



Historic Water Resources Reform and Development Act Enacted into Law

NEW DEVELOPMENTS

On June 10, 2014, President Obama signed into law the Water Resources Reform and Development Act of 2014 (“WRRDA”) (Public Law No: 113-121). The primary purpose of the bill is to provide funding for improvements to rivers and harbors, dredge East Coast ports to 50 feet to accommodate post-Panamax depth vessels, and to improve the way the Army Corps of Engineers (“COE”) selects and implements its projects. Another vital feature is the streamlining of the environmental review process for projects. The bill is the first water resources bill since 2007, and is noteworthy for being the first water resources bill in the post-earmark era. The text of the legislation is available at <http://www.gpo.gov/fdsys/pkg/BILLS-113hr3080enr/pdf/BILLS-113hr3080enr.pdf>.

BACKGROUND

For about three decades, Congress passed a water resources bill (“WRDA”) biannually. However, the mechanisms of the Act broke down in 2002 due to gridlock over reforming the COE. The 110th Congress passed a WRDA bill in 2007, but President Bush refused to sign the legislation because he considered the \$23 billion price tag to be fiscally irresponsible and full of pork-barrel projects to districts. Although Congress ultimately overrode the veto, WRDA became associated with unbridled spending and special interests. Many saw the 2010 ban on earmarks as particularly damaging to the WRDA process since it would be difficult to ensure passage without the traditional designated projects in the legislation.

PASSAGE OF WRRDA

The 2014 WRRDA process began in the fall of 2012, during the 112th Congress, when Chairwoman Barbara Boxer and Ranking Member David Vitter of the Senate’s Environment and Public Works Committee began hearings on WRDA. [Note: The term “Reform” was added to WRDA to reflect the reform and streamlining provisions in the final bill.] The hearings were noteworthy for their bipartisan and cooperative approach. After the start of the 113th Congress, Congressman Bill Shuster, Chairman of the House Committee on Transportation and Infrastructure, introduced the bill in the House on September 11, 2013. The bill ultimately passed the House on October 23, 2013, and passed the Senate by Unanimous Consent on October 31, 2013. The House agreed to the Conference Report on May 20, 2014 by a vote of 412-4, and the Senate agreed to the Conference Report two days later by a margin of 91-7. The President signed the bill into law on June 10, 2014.

KEY POINTS IN WRRDA

Process without Earmarks

WRRDA is notable for being the first modern water resources bill to have passed without earmarks. Although members, including Chairwoman Boxer, opined on the benefits of earmarks to water resource bills, the House stood firm in its support of the earmark ban.

To comply with the earmark ban, the usual process was reversed. Instead of Congress deciding which projects to authorize the COE to perform, the COE recommended 23 projects to Congress, of which 21 were incorporated into the House bill. The Senate version would have deferred to the COE, but initiated 20 projects. The conference report agreed to by both chambers uses the House's vetting process and ultimately authorized 34 projects.

Use of the Harbor Maintenance Trust Fund ("HMTF")

One of the key issues of the maritime community was the expenditure of receipts in the HMTF. The HMTF is funded with a tax paid on cargo by importers and shippers. The HMTF has run a large surplus in recent years, with Congress appropriating only half of the \$1.6 billion in the fund. As Henry Bridges, Chairman of the American Association of Port Authorities, noted in his testimony before the Senate EPW Committee, "[p]ort and harbor users are paying for 100 percent of maintenance dredging and getting half in return."

To ameliorate these concerns, WRRDA mandates that by 2025, 100 percent of receipts in the HMTF would go to port expenditures. In the meanwhile, the COE must prioritize funding allocations for harbor projects. WRRDA also authorizes \$50 million annually for dredging at ports that are key to trade and energy commodities.

Inland Waterways Trust Fund ("IWTF")

Another key concern of the maritime community was the use of the IWTF. This legislation shifts much of the cost of the Olmsted Dam project out of the IWTF into the general treasury to allow for the initiation of other projects. WRRDA also directs the Government Accountability Office to study the revenue system and make recommendations on alternative collection systems.

Non-Federal Resources

WRRDA also sought to accelerate project delivery and increase flexibility by encouraging collaboration at all levels of government. For emergency situations, the Corps may accept non-federal resources to repair projects. Non-federal entities may also use their own resources to initiate projects without congressional authorization. To incentivize these measures, the non-federal entity could receive credit for their expense if the project is ultimately authorized by Congress.

Environmental and Related Streamlining

WRRDA creates a new procedure for COE review of all dredging and flood control projects. The new procedure is called "3-by-3-by-3." This requires the COE to complete all environmental reviews of projects in three years; spend no more than \$3M on any feasibility study; and limits the level of internal Corps' reviews to three layers of bureaucracy. This was a major feature of the House bill—and one the Administration strongly objected to—but ultimately the President did not veto the entire bill for this one provision.

Project Deauthorization

As emphasized in the title of the Act, "reform" was central to the new WRDA process. In addition to the streamlining process, above, the Act requires the COE to deauthorize backlogged projects. Projects that have not been funded in the past five years and that are not under construction will be on the COE first list of potential deauthorizations. Ultimately, the COE will have to deauthorize \$18 billion of federal cost shares from backlogged projects.

Examples of Approved Projects

- *Louisiana—Morganza to the Gulf Levee and Floodgate Project & Coastline Repair*

The most expensive project is a \$6.7 billion project to build 98 miles of levee along with 22 floodgates in Louisiana. The purpose of the project is hurricane and storm damage reduction. The area's disaster vulnerability has increased due to wetlands loss, and the cost of the project has increased since 2007 when it was first authorized. The total cost is anticipated to be \$10.3 billion. Another \$1 billion for environmental restoration projects has been slated for projects along Louisiana's coast, with an anticipated cost of \$1.6 billion.

- *Chesapeake Bay and Poplar Island*

WRRDA authorizes \$1.2 billion for hurricane damage repair and environmental restoration efforts in the Chesapeake Bay, and has a total cost of \$1.9 billion. Another project for Maryland's Poplar Island, which is within the Bay, will have an initial cost of \$868 million, and a projected total cost of \$1.2 billion.

- *California—American Rivers Watershed and Natomas Basin*

WRRDA authorizes \$761 million to initiate flood risk management within California's American Rivers Watershed and Natomas Basin, near the state capital of Sacramento. According to the COE report, Sacramento is one of the most flood-prone cities in the United States, which necessitates the project. Projections place the total cost at \$1.1 billion.

- *Savannah Harbor Expansion Project*

The Port of Savannah will be deepened to allow for post-Panamax vessels. The total cost of \$706 million will be shared between the COE and the State of Georgia.

- *Boston Harbor*

Boston harbor is slated to receive \$310 million for dredging. The initiative is expected to double the amount of shipping containers that move through Boston. COE estimates that the increased economic activity will result in a \$2.7 billion impact in the New England region.

- *Minnesota and North Dakota—Red River Valley*

Flood prevention infrastructure in the Red River Valley of Minnesota and North Dakota is authorized to receive \$847 million. The projected total cost is \$1.9 billion.

CONCLUSIONS AND RECOMMENDATIONS

The passage of a WRRDA bill without real earmarks is a historic achievement, as is the new requirement for the COE to complete their reviews in a very tight timeline. Congress has also committed to repeating the WRRDA process every two years. However, the change in process and drastic decrease in overall project allocations have created winners and losers. Our analysis of the process shows the importance of engaging early and often with members and agencies on water development projects to ensure authorization in the next WRRDA.

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