

Dear Ms. Irvin,

Valley Water is in receipt of your comments submitted on June 18, 2020 regarding the Federal Energy Regulatory Commission Order Compliance Project (FOCP) and offers the following responses:

**Question 1:** The response to the Sierra Club comment letter was never sent to the Sierra Club.

**Response 1:** Valley Water received the Sierra Club's June 8, 2020 letter via email in late afternoon of June 8. Because the Board meeting was held in the early afternoon of June 9, Valley Water did not have sufficient time to review and respond to the letter. During the June 9 Board meeting, the Board Chair clarified that it would be appropriate for Valley Water to address the letter at the following Board meeting. Staff indicated its plan to address the letter at the June 23 Board meeting, to which the Chair responded that the letter would become a part of the public record for the June 23 public hearing. Rather than simply responding to the letter during the June 23 public hearing and in the interest of providing Valley Water's response to the public for their review as well as establishing clear administrative record for the proceeding, the Sierra Club comment letter, as well as a memorandum response, was included in the agenda packet for the June 23, 2020 public hearing, that was posted to Valley Water's website on June 12, 2020.

**Question 2:** The response to the Sierra Club comment letter included the following information on the operation of the chillers to maintain the cold water management zone. However, this information was not added to the project description in the Engineers Report. This information would improve the project description and there seems to be no reason not to include it, other than a prevalent attitude to dismiss public input and a tendency towards secrecy.

- During the FOCP and ADSRP, Valley Water plans to keep the reach from the base of Anderson Dam to Ogier Ponds, known as the cold water management zone, wet using a combination of available local water passed through the construction area and imported Central Valley Project water released through an existing pipeline about ¼ mile downstream of Anderson Dam.

**Response 2:** In addition to providing clarification about Valley Water's plan to keep the cold water management zone from the base of Anderson Dam to Ogier Ponds, Valley Water also expands the discussion of the augmentation of streamflow downstream of the dam in the revised Project Description, specifically in Section 5.8.7. The revised Project Description is an attachment to the June 23 Board agenda packet as well as the supplemental Board agenda packet, and the Board will be considering the proposed project, as provided in the revised Project Description, for approval on June 23. Staff has determined that there is no need to add the clarifying information in the Engineer's Report. The District Act only requires the Engineer's Report to include a general description of the project because the purpose of the public hearing on the Engineer's Report is for the Board to consider written and oral objections to the proposed project when the project includes new construction and the project is funded by single or joint zones of benefits. The project description in Engineer's Report already describes the design and operation of the chiller as part of the Coyote Creek stream augmentation fish protection measure and provides an estimated cost of that fish protection measure.

**Question 3:** In response to the Sierra Club letter, the District minimizes any responsibility to inform the public about the environmental impacts and mitigation measures related to the FOCF. The District needs to study those impacts and develop mitigations anyway and should make some effort to provide transparency to the public about environmental impacts. This may not be a full CEQA process for the FOCF, but providing this information to the public would show some commitment to make up for the important public process that has been discarded because this is an “emergency.” Instead, the District is taking the path of secrecy by declaring that the only place these impacts will be considered is under cumulative impacts in the Anderson Dam Seismic Retrofit Project EIR, and that mitigation monitoring for the FOCF will not be integrated with mitigation monitoring for the ADSRP.

**Response 3:** When the Legislature creates statutory exemptions, such as the emergency project exemption, it makes a policy decision that certain projects are so important that they can and should proceed without any CEQA review. Valley Water is following the emergency exemption rules provided in CEQA and the CEQA Guidelines. These rules do not require “after-the-fact” CEQA analysis of exempt emergency projects. Therefore, there is no plan for Valley Water to study the impacts of the FOCF or develop mitigations for the FOCF as part of a CEQA process, other than as a cumulative project in the ADSRP EIR. However, information about the project’s impacts on natural resources will be provided to fish and wildlife agencies (e.g., USFWS, NMFS, CDFW), the USACE, and state water quality regulators as part of their publicly-accessible permit processes.

Valley Water understands that the public may be looking for greater public disclosure of impacts and mitigation measures than required by CEQA’s emergency exemption rules. Please note that Valley Water does intend to periodically update the public on the progress of FOCF implementation on its website and in its newsletters. Public information will include progress on implementing avoidance and minimization measures (AMMs) designed to minimize environmental impacts of FOCF implementation. Also, as authorized by Council on Environmental Quality “alternative arrangement” procedures for emergency projects, FERC plans to prepare focused, streamlined environmental evaluation under the National Environmental Policy Act (NEPA), which will be available publicly through the FERC docket and other sources. This document, together with emergency consultations and permitting through regulatory agencies with jurisdiction, such as NMFS, USFWS, CDFW, USACE, and the SWRCB, will provide public disclosure of FOCF impacts and avoidance and minimization measures. To facilitate public access, on its website Valley Water will provide links to the FERC FOCF NEPA evaluation and to selected Valley Water FOCF permitting documents.

**Question 4:** The only meeting on the FOCF on Thursday 5/28/20 was announced two days before the meeting. Three other meetings were organized as meetings about the Coyote Creek flood control projects.

**Response 4:**

Information about the May 28, 2020 Anderson Dam FOCF virtual public meeting was provided on a postcard notification mailed to more than 13,750 residents during the week of May 18 and was included on the Anderson Dam project webpage (<https://www.valleywater.org/anderson-dam-project>) that same week. Staff informed media outlets about the virtual public meeting via a media advisory distributed on May 14, with another media advisory about the public meeting sent on May 26. In the weeks leading up to the meeting date, additional notification occurred on

Valley Water's social media platforms, which includes Facebook, Twitter and messaging on NextDoor.

