



Santa Clara Valley Water District

File No.: 21-0627

Agenda Date: 6/22/2021

Item No.: 7.1.

BOARD AGENDA MEMORANDUM

SUBJECT:

Proposed Adjustments and Modifications to the Good Neighbor Program: Encampment Cleanup Project, Project F5 under the Renewed Safe, Clean Water and Natural Flood Protection Program.

RECOMMENDATION:

- A. Review Proposed Text Adjustments and Key Performance Indicator Modifications for Project F5: Good Neighbor Program: Encampment Cleanup under the renewed Safe, Clean Water and Natural Flood Protection Program; and
- B. Consider whether to set a time and place for a public hearing on the proposed modifications to the Project.

SUMMARY:

Background

On November 3, 2020, Santa Clara County voters overwhelmingly approved Measure S, a renewal of Santa Clara Valley Water District's (Valley Water) Safe, Clean Water and Natural Flood Protection Program (Safe, Clean Water Program). Voters first approved a community-focused program to address our waterways and water supply in 2000 as the Clean, Safe Creeks and Natural Flood Protection Plan, then again in 2012 as the Safe, Clean Water and Natural Flood Protection Program.

The renewed Safe, Clean Water Program addresses the following six community priorities:

Priority A: Ensure a Safe, Reliable Water Supply

Priority B: Reduce Toxins, Hazards, and Contaminants in our Waterways

Priority C: Protect Our Water Supply and Dams from Earthquakes and Other Natural Disasters

Priority D: Restore Wildlife Habitat and Provide Open Space

Priority E: Provide Flood Protection to Homes, Businesses, Schools, Streets, and Highways

Priority F: Support Public Health and Public Safety for Our Community

As outlined in Resolution 20-64 (Attachment 1), which was adopted by the Board on July 21, 2020, to ensure transparency, accountability, and fiscal responsibility, the renewed Safe, Clean Water

Program will continue to be monitored by an independent monitoring committee (IMC), an external citizen oversight committee. Staff is also required to develop 5-year implementation plans for the Program and present those to the IMC for review before submitting those to the Board for approval. The 5-year implementation plans describe the work to be accomplished during the five years to deliver the KPIs and clarify roles and responsibilities for implementing, measuring, monitoring, and directing the projects under the Program.

The renewed Safe, Clean Water Program also requires independent audits every five years, and a change control process, which requires all adjustments be made by the Valley Water Board of Directors (Board) during a public board meeting. Furthermore, modifications to key performance indicators (KPIs) or decisions to not implement a project require a public hearing, which must be publicly noticed. Attachment 2 is the Draft Notice of Public Hearing, which will be advertised per California Government Code § 6066 for the proposed modifications to the Good Neighbor Program: Encampment Cleanup Project.

Good Neighbor Program: Encampment Cleanup Project

The Good Neighbor Program: Encampment Cleanup project (Project F5) under the renewed Safe, Clean Water Program, is a countywide project. The primary objective of the project is to remove trash, debris, and hazardous pollutants generated from encampments near waterways or on Valley Water property. Under the current project, the cleanup of encampments is linked to the removal of structures.

While developing the 5-Year Implementation Plan for Fiscal Years 2022-2026 (FY22-26 5-Year Plan), in response to the changing legal, political and social climate as it relates to encampment sites and homelessness in Santa Clara County, staff has identified the need for text adjustments and modifications to the KPIs for Project F5 under the renewed Safe, Clean Water Program, and related Glossary definitions.

Prior case law made it illegal to persecute unhoused for sleeping on public lands when housing is unavailable. In response to the COVID-19 pandemic, there have been many new restrictions placed on the type of cleanup activities that can be performed in relation to encampments. In turn, it has been challenging to partner with agencies on encampment site cleanups.

Additionally, recent case law has highlighted legal limitations relating to the removal of illegal encampments. Recent cases have cited and relied upon guidance from the Center for Disease Control (CDC) regarding encampments during the COVID-19 pandemic to limit when encampment abatements can proceed. These limitations have curtailed the removal of illegal encampments and displacement of the people living in those encampments for the time being.

In effect, the CDC's COVID-19 pandemic restrictions and the associated legal restrictions on the removal of illegal encampments has currently halted the work of the Good Neighbor Program: Encampment Cleanup project under the 2012 Safe, Clean Water Program.

This has resulted in a buildup of trash, debris, and hazardous pollutants that contribute to contamination of waterways and damage to Valley Water facilities. To address this, Valley Water

needs to be able to perform work, either independently or through ongoing coordination with local cities and agencies, to clean up trash, debris and hazardous pollutants generated by encampments near waterways or on Valley Water property.

Furthermore, through education and increased awareness, staff has recognized that people living in illegal encampments may identify the encampment site as their home and feel a sense of community there. In turn, while these individuals are without a house or lacking a place to live, they prefer not to be referred to as homeless.

To align the renewed Safe, Clean Water Program with these changing conditions, staff is proposing a modification to both KPIs, along with text adjustments to both Glossary definitions and the Project's description and benefits.

The proposed text adjustments and KPI modifications were presented for review and input to the Homeless Encampment Committee (Committee) on April 20, 2021. The Committee, comprised of three Board members, is tasked with discussing homelessness and encampment issues and bringing discussion and recommendations to the Board. The Committee agreed to bring the proposed modifications and text adjustments to the Board and asked that staff work with Committee Chairperson on an alternative terminology for "homeless" or "unhoused."

Staff also presented the proposed adjustments and modifications to Project F5 to the IMC as part its review of the FY22-26 5-Year Plan and the IMC expressed its support of the proposed changes.

