

California Regional Water Quality Control Board

San Francisco Bay Region

RESPONSE TO WRITTEN COMMENTS

On the Tentative Order for Reissuance of Waste Discharge Requirements and Water Quality Certification for the Santa Clara Valley Water District Stream Maintenance Program, Santa Clara County

On or before April 20, 2020, the San Francisco Regional Water Quality Control Board (Water Board) received written comments on a tentative order distributed for public comment on March 18, 2020.

The following parties provided comments:

1. California Trout and San Francisco Baykeeper joint letter (CB)
2. Guadalupe-Coyote Resource Conservation District (GCRCD)
3. Mr. Richard McMurtry (RM)

Two commenters, California Trout and GCRCD, included comment letters they had submitted separately in 2019. All comments were considered and are responded to below.

In addition, we made minor staff-initiated changes to the tentative order, resulting in a revised tentative order. The changes are described at the end of this document.

Water Board staff have summarized the comments, shown below in italics, and paraphrased for brevity, in some cases., Each comment is followed by our response. For the full comments, please refer to the comment letters.

COMMENTS

California Trout – San Francisco Baykeeper (CB)

***Comment CB-1.** The SMP manual as currently written remains incomplete and inadequate to avoid take of listed salmonid species and unnecessary habitat degradation in waters of the State.*

Response to CB-1. We disagree that the SMP is incomplete or will lead to unnecessary degradation of waters of the State. The SMP Manual (Manual) includes multiple elements to ensure that waters are not degraded as a result of maintenance activities. These include: (1) detailed criteria for the activities authorized by the tentative order; (2) required impact avoidance and minimization measures, such as work windows for working in streams at times when biota are not likely to be present; and (3) compensatory mitigation criteria to ensure that the unavoidable impacts of SMP activities are appropriately addressed by compensation for incidental take of salmonids or other sensitive species, and result in no net loss of wetlands and other waters of the State. In particular, the minimization and avoidance measures will allow the Santa Clara Valley

Water District (Valley Water) to carry out maintenance work through measures that avoid permanent or ongoing degradation of waters.

We agree that some maintenance activities may result in take of listed species, but we disagree that the avoidance and minimization measures are therefore inadequate. The Manual includes the criteria and limits that the National Marine Fisheries Service (NMFS) required in its Biological Opinion (BO) for the SMP, and the tentative order requires Valley Water to work in compliance with the Manual. While the BO recognized that incidental take of salmonids may occur through SMP activities, it found that the SMP's effects on salmonids would be minimal. At the same time, the tentative order recognizes continuous improvement of the stream maintenance program by incorporating increased notification, monitoring, reporting, and mitigation requirements for large woody debris management actions.

Comment CB-2. *The SMP does not rely upon a scientifically vetted baseline of watershed health to make its determinations of necessary maintenance or mitigation, making it challenging to determine impacts, necessary mitigation, gauge effectiveness of the mitigation, assess penalties for maintenance or work that diminishes this baseline, or to adequately determine and evaluate cumulative impacts on water quality, beneficial uses, and public trust resources.*

Response to CB-2. We disagree. The tentative order and SMP, including the procedures for determining when maintenance is necessary and order requirements to mitigate unavoidable impacts, are grounded in a scientific understanding of creek functions, beneficial uses, and watershed health that is informed by applicable regulations and policy. Decisions for SMP maintenance activities and impact avoidance, minimization, and compensation measures meet the requirements of the *Water Quality Control Plan for the San Francisco Bay Basin* (Basin Plan), including the California Wetland Conservation Policy's requirement to ensure no net loss, and a long term net gain, in the quality, extent, and permanence of wetlands. Where appropriate, tentative order requirements are informed by the species-specific requirements of the U.S. Fish and Wildlife Service (USFWS) BO, NMFS BO, and the California Department of Fish and Wildlife (CDFW) Lake and Streambed Alteration Agreement for the SMP.

For example, the impact avoidance and minimization measures, and compensatory mitigation required in the Manual vary, based on the type of maintenance activity (e.g., bank stabilization project using rock riprap vs. a soft or hybrid method with rock toe and brush mattress layering), and a site's type and circumstances (e.g., concrete channel vs. natural channel; the amount of vegetation impacts to access a site; the impacts to vegetation during the maintenance activity).

Valley Water will report the SMP's cumulative impacts and mitigation in the SMP's annual summary reports, which must be submitted to the Water Board.

This approach is reflected in the Manual's organization. Manual Chapters 4 – 9 include activity-specific impacts and mitigation criteria; Chapter 10 includes mitigation requirements; and Chapters 11 and 12 contain the monitoring and reporting requirements.

Additional detailed guidance to avoid and minimize impacts, and for compensatory mitigation, is included in the Manual attachments, including: A-BMPs; E-Water Quality Monitoring Plan; F-Sediment Characterization Plan; G-Steelhead Impact Minimization Measures; and I-Compensatory Mitigation Plan. Thus, the tentative order requires Valley Water to implement a program that appropriately determines a project's impacts, protection of beneficial uses, and compensation of impacts on a case-by-case basis as well as cumulatively for the program duration.

Comment CB-3. *The manual lacks a comprehensive monitoring plan for ecosystem function and habitat quantity and quality associated with maintenance activities over time, cumulative impacts analysis from the maintenance activities, and a plan for continued improvement. Further, there are several omissions in the document and process of approval that preclude adequate management agency oversight to ensure that public trust resources and/or beneficial uses are not degraded, as described below.*

Response to Comment CB-3. We disagree. See response to Comment CB-2. In addition, Valley Water's annual summary report must include a cumulative analysis of various impacts and mitigation to ensure that SMP activities remain within the program limits. For example, the annual summary report includes an accounting of the soft, hybrid, and hard bank stabilization methods, and for in-kind hardscape replacements. The net totals show that soft and hybrid treatments, combined, exceed the hardscape methods. Other cumulative effects include an accounting of instream complexity improvements by linear feet per project for mitigation of impacts to salmonid habitat, including impacts to LWD removal, undercut banks removal in salmonid streams, and removal of coarse sediment, and the construction of instream complexity projects to mitigate for those impacts. With such details, the ASRs provide an adequate assessment of the SMP cumulative impacts and mitigation. In addition, the SMP requires Valley Water to continue to develop its technical understanding of stream characteristics and function over time, which will result in better-targeted maintenance appropriate to the situations when it is needed. This is part of the plan for continued improvement.

