



Valley Water

2026

Legislative Guiding Principles

Serving 2 million people living and working in Silicon Valley, Valley Water is the primary water resources agency for Santa Clara County, California.

Valley Water acts not only as the county's water wholesaler, but also as its flood protection agency and the steward for its watersheds, streams and creeks, underground aquifers and Valley Water-built reservoirs. As the county's water wholesaler, Valley Water makes sure there is enough clean, safe water for the county's residents. As the agency responsible for flood risk reduction, Valley Water works diligently to protect Santa Clara Valley homes, schools, roadways, and businesses from the devastating effects of flooding. Our watershed and stream stewardship responsibilities include protection and restoration of habitats, and protection of endangered species in connection with carrying out the purposes of the District Act.

To support our efforts in managing critical water issues, Valley Water advocates for legislation that advances our key guiding principles:

- I. Ensure a reliable supply of healthy, clean drinking water.
- II. Reduce the potential for flood damage.
- III. Enhance the quality of life through the protection and enhancement of watersheds, streams, and natural resources.
- IV. Protect revenues, enhance revenues, and contain costs.
- V. Encourage opportunities for job creation, and the protection and stability of Valley Water's workforce.
- VI. Prepare for emergencies, provide security, and ensure continuity of essential services.

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I. Ensure a reliable supply of healthy, clean drinking water.

A. Water Supply and Drought

1. Support efforts to provide drought relief funding.
2. Support efforts to advance Direct Potable Reuse of recycled water through Raw Water Augmentation and Treated Drinking Water Augmentation, specifically the State Water Board's promulgation of criteria and authorization for these purposes.
3. Support efforts that increase or sustain the reliability or quality of Valley Water's imported water supplies.
4. Support increasing water use efficiency throughout the state, while considering previous water use efficiency investments.
5. Support efforts that protect/advance Valley Water's interests in California's Modernization of the Delta Conveyance, including efforts to ensure a financially prudent project delivery.
6. Support strengthening local agencies' ability to manage and protect groundwater supplies.
7. Support the role of technology in addressing water conservation efforts and encourage government funding for technological advancements.
8. Support tax-exempt status for water conservation rebates.
9. Support prioritizing municipal and industrial water supplies during shortages.
10. Support enactment of county or city ordinances that would promote compliance with SB 407 (Padilla) Chapter 587, Statutes of 2009, by requiring the replacement of non-water-conserving plumbing fixtures upon the transfer of real property, or other enforcement mechanisms.
11. Support efforts to reduce non-functional turf through building standards and other means.
12. Support efforts to improve the integration of water agencies in land use decision-making processes.
13. Support efforts to ensure the reliability of operations of state and federal water projects.
14. Support efforts that reduce impediments for public agencies seeking to use effluent water for recycling purposes, such as right of first refusal or other mechanisms.

B. Water Quality

1. Support efforts to aggressively protect water quality from contamination in watersheds and groundwater basins.

2. Support efforts to amend the Clean Water Act consistent with our mission.
3. Support efforts to address all Delta stressors, including toxics, invasive species and in-Delta and upstream diversions.
4. Oppose weakening the State Water Resources Control Board's anti-degradation policy.
5. Support research and funding for understanding and addressing issues around Constituents of Emerging Concern (CECs) in the water supply.
6. Support the concept of beneficiary pays.
7. Support funding for the characterization, monitoring, and treatment of per- and polyfluoroalkyl substances (PFAS). Where a source of contamination can easily be identified, support the "polluter pays" principle.
8. Support the use and proper funding of existing science-based processes to regulate drinking water contaminants and discourage legislation seeking to regulate contaminants outside science-based processes. In cases where legislation is enacted, support efforts to require reasonable compliance periods for regulations imposed by the legislation.

