

Highlights of the Water Resources Development Act of 2018

(Public Law No. 115-270)

The Water Resources Development Act of 2018 (WRDA 2018) was signed into law on October 23, 2018, as a title in America's Water Infrastructure Act of 2018. WRDA 2018 has extensive bipartisan support; the bill passed the Senate by a vote of 99-1 and passed the House by voice vote.

WRDA 2018 advances a number of Water Protection Network priorities and sets the stage for important future progress on several issues, including:

- **Natural Infrastructure:** WRDA requires the Army Corps of Engineers (the Corps) to consider natural infrastructure solutions (healthy wetlands, floodplains, and rivers) for flood and storm projects if such solutions are “practicable.” The term “practicable” is a well-established legal standard that means “capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.” This clear legal standard can now be used to compel the Corps to meaningfully assess use of wetland and stream protection and restoration to reduce flood risks where those approaches are viable.
- **Sound Project Planning:** WRDA extends the important independent external peer review requirements by 5 years—until 2024. The WPN led efforts to enact independent peer review in WRDA 2007 to ensure an unbiased, outside review of Corps planning for costly or controversial projects.
- **Removing Outdated Infrastructure:** WRDA makes important improvements to the “disposition study” processes to facilitate the removal of outdated and dangerous structures, including unused locks and dams. The bill increases study transparency and importantly, requires the Corps to consider infrastructure removal and other modifications that would “improve the overall quality of the environment in the public interest” when conducting disposition studies.
- **Modernizing Benefit-Cost Analysis and Corps Structure:** WRDA requires important studies by the National Academy of Sciences and Government Accountability Office that will set the stage for future reforms to the Army Corps’ benefit-cost ratio (BCR) process and the Corps’ structure and project delivery process. The studies will include examining counting lost ecosystem services as a project cost in the BCR.
- **Imposing Restrictions on the Pearl River “One Lake” Project in Mississippi:** WRDA imposes important restrictions on moving this project to the next phase of detailed technical design, including a requirement to address all adverse downstream impacts. Many WPN members are working to stop this project that, if constructed, will destroy 1,500 acres of floodplain wetlands, reduce freshwater flows to the Gulf of Mexico, expose people and wildlife to extensive toxic pollution, and cause the collapse of 7 bridges.
- **Advancing Everglades Restoration:** WRDA approves important changes to an Everglades Restoration project that will allow construction of a long-needed water storage reservoir. This will help restore more natural flows of clean water to the Everglades while reducing polluted discharges that trigger toxic blue-green algae outbreaks in Florida. Many WPN members have worked for years to restore the Everglades.

Importantly, WRDA 2018 is one of the “cleanest” WRDAs with respect to rolling back environmental protections. Of the handful of troubling environmental rollback provisions that made it into the Senate and House bills, most were removed or neutralized during conferencing.

America's Water Infrastructure Act of 2018 also addresses Drinking Water System Improvements, Hydropower projects, and Bureau of Reclamation projects. The bill's Drinking Water System Improvements title expands investments in drinking water and wastewater systems, including providing resources to restore storm-damaged water systems, and reauthorizes the Safe Drinking Water Act for the first time in 20 years. The bill also doubles the amount of funding over a three year period for the Drinking Water State Revolving Fund (SRF), a core federal-state partnership that works to ensure safe drinking water for millions. Unfortunately, the other titles in the bill include some environmentally damaging provisions that are outside of the scope of this summary.

Progressive Provisions in WRDA 2018

The following provisions in WRDA 2018 make progress on Water Protection Network priorities:

