



# House Action Reports

*Edition: Conference Summary*

No. 113-2/May 19, 2014

## Water Projects Agreement

This Conference Summary describes the conference agreement on HR 3080 , Water Resources Reform and Development Act.

The agreement authorizes 34 U.S. Army Corps of Engineers water-resource-related activities — including port dredging, inland locks and dams, and flood control projects — costing an estimated \$12 billion, but requires the deauthorization of at least \$18 billion in previously authorized projects. It significantly modifies the procedures for selecting, reviewing and building water projects by creating a new process for water project approval, limiting to three years the period in which feasibility studies must be completed and streamlining the environmental review and permitting process, and allowing greater participation by non-federal interests in water resource development and operation.

The measure provides for increased expenditures from the industry-financed Harbor Maintenance Trust Fund in an effort to reduce the backlog of port and harbor projects, and requires a review of possible ways to increase revenue collections for financing projects on the inland waterways. It also creates two pilot programs intended to promote innovative financing of water projects and attract new non-federal investments.

The agreement has broad, bipartisan support; the House is scheduled to consider it Tuesday under suspension of the rules.

### Contents

---

I. Background & Summary .....	2
II. Project Selection & Permitting Process .....	9
III. Trust Fund & Financing Issues .....	21
IV. Expand Role of Non-Federal Entities .....	31
V. Flood Control, Levees, Rivers, Coasts & Other Provisions .....	36

---

# Section I

---

## Background & Summary

Since its inception, the federal government has been involved in developing and maintaining ports, harbors and waterways of the United States as a means of facilitating navigation and promoting commerce. Operating through the U.S. Army Corps of Engineers (the corps), the government has also protected communities against floods by building dams and levees.

According to the Congressional Research Service, the corps has constructed thousands of flood damage reduction and navigation projects throughout the country, including nearly 12,000 miles of commercially active waterways, nearly 1,000 harbors, and 600 dam and reservoir projects. The corps has also built, usually with participation by non-federal partners, roughly 9,000 miles of the nation's estimated 100,000 miles of levees (the corps maintains only 900 miles of levees; the remaining levees are operated by non-federal entities, often local governments or special districts).

Maintaining and improving navigable ports and channels is considered critical to U.S. economic growth and the nation's international competitiveness. Nearly one-third of the U.S. gross domestic product is derived from international trade, and 99% of that trade passes through one of the nation's ports. Measured in tons, more United States merchandise is carried by oceangoing vessels than by airplanes, trucks, freight trains and pipelines combined. The development and interconnectedness of U.S. ports, harbors and inland waterways gives the country a competitive advantage: Moving merchandise across and out of the country costs less than is true of comparable merchandise in other nations.

However, U.S. harbor and waterway infrastructure is deteriorating more quickly than it is being repaired, which most observers agree threatens the United States' competitive advantage. Water infrastructure maintained by the corps, such as locks and dams, is more than 55 years old on average. And an expansion of the Panama Canal that will permit the passage of larger ships is expected to soon be completed, but no U.S. ports in the Gulf of Mexico or on the East Coast currently has the depth to accommodate vessels of that size and draft, and ports will also need to invest in larger cranes that can reach across the broader width of those new container vessels that are expected to become the new standard for ocean shipping.

## **Congressional Action**

Beginning in the mid-1980s, Congress every other year typically enacted Water Resources Development Act (WRDA) legislation that authorized the corps to study or build specific water projects and set corps policy and guidelines for project planning and implementation. The last such authorization was enacted in 2007 ( PL 110-114 ).

In the past, these authorization laws listed hundreds of site-specific projects across the country — many of which were added at the behest of members of Congress and were considered earmarks. But Congress has essentially banned earmarks since the 2007 law was enacted, which complicated the development and consideration of water resources authorization legislation. Nevertheless, the vast majority of members of Congress agree on the importance of water resource development and have been eager to find a new procedure for ensuring that water resource development projects are authorized.

By a 83-14 vote, the Senate on May 15, 2013, passed its Water Resources Development Act ( S 601 ). The House passed its Water Resources Reform and Development Act ( HR 3080 ) on Oct. 23, 2013, by a 417-3 vote. Both bills proposed to authorize new projects and deauthorize older ones that either received no funding or were not completed, to streamline the environmental review and permitting process and to find innovative means of financing new projects and more actively engaging non-federal interests in the project planning and construction process.

Key differences involved how new projects should be selected, with the Senate bill providing the corps with greater authority in choosing which projects would be built, while the House proposed a procedure through which various entities, including the corps, could suggest projects — but Congress would have the final say. Also in dispute were differences regarding the extent to which spending from the Harbor Maintenance Trust Fund should be boosted.

A final sticking point in House-Senate negotiations appears to have involved a pair of provisions involving ocean policy. House Republicans opposed a provision by Sen. Sheldon Whitehouse, D-R.I., that would create a national Endowment for the Oceans, Coasts and Great Lakes. A similar mandate was included in the Senate's 2012 surface transportation authorization, but the provision was stripped out in the final conference agreement ( PL 112-141 ). Senate Democrats, meanwhile, opposed House language that barred implementation of a National Ocean Policy established by a presidential executive order in 2010. Both provisions eventually were dropped in conference.

## **Summary of HR 3080**

This agreement authorizes 34 water resources projects, costing an estimated \$12 billion, but requires the deauthorization of at least \$18 billion in previously authorized projects that were never started or haven't received funding in the past six years.

It establishes a new process for determining how water resource projects will be authorized in the future; increases expenditures from the Harbor Maintenance Trust Fund (HMTF); requires investigation into new revenue streams for the Inland Waterways Trust Fund (IWTF); and modifies aspects of the environmental impact review and permitting process in an effort to streamline the process and reduce delays.

The legislation also permits greater participation of non-federal interest in water resource development and operation and establishes new programs to fund wastewater infrastructure.

### **Authorizations & Deauthorizations**

The agreement authorizes 34 projects and feasibility studies, and it also deauthorizes a number of older projects and establishes a procedure for future deauthorizations.

Specifically, it requires the corps to identify projects from oldest to newest, authorized prior to the enactment of the 2007 WRDA ( PL 110-114 ), that either were never begun or have not received funds in the past six years. The total federal cost of the projects on the list must equal at least \$18 billion.

The agreement also provides that projects it authorizes will be deauthorized if, seven years after enactment, no funds have been obligated for construction.

### **Water Resource Project Selection**

Like the House bill, the agreement establishes a new, multilayer process for ensuring that Congress each year receives a list of recommended water resource projects — from which it would then decide which ones to authorize and fund.

Under the new process, the Army Corps of Engineers (the corps) would annually submit its own recommendations — as well as state and local and other recommendations — to Congress to be approved or rejected.

### **Program Streamlining**

The measure requires that project feasibility studies be completed within three years of their start, that they cost no more than \$3 million and that they involve concurrent review by district, division and headquarters levels of the corps.

The agreement also repeals the requirement for reconnaissance studies, as well as the review of the cost-effectiveness of project designs. Reconnaissance studies are meant to identify potential solutions to a water resources problem and usually last between 12 and 18 months.

### ***Environmental Impact Reviews***

The agreement creates a new environmental impact review process that makes the corps the lead agency responsible for ensuring that the process and the environmental impact statements are performed in a timely manner and concurrently with any other federal, state, local or tribal agency.

It also requires the corps to solicit new requests for categorical exclusions to the environmental review process and allows for the addition of new categorical exclusions.

### **Harbor Maintenance Trust Fund**

The agreement provides for increased expenditures from the Harbor Maintenance Trust Fund (HMTF) for harbor maintenance activities each year. Under the agreement, the target expenditure in FY 2015 from the HMTF is 67% of the funds collected in 2014, with the rate rising by FY 2025 to 100% of the funds collected in 2024.

The measure requires the corps to assess the operation and maintenance needs of U.S. harbors and, to the maximum extent practicable, to prioritize future trust fund spending on an equitable allocation among all harbor types. To ensure that "emerging harbors" receive funding so they can enhance their competitiveness, it requires that they receive funding each year equal to at least 10% of the total appropriated from the trust fund for FY 2012. In years when total trust fund spending exceeds the total 2012 level, a portion of that higher funding would be allocated for certain "priority" needs — with 10% to emerging harbors, at least 5% to "underserved" ports, and at least 10% for harbor and related projects on the Great Lakes navigation system. Another 10% of that additional funding must be for "expanded uses" at inland or other eligible harbors.

The measure requires that any increase in annual corps project operation and maintenance expenditures, which come from the HMTF, be accompanied by an equal increase in total appropriations provided for the corps' civil works program.

### **Inland Waterways Trust Fund**

The agreement changes the process for delivery of projects funded by the Inland Waterways Trust Fund (IWTF). To qualify, projects must meet criteria including scope, funding source, project management and cost estimate. The corps must establish a system for applying best management strategies for such projects.

The agreement also requires a review of possible ways to increase revenue collections for financing projects on the inland waterways. Potential revenue streams to be reviewed include increased fuel taxes, user fees and construction bonds.

The measure provides that the Olmsted lock and dam project on the Ohio River is to receive just 15% of its cost from the industry-funded IWTF, down from 50% of its cost — meaning that 85% of its cost would be funded through general Treasury revenues.