Comment CB-4. *There is a significant missed opportunity to utilize the best scientific information available to guide decision-making and actions and increase public participation in the Notice of Proposed Work (NPW) process.*

Response to Comment CB-4. We agree that it is important to use the best available scientific information and to ensure there is appropriate opportunity for public input. The SMP has incorporated substantial public input, including during Valley Water's CEQA process for the SMP, and the Water Board's issuance and subsequent reissuance of the water quality certification and waste discharge requirements. Water Board staff has also met periodically with a number of the commenters. The intent of this programmatic maintenance authorization is to streamline the completion of maintenance activities necessary to protect public safety and property while ensuring they are done in a manner that is appropriately protective of water quality and environmental health. This is done by setting expectations upfront regarding which activities are authorized and how they may be carried out. While we value the significant contributions and benefits public participation provides, incorporating an additional public participation process would run

counter to the program's goal of timely completing necessary maintenance using an agreed-upon set of standards. See also response to Comment CB-2.

Comment CB-5. *The commenter requests that the Water Board defer the approval of the SMP Manual to allow for corrections and revisions to the Manual to address their comments.*

Response to Comment CB-5. We disagree that the Water Board's consideration of the tentative order should be delayed. As described above, the Manual appropriately identifies a limited set of maintenance activities that may be completed, the conditions under which they may be completed, including practices to reduce impacts, required mitigation, and reporting.

Comment CB-6. *The Regional Water Board has not quantified how much suitable fish habitat is available or needed in the Coyote, Guadalupe, and Stevens watersheds, and correspondingly, how much habitat can be cumulatively impacted without significant impacts to fisheries. We believe that habitat mapping done as part of FAHCE (the Fisheries and Habitat Collaborative Effort) may be useful to the Regional Water Board's quantitative evaluation of potential habitat impacts under the SMP and whether those impacts would degrade relevant beneficial uses. The FAHCE Initialing Parties have an analysis of how much suitable habitat is needed to support minimum viable populations of salmon and steelhead on the Guadalupe River that could be useful to the Regional Water Board's analysis, and we encourage the Board to request it from Valley Water to establish a baseline with which to gauge impacts on beneficial uses.*

Response to Comment CB-6. Comment noted. Baseline evaluations of habitat, fisheries, and other species were part of the environmental review performed pursuant to California Environmental Quality Act (CEQA). The cumulative impacts of SMP activities were determined to be less than significant. While the specific data from FAHCE are not incorporated in the SMP Manual, staff from NMFS and CDFW, with technical expertise in salmonid habitat and life history needs, review SMP project proposals, and their reviews are informed by FAHCE. We expect, and will advocate for, Valley Water to incorporate FAHCE findings, as well as other sources of updated watershed information, in the next SMP reissuance cycle (called SMP-3), which we anticipate will be completed in about five years.

Comment CB-7. *The SMP Manual and draft tentative order do not adequately define the criteria that Valley Water should apply in exercising its discretion under the SMP. The bounds of Valley Water's discretion must be clearly stated [by] the Regional Water Board to make findings regarding the SMP's likely impacts on water quality standards and to provide effective oversight of Valley Water's implementation of the program in compliance with the tentative order.*

*One instance where SCVWD's exercise of discretion is not scientifically based, otherwise unclear or arbitrary, or non-existent is the exclusion of project work above the 1,000-foot elevation contour in Santa Clara County. NMFS's best available science that found that many Bay Area watersheds upstream of dams and reservoirs maintain *O. mykiss**

irideus populations that retain genetic markers associated with anadromy that could perhaps serve as crucial sources of genetic information that would aid in the recovery and eventual de-listing of CCC steelhead. Further, *O. mykiss* are public trust resources regardless of where they reside in California, and therefore degrading their habitat, whether it is above or below the arbitrary 1,000-foot elevation contour, flies in the face of the Regional Water Board's mandate to protect and maintain beneficial uses and public trust resources.

Response to Comment CB-7. We disagree. The tentative order provides clear criteria for covered projects, detailed mitigation requirements, and measurable performance standards (See response to CB-2). The SMP, as authorized in the tentative order, would give Valley Water some discretion in deciding that maintenance is necessary, and in determining project or intervention designs and methods. Such discretion is necessary to effectively plan, implement, and mitigate for projects in unique site-specific circumstances. Moreover, the Water Board's oversight authority and review of proposed and completed projects will ensure that Valley Water is not abusing its discretion.

We agree that the tentative order does not cover maintenance projects above the 1,000-foot contour. This is because relatively little maintenance is needed in the upper stream reaches. The SMP is limited to below the 1,000-foot elevation boundary because the majority of urban development, where flood risk reduction and protection of public safety and infrastructure are needed most, is below this elevation. If maintenance is needed in streams above the 1,000 ft elevation contour, Valley Water must apply for an individual water quality certification or other appropriate authorization. For example, we recently authorized bank stabilization projects in the Coyote Ridge Preserve under an individual certification because it was not covered by the SMP WDRs.

Finally, recognizing the importance of upper-watershed habitat, Valley Water acquired 982 acres of high-quality habitat in the upper watersheds and will manage the properties in perpetuity to mitigate for SMP impacts (see Order Finding 27). If maintenance in these properties is needed, Valley Water would seek an individual water quality certification or other appropriate authorization.

Comment CB-8. *Large Woody Debris (LWD) has not been fully described or assessed in the current EIR for this SMP.*

Response to Comment CB-8. We disagree. The SMP's 2012 EIR appropriately assessed LWD. Thus, additional CEQA review of Manual Chapter 9, which covers the LWD removal program, is not required. In the 2012 EIR, Management Practices GEN-1 states "[m]odification and removal of instream large woody debris will occur at any time of the year, and as further described in the NMFS Biological Opinion." EIR section 3.3 discusses LWD removal (3.3-48) and its associated impacts (3.3-52). The Manual's "Tier 3" designation is not expected to affect the CEQA analysis by increasing the level of significance because mitigation measures will remain in the program, such as MM BIO-9 (3.3-107). Valley Water will still be required to mitigate for LWD removal. With this reissuance, LWD management actions were moved into a separate SMP Manual chapter, Chapter 9, to clarify the LWD removal

process and mitigation criteria. However, the LWD removal activity is not a new component of the SMP and does not require additional CEQA review. Moreover, while the LWD management program has been improved to reflect “lessons learned,” the improvements do not require additional CEQA review because they do not result in additional environmental impacts.

