



Santa Clara Valley Water District

File No.: 23-0102

Agenda Date: 2/28/2023

Item No.: 3.6.

BOARD AGENDA MEMORANDUM

SUBJECT:

Adopt Recommended Positions on State Legislation: AB 30 (Ward) Atmospheric Rivers: Research, Mitigation, and Climate Forecasting Program, SB 23 (Caballero) Expedited Permitting for Water Supply and Flood Risk Reduction Projects, and Other Legislation Which May Require Urgent Consideration for a Position by the Board.

RECOMMENDATION:

- A. Adopt a position of "Support" on: AB 30 (Ward) Atmospheric Rivers: Research, Mitigation, and Climate Forecasting Program; and
- B. Adopt a position of "Support" on: SB 23 Expedited Permitting for Water Supply and Flood Risk Reduction Projects.

SUMMARY:

AB 30 (Ward) Atmospheric Rivers: Research, Mitigation, and Climate Forecasting Program (I-12/05/22)

Position Recommendation: Support

Priority Recommendation: 3

SB 758 (Block, 2015) established the Atmospheric Rivers: Research, Mitigation, and Climate Forecasting Program (Program) in the Department of Water Resources (DWR). The law requires DWR, upon an appropriation of funding, to research climate forecasting and the causes and impacts that climate change has on atmospheric rivers, and to use its existing authority to operate reservoirs in a manner that improves flood protection, and to re-operate flood control and water storage facilities to capture water generated by atmospheric rivers. DWR has implemented the Program.

AB 30 (Ward) would delete provisions of the Water Code that make the operation of the Program contingent upon the legislative appropriation of special fund moneys, and instead would simply require DWR to operate the Program as part of their annual department budget. The bill also would rename the Program the Atmospheric Rivers Research and Forecast Improvement Program: Enabling Climate Adaptation Through Forecast-Informed Reservoir Operations and Hazard Resiliency (AR/FIRO) Program.

Importance to the Valley Water

California has the most variable annual precipitation of any region in the U.S., ranging from severe drought to major floods. Research has shown that this variability is largely due to a weather condition known as “atmospheric rivers” which are responsible for 30-50 percent of California’s precipitation and water supply delivered in just a handful of days each year. An atmospheric river storm is commonly called a “pineapple express” because it brings tropical moisture to the western U.S. In December and January of this year California experienced a significant number of atmospheric rivers that brought high winds, precipitation, and flooding throughout the state. The Program allowed water managers to make timely decisions to release water from reservoirs for enhanced flood protection and to more accurately notify the public of potential floods.

Better forecasting of atmospheric rivers across hours, days, weeks, and seasons has the potential to improve both water supply and flood protection using “Forecast-Informed Reservoir Operations” (FIRO). Through the expansion of FIRO, and the accuracy in forecasting that it provides, reservoir operators can release water ahead of storms that could otherwise cause flooding with less concern regarding the loss of water supply needed in the summer months. Better forecast accuracy also helps reduce unnecessary releases of water.

Valley Water staff are currently exploring the use of FIRO precipitation projections on a pilot study basis in the operation of Lexington Reservoir in order to create additional flood storage space before forecasted rain events that may pose a flood danger by reducing releases of water called for in the current reservoir operation. The water that remains in the reservoir, that would have otherwise been released, can then be used at a later time to beneficially recharge the groundwater aquifer, support a larger cold-water pool for fish species, and support ecological habitat in streams throughout the dry periods in the spring, summer, and fall.

Staff recommends that the Board adopt a position of “Support” for AB 30.

Pros

- Requires DWR to operate the Program, removing the need for an annual advocacy effort for the continued operation of the Program.
- The continued improvement of atmospheric river forecasting allows for better informed water management decisions, both to collect additional water supply and to enhance flood protection.

Cons

- None identified at this time.

SB 23 (Caballero) Expedited Permitting for Water Supply and Flood Risk Reduction Projects (I -12/05/22)

Position Recommendation: Support

Priority Recommendation: 1

SB 23 is sponsored by the Association of California Water Agencies (ACWA) at the request of Valley Water, as approved by the Valley Water Board on October 25, 2022. The bill contains numerous provisions seeking to increase the efficiency of the regulatory permitting process for water supply and flood risk reduction projects, without exemption from any environmental protections. The qualifying projects under the bill include the following.