C. Funding for Water Infrastructure

1. Support funding and partnerships to ensure sustainable long-term water supplies, including recycled water and groundwater storage projects.
2. Support state and federal funding for Delta Solutions, including funding for planning and environmental review of new Delta conveyance facilities and funding for improving the integrity of Delta levee systems that impact salinity intrusion.
3. Support assessing the state of the nation's dams and providing grants or infrastructure loans for dam retrofit.
4. Support legislation that allows a borrower to pay the credit subsidy on a Water Infrastructure Finance and Innovation Act (WIFIA) loan.
5. Support legislation, bond measures, or appropriations that fund or could fund efforts in Valley Water's interests, including infrastructure projects.
6. Support the financing of recycled water facilities by amending the federal tax code to permit the issuance of tax-exempt governmental bonds by a public agency, or on behalf of a public agency-approved public-private partnership (P3), that may design, build, own, operate, and/or finance the facilities.
7. Support efforts to streamline grant or loan terms and conditions to ensure timely and cost-effective project delivery. Support flexibility for funding agencies to waive certain terms or conditions as needed.

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D. Water Affordability

1. Support defining “disadvantaged community” such that regional affordability factors are considered.
2. Support amending the California Constitutional provisions enacted by Proposition 218 and Proposition 26 to allow low-income water rate assistance.
3. Support funding to stabilize water rates through grants and other financial assistance for water infrastructure.

II. Reduce the potential for flood damage.

A. Flood Protection Funding

1. Support funding for infrastructure, construction, and repair of flood protection systems.
2. Support funding for the Federal Emergency Management Agency (FEMA) to update tidal and fluvial flood risk maps.
3. Support funding for the implementation of a statewide flood protection needs assessment.
4. Support equitable funding and staffing for the State Flood Control Subventions Program.
5. Support funding for research of atmospheric rivers and for new technologies that provide improved information for weather forecasts, stream flows, reservoir operations, and flooding.

B. Regulatory Reform

1. Support timely and more appropriate permitting of capital and operations and maintenance projects.
2. Support California Environmental Quality Act (CEQA) reform to accelerate projects.
3. Support a regulatory environment that allows and encourages special districts and municipalities to achieve local, state, and national water conservation and environmental goals.
4. Support adequate funding for regulatory agencies to ensure proper levels of service and reduce project cost increases due to regulatory delay.
5. Support efforts to allow an applicant to conduct environmental review only under CEQA when both federal and state approval is required for public projects in California.
6. Support state regulatory changes that consider compensatory mitigation required by other state and federal agencies to avoid mitigating twice for the same impacts to riparian habitat.
7. Support efforts to eliminate the requirement to mitigate for temporary impacts if the work will reduce a project’s permanent impacts and/or provide multiple, regional benefits. Support empowering regulatory agency staff to make

regionally specific decisions and consider local factors (e.g., emergency need, expedited need, quality of impact to habitat, etc.) when issuing permits.

8. Support alternatives to endowments for public agency funding of mitigation site maintenance.
9. Ensure participation in the Community Rating System Recertification process through FEMA’s National Flood Insurance Program.
10. Support efforts to continue the National Flood Insurance Program with a balanced approach to program reform.
11. Support local permit and fee exemptions to facilitate hazardous tree removal from Valley Water property.
12. Support efforts to amend how federal costs and benefits are calculated for flood protection projects, using variable discount rates and considering each community’s unique social and economic factors.

III. Enhance quality of life through the protection and enhancement of watersheds, streams, and natural resources.

A. Waterway and Ecosystem Protection

1. Support efforts to eliminate or reduce waste entering waterways (e.g., plastic bags, expanded polystyrene, etc.).
2. Support efforts to protect the environment through conservation, preservation of natural resources and habitat, and improving the health of local watersheds.
3. Support efforts to address abandonment or derelict operation of vessels in navigable waterways and reservoirs.
4. Support ecosystem restoration in the Delta.
5. Support the expansion of transitional and permanent housing for unhoused people.
6. Support efforts to fund and facilitate the cleanup of unlawful encampments and reduce or prevent homelessness and continue to explore potential avenues of collaboration with other public agencies and initiatives.
7. Support improvements to behavioral health services provided to unhoused people.
8. Support the inclusion of special districts in funding to address encampments of unhoused people.
9. Supply funding for boating inspections and other measures to prevent the spread of invasive mussels.
10. Support efforts to address mercury contamination in local waterways.

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11. Support efforts to reduce fossil fuel consumption and the resulting greenhouse gas emissions, including opposing fracking or any expansion of oil and gas production.
12. Support funding to address climate change impacts on water supply and flood management facilities and infrastructure needs.
13. Support funding for feral pig management programs to reduce impacts to Valley Water projects and neighboring communities.

