



# Santa Clara Valley Water District

File No.: 21-0750

Agenda Date: 7/13/2021

Item No.: \*2.9.

## BOARD AGENDA MEMORANDUM

### SUBJECT:

Public Hearing on Proposed Modifications to the Good Neighbor Program: Encampment Cleanup Project, Project F5 Under the Renewed Safe, Clean Water and Natural Flood Protection Program and Review and Approval of Corresponding Text Adjustments (PREVIOUSLY LISTED AS 2.8).

### RECOMMENDATION:

- A. Open the public hearing to receive comments on the Renewed Safe, Clean Water and Natural Flood Protection Program's Project F5: Good Neighbor Program: Encampment Cleanup Project;
- B. Close the public hearing;
- C. Review and Approve the Proposed Text Adjustments; and
- D. Adopt the resolution APPROVING THE MODIFICATION TO THE GOOD NEIGHBOR PROGRAM: ENCAMPMENT CLEANUP PROJECT OF THE SAFE, CLEAN WATER AND NATURAL FLOOD PROTECTION PROGRAM.

### 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

Each of these priorities has specific operational and capital projects, which have key performance indicators (KPIs) to keep them on track in meeting the overall Program priorities. KPIs are considered our measurement for delivery of each Project and represent our commitment to the voters.

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. The renewed Program also requires that staff develop 5-year implementation plans and conduct independent audits every five years.

As changes may be required throughout the implementation of the Program, staff has developed a change control process, which outlines the differences between adjustments and modifications to the Program and identifies the different processes for implementing both. In summary, adjustments are project changes that do not impact KPIs, such as updates to text, financial allocation or schedule, and can be approved by the Valley Water Board of Directors (Board) during a public board meeting. Any changes to KPIs are considered modifications. Modifications to key performance indicators (KPIs) or decisions to not implement a project require a public hearing, which must be publicly noticed. Attachment 1 is the Notice of Public Hearing and Ad Placement Schedule, which was 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. In turn, KPI 1 identified the number of encampments to be cleaned up annually as a success measurement.

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

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abatement 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. 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.

Attachment 2 shows the proposed adjustments to the glossary definitions, project description and benefits and the proposed modifications to the KPIs, with all proposed changes shown with strike-through for removed text and red font for new text. Attachment 3 is a clean copy of the glossary definition and project descriptions, benefits and KPIs with the proposed changes incorporated.

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 of 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."

After opening and closing the public hearing, staff is recommending that the Board first approve the proposed text adjustments and then adopt the resolution APPROVING THE MODIFICATION TO THE GOOD NEIGHBOR PROGRAM: ENCAMPMENT CLEANUP PROJECT OF THE SAFE, CLEAN WATER AND NATURAL FLOOD PROTECTION PROGRAM (Attachment 4).

**FINANCIAL IMPACT:**

The financial impact associated with this item is the cost of placing the public notice ad. The cost for the public notice ad is approximately \$10,000 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: Notice of Public Hearing, Ad Placement Schedule
- Attachment 2: Proposed Adjustments/Modifications, Redlined
- Attachment 3: Proposed Adjustments/Modifications, Final
- Attachment 4: Resolution

**UNCLASSIFIED MANAGER:**

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