

The Board approved Recommendation B; Took no action on Recommendation C; and Closed the Public Hearing.

File No.: 18-0318

Agenda Date: 5/23/2018

Item No.: 2.1.

BOARD AGENDA MEMORANDUM

SUBJECT:

Public Hearing on the Proposed Modifications to Project A2: Safe, Clean Water Partnerships and Grants (Nitrate Treatment System Rebate Program); and Project E4: Upper Penitencia Creek Flood Protection of the Safe, Clean Water and Natural Flood Protection Program (Continued from April 10, 2018).

RECOMMENDATION:

- A. Conduct the public hearing on the proposed modifications to Project A2: Safe, Clean Water Partnerships and Grants (Nitrate Treatment System Rebate Program); and Project E4: Upper Penitencia Creek Flood Protection of the Safe, Clean Water and Natural Flood Protection Program;
- B. Adopt the resolution APPROVING MODIFICATION TO THE NITRATE TREATMENT SYSTEM REBATE PROGRAM OF THE SAFE, CLEAN WATER PARTNERSHIPS AND GRANTS OF THE SAFE, CLEAN WATER AND NATURAL FLOOD PROTECTION PROGRAM; and
- C. Adopt the resolution APPROVING MODIFICATION TO THE UPPER PENITENCIA CREEK FLOOD PROTECTION PROJECT OF THE SAFE, CLEAN WATER AND NATURAL FLOOD PROTECTION PROGRAM.

SUMMARY:

Background on the Proposed Modifications:

Project A2: Safe, Clean Water Partnerships and Grants (Nitrate Treatment System Rebate Program)

The proposed modification is for Project A2, Key Performance Indicator (KPI) #3, the Nitrate Treatment System Rebate Program (Nitrate Rebate Program). The Nitrate Rebate Program provides funds to reimburse private well users for the costs of installing a nitrate treatment system to improve water quality and safety.

Nitrate contamination continues to be a groundwater protection challenge in southern Santa Clara County and many areas of the state. About a third of domestic wells tested in the county have nitrate above the drinking water standard, and this rebate program is viewed favorably by regulatory agencies working to reduce well owner exposure.

While the KPI has been met each Fiscal Year (FY), with 100% of eligible rebates awarded, participation has been very low. To date, 29 rebates totaling \$9,463 have been awarded under this

program. Since FY14, the program has expended approximately \$121,000, which is 15 percent of the total program funding. Of the program funds expended to date, approximately \$112,000 was spent on developing and administering the rebate program, including outreach costs.

The Independent Monitoring Committee (IMC) has acknowledged its concern about the cost/benefit ratio for this program and has made recommendations targeted at improving program participation each year for years one through three of the Safe, Clean Water Program. Per the Board's direction, staff implemented each of the IMC's recommendations, which included additional outreach, targeted outreach, and offering rebates for 100 percent of treatment system cost. Despite these additional efforts, the program participation has not significantly increased.

On February 27, 2018, based upon the continued low demand for the Nitrate Rebate Program despite robust outreach efforts, in the IMC's year four report, the committee recommended reallocating all or a portion of the remaining funds to other Safe, Clean Water Program projects. Staff concurred with the IMC's recommendation and on March 13, 2018, the Board directed staff to pursue the modification of KPI #3 and proceed with a formal public hearing.

The proposed modification will reduce the maximum program funding from approximately \$798,000 (adjusted 15-year plan amount) to approximately \$141,000 to align with the demand for the Nitrate Rebate Program. This reduced program funding level includes the funds spent to date to develop, administer and advertise the program, along with an annual allocation of \$4,000, which will be used for rebates through the project's completion date of 2023. This will help ensure continued assistance for well users that want to take advantage of this opportunity to reduce nitrate levels in their drinking water. The annual amount of \$4,000 matches the maximum rebate funding for any previous year. The staff administration and outreach efforts are now minimal and could be absorbed in the District's groundwater management program.

The funds used for rebates to date, plus the annual allocation of \$4,000 through 2023, equate to an estimated \$30,000 for rebates through the project completion. This estimated funding amount designated for rebates is reflected in the proposed modification to the KPI.

Proposed modification to Key Performance Indicator #3:

Reduce number of private well water users exposed to nitrate above drinking water standards by awarding 100% of eligible rebate requests for the installation of nitrate removal systems; up to \$30,000 for all rebates.

The remaining funds from the Nitrate Rebate Program equates to approximately \$650,000 and would be reallocated to one or more projects within the Safe, Clean Water Program. The recipient project(s) will be decided by the Board on May 23, 2018 during a special board meeting.

The original project text from the Safe, Clean Water Program, the strike-through version showing all proposed modifications, and a clean copy version of the modified project text are included as Attachment 1.

Project E4: Upper Penitencia Creek Flood Protection

(Coyote Creek to Dorel Drive - San José)

The primary objective of Project E4, the Upper Penitencia Creek Flood Protection Project, is to reduce the risk of flooding to homes, schools, businesses and highways in the Upper Penitencia Creek Watershed located in San José.

In 2016, the U.S. Army Corps of Engineers (USACE) decided that they could not support a multi-objective project that would be aligned with the interests of the community, resource agencies, and the District. The District therefore switched to a local planning effort aimed at developing a multi-purpose project to meet multiple beneficial goals including improving water quality and providing opportunities for recreational improvements and habitat restoration.

With the urgent demand for flood risk reduction along Coyote Creek, the Capital Improvement Program (CIP) Committee recommended reducing the scope of the Upper Penitencia Creek Flood Protection Project to the planning phase only and reducing the Safe, Clean Water funding from approximately \$42 million to \$2 million. To date, the project has not expended any of its allocated Safe, Clean Water funds and has been supported by the District's Watershed and Stream Stewardship fund.

