



Santa Clara Valley Water District

File No.: 20-0725

Agenda Date: 9/8/2020

Item No.: 3.2.

BOARD AGENDA MEMORANDUM

SUBJECT:

Adopt Recommended Positions on Federal Legislation: S. 4188 (Harris) Water for Tomorrow Act; H.R. 7575 (DeFazio) Water Resources Development Act; S. 4308 (Sinema) A Bill to Amend the Social Security Act to Include Special Districts in the Coronavirus Relief Fund, to Direct the Secretary to Include Special Districts as an Eligible Issuer Under the Municipal Liquidity Facility, and for Other Purposes; S. 2596 (Duckworth) Voluntary Water Partnership for Distressed Communities Act of 2019; S. 4530 (Feinstein) / H.R. 8041 (Harder) Snow Water Supply Forecasting Program Authorization Act; and Other Legislation That May Require Urgent Consideration for a Position by the Board.

RECOMMENDATION:

- A. Adopt a position of "Support and Amend" on S. 4188 (Harris) Water for Tomorrow Act;
- B. Adopt a position of "Support and Amend" on H.R. 7575 (DeFazio) Water Resources Development Act of 2020;
- C. Adopt a position of "Support" on S. 4308 (Sinema) A bill to amend the Social Security Act to include special districts in the coronavirus relief fund, to direct the Secretary to include special districts as an eligible issuer under the Municipal Liquidity Facility, and for other purposes;
- D. Adopt a position of "Support" on S. 2596 (Duckworth) Voluntary Water Partnership for Distressed Communities Act of 2019; and
- E. Adopt a position of "Support" on S. 4530 (Feinstein) / H.R. 8041 (Harder) Snow Water Supply Forecasting Program Authorization Act.

SUMMARY:

A. S. 4188 (Harris) Water for Tomorrow Act

Recommendation: Support and Amend

Priority Recommendation: 2

This bill would authorize \$3 billion in new water infrastructure programs to improve drought preparedness, enhance ecosystem protection, and help ensure that disadvantaged communities have access to safe, clean drinking water. The bill would authorize:

- \$500 million for water recycling projects under the Title XVI WIIN competitive grant program, which was originally included in Congresswoman Grace Napolitano's Water Recycling Investment and Improvement Act (H.R. 1162), which the Board supported in 2019 and has supported in prior years;

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- A new Reclamation Infrastructure Finance and Innovation Pilot Program modeled after the Water Infrastructure Finance and Innovation Act (WIFIA) Program to finance large wastewater, drinking water, and other water resources infrastructure projects;
 - Drought planning for critically important fisheries;
 - New funding for watershed health and aquatic ecosystem restoration projects; and
 - New funding for drinking water assistance to disadvantaged communities.

The bill combines Senator Harris's Water Justice Act (S. 2466), on which the Board adopted a position of "Support and Amend" in November 2019, and Congressman Jared Huffman's Furthering Underutilized Technologies and Unleashing Responsible Expenditures for Drought Resiliency (FUTURE Drought Resiliency) Act (H.R. XXXX), on which the Board adopted a position of "Support and Amend" in June 2020.

Proposed Amendments:

In order to better serve the interests of Valley Water, staff recommends the following amendments:

1. Include language to make dam safety improvement projects eligible for funding under this bill if the project serves a reservoir used for drinking water supply. Including this language would enable Valley Water projects like the Anderson Dam Seismic Retrofit Project to be eligible for funding under this bill.
2. Under the Reclamation Water Infrastructure Finance and Innovation Act (RIFIA) Program:
 - a. Strike the provision in current law that automatically imposes a senior lien - a lien that has repayment priority over other liens - on pledged revenues and/or assets in the event of default leading to bankruptcy, insolvency, or liquidation. At a minimum, Valley Water suggests including a clause to enable a waiver under certain circumstances. Existing financing rules prohibit Valley Water from providing a senior lien; thus, borrowing under the RIFIA Program could create a legal problem if Valley Water were to default on the loan.
 - b. Strike the eligibility requirement that a project must provide net ecosystem benefits in excess of required environmental mitigation measures or compliance obligations. Without removing this requirement, Valley Water projects that meet mitigation requirements under current state and federal law, but that do not produce an excess of ecosystem benefits, would not be able to access this funding.

