



Santa Clara Valley Water District

File No.: 17-0318

Agenda Date: 5/18/2017

Item No.: 4.

BOARD AGENDA MEMORANDUM

SUBJECT:

Consider Recommendations Relating to the Master Reservoir Lease and Proposed Master Partnership Agreement Between the County of Santa Clara Parks and Recreation Department and Santa Clara Valley Water District.

RECOMMENDATION:

- A. Receive report relating to public recreation at District property, including reservoirs and other joint engagements of the Santa Clara Valley Water District and the County of Santa Clara Parks and Recreation Department;
- B. Receive report relating to options to develop a County-proposed Master Partnership Agreement between the District and the County that would both replace the Master Reservoir Lease and expand the scope of cooperation to other areas of mutual interest, including trails development, natural resource management, and public recreation at District facilities; and
- C. Provide direction to County Administration and District staff regarding mutual commitments and processes to coordinate efforts directly for, or associated with, recreation, including planned land acquisition, construction of recreational improvements, pond/lake and stream reconfiguration, and trail development.

SUMMARY:

For over 60 years the Santa Clara Valley Water District (District) and the Santa Clara County Department of Parks and Recreation (County Parks) have worked together to effectively manage an integrated system of land and water that serves multiple purposes. By working together, we have protected water quality, provided for recreational use of the reservoirs and creeks, provided education on water conservation, enhanced natural resources, restored habitats, improved flood protection, and removed mercury from the environment.

Under an agreement with the District, County Parks has the authority to make available for public recreation ten reservoirs and five ponds owned and operated by the District. Of the 52,000 acres that comprise the County's park system, approximately 6,000 acres of District property is leased by County Parks for recreational purposes, and approximately half of the County's 28 parks incorporate or abut District property. County Parks spends millions of dollars each year managing public use of District reservoirs and riparian corridors. Through this partnership, the agencies support public launch of approximately 23,000 boats annually. County Parks conservatively estimates that approximately 66,000 visitors participate in boating and approximately 138,000 visitors participate in

fishing each year. In addition, approximately 5,000 people camp at the Coyote Lake Campground constructed and operated by County Parks on District property. The combined total of these activities accounts for roughly 7% of the total County Parks visitation. In addition to reservoir use, the multi-jurisdictional regional trails system that follows creek corridors partially controlled by the District supports millions of recreational visits annually. The public values the seamless access and recreational use of the combined system of County and District lands, reservoirs, creeks, and visitor-serving facilities.

Our two organizations successfully collaborate on numerous projects, including, but not limited to, the Vessel Inspection Program, remediation of mercury at Almaden Quicksilver County Park, flood protection, creek clean-up events, the Habitat Conservation Plan, and developing an inter-connected system of trails in cooperation with numerous other agencies. A list of other examples of the cooperative projects between the District and County Parks is included as Exhibit 1.

Historically two core documents have provided formal structure to our partnership: The Master Reservoir Lease, by which the District allows public recreation under the management of County Parks, and the Master License agreement by which the County provides for District access and use of Park property. In July 2014, County Parks staff and District staff met to discuss the renewal of both documents with the goal of developing an updated and expanded agreement that would incorporate the purposes of both agreements prior to the September 2016 expiration of the Master Reservoir Lease. However, staff of the respective agencies were unable to reach agreement on updated agreements and, in August 2016, the respective Boards approved a two-year extension of the existing Master Reservoir Lease. During the District Board's discussion related to approving the extension of the agreement, District Board Members agreed to request a joint meeting of the respective Boards to discuss the policy issues together.

Since August 2016, District and County staffs have continued to meet and discuss the County Parks' goal of negotiating a new agreement that would comprehensively address the policy framework and mutual goals of the broader partnership between the District and County Parks. In seeking to develop an updated agreement, the County is interested in exploring the potential for the District to enhance its District Act-described powers to provide beneficial uses of land and water for recreational purposes in support of the County Parks system. The County is also interested in enhancing the synergy between our organizations in response to the public desire for recreational access to District-owned property and facilities.