Proposed modification to the Key Performance Indicators:

1. Complete a planning study report for a flood protection project to provide up to 1% flood protection to 9,000 homes, businesses and public buildings.

While this modification would suspend the Upper Penitencia Creek project's design and construction phases, completing the project's planning phase would position the District to be able to pursue additional funding for design and construction in the future as grant opportunities and other funding sources may become available.

The remaining available funding equates to approximately \$40 million. The current draft CIP for FY19-23 being circulated for public review includes the additional funding from the Upper Penitencia project. The final CIP is scheduled to be presented to the Board on May 8, 2018 for adoption. Upon the Board's adoption of the final CIP, the remaining available funds would be reallocated to the Coyote Creek Flood Protection Project to allow the District to complete flood risk reduction along 9 miles of Coyote Creek from Montague Expressway to Tully Road. The Coyote Creek project currently has local funding for the planning and design phases and partial funding for construction. The additional funding from the Upper Penitencia Creek project would allow the District to construct Coyote Creek's preferred project with local funding only.

The original project text from the Safe, Clean Water Program plan, the strike-through version showing all proposed modifications, and a clean copy version of the modified project text are included as Attachment 2.

Public Hearing Notice Requirements:

On July 24, 2012, the Board adopted Resolution No. 12-62, which specified the limits and conditions by which the District is authorized to institute a special parcel tax for the Safe, Clean Water Program.

As set forth in that Resolution, the Board of Directors may direct that proposed projects in the Safe, Clean Water program be modified or not implemented depending upon a number of factors, including federal and state funding limitations. To modify a proposed project, the Board must hold a formal, public hearing on the matter, which will be noticed by publication and notification to interested parties, before adoption of any such decision to modify or not implement a project. At its regular meeting on March 27, 2018, the Board set the time and place for a formal public hearing on this matter to take place on April 10, 2018.

Staff prepared and published an advertisement in Santa Clara County consistent with the two-week notice requirements stated in California Government Code section 6066. The list of newspapers that published the ad and a copy of the Public Notice Ad is attached to this memo (Attachment 5: Ad Placement Schedule and Sample Public Notice Ad).

FINANCIAL IMPACT:

The financial impact of holding the public hearing is the cost of translating and advertising the public notice ad, which is estimated to be approximately \$40,000 (Attachment 2). These costs will be paid through the Coyote Creek Flood Protection Project budget (26174043) and if necessary, staff will seek a budget adjustment to ensure sufficient funds are available.

The Nitrate Rebate Program (26061010) 15-year Safe, Clean Water Program allocation will be reduced by approximately \$650,000. Those funds will be reallocated to one or more Safe, Clean Water Projects. The recipient project(s) will be decided by the Board on May 23, 2018 during a special board meeting.

The reallocation of the 15-year Safe, Clean Water Program funding for the Upper Penitencia Creek Flood Protection Project (26324001) to the Coyote Creek Flood Protection Project (26174043) will be formally approved through the Board's adoption of the Final CIP for FY 19-23 on May 8, 2018.

CEQA:

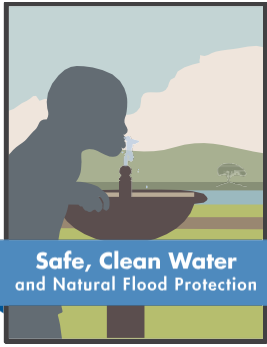
The recommended action does not constitute a project under CEQA because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

Attachment 1: Nitrate Treatment System Rebate Program
Attachment 2: Upper Penitencia Creek Project Text Modifications
Attachment 3: Resolution Nitrate Treatment System
Attachment 4: Resolution Upper Penitencia Creek
Attachment 5: Sample Ad and Schedule

UNCLASSIFIED MANAGER:

Ngoc Nguyen, 408-630-2632



Safe, Clean Water and Natural Flood Protection



Original Project Text

Project A2

Safe, Clean Water Partnerships and Grants

Grants and partnerships covered under this project include:

- Grants for agencies and organizations to study and pilot-test new water conservation programs. In FY10, county water conservation stood at 50,600 acre-feet, but this number needs to nearly double by 2030 to meet future demand.
- Grants to help schools in the county provide drinking water dispensers and other potable water devices for students. California Senate Bill 1413 (SB 1413) requires that schools provide access to free, fresh drinking water during mealtimes in food service areas.
- Rebates to private well water users for the installation of point-of-use treatment systems to remove excess nitrate from their drinking water.

Benefits

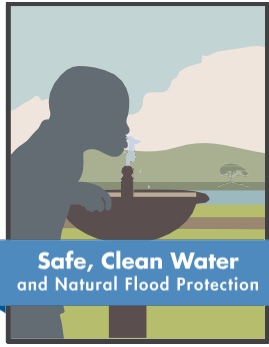
- Helps the District exceed the conservation goal of 98,500 acre-feet per year by 2030.
- Reduces water demands and the need to invest in new or expanded water supply sources and associated infrastructure.
- Increases water supply reliability.
- Helps schools provide safe, clean drinking water to students and comply with state mandate.
- Assists private well water users in maintaining the quality and safety of their drinking water.

Key Performance Indicators (15-Year Program)

1. Award up to \$1 million to test new conservation activities.
2. Increase number of schools in Santa Clara County in compliance with SB 1413 and the Healthy Hunger-Free Kids Act, regarding access to drinking water by awarding 100% of eligible grant requests for the installation of hydration stations; a maximum of 250 grants up to \$254,000.
3. Reduce number of private well water users exposed to nitrate above drinking water standards by awarding 100% of eligible rebate requests for the installation of nitrate removal systems; a maximum of 1,000 rebates up to \$702,000.