Status:

The bill was introduced in the Senate on July 2, 2020, and was referred to the Committee on Energy and Natural Resources. The Energy and Natural Resources Subcommittee on Water and Power held a hearing on the bill on July 22, 2020.

Importance to Valley Water:

This bill would authorize new programs and funding to improve Western water infrastructure and improve drinking water for disadvantaged communities, increasing our drought resilience and helping to ensure that there is affordable drinking water for all. The bill also includes recycled water funding,

as well as a new RIFIA program - all of which Valley Water could potentially access to fund our water supply projects. Staff recommends supporting the bill and proposing the aforementioned amendments to improve its value to the people and environment in Santa Clara County.

Pros:

- Aligns with Valley Water's efforts to provide safe, clean water to all.
- The RIFIA Program would provide a new program for low-interest loans solely for large water supply projects in the West, which could fund certain Valley Water capital projects.

Cons:

- Without the proposed amendments, Valley Water projects could be ineligible to receive some of the new funding.

B. H.R. 7575 (DeFazio) Water Resources Development Act of 2020;**Recommendation: Support and Amend****Priority Recommendation: 2**

This Water Resources Development Act (WRDA) would authorize \$8.6 billion in water infrastructure projects throughout the nation and make important changes to several U.S. Army Corps of Engineers (USACE) policies. Key highlights include:

- States that USACE should consider and evaluate projects with multiple benefits, when requested by the non-federal sponsor;
- Allows USACE to explore a project that benefits economically disadvantaged communities, if the project is technically sound and environmentally beneficial, by working with the non-federal sponsor to modify the project such that it would be in the federal interest;
- Makes non-federal dams with small hydroelectric facilities (1.5 megawatts or less) eligible for grant funding under the Federal Emergency Management Agency's (FEMA) Rehabilitation of High-Hazard Potential Dams Program;
- Authorizes a pilot program for 10 flood protection studies in disadvantaged communities;
- Authorizes USACE to study, design, and construct flood protection projects in communities that have experienced repeated flooding events;
- Directs USACE to create an inventory of water resources development projects that are, or have the potential to be, contaminated with PFAS;
- Allows USACE to provide technical assistance to non-federal interests for resiliency planning, with priority given to economically disadvantaged communities; and
- Sets up a process for deauthorization of USACE projects that have not received federal funding in the previous ten fiscal years.

This is the House version of WRDA; the Senate has introduced its own version, the America's Water

Infrastructure Act of 2020 (S. 3591), on which the Board adopted a position of “Support and Amend” in May 2020.

Status:

The bill was introduced in the House on July 13, 2020, reported favorably by the Committee on Transportation and Infrastructure on July 24, and passed the House by voice vote on July 29, 2020.

Proposed Amendments:

In order to better serve Valley Water’s interests, staff recommends the following amendments:

- 1. Water Infrastructure and Workforce Investment.** This grant program created under the last water resources development bill provides critical resources and federal partnership to help train new and incumbent water utility workers to ensure that we have skilled workers to meet our nation’s water infrastructure needs. Staff supports reauthorizing this program but recommends extending the authorization to Fiscal Year 2030 and increasing the funding authorization to \$10 million per year. This would align with the Board-approved appropriations requests for Fiscal Year 2021 and partner requests for the program. H.R. 7575 currently does not include any workforce investment provisions.
- 2. Reclamation Title.** As currently drafted, the bill primarily covers flood protection, leaving out the water supply side of water resources policy. Staff recommends amending the bill to include a Reclamation title, making it more comprehensive and truly responsive to all water resources and infrastructure needs. Staff recommends including the following in any Reclamation title:
 - a. Repealing a provision under the CALFED Reauthorization Act of 2004 that prohibited federal participation in the construction of an expanded Pacheco Reservoir. While the origins and intent of the original language is unclear, repealing the provision altogether will remove any potential barriers to using federal funds for construction of the Pacheco Reservoir Expansion Project.
 - b. Authorizing additional funding for water storage projects.

