



Santa Clara Valley Water District

File No.: 23-0792

Agenda Date: 8/8/2023

Item No.: 3.4.

BOARD AGENDA MEMORANDUM

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

SUBJECT:

Adopt a Resolution Certifying the Final Environmental Impact Report for the Fish and Aquatic Habitat Collaborative Effort Project and Adopting CEQA Findings of Fact, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program for the Fish and Aquatic Habitat Collaborative Effort Project, and Approve the Staff Recommended Environmentally Superior Alternative as the Fish and Aquatic Habitat Collaborative Effort Project for Implementation.

RECOMMENDATION:

- A. Consider the Potential Environmental Effects of the Fish and Aquatic Habitat Collaborative Effort Project as discussed in the Final Environmental Impact Report;
- B. Adopt a Resolution CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE FISH AND AQUATIC HABITAT COLLABORATIVE EFFORT PROJECT AND ADOPTING CEQA FINDINGS OF FACT, STATEMENT OF OVERRIDING CONSIDERATIONS, AND MITIGATION MONITORING AND REPORTING PROGRAM; and
- C. Approve the Staff Recommended Environmentally Superior Alternative as the Fish and Aquatic Habitat Collaborative Effort Project for implementation in the Guadalupe River and Stevens Creek watersheds.

SUMMARY:

Santa Clara Valley Water District (Valley Water) manages an integrated water resources system that includes the supply of clean, safe water, flood protection and stewardship of streams in Santa Clara County. The project area for this Final EIR, published on June 30, 2023 (Attachment 1), includes portions of the Stevens Creek and Guadalupe River watersheds, including mainstream tributaries and water supply facilities where Valley Water holds corresponding water rights licenses. The Stevens Creek and Guadalupe River watersheds are located in Santa Clara County and drain to the southern end of the San Francisco Bay.

In 1996, the Guadalupe-Coyote Resource Conservation District (GCRCD) filed a complaint with the State Water Resources Control Board (SWRCB). The complaint alleged that Valley Water operations affected fish and wildlife, in conflict with requirements of the Water Code, Fish and Game Code, and other State of California laws.

In response to this complaint, Valley Water convened local environmental organizations and state and federal resource agencies in settlement negotiations and developed what is known as the Fish and Aquatic Habitat Collaborative Effort (FAHCE). As of the time of Final EIR publication, FAHCE participants include Valley Water; Trout Unlimited; California Trout, Inc.; the Northern California Council of Federation of Fly Fishers (now known as the Northern California Council of Fly Fishers International); the Pacific Coast Federation of Fishermen's Associations; the National Marine Fisheries Service (NMFS); the U.S. Fish and Wildlife Service (USFWS); and the California Department of Fish and Wildlife (CDFW, formerly the California Department of Fish and Game); this group is collectively referred to hereafter as the Initialing Parties. Measures developed through FAHCE are intended to modify instream flows and improve habitat conditions, as appropriate, to meet the management objectives specified in the *Settlement Agreement Regarding Water Rights of the Santa Clara Valley Water District on Coyote, Guadalupe and Stevens Creeks*, initialed by the Initialing Parties on May 27, 2003 (Settlement Agreement, Appendix B of Final EIR).

It should be noted that Valley Water has implemented many projects since the FAHCE process was initiated in 1996. These projects align with the objectives of the Settlement Agreement and have in many cases resulted in early implementation of elements identified in the Settlement Agreement and have improved baseline conditions for fisheries. These projects include geomorphic restorations, fish barrier removals, installation of fisheries habitat such as large woody debris and gravel augmentation, initiation of programmatic monitoring for each watershed which includes fisheries, temperature, flow, depths, velocity and various other monitoring elements.

In addition, to support the adaptive management component of FAHCE, Valley Water initiated programmatic monitoring in 2018 and commenced a three-year pilot FAHCE-plus flow project in Guadalupe Creek and Stevens Creek in 2020.

Project Description and Environmental Benefits

The proposed FAHCE Project implements a Fish Habitat Restoration Plan (FHRP), which includes restoration measures specified in a 2003 FAHCE Settlement Agreement. The proposed project includes both flow measures (reservoir re-operations rule curves) and non-flow measures such as fish barrier remediation, and measures to increase spawning and rearing habitat. The FHRP outlined up to four phases to implement restoration measures through an adaptive management program (AMP). Phase 1 consists of implementing reservoir re-operation rule curves and facility improvements necessary to support fish passage, spawning and rearing habitat, and hydrologic enhancements over a ten-year term. Phases 2 and 3 would be implemented only if program objectives are not being met through preceding phase(s). Phase 4 would continue implementation and maintenance of the preceding phase where program objectives are being met, and would continue the adaptive management program, including monitoring, data analysis and report preparation.

Implementation of the FHRP will improve fish passage and enhance fish habitat within the Stevens Creek and Guadalupe River watersheds while maintaining a reliable current and future water supply and water deliveries where Valley Water holds water rights licenses in northern Santa Clara County.

