



Santa Clara Valley Water District

File No.: 18-0941

Agenda Date: 3/26/2019

Item No.: 7.2.

BOARD AGENDA MEMORANDUM

SUBJECT:

Recommended Positions on Federal Legislation: H.R. 1137 (Garamendi) - To amend the Water Resources Development Act of 1986 to repeal the authority relating to reprogramming during national emergencies; S. 326 (Udall) - Restrictions Against Illegitimate Declarations for Emergency Re-appropriations (RAIDER) Act of 2019; H.R. 1162 (Napolitano) - Water Recycling Improvement and Investment Act; H.R. 1132 (Speier) - San Francisco Bay Restoration Act of 2019; and Other Legislation That May Require Urgent Consideration for a Position by the Board.

RECOMMENDATION:

- A. Adopt a position of "Support" on H.R. 1137 (Garamendi) - To amend the Water Resources Development Act of 1986 to repeal the authority relating to reprogramming during national emergencies;
- B. Adopt a position of "Support" on S. 326 (Udall) - Restrictions Against Illegitimate Declarations for Emergency Re-appropriations (RAIDER) Act of 2019;
- C. Adopt a position of "Support" on H.R. 1162 (Napolitano) - Water Recycling Improvement and Investment Act; and
- D. Adopt a position of "Support" on H.R. 1132 (Speier) - San Francisco Bay Restoration Act of 2019.

SUMMARY:

- A. H.R. 1137 (Garamendi) - To amend the Water Resources Development Act of 1986 to repeal the authority relating to reprogramming during national emergencies**

Recommendation: Support

Priority Recommendation: 2

This bill would repeal 33 U.S. Code 2293, the provision in the Water Resources Development Act (WRDA) of 1986 that allows the president, in the event of a declaration of war or declaration of a national emergency, to reprogram any U.S. Army Corps of Engineers (USACE) funding not deemed essential to national defense.

President Trump has threatened to redirect unspent USACE funds to construct the wall along the U.S.-Mexico border if Congress does not appropriate adequate funding. Under this provision in WRDA 1986, he has the legal authority to so. The President has explicitly said that California and Puerto Rico projects with as-yet unspent funds awarded under recent disaster supplemental appropriations bills are potential targets for reprogramming.

Status:

The bill was introduced on February 11, 2019, and was referred to the House Committee on Transportation and Infrastructure. Cosponsors of the bill include Representatives Anna Eshoo (D-CA-18) and Zoe Lofgren (D-CA-19).

Importance to Valley Water:

Under the FY 2018 disaster supplemental appropriations bill, USACE awarded \$177.2 million in construction funding for the South San Francisco Bay Shoreline Project (Shoreline). On February 14, 2019, the project partners - Valley Water, the State Coastal Conservancy, and USACE - executed the Project Partnership Agreement to allow for the obligation of funds. This process was expedited in order to reduce the risk of the President reprogramming the funds. While it appears the Shoreline Project funding is no longer vulnerable, without a full repeal of this provision in law the possibility of reprogramming during future emergencies exists for this and all other Valley Water USACE-funded projects.

Pros:

- The bill would help protect the Shoreline Project - and all other Valley Water Projects that have already received, or are expected to receive, funding from the U.S. Army Corps of Engineers - from losing federal funds that have been appropriated or otherwise made available. Only Congress could authorize re-assignment of those funds.
- By repealing this entire section of WRDA 1986, in the event of a declaration of war or declaration of national emergency, the president would no longer be able to unilaterally halt civil works activities or reprogram civil works funding deemed non-essential to national defense. This would allow civil works projects to continue under those scenarios and it would give Congress additional control over how civil works funds are spent.

Cons:

- Taking away the president's ability to unilaterally reprogram civil works funding during a declared war or national emergency could potentially hinder national defense by forcing the president to first seek congressional approval.

B. S. 326 (Udall) - Restrictions Against Illegitimate Declarations for Emergency Re-appropriations (RAIDER) Act of 2019**Recommendation: Support****Priority Recommendation: 2**

This bill would prohibit the use of funds appropriated for military construction or to the U.S. Army Corps of Engineers (USACE) for the construction - and any associated activities - of a border wall on the southern U.S. border without express congressional authorization.

Under the Water Resources Development Act of 1986, during times of a declared war or declared national emergency, the president has the authority to unilaterally halt civil works activities deemed non-essential to defense and reprogram those funds.

Status:

The bill was introduced on February 4, 2019, and was referred to the Senate Committee on Appropriations. Cosponsors of the bill include Senators Feinstein (D-CA) and Harris (D-CA).

Importance to Valley Water:

This bill is similar to H.R. 1137 (Garamendi), recommended for support in Section A of this memorandum. Under the FY 2018 disaster supplemental appropriations bill, USACE awarded \$177.2 million in construction funding for the South San Francisco Bay Shoreline Project (Shoreline). On February 14, 2019, the project partners - Valley Water, the State Coastal Conservancy, and USACE - executed the Project Partnership Agreement to allow for the obligation of funds. This process was expedited in order to reduce the risk of the President reprogramming the funds. While it appears the Shoreline Project funding is no longer vulnerable, there is no guarantee without a strict prohibition on reprogramming of these funds.

This bill would prohibit the reprogramming of already-awarded USACE funds for construction of a southern border wall without express approval from Congress. This would protect the Shoreline Project's construction funding, as well as all other Valley Water projects with USACE funding, from reprogramming to fund construction of any barrier on the southern U.S. border.

