



Santa Clara Valley Water District Board of Directors Meeting

Teleconference Zoom Meeting

1:00 PM SPECIAL MEETING AGENDA

**Wednesday, April 14, 2021
1:00 PM**

District Mission: Provide Silicon Valley safe, clean water for a healthy life, environment and economy.

DISTRICT BOARD OF DIRECTORS

Tony Estremera, Chair - District 6
Gary Kremen, Vice Chair - District 7
John Varela - District 1
Barbara Keegan - District 2
Richard P. Santos - District 3
Linda J. LeZotte - District 4
Nai Hsueh - District 5

During the COVID-19 restrictions, all public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body, will be available to the public through the legislative body agenda web page at the same time that the public records are distributed or made available to the legislative body, or through a link in the Zoom Chat Section during the respective meeting. Santa Clara Valley Water District will make reasonable efforts to accommodate persons with disabilities wishing to participate in the legislative body's meeting. Please advise the Clerk of the Board Office of any special needs by calling (408) 265-2600.

RICK L. CALLENDER, ESQ.
Chief Executive Officer

MICHELE L KING, CMC
Clerk of the Board
(408) 265-2600
Fax (408) 266-0271
www.valleywater.org

Note: The finalized Board Agenda, exception items and supplemental items will be posted prior to the meeting in accordance with the Brown Act.

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Santa Clara Valley Water District
Board of Directors
1:00 PM SPECIAL MEETING
AGENDA

Wednesday, April 14, 2021

1:00 PM

Teleconference Zoom Meeting

IMPORTANT NOTICES

This meeting is being held in accordance with the Brown Act as currently in effect under the State Emergency Services Act, the Governor's Emergency Declaration related to COVID-19, and the Governor's Executive Order N-29-20 issued on March 17, 2020 that allows attendance by members of the Board of Directors, District staff, and the public to participate and conduct the meeting by teleconference, videoconference, or both.

Members of the public wishing to address the Board during a video conferenced meeting on an item not listed on the agenda, or any item listed on the agenda, should use the "Raise Hand" tool located in Zoom meeting link listed on the agenda. Speakers will be acknowledged by the Board Chair in the order requests are received and granted speaking access to address the Board.

Santa Clara Valley Water District (District), in complying with the Americans with Disabilities Act (ADA), requests individuals who require special accommodations to access and/or participate in District Board meetings to please contact the Clerk of the Board's office at (408) 630-2711, at least 3 business days before the scheduled District Board meeting to ensure that the District may assist you.

This agenda has been prepared as required by the applicable laws of the State of California, including but not limited to, Government Code Sections 54950 et. seq. and has not been prepared with a view to informing an investment decision in any of Valley Water's bonds, notes or other obligations. Any projections, plans or other forward-looking statements included in the information in this agenda are subject to a variety of uncertainties that could cause any actual plans or results to differ materially from any such statement. The information herein is not intended to be used by investors or potential investors in considering the purchase or sale of Valley Water's bonds, notes or other obligations and investors and potential investors should rely only on information filed by the District on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System for municipal securities disclosures and Valley Water's Investor Relations website, maintained on the World Wide Web at <https://emma.msrb.org/> and <https://www.valleywater.org/how-we-operate/financebudget/investor-relations>, respectively.

Under the Brown Act, members of the public are not required to provide identifying information in order to attend public meetings. Through the link below, the Zoom webinar program requests entry of a name and email address, and Valley Water is unable to modify this requirement. Members of the public not wishing to provide such identifying information are encouraged to enter "Anonymous" or some other reference under name and to enter a fictional email address (e.g., attendee@valleywater.org) in lieu of their actual address. Inputting such values will not impact your ability to access the meeting through Zoom.

Join Zoom Meeting:
<https://valleywater.zoom.us/j/99547069852>
Meeting ID: 995 4706 9852
Join by Phone:
1 (669) 900-9128, 99547069852#

1. CALL TO ORDER:

1.1. Roll Call.

1.2. Pledge of Allegiance/National Anthem.

1.3. Time Open for Public Comment on any Item not on the Agenda.

Notice to the public: Members of the public who wish to address the Board on any item not listed on the agenda should access the "Raise Hand" tool located in Zoom meeting link listed on the agenda. Speakers will be acknowledged by the Board Chair in order requests are received and granted speaking access to address the Board. Speakers comments should be limited to three minutes or as set by the Chair. The law does not permit Board action on, or extended discussion of, any item not on the agenda except under special circumstances. If Board action is requested, the matter may be placed on a future agenda. All comments that require a response will be referred to staff for a reply in writing. The Board may take action on any item of business appearing on the posted agenda.

2. TIME CERTAIN:

1:00 PM

- 2.1. Pacheco Reservoir Expansion Project Workshop Topics, Project No. 91954002.

[21-0362](#)

Recommendation: Receive and discuss information regarding the Pacheco Reservoir Expansion Project (PREP). This is an information-only item and no action is required.

Manager: Christopher Hakes, 408-630-3796

Attachments: [Attachment 1: PowerPoint](#)
[Attachment 2: CWC Funding Source Memorandum](#)
[Attachment 3: Funding Options](#)
[Attachment 4: Right of Way Analysis Memorandum](#)

Est. Staff Time: 2 Hours

Notice to the Public: The Board of Directors meets in Closed Session in accordance with the Ralph M. Brown Act. Following the conclusion of Closed Session discussion, the Board will return for the remaining items on the regular meeting agenda.

- 2.2. CLOSED SESSION
CONFERENCE WITH LEGAL COUNSEL
CONFERENCE WITH REAL PROPERTY NEGOTIATORS

[21-0357](#)

Pursuant to Government Code Section 54956.8:

Setting Negotiation Parameters for Price and Terms of Payment for
Acquiring Property Interest in APN 728-34-020, 729-36-001, 725-06-008,
678-02-031 and 678-02-034

Negotiators: Rick Callender, Melanie Richardson, Sue Tippetts,
Christopher Hakes, Eli Serrano, and Bill Magleby

Other Negotiating Parties: County of Santa Clara

3. ADJOURN:

- 3.1. District Counsel Report on Closed Session.
- 3.2. Clerk Review and Clarification of Board Requests.
- 3.3. Adjourn to Special Meeting at 7:00 p.m., on April 15, 2021, to be called to order in compliance with the State Emergency Services Act, the Governor's Emergency Declaration related to COVID-19, and the Governor's Executive Order N-29-20.

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Santa Clara Valley Water District

File No.: 21-0362

Agenda Date: 4/14/2021

Item No.: 2.1.

BOARD AGENDA MEMORANDUM

SUBJECT:

Pacheco Reservoir Expansion Project Workshop Topics, Project No. 91954002.

RECOMMENDATION:

Receive and discuss information regarding the Pacheco Reservoir Expansion Project (PREP). This is an information-only item and no action is required.

SUMMARY:

Following the cost estimate update presented to the Water Storage Exploratory Committee on December 28, 2020 and the Board of Directors on January 12, 2021, staff is presenting several Pacheco Reservoir Expansion Project topics, that may affect the Fiscal Year 2022 budget and future water rates and charges, to the Board of Directors in advance of budget adoption. The topics presented will include funding and external issues that could have significant financial, project implementation, and schedule implications on the project.

Potential Project Funding Sources

Staff has prepared analysis of 14 potential project funding sources as follows:

1. Water rates & charges (pay-go and bond financing)
2. Water Storage Investment Program (WSIP) - currently conditionally awarded
3. WSIP - potential additional funds
4. Water Infrastructure Finance and Innovation Act (WIFIA) loan
5. San Felipe Facilities Expansion - U.S. Bureau of Reclamation (USBR) Co-operative agreement
6. General Obligation Bonds
7. Federal Emergency Management Agency (FEMA) - Hazard Mitigation grant
8. Building Resilient Infrastructure and Communities (BRIC) grant (FEMA)
9. USBR WaterSmart Grant
10. California Department of Water Resources (DWR) Grant
11. Other Federal/State grant
12. Public agency partner participation
13. Corporate sponsorship/grants
14. Private investment (P3)

Although information for each of the topics above is presented at a high level in Attachment 3, the following funding topics will be presented in greater detail and as part of a PowerPoint Presentation (Attachment 1):

Water rates & charges - Staff will present different funding scenarios and the impact to FY22-29 Annual Rate Increases for Zone W-2.

Public agency partner participation - Staff will provide an update on potential partnership participation.

