The Heritage Foundation
LEADERSHIP FOR AMERICA

BACKGROUNDER

No. 2835 | AUGUST 15, 2013

House Water Resources Development Act: Ditch Senate Bill Blunders, Reform the Army Corps

Emily Goff

Abstract

House lawmakers will soon introduce their version of the Water Resources Development Act (WRDA), legislation that authorizes the Army Corps of Engineers (Corps) to study and construct water infrastructure projects. Impacting a sprawling range of activities, past WRDAs have failed to prioritize projects and wasted taxpayer money. And as the Corps' mission overreach grows, so does the number of WRDA-sponsored activities—projects that should be funded by states and localities or could be better managed by the private sector. While the Senate-passed WRDA bill (S. 601) included some modest reforms, it increased the share of federal spending in joint projects with local communities and failed to limit federal involvement in state, local, or private-sector activities. Not only should the House avoid these failures, but it also should offer reforms that save taxpayer dollars and begin to devolve the Corps' current responsibilities.

For the first time since 2007, the U.S. House of Representatives Transportation and Infrastructure Committee (T&I) will soon propose a new Water Resources Development Act (WRDA). Traditionally, WRDA bills authorize the Army Corps of Engineers (Corps) to spend billions of taxpayer dollars to study and construct water infrastructure projects as part of its Civil Works Program.

In the early 19th century, the Corps focused primarily on waterway navigation projects. Congress expanded its mission over time, however. For example, in the 1930s Congress added flood control, followed by Army real estate and construction programs in the

Key Points

- Many projects that the Army Corps of Engineers studies and constructs would be more appropriately funded and managed by states, local communities, or the private sector.
- Recreation facility management, beach replenishment, and municipal water supply projects are just three examples of the Corps' activities that are truly state or local in nature and should be funded and managed at that level.
- If states and localities—not federal taxpayers—bore most or all of the costs and the risks associated with water projects, they would have greater incentive to pursue projects they could afford to construct and maintain.
- The House should propose reforms that clean up the Corps' project backlog, reduce federal spending on joint projects with local entities, and begin ending federal involvement in projects that are state or local responsibilities.

This paper, in its entirety, can be found at **http://report.heritage.org/bg2835**

Produced by the Thomas A. Roe Institute for Economic Policy Studies

The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400 | heritage.org

1940s, and, more recently, environmental restoration. While there may be a legitimate limited federal role in some of these areas, Congress is involving the Corps in projects that are the responsibility of states, localities, or the private sector. Indeed, the Corps is now involved in recreation site management, hydropower, municipal and agricultural water supply, harbor construction and maintenance, beach replenishment, and wastewater projects.

Ultimately, most of the Corps' civil works activities could be transferred to state and local governments, which can better prioritize how public resources should be expended. Alternatively, some of these activities could be turned over to the private sector, which can manage projects more efficiently and at less cost to federal taxpayers. Despite this clear need for reform, the Senate-passed Water Resources Development Act of 2013 (S. 601), estimated to cost $12.2 billion over 10 years, offered more of the same.[1] Thus, it is crucial that the T&I Committee propose reforms that curtail spending, cut red tape, and scale back the Corps' mission.

Trouble with the WRDA

The following list offers solutions to several of the WRDA's most pressing problems—reforms that, if enacted, would help return the Corps' mission to its original, limited role.

Set Up a Deauthorization Process with Teeth. The Corps has accumulated a massive backlog of more than 1,000 studies and projects, with an estimated price tag of $60 billion–$80 billion. This backlog illustrates the Corps' lack of prioritization as well as Congress's penchant for authorizing more projects than it has resources to fund. It also makes the case for devolving many of the Corps' activities to state and local authorities stronger; they know their priorities better than the federal government and would be more likely to construct projects they could pay for—if they were responsible for the funding.

