Max Overland

From:	Mr. Shore <jshore1905@gmail.com>
Sent:	Thursday, July 2, 2026 11:37 AM
To:	John Varela; Shiloh Ballard; Richard Santos; Jim Beall; Nai Hsueh; Tony Estremera; Rebecca Eisenberg; Clerk of the Board
Cc:	greer.stone@paloalto.gov; lgauthier@smcgov.org; mdinan@cityofepa.org; Combs, Drew; Keith.Reckdahl@paloalto.gov; keakin@redwoodcity.org; cttaylor@menlopark.gov; rabrica@cityofepa.org; Margaret Bruce; Shikada, Ed; Melanie Richardson
Subject:	Proposed Modification of Project E5 Key Performance Indicator
Attachments:	SCVWD-E5_KPI--Edgewood--01Jul2026.pdf
Follow Up Flag:	Follow up
Flag Status:	Completed
Categories:	Completed

Please find attached a comment letter on the above-referenced subject for your consideration.

Respectfully,

Jeffrey Shore

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July 2, 2026

VIA EMAIL

To: jvarela@valleywater.org, sballard@valleywater.org, rsantos@valleywater.org, jbeall@valleywater.org, nhsueh@valleywater.org, testremera@valleywater.org, reisenberg@valleywater.org, clerkoftheboard@valleywater.org

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Re: Comments Regarding Proposed Modification of Project E5 Key Performance Indicator — San Francisquito Creek Reach 2 — July 14, 2026 Public Hearing

Dear Chair Estremera, Vice Chair Santos and Members of the Board,

I am writing on behalf of myself and more than a dozen other families whose homes on Edgewood Drive in Palo Alto border San Francisquito Creek just upstream of Highway 101. After the February 1998 flood, East Palo Alto authorized a developer to raise above flood level a creek-adjacent site opposite our homes and construct a multi-story apartment complex on it. In response, Valley Water worked with homeowners, the developer, permitting agencies and officials from Palo Alto, East Palo Alto and San Mateo County to spearhead the San Francisquito Creek Levee Project in 2002, protecting our homes and surrounding properties from increased flood risk associated with the raised site. That project, like the one now before this Board, required construction through backyards, coordination across four jurisdictions, and no small measure of diplomacy — on a much smaller scale than Reach 2, but drawing on the same skills and experience this project will require.

I. Our Request

Speaking for our neighborhood, and also as someone who has lived adjacent to San Francisquito Creek just upstream of Highway 101 since 1996, has attended innumerable Board meetings of the San Francisquito Creek Joint Powers Authority ("*SFCJPA*"), served on Valley Water's former Lower Peninsula Flood Control and Watershed Advisory Committee for many years, and who voted for the renewal of the SCW Program in 2020, we have one request.

Before advancing the modification of the Project E5 Key Performance Indicator ("*KPI*"), we urge Valley Water to make a sustained and genuine effort to adjust its role in and authority over SFCJPA's Reach 2 project (the "*Project*") and preserve the current KPI.[1] Having made a commitment to voters in 2020, the burden should fall on Valley Water to demonstrate that no adjustment — of whatever form — could preserve the existing KPI. It is the KPI that should be protected, and Valley Water's role or authority that should be adjusted — not the reverse. As a first step, we ask the Board to direct staff to prepare a framework defining the roles and responsibilities that would allow the existing KPI to be preserved, as described further below.

II. Why This Matters Now

Valley Water has been the principal funder of flood risk reduction improvements on San Francisquito Creek for many years, and the community is mindful of that investment, as well as the genuine resource constraints that Valley Water currently faces. The concern raised here is not with Valley Water's commitment to date, but with what the proposed KPI would mean for the Project going forward.[2]

The proposed KPI modification would be unwelcome at any time, but it comes at a moment of heightened stress for the Project. Federal funding constraints are tightening across the board, every dollar of local funding is under pressure, and within the affected communities there remains genuine disagreement about the relative benefits of the leading solution and whether its costs are proportionate to the protection they would deliver. In this environment, community and institutional confidence in the Project's leadership and accountability structure is not a nicety — it is a precondition for the Project moving forward at all.

III. Why Valley Water's Engagement Is Structurally Necessary

The SFCJPA was never designed to deliver the Project independently. Its lean staff and its member agencies have no comparable experience managing a flood control capital project of this complexity. A funding-only KPI would not simply reflect Valley Water's reduced role; it would codify and entrench it, removing the outcome-based pressure that gives Valley Water reason to fully engage and depriving the SFCJPA of the informed scrutiny that Valley Water's active involvement brings to the Project. What the Board is being asked to ratify is Valley Water's transformation — unannounced and until December 2024 unknown to the public — from a full partner in Project delivery into a source of Project funds.