### **Non-Federal Interests**

The agreement allows non-federal entities to conduct a wide variety of water resources development projects — as long as the corps approves the plans, the project is specifically authorized by Congress and an environmental impact statement has been filed.

The measure also allows non-federal interests to contribute funds for any authorized water resources development study or project that the corps deems is in the public interest, as well as for federally declared disaster areas, for the management of water resources managed by the corps, for projects that have exceeded their maximum costs and for the operation and maintenance of authorized navigation projects. Under the agreement, non-federal interests can receive credit for in-kind and work-in-kind contributions to water resources projects.

It establishes a five-year pilot program that allows non-federal interests to fund the operation of specific locks on inland waterways where the corps has proposed to reduce operations for budgetary reasons.

### **Water Infrastructure Financing**

The agreement establishes two new programs to finance water infrastructure, and it modifies the existing Clean Water State Revolving Fund (SRF) program that states and municipalities now use to finance wastewater treatment facilities.

***State Revolving Funds***

The measure includes numerous modifications to the existing SRF authority under the Clean Water Act ( PL 92-500 ) to increase the affordability of SRF financing to local communities, increase flexibility in the uses of the Clean Water SRF to address local water quality concerns and promote more cost-effective management of infrastructure financed by SRF resources.

***WIFIA***

The agreement includes Senate provisions to create a five-year Water Infrastructure Finance and Innovation Authority (WIFIA) pilot project that would provide credit assistance for drinking water, wastewater and other water resources infrastructure projects.

Under the measure, WIFIA financing would have to be matched with non-federal funds for eligible projects, including planning, permitting, engineering, design, construction, rehabilitation, replacement and the acquisition of property. Entities that may participate in the program are corporations; partnerships; joint ventures; trusts; state or local governments or agencies, tribal governments or consortia; or state infrastructure financing authorities.

***Public-Private Partnerships***

The agreement establishes a pilot program for public-private partnership in developing water infrastructure. Under the measure, the corps is authorized to enter into agreements with non-federal interests, including private entities, to finance construction of at least 15 water resources development projects.

**Other Provisions**

The agreement requires the corps to consider nonstructural alternatives to repairing or replacing flood control projects that have been damaged; allows local communities to request that stronger flood control measures be implemented; establishes a national levee safety initiative and requires that an inventory of all levees be conducted; provides the corps with new authorities to respond to extreme weather; and requires the corps to conduct an inventory of the properties it controls, with an eye toward disposing of unneeded property.

**References**

All conferees except Rep. Rick Nolan, D-Minn., signed the conference report ( H Rept 113-449 ), which was filed May 15.

The Senate passed its bill ( S 601 ) on May 15, 2013, by a 83-14 vote. The House passed the bill ( HR 3080 ) on Oct. 23, 2013, by a 417-3 vote (see House Action Reports Fact Sheet 113-16 and Floor Summary ).

See CQ Weekly, pp. 50 , 394 and CQ Weekly 2013, pp. 582 , 824 , 844 , 867 , 891 , 924 , 1474 , 1559 , 1646 , 1750 and 1810 .

---



## Section II

---

### **Project Selection & Permitting Process**

This section describes the provisions of the conference agreement on HR 3080 , Water Resources Reform and Development Act, that establish a new process for authorizing water infrastructure projects, that expedite project studies and reviews and that authorize and deauthorize specific projects.

The agreement, like the House bill, establishes a new process for authorizing Army Corps of Engineers water infrastructure and resource projects under which the corps would submit its own recommendations, as well as state and local recommendations, to Congress to be approved or rejected — which would preserve Congress' role in making final project decisions. It also modifies the process of conducting project feasibility studies and environmental impact reviews in order to streamline the process and reduce delays, and it authorizes 34 specific projects (for an estimated cost of \$12 billion) while requiring the deauthorization of other projects authorized prior to 2007 that would cost the federal government at least \$18 billion to complete.

### **Current Water Resources Project Process**

The current process for building water infrastructure projects involves the authorization by Congress of a study, the subsequent authorization of the project based on the study and the separate appropriation of funds to conduct each of those actions. If a study is authorized and funded, the corps conducts an initial reconnaissance study followed by a more detailed feasibility study. Congressional authorization for construction is based on the feasibility study. Usually a non-federal interest or sponsor is required to help pay for the feasibility study and some portion of the funding of the project.

Although the reconnaissance study is supposed to take no longer than 18 months and the feasibility study no longer than three years, the process often takes much longer. As is true of most infrastructure, water resources development projects must go through an environmental impact review as required by the National Environmental Policy Act of 1969 (NEPA; PL 91-190 ).

Congressional authorizations for studies and construction have historically been granted through the Water Resources Development Act (WRDA) bills, while appropriations to fund the studies and construction usually are made through Energy and Water Appropriations acts. In the past, WRDA bills often authorized studies, modifications and other specific projects that were advanced by individual members of Congress — but had not met any other selection criteria or had been recommended by the U.S. Army Corps Chief of Engineers. Such congressional earmarks are now essentially banned in the House.

## **New Project Selection Process**

The agreement establishes a process under which Congress each year would receive a list of water projects recommended by the Corps of Engineers and from state and local interests that meet certain criteria — from which it could then choose the projects to be authorized. The process is based on provisions in the House bill.

The measure expresses the sense of Congress that a water resources development bill to authorize projects should be considered during every two-year Congress.

### ***Annual Proposals to Congress***

The agreement requires the Army Corps of Engineers annually to provide Congress with a list of potential feasibility studies and project modifications, including recommendations by both the corps and by non-federal interests, that could be authorized and funded.

The process would start with the corps, by May 1 of each year, publishing in the Federal Register a request for proposals from non-federal interests for possible project feasibility studies and modifications to authorized projects. Proposals must be received within 120 days of the notice's publication in the Federal Register.

All eligible non-federal proposals, as well as the corps' own proposals, would then be submitted to Congress by Feb. 1 of the following year and be made publicly available. To be included in the report, non-federal proposals would be reviewed by the corps to ensure they meet the same standards as corps-proposed projects — i.e., they must be related to the missions and authorities of the corps, require specific congressional authorization that has not yet been granted and must not have been included in any previous annual report, and the corps must be able to carry out the project if authorized and funded.

For each feasibility study and modification, the report must describe the potential benefit and list the name of any non-federal interest associated with the project as well as that entity's expected contribution to the project. Non-federal interests must also provide a statement of support for the project, the purpose of the project, an estimate of total federal and non-federal costs, and an estimate of the monetary and non-monetary benefits of the project.

The corps must certify that each feasibility report meets the criteria for inclusion. The report must include an appendix listing proposals that were submitted by non-federal interests but not included along with a description of how these proposals did not meet the criteria for inclusion.

### ***Harbor Projects***

Similar to the House bill, the agreement requires the corps to make a biannual assessment of the operation and maintenance needs of harbors and, in conjunction with the president's annual budget submission, identify the harbors for which the president proposes to allocate funding over the next five fiscal years.

Within 90 days of enactment, the corps must assess the operation and maintenance needs of U.S. harbors as they are used for different functions. Different harbor types include commercial navigation; commercial fishing; use by Native American tribes for subsistence and ceremonial purposes; transportation of persons; domestic energy production, including servicing of offshore facilities; Coast Guard operations; and recreational purposes.

The corps must prioritize future operations and maintenance expenditures based on an equitable allocation among the harbor types; decisions cannot be made solely on the basis of tonnage transiting through a harbor. However, the corps may review reports from non-federal interests that provide economic justification for investment in the operation and maintenance of a harbor. The corps must provide a written response to such reports and is allowed to use the information provided in the reports to justify additional funding for these harbors.

Starting in FY 2015, and every two years thereafter in conjunction with the president's annual budget submission, the corps must identify for Congress on a project-by-project basis the operation and maintenance costs associated with harbors, including costs to achieve and maintain authorized length, depth and width of harbors; the funding requested in the president's budget for operation and maintenance costs; the unmet operation and maintenance needs of harbors; and the harbors for which the president will allocate operation and maintenance funding over the next five years.

### ***Inland Waterway Projects***

Like the House bill, the agreement requires the Inland Waterways User Board, prior to the administration's submission of the president's annual budget, to make recommendations to the corps regarding construction and rehabilitation priorities and spending levels on the inland waterways. After the president's budget has been submitted, the board must advise Congress and make recommendations on the development of a long-term capital investment program.

### ***Prioritization of Projects***

The agreement includes Senate provisions that set parameters that the corps must consider when prioritizing projects whose primary purpose is to reduce the risk of damage from hurricanes and storms.

Specifically, it requires the corps to give funding priority to projects that address an imminent threat to life and property; prevent storm surge from inundating populated areas; prevent the loss of coastal wetlands that mitigate the impact of storm surge; protect emergency hurricane evacuation routes or shelters; prevent damage to publicly owned infrastructure; minimize disaster relief costs; and address risk reduction in areas for which the president declared a major disaster.

Within 180 days of enactment, the corps must submit to Congress a list of hurricane and storm damage reduction projects that have received federal funds since 2009, those that have been authorized for more than 20 years and are less than 75% complete, and projects that are being re-evaluated. From that list, the corps must identify those projects that meet the new priorities as outlined above and provide a plan for completing those high-priority projects.

Ecosystem restoration efforts must be prioritized according to whether they address an identified threat to public health, safety or welfare; preserve or restore ecosystems of national significance; or preserve or restore habitats of importance for federally protected species.

