

Items 5 and 6
Files 11-0188 and 11-0187

Department:
 Public Utilities Commission (PUC)

EXECUTIVE SUMMARY

Legislative Objective

- File 11-0188: Request to release \$330,510,906 reserved by the Budget and Finance Committee to fund the construction of the Calaveras Dam Replacement Project.
- File 11-0187: Resolution adopting findings under the California Environmental Quality Act (CEQA) for the Calaveras Dam Replacement Project, and directing the Clerk of the Board of Supervisors to notify the Controller of this action.

Key Points

- As of April 20, 2010, the Board of Supervisors has appropriated a total of \$409,445,000 for the Calaveras Dam Replacement Project, including (a) \$78,934,094 in various appropriations, which are currently not on reserve, and (b) \$330,510,906 in appropriated and reserved funds (Ordinance 311-08, File 08-1453; Ordinance 92-10, File 10-0337).
- Ordinances 311-08 and 92-10 placed the entire appropriation of \$330,510,906 on two separate but overlapping reserves, including (a) a Budget and Finance Committee reserve, and (b) a Controller's reserve pending the Board of Supervisors approval of the Environmental Impact Reports (EIRs) prepared pursuant to the California Environmental Quality Act (CEQA).
- The Calaveras Dam Replacement Project, one of 86 separate capital improvement projects under the PUC's Water System Improvement Program (WSIP), will result in the construction of a new Calaveras Dam in the Sunol Valley in order to increase the seismic reliability and in order to increase the water storage capacity of the Calaveras Reservoir and Dam.

Fiscal Impacts

- As of February 23, 2011, the PUC has expended \$47,836,959 of the previously appropriated and not reserved funds of \$78,934,094, such that the PUC has \$31,097,135 in available unreserved funds.
- Of the estimated remaining total expenditures of \$361,608,041 (\$409,445,000 less \$47,836,959), \$41,895,832 will be expended for non-construction costs and (b) \$319,712,209 (including a ten percent contingency) will be expended for construction costs. Actual construction costs will be known when construction bids are received on April 21, 2011.
- The PUC's current total estimated cost for the Calaveras Dam Replacement Project is \$434,143,000, which is an increase of \$24,698,000, or six percent more than the PUC's previously approved budget of \$409,445,000. The PUC states that the \$24,698,000 increase is a result of costs associated with environmental mitigation. However, because the current projected cost of all 86 WSIP Projects is \$4,442,000,000, which is \$143,556,261 or 3.1 percent less than the PUC's previously estimated WSIP approved budget of \$4,585,556,261, the PUC anticipates utilizing such cost-savings to fund the \$24,698,000 increase in the Calaveras Dam Replacement Project.

Recommendations

- Approve the proposed resolution adopting the findings under CEQA (File 11-0187).
- Subject to the approval of the proposed settlement agreement, release a total of \$17,698,697 from a Budget and Finance Committee reserve, including (a) \$6,900,000 for construction-related costs, including \$2,000,000 for settlement costs, which are not part of the main construction contract and must be completed prior to the commencement of construction on August 1, 2011, and (b) \$10,798,697 in estimated additional non-construction costs (the total requested release amount of \$330,510,906 less \$319,712,209 (see Table 1 below) in estimated additional construction costs).
- Replace the existing Budget and Finance Committee reserve on the remaining \$312,812,209 (requested release from reserve of \$330,510,906 less recommended release of \$17,698,697) with a Controller's reserve, and instruct the Controller, after receiving supporting documentation from the PUC, to release the amount of construction funds equal to the lowest responsive construction bid received by the PUC for the main construction contract, plus a ten percent construction contingency.
- Request the Controller to return any remaining unneeded funds for the Calaveras Dam Replacement Project to a Budget and Finance Committee reserve.

MANDATE STATEMENT / BACKGROUND

Mandate Statement

Section 3.3 of the City's Administrative Code provides that the committee of the Board of Supervisors that has jurisdiction over the budget (i.e., Budget and Finance Committee) may place requested expenditures on reserve which are then subject to release by the Budget and Finance Committee.