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[1] The Reach 2 Project covers the extent of San Francisquito Creek from Highway 101 upstream to Middlefield Road. The current Project E5 KPI is a 2-part outcome-based metric, as follows: *1. Preferred project with federal, state and local funding: Protect more than 3,000 parcels by providing 1% (100-year) flood protection. 2. With state and local funding only: Protect approximately 3,000 parcels by providing 1% (100-year) flood protection downstream of Highway 101, and approximately 1.4% (70-year) protection upstream of Highway 101.*

[2] The proposed Project E5 KPI would replace the current 2-part KPI with the following funding-only metric: *1. Provide the San Francisquito Creek Joint Powers Authority a portion of funds commensurate with the project's benefits to Santa Clara County, to provide flood protection along San Francisquito Creek.*

IV. Reexamining the Audit's Role as the Impetus for the KPI Modification Proposal

The Performance Audit Report of the Safe, Clean Water and Natural Flood Protection Program (the "*SCW Program*" aka "*Measure S"*) for FY22-24 (the "*Audit Report*") was prepared by PMA Consultants (the "*Auditors*"), based on fieldwork that ended in July 2025, and was received by the Board in November 2025. Findings 6 and 7 are central to the proposed modification.

A. Finding 7 — KPI Misalignment with Valley Water's Role and Authority

In Finding 7, the Auditors noted that the KPI for San Francisquito Creek flood protection ("*Project E5*") is misaligned with Valley Water's role and authority because the "KPI holds Valley Water accountable for delivering a specific community outcome (protecting parcels from a 70-year flood event), yet Valley Water no longer has the direct control or authority to ensure this outcome is achieved" and that the "KPI, as currently worded, does not accurately reflect Valley Water's role as a funding partner." Based on Finding 7, the Auditors recommended that Valley Water re-evaluate the KPI for Project E5 and consider options for shifting the KPI from an outcome-based metric to one that measures Valley Water's specific, controllable contributions, such as a funding or partnership-based deliverable."

There are legitimate questions about whether and when Valley Water relinquished "direct control or authority" over the Reach 2 Project, and, if so, whether SFCJPA staff's assumption of that "direct control or authority" was authorized. In the Committee Agenda Memorandum prepared by staff for the meeting of the Board Policy & Monitoring Committee (the "*BPMC*") on December 6, 2024 (the "*December 2024 Memo*"), staff assert that Valley Water turned over project design leadership to the JPA in February 2023, at the JPA's request.[3] Publicly available SFCJPA Board agendas and minutes show no evidence that the transfer was authorized by Board-level action or documented in writing.

Section 9(e) of the Second Amended and Restated JPA Agreement (the "*JPA Agreement*") states that "no Action of the Authority shall be effective or binding unless and until such action has been authorized by the Board of Directors." If the SFCJPA's assumption of project design leadership was an Action of the Authority, it would appear to require SFCJPA Board authorization. In addition, section 24 of the JPA Agreement includes a customary integration clause, which states that "there are no oral understandings or agreements not set forth in writing herein." The absence of any written record of the transfer may not merely constitute a procedural gap; it is potentially inconsistent with the JPA Agreement's own integration clause. Valley Water signed the JPA Agreement in August

[3] A copy of the December 2024 Memo is attached as Exhibit A. Compare the statement in related Finding 6: "*Valley Water's role has evolved from project lead to that of a primary funder and influential partner within the . . . SFCJPA*." This notion of an "evolving" role change is echoed in an observation made by Valley Water's SFCJPA Board representative in an exchange with Menlo Park's Board representative at a SFCJPA Board meeting on February 26, 2026.

2023, five months after the reported transfer, without any reference to the transfer appearing in the JPA Agreement's text or in any contemporaneous JPA Board agendas or minutes.

In their written response to the December 2024 Memo, SFCJPA staff did not concede that Valley Water's authority over the Reach 2 Project had been limited (the "*SFCJPA December 2024 Response*").[4] SFCJPA staff argued the opposite: that Valley Water's role at the time was unchanged from its role in the completed Reach 1 Project.[5] However, SFCJPA staff simultaneously acknowledged that, beginning in 2020, at Valley Water senior staff's encouragement and by mutual agreement, SFCJPA staff took on an increasing share of the Project's coordination, planning, design and management, as Valley Water staff cited heavy workloads and competing priorities. In effect, SFCJPA staff's own account is not that the role changed, but that Valley Water voluntarily stepped back from it.

Finding 7 concludes that Valley Water's Project E5 KPI is misaligned with its current role because it "no longer has the direct control or authority" to ensure the 70-year flood protection outcome is achieved. This conclusion appears to rest on the premise that the reported February 2023 transfer of project design leadership was legitimate, authorized, and irreversible. A premise of that kind would typically be confirmed by verifying that the role shift was authorized by the appropriate governing body, documented in a written agreement or resolution, disclosed to and ratified by the SFCJPA Board, and consistent with the governance requirements of the JPA Agreement itself. The Audit Report does not appear to reflect that this verification took place.

Furthermore, Section 5(i) of the JPA Agreement explicitly authorizes the Authority to "assign, delegate, or contract with a Member Entity or third party to perform any of the Authority's duties." This provision confirms that even if Valley Water's role is limited, it is not a structural feature of the JPA. It is a governance choice that the Authority has the power to reverse at any time through a formal delegation. This provision suggests that the misalignment between Valley Water's role and its KPI is remediable within the existing governance framework — a possibility the Audit Report does not appear to address.

