AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

S. HRG. 116–201

BUSINESS MEETING WITH INFORMATION GATHERED

MEETING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

MEETING MAY 6, 2020; INFORMATION GATHERED APRIL 22, 2020

Printed for the use of the Committee on Environment and Public Works

Available via the World Wide Web: http://www.govinfo.gov

BUSINESS MEETING: MAY 6, 2020;
INFORMATION GATHERED: APRIL 22, 2020

S. HRG. 116–201

BUSINESS MEETING WITH INFORMATION GATHERED

MEETING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

MEETING MAY 6, 2020; INFORMATION GATHERED APRIL 22, 2020

Printed for the use of the Committee on Environment and Public Works

Available via the World Wide Web: http://www.govinfo.gov

U.S. GOVERNMENT PUBLISHING OFFICE

40–523 PDF WASHINGTON : 2020

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

JOHN BARRASSO, Wyoming, *Chairman*

JAMES M. INHOFE, Oklahoma
SHELLEY MOORE CAPITO, West Virginia
KEVIN CRAMER, North Dakota
MIKE BRAUN, Indiana
MIKE ROUNDS, South Dakota
DAN SULLIVAN, Alaska
JOHN BOOZMAN, Arkansas
ROGER WICKER, Mississippi
RICHARD SHELBY, Alabama
JONI ERNST, Iowa

THOMAS R. CARPER, Delaware, *Ranking Member*
BENJAMIN L. CARDIN, Maryland
BERNARD SANDERS, Vermont
SHELDON WHITEHOUSE, Rhode Island
JEFF MERKLEY, Oregon
KIRSTEN GILLIBRAND, New York
CORY A. BOOKER, New Jersey
EDWARD J. MARKEY, Massachusetts
TAMMY DUCKWORTH, Illinois
CHRIS VAN HOLLEN, Maryland

RICHARD M. RUSSELL, *Majority Staff Director*
MARY FRANCES REPKO, *Minority Staff Director*

C O N T E N T S

Page

MAY 6, 2020

OPENING STATEMENTS

Barrasso, Hon. John, U.S. Senator from the State of Wyoming 1
Carper, Hon. Thomas R., U.S. Senator from the State of Delaware 3
Inhofe, Hon. James M., U.S. Senator from the State of Oklahoma, and Boozman, Hon. John, U.S. Senator from the State of Arkansas, prepared statement 9
Cramer, Hon. Kevin, U.S. Senator from the State of North Dakota, prepared statement 11
Capito, Hon. Shelley Moore, U.S. Senator from the State of West Virginia 19
Sullivan, Hon. Dan, U.S. Senator from the State of Alaska 22
Cardin, Hon. Benjamin L., U.S. Senator from the State of Maryland, prepared statement 792
Duckworth, Hon. Tammy, U.S. Senator from the State of Illinois, prepared statement 793

LEGISLATION

URL/Web address to the text of the amendment in the nature of a substitute for S. 3591, America's Water Infrastructure Act of 2020 10
Senator Cramer Amendment #2 to S. 3591, To include a provision relating to water supply 13
URL/Web address to the text of the amendment in the nature of a substitute for S. 3590, the Drinking Water Infrastructure Act of 2020 18

ADDITIONAL MATERIAL

Information gathered on April 22, 2020, for this business meeting 26

BUSINESS MEETING WITH INFORMATION GATHERED

WEDNESDAY, MAY 6, 2020

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

The Committee, met, pursuant to notice, at 10:04 a.m. in room 406, Dirksen Senate Office Building, Hon. John Barrasso (Chairman of the Committee) presiding.

Present: Senators Barrasso, Carper, Inhofe, Capito, Cramer, Braun, Rounds, Sullivan, Boozman, Wicker, Shelby, Ernst, Cardin, Markey, and Van Hollen.

OPENING STATEMENT OF HON. JOHN BARRASSO, U.S. SENATOR FROM THE STATE OF WYOMING

Senator BARRASSO. Good morning. I call this meeting to order.

Today, the Committee is voting on two bipartisan infrastructure bills: America's Water Infrastructure Act of 2020, and the Drinking Water Infrastructure Act of 2020.

The bills are ideal complements to the bipartisan highway bill that the Committee has already reported with a vote of 21 to nothing. Together, America's Transportation Infrastructure Act and these two bills will be critical to our economic recovery after the immediate pandemic response is behind us.

I want to specifically thank Ranking Member Carper, Subcommittee Chairs and Ranking Members Capito, Cardin, Cramer, and Duckworth for their ongoing tireless efforts to craft these two important bills.

Senator Carper and I have agreed that we will begin voting at roughly 10:15. At that time, I am going to call on Senator Cramer to bring up his amendment, and then we will turn to the agreed upon amendments and final passage of the bills.

Once we begin voting, we will not debate the other items in the agenda while we are voting. Instead, we will debate the items on the agenda before we begin voting. I will also be happy to recognize any members who still want to talk about any issues that they have concerns about after voting concludes.

America's Water Infrastructure Act of 2020 is bipartisan legislation and includes input from every member of this Committee and the Senate as a whole. The bill will help grow the economy, cut Washington red tape, and keep communities safe.

The legislation provides $17 billion in new Federal authorization for Corps and EPA projects and programs. It will help deepen nationally significant ports, it will maintain the navigability of inland

waterways, it will fix aging dams and irrigation systems, and upgrade wastewater systems across the country.

The bill will increase water storage in the West and help build new flood management infrastructure in the Midwest.

Many flood protection projects in the heartland are not funded because their property values are not as high as property values on the coasts. Our bill will make it possible for these important projects, including those in rural and disadvantaged areas, to get funded and built.

It also includes new water storage provisions to study, construct, or enlarge small water storage projects. Many States in the West, like Wyoming, want the ability to provide more water for farmers and ranchers. Our bill will enable the construction of smaller reservoir projects and expand existing reservoirs in these States.

Too often, important water projects are delayed because of drawn out environmental reviews. America's Water Infrastructure Act of 2020 cuts Washington red tape. It will push the Army Corps to take just 2 years to complete its feasibility studies for potential projects. The goal is in line with the standard President Trump has set for Federal infrastructure projects and permits.

Our bill will also allow other agencies, Federal agencies, to review Army Corps categorical exclusions, and if appropriate, adopt some more categorical exclusions. These exclusions will get needed projects started faster.

Many communities also need assistance complying with burdensome environmental laws and regulations. The legislation increases funding for technical assistance and training programs for small, rural, and tribal municipalities.

The bill also includes important provisions to help smaller rural communities leverage Federal dollars and waive cost share requirements so that they can implement needed infrastructure projects.

America's Water Infrastructure Act of 2020 also makes safety a priority. In recent years, we have seen the damage that floods and droughts can cause. Our bill takes steps to address the maintenance backlog of dams, levees, and reservoirs that protect so many communities around the country. The bill also contains provisions to fight the threat of invasive species.

Drinking water systems are also critical. The Drinking Water Infrastructure Act of 2020 provides an estimated $1.25 billion in Federal authorizations to help communities ensure their drinking water is safe. The bill reauthorizes the Safe Drinking Water Act Emergency Fund to provide assistance to communities facing drinking water emergencies.

Our legislation requires 20 percent of the Drinking Water State Revolving Funds be used on grants, no interest loans, or debt relief, to help public water systems. The provision will give struggling systems a chance to provide safe and reliable drinking water to their communities.

The bill also makes it simpler for schools and childcare programs to test for lead in their drinking water.

I want to thank all the members of this Committee for their hard work in writing these bills. The bills before us today will support our recovering economy, will cut Washington red tape, will help keep communities safe, and will improve Americans' quality of life.

President Trump has called on Congress to pass infrastructure legislation. Our highway infrastructure legislation, combined with these two water infrastructure bills, will answer the President's call to help revive our Nation's economy once we have moved beyond the immediate health crisis.

I would now like to turn to Ranking Member Carper.

OPENING STATEMENT OF HON. THOMAS R. CARPER, U.S. SENATOR FROM THE STATE OF DELAWARE

Senator CARPER. Thanks, Mr. Chairman.

I am delighted to be here with you and our colleagues, especially on the day when we celebrate the birthday of our dear friend, Richard Shelby.

Happy birthday, Richard.

We are gathered here today, and it doesn't look like our regular room, does it? I could get used to this; it is pretty big. I don't know how long we will have to use it, but I am glad it is available for us today.

Here we are, wearing masks, attempting to maintain at least 6 feet of separation between us, and I am reminded that these are far from normal times.

Before we turn to two pieces of very fine legislation whose consideration brings us here today, I want to first express my thanks to you, Mr. Chairman, for your leadership, and to every member of this Committee. Every member of this Committee has contributed to the products that we are going to be debating and voting on here today.

I think most members of the U.S. Senate, not all, but almost all members of the U.S. Senate, have contributed as well, but we are grateful for all that input that has been provided to enable our majority and minority staff to draft the legislation that is before us.

I was talking to John Kane coming in, who has worked as sort of the lead on our side for putting this baby together, these two pieces of legislation together. I said, "How do you feel, John?" He said, "I am exhausted," and he is probably not the only one who is exhausted. I just want to say to everyone, on our staffs, Democrat, Republican, majority, minority, thank you so much for your hard work.

I would note that the U.S. Senate has returned to work in Washington, DC, today, while the rest of this city and much of our country remain under stay at home orders due to the COVID–19 pandemic that continues to ravage many communities across America.

I spoke to one of the Capitol police officers outside in the hall to ask her about how many Capitol police officers have been stricken, may have been found carrying the virus, and I was surprised how many of our Capitol police officers have actually had the symptoms and then had to be quarantined and treated.

Last month, we learned that—speaking of the city—last month, we learned that here in this city, African Americans account for almost 80 percent of COVID–19 related deaths. Eighty percent. In fact, we are reminded almost daily by news stories that communities of color are disproportionately impacted by harmful air pollution, which is a co-morbidity of this disease.

In recent weeks, studies have consistently shown a link between air pollution and higher numbers of COVID–19 related deaths. Sadly, despite these findings, EPA has answered the President's call to be all hands on deck in this fight largely by seeking to roll back major public health protections for clean air.

So as our Committee moves forward on two important bipartisan pieces of legislation today, I hope we will all continue to be mindful of our responsibility as Senators to conduct oversight on the Federal Government's response to the ongoing COVID–19 pandemic. In doing so, we also have an opportunity to highlight some of the science and innovation that can help us overcome this deadly pandemic.

For example, I was reading this, Mr. Chairman, was reading this morning about how COVID–19 virus can be detected in wastewater in ways that might be able to help us almost as looking over the horizon to know that this is coming.

This is technology; this is science that actually goes back to the days of polio, when we were concerned about stopping the spread of polio in this country. This technology is probably able to be brought to bear currently, and we are interested in seeing that happen.

The COVID–19 pandemic has also reminded us that access to clean water and public health are critically connected. In addition, we are reminded daily, almost hourly, it seems, just how important it is to have access to soap and clean water and washing our hands, a simple yet effective way to prevent this virulent disease.

Now, Mr. Chairman, that brings us to our focus today, and that is improving and investing in our country's waterways, as well as our drinking water and wastewater infrastructure systems. Our country's drinking water and wastewater systems, our shipping channels, and flood control structures are essential to our economy and to our way of life, but they remain in desperate need of improvement and investment.

I was talking to a reporter and trying to explain why this is relevant. In the Declaration of Independence, we all know it talks about life, liberty, and the pursuit of happiness.

It is hard to have life without water, clean water that we can drink. It is hard to have happiness without a strong economy, and when we are talking about moving goods and products around this country and around the world, a lot of it goes on water, overwhelmingly does. Stuff goes on water in and out of our country, so it is critically important.

America's Water Infrastructure Act of 2020 and the Drinking Water Infrastructure Act of 2020 are two bipartisan bills that will help the U.S. Army Corps of Engineers and the EPA continue to make more of the urgently needed improvements to key water infrastructure systems throughout our country.

Every American relies on water and on our water infrastructure, most without realizing it. Millions of Americans across this country rely on the Army Corps projects to safely navigate our waters, to stay safe from flooding and storm damage, and reap the benefits of healthy aquatic ecosystems in marshlands.

In communities across America, Army Corps projects are often the silent engines that power local economies, too. For example, in

Wilmington, Delaware, the Port of Wilmington supports, I am told, more the 19,000 jobs in our region, several States. It is the United States' top seaport for fresh fruit imports as well. If you ate a banana this morning, it probably came through the Port of Wilmington.

The Army Corps is working diligently with our port on an expansion project that will open a channel to a new containment facility in Edgemoor, just a couple miles north of our current Port of Wilmington on the Delaware River. The Army Corps is responsible for dredging and maintaining access to this new channel, which over time will support more commerce and more jobs for the region.

In addition to authorizing the necessary projects, America's Infrastructure Act will also improve agency transparency and accountability for the budgeting, conduct, and completion of Federal projects. Our Committee has heard that the Corps' arcane benefits-cost analysis, which the Corps relies on to prioritize projects, often fails to capture the critical needs and true economic benefits of projects in smaller, coastal, rural, disadvantaged, and tribal communities. This legislation addresses those problems.

Meanwhile, too many of our communities are facing significant water contamination. America's Water Infrastructure Act reauthorizes the Clean Water Revolving Loan Fund for the first time since 1987, which I think is pretty close to the time of your birthday, your original birth, Senator Shelby. Anyway, I find that so many of our communities use that to improve their wastewater systems.

In the Drinking Water Bill, we authorize more than a half-billion dollars to provide critical drinking water infrastructure through the Small and Disadvantaged Communities Grant Program.

We also continue our work to address PFAS, commonly known as the forever chemicals, because they degrade so slowly over time. The Drinking Water Bill expands an EPA grant program that became law last year to allow it to provide funds to clean up groundwater contaminated with PFAS, in addition to drinking water.

The bill before us today also requires provisions that previously passed the Senate to require EPA to set a drinking water standard for two of the PFAS chemicals we are most concerned about, PFOA and PFAS.

Finally, looking to the future, these two bipartisan bills will also help us to fortify our communities from the growing impact of climate change. The bills expand grants that will help small and medium sized communities increase the resiliency of their water systems to natural hazards and to extreme weather.

Before I close, Mr. Chairman, I will just say that as far as we have come in reporting these bills today, we have more work to do before these bills are truly ready for the floor.

I just want to mention very briefly two issues in particular. First, Democratic Senators want to keep working on this bill as it moves forward to ensure that many types of ports receive a balanced distribution of funds from the Harbor Maintenance Trust Fund. I appreciate your agreement, Mr. Chairman, to ensure this outstanding issue is addressed before these pieces of legislation go to the Senate floor.

Second, I am troubled that we have not been able to make more progress on language submitted to the Committee by Senator Gilli-

brand that would ask EPA to determine whether to set standards under the Clean Water Act to limit the amount of PFAS that can be released into the environment by industry. Forcing water ratepayers to remove the PFAS from the drinking water and providing taxpayer funding to clean up contaminated sites are efforts made less effective if we don't also take steps to reduce the amount of PFAS being released into our environment in the first place.

I hope our Chairman will join me in the weeks ahead in leading a determined effort to find a bipartisan solution on this effort, something that my staff and I know other staffs are anxious to do.

Again, I appreciate that you are willing to ensure, Mr. Chairman, that these outstanding issues are addressed before these two pieces of legislation go to the Senate floor.

And with that, I again want to thank everyone who has worked so hard to bring us here to this day.

Thank you so much.

[The prepared statement of Senator Carper follows:]

STATEMENT OF HON. THOMAS R. CARPER,
U.S. SENATOR FROM THE STATE OF DELAWARE

Today, Chairman Barrasso, Chairwoman Capito, Chairman Cramer, Ranking Member Cardin, Ranking Member Duckworth, and I are releasing two draft pieces of water infrastructure legislation for stakeholder review, comments, and feedback. America's Water Infrastructure Act of 2020 and The Drinking Water Infrastructure Act of 2020 are the bipartisan product of months of work from the Senate Environment and Public Works (EPW) Committee, the EPW Transportation and Infrastructure Subcommittee, and the EPW Fisheries, Water, and Wildlife Subcommittee. I thank my colleagues and their staffs for working in a bipartisan and transparent manner to bring us to this stage in the Water Resources Development Act (WRDA) process.

Typically, at this stage in the WRDA development process, the Committee and Subcommittees would hold stakeholder information listening sessions and briefings. Soon thereafter, the Committee and Subcommittees would hold hearings to receive testimony from both the applicable Federal agencies and relevant stakeholders.

Unfortunately, due to the ongoing challenges due to the COVID–19 pandemic we are unable to hold in-person listening sessions and briefings and must adapt our process accordingly. Through this information gathering process, our Committee hopes to gain critical insights from Members of Congress, stakeholders, and the general public so that we can improve these two bipartisan draft bills before taking any legislative action.

Most Americans understand the importance of making improvements and investments in the infrastructure we can see, like our roads, highways, bridges, and airports. On the other hand, it is easy to overlook the infrastructure we rarely, if ever, see, like our pipes, shipping channels, and flood control structures. But if truth be known, every American relies on this unseen water infrastructure every day. Our Nation's water infrastructure is often the forgotten champion of our economy. It's essential to our way of life, and it's in desperate need of improvements and investments.

Our Nation's ports, inland waterways, locks, dams, flood and coastal storm protection, ecosystem restoration, and other water infrastructure are critical to generating economic growth, facilitating commerce and trade, and protecting our communities from the extreme weather events that have become all too familiar and all the more destructive. Our drinking water and wastewater systems are key components to the basic building blocks of life and business in America. In the face of the COVID–19 pandemic, for example, we have realized just how important it is to have access to soap and clean water—a simple yet effective way to prevent the spread of disease and protect Americans from this dangerous pandemic.

Both of these bipartisan draft bills would improve and invest in key water infrastructure systems throughout the country through the U.S. Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA).

The Corps' civil works program is a critical component of our Nation's economy and part of the backbone of our society. Over 99 percent of U.S. overseas trade

moves through waterways that the U.S. Army Corps of Engineers is responsible for maintaining.

Our Nation's ports are intrinsically tied to our way of life. For example, if ships carrying fruits, vegetables, meat, or seafood are unable to reach their destination, prices at the grocery store will rise. If prices at the grocery store rise, families who may already struggle to put food on their tables will have to figure out how to stretch their budgets even further. Improving access to our ports is not just a policy matter for Congress, it could be the difference between a hungry or a healthy child.

This draft bill makes investments in the ports and waterways that keep this country moving, from the Port of Wilmington in my home State of Delaware, to the Port of Mobile, to the Port of New York and New Jersey to the Tulsa Port of Catoosa.

Unfortunately, we currently have a construction backlog of infrastructure investment somewhere in the neighborhood of $96 billion, according to recent estimates from the Corps. Meanwhile, the agency's annual budget hovers around $4.6 billion. This bill begins addressing that backlog by authorizing critical investments in local-Federal relationships, leveraging existing resources to ensure we get the most "bang for our buck."

The bill also increases local participation, transparency, and accountability in the annual budget process. It's our hope that an increase in local participation will allow for a more transparent and long-term look at the Corps' activities. It would also help us to generate a stronger groundswell of support for increased appropriations for the agency's initiatives.

When disaster strikes, the Federal Government has to step in and help—a large part of the response effort is from the Army Corps of Engineers under the direction of other Federal agencies. Many people do not realize the critical role that the Corps serves in responding to all sorts of emergencies, like the flooding up and down the Missouri River last spring.

Even today, the Corps is hard at work helping States combat the novel coronavirus by constructing temporary hospitals in order to provide enough bed spaces for patients to receive treatment. This bill builds on the emergency authorities of the Corps and makes it easier for communities to get longer term assistance, rather than the quick fixes current law only allows the Corps to provide.

These bills also build on the work we did in the American Transportation and Infrastructure Act to fight the ever growing threat of climate change. Rising sea levels, extreme heat, flooding, and storm surges are already having devastating effects on our water infrastructure. Our draft bill authorizes $10 million for the U.S. Army Corps of Engineers to develop and carry out a plan for the mapping of coastlines that are experiencing rapid changes on a recurring basis due to the ever worsening impacts of climate change. In addition, America's Water Infrastructure Act of 2020 requires the Corps to consider the most beneficial use of dredged material, which includes providing sand dunes that protect coastal communities from extreme weather events.

In order to help our most vulnerable communities prepare for the impacts of climate change, both of these draft bills provide a combined authorization of $80 million for Water Infrastructure Resiliency and Sustainability Grant Programs, which award grants to small and medium sized communities to increase the resiliency or adaptability of water systems to natural hazards. America's Water Infrastructure Act of 2020 also includes programs aimed at reducing the harmful emissions that exacerbate climate change, authorizing $75 million in funding for the EPA to reduce air pollution emissions at ports and wastewater treatment facilities.

In addition to critical Corps programs, these bills also authorize funding for key programs at the EPA that address major drinking water and wastewater needs across the country. For the first time since 1987, the Drinking Water Infrastructure Act of 2020 reauthorizes the Clean Water State Revolving loan fund and its critical funding up to $3 billion annually over 3 years. This State revolving fund provides critical resources to States to fund wastewater infrastructure projects that serve communities across the country.

There is an ongoing drinking water contamination crisis in communities across the country. We need to invest in water infrastructure wisely. This bill makes it clear that we have learned our lessons from crises, like the one we saw in Flint, Michigan. It devotes more resources to the things that are most important, like making sure every parent—no matter what zip code they live in—can be confident that the water coming out of their tap is safe for their children and families.

This draft legislative package also builds on work this Committee has done and continues to do on per- and polyfluoroalkyl substances (PFAS). It provides an annual authorization of $300 million in grants for addressing emerging contaminants. It does this by increasing the funding available for the $100 million in annual grants that was enacted in last year's National Defense Authorization Act for re-

moving PFAS from drinking water and also adds a new focus on cleaning up contaminated sites and removing PFAS from groundwater, which many rely upon for drinking water.

This provision should matter to every Member of Congress; however, it is particularly important to me, given the growing concerns that I have about the groundwater contamination around Dover Air Force Base due to the use of these chemicals as a firefighting foam and industrial cleaner over many decades. I am also confident that the final legislation the Committee acts on will include the provisions unanimously adopted last year in the Senate to require EPA to set an enforceable drinking water standard for PFOA and PFOS (two specific PFAS) within 2 years. I hope to also continue to explore whether bipartisan consensus can be reached to include additional measures to prevent more PFAS contamination from industrial sources.

Finally, these draft bills offer critical assistance to some of our Nation's most vulnerable communities. They will help to fortify these communities from the impacts of climate change, while also investing more than a half-billion dollars to provide critical drinking water infrastructure through the Small and Disadvantaged Communities grant program. America's Water Infrastructure Act of 2020 also offers resources to help lower income individuals connect their homes to existing wastewater infrastructure, upgrade their septic systems, or install new septic systems. On the Corps side, this bill makes several policy changes to level the playing field for Environmental Justice communities to ensure that more of their projects are selected and are able to receive full Federal funding.

I want to thank the stakeholders who will engage in this process with us over the next 2 weeks, particularly the five who will participate in a written question and answer process with us: Niels Hansen with the Public Lands Council, Stephen Sandherr with the Associated General Contractors of America, Dan Coughlin with Sheridan Area Water Supply Joint Powers Board on behalf of the National Rural Water Association, Diane VanDe Hei with the Association of Metropolitan Water Agencies, and Tony Pratt with the American Shore and Beach Preservation Association.

In an uncertain time like the one in which we now live, and in a Congress that's frequently divided, I am grateful that we have been able to come together to strengthen our Nation's water infrastructure and to support the water programs and reforms that are so critical to the American people's way of life. I look forward to receiving comments and feedback on these draft bills, and I look forward to the work ahead of us to make them even stronger.

Thank you.

Senator BARRASSO. Thank you very much, Senator Carper.

I would now like to turn to our Subcommittee Chair and Ranking Members, and we will start first with Senator Capito.

Senator CAPITO. Thank you. For my statement?

Senator BARRASSO. If you would like, yes.

Senator CAPITO. You know what? Why don't I save my statement until after we vote?

Senator BARRASSO. Certainly.

Then, Senator Cardin.

Senator CARDIN. Well, I just really want to thank the leadership of the Committee. As you both have said, this bill represents the product of every member of this Committee. It has been done in a very bipartisan, open manner. It is critically important to our economy.

I could talk at length about how important it is to projects in the State of Maryland, but I will follow the example of my Subcommittee chair, and defer any further comments.

Senator BARRASSO. Well, thank you, but I do appreciate the bipartisan nature, because you looked terrific last night on Fox News extolling the virtues of the infrastructure bill, so thank you for that. I appreciate it.

Senator Cramer, anything you would like to add as a Subcommittee Chairman?

Senator CRAMER. Other than to just say thank you to both of you, for your leadership, and to the entire Committee. It is one of the joys of this Committee, is the bipartisan collaboration. So I look forward to making a longer statement with my amendment.

Senator BARRASSO. We will certainly do that.

Senator Inhofe, any final comments before we move to the vote?

Senator INHOFE. Just briefly. I think it is significant to recognize that—remember when Barbara Boxer and I took over the leadership back in 2014, this WRDA bill is supposed to be happening every 2 years, and it had been 7 years since the last one that we had. Since that time, it was 2014, 2016, 2018, and 2020, so that is a major thing to get back to the way it should have been.

The last thing I would mention is that a lot of people don't realize that Arkansas and Oklahoma are navigable States, and there are some things in here that are very effective for Senator Boozman and myself that we appreciate very much.

Thank you.

[The prepared statement of Senators Inhofe and Boozman follows:]

STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR FROM THE STATE OF OKLAHOMA, AND HON. JOHN BOOZMAN, U.S. SENATOR FROM THE STATE OF ARKANSAS

Mr. Chairman, we would like to say a few words about how critically important the McClellan-Kerr Arkansas River Navigation System (MKARNS) is to Oklahoma and Arkansas, and how Senator Inhofe's and my amendment will provide a new tool in the toolbox to deepen the MKARNS to its fully authorized depth of 12 feet.

Arkansas and Oklahoma have been working for more than a decade to deepen the MKARNS, a 445-mile long system consisting of 18 locks and dams that provides 9-foot depth inland navigation from the confluence of the White River and Mississippi River to the Tulsa Port of Catoosa, Oklahoma. There are five major public port facilities, and 62 private ports and terminals that support the movement of the major commodities shipped on the MKARNS. These commodities include coal, petroleum products, wheat, soybeans, fertilizers, sand and gravel, iron and steel products, and oversized/over-dimensional manufactured goods.

Deepening the MKARNS from a 9-foot channel to a 12-foot channel—so barges and boats can maximize the tonnage of cargo they can transport along this system—would result in a 40 percent increase (630 tons per barge) in the capacity of the MKARNS to transport these important products for our Nation's farmers, manufacturers, and small businesses. This increase in capacity would result in estimated shipper savings of $43,100,000 annually, which would dramatically reduce the price of goods for consumers across the country. The lower cost of transportation would also benefit agricultural users of the system in States like Arkansas, Oklahoma, Texas, Kansas, Missouri, Nebraska, Minnesota, North Dakota, South Dakota, Idaho, Colorado, Montana, New Mexico, Arizona, and Nevada.

In addition to the economic benefits of utilizing water resources infrastructure, by serving as maritime freight corridors for the shipment of goods, our inland waterways alleviates wear and tear to our surface transportation infrastructure, reduces congestion on roads and bridges, and allows us to transport these goods in a way that emits less pollutants into our atmosphere.

A 12-foot navigation channel was authorized in 2003 following a feasibility study by the U.S. Army Corps of Engineers, which found almost 90 percent of the channel to already be 12 or more feet deep. In 2005, Congress appropriated $7,000,000 to start construction of the deepening project, however, it was categorized as Operation & Maintenance dollars instead of Construction General dollars, thereby creating a technicality with the Corps that has now wrongly classified the 12-foot channel as a new start rather than the continuation of an existing project. Thus, the Corps has not maintained the authorized 12-foot navigation channel.

The Inhofe-Boozman amendment will give the Corps of Engineers the authority and flexibility to work with a non-Federal interest specifically for the purpose of deepening the MKARNS. If a non-Federal interest would like to dedicate funding to this authorized project before Federal dollars become available, they will be able to do so sooner rather than later. Our amendment also provides non-Federal spon-

sors the eligibility to be reimbursed by the Corps of Engineers subject to appropriations.

It is past time to get the ball rolling on this vitally important project, and I am confident the Inhofe-Boozman amendment will create a valuable mechanism to do so.

Senator BARRASSO. Thank you very much, Senator.

Now I would like to move to vote on the items on today's agenda.

I would like to first call up Barrasso-Carper-Capito-Cardin Substitute Amendment to S. 3591, America's Water Infrastructure Act of 2020, that was circulated last Friday. The Ranking Member and I have agreed that this substitute shall be considered the original text for purposed of amendments.

Members have filed amendments to the substitute. The Ranking Member and I have filed Barrasso-Carper No. 1, which incorporates additional input from members and stakeholders. With the agreement of the Ranking Member, I am happy to accept this amendment.

[The text of the amendment in the nature of a substitute is available at https://www.govinfo.gov/content/pkg/BILLS-116s3591rs/pdf/BILLS-116s3591rs.pdf]

Senator BARRASSO. The Ranking Member and I have agreed to vote on Barrasso-Carper No. 1 by voice vote, but members may choose to have their votes recorded after the voice vote.

Before that, Senator Cramer would like to offer an amendment.

Senator CRAMER. Thank you, Chairman. Let me ask for Cramer Amendment No. 2.

Thank you again, Chairman Barrasso, Ranking Member Carper, for the collaborative way that you approach this Committee. It is a real joy to be part of it. I think about last year, and what an honor it was to work with all of you on the largest highway bill in the history of our country that passed with this incredible cooperation. It was a joy, and it is great to be able to add these two bills to that infrastructure ambition.

That being said, I do have this amendment before the Committee to protect States' water rights, and I am asking for your support.

Last year, I led a bipartisan letter asking for the withdrawal of the Corps' disastrous water supply rule. Many of you signed that letter, and thankfully, the President withdrew the rule, because there was bipartisan resolve that the Army Corps had overstepped its bounds.

Western States span the ideological spectrum, but we were all united: Our water rights must be respected. Since the rule's withdrawal, I have worked closely with the Western Governors' Association, Western Attorneys General, and the Western Water Council to build upon this success by drafting legislation to address the longstanding conflict between the Army Corps of Engineers' application of Federal water law and western States' application of their water rights under the prior appropriation doctrine.

The amendment before you today only applies to Section 6 of the Flood Control Act for States located wholly or partly west of the 98th meridian. To be clear, the language I started with was much broader, but I wanted to be cognizant of the longstanding water litigation some eastern States have with the Corps.

This broader language, much more substantive language than the original amendment, is what was supported unanimously by

every Governor and every attorney general in the western United States. But I included multiple safeguards into the amendment to accommodate others' concerns.

It does not affect any State east of the Mississippi. Let me say that again, Mr. Chairman. It does not affect any State east of the Mississippi. It preserves all existing water supply contracts, and only applies to prior appropriation States.

Just like western States want to preserve our water rights, we are not trying to get involved in eastern States' water wars. The amendment codifies the historic practice of not requiring a water supply contract as part of granting water users access to Corps reservoirs in western States.

It is simple, but it is vital to States' rights to meet the water supply needs of their citizens.

For historical context, it was the Federal Government who dammed our rivers and flooded our land. It seems completely unreasonable that the Corps would then try to federalize the water system and force States and water users to ask them for permission to access it.

For further context, there are only 11 water supply contracts under Section 6 authority. One of those is in North Dakota.

Even though this withdrawal was quite literally a drop in the proverbial bucket and was swiftly approved by North Dakota, it took over 2 years to complete the water supply contract process. I think any of us would find that unacceptable, and no doubt, each of you have similar frustrations in your States.

The Flood Control Act clearly states, "It is declared to be the policy of the Congress to recognize the interests and rights of the States in determining the development of the watersheds within their borders." It is not often an issue unites States ranging from North Dakota to Oregon, to Oklahoma to Washington. However, when States are granted a right, we do expect it to be observed.

I have only been on this Committee for a little more than a year, but it has been a common refrain for many of you that the Corps is unresponsive, has overstepped its bounds, or has completely ignored congressional direction. We should not squander the opportunities we have to address some of these issues.

Mr. Chairman, like me, many members of this Committee are from western States or served as State legislators, regulators, or even Governors. No matter our political stripes, we all understand the importance of protecting the rights granted to our States, and I am sure each of you agree you would rather have your State determine how to best serve your constituents.

I respectfully ask you to support the amendment and look forward to continuing to work with each of you.

Thank you.

[The prepared statement of Senator Cramer follows:]

STATEMENT OF HON. KEVIN CRAMER,
U.S. SENATOR FROM THE STATE OF NORTH DAKOTA

Chairman Barrasso and Ranking Member Carper, thank you for compiling and releasing the draft legislative text for America's Water Infrastructure Act of 2020 (AWIA) and the Drinking Water Infrastructure Act of 2020. I appreciate the collaborative, bipartisan nature you have fostered on the EPW Committee as we construct important legislation like the bills before us today. The draft text and this informa-

tion gathering process is an important step to hear stakeholders' priorities, refinements, and concerns. I look forward to reviewing the input we receive through this process.

I have been a fervent supporter of passing a comprehensive infrastructure package into law. We unanimously passed the largest highway bill in history out of Committee last year. I was proud to support America's Transportation and Infrastructure Act in support of our Nation's highways and bridges. Our water infrastructure is equally vital, and I look forward to quickly moving these proposals through the legislative process. Our constituents understand the importance of infrastructure and are counting on us to get the job done.

As the Chairman of the Fisheries, Water, and Wildlife Subcommittee, I appreciate the work put into the Drinking Water Infrastructure Act. This bill places a high priority on rural, underserved areas who need help to safely and regularly access drinking water. It reauthorizes multiple drinking water programs important for North Dakota communities, especially those with small populations in rural areas. In addition, the proposal sets aside specific program funding for North Dakota's tribal communities to ensure they have access to critical drinking water programs.

America's Water Infrastructure Act is bipartisan legislation with practical solutions which benefit North Dakotans and Americans across the country. It would create jobs, bolster interstate commerce, protect local communities' access to safe drinking water, and provide much needed congressional oversight and direction for the U.S. Army Corps of Engineers (USACE). Western States have a long fraught relationship with the USACE, often feeling neglected, if not completely ignored. Water Resources Development Act provisions are a critical opportunity for Congress to provide necessary oversight and direction to a bureaucracy often run amok. AWIA contains multiple provisions to transform how the USACE operates and interacts with States and local communities.

As we started to draft this proposal, I reached out to North Dakotans to get their input. I appreciated the feedback and ideas I received from constituents. While not every priority was included, the current proposal provides substantial funding and reforms needed back home. AWIA includes approximately $17 billion in new Federal authorizations. It would increase water storage, provide protection from floodwaters, maintain the navigability of inland waterways, and repair aging wastewater and irrigation systems.

Throughout this process, I have worked closely with North Dakota and other western States seeking to address a longstanding issue with the USACE's refusal to acknowledge States' authority. I remain committed to include bipartisan legislation, requiring the USACE to follow congressional intent by deferring to State water appropriation rights.

Last year, I led a bipartisan group of our colleagues and interested stakeholders to express deep concern over the USACE's proposed Water Supply Rule. Thankfully, President Trump decided to repeal this deeply flawed rule. I am now working with our colleagues, especially western members, to develop bipartisan language to provide a permanent solution. It is unfortunate we could not reach a conclusion to this longstanding issue in time for this initial draft. The USACE needs to follow congressional intent and respect States' water allocation rights. Western States should not be held hostage by unrelated water wars and special interests, and I will continue pushing for a solution.

Thank you for holding this information gathering session, and I look forward to building upon the good work we have done.

[The text of the amendment follows:]

S. 3591, Cramer Amendment #2

This amendment will codify the US Army Corps of Engineers (USACE) historic practice of not requiring a water supply contract as part of granting water users access to project reservoirs for the purpose of appropriating natural flow in States located wholly or partly west of the 98th meridian. Although Section 6 of the Flood Control Act of 1944, 33 U.S.C. § 708, authorizes the Secretary of Army authority to enter into contracts for surplus water at project reservoirs, the USACE practice has been to grant access through real estate contracts. At present, there are only eleven active Section 6 water supply contracts in contrast to the more than 1,600 real estate contracts.

This amendment is vital to Western States that allocate water under the prior appropriation doctrine. Much of the water flowing through Corps reservoirs is natural flow of the rivers, not stored water. The natural flow is unappropriated water that Western States allocate to meet water supply needs of their citizens. This amendment will ensure access to these waters in accordance with the Congressional policy of the Flood Control Act of 1944, "to recognize the interests and rights of the States in determining the development of the watersheds within their borders and likewise their interests and rights in water utilization and control…." 33 U.S.C. § 701-1,

EDW20266 S.L.C.

S. 3591, Cramer #2

AMENDMENT NO._____ Calendar No._____

Purpose: To include a provision relating to water supply.

IN THE SENATE OF THE UNITED STATES—116th Cong., 2d Sess.

S._____

To provide for improvements to the rivers and harbors of the United States, to provide for the conservation and development of water and related resources, to provide for water pollution control activities, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. CRAMER

Viz:

At the appropriate place in title I, insert the following:

SEC. _____. WATER SUPPLY RULE.

(a) APPLICABILITY OF CERTAIN PROVISIONS OF LAW.—Beginning on the date of enactment of this Act, section 6 of the Act of December 22, 1944 (commonly known as the "Flood Control Act of 1944") (58 Stat. 890, chapter 665; 33 U.S.C. 708), shall not apply to a project in a State located wholly or partly west of the 98th meridian, except that nothing in this section affects or interferes

1 with a contract authorized under that section 6 in effect
2 on the day before the date of enactment of this Act.
3 (b) EASEMENT FOR ACCESS TO CORPS RES-
4 ERVOIRS.—In accordance with the first section of the Act
5 of December 22, 1944 (commonly known as the "Flood
6 Control Act of 1944") (58 Stat. 887, chapter 665; 33
7 U.S.C. 701–1), the Secretary shall allow access to project
8 reservoirs located in States located wholly or partly west
9 of the 98th meridian for purposes of appropriating water
10 for beneficial uses pursuant to State law.
11 (c) SAVINGS PROVISION.—
12 (1) IN GENERAL.—Nothing in section 6 of the
13 Act of December 22, 1944 (commonly known as the
14 "Flood Control Act of 1944") (58 Stat. 890, chapter
15 665; 33 U.S.C. 708), may be interpreted or applied
16 to interfere with the laws of any State relating to
17 the control, appropriation, use, or distribution of
18 water, or any vested right acquired under a State
19 law.
20 (2) INTERSTATE STREAMS.—Nothing in this
21 section affects the right of the Federal Government,
22 a State, or a landowner, appropriator, or user of
23 water to use any interstate stream or the water of
24 an interstate stream.

Senator BARRASSO. Thank you, Senator Cramer.

Anyone else like to address Senator Cramer's amendment?

Senator Shelby.

Senator SHELBY. Mr. Chairman, I will be brief.

I can understand, we all can, Senator Cramer's frustration with our water supply issues. This is something that my State of Alabama has grappled with for 30 years.

The people in my State, the Governor, and the attorney general and all of them have expressed immense concern over the proposed language and the precedent, basically the precedent, that it would set despite efforts to minimize the concerns. Fundamentally, this amendment, as you all know, would allow States to preempt Federal law and Corps of Engineers projects, which has the potential to impact downstream States. I understand how he has crafted it for the West and so forth, but I think it is a bad precedent, and I would oppose it.

Senator BARRASSO. Anyone else like to make a comment regarding this amendment?

I understand the importance of State water rights in the West. Water is vital for ranching, farming, and rural communities in Wyoming and North Dakota and the entire West. For years, my colleagues in the West have fought to protect our States' water from Federal encroachment, which is the spirit of this amendment.

Unfortunately, there still remain some concerns with the amendment as currently drafted, and it is for that reason that I believe we need to continue to work on this issue and address the potential unintended consequences which have just been raised by another colleague.

So I pledge to continue the conversation with my colleague from North Dakota and other members of the Committee moving forward, but will not be able to then support the amendment as drafted at this time.

At this time, we would offer the amendment from Senator Cramer, and the motion would be on approving Cramer 2. Is there a second?

Senator SULLIVAN. Second.

Senator BARRASSO. It is been moved and seconded.

All those in favor please say aye.

[Chorus of ayes.]

Senator BARRASSO. Opposed, nay.

[Chorus of noes.]

Senator BARRASSO. It is the opinion of the chair that the noes have it, and Cramer No. 2 is not agreed to at this time.

I would like to now call up Barrasso-Carper No. 1, and I ask that members withhold discussion of this amendment until we complete the voting.

I move to approve Carper-Barrasso No. 1. Is there a second?

Senator CARPER. Second.

Senator BARRASSO. All those in favor please say aye.

[Chorus of ayes.]

Senator BARRASSO. Opposed, no.

[No audible response.]

Senator BARRASSO. In the opinion of the chair the ayes have it, and Barrasso-Carper No. 1 is agreed to.

Any other Senators seek recognition to offer an amendment? I see no other members seeking recognition to offer an amendment.

I move to approve the substitute amendment to S. 3591 as amended and report S. 3591 as amended favorably to the Senate.

We will hold a roll call vote. Is there a second?

Senator CARPER. Second.

Senator BARRASSO. The Clerk will call the roll.

The CLERK. Mr. Booker.

Senator CARPER. Aye by proxy.

The CLERK. Mr. Boozman.

Senator BOOZMAN. Aye.

The CLERK. Mr. Braun.

Senator BRAUN. Aye.

The CLERK. Mrs. Capito.

Senator CAPITO. Aye.

The CLERK. Mr. Cardin.

Senator CARDIN. Aye.

The CLERK. Mr. Carper.

Senator CARPER. Aye.

The CLERK. Mr. Cramer.

Senator CRAMER. Aye.

The CLERK. Ms. Duckworth.

Senator CARPER. Aye by proxy.

The CLERK. Ms. Ernst.

Senator ERNST. Aye.

The CLERK. Mrs. Gillibrand.

Senator CARPER. Aye by proxy.

The CLERK. Mr. Inhofe.

Senator INHOFE. Aye.

The CLERK. Mr. Markey.

Senator CARPER. Aye by proxy.

The CLERK. Mr. Merkley.

Senator MERKLEY. Aye.

The CLERK. Mr. Rounds.

Senator ROUNDS. Aye.

The CLERK. Mr. Sanders.

Senator CARPER. Aye by proxy.

The CLERK. Mr. Shelby.

Senator SHELBY. Aye.

The CLERK. Mr. Sullivan.

Senator SULLIVAN. Aye.

The CLERK. Mr. Van Hollen.

Senator VAN HOLLEN. Aye.

The CLERK. Mr. Whitehouse.

Senator CARPER. Aye by proxy.

The CLERK. Mr. Wicker.

Senator WICKER. Aye.

The CLERK. Mr. Chairman.

Senator BARRASSO. Aye.

Clerk will report.

The CLERK. Mr. Chairman, the yeas are 21, nays are zero.

Senator BARRASSO. The yeas are 21, the nays are zero. We have approved S. 3591 as amended, which will be reported favorably to the Senate.

Now I would like to call up the Barrasso-Carper-Cramer-Duckworth substitute amendment to S. 3590, Drinking Water Infrastructure Act of 2020, that was circulated last Friday.

The Ranking Member and I have agreed that this substitute shall be considered the original text for purposes of amendments. Members have filed amendments to the substitute. The Ranking Member and I have filed Barrasso-Carper No. 2, which incorporates additional input from members and stakeholders.

[The text of the amendment in the nature of a substitute is available at https://www.govinfo.gov/content/pkg/BILLS-116s3590rs/pdf/BILLS-116s3590rs.pdf]

Senator BARRASSO. With the agreement of the Ranking Member, I am happy to accept this amendment.

The Ranking Member and I have agreed to vote on Barrasso-Carper 2 by voice vote. Members may choose to have their votes recorded after the voice vote.

Now, at this time, I would like to call up Barrasso-Carper 2 and ask that members withhold discussion on this amendment until after we complete the voting.

I move to approve Barrasso-Carper 2. Is there a second?

Senator CARPER. Second.

Senator BARRASSO. All those in favor, please say aye.

[Chorus of ayes.]

Senator BARRASSO. All those opposed, nay.

[No audible response.]

Senator BARRASSO. It is the opinion of the Chair that the ayes have it; Barrasso-Carper 2 is agreed to.

Any other members, Senators, seek recognition to offer an amendment?

I see no members seeking recognition to offer this amendment.

So at this point, I move approval of substitute amendment to S. 3590 as amended and report S. 3590 as amended favorably to the Senate.

We will hold a roll call vote on this. Is there a second?

Senator CARPER. Second.

Senator BARRASSO. The Clerk will call the roll.

The CLERK. Mr. Booker.

Senator CARPER. Aye by proxy.

The CLERK. Mr. Boozman.

Senator BOOZMAN. Aye.

The CLERK. Mr. Braun.

Senator BRAUN. Aye.

The CLERK. Mrs. Capito.

Senator CAPITO. Aye.

The CLERK. Mr. Cardin.

Senator CARDIN. Aye.

The CLERK. Mr. Carper.

Senator CARPER. Aye.

The CLERK. Mr. Cramer.

Senator CRAMER. Aye.

The CLERK. Ms. Duckworth.

Senator CARPER. Aye by proxy.

The CLERK. Ms. Ernst.

Senator ERNST. Aye.

The CLERK. Mrs. Gillibrand.
Senator CARPER. Aye by proxy.
The CLERK. Mr. Inhofe.
Senator INHOFE. Aye.
The CLERK. Mr. Markey.
Senator CARPER. Aye by proxy.
The CLERK. Mr. Merkley.
Senator MERKLEY. Aye.
The CLERK. Mr. Rounds.
Senator ROUNDS. Aye.
The CLERK. Mr. Sanders.
Senator CARPER. Aye by proxy.
The CLERK. Mr. Shelby.
Senator SHELBY. Aye.
The CLERK. Mr. Sullivan.
Senator SULLIVAN. Aye.
The CLERK. Mr. Van Hollen.
Senator VAN HOLLEN. Aye.
The CLERK. Mr. Whitehouse.
Senator CARPER. Aye by proxy.
The CLERK. Mr. Wicker.
Senator WICKER. Aye.
The CLERK. Mr. Chairman.
Senator BARRASSO. Aye.
The Clerk will report.
The CLERK. Mr. Chairman, the yeas are 21, the nays are zero.
Senator BARRASSO. Thank you.
The yeas are 21, the nays are zero. We have approved S. 3590 as amended, which will be reported favorably to the Senate.
I want to thank the members. The voting part of this business meeting is concluded.
Senator CARPER. Mr. Chairman.
Senator BARRASSO. Yes.
Senator CARPER. I just wanted to say a brief word. Just to commend our Chair of our relevant Subcommittee, the Transportation Infrastructure Committee, and to Ben Cardin, our Ranking Member. Thank you, both of you.
Senator BARRASSO. And our new Committee spokesman now on Fox News, as we saw last night.
Senator CARPER. That is right.
[Laughter.]
Senator BARRASSO. Are there members who have filed amendments that they did not offer but would still like to discuss?
If not, I would be happy to recognize any other members, and I know, Senator Capito, you deferred on making your opening statement until after the voting was completed out of courtesy for the other members.

OPENING STATEMENT OF HON. SHELLEY MOORE CAPITO, U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator CAPITO. Right.
Thank you, Mr. Chairman, and I thank everybody, members of the Committee, for the good, hard work.

I want to thank you, particularly, Chairman Barrasso, and Ranking Member Carper, thank you, and also Senator Cardin and I have worked, I think, very well together with our staffs, both on this bill and on the highway bill that we previously passed.

I would like to get into just some of the issues that are specific to my area that I think are particularly very, very good for my part of the country. This will reauthorize programs under the Corps of Engineers and the EPA that are critical to West Virginia. In particular, there is a provision in there that I authored that will establish a new program that will provide over $100 million for water and wastewater infrastructure in West Virginia and elsewhere in Appalachia. We are far behind, in some cases.

This legislation increases investments in our Nation's inland waterway infrastructure, and if you know anything about the eastern part of the country and certainly, those locks and dams on the Ohio, Kanawha, and Mon River are extremely important for moving commerce and for recreational purposes. By adjusting the cost share for projects funded with expenditures from the Inland Waterway Trust Fund, a long overdue update, and quite welcome, to help us expedite construction.

It also supports flood control through enhanced cooperation between the Corps and local communities, which is critical to a State like mine, again, because we have experienced catastrophic floods in recent years.

And it incorporates important changes to a program I created along with Senator Booker that will help train the next generation of water and wastewater workers. I am sure all of us are hearing that the work force is way down in this area, and attracting the new work force into what can be a career in water and wastewater is something that Senator Booker and I have worked on over the last several years. These are just a couple examples of improvements this will make to our water resource infrastructure.

I was also glad to see that some of the provisions that I authored are in the Drinking Water Infrastructure Act. This legislation authorizes several programs that will help community systems, such as those in West Virginia, provide safer, more affordable drinking water. I think Senator Cardin talked a lot about the importance of, in the COVID atmosphere that we are in now, knowing that your drinking water is safe and how important that is.

My bill with Senator Cardin, the Assuring Water Quality Infrastructure Act, is included and will provide grant funding to small water systems to address the issue of water loss. I was astounded when I read an article in our local paper that talked about the 50 percent or 80 percent of water loss that some of these systems, because they are so old, are leaking out of old infrastructure. A recent report detailed that some of the systems, as I said, have over 75 percent of the water they produce leave before it even reaches the tap.

We are lucky in our State, because as we are here today in the dampness of Washington DC, we do have a lot of water, luckily. The Drinking Water Infrastructure Act also includes provisions that address the issue of PFAS, something I have been extremely concerned about, and that contamination which has been a priority of mine.

Importantly, it includes legislation I co-sponsored with Senator Gillibrand that mandates that EPA establish a drinking water standard for two legacy compounds, PFO and PFOS, which have been shown to cause health problems in communities across the country and in my State particularly. This legislation also authorizes funding to address the presence of PFOS and other contaminants in drinking water through the purchase of filtration systems.

In closing, I would like to extend my gratitude to the staff that negotiated these bills many times in our absence, both with the Committee and our personal offices.

In my office, I would like to thank Max and Travis and Adam. In particular, I would like to thank on the Committee, Brian, Andrew, Lizzy, Craig, Christina, John, Annie, Susan, and Mark with the Committee, and Shannon and Andrew with Senator Cardin's office. Their hard work and dedication is to be commended.

I do look forward to the day, and hopefully this will be sooner than later, where we marry the two infrastructure bills together to serve as, I think, a great get back to work, rebuild America's infrastructure. The bills that we have passed overwhelmingly, now unanimously, through this Committee, so I join with you, Senator Barrasso, as the Chair and others to bring these to the full Committee to see this legislation become law.

Thank you so much.

[The prepared statement of Senator Capito follows:]

STATEMENT OF HON. SHELLEY MOORE CAPITO,
U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Thank you, Chairman Barrasso and Ranking Member Carper, for the opportunity to submit a statement on the release of draft legislative text for America's Water Infrastructure Act of 2020 (AWIA) and the Drinking Water Infrastructure Act of 2020. This draft legislation represents our continued commitment to strengthening our Nation's water resources infrastructure, and to providing Americans access to dependable water and wastewater services.

The draft text of AWIA 2020 is this Committee's latest bipartisan collaboration to advance biennial Water Resources Development Act (WRDA) legislation. As Chairman of the Subcommittee that oversees WRDA, I was proud to negotiate this draft legislation with Chairman Barrasso and Ranking Member Carper, as well as Subcommittee Ranking Member Cardin. It reauthorizes programs under the U.S. Army Corps of Engineers and the EPA critical to communities in West Virginia and across the Nation. Once enacted, it will increase investments in our Nation's inland waterways infrastructure, support flood control through enhanced cooperation between the Army Corps and local communities, authorize millions of dollars for water and wastewater infrastructure in Appalachia, and help train the next generation of wastewater workers, among many other important provisions.

I was also glad to see provisions I authored included in the draft text of the Drinking Water Infrastructure Act; in particular, legislation I introduced along with Ranking Member Cardin, the Assuring Quality Water Infrastructure Act, that will authorize funding to small public water systems to undertake infrastructure asset management and prevent water leaks while protecting ratepayers. We were also able to secure inclusion of our legislation to reauthorize and strengthen a program that funds projects to increase water systems' resiliency against natural hazards like flooding. In conjunction with other provisions such as those that provide resources to address emerging contaminants like PFAS, this draft legislation represents a significant step toward providing safer, more effective drinking water services for West Virginians and all Americans.

Finally, I would like to extend my gratitude to the staff that negotiated these bills, both at the Environment and Public Works Committee and in our personal offices. In particular, Brian, Andrew, Lizzy, Craig, Christina, John, Annie, Susan, and Mark with the Committee, and Shannon and Andrew with Senator Cardin's office. Your hard work and dedication are to be commended.

I look forward to hearing from our invited witnesses and other stakeholders as part of this process, and to introducing this legislation in the near future. Moving forward, I will work with my colleagues on this Committee and in the full Senate to see them become law.

Senator BARRASSO. Thank you, Senator Capito.

Senator Sullivan, before calling on you, I want to thank you for your continued leadership in all areas of infrastructure, highways, roads, bridges, tunnels, water infrastructure, ports, dams, reservoirs; thank you for your incredible work.

OPENING STATEMENT OF HON. DAN SULLIVAN, U.S. SENATOR FROM THE STATE OF ALASKA

Senator SULLIVAN. Thank you, Mr. Chairman, and I want to return the compliment to you and the Ranking Member. I think this is exactly what our country needs right now, seeing Senators back at work, which we all are, working in a bipartisan way that will help our country at the appropriate time, and I think it is getting very soon, to really turbo-charge the economic recovery that we are going to need as we get through this pandemic.

You mentioned the highway bill, 21 to zero by the way, out of this Committee, really important, super bipartisan. And then today with regard to the WRDA bill, legislation with regard to clean water, again, completely bipartisan. The combination of these two coming together as an infrastructure bill, bipartisan, it is what our country needs.

The President certainly supports us. I have had the opportunity to talk to him about this, as I know you have, Mr. Chairman, so I want to thank you and Ranking Member Carper's leadership on this issue.

Again, I think it is what we need to be doing, what the American people need to be seeing, progress, bipartisan progress on something that the vast majority of my constituents in Alaska, but probably all over the Nation, support: Serious infrastructure for our Nation to help our economy, help our workers, get through this crisis.

Mr. Chairman, I want to just highlight two areas of this legislation that are particularly important to my State, and I think important in the Nation. One, as has already been mentioned, is the work with regard to clean water, clean sewers, or I am sorry, flush toilets.

I hate to say it, but I remind this Committee a lot that there are communities in America, a number of them in my State, that don't have running water, that don't have flush toilets. Over 30 communities in Alaska, primarily Alaska Native communities, don't have what every American thinks is a basic amenity, that they have in their State, or in their community. We don't have it.

The CDC is saying wash your hands very frequently, OK? That is important. How can you wash your hands if you don't have running water? You can't.

And by the way, these are communities that during the Spanish flu, over a hundred years ago, got wiped out. My State had more deaths per capita than any State in the country during the Spanish flu because that ripped through Native communities and had mortality rates, in some, in the 70 percent—mortality rates.

So there is a lot of trepidation in my State and in some of my communities right now with regard to this pandemic. But one thing we have to do is to be able to get running water, basic running water and sewer to communities in America. This legislation will help in that regard.

I want to thank Senator Capito. I know this issue is important to her, but all the members on this matter.

The second issue I wanted to highlight, Mr. Chairman, is another that relates to our economic security, but our national security. This legislation takes a very important step forward with regard to recognizing the strategic importance of the Arctic to our Nation.

America is an Arctic nation. We are an Arctic nation because of the State of Alaska. There is a sense of Congress in this legislation that recognizes the strategic importance of the Arctic to our economic and national security and calls for expediting the feasibility report for the first deep draft port in the Arctic.

Let me explain. Right now, in the bill, this will serve as a placeholder for this vital project. It is my understanding that the Chief's Report for the Arctic deep draft port in Nome, Alaska, is expected to be finalized at the end of the month. We are all recognizing, a number of us sit on the Armed Services Committee, on this Committee, that the receding sea ice, the opening of transportation routes, the increase in human activity, the increases in resource opportunities, have all increased the interest globally in the Arctic. Even the Chinese have a plan with regard to the Arctic, although they are not an Arctic nation.

It is possible now to safely navigate the Arctic via the Northwest Passage and Northern Sea route. These routes can save shippers weeks in travel and are thousands of nautical miles shorter when compared to using the Suez Canal or Panama Canal routes.

Yet, in America, an Arctic nation, we have essentially no strategic Arctic port that can handle any kind of serious shipping, any kind of Navy shipping, any kind of Coast Guard shipping, icebreakers.

In fact, the closest U.S. port to the Arctic is in Dutch Harbor, that is Unalaska, which is a thousand miles away from the Arctic Circle, or the Port of Alaska in Anchorage, my hometown, which is 1,500 nautical miles away from the Arctic. Otherwise, there is nothing there.

So, Mr. Chairman, I want to thank you and the Ranking Member and this entire Committee, because what will be happening with this legislation is that the Port of Nome will be positioned as a critical Arctic port that can handle deepwater draft ships, like destroyers, like icebreakers. This will be the first of what I believe will one day be a system of Arctic ports in Port Clarence, north of Nome, Cape Blossom near Kotzebue.

But our Arctic neighbors have had a head start. As I mentioned, the government of China, the government certainly of Russia has prioritized the development of Arctic capabilities.

The Russians have created a new Arctic military command and construction or refurbishment of 16 deepwater ports and 14 military airfields. Again, the U.S., an Arctic nation, has none. Not one. Not one deepwater port in the Arctic, but that changes today.

Our first Arctic deepwater port draft will support U.S. Navy and Coast Guard assets operating in the region, as well as provide vital support for economically challenged communities in western Alaska.

Mr. Chairman, there is a lot at stake here: National security, economic security, the environment. But I want to mention also, there are 23 communities across the Norton Sound Region that depend heavily on the Port of Nome as a trans-shipment point for fuel, equipment, supplies, many of them legitimately threatened by the high price of fuel and goods, and over 53 communities in my State in the broader region that rely on Nome as a maritime freight hub.

Enabling this port and other ports to have ships, large ships that can dock there, can lower the cost of commodities, bringing savings to these residents in my State and the surrounding communities, many of whom practice a subsistence based way of life.

So again, this is all in this bill. Very important issues, I would say, for the Nation, certainly for Alaska, and I want to thank the Chairman and the Ranking Member on including these in a very bipartisan way. It is important progress that we are seeing today in the Senate.

Thank you, Mr. Chairman.

Senator BARRASSO. Well, I appreciate your comments, Senator Sullivan. As you talk about the role of China, the role of Russia now in the Arctic, I have read that China is trying to build another Silk Road through the Arctic, and Russia is trying to build a toll road through the Arctic, and the impact of those on the globe as well as on our own economy in America.

So I appreciate your ongoing leadership and dedication to fight for these ports and the issues related to, not just your State, but to American security, economic as well as other components of security as we face a changing world. Thank you so much.

Anyone else like to make any statements at this time?

Senator CARPER. I have a unanimous consent, but I want to thank the Senator from Alaska for an interesting and informative statement. It was just really a pleasure to work with you on this legislation, and your staff. Thank you.

Mr. Chairman, I have a unanimous consent request, but as you know, we have received, I think, more than 150 stakeholder letters on our bills with comments during the information gathering process that you led over the last 2 weeks, I think people had until May 1st to offer their comments.

All of the comments included statements of support for various provisions, helpful feedback, and additional ideas. We are really appreciative of that process that we are going to continue to work through this water infrastructure process in a bipartisan fashion.

So I would ask unanimous consent to insert in the record for this markup the more than 150 letters we received during the information gathering process.

Senator BARRASSO. Without objection. I appreciate your lead on that, because that is right, last Friday, the Committee concluded the information gathering process on draft legislation entitled America's Water Infrastructure Act of 2020 and the Drinking Water Infrastructure Act of 2020, Stakeholder Comments. This in-

formation gathering process help lay the foundation for the two bills that we reported out today.

So we now have unanimous consent to enter the full record of this information gathering process in today's business meeting, and I thank you for raising that issue.

[The referenced information follows:]

560 W. Lake St.
Sixth Floor
Chicago, IL USA
60661-6600

312.440.4300
Fax: 312.440.0559
Toll-free: 888.243.3368
agd.org

Written Comments of

Dr. Connie White, D.D.S., FAGD
President
The Academy of General Dentistry

to the

United States Senate

Committee on Environment and Public Works

For an Information-Gathering Process on Draft Legislation entitled,

America's Water Infrastructure Act of 2020 and

the Drinking Water Infrastructure Act of 2020: Stakeholder Comments

May 1, 2020

Founded in 1952, AGD is the only professional association that exclusively represents the needs and interests of general dentists. AGD provides its more than 39,000 members with the resources, support, and inspiration they need to deliver the best dental care and oral health education to the public. AGD's mission is to "advance general dentistry and oral health through quality continuing education and advocacy."

YOUR VOICE FOR **EXCELLENCE** THROUGH EDUCATION AND **ADVOCACY**

ACADEMY of GENERAL DENTISTRY
560 W. Lake St. Sixth Floor Chicago, IL USA 60661-6600
312.440.4300 Fax: 312.440.0559 Toll-free: 888.243.3368 agd.org

Chairman Barrasso, Ranking Member Carper, and members of the Senate Environment and Public Works (EPW) Committee, thank you for providing the opportunity to submit written stakeholder comments to support the committee's "*Information-Gathering Process on Draft Legislation entitled, America's Water Infrastructure Act of 2020 and The Drinking Water Infrastructure Act of 2020: Stakeholder Comments*".

On behalf of the Academy of General Dentistry (AGD) and its 39,000 members, I would like to thank you for your efforts to develop and consider these discussion drafts. AGD appreciates the EPW Committee's commitment to enriching the lives of so many Americans via improvements to our nation's water resources infrastructure and drinking water infrastructure.

AGD is a professional association for general dentists from across the United States. Founded in 1952, the AGD has grown to become the country's second-largest dental association, and it is the only association that exclusively serves the needs and represents the interests of general dentists. The organization also works to promote the oral health of the public and to foster general dentists' continued proficiency through quality continuing education.

As dentists, we work to ensure that people in communities we serve are able to access safe, clean, and appropriately fluoridated drinking water. The provisions you have incorporated within *American's Water Infrastructure Act of 2020* (AWIA 2020) and *The Drinking Water Infrastructure Act of* 2020 will meaningfully advance this goal in every state, especially in small and rural communities. Small and rural water utilities are often in greatest need of funding assistance for operating, maintaining, and improving their drinking water systems.

The current COVID-19 crisis is placing a substantial financial impact on drinking water utilities[1], many of which were already in dire need of funding to sustain infrastructure and facilities. Delay, prevention, or suspension of community water treatment plans as they relate to water fluoridation will likely result from impending budgetary constraints, intensified by the current crisis.

Community water fluoridation is one of the most practical, cost-effective, equitable, and safe measures communities can take to prevent tooth decay and improve their oral health. Water fluoridation is the best method of delivering fluoride to all members of the community, regardless of age, education, income level, or access to routine dental care.

The benefits of fluoride's effectiveness extend throughout life, resulting in fewer and less severe cavities. Each generation born since the implementation of water fluoridation 75 years ago has enjoyed better dental health than the generation that

[1] American Water Works Association/Association of Metropolitan Water Agencies, Financial Impact of the COVID-19 Crisis on U.S. Drinking Water Utilities, April 2020 (https://www.awwa.org/Portals/0/AWWA/Communications/AWWA-AMWA-COVID-Report_2020-04.pdf)

ACADEMY of GENERAL DENTISTRY
560 W. Lake St. Sixth Floor Chicago, IL USA 60661-6600
312.440.4300 Fax: 312.440.0559 Toll-free: 888.243.3368 agd.org

preceded it[2]. In light of this, the AGD has long supported community water fluoridation programs and efforts to preserve and expand its practice, which has been one of public health's greatest success stories.

AGD strongly supports the committee's work to advance and refine these discussion drafts during these tumultuous and challenging times. We hope that Congress will pass water resources legislation, such as AWIA 2020 and the Drinking Water Infrastructure Act of 2020, in short order. Bolstering our nation's water resources is essential in ultimately providing Americans access to water that will enhance and protect their health.

Thank you for the opportunity to submit these written comments. If you or your staff have any questions or need additional information, please contact Daniel J. Buksa, JD, Associate Executive Director of Public Affairs, by phone at (312) 440-4328 or via email at daniel.buksa@agd.org to let us know how we may be of further assistance.

Sincerely,

Connie L. White, D.D.S., F.A.G.D.

Connie White, D.D.S., FAGD
President
Academy of General Dentistry

[2] Centers for Disease Control and Prevention, 75 Years of Community Water Fluoridation, January 2020 (https://www.cdc.gov/fluoridation/basics/anniversary.htm)

Comments of the Association of Equipment Manufacturers on the discussion drafts of America's Water Infrastructure Act (AWIA) of 2020 and the Drinking Water Act of 2020

The Association of Equipment Manufacturers (AEM) represents more than 1,000 companies that support more than 2.8 million jobs in the equipment manufacturing industry. Our members and the economic sectors they support – agriculture, construction, utilities, mining, and forestry--depend on American water infrastructure to transport their goods to local and global markets, and also play an integral role in the construction and maintenance of U.S. water systems.

Our nation's waterways and harbor infrastructure play a significant role in connecting goods and agricultural commodities with consumers domestically and globally. They represent one of the most cost-effective, fuel-efficient, and safest modes of freight transport domestically. Our nation's water utility infrastructure is equally important to the lives of Americans everyday particularly in ensuring that we have access to safe, clean drinking water. However, the current state of U.S. water infrastructure threatens to undermine our nation's ability to compete in the global marketplace, access to safe water in our communities, and the important role the equipment manufacturing industry plays in the U.S. economy.

America's Water Infrastructure Act (AWIA) of 2020 and the Drinking Water Act discussion drafts are a strong starting point for the biennial water resources reauthorization; however, some changes should be incorporated to ensure sufficient, reliable funding is provided to adequately build and maintain critical water infrastructure programs. AEM is pleased to present the following comments to members of the Senate Environment and Public Works Committee as it finalizes legislation to reauthorize water infrastructure programs.

AEM has long advocated for cutting bureaucratic red-tape and streamlining the feasibility studies that prevent projects from moving forward. According to the GAO, some feasibility studies conducted for U.S. Army Corps of Engineers projects have taken more than a decade to complete. AEM is pleased to see that the discussion draft includes language setting a goal for completion of feasibility studies within two years. Strict adherence to this timeline will ultimately help reduce costs for important water infrastructure projects.

Additionally, AEM supports the reauthorization of both the Clean Water State Revolving Fund (CWSRF) Program and Water Infrastructure Finance and Innovation Act (WIFIA) included in

the legislation. However, we share concerns about the authorization levels of the CWSRF in particular as the levels that rise to $3 billion in fiscal year 2023 are not as generous as authorizations provided for in legislation that passed through the House Transportation and Infrastructure Committee, H.R. 1497, Water Quality Protection and Job Creation Act of 2019, which AEM supported. Given the immense need required to maintain and upgrade our nation's water infrastructure systems, it is important that the Committee consider making the authorizations for grant and loan programs covered by the bills even more robust.

While both pieces of legislation show an increased federal interest in investing in new technologies through programs like the Advanced Drinking Water Technologies study and grant program and the stormwater infrastructure technology grant program, AEM is disappointed that greater attention was not given to encouraging the adoption of digital construction technologies and techniques. Technological advancements have created new opportunities and benefits for infrastructure construction projects. Technologies such as embedded sensors, digital twins, 3D modeling, Building Information Modeling, Information and Communication Technology, automation, and unmanned aerial vehicle use have been shown to improve safety, reduce waste, prevent project errors, and mitigate cost overruns in commercial projects. These benefits could be expanded to our nation's infrastructure assets throughout their lifecycle stages including planning, construction, operation, and maintenance with broad federal adoption. As Committee moves forward with finalizing legislation, AEM encourages the inclusion of language to incentivize the adoption and deployment of these advanced technologies.

AEM is grateful to the Committee for producing strong, bi-partisan discussion drafts reauthorizing important water infrastructure programs. We appreciate the opportunity to outline comments reflecting the needs of the equipment manufacturing industry and we look forward to serving as a resource for the Committee as these bills move forward. For more information about these recommendations, please contact AEM staff Kate Fox Wood at kfoxwood@aem.org or Megan Evans at mevans@aem.org.

Robert C. Lanham, Jr, President
Dan K. Fordice, III, Senior Vice President
Lester C. Snyder, III, Vice President
Jeffrey L. DiStefano, Treasurer
Stephen E. Sandherr, Chief Executive Officer
Jeffrey D. Shoaf, Chief Operating Officer

May 6, 2020

The Honorable John Barrasso
Chairman
Committee on Environment & Public Works
United States Senate
Washington, DC 20510

The Honorable Tom Carper
Ranking Member
Committee on Environment & Public Works
United States Senate
Washington, DC 20510

RE: *America's Water Infrastructure Act of 2020* and the *Drinking Water Infrastructure Act of 2020*

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of the Associated General Contractors of America (AGC) – the leading association in the construction industry representing more than 27,000 firms, including America's leading general contractors and specialty-contracting firms – thank you for your bipartisan leadership in developing *America's Water Infrastructure Act of 2020* (AWIA) and the *Drinking Water Infrastructure Act of 2020* (DWIA). These bipartisan bills are a positive step forward as Congress works to address our nation's water resources infrastructure and water infrastructure needs. These investments will create jobs, improve the quality of life for all Americans, and help grow our economy now and in the future.

AWIA authorizes approximately $17 billion in critical water resources projects across the nation. AGC supports provisions in the bill that: accelerate the environmental review and permitting process for projects; extend a pilot program that allows non-federal interests to carry out feasibility studies and projects; improve navigability of the inland waterways; provide the USACE with emergency contracting authority; and increase water storage.

Additionally, AWIA will increase investment in our clean water infrastructure. AGC supports provisions in the bill that: authorize funding for water infrastructure through existing and new programs, such as the Water Infrastructure Finance and Innovation Act Program and the Clean Water State Revolving Fund Program; provide needed technical assistance to local communities; and improve the resiliency and sustainability of clean water infrastructure.

DWIA authorizes approximately $2.5 billion to improve our drinking water infrastructure. AGC supports provisions in the bill that reauthorize the Safe Drinking Water Act emergency fund, which provides technical assistance to communities facing critical drinking water needs; authorize funding to combat the threats to public health, resulting from contaminates, such as lead, in drinking water; establish programs to help guarantee the operational sustainability and the resiliency of small and midsize water systems; and create new discretionary grant programs.

AGC urges you to avoid including controversial provisions that could jeopardize the bipartisan support for these bills. AGC looks forward to working with you as the legislative process continues.

Sincerely,

James V. Christianson
Vice President, Government Relations

Cc: Members of the Senate Committee on Environment and Public Works

2300 Wilson Blvd., Suite 300, Arlington, VA 22201 | 703.548.3118 | AGC.org

WRDA 1986
SEC. 729. STUDY OF WATER RESOURCES NEEDS OF RIVER BASINS AND REGIONS.
(a) The Secretary, in coordination with the Secretary of the Interior and in consultation with appropriate Federal, State, and local agencies, is authorized to study the water resources needs of river basins and regions of the United States. The Secretaries shall report the results of such study to Congress not later than October 1, 1988.
(b) In carrying out the studies authorized under subsection (a) of this section, the Secretaries shall consult with State, interstate, and local governmental entities.
(c) There is authorized to be appropriated $5,000,000 for fiscal years beginning after September 30, 1986, to carry out this section.

WRDA 2000

SEC. 202. WATERSHED AND RIVER BASIN ASSESSMENTS.
Section 729 of the Water Resources Development Act of 1986 (100 Stat. 4164) is amended to read as follows:
SEC. 729. WATERSHED AND RIVER BASIN ASSESSMENTS.
(a) IN GENERAL.—The Secretary may assess the water resources needs of river basins, aquifers and watersheds of the United States, including needs relating to—
(1) ecosystem protection and restoration;
(2) flood damage reduction;
(3) navigation and ports;
(4) watershed protection;
(5) water supply; and
(6) drought preparedness.
(7) groundwater sustainability
(b) COOPERATION.—An assessment under subsection (a) shall be carried out in cooperation and coordination with—
(1) the Secretary of the Interior;
(2) the Secretary of Agriculture;
(3) the Secretary of Commerce;
(4) the Administrator of the Environmental Protection Agency; and
(5) the heads of other appropriate agencies.
(c) CONSULTATION.—In carrying out an assessment under subsection
(a), the Secretary shall consult with Federal, tribal, State, interstate, and local governmental entities.
(d) PRIORITY RIVER BASINS AND WATERSHEDS.—In selecting river basins and watersheds for assessment under this section, the Secretary shall give priority to—
(1) the Delaware River basin;
(2) the Kentucky River basin;
(3) the Potomac River basin;
(4) the Susquehanna River basin; and
(5) the Willamette River basin.
(e) ACCEPTANCE OF CONTRIBUTIONS.—In carrying out aassessment under subsection (a), the Secretary may accept contributions, in cash or in kind, from Federal, tribal, State, interstate,

and local governmental entities to the extent that the Secretary determines that the contributions will facilitate completion of the assessment.
(f) COST-SHARING REQUIREMENTS.—
(1) NON-FEDERAL SHARE.—The non-Federal share of the costs of an assessment carried out under this section shall be 50 percent.
(2) CREDIT.—
(A) IN GENERAL.—Subject to subparagraph (B), the Secretary may credit toward the non-Federal share of an assessment under this section the cost of services, materials, supplies, or other in-kind contributions provided by the non-Federal interests for the assessment.
(B) MAXIMUM AMOUNT OF CREDIT.—The credit under subparagraph (A) may not exceed an amount equal to 25 percent of the costs of the assessment.
(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $15,000,000.''.

WRDA 2007
SEC. 2010. WATERSHED AND RIVER BASIN ASSESSMENTS.
Section 729 of the Water Resources Development Act of 1986 (33 U.S.C. 2267a; 114 Stat. 2587–2588; 100 Stat. 4164) is amended—
(1) in subsection (d)—
(A) by striking ''and'' at the end of paragraph (4);
(B) by striking the period at the end of paragraph
(5) and inserting a semicolon; and
(C) by adding at the end the following:
(6) Tuscarawas River Basin, Ohio;
(7) Sauk River Basin, Snohomish and Skagit Counties, Washington;
(8) Niagara River Basin, New York;
(9) Genesee River Basin, New York; and
(10) White River Basin, Arkansas and Missouri.'';
(2) by striking paragraph (1) of subsection (f) and inserting the following:
(1) NON-FEDERAL SHARE.—The non-Federal share of the costs of an assessment carried out under this section on or after December 11, 2000, shall be 25 percent.''; and
(3) by striking subsection (g).

Agricultural Business Council of Kansas City
P.O. Box 26426
Kansas City, MO 64196
(816) 912-2084
www.agbizkc.com

April 29, 2020

Hon. John Barrasso, Chairman
Committee on Env. and Public Works
United States Senate
Washington D.C. 20510

Hon. Thomas R. Carper, Ranking Member
Committee on Env. and Public Works
United States Senate
Washington D.C. 20510

Dear Chairman Barrasso and Ranking Member Carper:

The Agricultural Business Council of Kansas City writes in response to the Committee's solicitation of views on "America's Water Infrastructure Act of 2020." We write to formally express our strong support for S. 3403, the Lower Missouri River Flood Prevention Program Act, and we ask that this letter be made part of the Committee's official record on this subject.

The Council is an association that advocates growth and awareness of the food, fiber, agri-science and related industries in the Kansas City region. Council members include agricultural producers, producer group representatives, agribusiness, communications, legal, financial, education, farm equipment, natural resources, animal health, animal feed, energy, food processing, crop input, state government agencies, biofuels, software technology, and others with an interest in agriculture.

This legislation would improve the U.S. Army Corps of Engineers' (USACE) process for managing water resource projects along the lower Missouri River system. The bill would establish a new program that would require the USACE to implement a system-wide approach to water development projects to reduce flood risk and improve flood protection along the lower Missouri River. The proposal would provide greater efficiencies and streamlining with regard to how the USACE plans for and manages Missouri River water resource development projects from inception to completion.

Devasting floods along the Lower Missouri in 2019 created great hardship for affected producers and local businesses. We believe passage of the legislation would help create a framework for needed improvements in river management.

We appreciate your consideration.

Sincerely,

Robert Petersen

Robert Petersen
Executive Director
Bob.petersen@agbizkc.com

The Agricultural Business Council of Kansas City

DANIEL HORRIGAN, MAYOR

DEPARTMENT OF PUBLIC SERVICE
AKRON WATERWAYS RENEWED!
166 SOUTH HIGH STREET, ROOM 701
AKRON, OHIO 44308-1627
Phone: (330) 375-2355
E-mail: Pgsellman@AkronOhio.gov

AkronWaterways Renewed!

PATRICK D. GSELLMAN PE
AWR PROGAM MANAGER

April 30, 2020

Senate Committee on Environment and Public Works
QFR@epw.senate.gov

America's Water Infrastructure Act of 2020
The Drinking Water Infrastructure Act of 2020

On behalf of the citizens of the City of Akron, Ohio and the many neighboring communities Akron serves, we are writing to strongly urge that the America's Water Infrastructure Act of 2020 and the Drinking Water Infrastructure Act of 2020 include economic stimulus and regulatory relief to address the massive economic impact from the coronavirus pandemic on our water and wastewater systems and the customers they serve.

Once we are past the immediate medical and economic crisis, we should turn to restarting America's economic engine. One of the best ways Congress can help is by investing in America's drinking water and wastewater infrastructure through these two Acts. Also, there is an opportunity to better financially assist communities in complying with burdensome environmental laws and regulations.

The economic impacts of coronavirus are expected to be enormous. Akron, like many other Ohio cities, heavily relies on income tax as a major source of revenue, which will be immediately and greatly affected by the unprecedented amount of unemployment and business closures. In addition, decreased revenue from households unable to pay their bills and shuttered businesses, combined with water shutoff moratoriums, will lead to millions of dollars in lost revenue for our water and wastewater system. Akron has already seen a 16% reduction in water usage in the last three weeks. This loss in revenue is negatively impacting Akron's ability to meet its required funding needs for operation, maintenance and capital expenditures for water and wastewater services.

Akron, prior to the pandemic, already had unaffordable wastewater rates due to a $1.2 billion massive (federal court ordered) combined sewer overflow program and was in greater need of capital investments in drinking water infrastructure. In general, America and its cities have a backlog of needed investment in critical water and wastewater infrastructure.

In order to start to address these needs, Akron supports the inclusion of the following items in the two Acts under discussion.

- Inclusion of strong funding for drinking water and wastewater infrastructure as part of any economic stimulus package.

- Additional funding to the State Revolving Loan Funds in order for the States to provide grants and principal forgiveness loans.
- Additional funding for the Great Lakes Region to protect the nation's greatest supply of fresh water.
- Infusion of money (especially into low income and communities of color) for needed projects to provide local employment and money into the economy.

- Support for the Integrated Planning process (and appropriate amendments to Akron's Consent Decree) to prioritize projects of greatest need, reduce costs, and provide equal or better water quality improvements. Specific examples include the following:
  - Replacement of the Akron Ohio Canal Interceptor - Enhanced High Rate Treatment project as required in its Consent Decree, which provides for an insignificant amount of water quality benefit, for asset management projects including, but not limited to, sewer lining and rehabilitation, green infrastructure, and additional sewer separations.
  - Consideration of the inclusion of alternative projects such as the removal of the Cuyahoga River Gorge Dam and projects upstream of the Cuyahoga Valley National Park to improved water quality.
  - Support of Integrated Planning alternative projects such as Akron's Northside Project in place of Akron's Consent Decree Tunnel project. The Northside project is a sustainable project that using "green" technologies in place of "gray" infrastructure. It would be a first step of building local infrastructure to fight climate change and improve resiliency.

- Financial support for major, sustainable, infrastructure projects that address issues dealing with replacing aging infrastructure, significant reduction of combined sewer overflows, treatment of storm water, use of "green" infrastructure, replacement of lead water services, and upgrades of the public water system. Specific examples include the following:
  - Financial support for Akron's Northside project
  - Financial support for needed water plant and water system asset management projects.

One of the best ways that Congress can help the City of Akron, Ohio is by investing in its' water and wastewater infrastructure to stimulate the economy, putting people to work (lower income families and people of color in our urban core) and protecting the environment. Thank you for the opportunity to comment on your bills under consideration. For additional information, please feel free to contact Patrick Gsellman as shown below.

Sincerely,

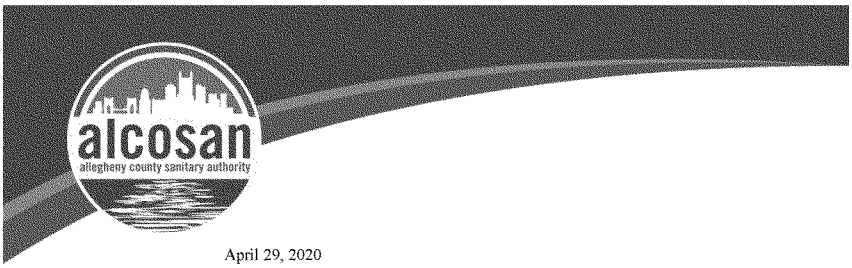
Patrick D. Gsellman PE 4/30/20

Patrick D. Gsellman, PE
Akron Waterways Renewed Program Manager

PDG\

Contact Information:
Patrick Gsellman, PE, Akron Waterways Renewed Program Manager
166 South High Street, Akron, Ohio 44308
Pgsellman@akronohio.gov
330-375-2201

ec:
Ohio Senator Sherrod Brown
Ohio Senator Rob Portman
Representative Tim Ryan, Ohio District 13
Representative Marcia Fudge, Ohio District 11
Representative Anthony Gonzalez, Ohio District 16



Members of the Board
Corey O'Connor
Chair Person
Rep. Harry Readshaw
Sylvia C. Wilson
Shannah Tharp-Gilliam, Ph.D.
Jack Shea
John Weinstein
Brenda L. Smith

Arletta Scott Williams
Executive Director
William H. Inks, CPA
Director
Finance & Administration
Jan M. Oliver
Director
Regional Conveyance
Douglas A. Jackson, P.E.
Director
Operations & Maintenance
Kimberly N. Kennedy, P.E.
Director
Engineering & Construction
Michelle M. Buys, P.E.
Director
Environmental Compliance
Jeanne K. Clark
Director
Governmental Affairs
Joseph Vallarian
Director
Communications

April 29, 2020

The Honorable John Barrasso
Chair, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Thomas Carper
Ranking Member, Senate Committee on Environment and Public Works
456 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chair Barrasso and Ranking Member Carper:

On behalf of the Allegheny County Sanitary Authority (ALCOSAN), thank you for the opportunity to provide comments on the *America's Water Infrastructure Act of 2020* (AWIA 2020) discussion draft. ALCOSAN is a municipal sewer authority in Allegheny County, Pennsylvania which provides wastewater conveyance and treatment services to nearly 1 million daily users in 83 municipalities, including the City of Pittsburgh. We are pleased to see the significant investments proposed for clean water initiatives in Title II and we greatly appreciate the Committee's attention to these important matters.

We strongly support the proposed investments in Sections 2001, 2005, 2006, 2007, 2008, 2012, 2014, 2015, and 2016 of Title II. ALCOSAN's small customer municipalities will also benefit from provisions that aim to assist small or medium facilities, including Sections 2003 and 2004. These provisions will help communities address critical infrastructure needs by providing needed capital investments and technical assistance. ALCOSAN is especially supportive of Section 2007, which reauthorizes the Sewer Overflow and Stormwater Reuse Municipal Grants Program at an increased level of $250 million for Fiscal Years 2021 and 2022. This program gives ALCOSAN the opportunity to compete for much needed grant funding to help implement its $2 billion Clean Water Plan. This plan, which is required by federal consent decree, will significantly improve water quality through reducing overflows into regional waterways. Grant funding such as this helps reduce the overall financial burden on our ratepayers, which is a critical task, especially during times of economic downturn.

3300 Preble Avenue • Pittsburgh, PA 15233-1092 • ph: 412.766.4810
www.alcosan.org

ALCOSAN also strongly supports Section 2012, which requires ten percent of Clean Water State Revolving Funds to be used for grants, negative interest loans, and loan forgiveness or to buy, refinance or purchase debt. We would, however, encourage the Committee to consider requiring a greater percentage of funds be used for these purposes in Fiscal Year 2021 in light of the economic stresses resulting from the COVID-19 pandemic. A similar approach was taken in the *American Recovery and Reinvestment Act of 2009* to help stimulate the economy during the 2008-2009 Recession.

In addition, ALCOSAN expresses very strong support for Section 1204(b)(21), which would modify the authorized funding level for the South Central Pennsylvania environmental restoration infrastructure and resource protection development pilot program under Section 313 of the *Water Resources Development Act of 1992*. The current authorization is effectively depleted; in order to complete any more projects using the authority, the authorization must be amended to provide additional funding. This authority is important to ALCOSAN and the region because it provides an important avenue to secure grant assistance to construct water-related environmental infrastructure and resource protection and development projects. We very much appreciate the Committee's inclusion of this important modification in the discussion draft.

Thank you for the opportunity to provide these comments to the Committee and are grateful for your consideration. If you have any questions, please contact me by email at Jeanne.Clark@alcosan.org or phone at 412-734-6222.

Very truly yours,

ALLEGHENY COUNTY SANITARY AUTHORITY

Jeanne K. Clark
Director of Governmental Affairs

ALLIANCE FOR
american
manufacturing

May 1, 2020

Honorable John Barrasso
Chairman, Committee on Environment
and Public Works
United States Senate
Washington, DC 20510

Honorable Thomas R. Carper
Ranking Member, Committee on Environment
and Public Works
United States Senate
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of the Alliance for American Manufacturing (AAM), I write to commend your efforts to authorize much needed, American-made investments in our nation's water resources, water treatment and drinking water distribution infrastructure, through the *Drinking Water Infrastructure Act of 2020* and the *American Water Infrastructure Act of 2020 (AWIA)*. America's water infrastructure network is in desperate need of repair. AAM stands by your commitment to enact meaningful investments in our critical infrastructure during the 116th Congress.

AAM strongly supports language in the *Drinking Water Infrastructure Act* that makes permanent the Drinking Water State Revolving Fund's (DWSRF) "American Iron and Steel" (AIS) domestic content procurement preference. This policy has been continually applied to the DWSRF program since FY 2014 through its inclusion in each of the last seven annual appropriations to the Environmental Protection Agency. The AIS statute was also authorized and extended by Congress in both its 2016 and 2018 water resources development acts. Making this policy permanent is long overdue and we commend the bipartisan support on the committee for its inclusion in the underlying legislation.

Six years ago, Congress approved two separate, but effectively identical, statutes permanently applying the AIS requirement to the Clean Water State Revolving Fund and Water Infrastructure Finance Innovation Act program in the *Water Resources Reform and Development Act of 2014*. The permanent application of AIS procurement preferences to the DWSRF would ensure that EPA's principle federal infrastructure assistance programs are administered consistently, providing certainty for domestic manufacturers and their raw material suppliers, and ensuring that investments in critical water infrastructure create and sustain American jobs.

Policies like the AIS are broadly supported by American voters. A 2019 poll conducted by the Mellman Group and Public Opinion Strategies showed that 80 percent of likely voters support Buy America, with little difference between Americans irrespective of their demographic, geographic, or political identification. Americans overwhelmingly support these policies because they understand that when taxpayer dollars are spent on public infrastructure, using American-made iron and steel ensures that we incentivize factory investment and job creation here at home.

Domestic content procurement preferences serve not only as an acknowledgement of U.S. manufacturers' continued commitment to their domestic operations and American workers, but also of their compliance with labor, workplace safety, and environmental laws. The procurement policies of the EPA, which administers the DWSRF, should not be divorced from its regulatory

711 D Street, NW, 3rd Floor • Washington, DC 20004 • 202-393-3430 • americanmanufacturing.org

ALLIANCE FOR
american
manufacturing

policies. It is simply indefensible for the EPA to impose regulatory burdens on U.S. manufacturers and their raw material suppliers only to use U.S. tax dollars to source materials from foreign nations without comparable environmental safeguards or enforcement. Buy America policies ensure that public procurement is aligned with our shared public policy objectives.

We encourage the committee to apply domestic content procurement preferences to additional programs and ensure that our tax dollars are spent here at home rather than in China, whose manufacturers are some of the world's most polluting and are deeply connected to, if not owned by, the government itself. For instance, the committee proposes a new Drinking Water Infrastructure Discretionary Grant Program that does not appear to be covered by a domestic content procurement preference. The same is true with respect to various clean water grant programs administered by the EPA. These are missed opportunities to reinvest hundreds of millions of hard-earned tax dollars back into communities across America.

Thank you for your leadership in working to maintain and improve our infrastructure. With strong, permanent Buy America preferences in place, these investments support U.S. manufacturing jobs and incentivize capital investments here at home rather than offshore.

Sincerely,

Scott N. Paul
President

711 D Street, NW, 3rd Floor • Washington, DC 20004 • 202-393-3430 • americanmanufacturing.org

ALLIANCE FOR
american
manufacturing

Contact Information:
Submitted on behalf of AAM President Scott N. Paul by
Riley Ohlson
Vice President - Federal Affairs
711 D Street NW
Washington DC, 20004
ROhlson@aamfg.org
202.695.8119

May 1, 2020

The Honorable John Barrasso
Chairman
Senate Committee on the Environment and Public Works
Washington, DC 20510

The Honorable Thomas Carper
Ranking Member
Senate Committee on the Environment and Public Works
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper:

The Alliance for the Great Lakes (Alliance) appreciates the Senate Committee on Environment and Public Works for its bi-partisan effort in releasing the draft America's Water Infrastructure Act and the Drinking Water Infrastructure Act of 2020. We also appreciate the opportunity to provide the Committee with our comments on the draft bills as the Senate continues its deliberations. The Alliance is a member of the Healing Our Waters – Great Lakes Coalition and our comments closely track comments that we signed onto as part of that Coalition.

America's Water Infrastructure Act of 2020

The U.S. Army Corps of Engineers (USACE) plays a critical role in helping Great Lakes states protect and restore the Great Lakes. America's Water Infrastructure Act of 2020 could help continue the progress being made in partnership with the USACE, in addition to addressing critical water infrastructure needs that support our region's environment and economy. The Alliance would like to comment on the following:

Title I – Water Resources Development

Subtitle A – General Provisions

Sec. 1002 – Great Lakes comprehensive flood protection study

Great Lakes coastal communities face significant challenges as lake levels have fluctuated dramatically in recent years. These fluctuations will only become more common and more severe as climate change continues to impact the region. The Alliance supports the inclusion of another

150 N. Michigan Ave. • Suite 700 • Chicago, Illinois 60601 • (312) 939-0838 • alliance@greatlakes.org • www.greatlakes.org
Buffalo • Chicago • Cleveland • Detroit • Milwaukee

comprehensive study on shoreline protection and resiliency in response to flooding from record high lake levels in 2019.

Sec. 1017 – Continuing authority programs

The Alliance appreciates the Committee's efforts to expand access to and the affordability of water resource projects to small and disadvantaged communities. Establishing a cost-share waiver for these communities under the continuing authorities program will help local and regionally beneficial projects get started and reach completion. We also support the increases in the authorization levels for the Section 204, 206, and 1135 Continuing Authorities Programs.

Sec. 1041 – Brandon Road study

The Alliance supports the Brandon Road Lock & Dam project as a critical line of defense against the advance of the invasive carp. Asian carp pose the single biggest aquatic invasive species threat to the nationally significant Great Lakes, bordered by eight states and two Canadian provinces. Preventing Asian carp from entering the Great Lakes is a priority for the Alliance. We appreciate the Committee's proposed adjustment to the cost-share requirement, but we urge Congress to further adjust the cost-share to full federal expense in recognition of the national importance of this project.

Sec. 1093 – Harmful algal blooms demonstration program

Harmful algal blooms fueled by phosphorus runoff from cities and farms are a significant issue in the Great Lakes region. These harmful algal blooms close beaches, kill fish, harm recreational economies and impact local drinking water supplies. The Alliance supports establishing a demonstration program to determine the causes of, and how to effectively treat and eliminate, harmful algal blooms within the Great Lakes and Lake Okeechobee, FL, and applicable tributaries.

Subtitle D – Water Resources Infrastructure:

Sec. 1401 – Project authorizations

The Alliance appreciates the Committee's authorization of the Great Lakes and Mississippi River Interbasin Study-Brandon Road. This project is essential to keep Asian carp from entering the Great Lakes. We strongly support the USACE's efforts to quickly move forward with this project to protect the Great Lakes ecosystem and economy.

Title II – Clean Water

Sec. 2007 – Sewer overflow and storm reuse municipal grants

The Alliance strongly supports the reauthorization of the EPA Sewer Overflow and Stormwater Reuse Municipal Grant program, increasing its annual funding authorization to $250 million for fiscal years 2021 – 2022. More than 70 percent of all combined sewers, which collect both sewage and

stormwater runoff, in the United States are located in the Great Lakes region.12 Combined sewer overflows during heavy rains lead to raw or poorly treated sewage polluting our lakes. In areas with significant paved surfaces and aging stormwater infrastructure, urban flooding and basement backups pose serious health risks and result in significant economic losses. These challenges are expected to get worse due to the impacts of climate change.

Sec. 2012 & Sec. 2015 – Use of Clean Water State Revolving Funds & Reauthorization of Clean Water State Revolving Loan Funds

The Alliance supports the reauthorization and increased funding for the Clean Water State Revolving Loan Fund (CWSRF) under Sec. 2015. The American Society of Civil Engineers' 2017 Report Card for America's Infrastructure gave the nation's aging wastewater system a "D+". Capital investment needs for the nation's wastewater and stormwater systems are estimated to total $271 billion over the next twenty-five years. Given the need across the nation, we urge the Committee reauthorize the CWSRF at no less than $10 billion each year for at least the next five years. This investment would support public health, the environment and the economy.

The Alliance appreciates the intent to codify the minimum 10 percent set-aside for the CWSRF program for grants, negative interest loans, and loan forgiveness. This subsidization is critical for many communities struggling to finance critical water infrastructure projects. We urge the Committee to clarify Sec. 2012 to ensure it provides a 10 percent minimum for this additional project subsidization and not a cap.

The Alliance also urges the Committee to permanently establish the Green Project Reserve within the CWSRF and direct at least 20 percent of funding to projects that incorporate nature-based solutions that provide green infrastructure and other nature-based solutions that provide significant environmental and community benefits.

Sec. 2010 – Grants for construction, refurbishing, and servicing of individual household decentralized wastewater systems for individuals with low or moderate income

The Coalition supports the establishment of a decentralized wastewater grant program. Public sewer systems do not extend to all communities, with estimates suggesting that more than 1.7 million people in the U.S. lacking access to basic plumbing facilities. This lack of connection to public systems is primarily borne by low-income and communities of color, with system failures leading to public health and water quality concerns. The Coalition supports assisting these low- and moderate-income households but urges the Committee to remove its geographic eligibility restriction to include the households across the country including the Great Lakes region.

Sec. 2017 – Small and Disadvantaged Community Analysis

The Alliance strongly supports the inclusion of a Small and Disadvantaged Community analysis proposed in Sec. 2017. Economically disadvantaged communities are often the worst impacted by ageing and deteriorating infrastructure, facing significant financial burdens and unaffordable water

rates that make investing in the upgrades necessary to comply with clean water standards close to impossible. It is critical to examine the historical distribution of funds and identify obstacles to communities applying for funds. As a nation, we need to improve distribution and access to funding and financing for economically disadvantaged communities.

The Alliance also supports the proposed reauthorization or establishment of the following programs:

- Clean water infrastructure resiliency and sustainability program - Sec. 2001 establishes a new EPA grant program to assist publicly owned treatment works in increasing their resilience and adaptability to natural hazards. Authorized at $5 million for each fiscal year 2021 – 2024.
- Technical assistance for Treatment works - Sec. 2002 reauthorizes a series of technical assistance grants for rural, small, and tribal municipalities. Increasing its authorization to $75 million for every fiscal year 2021 – 2024. Sec. 2003 establishes a new circuit rider program, awarding grants for technical assistance to small and medium publicly owned treatment works. Authorized at $10 million for each fiscal year 2021 – 2024
- Water infrastructure and workforce investment - Sec. 2008 reauthorizes the Water Infrastructure Workforce Development program. Doubling its authorization to $2 million for each fiscal year 2021 – 2024 and expanding those entities eligible for grants.
- Connections to publicly owned treatment works - Sec. 2011 establishes a new EPA grant program to reimburse publicly owned treatment works or nonprofits for the costs of connecting households to municipal or private wastewater systems. Authorized at $20 million for each fiscal year 2021 – 2022.
- Water Infrastructure financing - Sec. 2014 reauthorizes the Water Infrastructure Finance and Innovation Act through FY2024.

Title III – Tribal and Other Matters

Sec. 3003 – Mapping and screening tool

The Alliance appreciates the Committee's continued commitment to the use and updating of the EPA's EJSCREEN program. It is an important tool in the consideration of environmental justice in decision-making.

Sec. 3006 – Great Lakes Restoration Initiative

The Alliance supports the reauthorization of the Great Lakes Restoration Initiative at $375 million for FY2022. We urge the Committee to adopt the full reauthorization proposed by S. 2295, authorizing the GLRI through FY2026 with incremental increases of $25 million per year reaching its original funding level of $475 million in FY26. Bipartisan support for the federal Great Lakes Restoration Initiative has resulted in significant on-the-ground environment and community improvements in all eight Great Lakes states. The Great Lakes Restoration Initiative is a critical program that is improving water quality, protecting the environment, improving the lives of people across the region, and supporting local economies. A 2018 study from the University of Michigan showed that every $1.00 of federal spending on GLRI projects between 2010 and 2016 will produce $3.35 in additional economic activity in the Great Lakes region through 2036.

Thank you for considering our comments and perspective on America's Water Infrastructure Act of 2020. The Alliance also appreciates the opportunity to provide comments on the Drinking Water Infrastructure Act of 2020.

Drinking Water Infrastructure Act of 2020:

According to the American Water Works Association, an estimated $1 trillion is necessary to repair, replace, and expand drinking water distribution systems over the next two decades. In 2017, the American Society of Civil Engineers gave our nation's drinking water system a "D" saying that much of our drinking water infrastructure is nearing the end of its useful life. The U.S. Environmental Protection Agency's Drinking Water Infrastructure Needs Survey and Assessment, submitted to Congress in March 2018, found that the Great Lakes states have an outsized infrastructure need, with the eight states representing nearly 24% of total national need. The Great Lakes region is experiencing an alarming trend of diminished drinking water safety while local costs continue to rise. Low-income households are especially burdened by these costs. We appreciate the Committee's efforts to address these issues and would like to provide comments on the following:

Sec. 4 – Drinking Water State Revolving Loan Fund

The Alliance appreciates the Committee's efforts to support the remediation and mitigation of public health threats to drinking water through the Drinking Water State Revolving Loan Fund. Too many households have water that is contaminated from lead. Replacing this dangerous infrastructure must be a top priority. We support the inclusion of a minimum 20 percent set-aside for additional subsidies for disadvantaged communities to public water systems addressing the threat of heightened exposure to contaminants, including lead.

Sec. 6 – Assistance for Small and Disadvantaged Communities

Section 6 reauthorizes and expands EPA's Small and Disadvantaged Communities program increasing its authority to $60 million in FY2021 and $100 million for each fiscal year 2022 – 2024. The Alliance supports the expansion of this program and the adjustment of its cost-share from a minimum of 45 percent to a waivable 10 percent non-federal contribution.