Comment CB-9. *LWD management may not require pre-notification to the respective management agencies, resulting in discretion in informing actions that would not be gauged by management agencies until after the fact.*

Response to Comment CB-9. This comment refers to LWD management actions that may occur during the salmonid spawning and migration season (which typically coincides with the wet season) to prevent debris jams that can cause flooding, infrastructure damage, or scour or erosion in streams (See Chapter 3, Table 3-1, for work window criteria that allow for LWD to occur year-round, if warranted). In those situations, agencies would be notified, but not until up to one week after the LWD action was done.

We recognize that Valley Water is entrusted to evaluate the need for LWD actions during the wet season for preventative measures mentioned above. Although those actions do not involve pre-approval from agencies, Valley Water is, nonetheless, highly accountable to LWD actions conducted during the migration and spawning season because they incur mitigation debt if the wood is cut as a Tier 3 action, relocated as a Tier 4 action, or removed as a Tier 5 action, and must comply with monitoring and reporting requirements for each Tier 3 and 4 action.

Comment CB-10. *The Manual includes a dubious definition of “emergency” actions and descriptions of procedures for maintenance.*

Response to Comment CB-10. The SMP Manual uses the Public Resource Code Section 21060.3 definition for “emergency”: A sudden, unexpected occurrence involving a clear and imminent danger that demands immediate action to prevent or mitigate loss of or damage to life, health, property, or essential public services. The SMP does not cover emergency projects because of their urgent nature.

However, emergency projects are not completed without review. They must be authorized under emergency permits from agencies (e.g., U.S. Army Corps of Engineers Regional General Permit 5, Repair and Protection Activities in Emergency Situations (RGP 5), and the State Water Resources Control Board’s general water quality certification for RGP 5 (Water Quality Order No. 2019-0044-EXEC), which include notification to and review by Regional Water Board staff.

Comment CB-11. *Past poor discretion exercised by SCVWD regarding LWD removal and dewatering much of the reach on Coyote Creek during peak migration flows for steelhead in March 2017, without prior notification, may have risen to the level of take under ESA when those actions were unilaterally taken by SCVWD.*

Response to Comment CB-11. This comment refers to an incident in February 2017 in

which Valley Water's Board proclaimed an emergency situation at the Coyote Creek percolation pond after flashboards on the dam were not removed proactively before winter storms, resulting in sustained high creek flows. This incident, which may well have resulted in take, was not a maintenance activity covered by the SMP. The percolation pond and dam, and other similar instream percolation ponds, are not covered under the SMP; within Valley Water, they are the responsibility of Valley Water's Water Operations division. Work on them would require appropriate individual authorizations.

Comment CB-12. *Without changes to the SMP, the Regional Water Board and other resource agencies will be unable to provide the oversight needed to adequately protect beneficial uses and public trust resources.*

Response to Comment CB-12. Comment noted. The tentative order, if adopted, includes details sufficient to oversee and enforce the SMP meets the Water Board's requirements.

Comment CB-13. *There is inadequate public participation to ensure that Valley Water's priorities, goals, and exercise of discretion are consistent with other restoration activities and priorities being undertaken in these watersheds. Therefore, we request that interested stakeholders be allowed to review and provide comments on Notice of Proposed Work proposed by Valley Water on an annual basis to increase actions and maintenance that serve the public interest for these shared beneficial uses and public trust resources. There is no public input in Biological Opinions or consultations or relevant permitting processes with management agencies, and so this Notice of Proposed Work offers an avenue and important opportunity for public engagement and participation in determining the fate of their watersheds in a region that sorely needs it.*

Response to Comment CB-13. Comment noted. The environmental review process for SMP-3 is already underway and the Water Board welcomes public participation to inform the next EIR and permits for SMP-3. See response to comment CB-4, which addresses public participation for the NPW.

Guadalupe-Coyote Resource Conservation District (GCRCD)

Comment GCRCD-1. *We were disappointed our comments submitted during the initial 30-day review of the application do not appear to have been addressed by the permittee in its revisions to the manual. We hereby incorporate these previous comments (see attachment dated September 6, 2019) by reference as if stated fully herein.*

Response to Comment GCRCD-1. Comment noted. The comments to the September 2019 letter are addressed below, beginning at Comment GCRCD-15.

Comment GCRCD-2. *We request that the Water Board suspend action to approve the tentative order and the SMP manual until the following steps in Comments GCRCD-3 through GCRCD-14 have been completed.*

Response to Comment GCRCD-2. Comment noted. As discussed below, we are not

proposing to delay the Water Board's consideration of the tentative order. Interested parties may participate in the meeting to voice concerns about the order.

Comment GCRCD-3. *The SMP does not support long-term management of ecosystem health in Santa Clara's watersheds because it is not informed by baseline determination of system health, nor does it facilitate quantitative impacts analysis, analysis of the likely effectiveness of proposed mitigation measures, or standardization of training.*

Response to Comment GCRCD-3. Baseline conditions, including impacts of SMP activities to sensitive species such as steelhead, are covered in the EIR. See also responses to Comments CB-2 and CB-6. Under the SMP, Valley Water holds annual training for SMP staff and contractors, covering BMPs detailed in the SMP Manual, environmental laws and regulations; work window guidelines; sediment and erosion control; good site management (e.g., trash removal and hazardous spill prevention and response); non-stormwater management (e.g., dewatering protocols and concrete waste management); cultural resources; nesting bird and special status species identification and impact avoidance and minimization; and timely correction of violations and violation reporting requirements. In addition to the annual training, while a project is in place, project managers hold daily meetings for work crews onsite at each project site (i.e., tailgate meetings) to reiterate specific details of the day's work and BMPs and other activities to implement in accordance with the Manual, and the project-specific design aspects. See also response to Comment GCRCD-20 pertaining to training.

Comment GCRCD-4. *The SMP as written allows for a continued, incremental loss of habitat over time and does not take into account the cumulative impact of those losses because it has not established a baseline against which losses will be measured and has not quantified how much habitat must be protected to support viable populations of anadromous species.*

Response to Comment GCRCD-4. We disagree that the SMP causes a net overall loss of habitat because projects that result in unavoidable impacts must be compensated to achieve no net loss, and a long-term net gain, in wetlands and other waters of the State. See also response to Comment CB-2.

