



# Santa Clara Valley Water District

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**File No.:** 23-0128

**Agenda Date:** 1/24/2023

**Item No.:** \*2.8.

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## BOARD AGENDA MEMORANDUM

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

### SUBJECT:

Conduct a Public Hearing on Proposed Modifications to Projects under Priorities D and E of the Renewed Safe, Clean Water and Natural Flood Protection Program.

### RECOMMENDATION:

- A. Open and conduct the public hearing to receive comments on the renewed Safe, Clean Water and Natural Flood Protection Program's following projects:
  - i. D3: Sediment Reuse to Support Shoreline Restoration;
  - ii. D4: Fish Habitat and Passage Improvement;
  - iii. D6: Restoration of Natural Creek Functions;
  - iv. E2: Sunnyvale East and Sunnyvale West Channels Flood Protection; and
  - v. E4: Upper Penitencia Creek Flood Protection Project;
- B. Close the public hearing;
- C. Review and Approve the Proposed Text Adjustments to D3: Sediment Reuse to Support Shoreline Restoration;
- D. Adopt the resolution APPROVING THE MODIFICATION TO D3: SEDIMENT REUSE TO SUPPORT SHORELINE RESTORATION PROJECT OF THE SAFE, CLEAN WATER AND NATURAL FLOOD PROTECTION PROGRAM;
- E. Adopt the resolution APPROVING THE MODIFICATION TO PROJECT D4: FISH HABITAT AND PASSAGE IMPROVEMENT PROJECT OF THE SAFE, CLEAN WATER AND NATURAL FLOOD PROTECTION PROGRAM;
- F. Adopt the resolution APPROVING THE MODIFICATION TO D6: RESTORATION OF NATURAL CREEK FUNCTIONS PROJECT OF THE SAFE, CLEAN WATER AND NATURAL FLOOD PROTECTION PROGRAM;
- G. Adopt the resolution APPROVING THE MODIFICATION TO E2: SUNNYVALE EAST AND SUNNYVALE WEST CHANNELS FLOOD PROTECTION PROJECT OF THE SAFE, CLEAN WATER AND NATURAL FLOOD PROTECTION PROGRAM; and
- H. Adopt the resolution APPROVING THE MODIFICATION TO E4: UPPER PENITENCIA CREEK FLOOD PROTECTION PROJECT OF THE SAFE, CLEAN WATER AND NATURAL FLOOD PROTECTION PROGRAM.

**SUMMARY:**

**Background**

On November 3, 2020, Santa Clara County voters overwhelmingly approved Measure S, a renewal of Santa Clara Valley Water District's (Valley Water) Safe, Clean Water and Natural Flood Protection Program (Safe, Clean Water Program). Voters first approved a community-focused program to address our waterways and water supply in 2000 as the Clean, Safe Creeks and Natural Flood Protection Plan, then again in 2012 as the Safe, Clean Water and Natural Flood Protection Program.

The Safe, Clean Water Program addresses the following six community priorities:

**Priority A:** Ensure a Safe, Reliable Water Supply

**Priority B:** Reduce Toxins, Hazards, and Contaminants in our Waterways

**Priority C:** Protect Our Water Supply and Dams from Earthquakes and Other Natural Disasters

**Priority D:** Restore Wildlife Habitat and Provide Open Space

**Priority E:** Provide Flood Protection to Homes, Businesses, Schools, Streets, and Highways

**Priority F:** Support Public Health and Public Safety for Our Community

Each of these priorities has specific operational and capital projects, with key performance indicators (KPIs) to keep them on track in meeting the overall Safe, Clean Water Program priorities. KPIs are considered the measurement for the delivery of each project and represent Valley Water's commitment to the voters.

To ensure transparency, accountability and fiscal responsibility, the renewed Safe, Clean Water Program will continue to be monitored by an independent monitoring committee (IMC), an external citizen oversight committee. The Safe, Clean Water Program also requires that Valley Water develop 5-year implementation plans and conduct independent audits every five years.

