

Taxpayers for Common Sense Analysis of Selected Provisions in the Manager’s Amendment of S. 2848, the Water Resources Development Act of 2016

Title I – Program Reforms

Sec. 1001 Study of Water Resources Development Projects by Non-Federal Interests

Allows Corps to provide technical assistance to non-federal interests completing their own feasibility study as long as non-federal interests pay the costs.

Sec. 1002 Advanced Funds for Water Resources Development Studies and Projects

Amends 1947 law that allowed state and local governments to contribute to the construction of flood control projects. Contributions could be repaid from appropriated funds at no interest at a later date. This provision would expand the law to incorporate all types of Corps projects and also studies.

TCS: This provision continues the recent move to shift much of the decision-making about project funding to non-federal interests and moves away from creating an encompassing prioritization system. This reaches back to a provision that was enacted in 1940 and hasn’t changed since 1956 (when the term Secretary of War was replaced with Secretary of the Army).

Sec. 1003 Authority to Accept and Use Materials and Services

Expands a provision in WRDA 2014 that allows non-federal interests to contribute materials and services to repair, replace, or restore a project damaged by an emergency. Reimbursement is not allowed. The new provision would allow funds to be contributed and would expand to include risks to the functioning of the project.

Sec. 1004 Partnerships with Non-federal Entities to Protect the Federal Investment

Corps is allowed to partner with non-federal interests to accept funds, materials, and services to ensure a project continues to function. No credit or reimbursement is allowed.

TCS: Even though both Sec. 1003 and 1004 do not currently allow crediting or reimbursement, they continue down the path of enabling non-federal interests to direct where Corps efforts and activities are conducted, subverting both Congress and the Administration’s abilities to set priorities.

Sec. 1005. Non-federal Study and Construction of Projects

The Corps is allowed to accept funds from non-federal interests to help them complete feasibility studies and construction of projects.

TCS: Sec. 1005 does allow for credit or reimbursement for funds. This continues down the path of enabling non-federal interests to direct where Corps efforts and activities are conducted, subverting both Congress and the Administration’s abilities to set priorities.

Sec. 1006 Munitions Disposal

This emanates from an incident where sand pumped onto a New Jersey beach as part of a Corps project contained unexploded munitions. This clarifies the WRrDA 2014 provision that “clarified” munition disposal authorities and directs that instead of the DOD agency that released the munitions “funding”

their removal, the Corps is to complete removal and (TCS: *possibly*) be reimbursed by the offending agency.

Sec. 1007 Challenge Cost-sharing Program for Management of Recreation Facilities

Allows service providers at Corps recreation facilities to keep the user fees to maintain services.

TCS: This makes sense.

Sec. 1009 Project Completion

Raises authorization level, in amount necessary to complete, any environmental infrastructure project authorized in WRDA 1992. Project must have received at least \$4 million in federal funds, be 80% complete, demonstrated significant progress toward completion of project or segments, and benefits will not be realized unless the project authorization is increased.

TCS: Environmental Infrastructure projects were a brainchild of the then-Rep. Bud Shuster (R-PA) and the late Rep. Jack Murtha (D-PA). It was little more than a lever to send additional cash to powerful lawmakers home districts as grants (with some match) to construct undefined wastewater and water supply projects. Not only are these not in the Corps already strained mission areas, but it is duplicative of revolving loan programs administered by EPA and the states. This seems like a narrowly tailored provision to one or a handful of projects.

Sec. 1010 Contributed Funds

Modifies existing provision that enables the Corps to accept funds from non-federal interests for work, study, or design of projects. Previously, law required there also be federally appropriated funds as well for the project, this provision strips that requirement. It also enables funds to be used to update reservoir operation manuals except on certain controversial systems (Upper Missouri, Apalachicola-Chattahoochee-Flint, Alabama-Coosa-Tallapoosa, and Stones River) are not eligible. Provides for annual report.