B. Finding 6 — Enhanced Partnership Project Management

Finding 6 recommends that Valley Water develop better tools, specifically a Strategic Decision & Risk Log, to more effectively manage its position within the SFCJPA partnership, protect its financial investment, and influence project outcomes. Management agreed with this recommendation. Finding 6 is a recommendation for more strategic

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[4] A copy of the SFCJPA December 2024 Response is attached as Exhibit B.

[5] The Reach 1 Project involved the extent of San Francisquito Creek from the San Francisco Bay to Highway 101.

engagement, not less. It does not recommend that Valley Water accept a passive funding role.

C. A Timing Question Worth Probing

The December 2024 Memo, which recommended consideration of a funding-only KPI to address Valley Water's limited authority over the Reach 2 Project, was written approximately eleven months before the Board reviewed the audit findings now being cited to justify a funding-only KPI. The Board may wish to ask staff to clarify the extent to which staff representations and recommendations reflected in the December 2024 Memo were shared with the Auditors and the extent to which the audit findings informed a position that, on the public record, appears to have been considered in advance of the findings.

V. Clarifying Roles and Preserving the KPI Are Not Mutually Exclusive

At the BPMC meeting on April 21, 2026, a public commenter suggested that the revised KPI should include not only a funding deliverable but also an engineering design support deliverable, noting that Valley Water is the only JPA member with a deep bench of flood-control engineering experts and that residents in the floodplain have a legitimate interest in expecting Valley Water to hold itself accountable for engineering design quality assurance. The BPMC Chair declined, stating that the purpose of this KPI modification is to clarify roles and responsibilities, that Valley Water stands ready to support the technical development of the Project but needs a request from the JPA because it is not Valley Water's project, and that technical support would require a separate bilateral agreement initiated by the JPA that defines roles and responsibilities.

This response sits uneasily alongside Finding 7. Finding 7 recommended shifting the KPI to measure Valley Water's "specific, controllable contributions, such as a funding or partnership-based deliverable." Engineering design support is squarely a partnership-based deliverable within the meaning of that recommendation. Valley Water could pursue both: a bilateral agreement clarifying roles and responsibilities with the SFCJPA, and a KPI that retains outcome-based accountability to the voters who funded the SCW Program. Treating these as mutually exclusive is a choice rather than a requirement of the governance structure, and it is worth asking what that choice optimizes for. A bilateral agreement that clarifies roles and responsibilities without preserving an outcome-based KPI would give Valley Water welcome administrative clarity, but without corresponding accountability to the community for the outcome that clarity is meant to serve.

At the Valley Water Board meeting on June 23, 2026, the BPMC Chair again offered the same "clarification-of-roles-and-responsibilities" rationale for the KPI modification.[6] She observed that the existing KPI gives the false impression that Valley Water is solely responsible for the accomplishment of the entire SF Creek project, when in fact an independent JPA is responsible for delivering the project, and Valley Water is only one of five member agencies that shares that responsibility. This rationale is worth examining on two points.

First, if the problem with the existing KPI is that it creates a misleading impression of sole responsibility, the remedy is to reword the KPI to accurately reflect shared responsibility, not to eliminate the outcome commitment entirely. The proposed replacement language does not say "Valley Water, as one of five SFCJPA member agencies, shares responsibility for delivering 70-year flood protection upstream of Highway 101." It says nothing about flood protection levels at all. The "shared responsibility" rationale calls for a clarification of accountability, not an abandonment of it. As a Palo Alto Emergency Services Volunteer stated on the June 23 public record, the Board should "direct staff to bring back a revised KPI that preserves accountability for actual flood protection while clarifying Valley Water's role with the JPA."

Second, this "shared responsibility" rationale sits in some tension with how Valley Water led and delivered the downstream Reach 1 project. At the SFCJPA Board meeting on February 26, 2026, Valley Water's representative on the SFCJPA Board confirmed that Valley Water served as project manager and then project construction manager for Reach 1, but that its role has since evolved. The SFCJPA's multi-agency structure — and Valley Water's status as one of five member agencies — was no different during Reach 1 than it is today. If shared responsibility among member agencies did not require diluting the outcome-based KPI for Reach 1, it is unclear why the same shared structure requires diluting it for Reach 2. The more plausible explanation is not a structural feature of the JPA, but a governance choice by Valley Water that can be revisited, using the delegation mechanism already available under Section 5(i) of the JPA Agreement.

The Executive Director of the SFCJPA has stated that Valley Water staff kept her apprised of the KPI modification initiative as it developed. She endorsed the initiative as sensible at a SFCJPA Board meeting in February 2026 and endorsed the specific proposed KPI language at a BPMC meeting in April 2026. On June 23, with that language unchanged, she reversed her position. The Executive Director stated that the proposed language is ambiguous, potentially subject to manipulation, and contrary to Valley Water's voter commitments, and that SFCJPA staff were never consulted about the specific language before that language was posted publicly for the BPMC meeting on April 21. She committed to collaborating with Valley Water on revised language that better serves both agencies' objectives. The Board has not yet had the

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[6] The "clarification-of-roles-and-responsibilities" rationale was also attributed to Valley Water staff by the SFCJPA Executive Director at the SFCJPA Board meeting on February 26, 2026.

benefit of a public explanation for that reversal, and one may well exist. In its absence, the Board should give real weight to the fact that an informed participant in this process, who found the proposed KPI sensible as recently as April, concluded by June that it was not.