IV. Protect revenues, enhance revenues, and contain costs.

1. Support innovative funding proposals that leverage government dollars.
2. Oppose the involuntary realignment of services and revenue.
3. Remove barriers to local agencies' ability to issue tax-exempt bonds and Certificates and Participation.
4. Protect local government revenues by maintaining local authority over the collection of fees and generation of revenues.
5. Oppose efforts to reallocate property taxes among state and local agencies.
6. Support the California Water Commission engaging Congress and the federal government in supporting the completion of projects in Santa Clara County.
7. Support reducing the vote threshold for ballot measures funding infrastructure projects.
8. Oppose the imposition of unfunded mandates.
9. Support the creation of a \$100,000 threshold when requiring a competitive selection process for the contracting of professional services.
10. Support flexibility in public works construction contracting.
11. Support funding for Valley Water projects and operations related to a declared local, state, or national emergency.
12. Support changes to federal law that would allow Valley Water to pay out the entirety of an employee's accrued vacation.

V. Encourage opportunities for job creation, and the protection and stability of Valley Water's workforce.

1. Support transparency and accountability for local government.
2. Oppose legislation that reduces the authority and or ability of local government to determine how best and most effectively to operate local programs and provide services.
3. Support workforce training, job creation, research, and development efforts.
4. Support efforts to curb and/or control the escalating cost of employer-provided benefits.
5. Support efforts to provide a more sustainable and cost-effective delivery of workers' compensation benefits for injured Valley Water employees.
6. Oppose legislation that interferes with the employer-employee relationship or places employees at risk while performing their duties.
7. Remove barriers to attracting, recruiting, and retaining a diverse workforce that reflects the community that Valley Water serves.
8. Support efforts to promote a well-trained and fairly compensated workforce.

VI. Prepare for emergencies, provide security, and ensure continuity of essential services.

1. Support efforts to strengthen drought relief policies.
2. Support efforts to develop and implement statewide integrated public safety communication systems.
3. Support utilizing drone technology for inspections of Valley Water systems and facilities.
4. ~~Support mandatory COVID-19 vaccination for government employees to ensure continuity of essential services.~~
5. *Support local, state, and federal legislation and funding that strengthens wildfire suppression efforts.*

2026 POLICY NARRATIVES

Local Narratives

Water Efficiency

Model Water Efficient New Development Ordinance

Summary of Legislative and Administrative Needs

In 2015, several entities formed the Santa Clara County Water Efficient New Development Task Force, including representatives from Santa Clara County, several cities (Cupertino, Morgan Hill, Mountain View, Palo Alto, and Sunnyvale), Valley Water, Sustainable Silicon Valley, and Joint Venture Silicon Valley. The goal of the Task Force was to develop a Model Water Efficient New Development Ordinance (MWENDO) that jurisdictions in Santa Clara County could adopt either in whole or in part, which would add additional water efficiency measures beyond CALGreen's mandatory measures and ensure that new developments meet strong water efficiency standards. The Task Force solicited input from a variety of ~~other stakeholders~~ **community partners**, including Valley Water's Agricultural Water Advisory Committee, Environmental and Water Resources Committee, and Landscape Committee; the Santa Clara County/City Managers' Association; water retailers; California Water Commission; Cities Association of Santa Clara County; and building officials in Santa Clara County.

On June 30, 2025, Assembly Bill (AB) 130 and Senate Bill (SB) 131 were signed into law to accelerate new housing development by streamlining the environmental review process. While AB 130 and SB 131 aim to benefit housing production, the new laws temporarily restrict local governments from adopting new or amended reach codes, including MWENDO, for residential developments through 2031. As a result, further adoption of MWENDO is restricted during this moratorium unless the ordinance is determined to be an emergency health and safety measure in response to a declared drought emergency.

