

# ISSUE BRIEF

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## The 2018 Water Infrastructure Bill Is a Flood of Failure

*David Ditch*

The Senate could vote on final passage of S. 3021, the America's Water Infrastructure Act (AWIA) of 2018, this week.<sup>1</sup> This bill relates to water resource projects undertaken by the Army Corps of Engineers.

Despite the significant and well-known flaws of the federal water infrastructure policy, the AWIA makes no serious attempt to change course. In fact, rather than simply reinforcing the status quo in one policy area, the AWIA manages to cross over into energy policy and further entrench poor decisions there as well.

### Water Policy Falls Short

The Army Corps' infrastructure work has long been plagued by a backlog of projects that Congress has authorized, many of which are later de-authorized before completion. This shows a lack of seriousness on the part of the authorizers, since vital projects should not be placed at the end of a long line, nor should they be summarily dismissed later to make room for new wish-list items. A standard operating procedure of tolerating and exacerbating the backlog highlights that water infrastructure legislation is primarily about "you scratch my back, I'll scratch yours" log-rolling, and obtaining press release fodder. Members of Congress seem more interested in

congratulating themselves for obtaining an initial authorization than in making sure a project is strong enough to reach completion.

Rather than blithely accepting the status quo, Congress should consider reforms previously recommended by Heritage Foundation analysts:<sup>2</sup>

- **Take the backlog seriously.** In 2014, the Government Accountability Office estimated the value of the 1,000-plus authorized projects in the Army Corps' queue at \$62 billion.<sup>3</sup> On January 18, 2018, Major General Donald Jackson of the Army Corps testified that the backlog had reached \$96 billion.<sup>4</sup> The "backlog prevention" section of the AWIA mirrors the language seen two years ago in the WIIN, which did not even put a dent in the backlog's growth. The bill, as it currently stands, would only add to the backlog. Congress should implement a practice of at least twice as much de-authorization than new authorization, taking into account both the number of projects and their costs. Legislators should focus on priorities.
- **Remove all questionable projects.** Simply reading through the contents of a water development bill is enough to make it clear that the goal is not to develop a comprehensive infrastructure plan, but rather to green-light a hodgepodge of projects that often have little or no value outside the immediate area. For example, \$53.5 million in federal funds are authorized for flood prevention around the tiny Mamaroneck and Sheldrake rivers in New York. This part of Westchester County, dotted with golf courses, does not require financial help from taxpayers in Arkansas or Idaho.

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This paper, in its entirety, can be found at <http://report.heritage.org/ib4907>

The Heritage Foundation  
214 Massachusetts Avenue, NE  
Washington, DC 20002  
(202) 546-4400 | [heritage.org](http://heritage.org)

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The federal government should only get involved for critical projects of national value.

- **Reduce subsidies to states and localities.** Section 1401 of the AWIA provides a table of new authorizations and shows the estimated amount of federal and non-federal spending on projects. In most cases, the vast majority of spending is federal, even though a majority of the benefits derived from these projects would be local or regional. To make matters worse, the Congressional Budget Office (CBO) estimates that the AWIA would cause a revenue loss of \$103 million over 10 years<sup>5</sup> due to state and local governments issuing tax-free bonds in conjunction with State Revolving Funds in the bill. The tax-free status of such bonds serves as a second layer of federal subsidy. If the vast majority of the cost of these projects were borne by the local and regional beneficiaries rather than being spread across the entire country, it is doubtful whether many items would survive scrutiny.
- **Mandate sufficient benefit-cost protections.** Development projects should only move forward if the benefit to taxpayers is found to be at least double the cost. Rather than protecting federal taxpayers from costly projects with insufficient benefits, this bill would provide ways for projects to proceed even when they fall short of a one-to-one benefit-cost ratio.

## Using Oil to Grease the Process

In addition to falling short on prudent water infrastructure policy decisions, there is a further flaw in the AWIA that has no business being part of a water infrastructure package.

Due to an increase in mandatory (non-appropriated) infrastructure spending of \$7 million over 10 years, and the decrease in revenue of \$103 million over 10 years, the bill would normally result in a \$110 million deficit impact<sup>6</sup> if passed. However, section 3009 directs the Secretary of Energy to sell 5 million barrels of crude oil from the strategic petroleum reserve (SPR) in fiscal year 2028. The CBO estimates that the sale would generate \$340 million,<sup>7</sup> though with the sale so far in the future there is no way of knowing. As a result of the oil sale, the CBO estimates that the bill as a whole would reduce deficits by \$230 million over 10 years.<sup>8</sup>

The use of the SPR, which was created in 1975 in an attempt to prevent oil supply shocks,<sup>9</sup> adds a new set of problems:

