

**THE 2016 WATER RESOURCES DEVELOPMENT  
ACT—POLICIES AND PROJECTS**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON**  
**ENVIRONMENT AND PUBLIC WORKS**  
**UNITED STATES SENATE**  
**ONE HUNDRED FOURTEENTH CONGRESS**

SECOND SESSION

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MARCH 16, 2016

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COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ONE HUNDRED FOURTEENTH CONGRESS  
SECOND SESSION

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# **THE 2016 WATER RESOURCES DEVELOPMENT ACT—POLICIES AND PROJECTS**

**WEDNESDAY, MARCH 16, 2016**

U.S. SENATE,  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,  
*Washington, DC.*

The committee met, pursuant to notice, at 10:02 a.m. in room 406, Dirksen Senate Office Building, Hon. James Inhofe (chairman of the committee) presiding.

Present: Senators Inhofe, Boxer, Vitter, Barrasso, Capito, Boozman, Wicker, Fischer, Rounds, Sullivan, Carper, Cardin, Whitehouse, Merkley, and Gillibrand.

## **OPENING STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR FROM THE STATE OF OKLAHOMA**

Senator INHOFE. All right, this meeting will come to order. Just before any of our people have to leave, let me just share, this is a big deal. This is the ultimate looking the gift horse in the mouth; when we are short of resources in the Corps and there are people willing to do things at their own expense, and we drag it out and make it difficult. So let me say that in a longer form.

This is our second hearing on the 2016 WRDA. At our February 10th hearing we heard about the importance of rebuilding America's crumbling waterways and flood control infrastructure, and the national economic benefits that this infrastructure supports.

Today we will hear from the Assistant Secretary of the Army, Jo-Ellen Darcy, and the Chief of Engineers, Lieutenant General Bostick, about new water resources projects to improve the infrastructure and the Corps' policies that can help or hinder the development of the project benefits.

As I mentioned at our February 10th hearing, we are back on schedule to pass a WRDA bill every 2 years. This allows Congress to help meet the demands of navigation, flood control, ecosystems and restoration projects around the Country. Since we passed the last WRDA bill, that was June 2014, the Chief of Engineers has completed 22 reports recommending new water resources projects or changes to existing projects and has submitted these reports to Congress. We are considering these projects for the 2016 WRDA. All of them will provide significant benefits.

In addition, under the new process established in WRDA 2014, our States and local governments have submitted 172 requests for studies that can lead to new water resources projects or modifications to existing projects. Of these, the Corps determined that 49

met the criteria set forth in WRDA. The Corps has sent those study requests to Congress and we are reviewing them.

These projects and studies, if requested by a senator, will form the core of the 2016 WRDA, and the staff already has put together that base text. We also are reviewing the policy and programmatic issues that senators have brought to our attention.

We all know that the Corps is operating under constrained budgets. At our February 10th hearing, we heard from witnesses, including Bob Portiss, my director of the Port of Catoosa in Oklahoma, that in some cases even the operational status of our navigable waterways can be at risk. That is why we want to make sure that you have the authority, you being the Corps, to accept money, goods and services from your non-Federal sponsors when they are willing to supplement your resources on a voluntary, non-reimbursable basis.

It just blows my mind to think that is happening. We have such great things that we are behind on that we need to have done, and they are willing to come forth with their own resources to make this happen, and we say no or we stall them. That is the Government way.

So I look forward to working with you, the Corps, and your staff to help draft language to achieve this goal.

We also want to work with you and do more to encourage public-private partnerships. This can include private funded expansions of infrastructure to produce new and greater benefits, like expanding water supplies and energy production.

If the private sector is willing to invest with the understanding that they can market what they create, in other words, if something doesn't exist today and they make it exist, they should be entitled to do that. Under the current process, it seems like the Corps looks for ways to say no, and I want to work with you guys to encourage partnerships where the Corps is looking for ways to say yes.

As you know, there is a lot of interest in the water supply issues. The Corps does not own water, but it currently manages about 9.8 million acre feet of water that can be used for municipal water supply or irrigation purposes. In WRDA 2014, we required reports on how the Corps manages its reservoirs. One report was due last June and the other is due this coming June, but we haven't seen any results from that yet. We want to work with you, the Corps, to help optimize the use of water that is already available, while meeting existing project purposes and honoring existing water rights.

Like many States, Oklahoma has suffered in previous years due to drought. Yet, we have unused water in 12 lakes in Oklahoma. I want to work with you to ensure that this unused water can be repurposed for use in Oklahoma. It is important to Oklahoma that WRDA is one of many tools to enact policies which plan for meeting water supply demands in the future.

The main thing I want to address, though, is what I mentioned early on.

With that, I recognize Senator Boxer.

[The prepared statement of Senator Inhofe follows:]

STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR  
FROM THE STATE OF OKLAHOMA

This is our second hearing on the 2016 Water Resources Development Act or WRDA. At our February 10th hearing, we heard about the importance of rebuilding America's crumbling waterways and flood control infrastructure and the national economic benefits that this infrastructure supports.

Today we will hear from the Assistant Secretary of the Army, Jo-Ellen Darcy, and the Chief of Engineers, Lt. General Bostick, about new water resources projects to improve that infrastructure and the water resources projects that improve that infrastructure and the Corps' policies that can help-or hinder-the delivery of project benefits.

As I mentioned at our February 10th hearing, we are back on schedule to pass a Water Resources Development Act every two years. This allows Congress to help meet the demands for navigation, flood control and ecosystem restoration projects around the country.

Since we passed the last WRDA in June 2014, the Chief of Engineers has completed 22 reports recommending new water resources projects or changes to existing projects and has submitted these reports to Congress. We are considering these projects for the 2016 WRDA. All of them will provide significant benefits.

In addition, under the new process established in WRDA 2014, our States and local Governments have submitted 172 requests for studies that can lead to new water resources projects or modifications to existing projects. Of these, the Corps determined that 49 met the criteria set forth in WRDA. The Corps has sent those study requests to Congress and we are reviewing them.

These projects and studies, if requested by a Senator, will form the core of the 2016 WRDA and the staff already has put together that base text. We also are reviewing the policy and programmatic issues that Senators have brought to our attention.

We all know that the Corps is operating under constrained budgets. At our February 10th hearing we heard from witnesses, including Bo Portiss the Director of the Port of Catoosa, that in some cases even the operational status of our navigable waterways can be at risk. That is why we want to make sure that you have the authority of accept money, goods and services from your non-federal sponsors when they are willing to supplement your resources on a voluntary, non-reimbursable basis. I look forward to working with you and your staff to help craft language to achieve this goal.

We also want to work with you to do more to encourage public private partnerships. This can include privately funded expansion of infrastructure to produce new and greater benefits, like expanding water supplies or energy production.

The private sector is willing to invest, with the understanding that they can market what they create. Under the current process it seems like the Corps look for ways to say "no." I want to work with you to encourage partnerships where the Corps is looking for ways to say "yes."

As you know there is a lot of interest in water supply issues. The Corps does not own water, but it currently manages about 9.8 million acre feet of water that can be used for municipal water supply or irrigation purposes. In WRDA 2014, we required reports on how the Corps manages its reservoirs. One report was due last June and the other is due this June, but we have not seen any progress yet.

We want to work with you to help optimize the use of water that is already available, while meeting existing project purposes and honoring existing water rights. Like many States, Oklahoma has suffered in previous years due to drought. Yet, we have unused water in 12 lakes in Oklahoma. I want to work with you to ensure that this unused water can be repurposed for use in Oklahoma. It is important to Oklahoma that WRDA is one of many tools to enact policies which plan for meeting water supply demands in the future.

Senator Boxer and I are committed to working together to find solutions where we can. That is why I am confident that we move a bill through committee this Spring and pass a WRDA in 2016.

**OPENING STATEMENT OF HON. BARBARA BOXER,  
U.S. SENATOR FROM THE STATE OF CALIFORNIA**

Senator BOXER. Thank you so much, Senator Inhofe.

I am very pleased to see Secretary Darcy here and Chief Bostick, and I just want to make a point. With the Country in a very contentious place and so much dividing us, this is an area this Com-

mittee can restore some hope and faith that we can work together. We proved it working together on the highway bill, we proved it before on WRDA bills, and I just want to say to my chairman how much I look forward to working with him and every member of this Committee on both sides on this particular bill; and there is nothing standing in our way.

It is always easiest to do nothing, because there is always an excuse. But this Committee understands our responsibility, so I am very hopeful we can really have a strong WRDA bill.

Now, the new WRDA bill will support critical projects around this Country. They include projects for needed flood damage reduction, coastal storm protection, port deepening, and ecosystem restoration projects. Every one of those categories means more jobs, better and cleaner environment; it means we are looking at the infrastructure and moving forward.

And since our 2014 WRDA bill, which I was very proud to work with my colleague on, 22 chief's reports related to projects in 17 States have been completed. And I know we each care deeply about our own States and the Country, so I will mention a couple in my State, two longstanding California priorities, the Los Angeles River, and people don't know we have a Los Angeles River, and it can rage; and the South San Francisco Bay Shoreline projects. Those have been concluded.

Also, the Salton Sea, which is proving to be a major challenge to us. I won't get into it today, but it is a body of water that was formed by basically agriculture, and it is a stopping off place for almost all the wildlife you can imagine coming through the Pacific Flyway. It is in great trouble and is drying, and as it dries the intensity of the smell goes all the way from the Salton Sea through Riverside County, San Bernardino and into Los Angeles. It is dangerous. We have to act on it and we have begun in this Committee to address it, and I am looking forward to addressing it again.

Now, with all the droughts that we are suffering and the need to look at desal and the other things long-term because of climate change, we still have incredible flood problems that come from extreme weather. The Committee has been very helpful to us in our Sacramento area, which, as I have pointed out in the past, if there were to a Katrina-like event, it would make Katrina look nothing like we thought, it would make it look like that was really bad and terrible, but this is horrific. So we need to move.

I will close with this. I want to thank my chairman and his staff for working so hard to address the Flint crisis. In a bipartisan way, he reached out to Republicans and Democrats, and we almost had it done. And I still don't understand why we couldn't get it done. I am not even going to go into it. A couple of members have serious problems.

But we can't turn away, as we do the Water Resources Development Act, it seems to me, from this crisis that is facing us now. So I am hoping we can work together. I know Senator Cardin has some measures to look at what we can do to help avoid another Flint.

I want to show you the picture of the crisis, what the pipes look from the corrosion; and there is just no reason. We have anti-corrosion methods here, so there have to be ways to address this so that

we prevent the crisis and we prevent the horrible effects of lead, particularly in our children. And speaking of children, look at this beautiful picture of the children delivering drinking water to their communities. This should never ever, ever, ever happen again.

So we have a chance. We never know, we can't control when we are born, where we are, but we are here and it is now; and we know about Flint and we know it is happening in Mississippi, we know we have issues in Baltimore with the drinking water in the fountains, we know we have issues in Ohio right now. It is just beginning. So I am hoping, Mr. Chairman, that working together with both sides wanting to solve a problem we can do it.

Let me just add one quick thing. The President's hands were tied when the Governor of Michigan asked him to declare an emergency. He couldn't do it because the Stafford Act doesn't allow it, even though it does allow help for manmade disasters such as explosions or flooding that has to do with some negligence on a dam project, for example.

So I wrote some legislation to allow the President, if asked by a Governor, to declare an emergency and move quicker, quicker, so you don't have these little kids having to deliver water, so we have the ability to respond. I hope my colleagues will help me with that bill. And there may be a way to reference it in WRDA because we can't do it directly in WRDA.

But I am excited about what lies ahead for us. I think we can again prove, Mr. Chairman, that this Committee can start restoring the faith of the people in the process.

Thank you.

Senator INHOFE. Thank you, Senator Boxer. Move quicker. This is something we are going to try to get the Corps to do on a couple of areas.

So, with that, we will start with Secretary Darcy.

**STATEMENT OF JO-ELLEN DARCY, UNITED STATES ASSISTANT SECRETARY OF THE ARMY**

Ms. DARCY. Thank you, Chairman Inhofe and distinguished members of the Committee. Thank you for the opportunity to testify before you today to discuss the policy issues and projects that the Committee expects to address in a Water Resources Development Act for 2016.

The President is committed to investing in a 21st century infrastructure for America, including its water infrastructure, in order to strengthen the Nation's economy and resilience, provide for public safety, and to restore the environment. We applaud the effort of passing a WRDA bill every 2 years.

Over the past century, Federal, State, local, as well as Tribal governments have made enormous investments in new water infrastructure, including locks and dams, levees, and other improvements. However, we must also continue our dialog regarding responsible and sustainable ways to fund the operation and maintenance of our aging water infrastructure so that it can safely and reliably serve current, as well as future, generations.

State, local, and Tribal governments are taking on greater roles in water resources investments. We look forward to discussing additional authorities that may be needed for innovative finance mod-

els and partnerships with the private sector, and to working with the Committee to remove barriers so that we can continue progress in addressing the Nation's needs.

We also welcome any discussion regarding how we can sustainably support our inland waterway infrastructure over the medium-and the long-term, and look forward to working together with you on these solutions.

Together with State, local, and Tribal communities, the Obama administration is working to develop and implement structural, as well as non-structural, approaches to water resources challenges to improve their resilience. The Federal Government needs to continue to provide technical, as well as planning, assistance to help prepare, adapt, as well as protect communities from the impacts of climate change.

Recently, the Army submitted the 2016 Report to Congress on Future Water Resources Development in response to section 7001 of WRRDA 2014. This annual report, Chief's Reports, and Post Authorization Change Reports will help inform the decisionmaking of this Committee on a collection of new projects that can be considered for WRDA 2016.

Our written testimony briefly describes the 13 Chief's Reports that have completed executive branch review since WRRDA 2014, five of which completed executive branch review subsequent to submission of our annual report on the 1st of February.

Since 1996, the Corps of Engineers has developed and implemented an Indian Affairs program. We have Tribal liaisons at Corps headquarters and at all 38 districts and 8 division offices. We have trained over 1,500 Federal agency staff and Tribal consultation processes, as well as establishing a Tribal Center of Expertise at our district in Albuquerque.

In recent years we have made significant progress working with the Columbia River Basin Tribes on salmon and habitat issues, with Puget Sound Tribes on flood risk management and habitat restoration, and with Tribes regarding the transfer of lands, over 30,000 of the Garrison Projects, to the Department of Interior in order to be held in trust for these Tribes.

Something I wanted to bring to the attention of the Committee is that section 1002 of WRRDA 2014 repealed Section 905(b) of WRDA 1986, thereby eliminating recognizance studies and reports as a basis for, as well as a precursor to, feasibility studies. By repealing recognizance studies, we have inadvertently handicapped our Tribal partnerships. Recognizance studies were an aid to Tribes who had limited resources, and I am glad that our staffs will work together to try to resolve this issue in the coming WRDA bill.

Also regarding our collaboration with Tribes, I wanted to announce the opening of the Corps' fourth Veterans Curation Lab in Washington State on the Colville Reservation. The Corps' Veterans Curation Program was started in 2009 with support from the American Recovery and Reinvestment Act. The program offers veterans the opportunity to learn tangible skills and gain experience by rehabilitating and preserving federally owned or administered archeological collections found at Corps projects. This program's unique training for future employment has meant that 90 percent of the more than 250 graduates have gone on to find permanent

employment or returned to universities and colleges to continue their education.

Mr. Chairman, we look forward to working with you and appreciate the Committee's support for the Nation's water resources to strengthen the foundation for economic growth for our communities and for our environment, and I am really looking forward to working with you on WRDA for 2016. Thank you.

[The prepared statement of Ms. Darcy follows:]

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DEPARTMENT OF THE ARMY

COMPLETE STATEMENT

OF

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

AND

LIEUTENANT GENERAL THOMAS BOSTICK  
CHIEF OF ENGINEERS

BEFORE

THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

ON

THE 2016 WATER RESOURCES DEVELOPMENT ACT – POLICIES AND  
PROJECTS

MARCH 16, 2016

Mr. Chairman and distinguished members of the Committee, we are honored to be testifying before you today to discuss the policy issues and projects that we believe the Committee should consider in the next Water Resources Development Act (WRDA). Water resources infrastructure across the Nation enables the low-cost shipment of goods through our coastal ports and on the inland waterways, reduces the flood risk to communities, restores aquatic ecosystems, provides drinking water, generates renewable electricity, and offers water-based recreation opportunities to the public.