TCS: Requiring that there be some amount of appropriated funds (even \$1) demonstrated some level of federal interest in the project. By removing that requirement, the Corps devolves into becoming a contractor for any deep pocketed federal interest that has an authorized project. Again, this is a further diminution of the federal program and loss of Congressional control (even with a reporting requirement).

Sec. 1011 Application of Certain Benefits and Costs Included in Final Feasibility Studies

Refers to a navigation project authorized after November 7, 2007, involving offshore oil and gas fabrication ports and directs which plan should be used in accordance with an emergency supplemental from 2005.

TCS: We know what project bill is talking about. The Port of Iberia in New Iberia, LA. Louisiana lawmakers have been trying to get this project constructed since at least 2005 manipulating the Corps' economic analysis in the process. From the 2005 legislation:

SEC. 6009. In determining the economic justification for navigation projects involving offshore oil and gas fabrication ports, the Secretary of the Army, acting through the Chief of Engineers, is directed to measure and include in the National Economic Development calculation the value of future energy exploration and production fabrication contracts and transportation cost savings that would result from larger navigation channels.

What this provision does is ignore that those economic benefits would come from economic activities diverted from another part of the country (presumably Texas) which should not be counted for National Economic Development worthy of federal taxpayer investment.

Sec. 1012 Leveraging Federal Infrastructure for Increased Water Supply

Directs the Corps to review proposals from non-federal interests to increase water supply through modification of projects or operations of projects. Funds to conduct review can be provided by the non-federal interests. If the review is favorable, non-federal interests pay the full cost of the modification. Certain controversial systems (Upper Missouri, Apalachicola-Chattahoochee-Flint, Alabama-Coosa-Tallapoosa, and Stones River) are not eligible.

Sec. 1013 New England District Headquarters

Authorizes the Corps to construct additions to existing buildings on Hanscom Air Force Base in Bedford, MA for new district headquarters.

TCS: Considering the current District headquarters is in Concord, MA, this may be an attempt to inoculate Hanscomb from a future base closure round.

Sec. 1014 Buffalo District Headquarters

Authorizes a new headquarters building in Buffalo for the district, does not specify the location.

Sec. 1015 Completion of Ecosystem Restoration Projects

Enables operation and maintenance of ecosystem restoration projects to be concluded ten years after certain ecological success criteria are met.

Sec. 1016 Credit for Donated Goods

Establishes that the amount of in-kind credit should be the value of goods rather than the price paid for the goods.

TCS: This could cut both ways, but clearly for land purchased years before, this would increase the value of the donation.

Sec. 1017 Structural Health Monitoring

Create a program to assess and improve condition of infrastructure for response to flood and earthquakes; pre-disaster mitigation measure; and lengthening the useful life of infrastructure.

TCS: If the Corps is not already doing this, it is depressing and sad.

Sec. 1019 Non-federal Interests

Allows Alaska native villages to be non-federal sponsors.

Sec. 1020 Discrete Segment

Creates a new sub-project definition "discrete segment" (adds to separable element) that would enable crediting before project is complete.

TCS: Separable elements of projects have to be cost justified, not sure about discrete segments which seem to be smaller than separable elements.

Sec. 1023 Wetlands Mitigation

Allows potential mitigation credits to be considered.

TCS: Taxpayers could wind up paying for mitigation that is never carried out or that will not work.

Sec. 1024 Use of Youth Service and Conservation Corps

Enables Districts to work with youth service and conservation corps to work on projects where appropriate.

TCS: Seems like a positive way to engage youth.

Sec. 1025 Debris Removal

Increases from \$1 million to \$5 million the amount the Corps can divert from existing appropriations to remove snags and debris and clearing navigation channels. Also expands to include removing obstructions and to activities “adjacent to a Federal channel.”

TCS: It is not clear what adjacent actually entails and could authorize Corps to engage in activities that are not federal interests.