Valley Water's Approach to Address Legislative and Administrative Needs

~~Work with County staff and/or Board of Supervisors, as well as municipal staff and/or City Councils, to adopt a Model Water Efficient New Development Ordinance to ensure that new development is water-efficient to extend the region's water supplies.~~ Despite the temporary moratorium restricting local governments from adopting new or amended building standards like MWENDO, Valley Water will continue to actively engage with elected officials and staff from local jurisdictions to explore alternative strategies for promoting water use efficiency. Additionally, Government Relations staff will develop targeted outreach to key industry partners during the moratorium to build support for MWENDO measures that apply to commercial properties.

State Narratives

State Budget Appropriations Advocacy

Proposition 4 Climate Resilience Bond Appropriations

Summary of Legislative and Administrative Needs

On November 5, 2024, California voters approved Proposition 4 - Bonds for Safe Drinking Water, Wildfire Prevention, and Protecting Communities and Natural Lands from Climate Risks. Valley Water staff advocated for specific programs and funding allocations for four years leading up to the Legislature and the Governor approving Proposition 4 for the voters' consideration. Now that the bonds are approved, the Legislature will appropriate the funding over the coming years. The timing and amount of these appropriations can affect what Valley Water projects are able to qualify for grant funding for dam safety, flood protection, sea level rise adaptation, recycled water potable reuse, regional water conveyance, the Water Storage Investment Program, and habitat restoration and enhancement.

The first Proposition 4 appropriations ~~will likely~~ occurred in the FY 2025- 26 State Budget, ~~and the second allocation will be considered during the FY 2026-27 State Budget the Governor's version of which is already being developed by administrative agencies and will be presented to the Legislature for further consideration in January.~~

Numerous budget committee hearings, administration presentations, and advocacy actions will get underway in early 2025~~6~~ and continue through the final approval in June 2025~~6~~ of the FY 2025~~6~~-26~~7~~ State Budget.

Valley Water's Approach to Address Legislative and Administrative Needs

~~Staff recommends in lieu of a sponsored bill for 2025, that~~ Valley Water will focus on the numerous grant program appropriations to be considered because of the voters' approval of Proposition 4. In addition to budget appropriations, new grant program guidelines will be drafted for a potable reuse grant program that was created in Proposition 4 at Valley Water's urging. These guidelines should be shaped and timed to best enable Valley Water's Purified Water Project to be eligible for funding. ~~Finally, t~~There are numerous programs for which Proposition 4 grant funding will be available for application ~~beginning in late 2025~~~~6~~. Government Relations staff will assist the Grants Management Unit and project managers in developing compelling applications demonstrating that Valley Water projects will deliver on the voters' climate resilience goals as expressed in Proposition 4. Now that these funding opportunities

have been created, Valley Water must aggressively pursue every possible dollar to best serve the people of Santa Clara County.

Direct Appropriations for Valley Water Projects

Summary of Legislative Needs

Direct appropriations requests are funding proposals for specific projects, proposed by legislators, and included in the state budget. These requests are subject to legislative negotiations during the budget process and require approval from the Governor.

Direct appropriations can provide needed funding for projects, even in small amounts. Funding received through a direct appropriation can also be used to leverage funding from other sources. Pursuing direct appropriations through the legislative budget process can be useful for reasons other than the funding itself, including relationship building with legislators who support and champion the effort, and building awareness of Valley Water projects in the legislature.

Valley Water's Approach to Address Legislative Needs

In consultation with Valley Water project teams and the grants unit, the state OGR team will identify and develop a direct appropriation request or requests to secure state funding for Valley Water projects during the 2026 Legislative session. After determining that the timing and funding amounts align with project needs, the state team will meet with members of the Santa Clara County state legislative delegation who have the projects in their districts to seek their sponsorship.

State Narratives

Regulatory Issues

Extended Delays in Issuing Permits: Agencies Have Not Been Able to Issue Permits in a Timely Fashion due to Understaffing and Other Staffing Issues

Summary of Administrative Needs

Regulatory agencies appear to lack adequate staff to process permits in a timely and predictable manner. Engaging staff from agencies early in a project is increasingly difficult due to the lack of staff resources. Streamlining of state and federal permits is essential to getting local agency projects out in a timely and cost-effective manner.

