



# Santa Clara Valley Water District

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**File No.:** 17-0787

**Agenda Date:** 12/12/2017

**Item No.:** 7.3.

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## BOARD AGENDA MEMORANDUM

### **SUBJECT:**

Recommended Positions on Federal Legislation: HR 3916 (Calvert) - Federally Integrated Species Health (FISH) Act; HR 3912 (Walorski) - Move America Act of 2017; and HR 1971 (Smucker) and S 692 (Fischer) Water Infrastructure Flexibility Act.

### **RECOMMENDATION:**

- A. Adopt a position of "Support" on: HR 3916 (Calvert) - Federally Integrated Species Health (FISH) Act;
- B. Adopt a position of "Support" on: HR 3912 (Walorski) - Move America Act of 2017; and
- C. Adopt a position of "Support" on: HR 1971 (Smucker) and S 692 (Fischer) - Water Infrastructure Flexibility Act.

### **SUMMARY:**

#### **A. HR 3916 (Calvert) - Federally Integrated Species Health (FISH) Act Recommendation:**

#### **Support**

#### **Priority Recommendation: 2**

The purpose of this bill is to amend the Endangered Species Act of 1973 to vest in the Secretary of the Interior, functions under that Act with respect to species of fish that spawn in fresh or estuarine waters and migrate to ocean waters, and species of fish that spawn in ocean waters and migrate to fresh waters.

The bill would consolidate the management and regulation of the Endangered Species Act (ESA) within the Fish and Wildlife Service (FWS), by transferring the National Marine Fisheries Service (NMFS) and their duties from the Department of Commerce to the Department of the Interior, (where the FWS resides and where NMFS was formerly located.)

**Status:** This bill was introduced on October 3, 2017, and referred to the House Natural Resources Committee. On October 12, 2017, a hearing was held by the House Natural Resources Committee, Subcommittee on Water, Power, and Oceans.

#### **Importance to the District:**

Transferring NMFS and their ESA responsibilities from the Department of Commerce to the

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Department of the Interior, could streamline the regulatory review and enforcement of the ESA requirements and allow District personnel to deal with one agency when trying to resolve ESA issues on projects.

**Pros:**

- Consolidates the enforcement of the ESA within one Federal agency.
- If ESA issues arise with a District project, only one Federal agency will need to be consulted.
- Could help streamline permit review and processing by two federal agencies.

**Cons:**

- The transfer of responsibilities from one federal agency to another during the initial transition period may result in the Department of Interior having to adjust to new functions and duties it did not previously have which could create a possible delay in permit review.

**B. HR 3912 (Walorski) - Move America Act of 2017****Recommendation: Support and Amend****Priority Recommendation: 2**

The purpose of this bill is to amend the Internal Revenue Code to allow tax-exempt Move America bonds and tax credits to be used to fund certain infrastructure projects. A Move America bond is treated as a tax-exempt private facility bond with certain exceptions. At least 95% of the net proceeds from the bond must be used to finance infrastructure projects, which includes funding for water furnishing facilities, sewage facilities, flood diversions, and inland waterways.

The Move America bonds are subject to a volume cap equal to 50% of a state's current private activity bond volume cap. States may exchange all or a portion of the volume cap for Move America tax credits to be allocated to taxpayers. The credits include: (1) a project credit for a portion of the basis of each qualified project; and (2) an infrastructure fund credit for investments in qualified infrastructure funds, including a state infrastructure bank, a water pollution control revolving fund, or a drinking water treatment revolving loan fund. States would have to report specified details to the Department of the Treasury regarding the value of the volume cap exchanged and credits allocated.

**Recommended Amendment**

The District is recommending the following amendment to this legislation:

Include language which will provide for a modification of 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 which may own, operate and/or finance the facilities. Such a 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.

**Status:** HR 3912 was introduced on October 2, 2017, and referred to the House Ways and Means Committee.

**Importance to the District:** The tax-exempt Move America bonds and tax credits will serve as an additional financing tool to support the funding of water infrastructure projects that affect water furnishing facilities, flood diversions, and inland waterways.