Although the agency staffs have made some progress, they have been unable to reach agreement on key provisions related to the level of the District's and the County's commitment to continuing public access and recreational use of District lands and water, particularly as related to:

- Which agency should bear the costs of removing and replacing recreational facilities no longer needed if recreation is terminated at one or more reservoirs during the agreement term or upon termination of the agreement.
- The potential for District cost sharing in recreation facility upgrades or in construction of new recreational amenities, and
- The apportionment of liability between the two agencies arising from public access and recreational activity.

At the Joint Meeting, County Parks will present a summary of the history of the partnership, provide an overview of the integrated system of land and water that is owned by the two agencies. County Parks and District representatives will present a number of important issues for the two agencies to address as we consider the future of County Parks-supported public access and recreational use of District property. Staffs will seek policy direction on the issues from the respective Boards.

Contract History

County Parks has managed District reservoirs for recreational use since 1958. The Board of Supervisors approved a Master Reservoir Lease with the District on September 10, 1996 for a 20-year term. The lease was first amended on December 13, 2005 for the purpose of modifying the areas covered by the lease, with no change to the term. The lease was amended a second time in 2009, approved by the County on September 29, 2009 and fully executed by the District on October 22, 2009 (for the purpose of expanding the area of reservoir lands covered under the existing agreement). The District approved a two-year extension of the current lease on August 23, 2016 and the County of Santa Clara approved the lease extension on August 30, 2016. The current lease is attached as Exhibit 2.

Legislation and Agency Policies Related to Public Access and Recreational Use

District Legislation and Policies

In support of public recreation, the District Act describes the following purposes and powers where the District may take action:

- i. Section 4(c)(7) Enhance, protect, and restore streams, riparian corridors, and natural resources.
- ii. Section 4(c)(8) Preserve open space in Santa Clara County and support the county park system in a manner that is consistent with carrying out the powers granted by this section.
- iii. Section 5(16) Acquire, construct, maintain, operate and install landscaping or recreational facilities in connection with any dam, reservoir, or other works owned or controlled by the District.

The District Board adopted Ends Policies including:

- i. E4.2 - Improved quality of life in Santa Clara County through appropriate public access to trails, open space and District facilities.
- ii. E4.2.1 - Support healthy communities by providing public access to additional trails, parks, and open space along creeks and in the watersheds.
- iii. E4.2.2 - Support healthy communities by providing appropriate public access to District facilities

The District's Board adopted various policies regarding the District's role in support of public access and recreational use (commonly described by the District as Joint Use), which Park staff interprets as being more limiting than the District Act allows. Resolution No. 72-44 "Stating Policy Regarding Recreation Uses of Groundwater Recharge Facilities" (Exhibit 3) favoring compatible

recreation uses adjacent to and of the water surface of groundwater recharge facilities. The provision of recreational structures, facilities and amenities and their maintenance for safety and sightlines, together with the control of the recreational use shall be the responsibility of the public agency under contract with the District. The resolution further states that water supply revenues will not be used to meet the cost of recreation uses such as on shore facilities, fish stocking and replacement, public liability insurance, policing and supervision.

The District's Board also adopted Resolution No. 74-38 "Declaring Policy Governing Joint Public Use of District Facilities" (Exhibit 4) whereby District lands are made available to public agencies to install, maintain and operate recreational access facilities. "Such joint use shall not unduly interfere with the District's use..." and "The installation, maintenance and removal of improvements or structures necessary or convenient to the joint use shall be at the sole cost of the agency proposing such joint use..."

County Policy Documents

- a. The County General Plan identifies numerous strategies, policies, and goals to support a regional system of parks, trails; and protect natural resources, including water quality, and biotic habitats. The General Plan further identifies inter-jurisdictional coordination as a key strategy to achieving these goals.
- b. The Board Approved Strategic Plan for the Parks and Recreation Department describes the following purposes and goals for the Parks and Recreation Department:
 - i. Mission: To provide, protect, and preserve regional park lands for the enjoyment, education, and inspiration of this and future generations.
 - ii. Vision: To create a growing and diverse system of regional parks, trails and open spaces of countywide significance that connects people with the natural environment, offers visitor experiences that renew the human spirit, and balances recreation opportunities with resource protection.

