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APPROVED
OCT 22 1976

8/10/22/76

Statement
disapproved

THE WHITE HOUSE
WASHINGTON

October 20, 1976

Posted
10/22/76

ACTION
Last Day: October 23, 1976

MEMORANDUM FOR THE PRESIDENT

archived
10/22/76

FROM: JIM CANNON *Handwritten signature*
SUBJECT: Enrolled Bill S. 3823
Water Resources Development Act of 1976

This is to present for your action S.3823, a bill which would authorize the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control and other purposes.

BACKGROUND

S. 3823 would authorize construction (subject to appropriations) on 12 water resources projects, preconstruction planning on 37 projects, and contains a large number of project modifications, special exceptions to present law, and special benefits for particular groups or individuals.

The bill is similar to the biennial Rivers and harbors and Flood Control bills of the past, the most recent versions of which were passed in 1972 and 1974. The 1972 bill was vetoed, the 1974 bill was approved. S. 3823 passed on a vote of 78 to 3 in the Senate and by a voice vote in the House, and subsequently both houses cleared the conference report on voice votes.

BUDGET IMPACT

The cost of the projects authorized in this bill totals about \$7.3 billion. However, the authorizations for project construction total only about \$145 million, a relatively small amount as Rivers and Harbors bills go. The majority of the projects, costing about \$7.2 billion, are authorized only for preconstruction planning, not for construction. Thus, further Congressional authorization is required before construction, and that process will afford another opportunity for Executive Branch review and possible influence on Congressional action.



ARGUMENTS FOR APPROVAL

1. The dollar cost of the projects that would be authorized for construction by the bill is not large compared to similar acts in recent years.
2. The overwhelming vote in favor of the bill in both the Senate and House indicates that similar legislation would probably be passed next year.
3. Most of the larger projects would be authorized only for preconstruction planning rather than construction. This would allow the Administration (and the Congress) another opportunity to review these projects prior to making a construction commitment.
4. Some of the projects that would be authorized in this bill are worthwhile investments, having met strict cost-benefit tests, and undergone extensive screening for environmental and other problems.

ARGUMENTS FOR DISAPPROVAL

1. The unilateral diversion of Lake Michigan waters would be a serious breach of international policy, and could seriously damage U.S.-Canadian relations.
2. The Congress has flagrantly disregarded established Executive branch procedures and recommendations.
3. The authorization for preconstruction planning of about \$7.2 billion in water projects would represent a very large step toward a program difficult to restrain fiscally in the future.
4. The bill would not authorize the Locks and Dam Number 26 replacement near Alton, Illinois, as you recently recommended.
5. The bill would not include the monetary authorization for carrying on the fiscal year 1978 Corps of Engineers program in a number of river basins, as requested when the 1977 budget was submitted.
6. The special interest provisions in this bill which would either grant advantages not available to others under standard policies or relieve particular groups of responsibilities for project-related costs to the disadvantage of the general taxpayer are objectionable as traditional "pork barrel."

Additional discussion of the provisions of the enrolled bill is provided in OMB's enrolled bill report at Tab A.

AGENCY RECOMMENDATIONS

Of all the agencies whose comments were solicited by OMB, only two recommend disapproval.

The Department of State recommends disapproval in view of Section 166 of the bill which authorizes a five-year demonstration program of increased rates of diversion of Lake Michigan waters at Chicago into the Illinois Waterway. The Government of Canada takes strong exception to this section as it entails unilateral alteration of the Chicago diversion without full prior consultation.

The Council on Environmental Quality urges a veto on the grounds that the provisions in the bill would weaken the integrity of the current standards for planning and evaluating projects, allow undesirable or ill-considered Federal forward commitments in future years, grant unwarranted benefits to special interest groups, and provide many unnecessary authorities.

OMB recommends approval of the enrolled bill.

STAFF RECOMMENDATIONS

Max Friedersdorf

"Recommend approval. Have received letters or calls from Jack Edwards, Tom Bevill, Bill Harsha, Ed Derwinski, Dan Rostenkowski, Tom Hagedorn, Ted Risenhoover, Jennings Randolph, Dewey Barlett, Al Quie, Lloyd Bentsen"
Approval

Robert Hartmann
National Security
Council

No objection.

Counsel's Office
(Kilberg)

Recommend disapproval in light of Sections 101(b) and (c) of the bill which would permit Chief of the Corps of Engineers to proceed with advanced engineering and design of certain water resources development projects upon transmittal of recommendations for a project to the Secretary of the Army for transmittal to Congress. This means that the

Counsel's Office (Cont)

Corps of Engineers could proceed without prior approval of the Secretary of the Army or OMB. This provision could violate Article II of the Constitution which vests in the President the execution of the law, under the direction and control of Executive officers responsible to him. Also, though it is outside my area of expertise, I share the State Department's concern about the serious problems with Canada that this bill could cause at this time."

RECOMENDATION

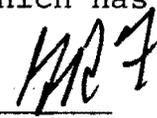
I recommend that you approve S. 3823. I also recommend that you issue the attached signing statement which has been prepared by OMB. The statement indicates you are instructing the Secretary of the Army to defer action on the diversion of water from the Great Lakes pending discussions with the Canadian Government and expresses your concern over the Congressional disregard of the water project planning process.

DECISION

Sign S. 3823 at Tab B.

Issue signing statement at Tab C which has been cleared by Doug Smith.

Approve _____

Disapprove 

Veto S. 3823 and sign Memorandum of Disapproval at Tab D which has been cleared by Doug Smith.



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

OCT 19 1976

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill S. 3823 -- Water Resources
Development Act of 1976

Sponsor - Senator Gravel (D) Alaska

Last Day for Action

October 23, 1976 - Saturday

Purpose

Authorizes construction (subject to appropriations) on 12 water resources projects, preconstruction planning on 37 projects, and contains a large number of project modifications, special exceptions to present law, special benefits for particular groups or individuals, and other similar provisions.

Agency Recommendations

Office of Management and Budget	Approval (Signing Statement attached)
Department of the Army	Approval
Department of Transportation	No objection
Environmental Protection Agency	No objection (Informally)
Department of Commerce	No objection
Department of the Interior	No objection
Federal Power Commission	No objection
General Services Administration	No objection
Department of Housing and Urban Development	No objection
Department of the Treasury	No objection
Water Resources Council	No position
Council of Economic Advisers	No comment
Department of Justice	Defers to agencies more concerned
Department of Agriculture	Defers to Army
Department of State	Disapproval (Memorandum of Disapproval attached)
Council on Environmental Quality	Disapproval

Discussion

This bill is similar to the biennial Rivers and harbors and Flood Control bills of the past, the most recent versions of which were passed in 1972 and 1974. The 1972 bill was vetoed, the 1974 bill was approved. S. 3823 passed on a vote of 78 to 3 in the Senate and by a voice vote in the House, and subsequently both houses cleared the conference report on voice votes.

The cost of the projects authorized in this bill totals about \$7.3 billion. However, the authorizations for project construction total only about \$145 million, a relatively small amount as Rivers and Harbors bills go. The majority of the projects, costing about \$7.2 billion, are authorized only for preconstruction planning, not for construction. Thus, further Congressional authorization is required before construction, and that process will afford another opportunity for Executive branch review and possible influence on Congressional action.

