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Board of Directors, Pajaro Valley Water Management Agency
36 Brennan St.
Watsonville, CA 95076

January 12, 2023

RE: Disking of Seasonal Wetlands in Violation of Adaptive Management Plan

Honorable Directors:

In November of 2022, PV Water disked approximately 65 acres of seasonal marsh in College Lake, an action that eliminated a significant percentage of the existing waterfowl food plant habitat in the seasonal wetland area. The action raised concerns about the Pajaro Valley Water Management Agency's capacity to faithfully and responsibly implement the Adaptive Management Plan adopted by your Agency in 2022. This letter describes the impacts of the wetland vegetation removal and requests your Agency to add oversight and accountability to the implementation process in order to improve AMP compliance.

The Sierra Club agrees with Director Culbertson's comment at the December Board meeting requesting that the Projects and Facilities Operations Committee (PFO Committee) formally review the diskings event at the soonest available meeting, with invitations to all former members of the Ad Hoc Adaptive Management Plan Committee (AMPC) to participate, and for that Committee to report back to your Board on findings and recommended actions.

Our recommended actions, on pages three and four of this letter, also include determining the purpose and motivation for the diskings action and whether any diskings or related management commitments have been written into land lease, purchase or other contracts or obligations.

The diskings activity eliminated all of the existing emergent wetland habitat on the eastern side of College Lake, leaving predominately bare dirt in an area that had previously experienced approximately 96% vegetative cover (based on the first-year Baseline Vegetation Monitoring Report completed by SWCA Environmental Consultants). As summarized in the following paragraphs, the diskings was noncompliant with the Adaptive Management Plan, undermined or nullified the Agency's water rights permit and stipulation approved by the State Water Resources Agency, damaged biotic and cultural resources and prevented the completion of baseline studies of waterfowl habitat use.

- **The diskings activity was not compliant with the AMP.** The Agency manager stated at the Board meeting of December 21, 2022 that the diskings was conducted in response to requests by an adjacent landowner to clear ground for pest animal control. Communications by Water

Conservation and Outreach Specialist Marcus Mendiola indicated that the disking was also executed for woody vegetation control. In terms of animal pest control, neither the College Lake Integrated Resources Management Project description, nor the project EIR, nor the AMP describes or authorizes wetland vegetation removal as a pest control measure to support upland agriculture. Previous practice by private growers prior to AMP adoption included disking only protective strips adjacent to farmed areas. With respect to woody vegetation, Table 4-1 of the AMP allows woody vegetation control only when infestation is identified at least 1/10 of 1 acre in extent, with a minimum of 0.5% cover of woody vegetation. No evidence of woody vegetation has yet been provided. The vegetation monitoring recorded no woody vegetation in any of the 10 transects surveyed within the disked area nor in any other of the 25 total transects surveyed.

- **The disking violated a water rights stipulation.** The stipulation incorporated into the water rights permit requires the agency to take management actions to preserve waterfowl habitat quality—not to eliminate such habitat. The agency’s action had the effect of preemptively and unlawfully nullifying the water rights stipulation.
- **The disking was biologically destructive.** The average percent cover of high-value waterfowl food plants in Fields 1 and 2, where all emergent vegetation was eliminated, was 21% and 45%, respectively. High value food plants such as Japanese millet and smartweed produce 4–6 tons of seed and vegetable forage per acre that are utilized not only by wintering waterfowl but also by migratory songbirds, which are protected by the Migratory Bird Treaty Act and include a number of special status species recorded within the disked area. The seasonal marsh habitat also supports a multi-species prey base utilized by multiple pairs of raptors breeding within or adjacent to the lake basin, and wintering birds of prey belonging to more than a dozen species, as documented by your Agency’s bird surveys. The habitat also supported a great diversity of other important predators.
- **Damage to cultural resources violated the AMP.** The AMP requires PV Water to “sustain plants of cultural significance to the Amah Mutsun Tribe.” The disking removed extensive stands of cocklebur (*Xanthium strumarium*), a plant that is valued for medicinal uses by tribal peoples, along with curly dock (*Rumex crispus*) and possibly others among at least 20 species of culturally significant plants recorded in the lakebed. Hand removal, selective disking or other proportionate method would allow control of woody vegetation without degrading cultural resources.
- **Baseline studies were interrupted and subverted.** PV Water is obligated by multiple environmental documents and permits to conduct baseline studies of waterfowl habitat use. These studies were mandated by the Basin Management Plan Environmental Impact Report (EIR) and the College Lake Integrated Resource Management Project EIR, and incorporated into the water rights permit and Adaptive Management Plan. By eliminating the habitat, your Agency destroyed the opportunity to study baseline waterfowl use of that habitat. Your action was therefore out of compliance not only with the AMP and water rights permit, but also out of compliance with the Mitigation Monitoring and Reporting Plan for two EIRs. Subversion of the baseline habitat use study also represents a misappropriation of public funds.
- **The disking had no beneficial effect.** No upland farming was taking place at the time of the disking action; “For Lease” signs were visible on the property. Within 3 years of the disking event, annual inundation will foreclose woody vegetation growth over most of the area disked below the 57' contour.

