



Santa Clara Valley Water District

File No.: 24-0568

Agenda Date: 7/9/2024

Item No.: 3.5.

BOARD AGENDA MEMORANDUM

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

SUBJECT:

Consider the May 17, 2024, Environmental Creek Cleanup Committee Recommendation to Adopt the Proposed Water Resources Protection Zones Ordinance.

RECOMMENDATION:

Consider recommendation resulting from the May 17, 2024, Environmental Creek Cleanup Committee meeting to:

- A. Adopt the Proposed Water Resources Protection Zones Ordinance; and
- B. Provide feedback and recommendations to staff as necessary.

SUMMARY:

At its May 17, 2024, meeting, the Santa Clara Valley Water' District's (Valley Water) Environmental Creek Cleanup Committee (ECCC) recommended that the Board adopt a proposed Water Resources Protection Zones Ordinance (Ordinance), which aims to reduce encampments, prevent re-encampments, and prohibit related activities along creeks, waterways, water supply facilities, and other lands where Valley Water holds land rights. The Ordinance is intended to protect water resources, endangered species, and other ecological resources, as well as to support and improve safety for Valley Water's field operations staff.

Water Resources Protection Zones Ordinance

The purpose of the Ordinance (Attachment 1) is to establish water resources protection zones (WRPZ) to ensure that Valley Water continues providing Silicon Valley safe, clean water for a healthy life, environment, and economy, as well as to support and improve safety conditions for field operations staff. The Ordinance is intended to improve water quality, to protect water supply facilities and riparian habitats, and to promote staff safety by prohibiting camping and related activities within the WRPZ.

The Ordinance prohibits the following activities:

- a. Unauthorized establishment of encampments and any depositing of trash, debris, and/or

hazardous pollutants related to the establishment or presence of encampments.

- b. Any activity or nuisance that unreasonably disturbs the occupants of neighboring properties, including but not limited to the possession or use of explosives, fireworks, or other toxic or hazardous materials or substances, or use of any loudspeakers, public address systems, sound amplifiers, radio, or broadcast within the WRPZ in such manner that sounds are unreasonably loud or directed beyond the immediate area of the listener, except to the extent appropriate permits are obtained in accordance with any applicable municipal code section.
- c. Any activities that could create a hazard or potential hazard to Valley Water employees or the public, or that could interfere with, obstruct, or prevent the safe operation of Valley Water facilities, including but not limited to buildings or habitat, or its activities associated with water quality, environmental stewardship, or flood risk reduction.
- d. Any unlawful activities.

Based on the ECCC's input, and per prior Board direction, Valley Water will continue to collaborate with governmental and private partners to seek ways to contribute to housing or shelter alternatives that support the relocation of unsheltered people from Valley Water lands. While Valley Water, as a water district, ultimately does not have control over housing outcomes, it is committed to using its power as an environmental stewardship agency to protect the waterways in collaboration with cities and the County as they fulfill their housing and social service roles. However, Valley Water cannot wait until holistic solutions to homelessness have been established and implemented before taking action to fulfill its obligations as an environmental steward and to ensure that Valley Water staff are safe while performing work in the field. The Ordinance is intended to address these principal obligations of environmental stewardship and staff safety while Valley Water continues its collaboration with other organizations and pursues solutions to homelessness on a separate track.

The ECCC also provided recommendations regarding Ordinance enforcement. Per Section 9(b) of the Santa Clara Valley Water District Act, a violation of any Valley Water ordinance is a misdemeanor. However, additional language was added to the draft Ordinance to ensure that Valley Water provides adequate warning and an opportunity for anyone in violation to voluntarily relocate or otherwise remedy the violation before further enforcement actions are taken. The intention is not for this Ordinance to result in criminalization, but instead for it to result in encampment relocation or the cessation of prohibited activities. Valley Water will first employ an educational approach, providing information on Ordinance requirements, resources for identifying Valley Water lands, and a request to remedy the violation. Even if a person in violation chooses not to self-remedy, and escalated enforcement is warranted, the prosecutor may still exercise his or her discretion to specify that an offense is merely an infraction rather than a misdemeanor.

Background and Need for the Ordinance

Valley Water's mission is to provide Silicon Valley safe, clean water for a healthy life, environment, and economy. As part of this mission, Valley Water has an obligation to protect against activities that negatively impact water quality and ecological resources. Valley Water also has an obligation to

protect its field staff whose work is critical to meeting regulatory requirements and maintaining flood protection and water supply infrastructure. The continued presence of encampments of unsheltered people on lands where Valley Water holds property rights threatens Valley Water's ability to carry out its mission and ensure the safety of its staff.

