



# Santa Clara Valley Water District

---

**File No.:** 20-0514

**Agenda Date:** 6/23/2020

**Item No.:** 6.4.

---

## BOARD AGENDA MEMORANDUM

### **SUBJECT:**

Transfer of Funds from the Watersheds Stream Stewardship Fund to the Safe, Clean Water and Natural Flood Protection Program Fund to Support the Upper Penitencia Creek Flood Protection Project Contributed Funds Agreement with the United States Army Corps of Engineers.

### **RECOMMENDATION:**

- A. Approve a fund transfer in the amount of \$2 million from multiple Watersheds Stream Stewardship Fund (Fund 12) Operations Projects Unspent FY20 Budgets to the Safe, Clean Water and Natural Flood Protection Program Fund (Fund 26) to Support the Upper Penitencia Creek Flood Protection Project Contributed Funds Agreement with the United States Army Corps of Engineers; and
- B. Approve budget adjustment adding \$2 million to the Upper Penitencia Creek Flood Protection Project Fiscal Year 2020 budget.

### **SUMMARY:**

#### ***Project Overview***

The Upper Penitencia Creek Flood Protection Project, Project E4, is included in the Safe, Clean Water and Natural Flood Protection Program (Safe, Clean Water Program). The objective of this Project is to plan, design and construct improvements along 4.2 miles of Upper Penitencia Creek from the confluence with Coyote Creek to Dorel Drive. Part of the Project will protect the area around the Bay Area Rapid Transit's Berryessa station near King Road, which would otherwise be subject to flooding.

This Safe, Clean Water Project has two Key Performance Indicators:

- 1. Preferred Project with federal and local funding: construct a flood protection project to provide 1% flood protection to 5,000 homes, businesses and public buildings
- 2. With local funding only: Acquire all necessary rights-of-way and construct a 1% flood protection project from Coyote Creek confluence to King Road.

---

The Project began in partnership with the U.S. Army Corps of Engineers (USACE) on February 17, 1998, when Santa Clara Valley Water District (Valley Water) and the USACE entered into a Feasibility Cost Sharing Agreement to fund the feasibility study. Between Fiscal Years 2013-14 and 2017-18 (FYs 14-18) Valley Water aggressively pursued federal funding for the project. Unfortunately, the USACE identified project was a single-purpose flood risk reduction project that included the construction of floodwalls and the removal of trees, both of which were strongly opposed by the community. In fact, the community and environmental regulatory agencies advocated for a multi-purpose project.

During the past four years, as the Project has not been funded by the USACE, Valley Water has conducted a detailed planning study to determine how to reduce flood risk for the community, improve habitat functions and recreation, and preserve water supply benefits. As a result, this work has resulted in a recommended a local-funding-only project aimed at meeting multiple beneficial goals, including water quality and providing opportunities for recreation improvements and habitat restoration.

### ***Flooding History and Project Background***

Upper Penitencia is a major tributary of Coyote Creek, flowing westerly from Alum Rock Park through the residential neighborhoods of Berryessa and Alum Rock in San Jose. More than 5,000 homes, schools and businesses are located in this floodplain, including many high-tech and commercial industries supporting the greater Silicon Valley.

With the capacity to carry less than a 10-year event, Upper Penitencia Creek has spilled its banks at least 7 times since Valley Water began preparing flood reports in 1967. Damaging flood events occurred in 1978, 1980, 1982, 1983, 1986, 1995, and 1998, impacting many homes, businesses, and surface streets.

Potential damages from a 1% (or 100-year) flood event are estimated at \$455 million (in 2004 dollars, according to a USACE economic analysis), with average annual damages estimated at \$30.5 million for the full reach from the Coyote Creek confluence to Dorel Drive.

The preferred project would further the objectives of a 1981 tri-party agreement, which was renewed in 2006 for another 25 years, between Valley Water, the City of San Jose, and the County of Santa Clara to preserve open land and provide flood protection along the Upper Penitencia Creek corridor. As a result of the agreement, 78 acres have been permanently preserved as Penitencia Creek County Park and Penitencia Creek Trail. A 4-mile, intermittent trail follows Upper Penitencia Creek from 700-acre Alum Rock Regional Park to its confluence with Coyote Creek. In addition to much-needed flood protection, this Project will help provide the opportunity for the City of San Jose and Santa Clara County to complete the long-planned trail and linear park.

