Valley Water

2023
Policy Proposals and 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 local flood protection, 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 damages.

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.

2023 Legislative Guiding Principles

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

A. Water Supply and Drought

1. Support legislative, administrative, or other efforts that protect/advance Valley Water's interests in California's Modernization of the Delta Conveyance, including efforts to ensure financially prudent project delivery.
2. Support legislative actions that provide for drought relief funding and policies.
3. Support and advocate for the Direct Potable Reuse of recycled water through Raw Water Augmentation and Treated Drinking Water Augmentation, specifically advocating for the State Water Board to promulgate criteria and authorization for these purposes.
4. Support measures that increase or sustain the reliability or quality of Valley Water's imported water supplies.
5. Support increasing water use efficiency throughout the state, while taking into account previous water use efficiency investments.
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 legislative efforts that provide public water agencies with first right of refusal to accept wastewater.
10. Support legislation and policies that prioritize municipal and industrial water supplies during shortages.
11. Support enactment of county or city ordinances that would promote compliance with SB 407 by requiring the replacement of non-water-conserving plumbing fixtures upon transfer of real property, or other enforcement mechanisms.
12. Support efforts to reduce non-functional turf through building standards and other means.

B. Water Quality

1. Support efforts to place a moratorium on fracking and all related legislative bills.
2. Support efforts to aggressively protect water quality from contamination in watersheds and groundwater basins.
3. Support efforts to amend the Clean Water Act consistent with our mission.
4. Support efforts to address all Delta stressors, including toxics, invasive species and in-Delta and upstream diversions.
5. Oppose weakening the State Water Resources Control Board's anti-degradation policy.
6. Support legislative efforts and regional initiatives that would provide research funding into understanding and addressing issues around Constituents of Emerging Concern (CECs) in the water supply.
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. Supply funding for boating inspections and other measures to prevent the spread of invasive mussels.
3. Support protection funding for planning and environmental review of new Delta conveyance facilities.
4. Support protection of funding for improving the integrity of Delta levee systems that impact salinity intrusion.
5. Support assessing the state of the nation's dams and providing grants or infrastructure loans for dam retrofit.
6. Support legislation that allows a borrower to pay the credit subsidy on a Water Infrastructure Finance and Innovation Act (WIFIA) loan.
7. Support legislation, bond measures, or appropriations that fund or could fund efforts in Valley Water's interests, including infrastructure projects.
8. 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.
9. 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.

D. General Water Policy and Reliability

1. Support timely permitting of water supply capital and operations and maintenance projects.
2. Support legislative efforts that improve integration of water agencies in land use decision-making processes.
3. Support efforts to streamline the permitting of water recycling projects, taking into account the need to protect high quality groundwater basins.
4. Support legislation that provides for the reliability of operations of state and federal water projects.
5. Support regulatory and legislative proposals that reduce

impediments for public agencies seeking to use effluent water for recycling purposes.

6. Support and promote the concept of beneficiary pays.
7. Support changes to the definition of disadvantaged community so that affordability factors are considered to address specific communities.
8. Support legislative efforts that amend Proposition 218 and Proposition 26 to allow low-income rate assistance.

II. Reduce the potential for flood damages.

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. Flood Protection and Regulatory Efforts

1. Support timely and more appropriate permitting of capital and operations and maintenance projects.
2. Ensure participation in the Community Rating System Recertification process through FEMA's National Flood Insurance Program.

3. Support efforts to continue the National Flood Insurance Program with a balanced approach to program reform.

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

A. Waterway and Ecosystem Protection

1. Support legislative efforts to eliminate or reduce waste entering waterways (e.g., plastic bags, expanded polystyrene, etc.).
2. Support legislation and funding that facilitates the cleanup of unlawful encampments and reduces or prevents homelessness, and continue to explore potential avenues of collaboration with other public agencies and initiatives.
3. Support legislation that protects the environment through conservation and the preservation of natural resources, habitat, and improving the health of local watersheds.
4. Support legislative efforts to address abandonment or derelict operation of vessels in navigable waterways and reservoirs.
5. Support legislation and policies that address mercury contamination in local waterways.
6. Support ecosystem restoration in the Delta.

