



H.R. 3080, Water Resources “Reform” and Development Act of 2014: Commentary and Analysis

Title I – Program Reforms and Streamlining

Sec. 1001 – Vertical integration and acceleration of studies. Codifies the Corps of Engineers 3-3-3 Plan. Feasibility studies to be completed in 3 years for not more than \$3 million with concurrent review by District, Division, and Headquarters personnel (3 levels review). One year extension is authorized.

New provision added in conference that would create an exception to extend studies for an additional three years for feasibility studies that are complicated because of the scope and scale; uses innovative design or construction; requiring significant action by Federal, State, or local agencies; significant public dispute on the nature or effects of the project; significant public dispute on economic or environmental costs or benefits of the project.

All feasibility must be completed in less than seven years. And any delays require reports from the Secretary. After four years the Secretary is to submit a publically available report on implementation of the system.

TCS: This provision reflects recommendations TCS made during the House and Senate consideration of the legislation. However, reports should be made available to the public more frequently.

Sec. 1002 – Consolidation of studies. Eliminates reconnaissance studies and incorporates into a new feasibility study process.

Sec. 1003 – Expedited completion of reports. Pushes Secretary to complete ongoing feasibility studies and green-lights preconstruction, engineering, and design following successful completion of a feasibility study.

TCS: PED was typically an authorized process rather than automatic.

Sec. 1008 – Expediting hydropower at Corps of Engineers facilities. Creates new priority mission for Corps – hydropower at Corps dams.

TCS: Makes the Corps report biennially on efforts to increase hydropower production at Corps dams. This seems to ignore realities of hydro-electric generation. Corps dams are generally poor producers of power because a good hydro dam is the opposite of a good navigation dam. But whatever.

Sec. 1010 – Determination of Project Completion. For certain Corps projects (e.g. flood damage reduction) the non-Federal interest takes over operation and maintenance when a project or separable element is complete. This provision allows the non-Federal interest to challenge that transfer, requiring

the Corps to find an independent expert to determine if it is complete, delaying transfer by up to 6 months.

TCS: This seems like an effort by non-federal interests to force taxpayers to pay for ongoing maintenance costs, particularly for separable elements of larger projects.

Sec. 1011 – Prioritization. Prioritizes hurricane and storm damage reduction projects using several criteria not including benefit cost analysis (BCA). Also requires the Corps to document projects at least 20 years old that are less than 75 percent complete and a plan to complete them.

TCS: Not including BCA as at least one the criteria is a critical error. In addition, a project more than 20 years old that is not 75 percent complete begs the question about the importance/utility of such a project. A provision that would prioritize hurricane/storm damage reduction studies was deleted.

Sec. 1014 – Study and Construction of Water Resources Development Projects by Non-Federal Interests. This section would allow non-federal interests to contribute to studies or construction of a project and be reimbursed.

TCS: Depending on how much this provision is used it could upend the nation’s control over where federal water resource project investments are being made. A project that is a lesser priority may be funded or advanced by the private sector and reimbursement would divert federal funds from higher priority projects.

Sec. 1015 – Contributions by Non-Federal Interests. This provision allows non-federal interests (including States) to contribute to the construction of inland navigation projects among others.

TCS: This does not deal with the heavily subsidized inland water system’s real issues: a fuel tax supported trust fund that doesn’t generate enough revenue and a 100 percent operations subsidy.

Sec. 1016 – Operation and Maintenance of Certain Projects. The Secretary may assume O&M activities for a navigation channel that is deepened by a non-federal interest prior to December 31, 2014.

TCS: This would allow non-federal interests to jumpstart deepening. These could be projects that are not in the national interest, or low priority, which is why they had not been funded.

Sec. 1018 – Credit for in-kind Contributions. This provision standardizes in-kind crediting: credit for work done by the project sponsor to help construct the project or provide lands, easements, rights-of-way, relocations, or dredge disposal areas (LERRDs). It also brings in-kind crediting to the “environmental infrastructure” projects.

TCS: In-kind crediting can and has been abused and there has been no analysis to show that in-kind crediting is effective. The so-called environmental infrastructure projects are in reality political slush funds to obtain federal subsidies for water supply and wastewater treatment plants. In reality this is a grant program that was established by then Reps. Bud Shuster (R-PA) and Jack Murtha (D-PA). Geographic areas defined by political boundaries are eligible for federal funds for up to 80 percent of a project cost. These are not federal projects and are duplicative of the more prioritized and fiscally responsible revolving loan programs administered by EPA. The entire environmental infrastructure program is outside of the Corps mission and should be abolished in its entirety not further strengthened with in-kind crediting.