Staff is currently focusing on developing the funding options identified above, as well as the WSIP/Prop 1 funding outlined below, but consideration and development efforts for the other 11 options are ongoing. For details of the status of the funding options, please refer to Attachment 3.

External Issues

The issues outlined below will not be covered in staff's presentation but may have an effect on the overall cost and schedule of the project. Additional updates will be provided to the Water Storage Exploratory Committee on these issues as new information becomes available.

1. *WSIP/Prop 1* - A memo is attached (Attachment 2) with an analysis of potential WSIP funding options and schedule implications associated with existing project withdrawals.
2. *Coordination with USBR for the San Luis Low Point Improvement Project (SLLPIP)* - Staff has met with USBR representatives, including the Regional Director, to discuss the next steps to update the Feasibility Report that did not advance through policy review in December 2020. Additional federal benefits are being considered that may favorably increase the benefit/cost ratio for the project. Staff is currently working with USBR to complete the updated Feasibility Report with PREP as the preferred alternative. This would provide federal permitting support and potential federal funding through future initiatives.
3. *Analysis of right of way related topics* - Staff has prepared an update (Attachment 4) of the Project's right of way needs, including a summary of the land acquisition process. The update includes a new cost estimate for project area property, mitigation land, and potential implications.
4. *Discussion with State Parks* - Staff has met with the State Parks Director, executive management, and local State Parks personnel regarding the potential encroachment of the expanded reservoir into Henry Coe Park. The area impacted was presented and discussed along with possible ideas to collaborate to offset the potential impact.
5. *Update on outreach to the environmental community and potential environmental permitting implications* - Staff met with environmental groups to discuss their concerns with the Project and are continuing outreach and analysis over the next several weeks to determine potential impacts on schedule. While these concerns may or may not affect environmental permitting, project permitting is considered by staff to be extremely complex, and therefore at risk of

unforeseen delays.

6. *Results from the recent project public survey unveiled at the February public scoping meetings*
-As of April 1, Valley Water collected 216 responses. Staff analysis indicates there is a positive response on the Pacheco project merits and key messages and prior to the issue of project cost appearing, nearly 60% support or strongly support the project. However once the survey refers to cost, the project quickly loses support with nearly 40% of respondents not willing to support any increase in water rates to help fund the expansion of Pacheco Reservoir and just 6.94% willing to pay the \$16 to \$20 monthly increase required to pay for this project from water rates; while 68% list the high cost as the biggest concern about this project. "Valley water should pursue a local multi-benefit water storage projects, such as the expansion of Pacheco Reservoir," was the lowest rated option in another question, with conservation, recycled and purified water and partnering with other agencies on regional water supply projects all rating ahead of the Pacheco project.

FINANCIAL IMPACT:

There is no financial impact associated with this item.

CEQA:

The recommended action does not constitute a project under CEQA because it does not have the potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

- Attachment 1: PowerPoint
- Attachment 2: CWC Funding Source Memorandum
- Attachment 3: Funding Options
- Attachment 4: Right of Way Analysis Memorandum

UNCLASSIFIED MANAGER:

Christopher Hakes, 408-630-3796

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Unique Opportunity for Ecosystem Enhancement,
Improved Water Supply Reliability, and Emergency
Water Supply



Pacheco Reservoir Expansion Project

Board Policy Decisions

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- Where does the Pacheco Reservoir Expansion Project fit into the Water Supply Master Plan?
- Are there predetermined “triggers” that require that the project be re-validated by the Board of Directors (time, partnership participation, cost, schedule, etc.)
- What level of Partnership participation should be assumed for financial planning purposes?

Pacheco Benefits for Valley Water (WSIP)

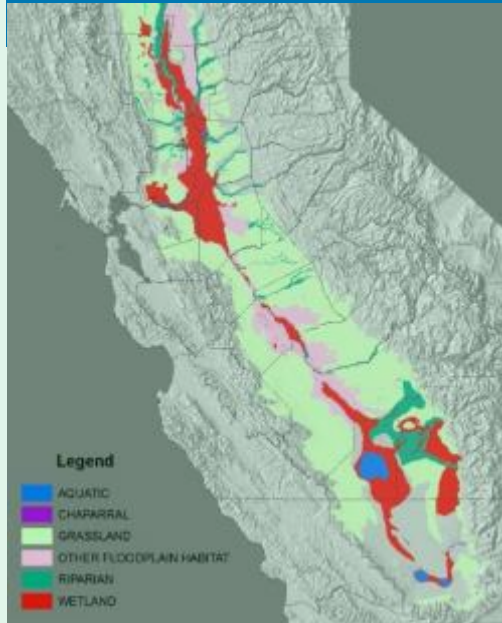
3

ENVIRONMENTAL

Enhance habitat for federally threatened steelhead



Enhance water supply in below- normal years to wildlife refuges in the Delta



Increase water supply reliability and emergency water supply



Resolve the water quality problem in supply sourced from San Luis Reservoir



Reduce flooding along Pacheco Creek and to disadvantaged communities

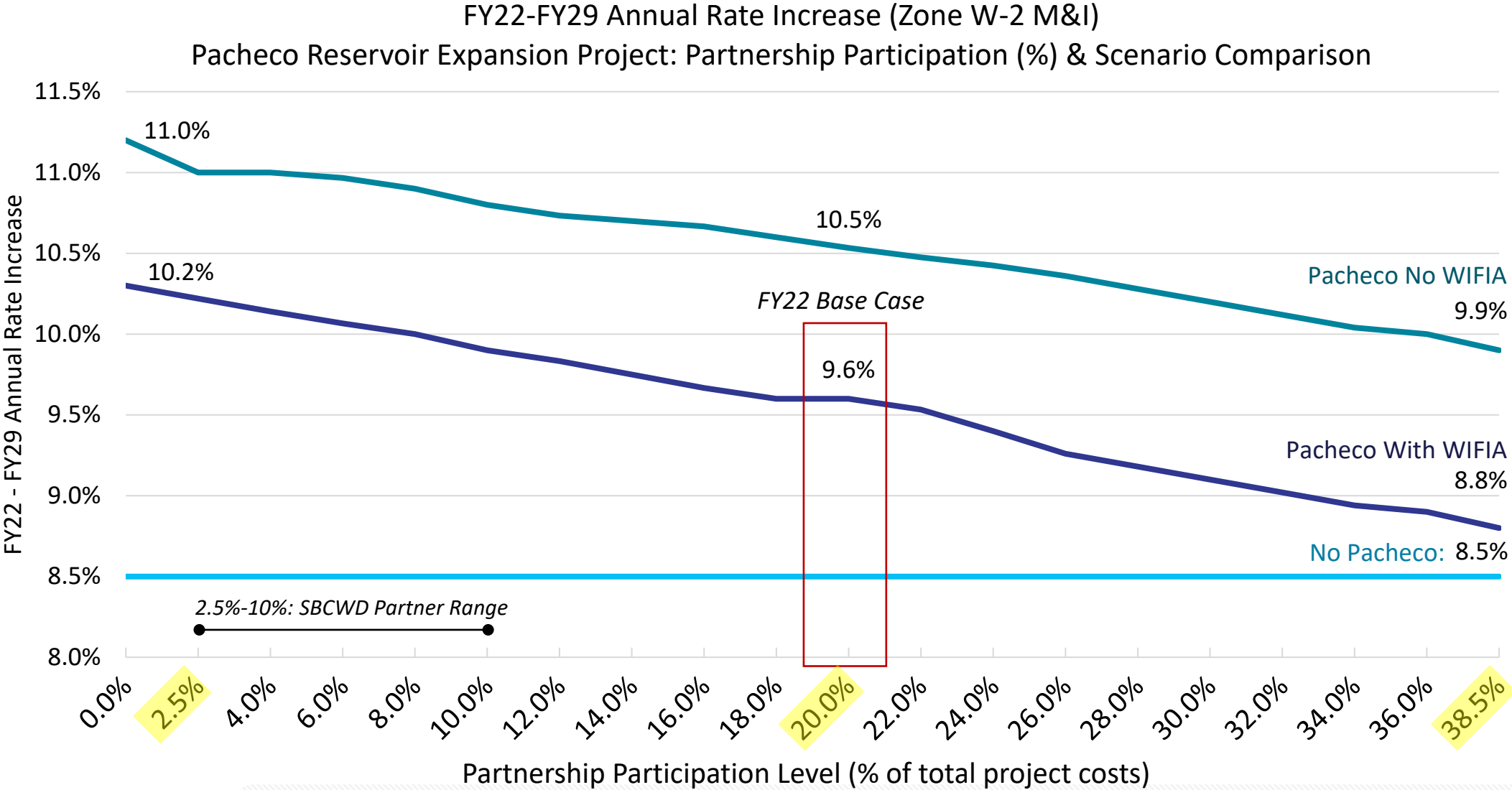


Project Cost Estimate History

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Year	CIP Estimate	Estimate with future inflation (CIP calc.)	
2017	\$969,000,000	N/A	2015 dollars for WSIP Application
2019	\$1,182,004,000	\$1,345,000,000	No construction cost changes from WSIP estimate
2020	\$2,203,321,000	\$2,519,622,000	*NEW CONSTRUCTION ESTIMATE*