The President is committed to investing in a 21<sup>st</sup> Century Infrastructure for America – including its water infrastructure – to strengthen the Nation’s economy and resilience, provide for the public safety, and restore the environment. We look forward to working with you on a Water Resources Development Act for 2016.

The last WRDA bill included significant reforms. We urge the Committee to continue this progress in the next WRDA bill. Over the past century, Federal, State, local, and tribal governments have made enormous investments in new water infrastructure, including locks and dams, levees, and other improvements. However, we must also continue our dialogue regarding responsible, economic, and sustainable ways to fund the operation and maintenance of our aging water infrastructure so that it can safely and reliably serve current and future generations. There will continue to be worthwhile investments in new projects; additionally, the challenges of the 21<sup>st</sup> century include maintaining the key features of our existing infrastructure, and restoring aquatic ecosystem functions.

We are executing our program in a complex, resource-constrained environment, requiring greater collaboration and trust with our customers, partners, stakeholders, and the public. Federal spending is limited, so we must re-think how we finance investments in existing and new water resources infrastructure. While we should make investments to enable existing projects to continue delivering benefits, we cannot afford to invest in infrastructure that no longer meets the Nation’s needs or has become too costly compared to the national economic, environmental, and other public benefits it provides.

State, local, and tribal governments are taking on greater roles in water resources investments. We continue to work on innovative finance models and partnerships with the private sector, as a way to address some of the needs. Our goal is to improve the overall approach to water infrastructure investment, by engaging with state and local governments and private sector investors, and expanding the market for public private partnerships, which would better leverage Federal dollars.

Creating a 21<sup>st</sup> Century water resources infrastructure requires more than making tough investment decisions. We are working to improve our processes for planning, constructing, operating and maintaining, and rebuilding this infrastructure where appropriate, and will continue to make progress in this regard.

WRRDA 2014 helped advance some of these objectives in areas such as SMART planning. But, more can be done. For example, we appreciate the recent increase in the diesel fuel tax to help finance the share of inland waterways capital investments that are the responsibility of the users under current law. This increase was supported by the Congress, the users, and the Administration and was an important step forward. However, in the long-term, there will be a gap in financing if we want to maintain the level of service on the principal inland waterways. This Administration has put forward a proposal to address this issue, intended as an opening to work with the Congress and the users on how we can best meet the challenge. We welcome dialogue and look forward to working together with you on a solution.

We need to continue to look at the Harbor Maintenance Trust Fund, and potential alternative ways to better support our nation's waterborne commerce and the communities, businesses, and consumers that depend on it. Similarly, we encourage dialogue on other reforms that provide the Corps with better tools to improve how the Nation develops, manages, and maintains our water resources.

We also will need to reassess our basic assumptions about the roles of the Federal government, the states, local government, and the private sector for some of this infrastructure.

Together with State, local, and tribal communities, the Administration is working to develop and implement structural and nonstructural approaches to water resources challenges to improve their resilience to the impacts of climate change. The Federal government needs to continue to provide technical and planning assistance to help prepare, adapt, and protect communities from the impacts of climate change.

Similarly, we would welcome dialogue on other important reforms so that we can work together to improve how we develop and manage our water resources. As we did in 2014, we should work to find a common ground that both the Congress and the Administration can come together to support.

The Corps has a strong working relationship with tribal communities. Since 1996 the Corps has developed and implemented an Indian Affairs Program from the ground up. We have Tribal Liaisons at Corps Headquarters, and at all 38 district and 8 division offices with Civil Works missions. We have trained over 1,500 federal agency staff in tribal consultation process.

In recent years we have made significant progress working with Columbia River Basin Tribes on salmon and habitat issues, with Puget Sound Tribes on flood risk management and habitat restoration issues, and with the Mandan-Hidatsa-Arikara Nation regarding the transfer of over 30,000 acres of Garrison Project lands to the Department of the Interior to be held in trust for the tribe. We look forward to working with you to continue to improve the way we support and work with tribal communities.

### The Section 7001 Annual Report

Recently, the Army submitted the 2016 Report to Congress on Future Water Resources Development (Annual Report) in response to section 7001 of WRRDA 2014, Reports of the Chief of Engineers (Chief's Reports), and Post Authorization Change Reports (PACRs). In preparing this year's report, we revisited the projects that were listed in the 2015 7001 report appendix and, in response to feedback from this Committee, included projects that met the new criteria for the 2016 report. This year, we evaluated proposals strictly based on the five statutory criteria. In order to provide more transparency, we increased our outreach to non-Federal interests, and sought to clarify for both our districts and local sponsors the process and the criteria under which proposals would be evaluated. In the report, we accounted for all Chief's Reports completed since the enactment of WRRDA 2014, and added 31 proposals following a one-time re-evaluation of proposals submitted in 2014 that were included in last year's Appendix in light of our revised process. A total of 61 proposals were received for the 7001 Annual Report this year: 25 were for new feasibility studies, 34 were for modifications to existing projects or changes to legislation, and two were proposals for a study modification. Of these proposals, 30 met the criteria and are listed in the Annual Report Table. The 31 proposals that did not meet the criteria are in the appendix. The two primary reasons proposals are included in the Appendix are that either the proposal did not fit within the identified Corps core mission areas or authority already exists to perform the requested work. Where authority already exists, inclusion in the Appendix to the 2016 Annual Report does not preclude the Army from carrying out either a study or construction.

I will now provide a brief overview of the 13 proposed projects that have completed Executive Branch review since the passage of WRRDA 2014. The Army has previously provided the results of those reviews along with the following project information to the Congress. These proposed projects fall within the main mission areas of the Corps (commercial navigation, flood and storm damage reduction, and aquatic ecosystem restoration). There are ten other projects that have reports by the Chief of Engineers but are still under Executive Branch review as well as one Chief's Report for a project disposition. Also, there are four pending PACRs under Executive Branch review.

### **Commercial Navigation**

#### Brazos Island Harbor, Brownsville, Texas

On February 23, 2016, a report was transmitted to Congress on navigation improvements within the Brazos Island Harbor. The plan would increase the nominal depth of the Federal channel to -52 feet mean lower low water (MLLW) for portions of the inner channel and -54 feet MLLW for the entrance channel.

Based upon the October 2015 price levels, the total initial project cost for this project is \$207.5 million with the Federal share totaling \$117.7 million and the non-Federal share totaling \$89.8 million.

Calcasieu Lock, Louisiana

On August 20, 2015, a report was transmitted to Congress on navigation improvements in the vicinity of Lake Charles, Louisiana. The plan consists of a sluice gate structure and dredging a new bypass channel to a depth of 12-feet MLLW. The channel transitions to a depth of 6-feet MLLW at the structure.

Based upon the October 2015 price levels, the total initial project cost for this project is \$16.9 million. This cost would be shared equally between the Federal government and the Inland Waterways Trust Fund.

Charleston Harbor, Charleston, South Carolina

On January 13, 2016, a report was transmitted to Congress on navigation improvements within Charleston Harbor. The locally preferred plan that is being recommended will deepen the entrance channel to 54-feet across the 800-foot width, while reducing the existing stepped 1,000-foot top channel width to 944-feet. The entrance channel will be extended approximately three miles seaward from the existing location to a depth contour of -54-foot MLLW; deepen the inner harbor from an existing project depth of -45 feet to -52 feet MLLW from the Entrance Channel to the confluence of the Wando and Cooper Rivers, about two miles up the Wando River to the Wando Welch container facility and about three miles up to the Cooper River to the New Navy Base Terminal, and to a project depth of -48 feet MLLW over the five mile reach leading from the New Navy Base Terminal to the North Charleston container facility (over expanded bottom widths from 400 to 1,800 feet); and enlarge the existing turning basins to a 1,800-foot diameter at the Wando Welch and New Navy Base terminals to accommodate Post Panamax Generation 2 and 3 container ships and widen selected reaches.

Based upon the October 2015 price levels, the total initial project cost for this project is \$496 million with the Federal share totaling \$228.2 million and the non-Federal share totaling \$267.8 million.

Port Everglades, Broward County, Florida

On January 29, 2016, a report was transmitted to Congress on navigation improvements for Port Everglades in Broward County, Florida. The locally preferred plan that is being recommended would increase the nominal depth of the Federal channel to -48 feet MLLW, widen the outer entrance channel to a width of 800-feet, and widen the Southport Access Channel, the main turning basin and the Turning Notch.

Based upon the October 2015 price levels, the total initial project cost for this project is \$329 million with the Federal share totaling \$224.5 million and the non-Federal share totaling \$104.5 million.

Portsmouth Harbor and Piscataqua River, New Hampshire and Maine

On June 18, 2015, a report was transmitted to Congress on navigation improvements for Portsmouth Harbor, and Piscataqua River in New Hampshire and Maine. The plan would increase the width of the turning basin from 800-feet to 1,200-feet.

Based upon the October 2015 price levels, the total initial project cost for this project is \$22 million with the Federal share totaling \$16.5 million and the non-Federal share totaling \$5.5 million.

**Flood and Storm Damage Reduction**Bogue Banks, Carteret County, North Carolina

On February 16, 2016, a report was transmitted to Congress on hurricane and storm damage reduction along the Atlantic Ocean shoreline Bogue Banks, Carteret County, North Carolina. The plan consists of constructing 22.7 miles of main beach fill berm, approximately 50-feet wide, with a consistent profile across the entire length, along with dune expansion of approximately 5.9 miles of the project shoreline. The amount of dune expansion would vary from elevation 15 feet to 20 feet.

Based upon the October 2015 price levels, the total initial project cost for this project is \$38.7 million with the Federal share totaling \$25.1 million and the non-Federal share totaling \$13.6 million. The total cost over the 50-year project life, including periodic nourishment, is \$118.8 million, with a Federal share of \$59.4 million and non-Federal share of \$59.4 million.

Edisto Beach, Colleton County, South Carolina

On February 16, 2016, a report was transmitted to Congress on hurricane and storm damage reduction along the Atlantic Ocean shoreline of Edisto Beach, South Carolina. The plan consists of constructing a dune to an elevation of 15-feet with a top width of 15-feet extending 16,530 feet along the beach. This dune would be fronted by a berm at an elevation of 7-feet and 75-feet wide, extending south 7,740 feet from the northern extent of the project area and then tapering to 50-feet in width over the remaining length and taper to the existing profile. The dune would transition to 14-feet in elevation and extend around the southern end of the island for 5,290 feet. There would also be constructed 1,130 feet of total groin lengthening across 23 existing groins.

Based upon the October 2015 price levels, the total initial project cost for this project is \$21.9 million with the Federal share totaling \$14.2 million and the non-Federal share totaling \$7.7 million. The total cost over the 50-year project life, including periodic nourishment, is \$34.5 million, with a Federal share of \$17.3 million and non-Federal share of \$17.3 million.

Flagler County, Florida

On February 16, 2016, a report was transmitted to Congress on hurricane and storm damage reduction along the Atlantic Ocean shoreline of Flagler County, Florida. The plan would include construction of the dune along 2.6 miles of shoreline to an elevation 19 feet to match the elevation of the existing dune. From the seaward end of the dune extension, a 1 vertical on 3 horizontal dune slope would extend to the design berm elevation of 11 feet to match the existing berm elevation.

Based upon the October 2015 price levels, the total initial project cost for this project is \$14.5 million with the Federal share totaling \$9.4 million and the non-Federal share totaling \$5.1 million. The total cost over the 50-year project life, including periodic nourishment, is \$31.2 million, with a Federal share of \$15.6 million and non-Federal share of \$15.6 million.

Hereford Inlet to Cape May Inlet, New Jersey

On February 1, 2016, a report was transmitted to Congress on hurricane and storm damage reduction along the Atlantic Ocean shoreline from Hereford Inlet to Cape May Inlet, New Jersey. The plan would include construction of the dune along 4.5 miles of shoreline to an elevation of 16 feet with a 25-foot wide dune crest on a 75-foot wide berm that at an elevation of 6.5 feet.

Based upon the October 2015 price levels, the total initial project cost for this project is \$22.3 million with the Federal share totaling \$14.5 million and the non-Federal share totaling \$7.8 million. The total cost over the 50-year project life, including periodic nourishment, is \$85.3 million, with a Federal share of \$42.6 million and non-Federal share of \$42.6 million.

Leon Creek Watershed, San Antonio, Texas

On January 15, 2016, a report was transmitted to Congress on flood risk management for the Leon Creek Watershed, San Antonio, Texas. The plan consists of a levee extending 3,700 linear feet from high ground on the southeast side of Port San Antonio to S.W. Military Drive at a maximum height of 21-feet and a 12-foot top width with 3.5-foot on 1-foot slopes, in channel modification that extend approximately 2,850 linear feet with a 60-foot bottom width, and permanent evacuation of four single family residential structures and 32 townhouses susceptible to damage by a flood with a 4-percent annual exceedance probability.

Based upon the October 2015 price levels, the total initial project cost for this project is \$29.1 million with the Federal share totaling \$18.9 million and the non-Federal share totaling \$10.2 million.

**Manhattan, Kansas**

On December 3, 2015, a report was transmitted to Congress on flood risk management for the City of Manhattan, Kansas. The plan consists of modifying the existing project by raising 14,600 feet of levee on the Big Blue River and Kansas River on average 1.5 – feet but by as much as 3-feet, adding under seepage control measures including 29 relief wells with over 4,900 feet of collector system, 2,500 linear feet of under seepage control berms, replacing five existing drainage structures, adding a closure structure at Hayes Drive and relocating various utility crossings.

Based upon the October 2015 price levels, the total initial project cost for this project is \$24.3 million with the Federal share totaling \$15.8 million and the non-Federal share totaling \$8.5 million.

**Aquatic Ecosystem Restoration****Central Everglades Planning Project, Comprehensive Everglades Restoration Plan, Central and Southern Florida**

On September 3, 2015, a report was transmitted to Congress on ecosystem restoration improvements for the Central Everglades Project located in Martin, Lee, Palm Beach, Broward, Miami Dade and Monroe Counties, Florida. The purpose of the Central Everglades Planning Project is to improve the quantity, quality, timing and distribution of water flows to the Northern Estuaries, central Everglades and Everglades National Park, and Florida Bay while increasing water supply for municipal, industrial and agricultural users. The Central Everglades Planning Project developed from six components (or portions thereof) of the Comprehensive Everglades Restoration Plan: Everglades Agricultural AREA Storage Reservoirs; Water Conservation Area 3 Decompartmentalization and Sheetflow Enhancement; S-356 Pump Station Modifications; L-31 N Improvements for Seepage Management; System-wide Operational Changes – Everglades Rain-Driven Operations; and Flow to Northwest and Central Water Conservation Area 3A.

Based upon the October 2015 price levels, the total initial project cost for this project is \$1,958,164,000 with the Federal share totaling \$979,865,266 and the non-Federal share totaling \$978,298,734.

**Flood and Storm Damage Reduction and Aquatic Ecosystem Restoration****Upper Des Plaines River & Tributaries, Illinois and Wisconsin**

On January 29, 2016, a report was transmitted to Congress on flood risk management and ecosystem restoration for the Upper Des Plaines Watershed in Illinois and Wisconsin. The project would include the construction of a system of three

levee/floodwalls and two floodwater storage reservoirs near or adjacent to the main stem of the Des Plaines River. The flood risk management plan includes recreational features at three sites and implementation of non-structural flood risk management measures at up to 377 structures in nine communities in Lake and Cook County. The ecosystem restoration plan would restore 6,859 acres at seven sites across the watershed.

Based upon the October 2015 price levels, the total initial project cost for this project, as recommended in the Chief's Report, is \$309,098,000 with the Federal share totaling \$200,702,000 and the non-Federal share totaling \$108,396,000.

