



Board Report

File #: WRAG 19-302, **Version:** 1

Consider:

- a. Receiving a report on key terms of a draft Pajaro Regional Flood Management Agency Joint Exercise of Powers Agreement (“JPA Agreement”) to address flooding issues along the Pajaro River;
 - b. Directing staff to finalize the JPA Agreement, including terms that set a five-member agency board and voting protocols that require unanimous consent to approve the JPA’s annual budget; and
 - c. Directing staff to return in early 2020 with a finalized JPA agreement to be considered for adoption.
- (AGENDA ITEM NO. 1 REVISED VIA SUPPLEMENTAL)

RECOMMENDATION:

It is recommended that the Monterey County Board of Supervisors and the Monterey County Water Resources Agency Board of Supervisors:

- a. Receive a report on key terms of a draft Pajaro Regional Flood Management Agency Joint Exercise of Powers Agreement (“JPA Agreement”) to address flooding issues along the Pajaro River;
- b. Direct staff to finalize the JPA Agreement, including terms that set a five-member agency board and voting protocols that require unanimous consent to approve the JPA’s annual budget; and
- c. Direct staff to return in early 2020 with a finalized JPA agreement to be considered for adoption.

SUMMARY:

An analysis of potential governance structures to oversee capital investment and long-term operations and maintenance on the Pajaro River has led staff to recommend formation of a new Joint Powers Authority (“JPA”) in Monterey and Santa Cruz counties. The JPA’s purpose is to finance and implement flood risk reduction projects, and to oversee and fund operations and maintenance of any existing and newly built flood risk reduction facilities. This report is intended to update the Board and seek input on key terms and conditions within the draft JPA Agreement that would govern the new JPA. Proposed member agencies include government entities with land use and long-term operations and maintenance responsibilities.

BACKGROUND:

For many decades, the Monterey County Water Resources Agency (“MCWRA”) and the Santa Cruz County Flood Control and Water Conservation District - Zone 7 (“Zone 7”) have been engaged with the United States Army Corps of Engineers (“USACE”) to pursue a flood risk reduction project on the Pajaro River. The Federal Pajaro River Flood Risk Reduction project (“Project”) has gone through a complicated history of planning iterations to identify a feasible and fundable project. The identification of a feasible project is now complete. The two non-federal project sponsors, MCWRA and Zone 7, have received a final integrated General Reevaluation Report/Environmental Assessment, or GRR/EA, accompanied by a signed Director’s Report from USACE. The signed report updates the existing federal authorization and allows the Project to compete for Federal Work Plan funds to enter the design/construction phases.

Alongside the federal process, staff has been working with the State Department of Water Resources to ensure appropriations are made to the Project through the existing authorization under the Subventions program. The Subventions program offers to pay up to 70% of non-federal capital costs associated with a federally sponsored implementation with USACE. Additionally, staff coordinated with State Assembly

members Mark Stone and Robert Rivas as well as State Senator Bill Monning to develop legislation (AB-489) that allows the use of authorized State subventions funding in advance of, or in the absence of, federal investment in construction. The bill was signed by Governor Newsom on September 27, 2019 and provides flexibility to move forward with project implementation earlier than that which might be afforded by the federal process.

Key to implementing flood risk reduction projects, including the federal project, is the establishment of one or more governance entities that will fund, finance and lead implementation. The governance entity (or entities) would act as the local sponsor for the Project and provide assurances to both the federal and state governments to operate, maintain, repair, replace and rehabilitate the Project. Additionally, the new governing body (or bodies) would oversee floodplain management of the Pajaro River basin, in collaboration with land use agencies. Ultimately, a governance entity will plan for and manage the flood risk reduction system in order to address and adapt to changing conditions and evolving regulatory requirements over time.

In September 2012, a consultant to the local sponsors completed a memorandum “Potential Governance Structures for the Lower Pajaro Levee Reconstruction Project”, that presented a preliminary assessment of potential governance structures for the future management of the Project. An analysis of potential governance options initially identified a new JPA as the superior governance approach to finance and implement flood risk reduction actions.