B. Regulatory Efforts

1. Support CEQA reform to accelerate projects.
2. Promote a regulatory environment that allows and encourages special districts and municipalities to achieve local, state, and national water conservation and environmental goals.
3. Support adequate funding for regulatory agencies to ensure proper levels of service and reduce the cost of inflation due to regulatory delay.
4. Support changing certification requirements for water treatment operators who work at recycled water facilities.
5. Support legislative efforts that 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.

C. Resource Protection Funding

1. Support funding to address climate change impacts on water supply and flood management facilities and infrastructure needs.
2. Support alternatives to endowments for public agency funding of mitigation sites maintenance.

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

1. Support state and federal funding for key infrastructure efforts, including funding for local projects and a Bay-Delta solution.
2. Support innovative funding proposals that leverage government dollars.
3. Oppose the involuntary realignment of services and revenue.
4. Remove barriers to local agencies' ability to issue tax-exempt bonds and Certificates and Participation.
5. Protect local government revenues by maintaining local authority over the collection of fees and generation of revenues.
6. Oppose efforts to reallocate property taxes among state and local agencies.
7. Support the California Water Commission engaging Congress and the federal government in supporting the completion of projects in Santa Clara County.
8. Support reducing the voting requirement for special taxes.
9. Oppose the imposition of unfunded mandates.
10. Clarify groundwater charges and language.
11. Support exemptions for stormwater and flood protection fees.
12. Support the creation of a $100,000 threshold when requiring a competitive selection process for the contracting of professional services.
13. Support utilization of drone technology for inspections of Valley Water systems and facilities.
14. Support flexibility in public works construction contracting.
15. Support funding for Valley Water projects and operations related to a declared local, state, or national emergency.
16. Support changes to federal law that would allow Valley Water to pay out the entirety of an employee's accrued vacation.
17. Support funding to stabilize water rates through grants and other financial assistance for water infrastructure.

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 legislative efforts that curb and or control the escalating cost of employer-provided benefits.
5. Promote policies that 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. Support efforts to develop and implement statewide integrated public safety communication systems.
8. Support creation of a single department to oversee and coordinate emergency preparedness, response, recovery, and homeland security activities.
9. Remove barriers to attracting, recruiting and retaining a diverse workforce that reflects the community that Valley Water serves.
10. Support legislation, regulations, and policy initiatives that promote a well-trained and fairly compensated workforce.
11. Support mandatory COVID-19 vaccination for government employees to ensure continuity of essential services.

CONTACT US

To find out the latest information on Valley Water projects or to submit questions or comments, use our **Access Valley Water** customer request system at ***access.valleywater.org***.

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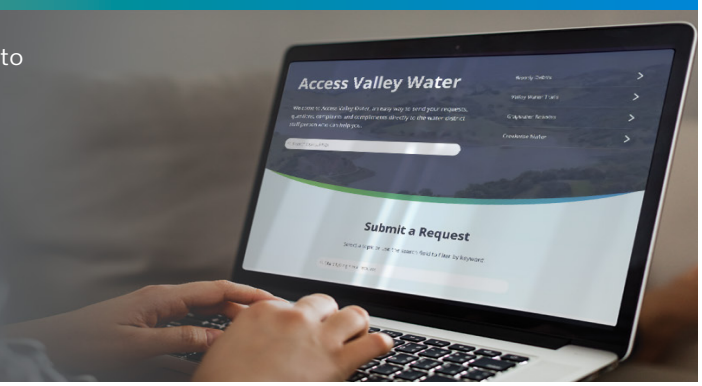

2023 POLICY NARRATIVES

Local Proposals and Priorities

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, 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.

This model ordinance establishes requirements for new developments promoting water use efficiency and alternate sources of water supply and is designed to be easily customizable for local priorities. The MWENDO is also an energy efficiency reach code, as it includes requirements at the water-energy nexus that simultaneously reduce water and energy use. The MWENDO was developed based on significant research and analysis of similar ordinances already adopted by innovative jurisdictions. Water efficiency measures range from simple efforts such as requiring efficient water heaters, to new programs to facilitate the use of stormwater, condensate, foundation seepage, and recycled water, including recycled graywater and black water.

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.