Under current law, the Corps must send Congress a list of authorized projects that have not received any study or construction funding within the previous 10 years; S. 601 reduces this time frame to five years—a positive reform. It also requires two additional reports on outstanding projects, but does nothing with them. Additionally, the bill establishes an Infrastructure Deauthorization Commission that is supposed to identify projects that are not feasible or no longer in the federal interest.[2] However, the commission is not allowed to consider deauthorization projects that were authorized or reauthorized after WRDA 1996, have received any funding in the previous 10 years, are over 50 percent finished, have a "viable non-Federal sponsor," or are currently under Corps review. In short, the deauthorization provision is weakened by loopholes.

The House should follow the Senate's lead by automatically deauthorizing any project that has not received funding in five years, but further specify that only *construction* funding—not simply study funding—within those five years counts. Rather than delegate project deauthorization to a toothless, non-elected commission, the House could set rigorous, project-blind criteria for delisting unnecessary projects, and then work with the Corps to do just that. Additionally, aligning project authorizations with available funds (funding is consistently less than authorized project costs) would help unclog the Corps' project pipeline by stemming the tide of new project authorizations.

Curtail New Project Authorizations. Before the earmark moratorium, WRDA bills largely consisted of long lists of project earmarks. For example, project earmarks that served the parochial interests of lawmakers and lobbyists inflated the final WRDA 2007 price tag to over $23 billion, up from House and Senate versions that cost $15 billion and $14 billion, respectively.[3]

Rather than listing specific projects, S. 601 authorizes any project that has a favorable Army "Chief's Report" to receive funding. This approach would tilt the balance of power toward the executive branch, reducing congressional oversight when stronger oversight is needed.

1. Emily Goff, "Seven Costly Sins of the Water Resources Development Act of 2013," Heritage Foundation *Issue Brief* No. 3298, May 3, 2013, http://www.heritage.org/research/reports/2013/05/7-problems-of-the-water-resources-development-act-of-2013.
2. Water Resources Development Act of 2013, S. 601, § 2049, http://www.gpo.gov/fdsys/pkg/BILLS-113s601es/pdf/BILLS-113s601es.pdf (accessed August 7, 2013).
3. Nicola Moore and Alison Acosta Fraser, "Spending Run Amok: President Should Veto Water Resources Development Act," Heritage Foundation *WebMemo* No. 1641, September 26, 2007, http://www.heritage.org/research/reports/2007/09/spending-run-amok-president-should-veto-water-resources-development-act.

Instead, House lawmakers could make additional project authorizations contingent upon material reductions in the Corps' backlog via a robust, enforceable deauthorization process. Any new authorizations could be based on detailed criteria, and Congress should direct the Corps to prioritize cost-effective projects that address pressing national needs. Congress should also update the antiquated benefit-to-cost ratio the Corps uses when evaluating projects, to ensure an actual return on taxpayer funding.[4]

Reduce Project Delays. Project delays exacerbate the Corps' backlog and waste federal dollars. One way the Senate bill attempts to accelerate study and project time lines is by imposing fines (ranging from $10,000 to $20,000 per week) on federal agencies that fail to complete environmental reviews of projects within deadlines set by statute. For a given agency, the amount of the fine would be transferred from the office of the agency head to the division causing the delay.

Imposing financial penalties is one approach to curtailing delays. A more fundamental reform would be for the House to narrow the scope of the Corps' responsibility and thus authorize it simply to do less—thereby limiting the Corps to deploying its resources only to high-priority projects. Another approach—reforming current environmental law—is addressed below.

Reform NEPA. The National Environmental Policy Act (NEPA) requires federal agencies to complete an environmental review process for each Corps project. Intended to encourage stewardship of the environment, NEPA instead has led to increased project costs and delays—a direct result of the litigious and unnecessarily complicated nature of the environmental impact analysis.

