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Water Infrastructure Improvements for the Nation Act (WIIN)

The Water Infrastructure Improvements for the Nation Act (WIIN or WIIN Act; P.L. 114-322) authorized a broad range of water resource and water quality activities when it was signed into law on December 16, 2016. The 115th Congress is anticipated to debate funding for activities authorized in WIIN, participate in congressional oversight of WIIN implementation, and to address water resource and water quality issues not addressed in WIIN.

WIIN: Structure and Background

WIIN combined provisions typically found in a Water Resources Development Act (WRDA) with provisions addressing other water issues, such as California drought, drinking water infrastructure and emergencies, and water-related waste and spills concerns. These activities historically had been authorized in separate legislation and managed by multiple congressional committees. WIIN compiled relatively independent water-related titles:

- Title I authorized Army Corps of Engineers (Corps) water resource projects and activities;
- Title II addressed drinking water emergencies, infrastructure, and coal combustion residuals (CCR, commonly known as *coal ash*);
- Title III addressed selected Department of the Interior water issues, including water project management in California and Indian water; and
- Title IV included miscellaneous water matters, including aquatic restoration and spill protections and recovery.

WIIN and Other Bills from the 114th Congress

Many WIIN provisions were drawn in whole or in part from other legislation in the 114th Congress. Many provisions addressed subjects contained in, or had similar content to, the House or Senate versions of the Water Resources Development Act of 2016—H.R. 5303 and S. 2848 of the 114th Congress. Unlike H.R. 5303 and S. 2848, WIIN included provisions associated with operations of federal and state water projects in California (Title III, Subtitle J).

While WIIN's breadth reached beyond the activities of the Corps (which was the sole focus of H.R. 5303), WIIN did not share all elements of S. 2848 (which also was broader in focus than just the Corps). For example, S. 2848 included provisions on water quality infrastructure under the Clean Water Act (CWA). Most of S. 2848's CWA provisions were not included in WIIN. Similarly, WIIN did not include numerous other water quality infrastructure financing provisions from S. 2848 that were not related to the CWA. (See CRS In Focus IF10471, *WRDA Legislation in the 114th Congress: Clean Water Act and Infrastructure*

Financing Provisions in S. 2848 and WIIN, by Claudia Copeland.)

WIIN Debate

Some WIIN provisions had broad support; others were related to controversial issues and legislation. Some water stakeholders viewed WIIN as a compromise; others remained opposed to language included in WIIN. WIIN topics that were controversial during the 114th Congress included federal Endangered Species Act (ESA; P.L. 93-205) implementation associated with California water infrastructure operations; assistance for lead contamination in Flint, Michigan; and requirements for federally supported drinking water projects to use U.S. iron and steel.

Corps Water Resource Projects

Title I of WIIN contains 140 provisions related to Corps projects and activities (the short title for WIIN Title I is WRDA 2016). WIIN, like H.R. 5303 and S. 2848, authorized new Corps water resources studies and projects and modifications to ongoing construction projects. Each of the new project construction authorizations was based on a completed report by the Corps' Chief of Engineers. WIIN authorized 30 new construction projects at a federal cost of more than \$10 billion. Various Corps provisions in WIIN related to how nonfederal sponsors participate in the financing of water infrastructure activities. For example, Section 1111 increased the federal construction cost share for harbor deepening that occurs between 45 feet and 50 feet, at an estimated federal cost increase of \$430 million over the FY2017-FY2026 period. Other sections, such as Sections 1127, 1166, and 1171, changed authorities for crediting and reimbursing nonfederal entities for project-related expenditures. Section 1120 required a review of Corps tribal consultation policies for projects and permits. For more information, see CRS Insight IN10608, *Army Corps Projects and Tribal Consultation: Requirements, Policies, and Controversy*, by Nicole T. Carter.

Lead and Drinking Water Emergencies

Title II, Subtitle B, authorized disaster relief and infrastructure assistance to address lead contamination of drinking water but included no mandatory funding. For states subject to a presidential emergency declaration concerning lead in drinking water, Section 2201 authorized appropriations of \$100 million for grants to assist an affected public water system; the grants are to be provided through the Drinking Water State Revolving Fund (DWSRF) program administered by the U.S. Environmental Protection Agency (EPA). Section 2203 authorized appropriations of \$20 million for the Department of Health and Human Services to establish (1) a voluntary lead-exposure registry for a city exposed to lead contamination in the water system and (2) an advisory committee on lead programs and research. Another \$30 million in funding was

authorized to fund childhood lead poisoning prevention and childhood health programs. Section 2202 included a sense of Congress supporting an initial appropriation of \$20 million under the Water Infrastructure Finance and Innovation Act (WIFIA) of 2014 to be used for eligible projects including those that address lead in drinking water. P.L. 114-254, Continuing and Security Assistance Appropriations Act of 2017, provided \$170 million in appropriations for WIIN, Title II, Subtitle B activities.

