



# Santa Clara Valley Water District

File No.: 24-0544

Agenda Date: 6/25/2024

Item No.: 4.5.

## BOARD AGENDA MEMORANDUM

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

### SUBJECT:

Authorize Acquisition of a Real Property Interest from Michele A. Dour, for the Federal Energy Regulatory Commission Order Compliance Project Coyote Creek Flood Management Measures Project, Project No. 91864007, APN 472-31-041, Real Estate File Nos. 4021-320 and 4021-406 for the Price of \$307,000 (San Jose, District 2).

### RECOMMENDATION:

- A. Authorize the Chief Executive Officer to execute a Right of Way Agreement between Michele A. Dour and the Santa Clara Valley Water District for acquisition of a permanent easement and a temporary construction easement on APN 472-31-041, located at 650 S 16<sup>th</sup> Street, San Jose, CA, for the price of \$307,000, based upon the terms and conditions as set forth in the Agreement;
- B. Authorize the Chief Executive Officer to accept the Easement Deed (4021-320) from Michele A. Dour; and
- C. Authorize the Chief Executive Officer to accept the Temporary Construction Easement Deed (4021-406) from Michele A. Dour.

### SUMMARY:

Santa Clara Valley Water District (Valley Water) staff recommends acquisition of a permanent easement and a temporary construction easement on APN 472-31-041, a residential real property located at 650 S 16<sup>th</sup> Street, in San Jose, California owned by Michele A. Dour (Owner), according to the terms of the Right of Way Agreement (Attachment 1). The permanent easement from the Owner is described and shown on Deed No. 4021-320 (Attachment 2) and the temporary construction easement from the Owner is described and shown on Deed No. 4021-406 (Attachment 3).

Approval of the Agreement and acquisition of the permanent and temporary construction easements from the Owner are necessary to implement flood risk reduction elements of the Federal Energy Regulatory Commission (FERC) Order Compliance Project Coyote Creek Flood Management Measures Project (CCFMMP).

### PROJECT BACKGROUND

Valley Water is undertaking the Anderson Dam FERC Order Compliance Project (FOCP) as a result

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of the February 20, 2020, directive from FERC to implement interim risk reduction measures at Anderson Dam to protect the public from risk of dam failure due to seismic activity. The approved FOCF includes four categories of actions including reservoir drawdown, construction of the Anderson Dam Tunnel Project (ADTP) (anticipated to be completed in 2024), operation and maintenance following ADTP construction, and avoidance and minimization measures (AMMs) necessary to reduce environmental and water supply impacts during implementation of FOCF. To address the higher flows from operation of the tunnel after its completion, flood management measures, identified and to be implemented under the CCFMMP, were included in the FOCF to reduce flood risks within urbanized areas of San José. Specifically, the FOCF's flood management measures include possible acquisition of properties and construction of floodwalls. The construction of CCFMMP is also anticipated to be completed in 2024. The overall flood risk reduction objective of CCFMMP and Coyote Creek Flood Protection Project (CCFPP) is protecting areas of Coyote Creek against a flood event approximately equivalent to the February 2017 flood event. This goal will be met by the completion of CCFMMP and the CCFPP.

## **RIGHT-OF-WAY NEGOTIATIONS**

Since early 2023 staff have worked with the Owner to identify the design needs and address the Owner's concerns through design modifications. Some of these design accommodations included revising the floodwall design to significantly reduce the portion of the permanent easement area above the top of bank and revising the language of the permanent easement deed to address Owner concerns. Despite these accommodations an agreement could not be reached with the Owner for acquiring the necessary property rights.

Therefore, on November 14, 2023, Valley Water Board of Directors adopted a Resolution of Necessity (RON) for a 7,837 square foot permanent easement (4021-320) and a 1,538 square foot temporary construction easement (4021-406) on APN 472-31-041 located at 650 S 16<sup>th</sup> Street, San Jose, CA. The Board also directed staff to continue working with the Owner in an effort to reach an agreement.

Subsequent negotiations included additional consideration for the value of the riparian corridor, and severance damage due to loss of use of the creek area as well as the damages to an Oak tree and the concrete slab surrounding it. The negotiated settlement amount of \$307,000 was agreed to by the Owner.

## **ENVIRONMENTAL JUSTICE AND EQUITY IMPACT:**

There are no environmental justice impacts associated with the acquisition of a permanent easement and a temporary construction easement on APN 472-31-041, located at 650 S 16th Street, San Jose, CA, given that no human health or environmental impacts are likely to result from this action alone. Staff negotiated with the owner to ensure fair compensation which includes compensation for severance damages. This action is necessary for the implementation of the CCFMMP which will not result in likely environmental justice impacts; no likely disproportionate impacts to disadvantaged communities (DAC) are expected (DAC as defined in CalEPA's AB535 Disadvantage Communities Map as the top 25 percentile scores on CalEnviroScreen).

The CCFMMP has beneficial environmental justice impacts. The intent of CCFMMP is to protect the public, including disadvantaged communities in the area, from dangers associated with flooding similar to the flooding event that occurred in February 2017. During the planning and design phase of the CCFMMP, several public meetings were held to solicit input from the community. Since 2019, meetings have been held both in person at several locations in the neighborhoods impacted by this project, as well as online. The completion of the CCFMMP will directly benefit the adjacent disadvantaged communities along the full stretch of Coyote Creek between Montague Expressway and Tully Road.

**FINANCIAL IMPACT:**

The FOCF Coyote Creek Flood Management Measures Project, Project No. 91864007 is included in the Capital Improvement Program (CIP) Fiscal Years (FY) 2025-29 Five-Year Plan and in the FY 2023-24 Adopted Budget. The acquisition price of the easements from the Owner is \$307,000, and there is sufficient funding in the FY 2023-24 Adopted Budget to encumber this purchase. The Project is funded by the Water Utility (Fund 61) with 81.37% of the costs allocated to North County Zone W-2, 7.85% to South County Zone W-5 and 10.78% to South County Zone W-7.

**CEQA:**

The FOCF was determined to be exempt from CEQA review pursuant to the statutory exemption for specific actions necessary to prevent or mitigate an emergency under CEQA Guidelines §15269(c) and Public Resources Code §21080(b)(4). Valley Water filed a Notice of Exemption for FOCF with Santa Clara County Clerk-Recorder Office on June 29, 2020. This acquisition is considered part of the CCFMMP, which is included in the FOCF and continues to be exempt from CEQA pursuant to the above-cited provisions.

**ATTACHMENTS:**

- Attachment A: Gov. Code 84308
- Attachment 1: Right of Way Agreement
- Attachment 2: Easement Deed
- Attachment 3: Temporary Construction Easement Deed

**UNCLASSIFIED MANAGER:**

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