



# Santa Clara Valley Water District

File No.: 20-0037

Agenda Date: 4/28/2020

Item No.: 3.9.

## BOARD AGENDA MEMORANDUM

### SUBJECT:

Approve Recommended Positions on Federal Legislation: H.R. 5752 (Costa) - Conveyance Capacity Correction Act; H.R. 5504 (Brownley) - To Amend the National Dam Safety Program Act with Respect to the Definition of Eligible High Hazard Potential Dam, and for other Purposes; H.R. 5302 (McNerney) - Western Water Recycling and Drought Relief Act; H.R. 5316 (Cox) - Move Water Now Act; and Other Legislation That May Require Urgent Consideration for a Position by the Board.

### RECOMMENDATION:

- A. Adopt a position of "Support" on H.R. 5752 (Costa) - Conveyance Capacity Correction Act;
- B. Adopt a position of "Support" on H.R. 5504 (Brownley) - To amend the National Dam Safety Program Act with respect to the definition of eligible high hazard potential dam, and for other purposes;
- C. Adopt a position of "Support and Amend" on H.R. 5302 (McNerney) - Western Water Recycling and Drought Relief Act; and
- D. Adopt a position of "Support and Amend" on H.R. 5316 (Cox) - Move Water Now Act.

### SUMMARY:

#### A. H.R. 5752 (Costa) - Conveyance Capacity Correction Act

##### Recommendation: Support

##### Priority Recommendation: 2

This bill would authorize \$400 million to accelerate and complete repairs to certain water conveyance facilities at sites owned by the U.S. Bureau of Reclamation but operated and maintained by others (known as transferred works). A project would be eligible for funding if it meets three criteria:

1. Damage caused by land subsidence has resulted in the need to undertake non-recurring repairs on a conveyance facility that conveys water from an estuary to a joint powers authority or public water agency;
2. The project has lost 10 percent or more of its designed carrying capacity along some portion of the facility; or
3. Restoring carrying capacity of the project would assist in meeting groundwater sustainability goals defined under State law.

A project would not be eligible for funding if it contains on-farm conveyance facilities and conveyance facilities that serve only one water district.

Projects would be given priority if they are located in both:

1. A state that has experienced severe drought during some or all of at least 7 calendar years during the 10-year period ending immediately before the funds are made available; and
2. An area that has experienced exceptional drought during some or all of at least 4 calendar years during the 10-year period ending immediately before the funds are made available.

Under these criteria, the bill would benefit the Delta-Mendota Canal and the California Aqueduct.

**Status:**

The bill was introduced in the House on February 4, 2020, and was referred to the Committee on Natural Resources.

**Importance to Valley Water:**

The Delta-Mendota Canal and California Aqueduct are two conveyance facilities critical to delivering imported water to San Luis Reservoir. The Delta-Mendota Canal, built in 1951, is a 117-mile canal that carries water from the Sacramento-San Joaquin Delta southward, emptying in the San Joaquin River near the city of Mendota. Along the way, water is pumped into San Luis Reservoir where it is accessed by Central Valley Project contractors, including Valley Water. The California Aqueduct, built in 1963, is a more than 400-mile long system of canals, pipelines, and tunnels that is the central means of conveyance for the State Water Project (SWP). The Aqueduct carries water from the Delta southward, emptying in Lake Cachuma in Santa Barbara County.

These conveyance facilities are an essential component of transporting both Central Valley Project (CVP) and SWP water to the San Luis Reservoir, which Valley Water then imports into Santa Clara County, and both facilities are operating below capacity due to significant subsidence. An infusion of federal funding would help make repairs to these critical facilities to restore carrying capacity and reduce

**Pros:**

- Provides funding for the much-needed repair and restoration of the Delta-Mendota Canal, which transports CVP water to San Luis Reservoir, and the California Aqueduct, which transports both CVP and SWP water to San Luis Reservoir.

**Cons:**

- None identified at this time.

**B. H.R. 5504 (Brownley) - To amend the National Dam Safety Program Act with respect to the definition of eligible high hazard potential dam, and for other purposes.**

**Recommendation: Support**

**Priority Recommendation: 2**

This bill would amend the definition of “eligible high hazard potential dam” under the National Dam Safety Program Act (33 U.S. Code § 647f) to ensure that certain dams can receive federal assistance for rehabilitation. Under current law, an “eligible high hazard potential dam” does not include 1) a

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licensed hydroelectric dam; or 2) a dam built under the authority of the Secretary of Agriculture. This bill would amend the definition to stipulate that a licensed hydroelectric dam is not considered an eligible high hazard potential dam, and therefore not eligible to receive funding under the National Dam Safety Program's Rehabilitation of High Hazard Potential Dam Grant Program if it has "an authorized installed capacity of greater than 1500 kilowatts." This would extend funding eligibility to dams with small hydroelectric facilities (i.e., less than 1500 kilowatts), such as Anderson Dam.

