



# Santa Clara Valley Water District

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**File No.:** 21-1198

**Agenda Date:** 11/9/2021

**Item No.:** 3.3.

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## BOARD AGENDA MEMORANDUM

### **SUBJECT:**

Approve the First Amendment to Agreement for Possession and Use by and Between Santa Clara Valley Water District and the County of Santa Clara for Anderson Dam Tunnel Project, Coyote Percolation Dam Replacement Project, and Cross Valley Pipeline Extension Project as parts of the Federal Energy Regulatory Commission Order Compliance Project, under the Anderson Dam Seismic Retrofit Project No. 91864005, APN: 728-34-020, 729-36-001, 678-02-031 & -034, and 725-06-008; Real Estate File Nos. 9186-35, 9186-39, 9188-17, and 9232-52, Providing a No-Cost time extension to the Agreement (Unincorporated Santa Clara County) (District 1).

### **RECOMMENDATION:**

Approve the First Amendment to Agreement for Possession and Use by and Between Santa Clara Valley Water District and the County of Santa Clara, providing a no-cost time extension to the agreement.

### **SUMMARY:**

On April 27, 2021, the Board approved an Agreement for Possession and Use by and Between Santa Clara Valley Water District and the County of Santa Clara. The Agreement for Possession and Use (PUA) is also attached hereto (Attachment 1).

Since the Board meeting of April 27, 2021, representatives of Santa Clara Valley Water District (Valley Water) and the County of Santa Clara (County) have engaged in regular discussions for acquisition of the real property interests described in the PUA. These discussions are ongoing, cooperative, and productive. Section 2.1 of the PUA provides that if the parties have not entered into a formal sales agreement within six months of the effective date of the PUA (April 27, 2021), then Valley Water may seek authorization from this Board to acquire the real property interests described in the PUA by eminent domain. In the alternative, Section 2.1 also provides that the terms and provisions of the PUA may be extended by mutual written agreement of the parties. Because of the productive discussions to date and because Valley Water representatives believe that the additional time for negotiations authorized by the First Amendment to the PUA extending negotiations to April 27, 2022, will result in a sales agreement that is satisfactory to both Valley Water and the County, Valley Water staff recommend that the Board approve the First Amendment to the PUA.

### **FINANCIAL IMPACT:**

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The First Amendment to the PUA does not require any additional funds beyond the \$1,500,000.00, deposited into escrow in accordance with the terms and provisions of the original PUA. The Anderson Dam Seismic Retrofit Project No. 91864005 includes adequate funding in the Board adopted FY 2020-21 Budget for this transaction. The ADSRP is funded by the Water Utility Enterprise Fund (Fund 61).

**CEQA:**

Approval of the original PUA and this First Amendment are covered by the FOC's Statutory Exemption for specific actions necessary to prevent or mitigate an emergency under Pub. Res. Code section 21080(b)(4) and CEQA Guidelines section 15269(c). CEQA (Pub. Res. Code § 21060.3) defines an "emergency" as a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Dam failure leading to catastrophic flooding would be a "sudden unexpected occurrence" were it to occur. FERC's dam safety order clearly reflects a regulatory determination that seismic risks associated with Anderson Dam and the existing outlet constitute an emergency situation that requires immediate action by Valley Water. Each of the FOC components, including property acquisition to construct these components, is necessary for an integrated emergency response to the FERC Order, both to mitigate the potential for a catastrophic dam failure, and to avoid and minimize environmental, flood management, groundwater recharge, and water supply impacts of such emergency response actions.

In addition, because the temporary water pipeline easement (APN: 725-06-008) and the 4.05-acre parcel (APN: 729-36-001) are also planned for future use by the ADSRP, CEQA Guidelines Section 15004 (b)(2) applies to Valley Water's acquisition of these property interests with respect to future ADSRP use. Section 15004 (b)(2) states that public agencies shall not formally make a decision to proceed with use of a site for facilities which would require CEQA review, regardless of whether the agency has made any final purchase of the site for these facilities, except that agencies may designate a preferred site for CEQA review and may enter into land acquisition agreements when the agency has conditioned the agency's future use of the site on CEQA compliance. Execution of the PUA does not commit Valley Water to a definite course of action in regard to ADSRP, no future ADSRP use of the temporary pipeline easement and 4.05-acre parcel would commence until after ADSRP CEQA review is completed, and after that CEQA review Valley Water may pursue a different alternative.

**ATTACHMENTS:**

Attachment 1: Agreement

Attachment 2: First Amendment to Agreement

**UNCLASSIFIED MANAGER:**

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