VI. Most of the Original Justifications for the Revised KPI Have Been Overtaken by Events

The perception of structural misalignment between Valley Water's role and the current KPI appears to stem from institutional tensions that accumulated over several years without being openly examined or resolved. This perception broke into public view at a Special Meeting of the BPMC on December 6, 2024. The agenda memorandum for that meeting (previously referenced and attached as Exhibit A ("*December 2024 Memo*")) bundled the issue of Valley Water's KPI together with broader concerns about its governance relationship with the SFCJPA, its financial obligations, the JPA's financial controls, and the direction of the Project, without clearly distinguishing which of those concerns independently justifies a permanent modification to the KPI. The December 2024 Memo catalogued seven concerns as potential justifications for a KPI modification (apart from limited control or authority over the Project). The status of each, as of this writing, is summarized below:

A. Uncertainty about Level of Flood Protection SFCJPA Would Pursue

On January 30, 2025, the SFCJPA Board formally reaffirmed the 7,200 cfs design goal corresponding to 70-year flood protection, consistent with the 2019 certified EIR. Neither Valley Water staff nor the Auditors cited this resolution as a material development.

B. Apparent Infeasibility of Four-Element Design for Reach 2 following December 2022 Revelation that the Creek has 25% Less Capacity than Previously Modeled

In May 2025, the SFCJPA's consultant presented its Alternatives Evaluation Technical Report, which detailed preliminary design alternatives that would achieve the design goal of containing 7,200 cfs. Neither Valley Water staff nor the Auditors cited this Report as a material development.

C. The SFCJPA's Failure to Complete Required Financial Audits for Five Years

On March 26, 2026, the SFCJPA Board accepted audits for all five outstanding fiscal years. Valley Water staff did not cite this resolution as a material development.

D. Valley Water's Indirect Subsidy of SAFER Bay Project Operations through Inadequate Expense Separation

The SFCJPA December 2024 Response disputed this characterization as untrue. If this concern remains disputed rather than affirmatively resolved, the Board may wish to ask staff whether it continues to be treated as a basis for the proposed KPI modification.

E. Lack of Project Ownership is Inconsistent with Capital Project Status

San Francisquito Creek Flood Protection (E5) was transferred from the CIP Five-Year Plan into an Operating Project for budgeting and long-term forecasting by the Valley Water Board on January 13, 2026, "to be more consistent with other similar projects where Valley Water is not the project owner or lead agency." Unlike the concerns above, this is not a December 2024 concern that the SFCJPA resolved. It is a subsequent action by Valley Water itself, and it bears directly on the transformation referenced in Section III above.

F. A Funding-Voting Mismatch on the SFCJPA Board

Valley Water has one vote of five on the SFCJPA Board despite contributing most of the project funding. Staff suggested Valley Water consider seeking weighted voting rights. There is no evidence in the public record that Valley Water has pursued this remedy. Therefore, this concern remains unresolved.

G. Funding Gap Anticipated Without Credible Funding Plan

As the December 2024 Memo explained, total Project costs cannot be determined until the level of protection for the upstream reach is finalized. Even the then-current design — which did not achieve 70-year flood protection — carried an approximate $25 million funding gap after applying all remaining SCW Program funds. Valley Water staff estimated that achieving 70-year protection would require additional infrastructure and $50 to $100 million or more in funding beyond that already-unfunded amount. A formal cost-sharing agreement awaits selection of a preferred design alternative with an associated cost estimate, and funding sources beyond the SCW Program will still need to be identified to close the resulting gap.

Of the eight concerns bearing on the proposed KPI modification, Valley Water's purported limited authority over the Project — the central premise of Finding 7 — appears to rest on an unauthorized and undocumented 2023 transfer of project leadership that, as discussed above, is remediable at any time through the JPA Agreement's own delegation mechanism. Of the seven remaining concerns catalogued in the December 2024 Memo, three have been affirmatively resolved by the SFCJPA's own subsequent actions (the reaffirmed design goal, the viable design alternative, and the completed audits). One — the SAFER Bay expense-separation concern — remains disputed rather than resolved. Two — the funding-voting mismatch and the anticipated funding gap — remain entirely unaddressed. The seventh — reclassifying the Project from a Capital Project to an Operating Project to reflect that Valley Water is not the Project's owner or lead agency — was among the actions the December 2024 Memo itself put before the BPMC for consideration. Unlike the KPI modification now before the Board, that action did not require a public hearing. Valley Water's Board implemented it on January 13, 2026. On this accounting, the central justification for the proposed KPI modification is not a structural fact but a governance choice that remains reversible; roughly half of the supporting concerns catalogued in December 2024 no longer hold; and where Valley Water has already acted on a December 2024 concern, it has done so without the kind of public process now being extended to the KPI question.