Sec. 7 – Reducing Lead in Drinking Water; Lead Mapping Pilot Program

The Alliance supports the creation of this pilot program that will provide valuable information to advance the critical mapping processes necessary to accurately map and locate lead service lines. This is an essential step in replacing dangerous lead service lines in communities across the country.

Sec. 10 – Needs Assessment for Nationwide Rural and Urban Low-Income Community Water Assistance

The Alliance strongly supports the inclusion of this provision. A study to examine the prevalence of low-income households that do not have access to affordable drinking water services is critical. We urge the Committee to also address access to affordable wastewater and municipal stormwater

services in addition to drinking water services.

Sec. 11 – Lead Contamination in School Drinking Water

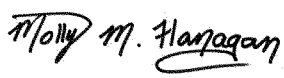
The Alliance supports reauthorization of EPA's Voluntary School and Child Care Lead Testing program through FY2022. We urge the Committee to increase the funding authorization for the program and include resources to support point of use filters for schools and day care centers that are waiting for their lead lines to be replaced.

The Alliance also supports the proposed reauthorization and establishment of the following programs:

- Technical assistance and grants for emergencies affecting public water systems - Sec. 3 reauthorizes the Emergency Situations program at $35 million for each fiscal year 2021 – 2024, clarifying the eligibility of the program to address public health threats resulting from contaminants such as lead. Sec. 3 reauthorizes the technical assistance program for small public water systems to achieve and maintain compliance with drinking water standards.
- Drinking water infrastructure resilience and sustainability programs - Sec. 6 reauthorizes EPA's small systems grant program to increase resilience to natural hazards and increases its authorization from $4 million to $10 million for each fiscal year 2021 – 2024. Sec. 9 creates an identical program for mid-size systems and authorizes it at $5 million for each fiscal year 2021 – 2024.
- Grants for the connection to public water systems - Sec. 6 establishes a new EPA grant program to provide grants for the connection of low-income households to public water systems and authorizes $20 million for each fiscal year 2021 – 2022.
- Pilot program for state competitive grants for underserved communities - Sec. 6 establishes a new pilot program, State Competitive Grants for Underserved Communities and authorizes it at $50 million for each fiscal year 2021- 2024.
- Indian Reservation drinking water program - Sec. 12 reauthorizes the Tribal Drinking Water program, increasing its authorization from $20 to $50 million for each fiscal year through 2024.

The Alliance appreciates the opportunity to provide comments on the draft America's Water Infrastructure Act and the Drinking Water Infrastructure Act of 2020. Thank you for your consideration. Please contact the Alliance for the Great Lakes Vice President for Policy, Molly Flanagan, if you have any questions at mflanagan@greatlakes.org or (312) 445-9741.

Sincerely,



Molly M. Flanagan

April 30, 2020

Honorable John Barrasso
Chairman
United States Senate
Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington DC 20510-6175

Honorable Tom Carper
Ranking Member
United States Senate
Committee on Environment and Public Works
456 Dirksen Senate Office Building
Washington, D.C. 20510

Re: America's Water Infrastructure Act of 2020

Dear Chairman Barrasso and Ranking Member Carper:

The American Association of Port Authorities (AAPA) is pleased to see the introduction of the America's Water Infrastructure Act of 2020 (AWIA 2020).

We appreciate your efforts to remove hurdles and streamline processes to the Corps navigation program, like the 2-year Feasibility Study completions. The bill addresses several AAPA requests for technical revisions to improve efficient and cost-effective product delivery. The bill also approves new feasibility studies and approves Chiefs Reports to proceed with design and construction, which are essential to support and expand the nearly 31 million American jobs that generate $378 billion in Federal, State and Local tax revenue each year from port activities.

AWIA 2020 is also the opportunity to conclude many years of efforts and complete legislative action regarding the Harbor Maintenance Trust Fund, HMTF. AAPA's HMTF proposed legislation with its 4 pillars, has been split into 2 pieces with the 'full use' pillar addressed in the CARES Act of 2020. The remaining 3 pillars are: (1) permanent authorization of the Donor and Energy Transfer Ports program with expanded uses and funding; and funding assurances for (2) emerging harbors and the (3) Great Lakes region. While these provisions were not included in the EPW draft AWIA release, we look forward to working with you to secure their inclusion prior to Senate passage. This legislative proposal benefits over 800 ports around the Nation that will see advantages through the inclusion of the remaining 3 pillars.

We thank you for your continued leadership on the introduction of the AWIA 2020 and urge you to include the remaining HMTF provisions in the legislation to permanently solve the HMTF port maintenance issue.

Sincerely,

Christopher J. Connor
President and CEO
American Association of Port Authorities
1010 Duke Street
Alexandria, VA 22314

POC: Jim Walker, jwalker@aapa-ports.org 703-254-7105

A Long-Term Funding Solution for Port Maintenance
GOOD FOR PORTS, GOOD FOR THE NATION

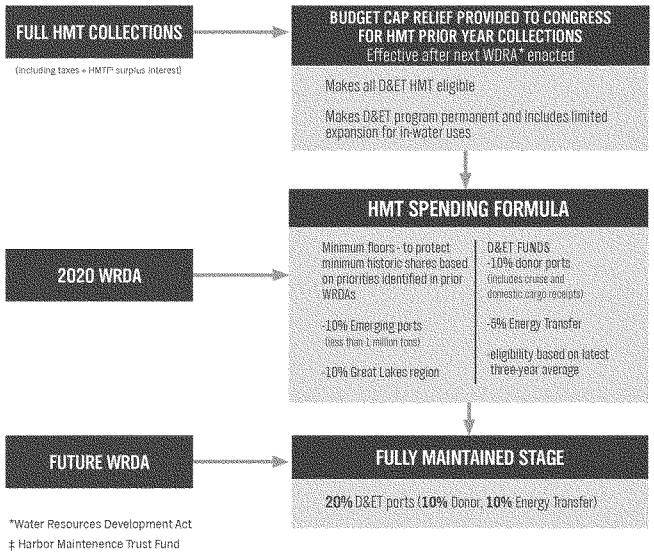
AMERICA: KEEP IT MOVING

After years of underutilizing Harbor Maintenance Tax (HMT) collections, a comprehensive solution that dedicates full use of the annual revenues to the U.S. Army Corps of Engineers (Corps) will result in the long-term sustainability of our nation's harbor maintenance needs.

The port industry has agreed on a fair and equitable framework that provides full use of the HMT by the Corps, ensures year-to-year funding sustainability and assures the most efficient use of collected harbor maintenance funds. Under this plan, the prior year's HMT revenues would be appropriated to the Corps.

FOR U.S. PORTS, MAINTENANCE IS THE HIGHEST PRIORITY.

This plan will restore and fully maintain the nation's water highways using existing revenues with NO NEW TAXES. It has four pillars: (1) Full use of HMT; (2) Donor and Energy (D&ET) Port spending expansion; and minimum floors for both (3) emerging ports and (4) the Great Lakes.



*Water Resources Development Act

‡ Harbor Maintenence Trust Fund

AAPA American Association of Port Authorities

1010 Duke Street
Alexandria, VA
22314-3589

703.684.5700
Fax: 703.684.6321
www.aapa-ports.org

A Long-Term Funding Solution for Port Maintenance
GOOD FOR PORTS, GOOD FOR THE NATION

AMERICA: KEEP IT MOVING

FOR U.S. PORTS, MAINTENANCE IS THE HIGHEST PRIORITY

Responsible for over a quarter of United States GDP and nearly 31 million American jobs, a well-maintained port system is vital to the manufacturers, exporters and farmers who count on U.S. ports to move their products to market. Eliminating the diversion of Harbor Maintenance Tax (HMT) funds away from their intended purpose is important to ensure a steady flow of U.S. goods to international markets.

A PORT INDUSTRY SOLUTION TO FIX A BROKEN SYSTEM

After years of underutilizing the HMT, enabling all funds collected are used each year by the U.S. Army Corps of Engineers (Corps) will result in the long-term sustainability of our nation's harbor maintenance needs.

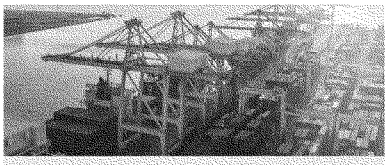
The port industry has agreed on a fair and equitable framework that guarantees full use of the HMT by the Corps, ensures year-to-year funding sustainability and provides the most efficient use of collected harbor maintenance funds.

ENSURING TAX FAIRNESS

The port industry has agreed on a plan that creates a budget incentive to spend 100 percent of the tax paid by shippers to our ports, while providing no additional tax burden on the industry or taxpayers. It assures a fair, equitable and reliable way to ensure the health of this critical part of America's transportation infrastructure. Under this plan, HMT yearly revenues would be appropriated to the Corps.

AAPA'S HARBOR MAINTENANCE FRAMEWORK

- A comprehensive solution that provides 100% of taxes collected from shippers to our nation's seaport infrastructure and international competetiveness.
- A long-term solution that fixes an unfair system and addresses the health and wellbeing of our seaport water highways that are critical for delivering goods to Americans.
- All HMT collections to restore and maintain U.S. water highways complement the $155 billion in port-related capital investments planned to assure safe and efficient freight movement.
- A fair and equitable approach that enables water transportation cost savings to be fully realized by American consumers and U.S. exporters competing in the global marketplace.



FOUR PILLARS OF THE PLAN

- ✓ **Full use of HMT revenues plus interest on the Harbor Maintenance Trust Fund**
- ✓ **Donor and Energy Transfer Port Funding**

Protection for:
- ✓ **Emerging ports funding**
- ✓ **Great Lakes System Funds**

Support the AAPA plan to restore and fully maintain the nation's water highways – with no new taxes!

@seaportsdeliverprosperity

@AAPA_Seaports

www.aapa-ports.org/movingamerica

AAPA American Association of Port Authorities
1010 Duke Street · Alexandria, VA · 22314-3589
703.684.5700 · aapa-ports.org

May 1, 2020

The Honorable John Barrasso
Chair
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Tom Carper
Ranking Member
Senate Committee on Environment and Public Works
456 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso and Ranking Member Carper:

Thank you for the opportunity to provide policy recommendations regarding the drafts of the *America's Water Infrastructure Act of 2020* and the *Drinking Water Infrastructure Act.* There is broad agreement that infrastructure investment is necessary for the safety and economic development of our country, but funding remains a challenge. This was true prior to the COVID-19 crisis, which has brought the need to restart our economy to be our next national priority after ensuring the health and safety of our citizens.

Rebuilding our nation's crumbling infrastructure is a surefire way to promote resiliency and get Americans back to work. The most cost-effective way to rebuild infrastructure is to promote open competition. Open competition will remove regulatory barriers to materials selection, extending federal dollars and preventing price gouging or inflation. Recent studies have shown that cities can cut the costs of water infrastructure projects by almost one-third if they utilize open competition. Potential nationwide savings from open competition are in the hundreds of billions of dollars. Once we have recovered from COVID-19, opening the door at the start of a construction surge to the broadest possible range of materials (that meet standards) also means more flexibility in the market to meet shortages, match local supply and demand, and get our economy up and running as quickly as possible.

Currently a large number of municipalities have regulatory restrictions that greatly limit the types of materials that can be considered for infrastructure projects. By limiting choice and taking many potential solutions off the table, these regulations have increased costs for projects and blocked new and innovative materials from being considered. The result is an archaic system that props up material monopolies resulting in billions of dollars in wasted local, state and federal resources that could be put to better use.

Simple, common-sense legislation that uses competition to help stretch our investments in water infrastructure further is good for business, taxpayers, local governments, and the country. As you consider writing water infrastructure legislation please include open competition requirements.

Please do not hesitate to contact me at jill_brubaker@americanchemistry.com, by phone at 202-441-1698 or by mail at the American Chemistry Council, 700 2nd Street, NE Washington D.C. 20002.

Sincerely,

Jill Brubaker, Director, Federal Affairs at the American Chemistry Council on behalf of:

American Chemistry Council

American Composites Manufacturers Association

Associated Builders and Contractors

International Association of Plastics Distribution

Leading Builders of America

National Association of Homebuilders

National Corrugated Steel Pipe Association

Plastic Pipe and Fittings Association

Plastics Industry Association

Plastics Pipe Institute

PVC Pipe Association

Vinyl Institute

May 1, 2020

The Honorable John Barrasso
Chairman
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Thomas Carper
Ranking Member
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper:

The American Coatings Association (ACA) appreciates the opportunity to provide comments on the *Water Infrastructure Act of 2020 and the Drinking Water Infrastructure Act*, two legislative vehicles that address critical water infrastructure, including the levees, dams and ports that support the coatings manufacturing industry as well as the drinking water systems that sustain our communities. ACA supports a robust program to upgrade and improve the aging inland waterways as well as America's ports, the gateway to commerce.

ACA is a voluntary, non-profit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. Our organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory, and judicial issues, and provides forums for the advancement and promotion of the industry through educational and professional development services. ACA's membership represents over 90 percent of the total domestic production of paints and coatings in the country.

1500 RHODE ISLAND AVENUE N.W. • WASHINGTON, DC 20005 • T 202.462.6272 • F 202.462.8549 • www.paint.org

America's Water Infrastructure Act of 2020 Should Incorporate Use of Innovative Materials

ACA urges inclusion of the Innovative Materials for America's Growth and Infrastructure Newly Expanded (IMAGINE) Act, S. 403/H.R. 1159, in any legislative package considered by the Committee, as this bill would encourage investing in new techniques and materials, including coatings, that would help to extend the life of critical public works.

As you may know, the coatings industry has been investing millions of its own dollars to develop the most innovative class of coatings, adhesives and insulating foams. These materials will play an important role in designing the 21st Century infrastructure that is needed to meet 21st Century challenges. Investment in our nation's infrastructure is critical and cannot wait any further.

The IMAGINE Act will establish a task force to assess existing standards and test methods for the use of innovative materials in infrastructure, identify key barriers in the standards area that inhibit broader market adoption, and develop new methods and protocols, as necessary, to better evaluate innovative materials. In addition, innovative material hubs would be developed to further drive research and development of different innovative materials for use in infrastructure projects. Under the bill, research funds are dedicated to the development of innovative materials. Specifically, an "Innovative Bridge Program" and a "Water Infrastructure Innovation Program" are included in this legislation.

Coatings are Key

ACA believes that successful infrastructure legislation must promote innovative technologies and drive solutions that improve the performance of our national infrastructure. By protecting the surfaces to which they are applied, coatings are a significant contributor to any effort to improve U.S. infrastructure.

New, technology-driven coating materials can make our public works safer, and more resilient and sustainable, and respond better to extreme weather, rising sea level, and other 21st century challenges like chemical damage. For instance, unprotected steel structures in harsh environments can lose as much as 1 mm in thickness in as little as five years. This loss contributes to structural weakness, and the steel must be replaced. But a thin protective coating applied to the steel can slow or delay the corrosion process and significantly extend the life of the steel by 15 or more years, even in offshore environments. For example, coatings applied to the San Mateo Bridge in Hayward, California extended the service life of the bridge by an additional 25-45 years.

Coatings are also integral for protecting our water. Protective pipe coatings for water transmission are frequently overlooked but play a vital role: the coatings work as both an internal lining and a corrosion-resistant external coating, for both potable and non-potable water transmission pipelines, acting as a barrier for both mechanical resilience and resistance against both chemical and climactic impact.

The IMAGINE Act will encourage research and deployment of innovative construction materials, including the next generation of coatings that are crucial for transportation and water infrastructure projects nationwide. These materials are often invisible but can lengthen the lifespan of expensive and critical infrastructure and extend capital investments.

Conclusion

America's Water Infrastructure Act of 2020 and the Drinking Water Infrastructure Act will only be enhanced by inclusion of the IMAGINE Act. America's water infrastructure and drinking water systems will be greatly improved by the use of innovative coatings.

If you have any questions at all, please do not hesitate to contact me.

Respectfully submitted,

Heidi K. McAuliffe
Vice President, Government Affairs

901 New York Avenue, NW Suite 300W
Washington, DC 20001
hmcauliffe@paint.org
202.719.3686

May 1, 2020

The Honorable John Barrasso
Chairman
Committee on Environment
and Public Works
United States Senate
Washington, DC 20510

The Honorable Thomas R. Carper
Ranking Member
Committee on Environment
and Public Works
United States Senate
Washington, DC 20510

RE: ACEC Comments on America's Water Infrastructure Act of 2020 (AWIA) and the Drinking Water Infrastructure Act of 2020 (DWIA).

Dear Chairman Barrasso and Ranking Member Carper:

Thank you for releasing bipartisan draft legislation to maintain and improve water infrastructure across the United States. On behalf of the American Council of Engineering Companies (ACEC), representing more than 6,000 firms engaged in the design of transportation, water and energy infrastructure, we appreciate the opportunity to provide input.

This legislation takes on special significance as Americans respond to, and recover from, the effects of the COVID-19 pandemic. The draft AWIA and draft DWIA offer an opportunity to meet long-standing infrastructure needs as well as recover from the impact of the virus. ACEC fully supports your efforts as represented in the draft bills, and respectfully offers the following recommendations for improvement.

Though the draft reauthorizations represent incremental and welcome levels of investment, there is a well-documented demand for water infrastructure improvements that dwarfs the proposed funding levels in the drafts. ACEC strongly recommends more aggressive efforts to more realistically address water infrastructure needs. Not only will public health benefit, investment in water infrastructure would support the US economic recovery and global competitiveness for decades to come.

WRDA, CWA, and SDWA reauthorizations should reflect a broader commitment to resilience. Commitments to resilient design for mitigation of future risk under all water infrastructure reauthorizations (WRDA, CWA, SDWA) are welcomed, as reflected in AWIA Section 2001, and draft DWIA Section 9. Nevertheless, while periodic, piecemeal and static flood risk studies such as directed in draft AWIA Sections 1001, 1002 and 1003 may be momentarily useful, both the draft AWIA and the draft DWIA lack a statement of national commitment to a model of dynamic and continuous, iterative data-driven watershed risk management, as recommended by the Fourth National Climate Assessment. Mitigation of future drought risk could be similarly managed.

The WRDA backlog should be reduced and be reviewed to mitigate future risk. The draft AWIA should reflect a commitment to reduce the estimated $96 billion backlog that includes an effort to evaluate the backlog to mitigate future risk. Design has a shelf life for existing and future flood risk, as draft AWIA Sections 1001, 1002 and 1003 implicitly recognize. Climate, land-use, and commercial vessel change make decades-old design obsolete. Existing structures no longer perform to meet acceptable levels of future risk. Data driven and analytical approaches (iterative risk management) can more effectively manage coastal and riverine watersheds to meet future flood risks as anticipated by well-known trends in precipitation and sea-level rise. Title I of the draft AWIA would be improved with a provision that authorizes a pilot iterative risk management program with the objective of protecting critical infrastructure e.g. transportation, water and energy.

WRDA reauthorization should articulate strong partnership between the Corps and the private engineering sector. As reflected in report language in WRRDA 2014, America's engineering industry continues to provide critical technical expertise, innovation, and local knowledge to federal and state agencies in order to efficiently deliver water resource projects to the public. The next WRDA bill should also recognize the valuable contributions made by the nation's engineering industry to the work of the Corps of Engineers and encourage the Corps to reinforce that partnership by taking full advantage of engineering industry capabilities to strengthen project performance.

Robust funding for the State Revolving Fund (SRF) programs is critical to meet system needs, and timely as part of an infrastructure-based recovery agenda. We believe Section 2015 of the draft AWIA, which provides increases in authorized funding levels for wastewater SRF financing to $3 billion over three years incrementally, to be a good start, and we urge the Committee to build on this as the legislative process moves forward. The need is readily apparent – according to the EPA, water and wastewater utilities will need at least $750 billion over the next 20 years simply to maintain current service. The American Water Works Association estimates that $1 trillion is necessary to maintain and expand drinking water systems service to meet demands over the next 25 years. ACEC also supports increased funding for the WIFIA program to supplement the SRF programs and help to address the funding challenges going forward.

Buy America provisions should not unreasonably block critical drinking water projects. Section 4 of the draft DWIA makes permanent the American Iron and Steel requirements for the Drinking Water State Revolving Loan Fund, also known as "Buy America." Excessively rigid "Buy America" provisions can threaten projects to meet essential human health needs. Threshold, prohibitive cost barriers to project finance raised by such provisions should be considered for automatic waiver for DWSRF funded projects.

Emerging contaminant remediation funding should be aligned with the national legal framework for hazardous substance designation and regulation of drinking water maximum contaminant levels. Section 4 of the draft DWIA provides $300 million in grants to assist in the remediation of contamination from emerging contaminants, e.g. PFAS. It is not clear how Section 4 is aligned to the national legal framework to address emerging contaminants

in wastewater and drinking water with the current scientific, evidence-based regulatory approach.

The Brooks Act should be applied to engineering of DWSRF and other grant funded draft DWIA projects. For decades, the federal government and most states have used Qualifications-Based Selection (QBS) for the procurement of engineering services. Section 4 of the draft DWIA provides grants for remediation of "eligible sites." QBS applies to most federal infrastructure programs, including the CWSRF, and we urge the Committee to extend this competitive procurement process to the drinking water program. Procurement decisions on the basis of demonstrated experience and expertise – as required through a QBS process – is particularly needed today as utilities seek to address emerging contaminants, new hazardous substance designations and drinking water MCLs. The evolution of drinking water systems engineering, and the federal role to meet the emerging contaminant challenges, require specialized engineering services that are best identified and procured through QBS.

Oppose so-called "open competition" materials mandates that interfere with engineering judgement. ACEC strongly opposes legislation that seeks to mandate the consideration of plastic pipe and other materials in a manner that interferes with the ability of licensed engineers to make design decisions in the best interests of the water utility clients they serve. Such efforts have been routinely rejected in the states, and we urge the Committee to oppose such language as it moves its water agenda forward.

Once again, thank you for your leadership in moving these important legislative initiatives forward, and ACEC looks forward to working with you to secure their passage.

Sincerely,

Linda Bauer Darr
President & CEO

Contact:
Lynn Schloesser, lschloesser@acec.org
American Council of Engineering Companies
1015 15th Street NW, 8th Floor
Washington, DC 20005
202-682-4354

May 1, 2020

The Honorable John Barrasso
Chairman, Committee on Environment and Public Works
United States Senate
307 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Tom Carper
Ranking Member, Committee on Environment and Public Works
United States Senate
513 Hart Senate Office Building
Washington, DC 20510

The Honorable Shelley Moore Capito
Chairman, Subcommittee on Transportation and Infrastructure
United States Senate
172 Russell Senate Office Building
Washington, DC 20510

The Honorable Ben Cardin
Ranking Member, Subcommittee on Transportation and Infrastructure
United States Senate
509 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso, Ranking Member Carper, Chairman Capito, and Ranking Member Cardin:

On behalf of the American Flood Coalition, a nonpartisan coalition of over 200 members representing all levels of government, as well as military, business, and civic communities who have come together to identify national solutions to flooding and sea level rise, we appreciate your leadership to advance thoughtful, bipartisan solutions to strengthen our nation's water infrastructure.

As the Senate Committee on Environment and Public Works ("Committee") looks to advance America's Water Infrastructure Act of 2020, we would like to share the following comments on the discussion draft ("Draft") for your consideration moving forward.

Assistance to Local Communities

We are pleased to see the inclusion of language in the Draft encouraging the U.S. Army Corps of Engineers ("Corps") to prioritize projects in underserved, economically distressed, or rural communities in Sections 1017 and 1083.

Flooding and sea level rise affect communities regardless of size, but distressed communities often lack the necessary resources to complete essential flood mitigation projects. Providing the Corps with the authority to recommend projects in small, rural, or distressed communities without the need to demonstrate that such projects are justified by one-size-fits-all national economic development standards will help level the playing field for these communities. Further, requiring a determination of potential local, regional, and non-economic benefits will yield a more complete picture of the "real world" impacts of potential projects.

Likewise, providing the Corps with additional flexibility to reduce the non-federal cost-share for certain projects in small or distressed communities will ensure that critical water infrastructure projects can proceed in our current uncertain economic environment. As communities across the nation address the COVID-19 pandemic and plan for the ensuing long-term economic implications, policy steps such as this will allow for job-creating and life-saving infrastructure projects to continue.

As the Committee builds on the Draft, we strongly encourage the Committee to continue to support the deployment of technical assistance to communities. The Corps provides critical, but limited, flood risk reduction technical assistance through efforts like the Floodplain Management Services Program and the interagency Silver Jackets. For small or underserved communities, which lack the on-the-ground experience and expertise to implement flood mitigation and flood risk reduction strategies, such technical assistance programs offer valuable help for local leaders to address flood risk, leverage available state and municipal resources, and avoid a larger, more costly problem in the future.

Enhancing and strengthening the Corps' technical assistance programs is a smart, proactive investment that can limit the potential scope and expense of subsequent emergency efforts. One recommendation in this direction would be to explore the development of a "circuit riders" program, similar to the one created in Section 2003 of the Draft. While that program is structured within the Environmental Protection Agency to provide on-site assistance to small and medium public-owned treatment works, a similar program within the Corps to provide on-site flood risk reduction assistance for small or underserved communities would yield long-term benefits by helping and empowering municipalities to act before disaster strikes.

Better Data & Mapping

Accurate data to plan for current and future flood conditions is an essential tool to protect communities from rising seas and more frequent flooding. We support the Committee's efforts in Section 1079 to direct the Corps to develop and carry out a plan for the mapping of coastlines for states and territories affected by rapid, reoccurring coastline changes. Coastal flooding and sea level rise are impacting communities across the United States and any effort to map and assess this data must take these impacts into consideration.

As the Committee advances the Draft, we would strongly encourage the inclusion of an explicit requirement to communicate the outcomes of any coastal mapping effort to affected communities and the public in clear, understandable terms. We have found that similar federal efforts to update flood maps have failed to convey information on flood risk to impacted populations in a timely and accessible manner. This communication can go a long way to helping communities and property owners take proactive measures to protect against future flooding.

Lastly, there has been increasing investment across different federal agencies to develop more granular mapping of flood risk in recent years. Unfortunately, such efforts have lacked appropriate interagency coordination and have not been as synergistic as they could - and should - have been to create a more precise and holistic understanding of flood risk. We encourage the Committee to explore efforts that will ensure greater coordination, information sharing, and communication across federal agencies engaged on flood mapping efforts.

Natural Infrastructure

We support the use of natural and green infrastructure as a strategy to mitigate and reduce flood risk, and we are pleased to see language in Section 1098 of the Draft, which would allow natural or nature-based solutions to be employed for certain small flood control projects within the continuing authorities program.

To build upon past efforts to integrate natural infrastructure considerations into project design, the Committee should encourage the Corps to develop guidance on how to accurately capture and assess the benefits of natural infrastructure solutions and incorporate them into the Corps' Benefit-Cost Analysis.

AMERICAN FLOOD COALITION

We believe that local communities should have the flexibility to choose the infrastructure solutions that work best for their unique needs, and the process to select natural solutions shouldn't be made unduly burdensome due to permitting and analysis challenges. Clear guidance on ways to measure the benefits of natural infrastructure, such as enhancing outdoor recreation or improving surrounding environments, can avoid inconsistencies in review and provide a better understanding of how these innovative solutions can strengthen local communities.

Resilient Water Infrastructure

We applaud the authorization of the Clean Water Infrastructure Resiliency and Sustainability Program, set forth in Section 2001 of the Draft.

Targeted grant programs, which increase the sustainability of publicly-owned clean water and drinking water infrastructure, will provide immediate, necessary assistance for local communities struggling to find funds to upgrade aging systems. With municipal budgets already stretched thin, communities are in great need of dedicated resilient infrastructure funding options, such as this program.

Sea level rise will bring new challenges to our nation's clean water and drinking water infrastructure. With just one foot of sea level rise, 60 wastewater treatment plants nationwide will be exposed to flooding, putting over 4 million people at risk of being impacted by loss of wastewater services. As flooding and storms increase in frequency and severity, communities will need to act to fortify their water infrastructure to withstand the impacts of severe weather events. Programs, like this, will go a long way to help this effort.

We appreciate the opportunity to offer comments on the Draft and look forward to working with you on proactive solutions to protect our communities from flooding and sea level rise. In the event you or your staff have any questions, please do not hesitate to contact our Government Relations Director, Dante Cutrona, at dante@floodcoalition.org or (610) 207-8807. Our mailing address is 1501 M Street, NW, Suite 430, Washington, DC, 20005.

Sincerely,

Melissa Roberts
Executive Director

Your Comprehensive
Public Works Resource

www.apwa.net

1200 Main Street, Suite 1400
Kansas City, MO 64105-2100
816-472-6100 800-848-APWA
fax 816-472-1610

25 Massachusetts Avenue, NW
Suite 500A
Washington, DC 20001
202-408-9541

May 1, 2020

The Honorable John Barrasso
Chairman
Senate Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Tom Carper
Ranking Member
Senate Environment and Public Works Committee
456 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of the American Public Works Association (APWA) and our more than 30,000 members, I am writing to thank you for your continued work and focus on our nation's infrastructure. A perfect example of this focus is your work on "America's Water Infrastructure Act of 2020" and "Drinking Water Infrastructure Act of 2020." APWA is appreciative of your efforts to craft these important bipartisan bills to address water infrastructure issues. We are especially appreciative of your work to include language that will make public works agencies eligible for federal water workforce funding, as well as reauthorizing and increasing funding for the Clean Water State Revolving Fund (CWSRF) program, and reauthorizing the Water Infrastructure Finance Innovation Act (WIFIA) program.

The language in Section 2008 of "America's Water Infrastructure Act of 2020"

- reauthorizes an existing competitive grant program at the Environmental Protection Agency (EPA) that assists in getting people into the pipeline for careers in the water sector;
- doubles the funding to $2 million annually through fiscal year 2024;
- provides a definition for public works departments and agencies that specifically makes those entities eligible for these funds. In practice, public works departments and agencies are already providing credentialing and accreditation for those interested in joining the water workforce, helping to develop the next generation water sector professionals. Allowing public works agencies and departments to access these federal funds will provide needed assistance in identifying, training, and retaining the next generation of water sector professionals.

Reauthorization of the CWSRF program is also vital to helping bring our water infrastructure into a state of good repair. The CWSRF is an important tool used across all 50 states and in communities of all sizes to help communities make investments more affordably. Increasing funding for the program to a maximum of $3 billion in FY 2023 will help communities meet the massive demand for infrastructure investment across the nation. Additionally, reauthorizing the WIFIA program will aid communities looking to undertake large-scale water infrastructure projects that would overwhelm the SRF allotment for that state. Combined use of CWSRF and WIFIA programs will greatly increase the federal funding for water infrastructure investment.

APWA is extremely supportive of the work your Committee has done to address the issues surrounding water infrastructure in our country. Specifically, we are pleased to see inclusion of the following provisions in "America's Water Infrastructure Act of 2020":

- Sewer overflow control grants (Sec. 2007);
- Water infrastructure and workforce investment (Sec. 2008);
- Water Infrastructure Finance Reauthorization (Sec. 2014);
- Reauthorization of Clean Water State Revolving Funds (Sec. 2015); and

PRESIDENT
William E. (Bill) Spearman III, P.E.

CHIEF EXECUTIVE OFFICER
Scott D. Grayson

AMERICAN PUBLIC WORKS ASSOCIATION

Your Comprehensive
Public Works Resource

www.apwa.net

1200 Main Street, Suite 1400
Kansas City, MO 64105-2100
816-472-6100 (800-848-APWA)
fax 816-472-1610

25 Massachusetts Avenue, NW
Suite 580A
Washington, DC 20001
202-408-9541

- Wastewater Infrastructure Discretionary Grant program (Sec. 2016).

We are also pleased to see the following provisions included in the "Drinking Water Infrastructure Act of 2020":

- Lead Mapping Pilot Program (Sec. 7);
- Operational Sustainability of Small Public Water Systems (Sec. 8);
- Needs Assessment for Nationwide Rural and Urban Low-Income Community Water Assistance (Sec. 10); and
- Drinking Water Infrastructure Discretionary Grant Program (Sec. 14).

All these elements, combined with language enabling the Army Corps of Engineers to undertake important projects throughout the country, combine to make this bill a positive step in finding solutions to our nation's water infrastructure problems.

However, APWA members are disappointed that language related to the National Pollution Discharge Elimination System (NPDES program was not included in "America's Water Infrastructure Act of 2020". We urge you to add this important language to the bill. In October of last year, the House Transportation and Infrastructure Committee unanimously passed a bill reauthorizing the CWSRF program that included language that would extend permit lifecycles from five years to 10 years under the NPDES program. For these agencies that have a proven track record of compliance with NPDES, a 10-year term for a NPDES permit would be much more efficient than the current 5-year term, due to the inordinate amount of time, effort, and expense involved in reviewing permits every five years. These costs are all resources that are used on the permitting process rather than actual permit implementation. The processes involved in the permit, including watershed planning and development of Total Maximum Daily Load levels, have lengthy implementation schedules, often longer than five years. APWA and its members are happy to discuss this change to the NPDES program and how it can be incorporated in the final version of this legislation.

Each day public works professionals are diligently working to protect and maintain the critical infrastructure that is so essential to protecting our health and quality of life. Because of our shared commitment, APWA looks forward to continuing to work with you and your staff on this legislation to help public works professionals meet our water infrastructure challenges. If you have questions or comments regarding this letter or APWA's water priorities, please contact APWA Government Affairs Manager Sean Garcia at (202)218-6734 or sgarcia@apwa.net.

Sincerely,

William (Bill) Spearman, III, P.E.
President

Scott Grayson, CAE
Chief Executive Officer

PRESIDENT
William E. (Bill) Spearman III, PE

CHIEF EXECUTIVE OFFICER
Scott D. Grayson

May 1, 2020

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of American Rivers and our 275,000 members and supporters, I want to thank you for the opportunity to review and comment on the recently released draft of America's Water Infrastructure Act of 2020 (AWIA).

American Rivers commends your efforts to maintain the biennial schedule for AWIA. It is important to the agencies as well as the partner organizations to have regular and reliable legislation to ensure the smooth and timely delivery of the many important infrastructure projects authorized in this bill.

While this draft contains many positive and constructive provisions, below we present our thoughts on various provisions that we support or have concerns with, and where we think there might be improvements made to the provisions. One omission from the bill that we are concerned with is there is no clear direction to the Army Corps of Engineers that natural or nature based solutions should be cost-shared at the same ratio as non-structural infrastructure projects.

American Rivers looks forward to continuing to work with the Committee to advance these and other important water infrastructure priorities in the future.

Sincerely,

Ted Illston
Senior Director of Policy and Government Relations
American Rivers
1101 14th St NW, Suite 1400
Washington DC 20005
TIllston@americanrivers.org
202-243-7077

AMERICAN RIVERS

RECOMMENDATIONS ON AMERICA'S WATER INFRASTRUCTURE ACT OF 2020
DISCUSSION DRAFT

Amend Section 1001. Upper and Lower Missouri River comprehensive flood protection studies. American Rivers supports this comprehensive flood protection study for the Upper and Lower Missouri River. We appreciate the integrated and comprehensive design of the proposed study including the examination of nonstructural and floodplain management strategies including the consideration of natural features or nature-based features to reduce flood risk. The Missouri River is particularly in need of adjustments to the levee system to increase the capacity to carry flood water on adjacent floodplains while providing other benefits like habitat improvement. While several projects are underway, a more thorough assessment of levee realignments is needed to reduce repetitive damages. Coordination of this assessment with habitat restoration activities will result in more efficient use of taxpayer funding for the Missouri River. American Rivers also recommends that this study consider whether changes to the operations and maintenance of the navigation channel would reduce flood risk. We recommend the following amendments to the language:

- amend § 1001 (b)(1) (page 7, line 15) ("and the setting back of levees and removing structures from areas of recurring flood vulnerability where advantageous to reduce system flood risk and damages, and where locally acceptable."
- amend § 1001(c)(5) (page 9, lines 3-6) to read: "(5) address whether changes to operation and maintenance of the navigation system could reduce flood risks and increase resilience of the river and river communities."

Sec. 1002. Great Lakes comprehensive flood protection study. American Rivers supports this study and we appreciate the inclusion of an examination of consideration of natural features or nature-based features. We note that a similar study was authorized by WRDA 2016 that has yet to be funded. We urge coordination between these two authorizations to minimize duplication of effort and efficient use of funding.

Section 1010. Project modifications for improvement of environment. American Rivers supports the Sec. 1135 program, however, we do not support prioritizing one region over another.

Amend Section 1011. Non-Federal implementation pilot program. American Rivers and our partner organizations have seen significant problems with the use of the Public-Private Partnership Pilot Program on the Upper Mississippi River as non-federal interests have tried to use this authorization to advance environmentally harmful navigation projects. These problems include, but are not limited to: major confusion regarding which activities are the responsibility of the Corps and which are the responsibility of the non-federal sponsor; the inability of the non-federal sponsor to conduct required technical analyses; the inability of the non-federal sponsor to effectively engage the public and other federal agencies; and the inability of the public to obtain information about the process being used. We urge Congress to address these types of problems as part of any extension of this or any similar program. To this end, we strongly recommend that the Senate amend this section to require the Corps to develop guidelines that provide a clear roadmap to the process that is to be used, the entities responsible for each step of the process, and the entity responsible for responding to public inquiries and requests for information.

Amend Section 1013. Annual report to Congress on authorized studies and projects. American Rivers is concerned that this proposal undermines the Corps' feasibility

study planning process. This proposal opens a door for funding projects that have not completed planning and passed standard benefit-cost assessments. Many projects on the Army Corps' backlog were authorized decades ago and require further evaluation to ensure they are in compliance with current laws and are designed to current standards. We recommend adding a new subsection to § 1013(c)(1)(A) (page 24) to read:

- "(iv) Authorized water resources development projects that require additional or supplemental reviews under the National Environmental Policy Act, Clean Water Act, Endangered Species Act, or other federal environmental law shall be identified as eligible only for funding to complete the required reviews."

Section 1015. Operation and maintenance. American Rivers is concerned with the language waiving an external independent peer review. The IEPR process is intended to ensure that very expensive and potentially controversial projects receive input from external experts. We are concerned that including waiver language for this provision will set a concerning precedent for similar language to be included in future project authorizations. American Rivers would encourage language that continues to authorize the IEPR process in the case of the non-monetary triggers included in Sec. 2034 of WRDA 2007.

Amend Section 1017. Continuing Authority Programs. American Rivers supports the proposed increases to Continuing Authorities Programs project and program funding levels to keep pace with inflation and rising project costs. We also support the reduced cost-share proposal for small and disadvantaged communities. In an effort to maintain transparency on CAP programs, we encourage the Committee to considering instructing the Corps to include a comprehensive information on CAP program projects and spending on the main Army Corps website. Currently, this information is organized by district, and publicly available information varies by district to district.

In addition, we strongly encourage the Committee to add the Upper Mississippi River Restoration (UMRR) Continuing Authority Program to the list of programs being adjusted for inflation. The UMRR Program was the first environmental restoration and monitoring program undertaken on a large river system in the United States; authorized by the Water Resources Development Act of 1986. The Program has come to be recognized as the single most important effort committed to ensuring the viability and vitality of the Upper Mississippi River System's diverse and significant fish and wildlife resources since establishment of the National Wildlife Refuges on that system in the 1920's. Since 2011, the UMRR Program's obligation rate has been near 100% and has been fully funded since Fiscal Year 2018. The Program's strong record of spending and project success indicates that it can obligate a larger investment. The need for greater funding was also made apparent in the Programs 2016 Report to Congress, which found that habitat on the Upper Mississippi River continues to degrade one to four times faster than current restoration efforts. The UMRR Program has never been adjusted for inflation, which has decreased its spending power by 53.5% since 1999, when its current authorized appropriation cap was set. We strongly suggest Section 1017 should be amended to include:

- a) UPPER MISSISSIPPI RIVER RESTORATION PROGRAM.
- 1) Section 1103(e)(3) of the Water Resources Development Act of 1986 (33 U.S.C. 652(e)(3)), is amended by striking "$22,750,000 for fiscal year 1999 and each fiscal year thereafter" and inserting "$34,921,250 for fiscal year 2021 and each fiscal year thereafter".
- 2) Section 1103(e)(4) of the Water Resources Development Act of 1986 (33 U.S.C. 652(e)(4)), is amended by striking "$10,420,000 for fiscal year 1999 and each

fiscal year thereafter" and inserting "$15,994,700 for fiscal year 2021 and each fiscal year thereafter".

Strike Section 1018. Shore damage prevention or mitigation: American Rivers is concerned that this section will allow non-federal interests to meet mitigation obligations using funding provided by the U.S. Fish and Wildlife Service. Non-federal entities should not use federal taxpayer dollars to meet their financial obligations for complying with mitigation obligations. We urge the Committee to strike this section from the bill.

Section 1020. Criteria for funding environmental infrastructure projects: The draft bill includes many authorizations for environmental infrastructure projects, which have traditionally applied to water and wastewater treatment in rural areas. We urge the Committee to ensure that this funding does not repeat the challenges of the Construction Grants and Loans program which provided funding for construction but did not support management or operations and maintenance needed to ensure the systems are self-maintaining and operational for the long-term.

Section 1021. Aging Infrastructure: American Rivers supports this proposal for enhanced analysis of aging dams.

Amend Section 1022. Expediting repairs and recovery from flooding: American Rivers supports the intent to speed repair and recovery of flood risk management infrastructure following floods, however we are concerned that this section as written would facilitate the construction of levee raises that have been undertaken without adequate consideration of environmental and public safety impacts. The provision would allow for "improvements" and "upgrades" that could include making emergency flood fighting additions permanent without proper design and technical analysis. In addition, the provision deems all levee repairs to be in the public interest if they don't cause flooding elsewhere. Such a determination would undermine the important determination that changes to a civil works project do not cause harm to the public. We recommend striking subsection (b), and adding "section 14 of the Act of March 3, 1899 (33 U.S.C. 408)" as a new subsection (c)(4)

Support Section 1031. Dam remediation for ecosystem restoration. American Rivers supports.

Section 1035. Chesapeake Bay environmental restoration and protection program: American Rivers supports increasing the authorized level of appropriations for this critical program for restoration of the Chesapeake Bay and will help ensure that funding is distributed to projects across the multiple states within the Bay watershed who each play an important role in restoring water quality. In addition, we support the direction to the Army Corps to carry out public outreach in order to assist non-federal sponsors in participating in this program, which will result in more coordination and further investment in restoration of the Bay.

Amend Section 1037: Interagency task force on small dams and fish passage: American Rivers strongly supports this proposal to establish an interagency task force on small dams and fish passages. Stream barrier removal projects are multi-benefit projects that are undertaken by many federal and state agencies, as well as non-governmental organizations. Improved coordination, data sharing, and cooperative funding programs will help ensure that federal funding is spent efficiently and there are clear lines of communication between agencies. To provide clarity and improve the implementation of the program we recommend:

- Replace "small dam" with "low-head dam" which is defined in existing regulations, everywhere it appears.
- Add the Chief of the U.S. Forest Service to the list of task force members as there are many dams on U.S. Forest Service dams and the agency engages in maintenance and fish passage projects.
- Add the Administrator of the National Oceanic and Atmospheric Administration to the list of task force members as NOAA Fisheries has important responsibilities restoring, opening, and maintaining habitat for migrating fish including at dams.
- Require an opportunity for public review and comment prior to delivery of the task force report to Congress.
- Authorize funding for the task force and preparation of the study or clarify that funds authorized by Section 1073 can be used for the operations of this task force and development of the report to Congress.
- Provide instruction that any analysis undertaken should give equal weight to ecological impacts of small dam structures and that recreation should not be the default category for the absence of existing data on dam use/purpose, which is a major failing of the National Inventory of Dams.

Amend Section 1040. Rehabilitation of flood control pump stations affecting Corps of Engineers flood risk management projects. American Rivers urges the Committee to amend this section that allows increasing the capacity of eligible pumping stations and related drainage measures subject solely to a determination "that the rehabilitation is feasible." Operation and construction of pumping plants along the Upper Mississippi River already causes significant adverse impacts to wetland resources, water quality, in-stream flows, and wildlife habitat. Increasing pumping capacity can increase flood risks for communities and businesses along the waters that receive the pumping plant discharges. Increasing pumping plant capacity and related drainage can also require major new construction in highly sensitive habitats. As such, proposals to increase pumping capacity associated with any flood risk management project deserve careful review beyond the scope of rehabilitation. Congress should ensure that the full range of impacts are carefully assessed prior to any decision to increasing pumping plant capacity by amending § 1040 to require full compliance with federal environmental laws, including the National Environmental Policy Act and Clean Water Act, before a decision may be made regarding increasing any pumping plant capacity.

Section 1044. Project partnership agreement: American Rivers supports this provision to give non-federal sponsors of Corps projects a better understanding of their operations and maintenance responsibilities. However, we remain concerned that the requirement to assume liability for operations and maintenance in perpetuity remains an obstacle to non-federal sponsors, particularly for non-profit organizations engaged in habitat restoration projects with the Army Corps. We encourage the Committee to continue working with non-profits engaged in habitat restoration, such as The Nature Conservancy, to resolve this on-going challenge.

Amend Section 1047: Levee Safety American Rivers supports this requirement for the national levee database to include information on deficiencies and remedies, as well as a requirement for consultation with non-federal interests and a public comment opportunity on identified deficiencies. We believe this information will allow for multiple agencies and stakeholders to have discussions about potential multiple-benefit solutions such as levee setbacks and realignments before flood damage occurs. This will only be successful at fostering integrated water resources planning and improving the resiliency of the flood risk management

system if the information on levee deficiencies is made publicly available. We have several recommendations to provide clarify and improve transparency:

- Clarify that the engineering and maintenance deficiencies and remedies should be included as publicly available information in the National Levee Database
- Clarify that "engineering and maintenance deficiencies" described in paragraph (d) includes identification of all levees that exceed authorized top-of-levee elevations.
- Authorize funding or increase the relevant funding source in order for the Army Corps to undertake this additional important responsibility.

Section 1049. Implementation guidance for post-flood improvements. Section 1176 of WIIN 2016 defines "non-structural alternatives" to include restoration or protection of natural resources if they will reduce flood risk. However, we have some concerns that the provision allows the Corps to increase the level of protection when repairing a flood control structure. We believe there is a risk of this provision being misused as a program to increase the height and width of levees without going through the proper design and modeling to assess potential to increase flood risk to neighboring communities. We also note that the implementation of P.L. 84-99 is in grave need of reform in order to promote sustainable, long-term flood risk management. Since 2014 Congress has been instructing the Army Corps to make necessary changes to this program that would begin to improve it's operations, yet the Army Corps has not yet issued implementation guidance to fully implement these reforms. We recommend that this provision be expanded to include implementation guidance for Section 3029(a)(1) of WRDA 2014 as well.

Amend Section 1053. Establishing permanent features from emergency response measures. American Rivers recognizes the burden that repeated emergency flood response efforts can place on small or disadvantaged communities. We strongly encourage Congress to continue to identify ways to provide much needed assistance to these communities to reduce their flood risk and improve floodplain management. However, we are concerned that this section fails to ensure a full evaluation of alternative approaches, including natural infrastructure and levee setbacks, that may be able to provide the same or better levels of protection at less cost and with fewer future flood risks to the community and others. Also, along the Upper Mississippi River, rural levee districts are already trying to circumvent normal processes that require the review of alternatives by raising their levees during floods, but then failing to push them back down. This section prioritizes a feature that was designed to be a temporary, rapid-response solution into one that is permanent. To ensure cost-effective, meaningful protection to these at-risk communities, we recommend amending Section 1053 to require a full evaluation of nonstructural and natural infrastructure solutions, including levee setbacks; and explicitly ensuring that evaluation of these projects must comply fully with federal environmental laws.

Strike Section 1054. Studies of water resources development projects by non-Federal interests. The process established under 33 U.S.C. 2231 (which is being amended by this section 1054) fails to establish any baseline capacity criteria and fails to lay out the processes that should be followed when a non-federal sponsor is carrying out federal planning responsibilities. On the Upper Mississippi River, non-federal interests have already tried to advance planning and design for new locks on the Upper Mississippi and Illinois Rivers. But, due to a general lack of direction from the Corps and Congress there have been significant problems, including but not limited to: major confusion regarding which activities are the responsibility of the Corps and which are the responsibility of the non-federal sponsor; the inability of the non-federal sponsor to conduct required technical analyses; the inability of the non-federal sponsor to effectively engage the public and other federal agencies; the inability of

the non-federal sponsor to carry out required actions that can be implemented only by federal agencies; and the inability of the public to obtain information about the process being used. We urge the Senate to strike § 1054 and to refrain from expanding the non-federal sponsor planning process until these underlying problems are addressed. To this end, we strongly recommend that Congress direct the Corps to develop detailed guidelines that provide a clear roadmap to the planning process that is to be used by non-federal sponsors, the entities responsible for each step of that process, and the entity responsible for responding to public inquiries and requests for information.

Strike Section 1057. Support for mitigation efforts for small dams in National Heritage Corridors. This provision would shift the mitigation responsibility of a non-federal hydropower responsibility to the federal taxpayers. Fish passage that is a legally required obligation of a hydropower company should be carried out by the hydropower company. It should not be the responsibility of the Army Corps. We urge the Committee to strike this provision.

Support Section 1061. Rio Grande Environmental Management Program, Colorado, New Mexico, and Texas. This program is an important tool for the restoration of the Rio Grande River.

Strike Section 1069. Inland Waterway Transportation. American Rivers urges the Senate to strike this section that would significantly increase the Federal cost share for construction and major rehabilitation of navigation projects on the inland waterways systems. Section 1069 would create an enormous additional subsidy for the navigation industry which already pays just 10% of the costs of the inland waterway system, even though that system moves only 4 to 5% of U.S. freight commercial tonnage (as of 2014). By contrast freight rail operators pay 100% of the costs of the rail system, and cars and trucks pay about 80% of the costs of maintaining the highway system (through a fuel tax).

These enormous additional subsidies will facilitate unwise investments that harm the environment and can increase flood risks for river communities. Documenting significant declines in traffic on the inland waterway system and existing capacity, a 2018 report by the Congressional Research Service calls into question the need for new construction on the system. For example, as highlighted in that report: traffic on the Upper Mississippi River system has been declining and even during their "busiest months" the seven locks targeted for expansion under the NESP program average just 10 tows per day; the Upper Ohio River has seen a "long-term downward trend in traffic levels"; and the volume of coal, which accounts for 80% of tonnage, transported on the Lower Monongahela River, is half of what it was in the late 1990s and three of the last four operating coal-fired electric power plants on the river closed between 2013 and 2017.

Amend Section 1070. Federal interest determination. American Rivers supports reinstating the pre-feasibility study determination of whether a federal water resources project may be in the federal interest. We recommend amending § 1070(b)(1) (page 113, lines 6-9) to read: "(1) IN GENERAL.—Before initiating a study under subsection (a), the Secretary shall determine the Federal interest in carrying out the feasibility study based on a preliminary analysis of potential solutions and environmental impacts that may be examined in the feasibility study."

Section 1073. Completion of Projects. American Rivers supports this authorization of appropriations to complete reports required by previous WRDAs and this bill. In particular we support urging the Army Corps to recommend this funding be used to prioritize completion of the studies authorized by Section 1102 and 1103 of America's Water Infrastructure Act of 2018 to improve the efficiency of the Army Corps' planning and construction activities and ensure accurate evaluation of project costs and benefits, including consideration of the social and environmental costs and benefits of project alternatives over a project's full life cycle.

Amend Section 1080. Disposal of dredged materials. American Rivers supports the intent of this provision to improve the disposal of dredged materials. When clean dredge material is appropriately sourced it can be used to maximize environmentally sound civil works projects and provide environmental benefits. To effectively implement this provision we recommend amending the first portion of § 1080(a) (page 124, lines 16-22) to read as follows:

- "(a) Upon enactment of this Act, the Secretary shall ensure that, when evaluating the placement of dredged materials from operation and maintenance of water resources development projects, the Corps of Engineers shall consider . . ."

Amend Section 1083. Corps of Engineers projects in underserved communities, economically distressed rural areas. American Rivers support the intent to identify ways to more equitably ensure that smaller communities have their water resources needs met. However, we oppose the strategy proposed in this provision. This approach continues a pattern of piecemeal reforms to Corps project planning and evaluation by altering the benefit-cost analysis to allow Corps projects to rely on regional benefits when economic benefits can not be demonstrated. While this provision may result in positive results for rural communities, the vague definitions of "rural areas" and "underserved communities" appears to be an approach to justify investments in levees, stream channelization and flood control pumps for low-lying farmland owned by agribusiness with few residential properties. This strategy will perpetuate ongoing inequitable and piecemeal flood control strategies that harm river health and pit neighboring levee districts against each other. We urge the Committee to reevaluate this approach and consider narrowing the focus to urban and community water supply and flood damage reduction projects including nonstructural and natural infrastructure approaches.

Strike Section 1089. Report on benefits calculations for flood control structures: While American Rivers supports publicly available information on flood insurance and improvements to the Army Corps' benefit-cost analysis, we oppose the limited scope of this study which would assess the flood insurance savings from flood risk management infrastructure. Looking at flood insurance rate reductions in a vacuum without also assessing the residual risk that levees and flood control structures provide, and the costs of catastrophic failure of the structures during a flood perpetuates the false sense of security that these structures can provide. We believe it is unnecessary for the Army Corps to undertake this study as FEMA tracks flood insurance rate data and should already possess the necessary information. Having the Corps undertake this study would be duplicative. We recommend striking this section and urging the Army Corps to complete section 1103 of America's Water Infrastructure Act of 2018 which would take a comprehensive look at the Corps benefit-cost analysis.

Strike Section 1090. High water-low water preparedness. American Rivers is concerned that this provision creates an enormous loophole for carrying out major navigation construction as so-called "emergency mitigation projects" whenever the Corps makes a determination that a wide-array of situations exist or are "anticipated to exist." This section is

so vaguely written that it could allow the use of undefined emergency procedures to carry out virtually any type of activity, including construction of new locks, lock bypass channels, and major rehabilitation. Critically, the Corps already has extensive authority to utilize emergency procedures to quickly carry out navigation dredging where the failure to do so "would result in an unacceptable hazard to life or navigation, a significant loss of property, or an immediate an unforeseen significant economic hardship if corrective action is not taken" more quickly than would be allowed if normal procedures were followed. 33 C.F.R. § 335.7, see also 33 C.F.R. § 337.7. The Corps may also rely on 33 C.F.R. 230.8 to promptly carry out other types of emergency actions.

Section 1092. Report on antecedent hydrologic conditions. We support the provision. Missouri River forecasting is important for effective management in the basin.

Section 1098. Small flood control projects. American Rivers strongly supports this provision to add consideration of natural features and nature-based features to the 205 CAP program for small flood risk management projects. This will bring the CAP small flood projects in line with existing requirements to consider natural features and nature-based features in large flood risk management projects. Natural features and nature-based features can be used alone or in conjunction with structural flood infrastructure to reduce flood risk while providing many other benefits to society including habitat, improved water quality, recreation, etc.

Strike Section 1101. Flexibility for projects. American Rivers opposes further streamlining of the project planning process and we urge the Committee to strike this provision. This provision arbitrarily shortens the project planning timeline by a year, regardless of the scope of the study. This provision directs the Corps to take shortcuts that could result in incomplete assessments of critical environmental or public safety information. This proposal disregards the facts that the Army Corps has instituted institutional changes to make project planning more efficient in recent years, as well as the reality that project construction is ultimately constrained by limitations on new project starts set by the Appropriations Committee.

Strike Section 1102. Development of categorical exclusions. American Rivers opposes Section 1102 and urges the Committee to strike it from the draft bill. This provision authorizes expanding the use of categorical exclusions which would allow projects to advance without review under the National Environmental Policy Act (NEPA). NEPA provides a critical opportunity for public input into projects that will affect their communities which frequently results in improvements to project designs and reduced impacts on the environment and communities. Categorical Exclusions should be reserved for activities that have very limited impact on the environment, including cumulative impacts, or are intended to protect or restore the environment.

Section 1202. Expedited completion. American Rivers has positions on two studies under Section 1202.

- #37. The project for navigation, Upper St. Anthony Falls Lock and Dam, Minnesota American Rivers strongly supports the disposition study for Upper St. Anthony Falls and encourages the Army Corps to prioritize its completion.
- Amend #53. An economic reevaluation report for the navigation and sustainability program under title VIII of the Water Resources Development Act of 2007 (33 U.S.C. 652 note; Public Law 110-114). American Rivers supports a full economic re-evaluation of the navigation and sustainability program under title 14 VIII of the Water Resources

Development Act of 2007 (33 U.S.C. 652 note; Public Law 110–114). However, the Corps' efforts to update the economic evaluation for this program have been troubling at best. The Corps has "lost" two comment letters from the Nicollet Island Coalition that we facilitate, stated publicly that the final report will not be made public, failed to produce legally mandated responses to the 2008 Independent External Peer Review panel recommendation, and they appear to not be following the Corps internal guidance for economic re-evaluation. Given the controversial history of the project, we recommend amending Section 1202.53 to ensure the Corps follows all legally required protocols associated with Independent External Peer Review (33 USC 2343), the National Environmental Policy Act, the Endangered Species Act, and the Methodology for Updating Benefit-to-Cost Ratios (BCR) for Budget Development (CWPM 12-001).

Support Sec. 1506. GAO study on Federal dams with reservoirs.

Support Sec. 1506. GAO study on Federal dams with reservoirs. Requires identification of federal dams that no longer serve a federal purpose or have been considered for divestment, breaching, or removal.

Sec. 2005. Wastewater efficiency grant pilot program. We support the provision and have two suggested modifications in the reports section:

1. A report on the improvement in efficiency as a result of the project
2. In the report in impacts to communities three miles away, they should try to include that the report should specifically include impacts on communities in that radius that are of majority minority status and/or communities where average income of residents are at or below the poverty level.

Support Sec. 2008. Water infrastructure and workforce investment. We support the provision.

Sec. 2015. Reauthorization of clean water State revolving funds. We strongly support significantly increasing authorized funding levels for the Clean Water State Revolving Fund (CWSRF).

Support Sec. 2017. Small and disadvantaged community analysis. We support the provision.

Support Sec. 2018. Stormwater infrastructure technology. We support the provision.

ASCE
AMERICAN SOCIETY OF CIVIL ENGINEERS

25 Massachusetts Ave NW, Suite 500
Washington D.C., 20001
(202) 789.7850 phone ■ www.ASCE.org

April 24, 2020

The Honorable John Barrasso
Chairman, Senate Environment
and Public Works Committee
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Tom Carper
Ranking Member, Senate Environment
and Public Works Committee
456 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso and Ranking Member Carper,

The American Society of Civil Engineers (ASCE) thanks you for introduction of the America's Water Infrastructure Act of 2020 and the Drinking Water Infrastructure Act of 2020. Our nation's levees, dams, inland waterways, ports, drinking water, wastewater, and stormwater infrastructure systems are critical for public safety, strong businesses, economic growth, and the preservation and enhancement of our environmental resources. These systems protect hundreds of communities, support millions of American jobs, and generate trillions of dollars of economic activity. However, many of these infrastructure assets have reached the end of their design life, and the investment gap must be closed if we hope to both repair and modernize these infrastructure systems to be competitive in the 21st century.

First, ASCE would like to thank the Committee for keeping the Water Resources Development Act on its biennial schedule. Additionally, we were pleased that the recent coronavirus economic stimulus package, the CARES Act, included a provision that unlocks the **Harbor Maintenance Trust Fund (HMTF)**, providing much needed funds over the next decade by ensuring that all future HMTF revenue will be used its intended purpose of dredging at our nation's ports and inland harbors. We urge the Committee to oversee this provision's full implementation.

More specifically to the WRDA legislation, ASCE would also like to thank the Committee for reauthorizing the U.S. Environmental Protection Agency's (EPA) **Clean Water State Revolving Fund (CWSRF)** program for the first time in 30 years. As written, the reauthorization incrementally increases over five years until finally reaching $3 billion in Fiscal Year 2023. The CWSRF plays a vital role in providing much-needed support for investments in state and local wastewater and stormwater infrastructure, and since its inception in 1987, it has provided $45.2 billion to all fifty states, DC, and Puerto Rico. We urge the Committee to increase the reauthorization levels to more closely mirror those in H.R. 1497, the Water Quality Protection and Job Creation Act, which reauthorizes the CWSRF at $16.68 billion over five years. Over the next two decades, more than 56 million new users will be connected to centralized wastewater systems, which will require the construction of 532 new systems by 2032 to meet future demand. The EPA estimates that over the course of the next 20 years, $271 billion will be needed for wastewater infrastructure. In order to close the growing funding gap, we urge the Committee to increase the CWSRF's reauthorization levels.

ASCE also strongly supports language reauthorizing the **EPA's Water Infrastructure Finance & Innovation Act (WIFIA)** program at $50 million a year through FY24 and thanks the Committee for including it. Demand for the program remains high – as of 2019, prospective borrowers have submitted letters of interest for 156 projects requesting **over $21 billion** in WIFIA loans, including $3.9 billion in requests for drinking water projects. The program has successfully closed 14 loans across 18 states totaling $3.5 billion in financing for projects ranging in size from $20.7 million to $699 million.

However, we urge the Committee to also reauthorize the **U.S. Army Corps of Engineers' (USACE) WIFIA program at the same $50 million a year authorization level as the EPA's WIFIA program.** This program could provide financing for an array of projects that remain on the books for the USACE, including those that achieve environmental, hurricane, flood, and storm damage reduction, coastal or inland harbor navigation improvement, and/or inland and intracoastal waterways navigation. The 25,000 miles of inland waterways and 239 locks managed by the USACE supports more than half a million jobs and delivers more than 600 million tons of cargo each year – about 14% of all domestic freight. Yet most locks and dams on the system are well beyond their 50-year design life, and nearly half of vessels experience delays. The USACE is currently piloting a P3 program for three projects that include flood risk management, ecosystem restoration, and harbor channel improvement. The use of an additional alternative financing mechanism such as the WIFIA program can result in improvements through shorter delivery times, greater capital efficiency, and increased operational efficiency, ultimately helping to reduce the project backlog for the USACE on the inland waterways system.

Furthermore, ASCE appreciates that the Committee has amended the **Inland Water Trust Fund's (IWTF)** cost share from 50% general revenue/ 50% IWTF to 65-35 for construction and rehabilitation projects on our nation's inland waterways systems. The updated cost share will encourage faster construction and expedite completion of key inland waterways navigation projects similar to previous WRDA bills that have changed the cost share for certain projects with positive results. ASCE's 2016 *Failure to Act* economic study found that from 2026 through 2040, the average annual investment gap for waterside improvements, including dredging and lock and dam repair, is expected to be $1.9 billion, which will result in an economic loss of $2.8 trillion of GDP and 1.2 million fewer jobs in 2040 than would otherwise be expected with modernized water resources systems in place. This amendment to the cost share is critical if we are to modernize the nation's inland waterways infrastructure and close the investment gap.

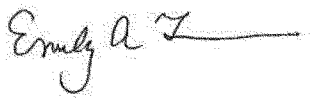
Next, ASCE applauds the Committee for including the creation of a lead mapping pilot program for drinking water utilities, the expanded eligibility for the existing **Voluntary School and Childcare Lead Testing Grant Program**, and the infusion of an addition $300 million a year to the **Drinking Water State Revolving Fund** (DWSRF) program to remediate emerging contaminants such as per- and polyfluoroalkyl substances **(PFAS)**. Many of our nation's cities contain lead service lines, and a 2018 Government Accountability Office (GAO) report found that more than 400 military installations' water systems are contaminated with PFAS. We support new funding streams such as these to assist utilities in the monumental task of addressing these emerging contaminants in order to protect public health and to remain in SDWA compliance.

Finally, ASCE would like to thank the Committee for including the reauthorization and creation of programs that **encourage resilience, innovation, and the utilization of green infrastructure systems**, which help balance the built and natural environments and are often cost-competitive compared to gray forms of infrastructure. As natural hazards become more frequent and severe, investments in resilience measures will save lives and dollars. In fact, the National Institute of Building Sciences (NIBS) found that mitigation funding can save the nation $11 in future disaster costs for every $1 spent on hazard mitigation.

A critical component to raising our nation's "D+" infrastructure grade is using new approaches, materials, and technologies to ensure our infrastructure is able to quickly recover from significant weather and other hazard events while reducing impacts on local economies, quality of life, and the environment. We also support research and development into innovative materials and processes to modernize and extend the life of infrastructure, reduce life-cycle costs, expedite repairs or replacement, and promote cost savings.

In conclusion, ASCE thanks the Committee for introduction of the America's Water Infrastructure Act of 2020 and the Drinking Water Infrastructure Act of 2020. We believe our nation must prioritize the investment needs of our water resources, drinking water, wastewater, and stormwater infrastructure systems to protect public health, ensure a strong economy, and build a modern, efficient network of infrastructure that can compete on a global stage. We welcome the opportunity to work with you and your staff on these critical infrastructure bills and can be reached at govwash@asce.org.

Sincerely,



Emily Feenstra
Managing Director, Government Relations & Infrastructure Initiatives

April 28, 2020

The Honorable John Barrasso
Chairman
Committee on Environment and Public Works
United States Senate
307 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Tom Carper
Ranking Member
Committee on Environment and Public Works
United States Senate
513 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper,

On behalf of the nation's recreational fishing industry, thank you for developing America's Water Infrastructure Act of 2020, which includes numerous provisions that will benefit the recreational fishing community. As our industry is facing significant economic and access challenges related to the COVID-19 pandemic, we appreciate your leadership in identifying a comprehensive set of water infrastructure policies that will improve the condition of our nation's waterways, expand recreational access and benefit the economy in these difficult times.

The American Sportfishing Association (ASA) is the trade association representing the recreational fishing industry, including sportfishing equipment manufacturers, distributors, retailers and outdoors media. The nation's 50 million recreational fishermen contribute $125 billion annually to the economy, supporting over 800,000 jobs. Our nation's rich tradition of recreational fishing is predicated on healthy and accessible waterways.

We strongly support the development and swift enactment of a water infrastructure package such as this. While often forgotten when considering more traditional infrastructure like highways and bridges, water infrastructure is critically important to economies throughout the nation, all of which are suffering right now due to the COVID-19 pandemic. The provisions in your draft bill would be sound policies at any time, but especially now are critical to provide economic stimulus and support for business, like the recreational fishing industry, that depend on our nation's waterways.

Below are specific provisions in your draft bill supported by ASA, and which we encourage you to maintain as you continue advancing America's Water Infrastructure Act of 2020.

Sec. 1002. Great Lakes comprehensive flood protection study.

- Flooding throughout the Great Lakes has resulted in substantial losses in recreational access, causing erosion, damaging lakeside property, and causing many boat ramps to become damaged and inaccessible. ASA is pleased to see $25 million in federal funding being dedicated to complete a report outlining shoreline protection and resiliency. This study will help ensure sound management and policy, and mitigate future impacts when the Great Lakes inevitably flood in the future.

AMERICAN SPORTFISHING ASSOCIATION
1001 N. Fairfax Street, Suite 501, Alexandria, VA 22314 • 703-519-9691 • Fax: 703-519-1872
Web: www.ASAFishing.org • Email: info@ASAFishing.org

Sec. 1035: Chesapeake Bay Environmental Restoration and Protection Program

- The health of the Chesapeake Bay is not only critical to the recreational fishing community around the Bay itself, but also to the entire Mid-Atlantic region, as the Bay is an important nursery for migratory fish like striped bass. The Chesapeake Bay Program coordinates data collection and distributes grants to states for Chesapeake Bay restoration efforts. This Program helps states control pollution and manage runoff into the tributaries that feed into the Bay. ASA is grateful for the increased funding authorized under this section.

Sec. 1037. Interagency task force on small dams and fish passages.

- ASA is supportive of the creation of an interagency task force to study small dams and fish passages. The removal of dams and creation of fish passage structures will benefit fisheries by allowing many fish species access to their native ranges. Throughout the country, the costs of many dams (e.g., environmental, safety and socio-economic factors) outweigh the benefits (e.g., hydropower, flood control, irrigation), and in many cases dams have outlived their useful purpose. Having a federal task force that develops a national strategy for identifying, prioritizing, and successfully removing or refurbishing small dams of concern by 2030 will allow for a more coordinated and comprehensive approach to considering removal of these structures.

Sec. 1041. Brandon Road study.

- ASA is strongly supportive of the Brandon Road project and the cost share agreement outlined in Sec. 1041. This important project is critical to protecting the Great Lakes from Asian Carp, which are currently one of the greatest threats to the $7 billion Great Lakes fishery.

Sec. 1074. Delegation of Work for Comprehensive Everglades Restoration Plan Projects.

- ASA supports this provision to delegate work and federal funds to the non-local sponsor for Everglades restoration projects. This delegation will help complete these projects in the most expeditious manner by allowing flexibility in the regulatory process.

Sec. 1093. Harmful algal blooms demonstration program.

- In addition to their human health risks, HABs harm fish populations and native aquatic habitat. From Florida beaches closed due to red tide, to fishing tournaments being cancelled in lakes across the country, HABs continue to harm recreational fishing opportunities and fisheries resources at a growing rate. The recreational fishing community welcomes additional research to detect and mitigate HABs.

Sec. 1096. Increasing access for recreation at Corps of Engineers projects.

- ASA is supportive of this effort to increase access at Army Corps of Engineers (USACE) facilities, which currently provide recreational fishing opportunities in many parts of the country, particularly on USACE-managed reservoirs. The USACE is one of the nation's leading federal providers of outdoor recreation with over 400 lake and river projects in 43 states, supplying 14% of all freshwater fishing. ASA is thankful for the access currently provided by the USACE and is supportive of efforts to increase these opportunities.

Sec. 1202. Expedited completion.

- ASA supports the direction to expedite completion and review of important Everglades restoration projects, including Lake Okeechobee, Western Everglades, Canal 111 South Dade, and Caloosahatchee River C-43 West Basin Storage

Reservoir. Everglades restoration is a high priority for our association given its impacts on water quality in Florida and moving these remaining projects forward as quickly as possible will minimize negative impacts on habitat and natural resources.

Sec. 1401. Project Authorizations.

- Loxahatchee River Watershed is an important component of Everglades restoration addressing quality, quantity, timing and distribution of water on the eastern side of the system and has undergone a thorough planning process. ASA supports authorization of this project.

Sec. 1602. Invasive species in impaired waters.

- Aquatic invasive species are currently one of the greatest threats to recreational fishing, as their introduction can completely disrupt a fisheries ecosystem. While much of the management and control of aquatic invasive species is done at the state and local level, increased technical and financial federal support would benefit these efforts.

Sec.1603. Aquatic invasive species research.

- ASA is supportive of this textual change to Sec. 1108 of AWIA 2018 (33 U.S.C. 2263a) as the Army Corps of Engineers Engineer Research and Development Center is already a leader research on AIS management and eradication that is shared across agencies. The inclusion of "prevention" will assure that ERDC is focusing on ways AIS can be avoided altogether.

Sec. 1604. Invasive species mitigation and reduction.

- Increasing coordination between the federal government and states is key in preventing the spread of aquatic invasive species. The pilot projects authorized in this section will help to identify appropriate and reasonable approaches to allow boaters to continue to access waterways while minimizing the potential associated spread of aquatic invasive species.

Sec. 1606. Invasive species assessment, prioritization, and management.

- ASA strongly supports efforts to restore Florida's Everglades, including the identification and eradication of invasive species. Invasive species are a key threat to this ecosystem and have proved challenging to control. As such, ASA supports the development of a process to identify, study and eliminate them.

Sec. 1607. Asian carp prevention and control pilot program.

- Asian carp are a significant threat to recreational fisheries not only in the Great Lakes but throughout the Mississippi River drainage. Where introduced, they have disrupted the natural ecosystem, resulting in declines in recreational fish populations. In addition, their behavior of jumping out of the water when motorized boats transit nearby create a serious risk to human health. Reducing their populations where they have already established, and preventing their further spread are critical to supporting recreational fishing opportunities and communities in many parts of the country. The prevention and control projects required in this section will hopefully provide tangible progress in stopping the spread of Asian carp. We are thankful for your leadership to confront this issue at such a pivotal juncture.

Sec. 1608. Aquatic invasive species prevention.

- ASA is supportive of the provision in Sec. 1608 and the expansion of WRRDA to include Asian Carp beyond the Upper Mississippi and Ohio River Basins and

tributaries to all six sub-basins of the Mississippi River, as all of these areas are threatened by Asian Carp infestation.

Sec. 3006: Great Lakes Restoration Initiative

- The Great Lakes Restoration Initiative (GLRI) has provided billions of dollars for critical Great Lakes projects including invasive species control, Asian carp prevention, habitat restoration, and many other areas of interest. This section reauthorizes the GLRI and increases funding to $375 million to restore and protect the Great Lakes through water infrastructure projects, as well as ecosystem restoration and invasive species control.

Sec. 3007: San Francisco Bay Restoration Grant Program

- The health of San Francisco Bay is critical to the in-shore health of fish populations and the grants authorized in this section can be used to further the restoration, monitoring and maintenance of fish habitat. This section establishes a San Francisco Bay National Program Office to oversee a new grant program to implement the San Francisco Bay Plan – a comprehensive conservation and management plan. The provision is authorized $25 million for each fiscal year 2021 and 2022.

Sec. 3008: Lake Tahoe Restoration Program

- The section establishes cooperative agreements, grants, or other means for activities, studies, or projects identified in the Lake Tahoe Environmental Improvement Program. This section authorizes $6 million is authorized in appropriations for fiscal years 2021 through 2024. These funds are critical to combatting invasive species, restoring and protecting the environment of the Lake Tahoe Basin.

Sec. 3009: Puget Sound Coordinated Recovery

- Restoring the health of Puget Sound must remain a priority for our region and our nation as it is one of the most productive and critical regions for fish habitat in the country. This section establishes a Puget Sound Recovery National Program Office in the EPA which is tasked to coordinate all activities related to the restoration and protection of the Puget Sound and to promote the efficient use of program resources. Additionally, this section requires the Director of the Office of Management and Budget (OMB), in consultation with the Puget Sound Federal Task Force, to submit a financial report to Congress containing an interagency crosscut budget relating to Puget Sound restoration and protection activities. $50 million is authorized for each fiscal year 2021 through 2025 to carry out this section. Restoration efforts in the Puget Sound generate jobs, goods, and services in the short-term and help to ensure the economic livelihood of the region in the long-term.

We look forward to the opportunity to work with you and your staff to advance these and other priorities as you continue to advance America's Water Infrastructure Act of 2020.

Sincerely,

Mike Leonard
Vice President of Government Affairs

American Water Works Association
Dedicated to the World's Most Important Resource®

Government Affairs Office
1300 Eye Street NW
Suite 701W
Washington, DC 20005-3314
T 202.628.8303
F 202.628.2846

May 1, 2020

The Honorable John Barrasso
Chair
The Honorable Thomas R. Carper
Ranking Member
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Chairman Barrasso and Ranking Member Carper,

The American Water Works Association (AWWA) appreciates the opportunity to offer comments regarding two pieces of draft legislation, America's Water Infrastructure Act of 2020 (AWIA 2020) and the Drinking Water Infrastructure Act of 2020 (DWIA 2020). We will comment on each bill separately and provide additional thoughts on addressing the current COVID-19 pandemic.

America's Water Infrastructure Act of 2020

Water Infrastructure Finance and Innovation Act

AWWA commends the committee for reauthorizing the Water Infrastructure Finance and Innovation Act (WIFIA) through fiscal year 2024 in AWIA of 2020. Since EPA began issuing loans in fiscal year 2018, the program has leveraged $140 million in congressional appropriations to provide more than $17 billion in loan capacity for water infrastructure projects around the country. We also appreciate the Committee's inclusion in Section 3010 of an administrative reform to WIFIA, which reduces the number of credit rating opinion letters required from each applicant from two to one. This modification will further reduce barriers faced by systems pursuing financing through WIFIA.

However, AWWA does have one note of great concern about WIFIA at the moment. We are aware of an issue regarding the budget impact of certain projects receiving assistance through WIFIA. In all WIFIA projects to date, save one, the program has leveraged federal dollars at a rate of about 1:97. In other words, for every dollar appropriated for WIFIA, $97 can be loaned to a project. However, there is one project in which one of the partners is a federal agency or sub-agency. In that instance, the Congressional Budget Office (CBO) and Office of Management and Budget (OMB) have determined the project should be scored at 100 percent of the loan value, resulting in a 1:1 leverage ratio. Such scoring will wipe out the leveraging ability of WIFIA and leave a relatively small amount of money for loans. One federally related project could result in there being no money for any other projects.

In the fiscal year 2020 omnibus appropriations bill, Congress required the U.S. Environmental Protection Agency (EPA), CBO, and OMB to resolve this issue before the next round of WIFIA funding can be released. It is our understanding that the three agencies have not come to a conclusion on this issue. EPA should be issuing a "Notice of Funding Availability" at this time for fiscal year 2020 WIFIA funds, but it is prevented from doing so because of this impasse. At a time when the country should be creating jobs – and in this program, jobs that protect human and environmental health – this must be resolved.

To resolve the impasse, AWWA is offering the attached legislative language for your consideration, *Attachment 1*. This language changes the definition of "governmental activity" to exclude certain WIFIA projects with federal sponsors and requires that CBO take into consideration only the long-term risk to the federal government of non-repayment. Again, without this fix, federally-sponsored projects could completely squeeze out utility projects due to budget scoring.

This language does not provide any additional budget authority and does not affect the nature of other debt issued for the affected projects. Therefore, we do not expect the language to have any budgetary impact or present scoring challenges.

We have one other suggestion to streamline WIFIA and make it more attractive to co-lenders for the innovative finance arrangements that Congress sought in creating the program. That improvement would be to eliminate the "springing lien" provision found in the original law creating WIFIA, in which the federal government springs to the forefront of creditors in the event of a bankruptcy. Historically, water utilities have a default rate of 0.04 percent, and most of those defaults are resolved. Therefore, removing the springing lien would have little or no budget impact, but would ease the minds of co-lenders. We have suggested legislative text, *Attachment 2*.

Other suggestions

Section 2001 of AWIA 2020 creates a resiliency and sustainability program for water systems under the jurisdiction of the Clean Water Act. This program is similar to one created for drinking water systems in Section 2013 of AWIA 2018, but does not require the same risk and resiliency assessments or emergency response plans. AWWA urges the Committee to align these programs further in order to avoid redundancy and confusion for dual water utilities. Drinking water systems are currently complying with these provisions and will be required to renew/update their assessments beginning in 2025. We believe a requirement for wastewater systems to complete risk and resiliency assessments and emergency plans starting in 2025 would help streamline the facilitation of this work. This analysis could also be used to further justify allocation of funds to mitigate risks from natural hazards.

Additionally, Section 2008 raised some questions. It is not clear to us why a new definition of public works was necessary. Were water systems managed within public works departments being excluded from consideration? Also, in most communities and at FEMA, public works usually means more than water systems. It also includes activities such as streets, traffic control systems, municipal fleet management, and the like. We would like to see clarification of this passage.

Drinking Water Infrastructure Act of 2020

Section 4 of DWIA 2020 makes permanent language in last year's appropriations bill requiring states to use 20 percent of their drinking water state revolving fund (DWSRF) capitalization grants for grants; negative-interest loans; or to buy, refinance, or purchase debt.

While there is clearly a need for additional flexibility during the current public health crisis, we urge the Committee to avoid making permanent these changes to the Drinking Water State Revolving Fund (DWSRF). The infrastructure challenges that drinking water systems face vary widely from system to system. A permanent set-aside of DWSRF funds for a particular contaminant or type of project could place utilities at a competitive disadvantage for DWSRF loans if their challenges do not match those in a particular set-aside.

At its core, the DWSRF is a program designed to help water systems improve or replace drinking water infrastructure. In its most recent Drinking Water Needs Survey and Assessment, EPA identified $472.6 billion worth of drinking water infrastructure needs over the next 20 years. Additional set-asides for non-infrastructure needs, including operations and debt-repayment, results in fewer dollars to address the country's aging infrastructure. AWWA's own study, Buried No Longer, found that the United States must invest $1 trillion over the next 25 years for the country to maintain its current level of service.

In the interest of the long-term health of the SRF funds, we urge Congress to provide additional but separate allocations to the Drinking Water and Clean Water SRF programs, the Water Infrastructure Finance and Innovation Act program, and rural utility assistance programs at the U.S. Department of Agriculture to address impacts of the current pandemic.

COVID-19 Emergency Funding Needs

As drinking water utilities continue to prioritize public health and provide essential service to customers, the sector faces accelerating revenue shortfalls due to an increase in late payments, reduction in commercial demand, reduction in demand from school systems and the widespread curtailing of shutoffs due to delinquent payments. AWWA and the Association of Metropolitan Water Agencies (AMWA) recently released a report detailing the financial impact of the COVID-19 public health crisis on water systems across the country.

The report, completed by Raftelis *(Attachment 3)*, estimates that drinking water utilities alone face nearly $14 billion in financial losses. Additionally, revenue shortfalls at utilities may lead to a reduction in overall economic activity of up to $32.7 billion and cost 75,000 to 90,000 private sector jobs.

We therefore urge Congress, whether in this legislation or in the next recovery/stimulus bill to address these issues:

- Assistance to low-income customers who have had trouble paying their water bills and are now facing greater hardship due to the economic downturn.
- Assistance to water utilities facing significant revenue shortfalls they are no longer shutting off delinquent customers and because revenues from business and schools has fallen.
- Investment in the nation's water infrastructure to spur economic growth, create jobs and protect human and environmental health.

We hope to work further with Congress in addressing water infrastructure issues and new issues arising from the current pandemic. Please do not hesitate to contact me or my staff.

Sincerely,

G. Tracy Mehan III

Executive Director for Government Affairs

Attachment 1

1 **SEC. ___. BUDGETARY TREATMENT.**

2 (a) ELIGIBLE ENTITIES.—Section 5025(5) of the Water
3 Infrastructure Finance and Innovation Act of 2014 (33 U.S.C.
4 3904(5)) is amended by striking "Federal, State," and inserting
5 "State".

6 (b) NON-FEDERAL PROJECT.—Section 5028(a) of such Act
7 (33 U.S.C. 3907(a)) is amended—

8 (1) in paragraph (3) by inserting "non-Federal" after
9 "dedicated"; and

10 (2) by adding after paragraph (6) the following:

11 "(7) NON-FEDERAL PROJECT.—

12 "(A) IN GENERAL.—Notwithstanding any other
13 provision of law, regulation, or guidance, any project that is
14 otherwise eligible for assistance under this chapter and that
15 meets the requirements of subparagraph (B) shall not be
16 treated as a Federal governmental activity.

17 "(B) REQUIREMENTS.—

18 "(i) The project applicant shall be a non-Federal
19 eligible entity under section 3904; and

20 "(ii) the Federal credit instrument for the project shall
21 be repayable from non-Federal revenue sources.".

22 (c) FINANCIAL RISK ASSESSMENT.—Section 5029(a)(2) of
23 such Act (33 U.S.C. 3908(a)(2)) is amended by inserting "in
24 accordance with section 3901(13)" after "the secured loan".

Attachment 2

1 **SEC. ___. NONSUBORDINATION.**

2 Section 5329(b) of the Water Infrastructure Finance and Innovation
3 Act of 2014 (33 U.S.C. 3908(b)) is amended by revising paragraph (6) to
4 read as follows:

5 "(6) NONSUBORDINATION.—

6 "(A) IN GENERAL.—Except as provided in
7 subparagraph (B), a direct loan under this section shall not
8 be subordinated to the claims of any holder of project
9 obligations in the event of bankruptcy, insolvency, or
10 liquidation of the obligor.

11 "(B) PRE-EXISTING INDENTURE.—

12 "(i) IN GENERAL.—The Administrator shall
13 waive the requirement of subparagraph (A) for a
14 public agency borrower that is financing ongoing
15 capital programs and has outstanding senior bonds
16 under a preexisting indenture, if the direct loan is
17 rated in the A category or higher.

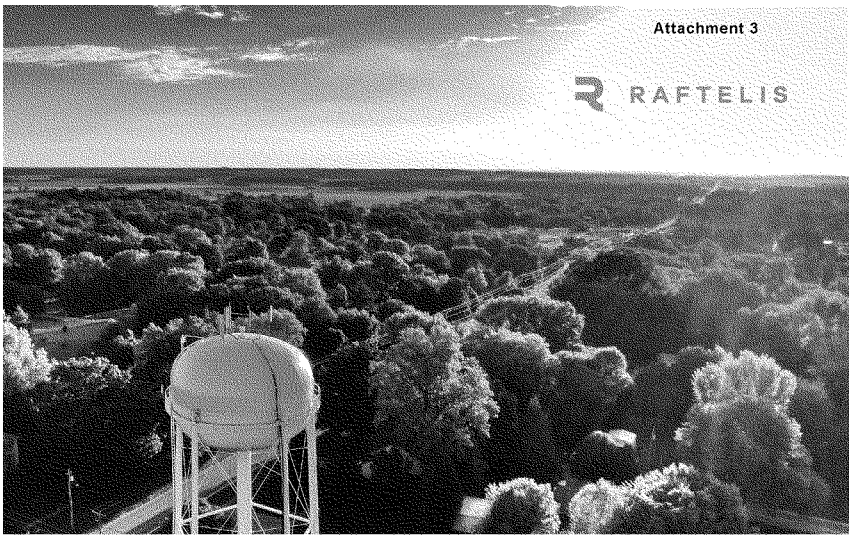
18 "(ii) Upon the waiver of the nonsubordination
19 requirement under this subparagraph—

20 "(I) the maximum credit subsidy to be paid by
21 the Federal Government shall be not more than 10
22 percent of the principal amount of the direct loan;
23 and

1 "(II) the obligor shall be responsible for

2 paying the remainder of the subsidy cost, if any.".

Attachment 3



The Financial Impact of the COVID-19 Crisis

on U.S. Drinking Water Utilities

APRIL 14, 2020

American Water Works Association

Dedicated to the World's Most Important Resource®

ASSOCIATION OF METROPOLITAN WATER AGENCIES

This project was funded by the Water Industry Technical Action Fund of AWWA

Table of Contents

1 Executive Summary

2 1. Introduction

2 **1.1. Background and Objectives**

2 **1.2. Scope of Work**

2 **1.3. Methodology**

3 **1.4. Data and Information Sources**

4 2. Analysis and Results

4 **2.1. Financial Losses Due to Changes in Customer Delinquency Policies**

5 2.1.1. Methodology

6 2.1.2. Analysis

9 **2.2. Revenue Loss Due to Declines in Consumption**

10 2.2.1. Methodology

10 2.2.2. Analysis

13 **2.3. Financial Impact of Water Utility Operational Policy Changes**

14 2.3.1. Methodology

14 2.3.2. Analysis

15 **2.4. Financial Loss Due to Slower Customer Growth**

16 2.4.1. Methodology

16 2.4.2. Analysis

17 **2.5. Economic Impact of Reduced Capital Expenditures**

18 2.5.1. Methodology

19 2.5.2. Analysis

20 **2.6. Other Impacts and Considerations**

21 **2.7. Estimated Total Aggregate Financial Impact on U.S. Drinking Water Utilities**

21 **2.8. Wastewater Sector Potential Impacts**

22 3. Conclusions

List of Tables

6 Table 2-1. Estimated Aggregate Annual Drinking Water Utility Revenues

7 Table 2-2. Estimated Deferred or Lost Revenue Due to Increased Bill Delinquencies

8 Table 2-3. Estimated Marginal Cost Impact of Non-Shut Offs of Delinquent Accounts

12 Table 2-4. Estimated Revenue Loss Due to Declines in Non-Residential Consumption

12 Table 2-5. Estimated Increase in Residential Consumption

13 Table 2-6. Estimated Revenue Increase Due to Increases in Residential Consumption

14 Table 2-7. Estimated Operation Policy Change Impacts on Personnel Expenses

16 Table 2-8. Estimated Aggregate Loss of System Development Charges

17 Table 2-9. Estimated Loss of Rate Revenue from Lower New Customer Growth

19 Table 2-10. Estimated Economic Impacts of Deferred Capital Construction Expenditures

20 Table 2-11. Estimated Revenue Loss from Reduction and Deferral of Water Rate Increases

21 Table 2-12. Estimated Total Aggregate Financial Impact

List of Figures

3 Figure 1-1. Location of Utilities Responding to Raftelis Questionnaire

4 Figure 2-1. Water Utility Changes to Delinquency Policies

5 Figure 2-2. Pre-Crisis Water Utility Uncollectible Rates (N=42)

8 Figure 2-3. Drinking Water Utilities with Debt Forgiveness Policies (N=47)

9 Figure 2-4. Drinking Water Utilities Experiencing Changes in Water Demands (N=28)

10 Figure 2-5: Cumulative Share of Labor Market Subject to State Lockdowns

11 Figure 2-6: Industries Anticipated to Experience Significant Water Demand Reductions

13 Figure 2-7: Personnel Expense Changes (N=27)

15 Figure 2-8. Historical Trends in Housing Completions vs. Unemployment

17 Figure 2-9. Drinking Water Utilities Indicating Delays in Capital Construction

18 Figure 2-10. Anticipated Annual Capital Expenditure Adjustments (N=11)

Appendices

23 COVID-19 Questionnaire Results

Executive Summary

Drinking water utilities across the U.S. have experienced, and are anticipated to continue to experience, revenue and cost impacts associated with the COVID-19 crisis. This report was prepared for the American Water Works Association ("AWWA") and the Association of Metropolitan Water Agencies ("AMWA") to estimate the financial impacts of the crisis on drinking water utilities in the U.S.

The anticipated financial impacts were estimated by (1) obtaining recent and relevant data regarding observed or anticipated financial and operational water utility impacts, (2) monetizing the impacts, and (3) scaling up or aggregating the impacts to estimate the impacts on a national level.

The results of the assessment indicate that the aggregate financial impact of COVID-19 on drinking water utilities will likely be approximately $13.9 billion, representing an overall 16.9 percent financial impact on the drinking water sector. These impacts are a result of drinking water utilities eliminating shut offs for non-payment, anticipated increased delinquencies as a result of high unemployment rates, reductions in non-residential water demands and associated revenues offset by increases in residential consumption, and lower customer growth. A summary of the financial impacts associated with these factors are provided in the table below.

Due to these financial impacts, drinking water utilities across the nation are anticipated to delay and reduce capital expenditures by as much as $5 billion (annualized) to help manage cash flows due to the crisis. These capital expenditure reductions will have a cascade effect on economic activity in communities across the U.S. As a result, **communities will experience a reduction in economic activity by as much as $32.7 billion** (annualized) in aggregate when considering economic multiplier effects. The reduction in capital expenditures is also anticipated to result in a loss of 75,000 to 90,000 private sector jobs.

Drinking water utilities may also experience additional future revenue losses estimated at approximately $1.6 billion in aggregate as a result of deferrals of planned water rate increases, bringing **the total combined impact of the crisis on drinking water utilities to more than $15 billion**. These deferrals will further exacerbate community economic impacts by further reducing capital spending and will put the water sector further behind in addressing its capital infrastructure needs.

The financial impact of the COVID-19 crisis on water and wastewater utilities combined is estimated to exceed $27 billion.

Estimated Total Aggregate Financial Impact on Drinking Water Utilities

Description	2 Months	4 Months	6 Months	Annualized
Marginal Cost of Non-Shut Offs	$0.10B	$0.19B	$0.29B	$0.57B
Revenue Loss Due to Increased Delinquencies	$0.82B	$1.64B	$2.46B	$4.92B
Reduction in Commercial Revenues	$1.23B	$2.46B	$3.69B	$7.38B
Increase in Residential Revenues	($0.44B)	($0.88B)	($1.32B)	($2.64B)
Increase in Personnel Expenses	$0.10B	$0.21B	$0.31B	$0.63B
Reduction in System Development Charges	$0.43B	$0.87B	$1.30B	$2.60B
Reduction in Revenues from Lower Customer Growth	$0.01B	$0.05B	$0.09B	$0.41B
Total Aggregate Financial Impact	**$2.3B**	**$4.5B**	**$6.8B**	**$13.9B**

This assessment and report was funded by the Water Industry Technical Action Fund ("WITAF") of AWWA. WITAF is managed by the Water Utility Council to support projects, studies, analyses, reports and presentations in support of AWWA's legislative and regulatory agenda. WITAF is funded by a portion of organizational member's dues.

1 Introduction

1.1. Background and Objectives

This report was prepared for the American Water Works Association ("AWWA") and the Association of Metropolitan Water Agencies ("AMWA") to assist in estimating the financial impact that the novel COVID-19 virus is anticipated to have on water utilities in the United States ("U.S.") The intent of the report is to aid AWWA and AMWA in advocating for securing Federal funding for the drinking water sector to help deal with this crisis and to provide AWWA and AMWA membership with information regarding the aggregate financial impact of the COVID-19 crisis on the sector. This assessment and report was funded by the Water Industry Technical Action Fund ("WITAF") of AWWA. The WITAF is managed by the Water Utility Council to support projects, studies, analyses, reports and presentations in support of AWWA's legislative and regulatory agenda. WITAF is funded by a portion of organizational member's dues.

1.2. Scope of Work

Drinking water utilities across the U.S. have experienced and are anticipated to experience revenue and cost impacts associated with the national, state, and local response to the COVID-19 crisis. The scope of this work consisted of estimating the aggregate financial impacts on drinking water utilities due to the following:

1. **Changes in utility policies** to not shut off water service to customers with delinquent accounts and providing forgiveness of late penalty fees. This included preparing estimates of the anticipated rise in delinquencies due to the policy change, as well as due to anticipated rising unemployment rates.

2. **Losses in revenue** from non-residential (i.e., commercial, industrial, and institutional) customers, net of residential revenue increases, as a result of national and state directives for the temporary shutdown of non-essential businesses and "stay at home" orders.

3. **Operational actions taken**, or anticipated to be taken, by water utilities to ensure safe and reliable water service, such as sequestering water operators and other key staff.

4. **Reducing, deferring or eliminating capital expenditures** to preserve cash and help maintain financial sustainability.

5. **Reduction in system development charges and user charges from new growth** due to slowing of economic growth and development.

Due to the rapidly developing and changing crisis, the scope of work was initiated on April 1, 2020 and was completed on April 13, 2020.

The financial assessment summarized in this report was prepared based on relevant data and information available as of the date of this report. It does not incorporate any facts or information which may have come into existence after the date of the report, and such information could have a material effect on the findings and conclusions contained herein. As such, the estimates contained in this report are early estimates based on available data that may understate the financial impacts on drinking water utilities depending upon the length and severity of the crisis. The analyses focused on the national impacts to drinking water utilities in the U.S. and did not consider or involve developing specific state or city impacts, or a detailed estimate of the impacts to wastewater utilities.

1.3. Methodology

In general, the methodology used to estimate the financial impacts of the COVID-19 crisis on drinking water utilities consisted of (1) obtaining recent and relevant data regarding observed or anticipated financial and operational water utility impacts, (2) monetizing the impacts, and (3) scaling up or aggregating the impacts to estimate monthly and annualized national impacts. Specific methodologies used to identify and quantify the various financial impacts of COVID-19 on drinking water utilities are provided in Section 2.

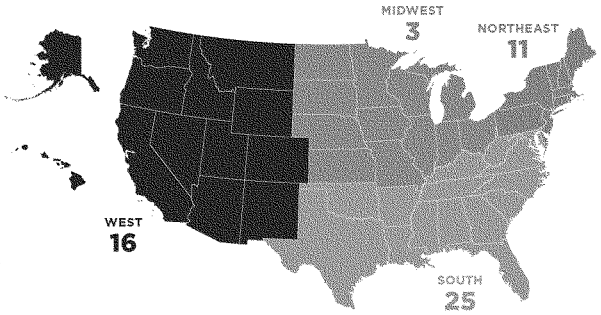


Figure 1-1.
Location of Utilities Responding to Raftelis Questionnaire

1.4. Data and Information Sources

Information that was used to complete the financial impact assessment was compiled from various AWWA and AMWA sector surveys, sector publications, responses from a questionnaire prepared and distributed to water utilities, and financial data and information from recent rate studies completed by Raftelis for various drinking water utility clients. Specific sector surveys and publications that were relied upon to complete the assessment, included the following:

- COVID-19 Survey Conducted by AWWA on March 25-30, 2020;
- 2019 Water and Wastewater Rate Survey. AWWA;
- Utility Benchmarking: Performance Management for Water and Wastewater. AWWA 2019;
- INSIGHT – Utility Financial Information Database. AMWA 2018;
- Dun & Bradstreet, First Research Industry profile for the Water Industry. 2018;
- Public Spending on Transportation and Water Infrastructure, 1956 to 2017. Congressional Budget Office, October 2018;
- U.S. Census Bureau, Population Survey (2019);
- U.S. Census Bureau, American Housing Survey Data (2017);
- U.S. Census Bureau, Historical Labor Force Unemployment Rate Statistics;
- U.S. Census Bureau, Building Permit Survey (2019);
- Residential End Uses of Water, Version 2 Executive Report, Water Research Foundation, April 2016;
- Back-of-the-Envelope Estimates of Next Quarter's Unemployment Rate. The Federal Reserve Bank of St. Louis, March 24, 2020;
- COVID-19: Economic Scenarios. Moody's Analytics. March 27, 2020;
- The Daily Shot: Consumers Cut Spending by About 50 Percent, Wall Street Journal, April 8, 2020;
- National Impact Fee Survey, Duncan Associates, 2019;
- Local Government Investment in Municipal Water and Sewer Infrastructure: Adding Value to the National Economy, Prepared for the U.S. Conference of Mayors by The Cadmus Group, Inc. August 14, 2008; and
- The Economic Benefits of Investing in Water Infrastructure, Bureau of Economic Analysis, 2018.

AWWA surveyed member utilities and other sector organizations between March 25 - 30, 2020 to gauge the impacts of COVID-19 and actions being taken to manage risk and plan for contingencies. AWWA received 615 responses to the survey, of which 532 responses were from unique utilities, and 81 were from non-utility survey participants. Results from this survey were used in this assessment, where noted.

Raftelis prepared a questionnaire focused on the financial and operational impacts of the COVID-19 crisis on drinking water utilities and distributed the questionnaire to more than 150 water utilities. The questionnaire was completed between April 6 – 8, 2020. A total of 102 responses to the survey were received, of which 55 responses were usable, complete, and represent responses from unique drinking water utilities. Responses from this questionnaire were used in this assessment, where noted. In addition, the full questionnaire and a summary of the responses are provided in Appendix A.

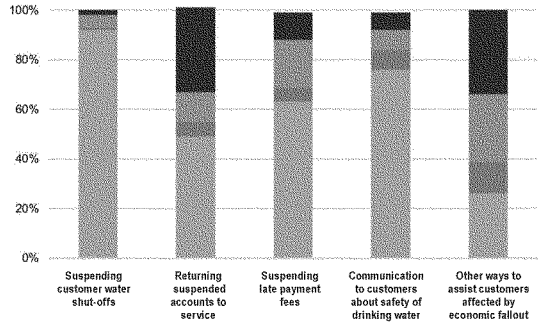
2 Analysis and Results

This section of the report provides a detailed description of the methodologies and analyses employed to quantify the financial impacts of the COVID-19 crisis on drinking water utilities and summarizes the results of the analyses.

2.1. Financial Losses Due to Changes in Customer Delinquency Policies

Many drinking water utilities have changed their shut-off and late bill payment fee policies for delinquent accounts in reaction to the crisis. According to the recent COVID-19 survey completed by AWWA in March 2020, approximately 98% of respondents indicated that policies are either in place to suspend customer water shut-offs, in development, or indicated that they are considering implementing such policies, as show in Figure 2-1.

