AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

ONE-YEAR ANNIVERSARY AFTER ENACTMENT: IMPLEMENTATION OF THE WATER RESOURCES REFORM AND DEVELOPMENT ACT OF 2014

(114–20)

HEARING

BEFORE THE

SUBCOMMITTEE ON
WATER RESOURCES AND ENVIRONMENT

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

JUNE 10, 2015

Printed for the use of the
Committee on Transportation and Infrastructure

Available online at: http://www.gpo.gov/fdsys/browse/committee.action?chamber=house&committee=transportation

U.S. GOVERNMENT PUBLISHING OFFICE

94–928 PDF WASHINGTON : 2016

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

BILL SHUSTER, Pennsylvania, *Chairman*

DON YOUNG, Alaska
JOHN J. DUNCAN, JR., Tennessee, *Vice Chair*
JOHN L. MICA, Florida
FRANK A. LOBIONDO, New Jersey
SAM GRAVES, Missouri
CANDICE S. MILLER, Michigan
DUNCAN HUNTER, California
ERIC A. "RICK" CRAWFORD, Arkansas
LOU BARLETTA, Pennsylvania
BLAKE FARENTHOLD, Texas
BOB GIBBS, Ohio
RICHARD L. HANNA, New York
DANIEL WEBSTER, Florida
JEFF DENHAM, California
REID J. RIBBLE, Wisconsin
THOMAS MASSIE, Kentucky
TOM RICE, South Carolina
MARK MEADOWS, North Carolina
SCOTT PERRY, Pennsylvania
RODNEY DAVIS, Illinois
MARK SANFORD, South Carolina
ROB WOODALL, Georgia
TODD ROKITA, Indiana
JOHN KATKO, New York
BRIAN BABIN, Texas
CRESENT HARDY, Nevada
RYAN A. COSTELLO, Pennsylvania
GARRET GRAVES, Louisiana
MIMI WALTERS, California
BARBARA COMSTOCK, Virginia
CARLOS CURBELO, Florida
DAVID ROUZER, North Carolina
LEE M. ZELDIN, New York

PETER A. DEFAZIO, Oregon
ELEANOR HOLMES NORTON, District of Columbia
JERROLD NADLER, New York
CORRINE BROWN, Florida
EDDIE BERNICE JOHNSON, Texas
ELIJAH E. CUMMINGS, Maryland
RICK LARSEN, Washington
MICHAEL E. CAPUANO, Massachusetts
GRACE F. NAPOLITANO, California
DANIEL LIPINSKI, Illinois
STEVE COHEN, Tennessee
ALBIO SIRES, New Jersey
DONNA F. EDWARDS, Maryland
JOHN GARAMENDI, California
ANDRÉ CARSON, Indiana
JANICE HAHN, California
RICHARD M. NOLAN, Minnesota
ANN KIRKPATRICK, Arizona
DINA TITUS, Nevada
SEAN PATRICK MALONEY, New York
ELIZABETH H. ESTY, Connecticut
LOIS FRANKEL, Florida
CHERI BUSTOS, Illinois
JARED HUFFMAN, California
JULIA BROWNLEY, California

SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT

BOB GIBBS, Ohio, *Chairman*

CANDICE S. MILLER, Michigan
DUNCAN HUNTER, California
ERIC A. "RICK" CRAWFORD, Arkansas
DANIEL WEBSTER, Florida
JEFF DENHAM, California
REID J. RIBBLE, Wisconsin
THOMAS MASSIE, Kentucky
TOM RICE, South Carolina
RODNEY DAVIS, Illinois
MARK SANFORD, South Carolina
TODD ROKITA, Indiana
JOHN KATKO, New York
BRIAN BABIN, Texas
CRESENT HARDY, Nevada
GARRET GRAVES, Louisiana
DAVID ROUZER, North Carolina
BILL SHUSTER, Pennsylvania *(Ex Officio)*

GRACE F. NAPOLITANO, California
DONNA F. EDWARDS, Maryland
JOHN GARAMENDI, California
LOIS FRANKEL, Florida
JARED HUFFMAN, California
EDDIE BERNICE JOHNSON, Texas
ANN KIRKPATRICK, Arizona
DINA TITUS, Nevada
SEAN PATRICK MALONEY, New York
ELIZABETH H. ESTY, Connecticut
ELEANOR HOLMES NORTON, District of Columbia
RICHARD M. NOLAN, Minnesota
PETER A. DEFAZIO, Oregon *(Ex Officio)*

CONTENTS

Page

Summary of Subject Matter vi

WITNESSES

Hon. Jo-Ellen Darcy, Assistant Secretary of the Army (Civil Works):
- Testimony 7
- Joint prepared statement with Lieutenant General Thomas P. Bostick, Chief of Engineers, U.S. Army Corps of Engineers 46
- Responses to questions for the record from the following Representatives:
  - Hon. Bob Gibbs of Ohio 54
  - Hon. Garret Graves of Louisiana 55
  - Hon. Candice S. Miller of Michigan 56
  - Hon. Tom Rice of South Carolina 58
  - Hon. John Katko of New York 59

Lieutenant General Thomas P. Bostick, Chief of Engineers, U.S. Army Corps of Engineers:
- Testimony 7
- Joint prepared statement with Hon. Jo-Ellen Darcy, Assistant Secretary of the Army (Civil Works) 46
- Responses to questions for the record from the following Representatives:
  - Hon. Bob Gibbs of Ohio 61
  - Hon. John Katko of New York 64

SUBMISSIONS FOR THE RECORD

Letter of June 9, 2015, from Kurt J. Nagle, President and CEO, American Association of Port Authorities, to Chairman Bob Gibbs and Ranking Member Grace F. Napolitano, Subcommittee on Water Resources and Environment 66

Written statement, National Hydropower Association, Linda Church Ciocci, Executive Director 68

Committee on Transportation and Infrastructure
U.S. House of Representatives

Bill Shuster
Chairman

Washington, DC 20515

Peter A. DeFazio
Ranking Member

Christopher P. Bertram, Staff Director

Katherine W. Dedrick, Democratic Staff Director

June 5, 2015

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Water Resources and Environment
FROM: Staff, Subcommittee on Water Resources and Environment
RE: Hearing on "One Year Anniversary After Enactment: Implementation of the Water Resources Reform and Development Act of 2014"

PURPOSE

On Wednesday, June 10, 2015, at 10:00 a.m. in 2167 Rayburn House Office Building, the Subcommittee on Water Resources and Environment will meet to receive testimony from the Assistant Secretary of the Army for Civil Works and the Chief of Engineers for the U.S. Army Corps of Engineers (Corps) on implementation of the Water Resources Reform and Development Act of 2014 (WRRDA 2014).

Army Corps of Engineers – Civil Works

The Corps of Engineers constructs projects for the purposes of navigation, flood control, beach erosion control and shoreline protection, hydroelectric power, recreation, water supply, environmental protection, restoration and enhancement, and fish and wildlife mitigation.

The first step in a Corps water resources development project is a study of the feasibility of the project. If the Corps has previously conducted a study in the area of the proposed project, the new study can be authorized by a resolution of either the House of Representatives Committee on Transportation and Infrastructure or the Senate Committee on Environment and Public Works. If the area has not been previously studied by the Corps, then an Act of Congress is necessary to authorize the study. Historically, most studies have been authorized by Committee resolution.

The Corps prepares a feasibility report, the cost of which is shared 50 percent by the federal government and 50 percent by the non-federal interest, to determine if a project is economically justified, environmentally acceptable, and technically achievable.

After a full study is completed, the results and recommendations of the study are submitted to the Congress, usually in the form of a report of the Chief of Engineers. If the results and recommendations are favorable, the next step is authorization. Project authorizations are contained in Water Resources Development Acts (WRDAs), the most recent of which was enacted in 2014.

Currently the Corps maintains more than 25,000 miles of channels for commercial navigation, and operates and maintains 236 locks at 192 sites. Almost 140 locks are more than 50 years old. The Corps also maintains 926 coastal, Great Lakes, and inland harbors.

The Corps manages more than 700 dams nationwide and is responsible for almost 15,000 miles of levees through its flood damage reduction mission. Corps flood damage reduction projects prevent, on average, more than $48.5 billion in flood damage annually. Every dollar invested in a Corps flood project prevents $7.92 in damage.

The Corps of Engineers employs almost 23,000 people, including more than 280 military personnel. Corps projects provide annual net economic benefits of more than $87 billion, and the total replacement value of Corps infrastructure assets equals approximately $265 billion.

Water Resources Reform and Development Act of 2014

Traditional WRDAs authorize the Corps to carry out projects used for navigation, flood damage reduction, aquatic ecosystem restoration, and other purposes. WRDAs are meant to be enacted every two years, but recently only two have been enacted into law (2007 and 2014).

WRRDA 2014 was enacted on June 10, 2014. It codified measures to accelerate the project delivery process, promoted fiscal responsibility, and called for increased federal support of transportation networks to promote competitiveness, prosperity, and economic growth. WRRDA 2014 also made reforms to increase transparency, accountability, and congressional oversight in reviewing and prioritizing future water resources development investment.

With the enactment of WRRDA, the Corps is required to issue just over 200 pieces of implementation guidance to carry out the law. In the one year since enactment, the Corps has issued less than 40 percent of the implementation guidance, much of which is to carry out nontechnical sections of the law. By comparison, one year after enactment of WRDA 1986, the Corps had issued approximately 50 percent of the implementation guidance. Many non-federal project sponsors could benefit from the reforms that WRRDA 2014 provides, but instead are having difficulty utilizing the provisions since implementation guidance has not been issued.

Annual Report to Congress

Section 7001 of WRRDA 2014 required the Secretary of the Army to request proposals from non-federal interests for new project authorizations, studies, and modifications to existing Army Corps of Engineers projects. Further, it required the Secretary to submit to the Committee on Transportation and Infrastructure and the Senate Committee on Environment and Public

Works, and make publicly available, an Annual Report of those activities that are related to the missions of the Corps of Engineers and require specific authorization by law.

This section was included in WRRDA so that Congress could gain greater insight into the water resources challenges facing the nation and the Army Corps of Engineers. The Annual Report is intended to guide Congress and help set priorities for future water resources legislation. Congress intended that this report would be a collective effort of state and other non-federal project sponsor priorities without the concerns of feasibility and cost.

Implementation guidance has been issued for this section, and it tracked very closely with congressional intent until the first Annual Report was provided to the Committee on Transportation and Infrastructure in February 2015.

Rather than provide Congress an Annual Report based on the criteria required in WRRDA 2014, the Corps instead provided a list of projects that met Administration prioritization. According to WRRDA 2014, any project request that met the following criteria was to be included in the Annual Report:

1. Are related to the missions and authorities of the Corps of Engineers.
2. Require specific congressional authorization, including by an Act of Congress.
3. Have not been congressionally authorized.
4. Have not been included in any previous Annual Report.
5. If authorized, could be carried out by the Corps of Engineers.

However, in its first Annual Report, the Administration used a different set of criteria for evaluating project authorizations, studies, and modifications than those specifically outlined in section 7001(c)(1)(A) of WRRDA 2014.

For example, in the initial Annual Report, two of the nine pending feasibility reports were listed in the appendix for the stated reason that these reports had yet to clear administration review. Yet, the statutory criteria in section 7001(c)(1)(A) do not mention clearing administration review as a factor for listing a project authorization, study, or modification in the appendix. Similarly, other project authorizations, studies, or modifications are listed in the appendix for the stated reason that these requests are "not a primary mission" of the Corps. Again, the statutory criteria listed in section 7001(c)(1)(A) do not consider whether an authorization, study, or modification is a "primary mission" of the Corps as a factor for including that request in the appendix. The appendix is an added layer of transparency that contains projects that were not included in the Annual Report, but provides Congress with a more complete spectrum of the potential project studies, authorizations, and modifications.

The Annual Report is intended to reflect a broad spectrum of activities for Congress, not the Administration, to consider in authorizing future water resources projects. The *Federal Register* Notice for project submittals to the Corps for the next Annual Report was issued on May 26, 2015.

Accelerated Project Delivery Process

Important reforms provided by WRRDA 2014 accelerate the project delivery process. WRRDA 2014 limits feasibility studies to three years and $3 million in federal costs per study, and requires all three levels of the Corps (District, Division, and Headquarters) to concurrently review the feasibility study.

To help the Corps comply with the commonly referred to "3x3x3" process, WRRDA 2014 repealed the requirement that a reconnaissance study must be conducted prior to initiating a feasibility study. This creates an accelerated process which allows non-federal project sponsors and the Corps to go directly into the feasibility study phase at a 50 percent federal-50 percent non-federal cost share, shaving approximately one year off the feasibility study schedule. WRRDA 2014 also accelerates Corps studies and reviews by requiring the Corps to better coordinate with all federal, state, and local agencies involved in the environmental review process.

WRRDA 2014 provides the Corps with permanent authority to accept funds from non-federal interests to process permits within the regulatory program of the Corps of Engineers. Also included in this provision is a pilot program for public utility companies and natural gas companies to expedite the processing of permits within the regulatory program of the Corps.

Implementation guidance has been issued on some of these provisions, like the "3x3x3" process and the repeal of the requirement that the Corps carry out initial reconnaissance studies. Implementation guidance has yet to be issued for other project acceleration provisions.

Flexibility for Non-federal Interests

WRRDA 2014 maximizes the ability of non-federal interests to contribute their own funds to move studies and projects forward. Under the law, non-federal interests have the opportunity to contract with the Corps to study, design, and construct water resources projects using their own funding.

WRRDA 2014 establishes a five-year pilot program for the acceptance and expenditure of funds contributed by non-federal interests to operate and maintain specific locks located on the nation's inland waterways. WRRDA 2014 authorizes a non-federal sponsor to apply credit for in-kind contributions that are in excess of the non-federal share to other water resources development projects being carried out by the same non-federal sponsors.

Very few implementation guidance sections have been issued related to non-federal contributions, though the sections that have been issued generally follow congressional intent.

Harbor Maintenance Trust Fund

WRRDA 2014 creates a targeted expenditure from the Harbor Maintenance Trust Fund (HMTF), increasing each year, so that by fiscal year 2025 and beyond, 100 percent of the funds collected for harbor maintenance purposes go towards required operation and maintenance

activities. At the same time, WRRDA 2014 addresses the needs of the nation's authorized harbors in a manner that benefits both the largest commercial harbors, as well as the smaller and emerging harbors. For fiscal years 2015 through 2024, the Secretary is directed to allocate 90 percent of such funds to meet the needs of high-use and moderate-use harbor projects, and to allocate 10 percent of such funds to meet the needs of emerging harbors.

The Corps has not issued any implementation guidance on the sections related to the Harbor Maintenance Trust Fund.

In addition, during the 113th Congress, a provision was included in the fiscal year 2015 Omnibus Appropriations that directs the Corps to forgo the allocation of harbor maintenance funds contained in section 2102 of WRRDA 2014. This Congress, the House of Representatives passed an amendment to the fiscal year 2016 Energy and Water Appropriations bill directing the Corps to follow the allocation of harbor maintenance funding, which was approved by voice vote.

Water Infrastructure Public-Private Partnership Pilot Program and WIFIA

WRRDA 2014 establishes a Water Infrastructure Finance and Innovation Act (WIFIA) to provide federal credit assistance for drinking water and wastewater activities through the Environmental Protection Agency's (EPA's) portfolio, and water resources infrastructure projects through the Corps' portfolio. This newly created program is modeled after the highly successful Transportation Infrastructure and Innovation Act (TIFIA) program for surface transportation. WIFIA aims to provide credit assistance in the form of loans or guarantees for eligible water projects.

WRRDA 2014 also strengthens the primary existing source of federal investment for wastewater infrastructure, the Clean Water State Revolving Fund (CWSRF), by expanding the types of projects eligible for CWSRF funding, by increasing the affordability of local financing from the Fund, and by providing communities with greater flexibility in the use of financial assistance to target local water quality needs.

While implementing this new program requires actions by both the Corps and EPA, the Corps has yet to issue implementation guidance on WIFIA. EPA is actively developing its implementation guidance on WIFIA. While EPA's guidance follows the intent of WRRDA 2014, there is no indication of when the Corps will release their guidance.

WRRDA 2014 authorizes the Corps to enter into agreements with non-federal interests, including private entities, to finance construction of at least 15 authorized water resources development projects utilizing the model of a public–private partnership. While the Corps is attempting to carry out public-private partnership activities, implementation guidance for public-private partnerships under WRRDA 2014 has yet to be issued.

Deauthorizations

WRRDA 2014 also contains a provision to deauthorize $18 billion of old, inactive projects. While implementation guidance for the deauthorization section has been issued, the Corps has yet to supply Congress with the required interim list of $18 billion worth of potential projects that are proposed to be deauthorized.

WITNESSES

The Honorable Jo-Ellen Darcy
Assistant Secretary of the Army—Civil Works

Lieutenant General Thomas P. Bostick
Chief of Engineers
United States Army Corps of Engineers

ONE-YEAR ANNIVERSARY AFTER ENACTMENT: IMPLEMENTATION OF THE WATER RESOURCES REFORM AND DEVELOPMENT ACT OF 2014

WEDNESDAY, JUNE 10, 2015

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to call, at 10 a.m., in room 2167, Rayburn House Office Building, Hon. Bob Gibbs (Chairman of the subcommittee) presiding.

Mr. GIBBS. The Subcommittee on Water Resources and Environment of the Committee on Transportation and Infrastructure will come to order.

A couple housekeeping issues. I ask unanimous consent that Mr. Farenthold may be included in today's hearing.

Is there an objection?

Without objection, so ordered.

I ask unanimous consent that the hearing record be kept open for 30 days after this hearing in order to accept written testimony for the hearing record.

Is there an objection?

Without objection, so ordered.

Welcome today. Today we are having a hearing on the 1-year anniversary after the enactment of the implementation of the Water Resources Reform and Development Act of 2014. One year ago a strong bipartisan message was sent by Congress and the President with the enactment of the Water Resources Reform and Development Act of 2014.

Congress has made a conscious effort in WRRDA 2014 to enhance America's competitiveness by strengthening investments in the Nation's water resources infrastructure, including ramping up Harbor Maintenance Trust Fund expenditures for their intended purposes.

A high priority of any administration should be to put the United States at a competitive advantage in the world markets, especially since world trade patterns are expected to be dramatically different when the Panama Canal expansion becomes operational early next year.

Additionally, when Congress enacted WRRDA 2014, there were several high-priority provisions included in the law, provisions that

related to the Harbor Maintenance Trust Fund, the Inland Waterways Trust Fund, permit processing, project acceleration, and a new mechanism for project authorizations.

WIFIA [Water Infrastructure Finance and Innovation Act], public-private partnerships, and the deauthorization of old and inactive projects were included in a law that was signed by the President in June of 2014. While the WRRDA law is transformative and, in some places, complicated, we remain disappointed at the pace and the prioritization at which the U.S. Army Corps of Engineers [Corps] is carrying out the drafting of the implementation guidance.

Today, at the 1-year anniversary of enactment of WRRDA 2014, we would hope and expect that the Corps would put more of a priority in writing the implementation guidance. After all, WRRDA is the law of the land. It is not a suggestion for the administration to casually disregard.

Much of the implementation guidance that has been issued tracks closely with the intent of Congress with a few exceptions. However, these guidance documents pertain to some of the less complex provisions contained in WRRDA 2014.

The Corps appears to have done an excellent job in following congressional intent associated with the study acceleration provision, specifically the issuance of the 3x3x3 guidance. Unfortunately, the same cannot be said for the implementation of the new authorization provisions carried out pursuant to section 7001 of WRRDA 2014.

The annual report is intended to reflect a broad spectrum of activities for Congress, not the administration, to consider in authorizing future water resources projects. The job of the Corps, under section 7001, is primarily an administrative one; that is, the Corps is to collect proposals, screen them against the five criteria in the law, and simply report the findings.

The contents of the first annual report did not meet this committee's expectations not only in terms of the number of proposals submitted by non-Federal project sponsors, but also, how the administration used this process as a way to promote their priorities and not those of their customers. We look forward to fixing this process going forward.

For some of the more complex provisions, like WIFIA and contributed funds, the Corps customers—the non-Federal stakeholders—are still waiting to benefit from these sorts of reforms provided in WRRDA 2014.

Even some of the commonsense provisions, like the use of benchmarking for non-Federal improvements to Federal projects, permanent acceleration activities through the section 214 program, or the public-private partnership provisions, are suffering for what appears to be an inattention from the Corps.

WRRDA 2014 accelerated the project delivery process, promoted fiscal responsibility, strengthened transportation networks, increased transparency, and increased congressional oversight in prioritizing future water resources investment. WRRDA 2014 was transformative. It is complex and requires thoughtful implementation by the Corps to ensure it carries out of the intent of Congress.

While implementation has not met the committee's expectations so far, we look forward to continuing to work with the Corps to ensure that WRRDA 2014 is carried out in a fashion that benefits the Nation.

I want to pass on a note of thanks to General Peabody. While General Peabody is not an official witness today, he is at the table and he joins the hearing to answer some of the more complex questions.

General Peabody is retiring from the United States Army in the coming weeks. He is a native of my home State of Ohio. I want to thank him for his distinguished service of 35 years in the military service and wish him well in the future.

I also look forward to testimony from Ms. Darcy and General Bostick.

Now I recognize my ranking member, Mrs. Napolitano, for her statement.

Mrs. NAPOLITANO. Well, thank you so very much, Mr. Chairman, for holding today's hearing on the status of implementation of WRRDA 2014, which today is its first anniversary.

