



MEMORANDUM

TO: Water Resources Committee and Alternates, Board of Directors and Alternates

FROM: Scott Petersen, Water Policy Director

DATE: March 1, 2021

RE: Water Resources Committee to Consider Recommendation to Board of Directors to Adopt Staff Recommendation for Positions on Legislation

Recommendation

Recommend to the Board of Directors to adopt the following positions on federal legislation:

- Adopt a position of "Support" on H.R. 644 (Calvert), REBUILD Act
- Adopt a position of "Support" on H.R. 737 (Valadao), RENEW WIIN Act
- Adopt a position of "Support" on H.R. 866 (Calvert), FISH Act
- Adopt a position of "Support" on S.B. 559 (Hurtado), Department of Water Resources: water conveyance systems: Canal Conveyance Capacity Restoration Fund.

Summary

H.R. 644 (Calvert) – REBUILD Act

RECOMMENDATION: SUPPORT

**OBJECTIVE: Improve Central Valley Project Water Supply for Member Agencies
Improve Water Infrastructure Affecting Authority Member Agencies**

Summary

This bill authorizes (1) the assignment to states of federal environmental review responsibilities under relevant federal environmental laws for projects funded by, carried out by, or subject to approval by federal agencies; and (2) states to assume all or part of those responsibilities.

Each responsible federal official who is authorized to assign such responsibility must promulgate regulations that establish requirements relating to information required to be contained in state applications to assume those responsibilities.

An official may approve an application only if (1) public notice requirements have been met, (2) the state has the capability to assume the responsibilities, and (3) the head of the state agency having

primary jurisdiction over the projects enters into a written agreement with an official to assume the responsibilities and to maintain the financial resources necessary to carry them out.

The officials must audit state compliance with federal laws for which responsibilities are assumed. The officials may terminate the responsibilities assigned to states after providing notice to states of any noncompliance and an opportunity to take corrective action.

Status

H.R. 644 was introduced in the House of Representatives on February 1, 2021 and has been referred to the House Natural Resources Committee.

Importance to the Authority

This legislation would extend the National Environmental Policy Act delegation authority granted under the FFAST Act to other state agencies, leading to more streamlined environmental review processes for projects that require both CEQA and NEPA analysis. This streamlined review could expedite project delivery without negatively impacting public information and notice requirements and reduce the costs associated with environmental permitting of project development and delivery.

Pros:

- Joint CEQA/NEPA review by California state agencies could reduce project development costs and expedite project delivery with little to no impact on public information requirements and environmental impacts.

Cons:

- None identified at this time.

Committee Options

Option 1

Recommend that the Board authorize the Executive Director and delegated staff to express support to H.R. 644 (Calvert), REBUILD Act

Fiscal Impact: Unknown. May result in decreased environmental permitting costs and expedited project delivery timelines for projects that currently require joint CEQA/NEPA review by state and federal agencies by granting authority for a joint analysis by a single agency to be completed.

Business Analysis: Reduce costs associated with project delivery for member agencies.

Option 2

Take no action.

Fiscal Impact: Unknown. SLDMWA may be subject to additional costs associated with water supply, storage or conveyance infrastructure.

Business Analysis: SLDMWA and its member agencies could be subject to additional costs resulting from environmental permitting for project delivery.

H.R. 737 (Valadao) – RENEW WIIN Act

RECOMMENDATION: SUPPORT

**OBJECTIVE: Restore Central Valley Project Water Supply for Member Agencies
Improve Water Infrastructure Affecting Authority Member Agencies**

Summary

The bill would extend the authorities under the Water Infrastructure Improvements for the Nation Act of 2016 providing operational flexibility, drought relief, and other benefits to the State of California.

Status

H.R. 737 was introduced in the U.S. House of Representatives on February 2, 2021 and has been referred to the House Natural Resources Committee. Additional key cosponsors include the 10 Members of the California Republican Congressional delegation.

Importance to the Authority

The bill extends Subtitle J of the Water Infrastructure Improvements for the Nation (WIIN) Act of 2016, legislation that provides key operational provisions for the Central Valley Project and funding for water storage and conveyance projects, water recycling, desalination, and environmental restoration projects, and authorized the contract conversions and prepayment completed by many Authority member agencies. Importantly, the authorities provided by the WIIN Act expire at the end of this calendar year.

