



# Santa Clara Valley Water District

File No.: 21-0793

Agenda Date: 7/13/2021

Item No.: \*3.1.

## BOARD AGENDA MEMORANDUM

### SUBJECT:

Approve Recommended Positions on Federal Legislation: H.R. 3404 (Huffman) - the Furthering Underutilized Technologies and Unleashing Responsible Expenditures for Western Water Infrastructure and Drought Resiliency Act (FUTURE Western Water Infrastructure and Drought Resiliency Act); H.R. 3293 (Blunt Rochester) - Low-Income Water Customer Assistance Programs Act of 2021; H.R. 1512 (Pallone) - Climate Leadership and Environmental Action for our Nation's Future Act (CLEAN Future Act); H.R. 2337 (Neal) - Public Servants Protection and Fairness Act of 2021; \*S. 2185 (Barrasso) - Western Water Infrastructure Act of 2021; \*S. 872 (Duckworth) - Environmental Justice for All 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 H.R. 3404 (Huffman) - Furthering Underutilized Technologies and Unleashing Responsible Expenditures for Western Water Infrastructure and Drought Resiliency Act (FUTURE Western Water Infrastructure and Drought Resiliency Act);
- B. Adopt a position of "Support and Amend" on H.R. 3293 (Blunt Rochester) - Low-Income Water Customer Assistance Programs Act of 2021;
- C. Adopt a position of "Support" on H.R. 1512 (Pallone) - Climate Leadership and Environmental Action for our Nation's Future Act (CLEAN Future Act);
- D. Adopt a position of "Support" on H.R. 2337 (Neal) - Public Servants Protection and Fairness Act of 2021;
- \*E. Adopt a position of "Support and Amend" on S. 2185 (Barrasso) - Western Water Infrastructure Act of 2021; and
- \*F. Adopt a position of "Support" on S. 872 (Duckworth) - Environmental Justice for All Act.

### SUMMARY:

**A. H.R. 3404 (Huffman) - Furthering Underutilized Technologies and Unleashing Responsible Expenditures for Western Water Infrastructure and Drought Resiliency Act (FUTURE Western Water Infrastructure and Drought Resiliency Act)**

**Recommendation: Support and Amend**

**Priority Recommendation: 2**

This is a comprehensive water infrastructure bill that would authorize a significant investment in new water storage, water recycling, and desalination projects; ecosystem restoration; and improved data

monitoring and weather forecasting technology.

The bill would make significant investment in these areas, including the following:

- Authorizing \$750 million in new funding for water storage projects. This represents a significant increase over the \$335 million authorized under the Water Infrastructure Improvements for the Nation (WIIN) Act, funding that has already been appropriated.
- Preserving the WIIN Act process for projects that are already going through that process, including “State-led” projects like the Pacheco Reservoir Expansion Project. The bill would also strike the WIIN Act deadline for feasibility determination (January 1, 2021).
- Reauthorizing the California Bay-Delta Restoration Act (CALFED) and repeals language that expressly prohibits the use of funding for the construction of the Pacheco Project.
- Authorizing \$500 million for water recycling projects under the Title XVI WIIN competitive grant program and increase the per-project cap from \$20 million to \$30 million. These are provisions in the Water Recycling Investment and Improvement Act (H.R. 1015), which the Board voted to support in March 2021. The Board has also adopted positions of “Support” on previous versions of that bill.
- Establishing a Bureau of Reclamation Infrastructure Fund at the United States Treasury to provide \$300 million in annual funding for fiscal years 2031-2061 with revenues that would otherwise be deposited into the Reclamation Fund. In addition to existing federal investments, each year an additional \$300 million would be provided from the Infrastructure Fund for the following:
  - \$100 million for Title XVI water recycling projects;
  - \$100 million for WaterSMART Water and Energy Efficiency grants; and
  - \$100 million for Reclamation dam safety projects.
- Authorizing \$260 million in grant funding for innovative desalination projects.
- Authorizing \$100 million for a new Bureau of Reclamation grant program to aid disadvantaged communities facing a lack of adequate clean drinking water.
- Investing in water workforce development, including job training and education.
- Investing in improved technology, including establishing an expanded “X-Prize” for the development of new water technologies and improving federal use of modern weather forecasting technology.
- Expanding the income tax exclusion for homeowners receiving rebates from water utilities for the purchase and/or installation of water conservation systems.

