



Board Agenda Item 32

DATE: April 23, 2024

TO: Board of Supervisors

SUBMITTED BY: Paul Nerland, County Administrative Officer

SUBJECT: Amendments to Subrecipient Agreements, State and Local Fiscal Recovery Funds
Malaga County Water District - Storage Tank
Malaga County Water District - Groundwater Well

RECOMMENDED ACTION(S):

- 1. Approve proposed amendment to the County of Fresno's American Rescue Plan Act - State Local Fiscal Recovery Fund (ARPA-SLFRF) expenditure plan, revise the scope of work for the Drinking Water Storage Tank to be implemented by Malaga County Water District (Subrecipient), to instead fund the Final Design and Engineering for a Storage Tank at Well 5A, and redesignate funding availability from Subrecipient Agreement No. 22-339 to Agreement No. 22-172 for the construction of a groundwater well to be implemented by Subrecipient.**
- 2. Approve and authorize the Chairman to execute First Amendment to Subrecipient Agreement No. 22-339 which will revise the scope of work from Drinking Water Storage Tank to instead use ARPA-SLFRF funding for Final Design and Engineering for a Storage Tank at Well 5A, update the expenditure plan, and reduce the agreement maximum by \$2,479,561, to a total of \$87,664; and**
- 3. Approve and authorize the Chairman to execute First Amendment to Subrecipient Agreement No. 22-172 with the Subrecipient which will revise the expenditure plan, update the modification clause, and increase the agreement maximum by \$2,479,561, to a maximum compensation not to exceed \$4,329,561, to fund the design and construction of a groundwater well in the Community of Malaga.**
- 4. Authorize the County Administrative Officer or designee to approve and execute written changes to the items in the project budget for Subrecipient Agreement No. 22-172, which when added together during the term of the Agreement, do not exceed ten percent (10%) of the total maximum compensation payable to Subrecipient, and which do not result in any change to the maximum compensation amount payable to Subrecipient.**

Approval of the recommended actions will amend the County of Fresno's ARPA-SLFRF Expenditure Plan and reallocate \$2,479,561, which is the amount of unused funds from Subrecipient Agreement No. 22-339, previously intended for the construction of a water storage tank, and instead increase funding for the final construction of Subrecipient's Agreement No. 22-172, which is intended for the construction of a new Well 5A and Subrecipient represents is the more urgent need in the Community of Malaga. Due to increasing construction costs, the lowest responsible bid significantly exceeded the ARPA funding availability. The recommended amendment for Agreement No. 22-339 will modify the scope of work to be performed and

limit reimbursement to expenditures incurred through February 2024, for engineering design, environmental review, and program management to complete a specification plan and design of the water storage tank (\$87,664). The recommended amendment for Agreement No. 22-172 will increase the agreement maximum by \$2,479,561 and add language to the modification clause of the agreement, which will allow the County's Administrative Officer or designee to consider and approve written requests for budget revisions that do not exceed a maximum 10% of the maximum compensation under the agreement as amended (\$4,329,561). The final recommended action will delegate limited signature authority to the County Administrative Officer or designee to make the previously described revisions to the agreement's budget, if requested. This item pertains to District 4.

ALTERNATIVE ACTION(S):

If your Board were not to approve the recommended actions, sufficient SLFRF would not be available to Subrecipient to fund the design, engineering, construction, and construction review, etc. of either a new drinking water storage tank or the more urgently needed Well 5A that would increase available drinking water needed to meet the maximum daily demand in the disadvantaged Community of Malaga.

FISCAL IMPACT:

There is no increase in Net County Cost associated with recommended actions. Sufficient appropriations are included in the FY 2023-24 Adopted Budget for the Auditor-Controller/Treasurer-Tax Collector Org. 1033 - Disaster Claiming, Fund 0026, Subclass 91021, Account 7845.

DISCUSSION:

The American Rescue Plan Act of 2021 (ARPA) established the SLFRF Program, which delivers \$350 billion to state, local, and Tribal governments across the country to support their response to and recovery from the COVID-19 public health emergency.

The Department of the Treasury's 31 CFR Part 35 Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule ("Interim Final Rule") (for expenditures before April 1, 2022) and Final Rule ("Final Rule") establish a framework for determining the types of programs and services that are eligible under the ARPA. SLFRF may be used for eligible activities under four general categories:

- A. Respond to the COVID-19 public health emergency or its negative economic impacts;
- B. Provide premium pay for essential workers;
- C. Replace public sector revenue loss, subject to certain limitations; and
- D. Make necessary investments in infrastructure investments in water, sewer, and broadband.