Common Goals and Differing Priorities

While the District and County Parks share many common goals, each agency has different core missions. For over sixty years, the agencies have worked together to effectively manage an integrated system of land and water that serves multiple purposes. The District has made its reservoirs available for public recreation. County Parks has managed recreation at the reservoirs and created an expanding regional park system. The County has acquired lands that protect the watersheds around District reservoirs and provide for increased recreational access to the "lake" parks and to build out regional trail system envisioned in the County-wide Trails Master Plan. During negotiations towards a proposed renewal of the Master Reservoir Lease, District staff has consistently focused on the District's core responsibilities of water quality, water supply, stewardship and flood protection, and County Park staff has consistently focused on the Department's core mission of parkland preservation, natural resource protection, and recreational use.

County Parks has proposed a set of "Shared Principles" (Exhibit 5) that sets forth a policy level

conceptual framework that would undergird a comprehensive partnership between the two agencies and which would guide the specific terms of various sub agreements related to the construction and operation of various facilities. These principles build upon concepts and language within the District Act and other policy level documents already approved by the respective agencies.

The District has generally maintained that it will allow public access and recreational use of its land and water provided such use does not negatively impact the District's mission related to water quality, water supply, stewardship and flood protection. Over time, regulatory restrictions have resulted in a reduced level of public access and use of District facilities. Currently swimming is not allowed in District reservoirs used as a source for treated water supply and is limited under Special Use Permit in the remaining reservoirs. Boating access is limited to five of the ten reservoirs.

The inability of District and County staff to reach closure on a new agreement stems from the desire of County Park staff to have the District strengthen its commitment to public access and recreational use as authorized by the District Act, whereas District staff points to the Joint Use Policies that limit the District's commitment, investment and liability. District staff has stated that investment in recreational amenities would likely be limited and proportional to the extent that those amenities service the District's core purposes of water supply and quality, stewardship and flood protection. The County perspective of the proposed agreement is that the District has also sought to reduce its liability to the greatest extent possible, and to assign the responsibility to the County for any damages or injuries resulting from any public access to District facilities.

County Park Charter

Although the County's first park, Stevens Creek County Park, was acquired in 1924 and the Department of Parks and Recreation was formed in 1956, since 1972 the Park Charter has served as a foundational support for County Parks. Most recently approved by voters in 2016, the Park Charter sets aside a portion (\$0.015 per \$100 of assessed value - approximately \$60M for FY18) of property taxes that would otherwise go into the County General Fund. Park Charter funds must be spent on public park purposes that are consistent with the County's General Plan. Ten percent of Park Charter revenues are dedicated to acquisition, ten percent are dedicated to capital improvements, and the balance is available to support operations.

Following voter approval of the Park Charter extension, County Parks is updating its Strategic Plan and developing a Ten-Year Capital Improvement Program. These plans will set priorities for the future growth, rehabilitation, and operation of the regional park system. Preliminarily, County Parks has identified capital improvement project needs of at least \$187M, which is approximately three times the \$67 million of resources anticipate to be available over the plan's ten-year planning horizon.

The District has plans to undertake major work related to seismic upgrades of two of the three major boating reservoirs and is undertaking significant work to improve flood protection in the valley. These projects are likely to have a significant impact on recreational amenities and use.

County Parks is seeking assurances from the District that it will support continued public access and recreational use of its reservoirs and other District lands upon which recreational trails and other

improvements are constructed. The County has invested tens of millions of dollars in constructing recreational amenities on District property. Park Charter Funds should only be invested in improvements where continuing public use is assured. The Park Charter Fund has insufficient resources to remove or replace these amenities. In addition, County Parks would welcome District participation in upgrading existing facilities to address the public desired recreational use of its lands and water.