VII. Proposed KPI Language Creates an Unmeasurable Funding Standard

If the purpose of the modification is to align the KPI with Valley Water's actual role as a funding partner, the proposed language should clearly define that obligation. Instead, it makes Valley Water's funding contribution contingent on "the project's benefits to Santa Clara County" — a metric that is undefined, unmeasurable at the time of any given funding decision, and subject to unilateral determination by unspecified parties. Several distinct ambiguities follow from this undefined standard.

A. No Connection to Reach 2 Specifically

"Benefits to Santa Clara County" are not defined as benefits from Reach 2. Read broadly, the language could permit Valley Water to treat its funding obligation as satisfied — or reduced — by pointing to benefits from other Santa Clara County flood-control investments on San Francisquito Creek entirely unrelated to Reach 2. Nothing confines "benefits" to the Project itself.

B. No Defined Methodology

The proposed language states no method for measuring "benefits" — no reference to parcels protected, property value, cost-benefit ratio, population served, or any comparable metric. Without a methodology, the term is not merely imprecise but potentially self-justifying. Any funding level could be rationalized after the fact by selecting a favorable measure of "benefits."

C. No Distinction Between County-Wide and City-Level Benefits

Measuring Valley Water’s funding commitment by reference to the Project’s benefits to Santa Clara County raises the question whether benefits to the City of Palo Alto would be considered identical to, part of or separate from the benefits to Santa Clara County. The

County's benefits do not necessarily align with the City's benefits. After all, the City is a member of the JPA and may have its own project funding obligation.

D. No Defined Timing

It is unclear when "benefits" are assessed – whether annually, at project milestones, only at completion, or on a continuous basis. This uncertainty leaves unclear when Valley Water's funding obligation attaches and could permit funding delays justified by an assertion that benefits have not yet been demonstrated.

E. No Floor, Cap, or Link to Protection Level

The language does not state whether Valley Water's contribution is capped, has a floor, or is fully open-ended and discretionary. Absent a floor, "benefits-based" funding could in principle be reduced to a nominal amount without violating the KPI's own terms. Nor is it clear whether the modification is intended to permit Valley Water to reduce its financial obligation if the Project ultimately delivers less than 70-year flood protection.

F. No Accounting for Cross-Jurisdictional Benefit

The proposed language does not specify whether "benefits" are measured Project-wide, along the full reach shared with San Mateo County communities, or only for the portion of flood protection benefit attributable to Santa Clara County parcels. Because San Francisquito Creek forms the boundary between the two counties, and flood protection improvements on one bank affect hydraulic conditions on the other, an undefined "benefits" metric leaves unclear whether cross-jurisdictional protection needs are accounted for in determining Valley Water's contribution — a question the Board should resolve regardless of how the underlying cost-share is ultimately allocated among member agencies.

VIII. Our Request, First Step

The voters who approved Measure S in 2020 were promised a specific outcome — 70-year flood protection upstream of Highway 101 — not a funding pass-through of indeterminate amount to an agency of indeterminate capacity pursuing an indeterminate level of protection. As Valley Water's own presentation materials confirm, those KPIs are contained in the election resolution approved by the voters. They are not administrative targets. They are voter commitments.

The audit findings cited in support of the proposed KPI modification describe a misalignment between Valley Water's current role and its existing KPI. But misalignment is not a reason to modify the KPI. It is a reason to restore the role.

The public record leading to the public hearing on July 14 reflects broad, informed, and technically credible opposition to the proposed language — from neighborhood organizations, Stanford Civil Engineering faculty, long-term SFCJPA participants and an emergency services volunteer. That record does not support approving the proposed language as written.

As a first step, we respectfully request that the Board direct Valley Water staff to prepare, for the August 11 Board meeting, a draft framework that both defines a minimum set of Valley Water roles and responsibilities for the Reach 2 Project and lays out the steps to implement them — sufficient, once implemented, to permit Valley Water to preserve its existing KPI for the Reach 2 Project flood protection outcome.

Respectfully

Jeffrey Shore
jshore1905@gmail.com

cc: Greer Stone, Chairperson, SFCJPA Board
Lisa Gauthier, Vice-Chairperson, SFCJPA Board
Drew Combs, SFCJPA Board Member
Mark Dinan, SFCJPA Board Member
Keith Reckdahl, SFCJPA Alternate Director, City of Palo Alto
Kaia Eakin, SFCJPA Alternate Director, San Mateo County Flood and Sea Level Rise
Cecilia Taylor, SFCJPA Alternate Director, City of Menlo Park
Ruben Abrica, SFCJPA Alternate Director, City of East Palo Alto
Margaret Bruce, Executive Director, SFCJPA
Ed Shikada, City Manager, City of Palo Alto
Melanie Richardson, Interim CEO, Valley Water
Edgewood Neighbors

Exhibit A

Santa Clara Valley Water District

File No.: 24-1039

Agenda Date: 12/6/2024
Item No.: 4.1.

