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BOARD OF DIRECTORS

Katherine M. Miller, Chair
Jesús Andrade, Vice-Chair
Steve Dresser, Director
Mark Elliott, Director
Elbert Holman, Director

**ACTING
EXECUTIVE DIRECTOR**

Scott Shapiro

BOARD OF DIRECTORS

Mike Morowit, Director
Tom Patti, Director
Gary Singh, Director
Susan Lofthus, Alternate
Miguel Villapudua, Alternate

BOARD MEETING

SAN JOAQUIN AREA FLOOD CONTROL AGENCY AGENDA

MARCH 29, 2018

9:00 A.M.

425 N. El Dorado Street, City Hall, Second Floor, Council Chambers

1. CALL TO ORDER / ROLL CALL

2. PLEDGE TO FLAG

3. CONSENT AGENDA

3.1) Approve minutes of the Board meeting of February 26, 2018

3.2) Reimbursement to the City of Stockton for Operating Expenses
(Informational Only)

4. WORKSHOP

4.1) History of Smith Canal (Informational Only)

4.2) Presentation

5. ORAL REPORT FROM EXECUTIVE DIRECTOR

6. PUBLIC COMMENTS

7. BOARD QUESTIONS, COMMENTS, ACTIONS

8. CLOSED SESSION

8.1) Conference with Legal Counsel Regarding Public Employment Pursuant to Government Code Section 54957

Title: Executive Director

8.2) Dominick Gulli v. San Joaquin Area Flood Control Agency; ICF International, Inc.; Peterson and Brustad, Inc; Moffat and Nichol.

Case No. STK-CV-UWM-2015-0011880

8.3) Dominick Gulli v. San Joaquin Area Flood Control Agency (Smith Canal Addendum)

Case No. STK-CV-UWM-2017-0013586

8.4) Atherton Cove Property Owners Association v. San Joaquin Flood Control Agency. C085520 San Joaquin County

Case No. STK-CV-UWM-2015-60011847

9. ADJOURNMENT

BOARD MEETING DATES AT 9:00 A.M.:

May 17, 2018

July 19, 2018

September 20, 2018

November 8, 2018

January 17, 2019

In compliance with the Americans with Disabilities Act, the meeting room is wheelchair accessible and disabled parking is available. If you have a disability and need disability-related modifications or accommodations to participate in this meeting, please contact the Board's office at (209) 937-7900 or (209) 937-7115 (fax). Requests must be made one full business day before the start of the meeting.

Agenda Item 3.1

**MINUTES
SAN JOAQUIN AREA FLOOD CONTROL AGENCY
SPECIAL MEETING OF FEBRUARY 26, 2018**

CITY COUNCIL CHAMBERS, STOCKTON, CALIFORNIA

1. CALL TO ORDER / ROLL CALL 1:02 PM

Roll Call

Present:

Jesús Andrade

Steve Dresser

Mark Elliott

Elbert Holman

Katherine Miller

Mike Morowit

Tom Patti

Gary Singh

2. PLEDGE TO FLAG 1:03 PM

3. ELECTION OF OFFICERS 1:03 PM

Motion: Approve Election of Officers

Moved by: Elbert Holman, seconded by Jesús Andrade

Vote: Motion carried 8-0

Yes: Jesús Andrade, Steve Dresser, Mark Elliott, Elbert Holman,
Katherine Miller, Mike Morowit, Tom Patti and Gary Singh

4. CONSENT AGENDA 1:11 PM

PUBLIC COMMENT

Dominick Gulli

Motion: Approve Consent Agenda Items 4.2-4.5, save Item 4.1 which was considered separately.

