



Santa Clara Valley Water District

File No.: 17-0188

Agenda Date: 3/28/2017

Item No.: *7.1.

BOARD AGENDA MEMORANDUM

SUBJECT:

Recommended Position on State Legislation: AB 18 (Garcia) California Clean Water, Climate, and Coastal Protection and Outdoor Access for All Act of 2018, SB 3 (Beall) Affordable Housing Bond Act of 2018, SB 5 (De Leon) California Drought, Water, Parks, Climate, Coastal Protection and Outdoor Access for All Act of 2018, SB 231 (Hertzberg) Local Government: Storm Water Management and other legislation which may require urgent consideration for a position by the Board.

RECOMMENDATION:

- A. Adopt a position of "Support if Amend" on: AB 18 (Garcia) California Clean Water, Climate, and Coastal Protection and Outdoor Access for All Act of 2018.
- B. Adopt a position of "Support" on: SB 3 (Beall) Affordable Housing Bond Act of 2018.
- C. Adopt a position of "Support if Amend" on: SB 5 (De Leon) California Drought, Water, Parks, Climate, Coastal Protection and Outdoor Access for All Act of 2018.
- D. Adopt a position of "Support" on: SB 231 (Hertzberg) Local Government: Storm Water Management.

SUMMARY:

***AB 18 (E. Garcia) California Clean Water, Climate, and Coastal Protection and Outdoor Access for All Act of 2018 (A-2/23/17)**

Position Recommendation: Support if Amended

Priority Recommendation: 1

AB 18 (E. Garcia) is a \$3 billion water and parks bond, which if passed by a two-thirds vote of the Legislature, will be placed on the June 2018 statewide ballot. This measure would authorize bond expenditures across 9 funding categories as follows:

- (1) \$900 million for investments in environmental and social equity;
- (2) \$525 million for investments in protecting, enhancing, and accessing California's local and regional outdoor spaces (for which \$110 million is for competitive grants to regional park districts, counties, and special districts for regional trails, regional sports complexes, low-cost accommodations in park facilities, and interpretative facilities that serve youth and communities of

color);

(3) \$330 million for restoration and preservation of existing state park facilities and units, to preserve and increase public access, and to protect natural, cultural and historic resources in the parks;

(4) \$45 million for competitive grants to local agencies, conservancies, tribes, and nonprofit organizations for non-motorized access to parks, waterways, and other natural environments;

(5) \$40 million for competitive grants to cities, counties and districts in non-urbanized areas for rural recreation, tourism, and economic enrichment investment;

(6) \$70 million for rivers and creeks including \$5 million for the Guadalupe River and its headwaters or contributing tributaries, including Los Gatos Creek, as well as an addition \$165 million for appropriation by the Legislature;

(7) \$145 million for state conservancies enumerated in Proposition 1, the Water Quality, Supply, and Infrastructure Improvement Act of 2014, including \$25 million to the State Coastal Conservancy;

(8) \$180 million for ocean, bay, and coastal protection, including \$40 million for the San Francisco Bay Area Conservancy Program and an additional \$95 million to the State Coastal Conservancy; and

(9) \$600 million for climate adaptation and resiliency projects that improve a community's ability to adapt to climate change.

It has been 15 years since California last approved a bond dedicated to parks and park lands. Since 2000, the state has enacted three bond acts for the development and enhancement of state and local parks and recreational facilities:

- Proposition 12 in 2000, totaling \$2.1 billion, included \$780 million for local, regional parks, primarily through block grant awards, and \$400 million for state parks to address deferred maintenance and acquisition priorities.
- Proposition 40 in 2002, totaling \$2.4 billion, included \$946 million for local, regional parks through both block grants and competitive grant awards, and \$250 million for State Parks to address deferred maintenance and acquisition priorities.
- Proposition 84 in 2006, totaling \$5.4 billion, which primarily was a water and flood control bond, but which included \$457 million for funding park-poor disadvantaged communities and nature center investments, and \$400 million for state parks to address deferred maintenance and acquisition priorities.

Importance to the District

AB 18 (E. Garcia) is a \$3 billion parks and water bond, which provides substantial funding toward land conservation, parks and trails, and habitat resiliency programs. Presently, the legislation authorizes \$5 million in bond funding for the Guadalupe River and its headwaters or contributing tributaries, including Los Gatos Creek, which would serve to protect valuable habitat, species, and water quality within those watersheds.

