



# Santa Clara Valley Water District

**File No.:** 17-0909

**Agenda Date:** 2/27/2018

**Item No.:** 7.2.

## BOARD AGENDA MEMORANDUM

### **SUBJECT:**

Recommended Positions on Federal Legislation: HR 4492 (Mast) - Water Infrastructure Finance and Innovation Reauthorization Act of 2017 and S 2329 (Hoeven) - Water Infrastructure Finance and Innovation Reauthorization Act of 2018; HR 4525 (Pallone) - Living Shorelines Act of 2017; HR 4490 (Cartwright) and S 2176 (Whitehouse) - Safeguarding America's Future and Environment (SAFE) Act; H.R. 1654 (McClintock) and S 677 (Barasso)- Water Supply Permitting Coordination Act; HR 519 (Buck)-Water and Agriculture Tax Reform Act; and HR 3009 (Duncan)-Sustainable Water Infrastructure Investment Act.

### **RECOMMENDATION:**

- A. Adopt a position of "Support and Amend" on: HR 4492 (Mast) - Water Infrastructure Finance and Innovation Reauthorization Act of 2017, and S 2329 (Hoeven) - Water Infrastructure Finance and Innovation Reauthorization Act of 2018;
- B. Adopt a position of "Support" on: HR 4525 (Pallone) - Living Shorelines Act of 2017;
- C. Adopt a position of "Support" on: HR 4490 (Cartwright) and S 2176 (Whitehouse) - Safeguarding America's Future and Environment (SAFE) Act;
- D. Adopt a position of "Support" on H.R. 1654 (McClintock) and S 677 (Barasso) - Water Supply Permitting Coordination Act;
- E. Adopt a position of "Support and Amend" on HR 519 (Buck) - Water and Agriculture Tax Reform Act; and
- F. Adopt a position of "Support and Amend" on: HR 3009 (Duncan) - Sustainable Water Infrastructure Investment Act.

### **SUMMARY:**

**A. HR 4492 (Mast) - Water Infrastructure Finance and Innovation Reauthorization Act of 2017 and S 2329 (Hoeven) - Water Infrastructure Finance and Innovation Reauthorization Act of 2018**

**Recommendation: Support and Amend Both**

**Priority Recommendation: 2**

These nearly identical bills would reauthorize the Water Infrastructure Finance and Innovation Act Program (WIFIA) for five years beyond its currently scheduled expiration in 2019. In addition, the bills would double the program's Fiscal Year 2018 funding authorization from \$45 million to \$90

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million, before incrementally ramping up authorized funding levels to reach \$140 million by 2024.

The bills would also give the Environmental Protection Agency (EPA) new authority to work with the U.S. Army Corps of Engineers (USACE) to consider applications for projects intended to address flood damage reduction, hurricane and storm impacts, and coastal, inland harbor, or inter coastal waterway navigation improvements. The existing WIFIA statute makes these types of projects eligible for funding through a separate USACE-administered WIFIA program, but USACE has not yet taken steps to make this program operational.

The WIFIA program was established as part of the Water Resources Reform and Development Act of 2014 and is a federal loan and guarantee pilot program that aims to accelerate investment in our nation's water infrastructure by providing long-term, low-cost supplemental credit assistance for regionally and nationally significant projects. WIFIA offers greater financial flexibility to utilities, municipalities, nonprofits, and other eligible entities who may lack the capacity to fund water infrastructure upgrades by helping cover up to 50% of the project costs.

Both bills have received a wide range of support and have been backed by the Association of California Water Agencies (ACWA), the American Water Works Association (AWWA), the Water Environment Federation, the Association of Metropolitan Water Agencies (AMWA), and the National Association of Clean Water Agencies (NACWA).

**Status:** HR 4492 was introduced on November 30, 2017, and referred to the House Energy and Commerce and Transportation and Infrastructure Committees. S 2329 was introduced on January 23, 2018, and referred to the Senate Environment and Public Works Committee. No hearings have been scheduled or held on either bill yet.

**Proposed Amendments:** The District recommends the following two amendments to both HR 4492 and S 2329:

- 1) Include language that the EPA remove the springing lien provision to impose senior lien on pledged revenues and/or assets in the event of default leading to bankruptcy, insolvency, or liquidation. The District recommends the EPA remove this provision or at a minimum, include a clause to enable a waiver from this provision under certain circumstances because in the District's case, we cannot provide a senior lien due to conditions of existing bond covenants.
- 2) Include language in the WIFIA program rules to allow borrowers to pay for the credit subsidy instead of requiring annual Congressional budget appropriation. This amendment would allow for larger loans to be made by the EPA to fund major water infrastructure projects without the government taking on the credit risk. This change would allow for large infrastructure loans to get constructed with low-cost federal loans that are repaid to the federal government.