Sec. 1019 – Clarification of In-Kind Credit Authority. This provision allows transfer of in-kind credits between projects if the crediting is in excess of the non-federal cost-share and is drafted for Louisiana.

Sec. 1020 – Transfer of Excess Credit. Similar to Sec. 1019 but national in scope.

Sec. 1021 – Crediting Authority for Federally Authorized Navigation Projects.

This provision allows non-federal interests to conduct operation and maintenance activities for federal navigation projects and receive credit toward construction cost-share of another navigation project.

TCS: This, like many of the other crediting provisions, moves further away from a system of prioritizing investments and allows the Corps and the taxpayer to be directed by non-federal interests as to what projects would be funded.

Sec. 1030 – Continuing Authority. This provision increases the authorized funding level for small projects conducted under the Corps' continuing authority programs (CAP). In addition, the provision directs the Corps to publish the criteria the Corps uses for prioritizing annual funding to the projects. It also requires the Corps to publish a report with the name, description, cost estimate for completion for each active CAP project as well as the funding level for each CAP program.

TCS: We hope the prioritization requirement is the first step toward Congress asserting authority over the Corps' prioritization process and will lead to increased Congressional scrutiny and non-parochial (e.g. not earmarks) oversight and direction for the Corps program.

Sec. 1035 – Recreational Access. Allows use of "floating cabin[s]" in the Cumberland River Basin.

TCS: This appears to be the settlement of a parochial issue regarding usage of the Cumberland River. Does not qualify as a Congressional earmark (no money) but clearly seems to be parochial.

Sec. 1036 – Non-Federal Plans to Provide Additional Flood Risk Reduction. Directs the Secretary to carry out a locally preferred plan that is more expensive than the project authorized in this bill if the project is cost-justified, technically feasible, and environmentally acceptable. The federal share of the cost shall not be greater than what was authorized in this bill.

TCS: The Corps recommends locally preferred plans to Congress all the time if they merit consideration. Evidently there are some projects authorized in WRRDA that are not to the sponsors liking so this appears to be an attempt to end run and authorize projects that Congress is explicitly not authorizing in this bill. Also, the proviso limiting the federal government to the original "share" of the project could be interpreted as preserving the cost share (65 percent) for the expanded project. TCS understands that this limits the federal costs to those of the original project. At TCS urging, this point was reiterated during House consideration of the conference report by Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA).

Sec. 1037 – Hurricane and Storm Damage Reduction. Pre-authorizes studies for beach renourishment projects that are reaching the end of their 50-year authorized life. In addition, any project where authorization is expiring within five years (i.e. first authorized in 1969 or earlier) the renourishment authority is extended for three more years. Furthermore, projects in this category are not to be considered a "new start" which would put them ahead of new authorizations for getting funds.

TCS: Zombie Beaches survive conference! These projects have been ongoing for 50 years. There was adequate time to plan for what is next and giving them an automatic short term extension followed by longer term extension is unwarranted. They should have been going through the normal process years

ago if they were seeking additional authorization. These projects will be eligible for Medicare by the time they expire.

Sec. 1042 – Reports to Congress. Sets up a system to reprogram funds within the Corps if reporting requirements are not met on the pilot programs for non-federal feasibility study development, non-federal project management, harbor maintenance expenditures, and non-federal project requests.

Sec. 1043 – Non-Federal Implementation Pilot Program. Establishes pilot programs for non-federal interests to develop feasibility studies and receive credit for their work in the construction phase. Also a pilot program to have non-federal interests construct projects.

TCS: This seems like a recipe for waste. First off, today not all feasibility studies result in project recommendations, nor should they. That might change under the new system, where the non-federal interest supporting the project does the study. Since they are spending money to get construction credit, recommending the project moves forward is clearly in their interest.

This is not the same as contracting out. Under this provision there is no competition or bid. There will also be little federal savings because everything is reimbursed which can serve to increase costs, especially if the work is not up to par and has to be redone.

Sec. 1050 – Namings. Renames Aberdeen Lock on the Tennessee-Tombigbee Waterway for former Waterway Administrator Donald G. Waldon. Names the Lower Mississippi River Museum and Riverfront Interpretive Site after Jesse Brent, the late owner of Brent Towing Company. Renames the Kaskaskia Lock and Dam on the Illinois River after former Rep. Jerry Costello (D-IL).

TCS: Eight of the 10 locks on the Tenn-Tom boondoggle will have names. Two left!