Some elements of the Coyote Creek Flood Protection project are part of the FOCF—namely measures needed to protect properties against the larger flows that will be released from the dam's new outlet tunnel. As such the Coyote Creek Flood Protection Project virtual public meetings held on June 10, 11, and 17, 2020 included information about Anderson Dam and the FOCF. Similarly, the Coyote Creek virtual public meetings were noticed publicly via a postcard mailer earlier in the month, along with news advisories and reminder notifications via social media postings.

Although the distributed agendas for the meetings included an update on the Anderson Dam Seismic Retrofit Project (ADSRP), Valley Water took the opportunity to update the residents in attendance on the FOCF and its effect on the ADSRP and Coyote Creek Flood Protection Project. The meeting at which the FOCF will be discussed in detail is the June 23, 2020 Public Hearing, which was noticed on June 12, 2020 as required by Brown Act Regulations. However, prior to this meeting, Valley Water's Board also discussed the Preliminary Project Description for the FOCF on May 26, 2020, which was also publicly noticed in accordance with the Brown Act.

**Question 5:** In the meeting on Coyote Creek flood control on Wednesday 6/17/20, the meeting was ended 5 minutes early when there were still 10 unanswered questions in the chat box (according to the meeting facilitator). Rather than leave 5 minutes early, a good public outreach process would be willing to stay 5 minutes late to finish answering the public's questions. This is especially true when the outreach process is already compromised by use of a remote conferencing tool (which was used to prevent participants from seeing who else was attending the meeting, and was used to hide all questions until District staff decided to answer them).

**Response 5:**

In response to the current pandemic, Valley Water has been hosting virtual public project updates meetings via Zoom since May 2020. Although the Valley Water Board of Directors and staff do miss the opportunity to connect with members of the public face to face, we have found the virtual meetings to be an effective platform to share information and interact with the public during these extraordinary times

The Coyote Creek Flood Protection Project meetings series was hosted using a similar webinar format and included a facilitator at all three events. These virtual events were live streamed via Facebook, with Spanish and Vietnamese interpreters also available. Each of the meetings included a Questions and Answers (Q&A) portion, where various division staff answered questions on multiple topics ranging from creek maintenance to the drawdown of Anderson Reservoir.

Your attendance at all three meetings was appreciated. Staff also appreciated the questions you posed during those meetings, which resulted in robust meeting discussions. Here is a summary of each virtual public meeting and how questions were addressed, in addition to information on the virtual meeting end time:

- June 10
  - 24 questions asked and all answered.
  - The meeting ended at 7:53p.m. as all questions were answered.

- Team spent time answering questions from latest Frequently Asked Questions; given that there were moments where there were no questions being asked.
- June 11
  - 25 questions asked and all answered (11 of which were asked by you)
  - The meeting ended at 7:52p.m. as all questions were answered.
  - Team spent time answering questions off FAQ since there were moments where there were no questions being asked.
- June 17
  - 36 questions asked (37 submissions, with one thank you comment). Twenty-five questions were answered, with 11 questions remaining.
  - The meeting ended at 7:55p.m. as the Q&A portion required a follow-up, given that several of the questions required more time to address.

In general, the facilitator allotted time at the end of each meeting to ensure there would be an opportunity for next steps and closing statements. Although the next steps and closing statements were completed much quicker than anticipated on June 17<sup>th</sup>; the facilitator announced that all unanswered questions would be responded to as part of the Q&A document update that would be available online.

Please note, given the way Zoom webinar is structured, unanswered questions would have to be marked “answered” in order to become visible. Showing the questions as answered on the automated Zoom report and recording would be inaccurate and potentially cause confusion for those who decide to view the meeting after the live Zoom event.

All three public meeting recordings are available on Valley Water’s YouTube channel and Facebook. The video links, along with meeting materials are available on the project webpage (<https://www.valleywater.org/coyote-creek>).

**Question 6:** At the meeting on Wednesday 6/17/20, I asked the following question which was unanswered. Staff said they would respond to all the unanswered questions. I don’t have confidence that they actually will, and especially no confidence that these answers will be made public.

- Can the staff report for the Board of Directors on June 23 discuss how far along design is for each of the projects in the FOCP and how the projects might change as design moves forward? The Board should be informed of these uncertainties. I imagine a table that includes columns for each project such as: % design complete, factors still to be determined (such as location and operation of chillers); potential for design changes; permits required; etc.

**Response 6:** Per the District Act authorizing the establishment of the Santa Clara Valley Water District, the purpose of an Engineer’s Report is to provide the salient project details listed below to Valley Water’s Board of Directors so that action may be taken if appropriate. Specifically:

1. A general description of the project
2. A general description of the lands, rights of way, easements and property proposed to be taken, acquired or injured in carrying out said project.
3. A map or maps which shall show the location and zones, as may be required, of each of said projects, and lands, rights of way, easements and property to be taken, acquired or injured in carrying out said project

**4.** An estimate of the cost of each project, including a statement of the portion, if any, of such cost theretofore advanced by the district for said project for which the district proposes to reimburse itself from the proceeds of sale of any bonds to be issued to pay for said project and an estimate of the cost of lands, rights-of-way, easements and property proposed to be taken, acquired or injured in carrying out said project, and also of all incidental expenses likely to be incurred in connection therewith, including legal, clerical, engineering, superintendence, inspection, printing and advertising

Information regarding the completeness of each design element is not presented within the Engineer's Report and will not be included in the FOCP Engineer's Report. The FOCP permitting requirements can be found in Table 7 of the Project Description.

As always, Valley Water appreciates your continued interest and participation in our projects.

Thank you,

Christopher Hakes

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