



Santa Clara Valley Water District

File No.: 22-0106

Agenda Date: 6/28/2022

Item No.: 3.1.

BOARD AGENDA MEMORANDUM

SUBJECT:

Adopt Recommended Positions on Federal Legislation: S. 4136 (Carper) / H.R. 7776 (DeFazio) - Water Resources Development Act of 2022; S. 4279 (Padilla) / H.R. 7847 (McNerney) - Water Efficiency, Conservation, and Sustainability Act of 2022; H.R. 3112 (McNerney) - Western Water Recycling and Drought Relief Act of 2021; H.R. 1352 (Lawrence) / S. 916 (Sanders) - Water Affordability, Transparency, Equity, and Reliability Act of 2021; and Other Legislation That May Require Urgent Consideration for a Position by the Board.

RECOMMENDATION:

- A. Adopt a position of "Support and Amend" on S. 4136 (Carper) / H.R. 7776 (DeFazio) - Water Resources Development Act of 2022;
- B. Adopt a position of "Support" on S. 4279 (Padilla) / H.R. 7847 (McNerney) - Water Efficiency, Conservation, and Sustainability Act of 2022;
- C. Adopt a position of "Support and Amend" on H.R. 3112 (McNerney) - Western Water Recycling and Drought Relief Act of 2021; and
- D. Adopt a position of "Support" on H.R. 1352 (Lawrence) / S. 916 (Sanders) - Water Affordability, Transparency, Equity, and Reliability Act of 2021.

SUMMARY:

A. **S. 4136 (Carper) / H.R. 7776 (DeFazio) - Water Resources Development Act of 2022**

Recommendation: Support and Amend

Priority: 1

The Water Resources Development Act (WRDA) is typically a two-year bill that authorizes U.S. Army Corps of Engineers (USACE) civil works projects and enacts national water infrastructure policy changes. In recent years, WRDA has also authorized funding and programs that support drinking water infrastructure, which falls under the jurisdiction of the U.S. Environmental Protection Agency, and occasionally the bill has authorized funding and programs managed by the U.S. Bureau of Reclamation. Both the House and Senate 2022 bills, however, are limited to USACE projects and policy. Both bills would authorize new USACE civil works projects and would make important changes to several USACE policies to improve USACE's engagement with Tribes and disadvantaged communities. These include the following:

- S. 4136 would establish a new Tribal and Disadvantaged Communities Advisory Committee to advise USACE on how to more effectively deliver projects and programs to underserved communities.
- S. 4136 would reduce the local sponsor funding match for disadvantaged communities that participate in shoreline protection and restoration projects; and
- S. 4136 would help disadvantaged communities participate in USACE projects to elevate homes in flood-prone areas by authorizing payment of temporary relocation assistance.
- H.R. 7776 would increase the funding authorization for technical assistance to states, as well as authorize USACE to waive the cost of this assistance to disadvantaged communities.
- H.R. 7776 would direct USACE to increase outreach to urban and rural communities and Tribes about USACE programs, as well as provide additional public resources for increased community engagement with USACE programs.
- H.R. 7776 would require that each USACE district with a Tribal community must establish a Tribal liaison position.

Other highlights include:

- S. 4136 would expand options for transferring in-kind contribution credits across studies or projects.
- S. 4136 would authorize USACE to advance the federal share of funds to a non-federal sponsor for the acquisition of lands, easements, and rights-of-way for certain projects.
- S. 4136 would authorize USACE, at the request of a non-federal sponsor, to reduce a non-federal cost-share of a project by applying a credit earned by the non-federal sponsor on a different project.
- S. 4136 would allow a USACE project's or study's non-federal interest to use funds provided by another federal agency to satisfy the non-federal cost share, provided that those other funds are appropriated for a purpose that is similar or complementary to the purpose of the study or project.
- S. 4136 would require USACE to establish a Western Water Cooperative Committee comprised of representatives from USACE and other stakeholders to ensure that water resources development projects in the West are operated in a way that avoids or minimizes conflicts between the operation of those projects and State water rights and water laws.
- S. 4136 would require the Government Accountability Office to review the factors and conditions leading to ongoing water resources development projects that are over budget or behind schedule.
- H.R. 7776 would direct USACE to develop a strategic plan for fully implementing the federal authority for maximizing the beneficial use of dredged material.
- H.R. 7776 would establish a process for deauthorizing inactive projects or those that have not received funding in the past 10 fiscal years.

Proposed Amendment:

In order to better serve Valley Water's interests, staff recommends the following amendment:

1. USACE asserts that statutory changes are necessary to fix two current problems with the South San Francisco Bay Shoreline Phase I Project that prohibit USACE from spending additional federal funds on the project. Staff recommends amending this bill to include appropriate language that will solve these issues and restore the original federal/non-federal cost share for the project. Staff is currently working with congressional staff to develop the right language.