Staff Recommended FAHCE-plus Alternative as the FAHCE Project

Staff is recommending the FAHCE-plus Alternative as the FAHCE Project for implementation (Attachment 3). The FAHCE-plus Alternative is the environmentally superior alternative compared to the original Proposed Project (FAHCE) evaluated in the EIR. The FAHCE-plus Alternative is intended to increase the benefit of flow measures, i.e., reservoir releases during key salmonid life stages. While including all the non-flow measures consistent with the original Proposed Project, this alternative further enhances the fisheries benefits of the original Proposed Project's rule curves (flow measures) and includes the following changes:

- **Pulse Flow Revisions**, which include adjustment of the FAHCE flows in magnitude, duration, and frequency based on model outputs specific to each watershed, prioritizes multipurpose pulse flows to aid in both up-migration and outmigration of steelhead. The revisions also include additional safeguard pulse flows specific to each watershed intended to promote fish migration even in low water years.
- **Winter Base Flow Adjustments**, which include conservation of reservoir storage in the winter for pulse flows; this would make summer rearing flows more reliable by reducing winter base flows and enables additional migration pulse flows.
- **Summer Base Flow Adjustments**, which include an increase in the water temperature limit in the reservoir used to calculate the reservoir cold pool volume available for summer cold water releases in the Cold-Water Management Zone (CWMZ), allowing a greater portion of the reservoir volume to be used for summer flows to enhance summer fish rearing habitat while still meeting the water temperature targets in the CWMZs.

Public Outreach Efforts

For the development of the Settlement Agreement and FHRP, Valley Water has coordinated and engaged with several agencies and stakeholders as outlined below:

- a Technical Advisory Committee made up of Valley Water staff, technical consultants, technical representatives from the Initialing Parties, and a FAHCE Consensus Committee, which was a policy group with an objective of establishing foundational principles for FAHCE,
- the Initialing Parties consisting of Valley Water, California Department of Fish and Game (now CDFW), NMFS, USFWS, GCRCD (withdraw in 2020), Trout Unlimited, Pacific Coast Federation of Fishermen's Associations, Urban Creeks Council (not active), Northern California Council of Federation of Fly Fishers (now known as the Northern California Council of Fly Fishers International), and California Trout, Inc.),
- the FAHCE Technical Work Group made up of representatives/consultants of Initialing Parties; and
- the Adaptive Management Team, consisting of representative(s) from each of the Initialing Parties.

Valley Water has conducted periodic meetings with these various stakeholders outside of the formal CEQA process since 2015. Valley Water's website (www.valleywater.org/FAHCE <<http://www.valleywater.org/FAHCE>>) includes links to over three dozen FAHCE updates or workshops provided to the Board of Directors, Stream Planning and Operations Committee, Environmental Water Resources Committee, and other Board committees.

Environmental Review

As the lead agency under CEQA, Valley Water circulated a Notice of Preparation (NOP) for the Proposed Project on February 2 through March 3, 2015. To provide an additional opportunity for public input on the scope and content to be addressed in the EIR, Valley Water later held a scoping meeting in June 2017.

A Draft EIR was then prepared to provide the Board, public, responsible agencies, and trustee agencies with information about the potential environmental effects of the FAHCE Project. The Draft EIR analyzes a reasonable range of alternatives based on input from environmental assessments, the public participation process, and resource agencies. The Draft EIR describes project elements, evaluates project impacts, and proposes mitigation measures to avoid or reduce significant impacts. The Draft EIR was prepared in compliance with the California Environmental Quality Act (CEQA, Public Resources Code section (§) 21000 et seq.) and the State CEQA Guidelines (California Code of Regulations [CCR] title 14, § 15000 et seq.).

On June 30, 2021, Valley Water released the Draft EIR for public review (State Clearinghouse No. 2015022008). The public review period began on June 30, 2021, and was extended to October 15, 2021, in response to agency requests.

On July 21, 2021, a virtual public meeting was held online to provide information on the Proposed Project and to provide agencies and interested individuals with information on how to comment on the contents of the Draft EIR. Copies of the Draft EIR and appendices were posted online, and hard copies were available for pickup at the Valley Water headquarters and at several public libraries throughout the County.

Valley Water received 25 individual comment letters in total. Written comments received on the Draft EIR are included and responded to in Chapter 6 of the Final EIR.

On June 30, 2023, the Final EIR (Attachment 1) was posted on Valley Water's FAHCE website, and a notice of availability of the Final EIR with notification of this Board hearing was filed with the State Clearinghouse. Subsequently, staff identified several minor corrections needed for the Final EIR and prepared an errata sheet (Attachment 2) to be included as part of the Final EIR for the Board's consideration.

Summary of Environmental Impacts

The Final EIR concludes that the FAHCE-plus Alternative would result in no or less-than-significant impacts relating to hydrology, groundwater resources, water supply, recreation, air quality, greenhouse gas emissions/energy, and utilities.

The FAHCE-plus Alternative would provide long-term beneficial impacts for water quality, aquatic biological resources, and certain terrestrial biological resources. Both the flow and non-flow measures of this Alternative provide overall benefits to steelhead in both Stevens Creek and in Guadalupe River and to Chinook Salmon in Guadalupe River project areas, with the FAHCE-plus

Alternative flow measures overall providing greater benefits to steelhead habitat conditions and migration potential than the Proposed Project (FAHCE) flow measures.