Water Fixture Retrofit Upon Resale

Summary of Legislative Needs

Valley Water estimates that approximately 15% of multi-family dwellings, 26% of single-family dwellings, and 17% of commercial buildings in Santa Clara County still contain 3.5 gallons-per-flush toilets, which waste significant amounts of water. State law regulates what water fixtures can be sold by retailers and what water fixtures can be installed in new construction and improvements to real property, and with the passage of SB 407 (Padilla) in 2009, the State mandated that noncompliant (non-water efficient) plumbing fixtures be replaced in single-family residential real property by January 1, 2017, and in multifamily residential real property and commercial real property by January 1, 2019. Many local jurisdictions, such as Los Angeles, San Diego, San Francisco, and others, have enacted supplemental local ordinances to enforce the state standards by requiring that water fixtures be retrofitted before a property sale can be recorded by the County Clerk-Recorder.

Valley Water's Approach to Address Legislative Needs

Work with County staff and/or Board of Supervisors to adopt an ordinance to require the retrofit of non-water efficient fixtures upon the resale of residential and commercial properties built before 1994.

Regulatory Issues

Seek Permit and Fee Exemptions from Local Jurisdictions to Remove Hazardous Trees from Valley Water Property

Summary of Legislative and Regulatory Needs

Ten local jurisdictions currently require Valley Water to obtain permits and pay fees to remove hazardous trees on Valley Water property. Five jurisdictions, including the County and the City of San José, exempt Valley Water from the requirement. Because Valley Water complies with the California Environmental Quality Act (CEQA); provides mitigation, as necessary; and notifies neighbors of the tree removal, complying with local permitting requirements is redundant and adds time and costs to the removal of trees declared a hazard.

Valley Water's Approach to Address Legislative and Regulatory Needs

Pursue exemptions from the remaining jurisdictions.

Sponsored Bills

District Act Reform

Summary of Legislative Needs

The Santa Clara Valley Water District Act (District Act) was originally enacted in 1951 and has been subsequently amended numerous times to evolve with the jurisdiction, scope, and mission of the agency. Valley Water proposes to amend the District Act in 2023 to reform financing limitations to reduce the cost of borrowing, to modernize antiquated language, and to renew a sunsetting provision related to Board member per diem.

Reform Financing Mechanisms

Valley Water seeks the same financing authorities available to other large water and flood protection agencies in the state.

1. Allow Voters to Decide on G.O. Bonds

   Authorize Valley Water to propose general obligation (G.O.) bonds for critical infrastructure paid by an ad valorem property tax approved by 2/3 of the voters. The existing omission of G.O. bond authority is outdated and forces higher financing costs for large-scale public borrowing.

2. Reform Revenue Bond Authority

   Valley Water cannot issue revenue bonds based on gross revenue as required by existing law because it has other types of debt backed by net revenue. Issuing bonds based on gross revenue would inappropriately put one creditor above another. By allowing water revenue bonds to be paid from net revenues (instead of gross revenues), as well as from funds already allocated to Valley Water from the County's 1% property tax, the agency's water revenue bond authority would be reformed and available for borrowing.

3. Update the Short-Term Debt Cap

   Many local agencies have a short-term debt cap established in Government Code Section 53858. Valley Water's agency-specific cap is just $8 million, has not been updated in decades, and should be on par with other agencies. This bill would make the short-term debt cap equal to 85% of annual revenue like many other agencies.

Modernize Antiquated Language

The District Act has been amended 51 times since it was enacted in 1951. Each time it was amended, the authors of the legislation used legal phrasing, grammar, and organizational standards of that time in history. Today, the District Act lacks standard numeration of paragraphs and uses language that is confusing and inaccessible for modern readers. In 2021, the Office of Government Relations, the Office of District Counsel, and the Office of Legislative Counsel in the Legislature worked together to modernize the language in the District Act without making substantive changes and respecting the perceived intent of the numerous bills that created it. Those changes should now be enacted.

Valley Water Board Member Per Diem

Until 2018, Valley Water Board members received compensation for up to 10 meeting days per month like other water districts. AB 1889 (Caballero, 2018) made various changes to the District Act, including increasing compensation for Board members to 15 meeting days per month until December 31, 2023. The base stipend may be increased through a publicly noticed Board action by five percent annually. The current stipend amount is $348.45 per meeting day, for a maximum possible compensation of $62,721 per year based on 15 meeting days per month. If the sunset date is not renewed, the maximum possible compensation would drop to $41,814 per year based on 10 meeting days per month.

