

TO: Valley Water Clerk of the Board
FROM: Margaret Bruce, Executive Director, San Francisquito Creek Joint Powers Authority
SUBJECT: AGENDA ITEM 5.3 - Please provide the following to the Valley Water Board members
DATE: January 11, 2025

On December 6, 2024, the Valley Water Board Policy and Monitoring Committee received a copy of a four-page document (attached) from the San Francisquito Creek Joint Powers Authority (SFCJPA). Because the January 14, 2025, Valley Water Board agenda item 5.3 and Board packet references that previous committee meeting and staff report, but doesn't include the information provided by the SFCJPA, we are including it here for the Board's awareness.

Attached:

Valley Water Board Policy and Monitoring Committee Meeting Friday, December 6, 2024, Agenda Item 4.1, SFCJPA Comments for the Record.

SFCJPA December 19, 2024 Board Meeting Agenda Item 8.B. Discussion item - Staff Report



Valley Water Board Policy and Monitoring Committee Meeting Friday, December 6, 2024
Agenda Item 4.1
SFCJPA Comments for the Record.

Summary of Issues Raised in Valley Water Committee Staff Report

1. Valley Water's Role: Valley Water staff feel that they have limited authority over Project Outcome

SFCJPA Response: Valley Water's current role is the same as it was in the completed Reach 1 Project. The SFCJPA bid and managed the design of the Reach 1 Project, including Engineer of Record during construction and As-Builts. The SFCJPA held additional contracts during construction, including PG&E utility relocation and sanitary sewer realignment. In total, the SFCJPA had 10 contracts for design and construction, while Valley Water had two- construction and construction management.

This same role is duplicated with the Newell Road Bridge Replacement Project- where this project is being delivered by the City of Palo Alto, who holds the design contract, with Valley Water funding 11% of the Newell Road Bridge project (the 'non-federal portion') using Measure S funds through an agreement between the City of Palo Alto and Valley Water.

At Valley Water Sr. Staff's encouragement, beginning in 2020, the SFCJPA has taken on a larger and larger share of the project's coordination, planning, design and management. It was by *mutual agreement* that the SFCJPA took on the formal role related to design and implementation. This occurred after the hydraulics review confirmed that the envisioned project design would need to be reconsidered. At the time, Valley Water staff acknowledged their heavy workloads and competing priorities.

2. Project Direction: The Safe Clean Water KPI indicates Valley Water is responsible for Project delivery; the Project is included in Valley Water's CIP. The Project does not provide 70-year protection to meet the Safe Clean Water KPI.

SFCJPA Response: The Safe Clean Water KPI describes the goal for the level of protection, not that Valley Water is singularly responsible for project delivery (see pages 126 - 128 of the Valley Water Annual Report FY 2023-24). We agree that the current Valley Water design is deficient in meeting this KPI, due to the new understanding of channel capacity. The SFCJPA has not changed the design objective, which is documented in the 2019 EIR; although, with the updated hydraulics, this goal will be more difficult to attain. Ultimately, the SFCJPA board will confirm the specific project goal, and will select the actions to meet that goal, based on various factors such as cost, constructability, and the largest benefit to the community.

The KPI will need to be revised in any case since it currently specifies 70-year protection using state and local funding only. The SFCJPA has had a federal partnership with USACE for specific project elements since 2020 under the CAP 205 Program.



3. Financial Concerns: The Project does not have enough funding for construction

SFCJPA Response: SFCJPA agrees with this statement. This fact has been known by all member entities for many years. The known project costs and the known available funding (from grants and from Measure S) have been regularly conveyed to the members of the SFCJPA. Members of the SFCJPA are cognizant of their responsibilities to close the funding gap.

a) Has contributed the majority of Project funding

SFCJPA Response: SFCJPA agrees that Valley Water has contributed the majority of San Francisquito Creek project funding, but the presentation does not show the \$11.8 M grant that SFCJPA obtained and managed for Reach 1, awarded for project benefits to the underserved community of East Palo Alto, nor does it reflect contributions made by or, payments to, other SFCJPA members.

b) SFCJPA annual financial audits have not been completed in five years

SFCJPA Response: SFCJPA agrees; these are being worked on. As reported to the Board and Finance Committee, due to technical, software provider, and IT issues, audit work has been delayed but is in-process with SFCJPA auditors. All past due audits are expected to be completed and brought to SFCJPA Finance Committee first then the SFCJPA Board for acceptance within the next six months. Note that while audit work has been delayed, SFCJPA staff has consistently provided the SFCJPA Finance Committee and Board with mid-year and yearly financial reports including updates on project related expenses.