Core Issues

Negotiations between the District and County Parks have been focused on clarifying and attempting to resolve a number of core issues before moving on to develop a potential Master Partnership Agreement and supporting specific agreements. Exhibit 6 is a chart which summarizes the key areas of difference between the District and County Parks and describes the current approach, the desired outcome sought by County Parks, and the District's staff response to the County's requests. While it appears that staff can likely resolve the issues related to the form of agreement and coordination on system and project planning, the negotiating teams need guidance in resolving core issues related to:

- Conditions under which the District would discontinue public access and recreational use of its properties.
- Cost sharing related to the costs of constructing, rehabilitating, removing and replacing recreational amenities on District property.
- Apportioning liability between the agencies.

Detailed Discussion of County Parks Primary Interests and District Response

In addition to County Parks' proposed Shared Principles included as Exhibit 5, during the negotiation process, County staff has outlined several desired objectives, summarized as follows:

1. Compatible provision of (a) safe, reliable drinking water, (b) a safe community and healthy environment through managing natural resources, including watersheds and riparian area, (c) flood risk mitigation, and (d) public access and recreational use of the shared system of land and facilities managed by the District and the County.
2. Shared responsibility in stewarding these resources and providing public access to these lands and facilities.
3. Collaboration, leveraging the two agencies' individual strengths.
4. Bilateral agreements should respect the priorities and requirements of each agency, and minimize conflict. Each agency should seek to empower its staff to make decisions that promote the agencies' mutual goals. Periodic reviews of the working relationship between the agencies should be held to ensure implementation of this collaborative culture.
5. By allowing for public access and recreational use of District property, the District can support the County's purposes and support its own goals of promoting public access and use.
6. County Parks' operation of District property enables the County to enhance its public mission and service delivery to the public. County's management of District property also supports the District's other purposes and relieves the District of substantial costs associated with management of those lands and facilities.
7. The County requests that the District enhance its proactive role in providing recreational facilities by enhancing County's engagement and participation in future District land acquisition, capital improvement, and policy development so that the two agencies can fulfill

their joint and complementary public roles.

8. Reciprocity in mutual access to each agencies' property.

County staff requests a strengthened District commitment to recreational access and use of District lands and facilities, referencing the powers and provisions in the District Act cited above. Primary areas of County interest and the District response are discussed below:

1. Master Partnership Agreement Proposal

The County has proposed developing a Master Partnership Agreement that would comprehensively address the policy framework and mutual goals of the broader partnership between the District and County Parks. The County proposes that this agreement incorporate the Shared Principles detailed in Exhibit 5 and that the Master Partnership Agreement provide direction to staff and inform a number of subordinate individual detailed agreements that would be necessary for each of the areas of collaboration such as recreation and the specific projects identified above.

District Response: A number of County's principles could be beneficial to both agencies. An agreement between the agencies could formalize the commitment to a set of principles and objectives. Additional agreements would be necessary to formalize all the bilateral engagements between the two agencies.

2. Coordination on program and project planning

The County requests a commitment to mutual program planning and early engagement in system and project plans.

District response: Staff concurs that existing Master Reservoir Lease descriptions and scope of language relative to early engagement and project planning related to recreation could be updated and extended to other areas of coordination and cooperation between the District and County Parks.

3. Increased District commitment to continued access and recreation use

The County requests consideration of several provisions in the event the agreement or components thereof are terminated. The County desires specific, limited conditions under which termination of the agreement could occur, such as for critical public safety. Given the expectation that Park Charter funds would be invested in facilities which will be available for park purposes in perpetuity, the County perspective is that this is in accordance with the District Act language which enables the District "To acquire, construct, maintain, operate, construct and install... recreational facilities...in connection with...other works owned or controlled by the District". County Parks requests that the District bear costs associated with the removal of recreational improvements upon termination of the agreement or in the event a recreational improvement needs to be removed or altered for District water supply, flood protection or stewardship interests. The County also requests the District consider providing mitigation for the loss of public access and recreational use in the event of removal or termination of the agreement.