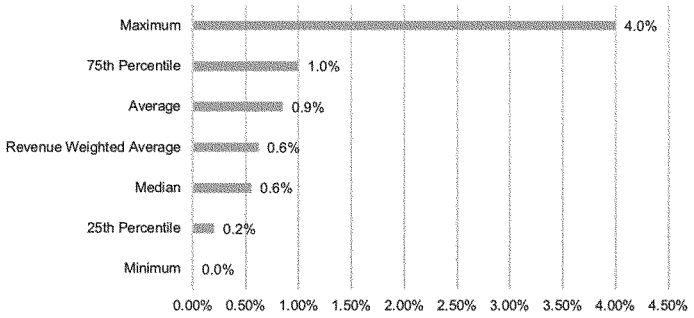
Figure 2-1. Water Utility Changes to Delinquency Policies



	Suspending customer water shut-offs	Returning suspended accounts to service	Suspending late payment fees	Communication to customers about safety of drinking water	Other ways to assist customers affected by economic fallout
Currently no plans to develop	2%	34%	11%	7%	34%
Considering	5%	12%	19%	8%	27%
Currently in development	1%	6%	6%	8%	13%
Currently in place	92%	49%	63%	76%	26%

Responses from the Raftelis COVID-19 impact questionnaire indicated that the median annual uncollectable percentage for drinking water utilities prior to the COVID-19 crisis was approximately 0.6 percent, as shown in Figure 2-2. In addition, survey respondents indicated the likelihood that delinquencies would increase significantly in the coming months.

Figure 2-2. **Pre-Crisis Water Utility Uncollectible Rates** (N=42)



Due to changes in water utility shut-off policies and rising unemployment rates, delinquencies and annual uncollectible percentages will likely increase significantly, resulting in incremental water utility revenue deferrals or losses. Some specific examples of delinquency policy changes that have been implemented are as follows:

Manchester Water Works (NH) is not charging late fees or performing shut-offs for not payment.

City of Tulsa (OK) is working on extending its payment arrangement plans without penalty. In some cases, it anticipates the need to write off the debt.

City of Chandler (AZ) is helping water customers financially burdened due to COVID-19 by suspending disconnections, not charging late fees, and extending payment plans.

WaterOne in Johnson County (KS) has eliminated late payment fees and anticipates a 53 percent reduction in late payment fees assuming that it foregoes changing these fees for six months.

2.1.1. Methodology

The steps used to estimate drinking water utility financial losses due to changes in delinquency policies are summarized as follows:

1. Estimate the marginal cost impact of non-shut offs of delinquent accounts:

a. Identify typical delinquency rates and bad debt ratios using the AMWA INSIGHT survey, AWWA benchmarking study, and responses from the Raftelis water utility questionnaire.

b. Estimate the typical marginal cost of water defined as variable costs (e.g. power, chemicals, etc.) as a percentage of the typical water utility total budget from sector survey results and Raftelis experience.

c. Multiply marginal cost of water percentage by an estimate of the aggregate National water utility revenue and expenditure estimate.

d. Estimate the monthly marginal cost impact by dividing the figure above by a factor of 12.

2. Estimate the deferred or lost revenue to drinking water utilities due to increased bill delinquencies:

a. Use national unemployment statistics to estimate increases in delinquencies due to the crisis.

b. Estimate additional delinquencies due to moral hazard / lack of consequences of customers not paying their utility bills. Estimated from sample of sector data from past events.

c. Estimate incremental delinquency rate due to (a.) and (b.) above.

d. Multiply the increased delinquency rate by the Aggregate National water utility revenue estimate.

e. Estimate the monthly deferred revenue impact by dividing the figure above by a factor of 12.

f. Estimate the portion of utilities that may implement a policy to relieve customers from having to pay their delinquent, unpaid bills from Raftelis questionnaire results.

g. Estimate the potential monthly permanent revenue loss by multiplying the estimated value of delinquent water bills by the percentage of utilities implementing debt forgiveness policies.

3. Estimate lost revenue from the portion of utilities that may implement a policy to relieve customers from having to pay late bill fees.

a. Estimate the typical amount of late bill fees collected by drinking water utilities as a percentage of total revenues from the AMWA INSIGHT survey.

b. Multiply the late bill fee revenue percentage by the Aggregate National water utility revenue estimate.

c. Estimate the proportion of drinking water utilities that have or plan to implement late bill fee forgiveness policies from the March 2020 AWWA survey.

d. Multiply the proportion of drinking water utilities that have or plan to implement late bill fee forgiveness policies by the aggregate National late bill fee revenue estimate.

2.1.2. Analysis

The aggregate national level of annual revenues generated by drinking water utilities in the U.S. was estimated based on household and drinking water sector data as detailed in Table 2-1.

Table 2-1. **Estimated Aggregate Annual Drinking Water Utility Revenues**

Description		Reference	Parameter
a.	Number of U.S. Households	[1]	128.579M
b.	U.S. Households on Private Wells	[2]	10.72%
c.	U.S. Households on Public/Private Water Systems	1 - b	89.28%
d.	U.S. Households on Public/Private Water Systems	a x c	114.8M
e.	Median Monthly Residential Water Utility Bill	[3]	$42.41
f.	Estimated Annual Residential Water Utility Rate Revenue	d x e x 12	$58.4B
g.	Residential Share of Total Water Utility Rate Revenue	[4]	71%
h.	Estimated Annual Water Sector Revenues in 2019	f / g	$82.3B

[1] U.S. Census Bureau Population Survey (2019).

[2] U.S. Census Bureau, American Housing Survey Data (2017). Note that the estimated number of U.S. households on public or private water systems was calculated based on U.S Census data and is slightly lower than an estimate calculated using the USEPA data on the population served by Community Water Systems of approximately 311 million. Dividing the USEPA population figure by an assumption of 2.5 people per household, results in an estimate of approximately 124 million households connected to community water systems. If estimate prepared using USEPA data was used, the financial impacts estimated in this report would be higher.

[3] AWWA Water and Wastewater Rate Survey (2019).

[4] AMWA Insight Survey (2018) indicating 51% of revenue is residential, 29% non-residential, and 20% wholesale/other. Adjusted residential and non-residential percentages to reflect that approximately 7.25% of non-residential is multifamily.

The estimated annual water sector revenues shown in Table 2-1 are used to calculate financial losses due to changes in customer delinquency policies and other financial impacts estimated herein.

The financial impact of delinquent account policy changes was then estimated by quantifying the financial impact of (1) drinking water utilities continuing to provide service to delinquent accounts, instead of enacting shut-offs, and (2) deferred or lost revenue associated with observed and anticipated higher delinquency rates during the COVID-19 crisis, as detailed in Tables 2-2 and 2-3. The temporary elimination of late payment fees was not estimated to have a significant impact on water utility revenues.

The estimate of deferred or lost revenue due to increased bill delinquencies was prepared based on the increase in unemployment rates and the potential for additional bill delinquencies due to the inability to pay and the lack of consequences for non-payment, as detailed in Table 2-2. This estimate includes consideration of the moral hazard (i.e., lack of consequences of customers not paying their utility bills) resulting in higher bill delinquencies.

Table 2-2. Estimated Deferred or Lost Revenue Due to Increased Bill Delinquencies

	Description	Reference	Parameter
a.	Delinquent Account Write-offs as % of Total Revenues	[1]	0.6%
b.	Pre COVID-19 Unemployment Rate	[2]	3.5%
c.	Unemployment Rate During COVID-19 Crisis	[3]	12.0%
d.	% Increase in Delinquencies Due to Higher Unemployment Rate	c / b	342.9%
e.	% Increase in Delinquencies Due to Moral Hazard	[4]	320.0%
f.	Adjusted Delinquencies as % of Total Revenues	a x d x e	6.6%
g.	% Difference in Delinquencies	f - a	6.0%
h.	Annual Aggregate Water Utility Revenues	[5]	$82.3B
i.	Annualized Incremental Delinquencies	g x h	$4.9B
j.	Monthly Incremental Delinquencies	i / 12	$410M

[1] Results from Raftelis COVID-19 questionnaire.

[2] Labor Force Unemployment Rate Statistics from the U.S. Bureau of Labor Statistics for February 2020.

[3] Blended unemployment rate estimate for the second quarter of 2020 from Federal Reserve Bank of St. Louis, Moody's Global Economic Forecast publication dated March 27, 2020, and various news articles on the estimated unemployment rate.

[4] Data from observed increases in delinquencies from Seattle Public Utilities due to cessation of service shut-offs during new billing system conversion. Seattle observed an increase in delinquencies from 1.54% to 5.03% during this event. Factor adjusted based on AWWA March 2020 survey that indicated that approximately 98% of water utilities surveyed have suspended or are planning to suspend shut-offs in response to the COVID-19 crisis.

[5] Calculation as provided in Table 2-1.

The elimination of shut-offs will result in an added cost to drinking water utilities as they continue to supply customers with delinquent bills with water service, rather than enacting shut-offs. An estimate of the incremental cost of continuing to supply these customers with water service is detailed in Table 2-3.

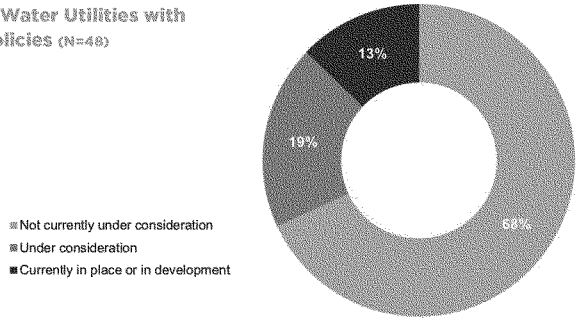
Table 2-3. Estimated Marginal Cost Impact of Non-Shut Offs of Delinquent Accounts

Description		Reference	Parameter
a.	Operating Ratio (O&M expenses / operating revenue)	[1]	58%
b.	Variable Expenses as % of Total O&M expenses	[2]	20%
c.	Marginal Cost	a x b	11.6%
d.	Aggregate Annual Water Utility Revenue	[3]	$82.3B
e.	Aggregate Annual Marginal Cost	c x d	$9.5B
f.	Delinquent Account Uncollectable Rate % of Total Revenues	[4]	6%
g.	Marginal Cost Impact of Non-Shut Offs - Annualized	e x f	$0.6B
h.	Marginal Cost Impact of Non-Shut Offs - Monthly	g / 12	$47.6M

[1] AWWA Utility Benchmarking Survey (2019), Table 2-6A.
[2] AMWA INSIGHT Survey and Raftelis experience.
[3] Calculation as provided in Table 2-1.
[4] Calculated in Table 2-2.

Based on Raftelis questionnaire responses, 12 percent of respondents have already put in place policies for debt forgiveness, and 19 percent are considering implementing such a policy as shown in Figure 2-3. Therefore, a significant portion of the increase in bill delinquencies are anticipated to result in water utility write-offs and permanent losses in revenue.

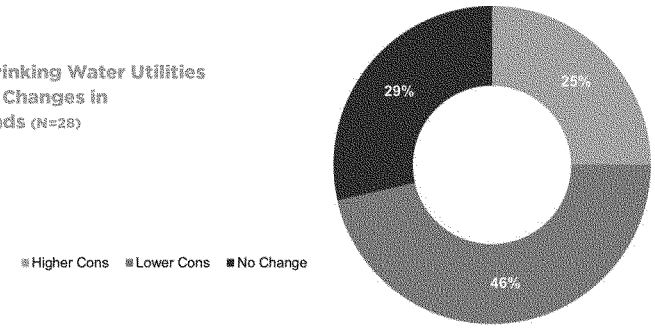
Figure 2-3. Drinking Water Utilities with Debt Forgiveness Policies (N=48)



2.2. Revenue Loss Due to Declines in Consumption

Approximately half of drinking water utilities responding to the Raftelis COVID-19 questionnaire indicated that they have already experienced reductions in water demands during the crisis that are a direct result of Federal, State, and local stay-at-home orders and reductions in commercial, industrial, and institutional activities, as shown in Figure 2-4.

Figure 2-4. **Drinking Water Utilities Experiencing Changes in Water Demands** (N=28)



Due to customer water metering frequencies (typically monthly, bi-monthly, or quarterly), there is a lag in observable changes in water consumption associated with the crisis, and for many utilities, it is too early to precisely estimate the impacts. However, it is anticipated that the vast majority of drinking water utilities across the U.S. will experience revenue loss due to water consumption declines. These reductions in demands are anticipated to result in losses in revenue from non-residential customers. Some specific utility examples of where consumption declines are occurring include:

A mid-sized utility in Pennsylvania experienced a 10 percent loss in water demands for the four-day average from March 1 – 4, 2020, as compared to the four-day average demands from a period in February prior to the crisis.

A large water utility in Virginia experienced a decline in demands between March 25 – 31, 2020 compared to the same time period in 2019 of approximately 6.7 percent.

A large water utility in Colorado has experienced reduction of more than 35 percent in water usage from non-residential customers, and approximately a 10 percent increase in residential water usage based on a small sample of customer meter data from the utility's AMI metering system.

Toho Water (FL) is anticipating experiencing a 52 percent reduction in commercial water usage and 12.5 percent reduction in reclaimed water sales over a six-month period, with a total annual revenue loss of approximately 9.2 percent.

Pittsburgh Water and Sewer Authority (PA) has experienced large college residential vacancies and commercial facilities shutdown that have resulted in reduction in total demands of approximately 12 percent.

South Central Connecticut Regional Water Authority (CT) has experienced a water production decline of approximately 6 percent. This utility serves primarily residential customers, but among their top 10 customers are universities and hospitals.

2.2.1. Methodology

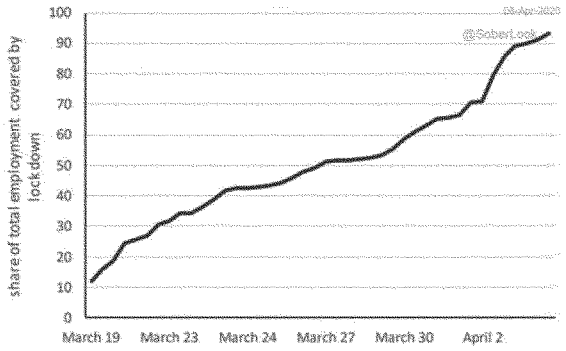
The potential loss in revenue due to anticipated declines in consumption was estimated as follows:

1. Identify the typical percentage of revenues generated by drinking water utilities from residential and non-residential customers based on the AMWA INSIGHT survey.
2. Estimate the reduction in non-residential water demands and revenues based on an aggregate sector analysis of affected stay-at-home orders and responses from the Raftelis COVID-19 questionnaire.
3. Estimate the typical water utility revenue reduction by multiplying the percentage of revenues associated with non-residential customers by the estimated reduction in non-residential water demands.
4. Multiply the estimate of the typical reduction in water utility revenues by the Aggregate National water utility revenue estimate.
5. Offset estimated losses on non-residential revenue with the estimated increase in revenue from residential water usage due to impacts of Federal and State stay-at-home orders.
6. Divide resulting revenue reduction number by 12 to convert to a monthly value.

2.2.2. Analysis

Recent U.S. labor market information indicates that stay-at-home orders and lockdowns during the COVID-19 crisis have impacted over 90 percent of the labor force[1], as shown in Figure 2-5.

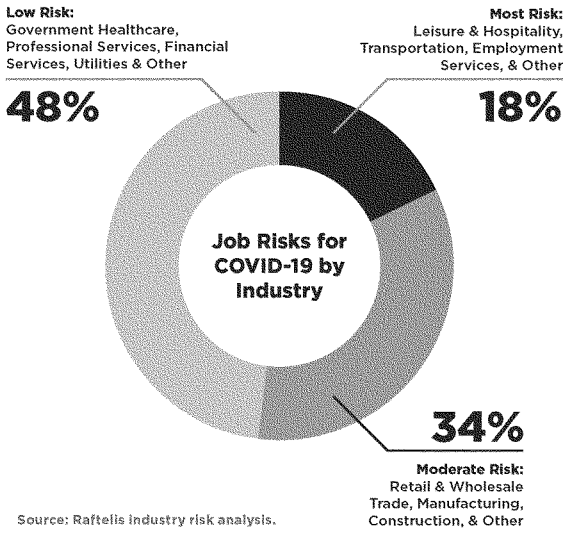
Figure 2-5. **Cumulative Share of Labor Market Subject to State Lockdowns**



1) The Wall Street Journal, April 8, 2020. https://blogs.wsj.com/dailyshot/2020/04/08/the-daily-shot-consumers-cut-spending-by-about-50/

Such stay-at-home orders have significantly impacted water demands from non-residential customers. A commercial sector risk assessment was completed to estimate the potential reduction of water demands and revenues from commercial and industrial businesses. Based on this analysis, it is anticipated that drinking water utilities will experience significant water demand reductions from industries in the leisure, hospitality, and transportation sectors, and moderate to significant reductions in water demands from other industries, such as retail and wholesale trade, manufacturing, and construction. The composition of these industries is summarized in Figure 2-6.

Figure 2-6. **Industries Anticipated to Experience Significant Water Demand Reductions**



Source: Raftelis industry risk analysis.

Based on the industry risk analysis, it was estimated that there is the potential for nearly full reduction in water demands from high risk industries and partial reduction (we assumed 50% reduction) in water demands from moderate risk industries. These estimates were used to assess the potential revenue loss due to water demand declines during the COVID-19 crisis, as detailed in Table 2-4.

Table 2-4. Estimated Revenue Loss Due to Declines in Non-Residential Consumption

Description	Reference	Parameter
a. Typical Non-Residential Revenue as % of Total Revenue	[1]	29.0%
b. Reduction in Non-Residential Water Demand	[2]	35.0%
c. Estimated Reduction in Revenue from Non-Residential	a x b	10.2%
d. Annual Aggregate Water Utility Revenue	[3]	$82.3B
e. Annualized Reduction in Water Utility Revenues	c x d	$8.4B
f. Marginal Cost Savings %	[4]	11.6%
g. Marginal Cost Savings $	e x f	($1.0B)
h. Net Annualized Reduction in Water Utility Revenues	e - g	$7.4B
i. Monthly Reduction in Water Utility Revenues	e / 12	$615M

[1] AMWA INSIGHT Survey (2018).

[2] Estimated based on analysis of U.S. industry risk exposure to COVID-19 (https://www.raftelis.com/insight/stress-testing-your-financial-plan/) considering reduction in demands from high risk industries, including leisure & hospitality, transportation, and other, and moderate reduction in demand from moderate risk industries, such as retail & wholesale trade, manufacturing, and construction industries.

[3] Calculation as provided in Table 2-1.

[4] Calculation as provided in Table 2-3.

The estimated loss in non-residential revenues are anticipated to be somewhat offset by an increase in water demands and revenues from residential customers due to Federal and State stay-at-home orders and as indoor water use increases due to greater homeowner occupancy during normal working hours. The estimated increase in residential consumption and associated revenues as a result of the COVID-19 crisis are detailed in Table 2-5.

Table 2-5. Estimated Increase in Residential Consumption

Description	Reference	Parameter
a. Increase in Residential Indoor Water Use	[1]	8.00%
b. Indoor Water Use as % of Total Water Use	[2]	60.00%
c. Increase in Residential Water Use Due to COVID19 Crisis	a x b	4.80%

[1] Estimated increase in indoor water use from a 33% increase in toilet use from an increase of eight hours at home (8 hrs / 24 hrs = 33.3%) times the percentage of toilet use as a % of total indoor water use of 24% from the publication: Residential End Uses of Water, Version 2 Executive Report, Water Research Foundation, April 2016.

[2] Residential End Uses of Water, Version 2 Executive Report, Water Research Foundation, April 2016.

Note that this estimate does not consider the potential that some residential customers may curtail water usage (e.g. outdoor water usage for irrigation) during the crisis to help lower their water bills.

Table 2-6. **Estimated Revenue Increase Due to Increases in Residential Consumption**

	Description	Reference	Parameter
a.	Residential Revenue as % of Total Revenue	[1]	71.0%
b.	Increase in Residential Water Demand	[2]	4.8%
c.	Increase in Residential Water Revenue (%)	a x b	3.4%
d.	Annual Aggregate Water Utility Revenue	[3]	$82.3B
e.	Annualized Increase in Water Utility Revenues	c x d	$2.8B
f.	Less: Adjustment for Increase in Residential Write-offs	[4]	6.0%
g.	Net Annualized Increase in Water Utility Revenues	e x (1-f)	$2.6B
h.	Estimated Monthly Increase in Water Utility Revenues	e / 12	$220M

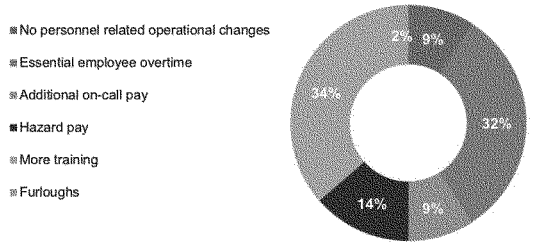
[1] AMWA INSIGHT Survey (2018).
[2] Calculated in Table 2-5.
[3] Calculation in Table 2-1.
[4] Calculation in Table 2-2.

The total estimated net decrease in water utility revenues is anticipated to be $4.7 billion on an annualized basis considering the anticipated $7.4 billion decrease in non-residential revenues and a $2.7 billion increase in residential revenues.

2.3. Financial Impact of Water Utility Operational Policy Changes

Some drinking water utilities have implemented new operational policies in response to the COVID-19 crisis, such as new operating hours for essential water utility staff, sequestering operations staff, and providing increased compensation for essential employees. Based on the Raftelis COVID-19 questionnaire response, personnel-related changes included paying essential employees overtime, providing additional compensation to employees as "hazard pay," incurring more employee on-call personnel expenses, and in some cases furloughing employees, as summarized in Figure 2-7.

Figure 2-7. **Personnel Expense Changes** (N=27)



For approximately the 40 percent of drinking water utilities responding that personnel expenses are anticipated to increase due to the crisis, the weighted average percent change in personnel expenses was approximately 6.5 percent. Specific examples from drinking water utilities responding to the questionnaire include the following:

A large utility in North Carolina is paying a 5% premium to essential workers.

El Paso Water Utilities Public Service Board (TX) is experiencing personnel impacts related to emergency administrative leave.

Great Lakes Water Authority (MI) indicated that it had increased the pay of all operation and maintenance personnel by $1.00 per hour in response to the crisis.

Des Moines Water (IA) has sequestered treatment plant operating personnel enough for 12-hour shifts, and is paying each of these staff for 24 hours per day. The balance of personnel is being paid regular salaries, even though some will not be working.

La Puente Valley County Water District (CA) is implementing alternative work schedules in which a portion of staff is paid to be home at the ready.

2.3.1. Methodology

Estimation of the financial impacts of operational actions taken, or anticipated to be taken, by drinking water utilities that impact personnel expenses consisted of:

1. Obtain information from Raftelis questionnaire regarding % changes to personnel expenses due to crisis.
2. Obtain typical percentage of personnel expenses compared to total water utility expenditures from AWWA and AMWA survey data.
3. Multiply % change to personnel expenses by personnel expense estimate as % of total expense. Then multiply this resulting percentage by the national revenue estimate from the CBO source to aggregate to the national level.
4. Divide resulting national personnel expense impact by 12 to convert to a monthly value.

2.3.2. Analysis

An estimate of the personnel expense impact of changes to drinking water utility personnel policies was calculated as detailed in Table 2-7.

Table 2-7. **Estimated Operation Policy Change Impacts on Personnel Expenses**

Description		Reference	Parameter
a.	Increase in Personnel Expenses Due to COVID-19 Crisis	[1]	6.5%
b.	Weighted Average Personnel Expense Increases	[2]	3.2%
c.	Personnel Expenses as % of Total Budget	[3]	23.8%
d.	Increase in Personnel Expense as % of Total Revenue	b x c	0.8%
e.	Annual Aggregate Water Utility Revenue	[4]	$82.3B
f.	Aggregate Annual Increase in Personnel Expense	d x e	$0.6B
g.	Aggregate Monthly Increase in Personnel Expense	f / 12	$52M

[1] Raftelis questionnaire response. Average increase in personnel expense for those respondents indicating increased expenses.

[2] Raftelis questionnaire response. Weighted responses by revenue, including those respondents indicating no expense increase.

[3] Operating Ratio (58%) x Personnel Expense as % of operating & maintenance expense (41%). From 2019 AWWA Utility Benchmarking Survey, Table 2-6A and the 2019 AMWA INSIGHT Survey.

[4] Calculated in Table 2-2.

Some utilities also responded to the Raftelis COVID-19 questionnaire that they anticipate experiencing increases in non-personnel related expenses due to the crisis, while others indicated potential decreases in non-personnel expenses due to the crisis. Reported increases in expenses consisted of equipment to enable employees to work from home (e.g. computers, monitors) and personal protective equipment. Reported decreases in expenses included items such as reduced travel and conference expenses, reductions in utilities and chemicals due to lower water production, reductions in material costs from reduction in non-essential work activities. Some specific examples of changes to non-personnel expenses are as follows:

Salt Lake City, Department of Public Utilities (UT) is anticipating additional chemical costs in order to have excess supplies in place if there are interruptions in vendor services, and additional personal protective equipment material and supply costs.

Portland Water District (ME) has incurred additional cost related to a remote workforce, including new personal computers, monitors, server, and software. In addition, it anticipates additional expenses in personal protective equipment.

Lehigh County Authority (PA) has experienced a significant investment in IT/technology expenses to support work-from-home arrangements, including rapid purchase and deployment of laptops and reimbursement for internet service and cell phone usage for employees working from home.

Manchester Water Works (NH) has reduced non-essential work activities which may reduce the purchase of certain materials and supplies.

Fort Pierce Utilities Authority (FL) has experienced increases in materials and supplies costs for disinfectants, towel wipes, respirators, thermometers, and masks. It also anticipates incurring additional expenses associated with sanitation of lobby areas and health monitoring when customer service offices open and employees return to utility offices after working from home.

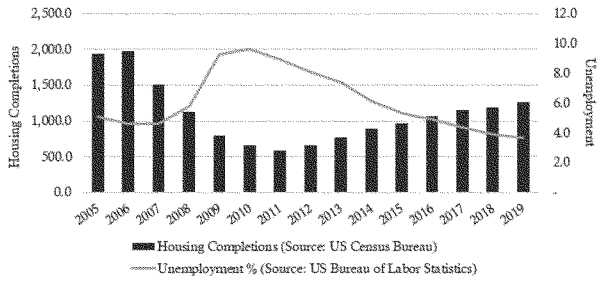
Dare County (NC) anticipates a decrease in chemical usage and utility costs.

Due to the variable responses from the Raftelis COVID-19 questionnaire, a definitive estimate of increased non-personnel expenses could not be made.

2.4. Financial Loss Due to Slower Customer Growth

The COVID-19 crisis is anticipated to slow the growth in new development and housing starts, which will further impact the revenues of drinking water utilities. Historical data on the correlation between the unemployment rate and housing development activity was gathered, reviewed, and analyzed. The analysis of this data indicated that that a significant decrease in real estate development is likely to occur due to the COVID-19 crisis as a result of increased unemployment, as indicated in Figure 2-8.

Figure 2-8. **Historical Trends in Housing Completions vs. Unemployment**



Source: Labor force and unemployment statistics from the U.S. Census Bureau.

This anticipated slower growth in development will likely result in deferrals or losses associated with system development charges ("SDCs") and user charge revenues from new customers. Some specific examples of drinking water utilities anticipating growth-related impacts are as follows:

Charlotte Water (NC) has revised its SDC projections to be flat or slightly lower in 2020 as compared to 2019. Prior to the crisis, Charlotte Water was anticipating an increase in SDCs from these fees due to development growth in the Charlotte region.

East Bay Municipal Utility District (CA) anticipates reductions in development activity and SDCs could be severe.

Tucson Water (AZ) expects approximately a 20 percent reduction in development activity and SDCs because prospective homebuyers might not be able to buy at this time.

Tualatin Valley Water District (OR) expects a 20 percent reduction in new connections and SDCs due to a reduction in growth and development.

2.4.1. Methodology

The deferrals or financial losses associated with anticipated lower development activity was estimated as follows:

1. Estimate the deferrals or losses from lower system development charges:

a. Estimate pre-COVID-19 aggregate residential and non-residential SDCs from sector publications on system development and impact fees.

b. Estimate the anticipated percent reduction in building permits during the COVID-19 crisis from U.S. Census Building Permit Survey data, information from the response to the Raftelis COVID-19 questionnaire responses and Raftelis estimates.

c. Multiply the estimate of the percent reduction in building permits by the aggregate annual SDC estimate.

d. Divide resulting reduction in SDCs by 12 to convert to a monthly value.

2. Estimate the net loss in anticipated water utility rate revenues due to slower customer growth

a. Estimate the anticipated reduction in housing unit construction based on U.S. Census Building Permit Survey data, information from the response to the Raftelis questionnaire, and Raftelis estimates.

b. Estimate the typical monthly water bill for residential customers based on the AWWA rate survey.

c. Multiply the monthly reduction in housing unit construction by the typical monthly water bill for residential customers.

d. Adjust the calculated revenue loss by an estimate of the reduction in water utility marginal cost of serving new customers.

e. Calculate the cumulative net revenue loss if the COVID-19 crisis lasts 2-months, 4-months, or 6-months.

2.4.2. Analysis

The aggregate loss in system development charges was estimated as detailed in Table 2-8.

Table 2-8. **Estimated Aggregate Loss of System Development Charges**

Description		Reference	Parameter
a.	Aggregate Residential System Development Charges (2019)	[1]	$2.4B
b.	Residential as % of Total	[2]	69%
c.	Aggregate Total System Development Charges (2019)	a / b	$3.5B
d.	Anticipated % Reduction in Building Permits During Crisis	[3]	75%
e.	Annualized Reduction in System Development Charges	d x e	$2.6B
f.	Monthly Reduction in System Development Charges	f / 12	$217M

[1] U.S. Census Bureau Building Permit Survey (2019) and National Impact Fee Survey, Duncan Associates, 2019.

[2] AMWA INSIGHT Survey (2018).

[3] Raftelis estimate.

The loss of future rate revenue from anticipated declines in new customer connections was estimated as detailed in Table 2-9.

Table 2-9. **Estimated Loss of Rate Revenue from Lower New Customer Growth**

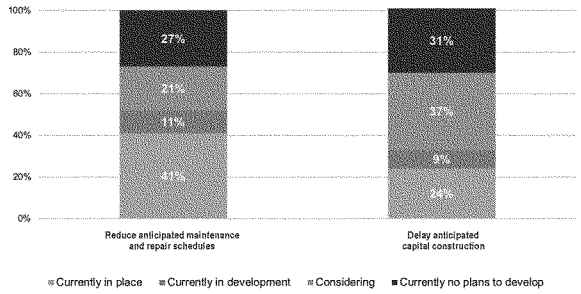
Description		Reference	Parameter
a.	Anticipated % Reduction in Building Permits During Crisis	[1]	75%
b.	Monthly Lost Housing Unit Equivalents	[2]	85,647
c.	Median Monthly Residential Water Bill	[3]	$42.41
d.	Monthly Reduction in Aggregate Residential Water Revenue	b x c	$3.63M
e.	Non-Residential Revenue as a % of Total Revenue	[4]	29%
f.	Monthly Reduction in Aggregate Non-Residential Water Revenue	d x e/(1-e)	$1.48M
g.	Total Monthly Aggregate Reduction in Water Revenue	d + f	$5.12M
h.	Marginal Cost Factor	[5]	11.6%
i.	Less Marginal Cost	g x h	$0.59M
j.	Net Monthly Aggregate Reduction in Water Revenue (Month 1)	g - i	$4.52M
k.	Annualized Aggregate Reduction in Water Revenue	calculation	$0.4B

[1] Raftelis estimate.
[2] U.S. Census 2019 Building Permit Survey data multiplied by % reduction in building permits in (a.).
[3] AWWA Water and Wastewater Rate Survey (2019).
[4] AMWA INSIGHT Survey (2018).
[5] Calculated in Table 2-4.

2.5. Economic Impact of Reduced Capital Expenditures

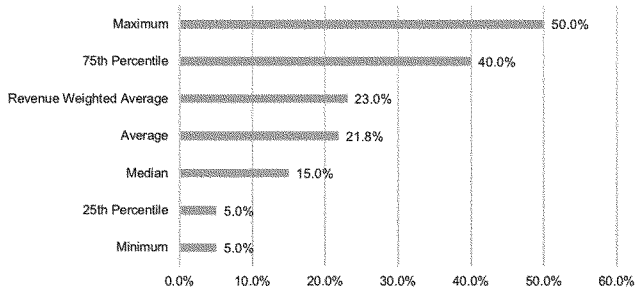
Some drinking water utilities are deferring a portion of their previously planned capital expenditures to manage cash flows during the COVID-19 crisis and to comply with required Federal or State temporary shutdown of non-essential businesses activities and "stay at home" orders. According to a recent COVID-19 survey completed by AWWA in March 2020, approximately 69 percent of water utility respondents were considering or anticipating delays in capital construction, as shown in Figure 2-9.

Figure 2-9. **Drinking water utilities indicating Delays in Capital Construction**



Responses from the Raftelis COVID-19 impact questionnaire indicated that the anticipated range of capital expenditure changes for those drinking water utilities that expect declines in capital construction is between 5 percent and 50 percent, with a weighted average of approximately 23 percent, as shown in Figure 2-10.

Figure 2-10. **Anticipated Annual Capital Expenditure Adjustments** (N=11)



Some specific examples of anticipated levels of decline in capital construction from the responses to the questionnaire include the following:

Salt Lake City, Department of Public Utilities (UT) has reduced both cash funded and debt financed capital expenditures by 32 percent due to COVID-19.

Tucson Water (AZ) anticipates reducing both cash funded and debt financed capital expenditures by 50 percent.

Lehigh County Authority (PA) plans to reduce both cash funded and debt financed capital expenditures by 40 percent.

This capital expenditure deferral is anticipated to result in a loss in jobs and economic stimulus (e.g. GDP) in local economies across the country.

2.5.1. Methodology

An estimate of the economic impacts to local economies of a decrease in drinking water utility capital spending was prepared based on the following methodology:

1. Estimate the percentage of drinking water utilities that plan to defer or reduce capital expenditures from the March 2020 AWWA survey results and the responses from the Raftelis COVID-19 questionnaire.
2. For the portion of drinking water utilities that plan to defer or reduce capital expenditures, estimate the typical percent capital expenditure reduction from the results of the Raftelis COVID-19 questionnaire.
3. Multiply the percentage of utilities planning deferred or reduced capital expenditures by the percent reduction in planned capital expenditures to derive the overall percent reduction in capital expenditures.
4. Multiply the estimated percent reduction in capital expenditures by the estimated aggregate national level annual water utility capital expenditure amount.
5. Divide resulting revenue reduction number by 12 to convert to a monthly value.
6. Estimate lost economic stimulus on the local economy by multiplying the monthly national value of capital expense deferrals by the economic multipliers from published sources.

2.5.2. Analysis

The economic impact of delaying capital construction projects may help utilities preserve cash and postpone the need to secure additional financing during the crisis, but the delay in capital construction can have a significant impact on economic activity in the local community. A report prepared for the U.S. Conference of Mayor reported that for each dollar spent on water supply and sewer systems, there is an increase in private sector output (i.e. Gross Domestic Product) in the long-term of $6.35.[2] In addition, this report cites the U.S Department of Commerce's Bureau of Economic Analysis estimates that for each dollar of revenue of the water and sewer sector, there is an increase in revenue that occurs in private industry of $2.62 in that year. Furthermore, a publication by the U.S. Bureau of Economic Analysis indicates that 15 to 18 jobs are created or sustained for each $1 million of drinking water capital spending.[3]

Based on these economic multiplier effects, the economic impact that deferred capital construction expenditures are anticipated to have on local economies across the U.S. were estimated, as detailed in Table 2-10.

Table 2-10. **Estimated Economic Impacts of Deferred Capital Construction Expenditures**

	Description	Reference	Parameter
a.	Utilities Anticipating Reduction in Capital Spending	[1]	70%
b.	Anticipated Reductions in Capital Spending	[2]	23%
c.	Aggregate Annual Water Utility Capital Expenditures	[3]	$31B
d.	Annualized Aggregate Reduction in Water Utility Capital Spending	a x b x c	$5B
e.	Monthly Aggregate Reduction in Water Utility Capital Spending	d / 12	$416M
f.	Capital Spending – GDP Economic Multiplier	[4]	$6.55
g.	Monthly Aggregate Loss in GDP from Reduced Capital Spending	f x e	$2.7B
h.	Annualized Aggregate Loss in GDP from Reduced Capital Spending	f x d	$32.7B
i.	Jobs Created Per $1M in Water Capital Spending	[5]	15-18
j.	Jobs Impact of Reduced Water Utility Capital Spending	d x h	75,000 – 90,000

[1] Raftelis questionnaire results.

[2] Ratelis questionnaire results.

[3] Public Spending on Transportation and Water Infrastructure, 1956 to 2017. Congressional Budget Office. October 2018.

[4] Local Government Investment in Municipal Water and Sewer Infrastructure: Adding Value to the National Economy, Prepared for the U.S. Conference of Mayors by The Cadmus Group, Inc. August 14, 2008.

[5] The Economic Benefits of Investing in Water Infrastructure, Bureau of Economic Analysis, 2008.

As estimated in Table 2-10, it is anticipated that communities across the nation will experience a reduction in economic activity and jobs as a result of lower drinking water utility capital spending. The aggregate reduction in community economic activity is estimated to be as much as $32.7 billion (annualized) when considering these public infrastructure multiplier effects. The reduction in water utility capital spending is also anticipated to result in a loss of between 75,000 to 90,000 private sector jobs. These economic impact estimates highlight the added "bang-for-the-buck" impact that drinking water utility capital spending has on the overall economy.

2) Local Government Investment in Municipal Water and Sewer Infrastructure: Adding Value to the National Economy, Prepared for the U.S. Conference of Mayors by The Cadmus Group, Inc. August 14, 2008.

3) The Economic Benefits of Investing in Water Infrastructure, Bureau of Economic Analysis, 2008.

2.6. Other Impacts and Considerations

The COVID-19 crisis is anticipated to have other financial impacts that have not been quantified in the analysis above. Based on the responses from the Raftelis COVID-19 questionnaire, these other impacts may also include:

- Reductions or deferrals of drinking water utility rate increase that were previously planned;
- Financial impacts associated with directives by City or County government management for across the board spending reductions by all units of government, including water departments, which could impact the level of service of drinking water utilities impacted by such directives;
- Financial impacts associated with directives by City or County management for enterprise funds, including water enterprise funds, to transfer a portion of available cash balances to the General Fund, leaving some drinking water utilities more vulnerable to cash flow issues as the crisis drags on;
- Delays in securing financing for capital improvements as a result of bond market volatility and uncertainty, thereby increasing the magnitude of delays in capital spending.

Some specific examples of these other impacts are provided below:

The City of Springfield (MA) originally planned to have a 7% water rate increase but is now considering a 17% increase due to anticipated revenue losses from consumption declines. The utility is concerned about having such a large increase at this time.

The Austin City Council (TX) has cut residential water and sewer rates by 10 percent in reaction to the COVID-19 crisis.

The City of Tacoma (WA), which has a six-year rate plan, was asked to review the plan to determine the impact of reducing it.

South Central Connecticut Regional Water Authority (CT) is conducting budget and projection revisions and has decided to defer a planned rate application.

For one utility in the Midwest, its City Council enacted an inter-fund loan from the water and power utilities to the General Fund to help address General Fund budget shortfalls. This included authorizing a $15 million transfer from the water utility to the General Fund, representing essentially all of the utility's capital improvement project funds and excess reserves, leaving only a 45- to 60-day operating cash reserve.

One utility in the West (anonymous), with a fiscal year of July 1 – June 30, was in process of adopting its FY 2021 budget prior to the economic disruption related to COVID-19. It is now proposing a revised and reduced budget.

Dayton Water (OH) received a general government request for reduction in expenditures, except essential purchases or COVID-19-related purchases.

It is anticipated that many drinking water utilities may defer or reduce planned water rate increases as a result of the COVID-19 crisis because of political pressure, even though they have or will experience negative financial impacts associated with the crisis. Therefore, an estimate of the potential lost future revenue associated with reduction or deferral of water rate increases was prepared as detailed in Table 2-11.

Table 2-11. Estimated Revenue Loss from Reduction and Deferral of Water Rate Increases

Description	Reference	Parameter
a. Aggregate Annual Water Utility Revenue	[1]	$82.3B
b. Historical Average Annual Water Rate Increase	[2]	4%
c. Annual Increase in Aggregate Water Utility Revenue	a x b	$3.3B
d. % Reduction in Annual Rate Increases due to COVID-19	[3]	50%
e. Annualized Lost Revenue from Water Rate Increase Deferrals	c x d	$1.6B

[1] Calculated in Table 2-1.

[2] Water and Wastewater Maintenance Index, Bureau of Labor Statistics.

[3] Raftelis estimate.

The analysis indicates the potential for drinking water utilities to experience additional aggregate revenue loss of approximately $1.6 billion. Much of the need to raise water rates in the U.S. is to obtain funds to ensure adequate water supplies, continue to meet drinking water regulations, and address aging infrastructure.[4] As a result of additional deferment of water rate increases and associated reductions in capital expenditures, the COVID-19 crisis will put the water sector further behind in addressing its capital infrastructure needs.

2.7. Estimated Total Aggregate Financial Impact on U.S. Drinking Water Utilities

The aggregate total direct financial impacts on drinking water utilities if the crisis lasts two months, four months, or six months are shown in Table 2-12. However, these monthly estimates do not consider the lingering impacts that are likely to be experienced after the crisis subsides, such as continued negative financial impacts from a potential extended economic recession. Therefore, the estimated aggregate annualized financial impact on drinking water utilities of $13.9B may be a better estimate of the total potential direct financial impact.

Table 2-12. Estimated Total Aggregate Financial Impact

Description	2 Months	4 Months	6 Months	Annualized
Marginal Cost of Non-Shut Offs	$0.10B	$0.19B	$0.29B	$0.57B
Revenue Loss Due to Increased Delinquencies	$0.82B	$1.64B	$2.46B	$4.92B
Reduction in Commercial Revenues	$1.23B	$2.46B	$3.69B	$7.38B
Increase in Residential Revenues	($0.44B)	($0.88B)	($1.32B)	($2.64B)
Increase in Personnel Expenses	$0.10B	$0.21B	$0.31B	$0.63B
Reduction in System Development Charges	$0.43B	$0.87B	$1.30B	$2.60B
Reduction in Revenues from Reduced Customer Growth	$0.01B	$0.05B	$0.09B	$0.41B
Aggregate Financial Impact[1]	**$2.3B**	**$4.5B**	**$6.8B**	**$13.9B**

[1] Note $13.9B compared to drinking water sector size of $82.3B equals an overall estimated financial impact of 16.9%.

Raising water rates on customers to offset these impacts is likely not an option for many drinking water utilities due to political considerations and because increasing water rates at a time crisis may result in even higher revenue losses due to increased delinquencies. Moreover, responses from the Raftelis COVID-19 questionnaire indicate that many drinking water utilities may be deferring or decreasing planned water rate increases, rather than raising water rates to offset these losses. The analysis results indicate the potential for drinking water utilities to experience additional aggregate future revenue loss of approximately $1.6 billion as a result of these future deferment of water rate increases. Therefore, the combined potential impact, including the impact on current and future revenues, is anticipated to be as much as $15.5 billion.

2.8. Wastewater Sector Potential Impacts

While this report focused on estimating the financial impacts to drinking water utilities, similar impacts are likely to be experienced by wastewater utilities across the U.S. Assuming aggregate annual wastewater sector revenues of approximately $63 billion, the wastewater sector financial impact may be in the range of $12 billion (16.9% impact x $63B). If deferrals of wastewater rate increases occur similar in frequency as those anticipated for drinking water utilities, the combined impact may be as high as $11 billion. A preliminary estimate prepared by the National Association of Clean Water Agencies indicates the impact may be in the $12.5 billion range. Therefore, the combined water and wastewater sector impact of COVID-19 is estimated to be more than $27 billion.

4) 2019 State of the Water Industry Report, AWWA.

3 Conclusions

The following are the primary results and conclusions from the financial impact analysis:

1. Customer delinquincies

Water utilities are expected to experience at least a 6.0 percent increase in customers delinquent in paying their water bills as a result of the COVID-19 crisis and policy changes eliminating water service shut-offs, which may result in an annualized shortfall of $4.9 billion for drinking water utilities. As water utilities continue to provide water to customers with bill delinquencies, rather than enacting shut-offs, they will incur an estimated $0.6 billion of additional costs.

2. Revenue shortfall

Drinking water utilities across the nation are expected to experience an estimated revenue shortfall of $7.4 billion (annualized) due to declines in commercial, industrial, and institutional water consumption due to the COVID-19 crisis. This revenue shortfall may be offset by an increase in residential user charge revenue of approximately $2.6 billion due to "stay-at-home" orders.

3. Reduced system development charges

The COVID-19 crisis is anticipated to slow the growth in new development and housing starts, which will further impact the financial losses of drinking water utilities. Slowing of new customer growth will reduced system development charges of drinking water utilities by an estimated $2.6 billion (annualized). Declines in new customer growth may also result in additional reductions in planned water rate revenues of $0.4 billion (annualized) as new customer accounts are slower to be added to service territories of drinking water utilities, causing utilities to carry the already built excess capacity of drinking water systems longer.

4. Increased personnel expenses

Operational policies implemented by drinking water utilities to ensure essential staff remain healthy and available to help provide essential water service to the U.S. population are anticipated to increase personnel expenses of drinking water utilities by an estimated $0.6 billion, with the potential for additional costs associated with other non-personnel related materials, supplies, and equipment.

5. Aggregate current financial impact

The combined aggregate financial impact of COVID-19 on drinking water utilities from the current financial impacts quantified above is estimated to be approximately $13.9 billion representing an overall 16.9 percent impact on drinking water sector revenues.

6. Delayed and reduced capital expenditures

Due to these financial impacts, drinking water utilities across the nation are anticipated to delay and reduce capital expenditures by as much as $5 billion (annualized) to help manage cash flow due to the COVID-19 crisis. These capital expenditure reductions will have a multiplier effect on economic activity in communities across the U.S. As a result, communities will experience a reduction in economic activity by as much as $32.7 billion (annualized) in aggregate when considering these public infrastructure multiplier effects. This reduction in water utility capital expenditures is also anticipated to result in a loss of 75,000 to 90,000 private sector jobs.

7. Deferred water rate increases

Drinking water utilities may also experience future revenue losses estimated at approximately $1.6 billion in aggregate as a result of deferrals of planned water rate increases, bringing the total combined impact of the COVID-19 crisis to more than $15 billion. These deferrals may further exacerbate community economic impacts by further reducing drinking water utility capital spending, and will put the water sector further behind in addressing its capital infrastructure needs.

8. Combined financial impact

The combined current and future financial impact of the COVID-19 crisis on water and wastewater utilities is estimated to exceed $27 billion.

Appendix COVID-19 Questionnaire Results

1. Please state the name of your organization.

n	Northeast	Midwest	West	South
55	11	3	16	25

See open ended tables for list of organizations willing to self identify.

2. Please enter your name and title.

Names are not reported to maintain respondent privacy.

Titles are not reported to maintain respondent privacy but generally included Utility Directors and Chief Financial Officers.

3. What are your drinking water utility's total annual revenues from the following sources for the most recent full fiscal year (Residential rate revenue, Non-residential rate revenue, Other rate revenue (e.g. bulk or wholesale), System development fees (i.e. capacity fees), Other miscellaneous revenue)? Note: Reported summary statistics use revenue totals across sources and were used to calculate revenue weighted averages for select questions.

n	Min	Max	Average	Median
51	$2,274,000	$1,524,000,000	$137,439,975	$60,067,052

4. If your drinking water utility has experienced changes in daily water demand from typical levels since the Covid-19 crisis started having impacts in your area (around early or mid-March 2020 for most geographies), please provide information on how such demands have changed:

Typical normal daily water demand (MGD)				
n	Min	Max	Average	Median
36	1.45	548.00	66.52	41.45
% reporting Covid-19 crisis demand impact				
n	No change	Higher Demand	Lower Demand	Average % change
28	29%	25%	46%	-0.7%

5. If you have experienced changes in water demand since the Covid-19 crisis started, please describe the nature of the change you have observed:

See open ended tables.

6. Have you or do you anticipate instituting a policy of debt forgiveness of delinquent KII amounts for customers in response to the Covid-19 crisis? Please select one.

n	Currently in place or in development	Under consideration	Not currently under consideration
47	13%	19%	68%

7. If currently in place, in development, or under consideration, please describe any criteria you are considering for offering customer debt forgiveness for debt accumulated during the Covid-19 crisis:

See open ended tables.

8. What is your annual uncollectible, or write-off, percentage of total revenue in a typical year?

n	Min	Max	Average	Median	Revenue Weighted Average
42	0%	4%	0.85%	0.55%	0.62%

9. Do you anticipate implementing any of the following personnel-related operational changes as a result of the Covid-19 crisis? Please select all that apply. Note: Reported as % selecting each option.

n	27
Does not apply / no personnel related operational changes	9%
Essential employee overtime	32%
Additional on-call pay	9%
Hazard pay	14%
More training	34%
Furloughs	2%
Other	See open ended tables.

10. Please provide an estimate of the total percent change in monthly personnel expenses resulting from your operational changes during the crisis:

n	Min	Max	Average	Revenue Weighted Average	Revenue Weighted Average (among non-zero, *n* =10)
25	0%	+25%	+2.6%	+3.2%	+6.5%

11. Do you anticipate changes to any of the following non-personnel related operating line items as a result of the Covid-19 crisis? Please select all that apply.

n	36
Does not apply / no non-personnel related operational changes	10%
Professional / contract services	28%
Chemicals	9%
Materials & supplies	32%
Fuel	14%
Utilities	7%
Other, please desribe	See open ended tables.

12. Please provide an estimate of the total percent change in monthly non-personnel expenses resulting from your operational changes during the crisis:

n	Min	Max	Average	Revenue Weighted Average	Revenue Weighted Average (among non-zero, *n* =7)
7	-10%	+5%	-3%	-2.2%	-2.2%

13. If you wish to elaborate on these non-personnel related operational expense changes you may describe them further here:

See open ended tables.

14. Is your drinking water utility part of a larger municipal government (i.e. City or County Government)? Please select yes or no.

n	Yes	No
54	57%	43%

15. Have you experienced across-the-board directives by the general government to limit water utility spending on non-essential activities? Please select yes or no.

n	Yes	No
30	40%	60%

16. Please provide the potential percentage reduction in expenses as part of these directives by the general government to limit spending on non-essential activities.

n	Min	Max	Average	Median
8	0%	75%	10.62%	0%

17. If you wish to elaborate on these reductions in spending as part of these directives you may describe them further here:

See open ended tables.

18. Has your general government requested the transfer of cash reserves from the drinking water utility enterprise fund to the general fund in response to the crisis?

n	Yes	No
28	4%	96%

19. Please provide the amount of cash reserves requested to be transferred to the general fund from your drinking water utility enterprise fund in response to the crisis.

n	0

20. Have or do you plan to adjust, delay, or defer any of the following capital spending due to the COVID-19 crisis? (% responding to each)

n	47
Cash funded capital expenditures	23%
Debt financed capital expenditures	0%
Both cash funded and debt financed capital expenditures	34%
None / no plan to adjust, delay, or defer spending on capital projects	43%

21. Please provide the percentage of your annual capital expenditures you have already or anticipate adjusting, delaying or deferring due to the Covid-19 crisis.

n	Min	Max	Median	Average	Revenue Weighted Average
11	5%	50%	15%	22%	23%

22. Have you experienced, or do you anticipate experiencing reductions in system development fees (i.e. capacity fees) due to reduced development activity associated with the Covid-19 crisis? (% responding to each)

n	43
Yes	44%
No	33%
Not applicable / we don't charge SDFs	23%

23. Please provide the percentage reduction in annual system development fee revenues you anticipate due to reduced development activity associated with the Covid-19 crisis.

n	Min	Max	Median	Average	Revenue Weighted Average
9	-8%	-50%	-20%	-23%	-19%

24. Do you anticipate experiencing reductions in the growth in new customers connecting to your drinking water system? (% responding to each)

n	42
Yes	50%
No	50%
If yes, please elaborate	See open ended tables.

25. Are there any other details or financial impacts to your utility resulting from COVID-19 that have not been covered within this survey? If yes, please share.
See open ended tables.

26. Would you be willing to allow us to attribute the data you provided with your utility's name in our report?	
n	51
Yes	63%
No	37%

1. Please state the name of your organization.			
Region	State	Organization	
Midwest	OH	Dayton Water Department	
Midwest	Anonymous Midwestern Utility		
Midwest	Anonymous Midwestern Utility		
Northeast	CT	South Central Connecticut Regional Water Authority	
Northeast	ME	Portland Water District	
Northeast	NH	Manchester Water Works	
Northeast	NY	Suffolk County Water Authority	
Northeast	RI	Newport, RI Dept of Utilities	
Northeast	RI	Providence Water Supply Board	
Northeast	PA	Pittsburgh Water And Sewer Authority	
Northeast	PA	Lehigh County Authority	
Northeast	Anonymous Northeastern Utility		
Northeast	Anonymous Northeastern Utility		
Northeast	Anonymous Northeastern Utility		
South	AL	The Water Works Board of the City of Birmingham	
South	AR	Central Arkansas Water	
South	FL	City of Lakeland	
South	FL	Martin County Utilities	
South	FL	Charlotte County Board of County Commissioners	
South	FL	Fort Pierce Utilities Authority	
South	GA	Gwinnett County Water Resources	
South	NC	Charlotte Water	
South	NC	Dare County, NC	
South	NC	Raleigh Water	
South	OK	City of Tulsa	
South	TX	City of Round Rock, Texas	
South	TX	El Paso Water Utilities Public Service Board	
South	Anonymous Southern Utility		
South	Anonymous Southern Utility		
South	Anonymous Southern Utility		
South	Anonymous Southern Utility		
South	Anonymous Southern Utility		
South	Anonymous Southern Utility		
South	Anonymous Southern Utility		
South	Anonymous Southern Utility		
South	Anonymous Southern Utility		
South	Anonymous Southern Utility		
South	Anonymous Southern Utility		
South	Anonymous Southern Utility		
West	AZ	City of Chandler	
West	AZ	City of Tucson - Tucson Water	
West	CA	City of San Diego Public Utilities	
West	CA	East Bay Municipal Utility District	
West	CA	La Puente Valley County Water District	
West	CA	Metropolitan Water District of Southern California	
West	CO	Centennial Water and Sanitation District	
West	CO	City of Greeley, Colorado	

1. Please state the name of your organization. (continued)			
Region	State	Organization	
West	OR	Tualatin Valley Water District	
West	UT	Salt Lake City Department of Public Utilities	
West	Anonymous Western Utility		
West	Anonymous Western Utility		
West	Anonymous Western Utility		
West	Anonymous Western Utility		
West	Anonymous Western Utility		
West	Anonymous Western Utility		

5. If you have experienced changes in water demand since the Covid-19 crisis started, please describe the nature of the change you have observed:	
South Central Connecticut Regional Water Authority	We are seeing a decline in production. We are largely residential and have not seen an increase. Our top ten customers are primarily universities and hospitals.
City of Round Rock, Texas	Not enough data to distinguish change in usage yet.
Martin County Utilities	MCU has decreased pressures to relieve stress on surficial wells. This water is blended with deeper brackish water (wells) and treated through RO membranes. We are at the peak of Florida's dry season and are experiencing very dry conditions. This coupled with increased residential water demands drove demands well over 12 MGD (highest demand on record was 14 MGD April 2018). Decrease in non-residential demand is masked.
City of Chandler	Chandler has been tracking higher for water use in 2020 when compared to 2019 with the biggest factor being Intel. Governor Ducey, announced shelter in place in March and we took a dip. However our large industrial demands and outdoor water use are ramping up. Bottom line is we have not seen a reduction in water use.
Gwinnett County Water Resources	Overall demand has increased March 1 through March 19. We do not have the data for consumption after that point yet. We are continuing to monitor consumption data closely as April bills go out (March consumption).
Salt Lake City Department of Public Utilities	We are unable to determine the specific impacts at this time. Consumption for March 2020 compared to March 2019 is higher in both categories. April will provide better insights to usage patterns.
Charlotte County Board of County Commissioners	Our county is very seasonal so we see many changes in demand around this time normally. We have seen an increase in demand, slightly less than normal, but we are not easily able to determine if it relates to COVID.

5. If you have experienced changes in water demand since the Covid-19 crisis started, please describe the nature of the change you have observed: (continued)	
Charlotte Water	We have noticed that our residential consumption has increased by .05 Ccf and our commercial consumption has decreased by almost the same amount.
Tualatin Valley Water District	Anomalies in weather are making it difficult to attribute demand reductions to COVID-19. We our deliveries appear to be on par with past years. And our bimonthly billing cycles have not allowed a more detailed analyses. But we're worried.
Dare County NC	We do not know because of increasing seasonality.
City of San Diego Public Utilities	Too soon to tell, but i imagine we are seeing a spike in residential use and probably a larger dip in non-residential use, because of lack of tourists in hotels and theme parks, etc.
Pittsburgh Water And Sewer Authority	Large college residential vacancies and commercial facilities shutdown has reduced demand somewhat.
Manchester Water Works	Decreased non-residential demand.
Suffolk County Water Authority	Very slight (3%) increase in demand; this is mostly on the East end of Long Island. Right now, our assessment is that this is a result of Manhattan residents fleeing the city for their summer residences. We appear to be a month ahead of schedule for where our demand normally sits.
City of Tulsa	We won't see the numbers for consumption for March until tomorrow, which I can forward to you by customer classification. Water demand numbers provided above are for pumpage. For the last two years, we are actually seeing our consumption numbers decrease, while our pumpage numbers are increasing due to the amount of flushing we need to perform on dead-end lines to keep disinfectant residuals up in a chloraminated system.
The Water Works Board of the City of Birmingham	Overall, potable water production is up 2% for year-to-date 2020 over the similar period in 2019. That's a little surprising given how much rainfall we had in January/February and the assumed curtailment of commercial restaurant usage.
Lehigh County Authority	Too early to tell. Impact appears to be minimal. Industrial usage is maintained due to high percentage of food / beverage manufacturing on our system.
7. If currently in place, in development, or under consideration, please describe any criteria you are considering for offering customer debt forgiveness for debt accumulated during the Covid-19 crisis:	
City of Lakeland	There has been discussions about deferring payments or allowing customers to make pre-set payments until caught up but at this time debt forgiveness has not been discussed.

7. If currently in place, in development, or under consideration, please describe any criteria you are considering for offering customer debt forgiveness for debt accumulated during the Covid-19 crisis: (continued)	
Gwinnett County Water Resources	We are considering removing late fees for bills accumulated during the crisis.
Tualatin Valley Water District	Still in development. We're very concerned about the ability to assess needs since we don't have access to data for means testing.
Dare County NC	Governor's executive order
City of San Diego Public Utilities	Too early to know.
Portland Water District	Waiving late fees on deliquent accounts
Pittsburgh Water And Sewer Authority	Similar to the requirements for debt forgiveness for low income residents. $300 per year if efforts to pay are made.
Manchester Water Works	We are not charging late fees or doing shut offs for non-payment during this time.
Suffolk County Water Authority	SCWA is considering eliminating the late charges during the COVID crisis.
City of Tulsa	Only under consideration now. We are working on extending our payment arrangement plans. Knowing it will take time for recovery of jobs, income, other bills, credit cards, etc., we would rather have the money that is owed to us, but extend the payment arrangement plans (without penalty). In some cases though, we anticipate we will just need to write off the debt.
City of Tucson - Tucson Water	Mayor and Council Policy Direction
Centennial Water and Sanitation District	We have suspended disconnects and working with customers on payment plans. We are developing options for reducing or finding other funding sources to assist customers in need.
Dayton Water Department	Currently only delay of payment, wave late fees, no shut offs, could evolve.
Lehigh County Authority	Low-income or unemployed customers are our primary concern. We may consider either extending due dates for a longer period to pay prior to assessing penalties / terminations once the pandemic has ended.

9. Do you anticipate implementing any of the following personnel-related operational changes as a result of the Covid-19 crisis? Please select all that apply. Note: Reported as % selecting each option.	
South Central Connecticut Regional Water Authority	We are currently paying all employees and paying overtime, if incurred. We are also considering options to reduce expenses.
City of Lakeland	Non-essential employees paid Administration leave.
East Bay Municipal Utility District	Two week rotation with pay for field and operating staff as a precaution against sudden widespread infection of field and operating staff
Metropolitan Water District of Southern California	Non-essential employees teleworking.
Charlotte County Board of County Commissioners	Operational schedule changes only - employees working from home
Charlotte Water	Altered work schedules
Tualatin Valley Water District	Not at this time. But we're monitoring things carefully and may implement furloughs if revenues are too far below plan.
Fort Pierce Utilities Authority	Admin time for those unable to telework from home
EL PASO WATER UTILITIES PUBLIC SERVICE BOARD	Emergency Administrative Leave, new Fedreral COVID-19 Laws
Pittsburgh Water And Sewer Authority	employee make 2 teams with furloughs every other week
Manchester Water Works	only essential employees working, all others are home with pay
La Puente Valley County Water District	Alternative schedules in which a portion of the staff is paid to be home at the ready.
City of Tulsa	Reduction in temporary employment services
City of Tucson - Tucson Water	Hiring Freeze, Suspended all temp personnel, layoffs
Dayton Water Department	Essential employees report, non-essential on paid leave.
Raleigh Water	paying critical employees 5% premium
Lehigh County Authority	Extensive work-from home for administrative staff

11. Do you anticipate changes to any of the following non-personnel related operating line items as a result of the Covid-19 crisis? Please select all that apply.	
East Bay Municipal Utility District	some field work not getting done, so might have some small non labor cost savings
Tualatin Valley Water District	Reduction in training that requires travel.
Fort Pierce Utilities Authority	Sanitization, PPE, Safety/Heath Monitoring
Dare County NC	Chemicals & Utilities will decrease
Central Arkansas Water	travel
City of Tucson - Tucson Water	essential only purchases for water operations
Lehigh County Authority	Technology purchases to support work from home.

13. If you wish to elaborate on these non-personnel related operational expense changes you may describe them further here:	
South Central Connecticut Regional Water Authority	We are revising our budget for our upcoming fiscal year due to COVID-19 as well as year current year projection.
Gwinnett County Water Resources	Additional laptops, VPN licenses, computer monitors.

13. If you wish to elaborate on these non-personnel related operational expense changes you may describe them further here: (continued)	
Salt Lake City Department of Public Utilities	We anticipate additional chemical costs to have supplies in place if there are interruptions on vendor services. Additional materials and supply costs are anticipated to properly protect our employees during this time.
Tualatin Valley Water District	Most are related to reduction in training and the elimination of travel for training events. Training is limited to those individual and activities that are required to maintain certifications.
Fort Pierce Utilities Authority	Disinfectants, Towel wipes, Respirators, Thermometers, Masks, etc. H2O2 Air purifiers, and the ultimate sanitization of the lobby area before we reopen to serve customers.
Portland Water District	Items related to remote working - pc, monitors, new server and software, PPE some programs not being done so savings may result - hydrant inspection/painting, etc.
Pittsburgh Water And Sewer Authority	Masks, daily medical screening testing of staff and vendors entering WTP and Operations yards.
Manchester Water Works	We are not performing any non-essential work, therefore the materials we would have purchased to do these jobs will not be bought. In addition, we don't have crews driving around the City because they are not working so we will likely save on fuel costs as well.
La Puente Valley County Water District	Difficult to accurately factor at this time.
City of Tucson - Tucson Water	Applies to discretionary spending
The Water Works Board of the City of Birmingham	Janitorial Services-including sanitizing the facilities. Material-Purchasing PPE material
Dayton Water Department	Mostly related to fuel and petroleum based products. Ethanol production is in crisis with severe demand reduction requiring refineries to support a much reduced volume.
Lehigh County Authority	Some increase in fuel due to allowing all staff to travel home in utility vehicles. Many construction projects are on hold, so we're not sure of the impact to those contracts. Significant investment in IT / technology to support work-from-home arrangements including rapid purchase and deployment of laptops and reimbursement (if needed) for internet service and cell phone service for employees working from home.

17. If you wish to elaborate on these reductions in spending as part of these directives you may describe them further here:	
City of Round Rock, Texas	City of Round Rock is doing only targeted department and program reductions at this time. No water utility reductions related to COID at this time.
City of Chandler	General non-essential operating contracts
Gwinnett County Water Resources	None have been given at this time.
Salt Lake City Department of Public Utilities	We were not asked to curtain non-essential spending but have revised our FY21 budget request.
Manchester Water Works	No specific directives on spending as we are an enterprise fund, but we have been directed by the Mayor to only have essential employees working on essential tasks.
City of Tulsa	The water utility has plenty of unencumbered cash-funded capital to that could be used via budget amendment for any shortfall in revenues not covered by expense savings. Employees are being asked to watch expenses, but not to the point that it would impact any service delivery.
Dayton Water Department	Essential purchases only or COVID-19 related

24. Do you anticipate experiencing reductions in the growth in new customers connecting to your drinking water system? (% responding to each)	
East Bay Municipal Utility District	Unknown but could be severe
Tualatin Valley Water District	New connections (and SDCs) are still above plan. But we're anticipating a reduction in growth and development.
Pittsburgh Water And Sewer Authority	Development activities are reduced
City of Tulsa	Commercial customers - small businesses; residential is still expected to increase slightly.
City of Tucson - Tucson Water	Prospective homebuyers might not be able to buy at this time. Anticipated recovery might take quite some time.
The Water Works Board of the City of Birmingham	Customers are less inclined to move during these uncertain times.
Lehigh County Authority	Short-term reductions due to work stoppage for private construction. Not sure about long-term impact!

25. Are there any other details or financial impacts to your utility resulting from COVID-19 that have not been covered within this survey? If yes, please share.	
South Central Connecticut Regional Water Authority	As part of our budget and projection revisions, we are deferring a planned rate application.
City of Chandler	Helping water customers financially burdened due to COVID-19 by suspending disconnections, not charging late fees, and extending payment plans.
Tualatin Valley Water District	We are working hard to anticipate the impacts of the potential economic slowdown on our customers. We're in the middle of a major infrastructure investment and see the potential to help our local economy recover by maintaining investment in infrastructure post-COVID-19 pandemic. Essentially we're in the shovel-ready business right now and have capital plans that can be executed as soon as funding is available.
Portland Water District	Investment Interest income expected to be lower. Delay in installation of summer seasonal accounts will reduce review
Suffolk County Water Authority	SCWA is in a unique situation as we are currently going through a bond offering, which has been delayed. We anticipate that this deal will conclude, but it has been an abnormal process due to the crisis and resulting market conditions.
City of Tulsa	Are you planning on changing future rate increases due to COVID-19? Yes. Water remains at 0% for FY21 (July 2020 - June 2021). Sewer is changing from a 7% increase in additional revenue required to a 3%.

May 1, 2020

The Honorable John Barrasso
Chairman Committee on Environment & Public Works
United States Senate
Washington, D.C. 20510

The Honorable Thomas Carper
Ranking Member Committee on Environment & Public Works
United States Senate
Washington, D.C. 20510

QFR@epw.senate.gov

Re: Stakeholder Comments regarding the S. __Drinking Water Infrastructure Act of 2020

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of the A. O. Smith Corporation ("A. O. Smith"), I would like to thank you and the Committee for affording the opportunity to provide stakeholder input on the Committee's draft legislation to further improve both the quality of our nation's drinking water and its infrastructure delivery system. The Drinking Water Infrastructure Act of 2020 contains several provisions to achieve those goals and we are supportive of the Committee's draft legislation.

By way of brief background, the A. O. Smith has been headquartered in Milwaukee, Wisconsin since its founding in 1874. A. O. Smith is North America's largest manufacturer and seller of residential and commercial water heating equipment and boilers, as well as a leading manufacturing of water treatment technologies, including point-of-use and point-of-entry systems. We take great pride in our history of manufacturing high quality, high efficiency, innovative American products that meet our customers' needs.

What follows are A. O. Smith's general comments, and suggestions, for certain sections of the draft bill:

Section 4

A. O. Smith supports the legislation's identification of perfluoroalkyl and polyfluoroalkyl substances for groundwater remediation. As the Committee knows, these "PFAS" substances are typically identified outside of the upstream water treatment process and must be remediated at the location (or

situs) of the contamination, but most also be treated at the point of use/ point of entry into a home or dwelling. A. O. Smith would however point out that the section's "clean up" standards that a State's "toxicity values, standards, and regulations" must apply may in certain circumstances increase the cost of utilizing certain treatment technologies or in other circumstances preclude certain treatment technologies from being deployed.

Section 6

A. O. Smith supports the legislation's inclusion of the purchase of filters for the removal of contaminants of concern under the Small and Disadvantaged Communities Assistance program. A. O. Smith does recommend however that the eligible filter technologies be expanded and include a requirement that any eligible technologies carry independent third-party certification to standards adopted by the American National Standards Institute (ANSI). A. O. Smith's recommended language changes are outlined in an attachment to these comments.

Section 13

A. O. Smith supports the legislation's inclusion of a study to evaluate advanced drinking water technologies that would examine "the state of existing and potential future technology that enhances or could enhance the treatment, monitoring, affordability, efficiency, and safety of drinking water provided by a public water system." A. O. Smith would recommend that within the scope of the proposed study that "testing" be expressly included, as well as modernizing the data inputs that are required to be included in Community Confidence Report submissions to the Environmental Protection Agency.

Finally, and to further build on the foundation of the legislation's improvements to the nations drinking water infrastructure, A. O. Smith would respectfully request the Committee to examine authorizing a national direct to consumer program that would afford eligible consumers the ability to purchase and install point of use or point of entry water treatment systems to address water quality challenges that can only be addressed at their tap. Such a program would act as an insurance policy for consumers to ensure that their drinking water – especially for homeowners who rely on groundwater – have safe drinking for their families. We have included a conceptual framework for your consideration.

Once again, A. O. Smith appreciates the opportunity to submit these comments for your and the Committee's consideration. Should you or your staff have any questions, please do not hesitate to contact me.

Respectfully submitted,

Joshua C. Greene, Vice President, Government and Industry Affairs
A. O. Smith Corporation
400 N. Capitol Street, NW Suite 585
Washington, D.C. 20001
(202) 434-4779
jcgreene@aosmith.com

Clean Potable Drinking Water for All Concept

In order to maintain and grow our domestic manufacturing base, stimulate demand in the economy for essential equipment that promotes public health, while at the same time ensuring that all people have access to clean drinking water, what follows is conceptual federal initiative for the installation, ongoing maintenance, and environmental stewardship benefits of water treatment equipment.

Brief Overview

There are significant occurrences of Lead, PFOA/PFOS, Nitrates, TCE, and other regulated and unregulated contaminants in the nation's drinking water distribution systems, as well as in groundwater, and private wells. Clean potable drinking water is essential for public health and the expanded utilization of bottled water is not a sustainable solution. Point-of-Use and Point-of-Entry (i.e. POU/POE) water treatment solutions are the most cost effective and sustainable solutions to address drinking water quality issues at the tap at homes, offices, schools, medical facilities, and other places where drinking water is consumed. While it is important that the nation's water distribution infrastructure maintenance backlog be addressed, it will take decades for the projects to be completed and will not help the 41 million Americans the utilize groundwater. In the interim, millions of Americans will continue to struggle with their drinking water quality. We need to help these Americans now. The Water Treatment industry has certified filtration products on the market and available TODAY that are certified to address Lead, Nitrates, Volatile Organic Compounds (VOCs), and PFOA & PFOS among other contaminants.

Solution = Direct-to-Consumer *Rebate or Incentive for the purchase and installation of a Point of Entry or Point of Use Water Treatment Device/System*

Product/ System Requirement:

- Minimum certification to a 3rd party ANSI Accredited testing/certification agency to the following standards:
    - ANSI/NSF 53 for health effects reduction including Lead
    - ANSI/NSF P473 for the reduction of PFOA/PFOS

Rebate Structure:

- Rebate of up to [$1,000] for the purchase, installation, AND registration in a water quality assurance program.
- The Rebate should be able to be claimed through all water treatment delivery channels on a voluntary basis, including, but not limited to licensed contractor, plumber, manufacturer, or big box home improvement and hardware stores.

Federal Government Facilitators:

- DOE State Energy Program/Weatherization Program;
- USDA Rural Economic Development Program (RCAP);
- HUD Office of Healthy Homes;
- DOI for Tribal communities; or
- EPA

Drinking Water Infrastructure Act of 2020

- Potential insertion/addition to address contaminants under:
    - SEC. 6. ASSISTANCE FOR SMALL AND DISADVANTAGED COMMUNITIES.

SEC. 6. ASSISTANCE FOR SMALL AND DISADVANTAGED COMMUNITIES.

(a) EXISTING PROGRAMS.—Section 1459A of the Safe Drinking Water Act (42 U.S.C. 300j–19a) is amended—

(1) in subsection (b)(2)—

(A) in subparagraph (B), by striking ''and'' at the end;

(B) in subparagraph (C), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

''(D) the purchase of filters *and point of use/point of entry water treatment technologies that are certified to an applicable standard set by the American National Standards Institute by an independent third-party certification organization accredited by the American National Standards Institute* for the removal of contaminants of concern;

May 1, 2020

The Honorable John Barrasso
Chairman
U.S. Senate Committee on Environment
and Public Works

The Honorable Tom Carper
Ranking Member
U.S. Senate Committee on Environment
and Public Works

Dear Chairman Barrasso, Ranking Member Carper and Members of the U.S. Senate Committee on Environment and Public Works:

On behalf of Associated Builders and Contractors, a national construction industry trade association with 69 chapters representing more than 21,000 members, I appreciate the opportunity to comment on the draft legislation that is being considered by the committee, the America's Water Infrastructure Act of 2020 and the Drinking Water Infrastructure Act. Additionally, ABC would like to express our sincere appreciation for the bipartisan legislation that both bodies have passed to aid the U.S. economy, particularly small businesses, during the coronavirus epidemic.

ABC applauds the U.S. Senate Committee on Environment and Public Works for recognizing the importance of improving our nation's water resources and drinking water infrastructure. ABC and our members are committed to building taxpayer-funded projects with the highest standards of safety and quality, and we stand ready for the opportunity to build and maintain America's water infrastructure to the benefit of the communities that it will serve. We believe that both pieces of draft legislation represent a path forward on this vital issue and ask the committee for several improvements to the final product and that are outlined below.

ABC believes that federal investments in infrastructure can play an essential role in rebuilding our economy and creating well-paying jobs for the American people. ABC urges the committee to ensure that all contracts awarded from funds of the legislation are awarded through a fair and competitive bidding process that allows all qualified contractors to compete on a level playing field based on merit, experience, quality and safety. To deliver the highest quality projects at the best cost to taxpayers, a critical part of any federal investment in infrastructure should include the entire construction industry. The most cost-effective way to rebuild infrastructure is to promote open competition.

Contractors can fairly compete to build and work on these taxpayer-funded jobs as long as there are no government-mandated project labor agreements on federal and federally assisted projects, which drive up the cost of construction projects by between 12% and 18% and discourage employers of more than 87% of the construction workforce who choose not to belong to a union from bidding on taxpayer-funded projects. PLAs primarily affect small businesses, and ABC joined other organizations in a letter to advocate for the application of fair and open competition to the materials selection process, which like labor, would ensure that investments in water infrastructure go further for business, taxpayers, local governments, and the country.

While ABC supports increased financing of water infrastructure projects, we are concerned that these funds would apply federal Davis-Bacon Act requirements to federal and non-federally funded projects, decreasing the value to taxpayers. Considering the current economic crisis, the committee should consider suspending the application of Davis-Bacon wage requirements on all projects funded under the proposed legislation. The flawed and inflationary wage determination process increases the cost of construction and can have chilling impact on competition, particularly for small businesses.

America's Water Infrastructure Act includes important provisions to accelerate project delivery and improve resiliency to natural hazards – a priority that ABC appreciates. Additionally, ABC is encouraged by President Trump's One Federal Decision, Executive Order 13807, and with the progress currently being made to modernize the National Environmental Policy Act. The committee should consider including language in the bill to reduce delays that can hinder critical projects while maintaining environmental stewardship.

ABC also urges the committee to build on the example it set with S. 2302, America's Transportation Infrastructure Act of 2019, to enhance construction workforce development opportunities. An increase in construction demand generated by significant infrastructure investments would further exacerbate the shortage of skilled workers in the construction industry. The federal government should commit to supporting and defending an "all- of-the-above" strategy for skill development where workers and employers have the freedom to choose the best way to educate construction employees that maximizes innovation to achieve world-class safety and productivity.

ABC appreciates the opportunity to comment on the committee's important work to improve our nation's water infrastructure. We also call on Congress for an additional investment in residential, commercial, and transportation infrastructure to further accelerate the recovery of the U.S. economy. Any investment in infrastructure would have a profound economic effect not only on the construction industry, but the communities which these projects would benefit.

We thank you for your leadership to address the critical needs of our nation during this difficult time.

Sincerely,

Kristen Swearingen
Vice President, Legislative & Political Affairs
Associated Builders and Contractors, Inc.
440 First St., N.W., Suite 200
Washington, DC 20001
Swearingen@abc.org
(202) 595-1804

Bringing
Water
Together

May 1, 2020

Chairman John Barrasso
Environment and Public Works Committee
United States Senate
410 Dirksen Senate Office Building
Washington, DC 20510

Ranking Member Tom Carper
Environment and Public Works Committee
United States Senate
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper,

On behalf of the Association of California Water Agencies (ACWA), thank you for this opportunity to share ACWA's views on the America's Water Infrastructure Act (AWIA) of 2020 and Drinking Water Infrastructure Act of 2020. ACWA's 455 public water agency members supply over 90 percent of the water delivered in California for residential, agricultural, and municipal uses.

ACWA is pleased you are moving forward with AWIA and supports much of the draft text. ACWA recommends the following:

Bureau of Reclamation Title
ACWA asks that a Bureau of Reclamation (Reclamation) title be included in the measure. Reclamation is the nation's largest wholesale water provider. Most Reclamation projects are physically located in the west, but this infrastructure benefits the entire nation through the food, fiber, power and economic benefits it generates. Congress, recognizing the importance of Reclamation included a Reclamation title in the 2018 AWIA (Public Law No: 115-270), which passed the Senate 99-1.

Recommendation:
We ask that the Committee build upon the successful effort of Public Law No: 115-270 and work with the Senate Energy Committee to develop a Bureau of Reclamation title for AWIA 2020.

Codify Withdrawal of Water Supply Rule (81 FR 91556)
On January 19, 2020, the Administration announced it was directing the Corps to withdraw the Water Supply Rule. This announcement came in response to a bipartisan letter signed by nineteen western senators, including leading members of the Environment and Public Works Committee.

Recommendation:
Water users are appreciative of the Administration's effort to withdraw the rule. It is a wise step that should be codified. Codification of the withdrawal would protect western water rights, protect the role of states in water management, and provide water managers with the certainty they need to supply water to our nation's communities

SACRAMENTO 980 9th Street, Suite 1000, Sacramento, CA 95814 • (916) 441-4545
WASHINGTON, D.C. 400 North Capitol Street NW, Suite 357, Washington, DC 20001 • (202) 434-4760
www.acwa.com

ACWA would also like to provide support or recommendations on the following provisions:

Section 1005. Watercraft inspection stations.
ACWA supports efforts to address invasive species. We believe the technical correction included in Section 1005 will ensure appropriate implementation of important efforts to combat the spread of invasive species.

Section 1017. Continuing authority programs.
This section establishes a significant cost-share waiver for "small" or "disadvantaged" communities seeking to carry out a project under a continuing authority program (CAP) with the Corps. Small communities often struggle to make improvement to water infrastructure due to smaller rate bases. ACWA supports the effort to increase federal cost share for these disadvantaged communities.

We recommend expanding the pilot program to also include Bureau of Reclamation projects that serve small or disadvantage communities.

Section 1021. Aging Infrastructure.
ACWA supports the aging infrastructure studies by the Corps for federal agencies and non-federal entities that own, operate, and maintain water infrastructure. We believe this will allow our members to learn about future infrastructure needs so that they can implement a plan to increase the longevity of the existing infrastructure.

Section 1037. Interagency task force on small dams and fish passages.
This section requires the Secretary to establish an interagency task force to study small dams and fish passages. The Secretary must also submit a report to Congress by December 31, 2021, that includes recommendations for a national strategy for identifying, prioritizing, and successfully removing or refurbishing small dams of concern by 2030. The interagency committee includes representatives from multiple federal agencies including the Corps, Reclamation, the Environmental Protection Agency, and several other agencies. This report will include recommendations related to dam removal and remediation.

Dam removal can be contentious and affect communities and local governments. ACWA recommends that the Committee direct the interagency task force consult with states and local governments when developing the report.

Section 1042. Credit or Reimbursement.
ACWA supports Section 1042. This section would benefit local project sponsors and the federal government by ensuring those that are capable of making Corps approved repairs can do them in a more efficient manner, freeing up federal resources for those areas within a disaster area that need additional assistance.

Section 1054. Studies of water resources development projects by non-Federal interests.
This section amends section 203 of WRDA 1986 (33 U.S.C. 2231) to permit a non-federal interest to undertake not just a federally authorized feasibility study of a proposed project, but also conduct a feasibility study on modifications or improvements to a project constructed by the Corps. ACWA supports this section.

ACWA

Section 1083. Corps of Engineers projects in underserved communities, economically distressed areas, or rural areas.
This section allows the Secretary to recommend a project for funding without the need to demonstrate that the project is justified by national economic development benefits. This is contingent on the community that is served by the project being small, financially disadvantaged, or rural, as well as the long-term life safety, economic viability, and environmental sustainability of the community being threatened without the project. The economic evaluation of such a project must include non-monetary benefits, as well as monetary benefits. ACWA supports this section.

Section 1101. Flexibility for projects.
ACWA supports this section which establishes a two-year goal for the completion of Corps feasibility studies.

Section 1102. Development of categorical exclusions.
ACWA supports this section which directs the Secretary to share a list of the Corps' categorical exclusions for environmental review with other federal agencies and directs those federal agencies to conduct a rulemaking process if they determine that it is appropriate to adopt similar categorical exclusions. This section includes the Department of the Interior, Department of Agriculture, Department of Energy, and other federal agencies.

Section 1202. Expedited completion.
ACWA supports this section which requires the Secretary to expedite the completion, review, or validation of the applicable decision documents.

Sections: 1602. Invasive species in impaired waters; 1603. Aquatic invasive species research; 1604. Invasive species mitigation and reduction; 1609. Invasive species in Alpine Lakes pilot program.
ACWA appreciates and supports the efforts to address invasive species threats that would be authorized and expanded under these sections.

Section 2004. Small publicly owned treatment works efficiency grant program.
ACWA supports this section which creates an EPA grant program to assist small publicly owned treatment works that serve less than 10,000 people, or are disadvantaged, with replacing or repairing equipment to increase the water efficiency or energy efficiency.

Section 2014. WIFIA.
ACWA supports WIFIA for the Corps. ACWA requests your assistance in ensuring the USACE WIFIA program is authorized and able to receive the necessary appropriations to begin the issuance of loans. ACWA would like to see that the USACE WIFIA program be authorized at $50 million dollars through 2024 like the EPA WIFIA program.

Section 2015. Reauthorization of Clean Water State Revolving Loan Funds.
ACWA supports efforts to increase funding to the Clean Water State Revolving Loan fun. Increasing this funding to $3 billion by 2023 is necessary to support the health of our nation and our economy.

ACWA

Section 3010. Final rating opinion letters.
ACWA supports this streamlined provision.

Again, ACWA appreciates your leadership on this important legislation.

If you have any questions regarding ACWA's comments, please contact ACWA Director of Federal Relations, David Reynolds by email at dlreyns@sso.org; by phone at (202) 434 – 4760; or by mail at 400 N Capitol Street NW, Suite 357, Washington, D.C., 20001.

Sincerely,

David L. Reynolds
Director of Federal Relations
Association of California Water Agencies

CC:

US Senator Dianne Feinstein
US Senator Kamala Harris

Association of State Drinking Water Administrators (ASDWA)

Testimony to the

Senate Committee on Environment and Public Works

An Information-Gathering Process on Draft Legislation entitled, America's Water Infrastructure Act of 2020 and The Drinking Water Infrastructure Act of 2020

Submitted by J. Alan Roberson, P.E.

Executive Director, ASDWA

Tuesday, April 28, 2020

Summary
The Association of State Drinking Water Administrators (ASDWA) submits the following recommendations for strengthening America's Water Infrastructure Act of 2020 (AWIA 2020) and the Drinking Water Infrastructure Act of 2020 (DWIA 2020) on behalf of the drinking water programs in the 50 states, five territories, District of Columbia, and Navajo Nation. ASDWA applauds and supports the increased and extended authorizations for existing lead programs, increased support for water systems to enhance security and resiliency, and support of new and existing programs to assist small, rural, and disadvantaged systems. ASDWA requests the authorization for the Public Water System Supervision (PWSS) program be increased from the current $125 million to $250 million annually and that the Committee take this opportunity to extend and increase the authorization for the Drinking Water State Revolving Fund (SRF).

Testimony
Chairman Barrasso, Ranking Member Carper, and members of the committee:

The Association of State Drinking Water Administrators (ASDWA) appreciates the opportunity to offer this written testimony during the information-gathering process regarding the draft America's Water Infrastructure Act of 2020 (AWIA 2020) and the Drinking Water Infrastructure Act of 2020 (DWIA 2020). We commend the committee for moving forward with the important work of developing legislation to protect public health and the environment through the Safe Drinking Water Act (SDWA) and Clean Water Act (CWA) even as the COVID-19 pandemic continues to impact efforts to ensure the continued delivery of safe drinking water, Congressional operations, and normal life around the country.

ASDWA represents the 57 administrators and their staff from the 50 state drinking water programs, five territorial programs, the District of Columbia and the Navajo Nation. Our members have the responsibility for direct implementation of the SDWA and have primary enforcement responsibility (primacy) in their respective jurisdictions. Our members and their staff are on the front lines every day, providing technical assistance and support of our country's 150,000 drinking water systems, which is critical to ensuring safe drinking water and protecting public health. As such, our testimony focuses on the aspects of the draft legislation that amend the SDWA.

Secure and Resilient Public Water Systems and Assistance for Small, Rural, and Disadvantaged Public Water Systems
ASDWA supports (with two recommended additions) the multiple provisions that encourage increasing the resiliency and security of public water systems and the provisions that provide increased resources for small, rural and disadvantaged water systems in both AWIA 2020 and DWIA 2020, including:

- Reauthorizing the existing Drinking Water System Resilience and Sustainability Program under section 1459A(l) of SDWA through DWIA 2020 section 6;
- Establishing the proposed Midsize Drinking Water System Infrastructure Resilience and Sustainability Program in DWIA 2020 section 9;

- The commissioning of a study on low-income households in the Unites States without affordable public drinking water services proposed in DWIA 2020 section 10;
- The small and disadvantaged community analysis required by AWIA 2020 Section 2017;
- The expansion of the Assistance for Small and Disadvantaged Communities program to allow for the use of funds to purchase point-of-use (POU) filters that remove contaminants of concern from public drinking water systems and for providing information regarding proper filtration maintenance and options regarding replacing lead service lines or other sources of lead from water systems and technical assistance, as proposed in DWIA 2020 section 6
    - ASDWA recommends that the legislation allow the flexibility for states to determine if POU devices are allowable (or not), given several states' negative past experiences with POU devices with multiple long-term issues such as 100% community participation, device maintenance and replacement, and compliance monitoring;
- The operational sustainability program for small public water systems, as proposed in DWIA 2020 section 6; and
- The creation of a new EPA grant program to provide grants to a utility or nonprofit to voluntarily connect a low-income household to a municipal public drinking water system, as proposed in DWIA 2020 section 6. Even with 150,000 regulated public water systems in the United States, a potential gap for ensuring safe drinking water still exists as represented by the approximately 15 million households that rely on private wells with limited regulation at the local level, although not all of those households are low-income.

ASDWA supports requiring EPA to submit a report to Congress that assesses the vulnerability of coastal and inland drinking water and wastewater infrastructure to sea level rise, storm surge, extreme weather, and other flood risks in AWIA 2020 section 3004. ASDWA recommends that inland drinking water and wastewater infrastructure be included in this report as many water systems in states such as Nebraska, Kansas, Iowa and Missouri have all experience flooding associated with the Missouri River and have been impacted by these disasters.

Lead in Drinking Water

ASDWA supports DWIA 2020's reauthorization of the Voluntary School and Childcare Lead Testing Grant Program but does not support the expansion of eligible grant recipients to include public water systems and eligible nonprofit organizations. Funding for lead testing in schools is crucial to protecting the most vulnerable population, our nation's children, from exposure to high levels of lead in drinking water, however, states should not be competing with other entities for this funding. This could potentially create confusion and competition between the funds awarded to states to test schools and funds awarded to systems and non-profits. ASDWA also supports extending the grant programs authorized in SDWA Section 1459B through 2022. These grants, which help communities implement lead reduction projects, will continue to be an important source of federal support for the removal of all lead service lines, both publicly and privately owned, especially for water systems serving low-income homes and communities. With the upcoming finalization of EPA's Lead and Copper Rule Revisions (LCRR),

authorized funding for these grant programs, created by Congress in the Water Infrastructure Improvements for the Nation (WIIN) Act of 2016 (P.L. 114-322), will likely need to be expanded and the programs further extended.

Support for State Drinking Water Programs

Additional funding to the state drinking water programs is essential for appropriate implementation of the SDWA to ensure safe drinking water. Many state primacy agencies are already short staffed, as detailed in ASDWA's 2018 Beyond Tight Budgets report, and are frequently called upon to divert resources from core drinking water programs (including inspections, technical assistance and training, permitting/plan approvals, and compliance/enforcement) to address emerging needs – most recently the COVID-19 pandemic. Without additional funding, both the core program and the additional work – to address emerging contaminants such as per- and polyfluoroalkyl substances (PFAS) and harmful algal blooms (HABs), implementing more stringent requirements for contaminants such as lead, and providing increased assistance to drinking water systems who continue to struggle to meet SDWA compliance – will suffer.

Funding is vital to state drinking water programs to fulfill their role in implementing the SDWA and protecting public health. The number of regulations requiring state adoption and implementation as well as performance expectations continue to grow while the federal funding increases have not kept pace. Inflation has further eroded the relatively static funding levels. ASDWA's 2013 Report, Insufficient Resources for State Drinking Water Programs Threaten Public Health, estimated the funding gap to be at a minimum of $240 million. The 2019 update to this report (publication pending) estimates the funding gap has increased due to the emerging needs previously mentioned. ASDWA respectfully requests the authorization for the Public Water System Supervision (PWSS) program, the principal federal funding source for state water programs, be increased from the current $125 million to at least $250 million annually.

Drinking Water SRF Reauthorization and Funding for Emerging Contaminants in Drinking Water

ASDWA supports the authorization for additional funding to assist in the remediation of contamination from emerging contaminants, with a focus on PFAS, as proposed in DWIA 2020 section 4. However, ASDWA urges the Committee to ensure that this funding can be awarded through the SRF programs as additional subsidy, rather than only through grants. If the funding for this program was appropriated as written, states would face massive barriers to implementation, including passing new state laws or updating laws to allow for the SRF programs to award grant funding. They would also have to acquire additional state employees to implement this program, since as written, it is not integrated into existing processes.

- Grants versus loan forgiveness/principle forgiveness: in the draft bill language, only "grants" are authorized, not principal forgiveness and/or negative interest rate loans.
- A "grant" is a legally distinct financial instrument versus a loan with principal forgiveness or a negative interest rate.

- 46 of the 51 Drinking Water SRF programs have never provided a "grant" from their Drinking Water SRF program. Only 2 states offer it on a regular basis.
- By dispersing the funds as grants, there would be additional requirements in OMB's Uniform Grant Guidance that water systems must follow if these funds are awarded by states to the water systems. This places additional and unnecessary burden on water systems, as well as the states who manage and oversee these projects.
- Some states have state-level legal prohibitions against giving "grants" from their SRF program.

The simplest route is to modify the language to include additional subsidy options, such as principal forgiveness. It is possible for the Drinking Water SRF programs to make a loan for 100% principal forgiveness so the project ends up costing nothing, or next to nothing depending on when during the course of a project the program begins to charge interest (typically under $1,000 for a $500,000 - $1,000,000 loan, depending on the current interest rate). Allowing principal forgiveness and other subsidy forms rather than only grants would significantly reduce the burden on states and water systems.

The language in the DWIA 2020 draft bill that codifies Appropriations language requiring states to use 20% of the Drinking Water SRF for grants, negative interest loans, or to buy, refinance or purchase debt is problematic from the states' perspective. While subsidy options under the Drinking Water SRF are an important and necessary component to assisting disadvantaged communities, requiring a minimum 20% subsidy is problematic for some programs. Additional subsidization reduces the total number of water infrastructure projects that can be funded by the federal capitalization grant. Many states already offer state-funded grants to complement the SRF subsidized loans and could benefit from the ability to provide more subsidized loans rather than additional subsidization. By removing the minimum required percentage for disadvantaged subsidy and allowing all SRF applicants to be eligible for such subsidization, the Committee can increase flexibility for states to provide additional subsidization and ultimately increase the funding available to communities.

Though ASDWA supports the reauthorization of WIFIA and Clean Water SRF, it is a missed opportunity that the Committee has failed to include a similar reauthorization of funding for the Drinking Water SRF. ASDWA recognizes that the Drinking Water SRF was reauthorized in the 2018 AWIA, but the reauthorization was only through fiscal year 2021. EPA's 6th Drinking Water Needs Survey concluded that $427.6 billion of capital investment was needed for the next 20 years. The total translates to $21.4 billion annually. Continued investment is needed for aging treatment plants, storage tanks, pumps, and distribution lines that carry water to our nation's homes, businesses, and schools. Unlike other water infrastructure funding programs, the Drinking Water SRF offers project subsidization for disadvantaged communities, funds for training and technical assistance, and is a fundamental funding mechanism for many medium and small utilities who would pay much higher interest rates if forced to use the bond market. We urge the Committee to take advantage of this opportunity before the program expires and to extend and increase authorization of the Drinking Water SRF, picking up where AWIA 2018 left off.

ASDWA would like to encourage the Committee to consider temporary changes to the Drinking Water SRF program that would help the water sector during the COVID-19 pandemic.

First, ASDWA recommends the required 20% state match for the 2020 and 2021 Drinking Water SRF capitalization grants be eliminated. Presently, states are required to contribute 20% of the capitalization grant for the SRFs to be awarded federal funding. However, the COVID-19 pandemic has caused an economic downturn at a minimum on scale of the 2008 Great Recession. Eliminating the state match requirement for the SRFs, just as Congress did in the America Recovery and Reinvestment Act of 2009, will support states facing a sudden loss of tax revenue or inability to access financing for state match through the municipal bond market, and ensure federal funding for SRF subsidized loans for water infrastructure projects is available as soon as possible.

Second, ASDWA recommends that the Drinking Water SRF Administration and Technical Assistance set-aside, which allows states to use up to 4 percent of the capitalization grant, $400,000, or 1/5th percent of the current valuation of the fund (whichever is greater), for costs associated with administering and implementing the state's Drinking Water SRF program and providing technical assistance to systems of all sizes, be increased to 6% for 2020 and 2021 capitalization grants. State primacy agencies and financing authorities faced challenges after the 2008 Great Recession because many water system projects were not shovel-ready. Because of the COVID-19 pandemic, it's likely that the sector will see a similar delay in projects being ready to move forward with funding and construction when we return to normal operations. AWWA and AMWA's Financial Impact of the COVID-19 Crisis on U.S. Drinking Water Utilities analysis, water systems expect to delay, reduce, or eliminate capital construction by as much as $5 billion (annualized) to help manage cash flows and to comply with required Federal or State temporary shutdown of non-essential businesses activities. An increase in the administration set-aside will provide state Drinking Water SRF programs with additional resources to provide the needed assistance to water systems when capital construction and expenditures return to normal and will ensure states are able to maintain the staff to manage a robust infrastructure funding program throughout the pandemic.

Thank you again for your continued work and support to ensure safe drinking water for all. ASDWA appreciates the opportunity to submit this testimony to support the committee's information gathering process. We look forward to continued engagement as the Committee refines these proposals in the weeks and months ahead.

ASSOCIATION OF STATE FLOODPLAIN MANAGERS, INC.
8301 Excelsior Dr., Madison, Wisconsin 53717
Phone: 608-828-3000 | Fax: 608-828-6319 | asfpm@floods.org | www.floods.org

Executive Director
Chad M. Berginnis, CFM

Deputy Director Operations
Ingrid D. Wadsworth, CFM

Director Emeritus
Larry A. Larson, P.E., CFM

May 1, 2020

Honorable John Barrasso
Chairman
Committee on Environment and Public Works
United States Senate
410 Dirksen Senate Office Building
Washington DC 20510

Honorable Tom Carper
Ranking Member
Committee on Environment and Public Works
United States Senate
456 Dirksen Senate Office Building
Washington DC 20510

Dear Chairman Barrasso and Ranking Member Carper and Members of the Committee:

The Association of State Floodplain Managers (ASFPM) appreciates the opportunity to provide comments on the **Discussion Draft** recently published on the Committee's website for the 2020 Water Resources Development Act (WRDA) and entitled **"America's Water Infrastructure Act of 2020."** We appreciate your commitment to continuing bipartisan effort to address the water resources needs of the nation, and to seek views and ideas for potential improvements in programs of the U.S. Army Corps of Engineers (Corps) that would help increase the resiliency and long-term health and productivity of our nation's water resources infrastructure.

The 19,000 members of ASFPM and our Chapters are partners of the Corps, Federal Emergency Management Agency (FEMA), and many other federal agencies, along with those at the state and local levels in reducing loss of life and property due to flooding. Our 37 state chapters are active within their states and nationally as well. State and local floodplain managers and their private sector engineering and floodplain management colleagues interact regularly with the Corps at the Headquarters and District levels in developing and implementing solutions to flooding challenges.

Recent experience continues to demonstrate that the increasing variability and frequency of intense weather events and conditions, along with intensifying watershed development and aging water infrastructure underscore the need for new thinking and approaches to reduce vulnerabilities and increase resilience. 2019 was the fifth consecutive year (2015-2019) in which 10 or more billion-dollar weather and climate disaster events have impacted the United States, according to the National Climatic Data Center of NOAA. The NCDC identifies some 254 such events having occurred since 1980 with a cost of more than $1.7 trillion. Floods are – and continue to be – the nation's most frequent and costliest disasters and the costs to taxpayers continue to increase.

While the Corps has often successfully engineered structural means of controlling flood waters, it is becoming more and more apparent that 1) operation and maintenance costs are exceeding the ability of communities and local sponsors to pay those costs, which is their obligation; 2) structural projects, while necessary in some instances, are expensive; 3) traditional projects can inadvertently increase flood hazards upstream, downstream and across the river; and 4) nonstructural projects can often offer a less expensive, more sustainable and affordable means of reducing flood hazards and costs.

In the attachment to this letter we offer numerous specific comments, concerns, and suggestions below the section description (in "red") on many of the individual sections of the Discussion Draft, keyed to the accompanying Section-by-Section Analysis. We would first like to identify several overarching themes for potential improvements in the bill as the bill progresses in the legislative process.