In 2024, Valley Water advocated to help enact AB 2501 (Alvarez) which authorized the state and regional water boards to accept donations from public agencies to expedite the permitting of public benefit projects. However, the state salary levels for environmental scientists are far below market in most California jurisdictions. The state continues to have a problem with hiring and retaining the talented staff needed to complete complex large scale public benefit project permitting in a timely manner.

Valley Water's Approach to Address Administrative Needs

Request and support adequate funding for regulatory agencies in the state budget process and collaborate with regulatory agencies at all levels to address issues and improve the overall permit process leading to public infrastructure projects not being delayed. Where feasible, support standardizing regulatory agency internal processes and procedures to optimize the permitting application process.

Better Coordination of Mitigation Requirements Among Federal and State Regulatory Agencies is Needed

Summary of Administrative Needs

Complying with multiple and often conflicting mitigation requirements of state and federal agencies has become increasingly common, often driving up the price tag on projects and delaying projects which often are responsible for the protection of the health and safety of the community. It has become increasingly difficult to comply with conflicting regulations that govern day-to-day operations and the building of infrastructure projects.

Federal compensatory mitigation for impacts to wetlands and

Waters of the United States should comply with the hierarchy established by the Mitigation Rule (Compensatory Mitigation for Losses of Aquatic Resources; Final Rule [33 CFR parts 325 and 332] and Final 2015 Regional Compensatory Mitigation and

Monitoring Guidelines for the U.S. Army Corps of Engineers South Pacific Division) which stipulates in descending order of preference mitigation banks, 2) in-lieu fee programs, and 3) permittee-responsible mitigation in consideration of a watershed approach.

The best mitigation option for Valley Water may be the establishment of an in-lieu fee program. However, state and federal agencies have not been supportive of in-lieu fee programs despite their priority level in the Federal Mitigation Rule and their strong recommendation that in-lieu fee is an effective and useful approach to satisfy compensatory mitigation requirements.

Valley Water's Approach to Address Administrative Needs

A forum or process should be created which allows for agencies to understand the requirements being placed on permittees, which will decrease the conflicts which are often present. Federal and state agencies should agree to and accept the same mitigation for the same project impacts to reduce the financial burden on public agencies like Valley Water. This will allow for more efficient permitting and responsible spending of public funds. In-lieu fee programs should be an allowable mitigation option for Valley Water.

Create a Balanced Approach to Watershed-Based Regulatory Permitting and Financing for Public Agencies

Summary of Legislative, Regulatory, and Administrative Needs

Valley Water wants to ensure that it can work effectively and efficiently with regulatory agencies to ensure that permits are obtained in a timely and predictable manner and that our financial resources are appropriately utilized.

To that end, in situations where it can be determined that routine maintenance would not cause additional environmental impacts than which were originally mitigated for, there should not be a need for permitting the maintenance. Removing this permitting requirement would both simplify the process and expedite the overall timeline for conducting routine maintenance.

Furthermore, environmental restoration projects, by their very nature, are intended to protect, restore, and enhance the environment, and should be exempt from mitigation.

State Narratives

Valley Water's Approach to Address Legislative, Regulatory, and Administrative Needs

Seek legislative, regulatory, and administrative paths in conjunction with interested ~~stakeholder groups~~ community partners to: 1) pursue efforts that will allow for public agencies, which are performing routine maintenance, to bring flood protection projects back to their original capacity to be exempt from CEQA and or needing to obtain a permit, as long as the maintenance would not cause any additional environment impacts which were not originally mitigated; 2) pursue efforts that will allow for environmental restoration projects to be exempt from requiring mitigation; and 3) pursue efforts which will provide agencies alternatives and exemptions to endowments if the agency has adopted the local or regional watershed management plan.

~~Water Supply~~

~~Streamline the Water Rights Change Petition Process for Valley Water Projects~~ ~~Summary of Administrative Needs~~

~~According to the State Water Resources Control Board (State Water Board) Water Rights Petitions Program webpage, the water rights change petition process takes five to seven years to complete, and if there are significant protests filed, the process can take even longer. While these issues are complex, the time to obtain water rights permits could be reduced if the State Water Board allocated more staff to the Water Rights Petitions Program. The implementation of the Fish and Aquatic Habitat Collaborative Effort (FAHCE) settlement agreement and the Anderson Dam Seismic Retrofit Project both require the petitioning of the State~~