There are also ten other proposed projects with reports by the Chief of Engineers, which the Executive Branch is in the process of reviewing. These are:

- Little Diomed, Alaska
- Kansas Citys, Missouri and Kansas
- Mill Creek, Nashville, Tennessee
- West Shore Lake Pontchartrain, Louisiana
- Los Angeles River, Los Angeles, California
- Skokomish River Basin, Mason County, Washington
- Lower Willamette River, Oregon
- South San Francisco Bay Shoreline, Santa Clara County, California
- Upper Turkey Creek, Merriam, Kansas
- Princeville, North Carolina

Two additional Chief's Reports were not included in the report table of the 2016 Annual Report. The first, Orestimba Creek, California, was authorized in WRDDA 2014 and, therefore, does not meet the criteria of requiring authorization. It was transmitted to Congress on January 29, 2016. The second, the Chief's Report for a disposition study for Green River Locks and Dams 3, 4, 5 and 6 and Barren River Lock and Dam 1, Kentucky was signed on April 30, 2015 and remains under Executive Branch review. Because it is a disposition study, it does not meet the requirements for inclusion in this annual report and was not included in the report tables.

Mr. Chairman, I would now like to discuss PACRs. Section 902 of WRDA 1986 establishes a maximum total project cost for Civil Works projects. A further authorization is required to use Federal funds beyond this maximum authorized project cost. In these cases, the Corps of Engineers generally completes a PACR, which is provided to Congress if there is a recommendation for such a further authorization. There are four PACRs that have been approved by the Corps of Engineers and are under Executive Branch review.

These reports are:

- Blue River Basin, Kansas City, Missouri
- Turkey Creek Basin, Kansas City, Kansas and Kansas City, Missouri

- Ohio River Shoreline, Paducah, Kentucky
- Comprehensive Everglades Restoration Plan: Picayune Strand Restoration Project

Mr. Chairman, we look forward to working with you and appreciate this committee's support for investments in the Nation's water resources to strengthen the foundation for economic growth, protect communities, and protect and restore our environment. Mr. Chairman, this concludes our statement. We appreciate the opportunity to testify today and look forward to answering any questions you may have.

**Senate Committee on Environment and Public Works**  
**March 16, 2016 hearing entitled, "The 2016 Water Resources Development Act"**  
**Questions for the Record for Secretary Darcy**

**Chairman Inhofe:**

1. The FY 2015 Energy and Water appropriations bill included the following language:

"None of the funds made available by this Act may be used to require a permit for the discharge of dredged or fill material under the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq.) for the activities identified in subparagraphs (A) and (C) of section 404(f)(1) of the Act (33 U.S.C. 1344(f)(1)(A), (C))."

The Corps did not implement this limitation on use of funds, so when the same language was included in the FY 2016 Appropriations bill, it was accompanied by the following language from H. Rept. 114-9:

"The Corps is directed to implement the provision in this bill as it is intended—as a complete prohibition on requiring permits for the specified activities; the so-called "recapture provision" shall not apply to these activities."

The Corps is still refusing to implement this provision even though the bill language is clear. It identifies activities by reference to language in section 404(f)(1). The cross-reference in 404(f)(1) to 404(f)(2) is not part of the activities identified. Despite this, and despite report language that is directly on point, the Corps is still refusing to implement this provision.

- a. Did the Corps expend any FY 2015 or FY 2016 funds to assist EPA (including review of the terms of a settlement agreement) in its action against Andy Johnson for building a stock pond (an activity identified in 404(f)(C)) (Andy Johnson v. U.S. EPA, Dist. WY Case No. 15-CV-147)?

Answer: The Environmental Protection Agency (EPA) was the lead agency in this enforcement action. EPA's position in the administrative enforcement action and defensive litigation was that Mr. Johnson's activities did not constitute the construction of a stock pond subject to the exemption in CWA section 404(f)(1)(C) and therefore the rider did not apply. The Corps agreed with that position. During FY15/16, the Corps' Omaha District staff provided support to the EPA, including answering questions in order to clarify elements in the Corps' administrative record, providing technical site information to EPA to aid EPA in its investigation, and providing input on potential settlement alternatives. Omaha District Regulatory staff also participated in a meeting between EPA staff and the Johnsons and their counsel regarding potential

settlement of the case. The only Corps expenditures in FY15/16 related to the enforcement action were in the form of labor and travel costs.

- b. Did the Corps expend any FY 2015 or FY 2016 funds to continue to defending its position in Duarte Nursery Inc. v. U.S. Army Corps of Engineers (Dist. CA Case No:2:13-cv-2095) that Duarte Nursery requires a permit for plowing to allow planting of winter wheat at their tree nursery (an activity identified in 404(f)(1)(A))?

Answer: On February 23, 2013, the Corps issued a cease and desist letter to Duarte Nursery, Inc., and John Duarte (Duarte) in response to alleged violations of the Clean Water Act (CWA). On October 10, 2013, Duarte filed an action seeking judicial review of the cease and desist letter in the Eastern District of California. After a motion to dismiss Duarte's complaint was denied, the United States filed an enforcement counterclaim against Duarte on May 7, 2014, alleging a violation of the CWA but not of the cease and desist letter. Duarte then amended its complaint on August 20, 2014 (additionally amended on September 3, 2015), to allege that the United States' counterclaim was improper retaliatory prosecution. The United States takes the position in the litigation that Duarte's activities did not constitute "plowing" as that term is used in section 404(f)(1) of the CWA and defined by regulation. The Department of Justice is representing the United States in this ongoing litigation. The Corps expended FY2015 and FY2016 funds on matters related to the litigation, including coordination with the Department of Justice and preparing for trial.

- c. Why are FY 2015 and FY 2016 funds being used to continue to maintain a Corps website that takes the position that changing from one type of farming to another (vineyard to row crops for example) constitutes a new use that would require a permit if farm includes wetlands and the activity would disturb those wetlands?  
<http://www.spk.usace.army.mil/Missions/Regulatory/Permitting/Section404Exemptions.aspx>

Answer: Only general website maintenance costs were expended in FY2015 and thus far in FY2016 to maintain the Sacramento District webpage.

2. Despite being authorized by Congress, Committee staff has been told that the Corps does not prioritize environmental infrastructure projects. Is this accurate? If so, why?

Answer: The Budget focuses on the three main mission areas of the Corps Civil Works program, which are flood and storm damage reduction, commercial navigation, and aquatic ecosystem restoration. However, the Corps has funded environmental infrastructure projects in its annual work plan from funds added above the Budget level.

3. When provided money by Congress specifically for environmental infrastructure projects, how are determinations made as to what projects will receive these funds?

Answer: The 2016 work plan for the Civil Works program allocated funds using a rating system with three components: performance-based considerations and measures; considerations provided by the Statement of Managers or related rating measures; and management controls to ensure that the amounts allocated reflect the estimated cost of a defined set of work, with an emphasis on the ability to use funds in the current fiscal year. Because environmental infrastructure projects are funded in the construction account, they were also subject to general criteria developed for the construction program. In addition, for environmental infrastructure projects the Corps considered: (1) whether the funds would enable actual construction work, or work that supports future construction work; and (2) whether the projects were located in rural communities, or in in areas with high poverty rates, consistent with State priorities.

4. Please explain the Corps' position in Orchard Hill Building Company v. U.S. Army Corps of Engineers (Case No. 1:15-cv-06344) that stormwater detention ponds constructed on prior converted cropland that develop wetlands characteristics are waters of the U.S. relying on the allegation that a storm sewer pipe replaced a "historic tributary" and that stormwater detention pond and storm sewer pipe therefore confers jurisdiction over a parcel being developed for residential housing?

Answer: The referenced litigation involves a challenge to an approved jurisdictional determination issued by the Corps' Chicago District on July 19, 2013, concluding that the Orchard Hill Building Company's approximately 60-acre site in Cook County, Illinois, contains approximately 13 acres of wetlands that are waters of the United States subject to the Clean Water Act. The Department of Justice is representing the United States in this litigation. The case was filed on July 21, 2015, but was stayed until April 12, 2016. The United States' answer or other responsive pleading is currently due to be filed on or before May 3, 2016.

5. Last August, I sent you a letter asking you to clarify how you intend to regulate sewers in older American cities that were built in streams. This is a critical issue because your new WOTUS rule claims that you can regulate land or ditches or sewer systems if an old photograph shows that there used to be a stream or wetland in the same location.

I gave you specific examples from right here in DC, where old photos and city plans show that the sewers under North Capitol Street were built in a stream that flowed into the Anacostia River, and Constitution Avenue was once a navigable

channel that flowed into the Potomac River. It took you over six months to respond, and your letter failed to answer any of my questions.

Your response says that a sewer or ditch or pond that was built in dry land is not a water of the United States. I didn't ask you about sewers built in dry land – I asked you about sewers that were built in streams. You did not answer my question. So I will ask it again – if a city like Washington DC built a sewer in a stream in the early 1900's – would you consider that sewer to be a water of the United States?

Answer: If a city or municipality built an underground sewer in a stream in the early 1900's, it is unlikely that it would today exhibit the physical characteristics necessary to bring it within the definition of a tributary and thus would not become jurisdictional under the Clean Water Rule (29 June 2015).

**Senator Whitehouse:**

6. In the Corps' FY17 budget request, in the \$1.214 billion Flood and Coastal Storm Damage Reduction budget line, there was a stark gap in the funding requested for coastal (\$10 million) and inland (\$1.204 billion) projects. It's proven difficult to find an explanation for this disparity between inland and coastal projects. It is unlikely that there is only \$10 million worth of coastal projects authorized for Corps action. Especially given the barrage of flooding and storm threats coasts face due to sea level rise and climate change, can the Corps explain why this extreme gap in funding exists?

Answer: The Budget for the Corps construction program funds those projects that provide the greatest economic and environmental returns to the Nation or address a significant risk to human safety.

Also, many of the Atlantic coast projects have received funding provided in the Disaster Relief Appropriations Act (P.L. 113-2) to address the impacts of Hurricane Sandy, other Flood Control and Coastal Emergencies funding, or through the additional funding appropriated by Congress. As a result, there was a reduced basis for justifying funding such work in the Budget.

7. The National Ocean Policy (NOP) is a commonsense effort to efficiently manage our oceans, coasts, and Great Lakes by coordinating the authorities and efforts of over 20 federal agencies, including the Army Corps of Engineers, and local and state governments. Even with the successes of the National Ocean Policy, there continue to be efforts to undermine continued implementation of the NOP, including attempts in the last WRDA bill to undercut the Corps' NOP efforts.

As we prepare to consider WRDA legislation again this year, the possibility exists for another round of attacks on the NOP. Would preventing or restricting the

Corps' ability to work with other federal agencies, as well as state and external stakeholders, benefit or harm the Corps' ability to meet its responsibilities?

Answer: The Corps should continue to be part of this interagency and intergovernmental process. The process provides a way to track and coordinate ongoing and planned actions, at the Federal and state levels, and share expertise on issues involving the resources of the oceans, the Nation's coasts, and the Great Lakes.

Further, the Corps has been a key participant in the regional ocean planning processes currently underway in the northeast and mid-Atlantic regions; does the Corps believe that participating in this process has been beneficial?

Answer: Yes. Participation in coordination and collaboration in the regional ocean planning processes for the northeast and mid-Atlantic regions has been beneficial as they have provided an additional vehicle for the Corps (and that of its State and Federal partners) to support balanced uses and conservation of regional ocean and coastal resources.

**Senator Booker:**

8. The North Atlantic Coast Comprehensive Study described the importance of natural and nature-based infrastructure solutions. Are there opportunities to incorporate natural and nature-based techniques in more projects?

Answer: The North Atlantic Coast Comprehensive Study found that there are opportunities for an integrated approach to evaluating coastal storm risk management, and that Natural and Nature-Based Features (NNBF) could be utilized in risk management efforts.

9. What did the Army Corps learn through post-Sandy resilience projects about the importance of natural infrastructure?

Answer: Natural and Nature-Based Features (NNBF) offer valuable options for developing "multiple lines of defense" for coastal systems, with the aim of producing social, economic, and ecological benefits that promote coastal and community resilience. For example, artificial reefs along the shoreline can attenuate some waves, and may contribute to flood risk management in some locations. Blending NNBF with onshore vegetative plantings can provide a degree of erosion control and generates functional habitat for fish and wildlife.

10. Recognizing increased extreme weather and changing sea levels, would the Army Corps benefit from being authorized to conduct regional, cross-district

coastal resilience assessments or other policy changes to improve coastal resilience in the 2016 WRDA bill?

Answer Perhaps, but without specific language to review, it is difficult to answer with certainty. In general, the Corps has sufficient authority to conduct such assessments, but lacks funding or cost-sharing partners to support such investigations.

11. I understand that environmental restoration projects near densely populated urban areas with higher property values are often not funded because of the methodology of the cost-benefit analysis that is employed. Are there ways to better take into account the benefit of preventing floods from devastating densely populated urban areas?

Answer: Restoration of ecosystems within urban areas often are costly undertakings in large part due to higher real estate costs when compared to more rural areas. The higher costs, and in some cases substantially higher costs, make it difficult for such projects to compete in the budget. Our current methodologies allow for the accounting of flood risk management benefits of restoration actions, although those benefits are not necessarily considered in the budget process.

Senator INHOFE. Thank you, Secretary Darcy.  
General BOSTICK.

**STATEMENT OF LIEUTENANT GENERAL THOMAS P. BOSTICK,  
COMMANDING GENERAL AND CHIEF OF ENGINEERS**

General BOSTICK. Chairman Inhofe, Ranking Member Boxer, and distinguished members of the Committee, thank you for the opportunity to testify today with Secretary Darcy.

I love the U.S. Army Corps of Engineers, and it has been my great honor to serve the Nation and the Army for nearly 38 years. As this may be my last hearing as Chief of Engineers, I want to thank you for great support for the Civil Works program. This Committee in particular has been essential to the progress we have made over the years. Also want to thank Secretary Darcy for her unending leadership and passion for this work.

The details about the Chief's Reports have been submitted to the Congress and are contained in my written statement. Today I would like to provide a brief update on the progress we have made with our four campaign goals and provide some of my perspectives on the very important water resources challenges that face our Nation.

Our first goal is to support national security, and here we like to talk about the investment in Civil Works projects, not the costs. It is an investment in the work that we do and the risk reduction that these projects provide the American people. But it is also an investment in our people; and whether they serve in Iraq, Afghanistan, Pakistan, India, the United States, or in over 100 countries around the world, our people are making a difference.

As part of Civil Works transformation, our second goal, we continue to improve and modernize the project planning process. Our planning modernization objective is to manage a risk-informed planning program that delivers timely, cost-effective, and high-quality water resources investment recommendations. Since the inception of Civil Works transformation in 2008, 59 Chief's Reports have been completed with recommendations for over \$30 billion in water resources investments.

During the first 4 years of Civil Works transformation, 19 Chief's Reports were completed; in the last 4 years, the number is 40, more than doubling our progress. We are on schedule to complete another 12 reports by the end of the fiscal year. While we have made great progress, we can and must continue to improve.

In our third campaign goal, reduce disaster risks, here the Corps continues to perform extremely well. We had historic floods in 2011, 2015, and continuing this year; and because the systems performed as designed, many Americans did not even realize the magnitude of these floods.

In addition to the fact that no one died in these events, the return on investment is \$45 for every \$1 invested in the Mississippi Rivers and tributary system. Approximately \$234 billion of damages have been prevented.

And despite all of these investments, our Nation's infrastructure is aging. The American Society of Civil Engineers rates the Nation's overall infrastructure at a D plus. The Corps is managing

over \$225 billion worth of that infrastructure, and funding across the Federal Government remains very challenging.

In order to complete the construction projects that we are currently budgeting, we would require \$19.7 billion additional. With construction funding at just over \$1 billion per year, it would take nearly 20 years to complete our current work. As a Nation, we must continue to think creatively and innovatively about how we gain support beyond the Federal Government in the completion of these and future projects so that we can complete these projects in a more reasonable amount of time.

Finally, our last goal is to prepare for tomorrow, and this is all about our people. In the nearly 4 years that I have been in command, I have traveled to all 43 districts and 9 divisions to see the vital work the Corps is doing at home and abroad. I remain convinced that we have an exceptionally skilled, talented, and loyal work force. I am very proud of the people who serve in the U.S. Army Corps of Engineers and our fellow teammates, including the military, civilian, local and Federal, and our contractors. As we have done for nearly 240 years, the U.S. Army Corps of Engineers remains focused on engineering solutions for the Nation's toughest challenges.

Thank you for the opportunity today and I look forward to your questions.