Water Rate Impact

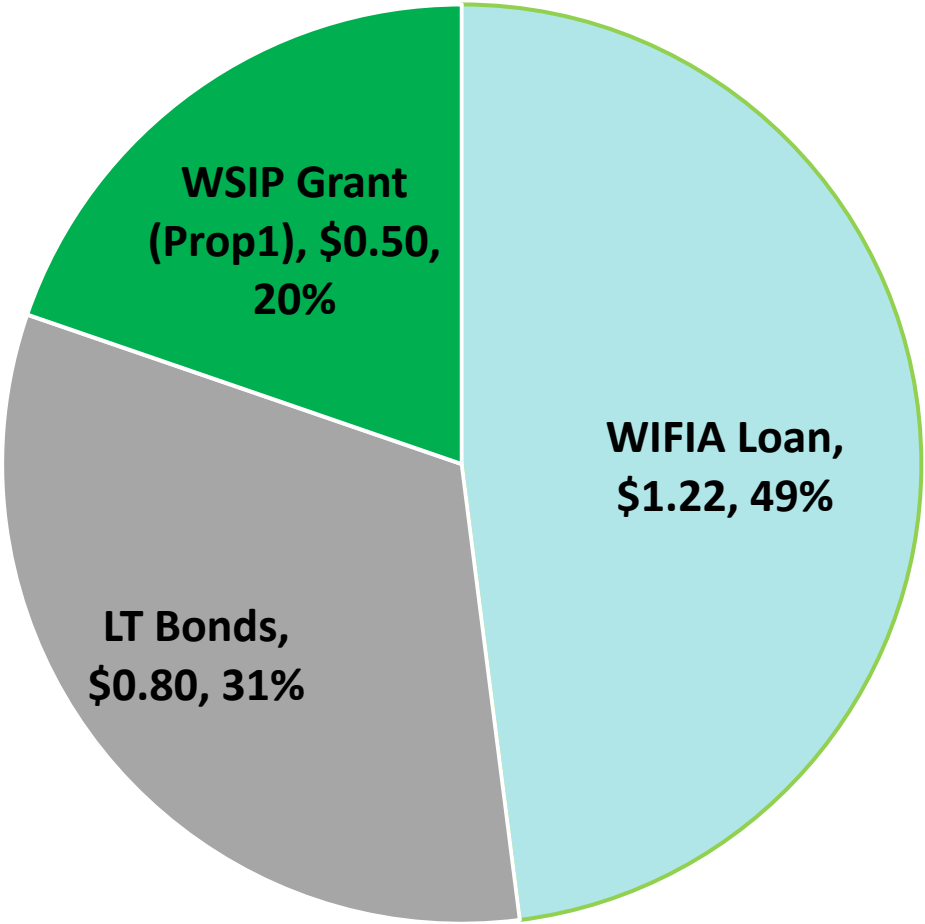


Financing Plan - Total Project Cost \$2.5B

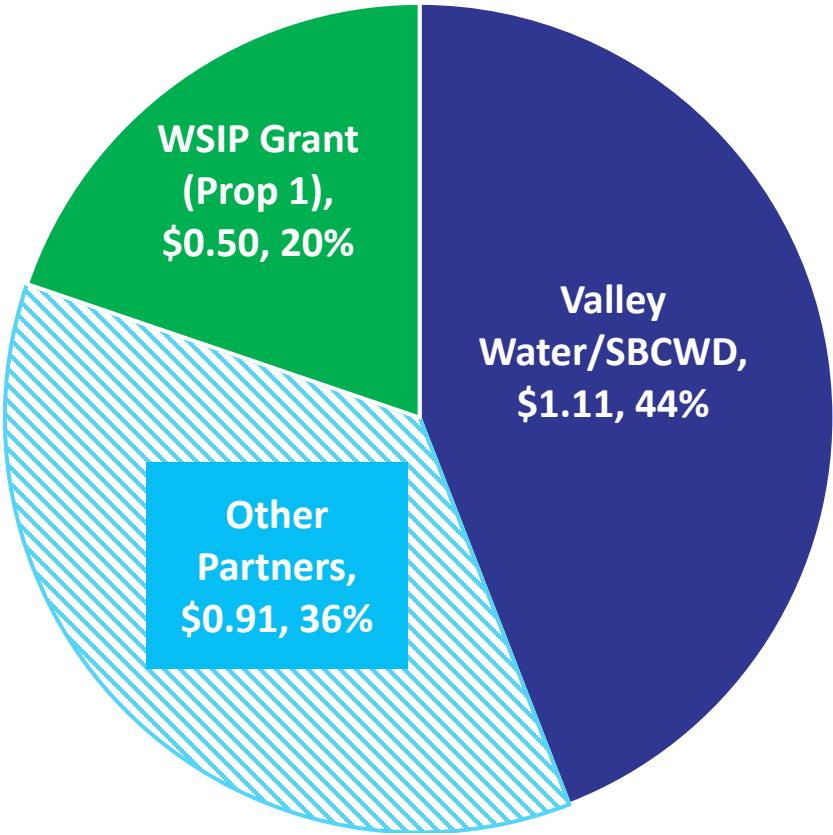
(\$BILLIONS)

6

Funding Sources



Allocation of Financing



Total Financing Costs (Principal + Interest): \$3.8B*
Average Annual Debt Service: \$81M*



* Preliminary financing estimates based on FY 2022 budgetary rates, subject to change pending timing, amount, and market conditions. Page 6 of 17

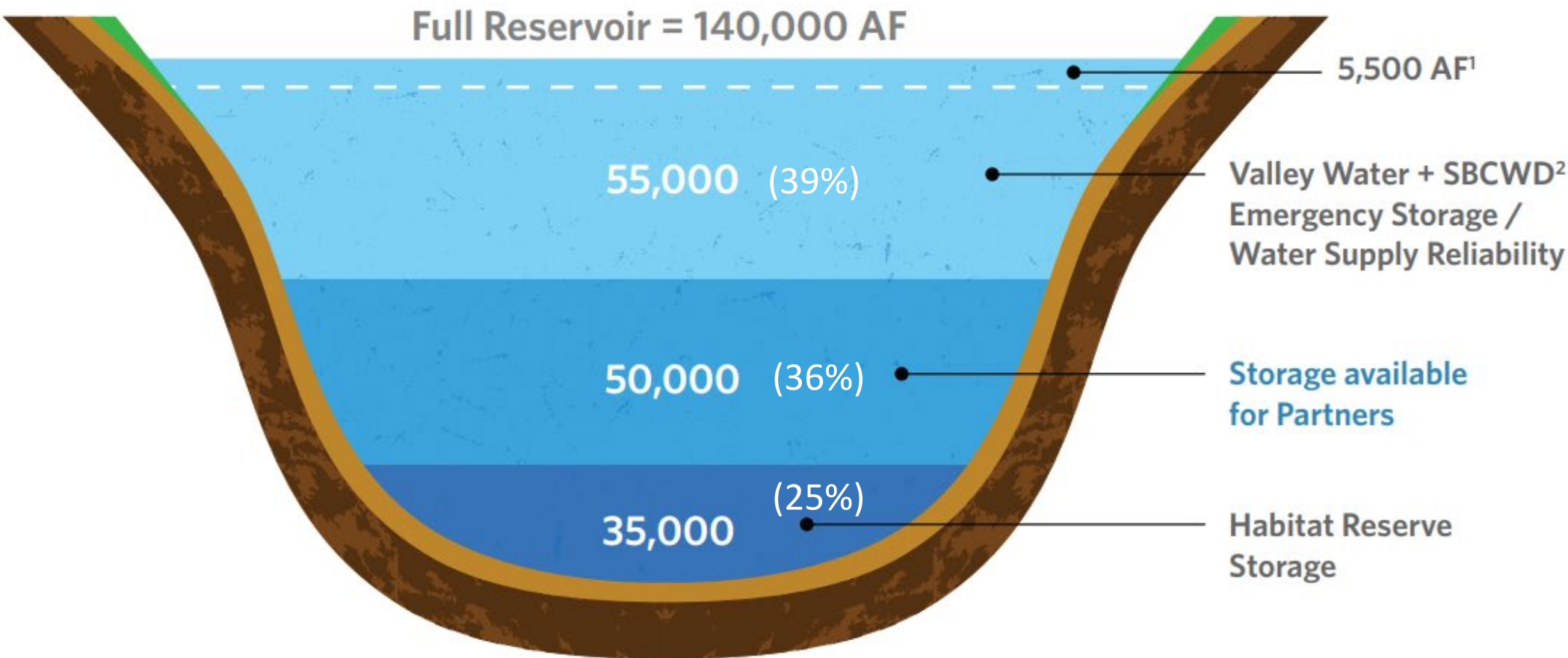
Four Partnership Options

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- (1) Valley Water retains ownership – form partnerships via third party contractual rights
- (2) Joint Exercise of Powers of Authority (JPA) – form partnerships through JPA membership
- (3) Partnerships with Private Entities – form partnership with private entities to invest in capacity and sell their benefits to others
- (4) Partnerships with Federal and/or State agencies

