



Association of California Water Agencies
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December 10, 2013

The Honorable Barbara Boxer
Chairman
U.S. Senate Committee on Environment and
Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Max Baucus

The Honorable Tom Carper

The Honorable Ben Cardin

The Honorable Sheldon Whitehouse

The Honorable Nick Rahall II

The Honorable Peter DeFazio

The Honorable Corrine Brown

The Honorable Eddie Bernice Johnson

The Honorable Tim Bishop

The Honorable Donna Edwards

The Honorable John Garamendi

The Honorable Janice Hahn

The Honorable Rick Nolan

The Honorable Lois Frankel

The Honorable Cheri Bustos

The Honorable Grace Napolitano

The Honorable Bill Shuster
Chairman
U.S. House Committee on
Transportation and Infrastructure
2165 Rayburn House Office Building
Washington, DC 20515

The Honorable John Duncan Jr.

The Honorable Frank LoBiondo

The Honorable Sam Graves

The Honorable Shelley Moore Capito

The Honorable Candice Miller

The Honorable Duncan Hunter

The Honorable Larry Buchson

The Honorable Bob Gibbs

The Honorable Richard Hanna

The Honorable Daniel Webster

The Honorable Tom Rice

The Honorable Markwayne Mullin

The Honorable Rodney Davis

The Honorable Doc Hastings

The Honorable Rob Bishop

The Honorable David Vitter

The Honorable John Barrasso

The Honorable James Inhofe

Dear WRDA/WRRDA Conferees:

The Association of California Water Agencies (ACWA) and the Texas Water Conservation Association (TWCA) represent a large spectrum of water resources interests throughout the California and Texas. The two organizations have prepared the following comments for your consideration as you continue to work through the differences between S 601, the Water Resources Development Act (WRDA), and HR 3080, the Water Resources Reform and Development Act (WRRDA).

The bipartisan efforts on much needed water resources legislation are much appreciated. It is noteworthy that after seven years, we are on the verge of passing WRDA reauthorization legislation. The reauthorization comes at a time when the U.S. Army Corps of Engineers (USACE) needs to provide a strong federal partnership to state and local governments in helping to manage our nation's water resources related activities.

New Project Authorization and Modifications to Projects

Project selection, particularly with the sanctions on earmarks in the House that has eliminated Congressional input and support of needed projects, has been a major concern. ACWA and TWCA support Section 118 of HR 3080 as a step forward in finding a constructive means for Members of Congress to have a voice in project selection and authorization. A Member should have the opportunity to support and advocate for a needed project in her or his District.

The non-federal sponsor should be recognized as a partner with the USACE on new studies or project modifications. Section 118 should be modified to ensure that the non-federal sponsor's comments on project benefits are submitted to Congress. ACWA and TWCA join with other water associations in strongly preferring that the discretion to authorize or fund projects reside with the Congress.

WIFIA – Title X of S. 601

Both ACWA and TWCA recognize and support the need for innovative financing for water resources projects. The provisions for WIFIA and public-private partnerships (PPP) are needed to authorize the USACE role in supporting these efforts

In the arid West, there is a number of major water projects currently planned and ready for financing that would benefit from the WIFIA financing options. Many of these projects are complex, large-scale projects that use advanced treatment technologies and are, therefore, capital intensive to build. The following are examples of the types of projects being developed by our members and others that would potentially benefit:

- Water recycling projects for irrigation and industrial uses
- Indirect potable reuse water recycling projects that use advanced treatment technologies to produce purified recycled water to indirectly augment groundwater and surface drinking water supplies

- Desalination projects using advanced treatment technologies
- Brine minimization projects that recover additional supplies of water from brine discharge streams
- Regional water supply/infrastructure development projects.

The WIFIA program provided for in Title X of S. 601 will add a much needed financing alternative for Western water managers and provide funding at the appropriate level for these much needed projects. Specifically, the proposed WIFIA pilot program would provide such funding for large projects in excess of \$20 million. We believe this is beneficial, but would urge the Committee to ensure the WIFIA is not established at the expense of the current EPA State Revolving Fund (SRF) program. This is consistent with S. 601, as passed by the Senate, which clearly states congressional support for the SRF's in Sec. 10002(1) by stating that the purpose of the WIFIA program is to establish "additional opportunities for financing water resources projects that complement but do not replace or reduce existing Federal infrastructure financing tools..." Finally, ACWA and TWCA encourage the Committee to allow the use of tax-exempt funding in conjunction with projects selected for WIFIA funding, or to allow WIFIA financing to fund up to 100% of project costs.