As changes may be required throughout the Safe, Clean Water Program implementation, Valley Water has developed a change control process, which outlines the differences between adjustments and modifications to the Program and identifies the different processes for implementing both. In summary, "adjustments" are project changes that do not impact KPIs, such as updates to text, financial allocation or schedule, and can be approved by the Valley Water Board during a public board meeting. Any changes to KPIs are considered "modifications." Modifications to KPIs or decisions to not implement a project require a public hearing, which must be publicly noticed.

**Infrastructure Project Cost Escalations Impact the Financial Health of Safe, Clean Water Fund (Fund 26)**

Infrastructure construction projects in the Safe, Clean Water Program are experiencing significant cost increases. Among the projects with a major cost escalation is Project E1: Coyote Creek Flood Protection (Coyote Creek Project), with an approximately \$162 million increase.

The Coyote Creek Project, extending from Montague Expressway and Tully Road, is designed to provide protection from floods up to the level that occurred on February 21, 2017. Upstream of the

Coyote Creek Project, Valley Water is implementing another major project, the Anderson Dam Seismic Retrofit Project (ADSRP). To minimize risk to the communities along Coyote Creek, Valley Water must move forward with the planned construction schedule for the Coyote Creek Project to align with the completion of the high-level outlet for the Anderson Dam Seismic Retrofit Project.

These increased costs are impacting the Safe, Clean Water fund's financial health, resulting in staff's recommendation that the Valley Water Board of Directors provides direction on balancing the overall fund and delivering the voter-approved Safe, Clean Water Program.

Furthermore, Valley Water staff has identified the need to modify Project D3: Sediment Reuse to Support Shoreline Restoration due to changed circumstances.

Therefore, staff is recommending modifying projects D3: Sediment Reuse to Support Shoreline Restoration, D4: Fish Habitat and Passage Improvement, D6: Restoration of Natural Creek Functions, E2: Sunnyvale East and Sunnyvale West Channels Flood Protection, and E4: Upper Penitencia Creek Flood Protection.

### **Proposed Adjustments and Modifications**

#### *Project D3: Sediment Reuse to Support Shoreline Restoration (Project D3)*

This project is countywide and provides for the reuse of local sediment for environmental enhancement and restoration projects. Project D3 has the following two KPIs, including KPI #1 "Maintain partnership agreements to reuse sediment to improve the success of salt pond and tidal marsh restoration projects and activities."

Staff recommends (Recommendation C.) approval of text adjustments to Project D3 to align with the proposed KPI modifications. Text adjustments are subject to Board approval, but without requiring a public hearing and adoption of a resolution.

Project D3 has continued from the 2012 Safe, Clean Water and Natural Program (2012 Program) but with an expanded scope.

Under the 2012 Program, the project purpose was to "reuse local sediment from streams flowing into San Francisco Bay to create and rehabilitate habitat in the South Bay Salt Ponds Restoration." Titled "D8: South Bay Salt Ponds Restoration Partnership," the project description stated that "In partnership with the U.S. Fish and Wildlife Services (FWS), clean sediment is applied to appropriate locations to improve the success of the South Bay Salt Ponds Restoration effort." The Project KPI included "Establish agreement with FWS to reuse sediment at locations to improve the success of Salt Pond restoration activities."

Under the renewed Safe, Clean Water Program that voters approved in 2020, the project's purpose and scope are expanded in terms of sediment source and its use. Regarding the sediment source, the current Project D3 description states, "reuse local sediment through Valley Water's Stream Maintenance Program, capital projects and other local sources to create and restore tidal marsh habitat." Regarding usage, the project description states that "Sediment may be reused to support

the South Bay Salt Pond Restoration project or other environmental enhancement and restoration projects."

