



Legislation Details (With Text)

File #: 2020-0666

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File created: 6/24/2020 **In control:** Sonoma County Water Agency

On agenda: 8/4/2020 **Final action:**

Title: Right of Way Acquisitions for Dry Creek Habitat Enhancement and Additional Right of Way for Maintenance of Previous Projects

Sponsors: Sonoma County Water Agency, Russian River County Sanitation District, Sonoma Valley County Sanitation District (Director, South Park County Sanitation District, Occidental County Sanitation District)

Indexes:

Attachments: 1. Summary, 2. Resolution

Date	Ver.	Action By	Action	Result
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To: Board of Directors - Sonoma County Water Agency and Russian River, Occidental, South Park, and Sonoma Valley County Sanitation Districts

Department or Agency Name(s): Sonoma County Water Agency and Russian River Occidental, South Park and Sonoma Valley County Sanitation Districts

Staff Name and Phone Number: Sharina Arevalos / 547-1912

Vote Requirement: 4/5th

Supervisory District(s): Countywide

Title:

Right of Way Acquisitions for Dry Creek Habitat Enhancement and Additional Right of Way for Maintenance of Previous Projects

Recommended Action:

- Authorize Sonoma Water's General Manager to execute agreements to acquire the property rights needed for construction of the Dry Creek Habitat Enhancement Project, Phases 4-6 for the total appraised value of all property rights necessary for the projects, estimated at no more than \$1,500,000 for Phase 4, no more than \$1,272,000 for Phase 5, and at no more than \$1,980,000 for Phase 6, in substantially the form provided to the Board, with the approval of County Counsel, and to execute such other documents and take such other actions as are necessary to complete the transactions (Fourth District).
- Authorize the General Manager to offer owners up to \$5,000 for an independent appraisal pursuant with California Code of Civil Procedure section 1263.025. (Fourth District)
- Authorize the General Manager to execute License Agreements, not to exceed the appraised value, to complete repairs to previously constructed project sites in substantially the form provided to the Board following approval by County Counsel. (Countywide)
- Adopt a resolution authorizing adjustments to the Board Recommended Budget for Fiscal Year 2020-2021 for the Watershed Planning and Restoration Fund, in the amount of \$1,005,000 for the Right of Way Acquisitions for Dry Creek Habitat Enhancement and Additional Right of Way for Maintenance of Previous Projects. (4/5th Vote Required)

Executive Summary:

This item requests that the Sonoma County Water Agency (Sonoma Water) Board of Directors authorize the General Manager to execute agreements to acquire the property rights necessary to construct the Dry Creek Habitat Enhancement Phases 4-6 Projects.

In addition, the item authorizes Sonoma Water to offer to pay up to \$5,000 to each affected owner for an independent appraisal as legally required.

This item also requests authority for the General Manager to execute license agreements for the purposes of staging and stockpiling equipment and materials required for maintenance of previously approved projects of Sonoma Water and/or sanitation districts.

Discussion:

The Dry Creek Habitat Enhancement Project is a key element of Sonoma Water's compliance with the 2008 Russian River Biological Opinion. Construction of the Project will result in improving habitat within 6 miles of Dry Creek. Completion of the Project will aid in the survival and recovery of listed salmonid species in Dry Creek, and will ensure the continued ability of Sonoma Water to deliver water from Lake Sonoma to its water contractors. The Dry Creek Habitat Enhancement Phase 4-6 will work towards the goal of providing six miles of habitat enhancement. Sonoma Water has partnered with the U.S. Army Corps of Engineers (Corps) to complete these three miles of new construction habitat.

HISTORY OF ITEM/BACKGROUND:

Dry Creek is home to endangered coho salmon and threatened Chinook salmon and steelhead. The creek also serves as a conduit for water that is released from Lake Sonoma by the United States Army Corps of Engineers (Corps) for flood control purposes and by Sonoma Water for water supply. The Dry Creek Habitat Enhancement Project would implement additional habitat enhancement projects along Dry Creek to fulfill the requirements of the Russian River Biological Opinion.