During the 2016 legislative session, the District adopted a "Support if Amended" position on AB 2444 (E. Garcia) and requested amendments allocating \$25 million to the Los Gatos Creek and Upper Guadalupe Watersheds and \$30 million to establish a Guadalupe River

Conservancy. The bill was amended to include \$10 million in bond expenditures only for the Guadalupe River watersheds. We also requested language that would identify disadvantaged communities based on regional median income instead of the statewide median. While initially these amendments were accepted, later they were dropped from the final version of AB 2444, and are absent in AB 18 due to the author prioritizing disadvantaged communities in the Central Valley.

*AB 18 and SB 5 are very similar, except that SB 5 includes \$1 billion in supplemental funding for water related programs established by Proposition 1 and includes \$500 million for flood protection. It is expected that these two measures will be merged later in the legislative process.

If the District partners with regional open space or conservation agencies to purchase lands within local watersheds, it is possible AB 18 funded programs could benefit the District. For example, the District could seek mitigation credits for listed species and habitat found within lands procured with AB 18 funds, which could help advance District projects.

Staff recommends that the Board adopt a position of “Support if Amended” on AB 18.

**Amendments Recommended*

- Increase the authorization of \$5 million for the Guadalupe River watershed to \$10 million, which is the negotiated amount included in the final version of AB 2444 (E. Garcia, 2016).
- *Seek supplemental funding for Proposition 1 grant programs comparable to the funding included in SB 5 (De León).
- *Seek funding for flood protection comparable to the February 23, 2017 amendments to SB 5 (De León) with aim to qualify project funding for Coyote Creek.
- *Seek funding for the stat Flood Control Subventions program.
- *Seek funding for the retrofitting or reconstruction of dams to which the California Department of Water Resources Division of Dam Safety has assigned a seismic restriction limiting storage capacity.

Pros

- Authorizes \$5 million in bond expenditures for the Guadalupe River watershed in Santa Clara County.

- Provides needed investment in parks, recreation facilities, and protection of California's natural and historical resources.

Cons

- This legislation does not authorize bond expenditures for projects under Proposition 1 (2014), such as, recycled water, groundwater, water quality, and integrated watershed funding.
- *This legislation does not include funding for flood protection included in the February 23, 2017 version of SB 5 (De León).

SB 3 (Beall) Affordable Housing Bond Act of 2018 (I-12/05/16)**Position Recommendation: Support****Priority Recommendation: 3**

In 2006, voters passed Proposition 1C, the Housing and Emergency Shelter Trust Fund Act of 2006, which authorized \$2.85 billion in general obligation bonds for housing and related capital improvements. A report by the California Department of Housing and Community Development's Division of Financial Assistance states that, as of June 30, 2015, Santa Clara County (County) has received \$146,815,755 from Proposition 1C (6.4% of total bond funds available), which has assisted in the creation of 7,804 units of affordable housing throughout the County. The cost per unit has averaged \$18,812.89. Proposition 1C was approved by voters by a margin of 57.8% to 42.2%.

The Federal Budget Control Act of 2011, also referred to as "sequestration" initiated automatic federal spending cuts of \$85 billion, which severely impacted homeless services and affordable housing programs. The Center on Budget and Policy Priorities estimates that by the end of 2014 in California nearly 15,000 housing vouchers were lost, and nationally between 125,000 and 185,000 low-income families lost housing assistance because of federal spending cuts.

SB 3 would authorize the issuance of \$3 billion in general obligation bonds, subject to the approval of a simple majority of voters in the November 2018 general election, for the following affordable housing purposes.

1. \$1.5 billion to the Multifamily Housing Program, to be used to assist in the construction, rehabilitation, and preservation of permanent and transitional rental housing for persons with incomes of up to 60 percent of the area's medium income (\$56,312.40 in 2014 dollars).
2. \$600 million for the Transit-Oriented Development Implementation Fund, which shall be used for the following purposes.
 - a. \$200 million for the Transit-Oriented Development Implementation Fund;
 - b. \$300 million for the Infill Infrastructure Financing Account, to be used to assist in the new construction and rehabilitation of infrastructure that supports high-density affordable and mixed-income housing in locations designed as infill; and
 - c. \$100 Million for the Building Equity and Growth in Neighborhoods (BEGIN), to be used for down payment assistance for low- and moderate-income buyers purchasing newly

constructed homes in a BEGIN project.

3. \$600 million to be deposited in the Special Populations Housing Account, which shall be used for the following purposes:
 - a. \$300 million for the Joe Serna, Jr. Farmworker Housing Grant Fund; and
 - b. \$300 million for the Local Housing Trust Matching Grant Program Account, which provides matching grant funds for public agencies and nonprofit organizations that raise money for affordable housing.
4. \$300 million for the Home Ownership Development Account to be used for the CalHome Program.