Geographic Area of Benefit

Countywide



Safe, Clean Water and Natural Flood Protection



Proposed Modifications

Project A2

Safe, Clean Water Partnerships and Grants

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- Grants for agencies and organizations to study and pilot-test new water conservation programs. In FY10, county water conservation stood at 50,600 acre-feet, but this number needs to nearly double by 2030 to meet future demand.
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- Rebates to private well water users for the installation of point-of-use treatment systems to remove excess nitrate from their drinking water.

Benefits

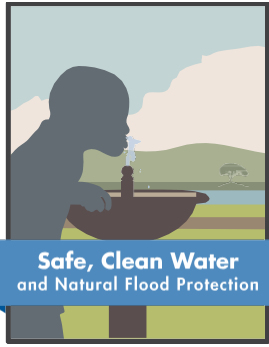
- Helps the District exceed the conservation goal of 98,500 acre-feet per year by 2030.
- Reduces water demands and the need to invest in new or expanded water supply sources and associated infrastructure.
- Increases water supply reliability.
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3. Reduce number of private well water users exposed to nitrate above drinking water standards by awarding 100% of eligible rebate requests for the installation of nitrate removal systems; up to \$30,000 for all rebates, a maximum of 1,000 rebates up to \$702,000.

Geographic Area of Benefit

Countywide



Safe, Clean Water and Natural Flood Protection



Modified Project Text

Project A2

Safe, Clean Water Partnerships and Grants

Grants and partnerships covered under this project include:

- Grants for agencies and organizations to study and pilot-test new water conservation programs. In FY10, county water conservation stood at 50,600 acre-feet, but this number needs to nearly double by 2030 to meet future demand.
- Grants to help schools in the county provide drinking water dispensers and other potable water devices for students. California Senate Bill 1413 (SB 1413) requires that schools provide access to free, fresh drinking water during mealtimes in food service areas.
- Rebates to private well water users for the installation of point-of-use treatment systems to remove excess nitrate from their drinking water.

Benefits

- Helps the District exceed the conservation goal of 98,500 acre-feet per year by 2030.
- Reduces water demands and the need to invest in new or expanded water supply sources and associated infrastructure.
- Increases water supply reliability.
- Helps schools provide safe, clean drinking water to students and comply with state mandate.
- Assists private well water users in maintaining the quality and safety of their drinking water.

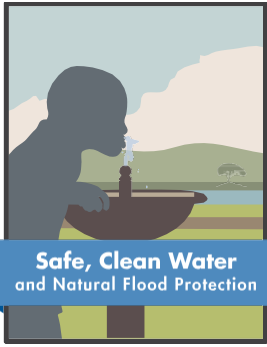
Key Performance Indicators (15-Year Program)

1. Award up to \$1 million to test new conservation activities.
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3. Reduce number of private well water users exposed to nitrate above drinking water standards by awarding 100% of eligible rebate requests for the installation of nitrate removal systems; up to \$30,000 for all rebates.

Geographic Area of Benefit

Countywide

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Safe, Clean Water and Natural Flood Protection



Original Project Text

Project E4

Upper Penitencia Creek Flood Protection Coyote Creek to Dorel Drive – San José

Preferred project: A federal-state-local partnership

This project continues a partnership with the U.S. Army Corps of Engineers (USACE) to plan, design and construct improvements along 4.2 miles of Upper Penitencia Creek from the confluence with Coyote Creek to Dorel Drive. The project is also funded in partnership with the state. Part of the project must be completed prior to a planned Silicon Valley Rapid Transit extension to the Bay Area Rapid Transit line, to protect the area around the proposed Berryessa station near King Road, which would otherwise be subject to flooding.

The natural creek channel will be preserved while adjacent existing open space and parkland will remain as recreational areas, only rarely taking the role as a temporary floodplain so that floodwaters do not enter surrounding neighborhoods and commercial areas. Proposed construction measures may include modified floodplains, levees, flood walls, bypass channels, and fish passage improvements. Existing District water supply facilities may also be modified to protect habitat and improve water supply reliability.

The \$41.9 million in local funding from Safe, Clean Water allows the District to move ahead with the planning, design and construction of the project.

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 José. 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 the District 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 build on a 1981 tri-party agreement between the District, the City of San José, and Santa Clara County 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 José and Santa Clara County to complete the long-planned trail and linear park.

Benefits

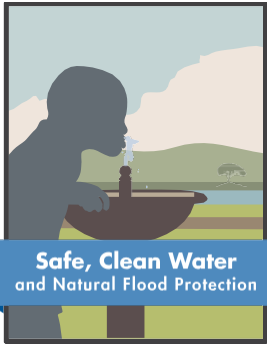
- Preferred project provides 1% flood protection to approximately 5,000 homes, schools and businesses. Locally funded-only project provides 1% flood protection to the proposed rapid transit station and areas downstream from King Road
- Reduces sedimentation and maintenance requirements
- Improves water quality in Coyote Creek
- Provides opportunities for recreation improvements consistent with the City of San José and Santa Clara County Park master plans

Key Performance Indicators (15-Year Program)

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.