We would urge the Committee to:

1) Increase emphasis on growing and expanding Corps of Engineers Technical Assistance Programs – Floodplain Management Services (FPMS), Planning Assistance to States (PAS), and National Flood Risk Management/ Silver Jackets. These programs or strengthened and expanded versions could especially help small and disadvantaged communities with, otherwise, often unavailable technical assistance to develop flood hazard and other water resources solutions, often at far less costs than large Corps projects. These are programs that also can help communities better use their own resources to address flooding, flood risk management and other water resource management problems. We find often that Corps Districts are not availing themselves of these programs and are mostly unaware of these programs' potential to serve much larger numbers of communities with much needed assistance at assessing risks and cost-effectively addressing those risks. At present, total funding levels are too small to get appropriate attention. We applaud recent efforts of Corps leaders to raise awareness among District managers, but we urge Congress to give much stronger encouragement with increased funding, additional authorization and direction to maximize potential and reach of technical assistance.

2) Strengthen direction in Corps planning and project alternative analysis to consider nonstructural and nature-based and natural infrastructure approaches. We strongly urge the Committee to provide greater support for these approaches, and to bring cost-sharing formulas for nonstructural and natural infrastructure and nature-based flood risk management solutions into sync to provide greater incentives for their use by communities. These approaches have potential to save much more taxpayer dollars through reduced disaster

costs, reduced infrastructure costs, and to save lives and property, often with important long-term environmental benefits to society.

3) Reform and modernize the Corps' emergency assistance authorities and the P.L. 84-99 program. Complete analysis is needed of past funds spent to repair levee failures and damage, especially to account for many repetitive levee and other infrastructure repairs, and to take into account changing and future conditions and climate change signals as we repair and rehabilitate flood-related infrastructure. This program needs to assure sponsors are meeting their commitments on operation and maintenance. Previous WRDA's have directed such studies, but these have never been completed.

4) Reform and update benefit-cost analysis and project planning and evaluation procedures to modernize planning and incorporate natural floodplain values and functions, anticipate reasonably foreseeable future conditions. Appropriate studies and reports have been authorized in previous WRDA's, but have not been completed. We urge the Committee to reiterate, update and build on these.

5) Avoid piecemeal unravelling of long-fought for economic and environmental planning reforms – with provisions that too often are motivated as a means to promote pet projects, but may end up promoting projects that are far less effective and much costlier in the long run. The Discussion draft bill contains a substantial number of waivers or weakening of benefit-cost requirements, broad assumptions of non-federal responsibilities as new federal responsibilities, and increased pressures to rush environmental and planning reviews that are likely to undermine sound decision-making, and certain of which should be stricken or substantially modified.

6) **Additionally, no flood control projects should be authorized unless non-federal sponsors can provide assurances of financial capability to fund not only the non-federal share of construction, but assurances they have the financial capability to operate and maintain the facility for its expected life**. Many provisions that would have the Corps of Engineers assume responsibilities of non-federal sponsors are effectively absolving sponsors of operation or maintenance that was originally a nonfederal requirement. These have potential to mushroom into massive costs to the federal taxpayers and often skew wise decision-making away from prudent planning and approaches.

7) High Hazard Dam language. We also would strongly urge inclusion of language proposed by Sen. Feinstein for the High Hazard Dam Rehabilitations program. These changes would address problems identified during the first program grant cycle in 2019, where modification of the authorizing language would improve program implementation, including clarifying some grant eligibility requirements, better defining technical terms and clarifying the requirements for flood risk education, planning and response for communities impacted by a dam. This important program helps state dam safety programs achieve their important role in regulating approximately 70% of the dams in the nation.

Once again, we very much appreciate the opportunity to provide these comments, and we would be glad to respond to any questions you may have. Please contact me, Chad Berginnis, ASFPM Executive Director at with

questions or other needs. National headquarters of the Association of State Floodplain Managers is located at 8301 Excelsior Drive, Madison, WI, 53717, 608-828-3000.

Thank you,

Most sincerely,

Chad Berginnis, Executive Director ASFPM

Attachment – ASFPM Comments on Relevant Sections of AWIA 2020 Discussion Draft (in Red) – Section by Section

Keyed to: (Discussion Draft) EDW20246

ASFPM Attachment

America's Water Infrastructure Act of 2020 Section-by-Section
With Comments of Association of
att State Floodplain Managers
in (Red)

Sec.1.Short title; table of contents.

This section states that this Act may be cited as the "America's Water Infrastructure Act of 2020" and contains the table of contents.

Sec.2. Definition of Secretary.

This section states that in this Act, the term "Secretary" means the Secretary of the Army.

TITLE I—WATER RESOURCES DEVELOPMENT

Subtitle A—General Provisions

Sec.1001.Upper and Lower Missouri River comprehensive flood protection studies.

This section requires that the Secretary conduct two comprehensive studies: one on the Upper and one on the Lower Missouri River. The Secretary must submit one comprehensive strategy and report encompassing both to Congress on flood risk in areas affected by the severe flooding that occurred along the Missouri River in 2019. The study shall include recommendations on management plans and actions to be carried out by the responsible federal agencies; address whether changes are necessary to the general comprehensive plan for flood control in the Missouri River Basin; and address whether there are opportunities for increased non-federal management in the Missouri River Basin. The study shall also include recommendations for non- federal and federal action where appropriate, as well as follow-up studies for problem areas for which data or current technology does not allow for immediate solutions.

This section authorizes $50 million in appropriations to carry out this section, to remain available until expended.]

High interest to ASFPM
The two Missouri River studies – Upper and Lower –are important, but they must include natural infrastructure alternatives as options along full system. Nature-based solution alternatives and the use of levee setback concepts need to be integral parts of the studies. The reports should specifically consider repetitive levee repair and rehabilitation costs factoring in loss information and histories and potential for utilization of non-structural approaches for flood hazard reduction. Calculations for design, O&M, etc. of levees must consider increased precipitation and high flow, regional flow and runoff trends and reasonably expected future conditions

Keyed to: (Discussion Draft) EDW20246

Sec.1002.Great Lakes comprehensive flood protection study.

This section directs the Secretary to conduct a comprehensive study, and submit a report to Congress, on shoreline protection and resiliency in areas affected by flooding in 2019 due to high lake water levels along the Great Lakes.

The section requires that the Secretary address whether changes are necessary to the management plan for the Great Lakes, including plans for individual lakes of the Great Lakes; address whether there are opportunities for increased non-federal management in the Great Lakes; and include recommendations on management plans and actions to be carried out by the responsible federal agencies.

This section authorizes $25 million in appropriations to carry out this section, to remain available until expended.

High interest to ASFPM
The study will support Shoreline and Erosion protection and "resiliency". The bill language contains consideration of nature based and natural infrastructure based alternatives and potential property buyouts where appropriate

Sec.1003.Additional studies under North Atlantic Coast Comprehensive Study.

This section requires the Secretary to carry out a study to determine the feasibility for a hurricane and storm damage risk reduction project for any major metropolitan area geographically located within the study area identified in the North Atlantic Coast Comprehensive Study that was not included as a high-risk focus area identified in the initial study. This study is a continuation of the previously authorized comprehensive study.

High interest to ASFPM
Adds high risk major metropolitan areas not in original disaster supplemental authorized study which emphasized identifying old feasibility studies for updating—is this adequate? The bill language does not, but should, include specific consideration of nature based and natural infrastructure based alternatives and potential property buyouts where appropriate – note after several major disasters there have been significant voluntary buyout programs, including in North Carolina, with highly beneficial B/C. Managed retreat options and future conditions should be clear and included, but are not.

Sec.1010.Project modifications for improvement of environment.

This section extends the period for which the Secretary is to give priority to projects that restore degraded ecosystems through modification of existing flood risk management projects authorized under section 1135 of WRDA 1986 (33 U.S.C. 2309a) and located within the Upper Missouri River Basin until September 30, 2026.

Moderate to high interest, ASFPM would support.

This should be non-controversial. Extends 1135 priority for ecosystem restoration projects in Upper Missouri Basin for 7 years through FY 2026. The provision could be helpful for options in responding to 2019 flooding.

Sec. 1011. Non-Federal implementation pilot program.

This section amends section 1043 of the Water Resources Reform and Development Act of 2014 (WRRDA 2014) (33 U.S.C. 2201 note; Public Law 113-121) to allow the Secretary to transfer funds to a non-federal entity to do work on feasibility studies and projects. It also extends the date of the ability to commence feasibility studies by non-federal interests from June 10, 2019, to December 31, 2026. It also extends the associated $25 million authorization of appropriations per fiscal year for such feasibility studies through fiscal year 2026.

In addition, this section extends the date of the ability to commence project implementation under subsection (b) by non-federal interests from June 10, 2019, to December 31, 2026. It also lengthens the associated $25 million authorization of appropriations per fiscal year for such projects through fiscal year 2026.

Medium interest to ASFPM.
Essentially *reauthorizes* and extends 7 by years, through FY 2026, a 5-year, now expired, WRDA 2014 pilot program to allow non-federal interests to assume full feasibility study responsibilities and to allow "implementation" responsibilities of up to 15 projects, for "flood risk management; hurricane and storm damage projects (including levees, floodwalls flood control channels, and water control structures; coastal harbor and channel and inland navigation; and aquatic ecosystem restoration." This does not change basic arrangements from 2014. The extension should be non-controversial and adds some local options.

Sec.1012.Thin layer placement pilot program.

This section amends section 1122 of the Water Infrastructure Improvements for the Nation Act of 2016 (WIIN 2016) (33 U.S.C. 2326 note; Public Law 114-322). It increases the number of authorized projects under the beneficial use of dredged material pilot program from 20 to 40 projects, and requires that ten of those projects must use thin layer placement of dredged fine and coarse grain sediment for the maintenance and restoration of wetlands.

This section also revises the pilot program so that it terminates after the completion of 40 projects.

High interest to ASFPM.
This could become boondoggle for beach nourishment and should have greater sidebars to assure environmental and safety benefits. How is doubling to 40 projects and mandating "thin-layer placement" for a bunch of projects justified? The language does *not* require non-structural or nature-based alternatives to be developed; however, purposes *can* be ecosystem restoration, but not required to be, except 10 projects said to be "for maintenance and restoration of wetlands." The 2014 program waived the Federal standard (which requires sponsors to pay dredge disposal/placement costs beyond standard placement), making costs greater than standard dredge

disposal a cost to U.S. general taxpayers. This should be looked at more closely and could/should be improved to assure public interest.

Sec.1013.Annual report to Congress on authorized studies and projects.

This section requires the Secretary to develop an annual report that identifies each authorized study or authorized water resource development project submitted by non-federal interests for consideration through the annual Energy & Water Development appropriations bill. Criteria for inclusion in the report includes: projects that have been authorized by Congress, authorized studies and non-operations and maintenance projects for which the non-federal interest has entered into an appropriate agreement with the Corps, and demonstrates the legal and financial capability to satisfy the requirements of local cooperation for the study or project.

The report must describe specified benefits for each authorized study and authorized water resources development project included in the annual report, as well as the name of the associated non-federal interest; the purpose of the authorized study or authorized water resources development project; an estimate, to the maximum extent practicable, of the federal, non-federal, and total costs of the authorized study or authorized water resources development project; and an estimate, to the maximum extent practicable, of the monetary and nonmonetary benefits of the authorized study or authorized water resources development project.

According to this section, the Secretary shall include in the annual report an appendix listing the proposals submitted that were not included in the annual report and a description of why the Secretary determined that those proposals did not meet the criteria for inclusion. The Secretary shall also make the annual report to Congress publically available on the internet.

High interest to ASFPM.
This is part of a means to potentially undermine the value of Corps feasibility planning. This requires an annual report by Secretary of all authorized study or authorized water resource development projects for Appropriations consideration that have been noticed by non-federal sponsors, but requires Secretary to estimate federal, non-federal and total costs and monetary and non-monetary benefits of projects. This appears to be outside the standard BCR requirements, opening a potential chasm in describing project evaluations. This is not the way Congress should seek solid information on project evaluations and worthiness. Instead, attention should be paid to an enhanced approach to benefit-cost analysis that has been needed for years.

Sec.1014.Annual report to Congress on water resources infrastructure.

This section amends section 7001 of WRRDA 2014 (33 U.S.C. 2282d) by giving the Secretary the option to look at regional and local benefits, in addition to benefits to the national economy.

This section also eliminates the restriction on new environmental infrastructure assistance programs or projects from being included in the annual report.

High interest, ASFPM would oppose.
Undermines appropriate benefit and cost considerations, as with Sec. 1013 above, by giving

Secretary the "option" to look at regional and local benefits in making recommendations. This "optional" approach to evaluating projects could render benefit-cost analysis unreliable and is useless because of lack of clarity and discipline. While updating BCA is commendable, especially with need to identify nonmarket values, this arbitrary approach is not an appropriate way to go.

Sec.1015.Operation and maintenance.

This section amends section 204(f) of WRDA 1986 (33 U.S.C. 2232(f)) to require that for a federally authorized harbor or inland harbor to have federal assumption of operation and maintenance of improvements thereto, a non-federal sponsor shall submit to the Secretary a report on the improvements carried out by the non-federal sponsor. This section clarifies that the report must include an economic justification for the improvements; details of the project improvement plan and design; proposed arrangements for the work to be performed; documents relating to any applicable permits required for the project improvements; and that the Secretary must make a determination within 180 days after the date on which the Secretary receives the report on the improvements.

Medium interest to ASFPM.
This is another likely giveaway for harbor dredging projects as non-federal sponsors supply economic justification. The provision supports federal assumption of O&M of harbor or inland navigation maintenance costs, but only for harbors and inland waterways; does not directly affect flood risk reduction. Specifically waives Independent Review for any project less than $200 million and excludes non-federal costs from BCR's (but no such adjustment for benefits). At a minimum the language should clarify that economic justification should meet Corps' basic economic and environmental standards.

Sec. 1016.Transparency and accountability in cost sharing for water resources development projects.

This section amends section 1120 of AWIA 2018 (33 U.S.C. 2315b). It requires the Secretary, in the case of a beach nourishment project for which funds in excess of the amount needed to complete the nourishment cycle in the current fiscal year have been contributed by a non-federal sponsor, to either transfer excess non-federal funds back to the non-federal sponsor upon its request; or to transfer the excess to pay the cost-share for other projects carried out by the Secretary for which the non-federal sponsor is the same.

Medium interest to ASFPM.
Requires Secretary to refund excess non-federal beach nourishment share if not needed for a particular cycle or to allow application to other projects. Is not clear what happens to federal share in this circumstance, is total amount reduced? It only speaks to non-federal share.

Sec.1017. Continuing authority programs.

This section establishes a cost-share waiver for "small" or "disadvantaged" communities seeking to carry out a project under a continuing authority program (CAP) with the Corps.

The Secretary can only apply the waiver to a maximum of 50 projects in small communities and 50 projects in disadvantaged communities, and no more than three projects in each category within any one Corps District can qualify for the waiver. This section also increases authorized annual appropriations for all CAP programs, as well as allows for a 20 percent federal funding limit overage, per project, on a case-by-case basis.

High interest to ASFPM.
Cost share waivers could be subject to abuse, with no specified criteria, provided and does not include a guarantee of consideration of non-structural and nature based solutions for these Continuing Authorities projects. In concept, this could expand use of CA programs, which could be good, especially for small communities. This allows cost-share waivers for from 10 percent up to 100 percent for small and disadvantaged communities and up to 50 projects in each for each of the two categories per year. The language should consider specifically requiring consideration of non-structural and nature-based solutions in planning for each of these programs, and should add Corps continuing authority planning programs, including **Floodplain Management Services, Planning Assistance to States and Flood Risk Management Program/Silver Jackets** as programs receiving increased attention, inflation ceiling adjustments, and targeted cost-sharing waivers, where appropriate.

Sec.1018. Shore damage prevention or mitigation.

This section amends section 111 of the River and Harbor Act of 1968 (33 U.S.C. 426i) by giving discretion to the Director of the U.S. Fish and Wildlife Service (USFWS) to allow a non-federal interest to satisfy all or part of its cost-share for a shore damage or mitigation project by using funds from the USFWS.

Medium interest to ASFPM.
Raises ome concern for accountability. Directs Director of U.S. Fish and Wildlife Service to allow FWS funding to be used as a source for non-federal interests to meet non-federal cost-share requirements for the shore damage prevention or mitigation continuing authorities program. Concerned that the Section 111 program is not specifically targeted to improve fish and wildlife or aquatic ecosystem purposes, but to protect public or privately owned shores impacted by navigation.

Sec.1019.Sediment management plan. This section requires that within one year of enactment of this Act, the District Commander of each Corps District that carries out any dredging activity for navigation or other water resources development project purposes develop, at full federal expense, a five-year sediment management plan for submission to the Secretary. A District Commander must provide notice and an opportunity for public comment, as well as make the plans or revisions publically available. The Secretary has to transmit the plan or revision to a plan, as applicable, to Congress.

Medium interest to ASFPM.
All Districts that conduct dredging for navigation or other purposes develop five-year

sediment management plans at full federal expense (with notice and public comment), updated them each year. Of note, the Corps could incur considerable expense preparing the reports; no source is identified for federal funding, including no source from navigation interests or even navigation trust funds. Plans could have water resource planning utility, if done well.

Sec.1020.Criteria for funding environmental infrastructure projects.

This section requires that the Secretary develop written criteria to rank of environmental infrastructure projects for the purpose of prioritizing funding. Subsection (a) requires a minimum criterion for all environmental infrastructure programs. Subsection (b) of this section authorizes a separate criterion for the environmental infrastructure projects that are authorized under section 219 of the WRDA 1992 (106 Stat. 4835; 113 Stat. 335).

Moderate interest to ASFPM.
Focuses on "Environmental Infrastructure" projects, including Sec. 219 of WRDA 1992 projects that generally have been for water and wastewater treatment projects, which have not been traditional Corps areas. Requires the Secretary to develop ranking criteria for these projects. Again, urge that non-structural and nature-based approaches should be required to be developed and considered in any planning (and rating) of such projects, especially because they can often be among the most cost-effective to solve water treatment needs.

Sec.1021.Aging infrastructure.

This section authorizes the Secretary to enter into contracts with federal agencies and non-federal entities that own, operate, and maintain a water resources, water storage, or irrigation project for enhanced inspections of aging infrastructure. A non-federal entity that enters into such a contract for such inspections cannot be required to complete any recommended actions resulting from the enhanced inspections unless the Secretary determines that failure to do so would constitute a public safety risk.

Moderate interest to ASFPM.
This could be beneficial. Allows the Secretary to enter into contracts with federal agencies or non-federal interests in water resources, water storage or irrigation projects, subject to appropriations, for enhanced (with special techniques) inspections of projects at least 75 years old. Ultimately, funding would come from the agency or non-federal entity requesting the inspection. Despite the second sentence above, the section flatly prohibits Secretary from ordering corrective or remedial action by a non-Federal entity associated with a project under the jurisdiction of another Federal agency, in response to an inspection under this section. Unclear what effect, if any, this prohibition might have on Corps of Engineers dam safety authority. The public, including residents potentially impacted by project failure, should also be made aware of any project safety concerns identified by a Corps inspection.

Sec.1022.Expediting repairs and recovery from flooding.

This section requires that, for the five-year period beginning with the enactment of this Act, that the Secretary prioritize and expedite the processing of applications for permits under "the

Rivers and Harbors Act of 1899 (30 Stat. 1151, chapter 425; 33 U.S.C. 403), section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344), and permissions under section 14 of the Act of March 3, 1899 (30 Stat. 1152, chapter 425; 33 U.S.C. 408). This includes completions of repairs, reconstruction (including improvements), and upgrades to flood control infrastructure damaged by flooding events during calendar years 2017 through 2020, including damage caused by ice jams.

Moderate to high interest to ASFPM.
Directs the Secretary to prioritize and expedite permit processing to complete repairs, reconstruction (including improvements) and upgrades to flood control infrastructure damaged by 2017-2020 floods. Says the activity is "in the public interest" unless it "would induce flooding in another location." A concern is whether the statutory conclusion that the repair is "in the public interest" could inhibit the Secretary's discretion on whether an alternative repair or rehabilitation method might be superior for other additional objectives to the one proposed by the applicant. Some consideration should be made regarding whether the location has a notable repeated history of project flood control failures, repairs and rehabilitations.

Sec.1024.Uniformity of notification systems.

This section requires that the Secretary conduct an inventory of all communication and notifications systems used by the Corps with respect to projects, initiatives, and facilities of the Corps within 180 days of enactment of this Act. Further, within a year of enactment of this Act, the Secretary must develop a plan for making such communication and notification systems uniform, within 18 months the Secretary shall implement emergency management notifications, and within two years the Secretary must have completed implementation of the communication and notification uniformity plans.

Nothing in section authorizes the elimination of any existing communication or notification systems used by the Corps.

High Interest to ASFPM.
Section requires inventory and plan (6 mos/12 mos) for all communications and notifications of the Corps for projects, initiatives and facilities. Language seems too vague as to direction – almost all emphasis is on national *uniformity*; does not focus on *effectiveness*. Undoubtedly this would affect communications to the public and residents of risks associated with Corps projects and facilities, as well as other areas; an important issue is potential Corps program-related dam and levee failure inundation areas and mapping and risk communication.

Sec.1025.Susquehanna, Delaware, and Potomac River Basin Commissions.

This section amends section 5019 of WRDA 2007 (121 Stat. 1201; 128 Stat. 1307) to reauthorize the Susquehanna, Delaware, and Potomac River Basin Commissions and transfer them under the purview of the U.S. Environmental Protection Agency (EPA).

Moderate interest to ASFPM.
It is good to reauthorize River Basin Commissions who do important flood risk management

and hazard reduction and floodplain management planning. Concern, however, for loss of important Corps of Engineers budget support for the RBC's. EPA has strong water quality expertise, but generally does not have the same water resources development expertise and major operational presence of USACE in these three river basins and in their related bays and estuaries. Unclear what is best.

Sec.1028. Coastal storm damage reduction contracts.

This section mandates that the Secretary seek input from the community or communities where a coastal storm damage reduction project is located to minimize, to the maximum extent practicable, the impact to the local economy due to the timing of the project activities.

Moderate interest to ASFPM.
Generally, directs the Secretary to seek community input where the project is located to minimize local economic impact due to timing of project activities. This should be a feature of environmental impact analysis under environmental compliance, so no objection, but the provision may not be necessary. The process hould emphasize strong environmental compliance in all project planning and emphasis on nature based solutions.

Sec.1029. Corps flood policy within urban areas
This section requires the Secretary to expedite the completion of the report on Corps flood policy within urban areas pursuant to section 1211 of AWIA 2018 (132 Stat. 3808).

Moderate interest to ASFPM.
Directs the Secretary to expedite Sect 1211 Report from AWIA 2018 on flooding in urban floodplains and the 800 cu ft/second for 10 percent flood regulatory limit. Other issues that are also important to explore are urban flooding problems and roles in addressing.

Sec.1030.Reporting on over budget and behind schedule Corps projects.

This section requires the Secretary to submit a report describing water resources projects that either exceed the total estimated project budget by more than $100 million, or exceed the estimated project completion date by more than five years. The report must be completed within 180 days of enactment of this Act and submitted to the Committee on Environment and Public Works of the Senate (EPW) and the Committee on Transportation and Infrastructure of the House of Representatives (T&I).

Moderate interest to ASFPM.

Directs the Secretary to report to T&I and EPW, describing water resource projects exceeding total budget by $100 million or uncompleted more than 5 years after estimated completion date. However, this does not direct study be made public, and seemingly should, for greatest value.

Sec.1031.Dam remediation for ecosystem restoration.

This section amends section 542(b)(2) of WRDA 2000 (114 Stat. 2671; 121 Stat. 1150) to

allow for dam remediation in the Lake Champlain Watershed if the purpose is to restore, protect and preserve the surrounding ecosystem. This section applies to dams that have been constructed, in whole or in part, by the Corps for flood control purposes, for which construction was completed before 1940, that are classified as "high hazard potential" by the state dam safety agency of the state in which the dam is located, and that is operated by a non-federal entity, as a critical restoration project.

Moderate interest to ASFPM.
Authorizes dam remediation and adds specific criteria for publicly owned, otherwise a non-Federal entity, dam remediation projects with "high hazard potential" in Lake Champlain watershed that demonstrate substantial public interest value for water quality for ecosystem restoration, protection and preservation purposes. Projects must be Corps built flood control projects completed more than 80 years ago (pre-1940). Seems generally positive purposes, requires state cooperation, and does not waive legal requirements. Original act had $20,000,000 authorization.

Sec.1033.Maintenance of high risk flood control projects.

This section mandates that if the Secretary assumes responsibility for the maintenance of a project classified as class III or higher urgency under the Corps' Dam Safety Action Classification after the date of enactment of this Act, then the Secretary will continue to be responsible for the maintenance of that project. The Secretary's responsibility for maintenance remains until the earlier of (1) the date on which the project is modified to reduce that risk and the Secretary determines that the project is determined to be adequately safe or (2) 15 years after the date of enactment of this Act.

High interest to ASFPM.
If the Secretary assumes maintenance responsibility of a Class 3 or higher dam under Dam Safety Action Classification, then maintenance remains the Secretary's responsibility for up to 15 years after enactment or until dam project is determined adequately safe. First of all, under what authority could USACE assume O&M for a non-Federally owned dam? This issue points out the need for States to have an effective dam safety program, since they have the ability under land use to regulate dams. This section shifts responsibility to the U.S. taxpayer through the Secretary—not a move in the public interest.

Sec.1034.Projects to accommodate irregular dredging.

This section requires that the Secretary, within two years of enactment of this Act and to the maximum extent practicable, implement at least one project under section 107 of the River and Harbor Act of 1960 (33 U.S.C. 577) to improve a harbor to accommodate a special event that is (1) hosted by a government entity, (2) is open to the public, and (3) would have significant educational and regional economic development benefits. This section also allows for the Secretary to not require national economic development benefits to exceed costs for any such project carried out under specified circumstances and includes specific cost-share requirements typical of section 107 projects under CAP.

Medium interest to ASFPM.
A small harbor 107 project with flood-related implication. Appears as a tailored giveaway to some entity, not directly identified. Waiver of benefit-cost requirements sets poor precedent.

Sec.1035.Chesapeake Bay environmental restoration and protection program.

This section amends section 510 of WRDA 1996 (110 Stat. 3761; 121 Stat. 1202; 128 Stat. 1318) to set a per project total cost limit of $15 million for the Chesapeake Bay environmental

restoration program. It also increases authorized appropriations to $90 million to carry out the program.

In addition, it requires the Secretary to carry out public outreach and workshops for non-federal interests to provide information on the Chesapeake Bay environmental restoration and protection program under section 510 of WRDA 1996, including how to participate in the program. This section authorizes $2.5 million for this outreach for each fiscal year 2021 and 2022.

Moderate interest to ASFPM, would support.
The flood aspect would most likely be if restoration projects are for shoreline health or open space, with setbacks set to anticipate future conditions and sea level rise. Expands Chesapeake Bay Environmental Restoration Program from $40 million to $90 million/ per project cap set at $15 million; calls for public outreach with authorized spending.

Sec.1036.Implementation guidance; reports; and briefings.

This section requires the Secretary within 150 days of enactment of this Act, to conduct a mandatory briefing to EPW and T&I on the status of implementation guidance and reports required under this Act.

This section also requires that the Secretary provide EPW and T&I with quarterly briefings on the status of the implementation of each provision of law under WRRDA 2014, WIIN 2016, and AWIA 2018, as well as this Act and any amendments made by this Act to these aforementioned pieces of legislation. The obligation to provide such briefings terminates on the date that the Secretary completes the implementation of each provision of law under these specified pieces of legislation.

Moderate interest to ASFPM.
Requires briefing by the Secretary on WRDA '14,'16,'18 Guidance Implementation, and directs "use of existing data". ASFPM would urge that Corps make public the data on repetitive repair and rehabilitations from flood disasters. Also urge public availability of information from requested briefings, where appropriate.

Sec.1037.Interagency task force on small dams and fish passages.

This section requires the Secretary to establish an interagency task force to study small dams

and fish passages.

The Secretary must also submit a report to Congress by December 31, 2021, that includes recommendations for interagency cooperation; an analysis of the quality of existing data and need for additional surveys or other studies; and a national strategy for identifying, prioritizing, and successfully removing or refurbishing small dams of concern by 2030.

Moderate to high interest to ASFPM.
Directs the Secretary to establish small dam/fish passage task force. Note membership similar to FIFM-TF. Task force should be directed to engage public input and provide public summaries of quarterly meetings. With no funding authorized, how will they complete report(s)?

Sec.1038.Project completion.

This section extends through fiscal year 2024 the authorization of appropriations to carry out projects or programs of assistance authorized under section 219 of WRDA 1992.

Moderate interest to ASFPM.
Extends authorization of 219 "environmental infrastructure" program for 3 additional years thru 2024. This has tended to fund projects with very local water and wastewater treatment focus. Would urge if program is extended, to add planning requirement to assure that non-structural and nature-based alternatives are considered to combine with potential for flood risk management where appropriate.

Sec.1039.Levee accreditation process; levee certifications.

This section includes a sense of Congress that the process developed by the Flood Protection Structure Accreditation Task Force established by Public Law 112-141 should not be limited to levee systems in the "inspection of completed works program" of the Corps. Instead, the process shall apply equally to federally owned levee systems operated by the Secretary, as well as federally owned levee systems operated by the Secretary as part of a reservoir project.

This section also amends section 3014(a) of WRRDA 2014 (42 U.S.C. 4131). The section requires that when a levee system is operated and maintained by the Corps the agency must cooperate with local governments seeking a levee accreditation decision. The Corps must provide information necessary to support the accreditation decision in a timely manner. The section also allows non-federal entities to pay for the federal cost associated with accelerated levee system evaluations.

High interest to ASFPM.
Expands levee accreditation program beyond PL 84-99 scope to include federally owned levees operated by the Secretary and federally owned levees operated by the Secretary as part of a reservoir project. ASFPM's comment is this allows sponsors to fund USACE evaluation of levees, which has not been allowed since there is no federal interest in the levee unless in RIP program. We oppose USACE doing anything more than windshield

inspections on non USACE levees.

Sec.1040.Rehabilitation of flood control pump stations affecting Corps of Engineers flood risk management projects.

This section authorizes the Secretary to carry out rehabilitation of an eligible pump station if the Secretary deems the rehabilitation is feasible. This means addressing a major deficiency of the eligible pump station caused by long-term degradation of the foundation, construction materials, or engineering system or components. Prior to rehabilitation under this section, a non-federal interest must enter into a binding agreement with the Secretary to pay the non-federal share of the costs of rehabilitation and to pay 100 percent of the operation and maintenance costs of the rehabilitated eligible pump station.

This section authorizes $75 million in appropriations, to remain available until expended.

High interest to ASFPM.
This constitutes a substantial new assumption of federal responsibility and cost to federal taxpayers to rehabilitate pump stations associated with flood control systems that are the responsibility of the sponsors or other non-Federal interest, if a Corps flood project could be impaired by failure of the non-Federal project. It is not clear why the Corps should assume such responsibilities. This may be more generous than current equities would seem to warrant, compared with other projects.

Sec.1041.Brandon Road study.

This section amends section 3061(d)(2) of WRDA 2007 (121 Stat. 1121; 132 Stat. 3785). It sets the cost-share to 75 percent federal expense and 25 percent non-federal expense for any project authorized to be constructed as a result of the feasibility study regarding the range of options and technologies available to prevent the spread of aquatic nuisance species between the Great Lakes and the Mississippi River through the Chicago Sanitary and Ship Canal and other aquatic pathways.

Moderate interest, ASFPM supports.
Not much flood policy, but highly important ecological project. Increases federal cost-sharing to 75-25 for implementation of any project developed from the Asian carp barriers feasibility study for blocking Asian carp transfer to Great Lakes by Chicago S&S canal. Reasons seem strong to increase Federal effort and maybe the federal contribution percentage.

Sec.1042.Credit or reimbursement.

This section amends section 1024 of WRRDA 2014 (33 U.S.C. 2325a). It changes existing law to allow an entity that contributes materials or services to repair, restore, replace or maintain a water resources project to be eligible for reimbursement for the value of the materials and services.

This section further states that prior to contributing materials or services under section 1024 of WRRDA 2014, the non-federal interest must enter into an agreement with the Secretary

specifying the terms and conditions of the use of materials and services. Any such agreement requires the non-federal interest to hold the United States free from any and all damage arising from the use of any materials and services, unless due to the fault or negligence of a federal contractor.

This section also allows non-federal interests that contribute materials or services to be eligible for reimbursement up to an amount equal to the estimated federal cost for the performance of those materials or services. Reimbursement is contingent on the Secretary determining that the materials or services provided are integral to the project, and is subject to the availability of

appropriations and the non-federal interest's compliance with all federal laws and regulations that would apply to the use of materials or services had the Secretary provided them.

This section permits the Secretary to use existing emergency authorities following a flood event to accept materials, services, or funds under section 1024 of WRRDA 2014 if those materials, services, or funds are being used for restoring an authorized navigation or flood risk management project up to authorized dimensions; repairing or reconstructing an authorized navigation or flood risk management project; or any other activities the Secretary determines are in the public interest as a result of the emergency.

This section also amends section 221(a)(4) of the Flood Control Act of 1970 (42 U.S.C. 1962d- 5b(a)(4)). It allows the Secretary, regarding a written agreement for a water resources project, to determine the value of in-kind contributions made by a non-federal interest towards the non- federal's project cost-share. It also allows the Secretary to determine as part of the agreement, the value of materials and services contributed by the non-federal third parties, without charge, to the non-federal interest for post-cost-sharing agreement planning or certain construction. This section strikes the limitation that amount of the credit authorized cannot exceed the actual and reasonable costs of the materials, services, or other things provided by the non-federal interest.

Moderate interest to ASFPM.
This may add unnecessary ambiguity. This section expands federal policy on credits and reimbursements to non-Federal interests for contributed materials or services. Allow credits and reimbursements to be valued up to "not to exceed an amount that is equal to the estimated Federal cost for the performance of these materials or services," but should be limited to the immediate value of the contributions; Strikes the current limitation that credit cannot exceed actual and reasonable costs," and allows credits and reimbursements after disasters for repairs "up to the authorized dimensions" of the project. This is sometimes an ambiguous and difficult-to-determine standard. Allows for activities after the disaster the Secretary "determines to be in the public interest". Concerned that these standards may be somewhat vague to implement and subject to abuse.

Sec.1043.Emergency contracting.

This section allows the Secretary to maximize use of "tradeoff procedures" in competitive acquisitions while carrying out work with states in an area under a disaster declaration

pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42
U.S.C. 5170). "Tradeoff procedures" place roughly an equal weight or greater importance on schedule and other non-price factors compared to cost or price.

High to moderate interest to ASFPM.
Directs the Secretary to "maximize" use of trade-off procedures in competitive contracting after disasters, which seems to unnecessarily limit the Secretary's exercise of judgment in pricing acquisitions. This could unnecessarily drive up costs of repairs to federal taxpayers, if the Secretary's discretion is not heavily constrained.

Sec.1044.Project partnership agreement.

This section amends section 103(j)(1) of WRDA 1986 (33 U.S.C. 2213(j)(1)). It requires that any agreement required for flood control and other purposes for which that section applies, to include a brief description of, and estimate costs for, anticipated operation, maintenance, repair, replacement, and rehabilitation obligations of the non-federal interest for the project.

Moderate interest to ASFPM.
Good provision. Requires Project Partnership Agreements to include information on OMRRR obligations of non-Federal interests. It is important that these be specified and understood in advance by parties. In fact, no such agreement should be approved unless the sponsor can provide definite assurance they have the financial capability to operate and maintain the project for the life of the project

Sec.1046.Emergency flooding protection for lakes.

This section requires the Secretary submit a report to Congress on the extent to which the program under section 5 of the Flood Control Act of 1941 (55 Stat. 650, chapter 377; 33 U.S.C. 701n), applies to lakes, including lakes with the flow of a slow-moving river, including, if applicable, recommendations for legislative changes to ensure that such lakes are eligible for the program.

High interest to ASFPM.
Directs the Secretary to report to Congress on extent that lakes and lakes "with the flow of a slow moving river" are included within the Corps' P.L. 84-99 emergency assistance and repair and rehabilitation programs. ASFPM believes the P.L. 84-99 program is in many cases overly generous and becoming an all-purpose federal bail-out for aging and poorly-managed flood projects in need of substantial reform and overhaul. Any such report should identify the potential federal and taxpayer costs of expanding P.L. 84-99 to lakes and to limit expansion only if substantial public interest can be shown.

Sec.1047.Levee safety.

This section amends section 9004 of WRDA 2007 (33 U.S.C. 3303) to require the Secretary to identify engineering and maintenance deficiencies, as well as describe recommended

remedies and the associated costs, for each levee identified in the national levee database. When identifying deficiencies and describing remedies, the Secretary is required to consult with relevant non-federal interests and provide them with an opportunity to comment.

High interest to ASFPM.
Expands the Corps Levee Safety program to require the Secretary to identify and recommend remedies for the deficiencies of all levees in the national levee database. This sets out a very large undertaking for the Army Corps, which places a greater burden on Federal resources that was actually agreed to be done by the sponsors of the levees when they signed sponsorship agreements. This burden is the responsibility of the non-Federal levee owners/operators.

Sec.1049.Implementation guidance for post-flood improvements.

This section requires the Secretary to expedite the implementation guidance for the amendments made by section 1176 of WIIN 2016 (130 Stat. 1673).

High interest to ASFPM.
Section 1176 of WIIN 2016 included a definition of "nonstructural" alternatives under the Corps' emergency repair and rehabilitation authority P.L. 84-99, and an authorization for the Corps to rehabilitate "to above the [protection] level" of the flood control system's original design. This could ultimately be enormously and unnecessarily expensive for the U.S. taxpayers. ASFPM is concerned that the P.L. 84-99 program is in need of reform and is seriously deficient in promoting responsible, long-term flood risk management and planning on the part of many project owners or managers. We would urge the Corps to complete already authorized studies that would inform the appropriate development of guidance in this area.

Sec.1053.Establishing permanent features from emergency response measures.

This section requires the Secretary, at the request of an impacted community, to evaluate whether a temporary structure that was constructed by the Corps in response to a natural disaster be considered to become a permanent feature. In making that determination, the Secretary shall consider the likelihood that a similar structure will need to constructed in the area in the future if not made permanent; the extent to which similar structures have been constructed in the area previously and have been removed; the economic, safety, and environmental benefits and impacts of establishing a permanent feature in the watershed of the impacted community; the extent of the modifications necessary to make the temporary structure a permanent feature; and the costs of the modifications.

Once this evaluation is done, the planning, design, and construction of permanent features may proceed if the total project cost is not expected to exceed $17.5 million. If the total construction cost of a project is more, then the Secretary must submit to Congress a request to carry out the project in a manner similar to a Chief's Report and may not carry out the project until Congress authorizes the construction of the project.

Keyed to: (Discussion Draft) EDW20246

This section establishes the maximum non-federal cost-share for carrying out a project under this section at 35 percent, except when carrying out a project with a small or disadvantaged community if it is determined that the life safety or economic viability of the community would be threatened without the project. If that is determined to be the case, the Secretary may reduce the cost-share of the applicable project from a minimum of ten percent, up to 100 percent of the non-federal share.

High interest, ASFPM opposes this provision, which should be stricken.
Emergency flood fighting is one of the most abused provisions during flooding that provides limited protection to some properties at the expense of other properties or communities. ASFPM is concerned that emergency flood fight structures are not designed and constructed to appropriate permanent structure specifications, and often are built without consideration of causing added flooding on properties or communities up, down or across the river. Such adverse impacts put the taxpayers in a potential liability position.

The premise of this section appears to be that small and disadvantaged communities would benefit from converting emergency structures to permanent structures. Emergency levees are intended to be removed after a flood fight. In fact, these communities could find themselves at greater risk in the long-term because insufficient attention was paid to appropriate flood risk management planning.

Sec.1054.Studies of water resources development projects by non-Federal interests.

This section amends section 203 of WRDA 1986 (33 U.S.C. 2231) to permit a non-federal interest to undertake not just a federally authorized feasibility study of a proposed project, but also conduct a feasibility study on modifications or improvements to a project constructed by the Corps.

The Secretary is required by this section to issue guidelines for feasibility studies of water resources development projects conducted by non-federal interests to provide sufficient information for the formulation of the studies, including processes and procedures related to reviews and assistance. Any technical assistance provided by the Secretary under section 2231 of WRDA 1986 may include any assistance that does not conflict with any other federal law (including regulations).

High interest to ASFPM.
Requires the Secretary to develop guidelines for non-Federal interests to conduct feasibility studies regarding potential modifications or improvements to projects. Such guidelines must be put out for public review, since it, in effect puts the fox in charge of the henhouse. While such feasibility studies may be a challenge to assure accountability, this could be a means of encouraging local communities to develop water planning capacities with Corps assistance.

Sec.1055.Subsurface drain systems research and development.

This section mandates that the Secretary, acting through the Director of the Engineer

Research and Development Center (ERDC), carry out research and development activities relating to the use of subsurface drain systems as a flood risk-reduction measure and a coastal storm risk- reduction measure.

This section authorizes $5 million dollars, to remain available until expended.

Moderate interest to ASFPM.
This research is needed. ASFPM is concerned that the massive proliferation of subsurface drain systems, especially in Midwestern states, has notably contributed to accelerated runoff and increased river flooding after large precipitation and snowmelt events throughout the region. The research should seek to quantify the effects and consider means of mitigating flood risks, particularly in light of expected risk increasing future conditions.

Sec.1057. Support for mitigation efforts for small dams in National Heritage Corridors.

This section allows the Secretary to participate in ecosystem restoration efforts, including fish passage measures at a dam associated with a small hydroelectric power project, that are otherwise the legal obligation of the hydroelectric power project licensee or exemption holder to provide under the Federal Power Act (16 U.S.C. 791a *et seq.*), if the ecosystem restoration project is located in a National Heritage Area located within the boundaries of the North Atlantic Division of the Corps.

Moderate interest, ASFPM supports

Allows Corps participation in ecosystem restoration and fish passage.

Sec.1070.Federal interest determination.

This section amends section 905 of WRDA 1986 (33 U.S.C. 2282) by requiring a federal interest determination prior to initiating an authorized water resources project-related study. The cost of the determination is at full federal expense and is limited to no more than $100,000. Further, the federal interest determination must be completed within 120 days from the availability of full funding for the determination, and is not subject to the 3x3x3 requirements established under sections 1001(a)(1) and (2) of the WRRDA 2014 (33 U.S.C. 2282c(a)(1) and (2)).

High interest to ASFPM.
ASFPM generally, supports restoration of a federal interest determination as a first step in planning to consider options for federal and non-federal scoping and alternative solutions, but it must be done correctly with public interest being the paramount consideration.

Sec.1071.Report on single levee standard.

This section requires that the Secretary, in coordination with the Federal Emergency Management Agency (FEMA) Administrator, submit to EPW and the T&I a report on the differences between the levee standards of the Corps and levee standards of FEMA. The report should address whether any differences uncovered create uncertainty for levee management purposes. The report must be submitted within 180 days of enactment of this

Act.

High interest to ASFPM.
ASFPM generally support such a study. USACE and FEMA should establish a National Levee Safety Committee under the auspices of the Federal Interagency Floodplain Management Task Force to establish national standards for all aspects of levees: planning, design, construction, operation and maintenance and assurance of funding for construction along with operation and maintenance for the life of the levee. We urge that the Secretary's report be made public.

Sec.1072.South Atlantic Coastal Study.

This section amends section 1204 of WIIN 2016 (130 Stat. 1685) to require the Secretary to provide EPW and T&I with an annual briefing and report on the South Atlantic Coastal Study. The purpose of the study is to identify the risks and vulnerabilities of coastal areas located within the South Atlantic Division of the Corps to increased hurricane and storm damage as a result of sea level rise. The report on the status of the study on a state-by-state basis must be submitted annually, and not later than 180 days after the aforementioned annual briefing. The report will include detailed information on the engagement of the Corps with non-federal interests regarding the study.

High interest to ASFPM.
This is a critically important Corps reporting exercise for the South Atlantic coastal region's public safety, future growth and development, and environmental health. ASFPM would urge that the section include opportunity for public engagement and comment, and that reports be made public.

Sec.1073.Completion of reports.

This section authorizes $50 million in appropriations, to remain available until expended, for the completion of any report required under a provision of WRRDA 2014, WIIN 2016, AWIA 2018, this Act, or any amendments made by any of these aforementioned acts, and for which appropriations were not or are not otherwise provided.

Moderate interest, ASFPM supports.
There are a number of key reports that have either not been started, or have been started but not completed from recent WRDA legislation, that are important to the regions and programs involved.

Sec.1074.Delegation of work for Comprehensive Everglades Restoration Plan projects.

This section amends section 601 of WRDA 2000 (114 Stat. 2684) to allow the Secretary to delegate work that needs to be completed on projects authorized under the Comprehensive Everglades Restoration Plan (CERP) to non-federal sponsors. This also includes modifications to the Central and Southern Florida Project, and the specified authorization of future projects.

If the Secretary determines that a non-federal sponsor is capable and willing to design and construct an authorized CERP project, or separable element, the Secretary may transfer funds to the non-federal sponsor up to the amount of the federal share to carry out the project. If Corps technical assistance is required, the transferred funds would equal to the difference between: not greater than 100 percent of the federal share of the cost of carrying out the project, or separable element, and the cost of providing the non-federal sponsor with federal technical assistance required for compliance with statutory, regulatory, and program requirements.

Moderate interest to ASFPM.
In general, ASFPM supports the section. There can be high value in allowing delegation of project work for projects such as those in the Comprehensive Florida Everglades Plan to strengthen and bolster local and state level capability, especially in managing large land and water areas. Such projects should be intimate partnerships of local, state and tribal governments and the Corps of Engineers.

Sec.1076.Repair and restoration of embankments.

This section authorizes the Secretary to repair and restore any portion of an embankment that is adjacent to the shoreline of a reservoir project operated by the Secretary for which damage to, or the failure of, the embankment has adversely affected a roadway that the Secretary has relocated for construction of the reservoir.

Moderate interest to ASFPM.
Increases basic assumption of federal responsibility. Section sets a low bar for the Secretary's assumption of embankment repair responsibility that can ignore causes of failures that may be attributed to non-Federal interest management.

Sec.1079.Coastal mapping.

This section amends section 516 of WRDA 1996 (33 U.S.C. 2326b) to require the Secretary to develop and carry out a plan for the mapping of coastlines that are experiencing rapid coastline changes on a reoccurring basis. This includes, but is not limited to, Alaska, Hawaii, and any U.S. territories. This section authorizes an additional $10 million for these activities.

Moderate interest to ASFPM.
Generally, ASFPM supports updating mapping of coastlines as an important factor to identify present and future flood risk, and to help guide development out of harm's way. Such mapping should be coordinated with mapping efforts of the States, and other Federal agencies, such as FEMA, NOAA, and the DOI US Geological Survey and US. Fish and Wildlife Service.

Sec.1082.Briefings on dissemination of information.

This section amends section 1104(b) of AWIA 2018 (33 U.S.C. 2282d note; Public Law 115-270) to require that the Secretary provide EPW and T&I annual briefings on the Secretary's education and awareness efforts regarding non-federal interests and the annual 7001 Report. It

also requires that the Secretary issue guidance for the uniform implementation of the 7001 process by Corps districts and ensure annual compliance with that guidance.

Moderate interest to ASFPM.
ASFPM agrees the 7001 process has had uneven quality and could generally benefit from guidance on more uniform quality information and implementation procedures for Districts.

Sec.1083. Corps of Engineers projects in underserved communities, economically distressed areas, or rural areas.

This section allows the Secretary to recommend a project for funding without the need to demonstrate that the project is justified by national economic development benefits. This is contingent on the community that is served by the project being small, financially disadvantaged, or rural, as well as the long-term life safety, economic viability, and environmental sustainability of the community being threatened without the project. The economic evaluation of such a project must include non-monetary benefits, as well as monetary benefits.

High interest to ASFPM.

ASFPM continues to be concerned that reforms to Corps project planning and evaluation have often proceeded piecemeal. ASFPM does not disagree with the idea that accommodations could be made for planning and evaluating water resources and flood risk management and protection of underserved communities, economically depressed areas and rural areas. However, we remain concerned that too often the "solutions" put forth are driven by manipulating benefit and cost analyses and weighting to promote a particular solution, rather than focus on the long-term conditions to enhance overall safety and community resiliency and sustainability that is needed. ASFPM would recommend that Congress urge and direct the Corps and the nation's fellow water resources agencies build upon the studies authorized in WRDA 2007, Sections 2031 and 2032, and the report authorized in Section 1103 of WRDA 2018 and continue to develop and refine, in a comprehensive way that provides approaches to and implementation of a modernized framework for planning and evaluating the worthiness of federal water resources development projects and solutions.

Sec.1088.Enhanced development demonstration program.

This section directs the Secretary to review the master plan and shoreline management plan for any lake under section 3134 of WRDA 2007 (121 Stat. 1142; 130 Stat. 1671) for the purpose of identifying areas suitable for enhanced development. Additionally, this section allows the Secretary to lease federal land for the purpose of enhanced development for up to 100 years, and is authorized to accept as in-kind consideration for lease payment the maintenance, protection, alteration, repair, improvement, or restoration of public recreation facilities under the control of the Secretary and construction of new public recreation facilities.

Moderate interest to ASFPM.
ASFPM would urge the Secretary in the plan review to consider flood-related concerns based

upon current and future conditions within the region.

Sec.1089. Report on benefits calculation for flood control structures.

This section requires the Secretary to submit a report, not later than 180 days after the date of enactment of this Act, to EPW and T&I on the extent to which flood insurance premium reductions are included in the calculation of the benefits when justifying the implementation of a structural flood risk management project.

High interest to ASFPM.
ASFPM is concerned that approaching reform and modernization of benefit cost analysis should not be accomplished on a piecemeal basis, but should be developed comprehensively. ASFPM would recommend that Congress urge and direct the Corps and the nation's fellow water resources agencies build upon the studies authorized in WRDA 2007, Sections 2031 and 2032, and the report authorized in Section 1103 of WRDA 2018, and continue to develop and refine, in a comprehensive way that provides the approaches to and implementation of a modernized framework for planning and evaluating the worthiness of federal water resources development projects and solutions.

Sec.1092.Report on antecedent hydrologic conditions.

This section requires the Secretary to submit a report within one year of enactment of this Act to EPW and T&I relating to the Corps' use of data relating to antecedent hydrologic conditions in the Missouri River Basin since 2010 (e.g., soil moisture conditions, frost depths, snowpack, and stream flow conditions). More specifically, the report is required to examine the use of this data in conducting Missouri River mainstem reservoir operations under the Missouri River Master Manual; developing related annual operating plans; and performing seasonal, monthly, and conducting daily operations.

This section requires the Secretary to enter into an agreement with the National Academy of Sciences (NAS) or another independent scientific and technical advisory organization to conduct a peer review of the Corps' report. The Secretary shall submit the results of the peer review to EPW and T&I within 180 days after receipt of the peer review.

This section authorizes $5 million for the report, and an additional $5 million for the peer review.

High interest to ASFPM.

ASFPM would support the Secretary, working with other Federal and non-Federal agencies and the National Academies, in gathering a report on the Missouri River flood antecedent conditions. This data will assist in other studies on approaches to regional river management into the future.

Sec.1098.Small flood control projects.

This section amends section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s) (as

amended by section 1017(b)(6) of this Act) to include natural or nature based projects.

High interest to ASFPM.
ASFPM appreciates the addition in this Section of authorization of natural features and nature-based features in the Section 205 small flood control projects continuing authorities program. We also urge that nature-based and natural features projects should be afforded the same somewhat beneficial cost-share treatment of nonstructural projects, generally, and in all continuing authorities' programs, as appropriate. We urge this because these solutions remove the long term O&M costs which sponsors agreed to do, but too often come back to Congress to fund with federal taxpayer funds. We strongly urge that Corps technical assistance programs such as **Floodplain Management Services**, **Planning Assistance to States**, **Flood Risk Management Services/Silver Jackets** be enhanced to help many more communities with technical assistance in addressing flood-related problems with thoughtful land and floodplain management.

Sec.1099.Comprehensive study of Mississippi River System from Old River Control Structure to Gulf of Mexico.

This section requires the Secretary to submit a report to Congress on the lower Mississippi River.

This study shall include the tributaries and distributaries of the Mississippi River, from the Old River Control Structure near Point Breeze, Louisiana, to the Gulf of Mexico. The section outlines specific detail of the study and requires it to be conducted in collaboration with the heads of other relevant federal agencies.

This section authorizes $25 million to carry out this comprehensive study, to remain available until expended.

Moderate priority to ASFPM.
ASFPM supports a comprehensive, multiagency approach to management of the important Lower Mississippi River tributaries and distributaries, as one of the most complex and critical ecosystems, water resource treasures, changing landscapes and flood prone regions the nation. However, some non-Federal cost-sharing would be appropriate.

Outside Witness Testimony

House Committee on Appropriations

Subcommittee on Energy and Water Development

Re: Army Corps of Engineers, Civil Works

Submitted by: Chad Berginnis, Executive Director

Association of State Floodplain Managers

March 31, 2020

The Association of State Floodplain Managers (ASFPM) appreciates the opportunity to provide Outside Witness Testimony for the Committee's record on the FY 2021 Energy and Water Development Appropriations legislation. The Association has almost 20,000 members, including members in 37 state chapters. Members are largely state and local officials, but many are the engineers, planners, and other professionals who support local communities' efforts to reduce flood risk and to wisely manage floodplains and flood prone areas within their jurisdictions. Our membership also includes members of research and academic institutions, and the insurance and lending industries.

Increase Funding for Corps of Engineers Technical Assistance.

The Association of State Floodplain Managers (ASFPM) has long supported the technical assistance programs of the Army Corps of Engineers Civil Works Program. Corps of Engineers expertise in assisting communities to develop solutions to flood challenges can make major strides toward reducing flood losses – often without multi-million-dollar taxpayer investments in large Corps projects. The technical assistance programs include **Section 22 Planning**

Assistance to States (PAS), Flood Plain Management Services (FPMS) (Section 206, 1960 Flood Control Act (PL 86-645), as amended), National Flood Risk Management Program (NFRMP) and the Silver Jackets program. Appropriations for these programs are made through the Investigations – Remaining Items section of the Energy and Water Development Appropriations.

These programs represent a relatively small portion of the budget for the Army Corps of Engineers, yet have a significant return on investment. Many smaller jurisdictions that would never qualify for a major Corps project nor be able to afford the long term Operations and Maintenance costs for major projects, can develop smaller projects that can be non-structural, nature-based, or a combination of structural and non-structural measures. The Corps' Silver Jackets program has the added advantage of being able to bring together other programs from within the federal family as well as state and locally-based programs to assist in addressing flood-related challenges.

ASFPM members strongly urge that these technical assistance programs be funded at higher levels than in the past. The budget request for Fiscal Year 2021 includes $5 million for Planning Assistance to States (PAS), $15 million for Flood Plain Management Services (FPMS) and $5 million for the National Flood Risk Management Program (NFRMP). The Silver Jackets funding is included in the funds for the NFRMP. We suggest funding PAS at $15 million, FPMS at $25 million, and $10 million for NFRMP.

We strongly recommend expanding Corps engagement with such programs because of their great value in assisting states and communities to reduce their future losses due to flooding. Many communities across the nation are already experiencing and are anticipating increased flooding, erosion problems, and deteriorating water supplies from more frequent and intense rainfall events and coastal storms, rising sea levels, and increasing stormwater runoff and urban flooding from changing climate and land use changes in watersheds. To address these flooding problems, many communities need expert engineering, economic, environmental, and planning assistance to assess and help identify potential structural and/or non-structural solutions to their flooding problems. Many smaller communities cannot afford to maintain such expertise in their local governments on a permanent basis, and can benefit greatly from Corps of Engineers technical support. We note that only a few Corps Districts across the country have made use of these opportunities to bring Corps expertise to their communities outside of the context of major Corps construction projects. Thus, large numbers of communities do not have the advantage to tap Corps expertise and support where and when it is often most needed and would be helpful. We ask the Subcommittee to consider report language supporting current efforts at Corps Headquarters to educate Districts about these programs and to encourage their use.

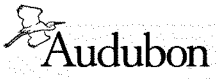
National Flood-related study provisions. We would also urge the Subcommittee to provide funding for two important WRDA-authorized studies. The Corps' **Water Resources Priorities Study**, begun in 2016, but thus far not complete, will assess the Nation's flooding vulnerabilities across all regions of the U.S., and will analyze the effectiveness of programs, authorities,

policies, roles, and activities for flood damage and flood risk reduction. This unique study, originally authorized in WRDA 2007 (Section 2032) will provide Congress with a broad overview perspective of federal flood risk reduction programs and trends, including ways to potentially reduce costs by improving the effectiveness, efficiency, and accountability of existing programs and strategies. We have clearly witnessed an enormous increase in the nation's flood disaster impacts and costs. Average annual costs have grown from approximately $4 billion in the 1980's to $17 billion (2010 – 2018), and FEMA has recently estimated that total average national flood damages have risen (2009 – 2019) to $39.3 billion, including both hurricane and riverine impacts. Obviously, some years have witnessed damages far exceeding these levels. ASFPM believes that such a study is even more needed now than when it was first authorized.

In addition, for many of the same reasons, we would also urge the Committee to consider including funds for the Corps' **Review of Emergency Response Authorities** study, authorized in Section 3029(b) and (c) of WRDA 2014, including providing Congress and the public with required biennial reports on emergency repair and rehabilitation expenditures under the P.L. 84-99 program. We are concerned that there are many situations where federal taxpayers are repeatedly paying for the same levee and other flood control project repairs, and where improved flood damage reduction plans, such as voluntary buyout plans, identification of floodways, and levee setbacks and realignments that make room for increasingly large flood volumes being experienced, should be developed to reduce disaster costs and improve floodplain management and environmental management simultaneously. The study would be

an important starting point for Corps and Congress' review of ballooning costs and reducing public and private damages.

Thank you for considering the views of the Association of State Floodplain Managers. We would be glad to respond to any questions. Please contact Chad Berginnis, ASFPM Executive Director at cberginnis@floods.org. National headquarters of the Association of State Floodplain Managers is located at 8301 Excelsior Drive, Madison, WI, 53717, 608-828-3000, www.floods.org.



National and International Programs
1200 18th Street, Suite 500
Washington, DC 20036

202.861.2242
www.audubon.org

April 28, 2020

The Honorable John Barrasso
Chair
Committee on Environment and Public Works
307 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Tom Carper
Ranking Member
Committee on Environment and Public Works
513 Hart Senate Office Building
Washington, D.C. 20510

Chair Barrasso and Ranking Member Carper:

The National Audubon Society applauds your commitment to advancing water infrastructure legislation that is critical to restoring America's ecosystems, protecting wildlife habitat, and increasing the use of natural infrastructure. These goals are critical to advancing Audubon's mission to protect and restore the places that birds need for today and tomorrow.

As progress continues in developing the next Water Resources Development Act (WRDA) bill, known as America's Water Infrastructure Act (AWIA), we urge you to prioritize the use of natural infrastructure and nature-based solutions that are essential for resilient communities, robust populations of birds and wildlife, and local economies that depend on reliable water infrastructure. It is also important that the ecosystem restoration mission of the U.S. Army Corps of Engineers (Army Corps) is prioritized as an important way to advance projects and policies that provide ecological benefits through WRDA bills.

We encourage the Committee to improve upon the draft AWIA bill by addressing the following:

- **Natural Infrastructure (Sec. 1098):** Audubon supports Section 1098 amendments that allow "natural infrastructure" projects to be funded as small flood control projects through the Corps Continuing Authorities Program. However, we encourage the Committee to do more to support the use of natural and nature-based features through the Army Corps civil works program, including by amending 33 U.S.C. § 2213(b) to specifically clarify that natural

infrastructure projects (i.e., projects that "incorporate natural and nature-based features") qualify for the same federal cost sharing as that allowed for nonstructural projects. Natural infrastructure can provide more cost-effective and environmentally beneficial solutions for managing stormwater, protecting coastal communities from more frequent and severe storms, and recharging groundwater aquifers in arid environments. The Committee should support and encourage these types of innovative approaches that deliver multiple benefits to communities and ecosystems.

- **Small and Disadvantaged Communities (Secs. 1017 and 1083)**: Audubon supports provisions in Sections 1017 and 1083 that waive cost share for underserved communities and change the process for calculating project benefits for small, rural, and economically disadvantaged communities. Federal cost sharing and benefit-cost ratios are often a barrier to socially vulnerable communities accessing Army Corps programs to study and implement projects to reduce storm and flood risks. Audubon supports these measures that will increase access to flood risk reduction planning in underserved communities by waiving the non-Federal study cost share for feasibility studies that evaluate natural infrastructure and non-structural solutions for socially vulnerable areas. By enacting these changes, the Committee can help to ensure that the most at-risk communities have the resources needed to evaluate flood risk reduction measures, including environmentally beneficial natural infrastructure projects that can enhance flood resilience, while also improving water quality, public health, and important habitats for birds and other wildlife.
    - We support and appreciate the goal to ensure equity and broad access for small and disadvantaged communities across the nation. We are concerned, however, that the Continuing Authority Program cost share waivers for small and disadvantaged communities are limited to three per Corps district each fiscal year. This approach does not reflect the concentration of small and disadvantaged communities in some regions of the United States and we propose that waiver limits account for regional variations in need.
- **Beneficial Use (Secs. 1012, 1019, 1080, and 1095)**: We support the draft bill's extension of the beneficial use of dredged materials (BUDM) pilot program from 20 to 40 pilots and expansion of the program to promote thin layer placement of dredged sediment for the maintenance and restoration of wetlands (at Sec. 1012) and requirements for District Sediment Management Plans to promote environmentally beneficial use of dredged materials (at Sec. 1019). Additionally, we support provisions in AWIA that call on the Secretary to consider beneficial use options for dredged sediments that are not the least cost alternative (Sec. 1095) and to revise benefit-cost analyses to consider the environmental benefits of beneficial use projects (Sec. 1080). However, we encourage the Committee to revise Section 1080 to more efficiently and effectively direct the Corps to change its criteria for evaluating beneficial use by amending lines 16-22 on page 124, and simply stating: "(a) IN GENERAL—Not later than 180 days after the date of enactment of this Act, the Secretary shall ensure, when evaluating the placement of dredged material, the Corps of Engineers shall consider..." These changes will help to ensure that the Army Corps expeditiously implements policy changes to direct the use of valuable dredged sediments toward environmentally beneficial projects that restore habitats and enhance flood protections for communities. For example, Audubon and partners are working

with the Army Corps and Charleston Harbor to use dredged material to create habitat for nesting seabirds on Crab Bank, a natural feature that serves as both a local tourist destination and prevents erosion and increases resilience for the adjacent communities. Ultimately, Audubon urges the Committee to ensure that the Army Corps is deploying 100 percent of uncontaminated dredged sediments to beneficial uses.

- **Protecting and restoring the Delaware River Watershed.** In the Water Infrastructure Improvements for the Nation Act, (PL 114-332) that included WRDA 16, the Delaware River Basin Conservation Act (DRBCA) created the Delaware River Basin Restoration Program (DRBRP) in the U.S. Fish and Wildlife Service, clearly affirming the national priority of restoring the Delaware River Watershed. The DRBRP provides a competitive grant and technical assistance program to support on-the-ground work by state and local governments, non-profit organizations, and universities. The Delaware River Basin Commission (DRBC) is a federal-state compact agency tasked with overseeing a unified approach to managing the basins' water resources. Despite the recognition of importance of the commission in the DRBCA, full funding for federal government participation has not been appropriated since October 1, 1996, with the exception of one congressionally directed appropriation in FY2009. In order to advance the goals of DRBCA, support for both the DRBRP alongside the DRBC is imperative. Audubon supports provisions in AWIA changing the federal partner for the Delaware River, Susquehanna, and Potomac River Basin Commissions from the Army Corps to the Environmental Protection Agency (EPA) (Sec. 1025).
- **Provisions to protect and advance restoration of America's Everglades. (Secs. 1074, 1093, 1308, and 1606):** We support provisions in AWIA that aim to remove hurdles to timely restoration of America's Everglades and help to ensure that progress toward the world's largest ecosystem restoration program continues. We also support provisions to address new challenges to the Everglades and other aquatic ecosystems from toxic algal blooms and invasive exotic species that can damage the very ecological resources that large-scale restoration efforts are seeking to recover.
- **Completion of Reports (Sec. 1073)**: We thank the Committee for specifically authorizing $50 million in funding to support important studies that were called for in previous WRDA legislation. Audubon encourages the Committee to specifically authorize and work with appropriators to provide funding for the important National Academy of Sciences studies required by Sections 1102 and 1103 of America's Water Infrastructure Act of 2018. Section 1102 requires a National Academy of Sciences Study to examine ways to improve the Army Corps' project delivery process. Section 1103 requires a National Academy of Sciences Study to examine ways to improve the Corps' BCA. These studies are essential for improving the efficiency of the Army Corps' planning and construction activities and for ensuring accurate evaluation of project costs and benefits, including consideration of the social and environmental costs and benefits of project alternatives over a project's full lifecycle and methodologies for setting discount rates. Currently, the Army Corps BCA does not accurately account for all of the costs and benefits of projects; actual costs of projects are often much higher than estimated, and the Corps analysis fails to account for the environmental impacts of structural flood control projects and the environmental benefits of natural infrastructure

approaches. These studies will provide the technical foundation needed to ensure that the Army Corps modernizes its methodologies for assessing the full costs and benefits of projects.

- **Pre- and post- monitoring of project impacts**: We also encourage the Committee to include specific mandates and funding for monitoring. The Army Corps should be required to include and fund more robust monitoring plans to track and assess impacts during project implementation and after completion. Monitoring can help determine if negative impacts are occurring, and provide the chance to adjust operations to reflect real-time impacts. Monitoring can also demonstrate the tangible benefits after a project is completed in a way that helps articulate the return on investment of ecosystem restoration, navigation, and flood-risk management projects alike.
- **Amend Sec. 1507 (GAO Report on Certain Federal Dams and Reservoirs).** Audubon encourages amendments to ensure this evaluation not solely focus on water storage but to also consider instream flow needs.

Audubon thanks the Committee and supports the authorization of the following projects and studies included in the draft AWIA bill:

- **Chesapeake Bay Environmental Restoration and Protection Program amendments (Sec. 1035):** The Chesapeake Bay is the largest estuary in the U.S. extending across five states and the District of Columbia, and is an ecologically important watershed that provides habitats for over 3,600 plant and animal species. However, climate change, pollution, and environmental degradation of the Bay are causing impacts to fisheries and loss of habitat for birds and other species. Army Corps funding is critical to preserving and enhancing this important watershed.
- **Comprehensive Study of Mississippi River System (Sec. 1099)**: Audubon supports the authorization of a $25 million study on the lower Mississippi River. The Mississippi River is one of our most commercially and ecologically important waterways, but it also faces significant threats from climate change and more extreme weather. This study can identify solutions for enhancing the resilience of communities and ecosystems along the lower Mississippi River in both Louisiana and Mississippi that face increasing risks of flooding and provide critical habitats for birds, wildlife, and economically important fisheries.
- **Sec. 1061 Reauthorization of the Rio Grande Environmental Management Program until 2024**
    - We also urge reauthorizing this program until 2029 and an increase in the federal cost-share.
- **Sec. 1063 Rural Western Water**
- **Sec. 1202 Expedited Completion**
    - (31) The project for ecosystem restoration, Caloosahatchee River C–43, West Basin Storage Reservoir, Florida
    - (30) The project for ecosystem restoration, Canal 111, South Dade, Florida
    - (24) The project for flood risk management, Upper Barataria, Louisiana.
    - (25) The project for navigation, Houma Navigation Canal, Louisiana.
    - (26) The project for navigation, Port Fourchon, Belle Pass, Louisiana.
    - (45) The project for navigation, Baptiste 14 Collette Bayou, Louisiana.

- **Sec. 1401 – Project Authorizations – Ecosystem Restoration**
    - Great Lakes and Mississippi River Interbasin Study–Brandon Road, Will County
- **Subtitle E – Water Supply and Storage**
- **Clean Water Title (Title II):** Audubon supports reauthorization and increased funding for the Clean Water State Revolving Fund (SRF) (at Sec. 2015), which provides resources to help states and municipalities maintain and improve wastewater treatment infrastructure that is critical to protecting water quality and public health. The Committee should include a 20 percent green project reserve set aside to encourage states to invest in energy-and water-efficiency upgrades, and natural and nature-based approaches for addressing local water quality challenges. Additionally, we support the creation of a clean water infrastructure resiliency and sustainability program (Sec. 2001) to provide funding to enhance the resilience of water infrastructure to climate risks, including sea-level rise, more frequent and intense storms, and greater water scarcity. This program will provide needed resources to deploy natural infrastructure and other approaches for reducing risks to water infrastructure systems and preserving and protecting watersheds that provide important water resources for communities and agriculture and that are also needed to support important biodiversity. Audubon also supports provisions specifically authorizing funding for water and energy efficiency upgrades for small and disadvantaged communities (Sec. 2004), which often lack the financial resources needed to upgrade water infrastructure systems and could benefit from additional federal support.
- **San Francisco Bay Restoration Grant Program (Sec. 3006)**: Audubon supports inclusion of Section 3006 in the AWIA, which would create a San Francisco Bay Restoration Program at the U.S. Environmental Protection Agency (EPA) and would authorize funding of up to $25 million per year to support the restoration of this ecologically and economically important estuary. The San Francisco Bay is the Pacific Coast's largest estuary and is surrounded by the rapidly growing and urbanized counties that make up the Bay Area. The Bay hosts a range of environmentally, economically and socially important uses, including ports, industry, agriculture, fisheries, and recreation. The Bay also provides important habitats for waterbirds, including Brant Geese and Surf Scoters, underscoring the ecological value of this ecosystem. However, San Francisco Bay faces significant threats. It has lost 90 percent of its tidal wetlands and more than 50 percent of its eelgrass and mudflat habitat. Climate change is also exacerbating these threats by altering the salinity balance of Bay waters, increasing water temperatures, reducing species abundance and diversity, and increasing habitat loss and flood risks from rising sea levels. We applaud the Committee's work to include provisions and funding for this important program in the AWIA bill.
- **Puget Sound Coordinated Recovery (Sec. 3009)**: Audubon also supports inclusion of Section 3009, which would support a coordinated federal agency effort and authorize up to $50 million in funding needed to support Puget Sound restoration efforts. The Puget Sound area is home to 4.5 million people and is a rapidly growing economically important metropolitan region; the Sound is also an ecologically important resource providing habitats for many threatened and endangered species, including orcas, Chinook salmon, and steelhead. Despite significant investments to improve the health of Puget Sound, progress towards ecosystem recovery targets remains slow and the Sound continues to suffer from pollution, habitat

degradation, and climate-related threats. The declining health of the Sound is demonstrated by declines in the number of marine birds wintering in Puget Sound over the last 30 years and migratory, fish-eating birds appear to be at the greatest risk. To improve efforts to restore the Sound, we encourage you to include similar provisions as those laid out in H.R. 2247 that would specifically call for the development of a federal action plan to address climate and other threats to the Puget Sound, including ocean acidification, spread of invasive species, and destruction of marine and wildlife habitats.

Audubon also urges the Committee to continue rejecting efforts to advance environmentally harmful projects, such as the Pearl River Basin Demonstration Project or the Yazoo Backwater Area/Flood Reduction, Wildlife Habitat, and Water Quality Improvement Project. We were pleased to see the draft AWIA does not include these projects. Natural infrastructure alternatives should be pursued to address the longstanding flooding concerns in the regions these projects affect.

Additionally, we urge you to reject provisions that would weaken environmental review and permitting requirements, such as requiring adoption of additional categorical exclusions, or that impose artificial time clocks on these processes. Comprehensive and transparent review processes that ensure that all stakeholder, including the public, are able to evaluate and respond to project proposals are essential to development and design of projects that meet the needs of communities and the environment.

Audubon looks forward to continuing to work with the Committee to advance these and other important water infrastructure priorities in the future.

Sincerely,

Julie Hill-Gabriel
Vice President, Water Conservation
National Audubon Society

1200 18th St, Suite 500
Washington, DC 20036
786-246-2903
Julie.Hill-Gabriel@audubon.org

BACKCOUNTRY
HUNTERS & ANGLERS

PO BOX 9257
MISSOULA, MT 59807
406-926-1908

May 1, 2020

The Honorable John Barrasso
Chairman
Senate Environment and Public Works
Committee
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Thomas Carper
Ranking Member
Senate Environment and Public Works
Committee
456 Dirksen Senate Office Building
Washington, D.C. 20510

Written Comments from Backcountry Hunters & Anglers on an information-gathering process entitled, "An Information-Gathering Process on Draft Legislation entitled, America's Water Infrastructure Act of 2020: Stakeholder Comments"

Point of Contact: Julia Peebles
Mailing address: PO Box 9257, Missoula MT 59807
Phone: (765) 760-1584
Email: peebles@backcountryhunters.org

Dear Chairman Barrasso and Ranking Member Carper:

Backcountry Hunters & Anglers (BHA) represents the voices of approximately 40,000 members with dedicated sportsmen and women committed to speaking up on behalf of our wild public lands, waters, and wildlife. Over the past six years, BHA has doubled its membership annually and 69 percent of those sportsmen and women are between the ages 18 and 45 years old. More than half of our members identify as Independent or unaffiliated with 25 percent as Republican and 16 percent as Democrat.

On behalf of BHA, I write to provide support and recommendations to the America's Water Infrastructure Act (AWIA) draft legislation. We believe provisions in the AWIA draft are critical to enhancing our nation's $887-billion outdoor recreation economy, restoring fisheries, and promoting resiliency and safety in our communities with nature-based infrastructure. Investments in flood management, the restoration of watersheds, science-based studies, the reduction of harmful algae and invasive species and increasing opportunities to recreate at Army Corps of Engineer project sites now will avoid costly consequences in the future if we fail to adequately address current needs.

BHA is motivated to work with the Committee on identifying water infrastructure solutions for critical watersheds, fish passage, abandoned and inactive mines and certain federal dams and reservoirs.

Section 1002, Great Lakes Comprehensive Flood Protection Study
BHA supports the establishment of this collaborative research on shoreline resiliency with the consideration of nature-based infrastructure. To strengthen the study, we recommend including

language that requires the consideration of long-term resiliency and eliminate shoreline erosion. We also have some reservations about a similar program that was authorized in the Water Infrastructure Improvements for the Nation Act of 2016, but it has yet to receive funding. To minimize duplicated efforts, we encourage coordination between the two programs.

Section 1020, Criteria for Funding Environmental Infrastructure Projects
BHA supports the development of written funding criteria that prioritizes nature-based infrastructure solutions with long-term benefits for efficient allocations of taxpayer dollars and management of fish and wildlife habitat. Investing in nature-based infrastructure will restore wetlands, support healthy fisheries, reduce flooding and storm surge in coastal areas, and provide solutions that help protect communities from devastating natural disasters.

Additionally, we recommend modernizing the cost and benefit analysis criteria for Army Corps projects. As currently enacted, traditional infrastructure (i.e. dams) projects receive 50 percent of the total costs of a project from federal dollars, while nontraditional infrastructure (i.e. expanded floodplains) only receives 35 percent of federal funding for the total costs of a project's Benefit to Cost Ratio (BCR). Reforming the criteria would require consideration of the costs associated with lost ecosystem services generated from traditional infrastructure projects and it would direct outside review of the BCRs to guarantee accuracy.

Section 1035, Chesapeake Bay Environmental Restoration and Protection Program
The Chesapeake Bay is a critical watershed supporting the livelihood and drinking water for portions of six states and the entirety of the District of Columbia. This program authorizes projects for sediment and erosion control, fish and wildlife habitat enhancement, and shoreline resiliency. BHA supports increasing funds for the program by $50 million and increasing the total cost of each project from $10 million to $15 million. The additional funds will restore the health of the Bay and boost the regional economy that depends on it for agricultural and outdoor recreation opportunities.

Section 1037, Interagency Task Force on Small Dams and Fish Passage
Establishing an interagency task force will improve coordination and alleviate concerns related to public safety, flood risks, fish passage, wildlife conservation, water quality, and the overall health of ecosystems. Agencies will be able to prioritize projects and effectively implement cross boundary strategies related to the removal or restoration of small dams and fish passages. BHA supports this provision.

Section 1062, Restoration of Abandoned Sites
The Restoration of Abandoned Mine Sites (RAMS) program provides federal and non-federal interests with technical, planning, and design assistance to address water quality problems caused by drainage and related activities from abandoned and inactive non-coal mines. There are more than 500,000 abandoned mines across the United States, and many erode heavy metals and other toxic residue into streams and groundwater—threatening fish habitat and our clean drinking water. BHA supports the increased funding for RAMS to enhance reclamation projects.

Section 1063, Rural Western Water

There is a water crisis in the West with about two-thirds of it suffering from drought conditions—increasing pressure on aquatic habitat. BHA is encouraged to see language that prioritizes our Western waters and its storage infrastructure by dedicating a program manager to oversee projects in Idaho, Montana, New Mexico, Utah, and Wyoming. Having dedicated staff will improve coordination with federal, regional, state, and local stakeholders.

Section 1093, Harmful Algal Blooms Demonstration Program
Toxic algal blooms are becoming more common in freshwater ecosystems like rivers, lakes, ponds and reservoirs, and impacting aquatic and terrestrial habitat. BHA strongly supports funding the algal blooms demonstration at $25 million until expended. The demonstration could lead to a standardized and scalable management practice that removes algae and nutrients from large bodies of water and restores clean and healthy aquatic habitat within the Great Lakes, Lake Okeechobee in Florida and other tributaries impacted.

Section 1096, Increasing Access for Recreation at Corps of Engineers Projects
This provision is a no brainer and strongly supported by BHA. Collaborating with federal, non-federal, and local recreation-orientated organizations will minimize management conflict and maximize accessibility and public use at Army Corps project sites.

Section 1607, Asian Carp Prevention and Control Pilot Program
This section creates an Asian carp prevention and control pilot program to manage, prevent the spread, and reduce or eradicate the population using technologies, methods, and measures. BHA supports this provision and believes the program will halt the devastating northward spread of Asian carp and safeguard the fishing industry in the Great Lakes, which would lose $6 billion in annual revenues should Asian carp establish a population.

Section 1608, Aquatic Invasive Species Prevention
Similar to section 1607, this provision expands multiagency efforts between the Fish and Wildlife Service, National Parks Service, and Geological Survey to slow the spread of Asian carp beyond the Upper Mississippi and Ohio River basins and tributaries to all six sub-basins of the Mississippi River. Currently, the enacted program limits prevention efforts to the Upper Mississippi and Ohio River basins. The growing population of Asian carp and its movement north threatens native fish species and would have devastating implications to the fishing economy.

Section 3006, Great Lakes Restoration Initiative
The Great Lakes are the largest bodies of fresh water in the world. BHA strongly supports reauthorizing the program at $375 million annually until fiscal year 2022. This is a $75 million increase from fiscal year 2020 enacted levels. The Great Lakes Restoration Initiative is a successful program that strategically targets critical areas through multiple action plans and public input. Increasing funds will furthermore expand fish and habitat rehabilitation and implement collaborative projects between federal, state, and local stakeholders.

Conclusion
Thank you for the opportunity to provide recommendations and support for the draft legislation, America's Water Infrastructure Act. BHA appreciates the Committee's bipartisan efforts in support of

properly managing and implementing natural infrastructure and restoring aquatic habitat key to driving the economy, providing large returns on investments, and ensuring that Americans have clean drinking water.

Sincerely,

John W. Gale

John W. Gale
Conservation Director
Backcountry Hunters & Anglers

WWW.BACKCOUNTRYHUNTERS.ORG
ADMIN@BACKCOUNTRYHUNTERS.ORG
725 W ALDER SUITE 11
MISSOULA, MT 59802

May 1, 2020

Senator John Barrasso, Chairman
Senator Thomas R. Carper, Ranking Member
United States Senate, Environment and Public Works Committee
456 Dirksen Senator Office Building
Washington, DC 20510

Chairman Barrasso and Ranking Member Carper:

Burns & McDonnell is an employee-owned global engineering company headquartered in Kansas City, MO. We have clients across the nation and are providing planning, engineering and construction services for a myriad of infrastructure projects including transportation, aviation, oil and gas, and water. We appreciate the opportunity to provide comments on the proposed Drinking Water Infrastructure Act (DWIA) of 2020.

The deliberation and passage of this legislation comes at a unique time given the challenges posed by the COVID-19 pandemic and the historic economic impacts. The American Water Works Association estimates the pandemic will result in an annual reduction of drinking water revenues by nearly $14 billion. This represents approximately 17 percent of the annual water sales across the country. The ramifications of this fact will further exacerbate the economic impact through the reduction or delay in much needed water infrastructure projects. Passage of the DWIA at this time will mitigate many of the economic impacts resulting from COVID-19.

The Drinking Water State Revolving Funds (DWSRF) is the premier program for financing water infrastructure. Section 4 codifies language to require 20% of the DWSRF be used for grants or principle forgiveness. While maximizing this amount is critical to sustaining the level of drinking water project implementation during this difficult economic time, we would recommend maintaining flexibility at the state level to establish the actual percentage up to 20 percent. We would further recommend the DWIA be amended to eliminate the 20 percent state matching requirement for 2020 capitalization grants.

Alternative delivery methods for design and construction of water infrastructure projects funded through DWSRF is an excellent means of expediting the implementation of priority projects addressing long-term needs of our nation's public water suppliers. Design-build projects can provide suppliers with cost certainty sooner and allow construction activities to occur concurrently with progressive project design. This project delivery method is especially beneficial during the economic recovery from COVID-19 by putting additional people to work on projects more quickly than traditional design-bid-build project delivery. We recommend the DWIA be amended to encourage the use of alternative project delivery methods.

BURNS McDONNELL®

We support the creation of a water resiliency and sustainable water supply grant program for mid-sized systems (10,000 – 100,000) as described in Section 9. With many of our clients being mid-sized and located in the middle portion of the country, our susceptibility to drought and floods is far greater, putting stress on our ability to provide a safe and adequate drinking water supply. $5 million in annual authorization is likely insufficient to meet the needs for this new program. However, we support the language and will encourage the increase in authorized funding as demonstrated demand increases.

Thank you for the opportunity to submit these comments in support of the committee's information gathering process. Burns & McDonnell appreciates the committee's efforts in moving forward with this legislation during these historic and difficult times. Please contact me if we can be of further assistance.

Sincerely,

Ron Coker
Senior Vice-President & General Manager, Water
Burns & McDonnell
9400 Ward Parkway
Kansas City, MO 64114
rcoker@burnsmcd.com
(816) 822-3082

CALHOUN
Port Authority
POINT COMFORT, TEXAS ★ USA

(361) 987-2813 • Fax (361) 987-2189 • 2313 FM 1593 South • P.O. Box 397 • Point Comfort, Texas 77978
www.calhounport.com

PORT OF PORT LAVACA - POINT COMFORT

Providing Calhoun County Industries with Direct Deep-Draft Access to Global Markets

May 1, 2020

The Calhoun Port Authority (Texas) is requesting to please include the AAPA HMTF proposed Senate EPW WRDA legislation:

AWIA 2020 is an opportunity to conclude many years of efforts and complete legislative action regarding the Harbor Maintenance Trust Fund, HMTF. AAPA's HMTF proposed legislation with its 4 pillars, has been split into 2 pieces with the 'full use' pillar addressed in the CARES Act of 2020. The remaining 3 pillars are: (1) permanent authorization of the Donor and Energy Transfer Ports program with expanded uses and funding; and funding assurances for (2) emerging harbors and the (3) Great Lakes region. While these provisions were not included in the EPW draft AWIA release, we look forward
to working with you to secure their inclusion prior to Senate passage. This legislative proposal benefits over 800 ports around the Nation that will see advantages through the inclusion of the remaining 3 pillars

Regards,

Charlie Haus

Charles R. Hausmann

Charles R. Hausmann, CPA
Port Director
Calhoun Port Authority
2313 FM 1593 South
Point Comfort, TX 77978
Email: crh@calhounport.com
Phone: (361) 987-2813

Board Members: J. C. Melcher, Jr., Board Chair; Shields A. Holladay, Sr.; Board Secretary; Johnny J. Perez; H.C. Wehmeyer, Jr.; Jay Cuellar; Luis De La Garza
Executive Staff: Charles R. Hausmann, CPA, Port Director; Forrest E. Hawes, Deputy Port Director; David Roberts, Port General Counsel

California Marine Affairs and Navigation Conference

May 1, 2020

The Honorable John Barrasso
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Tom Carper
Ranking Member, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

Via E-mail to: QFR@epw.senate.gov

Subject: America's Water Infrastructure Act of 2020 (AWIA 2020)

Dear Chairman Barrasso and Ranking Member Carper:

Thank you very much for posting the Committee's draft bill concerning assistance to the Nation's ports and harbors.

Our Membership consists of the non-federal sponsors of navigation projects in California. We have been in existence for over sixty years bringing a diverse group of ports and harbors to Washington, DC to advocate for policies and funding related to constructing, improving and maintaining these projects. We are unique in that the State of California does not have a "port" agency to perform these functions.

Our principles with regards to the Water Resources Development Act are two-fold: to fully expend the Harbor Maintenance Tax collected for its intended purpose with an emphasis on those areas that significant tax revenues flow through; and, to drive down the costs of the federal maintenance dredging program.

California's integrated system of ports and harbors is a "market" driven structure. Significant international cargo flows in and out of the three large container ports of Long Beach, Los Angeles and Oakland. Products such as automobiles, agriculture and fisheries are moved to medium sized ports with fisheries and other navigation such as charter, expedition, research and recreation are provided at smaller facilities.

California's coast is rugged and critical harbors of refuge are far apart. We do not have the benefit of a inter-coastal waterway and as a result if a harbor entrance is not accessible due to a lack of maintenance dredging the next safe harbor may be over a day away.

Several of our Members are in the various stages of navigation improvements. One is in the construction phase, several are in various study and environmental stages and others are in the contemplation stage. This includes Hueneme, Long Beach, Stockton, Oakland and Redwood City.

Our larger container facilities not only compete with other ports in the United States, they also compete with other international ports to bring cargo into the United States. This movement of containers primarily through the West Coast of Canada at this time, is causing the loss of thousands of well paying jobs in the U.S. logistics industry as well as the loss of tax dollars. The Prince Rupert Port Authority advertises itself as the "Gateway to the Heartland of America."

Our desires to fully expend the Harbor Maintenance Tax collected relates to the increasing costs of dredging. This is also why we wish to see the dredging costs go down. In 1986 the Corps spent approximately $322 million to perform 282 million cubic yards of maintenance dredging. In 2016 the expenditure was just over one billion dollars to perform maintenance dredging of 186 million yards.

We request that you consider increasing the funds authorized for donor equity and make the program permanent. Hundreds of millions of Harbor Maintenance Tax dollars are collected on the cargo going through the Ports of Long Beach and Los Angeles. These ports are not getting much if any benefit of the program. They are competing directly with Canadian ports and in the near future, possibly Mexican ports. They also are competing with East Coast ports that are having federal navigation channels maintained by taxes collected in Los Angeles County. Finally, on this point, the nation should encourage the investment these ports have made and are making in cargo handling, supply chain optimization and zero emissions as well as water quality improvements. Further, for those receiving "donor" port funds only, we would like them to be able to expend them for in-the-water maintenance of their publicly owned facilities.

We as an organization, support the Federal Standard as it is used in the placement of dredged material. This standard allows for dredging and the placement of the material in accordance with federal law. If a third party wishes to use the material in another manner or at an elevated cost, they have the ability to pay for such incremental costs. Our, primary concern is that there are limited dollars available for dredging and those funds should be used for dredging. As Congress has heard, there are numerous ports and harbors that need to be dredged.

We do support the concept of beneficial use, however, the term is in the "eye of the beholder." We believe that putting material back into the water column or into the near shore surf zone should be considered beneficial. To that end, we are supportive of "working with nature" and "precision navigation" to reduce the need for dredging while maintaining channel dimensions for safe navigation.

Section 1012 We are very concerned that some of the "beneficial" use provisions of dredged material will increase the costs of the federal navigation maintenance program and as a result cause fewer emerging harbors to be dredged. We believe that putting "clean" dredged material back into the water column or in the near shore surf zone should be considered beneficial. Thin layer placement of dredged material into a wetland is a good idea for helping marshes, however, it is a costly process and there may be more efficient methods to achieve the same goal that provides for more dredging and more marshes rehabilitated. As we have stated elsewhere, the Corps has the ability to and has received funds from others to place sediment in a variety of locations. We encourage Congress to look at how to streamline the acceptance of contributed funds for this purpose.

Section 1019 We are very concerned that any process that must start at the District and go through Division, Headquarters, the Assistant Secretary of the Army and thence on to Congress will be expensive, which means less money for dredging, cause management focus to no-longer be on the goal of maintaining navigation channels. We must point out that there is not a direct cost-sharing aspect to maintenance dredging , however there is a life safety aspect to maintenance dredging. Any process that delays maintenance dredging may lead to loss of life or environmental degradation due to vessel groundings or capsizing.

Section 1080 Again, we are not sure as to the need to require this action, as we have projects that are not getting dredged.

Section 1095 Again, we are not sure as to the need to adopt this position as we have projects that are not getting dredged and the term beneficial is in the eye of the beholder.

We do not believe in dredging for the sake of dredging. Dredging and the placement of the sediments is crucial for safe navigation and to benefit the environment. We have partnered and in some cases funded studies in the development of biological opinions and the resulting environmental work windows to protect endangered and commercially important species. We have engaged with others to understand the benefits and costs of doing things differently as we recognize we are operating in a dynamic environment. We know we are stewards of the environments around us and are continuing to improve our activities to improve those environments. However, we believe it is unreasonable to place the full burden of placing sediment in areas to protect private property on the navigation stakeholders. Property owners and society at large should be making substantial investments as well. For if there wasn't a navigation system to maintain, where would they be getting the sediment from?

Again, you have our deep thank you for allowing us to review and comment on your critical work.

Sincerely,

James M. Haussener
Executive Director
California Marine Affairs & Navigation Conference
20885 Redwood Road, Suite 345
Castro Valley, CA 94546
(925) 828-6215
Jim@cmanc.com

May 1, 2020

The Honorable John Barrasso
Chairman
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Tom Carper
Ranking Member
Senate Committee on Environment and Public Works
456 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper:

The California Association of Port Authorities (CAPA), which consists of the 11 commercial seaports in California, welcomes the opportunity to provide comments on the committee's draft *America's Water Infrastructure Act of 2020* (AWIA 2020).

We appreciate the recent inclusion of Section 14003 in the Coronavirus Aid, Relief and Economic Security (CARES) Act to ensure that all annual revenue deposited in the Harbor Maintenance Trust Fund (HMTF) is appropriated annually for the intended purpose of maintaining the nation's ports and harbors.

However, further reforms are needed to ensure that those funds meet our nation's water infrastructure needs. As the committee considers the AWIA 2020 we urge you to consider the following additional reforms:

- **Fair and Equitable Allocation of Funding** – With increased funding available from the HMTF, the committee should adopt the remaining provisions of the American Association of Port Authorities' (AAPA) Harbor Maintenance Tax Agreement to, among other things, provide equitable funding to donor ports, four of which are located in California.

- **Expanded Uses of Funding** – The committee should expand eligibility for HMTF funding to be used for in-water infrastructure maintenance in order to help meet some of the most critical needs at ports and enhance competitiveness of our nation's ports. The committee should also expand eligibility to fortify against seismic activity.

Additionally, we appreciate the committee's inclusion of Section 3002 in AWIA 2020 to provide grants to ports to reduce emissions from waterborne vessels. However we believe $20 million per year will not be sufficient to meet the needs of the nation's ports and the committee should consider increasing the funding level for that program.

The California Association of Port Authorities sincerely appreciates the committee's work to improve our nation's water infrastructure and looks forward to working with you to accomplish that shared goal.

Written Comment by

Copper Development Association
Ductile Iron Pipe Research Association

to the

United States Senate
Committee on Environment and Public Works

For an Information-Gathering Process on Draft Legislation entitled,
America's Water Infrastructure Act of 2020 and
the Drinking Water Infrastructure Act of 2020
May 1, 2020

On behalf of the Copper Development Association (CDA) and the Ductile Iron Pipe Research Association (DIPRA), we want to thank you for focusing on much-needed water infrastructure investment through the Drinking Water Infrastructure Act of 2020 (DWIA 2020) and America's Water Infrastructure Act of 2020 (AWIA 2020). We also request the inclusion of robust investment for drinking water infrastructure in the next COVID-19 stimulus package and the exclusion of material preference provisions.

Collectively, we represent many of the materials and industries that serve as the foundation for our nation's water infrastructure. With centuries of proven performance, our materials have provided reliable, resilient, safe and sustainable infrastructure for millions of Americans. Building upon our proven success, our industries constantly innovate to serve Americans and our infrastructure into the future.

We appreciate your recognition of the importance of water infrastructure investment to address the significant needs of our country. Prior to the current COVID-19 crisis, the Environmental Protection Agency (EPA) estimated national drinking water and wastewater needs to total more than $740 billion. Our needs are even greater now, as utilities are facing decreased revenue from commercial and residential ratepayers. Clean drinking water has always been essential to every part of our lives, but it is especially critical now, as people need to wash their hands to prevent the spread of COVID-19, and our front-line health care, first-responders and other workers depend on it as they are working to save lives and fight the virus. For these reasons, we urge support for the inclusion of robust water infrastructure investment in future stimulus and infrastructure legislation.

We also want to thank the Committee for rejecting efforts to include material preference provisions, such as "open competition" or "innovative materials" in DWIA 2020 and AWIA 2020. Historically, the Committee and Congress have opposed these types of provisions, as they spark material wars and undermine the ability of Congress to pass much-needed infrastructure legislation, such as these bills.

In light of those concerns, we want to seek clarification regarding terminology included in these bills. The phrase "new and emerging, but proven" and variations appear in both bills. These phrases are used in different ways to describe concepts, such as "new and emerging stormwater control infrastructure," "new and emerging, but proven, stormwater control infrastructure," "new and emerging, but proven, stormwater control technology," and "new and emerging, yet proven, technologies." We want to confirm our assumption that these examples and similar terminology used in the bills do not refer to the infrastructure "materials" themselves, as that would raise concerns.

Again, thank you very much for your commitment to water infrastructure investment and for the consideration of these issues. Please let us know if you have any questions or need additional information.

Copper Development Association

Andrew G. Kireta Jr.

Vice President

7918 Jones Branch Dr. #300

McLean, VA 22102

Phone 317-346-6442

Email andrew.kiretajr@copperalliance.us

Ductile Iron Pipe Development Association

Patrick J. Hogan

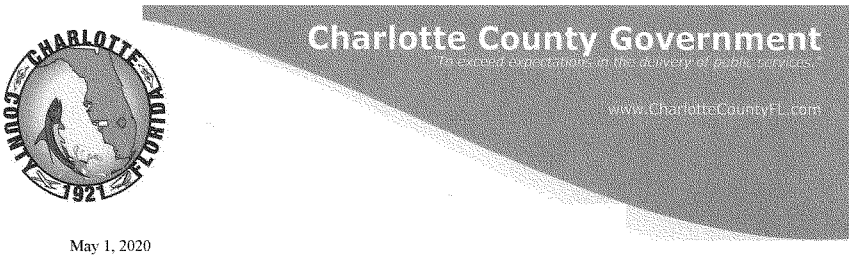
President

P.O. Box 190306

Birmingham, AL 35219

Phone 205-402-8700

Email patrick.hogan@dipra.org



May 1, 2020

The Honorable John Barrasso
Chairman
Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Tom Carper
Ranking Member
Committee on Environment and Public Works
456 Dirksen Senate Office Building
Washington, D.C. 20510

Via email: QFR@epw.senate.gov

Dear Chairman Barrasso and Ranking Member Carper,

On behalf of the Charlotte County, Florida Board of County Commissioners, thank you for the opportunity to submit written comments to the Committee on the Environment and Public Works regarding your draft America's Water Infrastructure Act of 2020 (AWIA). We appreciate your effort in developing the bill, yet we have concerns with one section that is of importance to our community.

Section 1204 of the discussion draft intends to provide "Assistance to Non-Federal Sponsors" and asks the Corps of Engineers to "provide assistance" to the non-federal interest of projects within the section. Subsection 40 includes a discussion of our request; we appreciate being included in the bill.

Unfortunately, as you surely know, the Corps has no authority to modify an authorization on their own or through the Section 7001 process of the Water Resources Development Act (WRDA) of 2014. In fact, Congress must make the changes we request if they are to be made at all. With that in mind, your Senate version of WRDA 2018, S. 2800 did just that – Section 2203 appropriately modified our ecosystem restoration authorization as we requested. While the language unfortunately did not make it through the conference process with the House and did not become law, we urge you to please include the same language from your bill of two years ago in the version of the AWIA you formally introduce. That language is simply as follows:

> *CHARLOTTE COUNTY, FLORIDA.—*
> *$30,000,000 for wastewater infrastructure, Charlotte County, Florida.*

With respect to the Section 7001 process, the County already sought the assistance of the Corps during their 2014 and 2015 rounds of the process. Our request was listed in the appendix each time because the Administration deemed that the County's project did not meet a "core" mission of the Corps of Engineers. Congress, however, in Section 7001 of WRDA 2014, said "the Secretary shall include…only those…proposed modifications…that are *related to the missions and authorities* of the Corps of Engineers" (emphasis added). Ecosystem restoration, as proposed under our authorization modification, is related to the missions and authorities of the Corps. Simply put, this is not an issue that can or will be settled by the Corps alone without Congressional direction.

By way of background, our request will support our ongoing efforts in southwest Florida to transition the community from older, often failing septic systems to central sewer. We began developing

the Restoration of Water Quality in the Impaired Waters of Charlotte Harbor project in 2009 with the prioritization of areas within Charlotte County that were not on central wastewater disposal. Prioritization was based on the following criteria: proximity to impaired water bodies, septic system failures, population density, frequency of beach closures due to bacteria, proximity of existing central wastewater disposal infrastructure, and projected road paving projects. Four areas were identified with a total construction cost upwards of $400 million by project completion. This authorization amendment request for $30 million will help to eliminate approximately 2,600 existing failing septic systems that are negatively affecting water quality to the receiving waters of Charlotte Harbor and the Gulf of Mexico.

The project will substantially restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches and coastal wetlands of the Gulf Coast ecosystem. Specifically, the project will improve the health of the Charlotte Harbor estuary, the second largest in Florida, which ultimately will improve the health of the Gulf of Mexico. Water quality improvements will provide important benefits for the wildlife ecosystem of the Gulf such as seagrasses, mangroves, shellfish, sea turtles, and other marine life.

According to results of an EPA-approved watershed model for a pilot septic replacement and stormwater improvement project in the North Shore area of Charlotte Harbor, total nitrogen, total phosphorus, and organics are anticipated to be reduced on average by 87% upon project completion. As a result of the project, bacteria levels are also anticipated to decrease. The entire multi-phased project will eliminate over 18,200 OSTDS and improve the functioning of stormwater swales throughout the prioritized areas.

Thank you for your work on the America's Water Infrastructure Act of 2020. Please modify our authorization as you have done in prior legislation and do not leave the change to the Corps of Engineers.

Sincerely,

Cameron Pennant, Legislative Manager
Charlotte County, Florida
18500 Murdock Circle, Suite 538
Port Charlotte, FL 33948
Cameron.Pennant@charlottecountyfl.gov
(941) 740-4893

CC: Senator Marco Rubio
Senator Rick Scott
Congressman Greg Steube

CHESAPEAKE BAY COMMISSION

Policy for the Bay• www.chesbay.us

May 5, 2020

The Hon. John Barrasso, Chairman
Environment & Public Works Committee
United States Senate
307 Dirksen Senate Office Building
Washington, D.C. 20510

The Hon. Thomas R. Carper, Ranking Member
Environment & Public Works Committee
United States Senate
513 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of the Chesapeake Bay Commission, I am writing to support efforts by the Senate Environment and Public Works Committee to invest in our nation's water infrastructure, ecosystem restoration and other activities that will boost economic activity and protect our natural environment. We hope that the recently released America's Water Infrastructure Act (AWIA) will receive consideration in the committee and by the full Senate in the near future.

