State Water Resources Control Board

February 15, 2022

Santa Clara Valley Water District
c/o Todd Sexauer
5750 Almaden Expressway
San Jose, CA 95118
PachecoExpansion@valleywater.org

Dear Mr. Sexauer:

COMMENTS ON DRAFT ENVIRONMENTAL IMPACT REPORT (STATE CLEARINGHOUSE #2017082020) FOR THE PACHECO RESERVOIR EXPANSION PROJECT IN SANTA CLARA COUNTY

Thank you for the opportunity to comment on the draft Environmental Impact Report (EIR) for the Pacheco Reservoir Expansion Project (Project).

The mission of the State Water Resources Control Board (State Water Board) and the nine Regional Water Quality Control Boards throughout the state (Regional Boards) (collectively Water Boards) is to preserve, enhance, and restore the quality of California's water resources and drinking water for the protection of the environment, public health, and all beneficial uses, and to ensure proper water resource allocation and efficient use, for the benefit of present and future generations.

The State Water Board administers water rights in California and the State and Regional Boards have primary authority over the protection of the State's water quality. The Pacheco Reservoir Expansion Project will require both water right and water quality approvals from the State Water Board and Central Coast Regional Water Quality Control Board (Central Coast Water Board). Accordingly, the Water Boards are responsible agencies for the Project pursuant to the California Environmental Quality Act (CEQA).

As responsible agencies under CEQA, the Water Boards must review and consider the environmental effects of the Project identified in the draft EIR that are within their purview and reach their own conclusions on whether and how to approve the project. (Cal. Code Regs., tit. 14, § 15096, subd. (a).) Responsible agencies should also comment on draft environmental impact reports and negative declarations for projects that will require the responsible agencies' approval. (*Id*., § 15096, subd. (d).)

Accordingly, the Water Boards submit these joint comments. General comments regarding the Project are included below whereas specific comments are included in a comment table as an attachment to this letter. In addition, for each comment in the attached table, the commenting Section within the State Water Board is identified to facilitate follow up discussion between staff if warranted. Should you have questions or topics for discussion regarding these comments, please contact the appropriate staff identified below.

Justine Herrig
Senior Environmental Scientist
Permitting Section
916-323-5176
Justine.Herrig@waterboards.ca.gov

Jane Ling
Senior Water Resources Control Engineer
Petition, Licensing, and Registration Section
(916) 341-5335
Jane.Ling@waterboards.ca.gov

Craig Williams
Senior Environmental Scientist
Bay-Delta Section
(916) 341-5759
Craig.Williams@Waterboards.ca.gov

Garrett Long
Water Resources Control Engineer
Water Quality Certification & Public Trust Section
Garrett.Long@Waterboards.ca.gov

General Comments

Consideration of CEQA by the State Water Board
The State Water Board, as a responsible agency under CEQA, will review and consider environmental impact determinations and associated analysis as presented in a draft and final EIR prepared by the Santa Clara Valley Water District (Valley Water) for the Project. Consideration of environmental impacts is required before taking any final action, such as issuing a water right permit, a water right change petition, or a water quality certification pursuant to section 401 of the Clean Water Act. Accordingly, these comments are intended to assist in development of a robust CEQA document capable of supporting actions by the State Water Board for the Project. In exercising its independent authority, however, the State Water Board may reach determinations that differ from those presented in CEQA.

North Fork Pacheco Creek

State Water Board comments on the North Fork Pacheco Creek within the Pacheco Creek watershed focus on anticipated State Water Board actions, which include action on an application for water quality certification, a petition to change water right license 2879, and water right applications seeking to divert additional water from North Fork Pacheco Creek. The Project involves the removal of an existing dam that creates Pacheco Reservoir and construction of a new dam and expanded reservoir approximately 1.8 miles upstream of the existing dam on North Fork Pacheco Creek. Pacheco Pass Water District diverts and stores water in the existing Pacheco Reservoir under water right license 2879. The petition to change license 2879 will seek authorization to move the point of diversion upstream to the new dam location. The new reservoir will also divert more water from North Fork Pacheco Creek, requiring acquisition of new water right permit(s).

Water Right Permit
The draft EIR indicates that Valley Water intends to file a water right application to appropriate water by permit with the State Water Board. Valley Water intends to use the additional water from North Fork Pacheco Creek for fish and wildlife preservation and enhancement, and municipal, and industrials uses. Fish and wildlife preservation and enhancement use are considered a non-consumptive use (where water returns to the stream) and municipal and industrial uses are consumptive uses. Based on the proposed use of water for fish and wildlife enhancement and preservation by the Project as described in the draft EIR, the Project may need to file two separate water right applications since it appears that the non-consumptive use and consumptive uses are not incidental to each other. (See Cal. Code Regs., tit. 23, § 686.) Consideration of any water right application is a discretionary action that requires determinations that (1) unappropriated water is available, (2) potential impacts to fish and wildlife will not be unreasonable and public trust resources will be protected to the extent feasible and in the public interest, and (3) the appropriation of water is in the public interest.

Petition to Change Water Right Licenses and Permits
The draft EIR indicates that Valley Water intends to file a change petition, on behalf of Pacheco Pass Water District, to change water right license 2879 which diverts water from North Fork Pacheco Creek into the existing Pacheco Reservoir. However, the draft EIR does not discuss the need for a petition to change the U.S. Bureau of Reclamation's (Reclamation) water rights for the Central Valley Project (CVP) to allow for rediversion of water previously diverted under Reclamation's rights into the proposed new reservoir; the Board's analysis indicates that such a petition will be a requirement for the project. The EIR should also fully address potential impacts, including identification of mitigation measures, from effectively expanding the south of Delta capacity to store water diverted from the Delta, particularly given that most of the water proposed to be stored in the new reservoir would be water diverted from the Delta. (See Wat. Code, §§ 1702, 1703, 1703.6, subd. (d) [setting forth requirements for water right change petitions].) When a project is seeking to petition to modify existing water

rights and the project is also seeking a water right application as part of the same project on the same water source, the State Water Board may process both actions together. Petitions follow the same general processing steps and timeline as water right applications, as described below. Additionally, consideration of any petition on an existing water right is a discretionary action that requires determinations that the change to the existing water right (1) will not cause injury to existing water right holders or initiate a new water right, (2) will not cause unreasonable impacts to fish and wildlife and public trust resources will be protected to the extent feasible and in the public interest, and (3) will be in the public interest.