The Valley Water Board's engagement with the community and its oversight of the agency requires significant time from Board members, yet the compensation for the position is quite low. Combined with the significant cost of living in Santa Clara County, which is one of the highest in the country, few people can afford to serve on the Valley Water Board. By renewing the sunsetting District Act provision, the base stipend would remain at $348.45 per meeting day with possible inflation adjustments of up to five percent annually, if approved by the Board at a publicly noticed meeting. This change would help improve the affordability of serving on the Valley Water Board and help attract a more diverse pool of candidates from varying socio-economic levels to serve on the Board.

Valley Water's Approach to Address Legislative Needs

Valley Water will seek to sponsor state legislation to amend the District Act to reform financing mechanisms, modernize antiquated language, and ensure existing Board member per diem rules do not sunset.

California Public Employees Retirement System (CalPERS) Classic Tier 2 Reform

Summary of Legislative Needs

CalPERS provides retirement benefits to Valley Water employees from a fund not pooled with other agencies and based on retirement benefit formulas and payments from both employees and the water district. In 2012, the Valley Water Board of Directors approved changes to the employee retirement formula that reduced the employee pension benefit formula from 2.5% at 55 years of age to 2% at 60 years of age for new employees.

Also in 2012, the Legislature was negotiating statewide pension reform, which resulted in the passage of the Public Employee Pension Reform Act (PEPRA). That bill set the employee pension benefit formula for all public employees hired after January 1, 2013, to 2% at 62, increasing to 2.5% at 67.

PEPRA has been interpreted by key stakeholders as locking in the pension benefit in effect on December 31, 2012, for Classic employees hired by Valley Water on or after January 1, 2013. Although the provision in PEPRA was intended to protect existing employees from a change to a less generous benefit, it has locked in a less generous benefit for a small subset of Valley Water's Classic employees.

These CalPERS Classic Tier 2 employees number approximately 85, but also include any CalPERS Classic Member that transfers to Valley Water from another qualifying agency. This Tier 2 retirement formula is driving away employees with extensive experience. When these employees leave, it is very difficult to replace them with comparably experienced Classic employees because they, too, are subject to the state law provision locking in the less generous retirement formula for hours of service at Valley Water.

The Bargaining Units representing Valley Water employees and management support the Valley Water Board's proposal seeking to change the Classic Tier 2 retirement benefit formula to match Classic Tier 1. The MOUs were approved by the Board on November 23, 2021. Since that time, Valley Water has had discussions with key stakeholders at CalPERS and in the Legislature who interpret state law as prohibiting the desired change in benefit formula, leaving Valley Water at a disadvantage in retaining and recruiting experienced public employees.

Valley Water's Approach to Address Legislative Needs

Explore with Labor Leaders, CalPERS, and state legislators the political viability of state legislation that would amend the Government Code to expressly allow the Valley Water Board of Directors to change its CalPERS Tier 2 formula to 2.5% at 55 for the purpose of retirement benefit calculation.

In compliance with state law, the change would apply prospectively. This means the time already served at Valley Water by existing Classic Tier 2 employees would remain at 2% at 60 years of age, and the time served by those employees after the proposed change would be calculated using the new benefit formula.

By allowing the Valley Water Board of Directors to make this change with state authorization, existing Classic Tier 2 employees will have the incentive to stay at Valley Water through retirement, and experienced CalPERS Classic Members from other agencies would be able to accept employment at Valley Water without a significant reduction in their retirement benefit.

Regulatory Issues

No Net Loss Policy Update

Summary of Regulatory and Legislative Needs

The U.S. Fish and Wildlife Service and the San Francisco Bay Regional Water Quality Control Board (Regional Board) have indicated strong preferences for wetland restoration projects to be constructed with broad, gently sloping transition zones to the adjacent uplands. These so-called "ecotones" provide varying habitats in the transition from open water to marsh to dry land, thereby reducing wave runup and erosion on levees and increasing resilience to sea level rise.