[The prepared statement of General Bostick follows:]

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DEPARTMENT OF THE ARMY

COMPLETE STATEMENT

OF

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

AND

LIEUTENANT GENERAL THOMAS BOSTICK  
CHIEF OF ENGINEERS

BEFORE

THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

ON

THE 2016 WATER RESOURCES DEVELOPMENT ACT – POLICIES AND  
PROJECTS

MARCH 16, 2016

Mr. Chairman and distinguished members of the Committee, we are honored to be testifying before you today to discuss the policy issues and projects that we believe the Committee should consider in the next Water Resources Development Act (WRDA). Water resources infrastructure across the Nation enables the low-cost shipment of goods through our coastal ports and on the inland waterways, reduces the flood risk to communities, restores aquatic ecosystems, provides drinking water, generates renewable electricity, and offers water-based recreation opportunities to the public.

The President is committed to investing in a 21<sup>st</sup> Century Infrastructure for America – including its water infrastructure – to strengthen the Nation’s economy and resilience, provide for the public safety, and restore the environment. We look forward to working with you on a Water Resources Development Act for 2016.

The last WRDA bill included significant reforms. We urge the Committee to continue this progress in the next WRDA bill. Over the past century, Federal, State, local, and tribal governments have made enormous investments in new water infrastructure, including locks and dams, levees, and other improvements. However, we must also continue our dialogue regarding responsible, economic, and sustainable ways to fund the operation and maintenance of our aging water infrastructure so that it can safely and reliably serve current and future generations. There will continue to be worthwhile investments in new projects; additionally, the challenges of the 21<sup>st</sup> century include maintaining the key features of our existing infrastructure, and restoring aquatic ecosystem functions.

We are executing our program in a complex, resource-constrained environment, requiring greater collaboration and trust with our customers, partners, stakeholders, and the public. Federal spending is limited, so we must re-think how we finance investments in existing and new water resources infrastructure. While we should make investments to enable existing projects to continue delivering benefits, we cannot afford to invest in infrastructure that no longer meets the Nation’s needs or has become too costly compared to the national economic, environmental, and other public benefits it provides.

State, local, and tribal governments are taking on greater roles in water resources investments. We continue to work on innovative finance models and partnerships with the private sector, as a way to address some of the needs. Our goal is to improve the overall approach to water infrastructure investment, by engaging with state and local governments and private sector investors, and expanding the market for public private partnerships, which would better leverage Federal dollars.

Creating a 21<sup>st</sup> Century water resources infrastructure requires more than making tough investment decisions. We are working to improve our processes for planning, constructing, operating and maintaining, and rebuilding this infrastructure where appropriate, and will continue to make progress in this regard.

WRRDA 2014 helped advance some of these objectives in areas such as SMART planning. But, more can be done. For example, we appreciate the recent increase in the diesel fuel tax to help finance the share of inland waterways capital investments that are the responsibility of the users under current law. This increase was supported by the Congress, the users, and the Administration and was an important step forward. However, in the long-term, there will be a gap in financing if we want to maintain the level of service on the principal inland waterways. This Administration has put forward a proposal to address this issue, intended as an opening to work with the Congress and the users on how we can best meet the challenge. We welcome dialogue and look forward to working together with you on a solution.

We need to continue to look at the Harbor Maintenance Trust Fund, and potential alternative ways to better support our nation's waterborne commerce and the communities, businesses, and consumers that depend on it. Similarly, we encourage dialogue on other reforms that provide the Corps with better tools to improve how the Nation develops, manages, and maintains our water resources.

We also will need to reassess our basic assumptions about the roles of the Federal government, the states, local government, and the private sector for some of this infrastructure.

Together with State, local, and tribal communities, the Administration is working to develop and implement structural and nonstructural approaches to water resources challenges to improve their resilience to the impacts of climate change. The Federal government needs to continue to provide technical and planning assistance to help prepare, adapt, and protect communities from the impacts of climate change.

Similarly, we would welcome dialogue on other important reforms so that we can work together to improve how we develop and manage our water resources. As we did in 2014, we should work to find a common ground that both the Congress and the Administration can come together to support.

The Corps has a strong working relationship with tribal communities. Since 1996 the Corps has developed and implemented an Indian Affairs Program from the ground up. We have Tribal Liaisons at Corps Headquarters, and at all 38 district and 8 division offices with Civil Works missions. We have trained over 1,500 federal agency staff in tribal consultation process.

In recent years we have made significant progress working with Columbia River Basin Tribes on salmon and habitat issues, with Puget Sound Tribes on flood risk management and habitat restoration issues, and with the Mandan-Hidatsa-Arikara Nation regarding the transfer of over 30,000 acres of Garrison Project lands to the Department of the Interior to be held in trust for the tribe. We look forward to working with you to continue to improve the way we support and work with tribal communities.

### The Section 7001 Annual Report

Recently, the Army submitted the 2016 Report to Congress on Future Water Resources Development (Annual Report) in response to section 7001 of WRRDA 2014, Reports of the Chief of Engineers (Chief's Reports), and Post Authorization Change Reports (PACRs). In preparing this year's report, we revisited the projects that were listed in the 2015 7001 report appendix and, in response to feedback from this Committee, included projects that met the new criteria for the 2016 report. This year, we evaluated proposals strictly based on the five statutory criteria. In order to provide more transparency, we increased our outreach to non-Federal interests, and sought to clarify for both our districts and local sponsors the process and the criteria under which proposals would be evaluated. In the report, we accounted for all Chief's Reports completed since the enactment of WRRDA 2014, and added 31 proposals following a one-time re-evaluation of proposals submitted in 2014 that were included in last year's Appendix in light of our revised process. A total of 61 proposals were received for the 7001 Annual Report this year: 25 were for new feasibility studies, 34 were for modifications to existing projects or changes to legislation, and two were proposals for a study modification. Of these proposals, 30 met the criteria and are listed in the Annual Report Table. The 31 proposals that did not meet the criteria are in the appendix. The two primary reasons proposals are included in the Appendix are that either the proposal did not fit within the identified Corps core mission areas or authority already exists to perform the requested work. Where authority already exists, inclusion in the Appendix to the 2016 Annual Report does not preclude the Army from carrying out either a study or construction.

I will now provide a brief overview of the 13 proposed projects that have completed Executive Branch review since the passage of WRRDA 2014. The Army has previously provided the results of those reviews along with the following project information to the Congress. These proposed projects fall within the main mission areas of the Corps (commercial navigation, flood and storm damage reduction, and aquatic ecosystem restoration). There are ten other projects that have reports by the Chief of Engineers but are still under Executive Branch review as well as one Chief's Report for a project disposition. Also, there are four pending PACRs under Executive Branch review.

### **Commercial Navigation**

#### Brazos Island Harbor, Brownsville, Texas

On February 23, 2016, a report was transmitted to Congress on navigation improvements within the Brazos Island Harbor. The plan would increase the nominal depth of the Federal channel to -52 feet mean lower low water (MLLW) for portions of the inner channel and -54 feet MLLW for the entrance channel.

Based upon the October 2015 price levels, the total initial project cost for this project is \$207.5 million with the Federal share totaling \$117.7 million and the non-Federal share totaling \$89.8 million.

Calcasieu Lock, Louisiana

On August 20, 2015, a report was transmitted to Congress on navigation improvements in the vicinity of Lake Charles, Louisiana. The plan consists of a sluice gate structure and dredging a new bypass channel to a depth of 12-feet MLLW. The channel transitions to a depth of 6-feet MLLW at the structure.

Based upon the October 2015 price levels, the total initial project cost for this project is \$16.9 million. This cost would be shared equally between the Federal government and the Inland Waterways Trust Fund.

Charleston Harbor, Charleston, South Carolina

On January 13, 2016, a report was transmitted to Congress on navigation improvements within Charleston Harbor. The locally preferred plan that is being recommended will deepen the entrance channel to 54-feet across the 800-foot width, while reducing the existing stepped 1,000-foot top channel width to 944-feet. The entrance channel will be extended approximately three miles seaward from the existing location to a depth contour of -54-foot MLLW; deepen the inner harbor from an existing project depth of -45 feet to -52 feet MLLW from the Entrance Channel to the confluence of the Wando and Cooper Rivers, about two miles up the Wando River to the Wando Welch container facility and about three miles up to the Cooper River to the New Navy Base Terminal, and to a project depth of -48 feet MLLW over the five mile reach leading from the New Navy Base Terminal to the North Charleston container facility (over expanded bottom widths from 400 to 1,800 feet); and enlarge the existing turning basins to a 1,800-foot diameter at the Wando Welch and New Navy Base terminals to accommodate Post Panamax Generation 2 and 3 container ships and widen selected reaches.

Based upon the October 2015 price levels, the total initial project cost for this project is \$496 million with the Federal share totaling \$228.2 million and the non-Federal share totaling \$267.8 million.

Port Everglades, Broward County, Florida

On January 29, 2016, a report was transmitted to Congress on navigation improvements for Port Everglades in Broward County, Florida. The locally preferred plan that is being recommended would increase the nominal depth of the Federal channel to -48 feet MLLW, widen the outer entrance channel to a width of 800-feet, and widen the Southport Access Channel, the main turning basin and the Turning Notch.

Based upon the October 2015 price levels, the total initial project cost for this project is \$329 million with the Federal share totaling \$224.5 million and the non-Federal share totaling \$104.5 million.

Portsmouth Harbor and Piscataqua River, New Hampshire and Maine

On June 18, 2015, a report was transmitted to Congress on navigation improvements for Portsmouth Harbor, and Piscataqua River in New Hampshire and Maine. The plan would increase the width of the turning basin from 800-feet to 1,200-feet.

Based upon the October 2015 price levels, the total initial project cost for this project is \$22 million with the Federal share totaling \$16.5 million and the non-Federal share totaling \$5.5 million.

**Flood and Storm Damage Reduction**Bogue Banks, Carteret County, North Carolina

On February 16, 2016, a report was transmitted to Congress on hurricane and storm damage reduction along the Atlantic Ocean shoreline Bogue Banks, Carteret County, North Carolina. The plan consists of constructing 22.7 miles of main beach fill berm, approximately 50-feet wide, with a consistent profile across the entire length, along with dune expansion of approximately 5.9 miles of the project shoreline. The amount of dune expansion would vary from elevation 15 feet to 20 feet.

Based upon the October 2015 price levels, the total initial project cost for this project is \$38.7 million with the Federal share totaling \$25.1 million and the non-Federal share totaling \$13.6 million. The total cost over the 50-year project life, including periodic nourishment, is \$118.8 million, with a Federal share of \$59.4 million and non-Federal share of \$59.4 million.

Edisto Beach, Colleton County, South Carolina

On February 16, 2016, a report was transmitted to Congress on hurricane and storm damage reduction along the Atlantic Ocean shoreline of Edisto Beach, South Carolina. The plan consists of constructing a dune to an elevation of 15-feet with a top width of 15-feet extending 16,530 feet along the beach. This dune would be fronted by a berm at an elevation of 7-feet and 75-feet wide, extending south 7,740 feet from the northern extent of the project area and then tapering to 50-feet in width over the remaining length and taper to the existing profile. The dune would transition to 14-feet in elevation and extend around the southern end of the island for 5,290 feet. There would also be constructed 1,130 feet of total groin lengthening across 23 existing groins.

Based upon the October 2015 price levels, the total initial project cost for this project is \$21.9 million with the Federal share totaling \$14.2 million and the non-Federal share totaling \$7.7 million. The total cost over the 50-year project life, including periodic nourishment, is \$34.5 million, with a Federal share of \$17.3 million and non-Federal share of \$17.3 million.

Flagler County, Florida

On February 16, 2016, a report was transmitted to Congress on hurricane and storm damage reduction along the Atlantic Ocean shoreline of Flagler County, Florida. The plan would include construction of the dune along 2.6 miles of shoreline to an elevation 19 feet to match the elevation of the existing dune. From the seaward end of the dune extension, a 1 vertical on 3 horizontal dune slope would extend to the design berm elevation of 11 feet to match the existing berm elevation.

Based upon the October 2015 price levels, the total initial project cost for this project is \$14.5 million with the Federal share totaling \$9.4 million and the non-Federal share totaling \$5.1 million. The total cost over the 50-year project life, including periodic nourishment, is \$31.2 million, with a Federal share of \$15.6 million and non-Federal share of \$15.6 million.

Hereford Inlet to Cape May Inlet, New Jersey

On February 1, 2016, a report was transmitted to Congress on hurricane and storm damage reduction along the Atlantic Ocean shoreline from Hereford Inlet to Cape May Inlet, New Jersey. The plan would include construction of the dune along 4.5 miles of shoreline to an elevation of 16 feet with a 25-foot wide dune crest on a 75-foot wide berm that at an elevation of 6.5 feet.

Based upon the October 2015 price levels, the total initial project cost for this project is \$22.3 million with the Federal share totaling \$14.5 million and the non-Federal share totaling \$7.8 million. The total cost over the 50-year project life, including periodic nourishment, is \$85.3 million, with a Federal share of \$42.6 million and non-Federal share of \$42.6 million.

Leon Creek Watershed, San Antonio, Texas

On January 15, 2016, a report was transmitted to Congress on flood risk management for the Leon Creek Watershed, San Antonio, Texas. The plan consists of a levee extending 3,700 linear feet from high ground on the southeast side of Port San Antonio to S.W. Military Drive at a maximum height of 21-feet and a 12-foot top width with 3.5-foot on 1-foot slopes, in channel modification that extend approximately 2,850 linear feet with a 60-foot bottom width, and permanent evacuation of four single family residential structures and 32 townhouses susceptible to damage by a flood with a 4-percent annual exceedance probability.

Based upon the October 2015 price levels, the total initial project cost for this project is \$29.1 million with the Federal share totaling \$18.9 million and the non-Federal share totaling \$10.2 million.

Manhattan, Kansas

On December 3, 2015, a report was transmitted to Congress on flood risk management for the City of Manhattan, Kansas. The plan consists of modifying the existing project by raising 14,600 feet of levee on the Big Blue River and Kansas River on average 1.5 – feet but by as much as 3-feet, adding under seepage control measures including 29 relief wells with over 4,900 feet of collector system, 2,500 linear feet of under seepage control berms, replacing five existing drainage structures, adding a closure structure at Hayes Drive and relocating various utility crossings.

Based upon the October 2015 price levels, the total initial project cost for this project is \$24.3 million with the Federal share totaling \$15.8 million and the non-Federal share totaling \$8.5 million.

**Aquatic Ecosystem Restoration**Central Everglades Planning Project, Comprehensive Everglades Restoration Plan, Central and Southern Florida

On September 3, 2015, a report was transmitted to Congress on ecosystem restoration improvements for the Central Everglades Project located in Martin, Lee, Palm Beach, Broward, Miami Dade and Monroe Counties, Florida. The purpose of the Central Everglades Planning Project is to improve the quantity, quality, timing and distribution of water flows to the Northern Estuaries, central Everglades and Everglades National Park, and Florida Bay while increasing water supply for municipal, industrial and agricultural users. The Central Everglades Planning Project developed from six components (or portions thereof) of the Comprehensive Everglades Restoration Plan: Everglades Agricultural AREA Storage Reservoirs; Water Conservation Area 3 Decompartmentalization and Sheetflow Enhancement; S-356 Pump Station Modifications; L-31 N Improvements for Seepage Management; System-wide Operational Changes – Everglades Rain-Driven Operations; and Flow to Northwest and Central Water Conservation Area 3A.

Based upon the October 2015 price levels, the total initial project cost for this project is \$1,958,164,000 with the Federal share totaling \$979,865,266 and the non-Federal share totaling \$978,298,734.

**Flood and Storm Damage Reduction and Aquatic Ecosystem Restoration**Upper Des Plaines River & Tributaries, Illinois and Wisconsin

On January 29, 2016, a report was transmitted to Congress on flood risk management and ecosystem restoration for the Upper Des Plaines Watershed in Illinois and Wisconsin. The project would include the construction of a system of three

levee/floodwalls and two floodwater storage reservoirs near or adjacent to the main stem of the Des Plaines River. The flood risk management plan includes recreational features at three sites and implementation of non-structural flood risk management measures at up to 377 structures in nine communities in Lake and Cook County. The ecosystem restoration plan would restore 6,859 acres at seven sites across the watershed.

Based upon the October 2015 price levels, the total initial project cost for this project, as recommended in the Chief's Report, is \$309,098,000 with the Federal share totaling \$200,702,000 and the non-Federal share totaling \$108,396,000.