**Pros:**

- This bill could provide an additional source of funding for the District's drinking water, recycled water, and other water supply planning projects.
- It provides another avenue to finance essential water resource conservation and flood protection projects and could therefore expedite the construction of projects that may be impeded due to the lack of readily available funding.

**Cons:**

- The bill has an expansive list of infrastructure projects (such as airports, docks and wharves, mass commuting facilities, and railroads, etc.) that would also qualify for Move America bond financing. Consequently, there may be a robust competition for the District to obtain Move America bond financing for its water infrastructure projects since various other infrastructure projects would be eligible for financing and only a limited number of Move America bonds would be issued to each state.

**C. HR 1971 (Smucker) and S 692 (Fischer) - Water Infrastructure Flexibility Act**

**Recommendation:** Support

**Priority Recommendation:** 2

The purpose of these two identical bills is to provide for an integrated plan permitting process, to establish an Office of the Municipal Ombudsman who assists in compliance with federal environmental laws, to promote green infrastructure in the permitting process, and to revise federal guidance on the financial capability of a community to make water quality or drinking water improvements.

In short, the Water Infrastructure Flexibility Act:

- Creates an integrated plan permitting process that provides municipalities with the opportunity to create an integrated plan permit that combines permit requirements related to municipal stormwater discharge and surface water discharge.
- Establishes an Office of Municipal Ombudsman at the Environmental Protection Agency (EPA) to help agencies comply with the Federal Water Pollution Control Act (Clean Water Act) and the Safe Drinking Water Act.
- Directs the EPA to promote "green infrastructure" in its integrated plan permitting process. In

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this bill, “green infrastructure” is defined as a range of measures that use plant and soil systems, permeable surfaces, stormwater harvest and reuse, or landscaping to store, infiltrate, or evapotranspire stormwater, and reduce flows to surface waters.

- Requires the EPA to update its published federal guidance for determining the affordability of communities to make water quality or drinking water improvements.

The House and Senate bipartisan bills would allow municipalities to improve their permit review process by adopting an integrated approach, to gain assistance in complying with the Federal Water Pollution Control Act (Clean Water Act) and the Safe Drinking Water Act, to promote green infrastructure through its permitting process, and to establish stronger federal guidance on the economic impacts that water infrastructure investments have on communities.

**Status:** S 692 was introduced on March 21, 2017. The bill as amended was passed by the Senate on October 5, 2017, and sent to the House for consideration. HR 1971 was introduced on April 6, 2017, and referred to the House Energy and Commerce and House Transportation and Infrastructure Committees. No hearings in the House have been scheduled yet.

#### **Importance to the District:**

An integrated plan permitting process that consolidates permit requirements related to municipal stormwater discharge and other sources of water discharge into one integrated plan permit can help streamline the permitting process and enable the District to have its vital water infrastructure projects move forward in a more timely and efficient manner. Moreover, an Office of Municipal Ombudsman at the Environmental Protection Agency (EPA) can also help the District in developing an integrated permit plan that allows for flexibility in compliance with the Federal Water Pollution Control Act (Clean Water Act) and the Safe Drinking Water Act.

#### **Pros:**

- An integrated plan permitting process may create an opportunity for the District to combine its permit requirements related to municipal stormwater discharge, surface water discharge, and other sources of water discharge into one integrated plan permit.
- Consolidating the permit process into an integrated approach may enable the District’s critical water infrastructure projects (that are subject to such permitting requirements) to materialize in a more swift and efficient manner.
- An Office of Municipal Ombudsman at the Environmental Protection Agency (EPA) can facilitate municipalities (such as the District) in gaining flexibility in compliance with federal environmental regulations while developing an effective integrated permit plan.

#### **Cons:**

- Working with a Municipal Ombudsman has the potential to possibly slow down the processing of permits initially given that it will take time to develop and implement the integrated permit plan that centralizes multiple permit requirements into one integrated permit.

#### **FINANCIAL IMPACT:**

None.

**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:**

None

**UNCLASSIFIED MANAGER:**

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