Pros:

- The legislation would extend beneficial provisions of the WIIN Act, including the water storage account funding, water recycling funding, and operations provisions, for 10 years. If enacted, the legislation would provide opportunities to continue to fund Authority and member agency projects, including the restoration of the conveyance capacity of the Delta-Mendota Canal and an expansion of San Luis Reservoir.

Cons:

- None identified at this time.

Committee Options

Option 1

Recommend that the Board authorize the Executive Director and delegated staff to express support to H.R. 737, Renew WIIN Act.

Fiscal Impact: Unknown. Federal funding provided through WIIN Act authorities could reduce member fees for key Authority projects and additional water supplies provided by operational provisions could increase year-to-year water supply reliability.

Business Analysis: Unknown.

Option 2

Take no action.

Fiscal Impact: Unknown. SLDMWA may be subject to lower federal funding for projects, reduced allocations or lost water supply resulting from expired authorities.

Business Analysis: SLDMWA may be subject to reduced allocations or lost water supply resulting from expired authorities.

H.R. 866 (Calvert) – To amend the Endangered Species Act of 1973 to vest in the Secretary of the Interior functions under that Act with respect to species of fish that spawn in fresh or estuarine waters and migrate to ocean waters, and species of fish that spawn in ocean waters and migrate to fresh waters.

RECOMMENDATION: SUPPORT

OBJECTIVE: Restore Central Valley Project Water Supply for Member Agencies

Summary

This bill gives the Fish and Wildlife Service (FWS) the sole authority to protect endangered or threatened species that are anadromous species (species of fish that spawn in fresh or estuarine waters and that migrate to ocean waters) or catadromous species (species of fish that spawn in ocean waters and migrate to fresh waters). Currently, the FWS shares this authority with the National Marine Fisheries Service.

Status

H.R. 866 was introduced in the House of Representatives on February 5, 2021, and has been referred to the House Natural Resources Committee. Additional key cosponsors include: Tom McClintock (CA-04), Jim Costa (CA-16), David Valadao (CA-21), Devin Nunes (CA-22), and Mike Simpson (ID-02).

Importance to the Authority

This bill would shift Endangered Species Act management for anadromous and catadromous species from NOAA Fisheries to the Fish and Wildlife Service, making a single resource agency responsible for the management of Endangered Species Act compliance for all species impacting water supply reliability through implementation of the Biological Opinions for the Long-Term Operations of the Central Valley Project and State Water Project.

Pros:

- The bill would increase efficiencies of species management efforts and likely reduce conflicting management requirements that arise when multiple agencies have responsible charge over species management efforts, like those experienced in 2016 when FWS was urging releases from Shasta Dam for salinity control

Cons:

- None identified at this time.

Committee Options

Option 1

Recommend that the Board authorize the Executive Director and delegated staff to express support to H.R. 866, To amend the Endangered Species Act of 1973 to vest in the Secretary of the Interior functions under that Act with respect to species of fish that spawn in fresh or estuarine waters and migrate to ocean waters, and species of fish that spawn in ocean waters and migrate to fresh waters.

Fiscal Impact: Unknown. Potentially reduce costs associated with Endangered Species Act program.

Business Analysis: Reduce costs associated with recovery of listed species.

Option 2

Take no action.

Fiscal Impact: Unknown. SLDMWA may be subject to additional costs/water supply impacts due to conflicting species management efforts.

Business Analysis: SLDMWA and its member agencies could be subject to additional costs resulting from regulatory requirements.

S.B. 559 (Hurtado) – Department of Water Resources: water conveyance systems: Canal Conveyance Capacity Restoration Fund.

RECOMMENDATION: SUPPORT

OBJECTIVE: Improve Water Infrastructure Affecting Authority Member Agencies

Summary

This bill would establish the Canal Conveyance Capacity Restoration Fund in the State Treasury to be administered by the department. The bill would require all moneys deposited in the fund to be expended, upon appropriation by the Legislature, in support of subsidence repair costs, including environmental planning, permitting, design, and construction and necessary road and bridge upgrades required to accommodate capacity improvements. The bill would require the department to expend from the fund, upon appropriation by the Legislature, specified monetary amounts to restore the capacity of 4 specified water conveyance systems, as prescribed, with 2 of those 4 expenditures being in the form of a grant to the Friant Water Authority and to the San Luis and Delta-Mendota Water Authority. The bill would make these provisions inoperative on July 1, 2030, and would repeal the provisions as of January 1, 2031.