The bill contains 105 sections, most of which would authorize project modifications or deal with related matters which are of interest to particular beneficiaries and to the Congressional sponsors. Lists of the individual project authorizations and the provisions of the bill are attached.

One provision of the bill -- Section 166 -- is relatively minor in a domestic context, but it raises a sensitive international policy issue of the kind not ordinarily presented in domestic legislation of this character. This provision would authorize the Secretary of the Army -- acting through the Chief of Engineers -- to increase water diversions from the Great Lakes to the Mississippi River system from 3200 cubic feet per second (CFS) to 10,000 CFS. The diversion would take place at Chicago through facilities operated by the Metropolitan Sanitary District. The purposes of the diversion are to alleviate damages caused by recent high water levels on the Great Lakes and to improve the water quality of the Illinois Waterway by dilution.

Diversions of water from the Great Lakes have been limited to 3200 CFS since the 1930's when the Supreme Court took jurisdiction and appointed a master to supervise diversions. President Eisenhower twice vetoed legislation to increase diversions at Chicago in the 1950's -- at that time for the sole purpose of providing additional water for sewage dilution. These vetoes were based primarily on the importance of maintaining good relations with the Government of Canada, and on

the strong protests of the Canadian Government.

The Canadian Government has formally protested the unilateral increase in diversions that would be authorized in the bill, which it considers to be in violation of treaty obligations. The Canadians note that they will hold the United States responsible for any damages, including hydropower losses on the Saint Lawrence River, and indicate that these damages would be substantial.

The Department of State, for foreign policy reasons expressed in its attached views letter, recommends that the bill be vetoed, and it has provided a suggested draft Memorandum of Disapproval.

If the bill is to be approved, the Department of State wishes to consult with White House staff beforehand to consider the issue of our relations with Canada concerning the diversion issue. The timing is permissive -- not mandatory -- so you could instruct the Secretary of the Army to defer any action on the diversions unless and until a satisfactory agreement was reached with the Canadian Government. If the Congress should later appropriate funds for the diversion, it would be necessary to propose a deferral under the Budget Impoundment Control Act of 1974 which, if rejected by either body in Congress, would require that the diversion program be initiated notwithstanding Canadian objections. A signing statement addressing this issue would be reassuring to Canada, but would not overcome Canadian objections to the authorization.

The major objections to the traditional domestic provisions of the bill are that they would:

- disregard established procedures for Executive branch review and formulation of water projects by authorizing 41 projects or project modifications without the benefit of cleared Executive branch project or legislative reports;
- propose a new account in the Treasury to finance hydropower in Alaska (which would be a precedent for a national hydro program -- and was so designed in the Senate version of the bill);
- provide for the use of so-called "regional" benefits in computing benefit-cost ratios for navigation projects, a procedure which would support authorization of a multitude of economically marginal projects;

- authorize the Corps of Engineers to initiate a nationwide program for drift removal at commercial harbors at Federal expense -- a responsibility which should be placed on those who create the debris problem;
- require the Federal Government to relocate and rebuild an entire town (Nelson, Pennsylvania) in place of the standard practices for compensation applicable to other communities;
- permit the Chief of Engineers to certify projects as authorized for planning regardless of the position of the Secretary of the Army or the President (this is the intent as expressed in the House Committee Report; the bill itself does not rule out Presidential and Secretarial powers); and,
- authorize 9 projects on a basis inconsistent with Executive branch recommendations regarding cost-sharing, lack of Federal interest, or economic justification.

In addition, the bill contains numerous provisions comprising special benefits by interest subsidies, sale at less than fair market value, forgiveness of power cost repayment, and other similar provisions which, while minor individually, are highly objectionable collectively on their merits and because of the adverse precedents they represent. These provisions are detailed in the attachments.

The Department of the Army strongly recommends approval of this bill. The departmental comments especially emphasize the desirability of various studies and projects that would be authorized in the bill, permitting funds for various new starts to be included in the fiscal year 1978 budget. Also mentioned is the intention of the Army to fully coordinate any diversions from Lake Michigan at Chicago with all the affected Federal, State and local interests, including the Department of State. The Department considers it regrettable that the bill would not authorize replacement of the Locks and Dam 26 structure, near Alton, Illinois.

The Council on Environmental Quality urges a veto on the grounds that the provisions in the bill would weaken the integrity of the current standards for planning and evaluating projects, allow undesirable or ill-considered Federal forward commitments in future years, grant unwarranted benefits to special interest groups, and provide many unnecessary authorities.

The Department of the Interior expresses serious concerns that the bill lacks provisions for coordination among Federal agencies and that it would grant exceptions to current policy on hydropower repayments by mandating non-reimbursable costs and reduced payments for the Snettisham project in Alaska. The Department, however, does not object to approval of the bill.

The Department of Agriculture generally defers to the Army, but notes that one section provides for a project near Chicago which the Department considers inappropriate in view of the need for Federal fiscal restraint.

The Department of Commerce has no objection to approval, and notes with particular interest various special studies authorized in the bill which the Department would conduct in cooperation with the Army.

The Department of Transportation comments on eleven sections of the bill, but does not object to approval.

Arguments for Approval

- The dollar cost of the projects that would be authorized for construction by the bill is not large compared to similar acts in recent years.
- The overwhelming vote in favor of the bill in both the Senate and House indicates that similar legislation would probably be passed next year.
- Most of the larger projects would be authorized only for preconstruction planning rather than construction. This would allow the Administration (and the Congress) another opportunity to review these projects prior to making a construction commitment.

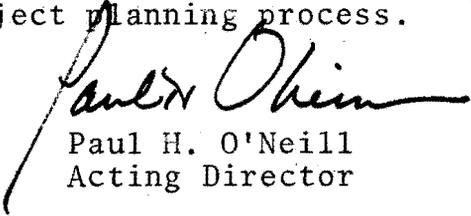
- Some of the projects that would be authorized in this bill are worthwhile investments, having met strict cost-benefit tests, and undergone extensive screening for environmental and other problems.

Arguments Against Approval

- The unilateral diversion of Lake Michigan waters would be a serious breach of international policy, and could seriously damage U.S.-Canadian relations.
- The Congress has flagrantly disregarded established Executive branch procedures and recommendations.
- The authorization for preconstruction planning of about \$7.2 billion in water projects would represent a very large step toward a program difficult to restrain fiscally in the future.
- The bill would not authorize the Locks and Dam Number 26 replacement near Alton, Illinois, as you recently recommended.
- The bill would not include the monetary authorization for carrying on the fiscal year 1978 Corps of Engineers program in a number of river basins, as requested when the 1977 budget was submitted.
- The special interest provisions in this bill which would either grant advantages not available to others under standard policies or relieve particular groups of responsibilities for project-related costs to the disadvantage of the general taxpayer are objectionable as traditional "pork barrel."

Recommendation

We recommend approval with a signing statement instructing the Secretary of the Army to defer action on the diversion of water from the Great Lakes pending discussions with the Canadian Government, and expressing your concern over the Congressional disregard of the water project planning process.


