

Background

The Water Resources Development Act (WRDA) bill being considered by the Senate today contains many important projects. There is little disagreement about the need to properly maintain our aging federal infrastructure, or to provide for critical national flood control priorities.

Where there is doubt, however, is in Congress' ability to prioritize federal spending and national infrastructural needs. By taking up this bill before emergency funding has been provided to U.S. troops on the frontlines, Congress has failed to take care of national security needs before addressing its own parochial interests.

The current version (pre-Managers package), according to Congressional Budget Office (CBO), will authorize \$31.5 billion in new spending.¹

The "Managers' package" contains many new projects and was only recently made available in searchable format for staff to review.

The earmark disclosure rule passed by the Senate earlier this year required all Members who requested earmarks to certify that they and their spouses would not financially benefit from any of those earmarks. That rule required those certifications to be available on the Internet. However, they are not available to the public on the Internet.

This bill clearly violates both the spirit and the letter of the earmark disclosure rules that were unanimously passed by the Senate earlier this year.

In opposing the House passed version of WRDA just two weeks ago, a bill that was half as costly as the bill reported out of Senate committee, the Bush Administration noted: "In a time of much-needed fiscal restraint, the additional spending in this bill is unacceptable."²

¹ <http://www.cbo.gov/ftpdocs/80xx/doc8038/s1248.pdf>

² <http://www.whitehouse.gov/omb/legislative/sap/110-1/hr1495sap-r.pdf>

In the wake of Hurricanes Katrina and Rita, when many urgent needs have still not be addressed despite spending over \$100 billion, how does this bill set priorities?

There are more than 300 other projects in the underlying bill—and with many more added in the Manager’s package-- and nearly 700 in the companion bill that recently passed the House.

It includes a provision related to a visitor’s center in Morgan City, Louisiana, *eighty five miles* from New Orleans, and itself in the center of hurricane and tropical storm country.³ How does a visitors center protect the residents of Louisiana from future storms or assist those who are still displaced as a result of Hurricanes Katrina and Rita. The answer is both simple and obvious-- it doesn’t.

The bill includes an authorization for the replacement of sand on beaches in San Diego—and a lot of it.

Imperial Beach in San Diego will be the beneficiary of 1.6 million cubic yards of sand replacement in the initial phase, and 7,100 feet long, 105 feet wide “along the developed shore.” Every ten years, for fifty years the Corps will add another one million cubic yards of sand.⁴ While the local sponsor will cover some of the costs, the federal government will be responsible for \$8.5 million in the initial phase and \$20.5 million for period replenishment.

How will adding sand to beaches in San Diego protect residents of California from the threat of floods? Again, it won’t.

The bill authorizes an “ecosystem restoration and recreation” project in East St. Louis, Illinois and vicinity. While much of this the outlined ecosystem restoration is likely meritorious, it is hard to justify the “installation of 650 wood duck boxes and 870 prairie bird perches,” which are called for in the underlying plan,⁵ as a critical national priority. Estimated federal cost for the entire project: \$134.9 million⁶.

³ <http://www.hurricanecity.com/Rank.htm>

⁴ [http://www.congress.gov/cgi-lis/cpquery/R?cp110:FLD010:@1\(sr058\)](http://www.congress.gov/cgi-lis/cpquery/R?cp110:FLD010:@1(sr058)) pg 5 of committee report

⁵ Committee Report 110-58, accompanying S 1248—page 9

⁶ Amendment in the Nature of Substitute to S 1248, p. 16

The reality is there are real consequences when Congress fails to prioritize water resource infrastructure and important navigation maintenance projects.

Funding for beach erosion may be nice for local merchants and property owners, but should that come at the expense of rebuilding or protecting against the next major catastrophe or the loss of national navigation and shipping lanes?

Likewise, a visitors center may be nice for tourists but how does it protect Louisiana residents from future hurricanes or care for those still suffering who have lost so much?

The committee has now produced a manager's amendment that strikes the underlying bill text and replaces it entirely.

In a reported effort to make the package less expensive,⁷ the bill has grown from 341 pages to 428 pages. And all of the projects just mentioned, remain in the amended bill and have been joined by many more.

Priorities matter.

When a family has to choose between replacing a roof blown off in a recent storm or building a swimming pool in the backyard that the family has been dreaming about for sometime, what do they choose?

Most families would rebuild the roof first. But if a family followed Congress' example, they would raid their children's college fund and empty their own retirement fund to build the swimming pool, purchase a flat screen TV, buy a new sports car and then repair the roof.

That is essentially what this bill does. We are repairing the roof but also borrowing from our children to pay for non-essential luxuries.

⁷ http://www.rollcall.com/issues/52_120/news/18348-1.html

In addition to the hundreds of newly authorized projects in this bill, consider for a moment that the Corps already faces a backlog in excess of 500 projects,⁸ or \$58 billion.⁹

One nonpartisan taxpayer group, Taxpayers for Commonsense, estimates that it would take forty years at the current rate of spending just to complete the Corps projects already authorized.¹⁰

While this bill takes an important first step in deauthorizing several dormant projects, it does little to address the growing backlog of sometimes questionable projects that threaten our ability to prioritize scarce Corps resources.