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

With the increased funding amounts authorized to be appropriated to the WIFIA program through this legislation, these bills have the potential to provide funding for future District water infrastructure projects.

**Pros:**

- Reauthorizes a very important national program that can help fund District water infrastructure projects by helping to cover project costs.
- Increases the authorized appropriation levels for the WIFIA program from which the District may qualify to receive funding.
- WIFIA provides credit assistance to large water infrastructure projects that would otherwise have difficulty obtaining financing.
- Requires that the USACE work with the EPA to begin implementation of the program for WIFIA projects that would include projects that the District invests in such as flood protection and flood damage reduction projects.

**Cons:**

- Given the popularity of this legislation with the other water resources agencies listed above as well as with other water districts that rely on federal funding to support their respective water infrastructure projects, the District will likely face a high level of competition from these other entities when vying for WIFIA funding.

**B. HR 4525 (Pallone) - Living Shorelines Act of 2017**

**Recommendation: Support**

**Priority Recommendation: 2**

This bill would direct the Administrator of the National Oceanic and Atmospheric Administration (NOAA) to make grants to States, local governments, and nongovernmental organizations for purposes of carrying out shoreline stabilization projects utilizing natural materials.

This bill would help protect coastal communities from the rising threats of climate change including increased storm intensity and frequency, increased flooding, and sea level rise. Utilizing natural infrastructure can help to effectively mitigate future flooding while benefiting the local environment and economy.

In order for proposed projects to be selected, they must be focused on protecting coastal communities, and be able to demonstrate and quantify a minimal level of protection as specified by NOAA and the U.S Army Corps of Engineers.

The bill authorizes \$20 million each year through Fiscal Year 2023 for grants that would cover 50% of the project costs. The bill would also require data collection and monitoring of approved projects.

**Status:** The bill was introduced on December 1, 2017, and referred to the House Natural Resources Committee. No hearings have been scheduled or held yet.

**Importance to the District:**

The bill may provide a source of funding for the South San Francisco Bay Shoreline Project or other

shoreline protection projects utilizing natural materials.

**Pros:**

- This bill could provide grants to help fund the District's shoreline-related projects that are impacted by climate change conditions, such as the South San Francisco Bay Shoreline Project.
- This bill promotes the use of natural instead of man-made materials in the protection of shorelines which is aligned with the District's efforts to engage in environmentally restorative practices in its projects when it is both reasonable and possible.
- Since this bill would help protect communities from the threats of climate change, supporting it would enable the District to uphold its commitment to protect its Santa Clara County residents from the looming threats of climate change in both the short-term and the long-term.

**Cons:**

- The bill would give priority consideration to projects in areas where a Federal disaster declaration has been made in the past 10 years. Consequently, the District will likely face fierce competition for funding from other regions that have also faced significant and devastating flooding along their shorelines within the past several years.

**C. HR 4490 (Cartwright) and S 2176 (Whitehouse) - Safeguarding America's Future and Environment (SAFE) Act**

**Recommendation: Support Both**

**Priority Recommendation: 2**

Both of these identical bills (SAFE Act) would require federal natural resource agencies to form an interagency working group to plan and implement a long-term national climate change adaptation strategy based on the best available science. State, local, and tribal governments, as well as nongovernmental organizations, academic institutions, and private sector representatives would be called upon to lend their expertise to the working group. The SAFE Act would require agencies to work together to identify and prioritize specific conservation and management strategies and actions to respond to extreme weather and climate change. It would also encourage the development of state-specific adaptation plans.

This national strategy would guide federal adaptation plans and reduce redundancy and costs. The SAFE Act would also create the National Climate Change and Wildlife Science Center which would develop and compile scientific information on climate variability.

**Status:**

HR 4490 was also introduced on November 30, 2017, and referred to the House Natural Resources Committee. S 2176 was introduced on November 30, 2017, and referred to the Senate Natural Resources Committee. No hearings have been scheduled or held yet on either bill.

**Importance to the District:**

Planning for extreme weather events is in alignment with the District's Board Appointed Officer interpretation of the Board's Governance Policies on water supply which includes, "incorporating climate change mitigation and adaptation into District planning efforts." This bill is also aligned with the District's Legislative Guiding Principle on Resource Protection Funding which includes "supporting funding to address climate change impacts on water supply and flood management facilities and infrastructure needs."