The Commission is a tri-state legislative body, comprised of state legislators, gubernatorial representatives and citizens from Virginia, Maryland and Pennsylvania. The Commission works to advance policy, at all levels of government, to restore and protect the Chesapeake Bay. By law, we serve as a liaison to the Congress. Accordingly, we'd like to highlight for the committee federal policies of importance to the Chesapeake Bay Commission.

The Commission is a signatory member of the Chesapeake Bay Program Partnership. The US Army Corps of Engineers (USACE) is among our partners in the effort to restore the Bay. The USACE Chesapeake Bay Restoration and Protection Program is a critical component of that effort. As a result, we support Section 1035 of AWIA, which would increase the overall authorization of the program to $90M; increase the maximum project cost to $15M; and establish a fund to conduct outreach and training for non-federal entities interested in working with USACE on Bay restoration projects. We would urge the committee to retain this section and to also encourage the Administration through report language to include funding in its next budget for specific projects in the USACE Chesapeake Bay Comprehensive Plan.

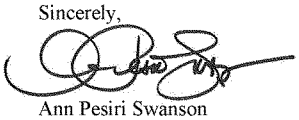
The Commission strongly supports efforts to invest in stormwater infrastructure. Insufficient stormwater management contributes not only to nutrient and sediment pollution to Chesapeake Bay, but also flash flooding, property damage, and loss of life. It is also one of the most expensive and difficult infrastructure challenges to mitigate in built-out areas. The use of green infrastructure practices can help to reduce the cost and provide additional benefits to the community, such as green space, recreational areas, and tree canopy, but requires specialized technical assistance.

Section 2001, the Clean Water Infrastructure Resiliency and Sustainability Program; Section 2007, the Sewer Overflow and Stormwater Reuse Municipal Grants; and Section 2018, related to Stormwater Infrastructure Technology are important efforts to address stormwater runoff issues. In addition, we encourage the committee to adopt the maximum possible funding level for the

Clean Water State Revolving Fund. We have neglected to adequately invest in our nation's water infrastructure for far too long. Investing in these programs now can put Americans back to work repairing critical infrastructure that is key to the basic well-being of our nation and protects our environment, food, and public health systems.

The Commission is dedicated to improving the health and natural ecosystems of the Chesapeake Bay watershed. We believe investments in water infrastructure are critical to our mission and provide much needed economic stimulus during these uncertain times. As you continue to consider AWIA and other related legislation under the committee's jurisdiction, we appreciate your consideration of these policy requests.

Sincerely,



Ann Pesiri Swanson
Executive Director

cc: Chesapeake Bay Commission members

CHESAPEAKE BAY FOUNDATION
Saving a National Treasure

OFFICERS
Elizabeth Oliver-Farrow
CHAIR
Otis S. Jones
VICE CHAIR
Robert A. Kinsley II
VICE CHAIR
William C. Baker
PRESIDENT
David A. Fogle
TREASURER
William A. Agee
SECRETARY

TRUSTEES
Dara C. Bachman
R. Bruce Bradley
Joan P. Brock
George L. Bunting Jr.
D. Keith Campbell
Michael J. Chiaramonte
Thomas M. Davis III
Robert S. Evans
Margaret M. Freeman
Jennifer E. Green
Harry S. Gruner
Michael J. Hanley
Jeanne Trimble Hoffman
Ann D. Horner
Burks B. Lapham
Katie Z. Leavy
Pamela B. Murphy
Devan B. Ogburn
Mamie A. Parker, Ph.D.
Crystal Patterson
Anna R. Pauletta
Ann Pelham
J. Sedwick Sollers III
Sandra E. Taylor
Preston M. White
Stephen M. Wolf

HONORARY TRUSTEES
Donald F. Boesch, Ph.D.
W. Russell G. Byers Jr.
Louisa C. Duemling
Richard L. Franyo
Alan R. Griffith
Carolyn Groobey
Ann Fritz Hackett
C.A. Porter Hopkins
Robert A. Kinsley
T. Gaylon Layfield III
Harry T. Lester
Byron F. Marchant
M. Lee Marston
Wayne A. Mills
Arnold I. Richman
Marie W. Ridder
James E. Rogers
Truman T. Semans
Simon Sidamon-Eristoff
Jennifer Stanley
Thomas H. Stoner
Bishop Eugene Taylor Sutton
Alan L. Wurtzel

May 1, 2020

The Honorable John Barrasso
Chairman
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

The Honorable Tom Carper
Ranking Member
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

RE: *America's Water Infrastructure Act of 2020*, Discussion Draft

Dear Chairman Barrasso and Ranking Member Carper,

On behalf of the Chesapeake Bay Foundation, thank you for the opportunity to provide comments on the discussion draft of *America's Water Infrastructure Act of 2020* (AWIA 2020). We appreciate your bipartisan leadership to address critical infrastructure and water resource challenges facing our nation.

CBF is a 501(c)(3) non-profit organization founded in 1967. The organization's mission – carried out from offices in Maryland, Virginia, Pennsylvania, and the District of Columbia and with the support of more than 300,000 members and e-subscribers – is to restore and protect the ecological health of the Chesapeake Bay, the nation's largest and one of its most vital estuaries.

Critical to the success of our mission is the implementation of water resource management projects across the Chesapeake Bay watershed that focus on reducing pollution and restoring ecosystems. To that end, CBF supports the following provisions of the AWIA 2020 that:

1. Invest in **ecosystem restoration projects** in the Chesapeake Bay watershed (Sections 1035 and 1401);
2. Enhance our nation's **clean water infrastructure** (Sections 2001, 2015, and 2016);
3. Encourage the **beneficial use of dredged materials** of ecosystem restoration (Sections 1012 and 1080); and
4. Advance **environmental justice** and access to clean water investments (Section 2017).

Invest in Ecosystem Restoration Projects (Sections 1035 and 1401)

Chesapeake Bay Environmental Restoration and Protection Program (Section 1035)

Section 4010 of the 2014 Water Resources Reform and Development Act directed the United States Army Corps of Engineers (USACE) to conduct a comprehensive plan detailing the full suite of activities necessary to meet all the goals of the *2014 Chesapeake Bay Watershed Agreement* and Executive Order 13508, *Chesapeake Bay Protection and*

PHILIP MERRILL ENVIRONMENTAL CENTER
6 HERNDON AVENUE | ANNAPOLIS, MD 21403 | 410-268-8816 | CBF.ORG

Restoration.[1] The *Chesapeake Bay Comprehensive Plan* was completed in the spring of 2018 and is being finalized. The watershed assessment will result in a comprehensive master plan for restoring, preserving, and protecting the Chesapeake Bay ecosystem that aligns with existing federal, state, and local plans and the *Chesapeake Bay Agreement*. The plan identifies more than 300 projects in need of funding.

The increase in funding for Section 510 of WRDA and the requirement for public outreach and workshops for non-federal interests to provide information on Chesapeake Bay environmental restoration and protection under Section 1035 of AWIA 2020 are critical to implementing this comprehensive water resources restoration plan.

Anacostia Watershed Stream Restoration Project (Section 1401)

The Anacostia River watershed encompasses approximately 176 square miles in Montgomery and Prince George's Counties, Maryland, and the District of Columbia, and is one of the most heavily urbanized regions of the Chesapeake Bay watershed. The Anacostia flows into the Potomac River, and ultimately drains into the Chesapeake Bay. Due to heavy urbanization, severe stream habitat damage has occurred, which has led to poor water quality, excess sediment, loss of wetlands, and more. The Anacostia Watershed Stream Restoration Project, as outlined in the 2018 Final Feasibility Report[2] and signed Chiefs Report[3], will fully restore seven miles of in-stream habitat, four miles of fish passage, and connect 14 miles of previously restored habitat in the Northwest and Northeast Branches of the Anacostia River.

CBF supports the authorization of funding under Section 1401 for Anacostia Habitat Restoration that will open blockages for migratory fish allowing access to 90% of the tributaries currently blocked.

Enhance our Nations Clean Water Infrastructure (Sections 2001, 2015, and 2016)

Clean Water Infrastructure Resiliency and Sustainability Program (Section 2001)

The Chesapeake Bay region is already suffering from negative impacts of climate change including more frequent and intense storms and floods, sea level rise, and shoreline erosion. In Maryland alone, sea-level rise accelerated by climate change threatens to flood more than 61,000 homes valued at $19 billion by 2100. In Norfolk, Virginia, sea level rise poses significant risks not only to the public, but to military infrastructure and operations. In addition, entire inhabited islands in the Bay are now underwater, with more at risk of becoming so.

Establishing a program whereby publicly owned treatment works can utilize grants to assist in developing, operating, and maintaining programs and projects that increase resiliency or adaptability of water systems to natural hazards is essential to aiding the region's overall response to climate change.

Reauthorization of Clean Water State Revolving Loan Funds (Section 2015)

---

[1] 74 FR 23099, May 15, 2009.
[2] https://www.nab.usace.army.mil/Portals/63/docs/Environmental/Anacostia/AWR_PG_Main_Report_FINAL_Dec2018.pdf
[3] https://www.nab.usace.army.mil/Portals/63/docs/Environmental/Anacostia/SIGNED_Chief's_Report-Anacostia_PGC.pdf

The Clean Water State Revolving Fund (CWSRF) is the main source of financing for wastewater municipalities across the nation including in the Chesapeake Bay watershed. Recent improvements in the Bay and the rivers and streams that feed into it have been driven in large part by upgrades in municipal water treatment facilities throughout the watershed.

As such, CBF supports the reauthorization of CWSRF and increase in the program's authorization as an important and necessary step to efforts to restore the Chesapeake Bay, but would recommend that the Committee consider further increases for this critical program.

Wastewater Infrastructure Discretionary Grant Program (Section 2016)

Establishing a discretionary grant program for publicly-owned treatment works that provides priority funding for systems that need assistance coming into compliance with federal regulations and laws or that need additional assistance in completing work because of a lack of full financing will accelerate improvements to these facilities, resulting in reductions of excess nutrient loads and better water quality in the watershed.

Encourage the Beneficial Use of Dredged Materials (Sections 1012 and 1080)

Between 1996 and 2010, coastal counties in the United States lost 139,552 acres of tidal wetlands. Virginia experienced the fifth highest loss rate nationwide, losing 1% of the state's tidal wetland in the same time period.[4] Coastal wetlands are critical to the health of the Chesapeake Bay. They provide a nursery to juvenile fishes, filter out excess nutrients, and take up and store large quantities of carbon. The loss of these wetlands represents a significant challenge to the recovery of the Chesapeake Bay.

Fortunately, beneficial reuse of dredged material provides an opportunity to supply wetlands restoration with much needed sediments while addressing the need for responsible disposal of dredged materials (Section 1080). The environmental benefit of dredged material reuse has been clearly demonstrated at Poplar Island where hundreds of acres of tidal marsh now support waterfowl, colonial nesting waterbirds, and diamondback terrapins. The new tidal marshes at Poplar have been able to grow vertically after their creation to keep pace with sea level rise. The island has been so successful as a wildlife habitat that it is being nearly doubled in size and new beneficial use projects at Barren and James islands are in the planning and feasibility stages.

CBF is currently part of a project to use maintenance dredged material from the federal navigation channel of the Baltimore Harbor to nourish the intertidal zone and enhance the wetland ecosystem of Fleming Park in Baltimore County, MD. The project would address long-standing environmental justice issues by supporting climate resiliency in a historically African American community and increase regional capacity to adaptively manage sediment.

CBF also supports expanding the use of dredged material to support thin layer marsh nourishment projects (Section 1012) that may help extend the life of marshes suffering from fragmentation as a result of sea level rise and innovative use of dredged material to rebuild eroded shorelines in urban settings where communities are at risk.

---

[4] https://www.frontiersin.org/articles/10.3389/fmars.2019.00511/full#F2

Maritime commerce is an economic engine in the Chesapeake Bay region. Facilitating more extensive reuse of dredged materials for rebuilding the Bay's critical habitats will provide a win-win for the ecosystem and the economy.

Advance Environmental Justice and Access to Clean Water Investments (Section 2017)

Clean water, clean air, clean land, and a safe environment are rights we all share. Unfortunately, there is a long history of placing environmental burdens on low-income or largely minority communities. CBF is supportive of section 2017, which requires the EPA Administrator to account for historical injustices in funding for low-income and minority communities, and analyze new opportunities and methods to ensure equitable and just distribution of funds under state revolving funds, including the CWSRF, for those communities. Ensuring low-income and minority communities are not disproportionately harmed by pollution and other environmental threats is essential.

Thank you for your bipartisan efforts to develop this discussion draft of America's Water Infrastructure Act, and for providing stakeholders an opportunity to submit comments. We look forward to working with you to advance this important legislation.

Please contact our Federal Executive Director, Jason Rano, at jrano@cbf.org or 917-838-9459 with any questions.

Sincerely,

Lisa Feldt

Vice President
Environmental Protection and Restoration

May 1, 2020

The Honorable John Barrasso, Chairman
Committee on the Environment and Public Works
U.S. Senate
Washington, DC 20510

The Honorable Thomas Carper, Ranking Member
Committee on the Environment and Public Works
U.S. Senate
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper:

As co-chairs of the Choose Clean Water Coalition, and on behalf of our more than 250 member organizations, we thank you for the opportunity to comment on the draft America's Water Infrastructure Act (AWIA) of 2020. We also thank you for the great bipartisan work in moving this legislation forward and keeping the Water Resources Development Act on its regular two-year cycle.

The Choose Clean Water Coalition harnesses the collective power of our organizations to advocate for clean rivers and streams in all communities in the Chesapeake Bay region. We are focused on helping local communities and states to meet their pollution limits as outlined in their state clean water plans, and AWIA can be extremely helpful to address the infrastructure needs in those state plans that are critical for clean water.

Title I – Water Resources Development

Subtitle A – General Provisions

Section 1035. Chesapeake Bay environmental restoration and protection program.
We strongly support this section which amends section 510 of WRDA 1996 (110 Stat. 3761; 121 Stat. 1202; 128 Stat. 1318). In particular, we support increasing the authorization level from $40 million to $90 million, as well as raising the limit on per project total cost to $15 million for the Chesapeake Bay environmental restoration program. The U.S. Army Corps of Engineers plays a significant role in Chesapeake Bay watershed restoration and protection, and these new changes will enhance their efforts and impact.

Subtitle D – Water Resources Infrastructure

Section 1401. Anacostia Watershed Stream Restoration Project.
The Coalition strongly supports this provision for bringing much needed restoration work to the Capital Region's "forgotten river". This critical project will fund work in Prince George's and

Address: 20 Ridgely Avenue, Suite 203 Annapolis, MD 21401
Phone: (443) 927-8047
Fax: (443) 927-8050
Email: info@choosecleanwater.org
Website: www.ChooseCleanWater.org

Montgomery counties in Maryland for approximately 20 miles of stream restoration work to remove blockages to migratory fish in Northwest Branch and Sligo Creek – key tributaries to the Anacostia. These projects will provide great improvements to the Anacostia watershed where the work will be done, as well as for the entire River, including the lower portion that flows through the District of Columbia.

Title II – Clean Water

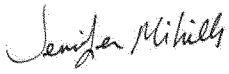
Section 2015. Reauthorization of Clean Water State Revolving Fund.
The Choose Clean Water Coalition strongly supports increasing funding for the Clean Water State Revolving Fund (SRF). The Clean Water SRF is one of the funding components of the Clean Water Act to ensure that local governments have federal funding support to implement the Act's mandates. This section amends the Clean Water Act to incrementally increase the authorized level of the Clean Water SRF from $2 billion for Fiscal Year 2021 to $3 billion for Fiscal Year 2023. We urge the Committee to go further and to reauthorize the Clean Water SRF at no less than $3.4 billion in Fiscal Year 2021 and thereafter.

Additionally, we also urge the Committee to support language targeting 20 percent of the Clean Water SRF funds for green infrastructure and innovative projects including those to manage stormwater, which helps communities improve water quality while creating green space, mitigating flooding, and enhancing air quality.

We appreciate the opportunity to provide comments on the draft America's Water Infrastructure Act of 2020. Thank you for your leadership and for considering our recommendations for inclusion in a final bill. If you have any questions, please contact Peter J. Marx with the Choose Clean Water Coalition at peter@chooseccleanwater.org or 410-905-2515.

Sincerely,

Lisa Alexander, Co-Chair
Audubon Naturalist Society



Jennifer Mihills, Co-Chair
National Wildlife Federation

Mary Rafferty, Co-Chair
Virginia Conservation Network

CITRUS HEIGHTS WATER DISTRICT

6230 Sylvan Road
P.O. Box 286
Citrus Heights
California
95611-0286

phone
916/725-6873

fax
916/725-0345

website
www.chwd.org

Board of Directors

Raymond A. Riehle
David C. Wheaton
Caryl F. Sheehan

General Manager/ Secretary
Hilary M. Straus

Director of Finance and Administrative Services/Treasurer
Susan K. Talwar

Accounting Manager/ Assessor/Collector
Alberto Preciado

The Honorable John Barrasso
Chairman
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

The Honorable Tom Carper
Ranking Member
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

May 1, 2020

Dear Chairman Barrasso and Ranking Member Carper,

The Citrus Heights Water District (CHWD) writes to inform your information-gathering process on the draft copies of *the America's Water Infrastructure Act of 2020 (AWIA 2020)* and *the Drinking Water Infrastructure Act of 2020*. CHWD provides drinking water to an estimated population of 67,000 customers in Sacramento and Placer Counties, California, and the residents of Citrus Heights, Fair Oaks, Orangevale, Carmichael, and Roseville. Our service area consists of 12.2 square miles of service line with approximately 19,600 water service connections. Our agency is proud to have served our community for one hundred years. We appreciate having the opportunity to provide feedback to the Senate Committee on the Environment and Public Works.

Our Board of Directors are supportive of a number of provisions contained within the *Drinking Water Infrastructure Act of 2020*. We appreciate new initiatives intended to increase the capacity of small and medium-sized public water systems, including the establishment of an operational sustainability program for small public water systems, a grant program for water systems serving a population of 100,000 or fewer people to deploy advanced drinking water technologies, and a resilience and sustainability program for mid-size systems. Language to expand the Assistance for Small and Disadvantaged Communities program and provide waiver authority for cost sharing requirements will allow for greater servicing of small and disadvantaged areas. We also applaud the bill's proposed drinking water infrastructure discretionary grant program and the inclusion of public water systems in the existing Voluntary School and Childcare Lead Testing Grant Program.

We are concerned, however, that the *Drinking Water Infrastructure Act of 2020* does not authorize sufficient funding for our community's drinking water needs. Robust investments in water infrastructure and drinking water will guarantee greater health and safety outcomes for our residents. For example, the Midsize Drinking Water System Infrastructure Resilience and Sustainability Program, which could provide critical assistance for a myriad of purposes, ought to be authorized at $100 million annually to provide sufficient resources to meet national demands. The current proposed level of $5 million would barely begin to address our local needs as we undertake $500 million of major capital investments

through Project 2030. Our system will need water main replacements, meter replacements, and various enhancements to promote energy efficiency and water supply resiliency and redundancy.

We must ensure that our water infrastructure has the resources it requires to remains resilient for generations to come. Moving forward, infrastructure investment can serve as an effective method to stimulate our national economy as we collectively emerge from this difficult moment in our history. Our Board of Directors and staff call your attention to the *American Recovery and Reinvestment Act of 2009*. The historic legislation should serve as a recent example of success in addressing local needs, creating jobs, and demonstrating the potential of an effective partnership between communities and the federal government advancing the recovery together. Water infrastructure must be included in any major stimulus package as we seek to restart the U.S. economy in the months ahead.

Thank you for your consideration of our feedback. Please feel free to reach out to General Manager Hilary Straus via email at hstraus@chwd.org or by phone at (916)735-7715 if you have any questions. We thank you for your hard work in developing these two critical legislative initiatives and your support for water districts nationwide.

Sincerely,

Hilary Straus
General Manager
Citrus Heights Water District

City of Arcadia

Dominic Lazzaretto
City Manager

May 1, 2020

Via email to OFR@epw.senate.gov

The Honorable John Barrasso
Chairman
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Thomas R. Carper
Ranking Member
Senate Committee on Environment and Public Works
456 Dirksen Senate Office Building
Washington, DC 20510

Re: America's Water Infrastructure Act of 2020: Proposed Ecosystem Restoration Studies in the Rio Hondo and San Gabriel River Watersheds

Dear Chairman Barrasso and Ranking Member Carper:

Thank you for your leadership and for the opportunity to comment on your draft legislation, *America's Water Infrastructure Act of 2020*. I am submitting comments on behalf of the City of Arcadia, California, and our partners working to restore areas in the Rio Hondo and San Gabriel River watersheds in Los Angeles County, California. The City of Arcadia has been working closely on this effort with our partners the Cities of Bradbury, Duarte, Monrovia, Sierra Madre, along with Los Angeles County, and the Los Angeles County Flood Control District.

We have submitted these projects for inclusion in the Army Corps of Engineers' next "Section 7001 Report" to Congress. If these projects are not included in the main body of the 7001 Report, we respectfully request an addition to the draft legislation that would continue and update an existing authorization for studies to modify and improve Army Corps projects in the Los Angeles and San Gabriel River watersheds, to allow for a feasibility study of ecosystem restoration projects in the Rio Hondo and San Gabriel River watersheds. Proposed language is attached.

Located in the foothills of the San Gabriel Mountains, the projects would restore aquatic ecosystems in the Rio Hondo watershed, a subwatershed of the Los Angeles River watershed that is linked to the San Gabriel River watershed,

240 West Huntington Drive
Post Office Box 60021
Arcadia, CA 91066-6021
(626) 574-5401
(626) 446-5729 Fax
domlazz@ArcadiaCA.gov
www.ArcadiaCA.gov

begins high in the San Gabriel Mountains, and flows into urbanized areas of Los Angeles County. The proposed projects would provide restored aquatic ecosystem functions and habitat in key areas along the Pacific Flyway 2-5 miles south of the Angeles National Forest and connected San Gabriel Mountains National Monument. It would also restore Baldwin Lake, an iconic aquatic resource at the Los Angeles County Arboretum and Botanical Gardens that draws more than 400,000 visitors per year, including most of the County's schoolchildren, and holds enormous natural and cultural value for the region. The projects capture, retain, and treat stormwater for ecosystem restoration. The largest project would restore the area of Sawpit Wash, an Army Corps-constructed concrete lined channel that feeds into Peck Lake.

The projects will also recharge groundwater in two aquifers: the Main San Gabriel and Raymond Basins. The projects therefore offer multiple regional benefits for ecosystem restoration, water conservation, and recreation. The combined projects would conserve approximately 1900 acre-ft per year of stormwater that would otherwise be discharged to the ocean. The restored natural processes and habitat will also provide incidental water quality benefits for the watershed. The recent, historic drought has taught us that it is critical for the region to invest in multi-purpose projects that capture stormwater flows to restore habitat and also conserve water through groundwater recharge. These projects would demonstrate a new model that provides ecosystem services for surrounding communities and habitats, more resilient and sustainable water resources for the region, and benefits for other ecosystems by reducing dependence on imported water supplies.

Thank you for your efforts on this critical piece of legislation, and for your consideration of these comments.

Cordially,

Dominic Lazzaretto
City Manager
City of Arcadia
Member of Rio Hondo San Gabriel Watershed Group

Attachment: Rio Hondo San Gabriel River Proposed Language for the draft America's Water Infrastructure Act of 2020

cc: Senator Diane Feinstein
Senator Kamala Harris
Representative Grace Napolitano
Representative Judy Chu

Attachment
Rio Hondo San Gabriel River Watershed Proposed Language
For America's Water Infrastructure Act of 2020

Rio Hondo San Gabriel River. –

(1) In General. -- The Secretary is authorized to carry out studies to determine the feasibility of projects for ecosystem restoration in the Rio Hondo and San Gabriel River watersheds in Los Angeles County, California.

(2) Continuation of Existing Study.—Any study carried out under paragraph (1) shall be considered a continuation of reviews of reports on the Los Angeles and San Gabriel Rivers to determine whether modifications are advisable, as authorized by a Resolution by the Committee on Public Works of the Senate on June 25, 1969.

CITY OF DALY CITY

Department of Water and Wastewater Resources
153 Lake Merced Boulevard, Daly City, CA 94015
(650) 991-8200
Fax (650) 991-8220

Thomas J. Piccolotti, Director

May 1, 2020

The Honorable John Barrasso
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Thomas Carper
Ranking Member, Senate Committee on Environment and Public Works
456 Dirksen Senate Office Building
Washington, D.C. 20510
Dear Chairman Barrasso and Ranking Member Carper:

On behalf of the City of Daly City, CA, Department of Water and Wastewater Resources, thank you for the opportunity to provide comments on the America's Water Infrastructure Act of 2020 (AWIA 2020) discussion draft. Daly City strongly supports the Committee's efforts to provide additional investments in clean water initiatives, and we greatly appreciate the Committee's attention to these important matters.

Daly City strongly supports the proposed clean water investments in Sections 2001, 2005, 2006, 2007, 2008, 2012, 2014, 2015, and 2016 of Title II. These provisions will help communities address critical infrastructure needs by providing needed capital investments and technical assistance. Daly City is especially supportive of Section 2007, which reauthorizes the Sewer Overflow and Stormwater Reuse Municipal Grants Program at an increased level of $250 million for Fiscal Years 2021 and 2022. Grant funding such as this gives Daly City the opportunity to compete for funding to complete critical system upgrades that are long overdue. For example, the City has been working for decades with area stakeholders to construct an over $100 million Regional stormwater system improvement project (the Vista Grande Drainage Basin Improvement Project) that will reduce flooding, improve habitat and recreational opportunities, and provide water supply and water quality benefits by using green infrastructure. The project is finally set to begin construction in 2021 and the City is working to finalize project funding. This grant program would greatly help this project get constructed in a manner that does not create additional financial burden on our ratepayers, which is a critical task, especially during times of economic downturn.

Daly City also strongly supports Section 2012, which requires ten percent of Clean Water State Revolving Funds to be used for grants, negative interest loans, and loan forgiveness or to buy, refinance or purchase debt. We would, however, encourage the Committee to consider requiring a greater percentage of funds be used for these purposes in Fiscal Year 2021 in light of the economic stresses resulting from the COVID-19 pandemic. A similar approach was taken in the American Recovery and Reinvestment Act of 2009 to help stimulate the economy during the 2008-2009 Recession.

Lastly, we encourage the Committee to take such steps as are necessary to ensure that all authorized U.S. Army Corps of Engineers environmental infrastructure (EI) projects can compete for whatever funds are appropriated, taking economic, environmental, and social considerations into account. This is critical to entities like Daly City that have previously not been awarded funding but are eligible to compete under an authorized authority—in the case of Daly City, under the State of California EI authority. We propose the following legislative language for the Committee's consideration:

Unless otherwise expressly provided in law, all environmental assistance projects previously authorized by Congress, or to be authorized by Congress, shall be eligible to compete for funding by the Corps of Engineers on the basis of the benefits those projects produce, taking economic, environmental, and social considerations into account, and without regard to whether those projects have been previously identified for funding in any Fiscal Year Work Plan, from unobligated balances of appropriations previously made available by Congress for environmental assistance projects, or from future appropriations made available for environmental infrastructure assistance.

We again appreciate the opportunity to provide these comments to the Committee and are grateful for your consideration. If you have any questions, please feel free to contact me.

Thank you,

Thomas Piccolotti
Director, Daly City Department of Water and Wastewater Resources

Contact Information:
53 Lake Merced Blvd.
Daly City, CA 94015
(650) 991-8201
tpiccolotti@dalycity.org

April 28, 2020

United States Senate
Committee on Environment and Public Works
Via email at QFR@epw.senate.gov

COMMENTS on THE AMERICA'S WATER INFRASTRUCTURE ACT OF 2020 and THE DRINKING WATER INFRASTRUCTURE ACT OF 2020

We appreciate the provisions in these two bills that will support community efforts to restore and protect local water resources and to improve wastewater and drinking water systems. In particular we support increased funding for the Clean Water State Revolving Fund and for specific programs directed at solving problems including: critical needs of small and tribal systems as well as disadvantaged communities; lack of access to sanitation and drinking water service, and cleaning up PFAS chemical contamination. With other organizations, we have called for significant and needed increases in both the Clean Water and Drinking Water State Revolving Funds in the amount of $100 billion over 5 years split evenly between the two Funds. We urge the Committee to consider increases in these critical programs that are commensurate with the need to invest in clean and safe water.

The lack of extraneous provisions that put water quality and public health at risk and are not related to the overall objectives of the bills is welcome. For example, language in the current House bill would allow Clean Water Act discharge permits for publicly owned treatment works to be extended to ten years. We support exclusion of this language from this draft and urge you to keep this provision and any similar provisions that would ease pollution permit requirements out of all subsequent bills. We include some specific comments on each bill.

America's Water Infrastructure Act of 2020

Title I - Water Infrastructure Development

We are concerned about any provisions that would put water quality and public health at risk by expediting environmental review. For example: 1) The Great Lakes Comprehensive Flood Protection Study should investigate how low lake levels that could put drinking water intakes, harbors, and other resources and infrastructure at risk (Section 1001) and 2) Authorizing and directing agencies to consider adoption of expanded categorical exemptions under the National

Environmental Policy Act is counter to protecting public health and the environment (Section 1102).

Title II - Clean Water

- The incremental increases in the Clean Water State Revolving Fund program are a good first step. We urge the Committee to consider larger increases to address the realities of clean water needs. With many allies, we have joined the call for $50 billion over five years for the Clean Water State Revolving Fund with at least 20 percent of funding distributed to disadvantaged communities as additional subsidization (grants) rather than loans and at least 20 percent of CWSRF funding set-aside for investing in green infrastructure projects.

- The creation of the Clean Infrastructure Resiliency and Sustainability program is a welcome addition to enable wastewater systems to address long-term improvement needs and to be prepared for flooding and other risks.

- We support provisions in this bill to provide support for small, rural, and tribal communities as well as for non-profit organizations and circuit rider programs to help with improvements in small and medium wastewater systems.

- We support reauthorization of grants for workforce development in the utility sector as well as inclusion of water utilities in the eligibilities for these grants in addition to schools.

- Getting sanitation/wastewater treatment to households is critical to protecting water quality and public health. We support the programs to fund decentralized treatment for low- and moderate-income households and connection to wastewater systems.

Drinking Water Infrastructure Act of 2020

- We support reauthorization of the Drinking Water Infrastructure Risk and Resilience program for small and disadvantaged systems, the increased funding for this program, and the creation of a similar program for midsize systems.

- We support the inclusion of $300 million in grants annually to assist with addressing emerging contaminants, including PFAS chemicals. We urge the Committee to do more to address PFAS contamination including accelerating the ability to use the pollution

prevention tools of the Clean Water Act to keep PFAS chemicals out of our rivers, lakes, and streams.

- We appreciate the Committee's continued support for addressing lead at the tap in schools and childcare settings. The Voluntary School and Childcare Lead Testing Grants Program should be extended beyond 2022 and its focus should be updated to support efforts that fix the problem. Testing is of limited utility given that we would expect to find lead in many large buildings with outdated fixtures. Resources for addressing the source of the problem, for example installing water stations with proper filters, would improve the efficiency of this program and provide concrete protection for children.

Thank you again for the opportunity to comment during this process.

Lynn Thorp, National Campaigns Director
1444 I Street NW; Suite 400
Washington DC 20005
lthorp@cleanwater.org
202-895-0420 x 109

Written Statement
By The Clean Water Council

to the

United States Senate
Committee on Environment and Public Works

Information-Gathering Process on Draft Legislation
America's Water Infrastructure Act of 2020
Drinking Water Infrastructure Act of 2020

The Clean Water Council (CWC) is a coalition of national organizations representing utility and excavation contractors, design professionals, manufacturers and suppliers, labor unions, construction materials, and others committed to ensuring a high quality of life through sound water infrastructure. As members of the Clean Water Council, we appreciate the opportunity to comment on recent legislation introduced that would make progress towards the much-needed refurbishment of America's water and wastewater infrastructure.

Adequate Funding is Needed for Effective Programs

The CWC appreciates the committee's action on water infrastructure, but feels that more is needed. While the America's Water Infrastructure Act of 2020 (AWIA) and the Drinking Water Infrastructure Act of 2020 (DWIA) are a step in the right direction, they do not go nearly far enough in providing the funding levels needed for certain programs. Marginal increases to the Clean Water State Revolving Fund (SRF) are not nearly sufficient to bridge the necessary investment gap.

Our nation's underground water infrastructure ensures that Americans have access to clean drinking water, removes wastewater from homes and businesses, provides businesses with the resources they need to keep our economy moving, and protects our nation's waterways, beaches, and other recreational opportunities. Taken together, well-functioning water infrastructure is indispensable to the health of our country.

As drinking water and wastewater systems continue to age and the costs of compliance with environmental requirements mount, communities face increasing difficulties in paying for needed improvements. At the same time, the federal government has contributed a decreasing share of the total funding provided for water utility infrastructure. Federal spending accounted for just 4% of all

spending on water utility infrastructure in 2017. Current EPA assessments put national funding needs at around half a trillion dollars – a figure which will only grow the longer the necessary work is neglected.

We urge Congress to take things a step further by supporting SRF reauthorizations such as H.R. 1497, the Water Quality Protection and Job Creation Act, for long-term solutions to our water infrastructure funding needs.

Opportunities for Private Investment

The CWC understands the need to provide relief to local government entities, as provided in both the AWIA and DWIA – however, this should not come at the expense to long-term national needs for water/wastewater infrastructure projects. Both AWIA and DWIA should include significant increases in authorized funding for both the Clean Water and Drinking Water SRF programs. These programs have a track record of proven success with the resources they have been provided – with adequate funding they could do much more to address America's critical water infrastructure needs.

In addition to traditional public funding, Congress should consider measures that would open the door for more private sector investment through innovative financing, such as lifting the cap on private activity bonds (PABs) for water and wastewater infrastructure projects. While this would require action by the Senate Finance Committee, we encourage the Senate Environment and Public Works Committee to consider the advantages of PAB reform for these essential infrastructure projects.

Removing the PAB state volume cap increases private investment and capital investment, and enables more public-private partnerships, decreasing the risk placed on local governments. Additional investment would lead to thousands of high-paying jobs at a time when Americans need them most.

More Investment Equals a Real Impact

The CWC applauds Congress for taking action to address America's water infrastructure challenges, and appreciates the opportunity to comment on both bills. However, given the magnitude of the national need, lawmakers will have to include much more investment in both the AWIA and the DWIA for this legislation to have a real impact.

With proper funding, Congress has the change to put Americans back to work on critical infrastructure projects that not only create tens of thousands of jobs but also improve public health and safety, enhance environmental protections, and raise the quality of life for the average American. The CWC looks forward to working with Congress over the coming months to further our nation's commitment to clean water and economic growth.

For additional information, the Clean Water Council is available at www.cleanwatercouncil.net.

Submitted by the following Members of the Clean Water Council:

National Utility Contractors Association
American Council of Engineering Companies
American Concrete Pipe Association
Associated Equipment Distributers
Association of Equipment Manufacturers
American Society of Civil Engineers
American Supply Association
Distribution Contractors Association
Ductile Iron Pipe Research Association
National Association of Sewer Service Companies
National Ready Mixed Concrete Association
National Stone, Sand, and Gravel Association
National Utility Locating Contractors Association
Plastics Pipe Institute
Water and Wastewater Equipment Manufacturers Association

For More Information

Zachary Perconti
Legislative and Governmental Affairs Associate
Wyman Associates
10 G Street, NE
Suite 600
Washington, DC 20002
703-677-6049 (mobile)
202-248-5063 (office)
zack@wymanassociates.net

519 W. 9th Street, Hermann, Missouri 65041 (573) 690-2324

May 1, 2020

The Honorable John Barrasso
Chairman
Environment & Public Works Committee
U.S. Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Thomas Carper
Ranking Member
Environment & Public Works Committee
U.S. Senate
456 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso and Ranking Member Carper,

On behalf of the Coalition to Protect the Missouri River (CPMR), I am writing to offer initial comment on the discussion draft of America's Water Infrastructure Act (AWIA) 2020.

CPMR, established in 2001, is made up of 30 members in six states and supports the responsible management of Missouri River resources, as well as the maintenance and enhancement of congressionally authorized purposes of the river, including flood control, navigation and water supply. We also support science-based habitat restoration for endangered or threatened species, provided that management actions are responsibly conducted and properly balanced with our members' interests.

To begin, CPMR is appreciative of your commitment to a two-year cycle to address priority issues affecting our nation's waterways. While we have not extensively reviewed all provisions of the discussion draft, our initial comments are focused on two important provisions to our members:

Section 1001, Upper and Lower Missouri River Comprehensive Flood Control Studies

As you know, the Missouri River Basin has begun the long process of recovery from the record-setting 2019 flood. There is a vast recognition among those who live and work along, or directly on the Missouri River that we must better protect ourselves against future floods. However, we are concerned about the language contained in this section. CPMR believes this is a duplicative, unnecessary and overly complex approach to flood recovery

The most effective and best way to protect our citizens, farms and businesses against future flooding on the Missouri River is to limit the scope of future studies to the lower Missouri River from Gavins Point Dam to the confluence in St. Louis, Missouri. Since the passage of the 1944

Pick-Sloan Missouri River Basin Program, this portion of the river has experienced the vast majority of flooding.

Further, if this legislation continues to include both the upper and lower river, it could set the stage for future Missouri River Master Water Control Manual disputes, which in the past have proven to be elongated, expensive and divisive to the Basin. We urge the Committee's consideration of an actionable plan to implement lower Missouri River flood control improvements, such as the language in S. 3403 offered by Senator Blunt and cosponsored by all senators representing the lower Missouri River Basin.

Section 1100, Missouri River

CPMR advocated for inclusion of this language which addresses the impacts of Interception Rearing Complexes (IRC) for endangered pallid sturgeon. Today, our members are facing negative impacts to their livelihoods from legacy ESA structures constructed by USACE to aid pallid sturgeon propagation.

While IRC construction is a current leading hypothesis for pallid sturgeon recovery, negative impacts from legacy ESA construction projects such as shallow water habitat chutes and notches, which are former leading hypotheses, remain. We are appreciative of the direction given to USACE to repair legacy structures that are causing bank erosion and impacting flood control, as well as those diverting an unnecessary amount of water from the Missouri River channel, proving problematic for navigation. Additionally, this language provides important oversight by Congress in the form of a biannual report to ensure IRC are achieving their intended benefit for pallid sturgeon recovery and are not adversely impacting flood control, navigation and other authorized purposes.

Thank you for your support of our Missouri River Basin priorities. Please do not hesitate to contact me if you have any questions, or if I can be of further assistance.

Respectfully,

Dan Engemann
Executive Director
Coalition to Protect the Missouri River
519 W. 9th Street
Hermann, Missouri 65041
Danengemann05@gmail.com
(573) 690-2324

COASTAL STATES ORGANIZATION

50 F Street NW, Suite 570, Washington, D.C. 20001
Tel: (202) 800-0580 - www.coastalstates.org

May 1, 2020

The Honorable John Barrasso
Chairman
Committee on Environment and Public Works
United States Senate
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Tom Carper
Ranking Member
Committee on Environment and Public Works
United States Senate
456 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper,

On behalf of the Coastal States Organization (CSO) delegates representing the nation's coastal States, Territories, and Commonwealths on coastal resource and management issues, I am writing to thank you for your leadership in supporting national investments in the nation's water infrastructure and resources through the America's Water Infrastructure Act of 2020.

CSO supports ensuring beach-compatible dredged materials are beneficially used; timely and efficient permitting of beach and inlet management projects, while upholding all environmental standards; predictable funding of coastal flood risk and storm damage reduction projects; and improvements to coastal data acquisition, research, modeling, and mapping capabilities to better prepare coastal communities for future conditions. To these ends, CSO has the following feedback regarding the America's Water Infrastructure Act of 2020 Discussion Draft.

CSO supports the regional management of sediment and the beneficial use of dredge material. We are pleased with the inclusion of the following Sections, with no modifications, which will help to advance these efforts:

- Section 1012. Thin layer placement pilot program.
- Section 1019. Sediment management plan.
- Section 1080. Disposal of dredged materials.
- Section 1095. Selection of dredged material disposal method for certain purposes.

CSO supports the following Sections, with no modifications, which will support the efforts of the State, Territory, and Commonwealth Coastal Zone Management Programs:

- Section 1003. Additional studies under North Atlantic Coast Comprehensive Study.
- Section 1017. Continuing authority programs.
    - Specifically, the amendments to Section 14 of the Flood Control Act of 1946, Section 111 of the River and Harbor Act of 1968, Section 205 of the Flood Control Act of 1948, and Section 1135 of the Water Resources Development Act of 1986.
- Section 1035. Chesapeake Bay environmental restoration and protection program.
- Section 1093. Harmful algal blooms demonstration program.

- Section 1098. Small flood control projects.
- Section 2001. Clean water infrastructure resiliency and sustainability program.
- Section 3003. Mapping and screening tool.

We support Section 1002 Great Lakes comprehensive flood protection study. However, we recommend that this study should assess the impacts of shoreline armoring, which can disrupt the natural deposit and withdrawal cycle of shorelines and lead to additional shoreline erosion. To ensure that this issue is addressed, we recommend adding a ninth criterion to Section 1002(b) to read: "(9) The impacts of shoreline armoring on long-term shoreline resiliency."

We support Section 1079 Coastal mapping but would recommend considering adding language so this Section may also address extreme chronic erosion, such as is currently occurring in the Great Lakes and in some of the Pacific Island Territories.

We strongly support the inclusion of language addressing small and disadvantaged communities throughout the bill and in particular we are pleased to see Sections 1083 and 2017 included in the bill. However, we are concerned that there are inconsistent definitions of these terms throughout the bill which ultimately could result in confusion and creating unnecessary barriers for disadvantaged communities in navigating what they are and are not eligible for. Specifically, USACE Sections 1017 and 1053, while both referring to the Section 1083 definition of economically distressed, ultimately define small and disadvantaged differently. Further, U.S. EPA Sections 2004, 2017, and 2018 either do not define, or require the EPA Administrator to define, what small and disadvantaged means. It is our recommendation that the definitions be consistent, at least within each agency. We further recommend that population should be use to define "small" but not to define "disadvantaged" as there are non-small disadvantaged communities.

Finally, we note that Section 1015 touches on benefit-cost ratio (BCR) calculation for Section 204(f) of the Water Resources Development Act of 1986. We would like to see modifications to the BCR for all water infrastructure projects proposed for authorization, including flood risk reduction projects, to require USACE to determine and publish the full range of benefits including, but not limited to, economic value derived from tourism and recreation, ecological improvements, and social benefits.

We ask for your consideration of these points as you markup the America's Water Infrastructure Act of 2020. For any questions, please contact Rachel Keylon, CSO Federal Affairs Director, at (202) 800-0747 or rkeylon@coastalstates.org.

Sincerely,

Bradley Watson

Bradley Watson
Executive Director

The Coastal States Organization (CSO) supports:

- Ensuring beach-compatible dredged materials are beneficially used;
- Timely and efficient permitting of beach and inlet management projects, while upholding all environmental standards;
- Predictable funding of coastal flood risk and storm damage reduction projects;
- Responsible beachfront building setbacks, redevelopment standards, and construction practices, including relocation programs; and
- Improvements to coastal data acquisition, research, modeling and mapping capabilities to better prepare coastal communities for future conditions.

To these ends, CSO has the following feedback in regards to the 2020 WRDA Discussion Draft.

National Infrastructure

- Support Sec. 1002. Great Lakes comprehensive flood protection study.
    - Recommend adding a ninth criterion to Section 1002(b) to read:
        - "(9) The impacts of shoreline armoring on long-term shoreline resiliency."
- Support Sec. 1003. Additional studies under North Atlantic Coast Comprehensive Study.
- Support Sec. 1012. Thin layer placement pilot program.
- Support Sec. 1019. Sediment management plan.
- Support Sec. 1017. Continuing authority programs.
    - For content as outlined under "CAP" notes below.
- Support Sec. 1035. Chesapeake Bay environmental restoration and protection program.
- Support Sec. 1080. Disposal of dredged materials.
- Support Sec. 1095. Selection of dredged material disposal method for certain purposes.
- Support Sec. 1098. Small flood control projects.

Other Support

- Support Sec. 1079. Coastal mapping.
    - Recommend considering addition of extreme chronic erosion, such as is currently occurring in the Great Lakes and in some of the Pacific Island territories.
- Support Sec. 1083. Corps of Engineers projects in underserved communities, economically distressed areas, or rural areas.
    - See concerns on "disadvantaged" under "Concerns" notes below.
- Support Sec. 1093. Harmful algal blooms demonstration program.
- Support Sec. 2001. Clean water infrastructure resiliency and sustainability program.
- Support Sec. 3003. Mapping and screening tool.
- Support Sec. 2017. Small and disadvantaged community analysis.
    - See concerns on "disadvantaged" under "Concerns" notes below.

Concerns

- Environmental Justice Concern - Inconsistent definitions of "disadvantaged" communities.
    - Throughout the bill there are inconsistent definitions of disadvantaged communities which can result in confusion and could create unnecessary barriers for disadvantaged communities in navigating what they are and are not eligible for.
    - Recommend streamlining to have a consistent definition (may have different definition between USACE and EPA but should be consistent within each).
    - Further recommend that population should be use to define "small" but not to define "disadvantaged" as there are non-small disadvantaged communities.
    - Inconsistent language:
        - 1017 - defined as a city, town, or other incorporated or unincorporated subdivision that provides local government for less than 20,000 **and** is

economically distressed as defined by 1083(a), **or** is at risk of repeat flooding events, **or** has a degraded ecosystem.
  - 1053 - defines small or disadvantaged as a community with population less than 10,000 **or** an economically distressed area as defined by 1083(a) **or** at risk from repeat flooding events.
  - 1083(a) - defines an economically distressed area as one with a per capita income of 80 percent or less of national or an unemployment rate for the previous 24 months that is 1 percent higher than the national rate.
  - 2004 - refers to disadvantaged communities but not defined.
  - 2017 - requires EPA Administrator to conduct a study to determine criteria for disadvantaged communities analysis.
  - 2018 - disadvantaged communities are as determined by the EPA Administrator.

Questions

- Section 1034. Irregular Dredge appears to be an earmark work around, what is this for?

BCR

- Section 1015. Operation and Maintenance adds language making it so the non-federal cost is not included in the benefit-cost ratio for projects under section 204(f) of the Water Resources Development Act of 1986.
  - Non-contentious.
- We would like to see modifications to the BCR for all water infrastructure projects proposed for authorization, including flood risk reduction projects, to require USACE to determine and publish the full range of benefits including, but not limited to, economic value derived from tourism and recreation, ecological improvements, and social benefits.

CAP

Support the following amendments within Section 1017:

- Amendment to Section 14, Flood Control Act of 1946 (as amended).
  - Support Section 1017 amendment to increase appropriations.
- Amendments to Section 111, River and Harbor Act of 1968 (as amended).
  - Support Section 1017 amendment allowing the Secretary to increase the cost limit by 20% without approval by Congress for projects under this section of River and Harbor Act.
  - Support Section 1018 allowance of non-federal entities to use USFWS funds as non-federal share for projects under this section of River and Harbor Act.
- Amendments to Section 205, Flood Control Act of 1948 (as amended).
  - Support Section 1017 amendment to increase appropriations.
  - Support Section 1017 amendment allowing the Secretary to increase the cost limit by 20% without approval by Congress for projects under this section of the Flood Control Act.
- Section 1135, Water Resources Development Act of 1986 (as amended).
  - Support Section 1017 amendment to increase appropriations.
  - Support Section 1017 amendment allowing the Secretary to increase the cost limit by 20% without approval by Congress for projects under this section of the WRDA.

COLUMBIA BASIN
DEVELOPMENT LEAGUE

May 1, 2020

Honorable John Barrasso
Chairman
Energy and Public Works Committee
410 Dirksen Senate Office Building
Washington, DC 20510

Honorable Thomas Carper
Ranking Member
Energy and Public Works Committee
456 Dirksen Senate Office Building
Washington DC, 20510

Dear Chairman Barrasso:

The Columbia Basin Development League supports including a Bureau of Reclamation title in the America's Water Infrastructure Act of 2020 (AWIA).

As Congress discusses legislation to address critical water infrastructure, it is vital that Bureau of Reclamation projects be included to address our nation's most severe hydrological challenges. With your leadership, Congress, saw the importance of including a Bureau Reclamation Title in the 2018 AWIA: passing the Senate 99-1. AWIA 2020 as drafted has several sections that include limited Bureau of Reclamation provisions. We ask that you expand this effort and include a full Bureau of Reclamation title in AWIA 2020.

The Columbia Basin Development League is made up of businesses, civic and economic groups, farmers, and individuals who recognize the value of the Columbia Basin Project and the need for infrastructure investment. We are dedicated to the improvement of and rehabilitation of Columbia Basin Project water supply facilities. We have supported the Columbia Basin Project, which delivers essential water supplies to the northcentral region in Washington state, since 1964.

Decades ago, because of incomplete surface water infrastructure, farmers got permission to drill deep wells to access water for their farms while they waited for Columbia Basin Project completion. But, the aquifer from which they draw their water is rapidly declining and wells are failing, not only for farmers, but for municipalities providing domestic water for their citizens. The State of Washington and local communities have invested nearly $105 million into this federally-owned project. But federal funding is a critical component for a reliable water source for farmers,cities, towns and other purposes. Federal funds would help build the water delivery infrastructure needed to address this economic and environmental crisis and help maintain the region's economic vitality and sustainability.

Farmers need water to ensure an affordable, safe, and reliable food supply. Without reliable water, farmers cannot meet ever-increasing food demands of the American people and the world.

The Voice of the Columbia Basin Project – Invest. Maintain. Support.
P.O. Box 745 | Cashmere, WA 98815 | p. 509.782.9442 | f. 509.782.1203 | www.cbdl.org

COLUMBIA BASIN
DEVELOPMENT LEAGUE

The League supports legislation to address water infrastructure needs of our nation and supports funding for Bureau of Reclamation water infrastructure. Please contact us if you have questions or would like additional information.

Sincerely,

Mark Stedman, Board Chair

Vicky Scharlau, Executive Director

Conctact:
Sara Higgins
Assistant Director
509.782.9442
203 Mission Avenue, Suite 107
PO Box 745, Cashmere, WA 98815
sara@cbdl.org

P.O. Box 388
Coos Bay, OR 97420
www.cooswatershed.org
(541) 888-5922
cooswa@cooswatershed.org

Board of Directors

Randy Smith, President
Oregon Department of Forestry

Bree Yednock, Ph.D, Vice President
South Slough National Estuarine Research Reserve

Elise Hamner, Treasurer
SW Oregon Community College

Jennifer Wirsing, P.E., Secretary
City of Coos Bay Public Works and Development

Jason Richardson, P.E., Past-President
Weyerhaeuser Company

Mike Dunning
OR International Port of Coos Bay

Marty Giles
Waterest Discoveries

Joan Mahaffy
Agriculture

Jeff Messerle
Messerle & Sons

Joe Metzler
Cape Arago Audubon Society

Kristopher Murphy
Coquille Indian Tribe

Allen Solomon, Ph.D.
Member at Large

Greg Stone
Small Woodland Owners

John Sweet
County Commissioner

Carter Thomas
Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians

Don Yost
Member at Large

Executive Director

Haley Lutz

April 30th, 2020

The Honorable John Barrasso
Chairman
US Senate Committee on
Environment and Public Works
Washington, DC

The Honorable Thomas Carper
Ranking Member
US Senate Committee on
Environment and Public Works
Washington, DC

Sent to: John Kane and Andrew Harding

CC: Logan Hollers, Ben Ward, Bobby Ahren, Malcom McGeary, Liam Vlaming, Coos Watershed Association Board of Directors

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of the Coos Watershed Association (Association), I write to thank you for your continued leadership on the timely development of Water Resource Development Acts. To that end, the Association supports the inclusion of language in America's Water Infrastructure Act of 2020 to improve the effectiveness and efficiency of the Army Corps of Engineers' Continuing Authorities Program (CAP) Section 206 for Aquatic Ecosystem Restoration.

Specifically, the Association recommends the creation of a small grants program under CAP Section 206 to fund small water infrastructure and aquatic restoration projects implemented by local communities and non-profits (see proposed language attached).

CAP Section 206 provides authority for the Corps to enable projects that restore degraded aquatic or riparian ecosystems for plants, fish and wildlife. The intent of Congress for the Corps' nine CAPs was intended to make the Corps nimbler in implementing projects in the public interest not necessarily tied to a Corps Civil Works project. For the Corps CAP Section 206, this intent has been lost, and the current process to get projects on-the-ground is long, laborious and expensive - leaving most local communities and organizations unable to get smaller, yet critical, aquatic restoration needs addressed.

We propose creating a complementary small grants program under CAP 206 that would help make local communities more resilient, provide significant benefits to aquatic species and their habitats, and support

economic recovery across the country. The Corps would administer the program, targeted at aquatic restoration projects costing less than $3 million that can be completed in 1-2 years. Project feasibility, design and implementation would be under the purview of the project sponsor.

Currently, the Corps undertakes the project feasibility study, project design and implementation for all Section 206 projects. Typically, this means that Section 206 projects have become large, expensive, multi-year projects. Current CAP 206 projects require several years to complete a feasibility study, and several more years to initiate and complete project implementation, costing many millions, and often requiring several annual appropriations and very significant fiscal contributions from the non-federal sponsor. Thus, very few projects are completed or initiated in any one year, and sponsors with limited resources are excluded by default.

We respectfully ask your consideration of amending the Corps CAP 206 to include a program that enables local communities to address critical water infrastructure needs while improving aquatic habitats, makes communities more resilient through natural infrastructure, and supports rural economies. Please contact us if you have any questions on our recommendation.

Sincerely,

Haley Lutz

Haley Lutz

Executive Director
hlutz@cooswatershed.org
503-888-5922 x302

Water Resources Development Act 2020
Corps CAP Section 206 "New Tools" Amendment

Proposed Amendment: ***New Tools for Army Corps Success***

This Memorandum proposes statutory language to add to the Army Corps of Engineers' Continuing Authorities Program (CAP) Section 206 for Aquatic Ecosystem Restoration, 33 U.S.C. § 2330, a new grants program modeled after the Bureau of Reclamation's WaterSMART program. The addition to CAP Section 206 would provide new tools for the Army Corps to partner with existing eligible entities to carry out the current purposes of CAP Section 206, in order to provide a broader portfolio of projects within the Army Corps demonstrating and implementing natural infrastructure solutions.

Rationale for ***New Tools***

Congress has directed the Army Corps to increase its investments in natural infrastructure solutions over the past five years in a variety of ways:

- In the Water Resources Reform and Development Act (WRRDA) of 2014, Pub.L. 113-121, §4007, June 10, 2014, 128 Stat. 1315, Congress passed the *Northern Rockies Headwaters* provision to carry out projects for aquatic ecosystem restoration and flood risk reduction to mitigate the impacts of extreme weather events, including floods and droughts, on communities, water users, and fish and wildlife located in the headwaters of the Columbia, Missouri, and Yellowstone rivers.

- In the 2018 WRDA, Pub. L. 115-270, title I, §1149(c), Oct. 23, 2018, 132 Stat. 3787, Congress directed the Army Corps to "consider the use of both traditional and natural infrastructure alternatives, alone or in conjunction with each other, if those alternatives are practicable" in its feasibility reports for a project for flood risk management or hurricane and storm damage risk reduction, *codified at 33 U.S.C. §2282.*

- Also in the 2018 WRDA, Pub. L. 115-270, title I, §§ 1149(a), 1157(f), Oct. 23, 2018, 132 Stat. 3787, 3794, Congress directed the Army Corps to consider "a natural feature or nature-based feature" in carrying out a project to restore and protect an aquatic ecosystem or estuary, *codified at 33 U.S.C. §2330, CAP Section 206.*

What Congress has not done, however, is provide the Army Corps with any new tools to implement this new directive to consider, create, and invest in natural infrastructure or nature- based features. The proposed amendment to CAP Section 206 does just that.

How ***New Tools in CAP Section 206 Would*** **Work**

The new tools in CAP Section 206 would be similar to Reclamation's WaterSMART

program. Ten years ago, Congress passed the SECURE Water Act and created a new grants program called WaterSMART in order to provide the U.S. Bureau of Reclamation with new tools to conserve water and build drought resiliency in the West. Pub. L. 111-11, title IX, § 9504, Mar. 30, 2009, *codified at 42 U.S.C. §10364(a)*. Under WaterSMART's Water and Energy Efficiency Grants (WEEG) program for the past ten years, Reclamation has been able to partner with a variety of eligible applicants with water delivery authority to provide federal cost-share to water and energy conservation projects.

The proposed amendment to CAP Section 206 would similarly provide the Army Corps the authority to carry out the purpose of Section 206 through providing federal cost-share to entities eligible under Section 206. Currently under Section 206, the Army Corps is the project lead, carrying out a pre-project feasibility study and doing the project design and implementation, with the assistance of a non-federal partner. See, e.g., Walla Walla District's Section 206 information sheet. Typically, this means that the Section 206 projects are large, multi-year Army Corps projects that require several years to position undertaking a new feasibility study, and several more years to complete the feasibility study, prior to beginning project implementation.

Under the proposed addition to Section 206, a new grants program modeled on the SECURE Water Act's authority would provide a nimbler way for the Army Corps to undertake Section 206 projects. Under a new grants program modeled on Reclamation's WaterSMART program, the Army Corps would invite small ($2,500,000 or less) project proposals to carry out Section 206's purposes, select 10-20 project proposals for funding annually, and then distribute Army Corps funds to the eligible entities for project implementation. This would allow the Army Corps to develop a portfolio of natural feature and natural infrastructure projects.

Through partnering with non-federal entities currently eligible under Section 206 in this way, the Army Corps will show rapid implementation of a variety of projects at distributed scales and gain valuable experience and expertise in natural infrastructure projects.

Conclusion

Section 206 provides authority for the Army Corps of Engineers to develop projects that restore degraded aquatic or riparian ecosystems for plants, fish and wildlife. Under the proposed addition to Section 206, the Army Corps would also be able to fund aquatic restoration projects, and could prioritize projects that advance natural infrastructure tools to reduce flood risk and that incorporate a natural feature in the repair or replacement of built infrastructure.

Attachment A: Proposed *New Tools* Amendment to CAP Section 206, adding new DRAFT subsection (a)(3).

(a)GENERAL AUTHORITY

(1) IN GENERAL The Secretary may carry out a project to restore and protect an aquatic ecosystem or estuary if the Secretary determines that the project—

(A)

(i)

will improve the quality of the environment and is in the public interest; or

(ii)

will improve the elements and features of an estuary (as defined in section 2902 of this title); and

(B)

is cost-effective.

(2) DAM REMOVAL

A project under this section may include removal of a dam.

(3) AUTHORIZATION OF AQUATIC RESTORATION GRANTS

(A) AUTHORITY OF SECRETARY—The Secretary may provide a grant to an eligible entity to assist the eligible entity in planning, designing, or constructing any project to restore and protect an aquatic ecosystem or estuary—

(i)

to enhance natural water storage;

(ii)

to prevent the decline of species that the Director of the United States Fish and Wildlife Service or the Director of the National Marine Fisheries Service—

(a) has proposed for listing under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); or,

(b) has considered listing as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), but for which no rule has been proposed; or,

(c) has listed as a threatened or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), or to improve the designated critical habitat of such a species; or,

(iii) to otherwise address a priority, limiting factor of aquatic ecosystem health.

(B) ELIGIBLE ENTITY—To be eligible to receive a grant from the Secretary under subsection (A), an entity shall—

(i) notwithstanding section 221 of the Flood Control Act of 1970, 42 U.S.C. § 1962d-5b), be a nonprofit organization, a native American Indian tribe, or a conservation district; and

(ii) if applicable, have the consent of the affected unit of local government.

(C) SUBSTITUTE FOR FEASIBILITY STUDY—Notwithstanding any other provision of law, in lieu of a feasibility study on the grants program created by this section, or applications to it, the Secretary shall:

(i) develop criteria for the administration of the program to award grants to projects proposed by an eligible entity for the purposes of aquatic restoration;

(ii) provide an opportunity for public comment on the criteria developed under subparagraph (i), above; and,

(iii) report to Congress every five years on the projects carried out under this

program.

(D) APPLICATIONS — To be eligible to receive a grant from the Secretary under subsection (A), an eligible entity shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including a proposal of the project to be planned, designed, constructed, or carried out by the eligible entity.

(E) TITLE TO IMPROVEMENTS — If a natural infrastructure improvement to a federally owned facility is the subject of a grant or other agreement entered into between the Secretary and an eligible applicant under paragraph (A), the Federal Government shall continue to hold title to the facility and improvements to the facility.

(F) FEDERAL SHARE —

(i) In General — The Federal share of a project carried out using a grant from the Secretary under subsection (A) shall be not more than 65 percent of the cost of the project.

(ii) Calculation of Non-Federal Share — In calculating the non-Federal share of the cost of a project carried out using a grant from the Secretary under subsection (A), the Secretary shall take into consideration —

(a) the value of any in-kind services that substantially contributes toward the completion of the improvement or project; and
(b) any other amount contributed by any other Federal, tribal, state, local, or private entity.

(G) MAXIMUM AMOUNT — The amount provided to an eligible entity through a single grant under paragraph (A) shall be not more than $3,000,000.

(H) ALLOCATION AMOUNT — The funding disbursements for the grants under subsection shall not be less than half of the authorized annual funding for this section.

(b) COST SHARING

(1) IN GENERAL

Non-Federal interests shall provide 35 percent of the cost of construction of any project carried out under this section, including provision of all lands, easements, rights-of-way, and necessary relocations.

(2) FORM

Before October 1, 2003, the Federal share of the cost of a project under this section may be provided in the form of reimbursements of project costs.

(c) AGREEMENTS

(1) IN GENERAL

Construction of a project under this section shall be initiated only after a non-Federal interest has entered into a binding agreement with the Secretary to pay the non-Federal share of the costs of construction required by this section and to pay 100 percent of any operation, maintenance, and replacement and rehabilitation costs with respect to the project in accordance with regulations prescribed by the Secretary.

(2) NONPROFIT ENTITIES

Notwithstanding section 1962d-5b of title 42, for any project carried out under this section, a non-Federal interest may include a nonprofit entity, with the consent of the affected local government.

(d) COST LIMITATION

Not more than $10,000,000 in Federal funds may be allotted under this section for a project at any single locality.

(e) USE OF NATURAL AND NATURE-BASED FEATURES

In carrying out a project to restore and protect an aquatic ecosystem or estuary under subsection (a), the Secretary shall consider, and may include, with the consent of the non-Federal interest, a natural feature or nature-based feature, as such terms are defined in section 2289a of this title, if the Secretary determines that inclusion of such features is consistent with the requirements of subsection (a).

(f) FUNDING

There is authorized to be appropriated to carry out this section $62,500,000 for each fiscal year.

(Pub. L. 104–303, title II, § 206, Oct. 12, 1996, 110 Stat. 3679; Pub. L. 106–53, title II, § 210, Aug. 17, 1999, 113 Stat. 287; Pub. L. 110–114, title II, § 2020, Nov. 8, 2007, 121 Stat. 1078; Pub. L. 113–121, title I, § 1030(g), June 10, 2014, 128 Stat. 1232; Pub. L. 115–270, title I, §§ 1149(a), 1157(f), Oct. 23, 2018, 132 Stat. 3787, 3794

Contact:

Sara LaBorde
Wild Salmon Center
Executive Vice President
(971)263-3263
slaborde@wildsalmoncenter.org

721 NW 9th Ave, Suite 300
Portland, OR 97209

May 1, 2020

The Honorable John Barrasso
Chairman
Committee on Environment & Public Works
U.S. Senate
Washington, D.C.

The Honorable Thomas R. Carper
Ranking Member
Committee on Environment & Public Works
U.S. Senate
Washington, D.C.

Re: Stakeholder Comments on Draft America's Water Infrastructure Act (AWIA) and the Drinking Water Infrastructure Act (DWIA)

Dear Chairman Barrasso and Ranking Member Carper,

The Council of Infrastructure Financing Authorities (CIFA), whose members are the state agencies that implement the Clean Water and Drinking Water State Revolving Funds (SRFs), the preeminent subsidized water infrastructure funding programs, thanks the members and staff of the Environment and Public Works Committee for their hard work in drafting America's Water Infrastructure Act of 2020 and the Drinking Water Infrastructure Act of 2020. CIFA appreciates the opportunity to provide comments on this important legislation which will directly impact investment in water infrastructure – now and in the future.

The Clean Water and Drinking Water State Revolving Funds are the nation's premier programs for financing water infrastructure that protects public health and the environment.

Congress established and invested in the Clean Water and Drinking Water State Revolving Funds to provide a robust, renewable and perpetual source of funding for water infrastructure that protects public health and the environment. Since their creation, these state-federal partnerships, combined, have generated $179 billion in funding for more than 56,000 water infrastructure projects across America. Today, more than $75 billion in loan repayments continue to fund new projects, which is more than the total federal funding provided over the life of the programs.

SRF subsidized loans transformed financing for water infrastructure – forever.

Established in 1987, the Clean Water SRF replaced a federal grant program for construction of municipal wastewater treatment facilities. The results of transitioning from a federally-run grant program to a state-run subsidized loan program are clear and compelling.

- ✓ SRFs are effective and cost-effective.
  State management of the SRFs ensures federal funding meets the diverse and evolving needs of thousands of communities across the country, from small, rural towns to urban centers. Last year, SRFs funded 2,504 project agreements (1604 for clean water and 898 for drinking water).

- ✓ SRF subsidized loans provide a perpetual source of funding dedicated to water infrastructure.
  Loan repayments to the SRF must be used for water infrastructure in perpetuity, which ensures a significant and secure source of funding that is immune to annual budget pressure. Every dollar provided in loans increases the source of funding for future water infrastructure projects.

- ✓ SRF subsidized loans help utilities keep water and wastewater rates affordable.
  SRFs provide loans with below market interest rates. In 2019, the average interest rate was 1.5% for loans from the Clean Water SRF and 1.6% for loans from the Drinking Water SRF – about half the market interest rate. At these interest rates, every $100 million in SRF loans saves between $17 - $18 million in interest payments over the life of a 20-year loan. Those savings are passed onto the ratepayers in affordable water and wastewater services.

- ✓ SRF subsidized loans protect federal and state investment in water infrastructure.
  SRF subsidized loans require communities to have a financial stake in maintaining water infrastructure that is subsidized by state and federal taxpayers. Requiring "skin-in-the-game" is a proven incentive for asset management.

However, there is growing concern that federal mandates are transforming this successful, sustainable, state-run loan program into a federally-directed grant program that is less effective at meeting the needs of communities.

Until 2009, SRFs had the flexibility to tailor their programs to meet the needs of their communities. Today, federal mandates have requirements for project selection, planning, procurement, wages, construction materials and financing. Federal mandates dictate what materials can be used in construction, how much workers need to be paid for water infrastructure projects, how to procure certain services, and what types of projects get priority for funding. Many of these federal mandates apply to state funds as well.

1987: Congress established the Clean Water SRF to provide loans at or below market interest rates for water infrastructure that protects public health and the environment.

1996: Congress established the Drinking Water SRF to provide infrastructure loans, additional subsidization and technical assistance (set-asides) to help communities meet national standards for safe drinking water. Under the original law, the Drinking Water SRF could use up to 30% of the federal capitalization grant for state-directed additional

subsidization. State-directed additional subsidization is restricted to economically disadvantaged communities that meet affordability criteria.

2010: Congress gave the Clean Water SRF the ability to use portions of the capitalization grant for additional subsidization, with limitations set in annual appropriations bills.

Federal Mandate: Congress began mandating that both SRFs use a specific amount of the capitalization grant for additional subsidization. Unlike state-directed additional subsidization, federally-mandated additional subsidization can be used for any project. Annual appropriations bills defined the federally-mandated additional subsidization, which has been both a flat percentage and a range with both a floor and a ceiling over the years.

Federal Mandate: Congress began mandating that the Clean Water SRF use 10% of their capitalization grant on green infrastructure and energy and water efficiency projects.

Federal Mandate: Congress began mandating that all SRF projects, including those funded with 100% state funds, comply with Davis Bacon, which requires mechanics and construction laborers to be paid the federal prevailing wage. This mandate was made permanent for both programs in 2012.

Federal Mandate: Congress began mandating that all SRF projects, including those funded with 100% state funds, be built using only American-made iron and steel products. This federal mandate was made permanent for the Clean Water SRF in 2014 and is set to expire for the Drinking Water SRF in 2023.

2014: Congress gave SRFs the ability to use up to 30% of their capitalization grant for additional subsidization for communities that meet affordability criteria and for energy efficiency, water efficiency, stormwater management, and sustainable project planning, design, and construction.

Federal Mandate: Congress mandated that all wastewater treatment works, including those funded with 100% state funding, conduct a Cost and Effectiveness Analysis with a certification that processes, materials, techniques and technologies maximize efficient water use, reuse, recapture, water and energy conservation. This requirement applies to large complex projects such as a new wastewater treatment facility as well as minor rehabilitation and replacement projects, such as replacing underground sewer pipes. Previously, SRFs determined which projects required a cost and effectiveness analysis.

Federal Mandate: Congress mandated that all wastewater treatment works, including those funded with 100% state funding, develop and implement a Fiscal Sustainability Plan which includes an inventory of critical assets, an evaluation of the condition and performance of assets, a funding plan to maintain, repair, and replace assets and a

certification that the plan includes water and energy conservation. This requirement also applies to large complex projects such as a new wastewater treatment facility as well as minor rehabilitation and replacement projects, such as replacing underground sewer pipes. SRFs have always encouraged communities to develop comprehensive asset management plans for their water infrastructure.

Federal Mandate: Congress mandated that wastewater projects funded by the annual capitalization grant for the Clean Water SRF must use the federal procurement process for architectural and engineering services. In states that use a similar procurement process, this mandate isn't an issue. However, in other states, complying with multiple procurement processes – federal, state and local – is more challenging. For this reason, some SRFs no longer fund architectural and engineering services with federal funding. Additionally, this requirement may make federal funding of design-build projects more challenging, if not impossible.

2018: Federal Mandate: Congress mandated that the Drinking Water SRF use at least 6% of the capitalization grant for additional subsidization for disadvantaged communities and increased the cap on state-directed additional subsidization to 35%.

2019: Federal Mandate: Congress mandated all funding provided in a new authorization for the Drinking Water SRF to address emerging contaminants, with a focus on perfluoroalkyl and polyfluoroalkyl, be used only for grants.

Comments on Draft Legislation

Funding

Increased federal funding is needed to meet the growing demand for water infrastructure. According to the 2017 Infrastructure Report Card by the ASCE Foundation, $376 billion is needed to meet current and future demand for water and wastewater. Increased federal funding is needed to address a range of challenges, from replacing aging infrastructure, including lead and copper pipes, to addressing public health concerns with emerging contaminants. Because of the program's 20% match requirement, increasing federal funding also increases state funding for water infrastructure.

CIFA supports reauthorization of the Clean Water State Revolving Fund to at least the funding levels in the legislation.

Recommendation for WRDA Section 2015 and Safe Drinking Water Act: Section 1452: Increase the authorization levels for the Clean Water and Drinking Water State Revolving Funds by an additional $50 million by redirecting funding from the proposed discretionary grant programs at the U.S. Environmental Protection Act to the SRFs.

Increasing funding for the SRFs is more effective and economical than establishing new discretionary grant programs for infrastructure at the U.S. Environmental Protection Agency.
SRFs are effective because they fund water infrastructure projects based on state priorities. Creating a federal discretionary grant program within the U.S. Environmental Protection Agency for exactly the same purpose as the SRFs circumvents this proven state prioritization process.

Recommendation for AWIA Section 2016 and DWIA Section 14: Increase the authorization for the SRFs instead of creating new discretionary grant programs for infrastructure at the U.S. Environmental Protection Agency.

Restricting federal funding for the Drinking Water SRF to specific projects, such those that address emerging contaminants, should not reduce funding for state priority projects.
SRFs have a proven process for prioritizing projects for funding. While the additional authorization to address emerging contaminants is greatly appreciated, it must not be offset by reductions in the authorization for other projects or come at the expense of other projects identified by the state as a priority. Additionally, in the event an SRF doesn't receive enough applications to expend the appropriation, the SRF should be able to use the appropriation on any project.

Recommendations for DWIA Section 14: Add language to protect funding for other projects such as:

> "No Impact on Other Federal Funding – No funds shall be made available in a fiscal year to the Administrator for this purpose if –
>
> > (A) the total amount appropriated for fiscal year for State loan funds under section 1452 of the Safe Drinking Water Act is less than either the amount made available for such purpose in fiscal year 2019 or 105 percent of the previous fiscal year's appropriation for such purpose, whichever is greater.
> >
> > (B) the total amount appropriated for fiscal year for water pollution control revolving funds under title VI of the Federal Water Pollution Control Act is less than either the amount made available for such purpose for fiscal year 2018, or 105 percent of the previous fiscal year's appropriation for such purpose, whichever is greater."

Recommendations for DWIA Section 14: Add language to ensure SRFs that don't receive applications for projects to address emerging contaminants can use the funding for other priority projects, such as: "to the extent that there are sufficient applications from eligible recipients."

Additional Subsidization

Additional subsidization should be based on need, not federal mandates.
Additional subsidization is an important tool that SRFs use to fund critical water infrastructure projects that would not otherwise be undertaken. However, additional subsidization permanently reduces funding for future water infrastructure which is equally important.

Since 2009, additional subsidization has removed $8.78 billion from the revolving loan funds – more than SRF federal appropriations for the last three years. Had this funding been provided in loans, repayments would be funding a significant number of additional projects today.

Codifying additional subsidization at 10% of the Clean Water SRF and 20% of the Drinking Water SRF will continue to permanently remove funding for future water infrastructure. Additionally, the federal mandate for the Drinking Water SRF isn't capped. Without a ceiling, 100% of the annual federal capitalization grant can be used for principal forgiveness, grants or negative interest loans – completely eliminating a recurring source of revenue for water infrastructure in the future.

Allowing SRFs to make the decision on how much additional subsidization is necessary, up to a limit, ensures important projects are built today, while maintaining a robust source of funding for water infrastructure for future generations.

Recommendation for DWIA Section 2004: Allow the Clean Water State Revolving Fund to use up to 10% of the capitalization grant for additional subsidization on any projects (AWIA Section 2012) and the Drinking Water State Revolving Fund to use up to 20% of the capitalization grant for additional subsidization on any project.

Additional subsidization will help communities address the threat of emerging contaminants, including perfluoroalkyl and polyfluoroalkyl substances.
SRFs currently fund projects to address emerging contaminants, including perfluoroalkyl and polyfluoroalkyl substances. The additional authorization of $300 million for these projects provides additional resources to address the threat to public health. Because the challenge of emerging contaminants varies across the nation, providing SRFs with the flexibility to use up to 100% of the authorization for additional subsidization will ensure communities receive needed assistance today, while providing the opportunity to create a recurring source of revenue to address threats to public health in the future.

Additionally, requiring grants as the only form of additional subsidization increases the burden of compliance on communities that can least afford it. Principal forgiveness is the same as a grant without the additional federal requirements associated with federally funded projects, such as those funded by the capitalization grant. Like principal forgiveness, grants are often given in combination with a subsidized loan. Of the 102 SRF programs, 91 use principal

forgiveness exclusively and two states – Oklahoma and Washington – actually prohibit the use of grants in their SRFs.

Recommendation for DWIA Section 2004: Allow SRFs to use up to 100% of the funds for all forms of additional subsidization – principal forgiveness, grants and negative interest loans.

Other Issues

Planning is already an eligible use of the Clean Water SRF.
It's not clear how this addition would impact the SRFs, "to any qualified entity, as determined by the Administrator, to provide assistance in the design and engineering of any project described in this subsection."

Small and rural communities will benefit from technical assistance.
Allowing Clean Water SRFs to use 2% of their capitalization grant to fund technical assistance, just like the Drinking Water SRFs, will provide much needed support to small, rural and tribal communities. However, restricting the use of providers to not-for-profit organizations limits the ability of SRFs to meet those needs.

Allowing Clean Water SRFs to determine the best way to provide technical assistance – whether through a not-for-profit organization, private entity, within their state agency or through another state, regional, interstate, or municipal agency – will ensure funding is used for most suitable service provider.

Recommendation for AWIA Section 2012: Remove "for nonprofit organizations (as defined in section 104(w))" or add "private entity, state, regional, interstate, or municipality."

While well-intended public policy, the cumulative impact of increased federal mandates has unintended consequences.
Compliance with federal mandates on SRF subsidized loans increases the cost of water infrastructure projects, which requires communities to borrow additional money for compliance, not construction. Allowing SRFs, states and municipalities to determine planning and procurement requirements will reduce the cost of compliance on SRF loans.

Recommendation for the Clean Water Act Section 1382 and 1383: Repeal federal mandates for a Cost and Effectiveness Analysis, Fiscal Sustainability Plan and the federal procurement process for architectural and engineering services for Clean Water SRF loans.

Conclusion
The Clean Water and Drinking Water State Revolving Funds are a national model for financing infrastructure. Continuing to fund water infrastructure, while maintaining the financial integrity of these programs is important to the future of our nation.

Thank you again for providing the opportunity to comment on this important legislation. Please contact CIFA's Executive Director, Deirdre Finn, at dfinn@cifanet.org or (850) 445-9619.

Sincerely,

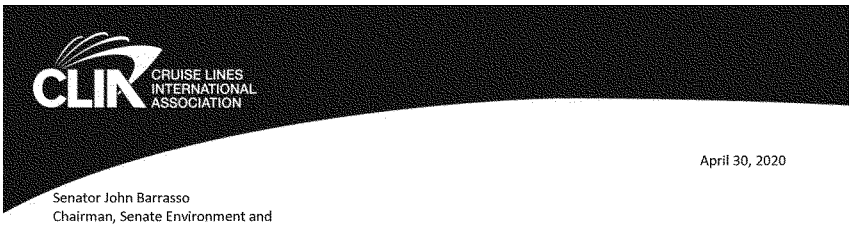
Kim Colson, CIFA President
Director, Division of Water Infrastructure
North Carolina Department of Environmental Quality

About CIFA
CIFA is a national not-for-profit organization that represents state government agencies, including financing authorities and departments of health and environmental protection, that manage the Clean Water and Drinking Water State Revolving Funds.

Executive Director: Deirdre Finn

Board of Directors, Officers:
- Kim Colson, North Carolina Department of Environmental Quality, President
- Jim McGoff, Indiana Financing Authority, Vice President
- Jeff Walker, Texas Water Development Board, Treasurer
- Angela Knecht, Florida Department of Environmental Protection, Secretary
- Jeff Freeman, Minnesota Pubic Facilities Authority, Past President

Board of Directors:
- EPA Region 1: Nate Keenan, Massachusetts Clean Water Trust
- EPA Region 2: David Zimmer, New Jersey Infrastructure Bank
- EPA Region 3: Brion Johnson, PENNVEST
- EPA Region 6: Lori Johnson, Oklahoma Water Resources Board
- EPA Region 5: Jerry Rouch, Ohio Environmental Protection Agency
- EPA Region 7: William Carr, Kansas Department of Health and the Environment
- EPA Region 8: Mike Perkovich, South Dakota Department of Environment & Natural Resources
- EPA Region 9: Lance Reese, California State Water Resources Control Board
- EPA Region 10: Jeff Nejedly, Washington State Department of Ecology
- Financial Community: Anne Burger Entrekin, Hilltop Securities



April 30, 2020

Senator John Barrasso
Chairman, Senate Environment and
Public Works Committee
410 Dirksen Senate Office Building
Washington, DC 20510

Senator Tom Carper
Ranking Member, Senate Environment and Public Works Committee
456 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper:

As the Senate Environment and Public Works Committee continues its work on the reauthorization of the Water Resources Development Act, I write to express the Cruise Lines International Association's (CLIA) support for sections 1201 and 1202 of the America's Water Infrastructure Act of 2020. The provisions within the legislation would provide significant economic, navigational, and safety benefits to the USVI, a critical partner of the cruise industry.

Section 1201 authorizes the U.S. Army Corps of Engineers to conduct project feasibility studies or project modifications, including navigation improvements in Christiansted Harbor, St. Croix, USVI and Charlotte Amalie Harbor, St. Thomas, USVI. Specifically, the Christiansted Harbor Project would improve access to the harbor's berthing areas. The Charlotte Amalie Harbor Project would make needed improvements to the port's navigation systems and address the dredging of materials left in the port's navigation channel in the wake of Hurricanes Irma and Maria. Both projects would provide economic and navigational benefits to the territory. With cruise line passengers accounting for a million visits to the USVI each year, and a $184 million annual economic impact, these projects will play an essential role in strengthening the territory's travel and tourism sector by enhancing the ability of cruise ships to call on both ports.

Section 1202 requires the U.S. Army Corps of Engineers to expedite the completion and review of several critical projects, including the Savan Gut Phase II, flood mitigation project in St. Thomas, USVI. The Savan Gut Phase II project is intended to mitigate the flood risk through St. Thomas's central business district. This central area is an important part of the island's tourism sector and plays a critical role in the island's economy. This project will enhance safety and the economic vibrancy of the area.

Established in 1975, CLIA is the world's largest cruise industry trade association, the leading authority of the global cruise community and provides a unified voice for our member lines. CLIA supports policies and practices that foster a safe, secure, healthy and sustainable cruise ship environment and is dedicated to promoting the cruise travel experience.

Thank you again for your leadership and your commitment to strengthen our nation's infrastructure. CLIA would be happy to be a resource as you further consider this legislation.

Sincerely,

Kelly Craighead

Kelly Craighead, President and CEO
kcraighead@cruising.org | +1-202-759-9296

CONFEDERATED TRIBES OF
COOS, LOWER UMPQUA AND SIUSLAW INDIANS
TRIBAL GOVERNMENT
1245 Fulton Avenue - Coos Bay, OR 97420
Telephone: (541)888-9577 Toll Free 1-888-280-0726 Fax: (541)888-2853

April 30, 2020

The Honorable John Barrasso
Chairman
US Senate Committee on Environment & Public Works
Washington, DC

The Honorable Thomas Carper
Ranking Member
US Senate Committee on Environment & Public Works
Washington, DC

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians (CTCLUSI), I write to thank you for your continued leadership on the timely development of Water Resource Development Acts. To that end, CTCLUSI supports the inclusion of language in America's Water Infrastructure Act of 2020 to improve the effectiveness and efficiency of the Army Corps of Engineers' Continuing Authorities Program (CAP) Section 206 for Aquatic Ecosystem Restoration.

Specifically, CTCLUSI recommends the creation of a small grants program under CAP Section 206 to fund small water infrastructure and aquatic restoration projects implemented by local communities and non-profits.

CAP Section 206 provides authority for the Corps to enable projects that restore degraded aquatic or riparian ecosystems for plants, fish and wildlife. The intent of Congress for the Corps' nine CAPs was intended to make the Corps nimbler in implementing projects in the public interest not necessarily tied to a Corps Civil Works project. For the Corps CAP Section 206, this intent has been lost, and the current process to get projects on-the-ground is long, laborious and expensive - leaving most local communities and organizations unable to get smaller, yet critical, aquatic restoration needs addressed.

We propose creating a complementary small grants program under CAP 206 that would help make local communities more resilient, provide significant benefits to aquatic species and their habitats, and support economic recovery across the country. The Corps would administer the program, targeted at aquatic restoration projects costing less than $3 million that can be completed in 1-2 years. Project feasibility, design and implementation would be under the purview of the project sponsor.

Currently, the Corps undertakes the project feasibility study, project design and implementation for all Section 206 projects. Typically, this means that Section 206 projects have become large, expensive, multi-year projects. Current CAP 206 projects require several years to complete a feasibility study, and several more years to initiate and complete project implementation, costing many millions, and often requiring several annual appropriations and very significant fiscal contributions from the non-federal sponsor. Thus, very few projects are completed or initiated in any one year, and sponsors with limited resources are excluded by default.

We respectfully ask your consideration of amending the Corps CAP 206 to include a program that enables local communities to address critical water infrastructure needs while improving aquatic habitats, makes communities more resilient through natural infrastructure, and supports rural economies.

If you have any questions on our recommendations, please do not hesitate to contact Roselynn Lwenya, PhD, Director of Culture and Natural Resources at rlwenya@ctclusi.org.

Respectively,

Alexis Barry
Chief Executive Officer
Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians

May 1, 2020

The Honorable John Barrasso
Chairman
US Senate Committee on Environment & Public Works
Washington, DC

The Honorable Thomas Carper
Ranking Member
US Senate Committee on Environment & Public Works
Washington, DC

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of Curry Watersheds Partnership (including the Curry Soil and Water Conservation District, and the Lower Rogue and South Coast Watershed Councils), I write to thank you for your continued leadership on the timely development of Water Resource Development Acts. To that end, Curry Watersheds Partnership supports the inclusion of language in America's Water Infrastructure Act of 2020 to improve the effectiveness and efficiency of the Army Corps of Engineers' Continuing Authorities Program (CAP) Section 206 for Aquatic Ecosystem Restoration.

Specifically, Curry Watersheds Partnership recommends the creation of a small grants program under CAP Section 206 to fund small water infrastructure and aquatic restoration projects implemented by local communities and non-profits.

CAP Section 206 provides authority for the Corps to enable projects that restore degraded aquatic or riparian ecosystems for plants, fish and wildlife. The intent of Congress for the Corps' nine CAPs was intended to make the Corps nimbler in implementing projects in the public interest not necessarily tied to a Corps Civil Works project. For the Corps CAP Section 206, this intent has been lost, and the current process to get projects on-the-ground is long, laborious and expensive - leaving most local communities and organizations unable to get smaller, yet critical, aquatic restoration needs addressed.

We propose creating a complementary small grants program under CAP 206 that would help make local communities more resilient, provide significant benefits to aquatic species and their habitats, and support economic recovery across the country. The Corps would administer the program, targeted at aquatic restoration projects costing less than $3 million that can be completed in 1-2 years. Project feasibility, design and implementation would be under the purview of the project sponsor.

Currently, the Corps undertakes the project feasibility study, project design and implementation for all Section 206 projects. Typically, this means that Section 206 projects have become large, expensive, multi-year projects. Current CAP 206 projects require several years to complete a feasibility study, and several more years to initiate and complete project implementation, costing many millions, and often requiring several annual appropriations and very significant fiscal

contributions from the non-federal sponsor. Thus, very few projects are completed or initiated in any one year, and sponsors with limited resources are excluded by default.

We respectfully ask your consideration of amending the Corps CAP 206 to include a program that enables local communities to address critical water infrastructure needs while improving aquatic habitats, makes communities more resilient through natural infrastructure, and supports rural economies. Please contact us if you have any questions on our recommendation.

Sincerely,

Miranda Gray, South Coast Watershed Council Coordinator
Curry Watersheds Partnership
Gold Beach, OR
541-247-2755
www.currywatersheds.org

Delaware River Basin Commission
DELAWARE • NEW JERSEY
PENNSYLVANIA • NEW YORK
UNITED STATES OF AMERICA

Delaware River Basin Commission
25 Cosey Road
PO Box 7360
West Trenton, New Jersey
08628-0360
Phone: (609) 883-9500 Fax: (609) 883-9522
Web Site: http://www.drbc.gov

Steven J. Tambini, P.E.
Executive Director

May 1, 2020

The Honorable John Barrosso
Chairman
U. S. Senate Committee on
Environment and Public Works
Washington D.C. 20515

The Honorable Thomas R. Carper
Ranking Member
U. S. Senate Committee on
Environment and Public Works
Washington D.C. 20515

Dear Chairman Barrosso and Ranking Member Carper:

On behalf of the Delaware River Basin Commission (DRBC or "Commission"), I submit these comments in support of America's Water Infrastructure Act of 2020, TITLE I—WATER RESOURCES DEVELOPMENT, Sec.1025.Susquehanna, Delaware, and Potomac River Basin Commissions.

As you are aware, this section amends section 5019 of WRDA 2007 (121 Stat. 1201; 128 Stat. 1307) to reauthorize the Susquehanna, Delaware, and Potomac River Basin Commissions and transfer them under the purview of the U.S. Environmental Protection Agency (EPA) for the purposes of funding.

The Delaware River Basin Commission (DRBC), the Susquehanna River Basin Commission (SRBC) and the Interstate Commission on the Potomac River Basin (ICPRB) Commissions (RBCs)were each formed independently, created by separate Acts of Congress and concurrent compact legislation, signed into law from which regional bodies were created, with the force of law to oversee a unified approach managing their respective river basin without regard to political boundaries. The Congressionally approved compacts set forth obligations for support and funding from the individual compact states and the federal government.

Until FY97, included regularly under Title IV (Independent Agencies) of the Energy and Water Development Appropriations legislation enacted each year, this appropriation was administered by the United States Department of Interior. Since moving the administration of the appropriation to the Secretary of the Army through the United State Army Corps of Engineers (USACE), with the exception of one congressionally directed appropriation in FY2009, legally mandated funding has not been provided to the RBCs since 1996.

In 2007, Congress attempted to rectify this funding deficit. The Water Resources and Development Act (WRDA) 2007 authorized the Secretary of the Army to allocate funds to the Mid-Atlantic River Basin Commissions. WRDA 2014 once again authorized the allocation however, as previously stated, funding was not allocated or appropriated.

Although the USACE Civil Works mission areas includes water resource development and management, the funding options have not supported operations funding for the Commissions as directed by Congress. Once again, the proposed FY2021 the USCACE Civil Works budget published in February 2020 does not have an allocation for the RBCs despite congressional direction in WRDA 2007 and WRDA 2014.

DRBC supports the proposed amendment as we believe it is a path forward to meet federal funding obligations to these river basin commissions that provide water resources for over 23 million Americans. On behalf of the Delaware River Basin Commission, I would like to express appreciation to Chairman Barrasso and Ranking Member Carper for their support of the Delaware, Susquehanna and Potomac River Basins.

Thank you.

Sincerely,

Steven J. Tambini,
Executive Director
Delaware River Basin Commission
steve.tambini@drbc.gov
(609) 477-7200

DIGDEEP

DIGDEEP HQ
Ph +1 424 285 0773
info@digdeep.org

Box 26779
Los Angeles, CA
90026

May 1, 2020

The Honorable John Barrasso
Chairman; Environment and Public Works Committee
United States Senate
Washington, DC 20510

The Honorable Tom Carper
Ranking Member
Environment and Public Works Committee
United States Senate
Washington, DC 20510

DIGDEEP DEFENDS YOUR HUMAN RIGHT TO WATER.

Dear Chairman Barrasso and Ranking Member Carper:

Thank you for the opportunity to provide comments on the discussion drafts titled "America's Water Infrastructure Act of 2020" (AWIA) and the "Drinking Water Infrastructure Act of 2020" (DWIA).

My name is George McGraw. I am the Founder and Chief Executive Officer of DigDeep. DigDeep is the only nonprofit organization focused on water, sanitation, and hygiene (WASH) access for the more than two million Americans living without taps or toilets at home. Since 2013, our Navajo Water Project—which uses decentralized technology—has brought running water and sanitation to hundreds of families on the Navajo Nation, where more than 70,000 people live without basic access as a result of prolonged drought, groundwater contamination, and lack of infrastructure. DigDeep received the 2018 US Water Prize for that work. In 2019, DigDeep released Closing the Water Access Gap in the United States: A National Action Plan. This was the first national study on the domestic water and sanitation access crisis.

We commend you for drafting legislation that highlights the plight of numerous marginalized, rural, tribal and low-income communities without access to water. Our research shows that:

- At least 2.2 million Americans have no regular access to running water or flush toilets.
- Black and Latinx Americans are twice as likely to live in households without running water than whites.
- Native Americans are 19-times more likely to live without water than whites.
- 44 million Americans are served by water systems that have had a recent health-based Safe Drinking Water Act violation.
- Water access in six states and Puerto Rico is actually going backwards.

See http://closethewatergap.org/wp-content/uploads/2020/03/Dig-Deep_Closing-the-Water-Access-Gap-in-the-United-States_DIGITAL_compressed.pdf.

This problem is not isolated to a few communities living off the grid: there are people experiencing hardships from a lack of WASH access in all 50 states. Even in normal times, this represents a public health crisis, and in the midst of the COVID-19 pandemic, the situation is more urgent than ever. In the face of this virus, communities without access to water cannot wash their hands and are forced to break social distancing rules to haul water.

A lack of flexible, targeted federal funding is one of the key barriers to solving these problems once and for all. As discussed below, especially for poorer communities that are facing the most acute lack of access to safe running water and sanitation, federal funding that could support the work of nonprofits would make an enormous difference. New technology (and the creative application of legacy technologies) is making it possible to build decentralized systems that, once installed, are affordable to operate and maintain. Decentralized systems have the potential to provide WASH access in thousands of communities without it.

This draft legislation is sorely needed. I would like to particularly draw attention to section 2010 of the draft AWIA, which would provide grants for construction, refurbishing, and servicing of individual household wastewater systems for individuals with low or moderate income. As written, this funding would be distributed to a nonprofit that could then make subgrants to qualifying individuals. This approach represents a step in the right direction away from the current funding framework. The traditional centralized approach, in DigDeep's experience, tends not to work well for serving some of the poorest and more rural communities. As discussed below, however, while section 2010 is a good start, this provision is too narrow, as drafted, to benefit the communities and households facing the greatest need around the country. Furthermore, this section should be expanded to allow funding for individual or small-scale drinking water systems, or similar language added to accomplish this goal in the DWIA.

As noted above, the current funding framework favors centralized infrastructure, but our research and experience demonstrate that the Federal Government desperately needs to expand options for service delivery and management beyond municipal utilities. Small-scale wastewater systems that serve a cluster of homes are a promising option for areas where individual septic systems are not viable. Communities can create an on-site management entity to maintain household septic systems or test private wells. We are currently partnered on such a project in Lowdnes County, Alabama. In other places, community-run collectives might deliver treated water from central wells to household cisterns, similar to our work on the Navajo Water Project. Strategies like rainwater harvesting, water reuse, greywater systems, community water kiosks, fecal sludge management, biodigesters, microgrids, or remote monitoring can be effective in extreme environments and are easier to adapt to population or climatic shifts. These approaches often have reasonable maintenance fees after an up-front investment.

DigDeep would be pleased to work with the Committee to develop legislative language to serve marginalized communities even better. A broader approach to funding that does not require subgrants to individuals in all cases and is not limited in its geographic reach, and one that focuses

on both drinking water and wastewater, would empower nonprofits with expertise on WASH issues to work with communities and clusters of households facing the greatest need around the country.

Our preliminary suggestions on how this language could be amended are aimed to allow greater flexibility, to prioritize households without access to utility lines, to increase the amount of funding available, and to expand the grant program apply to decentralized drinking water systems. We would be happy to provide further input to the Committee or to assist with further amendments to this language. If the Committee plans to call witnesses to investigate the impacts lack of water and sanitation access are having on American families, we would gladly help identify citizens to provide their testimony.

We believe that these bills, if enacted, could make an enormous and very positive impact on millions of Americans now facing limited or insufficient access to WASH infrastructure, especially with edits along the lines we suggest below. Thank you for your consideration.

Suggested Amendments to Section 2010 of draft AWIA shown in redline below:

SEC. 225. GRANTS FOR CONSTRUCTION, REFURBISHING, AND SERVICING OF INDIVIDUAL HOUSEHOLD DECENTRALIZED WASTEWATER SYSTEMS FOR INDIVIDUALS WITH LOW OR MODERATE INCOME.
(a) DEFINITION OF ELIGIBLE INDIVIDUAL.—In this section, the term 'eligible individual' means a member of a household, the members of which have a combined income (for the most recent 12-month period for which information is available) equal to not more than 50 percent of the median nonmetropolitan household income for the State or territory in which the household is located, according to the most recent decennial census.
(b) GRANT PROGRAM.—
(1) IN GENERAL.—The Administrator shall establish a program under which the Administrator shall provide grants to private nonprofit organizations for the purpose of providing subgrants to eligible individuals in accordance with subsection (c) or for development of community wastewater or drinking water systems, in accordance with subsection (d).
(2) APPLICATION.—To be eligible to receive a grant under this subsection, a private nonprofit organization shall submit to the Administrator an application at such time, in such manner, and containing such information as the Administrator determines to be appropriate.
(3) PRIORITY.—In awarding grants under this subsection, the Administrator shall give priority to applicants that have substantial expertise and experience in promoting the safe and effective use of decentralized wastewater or drinking water systems.
(4) ADMINISTRATIVE EXPENSES.—A private nonprofit organization may use amounts provided under this subsection to pay the administrative expenses associated with the provision of subgrants under subsection (c), as the Administrator determines to be appropriate.

(c) SUBGRANTS.—
(1) IN GENERAL.—Subject to paragraph (2), a private nonprofit organization may use a grant provided under subsection (b) to provide subgrants to eligible individuals for the construction, refurbishing, and servicing of individual household decentralized wastewater systems.
(2) PUBLIC UTILITY CONNECTION AVAILABLE.—

(A) IN GENERAL.—In any case in which an eligible individual who submits to a private nonprofit organization an application for a subgrant under this subsection resides in a household that could be connected to an available public wastewater utility, the private nonprofit organization may either reject the application or conduct a cost analysis to determine whether establishing such a connection would be a more cost-effective use of subgrant funds, as compared to the eligible uses described in paragraph (1).
(B) USE OF FUNDS.—If a cost analysis under subparagraph (A) demonstrates that the connection of the applicable household to a public wastewater utility is more cost-effective than the eligible uses described in paragraph (1) with respect to the household, the eligible individual may use a subgrant provided under this subsection to establish the connection.
(3) APPLICATION.—To be eligible to receive a subgrant under this subsection, an eligible individual shall submit to the private nonprofit organization serving the area in which the individual household decentralized wastewater system of the eligible individuals is, or is proposed to be, located an application at such time, in such manner, and containing
such information as the private nonprofit organization determines to be appropriate.
(4) PRIORITY.—In awarding subgrants under this subsection, a private nonprofit organization shall give priority to any eligible individual who does not have access to a sanitary sewage disposal system.
(5) MAXIMUM AMOUNT.—The amount of a subgrant to an individual provided under this subsection shall not exceed $20,000.
(d) COMMUNITY WASTEWATER OR DRINKING WATER SYSTEMS.—
(1) IN GENERAL.—Subject to paragraph (2), a private nonprofit organization may use a grant provided under subsection (b) to construct, refurbish, or service decentralized drinking water or decentralized wastewater systems to serve individuals or small communities of 100 individuals or fewer.
(2) OPERATION, MAINTENANCE, AND REPLACEMENT.—One of the criteria considered in awarding a grant to a nonprofit organization for purposes of carrying out this subsection is the extent to which the nonprofit organization can demonstrate that water infrastructure to be constructed or rehabilitated with the grant will be operated, maintained, and replaced by the individuals or communities who will use the infrastructure, which can be shown through studies showing ability to pay or through the creation of on-site maintenance entities or user associations with the ability to collect fees for providing ongoing operation, maintenance, and replacement.
(3) PRIORITY.—In awarding grants under this subsection, the Administrator shall give priority to proposals for individuals or communities lacking to a sanitary sewage disposal system or safe drinking water system.

(e) REPORT.—Not later than 2 years after the date of enactment of this section, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report describing the results of the program under this section with respect to the prevalence throughout the United States of low- and moderate-income households without access to a sanitary sewage disposal system.
(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator to carry out this section $50,000,000 for each of fiscal years 2021 and 2022.'

