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MEMORANDUM

NATIONAL SECURITY COUNCIL

#5833

October 20, 1976

MEMORANDUM FOR: JAMES M. CANNON

FROM: Jeanne W. Davis *JWD*

SUBJECT: *JWD* S. 3825-Water Resources Development Act
of 1976

The NSC Staff concurs with OMB's memorandum of approval of the proposed enrolled bill S. 3825.

Date: October 19

Time: 945pm

FOR ACTION: NSC/S
Max Friedersdorf
George Humphreys
Bobbie Kilberg
Robert Hartmann

cc (for information): Jack Marsh
Ed Schmults
Mike Duval
Steve McConahey

FROM THE STAFF SECRETARY

*to DJS
10/20 11:22
GAM*

*J.C.
JK
JK*

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.

James M. Cannon
For the President



STATEMENT BY THE PRESIDENT

I have today 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 advance planning on an additional projects whose construction would eventually cost over \$7 Billion. It also authorizes an increase in the diversion of water from Lake Michigan at Chicago from 3200 cubic feet per second to as much as 10,000 cubic feet per second over a 5 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 given the bill my approval.

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 and 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

back-up p. 2

back-up p. 8

OK

OK

OK

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OK

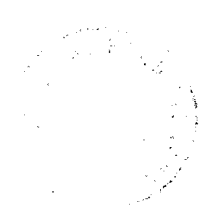
OK

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.

Though authorized by this bill, additional diversions of water from Lake Michigan -- boundary waters which we share with Canada -- 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.

*Mac County
42386*

cc *cc* *cc*



Date: October 19

Time: 945pm

FOR ACTION: NSC/S
 Max Friedersdorf
 George Humphreys
 Bobbie Kilberg
 Robert Hartmann

cc (for information): Jack Marsh
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 Mike Duval
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 Bill Seidman

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

Recommend disapproval in light of Sections 101(b) and (c) of the bill which would permit the 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 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.

Bobbie Kilberg 10/20/76

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Kilberg
 James M. Cannon
 for the President

Date: October 19

Time: 945pm

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Recommend Approval. Have received letters or calls from Jack Edwards, Tom Bewell, Bill Harsha, Ed Derwinski, Dan Rostenkowski, Tom Hagedorn, Ted Kucinich, Jennings Randolph, Dewey Bartlett, Al Quie, Lloyd Bentsen.

Mef

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James V. Cannon
 For the President



Date: October 19

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REMARKS:

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No OBJECTION
RBP



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James M. Cannon
For the President



DEPARTMENT OF THE ARMY
WASHINGTON, D.C. 20310

15 OCT 1976

Honorable James T. Lynn

Director, Office of Management and Budget

Dear Mr. Lynn:

This is in reply to your request for the views of the Department of the Army on enrolled enactment S. 3823, 94th Congress, "Authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purposes."

This act, entitled the "Water Resources Development Act of 1976", is similar to previous biennial River and Harbor and Flood Control Acts that have provided necessary authorities for the prosecution of the Civil Works program of the Army Corps of Engineers. The estimated total cost of the act is \$665 million as presented in the inclosed table.

The Department of the Army strongly recommends approval of the enrolled enactment.

Following a procedure begun in the 1974 Water Resources Development Act, the act provides authorization for Phase I advanced engineering and design studies on 37 projects at an estimated cost of \$74 million. Authorization for construction under this procedure will follow submission of Phase I reports, which will further refine the survey report studies, reflect current policies and conditions, and have the benefit of full Executive Branch review and comment.

As a corollary to the Phase I authorization concept, the act authorizes, in Section 101(c), initiation of Phase I planning whenever the Chief of Engineers transmits his recommendations for a water resources project to the Secretary of the Army for transmittal to Congress. The objective of this section is to promote efficiency, continuity and responsiveness in planning water resource projects.



The authority is limited in three ways. First, the Chief of Engineers must find that the project is without substantial controversy and justifies further investigations and transmit these findings to the public works authorization committees of Congress. Second, authority for Phase I studies for any given project expires upon enactment of the next Water Resources Development Act. Third, a total of \$4 million is authorized to carry out this section in each of the Fiscal Years 1978 and 1979. Because Congress, through the Phase I study authorization procedure initiated in 1974 and continued in this bill, has provided that decisions regarding construction authorization will be deferred in most cases until much later in the project planning continuum, the practical effect of section 101(c) will be to expedite the assembly of the detailed information necessary for the President and the Congress to make a timely and informed construction authorization decision.

While some Phase I authorizations are provided in the act for projects which have not undergone full Executive Branch review, the authorizations provide only for continuing planning, and the Department of the Army would continue to process the reports on these projects in accordance with established procedures. In addition, the Phase I reports will receive normal Administrative review prior to submitting recommendations for construction authorizations.

The act contains construction authorizations that total \$523 million. Of this amount, \$145 million is for 12 new projects. Reports on six of these have cleared Executive Branch review, and four were in late stages of review. Two projects were not based on survey reports.

The act contains authorized modifications to 30 projects that total \$345 million. The most important of these are additional authorization for the Big South Fork National River and Recreation Area (\$70.7 million), Lower Snake River Fish and Wildlife Compensation Plan (\$58.4 million), Mississippi River-Gulf Outlet Bridges (\$71.5 million), and reauthorization of the Theodore Ship Channel, Mobile, to cover increased costs and minor modifications (\$32.8 million additional).

The bill also provides \$8 million for a two-year harbor drift removal program and an additional authorization of \$25 million for the streambank erosion program authorized in the 1974 Act.

Survey and study authorizations total \$55 million. The most significant items are urgently-needed comprehensive studies

of the waterway system and hydroelectric power resources, as well as authorization of the Great River Environmental Action Team (GREAT) study on the Upper Mississippi River and additional authorization of the Great Lakes Navigation Extension Study, which would otherwise expire at the end of the year.

Significant provisions of the act are to be found in the following sections:

Section 102 authorizes a \$58 million program of fish and wildlife mitigation on the Lower Snake River. This proposal has received widespread support, particularly in regard to restoration of salmon runs in Idaho. Since the costs of the program will be assessed against four existing projects, most of its costs will be recovered through power revenues.

Section 107 provides a necessary extension of the Corps of Engineers' demonstration program to extend the navigation season on the Great Lakes and the Saint Lawrence Seaway and an increased program appropriation authorization from \$9,500,000 to \$14,968,000. The section specifies that the program's environmental and ecological investigations are to include investigations of measures to ameliorate adverse impacts upon local communities.

Section 117 authorizes the Secretary of the Army, acting through the Chief of Engineers, to study, in cooperation with interested States and Federal agencies, through the Upper Mississippi River Basin Commission, the development of a river system management plan in the format of the "Great River Study" for the Mississippi River from the mouth of the Ohio River to the head of navigation at Minneapolis, Minnesota at an estimated cost of \$9.1 million.

Section 120 authorizes the Secretary of the Army, acting through the Chief of Engineers, to contract with States and their political subdivisions to obtain increased law enforcement services at Corps outdoor recreation areas during peak visitation periods. This authority is limited to \$6 million for each of Fiscal Years 1978 and 1979 and was recommended by the Department of the Army for enactment by this Congress.

Section 133 increases from \$1 million to \$2 million the limitations on Federal costs of small flood control and navigation projects that the Department of the Army has authority to construct without specific congressional authorization. The section similarly increases our discretionary authority to construct small flood control projects to protect major disaster areas from \$2 million to \$3 million per project. This section simply raises individual project limitations on these small project authorities in recognition of inflation in construction costs.

It does not, however, authorize any increase in the existing annual limitations on overall expenditures under these authorities.

Section 134 directs the Secretary of the Army, acting through the Chief of Engineers, to establish a procedure whereby, at the request of local interests, improvements for flood control to be undertaken by local interests can be certified for possible inclusion within the scope of a potential Federal project under study for the purposes of analyzing the costs and benefits of the project and assessing the local participation in the costs of the project. This authority is to be in effect only until December 31, 1977.

Section 145 authorizes the Secretary of the Army, acting through the Chief of Engineers, upon the request of a State, to place beach-quality sand that has been dredged in constructing and maintaining navigation channels on adjacent beaches. The increased cost of such beach nourishment over the cost of alternative methods of disposing of the dredged sand is to be paid by non-Federal interests. This would confirm in law what has been an established practice of the Corps of Engineers.

