



# **Santa Clara Valley Water District FAHCE Ad Hoc Committee Meeting**

Teleconference Zoom Meeting

## **AGENDA**

**Thursday, October 8, 2020  
1:00 PM**

**District Mission: Provide Silicon Valley safe, clean water for a healthy life, environment and economy.**

### **FAHCE AD HOC COMMITTEE**

Barbara Keegan - District 2  
Linda J. LeZotte - District 4  
Tony Estremera - District 6

All public records relating to an item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the Office of the Clerk of the Board at the Santa Clara Valley Water District Headquarters Building, 5700 Almaden Expressway, San Jose, CA 95118, at the same time that the public records are distributed or made available to the legislative body. Santa Clara Valley Water District will make reasonable efforts to accommodate persons with disabilities wishing to attend Board of Directors' meeting. Please advise the Clerk of the Board Office of any special needs by calling (408) 265-2600.

**Note: The finalized Board Agenda, exception items and supplemental items will be posted prior to the meeting in accordance with the Brown Act.**

# **Santa Clara Valley Water District**

## **FAHCE Ad Hoc Committee**

### **AGENDA**

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#### **IMPORTANT NOTICES**

This meeting is being held in accordance with the Brown Act as currently in effect under the State Emergency Services Act, the Governor's Emergency Declaration related to COVID-19, and the Governor's Executive Order N-29-20 issued on March 17, 2020 that allows attendance by members of the Committee, staff, and the public to participate and conduct the meeting by teleconference, videoconference, or both.

Members of the public wishing to address the Committee during a video conferenced meeting on an item not listed on the agenda, or any item listed on the agenda, should use the "Raise Hand" or "Chat" tools located in Zoom meeting link listed on the agenda. Speakers will be acknowledged by the Committee Chair in the order requests are received and granted speaking access to address the Committee.

Santa Clara Valley Water District (Valley Water) in complying with the Americans with Disabilities Act (ADA), requests individuals who require special accommodations to access and/or participate in Valley Water Committee meetings to please contact the Clerk of the Board's office at (408) 630-2711, at least 3 business days before the scheduled meeting to ensure that Valley Water may assist you.

This agenda has been prepared as required by the applicable laws of the State of California, including but not limited to, Government Code Sections 54950 et. seq. and has not been prepared with a view to informing an investment decision in any of Valley Water's bonds, notes or other obligations. Any projections, plans or other forward-looking statements included in the information in this agenda are subject to a variety of uncertainties that could cause any actual plans or results to differ materially from any such statement. The information herein is not intended to be used by investors or potential investors in considering the purchase or sale of Valley Water's bonds, notes or other obligations and investors and potential investors should rely only on information filed by Valley Water on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System for municipal securities disclosures and Valley Water's Investor Relations website, maintained on the World Wide Web at <https://emma.msrb.org/> and <https://www.valleywater.org/how-we-operate/financebudget/investor-relations>, respectively.

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**<https://valleywater.zoom.us/j/93196157529>**

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**Meeting ID: 931 9615 7529**

**1. Roll Call.**

**2. TIME OPEN FOR PUBLIC COMMENT ON ANY ITEM NOT ON THE AGENDA.**

*Notice to the Public: Members of the public who wish to address the Committee on any item not listed on the agenda should access the "Raise Hand" or "Chat" tools located in Zoom meeting link listed on the agenda. Speakers will be acknowledged by the Committee Chair in order requests are received and granted speaking access to address the Committee. Speakers comments should be limited to three minutes or as set by the Chair. The law does not permit Committee action on, or extended discussion of, any item not on the agenda except under special circumstances. If Committee action is requested, the matter may be placed on a future agenda. All comments that require a response will be referred to staff for a reply in writing. The Committee may take action on any item of business appearing on the posted agenda.*

**3. INFORMATION AND ACTION ITEMS:**

- 3.1. Proposed Conversion of Santa Clara Valley Water District (Valley Water) [20-0907](#)  
Fish and Aquatic Habitat Collaborative Effort (FAHCE) Ad Hoc  
Committee to a Standing Board Committee.

