“A LOT OF INGREDIENTS” IN THIS YEAR’S WRDA

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As Congress works to complete a Water Resources Development Act for 2016 ("WRDA 2016") before the summer Congressional recess, stakeholders with an interest in U.S. Army Corps of Engineers ("USACE") civil works projects, water resources policy, water supply issues, or funding for maritime or water infrastructure projects should engage Congress now. The K&L Gates policy team is paying close attention to congressional action on WRDA and is prepared to assist our clients.

SENATE COMMITTEE OVERWHELMINGLY APPROVED WRDA 2016 LAST WEEK

On Thursday, April 28, the Senate Environment and Public Works ("EPW") Committee approved bipartisan WRDA 2016 legislation (S.2848), a $9 billion measure, with a 19-1 vote. Senate EPW Committee Chairman Jim Inhofe (R-OK) described the bill as achieving a good balance with "a lot of ingredients."

S.2848, like most WRDAs, authorizes improvement and maintenance projects for U.S. maritime transportation infrastructure such as harbors, dams, locks, and navigation channels. Unlike traditional WRDAs, the Senate bill also includes an aid package for Flint, Michigan and promotes policies and provides financial assistance aimed at improving drinking water and wastewater systems throughout the nation.

PROMOTING MARITIME TRANSPORTATION INFRASTRUCTURE

Traditionally, WRDA bills authorize USACE civil works projects, reform funding mechanisms such as the Harbor Maintenance Trust Fund ("HMTF") or Inland Waterway Trust Fund, and address USACE water resource policy issues.

The Senate's version of WRDA 2016 authorizes 25 USACE projects with a Chief of Engineers report, including major harbor investments, flood-control measures, and environmental-restoration work, as well as certain modifications to existing projects.

The bill also updates the cost-sharing formula for harbor deepening projects for which the federal government has responsibility for 75 percent of the dredging costs by increasing the upper depth threshold to 50 feet from 45 feet. It also extends to fiscal year ("FY") 2025 the 10 percent set-aside from the HMTF for emerging harbors and the grant program for donor ports and energy transfer ports.

Until full use of Harbor Maintenance Tax ("HMT") revenues is achieved, which is targeted for FY 2025, the Senate's WRDA 2016 seeks to ensure that funds are increasingly appropriated to dredging activities at ports by requiring the annual authorized target funding level to be greater than the previous fiscal year's funding level.

Additional policy changes include authorizing the USACE to provide technical assistance to independent feasibility studies; expanding USACE authority to accept funds from states and local governments for all water

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resources projects, not just flood control; allowing the USACE to partner with non-federal interests to help address maintenance backlogs for USACE projects; permitting service providers to operate USACE recreation facilities and collect and keep associated user fees; and streamlining and expediting approval processes for certain dredging projects.

UNIQUE PROVISIONS ON DRINKING WATER AND WASTEWATER SYSTEMS

Going beyond the scope of a typical WRDA, the Senate bill aims to increase water supply and improve crumbling drinking water and wastewater systems. To this end, the bill authorizes more than $6 billion for programs under the Safe Drinking Water Act and Clean Water Act, including a $220 million aid package to address the Flint, Michigan crisis.

The Senate's WRDA 2016 authorizes a number of grant programs to assist communities with maintaining and updating their drinking water and sewage-treatment systems. One grant program is focused on helping small and disadvantaged communities that lack basic drinking water or wastewater services with $1.4 billion in authorized funding over five years, and another grant program authorizes $300 million over five years for the replacement of lead water lines. An additional $1.8 billion in grants is authorized over a five-year period to address sewer overflows and stormwater discharges. The bill also seeks to help local communities meet EPA mandates by allowing them to prioritize the most severe health threats.

The bill also promotes green infrastructure and innovative technologies to address drought and water supply needs. The legislation would allow federal entities to increase water supply through a variety of projects such as increasing the storage capacity of federal reservoirs and diverting water released from a federal reservoir. The non-federal interest requesting such measures would be responsible for the cost of implementation and the operation and maintenance costs attributable to the alteration. Another provision would require the USACE to review its reservoir operations to improve weather forecasting and run-off forecasting, prioritizing areas with prolonged drought and reservoirs that have not been reviewed in the past 10 years. In addition, the USACE would be required to update its water control manuals to incorporate revised forecasting models. The Upper Missouri River, the Apalachicola-Chattahoochee river system, and the Alabama-Coosa-Tallapoosa river system are exempt from these provisions.

Additionally, building off the Water Resources Reform and Development Act of 2014, the Senate bill makes changes to the Water Infrastructure Finance and Innovation ("WIFIA") program by clarifying the scope of eligible projects, authorizing the financing of fees for small community applicants, and explaining that the 51 percent of project costs funded by non-WIFIA sources includes costs incurred and in-kind contributions made before receipt of the loan. The bill also removes the requirement that the Water Infrastructure Public-Private Partnership Pilot program be authorized in an appropriations bill.

SIGNIFICANT MOTIVATION TO COMPLETE WRDA IN 2016

Despite the challenges associated with the congressional calendar during a presidential election year, the key players in the Senate and the House are highly motivated to complete a bipartisan WRDA in 2016 as part of their commitment to returning to a two-year cycle for WRDA bills.

Moreover, this is the last term for Chairman Inhofe to serve as Chairman of the Senate EPW Committee due to term limits, and Ranking Member Barbara Boxer (D-CA) is retiring.

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NEXT STEPS

Both chambers are aiming to pass WRDA before the July recess. The Senate bill is expected to be considered on the Senate floor in late May. Although the House has not yet released a draft WRDA, Chairman Shuster has indicated he plans to have WRDA on the House floor by June, which means that the House will likely mark up its bill in May.

The House is expected to move forward with a more traditional and modest proposal for WRDA, which Chairman Shuster has referred to as a "pamphlet bill." It remains to be seen how the two chambers will reconcile a more robust Senate WRDA containing nontraditional elements with the narrower approach anticipated in the House

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