### ***Recent Board Decisions***

On December 17, 2019, during the Safe, Clean Water Program Capital Project Status Updates and Funding Scenario Discussion, staff presented the following:

1. The outcome of the Upper Penitencia Creek Flood Protection Project (Upper Penitencia Project) planning phase with a recommended phased approach to the Project. Below is a brief summary of each proposed phase.
  - A. Phase I (Reach 1) - Coyote Creek confluence to King Road (Local funding only KPI)
    - 1) Widen bank to provide additional channel capacity and stream restoration
    - 2) Protects 450 parcels from 1% flood including the BART Station
    - 3) \$17 million capital and \$145,000 annual maintenance cost
  - B. Phase II (Reaches 2 & 3) - King Road to Capital Avenue
    - 1) Channel widening, stream restoration, short setback levees, and floodwalls
    - 2) Phases I and II to protect 1,250 parcels from 1% flood including BART Station
    - 3) \$7 million capital and \$165,000 annual maintenance cost
  - C. Phase III (Reaches 4-7) - Capital Avenue to Dorel Drive
    - 1) These Project Reaches are still in the planning phase.
    - 2) Phases I through III to protect all 8,000 parcels at risk of 1% flooding
    - 3) \$43 million capital and \$300,000 annual maintenance cost (capital costs depend on plans and land use agreements with San José and County for flood detention)
2. Multiple funding scenarios regarding how best to utilize Safe, Clean Water Program funds to maximize the delivery of flood protection under the program.

The Board voted to proceed with a funding scenario that reallocated approximately \$23 million in funding from the Upper Penitencia Creek Project to the Coyote Creek Flood Protection Project (Coyote Creek Project) in order address the estimated funding shortfall required to construct the Coyote Creek Project. With the remaining allocation of approximately \$24 million in the Upper Penitencia Creek Project, the Board directed staff to proceed with both Phase I and Phase II of the Project.

This approach will maximize the flood protection provided with local funds by designing and building improvements to the creek from the confluence with Coyote Creek to Capital Expressway. This work would provide 1% flood protection for the affected creek reaches, including the new BART station at Berryessa Avenue, and also provide 20-year flood protection for the entire watershed. The planning phase for this work is nearly completed and design is expected to begin in FY21.

### ***USACE Contributed Funds Agreement***

To be able to construct the preferred project, Valley Water has maintained its relationship with the

USACE to explore options to continue some level of a federal-funded project. However, because the study has been inactive and without a clear path forward, the USACE is considering terminating the Feasibility Study. In order to keep the study open and preserve our federal partnership, Valley Water is proposing to enter into a Contributed Funds Agreement, which will allow USACE to continue to work on identifying a path forward.

If Valley Water does not enter into a Contributed Funds Agreement, the USACE will terminate the Feasibility Study.

### ***Fund Transfer and Budget Adjustment***

As presented to the Board on December 17, 2019 during the Safe, Clean Water Program Capital Project Status Updates and Funding Scenario Discussion and again during the Budget Work Study Session on April 29, 2020, the Safe, Clean Water Program is facing funding challenges and currently is projecting a shortfall at the end of 2028. As a result, the budget adjustment for the Upper Penitencia Project cannot be funded by the Fund 26 Operating and Capital Reserves. In order to identify the necessary funds and avoid impacting the Fund 12 Operating and Capital Reserves balances or the FY21 budget, staff has identified operating projects with unspent funds remaining in their FY20 budgets, which combined total \$2 million in funding for the Upper Penitencia Creek Project Contributed Funds Agreement with the USACE.

The projects from which funds will be transferred are listed below:

1. Non SMP Vegetation Removal for Conveyance (62761080) - \$1,600,000
  - a. These funds were originally budgeted to address vegetation issues in the Guadalupe River, Tasman to I-880 reach. Since the development of the FY20 budget, additional funding was identified and budgeted as part of the capital project for that reach (Guadalupe River, Tasman Drive to I-880 - 30154019), and thus, the funds budgeted to 62761080 in FY20 will remain unspent.
2. Integrated Water Resource Master Plan (62041027) - \$380,000
  - a. The funds are available as a result of unspent services and supplies from One Water planning, which were set aside for expected additional support by the Aquatic Science Center/San Francisco Estuary Partnership with metrics development and watershed planning, as well as funds for technical writing services for watershed plan reports. Delays in watershed plans and related reports, due to policy discussions as well as lead staff reassigned to a special assignment, have led to delays and a reduced need for funds in FY20. The funds for these support services are budgeted in FY21.
3. Watersheds Chief Operating Officer Unscoped Project (62001090) - \$20,000
  - a. This project serves as a resource to manage unexpected expenditures that are outside the range of the usual operating budget of the Watershed and Stream Stewardship Fund. The goal is to ensure adequate funding is available for unplanned activities that occur during the fiscal year, such as the current need.

**FINANCIAL IMPACT:**

The Upper Penitencia Creek (project 26324001) is included in the Five-Year 2021-25 Capital Improvement Program and in the Board-adopted FY 2020-21 Budget. The total project cost will increase by \$2 million. There is not sufficient funding in the Project's Fiscal Year 2020-21 Budget or in the Project's 15-year Safe, Clean Water Program funding allocation to contribute funds to the Agreement with the USACE. However, the recommended actions would transfer \$2 million from multiple Watersheds Stream Stewardship Fund (Fund 12) Operations Projects unspent FY20 Budgets to the Safe, Clean Water and Natural Flood Protection Program Fund (Fund 26), which will meet the funding need for the Upper Penitencia Creek project and have no impact to the Fund 12 Operating and Capital Reserves or upcoming FY21 budget.

**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:**

Vincent Gin, 408-630-2633