Environmental Concerns

The Valley Water 2014-2023 Stream Maintenance Program (SMP) uses several methods for mitigating the environmental impacts of stream maintenance projects such as revegetation and invasive plant management. Valley Water spends millions of dollars on terrestrial and aquatic habitat enhancements. But trampling, excavation, vegetation and tree removal, and increased fire frequency associated with encampments have damaged and destroyed required habitat mitigation. For example, encampment-related impacts have prevented the successful establishment of 2.5 acres of river and floodplain habitat enhancements that were implemented, at considerable cost and effort, to provide advance mitigation for the Upper Guadalupe River Project. Failure to successfully establish mitigation limits the value of Valley Water's investment and substantially increases the time and cost to comply with environmental mitigation requirements.

Due to increasing safety issues and damage to mitigation sites from fires, vehicle traffic, trash and biohazardous materials, large structures, and bank excavations within and adjacent to Valley Water mitigation sites, the SMP program has had to abandon seven problematic Invasive Plant Management Program (IPMP) sites and has canceled over 36 acres of mitigation credit previously applied to the SMP program for the mitigation of SMP impacts. Valley Water had already expended over \$1.8 million dollars in labor, equipment, and materials to manage these mitigation sites.

Additionally, encampments and their associated uses can degrade water quality, obstruct fish passage, and damage and destroy habitats that various species depend upon. Protected species such as Steelhead trout, Chinook salmon, and other native species require the use of waterways and floodplains for their survival. In addition, protected waters and wetlands provide habitat, convey flood waters, help recharge groundwater, and provide other ecosystem services. Encampments commonly degrade water quality, obstruct fish passage, and damage and destroy habitats on which these species depend. Human waste from encampments adds nutrients to streams facilitating algae growth that is harmful to aquatic species.

Staff Safety Concerns

Over the last several years there has been an increase in the number of security incidents experienced by Valley Water staff that were associated with unsheltered people, including armed threats of violence, verbal assaults and physical intimidation, vicious dog encounters, and fire-related occurrences. Compounding the severity of these dangerous incidents is a rise in drug activity associated with unsheltered people residing on Valley Water property, as evidenced by an increasing rate of drug arrests and overdoses. If encampment activity is allowed to persist on Valley Water property, Valley Water staff will continue to be exposed to undue safety risks.

Related to this, a new workplace safety law, Senate Bill 553 (Chapter 289, Statutes of 2023), took effect on July 1, 2024, and requires prudent actions when incidents of workplace violence occur.

Senate Bill 553 enhances workplace safety protocols and requires employers to develop their own workplace violence prevention plans as part of their Cal/OSHA Injury and Illness Prevention Plans. Under this new law, Valley Water's "workplace" is considered any property or facilities Valley Water owns or controls.

Valley Water field operations staff operate in a workplace primarily located along creeks, waterways, and water supply facilities. When a staff safety incident occurs in the field, there must be an investigation, assessment, and application of mitigation measures. Any mitigation efforts put in place to address field workplace hazards may take days to complete, possibly suspending or delaying mission-critical work at that immediate location. The continued presence of encampments on Valley Water lands increases the opportunity for safety incidents and the likelihood that the associated legally mandated mitigation response will delay mission-critical work.

Safety Concerns for People Living Along Waterways

Currently, more than 700 people are estimated to be living on Valley Water property and easements. Encampments located along waterways are both a human and an environmental tragedy, resulting in deaths and negative health outcomes for unsheltered individuals. Waterways are often prone to flash floods, causing rapidly rising water that is a serious hazard to unsheltered people living in or near creek channels. Additionally, unsheltered individuals utilizing creeks and waterways put their health and safety at risk due to unhygienic and unsafe living conditions, waterborne diseases such as Shigella, frequent fire activity, as well as exposure to the elements.

Recommendation

In light of the concerns stated above, consider the ECCC recommendation to adopt the proposed Water Resources Protection Zones Ordinance, and provide feedback and recommendations as necessary.

ENVIRONMENTAL JUSTICE AND EQUITY IMPACT:

The Water Resources Protection Zones Ordinance addresses environmental stewardship by protecting water resources, endangered species, and other ecological resources which may be located near disadvantaged communities.

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 a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

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ATTACHMENTS:

Attachment 1: Ordinance

Attachment 2: PowerPoint

Handout 3.5-A: Chen

UNCLASSIFIED MANAGER:

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