There are also ten other proposed projects with reports by the Chief of Engineers, which the Executive Branch is in the process of reviewing. These are:

- Little Diomed, Alaska
- Kansas Citys, Missouri and Kansas
- Mill Creek, Nashville, Tennessee
- West Shore Lake Pontchartrain, Louisiana
- Los Angeles River, Los Angeles, California
- Skokomish River Basin, Mason County, Washington
- Lower Willamette River, Oregon
- South San Francisco Bay Shoreline, Santa Clara County, California
- Upper Turkey Creek, Merriam, Kansas
- Princeville, North Carolina

Two additional Chief's Reports were not included in the report table of the 2016 Annual Report. The first, Orestimba Creek, California, was authorized in WRDDA 2014 and, therefore, does not meet the criteria of requiring authorization. It was transmitted to Congress on January 29, 2016. The second, the Chief's Report for a disposition study for Green River Locks and Dams 3, 4, 5 and 6 and Barren River Lock and Dam 1, Kentucky was signed on April 30, 2015 and remains under Executive Branch review. Because it is a disposition study, it does not meet the requirements for inclusion in this annual report and was not included in the report tables.

Mr. Chairman, I would now like to discuss PACRs. Section 902 of WRDA 1986 establishes a maximum total project cost for Civil Works projects. A further authorization is required to use Federal funds beyond this maximum authorized project cost. In these cases, the Corps of Engineers generally completes a PACR, which is provided to Congress if there is a recommendation for such a further authorization. There are four PACRs that have been approved by the Corps of Engineers and are under Executive Branch review.

These reports are:

- Blue River Basin, Kansas City, Missouri
- Turkey Creek Basin, Kansas City, Kansas and Kansas City, Missouri

- Ohio River Shoreline, Paducah, Kentucky
- Comprehensive Everglades Restoration Plan: Picayune Strand Restoration Project

Mr. Chairman, we look forward to working with you and appreciate this committee's support for investments in the Nation's water resources to strengthen the foundation for economic growth, protect communities, and protect and restore our environment. Mr. Chairman, this concludes our statement. We appreciate the opportunity to testify today and look forward to answering any questions you may have.

**Senate Committee on Environment and Public Works**  
**March 16, 2015 hearing entitled, "The 2016 Water Resources Development Act"**  
**Questions for the Record for Lieutenant General Bostick**

**Chairman Inhofe:**

1. The FY 2015 Energy and Water appropriations bill included the following language:

"None of the funds made available by this Act may be used to require a permit for the discharge of dredged or fill material under the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq.) for the activities identified in subparagraphs (A) and (C) of section 404(f)(1) of the Act (33 U.S.C. 1344(f)(1)(A), (C))."

The Corps did not implement this limitation on use of funds, so when the same language was included in the FY 2016 Appropriations bill, it was accompanied by the following language from H. Rept. 114-9:

"The Corps is directed to implement the provision in this bill as it is intended—as a complete prohibition on requiring permits for the specified activities; the so-called "recapture provision" shall not apply to these activities."

The Corps is still refusing to implement this provision even though the bill language is clear. It identifies activities by reference to language in section 404(f)(1). The cross-reference in 404(f)(1) to 404(f)(2) is not part of the activities identified. Despite this, and despite report language that is directly on point, the Corps is still refusing to implement this provision.

- a. Did the Corps expend any FY 2015 or FY 2016 funds to assist EPA (including review of the terms of a settlement agreement) in its action against Andy Johnson for building a stock pond (an activity identified in 404(f)(C)) (Andy Johnson v. U.S. EPA, Dist. WY Case No. 15-CV-147)?

**Answer:** The Environmental Protection Agency (EPA) was the lead agency in this enforcement action. EPA's position in the administrative enforcement action and defensive litigation was that Mr. Johnson's activities did not constitute the construction of a stock pond subject to the exemption in CWA section 404(f)(1)(C) and therefore the rider did not apply. The Corps agreed with that position. During FY15/16, the Corps' Omaha District staff provided support to the EPA, including answering questions in order to clarify elements in the Corps' administrative record, providing technical site information to EPA to aid EPA in its investigation, and providing input on potential settlement

alternatives. Omaha District Regulatory staff also participated in a meeting between EPA staff and the Johnsons and their counsel regarding potential settlement of the case. The only Corps expenditures in FY15/16 related to the enforcement action were in the form of labor and travel costs.

Did the Corps expend any FY 2015 or FY 2016 funds to continue to defending its position in Duarte Nursery Inc. v. U.S. Army Corps of Engineers (Dist. CA Case No:2:13-cv-2095) that Duarte Nursery requires a permit for plowing to allow planting of winter wheat at their tree nursery (an activity identified in 404(f)(1)(A))?

Answer: On February 23, 2013, the Corps issued a cease and desist letter to Duarte Nursery, Inc., and John Duarte (Duarte) in response to alleged violations of the Clean Water Act (CWA). On October 10, 2013, Duarte filed an action seeking judicial review of the cease and desist letter in the Eastern District of California. After a motion to dismiss Duarte's complaint was denied, the United States filed an enforcement counterclaim against Duarte on May 7, 2014, alleging a violation of the CWA but not of the cease and desist letter. Duarte then amended its complaint on August 20, 2014 (additionally amended on September 3, 2015), to allege that the United States' counterclaim was improper retaliatory prosecution. The United States takes the position in the litigation that Duarte's activities did not constitute "plowing" as that term is used in section 404(f)(1) of the CWA and defined by regulation. The Department of Justice is representing the United States in this ongoing litigation. The Corps expended FY2015 and FY2016 funds on matters related to the litigation, including coordination with the Department of Justice and preparing for trial.

- b. Why are FY 2015 and FY 2016 funds being used to continue to maintain a Corps website that takes the position that changing from one type of farming to another (vineyard to row crops for example) constitutes a new use that would require a permit if farm includes wetlands and the activity would disturb those wetlands?  
<http://www.spk.usace.army.mil/Missions/Regulatory/Permitting/Section404Exemptions.aspx>

Answer: Only general website maintenance costs were expended in FY2015 and thus far in FY2016 to maintain the Sacramento District webpage.

2. Despite being authorized by Congress, Committee staff has been told that the Corps does not prioritize environmental infrastructure projects. Is this accurate? If so, why?

Answer: The Budget focuses on the three main mission areas of the Corps Civil Works program, which are flood and storm damage reduction, commercial navigation, and aquatic ecosystem restoration. However, the Corps has

funded environmental infrastructure projects in its annual work plan from funds added above the Budget level

3. When provided money by Congress specifically for environmental infrastructure projects, how are determinations made as to what projects will receive these funds?

Answer: The 2016 work plan for the Civil Works program allocated funds using a rating system with three components: performance-based considerations and measures; considerations provided by the Statement of Managers or related rating measures; and management controls to ensure that the amounts allocated reflect the estimated cost of a defined set of work, with an emphasis on the ability to use funds in the current fiscal year. Because environmental infrastructure projects are funded in the construction account, they were also subject to general criteria developed for the construction program. In addition, for environmental infrastructure projects the Corps considered: (1) whether the funds would enable actual construction work, or work that supports future construction work; and (2) whether the projects were located in rural communities, or in areas with high poverty rates, consistent with State priorities.

4. Please explain the Corps' position in Orchard Hill Building Company v. U.S. Army Corps of Engineers (Case No. 1:15-cv-06344) that stormwater detention ponds constructed on prior converted cropland that develop wetlands characteristics are waters of the U.S. relying on the allegation that a storm sewer pipe replaced a "historic tributary" and that stormwater detention pond and storm sewer pipe therefore confers jurisdiction over a parcel being developed for residential housing?

Answer: The referenced litigation involves a challenge to an approved jurisdictional determination issued by the Corps' Chicago District on July 19, 2013, concluding that the Orchard Hill Building Company's approximately 60-acre site in Cook County, Illinois, contains approximately 13 acres of wetlands that are waters of the United States subject to the Clean Water Act. The Department of Justice is representing the United States in this litigation. The case was filed on July 21, 2015, but was stayed until April 12, 2016. The United States' answer or other responsive pleading is currently due to be filed on or before May 3, 2016.

5. Last August, I sent you a letter asking you to clarify how you intend to regulate sewers in older American cities that were built in streams. This is a critical issue because your new WOTUS rule claims that you can regulate land or ditches or sewer systems if an old photograph shows that there used to be a stream or wetland in the same location.

I gave you specific examples from right here in DC, where old photos and city plans show that the sewers under North Capitol Street were built in a stream that flowed into the Anacostia River, and Constitution Avenue was once a navigable channel that flowed into the Potomac River. It took you over six months to respond, and your letter failed to answer any of my questions.

Your response says that a sewer or ditch or pond that was built in dry land is not a water of the United States. I didn't ask you about sewers built in dry land – I asked you about sewers that were built in streams. You did not answer my question. So I will ask it again – if a city like Washington DC built a sewer in a stream in the early 1900's – would you consider that sewer to be a water of the United States?

Answer: If a city or municipality built an underground sewer in a stream in the early 1900's, it is unlikely that it would today exhibit the physical characteristics necessary to bring it within the definition of a tributary and thus would not become jurisdictional under the Clean Water Rule (29 June 2015).

**Senator Booker:**

6. The Rahway River Basin Flood Risk Management feasibility study is nearing completion and is very close to being ready to begin the construction phase. This will provide much needed protection from flooding for communities in Union, Essex, and Middlesex Counties, some of the most densely populated areas in New Jersey. It is essential for the Army Corps to finalize the study this year and provide at least a cost estimate that can be included as a construction authorization in this year's WRDA Bill. Can you reassure me that we can accomplish this goal, and make up for time lags that have resulted in the Army Corps missing the 3/31/2016 milestone for the tentatively selected plan (TSP)?

Answer: Although the interim milestones have shifted due to a delay in the TSP (from March 2016 to July 2016), a revised schedule has been established with the Chief's Report anticipated in September 2017. Prior to the release of a draft report, the costs and plans are not yet fully developed and therefore, even without the delay of the TSP, it would still have been too early in the planning process for construction authorization in the WRDA 2016 Bill.

Senator INHOFE. Well, thank you, General. We have worked together for a long time. Let me applaud you for your public service and your sticking in when times have really gone tough in the past. So I appreciate the contributions that you have made very much.

General BOSTICK. Thank you.

Senator INHOFE. We are still on the early bird rule, I advise members on the right and the left.

I have always been supportive of the Corps' role in support our Nation's critical infrastructure. However, when people want to work for you, as I said in my opening statement, and they want to make a contribution, it seems like the Corps is looking for ways, as I said in my opening statement, to say no instead of yes. An example, even if a pipeline project is covered by a nationwide Section 10 permit and has an environmental assessment under NEPA, I understand that, and shows the project has no significant impact, it can still take months and months for the Corps to issue a separate Section 408.

Now, I don't want you to answer and take too long now, but for the record I want you to answer why do we need a Section 10 and then need a 408 permit in addition to that?

Then, second, I have two things that came. This is a progress report. We have been waiting for this for months and months and months. This came from you today, the day that we are having a hearing. You are not granting these permits, you are saying, one of these is California, by the way, and one is Connecticut. The letter is to inform you that the Department of Army has initiated negotiations for accepting a contribution. Well, that still is not a permit, not accepting. Does it take us to hold a hearing in order to get this far?

So I need have something. We will just do that for the record. Because what we are going to do, I want to hear the justification for the long period of time it takes. It might be that we will want to include some language, maybe not necessarily it could be free-standing, but language that says once you have a NEPA, once you have a Section 10, you have 2 months in order to come out with your decision. So keep in mind we are really serious about this.

Now, the regulatory issues also create barriers to public-private partnerships. If a private company wants to work with you to increase water supplies or create energy that work involves a Corps project, I want you to look for solutions, not problems. If there is a legal barrier, I want to hear about it or this Committee wants to hear about it. So I would ask you would you do that? If you perceive, and it shouldn't take a matter of days to determine whether or not there is going to be a legal problem, that we can start addressing that?

Ms. DARCY. Yes.

Senator INHOFE. All right. I have an even bigger problem with your wetlands permitting program. In the Clean Water Act, Congress created an exemption for ordinary farming activity. Now, it made an exception to that that doesn't apply to new activities.

Now, new activities, we are talking about things such as damming up a river. I mean, something that is a total major change from what they originally had. But we have cases where they wanted to change from a rice crop to a tomato crop. Well, you considered

that a new activity and subjected them to what they would otherwise be exempt from on the Clean Water Act.

To solve this problem, for 2 years in a row Congress has included language in your appropriation bills that says that you can't require a permit for ordinary farming activities; no exceptions, no exclusions. Now, instead of following the direction from Congress in the appropriation bill, you issued guidance telling your staff to ignore the appropriations language and continue to regulating any farming activity you claim is new.

Now, will you commit to us now in this meeting that you will follow the direction of Congress, specifically the Appropriations Committee, and language that is coming your way and stop trying to regulate ordinary farming, whether you think it is a new activity or not?

Ms. DARCY. Senator Inhofe, I would like to directly deal with the instances where we have tried to regulate something as new under this provision.

Senator INHOFE. Well, now, I have already given you one, where they are trying to change a crop from rice to tomatoes, and you consider that to be a new activity. Do you think in that case that is what the intent was when they put the new exclusion in?

Ms. DARCY. No, the exclusion was for normal farming practices that were currently operational. A crop change, and, again, I would like to look at if the crop change required a permit, why it required a permit because, as you say, from where you say, that doesn't look like a new activity; it is just a change in existing activity.

Senator INHOFE. And I agree. I agree with that. But it was considered to be a new activity.

Now, what I will do on that, I can cite a number of cases. There wouldn't be time to do that this morning, but I am going to send these to you and I would like to get a response. Now, I mentioned earlier that we have been waiting for a response for quite some time, and this always seems to be a problem, so I am going to ask you to address that right away because I would like to know.

I will give you specific cases and ask why you would consider that to be a new activity, and should that be new under the language that describes the exemption in the Clean Water Act.

Ms. DARCY. OK. We will try to provide you with a prompt reply.

Senator INHOFE. Thank you.

Senator Boxer.

Senator BOXER. Thank you, Mr. Chairman.

Secretary Darcy, in the past, WRDA bills were passed every couple of years, but since 2000 bills have only passed every 7 years. You know, it was 2000, 2007, 2014. Has the time lag between WRDA bills affected the efficient and timely completion of projects?

Ms. DARCY. Senator, I think not having a bill every 2 years has adversely impacted our ability to plan, our ability, as well as the ability of our local sponsors. If a local sponsor knows that every 2 years there is going to be an authorization bill, I think they can more easily plan for their investment, as well as a Federal Government investment. So I think if we are on a regular cycle for every 2 years, I think it is in the best interest not only in our program implementation, but also for the local sponsors who are responsible for funding these projects.

Senator BOXER. I agree.

General, it is great to see that 22 Chief's Reports have been completed since the passage of WRRDA 2014. I am happy to see Chief's Reports for two longstanding California priorities, Los Angeles River ecosystem restoration and the project for flood damage reduction and ecosystem restoration in South San Francisco Bay. There are three other projects due to have been completed: storm damage reduction along the Encinitas Solano Beach shoreline, reconstruction improvement of levees in West Sacramento, and the American River common features flood protection project, which will improve levees around Sacramento. Could you give me the status of these outstanding reports, please, when you expect them to be completed?

General BOSTICK. I would expect to sign those at the end of April of this year, assuming there are no issues; and currently it looks like they are moving along pretty well.

Senator BOXER. Well, I am very glad to hear that.

Secretary Darcy, in WRRDA 2014, Congress established a new innovative finance mechanism known as WIFIA, Water Infrastructure Finance and Innovation. It is modeled after TIFIA, our program that is really leveraging funds in the transportation sector. WIFIA is a 5-year pilot program allowing the Corps and the EPA to provide direct loans and loan guarantees for construction of critical water infrastructure projects. The program requires little Federal investment because it greatly leverages every Federal dollar invested.

This is kind of along the same line as my friend is discussing, the opportunity here to leverage a few Federal funds and bring in private funds and bring in other funds. EPA has begun implementation of its portion of the program and requested \$20 million in the President's Fiscal Year 2017 budget.

Despite the focus in your testimony on the need for innovative financing, the Corps has not requested any funding for this program or issued any implementation guidance for the program. So what is the status of the Corps implementation of WIFIA and why is it the Corps is so far behind EPA in its implementation of the WIFIA program?