I wish to welcome our two witnesses, the Honorable Jo-Ellen Darcy and Lieutenant General Thomas Bostick, and thank them for their service to our country and, also, to their hardworking staff, which we have great respect for. It is good to see you both again.

But before I proceed, I would like to take just a brief moment to thank both of you for your work on the final clean water protection rule. Along with the EPA [Environmental Protection Agency], your organization put a great deal of time—over a decade—and effort into crafting the final rule, and it is very evident.

Thank you for your thoughtfulness with which you engaged State and local governments and other stakeholder organizations. I do believe the final rule responded to many concerns as well as the criticisms of the proposed rule. We are grateful for your dedication to protect our Nation's water resources.

I would also like to thank you for the great degree of flexibility and responsiveness you have shown us in southern California as to respond to historic continuing drought.

Also, the deviation of Whittier Narrows Dam will eventually increase the amount of water captured and conserved for groundwater recharge in the area. And it is indicative of the types of solution-oriented flexibility we need to deal with in drought conditions, especially as regards to the acceptance of non-Federal funds to help on important projects throughout the West.

With no end in sight of the drought, I expect there will be many more opportunities in the future for all to work together not only in California water conservation efforts, but all the Western States. Again, thank you so very much.

As for today's hearing topic, implementation of WRRDA 2014, the Department of the Army and the Corps of Engineers have now had a year to develop implementation guidance for a variety of reforms.

Most important to the Western States and to California is the water supply issue, that the dams capture and recharge some of our aquifers; the public-private partnership, the funds being able

to allow acceptance of those which we have been working on for at least 5, 6 years; and, also, to the port trust fund, the implementation, being able to get some of those funds back to do the work that needs to be done in our ports.

WRRDA 2014 had a goal of increasing flexibility at the Corps of Engineers, modernizing the programs. Our reforms were intended to assist the Corps project delivery process by accelerating the method by which the projects and studies are carried out. As the chairman was pointing out, we have some concerns about how fast those are being carried out.

The Corps has been slow to implement the reforms contained in 2014's WRRDA. Implementation guidance has been issued for only 40 percent of the provisions. And we would expect that the Corps would swiftly embrace the reforms of WRRDA, but I am concerned that declining budgets have limited your ability to complete the work.

I am hoping that you will be able to clarify that somewhere along the line because, if you are getting less and asked to do more, I think we need to understand that that is hampering your ability to get the work done.

In particular, I am concerned that the Corps has not issued any guidance for section 1046 of WRRDA 2014, a section intended to assess the management practices of the Corps reservoirs in arid regions of the country and their impacts to water supply during periods of drought.

The findings of this assessment and your recommendations could be part of the solution to the drought. And so today we don't see any guidance on those issues.

With that said, I am happy to welcome our witnesses back to the subcommittee. And our goal is to continue to expand the dialogue between the Corps and our subcommittee so we can move forward to achieving a common goal of meeting our Nation's water resource needs in an expedient manner that protects public safety, allows for economic viability, and ensures the protection and improvement of the environment.

Mr. Chairman, I agree with you. I think we need to work together. And I would be happy to provide any assistance I can. Thank you so very much.

I yield back.

Mr. GIBBS. At this time I recognize the gentleman from Pennsylvania, the chairman of the Committee on Transportation and Infrastructure, Bill Shuster.

Mr. SHUSTER. Thank you, Chairman Gibbs.

Thanks to Secretary Darcy, General Bostick, and General Peabody for being here today.

It is critical that we get water resources back on the congressional schedule of doing it every Congress, and our intent is to do that not this year, but next year, in this Congress. I think it is important to make sure that these projects move forward and that we have consistent oversight.

As we turn the page to the next WRDA [Water Resources Development Act], there are major issues of implementation that we don't think are being followed, for instance, the section 214, which we put in there, which we though would be very helpful to the

Corps, providing dollars from the private sector to help move projects forward, and extremely helpful, we believe, to the private sector.

It seems to be slow-walking implementation, and for the life of me I can't understand that. It would be helpful, as I said, to both the Corps mission and to standing up these projects and moving them forward.

Even more concerning, the administration seems to be misinterpreting the new project authorization process that we established under WRRDA. The annual report required under WRRDA gave the Corps the opportunity to provide Congress with a list of non-Federal project sponsor priorities that reflect the needs of the Nation. Instead, the administration chose to provide Congress a list of the Corps priorities.

We were pretty clear in setting out the criteria that are related to the mission and authorities of the Corps, one; two, requires specific congressional authorization included by the act of Congress; three, have not been congressionally authorized, which is key, which a major part of the reform is to be able to move these projects forward without waiting on the Federal Government.

Instead of letting these projects sit around and wait for years and years and years, the locals can come up with the money and continue to see these projects move forward. It is absolutely critical.

Fourth is to have not been included in any previous annual report. And fifth is, if authorized, could be carried out by the Corps of Engineers. So, again, these are key provisions in the last water bill that don't seem to be moving forward.

The priorities of the States and local governments aren't being met. And, again, that annual report was intended to reflect a broad spectrum of activities for Congress, not the administration, to consider in authorizing future water resources projects.

So I expect the Corps to address these. As we move to the next water resources bill, we are going to have to just tighten them up. I just don't understand why this, what I think has been voted on in an extremely bipartisan way in this Congress with a vote of 400-and-some to very few—this is something that Congress wants. It is something the Corps should take up with breakneck speed and move these forward.

So I look forward to hearing your testimony today. I yield back. Thank you.

Mr. GIBBS. I recognize the gentleman from Oregon, the ranking member of the full committee, Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman. I appreciate the opportunity.

And I thank the Corps for being here.

Actually, I am a fan of the Corps, but I think you are going to hear some concern and frustration from a number of us up here today in the execution of the last Water Resources Development Act.

First, let's put down a marker. Last time I checked—and someone on the panel can probably correct me—the Corps had more than a $40 billion—"b," billion—backlog of critical infrastructure that needed repair or replacement. That is not acceptable.

And in the last WRRDA bill at the end of the year, the industry itself, the inland waterway users, wanted an increase on diesel tax and it was done in the yearend deal to begin to help defray some of the costs of the dysfunctional locks and levees and all the other problems that we have. So there is blame to go around here with the Congress.

Secondly, when we talk about the section of the bill that the chairman was just talking about, this was an attempt to restore what I always thought was a good principle, which is those who were elected from local areas better understand the needs of their constituents and their infrastructure than the main offices of the Federal bureaucracy in Washington, DC. So we used to have earmarks. Now earmarks got a bad name. I won't go into that for various reasons. And they were banned. Well, that was stupid.

So now we have a totally opaque process where spending priorities are determined somewhere in the administration, mostly by trolls over at OMB [Office of Management and Budget] who are accountable to no one and who do things that are invisible to everybody until they pop up. So that was dumb.

And we tried to get around that by requiring the Corps to evaluate locally submitted projects. And the Corps, perhaps at the behest of OMB, followed a Reagan-era Executive order and refused to follow the statutory requirements put on them by Congress and gave us back an anemic little list and excluded everything else and said they had substituted under the Reagan Executive order their own priorities and that they had authority to ignore us because we didn't say they couldn't use other criteria.

Well, obviously, we will correct that in the next bill. We will say: These are the only criteria you may use, period, end of story, statute, law, signed by the President. You have to follow it no matter what some jerk down at OMB says.

But we have a couple of years until we get there or a year and a half. And I would hope that we can be more productive during that time period in revisiting this issue, you know, this year, and that we can get freed from these—it is really clear what the intent of Congress was. And if someone in the administration wants to stonewall us, you know, that would be very unfortunate.

I would hope that this year we get more compliance with that statute, and I also hope that we begin to recognize that the Corps is underfunded, these are critical infrastructure needs, there is a difference between investment and just plain old spending, and we need to be investing more in bringing it up to a state of good repair.

With that, I yield back the balance of my time.

Mr. GIBBS. Thank you.

I would like to welcome our panel today. Today we have the Assistant Secretary of the Army, Secretary Darcy. We have Lieutenant General Bostick, Chief of Engineers, U.S. Army Corps of Engineers. And assisting at the witness table is General Peabody.

So, Secretary Darcy, the floor is yours.

TESTIMONY OF HON. JO-ELLEN DARCY, ASSISTANT SECRETARY OF THE ARMY (CIVIL WORKS); LIEUTENANT GENERAL THOMAS P. BOSTICK, CHIEF OF ENGINEERS, U.S. ARMY CORPS OF ENGINEERS

Ms. DARCY. Thank you, Mr. Chairman and distinguished members of the committee. We are honored to be here today to testify about the implementation of the Water Resources Reform and Development Act of 2014.

WRRDA 2014 provides new authorities to the Secretary of the Army to support the Nation's water resources needs by transforming existing processes and further enhancing collaboration with our stakeholders. As the Assistant Secretary of the Army for Civil Works, I am responsible for the overall supervision of the U.S. Army Corps of Engineers as we develop the guidance and the authorities of WRRDA 2014.

My goal is to continue to improve the Army's ability to serve the changing water resources needs of this Nation and to integrate water resources management. In order to implement WRRDA 2014, guidance is written to provide a common understanding of how the law will be implemented and which policies need to be amended to ensure consistent application of the law across the Nation.

Implementation guidance is prepared in a thoughtful manner, which takes time. A draft of the guidance is developed by and vetted within the Corps and then coordinated with my staff and Army General Counsel. As WRRDA 2014 contains many provisions that significantly change the way the Corps operates, we sought public input in developing our implementation guidance.

We held four listening sessions between August and September of 2014, with over 800 individuals participating in the sessions. We gained valuable information from these stakeholders regarding their views on the implementation of many of the WRRDA 2014 sections. In addition, we accepted written comments as well.

In October of 2014, the comments from the listening sessions and the written comments were compiled, organized by sections of the act that they related to, and distributed to the subject matter experts within the Corps for their use in drafting implementation guidance.

We have given priority for implementation guidance to national policy provisions and to those project and program provisions where funds have been appropriated. All completed guidance is posted on the Corps Web site. I will provide the link to this Web site. It is in the written testimony, as well.

Our joint written testimony focuses on the major categories of the national policy provisions contained within the act and the key provisions in those categories. These categories include project development and delivery, deauthorizations and backlog prevention, alternative financing, sponsor-led studies in construction, levee safety, work-in-kind credits, expediting the evaluation and processing of permits, navigation, and water supply and reservoir management. Implementation of this very important legislation has been and remains a priority for the Army and for the Corps.

Now I yield to General Bostick.

Mr. GIBBS. General Bostick, welcome.

General BOSTICK. Chairman Gibbs, Ranking Member Napolitano, full committee Chair Shuster, and Ranking Member DeFazio and distinguished members of the committee, I am honored to testify before you today, along with the Assistant Secretary of the Army for Civil Works, the Honorable Jo-Ellen Darcy, on the implementation of the Water Resources Reform and Development Act of 2014.

The United States of America is extremely blessed by natural resources, particularly our rivers and harbors. And the history of our Nation is written on our waterways. The U.S. Army Corps of Engineers has proudly served on the Nation's waterways since the very beginning, building coastal fortifications, dredging channels and designing and constructing locks, dams, and other navigation features.

Today we remain the world's continental maritime Nation. No other country even approaches the blessings of reliable access to oceans and inland waterways as the United States. The ability to leverage our extensive interior navigable waterway system is essential to our economic advantage and geopolitical dominance.

The Nation's harbors, channels and waterways handle approximately 2.3 billion tons of commerce annually. Ninety-eight percent of overseas trade, valued at more than $1.72 trillion, moves through Corps projects. Starting in the early 19th century, the development of multipurpose projects helped to provide additional benefits to the Nation.

One out of every four megawatts of hydropower produced in the United States is generated by the U.S. Army Corps of Engineers power plants. We are the largest renewable energy producer in the United States.

Additionally, we welcome over 370 million visits a year at 403 lakes and river projects in 43 States. As the Nation's communities were devastated by floods, coastal storms, and other natural disasters, our mission expanded to include flood and storm risk reduction. Historically, USACE [U.S. Army Corps of Engineers] projects avoid $8 of damage for every $1 invested.

In 2014 alone, our projects prevented over $14 billion worth of damage. In just the past few weeks, our projects have been severely tested by the incredibly heavy rains in Texas, Oklahoma, and Arkansas, where all initial reports are that the USACE projects have played a major role in assisting those States.

Following the passage of the Nation's environmental laws in the 1970s, our mission expanded further to cover environmental stewardship and restoration. Scores of rivers, wetlands, and water bodies have been protected by Corps regulatory programs or restored and enhanced by Corps disposal facilities, research, and environmental projects.

Historically, our water resources and maritime transportation system have made us the envy of other Nations. However, the state of our Nation's infrastructure today is threatening our national security. The American Society of Civil Engineers has graded our infrastructure at a D-plus. According to the world economic forum, the quality of U.S. infrastructure ranks 14th in the world out of 144, 7 slots lower than in 2008.

As we look forward, the U.S. Army Corps of Engineers is continuing to implement the reforms outlined in WRRDA 2014 as we

have done with previous WRDA legislation, including successful implementation of the planning modernization for Chief's Reports.

For example, during the 7 years since the inception of Civil Works transformation efforts in 2008, 48 Chief's Reports have been completed. During this time, 12 Chief's Reports were completed in the first 4 years and 35 were completed in the last 3½. We are clearly becoming more efficient.

This legislation is making a difference in our ability to deliver sustainable infrastructure projects that are economically viable, environmentally feasible, and technically justifiable.

I look forward to our discussion today and to continuing our work with members of this committee to improve the state of our Nation's vital infrastructure, and I look forward to your questions.

Mr. GIBBS. Thank you.

I will start off the questions.

Ms. Darcy, in a recent 2016 budget hearing we had and, also, in a letter, we requested a list of projects that met all five of the statutory criteria that was not included in the first January report.

I am going to ask you a series of questions and, just to make it easy for you, just yes or no on all of them.

First question: Are you familiar with the Brazos Island Harbor Channel project in southeast Texas that has a signed Chief's Report? Are you familiar with that project?

Ms. DARCY. Yes.

Mr. GIBBS. Has the Chief's Report been congressionally authorized?

Ms. DARCY. No.

Mr. GIBBS. Does Congress need to authorize this Chief's Report so that the Corps can carry it out?

Ms. DARCY. Yes.

Mr. GIBBS. If authorized, can the Corps carry out the Chief's Report?

Ms. DARCY. Yes.

Mr. GIBBS. OK. Does the Chief's Report relate to the mission of the Corps of Engineers, your mission?

Ms. DARCY. Yes.

Mr. GIBBS. Your staff is shaking his head yes back there.

Has the Chief's Report been in any previous annual reports in Congress? And I will answer that one for you. It is obviously no.

Ms. DARCY. No.

Mr. GIBBS. So we know there is one project in the appendix of the first annual report to Congress that is supposed to be included in the actual report. This was supposed to be a simple exercise.

Now that we know there is at least this one project that met all five criteria—because those five questions I asked you is the five criteria—would you please provide us promptly a list of projects that meet all five criteria that are erroneously contained in the appendix.

And I will also say, in the first report, there were 19 projects, studies, not listed in the annual report, but there are 95 studies, projects, modifications that were in the appendix.

And as we just demonstrated with the Brazos Island project that was in the appendix, it should have been in the annual report, as provided, of what we did in WRRDA.

You may respond.

Ms. DARCY. Congressman, you wanted a list of the projects that were in the appendix that——

Mr. GIBBS. That meet the five criteria, as my ranking member stated so eloquently in his opening remarks. It just amazes me that—you know, I am very concerned about the administrative review process that the Corps is holding to. And there's other ways for the administration to prioritize their projects. The President can do it in his budget when he offers his budget to Congress.

But, clearly, in WRRDA 2014, we set up this mechanism. And as long as it meets those five criteria, it has to be in the report and not the appendix because there's consideration—if it is in the appendix, we can't act on it. And so that means if we—you know, our goal, as Chairman Shuster said, is to have a WRDA bill done every Congress. But if it is in the appendix, we would have to wait to get that in the next reports and the next WRDA bill and see that delayed mechanism. That is our concern.

And so we are being kind of adamant about holding this—meets those five criteria. It should be in the report. And so we make the decision, the Representatives of the people here, and not the administration. There are other ways to voice their priorities.

Ms. Darcy, in section 1009 of the WRRDA 2014, electronic commerce required a report to the committee within 180 days of enactment to demonstrate how the Corps is complying with the procurement law.

While clearly the Corps of Engineers has missed this deadline, when can we expect to see the report, as required in that section?

Furthermore, can you characterize the discussion with the State agencies, local communities, and other Federal agencies, software vendors, the contractor community, and others about the benefits of electronic bidding?

General BOSTICK. Chairman, I will take this one.

We have been working this very hard within the Corps. We believe this is something that we absolutely need to do. We are behind where we should be.

We have two of our districts, Savannah and Fort Worth, that are currently piloting electronic receipt of proposals.

We expect that in another 60 days we will be able to put a report together to determine the way ahead. But we absolutely agree that we need to move forward in this area.

Mr. GIBBS. I am glad to hear that, because I think my understanding was some stakeholders out in the vendor community—that there is some work being done in electronic procurement with DOD, but the Corps has been kind of out there and hasn't been where they need to be at least with the rest of the Department of Defense.

So I yield my time now—or not yield my time—to my ranking member for any questions she may have.

Mrs. NAPOLITANO. Thank you, Mr. Chairman.

I certainly would like to pose again the budget resources issue, Madam Secretary, that my colleague brought up.

Do you need any additional personnel financial support in order to achieve full implementation? Because I know that is a critical question for me.

Ms. DARCY. Congresswoman, we are operating within our fiscal constraints and are doing all that we can in order to get to implementation, especially the implementation guidance. It is not complete yet, but we are working to get it done as expeditiously as possible.

We have put a tiger team together from our districts to focus just on the implementation guidance over the next couple of months so that they can get this done.

Mrs. NAPOLITANO. Thank you.

Under title IV of 2014 water resources law, several provisions addressing the growing water infrastructure crisis, financing and the wastewater issue. In subtitle C of that 2014 title V, it authorized the new water infrastructure financing, or WIFIA, to encourage additional private sector financing.

Do you have an update on implementation? And when can the program be ready for borrowers and lenders? And are you working with EPA and the Department of Transportation to learn from their experience in TIFIA [Transportation Infrastructure Finance and Innovation Act]?

Ms. DARCY. Yes, we are. Actually, we are working closely with EPA. We are about to enter into a memorandum of understanding about how exactly we will be able to work this.

As you know, this infrastructure bank for WIFIA is a loan guarantee program and the Corps of Engineers is not a loan guarantee or a granting agency.

So trying to fit the provisions of WIFIA into our kind of projects is something that we are trying to focus on and work through with EPA and, also, looking to the experience of TIFIA with the Department of Transportation.

Mrs. NAPOLITANO. Do you have any idea how long that is going to take, ma'am?

General BOSTICK. The staff is working this currently, and we believe this summer we will have an analysis completed.

Mrs. NAPOLITANO. I know. But one of the programs may end out in September and we are going to lose some funding from a local private nongovernmental entity.

General BOSTICK. We understand, Representative, and we are working this as aggressively as we can. As Secretary Darcy said, this is new for us.

Mrs. NAPOLITANO. Right.

General BOSTICK. We have been working hard on an analysis of how this would fit into our program and getting smart on loan guarantees and working closely with the EPA, but this summer we feel we should be able to have some resolution of the way ahead.

Mrs. NAPOLITANO. Please keep us informed.

The other question to both of you is—I met with General Peabody recently to get an update on the ongoing drought, which is quite critical in California and the Western States, to look at more flexibility for the water storage, especially in purposes of the dams.

And in the 2007 WRDA, there was a provision for a drought study to encourage the Corps to work with Commerce, inventory actions that could be taken by agencies to reduce the impact of drought, and it was set back for lack of funding, I understand, and being called a lower priority.

Given the fact that we have serious drought issues in the West, I was just wondering if there is going to be a reprioritizing of this particular study that would be able to help the Western States. And it is coming to mind, as General Bostick was mentioning, that Texas has an inordinate amount of water.

Do you have any recommendations in addition of how we can store that water and replenish aquifers? Because we will be continuing with drought cycles, as we are all aware.

General BOSTICK. There are several things that we are working on. First, the deviations that we have made in the past year, we have learned a lot from those. We think on a case-by-case basis we can turn those decisions fairly quickly and allow for more water supply.

Our engineering research and development team is also working very closely with other interagency partners who have funding to look at atmospheric rivers and the possibility of rain in the atmosphere as it moves from the west to the east to have better indication of when that will happen and how we can better prepare.

The other thing we are working on is our dam certification and making sure that the dams are structurally sound so that, if we want to increase the amount of water, we are capable of doing that.

Mrs. NAPOLITANO. Especially in areas that are very critical.

Could I get a commitment, possibly, to revisit the 2007 WRDA study?

Ms. DARCY. Congresswoman, I think we should take a look at that, given the——

Mrs. NAPOLITANO. I would really appreciate it.

Ms. DARCY. We will take another look at that.

And, also, as far as your provision 1046 in the WRRDA bill, I think it is important to finalize that implementation guidance.

Mrs. NAPOLITANO. Thank you.

Thank you, Mr. Chairman.

Mr. GIBBS. Chairman Shuster.

Mr. SHUSTER. Thank you, Chairman Gibbs.

And, again, thanks, everybody, for being here.

As I think Mr. DeFazio said, there is a lot of frustration on this committee dealing with the Corps. And, as we went through the process last time, I thought we worked with the Corps to try to put new programs and procedures in place.