Paul H. O'Neill
Acting Director

Attachments

Projects Authorized for Construction

	<u>Purpose</u>	<u>OMB Position</u>	<u>Ultimate Cost</u> (\$000)	<u>Congressional Interest 1/</u>
Los Angeles -- Long Beach Hbr., Ca.	Nav.	NOB	16,850	Anderson (D-32) Lloyd (D-35)
Harris Creek, Ky., Tn.	FC	OBJ	5,000	Hubbard (D-Ky.-1) Ford (D-Tn.-8)
Vermillion Lock, La.	Nav.	*	20,683	Breaux (D-7)
Basset Creek, Mn.	FC	*	7,593	Frenzel (R-3) Fraser (D-5)
Chaska, Mn.	FC	NOB	10,498	Hagedorn (R-1)
Liberty Park Seawall, N.J.	Rec.	*	12,600	Daniels (D-14)
Shooters Island Removal, N.Y.	Nav.	**	25,000	Murphy (D-17)
Santa Fe River and Arroyo Mascaras, N.W.	FC	*	8,200	Lujan (R-1)
Baytown, Tx.	FC	**	15,680	Eckhardt (D-8)
Neches River, Tx.	Nav.	NOB	14,300	Wilson (D-2) Brooks (D-9)
Red River, Tx., La.	FC	NOB	4,131	Waggoner (D-La.-4) Bell (D-Tx.-1) Thornton (D-Ak-1)
Richmond (Filtration plant), Va.	FC	OBJ	<u>4,617</u>	Satterfield (D-3)
TOTAL Authorized			145,152	

NOB: Report cleared favorably by Executive Branch.

OBJ: Report cleared unfavorably by Executive Branch.

*Not reviewed by Executive Branch.

**Not reviewed by Executive Branch but known policy problems.

Projects Authorized for Phase I Design

<u>Project</u>	<u>Purpose</u>	<u>OMB Position</u>	<u>Ultimate Cost</u> (\$ 000)	<u>Authorized Cost</u> (\$ 000)	<u>Congressional Interest</u>
Susitna River, AK.	P	**	1,664,428	25,000	Young (R)
Marysville Lake, (Parks Bar), CA.	P	*	717,050	150	Johnson (D-1)
Calleguas Crk, CA.	FC	NOB	26,630	1060	Mineta (D-13)
Morrison Stream, CA.	FC	OBJ	57,400	750	Moss (D-3)
Santa Ana, CA.	FC	**	714,300	700	Leggett (D-4)
					Corman (D-21)
					Rees (D-22)
					Waxman (D-24)
					Roybal (D-25)
					Rosselot (R-26)
					Bell (R-27)
					Burke (D-28)
					Hawkins (D-29)
					Danielson (D-30)
					Wilson (D-31)
					Anderson (D-32)
					Clanson (R-33)
					Hannaford (D-34)
					Lloyd (D-35)
					Brown (D-36)
					Pettis (R-37)
					Patterson (D-38)
					Wiggins (R-39)
					Hinshaw (R-40)
New London, CN.	Nav.	OBJ	8,022	250	Dodd (D-2)
Brunswick Hbr, GA.	Nav.	*	30,450	300	Ginn (D-1)
N. Branch Chicago River, IL.	FC	NOB	46,981	370	Metcalf (D-1)
					Murphy (D-2)
					Russo (D-3)
					Derwinski (R-4)
					Hyde (D-6)
					Collins (D-7)
					Rostencowski
					(D-8) Yates (D-9)
					Mikva (D-10)
					Annunzio (D-11)
					Crane (R-12)
					McClory (R-13)
Chicagoland Underflow, IL.	FC	**	1,500,000 est.	12,000	Same as N. Branc Chicago R. above but add O'Brien (R-17)

NOB: Report cleared favorably by Executive Branch.

OBJ: Report cleared unfavorably by Executive Branch.

*Not reviewed by Executive Branch.

**Not reviewed by Executive Branch but known policy problems.



Projects Authorized for Phase I Design
cont.

<u>Project</u>	<u>Purpose</u>	<u>OMB Position</u>	<u>Ultimate Cost</u>	<u>Authorized Cost</u>	<u>Congressional Interest</u>
Little Calumet, IN.	FC	NOB	86,858	1,400	Madden (D-1) Fithian (D-2)
Sowashee Crk, MS.	FC	*	13,000	450	Montgomery (D-3)
Wears Crk, MO.	FC	OBJ	30,510	50	Ichord (D-8)
St. John Bayou, MO.	FC	OBJ	22,753	300	Burlison (D-10) Hruska (R)
Papillion Crk, NB.	FC	*	31,375	75	McCollister (R12)
N.J. Coastal Inlets, III, N.J.	Rec.	NOB	34,473	2,396	Hughes (D-12)
N.J. Coastal Inlets III, N.J.	Rec.	NOB	31,786	2,062	Hughes (D-12)
Wallkill River, NY, NJ.	FC	OBJ	17,290	330	Gilman (R-NY-26) Meyner (D-NJ-13)
Passaic River Basin, NJ., NY.	FC	*	784,000	12,000	Fenwick (R-5) McGuire (D-7) Roe (D-8) Helstoski (D-9) Rodino (D-10) Rinaldo (R-12) Daniels (D-14) McHugh (D-NY-27)
Rio Salado, Rio Puerto, NM.		*	36,184	1,500	Runnels (D-2)
Pembina River, ND.	FC	*	22,840	930	Andrews (R)
Grafton, ND.	FC	NOB	10,973	570	Andrews (R)
Gallipolis Lock, OH, WV.	Nav..	*	148,000	2,800	Miller (R-Oh.-10) Slack (D-WV.-3)
Cleveland Hbr., OH.	Nav.	*	25,000	500	Stanton (D-20) Stokes (D-21)
Siuslaw River, OR.	Nav.	*	17,248	50	Weaver (D-4)
McNary 2nd Powerhouse, OR., WA.	P	*	499,000	1,800	Ullman (D-OR-2) McCormack (D-WA4) Foley (D-WA-5)
Days Crk Dam, OR.	FC	*	159,645	250	Hatfield (R) Weaver (D-4)
Clarion River, PA.	-	**	50,000	600	Murtha (12) Johnson (23)
Lock Haven, PA.	FC	NOB	30,400	430	Flood (D-11)
Wyoming Valley, PA.	FC	NOB	45,300	450	Flood (D-11)
Presque Isle, PA.	Rec.	NOB	18,600	700	Vigorito (D-24)
San Juan Hbr., PR.	Nav.	NOB	52,500	300	DeLaGarza

NOB: Report cleared favorably by Executive Branch.

OBJ: Report cleared unfavorably by Executive Branch.

*Not reviewed by Executive Branch.

**Not reviewed by Executive Branch but known policy problems.



Projects Authorized for Phase I Design
cont.

<u>Project</u>	<u>Purpose</u>	<u>OMB Position</u>	<u>Ultimate Cost</u>	<u>Authorized Cost</u>	<u>Congressional Interest</u>
Charleston Hbr., SC.	Nav.	NOB	32,437	500	Davis (D-1)
Nonconnah Crk., TN.	FC	NOB	68,377	400	Beard (R-6)
Brazos River, TX.	-	**	55,662	650	Hightower (D-13)
Red River (Days Crk), TX.	FC	OBJ	19,690	300	Hall (D-1)
Richmond, VA.	FC	OBJ	40,610	800	Satterfield (D-1)
LaCrosse, WS.	FC	NOB	15,746	400	Baldus (D-13)
TOTAL			7,165,518	73,573	

NOB: Report cleared favorably by Executive Branch.

