



MEMORANDUM

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

FROM: Scott Petersen, Water Policy Director

DATE: November 6, 2023

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

Staff Recommendation

Federal Legislation

Support

- Adopt a position of "Support" on H.R. 5664 (Schrier), Water Infrastructure Finance and Innovation Act Amendments of 2023

Summary

H.R. 5664 (Schrier), Water Infrastructure Finance and Innovation Act Amendments of 2023

RECOMMENDATION: SUPPORT

OBJECTIVE: Improve Water Infrastructure Affecting Authority Member Agencies

Summary

This legislation (1) reauthorizes the Water Infrastructure Finance and Innovation Act of 2014, (2) creates an authority to provide technical assistance to communities under 25,000 in population, (3) modifies the WIFIA program to restore WIFIA funding and financing eligibility to state entities and non-federal cost shares in federally involved projects, and (4) extends the loan length for projects with a useful life greater than 35 years.

Status

H.R. 5664 was introduced on September 21, 2023, and has been referred to the House Subcommittee on Water Resources and Environment.



Importance to the Authority

This legislation makes two important changes to the WIFIA program. The first change is that it provides WIFIA funding eligibility for projects on a federal facility where that WIFIA loan would be repaid by non-federal funding sources. Current law treats these projects differently for budgetary scoring purposes than projects that are not owned by the federal government and this change would provide flexibility for projects like the B.F. Sisk Dam Raise and Reservoir Expansion Project or the Delta-Mendota Canal Subsidence Correction Project to be eligible for WIFIA funding.

The second key change is that the legislation provides for an extension of the loan maturity date for WIFIA loans with a useful project life over 35-years to be extended to either 55 years or the project useful life, rather than the existing 30-year loan term under the current program. This would provide for longer financing windows that better align with the useful life of large infrastructure projects.

Guidelines for Taking Positions on Legislation

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 9, dated December 8, 2022, the Board adopted the Fiscal Year 2024 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 and consultants testify and advocate 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 designee 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

118TH CONGRESS
1ST SESSION

H. R. 5664

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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 21, 2023

Ms. SCHRIER (for herself, Mr. NEWHOUSE, Mr. GARAMENDI, Mr. LAMALFA, Mr. COSTA, Mrs. CHAVEZ-DEREMER, 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

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 2023”.

1 **SEC. 2. CLARIFICATIONS REGARDING SMALL COMMU-**
2 **NITIES AND RURAL WATER PROJECTS.**

3 (a) DEFINITIONS.—Section 5022 of the Water Re-
4 sources Reform and Development Act of 2014 (33 U.S.C.
5 3901) is amended—

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

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

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

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

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

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

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

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

1 “(ii) any other Federal law.”; and

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

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

8 (b) ELIGIBLE PROJECT COSTS.—Section
9 5028(a)(2)(B) of the Water Resources Reform and Devel-
10 opment Act of 2014 (33 U.S.C. 3907(a)(2)(B)) is amend-
11 ed by striking “\$5,000,000” and inserting “\$1,000,000”.

12 (c) AUTHORITY TO PROVIDE ASSISTANCE FOR
13 PROJECT DEVELOPMENT.—Section 5023 of the Water
14 Resources Reform and Development Act of 2014 (33
15 U.S.C. 3902) is amended by adding at the end the fol-
16 lowing:

17 “(c) TECHNICAL ASSISTANCE TO SMALL COMMU-
18 NITIES.—

19 “(1) IN GENERAL.—The Administrator may
20 provide technical assistance to small communities to
21 aid such communities in developing a proposal for
22 an eligible project and seeking assistance under this
23 subtitle to carry out such project.

1 “(2) TYPES OF ASSISTANCE.—Assistance under
2 paragraph (1) may be in the form of engineering
3 and financial planning assistance.”.

4 (d) CONFORMING AMENDMENTS.—

5 (1) ELIGIBLE PROJECT COSTS.—Section
6 5028(a)(2)(B) of the Water Resources Reform and
7 Development Act of 2014 (33 U.S.C. 3907(a)(2)(B))
8 is further amended by striking “a community of not
9 more than 25,000 individuals” and inserting “a
10 small community”.

11 (2) FUNDING.—Section 5033 of the Water Re-
12 sources Reform and Development Act of 2014 (33
13 U.S.C. 3912) is amended—

14 (A) in subsection (b)(2) by inserting
15 “(other than technical assistance under section
16 5023(c))” after “technical assistance”; and

17 (B) in subsection (c)(1) by inserting “and
18 for technical assistance to small communities
19 under section 5023(c)” before the period at the
20 end.

21 (3) OUTREACH PLANS.—Section 5036 of the
22 Water Resources Reform and Development Act of
23 2014 (33 U.S.C. 3915) is amended to read as fol-
24 lows:

1 **“SEC. 5036. OUTREACH PLAN TO SMALL COMMUNITIES.**

2 “Not later than 180 days after the date of enactment
3 of the Water Infrastructure Finance and Innovation Act
4 Amendments of 2023, the Administrator, in consultation
5 with relevant Federal agencies, shall develop and begin im-
6 plementation of an outreach plan to promote financial as-
7 sistance available under this subtitle to small commu-
8 nities.”.

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

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

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

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

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

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

20 “(11) A State-led storage project (as such term
21 is defined in section 4007(a) of the Water Infra-
22 structure Improvements for the Nation Act (43
23 U.S.C. 390b note)).

