



# Santa Clara Valley Water District

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**File No.:** 18-0292

**Agenda Date:** 6/12/2018

**Item No.:** 3.3.

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## BOARD AGENDA MEMORANDUM

### **SUBJECT:**

Resolution Authorizing the Acquisition of a Grant Deed From and Conveyance of a Quitclaim Easement Deed to Francisco J. Arriaga, for the Upper Llagas Creek Flood Protection Project, Project No. 26174051 (Morgan Hill), (District 1).

### **RECOMMENDATION:**

- A. Adopt the Resolution authorizing the ACQUISITION OF A GRANT DEED FROM AND CONVEYANCE OF A QUITCLAIM EASEMENT DEED TO FRANCISCO J. ARRIAGA FOR THE UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT, PROJECT NO. 26174051 (MORGAN HILL);
- B. Approve the Real Property Exchange Agreement 5010-237 & 5027-313.1 and authorize the CEO to execute the Real Property Exchange Agreement;
- C. Authorize the CEO to execute the Certificate of Acceptance for Grant Deed 5010-237; and
- D. Authorize the CEO to execute the Quitclaim Easement Deed 5027-313.1.

### **SUMMARY:**

The Santa Clara Valley Water District (District) is undertaking the Upper Llagas Creek Flood Protection Project (Project) in partnership with the U.S. Army Corps of Engineers (Corps) and the City of Morgan Hill (City) to provide 1% flood protection to approximately 1100 homes and 500 businesses along West Little Llagas Creek, East Little Llagas Creek, and Llagas Creek. The Project is approximately 13.9 miles long and encompasses the City, City of Gilroy, and various unincorporated areas of Santa Clara County, including San Martin.

This transaction involves the acquisition of fee title needed for the Project from Francisco J. Arriaga and the conveyance of unneeded easement to Mr. Arriaga. The proposed acquisition of a Grant Deed (Attachment 3) from Francisco J. Arriaga, Real Estate File No. 5010-237, is required for Phase 2 construction of the Project. In 2015, a Phase I Hazardous Substance Liability Assessment (HSLA) investigation was performed and the results were satisfactory (Attachment 5).

In order to set off the purchase price for the property being acquired, the District offered to quitclaim a portion of its existing easement interests described in Quitclaim Easement Deed Document No. 5027

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-313.1 (Attachment 4) to the property owner, Mr. Francisco J. Arriaga. The District previously acquired easement rights for water management and/or storm water drainage purposes (Deed #19043589, recorded August 1, 2006) from Nancy Y. Sugiyama, Patricia Y. Fabiny, Cynthia Y. Johnson, and Kathleen E. Mann. This acquisition was primarily lands within Llagas Creek and along the eastern riverbank. Attachment 2, Exhibit A is the legal plat and description for the proposed portion of the existing District easement property not required for the construction of the Project. A Quitclaim Easement Deed (17,712± square feet) to the property owner, Mr. Francisco J. Arriaga, is requested for approval. This right of way exchange will result in a savings to the District by avoiding the long term operations and maintenance costs associated with this surplus parcel by quitclaiming District's existing easement rights to Mr. Arriaga.

The District hired an independent appraiser, Smith and Associates, Inc., to appraise the subject parcels. The appraisal evaluated "just compensation" for the Conveyance of Quitclaim Easement Deed (5027-313.1) from the District to Mr. Arriaga at \$13,300.00 and evaluated the Grant Deed (5010-237) from Mr. Arriaga to the District at \$21,600.00 (Date of Valuation: April 14, 2015). The District presented an offer package to Mr. Arriaga to acquire his lands for \$21,600.00 or an offer to also accept the District Conveyance of Quitclaim Easement Deed (appraised value of \$13,300.00), resulting in a net payment by the District of \$8,300.00 to Mr. Arriaga. Mr. Arriaga accepted and signed the District offer for \$8,300 involving the Real Property Exchange Agreement (Attachment 2).

### ***Background***

The Project was originally administered by the United States Natural Resources Conservation Service (NRCS), formally known as the Soil Conservation Service (SCS). In 1999, the Corps was authorized by Congress to take over from NRCS and construct the remaining portion of the Project. However, due to lack of federal funding, the Corps' progress on the Project stalled. To get the Project back on schedule, the Corps approved the District's request to take over the Project's lead to administer the planning (preparation of the environmental documents) and design phases.

On September 22, 2009, the Board approved a cost sharing agreement (Agreement A3313S) with the City to prepare the environmental document, the design plans and the specifications for the Project. The City agreed to reimburse the District up to \$3 million of the total anticipated cost of these work efforts. On April 7, 2014, the District received final payment in full from the City of Morgan Hill. This Board action set the course for the District to take on Project tasks normally performed by the Corps, so as to advance the Project.