OBJ: Report cleared unfavorably by Executive Branch.

**Not reviewed by Executive Branch but known policy problems.



Modification-Authorized Projects

	<u>Purpose</u>	<u>OMB Position</u>	<u>Ultimate Cost (\$000)</u>	<u>Congressional Interest</u>
Mobile Harbor (Theodore channel) Al.	Nav.	*	32,806	Edwards (R-1)
Cook Inlet, Ak.	Nav.	*	(150/yr)	Young (R)
Snettisham, Ak.	Trans. line	OBJ	5,641	Young (R)
Beaver Dam, Ar.	Hatchery	**	6,000	Hammerschmidt (R-3)
Del Valle, Ca.	FC	OBJ	750	Dellums (D-18) Stark (D-9)
Port San Luis, Ca.	Nav.	*	--	Van Deerlin (D-42)
Napa, Ca.	--	*	1,200	Clausen (R-2)
Noyo, Ca.	Nav.	*	--	Clausen (R-2)
New London, Cn.	Nav.	OBJ	7,745	Dodd (D-2)
Lucky Peak Lake, Id.	Outlet Mod.	NOB	4,100	Symms (R-1) Hausen (R-12)
Lower Snake, Id., Wa.	Hatcheries	**	58,400	Hansen (R-Id-1) Foley (D-Wa-5)
Snake River Bridges, Id., Wa.	Bridges	OBJ	21,000	Hansen (R-Id-1) Foley (D-Wa-5)
Blue Waters Ditch, Il.	FC	*	--	Price (D-23)
Saylorville Lake, Ia.	FC	NOB	7,374	Smith (D-4)
Tuttle Creek, Ka.	Roads	**	630	Keyes (D-12)
Mermantau Lake, La.	Maint.	*	(155/yr.)	Breaux (D-7)
Caddo Lake, La.	Maint.	*	(16/yr.)	Breaux (D-7)
Mississippi River - Gulf Outlet Bridges, La.	Nav.	NOB	71,500	Long (D-8) Hebert (D-1)

NOB: Report cleared favorably by Executive Branch.

OBJ: Report cleared unfavorably by Executive Branch.

*Not reviewed by Executive Branch.

**Not reviewed by Executive Branch but known policy problems.



Modification-Authorized Projects (Con'd)

	<u>Purpose</u>	<u>OMB Position</u>	<u>Ultimate Cost (\$000)</u>	<u>Congressional Interest</u>
Red River Dike Disposal, La.	Nav.	OBJ	3,700	Waggoner (D-4) Long (D-8)
Mankato, Mn.	Bridges	OBJ	8,175	Hagedorn (R-2)
Libby Lake, Mt.	--	NOB	30	Hausen (R-2)
Cochiti Lake, NM	Rec.	OBJ	1,500	Montoya (D)
New York Harbor Drift, NY	Nav.	*	14,726	NYC Delegation North N.J. Delegation
Atlantic Intercoastal Waterway, NC	Bridges	NOB	2,875	Jones (D-1)
Minot, ND	FC	*	250	Andrews (R)
Williston, ND	Water	OBJ	1,000	Andrews (R)
McClellan-Kerr, Sallisaw, Ok.	Nav.	OBJ	1,200	Risenhoover (D-2)
Cowanesque Lake, Pa.	FC	**	12,000	McDade (R-10)
Blue Marsh Lake, (Gruber) Pa.	Archeol.	NOB	8,000	Scott (R)
Hartwell Lake, SC	P	NOB	15,700	Thurmond (R)
Big South Fork, Tn.	Rec	*	71,672	Kentucky Delegation
Obion and Forked Deer River, Tn.	FC	*	1,000	Jones (D-7)
San Antonio (Espada Acequia), Tx.	Archeol.	OBJ	1,761	Kazer (D-23)
Corpus Christi, Tx.	Nav.	*	759	Young (D-14)
Little Del, Utah	FC	*	--	McKay (D-1)
Chief Joe, Wa.	School	OBJ	<u>2,000</u>	Foley (D-5)
TOTAL			363,494	

NOB: Report cleared favorably by Executive Branch.

OBJ: Report cleared unfavorably by Executive Branch.

*Not reviewed by Executive Branch.

**Not reviewed by Executive Branch but known policy problems.



Legislative Content Other Than
Project Authorizations, Section by
Section

- **Section 101(c).** Allows initiation of Phase I study upon a finding transmitted to the Congress by the Chief of Engineers that the project is without substantial controversy and that further study is justified. Administration position - not reported on but objectionable.
- Section 107. Amends Great Lakes Navigation Season Extension. Adds \$6.5 M. Administration position - NOB.
- **Section 117.** Authorizes Upper Mississippi management plan. \$9.1 M authorized. Administration position - not reported on but objectionable.
- *Section 118.** Conveys certain lands along Louisiana - Texas Intracoastal Waterway to owner of record. Administration position - not reported on.
- *Section 119.** Modifies certain requirements of bridge owners with regard to the Secretary of Transportation. Administration position - not reported on.
- Section 120. Authorizes Secretary of Army to contract with states for law enforcement services at water resources projects. Authorizes \$6 M/ year, for 2 years. Administration position - NOB
- *Section 122.** Secretary of Army directed to review and report on local cooperation requirements regarding spoil disposal areas for Deep Creek, Virginia. Administration position - not reported on.
- *Section 123.** Provides for operation and maintenance of Los Angeles-Long Beach Harbor model. Administration position - not reported on.
- *Section 125.** Allows State of Louisiana to construct bridges over navigable waters. Administration position - not reported on.
- Section 128. Secretary of Army directed to convey certain lands in Texas to former owners. Administration position - no objection.

NOB: Report cleared favorably by Executive Branch.

OBJ: Report cleared unfavorably by Executive Branch.

* Not reviewed by Executive Branch.

** Not reviewed by Executive Branch but known policy problems.



- Section 129. Modifies Blue Marsh Lake project in Pennsylvania to include relocation and restoration of Gruber Wagon Works. Authorizes \$.9 M. Administration position - NOB.
- *Section 131. Increases limit on certain types of projects not requiring Congressional authorization. Administration position - not reported on.
- *Section 133. Increases limit on certain continuing authorities for small water development projects. Administration position - not reported on.
- *Section 134. Modifies method of including projects accomplished by non-Federal interests in Federal plans for new projects. Specifically mentions Mingo Creek, Oklahoma. Administration position - not reported on.
- ** Section 140. Allows the inclusion of regional development - as opposed to National economic benefits - in calculating the benefit/cost ratio of navigation projects. Administration position - not reported on but highly objectionable. Seriously undermines economic criteria.
- Section 142(Preauthorization study)
- For flood and related problems in area of San Francisco Bay. Administration position - no objection.
- *Section 143(Preauthorization study)
- For multipurpose water development in American Samoa. Administration position - not reported on.
- *Section 144(Preauthorization study)
- For multipurpose water development in area of Hilo Bay, and Kailua-Kona, Hawaii. Administration position - not reported on.
- *Section 145. Allows Corps to place on beaches sand dredged from navigation projects upon payment of cost differential. Administration position - not reported on.
- *Section 147. Directs Corps to conduct hydrographic surveys of section of Columbia River for navigation. Authorizes \$.5 M. Administration position - not reported on.