In accordance with the California Environmental Quality Act (CEQA), any public agency, that makes a discretionary decision to approve a project that has a potential to result in a direct physical change in the environment, must comply with CEQA by adopting specific findings prior to the approval of the project. The Board of Supervisors previously placed a Controller's reserve on the Calaveras Dam Replacement Project under the PUC's Water System Improvement Program (WSIP), pending adoption of the CEQA findings after reviewing the individual project's Environmental Impact Report (EIR). Under CEQA, the Board of Supervisors cannot delegate this responsibility to review the CEQA analysis before it makes its decision to fund specific projects.

Background

The Calaveras Dam Replacement Project is one of 86 separate capital improvement projects included in the PUC's Water System Improvement Program (WSIP)¹. The Calaveras Dam Replacement Project, in Sunol Valley, would result in the construction of a new 210 foot high and 1,210 foot long dam at the Calaveras Reservoir in order to (1) provide increased seismic reliability for the Calaveras Dam, and (2) restore the water storage capacity of the Calaveras Reservoir to its original level of 96,850 acre feet of water, or 31,558,708,090 gallons, instead of the currently restricted amount of 38,740 acre feet of water, or 12,623,483,236 gallons. Due to seismic safety concerns, the existing Calaveras Reservoir currently operates under a restriction imposed in 2001 by the California Division of Safety of Dams that limits the storage of water to 38,740 acre feet of water, or 12,623,483,236 gallons, which is only 40 percent of the normal reservoir capacity of 96,850 acre feet of water, or 31,558,708,090 gallons. According to the most recent WSIP Quarterly Report published on February 8, 2011, construction of the Calaveras Dam is anticipated to begin on August 1, 2011 and be completed in four years, or by approximately July 31, 2015.

As of April 20, 2010, the Board of Supervisors had appropriated \$409,445,000 for completion of the Calaveras Dam Replacement Project, including (a) \$78,934,094 in various appropriations, which are currently not on reserve, and (b) \$330,510,906 in appropriated and reserved funds (Ordinance 311-08, File 08-1453; Ordinance 92-10, File 10-0337). Ordinances 311-08 and 92-

¹ Propositions A and E, which were approved by the San Francisco voters on November 4, 2002, authorized the PUC to issue Water Revenue Bonds to finance the PUC's \$4,585,556,261 Water System Improvement Program, which consists of 86 separate projects designed to provide increased water delivery capacity and seismic reliability throughout the Hetch Hetchy water system. The most recent quarterly report published by the PUC on February 8, 2011 (WSIP Regional Projects Quarterly Report for the 2nd Quarter of FY 2010-2011) estimates that WSIP will have a total cost of \$4,442,000,000, a reduction of \$143,556,261.

10 placed the entire appropriation of \$330,510,906 on two separate but overlapping reserves, including (a) a Budget and Finance Committee reserve, pending Budget and Finance Committee review of the Calaveras Dam Replacement Project, and (b) a Controller's reserve pending the Board of Supervisors approval of Environmental Impact Reports (EIRs) prepared pursuant to the California Environmental Quality Act (CEQA). Ordinances 311-08 and 92-10 require the Budget and Finance Committee to review any WSIP project in excess of \$100,000,000 prior to the release of reserved funds from a Budget and Finance Committee reserve. The Budget and Finance Committee did not list specific criteria for the release of the reserved funds.

DETAILS OF PROPOSED LEGISLATION

The PUC is now requesting the release of the entire \$330,510,906 on Budget and Finance Committee reserve to fund the total estimated remaining project costs for the Calaveras Dam Replacement Project (File 11-0188).

The PUC is also requesting that the Board of Supervisors (a) adopt findings under the California Environmental Quality Act (CEQA) for the Calaveras Dam Replacement Project, and (b) direct the Clerk of the Board of Supervisors to notify the Controller of this action, such that the Controller will remove the overlapping separate reserve on the \$330,510,906, for the Calaveras Dam Replacement Project (File 11-0187).