As in the years past, in FY2021-22, under the renewed Safe, Clean Water Program, Valley Water delivered sediment for Pond A8 at Alviso for South Bay Salt Pond Restoration. This was carried out accordingly to the current agreement with USFWS, which remains in effect until December 2023.

However, Valley Water has paused delivering sediment to Pond A8 following USFWS direction in July 2022 that it needs to renew permits, which could take approximately two years. Meanwhile, the expansion in the use of sediment to projects beyond the South Bay Salt Pond Restoration Project under the renewed Safe, Clean Water Program creates new opportunities for the sediment to be reused for Valley Water environmental enhancement and restoration projects not requiring a partnership agreement.

In the coming years, sediment may be used for enhancement and restoration projects, such as at Pond A4, Ogier Ponds or similar projects. However, sediment reuse at these projects would require conducting CEQA analysis and compliance and determining the Quality Assurance Test Procedure, which would take some years. Once CEQA is completed, Valley Water could continue the reuse of sediment placement for restoration.

Therefore, to better align the renewed Safe, Clean Water Program with these changing conditions, staff is recommending a modification to KPI #1.

Staff is also recommending text adjustments to the project name and benefits to accurately capture the current project purpose of supporting restoration projects beyond Shoreline Restoration efforts.

Attachment 1 shows the proposed adjustments to Project D3's name, description and benefits and the proposed modification to KPI #1, with all proposed changes shown with strike-through for removed text and red font for new text. The attachment also shows a clean copy of the project name, descriptions, benefits and KPI #1 with the proposed changes incorporated.

#### *Project D4: Fish Habitat and Passage Improvement (Project D4)*

This project helps restore and maintain healthy fish populations, especially steelhead, by improving fish passage and habitat. Sites may include Alamitos Creek at Almaden Lake and County of Santa Clara-owned Ogier Ponds, where humanmade creek alterations disrupt fish migration. Project D4, which includes coordinating and partnering with other external parties, incorporates studies of streams throughout the county to determine what and where habitat improvements will most benefit steelhead. These studies can be used by regional partners to implement complementary habitat enhancements.

Project D4 has five (KPIs) including KPI #1 to "Complete planning and design for one (1) creek/lake separation" and KPI #2 to "Construct one (1) creek/lake separation project in partnership with local agencies."

The KPIs do not identify specific projects. Pursuant to the renewed Safe, Clean Water Program, Valley Water continues to proceed with Planning and Design to separate the Ogier Ponds complex from Coyote Creek and deliver KPI #1. This effort was initiated under the 2012 Program.

In 2021, the Board chose the Almaden Lake Improvement Project, which would separate Alamos Creek from Almaden Lake and return it to naturally flow into the Guadalupe River, to be constructed under KPI #2. However, since then, the Almaden Lake Improvement Project construction cost estimates have nearly tripled, making project construction unfeasible.

Meanwhile, Ogier Ponds are now part of the ADSRP as a mitigation measure to help offset some of the project impacts. Therefore, staff is recommending that the Board select the Ogier Ponds project to be constructed under KPI #2, while the Almaden Lake Improvement Project would continue planning and design to deliver KPI #1. Since, as part of ADSRP, Ogier Ponds project construction is funded by more sources than the Safe, Clean Water Fund (Fund 26), staff is recommending that the Board modify KPI #2 to partially fund the construction of a creek/lake separation project.

Attachment 2 shows Project D4 with the proposed modification to KPI #2, with all proposed changes shown with strike-through for removed text and red font for new text. The attachment also contains a clean copy showing the proposed KPI #2 changes incorporated.

Project D6: Restoration of Natural Creek Functions (Project D6)

This project is to develop, compile and use local hydrologic and geomorphic data to identify, design and construct projects to restore and improve the natural functions and stability of stream channels. Geomorphically appropriate channels will be more resilient to damage from more intense rainfall patterns caused by climate change.