My contact information is as follows:

Name: George McGraw
Mailing Address: 3308 Descanso Dr. Los Angeles, CA 90026
Email Address: george@digdeep.org
Phone Number: +1 715 904 0216

Thank you for your consideration of these comments, and I wish the Committee the best of luck in your work on these important pieces of legislation.

Sincerely,

George McGraw

May 1, 2020

Senator John Barrasso
Chairman,
Environment & Public Works Committee
410 Dirksen Senate Office Building
Washington, DC 20510

Senator Tom Carper
Ranking Member,
Environment & Public Works Committee
456 Dirksen Senate Office Building
Washington, DC 20510

Re: Comments on America's Water Infrastructure Act – Inclusion of Green Infrastructure

Dear Chairman Barrasso and Ranking Member Carper,

As a global leader on wetlands and riparian habitat restoration, Ducks Unlimited (DU) has worked closely with municipal wastewater treatment utilities to realize the water quality benefits of Green Infrastructure. Through partnerships with Publicly Owned Treatment Works (POTWs) and farmers, DU has coordinated "upstream projects" to utilize Green Infrastructure as an extremely cost-effective measure to reduce nitrogen and phosphorous loadings in impaired watershed across the nation. Beyond providing enormous savings to those charged with removing nitrogen and phosphorous from our nation's lakes streams and estuaries, Green Infrastructure – wetlands and habitat restoration – has also proven to be an effective tool for significantly reducing downstream flooding, providing critical habitat for fish, wildlife and waterfowl and capturing greenhouse gases.

DU has worked successfully with the bipartisan leadership of the House Transportation and Infrastructure Committee to have 15% of future Clean Water Act State Revolving Funds dedicated to Green Infrastructure. On October 31, 2019 the House Transportation and Infrastructure Committee unanimously approved the $16.6 B Water Quality Protection and Job Creation Act (HR 1497). The Green Infrastructure "set-aside" advocated by DU and included in this measure was praised by both Republican and Democratic Members of the Committee during the Full Committee Markup of HR 1497.

Ducks Unlimited requests that Sec. 2015 of the America's Water Infrastructure Act be amended to include a set aside for Green Infrastructure consistent with the measure approved by the House Transportation and Infrastructure Committee. Adoption of Green Infrastructure delivers critical water quality improvements, flood protection and wildlife habitat creation in a proven, cost-effective manner. Green Infrastructure provides significant benefits to both urban and rural America.

The Ducks Unlimited Team looks forward to working with you to ensure that the benefits of Green Infrastructure are fully realized. Please contact Dan Wrinn, Director of Federal Affairs to discuss the merits of Green Infrastructure and how DU can assist in building broad bipartisan support for America's Water Infrastructure Act.

Dan Wrinn, National Director of Government Affairs
Ducks Unlimited, Inc.
444 North Capitol Street, NW
Suite 745
Washington, DC 20001
Dwrinn@ducks.org
703-963-0130

2305 West Superior Street
Duluth, Minnesota 55806-1931 U.S.A.
218-727-8525 ■ Fax 218-727-6888
E-Mail: admin@duluthport.com ■ www.duluthport.com

Friday May 1, 2020

Environment and Public Works Committee
United States Senate

RE: America's Water Infrastructure Act of 2020

Dear Chairman Barrasso and Ranking Member Carper,

As the Senate Environment and Public Works (EPW) Committee considers the America's Water Infrastructure Act (AWIA) of 2020, I urge you to include Harbor Maintenance Trust Fund (HMTF) reform language. The reform language would (1) provide permanent authorization of the Donor and Energy Transfer Ports program, including expanded funding and authorized uses; (2) provide funding assurances for emerging harbors, those ports processing less than 1 million tons of freight per year; and (3) provide funding assurances for the Great Lakes ports.

This legislation provides broad national benefits and will specifically benefit Minnesota as there are 20 Federal navigation projects in the state and 18 of these are emerging harbors. These ports are extremely important to the state and regional economy. The proposed legislation will provide that at least 12% of annual HMTF revenues, almost $230 million based on the FY21 HMTF revenue estimate, go to emerging harbors channel maintenance. Additionally the HMTF legislative proposal would provide at least 12% of annual revenues to ports in the Great Lakes region – the heart of the supply chain for (first-pour) steelmaking in the US.

I urge the EPW Committee to include the HMTF reform language in the AWIA.

If you have any questions regarding this letter please contact me at:

Deborah DeLuca, Executive Director
Duluth Seaway Port Authority
2301 W Superior Street
Duluth, MN 55806
ddeluca@duluthport.com
218-727-8525

Sincerely,

Deborah B. DeLuca

Deborah B. DeLuca
Executive Director

Contact information:
Andrea Danny Folds
afolds@earthjustice.org
1001 G St NW Suite 1000
Washington, D.C. 20001
202.797.5249

Honorable John Barrasso
Chairman, Environment and Public Works Committee
United States Senate
Washington, D.C. 20510

Honorable Thomas R. Carper
Ranking Member, Environment and Public Works Committee
United States Senate
Washington, D.C. 20510

April 29th, 2020

Re: "*An Information-Gathering Process on Draft Legislation entitled, America's Water Infrastructure Act of 2020 and The Drinking Water Infrastructure Act of 2020: Stakeholder Comments*"

Dear Chairman Barrasso and Ranking Member Carper,

Thank you for the opportunity to provide input on America's Water Infrastructure Act of 2020 and the Drinking Water Infrastructure Act of 2020. Elements of this draft legislation could substantially improve and strengthen our nation's inadequate and underfunded water infrastructure. We also appreciate your attention to feedback from all impacted stakeholders, and we respectfully submit the comments below on select provisions of the two draft bills. We applaud the committee for seeking to authorize increased funding for the communities most afflicted by lack of adequate drinking water, wastewater, and surface water infrastructure, and we suggest revisions to certain provisions that could reduce risk, improve equity, and ensure transparency of projects authorized under these bills. We appreciate your time and consideration, and we welcome the opportunity to discuss further any of the suggestions provided.

America's Water Infrastructure Act of 2020

Sec. 1101: Earthjustice has serious concerns about the risk that arbitrary timelines pose by prioritizing speed over other concerns, thereby potentially failing to account for the variability of feasibility studies and the respective analyses they require.

Sec. 1102: Earthjustice opposes increased reliance on categorical exclusions, as such reliance often comes at the expense of public input and thorough environmental review by circumventing the traditionally required impact analysis.

Sec. 1080: Earthjustice urges the committee to strike this section to prevent alteration to existing requirements to avoid and minimize loss to wetlands, and to effectively mitigate adverse impacts where loss cannot be avoided.

Sec. 2015: Increasing the funding for the Clean Water State Revolving Fund program is an important step in improving water infrastructure across the country. We also encourage the committee to include language ensuring that at least 20 percent of funding is distributed to disadvantaged communities as additional subsidies (grants), rather than as loans.

Sec. 2001: Earthjustice applauds the inclusion of Resiliency and Sustainability funding for improving publicly owned treatment works (POTW) defenses from natural hazards, and suggests including language to provide for cost-share waivers for communities meeting the statutory criteria of a disadvantaged community.

Sec. 2002, 2003, 2004: We support the increase in funding levels for technical assistance on wastewater infrastructure in small, rural, and tribal communities, as well as the creation of an EPA program to provide grants to small and disadvantaged community POTWs.

Sec. 2010: Earthjustice supports the inclusion of decentralized wastewater system improvement grants through nonprofits, as inadequate wastewater sanitation infrastructure in the Mid-Atlantic, rural Southeast, and Appalachia is a human rights crisis. We suggest that the committee consider using the term "qualified nonprofit" rather than simply "nonprofit," as used in Senator Booker and Senator Capito's Decentralized Wastewater Grant Act, to ensure the funding is distributed and used in the most efficient way possible. We also suggest that the committee adjust language from prioritizing "households without access to a sanitary sewage disposal system" to those without "access to *functional* sanitary sewage disposal system," so as to not leave out households and communities with systems that are functionally unproductive and even potentially harmful.

Sec. 2011: Earthjustice supports grants from the EPA to POTWs and nonprofits to assist individuals in covering wastewater system connection costs.

Sec. 2016: Earthjustice supports a wastewater infrastructure discretionary grant program that prioritizes systems needing compliance assistance, and prioritizes projects in need of grants to complete financing packages. We suggest including a prioritization factor that gives preference to lower income communities, as well.

Sec. 3001: Earthjustice applauds increased tribal partnership program funding.

Sec. 3006-3009: Earthjustice applauds increased funding for ecosystem restoration in crucial regional bodies.

Drinking Water Infrastructure Act of 2020

Sec. 3: Earthjustice thanks the committee for reauthorizing the important Emergency Fund for Lead program, but suggests that the committee increase funding well above the level of $35

million. That has been the authorized funding level since 2002, and we are now more acutely aware of both the number of communities experiencing lead emergencies and the dire impacts of lead in drinking water.

Sec. 4: Earthjustice supports the committee's implementation of a grant program to address cleanup at sites with PFAS-contaminated groundwater. We thank the committee for increasing funding from $100 million to $300 million, as the Department of Defense has estimated a cost of at least $2 billion to clean up PFAS contamination at military installations alone.

Sec. 6: Earthjustice thanks the committee for including expanded assistance for small and disadvantaged communities with both lowered and waivable cost-share provisions. Such provisions help ensure that communities of color and native communities are not left behind as these infrastructure programs are implemented.

Sec. 7: Earthjustice supports programs providing funding for lead mapping and grants to implement full lead service line replacement, but cautions the committee against creating programs without considering potential disparate impacts in lead service replacement. Wealthier communities may be more likely to have mapped service lines than less wealthy communities, and thus may be more likely to take advantage of funding from this pilot program than low-income communities and communities of color. Any lead-mapping or mitigation programs should factor in rigorous environmental justice analyses accounting for possible disparate impacts.

Sec. 10: Earthjustice supports a water affordability study and the utilization of resulting recommendations to increase access to these services and cover the associated costs.

Sec 12: Earthjustice supports doubling the tribal drinking water program funding and encourages the committee to include language explicitly providing funding for the provision of potable water to tribal communities lacking access to water.

Sec 13: Earthjustice supports emerging technology grants for small public water systems serving disadvantaged communities and applauds the committee for including waivable cost shares, as cost share provisions can often cause more vulnerable communities to be left behind in the implementation of grant programs.

Sec 14: Earthjustice supports the committee's continued work to execute the strongest PFAS regulatory language. We encourage the committee to include language adding all PFAS chemicals to the Toxics Pollutant List under the Clean Water Act. We also strongly support designating all PFAS chemicals as hazardous substances under the Clean Water Act.

Additionally, we appreciate the committee's decision not to include provisions from S. 1932, the Drought Resiliency and Water Supply Infrastructure Act, in WRDA legislation. The harmful potential of S. 1932 and the importance of facilitating productive WRDA deliberations necessitate that it not be included. As explained in our attached letter, S. 1932 is contradictory to

the interests of the American people in multiple ways: the bill would authorize harmful water storage projects that could contravene state law, damage protected fish populations and fishing industries, destroy sacred cultural sites of the Winnemem Wintu Tribe, and burden taxpayers with the cost of financing private profits. Fishing and conservation groups jointly oppose S. 1932 for the latter reasons, and likewise oppose its attachment to critical legislation like the AWIA and the DWIA.

Forced passage of the WIIN Act in the 2016 WRDA process unjustifiably ransomed the health of entire communities; including the WIIN Act rider ultimately amounted to demanding authority to harm endangered species, fishermen, and tribes, in exchange for providing urgently needed resources to communities facing health emergencies. This year, Senator Feinstein is again seeking to use this must-pass vehicle to extend some of the most problematic provisions of the WIIN Act and to authorize additional problematic actions under S. 1932. We urge the committee to reject any such attempts and to ensure that the WRDA process remains squarely focused on how best to meet America's water infrastructure needs, rather than allowing the process to be co-opted by special interests.

Thank you again for considering Earthjustice's comments on this draft legislation. We appreciate the hard work of the committee to develop legislation that meets the needs of all impacted stakeholders and that invests in a secure water infrastructure for present and future generations. We are happy to provide any additional information or clarification on the comments above. Please let us know how we can support this process moving forward.

Respectfully,

Andrea "Danny" Folds

Associate Legislative Counsel | Lands, Wildlife & Oceans
Earthjustice
1001 G St NW Suite 1000
Washington, DC 20001
202.797.5249 | 404.354.6902
Earthjustice.org
Because the earth needs a good lawyer

April 2020

Please Oppose the "Compromise" Version of S. 1932
(Drought Resiliency & Water Supply Infrastructure Act)

Dear Senator,

We are writing to express our continued opposition to S. 1932 by Senator Gardner and Senator Feinstein. We are aware of proposed revisions to S. 1932 that are being framed as a "compromise" approach; unfortunately, these proposed revisions not only fail to address the significant concerns we flagged regarding S. 1932 as originally introduced, but they also raise new concerns. We therefore urge you to oppose this damaging water legislation that could harm salmon runs and other wildlife, and leave states ill-prepared for the challenges of the 21st century.

As discussed in our prior correspondence (see attached), S. 1932 authorizes large and disproportionate taxpayer spending for dams and other water storage projects without adequate environmental safeguards. The funding could be available for destructive projects like the proposed raising of Shasta Dam in California, which would violate state law and destroy Native America sacred sites, harm endangered salmon runs, and impact salmon fishing communities in California, Oregon, and Washington. The proposed revisions to S. 1932 would significantly **increase** authorized spending on environmentally damaging water storage projects, rather than provide parity in funding between storage and more sustainable water supply projects. Equally important, the proposed revisions still lack common sense safeguards like requiring that dams and other water storage projects provide net ecosystem benefits, creating a substantial risk of funding projects that will cause additional environmental harm.

In addition, while the proposed revisions to S. 1932 would require some dams and water storage projects to be authorized by the Senate Committee on Energy and Natural Resources and House Committee on Natural Resources, the revised bill still allows many dams and storage projects to completely bypass these authorizing committees, reducing Congressional oversight of spending and increasing the risk of cost overruns and delays without corrective action being taken, and with the American taxpayer on the hook. The proposed revisions to S. 1932 also seek to extend WIIN Act provisions to provide taxpayer subsidies to allow water districts to convert to permanent water supply contracts at a discount.

Finally, as with S. 1932, the proposed revisions provide taxpayer subsidies for private benefits of water storage projects, in contravention of the well-founded tenet that the beneficiaries should pay, and authorize taxpayer subsidies to pay for compliance with existing environmental mitigation obligations. Rather than providing funding for new measures to restore habitat and improve conditions for fish and wildlife in excess of existing mitigation and compliance obligations, the proposed revisions to S. 1932 would simply make federal taxpayers pay for the costs associated with mitigating the environmental harm caused by water projects, as private entities reap the benefits of those projects. Taxpayers should not be responsible for financing private gains.

For all of these reasons, we continue to urge you to oppose this damaging water legislation.

Anti-Environmental Provisions of S. 1932 (Gardner/Feinstein): Drought Resiliency and Water Supply Infrastructure Act

As a coalition of fishing industry members and environmental advocates, we appreciate the importance of addressing water supply needs nationwide, and especially in the West. However, we cannot support water supply policies that lack strong scientific foundations and environmental safeguards, and that unfairly burden taxpayers for private benefit.

1. **Failing to require that dams and authorized projects comply with federal and state law**

S. 1932 does not require that federal dams and other water projects comply with state law. It includes a savings clause stating the bill does not preempt state law, yet fails to explicitly require that water projects comply with state law. Because of this omission, the bill could allow federal funding for the illegal raising of Shasta Dam, which would violate California law. Section 3 and Section 7 of S. 1932 should be amended to explicitly require compliance with state and federal law.

2. **Disproportionately allocating funding for costly and inefficient water storage projects, with zero funding for increased water use efficiency and conservation**

S. 1932 fails to provide parity in funding for a broad range of water supply solutions. Instead, it prioritizes funding for dams and water storage projects, with far less funding for water recycling, and no funding for water use efficiency and conservation, which is one of the most cost-effective and environmentally sustainable ways of meeting water demands.

3. **Failing to require that dams and other water supply projects achieve a net environmental benefit, despite legacy of harmful impacts from water storage projects**

S. 1932 ignores the harmful legacy of water storage projects and would allow authorization of additional environmentally damaging projects by neither requiring projects to achieve a net environmental benefit, nor prioritizing projects that do so.

4. **Forcing taxpayers to subsidize the private benefits of water projects**

Multiple sections of S. 1932 provide taxpayer subsidies for private benefits of water storage projects, in contravention of the well-founded "user pays" principle. Section 3 authorizes taxpayer subsidies for project costs beyond those that are non-reimbursable, and section 7 authorizes taxpayer subsidies

to pay for compliance with existing environmental mitigation obligations. Rather than providing funding for new measures to restore habitat and improve conditions for fish and wildlife, the bill would simply make federal taxpayers pay for the costs associated with mitigating the environmental harm caused by water projects that benefit private parties. Taxpayers should not be responsible for financing private gains.

Ecological Restoration Business Association
8270 Greensboro Drive, Suite 700
Tysons, Virginia 22102
P: 703-584-8375 · www.ecologicalrestoration.org

April 29, 2020

The Honorable John Barrasso
Chairman
US Senate Committee on Environment & Public Works
Washington, DC

The Honorable Thomas Carper
Ranking Member
US Senate Committee on Environment & Public Works
Washington, DC

RE: **WRDA 2020 Recommendation for Better Contracting & Delivery of Corps' Civil Works Mitigation**

Dear Chairman Barrasso and Ranking Member Carper:

The Ecological Restoration Business Association (ERBA) represents the nation's leading ecological restoration and mitigation providers. Our member companies have projects that support infrastructure in over half the states across the country and they work with public entities and developers daily to provide environmental, resiliency and permitting solutions. The broader ecological restoration sector creates 225,000 jobs (and growing) and has a total economic impact of $24.5 billion. Because our members are experts in the process of ecological restoration and generate offsets in advance of impacts, they help expedite permitting, while reducing temporal loss of ecological services and taking on the mitigation-based liabilities of development projects. ERBA's mission is to support legislation and regulatory policies that promote investment in environmental results to enable responsible economic growth.

ERBA thanks you for your leadership to address the country's critical water infrastructure needs through the introduction of America's Water Infrastructure Act of 2020 (AWIA 2020); ERBA appreciates the opportunity to provide comments on this legislation. As the Committee deliberates ways to address our country's water infrastructure needs, we urge you to ensure that the authorizations for investments in water infrastructure also increase the resiliency and sustainability of our natural systems. ERBA urges you to prioritize multi-benefit projects and natural infrastructure solutions that protect our communities and makes them more resilient, while stimulating economic growth and job creation.

In support of these critical needs, ERBA recommends AWIA include language to improve the effectiveness and efficiency of the Army Corps of Engineers' mitigation for Civil Works projects. Specifically, ERBA recommends including in AWIA a Corps pilot program to test pay for performance or outcome-based contracting to address the Corps mitigation requirements for Civil Works projects, utilizing the knowledge and experience of private sector mitigation providers (see proposed language attached).

Army Corps of Engineers (Corps) Civil Works projects often impact jurisdictional waters and require mitigation offsets under the Clean Water Act. There is a backlog of mitigation pending completion to offset resource impacts that already occurred as a result of Corps Civil Works projects. According to

Corps data[1], since 2015 the agency has completed an average of 58% of its required annual mitigation, which means about 42% of Civil Works impacts occur without timely mitigation. Addressing this mitigation backlog would provide multiple public benefits including reduction of temporal loss of ecological services and cost savings in project delivery.

Performance-based contracting transfers the burden of risk for mitigation from the government agency to the private sector. In doing so, ecological outcomes have a very high likelihood of success since the private sector is not paid for its mitigation efforts until all parties agree that the previously determined ecological outcome was achieved.

Traditional contracting processes (wherein an agency issues a request for proposal to fulfill a design-build) may require the agencies to pay for all or part of unsuccessful projects, often leaving agencies caught in the middle on conflicts between designer, owner and implementor as to who was at fault for a failed project that did not deliver the desired ecological outcome or level of mitigation. Through performance-based contracting, contracts are structured to only pay for successfully implemented projects. In addition to shifting risk, performance-based contracting offers cost saving benefits to the public. As industry specialists, third party providers are motivated to find the most cost-effective, efficient path to delivery and are in a knowledgeable position to use the latest private sector techniques and scaled operations to achieve ecological goals.

Pay for performance contracting can greatly improve the timeliness and effectiveness of implementing the Corps mitigation responsibilities, while providing significant savings over how the Corps currently implements mitigation projects. We ask the Committee to include the creation of a pilot program in AWIA for using pay for performance contracting to address mitigation for Corps Civil Works projects. Please contact us if we can answer any questions.

Sincerely,

Sara Johnson
Executive Director
Ecological Restoration Business Association

[1] *See* Annual Chief's Reports at https://www.usace.army.mil/Missions/Civil-Works/Project-Planning/Products/MitigationStatus/. Further, we have anecdotal evidence that Corps sponsored mitigation often experiences delays and performance challenges that would be more readily addressed and anticipated by a private sector provider who specializes in the delivery of successful mitigation outcomes.

SEC. xxx. PERFORMANCE BASED CONTRACTING PILOT PROGRAM.

(a) IN GENERAL.—The Secretary shall establish a pilot program utilizing performance based contracts for the mitigation requirements of authorized Army Corps of Engineers Civil Works projects.

(b) PURPOSES.— to evaluate the technical, financial, and resource benefits of allowing a non-Federal mitigation provider to carry out and manage the design and construction of one or more mitigation projects using a performance based contract.

(c) ADMINISTRATION.—In carrying out the pilot program established under subsection (a), the Secretary shall—

(1) identify for inclusion in the program at least 15 Army Corps of Engineers Civil Works projects that have received appropriations for construction;

(2) notify the Committees in writing of each project identified under paragraph (1);

(3) issue a request for proposals to pilot mitigation providers to meet the mitigatation needs of projects identified under paragraph (1) through the use of a performance based contract;

(4) in issuing a request for proposals, the Secretary shall clearly define the desired mitigation outcome to be achieved by the pilot mitigation provider;

(5) when selecting a pilot mitigation provider project pursuant to paragraph (4), the Secretary shall use transparent, publicly available evaluation criteria during the selection process, which criteria shall:

(i) give first preference to pilot mitigation providers that propose mitigation largely delivered in advance of a project's impacts; and then

(ii) preference to pilot mitigation providers that propose mitigation delivered concurrent to a project's impacts; and

(iii) require a sufficiency determination of a pilot mitigation providers proposed financial assurances to ensure a high level of confidence that the proposed mitigation will be successfully completed;

(6) after selecting a pilot mitigation provider, enter into a performance based contract with the pilot mitigation provider under which the pilot provider is provided full project management control for the financing, design, or construction (or any combination thereof) of the project, or a separable element of the project;

(7) following the completion of a mitigation project under paragraph (3), certify that work was completed in accordance with the performance based contract in paragraph (6); and

(8) issue payment in accordance with the performance based contract to the relevant pilot mitigation provider;

(d) DETAILED PROJECT SCHEDULE.—Not later than 180 days after entering into a project partnership agreement under subsection (c)(6), a non-Federal pilot provider, to the maximum extent practicable, shall submit to the Secretary a detailed project schedule for the relevant project, based on estimated funding levels, that specifies deadlines for each milestone with respect to the project.

(e) TECHNICAL ASSISTANCE.—At the request of a pilot mitigation provider participating in the pilot mitigation program established under subsection (a), the Secretary may provide to the pilot mitigation provider, technical assistance with respect to—

(1) a study, engineering activity, or design activity related to a project carried out by the pilot mitigation provider under the program; and

(2) obtaining permits necessary for such a project.

(f) IDENTIFICATION OF IMPEDIMENTS.—

(1) IN GENERAL.—The Secretary shall—

(A) except as provided in paragraph (2), identify any procedural requirements under the authority of the Secretary that impede use of performance based contracts for development and completion of required mitigation elements of authorized Army Corps of Engineers Civil Works projects;

(B) develop and implement, on a project-by-project basis, procedures and approaches that—

(i) address such impediments; and

(ii) protect the public interest and any public investment in water resources development projects that involve performance based contracts in water resources development projects; and

(C) not later than 1 year after the date of enactment of this section, issue rules or guidance to carry out the procedures and approaches developed under subparagraph (B).

(2) RULE OF CONSTRUCTION.—Nothing in this section allows the Secretary to waive any requirement under—

(A) sections 3141 through 3148 and sections 3701 through 3708 of title 40, United States Code;

(B) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(C) section 2283 of title 33, United States Code; or

(C) any other provision of Federal law (including regulations).

(g) NON-FEDERAL FUNDING.—The pilot mitigation provider may finance the non-Federal share of a project carried out under the pilot program established under subsection (a).

(i) COST SHARE.—Nothing in this section affects a cost-sharing requirement under Federal law that is applicable to a project carried out under the pilot program established under subsection (a).

(h) REPORT.—Not later than 3 years after the date of enactment of this Act, the Secretary shall submit to the Committees and make publicly available a report describing the results of the pilot mitigation program established under subsection (a), including any recommendations of the Secretary concerning whether the program or any component of the program should be implemented on a national basis.

(h) NON-FEDERAL PILOT APPLICANT DEFINED.—In this section, the term ''pilot mitigation provider means—

(1) the non-Federal entity that is the performance based contract project provider;

(j) COMMITTEES DEFINED. – In this section, the term "Committees" means –

(1) the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives

(k) PERFORMANCE BASED CONTRACT DEFINED – In this section, the term "performance based contract means –

(1) a procurement mechanism by which the Army Corps of Engineers contracts with a pilot mitigation provider for a specific mitigation outcome requirement, with payment to the pilot mitigation providers linked to delivery of verifable and successful mitigation performance.

Ecosystem Investment Partners

2330 Marinship Way, Suite 120
Sausalito, CA 94965
C: 415.465.4423

May 1, 2020

The Honorable John Barrasso
Chairman
US Senate Committee on Environment & Public Works
Washington, DC

The Honorable Thomas Carper
Ranking Member
US Senate Committee on Environment & Public Works
Washington, DC

Dear Chairman Barrasso and Ranking Member Carper,

On behalf of Ecosystem Investment Partners (EIP), a private investment company that specializes in large scale restoration, I write to provide comments on the Senate Committee on Environment and Public Works' (Committee) recently released draft of America's Water Infrastructure Act (AWIA). EIP has a proven track record of success and has restored over 170 linear miles of streams and 44,000 acres of wetlands. We provide solutions to offset the environmental impacts of infrastructure, including construction and repair of roads, bridges, highways and flood control projects. Our experience working alongside the Army Corps of Engineers (Corps) uniquely positions us to provide feedback on AWIA.

Performance-Based Contracting

First and foremost, EIP supports the addition of language in AWIA directing the Corps use of performance-based contracting to increase transparent engagement of the private sector for Corps mitigation requirements (draft language attached).

Corps Civil Works projects often impact jurisdictional waters and require mitigation offsets under the Clean Water Act. There is a backlog of mitigation pending completion to offset resource impacts that already occurred as a result of Corps Civil Works projects. According to Corps data[1], since 2015 the agency has completed an average of 58% of its required annual mitigation, which means about 42% of Civil Works impacts occur without timely mitigation. Addressing this mitigation backlog would provide multiple public benefits including reduction of temporal loss of ecological services and cost savings in project delivery.

[1] *See* Annual Chief's Reports at https://www.usace.army.mil/Missions/Civil-Works/Project-Planning/Products/Mitigationstatus/. Further, we have anecdotal evidence that Corps sponsored mitigation often experiences delays and performance challenges that would be more readily addressed and anticipated by a private sector provider who specializes in the delivery of successful mitigation outcomes.

Comments on AWIA Provisions
EIP provides comments on the following provisions included in the AWIA draft:

Section 1018, Shore damage prevention or mitigation
EIP supports this provision as it will allow non-federal project sponsors to satisfy all or part of their cost-share for shore damage or mitigation project by using funds from the U.S. Fish and Wildlife Service. When the Corps does its own mitigation, it is often the last project element to receive funding, which creates a lack between the project's environmental impact and the offset of that impact. Accessing additional federal funds for mitigation needs will allow non-federal sponsors of Civil Works projects to reduce the temporal lag of their environmental impacts through the purchase of mitigation credits.

Section 1022, Expediting repairs and recovery from flooding
While EIP is generally supportive of prioritizing and expediting the processing of 408 and 404 permits for completion of repairs of flood control infrastructure damaged in recent floods, we encourage the Committee to clarify that expedited processing should not come at the expense of projects currently in the que for permits.

Section 1074, Delegation of work for Comprehensive Everglades Restoration Plan
In general, EIP supports the delegation of Corps ecosystem restoration funds to states or non-federal sponsors. These entities are often more efficient with project delivery mechanisms, including through the use of performance-based contracting. The state of Florida has begun using performance-based contracts to great success.

Section 1093, Harmful algal blooms demonstration program
EIP supports this provision and encourages the Committee to include language authorizing the Secretary to utilize performance-based contracting to achieve the desired harmful algae bloom reductions. The ecological restoration business is well capitalized and ready to put resources on the ground today to help the Corps meet its ecological goals through innovative approaches to water quality improvement and nutrient reduction. In fact, EIP is currently working in the state of Florida to develop innovative approaches to nutrient reductions.

Section 2015, Reauthorization of the Clean Water State Revolving Fund
EIP is supportive of this provision as the Clean Water State Revolving Fund is one of the main sources of funding for states and municipalities to address water quality challenges. There is a tremendous need for these funds across the country and EIP continues working with these entities to achieve their desired ecological outcomes, often through performance-based contracts.

Section 2016, Wastewater infrastructure discretionary grant program

Discretionary grants should be used to develop innovative solutions to publicly owned treatment works that are required to improve their water quality in order to comply with federal regulation and law. Green infrastructure projects like constructed wetlands can often provide cost-effective alternatives to onsite facilities improvements. EIP is developing projects in multiple states that utilize private investment to meet public water quality goals and help treatment facilities meet compliance requirements, and these projects could move forward more effectively with grant support to public agencies for the use of performance-based contracting.

Sincerely,

Adam Davis
Managing Partner

SEC. xxx. PERFORMANCE BASED CONTRACTING PILOT PROGRAM.

(a) IN GENERAL.—The Secretary shall establish a pilot program utilizing performance based contracts for the mitigation requirements of authorized Army Corps of Engineers Civil Works projects.

(b) PURPOSES.— to evaluate the technical, financial, and resource benefits of allowing a non-Federal mitigation provider to carry out and manage the design and construction of one or more mitigation projects using a performance based contract.

(c) ADMINISTRATION.—In carrying out the pilot program established under subsection (a), the Secretary shall—

(1) identify for inclusion in the program at least 15 Army Corps of Engineers Civil Works projects that have received appropriations for construction;

(2) notify the Committees in writing of each project identified under paragraph (1);

(3) issue a request for proposals to pilot mitigation providers to meet the mitigatation needs of projects identified under paragraph (1) through the use of a performance based contract;

(4) in issuing a request for proposals, the Secretary shall clearly define the desired mitigation outcome to be achieved by the pilot mitigation provider;

(5) when selecting a pilot mitigation provider project pursuant to paragraph (4), the Secretary shall use transparent, publicly available evaluation criteria during the selection process, which criteria shall:

(i) give first preference to pilot mitigation providers that propose mitigation largely delivered in advance of a project's impacts; and then

(ii) preference to pilot mitigation providers that propose mitigation delivered concurrent to a project's impacts; and

(iii) require a sufficiency determination of a pilot mitigation providers proposed financial assurances to ensure a high level of confidence that the proposed mitigation will be successfully completed;

(6) after selecting a pilot mitigation provider, enter into a performance based contract with the pilot mitigation provider under which the pilot provider is provided full project management control for the financing, design, or construction (or any combination thereof) of the project, or a separable element of the project;

(7) following the completion of a mitigation project under paragraph (3), certify that work was completed in accordance with the performance based contract in paragraph (6); and

(8) issue payment in accordance with the performance based contract to the relevant pilot mitigation provider;

(d) DETAILED PROJECT SCHEDULE.—Not later than 180 days after entering into a project partnership agreement under subsection (c)(6), a non-Federal pilot provider, to the maximum extent practicable, shall submit to the Secretary a detailed project schedule for

the relevant project, based on estimated funding levels, that specifies deadlines for each milestone with respect to the project.

(e) TECHNICAL ASSISTANCE.—At the request of a pilot mitigation provider participating in the pilot mitigation program established under subsection (a), the Secretary may provide to the pilot mitigation provider, technical assistance with respect to—

(1) a study, engineering activity, or design activity related to a project carried out by the pilot mitigation provider under the program; and

(2) obtaining permits necessary for such a project.

(f) IDENTIFICATION OF IMPEDIMENTS.—

(1) IN GENERAL.—The Secretary shall—

(A) except as provided in paragraph (2), identify any procedural requirements under the authority of the Secretary that impede use of performance based contracts for development and completion of required mitigation elements of authorized Army Corps of Engineers Civil Works projects;

(B) develop and implement, on a project-by-project basis, procedures and approaches that—

(i) address such impediments; and

(ii) protect the public interest and any public investment in water resources development projects that involve performance based contracts in water resources development projects; and

(C) not later than 1 year after the date of enactment of this section, issue rules or guidance to carry out the procedures and approaches developed under subparagraph (B).

(2) RULE OF CONSTRUCTION.—Nothing in this section allows the Secretary to waive any requirement under—

(A) sections 3141 through 3148 and sections 3701 through 3708 of title 40, United States Code;

(B) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(C) section 2283 of title 33, United States Code; or

(C) any other provision of Federal law (including regulations).

(g) NON-FEDERAL FUNDING.—The pilot mitigation provider may finance the non-Federal share of a project carried out under the pilot program established under subsection (a).

(i) COST SHARE.—Nothing in this section affects a cost-sharing requirement under Federal law that is applicable to a project carried out under the pilot program established under subsection (a).

(h) REPORT.—Not later than 3 years after the date of enactment of this Act, the Secretary shall submit to the Committees and make publicly available a report describing the results of the pilot mitigation program established under subsection (a), including any recommendations of the Secretary concerning whether the program or any component of the program should be implemented on a national basis.

(h) NON-FEDERAL PILOT APPLICANT DEFINED.—In this section, the term ''pilot mitigation provider means—

(1) the non-Federal entity that is the performance based contract project provider;

(j) COMMITTEES DEFINED. – In this section, the term "Committees" means –

(1) the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives

(k) PERFORMANCE BASED CONTRACT DEFINED – In this section, the term "performance based contract means –

(1) a procurement mechanism by which the Army Corps of Engineers contracts with a pilot mitigation provider for a specific mitigation outcome requirement, with payment to the pilot mitigation providers linked to delivery of verifable and successful mitigation performance.

El Dorado County Water Agency

Dane Wadle, *Georgetown Divide PUD* | Kelly Sheehan, *South Tahoe P.U.D.* | Shiva Frentzen, *Board of Supervisors* | Lori Parlin, *Board of Supervisors* | Brian K. Veerkamp, *Board of Supervisors* | Kenneth V. Payne, P.E., *General Manager*

April 28, 2020

The Honorable John Barrasso
Chairman, Senate Committee on
Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Thomas Carper
Ranking Member, Senate Committee on
Environment and Public Works
456 Dirksen Senate Office Building
Washington, D.C.

20510 Dear Chairman Barrasso and Ranking Member Carper:

On behalf of the El Dorado County Water Agency (EDCWA), thank you for the opportunity to provide comments on the *America's Water Infrastructure Act of 2020* (AWIA 2020) discussion draft. EDCWA is a water authority in El Dorado County, California focused on water resources, supply, flood control, and water infrastructure projects – both municipal and irrigation – to a large, mainly rural county in Northern California.

We strongly support including provisions focused on providing funding for upper watershed projects, especially any language prioritizing projects which would provide multiple benefits including flood control, water storage, and ecosystem and water quality benefits. For example, EDCWA is working on the Alder Creek Reservoir project which would provide water supply for municipal and irrigation users as well as important, measurable upstream flood control benefits for the American River watershed. In 2004 Congress authorized the Secretary of Interior to conduct a feasibility study for construction of a water storage project on Alder Creek; we continue working with the Bureau to secure funding for the study and urge the Committee to support the Corps of Engineers participating in this type of effort in a meaningful, coordinated manner.

We appreciate the opportunity to provide these comments to the Committee and are grateful for your consideration. If you have any questions, please contact me by email at bosthree@edcgov.us or by phone at (530) 621-5652; or Ken Payne, EDCWA General Manager, by email at ken.payne@edcgov.us or phone at (916) 425-0734.

Thank you.

Brian K. Veerkamp,
Chairman of the Board

cc: The Honorable Dianne Feinstein
The Honorable Kamala Harris
Kenneth V. Payne, P.E., EDCWA

4330 Golden Center Drive, Suite C Placerville, CA 95667 Office: (530) 621-5392 Fax: (530) 672-6721
edcwa@edcgov.us

April 28, 2020

Senator John Barrasso
Chairman
Committee on Environment and Public Works
U.S. Senate
Washington, D.C. 20510

Senator Tom Carper
Ranking Member
Committee on Environment and Public Works
U.S. Senate
Washington, D.C. 20510

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of our hundreds of thousands of members and supporters across the country, we applaud your efforts to tackle the challenges presented by America's aging clean water and drinking water infrastructure. The draft bills for both America's Water Infrastructure Act of 2020 (AWIA 2020) and the Drinking Water Infrastructure Act of 2020 would take steps forward to fortify and repair our nation's critical systems.

Environment America is supportive of many of the provisions in these bills, and we urge Congress to continue working to ensure these environmentally beneficial provisions become law as soon as possible. We also urge the committee to consider several provisions that are not fully addressed in the current draft bills. Finally, we ask that the committee removes provisions that would damage our environment if enacted as written.

Our positions are as follows:

Clean Water State Revolving Fund

Environment America supports provisions in America's Water Infrastructure Act of 2020 (AWIA 2020) that would significantly increase funding for the Clean Water State Revolving Fund (CWSRF). Sewage overflows and stormwater runoff present significant problems across the country, contributing billions of gallons of pathogen-containing pollution each year that degrade our beaches, rivers and lakes and put the public's health at risk. Last summer, Environment America's *Safe for Swimming* report found that more than half of beach sites tested in 29 coastal and Great Lakes states had levels of fecal bacteria in the water that put swimmers at risk of getting sick in 2018.

Aging infrastructure contributes significantly to sewage overflows and stormwater runoff pollution. In 2012, the EPA estimated that we will need $271 billion over the next twenty years to maintain and repair our wastewater infrastructure to meet current environmental and health standards. That amounts to $13 billion a year.

Environment America and 20 other organizations have urged Congress to increase funding for the CWSRF to $6 billion per year to address this problem. We support the committee's current proposal to increase funding for the CWSRF, and hope that the committee will continue to prioritize these important investments.

Green infrastructure

We would also like to see the committee take steps in AWIA 2020 to prioritize funding for green and natural infrastructure, which can prevent runoff pollution and improve the health of our communities. Low-tech, decentralized techniques such as rain barrels, permeable pavement and rooftop gardens can absorb up to 90 percent of rainfall, reducing the flow of stormwater that causes sewage overflows and sweeps pathogens, oil and grease, and other pollution into local waterways. We recommend that the committee dedicates at least 20 percent of CWSRF funding to green and natural infrastructure projects that prevent water pollution, as proposed in Rep. Debbie Mucarsel-Powell's WISE Act (H.R.2458).

PFAS

Environment America supports provisions in AWIA 2020 that would invest $300 million to clean up emerging contaminants like per- and polyfluoroalkyl substances (PFAS). We hope that the committee will go further by acting to establish binding protections against these toxic chemicals. It is critical that we establish federal safeguards against PFAS under the Clean Water Act, which would limit discharges into our waterways, as well as the Comprehensive Environmental Response, Compensation, and Liability Act (better known as Superfund), which would provide for cleanup and hold polluters financially accountable. Congress should also ensure that the EPA establishes a health-protective standard for the nation's drinking water. Research suggests that for such a drinking water standard to be truly health protective, a "safe" level across all PFAS would be as low as .1 parts per trillion.

Lead

Environment America asks that the committee go significantly further than what is currently in the Drinking Water Infrastructure Act of 2020 to address the problem of lead in drinking water. Nearly 2000 water systems in all 50 states had levels of lead contamination above EPA's action level of 15 parts per billion in a 2016 review of testing data by USA Today. This is just the tip of the iceberg, as many communities have failed to test or to test properly. More importantly, these figures do not include communities with lower concentrations of lead in their water. Health experts tell us that there is no safe level of lead. Medical experts estimate that 24 million children are at risk of losing IQ points due to low levels of lead exposure.

In order to protect our communities and our children from lead in drinking water, we will ultimately need to remove and replace the sources of contamination. We are asking for full replacement of all lead service lines. There are roughly 9.3 million lead service lines still being used, according to EPA's most recent estimate. The total cost of removing these toxic pipes will likely exceed $45 billion; this represents a fraction of the total cost of maintaining and improving the nation's drinking water infrastructure, which the EPA estimates will require $472.6 billion over the next 20 years.

We ask that the committee prioritizes this issue by dramatically increasing investments in the Drinking Water State Revolving Fund (DWSRF) to get the lead out of drinking water. Congress should invest an additional $4.5 billion per year through the DWSRF to remove and replace lead service lines over the course of the next ten years. In addition, Congress should invest $1 billion for schools to get the lead out by replacing faucets and fountains and installing filters.

Areas of concern

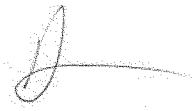
Environment America opposes several policies in the current draft legislation. We respectfully request that the committee removes the following provisions from AWIA 2020:

- **Sharing of categorical exclusions** — Categorical exclusions weaken the environmental review process, which is crucial to ensuring that projects do not harm our environment. The environmental review process is also a critical time for the public to provide input, which is fundamental to transparency and democratic participation.
- **Goal for the Army Corps to complete feasibility studies within two years** — Feasibility studies should be completed properly and in full, without the undue burden of arbitrary and unnecessary deadlines.
- **Codification of the 2016 Memorandum of Understanding between the Army Corps of Engineers and the Commission on Non-Federal Hydropower Projects** — As noted above, any weakening of the environmental review process to expedite hydropower projects endangers our environment.

We would also oppose any further changes that would weaken environmental review processes under the National Environmental Policy Act, pollution safeguards under the Clean Water Act, or any other critical environmental protections enshrined in our bedrock environmental laws.

Environment America truly appreciates the opportunity to participate in the stakeholder process. We hope our comments prove useful to the committee as you move toward finalizing a legislative package. Please do not hesitate to reach out to Katie Murtha by email at kmurtha@environmentamerica.org, by phone at (703) 598-2153, or by mail at 600 Pennsylvania Ave SE, Suite 400, Washington, DC 20003 if we can be of further assistance.

Sincerely,



Wendy Wendlandt
Acting President
Environment America

Katie J. Murtha
Vice President, Federal Government Affairs
Environment America

April 28, 2020

The Honorable John Barrasso
Chairman
Committee on Environment & Public Works
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Thomas Carper
Ranking Member
Committee on Environment & Public Works
United States Senate
456 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso and Ranking Member Carper,

On behalf of our over 2.5 million members and supporters, Environmental Defense Fund (EDF) appreciates the opportunity to provide comments on the America's Water Infrastructure Act of 2020. EDF is a leading international, non-partisan, nonprofit organization dedicated to protecting human health and the environment by effectively applying science, economics, law, and innovative private-sector partnerships. EDF supports the Senate's effort to pass a bipartisan bill focused on water resource conservation, river and harbor improvements, and water pollution control.

With this in mind, we support the following provisions:

1. **Sec. 1002.** We support the proposed Great Lakes Comprehensive Flood Protection Study, which is important to understand and address shoreline protection and resilience in areas affected by widespread flooding in 2019.

2. **Sec. 1072.** We appreciate the inclusion of annual briefings to Congress and public reports by the Corps on the South Atlantic Coastal Study, which will help ensure transparency for stakeholders and the public.

3. **Sec. 1073.** We appreciate the authorization of $50 million in appropriations to complete any outstanding reports from previous bills and amendments in those acts. Among other reports, this funding could be put to good use to complete the study authorized in Sec. 1103 of the America's Water Infrastructure Act of 2018 to review the economic principles and methods used by the Corps to formulate, evaluate, and budget for water resources development projects. The results of this study are critical to understand how to accurately account for all costs and benefits associated with Corps projects and improve the accuracy of project cost projections. In the past, actual project

costs have often been significantly higher than the projected costs used to determine a project's benefit-cost ratio (BCR), which distorts the BCR used to make decisions regarding whether to fund the project and its priority for funding. The current BCR process used by the Corps also underestimates the benefits of natural infrastructure solutions and does not take into account the costs associated with lost ecosystem services from the construction of traditional infrastructure projects.

4. **Sec. 1083.** We strongly support changing the process for calculating project benefits for small, rural, and economically disadvantaged communities. This change will help increase access to flood risk reduction planning in underserved communities. Federal benefit-cost ratios are often a barrier to socially vulnerable communities accessing Corps programs to study and implement projects to reduce storm and flood risks. With these changes, the Senate can help to ensure that the most at-risk communities have the resources needed to evaluate flood risk reduction measures. This includes environmentally beneficial natural infrastructure projects that can enhance flood resilience and improve water quality and ecosystem function.

5. **Sec. 1091.** We support the authorization of the East Rockaway Inlet to Rockaway Inlet and Jamaica Bay Reformulation. Specifically, this authorization is critical to quickly implement the natural and nature-based features in the plan to provide community and ecological resilience. We also support the inclusion of adaptive management activities in the project costs.

6. **Sec. 1099.** We support this provision that authorizes a $25 million study on the lower Mississippi River. The Mississippi River is one of our nation's most commercially and ecologically important waterways, but it also faces significant threats from climate change and more extreme weather. This study can identify solutions for enhancing the resilience of communities and ecosystems along the lower Mississippi River in both Louisiana and Mississippi that face increasing risks of flooding and provide critical habitats for birds, wildlife, and economically-important fisheries.

7. **Sec. 2001.** We support this provision that creates a Clean Water Infrastructure Resiliency and Sustainability Program that provides funding to enhance the resilience of water infrastructure to climate risks, including sea-level rise, more frequent and intense storms, and greater water scarcity. This program will provide needed resources to deploy natural infrastructure and other approaches that reduce water infrastructure system risk, as well as preserve and protect watersheds that provide important water resources for communities, agriculture, and support important biodiversity.

8. **Sec. 2004.** We support provisions specifically authorizing funding for water and energy efficiency upgrades for small and disadvantaged communities. Those communities often lack the financial resources needed to upgrade water infrastructure systems and could benefit from additional federal support. We appreciate the Committee's commitment to these critical upgrades.

9. **Sec. 2015.** We support the authorization and increased funding of the Clean Water State Revolving Loan Fund (SRF), which provides resources to help states and municipalities maintain and improve wastewater treatment infrastructure that is critical to protecting water quality and public health. We ask the Senate to codify a 20% set-aside of funds for the Green Project Reserve. That program is essential to invest in projects that incorporate green and nature-based infrastructure and encourage states to invest in energy- and water-efficiency upgrades. Investing in such infrastructure protects water quality, enhances wildlife habitat, and creates quality job opportunities for America's workers.

10. **Sec. 2017.** We support this provision that directs EPA to carry out an equity analysis to look at how states have historically dispersed Clean Water and Drinking Water State Revolving Funds (SRF) to small and disadvantaged communities and identify new opportunities to improve the distribution of these funds in a more equitable way to low-income, rural, and indigenous communities. A detailed analysis like this will help inform changes to the framework of the SRF program to lower the cost of infrastructure financing in vulnerable communities and ensure that states provide loans and grants in a more equitable way.

In addition to the provisions that we support, we also would recommend changes to some particular provisions and submit the following suggested revisions to those specific provisions:

1. **We recommend that the Committee include a provision that qualifies natural infrastructure projects for the same cost share as nonstructural projects.** We appreciate the inclusion of natural and nature-based features in Secs. 1001, 1002, 1098, 1099. However, we believe strongly that those provisions do not go far enough and more explicit incentives to promote the use of natural infrastructure solutions are essential to protecting communities. Natural infrastructure not only helps communities reduce their flood risk reduction but also provides substantial co-benefits such as improved fish and wildlife habitat, enhanced recreational opportunities, and improved water quality. We are concerned that the draft bill does not do enough to protect communities by clarifying that natural infrastructure projects should be subject to the same cost-share requirements as nonstructural projects. Such a provision is essential to provide additional protection to communities through incentivizing the use of natural infrastructure solutions across the country.

2. We recommend that the Committee **amend Sec. 1003 to consider all comprehensive sources of coastal flood risk, not just hurricane and storm damage.** We support feasibility studies to continue analyses started in the North Atlantic Coast Comprehensive Study (NACCS). We believe that the scope of the analysis proposed in Sec. 1003 could go further to have greater impact. We urge the Senate to broaden the scope to reflect and account for all comprehensive sources of coastal flood risk – hurricanes and other coastal storms, sea level rise, and downstream flooding from the watershed – and to plan for measures that accurately manage risk and damages for densely populated metropolitan areas within the study area. We also advise that this broader scope be applied to ongoing and future feasibility studies conducted as a result

of the NACCS, including the New York-New Jersey Harbor and Tributaries Study. Such a change is necessary to develop accurate and viable solutions reflective of the landscape and future conditions.

3. We recommend that the Committee **strengthen Sec. 1017 by expanding the waivers in each district to account for need and regional variation.** We support and appreciate the goal to ensure equity and broad access for small and disadvantaged communities across the nation. We are concerned, however, that the Continuing Authority Program cost share waivers for small and disadvantaged communities are limited to three per Corps district each fiscal year. This approach does not reflect the concentration of small and disadvantaged communities in some regions of the United States.

4. We recommend that the Committee **amend Sec. 1053 to include evaluation of alternatives to the temporary structure and to ensure that any permanent project is measured against the pre-emergency baseline.** We believe that it is important to allow small and disadvantaged communities to respond to emergency flood events and understand the challenges they face in doing so. However, we also believe that, when considering whether to make a temporary structure permanent, the Corps should study alternative approaches, including nonstructural solutions such as natural infrastructure and levee setbacks. Such project elements may be able to provide the same or better levels of protection at less cost and with fewer future flood risks to local and downstream communities. Also, it is important that the Corps assess impacts of converting temporary flood control structures to permanent ones with a baseline of pre-emergency conditions. That is essential to guarantee that all environmental impacts of the temporary structure, as well as any future permanent structure, are addressed and mitigated.

Finally, we recommend a few revisions across the policy established within the bill. Those include:

1. **Reject any provisions that would weaken environmental review and permitting requirements**. Comprehensive and transparent review processes that ensure that all stakeholders, including the general public, have the opportunity to evaluate and respond to project proposals are essential to the development and design of projects that meet the needs of communities and the environment. Indeed, provisions such as Sec. 1101 undermine meaningful project reviews by reducing the already short timeline goal for completing complex feasibility studies and environmental reviews. By requiring such rushed completion to meet a mandated time frame, like in Sec. 1101, the Senate will jeopardize achieving comprehensive and lasting solutions by truncating legitimate feasibility-level problem assessment and solution planning.

2. **Require sediment management plans to implement a watershed-level sediment budget for dredging activities.** We support improving the strategic use of clean and appropriately-sourced dredged materials to maximize environmentally-sound

flood and storm damage reduction measures and increase other environmental benefits. Once critical way to accomplish that is to require sediment management plans with all dredging activities.

3. **Require monitoring on all authorized projects to ensure meaningful assessment of project impacts. The draft legislation requires monitoring in some project authorizations and not in others.** We encourage the Senate to require the Corps to develop robust monitoring plans to track and assess impacts of projects during construction and throughout long-term operations and maintenance. Monitoring can help identify whether negative impacts are occurring, provide the opportunity to adjust construction and/or operations to reduce such impacts in real time, and help to institutionalize key learning for implementing future projects. Monitoring could be used to document tangible project benefits to help demonstrate the return on investment in ecosystem restoration, navigation, and flood-risk management projects.

Thank you again for the opportunity to provide input on the draft of the America's Water Infrastructure Act of 2020.

Respectfully submitted,

Mark W. Rupp
Director, State-Federal Policy & Affairs, Ecosystems
Environmental Defense Fund

1875 Connecticut Ave NW, Suite 600
Washington, DC 20009
202-572-3358
mrupp@edf.org

ENVIRONMENTAL LAW & POLICY CENTER
Protecting the Midwest's Environment and Natural Heritage

May 1, 2020

The Honorable John Barrasso
Chairman
Senate Committee on the Environment and Public Works
Washington, DC 20510

The Honorable Thomas Carper
Ranking Member
Senate Committee on the Environment and Public Works
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper:

The Environmental Law & Policy Center appreciates the opportunity to provide stakeholder comments on the draft America's Water Infrastructure Act of 2020 (AWIA). This is an important step in funding and addressing the infrastructure needs in the Great Lakes region and across the nation.

The Environmental Law & Policy Center joined the Healing Our Waters coalition letter providing input on sections of AWI as well as the Drinking Water Infrastructure Act of 2020. We wanted to take this opportunity provide additional specific comments on the provisions below.

America's Water Infrastructure Act of 2020 (AWIA)

Strike Section 1101 (Flexibility for projects: ELPC urges the Senate to strike Section 1101. Congress should prioritize solutions to water solutions nationally and in the Great Lakes region that are environmentally sound and cost effective. This section priorities speed over these essential principles. Reasonable environmental reviews and feasibility studies are essential to ensuring the impacts of projects are considered, including alternatives, as well as ensuring the public had a voice. Setting arbitrary timelines for project reviews undermines the essential environmental review process. We also oppose direction to the Secretary to take shortcuts to meet the new two-year goal. This will create confusion regarding the Corps' ability to utilize existing statutory criteria to extend the timeline for completing particularly complex project studies beyond three years when necessary.

Strike Section 1102 (Development of categorical exclusions): ELPC urges the Senate to strike Section 1102. The National Environmental Policy Act (NEPA) is a bedrock environmental law which has long served its valuable role in protecting the environment as federal dollars are invested in infrastructure projects. Categorical exclusions need to be carefully crafted based on the experience of the particular agency to ensure that only those projects with trivial

35 East Wacker Drive, Suite 1600 • Chicago, Illinois 60601
(312) 673-6500 • www.ELPC.org
Harry Drucker, Chairperson • Howard A. Learner, Executive Director
Chicago, IL • Columbus, OH • Des Moines, IA • Duluth, MN • Grand Rapids, MI • Jamestown, ND
Madison, WI • Minneapolis/St. Paul, MN • Sioux Falls, SD • Washington, D.C.

Printed on recycled paper

environmental impacts are excluded from review under the National Environmental Policy Act and the corresponding public input, evaluation of impacts, and analysis of potentially more effective alternatives. The public interest is not served by a directive to a broad set of federal agencies to adopt civil-works related categorical exclusions to speed up project reviews, including for categories of activities that clearly have significant effects, individually and cumulatively, such as repair and rehabilitation of roads and levees, construction of new roads, and some types of dredging. (33 C.F.R. §230.9). Moreover, the ACOE and other federal agencies already have the statutory authority and CEQ regulatory guidance to craft additional categorical exclusions.

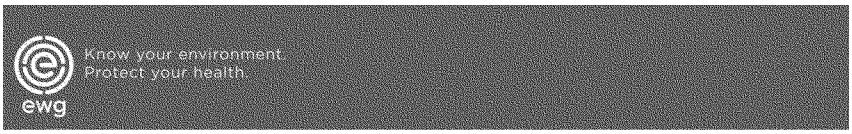
Strengthen Section 1002: Great Lakes comprehensive flood protection study ELPC supports section 1002 directing the Secretary to conduct a comprehensive study on shoreline protection and resiliency in areas of the Great Lakes that were affected by flooding in 2019. The Great Lakes remain at record high levels in 2020 and coastal areas throughout the Great Lakes are experiencing significant damage. ELPC issued a comprehensive report on the climate impacts on the Great Lakes and region noting that the Lakes will see increased fluctuation in water levels from the current highs to low levels. A comprehensive resiliency study for the Great Lakes region is long overdue and should address both high and low levels. A study was authorized in WRDA 2016 but not been funded. These studies should be coordinated to minimize any duplication.

Thank you for the opportunity to provide comments on this important legislation.

Sincerely,

Howard Learner

Howard A. Learner
Executive Director
hlearner@elpc.org
(312) 673-6500



May 1, 2020

The Honorable John Barrasso
Chairman
Environment and Public Works Committee
United States Senate
Washington, DC 20510

The Honorable Tom Carper
Ranking Member
Environment and Public Works Committee
United States Senate
Washington, DC 20510

Submitted electronically via QFR@epw.senate.gov

Addressing PFAS Contamination in the Drinking Water Infrastructure Act of 2020

Dear Chairman Barrasso and Ranking Member Carper:

Thank you for continuing to make cleaning up toxic per- and polyfluoroalkyl substances, or PFAS chemicals, a priority within your Committee. We believe that the Drinking Water Infrastructure Act of 2020 (DWIA 2020) is a critical opportunity to make further progress in tackling the PFAS contamination crisis.

As you know, PFAS chemicals are extremely persistent in the environment and the human body, and many have been linked at very low doses to serious health harms, including cancer, damage to the immune and reproductive system, and thyroid and kidney disease.

EWG estimates that there are at least 1,477 drinking water systems, military installations and industrial facilities in 49 states with known PFAS detections. And as more testing is conducted, that number is likely to grow considerably.

Remediation of PFAS Contamination in Groundwater and Drinking Water
We are glad to see the inclusion of section 4 of DWIA 2020 that expands the grant program within the Drinking Water State Revolving Funds intended to fund the clean-up of PFAS and other emerging contaminants established by last year's National Defense Authorization Act for FY 2020 by allowing for funds to also be used to remediate PFAS contamination in groundwater that is a source of drinking water or may contaminate drinking water.

We are also glad to see the annual funding authorized for these grants increased from $100 million to $300 million. Given the urgency of this public health threat and the economic strain that the coronavirus pandemic will place on states and municipalities, we urge the Committee to consider authorizing additional funds for this critical program so that states have more resources at their disposal to swiftly clean-up PFAS in drinking water supplies.

1436 U Street NW, Suite 100, Washington, DC 20009
p. 202.667.6982 | f. 202.232.2592
ewg.org

Setting Deadlines for a National Primary Drinking Water Standard
We are glad to see that the Committee continues to review PFAS language passed last year and would strongly encourage the Committee to include deadlines for the Environmental Protection Agency (EPA) to finalize a National Primary Drinking Water Standard for PFOA and PFOS and create on-ramps so the agency can create drinking water standards for other PFAS chemicals in the future – as was proposed in the substitute amendment to S. 1507, PFAS Release Disclosure Act, that was reported out of the Committee last year.

We believe that establishing limits for PFAS in drinking water is of paramount importance to protect public health and that any drinking water limit should be protective of vulnerable populations like infants, children and pregnant women.

While EPA has announced its preliminary determination to regulate PFOA and PFOS in drinking water, a congressionally directed timetable would ensure that such a determination is finalized in an expeditious manner and that other PFAS chemicals that are routinely found in drinking water and that pose a threat to public health are included in EPA's future decision making.

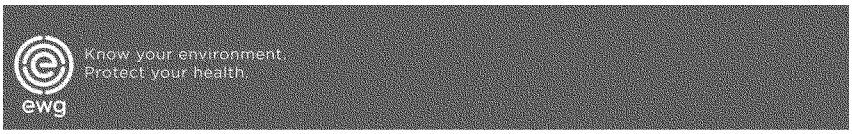
Addressing Industrial Discharges of PFAS into Water
Finally, we strongly encourage the Committee to address ongoing industrial discharges of PFAS by including S. 2980, the Clean Water Standards for PFAS Act, in DWIA 2020.

There are no federal limits on the amount of industrial PFAS waste that can be discharged into water or indirectly discharged through the pipes to a publicly owned treatment works (POTW).

In many communities, industrial discharges of PFAS are the most significant source of PFAS pollution entering drinking water supplies. Because there is no requirement that manufacturers or industrial users of PFAS pretreat their PFAS waste before they send it to a POTW, PFAS is also contaminating municipal biosolids that get applied to farm fields – a nascent risk for farmers and ranchers across the country.

According to recent analysis by EWG, at least 2,5000 industrial facilities could be discharging PFAS to surface waters or POTWs. And while some states like Michigan have taken steps to curb industrial discharges and require pretreatment of PFAS waste, most have not. That means that the burden of upgrading infrastructure to remove PFAS will fall on rate payers or local governments.

Rather than designating PFAS as hazardous substances under 311(b) or as toxic pollutants under Sec. 307(a) of the Clean Water Act, S. 2980 takes a more targeted approach by setting deadlines for the EPA to place limits on certain industrial discharges of PFAS through the establishment of water quality criteria, effluent guidelines, and pretreatment standards.



The new guidelines and standards established under S. 2980 would apply to select priority point source industry categories outlined in the bill. And, these standards would only apply to certain PFAS chemicals – in keeping with legislation this Committee adopted in 2019.

A similar version of this bill was passed with bipartisan support in January by the House of Representatives as a provision in H.R. 535, the PFAS Action Act. We believe that including S. 2980 would be a sensible way for this Committee to begin to tackle industrial discharges of PFAS within DWIA 2020.

Respectfully submitted,

Colin O'Neil
Legislative Director
Environmental Working Group

Contact Information:

Colin O'Neil
1436 U Street
Suite 100
Washington, D.C. 20009
Phone: 202-939-9157
Email: colin@ewg.org

Audubon Florida * Everglades Foundation * National Audubon Society
National Parks Conservation Association * National Wildlife Federation

The Honorable John Barrasso
Chair
Committee on Environment and Public Works
307 Dirksen Senate Office Building
Washington, D.C. 20510

April 28, 2020

The Honorable Tom Carper
Ranking Member
Committee on Environment and Public Works
513 Hart Senate Office Building
Washington, D.C. 20510

Chair Barrasso and Ranking Member Carper:

The undersigned groups who support protection of America's Everglades applaud your commitment to advancing water infrastructure legislation. The Everglades is an ecological treasure and important engine for Florida's economy and the more than 8 million people who live in and around this one of a kind ecosystem.

As progress continues in developing the America's Water Infrastructure Act (AWIA) 2020, we support the following provisions in the discussion draft of the bill that can help ensure that progress toward the world's largest ecosystem restoration program continues, including its goal to capture, clean, and redistribute freshwater to the places where it is needed most.

- **SEC. 1074. DELEGATION OF WORK FOR COMPREHENSIVE EVERGLADES RESTORATION PLAN PROJECTS**

- **SEC. 1093. HARMFUL ALGAL BLOOMS DEMONSTRATION PROGRAM**

- **SEC. 1308. COMPREHENSIVE EVERGLADES RESTORATION PLAN**

- **SEC. 1606. INVASIVE SPECIES ASSESSMENT, PRIORITIZATION, AND MANAGEMENT**

- **SEC. 1202. EXPEDITED COMPLETION**
  - **(30) The project for ecosystem restoration, Canal 111, South Dade, Florida.**
  - **(31) The project for ecosystem restoration, Caloosahatchee River C–43, West Basin Storage Reservoir, Florida.**

We also want to highlight some important issues and concerns related to Section 1202 (28), which lists the project for ecosystem restoration, Lake Okeechobee, Florida among a list of projects where the Secretary shall expedite the completion, review, or validation of the applicable decision document. The current plan for this project does not fulfill the project goals related to water storage and relies heavily on Aquifer Storage and Recovery wells despite guidance from the National Academy of Sciences that "...current uncertainties are too great to justify the large-scale implementation of ASR in the Everglades."[1] Understanding the hydrologic and water quality consequences of injecting large volumes of surface water into an aquifer should be the highest priority for decision-makers before approving its implementation.

While this project was supposed to restore the Lake Okeechobee watershed, in designing the current project, the U.S. Army Corps of Engineers only looked at water storage and wetland restoration options on one-third of the 2.6 million acre watershed, thereby significantly limiting the options for a project design that would garner stakeholder support. This is a central flaw to the project that cannot be overcome in any expedited completion of a decision document. We look forward to working with you to ensure that any project authorized in the Lake Okeechobee watershed is designed to achieve the ecological benefits directed by the Comprehensive Everglades Restoration Plan.

Thank you for the opportunity to weigh in on the discussion draft of the America's Water Infrastructure Act. Provisions in this bill are central to the future of successful Everglades restoration.

Sincerely,

Audubon Florida

Everglades Foundation

National Audubon Society

National Parks Conservation Association

National Wildlife Federation

For questions or concerns, please contact:
Julie Hill-Gabriel, National Audubon Society
1200 18th St, Suite 500
Washington, DC 20036
786-246-2903
Julie.Hill-Gabriel@audubon.org

---

[1] *Review of the Everglades Aquifer Storage and Recovery Regional Study*, National Academy of Sciences, Water Science and Technology Board, 2005.

P.O. Box 216 Klamath Falls, Oregon 97601
www.familyfarmalliance.org

Testimony for the Hearing Record of Patrick O'Toole On behalf of Family Farm Alliance

Submitted to the United States Senate
Committee on Environment and Public Works

Legislative Hearing on "Water Resources Development Act of 2020"
September 18, 2019

Good morning, Chairman Barrasso, Ranking Member Carper and Members of the Committee:

On behalf of the Family Farm Alliance (Alliance), thank you for the opportunity to present this testimony on the 2020 Water Resources Development Act (WRDA). My name is Pat O'Toole, and I have served as President of Board of Directors of the Alliance for over 14 years. As you know, WRDA is a biennial piece of legislation that is the main vehicle for authorizing water projects to be studied, planned and developed by the U.S. Army Corps of Engineers (Corps). It is also the legislative vehicle for implementing policy changes with respect to the Corps' water resource projects and programs. As such, this legislation is very important to the rural communities of the Western United States.

About the Family Farm Alliance

The Alliance is a grassroots organization of family farmers, ranchers, irrigation districts, and allied industries in 16 Western states. The Alliance is focused on one mission: To ensure the availability of reliable, affordable irrigation water supplies to Western farmers and ranchers. We are also committed to the fundamental proposition that Western irrigated agriculture must be preserved and protected for a host of economic, sociological, environmental, and national security reasons – many of which are often overlooked in the context of other national policy decisions.

Personal Background and Experience with Water Development

I have served on the Family Farm Alliance's Board of Directors since 1998 and was named as the organization's President in 2005. I am also a former member of Wyoming's House of Representatives. I presently serve on the Advisory Committee for AGree, a national agricultural

policy group, and work closely with both the Intermountain Waterfowl Joint Venture and Partners for Conservation.

My family has a strong background in irrigated agriculture and our 125-year old ranch (Ladder Ranch) located near Savery, Wyoming produces cattle, sheep and hay. My family and Ladder Ranch were the recipients of the distinguished 2014 Wyoming Leopold Environmental Stewardship Award. Our ranch straddles the Wyoming-Colorado border and has long afforded me the opportunity to view some unique water issues first-hand. I have testified before Congressional committees several times, where, among other things, I have highlighted the permitting challenges I have encountered in building the Little Snake Supplemental Irrigation Supply Project (High Savery Project) in Wyoming. That project was built in less than two years, but it took more than 14 years to permit. That reservoir is now delivering water that benefits multiple uses on the Little Snake River.

Overview

Water challenges in the West are significant and daunting. These challenges are not unique to any one state; rather they impact every state west of the 100th Meridian. Despite wet conditions this winter, the Colorado River Basin has experienced the longest dry spell in recorded history and one of the driest in the past 1,200 years.[1] According to research evaluating tree rings, hydrological conditions in California in the mid-2010s were the worst to hit the region since the 13th century.[2] Drought conditions in the Pacific Northwest over the last half-decade have been severe. Just this year, heavy rains and snowmelt overwhelmed parts of the Platte-Missouri River system. When we do have good water years, there is insufficient storage available to take advantage of mother nature's generosity in the dry years that inevitably follow.

All of these examples underscore the critical importance of having sufficient infrastructure in place to optimize water supplies. The need is obvious, and this belief is shared by many in the West. Earlier this year, the Family Farm Alliance – working with the California Farm Bureau Federation and Western Growers Association – transmitted letters signed by over 100 national and Western agriculture and water organizations, calling upon Members of Congress to develop an infrastructure package that addresses water infrastructure needs for storage and conveyance.

Water is the lifeblood of our nation. Without reliable and affordable water supplies, every sector of our economy would suffer – from agriculture, to manufacturing and high-tech, to local community needs. Food cannot be grown, businesses cannot operate, and homes and schools cannot be built or operate without water. Critical water infrastructure must be maintained and modernized to ensure the delivery of water today and for future generations. As Congress considers

[1] "Lingering Colorado River Drought Could Lead to Water Shortages," John Fialka, E&E News, 6 Sept 2018. Available: https://www.scientificamerican.com/article/lingering-colorado-river-drought-could-lead-to-water-shortages/

[2] Evidence Suggests California's Drought is the Worst in 1,200 Year, Woods Hole Oceanographic Institution, News Release, Dec. 14, 2014 found at http://www.whoi.edu/news-release/California-drought.

an infrastructure package, it is of paramount importance that maintenance, rehabilitation and development of water infrastructure is a high priority.

Many communities in the semi-arid and arid West – as well as the farms and ranches they are intertwined with – owe their existence, in large part, to the certainty provided by water stored and delivered by the U.S. Bureau of Reclamation (Reclamation) and other state and local water storage projects. The Corps also has a presence in the West, although more irrigated acreage is supplied by projects constructed by Reclamation. The Corps provides outdoor recreation opportunities to the public, and provides 24% of U.S. hydropower capacity. Their most visible missions include planning, designing, building, and operating navigation locks and dams; other civil engineering projects include flood control, beach nourishment, and dredging for waterway navigation; design and construction of flood protection systems through various federal mandates; and environmental regulation and ecosystem restoration. Clearly, the federal government plays an enduring role in Western water supply, flood control and waterway navigation infrastructure maintenance, rehabilitation and development. They do so consistent with state water laws, including working with local water interests in support of their efforts to manage water resources.

It is critical that water infrastructure for agricultural water providers is recognized as nationally important and qualified as such in potential infrastructure legislation. Qualifying projects should include water conveyance, surface water storage, aquifer recharge, and other water supply enhancement opportunities. Infrastructure legislation should address aging water infrastructure as well as the development of new infrastructure.

Western water managers face significant regulatory and policy-related challenges. Water infrastructure that was built early in the last century is aging. Meanwhile, less progress has been made at the federal level towards developing new and improved water infrastructure to keep up with the growing water demands of agriculture, expanding cities, energy production, and other needs.

While water conservation, water efficiency, and water transfers can be important tools for addressing certain water supply challenges, these tools are limited and do not yield the quantities of water that storage facilities do. Adequate water supplies for the future require supply enhancement measures – new and expanded water storage projects - that provide long-term solutions across the West.

For farmers to survive and for food to continue to be produced in America, a stable water supply must be available. In many areas of the West, water resources are available, and projects are waiting to be developed. However, the policies of the federal government make development of that water nearly impossible. Water wars are being fought throughout the West simply because we have not had the vision to develop new, dependable sources of water for our collective future.

Given the magnitude of the food security issue to the nation's economic and social wellbeing, policy makers must prioritize protection, enhancement and further development of our water supplies. This economically critical infrastructure is aging and needs improvement.

Such aging infrastructure presents a further challenge because it requires ever increasing maintenance and replacement investments. For example, as of 2013, the replacement value of the U.S. Bureau of Reclamation's infrastructure assets was $94.5 billion. Investing in this infrastructure on the front end will save taxpayers' money in the long run and allow us to preserve it, and the many benefits it provides, for future generations.

We appreciate this opportunity to discuss conceptual ideas for the 2020 WRDA. The following "wish list" assumes that the Senate WRDA under consideration will not necessarily be a Corps-centric bill, but could provide a vehicle to address other national and Western water resources challenges, as well. This has happened past Congresses, with the passage of the Water Infrastructure Improvements for our Nation (or WIIN) Act of 2016 and America's Water Infrastructure Act (AWIA) of 2018. We believe a Western water title of the bill could provide a vehicle for several other water bills currently being considered in Congress. There are other ideas and legislative proposals that could also be included in such a title, as described further below.

Considerations for 2020 Water Resources Development Act: Related Western Water Legislation

As you know, several water bills have been introduced in this Congress that would be appropriate to include in a Western water title of WRDA 2020. These bills are summarized below.

S. 2044 – The Water Supply Infrastructure Rehabilitation and Utilization Act

S. 2044, sponsored by Senator McSally (R-ARIZONA) includes provisions to deal with extraordinary maintenance challenges and is designed to amend the aging infrastructure section of a 2009 law (P.L. 111-11) that was created, in part, to help prevent future disasters of the type that occurred in 2008, when the Truckee Canal failed near Fernley, Nevada. S. 2044 – introduced just before the July Fourth recess - is another bill that gives local operators of federally owned facilities the tools they need to maintain and improve aging water infrastructure in a timely manner. Alliance Advisory Committee Member Wade Noble (ARIZONA) testified on behalf of the Alliance in July before the Senate Energy and Natural Resources Committee in support of this bill. This bill contains two important provisions.

The first provision deals with extraordinary maintenance challenges and is designed to amend the aging infrastructure section of P.L. 111-11, which contains provisions that many Western water interests pushed for following the Truckee Canal failure in 2008. P.L. 111-11 authorizes Reclamation to finance extraordinary maintenance on reserved and transferred works up to 50-years with Treasury rate interest rates – but appropriated funding is needed up front for these

provisions to work. Unfortunately, Reclamation rarely budgets for these non-federal obligations. This bill requires Reclamation to take requests from water users who require federal funding and long-term financing terms to make these improvements possible and to report those requests to Congress for their consideration in the appropriations process.

S. 2044 also includes provisions that create a pilot project for entities who operate Reclamation facilities to request a re-evaluation of their Corps water control manuals. Water managers are faced with greater stresses on available supplies and continue to seek to balance reservoir benefits for water supply, fisheries, and flood protection. The Corps has traditionally operated dams and reservoirs for flood control purposes. In some cases, operation might be constrained by limited on-the-ground water information or existing flood guide rule curves that were developed decades ago, before the advent of modern precipitation forecasting technology. There are opportunities to work with the Corps to demonstrate the feasibility of new technology like Forecast Informed Reservoir Operations (FIRO). Applying FIRO with deviations from past rules could allow for more proactive, rather than reactive, reservoir operations.

S. 1932 – The Drought Resiliency and Water Supply Infrastructure Act

The Alliance in June supported a bipartisan Western drought and water supply bill introduced in the Senate by Senators Dianne Feinstein (D-CALIFORNIA), Cory Gardner (R-COLORADO), Martha McSally and Kyrsten Sinema (D-ARIZONA). The *Drought Resiliency and Water Supply Infrastructure Act* (S. 1932) builds on Senator Feinstein's 2016 California drought legislation that was included in the WIIN Act. S. 1932 extends funding under the WIIN Act for an additional five years, including $670 million for surface and groundwater storage projects, and supporting conveyance; $100 million for water recycling projects; and $60 million for desalination projects. It creates a new loan program for water agencies at 30-year Treasury rates (currently about 2.6 percent) to spur investment in new water supply projects. Repayment can be deferred until five years after completion of the project. This bill also authorizes $140 million for habitat restoration and environmental compliance projects, including forest, meadow and watershed restoration and projects that benefit threatened and endangered species.

H.R. 2473 - Securing Access for the Central Valley and Enhancing Water Resources Act

This bill, sponsored by Rep. Harder (D-CALIFORNIA) provides a broad approach to addressing water issues facing California's Central Valley, home to many Family Farm Alliance members. It does this by increasing storage opportunities, spurring innovation, and making investments in our aging infrastructure. The bill also leverages federal resources to identify prime locations for groundwater storage and recharge in California and across the Western United States. This bill requires Reclamation to expedite feasibility studies for four specific storage projects in the Central Valley, including: Sites Reservoir, Del Puerto Canyon Reservoir, Los Vaqueros and San Luis Reservoirs and provides $100 million in storage funding. The bill also invests in water reuse and recycling by increasing funding for WaterSMART programs from $50 million to $500 million and extending the program's authorization. It establishes a water infrastructure and drought resolutions

fund to provide $300 million for water surface and groundwater storage, reclamation and reuse, and WaterSMART program projects. The bill would also create an innovating financing program which would provide low-interest federal loans to fund local water infrastructure projects, and would reauthorize the Rural Water Supply Act.

S. 1570 – The Aquifer Recharge Flexibility Act

The legislation – introduced by Senator Risch - aims to improve aquifer levels in Idaho and across western states by expanding the ability for aquifer recharge through federal lands and facilities. It would apply to all Western states except for California (because of existing Central Valley Project Improvement Act recharge authority) and would allow Reclamation-owned facilities to be used to recharge aquifers in the West. Currently, such recharge projects need to go through an approval process that requires easements and congressional authorization. Some restrictions would still apply in the bill, such as that water or power service contracts for Reclamation projects and existing obligations to fish, wildlife or water quality protection aren't affected. S. 1570 has a House companion bill sponsored by Rep. Fulcher (R-IDAHO).

H.R. 1621 Water Supply Permitting Coordination Act

This bill – introduced again by Rep. McClintock (CALIFORNIA) would authorize the Secretary of the Interior to coordinate Federal and State permitting processes related to the construction of new surface water storage projects on lands under the jurisdiction of the Secretary of the Interior and the Secretary of Agriculture and to designate the Bureau of Reclamation as the lead agency for permit processing, and for other purposes. This bill would establish a framework in which federal agencies with permitting responsibilities for the construction of new surface water storage projects must work together, coordinate their schedules, share data and technical materials, and make their findings publicly available.

All of these bills are supported by the Family Farm Alliance, and would appropriate to include in a Western water title of the 2020 WRDA. We urge that you coordinate with your colleagues on the Senate Energy and Natural Resources (ENR) Committee to investigate opportunities to use WRDA 2020 as a vehicle to advance these provisions in a Western U.S. and/or Reclamation title.

Considerations for 2020 Water Resources Development Act: Other Concepts

The following recommendations primarily consist of issues we have advanced in recent WRDA and Western drought legislative initiatives. Also, the recent flooding in the Midwest could provide a catalyst to address some of the concerns your committee heard at the field hearing in Iowa a few months back. Here are some recommendations, in no order of priority:

WIIN Act Extension

We support efforts to extend the Water Infrastructure Improvements for our Nation (or WIIN) Act, which is set to expire in 2021. As you know, the WIIN Act provides a much-needed streamlined process for the review, approval and funding of water infrastructure projects – both federal and non-federal. Our members in several Western states have benefited from this program, and more are sure to see value from this in the future. The aforementioned S. 1932 would update and/or replace some of the water supply development provisions in the WIIN Act.

Pilot Project to Adjust Flood Control Curves

The 2018 AWIA authorized the Corps to receive and expend funds from an owner of a non-Federal reservoir to formulate, review, or revise operational documents for any non-Federal reservoir to prescribe regulations for the use of storage allocated for flood control or navigation. Some of our members report that reviewing and adjusting Corps flood control curves can be a steep challenge. Water users who have been working with the Corps in some cases have found it a difficult process, with the Corps very cautious about making such changes. It may be helpful to provide some guidance to the Corps to return to Congress with a report identifying recent projects where storage capacity in a reservoir(s) has been reallocated or the Flood Control Manual has been altered to periodically allow for additional storage.

Water Supply Permitting Coordination

We will continue to advocate for advancing Chairman Barrasso's initiative to streamline the current multi-agency permitting processes that can delay the construction of new or expanded surface water storage projects by creating a "one-stop permitting shop" process through Reclamation. Past legislation driven by the Chairman (similar to that introduced by Rep. McClintock - H.R. 1621, above) set a schedule and timelines for agencies to consult and cooperate to complete environmental compliance analyses on these projects. This would also allow third parties to pay the costs of such permit processing to speed things up. Congress provided similar authorities to the Corps in the 2014 Water Resources Reform and Development Act (WRRDA 2014), P.L. 113-121, a law that was passed in both the House and Senate on a bipartisan basis and was signed into law by President Obama.

These provisions would direct the Secretary of the Interior (through Reclamation) to serve as a central hub for all federal permits, approvals, and decisions required related to new water storage projects. This includes permits for Clean Water Act (CWA), National Environmental Policy Act (NEPA), and Endangered Species Act (ESA) compliance, among the others. In carrying out this task, Reclamation would be directed to identify all federal agencies with permitting responsibilities or authority, notify them of pending applications, and set a schedule by which all cooperating agencies must complete and submit their reviews and permits. Cooperating agencies would be required to adhere to the coordinated schedule and use one unifying document for all environmental reviews. These provisions would be intended to significantly reduce the time, cost,

and inefficiencies associated with the existing multi-track, multi-agency NEPA analyses. Currently, each reviewing agency compiles its own data and reviews it separately in a vacuum.

These provisions should also allow willing states to participate as cooperating agencies. By allowing states to be involved at their discretion, the review process could include state developed science, data, and technical materials. This section should also require that, consistent with existing law, all relevant project data be made publicly available online. Finally, in order to help make multi-purpose surface storage projects more viable in an era of tightened federal budgets, this section of the bill should include a mechanism in which non-federal public entities are allowed to contribute financially to help defray the costs of the "one-stop shop" permitting review process.

An "opt-out" provision should be provided that would allow local project sponsors to proceed on a different project implementation path that has historically provided successful outcomes with another federal agency in the lead role. Meeting the challenge of expanding and modernizing the West's aging water infrastructure will require highly qualified professionals serving in both the public and private sectors. Very rarely are there "one size fits all" templates that apply to management of Western water resources challenges.

In many cases, local water agencies have long-time relationships with local and regional Reclamation engineers and managers that have led to successfully completed projects, such as the ongoing collaborative work in the Yakima Basin in Washington State, where successful water and environmental projects are being completed with Reclamation functioning as the lead federal agency. In other cases, local entities have developed close working relationships with other federal water agencies such as the Corps. In these cases, local entities should be able to continue to work with the federal agency they successfully worked with in the past for projects of this nature. To cover this range of possibilities, the "opt-out" section should provide flexibility for local project sponsors to either 1) engage with Reclamation in the facilitated permitting process articulated in this bill; or 2) opt-out, and proceed on a project implementation path that has historically provided successful outcomes with another federal agency such as the Army Corps in the lead role.

We believe provisions should be included that require the Secretary of the Interior to submit to the non-federal entity an estimate of the total cost of the federal administrative permitting process for the proposed projects and to provide a scheduled update on the actual administrative costs with an appropriate explanation of any major cost differences.

This section should also include language with a specific reference to non-federal state and local water supply projects that could be integrated with the operation of federally owned facilities. We want to ensure Reclamation is the lead agency in the case of permitting a non-federally built storage project that has a direct federal nexus with a Reclamation project – i.e. Sites Reservoir (California)– where it will be integrated into the operation of the Central Valley Project (as proposed by the local Joint Power Authority) but remain a non-federally developed and owned

facility. We would be happy to work with Committee staff to prepare specific language that would address this concern.

Water Rights Protection

The Alliance has long advocated that solutions to conflicts over the allocation and use of Western water resources must begin with recognition of the traditional deference to state water allocation systems and laws. We have previously testified in support of the Water Rights Protection Act (WRPA), introduced in past Congresses, and in this Congress, it was introduced by Rep. Tipton (COLORADO) as H.R. 579. WRPA-like provisions would protect communities, businesses, recreational opportunities, farmers and ranchers as well as other individuals that rely on privately held state-based water rights for their livelihood from federal takings. Specific language should prohibit the Department of the Interior (Interior) and U.S. Department of Agriculture (USDA) from conditioning any permit, lease, or other use agreement on the transfer of a non-federally held water right to the U.S. and directs federal policy to be consistent with state water law for surface water and groundwater resources.

Our farmers and ranchers rely on their vested water rights to secure operating loans in order to irrigate and produce crops and water livestock. Federal agencies should not be able to leverage those private water rights against farming and ranching families who have long depended upon federal permits and leases to support actions like grazing.

Permits for Water Transfers

The Supreme Court a few years back declined to review a George W. Bush-era rule exempting water transfers from Clean Water Act permits, leaving in place a lower-court decision that reinstated the policy. The U.S Environmental Protection Agency (EPA) issued the Water Transfers Rule in 2008 that excludes inter-basin water transfers from permitting requirements. Such systems are common in drinking water, irrigation, flood control and power generation infrastructure throughout the country. The rule formalized EPA's longstanding position that water transferred from one body of water to another via a pipe, tunnel or pumping station doesn't require a CWA National Pollutant Discharge Elimination System (NPDES) permit as long as there wasn't an industrial, municipal or commercial use along the way.

We support including provisions in 2020 WRDA that codify the existing CWA NPDES exclusion for the conveyance of waters of the U.S. when the transferred water is not subject to intervening industrial, municipal or commercial use. This would effectively limit any potential new level of regulation, permitting and certain litigation that could be put into place by another future Administration that could effectively hamstring the economies of states like Arizona, California, Colorado, Wyoming and other Western states, where millions of acre-feet of water are delivered through inter-basin transfers every year.

Missouri River Flooding

Farmers in the lower Missouri River have voiced serious concerns system about 1) impact of ecosystem priorities on traditional flood control responsibilities of the Corps; and 2) the need for more storage in the lower part of the system, below the big dams on the Missouri River system in the Dakotas and Montana. With the attention on the recent flooding in the Midwest, WRDA could provide a forum to tackle some of the problems that have surfaced, there, which your Committee has been tracking in recent hearings.

Reclamation Fund

Aging Reclamation infrastructure is a critical concern, as evidenced in Chairman Barrasso's own state of Wyoming. In the early morning hours of July 17, an underground tunnel collapse on the Fort Laramie Canal caused water to back up and the canal bank to breach, leaving 104,000 acres dry as repairs are planned and completed. The Fort Laramie Canal provides irrigation water to 104,000 acres in Wyoming and Nebraska served by the Goshen and Gering-Fort Laramie Irrigation Districts and two ditch companies. More than 400 farms in Wyoming alone rely on it.

In California's Central Valley, subsidence is threatening the integrity of hundreds of miles of canals – such as the Friant-Kern Canal - and other irrigation conveyance and storage structures. More disasters of this type loom on the horizon, and we need to apply the highest levels of creativity to find funding and financing resources to tackle aging water infrastructure challenges now.

The House Natural Resources Oversight and Investigations Subcommittee held a hearing in July 2019 to review the Bureau of Reclamation's infrastructure funding, including review of current balances in the Reclamation Fund at Treasury. The Reclamation Fund was established to help pay for construction and maintenance of those water projects in the West, but receipts to the fund have exceeded its annual appropriations, leading to a surplus balance of almost $17 billion.

Earlier this year, the Alliance supported legislation that would extend the Reclamation Water Settlement Fund, which allows for direct access to the Reclamation Fund. The Alliance supported this legislation, since tribal water rights settlements will continue to move forward, with or without the Fund. Future settlements that are authorized by Congress will hit Reclamation's budget even harder. However, that support was conditioned with a request that Congress apply a similar approach in addressing and modernizing aging water structures utilizing existing balances in the Reclamation Fund. We were pleased to see the House subcommittee seriously address this concern with a hearing.

Green Project Reserve for the Clean Water State Revolving Fund

The Green Project Reserve (GPR) is a fund that is currently included in annual appropriations, where not less than 10 percent of the funds made available to each state for Clean Water State Revolving Fund (CWSRF) capitalization grants are set aside to address green infrastructure, water or energy improvements, or other environmentally innovative activities (those that demonstrate new and/or innovative approaches to delivering services or managing water resources in a more sustainable way). These four categories of projects are the components of the GRP.

Congress' intent in enacting the GPR was to direct state investment practices in the water sector to guide funding toward projects that utilize green or "soft-path" practices to help utilities enhance water and energy conservation, among other objectives. The EPA WaterSense program defines water efficiency as the use of improved technologies and practices to deliver equal or better services with less water.

Water efficiency encompasses conservation and reuse efforts, as well as water loss reduction and prevention, to protect water resources for the future. This includes retrofitting or replacement of existing agricultural irrigation systems to more efficient agricultural irrigation systems.

Energy efficiency is the use of improved technologies and practices to reduce the energy consumption of water quality projects, use energy in a more efficient way, and/or produce/utilize renewable energy. This would include renewable energy projects such as wind, solar, geothermal, micro-hydroelectric, and biogas combined heat and power systems (CHP) that provide power to a Publicly Owned Treatment Works. It also includes micro-hydroelectric projects involve capturing the energy from pipe flow.

Over time, GPR projects could enable utilities to take savings derived from reducing water losses and energy consumption, and use them for public health and environmental enhancement projects. EPA expects that green projects will help the water sector improve the quality of water services without putting additional strain on the energy grid, and by reducing the volume of water lost every year.

The GPR sets a new precedent for the CWSRFs by targeting funding towards projects that States may not have funded in prior years. We would like your Committee to include provisions in 2020 WRDA to make the GRP "permanent".

Principles to Consider

The Congress and the federal government certainly cannot change the hydrology of the West, but there is a role it can play to support family farmers and ranchers. As the Committee continues its efforts to develop policies to improve water management in the long-term, we ask that you consider the following observations and principles:

- One size does not fit all. The best solutions come from the local level, and program funding and implementation criteria should be flexible to best apply to and fall within the context of what local watershed interests are doing.
- State water laws, compacts and decrees must be the foundation for dealing with shortages.
- Water use and related beneficial use data must be accurately measured and portrayed.
- Benefits of water use must reflect all economic / societal / environmental impacts.
- Water conservation can help stretch water supplies, but has its limits in certain situations.
- Public sentiment supports water remaining with irrigated agriculture, and developing strategic water storage as insurance against shortages.
- Technologies for water reuse and recycling are proven effective in stretching existing supplies for urban, environmental and other uses.
- Planning for water shortage in the West must look to the long-term in meeting the goals of agriculture, energy, cities, and the environment.
- A successful water shortage strategy must include a "portfolio" of water supply enhancements and improvements, such as water reuse, recycling, conservation, water-sensitive land use planning, and water system improvements. New infrastructure and technologies can help stretch water for all uses.
- Unintended consequences associated with reducing productive agricultural land/groundwater recharge/riparian habitat benefits should be avoided and, if unavoidable, minimized and fully mitigated.

It is critically important for policy makers to understand the dynamics of how streams work, and how important the role of upstream water storage is to provide balanced irrigation components downstream. Our members have a demonstrated track record of implementing projects to improve water use efficiency. However, there are other areas of the West where well-managed flood irrigation operations provide multiple critical benefits: food production, groundwater recharge, and wetlands habitat hundreds of species of wildlife. Snowpack-driven systems feed wetlands in Western intermountain areas. While 70 percent of the land in the West is owned by the federal government, 70 percent of the wetlands occur on the 30 percent of the land in private ownership. Wetland resiliency comes from senior water agricultural water rights remaining functional and lucrative. Irrigated working lands provide multiple environmental and societal benefits.

Conclusion

Extreme hydrologic events – marked by drought on one end, and floods on the other – will require everyone in the West to adopt a new paradigm, one that truly promotes wise management of this limited and valuable resource. This new paradigm will also mean additional investment in technology, conservation and new water storage and management infrastructure in order to deal with the uncertainties that lay before us. We are confident that your Committee will once again show a strong commitment to existing and future water infrastructure, recognize the unique challenges faced by rural communities, and take strong strides to address those challenges.

The public infrastructure challenges our Nation is currently facing are daunting, and they will require innovative solutions. The infrastructure investments made by prior generations have benefited this country for over a hundred of years. Now it is this generation's responsibility to invest in our water infrastructure for future generations.

Thank you again for the opportunity to testify on this important legislation. The Family Farm Alliance and our members stand ready to assist you in your efforts to begin assembling the 2020 WRDA. I will answer any questions you may have.

P.O. Box 216 Klamath Falls, Oregon 97601

Protecting Water for Western Irrigated Agriculture

May 1, 2020

The Honorable John Barrasso, Chair
The Honorable Tom Carper, Ranking Member
Committee on Environment and Public Works
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of the Family Farm Alliance (Alliance), thank you for the opportunity to present comments on your draft Water Resources Development Act (WRDA) bill, the *America's Water Infrastructure Act of 2020* ("AWIA 2020"). In past years, WRDA has served as the legislative vehicle for implementing policy changes and federal authorizations with respect to the Army Corps of Engineers' (Corps') water resource studies, projects and programs. As such, this legislation is very important to the rural communities of the Western United States.

The Alliance is a grassroots organization of family farmers, ranchers, irrigation districts, and allied industries in 16 Western states. The Alliance is focused on one mission: To ensure the availability of reliable, affordable irrigation water supplies to Western farmers and ranchers. We are also committed to the fundamental proposition that Western irrigated agriculture must be preserved and protected for a host of economic, sociological, environmental, and national security reasons – many of which are often overlooked in the context of other national policy decisions.

The current COVID-19 pandemic underscores the importance of safety and stability provided by domestic food production. As this crisis has pointed out, a stable domestic food supply is essential and of national security interest. For farmers and ranchers to survive, and for food to continue to be produced here in the American West, a stable water supply is a critical part of any conversation about our national food security. And, Western water supplies have been intrinsically linked to Corps water projects across the West.

As a result, we believe it is essential that our country continue to invest in the Western water infrastructure necessary to meet current and future water supply and management demands. Our existing water infrastructure in the West is aging and in need of rehabilitation and improvement. Most of the federally funded water infrastructure projects that benefit the large cities, rural

communities and small farms in the West were built over 50 years ago. As hydrological conditions in the West change and populations continue to expand, the need to address water security has become increasingly critical. Failing to improve existing water infrastructure and develop new water supplies will inevitably result in additional conflict as pressure grows to 'solve' urban and environmental water shortages. Moving water away from Western irrigated agriculture will surely contribute to the decline of our national food security as well as our important rural communities that rely on irrigated farms and ranches as foundational to their economies.

All of these examples underscore the critical importance of having sufficient infrastructure in place to optimize water supplies. The need is obvious, and this belief is shared by many in the West.

In particular, communities in the semi-arid and arid West – as well as the farms and ranches they are intertwined with – owe their existence, in large part, to the certainty provided by water stored and delivered by the U.S. Bureau of Reclamation (Reclamation) and other state and local water storage projects. The Corps also has a presence in the West, although water supplies from these facilities is delivered to these irrigated acres by Reclamation.

Family Farm Alliance President Patrick O'Toole last September testified before your Committee, and his written testimony provided recommendations for you to consider as you drafted the AWIA 2020 legislation. We have attached a copy of his testimony to this letter, and reiterate his recommendations below. As you may know, several other water bills have been introduced in this Congress that would be appropriate to include in a Western water title of AWIA 2020. These bills include:

- S. 2044 – The Water Supply Infrastructure Rehabilitation and Utilization Act;
- S. 1932 – The Drought Resiliency and Water Supply Infrastructure Act;
- H.R. 2473 - Securing Access for the Central Valley and Enhancing Water Resources Act;
- S. 1570 – The Aquifer Recharge Flexibility Act; and
- H.R. 1621 Water Supply Permitting Coordination Act.

These bills are supported by the Family Farm Alliance and would be appropriate to include in a Western water title of AWIA 2020.

The Alliance is particularly supportive of certain sections in Subtitle E of AWIA 2020, including provisions that deal with assistance in constructing small water storage projects in rural states, that assist with water supply and sediment issues in the Missouri River Basin, and that assess the Corps' work on modifying flood control rule curves for improved reservoir management.

Finally, the Alliance would be supportive of any legislative provisions that could be added to AWIA 2020 that would make the Environmental Protection Agency's (EPA's) Water Infrastructure Finance and Innovation Act (WIFIA) loans work for non-federal entities legally responsible for operating, maintaining and replacing important federally owned water infrastructure in the West.

We respectfully request that you strongly consider the approach and recommendations we have provided in our testimony and in this letter.

Extreme hydrologic events – marked by drought on one end, and floods on the other – will require everyone in the West to adopt a new paradigm, one that truly promotes wise management of this limited and valuable resource. This new paradigm will also mean additional investment in technology, water conservation, and new/updated water storage and management infrastructure in order to deal with the uncertainties that lay before us. We are confident that your Committee will once again show a strong commitment to existing and future Western water infrastructure, recognize the unique challenges faced by our rural communities, and take strong strides to address those challenges.

The public infrastructure challenges our Nation is currently facing are daunting, and they will require innovative solutions. The infrastructure investments made by prior generations have benefited this country for over a hundred of years. Now it is this generation's turn to responsibly invest in our water infrastructure for future generations.

The immediate need for action is clear. Earlier this month, the Family Farm Alliance – working with the California Farm Bureau Federation and Western Growers Association – transmitted letters signed by over 150 national and Western agriculture and water organizations, calling upon Members of Congress to develop an infrastructure package that addresses water infrastructure needs for storage and conveyance.

To that end, we believe all of these bills - which are supported by the Family Farm Alliance - would be appropriate to include in a Western water title of the AWIA 2020.

We urge that you coordinate with your colleagues on the Senate Energy and Natural Resources (ENR) Committee to investigate opportunities to use AWIA 2020 as a vehicle to advance these provisions in a Western U.S. and/or Reclamation title.

Thank you again for the opportunity to comment on this important legislation. If you have any questions, please do not hesitate to contact me at 541-892-6244.

Sincerely,

Dan Keppen
Executive Director

Written Comments

America's Water Infrastructure Act of 2020

Review of Key Flood and Levee Policy Provisions

May 1, 2020

Committee on Environment and Public Works
U.S. Senate
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper,

Thank you for the opportunity to provide comments on the draft legislation, "America's Water Infrastructure Act of 2020 (AWIA)." We appreciate the hard work by committee members and staff to identify national water resources priorities.

The following comments are focused on three flood and levee policy-related provisions included in the draft AWIA. We are also submitting a proposed amendment for your consideration related to the P.L. 84-99 Rehabilitation Assistance Program.

1. Sec. 1039. Levee Accreditation Process; Levee Certifications.

Recommendation: Strongly oppose; seek removal from AWIA.

Rationale: Sec. 1039 relies on Corps management of residual risk in flood plains at the expense of combined federal and nonfederal efforts to prevent catastrophic levee failure. It achieves this by expanding a harmful directive in the 2014 WRRDA to incorporate detailed risk assessments by the Corps, not on *levee conditions*, but rather *flood plain conditions* (i.e., flood plain evaluations) as a factor in deciding whether to "certify," or recognize, a levee on flood maps as providing 100-year level of

protection. The time, effort, and money spent by the Corps and being required of local levee sponsors on residual risk concerns divert resources away from our need to keep levees safe. This provision expands the 2014 WRRDA directive by authorizing the Corps flood plain evaluation process for all Federal (Corps) program levees, including MR&T levees.

Assuring safe, reliable levees is the mission of the Corps and local levee sponsors. This is so because one and/or the other entity designed, built, and performs O/M of the levee itself; not the entirety of the levee-protected flood plain. Flood plain management, which seeks to mitigate residual risk behind levees using nonstructural approaches like land use regulation, flood insurance, and property buyouts, is rightly assigned to FEMA and designated State and local flood plain management agencies.

Levee safety must be a component of overall flood protection involving efforts to ensure structural integrity and performance while providing benefits to the nation. The provision of safe levees should not be used as a springboard to justify or perform the separate and distinct duty of residual risk management in flood plain areas. Sec. 1039 unwisely ties NFIP accreditation of levees to non-deterministic modeling assessments of residual risk behind levees, not the longstanding method involving engineer-certified evaluations of flood control structure reliability.

Background: Previous, longstanding policy under 44 CFR 65.10 called for FEMA to review evidence certified and submitted by a licensed professional engineer, or a Federal agency (Corps) responsible for levee design, that a levee meets Federal design, construction, and O/M standards to protect against a 100-year flood event. If these levee-specific parameters were achieved, FEMA would accredit the levee and recognize its flood protection benefits on a NFIP flood map used to determine allowable development and flood insurance coverage and rate terms.