FISCAL IMPACT

Request to Release \$330,510,906 from Budget and Finance Committee Reserve (File 11-0188)

The total project costs of the Calaveras Dam Replacement Project, as previously estimated by the PUC, are \$409,445,000 (see Policy Considerations section pertaining to the new estimate of \$434,143,000). Approval of this request would result in the release of \$330,510,906 of funds from Water Revenue Bond proceeds² previously appropriated and placed on Budget and Finance Committee reserve by the Board of Supervisors, pending Budget and Finance Committee review of the Calaveras Dam Replacement Project.

As discussed above, the Board of Supervisors previously appropriated \$409,445,000 for the Calaveras Dam Replacement Project, including (a) \$78,934,094 in various appropriations which are currently not on reserve, and (b) \$330,510,906 in appropriated and reserved funds. As shown in Table 1 below, as of February 23, 2011, out of the previously unreserved appropriation of \$78,934,094, the PUC had expended \$47,836,959 for (i) project management, (ii) planning, (iii) environmental review, (iv) design, (v) construction management³, and (vi) costs for construction

² Water Revenue Bonds are funded with revenues received from the PUC's water ratepayers.

³ On July 20, 2010, the Board of Supervisors approved a construction management services agreement between the PUC and Black and Veatch, in a not-to-exceed amount of \$38,000,000 for a maximum term of 66 months (File 10-0855).

contracts⁴ for the Calaveras Dam Replacement Project, such that an estimated \$361,608,041 (see Table 1 below) in additional Project expenditures have yet to be expended, based on the total estimated project costs of \$409,445,000 (\$409,445,000 less previous expenditures of \$47,836,959).

Table 1: Estimated Calaveras Dam Replacement Project Costs

Description	Approved Budget	Expended, as of February 23, 2011	Estimated Additional Expenditures
Project Management	\$9,352,000	\$5,590,548	\$3,761,452
Planning	6,035,000	6,035,000	0
Environmental Review	15,540,000	15,403,294	136,706
Design	20,095,000	18,980,932	1,114,068
Bid and Award	200,000	0	200,000
Construction Management	37,534,000	1,150,394	36,383,606
Close-Out	300,000	0	300,000
Non-Construction Cost Subtotal	\$89,056,000	\$47,160,168	\$41,895,832
Construction Cost	320,389,000	676,791	319,712,209
Total Project Costs for Calaveras Dam Replacement	\$409,445,000	\$47,836,959	\$361,608,041

Given that the PUC has expended \$47,836,959 out of the previously unreserved appropriation of \$78,934,094, \$31,097,135 is available for remaining project expenditures. As shown in Table 2 below, the PUC intends to fund the remaining Calaveras Dam Replacement Project costs of \$361,608,041 with (a) \$31,097,135 in unexpended and unreserved funds which were previously appropriated by the Board of Supervisors, and (b) the requested release of \$330,510,906 which was previously appropriated but reserved by the Board of Supervisors.

Table 2: Requested Release of Reserves	
Total Appropriated and Unreserved by the Board of Supervisors	\$ 78,934,094
Previously Expended (See Table 1)	47,836,959
Available Funds	\$ 31,097,135
Requested Release of Reserved Funds (Subject of File 11-0188)	330,510,906
Total Estimated Additional Expenditures	\$ 361,608,041

As shown in Table 1 above, the total estimated remaining non-construction costs are \$41,895,832. In order to fund the \$41,895,832 in total estimated non-construction costs, the PUC anticipates expending (a) \$31,097,135 in available unreserved funds, and (b) \$10,798,697 of the requested release of \$330,510,906.

⁴ According to Mr. Carlos Jacobo, Budget Director at the PUC, the PUC has expended a total of \$676,791 on construction contracts to fund (1) the installation of a new stream gage on Alameda Creek, as part of the required project mitigation, and (2) part of the construction of a temporary off-site residence for the watershed keeper whose residence is located near the Calaveras Dam and will need to be relocated during the construction phase of the Calaveras Dam Replacement Project (see Table 3).