Project D6 has three KPIs, requiring Valley Water to construct three geomorphic-designed projects. Valley Water is on track to complete the construction of two projects, the Hale Creek Enhancement Pilot Project (KPI #1) and the Bolsa Road Fish Passage Project (KPI #2), in Fiscal Year 2024. However, Valley Water is yet to identify the third project required under KPI #3.

As a result of construction cost escalations, staff is recommending not implementing KPI #3 and reallocating the placeholder project funding to the Safe, Clean Water Program's Operating and Capital (Fund 26 Reserves), thus supporting the fund's financial health.

Attachment 3 shows Project D6 proposed modification to Not Implement KPI #3, with the proposed change shown with a strike-through for removed text. The attachment also contains a clean copy with the proposed change incorporated.

Project E2: Sunnyvale East and Sunnyvale West Channels Flood Protection (E2)

This project is to upgrade approximately 6.4 miles of the existing Sunnyvale East Channel to provide 1% flood protection (100-year event) to 1,618 parcels and approximately three (3) miles of the existing West Channel to provide 1% flood protection for 47 acres of highly valuable industrial lands, including the Onizuka Air Force Base. This project has only one KPI:

1. Provide 1% (100-year) flood protection for 1,618 properties and 47 acres (11 parcels) of

industrial land, while improving stream water quality and working with other agencies to incorporate recreational opportunities.

This project is locally funded with a local partnership and under the current schedule, construction is planned to begin in FY24 and be completed in FY26.

As a result of construction cost escalations, staff is recommending modifying Project E2 funding allocation to construct Sunnyvale West Channel, putting Sunnyvale East Channel construction on hold, and reallocating Sunnyvale East Channel construction-related planned expenditures to the Fund 26 Reserves. This modification will support the fund's financial health. However, it will impact Valley Water's ability to construct the project and deliver the KPI, thus triggering the requirement for a public hearing per the Program's Change Control Process.

Should additional funding become available within the Fund 26 Reserves or through partnership and/or grant funding, the Board may reallocate the construction funding to the project through a direction provided during a regular board meeting. Staff will reassess the availability of funding on an annual basis as part of the Capital Improvement Program's financial planning process.

Attachment 4 shows the proposed modification to Project E2's 15-year (FY2022-2036) funding allocation, with the table providing the current and the final modified 15-proposed funding allocation.

*Project E4: Upper Penitencia Creek Flood Protection (Project E4)*

This project continues a partnership with the U.S. Army Corps of Engineers (USACE) to plan, design and construct improvements along 4.2 miles of Upper Penitencia Creek from the confluence with Coyote Creek to Dorel Drive. Part of the project will protect the area around the Bay Area Rapid Transit's (BART) Berryessa station near King Road, which would otherwise be subject to flooding. In addition to providing flood protection, this multi-objective project will provide ecological restoration and recreation benefits while preserving the water supply. Project E4 has two (2) KPIs:

1. Preferred project with federal and local funding: Construct a flood protection project to provide 1% (100-year) flood protection to 8,000 parcels.
2. With local funding only: Construct a 1% (100-year) flood protection project from Coyote Creek confluence to Capital Avenue to provide 1% (100-year) flood protection to 1,250 parcels, including the new Berryessa BART station.

As of FY22, there was no federal funding from USACE for the project and Valley Water focused on the local funding only KPI. Valley Water completed the Planning Study in FY22, and Design is scheduled to begin in FY23.

As a result of construction cost escalations, staff is recommending modifying Project E4 funding allocation to reallocate construction-related planned expenditures to the Fund 26 Reserves. This will support the fund's financial health. However, it will impact Valley Water's ability to construct the project and deliver the KPIs.

Should additional funding become available within the Fund 26 Reserves or through partnership and/or grant funding, the Board may reallocate the construction funding to the project through a direction provided during a regular board meeting. Staff will reassess the availability of funding on an

annual basis as part of the Capital Improvement Program's financial planning process.