In a follow-up discussion with the Homeless Encampment Committee Chair, Richard Santos, the recommendation was not to use a qualifying term before referring to an "encampment," because it is not necessary. Additionally, rather than refer to the "homelessness crisis" in KPI #2, Committee Chair Santos recommended using the term "socio-economic crisis."

Below are the proposed text adjustments and modifications to the Good Neighbor Program: Encampment Cleanup project, Project F5 under the renewed Safe, Clean Water Program. The Board may approve the text adjustments at a regular Board meeting; however, the Board must set the time and place for the public hearing to modify Project F5. If the Board agrees to move forward with considering the proposed modifications, the public hearing can take place at the onset of the renewed Safe, Clean Water Program, which will begin in July 2021. The proposed public hearing date is July 13, 2021, which is the first regularly scheduled Board meeting in July.

Proposed Text Adjustments for Renewed Safe, Clean Water

As per the Safe, Clean Water Program's Change Control Process, staff is recommending the proposed text adjustments as shown below, with removed text shown with strike-through and new text in red font. The text adjustments are not currently incorporated into the FY22-26 5-Year Plan.

Glossary Definition: **Cleanup**

Sections: Appendix I of the FY22-26 5-Year Plan

Justification: Text adjustments to clarify what is considered a cleanup based upon the

changes due to the COVID-19 pandemic and corresponding case law.

Adjusted text: **Cleanup**

The removal of trash and debris **generated** resulting from encampments **or other illegal dumping**; by Valley Water or by Valley Water in **partnership** or coordination with other agencies.

Glossary Definition: **Encampment**

Sections: Appendix I of the FY22-26 5-Year Plan

Justification: Text adjustments to clarify what is considered a cleanup based upon the changes due to the COVID-19 pandemic and corresponding case law.

Adjusted text: **Encampment (homeless)**

A site where people are living or storing personal property ~~1 or more~~ structures ~~occupied by an individual or family~~ that is located illegally on Valley Water **property** or other public property. **Encampments may generate trash, debris, and hazardous pollutants. Such encampments contribute to contamination of waterways and damage to Valley Water facilities.** ~~An area where there are no structures, but where personal property is stored is also considered an encampment.~~

Glossary Definition: **NEW**

Sections: Appendix I of the FY22-26 5-Year Plan

Justification: Text adjustments to clarify what is considered a cleanup based upon the changes due to the COVID-19 pandemic and corresponding case law.

Adjusted text: **Encampment Cleanup**

Valley Water, independently or in partnership and coordination with cities and local agencies, will seek to remove trash, debris, and hazardous pollutants generated from encampments near waterways or on Valley Water property.

Project F5: Good Neighbor Program: Encampment Cleanup

Sections: Description and Benefits

Justification: Text adjustments to clarify that Valley Water may work independently or in partnership to cleanup encampments, as defined by the Glossary text adjustments referenced above.

Adjusted text: **Description**

This project supports Valley Water's independent efforts and ongoing coordination with local cities and agencies to clean up trash, debris and hazardous pollutants generated by encampments near waterways or on Valley Water property. This project supports Valley Water's ongoing coordination with local cities and agencies to clean up trash from

~~encampments near waterways or on Valley Water property.~~ Such encampments contribute to contamination of waterways and damage to Valley Water facilities. This **project includes** ~~is a cooperative effort partnering cooperative efforts to partner~~ with local municipalities and other agencies for services related to encampment cleanups and to help provide alternatives to homelessness.

This project will also provide funding for local municipalities' services supporting staff safety as they work around encampments and discouraging re-encampments along waterways.

Benefits

- Reduces the accumulation of trash, **debris**, and **hazardous** other pollutants in local waterways, including streams, ~~reservoirs and wetlands,~~ **and water utility facilities (e.g. percolation ponds)**
- Protects Valley Water facilities and reduces flood risk
- Improves the aesthetics of creeks in neighborhoods and along trails
- Coordinates Valley Water's efforts with multiple agencies to create lasting solutions to reduce ~~homeless~~ encampments near waterways

Proposed Modifications for Renewed Safe, Clean Water

As per the Safe, Clean Water Program's Change Control Process, staff is recommending the proposed modifications as shown below, with removed text shown with strike-through and new text in red font. It is important to note that the proposed modification to KPI 1 does not impact Valley Water's level of service, but rather changes the way the service is measured. Further, the modified KPI 1 will allow Valley Water the flexibility to operate both under these new restrictions and beyond.

Project F5: Good Neighbor Program: Encampment Cleanup

Sections: Key Performance Indicators

Justification: Proposed modifications to clarify that Valley Water may work independently or in partnership to cleanup encampments, as defined by the Glossary text adjustments referenced above. This includes a modification to how performance is measured, as encampment cleanups are no longer defined by structures thereby changing the way encampment sites can be quantified.

Modified text: KPIs 1 and 2

1. **Manage** ~~Perform~~ 300 **acres** annually to cleanups **trash, debris, and hazardous pollutants generated from encampments** and to reduce the amount **of these pollutants** ~~of trash and pollutants~~ entering streams.
2. Provide up to \$500,000 per year in cost-share with local agencies for services related to encampment cleanups, including services supporting staff safety, discouraging re-encampments along waterways or addressing the **socio-environmental** ~~homelessness~~ crisis with the goal of reducing the need for encampment cleanups.

FINANCIAL IMPACT:

The financial impact associated with the cost of this item is the cost of placing the public notice ad. The estimated cost for the public notice ad is approximately \$40,000 and there is sufficient budget in FY21 budget for the Good Neighbor Program: Encampment Cleanup project (Project No. 26771027). There is no change to the financial allocation of Project F5 should the proposed adjustments and modifications be approved.

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:

Attachment 1: SCVWD Resolution No. 20-64
Attachment 2: Draft Notice of Public Hearing

UNCLASSIFIED MANAGER:

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