Mr. Carlos Jacobo, Budget Director at the PUC states that the total estimated remaining construction costs of \$319,712,209, as shown in Table 1 above, will fund construction and construction-related costs. On January 31, 2011, the PUC issued a Request for Bids for construction of the Calaveras Dam Replacement Project, with bids due by April 21, 2011.⁵ Therefore, the actual construction agreement costs will not be known until April 21, 2011. Mr. Jacobo states that the PUC expects to award a construction agreement in late May 2011 to the lowest responsive bidder. The Budget and Legislative Analyst notes that approval of the construction agreement is not subject to Board of Supervisors approval because the PUC is authorized to award construction agreements, using the City's normal competitive bidding procedures, without subsequent Board of Supervisors approval, in accordance with Section 9.118(b) of the City's Charter.

Mr. Jacobo advises that of the total estimated remaining construction costs of \$319,712,209 (see Table 1 above), an estimated \$6,900,000 in construction-related activities and costs, which will not be part of the main construction contract award, must be completed prior to the commencement of construction on August 1, 2011. Table 3 below identifies the \$6,900,000 costs associated with these construction-related activities.

Table 3: Construction-related Costs

Pre-purchase of electrical transformer and switchgear	\$ 500,000
PG&E Powerline Upgrade to 12kV	2,500,000
Wildlife exclusion fencing, cattle fencing, and hand clearing of sage scrub in staging areas and spoils disposal sites	400,000
Test pits and core borings in disposal sites	200,000
Temporary watershed keeper's residence	750,000
Cash payment for settlement agreement to East Bay Regional Park District	2,000,000
Temporary office in Sunol Valley for East Bay Regional Park District	550,000
Total	\$ 6,900,000

Of the \$6,900,000 in construction-related costs detailed in Table 3, subject to the approval of the proposed settlement agreement, the PUC anticipates expending a total of \$2,550,000 on the proposed settlement between the PUC and the East Bay Regional Park District, which is discussed below, including (i) a settlement amount of \$2,000,000 to be paid by the PUC to the East Bay Regional Park District (EBRPD), and (ii) an amount of \$550,000 for the PUC to construct a temporary office in the Sunol Valley for the EBRPD staff, which must be completed prior to the commencement of construction.

In addition, Mr. Jacobo advises that the \$2,500,000 Pacific Gas and Electric (PG&E) powerline upgrade will be performed by PG&E through a work order issued to PG&E because PG&E requires that any modifications to PG&E structures be performed by PG&E. Mr. Jacobo states that subsequent to a competitive bid process, the PUC will award construction agreements to complete the remaining \$2,400,000 (\$6,900,000 total less \$2,000,000 settlement with EBRPD less \$2,500,000 for the PG&E work). As noted above, Mr. Jacobo advises that the \$6,900,000

⁵ Mr. Jacobo states that the original March 31, 2011 bid deadline was extended to April 21, 2011, to provide bidders additional time to properly account for the Calaveras Dam Replacement Project's complexities, including additional requirements imposed by the California Division of Occupational Safety and Health (Cal/OSHA) regarding the naturally occurring asbestos at the Calaveras project site.

detailed in Table 3 above must be completed prior to the commencement of construction on August 1, 2011.

**Adopt CEQA Findings and Remove the Overlapping Controller's Reserve
(File 11-0187)**

The Board of Supervisors also approved a separate and overlapping Controller's reserve on the Calaveras Dam Replacement Project, which requires an Environmental Impact Report (EIR) under the California Environmental Quality Act (CEQA), pending adoption of the CEQA findings by the Board of Supervisors.

The proposed resolution (File 11-0187) would adopt the findings in accordance with CEQA for the Calaveras Dam Replacement Project, and then request the Clerk of the Board of Supervisors to notify the Controller of this action, such that the Controller can remove the overlapping separate reserve on the \$330,510,906 previously appropriated and reserved by the Board of Supervisors.

Mr. Jacobo advises that environmental mitigation is estimated to cost \$24,698,000, which will increase the budget for the Calaveras Dam Replacement Project from \$409,445,000 to \$434,143,000 (see Policy Considerations section below).

