



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

File #: WRAG 20-264, **Version:** 1

Consider:

- a. Receiving a status report on the Pajaro River Flood Risk Management Project (“Project”); and
- b. Approving and authorizing the Chair to sign the Section 221 MOU Agreement and Design Agreement between the Department of the Army and the joint non-federal sponsors (the Santa Cruz County Flood Control and Water Conservation District and Monterey County Water Resources Agency), and associated Certification Regarding Lobbying.

RECOMMENDATION:

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

- a. Receive a status report on the Pajaro River Flood Risk Management Project (“Project”); and
- b. Approve and authorize the Chair to sign the Section 221 MOU Agreement and Design Agreement between the Department of the Army and the joint non-federal sponsors (the Santa Cruz County Flood Control and Water Conservation District and Monterey County Water Resources Agency), and associated Certification Regarding Lobbying.

SUMMARY:

Agency staff continues to coordinate with the U.S. Army Corps of Engineers, the State Department of Water Resources, and the Santa Cruz County Flood Control and Water Conservation District to maintain progress on the Pajaro River Flood Risk Management Project (“Project”) and to secure federal and state investment in the Project. A summary of the ongoing Project work is provided below.

DISCUSSION:

Background

The Pajaro River Federal Flood Control Project was built in 1949 by the United States Army Corps of Engineers (“Corps” or “USACE”) and is maintained jointly by the Santa Cruz County Flood Control and Water Conservation District - Zone 7 (“District” or “Zone 7”) and the Monterey County Water Resources Agency (“MCWRA”). Since the construction of the levee system in 1949, there have been four major floods on the Pajaro River and its tributaries in 1955, 1958, 1995, and 1998 that have resulted in significant inundation and damage caused by overtopping or breaching of the levees. In 1966, Congress authorized reconstruction of the Pajaro River levee system through Section 203 of the Flood Control Act of 1966 (Public Law 89-789, 80 Stat. 1421). The Army Corps recently completed a Feasibility Study with the release of a finalized General Re-evaluation Report (01/31/2019) and Environmental Assessment (“GRR/EA”) (01/31/2019), the tentative selection of a Pajaro Levee Improvement Plan, and a signed Director’s Report (12/13/2019) allowing the project to enter into the Design Phase.

Governance

Key to implementing flood risk reduction projects, including the 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 state and federal government to operate, maintain, repair, replace and rehabilitate the project. The five agencies engaged in the discussion concerning a potential new joint powers authority (“JPA”) are MCWRA, Zone 7, Monterey County, Santa

Cruz County, and the City of Watsonville. Due to COVID-19, there have been delays in finalizing the draft JPA Agreement, which will be brought before the Board for adoption following continued discussions on the policy issues.

Project Finance Strategy

A new Proposition 218 land-based special assessment is being proposed to pay the required local share for federal and state funding programs and to fund enhanced operations and maintenance. Due to the COVID-19 pandemic, the timing for our original plans to bring a Proposition 218 compliant benefit assessment district vote to the voters this Fall is not recommended. Staff is evaluating alternative finance strategies for long-term capital and/or O&M financing, which also highlights the possible need for joint non-federal sponsor bridge financing to support the local match monies the USACE will request over the next year or so. The Project Governance and Finance Committee will be presenting a strategy to executive management of candidate JPA member agencies this summer. The financing strategy will require executive-level policy decisions, as well as political and public acceptability, among other considerations. Regional economics will dictate when such a vote can move forward and may delay this source of revenue by many months, or possibly over a year.

CEQA Environmental Review

The Project Scoping period ended on March 3. Zone 7 staff received 23 written comment letters and five verbal comments submitted to the court reporter. Comments have been compiled and staff will be contacting the commenters to follow up over summer. Tribal consultation with the Amah-Mutsun Tribal Band was held on April 2, 2020, via teleconference. The Tribe expressed their desire to share resources and stay involved in the process of looking for opportunities for tribal resource enhancement. Zone 7 staff continues to refine a detailed project description for the EIR, and have developed a draft table of contents, draft vegetation mapping report, and draft wetland delineation, all of which is being internally reviewed. A Traffic Impact Analysis Request for Qualifications was distributed to three candidate firms on May 22, 2020. Zone 7 staff expects to select a consultant to perform the traffic analysis by June 19, 2020.