1. "Flood risk reduction projects," which include a project or plan that is proposed by a public agency or a public utility, to construct, alter, retrofit, maintain, manage, or improve a facility, channel, levee, or flood control modification, in which flood risk reduction or sea level rise protection is an objective of the project.
2. "Water Supply Project," which includes a project or plan proposed by a public agency or a public utility, to construct, alter, retrofit, maintain, manage, or improve a groundwater recharge, desalination, recycled water, water conveyance, surface water storage, stormwater capture, or water treatment facility.

Mitigation Measures for Water Quality Certifications

Watershed scale planning of environmental restoration and habitat enhancements has been identified as the most beneficial approach for species and has been advocated by fish and wildlife agencies and advocates. The use of Watershed Plans has been adopted by the State Water Board but has not been implemented in practice. For project applicants, Watershed Plans amount to "plug and play" mitigation strategies that reduce permit negotiation times and the costs associated with project delay. For the environment, it helps ensure mitigation dollars are spent where they provide the most benefit to the impacted species.

SB 23 would require the State Water Board and Regional Water Boards to accept a Watershed Plan for the purposes of issuing a Section 401 Water Quality Certification. The bill would require the water boards to use the following types of approved plans as Watershed Plans for purposes of implementing the Procedures for Discharges of Dredged or Fill Material to Waters of the State (Procedures) in issuing project certifications:

1. Habitat Conservation Plans that include biological goals for aquatic resources;
2. Natural Communities Conservation Plans that include biological goals for aquatic resources; and,
3. Habitat Management Plans that include biological goals for aquatic resources.

Unless the water board issuing a project certification determines in writing that a plan does not substantially meet the definition of a Watershed Plan, the bill would require the water board to accept, as terms of the project certification, avoidance, minimization, and compensatory mitigation for impacts to waters of the state provided through compliance with any Watershed Plan, so long as the public entity administering the plan identifies, tracks, and publicly reports the impacts to waters of the state and the manner in which they are addressed by such avoidance, minimization, and compensatory mitigation. To ensure mitigation investments stay focused where they are most beneficial to species, the bill would prohibit the water boards from imposing any additional project

certification terms and conditions mandating avoidance, minimization, or compensatory mitigation for impacts to waters of the state beyond those in an approved Watershed Plan.

Lake and Streambed Alteration Agreements

SB 23 would require the California Department of Fish and Wildlife (CDFW) to issue a final Lake and Streambed Alteration Agreement (LSAA) within 180 days of receipt of a notification from a project proponent for water supply and flood risk reduction projects, provided that:

1. CDFW determines that the project will substantially adversely affect an existing fish and wildlife resource;
2. The project proponent submits a complete notification for the project; and
3. The project proponent submits environmental documentation required by the California Environmental Quality Act (CEQA).

The final LSAA would include any reasonable measures mutually agreed to by the project proponent and CDFW in accordance with existing law. If CDFW and the project proponent are not able to reach a final agreement on all measures, then the project proponent may proceed in accordance with a final agreement issued by an arbitration panel pursuant to existing law, including reasonable measures necessary to protect the existing fish and wildlife resources substantially adversely affected by the project. The bill would allow CDFW and the project proponent to mutually agree to an extension of the 180-day period for issuance of a final agreement if needed. A deadline for the conclusion of negotiations proposed by the bill is believed would motivate the parties to a more expeditious issuance of the final agreement.

Section 401 Water Quality Certifications

The bill would create a new optional State Water Resources Control Board (State Water Board) and Regional Water Quality Control Board (Regional Water Board) process for securing a federal Clean Water Act Section 401 Water Quality Certification for flood risk reduction and water supply projects. The optional process would require the applicable water board to issue project certification within 180 days after a project proponent completes the following:

1. Requests pre-application consultation;
2. Files a complete application for project certification;
3. If required for the project, files a complete application or petition for all water rights approvals or amendments necessary to implement the project; and
4. Submits environmental documentation required by CEQA.

