The Senate Environment and Public Works Committee has unanimously endorsed S 601, the Water Resources Development Act of 2013. Although it's nice to see some bipartisanship in the capitol — S 601 is co-sponsored by Committee chair Barbara Boxer (D-CA) and ranking minority member David Vitter (R-LA) — the bill as approved by the Committee would badly undermine environmental review of federally funded water projects under the guise of streamlining.

Congress periodically enacts Water Resources Development Acts (WRDAs), or at least it used to do so. The WRDAs authorize Corps of Engineers water projects for flood control, navigation, and environmental restoration. Funding must be approved separately, but there's an expectation that the projects approved in WRDAs will be built. WRDAs have been a famous source of pork — remember the Tennessee-Tombigbee canal? George W. Bush vetoed the last one, in 2007, calling it "a pork-barrel system of Federal authorization and funding where a project's merit is an afterthought." Congress overrode that veto.

I have no opinion of the projects authorized by the current version of S 601 — in fact, I confess I haven't waded through the entire 284 pages of the bill. But I have read its unprecedented environmental review provision, and I'm very troubled by it.

If you're following along with the bill, the relevant provision is section 2033, titled "Project Acceleration." It's not something that snuck through because of a careless staff reading. The bill's sponsors are sufficiently proud of this provision that they call it out in their one-page press summary, saying it will "improv[e] the environmental review process while maintaining environmental protections." That's not my reading. The bill as it stands would allow the Corps to do an end-run around careful environmental review. I'm shocked that Barbara Boxer, who I have always considered a friend of the environment, is lending her name to it.

What's the problem? It's that the bill starts from the premise that projects should be approved. It views environmental review as an impediment to be gotten through as quickly as possible, rather than as an important factor in the decisionmaking process that should be accurate and thorough. And it turns that emphasis on speed into a weapon that the Corps of Engineers can wield to intimidate environmental agencies.

Section 2033 would give the Corps unprecedented power to bully federal environmental agencies. It would allow the Corps to set deadlines for other agencies to complete their environmental review, not just under NEPA but also under any other federal law requiring environmental approval, review, or permitting for water projects. Think Endangered Species Act, Clean Water Act section 404, Fish and Wildlife Coordination Act, and more. If an

environmental agency can't meet the Corps's deadline, the Corps can demand a meeting about it. If that meeting doesn't produce the Corps's desired outcome, it can elevate the issue to the agency heads, the Council on Environmental Quality, and ultimately the President.

That the point of Section 2033 is to clear away environmental hurdles rather than to streamline quality environmental review is clear from the asymmetry of its provisions. The purpose of the conflict resolution provisions is explicitly "to resolve issues that could delay completion of the environmental review process; or result in denial of any approvals required for the project under applicable laws." There is no corresponding provision for resolving issues that could result in misinformed or misguided approval of a project. The review process is very much in the Corps's control. The environmental agencies can resist review on the grounds that they don't have needed information, but if the Corps disagrees it can take the issue up the review ladder. If an environmental agency contends that it lacks the resources to carry out its review on the Corps's timeline its Inspector General has to back up that claim with an audit. To give the Corps even more leverage, if an environmental agency doesn't make a final decision about a project within 180 days of completion of an EIS or permit application, the agency head's budget would be docked up to $20,000 per week.

Clearly the point of these provisions is to help the Corps browbeat approvals out of environmental agencies. This sort of undermining of environmental review would be troubling in any context, but it would be especially problematic to give the Corps this kind of leverage, given its long history of overestimating the benefits of water projects and underestimating their environmental and economic costs. Senators who care about environmental protection should insist on removal of section 2033 before supporting S 601.

For our environmental law professor readers, there's an environmental law professor letter objecting to this aspect of S. 601 circulating. If you want to sign on to that letter, let me or Pat Parenteau at Vermont know this week.