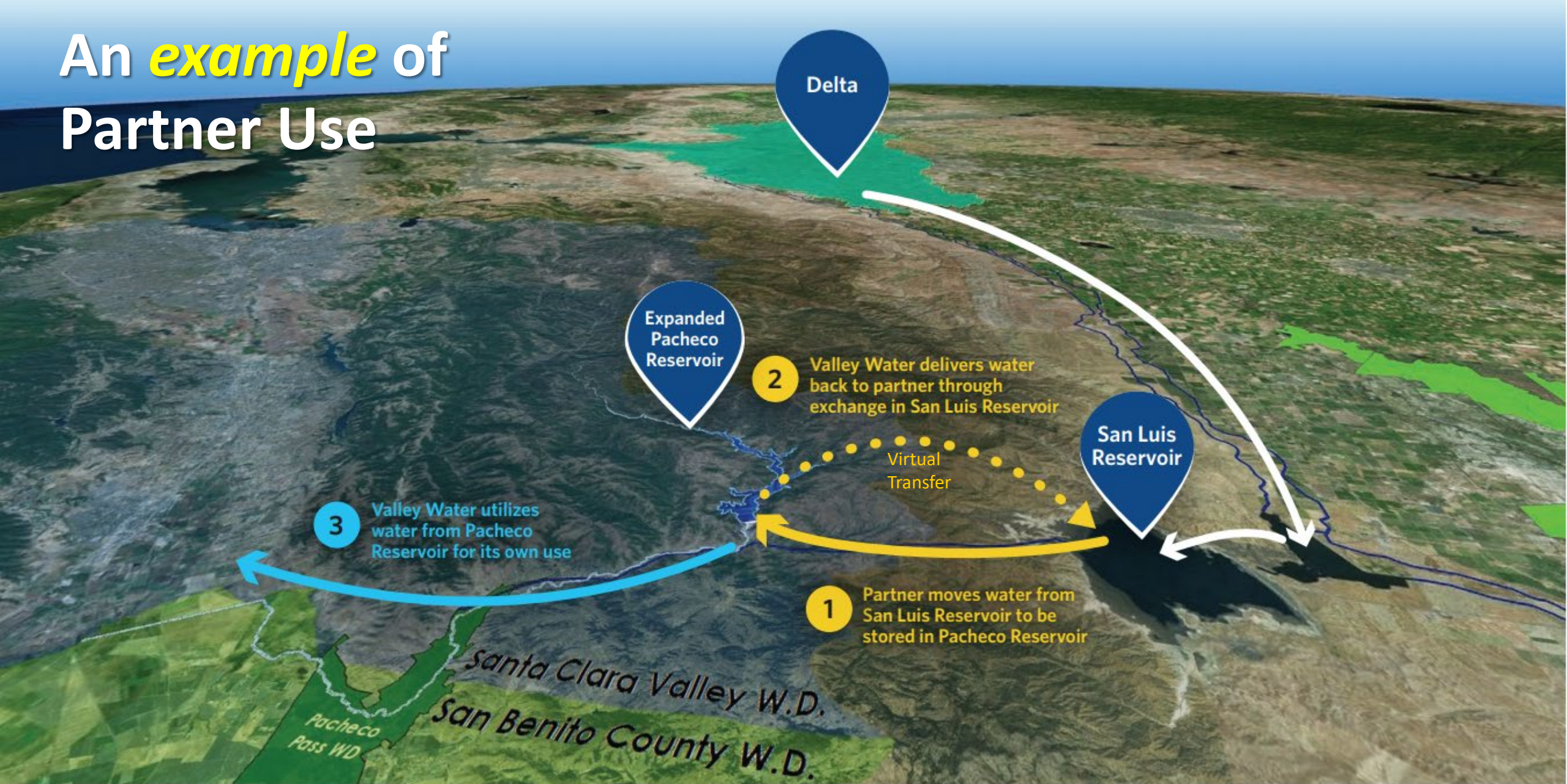
Possible Partnership Structure Example

PARTNERSHIP STORAGE



- 1 5,500 AF storage space reserved Nov. 1 for natural inflow only
- 2 San Benito County Water District

An *example* of Partner Use



Example of Partner Costs

1.0

PARTNERSHIP COST

	Environmental Reserve (WSIP) ¹	Valley Water and San Benito County Water District	Partners	Total
Reservoir Reserved Volume (<i>acre-feet, AF</i>)	35,000 AF	55,000 ² AF	50,000 AF	140,000 AF
Capital Cost	\$ 0.5 billion ²	\$ 1.1 billion ³	\$ 0.9 billion	\$ 2.5 billion
Capital Cost (<i>% of Total</i>)	20%	44%	36%	100%
Annual O&M Cost (<i>\$million/year, 2030</i>)	-	\$ 2.6 million/year	\$ 2.4 million/year	\$ 5.0 million/year

1 Water Storage Investment Program

2 Includes payment for emergency storage benefits (Valley Water)

3 Will increase if Partnership commitment is less than 50,000 acre-feet

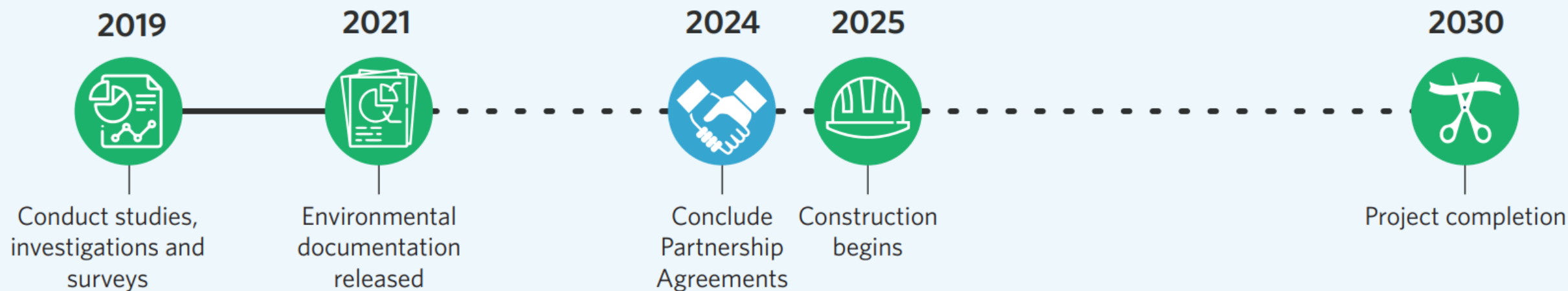
Approximate Storage Project Cost Comparison

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	Pacheco Reservoir Expansion	Los Vaqueros Expansion and Transfer Bethany Pipeline ¹	Sisk Dam Raise ²	McMullin 'Aquaterra' Groundwater Bank ³	AVEK 'High Desert' Groundwater Bank ⁴
Total Capital Cost	~\$2,520 Million	~\$951 Million	~\$1,292 Million	~\$344 Million	~\$159 Million
Total Storage Capacity	134 TAF	115 TAF	130 TAF	800 TAF	280 TAF
\$/AF of storage capacity	\$18,800/AF	\$8,300/AF	\$9,900/AF	\$400/AF	\$600/AF