### **Modify Review & Permitting Process**

In an effort to expedite the authorization and funding of water resources projects, the agreement makes a number of changes to the process used by the corps to approve or deny projects. Like the House bill, the changes are in two main areas: how feasibility studies are conducted and how environmental reviews are conducted. Also like the House bill, it repeals the requirement for reconnaissance studies.

#### ***Feasibility Studies***

The agreement makes three major changes to the process for conducting feasibility studies: limiting the cost of any one study to \$3 million, requiring that a study be completed within three years and requiring that all three levels of the corps (district, division and headquarters) conduct a study concurrently rather than sequentially.

It requires the corps, within 90 days of beginning a study, to initiate all federally mandated reviews, including the environmental review. The corps must convene a meeting of all federal, state and tribal agencies that may be involved in determinations regarding licensing or certification and provide them with the relevant information regarding the study and the project; the corps must continue to provide this information as the study progresses.

If the corps determines that a study will not be completed within the three-year time frame, it must prepare a time frame and cost outline to be presented to Congress within 30 days of making the determination. Authority for a feasibility study would end one year after the date on which the corps determined that the study needed extra time. However, the corps could extend the timeline further for complex studies, as long as it notifies Congress and explains when the extension is necessary.

Four years after enactment, the corps must submit a report to Congress on all studies conducted pursuant to the new timeline. In this report, the corps must make recommendations for further expediting the process and assess whether the cost limit needs to be increased because of inflation.

The agreement also includes a Senate provision that increases from \$45 million to \$200 million the cost threshold for when peer review of feasibility studies must be conducted.

### ***Environmental Reviews***

The agreement creates a new consolidated environmental review process for Army Corps of Engineers water projects.

Under current law, the National Environmental Policy Act (NEPA; PL 91-190 ) requires federal agencies to consider the environmental effects of proposed actions and inform the public of the potential environmental consequences of those actions. If a project is declared a "major federal action," an environmental impact statement is required. A NEPA-required environmental impact statement must include a description of the need for the action, reasonable alternatives and a description of how the environment would be affected by both the alternatives and the preferred proposal. When multiple agencies are involved in permitting an activity, each may be required to conduct a separate NEPA review.

The agreement makes the corps the lead agency for environmental reviews, where it would be required to make sure reviews are performed in a timely manner. As the lead agency, the corps would invite the participation of any other agencies that have jurisdiction, provide those agencies with the necessary information and, in consultation

with the agencies, establish a schedule for completion of the environmental review that would result in a single, consolidated environmental impact statement. Certain project sponsors that are non-federal agencies could assume responsibility as a joint lead agency in conducting the environmental review.

The corps must issue guidance regarding programmatic compliance in order to eliminate repetitive discussions of the same issues. It also must establish a process for coordinating with all involved agencies that emphasizes the importance of collaboration among agencies and promotes transparency.

Cooperating agencies involved in a review would be required to identify any areas of potential concern. If a cooperating agency identifies an issue that could prevent timely completion of the review or result in denial of the project, the corps would be required to hold a meeting between the agencies to try to resolve the problem.

Environmental reviews must include a public comment period on the draft review to start when the draft review is published and end after a maximum of 60 days. All other public comment periods are to be no more than 30 days, starting when the material is made publicly available. Within a year of enactment, the corps must establish an electronic database to make available to the public the status of NEPA environmental reviews for all project studies.

Any legal challenge seeking judicial review of a project approval must be filed within three years of when the approval is published in the Federal Register.

### ***Categorical Exclusions to Environmental Reviews***

Under current law, certain projects may be excluded from the requirement for an environmental review, based on the knowledge from past experience with similar actions that they do not involve significant environmental impacts. Such "categorical exclusions" cannot induce significant impact to planned growth or land use for the area; not require the relocation of significant numbers of people; not have a significant impact on any natural, cultural, recreational, historic or other resource; not involve significant air, noise or water quality impacts; not have significant impacts on travel patterns; and not otherwise, either individually or cumulatively, have any significant environmental impacts.

The agreement requires the corps within 180 days of enactment to report on the current categorical exclusions that it uses and solicit requests for new categorical exclusions. The corps must identify any new categorical exclusions that it approves within a year of enactment.

The measure also clarifies that if a water resources project is operating or is under construction when damaged by a presidentially declared major natural disaster, it is categorically excluded from needing an environmental review as long as the repair maintains the original design and location of the project.

### ***Expedited Permitting***

The agreement establishes a pilot program under which public utility companies and natural gas companies may contribute funds to expedite the processing of permits under the corps' regulatory program. (See Section IV, Expand Role of Non-Federal Entities, for further details.)

### ***Repeals***

The agreement repeals the requirement to conduct reconnaissance studies.

In the corps' current project approval process, reconnaissance studies precede feasibility studies. They are meant to study the water resources problem and identify potential solutions in sufficient detail to enable the corps to determine whether to proceed to a feasibility report. Reconnaissance studies generally take between 12 and 18 months to complete.

While repealing the requirement for reconnaissance studies, the agreement allows some of the activities associated with reconnaissance studies to be conducted at the beginning of the feasibility study process. The corps may terminate a feasibility study if it is clear that there is no federal interest for a project, or if the project is not possible for technical, legal or financial reasons.

The measure also repeals required reviews of the cost-effectiveness of project designs. Under current law, each project with a total cost in excess of \$10 million must undergo a cost-effectiveness review.

## **Deauthorizations**

The agreement deauthorizes a number of water resources projects and, like the House bill, establishes a procedure for further deauthorizations.

The measure deauthorizes 18 specific projects or portions of projects that were authorized between 1843 and 2007 — most of which are completed with no additional construction planned.

It also provides for the deauthorization of additional projects that were authorized prior to enactment of the 2007 WRDA ( PL 110-114 ) where the total federal cost would be at least \$18 billion. Under the measure, the corps must provide to Congress a list of projects that have not begun construction or, if they have begun construction, have received any federal or non-federal funds in the past six years. The corps must identify the projects from oldest authorization to the newest. After 180 days of congressional review, the projects on the list are automatically deauthorized unless Congress acts to reject a deauthorization.

The measure also requires the corps to develop and maintain an annual list of authorized projects for which funding was obligated during that fiscal year and a comprehensive backlog report of all authorized projects that have not been completed.

### ***Automatic Deauthorization of New Projects***

The agreement also creates a process for automatically deauthorizing water resources projects that are authorized by this measure. Specifically, a project authorized by the measure would be deauthorized if, seven years after enactment, no funds have been obligated for construction of the project.

Within 12 years of enactment, the corps must submit to Congress a list of any projects authorized by the agreement for which construction has not been completed, a description of the reasons why the projects were not completed and a schedule for the completion of the projects based on expected levels of appropriations.

## **Authorizations**

The agreement includes new authorizations for a number of projects, and it modifies the authorizations for certain other existing projects.

### ***New Project Authorizations***

The agreement authorizes construction of 34 projects for which feasibility studies have been completed and which have been recommended by the Corps Chief of Engineers. Those projects include the following.

Eight navigation projects:

- Sabine Neches Waterway, Southeast Texas and Southwest Louisiana (Texas, Louisiana) with an estimated federal cost of \$748 million and an estimated non-federal cost of \$366 million.



- Jacksonville Harbor-Milepoint (Florida) with an estimated federal cost of \$28 million and an estimated non-federal cost of \$9 million.
- Savannah Harbor Expansion Project (Georgia) with an estimated federal cost of \$492 million and an estimated non-federal cost of \$214 million.
- Freeport Harbor (Texas) with an estimated federal cost of \$121 million and an estimated non-federal cost of \$118 million.
- Canaveral Harbor (Florida) with an estimated federal cost of \$29 million and an estimated non-federal cost of \$12 million.
- Boston Harbor (Massachusetts) with an estimated federal cost of \$216 million and an estimated non-federal cost of \$95 million.
- Lake Worth Inlet (Florida) with an estimated federal cost of \$58 million and an estimated non-federal cost of \$31 million.
- Jacksonville Harbor (Florida) with an estimated federal cost of \$362 million and an estimated non-federal cost of \$239 million.

Nine flood risk management projects:

- Topeka (Kansas) with an estimated federal cost of \$17 million and an estimated non-federal cost of \$9 million.
- American River Watershed, Common Features Project, Natomas Basin (California) with an estimated federal cost of \$761 million and an estimated non-federal cost of \$387 million.
- Cedar River, Cedar Rapids (Iowa) with an estimated federal cost of \$73 million and an estimated non-federal cost of \$39 million.
- Fargo-Moorhead Metro (Minnesota, North Dakota) with an estimated federal cost of \$847 million and an estimated non-federal cost of \$1.1 billion.
- Ohio River Shoreline, Paducah (Kentucky) with an estimated federal cost of \$13 million and an estimated non-federal cost of \$7 million.
- Jordan Creek, Springfield (Missouri) with an estimated federal cost of \$14 million and an estimated non-federal cost of \$7 million.

- Orestimba Creek, San Joaquin River Basin (California) with an estimated federal cost of \$24 million and an estimated non-federal cost of \$22 million.
- Sutter Basin (California) with an estimated federal cost of \$255 million and an estimated non-federal cost of \$434 million.
- Truckee Meadows (Nevada) with an estimated federal cost of \$182 million and an estimated non-federal cost of \$99 million.

