



**Congressional
Research Service**

Informing the legislative debate since 1914

Water Resource Issues in the 113th Congress: Second Session

Betsy A. Cody, Coordinator

Acting Deputy Assistant Director and Specialist Natural Resources Policy

Charles V. Stern

Specialist in Natural Resources Policy

Nicole T. Carter

Specialist in Natural Resources Policy

Pervaze A. Sheikh

Specialist in Natural Resources Policy

January 29, 2014

Congressional Research Service

7-5700

www.crs.gov

R42947

Summary

The 113th Congress faces many issues related to water resource development, management, and protection. Such issues include how to make investment decisions in the context of fiscal constraints; how to maintain and reinvest in aging federal infrastructure (e.g., locks, dams, and levees); how to effectively respond to and prepare for flood and drought emergencies; and how to distribute investments between activities to meet new demands for water supplies and aquatic ecosystem restoration and protection. These issues often arise at the regional level, but have a federal connection. For example, the second session of the 113th Congress is likely to face questions related to regional or widespread drought (e.g., what policies, programs, and funding are in place or lacking?). Congress also may continue to address issues related to past flooding (e.g., Hurricane Sandy, Midwest floods), navigation and water supply challenges due to drought-induced low river flows, and balancing water supply needs among farm and urban communities, hydropower production, recreational use, and protection of threatened and endangered species.

The water resource issues of the 113th Congress are in part shaped by the actions of past Congresses, including the 112th Congress. In addition to holding numerous oversight hearings on agency policies, each Congress provides appropriations for major federal water research agencies, such as the U.S. Army Corps of Engineers (Corps) and the Bureau of Reclamation (Reclamation). The 112th Congress did not formally consider an omnibus Corps project authorization and policy bill—typically called a Water Resources Development Act (WRDA); however, both Houses of Congress passed a version of a WRDA bill during the first session of the 113th Congress.

The first session of the 113th Congress also considered legislation to augment developed water supplies (e.g., water storage, water reuse), settle Indian water rights claims, and facilitate small conduit hydropower development (P.L. 113-23 and P.L. 113-24). The first session also considered bills related to aquatic ecosystem restoration throughout the country (e.g., Everglades, Great Lakes, Klamath Basin, and Chesapeake Bay). The 113th Congress may also consider legislation or oversight activities related to the energy sector's water use and the water sector's energy use, as well as water research and development legislation, including research related to climate change, water resource availability, drought indicators and streamflow.

Measures being considered in the second session of the 113th Congress include those left pending from the first session, as well as other proposals. Because of current water conditions, disasters, or legal or agency developments, certain basin issues are particularly likely to receive congressional attention (e.g., operation of federal reservoirs in the Apalachicola-Chattahoochee-Flint river basin, Columbia River Basin, Missouri River Basin, and the Sacramento and San Joaquin river basins [Central Valley Project]). Other related legislation may include the energy-water nexus and environmental policy, and emergency legislation related to drought or flood issues.

This report discusses recent congressional activity and possible topics for the second session of the 113th Congress. It provides an overview of the federal role in water resources development, management, and protection, with focus on two major federal water resources agencies and related legislation. It also discusses overarching policy issues, such as drought and flood management and response; project funding and authorization priorities; and aquatic ecosystem restoration.

Contents

| | |
|--|----|
| Introduction..... | 1 |
| Recent Congressional Activity | 1 |
| Looking Forward..... | 3 |
| Federal Role in Water Resources | 3 |
| Federal Water Resource Agencies..... | 4 |
| U.S. Army Corps of Engineers | 5 |
| Legislation..... | 6 |
| Bureau of Reclamation | 7 |
| Legislation..... | 8 |
| Overarching Legislative Issues | 9 |
| Drought and Flood Preparedness and Response..... | 9 |
| Funding and Authorization Priorities | 10 |
| Aging Infrastructure | 10 |
| Changing Federal Partnerships..... | 11 |
| Earmarks and Project Authorization..... | 11 |
| Aquatic Ecosystem Restoration..... | 12 |

Contacts

| | |
|---------------------------------|----|
| Author Contact Information..... | 12 |
| Acknowledgments | 12 |

Introduction

The second session of the 113th Congress is likely to face numerous water resources issues as it conducts oversight and deliberates on authorizations and appropriations related to federal water resource development, management, and protection. Such issues include how to make investment decisions in the context of federal fiscal constraints; how to maintain and reinvest in an aging portfolio of federal infrastructure (e.g., locks, dams, and levees); how to effectively respond to and prepare for flood and drought emergencies; and how to distribute investments between activities to meet new demands for water supplies and aquatic ecosystem restoration and protection. These issues often arise at the regional level, but have a federal connection. For example, Congress may be faced with responding to various water related crises, such as extreme drought or flooding issues (e.g., California drought in 2014 and coastal flooding issues associated with Hurricane Sandy or other storms). More broadly, Congress may be faced with addressing navigation challenges due to drought-induced low river flows or floods, and addressing water supply needs of farm and urban communities while also protecting threatened and endangered species. The crux of many of these challenges is how to balance competing demands for water and river management, including how to cope with the growing fiscal limitations and the effect of federal project operations on the environment.