Water Quality Certification
Section 401 of the Clean Water Act (33 U.S.C. § 1341) requires any applicant for a federal license or permit for an activity that may result in any discharge to waters of the United States to obtain certification from the State that the project will comply with the applicable water quality requirements, including water quality standards promulgated pursuant to section 303 of the Clean Water Act (33 U.S.C. § 1313). Clean Water Act section 401 directs that certifications shall prescribe effluent limitations and other conditions necessary to ensure compliance with the Clean Water Act and with any other appropriate requirements of state law, which includes the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.). Conditions of certification shall become a condition of any federal license or permit subject to certification. The Project requires one or more federal permits and will result in a discharge to waters of the United States, and therefore must obtain a water quality certification from the State Water Board. Since the Project involves a water right activity, the application for a Water Quality Certification should be submitted to the State Water Board, which will coordinate with the Central Valley Water Board on its processing.

The State Water Board's certification must ensure compliance with applicable water quality standards as listed in regional and state water quality control plans. Water quality control plans designate the beneficial uses of water that are to be protected (such as municipal and industrial, agricultural, and fish and wildlife beneficial uses), water quality objectives for the reasonable protection of the beneficial uses and the prevention of nuisance, and a program of implementation to achieve the water quality objectives. (Wat. Code, §§ 13241, 13050, subds. (h), (j).) The beneficial uses, together with the water quality objectives contained in the water quality control plans, and applicable state and federal anti-degradation requirements, constitute California's water quality standards for purposes of the Clean Water Act. In issuing water quality certification for a project, the State Water Board must ensure consistency with the designated beneficial uses of waters affected by the project, the water quality objectives developed to protect those uses, and anti-degradation requirements. (*PUD No. 1 of Jefferson County v. Washington Dept. of Ecology* (1994) 511 U.S. 700, 714-719.)

Although the draft EIR analyzes the Project's potential impacts to environmental resources in comparison to baseline (existing) environmental conditions, the water quality certification process will evaluate the Project's consistency with water quality

standards. The evaluation of the Project's consistency with water quality standards may require actions in addition to proposed CEQA mitigation measures. The draft EIR needs additional analysis of potential water quality impacts associated with Project construction in addition to mitigation measure refinement to ensure established restoration metrics are met.

Water Right and Water Quality Certification Processing, Timing, and Hearing
The timelines for processing water right applications and petitions can vary greatly in length depending on the size and complexity of the project and the number and nature of protests received. The State Water Board will begin processing the application(s) and petition(s) once they are deemed complete. When water right applications are submitted to the State Water Board, staff must evaluate whether the application is complete within 30 days of receiving it, unless the timeline is suspended by Gov. Code, § 55922.1. due to a critically dry year or drought emergency. However, if deficiencies are found that make the applications incomplete, the State Water Board will send a deficiency letter which will provide a minimum of 60 days to address deficiencies.

The Board's first step, once the application is deemed complete, is to prepare a public notice of the project. Public noticing includes publication to provide existing water right holders and other stakeholders that may be affected by the proposed project information about the project and the opportunity to file protests against approval of the applications and petitions. The noticing period for the application(s) and petitions(s) is 60 days. Individuals and other entities may file protests against the water right application(s) or petitions(s) if they think that the proposed action will cause injury to an existing water right holder, adversely affect public trust resources, have an adverse environmental impact, or not be in the public interest.

If a valid protest is received during the noticing period, the water right applicant will be prompted to conduct protest resolution. (Wat. Code, § 1333.) Protest resolution typically lasts a minimum of 180 days. Depending on the number and content of the protests, protest resolution may be a lengthy process. Protest resolution may also result in the water right applicant and/or the protestants providing additional information to support their findings and/or claims. (Wat. Code, § 1334.) Protest resolution may result in the applicant conducting additional analysis to investigate matters raised by protestants. A robust draft and final EIR and supporting documentation should assist a water right applicant in resolving protests. In addition to the notice and protest process, other processing steps run concurrently, such as evaluation of water availability and potential impacts to public trust resources, as discussed below.

As part of processing the water right application, this project may involve a petition for release of priority from a state-filed application (Application 18334SF) located on the downstream flow path. A public hearing is required if a petition for release of priority from a state-filed application is filed. (Wat. Code, § 10504.1.) A hearing is also required if there are outstanding protests on a water right application or change petition that raise disputed issues of material fact. (Wat. Code, §§ 1350, 1351, 1704.)

Whenever practicable, a hearing on a petition for release of priority from a state-filed application will be combined with any required hearing on a related application or change petition. (Cal. Code Regs., tit. 23, § 739.) If the water right application for the Project requires a water right hearing, the hearings process generally runs after the other processing steps discussed, as information generated during processing the application is relied upon during the hearing. As mentioned above regarding protests, a robust EIR that addresses all State Water Board comments is expected to greatly assist with this process.

A hearing may take several years to complete. The California Water Commission has provided resources for State Water Board staffing to assist with processing of Proposition 1 Water Storage Investment Program (WSIP) projects, including this project. This dedicated staffing allows for expedited processing. Valley Water should be aware, however, that even when a project is considered expedited, hearing on an expedited project will be prioritized as appropriate taking into consideration other high priority efforts, such as other WSIP projects and other high priority matters that require a hearing. It is also possible that processing will be affected by drought conditions or other urgent matters. Per the California Water Commission's webpage for the Project, Valley Water is targeting the issuance of water right approvals for the Project by the end of 2024. The State Water Board wants to ensure that Valley Water is made aware that processing a water right application and petitions for the Project will take a considerable amount of time due to the complexity of the Project. Valley Water can help speed up the hearing timeline, and the entire water rights process, by completing a robust water availability analysis and resolving protests prior to the hearing.