Importance to the District

The Regional Water Quality Control Board's San Francisco Bay Water Quality Control Plan prohibits the discharge of rubbish, refuse, or other solid wastes into surface waters or any place where they will eventually be transported to surface waters. As a National Pollution Discharge Elimination System (NPDES) stormwater co-permittee, the District is a responsible party for rubbish and solid wastes discharge from District controlled waterways, including homeless encampments.

In order to, comply with the Regional Water Quality Control Board permit, the District engages in the cleanup of homeless encampments in creeks and streams throughout Santa Clara County in partnership with the county, cities, social services agencies, and homeless advocate organizations.

In Fiscal Years 2013 through 2015, the District spent \$2.6 million cleaning up almost 600 homeless encampments, and that number has been growing each year.

SB 3 would provide state residents an opportunity in November of 2018 to approve an initiative to provide state and local housing agencies with funding to improve the state housing crisis. SB 3 would provide local governments and community assistance organizations with funding to build new or rehabilitated housing for low- to moderate-income residents. The funding would also provide with assistance for a variety of rent and mortgage assistance programs.

SB 3, along with the implementation of a broad range of homelessness measures, will further the District's goal to reduce the number of residents living in encampments along the District's creeks and waterways. SB 3 may result in potential savings in encampment clean-up costs and allow the District to improve the integrity of our water supply and public safety along our waterways while at the same time aiding a broad range of Santa Clara Counties residents.

Staff recommends that the Board adopt a position of "Support" on SB 3.

Pros

- A significant amount of general obligation bond funds will be allocated to state and local

housing agencies to address affordable housing.

- May potentially improve the homeless crises by making more affordable housing available.
- The District may save on encampment clean-up costs as homeless populations decrease.

Cons

- Adds cost pressure to the State's General Fund from which bond principal and interest payments are funded.

***SB 5 (De León) California Drought, Water, Parks, Climate, Coastal Protection and Outdoor Access for All Act of 2018 (A-3/15/17)**

Position Recommendation: Support if Amended

Priority Recommendation: 1

*SB 5 (De León) is a \$3 billion water and parks bond, which if passed by a two-thirds vote of the Legislature, will be placed on the June 2018 statewide ballot. This bill authorizes \$500 million in bond expenditures for flood protection. Additionally, it allocates \$1 billion to supplement water related programs established by Proposition 1, the Water Quality, Supply, and Infrastructure Improvement Act of 2014. This bond proposal also would authorize \$1.5 billion in funding for parks.

*SB 5 authorizes \$500 million in bond expenditures for flood protection, specifically \$300 million for flood protection, \$100 million for levee repairs and restoration in the Sacramento-San Joaquin Delta, and \$100 million for stormwater, mudslide, and other flash flood related protections.

*SB 5 also authorizes a total of \$1 billion in bond expenditures, allocating \$250 million to each of four different programs established by Proposition 1 (2014), including: (1) water quality, (2) groundwater protection, (3) integrated watershed funding, and (4) recycled water programs.

Finally, SB 5 authorizes \$1.5 billion for parks, allocated as follows: (1) \$600 million for safe neighborhood parks in park-poor communities, (2) \$400 million for habitat resiliency, resource enhancement, and innovation, (3) \$125 million for river parkways programs, and allocates 60% of this to the Santa Monica Mountains Conservancy, (4) \$120 million for state conservancies, (5) \$100 million for State Parks, (6) \$80 million for oceans and coastal programs, (7) \$30 million for local park rehabilitation, (8) \$25 million for trails programs, and (9) \$20 million for rural parks.

**Importance to the District*

*Presently, SB 5 authorizes bond expenditures in the amounts of \$100 million for levee repairs and restoration in the Sacramento-San Joaquin Delta and \$250 million for recycled water programs established pursuant to Proposition 1 (2014).

AB 18 (E. Garcia), the competing bond measure detailed above, allocates funds for the Guadalupe River watershed, but SB 5 does not.

Like AB 18, SB 5's program funding includes competitive grants for local land conservation that the District, in partnership with local open space and conservation agencies, might use as mitigation credits for listed species and habitat.

*It is expected that AB 18 and SB 5 will be merged into a single measure later in the legislative process. AB 18 directly allocates \$5 million state bond funding for the Guadalupe River Watershed in Santa Clara County, while SB 5 appropriates an unspecified amount for the Guadalupe River Watershed. Staff will work towards a consolidation of the bills that favors the District.