RUSSIAN RIVER BIOLOGICAL OPINION:

The National Marine Fisheries Service (NMFS) issued the Russian River Biological Opinion on September 24, 2008. This opinion was a culmination of more than a decade of consultation between Sonoma Water, the Corps, and NMFS regarding the impact of Sonoma Water's and Corps' water supply and flood control activities on three fish species listed under the Federal Endangered Species Act: Central California Coast steelhead, Central California Coast coho salmon, and California Coastal Chinook salmon. NMFS concluded in the Russian River Biological Opinion that the continued operations of Coyote Valley Dam and Warm Springs Dam by the Corps and Sonoma Water in a manner similar to recent historic practices, together with Sonoma Water's stream channel maintenance activities and estuary management, are likely to jeopardize and adversely modify critical habitat for endangered coho salmon and threatened steelhead.

One finding of NMFS' Russian River Biological Opinion is that summer flows in the upper Russian River and Dry Creek are too high for optimal juvenile coho salmon and steelhead habitat. Current summer flows in the creek range from 105 to 175 cubic feet per second. The velocities associated with these summer flows make it difficult for the juvenile fish to thrive. The Russian River Biological Opinion recognizes that large reductions in the summertime flows in Dry Creek would impair Sonoma Water's ability to deliver water to its customers.

Therefore, the Russian River Biological Opinion requires habitat enhancement of six miles of Dry Creek to improve summer rearing conditions for coho salmon and steelhead while allowing Sonoma Water to maintain the existing flow range in Dry Creek from 105 to 175 cubic feet per second for water supply purposes. The six miles of habitat enhancement are to be distributed over the entire length of Dry Creek below Warm Springs Dam and implemented at a minimum of eight locations on the creek. It is intended that the enhancements for summer rearing will also provide winter rearing and refugia habitat. The habitat enhancements are to be implemented in phases to allow for evaluation of their effectiveness as the effort progresses.

DRY CREEK HABITAT ENHANCEMENT PROJECT PHASES 1-6 (MILES 1-6):

As of Spring 2020, Sonoma Water has completed 3 of the six miles of new habitat construction required by the 2008 Russian River Biological Opinion. A portion of the construction was constructed in partnership with the U.S. Army Corps of Engineers (Corps).

The habitat enhancement proposed designs are tailored to each site's geomorphic characteristics. Channel processes and dynamics vary along the length of Dry Creek; therefore, the project designs at the upstream end of the creek (nearer to Lake Sonoma) tend to focus on direct habitat construction, and more process-reliant designs closer to the confluence with the Russian River. Designs generally include a suite of tools, including: backwater channels, alcoves and ponds off to the side of the creek that, in summer, connect to the main stream only at their downstream end but may support higher flows during the winter; side channels, which are parallel to the main stream and connect at both ends during both the summer and winter; log jams, which are accumulations of logs that can initiate or stabilize a turn or fork in the channel and create deep pools; riffles, which are areas where the streambed is steeper and the current is swift, and pools, which are areas of deeper, cooler, slower water that provide habitat for young fish; winter refuge habitat, which provides locations where fish can escape high velocities in the mainstream during high winter flows; vegetation management, which includes removal of non-native or invasive weed species or dense stands of vegetation which channelize the flow of the creek; streambank construction to stabilize eroding banks; and dynamic process-based floodplain enhancement, which includes process-based enhancements in portions of Dry Creek near the confluence with the Russian River that would reconnect the channel and its floodplain.

ACQUISITION OF PROPERTY RIGHTS:

Implementation of the Phase 4-6 portions of the Project requires obtaining permanent easements and other temporary construction rights for staging, lay-down, and work areas from 34 property owners. Sonoma Water contracted with Greg Reinhart & Associates, Real Estate Appraisers and Consultants, to prepare appraisal reports for the valuation of the necessary property rights. Phases 4-6 appraisals are currently being conducted and are not yet complete; however, the appraiser estimated the total valuation for all property rights needed is \$4,752,000. Funding will be appropriated from the approved Fiscal Years 2020/2021 and 2021/2022 budgets for the Watershed Planning and Restoration Fund.

Sonoma Water staff has provided the draft easement deed, temporary construction easement agreement, and purchase contract that will be used for the acquisition of the property rights necessary for construction. Pursuant to California Code of Civil Procedure section 1263.025, when seeking to acquire the needed property rights, Sonoma Water is required to offer to reimburse each property owner the reasonable cost, up to \$5,000, for an independent appraisal of the property rights needed by Sonoma Water. This item requests the Board delegate to the General Manager for Sonoma Water the authority to make this offer to property owners as required by the Civil Code.