Status

S.B. 559 was introduced in the California Senate on February 18, 2021. Additional key coauthors include: Andreas Borgeas, Anna Caballero, Adam Gray, Rudy Salas, and Jim Patterson.

Importance to the Authority

This bill would establish the Canal Conveyance Capacity Restoration Fund in the State Treasury. Funds deposited into the Fund would be used to support subsidence repair costs of up to one-third of the total cost of subsidence repair costs to the Delta-Mendota (DMC), San Luis, and Friant-Kern Canals, and the California Aqueduct. This would provide up to a \$187 million grant to the Water Authority for subsidence mitigation along the DMC and up to \$194 million for repairs along the San Luis Canal.

Pros:

- The bill would provide up to a one-third cost share of state grant funds for capacity restoration of key conveyance for Authority member agencies.

Cons:

- None identified at this time.

Committee Options

Option 1

Recommend that the Board authorize the Executive Director and delegated staff to express support to S.B. 559, Department of Water Resources: water conveyance systems: Canal Conveyance Capacity Restoration Fund.

Fiscal Impact: Unknown. Reduce costs associated with infrastructure finance.

Business Analysis: Reduce costs associated with infrastructure finance.

Option 2

Take no action.

Fiscal Impact: Unknown. SLDMWA may be subject to additional costs associated with infrastructure development/repair.

Business Analysis: SLDMWA and its member agencies could be subject to additional costs resulting from infrastructure construction/repair.

Guidelines for Taking Positions on Legislation

A number of controversial bills are introduced each year in the Congress and in the California Legislature. It is important to understand how the Authority takes positions on legislation.

Policy

By Agenda Item 9, dated December 12, 2019, the Board adopted the Fiscal Year 2021 Objectives.

Water Authority's Positions on Legislation

The Water Authority takes positions on legislation that, if enacted, would impact Water Authority members, consistent with Water Authority Board adopted Goals and Objectives. The Water Authority may take the following positions on legislation: Oppose, Support, Oppose Unless Amended, Support if Amended, Not Favor, Favor, Not Favor Unless Amended, Favor if Amended, and Watch (neutral). The Water Authority's staff testifies and advocates with legislators and staff through meetings and member agency contacts on all positions except Watch, Favor and Not Favor. For Favor and Not Favor positions, written communication of the Water Authority's position is provided to the legislator. Nothing in this section should be read to preclude the Executive Director or his or her delegee from taking an informal support or informal oppose position on behalf of the Water Authority that is consistent with adopted legislative or policy objectives, or to preclude the Executive Director from communicating a position on emergency legislation after obtaining the concurrence of the Chair, or the Chair's designee, provided that the Executive Director informs the Board regarding such positions on emergency legislation no later than the next regularly scheduled Board meeting.

Amendment Development Process

If the Water Authority takes an Oppose Unless Amended or Support if Amended position, the Water Authority will typically discuss the concepts for the amendments at the meeting. Then Water Authority

staff, in consultation with Committee and/or Board Members as needed, will develop the amendments after the meeting.

Information Sharing

To provide adequate information to the entire Water Authority membership, the Water Authority provides legislative updates, posts positions and other information on our website, and sends out advisories and alerts on key legislation.

The Water Authority's legislative department is available to provide specific information on bills on request and Board Members are encouraged to communicate Water Authority positions on priority legislation in meetings with legislative staff, consistent with Water Authority policy. The Water Authority's Water Policy Director appreciates being informed by Water Authority members of positions taken by Water Authority members on legislation.

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Secretary Crowfoot discusses voluntary agreements at NorCal Water Association meeting

Back on March 5, the Northern California Water Association held their annual meeting. The opening session featured Secretary Wade Crowfoot and Deputy Secretary and Special Counsel for Water Policy at Cal EPA Kristin Peer. I'll be covering their comments in full on Wednesday, but here's what they had to say about the voluntary agreements.

Moderator Thad Bettner noted that both Secretary Crowfoot and Ms. Peer are involved in the voluntary agreement discussions, albeit from different perspectives. What are your insights on where voluntary agreements stand, and how are your agencies approaching them?