Sec. 1029 Prioritization

Adds restoration of coastal wetlands as a priority consideration for hurricane and storm damage reduction projects. Also, requires the Corps to report on programmatic authority environmental projects (Sec. 206 and 1135) that were authorized in WRDA 2007 or 2014 that meet some existing criteria and explain how they will be “expeditiously” completed.

TCS: Seeing prioritization in a WRDA is exciting for us, but this is a very minor measure. Prioritization systems established by Congress should be a key component of WRDA.

Sec. 1034 Hurricane and Storm Damage Reduction

Increases the authority for smaller hurricane and storm damage reduction projects from \$5 million to \$10 million.

Sec. 1036 Feasibility Studies and Watershed Assessments

Deals with efforts to accelerate studies. Changes cost-sharing so that the first \$100,000 cost of a feasibility study or Watershed assessment is a federal expense. Further expenses would cost-shared as before.

TCS: No real apparent need. The explanation is that this expense would be scope the study with the non-federal partner. This is a subsidy solution without a problem.

Sec. 1046 Study on the Performance of Innovative Materials

Directs the Corps to contract with Transportation Research Board to investigate the application of innovative materials (defined as high performance concrete formulations geosynthetic materials advanced alloys and metals reinforced polymer composites, and any other material) in Corps projects.

TCS: We’re certainly not opposed to study and figuring out if there are better ways to build a dam or floodwall or whatever, but there’s our experience is that someone that makes “high performance concrete formulations geosynthetic materials advanced alloys and metals reinforced polymer composites” is pushing this agenda.

Title II – Navigation

Sec. 2001 Projects Funded by the Inland Waterways Trust Fund

Stops the automatic deauthorization clock for 15 years for inland navigation constructions projects. Under current law projects that have received no funding for seven years are supposed to be automatically deauthorized.

TCS: Strongly oppose this provision. The argument is that because the Olmsted Lock and Dam project has been the only inland navigation construction project budgeted for several years (and is not expected to be completed until 2022) that these other projects should escape deauthorization. A project that has been deauthorized can be reauthorized if it is still viable. Furthermore the economic assumptions for any of these inland navigation projects would be so dated by the time they would move forward they should all be reevaluated before receiving construction funds.

Sec. 2002 Operation and Maintenance of Fuel-taxed Inland Waterways

Though sounding generic this targets a particular set of flood gates in Louisiana where the operations and maintenance cost share is 65 percent federal, 35 percent non-federal. Typically flood control O&M is completely non-federal. This provision credits the non-federal interest for any funding they provided for the federal share of O&M. This can either go to their share in future years or to contribute to raising levees to their authorized heights.

TCS: This just further extends this narrowly targeted provision that should be ended. Every other flood control project is maintained by non-federal interests.

Sec. 2003 Funding for Harbor Maintenance Programs

This provision amends a mechanism created in WRRDA 2014 to force increasing expenditures from the Harbor Maintenance Trust Fund. This provision ensures that even if there is a decline in revenue there will be a year to year increase in spending from the fund.

TCS: As we maintained in WRRDA, this is a decision that Congress should make through appropriations and not try to force increased spending.

Sec. 2007 Aids to Navigation

Directs the Corps to work with the Coast Guard regarding aids to navigation on the Ouachita-Black Rivers (LA/AR) and to provide assistance with the placement of aids to navigation. A report is required one year later.

TCS: The Ouachita-Black is a very low volume commercial waterway. This provision appears to attempt to elevate it in navigational importance.

Sec. 2009 Operation and Maintenance of Harbor Projects

Makes permanent the “emerging harbor” provision created by WRRDA 2014. This sets aside 10 percent of Harbor Maintenance Trust Fund spending for “emerging” harbors (those with less than 1 million tons of traffic per year).

TCS: The emerging harbor concept is ridiculous. If it is a low trafficked harbor, it should be a low priority, not benefit from a set aside. Even more ridiculous is that the original Senate bill only extended this provision for three years, the Manager’s amendment for the Senate floor made this permanent. How can a harbor be permanently “emerging”?