Comment GCRCD-5. *The CEQA review for the previous SMP manual did not include review of the LWD program.*

Response to Comment GCRCD-5. See response to Comment CB-8.

Comment GCRCD-5. *The application of herbicide has changed from the permittee's commitment in the original FSEIR, and that change has not had been evaluated in accordance with CEQA. The commenter notes that the EIR mitigation measure provides that herbicide will not be applied directly to water, but GCRCD has observed direct application of herbicide in water.*

Response to Comment GCRCD-5. Comment noted. The SMP does not authorize direct application of herbicide to water, per BMP GEN-2 (Manual Appendix A). Applying herbicide to water would result in a violation of the Order. Valley Water has pointed out that other

entities may be using herbicide in stream corridors, including contractors on capital improvement projects, and private property owners. Valley Water prepared a fact sheet to help educate other entities on responsible use of herbicide near streams.

Comment GCRCD-6. *Habitat must be evaluated quantitatively and qualitatively; there must be a sufficient amount of good quality habitat to support the fisheries. If the permittee proposes to take an action under the SMP that is anticipated to result in unavoidable impacts to habitat, the permittee must be required to assess the quantity and quality of the habitat in advance and then implement mitigation measures to meet or exceed the anticipated impact.*

Response to Comment GCRCD-6. We agree. When Valley Water proposes to take an action that will cause unavoidable impacts, including to fish habitat, mitigation is required. The amount and type of mitigation required reflect the quantity and quality of habitat affected. Mitigation proposals must be included in the NPW, and agencies evaluate the mitigation proposal to ensure they meet the requirements in Manual Chapter 10, Mitigation. See also response to Comment CB-2.

Comment GCRCD-7. *The LWD program - a program which Valley Water has used repeatedly in the past to justify in-stream work during steelhead and salmon migration and spawning seasons - was written after Valley Water was issued its final permits and was not subject to public review. It allows for determination by Valley Water as to what level, if any, risk is posed by LWD remaining in the stream, and does not require documentation of risk or quantitative removal reports to the regulatory agencies. The wide discretion on LWD management under the SMP appears to create an unevaluated and cumulatively significant impact on the streams.*

Response to Comment GCRCD-7. See response to Comment CB-9, which explains the improvements to the LWD program for the 2020-23 SMP2-2 period, and addresses concerns about the SMP authorizing LWD actions to occur year-round in a salmonid stream.

Comment GCRCD-8. *The SMP appears to allow Valley Water to decide what level of maintenance actions are appropriate, and in most cases, allows the permittee to avoid regulatory agency review until post-activity. For those actions it deems to be "minor maintenance," there appears to be no requirement to provide reports or documents that would allow these actions to be tracked, monitored or measured.*

Response to Comment GCRCD-8. The tentative order would continue to allow Valley Water limited professional judgment, or discretion, to implement Minor Maintenance tasks. However, Manual Chapter 8 limits Minor Maintenance to specific projects that the EIR identified as having less-than-significant impacts. If Valley Water proposes a project that exceeds the limits of Minor Maintenance, it would not fall within this category.

Comment GCRCD-9. *The tentative order states it does not cover or authorize "Emergency Activities and Procedures," which gives the impression that emergency activities are unregulated. If these activities are regulated under different authorities, the permits and documents by which these activities are regulated should be explicitly referenced in and/or*

attached to the order. If these activities are not regulated, this oversight should be corrected within the tentative order to ensure the SMP is not incentivizing use of "emergency procedures" to avoid regulatory oversight.

Response to Comment GCRC-9. We clarified Finding 21 to indicate that the list of items that the SMP does not cover is because those items are covered under other regulatory authorities separate from the SMP. However, we did not name each of the other regulatory mechanisms in the tentative order. The change to Finding 21 is shown below as underlined text:

21. The following activities are not included in the Manual and therefore not covered in or authorized by this Order, because these activities are authorized under other permits or regulatory authorizations:

See also response to Comment CB-10.

Comment GCRC-10. *The tentative order states that it does not cover "Capital Improvement Projects (CIPs)" or "Maintenance Work for large construction projects or CIPs." Previous Water Board orders for flood control projects within Santa Clara County required that prior to construction "all BMPs shall be updated to reflect those developed for the Stream Maintenance Program (Order R2-2002-0028) except for those that are determined to be specific to Stream Maintenance Program activities only and not appropriate for capital project s." This order should state what standards do apply to maintenance activities within flood control project areas, and the Water Board should follow up to ensure that existing BMPs for active flood control project areas be reviewed and updated to prevent inconsistency.*

Response to Comment GCRC-10. Imposing requirements onto CIPs through provisions in this order would not be the appropriate way to achieve the intended goal for SMP procedures to be used in a CIP. Instead, the Water Board can incorporate requirements into a CIP permit (water quality certification and waste discharge requirements) such that the CIP project managers will need to follow procedures consistent with the SMP. The commenter's suggestion that when we prepare a permit for a CIP that we should include requirements for BMPs from the suite of SMP BMPs, is reasonable and we will consider this for future CIPs. We will also consider using the commenter's proposed language in future CIP permits to characterize the relationship between CIP permits and the SMP: *"All BMPs shall be updated to reflect those developed for the Stream Maintenance Program except for those that are determined to be specific to Stream Maintenance Program activities only and not appropriate for capital projects."*

Comment GCRC-11. *The tentative order allows for "minor" changes to the manual after permit issuance and without public review. Since what is considered Minor Maintenance appears to be left to the permittee's sole discretion, there could be changes to operations or activities that are not minor when considering the cumulative impact to the watersheds. Furthermore, there is no public review process for these "minor changes". We recommend the Water Board implement a notification and public review process for all changes to the SMP to allow for stakeholder input and provide greater*

transparency.

Response to Comment GCRC-11. A “minor” change to the Manual refers to editorial changes, or other change that would have no consequence to SMP activities or requirements for complying with the Order. Regarding changes to the Manual, we concur that interested parties should have an opportunity to evaluate and comment on significant changes to the Manual. The Executive Officer will consider comments from interested parties before determining whether to authorize a change to the Manual..

Comment GCRC-12. *The permittee has previously described "burping the reservoirs" to remove debris clogging the infrastructure; this causes turbidity levels to increase downstream, and could potentially be harmful to stream health and fisheries populations. This should be specifically prohibited by the tentative order.*

Response to Comment GCRC-12. The comment refers to operations at a reservoir outlet structure. The SMP does not cover reservoir operations. Reservoir operations are managed by Valley Water's Water Operations division, and procedures for reservoir outlets are covered under the Dam Maintenance Program.