NOB: Report cleared favorably by Executive Branch.

OBJ: Report cleared unfavorably by Executive Branch.

* Not reviewed by Executive Branch.

** Not reviewed by Executive Branch but known policy problems.



- *Section 148. Encourages management of spoil disposal areas so as to prolong useful life. Administration position - not reported on.
- **Section 150. Authorizes Corps to include wetland establishment as part of authorized projects under certain conditions. Administration position - not reported on but probably objectionable.
- Section 153. Modifies procedures of approving construction of Arkansas-Red River Basin chloride control projects. Administration position - objection.
- Section 154. Provides certain broad exemptions from Corps permit authority. Administration position - objection.
- **Section 155. Includes new areas in streambank erosion demonstration program. Adds \$25 M. Administration position - not reported on but objectionable.
- Section 156. Increases Federal responsibility for beach nourishment. Administration position - objection.
- *Section 157. Decreases waiting period for automatic deauthorization. Administration position - not reported on.
- *Section 158. Corps authorized to study waterway improvements to date as they relate to future needs - Administration position - not reported on.
- Section 161. An additional modification to streambank erosion program. Administration position - objection
- Section 162. Exempts certain lakes from Corps permit authority. Administration position - objection.
- *Section 163. Authorizes study of navigation needs of San Pedro Bay. Administration position - not reported on.
- Section 165. Relieves Corps responsibility for traffic on Washington Aqueduct. Administration position - NOB.
- Section 166. Authorizes diversion from Lake Michigan at Chicago. Administration position - objection. International implication.
- **Section 167. Authorizes national study of hydropower potential (economic and physical). Authorizes \$7 M for 3 years. Administration position - not reported on but probably objectionable.
- *Section 168. Increases limit on planning cooperation with states. Administration position - not reported on.

NOB: Report cleared favorably by Executive Branch.

OBJ: Report cleared unfavorably by Executive Branch.

* Not reviewed by Executive Branch.

** Not reviewed by Executive Branch but known policy problems.



*Section 176(Preauthorization study)

For flood control and allied purposes at the Navajo Indian reservation, Arizona, New Mexico and Utah. At an estimated cost of \$2,000,000. Administration position - not reported on.

Section 177. Authorization of the Gaysville Dam and Lake, Stockbridge, Chittenden and Rochester, Vermont is terminated upon enactment of this act. Administration position - NOB.

Section 178. Declaring certain portions of the Hudson River in Hudson County, New Jersey, to be nonnavigable. Administration position - NOB.

Section 179. Declaring certain portions of the Hackensack River in Hudson County, New Jersey, to be nonnavigable. Administration position - NOB.

**Section 180(Preauthorization study)

For the development of a plan for shoreline protection and beach erosion control along Lake Ontario. Report to include recommendations on measures of protection and proposals for equitable cost sharing, together with recommendations for regulating the level of Lake Ontario to assure maximum protection. Cost - \$2,000,000. Administration position - not reported on but probably objectionable.

Section 181. Authority for the Washington Suburban Sanitary Commission to construct a water diversion structure on the Potomac River. Administration position - NOB.

Section 182(a). Amending authorization for Richard B. Russell Dam and Lake by deleting the following: "Nothing in this act shall be construed to authorize inclusion of pumped storage power in this project." Administration position - objection.

*Section 185. Assuring full participation of members of minority groups living in the States participating in Tenn.-Tombigbee Waterway Development, in the construction of the project, including action to encourage participation of minority owner firms. Administration position - not reported on.

NOB: Report cleared favorably by Executive Branch.

OBJ: Report cleared unfavorably by Executive Branch.

* Not reviewed by Executive Branch.

** Not reviewed by Executive Branch but known policy problems.



*Section 192. Reauthorization of Deep Fork River, Arcadia, Okla., deleting benefits for water quality and including benefits for water supply. Administration position - not reported on.

*Section 193(Preauthorization Study)

Authorizing Secretary of Commerce, thru EDA to study depletion of natural resources in Colorado, Kansas, New Mexico, Okla., Texas and Neb. Cost - \$6,000,000. Administration position - not reported on.

* Section 200(b) (Preauthorization Study)

For removal and disposal of debris and obsolete buildings in the vicinity of Metlakatla and Annette Islands, Alaska. Cost - \$100,000. Administration position - not reported on.

Section 202.

Allows for collection and removal of drift and debris from publicly maintained commercial boat harbors. \$4,000,000 per fiscal year for 2 years. Administration position - objection.

Section 203.

Alaska hydroelectric Power Development. Cost - \$25,000,000. Administration position - objection.

NOB: Report cleared favorably by Executive Branch.

OBJ: Report cleared unfavorably by Executive Branch.

* Not reviewed by Executive Branch.

** Not reviewed by Executive Branch but known policy problems.





DEPARTMENT OF STATE

Washington, D.C. 20520

OCT 14 1976

Dear Mr. Lynn:

In response to your circular of October 12, 1976 transmitting for the comment of the Department of State a copy of enrolled bill S.3823, The Water Resources Development Act of 1976, I am providing the Department's comments on aspects of the bill within our competence, and our recommendation that it not be signed by the President.

The Department recommendation is required in view of Section 166 of the bill which authorizes a five-year demonstration program of increased rates of diversion of Lake Michigan waters at Chicago, up to 10,000 c.f.s., into the Illinois Waterway with the stated purposes of affording water quality improvements in the Waterway and alleviating shore damages due to high water levels in the Great Lakes.

The Government of Canada has taken strong exception to this section, as it entails unilateral alteration of the Chicago Diversion without full prior consultation. In addition, the proposed demonstration program runs counter to both the spirit of close cooperation on transboundary pollution questions which has developed between the U.S. and Canada since the Boundary Waters Treaty was signed in 1909, and to a basin-wide and systematic approach to Great Lakes planning, points which are strongly in the U.S. national interest. Finally, the proposed legislation could expose the U.S. to claims for damages to power generation entities in Canada which see themselves disadvantaged by the increased diversion.

Throughout this century the Chicago Diversion has been a source of contention and litigation within the U.S., and a sensitive issue in U.S.-Canadian relations. The rate of

The Honorable
James T. Lynn, Director,
Office of Management and Budget.



diversion has been fixed by order of the Supreme Court since 1930 in response to extensive litigation between Illinois and other Great Lakes States (the present decree was entered June 12, 1967 (388 U.S.426)). The decree specifically contemplates the possibility of modification to permit Illinois to abstract additional Lake Michigan waters for domestic needs in the Northeastern Illinois Metropolitan Region under stated circumstances as well as permitting application by parties to the action for further action or relief.

The authority of the Congress to alter the rate of diversion, by legislating within its Constitutional authority, is not in question (see e.g. Wisconsin et al. v. Illinois et al., 281 U.S. 179-202); the Department expresses no opinion as to the constitutionality of the proposed legislation authorizing an increase in the rate of diversion at Chicago, or the advisability of signature of legislation affecting a case which remains before the Supreme Court. We note, however, that no provision is made in the bill for the post-demonstration period should Congress fail for any reason to enact timely subsequent legislation continuing or modifying the rate of diversion. The comments of the Department of Justice on this legislation should be solicited.

