SANTA CLARA VALLEY
HABITAT AGENCY

February 8, 2022

Attn: Valley Water
Todd Sexauer, Senior Environmental Planner
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

Via e-mail: TSexauer@valleywater.org

RE: Pacheco Reservoir Expansion Project (PREP) Draft EIR/EIS Comments

To Whom it May Concern,

The Santa Clara Valley Habitat Agency (Habitat Agency) respectfully submits the attached comments on the Draft EIR/EIS for the Pacheco Reservoir Expansion Project (DEIR). The Habitat Agency has reviewed the DEIR, including all technical reports and appendices. Although the Project is not covered by the Habitat Plan, it occurs within the Habitat Plan Permit Area and will result in significant impacts to biological resources as discussed in the DEIR and in the following comments. The Project also has the potential to directly conflict with the goals and objectives of the Habitat Plan. The Habitat Agency appreciates Valley Water's efforts to engage during early design and preparation of the DEIR. Indeed, many resource impacts were provided thoughtful consideration and discussion in the DEIR, including mitigation measures that were developed based on those early conversations. However, some resource impacts were not appropriately analyzed and/or lack sufficient mitigation to reduce impacts to the greatest extent feasible.

Please respond to the following comments.

1. **Balance of Wildlife and Habitat Needs**
   The Habitat Agency appreciates the DEIR focus on protection and enhancement of downstream habitat for South Central Coast steelhead. Identifying the best flow regime to benefit all downstream species and habitats was challenging during the many inter-agency meetings that were held throughout development of the DEIR. In the end, the proposed flow regime, with a heavy focus on fish benefits, represents a further departure from the natural hydrograph that, as stated in the DEIR will significantly affect downstream sycamore alluvial woodland (SAW) and would gradually convert existing SAW into willow riparian woodland. The Habitat Agency is concerned that the needs of fish in the watershed is not being appropriately balanced with the needs of other biological resources that are critical to the ecosystems downstream from Pacheco Reservoir. The Habitat Agency understands and respects that fish are now an

important species in the system that are in dire need of protection. However, the proposed operational flow regime would significantly alter downstream habitats, and this is an impact that could be lessened or avoided if more frequent dry back periods could be enforced. The dry back period is too short and too infrequent to prevent willows from encroaching into existing or future restored SAW habitat on the Habitat Agency's Pacheco Creek Reserve. In addition, the DEIR is unclear on conditions under which drybacks would occur, and there are statements in the Executive Summary that differ from the DEIR Chapter 3.5 about their frequency. Please clarify the conditions under which drybacks would occur, such as in dry and critical years, and how those year types will be defined. Please consider extending the frequency or duration of dry back periods to occasionally replicate the natural pre-dam hydrograph. And the DEIR Chapter 3.5 references that an adaptive management plan would be prepared for flow operations – would the Habitat Agency and other regulatory agencies be able to provide input and review the adaptive management plan?

2. **Land Conservation Coordination with the Habitat Agency**

The project as proposed would impact the Habitat Agency's ability to implement the Habitat Plan Conservation Strategy. Specifically, the Plan requires a minimum 46,496 acres to be protected through conservation by the time the Plan expires in 2063. These minimum requirements must be met regardless of the acreage of impacts the Plan covers over the permit term, and they would go up if the Plan covers more impacts than were anticipated during Plan preparation. This requirement is met through direct land purchases or purchases of conservation easements over existing land that contains the land cover types needed for the Habitat Agency to meet compliance criteria. This means the Habitat Agency is perpetually on the market for suitable conservation land with the appropriate types of resources. In the past, private developers or speculators have complicated the negotiations with willing landowners. Worse, some property owners with whom the Habitat Agency had been negotiating in good faith simply elected to instead sell to a higher bidder. Given this highly competitive real estate market, the Habitat Agency is already at a disadvantage when it comes to negotiations for land acquisition. If Valley Water's need to mitigate for hundreds of acres of high value conservation land results in the introduction of a new competitor for the same dwindling resources, then the Conservation Strategy becomes increasingly difficult to implement. This would be a conflict with an existing habitat conservation plan and would result in a significant impact under CEQA.

Appropriate mitigation would require that Valley Water coordinate directly with the Habitat Agency at the time any conservation land within Santa Clara County is considered as mitigation for any of the Project impacts. The High Speed Rail Authority has agreed to this level of coordination with the Habitat Agency for their San Jose to Merced segment of new rail line. Like the PREP, the High Speed Rail project is not covered by the Plan but could conflict with the Habitat Plan by pursuing negotiations with land owners within the Habitat Plan area in the absence of coordination with the Habitat Agency. Similarly, the Santa Clara Valley Regional Conservation Investment Strategy is required to coordinate with the Habitat Agency whenever conservation land is identified within the Plan area to ensure 1) that the Habitat Agency is not already in negotiations with the landowner and, 2) that the loss of the land to another entity

would not reduce the ability of the Habitat Agency to implement the Conservation Strategy of the Habitat Plan.

3. **Loss of Downstream Sycamore Alluvial Woodland**
   The DEIR states that perennial water flow associated with the new proposed flow regime would result in 71 acres of impacts to SAW downstream from the new reservoir. It is unclear how the impacts will be determined or when they would occur. It is also unclear when the proposed mitigation for those impacts would be required. Please clarify how the impact is to be determined and at what timeline the mitigation measures would be implemented.