**Status:**

The bill was introduced in the House on December 19, 2019, and was referred to the Committee on Transportation and Infrastructure.

**Importance to Valley Water:**

Congress passed the National Dam Safety Program Act in 1996 to assist states and other stakeholders in implementing dam safety policies and procedures critical to protecting human life and property. Federal funding is available if a state adopts a Federal Emergency Management Agency (FEMA)-approved dam safety program complete with detailed plans and policies for the safe construction, operation, maintenance, and inspection of its dams, as well as emergency procedures in the event of dam failure. The Water Infrastructure Improvements for the Nation (WIIN) Act (P.L. 114-322) added a new grant program under FEMA's National Dam Safety Program to rehabilitate certain eligible high hazard potential dams, and the bill authorized appropriations for fiscal years 2017-2026 for program implementation. Dams eligible for this grant funding do not, however, include licensed hydroelectric dams.

FEMA has identified Anderson Dam as a high hazard potential dam due to its seismic instability. Currently, however, Anderson Dam is ineligible for funding under FEMA's Rehabilitation of High Hazard Potential Dam Grant Program because the dam is a licensed hydroelectric dam. H.R. 5504 would enable licensed hydroelectric dams with an authorized installed capacity of 1500 kilowatts or less to become eligible for federal assistance under the grant program. Anderson Dam is a licensed hydroelectric dam with an authorized installed capacity of 800 kilowatts.

**Pros:**

- Amending the definition of "eligible high hazard potential dam" under the National Dam Safety Program Act would enable the Anderson Dam Seismic Retrofit Project to become eligible for FEMA funding that could aid construction.

**Cons:**

- None identified at this time.

**C. H.R. 5316 (Cox) - Move Water Now Act****Recommendation: Support and Amend****Priority Recommendation: 3**

This bill would authorize \$200 million for fiscal years 2020 through 2023 to accelerate and complete repairs to water conveyance facilities at sites owned by the Bureau of Reclamation but operated and maintained by others, commonly referred to as "transferred works." A project would be eligible for

funding if it meets three criteria:

1. Repairs are major, non-recurring maintenance of a mission-critical asset;
2. The project has lost 50 percent or more of its designed carrying capacity along some portion of the facility; and
3. The additional water made available would be used primarily for groundwater recharge to assist in meeting groundwater sustainability goals defined under State law.

These eligibility criteria effectively mean that only the Friant-Kern Canal would benefit from these funds - the Delta-Mendota Canal and the California Aqueduct would not be eligible for funding.

The bill also authorizes an additional \$200 million to implement the San Joaquin River Restoration Settlement, on top of the \$250 million in federal funding that was originally authorized under the San Joaquin River Restoration Settlement Act of 2009 (plus funding to be paid by Friant Division contractors and the State). The settlement agreement, reached in 2006 between the U.S. Departments of the Interior and Commerce, the Natural Resources Defense Council, and the Friant Division contractors, sets terms to further the dual goals of restoring and maintaining the fish populations in the San Joaquin River below Friant Dam, and minimizing or avoiding any resulting adverse water supply impacts to Friant Division contractors.

**Status:**

The bill was introduced in the House on December 4, 2019, and was referred to the Committee on Natural Resources.

**Proposed Amendment:**

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

1. Include "beneficiary pays" language to clarify who will be responsible for the 50-50 cost share of the canal repairs. The bill currently does not specify who will bear the cost.

**Importance to Valley Water:**

Repairing the Friant-Kern Canal is a worthy goal, helping to improve the reliability of conveyance of water throughout the Central Valley Project (CVP) system, which benefits Valley Water. The additional authorization for funding to implement the San Joaquin River Restoration Settlement Act would help relieve funding pressure for Delta-related activities (once funding is appropriated), helping to move the Delta Conveyance Project forward.

**Pros:**

- Funding to repair the Friant-Kern Canal would help improve the reliability of conveyance of water throughout the CVP system, benefitting Valley Water.
- Additional federal funding for implementing the San Joaquin River Restoration Settlement Act would, if appropriated, free up additional funding for Delta conveyance and other Delta-related activities.

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**Cons:**

- The bill does not currently specify who would be responsible for the 50-50 cost share of the repairs. The suggested amendment would address this concern.

**D. H.R. 5302 (McNerney) - Western Water Recycling and Drought Relief Act**

**Recommendation: Support and Amend**

**Priority Recommendation: 3**

This bill would amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize 12 recycled water projects in California and Hawaii, including several 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.

**Status:**

H.R. 5302 was introduced in the House on December 4, 2019, and was referred to the Committee on Natural Resources. Representative Jimmy Panetta (CA-20) is a cosponsor.

**Proposed Amendment:**

In order to better promote the interests of Santa Clara County residents, Valley Water recommends the following amendment to the bill:

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.

**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 in order 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 in order 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.

**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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