

2020



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:

- 1. Ensure a reliable supply of healthy, clean drinking water**
- 2. Reduce the potential for flood damages**
- 3. Enhance the quality of life through the protection and enhancement of watersheds, streams, and natural resources**
- 4. Protect revenues, enhance revenues, and contain costs**
- 5. Encourage opportunities for job creation, and the protection and stability of Valley Water's workforce**

2020 Legislative Guiding Principles

Ensure a reliable supply of healthy, clean drinking water

Water is a finite resource that must be protected. As the water wholesaler for our county, our ability to deliver a reliable, clean water supply for one of the country's most important technology communities continues to be challenged by a multitude of factors. Valley Water advocates for legislation impacting our water supply that accomplishes the following:

Water Supply and Drought

1. Support legislative, administrative or other efforts that protect and/or 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 efforts that encourage the use of recycled water for indirect and direct potable use.
4. Oppose measures that reduce 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 waste water.
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 the transfer of real property, or other enforcement mechanisms.

Water Quality

1. Support efforts to place a moratorium on fracking, and all related legislative bills.
2. Support efforts to aggressively protect the quality of our groundwater basin from contaminants.
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 Resource 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.

Funding for Water Infrastructure

1. Support funding to ensure sustainable long-term water supplies, including recycled water projects.
2. Support funding for boating inspections and other measures to prevent the spread of invasive mussels.
3. Support 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 retrofits.
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, appropriations, or other funding mechanisms that fund or could fund Valley Water infrastructure projects.

General Water Policy and Reliability

1. Support timely permitting of water supply capital and operations and maintenance projects.
2. Support legislative efforts that better integrate water resources in the land-use and 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.



2020 Legislative Guiding Principles

Reduce the potential for flood damages

Silicon Valley's waterways pass through areas populated by homes, schools, farms, and businesses. When our communities flood, the ensuing loss in productivity easily runs into millions of dollars, in addition to the physical infrastructure damage. Additionally, our shoreline area, which is vulnerable to tidal flooding, requires investments in levee maintenance and repair, and houses a number of Silicon Valley Fortune 500 businesses.

To maintain and expand the flood protection infrastructure necessary to prevent flooding and resulting damages, Valley Water advocates for legislation that accomplishes the following:

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 reimbursement of local funds used for the Upper Llagas Creek Flood Protection Project.
6. Support authorization for Valley Water projects at the federal level, including federal authorization for the South San Francisco Bay Shoreline, San Francisquito Creek, and Upper Llagas Creek Projects.

7. Support funding for research of Atmospheric Rivers, and for new technologies that provide improved information for weather forecasts, streamflows, reservoir operations, and flooding.

Flood Protection and Regulatory Efforts

1. Support timely and more appropriate permitting of capital and operations and maintenance (O&M) projects in order to provide or maintain capacity within river and stream systems.
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.
4. Support efforts to modify the U.S. Army Corps of Engineers' levee policy regarding vegetation near levees.

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

In order to protect and enhance the environment and improve the health of our watersheds, Valley Water advocates for legislation that accomplishes the following:

Waterway and Ecosystem Protection

1. Support legislative efforts to eliminate or reduce waste entering our waterways (e.g., plastic bags, expanded polystyrene, etc.).
2. Support legislation that facilitates the cleanup of unlawful encampments, and reduces or prevents homelessness.
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.

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 efforts to reduce the impact of including "the banks" in the definition of "Waters of the State."

Resource Protection Funding

1. Support funding to address climate change impacts on water supply and flood management facilities and infrastructure needs.
2. Support the use of alternative funding instruments to fund maintenance of mitigation sites.

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.



2020 Legislative Guiding Principles

Protect revenues, enhance revenues, and contain costs

Valley Water's multiple responsibilities are supported by a diverse array of funding sources. As we continue to maintain our operational budget while meeting the infrastructure needs of our complex water system, Valley Water will advocate for legislation that accomplishes the following:

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 revenues.
4. Oppose efforts to eliminate local agencies' ability to issue tax-exempt bonds and Certificates of 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 storm water 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.

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

Supporting the creation of local jobs and ensuring a well-trained workforce to carry out Valley Water's mission while containing costs continue to be priorities. To support opportunities for job creation, and the protection and stability of Valley Water's workforce, Valley Water will advocate for legislation that accomplishes the following:

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, and 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.

CONTACT US

For more information, contact us at **(408) 630-2600**, or visit our website at **valleywater.org**.



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Local Proposals and Priorities

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 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.