Sec. 2010 Additional Measures at Donor Ports and Energy Transfer Ports

Corrects a typo from WRrDA 2014 as well as makes permanent provisions benefiting donor and energy transfer ports.

TCS: Donor ports are a proxy for Los Angeles and Long Beach. Energy ports are proxy for those in Louisiana (among others).

Sec. 2011 Harbor Deepening

Changes cost-sharing for harbor deepening construction projects. Currently federal taxpayers bear 75 percent of the cost from deepenings between 20 and 45 feet and 50 percent of the cost of deepenings greater than 45 feet. This provision will roll back the cost share and have federal taxpayers pay 75 percent of the construction cost for deepenings up to 50 feet.

TCS: This is a roll back in cost sharing that is unnecessary and unfair. Many ports have paid the additional cost to go deeper than 45 feet. This is just a giveaway plain and simple. This is the second half of a change in WRrDA 2014 that changed the maintenance cost-share. CBO estimates that this will retroactively affect eight projects costing taxpayers an additional \$430 million more than was initially authorized.

Sec. 2012 Operations and Maintenance of Inland Mississippi River Ports

Mandates \$25 million be spent annually dredging Mississippi River ports from Minnesota to Louisiana to authorized dimensions and depths.

TCS: Unnecessary and unneeded provision that is trying to give small inland ports a leg up without a demonstrating that investment would provide a net economic benefit. CBO estimates this will cost taxpayers \$275 million.

Sec. 2015 Non-federal Interest Dredging Authority

Creates a program where non-federal interests can dredge navigation projects and be eligible for reimbursement by future appropriations.

TCS: This is the most recent in anti-prioritization push with the Corps program. Non-federal interests will be able to dictate which projects get done, regardless of priority and will demand future Congresses repay them for the work they did, when if it had been a higher priority it would have been budgeted.

Sec. 2017 Dredged Material

Changes existing policy regarding disposal of material dredged for beneficial use. Currently, if the Corps determines that dredged material from a navigation project could be used for beach protection or some other beneficial use and the cost is reasonable they can do so. But the incremental cost over the least cost disposal method, the increment had to be paid by a non-federal interest. This provision eliminates that requirement.

TCS: This could have a sweeping effect and significant increase the cost for navigation dredging projects. Previously this was 100 percent non-federal, now it would be 100 percent federal. This is a sweeping change. There should at least be a cost-share commensurate with the rate for the benefitting project/non-federal interest.

Title III – Safety Improvements

Sec. 3001 Rehabilitation Assistance for Non-Federal Flood Control Projects

Changes P.L. 84-99 rules to not just repair non-federal flood-damaged levees and other flood control works to the immediate pre-disaster condition, but to “original design level or original capacity” at 80 percent or 100 percent Federal expense, and allows the Corps to rebuild levees with increased level of protection above the “original design level” post-disaster, if the local sponsor pays the incremental additional costs. If a proposed betterment project has been studied and found feasible by the Secretary, the additional costs will be constructed at 65 percent Federal cost share.

TCS: P.L. 84-99 needs reform, but this essentially subsidizes building bigger levees in areas with proven flood risk. Under the existing emergency program levees would be returned to their pre-disaster condition at federal expense, this provision enables them to be built to the “original design level” at 80 or 100 percent federal expense. In many cases these levees would have not been maintained anywhere near their designed level or capacity. This is emergency funding not subject to appropriation and could have enormously costly impacts. In addition, this provision creates a perverse incentive to not maintain levee systems to take advantage of Uncle Sam’s largesse. It’s important to note that this wouldn’t just apply to levees previously constructed by the Corps, but also the thousands of private and agriculture levees. This would also apply to jetties and flood walls.

Sec. 3002 Rehabilitation of Existing Levees

Amends provision from WRrDA 2014 for dealing with coastal levees that are subsiding by removing requirement that the Corps determine the work be “technically feasible, environmentally acceptable, and economically justified.”