District response: Historically, the District's commitment to recreational access is to make District lands available to public agencies to install, maintain and operate recreational access facilities. The existing Master Reservoir Lease provides measures to cure a violation, measures to modify the lease for occupancy of fewer than all the reservoirs or recharge ponds and a six month notice to terminate by either party. Upon termination, the County is required to restore the site to pre-improved condition unless the District agrees to retain ownership of recreational amenities. The County's proposed approach which shifts the burden of removal of any recreational amenity at any time to the District, would be a significant departure from the current agreement. This departure may require Board consideration of new governance policies, repeal of Resolutions No. 72-44 and No.74-38 and identification of funding to financially support recreational facilities and uses beyond providing a joint use of District lands. The District has limited funding sources for recreational improvements. Groundwater charges (water rates) cannot be utilized for recreation. Clean Safe Creeks funds are directed to specific watershed and flood control projects.

4. Cost sharing

County Park staff clarified that its request for the District's commitment includes financial contribution for recreational capital improvements on District facilities. While specific cost share agreements would be developed for individual projects, the conceptual framework for cost sharing in projects would be identified in the new master agreement along with long term opportunities for coordination and collaboration. Understanding the general level of the District's willingness to invest in recreational amenities on its properties is likely to significantly impact the level of facilities available to public recreational use and similarly affect the extent to which County Parks would manage District property.

District response: Staff supports multi-purpose planning efforts and cost sharing within and limited to the historical framework of District water supply, flood protection and stewardship missions. A current review of opportunities for District cost sharing is limited to extension or repair of boat ramps at two reservoirs, where there is joint use of these facilities by District staff for water monitoring or maintenance activities.

5. Liability

The County seeks what it describes as a balanced approach to the indemnity obligations in the agreement.

The existing agreement requires the County to defend, indemnify, and hold the District harmless from and against specified types of actions and claims. The County also assumes risk of damage to personal property or injury to persons on the leased premises for any cause except District's negligence and except for recreational accidents resulting from the condition of the design or maintenance by District of its improvements. The existing agreement also requires the District to indemnify the County from and against claims and damages arising from District's ownership and use for purposes of storage, regulation and conservation of water on the leased premises, except in situations where the County is required to indemnify the District.

In its proposed revised Draft Master Reservoir Lease, provided to County Parks in April 2016, the District proposed further strengthening protections for the District. County Parks requested that liability be modified to reflect its view of the balanced partnership that should exist between the agencies.

District response: In recent discussions, District staff has proposed resolving this issue by utilizing the indemnity language from the current agreement in the new agreement. Historically, the District has required all joint use agencies to assume a certain amount of liability associated with the public's use of the District's facilities. The indemnity obligation is already prescribed, and the District is even required to indemnify the County under certain circumstances. The existing indemnity obligation is essentially the same as that required of cities subject to joint use agreements for use of District property for trails. The changes sought by the County could expose the District to unknown levels of future liability relating to the public's use of the leased property, so staff is recommending against such a change.

Implications for the Future

While there is no present crisis and the status quo could likely be maintained for several years, the decisions made related to the core issues identified will shape the nature of the relationship between the two agencies and significantly impact the future level of on-going investment in recreational facilities on District property and the breadth of public access to, and recreational use of, District properties.

Next Steps:

Staff of both agencies to work diligently to finalize the terms of an agreement, to include the recreational use of District reservoirs and groundwater recharge facilities, for their respective Board's consideration prior to September 16, 2018.

FINANCIAL IMPACT:

There is no financial impact associated with the consideration of this item.

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:

- Exhibit 1: District/County Parks Cooperative Project Examples
- Exhibit 2: Current District/County Master Reservoir Lease
- Exhibit 3: District Policy Regarding Recreation Use of Groundwater Recharge Facilities
- Exhibit 4: District Policy Governing Joint Public Use of District Facilities

Exhibit 5: County Draft Statement of Shared Principles

Exhibit 6: Chart of Key Issues to Resolve

Exhibit 7: District Act

Exhibit 8: PowerPoint

UNCLASSIFIED MANAGER:

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