



washington dc update

A Review of Water & Arid West Legislation

May 31, 2016

House WRDA Bill – A Positive Result

Even accounting for the ardent politics and constant rhetoric, the ways of Congress can be difficult to understand, some actions simply don't make sense. Fortunately, these mysterious ways are occasionally offset by examples of bipartisan successes. In the last few weeks there have been examples of both to bring to the attention of water managers in the Arid West.

On the positive side, both the Senate and House have passed out of full committee their respective versions of a Water Resources Development Act (WRDA) for 2016.

Transportation & Infrastructure Committee Chairman

Shuster has established one of those rare alliances, reminiscent of Sam Rayburn I am told, with Ranking Member Peter DeFazio and Subcommittee Chair Bob Gibbs and

Subcommittee Ranking Grace Napolitano. This alliance held together on the WRDA bill and allowed the Committee to achieve a number of its stated goals:

- Returns the WRDA authorization to “regular order” (meaning consideration of a new WRDA at every Congress);
- Authorizes projects with completed and approved Chief’s reports (bill authorizes 28 projects totally around \$5 billion);
- Contains no earmarks; and,
- Follows the new transparent process developed in WRRDA 2014 to review and prioritize water resources development activities with strong Congressional oversight.

In contrast to the Senate version (S. 2848) passed out of the Environmental & Public Works Committee on April

25th, the House version (H.R. 5303) is often referred to as a “pamphlet” bill, reflecting the Chairman’s interest in avoiding a broad, sweeping bill that could hamper its success and derail the goal of achieving a first-step in regular order.

The House Committee stayed solidly within the Committee’s jurisdiction; there no provisions related to drinking water programs, which are included as an extensive additional Title in the Senate version. Texas Congresswoman Eddie Bernice Johnson withdrew her amendment to authorize the Corps of Engineers to provide technical and other support to help deal with lead-

contaminated public water systems after Chairman Shuster observed that although a critical issue it was clearly outside the T&I Committee’s jurisdiction. Another withdrawn amendment was of interest because it reflected on the role of the federal government in resolving interstate

water disputes. Congresswoman Corrine Brown of Florida proposed to delete Section 113, which repeals a provision in the previous WRDA bill (WRRDA 2014) allowing Congress to resolve the continuing dispute between Florida, Georgia and Alabama over management of water supply stored at Lake Lanier if the States are unable to agree. After some tempered but strong discussion with her colleague on the committee from Georgia, Rep. Brown withdrew her amendment.

The WRDA mark-up on May 25th required almost two and a half hours, considering a number of amendments but adopting a relatively limited number. The Committee unanimously passed the “Water Resources Development Act of 2016” marking a clear, bipartisan achievement by the T&I Committee and its leadership.

Regular action and oversight by Congress through the biannual WRDA process will ensure that the United States’ infrastructure is prepared for future growth.

Chairman Shuster



The National Waterways Conference provided the following recap on amendments that were adopted by voice vote include:

- A manager's amendment by Chairman Shuster to require that the Army Corps complete a report by next year on the use of natural and nature-based features in projects, among other provisions.
- An amendment from Rep. Don Young (R-Alaska) to begin the initial process for constructing a deep dredge port in Alaska. The amendment received support from Democratic Rep. Rick Larsen of Washington, who said the provision was needed as Arctic exploration and navigation becomes increasingly frequent.
- An amendment from Rep. Duncan Hunter (R-Calif.) to boost collaboration with countries like Israel on desalination. Hunter's district near San Diego has a desalination plant that recently began operations.
- An amendment from Rep. Daniel Webster (R-Fla.) to compel the Army Corps to study flood risks for vulnerable populations within the corps' South Atlantic Division.
- An amendment from Rep. Rodney Davis (R-Ill.) to direct the Government Accountability Office to investigate alternative models for managing the Inland Waterways Trust Fund and for overseeing the project schedules for inland waterways projects.
- An amendment from Rep. Lois Frankel (D-Fla.) to have the Army Corps look at alternatives for assuming the maintenance costs for dredging. The amendment was passed after initial reluctance from Shuster, who said the provision would affect just a few ports in the country. Rep. Peter DeFazio (D-Ore.) supported Frankel, saying he could imagine one port in his district that could benefit from the directive.
- An amendment from Rep. Jared Huffman (D-Calif.) to allow the Army Corps to work with other entities to expand fish hatcheries, a move that could help the agency comply with the Endangered Species Act for threatened fish species.
- An amendment from Rep. Garret Graves (R-La.) to direct the Gulf Coast Ecosystem Restoration Council to write regulations to manage and certify environmental mitigation banks, entities that help offset the environmental damage caused by construction and other activities along the coast.

Consideration of WRDA 2016 on the House floor may come as early as June. After the Memorial Day recess, the House will be in session beginning the first full week in June and staying on the job through the end of the month.