The purpose of an annual audit is to ensure the SFCJPA's financial statements are a fair and accurate representation of its financial transactions and financial position. Annual audits also ensure the SFCJPA has appropriate procedures and controls in place to ensure the accuracy of its financial representations. The annual audits are not the source of information about staff time and grant-funded consultant work.

c) No clear delineation of SAFER Bay Project operations expenses-

SFCJPA Response: This is not a true statement. The SFCJPA tracks staff time to comply with State and federal grant reporting requirements. The SFCJPA rebills SAFER Bay project staff time to grants awarded to the SFCJPA for the SAFER Bay project. Because applicable staff time is re-billed to the grants supporting the SAFER Bay project, the amount of member contributions for operational costs expended towards the SAFER Bay project related staff hours is miniscule.

Valley Water contributes 20% of the SFCJPA's operating expenses. Since April 2022, SFCJPA staff have spent approximately 9.1% of their time on the SAFER Bay Project (Figure 1).

The SAFER Bay project has been part of the SFCJPA since 2011, with multiple unanimous approvals over the years by the SFCJPA Board. Furthermore, shoreline flooding/sea level rise is codified as part of the five-party member agreement (last update completed in December 2023).



The SAFER Bay project geographic scope is currently limited to San Mateo County. However, the SFCJPA completed the Feasibility Study for the City of Palo Alto in 2019. At that time, the City decided to participate in the South Bay Shoreline Project which had been granted \$67.5M in funding from the San Francisco Bay Restoration Authority. After the recent determination of a lack of federal interest by the US Army Corps of Engineers, we understand that the northern Santa Clara County portion of the Shoreline project is on hold, and the City of Palo Alto is evaluating options to accomplish their goal of sea level rise protection. In July the City of Palo Alto asked the SFCJPA to include Palo Alto in the official request to the San Francisco Bay Joint Venture Project for official adoption for the SAFER Bay Project by their board. This formal adoption was approved by their Board in October 2024. Staff time spent preparing for the Joint Venture presentation accounts for the 105 unbillable SAFER hours shown in Figure 1.

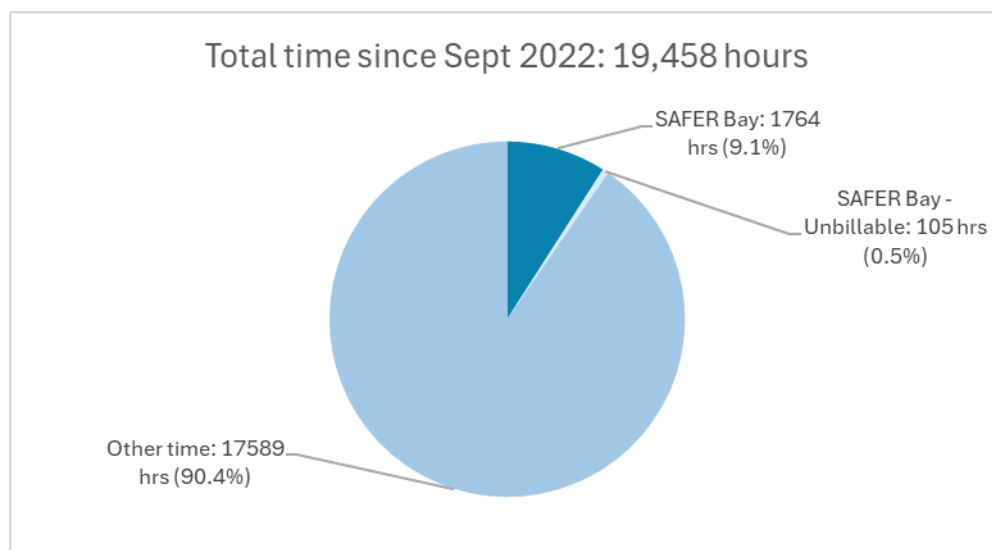


Figure 1: Time spent on SAFER Bay vs. other tasks since September 2022.

The SFCJPA welcomes the opportunity to answer any questions and concerns that any Valley Water board member or staff member may have. The concerns raised in the staff report could have easily been addressed in a manner that did not publicly call into question the capability or integrity of the other SFCJPA members and the staff of the SFCJPA.

POTENTIAL ACTIONS AND LIKELY CONSEQUENCES

The Board Policy and Monitoring Committee is asked to evaluate the following actions:

1. Options for Long Term Participation in SFCJPA

We have already demonstrated that Valley Water’s role has not changed, so we focus on the option of VW’s withdrawal from the agreement. It should be noted that this agreement was recently amended (concluding in December 2023) and included robust Valley Water participation.