The present legislation with respect to the diversion at Chicago was introduced in the House of Representatives on August 31 in the form of three identical bills (H.R. 15343, 15344, 15345). No hearings were held on the legislation, which, following passage by the House of Representatives as a provision of the Water Resources Development Act, was adopted in Conference and passed both Houses in the last hours of the 94th Congress.

In the past, a number of purposes have been advanced for an increase in the Chicago diversion, including benefits to navigation and commerce on the Illinois Waterway. In addition to the purposes mentioned above we understand proponents believe there is a correlation between the rate of diversion and the water table of Chicago suburban communities although this matter is not addressed in the legislation. These are domestic questions beyond the competence of this Department, but we note that environmental objections and concerns as to the enhanced flooding potential downstream on the Waterway and the Mississippi River have been expressed in the past. The passage of legislation authorizing an actual demonstration which itself would raise the above-mentioned concerns, without prior public hearings and without a full analysis of probable impacts, is, however, a procedure which strikes the Department

as being inconsistent with the spirit which motivated enactment of the National Environmental Policy Act.

The Department of State objected to the proposed legislation on September 20 in a letter to Congressman Ray Roberts, the principal sponsor (attached at Tab A). The Canadian Government has consistently opposed a unilateral U.S. increase in the diversion of waters out of the Great Lakes Basin as a matter of law and policy. Nevertheless, recognizing concerns in the United States over extreme high water levels, concerns which are shared on the Canadian side, the Government of Canada has cooperated in such measures as the exhaustive inquiry conducted by the International Joint Commission (IJC) resulting in its current levels report; the implementation of emergency regulation of Lake Superior by the IJC; and voluntary reductions in the rates of Canadian diversions into Lake Superior at Long Lac/Ogoki. The Department has repeatedly testified both as to Canadian views on any unilateral change in the Chicago Diversion and on the probable effect of any such change on U.S.-Canadian relations. While we do not accept Canada's legal arguments based on the complex of agreements between the two governments governing the utilization of the waters of the Great Lakes, it is clear that as a matter of international law Canada has legitimate rights and interests in the shared waters of the Great Lakes system. In particular, the Department offered a report to the House Committee on Public Works in 1953 which in part discussed the evolution of water utilization rights at the Niagara frontier in light of Article V of the 1909 Boundary Waters Treaty and the 1950 Niagara River Treaty, and concluded that a change in the amount of water abstracted at Chicago might affect the arrangements set forth in the Niagara Treaty, possibly necessitating its renegotiation. Canadian opposition also reflects concern for navigation interests and the maintenance of adequate draughts for vessel traffic in Great Lakes shipping channels and harbors. In the 1950's, President Eisenhower vetoed a number of analagous bills because of their possible adverse effects on U.S.-Canadian relations.

On October 7, the Canadian Embassy presented a diplomatic note of protest to the Department regarding this bill. The Canadian note (a copy of which is attached at Tab B) reiterates Canada's longstanding opposition to any unilateral increase in the diversion of water from Lake Michigan. The note expresses the concern of the Canadian Government that this legislation was passed without prior consultation, particularly in view of Canadian willingness, as demonstrated at the September 21 meeting between U.S. and Canadian officials on Great Lakes levels, to consider a reference to the IJC for

a study of all diversions into and out of the Great Lakes Basin. The note goes on to point out that an increase in the rate of the Chicago Diversion, such as contemplated by this legislation, would afford only minimal shoreline relief and this relief would not be felt in the lower Great Lakes for some two to three years. (We understand that past studies by the Corps of Engineers would tend to confirm this assessment.) These delayed effects might well, the Canadian note indicates, coincide with a period of low water levels and thus produce problems for navigation not only in the downstream international channels but also in the Canadian section of the St. Lawrence River. The note points out that if such a demonstration program is carried out on a unilateral basis, there will be "significant adverse economic and environmental consequences affecting particularly Ontario and Quebec" including increased consumption of fossil fuel to replace power losses at the hydroelectric generating stations along the St. Lawrence. The Canadian Government notes that very large compensation costs could be involved, and states that "Canada expects that the U.S. would provide such compensation" and "Canada would expect that the U.S. power developments at Niagara Falls and Barnhart Island would absorb the full effect of any resulting lessened flow of water and that full reimbursement would be received for power losses" at the Canadian generating plant at Beauharnois. Canada is still reviewing the estimated dollar loss that might result from increased diversions at Chicago, but has informally advised the Department it estimates the total loss to be very substantial. We would note that U.S. power entities may also sustain a loss of power generation capability as a result of an increased diversion.

Since the conclusion of the 1909 Boundary Waters Treaty, the two countries have developed a pattern of close consultation and cooperation in transboundary environmental and water resource matters. This coordination of effort is essential in the integrated Great Lakes system if water levels and regulatory measures are to be managed with maximum benefit to all of the interests affected. Unilateral action by the United States, without advance consultation and in the absence of adequate data regarding the likely downstream impacts of this program, would be inconsistent with this pattern of bilateral cooperation and agreement, and contrary to U.S. interests.

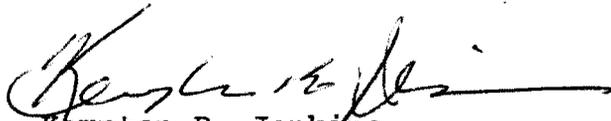
Adoption of the present legislation would make considerably more difficult the process of cooperation and consultation whereby both Governments, through the IJC mechanism, are attempting to improve, on a basin-wide basis,

a regulatory regime for the Great Lakes. In addition, adoption of the present legislation could leave the U.S. Government open to serious questions of compensation with regard to affected Canadian interests.

For these reasons the Department believes that the unilateral increase in the rate of diversion at Chicago authorized by the bill would be a shortsighted measure, productive of a serious bilateral problem which could only harm U.S. interests along the border. Therefore, the Department of State recommends that the President not sign this legislation before these questions can be resolved. We have attached (at Tab C) a draft veto message in support of this conclusion.

Should the President decide to sign the bill, we would appreciate the opportunity before the legislation is signed to consult with the White House and appropriate agencies to develop steps to mitigate the anticipated impact on U.S. - Canadian relations.

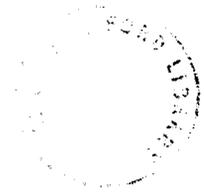
Sincerely,



Kempton B. Jenkins
Acting Assistant Secretary
for Congressional Relations

Attachments:

- Tab A - Letter to Congressman Ray Roberts, September 20.
- Tab B - Canadian Note No. 489.
- Tab C - Draft Veto Message.





DEPARTMENT OF STATE

Washington, D.C. 20520

EURICAN

POL 35 b-2

SEP 20 1976

Dear Mr. Roberts:

The Department of State would like to go on record with our views regarding the adoption of H.R. 15343, 15344 and 15345, recently introduced by a number of Congressmen to set up a demonstration program authorizing increased flows through the Chicago Diversion.

The adoption of the proposed legislation, without consultation with Canada, could, in the view of the Department, lead to a serious bilateral problem. We have been frequently called upon in the past, most recently in the testimony of Deputy Assistant Secretary Rufus Z. Smith in October 1974, concerning Canadian views on similar proposals to increase unilaterally the diversion in both extreme and average water level periods, and have noted Canada's strong opposition. Although we have not admitted the validity of Canadian legal arguments based on the complex of agreements between the two governments governing the utilization of the waters of the Great Lakes, it is nonetheless clear that Canada does have legitimate rights and interests in the shared waters of the Great Lakes System.

