



Meeting Date: 09/23/08
Agenda Item : 8.
Manager: G. Zlotnick
Extension: 2081
Director: All

BOARD AGENDA MEMO

☒ Discussion ☒ Action ☐ Consent ☐ Information

SUBJECT: Principles of Agreement for Joint Investigation of Future Alternatives for Pacheco Reservoir

RECOMMENDATION:

That the Board approve Principles of Agreement for a Joint Investigation of Future Alternatives for Pacheco Reservoir (Attachment 1) as the basis of negotiation for an agreement with Pacheco Pass Water District and San Benito County Water District.

RATIONALE:

The subject Principles of Agreement for a Joint Investigation of Future Alternatives for Pacheco Reservoir ("Principles of Agreement") would inform negotiations of an agreement that would;

- (a) facilitate investigation of the Pacheco Reservoir alternative under consideration as part of the San Luis Low Point Improvement Project ("SLLPIP"); and,
- (b) provide information to support future water supply investment planning.

Approval of the Principles of Agreement would, therefore, support:

Policy E-2.1.2: There is a reliable supply of healthy, clean drinking water.

Policy E-2.1.3: The water supply is reliable to meet future demands in Santa Clara County, consistent with the County's and cities' General Plans and other appropriate regional and statewide projections.

In addition, Pacheco Reservoir has been identified as a site of interest in the Santa Clara Valley Habitat Conservation Plan ("Valley Habitat Plan") currently under development with District participation, as there may be a potential for re-operations to support a run of steelhead in Pacheco Creek and downstream in the Pajaro River. Other opportunities for environmental enhancement in the watershed could be identified through investigations contemplated by the Principles of Agreement. Consequently, approval of the Principles of Agreement would also support:

Policy E-3.2: Environmental enhancements are implemented to improve watersheds, streams and the natural resources therein.

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Policy E-3.2.1: Potential environmental enhancement opportunities are identified to the Board.

EL-3.7 COMPLIANCE:

This is not a proposed consultant contract so EL-3.7 is not applicable.

SUMMARY:

In response to a request from the Pacheco Pass Water District ("Pacheco Pass"), representatives from San Benito County Water District ("San Benito") and the District met with Pacheco Pass on May 19, 2008, to explore collective interests in Pacheco Reservoir. The scope of the discussion included the watershed, operation of Pacheco Dam, flows in Pacheco Creek, existing facilities and potentially relocated or expanded facilities.

As a result of this meeting, staff drafted a set of principles for negotiation of an agreement that would give the parties three years to jointly investigate feasible alternatives for the future of Pacheco Reservoir. After completion of relevant studies, the agreement would also provide an option for the District and San Benito to purchase the existing Pacheco Reservoir and Pacheco Pass lands, subject to appropriate environmental review. Both Pacheco Pass and San Benito have reviewed the Principles of Agreement contained in Attachment 1 and confirmed that they reflect discussions held to date, and outline what the parties hope to achieve through a potential negotiated agreement.

Drivers for Investigation of Pacheco Reservoir

A. San Luis Low Point Improvement Project

The San Luis Low Point Improvement Project ("SLLPIP") is authorized by the CALFED Bay-Delta Authorization Act (October 25, 2004, 118 Stat. 1694). It specifically authorizes the Secretary of the Interior to "expend funds for feasibility studies, evaluation and implementation of the San Luis Low Point Improvement Project, except that Federal participation in any construction of the expanded Pacheco Reservoir shall be subject to future congressional authorization."

From the outset, an expanded Pacheco Reservoir was identified as a possible SLLPIP alternative. Providing a capability for San Felipe Division water to be stored during winter months in an enlarged Pacheco Reservoir would allow the San Luis Reservoir to be further drawn down during summer months, without reducing water quality or exacerbating water supply risks for the District and San Benito.

Central Valley Project (CVP) water supplies for the District and San Benito must be conveyed through San Luis Reservoir to the federal Pacheco Pumping Plant and San Felipe Division

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facilities. When storage in the reservoir drops below 300,000 acre-feet, increased turbidity and algae reduces water quality and causes problems at the District's treatment plants. CVP deliveries to the San Felipe Division may become limited by reduced pumping capacity at Pacheco Pumping Plant if the reservoir drops to a low enough level. Ultimately, if the drop is far enough or quality is so deteriorated, deliveries could be interrupted entirely. The SLLPIP seeks to resolve these problems, along with accomplishing other planning objectives that would benefit all south-of-Delta water contractors.

In August 2008, the U.S. Bureau of Reclamation (Reclamation) completed a Draft SLLPIP Plan Formulation Report. Alternatives carried forward and evaluated in that report include: (1) lowering the San Felipe (Pacheco Pumping Plant) intake facilities; (2) expanding Pacheco Reservoir; and, (3) implementing a combination of expanding the use of local groundwater, desalination, institutional measures, and re-operation of the District's and San Benito's existing facilities.