- **Section 1149:** Requires the Corps to consider use of natural infrastructure (healthy wetlands, floodplains, and rivers) for flood and storm damage reduction projects if such solutions are "practicable." This establishes a clear legal standard that can be used to compel the Corps to meaningfully assess the use of wetland and stream restoration to reduce flood risks where those approaches are viable.
- **Section 1141:** Extends the independent peer review requirements by five years, until 2024, to encourage more economically and environmentally sound planning.
- **Section 1168:** Significantly improves the disposition study processes which will facilitate the removal of outdated and dangerous structures, including by increasing study transparency and requiring the Corps to consider infrastructure removal and other modifications that would "improve the overall quality of the environment in the public interest."
- **Section 1117:** Requires the Corps to provide disposition studies to Congress and to include facilities studied for disposition in the Corps' future work plans.
- **Sections 1103 and 1204:** Requires studies by both the National Academy of Sciences and Government Accountability Office on the Corps' benefit-cost analysis process, including its failure to count lost ecosystem services as a project cost.
- **Section 1102:** Requires a National Academy of Sciences Study on options for fundamentally reorganizing the Corps and improving project delivery.
- **Section 1154:** Requires a comprehensive report on the Corps' project, study, and operations and maintenance backlogs.
- **Section 1214:** Requires a study to examine whether Corps activities cause a disproportionate impact on low income and minority communities.
- **Section 1308:** Approves important changes to an Everglades Restoration project that will allow construction of a long-needed reservoir that will help restore more natural flows of clean water to the Everglades while reducing polluted discharges that trigger algae outbreaks.
- **Section 1176:** Imposes important restrictions on moving the highly destructive Pearl River Project in Mississippi to the next phase of detailed technical design, including a requirement to address all adverse downstream impacts.
- **Section 1311:** Authorizes the Corps to remove dams on the Green and Barren Rivers if the Corps determines that removal is necessary before the dams are conveyed to other partners for removal, as

recommended in the applicable disposition study. This will help ensure safe and timely removal of these dams and sets an important precedent for removing other outdated infrastructure.

- **Section 1157:** Increases the authorized level of appropriations (to adjust for inflation) for the Corps' continuing authorities programs (CAP), including the Section 206 Aquatic Restoration CAP and the Section 1135 project modification for the environment CAP.
- **Section 1202:** Authorizes studies to determine the feasibility of ecosystem restoration efforts for the Lower Mississippi River and the Meramec River.

Problematic Provisions in WRDA 2018

The following provisions in WRDA 2018 implement damaging policy provisions or authorize destructive projects:

- **Section 1226:** Prohibits certain types of habitat restoration actions on the Missouri River needed to comply with Endangered Species Act requirements for the pallid sturgeon until completion of a study on the impacts of those restoration actions on other project purposes.
- **Section 1153:** Exempts non-federal sponsors carrying out construction of a federally authorized project from obtaining any permit that would not be required by the Corps. Importantly, this provision does not affect the requirement to obtain a Clean Water Act Section 401 State Water Quality Certification.
- **Section 1401:** Authorizes construction of a portion of the St. Johns project in Florida on lands protected under the Coastal Barrier Resources Act (CBRA); federal funds are otherwise prohibited from use in constructing projects on CBRA protected lands.
- **Section 1321:** Authorizes major construction for the Fargo Moorhead project in North Dakota on lands protected by FEMA easements that prohibit construction.
- **Section 1307:** Significantly increases the size, and thus the impacts, of the dredged material disposal site for the Delaware River Deepening project.
- **Section 1401:** Authorizes the Sabine Pass project in Texas that the Corps acknowledges will destroy at least 2,400 acres of bottomland hardwood wetlands and marsh wetland habitat, and authorizes hundreds of millions of dollars of other projects that will cause significant harm to wetlands and aquatic habitats.
- **Sections 1128 and 1161:** Directs or facilitates repairs of certain levees and floodways in a manner that prevents meaningful analysis of ecologically preferable alternatives (Section 1128 – Mississippi River and Tributaries Project floodway activation; and Section 1161 – facilitating rebuilding levees where buy-outs or flood easements would provide ecologically and economically better outcomes).

Additional Information

- Section-by-Section of America's Water Infrastructure Act of 2018, from the House of Representatives (https://www.waterprotectionnetwork.org/wp-content/uploads/2018/10/WRDA-AWIA-2018_House_Section-by-Section.pdf)
- Full text of the enrolled bill (<https://www.congress.gov/115/bills/s3021/BILLS-115s3021enr.pdf>)