- **Off-topic budgetary offset.** There is no connection whatsoever between water infrastructure and the SPR. When Congress papers over deficit-causing legislation with a pay-for out of left field, it demonstrates a lack of serious consideration for fiscal discipline on the issue at hand.
- **Fiscal gimmickry most foul.** Using the SPR would be dubious enough, but legislators have

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1. Most versions of this legislation in previous sessions of Congress were called the Water Resource Development Act (WRDA), though the 2016 iteration was the Water Infrastructure Improvements for the Nation Act (WIIN), Public Law 114-322.
2. Emily Goff, "WRDA: The Water Resources Development Act in the 114th Congress," Heritage Foundation *Issue Brief* No. 4097, November 26, 2013, [http://thf\\_media.s3.amazonaws.com/2013/pdf/IB4097.pdf](http://thf_media.s3.amazonaws.com/2013/pdf/IB4097.pdf), and Michael Sargent, "Necessary Reforms in the Water Resources Development Act Conference Bill," Heritage Foundation *Issue Brief* No. 4608, September 7, 2016, <http://thf-reports.s3.amazonaws.com/2016/IB4608.pdf>.
3. U.S. Government Accountability Office, "Army Corps of Engineers: The Corps Needs to Take Steps to Identify All Projects and Studies Eligible for Deauthorization," GAO-14-699, August 2014, <http://gao.gov/assets/670/665393.pdf> (accessed October 4, 2018).
4. Hearing, *America's Water Resources Infrastructure: Approaches to Enhanced Project Delivery*, Committee on Transportation and Infrastructure, U.S. House of Representatives, 104th Cong., 2nd Sess., January 18, 2018, video, <https://www.youtube.com/watch?v=VfkZj8Q9n2I> (accessed October 4, 2018).
5. Congressional Budget Office, "America's Water Infrastructure Act of 2018," September 12, 2018, <https://www.cbo.gov/publication/54468> (accessed October 4, 2018).
6. *Ibid.*
7. *Ibid.*
8. *Ibid.*
9. Nicholas Loris, "Why Congress Should Pull the Plug on the Strategic Petroleum Reserve," Heritage Foundation *Background* No. 3046, August 20, 2015, [http://thf\\_media.s3.amazonaws.com/2015/pdf/BG3046.pdf](http://thf_media.s3.amazonaws.com/2015/pdf/BG3046.pdf).

chosen to compound the oil sale's spuriousness by pushing the sale date back nine years rather than selling the oil immediately. This allows a future Congress to undo or modify the sale. More importantly, this type of accounting focuses on the 10-year "top line" score, while ignoring the one-year and five-year deficit increases of \$2 million and \$16 million,<sup>10</sup> respectively. Authorization bills are at their most "real" in the first few years, with further-out effects being less likely to happen. If the AWIA were to pass, the near-term deficit increase would be guaranteed while the long-term savings would be in serious doubt.

- **Misuse of the SPR.** From a policy perspective, the SPR should be phased out,<sup>11</sup> with oil sales being used to reduce the federal deficit rather than covering the costs of new legislation. The SPR has been ineffective at significantly mitigating price fluctuations throughout its 43-year history, while free markets have led to a production boom.<sup>12</sup> If anything, the inclusion of a nine-year delay in the oil sale signals that Congress has no intention of doing anything about this policy relic.

### Accountability Drought

A seeming congressional consensus on maintaining the policy status quo for both water infrastructure and the petroleum reserve was underlined by

the fact that the version of S. 3021 currently before the Senate passed the House by a voice vote. As a result, voters who are unhappy with the bill have no way of knowing where their House representative stood. It is to be hoped that Members of the Senate will at least be willing to tell the public where they stand on the AWIA.

### Conclusion

When a significant authorization bill reaches a certain point in the legislative process, most legislators opt not to fight for reforms strenuously. "Why stick my neck out if it's just going to pass anyway?" is often the line of thought. Yet this is precisely the reason why policy problems are able to accumulate and fester until they eventually reach a crisis point. There are a multitude of flaws in the AWIA, many of which are a matter of good governance rather than left-versus-right ideology. Members of the Senate should rethink how they approach water infrastructure and the SPR.

—*David Ditch* is Research Assistant in the Grover M. Hermann Center for the Federal Budget, of the Institute for Economic Freedom, at The Heritage Foundation.

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10. Congressional Budget Office, "America's Water Infrastructure Act of 2018."

11. Loris, "Why Congress Should Pull the Plug on the Strategic Petroleum Reserve."

12. U.S. Energy Information Administration, "The United States Is Now the Largest Global Crude Oil Producer," September 12, 2018, <https://www.eia.gov/todayinenergy/detail.php?id=37053> (accessed October 4, 2018).