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WASHINGTON, D.C. 20503

May 11, 2007
(Senate)

STATEMENT OF ADMINISTRATION POLICY

H.R. 1495 – Water Resources Development Act of 2007

(Senator Boxer (D) California)

H.R. 1495, the substitute amendment for the Water Resources Development Act (WRDA) of 2007, would have a significant overall cost. The Administration estimates that the bill would cost at least \$15 billion and perhaps much more in discretionary spending. Although many of the projects authorized by the bill have undergone a merit-based review, there are many others that have not, and therefore may be wasteful spending. The bill increases the Federal cost-share for many projects, authorizes projects outside of the three main missions of the Army Corps of Engineers (Corps) civil works program, and fails to ensure that projects yield high economic and environmental returns. In a time when fiscal restraint is much needed, the additional spending authorized in this bill, such as provisions for local wastewater and drinking water infrastructure projects, is unacceptable. For these reasons, the Administration strongly opposes H.R. 1495 in its current form.

Spending Concerns

To maintain fiscal discipline, the Administration urges the Senate to limit the number of authorizations in the bill substantially – to those within the three Corps main mission areas that are the most compelling based on their overall economic and environmental return to the nation.

To further reduce the cost of this bill, the Administration urges the Senate to delete or amend the following provisions:

- Section 5003, which would authorize over 100 wastewater and drinking water infrastructure projects – entirely outside the Corps' mission – that would cost the taxpayers hundreds of millions of dollars and divert funds from meritorious projects such as for flood and storm damage reduction.
- Subsection 2039(a), which would limit the non-federal share of certain safety-related project costs in the future, resulting in a major cost increase to the Federal taxpayer;
- Section 2001, which would add new liquidated damages against the Federal government and would potentially add billions of dollars in Federal costs and undermine cost-sharing by providing non-federal interests "credit" for work performed prior to the signing of a project cooperation agreement; any such credit should be limited to actual costs incurred by the non-federal cost-sharing partner to purchase lands, easements, and rights-of-way after the Corps issues a final report that identifies the need to acquire this property for the project;

- Section 2005, which would reverse efforts to optimize national economic and environmental returns;
- Sections 2014 and 2026, which would establish a costly commitment to the periodic nourishment of sand beaches; and
- Section 2036, which would make abandoned mine reclamation a Corps of Engineers responsibility.

In addition, the Senate should set the cost-share paid by the general taxpayer for the aquatic ecosystem restoration work in coastal Louisiana and along the Upper Mississippi River and Illinois Waterway at no more than 50 percent, as it is for the Everglades restoration effort.

Planning for the Future

The Administration supports the intent of subsections 2006(d) and 2006(e), insofar as they would reflect the support of the Congress for two separate Cabinet-level reviews: (1) of the Nation's flood and storm damage reduction programs; and (2) of the basic principles and guidelines that the Federal agencies have used since 1983 to formulate proposed water resources projects. However, the provisions in section 2006 that specify who the President should assemble as a Committee for these purposes, that omit the Secretary of Defense as a member of the Committee, and that require the Committee instead to work "in collaboration with" the Secretary of the Army are problematic. The provisions concerning the establishment and responsibilities of the Committee should also be non-binding.

The Administration supports expanded use of external independent peer review panels and an authorization for their use. However, it urges the Senate to revise section 2007 to: (1) extend the tenure of the panel if the Corps later proposes substantial changes to a project not previously considered by the panel; (2) provide sufficient flexibility to the Secretary to convene a panel following a final report by the District Corps office when needed; and (3) establish a higher dollar threshold for triggering a mandatory review. The Administration does not support changes to judicial deference in subsection 2007(c).

The Administration urges the Senate to delete subsection 2005(f). This provision would require the Secretary to provide recommendations to the 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. For projects with a Chief's report issued prior to the final bill, the provision also would require the Secretary to submit recommendations to the Congress within 90 days of the date of enactment, which is problematic given the number of pending reviews.

Aquatic Ecosystem Restoration

The Administration is committed to restoring the Everglades in partnership with the State of Florida and supports the bill's authorization to construct the Indian River Lagoon and Picayune Strand projects, as part of the South Florida aquatic ecosystem restoration effort.

The Administration urges the Senate to delete subsection 1002(d), which would tie new spending

for Upper Mississippi River and Illinois Waterway aquatic ecosystem restoration to the amounts appropriated for new locks, rather than to the individual merits of each project.

Section 1003 would significantly expand the current Federal effort to restore the aquatic ecosystem of coastal Louisiana, which the Administration supports. At the same time, the Administration has concerns with section 1001(20), which would authorize construction of a 72-mile Federal levee in coastal Louisiana. The project, which was developed pre-Katrina, could require re-formulation to ensure consistency with the conclusions of the ongoing comprehensive Louisiana Coastal Protection and Restoration study and with the long-term Federal effort to restore the coastal ecosystem.

The Administration urges the Senate to delete section 3076, which could lead to use of the Bonnet Carre Spillway in ways that would be harmful to the ecosystem of Lake Pontchartrain.

Constitutional Concerns

Subsection 1003(i) and section 2053 purport to direct the substance of, and/or determine the chain of command for, internal Executive Branch deliberations and should be deleted or appropriately modified to be consistent with the President's authority to supervise the unitary Executive Branch.

Subsections 2005(b)(3)(B) and 2005(f)(2) purport to require the Secretary of the Army or other Executive Branch officials to submit legislative recommendations to the Congress and should be deleted as inconsistent with the President's exclusive authority under the Constitution to recommend for Congressional consideration such measures as the President judges necessary and expedient.

It is unclear whether subsection 1003(f)(2) restricts which appropriations may be made by Congress or, instead, restricts the obligation of appropriations by the executive branch. If the latter construction is intended, the subsection would violate the constitutional separation of powers as described in the Supreme Court's ruling in *INS v. Chadha*, and the provisions should be modified to avoid this concern.

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