Recommendation: A. Discuss:

1. Proposed conversion of the Fish and Aquatic Habitat Collaborative (FAHCE) Ad Hoc Committee to a Standing Board Committee;
  2. Proposed additional committee purpose;
  3. Potential committee names;
  4. Path forward for the FAHCE Program; and
- B. Receive direction from the FAHCE Ad Hoc Committee.

Manager: Vincent Gin, 408-630-2633  
Aaron Baker, 408-630-2135

Attachments: [Attachment 1: Stream Stewardship Flyer](#)  
[Attachment 2: Board Governance Policy GP-8](#)

**4. CLERK REVIEW AND CLARIFICATION OF COMMITTEE REQUESTS.**

*This is an opportunity for the Clerk to review and obtain clarification on any formally moved, seconded, and approved requests and recommendations made by the Committee during the meeting.*

**5. ADJOURN.**



# Santa Clara Valley Water District

File No.: 20-0907

Agenda Date: 10/8/2020

Item No.: 3.1.

## COMMITTEE AGENDA MEMORANDUM

### FAHCE Ad Hoc Committee

#### SUBJECT:

Proposed Conversion of Santa Clara Valley Water District (Valley Water) Fish and Aquatic Habitat Collaborative Effort (FAHCE) Ad Hoc Committee to a Standing Board Committee.

#### RECOMMENDATION:

- A. Discuss:
  - 1. Proposed conversion of the Fish and Aquatic Habitat Collaborative (FAHCE) Ad Hoc Committee to a Standing Board Committee;
  - 2. Proposed additional committee purpose;
  - 3. Potential committee names;
  - 4. Path forward for the FAHCE Program; and
- B. Receive direction from the FAHCE Ad Hoc Committee.

#### SUMMARY:

##### Background

In 1996, the Guadalupe-Coyote Resource Conservation District filed a complaint with the State Water Resources Control Board over Valley Water's use of water rights in the Stevens Creek, Coyote Creek, and Guadalupe River watersheds. FAHCE was established to resolve this complaint. In 2003, Valley Water initialed a Settlement Agreement (SA) regarding water rights with the Guadalupe-Coyote Resource Conservation District, the California Department of Fish and Wildlife, U. S. Fish and Wildlife Service, National Marine Fisheries Service and a group of nongovernmental organizations, including Trout Unlimited, Pacific Coast Federation of Fishermen's Associations, California Trout, Urban Creeks Council and the Northern California Council of Federation of Fly Fishers. Since the initialing of the SA, Valley Water has diligently pursued the Environmental Impact Report (EIR) for the three creeks, but the complicated process has experienced several iterations and approaches, resulting in some delays. However, Valley Water has also implemented many elements identified in the SA such as fixing barriers to fish passage, fish habitat assessments, and geomorphic channel restoration. Many of the completed elements are highlighted in the attached stream stewardship flyer (Attachment 1).

##### Previous Board Direction

On April 12, 2016, the Board established the FAHCE Ad Hoc Committee to expedite the resolution of the water rights complaint to the State Water Resources Control Board (SWRCB). The Board tasked the FAHCE Ad Hoc Committee with two purposes:

- (1) Track the progress of Valley Water and other parties (Initialing Parties) of the SA in completing requirements enabling dismissal of the water rights complaint and commencement of the restoration program.
- (2) Identify and recommend actions the Board can take to ensure expeditious completion of the requirements defined in Purpose 1, including engagement with appointed boards and senior officials of the other Initialing Parties.

The FAHCE Ad Hoc Committee has met periodically to track the progress of completing the conditions precedent specified in the SA such as the FAHCE EIR and water right change petitions.

After the 2017 flooding affecting Coyote Creek, the Board established the Coyote Flood Risk Reduction Committee (CFRRC) to address various flood-related issues.

On February 11, 2020, the Board passed a motion to:

- (1) Disband the CFRRC and transfer any remaining CFRRC work items to the FAHCE Ad Hoc Committee; and
- (2) Refer to the FAHCE Ad Hoc Committee to review its purpose and consider including Anderson Dam and Coyote Creek issues, and return to the Board with a proposed new committee purpose and name.