State Proposals and Priorities

Expediting the Anderson Dam Seismic Retrofit Project

Expedited Permitting and Best Value Contracting for the Anderson Dam Seismic Retrofit Project

Summary of Legislative and Regulatory Needs

Timely completion of the Anderson Dam Seismic Retrofit Project will reduce the risks to public safety and the California economy stemming from the flood control and seismic deficiencies of the existing dam. However, even a one-year permitting delay of a large public infrastructure project like Anderson Dam can cost tens of millions of dollars in scarce public funding. Furthermore, the Federal Energy Regulatory Commission's independent Board of Consultants recommends "best value" procurement for the Anderson Dam project due to its complex design, delivery, and installation. Consequently, Valley Water is seeking to expedite the permitting and construction of this critical water supply project.

Valley Water's Approach to Address Legislative and Regulatory Needs

Seek introduction and passage of a bill providing expedited treatment of Anderson Dam permits and state authorization to use "best value" procurement, based on the public safety and economic risks of having a seismically restricted dam located above one of the state's most populous and economically significant regions.

Waterway and Ecosystem Protection

Allow Mitigation Credit for Homeless Encampment Cleanup

Summary of Administrative Needs

This proposal would create a system for a public entity such as Valley Water to receive mitigation credit for our efforts to clean up homeless encampments along Valley Water waterways to protect water quality.

Valley Water's Approach to Address Administrative Needs

Securing mitigation credit for homeless encampment cleanup may be accomplished through a rulemaking or regulatory approach. Consequently, staff recommends meeting with State and Regional Water Boards to discuss

the proposal and determine if the adoption of a regulation or statutory authorization is needed, or if the state agency may implement by administrative fiat.

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

State Proposals and Priorities

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 the 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 environmental 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.

Public Entities Need Flexibility in Financial Assurance Mechanisms for Long-Term Management of Compensatory Mitigation Sites

Summary of Legislative and Administrative Needs

Permitting agencies are requiring financial assurances for long-term management of compensatory mitigation sites as a condition of permit issuance. Federal and state agencies have recently been insistent that endowments are the only avenue to ensure the long-term sustainability of a compensatory mitigation site.

The U.S. Army Corps of Engineers (USACE), through its district engineer, determines the compensatory mitigation for a specific project. As part of this compensatory mitigation, the district engineer requires financial assurances for the completion of the mitigation project, as well as financing mechanisms for the long-term management of the mitigation property.

Financing of long-term sustainability of a mitigation project after its completed, PP 19649 Final Rule, Supplemental Information re 33 CFR 332.7 (USACE) and 40 CFR 230.97 Management (d) (U.S. Environmental Protection Agency) states "In cases where compensatory mitigation project sites are owned by public entities, it may not be necessary to include provisions for the financing of any required long-term management if, for example, a formal, documented commitment from a government agency is provided (i.e., stewardship commitment). For public agencies identifying adequate financing at the time of permit issuance may be problematic since agency funding can vary from year-to-year with budget cycles, thus underscoring the need for a formal, documented commitment.

State Proposals and Priorities

The State Government Codes 65966 (b) and 65967 (a) & (b) indicate there is flexibility in methods of funding for the long-term stewardship of mitigation property, and that an endowment is not the only option.

Valley Water's Approach to Address Administrative Needs

Valley Water seeks to engage with applicable state and federal agency senior officials to ensure flexibility in long-term financial assurances is available to public entities including exemption from endowments, and to clarify changes in agency policy if necessary.

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 Pacheco Reservoir Expansion Project 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

- A. Collaborate with other water agencies in efforts to establish a separate track for water rights change petitions for Proposition 1 Water Storage Investment Program-approved projects, including the Pacheco Reservoir Expansion Project.
- B. Concurrently 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 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 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 the 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.

Federal Proposals and Priorities

Regulatory Issues

Expedite U.S. Fish and Wildlife Service (USFWS) Permit Processing

Summary of Legislative, Regulatory, and Administrative Needs

USFWS lacks adequate staff to process permits in a timely and predictable manner. Often permit applications are placed into a queue, and processing of multiple permit requests from a single entity does not appear to be handled concurrently. A solution to this would be to implement a requirement that if the USFWS does not take action within 60 days on a permit, it is deemed approved automatically.

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

Seek legislative, regulatory and administrative paths toward this outcome.

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 (USACE) 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.

Conversely, state agencies typically place a higher value on permittee-responsible mitigation, on-site, or as close to the impacted site as possible. Compliance with the federal mitigation hierarchy is likely to result in higher state agency mitigation ratios and requirements.

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 the 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.

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 is able to work effectively and efficiently with regulatory agencies

Federal Proposals and Priorities

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 environmental 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.

Public Entities Need Flexibility in Financial Assurance Mechanisms for Long-Term Management of Compensatory Mitigation Sites

Summary of Administrative Needs

Permitting agencies are requiring financial assurances for long-term management of compensatory mitigation sites as a condition of permit issuance. Federal and state agencies have recently been insistent that endowments are the only avenue to ensure the long-term sustainability of a compensatory mitigation site.

The U.S. Army Corps of Engineers (USACE), through its district engineer, determines the compensatory mitigation for a specific project. As part of this compensatory mitigation, the district engineer requires financial assurances for the completion of the mitigation project, as well as financing mechanisms for the long-term management of the mitigation property.