The bill would establish a process for a water board's determination of application completeness, including an option to appeal to the State Water Board a determination regarding application completeness. Following any State Water Board appeal determination, the bill would allow the option for the project proponent to challenge the determination of completeness in court. Determinations of application completeness have been a major source of permitting delay, often because there is no clear process or statutory limit on how long the process may take.

Reporting Requirements

SB 23 would require, beginning on January 1, 2025, and annually thereafter, the water boards to prepare a public report for the relevant legislative policy and budget committees regarding the implementation and outcome of the bill's requirements.

Supplemental Consultation

This bill would authorize a state agency with the authority to permit a water supply or flood risk reduction project to do any of the following.

1. Enter into an agreement with a project proponent to recover costs for actions authorized by this section to expedite the review of environmental documents and review processing and issuances of project certifications, and other authorizations, permits, and approvals for water supply projects and flood risk reduction projects with the goal of completing permit review and approval in an expeditious manner.
2. Hire or compensate staff or contract for services needed to achieve these goals.
3. Work collaboratively with project proponents and other agencies with jurisdiction over the water supply project or flood risk reduction project to implement an integrated regulatory approach, similar to efforts implemented by the state permitting agencies for projects funded by the San Francisco Bay Area Measure AA, the San Francisco Bay Clean Water, Pollution Prevention and Habitat Restoration Program.

By creating an expanded opportunity for supplemental consultation with a permitting agency before and during the permitting process, it is believed that late-in-the-process surprises in mitigation requirements may be avoided, thereby averting costly project redesign and further delay.

Importance to Valley Water

As climate change extends the length and frequency of drought and the intensity of storms, communities across California are faced with difficult decisions regarding water supply, water use, and flood risk reduction. Changes in climate are necessitating critical adaptation of water supply and flood risk reduction infrastructure. State and local agencies are in a race against rapidly changing hydrology to build new projects or retrofit existing infrastructure, including water conveyance and treatment, recycled water, desalination, stormwater capture, surface and groundwater storage, sea level rise, and levee projects.

The Governor's Water Supply Strategy, released last August, identified permitting delays as one of the key issues to be addressed for all types of water supply projects. As such, there is a unique opportunity to achieve permit streamlining that has so far eluded water and flood risk reduction agencies. The timely delivery of critical water supply and flood risk reduction projects depends on whether project applicants and state and federal agencies can find a way to expedite project permitting, including pre-application consultation, environmental document review, and permit application and approval.

Even after environmental documentation is completed, project permitting is mired in delays caused by overlapping jurisdictions of state and federal agencies, agency culture and staffing issues, and a lack of urgency for projects racing against the accelerating impacts of climate

change. State permitting agencies have in recent years been under-resourced and statutory permitting deadlines are often missed, particularly for large projects. The permitting delays lead to costs increases in the tens of millions or more for large projects.

Because of the high cost of permitting delay for project applicants, Valley Water has been at the forefront of permit streamlining efforts for many years. The urgency of the climate crisis has increased the need for expedited permitting. There is now a unique opportunity to work with the Legislature and the Newsom Administration to address issues that cause permitting delays for water supply and flood risk reduction projects, without compromising on environmental protection.

Staff recommends that the Board adopt a position of “Support” for SB 23.

Pros

- Would improve species habitat mitigation outcomes through the use Watershed Plans that allow for mitigation investments at the best available sites for species recovery and resilience.
- Would expedite state permitting of water supply and flood protection projects.
- Would save public agencies and public utilities significant costs by averting delays on projects, including Valley Water projects in which delay can amount to tens of millions of dollars per year.

Cons

- The complexity of the environmental permitting process makes changes difficult even when the changes improve environmental outcomes for species, save public funding, and accelerate adaptation to a rapidly changing climate.

ENVIRONMENTAL JUSTICE IMPACT:

There are no Environmental Justice impacts associated with this item. The Board’s position does not enact the legislation discussed above. If the enactment of legislation necessitates an action by the Board with associated Environmental Justice impacts, those impacts will be assessed when the Board takes the action.

FINANCIAL IMPACT:

There is no financial impact associated with this item.

CEQA:

The recommended action does not constitute a project under CEQA because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

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ATTACHMENTS:

None.

UNCLASSIFIED MANAGER:

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