



July 19, 2024

Santa Clara Valley Water District
Attention: Todd Sexauer
Tsexauer@valleywater.org

RE: Draft Initial Study and Mitigated Negative Declaration IS/MND) for the Design Level Geotechnical Investigations for the Pacheco Dam Project

Dear Mr. Sexauer,

The Santa Clara Valley Audubon Society (SCVAS) was founded in 1926, and with over 1300 members, is one of the largest National Audubon Society chapters in California. SCVAS's mission is to promote the enjoyment, understanding, and protection of birds and other wildlife by engaging people of all ages in birding, education, and conservation. SCVAS is opposed to the Pacheco Dam project that the Geotechnical Investigations are intended to support. We strongly believe that the Pacheco dam project would have unmitigable, devastating environmental impacts on a regional scale, with questionable benefits if any. We would like to see Valley Water invest instead in reservoir expansion projects that are already underway (such as Los Vaqueros Reservoir), and increase efforts for groundwater recharge, recycling and reusing wastewater, capturing and treating stormwater, and promoting strong water conservation measures.

In the following comments we express our organization's concerns regarding Valley Water's Draft Initial Study and Mitigated Negative Declaration (IS/MND) for the Design Level Geotechnical Investigations for the Pacheco Dam Project:

- **The IS/MND segments CEQA Review.** The geotechnical investigations are an integral and necessary part of the larger Pacheco Dam Project. The investigations (borings, test pits etc.) have no purpose without the Pacheco Dam Project, and the Pacheco Dam Project cannot proceed without these investigations. A full EIR must be prepared for the entire Project: Geotechnical investigations and Pacheco Dam project combined.

- **Disruption to Wildlife Habitat and wildlife connectivity.** The proposed project is in a remote area that is a sensitive habitat for wildlife, including Tule elk, Mountain lions, Badgers, Bald Eagles, Golden Eagles, California Condor and many additional special status species. The IS/MND offers some mitigation measures to reduce direct impacts to individual animals, but lacks adequate mitigation for the impact on the suitability of habitat for foraging and reproduction. The geotechnical investigations will perforate vast areas that currently provide a remote and relatively undisturbed wildlife habitat. Many months, potentially years of drilling, digging, driving trucks and flying helicopters will impact habitat that is currently available to populations of people-averse species, and on ALL the water sources that are currently available to them in this landscape. This encroachment and associated noise and vibrations should be acknowledged as potentially significant and unmitigable. Furthermore, population level impacts for rare species are likely to occur as animals move away from the project area and compete for territories and resources elsewhere. This movement also exposes small populations to decimation due to lethal impacts when individual animals, such as Mountain lions, attempt to cross roads and highways.
- **The Santa Clara Valley Habitat Conservation Plan (VHP) cannot be used to permit impacts to species that are not covered by this plan.** Golden and Bald Eagles, fish, mountain lions, monarch butterflies and other special status species that forage and/or reproduce on the project sites are not covered by the VHP, and so adherence to VHP conditions cannot be relied on to mitigate impacts to these species. Most of these special status species were not originally included in the VHP precisely because mitigating impacts to their imperiled populations is difficult and controversial.
- **Nesting Birds:**
 - **Pre-Construction Nesting Surveys:** The IS/MND should include a clear requirement, including time requirement for pre-construction surveys for nesting birds to identify active nests within and near the project area. Surveys should be conducted by qualified biologists no more than 7 days before the commencement of any ground-disturbing or construction activities, and consider all possible nesting sites on trees, shrubbery, grasslands, on the ground and in burrows. Any pause in activities of over 2 days should trigger new surveys.
 - **Nesting Birds Buffer Zones:** The IS/MND should specify the establishment of buffer zones around identified active nests to minimize disturbance. Please implement buffer zones of at least 300 feet for common bird species and 500 feet for raptors and other sensitive species. No construction activities should occur within these buffer zones until the nests are no longer active.
 - **Monitoring Nesting Birds During Construction:** The mitigation measures should include continuous monitoring during construction activities to ensure compliance with protection measures for nesting birds. A qualified biologist should monitor active nests onsite to assess potential disturbances. If any nesting activity is observed within the buffer zones, work should cease, and additional protective measures should be implemented.
- **Impacts to Golden eagles:**

- The IS/MND mentions that Golden Eagles forage widely but nest in discrete locations, yet there is no detailed description of measures to identify, protect, and monitor these critical nesting and foraging habitats. Without a specific strategy to safeguard and monitor nesting areas, there's a risk of habitat disruption leading to nest abandonment, which could significantly impact Golden Eagle populations.
- The IS/MND highlights that "take" of eagles includes human-caused alterations around a nest site. However, it lacks concrete measures for avoiding or mitigating activities during sensitive periods (e.g., breeding season). Without clear guidelines on temporal restrictions or activity windows, there's a high risk of disturbances leading to nest abandonment or reduced reproductive success.
- The IS/MND mentions compliance with the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act but does not specify the procedures for monitoring or enforcing compliance. Without a robust monitoring and enforcement framework, it's challenging to ensure that the mitigation measures are effective and that any violations are promptly addressed.
- The IS/MND provides a broad overview of protected species and general compliance requirements but lacks species-specific mitigation measures for the Golden Eagle. Generalized measures may not adequately address the unique ecological requirements and threats faced by Golden Eagles, potentially leading to insufficient protection and remaining unmitigated significant impacts.
- The focus of the IS/MND is primarily on direct impacts, such as physical alterations around nest sites, without sufficient consideration of indirect impacts like changes in prey availability or increased human presence. Indirect impacts can significantly affect Golden Eagle populations by altering their behavior or habitat quality, which may not be effectively mitigated if only direct impacts are considered.
- The IS/MND suggests, "If it is determined the proposed Project would result in take of bald eagles or golden eagles, an incidental take permit from the USFWS would be required." Take of bald eagles or golden eagles should be considered a significant unavoidable cumulative impact that cannot be mitigated by an incidental take permit. This is because bird species of wide distribution, such as Golden eagles, are suffering declines due to the cumulative impacts of habitat loss as well as direct impacts from renewable energy and other projects, each with an issued take permit. The Cumulative Impact is devastating to these species.
- **Some mitigation measures could have significant impacts on special-status species.** For example, Nesting exclusion devices (BI-6) could result in abandonment of reproduction efforts by Burrowing owls, Golden Eagles and other raptors. Where small populations persist, such abandonment can have population-wide, detrimental impacts to the species in the region.
- **Stream Impact Assessment and Baseline Conditions:** The IS/MND should provide a comprehensive baseline assessment of the existing stream conditions, including hydrology, geomorphology, and ecological characteristics of streams potentially affected by the project. This should include water quality parameters, flow characteristics, and biodiversity assessments to establish baseline conditions for comparison post-project.

We strongly believe that the mitigation and other measures provided in the IS/MND are inadequate to mitigate the identified impacts to less than significant levels. A full environmental analysis would be necessary for the geotechnical investigations to proceed. We urge Valley Water not to adopt the IS/MND or approve the geotechnical investigation project.

Thank you for considering our comments.

Shani Kleinhaus, Ph.D.
Environmental Advocate
Santa Clara Valley Audubon Society
22221 McClellan Rd.
Cupertino, CA 95014
650-868-2114
advocate@scvas.org