Ms. DARCY. As you pointed out, EPA is currently beginning to implement the WIFIA program. We are still trying to develop it. The Corps of Engineers is not a granting agency; we are not a Federal credit assistance agency, as other agencies are, so it is a new way of doing business for us. We are a project-funded agency; we have local sponsors for all of our projects, we don't do grants. So we are in the process of looking at how we could develop that and also looking at what EPA has done so far as to how we could either partner with them in a way to make the WIFIA program what I think the Congress has envisioned it to be.

Senator BOXER. Well, let me just say when we work together to find an innovative way to move forward, we need you folks to be behind us, not to drag your feet. This is innovative. You should see what is going on on TIFIA. If you want some advice, call us, but don't drag your feet, because we don't have the funding that we would like to have. Senator Inhofe has been clear. So when you get

a chance to leverage funding, this could be 60 to 1, as I understand it, right?

Senator INHOFE. Sixty to one.

Senator BOXER. Sixty to one. And if you are sitting on it because, gee, we never did it before, well, there is a lot of things I haven't done before. You have to step up. You have to step up, regardless, and get it going. So if you can't get this thing moving, please call us. We will be glad to help. We will put together a little task force of Senator Inhofe's staff and my staff and others to help you.

Now, I talked about Salton Sea. This is an area that really upsets me because in WRDA 2007, to help battle the decline of the Sea, which I explained, if we let this go, you are going to have air quality problems not to be believed, all the way to LA, where we have millions and millions of people living. So in 2007 I worked with colleagues to authorize the Salton Sea restoration program. Funding for the program was twice included in the President's budget request, but after Congress provided the Corps with its annual appropriations, funding was never allocated in the annual work plan of the Corps. Why has this program never received funding, despite it being a priority in the President's budget?

Ms. DARCY. Senator, that study progress for Salton Sea, in our budgeting process in evaluating the possible outcomes from the studies, it has not competed well with the other studies that we have budgeted for.

Senator BOXER. Well, why don't we talk about that? It is hard for me to get that. If this thing goes south on us, we have a crisis of wildlife, because they stop at the Pacific Flyway. It is over for that species of birds. If this thing goes south on us, we have a situation where the air quality will be so poisoned that you will destroy three counties; and we have given you the ability to move. It is very frustrating, Secretary.

Now, further, in 2014, WRRDA 2014 included a provision, section 1011, that gives funding priority to ecosystem restoration projects that address and identify threat to public health, preserve ecosystems of national significance, preserve or restore habitats of importance for migratory birds. Now, the Salton Sea fits all three criteria. What else do you need to ensure that nationally significant ecosystems such as Salton Sea are prioritized? What else do I need to do here?

And that's the last question.

Ms. DARCY. Senator, I think that we probably need to take another look at the impacts and also the merits of the Salton Sea study. I know the State has developed a plan for Salton Sea and I think that given not only the provisions of WRRDA that you cite, but the possible adverse impacts, including adverse impacts to public health, I understand in that part of the State, we will take another look at it.

Senator BOXER. Thank you. I appreciate it. I know it is so hard, but this is so many millions of people impacted.

Senator INHOFE. All right, you are already two and a half minutes over.

Senator BOXER. I know. Well, I won't say one more word.

Senator INHOFE. We have several people here.

Senator BOXER. I won't say one more word, I promise you.

Senator INHOFE. Oh, good. All right.

Senator BOXER. I just want to close by this. The President has put it in the budget; WRRDA, in a bipartisan way, mentions it, and I just am so frustrated. But thank you.

Senator INHOFE. And this is when we are getting along.

[Laughter.]

Senator BOXER. We sure are.

Senator INHOFE. OK, so there won't be any confusion on the Democrat side, the early bird is going to have Cardin, Carper, and Whitehouse; and on the Republican side Vitter, Fischer, Capito, Rounds, Wicker, Sullivan, and Boozman.

Senator Vitter.

Senator VITTER. Thank you, Mr. Chairman.

And thanks to you both for being here and for your work. As you both know, a key priority of mine in Louisiana is the Morganza to the Gulf flood and hurricane protection project, which has been fully authorized in the last WRDA, has received a positive cost-benefit ratio, but has not gotten any meaningful attention from the Corps, and I continue to be very concerned about that.

General, back in mid-2012 we met in my office and you made an absolute commitment to me that you all would sharpen your pencil and refine the cost of that project to bring it down significantly. The goal was at least 20 percent. And that would be completed soon after the Chief's Report, which arrived in mid-2013. We haven't received any refined cost to bring that cost down so we can more effectively move forward, and that is 4 years, almost 4 years since that face-to-face conversation and commitment. Where is that? Where is that refined plan and lowered cost?

General BOSTICK. I don't have the refined plan on that. What we did do is we worked with the local stakeholders, folks that thought they could bring the cost down using different local methods. We considered those. We also re-looked at our analysis, and we don't have a lower number at this time.

Senator VITTER. I don't want to cut you off, General, but I want to get the point. You do remember that conversation?

General BOSTICK. I do remember the conversation.

Senator VITTER. Do you remember the commitment?

General BOSTICK. I remember the commitment.

Senator VITTER. And you thought it was definitely possible to sharpen your pencil, lower the cost with others' help, and the goal was at least 20 percent. Do you remember that?

General BOSTICK. I don't remember the exact figure. I do remember that we had a conversation and I said that we would re-look into everything that we could to see if there was a possibility to bring the cost down, because we thought at the price it was coming in it was not going to be fundable.

Senator VITTER. You all have never come back to me with that analysis. Has that analysis been done?

General BOSTICK. I will come back to you with what we have done. I do owe you that.

Senator VITTER. OK. But you are saying you looked at it and you couldn't lower it a penny?

General BOSTICK. I am not saying that. I am saying I don't know if it was lowered. I don't have those details with me at this time,

but I will go back and find out exactly what we did, what steps we took, and where we ended up and provide that.

Senator VITTER. Well, General, my impression is you all walked away from that and didn't make a meaningful effort to sharpen your pencil, lower the cost, as promised. When can I expect a detailed response about how we are going to do that?

General BOSTICK. We did make a concerted effort to try to bring the price down. I can't tell you exactly when, but it will be before I depart.

Senator VITTER. OK. Well, I would like to have a personal one-on-one meeting to walk through all of the different proposals that you received to lower the price and where we are on that.

General BOSTICK. And we will do that.

Senator VITTER. Thank you.

Now, consistent with that foot-dragging, the Administration put no budget request in for this crucial project. This is to protect a major part and heavily populated part of South Louisiana. This is a project that has \$700 million of commitments in the next 5 years from the State and locals, got a positive cost-benefit analysis, fully authorized in the last WRDA.

Madam Secretary, why was nothing put forward to help match that \$700 million from the State and locals?

Ms. DARCY. When considering all of the projects that would be included in the President's budget, this was considered and was not selected as being one that could be included in this year's 2017 budget request.

Senator VITTER. Well, I know that; I mean, I said that in the question. My question is given everything, including the State and local commitment and the cost-benefit, why that is so. I mean, this is a heavily populated area that is completely vulnerable.

Ms. DARCY. I believe this would have been a new start in the 2017 budget, and we only included one new start in the 2017 budget, and that was Mud Mountain Dam, which is a requirement of being able to comply with a biological opinion.

Senator VITTER. So biology, namely, animals, trump people?

Ms. DARCY. That is our responsibility, is to comply with the biological opinion.

Senator VITTER. Well, just for the record, humans are animals too, so I hope we get equal footing in the future.

Let me ask two things for the record, because my time is running out, or has run out.

One is to re-ask the Chairman's question about the complete laborious 408 permit process and, in particular, why a decision was reversed regarding Larose to Golden Meadow having no significant impact. That decision was reversed. Now it is supposed to have a significant impact and that is delaying that permitting even further.

And, second, lots of folks in the maritime industry are very concerned with the Corps' statement that the Brandon Road Lock and Dam in Joliet, Illinois could be closed for 30 days or more for emergency purposes. That would shut down major commerce in the whole heartland of the Country, and I would like clarification of what that means and what would be an emergency.

Thank you, Mr. Chairman.

Senator INHOFE. Thank you.

Senator Whitehouse.

Senator WHITEHOUSE. Thank you very much, Chairman.

And welcome to the witnesses. In Rhode Island, the Providence River goes up right next to Providence. Years ago it was an industrial waterfront; now residential uses and recreational uses have taken over and they are very welcome.

But residue of the industrial waterfront still remains out in the public trust areas of the Providence River. The Army Corps has taken the position that it will only clear things that fall within a prescribed commercial channel, which has no commercial traffic, it is now a recreational area, and will not help us with removing the hazards and obstacles to recreational navigation that exist because they aren't within this predefined commercial channel.

So I would like to continue to work with you and see what we can do in this bill to make sure that you can provide help and support. There simply isn't commercial traffic there any longer. What there is are things like community boating, which brings kids from neighborhoods that ordinarily would never see the oceans and see the water, and takes them out sailing, and they are now sailing around in an area, obviously they go outside this commercial channel into areas where these old rotten industrial era pilings remain a hazard to them and to their navigation.

So I look forward to working with you on that.

Ms. DARCY. Yes, sir.

Senator WHITEHOUSE. Very good.

The second thing I wanted to mention is that when we last did WRDA, everybody worked very hard here on putting transparency requirements in for the Army Corps. The obvious reason for that is that the Army Corps requires that local participants have money ready to pay their share; and having to hang on to that money, not knowing when it is going to be called on, creates a lot of difficulties and nuisance for local governments and for local sponsors.

So that was in 2014. You got out the guidance for the transparency section just in February, a couple weeks ago, so in the years that went by between when we passed the reauthorization with the transparency provision and the weeks ago that you got out the transparency guidance, have you taken other intermediate steps to try to improve the transparency that concerned this Committee? Or lack of transparency that concerned this Committee, to be specific.

Ms. DARCY. We have been, in our collaboration with our local sponsors, I think also part of the provision that was envisioned in the last WRDA bill was to have us be in cooperation or consultation with the other Federal agencies earlier in the process so that we could collaborate with them and have it be a transparent process so that the local sponsor would know, through the planning process, what was going on and what possible impacts or impediments there might be with other Federal regulations.

So we have been doing that within our planning process and looking forward to how we are going to develop these in a more transparent as well as inclusive process, so that we don't come to the end of a study and find out that, oh, we should have talked to

NIMS before now because there is going to be an issue. So we are trying to do that earlier so that we avoid that kind of thing.

Senator WHITEHOUSE. The last point that I want to raise I will ask you to take as a question for the record because I think it is going to take some research, but it is important enough to me that I wanted to ask the question live in the hearing, and that is that in the Army Corps' Fiscal Year 2017 budget request there is a \$1.214 billion flood and coastal storm damage reduction budget line. If you drill into that budget line, it appears that the amount requested for coastal projects is \$10 million and the amount requested for inland projects is \$1.204 billion, which would be more than 100 times as much.

As a coastal State, and as one that is more likely to see more damage from sea level rise, warming seas, and all of that, I am concerned that there should be this discrepancy between coastal projects and inland projects. Now, maybe that is an accounting or terminological glitch of some kind, but I would like to get a full explanation of that discrepancy, and please feel free to take that as a question for the record, but an important one.

Ms. DARCY. Right. And I think that once we do the drill-down and look at it, maybe part of it is terminology, as opposed to actual money on the coast and money in the rivers comparison, so we will provide you with that.

Senator WHITEHOUSE. Great. Thank you.

I would note for my colleagues from coastal States that it is only one of many areas in which funding appears to disproportionately go upland and leave our coastal States I guess the opposite of high and dry would not be the right metaphor to use, but certainly underfunded relevant to upland uses. Thank you.

Senator INHOFE. Senator Fischer.

Senator FISCHER. Thank you, Mr. Chairman.

And thank you, Secretary Darcy, for being here today. As you may know, Section 5104 of the 2007 WRDA authorized the Lower Platte River Watershed Restoration Project, and this project has national, State, and local significance as it encompasses the final 110 miles of the Platte River and it is a major tributary of the Missouri River. More importantly, the Lower Platte River Watershed serves as a critical drinking water source for Nebraska's largest and fastest growing metropolitan areas.

It is my understanding that a comprehensive study would enable local authorities to apply a systems approach to restoring degraded river and floodplain habitats, and other critical environmental resources to provide immediate and sustainable benefits for this river system.

In your Fiscal Year 2017 budget request you propose to complete investigations of 12 studies, at a cost of \$4.9 million. With these completions doesn't that free up the Corps to initiate some new starts for studies in Fiscal Year 2018 and will you consider studies for watershed restoration projects as you are deciding what studies to initiate?

Ms. DARCY. For 2018? Yes, indeed.

Senator FISCHER. OK. That would be wonderful. And how is the Corps advancing watershed restoration planning in cooperation with local governments and also with States?

Ms. DARCY. We are undertaking some watershed studies, as opposed to project-specific studies, and I would have to get back to you on which ones we are currently funding and which ones we are in the process of completing.

Senator FISCHER. OK, thank you. There is a new corrective floodplain mapping that is being done by FEMA, and it has placed the southern portion of Fremont, Nebraska, Village of Inglewood, and the Dodge County Industrial Park into the 100-year floodplain. None of this area was in the 100-year floodplain before the remapping by FEMA, and the changes that FEMA has made to existing levee freeboard requirements dictates that these levee upgrades be completed to provide protection from flooding much of Fremont.

This project has been converted to a Corps general investigation project and \$425,000 has been budgeted to complete the general investigation study report by September 30th of this year. However, it has come to my attention that last week the Corps informed local stakeholders that the study will be delayed until December 2017.

Do you know the reason for the delay and what are the additional costs that are going to be associated with that delay?

Ms. DARCY. I don't know the delay or what the additional costs are, unless General Bostick does, but, if not, we can find out for you.

Senator FISCHER. Thank you.

General, do you happen to know?

General BOSTICK. I do not know, but we can find that out fairly quickly.

Senator FISCHER. If you could get back to me on that, I would appreciate it. I would also hope that the Administration can assure us that timelines for these investigation studies are going to be fairly concrete so that we are able to look at projects and how they are budgeted also in the future. It really complicates the budgeting process when there is over a year difference in the time period.

Ms. DARCY. One thing I might offer, Senator, is that the Corps began and then the Committee, back in 2014, during the WRRDA bill, instituted this three-by-three-by-three planning process for us, which means \$3 million, 3 years to complete. So that helps the planning horizon for a local sponsor and the Federal Government as to what we are going to budget for in that 3-year process; and there is a waiver provision, but we are trying to stick by the three-by-three-by-three so everyone knows what is to be expected in a 3-year planning process.

Senator FISCHER. OK. But it will be helpful, as you know, these projects are very important for the health and safety of the citizens that live in that area, and we want to make sure that they can be completed and also completed with really an appropriate amount of resources being expended on them, and not see an increase because of delays.

Also, Secretary Darcy, on September 30th of this last year, you testified before a subcommittee here, the Fisheries, Water, and Wildlife Subcommittee, on the Corps' participation in developing a new definition for waters of the U.S., and I would note that I submitted questions for the record and I have yet to receive a response to those questions. At the hearing, I asked you how the final rule defines a roadside ditch. We haven't heard from you. You replied

that you were going to check. Did you check on that and do you possibly have a reply for me at the hearing today?

Ms. DARCY. Senator, I believe we got the answers to the questions for the record to the Committee late, but was it yesterday? Yesterday.

Senator FISCHER. OK. I understand all of us are busy, but I would certainly hope we could get responses in a more timely manner, and not just before you are going to show up before the Committee for a hearing. Thank you.

Thank you, Mr. Chairman.

Senator INHOFE. Thank you, Senator Fischer.

I am going to ask unanimous consent that I put a letter in, because it does reference what we are talking about, WIFIA, from the American Chemistry Council concerning what is referred to as the Stabenow-Inhofe Amendment. Without objection.