As discussed above, S. 601 is an incomplete attempt to streamline the environmental review process.[5] While it does not have primary jurisdiction over NEPA, it is in the T&I Committee's interest to work on NEPA reforms with the Committee on Natural Resources, which does have primary jurisdiction. Such reforms could consist of eliminating greenhouse gas emissions analysis from the review process, narrowing the NEPA review to major environmental issues only, and requiring NEPA to incorporate previous analyses into similar projects.[6]

Protect Taxpayers from Cost Overruns. Under current law, if an authorized Corps project experiences a cost overrun due to construction changes, it has to be reauthorized only if the increase is in excess of 20 percent.[7] S. 601, however, would excuse cost overruns above this 20 percent statutory limit, requiring only that the Corps document how the project "continues to provide benefits" and meets some loosely defined national need.[8]

When a project's costs increase dramatically, it is perhaps no longer in the federal interest to proceed—as the costs are likely not commensurate with the benefits. Any money the federal government has spent on such a project should be considered a sunk cost and not as justification for additional spending. In the long run, it would be better not to construct a more expensive project that has greater costs than benefits, and which could require taxpayer-funded operations and maintenance in the future. The House should reject the Senate bill's irresponsible cost-overrun provision and instead preserve Congress's essential oversight role in protecting taxpayers.

Maintain and Enforce Cost-Sharing Rules. Cost-sharing reforms implemented under WRDA 1986, which required local communities to pay for a share of project costs, led to a more than one-third reduction in overall project costs, saving taxpayers $3 billion.[9] Yet the current Senate bill would

4. "Crossroads: Congress, the Corps of Engineers and the Future of America's Water Resources," Taxpayers for Common Sense and National Wildlife Federation, March 2004, p. 20, http://www.taxpayer.net/images/uploads/downloads/Crossroads2004.pdf (accessed August 7, 2013).
5. Water Resources Development Act of 2013, § 2033.
6. Diane Katz and the Honorable Craig Manson, "The National Environmental Policy Act," in The Heritage Foundation, *Environmental Conservation: Eight Principles of the American Conservation Ethic* (Washington, DC: The Heritage Foundation 2012), p. 64, http://thf_media.s3.amazonaws.com/2012/EnvironmentalConservation/Environmental-Conservation-Full-Book.pdf.
7. Water Resources Development Act of 1986, 33 U.S.C. § 2280 (1986).
8. Water Resources Development Act of 2013, § 1003.
9. "Crossroads: Congress, the Corps of Engineers and the Future of America's Water Resources," p. 39.

undermine these cost-share rules. For example, S. 601 would hold federal taxpayers responsible for 65 percent of the operations and maintenance, repair, and replacement costs for flood projects previously constructed as part of hurricane and storm damage mitigation projects.[10] Traditionally, this operation and maintenance is not a federal responsibility.

House lawmakers should refrain from changing this or other federal cost-share rules. These rules force the local entities that directly benefit from projects to only undertake projects they can afford to operate and maintain. Likewise, fully devolving project construction and funding to states, localities, or the private sector would incentivize these entities to contain costs and prioritize project needs and wants.

Devolve Beach "Nourishment" Projects. Federal taxpayers currently subsidize anywhere between 50 percent and 65 percent of the cost of beach "nourishment" projects (regular replenishment of sand and sediment). The Senate bill would allow the Corps to extend these projects for an additional 15 years, on top of the current 50-year authorization—during which a single beach could be replenished every two to 10 years on average.[11] The Carolina Beach community, in Rep. Mike McIntyre's (D–NC) district, would be among the first to see its nourishment program expire in 2014—after 50 years. Not surprisingly, McIntyre authored this project extension language that Senator Kay Hagan (D–NC) then sponsored in S. 601.[12]

State governments or local entities, including private homeowners and businesses, have a financial interest in maintaining their beaches, and therefore they should be responsible for those costs—not federal taxpayers. Federal funding of beach replenishment distorts the risk calculations that developers and individuals would make in choosing to build, run a business, or live near a high-erosion coastline. In essence, this policy encourages high-risk behavior by transferring risk from the private entity or individual to the federal taxpayer. Further, beach replenishment can harm coastal ecosystems, which can require the Corps to fix the damage at further cost to taxpayers.

