



County of Monterey

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

Board Report

File #: WRAG 21-512, **Version:** 1

Consider recommending that the Monterey County Water Resources Agency Board of Supervisors:

- a. Approve the Joint Exercise of Powers Agreement by and among the City of Watsonville ("Watsonville"), the County of Monterey ("Monterey"), the County of Santa Cruz ("Santa Cruz"), the Monterey County Water Resources Agency ("MCWRA"), and Zone 7 of Santa Cruz County Flood Control and Water Conservation District ("Zone 7"), herein referred to as the "Member Agencies", to form the Pajaro Regional Flood Management Agency (PRFMA) and authorize the Chair to sign the Joint Exercise of Powers Agreement; and
- b. Approve the Indemnity Agreement regarding the Pajaro River Flood Risk Reduction Project ("Project") by and among the Member Agencies and authorize the Chair to sign the Indemnity Agreement.

RECOMMENDATION:

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

- a. Approve the Joint Exercise of Powers Agreement by and among the City of Watsonville ("Watsonville"), the County of Monterey ("Monterey"), the County of Santa Cruz ("Santa Cruz"), the Monterey County Water Resources Agency ("MCWRA"), and Zone 7 of Santa Cruz County Flood Control and Water Conservation District ("Zone 7"), herein referred to as the "Member Agencies", to form the Pajaro Regional Flood Management Agency (PRFMA) and authorize the Chair to sign the Joint Exercise of Powers Agreement; and
- b. Approve the Indemnity Agreement regarding the Pajaro River Flood Risk Reduction Project ("Project") by and among the Member Agencies and authorize the Chair to sign the Indemnity Agreement.

SUMMARY/DISCUSSION:

Formation of a Regional Flood Risk Management Joint Powers Authority ("JPA") has been identified as the most efficient and effective governance approach for reducing flood risk on the Lower Pajaro River. A single-purpose agency will be best positioned to support flood risk reduction project implementation and ensure consistent long-term operation, maintenance, repair, replacement, and rehabilitation ("OMRR&R") of the system.

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. Congress authorized reconstruction of the Pajaro River levee system in 1966, and re-authorization was granted by the Water Resources Development Act 1990. The USACE Headquarters signed a Director's Report on December 12, 2019, confirming the federal authorization to rebuild and enhance the existing flood risk reduction facilities on the Pajaro River and Salsipuedes Creek. MCWRA expects to execute a Design Funding Agreement with the

USACE and a Subventions Funding Agreement with the State of California Department of Water Resources in January 2021.

MCWRA, Monterey, Santa Cruz, Zone 7, and Watsonville (collectively “Member Agencies”) initiated work in 2010 to analyze the most effective and efficient way to govern, finance and implement the authorized federal project and to address long-term OMRR&R. Delays to secure approval of the Director’s Report by USACE resulted in a delay for implementation of a new governance structure. Staff has coordinated closely with the Member Agencies and the Finance and Governance Committee to secure input and inform key stakeholders within the community. A final recommendation was made to establish the Pajaro Regional Flood Management Agency in 2019 and successful negotiation of a draft Joint Exercise of Powers Agreement was completed in November 2020.

Governance Analysis

A key to the primary objective of 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. A secondary objective for consideration and function of any governance entity is the long-term OMRR&R of flood risk reduction features. A third objective is continued floodplain management of the basin, in collaboration with land use agencies. Ultimately a governance entity needs to be flexible enough to plan for and manage the flood risk reduction project in order to address and adapt to changing conditions and evolving regulatory requirements over time. The following governance options were developed and analyzed:

- Cooperation by Memorandum of Understanding (“MOU”)/Contract
- New Joint Powers Authority
- New Flood Control and Water Conservation District Zones

In September 2012, MIG completed a Memorandum titled “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 Lower Pajaro Levee Reconstruction Project. The Study presented initial results from stakeholders on the five criteria listed below:

- Fair, equitable and responsive to all stakeholders
- Organizational capability and technical effectiveness
- Politically feasible
- Clear lines of authority
- Efficient use of resources

The study concluded that a new Joint Powers Authority should be formed. The MIG report and conclusions are an important backdrop and context for follow-on efforts.

In April 2019, Larsen Wurzel & Associates, Inc. (“LWA”) completed a memorandum titled “Pajaro River Flood Management Agency, Governance Options Analysis and Recommendation” that presented a final assessment of potential governance structures for the future management of the Lower Pajaro Levee Reconstruction Project. In order to evaluate the potential governance options, specific criteria for evaluation were developed. The major topic areas were focused around the goal of implementing, funding, and financing flood risk reduction projects. However, the effectiveness of the governance option to carry out aspects of long-term OMRR&R and floodplain management activities was also considered.

