



## MEMORANDUM

TO: Water Resources Committee and Alternates, Board of Directors and Alternates

FROM: Scott Petersen, Water Policy Director

DATE: July 11, 2022

RE: Water Resources Committee to Consider Recommendations on Legislation /  
Board of Directors to Consider Same

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### Recommendation

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Recommend to the Board of Directors to adopt the following positions on federal legislation:

- Adopt a position of “Support and Amend” on H.R. 8127 (Schrier): Water Infrastructure Finance and Innovation Act Amendments of 2022

### Summary

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#### Federal Legislation

H.R. 8127 (Schrier): Water Infrastructure Finance and Innovation Act Amendments of 2022

**RECOMMENDATION: SUPPORT AND AMEND**

**OBJECTIVE:** Improve Water Infrastructure Affecting Authority Member Agencies

Summary

This bill would:

- Broaden WIFIA funding and financing eligibility to state and federal projects and entities. This includes state-led water storage projects, transferred works of the Bureau of Reclamation, and congressionally authorized Army Corps of Engineers (USACE) projects.
- Authorizes the use of collaborative project delivery methods for WIFIA projects, allowing more flexibility and reducing time and cost of the project.
- Allows certain federal water infrastructure loans to have maturity dates of up to 55 years.
- Reauthorizes USACE WIFIA program through FY2026.
- Directs the USACE to implement its WIFIA program, which it has not done despite its authorization in 2014.

Status

This legislation was introduced in the House of Representatives on June 16, 2022.



### Importance to the Authority

HR 8127 would make WIFIA funding and financing eligibility to transferred works, and state-led water storage projects, making the program available for financing of the Delta-Mendota Canal, provided that the loan is repaid using non-federal dollars. Additionally, the legislation extends the loan repayment term for projects with a useful life beyond 30 years to up to 55 years or equal the project's useful life.

#### Pros:

- The legislation would enable the Authority to access WIFIA funding and financing eligibility for transferred works projects, like the Delta-Mendota Canal Subsidence Correction Project.

#### Cons:

- Surface and groundwater storage funding is limited to nonreimbursable public benefits

### Committee Options

#### *Option 1*

Recommend that the Board authorize the Executive Director and delegated staff to express support to this legislation and pursue the following amendments:

1. Seek clarifying language that would enable project proponents to voluntarily accept a loan repayment period of less than 55 years on a project with a useful life greater than 30 years. The current statutory language is limited to loan repayment periods of either (1) 55 years, or (2) the project's useful life.

**Fiscal Impact:** Unknown. Reduced costs associated with Authority and member agency water project development.

**Business Analysis:** Increase financing flexibility for Authority and member agency projects.

#### *Option 2*

Take no action.

**Fiscal Impact:** Unknown.

**Business Analysis:** Status quo.

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## Guidelines for Taking Positions on Legislation

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A number of controversial bills are introduced each year in the Congress and in the California Legislature. It is important to understand how the Authority takes positions on legislation.

### Policy

By Agenda Item 8, dated December 9, 2021, the Board adopted the Fiscal Year 2023 Objectives.

### Water Authority's Positions on Legislation

The Water Authority takes positions on legislation that, if enacted, would impact Water Authority members, consistent with Water Authority Board adopted Goals and Objectives. The Water Authority may take the following positions on legislation: Oppose, Support, Oppose Unless Amended, Support if Amended, Not Favor, Favor, Not Favor Unless Amended, Favor if Amended, and Watch (neutral). The



Water Authority's staff testifies and advocates with legislators and staff through meetings and member agency contacts on all positions except Watch, Favor and Not Favor. For Favor and Not Favor positions, written communication of the Water Authority's position is provided to the legislator. Nothing in this section should be read to preclude the Executive Director or his or her delegee from taking an informal support or informal oppose position on behalf of the Water Authority that is consistent with adopted legislative or policy objectives, or to preclude the Executive Director from communicating a position on emergency legislation after obtaining the concurrence of the Chair, or the Chair's designee, provided that the Executive Director informs the Board regarding such positions on emergency legislation no later than the next regularly scheduled Board meeting.

### Amendment Development Process

If the Water Authority takes an Oppose Unless Amended or Support if Amended position, the Water Authority will typically discuss the concepts for the amendments at the meeting. Then Water Authority staff, in consultation with Committee and/or Board Members as needed, will develop the amendments after the meeting.

### Information Sharing

To provide adequate information to the entire Water Authority membership, the Water Authority provides legislative updates, posts positions and other information on our website, and sends out advisories and alerts on key legislation.