### Discussion

Pursuant to the February 11, 2020 Board direction, this meeting allows the FAHCE Ad Hoc Committee to discuss its proposed conversion to a Standing Board Committee prior to making a recommendation to the full Board. Staff seeks the FAHCE Ad Hoc Committee's input on the addition of a third purpose to the existing two ad hoc committee purposes:

“Identify and track progress of District and non-District activities that may affect the FAHCE Settlement Agreement and implementation.”

This additional purpose will incorporate the February 11, 2020 Board direction and provides the proposed Standing Board Committee with a broader perspective in advising the Valley Water Board on FAHCE program implementation to reasonably balance the use of Stevens Creek, Guadalupe River and Coyote Creek (Three Creeks) waters for beneficial uses, including stream stewardship, water supply and flood protection.

If the third purpose is authorized for the proposed Board Standing Committee, the committee's jurisdiction will be broadened to consider proposals, activities, and projects that may affect FAHCE. In keeping with the broadened scope of the proposed committee and in recognition that FAHCE is a long-term program that considers operations and restoration measures impacting local waterways, the committee is discussing names for the new Standing Board Committee.

To expedite the implementation of the Anderson Dam Seismic Retrofit Project (ADSRP), a critical life safety project, the SA's flow and restoration measures for the Coyote Creek watershed will be evaluated in the ADSRP EIR. Flow and restoration measures in the two remaining watersheds (Guadalupe and Stevens) will be evaluated in a separate EIR. Valley Water is committed to move expeditiously to complete the public draft EIR for the restoration measures in the Guadalupe River and Stevens Creek watersheds.

**ATTACHMENTS:**

Attachment 1: Stream Stewardship Flyer

Attachment 2: Board Governance Policy GP-8

**UNCLASSIFIED MANAGER:**

Vincent Gin, 408-630-2633

Aaron Baker, 408-630-2135

## Protecting the Environment is Fundamental to Our Mission



The mission of the Santa Clara Valley Water District (Valley Water) is defined in state law and includes environmental responsibilities, unique among California's water agencies, to enhance, protect, and restore streams, riparian corridors, and natural resources in connection with our water supply and flood protection efforts. Since our mission was expanded by the Legislature in 2001, Valley Water has fully embraced its broad responsibilities for environmental stewardship, employing teams of biologists who focus their work on habitat restoration and enhancement, water quality, and environmental protection.

## Extensive Investments to Improve Fisheries

The elected Valley Water Board of Directors has demonstrated strong support for environmental protection through substantial investments in stream stewardship, recycled water, groundwater recharge, and water conservation programs. The agency advocates for the environment within the water agency community and more broadly at the state and federal levels. Using cutting edge technologies to monitor fish, wildlife, precipitation, streamflow, and other environmental factors, Valley Water responds adaptively to enhance aquatic and riparian habitat for fish and other species. Over nearly two decades, Valley Water has invested extensively in efforts to conserve, protect, and enhance our natural resources. Some notable efforts include the following.

- Committed \$126 million for fisheries in Stevens Creek, Coyote Creek, and the Guadalupe River through the Fish and Aquatic Habitat Collaborative Effort.
- Maintains extensive stream gauge network with over 100 gauges, including 15 new gauges



to expand understanding of ecology and stream flows.

- Removed over 20 barriers to fish migration in streams throughout Santa Clara County.
- Funds a regional stormwater program to protect creeks from pollution.
- Modified groundwater recharge operations to enhance fish migration and habitat.
- Manages reservoir releases in consultation with regulators to best support fisheries.



- Restored natural stream channel on 2,100 feet of Stevens Creek to enhance habitat for steelhead.
- Funded studies of barriers to fish migration on Stevens Creek to determine what changes would be most beneficial for fish.
- Initiated a countywide study for prioritizing habitat improvements for steelhead.
- Established fish monitoring program on Coyote Creek, Stevens Creek, and the Guadalupe River to understand the health of threatened species.
- Installed fish cameras and radio-tagged fish to understand how fish migrate and survive in Coyote Creek and the Guadalupe River.
- Funded scientific studies to support the South Bay Salt Pond Restoration.
- Installed 35 alert radios to enable 24/7 stream gauge monitoring of critical flow conditions.
- Piloting oxygenation systems to reduce the mercury in streams and fish, improving habitat and addressing public health risks.