Based on the evaluation completed by LWA and previous work completed by MIG, a JPA was determined to be

best suited to accomplish the primary objective of project implementation in the lower Pajaro River watershed. It could also be structured and empowered to carry out OMRR&R and basin-wide flood management.

Some of the key findings that led the Member Agencies to recommend formation of the PRFMA are summarized below:

1. The JPA aligns and focuses purpose, and telegraphs the importance and priority of the long-term capital and O&M investment to the Federal and State governments and to the community;
2. Both the State and Federal Government prefer to sign agreements with a single project sponsor;
3. The Revolutionize USACE Initiative has identified strong interest in P3 (public private partnership), and has identified JPAs as an ingredient to the P3 model;
4. A JPA whose geographic boundary encompasses the Pajaro River watershed within the Counties of Santa Cruz and Monterey reduce the number of benefit assessment district votes required to raise capital and/or O&M funds; and
5. Flood risk reduction JPAs are common to California and are the tried and true model for financing, designing and implementing flood risk reduction projects.

Joint Exercise of Powers Agreement

Included for your consideration is a Joint Exercise of Powers Agreement negotiated by the Member Agency staff, management, and legal counsel. The initial agreement was developed by leveraging existing flood management agency Joint Exercise of Powers agreements and then adapting it to the needs of the Member Agencies. The Joint Exercise of Powers Agreement will form the Pajaro Regional Flood Management Agency whose purpose is to reduce flood risk to lives and property. The Agreement allows the member agencies to exercise common powers independently or in cooperation with the United States, the State of California or any other entity. While authorization to execute the JPA Agreement would be provided through this Board action, formal execution may occur after all Member Agencies have authorized execution of the JPA Agreement.

Indemnity Agreement

Also included for your consideration is an Indemnity Agreement negotiated by the Member Agency staff, management, and legal counsel. Some of the Member Agencies have existing contractual or existing obligations regarding facilities of the current flood risk reduction system which could result in liability on the part of that agency in the event of flooding. Watsonville has minimal existing obligations of the current flood risk reduction system and therefore should not have any additional liability in the event of flooding related to those facilities. The Member Agencies are recommending entering into the Indemnity Agreement so that, from the creation of the JPA until the completion of new facilities, Watsonville is not exposed to additional liability by the creation of or its participation in the JPA or any other Member Agencies' maintenance or operation of any existing facilities of the current system.

Next Steps

Most flood risk management JPAs are established prior to their member agencies fully funding the independent general administration and oversight functions. During the initial start-up phase, the JPA functions that are critical to legal establishment of the JPA can be administered by member agency staff. Benefits of establishing the JPA include the ability to cleanly execute federal cost share agreements and advance the Proposition 218 benefit assessment ballot proceeding process. In fact, formation of the JPA will create a newsworthy event on which to launch public outreach efforts, sending a message to the community that flood risk reduction is important enough to warrant a dedicated agency. Upon formation, the JPA will need to address administrative and policy issues prior to initiating the benefit assessment formation process. The following lays out a high-level summary of the current JPA startup plan.

Step 1: Establish JPA (Current Step)

Member Agencies secure necessary approvals to execute the Joint Exercise of Powers and Indemnity Agreements. Send notice to Secretary of State, file with State's Roster of Public Agency, file with County Clerk Registry, and notify LAFCO.

Step 2: Interim JPA Staffing by Member Agencies

Member Agency staff provide support, as needed and on an interim basis, to complete the administrative processes required to establish the JPA and advance the Proposition 218 benefit assessment formation process. The interim staff support could be provided through a services agreement between the JPA and one or more of its Member Agencies. This agreement could include providing staff support for all services needed to start-up the JPA.

Step 3: Implement Long-term Staffing Plan for JPA

Upon a successful Proposition 218 benefit assessment formation, the JPA Board of Directors decides how to staff the JPA on a permanent basis. Member agency staff would support the JPA through this process and recommend a staffing plan reflective of the available assessment district budget.

Step 4: Transition OMRR&R to JPA (Can be completed in parallel with Step 3)

OMRR&R responsibilities will be transitioned from Zone 7 and MCWRA to the JPA.

OTHER AGENCY INVOLVEMENT:

The staff, management, and legal counsel of the Member Agencies worked collaboratively on the draft Joint Exercise of Powers Agreement and Indemnity Agreement.

FINANCING:

No financial impact is immediately expected due to the initial formation of the JPA. Member agencies will continue to direct staff to support formation and start-up of the agency on an interim basis until the JPA Board decides when and how to permanently staff and fund the agency.

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Approved by: Brent Buche, General Manager, (831) 755-4860

Attachments:

1. Draft Pajaro Regional Flood Management Agency Joint Exercise of Powers Agreement
2. Draft Indemnity Agreement