THE FERGUSON GROUP LLC
1130 Connecticut Avenue, NW
Suite 300
Washington, D.C. 20036
202.331.8500
202.331.1598 fax

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Summary of Western-Wide Provisions of the Water Infrastructure Improvements for the Nation (WIIN) Act

Just after 1:00 am (EST) on Saturday, December 10th, the Senate approved the "Water Infrastructure Improvements for the Nation (WIIN) Act" (S. 612), which includes the California drought relief bill, by a vote of 78-21. The vote came after two days of work by Senate Environment and Public Works Committee Ranking Member Barbara Boxer (D-CA) and others opposed to the drought relief portion of the bill failed to gather enough support to block a final vote. Boxer led an effort to kill the entire bill saying that drought relief provisions negotiated by Senator Dianne Feinstein and a portion of the California House Delegation would harm endangered species in the Sacramento-San Joaquin River Delta and open the door to weakening the Endangered Species Act. After the overwhelming House vote in favor of the measure, however, Senator Boxer gave up her bid to filibuster the measure and kill the California drought relief provisions. The House of Representatives passed the WIIN Act this past Wednesday, December 8th, by a vote of 360-61, with 17 House Republicans and 44 House Democrats voting against the bill.

The bill now goes to the president, who is expected to sign the bill into law.

General Background

On December 5, 2016, the WIIN Act was publicly unveiled. According to the House Republican Transportation and Infrastructure (T&I) Committee staff, the WIIN Act "is comprehensive legislation to address the needs of America's harbors, locks, dams, flood protection, and other water resources infrastructure critical to the Nation's economic growth, health, and competitiveness. The WIIN Act is a measure that includes the Water Resources Development Act (WRDA) of 2016, which overwhelmingly passed the House in September, in addition to provisions to improve drinking water infrastructure around the country, address control of coal combustion residuals, improve water storage and delivery to help drought-stricken communities, address federal dam maintenance backlogs, and approve longstanding water settlement agreements for the benefit of taxpayers and Native Americans. The WIIN Act is the result of bicameral negotiations, improves critical infrastructure across America, and strengthens the economy."

This memo provides a summary of California and west-wide water-related provisions of the WIIN Act. More detailed summaries of the entire WIIN Act provided by the relevant House and Senate Committees of jurisdiction are available here, here, and here.

CVP Operations

The WIIN Act directs the U.S. Interior and Commerce departments to maximize the quantity of water supply provided to agricultural, municipal and industrial contractors from the Central Valley Project (CVP). Senator Feinstein and other supporters of the measure argued that the bill will not harm fish or negatively affect the environment, but rather will allow more water to be held and moved throughout the CVP. As noted above, Senator Boxer disagreed with this assessment and argued the operations provisions would undermine protections of endangered and threatened species.

Cost Savings

The measure is expected to generate $635 million in savings by allowing Bureau of Reclamation (Reclamation) service contractors in western states to repay or prepay contract costs associated with a water service or water project construction agreement. The contractor and Interior Department would have to reach a mutually agreeable arrangement for repayment or prepayment.

Surface Water and Groundwater Storage

The measure directs $335 million of the receipts generated through the prepayment of contracts to the "Reclamation Storage Account" that would be used to support the construction of water storage projects.

Specifically, the funds are authorized to support up to 50 percent of the costs of constructing a new or expanding an existing federally owned surface water storage project or up to 25 percent of a non-federal (state or local public agency) groundwater or surface water project. The bill requires that these non-federal projects be designated as "State-led," which the bill defines as a project for which federal assistance is requested by the Governor of the State in which the "State-led" project is located. The bill also requires the State or local sponsors and the Secretary of the Interior to concur that the project is technically and financially feasible; the sufficient non-Federal funding is available to complete the project; and, the State-led storage project sponsors are "financially solvent."

The Secretary must also make a determination that the project provides "Federal benefits, including water supplies dedicated to specific purposes such as environmental enhancement and wildlife refuges," that are at least proportional to the federal cost-share investment in the project.

Any "State-led" storage project in California would also require the California Water Commission to make a determination that the State-led project is consistent with the California Water Quality, Supply and Infrastructure Improvement Act, the 2014 water bond.