Five hurricane and storm damage risk reduction projects:

- West Onslow Beach and New River Inlet (North Carolina) with an estimated federal cost of \$99 million and an estimated non-federal cost of \$86 million.
- Surf City and North Topsail Beach (North Carolina) with an estimated federal cost of \$207 million and an estimated non-federal cost of \$168 million.
- San Clemente Shoreline (California) with an estimated federal cost of \$51 million and an estimated non-federal cost of \$48 million.
- Walton County (Florida) with an estimated federal cost of \$43 million and an estimated non-federal cost of \$129 million.
- Morganza to the Gulf (Louisiana) with an estimated federal cost of \$6.7 billion and an estimated non-federal cost of \$3.6 billion.

One hurricane and storm damage risk reduction and environmental restoration project:

- Mississippi Coastal Improvement Program (MSCIP) Hancock, Harrison and Jackson counties (Mississippi) with an estimated federal cost of \$693 million and an estimated non-federal cost of \$373 million.

Eleven environmental restoration projects:

- Mid-Chesapeake Bay Island (Maryland) with an estimated federal cost of \$1.2 billion and an estimated non-federal cost of \$668 million.
- Central and Southern Florida Project, Comprehensive Everglades Restoration Plan, Caloosahatchee River (C-43) West Basin Storage Project, Hendry County (Florida) with an estimated federal cost of \$313 million and an estimated non-federal cost of \$313 million.

- Louisiana Coastal Area (Louisiana) with an estimated federal cost of \$1 billion and an estimated non-federal cost of \$601 million.
- Marsh Lake (Minnesota) with an estimated federal cost of \$7 million and an estimated non-federal cost of \$4 million.
- Central and Southern Florida Project, Comprehensive Everglades Restoration Plan, C-111 Spreader Canal Western Project (Florida) with an estimated federal cost of \$87 million and an estimated non-federal cost of \$87 million.
- CERP Biscayne Bay Coastal Wetland (Florida) with an estimated federal cost of \$99 million and an estimated non-federal cost of \$99 million.
- Central and Southern Florida Project, Broward County Water Preserve Area (Florida) with an estimated federal cost of \$448 million and an estimated non-federal cost of \$448 million.
- Louisiana Coastal Area-Barataria Basin Barrier (Louisiana) with an estimated federal cost of \$322 million and an estimated non-federal cost of \$173 million.
- Neuse River Basin (North Carolina) with an estimated federal cost of \$24 million and an estimated non-federal cost of \$13 million.
- Lynnhaven River (Virginia) with an estimated federal cost of \$23 million and an estimated non-federal cost of \$12 million.
- Willamette River Flood Plain Restoration (Oregon) with an estimated federal cost of \$27 million and an estimated non-federal cost of \$15 million.

### ***Project Modifications***

The agreement modifies the existing authorizations to eight specific projects.

- On the Roseau River, Minn., the corps is authorized to continue the construction of a flood damage reduction project at a total cost of \$44 million, with an estimated federal cost of \$25 million and an estimated non-federal cost of \$18 million.

- The corps is authorized to continue reconstruction of the Wood River levee system in Madison County, Ill., at a total cost of \$26 million, with an estimated federal cost of \$17 million and an estimated non-federal cost of \$9 million.
- On the Corpus Christi ship channel in Texas, the corps is authorized to continue deepening and widening the channel at a total cost of \$353 million, with an estimated federal cost of \$183 million and an estimated non-federal cost of \$171 million.
- The corps is authorized to continue flood risk reduction on the Des Moines River and Raccoon River project in Iowa at a total cost of \$23 million, with an estimated federal cost of \$15 million and an estimated non-federal cost of \$8 million.
- On Poplar Island in Maryland, the corps is authorized to continue to restore and expand island habitat through the use of dredged material from the Baltimore Harbor and the Chesapeake and Delaware navigation project at a total cost of \$1.2 billion, with an estimated federal cost of \$868 million and an estimated non-federal cost of \$366 million.
- Along the Chicago shoreline of Lake Michigan in Illinois, the corps is authorized to continue with the shoreline erosion and flood reduction project at a total cost of \$541 million, with an estimated federal cost of \$185 million and an estimated non-federal cost of \$355 million.
- On the Western Sarpy and Clear Creek in Nebraska, the corps is authorized to continue construction of a flood risk reduction project at a total cost of \$43 million, with an estimated federal cost of \$28 million and an estimated non-federal cost of \$15 million.
- On Cape Girardeau in Missouri, the corps is authorized to reconstruct a flood reduction project at a total cost of \$18 million, with an estimated federal cost of \$17.6 million and an estimated non-federal cost of \$746,000.

## Section III

---

### Trust Fund & Financing Issues

This section describes the provisions of the conference agreement on HR 3080 , Water Resources Reform and Development Act, that make changes to the Harbor Maintenance Trust Fund (HMTF) and the Inland Waterways Trust Fund (IWTF).

The agreement calls for increased annual expenditures from the Harbor Maintenance Trust Fund for harbor maintenance activities each year until 100% of trust fund revenues collected each year are spent. It requires the government to study possible new sources of revenue for funding inland waterway projects and increases the share of project costs for the Olmsted Lock and Dam on the Ohio River that is funded by the general Treasury rather than the industry-financed Inland Waterways Trust Fund.

It also creates two pilot programs intended to promote innovative financing of water infrastructure projects and attract new non-federal investments — a public-private partnership program and a Water Infrastructure Finance and Innovation program — and it modifies the existing Clean Water State Revolving Fund (SRF) program that states and municipalities currently use to finance drinking water and wastewater treatment facilities in order to increase the affordability of SRF financing to local communities and increase flexibility in the use of such financing.

### Trust Funds

Established by the 1986 WRDA ( PL 99-662 ), the Harbor Maintenance Trust Fund (HMTF) provides funding for the corps' cost of dredging channels, maintaining jetties and breakwaters and operating locks along the coasts and in the Great Lakes. The trust fund is financed through a tax assessed at coastal and Great Lakes ports on the value of imported and domestic waterborne cargo and on cruise ship passengers. Expenditures from the HMTF are made through appropriations by Congress. Currently, however, only about half of the \$1.8 billion collected by the trust fund each year is appropriated for harbor projects despite documented needs at U.S. ports and harbors.

The Inland Waterways Trust Fund (IWTF) was created as part of the Inland Waterways Revenue Act of 1978 ( PL 95-502 ) to finance construction and major rehabilitation of the nation's inland waterways. Commercial users of the waterways are taxed on their fuel use, and that tax is deposited into the trust fund. The IWTF pays for 50% of the cost of new dams and navigation locks, as well as major rehabilitation of existing waterways facilities. The trust fund was intended to be self-sustaining, but the fuel tax is not tied to inflation and has not been increased since 1995.

## **Increase Harbor Maintenance Trust Fund Spending**

The agreement provides for increased target expenditures from the Harbor Maintenance Trust Fund (HMTF) for harbor maintenance activities each year — although it does not guarantee that funding (which would continue to be subject to annual appropriations acts). Under the agreement, the target expenditure in FY 2015 from the HMTF is 67% of the funds collected in 2014, with the target expenditure rising each year until FY 2025 and thereafter when 100% of the funds collected the prior year are supposed to be spent.

The measure requires the corps to assess the operation and maintenance needs of U.S. harbors and, to the maximum extent practicable, prioritize future trust fund spending on an equitable allocation among all harbor types. To ensure that "emerging harbors" — i.e., those with less than 1 million tons of commercial cargo annually — receive sufficient funding so they can enhance their competitiveness, the measure requires that they receive funding each year through FY 2022 that is equal to at least 10% of the total appropriated from the trust fund for FY 2012.

For years through FY 2024 in which trust fund expenditures exceed the FY 2012 total, the agreement requires that a portion of the funding above 2012 levels be allocated for certain "priority" needs. Specifically, 10% of that higher funding must be allocated to emerging harbors, at least 5% must be allocated to "underserved" ports that have not been maintained at their authorized depths or widths in the past six years (but where state and local investments have been made at the ports), and at least 10% must be provided for harbor and related projects on the Great Lakes navigation system. Finally, at least 10% of that additional funding must be for "expanded uses" at inland or other eligible harbors — including the dredging of berths and the dredging and disposal of contaminated sediments that may be affecting a federal navigation project.

The measure also requires that any increase in annual corps project operation and maintenance expenditures, which come from the HMTF, must be accompanied by an equal increase in total appropriations provided for the corps' civil works program. In the agreement's statement of managers, conferees say this provision is meant to ensure that an increase in operation and maintenance activities does not come at the expense of other corps activities.

### ***Funds for Donor and Energy Transfer Ports***

The agreement includes Senate provisions that authorize \$50 million a year through FY 2018 in discretionary appropriations to be used to provide payments to qualifying "donor" and "energy transfer" ports. "Energy transfer" ports are those larger ports that had

40 million tons of commercial cargo pass through them in 2011 and that move energy commodities as at least 25% of their total cargo mix, while "donor" ports are those through which the taxes on goods passing through generated large contributions to the HMTF but the ports receive little benefit from the fund.

Under the measure, those ports could use these funds for certain expanded uses — including the dredging of berths and of contaminated sediments, environmental remediation, or payments to importers or shippers who transport cargo through that port. These provisions are intended to ensure that those ports that contribute large amounts to the trust fund also receive port improvement funding or that shippers get back a portion of the fees they paid.