~~Water Board to change existing water rights and could be delayed.~~

~~Valley Water's Approach to Address Administrative Needs~~
~~Seek a contractual agreement with the State Water Board through which Valley Water would pay for additional State Water Board staff to work on Valley Water petitions, including the Anderson Dam Seismic Retrofit Project, FAHCE, and other projects as needed. With the enactment of AB 2501 (Alvarez, 2024), the State Water Board now has statutory authorization for donation of funds to pay for additional staffing to process water rights petitions.~~

~~Valley Water now must consider which parts of the state and regional boards where additional Valley Water funded staffing could expedite projects.~~

Federal Narratives

Infrastructure Funding

Water Infrastructure Finance and Innovation Act Program Improvements

Summary of Legislative and Administrative Needs

Since 2014, the Water Infrastructure Finance and Innovation Act (WIFIA) program has provided a long-term, low-interest financing option for large, non-federal water infrastructure projects nationwide. Since 2021, the Corps Water Infrastructure Financing Program (CWIFP) has been funded to provide long-term, low-interest financing for non-federal dam upgrades. With limited grant funding available for these large, capital-intensive infrastructure projects, these loan programs are a critical source of federal support. WIFIA has provided more than \$20 billion in credit assistance since its inception; CWIFP is still in its nascent stages, but it is expected to provide similar investment.

Unfortunately, there are two significant challenges with WIFIA and CWIFP that limit the programs' effectiveness at truly lessening the financial burden on local project sponsors:

1. **Ineligibility for federal projects.** WIFIA and CWIFP programs cannot be used to finance "federal projects": assets owned by the federal government, regardless of who operates or maintains the asset; or projects authorized by Congress, such as flood protection projects led by the U.S. Army Corps of Engineers (Corps). This limitation can pose a significant challenge for the local project sponsor when trying to fulfill the required cost share. Many of these projects play a significant role in regional flood protection, and their completion has economic and public safety implications well beyond the projects' immediate vicinities. Having access to the WIFIA or CWIFP could significantly lessen the burden on local sponsors.
2. **Disparity in available assistance.** Despite being authorized under the same law, the agencies have implemented WIFIA and CWIFP differently. The original WIFIA statute authorized credit assistance up to 49 percent of a project's cost under most circumstances but does provide for limited flexibility to provide credit assistance to a project up to 80 percent of the total costs, which EPA has said it will use only under exceptional circumstances. Conversely, the Corps has interpreted this flexibility much more generously, telling applicants that a project can be funded up to 80 percent of the total costs if the project substantially benefits economically disadvantaged communities.

Valley Water's Approach to Address Legislative and Administrative Needs

Seek legislative language that: 1) authorizes use of WIFIA and CWIFP to finance the local cost share of federal projects; and 2) increases the authorized amount of assistance under WIFIA from 49 to 80 percent to achieve parity with CWIFP.

Build America, Buy America Act Waivers

Summary of Legislative and Administrative Needs

The Build America, Buy America Act (BABAA) requires domestic preference for all iron, steel, manufactured products, and construction materials used in any infrastructure project receiving federal funding.

Congress passed the BABAA as part of the Bipartisan Infrastructure Law (BIL) in November 2021. The intent behind BABAA was to bolster America's industrial base and create high-paying jobs through the significant federal investment of the BIL. However, the administration recognized that BABAA requirements would impose cost and availability challenges for many projects. Domestic preference could add significant costs to a project, and in some cases the materials are not available domestically (or not in sufficient quantities or quality). In some cases, domestic preference could be inconsistent with the public interest. For projects already in planning and design, BABAA compliance would require re-evaluation, re-application for permits, and other changes that may lead to additional cost and schedule increases. This could delay much-needed investment in our nation's aging infrastructure.

Recognizing that such a preference could pose significant cost and availability challenges for many projects, the administration has granted numerous waivers of the BABAA requirements across the federal government. In June 2022, the Environmental Protection Agency (EPA) granted a BABAA waiver for projects financed under the Water Infrastructure Finance and Innovation Act (WIFIA) Program that initiated project design planning prior to May 14, 2022 (the date the BABAA requirements became effective). It appears, however, that the administration is now pushing federal agencies to sunset these BABAA waivers and make future funding subject to BABAA requirements. If this were to occur, future funding would be subject to BABAA requirements, potentially imposing significant costs on those project owners.