As you are probably aware, a recent report of the International Joint Commission entitled, Further Regulation of the Great Lakes, recommends that a study be conducted of all diversions, present or proposed, into and out of the Great Lakes Basin. We are in the process of negotiating with Canada the responses of the two governments to this recommendation as well as to the other recommendations of the IJC.

It is possible that the IJC study and/or a demonstration program could change Canadian views regarding an increase in the Chicago Diversion; however, unilateral action on our part would be contrary to the spirit of cooperation which has developed since the signature of the Boundary Waters Treaty of 1909 and to U.S. interests.



I would ask that our views be taken into consideration in connection with your Subcommittee's deliberations on this legislation. The Department of State stands ready to assist you either by providing more information or by consulting with the Government of Canada at an early date, should you so desire.

Sincerely,

Kempton B. Jenkins
Acting Assistant Secretary
for Congressional Relations

The Honorable
Ray Roberts,
House of Representatives.

EUR/CAN:KJonietz
x 21097

Clearances:

EUR/CAN: JHRouse, Jr.
L/EUR: KSGudgeon
H: HNelson



No. 489

The Embassy of Canada presents its compliments to the Department of State and has the honour to refer to the passage by the United States Congress on October 1, 1976 of the Water Resources Development Act of 1976 which contains a section authorizing a demonstration project involving an increased diversion from Lake Michigan at Chicago to the Mississippi River system. The Department of State is well aware of Canada's long-standing opposition to any unilateral increase in the diversion of water from Lake Michigan. This position has been clearly and repeatedly outlined in Canadian Government Notes of November 2, 1961, June 10, 1964 and June 8, 1973. The Government of Canada wishes to re-emphasize its continued adherence to this well-known position and to make the following additional points.

The Government of Canada is extremely concerned that legislation of this nature was passed without prior consultation with Canada and particularly so because as recently as September 21, 1976 at a Canada-United States

...2

Meeting on Great Lakes levels, Canada agreed to a United States proposal that joint consultations be held with a view to considering a possible Article IX reference to the International Joint Commission on the effects of consumptive uses and diversions into or out of the Great Lakes Basin. A demonstration project such as the one proposed should be considered in the context of these Canada-United States consultations and should not be the subject of unilaterally passed legislation or action.

The Embassy observes that one of the reasons given in the Act for increasing diversions at Chicago is to alleviate shoreline damage due to high water levels in Lake Michigan and the other Great Lakes. The Embassy wishes to point out that the initial effects of the increased diversions will be small in terms of relief to riparian interests and that such effects will not be felt in the lower Lakes for two to three years. It may well be that these delayed effects will coincide with a period of low levels, thus producing problems for navigation not only in downstream international channels but in the Canadian section of the St. Lawrence River. Canada shares the concern of the United States Congress over damage to shore property owners, but believes the two countries should work together towards solutions to this problem, as recommended by the International Joint Commission.



The Embassy wishes to advise the Department of State that if the demonstration project envisaged in this legislation is carried out on a unilateral basis, there will be significant adverse economic and environmental consequences affecting particularly Ontario and Quebec. Not the least of these would be a much greater consumption of fossil fuels with serious economic and environmental costs, to replace power lost at Niagara, Cornwall and on the Canadian section of the St. Lawrence. Very large compensation costs could be involved and Canada expects that the United States would provide such compensation. In particular, Canada would expect that the United States power developments at Niagara Falls and Barnhart Island would absorb the full effect of any resulting lessened flow of water and that full reimbursement would be received for power losses at Beauharnois. If the project is carried out, early consultations will be necessary to establish mechanisms for considering compensation questions including, if necessary, the formation of an appropriate tribunal.

By this Note, the Canadian Government wishes to ensure that the United States Government is fully aware of Canada's long-standing opposition to unilateral increases in diversions from the Great Lakes system.

...4



The Embassy of Canada avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.



WASHINGTON, D.C.
October 7, 1976



STATEMENT BY THE PRESIDENT

I have approved S. 3823, the Water Resources Development Act of 1976.

This omnibus measure, among other things, authorizes construction of 12 projects costing about \$145 million and authorizes advance planning on an additional 37 projects the construction cost of which would eventually be over \$7 billion. It also authorizes an increase in the diversion of waters from Lake Michigan at Chicago from 3200 cubic feet per second to as much as 10,000 cubic feet per second over a five-year period.

Many of the projects in this bill have been supported by the Executive branch and deserve to be authorized without delay. It is for this reason that I have approved the bill.

I regret that the Congress in this bill has authorized a number of projects without the benefit of the views of the responsible Executive branch agencies, in some cases on the basis of reports which are still under preparation in the field. It is regrettable that the Congress does not wait for completion of the careful planning and environmental consideration appropriately called for by general law and practice before rushing to authorize projects. However, most of these projects will be subject to further review prior to authorization of construction, and all of the projects will be subject to review in the budget process. There will, therefore, be opportunities for the Executive branch and the Congress to review and reconsider all the projects authorized in this bill before work gets underway.

This bill authorizes additional diversions of water from Lake Michigan -- boundary waters which we share with Canada. However, diversions of these waters should not be unilaterally undertaken by the United States. I have, therefore, instructed the Secretary of the Army to defer any action on this authorization pending appropriate negotiations by the Department of State with the Government of Canada.

D

MEMORANDUM OF DISAPPROVAL

I am today withholding my approval of S. 3823, The Water Resources Development Act of 1976. While there was much in this bill to commend it, I have reluctantly concluded that to sign this legislation into law as it now stands would not be in the national interest. Section 166 of this bill would establish a demonstration program of increased diversions from the Great Lakes at Chicago. Such a program would have a number of adverse effects which must be considered more fully before being adopted. These include possible power losses in the upstate New York area, claims for compensation by Canada and potentially adverse environmental effects both downstream on the Illinois Waterway and downstream on the Great Lakes System.

The Government of Canada has formally communicated its views to the Department of State urging that such a program not be undertaken without full prior consultation. In view of the long and mutually beneficial relationship between our two countries, and with particular regard to the spirit of close cooperation on transboundary environmental problems which has developed since the signature of the Boundary Waters Treaty of 1909, I have concluded that the maintenance of positive and beneficial U.S. relations with Canada and our strong national interest in the effective management of the Great Lakes System as a whole, require that I accede to the Canadian request. In so doing, I reassure the Congress that I would support legislation embodying the remaining provisions of this bill, and also to go on record as favoring the continuation of efforts undertaken jointly by the United States and Canada to examine all possible solutions

to the problems posed by the present high water levels on the Great Lakes. To this end, I have directed the Secretary of State to continue with the negotiations currently underway with Canada pursuant to the report of the International Joint Commission entitled Further Regulation of the Great Lakes.