**Pros**

- Planning for responses to extreme weather is an important District goal which includes providing flood protection from those events for our Santa Clara County residents.
- This bill would facilitate the production of a plan and the implementation of a long-term national climate change adaptation strategy that can help the District engage in long-term climate change preparation solutions to protect not only this generation but also future generations of Santa Clara County residents.
- The bill would involve local government and agencies as stakeholders in the development of the plan which would therefore give the District a chance to directly participate, offer input, and potentially be a part of crafting the climate change adaption strategy itself.
- Senator Dianne Feinstein who has been a supporter of District projects (including the District's Shoreline Project) is a co-sponsor of this Senate bill. Her co-sponsorship could also put California, and thus our Santa Clara County residents within the state, at the forefront of these efforts, thereby benefiting from this climate change adaptation plan.

**Cons**

- This bill does not provide any actual local project funding, so there is no potential for potential funding for District projects in this bill.

**D.HR 1654 (McClintock) and S677(Barasso) - Water Supply Permitting Coordination Act**  
**Recommendation: Support Both****Priority Recommendation: 2**

The purpose of this bill (and the accompanying identical companion Senate bill), is to authorize the Secretary of the Interior to coordinate Federal and State permitting processes related to the construction of new surface water storage projects on lands under the jurisdiction of the Secretary of the Interior and the Secretary of Agriculture. This bill establishes the Bureau of Reclamation (Bureau) as the lead agency for purposes of coordinating all reviews, permits, licenses, or other approvals or decisions required under federal law to construct new surface water storage projects covered under the Reclamation Act.

The principal responsibilities of the Bureau under this bill to: (1) serve as the point of contact for applicants, state agencies, Indian tribes, and others regarding qualifying projects; (2) coordinate

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preparation of unified environmental documentation that will serve as the basis for all federal decisions necessary to authorize the use of federal lands for qualifying projects; and (3) coordinate all federal agency reviews necessary for the development and construction of qualifying projects.

The bill puts the following permitting procedure in place:  
Bureau will:

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- (1) upon receipt of an application for a qualifying project, identify any federal agency that may have jurisdiction over a required review; and shall notify such agency that it has been designated as a cooperating agency unless specified conditions apply.
- (2) Each cooperating agency must submit to the Bureau: (1) a timeframe for completing the agency's authorizing responsibilities, (2) all environmental review material produced in the course of carrying out activities required under federal law consistent with the project schedule, and (3) all relevant project data.
- (3) A state in which a qualifying project is being considered may choose to participate as a cooperating agency as well and is required to either conduct or issue a review, or make a determination on issuing a permit, license, or approval for the qualifying project.

**Status:** HR 1654 bill was introduced on March 21, 2017 in the House and on June 26, 2017 it was received in the Senate and referred to the Senate Energy and Natural Resources Committee. S 677 was also introduced on March 21, 2017 and was referred to the Senate Energy and Natural Resources Committee. A subcommittee hearing on S 677 was held on June 14, 2017 by the Senate Energy and Natural Resources Committee, Subcommittee on Water and Power.

**Importance to the District:** These bills could help streamline the permitting process for the District's new surface water storage projects and other water supply projects that require federal and state permitting approval under the Bureau of Reclamation's authority. Promoting a coordinated effort of Federal and State permitting processes for projects related to the construction of new surface water storage projects can help expedite the approval of and construction of the District's surface water and other water supply planning projects.

**Pros:**

- By establishing the Bureau of Reclamation as the lead agency for managing all reviews, permits, licenses, or other required approvals to construct new surface water storage projects, and by creating a unified permitting process that consolidates the federal and state permitting procedures into one centralized process, this bill may help the District obtain more expedient permit approvals and swifter construction timelines for its surface water storage and other water supply projects.

**Cons:**

- Given that these bills would present a new approach that would require the Bureau of Reclamation to implement a new procedure and take on the additional task of cooperating with federal and state agencies to expedite permit processing and construction approvals at both

the federal and state levels, there may be a time delay involved since a new procedure would be implemented between the Bureau and the respective federal and state agencies. Thus, the initial stage of this process may not be as efficient and timely as the Bureau and the agencies work together to put this new system in place.