Five decades is more than sufficient time for local communities to find alternative funding for, or better means of, protecting beachfront property. A fiscally responsible reform would be to avoid reauthorizing any beach projects and rapidly devolve this activity to local communities.

Reform the Harbor Maintenance Program. Shippers currently pay the Harbor Maintenance Tax (HMT), a tax based on the value of (*ad valorem*) imported and domestic cargo passing through the nation's ports. The receipts are deposited into the Harbor Maintenance Trust Fund (HMTF) and appropriated annually by Congress to pay for harbor dredging and other maintenance. In fiscal year 2013, the HMTF will collect $1.8 billion but spend only $882 million. Noting the $8 billion balance in the HMTF, some lawmakers say that the nation's ports are under-funded and under-maintained and would like to see annual HMTF spending increase.[13]

S. 601 follows that course; it would require that all receipts, plus interest earned, be spent fully every year on harbor maintenance activities.[14] While this provision rightly intends for HMT receipts to be spent only on their intended purpose, from a budgetary perspective such a requirement is dangerous, as mandatory spending typically receives no regular oversight. Requiring that all the funds be spent could also potentially incentivize over-dredging or harbor deepening where it does not make economic sense.

S. 601 also fails to fix an underlying problem with the HMTF: inequities between receipt-generating and receipt-consuming ports. As the Congressional

10. Water Resources Development Act of 2013, § 2047.
11. Ibid., § 2030. See also, U.S. Army Corps of Engineers, "Shore Protection Assessment: Beach Nourishment: How Beach Nourishment Projects Work," 2007, p. 6, http://chl.erdc.usace.army.mil/%5CMedia%5C7%5C4%5C7%5CHowBeachNourishmentWorks.pdf (accessed August 7, 2013).
12. News Release, "Carolina Beach Renourishment Efforts Move Forward," Office of Rep. Mike McIntyre (D–NC), May 22, 2013, http://mcintyre.house.gov/index.php/newsroom/press-releases/760--carolina-beach-renourishment-efforts-move-forward (accessed August 7, 2013).
13. News release, "Senator Boxer's Statement: Hearing on The Harbor Maintenance Trust Fund and the Need to Invest in the Nation's Ports," U.S. Senate Committee on Environment & Public Works, January 31, 2013, http://www.epw.senate.gov/public/index.cfm?FuseAction=PressRoom.PressReleases&ContentRecord_id=9141134d-e0d1-4cc7-4802-84b44c364c95 (accessed August 9, 2013).
14. Water Resources Development Act of 2013, § 8003.

Research Service reports, the current system "creates a national pool of funds and redistributes the tax revenues from busy U.S. ports with low maintenance costs to less busy ports with higher maintenance costs."[15] Similarly, two ships the exact same size (thus requiring the same dredging needs), carrying cargo with differing values, could pay wildly different tax amounts. The fee each pays does not reflect the true cost of their dredging needs.

Harbor maintenance and funding needs bigger, broader reform. In the near term, Congress could implement market-based reforms that transfer harbor maintenance responsibilities to states, localities, and the private sector. As the Corps already contracts 80 percent of its maintenance dredging to the private sector; this activity could be fully privatized and the government taken out as a middleman.[16] This and similar reforms would more precisely link the costs of maintaining harbors to the shippers that use them.

Chart a Bold Course Forward

Rather than fritter away tax dollars and opportunities for reform—as Congress is wont to do in WRDA bills—lawmakers should break from business as usual and propose transformational reforms to the Army Corps of Engineers. The House should offer reforms that restrain spending and get Washington out of the business of funding activities that are best left to states, local communities, or the private sector.

*—**Emily Goff** is a Research Associate in the Thomas A. Roe Institute for Economic Policy Studies at The Heritage Foundation.*

15. John Frittelli, "Harbor Maintenance Trust Fund Expenditures," Congressional Research Service *Report for Congress*, updated January 10, 2011, p. 5, http://www.fas.org/sgp/crs/misc/R41042.pdf (accessed August 7, 2013).
16. Ibid., p. 4.