The Phase 4 construction area is identified as Reaches 13a & 10. Reach 13a is located approximately 1 mile downstream and Reach 10 is 4 miles south of Lake Sonoma situated along Dry Creek. The properties included in this phase are: Ferrari-Carano Vineyards (Assessor Parcel Numbers 139-110-036 & 057); Malloy (Assessor Parcel Numbers 139-140-033 & 34); Hardie Ranch LLC (Assessor Parcel Numbers 090-240-016, 039 & 041); Schmidt (Assessor Parcel Numbers 090-240-012; 090-240-014, 090-240-024); Faroni (Assessor Parcel Number 139-160-051); Seaton (Assessor Parcel Number 139-160-056); Long/Burns (Assessor Parcel Number 090-240-026) Pernod Ricard Kenwood Holding LLC (Assessor Parcel Numbers 139-160-046, 050 & 052); Pedroncelli Farms (Assessor Parcel Numbers 139-170-041 & 042).

The Phase 5 construction area is identified as Reaches 2a, 2b, 4c, & 4d. Reaches 2a & 2b are 2 miles upstream and Reaches 4c & 4d are 4 miles upstream of the Russian River confluence. The properties included in this phase are: Portola Building Company (Assessor Parcel Number 088-190-042); Carraro (Assessor Parcel Number 110-150-023); Carraro Investments LLC (Assessor Parcel Number 088-210-022); Kuljian (Assessor Parcel Number 089-190-032); West Dry Creek Road LLC (Assessor Parcel Number 089-190-008); Calistoga Properties, LLC (Assessor Parcel Number 089-040-019); Orsi (Assessor Parcel Number 088-210-023); City of Healdsburg (Assessor Parcel Number 088-210-021); Canale (Assessor Parcel Number 089-190-034); 2065 WDCR LLC (Assessor Parcel Number 089-190-007).

The Phase 6 construction area is identified as Reach 2a & Reach 1. Reach 2a extends 0.45 miles from Mill Creek and Reach 1 extends from the Russian River upstream to the confluence with Mill Creek. The properties included in this phase are: Schwab (Assessor Parcel Number 088-180-044); Strathclyde Ranch LLC (Assessor Parcel Number 088-180-001); Schwab (Assessor Parcel Number 088-180-003), Blue Ridge Builders (Assessor Parcel Number 088-180-043); Massoni (Assessor Parcel Number 088-180-009); Greene (Assessor Parcel Numbers 110-130-034 & 035); Syar Industries (Assessor Parcel Numbers 110-130-012 & 036 & 037, 088-180-007 & 025); Olson (Assessor Parcel Number 088-180-035); Jachetta (Assessor Parcel Number 088-180-022); De La Montayna (Assessor Parcel Number 110-130-007); Williams (Assessor Parcel Numbers 110-130-006 & 011); City of Healdsburg (Assessor Parcel Number 088-180-018 & 020); Woodward (Assessor Parcel Number 088-180-019); Octavio (Assessor Parcel Number 088-180-021); Thompson (Assessor Parcel Number 110-150-007).

Based upon the experience of Sonoma Water right-of-way staff while negotiating similar acquisition agreements for the overall Dry Creek Habitat Enhancement Project, some property owners may wish to alter the provisions of Sonoma Water's standard Dry Creek easement agreement (which is on file with the Clerk). Although such revisions do not result in a material and substantial increase in risk to Sonoma Water, or in the cost to carry out the Project, the time necessary to bring each revised easement agreement back to the Board of Directors for separate approval would make it difficult to deliver right of way contracts to Sonoma Water's project partner, the US Army Corps of Engineers, in time to start the next phase of construction in 2021. While also achieving the timeline outlined by the Russian River Biological Opinion, Sonoma Water staff is requesting that the Board delegate authority to the General Manager to negotiate and execute agreements to acquire the necessary property rights, at a price no greater than necessary to provide just compensation to the owner for the property interest, in the form presented to this Board, or in such other form as approved by County Counsel, and to execute any other documents and take other actions as are necessary to close the transactions.