Section 150 authorizes the Secretary of the Army, acting through the Chief of Engineers, to plan and establish wetland areas in connection with the dredging required for authorized water resources development projects within the Corps of Engineers' jurisdiction. The increased cost of establishing such a wetland area over the cost that would be required for alternative dredged material disposal for the project concerned is not to exceed \$400,000 and must be justifiable from the environmental, economic, and social benefits that will result. This provision recognizes there are many instances when dredged material can be a valuable resource for creating additional wetlands.

Section 145 and 150 will be conducted using standard project procedures, including review under the National Environmental Policy Act of 1969 and Section 404 of the Federal Water Pollution Control Act.

Section 154 provides that a Corps of Engineers permit is not required under the provisions of the Act of March 3, 1899 for placement of wharves and piers in any body of water of the United States located entirely within one State which is, or could be, considered to be a navigable water of the United States solely on the basis of its historical use to transport interstate waterborne commerce. The Corps regulates the conduct

of work and placement of structures in navigable waters of the United States under the 1899 Act. Qualifying waters for this exercise of Corps jurisdiction are those which have been used, are being used, or can be used for purposes of interstate commerce. The Corps also regulates the disposal of dredged or fill material in all waters of the United States under the provisions of Section 404 of the Federal Water Pollution Control Act.

The most noteworthy aspect of section 154 is the extremely limited extent of the exception to Federal regulatory jurisdiction that it provides. It does not extend to the regulatory authorities of any Federal agency other than the Corps nor does it extend to the Corps authority under the Federal Water Pollution Act or its authority under the 1899 Act to regulate work and structures in waters that are or can be used in interstate commerce. Finally, it does not extend to the Corps authority under the 1899 Act to regulate any work or structures, other than wharves or piers, in or affecting waters which are considered navigable solely on the basis of historical use.

Section 158 directs the Corps of Engineers to conduct a three-year study and report to Congress on the waterway improvements under its jurisdiction with an appraisal of additional improvements necessary to optimize the system. Information from the Study is to be available to the National Transportation Policy Study Commission.

Section 162 also provides another limited exception to the extent of the Corps of Engineers regulatory jurisdiction over work in navigable waters of the United States under the 1899 Act by legislatively declaring three otherwise qualifying lakes, under the existing legal tests of what constitutes a navigable water of the United States, to be excluded from the Corps of Engineers jurisdiction for purposes of Section 10 of the 1899 Act--Lake Oswego, Oregon; Lake Coeur d'Alene, Idaho; and Lake George, New York. The Department of the Army has consistently opposed nonnavigability declarations of this nature as providing an undesirable precedent for unjustified exceptions of certain water areas from the general applicability of Federal law.

Section 167 directs the Secretary of the Army, acting through the Chief of Engineers, to conduct a three-year study and report to Congress on the hydroelectric power resources at water resources development projects under its jurisdiction. Seven million

dollars is to be available for this study. The section also authorizes the Corps to use up to \$5 million per year for Fiscal Years 1978 and 1979 to undertake feasibility studies of specific hydroelectric power installations that are identified by the study as having high potential for meeting regional power needs at previously authorized projects. Enactment of this provision would obviate the Department of the Army's proposal for such legislation that is presently under review within the Administration.

Sections 178 and 179 would respectively eliminate the Federal navigation servitude over designated areas of the Hudson and Hackensack Rivers in Hudson County, New Jersey, subject to separate determinations by the Secretary of the Army, acting through the Chief of Engineers, that the projects to be erected at such areas are in the public interest. These determinations will be made in accordance with the requirements of the Act of March 3, 1899 and Section 404 of the Federal Water Pollution Control Act.

Section 185 directs the Secretary of the Army, acting through the Chief of Engineers, to make a maximum effort to assure full participation of members of minority groups in the construction of the Tennessee-Tombigbee Waterway project. The Chief of Engineers is to report annually to Congress on the implementation of this directive together with recommendations for any legislation to assure more equitable participation of members of minority groups in this project or others under the direction of the Secretary.

Section 186 modifies the Mississippi River-Gulf Outlet project to make bridge construction a Federal expense, at an estimated cost of \$71.5 million. The act would require coordination with the Department of Transportation's program under Section 132 of the 1976 Federal Highway Act. The provisions are consistent with Corps of Engineers testimony cleared by the Administration.

Section 193 directs the Department of Commerce, in cooperation with the Department of the Army and other agencies, to study the depletion of natural resources in the High Plains Region of Colorado, Kansas, New Mexico, Oklahoma, Texas, and Nebraska and the declining water resources of the Ogallala aquifer to develop a plan to increase water supplies in the area, and to submit a report to Congress by July 1, 1980. The sum of \$6 million is authorized to be appropriated to carry out the study.

Section 202 authorizes the Secretary of the Army, acting through the Chief of Engineers, to undertake a limited program of projects for collection and removal of drift and debris from publicly maintained commercial boat harbors and the land and water areas immediately adjacent thereto. The section provides that local sponsors of such projects are to recover the full cost of drift or debris removal from any identified owner of piers or other potential sources of drift or debris or to repair such sources so that they no longer create a potential source of drift or debris. The authority provided by this section would be in addition to the Department of the Army's authorities to effect the removal of debris under existing provisions of law such as the Act of March 3, 1899.

Section 203, the "Alaska Hydroelectric Power Development Act", establishes a fund with an initial deposit of \$25 million. The fund is to be available for use by the Secretary of the Army to defray the costs of advanced engineering and design and construction of any project in Alaska that is being studied by the Corps of Engineers or is authorized for Corps construction that has 90 percent or more of its benefits attributable to hydroelectric power generation. Use of the fund for Phase I would require an agreement by a non-Federal public authority to repay the costs of such work if the resultant report to Congress is favorable. Use of the fund for work beyond the Phase I stages, including construction, would require an agreement by a non-Federal public authority to pay the full anticipated costs of constructing the project as they are incurred and to assume ownership of the project at its completion.

The section anticipates the Federal government will assume all increase project costs over those fixed in the agreement if they are occasioned by acts of God, failure by the Corps to adhere to agreed work schedule, or a failure of design. Payment of such increased costs are, however, to be subject to appropriations acts. Most importantly, prior to any construction under this section, the agreement must be approved by Congress.

The complex provisions of section 203 have present applicability only to the Susitna project authorized for Phase I study under section 60 of this act.

Perhaps the most controversial provision of the act is the Great Lakes Diversion Program authorized in section 166. This section authorizes the Secretary of the Army, acting through the Chief of Engineers, to develop a five-year

demonstration program to increase temporarily the controllable diversion of water from Lake Michigan by various amounts calculated to raise the average annual diversion from the present limit of 3,200 cubic feet per second up to 10,000 cubic feet per second. This congressionally authorized increased diversion over that presently established by Supreme Court decree is intended to alleviate shoreline damage on the Great Lakes due to high water levels and to improve the water quality of the Illinois Waterway. It is to be accomplished incrementally and controlled to prevent adverse effects on the Illinois Waterway or the Mississippi River or on water levels necessary for navigational requirements of the Saint Lawrence Seaway in its entirety. Actual implementation of the program would be carried out by the State of Illinois and the Metropolitan Sanitary District of Greater Chicago under the supervision of the Chief of Engineers.

The Department of the Army is aware that there is opposition to any increase in the Chicago diversion due to unresolved issues of possible flooding and adverse environmental effects on the downstream Illinois Waterway. Moreover, this Department has been informed by the Department of State that the Government of Canada opposes unilateral increases in diversions from the Great Lakes system. In this instance, Canada is particularly apprehensive of hydroelectric power losses that it foresees at Niagara, Cornwall and on the Canadian section of the Saint Lawrence River.

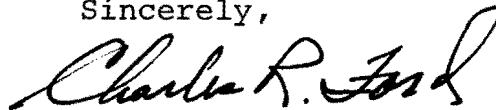
In considering these important areas of substantial opposition, it should be noted that the Department of the Army intends that the demonstration program authorized by section 166 will be established and approved for implementation only after full consultation with affected Federal, State, and local interests to accommodate their views and adopt their appropriate recommendations for this program and after compliance with the requirements of the National Environmental Policy Act of 1969. Moreover, the Department of the Army intends that this demonstration program will be developed to the maximum extent possible within the context of a Great Lakes Basin approach to consumptive uses and diversions and will be approved for implementation only after consultation with the Department of State.

