



# Santa Clara Valley Water District

**File No.:** 15-0488

**Agenda Date:** 11/10/2015

**Item No.:** 4.2.

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## BOARD AGENDA MEMORANDUM

### **SUBJECT:**

Quarterly Update on the Fisheries and Aquatic Habitat Collaborative Effort (FAHCE) Process.

### **RECOMMENDATION:**

A. Discuss the status of the FAHCE Settlement Agreement (Settlement Agreement) - Fish Habitat Restoration Plan, and of the water rights change petition process.

\*B. Extend the schedule to complete the Fish Habitat Restoration Plan and Environmental Impact Report (EIR) to December 31, 2016 to accommodate implementation of the FAHCE Modeling Study Plan, which was developed per the request of the Guadalupe - Coyote Resource Conservation District (GCRCD).

\*C. Direct staff to: 1) modify the existing environmental consulting agreement scope of services with HDR, Engineering, Inc. to support the additional services needed to implement the FAHCE Modeling Study Plan; and 2) allocate existing funds from the FAHCE project budget to support the legal services agreement for consulting services from water resources modeling expert, Dr. David Purkey of Stockholm Environment Institute.

### **SUMMARY:**

This item provides a status on Board direction (September 23, 2014) to submit the petitions for change in water rights to the State Water Resources Control Board (SWRCB) to address the Fisheries and Aquatic Habitat Collaborative Effort (FAHCE) Settlement Agreement. The Settlement Agreement was initialed in 2003 by the District, Guadalupe - Coyote Resource Conservation District (GCRCD), Trout Unlimited, the California Department of Fish and Wildlife (CDFW), U. S. Fish and Wildlife Service (USFWS), and National Marine Fisheries Service (NMFS), to address a water rights complaint filed by the GCRCD. The complaint alleges that District water supply operations on Coyote Creek, Guadalupe River, and Stevens Creek adversely impact steelhead trout and Chinook salmon. A key Settlement Agreement provision is the Fish Habitat Restoration Plan (Fish Plan) which proposes changes in reservoir releases to support instream flow needs for salmon and steelhead, stream channel enhancements, barrier removal, and an adaptive management program, to address the complaint.

On April 30, 2015, staff submitted fifteen Petitions for Change to the SWRCB, to address the technical aspects of the water rights subject to the Settlement Agreement. Technical changes include updated maps to correct the location of the diversions; changes in the purpose of use to reflect current beneficial use of the water, and modification of the place of use to a county-wide service area. The SWRCB provided comments on the submittal on October 23, 2015, and the comments were minor: 1) a request for more information on the diversion point for Upper Penitencia Creek, and 2) clarification regarding whether the proposed countywide

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place of use represented an actual or planned distribution area. Concurrent to SWRCB review of the petitions, District staff have been preparing the environmental aspects of the change petition including activities contemplated by the Settlement Agreement and the Program Environmental Impact Report (PEIR) needed to fulfill CEQA requirements for the completion of the water rights review process.

In June 2015, the Board approved an updated schedule and directed staff to work with the complainant's requests to 1) complete the Fish Habitat Restoration Plan and Environmental Impact Report (EIR) no later than December 31, 2015; 2) consult with initialing parties on the scientific work plan for the EIR to resolve any differences regarding analytical methods for the plan alternatives; 3) implement all remaining non-flow measures in the Settlement Agreement not later than five years after the SWRCB approval of the Water Rights Change Petition; and 4) work with other initialing parties to amend or supplement the FAHCE Settlement Agreement to specify the pathway for regulatory approvals.

Consistent with this direction, an administrative draft Fisheries Habitat Restoration Plan was provided to the initialing parties on June 19, 2015 and an administrative draft working section of the PEIR was provided on August 31, 2015. A technical committee consisting of staff and experts from the initialing parties provided some 300 comments on the administrative draft Fish Plan and PEIR sections. Most of these comments suggested removing aspects of the Fish Plan that were not in the Settlement Agreement; several requested a better description of the monitoring and adaptive management program; however the most serious comments questioned the approach used to evaluate the environmental effect of the proposed reservoir reoperations rule curves.

### Next Steps

As discussed at the Board meeting on October 13, 2015, the GCRCD requested that the Board add a month to the schedule to allow development of a technical study plan for the parties to agree on the method used to model the reservoir reoperations proposed in the Settlement Agreement for sufficiency to meet the objectives of the complaint. The District retained a water resources modeling expert, Dr. David Purkey of Stockholm Environment Institute, in Davis to assist HDR, the CEQA consultant and staff in preparing the study plan and to conduct the analyses. The plan will be vetted by the Technical Committee on October 29, 2015, for Signatory Group discussion on November 5, 2015; the outcome of these discussions will be provided to the Board at the November 10, 2014 meeting.

### FINANCIAL IMPACT:

This item is for discussion only and there is no financial impact; however staff intends to return to the Board at a future date to amend the HDR contract to reflect the change in the level of effort directed to the additional technical evaluation of the Fish Plan.

### CEQA:

The recommended actions do not constitute a project under CEQA because there is no potential for the action to result in direct or reasonably foreseeable indirect physical change in the environment. A Program Environmental Impact Report (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

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as part of its project approval process. The Notice of Preparation for the FAHCE EIR was published on January 30, 2015.

**ATTACHMENTS:**

\*Original 10-day Board Agenda Memo

\*Supplemental Board Agenda Memo

\*Supplemental Attachment 1: FAHCE Water Rights Petition Schedule

\*Attachment 4: Handout 4.2-A Julie Gantenbein Email

**UNCLASSIFIED MANAGER**

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