Reuse and Desalination

The bill also authorizes $50 million for new, unauthorized water reuse and recycling projects. The bill requires a project to have a completed feasibility study and the Secretary must make a determination that the project is technically and financially feasible.

Within 180 days of receipt of a feasibility study, the Secretary is required to submit a report to the Senate Energy and Natural Resources Committee and the House Committee on Natural Resources describing the result of the Secretary's review of the feasibility study, including any recommended changes to the proposed project.

The bill directs the Secretary to give priority to water reuse projects that have experienced drought or having been designated a disaster areas within the last four years and to projects that:

- are likely to provide a more reliable water supply for States and local governments;
- increase water management flexibility and reduce impacts on environmental resources; and
- are regional, with multiple stakeholders and provide multiple benefits including water supply reliability, ecosystem benefits, groundwater management and enhancements, and water quality improvements.

Finally, in order to receive funds a project must be earmarked in the Energy and Water Development Appropriations Act, after the Secretary submits a recommendation to the appropriate committees to fund the reuse project.

WaterSMART

The bill provides an additional $100 million for WaterSMART, $50 million of which is designated to water supply and conservation activities on the Colorado River. The additional funds will allow Reclamation to continue to expand the size and scope of competitive WaterSMART grants.

Fish and Refuges

The bill also authorizes $43 million through the Department of Commerce, National Marine Fisheries Service, and the Department of Interior to benefit endangered fish and wildlife, including:

- $15 million for the protection and restoration of salmon to increase spawning habitat on the Sacramento River and purchase water to increase flows to reducing predation at Clifton Court Forebay.

- $15 million for a voluntary, cost-shared fish passage program the U.S. Fish and Wildlife Service that uses to pay for installing fish screens and diversions that protect migrating salmon.

- $3 million for a study to help determine the best way to promote the recovery of the Delta smelt.

- A program to reduce predation in the Delta

- A program to purchase additional water: The bill authorizes the federal government to purchase water from willing sellers to augment flows needed for fish. Currently there is limited workable authority to accomplish this. The Department of the Interior requested this authority to enable targeted water purchases to provide more water for fish in conjunction with measures to improve habitat and food supply, which will help restore fish populations.

- Programs to reduce invasive species that harm fish: The bill authorizes pilot projects under a CALFED program to control invasive species. Invasive species—such as water hyacinth and Asian clams—have contributed to the decline of native listed fish in the Bay-Delta, including the Delta smelt.

- $10 million for additional sources of water supply and convenience system to help improve the reliability of water supplies to the refuges.

Other Provisions

Subtitle H – Water Desalination, reauthorizes and amends the Water Desalination Act of 1996 (Public Law 104-298) to coordinate and focus current federal desalination research and studies on cost-effective methods to derive potable water from saline sources in drought-stricken areas. The program is reauthorized at current levels ($40 million over five years).

Water Infrastructure Finance and Innovation Act (WIFIA). This section amends Subtitle C of WRRDA 2014, which established the Water Infrastructure Finance and Innovation Act (WIFIA) loan program. This section clarifies and amends projects eligible for assistance and also authorizes the Secretary of the Army or the EPA Administrator to allow loan fees to be financed along with the loan, and clarifies that eligible project costs incurred and in kind contributions made before receipt of a WIFIA loan will count towards the 51% of project costs that must be provided from sources other than WIFIA.

While the WIIN Act does not include language that was proposed to provide the Bureau of Reclamation with the authority to provide financing for large-scale water supply projects (the Reclamation Infrastructure Finance and Innovation Act, RIFIA), the bill significantly expands the existing WIFIA provisions to allow WIFIA assistance (long-term, low-cost financing) to be made available for not only water recycling projects, but to projects to provide **"alternative water supplies to reduce aquifer depletion."** The bill also expands the use of WIFIA assistance to a project to **"prevent, reduce, or mitigate the effects of drought, including projects that enhance the resilience of drought-stricken watersheds."** This latter change opens up the EPA WIFIA program to potentially be a source of financing for large-scale water supply projects of all kinds, including those with significant surface water storage facilities.