Geographic Area of Benefit

San José



Safe, Clean Water and Natural Flood Protection

Santa Clara Valley
Water District



Proposed Modifications

Project E4

Upper Penitencia Creek Flood Protection Coyote Creek to Dorel Drive – San José

Preferred project: A federal state local partnership

This project ~~continues a partnership with the U.S. Army Corps of Engineers (USACE) to plan, design and construct~~ completes a planning study report for flood protection improvements along 4.2 miles of Upper Penitencia Creek from the confluence with Coyote Creek to Dorel Drive. ~~The project is also funded in partnership with the state. Part of the project must be completed prior to a planned Silicon Valley Rapid Transit extension to the Bay Area Rapid Transit line, to protect the area around the proposed Berryessa station near King Road, which would otherwise be subject to flooding.~~

The planning study will identify improvements that preserve ~~The~~ the natural creek channel and will be preserved while adjacent recreational areas such as the existing open space and parkland, so that they will remain as recreational areas, only rarely taking the role can function on a rare basis to serve as a temporary floodplain to prevent so that floodwaters from do not entering surrounding neighborhoods and commercial areas. Proposed construction flood risk reduction measures may include modified floodplains, levees, detention/retention areas, flood walls, bypass channels, and fish passage improvements. Modifications to ~~E~~existing District water supply facilities may also be modified included to protect habitat and improve water supply reliability.

The ~~\$241.9~~ million in local funding from Safe, Clean Water allows the District to move ahead with the planning phase, design and construction of the project. The planning study report will provide the foundation to allow the District to pursue additional funding opportunities for the project design and construction phases.

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 José. 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 the District 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 build on a 1981 tri-party agreement between the District, the City of San José, and Santa Clara County 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 José and Santa Clara County to complete the long-planned trail and linear park.

Benefits

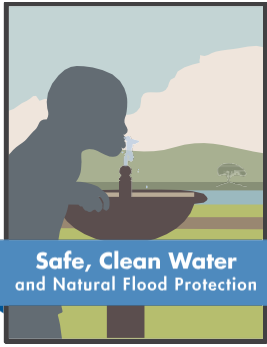
- ~~Preferred p~~Project provides a planning study report for:
 - Up to 1% flood protection to approximately 95,000 homes, schools and businesses.
~~Locally funded only project provides 1% flood protection to the proposed rapid transit station and areas downstream from King Road~~
 - Reduction of es sedimentation and maintenance requirements
 - Improvements to s water quality in Coyote Creek
 - ~~Provides o~~Opportunities for recreation improvements consistent with the City of San José and Santa Clara County Park master plans

Key Performance Indicators (15-Year Program)

1. ~~Preferred project with federal and local funding: Construct~~ Complete a planning study report for a flood protection project to provide up to 1% flood protection to 95,000 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.~~

Geographic Area of Benefit

San José and Milpitas



Safe, Clean Water and Natural Flood Protection



Modified Project Text

Project E4

Upper Penitencia Creek Flood Protection Coyote Creek to Dorel Drive – San José

This project completes a planning study report for flood protection improvements along 4.2 miles of Upper Penitencia Creek from the confluence with Coyote Creek to Dorel Drive. The planning study will identify improvements that preserve the natural creek channel and adjacent recreational areas such as the existing open space and parkland, so that they can function on a rare basis to serve as a temporary floodplain to prevent floodwaters from entering surrounding neighborhoods and commercial areas. Proposed flood risk reduction measures may include modified floodplains, levees, detention/retention areas, bypass channels, and fish passage improvements. Modifications to existing District water supply facilities may also be included to protect habitat and improve water supply reliability.

The \$2 million in local funding from Safe, Clean Water allows the District to move ahead with the planning phase of the project. The planning study report will provide the foundation to allow the District to pursue additional funding opportunities for the project design and construction phases.

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 José. 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 the District 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 project would build on a 1981 tri-party agreement between the District, the City of San José, and Santa Clara County 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 José and Santa Clara County to complete the long-planned trail and linear park.

Benefits

- Project provides a planning study report for:
 - Up to 1% flood protection to approximately 9,000 homes, schools and businesses.
 - Reduction of sedimentation and maintenance requirements
 - Improvements to water quality in Coyote Creek
 - Opportunities for recreation improvements consistent with the City of San José and Santa Clara County Park master plans

Key Performance Indicators (15-Year Program)

1. Complete a planning study report for a flood protection project to provide up to 1% flood protection to 9,000 homes, businesses and public buildings.

Geographic Area of Benefit

San José and Milpitas

**BOARD OF DIRECTORS
SANTA CLARA VALLEY WATER DISTRICT**

RESOLUTION NO. 18²⁷-1

**APPROVING MODIFICATION TO THE NITRATE TREATMENT SYSTEM REBATE
PROGRAM OF THE SAFE, CLEAN WATER PARTNERSHIPS AND GRANTS OF THE SAFE,
CLEAN WATER AND NATURAL FLOOD PROTECTION PROGRAM**

WHEREAS, on July 24, 2012, the Board of Directors of the Santa Clara Valley Water District (District) adopted Resolution No. 12-62 Providing for the Continuation and Levy of a Special Tax to Pay the Cost of a Safe, Clean Water and Natural Flood Protection Program in the Combined Flood Control Zone of the Santa Clara Valley Water District Subject, Nevertheless, to Specified Limits and Conditions (Resolution No. 12-62); and

WHEREAS, the purpose of the special tax is to supplement other available but limited revenues to keep the District's flood protection system of levees, channels, drains, debris basins and other improvements in a safe and effective condition; to enable the District to respond to emergencies; to perform maintenance and repair; to acquire, restore, and preserve habitat; to provide recreation; to conduct environmental education; to protect and improve water quality; and, to construct and operate flood protection storm drainage facilities; including in each case the cost of financing such activities; and

