



Santa Clara Valley Water District

CONFORMED COPY

File No.: 21-0456

Agenda Date: 4/27/2021

Item No.: 7.1.

BOARD AGENDA MEMORANDUM

SUBJECT:

Approve the Agreement for Possession and Use by and Between Santa Clara Valley Water District and the County of Santa Clara for Anderson Dam Tunnel Project, Coyote Percolation Dam Replacement Project, and Cross Valley Pipeline Extension Project as parts of the Federal Energy Regulatory Commission Order Compliance Project, under the Anderson Dam Seismic Retrofit Project No. 91864005, APN: 723-34-020, 729-36-001, 678-02-031 & -034, and 725-36-001; Real Estate File Nos. 9186-35, 9186-39, 9188-17, and 9232-52 (Unincorporated Santa Clara County) (District 1).

RECOMMENDATION:

Approve an Agreement for Possession and Use by and between Santa Clara Valley Water District (Valley Water), and the County of Santa Clara (County).

SUMMARY:

The Federal Energy Regulatory Commission (FERC) has jurisdiction over Anderson Dam, located on Coyote Creek in Morgan Hill, and its associated safety measures. Pursuant to FERC's authority, for public health and safety reasons, on February 20, 2020, Valley Water received an Order from FERC to further reduce risks to public safety by implementing certain risk reduction measures for dam operation and design. These measures include the construction of the Anderson Dam Tunnel Project (ADTP) anticipated to be completed in December of 2023.

Valley Water is undertaking the FERC Order Compliance Project (FOCP) because of the FERC February 20, 2020 directive to implement interim risk reduction measures at Anderson Dam. Those measures include but are not limited to ADTP, Coyote Percolation Dam Replacement Project, and Cross Valley Pipeline Extension Project. The ADTP will construct a diversion system to augment the existing outlet, which consist of a new diversion tunnel, an outlet structure, a microtunnel lake tap, and modifications to Coyote Creek just downstream of the base of the dam. ADTP also includes reservoir bank and rim stability improvement and existing intake structure modifications. The Coyote Creek Percolation Dam Replacement Project will construct a new inflatable bladder dam and related improvements to accommodate the increased water flows anticipated when ADTP becomes operational. The Cross Valley Pipeline Extension Project will construct approximately 7,100 linear feet of 36-inch diameter pipeline from existing Cross Valley Pipeline to Coyote Creek to enable imported water releases downstream of Ogier Ponds.

On June 23, 2020, Valley Water Board approved the Engineer's Report for FOCP and declared an

emergency for permitting purposes for the projects. On January 26, 2021, Valley Water Board adopted the plans and specifications and authorized advertisement of bids for the ADTP.

Valley Water entered discussions and negotiations with the County of Santa Clara (County) for the acquisition of four real property interests required to construct the Anderson Dam Tunnel Project (ADTP), Coyote Percolation Dam Replacement Project, and Cross Valley Pipeline Extension Project.

For ADTP, Valley Water will acquire 0.65 acres of County Parks property in fee title (Real Estate File No. 9186-35) for construction of the northern Coyote Creek channel. The northern Coyote Channel is needed to convey the increased flows from the diversion tunnel being built as part of ADTP. Valley Water will also acquire in fee title the approximately 4.05-acre parcel (Real Estate File No. 9186-39) that is part of Holiday Lake Estates. The 4.05-acre parcel is needed for staging of construction equipment that will be utilized for the bank and reservoir rim stability improvements at the Boat Marina and Hoot Owl Way landslide areas, which are part of the ADTP. The 4.05 acres will also be used for the subsequent Anderson Dam Seismic Retrofit Project (ADSRP). The decision was made to acquire the 4.05-acre parcel in fee title because of the duration of these two projects and the County's preference for the fee acquisition.

For the Cross Valley Pipeline Extension Project, a temporary water pipeline easement of approximately 0.73-acres (Real Estate File No. 9232-52) near Ogier Ponds between Monterey Road and Coyote Creek is needed to construct a water pipeline and related facilities. This water pipeline will provide an alternate method for introducing imported water to Coyote Creek below Ogier Ponds during construction of both ADTP and ADSRP.

For the Coyote Percolation Dam Replacement Project, a permanent utility easement of approximately 0.26-acres (Real Estate File No. 9188-17) near Forsum Road is required for installation and maintenance of an upgraded electric power supply. This upgraded power supply is necessary for the operation of a new inflatable bladder dam, adjustable fish ladder and related improvements built to accommodate the increased water flows anticipated when ADTP becomes operational.

A public works procurement process is currently underway with the goal of awarding a public works construction contract to construct ADTP by May of 2021. To award the ADTP construction contract, Valley Water requires immediate possession of various fee, easement, and temporary easement interests in County lands. The Parties have met and conferred, and County is willing to work with Valley Water and its requirement to advance these projects.