A Governance and Finance Committee (“Committee”) was established in 2016 to reach consensus with key stakeholders, elected officials, and agency staff on preferred methods of governance and finance to support flood risk reduction on the Pajaro River. Additional study was conducted to refine the analysis to be used to determine a preferred type of governing body to implement, finance, and oversee flood risk reduction. The Committee reached consensus on establishing a JPA and reaffirmed this stance when the Committee reconvened in 2019.

A new Proposition 218 special assessment is being proposed to pay the required local share for federal and state funding programs and to fund enhanced operations and maintenance. A separate forgivable loan agreement between the member agencies is being considered to provide the initial capital necessary to start the JPA. Upon successful passage of the land-based assessment, the initial startup funds related to general overhead and administration of capital investment would be repaid by the JPA. Staff is in the process of developing an agency budget.

DISCUSSION:

The five agencies engaged in discussion concerning a potential new JPA are MCWRA, Zone 7, Monterey County, Santa Cruz County, and the City of Watsonville. Counsel for each potential member agency are in the process of reviewing the draft JPA Agreement, which will be brought before the Board for adoption following initial decisions made on the policy issues. The major policy issues that require Board input and consensus are associated with composition of the JPA Board and voting protocols, which are further detailed below.

Composition of the Board:

An analysis of the amount of funding to be raised by the proposed member agencies was prepared. The analysis includes the proportion of operations and maintenance (“O&M”) responsibility for the existing levee facility, as well as the amount of capital required to support the local share for federal and state funding options. This analysis was reviewed by staff to assess the equity of representation for each potential member agency. The amount of capital assessment funding to be raised was estimated from a preliminary rate

capacity analysis prepared by consultants working on the proposed land-based assessment. The land-based assessment and benefit methodology is not complete, so an initial rate capacity analysis was prepared to provide a range of potential assessments. The JPA would also assume responsibility for O&M of the existing flood control facilities (existing levees and appurtenant facilities) ahead of construction of new facilities. The results of the analysis are shown in Table 1 (Attachment 1). At this time, staff are collectively recommending the composition described by Option 1, since it most equitably matches the existing O&M responsibility.

Voting Protocols:

Staff evaluated the need to include some key actions that required a unanimous vote to ensure collaboration between member agencies as an alternative to the inclusion of veto provisions. Given the limited focus of the new JPA Board to flood risk reduction, staff recommends that approval of the annual budget require a unanimous vote. While veto provisions could be added, it is recommended by staff that no veto provisions be included, as requiring a unanimous vote on the JPA budget will be sufficient to ensure collaboration and cooperation among the member agencies.

OTHER AGENCY INVOLVEMENT:

The five agencies engaged in discussion concerning the potential new JPA are MCWRA, Zone 7, Monterey County, Santa Cruz County and the City of Watsonville.

The Water Resources Agency Board of Directors heard this action on December 16, 2019 and recommended this action (Attachment 2). However, the Directors did question whether it was advisable to require a unanimous vote on the budget.

FINANCING:

The JPA will advance a Proposition 218 compliant land-based special assessment district to develop a local funding mechanism to match federal and state funding necessary to complete the Project and enhance operations and maintenance. Staffing, general overhead and administration costs would be covered by the new assessment.

Prior to passage of the assessment, it is proposed that the member agencies would pay for the annual operation budget based on the geographic distribution of operations and maintenance responsibility. This funding is still being evaluated by staff. The proportion of these funds unrelated to operations and maintenance of the existing facilities is being considered as a forgivable loan to the JPA that would be repaid upon successful passage of a land-based assessment. Existing Zone 1 and 1A funds, as well as existing funds from Zone 7, would be used for operations and maintenance of existing facilities. More specific information will be presented when the JPA Agreement is back for adoption.

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Attachments:

1. Table 1