The Final Rule permits SLFRF to be used to cover costs for eligible activities within those four general categories for the period that begins March 3, 2021, and ends on December 31, 2024. Recipients, including the County, and its subrecipients, must return any funds to the U.S. Department of the Treasury which are not obligated by December 31, 2024, and any funds not expended to cover such obligations by December 31, 2026.

Under Section 602(c)(3) of the ARPA, the County may transfer SLFRF to a special-purpose district for eligible uses for the purpose of meeting ARPA's goals. Subrecipient is a special purpose district under the ARPA.

Subrecipient represents that it operates three underground wells to supply potable drinking water to the disadvantaged Community of Malaga. Subrecipient represents that the existing wells are not sufficient to meet the Community of Malaga's maximum daily demand if one well were to go out of service. Subrecipient represents that it owns five inactive well sites, one of which (Well 5) was intended to be replaced through the construction of a new groundwater Well 5A, with construction expected to begin in 2023. The County,

with Agreement No. 22-172, approved the provision of \$1,850,000 in SLFRF to the Subrecipient on May 3, 2022, for the final engineering design, environmental review, Department of Drinking Water permitting, construction and administration, construction review, operation and maintenance manual, and project management for the construction of the new Well 5A.

Subrecipient subsequently entered into Agreement No. 22-339, the amount of \$2,567,225 in SLFRF, to fund the final engineering design, environmental review, Department of Drinking Water permitting, construction and administration, construction review, operation and maintenance manual, and project management for the construction of a new water storage tank for Subrecipient's Well 5A site.

The Subrecipient represents that since both Agreements, 22-172 and 22-339, were executed, both programs have completed the Design and Planning portion of their respective Agreements and were simultaneously advertised to receive bids. The Subrecipient represents that the programs were advertised for concurrent construction, which can only occur if the same contractor is selected for both projects. After closing the bid period on January 4, 2024, the Subrecipient represents that the apparent low and responsible bidder exceeded the grant funding provided by each Agreement individually and both Agreements together. The total shortfall for the construction budget for both projects together was \$2,519,902. Agreement 22-172 (Well 5A) construction budget comprised \$2,251,228 of the total shortfall. The Subrecipient represents that the reason for the shortfall was the significant escalation of construction costs since the time of the original funding applications were prepared and submitted to the County for funding consideration.

The Subrecipient represents that there are currently no other immediate sources of funding assistance, yet the need to construct the new Well 5A remains the urgent priority between the two projects (well construction and storage tank). On February 15, 2024, the Subrecipient provided the County a written request to modify the scope of work and the expenditure plan of the storage tank Agreement No. 22-339, and effectively shut down the storage tank project with the expenditures incurred as of the end of February 2024, only fund the final engineering and design, planning, and advertisement of a storage tank for the Subrecipient's Well 5A, with a maximum compensation not to exceed \$87,664, and instead reallocate unused SLFRF from Agreement 22-339, a difference of \$2,479,561, to address the Expenditure Plan deficit and increase funding capacity for the urgently needed construction at new Well 5A, as intended in the well construction Agreement No. 22-172.

Approval of the recommended actions will modify the expenditure plan of Agreement 22-172 by increasing reallocated funding resources (\$2,479,561) in accordance with the Subrecipient's expected construction expenditures based on the recent bids. Approval will also update the modification clause to Agreement 22-172 to allow 10% of the allocated funds to be moved between the expenditure plan's line items without increasing the maximum total funding originally approved. This change will provide the Subrecipient with needed flexibility within the program budget. Your Board's approval will also add language to the Subrecipient Agreement 22-172 modification clause that will allow the County's Administrative Officer or designee to consider and approve future written requests for budget revisions up to 10% of the maximum compensation, with no change to the maximum compensation.

REFERENCE MATERIAL:

BAI #31, August 9, 2022
BAI#29, May 3, 2022

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Amendment No. 1 to Agreement 22-339 - MCWD Storage Tank
On file with Clerk - Amendment No. 1 to Agreement 22-172 - MCWD Well Construction

CAO ANALYST:

John Toepfer