One of the first things we embraced was a Corps idea, the 3x3x3, which we thought was great. We codified it, working with you folks.

So, again, the first thing is: How many feasibility studies, based on the new 3x3x3 program, do you believe will be approved during this Congress between now and next year?

General BOSTICK. Seventeen this year.

Mr. SHUSTER. There are 10 now. Right? An additional seven?

Ms. DARCY. An additional——

Mr. SHUSTER. OK. Seventeen total. All right.

Well, again, I think it is a good program that you folks developed, and we embraced it and moved forward with it. Now the section 214 I spoke about—which, in the 2014 WRRDA, it is section 1006—that program has been in place as a small—I guess we call it a pilot project—since 2000, again, allowing the public utility com-

panies, natural gas companies, and other public entities to participate in that, giving you the funds to help move the process, where it doesn't guarantee them a permit.

I don't understand why the implementation has been delayed. When you have already been doing it, it should be something that we just sort of turn the spigot on a little, open it up a little more, so we get more things in the pipeline, so to speak. Can you talk to me about that.

Ms. DARCY. That guidance is imminent. I needed to send the delegation authority to the Secretary of the Army to delegate it to me, which I have done. So I am just waiting for that. It should be coming any day.

Mr. SHUSTER. Imminent in Washington could mean a decade. I mean, are we talking about months?

Ms. DARCY. No.

Mr. SHUSTER. Your understanding?

Ms. DARCY. My understanding is less than months.

Mr. SHUSTER. Well, that is good news to hear, because I think that was one of the most important reforms that we put in place. I know the industry is very eager, and I know that dealing with my colleagues at the time—Mr. Rahall was very, very supportive. So that is very good to hear.

The second thing that I think Chairman Gibbs mentioned is the annual report. We really need to revisit that and to make sure that these projects can move forward without authorizations. And there are a lot of them out there, again, one of the major reforms you put in place. Let's get these things moving.

It should be helpful to you folks, too, to see projects moving forward. And then, when Congress catches up, the money catches up, you can begin to participate. So I would encourage you to keep working on that.

The other thing that—and I am not going to talk about it because I don't know the details. I know Mr. Rice is here. But the Port of Georgetown, which talked to the Corps. The Corps came up with a number. The politicians, the local folks voted on a referendum, I believe, to fund it. After it was funded, the Corps came back and said, "Oops, it is more money."

Those are the kinds of things that happen. And what happens is the folks that represent the people in that area go to the people and say, "This is what we are going to do. We are going to open our port up, which is going to be a huge economic benefit to us" and then the Corps moves the goalpost on them.

You know, that is something we need to revisit. I have been talking to Mr. Rice about it. If there is any way that the folks at the Port of Georgetown can cut the Corps out, I would recommend they do that, say "To hell with it. Let's just do it ourselves and not sit around and be jerked around on this thing."

So those are the kinds of things that just cause tremendous frustration up here for Members. And things like this tend to occur all over the country.

So I would encourage you to revisit the Port of Georgetown and try to figure out a way because it is an economic benefit. It is something good for the Nation. And that should be something that I

know you folks—I know you folks consider that. Again, these communities are just getting hammered by it.

As I said, I think Mr. Gibbs covered it pretty well in his questioning. Those reports that come forward, the non-Federal entities, they are chomping at the bit to do this.

So can you talk a little bit about, build upon, what Mr. Gibbs said? Is that something that we are looking at that you are going to be revisiting?

Ms. DARCY. Referring to the 7001 report?

Mr. SHUSTER. Yes.

Ms. DARCY. Yes. We put out additional guidance this year. Each year we have to put a notice in the Federal Register in order to solicit the proposals from local sponsors and from non-Federal entities.

And we made some changes in that this year. I think we have made it clearer about what is needed in the proposals in order for us to consider them. This last time we didn't really get cost estimates that were universal. Some of them had cost estimates for a study, but not for construction.

We have also asked our division and district commanders to work closely with the proponents of these proposals in advance of their submission so that they know just exactly what is required and what is needed.

If there was an existing authority that the Corps already had, the project would be in the appendix, and this was confusing for some of them. I think some of those authorities weren't clear. So if there is an existing authority, there is no additional authorization needed for a proposal.

Mr. SHUSTER. Well, I know Chairman Gibbs requested a list of those. Can you commit to giving it to us so we can see them?

Ms. DARCY. Yes.

Mr. SHUSTER. OK. And, finally—I know my time has expired—the disappointing rate of implementation. I know our folks are saying it is 20 percent. You are saying it is 40 percent.

I would like the general to commit to a weekly teleconference with our staff to keep us updated on what is happening with the pace of implementation.

General BOSTICK. Certainly, Chairman, we will do that.

One of the things that is different in this case than before is that we have kind of made haste slowly as we moved into this.

Mr. SHUSTER. What is that? I didn't hear.

General BOSTICK. We made haste slowly. We went quickly, but we were cautious because we went out and talked to a lot of the public.

We wanted to make sure we had listening sessions to allow input before we jumped into our work. We did a number of listening sessions to let the public talk about their concerns. And then we took that into consideration.

We got off to a little bit of a slower start than we would have liked, but we are moving out now and we think we are on a good path forward. And we will keep you up to date.

Mr. SHUSTER. Thank you very much.

I yield back.

Mr. GIBBS. Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman.

Madam Secretary, let me just get this straight. In response to Mr. Gibbs and Mr. Shuster, you are now going to respond to question 2 in our letter of April 21, which is those projects that went into the appendix.

You are now going to evaluate each of those projects under the five criteria and only the five criteria submitted by Congress and provide that back to us. Is that correct? Is that what you just said?

Ms. DARCY. Congressman Gibbs asked for a list of those projects that were in the appendix——

Mr. DEFAZIO. Yeah. Well, we have that. That is easy. We can look at the appendix. That is what you referred me to in response to a letter.

What we asked you for was you take each one of those projects and apply yes or no to the five criteria enumerated in the statute.

Is that my understanding, that we are going to get that done?

Ms. DARCY. We will do that. Yes, we will.

Mr. DEFAZIO. OK. Excellent. Thank you.

Now, I don't want to get anyone on the spot, although since General Peabody is retiring in 2 weeks—congratulations, sir—you could answer the Mike Parker question.

Now, some might remember Mike Parker. And I asked Mike in a hearing here—I said, "Is this budget adequate to meet the critical needs of the Nation's infrastructure as it relates to the Corps mission?" And Mike said, "No." A week later he resigned for family reasons.

Anybody want to answer the question today? General?

General PEABODY. Sir, I will tell you that I have been personally counseled by Mr. Parker to avoid his example.

Sir, in my personal judgment, it is clear that this Nation has lost sight as a Nation. And I don't think this is exclusive to any particular branch of the Government or any echelon of Government.

But the Nation has lost sight of the importance and the reliance of our infrastructure to the health of our economy and the natural resources that that infrastructure helps preserve and maintain.

We are partly, I think, victims of our success. As General Bostick said earlier, we build out this great infrastructure and, at one point in the middle to latter part of the last century, we were clearly the envy of the world. I don't think that that is necessarily the case in all circumstances.

So I think one of our biggest challenges is really to understand the inherent value of that infrastructure and the alternative histories that did not happen because that infrastructure exists.

The clearest example in my own mind is the great flood, the 2011 Mississippi River flood, which was the greatest flood in the recorded history of that river. And, yet, in contrast to the 1927 flood, it was not a catastrophe.

In that flood alone, well over $230 billion of damages were prevented as a result of the expansive Mississippi River and Tributaries project. But because the catastrophe did not occur, it is very difficult for our citizenry to understand the impact and the value of this infrastructure.

So, to me, it is really one of understanding the value and then making investment choices on how to fund that. In my personal opinion, we don't have to do that from the Federal Government.

That is why I think it is very important that we continue to work with the Congress on some of the alternative financing provisions that you have included in this WRRDA, which I think are a good first step, but I also think need to be further developed and expanded upon.

It is something that we need to pursue. So I think how we fund it is the critical question for the Nation to continue to contend with.

Mr. DEFAZIO. Well, thank you, General. That is the best response I have ever gotten to that question, and I agree wholeheartedly with it. And you did it very diplomatically. So thank you.

Quick question about the 10-percent set aside. Seems to be some confusion. Some of my ports have heard that someone in the bowels of OMB has interpreted the 10 percent to be a cap and not a floor.

Secretary Darcy, can you tell me whether it is a cap or a floor?

Ms. DARCY. I see it as a guideline as to what should be in the bill.

Mr. DEFAZIO. That is kind of evading the question. So it is not a cap.

Ms. DARCY. It is not a cap.

Mr. DEFAZIO. OK. That is the best I can do, probably. Thank you.

Thank you, Mr. Chairman.

Mr. GIBBS. Mr. Crawford.

Mr. CRAWFORD. Thank you, Mr. Chairman.

I would like to thank General Peabody for your comments. The region to which you referred, obviously, my district is a big part of that. And I appreciate that. It was very historic.

And everything functioned as it should have. So the evidence of what was spent in the technology and the resources that went into that weren't as readily apparent, had there been considerably more damage and loss of life.

So it is a hard thing to communicate to folks who actually benefit from that. But thank you for your insights and comments. And I wish you well in your retirement.

I know we are here to talk about WRRDA. But, Madam Secretary, I just have a few quick questions.

Has the rule been finalized at this point?

Ms. DARCY. The rule has been finalized, but it has not been published in the Federal Register as of this morning.

Mr. CRAWFORD. Why not?

Ms. DARCY. It is a process that is done through the Office of Management and Budget, and it is merely mechanical at this point. The rule has been signed and has been finalized. It just has not appeared in the Register.

Mr. CRAWFORD. When do you expect to have that submitted?

Ms. DARCY. I would expect it within the week.

Mr. CRAWFORD. Have there been any responses to comments or other support documents finalized?

Ms. DARCY. The response to the comments document, yes.

Mr. CRAWFORD. They have been?

Ms. DARCY. Yes.

Mr. CRAWFORD. OK. Great.

Let me ask you this on WRRDA. Section 1047 of WRRDA authorizes special use permits for recreational activities at public recreation areas that you see around lakes and reservoirs operated by the Corps and for the fees generated at those locations to be retained and used on the site collected.

What progress has the Corps made in finalizing the guidance on that provision?

General BOSTICK. The special permit is under review currently.

Mr. CRAWFORD. It is under review. OK.

I am concerned about the progress on that. Do you anticipate a day when the Corps might finalize that guidance?

Ms. DARCY. Headquarters has forwarded it to my office. I am not going to use "imminent," but any day now.

Mr. CRAWFORD. OK. Again, I'm a little concerned about the slow progress made in the implementation of WRRDA. Today is 365 days.

Why has the Corps implemented just under 40 percent of a law that was enacted 1 year ago? I mean, it seems like there has been slow progress, Madam Secretary.

General BOSTICK. Part of it—and I will let the Secretary talk—the last WRDA in 2007 was primarily projects, and this is more process and policy and working through the law.

So, again, before we started finalizing implementing guidance, we went out and we had listening sessions to make sure that we were listening to Congress, but also listening firsthand to the local people and what their interests and concerns were. And then we came back and started implementing guidance process.

You are correct. We are at 38 percent now. We believe we will be at about 50 percent by the end of the calendar year and, within the 2-year period that we are required, finish most of the work.

Mr. CRAWFORD. OK. How are you prioritizing at this point? It seems like you may have been kind of focused on low-hanging fruit instead of the more consequential guidance on critical items, for example, section 1047 that I referred to earlier. How are you prioritizing?

General BOSTICK. Actually, we prioritize by looking at the hardest first. We went to the very tough issues that we thought we needed to tackle and took those on first.

We also looked at resources and time available. When we saw that we needed more people, we put a tiger team together and brought them in.

So, again, we got off to a slow start, but we believe we have the people and the process in place to continue to move on smartly.

Mr. CRAWFORD. Thank you.

Before I yield, again, General Peabody, I wish you well in your retirement. Your leadership in the MR&T [Mississippi River and Tributaries] and Mississippi Valley Flood Control and those issues has been very much appreciated by my constituents. Wish you all the best in your retirement.

I yield back.

Mr. GIBBS. Ms. Johnson.

Ms. JOHNSON. Thank you very much, Mr. Chairman. And thanks to the chair and ranking member for having this hearing and celebrating the anniversary.

My question really goes to the general progress and where we are. Back in—I think it was 2007—there was a study done even before then—might be 2002—that said that we would need about $17 billion or $18 billion every term for 20 years to catch up on the needs of Corps programs, projects.

Where are we as related to that study and progress?

Ms. DARCY. Is your question, Congresswoman, what is our backlog or what is our current expenditure rate?

Ms. JOHNSON. Backlog and projects. Where are we in terms of the infrastructure needs, water needs of the country, and moving along with where it was determined by a major study back then?

Ms. DARCY. We are operating our program within the budget constraints we face. One thing, as a result of WRRDA 2014 that I think has been a great addition to what we are doing, is the requirement that we look at the deauthorizations, and that is underway.

That is going to give us a better handle on not only what we have that is out there, but what is no longer required to be part of our inventory as to water resources projects that are still viable for the country.

So I think, as a result of that, we are going to be able to get a better understanding and handle on how to look forward with those projects that are no longer necessary.

Ms. JOHNSON. I know what the budget restraints are, but I was wondering whether or not we were keeping pace to the needs.

I am from Dallas, Texas, as you know, and we just had floods. And thank God we had the pump station going that saved a lot of homes from being flooded as much this time and some of the work on the Trinity River paid off.

But I know that it could have been better. We could have been further along. But I know that other places are dealing with some of this major weather change and the type of flooding disasters we are having.

And that was a very major study back then on what was the projected needs. Whether you get them will obviously depend on what we are willing to do here.

But I wondered how far we have come in attempting to address the major needs and how they will continue to occur. Because this study predicted that it would take $17 billion to $18 billion every term for 20 years in order just to come even with what the needs were at that time.

General BOSTICK. I don't have a number for you, Congresswoman. But what I will say is that it goes back to our challenge with the requirements and the resources as a country overall.

If you look at this year's budget, we have a little over $1 billion, $1.2 billion, in construction. If we were to complete all of the construction of the ongoing projects, it is about $23 billion we would need. We are obviously not going to have that.

So, simple math, it is about 15 years that it is going to take to do that work. So part of what WRRDA does is give us an opportunity to look at alternative financing, which we are aggressively

doing now, because the Federal Government cannot do this on its own.

But there are many, many more requirements out there than there are dollars available, and the Federal Government cannot do all of this. We are working aggressively to find public-private partnerships, contributed funds, and other methods that will help us sustain a program that is currently unsustainable.

Ms. JOHNSON. Thank you very much.

Thank you, Mr. Chairman.

Mr. GIBBS. Mr. Webster.

Mr. WEBSTER. Thank you, Mr. Chairman, for putting together this anniversary discussion on WRRDA. It is a good bill. It is great to look back and talk about how good the policy was.

I would like to thank Secretary Darcy and General Bostick for their leadership on Everglades restoration in Florida. Thank you for what you have done. You have made lasting contributions to the help of the ionic river of grass in Florida and all of these species and economies and communities that it supports. Thank you so much for what you have done.

I would like to focus in on section 5014, dealing with P3, public-private partnership pilot program, where up to 15 federally authorized projects can be transferred to non-Federal entities.

And I would just like to ask: How much have you completed on implementation? And are there any policy changes or challenges that have arisen as the Corps has been working on implementing that P3 section? I guess I would ask General Bostick first.

General BOSTICK. Congressman, first, we are very appreciative of what WRRDA has done, particularly in this area. Just in my previous comments talking about the funding gap for the Nation, this is one of those areas where we had already been working prior to WRRDA to try to find ways to alternatively finance some of these projects.

Currently we have seven demonstration projects separate and apart from WRRDA, but they are similar to what the end state is of P3. They are efforts to look at other methods, and this is going to better inform us on the pilots that we are required to do under WRRDA.

We do have some complications that we are trying to work through on the WRRDA P3 pilots. Some of that includes the budget scoring. We are working closely with OMB. I have had several meetings on how we can look at the scoring process.

There are other issues that we are working through, but this is a tough one for us. But we are committed to moving forward on it. We have hired someone that wakes up every day and thinks about P3. That is their job, and they have a team that is working on this.

I have met with a group of CEOs [chief executive officers] that are very anxious about participating in this, if we can find a mechanism to move forward where their investments are secure for a long term.

We have done this on the energy side on the military installations where we have done energy savings performance contracts. They are P3. And investors have helped us on our installations, and their payback is 30 or 40 years. We have done the first one of those on a Civil Works project.

So we have got a long way to go on this, Congressman, but we are working it as hard as we can.

Mr. WEBSTER. Secretary Darcy, do you have anything to add?

Ms. DARCY. Just that some of the demonstration projects that General Bostick referred to are a variety of projects. They are flood control projects. They are navigation projects, looking for other ways to finance or cofinance some of the dredging, not the O&M [operations and maintenance], within our authority, and what we are looking at, too, is do we have any barriers within our authorities to prevent us from P3s and, if we do, we want to seek modifications for some of those to enable us to go forward.

We are looking at a project called a separate delivery that the private sector would perform or build part of the project and the Federal Government would build another part. So just different ways to approach projects from how we have in the past.

Mr. WEBSTER. Thank you very much. Just to let you know, I know myself, Ms. Frankel, and many others on this committee are willing partners in this. I mean, it is not just something we just sort of took a look at and thought: Well, this might be nice. We are willing to help out in any possible way to implement this. We think it is a very good picture of what might be able to happen in the future.

So I yield back.

Mr. GIBBS. Ms. Frankel.

Ms. FRANKEL. Thank you very much, Mr. Chair.

I want to thank you all for your service. And I associate myself with Mr. Webster's remarks in regards to the Everglades and also give you my thanks.

I know we have given you a huge complicated task, and I am confident you will succeed. I want to focus specifically for a moment on section 1014, which allows the non-Federal sponsor to prefund the preconstruction engineering and design phase, and the construction phases, and later seek reimbursement or credit upon authorization, and that, more specifically, for those projects that did not receive a Chief's Report in the last authorization, or any authorization, they can move forward with their project.

And I want to use Port Everglades as an example since I am from south Florida and it is a huge economic generator for us, that port. We would not be able to be in the Chief's last authorization. As you probably know, they have been waiting 18 years for a Chief's Report. And they are ready, willing and able to do the PED [preconstruction engineering and design] work. And I know you are close to a Chief's Report, but now there are a couple of new roadblocks. And I would like you to tell me how we can get past them.

First, the port apparently was told that the Corps needs $77,000 to pay the expenses to negotiate a PED agreement with the port, number one. And, number two, we were also told that the Corps needs to come up with another $70,000 to complete the Assistant Secretary review before the Chief's Report is sent to Congress. So, first, could you explain that to me? Aren't you getting paid? You need more money to get paid to do your job? That part I don't understand.

General BOSTICK. Congresswoman, I am not aware of the details that you are providing, but we will track this down and work this

with the district. I believe this is something that we can work out. It may be working in the staff and already something that has been approved.

Ms. FRANKEL. OK. Well, that would be good if we could do that because, as I said, time is money and the big ships are going to start passing Port Everglades by if they are not able to move on this.

And related to section 1014, again, do you know where you are in terms of the implementation guidance on that provision?

General BOSTICK. This is currently under development.

Ms. FRANKEL. OK, you told me that last time, but I guess you are still developing it.

General BOSTICK. We are much closer than we were when we talked to you before.

Ms. FRANKEL. I am going to go to my next question.

General BOSTICK. What I would say is that we have some of this work ongoing already, and even though we are developing this guidance, the guidance already exists in a couple of our engineering regulations. For example, Miami was able to proceed with the same sort of guidance, and others are proceeding. So this is not holding up any work in this area, but we are still pursuing the guidance.

Ms. FRANKEL. OK. Well, I think the port in Broward would be a very good example for you to move on.

Next question, I think we spoke about this at the last hearing, which is the Broward Segment II Shore Protection Project and wanted to know whether or not that is still on track to begin work in November? Anybody know the answer to that?

Can you find that out for me?

Ms. DARCY. We will.

Ms. FRANKEL. Excellent.

And our last question, which is section 2008 of the water bill directs the Corps to assess the operation and maintenance needs of the Atlantic Intracoastal Waterway. For us, the intracoastal down in south Florida is primarily used for recreational uses—500,000 recreational vessels annually with almost a $12 billion economic impact, 66,000 jobs. It is huge for south Florida. Studies have shown that these benefits would be significantly reduced if the waterway is not properly maintained. So I am wondering, what is your status of the intracoastal assessment?

General BOSTICK. Congresswoman, we are still assessing this particular section. Funds are going to be required to do this, so we are looking at the allocation of funds in the different sections. This one has not been allocated funds to work on at this point.

Ms. FRANKEL. If you would just keep me apprised and let us know how I can help. And I know Mr. Webster is going to help too, right? Thank you.

I yield back, Mr. Chair.

Mr. GIBBS. Mr. Denham, you are recognized.

Mr. DENHAM. Thank you, Mr. Chair.

Secretary Darcy, Congress took steps last year to the House, to the Senate, President signed WRRDA. Specifically, section 1006 allows public utility companies and natural gas companies to participate in an already established program with the Army Corps to ex-

pedite the processing of permits. For the folks I represent, this means a more transparent and timely process. One that is predictable.

I understand that the Army Corps of Engineers held a listening session in September of last year to receive public input on the development of implementation. I understand that the guidance for section 1006 still has not been issued. Can you tell us what is happening, give us an update on the status of the guidance document, and specifically what you expect to be finalized and implemented?

