County of Monterey

Board Report

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Item No.18

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

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Consider authorizing the General Manager to engage with a collation of Western irrigated agriculture interests, including other water agencies, on the United States Army Corps of Engineers Proposed Rule for Agency Specific Procedures for implementation of its Principles, Requirements, and Guidelines for water resources investments.

RECOMMENDATION:
It is recommended that the Monterey County Water Resources Agency Board of Directors:

Authorize the General Manager to engage with a collation of Western irrigated agriculture interests, including other water agencies, on the United States Army Corps of Engineers Proposed Rule for Agency Specific Procedures for implementation of its Principles, Requirements, and Guidelines for water resources investments.

SUMMARY/DISCUSSION:

In the 2007 Water Resources Development Act (WRDA), Congress directed that future revisions to federal Principles, Requirements, and Guidelines (PR&G) for water resources investments "shall not affect the validity of any completed study of a water resources project." This was interpreted by many to mean that revisions to PR&Gs would only apply to future water resource projects, not retroactively to existing projects. Notwithstanding, in 2014, the Obama Administration's Interagency Guidelines stated that PR&Gs specifically apply to operational modifications, modernization of existing facilities, dam safety modifications, culvert replacements, water conveyance and fish ladder modifications. Now the Biden Administration is looking to expand the federal decision-making process to: 1) prioritize environmental justice programs; 2) account for "ecosystem services"; and 3) require new economic analyses; (4) prefer nonstructural alternatives/approaches. In response, the United States Army Corps of Engineers (Corps) has issued a Proposed Rule for Agency Specific Procedures (ASPs) for implementation of its Principles, Requirements, and Guidelines for its water resources investments.

Led by the Family Farm Alliance, a coalition of irrigated agricultural interests, including water agencies, is working to prepare a comment letter to express concerns with the Corps proposed rule. General concerns about the proposal include:

- Proposed rules stray beyond the legislative intent of Congress stated in the 2007 WRDA;
- Proposed rules add significant bureaucratic layers and increased subjectivity onto an already complex federal environmental and engineering decision making processes;
- Proposed rule overlays a whole new "value set," not just on new projects, but on every Civil Works action that has a nexus with water resources with potential to disrupt programs with a

long track record of success, such as Army Corps and Bureau of Reclamation dam safety programs.

- Proposed rules could significantly delay water resource plans, projects or programs now awaiting permit approval and/or potentially halt others.
- Proposed rules may be adopted by other federal agencies - e.g. ACE proposed rules based on 2015 Department of the Interior's (DOI's) rules.

Examples of concerns about specific issues include:

Environmental Justice programs: The proposed rules states, "environmental justice should be accounted for in all areas being assessed: economic, environmental and social" and that "the Corps would ensure social (including health) environmental justice factors are evaluated during the planning process, include consideration of such factors throughout the lifecycle of a water resources investment…" However, there is no specific guidance how this should be done so the concern is how subjective it may all become and how the Corps and other federal agencies might weigh out which segments of various populations are going to be impacted by water planning decisions.

Ecosystem Services: Ecosystem goods and services are those things provided by nature that are of use to humans. The proposed rule acknowledges that measuring ecosystem health is "challenging" but goes on to say "call for monetization where possible, of all ecosystem services that have economic, social, or environmental impacts that will affect decision making. Qualitative information used when it is not practicable to provide quantified or monetized information would be given similar consideration in evaluation." Factors proposed for assessment include: "changes in social interaction and community; quality of life; safety, mental and physical health, family and individual well-being; improvements in attitudes, beliefs and values (includes culture and religion); and more". The vague nature of ecosystem services analysis, especially when the beneficiaries of ecosystem services are not always obvious, are concerning.

New economic analyses: The rule proposes to consider "non-use" or "existence value" benefits, which are subjective and difficult to monetize or quantify. For example, how would one value an environmental change (such as the loss of a wetland) or preserving the resource in its current state. The proposed approach injects yet another level of subjectivity and time-consuming complexity into an already burdensome and complex decision-making process.

Bias towards nonstructural alternatives/approaches: The proposed rules impose vague requirements to use "nonstructural measures" and "nonstructural approaches" defined as "methods and practices employed to alter the use of existing infrastructure through human activities as opposed to altering physical interaction of water and land." The Corps defines "Nonstructural approaches" to include "things like policy modifications or floodproofing of existing infrastructure" and proposes inclusion of "a full nonstructural alternative and a full nature-based solutions alternative. . .in the final array of alternatives", which requires six types of alternatives, including also an "environmentally preferred alternative, an alternative that maximizes net public benefits, and a locally-preferred alternative".

OTHER AGENCY INVOLVEMENT:

The Personnel & Administration Committee considered this matter at their April 5th meeting and recommended the Board of Directors authorize Agency engagement on this issue.

FINANCING:

Engagement on this issue will require a small level of effort from the General Manager and

not result in any financial impact.

Prepared and Approved by: Ara Azhderian, General Manager, (831) 755-8982

Attachments:
1. Draft Comment Letter
2. Board Order