



Santa Clara Valley Water District

File No.: 18-0302

Agenda Date: 6/12/2018

Item No.: 6.3.

BOARD AGENDA MEMORANDUM

SUBJECT:

San Francisquito Creek Flood Protection Project, San Francisco Bay to Middlefield Road, Project No. 26284002, (San Francisquito Creek Flood Protection Project) Fiscal Year 2018 (FY18) Budget Adjustment in the Amount of \$2,119,897 from Watersheds Stream Stewardship Fund (Fund 12) and FY18 Budget Adjustment in the Amount of \$300,000 from the Safe, Clean Water and Natural Flood Protection Program Fund Project Reserves (Fund 26 Project Reserves), (Palo Alto) (District 7).

RECOMMENDATION:

- A. Approve a FY18 budget adjustment in the amount of \$2,119,897 from Fund 12 to Fund 26, Project No. 26284002; and
- B. Approve a FY18 budget adjustment in the amount of \$300,000 from Fund 26 Project Reserves, Project No. 26284002.

SUMMARY:

San Francisquito Creek is the dividing line between San Mateo and Santa Clara counties. After the historic flood of 1998, the cities of Palo Alto, Menlo Park and East Palo Alto, the San Mateo County Flood Control District and the Santa Clara Valley Water District (Water District) joined together to create the San Francisquito Creek Joint Powers Authority (SFCJPA). The SFCJPA is governed by a board of directors with elected officials representing each of the five (5) member agencies.

Over the years, the San Francisquito Creek Flood Protection Project, San Francisco Bay to Highway 101 Reach (S.F. Bay to Highway 101), has faced numerous challenges. Prior to construction, the issues related to environmental regulatory permitting and construction funding. Now, during construction, the Project faces issues such as physical work restrictions due to protected environmental habitat and the off-haul of excavated soil that falls outside the Project scope. To overcome these issues, each member agency continues to work together collaboratively to identify and implement workable solutions.

As a result of this collaborative, solutions-oriented approach, construction of the S.F. Bay to Highway 101 Project, began in summer 2016 and is entering its third year of construction in June 2018.

Current Construction Challenges

Protected Environmental Habitat (Resolved)

While the plan is to complete construction of the S.F. Bay to Highway 101 reach by winter of 2019, this last season of construction involves the lowermost reach of the Project near the S.F. Bay, which presents unique environmental challenges. San Francisquito Creek is protected steelhead trout stream habitat and the area near the S.F. Bay in the Project area is habitat to the federally-protected California Ridgeway's Rail bird (Rail). The results of a recent nesting Rail survey conducted by the U.S. Fish and Wildlife Service (USFWS) determined that Teichert, the construction contractor, would only be allowed a six (6) week work window from September 1 to October 15, in which to complete three (3) months' worth of work.

These very tight physical constraints made it infeasible for the contractor to complete construction of the Project this season and extending the construction duration for another year, if the contractor would agree to do so, would have been extremely costly and even more impactful to this sensitive habitat area.

Water District biologists and SFCJPA staff worked diligently to come up with a proposed amendment to the biological opinion to allow the contractor to begin work sooner and thereby have longer than six (6) weeks to construct the remaining work in that area. The devised approach minimized noise impacts to the Rail through use of low impact construction equipment and proposed a phased construction approach to defer the impacts as late as possible in the season. This approach was submitted to the US Army Corps of Engineers on May 10, 2018 to request reinitiation of formal consultation with USFWS. On May 31, 2018, the Water District, SFCJPA and other agencies received a formal letter from USFWS indicating that our revised approach did not change their original conclusion and allowed us to proceed with plans for the modified construction implementation this season.

Off-Haul of Unsuitable Materials (Pending - Recommendation A)

The cost for off-haul of unsuitable materials (unsuitable soil) from the Project site is the basis of Recommendation A stated above.

