



To: Members of the RCRC Board of Directors
From: Governmental Affairs Staff
Arthur Wylene, General Counsel
Date: January 11, 2021
Re: Water Issues Update

Summary

This memo provides an update on current issues involving California water policy.

Background

Though the Legislature returns this week, the water policy conversation continues to be primarily driven by discussions at the interstate and federal level. One notable update from the Legislature is the introduction of a \$5.5 billion resources bond proposal. Significant changes in federal policy are expected in coming months as President-elect Joe Biden fills cabinet posts and agency appointments, and as Congress pursues a legislative agenda that reflects the change in majority in the Senate.

Major ongoing items of interest for RCRC member counties include:

General Obligation Bonds to Fund Resource Programs

The Senate introduced Senate Bill 45 (Allen)—the Wildfire Prevention, Safe Drinking Water, Drought Preparation, and Flood Protection Bond Act of 2022—in the first week of December 2020. Perhaps unsurprisingly, the proposal largely mirrors Senator Ben Allen’s (D - Santa Monica) resources bond proposal from 2019, which failed in the State Assembly in 2020. Like the previous proposal, this measure would raise \$5.5 billion for resources and environmental quality related purposes, including flood protection, drought preparedness, habitat restoration, and safe drinking water infrastructure.

Governor Newsom’s Proposed 2021-22 Budget

The January proposed Budget continues to fund water and agricultural programs at recent levels, and provides some new funding, including \$30 million in grants to local governments for water resources planning (including Sustainable Groundwater Management Act implementation), and \$20 million for irrigation sustainability improvements. Also, the proposed Budget identifies new or renewed funding for repairing and improving key infrastructure, especially levees and other flood management infrastructure—including in the Delta. For a more detailed breakdown of proposed funding to state water programs, please refer to RCRC’s comprehensive summary of the Governor’s 2021-22 Budget proposal.

Presidential Transition

The transition from the Trump Administration to the Biden Administration is expected to bring major changes to federal water and environmental policy. The scope and extent of these changes will significantly depend upon confirmation of President-elect Biden's choice of appointees to lead federal agencies. Thus far, President-elect Biden has tapped a mix of Democratic stalwarts and newcomers to federal office to head key agencies, including Representative Deb Haaland (D - New Mexico) for Secretary of Interior, and North Carolina's environment secretary, Michael Regan, for Administrator of U.S. Environmental Protection Agency.

Policy areas that are anticipated to receive significant attention from the incoming Administration include the much-debated "Waters of the United States" rule under the Clean Water Act, and the Trump Administration's recent revisions to regulations implementing the National Environmental Policy Act and the Endangered Species Act. Those regulations not finalized by the transfer of the presidency are expected to be subject to additional review, amendment, and possible withdrawal. And with the shift in majority status in the U.S. Senate, Congressional Democrats may wield their majority to exercise "lookback" authority under the Federal Congressional Review Act to invalidate rules finalized in the late months of the Trump Administration. Under the law, all new federal rules finalized within 60 legislative days from the adjournment of the previous Congressional year are subject to review by the new Congress, and can be rescinded by a resolution of both houses and signature of the President.

Further, there is some speculation the Biden Administration may revisit the biological opinions governing state and federal water operations in the Delta, which would impact the ongoing litigation between California and the federal government, and could revive the discussion of voluntary agreements.

Shasta Dam Raise

On November 19, 2020, the Bureau of Reclamation released the Final Supplemental Environmental Impact Statement (FSEIS) for the proposed raising of Shasta Dam. The project, which has been under consideration for a number of years, would raise the dam by 18.5 feet, thereby increasing water storage capacity in Shasta Lake by 634,000 acre-feet. The project is controversial among water, agriculture, and environmental interests, and is opposed by the State of California. Attorney General Becerra has submitted critical comments on the FSEIS, and previously sued Westlands Water District over their role in the project. It is expected that a successor Attorney General will continue scrutiny of the project. Further litigation should be expected, and the future of the project is uncertain.

Klamath Dam Removal

Last November, the State of California and the State of Oregon reached an agreement with the electrical utility PacifiCorp to facilitate removal of hydroelectric dams on the Klamath River. The proposed removal has been under discussion for several years, but has been stalled by concerns over responsibility for removal costs. Under the agreement, the states would share responsibility for the removal operations, and would split the removal costs with the dams' former owner, PacifiCorp. Removal of these dams is controversial, with environmental and tribal interests supporting the proposal in order to improve fish passage, and local residents opposed due to concerns over property values, recreational opportunities, and flood and sediment control. There is widespread

perception that this project could provide a template for future dam removals elsewhere in the country. The agreement still awaits approval by the Federal Energy Regulatory Commission (FERC).

"30 by 30" Conservation Executive Order

On October 7, 2020, Governor Newsom issued an Executive Order declaring the "the goal of the State to conserve at least 30 percent of California's land and coastal waters by 2030." The Order directed state agencies to develop strategies to implement this goal by February 1, 2022, but provided little detail regarding what such strategies might entail. Further, the Governor's January proposed Budget for 2021-22 does not make significant mention of the executive order, and how it may be guiding budget policy decisions. It remains to be seen whether this Order was simply intended as general policy statement, or whether it will drive substantive rulemaking by state agencies in future years.

Staff Recommendation

Information only. RCRC staff will continue to engage in these policy areas as necessary to ensure the concerns of RCRC member counties are addressed.