Comment GCRC-13. *The permittee was issued a notice of violation of its SMP on March 26, 2019, and there may be others of which we are unaware. Past violations are important to note in the record as they can be used to establish patterns, and justify the use of more stringent language and conditions in the tentative order.*

Response to Comment GCRC-13. The notice of violation (NOV) cited in the comment is the only one we have issued to Valley Water for SMP work performed during 2014-2019. Considering the amount of SMP work Valley Water performs each year, its track record does not convey a pattern of non-compliance. The tentative order is comparable to those for other SMPs in the Region and includes provisions that are sufficient to pursue enforcement should either isolated instances or a pattern of non-compliance emerge.

Comment GCRC-14. *The level of construction and maintenance activity occurring in Santa Clara County streams, and their consequent impacts on long-term viability of anadromous fisheries and habitat needed to support them, begs greater stakeholder involvement in planning and coordination efforts. The Guadalupe Watershed Integration Working Group (GWIWG) and the Coyote Watershed Integration Working Group (CWIWG) were established decades ago to serve as "advisory committee[s] to Managing and Regulatory Agency staff to coordinate and integrate projects and environmental monitoring within the Guadalupe River Watershed. This applies to all projects which could impact water resources, beneficial uses, and associated habitat." Only one GWIWG subcommittee - the Upper Guadalupe River Project Design Review Team (DRT) - has been convened in recent years in spite of the Water Board orders (For example, Water Board Order No. R2-2003-0115 for the Upper Guadalupe River Flood Control Project was cited). The Water Board should require that these groups be reconvened in compliance with their original purpose as a condition of this order.*

Response to Comment GCRCD-14. We are open to participating in GWIWG or CWIWG meetings, and encourage Valley Water to convene and participate in meetings. However, the SMP Order is a mechanism to appropriately authorize limited categories of necessary stream maintenance activities. It is not a comprehensive watershed management plan and we are not proposing that the SMP Order require Valley Water to participate in or convene the suggested meetings.

Comments GCRCD-15 through GCRCD-25, received September 6, 2019, incorporated by reference in GCRCD's letter received April 20, 2020:

Comment GCRCD-15. *GCRCD is concerned that using such terms as "if feasible" or "when possible" can lead to decisions that are interpreted differently by various implementing staff, and which may or may not meet the intent or standards of the regulatory agencies responsible for oversight and compliance. As an example, the manual sets up a process for LWD removal extensions after mid-October, but fails to identify the criteria to justify extensions.*

Qualified biologists must "monitor all LWD modifications and removals" for Tiers 2-5 to "minimize impacts to sensitive species," but the monitoring criteria are not defined, and monitoring requirement are not clear. GCRCD stated that terms and requirements should be clear, quantifiable, have stated criteria, and a uniform process for justifying and documenting decisions.

Response to Comment GRCRC-15. The tentative order uses the terms "if feasible" and "when possible" because there is no one set of criteria to describe the range of conditions that could occur at a site where maintenance is needed. However, the Manual serves as a standard set of guidelines that implementing staff must use for decision-making. Maintenance planning principles are presented in Chapter 3, section 3.1. Accordingly, what is "feasible" or "possible" must reflect these principles and should not change significantly from project to project.

(2) The tentative order does set forth clear, quantifiable terms for LWD removal, including criteria for extensions of the work window. As the comment notes, the work window for LWD in salmonid streams of June 15-October 15 may be extended as late as December 31 under certain conditions (Manual Chapter 3, Table 3-1). These conditions are set forth in tentative order Provision D.97. Valley Water may complete LWD actions from January 1-June 14, to protect against flooding, prevent damage to infrastructure, and to maintain stream bed and bank stability. The threshold of risk justifying working outside the core work window is set forth in tentative order Finding 3, pertaining to the SMP goals and objectives, and Manual Chapter 1, sections 1.1.1 and 1.1.2. Removal of LWD is the last resort, given LWD is a beneficial resource to stream ecosystems. Removal of LWD would result in mitigation requiring Valley Water to add new LWD to the stream in the following construction season.

(3) To the point about monitoring requirements, Valley Water uses standard practices

for evaluating salmonid streams and LWD, such as *California Salmonid Stream Restoration Manual* prepared by CDFW. In addition, monitoring criteria are stipulated in various sections of the Manual, such as: Chapter 5, Sediment Maintenance, Inspections (pp. 5-1 to 5-2); Chapter 11, Mitigation Monitoring; Attachment D, Water Quality Monitoring; Attachment E, Sediment Characterization.

Comment GCRC-16. *GCRC is concerned that the Manual is written in terms that allow Valley Water to perform maintenance at any time and make changes without clearly demonstrating a need, or weighing the effects of the maintenance activity against potential impacts from performing the maintenance. An example presented is for vegetation management, one (out of five) of the triggers is based on comparing field observations to as-built plans. GCRC asserted that more analysis is needed to determine if the vegetation needs to be removed. Another example is Valley Water making assessments for when to remove or manipulate LWD. GCRC believes this is done without a process for evaluating flooding risks, identifying who is responsible for the assessments, or verifying a LWD assessment.*

Response to Comment GCRC-16. We disagree that the Manual allows Valley Water to perform maintenance at any time without justification. As mentioned in comment CB-2, Valley Water's discretion is limited by the criteria and the mitigation requirements, including impact avoidance and minimization, outlined in tentative order Provisions D.1-D.7. Regarding decisions for evaluating vegetation management by comparing conditions to as-built plans, Valley Water runs a hydraulic model to evaluate the existing conditions compared to the modeling done for the as-built plans. It uses the results to develop and, when needed, update, the maintenance guidelines.

Regarding LWD management actions, see responses to Comments CB-9 and GCRC-15. Valley Water's assessments take flood risk into account and are verified by a qualified biologist, consistent with Manual Chapter 9, and requirements in tentative order Provisions D.35-D.39 for LWD actions. Finally, Valley Water staff use their best professional judgment.

