



Rep. Calvert Rider

Interior / Environment Budget

Appropriations Act of 2019

Communications and Legislation Committee

Item 8-5

August 20, 2018

# Background

- Introduced May 17, 2018 by Rep. Ken Calvert
- Seeks to expedite development of CA WaterFix by exemption from litigation
- H.R. 6147 approved by House July 19, 2018
- S. 3073 does not include a provision similar to Calvert Rider. Differences to be worked out in conference committee.

# Calvert Rider Text

- “Notwithstanding any other provision of law, the Final Environmental Impact Report / Final Environmental Impact Statement for the Bay Delta Conservation Plan / California Water Fix (81 Fed. Reg.96485 (Dec. 25 30, 2016)) and any resulting agency decision, record of decision, or similar determination shall hereafter not be subject to judicial review under any Federal or State law.”

# Support and Opposition

- Congressman Calvert statement in support of Rider reiterated decade of studies, environmental documents and prior opportunities for objection.
- Critics of the Project cited more than 25 lawsuits of varying kinds that would be affected by this Rider.
- Senators Feinstein, Harris and CA Natural Resources Secretary John Laird oppose the Rider.

# Background: Judicial Review Preclusion

- Under federal law, Congress grants jurisdiction for federal review and so may take it away. Several tools:
  - Direct action by Congress authorizing completion of a project with no further legal review allowed. (All American Canal Lining project case)
  - Congress deems a project's compliance with Federal law is sufficient
  - Congress expressly prohibits judicial review
- Under state law, Congress may preclude judicial review under the Supremacy Clause of the U.S. Constitution.

# MWD Staff Analysis

- Recommended “Watch Position”
  - MWD Board voted on July 10, 2018 to support CA WaterFix and has for years supported expeditious advancement of the project.
  - There is merit to advancing the project without further legal review, but staff has expected for years that there will be legal challenges and is prepared to face these challenges.
  - Staff has not advocated for a legal exemption for CA WaterFix.

# Board Options

- Option #1

- Adopt the CEQA determination and take a watch position on Section 437 of H.R. 6147.

- Option #2

- Adopt the CEQA determination and take a support position on Section 437 of H.R. 6147.

- Option #3

- Adopt the CEQA determination and take an oppose position on Section 437 of H.R. 6147.

# Recommendation

- Option #1