Accordingly, the Department of the Army believes that inclusion of this demonstration program should not, of itself, constitute grounds for the President to withhold approval of the enrolled enactment.

It is regrettable that the act does not authorize construction of the necessary replacement project for Locks and Dam 26 on the Mississippi River at Alton, Illinois, recommended by the President or provide appropriate clarification of this Department's general discretionary authority to construct major navigational replacement facilities. We anticipate, however, that these items will be acted on early in the next Congress.

Approval of the enrolled enactment by the President would permit the Department of the Army to recommend funds be included in the 1978 budget for the Civil Works Program for some high priority survey, planning, and possibly construction starts, including urgently needed comprehensive studies of the waterway navigation system and hydroelectric power resources. I therefore strongly recommend that the President give the measure his approval.

Sincerely,

A handwritten signature in cursive script, reading "Charles R. Ford". The signature is written in black ink and is positioned below the word "Sincerely,".

Incl
as

Charles R. Ford
Acting Assistant Secretary of the Army
(Civil Works)

WATER RESOURCES DEVELOPMENT ACT OF 1976
SUMMARY OF MONETARY IMPLICATIONS OF AUTHORIZATIONS BY REGION AND ACTIVITY CATEGORY
(Dollar Amounts in Thousands)

| <u>Region</u> | <u>A C T I V I T Y C A T E G O R Y</u> | | | | <u>Total</u> | <u>Regional Distribution (Percent)</u> |
|------------------------------------|--|---|---------------------|------------------|---------------|--|
| | <u>Surveys and Studies</u> | <u>Phase I Planning Studies</u> | <u>Construction</u> | <u>O & M</u> | | |
| New England | 0 | 250 | 0 | 0 | 250 | ** |
| Middle Atlantic | 710 | 18,468 | 68,943 | 0 | 88,121 | 13 |
| South Atlantic-Gulf | 0 | 800 | 51,375 | 0 | 52,175 | 8 |
| Great Lakes | 10,468 | 14,470 | 0 | 0 | 24,938 | 4 |
| Ohio | 0 | 3,900 | 5,000 | 0 | 8,900 | 1 |
| Tennessee | 0 | 0 | 70,672 | 0 | 70,672 | 11 |
| Upper Mississippi | 9,100 | 400 | 33,640 | 0 | 43,140 | 6 |
| Lower Mississippi | 0 | 1,150 | 93,183 | * | 94,333 | 14 |
| Souris-Red-Rainy | 0 | 1,500 | 250 | 0 | 1,750 | ** |
| Missouri | 0 | 125 | 1,630 | 0 | 1,755 | ** |
| Arkansas-White-Red | 6,250 | 300 | 15,031 | * | 21,581 | 3 |
| Texas-Gulf | 0 | 650 | 32,491 | 0 | 33,141 | 5 |
| Rio Grande | 0 | 1,500 | 9,700 | 0 | 11,200 | 2 |
| Upper Colorado | 0 | 0 | 0 | 0 | 0 | ** |
| Lower Colorado | 2,000 | 0 | 0 | 0 | 2,000 | ** |
| Great Basin | 0 | 0 | 0 | 0 | 0 | ** |
| Columbia-North Pacific | 500 | 2,100 | 83,530 | 2,000 | 88,130 | 13 |
| California-South Pacific | 2,250 | 2,660 | 18,620 | 0 | 23,530 | 4 |
| Alaska | 100 | 25,000 | 5,641 | * | 30,741 | 5 |
| Hawaii and Guam | 1,800 | 0 | 0 | 0 | 1,800 | ** |
| Puerto Rico | 0 | 300 | 0 | 0 | 300 | ** |
| Nationwide | <u>22,000</u> | <u>0</u> | <u>33,000</u> | <u>12,000</u> | <u>67,000</u> | <u>10</u> |
| Total | 55,178 | 73,573 | 522,706 | 14,000 | 665,457 | 100 |

* Assumption of O&M authorized on three projects at an estimated cost of \$321 thousand per year.

** Three-tenths of one percent or less.



ASSISTANT SECRETARY

OFFICE OF THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

OCT 14

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

Dear Mr. Lynn:

This is in response to your request for departmental comments on S. 3823, an enrolled bill

"Authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purposes."

We have enclosed comments on Sections 107, 117, 119, 125, 140, 158, 162, 164, 166, 180 and 186 which are of concern to this Department. We defer to other Federal agencies as to other sections in S. 3823, but based on our comments, we have no objection to the President signing the enrolled bill.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert Henri Binder", written in a cursive style.

Robert Henri Binder
Assistant Secretary for Policy,
Plans and International Affairs

Enclosures

Section 107

This section of the enrolled bill amends Section 107 of the River and Harbor Act of 1970 by continuing the Navigation Season Extension Demonstration Program for the Great Lakes-Saint Lawrence Seaway until September 30, 1979, and authorizes an additional \$6,468 million to be spent on the program.

This is a multi-agency program in which both the Saint Lawrence Seaway Development Corporation and the United States Coast Guard are participants. The program to date has concentrated on the upper Great Lakes. Under the new authorization, particular emphasis will be given to addressing the constraints to winter navigation on the Saint Lawrence River and certain environmental issues including the impact of an extended season on local communities. We, therefore, support this section of the enrolled bill.

Section 117

This section of the enrolled bill authorizes an investigation and study by the Secretary of the Army, acting through the Chief of Engineers, of a river system management plan in cooperation with interested States and Federal agencies through the Upper Mississippi River Basin Commission. The plan would cover the Mississippi River from the mouth of the Ohio River to the head of navigation at Minneapolis, incorporating total river resource requirements including, but not limited to, navigation, the effects of increased barge traffic, fish and wildlife, recreation, watershed management and water quality.

It should be noted that the area to be covered by the investigation and study extends beyond the bounds of what is considered to be the Upper Mississippi River. This may conflict with future plans that may be proposed by other River Basin Commissions. Also, the Department would expect to be one of the primary Federal agencies that would cooperate in this investigation and study, although it is not clear from the language of the enrolled bill whether this cooperation would be with the Corps of Engineers or the Upper Mississippi River Basin Commission.

Section 119

This section of the enrolled bill amends Section 4 of the Act of June 21, 1940, by giving the Secretary of Transportation the authority to prescribe a reasonable time for submission of a bridge alteration plan in lieu of the statutory 90-day requirement. This section is identical to legislation proposed by the Department to the 94th Congress and on which we testified favorably on August 31, 1976.

Under present law the Secretary is empowered to issue an order requiring the alteration of any bridge which he believes presents an unreasonable obstruction to navigation. Section 4 of the Act of June 21, 1940, as amended, (54 Stat. 498, 33 U.S.C. 514) requires the owner of such bridge to submit a detailed plan for alteration within 90 days of the receipt of the order. A failure to submit a plan within the required time could result in a misdemeanor conviction with a maximum penalty of \$5,000. Experience has shown that 90 days is insufficient time for an owner to retain the necessary consultants and prepare the required plans. Therefore, we have routinely granted extensions and have not invoked the criminal provisions for failure to meet the 90-day requirement.

Section 125

This section of the enrolled bill gives Congressional consent for building the structures necessary for the construction of three specific highways in the State of Louisiana. Section 9 of the Act of March 3, 1899, (33 U.S.C. 401) requires the consent of Congress before any causeway may be built in any navigable water of the United States. We have no objection to this section of the enrolled bill.

Although the highways involved will require a number of causeways, as well as bridges, the interference with navigation will be minimal since the waters affected consist mainly of marshlands useable only by small shallow-draft vessels. Furthermore, before any construction can commence, a permit must be obtained from this Department. A permit will not be issued if the construction will cause undue interference with navigation or have a significant adverse effect on the environment.

Section 140

This section of the enrolled bill authorizes the Corps of Engineers to include regional economic development benefits in the economic analysis of any navigation project which is under preparation at the time of enactment.