- **The violation was willful and negligent.** The Agency Manager was present during the development of the trigger and management action policy for woody vegetation, and was reminded of these policies in conversations with the vice chair of the Adaptive Management Plan Committee prior to destroying wetland vegetation. The AMP and appropriate management measures were also discussed with the AMP consultant prior to disking and best management practices were referenced by the consultant.
- **The violation jeopardizes the College Lake Integrated Resources Management Project.** The water rights permit establishes that “No diversion is authorized under this permit unless the right holder is implementing the approved plan.” The failure of PV Water to implement the AMP in good faith undermines the conditions of the water rights permit and therefore jeopardizes a multi-million-dollar water project that is critically important to addressing the groundwater overdraft and maintaining Agency independence from State intervention.

PV Water Action is Required

There is an affirmative obligation, stemming from this noncompliant and destructive action, that PV Water establish a rigorous process to ensure and guarantee that no individual has sole discretion or authority to implement violative actions or to create destructive effects that jeopardize or violate the Agency’s primary mission of providing water to its clients.

The Sierra Club asserts, based on the evidence presented, that PV Water is obligated to pursue the following measures and actions to insure future compliance with the adopted AMP, to salvage baseline habitat use studies and to mitigate damage to wetland habitat. The Sierra Club requests that your agency implement Director Culbertson’s comment requesting that the Projects and Facilities Operations committee review the disking event and report back with recommended measures and actions to preserve waterfowl habitat quality and conduct adequate habitat use studies.

1. Contract with a qualified consultant to implement the AMP.
2. Introduce oversight and accountability into AMP implementation by widening the Projects and Facilities and Operations Committee by 2–4 seats to include representatives of the former Adaptive Management Plan Committee, including, at minimum, one At-large Pajaro Valley Community Member and one Non-Governmental Organization Member.
3. Amend the bylaws of the Facilities and Operations Committee to codify the role of new Committee members, including, at minimum, the ability to vote on any matters concerning AMP amendment, implementation and reporting.
4. Subject all proposed AMP amendment or management actions, and AMP-related report or monitoring study reviews, to approval by the PFO Committee prior to implementation. All such reviews shall be placed on the Committee agenda as potential actions and subject to public comment. All consultant reports studies and other consultant products shall be reviewed by the PFO Committee prior to acceptance by your Board.
5. Direct the Projects and Facilities and Operations Committee to review the disking event and report to the Board their findings on: a) the purposes and effects of the action, b) any non-compliance with the AMP or any Agency permits or any other Agency obligation, c) whether any land or lease contracts contain obligations to disk or otherwise manage this or other

properties, d) measures to mitigate the damage, and e) actions to ensure proper oversight of plan implementation.

6. Allow no further removal of vegetation from the damaged wetland area prior to project operation, including woody vegetation control disking or other vegetation removal.
7. Continue to monitor waterfowl and waterfowl food plant populations. Evaluate plant and waterfowl data to determine whether a relationship exists between the presence of waterfowl food plants and the occurrence of waterfowl. Monitor and analyze waterfowl habitat use data over the disked area to evaluate the recovery of the habitat and changes in use by waterfowl.
8. Investigate the possibility of amending the AMP to address agricultural pests on Agency lands adjacent to active agricultural lands, including: a) assess farmer concerns about adjacent pest issues, b) vet such concerns against published scientific evidence and the regulatory environment associated with adjacent crops, and c) identify objectives, metrics, thresholds, management measures and or pre-established methodologies based on scientific literature to control adjacent pests found to represent a valid threat to agriculture. As described in the current AMP, any proposed amendment shall be reviewed by the Projects and Facilities and Operations Committee as expanded.

PV Water is obligated to implement the Adaptive Management Plan in good faith in order to maintain the State water rights permit. The AMP, water rights permit and stipulation require the Agency to implement management actions to preserve waterfowl habitat quality. Your Board must take action to establish procedures and safeguards to ensure that Agency staff and management do not take any future actions contrary to these legal responsibilities. The Sierra Club looks forward to supporting measures and actions to ensure that the Adaptive Management Plan is faithfully and effectively implemented. Accurate and effective implementation of the AMP is necessary to mitigate the effects of the College Lake Integrated Resources Management and to ensure that the water project is implemented with minimized adverse effects on biotic, cultural and community resources.

The Sierra Club looks forward to maintaining our successful, cooperative relationship with PV Water that has resulted in the development of positive mitigation measures in two EIRs and strong policies within the Adaptive Management Plan. It is our hope that this relationship carries forward in the development of improvements to AMP oversight and implementation to ensure that the Adaptive Management Plan and College Lake Integrated Resources Management Project are implemented appropriately and successfully.

Sincerely,



Michal Guth
Chair, Executive Committee
Santa Cruz Group of the Ventana Chapter, Sierra Club