The measure provides that if the agreement's appropriations targets for the HMTF are met, the \$50 million authorization for these purposes will be extended through FY 2022.

### **Inland Waterways**

The agreement requires the government to study possible new sources of revenue for funding inland waterway projects, and it modifies the corps' oversight and management of inland waterway construction projects in order to improve on-time and on-budget project delivery. It also adds to the responsibilities of the Inland Waterways Users Board and requires the corps, in coordination with the board, to develop and submit to Congress a 20-year program for making capital investments on the inland and intracoastal waterways.

#### ***Revenue Collection for Inland Waterways***

Like the House bill, the agreement requires the corps and other federal agencies to investigate possible new sources of revenue to increase the amount of funding available for the construction of, and improvements to, inland waterways infrastructure.

Under the measure, the corps within a year of enactment must report to Congress on potential user fees and revenues that would be derived from the users and beneficiaries of the nation's inland and intracoastal waterways infrastructure — including potential fees and revenues from sources other than those already allowed by law. The goal would be to have additional fees that, when combined with revenues generated under current law, would support half of an annual construction spending level of \$380 million. The corps must consider whether the potential user fees and revenues are equitably associated with the construction, operation and maintenance of inland and intracoastal waterway infrastructure, and whether the fees can be collected efficiently.

In examining the issue, the corps must consult with other stakeholders and provide the opportunity for public hearings, including an inland waterways stakeholder roundtable to address the financial needs of the IWTF in supporting the inland waterways infrastructure system. The roundtable must discuss funding options, the funding status of the IWTF, prioritization of infrastructure needs and a timeline for addressing funding challenges.

The corps, in coordination with the Treasury, also must investigate the feasibility of issuing federally tax-exempt bonds in the IWTF, secured against available proceeds, including project annual receipts. Within two years of enactment, the GAO must report on the efficiency of collecting the existing fuel tax for the IWTF, including whether current methods result in full compliance and whether alternative methods and alternative collection options would result in increased revenues.

The agreement also requires the Government Accountability Office (GAO) to evaluate the current method of revenue collection for the IWTF and to review alternative methods of collection. GAO must report its findings to Congress within two years of enactment.

### ***Inland Waterways Project Delivery***

Like the House bill, the agreement establishes new management and oversight requirements for all capital improvement projects on the inland waterways in order to improve on-time and on-budget delivery of projects funded by the Inland Waterways Trust Fund (IWTF).

Under the measure, all such projects must be overseen by a project manager who has formal project management training and certification and who is certified by the chief of engineers. Projects must have risk-based cost estimates with a confidence level of at least 80%.

In addition, within 18 months of enactment, the corps must establish a system to identify and apply best management practices, evaluate early contractor involvement in acquisition procedures, develop a portfolio of standard designs for inland navigation locks, use full-funding contracts or formulate a revised continuing contracts clause, and establish procedures for recommending new project starts using a capital project business model.

The corps must carry out pilot projects to evaluate procedures for the study, design and construction of projects. It also must, at a minimum, evaluate early contractor involvement; use of continuing contracts for construction; and principles, procedures and processes used for military construction projects.



### ***Inland Waterways Users Board / Long-Term Capital Investments***

The Inland Waterways Users Board was established by the 1986 WRDA ( PL 99-662 ) and is tasked with making recommendations on the priorities and spending from the IWTF. The board consists of 11 industry representatives from all regions of the fuel-taxed system.

Like the House bill, the agreement requires the board to advise Congress regarding any completed inland waterways feasibility study. Under the measure, for each study or project that qualifies for authorization, the board must appoint one of its representatives to be an informal adviser. The corps must communicate with the board each quarter on the status of the study, design or construction of all commercial navigation features or components of the inland waterways or inland harbors, and it must submit to the board a copy of all completed feasibility reports on inland waterways or harbors.

The board also must work with the corps to provide recommendations on the development of a long-term capital investment program. The corps, within a year of enactment and in coordination with the board, must develop and submit to Congress a 20-year program for making capital investments on the inland and intracoastal waterways. The program must be based on the application of objective, national project prioritization criteria. To the greatest extent possible, the investments must be made in all geographical areas and ensure efficient funding of inland waterways projects.

Every five years, the corps and the board must submit a review of the 20-year program that makes revisions to the program and identifies and explains changes to project-specific recommendations and prioritization criteria.

### ***Interstate Water Agreements and Compacts***

The agreement expresses the sense of Congress that, since states and local governments have the most at stake and the most immediate knowledge of waterways and their commercial and recreational uses, states should reach agreements on interstate water resource compacts. It notes that the corps can help facilitate and assist such agreements, that Congress should quickly consider such agreements and that the corps should adopt procedures consistent with state agreements and compacts.

### ***Olmsted Lock and Dam***

The agreement reduces from 50% to 15% the share of project costs for Olmsted Lock and Dam that is funded by the industry-financed Inland Waterways Trust Fund — thereby increasing to 85% the share of project costs that must be financed by general corps appropriations and freeing up trust fund monies for other inland waterways projects.

The measure expresses the sense of Congress that the total appropriation for the Olmsted project should be at least \$150 million per year until the project is completed.

Current law requires construction and major rehabilitation projects on the inland waterways to be cost-shared on a 50/50 basis between the federal government and commercial users, but the Olmsted project, which is on the Ohio River between Illinois and Kentucky, has become so expensive that it has taken most of the money available each year in the trust fund. The Fiscal 2014 Continuing Appropriations and Debt Limit Act ( PL 113-46 ), enacted Oct. 17, increased the project's total authorized cost from \$775 million to \$2.9 billion.

The measure requires the corps, within one year of enactment, to submit to Congress a report on the lessons it has learned from its experience in planning and constructing the Olmsted project and how to apply these lessons for future projects. It also requires GAO to report to Congress why the Olmsted Lock and Dam project exceeded budget and why the project was not completed as scheduled.

### ***Financial Plans for Large Projects***

Partly because of the corps' poor experience with the Olmsted Lock and Dam, the agreement requires the corps to submit to Congress an annual financial plan for any project with an estimated cost of \$500 million or more.

## **Innovative Financing**

The agreement creates two pilot programs intended to promote innovative financing of water infrastructure projects and attract new non-federal investments, a public-private partnership program and a Water Infrastructure Finance and Innovation program, and it modifies the existing Clean Water State Revolving Fund (SRF) program that states and municipalities currently use to finance drinking water and wastewater treatment facilities in order to increase the affordability of SRF financing to local communities and increase flexibility in the use of such financing.

In particular, drinking water and wastewater infrastructure projects are in desperate need of funding across the country. The Water Works Association estimates it would cost \$951 billion over the next 37 years (through 2050) just to repair existing drinking water systems and an additional \$802 billion to expand systems to keep up with population growth. The EPA says there are immediate backlogs of \$385 billion in drinking water infrastructure projects and \$298 billion in wastewater projects that need financing.

## **WIFIA**

The agreement includes Senate provisions to create a five-year Water Infrastructure Finance and Innovation Authority (WIFIA) pilot project that would provide credit assistance for drinking water, wastewater and other water resources infrastructure projects. The program is modeled on the Transportation Infrastructure Finance and Innovation Act (TIFIA) that provides low-cost credit that states can leverage with private investment for major road and bridge programs.

Under the measure, WIFIA financing would have to be matched with non-federal funds for eligible projects and activities — including planning, permitting, engineering, design, construction, rehabilitation, replacement and the acquisition of property. Entities that may participate in the program are corporations; partnerships; joint ventures; trusts; state or local governments or agencies, tribal governments or consortia; or state infrastructure financing authorities. Depending on the type of project proposed, either the corps or the EPA would have authority to provide financial assistance for the project.

To be eligible for WIFIA funding, project costs must be anticipated to be at least \$20 million. However, projects that would serve communities of fewer than 25,000 individuals are allowed to have anticipated costs of not less than \$5 million. At least 15% of the amounts available each year must be set aside for small community water infrastructure projects.

Selection criteria for projects must include consideration of the extent to which the project is nationally or regionally significant with respect to the reduction of flood risk, improvement of water quality and quantity, protection of drinking water and the support of international commerce; the inclusion of public and private financing; and the likelihood that WIFIA assistance will allow the project to proceed at an earlier date than without WIFIA assistance. Other criteria include whether the project protects against extreme weather events or helps maintain the environment; whether the project serves a region with significant energy exploration, development or production; whether the project serves a region with significant water resource challenges; the readiness of the project to proceed; and whether WIFIA assistance reduces the federal assistance needed for the project.

In general, loans made under WIFIA financing should not exceed more than 49% of the anticipated eligible costs of the project. However, up to 25% of available WIFIA funds may be used for loans in excess of that limit. No WIFIA funds may be used for a project unless all the iron and steel products used in the project are produced in the United States. The corps and EPA must publicly make available on the Internet all applications received and a list of the projects selected for assistance. Within four years of enactment, GAO must report to Congress on the program and make recommendations for improvement.

The measure authorizes \$20 million in FY 2015 for the program, gradually increasing to \$50 million in FY 2019.