The Board supported a previous version of the FUTURE Western Water Infrastructure and Drought Resiliency Act when it was introduced in 2020.

**Status:**

The bill was introduced in the House on May 20, 2021, and was referred to the Committee on Natural Resources, as well as the Committees on Science, Space, and Technology; Ways and Means; Transportation and Infrastructure; and Energy and Commerce.

**Proposed Amendments:**

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

1. Rehabilitating our nation's highest risk dams, the vast majority of which are non-federal, should be an essential component of any water infrastructure legislation. More than half of our nation's dams are currently categorized as "high risk" according to the U.S. Army Corps of Engineers, yet federal funding for their repair is extremely limited. H.R. 3404 includes a provision to establish an Infrastructure Fund at Reclamation and require that \$100 million of the \$300 million available per year from the Fund go toward preserving the structural integrity of Bureau of Reclamation dams. Staff recommends amending the language to allow for funding in the Infrastructure Fund to be used to repair or upgrade non-federal dams, including dams that contain a small amount of hydroelectric power generation (e.g., under 1.5 megawatts). This change could allow Anderson Dam and certain other non-federal dams to become eligible for critical infrastructure funding.

**Importance to Valley Water:**

H.R. 3404 includes many provisions of interest to Valley Water, including investments in new storage and water recycling projects. These provisions would replace those from the WIIN Act that will expire in December 2021. Without a replacement, there would be no path to federal funding for new storage projects like the Pacheco Reservoir Expansion Project, and there would be no authorized competitive grant program for water recycling projects that Valley Water could access. The bill also includes an additional new investment in these and other projects through the Reclamation Infrastructure Fund, ensuring that funds that would otherwise sit unspent in the federal treasury would be set aside for in-demand projects that promote water recycling, water conservation, and water efficiency. These are all programs that Valley Water has utilized and could continue to access to fund its projects in the future. Finally, the bill includes significant investments in habitat restoration, water workforce development, and improved technology, all of which are important endeavors that Valley Water has supported in the past and are in line with Board-approved legislative guiding principles.

**Pros:**

- The bill would make a significant investment in water infrastructure nationwide, including several programs that Valley Water could access to fund its storage, water recycling, and water conservation and efficiency projects.
- The bill includes provisions for which staff directly advocated, such as the grandfather provision for water storage projects that are already moving through the WIIN Act feasibility process, and the language to repeal the prohibition in the CALFED law against expending funds for construction of an expanded Pacheco Reservoir.

**Cons:**

- None identified at this time.

**B. H.R. 3293 (Blunt Rochester) - Low-Income Water Customer Assistance Programs Act of 2021****Recommendation: Support and Amend****Priority: 2**

This bill would establish at the Environmental Protection Agency (EPA) two grant programs for states

or municipalities that own community water systems to secure one-year awards for providing assistance to low-income water, wastewater, and stormwater customers. The EPA would develop, in consultation with stakeholders, the parameters of such programs, which could include (but is not limited to) the following types of assistance:

- Direct financial assistance;
- A lifeline rate;
- Bill discounting;
- Special hardship provisions;
- A percentage-of-income payment plan; or
- Water efficiency assistance, including subsidizing the cost of installing water-efficient fixtures or leak repair work at a residence.

The EPA will prioritize awards to certain community water systems, including those that are subject to a consent decree relating to Clean Water Act compliance, those in which customers have seen rate increases of 30 percent or more during the prior three years, or those that can provide matching funds. The EPA would also be charged with conducting a nationwide low-income water customer needs assessment to determine the prevalence of low-income households that do not have access to affordable drinking water, affordable or onsite wastewater services, or affordable municipal stormwater services.

