



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 18, 2006
(Senate)

STATEMENT OF ADMINISTRATION POLICY

S. 728 – Water Resources Development Act of 2006

(Sen. Bond (R) Missouri and 19 cosponsors)

The Administration has strong concerns with the significant overall cost of S. 728. The Congressional Budget Office has estimated that the bill as reported by the Committee would authorize nearly \$12 billion in discretionary spending, and a preliminary Administration review indicates that the cost of the manager's amendment would be greater. The Administration believes the bill should establish priorities among these activities and limit new authorizations to those projects that represent the highest priorities for Federal funding within the three main Corps mission areas: commercial navigation, flood and storm damage reduction, and aquatic ecosystem restoration. The Administration is committed to maintaining fiscal discipline in order to protect the American taxpayer and sustain a strong economy.

The Administration supports the intent of the manager's amendment in the nature of a substitute to S. 728 with regard to provisions that: (1) address high-return nationally significant water resource infrastructure efforts and aquatic ecosystem restoration opportunities in coastal Louisiana and along the Upper Mississippi River; (2) protect the Great Lakes from invasive fish species; and (3) improve the Corps of Engineers recreation services by providing a financing authority similar to that proposed in the President's Budget.

The Administration is committed to restoring the Everglades in partnership with the State of Florida. S. 728 would authorize construction of the Indian River Lagoon project, a significant South Florida aquatic ecosystem restoration project. It would also authorize construction of the Picayune Strand project, which has not completed its review by the Administration. We look forward to working with Congress on these and future authorizations for this priority restoration effort.

The Administration looks forward to working with the Senate to revise this legislation so that it will accomplish our shared goals and objectives.

The Need for Basic Reforms

The civil works program has played an important role in developing the Nation's water resources; however, it faces several interrelated problems: (1) the Corps has a large backlog of unfinished construction work, resulting in more projects facing delays and a \$50 billion cost to complete the backlog of already-authorized projects; (2) the Corps is providing funding to construct projects outside of its three main missions, which reduces the funding available for higher priority needs; and (3) the Federal government pays a substantial share of project costs, which can lead to an over-allocation of resources to build new projects and upgrade existing

ones. The bill does not address, and in some cases would exacerbate, these problems.

The President's last four Budgets have outlined the direction of the reforms needed to address these and other concerns. The Administration has proposed five principles to guide Corps authorizations and appropriations, which focus on: (1) improving how the Corps formulates its water resources projects, such as through changes to the 1983 principles and guidelines for proposed Federal water resources projects; (2) limiting new construction starts to projects with a very high net economic or environmental return per dollar invested; (3) setting priorities for allocating funding among the projects with ongoing construction work in the three main Corps mission areas; (4) de-authorizing commercial navigation projects with extremely low levels of commercial use, and projects whose main purpose falls outside the three main mission areas; and (5) addressing cost-sharing.

The FY 2007 Budget proposes specific economic, environmental, and public safety performance criteria for use in establishing priorities among ongoing construction projects. The Administration supports efforts to prioritize water resources construction projects consistent with this approach, and looks forward to working with Congress to accomplish this objective.

Planning Future Projects

The bill's proposals regarding the formulation of projects would undermine efforts to improve the economic and environmental performance of future projects. Subsection 2005(e)(1)(A)(ii) would increase the ability of local project sponsors to direct the project alternatives that the Corps may consider and recommend, and could preclude consideration of other reasonable alternatives. Subsection 2005(e)(1)(B) would prohibit the use of budgetary and other policy considerations in the formulation of proposed projects. Both of these changes would erode the ability of the Executive Branch and Congress to ensure that the projects proposed for authorization are well-justified and in the national interest.

The Administration supports the independent peer review of proposed projects. Section 2007 would restrict such reviews to 90 days from the start of the public comment period, which may not provide enough time to fully consider the public comments and would preclude using these panels to assess substantial changes to the project proposed by the Corps in response to the public comments. The Administration looks forward to working with Congress on this process.