### ***State Revolving Funds***

The measure includes numerous modifications to the existing SRF authority under the Clean Water Act ( PL 92-500 ) to increase the affordability of SRF financing to local communities, increase flexibility in the uses of the Clean Water SRF to address local water quality concerns and promote more cost-effective management of infrastructure financed by SRF resources.

Established in 1987 through amendments to the Clean Water Act, SRF programs currently operate in all 50 states and Puerto Rico, with states maintaining revolving loan funds to provide permanent and independent sources of low-cost financing for water quality infrastructure projects. SRF programs are capitalized with federal grants and state matching funds (20% of the federal grants). Money is loaned for projects, and the loan repayments returned to the program are used to fund additional projects. Federal investment in the SRF programs is over \$36.2 billion, and the programs have provided more than \$100 billion in funding for water quality projects.

Conferees in the statement of managers say the modifications are intended to ensure that the Clean Water SRF remains a viable option for local communities and states to address ongoing local water quality concerns.

The agreement allows states to provide additional subsidies to loan recipients, including forgiveness of principal and negative interest loans, and it clarifies affordability criteria for municipalities in a state. Under the revised program, grant and loan recipients must select activities that maximize efficient water use, reuse, recapture and conservation. Fund balances must be available in perpetuity, and fees must be considered program income used to finance the administration of the fund.

It specifies that a maximum of 2% of the funds may be made available for loans to Native American tribes. All iron and steel used in a project funded through this program must be produced in the United States.

Within 18 months of enactment, the EPA must review the allotment formula for the allocation of funds and submit a report to Congress.

### ***Public-Private Partnership Pilot Program***

From the House bill, the agreement adopts provisions that require the corps to enter into agreements with non-federal interests, including private entities, to finance the construction of at least 15 congressionally authorized water resources development projects.

The purposes of the pilot program are to identify cost-saving project delivery alternatives that can help reduce the backlog of corps projects and to evaluate the benefits of allowing a non-federal entity to conduct the design and construction of these projects — including projects for coastal harbor improvement, channel improvement, inland navigation, flood damage reduction, aquatic ecosystem restoration, and hurricane and storm damage reduction.

Under the measure, the corps must identify at least 15 projects that have already been authorized by Congress. The corps must work with the non-federal entity to develop the project plan and must monitor and audit each project as it is carried out. In selecting projects, the corps must consider the significance of the project to the economy, whether the project encourages non-federal contributions, whether the project employs innovative project delivery and cost-saving methods, whether the project received federal funds in the past and experienced missed deadlines, and whether the project has not received federal funding for capitalization and modernization since it was authorized. The corps may provide technical assistance to the non-federal entity during the project, but it must be compensated.

Before starting a project partnership, the corps must justify to Congress that the agreement provides better public and financial benefits than a similar transaction using public funding or financing. Within three years of enactment, the corps must report to Congress on the result of the pilot program and make recommendations on whether the program should be implemented on a national basis.

### **Miscellaneous Funding Provisions**

The agreement includes several miscellaneous funding provisions.

The measure authorizes the corps to accept funds from other federal agencies to conduct work on their behalf, and it provides that if a water resource development project adversely affects another federal facility, the corps may accept funds from the other federal agency to address the adverse impact — including by removing, relocating or reconstructing the water resource project.

It adjusts cost-sharing requirements for U.S. territories to reflect inflation since 1986. Under current law, if a study in a territory costs \$200,000 or less, the corps must waive the territory's cost-sharing requirement. That \$200,000 figure would be increased to reflect inflationary increases.

It also includes Senate provisions that authorize the corps to charge fees at its recreation properties when hosting groups and events, and to enter into agreements with state or local governments to provide recreational opportunities at corps reservoirs that are adjacent to state or local recreation properties. The corps also would be authorized to issue and accept for entry to its recreation areas the nationwide parks and lands visitor passes issued by the Interior Department and its agencies.

## Section IV

---

### **Expand Role of Non-Federal Entities**

This section describes the provisions of the conference agreement on HR 3080 , Water Resources Reform and Development Act, that expand the role of non-federal entities in water resource projects.

The agreement expands the role of state and local governments and other non-federal entities in many different aspects of water infrastructure development, from the ability to propose projects to the funding and operation of projects. Among other things, the agreement allows non-federal entities to build water projects and to provide funds for a variety of federal activities, including the operation and maintenance of projects, and is intended to make non-federal entities more directly involved with development and operation of the nation's water transportation system.

Under the measure, non-federal entities are defined as "legally constituted public bodies (including federally recognized Indian tribes) or nonprofit entities with the consent of the affected local government, that have full authority and capability to perform the terms of their agreements and to pay damages, if necessary, in the event of failure to perform."

### **Project Planning & Construction**

Like the House bill, the agreement allows non-federal entities to provide funds to the corps to carry out studies for proposed water infrastructure projects and authorizes non-federal entities to carry out and build water infrastructure projects, or to contract with the corps to carry out the work on a federal project, if the corps approves the proposal and the project is authorized by Congress. Currently, this authority exists only for flood control projects.

Non-federal entities that intend to carry out projects themselves using their own funding still must comply with all applicable federal planning and development rules, including the development of an environmental impact statement for the project. When constructing a project, non-federal entities would be subject to the same laws and regulations as those that apply to the corps. The measure requires the corps to notify Congress before negotiating with a non-federal entity to conduct a water resources development project.

The corps must develop a benchmark for reviewing and processing applications from non-federal entities to modify or improve eligible water resources projects. Under the measure, the goal for completing action on applications involving most projects would be 45 days from the time the application is submitted; for more complicated project modifications, the corps must establish a 180-day benchmark.

The measure generally provides that the corps will be responsible for operating and maintaining a navigation project built by non-federal entities after its completion if, before construction, the corps determines that the project is economically justifiable and environmentally acceptable and after construction finds this to remain true; if the corps certifies that the project meets certification, permit and engineering standards; and if the project was specifically authorized by Congress.

The measure also includes Senate provisions authorizing a five-year pilot program to evaluate the cost-effectiveness and efficiency of allowing non-federal entities to conduct feasibility studies and construct not more than 15 projects for flood risk management, hurricane and storm damage reduction, ecosystem restoration, and coastal harbor and channel and inland harbor navigation.

### ***Non-Federal Contributions to Corps***

Under current law and practice it is very difficult for the corps to accept contributed funds to carry out authorized activities if no federal funds have been designated for that purpose. The agreement would remedy that situation by authorizing the corps to accept and expend contributed funds absent federal funds, or to authorize a non-federal entity to carry out the work on a federal project subject to credit or reimbursement.

Specifically, it clarifies that non-federal interests may contribute funds toward the construction of authorized projects, and it allows the corps to accept funds from a non-federal interest for any authorized water development project that has exceeded its maximum cost — as long as the use of the funds does not increase the federal share of the project.

In addition to providing permanent authority for the corps to accept funds from non-federal public interests to expedite the processing of permits within the corps' regulatory program, the measure for seven years allows public utility companies and natural gas companies to contribute funds to the corps to expedite the corps' evaluation of a permit as long as that would not adversely affect the corps' timeline or decision-making for any entity or company that has not contributed funds to a project. Under current law, only non-federal public entities may contribute funds to expedite corps' evaluations.



The measure also authorizes the corps to carry out projects on federal lands that have been paid for by a non-federal project sponsor.

### ***In-Kind Contributions & Credits***

Like the House bill, the agreement makes technical corrections to existing law in an effort to ensure that non-federal entities receive credit (against their portion of the cost of the project) for their contributions and work. It authorizes the corps to enter into written agreements with non-federal entities in order to credit certain costs and in-kind contributions against the non-federal share of the cost of the project.

Under the measure, if non-federal entities make contributions toward projects that are greater than required by the cost-sharing requirements, they receive credit for those contributions. They also receive in-kind credit for work performed prior to the existence of a project cooperation agreement between the corps and the entity; this credit would extend to work conducted prior to enactment.

The measure directs the corps to reimburse non-federal interests for costs that exceed the non-federal share if those costs are for work done pursuant to a written agreement and are the result of the requirement that the non-federal sponsor provide all lands, easements, rights-of-way, dredged material disposal areas and relocations for the project. Conferees note that current law creates a disincentive for non-federal interest from conducting in-kind work on projects that have significant costs from this requirement.

The agreement also:

- Allows the corps, under certain circumstances, to transfer credit for in-kind contributions that are in excess of the non-federal cost share to other water resources development projects being conducted by the same non-federal sponsor. The corps' authority to make these transfers expires 10 years after enactment.
- Allows non-federal interests to request credit for an authorized flood damage reduction project constructed before enactment; the credit could be provided instead of reimbursement for the federal share of the project.
- Allows the corps to accept materials and services contributed by non-federal interests for repairing or replacing a water resources development project that has been damaged or destroyed by an

emergency, as long as the corps determines that accepting the materials and services is in the public interest. Such materials and services would not be eligible for credit or reimbursement.

### **Operations and Maintenance**

The agreement includes Senate provisions that create a five-year pilot program under which the corps could accept funds from non-federal interests in order to operate and maintain certain locks and dams on the inland waterways system.

In their statement of managers, conferees note that the corps is proposing to limit the operations of certain locks on the system, partly because of budgetary concerns. In some cases, non-federal interests have expressed a willingness to finance continued operations at those locks in order to ensure that water traffic on the inland waterways system is not unduly affected. The measure would allow non-federal interests to pay the corps to keep those locks operating.