This report first discusses recent congressional activity and possible topics for the second session of the 113th Congress. Next it provides an overview of the federal role in water resources development, management, and protection, including a discussion of the two major federal water resources agencies (the U.S. Army Corps of Engineers and the Bureau of Reclamation) and related legislation. The report then provides an overview of overarching policy issues, including flood and drought preparedness and response; project funding and authorization priorities; and aquatic ecosystem restoration.

Recent Congressional Activity

The water resource issues of the 113th Congress are in part shaped by the actions of past Congresses. Legislative activity often is specific to the federal water resource management agencies, such as the U.S. Army Corps of Engineers (Corps) and the Department of the Interior's Bureau of Reclamation (Reclamation), or is specific to water use by particular sectors, such as energy, agriculture, navigation, recreation, and municipal and industrial use. Occasionally, Congress takes up broader water resource policy issues, such as coordination of federal water resource activities and programs. Legislation enacted for both the Corps and Reclamation during the first session of the 113th Congress was less than in prior Congresses, in large part due to congressional earmark policies.

The first session of the 113th Congress provided appropriations for the Corps to conduct its work, and action on authorization legislation. As of January 2014, conferees were negotiating a conference bill for an omnibus Corps authorization bill based on the House-passed H.R. 3080, Water Resources Reform and Development Act of 2013 (WRRDA 2013), and Senate-passed S. 601, Water Resources Development Act of 2013 (WRDA 2013).

The first session of the 113th Congress also provided appropriations for Reclamation to conduct its ongoing activities, and conducted oversight hearings on Reclamation-related activities (i.e., water resource projects in the 17 western states). The annual appropriations bill for the Corps and Reclamation is the Energy and Water Development Appropriations bill; however, both agencies

occasionally receive funding in emergency or other supplemental appropriations acts, particularly in response to natural disasters, such as floods, droughts, and hurricanes.¹

The 113th Congress considered legislation to augment developed water supplies (e.g., water storage, water reuse), settle Indian water rights claims, and provide direction for individual water projects and facilities. Several bills related to aquatic ecosystem restoration throughout the country were also considered. These bills generally addressed issues related to the construction of projects for water quality and habitat restoration, as well as governance and reporting for ongoing federal restoration actions. For instance, projects addressing the restoration of the Florida Everglades were included in the aforementioned water resources authorizing legislation in the Senate (S. 601) and House (H.R. 3080).

Several bills related to aquatic ecosystem restoration throughout the country were considered in the 113th Congress and were still pending at the beginning of the second session. These bills generally addressed issues related to water quality and habitat restoration, as well as project construction for restoration and water supply allocation among users and the environment. Bills authorizing comprehensive ecosystem restoration initiatives were introduced for the Great Lakes (e.g., H.R. 2773 and S. 1232), Long Island Sound (H.R. 2174 and S. 1080), the Everglades (H.R. 913 and S. 414), and Lake Tahoe (H.R. 3390 and S. 1451). These bills addressed governance of ecosystem restoration initiatives and the reauthorization of funding to continue restoration efforts, among other things. Other bills addressed specific aspects of ongoing restoration initiatives, such as expediting restoration project approval in the Everglades ecosystem.

The first session of the 113th Congress considered, but did not enact, a farm bill.² In addition to providing support for farmers and crop production, farm bills provide support for agricultural water conservation and efficiency measures, conservation programs in priority watersheds, and groundwater protection and recharge, as well as water resource and infrastructure needs associated with soil and water conservation.³ For information regarding drought disaster assistance for agricultural producers, see CRS Report RS21212, *Agricultural Disaster Assistance*.

Energy and environmental policy also affects water resources management and development. Two bills intending to facilitate the development of nonfederal hydropower were enacted in the first session of the 113th Congress: a small conduit hydropower development bill to facilitate nonfederal hydropower development at Reclamation facilities (P.L. 113-24) and a separate bill making alterations to the Federal Energy Regulatory Commission licensing process for certain projects (P.L. 113-23). Interest in water use by the energy sector (e.g., water for fuel extraction and power plant cooling) and energy use by the water sector (e.g., energy for water transport and treatment) remains high.⁴ Congress may consider legislation related to the issue in the remainder

¹ In the 113th Congress, the Corps received \$5.3 billion in funding related to the landfall of Hurricane Sandy. For more information, CRS Report R42841, *Army Corps Supplemental Appropriations: Recent History, Trends, and Policy Issues*, by Charles V. Stern and Nicole T. Carter.