THE WHITE HOUSE,

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: October 19

Time: 945pm

FOR ACTION:

NSC/S

Sign

cc (for information):

140 Max Friedersdorf

APP George Humphreys

✓ Bobbie Kilberg

Robert Hartmann

Bill Bill Seidman

Agenda

Jack Marsh
Ed Schmults

Mike Duval

Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date: October 20

Time: noon

SUBJECT:

S.3825-Water Resources Development Act of 1976

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OCT 20 1976

OFFICE OF THE
ADMINISTRATOR

Dear Mr. Lynn:

This is in response to your request for the comments of the Environmental Protection Agency concerning S. 3823, the "Water Resources Development Act of 1976" an enrolled bill.

The enrolled bill provides for the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and other purposes. It includes authorizations for water resources development projects and provisions modifying previously authorized projects. A total of 44 projects are contained in the bill.

Water development projects can have dramatic effects upon the environmental quality of our Nation's waters. EPA expects that the projects authorized by S. 3823 would be undertaken in compliance with NEPA and other environmental statutes. The Agency would also expect to be kept apprised of any anticipated changes in water quality and other activities which might involve the discharge of pollutants into navigable waters as defined in the Federal Water Pollution Control Act. Although we have comments to make with regard to certain provisions of S. 3823 which are set out in more detail below, we do not object to the signing of this enrolled bill.

§117

This section authorizes the Army Corps of Engineers to investigate and study development of a river system management plan for a segment of the Mississippi River. While we find this commendable, we believe that a river management plan should be developed for the total resource requirements of the entire river system. A study of the entire river system would be extremely valuable in developing plans for the protection of environmental resources along the Mississippi.

§118(a)(3)

We are concerned that the reconveyance of property previously used as portions of the Intracoastal Waterway could have adverse environmental impacts. Such a conveyance would sever Federal control over these lands. A potential result of such an action might be unwise flood plain development and greater exposure to flood risks. We recommend that the Army Corps of Engineers thoroughly consider the coastal impacts in making such reconveyances.

§134

We are concerned over the possible impact of this section upon the NEPA process. By allowing local interests to construct flood control improvements separate from the Corps of Engineers flood control program, there can be a foreclosure of the benefits of the NEPA process. Even though a local project may be declared compatible with a Corps project being studied, it may not be compatible with that Federal project once the Corps has undertaken its NEPA review. This provision could have the unintended effect of circumventing the NEPA process and thereby jeopardizing important environmental interests.

§140

This section allows the inclusion of regional economic benefits in the determination of the economic justification of any Corps navigation project. By allowing such inclusion, the Corps of Engineers will permit a "double counting" of project benefits since the regional benefits of a navigation project are also national benefits. The results of this procedure would be to threaten environmental resources by unreasonably favoring construction options.

§148

The general purpose of this section, to minimize the construction of new dredged spoil disposal sites, is commendable. However, we are concerned that this policy of using existing dredged spoil disposal sites will perpetuate the use of existing sites which are environmentally unsatisfactory. We suggest that the Corps review all existing disposal sites prior to further use under this section.

§145

This section provides for the replenishment of State beaches with beach-quality sand which has been dredged in the construction and maintenance of navigation inlets and channels. We assume that these activities will be carried out pursuant to other laws and regulations, in particular the FWPCA and the Coastal Zone Management Act.

§150

This section appears to be environmentally protective since it provides for the creation of new wetland areas as part of water resource development projects undertaken by the Army Corps of Engineers. We would caution, however, that this section could be misused to justify an otherwise undesirable water resource development project. The inclusion of the wetlands project could affect the cost benefit ratios computed for the larger project.

§154

This section removes from the coverage of §10 of the 1899 Rivers and Harbors Act (public interest review) those wharves and piers in waters of the United States which are located within one State and are, or could be, considered to be navigable bodies of water solely on the basis of historical use in interstate commerce. We believe that the loss of this review function could result in a direct environmental damage through the construction of wharves and piers. In addition, the primary and secondary development associated with these wharves and piers could cause further damage. In addition, there may be navigational and safety considerations which would be overlooked without §10 public interest review. Finally, we believe that there is no need to require permits for all piers and wharves in these bodies of water; however, we caution against the complete removal of Federal review authority under §10.

§158

We would hope that due consideration would be given to the environmental impact of waterway improvement in the comprehensive study mandated by this section. Also, we wish that any recommendations made to improve the system will take into account environmental effects.

§162

This section declares that three lakes are non-navigable for the purposes of §10 of the Rivers and Harbors Act of 1899. Since the bill's declaration of non-navigability is restricted to the 1899 Act, the requirements for navigable waters under the FWPCA §311 (oil and hazardous substance liability), §312 (vessel waste management), §402 (NPDES), and §404 (regulation of dredged or filled material discharges) will still be applicable. We believe, however, that the declaration of these three bodies of water as non-navigable is a dangerous precedent. As pointed out in our comments on §154, work in these lake waters will no longer be subject to a public interest review and consequently the risk of environmental, safety, and navigational problems will be increased.

§166

This section of the bill authorizes a three-fold increase in water diversion from Lake Michigan. It specifies that the increased diversion will be made in consideration of its effects on the Illinois Waterway and in protection of the navigational requirements of the St. Lawrence River and Great Lakes-St. Lawrence Seaway. This section will have no immediate effect on EPA programs as long as the applicable FWPCA requirements are met.

However, there may be some question as to the effect of the activities authorized by S. 3823 will have under existing national treaties and agreements, such as Great Lakes Boundary Waters Treaty of 1909. The United States has agreed, in Article II of that treaty, to make Federal and State courts available to Canada for the redress of injuries caused by the diversion of waters from their natural channel. The U.S. has also made numerous commitments to consult with Canada before interfering with or diverting these waters. We believe that no action should be taken on §166 of the bill until: (1) the Corps of Engineers completes an environmental impact statement on this diversion project, and (2) full consultations are carried out with the Canadian government regarding the effects of the proposed action, including the establishment of means to assess damages and to adjudicate claims. Without careful attention to these considerations, Canadian/American cooperation on environmental problems could be seriously hampered.

§§178 and 179

We are concerned that these sections make no explicit mention of the requirements of §404 of the Federal Water Pollution Control Act in the Chief of Engineers' decision making on the proposed determination of non-navigability.

In conclusion, the Environmental Protection Agency does not object to the signing of this enrolled bill, but we do offer the above comments concerning certain of its provisions.

Sincerely yours,


for Russell E. Train
Administrator

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C. 20503

10-
J. Johnston
10-19-76
6:30 p.m.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCT 19 1976

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill S. 3823 -- Water Resources
Development Act of 1976

Sponsor - Senator Gravel (D) Alaska

Last Day for Action

October 23, 1976 - Saturday

Purpose

Authorizes construction (subject to appropriations) on 12 water resources projects, preconstruction planning on 37 projects, and contains a large number of project modifications, special exceptions to present law, special benefits for particular groups or individuals, and other similar provisions.

Agency Recommendations

Office of Management and Budget	Approval (Signing Statement attached)
Department of the Army	Approval
Department of Transportation	No objection
Environmental Protection Agency	No objection (Informally)
Department of Commerce	No objection
Department of the Interior	No objection
Federal Power Commission	No objection
General Services Administration	No objection
Department of Housing and Urban Development	No objection
Department of the Treasury	No objection
Water Resources Council	No position
Council of Economic Advisers	No comment
Department of Justice	Defers to agencies more concerned
Department of Agriculture	Defers to Army
Department of State	Disapproval (Memorandum of Disapproval attached)
Council on Environmental Quality	Disapproval