If this provision were later made to apply to other projects, we believe that it could lead to a significant change from existing policy under which only net national economic benefits are employed in the formulation of the benefit/cost ratio for a project. Through such an addition of regional benefits to national economic development benefits, a submarginal navigation project could inappropriately receive a more favorable benefit/cost ratio than would otherwise be warranted.

Section 158

This section of the enrolled bill requires the Secretary of the Army, acting through the Chief of Engineers, to undertake a comprehensive study and report on the system of waterway improvements under his jurisdiction. The study shall include (1) a review of the existing system and its capability for meeting national needs including emergency and defense requirements, and (2) an appraisal of additional improvements necessary to optimize the system and its intermodal characteristics. A report must be submitted to Congress within three years after funds are first appropriated and made available for the study. Upon request, information and other data developed as a result of the study is to be made available to the National Transportation Policy Study Commission.

The Department supports this provision; however, we would like to point out that the National Transportation Policy Study Commission is required to submit its final report to the Congress no later than December 31, 1978, which is well before the time scheduled for completion of the Chief of Engineers report.

Section 162

This section of the enrolled bill declares Lake Oswego, Oregon, Lake Coeur d'Alene, Idaho, and Lake George, New York, as non-navigable for purposes of Section 10 of the Act of March 3, 1899 (30 Stat. 1151). Section 10 of the Act of March 3, 1899, prohibits construction of piers, wharves and other similar structures into any navigable water of the United States unless authorized by the Secretary of the Army.

We normally object to piecemeal divesting of Federal jurisdiction over waters which are otherwise considered to be navigable waters of the United States. However, since the structures exempted by this section of the enrolled bill are not ones which would substantially interfere with actual navigation, we defer in this case to the Corps of Engineers, who have the primary responsibility.

We also note that the enrolled bill erroneously implies that Section 10 of the Act of March 3, 1899, is set forth in 33 U.S.C. 401. Section 10 is, in fact, set forth in 33 U.S.C. 403. Since title 33 of the United States Code has not been enacted into positive law, however, this error has no substantive impact.

Section 164

This section of the enrolled bill authorizes \$21,000,000 for the Chief of Engineers to construct a four-lane high-level highway bridge connecting the cities of Lewiston, Idaho, and Clarkston, Washington, as part of the Snake River project.

The justification for this proposal appears to rest on the raising of the water level in the Snake River with the completion of the Lower Granite lock and dam project, a responsibility of the Army Corps of Engineers. Under these circumstances, we have no objection to this Corps of Engineers project modification.

Section 166 and Section 180

These two sections of the enrolled bill appear to be attempts to alleviate the high water levels presently being experienced throughout the Great Lakes.

Section 166 authorizes a five-year demonstration program to test the practicability of increasing the average annual diversion from Lake Michigan through the Illinois Waterway from 3,200 cubic feet per second to as much as 10,000 cubic feet per second. Since the authorization specifically states that no diversions of water other than necessary to service navigation on the Illinois Waterway are to be made if they would adversely affect navigation anywhere on the Great Lakes-Saint Lawrence River system, we have no objection to such a demonstration program.

Section 180, the "Lake Ontario Protection Act of 1976," directs the Secretary of the Army, acting through the Chief of Engineers, to develop a plan for shoreline protection and beach erosion along Lake Ontario. The Department is concerned that the requirements of navigation in the Saint Lawrence River be fully considered and protected in any plan of regulation which might be developed but does not object to the Corps of Engineers proceeding to develop such a plan.

Section 186

This section of the enrolled bill authorizes, at a cost not to exceed \$71,500,000, the construction of bridges made necessary by the building of the Mississippi River-Gulf outlet channel, if the Secretary of the Army after consultation with the Secretary of Transportation, determines that the cost of such construction will not be assumed by the Federal Government under 23 U.S.C. 156. Section 156 of title 23 provides general authority to the Secretary of Transportation to construct highways and bridges crossing Federal projects where there has been a substantial change in the requirements and costs of such construction since the project was authorized which would work an undue hardship upon any one State.

Under the provisions of the enrolled bill, there is no undue hardship to any one State and therefore, our authority under 23 U.S.C. 156 would be preserved for proper hardship occasions. Moreover, this one project would substantially exhaust the available sums under 23 U.S.C. 156 so that even if the undue hardship conditions had been met, the Department could not view an assumption of the construction costs for the bridges with favor. We, therefore, have no objection to this new Corps of Engineers construction authority.

OCT 8 1976



GENERAL COUNSEL OF THE
UNITED STATES DEPARTMENT OF COMMERCE
Washington, D.C. 20230

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

Attention: Assistant Director for Legislative Reference

Dear Mr. Lynn:

This is in response to your request for the views of this Department on S. 3823, an enrolled enactment, to be cited as the Water Resources Development Act of 1976. We have reviewed the bill as contained in the conference report, H. Rept. No. 94-1755.

This omnibus public works bill would authorize the Secretary of the Army, acting through the Chief of Engineers, to design, modify, or complete the construction of a significant number of flood control, navigation, water supply, hydroelectric power, erosion control, and recreation projects on rivers and harbors throughout the United States.

In addition, the Secretary of the Army, through the Corps of Engineers, would be authorized to undertake a variety of studies and demonstration programs, including: (1) the development of a comprehensive river system management plan for the Mississippi River, from the mouth of the Ohio River to Minneapolis; (2) a study and report on the system of waterway improvements under his jurisdiction, including an evaluation of the system's capability for meeting national emergency and defense requirements; (3) a 5-year demonstration program to temporarily increase the diversion of water from Lake Michigan in order to improve the water quality of the Illinois Waterway and to alleviate shoreline water damage to the Great Lakes during periods of high water levels; and, (4) a \$7 million study of the most efficient methods of utilizing the hydroelectric power resources at water resource development projects under his jurisdiction, and an additional \$5 million in each of fiscal years 1978 and 1979 to undertake feasibility studies of specific hydroelectric power installations identified as having high potential for contributing toward meeting regional power needs.



S. 3823 would also authorize the Secretary of the Army to plan and establish wetland areas as part of an authorized water resources development project under his jurisdiction. All costs of establishing such an area would be borne by the United States.

Further, S. 3823 would authorize the establishment in the U. S. Treasury of a \$25 million Alaska Hydroelectric Power Development Fund which would be available for use by the Secretary of the Army for the design and construction of hydroelectric power generating facilities in Alaska.

Section 193 of this bill would direct the Secretary of Commerce, acting through the Economic Development Administration, in cooperation with the Secretary of the Army and appropriate Federal, state, and local agencies, and the private sector, to study the depletion of the natural resources of those regions of Colorado, Kansas, New Mexico, Oklahoma, Texas, and Nebraska which are presently using the declining water resources of the Ogallala aquifer. The Secretary of Commerce would be authorized to develop plans to increase water supplies in the area, which would take into consideration the feasibility of transferring water from adjacent areas, and would be required to report to the Congress on an interim basis by October 1, 1978 and to make a final report by July 1, 1980. Six million dollars would be authorized to be appropriated for these purposes.

The Department of Commerce would have no objection to approval by the President of S. 3823.

This Department is particularly interested in the special studies authorized by S. 3823, some of which are outlined above. For example, the Department, through the Maritime Administration, would like to cooperate with the Corps of Engineers in its Mississippi River study.

We also plan, in the event of the President's approval of this bill, to coordinate our efforts under section 193 with the Water Resources Council.

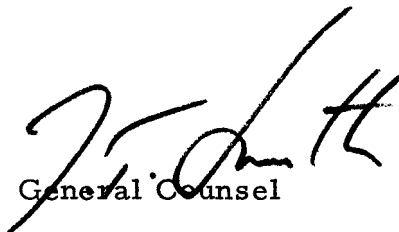
We should also like to draw your attention to section 147 of the bill which authorizes the Corps of Engineers to conduct hydrographic surveys of the Columbia River from Richland, Washington, to Grand Coulee Dam for the purpose of identifying navigational hazards and preparing maps of the river channel. This authority would overlap the existing responsibility of the National Ocean Survey (NOS) in this

area. Although NOS has already issued maps of the Columbia River above and below the section between Richland and Grand Coulee Dam, we have not mapped the extant area and have no plans to do so in 1977. However, we would recommend, in order to promote efficiency and encourage safe navigation, that any funds made available for this purpose be provided to NOS so that all maps of the River will be prepared by the same agency.