Secretary Crowfoot said they are all working together across agencies in a new and different way. *"Early on in a cabinet meeting, Governor Newsom came in, looked at us all, and said, 'Look, I understand that you get treated as pretty important people in Sacramento, but very few people outside of state government actually know what each of your agencies does. And what they care about is, are you getting stuff done for California?'"*

"Historically, and naturally, in big government, there can be these institutional tensions and sort of turf between departments or agencies. We've worked hard to break down some of those inherent tensions among our different missions within state government. We have what's called a 'One State Water Team.' We frequently meet with Kristin and Jared [Blumenfeld, Chair of Cal EPA] and Joaquin [Esquivel, Chair of the State Water Board] and Eileen [Sobeck, Executive Officer] at the Water Board, and Chuck [Bonham, Director of Fish & Wildlife] and Karla [Nemeth, Director of the Department of Water Resources]. That doesn't mean we don't have different perspectives or we don't have different obligations. But we work to really problem solve and make decisions as an administration. A good example of that was the Water Resilience Portfolio."

"On the voluntary agreements, I think there used to be a perception that DWR and Fish and Wildlife were one team working with the water contractors, and they threw something over the transom to the water board for the water board to consider quietly in a black box. That was the stereotype. I think we've put that on its head. What we worked for the first year to do is bring all of the parties together in a plenary session that met on a bi-weekly basis for almost an entire year, and to develop these voluntary agreements to enable the water board to do what it's mandated to do by state and federal law, which is update the water quality plan."

"We know that the Water Board has to do this," continued Secretary Crowfoot. "So our focus is to develop a package that's workable for water agencies, state and federal agencies, and for environmental conservation groups that will protect those beneficial uses more quickly than the traditional process of regulations and water rights adjudication litigation. And so we continue to think a voluntary agreement or set of agreements is a win-win-win. We're not agnostic on actually whether we want to achieve a voluntary set of voluntary agreements - we very much do. The complexity and the time that we've taken is we need to ensure that the program of implementation, including the flows and the habitat, actually is scientifically adequate, and therefore legally adequate."

"The voluntary agreement once produced will go through a blind scientific peer review, where objective scientists that know nothing about the politics of California water are going to review it for its adequacy. It's going to go through a CEQA process and, ultimately, through public analysis and hearings at the State Water Board. As champions of the voluntary agreements, we want to make sure that those agreements are an adequate program of implementation."

"We know that the voluntary agreements will be challenged legally, and so all the work we've been doing is to ensure that we can collectively identify the assets – the flow, the habitat, the management, and the science that's going to meet the bar that federal and state law sets for the Water Board."

"Over 2020, we were stymied by some pretty significant differences with the Trump administration as it relates to the protection of endangered species, and those legal

differences halted our progress," said Secretary Crowfoot. "The good news is that the new administration has made it very clear that they want to roll up the sleeves, work with us, explore how we resolve those legal differences and get back around the table on the voluntary agreements. The water agencies have been hard at work in recent months working on the voluntary agreement framework (or something similar to it) to present to the Water Board."

"I'm very bullish, actually, right now," he continued. "I know the Governor wants to get this done because I hear from him quite regularly asking for status updates. We're doing the good work with water agencies and other stakeholders really identifying what assets are needed, ultimately, to flow into that set of agreements and ultimately be analyzed and presented to the Water Board."

"I would add that this is something that the State Water Board is also quite supportive of, and hopefully we'll succeed because the improvements can get into the system much more efficiently and effectively," said Kristen Peer. "It can be a suite of assets – it's flow, habitat, funding. It's the whole system working together. Those things are either difficult or impossible for the Water Board to regulate because they have limited authority. So they recognize the benefits of the VAs and are hopeful that we will succeed in bringing them a package that is scientifically and legally adequate, which is what we are aiming to do."

"Even if that doesn't happen, the board is going to be completing its update of the water quality control plan, and in that, there will be a voluntary pathway," she continued. "The hope, of course, is that we bring something fully baked to the board for analysis. But even if that's not completed, there will be a pathway analyzed for voluntary agreements that can be slotted in. So this is something that the State Water Board is supportive of and, of course, Cal EPA is and has been for a number of years at this point."

"I might add a couple more things," said Secretary Crowfoot. "One is, this challenge is decades in the making, so we appreciate everyone's patience, recognizing that it's going to take some time to figure this out. We've been at this for about two years in this administration. And we do think we're making progress. Many of us spend more time on

the voluntary agreements than any other single initiative within state government right now."

