



FRIENDS OF THE RIVER

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To files: Extending the WIIN Act proposal

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Summary of Amendments

On November 30, 2018, Majority Leader Rep. McCarthy, Governor Brown, and U.S. Senator Dianne Feinstein announced their support for amendments to the 2016 Water Infrastructure Improvements for the Nation Act (WIIN).¹ These amendments would extend the deadlines for findings of feasibility by the Secretary of the Interior of WIIN storage projects by seven years and would provide authorization for appropriations of \$134 million per year for another five years. The amendments would extend nearly all of the provisions of the California Water subtitle of the WIIN by seven years. The proposed amendments also would extend by seven years the provisions of the WIIN giving state and federal water contractors extensive access to Endangered Species Act (ESA) biological assessment and opinion development on the operations of the Central Valley (CVP) and State Water Projects (SWP).

On December 5, 2018, California U.S. Senator Kamala Harris tweeted the following:

We must invest in sustainable water projects that protect critical ecosystems while also supporting our important agricultural economies across the state. Extending the controversial and detrimental policies of the WIIN Act is not the way to do this.

Presumed Purpose of the Proposed WIIN Amendments

These amendments would increase available federal funding for WIIN federal and non-federal dams by \$670 million, making authorized funding go to \$1,005,000,000

¹ <https://www.friendsoftheriver.org/wp-content/uploads/2018/12/Delta-water-deal-backed-Sac-Bee-Nov-30-2018.pdf>

(yes, that's a billion) with \$335 million already appropriated. According to press accounts, this increased funding and the time extensions for feasibility findings are seen as sweeteners for dam owners and diverters to sign voluntary settlement agreements that would substitute for actions by the State Water Control Board (SWRCB) in the Board's pending updates to the Bay/Delta Water Quality Control Plan. These updates would affect tributary flows to the San Joaquin and Sacramento Rivers and the Delta. Settling these tributary flow issues is seen by many as helping to facilitate Board decisions regarding the Change of Point of Diversion petitions by the California Department of Water Resources (DWR) and the U.S. Bureau of Reclamation (Reclamation) for the twin tunnels

Also important, and probably for the same reasons, are the extension of the WIIN delta and delivery provisions. These provisions are seen by many as requiring that greater priority be placed on maximizing south-of-delta export deliveries than water quality and environmental conditions in the Bay/Delta and its tributary ecosystems.

What this memo will not cover

When the WIIN was created, I did a memo on the affect of the WRDA/WIIN on storage projects in California.² Some of these provisions were in the traditional WRDA parts of the bill, and Senator Feinstein's contributions were in the other part, the California Water subtitle J of the WIIN. I did not analyze the affect of the WIIN on dam and delta operations, nor do I propose to do so here. It would be helpful if someone could create that memo and a memo on the effect of the time extensions on these WIIN operations provisions. But I did offer the following observation in that original memo.

[The WIIN] certainly reflects the desires of southern San Joaquin Valley and Southern California water districts to squeeze more water out of the Delta pumps — how successful that will be is yet to be established (SWRCB actions under state law are arguably not preempted).

Amending the WIIN and some other statutes

² The storage provision memo can be found here. The memo includes links to the 2016 WIIN and its sections. <https://www.friendsoftheriver.org/wp-content/uploads/2018/06/FOR-WIIN-CA-storage-provisions-memo-1-5-2016.pdf>

I will cover sections 1 and 4 of the draft amendments currently in our possession. The other two sections authorize increases in five-year funding for programs amended by §4009 of the WIIN to the Water Desalination Act of 1996 and the Reclamation Wastewater and Groundwater Study and Facilities Act.

Amending WIIN §4007 – §1 of the proposed amendments

Appropriations history, proposal, and cost-sharing requirements: The original WIIN section 4007(h) authorized \$335 million for federal and state-led (or a state's political subdivisions) water storage projects. As of this writing, all of this authority has been appropriated, with approximately \$35 million already spent or programmed to be spent by this federal fiscal year. Section 1 of the proposed amendments amend §4007 of the WIIN to authorize an additional \$134 million "to be appropriated for each of fiscal years 2020 through 2024 to carry out this section." If this authorization is fully appropriated by the Congress, there will be \$1,005,000,000 — a little over a billion dollars — for WIIN §4007 projects. These funds would be available for eligible federal WIIN projects (federal funding capped at 50% of project costs), as well as grants to eligible state-led projects (up to 25% of project costs).

