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SENT VIA EMAIL (cwc@water.ca.gov)

Chair Fern Steiner and
California Water Commission Members
California Water Commission
P.O. Box 942836
Sacramento, California 94236-0001

**RE: Agenda Item 9: Water Storage Investment Program: Decision for
Utilizing Funding
March 19, 2025 Meeting**

Dear Chair Steiner and Members of the California Water Commission:

These comments are provided on behalf of the Stop Pacheco Dam Project Coalition (“Coalition”), which is working to protect Santa Clara County’s ratepayers and the environment, as well as working ranchlands, from the wasteful and high-risk Pacheco Dam project. The comments relate to Agenda Item 9 for the California Water Commission (“Commission”) meeting on March 19, 2025. Item 9 is a consideration of redistribution of funds previously allocated to the Los Vaqueros Reservoir Expansion Project (“Los Vaqueros”). “Option 2” in the Commission’s staff report for this item makes the most sense regarding allocation of extra funding. Under this option, the Commission would collect more information to ensure funding is allocated only to projects making **demonstrable progress with viable public benefits**. As described below, the Pacheco Reservoir Expansion Project (“Pacheco Dam”) Dam does not fall into this category.

I. Project Benefits are Not Justifiable in Relation to Project Costs

Further public investments in the Pacheco Dam are not justified, considering its excessive cost of \$2 billion, relative to its claimed benefits.¹ In addition, this new dam faces schedule delays and challenges, even as the Santa Clara Valley Water District (“Valley Water”) mischaracterizes the overall schedule, as further explained below.

¹ Water Storage Investment Program Quarterly Report, January 31, 2025, p. 1, available at: https://cwc.ca.gov/-/media/CWC-Website/Files/Projects/Pacheco-Reservoir-Expansion-Project/Quarterly-Reports/Pacheco_QR_01312025.pdf.

The Pacheco Dam would also cause significant environmental harm. The new dam would inundate over 8 miles of previously undisturbed reaches of Pacheco Creek and an even larger area of previously undisturbed lands containing rich biological and cultural resources, including unique riparian forests. Inundated lands in the proposed new reservoir footprint include Henry Coe State Park, as well as the Nature Conservancy's Romero Ranch conservation easement.

II. Most Recent Quarterly Report Seriously Misrepresents the Project Schedule

Valley Water's most recent Quarterly Report to the Commission does not present an accurate depiction of the probable schedule for completing critical milestones for the Pacheco Dam project. As one example, according to the Quarterly Report, Valley Water anticipates receiving all necessary authorizations by the end of 2028.

The Quarterly Report also shows public benefit contracts with California Department of Fish & Wildlife being executed in 2026 -- **before** environmental review is complete in 2027.² It is unclear how these benefits could be committed to prior to completion of environmental review and permitting. Valley Water has just released an Environmental Impact Report for Design Level Geotechnical Investigations so that subsurface work was paused in 2023 can potentially resume this fall. With respect to water rights permits from the State Water Resources Control Board, a PowerPoint presented by staff to the Valley Water Board earlier this month shows these new water rights and changes being processed **in just six months** (between mid-2026 and late 2026). (See Exhibit A, p. 10.) This schedule would be overly optimistic even for an unopposed petition to the State Water Resources Control Board, let alone a complex new water rights on lands Valley Water does not currently control or own.

Moreover, while Valley Water claims it can purchase habitat mitigation credits from the Santa Clara Valley Habitat Mitigation Plan, that plan does not indicate that water infrastructure projects were intended to be covered. The "Pacheco Dam reconstruction and reservoir enlargement" is specifically not covered under the SCVHP.³ As a result, the project may not rely on the SCVHP for take authority of listed species, and Valley Water must separately seek such authority from the relevant wildlife agencies. This process, even if ultimately successful, makes fulfillment of required habitat mitigation much more uncertain than Valley Water has represented to the Commission.