In lieu of the corps assuming responsibility for operating and maintaining a project built by a non-federal interest, the measure allows non-federal interests to carry out those operations and maintenance responsibilities using their own funds. In such cases, the non-federal interest could receive a credit for those operations and maintenance costs that could be applied toward that party's share of construction costs on another element of the same project, or on another authorized navigation project sponsored by that non-federal interest. The credit could not exceed 20% of a project's construction costs, however.

In the case of harbors, the agreement allows non-federal interests to request that the corps maintain a navigation project for a harbor or inland harbor, and for the corps to enter into an agreement to do so. The non-federal interests must submit a report justifying the economic investment of maintaining the harbor, which can be based on navigation safety, national security, sustainability of subsistence harbors and projected economic benefits, including transportation savings and job creation. If the corps feels the federal economic investment is no longer justified, it can terminate the agreement.

### **Other Provisions**

The agreement includes modified Senate provisions that allow a non-federal entity to request that the corps study hurricane and storm damage reduction projects (beach replenishment) to determine whether there is federal interest in carrying out work for an additional time, up to 15 years. If there is federal interest, the non-federal entity may request the authorization of a specific project through the measure's new annual process used to select new projects.

Communities with 50-year beach nourishment agreements close to expiring will be allowed to apply for three-year extensions to allow the non-federal entity to progress through the study process and the annual report requirements.

## Section V

---

### **Flood Control, Levees, Rivers, Coasts & Other Provisions**

This section describes the provisions of the conference agreement on HR 3080 , Water Resources Reform and Development Act, that address certain Army Corps of Engineers flood control, dam, extreme weather and levee activities and addresses issues specific to certain rivers and coasts, as well as other provisions.

The agreement requires the corps to consider nonstructural alternatives to repairing or replacing flood control projects that have been damaged, allows local communities to request that stronger flood control measures be implemented, establishes a national levee safety initiative and requires that an inventory of all levees be conducted, provides the corps with new authorities to respond to extreme weather and requires the corps to conduct an inventory of the properties it controls with an eye toward disposing of unneeded property.

#### **Flood Control**

The measure requires the corps to consider alternatives to repairing or restoring flood control projects damaged by major storms and allows the corps to implement more robust flood control plans proposed by local authorities.

Under the measure, the corps is authorized, upon the request of a non-federal interest, to consider two or more flood control projects in the same area as a single program for budgeting purposes.

#### ***Alternative Repairs to Storm-Damaged Flood Control Projects***

Like the House bill, the agreement requires the corps to review and evaluate alternative levels of repairing or restoring flood control projects that are damaged or destroyed by major storms. Current law allows the corps to repair or restore qualifying flood control projects damaged by storms and allows modification of these projects by the corps.

The review is meant to ensure the future safety of affected communities; the resiliency of water resources development projects against future flooding and storms; and the long-term cost-effectiveness of projects that provide flood control and hurricane and storm damage reduction benefits. The goal of these provisions is to have the corps review its practices and evaluate alternatives that are economically feasible and nonstructural.

The corps must report its findings to Congress within a year of enactment.

### ***Locally Preferred Plans for Flood Risk Protection***

The measure allows the corps to carry out a locally preferred plan for flood risk protection that provides a higher level of protection than the flood control project that was approved by the corps and authorized by Congress.

Under the measure, the locally preferred plan can be used only if the corps determines that the plan is requested by a non-federal entity, is technically feasible and environmentally acceptable, and the plan's benefits exceed its costs. The federal share of the cost of the project cannot increase as a result of the change.

### ***Local Notification of Flood Threats***

The agreement requires the corps, for any river basin where it carries out flood risk management activities subject to an annual operating plan, to establish procedures for notifying the public and affected governments (including Native American tribes) whenever precipitation or runoff exceeds the lowest risk to life and property as outlined in the annual operating plan. The notification must provide information regarding expected water levels, appropriate preparedness actions, technical assistance and any other information that the corps deems appropriate.

## **Levees**

There are approximately 100,000 miles of levees across the country, almost 85% of which are locally owned, operated and maintained. As a consequence, it is extremely difficult to collect information about the levees or estimate their reliability — which can leave the public at risk of a levee failure. Like the Senate bill, the agreement includes provisions intended to enhance levee safety, including by establishing a national levee safety initiative to promote consistent safety standards.

Under the National Flood Insurance Program (NFIP), levees can be certified as providing sufficient protection against flooding and thus reducing the flood risk in the plain behind the levee. The agreement authorizes the corps, if requested by a non-federal owner of a levee, to evaluate a levee system and certify whether or not it meets the NFIP requirements. Under the measure, the costs of such evaluations would be split 50-50 between the corps and the non-federal owner.

It provides that non-federal levee systems will remain eligible for rehabilitation assistance as long as the levee system's sponsor continues to make satisfactory progress in improving the levee system, and it increases from \$10 million to \$30 million a year the authorization for federal planning assistance to state levee programs and increases the annual per state limit from \$2 million to \$5 million.

For federally authorized levees and other hurricane and storm damage reduction water projects where protection levels have diminished, the measure authorizes the corps to restore those federally authorized projects to their authorized protection levels. In association with this effort, the corps must evaluate and address consolidation, settlement, subsidence, sea level rise and other new data. This authority would expire after 10 years.

### ***Levee Safety Initiative***

The agreement authorizes the corps, in consultation with the Federal Emergency Management Agency (FEMA), to conduct a national levee safety initiative — including by establishing voluntary levee safety guidelines and providing technical assistance to states to create local levee safety programs.

The purposes of the levee safety initiative are to ensure that lives and property protected by levees are safe; to encourage appropriate engineering, operation and maintenance, inspection and emergency preparedness; to develop public education and awareness; to build public awareness of residual risks of living in levee protected areas; to develop technical assistance materials; and to encourage effective state and tribal levee safety programs.

Under the measure, the corps must conduct a one-time inventory and review of all levees identified in the national levee database to determine if a levee requires more comprehensive inspection. Within a year of enactment, the corps, in consultation with FEMA and coordinating with state, local and tribal governments, must establish voluntary national levee safety guidelines that are applicable to a range of levee types and provide for adaptation to local conditions.

The corps would provide technical assistance and training to states on levee safety. In order to be eligible for technical assistance, states must be establishing or already have a state levee system that complies with federal guidelines, and states must have sufficient funds to carry out a levee safety program. The state must request the corps' assistance, and the corps must consult with the state and appropriate non-federal interests when providing the assistance.

The agreement also establishes a levee rehabilitation assistance program under which the corps assists states, tribes and local governments with flood mitigation activities.

Finally, it requires the corps to report to Congress on the following: the state of levees in the United States and the effectiveness of the levee safety initiative; an assessment of the feasibility of and recommendations for establishing a joint national dam and levee safety program; and opportunities for alignment of federal programs to provide incentives to state, tribal and local governments to promote levee safety.

### ***Levee Vegetation Management***

The agreement requires the corps to review its guidelines regarding vegetation management for levees.

The review must examine the guidelines in terms of varied interests and responsibilities in managing flood risks, including the need to provide the greatest levee safety benefits with limited resources; preserving and enhancing natural resources, including the potential benefit that vegetation on levees can have in providing habitats for threatened species; protecting the rights of Native American tribes; determining how vegetation affects the performance of a levee during a storm or flood event; and any other factors that the corps deems appropriate.

In conducting the review, the corps must consider potential variances on a regional or watershed basis, including soil conditions, hydrologic factors, vegetation patterns and characteristics, environmental resources, levee performance history and institutional considerations. The corps is allowed to make exemptions to national guidelines where appropriate.

The review must make recommendations regarding vegetation management policies for levees that conform with state and federal laws and other applicable requirements, and within 18 months of enactment the corps must revise levee vegetation management guidelines based on the results of the review. Until the new guidelines are adopted, the corps is prohibited from requiring the removal of existing vegetation as a requirement for the approval or funding of any project.

## **Dams and Extreme Weather**

Like the Senate bill, the agreement includes provisions to strengthen dams and ensure best practices in responding to extreme weather events.

### ***Dam Safety***

There are approximately 84,000 dams in the United States, with an average age of 52 years. Of those 84,000 dams, 14,000 are considered "high hazard," which means that if they failed the resulting flood damage would cause significant loss of life and damage to the surrounding areas.

The agreement includes provisions aimed at strengthening the FEMA's dam safety program by providing stronger safety requirements, upgrading emergency preparedness plans to prevent dam failure and improving recovery plans. Under the measure, FEMA is authorized to develop a dam safety education and awareness initiative with the goal of assisting the public in preparing for, mitigating, responding to and recovering from dam incidents.

The agreement reauthorizes through FY 2019 numerous dam safety programs and activities, including the national dam inventory, public awareness, research, and dam safety training staff. The authorization for the largest of the programs, the national dam safety program, would be increased from \$6.5 million to \$9.2 million per year.

### ***Extreme Weather***

The agreement includes a number of provisions intended to help the corps better respond to extreme weather events and ensure that the corps is using best practices to address threats from floods, droughts and storms.

It requires the corps and the Interior Department to contract with the National Academy of Sciences to undertake a comprehensive evaluation of possible measures of how to respond to extreme weather and mitigate the risk of such weather. GAO, meanwhile, would be directed to review the corps' policies and procedures in response to floods, storms and droughts with an eye toward ensuring that the corps is taking appropriate measures to prepare for and respond to these events.