WHEREAS, in November 2012, the District's Measure B was overwhelmingly approved by more than a two-thirds majority vote of the electorate of the District, implementing a special tax, the proceeds of which are used solely for the purpose of supporting the five funding priorities of the Safe, Clean Water and Natural Flood Protection Program (Safe, Clean Water Program), which are as follows: Priority A: Ensure a safe, reliable water supply; Priority B: Reduce toxins, hazards, and contaminants in our waterways; Priority C: Protect our water supply from earthquakes and natural disasters; Priority D: Restore wildlife habitat and provide open space; and Priority E: Provide flood protection to homes, businesses, schools, and highways; and

WHEREAS, the Nitrate Treatment System Rebate Program is one of three Key Performance Indicators of the Safe, Clean Water Partnerships and Grants project under Priority A of the Safe, Clean Water Program; and

WHEREAS, the Safe, Clean Water Program describes the objective of the Nitrate Treatment System Rebate Program as follows: "Rebates to private well water users for the installation of point-of-use treatment systems to remove excess nitrate from their drinking water"; and

WHEREAS, the Safe, Clean Water Program defines the Key Performance Indicator (KPI) for the Nitrate Treatment System Rebate Program: "Reduce number of private well water users exposed to nitrate above drinking water standards by awarding 100% of eligible rebate requests for the installation of nitrate removal systems; a maximum of 1,000 rebates up to \$702,000"; and

WHEREAS, the KPI for the Nitrate Treatment System Rebate Program has been met each Fiscal Year, with 100% of eligible rebates awarded; and

WHEREAS, participation in the Nitrate Treatment System Rebate Program has been very low; and

WHEREAS, the District expended approximately \$121,264 to award 29 rebates totaling \$9,463, and develop and administer the rebate program, including outreach; and

WHEREAS, the Independent Monitoring Committee (IMC) has acknowledged its concern about the cost/benefit ratio for this program and has made recommendations targeted at improving program participation each year for years one through three of the Safe, Clean Water Program; and

WHEREAS, the Board directed staff to implement each of the IMC's recommendations, which included additional outreach, targeted outreach, and offering rebates for 100 percent of treatment system cost; and

WHEREAS, despite these additional efforts, the program participation has not significantly increased; and

WHEREAS, based upon the continued low demand for the program, despite robust outreach efforts, in the IMC's year four report, the committee recommended reallocating all or a portion of the remaining funds to other Safe, Clean Water Program projects; and

WHEREAS, on March 13, 2018, the Board directed staff to pursue the modification to the Nitrate Treatment System Rebate Program KPI; and

WHEREAS, the modification will reduce the maximum program funding to align with the demand for the program; and

WHEREAS, the Safe, Clean Water Program's Adjusted 15-year budget for the Nitrate Treatment System Rebate Program was approximately \$789,000; and

WHEREAS, the remaining funds from the Nitrate Rebate Program equates to approximately \$650,000 and would be reallocated to one or more projects within the Safe, Clean Water Program; and

WHEREAS, the recipient project(s) will be decided by the Board in an open public board meeting; and

WHEREAS, this reduced program funding level includes funds spent to date to develop, administer and advertise the program, along with an annual amount of \$4,000 prospectively, which will be used for rebates through the project's completion date of 2023 to help ensure continued assistance for well users that want to take advantage of this opportunity to reduce nitrate levels in their drinking water; and

WHEREAS, the District desires to modify the Nitrate Treatment System Rebate Program KPI to reduce the program's maximum funding for rebates up to \$30,000; and

WHEREAS, the District's Resolution No. 12-62 (Resolution No. 12-62) authorizes modifications to proposed projects. Paragraph J. reads as follows: "The Board of Directors may direct that proposed projects in the Safe Clean Water and Natural Flood Protection Program be modified or not implemented depending upon a number of factors, including federal and state funding limitations and the analysis and results of CEQA environmental review. The Board of Directors must hold a formal, public hearing on the matter, which will be noticed by publication and notification to interested parties, before adoption of any such decision to modify or not implement a project"; and

WHEREAS, at its regularly scheduled meeting conducted on March 27, 2018, the District's Board of Directors set a time and place for a formal public hearing to occur on April 10, 2018, at which time the Board will consider Proposed Modification to the Nitrate Treatment System Rebate Program of the Safe, Clean Water Partnerships and Grants of the Safe, Clean Water and Natural Flood Protection Program.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Santa Clara Valley Water District as follows:

1. Pursuant to the requirements stated in the District's Resolution No. 12-62, paragraph J., a noticed public hearing has been held.
2. To address continued low demand for the Nitrate Rebate Program, despite robust outreach efforts, the maximum program funding will be reduced to align with the demand for the program.
3. The reduced program funding level will include the funds spent to date to develop, administer and advertise the program, along with an annual amount of \$4,000 prospectively, which will be used for rebates through the project's completion date of 2023.
4. Of the reduced program funding level, the maximum amount for all rebates will be up to \$30,000.
5. The Key Performance Indicator for the Nitrate Treatment System Rebate Program of the Safe, Clean Water Partnerships and Grants project under Priority A, as set forth in the Safe, Clean Water Program, is modified to state as follows:
 - a. Reduce number of private well water users exposed to nitrate above drinking water standards by awarding 100% of eligible rebate requests for the installation of nitrate removal systems; up to \$30,000 for all rebates.

6. The District's Safe, Clean Water and Natural Flood Protection Program category of Priority A, Safe, Clean Water Partnerships and Grants Project's KPI for Nitrate Treatment System Rebate Program is hereby modified as stated in Attachment A hereto, Modified Safe, Clean Water Partnerships and Grants.