Agreement for Possession and Use

Through the Agreement for Possession and Use (PUA) the County grants Valley Water a right of possession prior to Valley Water's acquisition of the Property, prior to and in contemplation of a sale under threat of eminent domain or by order of condemnation under Code of Civil Procedure § 1268.030, to enable Valley Water to proceed with the construction of the FOCP and ADTP and related projects without delay or prejudice to County's right to receive just compensation for the Property. Valley Water desires to obtain and County agrees to grant to Valley Water an irrevocable

right to possess and use the property interests under the terms and conditions set forth in the PUA.

In exchange for Valley Water's deposit of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00) with a mutually agreed upon escrow agent and compliance with the terms of the PUA, the County agrees to permit Valley Water to use the above described property rights "AS-IS" and waives any rights to challenge Valley Water's right to acquire, possess and use the property interests consistent with the terms of the PUA. A remaining issue under discussion is just compensation which may include both cash consideration and other non-cash compensation.

Considerations related to appropriate compensation for the four real property interests described above are complicated. by terms related to the Master Partnership Agreement in replacing lost park recreational amenities and values removed from Valley Water property in connection with the project and the California Public Park Preservation Act which may apply to some or all the real property interests required by Valley Water.

Easement Deeds

The PUA includes two easement deeds as parts of Exhibit B. To ensure compatibility of the existing County parkland use and proposed FOCP and ADTP project uses, Valley Water has agreed to allow the County review and comment on 60% and 90% construction drawings, plans and specifications. And to the extent feasible, Valley Water shall reasonably respond to County comments and make appropriate modifications to the FOCP and ADTP plans. The scope of County's review shall be limited to Valley Water's project compatibility with aesthetic, ecological, recreational safety, and recreational function elements. After completion of the FOCP, ADTP, and ADSRP projects, any new or modified appurtenant structures proposed shall also be subject to review and comment by the County for the limited purposes described above. Lastly, the Board of Directors should note that the temporary water pipeline easement expires either on the earlier of (i) the Board's acceptance of the ADSRP project or (ii) December 31, 2032. The effective time period of the temporary water pipeline easement may be extended by mutual agreement of the Parties. If Valley Water obtains the necessary regulatory approvals to make the water pipeline operations permanent, the Parties will consider a permanent easement at that time.

Staff recommends that the Board approve the terms and conditions of the PUA.

FINANCIAL IMPACT:

The Anderson Dam Seismic Retrofit Project No. 91864005 is included in both the 2021-2025 Capital Improvement Program (CIP) and the Draft Five-Year 2022-26 CIP, and in the Board-adopted FY 2020-21 Budget. The PUA requires that Valley Water deposit \$1,500,000.00, with an escrow agent agreed on by the County and Valley Water. There is sufficient funding in the ADSRP Project's Fiscal Year 2020-21 budget to encumber this fee. The ADSRP Project is funded by Water Utility Enterprise Fund (Fund 61).

CEQA:

As the Board moves forward with the PUA approval, the FOCPP property transactions and activities are covered by the FOCPP's Statutory Exemption for specific actions necessary to prevent or mitigate an emergency under Pub. Res. Code § 21080(b)(4) and CEQA Guidelines §15269(c). CEQA (Pub. Res. Code § 21060.3) defines an "emergency" as a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Dam failure leading to catastrophic flooding would be a "sudden unexpected occurrence" were it to occur. FERC's dam safety order clearly reflects a regulatory determination that seismic risks associated with Anderson Dam and the existing outlet constitute an emergency situation that requires immediate action by Valley Water. Each of the FOCPP components, including property acquisition to construct these components, is necessary for an integrated emergency response to the FERC Order, both to mitigate the potential for a catastrophic dam failure, and to avoid and minimize environmental, flood management, groundwater recharge, and water supply impacts of such emergency response actions.

In addition, because the temporary water pipeline easement (APN: 725-06-008) and the 4.05 acre parcel (APN: 729-36-001) are also planned for future use by the ADSRP, CEQA Guidelines Section 15004 (b)(2) applies to Valley Water's acquisition of these property interests with respect to future ADSRP use. Section 15004 (b)(2) states that public agencies shall not formally make a decision to proceed with use of a site for facilities which would require CEQA review, regardless of whether the agency has made any final purchase of the site for these facilities, except that agencies may designate a preferred site for CEQA review and may enter into land acquisition agreements when the agency has conditioned the agency's future use of the site on CEQA compliance. Execution of the PUA does not commit Valley Water to a definite course of action in regard to ADSRP, no future ADSRP use of the temporary pipeline easement and 4.05 acre parcel would commence until after ADSRP CEQA review is completed, and after that CEQA review Valley Water may pursue a different alternative.

ATTACHMENTS:

Attachment 1: Agreement

UNCLASSIFIED MANAGER:

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