COMMITTEE AGENDA MEMORANDUM
Board Policy and Monitoring Committee

Government Code § 84308 Applies: Yes ☐ No ☒
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:
Discuss San Francisquito Creek Flood Protection Project (Project) and Issues Related to Santa Clara Valley Water District's Participation in the San Francisquito Creek Joint Powers Authority (SFCJPA) and Provide Feedback.

RECOMMENDATION:
A. Receive an update on Project status and issues related to Santa Clara Valley Water District's participation in the SFCJPA; and
B. Discuss and identify opportunities for improvement to help resolve these issues and provide feedback to staff on next steps.

SUMMARY:
At Santa Clara Valley Water District's (Valley Water) September 24, 2024, Board meeting, the Board approved payment of Valley Water's annual member contribution to the SFCJPA Operating Budget. At that time, the Board referred recently encountered policy issues associated with the SFCJPA and the Project to the Board Policy and Monitoring Committee (Committee) for further discussion. The summary below provides the background on the SFCJPA and the Project, a Project status update, and a summary of policy issues to be discussed by the Committee.

<u>Background</u>
San Francisquito Creek forms the boundary between San Mateo and Santa Clara Counties, with the cities of Menlo Park and East Palo Alto to the north and the City of Palo Alto to the south. The creek has overtopped and caused flooding in the surrounding communities several times in the past. The largest flood on record occurred in 1998 and was considered a once in 70-year flood event. The most recent flood event occurred on December 31, 2022, and was the second-largest flood on record.

The SFCJPA was formed in 1999 following the 1998 flood event and consists of five member agencies: Valley Water, the City of East Palo Alto, the City of Menlo Park, the City of Palo Alto, and the San Mateo County Flood and Sea Level Rise Resiliency District (One Shoreline). Each of the member agencies designate their own elected representative to the SFCJPA Board. Since its formation in 1999, the SFCJPA has been working to implement the San Francisquito Creek Flood

Protection Project (Project).

The Project is part of Valley Water's Safe, Clean Water and Natural Flood Protection Program (Safe, Clean Water Program) that voters renewed in November 2020. Each project in the Safe, Clean Water Program has established key performance indicators (KPIs) that are used to monitor the progress and completion of the project. Flood protection projects reliant on federal funding have two KPIs; one for the preferred project with federal funding and another for a local-funding-only project. This approach allows progress on local KPIs while pursuing additional federal funding sources. Valley Water is currently aiming to achieve the local funding KPI listed below for this Project:

> *"With state and local funding only: Protect approximately 3,000 parcels by providing 1% (100-year) flood protection downstream of Highway 101, and approximately 1.4% (70-year) protection upstream of Highway 101."*

The Project consists of two reaches: The downstream reach from San Francisco Bay to US Highway 101 and the upstream reach from US Highway 101 to Middlefield Road. The downstream reach of the Project was completed in 2018 and provides 100-year flood protection, thus meeting the Safe, Clean Water KPI for the downstream reach. The project included sediment removal, channel widening, levee improvements, and floodwalls. Valley Water took a lead role in implementing the downstream reach of the Project and managed the design and construction. There was no formal agreement for Valley Water to lead the project; rather, it was an informal arrangement between the SFCJPA Executive Director, Valley Water executive management, and other member agencies at the time. Valley Water contributed $51.2 million, or over 70% of the total cost of the downstream reach. Approximately $46.8 million was funded by the Safe, Clean Water Program, with the remainder funded by Valley Water's Watershed Stream Stewardship Fund.

The upstream reach of the Project is in progress. An EIR was approved in September 2019, and the preferred alternative included four project elements that would protect from a 70-year flood event. These four elements moved forward into design and have reached various levels of completion, listed below:

1. Pope-Chaucer Bridge Replacement - 90% design (by Valley Water)
2. Channel Widening (4 separate sites) - 90% design (by Valley Water)
3. Newell Road Bridge Replacement - design complete (by City of Palo Alto)
4. Top-of-Bank Improvements (floodwalls) - 60% design (by Valley Water)

<u>Current Project Status</u>

As a result of the December 31, 2022 flooding, Valley Water staff determined that the existing creek capacity was less than estimated in previous models. Consequently, the four above-mentioned project elements would no longer convey the 70-year design flow. The Project, as designed, does not meet the Safe, Clean Water KPI for the upstream reach to provide 70-year flood protection.

Valley Water continued to lead the design of the four upstream project elements until February 2023, when at the SFCJPA's request, Valley Water turned over project design to the SFCJPA to lead. In spring 2024, the SFCJPA hired a consultant to re-evaluate the project alternatives and reaffirm the preferred alternative (the four elements). Currently, the Pope Chaucer Bridge replacement, channel widening, and top-of-bank improvements are on hold until that analysis is complete.

The City of Palo Alto completed the Newell Road Bridge replacement design and is now proceeding to project construction since it has been determined that the bridge replacement will provide flood protection benefits without transferring risk downstream, and the project has grant funding. This project is being funded by a Caltrans Highway Bridge Program grant, with Valley Water contributing the local match funds for the grant of approximately 11% through a cost-share agreement with the City of Palo Alto.