[The referenced information follows:]



CAL DOOLEY  
PRESIDENT AND CEO

February 26, 2016

The Honorable James M. Inhofe  
Chairman  
Committee on Environment and Public Works  
U.S. Senate  
Washington, D.C. 20510

Dear Chairman Inhofe:

On behalf of the American Chemistry Council and our members, I am writing to express our support for the Stabenow/Inhofe compromise that will provide desperately needed resources to augment state and local efforts to fix and update aging water infrastructure. Unreliable and outdated water delivery systems can and do pose a threat to public health, as has become plainly obvious in recent weeks in Flint, Michigan, and in several other communities grappling with elevated lead levels in their drinking water. In addition to ensuring that communities have access to safe drinking water, unreliable and crumbling water infrastructure is of great concern for manufacturers like the petrochemical industry.

As you may know, America's petrochemical industry is experiencing a time of historic growth. As of this month, 266 projects valued at \$164 billion are completed, under construction, or in the planning phase. As companies build and expand facilities and add capacity, a key consideration is water availability and reliability. This need extends to virtually all manufacturing, not simply chemical production. While the U.S. has distinct advantages that help attract new manufacturing investment, the lack of reliable access to clean water presents a significant challenge. As a nation, we must invest in repairing and modernizing our crumbling water infrastructure in order to provide the physical platform necessary for our communities and overall economy to grow.

Clean, safe water is also critical for the ongoing operations of existing manufacturing facilities. Simply put, without reliable sources of water, many factories cannot operate. The ripple effects of water disruptions or contamination incidents can result in lost productivity and ultimately lost jobs.

While state and local authorities have primary responsibility for maintaining and operating water treatment and delivery systems, it has become very clear that many states and localities lack the resources needed to maintain even basic water systems in a way that ensures water is clean, safe and continuously available. We urge the Senate to act on this critically important issue.

Sincerely,

A handwritten signature in cursive script that reads "Cal Dooley".

Cal Dooley

Senator INHOFE. Senator Merkley.

Senator MERKLEY. Well, thank you very much, Mr. Chairman.

And thank you all for coming to testify. I wanted to start by noting how important dredging is and the maintenance of jetties to the coast of Oregon. Since I have been here in the Senate, I have been advocating for a set-aside for small port dredging. We have, for example, the Port of Bandon in Oregon, which has 300 substantial vessels each year, 23,000 volume-related trips.

So you have these small ports along the coast that have significant economies based on crab, shrimp, salmon, ground fish, sport fishing, whale watching, et cetera. I just wanted to raise that and encourage the Corps of Engineers to understand and maintain a commitment to keeping these economies functional through the jetties in good shape and the dredging on an ongoing basis.

I don't know if there are any comments that you want to share about that.

General BOSTICK. We also agree with the importance of these emerging harbors, and the Fiscal Year 2017 budget includes 10 percent of the funding, about \$95 million, for these small harbors.

Senator MERKLEY. And I very much appreciate that. And I must say our small ports are now in much, much better shape than they were just a few years ago thanks to that set-aside for the small ports.

I do a lot of town halls in Oregon, I think the count is now about 270. There is tremendous concern through the Columbia Gorge about the shipment of both oil cars that have explosive potential and also about coal, coal dust, so on and so forth. There are these various projects planned for being able to export coal overseas and these projects raise the prospect of unit trains that would run through our towns, obstruct one side of the town from the other on a regular basis, leave coal dust.

People are also very, very concerned about the environmental footprint, at a time when we now understand that 80 percent of the proven fossil fuels in the world, the reserves, have to stay in the ground if we are going to save this planet.

So Senator Wyden and I wrote a letter, which I will resubmit for the record, with the consent of the Committee.

Senator INHOFE. Without objection.

[The referenced information follows:]

United States Senate  
WASHINGTON, DC 20510

October 23, 2013

The Honorable Jo-Ellen Darcy  
Assistant Secretary of the Army (Civil Works)  
108 Army Pentagon  
Washington, DC 20310-0108

Dear Assistant Secretary Darcy:

We are concerned by the Army Corps of Engineers' continued refusal to conduct an environmental impact statement for Ambre Energy's proposed coal terminal at Port of Morrow, and its recent decision to deny information requested by a cooperating agency in lieu of a more detailed environmental study pursuant to the Endangered Species Act.<sup>1</sup>

The Corps' current scope of environmental review appears to fall short of its own regulations governing National Environmental Policy Act (NEPA) implementation. Those regulations state that "in some situations, a specific activity ... is merely one component of a larger project," and that an environmental review under NEPA should "address the impacts of the specific activity requiring a [Department of Army] permit and those portions of the entire project over which the district engineer has sufficient control and responsibility to warrant Federal review."<sup>2</sup> By refusing to evaluate the potential impacts of the project on the full length of the Columbia River, the Corps is limiting its ability to consider direct, indirect, and cumulative impacts of 8.8 million tons of coal that would be shipped by railroad to Boardman, Oregon; loaded onto barges; shipped some 200 miles on the Columbia, and then transferred mid-stream near Clatskanie, Oregon, to ocean-going ships that would travel further down the Columbia to the Pacific Ocean.

The Corps' decision to pursue such a narrow scope casts aside the advice of the National Marine Fisheries Service (NMFS), which must be consulted pursuant to section 7 of the Endangered Species Act (ESA) and section 305 of the Magnuson-Stevens Fishery Conservation and Management Act. The NMFS recommended in a December 27, 2012 letter that the Corps prepare a draft environmental impact statement in order to perform a comparative analysis of "coal transshipping projects ... at various sites in the Pacific Northwest." The letter cited both "public controversy" and the "potential for substantial impacts" to trust species under its purview, including ESA-listed species such as salmon, sturgeon, sea turtles and marine mammals such as whales and sea lions.

<sup>1</sup> Casandra Profita, *Army Corps Shrinks Endangered Species Review for Columbia River Coal Export Project*, Oregon Public Broadcasting, September 5, 2013, <http://earthfix.opb.org/communities/article/corps-shrinks-endangered-species-review-for-morrow/>. Accessed October 22, 2013.

<sup>2</sup> 33 C.F.R. § 325 App. B § 7(b)

By restricting its review to a mere mile of the river, the Corps is moving in the opposite direction of expert recommendations made by NMFS. Moreover, the Corps has further exacerbated the issue by refusing to provide nine of the 15 pieces of information that NMFS said were “necessary” to comply with ESA regulations in the absence of an EIS. This information would have answered questions about the expected increases in barge and ocean-going traffic, increases and impacts of train traffic, the threat of invasive species, and the impact to marine life.

The need for an in-depth endangered species review and information-sharing requested by NMFS was underscored by the applicant itself in a biological assessment prepared for Ambre’s subsidiary Coyote Island Terminals, LLC, in April, 2012. That report said the project would have “unavoidable impacts” on protected fish and habitat – a conclusion that was reported by regional media outlets.<sup>3</sup> Coyote Island Terminals’ April, 2012 assessment determined that the probability of increased traffic required review of a 276-mile “action area”<sup>4</sup> from Port of Morrow (river mile 253) to the Columbia Bar, five miles into the Pacific Ocean. The document determined that “the action area includes all areas that could be potentially affected by the proposed action and is not limited to the actual construction and operation areas” being proposed at Port of Morrow.<sup>5</sup>

In addition to the issues raised above, this project has generated substantial interest from the public,<sup>6</sup> and deserves a fuller accounting of its impacts by your agency in the NEPA process. The Council on Environmental Quality requires consideration of the “degree to which the effects on the quality of the human environment are likely to be highly controversial” to determine whether a proposed federal action “significantly” affects the environment.<sup>7</sup> Courts have found that “the effects of an action are ‘highly controversial’ when there is ‘a substantial dispute [about] the size, nature, or effect of the major federal action rather than the existence of opposition to a use.’”<sup>8</sup> The fact that there is a substantial dispute about the effect of the shipping terminal upon the Columbia River ecosystem itself justifies preparation of an EIS.<sup>9</sup>

Your agency has received correspondence from us both expressing concerns about the Corps’ approach to assessing the impacts of coal projects in Oregon, and along the Columbia River.<sup>10</sup> These concerns have been heightened by the agency’s recent actions in relation to the proposed coal export terminal at Port of Morrow. We both believe that

<sup>3</sup> Barbara LaBoc, *Report: Columbia River coal transport likely to threaten fish habitat*, Longview Daily News, June 11, 2012, [http://tdn.com/news/local/report-columbia-river-coal-transport-likely-to-threaten-fish-habitat/article\\_b1cfca26-b42d-11e1-85e9-0019bb2963f4.html](http://tdn.com/news/local/report-columbia-river-coal-transport-likely-to-threaten-fish-habitat/article_b1cfca26-b42d-11e1-85e9-0019bb2963f4.html). Accessed October 22, 2013.

<sup>4</sup> 50 C.F.R. Part 402.02 defines action area as “all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.”

<sup>5</sup> Anderson, Perry & Associates, Inc., *Biological Assessment for the Morrow Pacific Project*, La Grange, OR: April, 2012, at section 1.3, available at <http://www.scribd.com/doc/96830239/Boardman-Coal-Terminal-BA-RFS>. Accessed October 22, 2013.

<sup>6</sup> Courtney Platt, *Columbia River Coal Comments Most in DEQ History*, Northwest Public Radio, August 26, 2013, <http://earthfix.opb.org/energy/article/columbia-river-coal-comments-most-in-deq-history/>. Accessed October 22, 2013.

<sup>7</sup> 40 C.F.R. 1508.27(b)(4)

<sup>8</sup> *Friends of the Earth v. USACE*, 109 F. Supp. 2d at 43.

<sup>9</sup> *Id.*

<sup>10</sup> Letter from Sen. Merkley to Secretary McHugh and Secretary Salazar, copied to Major General Temple, June 18, 2012; letter from Chairman Wyden to Assistant Secretary Darcy, March 13, 2013 (see attached).

the Corps must conduct an EIS for any coal export facilities proposed along the Columbia River.

This approach would allow for a full accounting of the impacts of these projects on all parts of the Columbia River, in particular the Columbia River Gorge National Scenic Area, and the adjacent Mark O. Hatfield Wilderness, both of which are protected by federal law. The agency also must have a full accounting of how the project might affect important fishing grounds for Columbia River Treaty Tribes. The Corps is depriving the public of valuable information by continuing to ignore the recommendations and information requests of the NMFS, the applicant's original assessment of a proper scope of endangered species review, as well as the wishes of Oregon citizens and their elected leaders.

Please provide answers to the following questions no later than November 15, 2013:

- 1.) Please explain why the Army Corps has chosen to pursue individual environmental impact statements for coal export terminals proposed in Cherry Point, WA, and Longview, WA, but thus far has refused to begin an EIS for the Port of Morrow.
- 2.) An April, 2012, biological assessment prepared for Ambre Energy's subsidiary concluded that federal endangered species regulations require that the "action area" for the permit should be "Port of Morrow ... Columbia River between Port of Morrow and Port Westward ... Port Westward and Columbia River/Pacific Ocean ... plus approximately 41 upland acres of upland area at the new Port of Morrow facility at Boardman."<sup>11</sup> Please detail:
  - a. The action area your agency currently plans to pursue;
  - b. A comparison of how the action area referenced in question 2(a) differs from Ambre Energy's April, 2012, assessment of the "action area" referenced above; and
  - c. The reasons for any differences between the two.
- 3.) Please provide the expected marine traffic increases in conjunction with the Gateway Pacific Terminals project, and the Port of Morrow project. How does the marine traffic today compare to what these projects would add to their respective marine transport systems?
  - a. Please explain the rationale behind the scope of review for each project, and any differences between the two.

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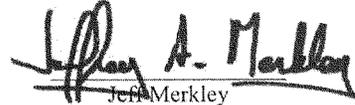
<sup>11</sup> *Supra* note 5, at section 1.3.

Thank you for your prompt attention to this matter. If any questions arise, please contact Peter Gartrell on Sen. Wyden's staff at 202-224-4971 or Adrian Deveny on Sen. Merkley's staff at 202-224-3753.

Sincerely,



Ron Wyden  
Chairman  
Senate Committee on Energy and  
Natural Resources



Jeff Merkley  
United States Senator

Cc: The Honorable Nancy Sutley, Chair, Council on Environmental Quality  
The Honorable Samuel Rauch III, Acting Assistant Administrator for Fisheries,  
National Oceanic and Atmospheric Administration  
Col. John Eisenhauer, Portland District Commander and District Engineer, U.S.  
Army Corps of Engineers  
Mr. William Stelle, Regional Administrator, West Coast Region, National Marine  
Fisheries Service

Attachments: Letter from Senator Jeff Merkley to Secretary McHugh and Secretary  
Salazar, June 18, 2012  
Letter from Chairman Ron Wyden to Assistant Secretary Darcy,  
March 13, 2013

Senator MERKLEY. Thank you very much.

Saying that, when we look at the environmental review for a coal project, it has to take the full perspective into account: What is the impact of the dust on the communities? What is the impact of the trains splitting the community in half for long periods each day? What is the impact of burning this coal on our broader objectives to be stewards of the planet for our children and our grandchildren? And we were very disappointed that the Army Corps of Engineers basically said, we are not interested in those issues.

Now we have gone through a period where the President has said we are going to suspend leases of our citizen-owned coal to study exactly this issue, exactly this issue that Senator Wyden and I were raising. Is the Corps rethinking the narrowness of its view of the world in light of the events of the last few years?

General BOSTICK. I would say that, in general, we certainly take a broader perspective. I am not sure of the specifics about the examples that you raise, but when we work on any of these projects we are working with all the local stakeholders, taking in the interests of a wide variety of groups and trying to make the best decision in the interest of the locals and the government. So there is not a view that we are not interested or we are not concerned about these types of environmental issues.

Senator MERKLEY. So I will just say in this case the Corps basically said the only thing we are interested in is the impact of putting pilings in the water. And I believe I can quote the Acting Chief of Regulatory Affairs said, the activities of concern to the public, such as rail traffic, shipping coal outside the United States, and burning of the coal are outside of our control and responsibility.

We were asking for a programmatic environmental assessment to take this understanding this broader view of these impacts on the local communities and on the broader world, not just the impact of putting the pilings in the ground. I just would encourage continue to rethink this, because these projects have very profound impact both on the path of what is shipped in and the effect of what is shipped out.

Thank you.

Senator INHOFE. Thank you, Senator Merkley.

Senator Rounds.

Senator ROUNDS. Thank you, Mr. Chairman.

First, let me just say to both of our witnesses thank you very much for your service. General Bostick, we most certainly appreciate the extended time that you have spent in service to our Country. We appreciate that. Thank you.

Assistant Secretary Darcy, Section 4003 of the 2014 WRRDA bill authorized the Corps to coordinate with various Government agencies to create a soil moisture and snow pack monitoring network in the Upper Missouri River Basin and maintain high elevation snow pack monitoring sites. That was after the flood of 2011. However, in a 2015 report, the Government Accountability Office found that the Federal agencies have made very limited progress implementing the monitoring program.

What is the status of the soil moisture and snow pack monitoring program? Do you know what that is? If you don't have it, I would ask for that to be returned on the record, please.

Ms. DARCY. I am aware of that provision, but I don't know what the status of the report is, so I would like to be able to get back to you with that information.

Senator ROUNDS. OK, fine. If it is as we have indicated here, which is not gone very far, would the Corps consider taking the role as the lead agency to implement the program?

Ms. DARCY. Did you say the local?

Senator ROUNDS. If it has not gone very far, if we are not getting any place, would the Corps consider taking the lead role in implementing the program?

Ms. DARCY. I think we would definitely consider it.

Senator ROUNDS. OK. In 2008, Secretary Darcy, you issued a real eState guidance policy, Letter No. 26. The directive required municipal and industrial water users from the Missouri River main stem reservoirs to acquire a water storage contract from the Corps prior to the Corps issuing an access easement for pumping water. The access easements are needed for all South Dakota water users of the Missouri River, to include municipal, industrial, and temporary use for short-term projects for which State permits had already been issued. The Corps' unwillingness to issue access easements affects South Dakotans' ability to manage the public's ability to use water from the Missouri River.

Do you plan to continue denying access easements to South Dakotans seeking to use water from the Missouri River?

Ms. DARCY. Senator, I think this is in response to granting easements. I think this happened in 2009. What we are currently doing is we are looking at the Flood Control Act, as well as the Water Supply Act to try to come up with, and this is within DOD review at the moment, to do a water supply rulemaking so that we can clarify what exactly the requirements are for either getting an easement or a contract for municipal industrial water supply at Corps of Engineers facilities.