² Water Storage Investment Program Quarterly Report, January 31, 2025, pp. 4-5.

³ August 2012 SCVHP, pp. 6-4, 2-117, available at: <https://www.scv-habitatagency.org/DocumentCenter/View/128/Chapter-6-Conditions-on-Covered-Activities-and-Application-Process>.

In short, Valley Water cannot and will not achieve the schedule it is currently reporting to the Commission.

III. Other Water Storage Projects Make a New Pacheco Dam Redundant

Valley Water has more cost effective and less environmentally destructive options available to increase water storage, even without the Vaqueros Reservoir expansion. For instance, the U.S. Bureau of Reclamation (“Reclamation”) recently approved raising B.F. Sisk Dam, and adding storage capacity to the nearby San Luis Reservoir.⁴ Valley Water is currently contemplating a partnership that would include 60,000 acre-feet of storage in San Luis Reservoir. Under the current approach, the federal government would contribute 30 percent of the funding to for the dam raise and would receive that same percentage of the water. Valley Water would absorb about half the cost — \$435 million — and add 60,000 acre-feet of water. This new storage would reduce the water shortage in a six-year drought period by about 66 percent, according to Valley Water staff. This additional water can be stored underground and accessed as needed to supplement supplies.

IV. Pacheco Dam Is Not Feasible and Would be a Misuse of Conditional Funding

The Pacheco Dam has become more infeasible since the Commission’s initial approval of funding in December 2021. Factors such as high project costs, environmental harm, lack of any project partners able to pay for the assumed 35 percent of the project, and scheduling and permitting challenges indicate that the Pacheco Dam is not feasible at this time. Now, three full years after the Commission’s determination of feasibility, Valley Water is still in the “early stages of discussion with various entities for up to 35% partnership.” (Quarterly Report, p. 9.)

As the Commission is aware, project funding is contingent upon feasibility (Wat. Code, § 79757, subd. (a)(2)), and changes in project circumstances require reevaluation of feasibility (Cal. Code Regs., tit. 23, § 6013, subd. (f)(4)). There is a continuing duty of the Commission fund only feasible projects: “When an applicant has complied with the requirements in section 6013(f)(1), (2) and (3), the Commission shall consider any changes that have occurred to the project since the maximum conditional eligibility determination was made and determine the final Program cost share.” (Cal. Code Regs., tit. 23, § 6013, subd. (f)(4).) This consideration applies equally to consideration of allocating additional funds made available by the demise of the Los Vaqueros Expansion project.

In December 2021, this Commission decided that the Pacheco Dam met Proposition 1 requirements. Now over three years later, Valley Water is still nowhere

⁴ See <https://www.usbr.gov/newsroom/news-release/5012>.

near done with the environmental review and permitting process. The revised draft environmental impact report required under state law is not expected until 2026, and federal environmental review under the National Environmental Policy Act has not yet formally begun. This does not constitute demonstrable progress. Moreover, costs for the Pacheco Dam have continued to rise, rendering the public benefits the Commission assumed would occur in its 2021 even smaller in relation to project costs.

Projects such as the Pacheco Dam that are nowhere near completing their environmental review processes should not be awarded additional Proposition 1 funds. Awarding such funds has the potential to further delay the tough decisions that need to be made by incentivizing and subsidizing expenditures on even more “study” before making a decision. Valley Water has already spent nearly \$100 million on this project (\$24.2 million of which was early Proposition 1 funding); no more public funds should be wasted on Pacheco Dam.

V. Conclusion

The Commission should allocate funding previously allocated to the Los Vaqueros project only to projects that are making demonstrable progress and that have viable public benefits. This does not include the controversial and unaffordable Pacheco Dam. The staff recommendation (Option 2) would allow the Commission to collect more information before allocating additional funds. Selection of this option would not promote further public investment in the Pacheco Dam, which has become increasingly infeasible each year. Thank for considering these comments.

Very truly yours,

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