WIIN §4007 sunset provision amendment: Section 1 of the proposed amendments also amend §4007(i) of the WIIN. This provision sunsets WIIN funding availability for any federal or state-led projects that have not been found feasible by the Secretary of the Interior by January 1 2021. The amendments change the date to January 1, 2028, a seven-year extension of time.

Currently allegedly feasible federal WIIN projects: At this writing, the Secretary of the Interior has made two Determinations of Readiness for Construction: the Shasta Dam raise and the Cle Elum Dam pool expansion of the Yakima Project in Washington.³ WIIN § 4007(b)(3)(A) requires that this determination only be made only after the Secretary of the Interior "determines that the proposed federally owned storage project is feasible in accordance with the reclamation laws."⁴

³ Additional WIIN project funding has so far gone to the Temperance Flat dam, Sites dam, Friant-Kern Canal, Boise River Basin Feasibility Study, Upper Yakima System Storage Feasibility Study. <https://www.friendsoftheriver.org/wp-content/uploads/2018/06/Adm-rprt-on-2018-CA-reservoir-enlargement-approps-request-ocr.pdf>

⁴ According to the Reclamation's Final Shasta Lake Water Resources Investigation (SLWRI) feasibility report, "all of the alternatives analyzed are feasible from an engineering

Eligibility of state-led projects: WIIN §4007(c)(2)(A) requires that funding assistance for state-led projects be requested by the Governor of the State in which the State-led storage project is located (that request for federal projects can come from the Governor *or* a cost-sharing public agency §4007(b)(1)). A governor's request has been made for the eight California Water Commission water storage projects that have been allocated funds from chapter eight of the 2014 California Water Bond (Proposition 1), so this WIIN condition has been met.⁵ In addition, WIIN §4007(c)(2)(B)(i) requires that a state-led project storage project be found to be " technically and financially feasible..." I am unaware of any Secretarial feasibility findings for these projects, although perhaps one exists for one of the iterations of Contra Costa County's Los Vaqueros Dam reservoir expansion projects.

Discussion: This section is clearly being proposed to move more federal funds into WIIN storage projects and to provide these often less-than-feasible or less-meritorious projects more time to win their Secretarial feasibility findings. On the federal side, Reclamation's apparent feasibility finding for the \$1.3 billion Shasta Dam raise could be subject to challenge, given its illegality.⁶ The \$2.8 billion Temperance Flat dam has a new non-federal sponsor in formation, an idea to circulate a new draft or supplemental draft EIS, and some significant funding and permitting challenges.⁷ These proposed amendments may be seen by their boosters as a life preserver as they do they struggle with difficult circumstances.

standpoint." Reclamation SLWRI Feasibility Report, p. 9-1. I am unaware of any written determination of feasibility "in accordance with the reclamation laws," one of the necessary findings for the WIIN §40074007(b)(3)(A) "determination of readiness for construction" for the Shasta Dam raise project. This project is illegal under state and federal law and currently fails one or more additional requirements for this determination.

⁵ One of these proposed projects is federal, the Temperance Flat Dam. The rest are non-federal. The eight state-funded projects are: Pacheco Reservoir Expansion Project; South Sacramento County Agriculture and Habitat Lands Recycled Water, Groundwater Storage, and Conjunctive Use Program; Los Vaqueros Reservoir Expansion Project; Temperance Flat Reservoir Project; Chino Basin Conjunctive Use Program; Sites Project; Kern Fan Groundwater Storage Project; and Willow Springs Water Bank. <https://www.friendsoftheriver.org/wp-content/uploads/2018/09/8.27.18-Gov-ltr-to-Secretary-Zinke-ocr.pdf>

⁶ See the referenced Shasta Dam raise referenced fact sheet at <https://www.friendsoftheriver.org/our-work/rivers-under-threat/sacramento-threat/>