² See CRS Report R42442, *Expiration and Extension of the 2008 Farm Bill*, by Jim Monke, Randy Alison Aussenberg, and Megan Stubbs; and, CRS Report R43076, *The 2013 Farm Bill: A Comparison of the Senate-Passed (S. 954) and House-Passed (H.R. 2642, H.R. 3102) Bills with Current Law*, coordinated by Ralph M. Chite.

³ For more information on agricultural soil and water conservation programs, see CRS Report R42093, *Agricultural Conservation and the Next Farm Bill*, by Megan Stubbs, and CRS Report R42854, *Emergency Assistance for Agricultural Land Rehabilitation*, by Megan Stubbs.

⁴ CRS Report R43199, *Energy-Water Nexus: The Energy Sector's Water Use*, by Nicole T. Carter; CRS Report R43200, *Energy-Water Nexus: The Water Sector's Energy Use*, by Claudia Copeland.

of the 113th Congress; related legislation was considered during the 112th Congress (e.g., S. 1343, the Energy and Water Integration Act of 2011), but not enacted. Water use by the energy sector is anticipated to increase because of expanding domestic onshore energy production, in part stimulated by changes in technology, as well as federal programs and policies such as blending mandates of the Renewable Fuel Standard, which have bolstered biofuel production from corn ethanol produced by both irrigated and non-irrigated corn.

The 113th Congress also has considered water research and development legislation targeted at specific programs or issues, such as research related to desalination (e.g., H.R. 745), state water resources research institutes (S. 970), and the National Integrated Drought Information System (H.R. 2431, S. 376). As of January 2014, the 113th Congress had not considered legislation addressing the broad water science and research portfolio; water science and research is spread across more than 20 federal agencies. No single water research strategy or formal coordination or prioritization mechanism exists. Some stakeholders are concerned that current research is insufficient to prepare the United States to confront domestic and international water challenges. The 112th Congress considered, but did not enact, proposals to provide additional direction and funding for the federal water research portfolio (e.g., H.R. 5862).

Looking Forward

The second session of the 113th Congress is likely to address some measures left pending at the end of the first session (e.g., a farm bill and a WRDA (or WRRDA)), and may consider other proposals as well. Because of current water conditions (e.g., drought in portions of the West and Southwest), disasters, or legal or agency developments, certain basin issues are likely to receive congressional attention. These include the operation of federal reservoirs in the Apalachicola-Chattahoochee-Flint river basin, Columbia River Basin, Sacramento and San Joaquin river basins (Central Valley Project in California), and Missouri River Basin. Other basins with federal reservoirs experiencing drought in the past and which may be subject to oversight during the second session of the 113th Congress include the Colorado, Klamath, and Rio Grande river basins.

Because of ongoing drought conditions in California and much of the West, Congress might again address drought assistance, planning, and preparedness through oversight hearings and/or specific legislation, including provisions of a farm bill, WRDA, or other legislation. (See Drought and Flood Preparedness and Response section below.)

The second session of the 113th Congress also may conduct oversight of the Chesapeake Bay, Everglades, Great Lakes, and San Joaquin River restoration initiatives, as well as federal activities related to management of the Sacramento and San Joaquin Rivers Delta and its confluence with San Francisco Bay (Bay-Delta). Common themes in regional restoration efforts include demand for new project services (e.g., improved or new flood control, water supply, and navigation facilities), protection of threatened and endangered species, drought management, and water quality concerns. Other topics that might be addressed include energy production effects on water resources and water resources research and development.

Federal Role in Water Resources

The federal government has long been involved in efforts to facilitate navigation, expand irrigation, and reduce flood and drought losses. For example, nearly every large river basin in the

country—from the Columbia, Sacramento, and Colorado rivers in the West to the Missouri, Mississippi, and Delaware rivers—contains one or more federal dam or navigation projects. These projects have largely been constructed by the U.S. Army Corps of Engineers (Department of Defense) and the Bureau of Reclamation (Department of the Interior). More recently, federal involvement has expanded to include municipal water supply development and efforts to protect water-related resources such as fish and wildlife. Increasing pressures on the quality and quantity of available water supplies have resulted in heightened local and regional water use conflicts throughout the country, particularly in the West and Southeast. Pressures include population growth, environmental regulation, in-stream species and ecosystem needs, water source contamination, agricultural and energy water demands, climate change and variability, and changing public interests.

Congress historically has played a major role in water resources through authorizations of and appropriations for regional and site-specific activities; however, numerous responsibilities are split or shared with state, local, and tribal governments, particularly related to water allocation and resource planning and management. Congress also establishes the policies that define the federal role in planning for federal water resource projects, and provides direction for construction, maintenance, inspection, and support of federal projects. Congress makes these decisions within the context of multiple and often conflicting objectives, competing legal decisions, long-established institutional mechanisms (e.g., century-old water rights, and contractual obligations), and in response to events such as floods, droughts, and structural failures.

