



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kerrie Romanow
Jim Shannon

**SUBJECT: LEGACY LAGOONS REMEDIATION
BUDGET ACTIONS**

DATE: January 27, 2021

Approved

Date

01/28/21

REPLACEMENT

REASON FOR REPLACEMENT

The report was replaced to update the Commission Recommendation/Input Section and to add the CEQA section.

RECOMMENDATION

Accept the following budget actions for the Legacy Lagoons Remediation Phase 2 project at the San José – Santa Clara Regional Wastewater Facility (RWF):

- (a) Adopt the following 2020-2021 Appropriation Ordinance amendments in the Sewer Service and Use Charge Fund:
 - (1) Decrease the Transfer to the San Jose – Santa Clara Treatment Plant Operating Fund by \$23,241,040; and
 - (2) Increase the unrestricted Ending Fund Balance in the amount of \$23,241,040.

- (b) Adopt the following 2020-2021 Funding Sources Resolution and Appropriation Ordinance amendments in the San Jose – Santa Clara Treatment Plant Operating Fund:
 - (1) Decrease the Legacy Lagoons Remediation appropriation by \$36,800,000;
 - (2) Decrease the estimate for revenue from Transfers and Reimbursements by \$23,241,040; and
 - (3) Decrease the estimate for Revenue from Local Agencies by \$13,558,960.

OUTCOME

Treatment Plant Advisory Committee (TPAC) acceptance of this recommendation and subsequent San José City Council (Council) approval would acknowledge the timeframe extension of the Legacy Lagoons Remediation Phase 2 project, estimated to cost \$39.3 million, and the project's impacts on the RWF Operation and Maintenance budget. Since the tributary agencies have not yet been billed for costs related to this project, the recommended action will

reduce the appropriated budget and allow the City of San José to correctly invoice the Tributary Agencies in the fourth quarter of FY 2020-2021. As work continues on this project, staff will return to TPAC and Council requesting appropriation of funds when awarding contracts for design and construction as needed.

BACKGROUND

The Regional Water Quality Control Board (Water Board) issued a Site Cleanup Requirements Order (Order) for the legacy lagoons at the Regional Wastewater Facility residual solids management (RSM) area. The Order required cleanup activities of 25 previously abandoned biosolids storage basins (lagoons) by 2023. The order allowed the project to be completed in phases. Phase 1, which includes 4 lagoons (L16-L19), is required to be completed by January 2021 because the area is proposed to be included in the upcoming shoreline levee project. Phase 2, which includes the remaining lagoons, was required to be completed by November 2023. The total estimated project cost of \$39,300,000, and the necessary revenue for Phase 2 was included in the Adopted 2020-2021 Budget approved by TPAC on May 21, 2020 and San José City Council on June 23, 2020. In anticipation of the City of San José portion of the cost liability for the project, the City of San José increased revenue in its Sewer Service and Use Charge by increasing rates, in part, to pay for this project.

In a July 7, 2020 letter submitted by City of San José staff, the City as administering agency of the RWF requested that an extension be granted to defer cleanup to allow alignment with the Shoreline Levee Project that is ongoing in the area to help protect the region from the threat of sea level rise. Since the Shoreline Levee Project is located in approximately the same physical location as the Phase 2 Remediation project, if work is conducted concurrently, potentially significant safety and logistical challenges would be created. Furthermore, deferral of the Phase 2 work would allow the City to benefit from experience gained during Phase 1.

On September 1, 2020, the City of San José received a letter from the San Francisco Regional Water Quality Control Board (Water Board) indicating that enforcement of the Order would be deferred by four years for a project completion date of November 30, 2027 for Phase 2 on the condition that the deferral is granted subject to the continued coordination and progress of remediation efforts led by the City of San José, with the project deliverables of the United States Army Corps of Engineers' (USACE) Shoreline Levee Project.

