

## ACTION ITEM

### **Approval of Department of Water Resources Proposed Proposition 12 Expenditures: Delta Aqueduct Protection Project – Upper Jones Tract (RD 2039)**

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**Summary:** Staff recommends that the Council adopt specified CEQA findings and approve funding by the Department of Water Resources (DWR) for Reclamation District (RD) 2039's Delta Aqueduct Protection Project – Upper Jones Tract. The State funds allocated by the proposed Council action total \$1,659,100. A local cost share fund of \$292,782 will provide an additional 15 percent of the project's total cost. The purpose of the Council's approval is to facilitate funding by DWR from Proposition 12, the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Act of 2000, for local projects consistent with Water Code section 83002(a)(1).

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#### **Requested Action**

Approve funding by DWR for RD 2039's Delta Aqueduct Protection Project – Upper Jones Tract pursuant to Water Code section 83002(a)(1). \$1,659,100 of State funds will be allocated pursuant to the proposed Council action. A local cost share of an additional \$292,782 will provide 15 percent of the project's total cost.

#### **Background**

Water Code section 83002 allocates funds from the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Act of 2000. Section 83002(a)(1) provides that "not less than thirty-five million dollars (\$35,000,000) shall be expended by the department for projects to reinforce those sections of the levees that have the highest potential to suffer breaches or failure and cause harm to municipal and industrial water supply aqueducts that cross the Delta and which are vulnerable to flood damage, including the installation of scour protection on the supports of the aqueducts in those areas located adjacent to the sections of the levees that have been identified as having the highest risk for breaches or failure." It also requires that "prior to the design or construction of any project funded pursuant to this paragraph, the California Bay-Delta Authority, or its successor, shall approve the specific project or program." The Delta Reform Act of 2009 made the Council the successor to the California Bay-Delta Authority. The purpose of the Council's approval is to facilitate funding by DWR for local projects consistent with the law.

DWR issued a Proposal Solicitation Package (PSP) in early 2010 to award the funds allocated by Water Code section 83002(a)(1). DWR identified 10 projects eligible to receive State funds to protect islands traversed by the East Bay Municipal Utility District's (EBMUD) Mokelumne Aqueduct. This aqueduct provides water from the Sierra Nevada to the East Bay region, serving approximately 1.3 million customers in 20 incorporated and 15 unincorporated communities. The Delta islands involved are Woodward, Palm-Orwood, Upper and Lower Jones, and Lower Roberts.

At the May 2010 Council meeting, the Council approved the expenditure of funds for design, planning, and environmental review for the ten projects, with the direction that project proponents could return to seek construction funding when California Environmental Quality Act (CEQA) compliance could be demonstrated. In 2011 construction funds for five of the ten projects were approved by the Council; and in 2012 another four of the ten projects received Council approval, for a total of nine of the ten projects. As of February 2016, the previously approved nine projects have been completed.

The Upper Jones Tract project was not included in previous approval requests due to the need for additional environmental assessment and development of appropriate avoidance and minimization measures to protect Giant Garter Snakes. Now the final biological assessments of the Upper Jones Tract project have been completed, and the project is now ready for Council's consideration and action.

The total amount of State funds allocated for all ten projects by the Legislature is \$35 million, which represents 85 percent of the total costs of the projects. The 15 percent local cost share match will be approximately \$6.1 million, for an overall total of approximately \$41.1 million.

### **Project Information and Review**

- Project Scope and Description. The proposed project is to raise RD 2039 levees along Trapper Slough, and also includes raising and replacing approximately 3,000 linear feet of asphalt along the Bacon Island Road adjoining the levee, as depicted in Attachments 1-4.
- CEQA Compliance and Project Approval.
  - a. Appropriate CEQA compliance documentation: RD 2039 filed a Notice of Exemption (Attachment 5) for the project under Class 1 (Existing Facilities) and Class 2 (Replacement or Reconstruction) on March 7, 2014.
  - b. CDFW approval: The Department of Fish and Wildlife (DFW) has reviewed a Biological Assessment Baseline biological resources assessment prepared for the project by Moore Biological Consultants, and determined that the activities described in the project's Scope of Work reflect the changes it had requested.
  - c. DWR concurrence: DWR is a responsible agency under CEQA and concurs with RD 2039's determination that the project is categorically exempt from CEQA.

Council staff reviewed the materials submitted by RD 2039 to determine:

- Appropriate project scope and description. Council staff reviewed the project, as described in the submitted written information, for technical accuracy. The project as described appears to help further advance the goal of reducing Delta flood risk by repairing and strengthening levees and is consistent with statute. Completion of the project will provide a strengthened levee which will reduce the flood risk to the aqueduct.

- Adequate CEQA compliance. The Council has discretionary approval authority with regard to these proposed projects and, as such, is a “responsible agency” under CEQA for each project. CEQA compliance is required prior to approval of a project, and commonly the repair and maintenance of Delta levees is eligible for exemption from CEQA requirements, if appropriate requirements are met. As described in Section 15301 of the CEQA Guidelines, a Class 1 Categorical Exemption is applicable to operation, repair, maintenance, permitting, leasing, licensing or minor alteration of existing public or private structures, facilities, mechanical equipment or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination. Types of facilities to which this exemption applies are listed in several subsections, including the following: “(d) Restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety, unless it is determined that the damage was substantial and resulted from an environmental hazard such as earthquake, landslide or flood.”

**Recommended Project Approval; Proposed Findings:**

Staff has reviewed the proposed project as described in documents provided by RD 2039, and based upon those documents and the representations made therein, recommends that the Council approve the project based on the following findings:

- The Council concurs with RD 2039 and DWR that the proposed project is exempt from CEQA under Class 1 Categorical Exemption (Article 19, Sec. 15301).
- The proposed project meets the criteria set forth in Water Code Section 83002(a)(1).

**Fiscal Information**

The Upper Jones Tract project before the Council is requesting State funding in the amount of \$1,659,100, with the local cost share of \$292,782 funded by EBMUD, whose water pipes cross several of the islands.

**List of Attachments**

Attachment 1: Project Vicinity Map  
Attachment 2: Project Location  
Attachment 3: Upper Jones Tract Project – Area of Work  
Attachment 4: Upper Jones Tract Project – Typical Levee Cross Section  
Attachment 5: CEQA Notice of Exemption Filed by the Reclamation District 2039  
Attachment 6: DWR Concurrence Regarding CEQA Categorical Exemption  
Attachment 7: RD 2039 UJ 10-1.0 Scope of Work  
Attachment 8: CDFW Staff Letter Regarding Scope of Work Approval

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