Valley Water biologist holding a riffle sculpin while surveying fish in the Coyote Creek Watershed.

Photo by Clayton Leal

## Fish and Aquatic Habitat Collaborative Effort

### What is FAHCE?

The Fish and Aquatic Habitat Collaborative Effort (FAHCE) is Valley Water's ongoing program established in 1997 to improve passage for fish migration and to enhance habitat for fish in Coyote Creek, Stevens Creek, and the Guadalupe River. Today, the program implements a 2003 Settlement Agreement born from a water right complaint filed with the State Water Resources Control Board.

The Settlement Agreement provides a roadmap for resolving water right complaints and for improving habitat conditions for fish in the three watersheds. This broad, long-term Settlement Agreement affects over 100 miles of creeks and eight reservoirs, including revised reservoir operations, numerous technical studies, and fish passage and habitat improvements.

### Valley Water Advances FAHCE Implementation

- **Combined Environmental Review of FAHCE measures on Coyote Creek with the Anderson Dam Seismic Retrofit Project.** Evaluating both impacts and enhancements on Coyote Creek expedites public safety, environmental improvements, and water supply resilience all as one system.
- **Removed 10 out of 18 priority fish migration barriers specified in the Settlement Agreement.**
- **Developed innovative computer model to evaluate fish habitat improvements.** Valley Water developed a new flow model in consultation with FAHCE parties, including environmental advocates and regulators. Each flow scenario produces millions of data points for fish habitat analysis and is being used to determine what habitat improvements will yield the best outcomes for fish.
- **Provides flows to benefit fish in coordination with state and federal resource agencies.** Valley Water has modified reservoir and groundwater recharge operations to provide flows for seasonal fish migration and to support habitat during drought.
- **Allocated \$1 million of Valley Water funds to fix the City of San José's Singleton Road crossing which is a major barrier to fish migration.**
- **Initiated a feasibility study on the Santa Clara County-owned Ogier Pond Complex to remove barriers to fish migration.**

# Governance Policies of the Board

<b>Title: Board Committee Principles</b> <b>Category: Governance Process</b>		
<b>Policy No. GP-8</b>	Adopted: June 15, 1999 Chair: Larry Wilson	Latest Revision: July 28, 2014 Chair: Tony Estremera
The Board of Directors revised and adopted this policy at its public meeting on the latest revision date.		

The District Act provides for the creation of advisory boards, committees, or commissions by resolution to assist the Board in performing its job, as defined.

Accordingly, the Board may establish the following type of Board Committees to assist it with policy advice, District Mission implementation, respective expertise, and, very importantly, to help produce the link between the District and the community:

**Board Standing Committee** – A Committee created by ordinance, resolution, or formal action of the Board comprised of less than a quorum of the Board and/or external members having continuing subject matter jurisdiction or a meeting schedule fixed by ordinance, resolution, or formal action. Annually, the purpose of an established Standing Committee will be reviewed to determine its relevance.

**Board Ad Hoc Committee** – A Committee comprised of less than a quorum of the Board and/or external members having a limited term, to accomplish a specific task, is established in accordance with the Board Ad Hoc Committee procedure (Procedure No. W723S01), and will be used sparingly. Annually, the purpose of an established Ad Hoc Committee will be reviewed to determine its relevance.

In keeping with the Board's broader focus, Board Committees will not direct the implementation of District programs and projects, other than to receive information and provide advice and comment.

Accordingly:

- 8.1. When used, Board Standing Committees and Board Ad Hoc Committees will be established so as to reinforce the wholeness of the Board's job and so as to never interfere with delegation from the Board to the BAOs.
  - 8.1.1. Board Standing Committees and Board Ad Hoc Committees are established for a specific purpose as defined by the Board. The committees' purpose may also include a definition in authority and limitation in duration. Expectations and authority will be carefully stated in order not to conflict with authority delegated to the BAOs.
  - 8.1.2. Board Standing Committees and Board Ad Hoc Committees will communicate directly with the Board and will not exercise authority over employees. Therefore, because the BAOs work for

# Governance Policies of the Board

the full Board, they will not be required to obtain approval of a Board Standing Committees or Board Ad Hoc Committee before an executive action.