Dam Operation – Concern with Sec 2014

Both ACWA and TWCA have concerns that Section 2014 of S 601 will establish a program that could alter or interfere with existing dam operations without compensation to the authorized purposes or without federal cost-share requirements as established for other reservoir purposes. We would encourage the Committee to either avoid including this Program or, if such a Program is considered necessary, to avoid "mandating" or "requiring" the Corps of Engineers to include all reservoirs. While opportunity for optimizing the use of Corps reservoirs is positive, the opportunity should be restricted to those that **do not diminish existing authorized purposes** and to those that have a **partner willing to pay the cost associated with it**.

Section 2014 would establish a program to allow the Secretary to potentially modify a reservoir Operating Plan to add to "other related project benefits" without expressed Congressional authorization. Adjusting the Operating Plan of a Corps reservoir, even on a short-term basis, can be detrimental to the water supply use of Corps reservoirs authorized for that purpose. If any portion of the conservation storage is used for some other purposes, water supply availability will be reduced. Further, the NFS, and the water supply customers that have funded the water supply use for decades, will realize a financial loss if a portion of the conservation storage supply is used for another purpose than water supply.

We offer the following additional comments regarding Section 2014:

- While the goal should be the "highest and best use" of water stored in a USACE reservoir, the NFS should be compensated for any changes to existing uses that have been funded by the NFS or any changes that could impact the water storage funded by the NFS. For reservoirs where the water supply is totally committed, it is a zero-sum effort—adding a new water use would result in a loss of some corresponding amount of existing water use. Gainers do so at the expense of losers; therefore, the gainers should compensate the losers.
- Any study initiated under this section should be initiated by the current NFS or involve the NFS.

- Studies should be cost-shared to avoid further burdening the already limited USACE O&M budget.
- Studies should involve stakeholders with recognized interest in the study in order to support the need for the study.
- Any party that gains a water use must have a water right for that use issued by the state.

Accelerating Studies and Streamlining Environmental Permitting

Both ACWA and TWCA support **improved efficiency in project development and a balanced approach to permit process changes**. The provisions requiring feasibility studies to be completed in three years, at a cost that does not exceed \$3 million, and for feasibility studies to be conducted by all three levels of the USACE concurrently are changes that would benefit study completion. Modification of the permitting process to streamline the process is supported, recognizing that adequate time be provided for environmental reviews gauged by the complexity of the project.

In S.601, Section 2032 and 2033 recognize delays for critically needed water projects can result from environmental review processes; however, Section 2033 would establish a complicated, administrative process that would itself be costly and have the potential to delay project permitting. ACWA and TWCA encourage responsible permitting, expediting the process in a common-sense practical manner, so that water projects throughout the nation and those critical to the arid West can be implemented.

Levee Safety

Providing for levee safety is critical, and ACWA and TWCA support the provisions of Section 126 of HR 3080 that would allow USACE to provide technical assistance to state and local governments to protect human life and property. However, we are concerned with Section VI of S. 601 because it establishes more federal programs, a levee safety board and a myriad of procedures. Both ACWA and TWCA support a comprehensive review of the guidelines on levee vegetation provided in provisions of both Senate and House versions are needed.

Deauthorization

The backlog of authorized projects that are either old or no longer applicable to the purposes authorized. For this reason, a provision in WRDA to deauthorize a reasonable number of projects of this sort should be included. Current law, and S. 601 would automatically deauthorize a project that has no federal expenditures for five years. However, given the recent history of constraints and delays in federal appropriations for needed water resources projects, we urge that the deadline for receiving funding be extended. We also support the H.R. 3080 provision that recognizes non-federal expenditures made by sponsors should provide for maintaining authorizations for viable projects that have been advanced by local investment but delayed by short-term federal funding shortfalls.