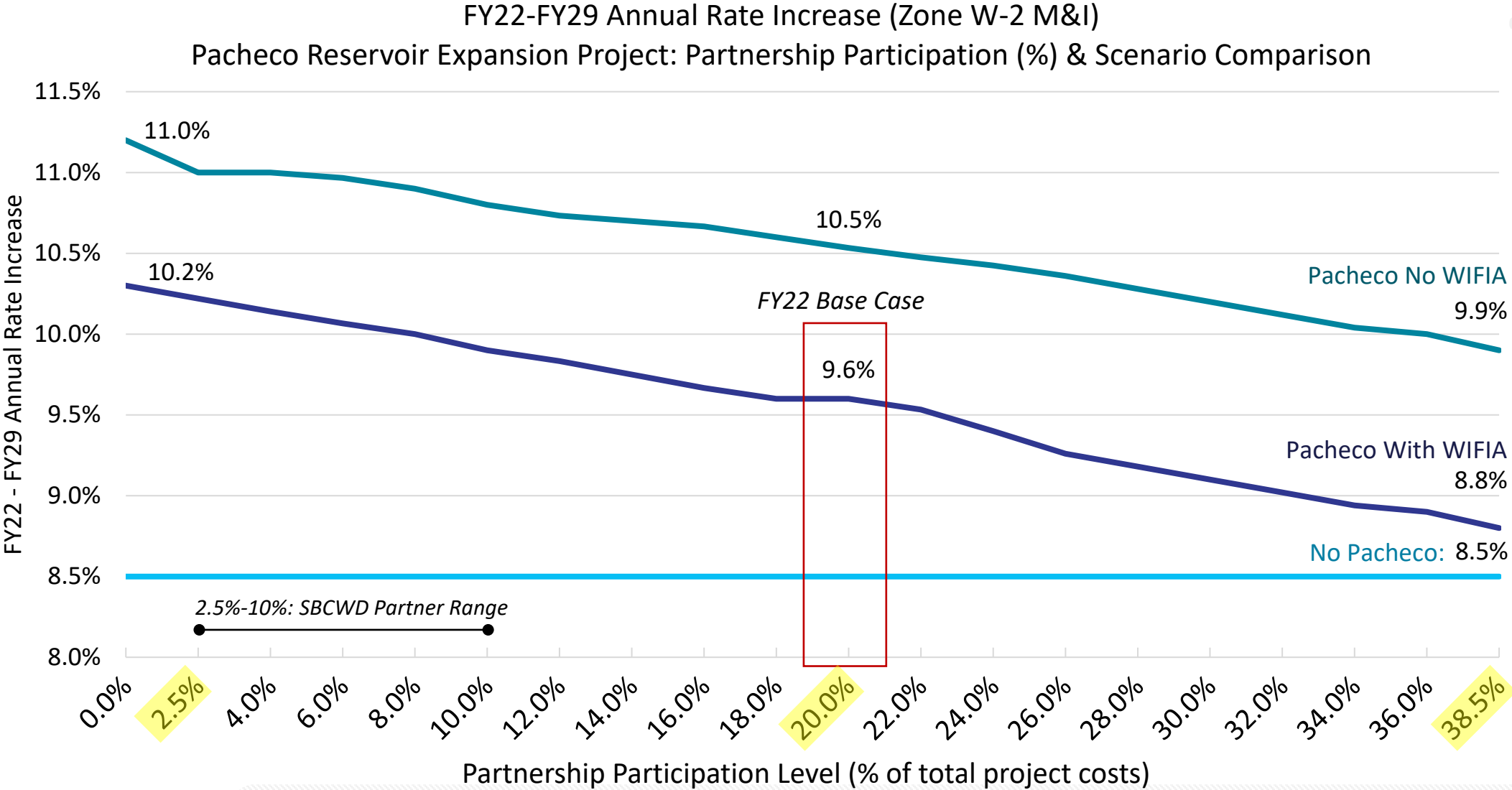
1. LVE Total Project Cost based on LVE Expansion Proforma Financial Model Version 5.0 Total Capital Cost, which includes the Transfer Bethany Pipeline cost.
2. Sisk Total Project Cost based on Sisk Dam final feasibility report dated December 2020, which was converted to an inflated cost projection using 4% inflation assumption
3. McMullin Total Project Cost based on 2020 preliminary estimate (to be revised) which was converted to an inflated cost projection using 4% inflation assumption
4. AVEK Total Project Cost based on Phase 1 Project Cost (similar size/scope), which was converted to an inflated cost projection using 4% inflation assumption

Project Schedule



All years referenced on the dashed line are schedule estimates.

Conclusion - Water Rate Impact



What Could Pacheco Do?

- Increases operational flexibility by increasing local storage capacity
- Banks existing imported water contract supplies for use during 1-2 years of a drought
- Provides year-round flow to creek downstream of reservoir

What Will Pacheco Not Do?

- No significant reduction in water shortage severity during prolonged droughts
- No long-term drought supply
- No new water supply

Discussion Summary

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- Pacheco Reservoir Expansion is one of several WSIP projects moving forward with partnership potential
- Unamortized capital cost of reservoir storage is between \$18K-\$20K/AF
- Annual increase in North County Zone W-2 M&I groundwater charge ranges from 8.5%-11% to account for Pacheco Reservoir Expansion Project

Board Policy Decisions

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- Does it make sense to continue to include the Pacheco Reservoir Expansion Project in the Water Supply Master Plan?
- Are there predetermined “triggers” that require that the project be re-validated by the Board of Directors (time, partnership participation, cost, schedule, etc.)
- What level of Partnership participation should be assumed for financial planning purposes?

QUESTIONS



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TO: Water Storage Exploratory Committee
Gary Kremen, Chair, District 7
John Varela, District 1
Richard Santos, District 3

FROM: Chris Hakes, Deputy
Operating Officer, Dam
Safety & Capital Delivery
Division, and
Bart Broome, Assistant
Officer, Office of
Government Relations

SUBJECT: Distribution of Additional Proposition 1
Water Storage Investment Program Funding

DATE: April 5, 2021

During the Water Storage Exploratory Committee on 2/28/21 there were questions raised about the timing of withdrawal decisions by proponents of projects funded by the Proposition 1 Water Storage Investment Program (WSIP). As you know, the Pacheco Reservoir Expansion Project (Pacheco Project) has qualified for WSIP funding in the amount of \$496,663,750, which includes a recent 2.5% inflation adjustment. This memo discusses the law and regulations governing WSIP grant funding, what would happen to a project's WSIP funding should that project not proceed, and scenarios under which that funding may be redistributed.

Withdrawal of WSIP Funded Projects

Not All WSIP Funded Projects Will Meet Statutory Deadline

Under [California Water Code Section 79757](#), all WSIP funded projects must comply with the following by 1/1/22: 1) all feasibility studies are completed and draft environmental documentation is available for public review; 2) the California Water Commission (CWC) has made a finding that the project is feasible and will help restore the ecological health and improve water management for the beneficial uses of the Delta; and 3) the Director of the California Department of Water Resources has received commitments for not less than 75 percent of the nonpublic benefit cost share of the project. Any projects that cannot meet this deadline will become ineligible; and the WSIP funds allocated to the project will revert to the state. Last October, the Temperance Flat Reservoir Authority informed the CWC, the administrator of the WSIP program, that their project will not achieve the 75% non-state funding requirement by the statutory deadline, thereby reverting to the state the \$171 million allocated to the Temperance Flat Reservoir Project.

Screening for a Second WSIP Grant Solicitation

In the months following the Temperance Flat Reservoir Authority's announcement, the CWC voted to allocate \$46 million of the reverted funding to two groundwater recharge projects that were not funded to their full eligibility amount in the first round of allocations. The CWC also approved the allocation of \$61 million for a 2.5% inflation adjustment for all WSIP funded projects, including the Pacheco Project. Finally, the CWC has held in reserve \$64 million to be allocated to new projects through a screening process for which applications are due on 10/22/21. The CWC must make a finding, not later than its December 2021 meeting, as to which projects have met the requirements of the 1/1/22 deadline; however, a determination of a grant amount for new projects would come in 2022. If the CWC moves forward with additional regulations and a second solicitation, only projects successful in the screening process would be eligible to apply.

At this time, it is unclear if the CWC screening for a second solicitation will yield projects that can meet the tight 1/1/22 deadline for completing draft environmental documents, submitting a feasibility study, and securing 75% of non-state funding. Another factor for prospective applicants is the relatively small amount of funds available for additional grants, currently only \$64 million. Water storage projects typically have costs measured in the hundreds of millions of dollars. The CWC could decide to split the funds available among several projects, making the grants smaller for individual projects.