The Project's water quality certification process is associated with a United States Army Corp of Engineers (USACE) Clean Water Act Section 404 permit. As such, the water quality certification process will be limited to approximately 90 days unless the USACE grants an extension. To ensure the requirements of the water right and water quality certification are consistent, State Water Board staff recommends Valley Water work with State Water Board staff to determine the appropriate timing for the filing of the water quality certification application for the Project.

Water Availability and Public Interest
The State Water Board will consider the hydrologic analyses and water availability findings included in the EIR for the Project while processing any water right applications filed for the proposed project. In determining the amount of water available for appropriation, the State Water Board must make its own independent findings on water availability and take into consideration the public interest and the relative benefit to be derived from all beneficial uses of the water concerned, including municipal, industrial, preservation and enhancement of fish and wildlife resources, and the water quality needed to protect beneficial uses.

The draft EIR indicates Valley Water may have embarked on efforts to assess water availability, however the water right application process typically involves a more

comprehensive examination, including cumulative impacts at a watershed scale. As a general approach, water availability considerations compare available supply, under a range of hydrologic conditions, minus water that needs to remain instream and water that is already spoken for by senior diverters (including senior priority applications).

Environmental analyses for projects involving new surface water diversions typically entail evaluation of the impacts of the proposed diversion, including the impacts on biological resources. For the State Water Board to evaluate the impacts of the proposed diversion of water, the Project needs to identify some key elements, starting with the quantity and rate of water proposed for diversion, and the beginning and end of the annual season when water would be diverted from North Fork Pacheco Creek. The draft EIR states the maximum amount of water Nork Fork Pacheco Creek can produce in any given year, and includes reduced downstream percentages compared to baseline flows in the creek, however the draft EIR does not indicate or analyze the quantity of water from the creek that will be sought under a water right application and how much will remain instream. The draft EIR does not appear to evaluate a minimum flow required to maintain instream resources during times of diversion, evaluate if there is a need for passing through peak flows to maintain the natural hydrograph, including for channel maintenance, or evaluate whether the season of diversion should be limited to reduce impacts to downstream fisheries and other instream resources. Without this information, the State Water Board will not be able to fully evaluate the impacts of the proposed diversion of water.

Water Right Application and Petition on License 2879 Public Trust Considerations
In addition to the State Water Board's obligations under CEQA and the Water Code, the State Water Board has an independent obligation to consider the effect of an application for a water right permit on public trust resources, and avoid or minimize harm to those resources to the extent feasible and in the public interest. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 446-447.) The common law public trust doctrine protects public uses of navigable water bodies, including fishing, recreation, and the preservation of fish and wildlife habitat. Under the public trust doctrine, the State Water Board has a duty of continuing supervision over the appropriation of water. The Board is not confined by past allocation decisions, and the CEQA baseline should not be construed as the appropriate baseline for consideration of the need to protect public trust resources. In addition, it is the policy of this state that all state agencies, boards, and commissions seek to conserve endangered species and threatened species and use their authority in furtherance of the purposes of the California Endangered Species Act. State agencies should not approve projects which would jeopardize the continued existence or habitat of any endangered species or threatened species if there are reasonable and prudent alternatives available consistent with conserving the species or its habitat which would prevent jeopardy. (Fish & G. Code, §§ 2053 & 2055.)

The State Water Board will also need a better understanding of proposed reservoir operations in order to process a water right application and petition. The draft EIR should clarify how the reservoir will operate with multiple sources of water and multiple

water rights. More detailed information, which could be provided in a reservoir operations plan, could be provided concerning the operations of the reservoir, including a range of quantities of water that would be stored in the expanded reservoir from diversions under water right License 2879, the CVP, and the proposed water right application(s) for additional diversion from North Fork Pacheco Creek.

Sacramento San Joaquin River Delta Watershed

The State Water Board acknowledges the significant benefit of a new water supply project such as Pacheco Reservoir to enhance California's water resiliency, where such projects can be designed and operated in a manner that does not exacerbate existing pressures on either the Delta ecosystem or the Pajaro River watershed.

The proposed project would involve the rediversion of water diverted by the CVP from the Sacramento/San Joaquin Delta (Delta) watershed and stored in San Luis Reservoir, effectively expanding storage capacity and increasing the ability to divert water from the Delta. Many of the current Delta operating requirements are in the process of being updated to strengthen environmental protections, including the water quality and flow objectives included in the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan) and the federal biological opinions issued under the federal Endangered Species Act for the long-term operation of the State Water Project (SWP) and CVP. Nonetheless, both the existing conditions baseline and the future conditions baseline identified in the draft EIR, which is less protective of Delta fish and wildlife than the existing conditions baseline, are used to conclude that Project and cumulative impacts to Delta fishes are less than significant, and the draft EIR does not evaluate any proposed operational constraints associated with diversions from the Delta.

In prior comments on the related San Luis Low Point Improvement Project's (SLLPIP) environmental documentation, State Water Board staff noted that Delta outflows under existing conditions are highly impaired, and are associated with prolonged and precipitous declines of native Delta species (see the State Water Board's 2017 scientific basis report in support of potential update and implementation of the Bay-Delta Plan:

www.waterboards.ca.gov/water_issues/programs/peer_review/docs/scientific_basis_phase_ii/201710_bdphaseII_sciencereport.pdf

The State Water Board's 2018 Framework for possible updates to the Bay-Delta Plan:

https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/sed/sac_delta_framework_070618%20.pdf).

However, as in the SLLPIP draft EIR/EIS, the draft EIR continues to rely on existing regulatory requirements to avoid significant impacts to Delta fishes, without consideration of potential future Bay-Delta Plan requirements. Potential changes

include new and modified Sacramento River inflow, Delta outflow, and cold water habitat objectives, as well as other requirements to ensure the reasonable protection of fish and wildlife beneficial uses. Although the State Water Board supports new storage projects that can take advantage of high flow events, operational constraints that address the potential impacts of increased diversions on fishery resources and water quality in the Delta should be evaluated.