Staff recommends that the Board adopt a position of "Support if Amended" on SB 5.

**Amendments Recommended*

- *Ensure that qualification criteria for flood protection funding included in the Bond does not exclude projects in Santa Clara County with aim to qualify project funding for Coyote Creek and other projects important to the District.
- *Seek funding for the state Flood Control Subventions Program.
- Seek language similar to AB 18 authorizing \$10 million in bond expenditures for the Guadalupe River watershed.

**Pros*

- *This legislation authorizes \$500 million in bonds for flood protection, including \$300 million for flood protection located anywhere in the state, \$100 million for levees in the Delta, and \$100 million for storm water, mudslide and other flash-flood-related investments.
- *This legislation authorizes \$1.5 billion in bonds for water related programs established by Proposition 1 (2014), including \$250 for recycled water.

**Cons*

- *This legislation, while indicating an appropriation for the Guadalupe River Watershed, it does not yet specify a dollar amount.
- The flood protection funding is modest considering statewide and local needs.
- This legislation does not authorize bonds for dams with seismic restrictions that limit storage capacity.

SB 231 (Hertzberg) Local Government: Storm Water Management (I-02/02/17)
Position Recommendation: Support
Priority Recommendation: 3

In 1996, California voters passed Proposition 218, the Right to Vote on Taxes Act, which added Articles XIII C and XIII D to the California Constitution. Article XIII C requires voter approval for local tax levies and provides that any local government tax, fee, assessment, or charge is subject to reduction or repeal by local ballot initiative. Article XIII D concerns assessments and property-related fees and includes prescriptive requirements for increasing or establishing new local government assessments or fees on real property, including fees for utility services by local governments. Among these requirements is approval of the assessment or fee by either a majority of property owners or by 2/3 of the general electorate, at the option of the local agency.

Article XIII D also includes an alternative and easier approval process specifically for water, sewer, or trash fees, that includes an opportunity for impacted property owners to submit written protests that are counted at a public hearing. If a majority of property owners protest the fee or charge, it may not be increased. However, this process for water, sewer, or trash fees does not require an election, making it both less expensive implement and more likely to yield fee increases.

SB 231 seeks to define the term “sewer” as it applies to Proposition 218’s requirements. Specifically, the bill would define the term “sewer” to include storm water, thereby allowing storm water management fees to be approved by the easier process. The question of whether storm water and drainage systems are included in the term “sewer” was litigated in *Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal. App. 4th 1351. In that case, the court of appeal concluded that the term “sewer,” as used in Proposition 218, is ambiguous and determined that storm water and drainage systems are not included in the term “sewer” as it applies to Proposition 218.

If SB 231 is enacted, it is widely believed further litigation would result. Taxpayer advocacy groups likely would argue that the bill constitutes an amendment of the California Constitution, requiring statewide voter approval. Particularly relevant to a court seeking to glean the voters’ intent when they passed Proposition 218, is the usual, ordinary, and commonsense meaning of the word “sewer.” Seeking to address this question, SB 231 includes several findings regarding long-standing definitions of “sewer” that include storm water.

Importance to the District

The Regional Water Quality Control Board’s San Francisco Bay Water Quality Control Plan prohibits the discharge of trash or other contaminants into surface waters or any place where they will eventually be transported to surface waters. As a permit participant, the District is a responsible party for rubbish and other contaminants discharged from District-controlled waterways, including trash and other contaminants in storm water.

By making storm water management fees more likely to be enacted, SB 231 would benefit the District in its compliance with state and federal water quality requirements. Local governments discharging storm water into District-controlled waterways would be more likely to enact storm water management fees, creating a reliable funding source for storm water and drainage infrastructure, including infrastructure that supports groundwater recharge and compliance with water quality requirements.

Staff recommends that the Board adopt a position of “Support” on SB 231.

Pros

- Storm water management fees would be more easily enacted, creating a reliable funding source for storm water and drainage infrastructure.
- More funding to divert storm water for groundwater recharge, which would benefit local water supply and potentially reduce flows in District-controlled waterways.
- Over time, there is a potential for improved water quality in District-controlled waterways and reduced costs for complying with state and federal water quality requirements.

Cons

- Will likely result in further litigation of the voters’ intent regarding the meaning of the word “sewer” as it applies to Proposition 218.
- Depending on how they are enacted, storm water management and drainage system fees may increase the cost of owning real-property, including the cost of housing.

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.

ATTACHMENTS:

*Original Board Agenda Memo

*Supplemental Board Agenda Memo

UNCLASSIFIED MANAGER:

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