Federal water resource construction activities shrank during the last decades of the 20th century, marking the end of earlier expansionist policies that had supported large federal investments in dams and hydropower facilities, navigation locks and channels, irrigation diversions, and flood control levees, as well as basin-wide planning and development efforts. Fiscal constraints, changes in national priorities and local needs, few remaining prime construction locations, and environmental and species impacts of construction and operation of federal projects all contributed to this shift. Although these forces are still active, there are proposals for renewed federal financial and technical assistance to address growing pressures on developed water supplies, to manage regional water resources to meet demands of multiple water uses, and to address the aging stock of water resources infrastructure.

Current drought conditions in the West and Southwest on top of extended and widespread drought of 2012, coastal flooding due to Hurricane Sandy, and record-level Midwest floods of 2011 have raised other questions about the federal role in water resources. In particular, the disasters have brought attention to the trade-offs in approaches to distributing federal appropriations among competing water resources projects, to risk management in water resources, and to the trade-offs in benefits, costs, and risks of the current division of responsibilities among local, state, and federal entities.

Federal Water Resource Agencies

Most of the large dams and water diversion structures in the United States were built by, or with the assistance of, Reclamation or the Corps. Historically, Reclamation projects were designed principally to provide reliable supplies of water for irrigation and some municipal and industrial uses. Corps projects were planned principally to improve navigation and reduce flood damages, with power generation, water supply, and recreation being incidental benefits. Reclamation

currently manages hundreds of dams and reservoirs in 17 western states,⁵ providing water to approximately 10 million acres of farmland and 31 million people, as well as 58 power plants capable of producing 40 billion kilowatt-hours of electricity annually (enough for approximately 3.5 million homes), and which generate more than \$1 billion in revenues annually.⁶ The Corps operates nationwide, and its activities are diverse. The Corps has constructed thousands of flood damage reduction and navigation projects throughout the country, including nearly 12,000 miles of commercially active waterways, nearly 1,000 harbors, and 600 dam and reservoir projects (with 75 hydroelectric plants generating 68 billion kilowatt-hours annually). Additionally, the Corps constructed, usually with nonfederal participation, roughly 9,000 miles of the estimated 100,000 miles of the nation's levees, but only maintains 900 miles. The remaining levees are operated by nonfederal entities, often local governments or special districts.

The Natural Resources Conservation Service (NRCS) in the U.S. Department of Agriculture also facilitates water resources development, primarily for flood control in small watersheds and for soil and water conservation purposes.

- For more information on USDA conservation programs and policies, see CRS Report R40763, *Agricultural Conservation: A Guide to Programs*, by Megan Stubbs, and CRS Report R42854, *Emergency Assistance for Agricultural Land Rehabilitation*, by Megan Stubbs.

Many other federal agencies have water-related programs (e.g., the Environmental Protection Agency, the U.S. Geological Survey, and the National Oceanographic and Atmospheric Administration). However, the remainder of this report focuses on the projects, programs, and policies of the Corps and Reclamation.

- For more information on federal water projects and programs—including types of financing and financial assistance—see CRS Report RL30478, *Federally Supported Water Supply and Wastewater Treatment Programs*, coordinated by Claudia Copeland.
- For more information on other federal water activities, see CRS Report R42653, *Selected Federal Water Activities: Agencies, Authorities, and Congressional Committees* coordinated by Betsy A. Cody.

U.S. Army Corps of Engineers

During 2013, the Corps responded to needs arising from flood and drought events, as well as performing its regular activities of constructing and operating and maintaining navigation, flood control, and ecosystem restoration projects and issuing permits for activities that may affect navigable waters and wetlands. As previously noted, Congress authorizes Corps water resources activities and makes changes to the agency's policies generally in an omnibus authorization bill, often titled as a Water Resources Development Act. Although WRDA enactment is usually attempted on a biennial schedule, enactment is less regular in part because of multiple and conflicting stakeholder interests and tensions over potential changes in Corps policies. Also, the

⁵ Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.

⁶ U.S. Department of the Interior, *Budget Justifications and Performance Information Fiscal Year 2014*, Bureau of Reclamation, Washington, DC, 2013, p. General Statement-2, <http://www.usbr.gov/budget/>.

bill is not a reauthorization bill, *per se*—rather, it is largely an authorization bill, since few Corps authorities expire.⁷ The most recent WRDAs were enacted in 2000 and 2007. Congress typically appropriates funds for these activities in annual Energy and Water Development Appropriations acts, and at times, it uses supplemental appropriations bills to fund Corps emergency activities.⁸