This action would not serve the needs of the Santa Clara County residents who have been waiting anxiously for the project to be implemented.

Another point to consider is that the City of Menlo Park has been paying their 20% of SFCJPA operations costs and contributed to the costs of the Reach 1 project although the residents of Menlo Park have yet to benefit from these investments.

2. Modifying agreement – The founding agreement was recently updated (December 2023) as discussed above. Valley Water actively participated in that 18-month process. If the issue of concern is the JPA’s shoreline flood risk reduction work, we have already demonstrated that SAFER costs are differentiated, fully documented through timekeeping and invoicing, and what is not billed back to grants is a negligible amount. And further, the JPA’s shoreline engagement preserves future options for the City of Palo Alto.

Options 2C and 2D- confirm and advocate for Valley Water’s preferred level of protection and advocate for additional funding ***are already being done.***

3. Modify the Clean Safe Water Program- this action is already needed due to the changed hydraulics and KPI at a minimum, which has been known since 2020.
4. Consider changing project from capital to operations-
As demonstrated above, Valley Water’s role on the project has not changed, but it appears that Valley Water staff or board members’ perceptions have changed. Changing the budget category from which Valley Water funds this work may be of interest to the Santa Clara County residents who voted for the program.

We note that this change was not indicated with City of Palo Alto’s Newell Road Bridge Replacement Project, where Valley Water is paying a fixed 11% of the Newell Road Bridge Replacement Project and Valley Water did not move it to their operations project.

In short, the SFCJPA wants to continue to work with Valley Water and does not understand this very recent change in perception of the Reach 2 Project. We want to continue to work together to implement a flood risk reduction project that is the best we can do with available funding, as soon as we can accomplish it, and preserve opportunities for future improvements.

A question of commensurate transparency –

The Valley Water report on the San Francisquito Creek Reach 2 project for last fiscal year (FY23-24) indicated an annual expenditure of \$1.320 Million dollars. Of that amount, slightly more than \$320 thousand was Valley Water’s annual SFCJPA operational budget contribution. What did Valley Water spend nearly \$1M of Measure S Reach 2 project funds on while the project was largely on pause as we considered the implications of what we learned from the ’22 NYE storm?

Agenda Item 8.B. Discussion item - Staff Report

On December 6, 2024, Valley Water’s Board Policy and Monitoring Committee discussed the involvement of Valley Water with the SFCJPA and their projects. SFCJPA staff was made aware of this meeting on December 3, 2024, from an email sent by Ms. Bhavani Yerrapotu, Deputy Operating Office for Watershed Design and Construction.

The Committee meeting agenda, recording, and SFCJPA’s four-page written response can be found on Valley Water’s website, at the links below:

December 6, 2024	Agenda Handout 4.1-A		Video
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In the Committee meeting, Valley Water staff presented some surprising, inaccurate and/or misleading information to their Board Policy and Monitoring Committee. Valley Water staff did not reach out to SFCJPA staff to inquire about the information, which could have diminished inaccuracies.

SFCJPA staff attended the meeting and tried to address some of the misrepresentations. During the meeting discussion, several inaccuracies were repeated.

We correct the record, as follows:

Inaccuracy 1: Valley Water led the design of the Reach 1 Project

FACT: The SFCJPA bid, awarded and managed the contract for the engineering design of the Reach 1 Project. This contract was awarded in 2009 to HDR Engineering, and ended in February 2020 after the final as-builts were delivered. It is true that this work was rebilled to Valley Water, but they did not hold the contracts.

Inaccuracy 2: Valley Water contributed 70% of total funding (\$51.2M) to the Reach 1 Project

FACT: The final disposition of costs, as accepted by Valley Water Board on May 14, 2019, is \$41.3M.

There is a discrepancy of \$10.9M in the accepted final costs to a new current cost of \$52.2M that may be related to staff time. We understand that after the project was completed, Valley Water added staff time into the final project cost.