It provides the corps with new authority after a disaster has occurred to conduct rapid, post-disaster watershed assessments and implement small flood control and ecosystem restoration projects. The corps is also authorized to recommend larger flood control and ecosystem restoration projects for possible authorization through the new project selection process created by the bill.

Finally, the measure encourages the corps in constructing its water projects to use resilient construction techniques that are more durable and sustainable in the face of extreme weather.



## **Specific Projects & Land Conveyances**

The agreement requires the corps to conduct an inventory of the properties it controls with an eye toward disposing of unneeded property, requires the corps to take specific actions on certain inland waterway projects, provides for the construction of a hydroelectric project in Oklahoma and authorizes land conveyances.

### ***Corps Inventory and Assessment of Properties***

The agreement requires the corps, within a year of enactment, to conduct an inventory and assessment of all properties it controls, as well as an inventory of properties no longer deemed necessary for the corps' missions.

In conducting the assessment, the corps must determine the extent to which each property aligns with current missions of the corps, the economic impact of the property on existing communities nearby, the extent to which the utilization rate for the property is being maximized and is consistent with nongovernmental industry standards for the given function or operation, and the extent to which reduction or elimination of the property could reduce the corps' operation and maintenance costs and energy consumption.

The corps must provide the inventory to the GSA and report to Congress.

### ***Inland Waterway Projects***

Like the Senate bill, the agreement requires the corps to operate and maintain any flood gate constructed as of the date of enactment as a feature of an authorized hurricane and storm damage reduction project that crosses an inland or intracoastal waterway. The non-federal cost share of the operation and maintenance of such flood gates is 35%.

It also requires the corps to:

- Conduct an assessment of the operation and maintenance needs of the Atlantic Intracoastal Waterway System and the Gulf Intracoastal Waterway System.
- Determine the feasibility of conducting smaller projects along inland and intracoastal waterways to reduce flood damage, protect the shoreline and improve the environment.
- Close the Upper St. Anthony's Fall Lock and Dam.

### ***Hydroelectric Facilities***

Like the House bill, the agreement allows the Cherokee Nation of Oklahoma to design and construct one or more hydroelectric generating facilities at the W.D. Mayo Lock and Dam on the Arkansas River in Oklahoma and to market the electricity generated.

The Cherokee Nation must obtain required permits but would be exempt from licensing requirements under the Federal Power Act. The corps must review and approve the plans developed by the Cherokee Nation, and if the tribe supplies the funds, the corps may build the hydroelectric generating facility. The Cherokee Nation will hold the title to the facility, however, and is allowed to assign it to a third party, subject to corps approval. The Cherokee Nation would be responsible for the operation, maintenance, repair, replacement and rehabilitation of the facility.

### ***Land Conveyances***

The agreement conveys land for six projects where the land transferred is deemed in excess of what is needed for the purposes of the project. For each conveyance, the exact acreage and legal description of the property to be conveyed will be determined by a survey that must be satisfactory to the corps.

The lands to be conveyed are located as follows: Oakland inner harbor tidal canal, Calif.; St. Charles County, Mo.; Tulsa Port of Catoosa, Rogers County, Okla.; Hammond boat basin, Warrenton, Ore.; Craney Island dredged material management area, Portsmouth, Va.; City of Asotin, Wash.

## **Rivers and Coasts**

The agreement includes Senate provisions that direct actions be taken on a regional basis for certain rivers and coastal areas — including the Mississippi River, the Missouri River, the Arkansas River, the Rio Grande River, the Northern Rockies headwaters, the North Atlantic coast, the Louisiana coast, the Red River basin and the Chesapeake Bay.

The measure requires that for every year the president fails to request funding for corps activities related to river basin commissions, the corps must submit to Congress a justification and explanation for the lack of funding and an analysis of the impact.

Under the agreement, the corps is authorized to update forecasting technology to maintain navigation on the Mississippi River. The corps is required to investigate the feasibility of projects to improve navigation and aquatic ecosystem restoration, conduct

a study to improve the management of water resource projects related to severe flooding and drought conditions and conduct navigation projects outside of the federal navigation channel to ensure safe and reliable fleeting areas.

The corps, in coordination with other federal agencies, is authorized to conduct soil moisture and snowpack monitoring in the Upper Missouri River basin. The corps must include in the president's annual budget the prioritization of federal actions to mitigate for fish and wildlife losses in the Missouri River basin.

The agreement also:

- Establishes a McClellan-Kerr Arkansas River navigation system advisory committee to provide information and recommendations on the efficiency, reliability and availability of operations of that navigation system.
- Modifies the ecosystem restoration program for the Lower Columbia River and Tillamook Bay to increase the authorization of funds from \$30 million to \$50 million.
- Extends the flood damage reduction and ecosystem restoration program for the Rio Grande River to 2019.
- Increases the funding authorization for environmental infrastructure assistance for rural Idaho, Montana, Nevada, New Mexico, Utah and Wyoming to \$435 million.
- Reauthorizes the Chesapeake Bay Environmental Restoration Program.
- Requires a review of Louisiana's plan for a sustainable coast and conducts feasibility studies for up to 10 projects in the plan.
- Authorizes the corps to reassign unused irrigation storage within the Red River basin to municipal and industrial water supply under certain circumstances.
- Requires studies of the feasibility of mitigating the impacts of extreme weather events along the headwaters of the Columbia, Missouri and Yellowstone rivers and tributaries; of aquatic ecosystem restoration in the coastal waters of the North Atlantic; and of projects in coastal zones to enhance ocean and coastal ecosystem resiliency.

## Miscellaneous Provisions

The agreement contains a number of provisions with various purposes, some of which are intended to make the corps more efficient, while others address environmental concerns and funding issues.

Like the House bill, it clarifies that the corps cannot prohibit "floating cabins" (defined in the law as vessels with overnight accommodations) as long as the floating cabin is in compliance with regulations for recreational vessels and the corps has authorized recreational vessels on those waters.

It also allows Native American tribes to develop contractual agreements with the corps in order to coordinate the management of resources, such as the protection of fish, wildlife, water quality and cultural resources.

### *EPA Regulations for Farm Oil Storage Tanks*

The agreement includes Senate provisions addressing EPA regulation of oil storage tanks on farms.

It requires that an individual tank with a storage capacity greater than 10,000 gallons, a farm with an aggregate storage capacity of 20,000 gallons or more, or a farm with a history of a spill be certified by a professional engineer to be compliant with oil spill prevention, control and countermeasures. The owner or operator of a farm with an aggregate storage capacity of less than 20,000 gallons is allowed to self-certify compliance with the regulations.

Under the measure, the EPA and the Agriculture Department must determine a threshold for exemption from all requirements. The threshold must be an aggregate storage capacity between 2,500 and 6,000 gallons with no history of spills. All containers on separate parcels with capacities of less than 1,000 gallons are excluded from the aggregate storage capacity of the farm.

The EPA's Spill Prevention, Control, and Countermeasure rule is intended to help facilities and farms prevent a discharge of oil into navigable waters or adjoining shorelines and to contain those spills if they do occur. The rule, which was delayed for about a decade after being released in the early 2000s, requires farms and other facilities as of May 10, 2013, to develop, maintain and implement an oil spill prevention plan. Critics claim that the regulation will cost farmers and ranchers tens of thousands of dollars and that many small farmers have had trouble securing the services of professional engineers to certify their plans.

### ***Improve Corps Efficiency***

The agreement includes provisions aimed at making the corps and its activities more efficient. These include:

- Allowing the corps to remove military munitions from the vicinity of projects.
- Requiring the corps to encourage and incorporate corrosion prevention activities.
- Directing the corps to encourage and incorporate advanced modeling techniques for activities related to water resource development projects and studies.
- Directing the corps to consider using dredged material for the maintenance of sediment resources in the nearby coastal system to reduce or avoid federal costs.
- Requiring to the corps consolidate its deep draft expertise and create a planning center for deep draft navigation.
- Requiring the corps to encourage the use of durable, resilient and sustainable materials and practices, including the use of geosynthetic materials and innovative technologies.
- Authorizing the corps to evaluate alternative levels of restoration for federal flood damage reduction projects damaged after storm events.

### ***Environmental Issues***

The agreement authorizes the corps and other applicable agencies to make recommendations to Congress on how to more effectively respond to threats from invasive species. It requires the Government Accountability Office to review federal costs of mitigating the impacts of aquatic invasive species on federally owned and operated facilities. It specifically requires federal agencies to work to slow the spread of Asian carp and authorizes the corps to modify existing projects to prevent the spread of invasive species in the Great Lakes.

The agreement also:

- Includes Senate bill provisions clarifying corps mitigation plans for adverse impacts on fish and wildlife of proposed projects.

- Adds the control and eradication of aquatic invasive species from navigable waters, tributary streams and connecting channels as an eligible activity under existing corps programs.
- Authorizes the corps to improve fish species habitat within a water resources project under certain circumstances.

### ***Reports to Congress***

The agreement requires the corps to submit a number of reports to Congress, including one on effects of droughts on lakes with Federal Energy Regulatory Commission licenses, and one regarding management of corps reservoirs in arid regions in an effort to determine the effects of such practices on water supply during periods of drought.