Finally, we suggest that the Corps of Engineers be encouraged to coordinate any planning for shoreline protection and beach erosion control along Lake Ontario, which it might carry out pursuant to section 180 of the bill, with appropriate authorities in New York State who have responsibility for developing and administering its Coastal Zone Management Plan.

With respect to section 193, enactment of this legislation would involve additional expenditures by this Department, the amount of which would depend upon the appropriations made to the Department pursuant to the authorization outlined above.

Sincerely,



General Counsel



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

OCT 14 1976

Dear Mr. Lynn:

This responds to your request for the views of this Department on enrolled bill, S. 3823, "Authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purposes."

Although we have serious concerns with certain provisions of enrolled bill S. 3823, we would not object to Presidential approval.

Enrolled bill S. 3823, the Water Resources Development Act of 1976, would authorize and direct the Secretary of the Army, acting through the Chief of Engineers, to undertake the phase I design memorandum stage of certain water resources development projects. It would also authorize a nationwide study of the hydroelectric potential of Corp's projects and of the removal and disposal of debris of obsolete World War II building remains on two Alaskan Islands. Section 201 of enrolled bill S. 3823 would make certain project costs for the Snettisham Hydroelectric Project Alaska nonreimbursable and also revise certain repayment criteria. Section 202 would give the Corps of Engineers new authority over debris on publicly maintained commercial boat harbors and the land and water areas immediately adjacent; and section 203 would provide for non-Federal financing of Alaska projects constructed by the Corps of Engineers, Federal guarantees as to the schedule and overall costs of the project, and conveyance of completed projects to non-Federal entities. Funds authorized under this bill would not be available for expenditure prior to fiscal year 1978.

Enrolled bill S. 3823 would authorize many Corps' projects which do not appear to affect this Department's responsibilities significantly. Several provisions, however, would affect Departmental programs. We have serious concern regarding those provisions and offer the following comments:



1. Section 160 - Susitna, Phase I Design Authorization.

Section 160 of enrolled bill S. 3823 would authorize phase I design for the Susitna (Alaska) project, to take effect "upon transmittal to the Secretary of the Army by the Chief of Engineers and notification to Congress of the approval of the Chief of Engineers."

Departmental responsibilities involved in the phase I work for the Susitna project include transmission and marketing of power by the Alaska Power Administration under section 5 of the 1944 Flood Control Act (including detailed route studies and designs for major transmission systems to deliver project power as well as power market analyses critical to the design, timing, and financial viability of the project) and related environmental and resource analyses by other Department Bureaus. Tradition, expertise, and legal responsibility make this work an Interior area of responsibility, considerably beyond the normal scope of work performed by the Corps of Engineers. Indeed, Congressional oversight for these functions comes from the Interior Committees. Should the President sign this enrolled bill, we would expect proper recognition of these responsibilities to be acknowledged in its administration.

2. Section 167 - Study of Hydroelectric Power Resources of Water Resources Development Projects under Jurisdiction of the Secretary of the Army.

This section directs a very broad study of hydroelectric resources and includes many aspects of direct interest to the Interior Department. Much of the study would be directly related to power marketing interests. This could easily lead to duplication of hydroelectric inventory and project studies conducted by various Departmental bureaus, including the Alaska Power Administration, Bonneville Power Administration, and the Bureau of Reclamation. Coordination with those Bureaus will be necessary.

3. Section 193 - Study of the High Plains Region.

The study of the High Plains Region under section 193, to some extent, duplicates our authorized Llano Estacado Water Management Study. Again, coordination with the Regional Director of the Bureau of Reclamation in Amarillo, Texas, will be necessary in order to avoid duplicative efforts.

4. Section 201 - Snettisham Project

This section contains two major provisions. One would make the costs of replacing and relocating the original Salisbury Ridge section of the Snettisham Project transmission line nonreimbursable; and the second would alter the criteria for repayment of reimbursable costs for the Crater-Long Lakes division of the Snettisham project.

In a formal report to the Senate Committee on Public Works, dated June 17, 1976, the Department opposed enactment of each of these provisions introduced at that time as S. 1366 and S. 944.

With regard to replacement and relocation of the Salisbury Ridge transmission line, the Snettisham Act of October 1962 (76 Stat. 1173, 1174) requires that all costs associated with the project be reimbursable. Indeed costs allocated to the basic function of power facilities, including modification or replacement as a result of design inadequacies, have historically and uniformly been reimbursable. We do not believe that the circumstances presented in this instance are so unique or the costs so great as to justify an unprecedented Federal exception. Making such an exception could confuse established policy for most major water projects. Even with the cost of replacement and relocation of the 138-kilovolt line included in the rate base, the Snettisham Project represents a substantial economic benefit for the power users.

Our latest estimates of the costs that would be nonreimbursable under this provision is \$11.3 million.

With regard to the restructure of the repayment provisions for the Crater-Long Lakes division of the Snettisham project, the present approved rate for Snettisham Project repayment is 15.6 mills per kilowatt-hour with repayment 50 years after completion of the Crater Lake stage. This provision would apply a 60-year repayment term. A 50-year repayment period for hydroelectric facilities is normal. In the case of a staged project like Snettisham, the 50-year criteria is applied to each stage.

This provision would also require small payments on the initial investment but defer all interest expense for the first 10 years. Recent advice from the Corps of Engineers indicates the investment for the Long Lake stage (including interest during construction) will be approximately \$90 million. The amount of deferred interest would be about \$2.7 million in the first year. The 10 year accumulated deficit in interest under the bill would exceed \$20 million exclusive of the interest costs of financing the deficit.

Rough studies by the Alaska Power Administration indicate firm power rates under this provision would average approximately 11.6 mills per kilowatt-hour over the first 10 years and then 25.3 mills per kilowatt-hour for the next 50 years, compared with the estimated average rate of about 23 mills projected under current repayment procedures. Our studies assume the annual OM & R costs are repaid each year.

This proposed modification would result in future retail power consumers subsidizing the present users. The original Snettisham Act requires the marketing agency to dispose of the Snettisham energy at the lowest possible rates consistent with sound business principles. The proposal to make only a token payment during the first 10 years will not result in the lowest possible rate over the period of repayment. We do not consider the proposed repayment structure, which includes deferring interest payments on the debt, to be desirable practice under the circumstances of this project.

The present wholesale rate is competitive with alternative sources of power in the area. The required rate following the tenth year of the proposed repayment plan might not be competitive.

5. Section 203 - Alaska Hydroelectric Power Development Act

This section would provide for non-Federal financing of Alaska projects constructed by the Corps of Engineers, Federal guarantees as to the schedule and overall cost of the project, and conveyance of the completed project to non-Federal entities for operation.

The authorization to proceed with the phase I stage is a blanket authorization, subject only to appropriate agreements between the Chief of Engineers and the local entities involved. There is no vehicle for coordination with affected Federal agencies. Since Federal land holdings in Alaska are considerable and since Departmental areas of responsibility involved in the phase I work include transmission and marketing of power under Section 5 of the 1944 Flood Control Act, we believe such administrative procedures assuring that controversial matters are aired in advance are needed. Interior programs impacted by the project would include: Alaska Power Administration (all power market and transmission study work); Fish and Wildlife Service (Fish and Wildlife Coordination Act, rare and endangered species); Bureau of Outdoor Recreation (includes wild and scenic rivers); the land management functions of BLM; National Park Service (impact on Mt. McKinley Park, archeological and historic resources); and Bureau of Mines (mineral resources). These programs involve decision on benefits and mitigation and are directly involved in determination of project benefits and cost allocations. We expect these agencies to be directly involved during the phase I stage.

It is not clear whether separate legislation authorizing construction of each project is needed prior to beginning such construction, or

whether subsection g(1) requiring submission of agreements to the Committees of Congress specified is intended to replace that legislation. If the latter is the case, the legislation is highly inappropriate and unprecedented.