Impacts and Timing of Withdrawals

If Valley Water decided not to move forward with the Pacheco Project by May or June of 2021, the potential applicants for the second WSIP grant solicitation may be more motivated to apply because the total funds available would grow from \$64 million to \$560 million. A delay beyond June 2021 in deciding not to proceed with the Pacheco Project increases the chances that the CWC would be left with too few qualified projects to fully use the additional funds made available by the withdrawal of the Pacheco Project, perhaps leaving hundreds of millions unallocated and unspent because no project could meet the statutory deadlines. It also is possible other projects with WSIP funding may fail to meet the statutory requirements in the final months or weeks before the 1/1/22 deadline.

Statutory Changes Require Approval by the Voters

[Water Code Section 79760 \(a\)](#), enacted by Proposition 1, requires that any amendments to Chapter 8 relating to WSIP must first pass both houses of the Legislature with a 2/3 vote and then appear on the statewide ballot for approval by a majority of California voters. If a decision to not proceed with Pacheco left hundreds of millions in state bond authorization in a legal limbo, the most viable way to resolve the issue is to amend Proposition 1 through another bond measure that would go to the voters on a 2022 statewide ballot or later.

Statutory Changes Both an Uncertainty and a Threat

The only option for statutory change to the Water Code provisions of Proposition 1 is adding language to a future statewide bond measure. While this is technically possible, there are numerous interests that would want to consume the unused Proposition 1 funds into the purposes of the new bond, which may or may not include a new round of applications for water storage projects. While [Water Code Section 79750 \(b\)](#) currently prohibits the repurposing of WSIP funds, that could be changed by the voters in another bond measure. Additionally, the threat of the unused funds being consumed by a future bond for other purposes is real. Including water storage funding in a bond makes 2/3 vote passage in the Legislature more difficult. There are numerous interests competing to be included in a statewide bond and few issues are as politically challenging as funding for dam construction.

Could the Pacheco Project Qualify for Additional Funding in the Second Solicitation?

Pacheco's Maximum Conditional Eligibility Determination

Both the statutory language and CWC regulations require that state funds only be spent on public benefits as defined in the statute and that a maximum of 50% of project costs can be paid by the state. The public benefits of the Pacheco project were already determined by the CWC and a Maximum Conditional Eligibility Determination (MCED) has been assigned to Pacheco of \$496,663,750. That is the maximum amount of funding that can be provided to the Pacheco project pursuant to the statute and the regulations as they are in place today.

CWC Reconsideration of Pacheco's MCED

One question that comes to mind is if the CWC could reconsider the MCED for the Pacheco Project based on a higher project cost, a revised requested amount, and qualifying public benefits not previously considered by the CWC. It is our understanding that the emergency water supply and environmental benefits scored for the project were higher than needed to get to the 50% funding limit. Recreation also has not been considered as a public benefit of the Pacheco Project. If reconsideration happens, Pacheco also might qualify for dual designation in more than one funding category, namely a "reservoir reoperation project," in addition to its existing designation as a "surface storage project." Our review of the Proposition 1 statute (Attachment 1) found no reason why the CWC could not adopt new regulations that would allow for a reconsideration of the MCED based on updated project information, especially if that reconsideration were requested by the project applicant. However, currently there is just \$64 million in funds available, not enough to address the Pacheco Project's cost increase issue.

Could Anderson Dam Qualify in the Second Solicitation?

Public Benefits and Timely Environmental Documents

The WSIP funding requirements are based on the concept that the state is investing in public benefits as defined in Proposition 1. Those public benefits include ecosystem improvements, water quality improvements, flood control benefits, emergency response, and recreational purposes. WSIP funded projects also must provide measurable improvements to the Delta ecosystem or to a tributary to the Delta. Valley Water's Anderson Dam Seismic Retrofit Project (Anderson Project) could possibly yield some of the required public benefits, but those benefits need to be above and beyond the existing obligations. Anderson Reservoir is south of Delta storage and may need to commit to some benefit to the Delta (e.g., for refuges). Finally, based on the current projected

release in 2021 of draft environmental documents for the Anderson Project, meeting the WSIP statutory requirements needed by the 1/1/22 deadline is possible should Valley Water pursue it.

An additional consideration is that Anderson Dam and its operations are paid solely by water rate payers. If Valley Water wants to use the reservoir to provide additional benefits not related to water supply and groundwater management, then another monetary source must be used to pay for those benefits. A one-time WSIP grant that would pay for additional, non-water supply benefits such as environmental enhancements, recreation, or flood protection, may need an additional funding source for the operation and maintenance of those facilities.

No Guarantee of Funding

Whether the Anderson Project could qualify for WSIP funding will be an uncertainty until the CWC decides on the award of funding. However, staff recommends further investigation into this possibility, with or without the Pacheco Project proceeding.

Key Conclusions

Risks in Delaying Decision Not to Proceed

If Valley Water decides to not proceed with the Pacheco Project in the second half of the 2021 calendar year or later, there is a risk that hundreds of millions in Proposition 1 WSIP funds would be trapped in a legal limbo, with the CWC unable to expend the funds on any project. Even if the Pacheco Project proceeds, other WSIP funded projects may fail to meet the 1/1/22 deadline, possibly leaving the state with funds that cannot lawfully be spent. While this legal limbo can be resolved by another statewide bond measure, it unclear if such a resolution is politically or logistically viable.

\$64 Million Grant Program Not Enough for Pacheco

While the Pacheco Project might qualify for additional WSIP funding, the current available funding for additional grants is just \$64 million. While that amount or even less would be helpful, it is not enough to address the Pacheco Project's cost increases.

A WSIP Grant for Anderson Should be Explored

The Anderson Project may qualify for a lower dollar WSIP grant request that would fit into the current \$64 million second solicitation, or a higher dollar grant request under a scenario where Pacheco or another large WSIP funded project withdraws from the program. These options should be explored and developed for further consideration with an eye toward the 10/22/21 application deadline.



Deputy Operating Officer
Dam Safety & Capital Delivery Division



Assistant Officer
Office of Government Relations

Attachment 1: Chapter 8 of Proposition 1 Water Storage Investment Program Statute

cc: R. Callender, M. Richardson, R. Gibson, A. Baker, C. Hakes, R. McCarter, M. Ozbilgin

BB

(2021-03-12 Memo on Timing of WSIP Withdrawals - Final)

Code: Section: [Up^](#) [Add To My Favorites](#)**WATER CODE - WAT**

DIVISION 26.7. Water Quality, Supply, and Infrastructure Improvement Act of 2014 [79700 - 79798] (*Division 26.7 added by Stats. 2014, Ch. 188, Sec. 8.*)

CHAPTER 8. Statewide Water System Operational Improvement and Drought Preparedness [79750 - 79760] (*Chapter 8 added by Stats. 2014, Ch. 188, Sec. 8.*)

79750. (a) Notwithstanding Section 162, the commission may make the determinations, findings, and recommendations required of it by this chapter independent of the views of the director. All final actions by the commission in implementing this chapter shall be taken by a majority of the members of the commission at a public meeting noticed and held pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(b) Notwithstanding Section 13340 of the Government Code, the sum of two billion seven hundred million dollars (\$2,700,000,000) is hereby continuously appropriated from the fund, without regard to fiscal years, to the commission for public benefits associated with water storage projects that improve the operation of the state water system, are cost effective, and provide a net improvement in ecosystem and water quality conditions, in accordance with this chapter. **Funds authorized for, or made available to, the commission pursuant to this chapter shall be available and expended only for the purposes provided in this chapter, and shall not be subject to appropriation or transfer by the Legislature or the Governor for any other purpose.**

(c) Projects shall be selected by the commission through a competitive public process that ranks potential projects based on the expected return for public investment as measured by the magnitude of the public benefits provided, pursuant to criteria established under this chapter.

(d) Any project constructed with funds provided by this chapter shall be subject to Section 11590.

(*Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.*)

79751. Projects for which the public benefits are eligible for funding under this chapter consist of only the following:

(a) Surface storage projects identified in the CALFED Bay-Delta Program Record of Decision, dated August 28, 2000, except for projects prohibited by Chapter 1.4 (commencing with Section 5093.50) of Division 5 of the Public Resources Code.

(b) Groundwater storage projects and groundwater contamination prevention or remediation projects that provide water storage benefits.

(c) Conjunctive use and reservoir reoperation projects.

(d) Local and regional surface storage projects that improve the operation of water systems in the state and provide public benefits.