The California Wetlands Conservation Policy, also called the "no net loss policy," as applied by the Regional Board is a disincentive to the establishment of ecotone wetlands, which often require fill and may convert a portion of the wetland to upland habitat. The Regional Board's enforcement of the no net loss policy requires not only the creation of new wetlands to mitigate for the construction of the upland habitat portion of the ecotone, but it also requires the creation of wetlands of a lower ecological function to mitigate for the conversion of lower functioning wetlands to higher functioning wetlands. This requirement increases costs and reduces the amount of ecologically beneficial ecotone habitats that can be constructed. This is an issue for the South San Francisco Bay Shoreline Project that seeks to establish horizontal levees with a large ecotone transition zone that will provide space for wetlands to migrate upslope as sea levels rise.

Valley Water's Approach to Address Regulatory and Legislative Needs

As part of a multi-year effort, explore creation of a coalition to advance this proposal through legislation or other means. Potential actions include:

1. Through the Regional Board's Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) amendment process, we await the release of additional, non-regulatory technical FAQs now being developed by the Regional Board to inform project applicants and Regional Board staff on how the no net loss policy should be properly applied to ecotone/horizontal levees.
2. If the FAQs and their application prove unsatisfactory, explore with the Newsom Administration if they would consider providing direction to the State and Regional Boards through the Cutting Green Tape Initiative's internal administrative means, or by updating the executive order.
3. The last resort would be to explore the political viability of a bill to codify Governor Wilson's 1993 executive order establishing the no net loss policy, while also providing for appropriate provisions to address the construction of ecotone habitats and the conversion to wetland types providing a higher ecological function. Legislative Counsel-drafted language was developed in 2022 by Valley Water and that language is on file should it be needed.

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.

Valley Water's Approach to Address Administrative Needs

Request and support adequate funding for regulatory agencies 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 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) that 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 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 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.

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

Seek legislative, regulatory, and administrative paths in conjunction with interested stakeholder groups 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.

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 web page, 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 by a backlog of water rights change petitions.

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.

Recycled Water Indirect/Direct Potable Use Proposal

Summary of Legislative and Regulatory Needs

To ensure an adequate and reliable supply of high-quality water, Valley Water has partnered with cities and water retailers in the county to develop recycled water supplies. Recycled water use is expected to expand in the coming years. In 2014, Valley Water completed the Silicon Valley Advanced Water Purification Center, an advanced water treatment facility that produces up to eight million gallons per day of highly purified recycled water that is blended into existing recycled water supplies, thereby improving overall recycled water quality so that the water can be used for a wider variety of irrigation and industrial purposes. Longer term, Valley Water is investigating using highly purified recycled water for replenishment of groundwater basins, similar to the successful groundwater replenishment system operated by the Orange County Water District, and potentially direct potable reuse.

Valley Water has been involved in the development of indirect potable reuse in Silicon Valley and in direct potable reuse research. In 2010 and 2013, the California State Legislature mandated that the state Department of Public Health (now Division of Drinking Water), in consultation with the State Water Resources Control Board (State Water Board), report on the feasibility of developing uniform water recycling criteria for direct potable reuse by December 31, 2016. The State Water Board released its draft report in September 2016, which suggested that direct potable reuse is feasible but requires additional research. In 2017, AB 574 (Quirk) was signed into law requiring the State Water Board to establish a framework for regulating direct potable reuse by June 1, 2018, and established a deadline for the development of Raw Water Augmentation regulations of 2023. The framework was completed in 2019, and the studies identified as required to complete the Raw Water Augmentation regulations are currently underway.

Valley Water's Approach to Address Legislative and Regulatory Needs

Continue to facilitate the creation of coalitions and efforts to support adequately funding recycled and purified water, and other programs that will allow full integration of stormwater, groundwater recharge, flood water, gray water, and indirect and direct potable reuse. Continue to work with the state and other stakeholders to further the development of regulations for direct potable reuse.

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.

Valley Water's Approach to Address Administrative Needs

Request and support adequate funding for regulatory agencies 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 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: 1) mitigation banks; 2) in-lieu fee programs; and 3) permittee-responsible mitigation in consideration of awatershed 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 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.

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

Seek legislative, regulatory and administrative paths in conjunction with interested stakeholder groups 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.

Water Resources Development Act of 2007 and Water Resources 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 often 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; 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.