PASSED AND ADOPTED by the Board of Directors of Santa Clara Valley Water District by the following vote on May 23, 2018:

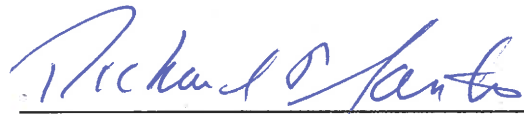
AYES: Directors Estremera, LeZotte, Hsueh, Keegan, Kremen, Varela, Santos

NOES: Directors None

ABSENT: Directors None

ABSTAIN: Directors None

SANTA CLARA VALLEY WATER DISTRICT

By: 

RICHARD P. SANTOS
Chair/Board of Directors

ATTEST: MICHELE L. KING, CMC


Clerk/Board of Directors

Attachment A: Modified Project Text

Project A2

Safe, Clean Water Partnerships and Grants

Grants and partnerships covered under this project include:

- Grants for agencies and organizations to study and pilot-test new water conservation programs. In FY10, county water conservation stood at 50,600 acre-feet, but this number needs to nearly double by 2030 to meet future demand.
- Grants to help schools in the county provide drinking water dispensers and other potable water devices for students. California Senate Bill 1413 (SB 1413) requires that schools provide access to free, fresh drinking water during mealtimes in food service areas.
- Rebates to private well water users for the installation of point-of-use treatment systems to remove excess nitrate from their drinking water.

Benefits

- Helps the District exceed the conservation goal of 98,500 acre-feet per year by 2030.
- Reduces water demands and the need to invest in new or expanded water supply sources and associated infrastructure.
- Increases water supply reliability.
- Helps schools provide safe, clean drinking water to students and comply with state mandate.
- Assists private well water users in maintaining the quality and safety of their drinking water.

Key Performance Indicators (15-Year Program)

1. Award up to \$1 million to test new conservation activities.
2. Increase number of schools in Santa Clara County in compliance with SB 1413 and the Healthy Hunger-Free Kids Act, regarding access to drinking water by awarding 100% of eligible grant requests for the installation of hydration stations; a maximum of 250 grants up to \$254,000.
3. Reduce number of private well water users exposed to nitrate above drinking water standards by awarding 100% of eligible rebate requests for the installation of nitrate removal systems; up to \$30,000 for all rebates.

Geographic Area of Benefit

Countywide

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**BOARD OF DIRECTORS
SANTA CLARA VALLEY WATER DISTRICT**

RESOLUTION NO. 18-

**APPROVING MODIFICATION TO THE UPPER PENITENCIA CREEK FLOOD PROTECTION
PROJECT OF THE SAFE, CLEAN WATER AND NATURAL FLOOD PROTECTION
PROGRAM**

WHEREAS, on July 24, 2012, the Board of Directors of the Santa Clara Valley Water District (District) adopted Resolution No. 12-62 Providing for the Continuation and Levy of a Special Tax to Pay the Cost of a Safe, Clean Water and Natural Flood Protection Program in the Combined Flood Control Zone of the Santa Clara Valley Water District Subject, Nevertheless, to Specified Limits and Conditions (Resolution No. 12-62); and

WHEREAS, the purpose of the special tax is to supplement other available but limited revenues to keep the District's flood protection system of levees, channels, drains, debris basins and other improvements in a safe and effective condition; to enable the District to respond to emergencies; to perform maintenance and repair; to acquire, restore, and preserve habitat; to provide recreation; to conduct environmental education; to protect and improve water quality; and, to construct and operate flood protection storm drainage facilities; including in each case the cost of financing such activities; and

WHEREAS, in November 2012, the District's Measure B was overwhelmingly approved by more than a two-thirds majority vote of the electorate of the District, implementing a special tax, the proceeds of which are used solely for the purpose of supporting the five funding priorities of the Safe, Clean Water and Natural Flood Protection Program (Safe, Clean Water Program), which are as follows: Priority A: Ensure a safe, reliable water supply; Priority B: Reduce toxins, hazards, and contaminants in our waterways; Priority C: Protect our water supply from earthquakes and natural disasters; Priority D: Restore wildlife habitat and provide open space; and Priority E: Provide flood protection to homes, businesses, schools, and highways; and

WHEREAS, the Upper Penitencia Creek Flood Protection Project (Upper Penitencia Creek project) is included under Priority E of the Safe, Clean Water Program; and

WHEREAS, the Safe, Clean Water Program describes the primary objective of the Upper Penitencia Creek project as reducing the risk of flooding to homes, schools, businesses and highways in the Upper Penitencia Creek Watershed located in San José; and

WHEREAS, the Safe, Clean Water Program defines the Key Performance Indicator (KPI) for the Upper Penitencia Creek project as follows: 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; and 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; and

WHEREAS, in 2016, the U.S. Army Corps of Engineers decided that they could not support a multi-objective project that would be aligned with the interests of the community, resource agencies and the District; and

WHEREAS, the District therefore switched to a local planning effort aimed at developing a multi-purpose project to meet multiple beneficial goals including improving water quality and providing opportunities for recreation improvements and habitat restoration; and

WHEREAS, with the urgent demand for flood risk reduction along Coyote Creek, the Capital Improvement Program (CIP) Committee recommended a modification to reduce the scope of the Upper Penitencia Creek project to the planning phase only and reduce the project's Safe, Clean Water funding from approximately \$42 million to \$2 million; and

WHEREAS, reducing the scope of the Upper Penitencia Creek project would suspend the project's design and construction phases, while completing the project's planning phase would position the District to be able to pursue additional funding for design and construction in the future as grant opportunities and other funding sources may become available; and

WHEREAS, to date, the Upper Penitencia Creek project has not expended any of its allocated Safe, Clean Water funds and has been supported by the District's Watershed and Stream Stewardship fund; and