Federal Narratives

Valley Water's Approach to Address Legislative and Administrative Needs

Seek legislative language that: 1) Provides a permanent waiver of BABAA requirements for federally funded projects that serve the public interest and have initiated planning/design prior to May 14, 2022; and 2) For projects that initiate planning/design after May 14, 2022, and are seeking federal financial assistance (grants and loans), offer the following options:

- *In a competitive grant application process, assign extra points (e.g. 10 points) for projects that will comply with BABAA to incentivize compliance and increase the overall score and chances of selection to receive the grant award; or*
- *Add a ten percent "bonus" award (grant or loan) for projects that will be designed with BABAA compliance to help relieve the increased cost burden.*

Dam Rehabilitation and Repair Legislation

Summary of Legislative Needs

Valley Water operates 10 dams in Santa Clara County as part of our reservoir system. Several of these dams are undergoing seismic evaluations to assess their ability to withstand current standards for earthquakes. These evaluations have revealed that gravelly soils that can liquefy were left in the foundations of many of our dams, posing a significant risk of failure in case of a large earthquake.

Anderson Dam, for example, was found to be structurally deficient and at high risk of failure in the event that a significant earthquake occurs when the reservoir is full. The seismic retrofit of Anderson Dam is now underway at a cost of \$1.2 billion. These projects are extremely complex and capital intensive, requiring significant financial resources.

The federal government has several programs to support upgrading the nation's federally owned dams but few programs to support funding non-federal dams, which account for more than 70 percent of all dams nationwide. The National Dam Safety Program, for example, currently provides financial assistance to states for strengthening their dam safety programs, but it does not provide assistance for infrastructure improvements when a dam is found to be deficient.

The Water Infrastructure Finance and Innovation Act (WIFIA) Program and the Corps Water Infrastructure Financing Program can provide low-interest, long-term loans for non-federal dam upgrades, but those programs only cover half the project costs and still require a local investment in the form of loan repayment. And while the November 2021 Bipartisan Infrastructure Law made the largest federal investment in our nation's infrastructure in more than a decade, it did not include any new funding for structural upgrades of our non-federal dams – many of which are considered high hazard potential.

The U.S. Army Corps of Engineers already manages the National Inventory of Dams (NID), an online database of more than 91,000 dams nationwide that includes important information about each dam's age, location, and hazard potential. Of all dams in the NID, 76 percent are categorized as high hazard potential – dams where downstream flooding would likely result in loss of life. Dam retrofits and upgrades are very costly, and many communities and states cannot afford to bear the full cost. Failure of these dams would cause economic devastation beyond their local boundaries, and the federal government should play a role in preventing those disasters.

Valley Water's Approach to Address Legislative Needs

Continue to support the introduction of a Dam Rehabilitation and Repair Act that will create a new source of funding to support repairs and upgrades at dams found to be structurally deficient, particularly those dams that are categorized as high hazard potential.

Regulatory Issues

Extended Delays in Issuing Permits: Agencies Have Not Been Able to Issue Permits in a Timely Fashion Due to Understaffing and Other Staffing Issues

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Federal Narratives

Valley Water's Approach to Address Administrative Needs

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Better Coordination of Mitigation Requirements Among Regulatory Agencies is Needed

Summary of Administrative Needs

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Federal compensatory mitigation for impacts to wetlands and Waters of the United States should comply with the hierarchy established by the Mitigation Rule (Compensatory Mitigation for Losses of Aquatic Resources; Final Rule [33 CFR parts 325 and 332] and Final 2015 Regional Compensatory Mitigation and Monitoring Guidelines for the U.S. Army Corps of Engineers South Pacific Division) which stipulates in descending order of preference: 1) mitigation banks; 2) in-lieu fee programs; and 3) permittee-responsible mitigation in consideration of a watershed approach.

The best mitigation option for Valley Water may be the establishment of an in-lieu fee program. However, state and federal agencies have not been supportive of in-lieu fee programs despite their priority level in the Federal Mitigation Rule and their strong recommendation that in-lieu fee is an effective and useful approach to satisfy compensatory mitigation requirements.