Ms. DARCY. Yes, Congressman. Earlier, I said that I needed to get delegation authority from the Secretary of the Army, which is imminent, and I assured Congressman Shuster that it would be any day now.

Mr. DENHAM. Thank you, I yield back.

Mr. GIBBS. Ms. Norton.

Ms. NORTON. Thank you, Mr. Chairman.

I do appreciate this followup hearing on WRRDA.

I am particularly interested in the levees. You have authority under the current WRRDA bill to do cost sharing. And I would like to ask a question of General Bostick and perhaps Assistant Secretary Darcy about where we are on this cost-sharing evaluation of levees for FEMA [Federal Emergency Management Agency], FEMA's National Flood Insurance Program.

General BOSTICK. Congresswoman, the Corps has worked very closely with FEMA in making provisions to help identify how the USACE levee information, when we go out and do levee certifications, how we can use that for the FEMA levee certification purposes. So that work is ongoing.

Working with FEMA, we are updating our policies currently to specify how data from our detailed risk assessments—our inspections and our screening—can be used on the National Flood Insurance Program. So we are moving on pretty well on this. I think we are on track.

Ms. NORTON. The reason, General Bostick, I am interested in it is, basically, I would like to see more streamlining. And I am wondering if you think that this cost sharing will speed up levee certification and the revision of flood maps which, of course, follows.

General BOSTICK. I wanted to make sure that I was clear in what I was talking about. What we are doing is data sharing. We expend a certain cost to do our risk assessments and our inspections. And before, those were separate and distinct from what FEMA was doing. So the consumer and the American public would see these two folks coming out, but we weren't sharing information.

Ms. NORTON. Sharing information and sharing cost as well?

General BOSTICK. In a sense it is, because if we have paid to do a risk assessment that covers, let's say, five of the items that FEMA would normally need, then it saves them from having to do it.

Ms. NORTON. Well, that is really what I am most interested in.

General BOSTICK. It would save costs, and that process is well underway.

Ms. NORTON. Save costs and perhaps save time. I am interested in the Seventh Street levee. That, of course, was—this is one of the most important areas in the country because it protects the entire

monumental core, the Washington Monument, most of our monumental buildings, even parts of local District of Columbia neighborhoods, and certainly, downtown Washington.

There were problems, initially, with the contract. You got that back—going. And last year they finished the levee. And I understand that the levee is fully operational, and I'm very pleased that that has finally occurred, that the contract itself is closed, except for very few minor matters.

The Army is certifying—the Army Corps is certifying the levee, and FEMA must redraw, of course, the flood maps.

Because, after the certification, there will be whole communities that are outside of the flood maps.

Now, I am interested to know when the—if the levee—if the—if the Army Corps is working with FEMA, if you're working simultaneously, so that the flood map process runs concurrently with the certification process.

These are—this is one of these mixed kinds of Government processes that can really confound the public. Since you are both working on the same facility, since you're both looking at things that are in tandem, can you do that concurrently rather than one, namely, the Army Corps move and then marches in FEMA to do some of what the Army Corps has already done, but necessitated by the fact that they are two different agencies. Why can't they simply get it done, move together, and get it over with to streamline the process?

General BOSTICK. I am now clear on the question, ma'am.

FEMA is responsible for the levee accreditation. So the Corps will, first, perform the levee system evaluation that is needed for FEMA.

Ms. NORTON. Simply to certify that it is—that is the normal certification process that this levee is good, and here comes FEMA.

General BOSTICK. There is engineering——

Ms. NORTON. Yes.

General BOSTICK [continuing]. Design and construction that our technical experts bring to the situation. They provide that to FEMA, and then FEMA does the accreditation. My staff is saying that in the fall of this year is when that will be done.

Mr. GIBBS. The gentlelady's time is expired.

Another round of questioning.

Mr. Rouzer.

Mr. ROUZER. Thank you, Mr. Chairman.

I want to thank each of our witnesses for being here with us today. And while I was not serving in Congress when this bill passed last year, I want to thank each of you and the agency for carrying out section 1037 that helped extend the renourishment project for Carolina Beach and vicinity, which, as you know, falls in my district. My constituents and I are very thankful to you for that.

General Bostick, a couple of questions for you. You know, one part of the bill that you—or the law that you have not written the rules for yet is section 1038. And, of course, regional sediment management is very important to my district as protecting and renourishing our beaches gets more and more costly.

The question is, what is the timeline, and how will you go about implementing section 1038 so that we can reduce or avoid future FEMA cost as well as cost of beach renourishment?

General BOSTICK. Sir, I am going to have to come back to you on that. I am not currently tracking where we're at on 1038.

I am being told it is under development.

Mr. ROUZER. Do you have any idea of the timeline?

General BOSTICK. We will follow up with you, Congressman.

Mr. ROUZER. OK. I want to follow up as well on your answer to a previous question dealing with section 2008 of the water bill, specifically that Atlantic Intercostal Waterway. You mentioned lack of funding. And I recognize that you can't save the world if you can't pay the rent. But my question is, isn't there some employee within the agency that can do that review? Is more funding really necessary for that?

General BOSTICK. The Corps is a very unique organization, and we have got great employees that bend over backwards every day. And something that is unique about us is that we are project funded. Every 15 minutes, they are doing billable hours. So each bit of work they are doing is tied to a project, and they are very closely managing that work.

So, if there was an extra hour in the day and extra funds for them to do that, then I am sure that they would execute it. I just need to see where, from the district's perspective, this stands and where it stands in terms of where it would be completed in the future. But I can assure you, if there were a possible way, there was one extra person that could do the work, they would do it. But given the constraints on how we operate, they have to set their priorities of work and base that on the project-funded needs that they have.

Mr. ROUZER. Let me ask this: Is there a possibility of an interagency transfer where you have excess money focused in on one project but you can transfer it to this?

General BOSTICK. I am not sure I'm following the question. You are saying money from another agency that might come——

Mr. ROUZER. Well, no. No. Within your agency. Money specified for a project that could be transferred.

General BOSTICK. So a reprogramming.

Mr. ROUZER. Yes sir, if that is what you want to call it.

General BOSTICK. I am not sure.

That is possible. We could take a look at it.

Mr. ROUZER. My last question, since I have 1 minute and 23 seconds left. We are at the 1-year anniversary of the bill, and perhaps this question has been asked before, but I was not here to hear the answer.

Only 40 percent of the rule has been implemented or promulgated. Why only 40 percent?

General BOSTICK. Part of the challenge with our start in this case is that we thought it was very important to go out to the American public and conduct listening sessions, not only with the local public, but businesses and interested parties, so that they could talk about WRRDA and talk about their concerns. So that got us off to a slow start in terms of where we would normally have started.

The other thing is that this WRRDA is far different from the previous WRDA, which is focused on projects and we could move quickly. This is really process and policy and taking time to get that right. Although, we are only at about 38 percent, we think by the end of the year, we will be at 50 percent, and at the end of 2 years, as we are required, we will have much of this accomplished.

Mr. ROUZER. Well, the end of the year we will start writing another bill for next year. And is there anything that we need to take into consideration to help make this process a little bit easier?

General BOSTICK. There are some issues that we are finding. There are small issues that I think we need to come back to the Congress and to the administration to sort out the way ahead, but all of that is working at this time. So if there are things that we will need, we will be sure to work with the Members and their staffs to ask for the appropriate support.

Mr. ROUZER. Thank you, Mr. Chairman.

Mr. GIBBS. Mr. Graves, you are recognized.

Mr. GRAVES OF LOUISIANA. Thank you, Mr. Chairman.

Secretary Darcy, General Bostick, and General Peabody, we appreciate you being here today.

Section 7007 of the WRDA 2007 bill provided a crediting provision for the Louisiana Coastal Area, and section 1019 of WRRDA 2014 provides some additional clarification there.

Could you give an update on where we are in regard to that crediting?

Ms. DARCY. On that particular section of the WRRDA bill from 2014, implementation guidance is complete. And is your question——

Mr. GRAVES OF LOUISIANA. I am aware that the State of Louisiana has probably in excess of $100 million in credit, as you know. There is a section that was in the original 7007 that was also modified and included in the 1019 section of the bill last year that allows for cross-crediting. As a matter of fact, right now, the Corps of Engineers is demanding the State of Louisiana put forth, I believe it is, $1.7 million in cost share for one project, while the State has well over $100 million in existing credits before the Corps of Engineers. And the Corps has actually referred—the Corps has actually referred that $1.7 million cost share to the Department of the Treasury for collections.

You have also shut down any potential grants to the State of Louisiana through these same agencies, because you are telling the State they need to pay you $1.7 million when, again, there is over $100 million in credits that are outstanding right now.

Ms. DARCY. I am going to try and answer this question, and I may defer to General Peabody, who may have some more specifics on it. But it is my understanding that the provision for credits requires an in-kind memorandum of understanding before the construction in order to be credited for that work. And in some of the cases that you are referring to, there was no in-advance memorandum of understanding between the Federal Government and the local sponsor.

Mr. GRAVES OF LOUISIANA. That is correct. And that is because section 7007 of WRDA 2007 explicitly stated that the credit was granted for work prior to the execution of a partnership agreement.

It didn't make any reference at all to any type of MOU [memorandum of understanding]. The State of Louisiana was concerned that, actually, if they executed any type of agreement, it would invalidate the ability of them to get credit because there would be an agreement in place.

Ms. DARCY. I am going to ask General Peabody, who was——

Mr. GRAVES OF LOUISIANA. And, just to clarify, General Peabody, I know you are aware of this, the section 1019 of WRRDA 2014 actually expanded, where it said: on the date of execution, before the date of execution, or after the date of execution.

General PEABODY. Yes, sir. Thank you, Congressman.

Thank you, ma'am.

So both sections you referred to, section 7007 of WRDA 2007 and section 1019 of WRRDA 2014, also make reference to section 221 of the Flood Control Act of 1970, and there is very explicit statutory language in that provision that requires a memorandum of understanding before crediting can be granted. I have had conversations with you in our previous jobs on this issue. We just talked with Mr. Graham from the CPRA [Louisiana Coastal Protection and Restoration Authority] last week, and we are in the process of working closely with him to get memorandums of understanding signed so that we can work with the State and provide the crediting that we both would like to be able to enable.

Mr. GRAVES OF LOUISIANA. And, General, I understand the attempt to interface section 221 in this case, but as you have stated in numerous occasions, and Corps counsel has stated, in fact, I believe WRDA 2007 actually makes the same reference in section—in the amendments to section 221, it specifically says: If there is another more specific provision of law, that one shall apply. And in this case, section 7007 was a more specific provision of law.

The Corps has attempted to go through and cherry-pick certain provisions of 221, certain provisions of 7007 and apply those.

Let me ask you this: If you agreed with my interpretation and what I believe is congressional intent that the credit was afforded for work that was done prior to signing an MOU, MOA [memorandum of agreement] partnership agreement, or anything else, would the Corps be required to accept the credit proposal submitted by the State? Meaning, if the State came in and said, here is $100 million worth of credit that we believe we have, would you be required to accept that $100 million?

General PEABODY. I think the key point is that the fundamental area where we don't see eye to eye is having an MOU prior to——

Mr. GRAVES OF LOUISIANA. Could you just answer that question, though? Would you be required to accept the $100 million in credit proposal that the State submitted to the Corps?

General PEABODY. Congressman, I am not going to go into hypotheticals on something that——

Mr. GRAVES OF LOUISIANA. I can answer that. No. You still have the ability to review the credit that the State submits to determine if it is actually integral to the project or not.

General PEABODY. We need an integral determination to do that, Congressman. I think the dilemma that the Corps has is that we can't take any particular statutory provision in isolation from other provisions of the law. That is one thing that often frustrates some

of the Members of Congress, because we really do need to look at all provisions of the law.

I would be happy to come visit with you on this, Congressman, and discuss the specific provisions of the 1970 Flood Control Act that you discussed. And we want to work very positively and cooperatively with the State to do this, but we also feel obligated to follow the law as we understand it.

Mr. GIBBS. Mr. Babin.

Dr. BABIN. Yes, sir. Thank you, Mr. Chairman.

This is for Secretary Darcy. Last Friday—excuse me—I was at the Port of Houston in my 36th Congressional District of Texas along with several other Members of Congress, the chair, and the cochair of the Congressional PORTS [Ports Opportunity, Renewal, Trade, and Security] Caucus, Representative Poe and Representative Hahn from California, we got the latest briefing on a number of issues, including a very serious safety issue, and I believe I mentioned this the last time you were here before our committee. As you know, the Port of Houston and the Houston Ship Channel is one the busiest, if not the busiest, port in the Nation at the time.

We have 8,300 ship calls annually at the port, more than any other port in the Nation. Additionally, there are 22,000 deep-draft vessel moves within the channel and another 200,000 barge moves every year. The economic impact of a shutdown at the Port of Houston is estimated to cost the economy more than $300 million per day. A 3-day shutdown is a $1 billion hit to our national economy.

In fact, we had this happen earlier this year, just north of what we call the Bayport Flare and the Houston Ship Channel. There are very serious safety issues right now within the Houston Ship Channel at the Bayport Flare. This is due to a design deficiency in the flare design which needs widening and enlarging. The Corps must address this issue in a timely manner. It is penny-wise and pound-foolish for us to not address this critical safety issue that is present right now in the Houston Ship Channel.

If there were an accident here at the Bayport Flare, itself, a shutdown would impact $300 million a day, as I said, to our national economy. And we cannot allow this to happen.

It is my understanding that it would cost $36 million to address this safety issue, which would be cost-shared between the Corps and the Port of Houston Authority.

Again, I brought this up at our last meeting. Following our last hearing, your staff was responsive and indicated that there is a 902 limit construction that cannot be exceeded. However, we have a serious safety issue. Given the significant risk to the ships traveling within the channel and to our national economy should there be an accident, I would ask that you sit down, again, with your team and think outside of the box—but, of course, within the law—to find a way to address this in a more timely manner because nothing has been done since.

Every day there is a risk at the flare, which could be addressed at a fraction of the cost. Any comments there?

Madam Secretary.

Ms. DARCY. I recall our discussion here on this issue, and we have since determined that a project deficiency report is what is

needed in order for us to see what the causes were of this deficiency. And we are on track. We have initiated that project deficiency report, and we should have that by the first of the year.

Dr. BABIN. So another 6 months to go, then, huh?

Ms. DARCY. Yes, sir.

Dr. BABIN. Also, one other issue.

In the north end of my district, southeast Texas, at the Sam Rayburn Reservoir, there is a major effort underway by the Army Corps of Engineers to develop a revised master plan, which is way overdue.

I have been told that a number of restrictions are already being imposed on people's property in the area surrounding the lake. Some folks, some individuals, have been told that they cannot cut down weeds or brush even on their own property.

And I will be following up with questions for the record on the specifics of the Sam Rayburn Reservoir issue and offering a personal invitation to you and your team to tour this site and hear firsthand from the community and from Members, individuals there.

But, speaking generally, isn't it somewhat inevitable that by posing the waters of the United States rule and designating that even more of the United States U.S. waters are navigable streams, navigable waterways, that property owners across the State of Texas and the country will see more, not less, of this sort of restriction being imposed by the Federal Government on private property owners?

Ms. DARCY. Congressman, the Sam Rayburn specific example is one that we will follow up with you on. But as far as the expansion of Clean Water Act jurisdiction, I don't believe that the finalization of this rule is going to add to or jeopardize private property owners' rights in the water.

Dr. BABIN. Well, if they are already being restricted from cutting brush on their property because of this imposition, I think it is already a problem. So we would like—we would like to see some addressing of that, if you don't mind.

And, also, one other thing, if we can get that report before 6 months. We have a safety issue at the Bayport Flare and the Houston Ship Channel.

Thank you, Mr. Chairman.

Mr. GIBBS. Mr. Sanford.

Mr. SANFORD. Thank you, gentlemen.

A couple of quick questions. First, on Charleston Harbor. The Civil Works Review Board for the Charleston Harbor Post 45 project. I guess the due date is June 25. Are we on schedule to hit that date?

Ms. DARCY. Yes, sir.

Mr. SANFORD. We are.

I guess the second part post June 25 would be if the 404 is done, Chief's Report is done, are we at a point where they could begin to move forward with regard to construction?

Ms. DARCY. With what? With construction?

The project has to be authorized. Once the Civil Works Review Board meets, then it goes into——

Mr. SANFORD. I thought there was a provision, if those chief pieces, or those important pieces, if you will, foundation pieces, were in place, then—I will come back to the team with regard to some language on that front. So that is the first question.

Two, I want to give you a compliment. One thing, oddly enough, that is important within my district are old impounded rice fields. And they are sort of weird creatures, and they don't fall into any category. I mean, literally, the trunks that go on them come from the time of the Egyptians and controlling water level. And you could set a flap one way and you could literally grow pine trees in there and have it aired and dried. You could set a flap another way and have it watered.

And, apparently, you guys at the district level have been most responsive to some of the landowners down that way with regard to easing some of the regulatory nuance and nuisance that goes with controlling these wetlands—again, nonwetlands wetlands, whatever you want to call them—and I want to say thank you.

Third, you just mentioned, Secretary, that there would be no further restriction with regard to private property rights in the event that the new waters go—the ruling goes into effect. I don't know how you would say that, given the fact that if you are not—if you have land that is not within jurisdictional control of the Corps presently but with the new map, it would be, how would that not be taking of private property rights?

Ms. DARCY. The new rule will give more certainty to what is jurisdictional under the Clean Water Act and what is not. And I don't envision——

Mr. SANFORD. Yeah. It might give more certainty, but it would be expanded in view of certainty.

In other words, if you look at the maps presently, there would be land that would be controlled by a private landowner. And if you look at the new map, at least as I have seen them, there would be much more jurisdictional control by the Corps.

So, yes, there is certainty, but what the certainty that we know would be, yeah, there would be more control in whether to cut weeds or doing a whole host of different things on what is presently land controlled by the private sector rather than the Government sector.

Ms. DARCY. Under the rule, if there is a significant nexus that can be determined between the water on a person's property and a navigable water that is attributed to a tributary and connects to another water, and if there is an activity that is requested by a landowner, that will determine whether it is a jurisdictional water and whether, indeed, a permit for that activity is needed.

Mr. SANFORD. Hearing you but not agreeing with you. I think it is the most legalistic of stretches to define navigable water as an intermittent stream that might flood once every couple of years. I don't know how that could be possibly construed as navigable.

I have done a lot of time on the water over the years and navigable with a boat is not a place where we go where it happens to flood once every, you know, 5 years. But we will come back to that.

Last question would be this: If you were to look at the three—I guess this is for the general—most onerous mandates—in other

words, you think that you could do much more with, perhaps, less—what would they be from the standpoint of Congress?

General BOSTICK. That would be a difficult one to answer. One of the things I think that the country needs to do is to think through how we sort out priorities.

We are, I think, the world's best at responding to disasters. And when there is a disaster, the country pulls together, we fund, and we do things like we did post-Katrina and post-Sandy.

Mr. SANFORD. I have 15 seconds, so I am going to ask for brevity. I apologize. So one would be what?

General BOSTICK. So one would be how we set priorities across the Nation.

Mr. SANFORD. I don't know that that is a mandate or onerous. But, OK. What is two and three?

General BOSTICK. And I think part of what WRRDA does is how we work better in the interagency area, so that the goals and objectives of one agency in a certain watershed, let's say, are similar and seen in the same light from the Federal Government.

Mr. SANFORD. General, I would respectfully submit that you maybe are going to pass on this question. I get it. And I guess I have burned through my time.

Thank you, Mr. Chairman.

Mr. GIBBS. Thank you, sir.

Mr. Rokita.

Mr. ROKITA. I thank the chairman.

Would the gentleman let me yield a minute to continue on with your questioning?

Mr. SANFORD. I don't want to torture my poor colleague there behind the witness stand.

Mr. ROKITA. OK.

Go ahead.

General BOSTICK. One of the other things I would say, Congressman, is reporting. When you look at the number of reports that we provide, I think we could look at that and see if there is redundancy and overlap, and could we reduce the amount of reporting and hold folks accountable for their responsibilities?

Mr. ROKITA. I thank you for that.

I appreciate everyone's testimony this morning.

I am interested in the Harbor Maintenance Trust Fund. How much money is in there right now?

General BOSTICK. It is about $8 billion.

Mr. ROKITA. $8 billion.

How is the Corps working to comply with the trust fund, given our intent to spend more in this area? And are we going to see the fiscal year 2017 budget reflect an increase in spending?

Ms. DARCY. Congressman, in response to the provisions for the Harbor Maintenance Trust Fund spending, there were two provisions: One for emerging harbors and one for Great Lakes. Congressman DeFazio mentioned the 10 percent earlier.

In both our FY 2015 workplan and in the 2016 budget, we complied with that requirement providing both 10 percent in one instance and 12 percent in another.

Mr. ROKITA. So you feel you've obliged Congress' intent?

Ms. DARCY. Yes.

Mr. ROKITA. And in the fiscal year 2017, what are the plans?

Ms. DARCY. The 2017 budget is still under development, and we will——

Mr. ROKITA. Would you plan on spending even more money in 2017 fiscal year?

Ms. DARCY. I think within the budget caps that we get, we will look to see where is the biggest need.

Mr. ROKITA. Well, you can spend less in other areas, right, and still comply with the budget caps?

Ms. DARCY. We can't——

Mr. ROKITA. Spend more on harbor maintenance, correct?

Ms. DARCY. Given the overall program cap.