Congress must come up with a more effective mechanism for prioritizing Corps projects by periodically deauthorizing initiatives or eliminating spending found to be not cost-effective, unessential or no longer needed.

- Over 1,417 Congressional projects costing \$1.88 billion were included in the Fiscal Year 2005 Energy and Water appropriations bill, which is the primary legislative vehicle for Corps funding.¹¹
- The Corps is the largest owner of hydroelectric plants in the country with 75 plants. It also manages over 4,300 recreation areas.¹²
- The Corps claims 34,600 civilian employees.¹³ The Office of Personnel Management includes more than 700 of these in the Washington, DC statistical area.¹⁴
- The Corps owns 13.4 million square feet of “building assets” and leases another 20.3 million square feet. The

⁸ <http://www.congress.gov/erp/rl/pdf/RL32064.pdf>

⁹ <http://www.taxpayer.net/corpswatch/crossroads/Crossroads2004.pdf>

¹⁰ <http://www.taxpayer.net/corpswatch/>

¹¹ http://www.cagw.org/site/PageServer?pagename=reports_pigbook2005#energy

¹² <http://www.cato.org/pubs/tbb/tbb-0510-27.pdf>

¹³ <http://www.usace.army.mil/who/>

¹⁴ <http://www.opm.gov/feddata/html/2006/september/table2.asp>

replacement value for its building assets is in excess of \$4.7 billion.¹⁵

- The Corps estimates that it spent \$2.9 million on conferences in FY 2006. That is \$1,800 per Corps employee attending a conference. Examples of recent conferences include the National Ergonomics Conference and Exposition in Las Vegas, and the Society for Hawaiian Archaeology Conference on the Isle of Kauai.

Congress must not lose sight of the costs to provide maintenance of current projects and infrastructure before substantially adding to that burden. The total replacement value for all Corps' assets (buildings and structures) is \$148.1 billion.¹⁶

Our ability to maintain what has already been built by taxpayers is already seriously imperiled.

Before this bill becomes law, therefore, Congress must consider alternatives that will allow the Corps and Congress to more effectively establish national priorities, and maintain and manage current assets.

Finally, the projects of true national significance should be identified and set as Corps priorities.

This bill does take two important steps towards reforming the Corps of Engineers.

First, the committee has included the Feingold-McCain independent peer review reforms approved by the Senate last year.

For too long, the Corps has been allowed to operate in a vacuum, free from oversight and often free from a critical eye towards the project justification studies it conducts that form the basis for many of the decisions made by Congress.

¹⁵ FY 2005 Federal Real Property Report; The Federal Real Property Council, June 2006

¹⁶ FY 2005 Federal Real Property Report; The Federal Real Property Council, June 2006

This reform will allow Congress to make better informed decisions about which projects have merit.

The committee has also included an important transparency provision that will assist Congress in performing its oversight duties, and hold bureaucrats accountable to taxpayers.

Ultimately, if used to its fullest extent, the information required in this annual transparency report will give Congress many of the tools it needs to more appropriately manage water resources projects.

The WRDA bill authorizes many important priorities. Unfortunately, it fails to set priorities and in so doing, continuing a trend that stretches resources rather than addressing those with the greatest merit or need first.

Ultimately, the blame lies squarely with Congress, not the Corps.

Timeline- Water Resources Development Act (WRDA)

- March 29, 2007- Environment and Public Works Committee (EPW) marks-up the legislation
- March 30, 2007- EPW Committee sends letter to all members inviting additional project submissions (for possible manager's package). States that it will only comply with S 1 *if* enacted.
- April 25, 2007- EPW sends out revised letter to all members requesting a letter from members certifying that neither the member nor their spouse has a "pecuniary interest" in any project request. Additionally, it announces that it will disclose the sponsor of each project request.
- April 30, 2007- Committee Report filed; Placed on Senate Calendar; Earmark disclosure not in searchable format.
- May 7, 2007- EPW Committee announces that staff may view the proposed manager's package in their office, or in the Cloakroom. The new package is 84 pages longer (426 pages).
- May 10, 2007 (WRDA floor consideration begins)-
 - 9:59am- Cloture Vote
 - 10:47am- Substitute Amendment distributed to staff in electronic format
 - 2:39pm- Senator Boxer asks for unanimous consent to submit updated earmark disclosure chart for the Congressional Record

April 18, 2007 (House Rules)

STATEMENT OF ADMINISTRATION POLICY

H.R. 1495 – Water Resources Development Act of 2007

(Rep. Oberstar (D) MN and 3 cosponsors)

As reported by the House Transportation and Infrastructure Committee, H.R. 1495, the Water Resources Development Act (WRDA) of 2007, would increase the cost to the Federal government by 50 percent or more relative to the House-passed WRDA from the 109th Congress. The Administration estimates that it would cost at least \$15 billion and possibly substantially more to implement the hundreds of new projects and programs that H.R. 1495 contains. The bill would increase the Federal cost-share for many projects, authorize projects outside of the Army Corps of Engineers' (Corps) mission, and not ensure that projects yield high economic and environmental returns. In a time of much-needed fiscal restraint, the additional spending in this bill is unacceptable. For these reasons, the Administration strongly opposes H.R. 1495 in its current form.