TCS: The federal government should not be doing projects that are not “technically feasible, environmentally acceptable, and economically justified.” We oppose removal of that stipulation. In addition, this attempts to end run cost sharing and use emergency designation while authorizing \$125 million for the program.

Sec. 3004 Rehabilitation of High Hazard Potential Dams

Creates a \$530 million (ten years) FEMA program to deal with high hazard dams (not including hydropower or USDA constructed dams).

Sec. 3005 Expedited Completion of Authorized Projects for Flood Damage Reduction

Directs the Corps expedite completion of four flood damage reduction projects:

Chicagoland Underflow Plan, IL; Cedar River in Cedar Rapids, IA; Comite River, LA; Amite River and Tributaries, LA.

TCS: The Chicagoland project is to deal with a combined sewer overflow issue, the others were all areas impacted by flooding in recent years (or in the case of LA, weeks). This provision has no actual effect other than telling the Corps to hurry up and appear interested.

Sec. 3006 Cumberland River Basin Dam Repairs

Directs that costs to repair seepage problem at dams in Cumberland River Basin be treated as dam safety costs.

TCS: Congress is wading into an intra-Corps debate as to whether treat the repairs at Center Hill and Wolf Creek Dams (and possibly others) as major rehabilitation or dam safety. The cost savings to

Southeastern Power Administration would be in the hundreds of millions of dollars according to a 2015 [GAO report](#). Decisions about how costs are allocated should not be done in narrow provisions like this that could set costly precedents.

Title IV River Basins, Watersheds, and Coastal Flats

Sec. 4001 Gulf Coast Oyster Bed Recovery Plan

Authorizes \$2 million for the Corps to work with affected states to develop a plan to recover Gulf Coast oyster beds.

TCS: The bill cites damage from Katrina, the BP oil spill and flooding events as the reason the beds were damaged. Billions of dollars have gone to the Gulf states in the form of disaster relief and BP settlement. It does not appear that another \$2 million needs to be used for a “plan.”

Sec. 4012 Adjustment

Removes Sumter County from and adds Berkeley County to the \$60 million Lakes Marion and Moultrie Environmental Infrastructure project in SC.

TCS: This was very stealthily done. References back to the original WRDA 92 law and statute and in the committee produced summary it simply says the provision “adjusts the boundaries of a project.” The Environmental Infrastructure program has been opposed by every President – Republican and Democrat – since its creation in the early 1990s. EI is a federal grant program for wastewater and water supply projects that are not part of the Corps’ primary mission areas and duplicates EPA loan programs. This particularly project is for water supply treatment and distribution. This provision does not provide a certain amount of money for the project (that was already done in WRDA 2007) so it isn’t an earmark, but the parochial nature and the Senate EPW obfuscation as well as its earmark lineage make it very close.

Title V – Deauthorizations

Sec. 5001 Deauthorizations

Deauthorizes 8 projects.

TCS: The manager’s amendment consolidated several lock and dam deauthorizations on the Green and Barren Rivers into one provision (and added an additional lock and dam - #4). So while there are fewer subprovisions to this section there is actually more deauthorizations.

Sec. 5002 Conveyances

Conveys 4 projects to state or local interests.

Title VI – Water Resources Infrastructure

Sec. 6001 Authorization of Final Feasibility Studies and Sec. 6002 Authorization of Project Modifications Recommended by the Secretary

Authorizes 28 navigation, storm and flood damage reduction, and environmental restoration projects and modifies an addition 7.

TCS: CBO scored the committee-passed bill as having \$10.5 billion in authorized and modified projects, \$5.8 billion of which would be borne by the federal government. The Manager’s amendment added

several projects including Southwest Coastal Louisiana which would add more than \$3 billion to the total coast (\$2 billion federal). Not including modifications, which would increase the cost, TCS estimates the bill authorizes \$12.7 billion in authorized projects, \$7.1 billion of which would be borne by the federal government.