Mr. ROKITA. Inland Waterways Trust Fund, the barge industry has, as you know, had a 9-percent increase in their diesel tax due to the ABLE Act. Did the President's most recent budget fully account for the increased revenue attributable to the user-fee increase?

Ms. DARCY. The anticipated increase from the user fee was between $30 million and $35 million, and I believe we did. That is anticipated for the 2017 budget as well.

Mr. ROKITA. So the President matched that in his budget, is that what you are saying?

Ms. DARCY. No. Because what comes from the Inland Waterways Trust Fund has to be matched from General Treasury.

Mr. ROKITA. Inland Waterways Trust Fund?

MS. DARCY. Yes.

Mr. ROKITA. Right. Right. So it seems like the President's budget may have lowballed the revenue compared to industry estimates. Do you agree or disagree? And even if the estimates—and even the estimates to the Appropriations Committee, I guess—like the last question, what I am getting to is, why is the President lowballing the spending estimate when we could be spending more on infrastructure?

General BOSTICK. I think part of what really——

Mr. ROKITA. General.

General BOSTICK [continuing]. Is here, the dynamics is what happened with Olmsted. When the Congress decided the cost share for Olmsted would go from 50/50 to 85/15, that caused more money to be available in the Inland Waterways Trust Fund. We believe that money is going to be needed in the future, and we certainly are working with the Inland Waterways Users Board to project what the requirements are going to be.

So we believe the ABLE Act money, the tax there, and the additional money not being used in Olmsted will be put to good use in future years.

Mr. ROKITA. What is your definition of "future"?

General BOSTICK. The immediate future.

Mr. ROKITA. Future is now?

General BOSTICK. Right. We were in immediate transition, I think, this year.

Mr. ROKITA. Mr. Peabody, do you have anything to add?

General PEABODY. I think the Chief has pretty much got it right. The two things that happened were the additional 9 cents, but also the Olmsted cost-share change, which is temporary. When we fin-

ish or substantially complete Olmsted in the next, probably, 4 to 5 years, then the additional funding, whatever has accrued above what we have not allocated on an annual basis, I think that will get bought down fairly quickly.

We are working through several different funding scenarios, and of course, we fund on an annual basis, so it is very difficult to predict how those funding scenarios will play out. But the key is that there are four major projects under construction, and there are others that we could do some work on, those will quickly consume that additional revenue once Olmsted is complete.

Mr. ROKITA. I yield.

Mr. GIBBS. Mr. Davis.

Mr. DAVIS. Thank you, Mr. Chairman.

Thank you, Secretary Darcy, General Bostick.

General Peabody, I didn't think I would get a chance to sit here with you again.

Welcome back.

And if I don't see you again after this, after my 5 minutes is up, good luck.

General PEABODY. I am going to come see you tomorrow, sir.

Mr. DAVIS. Oh, lucky you.

General PEABODY. No, sir. Lucky you.

Mr. DAVIS. You are a glutton for punishment, man.

Hey, General, thank you. I can't wait to see you tomorrow, and I do wish you well in your impending retirement.

This 1-year anniversary, I am glad to be here today to talk about it. However, the most important anniversary today is my wife and I's 20th, so I hope she has a very happy anniversary. Because I want to see some more progress on the anniversary of WRRDA. This is what frustrates somebody like me, who used to work on these issues as a staffer. And I enjoy having all of you come in front of our committee and meeting individually to talk about issues that are important to my district, our waterways, our water infrastructure, but it just seems like we have so many questions that just don't get answered or there is just—it just takes so long. I know that might be institutional, but I think we are all here to fix that. And we want to make sure that the Corps is a willing partner to do that.

I included, along with my colleague, Congresswoman Bustos, a provision in WRRDA for 15 P3 projects. I know my colleague, Mr. Webster, asked about these earlier, and I think the response was this is a tough one and you still have a long way to go.

I don't find that acceptable as a person who wrote the language. What is so tough and hard about us trying to put new and innovative approaches towards fixing our water infrastructure projects?

So, Secretary Darcy, can you give me a timeline as to when we can start to see at least 1 of these 15 projects moving forward? I will take them all in the 13th District of Illinois if you would like.

Ms. DARCY. Congressman, I think that some of the projects that we mentioned earlier, as far as a P3 approach, are further along than others. It is my hope that we will be able to get at least one of these P3 demonstrations before the year is out. And hopefully we can build on the experience from that to work towards others and the goal of the 15 that was in the WRRDA bill.

Mr. DAVIS. We just put that in as a new approach. We want to see investment in water infrastructure. That is why WRRDA is so crucial.

I have—I have my constituents who rely upon the inland waterway system come to my office. At first, when I got here a little over 2½ years ago, they said: You are not going to be able to pass WRRDA without earmarks. Well, we did. And we actually changed policies, which I think make it easier for the Corps, I hope, to work with us to implement our changes.

And then when we passed those policies, they said: Well, you will never be able to find a source to ensure that the Inland Waterway Trust Fund and harbor is fully funded. Well, we did. We, as an organization, as Congress, we did our job. And now those same individuals come in and say: What are you going to do to ensure that that surplus is not used for other purposes?

Well, it is a novel idea, I tell them. Let's get these projects moving forward. It has been way too long. You have so many good people working for you at the Corps of Engineers. If there is something we need to do to be able to help expedite this, let us know, but we can't continue to just have hearings like this with promises of maybe 1 of 15 P3s will be implemented by the end of the year. We authorized 15. We didn't authorize one. I want people to be able to walk and chew gum at the same time because we are asked to do that on a regular basis. And I think the Corps of Engineers should be able to do that too.

Now, I want to end with a thank you. I do want to thank the Corps of Engineers, especially in and around the St. Louis and Rock Island Districts, for working with the Sny Levee Drainage District, work out a problem with the flood level certification discrepancy with FEMA. And that is something that I do appreciate, the men and women who work out in the district offices on the ground are providing that great service.

So I got a bunch of other questions, but I don't have a lot of time. So I am going to leave you by saying: Thanks for your service. Thanks for being here. My frustration is not going to be alleviated until we start to see progress.

And, General Peabody, again, congratulations on your requirement. And I will give you the rest of the questions tomorrow.

I yield back.

Mr. GIBBS. Thank you.

We will start a second round of questions.

Secretary Darcy, did you receive a memorandum with enclosures, dated approximately April 27, of this year from General Peabody, which communicated serious concerns and deficiencies with the so-called Clean Water Rule and the rulemaking process for the rule?

Ms. DARCY. Yes, I did.

Mr. GIBBS. Can you please provide me a copy of that and for the hearing record and all the memo and the enclosures?

Ms. DARCY. I will have to check with counsel, sir.

Mr. GIBBS. Pardon?

Ms. DARCY. I will have to check with my counsel.

Mr. GIBBS. So you think there is some concern about providing the committee with that? That should be, you know, an open,

transparent—it is an internal document, but I think everything is open to this committee.

Ms. DARCY. I will be happy to provide it on the advice of counsel.

Mr. GIBBS. OK.

Let me ask you, then, that memorandum that you received from General Peabody, what steps did you take? Did you hold meetings? Did you respond to—the Corps had some serious concerns about the process of the Clean Water Rule and what is in the Clean Water Rule.

Ms. DARCY. We took those concerns and talked through them with the Environmental Protection Agency before finalizing the rule.

Mr. GIBBS. You took those to the——

Ms. DARCY. We did.

Mr. GIBBS. To who?

Ms. DARCY. Our colleagues at the Environmental Protection Agency because we were jointly developing this rule.

Mr. GIBBS. And OMB, were they involved in this?

Ms. DARCY. That was not shared with OMB to my knowledge.

Mr. GIBBS. OK. Ms. Darcy, WRRDA 2014, specifically sections 1007 and 1008, allows for the expedited considerations for reviewing and processing applications from non-Federal entities to modify and improve hydropower and all eligible Federal water resource projects. Why has implementation of this section been delayed, and has any non-Federal interest approached the Corps to pursue an activity under the new 408 requirements?

Ms. DARCY. As far as section 1007 goes, that is the one I am waiting for the delegation authority from the Secretary of the Army, but that is ready to go. I referenced this earlier to Congressman Shuster that it was imminent. And, to my knowledge, we have not had a request yet from a utility or hydropower person to use that sort of 214 provision. But I can double check with them. But last I heard, we had not had any requests.

Mr. GIBBS. But you are moving forward with implementation?

Ms. DARCY. Yes, sir.

Mr. GIBBS. OK.

General Bostick, you stated in multiple hearings that we have, you know, $18 billion list of old, inactive projects that deauthorize by September 2015. Is this an interim list or a final list of projects that will be—come forward by this September?

General BOSTICK. September is the interim list, which is the all-inclusive list of what we might want to deauthorize. Then we will come back to the Congress in about April with the $18 billion list——

Mr. GIBBS. Final list of April next year?

General BOSTICK. Final list.

Mr. GIBBS. OK. Thank you.

General Bostick, section 1023 allows for a non-Federal interest to contribute funds to the projects that go over the cost limit. Have any projects to date taken advantage of this, and how many projects do you expect to exceed the cost limit before the end of 2016?

General BOSTICK. This is 1014?

General PEABODY. 1023.

General BOSTICK. Chairman, can you say again which section you are——

Mr. GIBBS. Section 1023 that allows for a non-Federal interest to contribute funds when the project goes over the cost limit, has anybody taken advantage of this, and then also, do you expect any—how many projects do you expect to exceed that cost limit by the end of next year?

General BOSTICK. OK. Since 2012——

Mr. GIBBS. How many is 902 fixes?

General BOSTICK. Forty-seven.

Mr. GIBBS. Pardon?

General BOSTICK. Forty-seven agreements since 2012, and it has been about $105 million.

General PEABODY. Sir, because of the additional streamlining that your provision allowed, we just recently published guidance for this. We anticipate seeing an acceleration in the number and quantity, assuming that there are cost-share partners who are willing to come to us with contributed funds.

Mr. GIBBS. So——

General PEABODY. But we do not have a projection on how that is going to change. We are going to need some time and experience to see how this actually plays out before we will——

Mr. GIBBS. How many 902 fixes do you anticipate?

General PEABODY. How many what, sir?

Mr. GIBBS. How many 902 fixes do you anticipate?

General PEABODY. Sir, I am going to have to get back to you on that.

Mr. GIBBS. OK. And my first part of that question, have we had any non-Federal interest contribute funds over the cost limit?

General PEABODY. I am not aware of any, sir, but I will check with the staff.

Mr. GIBBS. OK. I appreciate that.

Last question here, Secretary Darcy, dealing with WIFIA. The Corps stated that they are not developing WIFIA implementation guidance and instead are developing a feasibility analysis to determine whether a WIFIA program could be effectively developed and implemented if funded. The EPA, as you may know, is actively developing its implementation guidance. Is the Corps consulting with the EPA regarding WIFIA development?

Ms. DARCY. Yes, we are.

Mr. GIBBS. Is the Corps consulting with other agencies to have loan and guarantee programs like the Department of Transportation?

Ms. DARCY. Yes, sir.

Mr. GIBBS. What does the feasibility analysis need to determine in order for the Corps to issue an implementation guidance? What are you looking for in the feasibility analysis? What do you need to determine to get to that implementation guidance? Because we are clear on the law. We want to move forward with WIFIA, and we are looking for the implementation guidance. What is the issue? What is the challenge here for you?

General BOSTICK. Looking at the potential benefits, as they would apply specifically to the Civil Works projects, and looking at what would actually be eligible. So there are some details that we

are looking at in terms of the potential benefits to Civil Works specifically. But we have been working very closely with EPA and others that have experience with this.

And as we have said before, we are searching for alternative financing methods. This is one of those that we believe can help, but we are just not as experienced in it, so we are aggressively pursuing it.

Mr. GIBBS. Well, I am a big advocate for this. I think you are correct, this is a great way to bring some private capital. And, you know, I would encourage the Corps to consult with these entities, like the Department of Transportation, that has had experience, and the EPA. And if you have to bring in outside people, I think, you know—which serves as a good program; we could move forward because if we don't get it off the ground, you know, as a pilot, we are going to have some challenges.

Mrs. Napolitano, do you have any questions? Go ahead.

Mrs. NAPOLITANO. Of course. Thank you so very much.

I will have to make this real short, but I do have a question, Ms. Darcy.

On page 8 of your report, "Water Supply and Reservoir Management," it refers to subsection (a) of 1046. It refers to arid regions. I am looking at the Public Law, but the second section of that—because that was under A, dam optimization—section B, updated report: Not later than 2 years after the date of enactment of this act, Secretary shall update and make publicly available the report entitled "Authorized and Operating Purposes of the Corps Engineers Reservoirs," dated July 1992.

Now, that was—which was produced pursuant to section 311 of the Water Resources Development Act of 1990. And in the inclusions, there are—any recommendations of the Secretary relating to that review the Secretary determines to be significant, and it goes on. That component directs the Corps to update its report, which is 23 years old on this particular area.

It is of significant importance to the country, mostly the West, as we look to the drought and to whether we can maximize water storage and aquifer recharge in light of the authorized purpose authorized in 2014.

Now, are you expecting to meet that date, and can we figure out how we can get information so that we are able, then, to either assist or formulate policy to help you along those areas?

Ms. DARCY. For 1046A, I thought we were in progress on that one, but I apologize, I am going to have to get——

General BOSTICK. We are.

Ms. DARCY. We are in progress.

General BOSTICK. Implementation guidance is under development.

Ms. DARCY. The implementation guidance for that section is under development. But I think your question, too, is how we can communicate more closely with you as we develop this report that is necessary. I think that we should commit——

Mrs. NAPOLITANO. Well, you have 1 more year to go on that report.

Ms. DARCY. Yes.

Mrs. NAPOLITANO. And what I am asking is, is there any way to be able to know whether you are going to be able to meet that deadline?

Ms. DARCY. We will make every effort to do so.

Mrs. NAPOLITANO. I am sorry?

Ms. DARCY. We will make every effort to do so.

Mrs. NAPOLITANO. Well, may we be kept up to date? Because we would like to be able to help, whether it is a funding issue or whether it is an issue of anything that might help.

It is critical. It is important, given the drought cycle that we are experiencing, and the fact that we are going to be needing all the help we can get.

So insofar as that 23-year-old report, I think it is time that we did give it some significant review.

Ms. DARCY. We will.

Mrs. NAPOLITANO. With that, Mr. Chair, I yield back.

Mr. GIBBS. Mr. Rice, your floor.

Mr. RICE. Thank you to the panel for being here. Always instructive to hear from the Corps.

I haven't been in politics all that long, I guess 4 years now between county council and now Congress. And I am concerned that any project that requires Corps approval in my district seems to—it never seems to happen without a great deal of intervention. It seems the Corps has become an entity that obstructs rather than promotes these projects.

I heard Mr. Peabody's discussion earlier about how the country has forgotten the importance of infrastructure and its effect on natural resources and commerce and the economy and so forth. I don't think that is true. I think that, at least in my district back home, that we are—we are struggling and gnashing our teeth and pulling our hair trying to get projects done, and that the Corps plays more of a role of obstruction than anything else. And it is incredibly frustrating and concerning to me.

Highway 31, when I was on county council, and held up for 2 years and finally when I got to Congress and started meeting with people at the Corps, and I am sorry, I only have 5 minutes, I can't even list all these things and let you respond adequately in the 5 minutes I have.

But it was held up for years because they shortened the road by 2 miles and expanded an intersection, and they required, you know, years' worth of surveys and a lot of money being spent. While we had the money in the bank to build the road and employ people in the worst time in our economy, and yet it was held up for years by requirements placed on us by the Corps because an environmental group wrote a letter.

Bucksport marine industrial park, which is pending right now, been working on a permit for that for about 4 years now. There is an existing commercial marina there, and they want to expand it, and yet it takes 4 years of permitting time. And we have just heard back from the Corps that they think they have changed the scope of the project, which was requested by the Corps, and now the Corps thinks that change in scope, wants them to go back to ground zero and start again.

International Drive, in my home county of Horry County, they have been working on permitting this road for years and years and years. Again, an environmental group wrote a letter to the Corps, and they have held back the permit now for an unstated reason and for an unstated period of time.

The Georgetown Port, I know Secretary Darcy in particular has been very helpful in trying to get the port dredged. And Chairman Shuster mentioned it earlier. When I became a congressman, I went to the Corps and asked them what we needed to do to get it dredged. They told me that we need to go and find $33 million, and we could get it done. And we found the money, with Secretary Darcy's help. And then they came back and said, "Oops, no, we were wrong. It is not $33 million; it is $67 million." And so then I have to go back to my constituents at home and explain to them while when they voted themselves a penny sales tax on a referendum to have this port dredged, that, oops, no, we were wrong. The actual cost is double what they told us it was going to be.

And then on I–73, you know, we have a road that part of it is built—been built by my home county, 18 miles getting as close to the border of the county as they can out toward I–95. We need 41 more miles to connect to 95 and then on past it to the North Carolina border, I–74, they say we are going to destroy 278 acres of wetlands on that stretch of road. And to mitigate for that, they are proposing that we—the Corps is pushing a plan that proposes we buy 6,800 acres to mitigate 278 acres at a cost of $20 million. And the level of absurdity here is just mind-boggling. We have been working on that permit, I don't know, 5-plus years, and we are still, apparently, years away.

And it appears to me that the Corps function has become to respond to these environmental groups on general, unfounded allegations and to hold—stifle progress on every front, and it is credibly frustrating. At a time when the economy is dragging, and we could be putting people to work, and we have the money here ready for three out of four of these projects, ready to build. It is not like we have to find financing. It is just that we have to jump through 4,000 flaming hoops in front of us.

So here is my question. I am sorry it took me so long to get to it. Please help me to unwind this labyrinth. Please help. Please give me recommendations to make your job easier or to limit, reasonably, the scope of people of interest that have a bite at the apple of holding these things up or the number of bites at the apple that they have. Because the place that we have got ourselves—and I don't know who put us here. I don't know if you guys put us here in the Corps, or if the Congress put us here, but where we are is in a very bad place. And we are stifling progress, and we are keeping people out of work, and we are holding back our economy. And we desperately need to unwind this labyrinth. Thank you very much.

Mr. GIBBS. Ms. Frankel.

Ms. FRANKEL. Thank you very much.

You have a very challenging, complicated task. I have a general question, which is, why do you change the district commanders every 3 years?

General BOSTICK. It is a great question. Part of this is we are developing our officers, our senior leaders. In most commands, those officers change every 2 years. And we have come back, in working with the chief staff of the Army, Secretary of the Army in these districts, except for the young lieutenant colonels, the colonels are there for 3 years. And there are other assignments that they have to go on and help serve the Nation in order for them to continue to move on and get their own experience.

What we rely on is great civilians to help execute and provide that continuity. So while the Corps is 34,000 strong, only 700 are military. And many of those are commanders and deputy commanders, but they have great civilians that are helping to run the organization. But it is mainly on their leader development.

Ms. FRANKEL. Have you ever considered a different way to do it?

General BOSTICK. I am not sure if my predecessors have.

I have looked at different options of actually moving some earlier, if, for example, they don't have joint experience, and they need joint experience, they haven't deployed, and we need to get them serviced in a deployed environment or on major staff. Some have extended, but not many have gone longer.

We do take a couple of commanders that have a lot of experience and put them in a second command. But, generally, we would not go beyond the 3 years. I have not thought about doing that, primarily for the reasons I have stated before.

Ms. FRANKEL. So I think what you are saying is that the main purpose of these district commanders are to—is for their own personal development and their career, which means, really, that I guess, your civilian force is running the operation.

General BOSTICK. I would say——

Ms. FRANKEL. That is not a criticism. That is really just a question.

General BOSTICK [continuing]. It is a team effort. I just spoke to the new commanders yesterday. About half of them have experience in U.S. Army Corps of Engineers and about half do not. We have a good experience bringing them in, transitioning. They are learning from a firehose for those first 6 months or so, but they have great civilians and a great structure. And they can come from the district to the division to the U.S. Army Corps of Engineers headquarters for expertise and support. But, you know, when you compare our district commanders to, let's say, a commander that is going to take a brigade combat team into combat, those are 2-year commanders, sometimes they are extended. But those are very difficult, very tough missions. The only difference is we grow up on the combat side often as opposed to the U.S. Army Corps of Engineers side. But it is a valid point that you raised.

Ms. FRANKEL. And the reason I raise it, is I think part of the frustration for those of us who are trying to see projects move along is that when there is new leadership, there is a learning curve. And then you are having to sort of reintroduce all the issues that you have been discussing for so many years. It is like it is over and over again.

So I don't know whether there is a better way to do it. I can understand your point, but I think you can understand the frustration

that we feel in having to almost repeat ourselves every time a new player comes into the role.

General BOSTICK. We should do our jobs. We work very hard at making sure the transition is as seamless as possible.

But one of the other things I would say about new commanders, they bring fresh ideas. They look at challenges differently. But most of them, we talk to them, they don't come in and try to change everything overnight. These are systems and processes that work, but some things do need change. And the questions that they ask cause us to think about why we are doing things that may not make logical sense.

Ms. FRANKEL. All right. Thank you.

I yield back.

Mr. GIBBS. I just want to editorialize a little bit. I have had that conversation with General Peabody. I think the frustration is an interesting question, and the conversation I had with General Peabody on the civilian side, I think he is implementing and trying to implement a program to help, because in the military side, the officers have gone through a lot of training how to adapt to certain issues and handle certain situations, and there is a culture maybe in the civilian side, especially in the regulatory side that I think General Peabody is trying to address and build at—I don't know what the right words are. But I don't know if you want to expound on that.

Go ahead, General.