Water Supply

Improved Water Efficiency Labeling Program

Summary of Legislative Needs

The Water Efficiency Labeling Scheme (WELS) is an international water efficiency labeling program designed to provide information to consumers, through the use of specific labels, indicating the level of water efficiency of products that use water. Both Australia and New Zealand have implemented these labels on the following types of products: washing machines, dishwashers, toilets, urinals, showers, and faucets. The purpose of the label is to help consumers choose products that use less water while still providing a satisfactory level of quality and performance.

In the United States, the Environmental Protection Agency (EPA) manages the WaterSense partnership program. Under this program, water efficient products are certified independently. For companies to use the WaterSense label, they must sign a partnership agreement. Unlike the WELS program, WaterSense labels do not indicate the level of water efficiency of a specific product. Instead, the label indicates that the product is 20% more water efficient than the average product in that category (as well as other criteria). Changing the labeling to indicate the level of water efficiency of a product (much like the Energy Star program on appliances) provides consumers with a better understanding of how water efficient a product is that they are considering buying.

Valley Water's Approach to Address Legislative Needs

Initiate discussions with Congressional members and the EPA on potential changes to the water efficiency labeling program in the WaterSense and other relevant programs at the federal level.

Recycled Water Indirect/Direct Potable Use Proposal

Summary of Legislative and Regulatory Needs

To ensure an adequate and reliable supply of high-quality water, Valley Water has partnered with cities and water retailers in the county to develop recycled water supplies. Recycled water use is expected to expand in the coming years. In 2014, Valley Water completed the Silicon Valley Advanced Water Purification Center, an advanced water treatment facility that produces up to 8 million gallons per day of highly purified recycled water that is blended into existing recycled water supplies, thereby improving overall recycled water quality so that the water can be used for a wider variety of irrigation and industrial purposes. Longer term,

Valley Water is investigating using highly purified recycled water for replenishment of groundwater basins, similar to the successful groundwater replenishment system operated by the Orange County Water District, and potentially direct potable reuse.

Valley Water has been involved in the development of indirect potable reuse in Silicon Valley and in direct potable reuse research. In 2010 and 2013, the California State Legislature mandated that the state Department of Public Health (now Division of Drinking Water), in consultation with the State Water Resources Control Board (State Water Board), report on the feasibility of developing uniform water recycling criteria for direct potable reuse by December 31, 2016. The State Water Board released its draft report in September 2016, which suggested that direct potable reuse is feasible but requires additional research. In 2017, AB 574 (Quirk) was signed into law requiring the State Water Board to establish a framework for regulating direct potable reuse by June 1, 2018. The first draft of the framework was released in April 2018, followed by a second edition in August 2019.

Valley Water's Approach to Address Legislative and Regulatory Needs

Continue to facilitate the creation of coalitions and efforts to support adequately funding recycled and purified water, and other programs that will allow full integration of stormwater, groundwater recharge, flood water, gray water, and indirect and direct potable reuse. Continue to work with the state and other stakeholders to further the development of regulations for direct potable reuse.

Flood Protection Funding

Pursue a Lower Class Level Under the National Flood Insurance Program's Community Rating System

Summary of Administrative Needs

The Community Rating System (CRS) is part of the Federal Emergency Management Agency's (FEMA) National Flood Insurance Program (NFIP). By participating in CRS, flood insurance premiums are discounted to reward community actions that meet flood protection and management goals of the CRS. Valley Water is not eligible to fully participate in the NFIP because it is not a permitting authority and lacks the regulatory mechanisms to implement the minimum requirements of the NFIP. However, in 1998, Valley Water was set up as a "fictitious" CRS community, despite not meeting the minimum requirements. Valley Water is the only "fictitious" community in the nation. Valley Water currently has a rating of "8" on a 1-10 scale, with "1" earning the greatest discount. Additionally, Valley Water provides many of the services through which the cities in the county earn their rating, without which they would not have their current CRS class level.

Valley Water's Approach to Address Administrative Needs

Initiate dialogue with FEMA and others to determine how to structure the CRS program locally so that Valley Water may best position itself to lower its rating and those of our partner cities. Concurrently, and incorporating relevant feedback from conversations with FEMA, initiate dialogue with Santa Clara County cities to create a framework managed by Valley Water that would enable them to achieve lower ratings and higher discounts for their residents.

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