While it is possible that a voluntary agreement for possible updates to the Bay-Delta Plan will be finalized and submitted to the State Water Board and ultimately incorporated into the Bay-Delta Plan, such a voluntary agreement would not necessarily address operating criteria for new or expanded diversion projects or other diverters that are not part of any voluntary agreement. As discussed further in detailed comments below, the draft EIR should include Project-specific operational constraints to ensure that future operations of the Project are consistent with modeled operations that form the basis for impact conclusions in the draft EIR.

Other State Water Board Considerations

Tribal Resources
For projects that may involve tribal resources, the Water Boards are committed to having meaningful involvement and consultation with California Native American Tribes on actions that may have an impact to tribal lands, tribal interest, and/or tribal cultural resources consistent with the mission of the Water Boards:

www.waterboards.ca.gov/about_us/public_participation/tribal_affairs/docs/california_water_board_tribal_consultation_policy.pdf

Equity Resolution
The State Water Board adopted Resolution No. 2021-0050, Condemning Racism, Xenophobia, Bigotry, and Racial Injustice and Strengthening Commitment to Racial Equality, Diversity, Inclusion, Access, and Anti-Racism

(https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2021/rs2021_0050.pdf).

Any action by the State Water Board related to the Project will take this resolution into consideration ensuring there is no conflict with the resolution.

Closing

We appreciate the opportunity to participate in the environmental review process. If you have any questions regarding these comments, please contact the appropriate staff identified above.

Sincerely,

Erik Ekdahl, Deputy Director
State Water Board, Division of Water Rights

Attachment: Comment Table for Pacheco Reservoir Expansion Project's Draft EIR

ecc: Todd Sexauer
TSexauer@valleywater.org

Justine Herrig
Justine.Herrig@waterboards.ca.gov

Amanda Montgomery
Amanda.Montgomery@waterboards.ca.gov

Dana Heinrich
Dana.Heinrich@waterboards.ca.gov

Sam Boland-Brien
Samuel.Boland-Brien@waterboards.ca.gov

Jane Ling
Jane.Ling@waterboards.ca.gov

Garret Long
Garrett.Long@Waterboards.ca.gov

Parker Thaler
Parker.Thaler@waterboards.ca.gov

Craig Williams
Craig.Williams@Waterboards.ca.gov

Jeff Laird
Jeff.Laird@Waterboards.ca.gov

Diane Riddle
Diane.Riddle@waterboards.ca.gov

Mark Cassady
Mark.Cassady@Waterboards.ca.gov

Diane Kukol
Diane.Kukol@waterboards.ca.gov

COMMENT TABLE FOR PACHECO RESERVOIR EXPANSION PROJECT'S DRAFT EIR

Chapter 2: Project Description and Alternatives to the Proposed Project

Comment No.	Page No.	Comment
1	2-15	The draft EIR states that "Field studies indicate that, under current conditions (low flows and high water temperature), only the 10 miles of Pacheco Creek downstream from the existing confluence of North Fork and South Fork Pacheco Creeks may provide suitable habitat for steelhead egg incubation and fry rearing in some years". The draft EIR should include discussion of how conditions will change in North Fork Pacheco Creek above the confluence given the proposed restoration and proposed flow schedule. Specifically, the EIR should discuss whether conditions will be appropriate for SCCC and when, including the likelihood that SCCC will move upward into the North Fork Pacheco Creek to the restored portion of North Fork Pacheco Creek once the Project is operating.
2	2-26	The draft EIR states "Material excavated from the dam would be sorted on-site; material deemed suitable for earth fill would be used for construction of the cofferdam." Please specify the criteria for "suitable" material.
3	2-34	Under "Natural Inflows and Integrated Water Management," the draft EIR indicates the expanded reservoir will be filled with natural inflows from North Fork Pacheco Creek and supplemented by inflows from San Luis Reservoir. The draft EIR provides the expected maximum and minimum inflows from North and East Fork Pacheco Creeks, but does not specify how much of those inflows the proposed project would divert. The draft EIR should be revised to include the proposed amount of water that will be diverted from North Fork Pacheco Creek by the Project and the amount of water that will be diverted from the Delta and stored in the reservoir.
4	2-36	The draft EIR states that "In years when adult migration most likely does not occur due to lack of hydrologic connectivity in the Pajaro River system, and other steelhead life stages within Pacheco Creek are not likely to be present to benefit from summer/fall baseflows (e.g., June –October), reservoir releases for summer/fall baseflows may be reduced to retain water supplies to create later environmental pulse flows." Please explain what constitutes a lack of hydrologic connectivity and provide information on the parameters that will be monitored or measured to determine a lack of hydrologic connectivity and the associated operational changes.

5	2-36	The draft EIR should identify the criteria or methodology that will be used to identify that "other steelhead life stages within Pacheco Creek are not likely to be present to benefit from summer/fall baseflows." Any additional monitoring or assessment criteria should be evaluated and discussed in the draft EIR.
6	2-61, 2-62	Section 2.3.5.1 states that "On average, the expected available emergency storage supply would be 117,480 acre-feet under existing conditions and 107,160 acre-feet under future conditions. However, the volume of water supplied for emergency purposes may exceed these volumes because high salinity water from the Delta could be blended with low salinity water from the Proposed Project, depending on water supply conditions." Please specify which water sources will contribute to the "emergency storage supply" and how much water will come from each source under different conditions. Section 2.3.5.2 states that "The Proposed Project would, on average (all water year types), provide an increase of 5,130 acre-feet of municipal and industrial water supply to Valley Water and SBCWD, under existing conditions. Under future conditions, the Proposed Project would provide an average (all water year types) of 3,600 acre-feet to Valley Water and SBCWD. During critical water years, the Proposed Project would provide an increase of 8,830 acre-feet of municipal and industrial water supply to Valley Water and SBCWD under existing conditions. Under future conditions, the Proposed Project would provide an increase of 8,350 acre-feet of municipal and industrial water in critical years to Valley Water and SBCWD." The draft EIR should be revised to specify how much water from each source will contribute to the additional municipal and industrial water supply.
7	2-62	Section 2.3.5.3 states that "The Proposed Project would improve habitat for SCCC steelhead by providing seasonal water flows and improving temperatures in the Pacheco Creek downstream from the expanded reservoir." The draft EIR should be revised to describe the total maximum amount of water that will be diverted, stored, and used in the expanded reservoir under the range of possible hydrologic conditions for fish and wildlife preservation and enhancement uses downstream of the expanded reservoir.
8	2-85	The draft EIR states that "A 55,000-acre-foot habitat storage reserve would be maintained to provide suitable flows and water temperatures for steelhead in the North Fork and mainstem of Pacheco Creek during multi-year droughts." The draft EIR should be revised to provide analysis as to why under Alternative A, the habitat storage reserve is 55,000 acre-feet whereas under the Proposed Project there is only 35,000 acre-feet proposed for the habitat storage reserve.
9	-	For each alternative, the draft EIR provides estimates of the additional water that would be made available for fish and wildlife, municipal, and industrial uses within the expanded reservoir. However, the