The Budget and Legislative Analyst notes that, in addition to the proposed resolution (File 11-0187) and the request to release funds on Budget and Finance Committee reserve (File 11-0188), the agenda for the Budget and Finance Sub-Committee meeting on March 9, 2011 includes a proposed resolution to be considered in closed session to approve a \$2,000,000 (see Table 3 above) settlement agreement between the East Bay Regional Park District (EBRPD) and the PUC (File 11-0175). The settlement agreement is related to the CEQA approval of the Calaveras Dam Replacement Project. According to Ms. Noreen Ambrose, General Counsel of the PUC, the terms of the settlement agreement would resolve issues related to the Calaveras Dam Replacement Project's construction activities. On February 15, 2011, the EBRPD filed an appeal of the EIR, preserving its right to object to the approval of the Calaveras Dam Replacement Project, pending Board of Supervisors approval of the proposed settlement agreement. Ms. Ambrose advises that if the Board of Supervisors approves the proposed settlement agreement, EBRPD will withdraw its appeal of the EIR and not challenge the certification of the EIR. Ms. Ambrose advises that if the Board of Supervisors does not approve the proposed settlement agreement, EBRPD will pursue CEQA litigation against the City challenging approval of the EIR for the Calaveras Dam Replacement Project, which may lead to delays in the construction for the project, thereby resulting in substantial increases in costs. However, because consideration of such a settlement agreement is scheduled to occur in closed session, the terms of such a settlement agreement are not included in this Budget and Legislative Analyst report.

POLICY CONSIDERATIONS

The Calaveras Dam Replacement Project is currently estimated to cost \$434,143,000, or \$24,698,000 more than the PUC's previously approved budget of \$409,445,000.

The PUC's approved budget for the Calaveras Dam Replacement Project is \$409,445,000. However, Mr. Jacobo advises that the Calaveras Dam Replacement Project is currently projected to cost \$434,143,000, which is \$24,698,000 or six percent more than the PUC's previously approved budget. According to Mr. Jacobo, this \$24,698,000 projected cost increase is due to anticipated increased environmental mitigation requirements, including (a), on-site environmental restoration of habitat and riparian corridors for special status species, (b) construction of a natural barrier fish passage, (c) archeological discoveries and relocations in the area around the Calaveras Dam, and (d) the construction of a fish ladder and fish screens at the Alameda Creek Diversion Dam (ACDD) to provide a means for steelhead trout (an endangered species) to pass around the ACDD and to prevent the entrapment of steelhead in the diversion tunnel, as detailed in Table 4 below provided by the PUC.

Table 4: Estimated Costs of Previously Unbudgeted Environmental Mitigation Costs

Specialty on-site environmental restoration	\$ 1,000,000
Construction of a natural barrier fish passage	1,000,000
Archaeological discoveries/relocations	698,000
Alameda Creek Diversion Dam fish ladder and fish screens	22,000,000
Total	\$ 24,698,000

Although the current projected cost for the Calaveras Dam Replacement Project has increased by \$24,698,000 over the PUC's previously approved budget, the current⁶ overall WSIP forecasted cost is \$4,442,000,000, which is \$143,556,261 or 3.1 percent less than the PUC's previously estimated overall WSIP approved budget of \$4,585,556,261. The reduced costs are based on PUC's projected reduced costs in various other WSIP projects. The PUC is scheduled to provide an update on WSIP in a hearing before the Budget and Finance Sub-Committee on March 9, 2011 (File 09-0417).

According to Mr. Jacobo, the PUC does not anticipate requiring a supplemental appropriation for the increased costs of \$24,698,000 for the Calaveras Dam Replacement Project. However, the Budget and Legislative Analyst notes that WSIP project funds are appropriated to the PUC by region, such that the reallocation of funds to the Sunol Valley Region (which includes the Calaveras Dam Replacement Project) from any other region would require approval by the Controller who is required to report to the Board of Supervisors, on a quarterly basis, as to any transfers of appropriations between PUC projects, if such transfers increase total project appropriations by more than ten percent (Ordinance 196-05, File 05-1045).

⁶ The current overall WSIP costs are based on the PUC's WSIP Quarterly Report, published on February 8, 2011.