Status:

S. 4136 was introduced in the Senate on May 4, 2022, and it was unanimously reported out of the Committee on Environment and Public Works on the same day. H.R. 7776 was introduced in the House on May 16, 2022, and it was unanimously reported out of the Committee on Transportation and Infrastructure on May 18, 2022.

Importance to Valley Water:

WRDA legislation has produced important new programs and policies, benefiting Valley Water projects over the years. WRDA 2022 would continue this trend for USACE, implementing several key policy improvements that are good for Valley Water, USACE, and the nation. These include the changes to how USACE works with disadvantaged communities, in particular, and granting a project's non-federal sponsor with more flexibility in financing.

Because of the current funding challenges with the Shoreline Phase I Project, this bill is one of the only bills likely to pass during this Congress and, therefore, is one of the only opportunities to enact the statutory changes that USACE contends are necessary to address the Shoreline Phase I Project issues and enable USACE to spend additional federal funds on the project. While the bill does not currently include that language, staff are working closely with congressional staff to ensure that this language is included in the final bill.

Pros:

- Both bills would make important changes to USACE policy that would improve USACE's engagement with Tribes and disadvantaged communities.
- S. 4136 would change USACE policy to provide more flexibility in the accounting and financing for certain civil works projects, benefiting the non-federal sponsor.

Cons:

- As written, neither bill includes language that would address the current funding challenges with the South San Francisco Bay Shoreline Project.
- Neither bill includes a Reclamation title, which would include policy changes and project authorizations for the U.S. Bureau of Reclamation.

B. S. 4279 (Padilla) / H.R. 7847 (McNerney) - Water Efficiency, Conservation, and Sustainability Act of 2022

Recommendation: Support

Priority: 2

This bill would create three new funding programs to address water inefficiencies and losses in public water systems across the nation. These programs are as follows:

- Water Efficiency and Conservation Grant Program: Authorizes funding to eligible entities (including water districts and utilities) that carry out water efficiency programs for the purchase, installation, or use of water efficient fixtures, appliances, and landscaping. Authorizes \$25 million per year for five years, half of which must go to entities that are in areas of a severe drought or under a Governor-declared drought emergency. At least 40 percent of the funds must go toward low-income households and disadvantaged communities.
- Sustainable Water Loss Control Program: Authorizes funding and technical assistance for eligible entities to conduct annual water audits and implement water loss controls and loss control programs. Authorizes \$40 million per year for five years.
- Assistance for Water Efficient Plumbing Code Adoption: Authorizes funding for eligible entities to incentivize the voluntary adoption of model water-efficient plumbing codes, similar to the federal program for energy efficient building codes. Authorizes \$20 million per year for five years.

Status:

S. 4279 was introduced in the Senate on May 19, 2022, and was referred to the Committee on Environment and Public Works. H.R. 7847 was introduced in the House on May 19, 2022, and was referred to the Committee on Energy and Commerce.

Importance to Valley Water:

As we enter the third year of a severe drought, we need additional federal investments in water-efficient infrastructure to help conserve this most precious resource. While most Santa Clara County residents are doing their part to conserve during this drought, additional incentives can only help to increase water savings throughout our region. Increasing conservation and efficiency is the most cost-effective way to ensure that we have a sustainable water supply, reducing demand and helping to keep rates low. These new federal assistance programs could support the work that Valley Water is already doing to encourage water savings, helping to offset our existing program costs.

Pros:

- Authorizes new federal funding that Valley Water could access to support our water efficiency and conservation programs.
- Authorizes new federal funding that incentivizes important water efficiency, conservation, and water loss control programs throughout the West.
- The bill is endorsed by the Association of California Water Agencies and the Association of Metropolitan Water Agencies, both of which Valley Water is a member, along with other water

conservation, environmental, and labor organizations.

Cons:

- None identified at this time.

C. H.R. 3112 (McNerney) - Western Water Recycling and Drought Relief Act of 2021

Recommendation: Support and Amend

Priority: 3

This bill would amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize 10 recycled water projects in the San Francisco Bay Area. Specifically, the bill would authorize new appropriations for the following recycled water projects in Santa Clara County:

- South Santa Clara County Recycled Water Project - \$10.99 million;
- Palo Alto Recycled Water Distribution Extension - \$8.25 million;
- Palo Alto Enhanced Recycled Water Facility - \$4 million; and
- Mountain View Recycled Water System Expansion and Improvement - \$4 million.