		draft EIR does not indicate of that additional water for these uses, how much would come from which water source (North Fork Pacheco Creek or the CVP). The draft EIR should be revised for Alternative A, B, C and D to indicate how much water will come from each source to provide the proposed additional water for fish and wildlife, municipal, and industrial uses.
10	-	Project alternatives analyzed in the draft EIR are related to dam type and location. It is unclear if the alternative included analysis of routes and locations for access roads, the electric transmission line, the conveyance pipeline, and other ancillary facilities. The draft EIR should be revised to clearly discuss these aspects for Alternative A, B, C, and D.

Chapter 3: Environmental Setting, Impacts, and Mitigation

Comment No.	Page No.	Comment
11	-	The cumulative impacts section does not include a discussion of the State Water Board's efforts to update and implement the Bay-Delta Plan and should. The State Water Board approved updated San Joaquin River flow and southern Delta salinity objectives in 2018 and is in the process of implementing those objectives. The State Water Board is also in the process of updating the Delta outflow and other flow and water project operational objectives in the Bay-Delta Plan as discussed above.

Section 3.5: Biological Resources – Botanical/Wildlife

Comment No.	Page No.	Comment
12	-	This section should also include in its analysis the State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State. (www.waterboards.ca.gov/water_issues/programs/cwa401/wrapp.html). The Dredge or Fill Procedures provide California's definition of wetland, wetland delineation procedures, and procedures for submitting applications for activities that could result in discharges of dredged or fill material to waters of the state. The Dredge or Fill Procedures ensure that State Water Board regulatory

		activities will result in no net loss of wetland quantity, quality, or permanence, compliant with the California Wetlands Conservation Policy, Executive Order W-59-93.

Section 3.6: Biological Resources – Fisheries Resources

Comment No.	Page No.	Comment
13	-	The draft EIR should consider the impact of the diversion of water from North Fork Pacheco Creek to the Pajaro River watershed as a whole. Specifically, the draft EIR should identify the diversion amount or range of possible diversion amounts and evaluate the potential direct and cumulative impacts of the proposed diversion and all other diversions in the watershed on the Pajaro River Lagoon and the fishery resources that utilize the lagoon.
14	3.6-3	The draft EIR states "East Fork Pacheco Creek is listed as having a historical steelhead population (DFG 1990 as cited in Becker and Reining 2008); however, steelhead are currently blocked from entering East Fork Pacheco Creek by North Fork Dam." The draft EIR should discuss why the proposed dam will not include a fish passage structure to allow connectivity to the steelhead's historical range within North Fork Pacheco Creek.
15	3.6-21	The *Biological Resources, Fisheries* section should include an evaluation of the impacts of minimization measure PAMM Fish-2. This minimization measure includes the construction of "a functional barrier that would prevent anadromous fish access to San Felipe Lake and Pacheco Creek upstream during construction," estimated to last for approximately 6.7 years. However, this exclusion barrier may have impacts of its own on SCCC steelhead that could effectively extirpate them from Pacheco Creek. It is unclear from the draft EIR what efforts will be made to facilitate recolonization of Pacheco Creek by SCCC steelhead after construction is completed or an estimated timeline for natural recolonization. An assessment for the impacts of PAMM Fish-2 should be included in the draft EIR and a recovery plan should be included as mitigation.
16	3.6-45	The *Biological Resources, Fisheries* section should include an analysis of the impacts of dampened winter peak flows on geomorphic processes that support the ecosystem. The winter pulse flows were designed to attract adult steelhead into Pacheco Creek. However, winter peak flows also drive geomorphic processes including scour and bed mobilization which rejuvenate riparian forests and clean gravel for salmon, benthic macroinvertebrates, and benthic diatoms. Peak flows are expected to be reduced by 41 to 55 percent in wet years under the proposed project. On page 3.6-45, the draft EIR

		state, “In high flow events, these tributary flows, combined with the release flows may be sufficient to trigger geomorphic processes that could affect habitat for anadromous fish species.” An analysis of the impacts of dampened winter flows on these geomorphic processes and other benefits such as flood plain access for yearling steelhead was not included in the draft EIR. The tradeoffs of reducing flows at one time to increase flows at another should be fully evaluated and described.
17	3.6-48	The water year type averaged X2 position cross-referenced from Section 3.20.3.4 is too coarse of a summary to support a less than significant impact determination for Delta fishes. Minimally, a seasonally averaged X2 position for the months of January through June should be considered. Ideally, more detailed information such as changes to frequency distributions of monthly X2 positions should be considered.
18	3.6-92	The SLLPIP draft EIR/EIS identified a significant impact associated with the risk of introduction of invasive aquatic species (including fishes) into Pacheco Creek. Mitigation Measure BIO-2 would have required a screen or treatment system capable of preventing the transfer of invasive fish, larvae, and eggs into Pacheco Reservoir. The draft EIR determined this impact to be less than significant, seemingly based on the observation that some invasive fish species are already present in the Pacheco Creek and the Pajaro River watershed. The Project description does not appear to contain a mitigation measure corresponding to the SLLPIP BIO-2. Mitigation Measure PAMM BI-13 *Aquatic Invasive Species Management*, appears to address introduction of invasive species due to construction and maintenance activities, but does not clearly address introduction of invasive species via import of water from San Luis Reservoir and should.
19	3.6-170	The cumulative analysis assumes that compliance with existing regulations will be sufficient to avoid cumulative impacts to Delta fishes. This conclusion is inconsistent with the large body of scientific information summarized in the State Water Board’s 2017 scientific basis report in support of the update of the Bay-Delta Plan, which concludes that existing flow conditions in the Delta watershed are insufficient to support native anadromous and resident fishes present in the Delta watershed. The draft EIR should consider operational constraints for the project to avoid additional impacts to the Delta.