Moved by: Steve Dresser, seconded by Elbert Holman

Vote: Motion carried 8-0

Yes: Jesús Andrade, Steve Dresser, Mark Elliott, Elbert Holman,
Katherine Miller, Mike Morowit, Tom Patti and Gary Singh

4.2) Contract Amendments with Independent Panel of Experts for the Smith Canal Gate Project

4.3) Adopt 2018-2019 Board Meeting Schedule

AGENDA ITEM 3.1

4.4) Ratification of Scott Shapiro as Acting Executive Director

4.5) Adopt Guidelines for Preparing Board Meeting Minutes

Motion: Approve Consent Agenda Item 4.1

Moved by: Tom Patti, seconded by Jesús Andrade

Vote: Motion carried 5-0

Yes: Jesús Andrade, Elbert Holman, Katherine Miller, Mike Morowit and Tom Patti

Abstain: Steve Dresser, Mark Elliott and Gary Singh

4.1) Approve minutes of the Board meeting of November 16, 2017

5. DISCUSSION OF BY-LAW PRINCIPLES 1:13 PM

PUBLIC COMMENT

Kris Balaji

Dominick Gulli

6. WORKSHOP 1:50 PM

6.1) History of Mossdale Tract Basin (Nomellini / Peterson)
(15-20 Minutes) 1:52 PM

- Early Actions by Reclamation District 17 (Nomellini)
- FEMA accreditation (Nomellini)
- History of lack of flooding (Nomellini)
- Levee Seepage Improvement Project Phases 1-3 / Mossdale Tract (Nomellini)
- SB 5 Requirements (Peterson)
- Lathrop & Manteca Approach to SB 5 Compliance (Peterson)

6.2) Three Potential Paths to Success (200-Year Flood Protection for Urban / Urbanizing Area) (20 Minutes) 2:40 PM

6.3) Medium and Long-Term Funding Approach (Wurzel)
(10 Minutes) 3:03 PM

- Development Impact Fee Program; and
- Overlay Assessment District; and
- Enhanced Infrastructure Financing District

6.4) Short Term Local Funding Approach (Shapiro / Wurzel)
(10 Minutes) 3:16 PM

6.5) Workshop Discussion (All) (45 Minutes) 3:24 PM

PUBLIC COMMENT

Steve Salvatore
Kris Balaji
Martin Harris

7. PROPOSED ACTIONS TO ADVANCE FLOOD PROTECTION FOR THE MOSSDALE TRACT (Budget Amendment; Advance Funding Agreement with Members) (Shapiro) (15 Minutes) **3:44 PM**

Motion: Approve Budget Amendment & Advance Funding Agreement with Members for the Mossdale Tract Program

Moved by: Tom Patti, seconded by Steve Dresser

Vote: Motion carried 8-0

Yes: Jesús Andrade, Steve Dresser, Mark Elliott, Elbert Holman, Katherine Miller, Mike Morowit, Tom Patti and Gary Singh

- Budget Amendment & Advance Funding Agreement with Members
- Contract actions
 - Acceptance of Assignment of State UFRR Agreement
 - Contracts with PBI
 - State UFRR Study SOW Assignment
 - General Assistance to Financing / ULOP Work
 - Contract with LWA
 - Development of Regional Impact Fee program
 - Prepare Overlay Assessment District FRP
 - Prepare 2018 Adequate Progress Report Update

Motion: Approve Creation of Mossdale Tract Ad-Hoc Committee consisting of the following members:

Stockton:	Jesús Andrade,
Lathrop:	Gary Singh,
San Joaquin County:	Katherine Miller,
Manteca:	Steve Dresser

Moved by: Tom Patti, seconded by Elbert Holman

Vote: Motion carried 8-0

Yes: Jesús Andrade, Steve Dresser, Mark Elliott, Elbert Holman, Katherine Miller, Mike Morowit, Tom Patti and Gary Singh

- Create Mossdale Tract Ad-Hoc Committee

8. ORAL REPORT FROM EXECUTIVE DIRECTOR 3:54 PM

9. PUBLIC COMMENTS 4:00 PM

Michael Babitzke

10. BOARD QUESTIONS, COMMENTS, ACTIONS 4:04 PM

11. CLOSED SESSION 4:04 PM

Conference with Legal Counsel and Recruiter Regarding Public Employment
Pursuant to Government Code Section 54957

Title: Executive Director

REPORT OF ACTION TAKEN IN CLOSED SESSION

The Board elected to add Scott Shapiro to the Executive Director interview panel.

12. ADJOURNMENT 4:20 PM

The meeting adjourned at 4:20 PM. The next meeting is scheduled for March 29, 2018, at 9:00 AM.