The Water Authority's legislative department is available to provide specific information on bills on request and Board Members are encouraged to communicate Water Authority positions on priority legislation in meetings with legislative staff, consistent with Water Authority policy. The Water Authority's Water Policy Director appreciates being informed by Water Authority members of positions taken by Water Authority members on legislation.

# **BILL TEXT**

117TH CONGRESS  
2D SESSION

# H. R. 8127

To reauthorize the Water Infrastructure Finance and Innovation Act of 2014,  
and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 16, 2022

Ms. SCHRIER (for herself, Mr. LAMALFA, Mr. GARAMENDI, Mr. NEWHOUSE, Mr. COSTA, and Ms. DAVIDS of Kansas) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To reauthorize the Water Infrastructure Finance and  
Innovation Act of 2014, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Water Infrastructure  
5 Finance and Innovation Act Amendments of 2022”.

1 **SEC. 2. CLARIFICATION REGARDING SMALL COMMUNITIES.**

2 (a) DEFINITIONS.—Section 5022 of the Water Re-  
3 sources Reform and Development Act of 2014 (33 U.S.C.  
4 3901) is amended—

5 (1) by redesignating paragraphs (11) through  
6 (15) as paragraphs (13) through (17), respectively;

7 (2) by redesignating paragraph (10) as para-  
8 graph (11);

9 (3) by inserting after paragraph (9) the fol-  
10 lowing:

11 “(10) RURAL WATER PROJECT.—The term  
12 ‘rural water project’ includes—

13 “(A) a rural water supply project author-  
14 ized under the Reclamation Rural Water Sup-  
15 ply Act of 2006 (43 U.S.C. 2401);

16 “(B) any project authorized under part III  
17 of subtitle A of title X of the Omnibus Public  
18 Land Management Act of 2009 (Public Law  
19 111–11), for a federally recognized Indian  
20 Tribe; and

21 “(C) any rural water project or rural water  
22 supply project authorized under—

23 “(i) section 1110 of title XI of divi-  
24 sion FF of the Consolidated Appropria-  
25 tions Act, 2021 (Public Law 116–260); or

26 “(ii) any other Federal law.”; and

1 (4) by inserting after paragraph (11), as so re-  
2 designated, the following:

3 “(12) SMALL COMMUNITY.—The term ‘small  
4 community’ means a city, town, or unincorporated  
5 area that has a population of not more than 25,000  
6 inhabitants.”.

7 (b) CONFORMING AMENDMENT.—Section  
8 5028(a)(2)(B) of the Water Resources Reform and Devel-  
9 opment Act of 2014 (33 U.S.C. 3907(a)(2)(B)) is amend-  
10 ed by striking “a community of not more than 25,000 in-  
11 dividuals” and inserting “a small community”.

12 **SEC. 3. CLARIFYING ELIGIBILITY FOR CERTAIN PROJECTS.**

13 The Water Infrastructure Finance and Innovation  
14 Act of 2014 (33 U.S.C. 3901 et seq.) is amended—

15 (1) in section 5023(b)(3) (33 U.S.C.  
16 3902(b)(3)), by striking “under paragraph (8) or  
17 (10)” and inserting “under paragraphs (8), (10),  
18 (11), (12), or (13)”; and

19 (2) in section 5026 (33 U.S.C. 3905)—

20 (A) in paragraph (10), by striking “or (8)”  
21 and inserting “(8), (11), (12), or (13)”; and

22 (B) by adding at the end the following:

23 “(11) A State-led storage project (as such term  
24 is defined in section 4007(a) of the Water Infra-

1 structure Improvements for the Nation Act (43  
2 U.S.C. 390b note)).

3 “(12) Transferred works (as such term is de-  
4 fined in section 9601 of the Omnibus Public Land  
5 Management Act of 2009 (43 U.S.C. 510)).

6 “(13) A congressionally authorized water re-  
7 sources development project that is owned or oper-  
8 ated by a non-Federal entity.”.

9 **SEC. 4. COLLABORATIVE PROJECT DELIVERY METHODS.**

10 (a) IN GENERAL.—Section 5028 of the Water Infra-  
11 structure Finance and Innovation Act of 2014 (33 U.S.C.  
12 3907) is amended—

13 (1) by redesignating subsection (c) as sub-  
14 section (d); and

15 (2) by inserting after subsection (b) the fol-  
16 lowing:

17 “(c) COLLABORATIVE PROJECT DELIVERY METH-  
18 ODS.—

19 “(1) AUTHORIZATION.—The Secretary or the  
20 Administrator, as applicable, may select, in accord-  
21 ance with this section, a project to be carried out  
22 using a collaborative project delivery method (con-  
23 sistent with any applicable State or local law), in-  
24 cluding a construction management at-risk method  
25 and a design-build method.