Sec. 1052 – Sense of Congress Regarding Water Resources Development Bills. States that Congress should consider WRDAs at least once a Congress (every two years). The WRDA preceding this one was in 2007, the one preceding that was 2000 (then 1999, 1996, 1992, 1990, 1988, 1986, 1976...).

TITLE II – NAVIGATION

Subtitle A: Inland Navigation

Sec. 2002 – Project Delivery Process Reforms. Creates a series of systemic reforms to identify best practices, improve on-time and on-budget delivery, identify construction techniques, and make recommendations for reform, including pilot projects to help determine these criteria.

Mandates that the Inland Waterway Users Board (IWUB) meet semiannually, and provide regular recommendations to Congress and the Secretary. The Secretary is required to communicate quarterly with users board on the status of all inland navigation construction projects and studies. Requires the Secretary to work with the IWUB to develop a 20-year capital investment program within a year. This report will be based on previous studies and will ensure that investments are made in all geographic areas of the system and ensures efficient funding of inland waterways projects. This is to be updated every five years.

TCS: The project delivery process reforms make sense. The increased role for the IWUB and direction that investments be made across the system do not. There is no analogue for the IWUB in the transportation program and the federally funded entity has been little more than a booster for spending increased taxpayer funds on projects benefitting their industry. Earlier IWUB studies about dealing with

shortfalls in the inland waterways trust fund have provided for increased fuel tax revenue, but also increasing the federal subsidy for inland waterways beyond the 90 percent subsidy that exists to date. Because taxpayers contribute more than 90% of the funds for the inland waterways system, there should also be taxpayer representation on this board.

Furthermore, all parts of the inland waterways are not the same. More than 80 percent of the traffic is on the Mississippi, Illinois, and Ohio Rivers and the Gulf Intracoastal Waterway. It makes no sense to invest in low traffic waterways; in fact these segments should no longer be part of the federal system.

Sec. 2003 – Efficiency of Revenue Collection. Within 2 years, a GAO study on the efficiency of collecting the inland waterways fuel tax, whether alternative methods of collection would result in increased revenues, and an evaluation of alternative collection.

TCS: Supports.

Sec. 2004 – Inland Waterways Revenue Studies Directs the Corps of Engineers to consult with “appropriate Federal agencies” in studying the potential for issuing tax-exempt bonds. These bonds would be secured by current and projected revenue from the inland waterways trust fund. Secretary would meet with representatives of commodities and bulk cargos shipped on the waterways, persons owning, operating, using, or otherwise benefitting from hydropower facilities, electric utilities that use these waterways for cooling of facilities, municipal and industrial water supply, recreation, irrigation, or flood damage reduction; other stakeholders as identified by the secretaries.

The Secretary would conduct a study looking at other user fees and revenue from beneficiaries of the inland waterways that would generate \$190 million annually. This would be in conjunction with fuel tax revenue, which over the last decade has not generated more than \$100 million in any year.

TCS: Supports the idea of studying bonds. Some concerns about taxpayer risk and increased tax complexity. Taxpayers should be one of the stakeholders identified. The House-passed WRDA was stronger in specifying the “appropriate Federal agencies” to be consulted as the Secretaries of Treasury, Transportation, the Interior, and the Administrator of the Environmental Protection Agency. By not specifying which agencies to consult, there is a risk the Corps will see no need to consult with other agencies in its study.

The user fee and revenue study is important. However, it should be expanded to determine the type and amount of user fees and revenue necessary to operate and maintain as well as construct the inland waterways system. Right now all of the inland waterway O&M costs are borne by the federal treasury, a system that is unique among transportation modes. Furthermore, it should be recognized that the vast majority of the inland waterways system has been designed to maximize benefits to navigation, which in many cases reduces potential water supply and flood damage reduction benefits. And that absent a navigation system there would still be water supply, recreation, and environmental benefits from these river systems.

Sec. 2005 – Inland waterways stakeholder roundtable. This provision follows on the user fee and revenue report and directs the Secretary hold a roundtable meeting to get stakeholder input on the report and infrastructure needs. The outcome would be another report that summarizes the roundtable and recommendations for next steps.

TCS: With the caveats noted above, TCS supports.

Sec. 2006 – Preserving the Inland Waterway Trust Fund. This provision increases the federal treasury share of construction costs at Olmsted lock and dam (Ohio River) from 50 percent to 85 percent. It also includes a sense of Congress that expenditures on this project should not be less than \$150 million per year. The section also changes the definition of major rehabilitation for locks and dams to those costing at least \$20 million up from the existing threshold of \$8 million.