As of January 2014, conferees were negotiating a conference bill based on the House-passed H.R. 3080, WRDDA 2013, and Senate-passed S. 601, WRDA 2013. During the bills' consideration, Members expressed frustrations and many diverse interests. Many are frustrated with how long Corps projects take; many express interest in authorizing new projects and de-authorizing older unconstructed projects. Some Members want a more prominent nonfederal role. Others support more funding for harbor maintenance and improving inland waterway construction. H.R. 3080 and S. 601 would address these issues, but often using different means. The earmark debate, House rules related to congressional earmarks, and concerns about congressional roles also shaped each bill's contents and approach. Typically, a WRDA authorizes hundreds of site-specific projects and a few regional projects and establishes agency policy and guidelines for project planning and implementation. Because the bulk of past WRDA bills have been composed of geographically specific authorizations, enactment of a bill in the 111th and 112th Congresses was complicated by various moratoria on "earmarks."⁹ S. 601 would authorize all new or modified construction projects that meet certain criteria (e.g., transmittal of a recommendation for construction by the Administration to Congress). H.R. 3080 lists specific projects that it would authorize; the listed projects have completed certain project development milestones in the Administration (e.g., favorable Chief's Report) and by Congress (e.g., subject of House Transportation and Infrastructure Committee hearing).

Hurricane Sandy in 2012 and Midwest flooding in 2011 raised many questions that the 113th Congress may pursue, including those related to national flood risk and federal actions to reduce that risk. In many cases, Corps facilities and their operations are central to debates over multi-purpose river management, especially during drought and flood conditions. For example, reservoir management by the Corps, such as in the Apalachicola-Chattahoochee-Flint basin (which provides much of the water supply for Atlanta, GA), is often controversial and has been challenged in the courts. Likewise, Corps operation of dams on the Missouri River and its effect on downstream navigation, flood control, species, and upstream water supplies remain controversial. Additionally, future operation of Corps facilities on the Columbia River are central to discussions regarding modification of the Columbia River Treaty with Canada.¹⁰

Legislation

As previously noted, as of January 2014, conferees were negotiating a Corps water resources authorization conference bill based on H.R. 3080 and S. 601. While most Corps authorizations are typically enacted in a WRDA, the 113th Congress may consider more targeted legislation as

⁷ While Corps authorizations generally do not expire or have established sunsets, an automatic de-authorization process begins if projects have not received funding for five years. A number of projects that were authorized in WRDA 2007 (P.L. 110-114) may soon undergo this process.

⁸ For more on these topics, see CRS Report R42841, *Army Corps Supplemental Appropriations: Recent History, Trends, and Policy Issues*, by Charles V. Stern and Nicole T. Carter.

⁹ For more on Corps authorization and appropriations issues, see CRS Report R41243, *Army Corps of Engineers: Water Resource Authorizations, Appropriations, and Activities*, by Nicole T. Carter and Charles V. Stern.

¹⁰ See CRS Report R43287, *Columbia River Treaty Review*, by Charles V. Stern.

well, such as proposals to change the system of financing for inland waterways (H.R. 1149, S. 407)¹¹ or to expedite Corps permits for public safety projects (H.R. 3730). As previously noted, in addition to the Corps annual appropriations typically provided through the Energy and Water Development and Appropriations Act (around \$5 billion annually), the Corps also often receives funds and direction on how to use those funds through supplemental appropriations related to flood and storm disasters. For example, in January 2013, P.L. 113-2, the Disaster Relief Appropriations Act of 2013, provided the Corps with more than \$5 billion in supplemental funds primarily for Hurricane Sandy response and future storm damage mitigation activities.¹²

Bureau of Reclamation

Since the early 1900s, Reclamation has constructed and operated many large, multi-purpose water projects, such as Hoover Dam on the Colorado River and Grand Coulee Dam on the Columbia River. Water supplies from these projects have been primarily for irrigation; however, some municipalities also receive water from Reclamation projects. Many of the largest facilities also produce hydropower. Construction authorizations slowed during the 1970s and 1980s due to several factors. In 1987, Reclamation announced a new mission recognizing the agency's transition from a water resources development and construction organization to one primarily occupied with managing water resources, including managing water and related resources in an environmentally and economically sound manner.¹³ Since then, increased population, prolonged drought, fiscal constraints, and water demands for fish and wildlife, recreation, and scenic enjoyment have resulted in increased pressure to alter operation of many Reclamation projects. Such changes have been controversial, however, as water rights, contractual obligations, and the potential economic effects of altering project operations complicate any change in water allocation, delivery, or project operations.

In contrast to the Corps, there is no tradition of a regularly scheduled authorization vehicle (e.g., a WRDA) for Reclamation projects. Instead, Reclamation projects are generally considered individually; however, occasionally individual project authorizations are rolled into an omnibus bill, such as P.L. 111-11 enacted in the 111th Congress or P.L. 102-575 enacted in the 102nd Congress.¹⁴ Because project authorizations are typically enacted in stand-alone legislation, project authorizations and Reclamation bills in general have slowed considerably since the 112th Congress and the onset of congressional earmark moratoria.