1 “(2) DEFINITIONS.—In this subsection:

2 “(A) COLLABORATIVE PROJECT DELIVERY  
3 METHOD.—The term ‘collaborative project de-  
4 livery method’ means a method for carrying out  
5 a capital project that involves close collabora-  
6 tion among the eligible entity, the owner of the  
7 project (if different from the eligible entity), the  
8 designer of the project, and the contractor for  
9 the project, from design through completion of  
10 construction.

11 “(B) CONSTRUCTION MANAGEMENT AT-  
12 RISK METHOD.—The term ‘construction man-  
13 agement at-risk method’ means a collaborative  
14 project delivery method in which an engineering  
15 firm and a construction management at-risk  
16 firm are retained under 2 separate contracts for  
17 design and construction, respectively.

18 “(C) DESIGN-BUILD METHOD.—The term  
19 ‘design-build method’ means a collaborative  
20 project delivery method under which a single  
21 lead contract is entered into with a design-  
22 builder for design and construction.”.

23 (b) STUDY ON THE USE OF COLLABORATIVE  
24 PROJECT DELIVERY METHODS.—Not later than 180 days  
25 after the date of enactment of this Act, the Administrator

1 of the Environmental Protection Agency, in coordination  
2 with the Regional Administrators, and the Secretary of the  
3 Army, acting through the Chief of Engineers, shall carry  
4 out, and make public the results of, a study that—

5           (1) evaluates the use of collaborative project de-  
6           livery methods in projects carried out using assist-  
7           ance received under the Water Infrastructure Fi-  
8           nance and Innovation Act of 2014 (33 U.S.C. 3901  
9           et seq.);

10           (2) determines barriers to increased use of col-  
11           laborative project delivery methods in such projects;

12           (3) assesses the potential benefits of using col-  
13           laborative project delivery methods in such projects;  
14           and

15           (4) identifies areas of need to educate agency  
16           staff in collaborative project delivery method imple-  
17           mentation and best practices.

18 **SEC. 5. MATURITY DATE.**

19           Section 5029(b)(5) of the Water Infrastructure Fi-  
20           nance and Innovation Act of 2014 (33 U.S.C. 3908(b)(5))  
21           is amended—

22           (1) in subparagraph (B), by striking “The final  
23           maturity date” and inserting “Notwithstanding sub-  
24           paragraphs (A) and (B), the final maturity date”;

1           (2) by redesignating subparagraph (B) as sub-  
2           paragraph (C); and

3           (3) by inserting after subparagraph (A) the fol-  
4           lowing:

5                       “(B) PROJECTS WITH A USEFUL LIFE OF  
6                       MORE THAN 35 YEARS.—Notwithstanding sub-  
7                       paragraph (A), for a project with a useful life  
8                       of more than 35 years (as determined by the  
9                       Secretary or the Administrator, as applicable),  
10                      the final maturity date of a secured loan under  
11                      this section shall be not later than the earlier  
12                      of—

13                      “(i) the date that is 55 years after the  
14                      date of substantial completion of the rel-  
15                      evant project (as determined by the Sec-  
16                      retary or the Administrator, as applicable);  
17                      and

18                      “(ii) if the useful life of the project is  
19                      less than 55 years, the useful life of the  
20                      project.”.

21 **SEC. 6. REAUTHORIZATION OF CORPS OF ENGINEERS**  
22 **WATER INFRASTRUCTURE FINANCING FUND-**  
23 **ING.**

24           Section 5033 of the Water Resources Reform and De-  
25           velopment Act of 2014 (33 U.S.C. 3912) is amended—

1 (1) by amending subsection (a)(3) to read as  
2 follows:

3 “(3) FISCAL YEARS 2022 THROUGH 2026.—

4 There is authorized to be appropriated to carry out  
5 this subtitle, to remain available until expended—

6 “(A) \$50,000,000 to the Administrator for  
7 each of fiscal years 2022 through 2026; and

8 “(B) such sums as may be necessary to the  
9 Secretary for each of fiscal years 2022 through  
10 2026.”; and

11 (2) in subsection (b)(2), by striking “the Ad-  
12 ministrator” and inserting “the Secretary or the Ad-  
13 ministrator, as applicable,”.