Section 3.12: Hydrology and Water Management

Comment No.	Page No.	Comment
20	-	The draft EIR is unclear as to how much additional water the Project will be diverting from North Fork Pacheco Creek. The draft EIR indicates that the additional water diverted from North Fork Pacheco Creek will be used for fish and wildlife preservation and enhancement, municipal, and industrial uses but does not state the proposed amount for each use. The draft EIR appears to indicate that much of the additional water diverted from North Fork Pacheco Creek will be primarily used for fish and wildlife preservation and enhancement downstream of the reservoir within Pacheco Creek. The draft EIR does not indicate how often the water will be used for municipal and industrial uses. The draft EIR should be revised to specify how much water will be diverted and allocated for each use as a range and on an average annual basis.
21	-	The draft EIR should include a reservoir operations plan that includes, but is not limited to, how the reservoir will be initially filled after construction, how water entering and leaving the reservoir from both North Fork Pacheco Creek and the CVP will be accounted for, and how water released for fish and wildlife use downstream of the reservoir (including how identifying how much will be released for subsequent beneficial use) will be monitored and tracked, including what triggers would be monitored that cause changes in the proposed variable flow schedule.
22	-	The level of explanation of modeling assumptions and local hydrology in the draft EIR, including the *Water Resources and Fisheries Numerical Modeling Appendix* ("Appendix", in the context of this comment) is improved relative to the prior San Luis Low Point Improvement Project draft EIR/EIS. However, additional detail and more comprehensive presentation of results are necessary for a complete analysis. Specifically, the following items should be addressed: • The basis for the assumed changes to the demand pattern for delivery of CVP San Luis supplies (Appendix Table 2-3, p. 2-17) should be described more completely, and the Project should include features that ensure that actual operations remain within the analyzed range. The validity of impact determinations, particularly for Delta resources, depends upon an accurate representation of the effect of the timing and quantity of imports to the expanded Pacheco Reservoir from San Luis Reservoir. It is not clear from the information in the draft EIR whether the assumed operations are appropriate for all water year types and alternatives.

		• The results presented in Section 3.12 are generally presented as monthly averages by water year type. Some representation of the range of variation within these averaged periods should be included. For example, one would expect that storage in a reservoir with a storage volume of approximately five times the sum of annual average inflow and imports may fluctuate substantially, particularly during extended droughts. The draft EIR does not appear to show any explicit representation of operations during such a period, though such periods occur during the modeled hydrological record. • The results of operations modeling of the Project should be described more completely to help the reader understand the effect of the Project in the context of overall Valley Water operations. Chapter 6 of the Appendix contains a detailed description of WEAP model assumptions, but does not contain illustrative results to enable the reader to understand the modeled operations. Time series presentations of representative operational conditions throughout the domain of the WEAP model would provide useful context.
23	3.12-14	A change petition to add Pacheco Reservoir as a Point of Rediversion may be required, and the expanded reservoir may need to be added as a place of storage for CVP's water rights if water from the CVP is stored in Pacheco Reservoir. In addition, if water is delivered to Pacheco Reservoir for storage when San Luis Reservoir is filling it could potentially add more storage space for the CVP rights. If so, the project has the potential to increase diversions from the Delta, and the potential impacts to the Delta fisheries and water quality conditions should be evaluated.
24	3.12-25, 29,30	The draft EIR states that impacts of the proposed project to water users in the Pajaro River Watershed would be less than significant because water supplies available to surface water users would not be substantially decreased. The draft EIR also mentions that the operation of the proposed project could cause changes to Pacheco Creek, but concludes that the changes would not impact surface water users in the Pajaro River Watershed due to the minor known amount of surface water diversion and the relatively minor change in total contribution of Pacheco River to Pajaro River. The draft EIR indicates that under the operation of the proposed project, surface flows downstream of Pacheco Reservoir during winter months could be over 50 percent less compared to flows under the baseline condition. This seems to be a significant reduction in flows downstream of the Reservoir and to conflict with the conclusion of less than significant impact due to no substantial decrease in surface water supplies. The draft EIR also noted that there is a state filing (Application 18334SF) downstream on the Pajaro River with a large diversion amount. Although the state filing has not been assigned for actual diversion, it will be required to be considered in the water availability analysis for the applications for water right permits.

		Relatedly, the draft EIR indicates that "the depletion of interconnected surface water criterion is excluded from analysis of Hydrology and Water Management impacts." Interaction of surface water and groundwater could play an important role in how downstream groundwater users are impacted by the surface flow reductions.
25	3.12-32,33; 3.12-103, 3.12-137	The draft EIR indicates the chronic lowering of groundwater levels below sustainability criterion established in the draft Groundwater Sustainability Plan (GSP) for the North San Benito Subbasin would be the most appropriate to assess the significance of potential impacts to groundwater supplies during construction. Please further explain the reasoning for using chronic lowering of groundwater levels given that construction of the project is not an ongoing activity. Although construction of the proposed project may not have a long-term impact to groundwater supplies, modeled results in the draft EIR shows that the proposed project could cause over 10% reductions in groundwater storage in Reaches 1, 2 and 3 for during both the modeled wet period and drought period. Further explanation is needed on why this impact is not significant and whether downstream groundwater users available supply could be impacted.