As with the Corps, Reclamation river and reservoir management in the face of drought conditions and climate change may also receive congressional attention. In many cases, Reclamation facilities and their operation are central to debates over multi-purpose river management, particularly during times of drought or years of lower than normal precipitation and runoff. For example, controversies associated with Reclamation water resources management in the Sacramento and San Joaquin river watersheds (CA), the Colorado River Basin, and Klamath

¹¹ See CRS Report R41430, *Inland Waterways: Recent Proposals and Issues for Congress*, by Charles V. Stern.

¹² For more information, see CRS Report R42841, *Army Corps Supplemental Appropriations: Recent History, Trends, and Policy Issues*, by Charles V. Stern and Nicole T. Carter.

¹³ Reclamation's current mission statement can be found at <http://www.usbr.gov/main/about/mission.html>.

¹⁴ Congress occasionally passes omnibus bills addressing key Reclamation policy changes, as well as new or revised project and program authorizations. Congress enacted P.L. 111-11 in 2009, which included multiple water and land subtitles. The last time Congress enacted a Reclamation omnibus bill was in 1992, the Reclamation Projects Authorization and Adjustment Act (P.L. 102-575).

River Basin (CA and OR) have often been exacerbated by low water flows and have also been the subject of extended litigation—sometimes even in normal water years. Likewise, ongoing issues associated with Reclamation’s operation of pumps in the San Francisco Bay/San Joaquin and Sacramento Rivers Delta (Bay-Delta) and their effect on water users and threatened and endangered species also are quite controversial. This situation also has been exacerbated by low water conditions in some years, including 2013—the driest year on record for parts of California.¹⁵ Low water supplies are again projected for California and other western areas for the 2014 water year.

Examples of Reclamation-related water project and management issues that may be considered during the second session of the 113th Congress include the following:

- response to drought, and operations of federal reservoirs and water delivery;
- regulatory impediments to new water storage projects;
- status of Reclamation’s Safety of Dams program;
- authorization and appropriations to address aging infrastructure;
- Sacramento-San Joaquin Valley water reliability and species concerns (e.g., Bay-Delta Conservation Plan, CALFED reauthorization, and proposals to address Central Valley Project water supplies);
- miscellaneous project adjustments;
- Klamath River Basin restoration and Klamath project management;
- Colorado River water management;
- San Joaquin River restoration settlement funding and oversight.

A broader issue that could receive attention from Congress is oversight of Reclamation’s mission and its future role in western water supply and water resource management generally. As public demands and concerns have changed, so has legislation affecting Reclamation. For example, some project sponsors are considering new partnerships in project development, with project construction largely to be undertaken by nonfederal sponsors. In part, this has developed due to project sponsor frustration in delays over new project studies. Some are pursuing independent nonfederal financing of water resources infrastructure (see section on “Changing Federal Partnerships,” below). Further, many in Congress have questioned Reclamation’s shift in focus from a water resources *development* agency to a water resources *management* agency and believe Reclamation is not doing enough to develop new water storage. Others argue for increased funds and attention to augment water supplies in the West through water reuse, recycling, aquifer storage and recovery, and desalination technologies. Some also have expressed frustration with regulatory hurdles facing project development and expansions. On the other hand, some groups contend Reclamation has not done enough to protect species and the environment generally.

Legislation

There was a marked decrease in Reclamation legislation in the 112th Congress compared with prior Congresses, and this trend has continued into the 113th Congress. This largely stems from

¹⁵ See <http://www.water.ca.gov/waterconditions/>.

congressional “earmark” moratoria policies, which in many cases extend to site-specific project authorization bills for Reclamation projects. Broader small-conduit hydropower legislation was enacted during the first session (P.L. 113-23 and P.L. 113-24), and several provisions related to water management in California were included in enactment of the FY2014 Consolidated Appropriations Act (P.L. 113-76, H.R. 3547) in January 2014. Also included in P.L. 113-76 was a one-year extension of the CALFED authorization (Section 207), and reauthorization the Reclamation States Emergency Drought Relief Act of 1991 (extended through 2017; Sec. 206). Legislation introduced during the first session of the 113th Congress primarily consisted of individual project adjustments (e.g., H.R. 1651, H.R. 2554) or alterations to existing programs (e.g., S. 715). Multiple bills passed one chamber, but not the other. Legislation left pending at the end of the first session of the 113th Congress might be addressed during the second session.

Overarching Legislative Issues

In addition to issues related to federal projects, the second session of the 113th Congress faces a number of overarching water resources issues, including flood and drought management and response; project funding and authorization priorities; and aquatic ecosystem restoration.