14 **SEC. 7. BUDGETARY TREATMENT OF CERTAIN AMOUNTS**  
15 **OF FINANCIAL ASSISTANCE.**

16 The Water Infrastructure Finance and Innovation  
17 Act of 2014 (33 U.S.C. 3901 et seq.) is amended by add-  
18 ing at the end the following:

19 **“SEC. 5037. BUDGETARY TREATMENT OF CERTAIN**  
20 **AMOUNTS OF FINANCIAL ASSISTANCE.**

21 “If the recipient of financial assistance for a project  
22 under this subtitle is an eligible entity other than a Fed-  
23 eral entity, agency, or instrumentality, and the dedicated  
24 sources of repayment of that financial assistance are non-  
25 Federal revenue sources, such financial assistance shall,

1 for purposes of budgetary treatment under the Federal  
2 Credit Reform Act of 1990 (2 U.S.C. 661 et seq.)—

3 “(1) be deemed to be non-Federal; and

4 “(2) be treated as a direct loan or loan guar-  
5 antee (as such terms are defined, respectively, in  
6 such Act).”.

7 **SEC. 8. CORPS WATER INFRASTRUCTURE FINANCING PRO-**  
8 **GRAM REGULATIONS.**

9 Not later than 1 year after the date of enactment  
10 of this Act, the Secretary of the Army, acting through the  
11 Chief of Engineers, shall publish in the Federal Register  
12 a final rule, pursuant to section 5032 of the Water Infra-  
13 structure Finance and Innovation Act of 2014 (33 U.S.C.  
14 3911), to carry out such Act (33 U.S.C. 3901 et seq.).

15 **SEC. 9. REPORTS TO CONGRESS.**

16 (a) EPA REPORT.—Not later than 1 year after the  
17 date of enactment of this Act, the Administrator of the  
18 Environmental Protection Agency shall submit to Con-  
19 gress a report on the implementation of—

20 (1) section 4301 of America’s Water Infrastruc-  
21 ture Act of 2018 (33 U.S.C. 3909 note); and

22 (2) any agreement entered into under section  
23 5030(g) of the Water Infrastructure Finance and  
24 Innovation Act of 2014 (33 U.S.C. 3909(g)) pursu-  
25 ant to such section 4301.

1           (b) CORPS OF ENGINEERS REPORT.—Not later than  
2 1 year after the date of enactment of this Act, the Sec-  
3 retary of the Army, acting through the Chief of Engineers,  
4 shall submit to Congress a report on the implementation  
5 of the Corps Water Infrastructure Financing Program  
6 carried out pursuant to the Water Infrastructure Finance  
7 and Innovation Act of 2014 (33 U.S.C. 3901 et seq.), in-  
8 cluding issues pertaining to such implementation with re-  
9 spect to levees and congressionally authorized projects de-  
10 scribed in section 5026(1) of such Act.

11           (c) GAO REPORT.—Section 5034(b) of the Water In-  
12 frastructure Finance and Innovation Act of 2014 (33  
13 U.S.C. 3913(b)) is amended—

14           (1) in paragraph (1), by striking “Not later  
15 than 3 years after the date of enactment of the  
16 Water Resources Development Act of 2018” and in-  
17 serting “Not later than 4 years after the date of en-  
18 actment of the Water Infrastructure Finance and  
19 Innovation Act Amendments of 2022”; and

20           (2) in paragraph (2)—

21           (A) by redesignating subparagraphs (B)  
22 and (C) as subparagraphs (C) and (D), respec-  
23 tively, and inserting after subparagraph (A) the  
24 following:

1           “(B) an evaluation of the implementation  
2 of this subtitle by the Secretary;” and

3           (B) in subparagraph (D) (as so redesign-  
4 nated)—

5           (i) by inserting “evaluations and” be-  
6 fore “recommendations”; and

7           (ii) by striking “subparagraphs (A)  
8 and (B)” and inserting “subparagraphs  
9 (A), (B), and (C)”.

10 **SEC. 10. TECHNICAL AND CONFORMING AMENDMENTS.**

11       The Water Resources Reform and Development Act  
12 of 2014 (33 U.S.C. 2201 et seq.) is amended—

13       (1) in section 1(b)—

14           (A) in the item relating to the heading for  
15 subtitle C of title V, by striking “Pilot”;

16           (B) in the item relating to section 5034, by  
17 striking “pilot”; and

18           (C) by inserting after the item relating to  
19 section 5035 the following:

“5036. Outreach plan.

“5037. Budgetary treatment of certain amounts of financial assistance.”;

20       (2) in the heading for subtitle C of title V, by  
21 striking “**Pilot**”; and

22       (3) in section 5022(12), by striking “et.” and  
23 inserting “et”.

○