Section 3.20: Water Quality

Comment No.	Page No.	Comment
26	-	The regulatory discussion in Chapter 3.20.2 should be revised to refer more specifically to State and Federal antidegradation policies to ensure that the antidegradation polices have been taken into consideration when assessing impacts to water quality. The Basin Plan which covers the antidegradation policies is available here: https://www.waterboards.ca.gov/centralcoast/publications_forms/publications/basin_plan/
27	3.20-10	The draft EIR states "Anecdotal observations suggest when Pacheco Reservoir storage is low in the fall, cyanobacteria (i.e., blue-green algae) may form a harmful algal bloom, depleting dissolved oxygen in the reservoir and diminishing water quality. Releases from the reservoir during these times are toxic to fish and livestock that use Pacheco Creek as a water source downstream (Smith 2007)."

		Please provide additional information on the current cyanobacteria blooms in Pacheco Reservoir as part of existing conditions, specifically what time period and duration cyanobacteria blooms occur along with species identification. Additionally, in the impact analysis, please provide analysis on the potential for the new reservoir to impact future cyanobacteria blooms.
28	3.20-23	The draft EIR states "PAMM BI-14: Comply with Restriction on Herbicide Use in Aquatic Areas -- This PAMM will require that only herbicides and surfactants registered for aquatic use will be applied within the banks of channels within 20 feet of any water present." For PAMM BI-14, please define "registered for aquatic use". Additionally, please note that the *Statewide National Pollutant Discharge Elimination System Permit for Residual Aquatic Pesticide Discharges to Waters of the United States from Algae and Aquatic Weed Control Applications* (Aquatic Weed Control General Permit)[1] (State Water Board 2013) applies to projects that require aquatic weed management activities. The Aquatic Weed Control General Permit sets forth detailed management practices to protect water quality from pesticide and herbicide use associated with aquatic weed control.
29	3.20-26	The draft EIR states "Table 3.20-15 provides a summary of water quality impacts and associated mitigation measures with implementation of the Proposed Project, No Project Alternative, and alternatives to the Proposed Project. Table 3.20-15 also provides a summary comparison of impacts of the Proposed Project to the other alternatives (i.e., No Project Alternative and Alternatives A through D), indicating whether the impacts of the other alternatives are similar to or more or less severe than those of the Proposed Project. It should be noted that these comparisons present the most severe impact determination, and this impact may be based on impacts from either the construction of project facilities or from long-term operations and maintenance." State Water Board staff requests that impact analysis for Section 3.20 Water Quality provide separate impact determinations for construction and operational related impacts as these actions are separated in time and can create different types of impacts.
30	3.20-29	The draft EIR states "The applicable CC Basin Plan temperature water quality objective for cold and warm freshwater habitat beneficial uses states that surface water temperatures shall not be increased

[1] Water Quality Order No. 2013 0002 DWQ and NPDES No. CAG990005, as amended by Order No. 2014-0078-DWQ, Order No. 2015-0029-DWQ, Order No. 2016-0073-EXEC, and any amendments thereto. Available at: https://www.waterboards.ca.gov/water_issues/programs/npdes/pesticides/weed_control.html. Accessed May 21, 2021.

		by more than 5°F above natural receiving water temperature. However, the definition of "natural receiving water" temperature has not been established and there is debate as to what time period and watershed conditions the "natural receiving water" should reflect. The CCRWQB developed an evaluation guideline for the CC Basin Plan water temperature general objective of inland surface waters for the 303(d) analysis (SWRCB 2018a), classifying waters with temperatures greater than a threshold of 70°F (21°C) as impaired for beneficial uses of cold freshwater habitat, specifically for steelhead. To determine the significance of temperature impacts during construction and operations, water temperatures in Pacheco Creek were evaluated against both the "natural receiving water" numeric objective and the 303(d) evaluation guideline of maintaining temperatures below 70°F (21°C). Impacts were considered significant if flows during construction or releases from the expanded reservoir during long-term operations resulted in mean monthly increases in natural receiving water of 5°F or greater, or if mean monthly water temperatures exceeded 70°F (21°C) for a duration (i.e., number of months) or distance (number of creek miles) greater than baseline conditions, which are not currently impaired for water temperature. Since no measurements are available to characterize natural receiving water temperatures of North Fork Pacheco Creek, reference mean monthly natural receiving water temperatures available for Upper Coyote Creek listed in Table 3.20-5 were used to define natural inflow reference conditions for analysis of water temperature." State Water Board staff have several comments on the above referenced text: • The use of mean monthly water temperature as a threshold for significance criteria when assessing compliance with CC Basin Plan and general objectives of inland surface waters for 303(d) listing is not appropriate. A mean monthly water temperature analysis averages water temperatures over a monthly time period which smooths out water temperature data and neglects to acknowledge hourly, daily, or weekly temperatures which may exceed CC Basin Plan and Thermal Plan temperature criteria. State Water Board staff request a 7-day maximum weekly average criteria be applied to the draft EIR's analysis. • Use of Upper Coyote Creek for creation of an existing condition (baseline) for Pacheco Creek in comparison to potential impacts associated with the Proposed Project is not appropriate. Creek specific conditions such as topography, water diversions, and geomorphology can influence a creek's water temperatures. Additionally, the Upper Coyote Creek data used for a baseline