Reclamation conducted EIS/EIR scoping meetings in San Jose on September 10 and in Sacramento and Los Banos on September 11, 2008. The Draft Feasibility Report and EIS/EIR is currently scheduled to be completed by summer 2009, and the Final Feasibility Report and EIS/EIR is scheduled to be completed by the end of 2009 or early 2010.

However, this schedule is heavily dependent on obtaining sufficient access to Pacheco Reservoir and private lands in its watershed for further geologic and technical studies. Approval of the Principles of Agreement and successful negotiation of an agreement with Pacheco Pass and San Benito would aid a more timely completion of the SLLPIP, by, among other things, helping to facilitate the requisite access for investigations. It could also facilitate effective use of remaining State Proposition 13 funds that are currently available until March 9, 2009, for reimbursement of certain SLLPIP costs.

B. Valley Habitat Plan

The Valley Habitat Plan is a cooperative effort by six Santa Clara County government agencies to provide an effective framework to protect, enhance, and restore natural resources in Santa Clara County, while improving and streamlining the environmental permitting process related to mitigating impacts on threatened and endangered species. The Valley Habitat Plan will provide incidental take permits for a broad suite of public works and development. Pacheco Reservoir is being discussed in the development of the Valley Habitat Plan, both as a covered activity and as a potential conservation measure.

- 1.) The covered activity includes relocating Pacheco Dam and expanding Pacheco Reservoir as an alternative in the SLLPIP, or as a future activity that could be undertaken independently by the District to optimize local water storage in its integrated water management portfolio.
- 2.) The conservation measure would entail re-operation of either the existing Pacheco Reservoir or an expanded Pacheco Reservoir to improve fishery resources. Some participants in the Valley Habitat Plan, including the federal resource agencies, are

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interested in establishing a run of steelhead in Pacheco Creek and downstream in the Pajaro River. While the Principles of Agreement contemplate investigating the feasibility of Pacheco Reservoir re-operation for this purpose, any actual change in operations during the proposed agreement's three-year timeframe would be subject to the approval of Pacheco Pass, coordination with the Valley Habitat Plan, and appropriate environmental review. Other opportunities for environmental enhancements may also be identified through related investigations in the watershed.

C. Relationship To Future Water Supply Investment Decisions

The District's Integrated Water Resource Planning 2003 Report (IWRP 2003) recommended protecting existing water supplies and making modest near term investments in a "no regrets" portfolio of additional conservation, groundwater recharge, and water banking. For longer term investments, IWRP 2003 found that the District's water supply portfolio should include investments in all-weather supplies (i.e., recycling and conservation), storage, and dry-year transfers. Subsequently, in December 2005, the Board adopted Policy E-2.1.4.2, which states; "the District's water supply sources are further diversified by making new investments in a mix of all weather supplies, storage, and dry year transfers or option agreements."

The District needs to consider how best to balance all weather supplies and storage, as well as the type of storage, for future water supply reliability. These considerations will be better informed with additional information on different water supply alternatives. Improved understanding of the feasibility of Pacheco Reservoir as a potential future storage option will provide important perspective as the District undertakes analyses and considers decisions regarding the appropriate mix of future water supply investments.

Moreover, investigations related to Pacheco Reservoir as envisioned under the Principles of Agreement could also contribute significantly to the District's developing dam retrofit strategy to address pressing and increasing seismic requirements.

CEQA REQUIREMENTS:

Approval of the Principles of Agreement provides only a basis for negotiation and has no environmental impact; therefore, it is not a project, as defined by CEQA.

ADVISORY COMMITTEE INPUT:

The proposed Principles of Agreement have not been presented to any Advisory Committees.

PUBLIC OUTREACH:

Public outreach related to investigation of Pacheco Reservoir is, in part, achieved through the EIS/EIR process for the SLLPIP. Public scoping meetings were held in San Jose on September

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10 and in Sacramento and Los Banos on September 11, 2008. The Valley Habitat Plan process also includes public meetings in which Pacheco Reservoir has been discussed.

FINANCIAL IMPACT:

Approval of the Principles of Agreement has no immediate financial impact.

Pacheco Pass would continue to own and operate Pacheco Dam and Reservoir during the term of the agreement. However, successful negotiation of an agreement based on these principles could lead to commitments and costs that are not currently included in the District's FY09 budget and long range forecast. Because discussions among the parties related to the subject Principles of Agreement did not commence until May of this year, it was not possible to include resources in the current year budget with any level of precision. Consequently, none were provided.

It is anticipated that certain investigations covered by a joint agreement would be conducted and paid for under the existing SLLPIP, including potential Proposition 13 funds referenced above, while others might be coordinated through the Valley Habitat Plan process. While there are no funds dedicated to such activities in the Valley Habitat Plan effort, it is possible that grants or other sources of funds might become accessible in the future for studies related to activities consistent with the Valley Habitat Plan, e.g. reservoir reoperation.

Should the Board authorize moving forward, an agreement subject to the proposed principles will provide for cost-sharing of additional investigations of mutual interest. Consistent with Board policy, any financial commitment that would exceed Executive Limitation EL-5.7 will be brought back to the Board for discussion and decision.