**E.HR 519(Buck) - Water and Agriculture Tax Reform Act**  
**Recommendation: Support and Amend**  
**Priority Recommendation: 2**

The purpose of this bill is to amend the Internal Revenue Code of 1986 to facilitate water leasing and water transfers to promote water conservation and efficiency. This bill amends the Internal Revenue Code to permit tax-exempt mutual ditch or irrigation companies to earn income from dispositions of certain real property and stock interests without affecting their tax-exempt status. This bill would require that such income be used to pay the costs of operations, maintenance, and capital improvements of such companies.

**Status:** The bill was introduced on January 13, 2017 and referred to the House Ways and Means Committee.

**Proposed Amendment:** The District recommends 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 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 partnerships.

**Importance to District:** This particular bill which is focused on tax code amendments, creates an opening for the District to request that the tax code be amended to allow for public-private partnerships by specifying an exception for recycled water and wastewater facilities, which would assist public agencies by allowing them to combine tax exempt bonds with public private partnerships in order to finance the District's critical recycled water projects.

**Pros:**

- The District is interested in bills that offer an opportunity to amend the tax code to allow for public-private partnerships which can be used to finance the District's critical recycled water projects.
- This bill signals a trend toward the introduction of legislation that is focused on tax reform in the field of water resources management which could benefit the District's interest in making tax reform amendments that promote the use of public-private partnerships which can fund its recycled water projects, such as the District's Silicon Valley Advanced Water Purification Center expansion project.

**Cons:**

- Although the bill does purport to encourage water conservation and efficiency as part of its purpose, without the inclusion of the proposed amendment, the bill primarily serves to benefit mutual ditch and irrigation companies which are privately-owned companies that do not directly impact the District.

**Please Note:** At the last Board meeting on 1/23/18, the Board took a position of “Support” on bill HR 3009 listed below. While the text of the Staff Report requested a “Support and Amend” position on this bill, the heading of the Staff Report only listed the bill as a “Support” position instead of a “Support and Amend” position. The bill was therefore adopted as a “Support” position instead of as a “Support and Amend” position. Staff therefore requests the Board to take a “Support and Amend” position on this bill at this time:

**F. HR 3009 (Duncan) - Sustainable Water Infrastructure Investment Act.**

**Recommendation: Support and Amend**

**Priority Recommendation: 2**

The purpose of this bill is to provide alternative financing for long-term infrastructure capital investment programs, to restore the Nation’s safe drinking water and wastewater infrastructure capability, and to protect the health of our citizens. The bill will amend the Internal Revenue Code of 1986 and state that the volume cap for private activity bonds shall not apply to bonds for facilities that furnish water and for sewage facilities. This bill amends the Internal Revenue Code to exempt tax-exempt facility bonds for water supply and sewage facilities from the state volume caps on private activity bonds.

Providing alternative financing solutions, such as tax-exempt securities, encourages investment in water and wastewater infrastructure. Federally mandated State volume cap restrictions in conjunction with other priorities have limited the use of tax-exempt securities on water and wastewater infrastructure investment. Removal of State volume caps for water and wastewater infrastructure would accelerate and increase overall investment in the Nation’s critical water infrastructure. This amendment would promote the increased use of innovative infrastructure financing methods (such as public-private partnerships) that support the funding, construction, and long-term management of sustainable water systems, and provide effective risk management of complex water infrastructure projects by municipal utility and private sector partners.

**Status:** The bill was introduced on June 22, 2017, and referred to the House Ways and Means Committee.

**Proposed 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

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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 clarify that the tax- exempt status of existing and future governmental bonds issued to finance wastewater systems that provide wastewater supply to the facilities, would not be adversely affected by such public/private partnerships.

**Importance to the District:** The removal of state volume caps for tax-exempt facility bonds that support water infrastructure projects can serve as an effective infrastructure financing tool that promotes the funding, construction, and long-term management of the District's key drinking water, recycled water, and other water supply planning projects.

**Pros:**

- Amending the tax code to remove state volume caps on bonds that subsidize water-furnishing and wastewater facilities will provide the District with an alternative pool of funding for its critical water infrastructure investment projects, that will enable the District to secure the long-term and reliable water supply for its Santa Clara County residents.
- This bill provides another avenue to finance essential drinking water projects and could therefore expedite the development and construction of projects that may be impeded due to the lack of readily available funding.

**Cons:**

- Although the removal of state volume caps for tax-exempt facility bonds that support water infrastructure projects would help the District, the District would actually have to get the bond in order to benefit from the removal of this state volume cap restriction. Given that the state has the authority to issue the bonds, there will likely be strong competition for these bonds from all eligible public water systems state-wide that want to expand the development of their respective water infrastructure projects too. Therefore, the District will have to compete with other eligible public water systems in California to receive the bond.

**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.

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