House Energy & Water Appropriations – A Disappointing Result

Reaction to riders and social issues continue to plague the appropriations process. On the heels of the positive House WRDA action came the disappointing House vote to defeat the House

Energy & Water Appropriations bill. Speaker Ryan and the Appropriation Committee are working to return to the appropriations process to “regular

order” and the E&W Appropriation bill was one of the first to be considered in that process. It included substantial funding for both the Bureau of Reclamation and the Corps of Engineers above the President’s budget amounts. Last year the appropriations process was derailed by the

Confederate flag controversy; this time another social issue sparked the controversy. Late in deliberations, an amendment to



protect the rights of the LGBT community was added to the bill. Democrats were not pleased with the riders included in the bill. When the bill reached the House floor, Republicans upset with the amendment joined by Democrats disgruntled with policy riders defeated the bill, 112-305. For the 114th Congress, it appears that the appropriations process will be disrupted and, once again, a Continuing Resolution will likely be result.

Making matters worse, the House EPW Appropriations bill included the text of Rep Valadao's (R-CA) drought bill. The Valadao bill, H.R. 2898, the *Western Water and American Food Security Act of 2015*, targets regulatory reform to require:

"...federal agencies to use current and reliable data when making regulatory decisions, which in turn will provide more water for communities in need. Additionally, the legislation will provide federal regulators with flexibility to capture water during wet years and will cut red tape holding back major water storage projects, which will aid the entire Western United States during dry years."

H.R. 2898 was passed by the United States House of Representatives last year on July 16, 2015 by a vote of 245 - 176. At the June WESTCAS Conference in Santa Fe, HRA will discuss the recent efforts to attach H.R. 2898 to other legislation, including the House Amendment adding the Valadao bill to the Senate-passed energy bill, S. 2012, and its inclusion in the House energy- and water-related bill, H.R. 5055.

Senate WRDA (S. 2848) Expansive Bill

Unlike the "pamphlet bill" passed by the House committee, the Senate's WRDA 2016 bill (S. 2848) is expansive, a tome of authorizations stretching from the water resource projects to water and wastewater funding. The 271-page bill, passed by the Energy & Public Works Committee on April 28,

2016, includes titles related ranging from Corps' programs reform, navigation, levee safety and flood control, a section on river basins, watersheds, and coastal areas, deauthorization of projects, water resources infrastructure and, significantly, Title VII, *Safe Drinking Water and Clean Water Infrastructure*.

Title VII is interesting because the Senate E&PW and House T&I committee have different jurisdictions with regard to EPA programs. The Senate Environment and Public Works Committee has jurisdiction over both the EPA Clean Water Act and the EPA Safe Drinking Water Act. This is not true in the House where the House Transportation and Infrastructure Committee only has jurisdiction over the CWA. The House Energy and Commerce Committee has jurisdiction over the SDWA. If House/Senate WRDA conferees are to take up both issues, the House Energy and Commerce Committee must be willing to appoint members to the conference that can deal with their Senate counterparts with regard to the Safe Drinking

Water Act. Chairman Shuster noted during House WRDA markup that discussions with the Energy and Commerce Committee were ongoing to determine if this will be possible. We could know the results of this conversation as early as next week when the Congress returns to session after its Memorial Day recess.

Also significant, is the fact that these types of provisions

are not typical of a WRDA bill. The conference committee discussions and resolving the jurisdictional questions will be at least interesting if not entertaining.

The 2014 Senate version of WRDA (S. 601) provisions were included that could have jeopardized long-standing non-federal sponsors' interests in and monetary commitments to water supply storage in Corps of Engineers reservoirs. The Senate WRDA 2016 bill (S. 2848) includes two provisions that present the same

At the WESTCAS Conference in Santa Fe next month, HRA will layout the House and Senate versions of WRDA 2016 as well as the Western "drought bills" proposed by Reps Valadao and Flake and Senator Feinstein.

WESTCAS will be called upon to add its voice to the western perspective on these important, pending bills.



concerns. Section 1012, “Leveraging Federal Infrastructure for Increased Water Supply,” and Section 1032, “Review of Reservoir Operations,” should be carefully scrutinized by WESTCAS and its members that are non-federal sponsors. These provisions, as currently stated, allow any “non-federal *interest*” to seek certain modifications to a water resources project. Consultation is included but there is no requirement that the non-federal *sponsor* must be notified, informed and agree to any modifications.

At the June WESTCAS Conference these provisions will be laid-out for review and discussion. HRA will follow progress of the Senate and House WRDA bills and the deliberations on the two versions in conference committee. As with the previous Senate WRDA bill, WESTCAS may need to submit concerns to Congress or join with other Western water associations in submitting comments on these and other provisions.



WESTCAS 2016 Annual Conference
June 22-24, 2016 – Inn at Loretto – Santa Fe, NM

“Maximizing Water Resources Through Recharge, Reuse, and Recycle”

As the President of WESTCAS, please accept our invitation to participate in our 2016 Annual Meeting in Santa Fe, New Mexico. The agenda focuses on practices our members are employing to stretch and increase their water supplies. Our program looks at this challenge from the legislative side to the on-the-ground practitioners. Our regulatory session features integrated planning and its potential to allow for prioritized compliance and arid states’ approaches to establishing protective nutrient effluent limits without breaking the municipal piggy bank. Our field trips include two of Santa Fe’s sources of water: the Santa Fe Watershed and the Buckman Direct Diversion. These tours will showcase the centerpiece of Santa Fe’s concerted effort to diversify their water supply portfolio. While you are in Santa Fe with us, we trust you will enjoy our evening reception at the Santa Fe Cooking School and a demonstration of native American artistry. Consider staying for the weekend to enjoy the art, food, and outdoors that make Santa Fe “the City Different.” Kelly Collins