



Santa Clara Valley Water District

File No.: 18-0682

Agenda Date: 10/9/2018

Item No.: 5.1.

BOARD AGENDA MEMORANDUM

SUBJECT:

California Department of Fish and Wildlife Incidental Take Permit No. 2081-2016-064-03 and Agreement for Sale of Conservation Credits from Sparling Ranch Conservation Bank for the Upper Llagas Creek Flood Protection Project, Project No. 26174052 (Morgan Hill) (District 1).

RECOMMENDATION:

- A. Authorize the Chief Executive Officer to execute the California Department of Fish and Wildlife Incidental Take Permit No. 2081-2016-064-03 that acknowledges the Santa Clara Valley Water District will offset potential impacts to existing California Tiger Salamander habitat due to construction of the Upper Llagas Creek Project; and
- B. Authorize the Chief Executive Officer to execute the Agreement for Sale of Conservation Credits between Sparling Ranch Conservation Bank and the Santa Clara Valley Water District, for California Tiger Salamander mitigation credits to satisfy the California Department of Fish and Wildlife Incidental Take Permit No. 2081-2016-064-03 requirements to offset potential impacts resulting from the construction of the Upper Llagas Creek Flood Protection Project.

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 (USACE) and the City of Morgan Hill (City) to provide 1% flood protection to approximately 1,100 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 of Morgan Hill, City of Gilroy, and various unincorporated areas of Santa Clara County, including San Martin. (See Attachment 3 for Project map).

Staff is recommending the Board authorize the CEO to execute an Incidental Take Permit with California Department of Fish and Wildlife (CDFW) and an Agreement for Sale of Conservation Credits with Sparling Ranch Conservation Bank to fulfill the CDFW permit requirements.

Background

On June 22, 2016, the California Department of Fish and Wildlife (CDFW) informed District staff that a California Endangered Species Act (CESA) listed species, the California Tiger Salamander (CTS), was found within dispersal distance of the Project limits. CESA prohibits the take of any species of

wildlife designated by the California Fish and Game Commission as endangered, threatened, or candidate species. The CTS is listed as threatened under CESA statutes; however, CDFW may authorize the take of any such species if certain conditions are met.

On November 28, 2016, staff prepared and submitted an Incidental Take Permit (ITP) application. The ITP is required to lawfully take the species in the event it is encountered during the construction of flood protection features within the designated habitat. To fulfill conditions within the ITP, the District must implement species-specific minimization and avoidance measures, and fully mitigate the impacts of the Project. (Fish & G. Code § 2081 (b); Cal. Code Regs., tit. 14, §§ 783.2-783.8).

The District received the final, CDFW-executed ITP on August 3, 2018 (Attachment 1). CDFW has determined that permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking of CTS in implementing Project activities. This determination is based on factors including an assessment of the importance of CTS in the Project area, the extent to which Project activities will impact the habitat, and CDFW's estimate of the acreage required for adequate compensation.

To meet CDFW's permit requirement, the District is to purchase a total of 29.47 acres of CTS upland mitigation credits from a CDFW-approved mitigation conservation bank, or purchase and manage the habitat for this species with a third-party conservation easement holder. District staff has opted to use a mitigation bank to fulfill this Project requirement for the following reasons: 1) mitigation banks reduce the uncertainty over whether the compensatory mitigation will be successful in offsetting project impacts; 2) mitigation banks are typically more cost effective than permittee-responsible compensatory mitigation; and 3) mitigation banks enable the efficient use of limited agency resources in the review of compliance monitoring.

The California Tiger Salamander (CTS) is also listed as threatened under the federal Endangered Species Act (8/4/2004). District staff has worked with the United States Army Corps of Engineers (USACE) to obtain concurrence that the mitigation specified from the state of California for this species will also fulfill federal mitigation requirements for the United States Fish and Wildlife Service (USFWS). Staff has reviewed the draft Biological Opinion from USFWS dated March 5, 2018, and the mitigation required is consistent with the state requirements for this species.

To fulfill both federal and state mitigation requirements for the CTS, District staff identified two mitigation banks within the designated service area which have been approved for use by both federal and state wildlife agencies. Based on a recommendation by USFWS, District staff selected the Sparling Ranch Conservation Bank (Bank) due to its proximity to the Project and because this bank had fewer contractual requirements. On June 13, 2017, USFWS and CDFW approved this Bank to offer CTS credits for sale as compensation for the loss of CTS habitat. District staff has worked with the Bank on the Agreement for Sale of Conservation Credits for the Project (Attachment 2) for 29.47 CTS upland habitat credits at \$35,000 per credit, for a total Agreement cost of \$1,031,450.

Next Steps

If the Board approves staff's recommendation, one more permit remains to be acquired for Project

construction-the USACE 404 permit. Staff anticipates receipt of this permit in fall 2018, and is preparing to seek Board approval of the design plans and specifications and authorization to seek construction bids before the end of this calendar year.

The Project will be constructed in two phases. Phase 1 construction will include Reaches 4 and 7a and the on-site mitigation at Lake Silveira. Phase 2 construction will include the remaining reaches (Attachment 3) and will likely be initiated a year after Phase 1 construction begins. Approximately 90 of the 100 parcels necessary for Phase 2 construction have been acquired, and staff anticipates acquiring the remaining parcels by March 2019.

FINANCIAL IMPACT:

Execution of the Agreement for Sale of Conservation Credits from Sparling Ranch Conservation Bank will cost \$1,031,450 for California Tiger Salamander mitigation credits to satisfy the California Department of Fish and Wildlife Incidental Take Permit No. 2081-2016-064-03 requirements for the Upper Llagas Creek Flood Protection Project. Funding for this transaction is included in the Project's Board-approved FY19 Budget.

CEQA:

Certification of the EIR

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 4).

Certification of the Final EIS

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. The USACE Regulatory addressed the comments in their Final EIS, with Corps Regulatory certification of its Final EIS anticipated in fall 2018.

ATTACHMENTS:

- Attachment 1: Incidental Take Permit
- Attachment 2: Agreement for Sale of Conservation Credits
- Attachment 3: Project Map
- Attachment 4: Notice of Determination

UNCLASSIFIED MANAGER:

Katherine Oven, 408-630-3126