Following approval of the cost sharing agreement with the City of Morgan Hill, the Board approved design services agreement A3366A with RMC Water and Environment (RMC) on May 11, 2010 to prepare the design plans and specifications. The Board later approved a consultant agreement A3399A to assume responsibility (due to lack of federal funding) of the Corps' environmental consultant contract with Cardno ENTRIX (ENTRIX) on July 19, 2011, to complete the environmental document, EIS/EIR for the Project. In addition, the Board approved consultant agreement A3685A with Overland, Pacific and Cutler, Inc. (OPC) on October 22, 2013 for real estate services to acquire the 146 parcels required to construct the Project.

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An Environmental Impact Statement/Environmental Impact Report (EIS/EIR) was prepared in 1982 that analyzed the original Llagas Creek Flood Watershed Project developed by the United States Department of Agriculture's SCS in the late 1960s. Since the approval of the 1982 EIS/EIR, numerous changes have occurred within the Project limits, including increased urbanization and riparian habitat, changes in runoff conditions, the federal listing of steelhead, and state/federal listings of California Tiger Salamander as threatened species, have resulted in refinements to the original Project design.

Project elements include:

1. Widening (generally by constructing against one bank) and deepening the channel in all reaches;
2. Construction of a geomorphically stable channel form that includes a sinuous low-flow channel, with geomorphic benches at bankfull elevation where the channel is widened;
3. Permanent maintenance access roads along the top of both banks;
4. Aquatic habitat enhancements;
5. Grade control structures;
6. Modifications to culverts and bridges;
7. Construction of a tunnel beneath Nob Hill through downtown City of Morgan Hill to bypass high flows from a portion of existing West Little Llagas Creek through the City's downtown that can remain natural (as-is), thus preserving the existing vegetation and habitat;
8. New 1.25-mile-long diversion channel (Reach 7a).

#### Certification of the Final EIR and Adoption of the Findings and MMRP

The Draft EIR was completed and a Notice of Completion was filed with the California Office of Planning and Research (OPR) and the Draft EIR was released for public review from January 6, 2014. A public meeting to receive comments on the Project was held on January 15, 2014 within the 45-day public review period. Resource agencies requested additional time for review and comment, which District staff granted. Ten letters with comments were received from the public and agencies in addition to oral comments received at the public meeting. Formal responses to each comment were incorporated into the Final EIR.

On June 10, 2014, the District's Board certified the Final EIR and approved the recommended Tunnel Alternative as the Project.

#### Certification of the Final EIS

U.S. Army Corps of Engineers (USACE) San Francisco Regulatory Division released the Project's Draft Environmental Impact Statement (EIS) for Public Review and 45-day comment period on December 31, 2015. The Public Review comment period ended on February 16, 2016. USACE Regulatory has addressed comments received but is awaiting receipt of U.S. Fish & Wildlife Service's Final Biological Opinion before releasing their Final EIS. Corps Regulatory certification of the EIS is currently anticipated by August 2018.

#### **Next Steps**

Phase 1 construction (Reach 4, Reach 7a diversion, and the on-site mitigation - Lake Silveira) is scheduled to begin in Fall 2018. It is anticipated that staff will request Board adoption of the Phase 1 final plans and specifications and authorizing the advertisement of the Project for obtaining construction bids in Summer 2018, subject to receipt of the last remaining Resource Agency permit required from the U.S. Army Corps of Engineers. Award of the Phase 1 construction contract is anticipated to occur in Fall 2018.

Phase 2 construction (all remaining reaches) is anticipated to be advertised for construction in Spring 2019. Phase 2 final construction documents and permanent acquisition of the remaining 12 or so parcels required for construction are anticipated for completion by December 2018.

**FINANCIAL IMPACT:**

Staff estimates an \$8,300 expenditure associated with approval of this item. Funding for this item is included in the FY18 Project budget.

Property acquisition costs, including appraisal costs and fees, for the Project are eligible at 100% reimbursement by the Department of Water Resources State Subventions Program.

**CEQA:**

On June 10, 2014, the Board certified the Environmental Impact Report for the Upper Llagas Creek Project, Resolution no. 14-67. The Notice of Determination is attached (Attachment 6).

**ATTACHMENTS:**

- Attachment 1: Resolution
- Attachment 2: Exchange Agreement
- Attachment 3: Grant Deed
- Attachment 4: Quitclaim Deed
- Attachment 5: Phase I HSLA
- Attachment 6: Notice of Determination

**UNCLASSIFIED MANAGER:**

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