The second major challenge related to completing construction by the end of the third season results from the need to have approximately 195,000 cubic yards of excavated unsuitable soil removed from the Project site; the soil is unsuitable for reuse on the Project and costs for off-haul and disposal are high. The District intended to pay Teichert for both import and export of soil for levee construction as one pay item, but Teichert contends the contract language was ambiguous and that this activity was not within the scope they intended to perform. They formalized their position in a Notice of Potential Claim relating to the additional costs of off-hauling and disposing of all unsuitable soil.

In an effort to resolve the claim, the Water District and Teichert each presented their positions at a hearing before the Dispute Resolution Board (DRB); as required by the Water District's Contract Documents. The DRB determined that Teichert's interpretation of the Contract Documents was correct and reasonable in concluding that all excavated soil could be reused on site and did not have to be removed. Based upon this conclusion, the DRB recommended that if Teichert performed this

work, they should be compensated for the additional costs of importing soil and for off-hauling all unsuitable soil, as it would be extra work they did not intend to perform. Initial costs estimates for this change were on the order of magnitude of \$12 million.

While Teichert was able to minimize the costs related to importing soil, the Water District and SFCJPA member agencies worked closely together to offset the costs of off-hauling unsuitable soil. In order to avoid impeding Project construction progress, both the cities of Palo Alto and East Palo Alto agreed to permanently place a portion of the clean, unsuitable soil on-site and temporarily stockpile the remainder. The combined cost savings of Palo Alto's temporary and permanent soil placement equates to approximately \$7.42 million; and the combined cost savings of East Palo Alto's temporary and permanent soil placement equates to approximately \$1.75 million.

The Water District's contribution to solving this problem is to off-haul the contaminated, unsuitable soil that cannot be permanently or temporarily stored on-site. All excavated soils were tested for contaminants, and it was determined that about 20,000 cubic yards was contaminated and must be disposed of at a State-permitted, non-hazardous waste landfill. The Water District intends to conduct a competitive procurement process and enter into a separate contract for the off-haul and disposal of the contaminated soil.

To fund this specific work, as stated in Recommendation A, staff recommends the Water District Board approve a FY18 Budget Adjustment in the amount of \$2,119,897 from Fund 12 to Fund 26, for the San Francisquito Creek Flood Protection Project, Project No. 26284002.

FY18 Budget Shortfall (Pending - Recommendation B)

Recommendation B, stated above, results from a FY18 budget shortfall.

As of May 14, 2018, the FY18 Project budget for Project No. 26284002 was over expended by \$118,951. The over-expenditure is due primarily to the costs incurred for acquisition of the Project's rights-of-way, as well as the unanticipated costs for a third-party labor compliance monitoring contract associated with a Proposition 84 grant for the Project, and the cost of Water District furnished plants for mitigation planting.

While the project has sufficient Fund 26 Project Reserves to cover these costs, the Board's approval of Recommendation B, a FY 18 Budget Adjustment in the amount of \$300,000 from Fund 26 Project Reserves to the San Francisquito Creek Flood Protection Project, Project No. 26284002, is required to allow staff to continue to charge their hours to the project in order to manage construction for the remainder of FY18.

Barring any unforeseen future Project construction complications during this season, the Board's approval of Recommendations A and B, will allow the Project to continue on schedule for a currently estimated completion date of early 2019.

FINANCIAL IMPACT:

Approval of Recommendation A would require a FY18 Budget Adjustment transferring \$1,119,897 of funds from the Fund 12 Canoas Creek Rodent Damage Repair Project reserves (Project No. 30114002), and \$1,000,000 of funds from the Fund 12 Lower Berryessa Creek Phase 1 Flood Project reserves (Project No. 40174004) to the San Francisquito Creek Flood Protection Project, Project No. 26284002. The monies transferred from the Canoas Creek Rodent Damage Repair Project and the Lower Berryessa Creek Phase 1 Flood Protection Project are deemed to be excess monies that would have been returned to Fund 12 reserves at the end of FY18 as unspent.

Approval of Recommendation B would require a FY18 Budget Adjustment transferring \$300,000 of funds from Fund 26 Project Reserves to the San Francisquito Creek Flood Protection Project, Project No. 26284002.

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:

None.

UNCLASSIFIED MANAGER:

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