⁷ See the discussion, press clips, and the referenced fact sheet at <https://www.friendsoftheriver.org/our-work/rivers-under-threat/san-joaquin-threat/>

The Secretary also has to make feasibility determinations for the non-federal dams. The \$5.3 billion or more Sites dam complex received a generous but still disappointing \$816 million allocation from the California Water Commission and is seeking more loans or funding from other sources.⁸ Santa Clara Water District's billion-dollar Pacheco Dam would have to move aggressively to get a Secretarial feasibility determination by 2021. There might be competition from the Yakima Project in Washington (although that project is stumbling on their financing side with a recent statewide ballot measure loss). The groundwater projects are also likely to seek 25% of their project costs from the WIIN. I don't have a good idea of their path to a Secretarial determination. That would be helpful to research. My guess is that of the state-led projects, only Los Vaqueros could be confident that they could be found feasible by 2021. Maybe Sites, but maybe not. If financial feasibility — i.e., can it be financed? — is part of the feasibility determination, it could always have a problem. Sites is really expensive.

Section 4007 of the WIIN was supposed to be drought legislation to address short-term drought issues, mostly in California. It morphed some at its genesis. Nevertheless, skeptics of the virtues of some of these storage projects took some comfort that the funding authorization was not generous, and that some — indeed, likely many — of the projects would fail to win the race for the feasibility-finding sunset. This proposal would now put a billion dollars on the table and another seven years of grace to get the Secretarial feasibility finding. If the amendments are made law, these projects are going to get more time and more money. With more subsidies, more time, and more political energies exerted, some may even approach viability. More work for us, too, of course. A lot more work as \$1.8 billion in state and federal grants would be potentially available if the amendments are passed. Low interest loans too.

WIIN Subtitle J, California Water, extension of time: The proposed amendments would extend the time of the applicability of this subtitle another seven years, to January 1, 2028 by amending WIIN §4013. Many of the more controversial provisions of the WIIN, such as measures trying to increase water deliveries from the California Delta, lie here. Sold as a short-term drought bill in 2016, the authors of the amendments clearly are looking to make them a part of the operational baseline.

⁸ <https://www.friendsoftheriver.org/wp-content/uploads/2018/09/States-largest-new-reservoir-likely-to-face-restrictions-Water-Deeply-9-26-2018-1.pdf>
<https://www.friendsoftheriver.org/wp-content/uploads/2018/12/Trump-officials-announce-450-million-loan-R-R-Searchlight-Nov-27-2018.pdf>

Special Access to resources agencies formulating ESA biological assessments and opinions: WIIN Section 4013 also sets up special access to the deliberations of Endangered Species Act (ESA) biological assessments or opinions (including reasonable and prudent alternatives) on the coordinated operations of the CVP and SWP for any public agency that contracts for water from the CVP or SWP. This special treatment would be extended seven years to January 1, 2033, effectively institutionalizing it. Presumably the last few months extensive meetings among DWR, Reclamation, and the water contractors on the Coordinated Operations Agreement and CVP Operations Plan are being carried out under this authority. Environmental organizations have not been invited to these meetings

Section 4: Extension of CALFED authorization

Section 4 of the proposed amendments extends the CALFED program authority for another five years, from 2019 to 2024. CALFED program authority is still used for some matters, including science and restoration programs. It has also been used as a funding vehicle to fund Water Fix work.⁹

Conclusion

If passed, the attempt from the authors and the Trump Administration will get additional years to approach feasibility and try for additional funding. If the Congressional appropriations committees, the Congress, and the President continue to fund up to the proposed authorized ceiling, the WIIN program will have a billion federal dollars behind it and more desire and momentum to ask for more. The morphing of a short-term drought bill would turn into a traditional Congressional Pork Barrel with water projects being the currency of exchange.

Perhaps more important is the extension of time for the drought emergency-based amendments to push for more south-of-delta export deliveries. Bad stuff there too.

Lots of more work too.

⁹ Recall the 2017 Inspector General Report that documented \$84.8 million spent on the tunnels on behalf of Westlands Water District and three other federal contractors' share. <https://www.doioig.gov/reports/bureau-reclamation-not-transparent-its-participation-bay-delta-conservation-plan>

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