Summary of Issues

The issues related to Valley Water's participation in the SFCJPA fall into three categories:

1. Valley Water's role in the SFCJPA
2. Project direction
3. Financial concerns

Valley Water's Role in the SFCJPA
Valley Water has limited authority over the Project outcome. Valley Water has limited voting rights as one of five member agencies, each having one vote. Furthermore, while San Mateo County has three member agencies and three votes (One Shoreline, City of East Palo Alto, and City of Menlo Park), Santa Clara County has only two member agencies and two votes (Valley Water and City of Palo Alto). This creates some inequity in representation on the SFCJPA Board between the two counties. In addition, Valley Water is no longer leading the project and SFCJPA staff has taken over the lead role.

Despite this limited authority over the Project outcome, Valley Water has committed a total of $81.5 million, which is the majority of funding for the Project. As of Fiscal Year 2024, Valley Water has expended approximately $60.4 million (which includes both Safe, Clean Water and Watershed Stream Stewardship funding), and approximately $21.1 million remains in Safe Clean Water funding.

For the downstream reach, Valley Water contributed $51.2 million (which includes both Safe, Clean Water and Watershed Stream Stewardship funding), while the four other member agencies contributed a combined total of $4.5 million, as outlined in the First Amended Construction Funding Agreement for the downstream reach. The SFCJPA also received $8.8 million in Department of Water Resources Proposition 1E and Proposition 84 grant funding for the downstream reach, with Valley Water leading pursuit of the Proposition 84 grant.

For the upstream reach, the City of Palo Alto is currently securing a $12.5 million Caltrans Highway Bridge Program grant for Newell Bridge Construction. The SFCJPA has executed an agreement for Proposition 1 grant funds in the amount of $5 million and is pursuing approximately $8.2 million is U.S. Army Corps of Engineers (USACE) CAP 205 funding.

While other member agency contributions and grant funding have been important to the Project's success, Valley Water's funding has been substantial in comparison.

Additionally, although Valley Water has limited authority over the Project outcome, the Safe, Clean Water Program KPI implies that Valley Water is responsible for project delivery. The Project's KPI calls for delivering 70-year flood protection for the upstream reach. However, Valley Water's altered role more closely aligns with a 'funding contribution' KPI. Several projects in the Safe, Clean Water Program are measured by funding contribution KPIs. One such example is Project F8: Sustainable Creek Infrastructure for Continued Public Safety, with the KPI to "*Provide up to $7.5 million in the first 15-year period to plan, design and construct projects identified through Watershed Asset Management Plans."*

Lastly, the Project is included in Valley Water's Capital Improvement Program (CIP) Fiscal Years 2025-29 Five-Year Plan. Aside from USACE partnership projects, this is the only project in Valley Water's CIP that is being led by another agency. Other similar projects where Valley Water is not the project owner and only contributing funds through partnership agreements are included in operating budgets rather than the CIP. Examples of these types of projects include the Los Vaqueros Reservoir Expansion Project, the Delta Conveyance Project, and the B.F. Sisk Dam Raise and Reservoir Expansion Project. Valley Water has limited authority over the delivery of these projects, and therefore, they are included in operating budgets rather than the CIP.

Project Direction
The next issue, which is also discussed above under 'Project Status,' is that the current project does not meet the Safe, Clean Water KPI to provide 70-year flood protection. Following the December 2022 flood event, it became evident that the Project as designed would no longer provide 70-year flood protection, and the SFCJPA hired a consultant to re-evaluate the preferred project alternative. SFCJPA staff is currently working with its consultant and the JPA Board to reaffirm the preferred alternative and select an updated level of flood protection. It is uncertain what level of protection the SFCJPA will pursue. If the SFCJPA proceeds with the current design, it will not meet Valley Water's KPI. If the SFCJPA proceeds with 70-year flood protection, additional flood protection elements will need to be added to the design.

Financial Concerns
Until the updated level of protection for the upstream reach of the Project is determined, the total project costs are unknown. Even with the remaining Safe, Clean Water funding applied to the Project as currently designed, which does not provide 70-year flood protection, there is an approximate $25 million funding gap. Valley Water estimates that 70-year flood protection would require additional infrastructure, and $50 to $100 million or more in funding.

Other financial concerns are related to SFCJPA operations. The SFCJPA Agreement requires annual financial audits, but these have not been completed for the past five (5) years. Financial audits are required by law at least bi-annually.

Additionally, there is no clear delineation of operations expenses between the two projects that the SFCJPA leads: the San Francisquito Creek Flood Protection Project and the SAFER Bay Project. The SAFER Bay Project provides coastal and sea level rise flood protection along the San Mateo County Shoreline. The SAFER Bay Project is located in and fully benefits San Mateo County. At a

2022 SFCJPA Board meeting, Valley Water and the City of Palo Alto raised concerns about continuing to contribute toward operating costs unless there was a clear separation of funding between the two projects. The purpose of separating expenses is to ensure that no portion of Valley Water or the City of Palo Alto's annual member contribution (approximately $350,000) is funding SAFER Bay project operations expenses, which benefits San Mateo County.

Next Steps

Some potential next steps for the Committee's consideration are provided below.