Comment GCRC-17. *GCRC is concerned that categorizing streams as modified, modified with ecological value, and unmodified, does not meet a standard allowing valuation in terms of fisheries needs. In addition, classification of LWD does not meet a standard allowing valuation in terms of fisheries needs. GCRC pointed out that fish passage, water delivery, organic material transport all equate to ecological services.*

Response to Comment GCRC-17. The categories of modified, modified with ecological value, and unmodified reflect objective standards, as set forth in tentative order Findings 12, 13, and 14. These categories serve as a basis for evaluating the severity of impacts, and to account for mitigation credit for improvements. For example, see Manual Table 10-1c, Summary of Mitigation Credit by Channel Type; and Table 10-2, Summary of Bank Stabilization Mitigation by Channel Type. These categories, however, are separate from the fish habitat assessments and potential

impacts to beneficial uses, and whether mitigation is required is not based on which category is assigned to the stream reach.

The designation of LWD management activities as Tier 1 through 5 actions is not meant to be interpreted as the standard for determining a stream's value for fisheries. LWD is an important element of fish habitat, but LWD is also an important consideration for flood control purposes. As a result, the tentative order requires that removal of LWD from an anadromous salmonid channel, where required for flood protection, is an impact that must be minimized and mitigated. With the tiered approach for LWD management actions, the tentative order recognizes that some actions have greater impact than others, as reflected in the increasing amounts of oversight through notification, monitoring, and reporting for Tiers 1 through 5, and mitigation requirements for Tiers 3 through 5.

Comment GCRC-18. *Removal or adjustment of LWD should be considered a negative impact requiring mitigation, with mitigation equal to or greater than the impact.*

Response to Comment GCRC-18. We agree. With the tentative order's reissuance, the LWD management program would be improved to incorporate greater accountability in LWD actions. Specifically, Tiers 3, 4, and 5 actions (cutting LWD, relocating LWD, or, removing LWD, respectively), result in mitigation requirements. Previously, only the former Tier 4 (now Tier 5, Removal) required mitigation. Mitigation requirements for LWD management actions are listed in Manual Chapter 10, Table 10-1-a, and section 10.10.3.

Comment GCRC-19. *GCRC disagrees that Minor Maintenance in creeks that support sensitive fish species should be automatically allowed year-round. Additionally, because minor maintenance as defined by the SCVWD can be intrusive even if equipment is not required to be instream (such as removing branches with winches), GCRC believes there should be a requirement that a moratorium be placed on performing minor maintenance whenever a biologist confirms the presence of steelhead and/or salmon in a creek.*

Response to Comment GCRC-19. Please see response to comment GCRC-8. The SMP does not authorize Minor Maintenance to occur automatically. Instead, as set forth in tentative order Finding 19, and Provisions D.31- D.34, and Manual Chapter 8, the SMP puts limitations on what types of projects are considered minor modifications. The limits include other regulatory authorities in some cases. For example, the limit for a bank stabilization project is 500 linear feet, which is the same as the limit in U.S. Army Corps of Engineers Nationwide Permit (NWP) 17, Bank Stabilization. Moreover, even Minor Maintenance actions undergo extensive site evaluation and decision process, including a biologist's evaluation.

Comment GCRC-20. *GCRC requested that specific training requirements be better defined for maintenance staff and contractors entering the waterways to perform maintenance. In addition, GCRC requested that qualifications for*

"biologist" to be defined, as they could vary greatly from the standard used by regulatory agencies.

Response to Comment GCRC-20. See response to comment GCRC-3. The Manual requires the use of a “qualified biologist,” but does not define the term. The definitions for “qualified biologist” are in the CDFW Lake and Streambed Alteration Agreement (Notification No. 1600-2009-0361-R3), and NMFS BO (NMFS SWR-2011-3722) for the SMP, as follows:

“CDFW-Approved Qualified Biologist(s) and Monitor(s). Permittee shall submit to CDFW for written approval, the names and resumes of all qualified biologists and biological monitors involved in conducting surveys and/or monitoring work. A qualified biologist is an individual who shall have a minimum of five years of academic training and professional experience in biological sciences and related resource management activities with professional training or demonstrable experience with the special status species for which surveys are required. A biological monitor is an individual who shall have academic and professional experience in biological sciences and related resource management activities as it pertains to this project, experience with construction-level biological monitoring, be able to recognize species that may be present within the project area, and be familiar with the habits and behavior of those species.

NMFS Biological Opinion. A qualified biologist (including those specializing in botany, wildlife, and fisheries) is determined by a combination of academic training and professional experience in biological sciences and related resource management activities. [Valley Water] may also utilize appropriately trained and/or experienced environmental staff. Resumes of qualified biologists shall be made available to NMFS upon request.

CDFW’s and NMFS’ review of qualified biologists has been sufficient to ensure appropriately-qualified professionals are used. In addition, we will request that Valley Water incorporate these definitions into the Manual’s glossary.

Comment GCRC-21. *GCRC is concerned that maintenance assessments are driven by engineering perspectives and requested that the stream assessment teams have additional expertise, including a qualified biologist and/or a geomorphologist. These professionals would contribute to decisions for beneficial reuse. For example, GCRC would like sediment maintenance assessments to consider such factors as relocating gravels for reuse upstream where it can provide spawning habitat and support benthic biota. The gravel portion of sediment would need to be sieved to remove fines. In addition, the comment noted that removing fines would help to remove mercury from the system.*

Response to Comment GCRC-21. See response to Comment GCRC-20. All projects are evaluated by a qualified biologist and additional expertise is not required to perform these particular assessments.

To the point of beneficial reuse of sediment and gravel, sediment removed must be characterized for reuse options following the sediment characterization requirements detailed in Manual Appendix F, Sediment Characterization. If the quality is appropriate for instream reuse, a qualified biologist and engineers with geomorphology expertise evaluate options for reuse as spawning gravel or other beneficial habitat.