SCOTT SHAPIRO
ACTING EXECUTIVE DIRECTOR
SAN JOAQUIN AREA FLOOD
CONTROL AGENCY

Agenda Item 3.2

March 29, 2018

TO: San Joaquin Area Flood Control Agency

FROM: Scott L. Shapiro, Acting Executive Director

SUBJECT: **REIMBURSEMENT TO THE CITY OF STOCKTON FOR OPERATING EXPENSES FOR FISCAL YEAR 2017-18**

RECOMMENDATION

Information Only

DISCUSSION

Background

Each year the San Joaquin Area Flood Control Agency reimburses the City of Stockton for expenses incurred in accordance with a cost sharing agreement executed on March 21, 1995, between the City of Stockton, San Joaquin County, and San Joaquin County Flood Control and Water Conservation District. It should be noted that the City of Stockton does not charge the Agency interest for carrying the Agency's operating expenses throughout the fiscal year.

Beginning in August 2009, staff started to bring the City of Stockton invoices before the Board for approval for reasons that are unclear today. Staff has determined that bringing the invoices before the Board when the staff is already authorized to pay the invoices under an existing contract and in compliance with an approved budget, is generating additional paperwork and utilizing valuable staff time with no particular corresponding benefit. Therefore, unless the Board instructs otherwise, staff will discontinue these reports, relying instead on the annual budget approval as the mechanism for the Board to analyze these expenses.

The Agency's budget is presented to the Board prior to the start of each fiscal year and the annual budget always includes the anticipated expenditures from the City of Stockton. These expenditures are comprised of salary and benefits for city employees on loan to the Agency as well as City of Stockton staff support services including payroll, accounting, human resources, and IT support. Other charges incurred by the Agency include material and supplies, rent for building space and office equipment, and overhead costs.

Last year the Board adopted SJAFCA Resolution Nos. 17-06 and 17-22 authorizing a reimbursement of operating expenses to the City of Stockton for fiscal year 2016-17

March 29, 2018

**REIMBURSEMENT TO THE CITY OF STOCKTON FOR OPERATING EXPENSES
FOR FISCAL YEAR 2017-18**

(Page 2)

totaling \$729,548.38.

The Agency's fiscal year 2017-18 budget includes \$937,214 to reimburse the City of Stockton for anticipated annual expenses. This amount includes salary and benefits for 5 full-time positions and all the other above-mentioned costs. It should be noted that one position is vacant (Associate Civil Engineer). For this reason, staff anticipates a costs savings of approximately \$145,000.

Present Situation

There does not appear to be a necessary or logical reason to continue the practice of bringing the City's invoices to the Board for approval because these expenditures have been previously approved by the Board through the annual budget process.

If the need should arise, requiring an amendment to the approved budget, staff will bring forth an item to the Board for its consideration and approval.

Fiscal year-end actual expenditures can be reported to the Board on an annual basis or at the Board's pleasure.

PREPARED BY: Marlo Duncan



APPROVED:
SCOTT L. SHAPIRO
ACTING EXECUTIVE DIRECTOR

SLS:MD

Agenda Item 4.1

March 29, 2018

TO: San Joaquin Area Flood Control Agency
FROM: Scott L. Shapiro, Acting Executive Director
SUBJECT: **SMITH CANAL GATE PROJECT HISTORY**

RECOMMENDATION

Information Only

DISCUSSION

Background

Smith Canal is a man-made backwater slough of the San Joaquin River just east of the Deep-Water Ship Channel. Smith Canal is leveed to prevent back-flooding from the Delta.

In 2005, as part of the Federal Emergency Management Agency (FEMA) Flood Map Modernization Program, FEMA began requiring levee owners/maintaining agencies to submit documentation showing that their levees could meet the certification requirements of the Code of Federal Regulations (CFR), Title 44, Chapter 1, Section 65.10, which included the following items:

1. Minimum freeboard
2. Closure devices
3. Embankment protection
4. Embankment and foundation stability
5. Settlement analysis
6. Interior drainage analysis
7. Operations and Maintenance plans
8. Certification requirements

Smith Canal maintaining agencies, Reclamation District 1614 (north bank levee) and Reclamation District 828 (south bank levee), determined that due to existing issues with encroachments, erosion, vegetation, maintenance, and construction records, etc., the Smith Canal levees were not able to meet FEMA certification requirements.

