

United States Senate

WASHINGTON, DC 20510

April 16, 2013

The Honorable Barbara Boxer
Chairman
Committee on Environment and Public Works
410 Dirksen Building
Washington, DC 20510

Dear Chairman Boxer:

We are writing to urge you to strike or revise certain provisions relating to fines in Section 2033 of the Water Resources Development Act of 2013.

Time and time again, outside agency reviews of Army Corps of Engineers projects have identified significant economic, public safety, and environmental problems. These legally-required reviews provide critical checks and balances on Army Corps planning, producing more effective solutions to water resources problems and saving taxpayers hundreds of millions of dollars. S.601, the Water Resources Development Act of 2013, creates unacceptable obstacles to these important reviews, including by fining resource agencies like the Fish and Wildlife Service for carefully doing their jobs. We see no evidence that the National Environmental Policy Act (NEPA) is the cause of delays of Army Corps projects; most scholars in the field believe the delays are caused by lack of funding and the backlog of approved projects.

Among many other troubling requirements, section 2033 imposes penalties on *any other* federal agency if that agency does not render a decision under *any* Federal law relating to an Army Corps project that requires an environmental impact statement (EIS) within 180 days of completion of the EIS or within 180 days of completion of a permit application, whichever is later. This would include decisions under the Endangered Species Act, Fish and Wildlife Coordination Act, Clean Water Act, and other federal laws.

Agencies would be fined up to \$20,000 a week for careful deliberation of important environmental issues. Ongoing fines could be assessed for multiple decisions on a single project up to a maximum of 1% of yearly office funding per project and 5% of yearly office funding for all projects per year. If an agency opposes imposition of a fine based on a lack of financial resources to make the decision, or if fines are assessed, section 2033 also requires a financial audit by the Inspector General.

These fines will be assessed against the already austere budgets of resource agencies like the Fish and Wildlife Service and the National Oceanic and Atmospheric Administration. While the fines ostensibly are intended to send needed funds to the office conducting the actual review, the fines would adversely impact the offices they are assessed against. This may very well lead to agency leadership to pressure staff to meet the deadlines, even if it results in inadequate reviews, to protect the already-stretched budgets and other agency priorities.

Section 2033 imposes additional financial burdens by requiring extensive written justifications each time a resource agency is unable to comply with any one of many interim deadlines established by

the Army Corps, even where the resource agency has not received necessary factual information. Some justifications will also trigger an Inspector General investigation. Additional budgetary impacts are created by a new process of multiple layers of higher level reviews over technical issues, including directly to the President.

Section 2033 creates unacceptable and unnecessary financial burdens on the resource agencies in the midst of already severe budget cuts. The imposition of fines represents a substantial departure from the important deference provided by Congress to federal agencies with natural resource expertise and will have a severe chilling effect on a resource agency's ability to meaningfully evaluate and raise important concerns and objections to federal water projects.

By enacting the NEPA, Congress sought to foster better agency decisions both by requiring agencies to consider the environmental impacts of their decisions and by requiring them to make the information on which their decisions are based available to the public. As the Supreme Court has said, "NEPA merely prohibits uninformed—rather than unwise—agency action." But by requiring informed decisions, it fosters wiser decisions. By imposing arbitrary and punitive deadlines on agency decision making, section 2033 will foster both uninformed and unwise decisions.

While we support encouraging agencies to conduct timely reviews, they should not be penalized for doing a thorough job. We urge you to delete or modify the provision authorizing the imposition of fines on Federal agencies conducting reviews of Army Corps projects. Thank you for your consideration.

Sincerely,



Ron Wyden
Chairman

Committee on Energy and Natural Resources



John D. Rockefeller IV
Chairman

Committee on Commerce, Science and Transportation