- 8.2. This policy applies to any group which is formed by Board action, whether or not it is called a committee and regardless of whether the group includes Board members. It does not apply to committees formed under the authority of the BAOs.
- 8.3. Board Committees will conduct their meetings in accordance with the provisions of the Brown Act (Open Meetings Law), even when the Brown Act would not otherwise apply to the committee due to its nature, function, or duration. If an exception of this policy is deemed to be in the best interest of the District, the reason for the exception will be identified at the time the Board or Chair creates the committee.
- 8.4. On an annual basis, the Board of Directors will review the structures, functions, and purposes of the Board Committees to ensure that the Board's needs are being met.

## Michele King

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**Subject:** FW: Comment on FAHCE Committee Meeting October 8, 2020 Item #3.1. convert Ad Hoc to Standing, FAHCE status

-----Original Message-----

From: D. Muirhead <doug.muirhead@stanfordalumni.org>

Sent: Wednesday, October 7, 2020 10:53 AM

To: Clerk of the Board <clerkoftheboard@valleywater.org>

Cc: Vincent Gin <VGin@valleywater.org>

Subject: Comment on FAHCE Committee Meeting October 8, 2020 Item #3.1. convert Ad Hoc to Standing, FAHCE status

Hello FAHCE Ad Hoc Committee Members and Staff,

Comment on FAHCE Ad Hoc Committee Meeting Thursday October 8, 2020  
Item #3.1. Convert FAHCE Ad Hoc Committee to Standing Board Committee.

Thank you for having a public meeting of the FAHCE Committee.

Given the number of times I have addressed the Board and BPPC on the need for this committee to transition from opaque to transparent, I was disappointed that I did not receive a courtesy notice of this meeting. Water Under the Bridge.

The most important action is to remove the exception to your Board Policy which requires ALL committees to embrace the Brown Act. When the Board created this committee on April 12, 2016, then-Board Chair Keegan declared the exception to be in the best interests of the agency, but did not provide a single example of why that exception was required. And we know that committees can bifurcate between open and closed sessions if necessary.

While I support expanding the scope of the Committee to incorporate multiple objectives (Coyote Creek and Anderson Dam), this appears to give you yet another excuse for delaying the FAHCE EIR.

The Staff Report Background states:

Valley Water has diligently pursued the Environmental Impact Report (EIR) for the three creeks, but the complicated process has experienced several iterations and approaches, resulting in some delays.

The Staff Report Discussion states:

This (...) provides the proposed Standing Board Committee with a broader perspective in advising the Valley Water Board on FAHCE program implementation to reasonably balance the use of Stevens Creek, Guadalupe River and Coyote Creek (Three Creeks) waters for beneficial uses, including stream stewardship, water supply and flood protection.

...

To expedite the implementation of the Anderson Dam Seismic Retrofit Project (ADSRP), a critical life safety project, the SA's flow and restoration measures for the Coyote Creek watershed will be evaluated in the ADSRP EIR. Flow and restoration measures in the two remaining watersheds (Guadalupe and Stevens) will be evaluated in a separate EIR. Valley Water is committed to move expeditiously to complete the public draft EIR for the restoration measures in the Guadalupe River and Stevens

Creek watersheds.

While you use aspirational words "diligently pursued" and "expedite the implementation" and "move expeditiously", I have in my email outbox my comments on the Fish Habitat Restoration Plan EIR Scoping meeting that I sent on Thursday June 29 2017 at 1:40 PM.

The last schedule update I have in my files is from the June 27, 2018 Joint Board Meeting Next Steps  
Summer 2018 Model Results and CEQA Alternatives  
January 2019 Internal Draft EIR  
Spring 2019 Status Update Public Draft EIR  
Late 2019 Final EIR

So the first thing this Committee needs to receive is the current timeline for Coyote Creek EIR and Guadalupe and Stevens EIR. Using the new District contact "CEO<ceo@valleywater.org>":  
[heartbeat reports and meet milestones or explain] Can you and your senior staff come up with a reporting mechanism so that projects with no specific milestone still get mentioned periodically (every six months?) as Active/Suspended/Dead.  
And for specific project milestones, report if met or explain miss.

Thank you for your consideration, Doug Muirhead, Morgan Hill