CALIFORNIA ENVIRONMENTAL QUALITY ACT:

The Dry Creek Habitat Enhancement Project Phases 4-6 Environmental Impact Report (EIR) did not include project-level analysis of the Project under the California Environmental Quality Act (CEQA). Since the Project is a minor modification to the Project description in the EIR, Sonoma Water's staff conducted a CEQA analysis of the potential for the Project to result in environmental impacts. That analysis was memorialized in the form of a CEQA Addendum. The CEQA Addendum, dated June 19, 2020, added the additional properties to the Dry Creek Project. Based on site reconnaissance and other analysis, Sonoma Water staff concluded that no new impacts were identified that were not addressed in the project or its circumstances or new or substantial importance that was not known and could not have mitigation measures that have already been identified and incorporated into the EIR Mitigation Monitoring and Reporting Program. The Project has been reviewed by the Permit and Resource Management Department of the County of Sonoma and has been determined to be consistent with §65402 of Government Code with regards to the General Plan.

Phase 3, part 3 of the Dry Creek project was completed in 2018. A high flow season in 2019 left a completed project site needing to be repaired by removing sediment that has filled in around the habitat features. The license agreement will allow for temporary use of property for stockpiling of the sediment during the repair. The property was previously appraised for the rental value of the property for the acquisition of the property rights needed for temporary construction rights to construct Phase 3, Part 3 Dry Creek Habitat Enhancement Project. The rental value of the license agreement needed for stockpiling of the sediment is equivalent to the rental value previously appraised. In addition to the Dry Creek Habitat Enhancement Project, Sonoma Water and the Sanitation Districts Sonoma Water operates have additional projects that could benefit from the authority to execute license agreements for project maintenance needs. This item will delegate authority to the General Manager to execute the license agreements provided the license is for a Board approved project; the compensation for the license is based on the previously appraised rental value; and the form of the license has been approved by County Counsel.

Prior Board Actions:

2/27/2018: Authorize General Manager to execute agreements to acquire property rights for Phase 2, part 2 for not more than \$450,000 and Phase 2 part 3 for not more than \$550,000 and authorize General Manager to offer owners up to \$5,000 for an independent appraisal.

12/13/2016: Authorize General Manager to sign a Project Partnership Agreement with the United States Army Corps; for Phase 3, part 2; authorize General Manager to execute agreements and compensate property owners for acquisition of easements up to \$403,000.

11/17/2015: Certify EIR Miles 2-6, approve the project Miles 2-6; file CEQA; authorize the General Manager to negotiate and execute agreements with property owners for Phase 2, Part 1, not to exceed \$988,500; and to execute license agreements, other documents, and take such other actions as are necessary to close the acquisitions.

FISCAL SUMMARY

Expenditures	FY 20-21 Adopted	FY21-22 Projected	FY 22-23 Projected
Budgeted Expenses	2,495,000	1,252,000	
Additional Appropriation Requested	1,005,000		
Total Expenditures	3,500,000	1,252,000	

Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other	2,495,000	1,252,000	
Use of Fund Balance	1,005,000		
Contingencies			
Total Sources	3,500,000	1,252,000	

Narrative Explanation of Fiscal Impacts:

Budgeted amount of \$2,495,000 is available from FY 2020/2021 appropriations for the Watershed Planning and Restoration Fund. Additional appropriations of \$1,005,000 are required to process this expense in year one. With Board approval, unused appropriations budgeted in FY 2019/2020 and rolled over to FY 2020/2021 will be made in the Watershed Planning and Restoration Fund pursuant to the attached budgetary resolution. The Corps of Engineers and Sonoma Water are sharing the cost of phases 4-6 design and construction on a 65 percent federal/35 percent Sonoma Water basis. Under the cost-share agreement, design, environmental compliance, right-of-way, and project management costs count toward Sonoma Water's 35 percent cost share.

Future appropriations will be budgeted in FY 2021/2022.

Staffing Impacts:			
Position Title (Payroll Classification)	Monthly Salary Range (A-I Step)	Additions (Number)	Deletions (Number)

Narrative Explanation of Staffing Impacts (If Required):

N/A

Attachments:

Resolution

Related Items "On File" with the Clerk of the Board:

None