Consequently, in 2009 FEMA issued Flood Insurance Rate Maps (FIRMs) which showed approximately 5,000 properties (approximately 15,000 residents) were located within the 100-year floodplain. In addition, based on topographical data newly developed by California Department of Water Resources (DWR), FEMA is proposing to remap this area

which would include an additional 3,000 parcels (approximately 9,000 residents) in the 100-year floodplain.

In 2009, at the request of the two RDs, SJAFCA partnered with RD 1614 and RD 828, and took the lead in evaluating options for restoring FEMA accreditation for the Smith Canal area. The cost of a solution was a concern for the partners because most of the affected population is within an area that is economically disadvantaged and on fixed incomes. Several alternatives were evaluated. Preliminary findings indicated that the most cost-effective alternative would be a fixed flood wall and gate structure at the mouth of Smith Canal.

SJAFCA consulted and coordinated with FEMA on the use of a gate structure as a method of providing flood risk-reduction for the Smith Canal area. SJAFCA prepared 30% engineering design plans of a proposed structure, and submitted a request to FEMA for a Conditional Letter of Map Revision (CLOMR). FEMA reviewed SJAFCA's CLOMR request and, in 2011, concurred that the gate structure would meet FEMA standards for providing at least 100-year flood risk-reduction and would warrant a revision in the area FIRM after the project is built.

At approximately the same time the CLOMR request was being processed, SJAFCA applied for funding from DWR's Early Implementation Program (EIP) to obtain partial funding from the State for the design and environmental review of the project. SJAFCA received a \$2,412,500 grant in September of 2012 for 50% of the project design phase and associated environmental analysis. As part of the EIP funding process, local communities are required to demonstrate their ability to cover the local costs.

Having secured FEMA's approval of the CLOMR and State's funding for the design, SJAFCA, RD 1614, and RD 828 elected to move forward with the formation of an assessment district to finance the local share of the project design, construction, and operations and maintenance (O&M) costs. A successful Proposition 218 election was conducted and on July 10, 2013, SJAFCA Board in concert with the RDs approved the formation of the assessment district.

On July 10, 2013, SJAFCA issued a request for Statement of Qualifications and proposals to 33 firms for the design environmental and public outreach of the project. Two engineering firms Green Mountain Engineering and Peterson Brustad, Inc., submitted statements and proposals. In October 2013, interviews were conducted by a selection panel consisting of the California Department of Water Resources, San Joaquin County and SJAFCA. The panel unanimously selected Peterson Brustad, Inc.

In November 2013, the Board authorized a contract with Peterson Brustad, Inc., in an amount not to exceed \$3.5 million for the design of the Project and Task Order 1 in an amount not to exceed \$1.4 million for the development of the Environmental Impact Report (EIR) and public outreach and required all subsequent work to be issued by task order to be approved by the Board.

As part of the California Environmental Quality Act (CEQA) process, SJAFCA considered many options, including ones proposed by Green Mountain Engineering. Following a screening process to ensure that all official alternatives achieved the project's goal and were cost effective, the environmental effects of three alternatives along with the No Project Alternative were fully analyzed in the EIR. The alternatives analyzed included:

- Alternative 1 -Single Gate Wall to Dad's Point (Proposed Project)
- Alternative 2 -Atherton Cove Flood Wall with Smith Canal Gate
- Alternative 3 -Dual Gated Walls to Atherton Cove and Smith Canal

Because the project will be receiving funding from State grants (EIP and UFRR) authorized under the Disaster Preparedness and Flood Prevention Bond Act of 2006 (Proposition 1E), the project is required to contribute to the 200-year level of flood protection mandated by Senate Bill 5 and to construct improvements in accordance with DWR's Urban Levee Design Criteria. In addition, DWR requires that an Independent Panel of Experts (IPE) review the design and implementation of the Project. Also, local agencies receiving State funding are required to help the State seek federal share for the project, which adds federal (U.S. Army Corps of Engineers) requirements to the project. On September 24, 2014, the Board approved agreements for the IPE for the project.

While the environmental analysis process was moving forward, SJAFCA was also working on requesting an Urban Flood Risk Reduction (UFRR) grant funding from DWR for the construction costs of the project. On March 9, 2015, SJAFCA submitted a concept proposal and on May 15, 2015, received a letter from DWR conditionally committing to provide up to \$22,309,666 for the construction phase of the project. SJAFCA submitted a full application in August 2015.