TCS: Bailing out the barge industry from its financial responsibilities is a direct threat to long-established cost share rules. Forcing federal taxpayers to cover 85% of the cost of Olmsted sets a precedent for users to get out of having to pay their fair share for every future over-budget and long-delayed Corps project. The change to the definition of rehabilitation means barge interests will no longer have to share in the costs of lock and dam rehabilitation unless it is estimated to cost more than \$20 million, effectively relieving them of any financial responsibility for the navigation locks built exclusively for the interest of the inland waterways shipping industry.

Sec. 2007 – Inland Waterways Oversight. The Secretary is directed to provide a report on the lessons learned from the Olmsted project and that any inland waterways project that has an estimated cost of \$500 million or more shall have an annual financial plan submitted to Congress. In addition the Government Accountability Office is directed to conduct a report on why Olmsted experienced such significant cost overruns and delays. The review will include an assessment of engineering methods, management, contracting, and the cost of foregone benefits.

Sec. 2008 – Assessment of operation and maintenance needs of the Atlantic Intracoastal Waterway and the Gulf Intracoastal Waterway. Requires the Secretary to submit an analysis of the operation and maintenance needs of the two waterways and the costs to maintain them at authorized length, width, and depth; the amount of funding in the President’s budget; and unmet needs.

TCS: These two different waterways are vastly different. The GIWW is used for significant commercial activity. The AIWW is mostly used for sailboats and personal watercraft and should be considered for not being maintained federally.

Sec. 2010 – Upper Mississippi River Protection. Directs the Secretary to close the Upper St. Anthony Falls Lock and Dam within one year.

TCS: Closure of this low-use lock and dam is in the public interest. Evaluation of potential closure, or removal of federal taxpayer responsibility for maintenance, of other low-use locks that no longer serve federal interests in a cost-beneficial manner should be considered. Lower St. Anthony should be closed as well.

Sec. 2013 – Operations and Maintenance of Fuel Taxed Inland Waterways. Stipulates that the federal government would be responsible for 65 percent of the operation, maintenance, repair, rehabilitation, and replacement costs of flood gates and pumping stations that were constructed by the date of the act as part of an authorized hurricane and storm damage reduction project and cross an inland or intracoastal waterway (subject to the diesel fuel tax).

TCS: This appears to be targeted toward Louisiana and specifically the flood gates that are part of the Inner Harbor Navigation Canal Lake Borgne Surge Barrier which was constructed to protect New Orleans post-Katrina. This typically would be a non-federal expense.

Subtitle B: Port and Harbor Maintenance

Sec. 2101 – Funding for Harbor and Maintenance Programs. This provision steadily increases the payout from the Harbor Maintenance Trust Fund from 67 percent of the taxes received in FY14 to be spent in FY15 to 100 percent of the taxes received in FY24 in FY25 and thereafter. It directs that this should be additive and not cannibalize other Corps spending if the total Corps budget does not increase stipulating that the increase shall only apply in a year where the a Corps funding increase is at least equivalent to the increase in HMTF outlays.

TCS: The requirement that the increase in HMTF outlays will only occur in years where the total Corps increase is at least as much as the HMTF outlay increase means that in years where an applicable increase occurs all or a substantial portion of the increased Corps funding will go to the Harbor Maintenance Trust Fund, not other maintenance or new construction. Conversely, it also means that if Corps funding is not increased by as much as the amount specified in the legislation for HMTF increases, the HMTF receives no increase.

Sec. 2102 – Operation and Maintenance of Harbor Projects. This section creates “priority funds,” which are equal to the difference between funds made available for harbor maintenance in future fiscal years and a baseline of FY12. It also creates different categories of ports: Emerging Harbors (less than 1M tons of cargo per year), Moderate-use harbors (1M – 10M tons of cargo per year), High-use (greater than 10M tons of cargo per year), Great Lakes Navigation system (ports on the Great Lakes that are to be treated as a system).

The Secretary is directed to distribute priority funds with 90 percent to high and moderate use ports and 10 percent to emerging. In addition not less than 5 percent shall go to underserved harbors (those maintained to less than authorized depth and width) and 10 percent to the Great Lakes system. In ports where they have contributed more in taxes to the trust fund than received in the preceding three years, they are eligible for expanded uses of 10 percent of the priority funds which includes maintaining private berths adjacent to the federal channel or to pay the private costs for dredging and confined disposal of contaminated sediments.

TCS: This is an extremely convoluted section that establishes a system that mathematically attempts to distribute “excess” funds to a wide range of projects. Little of it is truly prioritized. Furthermore, it enables federal funds to subsidize expenditures that by law have rightfully been non-federal expenses.

