



February 26, 2015

The Honorable Jo-Ellen Darcy
Assistant Secretary of the Army (Civil Works)
108 Army Pentagon
Room 3E446
Washington, DC 20310-0108

Dear Secretary Darcy,

This letter is in reference to the “Report to Congress on Future Water Resources Development” submitted to the Congress on February 4, 2015, in response to Section 7001 of the Water Resources Reform and Development Act of 2014. (Public Law 113-121, 33 U.S.C. 2282d) As you know, Section 7001 requires the submission of an annual report to Congress identifying feasibility reports, proposed feasibility studies and proposed modifications to projects or studies. Section 7001(c) sets forth in detail the contents that must be included in the report, and H. Rept. 113-246, which accompanied H.R. 3080, as passed by the House, states that “this information is meant to help the Committee and the Congress set priorities regarding which potential studies, projects, and modifications will receive authorizations.”

At the outset, we recognize that the annual report requirement provides a new process by which the Congress will consider and evaluate water resources projects. As such, it is inevitable there would be a learning curve in the preparation of this first report, and we appreciate that you endeavored to complete the report in accordance with the time requirements in Section 7001. However, we are writing to express significant concerns with the final report, based on the frustration and confusion from our members around the country.

Initially, it is very troubling that of the 114 proposals submitted by non-federal sponsors around the country, only 19 were deemed to have satisfied the criteria in Section 7001. Even more peculiar, all 19 were proposed feasibility studies, meaning that none of the proposals for project authorizations or project modifications were determined to have satisfied the requirements of Section 7001. Even at a cursory glance, such a finding would appear unusual. Section 7001 (c)(1)(A) requires that the Secretary “shall include in the annual report only those feasibility reports, proposed feasibility studies, and proposed modifications to authorized water resources development projects and feasibility studies that-

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- (i) are related to the missions and authorities of the Corps of Engineers;
- (ii) require specific congressional authorization, including by an Act of Congress;
- (iii) have not been congressionally authorized;
- (iv) have not been included in any previous annual report; and
- (v) if authorized, could be carried out by the Corps of Engineers.”

Read in conjunction with the House Report provision referenced above, a proposal could be omitted from the report only for failing to meet one of the 5 criteria listed above. Upon further scrutiny, however, it would appear that proposals that did meet the criteria were relegated to the Appendix. It would be very troubling if proposals were selected for inclusion in the final report only if they were consistent with Administration policy. This appears to be the case with at least two proposals in the appendix based on an explanation that a “[r]equirement for inclusion is for the Chief’s Report to be cleared by the Administration.” No such provision is contained in the law and such a requirement would, in fact, be in direct conflict with the intent of the provision rendering it irrelevant. In other cases, the explanation is that “water supply is not a primary mission.” Similarly, another proposal is in the appendix because “the Corps does not perform work for a single user.” These outcomes would appear to be clearly contrary to the specific language of Section 7001(c)(1)(A).

For numerous other proposals that are in the appendix, the offered explanations are confusing, and in many instances, simply contradictory. For instance, in several cases, the proffered explanation, in the last column on the chart, is that there is an existing authorization, negating the necessity of the proposal. However, in some of these instances, that’s demonstrably untrue. As you would imagine, such an outcome has created a great deal of frustration for non-federal sponsors around the country. This frustration has been exacerbated in at least several cases where the non-federal sponsors have been unable to secure a 408 permit to proceed, having been told an authorization is needed, only now to end up in the appendix, finding themselves in a no-win situation.

It is Congress’ stated intention to consider proposals in the annual report for inclusion in the next water resources authorization legislation. Further, Congress also provided that inclusion in the appendix indicates that those proposals do not meet the specific criteria set forth in Section 7001. Given the significant concern and frustration over how this report was prepared, we would respectfully request that you undertake an expedient reconsideration of the report, notably those proposals in the appendix that would in fact satisfy the 7001 requirements. Local communities around the country simply can’t wait until next time.

Respectfully submitted,



Amy W. Larson, Esq.
National Waterways Conference, Inc.

cc: The Honorable Jim Inhofe, Chairman, U.S. Senate Committee on Environment and Public Works

The Honorable Barbara Boxer, Ranking Member, U.S. Senate Committee on Environment and Public Works

The Honorable Bill Shuster, Chairman, U.S. House of Representatives Committee on Transportation and Infrastructure

The Honorable Peter DeFazio, Ranking Member, U.S. House of Representatives Committee on Transportation and Infrastructure