Sec. 1039 and its predecessor provision in the 2014 WRRDA (42 USC 4131) install recommendations made in 2013 by the "Flood Protection Structure Accreditation Task Force" to consider—

- Assessment of consequences in leveed areas;
- Identification of (flood plain) risk drivers;
- Allowing decisions (like levee accreditation) *based on less information and data* than would be necessary for traditional approaches;
- USACE risk assessments that are based on qualitative, nonreproducible levee screening opinions.

While some of those factors may be appropriate to consider in public risk awareness efforts, they do not provide a valuable construct for determining the structural integrity, aka safety, of a levee.

This Section also seeks to attain administratively the legislatively rejected provision of the Biggert Waters 12 Act to require residual risk NFIP in levee protected areas. The section will set in motion a process that makes accreditation a sliding scale (e.g., percentage of full accreditation or percentage risk-adjusted accreditation) dependent on residual risk management, allowing FEMA to map leveed areas as flood hazard areas requiring insurance for residual risk. This is a radical departure from the purely engineering and maintenance accreditation practiced historically. Engineering evaluations will be applied in support of residual risk management, including zoning and building codes, to lever a new flood insurance regime in levee-protected areas.

2. Sec. 1047. Levee Safety.

Recommendation: Strongly support.

Rationale: Sec. 1047 seeks to refocus the Corps and local levee sponsors onto the safety of levees. Consistent with the above discussion re Sec. 1039, this provision would help to restore proper mission assignments--

- Safe Levees: Corps and local levee sponsors;
- Residual Risk in Flood Plains: FEMA and designated State and local flood plain management agencies.

It amends the 2007 WRDA by directing the Corps to identify specific engineering and maintenance deficiencies and remedies for each levee included in the National Levee Database. This task is not now being consistently performed. The proposal also directs the Corps to integrally involve local levee sponsors and to solicit and consider public comments while performing levee deficiency identification.

Background: The Corps has been performing qualitative levee screening risk assessments referred to as "Levee Safety Action Classification(s)" or "LSAC(s)" that provide a first-order characterization of potential consequences in levee-protected flood plain areas in the event of levee overtopping or failure. To do this, judgment is being applied extensively by the Corps to bridge critical data gaps, variables and anomalies that are common when assessing levee systems. This first-order product risks producing overly subjective analyses that needlessly harm structural flood

protection, economic development, property values and local governance. The LSAC tool, which has been used by the Corps to assign and broadcast levee risk ratings and broadly estimate a national remediation cost ranging from $6.5 billion to $38 billion, is not supported by publicly available information, was not formulated considering local project sponsor input, and has not been subjected to external review by an independent panel of experts. These shortcomings must be addressed consistent with requirements from the Information Quality Act and other applicable standards to ensure the integrity of information and overall program efficacy.

Equally troubling is the agency's decision to publicize LSAC assignments in the absence of site-specific solutions with corresponding cost estimates. The Corps itself references these concerns in a nationwide levee portfolio report[1] published in March 2018 (p. 28)--

> "USACE has recently begun sharing information from risk assessments with sponsors and other Community risk managers. This has required a deliberate change in thinking from a condition-based framework, based on inspections, to a more comprehensive analysis of information that synthesizes hazard, levee performance, and potential consequences. **In addition, there may be reluctance to share risk information with the public when an immediate and viable risk management solution has not been identified**." [Emphasis added.]

We appreciate the difficult task faced by the Corps to evaluate levee system vulnerabilities; however, we hasten to point out that by law and policy, local levee sponsors bear the burden of assuring the day-to-day performance of levee systems and for also giving their communities confidence in local flood protection works. Therefore, local levee sponsors must be integrally involved as full partners in formulating levee risk assessments, identifying viable, economic flood risk reduction solutions and responsibly informing and educating their communities.

Sec. 1047 will facilitate a return to the "safe levees" approach needed from the Corps, founded on their engineering expertise (as opposed to FEMA's flood plain management mission), and earnestly sought after by

[1] U.S. Army Corps of Engineers. Levee Portfolio Report: A Summary of Risks and Benefits Associated With the USACE Levee Portfolio. March 2018. Available at: https://usace.contentdm.oclc.org/utils/getfile/collection/p266001coll1/id/6922

their non-federal partners—the local sponsors that own and operate the flood protection infrastructure critical to their communities.

3. Sec. 1071. Report on Single Levee Standard.

Recommendation: Strongly Oppose; seek removal from AWIA.

Rationale: Sec. 1071 would direct the production of a report by the Corps and FEMA to address the differences between levee standards of the two agencies and whether those differences create uncertainty for levee management purposes.

As discussed above, there are important, foundational differences in the two agencies' mission assignments. It follows that levee-related standards used by each agency would also necessarily be different. The Corps maintains and routinely updates minimum standards for various operational purposes; including levee design, construction, O/M, investigation, inspection, environmental impacts, economics, and cost sharing. FEMA lacks both the technical capacity and mission assignment to engage in levee design, construction, O/M, and other programmatic operations. The primary levee-related mission assignment for FEMA exists under 44 CFR 65.10 to consider evidence for levee accreditation under the NFIP. While the standards for each agency must rely on objective, transparent and reproducible information while remaining clear and achievable; it is appropriate and necessary that they measure and uphold desired levee performance outputs that reflect the important differences in respective Corps and FEMA mission assignments.

The two agencies should, in the routine accomplishment of their missions, identify their respective standards, explain why they are different in various respects and make clear and transparent how their standards contribute to meeting their missions. The objective should be to accommodate meaningful differences in standards associated with missions not trying to forge a unified standard that ignores the efficient division of labor between the two agencies inherent in their missions. We need one Corps and one FEMA respecting a rational division of labor – not agencies trying merge each other's work.

Proposed Amendment on Levee Rehabilitation.

SEC. ____. LEVEE REHABILITATION.

(a) IN GENERAL.--Section 5 of the Flood Control Act of 1941 (Public Law 77-228), as amended, commonly referred to as Public Law 84-99, (33 U.S.C. 701n), is further amended by inserting after (a) the following:

"(b) ELIGIBILITY.-- Any eligibility requirements for participation by non-Federal interests in the Rehabilitation and Inspection Program shall be promulgated as a rule in accordance with the Administrative Procedure Act."; and

(b) by redesignating the remaining subsections.

(c) MODIFICATION TERMS.--The Secretary shall not modify the eligibility criteria for the Corps Rehabilitation and Inspection Program specified in 33 CFR 203 for a period of 3 years after the date of enactment of this Act, except that nothing in this section shall modify or interfere with prior determinations made by the Secretary for vegetation management.

The preceding amendment would:

(a) require that any changed PL 84-99 eligibility requirements be subject to the formal rulemaking process (including Administrative Procedure Act requirements for economic and impact analyses, public notice and comment, etc.); and

b) retain the current PL 84-99 eligibility terms for at least 3 years. The purpose for 3-year pause is to allow the Corps and local levee sponsors together to consider and reach mutual understanding and support for potential benefits and harm that could result from changed P.L. 84-99 inspection procedures as well as the overall Levee Safety Program changes envisioned by new Corps-proposed guidance (DRAFT Engineering Circular 1165-2-218, published Feb 25, 2020). The savings clause at the end of subparagraph (b) preserves the hard-fought vegetation management variance secured in 2014 Corps guidance, later codified by Congress.

Background: The new Engineering Circular on levee safety is expected to result in rescission of the current eligibility terms of P.L. 84-99, specified in 33 CFR 203. This means that the decadeslong practice of relying on deterministic, inspection-based structural inspections by engineers and the corresponding eligibility terms will be replaced with USACE "risk-informed decision-making" ratings and requirements associated with residual risk management in levee-protected areas.

This amendment would pause that significant change for at least 3 years and require USACE to at least abide by the formal rulemaking process after that. One objective of this provision is to avoid the scenario whereby fate of levee systems are reliant upon the success or failure of local flood plain management agencies to implement nonstructural risk reduction (insurance, zoning, buyouts, land use regs, etc.).

We again thank you for your commitment to America's critical water resources needs and for this opportunity provide written comments.

Respectfully submitted,

Dan Delich, Director

Dan Delich

Floodplain Alliance for Insurance Reform

2805 Oakland Hills Drive
Plano, Texas 75025-6451
Phone: (214) 707-8772
E-mail: dan.delich@sbcglobal.net

May 1, 2020

By email: QFR@epw.senate.gov

Senator John Barrasso, Chairman, Senate Environment and Public Works Committee
Senator Tom Carper, Ranking Member, Senate Environment and Public Works Committee
United States Senate
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso and Ranking Member Carper:

We write to you in response to your request for comments on your draft America's Water Infrastructure Act of 2020.

The Georgia Chamber seeks to enhance the competitiveness of our State and to ensure that all regions are best positioned to expand their existing business base and attract new business investment.

The Chamber's Energy and Natural Resources Policy Committee recently resolved to support an initiative to amend the draft America's Water Infrastructure Act of 2020 to provide greater flexibility to counties, cities and state economic development agencies as they identify and prepare sites for new business investment.

Under 'normal' business conditions this proposed amendment would deliver a very attractive planning option. Now, as our state prepares its recovery from the COVID-19 pandemic, all options that provide opportunities to successfully attract new business investment should be aggressively pursued.

An amendment to the draft America's Water Infrastructure Act of 2020 provides an opportunity to develop a new approach to permitting that will move environmental due diligence earlier in the planning process, thereby, giving federal and state resource agencies the ability to expedite permitting decisions without circumventing any environmental laws or permitting requirements.

The proposed amendment would enable counties, economic development organizations and other government agencies to seek pre-development permitting of sites before receiving a specific development proposal. The proposal would allow the U.S. Army Corps of Engineers to complete Clean Water Act Section 404 and National Environmental Policy Act (NEPA) reviews and issue a permit for responsible development on a site before a project is identified.

At the end of the due diligence and regulatory consultation phase, the public entity would be granted a permit subject to appropriate, negotiated parameters including the type of industry, extent of impacts, mitigation plans, and other relevant factors.

The effect of this approach would be to enable development sites to be pre-approved and investment ready, speeding the final approval process and providing better competitive positioning during negotiations with prospective business investors. I have attached a concept paper that articulates the detail of this proposal.

We believe that this proposed new permitting approach presents an opportunity to build competitive advantage for developing regions and, we seek your support for it to be included in the draft America's Water Infrastructure Act of 2020.

Please do not hesitate to call if we can be of further assistance as you consider this request.

Sincerely

Chris Clark
President & CEO
Georgia Chamber of Commerce

America's Water Infrastructure Act of 2020 (AWIA)
Concept Paper: Responsible Permitting for Economic Development Property

BACKGROUND:
The U.S. Army Corps of Engineers (Corps) issues Clean Water Act Section 404 permits for activity impacting wetlands. Typically, applicants request an individual permit based on the precise details of the project and other aspects of the operations.

Local economic development efforts (typically carried out by a city or county economic development organization, port or airport authority, or other public or quasi-public agencies) try to prospectively identify tracts of land suitable for industrial development and then perform environmental due diligence on that property. The purpose of these efforts is to have competitive "product" that is ready for development when competing for economic development projects.

Ideally, local public economic development organizations (EDOs) can give prospective companies answers in a timely manner related to permitting timelines, costs, and requirements on the land they market. The prevalence of wetlands on a site makes it difficult, if not impossible, for many EDOs to give prospective companies answers to those questions.

When preparing due diligence on the property, local EDOs will not have specific information about the precise project footprint or the company's site development requirements. Therefore, they cannot apply for an Individual Permit on the site until a project locates and as such will not be able to answer questions related to timing or cost of permitting. A generic commitment from the Corps to expedite Individual Permits also does not suffice because there is still uncertainty related to timing of approval and the mitigation or other activities necessary to get that approval.

Throughout much of the country and particularly in coastal communities, the prevalence of wetlands complicates local EDO's ability to give prospective employers any specifics about how long it will take to permit a site, at what cost, and even if a permit will be issued. This puts coastal communities in particular at a competitive disadvantage for job creating projects.

AWIA CONCEPT:
The Corps needs a clearly defined legal path to work with a public entity on a responsible path of developing public-controlled property for economic development. The proposed AWIA concept would allow the Corps to complete the Clean Water Act Section 404 and National Environmental Policy Act (NEPA) reviews and issue a permit for responsible development on a site *before* an actual project is identified.

This would allow the Corps to bring other federal and state regulatory agencies together around the table with local EDOs on the front end of the site development process so that everyone has input. Issues related to wetlands, threatened/endangered species, and historic sites would be identified and mitigation plans outlined prior to a project locating on the site.

At the end of the due diligence and regulatory consultation phase, the public entity would be granted a permit subject to appropriate, negotiated parameters including the type of industry, extent of impacts, mitigation plans, and other relevant factors.

When a project selects the site and decides to locate, the Corps would review whether it fits the agreed upon parameters (type of industry, extent of impacts, etc.). If the project meets those conditions and does not exceed the original expected impacts, the permit remains in effect. If the Corps determines that the project will increase the environmental impacts beyond what was agreed, the parties can work to either modify the project, change the mitigation plans, or take other steps to bring the project into conformity with the negotiated permit parameters.

This new process would not weaken the Clean Water Act or corresponding environmental regulations. Public entities engaged in economic development would still abide by all NEPA and 404 requirements, all of which would remain unchanged. The public would still be given a right to comment on the permit. This concept would simply bring forward the Corps and other regulatory agencies' review processes to an earlier stage.

Allowing public entities to proactively undergo that review and establish parameters under which a site would be permitted provides public entities and potential job creators with much-needed clarity on whether a given site is likely to be approved for a 404 permit, and at what costs and under what circumstances. This level of certainty is vital for EDOs to be able to compete for economic development projects.

Prepared by JCEDF Jackson County Economic Development Foundation, Inc.

April, 2020

Senator John Barrasso
Chair, Senate Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, D.C. 20510

Senator Tom Carper
Ranking Member, Senate Environment and Public Works Committee
456 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senators Barrasso and Carper,

On behalf of our millions of members nationwide, we write to commend you on your comprehensive and forward-thinking draft legislation: Drinking Water Infrastructure Act of 2020 (DWIA2020) and America's Water Infrastructure Act of 2020 (AWIA2020).

Our nation's water infrastructure—whether drinking water and wastewater systems, localized stormwater management, or flood control at the watershed level—is critical to the health, safety, and economic security of all Americans. We applaud the committees bipartisan effort and dedication to addressing these issues in the draft legislation released last week, particularly through your reliance on green infrastructure.As you continue to advance this critical bi-annual

legislation, we look forward to refining provisions to enact legislation that effectively leverage green infrastructures' many benefits.

Green infrastructure can be extremely effective in the management of water movement through communities and provides co-benefits such as increased property values, improved air and water quality, increased recreational opportunities, and reduced noise pollution among others and can be cost competitive compared to gray forms of infrastructure. Green infrastructure helps build resilient communities, ultimately saving lives and dollars. A recent National Institute of Building Sciences report found that every $1 spent on hazard mitigation saves the nation $11 in future disaster costs. Green infrastructure projects are especially important in low income communities and communities of color, as there is a disproportionate absence of green infrastructure amenities and the associated benefits. For these reasons, we specifically applaud your dedication to investments in stormwater infrastructure (AIWA2020 Section 2007).

We also applaud your efforts to increase public access to the green infrastructure created by the United States Army Corps of Engineers for recreational activities (AWIA2020 Section 1096). The more the public uses and enjoys green infrastructure built by the USACE, the more they will support it.

Further, we appreciate your dedication to the resiliency of drinking water and wastewater systems (DWIA2020 Section 9 and AWIA2020 Section 2001). Because of the increasing frequency and severity of flood and drought emergencies in the United States, keeping our drinking water and wastewater systems operational and available for public use during these disasters is crucial to keeping people safe. In vulnerable, low-income, and communities of color, there has been unequal access to safe drinking water and a disproportionate exposure to combined sewer overflows and storm sewer overflows, both of which are especially exacerbated during severe flooding and extreme weather events. Green infrastructure is one of many tools that can be deployed on a case-by-case basis when addressing the vulnerabilities of these systems. We would simply urge that the Committee extend these two fantastic programs to water systems—and communities—of all sizes.

Finally, because we must be able to define our challenges before we can keep infrastructure of all kinds safe from natural disasters, we commend your coastal mapping provisions (AWIA2020 Section 1079).

We also applaud further investment in green infrastructure through higher authorized levels for the Clean Water State Revolving Fund (CWSRF). The Clean Water SRF program has been incredibly successful since its inception in 1987, supporting investment in more than $138 billion to communities through over 41,000 assistance agreements. However, there is

still a large backlog of infrastructure needs. The Environmental Protection Agency estimates that our nation faces more than $271 billion in wastewater infrastructure needs over the next 25 years just to maintain current levels of service. Thank you for your support to-date, and for the authorization increases to the Clean Water SRF already included in AWIA 2020. We urge you to substantially increase the authorization. States are required to use no less than 10% of their Clean Water SRF capitalization grants for projects that use green infrastructure and other innovative activities. A portion of every additional dollar will go to green infrastructure solutions, and the additional benefits described above. As you move this draft through the legislative process, we urge you to increase the Clean Water SRF authorized levels in recognition of this urgency.

All communities—of any size and in any location—deserve the health, safety, and economic security that investing in our nation's water infrastructure provides. Your legislation makes tremendous advances in this regard, and we sincerely congratulate you on your efforts. We stand ready to work with you and support these important provisions.

Sincerely,

American Institute for Architects

American Rivers

American Society of Civil Engineers

American Society of Landscape Architects

City Parks Alliance

National Association for Clean Water Agencies

National Municipal Stormwater Alliance

National Recreation and Parks Association

The Trust for Public Land

Water Environment Federation

P.O. Box 150
344 East Laurel Street
Willows, CA 95988
Tel: 530.934.8881
Fax: 530.934.3287
www.gcid.net

BOARD OF DIRECTORS
Donald R. Bransford, *President*
Peter Knight, *Vice President*
John Amaro
Logan Dennis
Blake Vann

GENERAL MANAGER
Thaddeus L. Bettner, P.E.

May 1, 2020

The Honorable John Barrasso
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Thomas Carper
Ranking Member, Senate Committee on Environmental and Public Works
456 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of Glenn-Colusa Irrigation District (GCID), the largest irrigation district in the Sacramento Valley, thank you for the opportunity to provide comments on the *America's Water Infrastructure Act of 2020* (AWIA 2020) discussion draft.

GCID's request is a narrow one: we request that the Committee include language in AWIA 2020 to deauthorize the Riverbed Gradient Facility for the Sacramento River at the Glenn-Colusa Irrigation District (GCID) Intake, California (Gradient Facility), and transfer the Gradient Facility to GCID to operate and maintain in a manner consistent with its original purpose of restoring the river hydraulic conditions in the vicinity of the GCID intake to pre-1970 conditions.

The Gradient Facility is unique. The Corps does not operate the Gradient Facility for any of its mainline missions (i.e., flood control, navigation, ecosystem restoration), and it does not further a vital Federal imperative. Further, removing the Gradient Facility from the inventory of projects the Government must oversee will have a beneficial effect. The deauthorization and transfer will produce either a cost savings or allow resources to be redirected to higher priority mission requirements.

Finally, GCID and the Corps of Engineers recently reached a Settlement Agreement of disputes emanating out of the construction, operation, and maintenance of the Gradient Facility. In that Settlement Agreement, which is pending final approval of the Attorney General (expected by the end of this month), the Corps acknowledges that GCID will seek legislation providing for the deauthorization of the Gradient Facility and transfer of the Gradient Facility to GCID for future operation and maintenance.

Specifically, GCID seeks the Committee's favorable consideration of the following bill language:

Section XXX. Sacramento River, Glenn-Colusa, California.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall execute an agreement with the Glenn-Colusa Irrigation District providing for the transfer of the project for flood control, Sacramento River, California, authorized by section 2 of the Act entitled "An Act to provide for the control of the floods of the Mississippi River and of the Sacramento River, California, and for other purposes", approved March 1, 1917 (39 Stat. 949), and modified by section 102 of the Energy and Water Development Appropriations Act, 1990 (103 Stat. 649), section 301(b)(3) of the Water Resources Development Act of 1996 (110 Stat. 3110), title I of the Energy and Water Development Appropriations Act, 1999 (112 Stat. 1841) and section 305 of the Water Resources Development Act of 1999 (113 Stat. 299).

(b) TRANSFER AGREEMENT.—The transfer agreement shall require the Glenn-Colusa Irrigation District to accept responsibility for assuring that the riverbed gradient restoration facility will be operated and maintained in the future in a manner that is consistent with its original purpose of restoring the river hydraulic conditions in the vicinity of the Glenn-Colusa Irrigation intake to pre-1970 conditions, and accomplishing the specific objectives of: stabilizing the local Sacramento River Reach to reduce the effect of river gradient changes on screen performance; increasing water-surface elevations at the fish screening facility to provide adequate hydraulic gradient to operate a fish bypass system; and stabilizing water levels to increase the efficiency of pumping plant operations.

(c) PROJECT DEAUTHORIZATION.—Upon execution of the transfer agreement, the project for flood control referred to in subsection (a) shall no longer be authorized [as a Federal project].

Our proposed draft deauthorization legislation closely parallels statutory language Congress has enacted previously to deauthorize another Corps' project (Ten Mile Creek Water Preserve Area Critical Restoration Project (see Public Law 114-113;129 Stat. 2402)). GCID is aware that the Congress has employed different statutory language to deauthorize Corps of Engineers projects in the past. Accordingly, we look forward to working with the Committee on language the Committee deems most appropriate to achieve the basic objectives of deauthorizing the project, transferring it to GCID for future operations and maintenance, and ending any further responsibilities of the Secretary for overseeing ongoing operations and maintenance.

We again appreciate the opportunity to provide these comments to the Committee and are grateful for your consideration. If you have any questions, please contact me at (o) 530-934-8881, (mobile) 530-588-3450, or by email at tbettner@gcid.net, or Roger Gwinn at (mobile) 202-770-7140 or rgwinn@tfgnet.com.

Sincerely,

Thaddeus L. Bettner
General Manager

THE UNITED STATES VIRGIN ISLANDS
OFFICE OF THE GOVERNOR
GOVERNMENT HOUSE
Charlotte Amalie, V.I. 00802
340-774-0001

May 1, 2020

The Honorable John Barrasso
Chairman
Environment & Public Works Committee
410 Dirksen Senate Office Building
U.S. Senate
Washington, D.C. 20510

The Honorable Thomas R. Carper
Ranking Member
Environment & Public Works Committee
456 Dirksen Senate Office Building
U.S. Senate
Washington, D.C. 20510

RE: *"America's Water Infrastructure Act of 2020 and The Drinking Water Infrastructure Act of 2020"*

Chairman Barrasso, Ranking Member Carper, and Members of the Committee:

On behalf of the Government of the U.S. Virgin Islands (USVI), I write to thank you for including Sections 1201(11) and (13) in the discussion draft of America's Water Infrastructure Act of 2020 (AWIA 2020). Legislative authorization and funding of these initiatives will be vital to helping us rebuild the Virgin Islands economy and improve the lives of our fellow Americans. In addition, we describe below additional measures that we hope will be included in the bill produced by your Committee.

The Virgin Islands is uniquely dependent on a tourism sector that has been frozen because of the pandemic, reducing to zero the economic activity that generates 30% of our Gross Domestic Product (GDP) and employs 25% of our civilian labor force. Unemployment claims have jumped to record highs, while government revenues have dropped to unprecedented lows. At the same time, the launch of the Territory's major non-tourism industry—the oil refinery on St. Croix—has been significantly delayed by the drastic drop in global oil demand and prices, depriving the USVI government of another expected source of significant revenues.

The Territory has seen economic devastation before, but never like this: the pandemic is like a hurricane with no end. The devastating impact of the pandemic across our entire tourism sector—cruise ship arrivals, airline passengers and traffic, resorts and hotels, restaurants, and all related services—has been an enduring disaster without apparent end.

Your Committee can help us rebuild and recover. As the Committee further considers reauthorization of the Water Resources Development Act this year, we urge you to keep Sections 1201(11) and (13) in

AWAI 2020. These provisions, respectively, would reauthorize two navigation projects: one for Christiansted Harbor in St. Croix and the other for Charlotte Amalie Harbor in St. Thomas. Each of these historic harbors has contributed greatly to the economic development of their respective island and played a driving force in the underlying causes for the American Revolution. Each harbor is critical to the USVI's economic recovery plan to return the Territory to economic health following Hurricanes Irma and Maria and now the COVID-19 Pandemic. The projects were de-authorized in WRDA 1986 *solely* because certain reclamation rights in the harbors were held by the West Indian Company Ltd. ("WICO"), at the time a Danish-owned corporation, as a legacy of the U.S. Government's purchase of the Virgin Islands from Denmark by treaty in 1917. In 1993. the USVI purchased WICO (including its reclamation rights), which became a subsidiary of the Virgin Islands Public Finance Authority, a corporate instrumentality of the USVI government. Thus, the only reason for the de-authorization was extinguished 27 years ago. Re-authorization of these projects will allow for re-federalization of the harbors and provide access to sorely needed federal resources to enhance safety, increase security, provide for maintenance dredging, and otherwise improve navigation. These projects are also essential to attracting and maintaining the ever-growing cruise ship entry into these picturesque harbors and thereby generating revenues and economic activity.

In addition, we request that you retain the expedited completion designation for the two drainage projects referenced in Section 1202(40) and (42) and include them in AWAI 2020. Further, we request that you authorize and fund USACE technical assistance and consultation in support of the wastewater infrastructure projects originally authorized in WRDA 2007 and listed below.

Savan Gut Phase II (Section 1202(40)) and Turpentine Run Project (1202(42)). These projects were initially planned to be implemented under the Section 205 Continuing Authorities Program (CAP), but due to funding limits in that program the projects are now being planned under the authority of Section 209 of the Flood Control Act of 1966, 80 STAT. 1423, P.L. 89-789, and would be eligible for funding under Division B, Subdivision 1, Title IV of the Bipartisan Budget Act of 2018, 132 STAT. 76-77, P.L. 115-123. We understand that the Chief's Reports are expected to be finalized for these two projects in the very near future and hopefully in time for those projects to be included in AWAI 2020. We urge you to encourage USACE to complete the Chief's Reports as soon as possible and to authorize and fund these projects in AWAI 2020.

Wastewater infrastructure projects in St. Croix and St. Thomas pursuant to WRDA section 219(f)(273). In WRDA 2007, Congress authorized $25 million for wastewater infrastructure projects in St. Croix and St. Thomas. In so doing, Congress recognized the poor condition of wastewater infrastructure on both islands, the need for substantial investment in new and upgraded infrastructure, and the very limited local resources available to fund that work. Since the enactment of WRDA 2007, the Territory has invested substantial amounts of local funding in its wastewater infrastructure, but no federal WRDA funding has been made available in those intervening 13 years. To address our critical wastewater infrastructure needs, federal support is sorely needed as soon as possible. We respectfully request that you direct USACE in this year's bill to provide the Territory with technical assistance and consultation in support of planning, design, and construction of wastewater infrastructure projects in St. Croix and St. Thomas, which would allow the projects to move forward. Further, if the existing WRDA § 219(f)(273) authorization needs to be modified to authorize such assistance and consultation (or further work), we request that Congress do so in AWAI 2020.

Thank you in advance for considering our requests. The Territory and its citizens—*American* citizens—

continue to need help if they are to survive this latest threat to their health and safety and to establish economic and financial stability.

Thank you again for your efforts on behalf of the residents of the USVI.

Sincerely,

Albert Bryan Jr.
Governor

cc: Members of the Committee, Environment & Public Works Committee

PORT AUTHORITY NY NJ
AIR LAND RAIL SEA

April 30, 2020

The Honorable John Barrasso
Chairman
United States Senate
Environment and Public Works Committee
307 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Tom Carper
Ranking Member
United States Senate
Environment and Public Works Committee
513 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of The Port Authority of New York and New Jersey, I am writing to respectfully request your strong support to include project design and construction authorization for the New York and New Jersey Harbor Anchorages Project (Project) within the upcoming America's Water Infrastructure Act (AWIA) of 2020. With authorization, the Gravesend Anchorage would be deepened to 50' utilizing funding authorized in section 101(a)(2) of the Water Resources Development Act of 2000 (114 Stat. 2572, Pub. L. No. 106-541) for the New York and New Jersey 50-ft Harbor Deepening Project (HDP) that was completed in September 2016,

The U.S. Army Corps of Engineers' (USACE) Chief of Engineers Report for the Project has been signed and completed. It recommends the need for a 50-ft anchorage area to safely accommodate and improve the operational efficiency of vessels that currently utilize the federal navigation channels. This capability was not included in the HDP, which deepened the adjacent channels beyond the currently authorized depths of the anchorages.

The language we are requesting you submit for inclusion in AWIA is as follows:

> *"The Secretary is authorized to construct the New York Harbor Anchorage Project, as recommended in the Chief's Report dated April 23, 2020, as a new feature to and amending the existing authorization of the New York and New Jersey Harbor Deepening Project, Section 101(a) of the Water Resources Development Act of 2000 (Public Law 106-541)."*

As part of regular harbor operations, anchorage areas are utilized for a variety of functions such as U.S. Coast Guard safety and security inspections, lightering, bunkering/refueling,

PORT AUTHORITY NY NJ
AIR LAND RAIL SEA

waiting areas, and emergency "bailout" areas. The dimensions of the existing anchorages cannot accommodate vessels with an overall length larger than 1,100 foot without incursion into the navigation channels which is a safety and operational concern. With the advent of the "big ship era," a significant portion of the container vessels that currently call the Port of New York and New Jersey are longer than 1,100 feet. In the absence of a suitable anchorage, large vessels are currently forced to return to or remain at sea, reducing vessel safety and cargo transportation efficiency.

Following the study guidelines and procedures leading to the signed Chief of Engineers Report, the USACE recommendation is to deepen the Gravesend Anchorage to a required depth of 50 feet, which was identified to be an environmentally acceptable alternative that reasonably maximizes project benefits. The total Project cost is expected to be approximately $25 million with the cost sharing of 75% Federal and 25% Non-Federal. Full funding is available through previously authorized Federal funding and from The Port Authority of New York and New Jersey as the Non-Federal sponsor. Therefore, we ask you to include language in AWIA 2020 to authorize this Project and allow the use of the remaining funding from the HDP.

I appreciate the unfailing and strong support you have shown for the Port of New York and New Jersey and ask for your continued attention to this vital navigational need.

Sincerely,

Sam Ruda

Sam Ruda
Director, Port Department
PANYNJ

CC: Senator Charles Schumer
Senator Robert Menendez
Senator Kirsten Gillibrand
Senator Cory Booker

4 World Trade Center | 150 Greenwich Street, 17 Floor | New York, NY 10007

PORT AUTHORITY NY NJ
AIR LAND RAIL SEA

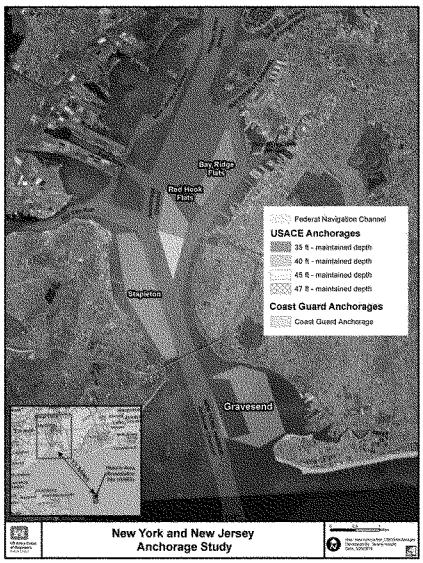


Figure 1 – New York and New Jersey Anchorages

May 1, 2020

The Honorable John Barrasso
Chairman
Senate Committee on the Environment and Public Works
Washington, DC 20510

The Honorable Thomas Carper
Ranking Member
Senate Committee on the Environment and Public Works
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of the Healing Our Waters-Great Lakes Coalition, we thank the Senate Committee on Environment and Public Works for its bi-partisan effort in releasing the draft America's Water Infrastructure Act and the Drinking Water Infrastructure Act of 2020, keeping the Water Resources Development Act on its two-year cycle. This is an important step in funding and addressing the infrastructure needs across the nation and in the Great Lakes region. We appreciate the opportunity to provide the committee our comments on the draft bills as the Senate continues its deliberations.

America's Water Infrastructure Act of 2020 (AWIA)

The U.S. Army Corps of Engineers (USACE) plays a significant role in helping Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin restore the Great Lakes. Through projects that have been authorized like the electric dispersal barrier in the Chicago Sanitary Ship Canal that helps prevent aquatic invasive species from entering the Great Lakes to other programs like the Great Lakes Fishery and Ecosystem Restoration Program, Army Corps investments are helping our region grow our economy and protect our environment.

AWIA could serve to help continue the progress being made in partnership with the USACE, in addition to addressing critical water infrastructure needs through its Title II provisions and reauthorizing the successful Great Lakes Restoration Initiative. In reviewing the draft legislation, the Coalition would like to note the following provisions:

<u>Title I – Water Resources Development</u>

Subtitle A – General Provisions

Sec. 1002 – Great Lakes comprehensive flood protection study

Great Lakes coastal communities face significant challenges as lake levels have fluctuated dramatically in recent years. Most recently record high water levels led to significant flooding and damage across the region, only 6 years after seeing record low levels. These fluctuations will only become more common and more severe as climate change continues to impact the region.

The Coalition supports the inclusion of another comprehensive study on shoreline protection and resiliency in response to flooding from record high lake levels in 2019. Though with Congress having authorized the Great Lakes Coastal Resiliency study in 2016, a study yet to have received funding, we urge both efforts be coordinated to avoid duplication and hope Congress continues to advocate for its inclusion in the USACE FY2021 workplan.

Sec. 1017 – Continuing authority programs

The Coalition appreciates the committee's efforts to expand access to and the affordability of water resource projects to small and disadvantaged communities. Establishing a cost-share waiver for these communities under the continuing authorities program will help local and regionally beneficial projects (such as streambank and shoreline erosion protection, shore damage prevention and mitigation, and aquatic ecosystem restoration projects) get off the ground and reach completion. We also support the increases in the authorization levels for the Section 204, 206, and 1135 Continuing Authorities Programs.

Sec. 1041 – Brandon Road study

The Coalition supports the Brandon Road Lock & Dam project as a critical line of defense against the advance of the invasive carp. We appreciate the Committee's proposed adjustment to the cost-share requirement, but we urge Congress to further adjust the cost-share to full federal expense in recognition of the national importance of this project.

We ask that the Committee also include in any final legislation an additional project authorization that allows the Corps to rapidly study and implement options and technologies at Brandon Road that improve the efficacy of the aquatic nuisance species (ANS) measures similar to the efficacy study authority associated with the electric barrier (Section 3061(b)(1)(D) of WRDA 2007) and implementation authority in Section 1039(c) of the WRRDA of 2014, P.L. 113-121, per sections ES.15 and 9.13.6 of "The Great Lakes and Mississippi River Interbasin Study -- Brandon Road Final Integrated Feasibility Study and Environmental Impact Statement – Will County, Illinois."

Sec. 1093 – Harmful algal blooms demonstration program

The growing threat of harmful algal blooms is of great concern to the Great Lakes region. New blooms are being fueled by excessive amounts of phosphorus washing into the region's rivers and lakes from urban and agricultural runoff. Moreover, stronger storms driven by climate change and the ecosystem impact of invasive mussels contribute to the problem. These harmful algal blooms close beaches, kill fish, impact local drinking water supplies (like Toledo, Ohio, in 2014), and when water supplies are contaminated, the most vulnerable members of the community are the first to be impacted.

The Coalition supports the establishment of a demonstration program that will seek to determine the causes of, and how to effectively treat and eliminate, harmful algal blooms within the Great Lakes and Lake Okeechobee, FL, and applicable tributaries. We appreciate the Committee's inclusion of a consultation provision to ensure collaboration with ongoing research efforts across federal agencies. Additionally, we urge the inclusion of a requirement that the USACE widely disseminate the results of the projects undertaken under this program. The lessons learned will be valuable in addressing the challenge of freshwater runoff pollution and the threat of algal blooms in our water across the country.

Sec. 1102 – Development of Categorical Exclusions

The Coalition asks for this section to be removed from the bill. Directing other departments and agencies, like the Department of the Interior, to adopt the Army Corps' categorical exclusions for major projects could undermine meaningful review of work that impacts our region's waters.

Categorical exclusions should be used carefully since they allow projects to move forward without corresponding public input, impact evaluation, and analysis of alternatives that could be more beneficial.

Subtitle D – Water Resources Infrastructure:

Sec. 1401 – Project authorizations

The Coalition appreciates the Committee's authorization of the Great Lakes and Mississippi River Interbasin Study-Brandon Road. The study evaluated options and technologies at the Brandon Road site in Will County, Illinois to prevent the upstream transfer of aquatic nuisance species from the Mississippi River Basin into the Great Lakes Basin, while minimizing impacts to existing waterway uses and users. Essential to protecting the Great Lakes ecosystem and economy, we support the USACE's efforts to quickly move forward with this project.

Subtitle F – Invasive Species:

The threat of aquatic invasive species is an ecological and economic threat to the Great Lakes, an ecosystem that has been significantly impacted by their introduction. An estimated 180 invasive species have been introduced in the Great Lakes leading to more than $200 million in annual damages and management costs. With an economy dependent on the recreational opportunities of its waters and a $7 billion fisheries industry, the looming threat of Asian carp and the ongoing battles being fought to control and eradicate countless other species emphasizes the need for a strong federal partnership.

The Coalition supports the inclusion of the broad range of provisions to address invasive species provided in this subtitle. Control and eradication of invasive species must be a nationwide effort and we appreciate the addition of programs (Sec. 1607 and 1608) to address the advance of Asian carp, particularly in the Mississippi River and its sub-basins. Additionally, the Coalition supports the expansion of Army Corps research and coordination with regions threatened by aquatic invasive species, as provided for in Sec. 1603, as well as the creation of an EPA technical assistance program for the eradication of invasive species from U.S. impaired waterways, as proposed under Sec. 1602.

<u>Title II – Clean Water</u>

Sec. 2007 – Sewer overflow and storm reuse municipal grants

The Coalition supports the reauthorization of the EPA Sewer Overflow and Stormwater Reuse Municipal Grant program, increasing its annual funding authorization to $250 million for fiscal years 2021 – 2022. With an estimated $77 billion in need across the Great Lakes region over 20 years to replace old sewer pipes and wastewater plants, continuing these infrastructure investments is essential to our waters.

Sewer overflows are of particular concern to Great Lakes cities who experience acute impacts from CSO/SSOs pouring millions of gallons of raw sewage into the Great Lakes. These communities are exposed to waterborne diseases, economically impacted by beach closures due to bacterial contamination, and have their waters further harmed by algal growth. The Coalition appreciates the inclusion of notification systems as an allowable use of grants, an important service to protect vulnerable communities as further investments are made to eliminate CSO/SSOs across the region.

Sec. 2012 & Sec. 2015 – Use of Clean Water State Revolving Funds & Reauthorization of Clean Water State Revolving Loan Funds

The Coalition supports the increase the Committee proposes in its reauthorization of the Clean Water State Revolving Loan Fund (CWSRF) under Sec. 2015. In increasing the CWSRF incrementally from $2 billion for FY2021 to $3 billion for FY2023, the program can better address the infrastructure backlog that the Great Lakes communities have been facing. Though after decades of limited federal investment, replacing the ageing and crumbling infrastructure across the region will necessitate a greater commitment from the federal government. The eight-state region faces over $77 billion in estimated needs over the next 20 years, a burden that continues to grow as communities already face unaffordable water rates and struggle to maintain already weak infrastructure. We urge the Committee reauthorize the CWSRF at no less than $3.4 billion in FY2021.

The Coalition also appreciates the intent to codify the minimum 10 percent set-aside for the CWSRF program for grants, negative interest loans, and loan forgiveness. This subsidization is critical for many communities struggling to bear the full weight of financing these expensive projects. High water rates, frequently the only solution available to water systems to cover the rising costs of local infrastructure, often do not work for families that already cannot pay their water bills and communities struggling to cover costs in places with low population or wages. We urge the Committee clarify Sec. 2012 to ensure it provides a 10 percent minimum for this additional project subsidization and not a cap.

Additionally, we ask the Committee to consider the codification of the green project reserve set-aside at no less than 20 percent. Prioritizing resilient and nature-based solutions such as restoring wetlands, building rain gardens, and installing permeable roads and sidewalks can often be more cost-effective solutions providing significant environmental and community benefits.

Sec. 2010 – Grants for construction, refurbishing, and servicing of individual household decentralized wastewater systems for individuals with low or moderate income

The Coalition supports the establishment of a decentralized wastewater grant program. Public sewer systems do not extend to all communities, with estimates suggesting that more than 1.7 million people in the U.S. lacking access to basic plumbing facilities. This lack of connection to public systems is primarily borne by low-income and communities of color, with system failures leading to public health and water quality concerns. The Coalition supports assisting these low- and moderate-income households but urges the committee to remove its geographic eligibility restriction to include the households across the country including the Great Lakes region.

Sec. 2017 – Small and Disadvantaged Community Analysis

The Coalition supports the inclusion of a Small and Disadvantaged Community analysis as proposed in Sec. 2017. Examining the historical distribution of funds with the intent of identifying new opportunities and methods to improve distribution and access for these most vulnerable and economically disadvantaged communities is an important step in ensuring no community gets left behind. These communities are often the worst impacted by ageing and deteriorating infrastructure, facing significant financial burdens and unaffordable water rates that make investing in the upgrades necessary to comply with clean water standards close to impossible. In order to provide a comprehensive analysis, we urge the Committee to direct the EPA to work in consultation with other relevant federal agencies. To understand the barriers to access and clarify how to improve distribution of assistance to these communities, the analysis should include consideration of other water infrastructure funds distributed to these communities such as USDA Rural Utilities Service Water & Environmental Programs, HUD Community

Development Block Grants, and Economic Development Administration Public Works Program grants.

The Coalition also supports the proposed reauthorization or establishment of the following programs:

- Clean water infrastructure resiliency and sustainability program
  - Sec. 2001 establishes a new EPA grant program to assist POTWs in increasing their resilience and adaptability to natural hazards. Authorized at $5 million for each fiscal year 2021 – 2024.
- Technical assistance for Treatment works
  - Sec. 2002 reauthorizes a series of technical assistance grants for rural, small, and tribal municipalities. Increasing its authorization to $75 million for every fiscal year 2021 – 2024.
  - Sec. 2003 establishes a new circuit rider program, awarding grants for technical assistance to small and medium publicly owned treatment works (POTWs). Authorized at $10 million for each fiscal year 2021 – 2024
- Water infrastructure and workforce investment
  - Sec. 2008 reauthorizes the Water Infrastructure Workforce Development program. Doubling its authorization to $2 million for each fiscal year 2021 – 2024 and expanding those entities eligible for grants.
- Connections to publicly owned treatment works
  - Sec. 2011 establishes a new EPA grant program to reimburse POTWs or nonprofits for the costs of connecting households to municipal or private wastewater systems. Authorized at $20 million for each fiscal year 2021 – 2022
- Water Infrastructure financing
  - Sec. 2014 reauthorizes the Water Infrastructure Finance and Innovation Act (WIFIA) through FY2024.

Title III – Tribal and Other Matters

Sec. 3003 – Mapping and screening tool

The Coalition appreciates the Committee's continued commitment to the use and updating of the EPA's EJSCREEN program. An important tool in the consideration of environmental justice in decision-making.

Sec. 3006 – Great Lakes Restoration Initiative

The Great Lakes Restoration Initiative (GLRI) is improving the lives of people across the region. Cleaning up toxic hot spots, improving water quality, and addressing emerging contaminants has benefited public health and local economies. It has led to a resurgence in water-based outdoor recreation, increased tourism, and revitalized communities with economic returns of more than 3 to 1. The House of Representatives recognized these successes when it reauthorized and expanded the GLRI by passing H.R. 4031 overwhelmingly earlier this year.

Even with the results being achieved, we still have more work to do and the Coalition supports the reauthorization of the GLRI at $375 million for FY2022. Though, the success of the GLRI is predicated on its multi-year authorization providing funding certainty for the long-term projects critical to the remediation of toxic hotspots and the restoration of the Great Lakes ecosystem. We urge the Committee adopt the full reauthorization proposed by S. 2295 (introduced by Sen. Stabenow, currently with 12 co-sponsors), authorizing the GLRI through FY2026 with incremental increases to its original funding level of $475 million.

We thank the Committee for the opportunity to provide comment on the America's Water Infrastructure Act of 2020. What follows are our comments and perspectives regarding the Drinking Water Infrastructure Act of 2020.

Drinking Water Infrastructure Act of 2020:

Communities across the country, and in the Great Lakes region, continue to grapple with crumbling, antiquated drinking water infrastructure. A staggering $110 billion is estimated to be needed over 20 years for improvements, upgrades, and repairs in the eight-state region. Moreover, too many communities are struggling to provide clean and affordable drinking water. Many simply are unable to bear the full weight of financing these expensive projects, forcing urban and rural communities to face unaffordable water rates leading to struggling families having to face the danger of water shutoffs that jeopardize their health and the health of their children. We applaud the Committee's efforts to comprehensively address these issues. This is a significant step to increasing funding and the accessibility of federal programs to underserved and low-income communities, though more must be done to ensure that all have access to safe and affordable drinking water.

In reviewing Drinking Water Infrastructure Act of 2020, the Coalition would like to note following provisions:

Sec. 4 – Drinking Water State Revolving Loan Fund

The Coalition appreciates the committee's efforts to support the remediation and mitigation of public health threats to drinking water through the Drinking Water State Revolving Loan Fund. Too many households still have water that is contaminated from lead. Since no level of lead is safe, replacing this dangerous infrastructure must be a top priority. We support the inclusion of a minimum 20 percent set-aside for additional subsidies (prioritizing disadvantaged communities) to public water systems addressing the threat of heightened exposure to contaminants, including lead. In codifying this set-aside, communities can more affordably finance and access grants for critical infrastructure investments.

Furthermore, PFAS chemicals and other emerging contaminants are a clear threat to our communities and their drinking water. We are encouraged by the proposed tripling of grants to $300 million annually to protect public water systems and remediate the potential threat to underground drinking water sources from PFAS chemicals. As a growing threat in the Great Lakes region and beyond Congress must continue to act and address PFAS chemical contamination and remediation. As indicated in the hold set at the end of the draft bill negotiations are ongoing, we urge Congress include a mandate to set health-based drinking water and wastewater standards for PFAS chemicals, including designation under CERCLA to ensure polluters are held financially accountable for cleanup efforts.

Sec. 6 – Assistance for Small and Disadvantaged Communities

Section 6 reauthorizes and expands EPA's Small and Disadvantaged Communities program increasing its authority to $60 million in FY2021 and $100 million for each fiscal year 2022 – 2024. While existing federal programs provide much-needed funding to help communities meet their clean water goals, some communities still cannot afford to bear the full weight of financing these expensive upgrades. This program assists those underserved communities and the Coalition supports its expansion, including the adjustment of its cost-share from a minimum of 45 percent to a waivable 10 percent non-federal contribution.

Moreover, the Coalition appreciates the expansion of the program to empower water systems and states to use funds for the purchase of filters to remove contaminants, assistance for the replacement of lead service lines, and entering contracts with nonprofits. Empowering

collaboration with local nonprofit organizations can foster increased community engagement, ensuring local investments meet community needs.

Sec. 7 – Reducing Lead in Drinking Water; Lead Mapping Pilot Program

The Coalition supports the creation of this pilot program as too many households in the Great Lakes region and across the country still have water that is contaminated from lead. Since no level of lead is safe, replacing this dangerous infrastructure must be a top priority. This pilot program would provide funds to system operators that through lead mapping have been found, or believed, to have 30 percent or more of service lines containing lead. Funds would be provided to those eligible to carry out lead reduction projects, testing the efficacy of their mapping techniques. In requesting a subsequent report as to the success project successes, the program will serve to provide valuable information to advance the critical mapping processes necessary to accurately map and locate lead service lines. An essential step in replacing the lead service lines still in place.

Sec. 10 – Needs Assessment for Nationwide Rural and Urban Low-Income Community Water Assistance

The Coalition supports the inclusion of a study to examine the prevalence of low-income households across the country lacking access to affordable drinking water services. From 2010 – 2017, water costs increased 41 percent across the country. In some Great Lakes communities water bills have tripled over the last 10 years, and when individuals cannot pay their water bills, they face water shutoffs, which jeopardize their health and the health of their children. Understanding the best methods to increase access to safe and affordable drinking water is essential, though the affordability of a family's water bill is not only dependent on drinking water service. We urge the Committee also include consideration of the affordability of wastewater services, two services commonly included in a single bill and both critical to a household.

Sec. 11 – Lead Contamination in School Drinking Water

Section 11 reauthorizes EPA's Voluntary School and Child Care Lead Testing program through FY2022. No level of lead is safe and with known lead exposure concerns across the Great Lakes region this program continues to be essential to communities. We appreciate the changes that will enable greater collaboration between local educational agencies and water systems, though much more must be done to protect our children. We urge the Committee increase the programs authorization and include resources to support point of use filters for schools and day care centers that are waiting for their lead lines to be replaced.

The Coalition also supports the proposed reauthorization and establishment of the following programs:

- Technical assistance and grants for emergencies affecting public water systems
  - Sec. 3 reauthorizes the Emergency Situations program at $35 million for each fiscal year 2021 – 2024, clarifying the eligibility of the program to address public health threats resulting from contaminants such as lead.
  - Sec. 3 reauthorizes the technical assistance program for small public water systems to achieve and maintain compliance with drinking water standards. An important source of funding for small communities.
- Drinking water infrastructure resilience and sustainability programs
  - Sec. 6 reauthorizes the EPA's small systems grant program to increase resilience to natural hazards. Increasing its authorization from $4 million to $10 million for each fiscal year 2021 – 2024
  - Sec. 9 creates an identical program for mid-size systems, authorized at $5 million for each fiscal year 2021 – 2024.
- Grants for the connection to public water systems

- Sec. 6 establishes a new EPA grant program to provide grants for the connection of low-income households to public water systems. Authorized at $20 million for each fiscal year 2021 – 2022, the program will benefit those most underserved and threatened by groundwater pollution throughout the Great Lakes region.

- Pilot program for state competitive grants for underserved communities
  - Sec. 6 establishes a new pilot program, State Competitive Grants for Underserved Communities. Authorized at $50 million for each fiscal year 2021- 2024, the program will provide important priority funding to states with a high proportion of underserved communities lacking connection to drinking water or wastewater services.
- Indian Reservation drinking water program
  - Sec. 12 reauthorizes the Tribal Drinking Water program, increasing its authorization from $20 to $50 million for each fiscal year through 2024.

We appreciate the opportunity to provide comment on the draft America's Water Infrastructure Act and the Drinking Water Infrastructure Act of 2020. Thank you for considering our perspective and we urge the Committee include these priorities in the final bills. Please do not hesitate to contact Chad Lord, Policy Director for the Healing Our Waters-Great Lakes Coalition, with any questions. He can be reached at: clord@npca.org, (202) 257-4365, or by mail at 777 6th Street, NW, Suite 700, Washington, DC 20001.

Sincerely,

Molly Flanagan
Vice President, Policy
Alliance for the Great Lakes

Anne Brasie
Executive Director
Clinton River Watershed Council

Marnie Urso
Policy Director
Audubon Great Lakes

Rob Mrowka
President
Concerned Citizens of Cattaraugus County, NY

Tom Conway
State water policy coordinator
BlueGreen Alliance

Mary Ellen Gondeck
Member of Justice Team
Congregation of St. Joseph

Brian Smith
Associate Executive Director
Citizens Campaign for the Environment

William Schleizer
CEO
Delta Institute

Steve Schultz
Water Program Coordinator
Clean Water Action Minnesota

Kyle Rorah
Regional Director of Public Policy
Ducks Unlimited

Mark Redsten
President
Clean Wisconsin

Nathan Murphy
State Director
Environment Michigan

Bryan Stubbs
Executive Director
Cleveland Water Alliance

Howard A. Learner
Executive Director
Environmental Law & Policy Center

Liz Kirkwood
Executive Director
FLOW (For Love of Water)

Kristy Meyer
Associate Director
Freshwater Future

Marie McCormick
Executive Director
Friends of the Rouge

Kelli Paige
CEO/Executive Director
Great Lakes Observing System

Susan Johnson
Secretary and Advocate
Green-Rock Audubon Society

Ivan J. Hack Jr.
President
Headwaters Chapter Izaak Walton League of America

Sr. Rose Therese Nolta
JPIC Coordinator
Holy Spirit Missionary Sisters, USA-JPIC

Indra Frank
Director of Environmental Health and Water Policy
Hoosier Environmental Council

Rebecca Esselman
Executive Director
Huron River Watershed Council

Edward L Michael
Chair, Govt. Affairs Com.
Illinois Council of Trout Unlimited

Charlie Palmgren
President
Illinois Division of the Izaak Walton League

Jennifer Walling
Executive Director
Illinois Environmental Council

Gene Hopkins
President
Indiana Sportsmens Roundtable

Emily A Wood
Executive Director
Indiana Wildlife Federation

Rick Graham
National Great Lakes Committee Chairman
Izaak Walton League of America

Elaine Graham
Ohio Division President
Izaak Walton League of America

Alicia Smith
Community Liaison
Junction Coalition

David Spangler
Vice President
Lake Erie Charter Boat Assn.

Sandy Bihn
Executive Director
Lake Erie Waterkeeper

Deborah Chubb
Consultant
League of Women Voters - Lake Michigan Region

Debra Cronmiller
Executive Director
League of Women Voters of Wisconsin

Dennis H. Eade
Executive Director
Michigan Steelhead & Salmon Fishermen's Association

Amy Trotter
Executive Director
Michigan United Conservation Clubs

Cheryl Nenn
Riverkeeper
Milwaukee Riverkeeper

Brenda Coley
Co-Executive Director
Milwaukee Water Commons

Craig Sterle
Member, Past President
MN Division - Izaak Walton League of America

Lynn McClure
Senior Director
National Parks Conservation Association

Marc Smith
Policy Director
National Wildlife Federation

Matt Misicka
President
Ohio Conservation Federation

Peter Bucher
Managing Director of Water Policy
Ohio Environmental Council

Tod Hardin
Chief Operating Officer
Plastic Oceans International

Irene Senn
Coordinator
Religious Coalition for the Great Lakes

Raj Shukla
Executive Director
River Alliance of Wisconsin

Nicole Silk
President
River Network

Mindy Miner
Chair
Rockford Sustainability Committee

Le Lind
President
Save Lake Superior Association

Lori Andresen
President
Save Our Sky Blue Waters

Natalie Johnson
Executive Director
Save the Dunes

John Peach
Executive Director
Save The River Upper St. Lawrence Riverkeeper

Andrea Densham
Senior Director Policy
Shedd Aquarium

Dalal Aboulhosn
Deputy Legislative Director
Sierra Club

Mike Kelly
Director, Great Lakes Office
The Conservation Fund

Christine Crissman
Executive Director
The Watershed Center Grand Traverse Bay

Jennifer McKay
Policy Director
Tip of the Mitt Watershed Council

Taylor Ridderbusch
Great Lakes Organizer
Trout Unlimited

Monica Lewis-Patrick
President & CEO
We the People of Detroit

Bill Wood
Executive Director
West Michigan Environmental Action Council

George M. Guyant
Great Lakes Committee Chair
WI Division - Izaak Walton League of America

Megan Severson
State Director
Wisconsin Environment

George Meyer
Executive Director
Wisconsin Wildlife Federation

Great Rivers Habitat Alliance
P.O. Box 50014 · St. Louis, MO 63105
314-918-1007

Written statement on behalf of Great Rivers Habitat Alliance on draft legislation entitled, "America's Water Infrastructure Act of 2020" submitted to the United States Senate Committee on Environment and Public Works,

Great Rivers Habitat Alliance is a nonprofit, conservation organization based in Missouri dedicated to preserving floodplains and wetlands for recreation, flood storage, agriculture, and hunting along the Confluence of the Mississippi, Missouri, and Illinois rivers.

We submit these comments on the draft WRDA legislation being considered in the interest of a healthier, safer, and more environmentally beneficial future for our waterways and floodplains.

GRHA suggests the following amendments to the legislation:

Amend Section 1011 (Non-federal implementation pilot program).

There have been significant problems with the use of the Public-Private Partnership Pilot Program on the Upper Mississippi River as non-federal interests have tried to use this authorization to advance environmentally harmful navigation projects. These problems include, but are not limited to: major confusion regarding which activities are the responsibility of the Corps and which are the responsibility of the non-federal sponsor; the inability of the non-federal sponsor to conduct required technical analyses; the inability of the non-federal sponsor to effectively engage the public and other federal agencies; and the inability of the public to obtain information about the process being used. We urge Congress to address these types of problems as part of any extension of this or any similar program. To this end, we strongly recommend that the Senate amend this section to require the Corps to develop guidelines that provide a clear roadmap to the process that is to be used, the entities responsible for each step of the process, and the entity responsible for responding to public inquiries and requests for information.

Amend Section 1017 (Continuing authority programs).

The Upper Mississippi River Restoration (UMRR) Continuing Authority Program should be added to the list and adjusted for inflation. The UMRR Program was the first environmental restoration and monitoring program undertaken on a large river system in the United States; authorized by the Water Resources Development Act of 1986. The Program has come to be recognized as the single most important effort committed to ensuring the viability and vitality of the Upper Mississippi River System's diverse and significant fish and wildlife resources since establishment of the National Wildlife Refuges on that system in the 1920's. Since 2011, the UMRR Program's obligation rate has been near 100% and has been fully funded since Fiscal Year 2018. The Program's strong record of spending and project success indicates that it can obligate a larger investment. The need for greater funding was also made apparent in the Programs 2016 Report to Congress, which found that habitat on the Upper Mississippi River continues to degrade one to four times faster than current restoration efforts. The UMRR

Program has never been adjusted for inflation, which has decreased its spending power by 53.5% since 1999, when its current authorized appropriation cap was set. We strongly suggest Section 1017 should be amended to include

a) UPPER MISSISSIPPI RIVER RESTORATION PROGRAM.

1) Section 1103(e)(3) of the Water Resources Development Act of 1986 (33 U.S.C. 652(e)(3)), is amended by striking "$22,750,000 for fiscal year 1999 and each fiscal year thereafter" and inserting "$34,921,250 for fiscal year 2021 and each fiscal year thereafter".

2) Section 1103(e)(4) of the Water Resources Development Act of 1986 (33 U.S.C. 652(e)(4)), is amended by striking "$10,420,000 for fiscal year 1999 and each fiscal year thereafter" and inserting "$15,994,700 for fiscal year 2021 and each fiscal year thereafter".

Amend Section 1022 (Expediting repairs and recovery from flooding).

While we appreciate the importance of expediting flood recovery efforts, we have seen several instances along the Upper Mississippi River where levee districts have illegally raised their levees without proper permits and approvals from state and federal agencies. This section, as written, would approve costly, and potentially dangerous levee construction without an appropriate analysis of less costly and less dangerous solutions and without fully addressing important and long-standing public interest criteria. As written, this provision could also undermine the Army Corps' important mandate to ensure that the plan does not impair the usefulness of a civil works project or harm the public. To address these concerns, we recommend that § 1022 be amended by striking subsection (b), and adding the phrase "section 14 of the Act of March 3, 1899 (33 U.S.C. 408)" as a new subsection (c)(4).

Amend Section 1040 (Rehabilitation of flood control pump stations affecting Corps of Engineers flood risk management projects).

We urge Congress to amend this section that allows increasing the capacity of eligible pumping stations and related drainage measures subject solely to a determination "that the rehabilitation is feasible." Operation and construction of pumping plants along the Upper Mississippi River already causes significant adverse impacts to wetland resources, water quality, in-stream flows, and wildlife habitat. Increasing pumping capacity can increase flood risks for communities and businesses along the waters that receive the pumping plant discharges. Increasing pumping plant capacity and related drainage can also require major new construction in highly sensitive habitats. As such, proposals to increase pumping capacity associated with any flood risk management project deserve careful review beyond the scope of rehabilitation. Congress should ensure that the full range of impacts are carefully assessed prior to any decision to increasing pumping plant capacity by amending § 1040 to require full compliance with federal

environmental laws, including the National Environmental Policy Act and Clean Water Act, before a decision may be made regarding increasing any pumping plant capacity.

Amend Section 1053 (Establishing permanent features from emergency response measures).

We recognize the burden that repeated emergency flood response efforts can place on small or disadvantaged communities. However, we are concerned that this section fails to ensure a full evaluation of alternative approaches, including natural infrastructure and levee setbacks, that may be able to provide the same or better levels of protection at less cost and with fewer future flood risks to the community and others. Also, along the Upper Mississippi River, rural levee districts are already trying to circumvent normal processes that require the review of alternatives by raising their levees during floods, but then failing to push them back down. This section prioritizes a feature that was designed to be a temporary, rapid-response solution into one that is permanent. To ensure cost-effective, meaningful protection to these at-risk communities, we recommend amending 1053 to require a full evaluation of nonstructural and natural infrastructure solutions, including levee setbacks; and explicitly ensuring that evaluation of these projects must comply fully with federal environmental laws.

Strike Section 1054 (Studies of water resources development projects by non-Federal interests).

The process established under 33 U.S.C. 2231 (which is being amended by this section 1054) fails to establish any baseline capacity criteria and fails to lay out the processes that should be followed when a non-federal sponsor is carrying out federal planning responsibilities. On the Upper Mississippi River, non-federal interests have already tried to advance planning and design for new locks on the Upper Mississippi and Illinois Rivers. But, due to a general lack of direction from the Corps and Congress there have been significant problems, including but not limited to: major confusion regarding which activities are the responsibility of the Corps and which are the responsibility of the non-federal sponsor; the inability of the non-federal sponsor to conduct required technical analyses; the inability of the non-federal sponsor to effectively engage the public and other federal agencies; the inability of the non-federal sponsor to carry out required actions that can be implemented only by federal agencies; and the inability of the public to obtain information about the process being used. We urge the Senate to strike § 1054 and to refrain from expanding the non-federal sponsor planning process until these underlying problems are addressed. To this end, we strongly recommend that Congress direct the Corps to develop detailed guidelines that provide a clear roadmap to the planning process that is to be used by non-federal sponsors, the entities responsible for each step of that process, and the entity responsible for responding to public inquiries and requests for information.

Strike Section 1069 (Inland Waterway Transportation).

We urge the Senate to strike this section that would significantly increase the Federal cost share for construction and major rehabilitation of navigation projects on the inland waterways

systems. Section 1069 would create an enormous additional subsidy for the navigation industry which already pays just 10% of the costs of the inland waterway system, even though that system moves only 4 to 5% of U.S. freight commercial tonnage (as of 2014). By contrast freight rail operators pay 100% of the costs of the rail system, and cars and trucks pay about 80% of the costs of maintaining the highway system (through a fuel tax).

These enormous additional subsidies will facilitate unwise investments that harm the environment and can increase flood risks for river communities. Documenting significant declines in traffic on the inland waterway system and existing capacity, a 2018 report by the Congressional Research Service calls into question the need for new construction on the system. For example, as highlighted in that report: traffic on the Upper Mississippi River system has been declining and even during their "busiest months" the seven locks targeted for expansion under the NESP program average just 10 tows per day; the Upper Ohio River has seen a "long-term downward trend in traffic levels"; and the volume of coal, which accounts for 80% of tonnage, transported on the Lower Monongahela River, is half of what it was in the late 1990s and three of the last four operating coal-fired electric power plants on the river closed between 2013 and 2017.

Strike Section 1089 (Report on benefits calculation for flood control structures).

While we strongly support improvements to the Corps benefit-cost analysis process, this study directive runs counter to the long-standing, fundamental policy of sound floodplain management (confirmed by the Association of State Floodplain Managers)—levees "should be used only as a method of last resort for providing a LIMITED means of flood risk reduction for existing development" because they create a false sense of security and incentivize increased development behind structures that inevitably will overtop or fail leading to catastrophic threat to life and property. Instead of pursuing a study that seeks information and recommendations related solely to accounting for reduced flood insurance costs behind a levee, Congress should ensure that the Corps conducts the study required by section 1103 (study on economic and budgetary analyses) of America's Water Infrastructure Act of 2018, which would ensure a comprehensive look at the Corps' benefit-cost analysis process.

Strike Section 1090 (High water-low water preparedness).

This provision creates an enormous loophole for carrying out major navigation construction as so-called "emergency mitigation projects" whenever the Corps makes a determination that a wide-array of situations exist or are "anticipated to exist." This section is so vaguely written that it could allow the use of undefined emergency procedures to carry out virtually any type of activity, including construction of new locks, lock bypass channels, and major rehabilitation. Critically, the Corps already has extensive authority to utilize emergency procedures to quickly carry out navigation dredging where the failure to do so "would result in an unacceptable hazard to life or navigation, a significant loss of property, or an immediate an unforeseen significant economic hardship if corrective action is not taken" more quickly than would be allowed if

normal procedures were followed. 33 C.F.R. § 335.7, see also 33 C.F.R. § 337.7. The Corps may also rely on 33 C.F.R. 230.8 to promptly carry out other types of emergency actions.

Amend Section 1202.53 (Expedited Completion).

We support a full economic re-evaluation of the navigation and sustainability program under title 14 VIII of the Water Resources Development Act of 2007 (33 U.S.C. 652 note; Public Law 110–114). However, the Corps' efforts to update the economic evaluation for this program have been troubling at best. The Corps has "lost" two comment letters from conservation organizations, stated publicly that the final report will not be made public, failed to produce legally mandated responses to the 2008 Independent External Peer Review panel recommendation, and they appear to not be following the Corps internal guidance for economic re-evaluation. Given the controversial history of the project, we recommend amending Section 1202.53 to ensure the Corps follows all legally required protocols associated with Independent External Peer Review (33 USC 2343), the National Environmental Policy Act, the Endangered Species Act, and the Methodology for Updating Benefit-to-Cost Ratios (BCR) for Budget Development (CWPM 12-001).

If you have any questions regarding these comments, please contact me at (314) 918-1007 or at dstokes@grha.org. Thank you very much.

Sincerely,

David Stokes

Executive Director

Great Rivers Habitat Alliance

PO Box 50014

St. Louis, MO 63105

Hamilton County

Board of County Commissioners

Denise Driehaus
President
Phone (513) 946-4405
Fax (513) 946-4404

Stephanie Summerow Dumas
Vice President
Phone (513) 946-4410
Fax (513) 946-4444

Victoria Parks
Phone (513) 946-4401
Fax (513) 946-4446

Todd B. Portune Center for County Government
138 East Court Street, Room 603
Cincinnati, Ohio 45202

www.hamilton-co.org
jeff.aluotto@hamilton-co.org

Jeff Aluotto
Administrator
Phone (513) 946-4420
Fax (513) 946-4444

Jacqueline Panioto
Clerk of the Board
Phone (513) 946-4414
Fax (513) 946-4444

April 28, 2020

The Honorable John Barrasso
Chairman, Senate Committee on Environment
And Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Thomas Carper
Ranking Member, Senate Committee on
Environmental and Public Works
456 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of Hamilton County, Ohio, thank you for the opportunity to provide comments on the *America's Water Infrastructure Act of 2020* (AWIA 2020) discussion draft. Hamilton County has been a strong supporter of the Committee's efforts in recent water resource development legislation to provide additional investments in clean water initiatives, and we again greatly appreciate the Committee's attention to these important matters this year.

We strongly support the proposed clean water investments in Sections 2001, 2005, 2006, 2007, 2008, 2012, 2014, 2015, and 2016 of Title II. These provisions will help communities address critical infrastructure needs by providing needed capital investments and technical assistance. Hamilton County is especially supportive of Section 2007, which reauthorizes the Sewer Overflow and Stormwater Reuse Municipal Grants Program at an increased level of $250 million for Fiscal Years 2021 and 2022. Grant funding such as this helps reduce the overall financial burden on our ratepayers, which is a critical task, especially during times of economic downturn.

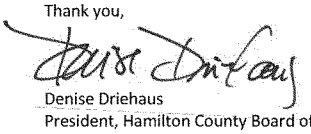
Hamilton County also strongly supports Section 3012 of Title III, which expands the duties of the U.S. Environmental Protection Agency's (EPA's) Office of the Municipal Ombudsman to include providing information to municipalities on local funding sources for projects, organization analyses, grant application assistance, and innovative funding sources and strategies. Hamilton County advocated for the establishment of this Office during the 2018 water resources development act process and is pleased to see Congress continue to recognize the value this office will be able to provide to municipalities.

Lastly, we ask the Committee to continue encouraging EPA to update its 1997 "Combined Sewer Overflows – Guidance for Financial Capability Assessment and Schedule Development" guidance with a methodology that better assesses a community's true financial ability to pay for clean water infrastructure improvements. EPA's

current model, which relies on the single metric of median household to measure affordability, does not provide an accurate or comprehensive assessment of affordability in a community. It is imperative that the 1997 guidance be updated without delay as communities and ratepayers across the country struggle with deepening affordability concerns as a result of the economic fallout of the COVID-19 pandemic.

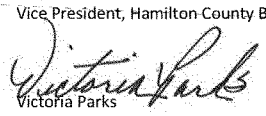
We again appreciate the opportunity to provide these comments to the Committee and are grateful for your consideration. If you have any questions, please feel free to contact me.

Thank you,



Denise Driehaus
President, Hamilton County Board of County Commissioners

Stephanie Summerow Dumas
Vice President, Hamilton County Board of County Commissioners



Victoria Parks
Hamilton County Commissioner

To: Transportation and Infrastructure Committee

From: Andrew Whitehurst, Water Program Director, Healthy Gulf, 3141 W. Tidewater Ln. Madison, MS 39110. andrew@healthygulf.org 601-954-7236

Subject: WRDA 2020 Sec. 1054 Comment

Date: May 1, 2020

The following language seems to contemplate widening the scope of what a non-federal interest may do with respect to creating feasibility studies.

"Sec.1054.Studies of water resources development projects by non-Federal interests. This section amends section 203 of WRDA1986 (33 U.S.C. 2231)to permit a non-federal interest to undertake not just a federally authorized feasibility study of a proposed project, but also conduct a feasibility study on modifications or improvements to a project constructed by the Corps.

The Secretary is required by this section to issue guidelines for feasibility studies of water resources development projects conducted by non-federal interests to provide sufficient information for the formulation of the studies, including processes and procedures related to reviews and assistance. Any technical assistance provided by the Secretary under section 2231 of WRDA 1986 may include any assistance that does not conflict with any other federal law (including regulations)."

In the recent experience that Healthy Gulf, and other non-profits and government agencies have had in Louisiana and Mississippi with an ongoing Section 211 project on the Pearl River, (2013-2018) the Secretary needs to guard against the non-federal sponsor writing self-serving, poorly documented, biased feasibility studies and Draft EIS documents. The Rankin Hinds Pearl River Flood and Drainage Control District in the Jackson Metro Area in Mississippi in the case at hand, has hand-picked contractors to write one of the worst feasibility/EIS documents any of the reviewers and commenters have seen in recent memory. The Drainage District has chosen the alternative that does the most harm to the Pearl River in Jackson and downstream to promote as its Tentatively Selected Plan. The U.S. Fish and Wildlife Service Field Services office in Lafayette La reviewed the Draft EIS and called the preferred lake dredging and damming plan "the most environmentally damaging alternative". Nobody seems deterred by the poor quality of the DEIS or feasibility studies.

The Vicksburg Corps of Engineers District has exhibited very little control over what has been a slanted and dishonest NEPA process by the local non-federal sponsors and as a consequence the integrity of the Vicksburg District (with respect to this project) has become as questionable as that of the intransigent non-federal sponsor.

If the Secretary doesn't want to see a feasibility study **modifying one of the Corps own existing projects** go as badly off the rails as the Pearl River Rankin Hinds Counties Federal Flood Risk Management Project has, then he needs to really think about **what kind of guidance documents** to write to control what is proposed in Section 1054. An admonishment against dishonesty in presenting science and economics would be a good start. Non-federal sponsors, given enough rope will hang themselves and, with them, the local Corps District monitoring their work. Based on what is happening in Rankin and Hinds Counties, the intentions of the non-federal project sponsor cannot always be trusted.

ICPI Comment regarding the discussion draft of ''America's Water Infrastructure Act of 2020''

Summary: ICPI fully supports AWIA 2020, but **recommends that "permeable pavements" be included by specific reference in four locations in the Stormwater sections.**

Contact name: Randall Pence, Capitol Hill Advocates LLC
Address: 2115 Royal Oaks Drive, Rockledge FL 32955
Email address: CHA2LLC@Outlook.com
Telephone: 321-735-8305

I am commenting on behalf of ICPI, the Interlocking Concrete Pavement Institute, regarding the discussion draft of ''America's Water Infrastructure Act of 2020''.

ICPI is the North American trade association representing the segmental concrete paving industry. ICPI is a subject matter expert on permeable interlocking concrete pavements, a subset of permeable pavements.

The purpose of this comment is to support the development and enactment of the dicussion draft, and to improve four key stormwater provisions by adding specific mention of permeable pavements.

Permeable Pavements

Unlike older impermeable pavement technology, permeable pavements allow stormwater to pass through into the local soils where the rain falls, greatly reducing damaging stormwater runoff and improving water filtration and water quality. They allow for robust construction and economic development with little or no negative impact on the local stormwater environment. These are substantial public policy reasons to encourage

adoption of permeable pavements. Permeable pavements are recognized by EPA as a stormwater Best Management Practice.

ICPI regards permeable pavements as unequivocally the most effective pavements in reducing CSOs from publicly owned waste treatment works and into MS4s, as well as for enhancing watershed protection and aquifer recharge.

Permeable pavements represent proven, off-the-shelf, business-feasible, eco-friendly, economical, ubiquitously available technologies that can replace impermeable paving that causes and exacerbates stormwater problems.

However, permeable pavements experience the same resistance to adoption often experienced by newer, innovative technologies. Permeable pavements, while commonplace in Europe and elsewhere, have lagged in adoption in the U.S. due to ongoing defaulting to older impermeable paving technologies that are more familiar to established planners and developers.

Adding specific mention of permeable pavement technology in "AWIA 2020" will provide needed attention and emphasis to help dislodge the planning and project-level entrenchment that inhibits broad-based implemention of permeable pavement technology in the U.S.

With that background: ICPI strongly supports enactment of the discussion draft, especially the elements that address stormwater and stormwater mitigation, either as a free-standing bill or as part of an infrastructure package in COVID-19 legislation.

Further, ICPI recommends the following four amendments to the discussion draft (proposed new language is underlined):

-- In Section 2001 of the discussion draft, amending Title II of the Federal Water Pollution Control Act, add a new Section 222 (c) (7): ***an explanation of how the proposed project is expected to maintain or enhance infiltration of stormwater runoff into soils using permeable pavements and similar paving technologies to avoid adding to stormwater runoff into drainage systems.***

-- In Section 2001 of the discussion draft, amending Title II of the Federal Water

Pollution Control Act, add a new Section 222 (d) (7): ***an explanation of how the proposed project is expected to maintain or enhance infiltration of stormwater runoff into soils using permeable pavements and similar paving technologies to avoid adding to stormwater runoff into drainage systems.***

-- In section 2018 (b) (1) (B) (i), amend the text as follows: *(i) conduct research on new and emerging stormwater control infrastructure that is relevant to the geographical region in which the center is located, including stormwater and sewer overflow reduction,* ***permeable pavements,*** *other approaches to water resource enhancement, alternative funding approaches, and other environmental, economic, and social benefits;*

-- In section 2018 (c) (2) (A) (i), amend the text as follows: *(i) Planning and designing stormwater control infrastructure projects that incorporate new and emerging, but proven, stormwater control technology, including engineering surveys, landscape* ***and permeable pavement*** *plans, maps, and implementation plans.*

Thank you for your kind consideration of this comment. Please do not hesitate to contact ICPI regarding any questions you might have.

All the best,

Randall Pence, for ICPI

INTERNATIONAL ASSOCIATION OF PLUMBING AND MECHANICAL OFFICIALS

101 Constitution Avenue, NW Suite 825 East
Washington, D.C. 20001

Ph: 202.445.7514
http://www.iapmo.org/GR

May 1, 2020

Honorable John Barrasso
Chairman
Senate Committee on Environment and Public Works
307 Dirksen Senate Office Building
Washington, DC 20510

Honorable Tom Carper
Ranking Member
Senate Committee on Environment and Public Works
513 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper:

Thank you for the opportunity to provide comments on the *America's Water Infrastructure Act of 2020*. As a trade association in the water and sanitation sector, we have experience working with communities, manufacturers and the workforce to address a continually evolving list of water quality and infrastructure issues.

The International Association of Plumbing and Mechanical Officials (IAPMO) is a nearly 100-year-old trade association that focuses its comprehensive services on the technical aspects of the plumbing and mechanical industries. We focus where people come in contact with water and sanitation. The IAPMO Group is comprised of 13 different business units with offices and staff in 11 countries. Our membership includes trained labor and contractors, engineers, product manufacturers, suppliers, plumbing and mechanical inspectors, and building officials. As a global leader, IAPMO has assisted with the development of standards, skills training, and conformity assessment services in regions around the world. IAPMO also works closely with international aid organizations to create enabling environments for water and sanitation services to spread and local industries to grow in developing nations.

We applaud the committee for putting forward bipartisan solutions to the challenges posed by our water infrastructure. We also applaud the committee's efforts to ensure that communities who are most vulnerable have access to clean drinking water. In particular, we support Section 2010 (Grants for construction, refurbishing, and servicing of individual household decentralized wastewater systems for individuals with low or moderate income). This legislation is desperately needed to help bring sanitation to the more than 2.2 million Americans that do not have access to clean water and effective sanitation. In these comments, IAPMO is proud to support and reiterate comments made to the committee by DigDeep.

Our preliminary suggestions on how this language could be amended are aimed to allow greater flexibility, to prioritize households without access to utility lines, to increase the amount of funding available, and to expand the grant program apply to decentralized drinking water systems. IAPMO feels that the provision is too narrow, as drafted, to benefit the communities and households facing the greatest need around the country. Furthermore, this section should

be expanded to allow funding for individual or small-scale drinking water systems or similar language should be added to the draft DWIA legislation. To ensure that these communities receive the life-changing services they need, we would propose that the following language be added to Section 2010 of draft AWIA:

SEC. 225. GRANTS FOR CONSTRUCTION, REFURBISHING, AND SERVICING OF INDIVIDUAL HOUSEHOLD DECENTRALIZED WASTEWATER SYSTEMS FOR INDIVIDUALS WITH LOW OR MODERATE INCOME.

(a) DEFINITION OF ELIGIBLE INDIVIDUAL.—In this section, the term 'eligible individual' means a member of a household, the members of which have a combined income (for the most recent 12-month period for which information is available) equal to not more than 50 percent of the median nonmetropolitan household income for the State or territory in which the household is located, according to the most recent decennial census.

(b) GRANT PROGRAM.—

(1) IN GENERAL.—The Administrator shall establish a program under which the Administrator shall provide grants to private nonprofit organizations for the purpose of providing subgrants to eligible individuals in accordance with subsection (c) *or for development of community wastewater or drinking water systems, in accordance with subsection (d).*

(2) APPLICATION.—To be eligible to receive a grant under this subsection, a private nonprofit organization shall submit to the Administrator an application at such time, in such manner, and containing such information as the Administrator determines to be appropriate.

(3) PRIORITY.—In awarding grants under this subsection, the Administrator shall give priority to applicants that have substantial expertise and experience in promoting the safe and effective use of decentralized wastewater *or drinking water* systems.

(4) ADMINISTRATIVE EXPENSES.—A private nonprofit organization may use amounts provided under this subsection to pay the administrative expenses associated with the provision of subgrants under subsection (c), as the Administrator determines to be appropriate.

(c) SUBGRANTS.—

(1) IN GENERAL.—Subject to paragraph (2), a private nonprofit organization *may* use a grant provided under subsection (b) to provide subgrants to eligible individuals for the construction, refurbishing, and servicing of individual household decentralized wastewater systems.

(2) PUBLIC UTILITY CONNECTION AVAILABLE.—

(A) IN GENERAL.—In any case in which an eligible individual who submits to a private nonprofit organization an application for a subgrant under this subsection resides in a household that could be connected to an available public wastewater utility, the private non profit organization *may either reject the application or* conduct a cost analysis to determine whether establishing such a connection would be a more cost-effective use of subgrant funds, as compared to the eligible uses described in paragraph (1).

(B) USE OF FUNDS.—If a cost analysis under subparagraph (A) demonstrates that the connection of the applicable household to a public wastewater utility is more cost-effective than the eligible uses described in paragraph (1) with respect to the household, the eligible individual may use a subgrant provided under this subsection to establish the connection.

(3) APPLICATION.—To be eligible to receive a subgrant under this subsection, an eligible individual shall submit to the private nonprofit organization serving the area in which the individual household decentralized wastewater system of the eligible individuals is, or is proposed to be, located an application at such time, in such manner, and containing
such information as the private nonprofit organization determines to be appropriate.

(4) PRIORITY.—In awarding subgrants under this subsection, a private nonprofit organization shall give priority to any eligible individual who does not have access to a sanitary sewage disposal system.

(5) MAXIMUM AMOUNT.—The amount of a subgrant *to an individual* provided under this subsection shall not exceed $20,000.

(d) COMMUNITY WASTEWATER OR DRINKING WATER SYSTEMS.—

(1) IN GENERAL.—Subject to paragraph (2), a private nonprofit organization may use a grant provided under subsection (b) to construct, refurbish, or service decentralized drinking water or decentralized wastewater systems to serve individuals or small communities of 100 individuals or fewer.

(2) OPERATION, MAINTENANCE, AND REPLACEMENT.—One of the criteria considered in awarding a grant to a nonprofit organization for purposes of carrying out this subsection is the extent to which the nonprofit organization can demonstrate that water infrastructure to be constructed or rehabilitated with the grant will be operated, maintained, and replaced by the individuals or communities who will use the infrastructure, which can be shown through both studies showing ability to pay or through the creation of on-site maintenance entities or user associations with the ability to collect fees for providing ongoing operation, maintenance, and replacement.

(3) PRIORITY.—In awarding grants under this subsection, the Administrator shall give priority to proposals for individuals or communities lacking to a sanitary sewage disposal system or safe drinking water system.

(*e*) REPORT.—Not later than 2 years after the date of enactment of this section, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report describing the results of the program under this section with respect to the prevalence throughout the United States of low- and moderate-income households without access to a sanitary sewage disposal system.

(*f*) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator to carry out this section $*50*,000,000 for each of fiscal years 2021 and 2022.'

Ensuring access to effective sanitation and safe drinking water poses a challenge for water systems in the United States and across the globe, especially during disruptive emergencies and

disaster recoveries. A lack of flexible, targeted federal funding is one of the key barriers to solving these problems once and for all. For poorer communities that are facing the most acute lack of access to safe running water and sanitation, federal funding that could support the work of nonprofits would make an enormous difference. New technology (and the creative application of legacy technologies) is making it possible to build decentralized systems that, once installed, are affordable to operate and maintain. Thanks to these innovative approaches, decentralized systems have the potential to provide WASH access in thousands of communities.

The Federal Government desperately needs to expand options for service delivery and management beyond municipal utilities. Small-scale wastewater systems that serve a cluster of homes are a promising option for areas where individual septic systems are not viable. Communities can create an on-site management entity to maintain household septic systems or test private wells. We are currently partnered on such a project in Lowndes County, Alabama. In other places, community-run collectives might deliver treated water from central wells to household cisterns, similar to our work with DigDeep's Navajo Water Project. Strategies like rainwater harvesting, water reuse, greywater systems, community water kiosks, fecal sludge management, biodigesters, microgrids, or remote monitoring can be effective in extreme environments and are easier to adapt to population or climatic shifts. These approaches often have reasonable maintenance fees after an up-front investment.

IAPMO is prepared to provide your committee with any additional information, including draft bill language, regarding the clarifying language proposed above. If you have questions regarding this request, please contact Dain Hansen, executive vice president for government relations for IAPMO, at dain.hansen@iapmo.org or 202-445-7514.

Thank you for your consideration,

International Association of Plumbing and Mechanical Officials (IAPMO)
4755 E. Philadelphia Street, Ontario, CA 91761

INTERSTATE COMMISSION ON THE POTOMAC RIVER BASIN

30 W. Gude Drive, Suite 450
Rockville, MD 20850
(301) 984-1908
www.potomacriver.org

Chairman
John C. Wirts

Vice Chairman
Ronald A. Stanley

District of Columbia
Willem Brakel (*)
Tiffany M. Potter
Jeffrey M. Seltzer
Kimberly L. Jones (a)
Hamid Karimi (a)
James T. Tsai (a)

Maryland
Gov. Lawrence J. Hogan
Robert J. Lewis
Nancy A. Hausrath (a*)

Pennsylvania
Rep. Dan Moul
Ronald A. Stanley*
Adam McClain(a)

Virginia
Paul A. Holland
Del. Alfonso Lopez
David K. Paylor
Scott W. Kudlas (a*)
Mark E. Peterson (a)

West Virginia
Austin Caperton
John C. Wirts (a*)
Adam McClain (a)
Phyllis M. Cole (a)

United States
Darryl Madden
MG Jeffrey L. Milhorn
Robert Sussman (*)
Amy M. Guise (a)

Executive Director
Michael A. Nardolilli

General Counsel
Robert L. Bolle

(*)--Executive Committee
(a)--Alternate

April 29, 2020

The Honorable John Barrosso
Chairman
U. S. Senate Committee on
Environment & Public Works
Washington D.C. 20515

The Honorable Thomas R. Carper
Ranking Member
U. S. Senate Committee on
Environment & Public Works
Washington D.C. 20515

Dear Chairman Barrosso and Ranking Member Carper:

On behalf of the Interstate Commission on the Potomac River Basin (ICPRB), I submit these comments in support of the Discussion Draft of "America's Water Infrastructure Act of 2020," TITLE I—WATER RESOURCES DEVELOPMENT Subtitle A, Sec. 1025.

This section amends section 5019 of The Water Resources and Development Act (WRDA) of 2007 (121 Stat. 1201; 128 Stat. 1307) to reauthorize ICPRB, the Susquehanna River Basin Commission and the Delaware River Basin Commission (collectively RBCs) and place all three RBCs under the purview of the U.S. Environmental Protection Agency (EPA) for funding purposes. The RBCs were created by Congressionally approved compacts that obligated the individual compact states and the federal government to fund the RBCs.

Included regularly under Title IV (Independent Agencies) of the Energy and Water Development Appropriations legislation enacted each year, the RBC appropriations were previously administered by the U.S. Department of Interior. Since moving the management of the appropriation to the U.S. Army Corps of Engineers (USACE), however, the legally mandated federal funding was last provided to the RBCs in 1996, except for a one-year earmark. This year, the proposed FY2021 USACE budget published in February 2020 fails to contain an allocation for the RBCs despite congressional direction to do so.

ICPRB supports the proposed amendment as we believe it is a better path forward to meet the federal funding obligations to the three RBCs under the purview of the EPA.

Sincerely,

Michael Nardolilli
Excutive Director
Contact's e-mail address: mnardolilli@icprb.org & direct telephone number: 301-274-8105

The ICPRB is an interstate compact commission established by Congress in 1940. Its mission is to protect and enhance the waters and related resources of the Potomac River basin through science, regional cooperation, and education. Represented by appointed commissioners, the ICPRB includes the District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia, and the federal government.

2020 WRDA Recommendations – Missouri River

Submitted by the Izaak Walton League of America

Jared Mott, Conservation Director

707 Conservation Lane, Gaithersburg, MD 20878

jmott@iwla.org

(301)548-0150, ext. 224

Flood damage reduction help protect both our rural and urban communities by developing non-structural flood reduction methods.

Extensive and prolonged flooding caused over $3 billion in damages in the lower Missouri River basin in 2019. The flood came on the heels of other recent devastating flood events this decade, including the record flood of 2011. These repeated catastrophic events dramatically demonstrate that changes must be made in how we manage the Missouri River System.

The economic cost from these frequent flood events to the American taxpayer keeps rising. Much more must be done to prevent future flooding. We believe that more effective flood risk reduction can be done through a combined approach which also incorporates river restoration efforts. This can be accomplished with additional levee setbacks and river widening projects. These water development projects will give the river the room to roam it continually demands. It will lower the river's crest during high flow events which will decrease flood damage and future flood risk. These projects will help to improve water quality for lower basin residents who rely on the Missouri for their drinking water.

Request: Secretary of the Army prepare a feasibility study throughout the Missouri River basin to determine what levees and river widening projects be prioritized within 5 years of enactment of this legislation.

The construction and ongoing operation of the Missouri River's Bank Stabilization and Navigation Project (BSNP) has significantly altered the lower river. The loss of over 522,000 acres of habitat along the lower river greatly contributed to the federal listing of the three species: the pallid sturgeon, interior least tern, and piping plover. In addition, 51 of 67 fish species native to the lower Missouri are currently listed as rare or declining.

Authorized under Section 601 of the 1986 Water Resources Development Act (WRDA) and Section 334 of WRDA 1999 and amended by Section 3176 of WRDA 2007, the BSNP Fish and Wildlife Mitigation Project authority allows for the development of approximately 166,750 acres of land in separate locations along the river in Nebraska, Iowa, Kansas and Missouri. WRDA 2007 states that recovery or mitigation funds made available for activities in the lower basin may be used for recovery or mitigation activities in the upper basin of the Missouri River, including the States of Montana, Nebraska, North Dakota, and South Dakota.

By the end of 2016, the Fish and Wildlife Mitigation Project had acquired a total of 66,332.87 acres at 74 sites. This includes 54,485.44 acres owned in fee title and 11,847.43 acres in easement on existing public land (USACE 2017 Biennial Report to Congress on BSNP F&W Mitigation Project). This acreage amounts to about 40% of the mitigation project's authorized 166,750 acres.

The Corps' Fall 2019 Strategic Plan identified no BSNP Fish and Wildlife Mitigation Project funding for FY 2019-2020, but it does list capability and estimated funding in FY20-23 for land management planning on BSNP Mitigation lands along with habitat restoration and riparian habitat development activities on existing lands.

We believe restoring the Missouri River reflects the nation's priorities of protecting our communities from flooding and restoring imperiled species and their habitats, while improving water quality. Funding to full programmatic capability will sustain successful recovery efforts while supporting the river's eight authorized purposes. Habitat development will result in increased recreational opportunities for families in the basin that provides year-round economic benefits for local communities.

Request: Secretary of the Army develop a strategic plan for the BSNP Fish and Wildlife Mitigation Project including long range objectives and state-specific operations management plans.

Restore and maintain our vital natural resources

Aquatic invasive species (AIS), both plant and animal, are threatening waters in the Missouri River basin. Currently Asian carp are in the Missouri River and its tributaries below Gavins Point Dam. Zebra mussels are in the Missouri River and in three of the six mainstem reservoirs; Lewis and Clark Lake, Lake Francis Case and Lake Sharpe. Additional information and outreach are critically needed to prevent the spread of AIS to the remaining three Missouri River reservoirs and other waters in the basin.

Immediate direction is also needed by federal and state agencies and nongovernmental organizations to create a basin-wide education and outreach effort to raise people's awareness of the threat posed by AIS. People are the leading vector transporting these species within the basin and across the nation. All water users, recreational, commercial, agricultural and industrial need to know how to prevent spreading these invaders to other waters.

Request: Secretary of the Army, within 60 days of enactment of this legislation, implement a basin-wide education and outreach plan designed to prevent the spread of invasive species by all users of the Missouri River ecosystem.

Kinsey Irrigation Company
181 East Loop, Kinsey, MT 59338

SIDNEY WATER USERS
Irrigation District
1101 11th ST SW, Sidney, MT 59270

May 1, 2020

Honorable John Barrasso
Chairman
Energy and Public Works Committee
410 Dirksen Senate Office Building
Washington, DC 20510

Honorable Thomas Carper
Ranking Member
Energy and Public Works Committee
456 Dirksen Senate Office Building
Washington DC, 20510

Chairman Barrasso:

On behalf of two irrigation systems from Montana, the Kinsey Irrigation Company (KIC) and the Sidney Water Users Irrigation District (SWUID), we would like to thank you for your leadership and giving us the opportunity to share our views on the America's Water Infrastructure Act of 2020 (AWIA).

As Congress begins to discuss AWIA and other pieces of legislation that addresses our nation's critical water infrastructure, we ask that Bureau of Reclamation (Reclamation) provisions be included. Congress saw the importance of including a Reclamation title in the 2018 AWIA, which passed the Senate 99-1. As drafted, AWIA 2020 includes several sections that have limited Reclamation provisions. We ask that this effort is expanded to include a full Reclamation title.

KIC and SWUID have had access to Pick-Sloan power for more than 70 years, in which their contract has been modified and renewed multiple times. However, in 2017 KIC and SWUID were informed they were no longer eligible for project use power (PUP), and that their contact, set to expire in December 2020, will not be renewed. Under the current PUP contract, power costs amount to 2.5% of KIC and SWUID's respective annual operating budgets. If their PUP contracts are not renewed at PUP rates, SWUID and KIC's power costs would consume 30-40% of their annual operating budgets. Losing PUP would not only induce negative economic impacts to these families, farmers, businesses, and workers, but it would put both KIC and SWUID at risk of going out of business.

The KIC supports 85 family farms and 6,640 agricultural acres. While the SWUID supports 45 families and 5000 acres. The impact of losing PUP will be detrimental to an already depressed agricultural economy and communities in the area.

Legislation was introduced in 2019 to resolve this issue and is an ideal example of what should be included in a Reclamation title. The fix would keep the status quo and would cap the PUP usage at current usage, never to increase. However, without PUP eligibility, there would be adverse effects on the region and economy. Because of this, the legislation has widespread support from twenty diverse groups including, the local power providers the Montana-Dakota Utilities Company and the Lower Yellowstone Rural Electric Cooperative.

Again, thank you for considering the inclusion of a Reclamation title in upcoming water infrastructure legislation. Please contacts us should you have any questions.

Sincerely,

Doug Martin
Kinsey Irrigation Company
406dougmartin@gmail.com
406.951.2640

Raymond Bell
Sidney Water Users Irrigation District
rayb@midrivers.com
406-489-2627

Kinsey Irrigation Company
181 East Loop, Kinsey, MT 59338

SIDNEY WATER USERS
Irrigation District
1101 11th ST SW, Sidney, MT 59270

May 1, 2020

Honorable John Barrasso
Chairman
Energy and Public Works Committee
410 Dirksen Senate Office Building
Washington, DC 20510

Honorable Thomas Carper
Ranking Member
Energy and Public Works Committee
456 Dirksen Senate Office Building
Washington DC, 20510

Chairman Ranking Member Carper:

On behalf of two irrigation systems from Montana, the Kinsey Irrigation Company (KIC) and the Sidney Water Users Irrigation District (SWUID), we would like to thank you for your leadership and giving us the opportunity to share our views on the America's Water Infrastructure Act of 2020 (AWIA).

As Congress begins to discuss AWIA and other pieces of legislation that addresses our nation's critical water infrastructure, we ask that Bureau of Reclamation (Reclamation) provisions be included. Congress saw the importance of including a Reclamation title in the 2018 AWIA, which passed the Senate 99-1. As drafted, AWIA 2020 includes several sections that have limited Reclamation provisions. We ask that this effort is expanded to include a full Reclamation title.

KIC and SWUID have had access to Pick-Sloan power for more than 70 years, in which their contract has been modified and renewed multiple times. However, in 2017 KIC and SWUID were informed they were no longer eligible for project use power (PUP), and that their contact, set to expire in December 2020, will not be renewed. Under the current PUP contract, power costs amount to 2.5% of KIC and SWUID's respective annual operating budgets. If their PUP contracts are not renewed at PUP rates, SWUID and KIC's power costs would consume 30-40% of their annual operating budgets. Losing PUP would not only induce negative economic impacts to these families, farmers, businesses, and workers, but it would put both KIC and SWUID at risk of going out of business.

The KIC supports 85 family farms and 6,640 agricultural acres. While the SWUID supports 45 families and 5000 acres. The impact of losing PUP will be detrimental to an already depressed agricultural economy and communities in the area.

Legislation was introduced in 2019 to resolve this issue and is an ideal example of what should be included in a Reclamation title. The fix would keep the status quo and would cap the PUP usage at current usage, never to increase. However, without PUP eligibility, there would be adverse effects on the region and economy. Because of this, the legislation has widespread support from twenty diverse groups including, the local power providers the Montana-Dakota Utilities Company and the Lower Yellowstone Rural Electric Cooperative.

Again, thank you for considering the inclusion of a Reclamation title in upcoming water infrastructure legislation. Please contacts us should you have any questions.

Sincerely,

Doug Martin
Kinsey Irrigation Company
406dougmartin@gmail.com
406.951.2640

Raymond Bell
Sidney Water Users Irrigation District
rayb@midrivers.com
406-489-2627

WESTFIELD
RESIDENTS
ADVOCATING
FOR
THEMSELVES

27 Moseley Avenue
Westfield, MA 01085

May 1, 2020

Senator John Barrasso, Chairman
U.S. Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chair Barrasso, Ranking Member Carper, and Honorable Members of the Committee,

Thank you for the opportunity to comment on *America's Water Infrastructure Act of 2020 and The Drinking Water Infrastructure Act of 2020.* We thank you for this legislation and applaud its attracting bipartisan support.

As communities struggling with contamination of our water resources by per- and polyfluoroalkyl substances (PFAS), we are writing to request that you consider including S.2980, the Clean Water Standards for PFAS Act.

Impacted communities bear an unequal burden for the costs of these chemical releases to our environment. All across America, cities and towns must fight to recover PFAS remediation costs and the costs of treating contaminated drinking water. Municipal wastewater treatment plants, in addition to receiving the PFAS from domestic waste, are often forced to accept PFAS-laden waste from industrial sources: organic chemicals, plastics, synthetic fibers; paper products, textile waste and more.

The *Clean Water Standards for PFAS Act* will assist American communities by returning the responsibility for monitoring, and cleanup to those entities causing the release of PFAS into the local environment by establishing a timeline requiring:

- The Environmental Protection Agency (EPA) to identify and mitigate the sources of PFAS in waterways and set protective limits on the amount of PFAS chemicals that can be released to these resources;
- Any entity intending to discharge PFAS directly or indirectly to surface water first acquire a *Clean Water Act* permit; and
- The EPA to establish protective standards for PFAS in wastewater effluent, before it is released into the environment or used for other purposes.

The *Clean Water Standards for PFAS Act* does not designate PFAS as hazardous materials, however, we actively support this designation. This bill will not prevent production and use of PFAS -containing personal protective equipment (PPE), however we support this restriction particularly in light of our fight against Covid-19.

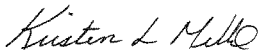
Exposure to PFAS compromises our immune system function and our ability to fight COVID-19 and other infectious diseases. PFAS have been shown to reduce antibody response to vaccines. Children are especially susceptible, receiving PFAS throughout development from placental transfer, cord blood, and breastmilk from exposed mothers.

Including S. 2980 in *America's Water Infrastructure Act of 2020 and The Drinking Water Infrastructure Act of 2020* will protect public health and our environment by reducing the amount of PFAS entering municipal wastewater systems and preventing ongoing release to our communities and our environment.

We urge you to enact legislation that will finally stop the flow of PFAS discharges into our water resources. Please add S. 2980 into *America's Water Infrastructure Act of 2020 and The Drinking Water Infrastructure Act of 2020.*

Thank you for including these comments in the official record, and for considering them during your deliberations.