Spending Concerns

To maintain fiscal discipline, the Administration urges the House to limit the number of authorizations in the bill substantially – to those within the three main mission areas that are the most compelling based on their overall economic and environmental return to the nation.

To further reduce the cost of this bill, the Administration urges the House to delete or amend the following provisions:

Section 2002, which would significantly lower the cost-share paid by non-Federal entities to deepen and maintain coastal harbors and channels below 45 feet, adding more than \$500 million to the costs paid by the general taxpayer just for the projects that are underway or already proposed;

Sections 2009 and 2019, which together would potentially add billions of dollars in Federal costs and undermine cost-sharing by providing non-Federal interests “credit” for work performed prior to the signing of a project cooperation agreement, and would add new liquidated damages against the Federal government;

Section 2018 and subsection 7007(b), which would allow Federal funds to count as non-Federal cost-shares – thereby eviscerating the purpose of cost-sharing;

Section 2032, which would establish a costly commitment to the periodic nourishment of sand beaches; and

Section 2036, which would reverse efforts to optimize national economic and environmental returns.

In addition, the House should set the cost-share paid by the general taxpayer for the aquatic ecosystem restoration work in coastal Louisiana and along the Upper Mississippi River and Illinois Waterway at no more than 50 percent, as it is for the Everglades restoration effort.

Planning for the Future

The Administration supports expanded use of external independent review and new authority for the Secretary of the Army to use external independent peer review panels. Sections 2037 and 7009 would unduly restrict current authority to use such panels. The Administration urges the House to delete section 7009. The Administration urges the House to revise section 2037 to:

(1) extend the tenure of review panels if the Corps proposes substantial changes to a project not previously considered by the panel; (2) provide sufficient flexibility to the Secretary and to the Chief of Engineers to convene a review panel following a final report by the District Corps office when needed; (3) establish a higher dollar threshold for triggering a mandatory review; and (4) authorize the Secretary, as well as the Chief of Engineers, to initiate a discretionary review.

Section 2027 and subsections 2028(h) and (i) would change the environmental review process by imposing requirements that are cumbersome and restrictive of basic practices under the National Environmental Policy Act of 1969, and by imposing arbitrary time deadlines on decisions by Federal agencies, state and local agencies, and Native American tribes.

Aquatic Ecosystem Restoration

The bill would significantly expand the current Federal effort to restore the aquatic ecosystem of coastal Louisiana, which the Administration supports. At the same time, the Administration has concerns with section 1001(21), which would authorize construction of a 72-mile Federal levee in coastal Louisiana. The project, which was developed pre-Katrina, could require re-formulation to ensure consistency with the conclusions of the ongoing comprehensive Louisiana Coastal Protection and Restoration study and with the long-term Federal effort to restore the coastal ecosystem.

The Administration urges the House to delete section 8005, which would tie new spending for the Upper Mississippi River and Illinois Waterway aquatic ecosystem restoration to the amounts appropriated for new locks, rather than to the individual merits of each project.

The Administration is committed to restoring the Everglades in partnership with the State of Florida and supports the bill's authorization to construct the Indian River Lagoon and Picayune Strand projects, as part of the South Florida aquatic ecosystem restoration effort. The Administration, however, opposes section 6008 regarding the Modified Water Deliveries project, which would establish a strict formula to govern how the Corps and the Department of the Interior would share these costs and restrict options concerning the scope of the work performed under the authorization for this project.

Constitutional Concerns

Subsections 2027(c), 7004(b), 7004(c), and other provisions that purport to direct the substance of, and/or determine the chain of command for, internal Executive Branch deliberations should be deleted as inconsistent with the President's authority to supervise the unitary Executive Branch.

Subsections 2027(h), 2028(a), 4002, and 4003(c) purport to require the Secretary of the Army or other Executive Branch officials to submit legislative recommendations to the Congress and should be deleted as inconsistent with the President's exclusive authority under the Constitution to recommend for Congressional consideration such measures as the President judges necessary and expedient.

Subsections 7006(c)(3), 7006(e)(3), and 7012(c) purport to give congressional committees the power to control the execution of certain provisions of the bill after it has been enacted as well as the power to appropriate funds by committee resolution. These subsections should be modified so as not to violate the constitutional separation of powers and not contradict the Supreme Court's ruling in *INS v. Chadha*.