General PEABODY. Sure, sir. So I guess this comes from my personal reflection that I am the product of 35 years of service, over 10 percent of which has been in formal military schooling on top of some civilian schooling and advanced civilian schooling that the Army has sent me to.

When you look at the investment that we make in our civilians, we do invest in their education and training, but we don't have the same kind of system that focuses on the doctrinal understanding of how the Corps works. And the Corps is every bit as complicated in its own way as the Army is. In fact, I just took a briefing and sent General Bostick and Secretary Darcy a note, last week or the week before.

We have the former executive director from the Society of American Military Engineers and a former Corps active duty military officer, Dr. Bob Wolff, under contract. He is working with several of our folks to develop the outlines of a training and doctrine approach for the Corps; not for the military guys because we tend to get taken care of, but we do tend to focus on some, Congresswoman Frankel, for the very reason you highlighted, which is they come in, they have a very short period of time, and so we need to spin them up quickly and get them focused.

The stability, I think, is your concern, ma'am, that really is provided by the civilian experts. Mr. Steve Stockton, sitting behind me, is the key adviser I go to. And so all my whacky ideas go through the leavening process of talking to Steve, because he has 40 years of experience. He has seen pretty much everything, often multiple times.

We need to accelerate that experience. We can't afford to wait 40 years. We can develop this policy orientation, statutory orientation,

doctrinal program since we won't be able to invest the kind of time and energy that I benefited from as a military officer, but we can put together some webinars, and some periodic face-to-face training for short periods of time that does focus our civilian workforce as they matriculate up through the leadership ranks, starting basically at the district level and then moving up through division and headquarters to provide this broader understanding. If we can develop this over time, will help get it at many of the concerns and issues that this committee has addressed with us today.

It will never be perfect, but I think just having a system that causes us to understand how things work, and most importantly, as the Chief pointed out, question ourselves about what we can do to change things and improve that system in place, will give us an institutional opportunity to improve.

Mr. GIBBS. I think that would be helpful because, obviously, I don't think we are going to change the policy of the Department of Defense on the tenure. I don't think the colonels that come into districts have a long aspiration to stay there forever either in the districts. So that might be a good way to address the issue.

General PEABODY. And, sir, if I could highlight Mr. Brown, our Chief of Planning, who just reminded me, the one area where we probably have most advanced this concept is in the planning arena. Multiple reform mechanisms that you put in WRRDA were related to planning including completing feasibility in one phase by doing away with recon studies, and putting the 3x3x3 process in the law.

If you look at the history of our planning program, really over the last 15 years, this is part of a larger continuum of reforms that we have attempted to put in place, which includes the Planning Associates program. It includes IEPRs [Independent External Peer Reviews]. It includes model certification, all these things over time will start to build momentum and increase our efficiency and effectiveness, and it is difficult to point to one single thing and say that was the magic moment or that was the magic elixer. But together I think these things will actually work to achieve the kinds of things that both of us want to realize.

Mr. GIBBS. Mr. Graves, you have the last question.

Mr. GRAVES OF LOUISIANA. Thank you, Mr. Chairman.

As you saw in the last line of questioning, I am not sure that I am going to necessarily get answers and so maybe I thought that before I asked my questions, I want to lay out just a little bit of background. I just sat here and typed out some things that I recalled and looked up a little bit.

I want to lay out the climate of what is happening in Louisiana and kind of help to define some of the frustration that we have. In some of the appropriations bills following Hurricane Katrina, the Corps was required to develop this LACPR [Louisiana Coastal Protection and Restoration] report. It was due in December of 2007. I don't remember which year it was. I want to say it was about 3 or 4 years late.

Section 4303 required that a study on outfall canals be set. It had a statutory deadline. It was late. They required—we required that a report identifying levee work for pre-Katrina deficiencies versus the new levee standard be issued. It was late.

They required that a Louisiana waters resources council be established to do the peer-review work. That was set up years later. Section 7004 of WRDA of 2007 required that they establish a task force. That still hasn't been set up.

They required that an integration team be established under the task force. That hasn't been set up.

They required that a comprehensive plan be due in December of 2008. It still hasn't been done. The MRGO [Mississippi River Gulf Outlet] restoration plan was due in 2008. It was submitted years late. Section 7007 we discussed the credit issue earlier that there is the disagreement. Right now, it looks like the State of Louisiana is going to be suing the Corps of Engineers under the 2007 and the 2014 laws now because the Corps is coming up with interpretations that I don't agree with and obviously people in the State and the attorney general's office don't agree with. Section 7006 of 2007 required that they submit construction reports for five projects. They were submitted late. Section 7006 also required that four feasibility reports be submitted by December 2009. All of those were late or maybe even haven't been submitted yet. I don't recall on those.

Another set of six projects were due—project reports were due in December 2008. They were submitted years late. Section 7011 requires that a report be done—a status report be done, I think it was at least 6 years later. I am fairly certain that has not been submitted. Section 7014 of WRDA 2007 require that the Corps provide specific project recommendations in the LACPR report. When that report was finally issued, there was not a single project that was actually explicitly recommended.

Section 1019 of WRRDA 2014 on the crediting said that they had to have the crediting and the cross-crediting all identified and worked out with the State of Louisiana, which would have been September of last year. The first time they called the State of Louisiana was in October and the cross-crediting work to date has still not been worked out.

Section 1010 of WRRDA 2014 required that there is notice of construction completion, allow an appeals process when a non-Federal sponsor does not agree that the budget be completed. The Corps has come back to the State when the State of Louisiana has tried to implicate that provision and they have said that that does not apply to work from Hurricane Katrina.

Section 2013 of the 2014 bill said that the operations and maintenance of the Western Closure Complex and the Inner Harbor Navigation Canal shall be the responsibility of the Corps of Engineers with a non-Federal cost share. And the Corps has rejected taking over O&M there.

So look, I am frustrated with these guys, and I think you all know that, and you like me kind of like a migraine. But all of this goes back to years and years of frustration where Congress has come in over and over again and provided explicit deadlines, and explicit requirements, and over and over again, the Corps of Engineers has largely invented their own interpretation or done what they wanted. And so I think that the frustrations at home in Louisiana are well founded.

As we discussed at the last hearing, we had the Corps of Engineers coming out with the EPA in issuing these WOTUS [waters

of the United States] regulations and talking about how important water, clean water, and wetlands are in the United States.

And as I said in two hearings now, the Corps of Engineers is the cause of the greatest loss of wetland historically and perspectively in the United States. The credibility here is incredibly frustrating, and I reference the $1.7 million the Corps has indicated that the State owes on the LCA6 projects. The Corps of Engineers owes us State money right now on Davis Pond in Caernarvon. You are refusing to provide the funds. Should we refer that—should the State refer that to a collection agency as well as the Corps is trying to do when we have $100 million in credit built upright now?

I know you don't agree with me, and I am not even going to ask you for a response. But I just want to be crystal clear that the frustrations that the State of Louisiana has, the frustrations that I have—Secretary Darcy, you and I sat side by side and wrote many of these provisions in 2007 that are being wholly ignored. The frustrations are very well founded. I understand that you are being told certain things up your chain of command, and in many cases, I don't believe that the things you are being told are accurate. And in many cases, I am believing that you are probably having your strings pulled by OMB and pushing you in a different direction, but Hurricane Katrina cost the country over $100 billion, $100 billion to respond.

You all know that we could have prevented those lives that were lost and we could have prevented that expenditure by spending a fraction of that money. You are going to see that same scenario play out over and over and over again until things change. It is going to require fundamental change. And then I hope that we see a new direction for the Corps of Engineers moving forward because, otherwise, we are going to have profound consequences to the environment, to the economy, and to lives moving forward. It is incredibly disappointing.

Mr. GIBBS. Do you wish to respond?

General BOSTICK. One thing I would like to say, in all due respect, you know, Hurricane Katrina hit in 2005. When Isaac hit 7 years later and the President said that the Hurricane Storm Damage Risk Reduction System would be complete, we weren't late. It was largely done, it was done to a high standard, on time, to a high quality. It is the envy of the international community to come to New Orleans and see the work that the Corps of Engineers and the interagency had accomplished.

I am not going to go down each and every item that the congressman has raised, but I will say from the President, Mayor Landrieu, the people of New Orleans, they were very appreciative of the end result of the work that we needed to accomplish.

There are a lot of reasons for why things are late, not on time, and we aggressively pursue everything that the Congress tells us to do. We don't come up with our own rules. We don't come up with our own projects. We don't come up with our own money. We do what is authorized and appropriated, and we ignore nothing.

Sometimes it seems that we misinterpret or interpret the law differently than others, but we are willing to sit down, Congressman Graves, and continue to work through these issues. We have the best people in the world that are highly dedicated and want to do

the right thing for the people of not only New Orleans, but for the rest of the country, and we are committed to doing that.

Mr. GIBBS. I would just like to respond. I think the Corps is dedicated, the personnel, and they want to do the right thing for the country. I think that is obvious. I have seen the workings with General Peabody, Secretary Darcy, and General Bostick.

General Bostick, you came out to my district a year or so ago in a local area, if you remember, in Zoar. Appreciate that.

I guess my concern is, first of all, Secretary Darcy on the back of my question on the Clean Water Rule, or WOTUS, I would appreciate if you could respond as fast as you can when you talk to counsel if you could get a response.

Ms. DARCY. I will get it to you today, sir.

Mr. GIBBS. And then, secondly, I think that what I have seen in 4½ years as chairman of this subcommittee, working with the Army Corps, I have seen some things that I think are out of the hands of the Army Corps of Engineers. And I think I am witnessing that on the WOTUS rule. And I think—I'd be interested to see what the Army Corps thoughts, internal thoughts, were that I mentioned earlier, and how the EPA responded because the EPA on the WOTUS rule that they implemented last week is more damaging to our economy and I think that actually erodes our—the strides we have made in water quality, for reasons I stated before—when you pile on more redtape bureaucracy, it doesn't help protect the environment. And that, you know, could have a chance to go backwards. I really am concerned about that, but I think the rule that they implemented is worse than what they were—the proposed rule after the hearings we had because when I look at the substantial nexus, the ditch, the exceptions, that there's about four or five exceptions that put ditches back into WOTUS that I think it includes almost every ditch. Think through that. And to think that we had to actually put in a rule that we specifically exempt swimming pools and puddles just goes to show that I think the whole thing is broken, the process is broken.

So I look forward to seeing that memo that was created internally. And I also look forward to continuing working with the Corps on the implementation of WRRDA. That is what this hearing was primarily about today, and we have some challenges there yet. But I think we can get there, and we made a big deal about the new mechanism we put in there for developing what the needs are out there, and we need to work with that and ask them back to this committee so we can authorize that and keep this economy—supply the infrastructure, the maritime infrastructure to increase our competitiveness in the global marketplace.

Ms. DARCY. I wanted to respond to both you and Congresswoman Frankel's comments about the district commanders changing so frequently. I think one of the reasons people don't like to see them change so often is not only because of the learning curve, but because the quality of the officer that you have leaving these districts and leaving these divisions. One of the reasons you have those quality officers is because people, like General Bostick, who is the Chief of Engineers, looks at these officers and makes a determination of what is the best fit for each of these districts and each of these divisions. His experience as the G–1 and the Army has

helped with that, plus his concern for and his dedication to making sure that these are the best officers to deliver the mission for the Civil Works program.

Mr. GIBBS. But I do think that General Peabody has actually hit on something on the additional training on the civilian side. I think that would be beneficial and help maybe mitigate some of those concerns.

So thank you for being here today. This committee stands adjourned.

[Whereupon, at 12:28 p.m., the subcommittee was adjourned.]

DEPARTMENT OF THE ARMY

COMPLETE STATEMENT

OF

THE HONORABLE MS. JO-ELLEN DARCY
ASSISTANT SECRETARY OF THE ARMY (CIVIL WORKS)

AND

LIEUTENANT GENERAL THOMAS BOSTICK
CHIEF OF ENGINEERS

BEFORE

TRANSPORTATION AND INFRASTRUCTURE COMMITTEE
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT

UNITED STATES HOUSE OF REPRESENTATIVES

ON

ONE YEAR ANNIVERSARY AFTER ENACTMENT: IMPLEMENTATION OF THE WATER RESOURCES REFORM AND DEVELOPMENT ACT OF 2014

JUNE 10, 2015

Mr. Chairman and distinguished members of the Subcommittee, we are honored to testify before you on the implementation of the Water Resources Reform and Development Act (WRRDA) of 2014.

WRRDA 2014 provides new and revised authorities to the Secretary of the Army with regard to the Nation's water resources. The Assistant Secretary of the Army for Civil Works (ASA(CW)) is responsible for the overall supervision and development of guidance for these authorities, and their implementation, and the U.S. Army Corps of Engineers (Corps) is charged with implementing the specific studies and projects. WRRDA 2014 authorizes 34 projects for construction at a total cost of approximately $25.7 billion, and authorizes the modification of eight projects at a total cost of approximately $2.2 billion. In addition, WRRDA 2014 deauthorizes 18 specific projects and establishes a process for considering additional deauthorizations under which the Corps would produce a list of inactive projects and separable elements of projects with a Federal cost of at least $18 billion.

WRRDA 2014 also contains many programmatic changes. Since some of these provisions have the potential to significantly affect the way the Corps and our stakeholders operate, we sought public input in developing implementation guidance. We held four listening sessions between August and September of 2014 with over 800 individuals participating in the sessions. We gained valuable information from these stakeholders regarding their views on the implementation of many of the WRRDA 2014 provisions. Additionally, we accepted written comments. In October 2014, the comments from the listening sessions and the written comments were compiled, organized by the section of the Act to which they relate, and distributed to the subject matter experts within the Corps for their use in drafting implementation guidance.

The purpose of implementation guidance is to provide a common understanding of how the law will be implemented and which policies will need to be amended to ensure consistent application of the law across the Corps. Implementation guidance is prepared in a thoughtful, deliberative manner to ensure that it is appropriately considered and coordinated, which takes time to complete. The guidance is thoroughly vetted within the Corps to include Counsel and then coordinated with the staff from the Office of the (ASA(CW)) and the Army Office of General Counsel. Where provisions directly affect work within the Divisions and Districts, we are developing guidance in consultation with the appropriate District, Division, and Headquarters Regional Integration Team.

We have continued to maintain a strong focus on implementation guidance to national policy provisions and to those project and program provisions where funds have been appropriated. We recently established a team of senior field staff to help develop guidance for those provisions for which guidance has not yet been completed. All completed guidance is posted on the Corps website at http://www.usace.army.mil/Missions/CivilWorks/ProjectPlanning/LegislativeLinks/wrrda2014/wrrda2014_impguide.aspx.

We will focus our testimony on the major categories of the national policy provisions contained within the Act and the key provisions in those categories. These categories include Deauthorizations and Backlog Prevention, Project Development/Delivery, Sponsor Led Studies and Construction, Work-In-Kind Credits, Expediting the Evaluation and Processing of Permits, Alternative Financing, Levee Safety, Navigation, and Water Supply and Reservoir Management.

DEAUTHORIZATIONS & BACKLOG PREVENTION

Section 6001 of WRRDA 2014 authorizes a process for the deauthorization of water resources development projects that were authorized prior to WRDA 2007 and have (a) not begun construction, or (b) if they have begun construction, have not received any Federal or non-Federal funding in the past six years. It requires the ASA(CW) to submit to Congress, and make publicly available, a list of authorized construction projects or separable elements that fit these criteria by September 2015. The Corps is currently developing this list.

Section 6003 terminates the authorization for any project or separable element of a project authorized for construction by WRRDA 2014 unless construction has been initiated within seven years of enactment.

Implementation guidance for these provisions has been completed.

PROJECT DEVELOPMENT/DELIVERY

Under this Administration, the Army has taken steps to improve and streamline the Corps Planning process. Section 1001 is patterned after an ongoing effort under which the Corps is to complete most feasibility studies within three years and for not more than $3 million total cost per study. This "3x3x3" rule has enabled the Corps to focus planning and management on a risk-based approach to its decision-making, with vertical team alignment through the Office of the ASA(CW). The Secretary may approve a study extension that will cost more than $3 million and/or take more than three years to complete if it is determined that that the study is too complex to complete within the three year timeframe or within $3 million. If an extension is approved, an updated feasibility study schedule and cost estimate will be prepared and notice will be provided to the non-Federal project sponsor and Congress. Implementation guidance for this provision has been completed.

Section 1002 repeals the requirement that the Corps conduct a reconnaissance study prior to initiating a feasibility study. The preliminary analyses that were previously conducted during the reconnaissance phase of a study are now done in the early stages of the feasibility study including the establishment of a detailed project schedule. The elimination of the reconnaissance phase allows the non-Federal sponsor and the Corps to proceed directly to the feasibility study, but could also result in added costs where the

Corps previously would have recommended, based on a reconnaissance report, to not proceed to the feasibility phase. Implementation guidance for this provision has been completed.

Section 1005 is intended to accelerate Corps studies by requiring early coordination between the Corps, as the lead agency, and other Federal agencies with relevant jurisdiction in the environmental review process. This section also creates opportunities for non-Federal sponsors to assume greater responsibilities in protecting public health, safety, and the environment by becoming a joint lead agency with the Corps and by preparing environmental compliance documents. It is designed to streamline the process for complying with the requirements of the National Environmental Policy Act (NEPA) concurrently with the requirements of other Federal laws and policies and applies to feasibility studies initiated after the enactment of WRRDA 2014 that have an Environmental Impact Statement (EIS). It promotes early and proactive engagement of other Federal, state, and local agencies, and communication and interaction throughout project development. Currently, the Corps is engaging with other agencies and evaluating the complexities of this provision.

Section 7001 requires that the Secretary of the Army annually submit to Congress a report that identifies completed feasibility reports, proposed feasibility studies, and proposed modifications to authorized water resources projects or feasibility studies. Section 7001 also requires a notice to be published annually in the Federal Register requesting proposals from non-Federal interests. The annual report reflects information provided by non-Federal interests in response to that notice.

The Secretary must certify whether the proposals submitted by non-Federal interests in response to the notice meet the five criteria of Section 7001:

- The proposal is related to the missions and authorities of the Corps;
- The proposal requires specific congressional authorization, including by an Act of Congress;
- The proposal has not been congressionally authorized;
- The proposal has not been included in any previous annual report; and
- If authorized, the proposal could be carried out by the Corps.

In the first annual report submitted on January 30, 2015 under this provision, we gained experience in interpreting the requirements of the section, including the criteria, and in applying them in a consistent manner to all proposals submitted. For example, not all of the submissions had uniform cost and benefit information, which required the Corps to use its best judgment when describing the expected benefits of each proposed study or modification. The Corps interpreted the criteria of being "related to the missions and authorities of the Corps of Engineers" to mean that the project fit within one of the Corps three primary mission areas (commercial navigation, aquatic ecosystem restoration, and flood and storm damage reduction). Non-Federal proposals relating to water supply, hydropower, and recreation were considered for inclusion in the report where they were proposed in conjunction with one or more of these three primary mission areas.

The request for proposals for the 2016 Annual Report, published in the Federal Register on May 26, 2015, reflects the following changes from the Federal Register Notice published last year: (1) the Corps interpretation of the criteria for inclusion has been broadened so that the 2016 Annual Report will be more inclusive of proposals to be considered in the Report, and (2) the notice provides additional clarification regarding each of the criteria for inclusion in the 2016 Annual Report.

Implementation guidance for this provision has been completed, but may be revised as we gain more experience with this report.

SPONSOR LED STUDIES AND CONSTRUCTION

Section 1014 provides non-Federal interests the opportunity to study, design, and construct water resources projects using their own funding, in accordance with all Federal laws and regulations applicable to studies and construction. The non-Federal sponsor may seek future credit or reimbursement for any non-Federal funds expended in excess of the non-Federal cost share of the project subject to the review and approval of the ASA(CW). Implementation guidance for this provision is under development.

Section 1043 authorizes the Secretary of the Army to establish and implement a pilot program to evaluate the cost-effectiveness and project delivery efficiency of allowing non-Federal interests to provide full project management control of feasibility studies and the construction of projects for flood risk management, hurricane and storm damage reduction, aquatic ecosystem restoration, and coastal harbor and channel and inland harbor navigation. Implementation guidance for this provision is under development.

WORK-IN-KIND CREDITS

Section 1018 amends Section 221(a)(4) of the Flood Control Act of 1970 to provide that work accomplished by a non-Federal interest prior to the completion of a feasibility study is potentially eligible for credit if the non-Federal interest executes an in-kind MOU prior to undertaking the work. This provision requires the Secretary to update existing or issue new guidance or regulations for carrying out this section. Further, it requires that these guidelines or regulations be published in the Federal Register and that the Secretary provide the public with an opportunity to comment on them. A proposed update to the relevant existing guidance (Engineering Regulation 1165-2-208) is under development.

Section 1019 amends Section 7007 of WRDA 2007 to clarify certain items that are eligible for work-in-kind credit. This provision relates specifically to projects or studies in the coastal Louisiana ecosystem. It requires that a process to carry out this provision must be established in coordination with the relevant State of Louisiana agencies.

Implementation guidance for this provision has been completed, in coordination with the State of Louisiana.

Section 1020 authorizes a non-federal sponsor to apply credit for in-kind contributions that are in excess of the non-federal share to other water resources development projects being carried out by the same non-federal sponsor, subject to certain conditions including preparation of a comprehensive plan approved by the ASA(CW). Implementation guidance for this provision is under development.