Pros:

- The bill would help protect the Shoreline Project - and all other Valley Water Projects that have already received funding from the U.S. Army Corps of Engineers - from losing federal funds that have been appropriated or otherwise made available. Only Congress could authorize re-assignment of those funds.
- The bill would only prohibit reprogramming of USACE funds during a national emergency for construction of the southern border wall. By limiting the prohibition to this narrow activity, the president would still have the ability to reprogram non-defense-essential USACE funds during other national emergencies.

Cons:

- The bill would only prohibit reprogramming of USACE funds during a national emergency for construction of the southern border wall. The president would still have the authority to reprogram USACE funds for any other purpose during declared national emergencies.
- This would only protect project funds made available prior to enactment of this bill, meaning that future funding awards would still be vulnerable to re-assignment by the president during a declared national emergency.

C. H.R. 1162 (Napolitano) - Water Recycling Improvement and Investment Act**Recommendation: Support****Priority Recommendation: 2**

This bill would strengthen the Title XVI water recycling competitive grant program and increase its funding authorization under the Water Infrastructure Improvements for the Nation (WIIN) Act of 2016. Specifically, the bill would:

- Increase the WIIN Act authorization for Title XVI from \$50 million to \$500 million;
- Make the WIIN Act Title XVI program permanent (it currently expires in 2021);

- Strike the requirement that projects must be in drought or disaster areas;
- Strike the requirement that the projects must be designated in appropriations legislation; and,
- Increase the limitation on the federal cost share of individual Title XVI projects from \$20 million to \$30 million.

The Board took a position of “Support and Amend” in 2018 on a previous version of this legislation (115th Congress). This bill is narrower in scope, making those proposed amendments now irrelevant.

Status:

The bill was introduced on February 13, 2019, and was referred to the House Committee on Natural Resources. Representative Eshoo (D-CA-18) is a cosponsor.

Importance to Valley Water:

The bill would significantly expand the Title XVI competitive grant program for recycled water projects, should the funds be appropriated. This is an important source of funding for recycled water programs that Valley Water could access for future projects.

Pros:

- Expands an important source of funding for recycled water projects that Valley Water could potentially access, should the funds be appropriated.
- Increases the federal cost share per project from \$20 million to \$30 million, allowing potential grantees like Valley Water to access additional matching funds.

Cons:

- None identified at this time.

D. H.R. 1132 (Speier) - San Francisco Bay Restoration Act of 2019**Recommendation:** Support**Priority Recommendation:** 2

This bill would amend the Clean Water Act to authorize a new San Francisco Bay grant program to fund Bay restoration and habitat improvement projects. Eligible grantees would include projects that advance specific restoration goals for San Francisco Bay, including water quality improvement; wetland, riverine, and estuary restoration and protection; nearshore and endangered species recovery; and adaptation to climate change. The bill would also create a new San Francisco Bay Program Office to be located within the Environmental Protection Agency’s (EPA) Region 9 headquarters to oversee the grant program and ensure that the funds are being spent to advance those specific restoration goals. The bill authorizes \$25 million for each of fiscal years (FYs) 2020-2024 to carry out this program.

Congress has authorized program offices and funding within EPA for other large estuaries like the Chesapeake Bay and the Great Lakes, allowing those regions to receive significant appropriations for restoration and climate adaptation over the years. Since 2008, thanks largely to the efforts of Senator Dianne Feinstein, the EPA has received an annual appropriation of roughly

\$5 million in grant funding for San Francisco Bay restoration projects. This is well below what other estuaries receive annually, however, and is well below what the Bay needs to restore the ecosystem and adequately adapt to climate change.

This bill would create a new San Francisco Bay Program under EPA and authorize annual appropriations for restoration grants that are much larger than have ever been appropriated. This would help ensure that the program receives the funding it needs on an annual basis to protect and restore San Francisco Bay, thereby improving habitat for fish and wildlife, improving water quality, and safeguarding shoreline communities from flooding and sea level rise.

The Board took a position of “Support” in 2018 on a previous version of this legislation (115th Congress).

Status:

The bill was introduced in the House on February 8, 2019, and was referred to the Committee on Transportation and Infrastructure and the Committee on the Budget. The bill was subsequently referred to the Transportation and Infrastructure Subcommittee on Water Resources and Environment. Cosponsors of the bill include Representatives Khanna (D-CA-17), Eshoo (D-CA-18), and Lofgren (D-CA-19).

Importance to Valley Water:

This bill would create a new San Francisco Bay grant program to fund Bay restoration and habitat improvement projects, such as the South San Francisco Bay Shoreline Project (Shoreline Project).

Pros:

- The bill could fund portions of the Shoreline Project, which, as a multi-benefit project, would be eligible for these funds.
- The bill would create a new funding source for climate adaptation projects around the Bay, including but not limited to the Shoreline Project, that would help protect at-risk communities in low-lying shoreline areas. This aligns with Valley Water’s commitment to protecting Santa Clara County residents from the dangers of sea level rise and climate change.
- The bill would create a new San Francisco Bay Program Office within EPA’s Region 9 headquarters in San Francisco to ensure that the grant funds are used to implement specific restoration, habitat improvement, and climate adaptation goals.
- Creating a new program office would put San Francisco Bay on par with other federally-authorized EPA estuary programs, making it easier for Congress to appropriate funds to the region in the future.

Cons:

- None identified at this time.

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.

ATTACHMENTS:

None.

UNCLASSIFIED MANAGER:

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