**Status:**

The bill was introduced in the House on May 18, 2021, and was referred to the Committee on Transportation and Infrastructure, in addition to the Committee on Energy and Commerce and the Committee on Ways and Means. The Committee on Energy and Commerce held a hearing on the bill on May 25, 2021.

**Proposed Amendment:**

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

1. As the bill is currently written, special districts would not be eligible to receive assistance under these new grant programs. Staff recommends amending the bill to make special districts eligible to receive these funds, either to provide direct assistance to ratepayers or to facilitate payments through a third party. This would allow Valley Water to secure federal funding for these important services.

**Importance to Valley Water:**

As residents of Santa Clara County continue to face financial hardship from the COVID-19 pandemic, which is now compounded by another West-wide drought, Valley Water is looking for ways to provide financial assistance to low-income customers. This bill would establish new grant programs at EPA to provide this assistance.

**Pros:**

- The bill would create new programs to provide federal assistance to low-income water customers nationwide, many of whom have been hit hardest by the COVID-19 pandemic.

**Cons:**

- As currently written, the bill does not include Valley Water or other special districts as eligible grant recipients. The staff-recommended amendment would resolve this.

**C. H.R. 1512 (Pallone) - Climate Leadership and Environmental Action for our Nation's Future Act (CLEAN Future Act)**

**Recommended Position: Support**

**Priority Recommendation: 2**

This comprehensive climate and green energy bill would invest more than \$565 billion in clean energy development, green transportation, clean drinking water, workforce transition programs, and environmental justice efforts. The bill would set two national greenhouse gas pollution targets: reaching a 50% reduction in greenhouse gases from 2005 levels by 2030 and reaching a 100% clean economy with net zero greenhouse gas pollution by 2050. For water, the bill would invest more than \$92 billion to improve drinking water quality and treat PFAS. Relevant provisions of the bill include:

- Authorizing nearly \$53 billion over fiscal years (FY) 2022-2031 for the Drinking Water State Revolving Fund.
- Authorizing \$35.2 billion over FYs 2022-2031 for drinking water lead service line replacement through the Drinking Water State Revolving Fund, with priority given to water systems that serve disadvantaged and environmental justice communities.
- Requiring EPA to establish a grant program for certain water systems to pay for capital costs associated with the implementation of eligible PFAS treatment technologies. The bill would authorize no more than \$500 million for each of FYs 2022-2031 for these grants.
- Requiring EPA to publish a list of treatment technologies that the agency determines are effective at removing all detectable amounts of PFAS from drinking water.
- Requiring that achieving environmental justice is built into the mission of every federal agency, as well as empowering environmental justice communities to participate in policy decision-making that impacts their communities.

**Status:**

The bill was introduced in the House on March 2, 2021, and was referred to the Committee on Energy and Commerce, in addition to the Committees on Transportation and Infrastructure; Oversight and Reform; Education and Labor; Ways and Means; Natural Resources; Armed Services; Foreign Affairs; Science, Space, and Technology; Intelligence; and Financial Services.

**Importance to Valley Water:**

This bill would authorize a much-needed federal investment in infrastructure, including drinking water infrastructure. This includes funding for programs that could benefit Valley Water and/or our retailers, including reauthorizing the Drinking Water State Revolving Loan Fund and providing grants to implement PFAS treatment technologies. These are important programs that help water systems improve drinking water quality nationwide and have particular value for systems that serve rural and

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disadvantaged communities where access to clean drinking water is often a concern. The bill would also prioritize environmental justice across all federal agencies, ensuring that becomes part of all agency missions and requiring that communities particularly impacted by air and water pollution are involved in the decision-making process for implementing relevant policies.

**Pros:**

- The bill would provide a significant, much-needed investment of federal funding to address drinking water infrastructure needs across the country.
- The bill could provide a source of funding for Valley Water and/or its retailers to cover capital costs associated with implementing PFAS treatment technologies.
- The bill aligns with Valley Water's Executive Limitation 1.1 on environmental justice, as well as the Board-adopted 2021 Legislative Guiding Principles to support equal access for to clean, safe drinking water, and to fund PFAS monitoring and treatment.