WHEREAS, the remaining available funding from the Upper Penitencia Creek project would be reallocated to the Coyote Creek Flood Protection Project (Coyote Creek project) to allow the District to complete flood risk reduction along 9 miles of Coyote Creek from Montague Expressway to Tully Road; and

WHEREAS, the Coyote Creek project currently has local funding for the planning and design phases and partial funding for construction, and the additional funding from the Upper Penitencia Creek project would allow the District to construct Coyote Creek's preferred project with local funding only; and

WHEREAS, the District desires to modify the Upper Penitencia Creek Flood Protection Project to reduce the project scope to the planning phase only; and

WHEREAS, the District's Resolution No. 12-62 (Resolution No. 12-62) authorizes modifications to proposed projects. Paragraph J. reads as follows: "The Board of Directors may direct that proposed projects in the Safe Clean Water and Natural Flood Protection Program be modified or not implemented depending upon a number of factors, including federal and state funding limitations and the analysis and results of CEQA environmental review. The Board of Directors must hold a formal, public hearing on the matter, which will be noticed by publication and notification to interested parties, before adoption of any such decision to modify or not implement a project"; and

WHEREAS, at its regularly scheduled meeting conducted on March 27, 2018, the District's Board of Directors set a time and place for a formal public hearing to occur on April 10, 2018, at which time the Board will consider Proposed Modification to the Upper Penitencia Creek Flood Protection Project of the Safe, Clean Water and Natural Flood Protection Program.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Santa Clara Valley Water District as follows:

1. Pursuant to the requirements stated in the District's Resolution No. 12-62, paragraph J., a noticed public hearing has been held.
2. To address the urgent demand for flood risk reduction along Coyote Creek and the lack of federal funding available for the Upper Penitencia Creek Flood Protection Project, the scope of the Upper Penitencia Creek project will be reduced to the planning phase only and the project's Safe, Clean Water funding will be reduced to \$2 million.

3. The remaining available funding from the Upper Penitencia Creek project will be reallocated to the Coyote Creek Flood Protection Project to allow the District to construct Coyote Creek's preferred project with local funding only and complete flood risk reduction along 9 miles of Coyote Creek from Montague Expressway to Tully Road.
4. The Key Performance Indicator for the Upper Penitencia Creek Flood Protection Project under Priority E, as set forth in the Safe, Clean Water Program, is modified to state as follows:
 - "1. Complete a planning study report for a flood protection project to provide up to 1% flood protection to 9,000 homes, businesses and public buildings."
5. The District's Safe, Clean Water and Natural Flood Protection Program category of Priority E for the Upper Penitencia Creek Flood Protection Project is hereby modified as stated in Attachment A hereto, Modified Project Text for the Upper Penitencia Creek Flood Protection, Coyote Creek to Dorel Drive – San José.

PASSED AND ADOPTED by the Board of Directors of Santa Clara Valley Water District by the following vote on May 23, 2018:

AYES: Directors

NOES: Directors

ABSENT: Directors

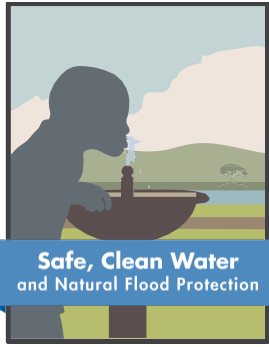
ABSTAIN: Directors

SANTA CLARA VALLEY WATER DISTRICT

By: _____
RICHARD P. SANTOS
Chair/Board of Directors

ATTEST: MICHELE L. KING, CMC

Clerk/Board of Directors



Safe, Clean Water and Natural Flood Protection



Attachment A: Modified Project Text

Project E4

Upper Penitencia Creek Flood Protection Coyote Creek to Dorel Drive – San José

This project completes a planning study report for flood protection improvements along 4.2 miles of Upper Penitencia Creek from the confluence with Coyote Creek to Dorel Drive. The planning study will address flood protection improvements for the area around the Silicon Valley Rapid Transit's proposed Berryessa/North San José station near King Road, as part of an extension to the Bay Area Rapid Transit line.

The planning study will identify improvements that preserve the natural creek channel and adjacent recreational areas such as the existing open space and parkland, so that they can function on a rare basis to serve as a temporary floodplain to prevent floodwaters from entering surrounding neighborhoods and commercial areas. Proposed flood risk reduction measures may include modified floodplains, levees, detention/retention areas, bypass channels, and fish passage improvements. Modifications to existing District water supply facilities may also be included to protect habitat and improve water supply reliability.

The \$2 million in local funding from Safe, Clean Water allows the District to move ahead with the planning phase of the project. The planning study report will provide the foundation to allow the District to pursue additional funding opportunities for the project design and construction phases.

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 José. 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 the District 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 project would build on a 1981 tri-party agreement between the District, the City of San José, and Santa Clara County 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 José and Santa Clara County to complete the long-planned trail and linear park.

Benefits

- Project provides a planning study report for:
 - Up to 1% flood protection to approximately 9,000 homes, schools and businesses.
 - Reduction of sedimentation and maintenance requirements
 - Improvements to water quality in Coyote Creek
 - Opportunities for recreation improvements consistent with the City of San José and Santa Clara County Park master plans

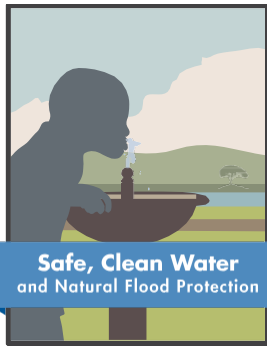
Key Performance Indicators (15-Year Program)

1. Complete a planning study report for a flood protection project to provide up to 1% flood protection to 9,000 homes, businesses and public buildings.

