April 10, 2013

Members of the Senate
United States Senate
Washington, DC 20510

Dear Senator,

The Water Resources Development Act of 2013 is a very important piece of legislation which has a major impact on how water resources are managed in the United States. The Association of State Wetland Managers and the Association of State Floodplain Managers support many of the provisions of the legislation but we respectfully request striking or significantly modifying Sections 2032 and 2033 of the bill prior to passage. We have reviewed the language of these sections and believe they will cause significant complexities for states’ own requirements and for federal/state collaboration on Corps project reviews. We believe these sections will undermine both the ability of the U.S. Army Corps of Engineers to carry out water resource projects as well as the ability of state, federal and local governments to provide comprehensive and accurate information about the environmental benefits and disadvantages of different alternatives. While we understand the intent to accelerate project movement, we do not believe that these provisions will accomplish that objective.

Importantly, the Water Resources Development Act (WRDA) of 2013, S. 601, supports greater efficiency in gaining approval for projects and reduces costs by supporting projects that yield multiple benefits. It establishes regional and multistate authorities to address multi-resource needs and emphasizes the use of natural infrastructure to deal with the threats of intensifying storms, floods and droughts.

Unfortunately, these positive, constructive revisions are undermined by the streamlining processes imposed by Sections 2033 (project acceleration) and 2032 (study acceleration) of S. 601. Singling out the National Environmental Policy Act and other federal, state and local environmental laws, for strict deadlines and punitive fines, Section 2033 sends a clear message that agencies assigned responsibilities for protecting the environment as well as human health and safety will be treated as unequal partners under the Act. We strongly urge the Senate to modify or repeal Sections 2032 and 2033 prior to passage. These sections would negatively impact state as well as federal environmental programs. Specifically

1) Environmental Review under the National Environmental Protection Act is often a collaborative effort between federal and state agencies. The federal agencies have access
to multi-state information and analysis not available to states. The states have local and regional expertise. The first consequence of constraining the time allowed to conduct environmental reviews under NEPA and other environmental laws will likely be less coordination with state and local agencies who will be unwilling to be included as a “non-Federal agency” subject to the shortened timeframe and dispute resolution process which can include an audit by the Inspector General and elevate dispute resolution to the Council on Environmental Quality. This is likely to inhibit a state agency’s ability to effectively participate in development of Environmental Impact Statements and Environmental Assessments conducted by the federal government leading to increased costs for states that will need to acquire this information independently as part of implementing their own state laws later during project implementation.

2) In Section 2033 the streamlined “environmental review process” includes the National Environmental Policy Act and “the completion of any environmental permit, approval, review or study required for a water resources project under any Federal law.” Are states carrying out Federal environmental laws such as the Clean Water Act through state delegation or assumption running a “state” or a “federal” program with respect to Section 2033? For example, are states that have assumed the Section 404 program such as Michigan and New Jersey required to comply with the U.S. Army Corps of Engineers environmental review process, timelines, etc.? What about states that have been delegated Section 402 point source discharge programs under the Clean Water Act, or other federal statutes such as coastal zone consistency certification under the Coastal Zone Management Act? The language is unclear.

3) Further, in most states, 401 Certification under the Clean Water Act is the state’s primary tool for conditioning federal permits to ensure they are consistent with state water quality standards and other relevant state authorities. Water quality development projects generally require Section 404 permits. Again, is Section 401 considered a “Federal Law” under Section 2033? Even if it is not, many states have their own statutory public comment periods as part of the states authorizing legislation for carrying out the Section 401 program. Section 2033 language is ambiguous and contradictory on how compliance with these state programs will be addressed if the Corps determines that a short deadline is required for issuing the Section 404 permit.

4) Over the years in our experience many projects that raised serious environmental concerns often also have substantial negative social and economic consequences. The environmental review process frequently identifies these other issues as well.

Finally, agencies at the federal, state, and local levels have specific missions. Agencies as a whole tend to do a good job carrying out their own missions, but they have neither the expertise nor the resources to address the missions of other agencies. Sections 2032 and 2033 would potentially require the U.S. Army Corps of Engineers to dictate timelines for decisions and impose penalties if they are not complied with in areas of public policy where they lack expertise.
While we support efficient timely decision making, we do not believe that Section 2032 and 2033 will achieve the intended goal. They will instead undermine efficient, integrated water project development and likely lead to a number of lawsuits as the Corps attempts to implement a “streamlined” process.

The country needs a reauthorized Water Resources Development Act. It needs an understandable, legally defensible act. Please strike or significantly modify Sections 2032 and 2033 of the Water Resources Development Act of 2013 prior to passing this bill out of the Senate.

Sincerely,

Jeanne Christie
Executive Director
Association of State Wetland Managers

Chad Berginnis
Executive Director
Association of State Floodplain Managers