



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann
City Attorney

SUBJECT: SETTLEMENT OF JEAN-MARIE
WHITE *et al.* v. SANTA CLARA
VALLEY WATER DISTRICT; CITY
OF SAN JOSE

DATE: November 4, 2021

RECOMMENDATION

Approve a settlement in the case of *Jean-Marie White, et.al. v. Santa Clara Valley Water District (SCVWD) and the City of San Jose (the 2017 Flood Cases)* in the amount of \$750,000 and authorize the City Attorney to execute a Settlement Agreement.

OUTCOME

Settle the lawsuit for economic and non-economic damages brought by over 250 plaintiffs against the City by payment of \$750,000, each side to bear their own costs and attorney fees, in exchange for a dismissal of the City from the litigation. The plaintiffs can proceed with the lawsuit against SCVWD.

BACKGROUND

On Saturday morning, February 18, 2017, after back-to-back “atmospheric rivers” resulted in heavy rainfall throughout the South Bay, Santa Cruz Mountains, and the Coyote Creek watershed, the Anderson Reservoir exceeded its capacity and began to spill uncontrollably through the Dam’s spillway. Over the next two days, rain continued to fall throughout the Coyote Watershed, increasing the spill from the Anderson Reservoir as well as adding water to the Coyote Creek through runoff and storm systems. Ultimately, flooding from Coyote Creek occurred in various parts of the City.

Plaintiffs, a group of slightly more than 250 renters and property owners sued the Water District and the City alleging that both entities were aware of the effect of debris, sediment, invasive vegetation, and other obstacles impeding the flow of water through the creek channel, and the risk that a creek channel with reduced capacity would cause flooding. Plaintiffs further alleged defendants failed to exercise reasonable care or take measures to prevent or mitigate the damage caused to the plaintiffs and failed to adequately warn them of approaching flood waters. The City has denied these allegations.

November 4, 2021

Subject: Settlement of *White v. SCVWD; City of San Jose*, a Lawsuit Alleging Property loss, damage and physical injuries due to Coyote Creek flooding (2017 Flood)

Page 2

ANALYSIS

The settlement of \$750,000 is reasonable given the cost and risks of further litigation. Plaintiff's claimed economic (property) damages total approximately \$12.6 million based on written discovery responses. Additionally, plaintiffs claim to have sustained non-economic or "pain and suffering" damages in an amount that would be determined at trial. Even if the City was found nominally liable at trial, such a verdict could mean that the City was responsible for payment of the entire amount of the claimed economic damages.

Initial efforts to put together a joint settlement with the SCVWD and the plaintiffs were unsuccessful. The City then proceeded on its own with settlement discussions with plaintiffs. Under the proposed settlement, plaintiffs will receive \$750,000 from the City, in addition to whatever future settlement or verdict they arrive at with the SCVWD. The settlement has been deemed to be in "good faith" by a Santa Clara County Superior Court Judge which eliminates an action by the Water District against the City. This is a negotiated agreement between the plaintiffs and the City, assisted by retired Judge Kevin McKenney. Importantly, the settlement allows the City to avoid the risks inherent in litigation.

BUDGET REFERENCE

The table below identifies the fund and appropriations to fund the contract recommended as part of this memorandum.

Fund #	Appn. #	Appn. Name	Current Appn.	Amount for Contract	2021-2022 Adopted Capital Budget Page	Last Budget Action (Date, Ord. No.)
541	2445	Major Litigation Costs	\$1,500,000	\$750,000	171	06/22/2021 Ord. No. 30621

CEQA

Not Applicable. Not a Project; File No. PP10-066(h), Settlement Agreements.

By: /s/ Nora Frimann

NORA FRIMANN
City Attorney

cc: Jennifer Maguire, City Manager

For questions, please contact NORA FRIMANN, City Attorney, at (408) 535-1900