



Santa Clara Valley Water District

File No.: 15-0375

Agenda Date: 10/13/2015

Item No.:

BOARD AGENDA MEMORANDUM

SUBJECT:

Fish and Aquatic Habitat Collaborative Effort (FAHCE) - Response to California Department of Fish and Wildlife (CDFW) request to extend the FAHCE project schedule to allow for review of the data and modeling supporting the Fish Habitat Restoration Plan.

RECOMMENDATION:

- A. Direct staff to modify the FAHCE project schedule, issued by the Board on June 22, 2015, to extend the review period as requested by Mr. Scott Wilson, Bay Delta Regional Director for the California Department of Fish and Wildlife, in his letter dated September 18, 2015; and
- B. Approve and authorize the District Board Chair to execute and send the October 13, 2015 written response to CDFW and other FAHCE signatories.

SUMMARY:

This item addresses the letter from CDFW (Attachment 2) requesting that the Board direct staff to extend the FAHCE project schedule for issuance of the public Draft Fish Habitat Restoration Plan (FHRP) and associated Draft Programmatic Environmental Impact Report (Draft PEIR). This action would allow the signatories to the FAHCE Settlement Agreement additional time to review the data, modeling approach and alternatives analysis for reservoir re-operations proposed in the FHRP.

CDFW is a key State agency that advises the State Water Resources Control Board (SWRCB) regarding the effects of the SWRCB water rights decisions on public trust resources, including fisheries. CDFW's interest in extending the FAHCE project schedule is consistent with its mission and would likely result in a better outcome for the pending water rights change petition review.

BACKGROUND:

The FAHCE Settlement Agreement was initialed in 2003, by the District, Guadalupe Coyote Resource Conservation District (GCRCD), Trout Unlimited; and the CDFW; U. S. Fish and Wildlife Service (USFWS), and National Marine Fisheries Service (NMFS) (Collectively the "FAHCE Signatories"), to address a water rights complaint filed by the GCRCD with the SWRCB. The complaint alleges that District water supply operations adversely impact aquatic species in Coyote Creek, Guadalupe River, and Stevens Creek in conflict with requirements under the public trust doctrine, Water Code and Fish and Game Code.

In September 2014, the Board directed staff to expedite efforts to complete certain condition precedents and tasks identified in the FAHCE Settlement Agreement to resolve the water rights complaint via the SWRCB water rights change petition process. An accelerated schedule identified the tasks needed to resolve the water rights complaint, including the development of the Fish Habitat Restoration Plan based on FAHCE Settlement Agreement provisions as the basis for

the environmental improvements that support the water rights change petition.

At its June 22, 2015, meeting, the Board directed staff to implement the request of the FAHCE complainants (Attachment 3) to consult with the FAHCE Signatories to resolve any differences regarding the analytical methods supporting the Draft PEIR alternative analysis.

Consistent with the schedule, an administrative draft Fisheries Habitat Restoration Plan was distributed to FACHE Signatories for review on June 19, 2015. Likewise, an administrative Draft PEIR was provided to them on August 31, 2015. The goal of the process is to consider the comments from the FAHCE Signatories to ensure their concerns are addressed prior to the CEQA review process. A Draft PEIR is scheduled for release for the 60-day public review period on October 31, 2015; the Final PEIR is scheduled for Board certification in late February 2016.

To this end meetings with the FACHE Signatories were set up monthly to address issues regarding FAHCE Settlement Agreement resolution and a Technical Workgroup, comprising experts from each FACHE Signatory, was convened to review the technical aspects, including analysis of the proposed reservoir re-operation strategy, alternatives analysis and proposed monitoring and modeling programs. Technical meetings focused on:

- * the hydrologic and water temperature models used to evaluate efficacy of the proposed re-operations to provide instream flow needs for salmonids;
- *data and sample outputs from the model; parameters for analysis of the continuous flow alternative; and
- *existing fisheries data, potential monitoring methods, and overall FAHCE project goals.

The technical workgroup consists of several experts from the FACHE Signatories that are new to the FAHCE process. It became clear the amount of information that would need to be digested to allow a fair evaluation was going to be a challenge. The administrative Draft PEIR did not contain analysis of the continuous flow alternative due to time constraints. The need for time to review the data and analysis was raised at the Signatory Group meeting held on September 15, 2015. Consequently, CDFW sent a letter to the Board requesting up to three months additional time to fully evaluate the modeling related to the reservoir re-operations continuous flow alternative.

To fulfill this request, staff has prepared a response letter (Attachment 1) that specifies a revised schedule that adds another three months to the previous FAHCE project schedule (Attachment 4).

NEXT STEPS:

The Technical Workgroup is scheduled to meet on October 15th and 29th, November 12th, and December 3rd and 17th. October meetings will focus on the comparison of the rule curve and continuous flow alternative and its potential effects on the fisheries. Meetings in November and December will focus on the scope and methodology of the monitoring program, and process for the adaptive management program.

FINANCIAL IMPACT:

There is no direct financial impact with this item.

CEQA:

The recommended action does not constitute a project under CEQA because there is no potential for the action to result in direct or reasonable foreseeable indirect physical change in the environment. A PEIR evaluating the environmental aspects of the Fish Habitat Restoration Plan and actions associated with the water rights petition approvals will be provided for the Board to consider as part of its project approval process.

ATTACHMENTS:

Attachment 1: Proposed Response Letter to CDFW

Attachment 2: 091815 Letter From CDFW

Attachment 3: 062315 Letter to Water and Power Law Group PC

Attachment 4: FAHCE Water Rights Schedule

*Attachment 5: Handout 4.4-A, R McMurtry

UNCLASSIFIED MANAGER

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