4. **Indirect Effects on the Pacheco Creek Reserve**
   The Pacheco Creek Reserve (PCR) is a 155-acre ribbon of land that includes a two-mile reach of Pacheco Creek and adjacent riparian and upland habitat. The PCR is approximately three miles downstream from the current Pacheco Dam and was acquired by the Habitat Agency several years ago for two important reasons. First, it includes numerous acres of existing rare Sycamore Alluvial Woodland (SAW) that the Agency is required to protect in conservation due to it being a vanishing resource in the Plan area. Second, it provides a unique and very rare opportunity to restore SAW by re-engaging the floodplain that was disconnected through past land uses and replanting within that floodplain. The Habitat Agency is required to restore a minimum of 14 acres of SAW within the first 40 years of Habitat Plan implementation. With a resource this scarce, the opportunities to restore it are even more scarce. Therefore, the PCR is vitally important to ultimate success of the Habitat Plan. For several years, the Habitat Agency has been developing plans to restore a significant portion of the PCR with a focus on restoration of SAW. Resources, including staff time and grant and Habitat Agency funding and Valley Water Safe Clean Water grant funding have been expended in the past three years, and the completed project is anticipated to cost over $2,500,000. Proposed mitigation for the loss of SAW on other properties downstream from the dam via purchase of out-of-county conservation may be sufficient as those properties are not existing mitigation or conservation sites. However, the PCR is both conservation and mitigation for cumulative impacts to SAW within the Habitat Plan area. If existing or future restored SAW is impacted on the PCR, there is no proposed compensation for the Habitat Agency's potential loss of the habitat (i.e., the Habitat Agency will then be protecting fewer acres of SAW), and the significant cost of the proposed restoration project at the PCR would not be compensated. Please explain how the PCR, above and beyond all other downstream properties, will be compensated for the significant loss of time, resources and habitat if existing and proposed SAW is impacted within its boundaries.

5. **Sycamore Alluvial Woodland Impacts Must be Mitigated Outside of Santa Clara County**
   Mitigation Measure BI-2c requires compensatory mitigation for SAW impacts through Valley Water's purchase and protection of existing SAW. Page 3.5-315 states "Because sycamore alluvial woodlands have limited distribution in Santa Clara County, acquisition of mitigation sites will <u>focus</u> in areas outside the SCVHP boundaries to prevent a reduction in the availability of areas suitable for mitigation for use by the SCVHA….). This mitigation measure requires two important revisions. First, the word "focus" underlined above for emphasis, must be changed to

"occur" to signify that this is more than an attempt to acquire lands outside the Plan area but a commitment that no land within the Plan area will become SAW mitigation for the Project. Second, the Habitat Plan is currently undergoing a major amendment that may increase the Plan area to include more of the County than is currently covered. Therefore, the mitigation measure should state that no land within Santa Clara County (as opposed to the Plan area) will become mitigation for the Project.

6. **Wildlife Movement Across Pacheco Creek**

   The Pacheco Creek Bridge at the downstream end of the Pacheco Creek Reserve consists of a bridge platform suspended by two walled sections within the creek, resulting in three gaps through which wildlife can pass safely under the highway and move up and down the creek corridor. Through most of the year, only one or two sections are inundated, allowing wildlife movement to occur through the dry sections. However, during complete inundation, the water reaches across all sections and up to the rip rap armoring at the base of the bridge abutments. Under these conditions, high flows under the bridge and throughout Pacheco Creek will prevent many mammal species traveling with young of the year in late spring/early summer from successfully crossing the creek channel. It is unclear if the proposed perennial flow regime would exasperate this condition by introducing flows beyond the winter and early spring that may restrict wildlife movement beneath the Pacheco Creek bridge. We are concerned that higher and more frequent base flows could reduce the permeability of wildlife to cross Pacheco Creek at this specific location and other reaches downstream of the project.

7. **Bullfrog Control Downstream of the PREP**

   Under the proposed new flow regime (perennial, increased flow) where drybacks only occur during "dry and critical water years" there will be negative impacts on CRLF where ponds and slow-flow areas may not dry out annually by the end of September, thus allowing bullfrog tadpoles to mature (they need two years to mature). While bullfrogs are currently in the system, their reproduction and competitive/predatory influence on CRLF is held in check by most ponds drying up and stream flow stopping in late fall.

8. **Construction Impacts**

   The DEIR states that beginning in the summer of the second year of construction and for approximately five years seasonal inflow would no longer be stored behind the existing north fork dam for summer releases and the system would revert to its unimpaired condition. Therefore, the depth to groundwater would likely increase from existing conditions during the summer and fall, which could result in impacts to existing wetland and riparian habitats and aquatic organisms. Following construction, conditions would then change to the flow operations conditions. The shift from existing, to construction period, to post-construction flow operations could also impact habitats and organisms. It is unclear if these potential impacts have been determined.

9. **Additional Studies and Reports**

   Please find attached Pacheco Pass Mountain Lion Study, prepared by Pathways for Wildlife in May 2020. On May 1, 2020, the California Fish and Game Commission published a notice of findings to designate the southern California/Central Coast population of the mountain lion as a candidate species under the California Endangered Species Act. Page 3-16 of the DEIR Biological Resources Appendix references an earlier study by Pathways that was a 2019 Hazards Assessment. The 2020 Study is more current and germane to wildlife movement impacts related to higher creek flows and perennial water.

   Also provided is an observation of California red-legged frog within one mile downstream of the Pacheco Dam. This observation was in June 2021.

We look forward to having our comments addressed in the Final EIR and welcome any engagement on behalf of Valley Water to ensure that its responses to our comments are sufficiently vetted and provide adequate mitigation for project impacts in the eyes of the Habitat Agency. Thank you.

Sincerely,

Edmund Sullivan,
Executive Officer

Attachments

A – Pathways for Wildlife 2020 Pacheco Pass Mountain Lion Study
B – California red legged frog observation documentation