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

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

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

5 (a) IN GENERAL.—Section 5028 of the Water Infra-
6 structure Finance and Innovation Act of 2014 (33 U.S.C.
7 3907) is amended—

8 (1) by redesignating subsection (c) as sub-
9 section (d); and

10 (2) by inserting after subsection (b) the fol-
11 lowing:

12 “(c) COLLABORATIVE PROJECT DELIVERY METH-
13 ODS.—

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

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

22 “(A) COLLABORATIVE PROJECT DELIVERY
23 METHOD.—The term ‘collaborative project de-
24 livery method’ means a method for carrying out
25 a capital project that involves close collabora-

1 tion among the eligible entity, the owner of the
2 project (if different from the eligible entity), the
3 designer of the project, and the contractor for
4 the project, from design through completion of
5 construction.

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

13 “(C) DESIGN-BUILD METHOD.—The term
14 ‘design-build method’ means a collaborative
15 project delivery method under which a single
16 lead contract is entered into with a design-
17 builder for design and construction.”.

18 (b) STUDY ON THE USE OF COLLABORATIVE
19 PROJECT DELIVERY METHODS.—Not later than 180 days
20 after the date of enactment of this Act, the Administrator
21 of the Environmental Protection Agency, in coordination
22 with the Regional Administrators, and the Secretary of the
23 Army, acting through the Chief of Engineers, shall carry
24 out, and make public the results of, a study that—

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

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

8 (3) assesses the potential benefits of using col-
9 laborative project delivery methods in such projects;
10 and

11 (4) identifies areas of need to educate agency
12 staff in collaborative project delivery method imple-
13 mentation and best practices.

14 **SEC. 5. MATURITY DATE.**

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

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

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

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

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

9 “(i) the date that is 55 years after the
10 date of substantial completion of the rel-
11 evant project (as determined by the Sec-
12 retary or the Administrator, as applicable);
13 and

14 “(ii) if the useful life of the project is
15 less than 55 years, the useful life of the
16 project.”.

17 **SEC. 6. REAUTHORIZATION OF CORPS OF ENGINEERS**
18 **WATER INFRASTRUCTURE FINANCING FUND-**
19 **ING.**

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

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

1 “(3) FISCAL YEARS 2023 THROUGH 2027.—

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

4 “(A) \$68,000,000 to the Administrator for
5 each of fiscal years 2023 through 2027; and

6 “(B) \$15,000,000 to the Secretary for
7 each of fiscal years 2023 through 2027.”; and

8 (2) in subsection (b)(2), by striking “the Ad-
9 ministrator” and inserting “the Secretary or the Ad-
10 ministrator, as applicable,”.

11 **SEC. 7. BUDGETARY TREATMENT OF CERTAIN AMOUNTS**
12 **OF FINANCIAL ASSISTANCE.**

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

16 **“SEC. 5037. BUDGETARY TREATMENT OF CERTAIN**
17 **AMOUNTS OF FINANCIAL ASSISTANCE.**

18 “If the recipient of financial assistance for a project
19 under this subtitle is an eligible entity other than a Fed-
20 eral entity, agency, or instrumentality, and the dedicated
21 sources of repayment of that financial assistance are non-
22 Federal revenue sources, such financial assistance shall,
23 for purposes of budgetary treatment under the Federal
24 Credit Reform Act of 1990 (2 U.S.C. 661 et seq.)—

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

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

4 **SEC. 8. REPORTS TO CONGRESS.**

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

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

11 (2) any agreement entered into under section
12 5030(g) of the Water Infrastructure Finance and
13 Innovation Act of 2014 (33 U.S.C. 3909(g)) pursu-
14 ant to such section 4301.

15 (b) CORPS OF ENGINEERS REPORT.—Not later than
16 1 year after the date of enactment of this Act, the Sec-
17 retary of the Army, acting through the Chief of Engineers,
18 shall submit to Congress a report on the implementation
19 of the Corps Water Infrastructure Financing Program
20 carried out pursuant to the Water Infrastructure Finance
21 and Innovation Act of 2014 (33 U.S.C. 3901 et seq.), in-
22 cluding issues pertaining to such implementation with re-
23 spect to levees and congressionally authorized projects de-
24 scribed in section 5026(1) of such Act.

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

4 (1) in paragraph (1), by striking “Not later
5 than 3 years after the date of enactment of the
6 Water Resources Development Act of 2018” and in-
7 serting “Not later than 4 years after the date of en-
8 actment of the Water Infrastructure Finance and
9 Innovation Act Amendments of 2023”; and

10 (2) in paragraph (2)—

11 (A) by redesignating subparagraphs (B)
12 and (C) as subparagraphs (C) and (D), respec-
13 tively, and inserting after subparagraph (A) the
14 following:

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

17 (B) in subparagraph (D) (as so redesign-
18 nated)—

19 (i) by inserting “evaluations and” be-
20 fore “recommendations”; and

21 (ii) by striking “subparagraphs (A)
22 and (B)” and inserting “subparagraphs
23 (A), (B), and (C)”.

1 **SEC. 9. TECHNICAL AND CONFORMING AMENDMENTS.**

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

4 (1) in section 1(b)—

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

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

9 (C) by inserting after the item relating to
10 section 5035 the following:

“5036. Outreach plan to small communities.

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

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

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

○