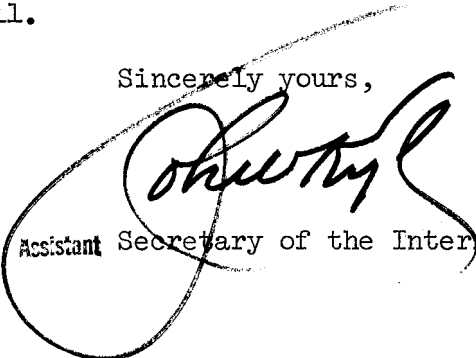
Subsection 203(h) authorizes the Secretary of the Army to convey all title, rights, and interests of the United States to any project and its lands and water areas to the non-Federal public authorities which have agreed to assume ownership upon full payment by such authorities. Again, the Federal land managing agencies have been left out of the process with respect to coordination. Management of the project area would not be subject to any Federal guidelines or policies and thus would not have to be consistent with management of adjacent Federal lands. Further, it appears that the entire project would be turned over to the local entities in fee. Certainly to the extent that Federal lands administered by the Secretary of the Interior may be involved, there should be an opportunity to make use of the lands for some other public purpose if and when the project is abandoned or removed. This would not be possible if the lands were transferred out of Federal ownership rather than withdrawn for project use.

Subsection 203(h) is not completely clear with respect to what lands would be available. We assume that no Federal land would be available without legislation or without consent of the administering agency and transfer to the Corps through normal procedures. If this is not the case, however, then we strongly object to this legislation.

General

Enrolled bill S. 3823 contains a great many provisions, some of which could significantly affect the programs of this Department. With proper administrative planning and coordination of the various interested agencies at the field level, wasteful conflicts and duplication and potential adverse impacts should be minimized. With this understanding, we would not object to Presidential approval of the enrolled bill.

Sincerely yours,



Assistant Secretary of the Interior

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

FEDERAL POWER COMMISSION
WASHINGTON, D.C. 20426

ENROLLED BILL S. 3823 - 94th Congress
The Water Resources Development Act of 1976

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

OCT 19 1976

Attention: Miss Martha Ramsey
Legislative Reference Division
Room 7201
New Executive Office Building

Dear Mr. Lynn:

This is in response to Mr. Frey's request of October 13, 1976, for the Commission's views on 3823, "The Water Resources Development Act of 1976." Of particular interest to the Commission are provisions setting up a hydroelectric development fund to help finance projects in Alaska, a provision for a Corps of Engineers' study on hydroelectric development and a provision setting up a corps of Engineers program to divert water from Lake Michigan down the Illinois waterway at Chicago.

Section 203 sets up a hydroelectric development fund to finance projects in the state of Alaska of which 90 percent or more of the benefits are attributable to hydroelectric power generation. Section 166 authorizes a five-year test program to determine the practicality of increasing the average annual diversion of water from Lake Michigan. Section 167 establishes a Corps of Engineers study of methods of utilizing hydroelectric power resources at water resource development projects under the jurisdiction of the Secretary of the Army.

The Commission generally has no objection to the approval of S. 3823. However, we would like to point out certain concerns we have about the bill, notably in Sections 203 and 166. First, Section 203 of the bill is not clear as to the applicability of certain provisions of the Federal Power Act. Section 203(g)(1) provides that prior to submittal



to Congress for approval, an agreement between the Secretary of the Army and the non-Federal entity must provide for an initial determination of feasibility and compliance with the law. It appears that this provision leaves the requirements of the Federal Power Act unaffected. If this is so, it is uncertain whether the agreement with the Secretary is to be filed after an application for a license under section 4(e) of the Federal Power Act is filed with Commission and further, whether the Secretary of the Army shall await the final decision of the Commission before proceeding with the project. Inasmuch as construction of such projects would be pursuant to Congressional authorization and the project would be operational at the time of licensing, a shortened or automatic licensing procedure could be directed by Congress as one solution to this problem. In lieu of this, the Corps of Engineers might consider rule-making and a cooperative FPC-Corps of Engineers agreement to address this issue.

Secondly, the proposed diversion of Lake Michigan waters under section 166 will have an adverse effect on power generation at the United States and Canadian power plants on the St. Lawrence River at the Outlet of Lake Ontario and the power plants of both countries at Niagara Falls. There will be a similar effect on the Canadian plants on the St. Lawrence River at Montreal. The Federal Power Commission has issued licenses to the Power Authority of the State of New York for the St. Lawrence Project (FPC Project No. 2000) and the Niagara Project (FPC Project No. 2216).

Since the combined United States and Canadian plants on the St. Lawrence at Massena, New York, have the capability of using the entire flow of the river for power generation up to 325,000 cfs and spill water infrequently, the plants of both countries can suffer a definite loss.

It is not possible at this time to forecast the specific power losses as a result of the increased diversions. However, any additional diversion can be expected to result in losses in generation at the plants at the outlet of Lake Ontario, perhaps 95 percent of the time, and every cubic foot per second diverted could result in a loss of 6 kW of generation at the combined United States-Canadian plants.

Honorable James T. Lynn

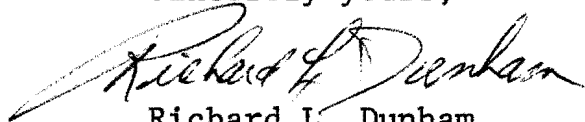
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Losses at Niagara are much more difficult to estimate because power plants at Niagara are not capable of using as great a percentage of total flow as the St. Lawrence plants and some of the increased diversion at Chicago will only reduce flows over the falls in excess of the treaty minimums. However, each cubic foot per second through the Niagara plants generates 24 kW.

We have been advised that the Power Authority of the State of New York alleges a loss of \$10 to \$20 million a year at its Niagara and St. Lawrence projects. On this basis, the losses to the Canadian power plants would be at least as high. Since the bill authorizes a test program with gradually increasing diversions involving considerable loss, the Federal Power Commission desires that the diversions be made in consultation with the Commission and project licensee to ensure that the ultimate impact on power generation is appropriately considered in the final evaluation and report to the Congress at the end of the five-year water diversion study and demonstration program authorized by S. 3823.

The Commission ~~does~~ not object to approval of the enrolled bill S. 3823.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Richard L. Dunham".

Richard L. Dunham
Chairman

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION
WASHINGTON, DC 20405



October 15, 1976

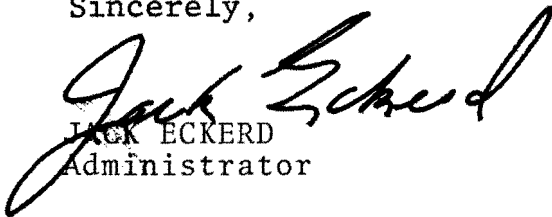
Honorable James T. Lynn
Director, Office of
Management and Budget
Washington, DC 20503

Dear Mr. Lynn:

By letter of October 13, 1976, you requested the views of the General Services Administration (GSA) on enrolled bill S. 3823, "Authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purposes."

GSA has completed its review of this bill and offers no objection to presidential approval.

Sincerely,


JACK ECKERD
Administrator



THE GENERAL COUNSEL OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

067 2 8 1976

Mr. James M. Frey
Assistantant Director for
Legislative Reference
Office of Management and Budget
Washington, D. C. 20503

Attention: Miss Martha Ramsey

Dear Mr. Frey:

Subject: Enrolled Enactment
S. 3823, 94th Congress

This is in response to your request for our views on the enrolled enactment of S. 3823. The enactment, among other things, authorizes the construction, repair, and preservation by the Army, acting through the Chief of Engineers, of specified public works on rivers and harbors for navigation, flood control and other purposes.

This Department defers to the Department of the Army and the Chief of Engineers as to the overall desirability and necessity of the provisions of the enactment, and to the Office of Management and Budget regarding its budgetary implications. We do, however, have the following comments regarding several of its provisions.

Section 150 of S. 3823 authorizes the Secretary of the Army to plan and establish wetland areas as part of authorized water resources development projects, and requires consideration of the establishment of wetland areas to be included, where appropriate, in new reports to the Congress on water resources development projects. We believe that these provisions represent a positive contribution toward furthering the policy of the National Environmental Policy Act regarding Federal efforts to enhance the quality of renewable resources.

We assume, of course, that in undertaking all of the projects authorized under the enactment, the Corps will give due consideration to avoiding the creation of new flood hazards. We are particularly concerned that any augmented diversion of water from Lake Michigan into the Illinois Waterway, in connection with the demonstration authorized under section 166 of the enactment, be most carefully monitored so as to prevent flooding of communities located along the Waterway. Also, while we have no objection to the relocation, under section 121, of the Town of Nelson, Pennsylvania, to a new townsite, we assume that the town will not be relocated in a special flood hazard area.

