



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

July 14, 2005
(House)

STATEMENT OF ADMINISTRATION POLICY

H.R. 2864 – Water Resources Development Act of 2005

(Rep. Young (R) Alaska and 3 cosponsors)

The Administration supports the provisions in H.R. 2864, the Water Resources Development Act (WRDA) of 2005, which would address high-return nationally significant water resource infrastructure efforts and aquatic ecosystem restoration opportunities in coastal Louisiana and along the Upper Mississippi River. We also support the intent of the bill's provisions to protect the Great Lakes from invasive fish species, and improve the Corps of Engineers recreation services by providing a financing authority along the lines proposed in the President's Budget.

The Administration is committed to restoring the Everglades ecosystem in partnership with the State of Florida. H.R. 2864 would authorize the construction of Indian River Lagoon, a significant South Florida aquatic ecosystem restoration project that has not completed its review by the Administration. We look forward to working with Congress on future authorizations for this priority restoration effort.

However, the Administration has strong concerns that in its current form H.R. 2864 does not include much-needed policy and program reforms and has a significant overall cost.

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. This workload has grown at an unmanageable rate, resulting in more projects facing delays and a \$50 billion cost to complete the backlog of already-authorized projects; (2) the 1983 principles and guidelines for proposed Federal water resources projects need to be revised to ensure that all features and incremental upgrades of recommended projects are likely to yield a high net economic or environmental return; 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. This legislation should instead chart a new direction for the Corps that clearly places the national interest foremost.

Reforms to improve project formulation and establish funding priorities for Corps projects and other activities must be included in the WRDA bill. In the President's 2004 and 2006 Budgets, the Administration outlined the direction of the reforms needed to address these and other concerns. Specifically, the 2004 Budget proposed five principles to guide Corps authorizations and appropriations, including setting priorities among existing projects in the

Corps main mission areas, and limiting new construction work to those projects with a very high net economic or environmental return per dollar invested. Consistent with these principles, the 2006 Budget proposed seven performance-budgeting guidelines for the construction program, including a clear system for establishing priorities among ongoing construction projects, criteria for new construction starts, and subjecting multi-year contracts issued by the Corps to the kinds of controls that apply to other Federal agencies.

Planning Future Projects

The bill's proposals regarding the formulation and selection of projects would undermine efforts to improve the economic and environmental performance of future projects. Subsection 2029(a) would codify a bias toward large projects by requiring the Corps generally to maximize net project benefits regardless of the cost, well past the point where the returns to scale start to diminish. Subsections 2025(i), 2029(a), and 2029(b) would increase the ability of local project sponsors to direct the alternatives and purposes the Corps may consider and recommend, and could preclude the consideration of reasonable alternatives. Each 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 does not support the change in the environmental review process envisioned in sections 2024 and 2025. We recognize the need for conducting environmental reviews in an efficient and technically sound manner, and the Corps is working, along with its Federal, State, local, and tribal partners, to improve its timeliness and effectiveness. Moreover, the procedures that would be established by sections 2024 and 2025 are themselves cumbersome, as well as overly detailed and prescriptive.

While the Administration supports the intent of the authorization for independent peer review of proposed projects, the bill would unduly restrict their use by requiring reviews to be completed within 90 days of the start of the public comment period, which may not provide enough time for the reviewers to fully consider public comments. We would like to work with Congress to clarify the types of projects that should be independently reviewed and the proper scope of the reviews.

Overall Cost

The Congressional Budget Office has estimated that it would cost more than \$10 billion to implement H.R. 2864's new Corps projects, make changes to existing projects and programs, and pay for the increased Federal cost-share on certain projects. The large number of project authorizations and their total cost would create expectations for future appropriations that cannot be met given competing spending priorities within the overall need for spending restraint, including deficit reduction. The Administration believes the bill should establish priorities among these activities and limit new authorizations to projects that represent the best opportunities for federal funding within the three main Corps mission areas.

Adequate and Appropriate Cost-sharing

The bill would significantly reduce the portion of the costs that non-Federal interests contribute to deepen and maintain coastal harbors and channels below 45 feet, which would add

more than \$1 billion in Federal costs just for the projects that the Corps already has proposed. The Administration also objects to the other authorizations in the bill that would have the effect of providing unwarranted waivers or reductions in non-Federal cost-sharing requirements. In addition, we are concerned that some provisions, such as section 5034, would inappropriately shift cost-sharing, requiring the Secretary of the Interior to pay for costs associated with work on a levee that is having an adverse effect on the Cache River National Wildlife Refuge, home to the recently re-discovered ivory-billed woodpecker.