EXPEDITING THE EVALUATION AND PROCESSING OF PERMITS

Section 1006 provides permanent authority for the Corps to accept and expend funds from non-Federal public entities, and allows public utility companies and natural gas companies to participate in the program for a period of seven years. This provision directs the Secretary to ensure that the use of the authority does not adversely affect the permit processing time for other applicants within the same Corps district and ensures adequate oversight of agreements signed under this authority. Section 1006 requires the ASA(CW) to prepare an annual report on the implementation of this section, including information on each Corps district that accepts funds under this section. The report for fiscal year 2014 was transmitted to Congress on May 4, 2015.

Section 1007 requires the Secretary to establish a process for reviewing requests under Section 14 of the Rivers and Harbors Appropriation Act of 1899, as amended and codified in 33 USC 408 (commonly referred to as Section 408). These requests involve permanent or temporary alterations by others of any completed Civil Works project. The law requires the establishment of timelines for the reviews of these requests. Implementation guidance for this provision is under development.

ALTERNATIVE FINANCING

Section 1015 clarifies that non-Federal interests may contribute funds toward construction of authorized water resources projects. Implementation guidance for this section was issued on February 11, 2015. Section 1023 allows the ASA(CW) to accept funds from a non-Federal interest for any authorized water resources development project that meets or exceeds their 902 cost limit per Section 902 of WRDA 1986, as long as the Federal cost share does not increase. The ASA(CW) is required to notify Congress in accordance with the existing authority when a non-Federal sponsor is approved to contribute funds. Implementation guidance for this provision has been completed.

Section 5014 authorizes the ASA(CW) to enter into agreements with non-Federal interests, including private entities, to manage the financing, design or construction (or any combination thereof) of at least 15 authorized water resources development projects. Under this pilot program, the ASA(CW) is to evaluate the technical, financial,

and organizational benefits of allowing a non-Federal pilot applicant to carry out and manage the design or construction (or both) of one or more such projects. The Corps is investigating possibilities and constraints of using this authority to pursue different types of partnerships with non-Federal sponsors, including public-private partnerships.

Title V, Subtitle C, the Water Infrastructure Finance and Innovation Act of 2014 (WIFIA), authorizes the Secretary of the Army and the Administrator of the Environmental Protection Agency (EPA) to provide financial assistance in order to carry out pilot projects, and to set regulations as they determine appropriate to carry out the subtitle. The Corps is investigating potential demand for a program under this title as well as administrative requirements. The Corps has also been coordinating with the EPA on program requirements and the agencies are pursuing an interagency Memorandum of Agreement (MOA) to formalize collaboration.

LEVEE SAFETY

Section 3016 authorizes the Corps to share the lessons and practices of its Levee Safety Program and work with all Federal, state, local and private levee interests in establishment of a National levee initiative. This could include: (1) build capacity and programs in states and with Tribes to oversee and regulate levees in their areas, (2) incentivize voluntary participation via Federal funding as new National guidelines are accepted, (3) implement risk as the common language of the National initiative for investments, policies, and communication, (4) recognize that shared responsibility extends to the whole floodplain, and (5) continue working closely with the Federal Emergency Management Agency (FEMA) and other stakeholders in an open and collaborative manner. An implementation plan has been developed for this provision.

Section 3013 requires the ASA(CW) to carry out a comprehensive review of the Corps guidelines related to vegetation management for levee systems. This review includes soliciting stakeholder recommendations and revising guidelines as needed. Implementation guidance is under development.

Section 3014 provides the Corps the ability to cost-share the evaluation of levees for the purposes of FEMA's National Flood Insurance Program. Implementation guidance for this provision will be incorporated into the Corps policy for performing these levee evaluations. Revisions of this policy are under development.

NAVIGATION

Section 2002 calls for a long-term capital investment strategy for the inland waterways. Under section 2005, the ASA(CW) would organize a stakeholder roundtable to assess and review issues associated with the financial management of the inland waterways. Section 2006 reduces the share of the remaining construction cost of the Olmsted Locks and Dam project that is paid by the users of the inland waterways from

50 percent to 15 percent, and provides that the General Fund would assume this cost. The Upper St. Anthony Falls Lock is on schedule to close by June 10, 2015, in accordance with Section 2010.

Section 2102 revises the authority for funding operation and maintenance of coastal and inland harbors and channels from the Harbor Maintenance Trust Fund, including provisions for emerging harbors, Great Lakes projects, and donor and energy ports.

WATER SUPPLY AND RESERVOIR MANAGEMENT

Subsection (a) of Section 1046 requires the ASA(CW) to provide a report assessing the management practices, priorities, and authorized purposes at Corps reservoirs in arid regions to determine the effects on water supply during periods of drought. For example, in response to recent drought conditions in some parts of the country, the Corps has been looking at existing drought contingency plans and evaluating whether additional studies or updates may be needed.

Subsection (b) directs the ASA(CW) to notify non-federal water supply storage sponsors at Corps multipurpose reservoir projects of the anticipated operations and maintenance activities and estimated costs of those activities for the next fiscal year and the subsequent four fiscal years. Implementation guidance for this provision is under development.

Subsection (c) provides that the ASA(CW) shall not charge a fee for surplus water under a contract entered into pursuant to Section 6 of the Flood Control Act of 1944 if the contract is for surplus water stored in the Upper Missouri Mainstem Reservoirs. By its terms, subsection (c) also provides that this restriction does not affect the authority of the ASA(CW), under 10 U.S.C. § 2695, to accept funds or to cover administrative expenses relating to certain real property transactions, and does not affect the application of Section 6 to surplus water stored outside of the Upper Missouri Mainstem Reservoirs. Implementation guidance for this provision is under development.

Subsection (d) authorizes a non-federal interest to submit a plan to the ASA(CW) for review prior to any effort to convert future use storage obligations to present use storage. Implementation guidance for this provision is under development.

Mr. Chairman, implementation of this legislation has been and remains a priority for the U.S. Army Corps of Engineers. This concludes our testimony and we would be happy to answer any questions you or other members of the Committee may have. Thank you.

QUESTIONS FOR THE RECORD

HOUSE SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT HEARING ON

"One Year Anniversary After Enactment: Implementation of the Water Resources Reform and Development Act of 2014"

June 10, 2015

QUESTIONS for the Honorable Jo-Ellen Darcy
(Secretary of U.S. Army Corps of Engineers Civil Works)

A. Submitted on Behalf of Congressman Gibbs:

Q1 - The U.S. Army Corps of Engineers has been increasingly public this year about its support for public-private partnerships (PPP's) but many of the specifics are lacking. You're aware that Congress passed bipartisan language into law as part of WRRDA to begin PPP's in the Corps. While this may be a shared goal, many on the Committee are frustrated by a lack of transparency and a lack of urgency. Can you tell us what your plans are to move forward with a PPP demonstration project, as well as the timing and next steps?

RESPONSE:

The U.S. Army Corps of Engineers (Corps) has been actively engaged with project sponsors, key stakeholder groups, Congressional interests and Administration officials towards identifying and developing innovative alternative financing opportunities within existing authorities that can, in the case of PPP (P3), leverage Federal investments with private sector funding to assure the dependable performance and efficient delivery of critical water resources infrastructure. The Corps is pursuing a national PPP portfolio of several demonstration projects within existing authority that are helping test the application of PPP to Civil Works infrastructure to help us better learn, adapt for possible application on a broader basis.

The WRRDA 2014 PPP authority prohibits the Corps from taking any action unless there are specific appropriations for the authority. Absent these specific appropriations, or other new authorities/appropriations, the Corps will continue to pursue PPP opportunities within existing authorities.

The Corps' PPP demonstration program has established that the application of P3s to complex Civil Works infrastructure is very project or system specific. It is more amenable to tailored approaches by business line than global one-size-fits-all solutions (i.e. a P3 structure that works for flood risk management is different from one for navigation, and both are different than hydropower). In some cases, it may be possible to put together a P3 structure that addresses multiple business lines within a single multi-purpose project or system.

We will continue to keep the Congress informed as the Corps further develops the Alternative Financing program and Demonstration projects, including lessons learned that may help identify and propose appropriate new policies, authorities and options.

Q2 - The law was clear that Chief's Reports were to be included in the Annual Report. Yet, in implementing section 7001 of WRRDA 2014, the Corps required that non-federal interests request the project. Again, this was not the law, but it brings up an interesting point—if an inland navigation project has a Chief's Report, and since inland projects do not have a traditional non-federal interest, how would the project get into the Annual Report?

RESPONSE:

Each year the Secretary will include in the report the list of feasibility reports with completed Chief's Reports that have cleared the Administration's review process as well as project modification reports that have cleared the Administrative review process since the last report.

Q3 - Whittier Narrows Flood Control Basin Project, submitted on behalf of the city of South El Monte, California is essentially a land conveyance. This project was left out of the first annual report. Could you please explain which of the five criteria it did not meet?

RESPONSE:

The proposed modification to Whittier Narrows Flood Control Basin Project was to terminate and remove the easement in order to permit development of the site. This modification would negatively impact a Corps flood control project and it is not directly related to a Corps mission.

B. <u>Submitted on Behalf of Congressman Graves:</u>

Q1 – Stakeholders have reached out to me with concerns over the inclusion of projects in the Corps Annual Report, mandated under Section 7001 of WRRDA 2014. Specifically, I have heard from stakeholders that have ongoing projects requesting modifications requiring congressional authorization that were relegated to the Appendix. Can you explain the Corps' criteria for including projects in the Report and Appendix and how you expect this process to change going forward?

RESPONSE:

The implementation guidance for Section 7001 of WRRDA 2014, the Annual Report to Congress, incorporates Executive Order (EO) 12322 which requires all projects, reports, plans, and proposals that will be submitted to Congress must be reviewed by the Administration to determine if the report is consistent with the policies and programs of the President. This review process applies equally to all projects, reports, plans, and proposals. There are no different standards between the normal Chief's Report process or Section 7001; a current decision document is needed:

- to identify scope of the potential project;
- to demonstrate the Federal interest;
- to confirm the project is technically sound, economically viable and environmentally acceptable; and
- to confirm the project is compliant with environmental and other laws included but not limited to National Environmental Policy Act, Endangered Species Act, Coastal Zone Management Act, and the National Historic Preservation Act and other pertinent statutes.

As required by law, the implementation guidance is consistent with Section 7001 of WRRDA. The criteria described above were applied consistently to all proposals. Going forward, proposals for ongoing projects requesting modifications requiring congressional authorization will be evaluated regarding the need for construction authorization with the caveat that EO 12322 must be fulfilled prior to implementation.

Q2 - WRRDA 2014 states that projects should go directly to the PED phase after a project receives a Chief's Report. Despite this, I have heard from stakeholders that continued to receive zero dollars. What is the Corps' policy on funding the PED phase in the Work Plan? Is there still discretionary funding under the flood risk management program unallocated?

RESPONSE:

Initiation of the Preconstruction Engineering and Design (PED) phase in a budget or work plan requires an investment decision by the Executive Branch. Feasibility studies, PED, and remaining items all compete for available funding in the Investigations account based on their merits.

Currently, funding for flood risk management remains unallocated, and candidates for that funding are under review.

C. <u>Submitted on Behalf of Congresswoman Miller:</u>

Q1 - As you may know, last Congress I introduced a bill that was included in the final language for WRRDA 2014 that required the Corps to fund and manage the Great Lakes waterways as a single, comprehensive navigation system, similar to other regional waterway systems, to ensure adequate, strategic funding for this important regional system. This provision requires the Army Corps to change how it distributes funding to ports and harbors in the Great Lakes. I would like to know the status of this new accounting change.

a) **Has implementing guidance been given to the Division and District on how to implement the language designating the Great Lakes Navigation System? If not, when do you anticipate releasing it?**

RESPONSE:

The current implementation accounts for the WRRDA 2014 language. The Corps has been treating the Great Lakes as a single navigation system since development of the Fiscal Year (FY) 2008 President's Budget. This takes into account commercial traffic as well as other factors, and the interdependence of the projects. The Corps allocated at least 10% of the Harbor Maintenance Trust Fund (HMTF) funds to the Great Lakes in accordance with Section 2102 of WRRDA 2014 in the FY 2016 Budget, $112.7 million (12%) and in the FY 2015 Work Plan, $111.3 million (10%).

b) **Given the new designation for the Great Lakes Navigation System and the shifting priorities between the time of budget preparation and project execution, should it be easier to transfer funds from one Great Lakes project to another than it has been in the past?**

RESPONSE:

The Great Lakes navigation system is considered as a system during the development of the budget and work plan recommendations. However, when publishing the budget/appropriation/workplan, each specifically authorized project is listed separately and is considered a "program, project, or activity" and subject to reprogramming limits as described in the appropriations law, which guides the transfer of funds between projects.

c) **Have there been instances where money was originally appropriated to a Great Lakes project and later reprogrammed to a project outside of the Great Lakes? Would you expect future reprogramming to remain within the Great Lakes Navigation System?**

RESPONSE:

There have been numerous reprogramming of funds over the years into and out of projects that are part of the Great Lakes system. While the views of stakeholders are always considered and most funding remains on the projects to which originally allocated, I would not preclude future reprogramming of funds into or out of the system based on unanticipated, priority funding needs on the part of reprogramming recipients and unanticipated savings or surpluses on the part of reprogramming donors.

Q2 - WRRDA 2014 contained language to help combat Asian carp – an invasive species that is threatening to wreak havoc on the Great Lakes and that has already caused millions of dollars in damages to the surrounding ecosystems. Earlier this year, I introduced a bipartisan bill to help speed up the Army Corps' ability to offer and implement a solution once and for all.

Looking at the schedule of actions described in the Brandon Road Project Management Plan, what of the $8.4 million in funding identified is necessary to make it to that decision

milestone? Further, at that point, what additional aspects or components would need to be identified, including but not limited to a non-federal sponsor or other funding option, in order for the Corps to move forward? If those aspects or components are not identified, does the Corps' process stop completely?

RESPONSE:

The entire $8.2 million identified in the Project Management Plan is needed to complete a Chief's Report which documents the study's final recommendation for submittal to Congress.`

Additionally, as part of the study phase, a non-Federal sponsor (NFS) must be identified. Once a NFS has been identified and the study has been completed, authorization to implement any recommendation included in the Chief's Report and funds to initiate the PED phase are required to advance the project. Physical construction of the recommend plan will not proceed until the project is authorized.

Work on the study will stop if funds are not made available. Work may also stop if a NFS is not identified prior to completion of the study. Upon submission of a Chief's Report to Congress, additional work cannot begin on the recommendations within that report until Congress authorizes implementation of the project and appropriates funds.

D. Submitted on Behalf of Congressman Rice:

Q1 - I have interest in Section 1021 of WRRDA 2014. The intent of the section is to authorize non-federal interests to carry out operation and maintenance (O&M) responsibilities of an authorized navigation project using its own funds and receive a credit for such work that may be applied toward construction costs of another navigation project sponsored by the same non-federal interest. In my state of South Carolina, the Port of Georgetown, as you know, is in need of significant O&M investment to restore the harbor to its authorized depth. Coincidentally, the Charleston Harbor Deepening Project is moving forward with significant state dollars pledged. What is the current status of the implementation guidance for Section 1021? When can we expect the implementation guidance for this section to be completed? How do you recommend the non-federal interests of the Port of Georgetown pursue the use of Section 1021 without guidance? What is the USACE's ability to begin working with non-federal interests, given the uncertainty, on WRRDA 2014 provisions that are not implemented and are time sensitive- like the situation in South Carolina?

RESPONSE:

Corps Headquarters, working with the Charleston District and the South Atlantic Division, is in the process of completing implementation guidance for Section 1021 and will continue to work to finalize guidance for this provision, and all other sections requiring guidance, as quickly as possible. Pending issuance of implementation guidance on this provision, if a non-federal

interest is interested in moving forward under the authority provided in Section 1021, it may work with the applicable Corps District, which in turn will coordinate with Corps headquarters to analyze project specifics and determine a way forward, if possible.

Q2 - I have been in close coordination with Brigadier General Turner and Lieutenant Colonel Litz on returning Georgetown Harbor to its authorized depth of 27 feet. The cost estimate we received in March of 2015 includes a 30% contingency which is heavily dependent on the results of sediment testing in the channel. That 30% contingency could affect the total dredge price up to $14.2 million. Due to your assistance, the Charleston District has $2 million to raise the dike of a disposal area and then, hopefully, contract the testing of the sediment. I have been told that once the contract to test the sediment is secured, the results will not be completed for 9 to 12 months. The strategy for moving forward with the project is dependent on these results. If sufficient funds for awarding the sediment contract are not available after the award of the dike raising contract, the timeline for the overall project will be pushed back significantly. What is the most appropriate way to coordinate with you on ensuring that money is available this year for sediment testing? Is reprioritization of Work Plan dollars an option? If money does run out this year, how can I ensure that money in the 2016 Work Plan will be available for Georgetown Harbor sediment testing?

RESPONSE:

Corps Headquarters is continuing to coordinate with the Charleston District and South Atlantic Division offices to ensure that it has the most current information about the amount of funding that is required for sediment testing. In the event that additional funds are required in FY 2015, the Corps will work to identify a source of funding which may include reprogramming of work plan funds. In the event that a work plan is developed in FY 2016, this project will compete for funds with all of the other worthy projects.

E. <u>Submitted on Behalf of Congressman Katko:</u>

Q1 – Given the new designation for the Great Lakes Navigation System and the shifting priorities between the time of budget preparation and project execution, should it be easier to transfer funds from one Great Lakes project to another than it has been in the past? Have there been instances where money was originally appropriated to a Great Lakes project and later reprogrammed to a project outside of the Great Lakes? Would you expect future reprogramming to remain within the Great Lakes Navigation System?

RESPONSE:

The Great Lakes navigation system is considered as a system during the development of the budget and work plan recommendations. However, when publishing the budget/appropriation/workplan, each specifically authorized project is listed separately and is considered a "program, project, or activity" and subject to reprogramming limits as described in the appropriations law, which guides the transfer of funds between projects.

The Great Lakes navigation system is considered as a system during the development of the budget and work plan recommendations.

There have been numerous reprogramming of funds over the years into and out of projects that are part of the Great Lakes system. While the views of stakeholders are always considered and most funding remains on the projects to which originally allocated, I would not preclude future reprogramming of funds into or out of the system based on unanticipated, priority funding needs on the part of reprogramming recipients and unanticipated savings or surpluses on the part of reprogramming donors.

QUESTIONS FOR THE RECORD

HOUSE SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
HEARING ON

"One Year Anniversary After Enactment: Implementation of the Water Resources Reform and Development Act of 2014"

June 10, 2015

QUESTIONS for General Thomas Bostick
(Chief of Engineers of U.S. Army Corps of Engineers)

A. Submitted on Behalf of Congressman Gibbs:

Q1 - What is the status of the Memorandum of Agreement between the Corps and the Texas Department of Transportation, allowing the state agency to assume the feasibility study needed for the Brazos River Floodgates project? (Section 1014 of WRRDA 2014 allows non-federal project sponsors to assume feasibility studies in lieu of the Corps.)

RESPONSE:

No Memorandum Of Agreement (MOA) is needed for the Texas Department of Transportation to undertake a feasibility study pursuant to Section 203 of WRDA 1986, which was amended by 1014(a) of WRRDA 2014. As an alternative to the U.S. Army Corps of Engineers' (Corps) traditional non-Federal sponsor and Federal cost-shared process for water resources development feasibility studies, Section 203 authorizes a non-Federal interest to carry out the feasibility study using its own funding and without assistance from the Corps. Under Section 203, the non-Federal interest submits the completed feasibility report to the Assistant Secretary of the Army (Civil Works) (ASA(CW)) for review. The ASA(CW) determines if the study, and the process under which the study was developed, complies with Federal laws and regulations applicable to feasibility studies of water resources development projects.

Unlike some other authorities that allow the Corps to provide technical assistance to non-Federal interests that are carrying out studies or projects, Section 203 does not authorize the provision of such assistance. In very limited circumstances, it may be possible for the Corps to provide technical assistance to non-Federal interests pursuant to the Intergovernmental Cooperation Act (IGCA), as modified by Section 211 of WRDA 2000 (commonly referred to as the Thomas Amendment). Provision of technical assistance pursuant to the IGCA is subject to the non-Federal interest certifying, with adequate facts to establish, that the requested services are not reasonably and quickly available through ordinary business channels. In addition, the ASA(CW) must be able to certify that the Corps is uniquely qualified to perform such services. For those services for which the ASA(CW) is able to provide this certification, the Corps would execute an MOA with the Texas Department of Transportation.

Q2 - WRRDA 2014 codified the vertical integration of feasibility studies. How will the Corps concurrently review for the Brazos River Floodgates feasibility study, while the Texas Department of Transportation undertakes and funds the project?

RESPONSE:

The provisions for vertical integration and concurrent review apply to those studies undertaken by the Corps. These provisions do not apply to a non-Federal interest which is carrying out a study pursuant to Section 203. The non-Federal interest submits its completed feasibility report directly to the ASA(CW) for review.

Q3 - Section 2008 of last year's WRRDA bill also required the Corps to conduct and assessment of the Gulf Intracoastal Waterway within 90 days of enactment of WRRDA. We are now 365 days past enactment – what is the status of this assessment?

RESPONSE:

The requested information on operations and maintenance needs for the Atlantic Intracoastal Waterway and Gulf Intracoastal Waterway to fulfill the report requirements of Section 2008 is not readily available and requires additional funding for significant data collection and analysis in order to prepare the report.

Q4 – How is the Corps implementing Section 2102?