1. *Investigate options for Valley Water's long-term participation in the SFCJPA:* Valley Water staff could investigate options for Valley Water's continued participation in the SFCJPA, how the San Francisquito Creek Flood Protection Project would proceed under each option, and the pros and cons associated with each option. Options include withdrawing from the SFCJPA, taking a lead role in the SFCJPA, or continuing in the current limited role. The SFCJPA Agreement includes a clause for withdrawal, which would need to occur by May 1st to avoid payment of the following year's annual member contribution.

2. *Take steps to improve the existing SFCJPA and SFCJPA Agreement:* If Valley Water wishes to continue to participate in the SFCJPA, there are actions that may help resolve some of the identified issues, including:

    a. Request to amend the Agreement to include weighted voting rights: Weighted voting rights would provide Valley Water with more authority over project direction and could be based on funding contribution and/or equal weighting between Santa Clara and San Mateo Counties. Some other JPAs that Valley Water participates in include weighted voting based on funding contribution.

    b. Request to amend the Agreement so member contribution is contingent upon financial audits and clear separation of SAFER Bay expenses: The Agreement could be amended so that payment of member contributions is contingent on the SFCJPA conducting annual financial audits and demonstrating clear separation of expenses between the San Francisquito Creek and SAFER Bay projects. This would provide more transparency regarding how Valley Water funds are being used by the SFCJPA.

    c. Confirm and advocate for Valley Water's preferred level of protection: Valley Water may wish to confirm the level of protection it desires for the project to provide (70-year or other). Confirming the level of protection may include an abbreviated planning effort or other cost-benefit analysis. Once determined, Valley Water's representative on the SFCJPA Board could advocate for Valley Water's preferred level of protection.

    d. Advocate for additional funding from other members or outside sources: It's clear that no matter which level of protection is selected or how Valley Water chooses to continue to participate, additional funding will benefit the Project and the SFCJPA. Valley Water may wish to advocate for additional funding from other SFCJPA members or other local, state, or federal sources.

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3. *Consider modifications to the Safe, Clean Water Program*: Depending on how Valley Water chooses to participate in the SFCJPA and the level of protection offered by the Project, Valley Water will need to modify the Safe, Clean Water Program, specifically the Project KPI. If Valley Water continues its current role, a funding contribution KPI more accurately reflects that role. Additionally, the Project level of protection will need to be modified once determined by the SFCJPA unless it remains at the 70-year level.

4. *Consider Changing the Project from a capital to an operations project*: Unless Valley Water becomes the project owner, consider removing the Project from the Capital Improvement Program (CIP) to be more consistent with other similar projects where Valley Water is not the project owner or lead agency.

Staff is requesting feedback from the Committee on proceeding with any of the above listed or other next steps that the Committee recommends.

ENVIRONMENTAL JUSTICE AND EQUITY IMPACT:
This action is unlikely to or will not result in adverse impacts and is not associated with an equity opportunity.

ATTACHMENTS:
Attachment 1: PowerPoint

UNCLASSIFIED MANAGER:
Bhavani Yerrapotu, 408-630-2735

Exhibit B

SAN FRANCISQUITO CREEK
JOINT POWERS AUTHORITY

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.

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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).

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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.

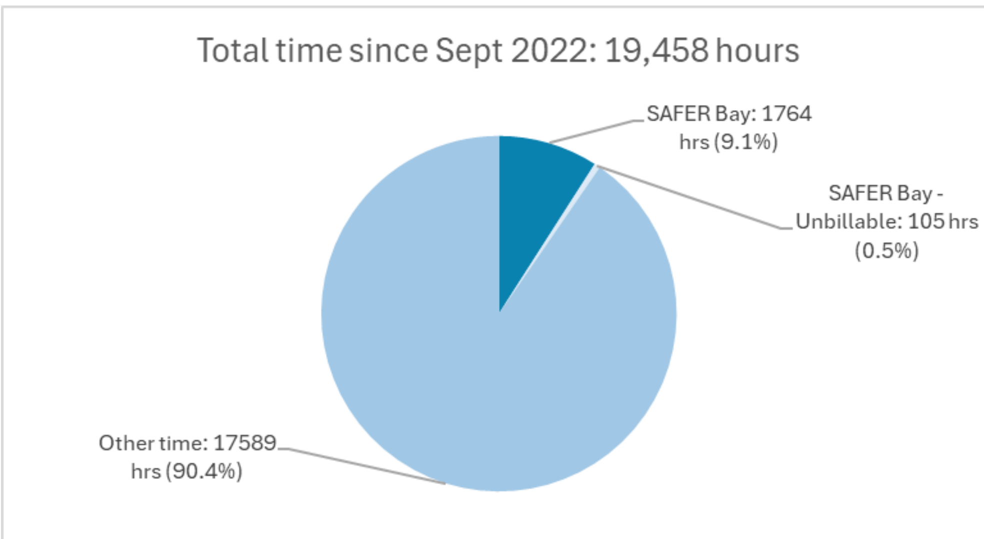

Figure 1: Time spent on SAFER Bay vs. other tasks since September 2022.

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.

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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?

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