

Central Valley Flood Protection Board Meeting
August 22, 2014

INFORMATIONAL BRIEFING

Water Resources Reform and Development Act (WRRDA) 2014

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Overview

Water Resources Development Act (WRDA) 2007 was the last bill passed by the Congress, prior to the well past due WRRDA 2014. The extra “R” for Reform was added by the House of Representative during the bill development process. Even though it has taken seven years to finalize a WRRDA, there are very few California projects authorized under this act because of the length of time it takes USACE to complete a study.

Key elements of the WRRDA 2014 that may be of interest to Board are:

- Authorization of four new projects in California, three of them in Central Valley but only two with SPFC facilities; Natomas and Sutter Basin.
- A number of Policy clarifications, which require new guidance or policy document to be issues by USACE.
- The Bill requires USACE to seek input from non-federal partners and experts prior to developing various guidance and policies.

Additional Detail

Not all elements of the bill will be covered in this short briefing. Board staff requested the briefing to concentrate on the following sections:

Section 1007. Expediting Approval of Modifications and Alternations of Projects by Non-Federal Interests.

- Amends process for considering applications under Sec. 14 of the Rivers and Harbors Act—a.k.a Section 408 permits (408 references the section of the U.S. Code)—to enter and modify a federal public works (e.g. levee).
- Public review process within 1 year for reviewing application process. The revised process shall provide that—
 1. Secretary shall establish benchmarks for the amount of time to determine whether an application is complete. 15 days is recommended.
 2. Secretary shall provide information on why application is deficient and the specific information needed to complete.
 3. Secretary shall establish benchmark for the amount of time to approve or disapprove an application. 45 days is recommended. If additional time is needed for review, it should not exceed 180 days. Secretary shall notify applicant of estimated time to complete.

4. Secretary shall provide information on why a benchmark is missed, the additional actions required to issue a decision, and the amount of time needed to make a decision.

- Written notices required under this section will be provided to Congress.
- Database will be kept of all applications and made available to the public.

Note: The provision does not put a benchmark on the amount of time required to prepare an application, including the necessary environmental assessment that often a significant factor in delaying the Sec. 14 (408) application process.

Section 1018. Credit for In-Kind Contributions

- Secretary shall not consider non-federal constructed improvements when calculating project costs and benefits as part of the future without project conditions.
- Excess credit may be transferred to another separable element of the same project.
- Non-federal interests shall be reimbursed on a first come, first served basis, subject to appropriations, for the excess cost of land, easement, rights-of-way, dredged material disposal areas, and relocation costs.
- If other crediting authority exists for a specific project, the non-federal interest may choose whether that authority or this provision will apply.
- Secretary shall update existing guidance and issue guidelines within 1 year after consultation with non-federal interests and publishing the proposed guidelines in the Federal Register for public review and comment. Guidance shall include:
 1. New milestone for executing a memorandum of understanding for construction by a non-federal interest;
 2. Criteria and procedures for evaluating a request for an earlier milestone;
 3. Criteria and procedures for determining whether non-federal interest construction is integral to the project.

Section 3011. Systemwide Improvement Framework

A levee system remains eligible for rehabilitation assistance as long as the levee system sponsor continues to make progress on a systemwide improvement framework or letter of intent.

Section 3012. Management of Flood Risk Reduction Projects

Two or more flood control projects located in the same geographic area may be combined as a single program for budgetary or project management purposes if requested by a non-federal interest.

Section 3013. Vegetation Management Policy

- Secretary shall review the levee vegetation management policy contained in the 2009 Engineering Technical Letter and the draft policy letter on applying for a variance. The Secretary's review shall consider—
 1. varied interests and responsibilities in managing risks;
 2. providing greater public safety benefit with limited resources;

3. safety improvements that minimize environmental impacts while providing for public safety;
 4. preservation of natural resources for species habitat and the impact on other regulatory requirements;
 5. protecting rights of Indian Tribes;
 6. vegetation impacts during storm or flooding;
 7. available scientific and historical records regarding links between vegetation and flood risk;
 8. avoid significant economic costs and environmental impacts.
- Secretary shall consider factors that promote variances on a statewide, tribal, regional, or watershed basis, including variances based on—
 1. regional or watershed soil conditions;
 2. hydrological factors;
 3. vegetation patterns and characteristics;
 4. environmental resources;
 5. levee performance history;
 6. effects on water supply;
 7. scientific evidence of link between levee vegetation and public safety;
 8. institutional considerations such as conflicts between federal or state environmental laws;
 9. funding availability;
 10. economic and environmental costs of removing woody vegetation;
 11. other relevant factors identified in public comments.
 - The scope of the variance may include a complete exemption from the levee vegetation policy.
 - Secretary shall consult with other federal agencies, representatives of state, regional, local and tribal governments, appropriate non-governmental organizations, and the public.
 - Secretary shall consider recommendations of the Corps of Engineers Regional Integration Teams and state, tribal, regional, and local entities.
 - Secretary shall consider views of independent experts on engineering, environment, and institutional considerations, and these views shall be made public and included in supporting material for the new guidelines.
 - Secretary shall issue guidelines within 18 months after allowance for 30-day public review and comment on draft guidelines.
 - Secretary shall not require the removal of any vegetation before the new guidelines are final unless the vegetation has been demonstrated to present an unacceptable safety risk.
 - Secretary shall reconsider any previous decisions made prior to the new policy if requested by an affected entity.

Note: Rep. Grace Napolitano (D-CA), a member of the WRRDA conference committee, submitted a statement during consideration of the conference report on the House floor that

seeks to clarify that recent ETL issued by the Corps does not satisfy the requirements of this provision.

Next Steps

USACE plan to seek input is four webinars scheduled every two week starting August 13, 2014 to listen to concerns of non-federal partners and other interested parties. They also accept comments in writing prior to closing the door to any further communication. USACE will develop their guidance and policy documents and federal register will be utilized to get public comments as required. This was not certainly the intent of State of California and others requesting participation in guidance and policy development. It was envisioned as partners with USACE, we will be given a seat on the table of experts that would develop such documents.