Attachment 5 shows the proposed modification to Project E4 15-year (FY2022-2036) funding allocation, with the table providing the current and the final modified 15-proposed funding allocation.

### **Next Steps**

After opening and closing the public hearing, staff is recommending that the Board first review and approve the proposed text adjustments to D3: Sediment Reuse to Support Shoreline Restoration and then consider adoption of the resolutions as follows:

1. Adopt the resolution APPROVING THE MODIFICATION TO D3: SEDIMENT REUSE TO SUPPORT SHORELINE RESTORATION PROJECT OF THE SAFE, CLEAN WATER AND NATURAL FLOOD PROTECTION PROGRAM (Attachment 6);
2. Adopt the resolution APPROVING THE MODIFICATION TO PROJECT D4: FISH HABITAT AND PASSAGE IMPROVEMENT PROJECT OF THE SAFE, CLEAN WATER AND NATURAL FLOOD PROTECTION PROGRAM;
3. Adopt the resolution APPROVING THE MODIFICATION TO D6: RESTORATION OF NATURAL CREEK FUNCTIONS PROJECT OF THE SAFE, CLEAN WATER AND NATURAL FLOOD PROTECTION PROGRAM;
4. Adopt the resolution APPROVING THE MODIFICATION TO E2: SUNNYVALE EAST AND SUNNYVALE WEST CHANNELS FLOOD PROTECTION PROJECT OF THE SAFE, CLEAN WATER AND NATURAL FLOOD PROTECTION PROGRAM; and
5. Adopt the resolution APPROVING THE MODIFICATION TO E4: UPPER PENITENCIA CREEK FLOOD PROTECTION PROJECT OF THE SAFE, CLEAN WATER AND NATURAL FLOOD PROTECTION PROGRAM.

Resolutions approving the modification to projects D3: Sediment Reuse to Support Shoreline Restoration Project, D4: Fish Habitat and Passage Improvement, Project D6: Restoration of Natural Creek Functions, E2: Sunnyvale East and Sunnyvale West Channels Flood Protection, and E4: Upper Penitencia Creek Flood Protection and the Notice of Public Hearing and Ad Placement Schedule will be provided in a Supplemental Board Agenda Memorandum that will be available on January 20, 2023.

### **ENVIRONMENTAL JUSTICE IMPACT:**

Individual capital projects may have environmental justice impacts and will conduct outreach and engagement to impacted communities, which will be reported to the Board accordingly.

### **FINANCIAL IMPACT:**

Upon adoption of the resolutions, the 15-Year funding allocation for Project E2: Sunnyvale East and West Channels Protection will be reduced from \$49 million to approximately \$23 million and for E4: Upper Penitencia Creek Flood Protection, it will be reduced from \$23.6 million to approximately \$1.5 million. Furthermore, approximately \$50 million will be transferred to Fund 26 Operating and Capital Reserves from Project D4: Fish Habitat and Passage Improvement's Almaden Lake Improvement

Project.

The modified funding allocations are approximated at this time and will be finalized through the development and Board approval of the Capital Improvement Program's FY 2024-28 Five-Year Plan.

**CEQA:**

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

**ATTACHMENTS:**

- Attachment 1: D3 Proposed Modifications
- Attachment 2: D4 Proposed Modifications
- Attachment 3: D6 Proposed Modifications
- Attachment 4: E2 Proposed Modifications
- Attachment 5: E4 Proposed Modifications
- \*Supplemental Agenda Memo
- \*Supplemental Attachment 1: Project D3 Resolution
- \*Supplemental Attachment 2: Project D4 Resolution
- \*Supplemental Attachment 3: Project D6 Resolution
- \*Supplemental Attachment 4: Project E2 Resolution
- \*Supplemental Attachment 5: Project E4 Resolution
- \*Supplemental Attachment 6: Public Notice Ad

**UNCLASSIFIED MANAGER:**

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