Restricting the Powers of the Executive Branch

The Administration strongly objects to section 2006(f)(1)(C), which would limit the ability of the Executive Branch to properly supervise the civil works program by prohibiting anyone from giving direction to the Chief of Engineers, including Senate-confirmed Presidential appointees in the Department of Defense, regarding any Corps report on a proposed project or any related recommendations for changes in law or policy. Such a provision would hinder the President's ability to fulfill his Constitutional duties. The bill would also require the Secretary to provide his recommendations to Congress on a proposed project within 90 days of the Chief's report, which is not adequate time for a proper review and a determination of the Administration's position. In addition, this language should be revised to request rather than require the recommendation, in keeping with the President's constitutional authority to make recommendations he determines to be necessary and expedient.

The Administration strongly objects to Section 1003(o) which conditionally pre-authorizes the construction of all projects identified in a future Corps report on options for improving storm damage reduction along the Louisiana coast. Congress should not pre-authorize these yet-to-be-identified projects, whose total cost is likely to be measured in the tens of billions of dollars and is not included in Congressional Budget Office estimate, before the Executive Branch, Congress, and the public have had a full opportunity to review them.

The Administration objects to Section 1003(n) which creates a new agency – the Louisiana Water Resources Council – to manage and oversee a system-wide comprehensive plan of unspecified future projects in Louisiana. This provision would circumvent the normal chain of command within the Executive Branch and thereby reduce accountability for the costs to build these projects. The provision also raises constitutional concerns with regard to the Appointments Clause.

Adequate and Appropriate Cost-sharing

The Administration objects to the authorizations in the bill that would have the effect of providing unwarranted waivers or reductions in non-Federal cost-sharing requirements. The Administration strongly opposes section 2039(a), which could be read as authorizing a major shift in future project costs – potentially costing billions of dollars to the general taxpayer. In addition, for the aquatic ecosystem restoration work along the Upper Mississippi River and Illinois Waterway and in the wetlands of coastal Louisiana, the cost-share paid by the general taxpayer should be no more than 50 percent, as it is for the Everglades restoration effort.

Upper Mississippi River and Illinois Waterway Navigation

The Mississippi River is a major artery for transporting America's bulk agricultural products, and the Administration is working to keep it that way. The Administration has identified work on the Upper Mississippi River and Illinois Waterway as one of the most important Corps operations and maintenance projects. The Administration would like to work with Congress to appropriately address the navigation and ecosystem needs of this part of the inland waterway.

Coastal Louisiana

The Administration recommends that the Senate revise section 1003 to provide a single generic authorization covering all studies, construction, and science work needed to support the effort to restore coastal Louisiana wetlands, including but not limited to the work envisioned in the near-term restoration plan. This would expedite the approval process for projects and their implementation while providing greater flexibility in setting future priorities. Subsection 1003(j) should also be revised to provide for only a science program, which should be run by the U.S. Geological Survey and be funded on a cost-sharing basis and through appropriations from the Corps. Moreover, section 1003(i), and several other provisions in the bill, should be revised to avoid micromanaging the internal deliberations of the executive branch, and thereby interfering with the President's constitutional duty to execute the law.

Other Concerns

The Administration also opposes certain other provisions in the bill, including:

Section 2001, which could significantly diminish accountability, nationwide consistency, and oversight of Corps projects by limiting the ability of Corps headquarters and the Secretary of the Army to review proposed agreements with local project sponsors, and could expose the Federal government to liquidated damages in the event that Congress terminates funding for a project;

Section 2014, which would establish a binding 50-year Federal commitment to the periodic nourishment of sandy beaches and which could be construed as promoting “shore protection” instead of storm damage reduction as the program’s objective; and

Section 3067, which would lead to the use of the Bonnet Carre Spillway in ways that could be harmful to the ecosystem of Lake Pontchartrain.

The Administration looks forward to working with Congress on these and other concerns as the legislation proceeds.

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