Section 134 of the enactment includes provisions permitting certified local improvements for flood control, accomplished prior to authorization of a Federal water resources development project, to be considered part of the Federal project for purposes of determining subsequent costs and benefits of the project and assessing local participation in the costs. We had previously submitted our views on similar provisions in connection with our February 27 report on H. R. 10175, generally deferring to the Department of the Army but expressing our concern with the apparent lack of standards with respect to local work to be performed under the advance certification provisions, particularly in the absence of any clear limitation of applicability of these provisions to communities participating in the national flood insurance program and for which flood control standards are already in place.

Sincerely,



Robert R. Elliott



THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

OCT 18 1976

Director, Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Attention: Assistant Director for Legislative
Reference

Sir:

Reference is made to your request for the views of this Department on the enrolled enactment of S. 3823, "Authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purposes."

S. 3823 is a water resources development project authorization and basic monetary authorization bill. The subject matter of this enrolled enactment is not of primary concern to this Department.

However, section 203 would authorize the establishment of an Alaska Hydroelectric Power Development Fund for the purpose of expediting development of environmentally sound hydroelectric power generating facilities in Alaska in order to meet the Nation's existing and future energy needs. This fund would be financed by certain collections under the Act and by appropriations. Provision is made for investment of excess fund balances.

The Treasury traditionally has been opposed to the investment of appropriated funds. The effect of this is to provide a hidden subsidy to the program, not generally intended by the Congress.

However, if there are compelling reasons for this legislation, the Department would not be opposed to a recommendation that this enrolled enactment be approved by the President.

Sincerely yours,


Richard R. Albrecht
General Counsel



UNITED STATES WATER RESOURCES COUNCIL

SUITE 800 • 2120 L STREET, N.W. WASHINGTON, D.C. 20037

October 13, 1976

Mr. James M. Frey
Assistant Director
for Legislative Reference
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Frey:

This is in response to your request for views on the enrolled bill "Authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purposes."

Several members of the Water Resources Council will be providing views directly to OMB. Accordingly, the Water Resources Council has not developed a formal position on the enrolled bill.

I note, however, that the bill would authorize two projects, Morrison Creek Stream Group, California, and Baytown, Texas, both emphasizing nonstructural alternatives for flood plain management. Equal consideration of nonstructural and structural alternatives to reduce flood losses through flood plain management has been recommended to the President in the Council's report "A Unified National Program for Flood Plain Management." The Council has also proposed revision of Executive Order 11296, Flood Hazard Evaluation, reflecting recent legislation and implementing "A Unified National Program for Flood Plain Management" at the Federal level.

Sincerely,

Gary D. Cobb
Acting Director

MEMBERS: SECRETARIES OF INTERIOR, AGRICULTURE, ARMY, COMMERCE, HOUSING AND URBAN DEVELOPMENT, TRANSPORTATION; ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY; CHAIRMAN, FEDERAL POWER COMMISSION - OBSERVERS: ATTORNEY GENERAL; DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET; CHAIRMEN, COUNCIL ON ENVIRONMENTAL QUALITY, TENNESSEE VALLEY AUTHORITY, RIVER BASIN COMMISSIONS, BASIN INTERAGENCY COMMITTEES.



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON, D.C. 20506

October 15, 1976

Dear Mr. Frey:

This is in response to your request for our views on enrolled bill, S. 3823, a bill, "authorizing the construction, repair and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purposes." The Council of Economic Advisers has no comments on this bill.

Sincerely,



Paul W. MacAvoy
Acting Chairman

Mr. James Frey
Assistant Director
for Legislative Reference
Office of Management and Budget
Washington, D. C. 20503



Department of Justice
Washington, D.C. 20530

October 15, 1976

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

Dear Mr. Lynn:

This is to supplement my enrolled bill reports of October 12, 1976 and October 14, 1976 concerning S. 3823, in response to the inquiry of your office with respect to section 166 of the bill.

Section 166 of the bill would authorize the Secretary of the Army to conduct a five year demonstration program to test the practicability of increasing the average annual diversion of water from Lake Michigan, at Chicago, Illinois, from the present limit of 3,200 cubic feet per second to 10,000 cubic feet per second. The purpose of this program is "to alleviate water damage on the shoreline of Lake Michigan and others of the Great Lakes during periods of abnormally high water levels in the Great Lakes * * *."

The "present limit" on diversions referred to in this bill is the limit established by the amended decree entered by the Supreme Court on June 12, 1967, in Wisconsin, et al. v. Illinois, et al., 388 U.S. 426. You have inquired whether the change in the authorized diversion which would be effected by the bill presents any legal or constitutional problems. In our opinion, no such problems exist.

Although the Supreme Court's decree in Wisconsin v. Illinois is the result of the Court's exercise of its constitutionally conferred original jurisdiction over controversies between States, the provisions of the decree are not predicated on considerations of constitutional law. There is therefore, in our opinion, no legal bar to the enactment of a statute which would supersede or change any provision of the decree.

We understand that Canada has voiced an objection to the approval of the statute because of its possible effect on the level of the Great Lakes. As you doubtless know, and as the Supreme Court expressly pointed out in Sanitary District of Chicago v. United States, 266 U.S. 405 (1925), "the Treaty of January 11, 1909, with Great Britain [36 Stat. 2448] expressly provides against uses 'affecting the natural level or flow of boundary waters' without the authority of the United States or the Dominion of Canada within their respective jurisdiction and the approval of the International Joint Commission agreed upon therein." The instant bill is silent with respect to whether or not the approval of the International Joint Commission is required for this diversion, and it may be, consequently, that the Congress intends the International Joint Commission to exercise its usual control over matters of this nature. But an opposite conclusion would raise no legal or constitutional problems, for it is well settled that "a treaty can supersede a prior Act of Congress, and an Act of Congress may supersede a prior treaty." The Cherokee Tobacco, 11 Wall. 616, 620-621 (1870); Tag v. Rogers, 267 F.2d 664 (C.A.D.C., 1959).

In any event, whether this provision of the bill is desirable is a matter with respect to which we defer to the Department of State.

Sincerely,

A handwritten signature in cursive script, reading "Michael M. Uhlmann". The signature is written in dark ink and is positioned above the typed name.

Michael M. Uhlmann
Assistant Attorney General

Department of Justice
Washington, D.C. 20530

October 14, 1976

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

Dear Mr. Lynn:

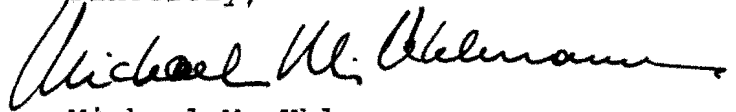
This is to supplement my enrolled bill report of October 12, 1976 concerning S. 3823, in response to the inquiry of your office with respect to sections 101(b) and (c) of the bill.

These sections of the bill authorize the Chief of the Corps of Engineers to proceed with advanced engineering and design of twenty-three specified water resources development projects upon transmittal of recommendations for a specific project by the Chief of Engineers to the Secretary of the Army for transmittal to Congress, i.e., without prior approval of those recommendations by the Secretary of the Army or the Office of Management and Budget. It is the position of the Department of Justice that such a provision could be violative of Article II of the Constitution, which vests in the President, under the direction and control of Executive officers responsible to him, the execution of the law; we have problems with any provision, such as the ones at issue, which eliminate the President's disciplinary authority over the execution of the law.

Whether this legal impediment would be sufficient, however, to warrant the disapproval of the bill in light of its remaining provisions raises a question of policy and discretion which exceeds the jurisdiction and expertise of the Department of Justice. Accordingly, we defer to those agencies more directly concerned with

the subject matter of the bill as to whether it should receive Executive approval notwithstanding this matter.

Sincerely,

A handwritten signature in cursive script, reading "Michael M. Uhlmann". The signature is written in dark ink and is positioned above the typed name.

Michael M. Uhlmann
Assistant Attorney General

Department of Justice
Washington, D.C. 20530

October 12, 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20530

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill S. 3823, authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purposes.