On July 23, 2015, SJAFCA received a letter from FEMA requesting additional information and documentation on the approved CLOMR. SJAFCA started meeting with FEMA representatives to determine the extent of the documentation requested.

On June 24, 2015, the Draft EIR was distributed, for a 45-day review and comment by interested persons, agencies, and organizations. The Final EIR was initiated addressing oral and written comments received at a public meeting and during the public review period.

On September 3, 2015, a Section 221 Memorandum of Understanding (MOU) was executed between SJAFCA and U.S. Army Corps of Engineers to advance the construction of the Smith Canal Gate project and be eligible for a credit on the Lower San Joaquin River Feasibility Study, or another future flood control project.

In November 19, 2015, the Board certified the Final EIR selecting Alternative 1 among the alternatives considered, and adopted the Findings of Fact and Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program. In addition,

the Board approved a Task Order for the design, permitting and right of way acquisition for the project.

On December 21, 2015, two lawsuits were filed challenging the approval of the project. The lawsuits were filed by the following parties:

- Atherton Cove Property Owners Association (ACPOA), including claims under the California Environmental Quality Act (CEQA), the public trust doctrine, and real estate common law.
- Dominick Gulli. Including claims under CEQA, Proposition 218, and laws related to public contracting.

These lawsuits are important because they could delay project construction, they may jeopardize the project's ability to obtain grant funds for construction, and they use the limited funds from the assessment and from DWR which would otherwise go to construction. The defense against them has, to date, cost approximately \$1,185,000.

On September 7, 2016, the IPE provided comments to the 35% design, and on June 16, 2017, provided comments to the 65% design documents. Comments from the IPE required some design changes and project features refinements. Design changes included, among other items, additional seismic and geotechnical analysis. The changes and potential impacts were identified in an Addendum to the Final EIR for the Project. Consequently, on November 16, 2017, the Board approved the Project with the design changes and refinements, and an Addendum to the Final EIR for the Project.

SJAFCA legal counsel successfully defended the Agency against the ACPOA lawsuit. However, on October 2, 2017, ACPOA filed an appeal.

On October 24, 2017, the UFRR grant was fully executed. DWR will cost-share 63% of the project construction costs to a maximum amount of \$22,309,666.

On December 18, 2017, Mr. Gulli filed a second lawsuit challenging the Addendum to the Final EIR for the Project, the project changes, and the determination that the project does not require recirculation, evaluation of mitigating environmental impacts and project alternatives.

On January 12, 2018, the IPE received a revised set of the 95% drawings, and a meeting was conducted on January 18, 2018, to go over the design. Final comments were received March 17. Based the comments from the panel, it is expected that the final set of drawings will be completed by mid-April.

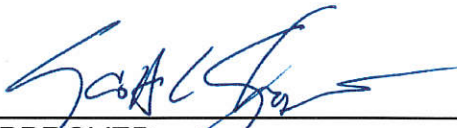
Present Situation

As part of the right of way acquisition necessary for the construction of the project, SJAFCA has recently discovered that when Dad's Point peninsula was being transferred

to the City by the U.S. Army Corps of Engineers, the northern tip of the peninsula was inadvertently left out from the legal description. The City has always assumed ownership of the entire parcel (and constructed a park on it) and therefore was agreeable to provide SJAFCA the necessary right of way rights to construct the project. However, due to the newly discovered information, SJAFCA is currently in conversations with USACE representatives to discuss the appropriate mechanisms to initiate the transfer of the portion that was left out from the transaction or to provide a long-term lease.

Recent project delays caused by the additional seismic and geotechnical analysis required by the IPE, the current landownership issue on Dad's Point, which is also affecting the acquisition of required permits, and the current lawsuits, required the project construction to be delayed until the next year. Delay of the construction phase of the project allows time for staff to complete the right of way acquisition, obtain needed permits, and to advance or resolve the existing lawsuits.

PREPARED BY: Juan J. Neira



APPROVED:
SCOTT L. SHAPIRO
ACTING EXECUTIVE DIRECTOR

SLS:JJN:dc

**End of Agenda
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