"The other point is we've really tried to make more transparent our assessment around the voluntary agreements," he continued. "Jared [Blumenfeld, Secretary of Cal EPA], and I have called this the open book test. So we have invited in the water board staff and the Fish and Wildlife staff, and the water resources biologists so that we're all understanding how we determine adequacy or consider adequacy. That's not the official process that the water board has to go through; that's an independent process. But this gives us a sense of really what's needed to be adequate. And we think that's going to serve us in the months to come."

Thad Bettner noted that the proposal has been out there for a while. To Secretary Crowfoot, when do you think would be the right time to sit down and reconvene with us about where we may be on our respective proposals? And for Ms. Peer, if the board is going to march forward with its process, when would we need to get something in there to have a viable alternative to an unimpaired flow approach?

Secretary Crowfoot said that the time is now to focus on getting a proposal for consideration done. *"I think in early spring, which is basically now, we should get back around the table with more detail and understand what's being proposed by the various parties. I want to encourage us to roll up our sleeves and get this done as it relates to the proposal. We think we were pretty clear about the voluntary agreement framework that we put out last year, and we really worked hard to identify what is that base level of adequacy for a proposal."*

"Things got complicated as we change the pumping regimes in the Delta from the federal biological opinion and the state incidental take permit," he continued. "So it took some time then to figure out okay, how are we expressing that framework, that baseline adequacy, given those different regimes? We think we're in a place right now to help articulate what's needed to meet that adequacy. So I do think that this spring, getting back around a table and talking through what's being proposed would be helpful because I know the Water Board needs to needs to move forward on phase two to comply with the state and federal legal requirements."

"We are intensely focused right now on rounding out the discussions and getting a package together," said Ms. Peer. "So the time is now, but folks should rest assured that there will be plenty of notice if and when the board decides to continue the process, and there will be a lot of process before anything is completed. So stay tuned on that. But again, the focus now is really to try to solidify the package to present."

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Anthea Hansen

From: Kearns & West Facilitation Team <dwr.announcements@kearnswest.com>
Sent: Friday, March 12, 2021 3:48 PM
To: Anthea Hansen
Subject: Extension of Public Meetings for State Water Project Contract Amendment for Delta Conveyance Negotiations



Dear All,

The Department of Water Resources (DWR) and the State Water Project (SWP) Contractors are extending the negotiation schedule to April 2021. The public negotiation process is expected to result in an Agreement in Principle (AIP) among DWR and the SWP Contractors that describes a methodology for cost allocation and the related matters that would be the basis of a contract amendment if a project is approved and after all necessary environmental review. Environmental analysis of the proposed amendments and of the underlying Delta conveyance facility itself will be conducted in accordance with the California Environmental Quality Act. Development of actual contract amendment language would follow the AIP.

UPCOMING MEETING DATES

The next public negotiation meeting for the proposed amendments to the SWP water supply contracts is expected to take place on Monday, March 29, 2021. All public negotiation meetings will occur by phone and webinar only and are expected to start at 10:00 a.m. and adjourn by 12:00 p.m. Additional meetings may be scheduled as needed.

WEBINAR ACCESS TO UPCOMING MEETING(S)

Per the Governor's direction on gatherings to protect public health and slow the spread of COVID-19, **upcoming public meetings for the SWP Contract Amendment for Delta Conveyance will occur via phone and webinar only.** Opportunities for public comment via conference call will occur as outlined in the forthcoming meeting agenda(s).

Negotiation Process

DWR has opened negotiations to the public to allow the opportunity to observe and provide comments to DWR at the end of each negotiation session. Written comments may also be submitted within seven (7) calendar days following each negotiation session. The process that DWR will follow to enable members of the public to observe and comment on the negotiations will be consistent with the "Principles Regarding Public Participation Process in SWP Contract Negotiations," which were approved as part of the settlement agreement

reached in the case titled, *Planning and Conservation League et al.v.*
Department of Water Resources, 83 Cal.App.4th 892 (2000).

Please contact Brian "BG" Heiland at (916) 653-4547 or by e-mail at
Brian.Heiland@water.ca.gov if you have any questions or need additional
information.

Thank you,

The Kearns & West Facilitation Team

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