Drinking Water Infrastructure

Title II, Subtitle A, included numerous amendments to the Safe Drinking Water Act (SDWA). The provisions reflected some, but not all, of the SDWA provisions included in S. 2848. Similar provisions were not in the Corps-focused H.R. 5303. (See CRS In Focus IF10474, *WRDA 2016: Infrastructure, Lead, and Other Safe Drinking Water Act Provisions in H.R. 5303 and S. 2848*, by Mary Tiemann.) Subtitle A revised the DWSRF program—the key federal drinking water infrastructure assistance program. Section 2113 generally prohibited the use of DWSRF funds during FY2017, unless all iron and steel products to be used in the project are produced in the United States. In contrast, S. 2848 had not limited this provision to FY2017.

Subtitle A established grant programs for (1) projects and activities to help small or disadvantaged water systems comply with SDWA requirements (appropriations were authorized at \$60 million per year for FY2017-FY2021); (2) lead reduction projects, including grants to low-income homeowners to replace lead service lines (appropriations were authorized at \$60 million per year for FY2017-FY2021); and (3) a voluntary program for testing for lead in drinking water at schools and daycare centers (with appropriations authorized at \$20 million per year for FY2017-FY2021). Paralleling House-passed H.R. 4470, Subtitle A included a requirement for public notification of lead action level exceedances and expanded EPA notification authorities.

California Drought and Indian Water

Title III contained provisions related to diverse water responsibilities of the Department of the Interior. Title III, Subtitle J (titled “California Water”), received particular attention; it addressed the drought in California by adjusting the authorization and management of federal and state water projects, increasing the support for new and existing drought-related programs, and altering related fish and wildlife management. While some Title III WIIN provisions had widespread support, controversy persisted over how WIIN approached ESA implementation, particularly water management under federal biological opinions (BiOps) designed to protect threatened Delta smelt, endangered salmon, and other species. Supporters of these provisions argued that WIIN’s changes would make additional water available to users facing curtailed allocations, without violating the ESA. Opponents contended that the changes harm listed species and their habitat in the short and long terms and could set a precedent for implementing the ESA elsewhere. (See CRS Report R44456, *Central Valley Project Operations: Background and Legislation*, by Charles V. Stern, Pervaze A. Sheikh, and Betsy A. Cody.) President’s Obama’s signing statement

for WIIN noted, “... I interpret and understand Subtitle J to require continued application and implementation of the Endangered Species Act.” (See CRS Report RL33667, *Presidential Signing Statements: Constitutional and Institutional Implications*, by Todd Garvey.) Other WIIN provisions related to authorities to proceed with water projects under certain circumstances, including water storage in western states (Section 4007), also garnered some controversy.

Title III also authorized additional support for Indian water projects. Specifically, Subtitle A of Title III established a program and fund for improving dam safety at Indian dams, and Subtitle B created a fund for repair, replacement, and maintenance of certain Indian irrigation projects, among other things. Subtitles D and G authorized two Indian water rights settlements that received hearings in the 114th Congress: the Pechanga Water Rights Settlement and the Blackfoot Water Rights Settlement, respectively. (See CRS Report R44148, *Indian Water Rights Settlements*, by Charles V. Stern.)

Waste and Spills

WIIN contained provisions affecting the protection of waters from wastes and recovery from spills. In recent years, these topics received considerable public interest and congressional scrutiny. Section 5004 addressed payment of claims for response costs for the August 2015 Gold King Mine incident. It also authorized long-term water quality monitoring downstream of the mine. Section 2031 created a mechanism to allow EPA to approve state programs regulating coal combustion residuals and allows EPA to regulate CCR in states that choose not to do so. (See CRS Insight IN10585, *State Programs for “Coal Ash” Disposal in the WIIN Act*, by Linda Luther.) Section 5011 modified the applicability of EPA’s Spill Prevention, Control, and Countermeasure regulations for farms by excluding specific oil-storage containers from regulation. (See CRS Report R44536, *Spill Prevention, Control, and Countermeasure (SPCC) Regulations: Background and Issues for Congress*, by Jonathan L. Ramseur.)

Ecosystem Restoration and Basin Efforts

WIIN authorized or expanded existing authorizations for several ecosystem restoration initiatives. Section 5005 authorized the Great Lakes Restoration Initiative, an interagency initiative coordinated by the EPA, at \$300 million annually from FY2017 to FY2021. WIIN also authorized restoration activities in the Missouri River Basin (Section 1179), Salton Sea (Section 1181), and Chesapeake Bay (Section 1180). Sections 5010 and 3603 authorized restoration initiatives for the Columbia River basin and Lake Tahoe, respectively. Title III, Subtitle E, authorized a restoration program for the Delaware River Basin.

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