Valley Water's Approach to Address Administrative Needs

A forum or process should be created that allows for agencies to understand the requirements being placed on permittees, which will decrease the conflicts that are often present.

Federal and state agencies should agree to and accept the same mitigation for the same project impacts to reduce the financial burden on Valley Water. This will allow for more efficient permitting and responsible spending of public funds. In-lieu fee programs should be an allowable mitigation option for Valley Water.

Create a Balanced Approach to Watershed-Based Regulatory Permitting and Financing for Public Agencies

Summary of Legislative, Regulatory, and Administrative Needs

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To that end, in situations where it can be determined that routine maintenance would not cause additional environmental impacts than which were originally mitigated for, there should not be a need for permitting the maintenance. Removing this permitting requirement would both simplify the process and expedite the overall timeline for conducting routine maintenance.

Furthermore, environmental restoration projects, by their very nature, are intended to protect, restore, and enhance the environment, and should be exempt from mitigation.

Valley Water's Approach to Address Legislative, Regulatory, and Administrative Needs

Seek legislative, regulatory, and administrative paths in conjunction with interested ~~stakeholder groups~~ community partners to 1) pursue efforts that will allow for public agencies, which are performing routine maintenance, to bring flood protection projects back to their original capacity to be exempt from needing to obtain a permit, as long as the maintenance would not cause any additional environment impacts which were not originally mitigated; 2) pursue efforts that will allow for true environmental restoration projects to be exempt from requiring mitigation; and 3) pursue efforts which will provide agencies alternatives and exemptions to endowments if the agency has adopted the local or regional watershed management plan.

Federal Narratives

Water Resources Development Act of 2007 and Water Resources Reform and Development Act of 2014 Implementation

U.S. Army Corps of Engineers (USACE) Levee Vegetation Policy

Summary of Administrative Needs

USACE currently requires all vegetation other than grasses to be removed from levees and within a 15-foot buffer zone on either side of USACE-inspected levees, which sometimes provide high quality riparian habitat. If Valley Water doesn't remove the vegetation, USACE may "fail" the levee and remove it from its rehabilitation and inspection program, which would then alert the Federal Emergency Management Agency (FEMA) and others that the levee is unacceptable and eliminate the possibility of USACE funding for flood-related work. Consequently, it is in Valley Water's interest to encourage USACE to revise this policy in order to: 1) prevent required removal of valuable riparian vegetation while balancing the need to maintain the ability to inspect levees for structural integrity; and 2) prevent the consequences associated with USACE "failing" levees that retain this valuable vegetation.

In the Water Resources Reform and Development Act (WRRDA) of 2014, Congress directed USACE to evaluate the current Levee Vegetation Policy, including preservation of habitat, vegetation impacts during flooding, historic links between vegetation and flood risk, economic and environmental impacts, and factors that promote regional variances in the program.

Valley Water's Approach to Address Administrative Needs

Work with USACE and Congress to ensure that Valley Water's desires relative to vegetation on levees are addressed through the implementation phase of WRRDA.

U.S. Army Corps of Engineers Section 104/221 Authority

Summary of Legislative and Administrative Needs

In 2011, the Assistant Secretary of the Army for Civil Works (ASA-CW) decided to no longer approve Section 104 applications. Section 104 crediting (Water Resources Development Act of 1986) allowed non-federal interests to repair design deficiencies and to make levee improvements as quickly as possible, while not impacting the USACE study processes.

Instead of utilizing Section 104, the ASA-CW elected to process credit requests under Section 221 of the Flood Control Act of 1970 (as amended by Section 2003 of the Water Resources Development Act of 2007). Section 221 as implemented by the ASA-CW does not promote construction by non-federal interests. Without a reasonable policy, local agencies' ability to move projects along faster with local dollars would be jeopardized.

Valley Water's Approach to Address Legislative and Administrative Needs

Work with USACE and Congress to ensure that Valley Water's needs are addressed through the implementation phase of WRRDA 2014. Continue to lobby and create support for the ASA-CW to grant and approve Section 104 credit until a new acceptable policy on crediting is put into place.