



Santa Clara Valley Water District

File No.: 18-0318

Agenda Date: 5/23/2018

Item No.: 2.1.

BOARD AGENDA MEMORANDUM

SUBJECT:

Public Hearing on the Proposed Modifications to Project A2: Safe, Clean Water Partnerships and Grants (Nitrate Treatment System Rebate Program); and Project E4: Upper Penitencia Creek Flood Protection of the Safe, Clean Water and Natural Flood Protection Program (Continued from April 10, 2018).

RECOMMENDATION:

- A. Conduct the public hearing on the proposed modifications to Project A2: Safe, Clean Water Partnerships and Grants (Nitrate Treatment System Rebate Program); and Project E4: Upper Penitencia Creek Flood Protection of the Safe, Clean Water and Natural Flood Protection Program;
- B. Adopt the resolution APPROVING MODIFICATION TO THE NITRATE TREATMENT SYSTEM REBATE PROGRAM OF THE SAFE, CLEAN WATER PARTNERSHIPS AND GRANTS OF THE SAFE, CLEAN WATER AND NATURAL FLOOD PROTECTION PROGRAM; and
- C. Adopt the resolution APPROVING MODIFICATION TO THE UPPER PENITENCIA CREEK FLOOD PROTECTION PROJECT OF THE SAFE, CLEAN WATER AND NATURAL FLOOD PROTECTION PROGRAM.

SUMMARY:

Background on the Proposed Modifications:

Project A2: Safe, Clean Water Partnerships and Grants (Nitrate Treatment System Rebate Program)

The proposed modification is for Project A2, Key Performance Indicator (KPI) #3, the Nitrate Treatment System Rebate Program (Nitrate Rebate Program). The Nitrate Rebate Program provides funds to reimburse private well users for the costs of installing a nitrate treatment system to improve water quality and safety.

Nitrate contamination continues to be a groundwater protection challenge in southern Santa Clara County and many areas of the state. About a third of domestic wells tested in the county have nitrate above the drinking water standard, and this rebate program is viewed favorably by regulatory agencies working to reduce well owner exposure.

While the KPI has been met each Fiscal Year (FY), with 100% of eligible rebates awarded, participation has been very low. To date, 29 rebates totaling \$9,463 have been awarded under this

program. Since FY14, the program has expended approximately \$121,000, which is 15 percent of the total program funding. Of the program funds expended to date, approximately \$112,000 was spent on developing and administering the rebate program, including outreach costs.

The Independent Monitoring Committee (IMC) has acknowledged its concern about the cost/benefit ratio for this program and has made recommendations targeted at improving program participation each year for years one through three of the Safe, Clean Water Program. Per the Board's direction, staff implemented each of the IMC's recommendations, which included additional outreach, targeted outreach, and offering rebates for 100 percent of treatment system cost. Despite these additional efforts, the program participation has not significantly increased.

On February 27, 2018, based upon the continued low demand for the Nitrate Rebate Program despite robust outreach efforts, in the IMC's year four report, the committee recommended reallocating all or a portion of the remaining funds to other Safe, Clean Water Program projects. Staff concurred with the IMC's recommendation and on March 13, 2018, the Board directed staff to pursue the modification of KPI #3 and proceed with a formal public hearing.

The proposed modification will reduce the maximum program funding from approximately \$798,000 (adjusted 15-year plan amount) to approximately \$141,000 to align with the demand for the Nitrate Rebate Program. This reduced program funding level includes the funds spent to date to develop, administer and advertise the program, along with an annual allocation of \$4,000, which will be used for rebates through the project's completion date of 2023. This will help ensure continued assistance for well users that want to take advantage of this opportunity to reduce nitrate levels in their drinking water. The annual amount of \$4,000 matches the maximum rebate funding for any previous year. The staff administration and outreach efforts are now minimal and could be absorbed in the District's groundwater management program.

The funds used for rebates to date, plus the annual allocation of \$4,000 through 2023, equate to an estimated \$30,000 for rebates through the project completion. This estimated funding amount designated for rebates is reflected in the proposed modification to the KPI.

Proposed modification to Key Performance Indicator #3:

Reduce number of private well water users exposed to nitrate above drinking water standards by awarding 100% of eligible rebate requests for the installation of nitrate removal systems; up to \$30,000 for all rebates.

The remaining funds from the Nitrate Rebate Program equates to approximately \$650,000 and would be reallocated to one or more projects within the Safe, Clean Water Program. The recipient project(s) will be decided by the Board on May 23, 2018 during a special board meeting.

