



Santa Clara Valley Water District

File No.: 18-0454

Agenda Date: 6/12/2018

Item No.: 7.2.

BOARD AGENDA MEMORANDUM

SUBJECT:

Recommended Position on Federal Legislation: HR XXXX (Calvert) - Fiscal Year 2019 House Interior-Environment Appropriations Bill.

RECOMMENDATION:

Adopt a position of "Oppose Section 437" on HR XXXX (Calvert) - Fiscal Year 2019 House Interior-Environment Appropriations Bill.

SUMMARY:

A. HR XXXX (Calvert) - Fiscal Year 2019 House Interior-Environment Appropriations Bill

Recommendation: Oppose Section 437

Priority Recommendation: 2

This bill makes appropriations for the Department of the Interior, the Environmental Protection Agency, and related agencies for the fiscal year ending September 30, 2019.

The bill provides regular annual appropriations for the Department of the Interior (except the Bureau of Reclamation and the Central Utah Project), the Environmental Protection Agency, and for other related agencies, including the U.S. Forest Service, the Indian Health Service, the Smithsonian Institution, and the National Foundation on the Arts and the Humanities.

In total, this bill would provide \$35.252 billion in appropriations, equal to the Fiscal Year 2018 enacted level. These funds are targeted for programs that support and protect the nation's natural resources, including \$3.9 billion for the Department of the Interior and U.S. Forest Service to prevent and combat devastating wildfires.

This bill would also appropriate a total of \$75 million for the Water Infrastructure Finance and Innovation Act (WIFIA) program to leverage federal dollars to provide financing for more than \$8 billion in water infrastructure projects.

Status:

The bill is in draft form and was released on May 14, 2018, in the House Appropriations Committee - Subcommittee on Interior, Environment, and Related Agencies. A hearing and markup on the draft

bill will be scheduled in June after the Memorial Day Congressional Recess.

Proposed Amendment:

Staff recommends an “Oppose Section 437” position on the bill because Representative Ken Calvert, who chairs the Subcommittee, inserted language at the end of the bill that would prohibit state or federal lawsuits against the final Environmental Impact Report/Environmental Impact Statement (WaterFix EIR/EIS) for the California WaterFix and any resulting agency’s decision and determination.

Consequently, staff recommends an “Oppose Section 437” position and proposes an amendment to remove the entire Section 437 from the draft bill, as outlined below:

Remove the following section:

CALIFORNIA WATER INFRASTRUCTURE

SEC. 437. Notwithstanding any other provision of law, the Final Environmental Impact Report/Final Environmental Impact Statement for the Bay Delta Conservation Plan/California Water Fix (81 Fed. Reg. 96485 (Dec. 25 30, 2016)) and any resulting agency decision, record of decision, or similar determination shall hereafter not be subject to judicial review under any Federal or State law.

Importance to the District: Despite the bill’s proposed funding for the WIFIA program which could benefit the District, as described above, this bill as it currently stands poses some risk to the District’s legal rights as it relates to the WaterFix EIR/EIS and resulting agencies’ decisions and determination. To the extent the District wants to reserve it’s right to challenge other agencies’ decisions in the future related to the Water Fix and EIR/EIS, the language in Section 437 should be removed from the bill.

Pros:

- Would appropriate a total of \$75 million for the Water Infrastructure Finance and Innovation Act (WIFIA) program to leverage federal dollars to provide financing for more than \$8 billion in water infrastructure projects which could be a potential source of funding for the District.
- Section 437 would prohibit any judicial challenge against the Water Fix EIR/EIS and any resulting agencies’ decision and determination, including those of the District. Thus, the District’s approval actions relating to the Water Fix would not be subject to judicial challenge.

Cons:

- As described above, Section 437 precludes judicial challenge against the Water Fix EIR/EIS and any resulting agency’s decision and determination. That prohibition would also apply in the event the District wants to pursue legal action challenging another agency’s decision relating to the Water Fix and its EIR/EIS.

FINANCIAL IMPACT:

There is no financial impact associated with this item.

CEQA:

The recommended action is not subject to the requirements of CEQA.

ATTACHMENTS:

None.

UNCLASSIFIED MANAGER:

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