(*Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.*)

79752. A project shall not be funded pursuant to this chapter unless it provides measurable improvements to the Delta ecosystem or to the tributaries to the Delta.

(*Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.*)

79753. (a) Funds allocated pursuant to this chapter may be expended solely for the following public benefits associated with water storage projects:

(1) Ecosystem improvements, including changing the timing of water diversions, improvement in flow conditions, temperature, or other benefits that contribute to restoration of aquatic ecosystems and native fish and wildlife,

including those ecosystems and fish and wildlife in the Delta.

(2) Water quality improvements in the Delta, or in other river systems, that provide significant public trust resources, or that clean up and restore groundwater resources.

(3) Flood control benefits, including, but not limited to, increases in flood reservation space in existing reservoirs by exchange for existing or increased water storage capacity in response to the effects of changing hydrology and decreasing snow pack on California's water and flood management system.

(4) Emergency response, including, but not limited to, securing emergency water supplies and flows for dilution and salinity repulsion following a natural disaster or act of terrorism.

(5) Recreational purposes, including, but not limited to, those recreational pursuits generally associated with the outdoors.

(b) Funds shall not be expended pursuant to this chapter for the costs of environmental mitigation measures or compliance obligations except for those associated with providing the public benefits as described in this section.

(Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.)

79754. In consultation with the Department of Fish and Wildlife, the state board, and the Department of Water Resources, the commission shall develop and adopt, by regulation, methods for quantification and management of public benefits described in Section 79753 by December 15, 2016. The regulations shall include the priorities and relative environmental value of ecosystem benefits as provided by the Department of Fish and Wildlife and the priorities and relative environmental value of water quality benefits as provided by the state board.

(Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.)

79755. (a) Except as provided in subdivision (c), no funds allocated pursuant to this chapter may be allocated for a project before December 15, 2016, and until the commission approves the project based on the commission's determination that all of the following have occurred:

(1) The commission has adopted the regulations specified in Section 79754 and specifically quantified and made public the cost of the public benefits associated with the project.

(2) The project applicant has entered into a contract with each party that will derive benefits, other than public benefits, as defined in Section 79753, from the project that ensures the party will pay its share of the total costs of the project. The benefits available to a party shall be consistent with that party's share of total project costs.

(3) The project applicant has entered into a contract with each public agency identified in Section 79754 that administers the public benefits, after that agency makes a finding that the public benefits of the project for which that agency is responsible meet all the requirements of this chapter, to ensure that the public contribution of funds pursuant to this chapter achieves the public benefits identified for the project.

(4) The commission has held a public hearing for the purposes of providing an opportunity for the public to review and comment on the information required to be prepared pursuant to this subdivision.

(5) All of the following additional conditions are met:

(A) Feasibility studies have been completed.

(B) The commission has found and determined that the project is feasible, is consistent with all applicable laws and regulations, and will advance the long-term objectives of restoring ecological health and improving water management for beneficial uses of the Delta.

(C) All environmental documentation associated with the project has been completed, and all other federal, state, and local approvals, certifications, and agreements required to be completed have been obtained.

(b) The commission shall submit to the Legislature its findings for each of the criteria identified in subdivision (a) for a project funded pursuant to this chapter.

(c) Notwithstanding subdivision (a), funds may be made available under this chapter for the completion of environmental documentation and permitting of a project.

(Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.)

79756. (a) The public benefit cost share of a project funded pursuant to this chapter, other than a project described in subdivision (c) of Section 79751, shall not exceed 50 percent of the total costs of any project funded under this chapter.

(b) No project may be funded unless it provides ecosystem improvements as described in paragraph (1) of subdivision (a) of Section 79753 that are at least 50 percent of total public benefits of the project funded under this

chapter.

(Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.)

79757. (a) A project is not eligible for funding under this chapter unless, by January 1, 2022, all of the following conditions are met:

(1) All feasibility studies are complete and draft environmental documentation is available for public review.

(2) The commission makes a finding that the project is feasible, and will advance the long-term objectives of restoring ecological health and improving water management for beneficial uses of the Delta.

(3) The director receives commitments for not less than 75 percent of the nonpublic benefit cost share of the project.

(b) If compliance with subdivision (a) is delayed by litigation or failure to promulgate regulations, the date in subdivision (a) shall be extended by the commission for a time period that is equal to the time period of the delay, and funding under this chapter that has been dedicated to the project shall be encumbered until the time at which the litigation is completed or the regulations have been promulgated.

(Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.)

79758. Surface storage projects funded pursuant to this chapter and described in subdivision (a) of Section 79751 may be made a unit of the Central Valley Project as provided in Section 11290 and may be financed, acquired, constructed, operated, and maintained pursuant to Part 3 (commencing with Section 11100) of Division 6.

(Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.)

79759. (a) The funds allocated for the design, acquisition, and construction of surface storage projects identified in the CALFED Bay-Delta Record of Decision, dated August 28, 2000, pursuant to this chapter may be provided for those purposes to local joint powers authorities formed by irrigation districts and other local water districts and local governments within the applicable hydrologic region to design, acquire, and construct those projects.

(b) The joint powers authorities described in subdivision (a) may include in their membership governmental partners that are not located within their respective hydrologic regions in financing the surface storage projects, including, as appropriate, cost share participation or equity participation. Notwithstanding Section 6525 of the Government Code, the joint powers agencies described in subdivision (a) shall not include in their membership any for-profit corporation or any mutual water company whose shareholders and members include a for-profit corporation or any other private entity. The department shall be an ex officio member of each joint powers authority subject to this section, but the department shall not control the governance, management, or operation of the surface water storage projects.

(c) A joint powers authority subject to this section shall own, govern, manage, and operate a surface water storage project, subject to the requirement that the ownership, governance, management, and operation of the surface water storage project shall advance the purposes set forth in this chapter.

(Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.)

79760. (a) In approving the Water Quality, Supply, and Infrastructure Improvement Act of 2014, the people were informed and hereby declare that the provisions of this chapter are necessary, integral, and essential to meeting the single object or work of the Water Quality, Supply, and Infrastructure Improvement Act of 2014. As such, any amendment of the provisions of this chapter by the Legislature without voter approval would frustrate the scheme and design that induced voter approval of this act. **The people therefore find and declare that any amendment of the provisions of this chapter by the Legislature shall require an affirmative vote of two-thirds of the membership in each house of the Legislature and voter approval.**

(b) This section shall not govern or be used as authority for determining whether the amendment of any other provision of this act not contained in this chapter would constitute a substantial change in the scheme and design of this act requiring voter approval.

(Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.)