RESPONSE:

The Corps is implementing the provisions of Section 2102 as follows:

- The Corps continues to use a variety of factors in prioritizing funding for the President's annual budget submission and work plan development, including the national and regional significance of harbor operations and maintenance and importance to national security and military readiness. Funding allocations are not based solely on tonnage.

- The Fiscal Year (FY) 2016 Budget included 10 percent of Harbor Maintenance Trust Fund (HMTF) Operation and Maintenance (O&M) funding for emerging harbors (low commercial use harbors with less than 1 million tons) ($91.5 million). The FY 2015 Work Plan included 12.6 percent for emerging harbors ($140.1 million), meeting the 10 percent target in accordance with Section 2102.

- The Corps continues to treat the Great Lakes as a system and allocated 12 percent of HMTF O&M funding for Great Lakes projects ($112.7 million) in the FY 2016 Budget. The Corps allocated 10 percent for Great Lakes projects ($111.3 million) in the FY 2015 Work Plan, meeting the 10 percent target in accordance with Section 2102.

- The Corps included 90 percent of HMTF O&M funding for high and moderate use commercial harbors in the FY 2016 Budget. In the FY 2015 Work Plan, the Corps included slightly less than 90 percent of HMTF O&M funding for high and moderate use

commercial harbors. Section 105 of the Energy & Water Development Appropriations Act (E&WDAA), 2015 indicated that funds should be expended only in accordance with the E&WDAA Act.

- The necessary information on harbor operations and maintenance needed to fulfill the report requirements of Section 2102(a) is not readily available and requires additional funding for significant data collection and analysis in order to prepare the report.
- The FY 2017 Budget Engineering Circular provided guidance to implement the provision to change the depth at which non-Federal sponsors cost-share the additional O&M costs for deep draft navigation projects from 45 feet deep to 50 feet deep.

Q5 – How is the Corps applying the Administrative Procedures Act to developing WRRDA implementation guidance? How is the Corps applying the Federal Advisory Committee Act to developing WRRDA implementation guidance?

RESPONSE:

Consistent with the Administrative Procedures Act and the Federal Advisory Committee Act (FACA), the Corps has received views and input from groups and from Congress. The Corps held several listening sessions and webinars with stakeholders to provide additional opportunities to share their views regarding WRRDA 2014 and the development of internal Corps implementation guidance. The Corps also accepted written comments. The Corps is using the input received to continue its internal agency work in developing implementation guidance for the various WRRDA provisions.

The Corps has not allowed any particular entity an opportunity to participate in activities that would give, or appear to give, a non-federal entity outside influence in the development of drafting internal guidance. The Freedom of Information Act supports the insulation of this deliberative process by exempting from disclosure pre-decisional documents.

For several provisions, WRRDA provides for notice and public comment in the development of implementation guidance. For example, the Corps will follow this requirement in the development of guidance for Section 1005 (streamlining of environmental review process), Section 1007 (modification and alteration of projects by no-Federal interests), Section 1017 (acceptance of contributed funds to increase lock operations), and Section 1018 (crediting of non-Federal in-kind contributions.

B. Submitted on Behalf of Congressman Katko:

Q1 – Has implementation guidance been given to the Division and District on how to implement the language designating the Great Lakes Navigation System? If not, when do you anticipate releasing it?

RESPONSE:

The Corps has been treating the Great Lakes as a single navigation system since development of the FY 2008 President's Budget. This takes into account commercial traffic as well as other factors, and the interdependence of the projects. The Corps allocated at least 10 percent of the HMTF funds to the Great Lakes in accordance with Section 2102 of WRRDA 2014. The Corps included $112.7 million (12 percent) in the FY 2016 Budget and allocated $111.3 million (10 percent) in the FY 2015 Work Plan.

Q2 – I'm told that the Corps has recently completed a "sensitivity study" regarding the proposed replacement lock at Sault Ste. Marie, MI. This single point of failure for the Great Lakes Navigation System is critical to our nation's manufacturing base and national security. When do you anticipate releasing the results of the study and briefing Congress? What is the next step in that process? How long will it be before an updated benefit/cost ratio is completed and when do you anticipate construction could begin?

RESPONSE:

The Corps is actively ensuring the reliability of this facility through a three pronged approach: (a) implementing Asset Renewal, a planned program to maximize reliability and reduce the risk of catastrophic failure through 2035 by repairing the most critical components as O&M funds allow; (b) preparing a Major Rehabilitation Report which would ultimately move the costs to the Construction General account; and, (c) beginning an economic reevaluation for the construction of a new Poe sized lock. Based on recent information, the Corps completed a sensitivity analysis that demonstrated that an updated economic reevaluation is warranted. An updated benefit/cost ratio would be completed in approximately 24 months after the economic reevaluation effort is funded.

Q3 – Are the connecting channels of the Great Lakes Navigation System dredged to their authorized depths and widths? If not, how much would it cost to restore them and how high a priority within the Great Lakes Navigation System is this for the Corps?

RESPONSE:

There are four Great Lakes connecting channels: St. Marys River, St. Clair River, Channels of Lake St. Clair, and the Detroit River. The Great Lakes connecting channels are given a very high priority in funding because they are critical to maintaining navigation throughout the system.

All of the connecting channels are maintained to the authorized depths. The St. Marys and St. Clair Rivers are also maintained to their authorized widths. For the channels of Lake St. Clair and Detroit River, navigation channels are maintained to support commercial navigation traffic. Where the authorized width is greater than needed to support commercial traffic, the wider channel dimensions are only dredged as funds are available. It would cost approximately $12 million to $15 million to restore the channels in Lake St. Clair and Detroit River to full authorized widths, although there would be no additional benefit to navigation for that investment over the Corps current investment in the connecting channels.

June 9, 2015

The Honorable Bob Gibbs
Chairman
Subcommittee on Water Resources and Environment
Committee on Transportation and Infrastructure
U.S. House of Representatives
B370 Rayburn House Office Building
Washington, D.C. 20510

The Honorable Grace Napolitano
Ranking Member
Subcommittee on Water Resources and Environment
Committee on Transportation and Infrastructure
U.S. House of Representatives
B370 Rayburn House Office Building
Washington, D.C. 20510

Dear Chairman Gibbs and Ranking Member Napolitano:

Thank you for the opportunity to comment on the Water Resources Reform and Development Act (WRRDA) of 2014 and implementation efforts by the Army Corps of Engineers (Corps). The American Association of Port Authorities (AAPA) represents the leading port authorities in the Western Hemisphere and our comments today reflect the comments of our U.S. members.

Our nation's economic future lies in global trade and the federal navigation channels are essential components of the U.S. freight movement system. Congress worked through a wide variety of interests and issues reaching the solutions provided in WRRDA. AAPA is very pleased with the WRRDA legislation. AAPA is also pleased that the Corps conducted a series of listening sessions in the months after WRRDA's enactment.

Corps leadership needs to press for innovation, streamlining and flexibility when developing implementation guidance. Many WRRDA provisions were written to streamline processes that had become overly burdened with multiple levels of review. We are concerned that the rate of implementation guidance development and issuance may reflect that the old processes and thinking may still be in place.

WRRDA Section 2102, Operation and Maintenance of Harbor Projects, is critical to our members. In developing their FY 2015 work plan earlier this year the Corps interpreted a Cromnibus sentence to mean that the careful compromise of WRRDA Section 2102 was not to be followed. The Corps intention to use 2102 in the FY 2016 Energy and Water appropriation needs to be confirmed.

WRRDA Section 2106, Additional Measures at Donor Ports and Energy Transfer Ports, is another very important provision. AAPA has worked with our member ports to address a variety of issues including funds distribution, work category preferences, who performs the work, acquisition strategies, etc. This information is being provided to the Corps ahead of their initiating implementation guidance.

1010 Duke Street, Alexandria, VA 22314-3589 p 703.684.5700 f 703.684.6321 www.aapa-ports.org

A considerable number of member ports are in the process of pursuing channel improvement feasibility studies and have great interest in the new streamlined navigation study process, known as '3x3x3' under WRRDA Section 1001, Vertical Integration and Acceleration of Studies. Other ports are anxious to understand the new nomination process for feasibility studies and construction under WRRDA Section 7001, Annual Report to Congress. While considerable attention has been applied to preparing and issuing WRRDA implementation guidance, we recommend that the Corps develop a communication strategy to notify the public when the guidance has been issued. Presently, stakeholders find out by periodically checking the Corps implementation guidance website and seeing which provisions have a hyperlink that displays the issued guidance.

Additionally, the process does not end when the implementation guidance is issued. The guidance is developed internally by the Corps as they view this is applicable under the Administrative Procedures Act. This means, aside from the initial listening session, the implementation guidance is prepared and issued and then cost sharing partners and stakeholders get their first opportunity for review. In many instances stakeholder review reveals questions and changes are needed.

America must prepare for 21st century freight movement – 95 percent of the world's population and 80 percent of consumption is outside the U.S. Global trade is the key to U.S. economic growth and jobs. We believe WRRDA's streamlined processes and innovations, when fully implemented, will help enhance America's international competitiveness, revitalize our economy and create sustainable jobs. We thank you for this opportunity to address these critical issues.

Sincerely yours,

Kurt J. Nagle
President and CEO
KJN:JW/pm

cc: Geoff Bowman
Ryan Seiger

National Hydropower Association
25 Massachusetts Ave. NW, Ste. 450, Washington, D.C. 20001 · Tel 202-682-1700 · Fax 202-682-9478 · www.hydro.org

Statement for the Record

On behalf of

The National Hydropower Association

Before the

U.S. House of Representatives Transportation and Infrastructure Committee

Subcommittee on Water Resources and Environment

Regarding

One Year Anniversary After Enactment: Implementation of the Water Resources Reform and Development Act of 2014

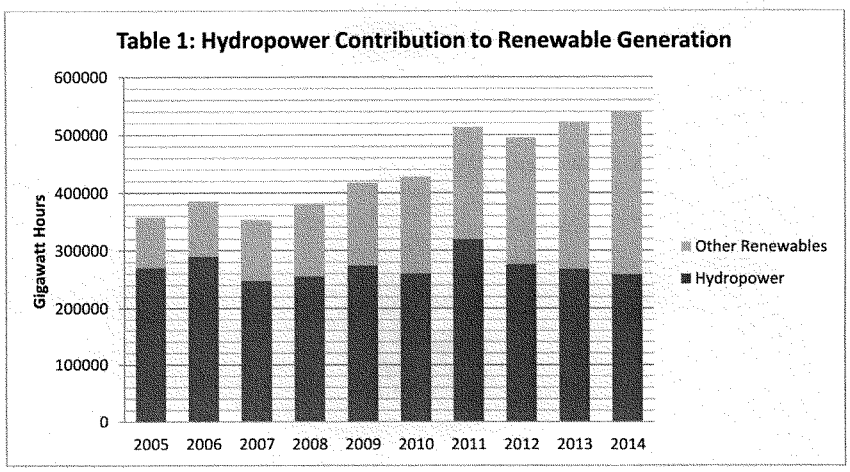
June 10, 2015

The National Hydropower Association[1] appreciates this opportunity to provide a statement for the record on the Subcommittee on Water Resources and Environment's June 10, 2015 hearing on the implementation of the Water Resources Reform and Development Act of 2014 (WRRDA).

Introduction

Hydropower plays a central and indispensable role in reaching the nation's clean energy goals and objectives for the U.S. electric power sector. Like wind, solar, and other renewables, hydropower is a source of clean, emissions-free energy. Distinct from these other renewables, however, hydropower provides flexible base load power to follow load, as well as peaking power when energy demand on the grid reaches its highest levels.

Hydropower also is a reliable and proven energy source. According to the U.S. Energy Information Administration, over the past 10 years hydropower generation has met or exceeded the generation of all other renewables *combined* - in some years constituting 75 percent or more of all annual renewable energy generation. Table 1 depicts hydropower's substantial contribution to renewable energy generation over the last 10 years.



[1] NHA is the national non-profit association dedicated exclusively to advancing the interests of the hydropower industry, including conventional, pumped storage, conduit power and new marine and hydrokinetic technologies. NHA's membership consists of more than 210 organizations, including consumer-owned utilities, investor-owned utilities, independent power producers, project developers, equipment manufacturers, environmental and engineering consultants, and other service providers.

What is often overlooked, however, is hydropower's potential to grow in an environmentally responsible way. Building upon the existing U.S. asset base, there are opportunities to increase capacity and generation. Most relevant to the June 10 hearing are the tremendous opportunities to add new hydropower generation units to existing non-powered dams operated by the U.S. Army Corps of Engineers (Corps).

Benefits of Hydropower to the U.S. Grid

The unique, flexible qualities of hydropower help integrate additional intermittent renewable resources to the electric grid. Hydropower facilities can quickly go from zero power to maximum output, making them exceptionally good at meeting rapidly changing demands for electricity throughout the day. This flexibility, along with energy storage benefits provided by both conventional and hydropower pumped storage projects, are critical to integrating greater amounts of intermittent renewable sources like wind and solar—thereby significantly increasing clean emission-free generation while preserving grid reliability.

These same attributes allow both fossil and nuclear units to run at peak efficiencies. This avoids unnecessary and undesired cycling of baseload nuclear generation units, as well as reducing carbon emissions from fossil units that would otherwise be called to run in less efficient modes of operation.

Thus, hydropower serves as the backbone for the effective functioning of the electric grid and the reliability and stability services it provides will be in even greater demand into the future. Particularly in conjunction with the emergence of wind, solar, and other renewables, hydropower plays an essential role in bringing these intermittent resources to the grid, expanding the utilization of this clean, emissions-free generation.

To illustrate, states that utilize more hydropower have the cleanest air and the lowest carbon intensity rates in the nation. For example, Washington state ranks number 10 in the nation in the amount of electricity generated. Because the majority of that generation comes from hydropower, the state ranks 50th in carbon intensity with only 132 lbs. of carbon dioxide produced per MWh. In 2012, nationwide, the use of hydropower avoided over 190 million metric tons of CO_2. This is the equivalent of avoiding the GHG emissions from approximately 40 million cars.

NHA believes that our clean energy goals, and system reliability, cannot be achieved without preserving the existing hydropower system, and importantly, supporting the deployment of new projects like those proposed for many existing non-powered dams owned and operated by the Corps.

Growth Potential of Hydropower

Today, hydropower accounts for approximately 7 percent of the nation's total electricity generation and half of all renewable electricity generation. Hydropower capacity in the United States is just over 100,000 MW, which includes 22,000 MW of pumped storage - by far the largest utility-scale energy storage resource deployed both in the U.S. and globally.

While many may assume that hydropower is mainly a Pacific Northwest energy resource, in fact, hydropower is utilized and available across the country, powering homes and businesses in every state. There are over 2200 federal and non-federal hydropower projects in service in the U.S. These projects are providing low-cost emissions-free power to consumers in every one of the 50 states.

While hydropower's existing contribution to the nation's energy system is significant, there also exists tremendous opportunity to increase capacity. One such growth area is on existing dams and conduits. The vast majority of U.S. dams were constructed for purposes other than hydropower generation - such as water supply, flood control, irrigation, and navigation. These dams include structures and impoundments that provide opportunities to install hydropower generation.

NHA estimates that only about 3 percent of the nation's approximately 80,000 existing dams are equipped with generation facilities. This presents an opportunity to maximize the public benefits of these non-powered dams and related infrastructure through retrofits to produce electricity. A 2012 study by the U.S. Department of Energy[2] concluded that an additional **12 GW** of capacity were available for development at existing non-powered dams. According to this study, the top ten sites alone have the potential to provide approximately **3 GW**, with the top 100 sites able to provide up to **8 GW**. In fact, 81 of the top 100 sites identified in the Department of Energy report are Corps dams.

As hydropower can be added to many existing dams with no incremental environmental impacts, this makes hydro generation, arguably, the cleanest of all new capacity options. In addition, as recent new projects have demonstrated, adding hydropower to Corps facilities can be done in such a way that works in concert with the other congressionally authorized purposes of the dams.

WRRDA of 2014 Implementation

With the passage of WRRDA, the Congress in an overwhelmingly bipartisan fashion, directed the Corps to make non-federal hydropower development a priority and work to address delays and inefficiencies in the Corps' approval process for proposed non-federal hydropower development on their dams.

Specifically, Section 1008 of WRRDA states "the development of non-Federal hydroelectric power at Corps of Engineers civil works projects, including locks and dams, shall be given priority" and that "approval of non-Federal hydroelectric power at Corps of Engineers civil works projects, including permitting required under section 14 of the Act of March 3, 1899 (33 U.S.C. 408), shall be completed by the Corps of Engineers in a timely and consistent manner."

NHA, and hydropower project developers, years prior to the passage of WRRDA, had repeatedly raised these same issues and had proposed improvements. While steps were taken over time, and some incremental progress was made, on the whole, developers reported that the Corps

[2] Available at: http://www1.eere.energy.gov/water/pdfs/npd_report.pdf

process continued to serve as a fundamental barrier to developing new clean hydropower. They also reported that the greatest resistance to adding hydropower came from staff or leadership at individual Corps districts across the country.
It was the industry's and NHA's hope that the direction provided to the Corps through WRRDA's passage would usher in a new era of hydropower development on Corps infrastructure. One year later, NHA is concerned that the Corps has not taken the steps necessary to fulfill Congress' intent and that this is having continued negative impacts on the development of clean hydropower on Corps infrastructure. In fact, developers have reported that when presented with the Section 1008 language, district officials have stated that they were not aware of it and they have not received any guidance from headquarters.

NHA believes there are those in leadership positions at the Corps – at headquarters and at the divisions and districts – that support non-federal hydropower development at Corps dams. However, a fundamental change in the view towards proposed hydropower projects has not reached all levels and a consistent policy has not emerged. NHA finds this reticence all the more frustrating and ironic as the Corps itself is the single largest producer of hydropower in the country. And as such, is the largest producer of clean, renewable, emissions-free power. One would think that the Corps would want to build on this accomplishment, not stymie it.

The following are general examples of the problems developers have encountered in the Corps approval process. Some of these examples pre-date the passage of WRRDA, but others have been experienced since then.

Problems working with the Corps

All too often, without clear directive or the lack of a strong 'champion' in the district, hydropower project work is given secondary status and is reviewed and commented on as time permits. It seems that many times other work that starts after a hydropower developer begins the Corps process still receives priority since it is considered 'normal' USACE work.

Some districts have also refused to be a cooperating agency with the Federal Energy Regulatory Commission (FERC), which is encouraged in the recent Memorandum of Understanding (MOU)[3] between the two agencies. By refusing to be a cooperating agency districts have been reported to impose their own post-license conditions different from any FERC findings, which creates delay and adds uncertainty.

Other districts have been found to fight hydropower development by denying access to data and refusing to share baseline operating information without a FOIA request, even to the point of requiring a FOIA request from FERC. Even if data is shared, districts have not always notified or consulted with project applicants before changing project operations, like flow regimes - this in the middle of an applicant studying flow effects and after significant resources have been expended. This type of change fundamentally affects the design, operation, and economics of a

[3] Available at: http://www.ferc.gov/legal/mou/mou-usace.pdf

project and can cost significant funds and time in order to analyze and respond to these changes. Lastly, one developer reported a district making it extremely difficult to obtain technical data which is necessary to assess hydro project feasibility, creating requirements for information disclosure above and beyond what Corps Headquarters requires.

In another example, a developer experienced a delay of over six months because the district, after the issuance of a FERC license, required a "System Safety Management Plan" that had not been identified prior to licensing. When the developer requested examples of similar Safety Plans that had been developed or approved by the district, the response was that they had never developed this type of plan for their projects and that they were unaware of any plan that they could provide as an example. Numerous draft plans were prepared and submitted for comments to the district's Safety Officer before being approved.

Regarding other process delays experienced, one developer has been waiting for a Section 408 approval for 17 months. The application has been under review at the division level and Headquarters since mid-December of 2013. For another project it took the Corps nine months to approve a 408 application, after 2.5 years of application revisions and negotiation. Ultimately, the Corps is not accountable to anyone for meeting deadlines.

NHA does want to highlight that there are some districts that are good to work with and fair and reasonable in dispensing their duties. These districts recognize the value of hydropower development and they have demonstrated that districts and developers can work together. They meet deadlines and they concern themselves with the pertinent issues. They do not push individual agendas.

Unfortunately, these examples are outnumbered by the problems experienced by developers, which can lead to significant real-world consequences impacting not only developers, but ratepayers in the end. For example, delays associated with one 408 approval for a developer caused several basis points to be lost in the financing, resulting in millions of dollars of interest being added to the overall project's cost. In another example, the added time for a 408 approval delayed the start of construction by approximately six months resulting in a 1.5 percent capital cost escalation equal to millions of dollars.

NHA recognizes that the Corps has many responsibilities to meet, but that should not stand in the way of good government, good projects, and good results for ratepayers. Increasing the renewable energy production of the nation at Corps infrastructure should be seen as an opportunity and not a burden. NHA stands ready to work with the Corps, at all levels, to improve on the status quo so that we can realize the multitude of energy and environmental benefits these hydropower projects will bring.

Conclusion

Hydropower is America's leading affordable, reliable, and renewable domestic energy resource, and its significant growth potential offers an indispensable tool to help meet our nation's clean

energy goals. Adding power generation to existing non-powered Corps dams is one of the prime opportunities to realize this growth potential in the hydropower sector. While the adoption of WRRDA and the hydropower provisions it contained was an important step, ultimately it is the Corps' implementation of the provisions that will make the difference in whether projects come online or not. We look forward to working with the Subcommittee, the Corps, developers, and stakeholders to ensure these opportunities are not lost.

Sincerely,

Linda Church Ciocci

Linda Church Ciocci
Executive Director

○