		comparison to Pacheco Creek was collected between 1965 to 1976 (draft EIR p. 3.20-6) which is not reflective of 2017 (year of Notice of Preparation issuance). State Water Board staff request that water temperature data from Pacheco Creek be collected to accurately create a baseline condition which can then be compared to modeled water temperatures (7-day weekly average) for assessing potential water quality impacts. Absent additional data collection on Pacheco Creek, more recent data than from 1976 for nearby creeks should be considered.
31	3.20-29	The draft EIR states "The discussion of construction of the Proposed Project under this impact focuses on five water quality constituents described similarly in both the CC and CV Basin Plans: temperature, sediment and turbidity, pH, oil and grease, and toxicity. The discussion of other water quality constituents described in Section 3.20.1.1 is excluded from the analysis of construction impacts as they are unrelated to the activities described under the Proposed Project. There are no proposed facilities or construction activities in any area subject to the Bay-Delta Plan." Impact WQ-1 analyzes if the Proposed Project and its alternatives could cause a violation of water quality standards or waste discharge requirements or otherwise substantially degrade surface water quality in Pacheco Creek or its tributaries. Narrowing the impact analysis associated with construction related impacts to temperature, sediment and turbidity, pH, oil and grease, and toxicity is not sufficient to accurately analyze the potential impacts of Proposed Project construction to water quality standards. The Central Coast and Central Valley Basin Plan narrative water quality objectives referenced in draft EIR section 3.20.1.1 should be included in the impact analysis because construction activities, dewatering and diversion, and long-term reservoir operations have the potential to impact concentrations of constituents in the Pacheco Creek watershed. The Project involves the removal of an existing dam and reservoir, and the construction of a new dam and reservoir approximately 1.8 miles upstream of the existing dam. In addition, the Proposed Project involves removal and stabilization of sediments currently entrained in the existing Pacheco Reservoir. The amount of sediment present is estimated to be between 800,000 to 1,600,000 cubic yards (draft EIR p.3.20-8). WQ-1 discusses that some reservoir sediment may be released from the reservoir footprint and into Pacheco Creek. Sediments may contain nutrients (bio-stimulatory substances), metals, and pesticides/harmful constituents. To assess the potential impacts to water quality standards associated with sediment transport, a sediment transport model should be developed that would bookend the amount of sediment that may be released in various water years during Project activities, and estimate

		the extent to which sediments may be transported through Pacheco Creek and into the Pajaro River. Sediment released into Pacheco Creek during Project activities should be appropriately mitigated to reduce Project impacts. Please note, if significant sediment deposits occur in Pacheco Creek and/or the Pajaro River it can decrease the water depth and thereby affect water temperature and aquatic habitat. Additionally, nutrient and chemical constituents of the sediments should be discussed in WQ-1 as it can affect water quality through exposure within and releases from the former reservoir footprint.
32	3.20-33	The draft EIR states "Consistent with PAMM WQ-2, all borrow, staging and disposal area would be sited to minimize or avoid water bodies or drainage features." State Water Board staff should be consulted with on the location of borrow, staging, and disposal sites prior to finalization.
33	3.20-33	The draft EIR states "Under the Proposed Project, about 1.8 miles of the historic channel of North Fork Pacheco Creek that was initially inundated by the existing Pacheco Reservoir in 1939 would be restored to provide salmonid spawning and rearing habitat. Approximately 1,000,000 cubic yards of residual sediments deposited in the existing reservoir inundation area would be excavated and either transported to on-site designated disposal areas or stabilized in areas outside the 100-year floodplain of North Fork Pacheco Creek or its tributaries within the Project study area." Please provide an estimate of how much sediment is expected to remain within the current reservoir footprint and be stabilized following dam removal.
34	3.20-34	The draft EIR states "Monitoring in key reaches downstream in Pacheco Creek would be used to assess and address potential downstream sediment impacts." In addition to turbidity, State Water Board staff recommend water quality monitoring include suspended sediment, dissolved oxygen, temperature, arsenic, cobalt, and nickel measurements to assess and address potential downstream impacts due to sediment releases associated with the Proposed Project.
35	3.20-37 and 3.20-38	The draft EIR states "Operation of the Proposed Project would cause the water surface elevation of the expanded reservoir to increase and decrease over time. As discussed under Impact Geo-6 in Section 3.9.3.3, the effects of increased wave action and fluctuating water levels may lead to shoreline erosion around the perimeter of the expanded reservoir, loading of fine sediment into the expanded reservoir, increases in turbidity, and possible degradations in surface water quality in the expanded reservoir, and

		under peak flow events in North Fork Pacheco Creek and Pacheco Creek downstream. Over time, similar to the "bathtub ring" phenomena observed around the shoreline of the existing Pacheco Reservoir and other reservoirs, the shoreline would erode to a point where bedrock would become exposed, which would limit ongoing erosion and decrease discharge of sediment into the reservoir. Within the portion not subject to clearing (Zone 3), organic material cover and residual root strength of trees and brush would be expected to slow down the erosional processes to some degree, but over time the decay of these residual erosion inhibitors would result in exposure of underlaying soil and rock to shoreline erosion. This impact would be significant because water quality standards could be violated, or water quality could otherwise be substantially degraded. Mitigation Measure WQ-1b would help to mitigate shoreline erosion impacts by reducing the overall sediment load to the North Fork Pacheco Creek watershed. This would be accomplished by conducting a watershed improvement inventory within subwatersheds that offer opportunities for in-channel or upland sediment reduction, channel stabilization. This inventory would form the basis for developing a watershed-based sediment management plan that would implement restoration activities (e.g., drainage improvement, channel and bank stabilization, revegetation, and animal management strategies) intended to prevent or reduce erosional processes that have negative impacts on water quality, receiving waters and beneficial uses. This plan would include specific performance standards (including moving turbidity levels towards compliance with CC Basin Plan objectives) and monitoring objectives intend to demonstrate effectiveness. With implementation of Mitigation Measure WQ-1b, this impact would be less than significant with mitigation." Please include in the impact analysis an estimate/quantification of the shoreline erosion's contribution to water quality impacts during high flow events. Additionally, please provided estimated duration, magnitude and frequency of shoreline erosion events that will adversely impact water quality standards in Pacheco Creek. The current analysis doesn't define the potential extent and timeframe for potential water quality impacts. Mitigation Measure WQ-1b includes the development of a plan that would reduce sediment loads to North Fork Pacheco Creek to offset the Project's impacts to water quality associated with shoreline erosion. Mitigation Measure WQ-1b lacks a performance standard to quantify sediment load reductions that will be achieved from its implementation. Without a performance standard, State Water Board staff

		can not accurately assess whether Mitigation Measures WQ-1b will be effective and reduce impacts to a less than significant level. State Water Board staff recommend Mitigation Measures WQ-1b be updated to include a performance standard for sediment load reductions that is at a minimum comparable to the potential impacts associated with the Proposed Project's operations related to shoreline erosion.
36	3.20-42 and Table 3.20-23, all references thereto	See comment number 17 above.