Funding Options – Pacheco Reservoir Expansion Project

	Description	Amount	Time to Development	Risk Level (likelihood of securing the funding)	Status
1	Water rates & charges (pay-go and bond financing)	Subject to Board approval (max ~11% rate increase if no WIFIA or other external funding except for 2.5% SBCWD portion)	Annual board approval process	Medium – rate affordability issues	Annual rate setting process
2	WSIP/Prop1 Grant (1st round)	Maximum Conditional Eligibility Decision (MCED) funding level \$497M	1 – 2 years	Low for the initial MCED allocation	Legislative timing/risk of funding becoming unavailable if California Water Commission (CWC) is unable to reallocate to other projects by Oct 2021; statutory deadline to complete feasibility study & draft EIR to maintain MCED allocation (\$497M)
3	WSIP/Prop1 Grant (2nd round)	~\$64M in additional grant amounts may be available via 2nd solicitation in 2021	1 – 2 years	High – competitive process to reallocate additional funding due to project withdrawals	Legislative timing/risk of funding becoming unavailable if CWC is unable to reallocate to other projects by Oct 2021
4	WIFIA loan	49% of project costs (~\$1B)	1 – 3 years	Medium – competitive process	Waitlist from 2020 NOFA; possible resubmittal of LOI in Spring 2021 (EPA)
5	San Felipe Facilities Expansion – USBR co-operative agreement	Potential for up to \$250M to build pump station and conveyance related to San Felipe	1 – 3 years	Medium – pending Reclamation project development/timing	May be structured similar to the Pacheco pump station project
6	General Obligation (GO) Bonds	TBD – 2/3 voter approval required	1 – 4 years	High	Require District Act amendment to allow GO Bonds and 2/3 voter approval to levy ad valorem tax
7	FEMA Hazard Mitigation grant	Up to 75%; competitive proposal process; federal funding limit of 80% applies	1 – 3 years	Medium – competitive process	Staff is researching eligibility with CalOES/EPA; funding timing depending on declaration of natural disaster (e.g. drought, flood protection, etc.)
8	Building Resilient Infrastructure and Communities (BRIC) grant (FEMA)	Grant may fund up to 75% of project cost; competitive proposal process; federal funding limit of 80% applies	1 – 3 years	Medium – competitive process	Next funding application ~Sept. – Dec. 2021; grant proceeds for each phase of project must be expended within 3 years of funding. BRIC offers up to \$600,000 in State competitions and up to \$50 million in National competitions. Federal funding is 75% of eligible project costs. More research needed for process/eligibility.
9	USBR WaterSMART grant	To be researched	1 – 2 years	Medium – competitive process	Next funding application for grants of up to 50% of project costs, capped at \$400,000 per project for water storage marketing in April 2021; more research needed for this and other similar future grant opportunities; most likely will be an annual application process
10	DWR grant	Flood risk protection grant \$25M statewide	1 – 2 years	Medium – competitive process	Next funding application in summer 2021; more research needed for eligibility/amount; may be an annual application process
11	Other Federal/State grant	TBD – SLLPIP funding/USBR partnership or other federal infrastructure investments pending congressional actions. Advocate for statewide bond measure to fund dam/reservoir projects	1 – 5 years	High – uncertainties associated with congressional legislation; competitive allocation; budget appropriation	Office of Government Relations to identify additional funding opportunities
12	Public agency participation	Depends on participation level and affordability	1 – 2 years	Medium – competing against other storage options	Staff are researching value of emergency water supply
13	Corporate sponsorship/grants	TBD	1 – 3 years	High	Funding amount/eligibility uncertain; research/outreach required to corporate philanthropy department; researching top taxpayer/employers within county such as Google, Stanford, Apple, Adobe, Sobrato, Cisco, etc.
14	Private investment (P3)	Depends on participation level	2 – 4 years	High – legal limitation (private use & life safety liability)	3/2/21 call with Jill Jamieson: DBF/DBFM possible; recommend RFI to test market interest; life safety/public entity legal immunity risk may preclude P3 O&M contract

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MEMORANDUM

FC 14 (08-21-19)

TO: Christopher Hakes
Deputy Operating Officer, Dam Safety & Capital
Delivery Division

FROM: Eli Serrano
Unit Manager, Real Estate
Services Unit

SUBJECT: Pacheco Reservoir Expansion Project –
Right-of-Way Acquisition Process

DATE: March 22, 2021

The purpose of this memorandum is to identify right-of-way transactions necessary in the next one-to-five years that have the potential to impact the overall cost or schedule for the Pacheco Reservoir Expansion Project (PREP).

Potential Real Estate Acquisition Costs

The following table shows a preliminary estimate of the number of parcels Valley Water needs to acquire under each property right category (as of 2020), and the expected increase in estimated costs of the transactions over a 5-year acquisition timeline.

Type of Action	2020 Parcels	2020 Estimated Costs	2025 Estimated Costs
Parcels or Portions thereof to Be Acquired in Fee	20	\$2,672,000	\$3,340,000
Parcels or Portions thereof to Be Acquired as Permanent Easement	3	\$98,000	\$122,500
Parcels or Portions thereof to Be Acquired in Fee and Permanent Easements	1	\$14,000	\$17,500
Parcels or Portions thereof to Be Acquired in Fee and Temporary Easements	7	\$3,427,000	\$4,283,750
Parcels or Portions thereof to Be Acquired in Fee, Permanent, and Temporary Easements	3	\$337,000	\$421,250
Parcels to be acquired for new Powerline as Permanent Easements	TBD	TBD	\$600,000
Parcels to be acquired for Mitigation Purposes	TBD	TBD	\$6,000,000
Total	34+	\$6,548,000	\$14,785,000

Methods for Property Acquisition

Property Acquisition Prior to Environmental Impact Report (EIR) Completion

Prior to EIR completion and certification, and if property owners are willing, Valley Water can attempt to utilize an “option to purchase agreement” (option agreement) to expedite gaining control of certain properties. An option agreement is a legally binding contract that allows a prospective buyer to enter into an agreement with a seller, in which the buyer is given the exclusive option to purchase the property for a period of time and for a certain price. An option agreement offers the benefit of initiating a positive relationship with the property owner, while securing Valley Water a placeholder for its required property rights. They can also be used for potential mitigation sites.

The option agreement would establish annual payments to the property owner to hold the property for Valley Water until it is able to obtain a certified EIR and acquire the needed property rights. Annual payments are typically 8% - 10% of fair market value (FMV) of the parcel and are *non-refundable* if Valley Water decides not to exercise the option. Current FMV for the Pacheco Pass area is \$1,600 - \$2,000 per acre.

Property Acquisition Post-EIR Completion

After EIR completion and certification, Valley Water will use conventional methods to acquire property rights; e.g. FMV appraisals with right of way contracts and negotiated settlements pending approval by the Valley Water Board of Directors (Board). Valley Water's current success rate to secure property rights with willing owners and conventional methods is approximately 80% - 90%. The remaining 10% - 20% represents potentially non-willing owners.

With willing owners, the projected FMV for property rights given a 5-year acquisition timeline is based on the following variables: 1) a 5% per year increase in value, 2) variations between initial offers and final sale prices based on historical Valley Water acquisition data, 3) final right of way costs to be determined once the final design and footprint is established, and 4) recent FMV appraisals.

Historical data suggests that for PREP, 35% - 40% of the real estate transactions will close at a price higher than the original offer. And the final sales/settlement price will be on average 15% - 20% higher than Valley Water's original acquisition offer.

Non-Willing Owners

For the anticipated 10% - 20% of non-willing owners, Valley Water staff and consultants will engage in extra efforts to try to reach mutually agreeable solutions. Staff will assemble a task team to engage individual property owners and make a diligent effort to resolve outstanding issues. The task team's methods will include 1) proposing that the owner secure their own appraisal, 2) proposing a possession and use agreement until compensation can be resolved, 3) proposing neutral party mediation, 4) securing closed session Board negotiation parameters and settlement dollar increments, and 5) proposing Valley Water legal discussions with the owner's legal representation.

It is anticipated that a limited number of property owners may continue to be non-willing after the extra effort to reach a mutually agreeable solution. If owners are not willing to grant property rights, the Board would have a last resort option to use the power of eminent domain to secure the necessary property rights. If litigation is required to obtain possession, legal costs are estimated to be \$30,000 - \$100,000 per case depending upon how heavily litigated the case is (e.g., number of expert witnesses, volume of discovery, etc.) and whether any judgment is appealed. Barring any court scheduling delays due to the COVID-19 pandemic, approximately **seven months' time** will be needed from the time Valley Water is required to serve the property owner with notice that it intends to adopt a Resolution of Necessity to the time Valley Water is able to take possession following the court's issuance of an order of prejudgment possession and Valley Water's service of notice of this order. The full trial on the matter, including any challenge to Valley Water's right to take and the amount of valuation, would come later.

Key Conclusions

Based on the expected number of real property acquisitions for the Pacheco Reservoir Expansion Project, it is anticipated that there will be willing and non-willing property owners. The willing owners are expected to be in the high 80% - 90% range with non-willing owners in the low 10% - 20% range. In the event of a limited number of owners that may continue to be non-willing, the Board will always have the last resort option to pursue a legal solution to obtain possession of the required property rights needed for the project.

Currently, the Project schedule needs the necessary real estate transactions complete and certified by the end of 2024 to start construction in early 2025. If the project is unable to secure and certify all necessary property rights as proposed, a one-year delay would drive the total cost of the project up \$14

million and a two-year delay would result in an increase over \$25 million. In addition, cost of financing and other factors would also contribute to increased cost impacts.

DocuSigned by:

Eli Serrano

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Eli Serrano, SR/WA

Real Estate Services Unit Manager

cc: M. Richardson, A. Baker, R. Blank, B. Hopper

ES

(Right of Way Analysis Memorandum)

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Santa Clara Valley Water District

File No.: 21-0357

Agenda Date: 4/14/2021
Item No.: 2.2.

NON-EXHIBIT/CLOSED SESSION ITEM

SUBJECT:

CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section 54956.8:

Setting Negotiation Parameters for Price and Terms of Payment for Acquiring Property Interest in
APN 728-34-020, 729-36-001, 725-06-008, 678-02-031 and 678-02-034

Negotiators: Rick Callender, Melanie Richardson, Sue Tippetts, Christopher Hakes, Eli Serrano, and
Bill Magleby

Other Negotiating Parties: County of Santa Clara

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