ANALYSIS

Since the Order has been deferred four years, the majority of appropriated funds will not be used this fiscal year. As such, the recommended budget adjustment actions reduces the appropriated funds in the San Jose – Santa Clara Treatment Plant Operating Fund for this project, and transfers San José's portion of funds to the San Jose Sewer Service and Use Charge Fund ending fund balance, as revenues to fund San José's share of this project were already collected, and reduces budgeted revenue and expenditures within the San Jose – Santa Clara Treatment Plant

Operating Fund related to this project in FY 2020-2021. Since the tributary agencies have not yet been billed for costs related to this project, the recommended action will reduce the appropriated budget and allow the City of San José to correctly invoice the Tributary Agencies in the fourth quarter of FY 2020-2021. A total of \$2.5 million will remain appropriated for planning, design, and permitting costs for the Phase 2 work. Future costs for this project will be requested through appropriate action and encumbered as future contract awards are brought to TPAC and Council for consideration.

CONCLUSION

Approval of these budget actions will ensure the San Jose – Santa Clara Treatment Plant Operating Fund does not have excess funds appropriated that will be unused this fiscal year, and ensure San José and Tributary Agency rate payers are not funding a project that has been deferred several years.

EVALUATION AND FOLLOW-UP

Funding for the Legacy Lagoons Remediation Project Phase 2 will be requested, appropriated, and encumbered as the project progresses with a project completion date anticipated by November 30, 2027 per the Water Board's Order.

CLIMATE SMART SAN JOSE

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memorandum will be posted on the City's website for the February 9, 2021 City Council Agenda.

COORDINATION

This memorandum was coordinated with the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

This memorandum was heard at the January 14, 2021, TPAC meeting. TPAC recommended approval of staff recommendations included in this memorandum. A TPAC supplemental memo

has been submitted to San José City Council for consideration at the February 9, 2021 City Council meeting.

COST SUMMARY/IMPLICATIONS

The recommendations in this memorandum and subsequent approval by San José City Council will more accurately reflect the current timeline and costs of the project and the Operations and Maintenance needs of the RWF. A total of \$2.5 million will remain in the Legacy Lagoons Remediation project for ongoing planning, design, and permitting costs for this project. Future funding for the Legacy Lagoons Remediation Project Phase 2 will be requested, appropriated, and encumbered as the project progresses with a project completion date anticipated by November 30, 2027 per the Water Board’s Order. Since the City of San José already collected revenue from ratepayers for this project, its portion of funds will be transferred back to the unrestricted fund balance within the Sewer Service and Use Charge Fund and will be transferred to the San Jose – Santa Clara Treatment Plant Operating Fund as needed each fiscal year to pay for San José’s portion of anticipated design and construction contracts awarded throughout the project term.

BUDGET REFERENCE

The table below identifies the fund and appropriations to fund the recommendations included as part of this memo.


Fund #	Appn. #	Appn. Name	Total Appn.	Budget Action Requested	2020-2021 Adopted Operating Budget Page	Last Budget Action (Date, Ord. No.)
541	8999	Unrestricted Ending Fund Balance	\$5,329,238	\$23,241,040	X-95	10/20/2020 Ord. No. 30494
541	A008	Transfer to the San Jose – Santa Clara Treatment Plant Operating Fund	\$85,500,000	(\$23,241,040)	X-95	06/23/2020 Ord. No. 30437
513	212C	Legacy Lagoons Remediation	\$39,300,000	(\$36,800,000)	X-91	06/23/2020 Ord. No. 30437
513	R090	Revenue from Local Agencies	\$44,800,000	(\$13,558,960)	X-91	06/23/2020 Ord. No. 79605
513	R003	Transfers and Reimbursements	\$85,500,000	(\$23,241,040)	X-91	06/23/2020 Ord. No. 79605

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CEQA

Addendum to the Environmental Impact Report for the San José/Santa Clara Water Pollution Control Plant Master Plan (SCH# 2011052074), Legacy Biosolids Lagoons Site Cleanup, File No. ER20-007.

/s/
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JIM SHANNON
Budget Director

If you should have any questions, please contact Napp Fukuda, Assistant Director at 408-793-5353.