Importance to Valley Water:

WRDA legislation has produced important new USACE programs and policies, benefiting Valley Water projects over the years. WRDA 2020 is no different, as it would implement several significant policy changes for which staff has been advocating that would benefit Valley Water projects and priorities. Provisions most relevant to Valley Water include:

- Encourages USACE to pursue multi-purpose projects if requested by the local community. Multi-benefit projects can include dynamic components like ecosystem restoration that are important to local communities. Valley Water staff advocated for inclusion of this provision, as it could move the Upper Penitencia Creek Flood Protection Project forward.
- Allows high-hazard dams with hydroelectric facilities of 1.5 megawatts or less to access federal rehabilitation and repair funding. Valley Water staff advocated for inclusion of this provision so that the Anderson Dam Seismic Retrofit Project could be eligible for the funding.
- Grants USACE flexibility to pursue projects that consider local and regional benefits, as well

as those that serve underserved communities or are in economically distressed areas. This would help ensure that USACE can invest in more underserved communities, such as the Coyote Creek Flood Protection Project reaches in the Rock Springs area, and allows for better assessing a project's true value to the community it serves.

- Expands access to USACE's Continuing Authorities Program (CAP) for disadvantaged communities, as well as increasing available funding. This could help the San Francisquito Creek Project, which will likely rely on CAP funding to complete the Upstream of 101 portion of the project.
- Creates a new San Francisco Bay Restoration grant program at EPA for water quality improvement in the Bay and creates a new San Francisco Bay Program Office under EPA's National Estuary Program. The bill authorizes \$25 million for each of fiscal years 2021 and 2022 for the grant program. This provision was introduced in H.R. 1132, the San Francisco Bay Restoration Act, on which the Board previously took a position of Support.

Pros:

- Authorizes several USACE policy updates and programs that could help expedite and fund numerous Valley Water projects.
- Includes several provisions that could directly benefit Valley Water, including language to promote multi-purpose projects and expanded eligibility for FEMA's Rehabilitation of High Hazard Potential Dams program.

Cons:

- Does not currently include a Reclamation title. As such, it is limited only to flood protection and water resources-related policy, not water supply policy.

C. S. 4308 (Sinema) A bill to amend the Social Security Act to include special districts in the coronavirus relief fund, to direct the Secretary to include special districts as an eligible issuer under the Municipal Liquidity Facility, and for other purposes.

Recommendation: Support**Priority Recommendation: 2**

This bill would make special districts eligible for future federal assistance that Congress provides in response to the COVID-19 pandemic. Under two previously-passed bills, the Families First Coronavirus Relief Act (H.R. 6201) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act (H.R. 748), special districts were specifically excluded from receiving direct federal assistance for which states and local governments were eligible. This bill would make special districts eligible for any future federal assistance related to COVID-19 that is provided to state, county, and local governments. The bill would also make special districts eligible for access to the Municipal Liquidity Facility (MLF), which the Federal Reserve created as a tool to use funds from the CARES Act to purchase bonds and revenue anticipation notes to support states and some local governments during the pandemic. This bill would make special districts eligible for that support.

This bill is similar to H.R. 7073 (Garamendi) Special Districts Provide Essential Services Act, which the Board voted to support on July 28, 2020.

Status:

This bill was introduced in the Senate on July 23, 2020, and was referred to the Committee on Finance. Senators Kamala Harris (D-CA) and Dianne Feinstein (D-CA) are cosponsors.

Importance to Valley Water:

This bill would make special districts, such as Valley Water, eligible for any future federal assistance related to COVID-19. While Valley Water has had to make tough financial decisions in light of the pandemic, including delaying non-essential but nonetheless important projects and programs to future years, Valley Water has been in a better financial position than some other jurisdictions. Nevertheless, financial assistance for Valley Water would help bring much-needed economic relief and stimulus to our region.

Pros:

- The bill would provide a source of new funding that could help Valley Water mitigate additional COVID-related financial impacts and bring economic assistance to our region.

Cons:

- None identified at this time.