The Budget and Legislative Analyst notes that the current projected costs for WSIP projects in the Sunol Valley Region total \$1,053,631,000, which is \$24,958,000 or 2.4 percent more than the approved budget of \$1,028,673,000. However, Mr. Jacobo notes that the costs for other WSIP projects in the Sunol Valley Region may decrease as (a) project designs are refined, and (b) construction bids continue to trend below estimated costs.

The actual construction costs will not be known until after the PUC receives construction bids, which are currently due on April 21, 2011

The Budget and Legislative Analyst notes that the Board of Supervisors could continue the requested release of reserved funds of \$312,812,209 until after the PUC receives the construction bids for the Calaveras Dam Replacement Project, which are currently due on April 21, 2011. If the subject request is continued until late May 2011, the actual amount to be released would then be equal to the actual award amount of the construction contract (plus a contingency), plus (a) \$6,900,000 (see Table 3 above) in construction-related costs and (b) the remaining non-construction costs of \$10,798,697 (the total requested release amount of \$330,510,906 less \$319,712,209 (see Table 1 above) in estimated additional needed construction costs), rather than the released amount being based on an estimate of the costs as currently provided by the PUC.

However, according to Mr. Jacobo, continuing the subject request could result in delays to the Calaveras Dam Replacement Project due to construction-related activities totaling \$6,900,000 that must be completed prior to the commencement of construction on August 1, 2011, as detailed in Table 3 above. Further, Mr. Jacobo notes that the Budget and Finance Committee will be considering the City's annual budget in late May and June and may not be available to release the required PUC funds. Mr. Jacobo advises that the PUC wants to award a construction contract for the Calaveras Dam Replacement Project in May 2011, in order to maintain the project's schedule.

As such, the Budget and Legislative Analyst instead recommends that the Budget and Finance Committee, subject to the approval of the proposed settlement agreement, (1) release a total of \$17,698,697 from the Budget and Finance Committee reserve, including (a) \$6,900,000 (see Table 3 above) for construction-related costs which are not part of the main construction contract and must be completed prior to the commencement of construction on August 1, 2011, and (b) the remaining \$10,798,697 for non-construction costs (the total requested release amount of \$330,510,906 less \$319,712,209 (see Table 1 above) in estimated additional construction costs), (2) replace the Budget and Finance Committee reserve on the remaining \$312,812,209 (total requested release of \$330,510,906 less \$17,698,697 recommended release) with a Controller's reserve, and (3) instruct the Controller, after receiving supporting documentation from the PUC, to release the amount of construction funds equal to the lowest responsive construction bid received by the PUC for the main construction contract, plus a ten percent construction contingency⁷.

⁷ According to Mr. Jacobo, a ten percent construction contingency is the standard construction contingency included in all WSIP project construction budgets, and that the above-noted \$319,712,209 (see Table 1 above) in estimated construction costs already includes a ten percent contingency.

The Budget and Legislative Analyst further recommends that the Controller return any remaining funds to a Budget and Finance Committee reserve.

RECOMMENDATIONS

1. Approve the proposed resolution adopting the findings under CEQA (File 11-0187).
2. Subject to the approval of the proposed settlement agreement, release a total of \$17,698,697 from a Budget and Finance Committee reserve, including (a) \$6,900,000 for construction-related costs, including \$2,000,000 for settlement costs, which are not part of the main construction contract and must be completed prior to the commencement of construction on August 1, 2011, and (b) \$10,798,697 in estimated additional non-construction costs (the total requested release amount of \$330,510,906 less \$319,712,209 (see Table 1 above) in estimated additional construction costs).
3. Replace the existing Budget and Finance Committee reserve on the remaining \$312,812,209 (requested release of \$330,510,906 less recommended release of \$17,698,697) with a Controller's reserve, and instruct the Controller, after receiving supporting documentation from the PUC, to release the amount of construction funds equal to the lowest responsive construction bid received by the PUC for the main construction contract, plus a ten percent construction contingency.
4. Request the Controller to return any remaining unneeded funds for the Calaveras Dam Replacement Project to a Budget and Finance Committee reserve.