Federal Authorization

The Director's Report signed and released on December 12, 2019, by the USACE Headquarters, confirms the federal authorization to rebuild and enhance the existing flood risk reduction facilities on the Pajaro River and Salsipuedes Creek. The Federal FY2020 Work Plan budgetary assignments were finalized on February 10, 2020, and the Project has secured \$1.8 million in federal investment towards PED (Design phase work). This appropriation represents the 65% cost-share requirement of the federal government to support initial design work for the first construction contract. A 35% cost-share allocation will be requested of the non-federal sponsors, requiring \$969,231 in joint non-federal sponsor funding that we expect the USACE to request upon signing a Design Agreement. The non-federal sponsors share will be split 50/50 between Zone 7 and MCWRA.

USACE has developed a draft Design Agreement ("DA") and associated certifications that will need to be signed and attached to the DA. The draft DA has been edited by both staff and legal counsel of both non-federal sponsors (Zone 7 and MCWRA) and has been reviewed by the District and Division offices of the USACE. The DA and associated certification are attached for your review, approval, and signature.

The key features of the DA include the following:

Description of the financial commitment of the federal government as well as of the non-federal sponsors, who will share in the costs of all requirements needed to complete the preconstruction engineering and design for the first construction contract. The cost-share allocation is 65% federal and 35% non-federal. The

agreement describes a projected cost estimate of \$7,100,000, with the federal government's share projected to be \$4,615,000 and the non-federal sponsor's share to be \$2,485,000, over multiple fiscal years. MCWRA's projected share will be \$1,242,500 under this scenario.

Allows the non-federal sponsors the flexibility to accelerate the provision of funds. While the District is not in a position to need nor offer accelerated funds at this time, the option can be useful in cases where federal appropriations slow.

Allows the non-federal sponsors to provide work-in-kind for materials and services that are integral to the project's design, and to seek In-Kind Credit for this work that shall be included in the calculation of construction costs for the Project in accordance with the terms and conditions of the Project Partnership Agreement (to be signed once Construction General funds are appropriated to begin construction).

Also included for your consideration and signature is a Memorandum of Understanding between the Department of the Army and the joint non-federal sponsors. The MOU allows the non-federal sponsors to provide or perform work that is related to the design and implementation of the project before the execution of cost-sharing agreements. While most Work-In-Kind will be credited under the provisions of the proposed Design Agreement and eventual Project Partnership Agreement, this MOU will allow the Agency to secure credit for as much work as possible, especially when the non-federal sponsors desire to advance work ahead of signing agreements. The MOU obligates nothing; it simply provides flexibility in project execution and financial crediting.

Both the Design Agreement and the MOU will be brought before the Santa Cruz County's Zone 7 Board of Supervisors on June 22, 2020, for consideration, approval, and signature.

Finally, the USACE has proposed another appropriation to Pajaro for the FY21 Work Plan of \$2.915 million to continue the design phase. If this is awarded (presumably early next calendar year), there will be an additional joint funding request to the NSFs of \$1.57 million to support the project. MCWRA's match share will be \$785,000 for FY21. The USACE SF District is positioning these requests to request Construction General funds in the third year (federal FY22) to embark on the construction of the first prioritized reach.

Subventions Authorization

The Project's Subventions authorization requires public notification of the draft non-federal cost-share report. The report identified a proposed cost share from the state of 70% of the non-federal eligible costs. The public comment period for the report closed on April 27, 2020, and no comments were received. DWR will now route a legislative report summarizing the cost-share proposal and demonstrating the Project's compliance with the California Water Code requirements for funding eligibility. The report will be transmitted to the Director's Office of DWR, as well as to the Legislature. The routing process will take approximately 4-5 weeks, during which the terms of the funding agreement can be negotiated. The funding agreement cannot be executed until program funds have been identified, which may happen as early as July 1, but could occur at a later date depending on the bond funding source. While 70% of all non-federal sponsor payments will be reimbursed under our State Subventions authorization (including the federal cost-share payments mentioned above), we do not expect these reimbursements to occur until late 2020 or early 2021.

OTHER AGENCY INVOLVEMENT:

County Counsel has reviewed the draft documents that were prepared by the Corps, Santa Cruz County's Zone 7 and MCWRA staff.

FINANCING:

MCWRA FY21 approved budget includes \$300,000 for the Project as well as staff time.

Prepared by: Shaunna Murray, Senior Water Resources Engineer, (831) 755-4860

Approved by:

Brent Buche, General Manager, (831) 755-4860

Attachments:

1. Draft Design Agreement
2. Draft Memorandum of Understanding
3. Monterey County - Certification re Lobbying