

VALLEY WATER ENCROACHMENT REMEDIATION PROGRAM IMPLEMENTATION POLICY

The Santa Clara Valley Water District (Valley Water) is California's largest multi-purpose agency for water supply, water resources stewardship, and flood protection. Valley Water serves nearly two million residents in Santa Clara County by ensuring a reliable and safe water supply, restoring creeks, and safeguarding homes, schools, and businesses from flooding, while partnering with other organizations to create trails, parks, and open spaces for public enjoyment.

Valley Water owns and manages more than 300 miles of streams, many of which run alongside residential neighborhoods. These public lands are entrusted to Valley Water to protect public health and safety and support healthy creek ecosystems. Additional land holdings and land rights allow access and maintenance to a network of water supply infrastructure including percolation ponds, pipelines, treatment plants, and nine reservoirs.

To supply clean, safe water to the community and deliver critical flood risk reduction programs and projects, it is essential that Valley Water protect its waterways, riparian corridors, pipelines, and other infrastructure. This includes maintaining Valley Water right of way to all its facilities for maintenance, repairs, security, and upgrades. Ensuring clear and safe rights of way is also critical for safe and cost-effective staff access and for planned and unexpected flood and water resource facility repair and improvements.

Encroachments

Increased urbanization and development have led to a rise in encroachments onto Valley Water's land holdings and rights of way. Common encroachments include garages, driveways, fences, trees, landscaped areas, parked vehicles, and other personal property. These encroachments:

- Obstruct Critical Construction Projects: Resolution of encroachments can create lengthy delays or prevent efficient and ecological design of projects.
- Hinder Access for Maintenance Activities: Encroachments reduce access for inspections and repairs, making conditions less safe and more arduous for the field staff. Top-of-bank encroachments may block access for emergency repairs.
- Escalate Costs: Encroachments can escalate the cost of a project by requiring change orders or legal fees.
- Create Potential Legal Liabilities: When Valley Water property is in private use, Valley Water may be held liable for injuries or damage that occur on its property.

In addition, encroachments can negatively impact the environment:

- Chemical Contamination: Pesticides, herbicides, and fertilizers used in lawn care can seep into the soil and contaminate nearby creeks, rivers, and groundwater.
- Bank Erosion: Development of the creek bank leads to erosion, impacting habitat and water quality
- Blocking Wildlife Passage: Encroachments can obstruct vital wildlife corridors used for migration, hunting, and breeding.

If allowed to remain, encroachments on Valley Water property can be considered a misuse of public resources for the following reasons:

- Unauthorized Use of Public Property: When individuals or organizations build structures or use Valley Water land without permission, they are benefiting from public property without providing compensation – at the public's expense.

- Violation of Public Trust: Public lands are held in trust for the benefit of all community members. Unregulated encroachments compromise this trust by allowing private use of shared resources without transparency, accountability, or fair compensation.
- Potential Legal Issues: In some cases, unauthorized use of public land may raise legal concerns. Using public assets for purposes other than those intended can be considered a misapplication of public resources and may expose agencies to legal or financial liabilities.

Remediation Guiding Principles

Due to the increasing number and impact of encroachments, Valley Water clarified and expanded its Encroachment Remediation Program in 2019 to enforce the Water Resources Protection Ordinance (WRPO), which requires an encroachment permit for all uses and modifications of Valley Water land rights and facilities, with few exceptions.

Because there are a large number of encroachments within the County and limited resources to address them, remediation actions are prioritized based on the severity of the impact to Valley Water. Priority levels are assigned by creek reach or facility, with all encroaching properties within the reach or facility assigned the same priority. Priority levels are described below.

Priority 1: Encroachments that:

- Pose a threat to public, staff, and/or environmental health and safety
- Impact Valley Water's ability to operate, inspect and/or maintain an existing facility
- Impact Valley Water's ability to proceed with a project scheduled to begin in three years or less (Examples include areas for capital improvements, city/county trails, mitigation, or stream stewardship)
- Pose a high risk/probability threat to water quality, stream stability, habitat, and/or Valley Water property
- Expose Valley Water to potential civil or criminal liability

Priority 2: Encroachments that:

- Impact Valley Water's ability to proceed with a project scheduled to begin in more than three years
- Are located in areas where access is not needed to conduct inspections, maintenance, or other operational activities for three or more years
- Pose a low risk/probability of threat to water quality, stream stability, and habitat
- Pose a low risk/probability of exposing Valley Water to potential civil or criminal liability

Priority 3: Encroachments that:

- Do not fall into Priority 1 or 2 categories
- Existed on or before October 22, 2019, and
- Are not deemed to be surplus lands
- Examples may include natural, unimproved creek areas with no nearby Valley Water facilities where no capital projects are planned within ten years and no operational activities may occur

Priority 1 and 2 encroachments will be remediated. Priority 3 encroachments may be eligible for temporary licensing prior to eventual remediation.

Encroachments that are no more than 6-inches onto Valley Water property may be deemed "de minimis" if they are not located at the top of bank, blocking access, or causing damage to the environment or Valley Water property. A "de minimis" exception only applies when Valley Water staff has determined that, in addition to the outlined factors, the costs and resources required for enforcement outweigh the benefit of recovery of public property.

Property exchanges may be considered in cases of significant structural encroachments or unusual lot configuration. Exchange or transfer will only be considered if the property is deemed surplus in accordance with the Santa Clara Valley Water District Act and other state laws.

Remediation Program Implementation - Eight Steps

The objective of the Encroachment Remediation Program is to resolve encroachments using a consistent, comprehensive, and policy-driven process. Following a report of suspected encroachment appearing to be within Valley Water property, Valley Water staff will attempt to work amicably with property owners according to the following general steps:

1. Valley Water will conduct a property line survey to confirm the encroachment is on Valley Water land rights and not permitted. The encroachment will be assigned a remediation priority based on the impact to Valley Water. Typically, priority is assigned by creek reach or facility based on operational needs.
2. An initial letter is sent to the Property Owner (PO) with property ownership information and request to contact Valley Water to discuss removal of the encroachment.
3. If no response from the PO, a Notice of Violation (NOV) requiring removal of the encroachment by date certain, usually within 3 months, if Priority 1 or 2. If Priority 3, a temporary license may be applicable.
4. If the PO responds to the initial letter or NOV, Valley Water will:
 - Work with PO to see that encroachment is removed or resolved
 - Provide arborist consultation if needed
 - Arrange for inspection when encroachment is removed or
 - Work with the PO on a fence cost share application if requested
5. If PO does not respond to the NOV, Valley Water will send two additional notices via certified mail (usually at 30-day intervals), attempt to reach the PO in person, and check the status of the encroachment
6. If the encroachment still exists and Valley Water is not able to reach the PO, a Compliance Order may be issued* or Valley Water will move forward with legal action
7. If a Compliance Order was issued and there is no response to that order, Valley Water will move forward with legal action to resolve the encroachment.
8. The encroachment case is closed.

* Please see the Water Resources Protection Ordinance for information regarding the License Program, Compliance Order, and Administrative Hearing process.

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