Expanded Role for State, Regional and Local (nonfederal) Entities

The water needs of the West call for cooperative actions of federal, state, and local governments. The challenges are too great for the federal government to set the course alone. For this reason,

there is a clear need for an expanded role for state, local governments and other non-federal sponsoring entities in the development and operation of projects. ACWA and TWC support the provisions in both the Senate and House versions that recognize and support this expanded role. We believe it is in the federal interest to allow non-federal sponsors to build water projects and to fund federal water-resource related activities. We support the opportunity for non-federal sponsors to implement pilot projects to evaluate authorizing the non-federal sponsor to construct a federally authorized project under Section 2025 of S.601. Likewise, we support the provisions found in both versions that authorize a non-federal sponsor to carry out feasibility studies for potential federal projects with the feasibility study cost being credited towards the non-federal share of the project construction cost.

Aquatic Invasive Species

With regard to aquatic invasive species, we appreciate that both the Senate and House versions provide the assistance of USACE to prevent and control aquatic invasive species. The assessment of the impacts on federal facilities as called for in Section 145 of the House bill is needed to reveal the extent of the current problem.

We believe that a major part of this assessment should be **the impact of invasive species on water transfers in the West for water supply purposes**. The assessment should recognize the potential conflicts between the Lacey Act restrictions on interstate transfer of invasive species and the interstate transfer of water supply in the West that may contain aquatic invasive species.

Congress should be aware of the current federal spending on invasive species mitigation at federal facilities and on efforts at prevention, then assess whether that funding level is sufficient. The assessment should recognize and account for the fact that invasive species are continuing to spread to the West and across the US and will affect additional USACE reservoirs and water resources projects in the future; the cost and impact assessment should recognize future costs.

Dredging and Sediment Management

We urge that Section 2326 be supported, as it helps to ensure that material suitable for beneficial reuse can be utilized in a cost effective manner, including its use for either or both marsh restoration and flood risk management purposes.

Further, we support provisions requiring the USACE to study innovative ways to improve dredging and sediment management, including the availability of dredging equipment, as found in Section 2024. We strongly urge you to adopt this language that has the potential to more successfully promote the use of beneficial reuse of dredged materials for flood risk management and marsh restoration and to reduce the overall cost of dredging.

Planning Assistance to the States

With regard to federal assistance to support planning of needed water resources projects, ACWA and TWCA support the continued funding and expansion of the Planning Assistance to States program as provided in the Senate version under Section 2019 as well as the clarification of the Corps' water storage pricing formulas under Section 2016. It is important for non-federal sponsors contributing to water resources projects in the West and throughout the nation to have a clear understanding of the cost formulas for water reallocations, acquiring USACE surplus water, and other pricing requirements.

Drought Operations and FERC License Potential Impacts

ACWA and TWCA support the need for an assessment by the USACE to determine if USACE operation of reservoirs impacted by drought, which is many if not all USACE reservoirs in the West, and licensed by the FERC for hydropower operations are being affected by the requirements of the long-term FERC license.

Interstate Compacts and the Role of States

Interstate Compacts and Agreements are critical to Western water management. As called for in the House version, ACWA and TWCA support Congress recognition that states should have the primary role in resolving interstate water disputes and that the federal role should be to facilitate and assist at the request of the state and to operate USACE reservoirs consistently with interstate agreements.

Additional Provisions Requested

ACWA and TWCA also support the following provision and requests the Committee's consideration of its inclusion in the Conference version to amend Section 219 as follows: "For projects authorized under this section, the Secretary shall give funding priority to projects that address –

- An identified threat to public health, safety, or welfare;
- A water quality or water supply concern considered critical to the watershed;
- A project for which a non-Federal sponsor has expended funds;
- A project that has previously received federal funds; or
- Water supply and quality in a low-income community."

We appreciate the opportunity to submit these comments. Both ACWA and TWCA appreciate your leadership in developing and advancing water resources development legislation, and we appreciate your consideration of our comments. We believe that these comments will help advance water resources in our states as well as the nation.

Sincerely,



Tim Quinn
Executive Director
Association of California Water Agencies



Leroy Goodson
General Manager
Texas Water Conservation Association