**Cons:**

- None identified at this time.

**D. H.R. 2337 (Neal) - Public Servants Protection and Fairness Act of 2021****Recommendation: Support****Priority Recommendation: 3**

This bill would amend the Social Security Act to adjust the amount of Social Security income that certain public sector employees receive if they also receive other public benefits, such as pensions from a local or state government. The Windfall Elimination Provision (WEP) of the Social Security Act was designed to reduce the unintended advantage of an employee having earned some income under Social Security and other income that is covered by other benefits. To be exempt from the penalty, the employee must have earned a "substantial amount" under Social Security, which in 2021 is \$26,550 per year (as determined by the Social Security Administration). Unless the employee earned that substantial amount or more under Social Security for 30 or more years, the WEP applies and Social Security benefits are reduced. This reduction is based on a standard formula, and the maximum yearly reduction (in 2021 dollars) is roughly \$500. This bill would implement a new Public Servant Protection (PSP) formula to calculate an employee's benefits based on the proportion of lifetime earnings covered by Social Security. The bill would also guarantee that future retirees always get the higher benefit between the WEP and the PSP formulas. These changes would benefit roughly two million retirees, primarily from eight states, including California.

**Status:**

The bill was introduced in the House on April 1, 2021, and was referred to the Committee on Ways and Means. Representatives Zoe Lofgren (CA-19), Anna Eshoo (CA-18), Ro Khanna (CA-17), and Jimmy Panetta (CA-20) are all original cosponsors.

**Importance to Valley Water:**

Many Valley Water employees have earned income under Social Security in previous work that does not reach the "substantial amount" threshold and will be subject to the WEP upon retirement. These

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employees paid into Social Security during their previous employment and should receive benefits in proportion to their service.

**Pros:**

- The bill would ensure that Valley Water employees and other public employees receive fair Social Security and disability benefits.
- Since Valley Water does not withhold Social Security taxes, changing the WEP to be more equitable would help the agency retain workers who have earned under Social Security or may want to work at covered employers instead.

**Cons:**

- None identified at this time.

**\*E. S. 2185 (Barrasso) - Western Water Infrastructure Act of 2021****Recommendation: Support and Amend****Priority Recommendation: 2**

This is a comprehensive water infrastructure bill that would reauthorize several important water infrastructure programs established under the Water Infrastructure Improvements for the Nation (WIIN) Act that are set to expire in December 2021, including water storage, water recycling, and desalination projects. The bill would authorize significant increases in funding for these programs to better meet the financial demand, particularly as drought conditions worsen in the West and water managers turn to alternative sources of supply. The bill would also authorize funds to repair aging water infrastructure facilities owned by the Bureau of Reclamation.

The bill would do the following:

- Reauthorize the water storage, recycled water, and desalination provisions of the WIIN Act through 2026.
- Authorize \$1.6 billion for surface and groundwater storage projects.
- Authorize \$375 million for water recycling projects and \$125 million for desalination projects.
- Grandfather in water storage, recycled water, and desalination projects that have already begun feasibility-level studies as of January 1, 2021.
- Authorizes \$1 billion for water management improvement.
- Authorizes \$50 million for enhanced inspections of infrastructure constructed by Reclamation at least 50 years ago. "Enhanced inspections" are defined as inspections that use current or innovative technology, including Light Detection and Ranging (known as LiDAR), ground penetrating radar, or subsurface imaging that can detect whether a facility is structurally unsound or at risk of failure.
- Require the implementation of sediment management plans for federally-owned reservoirs to help prevent sediment from reducing water storage capacity.
- Authorizes \$5 billion through fiscal year 2026 to eliminate the maintenance backlog at Reclamation and support the rehabilitation or replacement of any Reclamation dam deemed a public health and safety risk.