Comment GCRCD-22. *GCRCD stated that the SMP implementation is not consistent with the final subsequent EIR (FSEIR) pertaining to herbicide usage. The comment lists the FSEIR herbicide practices, including no direct application into water, and other criteria. GCRCD stated that it has documented instances in which herbicide was applied directly to water, and that Valley Water staff (or its contractor) explained to GCRCD that this was authorized because the SMP does not cover flood control project areas; and that herbicide application governed by the NPDES (i.e., the Aquatic Pesticide NPDES Permit (Water Quality Order No. 2011-0003-DWQ) allows for direct application to water. However, GCRCD believes that the SMP requirements supersede the NPDES permit. GCRCD requested that the Valley Water staff be held accountable to adhere to the SMP for its herbicide usage in all streams, and that a statement clarifying the governing regulations should be included in the new manual. Furthermore, GCRCD stated that because of the significant environmental issues on wildlife of allowing herbicide in the creeks, it believes that the use of herbicide needs additional environmental review prior to adoption of the updated SMP manual since, in some cases, the standards have been lowered (such as the removal of the surfactant requirements) and the resulting impacts have not been analyzed.*

Response to Comment GCRCD-22. See response to Comment GCRCD-5. Herbicide use under the SMP is consistent with the EIR. The SMP does not authorize direct application of herbicide to water per requirements in BMP GEN-2 (Manual Appendix A, BMPs). Surfactant requirements are still in place and have not been removed. As stated in tentative order Finding 97, Table 1, footnote 2, surfactants are permitted for use in a salmonid streams only when the stream is dry in the immediate work location, and no rain is forecast for the next 24 hours.

(See also Manual Chapter 4, section 4.4.1.D, re. surfactants.) Valley Water uses surfactants for every herbicide application, subject to the limitations in the tables of Provision D.97, and the Manual. Valley Water is also bound by the terms of the General Aquatic Pesticide NPDES permit and no violations of receiving water limitations (RWLs) were detected in samples collected in 2018.

Comment GCRCD-23. *GCRCD stated that the SMP Manual has expanded and amended sections that were not reviewed in the original CEQA document, and therefore an amendment to the EIR is warranted. Amendments to the updated manual that have not had environmental review include, but are not limited to, the removal of the surfactant conditions for herbicide use; the addition of a Tier 3 for LWD thresholds for removal (cutting LWD into smaller pieces); and the elimination of geographic restrictions on herbicide spray work.*

Response to Comment GCRCD-23. No new work activities were added to the SMP and we disagree that additional CEQA review is required. Tier 3 for LWD management was created at the request of the NMFS to better align with the intent of the NMFS Biological Opinion, though Tier 3 actions (cutting LWD resulting in pieces that can migrate downstream) were formerly under Tier 2. The former Tier 2 was split into revised Tier 2 (onsite modifications that could include cutting of small (non-LWD) branches from the main LWD stem) and Tier 3, for cutting larger pieces. The split of Tier 2 into Tier 2 and 3 resulted in bumping former Tiers 3 and 4 into Tiers 4 and 5. See response to Comments CB-8 and CB-9 pertaining to the revised LWD management program, and GCRCD-5 and GCRCD-22 pertaining to herbicide usage.

Comment GCRCD 24. *GCRCD is concerned that Valley Water's implementation of its existing program is not in compliance with the approved EIR and mitigation requirements, particularly in the area of herbicide application. GCRCD stated that since the SMP is proposed as a substitute for other documents usually prepared by and/or approved by federal regulatory agencies, GCRCD believes it essential that maintenance operations are clearly defined rather than allowing the qualitative measures prevalent in this document, and that the environmental impacts of the proposed program are addressed in full. The comment included an example of the U.S. Army Corps of Engineers having indicated its intent to use Valley Water's SMP to replace the required O&M Manual and to guide an Adaptive Management Plan on at least one project (Berryessa).*

Response to Comment CCRCD 24. See responses to Comments CB-2, CB-4, CB-8, CB-09, GCRCD-15, and GCRCD-16.

Mr. Richard McMurtry (RM)

Comment RM-1

Mr. McMurtry asked why maintenance work on private property is prohibited under Finding 21, and asked for clarification about whether Valley Water would be authorized to remove invasive plants as mitigation in areas where no "stream maintenance activity" is needed on private property.

Response to RM-1

The referenced Finding states the Order does not authorize maintenance performed on private properties "by owners or other agencies." The Order is specific to Valley Water's activities and does not cover work carried out by others. This does not preclude Valley Water from performing work on neighboring properties for invasive plant removal. We consulted with Valley Water on this matter (April 17, 2020) and found that Valley Water supports invasive plant removal on properties adjacent to its fee title and easement sites, provided the work is mutually acceptable to the neighboring property owner and other necessary agreements are in place to do the work. The mitigation credit garnered for Valley Water's invasive plant management

work would only be applicable to the area within its own right of way, however. This is because Valley Water cannot control the land use or activities outside of its easements and fee titles.

Staff-Initiated Changes

Staff corrected minor typographic errors and deleted Finding 43, which duplicated Finding 40. We renumbered the subsequent findings to reflect the deletion.

In addition, we edited Provision D.97, Tables 1-3, as shown below. Revisions are highlighted and shown with underline text for additions and strikethrough text for deletions. These edits were to ensure that the tables, which call out requirements in the SMP Manual, are consistent with the SMP Manual language. They do not result in any changes to Order requirements regarding the Program and its implementation.

Table 1: We deleted footnote 4 from the Minor Maintenance category under the last column, which is consistent with Manual Chapter 3, Table 3-1. Footnote 4 indicated that a biological survey would be done within 7 days of the maintenance project commencing, and that a biologist would be onsite during the work. The Order does not require a biologist survey for every Minor Maintenance activity and including footnote 4 was in error. However, through Valley Water's internal procedures, a qualified biologist evaluates all SMP proposed projects before they are implemented. In addition, other BMPs incorporate biologists' surveys and require their onsite oversight when the pre-project evaluation identifies the need for those BMPs. This is further discussed in our response to Comment GCRC-19.

Table 2: Edits shown are minor copyedits for clarity, addition of language to be consistent with language in the Manual, and the deletion of Footnote 3, regarding heavy equipment notification requirements, because that requirement is incorporated in the Manual's notification requirements.

Table 3: Edits shown are minor copyedits for clarity, removal of Footnote 5, which applies to Tables 1 and 2, but not Table 3, and clarification that the Feb. 1 – Nov. 30 work window applies to mowing, rather than grazing, activities.

Provision D.97. The Discharger shall conduct SMP maintenance work during the dry season or low-flow season, June 15 – October 15, as shown in the work windows below. Depending on stream conditions (i.e., dry channel conditions) and whether the channel supports anadromous fish, the Discharger may conduct limited SMP maintenance work activities per the work windows in Tables 1, 2, and 3.