Proposed Amendment:

In order to better serve Valley Water's interests, staff recommends the following amendment:

1. Include language to modify the tax-exempt bond provisions of the Internal Revenue Code to permit (but not require) the financing of recycled water and wastewater facilities from the proceeds of tax-exempt governmental activity bonds issued directly by a government agency or on behalf of a government agency-approved public-private partnership that may own, operate, and/or finance the facilities. Such modification would also clarify that the tax-exempt status of existing and future governmental bonds issued to finance wastewater systems providing the wastewater supply to the facilities would not be adversely affected by such public-private partnership.

The Board voted to adopt a position of "Support and Amend" on this bill during the 116th Congress.

Status:

H.R. 3112 was introduced in the House on May 11, 2021, and was referred to the Committee on Natural Resources. Representatives Jimmy Panetta (CA-20) and Anna Eshoo (CA-18) are original cosponsors.

Importance to Valley Water:

Valley Water's recycled and purified water projects are part of the strategy to develop a locally controlled, reliable, and drought-resilient water supply in Santa Clara County. The successful implementation of the South Santa Clara County Recycled Water Project and the projects in Palo Alto and Mountain View will help diversify our water supply portfolio, resulting in less reliance on imported water and groundwater that are becoming increasingly unreliable in our changing climate.

These four South Bay recycled water projects were all previously authorized, but their appropriations have been exhausted, requiring a new authorization of appropriations to be eligible for additional federal funding.

Pros:

- Increases the South Santa Clara County Recycled Water Project appropriations from its current authorization of \$7 million to \$10.99 million. The \$7 million authorization has been expended, yet additional funding is needed to construct storage and conveyance facilities.
- Promotes expanded development of recycled water in Santa Clara County and throughout the West, helping to diversify our water supply portfolio. The bill would authorize additional funds to help construct treatment, conveyance, and recharge facilities that are needed to expand the development and use of recycled water in our region.

Cons:

- Authorizing funds to projects by name, as this bill does, would be considered earmarks under the current House rules, and thus this bill has little chance of moving through the legislative process.

D. H.R. 1352 (Lawrence) / S. 916 (Sanders) - Water Affordability, Transparency, Equity, and Reliability Act of 2021

Recommendation: Support

Priority: 3

This bill would create a Water Affordability, Transparency, Equity, and Reliability (WATER) Trust Fund to dedicate up to nearly \$35 billion per year for water infrastructure improvements across the nation, focusing on drinking water and wastewater. The bill would prioritize disadvantaged communities and expand funding for technical assistance to small, rural, and indigenous communities. The WATER Trust Fund would support a range of water infrastructure improvements, including:

- Addressing water contamination from per- and polyfluoroalkyl (PFAS), an increasing priority for many communities;
- Upgrading household wells and septic systems;
- Helping homeowners replace lead service lines; and
- Updating water infrastructure in public schools.

The bill also would require the Environmental Protection Agency to study water affordability, shutoffs, discrimination, and other civil rights violations by water providers. The Trust Fund would be funded with any unobligated funds left in the Treasury at the end of each fiscal year.

The Board voted to adopt a position of “Support” on this bill during the 116th Congress.

Status:

H.R. 1352 was introduced in the House on February 25, 2021, and was referred to the Committees on Transportation and Infrastructure, Energy and Commerce, Ways and Means, and Agriculture. S. 916 was introduced in the Senate on March 23, 2021, and was referred to the Senate Committee on Environment and Public Works. Representatives Ro Khanna (CA-17) and Jimmy Panetta (CA-20) are cosponsors of H.R. 1352.

Importance to Valley Water:

Valley Water is committed to ensuring safe, clean water for all residents of Santa Clara County. This bill supports those goals throughout the country, particularly for those in disadvantaged communities and in small, rural, or indigenous communities. This directly correlates to Valley Water's Ends Policy E-1, "Provide Silicon Valley safe, clean water for a healthy life, environment, and economy," and Executive Limitation Policy E-1.1, "Promote practices, principles, and programs that support Environmental Justice for Disadvantaged Communities, and shall consider Environmental Justice objectives where appropriate and possible."

Pros:

- Provides much-needed federal investment in water infrastructure improvements throughout the country.
- Prioritizes funding for disadvantaged communities and small, rural, and indigenous communities that often experience environmental injustice. This is in line with Valley Water's mission and policies.
- Unlike its companion, H.R. 1352, S. 916 would be financed by unobligated funds left in the U.S. Treasury rather than through an increase in the corporate income tax. For this reason, S. 916 is more likely to pass the Senate than H.R. 1352.

Cons:

- None identified at this time.

ENVIRONMENTAL JUSTICE IMPACT:

There are no Environmental Justice impacts associated with this item.

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 the 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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