The Final EIR identifies significant environmental impacts related to certain terrestrial biological resources, cultural resources, tribal cultural resources, paleontological resources, and noise. Significant impacts of non-flow measures on special-status species, and on riparian and other sensitive natural communities, and paleontological resources would be reduced to less than significant levels with the implementation of mitigation measures.

The Final EIR concludes that the impacts of non-flow measures in the FAHCE-plus Alternative on cultural resources, tribal cultural resources, and noise would remain significant and unavoidable.

In addition to the FAHCE-plus Alternative, the Final EIR evaluates a No Project Alternative and a Non-flow Measures Only Alternative. The FAHCE-plus Alternative was determined to be environmentally superior.

Statement of Overriding Considerations

CEQA requires the decision-making body to balance, as applicable, the economic, legal, social, technological, or other benefits of a project against its unavoidable environmental risks when determining whether to approve the project. When a lead agency approves a project that will result in significant effects, which are identified in the Final EIR but are not avoided or substantially lessened, the agency must adopt a statement of overriding considerations (CEQA Guidelines, § 15093). The Statement of Overriding Considerations sets forth the specific reasons why the agency finds that the project's benefits would render the Project's unavoidable adverse environmental effects acceptable. (CEQA Guidelines § 15093, 15043(b); see also Public Resources Code § 21081(b).)

As noted, Valley Water has determined that the FAHCE-plus Alternative has significant unavoidable impacts on cultural resources, tribal cultural resources, and noise, despite efforts to mitigate them. However, Valley Water has evaluated the benefits of the FAHCE-plus Alternative, supported by substantial evidence in the EIR and the administrative record. The benefits include restoring and maintaining healthy fisheries, ensuring flexible and reliable groundwater recharge, and implementing adaptive flow and non-flow measures. There are also specific positive impacts on water quality, aquatic biological resources, and certain terrestrial biological resources.

Considering these benefits and weighing them against the unavoidable environmental impacts, prior to Project approval, the Board is being asked to adopt a Statement of Overriding Considerations that finds that the benefits of the FAHCE-plus Alternative outweigh the significant unavoidable impacts on cultural resources, tribal cultural resources, and noise.

Next Steps

Staff has completed the Final EIR and is requesting Board's certification of the EIR and approval of the FAHCE-plus Alternative as the Project. Before approval of the Project, the Board is recommended to adopt the CEQA Resolution (Attachment 3), which certifies the Final EIR, adopts Findings of Fact and the Statement of Overriding Considerations, and adopts a Mitigation Monitoring

and Reporting Program. The Board is then recommended to approve the FAHCE-plus alternative as the FAHCE Project for implementation.

Should the Board approve the FAHCE-plus Alternative, staff will pursue the necessary water rights and permits and initiate implementation of FAHCE-plus measures. The Final EIR includes a potential implementation schedule for non-flow and flow measures (see Attachment 4).

Staff anticipates requesting future Board approval for funding and implementing specific FAHCE-plus restoration measures outlined in the Fish Habitat Restoration Plan (Appendix A of the FEIR).

ENVIRONMENTAL JUSTICE IMPACT:

There are no environmental justice impacts associated with this item. Completion of this Project would have a positive impact on the communities within the Guadalupe River and Stevens Creek watershed, including disadvantaged community, by restoring and maintaining healthy fisheries, ensuring flexible and reliable groundwater recharge, improving water quality, aquatic and certain terrestrial biological resources.

The Final EIR analyzed the Phase 1 non-flow measures at a programmatic level since those projects have not yet been designed. The Phase 1 non-flow measures will be developed as part of the FACHE Adaptive Management Program and before those individual projects are approved, Valley Water would conduct environmental review, permitting, and environmental justice impacts evaluation as necessary.

FINANCIAL IMPACT:

The FAHCE operating project (Project No. 92041014) is included in the FY 2023-24 Board Adopted Budget at approximately \$3.7 million.

The FAHCE Implementation, Project No. 92C40357, is included in the Capital Improvement Program (CIP) Fiscal Years (FY) 2024-28 Five-Year Plan, with the project budget estimated to begin in FY 2026-27. The estimated cost for capital investment is approximately \$145 million over the 15-year CIP planning cycle subject to Board approval as capital projects are ready for implementation. The project is funded through the Water Enterprise Fund (Fund 61).

CEQA:

A Final EIR has been prepared for the FAHCE Project and is before the Board for certification. The Final EIR is available for the Board and public review on the Valley Water's website.

ATTACHMENTS:

- Attachment 1: Final EIR Cover Page and Link
- Attachment 2: Final EIR Errata Sheet
- Attachment 3: Resolution with Exhibits

Attachment 4: Phase 1 Restoration Measures, Potential Schedule

Attachment 5: FAHCE Overview and Final EIR Presentation

*Handout 3.4-A: Lucas

*Handout 3.4-B: NMFS

*Handout 3.4-C: Staff Responses

*Handout 3.4-D: CalTrout

*Handout 3.4-E: SFBRWQCB

UNCLASSIFIED MANAGER:

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