Financing of long-term sustainability of a mitigation project after its completed, PP 19649 Final Rule, Supplemental Information re 33 CFR 332.7 (USACE) and 40 CFR 230.97 Management (d) (U.S. Environmental Protection Agency) states "In cases where compensatory mitigation project sites are owned by public entities, it may not be necessary to include provisions for the financing of any required long-term management if, for example, a formal, documented commitment from a government agency is provided (i.e., stewardship commitment). For public agencies identifying adequate financing at the time of permit issuance may be problematic since agency funding can vary from year-to-year with budget cycles, thus underscoring the need for a formal, documented commitment.

The State Government Codes 65966 (b) and 65967 (a) & (b) indicate there is flexibility in methods of funding for the long-term stewardship of mitigation property, and that an endowment is not the only option.

Valley Water's Approach to Address Administrative Needs

Valley Water seeks to engage with applicable state and federal agency senior officials to ensure flexibility in long-term financial assurances is available to public entities, including exemption from endowments and to clarify changes in agency policy if necessary.

Federal Proposals and Priorities

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

Funding the Upper Llagas Creek Flood Protection Project Through the Water Resources Development Act or Other Appropriations

Summary of Legislative Needs

Valley Water's Upper Llagas Creek Flood Protection Project authorization language needs to be revised to eliminate an errant paragraph which was included in the Water Resources Development Act (WRDA) of 2007 authorization bill. This language has created confusion in providing direction to the USACE and the Office of Management and Budget. In addition, the project's progress has been severely impacted by the lack of appropriations from Congress. One way to address this is to explore reversing WRDA authorization back to the Natural Resources Conservation Service (NRCS), who had it prior to 1999. Since the USACE replaced NRCS for this project as part of WRDA 1999, funding has dwindled significantly, hampering this project's progress. Critical focus needs to be put on securing appropriations for the project going forward. Due to the restrictions on earmarks, the Water Resources Reform Development Act of 2014 (WRRDA) was not viable vehicle to fix the errant paragraph.

Valley Water's Approach to Address Legislative Needs

Continue to seek language clarifying the intent for the Upper Llagas Creek Flood Protection Project in WRDA legislation, or seek alternative federal sponsorship through WRDA or other federal legislation. Emphasis will be placed at all levels both locally and in Washington D.C. to secure future federal funding for the Upper Llagas Creek Flood Protection Project.

Additional emphasis will be placed on securing alternative funding, including funding from the Department of Agriculture through the Farm Bill or other agricultural appropriations as appropriate to ultimately allocate funding to NRCS.

U.S. Army Corps of Engineers Levee Vegetation Policy

Summary of Legislative 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, the USACE may "fail" the levee and remove it from its rehabilitation and inspection program, which would then alert 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 the USACE to revise this policy in order to 1) prevent required removal of valuable riparian vegetation, and 2) prevent the consequences associated with the USACE "failing" levees that retain this valuable vegetation. In WRRDA, the USACE has been directed by Congress 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 Legislative Needs

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

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

Summary of Legislative 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 WRDA of 2007). Section 221, as implemented by the ASA-CW, does not promote construction by non-federal interests.

Federal Proposals and Priorities

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 Needs

Work with the USACE and Congress to ensure that Valley Water's needs are addressed through the implementation phase of WRRDA of 2014. Continue 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.

Infrastructure Funding

Dam Evaluation, Rehabilitation, and Repair Legislation

Summary of Legislative Needs

Valley Water operates ten 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. The Anderson Reservoir dam evaluation concluded that the dam needs to be seismically retrofitted, at an approximate cost of \$400 million. The National Dam Safety Program currently provides financial assistance to states for strengthening their dam safety programs, but does not assist with infrastructure improvements when a dam is found to be deficient. A comprehensive federal assessment of the state of the nation's dams would enable Congress to fully understand what role, if any, Congress should have in the rehabilitation and repairs of non-federally funded dams.

Valley Water's Approach to Address Legislative Needs

Continue to support the introduction of a Dam Evaluation, Rehabilitation, and Repair Act that will assess the state of the nation's dams and will ultimately provide grants or infrastructure loans for structurally unfit dams.

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, that indicate 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 percent 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 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 both replenishment of groundwater basins, similar to the successful groundwater replenishment system operated by the Orange County Water District and potentially direct potable reuse.

Federal Proposals and Priorities

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, report on the feasibility of developing uniform water recycling criteria for direct potable reuse by December 31, 2016. The State Water Resources Control Board released its draft report in September 2016 which suggests 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 storm water, groundwater recharge, flood water, gray water, and indirect and direct reuse. Initiate discussions with Congressional members and the EPA as needed to further the development of regulations for direct potable use.

Flood Protection Funding

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

Summary of Legislative 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 Legislative 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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