D. S. 2596 (Duckworth) Voluntary Water Partnership for Distressed Communities Act of 2019**Recommendation: Support****Priority Recommendation: 3**

This bill would amend the Safe Drinking Water Act (SDWA) to authorize a community water system that is non-compliant with the Act to enter into a voluntary partnership with a neighboring, compliant water system to pull the distressed system into compliance. The bill would prevent a community water system from being penalized for non-compliance with the SDWA, for 180 days, if the entity is working to enter into a partnership with a compliant system. The partnership would be required to comply with the SDWA within three years or a date set by the State or the Environmental Protection Agency. The bill would also limit liability for the partnering utility, which incentivizes those agencies who may be afraid to enter into a partnership with a distressed utility.

Status:

The bill was introduced in the Senate on October 25, 2019, and was referred to the Committee on Environment and Public Works. Senator Dianne Feinstein (D-CA) is a cosponsor.

Importance to Valley Water:

Many water systems across the nation are unable to stay in compliance with the SDWA due to aging infrastructure and rising costs, among other factors, and many of those affected are low-income communities of color. Traditional enforcement of the SDWA only drains financial resources, further exacerbating the existing problems and putting communities at further public risk. This bill would give these systems an alternative that would allow them to come into compliance with the SDWA sooner, thereby meeting their obligations to provide safe, clean drinking water to their communities.

Providing safe, clean drinking water for all residents aligns with Valley Water's mission. Under Executive Limitation 1.1, a Board Appointed Officer should "Promote practices, principles, and programs that support Environmental Justice for Disadvantaged Communities, and shall consider Environmental Justice objectives where appropriate and possible." This bill would help ensure that Americans in disadvantaged communities, which suffer from a disproportionate lack of investment, have greater access to quality drinking water - something that all Americans deserve - and therefore also aligns with those Board-adopted Environmental Justice policies.

Pros:

- Would allow water systems that are out of compliance with the SDWA - many of which are small, rural, and in disadvantaged communities - to access technical assistance and funding by partnering with nearby compliant systems, thereby allowing those distressed systems to come into compliance more quickly than through traditional SDWA enforcement.
- The partnerships would be voluntary, not mandatory.
- Limits liability for the compliant water systems, which has typically been a barrier to creating these types of partnerships.

Cons:

- Could disincentivize failing community water systems from coming into compliance with the SDWA, as they would have the option of partnering with nearby compliant water systems and avoiding SDWA fines.
- Would not hold distressed community water systems accountable for failing to comply with the SDWA.

E. S. 4530 (Feinstein) / H.R. 8041 (Harder) Snow Water Supply Forecasting Program Authorization Act**Recommendation: Support****Priority Recommendation: 3**

This bill would establish an airborne snow observatory (ASO) and measurement program at the U.S. Department of the Interior to improve snowpack measuring and water supply forecasting. In December 2019, the National Aeronautics and Space Administration (NASA) ended its ASO program that measured snowpack using airplane-mounted light detection instrument, known as LiDAR. This bill would replace the NASA program with a new program at Interior to measure snowpack and improve water supply management. The bill would authorize \$15 million for fiscal years 2022-2026.

Status:

S. 4530 was introduced in the Senate on August 13, 2020, and was referred to the Committee on Energy and Natural Resources. The bill is cosponsored by Senator Kamala Harris (D-CA). H.R. 8041 was introduced in the House on August 14, 2020, and was referred to the Committee on Natural Resources.

Importance to Valley Water:

Accurate snowpack measurements and weather forecasting are essential to sound water supply

management. Without accurate measurements and forecasting, water managers could unnecessarily release water from reservoirs or pump groundwater, affecting supply allocations and wasting millions of taxpayer dollars. Conventional measurements alone are far less accurate than ASO technology; when combined, however, accuracy approaches 100 percent. This kind of accuracy is critical for making smart water supply decisions throughout the West, including the Bay Area.

Pros:

- Would ensure continued federal investment in the best available technology for snowpack measurement and water supply forecasting, facilitating smart water supply management.

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:

Don Rocha, 408-630-2338