The original project text from the Safe, Clean Water Program, the strike-through version showing all proposed modifications, and a clean copy version of the modified project text are included as Attachment 1.

Project E4: Upper Penitencia Creek Flood Protection

(Coyote Creek to Dorel Drive - San José)

The primary objective of Project E4, the Upper Penitencia Creek Flood Protection Project, is to reduce the risk of flooding to homes, schools, businesses and highways in the Upper Penitencia Creek Watershed located in San José.

In 2016, the U.S. Army Corps of Engineers (USACE) decided that they could not support a multi-objective project that would be aligned with the interests of the community, resource agencies, and the District. The District therefore switched to a local planning effort aimed at developing a multi-purpose project to meet multiple beneficial goals including improving water quality and providing opportunities for recreational improvements and habitat restoration.

With the urgent demand for flood risk reduction along Coyote Creek, the Capital Improvement Program (CIP) Committee recommended reducing the scope of the Upper Penitencia Creek Flood Protection Project to the planning phase only and reducing the Safe, Clean Water funding from approximately \$42 million to \$2 million. To date, the project has not expended any of its allocated Safe, Clean Water funds and has been supported by the District's Watershed and Stream Stewardship fund.

Proposed modification to the Key Performance Indicators:

1. Complete a planning study report for a flood protection project to provide up to 1% flood protection to 9,000 homes, businesses and public buildings.

While this modification would suspend the Upper Penitencia Creek project's design and construction phases, completing the project's planning phase would position the District to be able to pursue additional funding for design and construction in the future as grant opportunities and other funding sources may become available.

The remaining available funding equates to approximately \$40 million. The current draft CIP for FY19-23 being circulated for public review includes the additional funding from the Upper Penitencia project. The final CIP is scheduled to be presented to the Board on May 8, 2018 for adoption. Upon the Board's adoption of the final CIP, the remaining available funds would be reallocated to the Coyote Creek Flood Protection Project to allow the District to complete flood risk reduction along 9 miles of Coyote Creek from Montague Expressway to Tully Road. The Coyote Creek project currently has local funding for the planning and design phases and partial funding for construction. The additional funding from the Upper Penitencia Creek project would allow the District to construct Coyote Creek's preferred project with local funding only.

The original project text from the Safe, Clean Water Program plan, the strike-through version showing all proposed modifications, and a clean copy version of the modified project text are included as Attachment 2.

Public Hearing Notice Requirements:

On July 24, 2012, the Board adopted Resolution No. 12-62, which specified the limits and conditions by which the District is authorized to institute a special parcel tax for the Safe, Clean Water Program.

As set forth in that Resolution, the Board of Directors may direct that proposed projects in the Safe, Clean Water program be modified or not implemented depending upon a number of factors, including federal and state funding limitations. To modify a proposed project, the Board must hold a formal, public hearing on the matter, which will be noticed by publication and notification to interested parties, before adoption of any such decision to modify or not implement a project. At its regular meeting on March 27, 2018, the Board set the time and place for a formal public hearing on this matter to take place on April 10, 2018.

Staff prepared and published an advertisement in Santa Clara County consistent with the two-week notice requirements stated in California Government Code section 6066. The list of newspapers that published the ad and a copy of the Public Notice Ad is attached to this memo (Attachment 5: Ad Placement Schedule and Sample Public Notice Ad).

FINANCIAL IMPACT:

The financial impact of holding the public hearing is the cost of translating and advertising the public notice ad, which is estimated to be approximately \$40,000 (Attachment 2). These costs will be paid through the Coyote Creek Flood Protection Project budget (26174043) and if necessary, staff will seek a budget adjustment to ensure sufficient funds are available.

The Nitrate Rebate Program (26061010) 15-year Safe, Clean Water Program allocation will be reduced by approximately \$650,000. Those funds will be reallocated to one or more Safe, Clean Water Projects. The recipient project(s) will be decided by the Board on May 23, 2018 during a special board meeting.

The reallocation of the 15-year Safe, Clean Water Program funding for the Upper Penitencia Creek Flood Protection Project (26324001) to the Coyote Creek Flood Protection Project (26174043) will be formally approved through the Board's adoption of the Final CIP for FY 19-23 on May 8, 2018.

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: Nitrate Treatment System Rebate Program
- Attachment 2: Upper Penitencia Creek Project Text Modifications
- Attachment 3: Resolution Nitrate Treatment System
- Attachment 4: Resolution Upper Penitencia Creek
- Attachment 5: Sample Ad and Schedule

UNCLASSIFIED MANAGER:

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