Table 1. Work Windows for Maintenance Activities Below Ordinary High Water or High Tide Line in Creeks That Support Sensitive Fish Species

Work Activity	Jun 15 through Oct 15	Oct 15 through Oct 31 No work once significant rainfall occurs. ^{1,2} See footnotes 1 and 2	Nov 1 Through Dec 31 No work once significant rainfall occurs. ^{1,2} See footnotes 1 and 2	Year Round, except where mechanized equipment crosses a creek or water quality is otherwise affected
Hand pruning, tree removal, and stump treatment	X	X	X	
Herbicide Use ²	X ²	X ²	X ²	
Sediment Removal ³	X	X ³		
Bank Stabilization ³	X	X ³		
Concrete Removal /Bank Rehabilitation Mitigation	X	X		
Encampment Cleanup				X ⁴
Minor Maintenance				X⁴ -X
Management of Animal Conflict - Burrow Filling				X ⁴
Large Woody Debris				X ⁴

Footnotes:

- X indicates work is allowed.
 - "Sensitive fish" refers to anadromous salmonids, green sturgeon and longfin smelt.
 - All SMP activities that require dewatering of areas within anadromous salmonid streams are restricted to the period between June 15 and October 31.
- 1 No work is authorized once significant rainfall occurs. After October 1, the Discharger shall consult a 72-hour look-ahead weather forecasts from the National Weather Service (or other qualified local vendor) to prepare for possible winterization measures. If a significant rainfall is forecast within the coming 72-hr window, maintenance work that may result in sediment runoff to the stream shall be stopped to allow adequate time to complete erosion control measures. Winterization materials shall be available and installed prior to significant rainfall. Significant rainfall is the local rainfall of 0.5 inches or greater within a 24-hour period in the subject watershed, below the 1,000-foot contour.
 - 2 Herbicide use shall adhere to Material Safety Data Sheet and product label limitations. Aquatic herbicide use in California red-legged frog and California tiger salamander SMP potential range map areas is authorized only when the creek is dry and no rain is forecast for the next 48 hours. Surfactant use on the 14 creeks supporting anadromous salmonids is permitted when the stream is dry in the immediate work location and no rain is forecast for the next 24 hours.
 - 3 No new instream sediment removal or bank stabilization projects may be initiated after October 15.
 - 4 If work is occurring within the wetted channel, biological pre-activity surveys shall occur within 7 days prior to the initiation of work activities and a qualified biologist must be on site to monitor the work (See BMP GEN-1).

Table 2. Instream (Below Ordinary High Water or High Tide Line) Work Windows for Creeks That do Not Support Sensitive Fish Species

Work Activity	Jun 15 through Oct 15	Oct 15 through Nov 30 No work once significant rainfall occurs. ¹ ² See footnotes 1 and 2	Dec 1 through Dec 31 No work once significant rainfall occurs. ^{1, 2} See footnotes 1 and 2	Jun 15 through Dec 31 No work once significant rainfall occurs. ^{1, 2} See footnotes 1 and 2	Year-round except where mechanized equipment crosses a creek or otherwise affects water quality
Hand pruning, tree removal, and stump treatment					X
Herbicide	X ³	X ³	X ³		
Sediment Removal	X	X ⁴		X ⁵	
Bank Stabilization	X	X ⁴			
Concrete Removal /Bank Rehabilitation Mitigation	X	X			
Encampment Cleanup					X
Minor Maintenance					X
Management of Animal Conflict - Burrow Filling					X

Footnotes:

- X indicates work is allowed.

1 Defined as 0.5" within 24 hours within watershed

2 72-hour look-ahead weather forecasts from the National Weather Service (or local vendor such as the Western Weather Group) are consulted to prepare for possible winterization measures. If a significant rainfall is forecast within the coming 72-hr forecast window, then maintenance work that may result in discharge of sediment to the stream shall be stopped, to allow adequate time to complete erosion control measures. Winterization materials shall be available and installed when rain falls. If after a storm event occurs there was not significant rainfall, the project may continue until next significant rainfall or October 31.

3 If heavy equipment would be required for instream work, the work shall be included in the NPW for the instream work window.

3 Aquatic herbicides may be used in California red-legged frog and California tiger salamander SMP potential ranges map areas only when the creek is dry and no rain is forecast for the next 48 hours.

4 5 Only if at least 50% complete on October 15 or is a new project that will be completed in five (5) days or less.

5 4 Only for specific reaches of Berryessa, Lower Silver, Thompson, Canoas, Ross, Calabazas, San Tomas Aquino Creeks. Work may occur on Berryessa Creek (0+88+80; 232+70-236+00; 284+30-288+00), Lower Silver Creek (Reach 3 between Stations 37+40 and 381+19), Thompson Creek (0+00-10+00), Canoas Creek (0+00-390+00), Ross Creek (0+00-86+30), Calabazas Creek (35+00-105+00), and San Tomas Aquino Creek (80+00-100+00) with the following conditions:

- o Site conditions are dry and access for all construction equipment and vehicles will not impact waterways; and
- o All work will stop if any rainfall is forecast for the next 72-hour period.

Table 3. Non-Instream (Above Ordinary High Water or High Tide Line) Work Windows

Work Activity	Year-round, except where mechanized equipment crosses a creek or otherwise affects water quality	Work Period
Vegetation Management (including pruning, limb removal, vegetation removal <6 inches dbh and tree removal 6-12 inches dbh)	X	
Herbicide ^{2, 4}	X ¹	X ²
Mowing	X ³	Feb 1 through Nov 30
Grazing ³	X	Feb 1 through Nov 30
Management of Animal Conflicts	X ⁴	
Bank Rehabilitation Mitigation	X	
Encampment Cleanup Mitigation	X ⁴	
Minor Maintenance	X ⁵	

Footnotes:

- X indicates work is allowed.
- All maintenance vehicles shall stay on maintenance roads during the rainy season and when the soil is damp so as to avoid and minimize disturbed soil conditions within the bed and bank of the channel.
- ~~Grazing animals shall be restricted from entering the channel, all waters flowing and standing, and wetland habitats.~~

1 Per Material Safety Data Sheet and product label limitations.

2 Herbicide application can only occur in California red-legged frog and California tiger salamander SMP mapped areas when the creek or area is dry and no rain is forecast for the next 48 hours.

3 Grazing animals shall be restricted from entering the channel, all flowing and standing waters, and wetland habitats. See Large Woody Debris management (Manual Chapter 9).

4 Per special status species and pesticide requirements.

~~5 Instream work follows activity specific work windows.~~