Drought and Flood Preparedness and Response

Congress is often faced with reacting to natural disasters such as droughts and floods. Current drought conditions, particularly in California, on top of drought in the West and Southwest in 2013, and widespread drought in 2012, have left many areas of the West vulnerable to drought-induced impacts, such as water supply and use limitations, reduced agricultural and power production, and degraded fish and wildlife habitat. Responsibilities for drought planning and response are split among various levels of government and involve many different federal agencies. Although Congress has enacted legislation to coordinate drought information through the National Integrated Drought Information System (NIDIS), there is no overarching national drought policy and the law authorizing NIDIS appropriations is up for reauthorization. NIDIS reauthorization legislation was introduced in the 112th Congress, but was not enacted. NIDIS reauthorization again is being considered in the 113th Congress (H.R. 2431 and S. 376). Both bills would authorize appropriations through FY2018. Because of ongoing drought conditions in much of the West, Congress might again address drought planning and preparedness through oversight hearings and/or specific legislation, including provisions of a farm bill, WRDA, or other legislation. For more information on drought impacts and congressional response, see

- CRS Report RL34580, *Drought in the United States: Causes and Issues for Congress*, by Peter Folger, Betsy A. Cody, and Nicole T. Carter;
- CRS Report RS21212, *Agricultural Disaster Assistance*, by Dennis A. Shields; and
- CRS Report R42854, *Emergency Assistance for Agricultural Land Rehabilitation*, by Megan Stubbs.

Periodic but intense flooding also garners attention from Congress. For example, Hurricane Sandy flooding in 2012 and Midwest floods in 2011 tested the nation’s emergency response system and resulted in billions of dollars in damages. Although the Corps is the principal flood-fighting agency, other agencies also play a role in flood response, including providing disaster assistance and flood insurance (e.g., the Federal Emergency Management Agency, FEMA).

Additionally, responsibilities for flood damage reduction are spread among federal, state, local, and tribal governments. States and local governments in many ways play a primary role in floodplain management because of their jurisdiction over land use decisions and local zoning ordinances—deciding where and how development may occur. The 113th Congress has been engaged in some aspects of flood policy: policies affecting FEMA’s National Flood Insurance Program,¹⁶ flood project and funding provisions in H.R. 3080 and S. 601, and oversight recovery for areas recently affected by floods. Given the magnitude of the nation’s flood risk (e.g., over \$10.6 trillion in insured properties in coastal counties on the East Coast and along the Gulf of Mexico)¹⁷ and how the nation’s flood risk is increasing,¹⁸ the 113th Congress may consider additional ways to reduce flood risk, such as by improving infrastructure and protecting natural flood mitigation, removing disincentives to improved floodplain management, or promoting more pre-disaster recovery plans for highly vulnerable areas.

Funding and Authorization Priorities

Aging Infrastructure

U.S. water infrastructure is aging; the majority of the nation’s dams, locks, and levees are more than 50 years old.¹⁹ Failure of these structures could have significant effects on local communities as well as regional and national impacts. Major capital investments in these structures have been limited in recent years and repairing these facilities would cost billions of dollars.²⁰ Congressional funding has largely been at the project level and has remained essentially flat, while funding needs have increased over time. To date, no comprehensive funding solution to these issues has been enacted. Some propose funding mechanisms that might be more conducive to major capital investments in these projects, such as authorization of loan programs for some infrastructure types, or else including water resource infrastructure among the eligible recipients of funding from an infrastructure bank (such as that proposed in H.R. 402 in the 112th Congress, and H.R. 2553 in the 113th Congress). Others have proposed harnessing revenues from project beneficiaries (e.g., hydropower revenues, user fees) to fund project repairs and upgrades, or even transferring projects to nonfederal entities, such as state or local governments. Still others think the current system is adequate, but that increased investment in the form of project appropriations is warranted. In the first session of the 113th Congress, the Senate held a hearing on this topic. In the second session, legislation has been introduced that would require increased reporting by

¹⁶ CRS Report R42850, *The National Flood Insurance Program: Status and Remaining Issues for Congress*, by Rawle O. King

¹⁷ AIR Worldwide, *The Coastline at Risk: 2013 Update to the Estimated Insured Value of U.S. Coastal Properties*, Boston, MA, 2013.

¹⁸ A recent study concluded that the typical 100-year riverine and coastal flood hazard areas are expected to grow nationally by 40% to 45% by 2100. AECOM, *The Impact of Climate Change and Population Growth on the National Flood Insurance Program Through 2100*, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, June 2013.

¹⁹ For example, the majority of the Bureau of Reclamation’s facilities are more than 50 years old, and Corps infrastructure averages more than 55 years old. See CRS Report RL34466, *The Bureau of Reclamation’s Aging Infrastructure*, by Charles V. Stern.

²⁰ For example, for the Corps alone, waterway users previously estimated that needed lock repairs and upgrades total \$8 billion-\$18 billion over the next 20 years, and the Corps has stated that it will require more than \$26 billion for dam safety repairs over the next 25 years. Needed repairs to Reclamation facilities totaled \$3.2 billion in 2008.

Reclamation on its aging infrastructure backlog (S. 1800). (See also discussion below on “Changing Federal Partnerships.”)