Geographic Area of Benefit

San José and Milpitas

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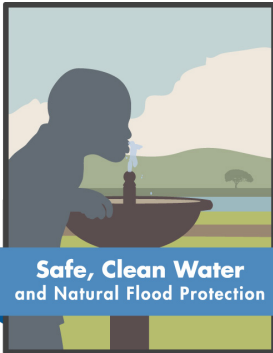


Safe, Clean Water and Natural Flood Protection



Ad Placement Schedule and Sample Public Notice Ad

Newspaper:	Dates:
Campbell Express	March 28 and April 4
Almanac (Portola Valley and Menlo Park)	March 28 and April 4
El Observador	March 30 and April 6
Gilroy/Morgan Hill	March 30 and April 6
Los Altos Town Crier	March 28 and April 4
Mercury News/San Mateo Times	March 30 and April 6
Metro	March 28 and April 4
Milpitas Post	March 30 and April 6
Mt. View/Palo Alto	March 30 and April 6
Santa Clara Weekly	March 28 and April 4
Vietnam Daily News	March 30 and April 6
Silicon Valley Community Newspapers weeklies (Almaden, Cambrian, Campbell, Cupertino, Los Gatos, Rose Garden, Saratoga, Sunnyvale and Willow Glen)	March 30 and April 6
San Jose Post	March 28 and April 6



Safe, Clean Water and Natural Flood Protection Program

The Safe, Clean Water and Natural Flood Protection Program (Safe, Clean Water) is a voter-approved, 15-year program to implement the community's priorities for the present and future water resources of Santa Clara County.

Notice of Public Hearing

What: Public Hearing on Proposed Modifications to the Nitrate Treatment System Rebate Program and the Upper Penitencia Creek Flood Protection Project

When: April 10, 2018 at 1:00 p.m.

Where: District Headquarters, Board Room
5700 Almaden Expressway,
San Jose, CA 95118

Modifications to the voter-approved program require a public hearing. Two changes are currently proposed.

Nitrate Treatment System Rebate Program

The proposed modification is for Project A2, Key Performance Indicator (KPI) #3, the Nitrate Treatment System Rebate Program (Nitrate Rebate Program). The Nitrate Rebate Program provides funds to reimburse private well users for the costs of installing a nitrate treatment system to improve water quality and safety.

The proposed modification will reduce the maximum program funding to align with the demand for the Nitrate Rebate Program. This reduced program funding level includes the funds spent to date to develop, administer and advertise the program, along with an annual amount of \$4,000 prospectively, which will be used for rebates through the project's completion date of 2023. This will help ensure continued assistance for well users that want to take advantage of this opportunity to reduce nitrate levels in their drinking water. The remaining funds would be reallocated to another project within the Safe, Clean Water Program.

Proposed modification to Key Performance Indicator #3:

Reduce number of private well water users exposed to nitrate above drinking water standards by awarding 100% of eligible rebate requests for the installation of nitrate removal systems; up to \$30,000 for all rebates.

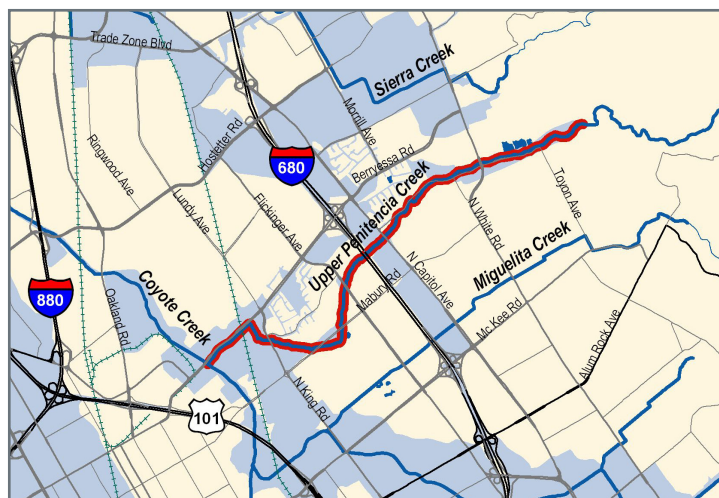
Upper Penitencia Creek Flood Protection (Coyote Creek to Dorel Drive – San José)

The proposed modification is for Project E4, the Upper Penitencia Creek Flood Protection Project. The primary objective of the project is to reduce the risk of flooding to homes, schools, businesses and highways in the Upper Penitencia Creek Watershed located in San José.

The proposed modification would reduce the scope of the Upper Penitencia Creek Flood Protection Project to the planning phase only through FY19, and would reallocate the remaining funds to complete flood risk reduction along 9 miles of Coyote Creek, from Montague Expressway to Tully Road. The proposed modification would address the urgent demand for flood risk reduction along Coyote Creek. Completing the planning phase for the Upper Penitencia Creek Flood Protection Project would position the District to be able to pursue additional funding for design and construction in the future as grant opportunities and other funding sources may become available.

Proposed modification to the Key Performance Indicators:

1. Complete a planning study report for a flood protection project to provide up to 1% flood protection to 9,000 homes, businesses and public buildings.



Map of the Upper Penitencia Creek Flood Protection Project area. Shaded blue areas indicate the 1% flood areas.

For more information

The board agenda memo regarding this hearing will be available on March 30, 2018 at www.valleywater.org. For more information on the public hearing, contact **Jessica Collins** at jcollins@valleywater.org or (408) 630-2200.