Title V – Water Infrastructure Financing

Subtitle A: State Water Pollution Control Revolving Funds

Amendments to the Clean Water Act provisions authorizing grants to states for state loan program capitalization. Makes effective date October 1, 2014 and extends loan repayment from 20 to 30 years, allows funds to be used for land acquisition and security improvements.

TCS: These are modest adjustments that have been supported by Congress in the past, but the inability to do full scale Clean Water Act reauthorization meant these provisions were dealt with in an ad hoc basis, mostly through appropriations. These provisions were not in either the House or the Senate bill.

Subtitle C: Innovative Financing Pilot Projects

Modeled on TIFIA from MAP-21, WIFIA (Water Infrastructure Finance and Innovation Act) would be a five-year pilot program of loans and loan guarantees for flood and storm damage reduction, environmental restoration, and navigation improvements. It also provides for EPA support to waste water and water supply (with provisos to protect existing state Clean Water and Drinking Water revolving loan funds preferences). \$175M authorized for each agency for five years.

TCS: Really depends on the program's ultimate structure and whether it undermines the federal program and undercuts national interests. TCS was encouraged by TIFIA, but the transportation programs have a much greater degree of state direction than the federal water program has.

Title VI – Deauthorization and Backlog Prevention

Sec. 6001 Deauthorization of Inactive Projects. Establishes as a purpose \$18B (authorized federal project cost) in backlog reduction (which is roughly \$2B more than the authorizations in this bill). The Corps is also required to annually provide a list on a publically available web site (downloadable, searchable, and sortable) of all the projects, the funding, the required additional funding to complete. In addition, there will be a publically available backlog report that would have the authorized cost, date, description, estimated completion, and remaining appropriations. It will be made available to the public.

The Corps would identify projects authorized before WRDA 2007 that have not initiated construction before date of enactment, or projects that have received no construction funding (federal or non-federal) for the preceding six fiscal years. Projects receiving post-authorization study funding in FY14 or the preceding six years would be exempt. This initial list will be followed by a 90-day comment period and then would be submitted to Congress not more than 90 days after the project list referenced in the first paragraph is submitted. And then 30 days later a final list will be submitted to Congress which will have six months to pass a joint resolution disapproving the final report or listed projects will be deauthorized.

TCS: It's enough to make us cry. We have fought for a publically available backlog list for more than a decade. Also, the deauthorization system should work, however, even \$18 billion will barely dent the \$60-80 billion backlog. The net deauthorization in the bill is a little more than \$2 billion when you consider the projects authorized in the bill.

Sec. 6003 Backlog Prevention. Any project authorized in this bill that has not had construction funds obligated will be deauthorized seven years from date of enactment. In addition, 12 years after enactment the Corps should detail to Congress any projects authorized by this bill where construction has not been completed, for what reason, a schedule for completion, and a five and ten year projection of the backlog and how eliminate it.

TCS: This provision makes sense to try to stop the backlog from growing even more rapidly. It is disappointing, however, that the projects authorized by WRDA 2007 (approaching \$30 billion in total cost) are in an exalted state. They are not eligible for the deauthorization system established in Sec. 6001 and are not affected by this provision despite it being seven years since their authorization.

Title VII – Water Resources Infrastructure

Sec. 7001 – Annual report to Congress. This section establishes a new system for studying and authorizing projects. Annually, the Corps will request feasibility study and modification proposals in the

federal record. The Corps will submit a report to Congress with the proposed feasibility studies, modifications, and feasibility studies that are in the Corps mission areas, require authorization, have not been authorized, have not been in a previous report, and could be constructed by the Corps. The report should include a discussion of the benefits (or projected benefits), non-federal interest backing the project and other amplifying information.

TCS: This is the new process for developing water resource projects for authorization. TCS is adopting a wait and see approach to this. It could generate a lot of wasteful studies or projects or not – it remains to be seen.

Sec. 7002 Authorization of Final Feasibility Studies.

Authorizes 34 projects for construction.

TCS: See attached chart.

Sec. 7003 Authorization of Project Modifications Recommended by the Secretary.

Authorizes 8 project modifications.

Sec. 7004 Expedited Consideration in the House and Senate. Creates an “Interim Authorization Bill” system in the House where projects that receive Chief’s reports (or recommended deauthorizations) receive expedited consideration in the 113th Congress. In the Senate, the authority also fast tracks consideration of water resource project legislation for projects with Chief’s Report and an Assistant Secretary of the Army (Civil Works) referral. The Environment and Public Works Committee would report all projects (bills) by the end of January of the second session of each Congress. The Senate procedure lasts until the end of the 115th Congress (December 31, 2018).