My review of this bill has revealed no constitutional or other legal objections to any section of this legislation. The Department of Justice's only concern is that any legislation such as this will generate increased environmental litigation by those concerned citizens who will be directly and adversely affected by such projects as those authorized by this bill. Our familiarity with the numerous projects authorized or continued by this bill is necessarily limited to those few projects herein that are subjects of past or ongoing litigation. I am of the opinion that none of the provisions of this bill will have any effect on any of this litigation.

The Department of Justice defers to those agencies more concerned with the subject matter of the bill as to whether it should receive Executive approval.

Sincerely,



Michael M. Uhlmann
Assistant Attorney General



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

October 14, 1976

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

Dear Mr. Lynn:

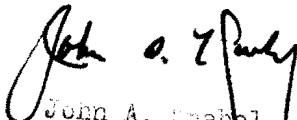
This is in reply to your request of October 6, 1976, for a report on enrolled bill S. 3823, Water Resources Development Act of 1976.

This Department defers to the Secretary of the Army except on section 126.

Section 126 of the bill authorizes the Secretary of the Army to undertake the phase I design memorandum stage of advanced engineering and design of a project for flood prevention and development of incidental recreation, preservation of the natural floodways, and protection of the watershed's soil resources, at an estimated cost of \$370,000, substantially in accordance with the Floodwater Management Plan, North Branch Chicago River Watershed, Cook and Lake Counties, Illinois, dated October 1974, and substantially in accordance with the watershed implementation program dated February 1974.

The Department of Agriculture recognizes that there are significant flood problems in this watershed area as, of course, there are in other areas. However, the bill is not compatible with the Administration's position to reduce Federal expenditures. The cost of implementing the program is estimated to be in excess of \$23 million. In this era of economic pressures on resources, we do not believe it is appropriate to establish a new program requiring additional Federal spending.

Sincerely,


John A. Heibel
Acting Secretary



ASSISTANT SECRETARY OF STATE

WASHINGTON, D. C. 20520

October 14, 1976

Dear Jim:

You should know that Ed Derwinski phoned me personally and expressed deep concern about the fate of this bill. I assured him that I would pass his concern along. He is, as he put it, totally committed to the passage of this legislation. At the time, we had not yet determined what our position would be. Now that we have, I feel duty-bound to inform him that we are recommending veto, and why. I also, however, will confirm to him that I have passed his own personal support for the bill along to you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kempton B. Jenkins".

Kempton B. Jenkins

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

Date: October 19

Time: 945pm

FOR ACTION: NSC/S
Max Friedersdorf
George Humphreys
Bobbie Kilberg
Robert Hartmann

cc (for information): 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

*I concur with Omb
auth*

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.

James M. Cannon
For the President

Date: October 19

Time: 945pm

FOR ACTION: NSC/S
Max Friedersdorf
George Humphreys
Bobbie Kilberg
Robert Hartmann

cc (for information): Jack Marsh
Ed Schmults
Mike Duval
Steve McConahey
Bill Seidman

FROM THE STAFF SECRETARY

DUE: Date: October 20

Time: noon

SUBJECT:

³
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

10/20 - Copy sent for researching. nm

10/20 - Researched copy returned. nm

Not and signed
[Signature]

Resumed approval
[Signature]

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.

James W. Cannon
For the President



STATEMENT BY THE PRESIDENT



I have today 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 *whose* construction *cost of which* would eventually *be* ~~cost~~ 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 5 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* ~~given~~ the bill, ~~my approval.~~

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, ~~and~~ 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

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.

~~It is~~ authorized by ~~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.



STATEMENT BY THE PRESIDENT

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

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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.

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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.



Memorandum of Disapproval

I ~~have today vetoed~~ S.3823, The Water Resources Development Act of 1976. *I am today with holding my approval of* 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, ~~I feel~~, 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 ~~wish to~~ reassure the Congress that I would ~~be willing to~~ support legislation



embodying the remaining provisions of the 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 ~~press forward~~ ^{continue} with the negotiations currently underway with Canada pursuant to the report of the International Joint Commission entitled Further Regulation of the Great Lakes.



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.

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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,



State Dept



Draft Veto Message

I have today vetoed 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, I feel, 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.

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embodying the remaining provisions of the 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 press forward with the negotiations currently underway with Canada pursuant to the report of the International Joint Commission entitled Further Regulation of the Great Lakes.

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
WASHINGTON, D. C. 20006

OCT 15 1976

MEMORANDUM TO JAMES M. FREY, OFFICE OF MANAGEMENT AND BUDGET

ATTN: Ms. Ramsey

SUBJECT: Enrolled Bill S. 3823 - Enrolled: Authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control and for other purposes.

Thank you for the opportunity to comment on this bill. The Council on Environmental Quality recommends that the President veto the bill for the following reasons:

1. Section 130 would provide authority to the Secretary of the Army acting through the Chief of Engineers to include regional economic development benefits for the purposes of computing the economic justification of the project. This section directly conflicts with the Water Resources Council's Principles and Standards which were signed by the President in 1973. It also conflicts with the findings of the Presidential "Section 80 Study" on which recommendations are due from the White House before the end of this year.

Regional, as opposed to national, economic benefits should not be used to influence decisions about the allocation of Federal funds. Claiming regional benefits for navigation projects obscures equivalent losses to other regions or transportation modes, and could lead to unwarranted Congressional support for projects such as the Cross-Florida Barge Canal and other environmentally and economically dubious projects. In past years the Corps of Engineers has always been able to reject regional economic development benefits in computing the economic justification of navigation projects because it was contrary to national policy. This section would erode that position and weaken a fundamental planning objective.

2. Section 134 provides a mechanism enabling the Corps of Engineers to certify, at the request of local interests, that particular non-Federal flood control improvements can reasonably be expected to be compatible with a potential Federal project then under study or other form of consideration. This section which would establish grounds for Federal reimbursement of local expenditures, does not appear to be consistent with other Federal water resource principles and standards. This section also complicates the NEPA Review procedures and could preclude alternatives from being seriously considered by the Corps of Engineers in the

formulation of a water resource project by requiring such decisions before adequate Federal planning and review have occurred.

3. Section 150 authorizes the planning and establishment of wetland areas as part of authorized water resource development projects. This section is unnecessary as there is nothing in the statutes that would prevent the Corps of Engineers from doing this currently if it is found to be in the public interest.

4. Section 154 and 162 provide for Congressional determination of navigable bodies of water of the United States. The Corps of Engineers has adequate authority to determine the navigability of any body of water of the United States under current law. The determination should be made by the Corps and not the Congress. A case-by-case determination by Congress is inappropriate and sets a bad precedent for overriding Federal regulatory policy on a case-by-case basis in response to local political pressure.

5. Section 156 authorizes the Corps of Engineers to provide periodic beach nourishments for a period not to exceed 15 years. This provides for open-ended appropriations for operation and maintenance of various coastal navigation and shore protection projects, many of which are poorly conceived and often benefit only special interest groups.

6. Section 158 authorizes the Corps of Engineers to make a comprehensive study and report on a system of waterway improvements necessary to optimize this system and its intermodal characteristics. Comprehensive transportation studies should be undertaken by the Department of Transportation as the primary agency, in conjunction with the Corps of Engineers, in order to assure a balanced national transportation policy.

7. Section 202 directs the Corps of Engineers to be responsible for developing projects for the collection and removal of debris and drift from publicly maintained commercial coast harbors and from land and water areas near or adjacent thereto. Drift and debris does threaten navigation safety, public health, recreation and the harbor front environment; however, the language of this section is inappropriate. The responsibility for the removal of drift and debris should be directed wherever possible at the parties responsible for causing the problem, namely private and local interests. There are no provisions in this section for regulating maintenance and removal of drift and debris by private, state, and local interests. This section is inadequate; the problem should be treated in a comprehensive program.

8. Section 203 provides for the establishment in the Treasury of the United States an Alaska Hydropower Development Fund. This section will create additional bureaucratic development within already overwhelmingly complex Federal water resource and energy development and management schemes. This will provide more Federal money for certain specific regional projects and more associated bureaucratic infrastructure. This section is unnecessary as ample authorization exists for the development of hydropower for Federal, state and private interests.

We respectfully request that this bill be vetoed for the above reasons.



Gary Widman
General Counsel