



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:


3630691A3941438...

Eli Serrano, SR/WA
Real Estate Services Unit Manager

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

ES
(Right of Way Analysis Memorandum)

THIS PAGE INTENTIONALLY LEFT BLANK