Project Costs	
SUBTITLE	
▶ Construction:	
▶ \$26,388,000 – Contract Award Amount	
▶ \$ 4,047,000 – Contract Change Orders	
▶ \$30,435,000 – Final Contract Amount	
▶ (15% Increase)	
▶ Funding Source:	
▶ Watershed Stream Stewardship Fund; Safe, Clean Water Fund	\$28,000,000
▶ City of East Palo Alto	\$1,260,000
▶ City of Menlo Park	\$800,000
▶ City of Palo Alto	\$400,000
▶ San Mateo County Flood Control	\$2,060,000
▶ Prop 84 Grant (secured by SFCJPA)	\$953,351
▶ Prop 1E Grant (secured by SFCJPA)	<u>\$7,875,000</u>
	\$41,348,351



Source: VW Board Presentation for Project E5: SAN FRANCISQUITO CREEK FLOOD PROJECT Bay to Highway 101 Reach (Downstream) Notice of Completion of Construction Contract and Project Acceptance, May 14, 2019
<https://scvwd.legistar.com/LegislationDetail.aspx?ID=3936874&GUID=6FA8A6B2-ED61-4303-8570-064C161BEC58>

Inaccuracy 3: Staff stated that they are *currently* paying for the design of the Reach 2 Project.

FACT: This is partially correct. Valley Water’s current fiscal year contribution of \$350,930.49 comprises one-fifth, or 20%, of the Reach 2 re-design. The work – being done through the Master Services Agreement with WRA – was approved unanimously by the SFCJPA board on April 25, 2024.

This budget also includes payments to Army Corps of Engineers as part of the CAP 205 program, supplemental EIR, Reach 1 Operations and Maintenance, flood early warning website, and all administrative (legal, office, IT and staff salaries), and is shared equally among the five SFCJPA members.

Inaccuracy 4: Valley Water has unequal representation at the SFCJPA Board.

FACT: Valley Water has the same amount of representation on the SFCJPA Board of Directors as they have had since the SFCJPA was created. This is the same representation they had through the U.S. Army Corps of Engineers General Investigation, through the completion of the Reach 1 project, and up to today.

Inaccuracy 5: SFCJPA requested the change from Valley Water to SFCJPA for project design.

FACT: Valley Water and the SFCJPA discussed schedule and Valley Water workload and priority issues, and the change was made by mutual agreement. At that time, there was no concern expressed by Valley Water about the SFCJPA assuming that role in project delivery. Moreover, for the past four years, senior staff at Valley Water have strongly encouraged the SFCJPA to take on more project coordination, communication, project management, design and delivery, to ensure the costs thereof are more equitably split. Concurring that this is both fair, and preserves Measure S revenues for construction, SFCJPA staff have taken this advice.

Valley Water's staff report to the Board Policy and Monitoring Committee on December 6 expressed concerns as if there have been new circumstances or novel conditions between the SFCJPA and Valley Water. That is not the case. The SFCJPA shares information as soon as it is received with each of its member entities, first at a staff level, and following review and comments, at City Executive meetings.

CONCLUSION

The SFCJPA believes that the issues raised in the December 6, 2024, Valley Water Board Policy and Monitoring Committee may stem from concerns related to the gaps in funding for project construction, which has been well known for many years, and has been discussed over the course of the project among SFCJPA staff and member executives.

Just last month, on November 12, 2024, Valley Water Board approved their FY 23-24 Annual Report for the Clean Safe Water and Natural Flood Protection Report that continued to conclude the following about San Francisquito Creek Flood Protection, San Francisco Bay To Upstream of Highway 101—Palo Alto with the following summary statements from Page 132; FY24 Annual Report. <https://tinyurl.com/SCWFY24AnnualReport>

Funding: *Medium Confidence*

There is a funding shortfall due to increasing construction costs and currently unknown design elements for the local-state-funding-only project. Valley Water's funding contribution has been secured through the renewal of the Safe, Clean Water Program. Additionally, the project is expected to receive approximately \$17.5 million in grants while continuing to seek additional grant funding. As the funding shortfall narrows, the SFCJPA member agencies plan to enter into a construction funding agreement to close any remaining funding gap. Additionally, the SFCJPA, in conjunction with USACE, continues to seek \$8.2 million in federal construction.

Jurisdictional Complexity: *Medium High Confidence*

This project requires cooperation with the SFCJPA and its member agencies, which include Valley Water, the cities of Palo Alto, East Palo Alto, and Menlo Park, and the San Mateo County Flood and Sea Level Rise Resiliency District (previously known as San Mateo County Flood Control District). In addition, there are key project stakeholders, including USACE and Stanford University regarding their Searsville Dam Project. Despite this, Valley Water has high confidence that the jurisdictions will continue to work together to accomplish the common goal of providing flood protection along San Francisquito Creek. The SFCJPA continues to work closely with its member agencies to

advance this project, and staff from all member agencies meet regularly to maintain a strong collaborative relationship.

The SFCJPA believes the highlighted statements above are still true. We can and will work together to get the Reach 2 Project designed and built to the SFCJPA Community, agency members' and board members' expectations. The SFCJPA conducts its work in a transparent and collaborative manner and is committed to continuing that practice with our agency and community members.

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