The bill would also authorize roughly an additional \$1.6 billion for aquatic ecosystem restoration work along the Upper Mississippi River and Illinois Waterway and \$785 million for coastal Louisiana. Restoring these ecosystems is, and should be, a priority. However, the bill does not require a sufficient non-Federal cost-share for these major aquatic ecosystem restoration efforts. The cost-share paid by the general taxpayer for the Everglades restoration effort is 50 percent, and this should likewise be the maximum Federal contribution for the Upper Mississippi River and Illinois Waterway and coastal Louisiana restoration efforts.

Restoring the Everglades

The bill would prevent the Corps from carrying out work on raising the Tamiami Trail (U.S. Highway 41) under the Modified Water Deliveries project, which Congress authorized in 1989 to improve the natural flow of water in the Everglades. The highway now acts as a physical barrier limiting north-south water flows, and this project is the foundation for restoring the Everglades ecosystem. The Corps should be allowed to proceed as needed to meet the goals of the 1989 authorizing legislation. The Assistant Secretary of the Army (Civil Works) will submit a report to Congress following his approval of an amended plan.

Upper Mississippi River and Illinois Waterway Navigation

The Mississippi River is a major artery for transporting America's bulk agricultural products, and the President 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 Corps periodically evaluates the condition of the 37 lock-and-dam sites on this part of the inland waterways. The President's Budget provides significant funding for three major lock-and-dam rehabilitation projects on the Upper Mississippi and Illinois Waterway. 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 recognizes that Coastal Louisiana is an environmental resource of national significance and has worked closely with the State of Louisiana to produce a near-term coastal wetlands restoration plan to guide how the next phase of restoration projects in Louisiana will be identified, prioritized, and sequenced. The plan involves spending about \$2 billion (combined total, including the non-Federal cost-share) over 10 years, with the understanding that significant additional work will be needed in subsequent years. The Administration believes we can make great progress through the plan in a fiscally responsible way by using the best available science and sound management principles.

The Administration recommends the House revise the bill to provide a single generic authorization covering all studies, construction, and science and technology work envisioned in the near-term plan. This would expedite the approval process for projects and their implementation while providing greater flexibility in setting future priorities. The authorization should allow the appropriation of \$500 million, which would cover the Federal share of roughly the first half of the costs of the near-term plan assuming a 50 percent Federal cost-share. For the Mississippi River Gulf Outlet, the bill should authorize a broader study of options to restore the area damaged by this navigation channel.

We also recommend the House modify or otherwise address potential inconsistency with the Breaux Act in order to create a single combined authorization. This would ensure coordination in the funding and implementation of all coastal Louisiana restoration efforts while maintaining the productive relationships with the State and Federal agencies established under the Breaux Act. The bill should ensure consideration of national economic development benefits where appropriate, along with environmental benefits, when formulating, selecting, and establishing priorities among restoration projects. The proposed science and technology program should be run by the U.S. Geological Survey, but be funded on a cost-sharing basis with appropriations from the Corps. Finally, sections 7002 and 7003 raise constitutional concerns.

In summary, we would like to work with the House to revise this legislation so that it will accomplish our shared goals and objectives.

Constitutional Concerns

Provisions of the bill, including sections 2024(h) and 6009(b), that purport to require Executive Branch officials to submit recommendations to Congress for legislation should be amended to require submission only of recommendations the President judges necessary and expedient, as is consistent with the Recommendations Clause of the Constitution and the constitutional authority of the President to supervise the unitary Executive Branch.

A committee resolution does not have the force of law because it does not satisfy the Constitution's requirements of bicameralism and presentment. Section 4073 should be amended to delete the reference to a committee resolution.

Section 7003 purports to confer authority to prepare Federal agency financial plans on a task force that includes State officers. To ensure the consistency of the provision with the President's authority under the Constitution to execute the laws, section 7003 should be amended to provide for the task force to recommend, rather than prepare, agency financial plans, or to exclude State officers from the task force.

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