**Principles of Agreement
for
Joint Investigation of Pacheco Reservoir
DRAFT #2 June 18, 2008**

1. Parties: Pacheco Pass Water District (Pacheco Pass), San Benito County Water District (San Benito) and Santa Clara Valley Water District (Santa Clara).

2. Interests of the Parties

- a. San Benito and Santa Clara are seeking alternatives that will improve their ability to manage water supply, water quality, and operational risks related to federal water deliveries from San Luis Reservoir.
- b. As a participant in the Santa Clara County Habitat Conservation Plan, Santa Clara is seeking alternatives that will improve fish habitat and other environmental values in the watershed.
- c. Pacheco Pass is seeking to ensure the continuation of operational benefits from Pacheco Dam and Reservoir, including groundwater recharge in Pacheco Creek upstream of the Highway 156 crossing.

3. Purpose of the Agreement

- a. Establish a process and time period for Santa Clara and San Benito to investigate feasible alternatives for the future of Pacheco Dam and Reservoir.
- b. Establish an option for Santa Clara and San Benito jointly to acquire Pacheco Dam and Reservoir, or to enter into a long-term lease or other arrangement with Pacheco Pass that would provide long-term benefits.
- c. Establish a process to explore and potentially implement mutually agreed upon near-term operational changes.

4. Term: Three years from date of execution (expected July 2008).

5. Work Plan to Investigate Feasible Alternatives

- a. Santa Clara and San Benito will jointly develop and agree upon a work plan to be accomplished during the term of the Agreement, including a scope of work, schedule, resources and budget, project management, methods of communication and coordination.
- b. Santa Clara and San Benito will form a policy-level steering committee and a management committee to facilitate development and implementation of the work plan.

6. Coordination

- a. Santa Clara and San Benito will consult Pacheco Pass in the development of the work plan, keep them informed of progress and make work products available for their review prior to release to others.
- b. Santa Clara and San Benito will coordinate the investigations and analyses with the Bureau of Reclamation's ongoing San Luis Reservoir Low Point Improvement Project.
- c. Santa Clara and San Benito will seek input from partners in the Santa Clara County Habitat Conservation Plan on the range of issues that should be studied, participation in workgroups to carry out investigations, and review of work products.

7. Alternatives to be Evaluated

- a. Alternatives to be evaluated will include remediation and re-operation of the existing Pacheco Dam and Reservoir, reconstruction and enlargement, or other possibilities.
- b. Feasible alternatives must maintain operational benefits for Pacheco Pass, including groundwater recharge in Pacheco Creek upstream of the Highway 156 crossing, at least equal to those that would have existed absent implementation of the alternative.
- c. Feasible alternatives will have no unacceptable impact on Henry Coe State Park.

8. Funding and Cost Sharing

- a. Santa Clara will seek to utilize an appropriate share of State grant funding available for the San Luis Reservoir Low Point Improvement Project to carry out the work plan.
- b. Santa Clara will seek cost-share funding from the Santa Clara County Habitat Conservation Plan for interim operational changes or investigations related to improvement of Pacheco Creek fish habitat.
- c. Santa Clara and San Benito will share remaining costs of the work plan equally, provided that when the option decisions provided by the Agreement are exercised, these cost shares will be adjusted to reflect the districts' respective long-term benefits.

9. Access for Investigations

- a. Pacheco Pass will provide access to the existing Pacheco Dam and adjacent property that the district owns or has rights of entry, for the purpose of investigating structural, geologic, environmental and other aspects of proposed alternatives.
- b. Pacheco Pass will facilitate, to the extent they are able, access by Santa Clara and San Benito to property in the watershed owned by others, as necessary to carry out investigations.
- c. Pacheco Pass will provide access to any relevant records that may assist with the evaluation of alternatives, including records of Pacheco Dam operation and maintenance and diversions in the watershed.
- d. Santa Clara and San Benito will each provide any relevant records or previous studies that may assist with evaluation of alternatives, including records of San Felipe Division operation and maintenance and diversions in the watershed.

10. Operations During the Term of the Agreement

- a. Pacheco Pass will continue to own and operate Pacheco Dam and Reservoir during the term of the Agreement.
- b. The parties will explore and, subject to mutual agreement and appropriate environmental review, may implement near-term operational changes to achieve water management and/or environmental objectives.
- c. Santa Clara and/or San Benito may provide resources to accomplish near-term operational changes, subject to appropriate indemnification by Pacheco Pass.

11. Exercise of Option

- a. Before the end of the Agreement, Santa Clara and San Benito may jointly exercise an option to acquire Pacheco Dam and Reservoir, or to enter into a long-term lease or other arrangement with Pacheco Pass that provides long-term benefits.
- b. If either Santa Clara or San Benito decides that it does not want to participate in an acquisition, long-term lease or other arrangement with Pacheco Pass, then the other district may independently exercise the option.
- c. Neither Santa Clara nor San Benito is obligated to exercise any option provided by the Agreement.