Changing Federal Partnerships

Some have expressed frustration with the pace of authorization for federal water resource projects and this has resulted in some local sponsors pursuing projects with limited federal partnership or support, or with expectations of future federal reimbursement or credit. An example is the potential construction of Sites Reservoir in California—an off-stream water storage project associated with the federal Central Valley Project (CA). Language authorizing nonfederal construction of proposed federal projects (as long as no federal funding is used), was included in H.R. 1837 and H.R. 6247 in the 112th Congress. More recently, the FY2014 Consolidated Appropriations Act (P.L. 113-76, H.R. 3547) includes a provision authorizing the Secretary of the Interior to partner with local joint power authorities to advance authorized planning and feasibility studies, among other things, including providing grants for such purpose (Section 208). Some stakeholders also have proposed advanced funding for federal projects by nonfederal sponsors, to spur project construction; both WRDA bills, H.R. 3080 and S. 601, include related provisions. Such proposals, however, raise the question of whether federal investment is needed if local sponsors can finance the projects on their own, whether the federal government will be able to meet the expectations for reimbursement, and whether the nonfederal sponsors with available financing will determine which projects get reimbursed from limited federal water resources infrastructure funds.

Others have proposed another approach. Some stakeholders support the approach taken in S. 601 or similar proposals. Title X of S. 601, the Water Infrastructure Finance and Innovation Act (WIFIA), would authorize a five-year pilot program for loans and loan guarantees for certain flood damage reduction, public water supply, and wastewater projects. The WIFIA concept is modeled after a similar program that assists transportation projects, the Transportation Infrastructure Finance and Innovation Act, or TIFIA, program. Proponents of the WIFIA approach, including water utility organizations, cite several potential benefits.

Related activity may address federal permitting or other regulatory activities that are viewed by some as impeding such development (e.g., requirements of the National Environmental Policy Act, Endangered Species Act, Clean Water Act, and Section 10 of the Rivers and Harbors Act and related regulations).

Earmarks and Project Authorization

Water resource project funding is often a part of the debate on congressionally directed spending, or “earmarks.” Although water resource project development has historically been directed by Congress, the site-specific nature of the authorizations and appropriations process resulted in projects being subject to earmark disclosure rules and earmark moratoria beginning in the 112th Congress.²¹ Earmark moratoria appear to be altering the makeup of Corps and Reclamation appropriations in particular by reducing the congressional additions of specific projects to the

²¹ In the 112th Congress, the House Republican Conference, Senate Republican Conference, and the Senate Appropriations Committee all adopted moratoria on earmark requests that are significant to how Congress directs these activities.

budget, and by funding broad categories of activities rather than specific projects. As a result, some projects that have historically benefitted from congressional support have received less (or no) funding in recently enacted appropriations bills. In addition to funding impacts, earmark moratoria have also influenced consideration of site-specific authorizations of water resource projects. WRDAs historically have been omnibus bills that include many provisions for site-specific Corps activities. In the 113th Congress, the House and Senate enacted versions of WRDA included no site-specific authorizations, and instead authorized only certain projects which had received a Chief's Report by the Corps.

Aquatic Ecosystem Restoration

The 113th Congress may consider the status and priority of major federal efforts to restore aquatic ecosystems that have been altered or impaired by development, habitat loss, and federal water resource projects. Some of these restoration initiatives include those in the Everglades, California Bay-Delta, Great Lakes, Chesapeake Bay, Klamath Basin, and elsewhere. Congressional interest in many of these initiatives is likely to continue in the 113th Congress, which may consider a number of issues pertaining to these ecosystems. For example, Congress may consider legislation to authorize a framework for governance and a comprehensive restoration plan for the Great Lakes and might conduct oversight over the implementation of restoration efforts in the Gulf Coast region. Further, lack of congressional authorization for several new construction projects in the Everglades has caused concern that the initiative is being delayed. Congress might consider policies that would streamline authorizations to allow for more projects to be implemented. Funding for existing and new restoration initiatives is controversial and could face challenges in the 113th Congress. For example, the Consolidated Appropriations Act, 2014 (P.L. 113-76), contained provisions that would limit the number of new construction projects for ecosystem restoration by the Corps. Deliberations over FY2015 appropriations could also address ecosystem restoration initiatives in various appropriations bills.

Author Contact Information

Betsy A. Cody, Coordinator

Acting Deputy Assistant Director and
Specialist Natural Resources Policy
bcody@crs.loc.gov, 7-7229
Charles V. Stern

Specialist in Natural Resources Policy
cstern@crs.loc.gov, 7-7786

Nicole T. Carter

Specialist in Natural Resources Policy
ncarter@crs.loc.gov, 7-0854

Pervaze A. Sheikh

Specialist in Natural Resources Policy
psheikh@crs.loc.gov, 7-6070

Acknowledgments

Megan Stubbs and Dennis Shields also advised on the development of this report.