**Status:**

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The bill was introduced in the Senate on June 23, 2021, and was referred to the Committee on Energy and Natural Resources.

**Proposed Amendment:**

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

1. Insert language to amend the Calfed Bay Delta Authorization Act (Public Law 108-361) to remove the prohibition on use of federal funding for expanding Pacheco Reservoir. Expanding Pacheco Reservoir is critical for providing emergency water storage for the people of Santa Clara County, and removing this barrier to federal support aligns with the purpose of S. 2185.

**Importance to Valley Water:**

S. 2185 includes many provisions of interest to Valley Water, including investments in new storage and water recycling projects. These provisions would replace those from the WIIN Act that will expire in December 2021. Without a replacement, there would be no path to federal funding for new storage projects like the Pacheco Reservoir Expansion Project, and there would be no authorized competitive grant program for water recycling projects that Valley Water could access. The bill also includes a grandfather provision for storage projects that have already begun feasibility-level studies, such as the Pacheco Project, Sites Reservoir Project, and others. The bill would also authorize critical investments in assessing the structural integrity of Reclamation infrastructure facilities and reducing the maintenance backlog at Reclamation. As a Central Valley Project contractor, Valley Water depends on the integrity and reliable operation of Reclamation-owned facilities. To that end, these investments are important for Valley Water's operations.

**Pros:**

- The bill would make a significant investment in water infrastructure nationwide, including several programs that Valley Water could access to fund its storage and water recycling projects.
- The bill would grandfather in water storage projects that are already moving through the WIIN Act feasibility process, preserving a path to federal funding for the Pacheco Reservoir Expansion Project.
- The bill would authorized enhanced inspections of aging Reclamation infrastructure facilities and invest in eliminating the Reclamation maintenance backlog.
- With the proposed amendment, the bill would remove a barrier in current law to using federal funds for the construction of an expanded Pacheco Reservoir.

**Cons:**

- None identified at this time.

**\*F. S. 872 (Duckworth) - Environmental Justice for All Act****Recommendation: Support****Priority Recommendation: 3**

This is a comprehensive environmental justice bill that would take several steps to address environmental injustices and affirm the civil rights of individuals in these communities. Highlights of the bill include:



- Requires that achieving environmental justice is built into the mission of every federal agency;
- Empowers environmental justice communities to participate in federal policy decision-making that impacts their communities;
- Creates a White House Environmental Justice Interagency Council to coordinate a government-wide effort to identify the disproportionate health and environmental impacts of federal policies and programs;
- Creates programs to expand access to parks and outdoor spaces; and
- Authorizes environmental justice programs to fund research and projects that address disproportionate environmental and public health impacts on low-income and communities of color.

The bill would also require consideration of cumulative impacts and persistent violations in permitting decisions under the Clean Water Act and the Clean Air Act. Under current law, an agency is not required to take into account the cumulative pollutant levels in a particular area when deciding whether to grant a permit for an individual facility. This has resulted in a high concentration of pollution in certain areas, which are often comprised of low-income communities of color.

The Board has supported similar environmental justice bills during previous Congresses.

**Status:**

The bill was introduced in the Senate on March 18, 2021, and was referred to the Committee on Environment and Public Works. Senator Alex Padilla (D-CA) is an original cosponsor.

**Importance to Valley Water:**

This bill aligns with Valley Water's mission and general principles of providing Silicon Valley with safe, clean water for a healthy life, environment, and economy. Furthermore, the bill aligns with Executive Limitation 1.1, which states that a Board Appointed Officer shall: "Promote practices, principles, and programs that support Environmental Justice for Disadvantaged Communities, and shall consider Environmental Justice objectives where appropriate." Providing access to safe, clean water for all residents in Santa Clara County, regardless of race or income level, is critical to ensuring environmental justice in our own community.

**Pros:**

- The bill aligns with Valley Water's Executive Limitation 1.1 on environmental justice.

**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:**

- \*Original Board Agenda Memo
- \*Supplemental Board Agenda Memo.

**UNCLASSIFIED MANAGER:**

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