Senator ROUNDS. The Missouri River runs right to the middle of South Dakota. The city of Pierre sits on the Missouri River, below the Oahe Dam. Main stem system. They would like to be able to get some water out, pump it out so they can use it in irrigating the parks and so forth, and peer. We need access across Corps land to get to the water to do it. It is not a question of whether or not the water is available to them; it is a matter of getting access across Corps land. It is a Corps right-of-way. It seems to me that it is being a little bit obstinate not to be able to work with a municipality to get an easement just to get a pump in the water to get the water out that is below a dam; it is not even in part of the storage of the river.

Ms. DARCY. Has the city of Pierre been denied an easement?

Senator ROUNDS. Yes.

Ms. DARCY. Then—

Senator ROUNDS. Would you get back to me and let me know?

Ms. DARCY. I was going to say I would definitely want to look into the details of that.

Senator ROUNDS. I would appreciate that. Thank you.

Assistant Secretary Darcy, in 2014 the WRRDA bill required the Corps to waive proposed water charges for contracted surplus water identified in surplus water reports. Can you tell me the sta-

tus of the surplus water studies you have undertaken and what you believe will result from the studies?

Ms. DARCY. Currently, I think of the five reservoirs on the Missouri we have had reallocation study reports that are currently at the headquarters. As I mentioned before in my response about the water supply rulemaking, we are hoping that the water supply rulemaking will clarify again what the contractual, as well as the financial responsibilities are for contracting with that water and what reallocations there are available in those reservoirs, because in order to reallocate, we need to make sure that the water there is available for other purposes, including municipal and industrial water supply.

Senator ROUNDS. Is the plan to charge an administrative fee for storing the water to those individuals who would gain access to it?

Ms. DARCY. In the rule that currently is underway is going to be put out for public review and comment, and the law says that there has to be a reasonable cost associated with that, and we are looking for public comment and what an interpretation of a reasonable cost would be over time.

Senator ROUNDS. Thank you.

Mr. Chairman, one last just to clarify. I indicated that the city of Pierre has been denied. I am not sure if they have been denied or they simply have not received a response, so I will clarify that. But I would really appreciate finding out why it is that tough to get that done.

Ms. DARCY. OK.

Senator ROUNDS. OK, thank you.

Thank you, Mr. Chairman.

Senator INHOFE. Thank you, Senator Rounds.

Senator Carper.

Senator CARPER. Thanks, Mr. Chairman.

Secretary Darcy, nice to see you. Everyone whose neighborhood, whose businesses have not been flooded by the Little Mill Creek in Northern Delaware this year, last year, they send their best and their thanks.

General Bostick, very nice to see you. How many years of service?

General BOSTICK. Thirty-eight, sir.

Senator CARPER. Thirty-eight. That is a pretty remarkable record. And on behalf of everyone in this Country who you have served for those years, continue to serve, I just want to thank you for an extraordinary life of service.

I want to start off. You were very nice to spend some time on the phone with me earlier this week, and if I could, I just want to go back to this commission, one of these basin commissions around the Country. You know better than me our Delaware River Basin Commission is one; another is the InterState Commission of the Potomac River Basin; a third is the Susquehanna River Basin Commission. Despite a reiteration and a clarification of congressional intent in WRRDA I think in 2014, the Army Corps of Engineers did not provide funding, as you know, in either 2015 or in 2016. In fact, the Delaware River Basin Commission in our part of the world has not received funding, I think, for 19 of the last 20 years.

Delaware is the only State that fully funds its share into the commission. Pennsylvania, I think, New York, and New Jersey fund some, but not all.

Just think back on our conversation. Could you just again tell me the status of what we think are fairly clear congressional directives for the Army Corps to budget and to allocate funds to the three river basin commissions and why it has not happened, and what we might be able to do about it?

Ms. DARCY. Senator, within our budget we have a program that is called Planning Assistance to States, and within that program it is envisioned that the activities of the river commissions would qualify for that funding. However, activities of the commission would need to be cost shared from 50 percent of the Federal input as well as 50 percent from the river commission. So if we can identify activities specific to the operation of the commission, we would be able to use that funding source if, again, we could find the cost share 50 percent from the commission itself.

Senator CARPER. OK. About how much money would we be talking about, do you know?

Ms. DARCY. I don't know. The entire line item for Planning Assistance to States is \$2.3 million.

Senator CARPER. OK, thank you.

As you know, the 2014 version of WRRDA further requires that if the secretary does not allocate funds for a given year, the secretary shall submit a notice explaining, describing why funds were not allocated, and, to my knowledge, no report has been provided. I would just ask if you could tell us why that report was not provided to Congress.

Ms. DARCY. The report wasn't provided because I think it is viewed that within this Planning Assistance to States funding stream that there would be the ability to fund some of the river commissions.

Senator CARPER. All right, thank you.

We talked a bit about the most recent storm that has come up the Atlantic Coast. I described we always compare to a storm that occurred in 1962. I was not in Delaware at the time, I was a kid I think somewhere, but whenever we talk about damages to the beaches in Maryland, Delaware, north, they talk about the storm of 1962.

We had a bad storm a couple of weeks ago, about a month or two ago, a lot of snow in many places, including here, but we had huge winds. We had sustained winds of 50 knots and up to as much as 60, 70 knots, which is a nor'easter. It did a whole lot of damage. The good news is it did not damage, did not destroy our beach communities from Fenwick Island up to Lewes. Rehoboth Beach was saved, Dewey, Bethany, because of the work by the Army Corps of Engineers.

I should just stop here and say we value very deeply our relationship with the Army Corps of Engineers, Region 3, Philadelphia, and also in Baltimore. They are wonderful people there, civilian and military. We love working with them. They are so responsive and thoughtful, and very creative, very creative. So we are grateful for that.

But we are in a situation where we need to restore the dunes that have protected and saved these beach communities, including one that you have spent some time in, as have I, in our lives. But I just want to ask do you think it might be possible to direct a portion of the remaining emergency funds from Superstorm Sandy disaster appropriations legislation toward the Corps' flood control and coastal emergency account perhaps through an amendment to WRDA later this spring?

Ms. DARCY. Senator, we are currently evaluating the damages from that storm and looking to our FCC&E account for what might be available there to be able to repair that damage. The appropriations bill for Sandy money is pretty specific that the damages have to have been caused by Superstorm Sandy, so I am not optimistic that we would be able to use those funds without some kind of legislative direction.

Senator CARPER. Good. Just one last quick question. In terms of the remaining funds from Superstorm Sandy that have not been obligated or used, would you just refresh my memory as to how much that is? I am thinking \$5.4 billion, half of which has been used, half which has not been obligated, but I may be mistaken.

General Bostick, do you know?

General BOSTICK. We have used about a billion out of the five billion. Most of the larger projects are yet to come.

Senator CARPER. All right.

General BOSTICK. They are authorized, but not constructed projects.

Senator CARPER. OK. OK.

Well, let's continue to have this conversation. Thank you very much. Thanks for joining us today. And thank you both for your service. Good to see you.

Ms. DARCY. Thank you.

Senator INHOFE. Thank you, Senator Carper.

Senator Boozman.

Senator BOOZMAN. Thank you, Mr. Chairman, and thank you, Secretary Darcy, so much for your service and being here with us today. We appreciate you.

Arkansas and neighboring States in our area share underground aquifers, and this is really of tremendous importance in the sense of homes, factories, farms, all of those depend on these aquifers. Sadly, after centuries of use, they are being depleted. The problem is your folks, other people tell us that when they get to a certain level they start to collapse and then they won't regenerate themselves under any circumstances. So we certainly don't want to get in that situation. In fact, I think that the Corps has described it as being catastrophic if that were to occur, with a multi-billion dollar negative impact. So the question is, what do we do about that?

And, to your credit, the Corps has two great projects there, and all of this deals with water scarcity, which is a huge problem. When you ask futurists what is going to be the problem in the future, it is water and energy. Everybody agrees with that, I think. Again, the question is, how do you fund these projects? It has been a real problem. We spend about \$200 million between the State and the Feds in doing this. I guess the question is the path for-

ward. And the problem is, they drag on, then the cost structure increases to the point it is hard to keep up with inflation.

So I guess the question is, how do we finance things like that? We are in a situation how with WIFIA where existing public-private partnerships are helpful, but they just don't really help with these big projects like that. So what we would like to do is come up with another option, and I guess the question is, for you and really for the Committee going forward, do you have any advice? What can we do to make it such that these projects that we all agree are valuable, in the best interest of the public?

And in these particular cases I think they are great demonstration projects as to what we need to be doing in other parts of the Country, again, to eliminate some of the problems that California has had, other States. As we look forward, I think that because of the fact that we have these unusual weather patterns and things, that it is going to become more and more of a problem.

Ms. DARCY. Senator, I think one of the things we need to do, which was alluded to by some of the other members, as well as the Committee recognized 2 years ago, was that alternative financing is something that we need to take a serious look at and use our imagination, as well as looking to private capital markets to help with some of this financing. Because we are going to need that in order to sustain those kinds of projects, as well as some of our own infrastructure projects in addition.

Senator BOOZMAN. Right. And as far as these types of projects, that is something that you, as the Chairman, support?

Ms. DARCY. These kinds of alternative financing projects? Yes.

Senator BOOZMAN. Well, alternative financing and then, again, these water scarcity projects. We are in a situation now where we are experiencing troubles that we haven't had in the past as far as significant, well, we have had these problems in the past. Again, the question of how do you actually deal with them.

Ms. DARCY. Well, because they are water resources development projects, so they are ones that not only do we have to recognize what our responsibility is for floods, but also for not enough water.

Senator BOOZMAN. Right. Very good.

General BOSTICK. And one of the things I would like to say on this is I think there hasn't been a real national dialog and direction that we have been given in the Corps or the Nation in how we want to address water scarcity and water supply and water distribution. These are generally not areas that the Corps is focused on, but it is a national issue, and there is no entity that is taking it on.

So every State, such as yourself, is taking this on, and we have to decide whether we want to do it at a national level. In China they are moving 50,000 swimming pools a day from the south to the north in a gravity-fed channel over 1,800 kilometers to take care of their water issues. I am not saying it is the right solution, but I am saying they and other countries are looking at us in trying to figure out what we are going to do. That is an example, Bayou Meto and Grand Prairie, but we have very few examples of what we are trying to do.

Senator BOOZMAN. And you are right, it is a good example. The other thing why it is natural for you all to come into play, I think,

is, like in our case, this is a multi-State problem. It is something that you are going to have to have cooperation among the States, and nobody is better to kind of pull all that together, even though it is very, very difficult, particularly with water issues. But in the sense of preventing water issues, I think that the Corps is playing a big role, but probably needs to play a greater role.

Thank you all, and thank you, sir, very much for your service. We very much appreciate you and all you represent.

Thank you, Mr. Chairman.

Senator INHOFE. Thank you, Senator Boozman.

Senator Gillibrand.

Senator GILLIBRAND. Thank you, Mr. Chairman.

Assistant Secretary Darcy, we are now roughly three and a half years after Superstorm Sandy ravaged the northeast, and I know that the New York district is very committed to building the necessary flood protection along our coast, but we find ourselves now coming up on yet another hurricane season where large numbers of my constituents are left unprotected. In particular, the South Shore, Staten Island is expected to take several more years to complete, as is the Rockaway and Jamaica Bay in New York City Coastal Storm Reformulation Project.

Now, while I understand these projects are very large, complex, and cannot be studied and designed overnight, are there statutory changes that could be made to help the Corps move more expeditiously through projects like these, which literally could mean the difference between life and death for millions of people in New York should another storm like Sandy hit our shores?

And, related, we just heard Senator Carper ask you about why the money is not spent; and you know Congress, if the money is not spent, they spend it somewhere else. So that, of course, raised very serious red flags for me because these projects need to be completed.

Ms. DARCY. Senator, I think your question is are there any impediments that we are finding that are keeping us from going more quickly, and I think the answer is no, but I am going to ask General Bostick if he has any additional views.

General BOSTICK. These are just long-term planning efforts. We had some initial issues, I think, with real estate and rights and easements and those sort of things, but generally the States are working with us to resolve those local issues and we are working with them to move the projects forward.

Senator GILLIBRAND. OK. Is funding or resources an issue for why these projects move slowly? And, if so, should we create more opportunities to leverage financing from other sources or expedite priority projects to facilitate it? I mean, is there anything that is standing in the way of these projects getting done?

General BOSTICK. I really have to come back to you on some of the specific details that the divisions and the districts may be facing. In general terms, they are not things that I believe we need from Congress in that we have the funding that we need.

Senator GILLIBRAND. So I would like from both of you a letter to this Committee saying that you intend to use the funds that have been appropriated and authorized to do these projects, and that they take a long time and that you intend to do this because I want

these funds to not be somehow targeted for other uses. And please address it to the full Committee.

General BOSTICK. We will do that.

Senator GILLIBRAND. Thank you.

Assistant Secretary Darcy, as you know, the Army Corps is currently working on a dredge material management plan for the disposal of dredge materials into Long Island Sound. I share the concerns of many of my constituents who do not want to see the environmental quality of the Sound negatively impacted by the project. Long Island Sound is an estuary of national significance, and both the Federal and government of New York State have spent significant resources to clean up the polluted waters of the Sound.

Specifically, I am extremely concerned that the Army Corps has not done a full enough evaluation of alternatives to open water dumping in the Sound. The New York State Department and Department of Environmental Conservation have both expressed concerns with the Corps approach, and I was disappointed by the Corps' refusal of New York State's request to extend the comment period to allow additional analysis by the State and other stakeholders.

Will you commit to working with my office and New York State to ensure that the Army Corps will not propose disposal sites that in any way would negatively impact the environmental quality of the Sound? And as the mission of the Army Corps has evolved over the years to place a greater focus on environmental restoration, could you comment on whether the long-term environmental costs and benefits should be more fully factored into the analysis of the various options for where dredge material should be disposed?

Ms. DARCY. Senator, the disposal of the dredge materials is something that we take very seriously, especially how it will impact the environment. One of the things we have been looking at much more in recent years is the beneficial use of dredge materials and how that can be used either for upland disposal or wetland creation or other kinds of things, as opposed to open water disposal or other things.

So we are looking at it not only for an environmental benefit perspective, but also from a cost perspective as well. And we do consider all environmental laws when we make a determination as to what is the best disposal option for our dredge materials.

Senator GILLIBRAND. OK. And then, last, I was very grateful that the Army Corps included funding in Fiscal Year 2017 budget for the design phase of the Cano Martin Pena environmental restoration project in San Juan, Puerto Rico. I visited the site with Senator Blumenthal in January 2015 and I can't stress enough how critical this project is for protecting public health for children who are literally wading in water that has not only refuse, but open sewage; and the risk to their health is so severe. So can you just provide me quickly with a status update on the project and what the Corps timeline is for preconstruction engineering and design phase?

Ms. DARCY. Senator, I visited the project three times, it was one of the first places I visited when I first took this job, and was moved by what I believe our moral imperative is to make this project a reality. We have provided funding, as you say, in the 2016

work plan, as well as the 2017 budget for preconstruction engineering and design. The report is on its way to my office that I need to sign off on in order for this to go forward. I am expecting that within the month, so it is moving along.

We have had a great cooperative relationship with ENLACE, who is the local sponsor on the ground in Puerto Rico, as well as the Commonwealth of Puerto Rico, and the Environmental Protection Agency, because there is the possibility of hazardous materials there and we have worked jointly with them in order to deal with that so that we can move this forward.

Senator GILLIBRAND. Thank you.

And thank you, Mr. Chairman. I am going to submit for the record one question about the Wallkill River in Orange County that you can submit by letter.

Thank you, Mr. Chairman. Thank you, Ranking Member.

Senator INHOFE. Thank you, Senator Gillibrand.

Without any further Senators here, we will excuse our panel and thank both of you very much for staying with us and particularly the service that you have offered, General Bostick. It is exemplary.

Ms. DARCY. Senator Inhofe, may I just indulge the Committee for 1 second? I want to thank General Bostick for his service. He has been at my side for the last 4 years of this journey, and I couldn't have asked for anyone with more integrity and more commitment to the program and projects of the Army Corps of Engineers, and his retirement is, in my view, a loss to the Army and the Country. Thank you.

General BOSTICK. Thank you very much, Secretary Darcy.

Senator INHOFE. I would agree with that.

We are adjourned.

[Whereupon, at 11:26 a.m. the committee was adjourned.]

