



# Santa Clara Valley Water District

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**File No.:** 20-0149

**Agenda Date:** 1/28/2020

**Item No.:** \*7.1.

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## BOARD AGENDA MEMORANDUM

### **SUBJECT:**

Receive a Brief Program Update and Approve Budget Adjustment in the Amount of \$773,200 to the Fiscal Year 2020 Budget of the Safe Clean Water Renewal Project, Project No. 62061049.

### **RECOMMENDATION:**

- A. Receive brief update on new program development for a potential future funding measure; and
- B. Approve a budget adjustment in the amount of \$773,200 to the Fiscal Year 2020 Budget of the Safe Clean Water Renewal Project; and
- \*C. Receive information on general taxes versus special taxes following the Board request for information at the December 10, 2019 Board meeting.

### **SUMMARY:**

Based on Board direction provided at the December 10, 2019 Board meeting, staff is providing a brief update and necessary resource request needed to initiate and explore the feasibility of a potential November 2020 funding measure.

#### Program Development

The current Safe Clean Water and Natural Flood Protection Program (Safe, Clean Water Program) offers a suite of opportunities to fund critical projects for Valley Water, its partners and grantees. Building on the successes of this Program to date, staff is first looking at the current Program and its five priorities to determine where there are opportunities to enhance and update projects and programs, and then explore new areas that may be of interest to the community. Throughout the process, it is critical to include both internal and external stakeholder feedback. To accomplish this, an internal effort is underway to gather input from various business areas throughout Valley Water (e.g., flood, stewardship, asset management, water supply, grants) to identify and prioritize projects, including potential costs. Simultaneously, staff is working on engaging with each Board Advisory Committee (Agricultural Water Advisory Committee, Environmental Water Resources Committee, and Water Commission) and the Safe Clean Water Independent Monitoring Committee to provide an update and gather input on program development, as well as developing a Community Input Survey to help gather public input on the program priorities and projects. This approach will facilitate development of a new program plan draft to share with the community for further feedback. As input is collected throughout the new program's development, the Board will be kept apprised of projects and programs, which may be recommended for inclusion in any potential future funding measure.

### FY20 Budget Adjustment Need

Staff is requesting a budget adjustment to move funds into the Safe Clean Water Renewal Project (62061049) to develop a future funding program in the form of a potential November 2020 ballot measure. Staff is requesting the Board to approve a budget adjustment of \$773,200 in hard costs to help build an enhanced program that will include community outreach activities to encourage broad public participation into the process of developing a community-preferred plan. Support services include costs for consulting, direct outreach, technical writing services and general education and outreach activities to develop an enhanced program that will include robust community input and stakeholder participation on program priorities and elements. The proposed budget adjustment amount is to be split between watershed stream stewardship reserves (88%) and water utility enterprise reserves (12%). This split is the estimated percentage of the program that would benefit the two funds, and is based on the formula used during development of the current Safe Clean Water and Natural Flood Protection program. Should the percentage of projects within the proposed funding measure shift, with more funding needs for water utility enterprise or watershed stream stewardship, this percentage allocation would be revisited.

Total budget costs to date for support services, including the requested budget adjustment amount, is estimated to be \$973,200 with \$200,000 already allocated towards this effort.

### Next Steps

Staff will continue to explore the feasibility of a future funding measure and build out what a future enhanced program would look like, including financial models.

Program development will continue, which includes community outreach to determine the desires of the residents of Santa Clara County for any future potential program. Additionally, stakeholder outreach will include a blue-ribbon roundtable tentatively set for mid/late March as well as additional internal and external stakeholder and community outreach. Upon gathering stakeholder and community input, staff will come back to the Board in March with an update and report to receive further Board input.

### \*General Taxes versus Special Taxes

\*At the December 10, 2019, Board meeting, the Board had questions regarding: (1) the level of voter approval required to pass a general tax; and (2) whether Santa Clara Valley Water District (Valley Water) can pursue a general tax measure rather than a special tax. For the reasons set forth below, Valley Water will be unable to pursue a general tax.

\*Generally, the California Constitution defines general taxes as “any tax imposed for general governmental purposes.” (Cal. Const., art. XIII C, §1 subd. (a).) Local governments may impose, extend, or increase general taxes by submitting the tax to the electorate and having it approved by a simple majority vote. (Cal. Const. art. XIII C, §2 subd. (b).) The imposition of general taxes is also subject to Proposition 62 (Govt. Code §§53720-53730) and Proposition 218 which require, in part, a two-thirds majority vote of the legislative body to adopt a resolution to place the measure on the ballot. (Govt. Code §53724.) In contrast, special taxes are those imposed for specific purposes. (Cal.

Const. art. XIII C, §1 subd. (d).) For a tax to be considered general rather than special, the use of the proceeds must be limited in some fashion, even where there may be multiple specific purposes the funds may be spent on. Local legislative bodies may only impose, extend, or increase *special* taxes by submitting the taxes to the electorate and obtaining approval by at least two-thirds of the voters. (Cal. Const. art. XIII C, §2 subd. (d).)

\*Please note that voters, through the initiative process, can also propose special taxes, and currently there is an open issue as to whether a voter-initiated special tax proposal needs a two-thirds vote or can be adopted by a simple majority. The Supreme Court's decision in *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, suggests the Court might permit a simple majority vote for voter-initiated special tax measures. However, the question has not been firmly resolved, and further guidance from the courts is likely. Since Valley Water will be pursuing the new tax, however, the voter threshold from the initiative process is not relevant to the Board's questions.

\*While there is a lower voter approval requirement for general taxes compared to special taxes (simple majority rather than two-thirds for special taxes), the Constitution holds that special districts or agencies have no power to levy general taxes. (Cal. Const. art. XIII C, §2 subd. (a).) Valley Water is a special district created by the California Legislature and it is therefore subject to this Constitutional restriction against levying general taxes. Further, even if this constitutional impediment did not exist, the District Act contains no express authorization for Valley Water to levy general taxes. Instead, it holds that the Board shall have the power to levy ad valorem taxes or assessments. (District Act §13 Taxation.) Article XIII A, Section 4 of the California Constitution permits Valley Water to impose a special tax by a two-thirds vote of the qualified electors within Santa Clara County.

#### **FINANCIAL IMPACT:**

Financial impacts associated with this Board item include a move of \$773,200 from reserves to the Safe Clean Water Renewal Project, Project No.62061049, to provide necessary funding to explore the feasibility of a future funding measure. This amount will be split between the Watershed and Stream Stewardship Fund (88%, \$680,416), leaving a Fund 12 Operating and Capital Reserve balance of \$67,217,529 and the Water Utility Enterprise Fund (12% \$92,784), leaving a Fund 61 Operating and Capital Reserve balance of \$39,579,658. Percentage allocations to funds may change in the future depending on the benefit each division receives from the measure.

\*There is no change to the originally reported financial impact associated with this item.

#### **CEQA:**

The recommended action does not constitute a project under CEQA because it does not have the potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

#### **ATTACHMENTS:**

- \*Original Agenda Memorandum
- \*Supplemental Agenda Memorandum

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