Very sincerely yours,



Kristen L. Mello
Co-founder, Director, WRAFT
Westfield Residents Advocating For Themselves
klm.wraft@gmail.com
413.564.4772

... who is also a Westfield City Councilor, At-Large

Respectfully submitted on behalf of the undersigned and those they represent:

NH State Representative Wendy Thomas
Merrimack, NH

Nicholas Morganelli, City Councilor, At-Large
Westfield, MA

Bridget Matthews-Kane, Westfield City Council, Ward 3
Westfield, MA

Laura Olah, Executive Director, Citizens for Safe Water Around Badger (CSWAB)
Merrimac, WI

Loreen Hackett, PfoaProjectNY
Hoosick Falls, NY

Laurene Allen, Merrimack Citizens for Clean Water
Merrimack, NH

Emily Donovan, Clean Cape Fear co-founder
Winnabow, NC

Buxmont Coalition for Safer for Water
Bucks and Montgomery County, PA

Vicki Quint, Code PFAS
Brookfield, WI

Stel Bailey, Fight For Zero, Executive Director
Cocoa, FL

Pamela Miller, Executive Director, Alaska Community Action on Toxics
Anchorage, AK

Diane and Paul Cotter, Founders; Your Turnout Gear and PFOA
Rindge, NH

Barry Kissin Fort Detrick Restoration Advisory Board
Fredrick, MD

Elizabeth Dejkus, WRAFT
Westfield, MA

Kathleen Hillman, WRAFT
Westfield, MA

Tara Thornton, Deputy Director, Endangered Species Coalition
National

L. Kyle Horton MD, MBA
Wilmington, NC

Joshua Panis
Westfield, MA

Heidi Leonard
Westfield, MA

Lorraine Golio
Westfield, MA

Dean Hoegger, Clean Water Action Council of Northeast Wisconsin, President
Green Bay, WI

Tom Lukens, Valley Stewardship Network, Board Chair
Viroqua, WI

JOHN LaFORGE, CO-DIRECTOR, NUKEWATCH
Luck, WI

Katharine Hodge, Merrimack Citizens for Clean Water
Merrimack, NH

John Peck, Family Farm Defenders, executive director
Madison, WI

Melody Morrell, Operations Director at The Cornucopia Institute
Viroqua, WI

Al Gedicks, Wisconsin Resources Protection Council, Executive Secretary
La Crosse, WI

Forest Jahnke, Crawford Stewardship Project
Gay Mills, WI

Linda Shosie
Tucson, AZ

Don Timmerman and Casa Maria Catholic Worker
Milwaukee, WI

Rachael Morin
Westfield, MA

Christopher W Clark
Westfield, MA

Gina Rosati
Merrimack, NH

Dace Zeps, Wisconsin Network for Peace, Justice & Sustainability, Administrator
Madison, WI

Dan Bienvenue
Westfield, MA

Dannielle Tompkins
Westfield, MA

Diane Pighetti
Westfield, MA

Carin Impionbato
Westfield, MA

Demand Action
Grand Rapids, MI

Tracy Stewart, Massachusetts Rep for Safe Healthy Playing Fields
Medway, MA

Karen Pighetti
Westfield, MA

Agma M. Sweeney
Westfield, MA

Jill Adams
Westfield, MA

Wade Rivest
Westfield, MA

Hello,

Thank you for allowing us the opportunity to review the discussion draft of the America's Water Infrastructure Act (AWIA) of 2020. Please see LA County Public Works' comments:

- SEC.1029. CORPS FLOOD POLICY WITHIN URBAN AREAS
  - Requires the Corps to expedite completion of a report on urban flooding pursuant to section 1211 of WRDA 2018.
  - NAFSMA prepared a white paper (with PW input) on urban flooding to justify funding from FEMA for entities to conduct urban flooding studies.
  - **COMMENT: SUPPORT**

- SEC.1033. MAINTENANCE OF HIGH RISK FLOOD CONTROL PROJECTS.
  - Stipulates that the Corps shall be responsible for maintaining DSAC-3 or higher facilities until the earlier of 1) the facility is modified to reduce the DSAC risk to "adequately safe" as determined by the Corps and 2) 15 years of enactment of WRDA 2020.
  - Whittier Narrows Dam is currently at DSAC-1. After the safety modification project it is expected to still be DSAC-3.
  - As written the language seems to leave open the possibility for the Corps to cease maintaining DSAC-3 or higher facilities after 15 years.
  - **COMMENT: OPPOSE, OR CLARIFY INTENT OF LANGUAGE.**

- SEC.1037. INTERAGENCY TASK FORCE ON SMALL DAMS AND FISH PASSAGES.
  - Requires the Corps to establish an interagency task force to study small dams and fish passages. The goal is to recommend a national strategy for identifying, prioritizing, and removing or refurbishing small dams of concern by 2030.
  - Potential impacts to FCD debris basins under federal jurisdiction. USFWS, NMFS, and CDFW are pushing for fish passage, and these agencies are brought into the Corps' 404 permit process. Passage may also become an issue for FCD rubber dams operating within Waters of the US.
  - **COMMENT: OPPOSE, OR CLARIFY INTENT OF LANGUAGE**

- SEC.1071. REPORT ON SINGLE LEVEE STANDARD.
  - Requires the Corps, in coordination with FEMA, to submit to Congress a report on the differences between the levee standards of the two agencies, and whether those differences create uncertainty for levee management purposes.
  - This provision is potentially problematic if the report results in new levee standards for levees where PW has already obtained FEMA accreditations.

- **COMMENT: AMEND TO APPLY ONLY TO LEVEES NOT ALREADY ACCREDITED BY FEMA PRIOR TO JANUARY 1, 2024.**

- SEC 1101. FLEXIBILITY FOR PROJECTS.
  - This section establishes a two-year goal for the completion of Corps feasibility studies by using all existing flexibilities under and exceptions to Corps' requirements.
  - **COMMENT: SUPPORT.**

- SEC.1202. EXPEDITED COMPLETION.
  - This section lists 55 projects targeted for expedited completion. The only project within LA County is the Malibu Creek Ecosystem Restoration Project (evaluating feasibility of removing Rindge Dam).
  - PW's role in this project is limited.
  - PW is pursing completion of the Arroyo Seco Ecosystem Restoration Project without the Corps, so we do not recommend requesting adding that project to this list.
  - **COMMENT: NEUTRAL.**

- SEC. 2014. WATER INFRASTRUCTURE FINANCING REAUTHORIZATION / SEC. 2015. REAUTHORIZATION OF CLEAN WATER STATE REVOLVING LOAN FUND
  - Section 2014 would reauthorize the Water Infrastructure Finance and Innovation Act (WIFIA) of 2014 up to $150 million between 2022 and 2024.
  - Section 2015 would reauthorize the Clean Water State Revolving Fund up to $7.5 billion between 2022 and 2024.
  - These federal loan programs generally help implement wastewater and drinking water projects.
  - The programs should be expanded to include assisting the development and implementation of stormwater projects for Clean Water Act compliance.
  - **COMMENT: AMEND TO INCORPORATE STORMWATER MULTI-BENEFIT PROJECTS FOR MS4 PERMIT AND TMDL COMPLIANCE.**

Thank you,
Jolene Guerrero, P.E.
Head, Community and Govt Relations
LA County Public Works
(626) 458-3912
Cell (626) 632-1308

May 1, 2020

To be submitted to the Senate Committee on Environment and Public Works in PDF format
QFR@epw.senate.gov

The Honorable John Barrasso
Chairman
United State Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Thomas R. Carper
Ranking Member
United State Senate Committee on Environment and Public Works
456 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso and Ranking Member Carper:

Thank you for the opportunity to provide comment on the America's Water Infrastructure Act of 2020 proposed legislative language.

The flood event of 2019 was severe in its impacts to the states of Iowa, Kansas, Missouri, and Nebraska, and it was unparalleled in its duration and damages. Since the early days of the 2019 flood event, Governors Reynolds, Kelly, Parson, and Ricketts of Iowa, Kansas, Missouri, and Nebraska, respectively, have been committed to coordinating efforts in order to bring a better level of protection to the entire Lower Missouri River. As such, a Memorandum of Agreement between the governors has directed our state agencies to continue to look for innovative flood response, recovery, and resilience that ensures the most effective outcomes in the future. Our agencies have been steadfast in creating a vision and maintaining our communication and our course of action to provide coordinated, systemic future flood protection infrastructure for the Lower Missouri River below Gavins Point Dam. Our singular goal—future flood protection—was motivated by the severe sustained impacts our states experienced during the 2019 event.

As we have reviewed the most recent text for Section 1001 of America's Water Infrastructure Act of 2020, titled Upper and Lower Missouri River comprehensive flood protection studies, we are concerned about the potential ambiguity created by the addition of a second Missouri River study focused on the Upper Missouri River basin. While our states certainly understand the need for holistic river management to support the authorized purposes, our understanding is that the impetus for proposing a study was the severe flood event of 2019, an event whose impacts were

most harmful to our four Lower Missouri River states, and for which action must be taken. We have learned and appreciated that when events such as the 2019 flooding occur, where conditions lead to runoff in the unregulated portion of the river basin, our states must have a coordinated approach for flood protection and resilience that must be operable in the event that upstream reservoir management cannot mitigate the floodwaters.

We believe that without clear delineation, the addition of a broader study that requires the incorporation of the upper river could dilute the effectiveness of our state's joint efforts and delay the implementation of flood reduction projects in the Lower Missouri River. Part (b) of the draft language of Section 1001 states that the study shall address flood risk in areas affected by severe flooding in 2019. We believe those areas most affected by 2019 flooding events were within the Lower Missouri River. Allowing the prioritization of study to remain centered on the Lower Missouri River will maintain a clear focus of reducing future flood risk from a recurrence of the 2019 event. Therefore, we respectfully request that a flood protection study in the lower basin be prioritized ahead of broader study efforts and allowed to proceed in advance so that the current focus remains on areas where the 2019 flooding effects have been the most acute.

The four lower basin states, working in concert with the Corps of Engineers, have made significant progress over the last year. Inclusion of authority in the America's Water Infrastructure Act can help to move these efforts along more fully if done correctly, or hinder our ongoing work if made too broad or complicated. We appreciate your efforts and support of the work we have underway.

Dru Buntin, Missouri Department of Natural Resources Deputy Director, will serve as a point of contact to coordinate response from the states on this matter. Mr. Buntin can be reached by mail at PO Box 176, Jefferson City, MO 65102; by email at Dru.Buntin@dnr.mo.gov; and by phone at 573-522-6221.

Sincerely,

Earl Lewis, Director
Kansas Water Office

Dru Buntin, Deputy Director
Missouri Department of Natural Resources

Jesse Bradley, Acting Director
Nebraska Department of Natural Resources

To: Senate Committee on Environment and Public Works, Chairman Mr. John Barrasio and Ranking Member Mr. Tom Carper

Comments From: Marian Maas, Ph.D.; 13005 S. 33rd Circle, Bellevue, NE 68123; marian.maas@coc.net; 402-293-9235

Dear Sirs and Committee Members:

I wish to provide support for your full consideration of the Interception Rearing Complexes (IRCs) and aid in their construction and development to the full possible capability. The IRCs are the major component of the ROD for the US Army Corps of Engineers' effort to meet compliance for prevention of jeopardy of the pallid sturgeon in the Missouri River. The ancient fish is diminishing in number, endangered, and not fulfilling "recruitment" from egg stage to a juvenile, growing fish stage. The IRCs are really the only hope that the Corps has at the present to turn this around and save the pallid sturgeon population. These small habitat enrichment sites do not interfere with navigation or dredging, nor increase flooding, as their opposition keep insisting. The Corps places these sites where it will be best to provide protection from the artificially extremely fast current (result of channelizing, straightening, and deepening the river by the USACE as industrial interests demanded; the Missouri River is the most modified river in the country.), and provide foraging and feeding capability for the tiny young sturgeon.

Please do not limit the number of IRCs that can be built. Please do not put extra constraints and demands upon the Corps, such as this draft bill's requirement for biannual reports for the next ten years on the changes to impacts of IRCs. Nature does not always work the way you will think it will work, nor will it always show a change or an improvement right away after a project has been installed. It may take several years before any change in the fish population will be seen, therefore making the Corps write a report immediately and every two years a needless, time and resource consuming requirement.

The IRC plan does not contribute to flood risk. And please be aware that Fish and Wildlife is also one of the Authorized Uses that was in the original 1942, 1944 Flood Control Acts. The Master Manual is NOT the original source of the eight authorized uses. Restoring riparian, aquatic, and terrestrial habitat which was lost in the channelization of the river is at the heart of acknowledging the Fish and Wildlife Authorized Use.

As a retired biologist I am concerned about the overall tenor of the draft legislation. Although "Environment" is part of the Committee's name, much of the contents of the proposed bill is directed towards economics - projects that will bring in jobs, income to local communities, and economic development. Very few words even mention the environment, species and habitat protection, outdoor recreation, or protection of our natural resources in their native state for The Public Trust.

Thank you for your kind attention. I look forward to hearing from you.

Sincerely,

Marian Maas, Ph.D., M.S.

marian.maas@cox.net

City of Pico Rivera
OFFICE OF THE CITY COUNCIL
6615 Passons Boulevard · Pico Rivera, California 90660 · (562) 801-4371
www.pico-rivera.org

GUSTAVO V. CAMACHO
Mayor

April 29, 2020

Sen. John Barrasso, Chairman
The United States Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Chairman Barrasso, Ranking Member Carper, and Members of the Committee:

The City of Pico Rivera, California is a community of 64,000 residents, located 11 miles east of Los Angeles. We appreciate the opportunity to offer comments to inform the information-gathering process regarding the draft America's Water Infrastructure Act of 2020 and the Drinking Water Infrastructure Act of 2020. We are especially grateful for the Committee on Environment and Public Works' (EPW) efforts to bring attention to the water infrastructure needs of the nation. As you work to finalize legislation, please consider these vitally important issues:

Help provide the tools needed to mitigate the impact of the Whittier Narrows Dam Safety Modification Project.

Our city is currently in the unique position of having to balance how to accommodate the Whittier Narrows Dam safety project, a multi-year flood control effort being under taken by the U.S. Army Corps of Engineers, to help prevent dam malfunction and potentially catastrophic disruption to our region, while meeting the needs of residents and businesses that make up our community.
Pico Rivera will be permanently disrupted by the project. The Corps will have to demolish much of our parks and recreation facilities for construction activities and other modifications at a cost of $100 million. We have submitted a Sec. 7001 proposal and continue to work closely with the Army Corps and our Congressional Delegation. Your help in providing the statutory tools to ensure that mitigation funds are available to communities like ours, facing disruption as a result of Army Corps projects, is imperative to our economic vitality.

Provide adequate resources to enable communities to remediate PFAS.

In order to meet new water quality standards, we must build a water treatment system to remove PFOA and PFOS from the groundwater and improve, repair and replace existing water facilities. The estimated cost to build treatment facilities at three plants and two well locations is approximately $10 million with on-going maintenance costs at roughly $1 million per year.

City of Pico Rivera
OFFICE OF THE CITY COUNCIL
6615 Passons Boulevard · Pico Rivera, California 90660 · (562) 801-4371
www.pico-rivera.org

GUSTAVO V. CAMACHO
Mayor

Considering the fact that there are numerous water purveyors throughout the nation facing this new health issue, we encourage you to increase the allocation for grants to assist in the remediation of emerging contaminants, with focus on perfluoroalkyl and polyfluoroalkyl substances. According to the U.S. Geological Survey, more than one-third of the Nation's population, roughly 115 million people, rely on groundwater for drinking water.

As the Senate EPW Committee works to finalize these bills and other water infrastructure legislation, we would welcome the opportunity to work with you and your staff and answer any questions. Thank you again for your leadership on these important issues.

Sincerely,

Gustavo V. Camacho
Mayor
City of Pico Rivera

GEORGE FLAGGS, JR.
MAYOR

November 1, 2019

The Honorable Roger Wicker
United States Senate
555 Dirksen Senate Office Building
Washington, DC 20510

Senator Wicker,

As Mayor of Vicksburg, and a member of the Mississippi River Cities and Towns Initiative (MRCTI), I am requesting that you strongly consider the enclosed amendments to the 2020 Water Resources Development Act (WRDA) reauthorization. The MRCTI would like the WRDA reauthorization to include the following:

- Improvements to disaster prediction;
- Studies to better understand the mitigation impacts of our ecological infrastructure; and,
- The creation of a recovery bond pilot program to improve disaster and resilience financing critical to the Mississippi River Corridor.

I urge you to work with other members of Congress along the Mississippi River to include these amendments in the WEDA reauthorization. MRCTI Mayors are reaching out to Senator Earnst (IA), Senator Duckworth (IL) and Senator Boozman (AR).

Thank you for your leadership and support. I hope to see you soon.

Sincerely,

George Flaggs, Jr.
Mayor

(enclosure)

CITY OF VICKSBURG, MISSISSIPPI • OFFICE OF THE MAYOR
1401 Walnut Street • Vicksburg, Mississippi 39180 • Office: 601.631.3718 • Fax: 601.631.3674 • *mayorflaggs@vicksburg.org*
VICKSBURG.ORG

CITY OF HELENA-WEST HELENA

October 30, 2019

Senator John Boozman
1401 West Capitol Avenue Ste 155
Little Rock, Arkansas 72201

Via email: ty_davis@boozman.senate.gov

SUBJECT: MRCTI Water Resources Development Proposal

Dear Senator Boozman:

Enclosed please find a drafted proposal from the Mississippi Rivers and Towns Initiative detailing three critical additions to the 2020 reauthorization of the Water Resources Development Act. I urge you to consider this proposal and support it when it comes before you. This proposal could have a positive impact on our community with its location directly on the Mississippi in the Alluvial floodplain.

Thank you again for all you are doing for Helena and Phillips County. You may contact me at 870-816-5122 or by email at mayor@helena-westhelena.us.

Respectfully,

Kevin A. Smith

Mayor Kevin Smith
City of Helena-West Helena

cc: Colin Wellenkamp, Executive Director MRCTI

Kevin Smith, Mayor **Sandi Ramsey, City Clerk** **Andre Valley, City Attorney** **Derrick Turner, Treasurer**

P: 870.817.7400 | F: 870.338.7250 | PO Box 248 | 226 Perry Street | Helena, AR 72342

City of Greenville, Mississippi

Errick D. Simmons
Mayor

Office of the Mayor

City Council Members
Al Brock, Ward 1
Lois Hawkins, Ward 2
Bill Boykin, Ward 3
Lurann Thomas, Ward 4
Tasha Banks, Ward 5
James Wilson, Ward 6

340 Main Street • P.O. Box 897 • Greenville, MS 38701 • Telephone: 662-378-1501 • Facsimile: 662-378-0276 • Email: edsimmons@greenvillems.org

The Honorable Roger Wicker
United States Senator, Mississippi
555 Dirksen Senate Office Building
Washington, D.C. 20510

RE: WRDA

Dear Senator Wicker:

As Mayor of Greenville, and a member of the Mississippi River Cities and Towns Initiative (MRCTI), I am requesting that you strongly consider the enclosed amendments to the 2020 Water Resources Development Act (WRDA) reauthorization. The MRCTI would like WRDA reauthorization to include the following:

- Disaster Prediction Improvements;
- Natural Infrastructure Mitigation Capacity Study; and,
- The creation of a recovery bond pilot program to improve disaster and resilience financing critical to the Mississippi River Corridor.

These amendments will tremendously help Greenville given the historic Flood of 2019, where the city sustained over $4 million dollars in municipal damages with 37 sewer failures and over 30 street failures.

I urge you to work with other members of Congress along with MRCTI senators, like Senator Earnst (IA), Senator Duckworth (IL), and Senator Boozman (AR) in this matter.

Thank you for your attention to and cooperation in this matter.

Sincerely,

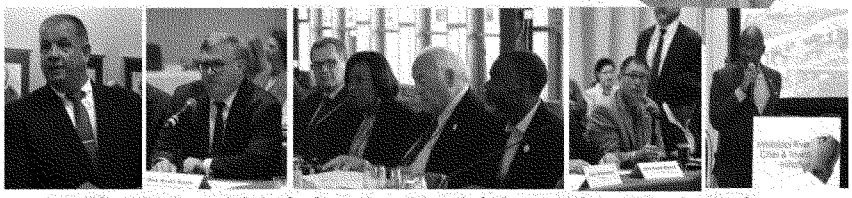
Errick D. Simmons
Mayor

Enclosure

Mississippi River Cities & Towns Initiative

An Association of United States Mayors

Our National Treasure 2019



Pictured from R to L: Mayor Rick Eberlin of Grafton, IL; Mayor Kevin Smith of Helena-West Helena, AR; Mayor Tim Kabat of La Crosse, WI; Mayor Sharon Weston Broome of Baton Rouge, LA; Mayor Frank Klipsch of Davenport, IA; Mayor Lionel Johnson of St. Gabriel, LA; Mayor Bob Gallagher of Bettendorf, IA; Mayor Errick Simmons of Greenville, MS

Water Resources Development Act 2020 Proposal:
Mississippi River Program – Disaster Prediction Improvements
Natural Infrastructure Mitigation Capacity Study
Recovery Bond Pilot

A proposal submitted by Mayors along the Mississippi River to Sustain one of the most important resources in the United States

---

The Mississippi River makes possible the United States' only trade surplus, generates nearly $500 billion in annual revenue, directly supports 1.5 million jobs, and is the largest commodity producer and mover in the world generating over $164 billion in commodity export economy alone. Yet, all of this economy is at significant risk due to vulnerabilities and damage created by escalating disasters costing cities 3 to 8 percent of their economies. 2019 was especially significant with no lees than $2 billion in actual losses along the main stem corridor and likely above $4 billion for the larger basin.

These unprecedented disasters throughout the Mississippi River Corridor necessitate further overt action including disaster prediction system improvements and hardware upgrades, economic analysis on the capacity of natural infrastructure to absorb and mitigate disaster impacts, and finally, assistance for city borrowing capacity to deploy financing for recovery activities so that infrastructure can be improved during rebuilding for greater resilience against the next event.

Cities along the Nation's most important asset propose three critical additions to the 2020 reauthorization of the Water Resources Development Act that will work to realize solutions on the ground that are cost effective to the American taxpayer providing a nearly 6 to 1 return on investment.

Disaster Prediction Improvements—Similar to what was authorized in WRDA 2014 but with specific hard ware and software additions specifically aimed at capturing more real-time data on water levels and inundation mapping capabilities.

Natural Infrastructure Mitigation Capacity Study—Wetlands, marshes, forests, connected floodplain and backwater areas play a multi-billion dollar role in helping cities manage and regulate water, but it is not well understood how these assets can work collectively to protect critical national infrastructure through the corridor so Mayors know where to deploy, restore, and/or augment natural infrastructure to achieve the best mitigation results; this study will equip them with that knowledge.

Recovery Bond Pilot—Not dissimilar to profit repatriation legislation or *Build America Bonds*, these recovery bonds would allow for private capital to flow into recovery and resilience projects by providing a subsidy to the issuer of the bonds at the rate of 35% of the interest paid by the issuer. Only taxable bonds would be eligible for the subsidy. This subsidy will lower the cost of capital of issuers participating in the program, allowing them to more quickly win approval of the projects and begin work. These projects would work in tandem throughout the Mississippi River Corridor toward mitigating the $2+ billion in actual losses incurred along 75 percent of the River Valley in 2019 with an aim toward rebuilding more resilient and sustainably. This pilot can allow for a significant expansion of projects and programs in the region, create jobs in devastated areas, give investors confidence the United States is taking steps to address compelling needs, and stimulate local economies that have been depressed by recent flooding and reduced international commodity sales. Moreover, this pilot can address critical infrastructure needs that threaten the security of our waterways and logistical systems.

Due to its ecological significance and economic importance, the Mississippi River has been the beneficiary of several Congressional actions over the past 25 years.

- In 1986, Congress designated the Upper Mississippi River System as both a nationally significant ecosystem and navigation system – the only inland river system to receive such a designation;
- In 1986 and again in 1999 and 2007, Congress authorized the Environmental Management Program (EMP). EMP is intended to ensure the coordinated development and enhancement of the Upper Mississippi River system;
- In 2007 Congress further authorized the Navigation and Ecosystem Sustainability Program (NESP). The objective of NESP is to adaptively manage the operation of the upper river system for both navigation and the environment.

2019 Disaster Impacts to Select Mississippi River States

14 million people displaced, 19.3 million acres unplanted, Basin-wide event from PA to OK

IOWA saw perhaps some of the worst and most expensive impacts out of all 275 days of flooding in 2019 with the largest recorded flood level recorded and over $1.7 billion in losses from both sides of the state. Major disaster declaration issued March 23.

ILLINOIS communities on the Mississippi River lost as much as 80% of their seasonal economy due to the 2019 floods. The confluence area of the Illinois, Missouri, and Mississippi Rivers witnessed an inland sea nearly 10 miles across. Dangerous constriction points and little natural storage capacity amplified risk. Major disaster declaration issued September 19.

ARKANSA sustained flooding across the state with the Arkansas River being above flood stage for most of its length from Oklahoma to Mississippi. By early June, only half of the Arkansas soybean crop had been planted. Major disaster declaration issued June 8.

MISSISSIPPI sustained flooding for six months in 2019. Storms, straight-line winds, and tornadoes also ravaged areas. Over 200,000 acres of farmland flooded and Greenville broke the all-time flood duration record set in 1927. Major disaster declaration issued April 23.

LOUISIANA sustained the longest period of flooding in the entire corridor—275 days, breaking all previous records. The U.S. Army Corps of Engineers opened the Bonnet Carre Spillway twice in one year, for the first time ever. Subsurface infrastructure damage to northern and mid-Louisiana is expected to be nearly 30 percent.

Water Resources Development Act 2020 Proposal:
Mississippi River Program–Disaster Prediction Improvements, Natural Infrastructure Mitigation Capacity Study, Recovery Bond Pilot

A proposal submitted by Mayors along the Mississippi River to Sustain one of the most important resources in the United States

---

Due to its ecological significance and economic importance, the Mississippi River has been the beneficiary of several Congressional actions over the past 25 years.

- In 1986, Congress designated the Upper Mississippi River System as both a nationally significant ecosystem and navigation system – the only inland river system to receive such a designation;
- In 1986 and again in 1999 and 2007, Congress authorized the Environmental Management Program (EMP). EMP is intended to ensure the coordinated development and enhancement of the Upper Mississippi River system;
- In 2007 Congress further authorized the Navigation and Ecosystem Sustainability Program (NESP). The objective of NESP is to adaptively manage the operation of the upper river system for both navigation and the environment;
- Unprecedented disasters throughout the Mississippi River Corridor have necessitated further overt action on behalf of Congress and state and local governments culminating in new levels of coordination and innovation which is supported through the following.

SEC. ____. MISSISSIPPI RIVER.

(a) MISSISSIPPI RIVER DISASTER PREDICTION IMPROVEMENTS.—

(1) IN GENERAL.—The Secretary, in consultation with the Secretary of the department in which the Coast Guard is operating, the Director of the United States Geological Survey, the Administrator of the National Oceanic and Atmospheric Administration, and the Director of the National Weather Service, as applicable, shall improve disaster prediction on the Mississippi River by—

(A) updating forecasting technology deployed on the Mississippi River and its tributaries through—

(i) the construction of additional automated river gages and sensors;

(ii) the rehabilitation of existing automated and manual river gages and sensors;

(iii) the replacement of manual river gages with automated gages and sensors, as the Secretary determines to be necessary; and

(iv) the development of interoperable channels between agencies to share and update technology and information through a unified systems portal through which local and state officials may accumulate data across federal platforms.

(B) constructing additional sedimentation ranges on the Mississippi River and its tributaries; and

(C) deploying additional automatic identification system base stations at river gage sites.

(2) PRIORITIZATION.—In carrying out this subsection, the Secretary shall prioritize the sections of the Mississippi River on which additional and more reliable information would have the greatest impact on maintaining navigation on the Mississippi River as well as protect critical national infrastructure from both low and high water disaster events.
(3) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress and make publicly available a report on the activities carried out by the Secretary under this subsection.

(b) MISSISSIPPI RIVER MAIN STEM NATURAL INFRASTRUCTURE DISASTER MITIGATION STUDY.—
(1) DEFINITION OF GREATER MISSISSIPPI RIVER BASIN.—In this subsection, the term "Mississippi River Main Stem" means the area covered in length from Lake Itasca State water boundaries to the mouth of the Mississippi where it empties into the Gulf of Mexico; and in width one whole county east and west of the channel along the entire corridor as of the date of enactment of this Act.
(2) IN GENERAL.—The Secretary shall carry out a study of the Mississippi River Main Stem—
(A) to improve the coordinated and comprehensive management of water resource projects in the greater Mississippi River Basin relating to severe flooding and drought conditions; and
(B) to identify and evaluate—
(i) natural infrastructure assets such as, but not limited to, wetlands, marshes, forests, and connected floodplain areas that have contributed to disaster mitigation capacity of the main stem to absorb impacts and reduce risk to critical infrastructure; and
(ii) the development of new water resource projects that incorporate natural infrastructure to improve the reliability of navigation and more effectively reduce disaster risk to cities.
(3) REPORT.—Not later than 3 years after the date of enactment of this Act, the Secretary shall submit to Congress and make publicly available a report on the study carried out under this subsection.
(4) SAVINGS CLAUSE.—Nothing in this subsection impacts the operations and maintenance of the Missouri River Mainstem System, as authorized by the Act of December 22, 1944 (commonly known as the "Flood Control Act of 1944")(58 Stat. 897, chapter 665).
(5) DISPOSITION.—
(A) IN GENERAL.—The Secretary may carry out any project identified pursuant to paragraph (1) in accordance with the criteria for projects carried out under one of the following authorities:
(i) Section 206 of the Water Resources Development Act of 1996 (33 U.S.C. 2330).
(ii) Section 1135 of the Water Resources Development Act of 1986 (33 U.S.C. 2309a).
(iii) Section 107 of the River and Harbor Act of 1960 (33 U.S.C. 577).
(iv) Section 104(a) of the River and Harbor Act of 1958 (33 U.S.C. 610(a)).

Further provision under WRDA Subtitle n, General Provisions or Subtitle n Innovative Financing Pilot Projects

SEC. ____. MISSISSIPPI RIVER DISASTER RECOVERY BOND PILOT PROGRAM

(a) IN GENERAL.—The Secretary shall establish a pilot program to issue new capital expenditure bonds for the next two years whose primary use of proceeds is for projects promoting economic and environmental security and stability along the Mississippi River Corridor to support recovery and resiliency efforts in the aftermath of the largest and longest flood disaster in US recorded history.

(b) PURPOSES.—The purposes of the pilot program established under subsection (a) are—

(1) to identify cost-saving project delivery alternatives that reduce the backlog of critical infrastructure repair and restoration projects that have become more urgent post the 2019 flood season;

(2) to evaluate the technical, financial, and organizational benefits of allowing for a significant expansion of projects and programs in the devastated region, build employment in disaster areas, stimulate local economies that have been impacted by recent flooding and by external economic issues such as those affecting international commodity sales, address critical infrastructure needs that threaten the security of the nation's waterways and logistical systems, and lead to a more preeminent role for American commodity movement through the global supply chain; and

(3) lower the cost of capital of issuers participating in the program, allowing issuers to more quickly gain approval of pending projects and begin work on funded projects;

(4) give global commodity investors confidence that the United States is taking steps to address critical infrastructure needs in the face of mounting impacts; and

(5) to evaluate the effectiveness of offering innovative financing options to cities, counties, and states for the recovery and deployment of infrastructure destroyed or compromised by the 2019 flood season, and rebuild that infrastructure to be more resilient than previous condition.

(c) SUBSEQUENT APPROPRIATIONS.—Any activity undertaken under this section is authorized only to the extent specifically provided for in subsequent appropriations Acts.

(d) ADMINISTRATION.—In carrying out the pilot program established under subsection (a), the Secretary shall—

(1) provide a subsidy of up to 35 percent on the interest of recovery and resilience bonds issued pursuant to this section thereby making borrowing for infrastructure projects cost advantageous for state and local governments identifying for inclusion in the program at least 15 projects submitted by cities, counties, and/or states for channel improvement, inland navigation, flood damage reduction, drought, or hurricane and storm damage reduction that includes both natural and built infrastructure;

(2) in consultation with the non-Federal pilot applicant associated with each project identified under paragraph (1), develop a detailed project management plan for selected projects that outline the scope, financing, budget, design, and construction resource requirements necessary for the non-Federal pilot applicant to execute the project, or a separable element of the project.

(e) SELECTION CRITERIA FOR PROVIDING SUBSIDY TO BOND FOR PROJECT(S).— In identifying projects under subsection (d)(1), the Secretary shall consider the extent to which the project—

(1) is significant to the economy of the United States;

(2) leverages Federal investment by encouraging non-Federal contributions to the project;

(3) employs innovative project delivery and cost-saving methods;

(4) received Federal funds in the past and experienced delays or missed scheduled deadlines;

(5) has unobligated Corps of Engineers funding balances;

(6) has not received Federal funding for recapitalization;

(7) incorporates both natural and built infrastructure to achieve recovery and mitigation milestones;

(8) partners with multiple states along the Mississippi River promulgate the benefits of the infrastructure to as many jurisdictions as possible;

(9) is financially sustainable upon completion of the one-time bond subsidy; and

(10) operates and/or focuses projects benefits at corridor scale as much as applicable.

(f) DETAILED PROJECT SCHEDULE.— a non-Federal pilot applicant, to the maximum extent practicable, shall submit to the Secretary a detailed project schedule for the relevant project, based on estimated funding levels, that specifies deadlines for each milestone with respect to the project.

(g) TECHNICAL ASSISTANCE.— At the request of a non-Federal pilot applicant participating in the pilot program established under subsection (a), the Secretary may provide to the non-Federal pilot applicant technical assistance with respect to—

(1) a study, engineering activity, or design activity related to a project carried out by the non-Federal pilot applicant under the program; and

(2) obtaining permits necessary for such a project.

(h) RULE OF CONSTRUCTION.—Nothing in this section allows the Secretary to waive any requirement under—

(1) sections 3141 through 3148 and sections 3701
through 3708 of title 40, United States Code;

(2) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or

(3) any other provision of Federal law.

(i) NON-FEDERAL FUNDING.—The non-Federal pilot applicant may finance the non-Federal share of a project carried out under the pilot program established under subsection (a).

(j) COST SHARE.—Nothing in this section affects a cost-sharing requirement under Federal law that is applicable to a project carried out under the pilot program established under subsection (a).
(k) REPORT.—Not later than 3 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives and make publicly available a report describing the results of the pilot program established under subsection (a), including any recommendations of the Secretary concerning whether the program or any component of the program should be implemented on a national basis.
(l) NON-FEDERAL PILOT APPLICANT DEFINED.—In this section, the term "non-Federal pilot applicant" means—
(1) the non-Federal sponsor of the water resources development Project which must be a local government including a city, county, state, or Native American Tribe;
(2) a non-Federal interest, as defined in section 221 of the Flood Control Act of 1970 (42 U.S.C. 1982d–5b); or
(3) a private entity in partnership local government as the applicant in which the project is located or that is otherwise affected by the project.

(m) BOND ISSUANCE – In the case of a qualified bond issued before January 1, 2022, the issuer of such bond shall be allowed a credit with respect to each interest payment under such bond which shall be payable by the Secretary as provided in subsection (1).
(1) Payment of Credit.— The Secretary shall pay (contemporaneously with each interest payment date under such bond) to the issuer of such bond (or to any person who makes such interest payments on behalf of the issuer) up to 35 percent of the interest payable under such bond on such date.
(2) Application of Arbitrage Rules.— For these purposes, the yield on a qualified bond shall be reduced by the credit allowed under this section.
(3) Interest Payment Date.— For purposes of this subsection, the term interest payment date' means each date on which interest is payable by the issuer under the terms of the bond.
(4) Qualified Bond.— For purposes of this subsection, the term 'qualified bond' has the meaning given such term in section (m) and is congruent to the term 'recovery bond.'
(5) Restrictions.—
(A) this program shall not be eligible for use to refinance prior bond issues, but only for new projects or next phases of ongoing projects requiring financing;
(B) only taxable bonds should be eligible for the subsidy; and
(C) the program should not include tax exempt issuance.

(6) Transitional Coordination With State Law.—Except as otherwise provided by a State after the date of the enactment of this Act, the interest on any recovery bond within this pilot (as defined in section 54AA of the Internal Revenue Code of 1986, as added by this section) and the amount of any credit determined under such section with respect to such bond shall be treated for purposes of the income tax laws of such State as being exempt from Federal income tax.

(7) Effective Date.—The amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.

The Metropolitan District of Hartford, Connecticut
Funding for Clean Water and Wastewater Infrastructure

Thank you for the opportunity to provide the Senate Committee on Environment and Public Works with comments relating to America's Water Infrastructure Act of 2020 and The Drinking Water Infrastructure Act of 2020. As you consider these important pieces of legislation, it is also important to recognize how vital our water infrastructure is to combat COVID-19 and to stabilize the economy. It is especially critical that we ensure the resiliency of water supply during this time of public health crisis, particularly for water capacity issues relating to hospitals, essential businesses, residences and as the CDC is advising Americans to be diligent about increased sanitization of environments and washing hands. Federal funding to ensure access to a reliable and resilient water supply for all Americans is needed. Please strongly consider inclusion of the below:

- **$10B for grants to regional water authorities** for clean drinking water availability, increased raw water transmission capacity, ensuring pipeline viability, redundancy and capacity expansion for emergency water service.

- **$25B over five years to capitalize Clean Water SRFs** and to provide for additional direct debt service relief for existing wastewater infrastructure projects. Of this amount, no less than 20 percent shall be provided to public entities for projects subject to federal clean water consent decree mandates. Consent decrees impact some of the most economically distressed urban areas that are dealing with COVID-19. Clean Water SRFs provide funds, low-interest loans and additional loan subsidizations (e.g., principal forgiveness and negative interest loans for existing and future projects) to communities for wastewater infrastructure.

- **$5B for grants to municipalities and public sector regional water authorities** to capture, treat, or reuse combined and sanitary sewer overflows or stormwater.

Justification

This funding would allow existing public sector water authorities to provide for resiliency of water supply, emergency supply and demand situations during this time of public health crisis to respond to COVID-19. The ability to off-set existing debt service costs related to federally mandated clean water projects under consent decrees would enable water utilities to provide this emergency resiliency. Consent decrees impact some of the most economically distressed urban areas that are dealing with COVID-19. This funding would allow these public entities to keep the general cost of water service lower and to have the funding ability to invest in much needed capacity infrastructure at this time. These funds would be especially helpful to serve distressed customers in strongly economically impacted areas.

Thank you in advance for your consideration and for your efforts to improve our water and wastewater infrastructure.

Steven J. Bonafonte
Assistant District Counsel
The Metropolitan District of Hartford, Connecticut
555 Main Street
Hartford, CT 06103
sbonafonte@themdc.com
860-278-7850 x 3226

DANIELLA LEVINE CAVA
MIAMI-DADE COUNTY COMMISSIONER
DISTRICT 8

May 1, 2020

SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

RE: Support for America's Water Infrastructure Act of 2020 if proposed amendments are not included that would connect Lake Okeechobee Regulation Schedule to Savings Clause in CERP, with those changes made, ensure the ability to send water south to Americas Everglades.

Chairman, Senator John Barrasso, Ranking Member, Senator Thomas R. Carper:

Recently I learned of an effort to amend America's Water Infrastructure Act of 2020 to include a change that would codify "savings clause" language, and lock in consumptive water uses as they were in 2000, and to do so before any CERP projects are brought online to send water south – into the Everglades ecosystem, Everglades National Park, and Biscayne National Park. This would reverse the very purpose behind the landmark Comprehensive Everglades Restoration Plan and frustrate efforts to recharge the aquifers that serve the 5 million residents of Miami-Dade, Broward, and Monroe Counties. Such an amendment would even hinder State and Army Corps efforts to prevent toxic blue-green algae blooms that have harmed the health and well-being of many Floridians.

Miami Dade County and its residents will benefit greatly from the full restoration of America's Everglades. Our drinking water supply, our awe-inspiring National Parks, and so much of our local economy depend upon it.

We will not be able to successfully restore the Everglades unless water from Lake Okeechobee and northern estuaries are cleaned of excess nutrients and sent south in much higher volumes than the current flow. CERP was always intended to redistribute water more equitably to the natural system, the very definition of Everglades restoration. This troubling language, if passed, would move us backward to a 20th century water distribution scheme that hurts the Everglades, estuaries, federally protected lands, fisheries, threatened and endangered species, and Florida's 21st century economy. It is critical you act to remove this language so full restoration benefits can be achieved.

Once this destructive language is excluded, I would urge you to expedite America's Water Infrastructure Act of 2020, as its investments in water infrastructure are extremely important to the citizens of Miami Dade County. It would:

- Provide about $17 billion in federal authorizations to invest in water infrastructure projects nationwide;
- Authorize the Army Corps to delegate certain Comprehensive Everglades Restoration Plan projects to the South Florida Water Management District;

STEPHEN P. CLARK CENTER • 111 N.W. FIRST STREET • STE. 220 • MIAMI, FL 33128-1963 • (305) 375-5218
SOUTH MIAMI-DADE GOVERNMENT CENTER • 10710 S.W. 211th Street • Ste. 103 • Miami, FL 33189 • (305) 378-6677

DANIELLA LEVINE CAVA
MIAMI-DADE COUNTY COMMISSIONER
DISTRICT 8

- Direct the Army Corps to expedite its decision documents for Lake Okeechobee ecosystem restoration, Western Everglades ecosystem restoration, and C-111 Canal ecosystem restoration;
- Allow the Army Corps to conduct a program to study algal blooms in Lake Okeechobee;
- Provide about $2.5 billion in federal authorizations to invest in drinking water infrastructure projects nationwide;
- Reauthorize the Safe Drinking Water Act emergency fund to assist communities facing drinking water emergencies that endanger public health;
- Empower local utilities to more easily test for lead in drinking water supplied to schools and childcare programs;
- Authorize $300 million in grants for remediation of emerging contaminants, focusing on perfluoroalkyl and polyfluoroalkyl substances (also known as "PFAS"); and
- Fund grant programs for water utilities to invest in new technology to improve water and energy efficiency, reduce emissions, and expand ratepayer affordability.

In addition to protecting our nation's water resources, America's Water Infrastructure Act of 2020 and the Drinking Water Infrastructure Act of 2020 will enhance the health and welfare of the people, protect the environment, and grow the economy of Miami-Dade County, creating jobs while building a more resilient future.

Sincerely,

Daniella Levine Cava

Daniella Levine Cava

Commissioner, District 8
Miami-Dade County, Florida

STEPHEN P. CLARK CENTER • 111 N.W. FIRST STREET • STE. 220 • MIAMI, FL 33128-1963 • (305) 375-5218
SOUTH MIAMI-DADE GOVERNMENT CENTER • 10710 S.W. 211th Street • Ste. 103 • Miami, FL 33189 • (305) 378-6677

Minnesota Cities Stormwater Coalition
Municipal stormwater professionals working together for clean water

Minnesota Cities Stormwater Coalition
Staff: Randy Neprash, PE
651-271-5535
randy.neprash@stantec.com
1276 Eldridge Ave. W.
Roseville, MN 55113

May 1, 2020

The Honorable John Barrasso
Chairman
Committee on Environment and Public Works
U.S. Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Thomas R. Carper
Ranking Member
Committee on Environment and Public Works
U.S. Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso and Ranking Member Carper,

The Minnesota Cities Stormwater Coalition (MCSC) writes in support of the America's Water Infrastructure Act of 2020. This important legislation will provide much needed funding and financing resources to communities in the Municipal Separate Storm Sewer System (MS4) program. MCSC members consist of approximately 130 of the MS4-permitted cities in the State of Minnesota.

MCSC is supportive of this legislation as significant portions of the Act address the needs of the MS4 sector in many important and impactful ways. The provision of grants and other vehicles to support communities with regulated stormwater programs are key in the support needed for MS4s who face the challenge of treating urban stormwater runoff that impacts the waters we depend upon for daily life.

While MCSC supports the Act, we do have some comments on ways to enhance the legislation. The specific items are identified in the following section with a brief summary of the proposed language edits as well as a justification for these changes along with specific language edits. We provide this information in this format to reduce the effort needed by Committee staff as they attempt to interpret input and integrate this input into the final version of the legislation.

Several of the MCSC suggestions are based on the concept that the main goals of stormwater research are to:

- Improve the effectiveness, cost-efficiencies, and protection of public safety and water quality for local implementation programs; and
- Promote better regulatory compliance for local implementation programs.

America's Water Infrastructure Act of 2020. Section 2018. STORMWATER INFRASTRUCTURE TECHNOLOGY

1. The scope for the Centers of Excellence (Centers) is too small. They should be able to work on more than just "new and emerging technologies", "new and emerging stormwater control infrastructure" and "new and emerging, but proven, stormwater control infrastructure". Local regulated stormwater permittees and stormwater practitioners need the Centers to work on a broader scope. It is important to recognize that the main goal of stormwater research is to improve the effectiveness, cost-efficiencies, and protection of public safety and water quality for local implementation programs.

   Additionally, the types of projects that are eligible for funding as Stormwater Control Infrastructure Project Grants (Section 2018(c) (page 274)) is too limited. A broader range of types of projects are appropriate for funding under this section and are needed by local regulated stormwater permittees and stormwater practitioners

   It would be cumbersome to list all the types of work the Centers should do each time and the types of eligible projects throughout the section. MCSC suggests creating a new phrase, "appropriate stormwater technologies" and providing a definition for this term in the "Definitions" subsection (pages 270 and 271) at the beginning of the section.

   MCSC suggests adding the following language to Section 2018(a) (page 271):

   (5) The term "appropriate stormwater technologies" means:

   (A) New and emerging stormwater control infrastructure,
   (B) New and emerging, but proven, stormwater control infrastructure,
   (C) Existing stormwater control infrastructure and practices for which:
   a. questions of effectiveness have been identified (e.g., phosphorus release in stormwater pond sediments);
   b. questions of the protection of public health and/or water quality have been identified (e.g., possible groundwater contamination from infiltration SCMs);

c. additional research is needed to support "crediting" for regulated local implementors in the context of TMDL Waste Load Allocations and/or MS4 permits (e.g., street sweeping, urban trees);

d. research on existing networks (instead of individual SCMs or specific types of SCMs) of multiple types of installed SCMs could yield significant results; or

e. local permitted stormwater programs could be more effective, cost-efficient, and/or protective of public health and water quality.

(D) Source control; or

(E) Technologies related to improved local compliance with stormwater regulations and TMDL Waste Load Allocations.

With this new term defined, MCSC suggests substituting "appropriate stormwater technologies" for the terms "new and emerging technologies", "new and emerging stormwater control infrastructure" and "new and emerging, but proven, stormwater control infrastructure" throughout the current draft Section 2018.

2. Local stormwater permittees and stormwater practitioners, along with other types of practitioners in this field, should have an explicit role in identifying and prioritizing the "stormwater control infrastructure needs" as listed in current draft Section 2018(b)(1)(B)(ii)(I) (page 272).

   MCSC suggests adding the following section as 2018(b)(1)(B)(ii), before the current subsection beginning "(ii) maintain a listing of…".

   (ii) develop and implement a stakeholder process to identify and prioritize the research gaps and research needs for urban stormwater. The stakeholders shall include researchers, local regulated stormwater program staff, stormwater practitioners, environmental groups, and federal, state, and local stormwater regulators. This stakeholder process shall be modeled on similar processes and frameworks that are currently within state programs. This stakeholder process shall be implemented once every two years.

3. The required cost share to be provided by eligible entities for Stormwater Control Infrastructure Project grants is 35 percent. Many federal grant programs used to implement stormwater infrastructure require no cost-share by localities, such as the HUD Community Development Block Grant Program, while those which require a cost-share are normally no higher than 20 percent, such as FHWA BUILD grants. The stormwater sector has significant funding challenges. Considering that fewer than ¼ of all MS4 programs have a dedicated user-fee funded revenue source and that a recent national survey of MS4s produced an annual estimated funding gap of $7.5 billion, it is not reasonable to expect communities to pay a larger portion of cost-sharing for federal grants than other infrastructure sectors. MCSC suggests changing the following section as 2018(b)(6) (page 279) as noted below

   *(A) IN GENERAL. – Except as provided in subparagraph (C), the Federal share of a grant provided under this subsection shall not exceed **80** percent of the total project cost.*

4. The organizations that are deemed eligible for the Centers of Excellence (Centers) should be broadened. While universities and research institutions clearly provide services that "(have) demonstrated excellence in researching and developing new and emerging stormwater control infrastructure," other types of organizations, such as nonprofits and community groups, provide similar services as well. The proposed broadened definition is also used to qualify some institutions for Planning and Development Grants under Section (c)(2)(a) - (see Item 5 below)

   MCSC suggests editing the following language in Section 2018(a)(4) (page 272) to read as follows:

   *(4) ELIGIBLE INSTITUTION. - The term "eligible institution" means an institution of higher education, a research institution, **or a nonprofit organization** that has demonstrated excellence in researching and developing new and emerging stormwater control infrastructure"*

5. Some activities are best led by eligible entities while others are best led by eligible institutions. Two specific activities that are currently associated with funding to eligible entities that should be considered to be led by eligible institutions include the development of standards as well as training and educational materials. Eligible entities often do not have the interest nor the technical resources to develop technical standards. Similarly, technical training materials are often developed and delivered by universities and technically-oriented nonprofits.

   MCSC suggests adding the following language to Section 2018(a) (page 271):

   (5) REGULATORY STANDARDS.-The term "regulatory standards" means the level of water quality treatment required to meet NPDES permit requirements.

   (6) TECHNICAL STANDARDS.-The term "technical standards" means technical direction on the implementation of infrastructure as well as the measurement and verification on the performance of water technologies and practices.

   MCSC suggests editing the following language in Section 2018(c)(1) (pages 274-275) to read as follows:

   *GRANT AUTHORITY.-The Administrator shall provide grants, on a competitive basis, to eligible entities, **and to eligible institutions in specified instances,** to carry out stormwater control infrastructure projects that incorporate new and emerging, but proven, stormwater control technology in accordance with this subsection.*

   MCSC suggests editing the following language in Section 2018(c)(2)(A)(ii) (page 275) to read as follows:

   *Identifying and developing **regulatory** standards necessary to accommodate...*

MCSC suggests editing the following language in Section 2018(c)(2)(A)(v) (page 275) to read as follows:

Developing training and educational material ***by either eligible entities or eligible institutions*** *regarding new and emerging, but proven, stormwater control infrastructure for distribution to…*

MCSC suggests adding the following language in Section 2018(c)(2)(A)(vi) (page 275) to read as follows:

(vi) Identifying and developing technical standards by either eligible entities or eligible institutions necessary to accommodate stormwater control infrastructure projects, including those projects that incorporate new and emerging, but proven, stormwater control technology.

6. One of the most important functions of the Centers should be to interpret and translate research results into actionable materials and information for local stormwater permittees and stormwater practitioners. This should be stated explicitly.

   MCSC suggests adding the following section as 2018(b)(1)(B)(viii) (page 273):

   (viii) develop programs of technology transfer and/or information diffusion to interpret and translate research results into actionable materials and information for local stormwater permittees and stormwater practitioners. These programs shall include "lessons learned" to guide local stormwater program implementation. These programs shall address improvements for local compliance with stormwater regulations and TMDL Waste Load Allocations.

7. One of the most important functions of the National Electronic Clearinghouse Center should be to interpret and translate research results into actionable materials and information for local stormwater permittees and stormwater practitioners. This should be stated explicitly. MCSC suggests adding the following section as 2018(b)(3)(B)(iii) (page 274)

   (iii) develop the Center in coordination with and as part of the programs of technology transfer and/or information diffusion to interpret and translate research results into actionable materials and information for local stormwater permittees and stormwater practitioners, including "lessons learned" to guide local stormwater program implementation and improvements for local compliance with stormwater regulations and TMDL Waste Load Allocations.

8. The Report required in Section 2018(d) (page 280) should be prepared with the active participation of the stakeholders from the stormwater sector. This should be stated explicitly.

   MCSC suggest adding the following text at the end of Section 2018(d) (page 281):

This Report shall be prepared with the active participation of a stakeholder group including researchers, local regulated stormwater program staff, stormwater practitioners, environmental groups, and federal, state, and local stormwater regulators.

9. A common challenge when implementing stormwater infrastructure projects are addressing site conditions that limits the feasibility and cost-effectiveness of project implementation to meet regulatory requirements. This challenge is exacerbated for programs that rely on retention-based performance standards as physical issues, such as soils with high clay content or a high seasonal groundwater table. Some states and local programs have developed policies to allow for flexibility when meeting stormwater regulatory requirements to accommodate these challenges. However, fewer than half of MS4 permits provide specific language allowing MS4s to develop these flexible options. This lack of flexibility reduces the opportunities for regulated communities to meet regulatory requirements as well as limiting the flexibility to encourage implementation in projects where they are most needed within a community as challenges associated with water quality as well as quantity/flooding issues are not heterogeneously distributed across MS4 jurisdictions. Changes to existing legislation is needed to facilitate the provision of flexibility in MS4 permits.

   MCSC suggests two items that would be articulated in two new sections within AWIA 2020 (Section 2019 and 2020).

   Both additions are proposed to be placed within TITLE II – CLEAN WATER. The first addition would be Section 2019 that is titled as "Alternative Stormwater Compliance." The proposed addition is listed below:

   (a) ANALYSIS. -Not less than 1 year after the date of enactment of this Act, the Environmental Protection Agency will develop a compendium of alternative stormwater management compliance programs, policies, and approaches used by the agency and/or state-delegated agencies. This document will include examples of flexible approaches to meet stormwater requirements from states and localities across the country. The compendium will describe the performance and advantages of alternative compliance options, including offsets, in lieu, and market-based examples. It will serve to inform the development of alternative compliance policies by Environmental Protection Agency and/or state-delegated agencies and/or the local stormwater authorities

   The second addition would be Section 2020 that is titled "Federal Water Pollution Control Act amendments." The proposed addition is listed in conceptual language, as opposed to legislative language, as we defer to the Committee on how best to integrate this proposed change. Our suggestion is that the following language be added to (33 U.S.C. 1251 et seq and 1342 (p)(4) and (6)):

   Alternative stormwater management compliance measures may be used if on-site SCM options have technical or physical limitations or are deemed unreasonably costly, there are concerns for public health and safety, or it is desirable to meet other objectives, such as

Total Maximum Daily Load allocations. Alternative stormwater management compliance measures include the following:

(1) Off-site compliance through the construction of off-site facilities that provide all required treatment, retention, detention or other performance standard conditions not addressed at the project site or addresses other stormwater-related issues or priorities within the community, such as ecological restoration, flooding, open space, or resilience,
(2) Modification of performance standards due to site constraints or public health concerns.
(3) Payment of an offset fee for all or a portion of treatment, retention, detention, or other performance standard conditions not provided at the project site.
(4) Purchase of credits or similar currency that accounts for treatment or retention provided at another location at the proportion not provided at the project site.
(5) A combination of items 1–4.

Alternative compliance programs may be delivered by market-based solutions. The specific policies and elements of alternative stormwater management compliance adopted by Environmental Protection Agency and/or the state-delegated authorities will be defined by Environmental Protection Agency and/or the state-delegated agencies and/or the local stormwater authorities.

Definitions

- ***Stormwater Control Measures****—A technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in the most cost-effective manner.*[1]
- ***Green Infrastructure Practices****—The range of measures that use plant or soil systems, permeable pavement or other permeable surfaces or substrates, stormwater harvest and reuse, or landscaping to store, infiltrate, or evapotranspirate stormwater and reduce flows to sewer systems or to surface waters.*[2]
- ***Natural Channel Design****—The application of fluvial geomorphology to create stable channels that do not aggrade or degrade over time and maximize stream functions given site constraints.*[3]
- ***On-site Stormwater Control Measures****—The use of stormwater control measures on a site to meet regulatory requirements associated with the treatment of urban stormwater runoff.*

---

[1] https://yosemite.epa.gov/oa/eab_web_docket.nsf/Attachments%20By%20ParentFilingId/54E1B2AAA29D010D85257C5100567581/$FILE/EPA-BAFB-00001211%20(1412-1434).pdf
[2] https://www.epa.gov/green-infrastructure/what-green-infrastructure
[3] https://www.epa.gov/sites/production/files/2015-07/documents/ncd_review_checklist.pdf

- ***Market-based Solutions****—The off-site provision of required stormwater controls on another site, or in another way, that is seen as more cost effective to a property owner or developer, but equally effective in attainment of the regulatory standard.*[4]
- ***Off-site Compliance****—A general term that covers off-site mitigation and refers to meeting all redevelopment stormwater requirements, as specified in the local stormwater bylaw or ordinance, at an off-site location(s).*[5]
- ***Off-site Facility****—A stormwater management measure located outside the subject property boundary described in the permit application for land development activity*[6].
- ***Offset Fee****—Monetary compensation paid to a local government for failure to meet pollutant load reduction targets.*[7] *Common terms used to describe this fee are "fee-in-lieu" (FIL)or an "in-lieu fee" (ILF).*
- ***Total Maximum Daily Load****—The calculation of the maximum amount of a pollutant allowed to enter a waterbody so that the waterbody will meet and continue to meet water quality standards for that particular pollutant.*[8]

America's Water Infrastructure Act of 2020. Section-by-Section

10. Stormwater infrastructure projects are eligible for Clean Water SRF assistance as clarified in the Water Resources Reform and Development Act (WRRDA) 2014.
    MCSC suggests adding the phrase "and stormwater runoff" as noted in bold in the sentence below as an amendment of the last sentence of Sec. 2012. Use of Clean Water State Revolving Funds. (page 42).

    This section allow allows for assistance with design and engineering wastewater ***and stormwater runoff*** *treatment systems to be an eligible use of the CWSRFs.*

---

[4] https://www.epa.gov/sites/production/files/2020-01/documents/final_draft_stormwater_finance_task_force_report_for_board_review.pdf
[5] https://www3.epa.gov/region1/npdes/stormwater/ma/ma-off-site-mitigation-guidance-manual.pdf
[6] https://www.epa.gov/sites/production/files/2015-12/documents/modelillicit_0.pdf
[7] *Ibid.*
[8] https://www.epa.gov/tmdl/overview-total-maximum-daily-loads-tmdls

MCSC appreciates the opportunity to provide input on this important piece of legislation and stands ready to provide further input now or at a later time if there is a need for further explanation or enhanced contextual framing for the comments and edits provided in this letter.

Thank you for considering our support and our input. Please contact me at randy.neprash@stantec.com or 651-271-5535 with any questions regarding this material covered in this document.

May 1, 2020

Randy Neprash, PE
MCSC Staff
651-271-5535
randy.neprash@stantec.com

MINNESOTA DIVISION IZAAK WALTON LEAGUE OF AMERICA

Our Mission: To conserve, restore, and promote the sustainable use and enjoyment of our natural resources, including soil, air, woods, waters, and wildlife.

April 30, 2020

The Honorable John Barrasso
Chairman
Senate Committee on the Environment and Public Works
Washington, DC 20510

The Honorable Thomas Carper
Ranking Member
Senate Committee on the Environment and Public Works
Washington, DC 20510

Re: **Draft America's Water Infrastructure Act 2020 (2020 Senate WRDA Discussion Draft)**

Dear Chairman Barrasso and Ranking Member Carper:

The Minnesota Division of the Izaak Walton League of America appreciates the opportunity to comment on the 2020 Senate WRDA Discussion Draft.

The Izaak Walton League (IWLA) was established in 1922. As many of its 54 founders fished in the Mississippi River promoting and achieving the establishment of the Upper Mississippi River Wildlife and Fish Refuge in 1924 was the League's first conservation priority. Management to preserve its complex ecosystems has continued to be of utmost importance to the League from 1924 to the present. Many IWLA Chapters are located along or near the Mississippi River and chapter members living in these areas are seeing, if not experiencing, devastation and costly damage from intense storms over the past several years. Consequently, IWLA members have come to realize that environmentally sound approaches when planning water resource projects need to be developed within a comprehensive understanding of the complexities of the ecosystems of the River and of its floodplain to strive for their resiliency. It is from this context that the Izaak Walton League submits the following comments regarding the following sections of the 2020 Senate WRDA Discussion Draft.

Amend Section 1011 (Non-federal implementation pilot program).

There have been significant problems with the use of the Public-Private Partnership Pilot Program on the Upper Mississippi River as non-federal interests have tried to use this authorization to advance environmentally harmful navigation projects. These problems include, but are not limited to: major confusion regarding which activities are the responsibility of the Corps and which are the responsibility of the non-federal sponsor; the inability of the non-federal sponsor to conduct required technical analyses; the inability of the non-federal sponsor to effectively engage the public and other federal agencies; and the inability of the public to obtain information about the process being used. We urge Congress to address these types of problems as part of any extension of this or any similar program. To this end, we strongly recommend that the Senate amend this section to require the Corps to develop guidelines that provide a clear roadmap to the process that is to be used, the entities responsible for each step of the process, and the entity responsible for responding to public inquiries and requests for information.

Amend Section 1017 (Continuing authority programs).

The Upper Mississippi River Restoration (UMRR) Continuing Authority Program should be added to the list and adjusted for inflation. The UMRR Program was the first environmental restoration and monitoring program undertaken on a large river system in the United States; authorized by the Water Resources Development Act of 1986. The Program has come to be recognized as the single most important effort committed to ensuring the viability and vitality of the Upper Mississippi River System's diverse and significant fish and wildlife resources since establishment of the National Wildlife Refuges on that system in the 1920's. Since 2011, the UMRR Program's obligation rate has been near 100% and has been fully funded since Fiscal Year 2018. The Program's strong record of spending and project success indicates that it can obligate a larger investment. The need for greater funding was also made apparent in the Programs 2016 Report to Congress, which found that habitat on the Upper Mississippi River continues to degrade one to four times faster than current restoration efforts. The UMRR Program has never been adjusted for inflation, which has decreased its spending power by 53.5% since 1999, when its current authorized appropriation cap was set. We strongly suggest Section 1017 should be amended to include

a) UPPER MISSISSIPPI RIVER RESTORATION PROGRAM.

1) Section 1103(e)(3) of the Water Resources Development Act of 1986 (33 U.S.C. 652(e)(3)), is amended by striking "$22,750,000 for fiscal year 1999 and each fiscal year thereafter" and inserting "$34,921,250 for fiscal year 2021 and each fiscal year thereafter".

2) Section 1103(e)(4) of the Water Resources Development Act of 1986 (33 U.S.C. 652(e)(4)), is amended by striking "$10,420,000 for fiscal year 1999 and each fiscal year thereafter" and inserting "$15,994,700 for fiscal year 2021 and each fiscal year thereafter".

Amend Section 1022 (Expediting repairs and recovery from flooding).

As an organization with members experiencing Mississippi River flooding and the need for flood recovery, we recognize the significant upstream and downstream impacts for various communities. So while expediting flood recovery efforts is important, it is imperative that levee districts do not illegally raised their levees along the Upper Mississippi River without proper permits and approvals from state and federal agencies. This section, as written, would approve costly, and potentially dangerous levee construction without an appropriate analysis of less costly and less dangerous solutions and without fully addressing important and long-standing public interest criteria. As written, this provision could also undermine the Army Corps' important mandate to ensure that the plan does not impair the usefulness of a civil works project or harm the public. To address these concerns, we recommend that § 1022 be amended by striking subsection (b), and adding the phrase "section 14 of the Act of March 3, 1899 (33 U.S.C. 408)" as a new subsection (c)(4).

Amend Section 1040 (Rehabilitation of flood control pump stations affecting Corps of Engineers flood risk management projects).

Given the flood risk for communities and wildlife habitat from increasing pumping capacity, we urge Congress to amend this section that allows increasing the capacity of eligible pumping stations and related drainage measures subject solely to a determination "that the rehabilitation is feasible." Operation and construction of pumping plants along the Upper Mississippi River already causes significant adverse impacts to wetland resources, water quality, in-stream flows, and wildlife habitat. Increasing pumping capacity not only can increase flood risks for communities and businesses along the waters that receive the pumping plant discharges, but increasing pumping plant capacity and related drainage can also require major new construction in highly sensitive habitats. As such, proposals to increase pumping capacity associated with any flood risk management project deserve careful review beyond the scope of rehabilitation. Congress should ensure that the full range of impacts are carefully assessed prior to any decision to increasing pumping plant capacity by amending § 1040 to require full compliance with federal environmental laws, including the National Environmental Policy Act and Clean Water Act, before a decision may be made regarding increasing any pumping plant capacity.

Amend Section 1053 (Establishing permanent features from emergency response measures).

Increased precipitation patterns require consideration of alternative approaches with the potential to provide better protection. We recognize the burden that recurring emergency flood response efforts can place on small or disadvantaged communities. Consequently it is very concerning that this section fails to ensure a full evaluation of alternative approaches, including natural infrastructure and levee setbacks that may be able to provide the same or better levels of protection at less cost and with fewer future flood risks to the community and others. It would be more prudent in the long term to reconnect the floodplain to the river leveraging setbacks and allowing the natural river systems of wetlands and numerous side channels to provide temporary flood storage. Conversely, along the Upper Mississippi River, rural levee districts are already trying to circumvent normal processes that require the review of alternatives by raising their levees during floods, but then failing to push them back down. This section prioritizes a feature that was designed to be a temporary, rapid-response solution into one that is permanent. To ensure cost-effective, meaningful protection to these at-risk communities, we recommend amending 1053 to require a full evaluation of nonstructural and natural infrastructure solutions, including levee setbacks; and explicitly ensuring that evaluation of these projects must comply fully with federal environmental laws.

Strike Section 1054 (Studies of water resources development projects by non-Federal interests).

We strongly urge the Senate to strike section 1054. The process established under 33 U.S.C. 2231 (which is being amended by this section 1054) fails to establish any baseline capacity criteria and fails to lay out the processes that should be followed when a non-federal sponsor is carrying out federal planning responsibilities. On the Upper Mississippi River, non-federal interests have already tried to advance planning and design for new locks on the Upper Mississippi and Illinois Rivers. But, due to a general lack of direction from the Corps and Congress there have been significant problems, including but not limited to: major confusion regarding which activities are the responsibility of the Corps and which are the responsibility of the non-federal sponsor; the inability of the non-federal sponsor to conduct required technical analyses; the inability of the non-federal sponsor to effectively engage the public and other federal agencies; the inability of the non-federal sponsor to carry out required actions that can be implemented only by federal agencies; and the inability of the public to obtain information about the process being used. We urge the Senate to strike § 1054 and to refrain from expanding the non-federal sponsor planning process until these underlying problems are addressed. To this end, we strongly recommend that Congress direct the Corps to develop detailed guidelines that provide a clear roadmap to the planning process that is to be used by non-federal sponsors, the entities responsible for each step of that process, and the entity responsible for responding to public inquiries and requests for information.

Strike Section 1069 (Inland Waterway Transportation).

We urge the Senate to strike this section that would significantly increase the Federal cost share for construction and major rehabilitation of navigation projects on the inland waterways systems. Section 1069 would create an enormous additional subsidy for the navigation industry which already pays just 10% of the costs of the inland waterway system, even though that system moves only 4 to 5% of U.S. freight commercial tonnage (as of 2014). By contrast freight rail operators pay 100% of the costs of the rail system, and cars and trucks pay about 80% of the costs of maintaining the highway system (through a fuel tax).

These enormous additional subsidies will facilitate unwise investments that harm the environment and can increase flood risks for river communities. Documenting significant declines in traffic on the inland waterway system and existing capacity, a 2018 report by the Congressional Research Service calls into question the need for new construction on the system. For example, as highlighted in that report: traffic on the Upper Mississippi River system has been declining and even during their "busiest months" the seven locks targeted for expansion under the NESP program average just 10 tows per day; the Upper Ohio River has seen a "long-term downward trend in traffic levels"; and the volume of coal, which accounts for 80% of tonnage, transported on the Lower Monongahela River, is half of what it was in the late 1990s and three of the last four operating coal-fired electric power plants on the river closed between 2013 and 2017.

Strike Section 1089 (Report on benefits calculation for flood control structures).

While we strongly support improvements to the Corps benefit-cost analysis process, this study directive runs counter to the long-standing, fundamental policy of sound floodplain management (confirmed by the Association of State Floodplain Managers)—levees "should be used only as a method of last resort for providing a LIMITED means of flood risk reduction for existing development" because they create a false sense of security and incentivize increased development behind structures that inevitably will overtop or fail leading to catastrophic threat to life and property. Instead of pursuing a study that seeks information and recommendations related solely to accounting for reduced flood insurance costs behind a levee, Congress should ensure that the Corps conducts the study required by section 1103 (study on economic and budgetary analyses) of America's Water Infrastructure Act of 2018, which would ensure a comprehensive look at the Corps' benefit-cost analysis process.

Strike Section 1090 (High water-low water preparedness).

This provision creates an enormous loophole for carrying out major navigation construction as so-called "emergency mitigation projects" whenever the Corps makes a determination that a wide-array of situations exist or are "anticipated to exist." This section is so vaguely written that it could allow the use of undefined emergency procedures to carry out virtually any type of activity, including construction of new locks, lock bypass channels, and major rehabilitation. Critically, the Corps already has extensive authority to utilize emergency procedures to quickly carry out navigation dredging where the failure to do so "would result in an unacceptable hazard to life or navigation, a significant loss of property, or an immediate an unforeseen significant economic hardship if corrective action is not taken" more quickly than would be allowed if normal procedures were followed. 33 C.F.R. § 335.7, see also 33 C.F.R. § 337.7. The Corps may also rely on 33 C.F.R. 230.8 to promptly carry out other types of emergency actions.

Amend Section 1202.53 (Expedited Completion).

We support a full economic re-evaluation of the navigation and sustainability program under title 14 VIII of the Water Resources Development Act of 2007 (33 U.S.C. 652 note; Public Law 110–114). However, the Corps seems to have delayed efforts to update the economic evaluation for this program, and they appear to not be following the Corps internal guidance for economic re-evaluation. Given the controversial history of the project, we recommend amending Section 1202.53 to ensure the Corps follows all legally required protocols associated with Independent External Peer Review (33 USC 2343), the National Environmental Policy Act, the Endangered Species Act, and the Methodology for Updating Benefit-to-Cost Ratios (BCR) for Budget Development (CWPM 12-001).

The MN Division – Izaak Walton League of America appreciates the opportunity to provide comment on the draft America's Water Infrastructure Act 2020 (2020 Senate WRDA Discussion Draft). Thank you for considering our perspective and priorities for the final bill. If you have any questions, do not hesitate to contact Jill Crafton, Izaak Walton League – MN Division, National Director at Jillgreatlakesike@gmail.com.

Sincerely,

Jill Crafton
10351 Decatur Avenue South
Bloomington, MN 55438
jillgreatlakesike@gmail.com
952 944-5583

May 1, 2020

Senate Committee on Environment and Public Works (EPW)
Submitted via email to QFR@epw.senate.gov

Re: MRN Comments on America's Water Infrastructure Act (AWIA) 2020 Discussion Draft

Dear Senate Committee on Environment and Public Works (EPW):

The Mississippi River Network (MRN) is grateful for the opportunity to provide input to EPW as it conducts its information-gathering process entitled, "An Information-Gathering Process on Draft Legislation entitled, America's Water Infrastructure Act of 2020 and The Drinking Water Infrastructure Act of 2020: Stakeholder Comments." These comments focus on AWIA 2020.

MRN is a diverse coalition of 56 nonprofit organizations, and businesses that are working together to protect the land, water, wildlife, and people of the United States' greatest River. The Network implements a national public program for the River, called "1Mississippi" that is designed to educate, engage, and inspire people to take action to protect the Mississippi River. Since 2009, the program has recruited 20,000 River Citizens and inspired thousands of actions.

This letter outlines MRN's comments that are relevant to the Upper Mississippi River. We recommend urge you to:

- Amend Section 1011 (Non-federal implementation pilot program)
- Amend Section 1017 (Continuing authority programs)
- Amend Section 1022 (Expediting repairs and recovery from flooding)
- Amend Section 1040 (Rehabilitation of flood control pump stations affecting Corps of Engineers flood risk management projects)
- Amend Section 1053 (Establishing permanent features from emergency response measures)
- Strike Section 1054 (Studies of water resources development projects by non-Federal interests)
- Strike Section 1069 (Inland Waterway Transportation)
- Strike Section 1089 (Report on benefits calculation for flood control structures)

- Strike Section 1090 (High water-low water preparedness)
- Amend Section 1202.53 (Expedited Completion)

Amend Section 1011 (Non-federal implementation pilot program).

There have been significant problems with the use of the Public-Private Partnership Pilot Program on the Upper Mississippi River as non-federal interests have tried to use this authorization to advance environmentally harmful navigation projects. These problems include, but are not limited to: major confusion regarding which activities are the responsibility of the Corps and which are the responsibility of the non-federal sponsor; the inability of the non-federal sponsor to conduct required technical analyses; the inability of the non-federal sponsor to effectively engage the public and other federal agencies; and the inability of the public to obtain information about the process being used. We urge Congress to address these types of problems as part of any extension of this or any similar program. **To this end, we strongly recommend that the Senate amend this section to require the Corps to develop guidelines that provide a clear roadmap for the process that should be used, the entities responsible for each step of the process, and the entity responsible for responding to public inquiries and requests for information.**

Amend Section 1017 (Continuing authority programs).

The Upper Mississippi River Restoration (UMRR) Continuing Authority Program should be added to the list and adjusted for inflation. The UMRR Program was the first environmental restoration and monitoring program undertaken on a large river system in the United States; authorized by the Water Resources Development Act of 1986. The Program has come to be recognized as the single most important effort committed to ensuring the viability and vitality of the Upper Mississippi River System's diverse and significant fish and wildlife resources since establishment of the National Wildlife Refuges on that system in the 1920's. Since 2011, the UMRR Program's obligation rate has been near 100% and has been fully funded since Fiscal Year 2018. The Program's strong record of spending and project success indicates that it can obligate a larger investment. The need for greater funding was also made apparent in the Programs 2016 Report to Congress, which found that habitat on the Upper Mississippi River continues to degrade one to four times faster than current restoration efforts. The UMRR Program has never been adjusted for inflation, which has decreased its spending power by 53.5% since 1999, when its current authorized appropriation cap was set. **We strongly suggest Section 1017 should be amended to include:**

> **a) UPPER MISSISSIPPI RIVER RESTORATION PROGRAM.**
>
> **1) Section 1103(e)(3) of the Water Resources Development Act of 1986 (33 U.S.C. 652(e)(3)), is amended by striking "$22,750,000 for fiscal year 1999 and each fiscal year thereafter" and inserting "$34,921,250 for fiscal year 2021 and each fiscal year thereafter".**
>
> **2) Section 1103(e)(4) of the Water Resources Development Act of 1986 (33 U.S.C. 652(e)(4)), is amended by striking "$10,420,000 for fiscal**

year 1999 and each fiscal year thereafter" and inserting "$15,994,700 for fiscal year 2021 and each fiscal year thereafter".

Amend Section 1022 (Expediting repairs and recovery from flooding).

While we appreciate the importance of expediting flood recovery efforts, we have seen several instances along the Upper Mississippi River where levee districts have illegally raised their levees without proper permits and approvals from state and federal agencies. This section, as written, would approve costly and potentially dangerous levee construction without an appropriate analysis of less costly and less dangerous solutions and without fully addressing important and long-standing public interest criteria. As written, this provision could also undermine the Army Corps' important mandate to ensure that the plan does not impair the usefulness of a civil works project or harm the public. **To address these concerns, we recommend that § 1022 be amended by striking subsection (b), and adding the phrase "section 14 of the Act of March 3, 1899 (33 U.S.C. 408)" as a new subsection (c)(4).**

Amend Section 1040 (Rehabilitation of flood control pump stations affecting Corps of Engineers flood risk management projects).

We urge Congress to amend this section that allows increasing the capacity of eligible pumping stations and related drainage measures subject solely to a determination "that the rehabilitation is feasible." Operation and construction of pumping plants along the Upper Mississippi River already causes significant adverse impacts to wetland resources, water quality, in-stream flows, and wildlife habitat. Increasing pumping capacity can increase flood risks for communities and businesses along the waters that receive the pumping plant discharges. Increasing pumping plant capacity and related drainage can also require major new construction in highly sensitive habitats. As such, proposals to increase pumping capacity associated with any flood risk management project deserve careful review beyond the scope of rehabilitation. Congress should ensure that the full range of impacts are carefully assessed prior to any decision to increase pumping plant capacity **by amending § 1040 to require full compliance with federal environmental laws, including the National Environmental Policy Act and Clean Water Act, before a decision may be made regarding increasing any pumping plant capacity.**

Amend Section 1053 (Establishing permanent features from emergency response measures).

We recognize the burden that repeated emergency flood response efforts are placing on small, under-resourced, and disadvantaged communities along the Mississippi River. However, we are concerned that this section fails to ensure a full and robust evaluation of alternative approaches -- including natural infrastructure, nature-based solutions, and levee setbacks among other tools --that may be able to provide the same or better levels of protection at less cost and with fewer future flood risks to the community and others. Also, along the Upper Mississippi River, rural levee districts are already trying to circumvent normal processes that require the review of

alternatives by raising their levees during floods, but then failing to push them back down after a flood event. This section prioritizes a feature that was designed to be a temporary, rapid-response solution into one that is permanent. To ensure cost-effective, meaningful protection to these at-risk communities, **we recommend amending 1053 to require a full evaluation of nonstructural and natural infrastructure solutions, including levee setbacks; and explicitly ensuring that evaluation of these projects must comply fully with federal environmental laws.**

Strike Section 1054 (Studies of water resources development projects by non-Federal interests).

The process established under 33 U.S.C. 2231 (which is being amended by this section 1054) fails to establish any baseline capacity criteria and fails to lay out the processes that should be followed when a non-federal sponsor is carrying out federal planning responsibilities. On the Upper Mississippi River, non-federal interests have already tried to advance planning and design for new locks on the Upper Mississippi and Illinois Rivers. But, due to a general lack of direction from the Corps and Congress there have been significant problems, including but not limited to: major confusion regarding which activities are the responsibility of the Corps and which are the responsibility of the non-federal sponsor; the inability of the non-federal sponsor to conduct required technical analyses; the inability of the non-federal sponsor to effectively engage the public and other federal agencies; the inability of the non-federal sponsor to carry out required actions that can be implemented only by federal agencies; and the inability of the public to obtain information about the process being used. **We urge the Senate to strike § 1054 and to refrain from expanding the non-federal sponsor planning process until these underlying problems are addressed. To this end, we strongly recommend that Congress direct the Corps to develop detailed guidelines that provide a clear roadmap to the planning process that is to be used by non-federal sponsors, the entities responsible for each step of that process, and the entity responsible for responding to public inquiries and requests for information.**

Strike Section 1069 (Inland Waterway Transportation).

We urge the Senate to strike this section that would significantly increase the Federal cost share for construction and major rehabilitation of navigation projects on the inland waterways systems. Section 1069 would create an enormous additional subsidy for the navigation industry which already pays just 10% of the costs of the inland waterway system, even though that system moves only 4 to 5% of U.S. freight commercial tonnage (as of 2014). By contrast freight rail operators pay 100% of the costs of the rail system, and cars and trucks pay about 80% of the costs of maintaining the highway system (through a fuel tax).

These enormous additional subsidies will facilitate unwise investments that harm the environment and can increase flood risks for river communities. Documenting significant declines in traffic on the inland waterway system and existing capacity, a 2018 report by the Congressional Research Service calls into question the need for new construction on the system. For example, as highlighted in that report: traffic on the Upper Mississippi River system has

been declining and even during their "busiest months" the seven locks targeted for expansion under the NESP program average just 10 tows per day; the Upper Ohio River has seen a "long-term downward trend in traffic levels"; and the volume of coal, which accounts for 80% of tonnage, transported on the Lower Monongahela River, is half of what it was in the late 1990s and three of the last four operating coal-fired electric power plants on the river closed between 2013 and 2017. **We urge the Senate to strike this section that would significantly increase the Federal cost share for construction and major rehabilitation of navigation projects on the inland waterways systems.**

Strike Section 1089 (Report on benefits calculation for flood control structures).

While we strongly support improvements to the Corps benefit-cost analysis process, this study directive runs counter to the long-standing, fundamental policy of sound floodplain management (confirmed by the Association of State Floodplain Managers)—levees "should be used only as a method of last resort for providing a LIMITED means of flood risk reduction for existing development" because they create a false sense of security and incentivize increased development behind structures that inevitably will overtop or fail leading to catastrophic threat to life and property. Instead of pursuing a study that seeks information and recommendations related solely to accounting for reduced flood insurance costs behind a levee, **Congress should ensure that the Corps conducts the study required by section 1103 (study on economic and budgetary analysis) of America's Water Infrastructure Act of 2018, which would ensure a comprehensive look at the Corps' benefit-cost analysis process.**

Strike Section 1090 (High water-low water preparedness).

This provision creates an enormous loophole for carrying out major navigation construction as so-called "emergency mitigation projects" whenever the Corps makes a determination that a wide-array of situations exist or are "anticipated to exist." This section is so vaguely written that it could allow the use of undefined emergency procedures to carry out virtually any type of activity, including construction of new locks, lock bypass channels, and major rehabilitation. Critically, the Corps already has extensive authority to utilize emergency procedures to quickly carry out navigation dredging where the failure to do so "would result in an unacceptable hazard to life or navigation, a significant loss of property, or an immediate an unforeseen significant economic hardship if corrective action is not taken" more quickly than would be allowed if normal procedures were followed. 33 C.F.R. § 335.7, see also 33 C.F.R. § 337.7. The Corps may also rely on 33 C.F.R. 230.8 to promptly carry out other types of emergency actions.

Amend Section 1202.53 (Expedited Completion).

We support a full economic re-evaluation of the navigation and sustainability program under title 14 VIII of the Water Resources Development Act of 2007 (33 U.S.C. 652 note; Public Law 110–114). However, the Corps' efforts to update the economic evaluation for this program have been troubling at best. The Corps has stated publicly that the final report will not be made

public, failed to produce legally-mandated responses to the 2008 Independent External Peer Review panel recommendation, and appear to not be following their own internal guidance for economic re-evaluation. Given the controversial history of the project, **we recommend amending Section 1202.53 to ensure the Corps follows all legally required protocols associated with Independent External Peer Review (33 USC 2343), the National Environmental Policy Act, the Endangered Species Act, and the Methodology for Updating Benefit-to-Cost Ratios (BCR) for Budget Development (CWPM 12-001).**

Thank you for the opportunity to provide these comments on the AWIA 2020 Discussion Draft. If you have further questions about the comments above, please do not hesitate to reach out at the contact information below.

Regards,

Maisah Khan, Policy Manager
Mississippi River Network
Email: mkhan@1mississippi.org

Mailing address: 6521 Wise Ave, St. Louis, MO 63139
Phone: 623-606-5869

Mississippi Valley Flood Control Association

9049 Corporate Gardens Drive, Suite 101, Germantown, TN 38138
Email: mvfca@att.net Telephone: (901) 758-1616

DEDICATED TO FLOOD CONTROL • NAVIGATION • BANK STABILIZATION • DRAINAGE

Executive Committee:

Louisiana
Reynold Minsky, *Chair*
Tallulah, LA

Dwayne Bourgeois
Raceland, LA

Arkansas
Steve Higginbothom
Vice Chairman
West Memphis, AR

Harry Stephens
Helena, AR

Mississippi
Fred Ballard
Greenville, MS

Clarence Cariker
Clarksdale, MS

Illinois
Russell Koeller
New Canton, IL

Kentucky
Greg Curlin
Hickman, KY

Tennessee
Jimmy Moody
Dyersburg, TN

Missouri
A.C. Riley James
Cape Girardeau, MO

Executive Vice President:
Stephen Gambrell

State Vice Presidents:
John Stringer (LA)
David Human (IL)
Doug Voorhees (KY)
Randy Richardson (TN)
Reynold Meyer (AR)
Don Rone Jr. (MO)
Johnny McGlown (MS)

America's Water Infrastructure Act of 2020 and
The Drinking Water Infrastructure Act of 2020

April 30, 2020

Submitted Electronically: QFR@epw.senate.gov

U.S. Senate, Committee on Environment and Public Works
401 Dirksen Senate Office Building, Washington, DC 20510-6175

Dear Chairman Barrasso and Ranking Member Carper:

Thank you for the opportunity to provide comments regarding the draft legislation, America's Water Infrastructure Act of 2020, and the Drinking Water Infrastructure Act of 2020. We are grateful for the Committees work to address the high value economy bolstering projects along our rivers in our Nation's heartland.

The year 2019 was the largest quantity in acre-feet of water in the 100-year history of measurement (chart attached). The system in the Lower Mississippi River was stretched but performed as designed, but for the uncompleted areas like the Yazoo Backwater in Mississippi. This part of the system and the people in and around the other uncompleted parts of the system in the lower Mississippi are suffering unnecessarily.

The local people were also very unfortunate on the Missouri. The flooding and hardship along the Missouri River devastated land and people. The need for improved flood control infrastructure has never been more evident. The Committee has an opportunity to help those whose lives have been turned upside down by the unprecedented rain and resulting flood waters of 2019, and those who continue to be threatened by flooding this year due to unrepaired levee breaches and the threat of above average rainfall forecasted for by the National Weather Service for 2020.

Also, the local people along the Upper Mississippi River States are in disparate need of a more systematic approach to flood control and water management.

Following are our comments.

National Levee Database

The National Levee Database includes 28,039 miles of levees, including 45,655 levee structures across the United States. This searchable database provides a wide array of information about the levees protecting communities, however it is not without flaws. To put it more bluntly, it has many flaws.

This database was compiled without the help of our input from local levee sponsors. There are many inaccuracies, disinformation, and false statements in the database. The information in the database has not been verified by local sponsors and currently the US Army Corps of Engineers claims that they do not have funds to work with sponsors to verify information or make improvements to the database.

We encourage the Committee to consider providing oversight to assure accurate engineering and benefit vs cost level of determinations and if the document is helpful for local sponsors and States … then the funding for correcting the many errors in the information provided in the National Levee Database. This tool is accessible to the public as well as state and federal agencies seeking levee information. It is vital to have accurate information when planning projects in areas protected by levees. Relying on some of the false information, which has not been verified by local levee sponsors, could be extremely dangerous, misleading and costly.

Levee Certification and Accreditation

We recommend the Committee remove Section 1039. It calls for residual risk assessment of the floodplain and what is located in the floodplain, rather than assessing the actual ability of a levee system to provide protection, when determining whether to certify a levee. Levees should be accredited or certified based on the actual levee structure and its ability to provide protection regardless of what is located in the area it protects. Sound engineering evaluations of the flood control structure should be used in the process, not residual risk guesses based on floodplain management decisions geared toward implementing more land use regulations, flood insurance sales and property buyouts. We believe Section 1039 is a focus in the wrong direction for improved flood control infrastructure and should be removed from the bill.

Levee Safety Program

We support language in the America's Water Infrastructure Act of 2020, regarding the Corps of Engineers' Levee Safety Program, which will help preserve and improve flood protection contributions by well-built and maintained levee systems. Language in Section 1047 of the Draft Bill would help identify engineering and maintenance deficiencies and move toward finding ways to fix levees with problems. As flood control becomes more and more important across the country, it is imperative to make sure our levees are safe and engineered to provide the necessary level of protection for the areas they protect.

Currently, the Levee Safety Program's focus is more about what is located within the levee's area of protection. Knowing what is located behind a levee is important. But, knowing the levee's ability and capacity to protect what is located in that area is even more important. The language in Section 1047, puts the focus on the actual levees and seeks to make sure our levees are well designed and maintained.

Sec. 1071. Report on Single Levee Standard.
We recommend that the Committee remove Sec. 1071. It's our opinion that Sec. 1071 is not an adequately written provision that directs the production of a report by the Corps and FEMA on (a) the differences between levee standards of the two agencies and (b) whether those differences create uncertainty for levee management purposes. In view of FEMA plans to introduce its new "Risk Rating 2.0," this provision could be related to possible efforts to fundamentally reform and/or abandon current levee accreditation procedures under 44 CFR 65.10 available to local sponsors through consulting engineers.
There are important, foundational differences in the two agencies' mission assignments. It follows that levee-related "standards" used by each agency would also necessarily be different. The Corps maintains and routinely updates minimum standards for various operational purposes; including levee design, construction, O/M, investigation, inspection, environmental impacts, economics, and cost sharing. FEMA lacks both the technical capacity and mission assignment to engage in levee design, construction, O/M, and other programmatic operations.

The primary levee-related mission assignment for FEMA exists under 44 CFR 65.10 to consider evidence for levee accreditation under the NFIP. The standards for each agency are and should remain different to reflect the important differences in respective mission assignments.

Upper Mississippi River Flood Control Act
We need and support the House Bill language in H.R. 5288 introduced by Rep. Blaine Luetkemeyer and co-sponsored by Rep. Rodney Davis. HR 5288, the Upper Miss Flood Control Act helps our Nation move forward in addressing flooding in the upper Mississippi in a more systematic multi-state approach for the Upper Mississippi River States.

Lower Missouri River Flood Prevention Program
Eight Senators from the Lower Missouri River Basin States (Iowa, Kansas, Nebraska and Missouri) have introduced Senate Bill 3403, which would establish a Lower Missouri River Flood Prevention Program. We hope the Committee will incorporate language in the Bill into the America's Water Infrastructure Act of 2020.

The program established by the Bill would allow USACE to study, design, and construct water resources development projects and provide flood protection to affected communities in the lower basin from Sioux City, Iowa to St. Louis, Missouri. A significant part of the Bill is the ability for USACE to move quickly to construction where work can begin based on a feasibility study conducted by the District Commander and approved by the Northwestern Division Commander.

We know, and USACE knows, there are places along the Missouri River in desperate need of flood control improvements. Damage sustained during the 2019, flooding can only be repaired back to the pre-flood level of protection under Public Law 84-99, the Corps' levee rehabilitation program, yet many places need improvements to avoid a reoccurrence of the devastation suffered over the past year. Including the provision of the Lower Missouri River Flood Prevention Program in the America's Water Infrastructure Act of 2020, would help move this forward quickly and send help to the communities impacted by Missouri River flooding much sooner.

These communities, landowners and businesses cannot wait for more rounds of study after study or experiments followed by more experiments. Actual construction is the means by which people along the Missouri River can rebuild their communities and begin to bring back their economies. The local people need Congress to act now so work can begin.

Language to prevent harmful PL 84-99 changes

Finally, we need language to help prevent harmful PL 84-99 changes, the amendment would: a.) require that any changed PL 84-99 eligibility requirements be subject to the formal rulemaking process (requiring APA-style economic and impact analysis, public notice and comment, etc); and b.) freeze the current PL 84-99 eligibility terms for at least 3 years. The savings clause at the end of subparagraph (b) heads off anticipated push back from California and other places on vegetation management by preserving the hard-fought veg management variance secured in 2014 guidance.

We request this amendment because the new Engineer Circular by USACE on levee safety (proposed 25 Feb 2020) will likely dislodge the current (but rapidly changing) inspection-based structural eligibility terms in lieu of the USACE "risk-informed decision-making" flood plain/residual risk management approach.

This amendment would block that for at least 3 years and then require USACE to abide by the rulemaking process after that time. It's widely assumed that USACE will attempt to rescind the current CFR requirements if the Engineer Circular is finalized in July or later. The consequences for levee sponsors and States are severe: the fate of our local people's levee system will rely heavily on the success and or failure of local flood plain management agencies to implement nonstructural risk reduction (insurance, zoning, buyouts, land use regulations, etc.). That is, USACE is rating and or regulating levees based on flood plain assessments.

We represent levee districts, drainage districts, associations, businesses and individuals affected by the Mississippi River and its tributaries. The flood of 2019, has caused great hardships in the Upper and Lower Mississippi River and tributary States and Missouri, Iowa, Kansas and Nebraska.

We need your help to recover from the flood and to help ensure we do everything possible to implement a reliable system of flood control, water management and productivity. It is disturbing that news reports focus only on the cost of damages and seldom if ever on the damages averted by thoughtfully built and properly invested in water infrastructure. The Lower Mississippi River's systematic flood control project has a benefit to cost ratio of $95 to $1. The system approach for Flood Control has prevented more than $1.5 trillion dollars in damages and provided a world envied globally competitive advantage for our people and Nation. We need reliability and improved flood control infrastructure!

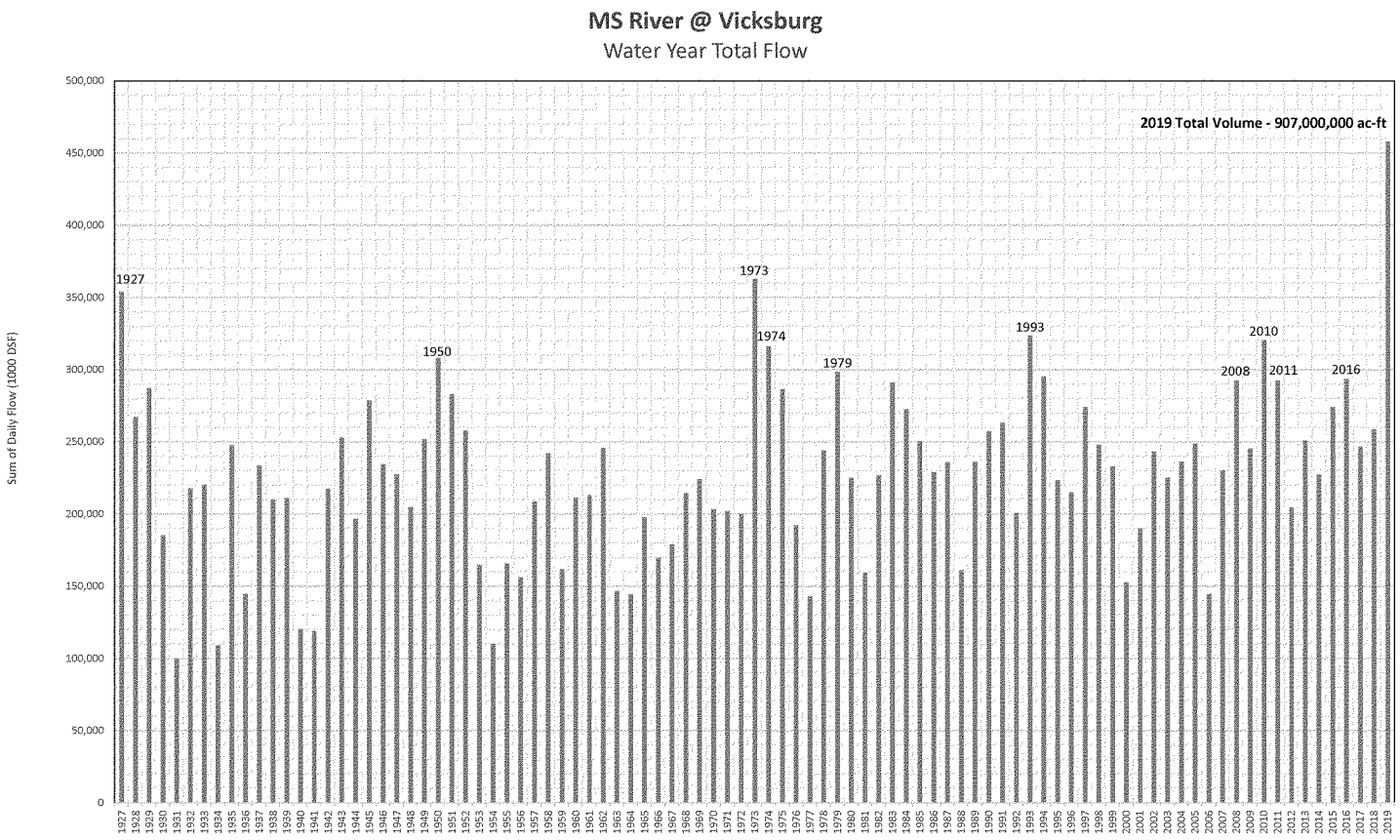
MISSISSIPPI VALLEY FLOOD CONTROL ASSOCIATION

Thank you for the opportunity to provide comments on this important legislation. Your leadership and your work have positive benefits and impacts on our people, their land and the citizens that live and work along our Nation's waterways.

Blessings,

T. Stephen Gambrell
Mississippi Valley Flood Control Association
9049 Corporate Gardens Dr. Suite #101
Germantown, TN 38138
Mvfca1922@gmail.com
901-758-1212

The MVFCA is the strong, consistent voice from river States of connected local people who own homes, land and businesses that deliver world envied productivity with unmatched efficiency along a super water highway with strategically located on-ramps. This economic engine that feeds the world depends on a flood control system that enables reliable business, land use, and water commerce.


MS River @ Vicksburg
Water Year Total Flow
Sum of Daily Flow (1000 DSF)
2019 Total Volume - 907,000,000 ac-ft
1927
1950
1973
1974
1979
1993
2008
2010
2011
2016

Promoting Beneficial Use of Water & Land Related Resources

MOARC

MISSOURI AND ASSOCIATED RIVERS COALITION EST. 1952

MOARC BOARD

Officers and Executive Committee

President
Tom Poer

First Vice President
Jeff Fisher

Executive Director
Sarah White

Secretary
David Combs

Treasurer
Karin Jacoby

Committee Chairs

Navigation, Shipping & Ports
Richard Grenville

Water, Power & Permitting
Kevin Caveny

Flood Control & Risk Management
Steve Dailey

Legislative Policy
Matt Bond

Education & Finance
Karin Jacoby

Membership & Communication
Glenda Johnson

Finance
John Patrick

At-Large
Tom Kimes
Frank Pogge *
Dong Quach
Tracy Streeter

* Past President

May 1, 2020

Senator John Barrasso, Chairman
Committee on Environment and Public Works
United States Senate
Washington D.C., 20510

Senator Thomas Carper, Ranking Member
Committee on Environment and Public Works
United States Senate
Washington D.C., 20510

Dear Chairman Barrasso and Ranking Member Carper,

The Missouri and Associated Rivers Coalition (MOARC) is pleased to provide comments on America's Water Infrastructure Act (AWIA) of 2020, of the Senate Discussion Draft: Sections 1001, 1039, 1071 and 1047.

Sec. 1001. Upper and Lower Missouri River comprehensive flood protection studies.

MOARC is a water resource advocacy organization supporting regional interests in effective water resource development within the Missouri River basin and its associated rivers. Development of flood risk management to provide greater levels of flood protection to communities, businesses, and farming within the basin has been one of the organization's primary missions since 1952. Frequent and devastating flood events experienced on the Missouri River requires immediate action to address flood protection for both the citizens and economy within the lower Missouri River basin. The economic losses and human suffering experienced in 2019 showed the need for changes and greater protection prior to future flood events.

Key points on the AWIA 2020, Section 1001 of the Senate Draft offered by MOARC:

- This authority in relation to Senator Blunt's Lower Missouri proposal is extremely large and unwieldy in its scale and proposes the expenditure of up to $50 million on studies followed by more studies. The timeline to get anything into construction would be many years.
- This proposal involves opening up of the Missouri River Master Manual, for which the last study took 15 years and untold millions of wasted taxpayer money. We do not see how opening up the Master Manual and reopening the water war would translate to more flood protection.
- This proposal is silent on tributaries of the Missouri River in the upper and lower basins and could allow for the study of projects on tributaries. Studies including tributaries could take a lot longer than 3 years and become a significant distraction from the urgent need to address flood protection in areas most significantly damaged in 2019.
- When given the right tools, the Army Corps of Engineers can get the job done, as evidenced by General Semonite's construction of emergency hospitals for the nation, and work on the southern border wall. Senator Blunt's proposal for the Lower Missouri River is a far better tool for empowering the Corps of Engineers to provide responsive and timely flood protection on the Missouri River than this proposal.
- If a full basin or comprehensive plans and report are developed with recommendations for projects, and approved by the Corps of Engineers and Congress, then individual project feasibility reports should not have to go all the way through the usual approval and authorization process. They should be approved at no higher than the District or at least the Division.

PO Box 22647 · Kansas City, MO 64113

Flood Control & Risk Management, Water Quality & Supply, Power, Environment, Agriculture, Shipping & Ports and Recreation

Promoting Beneficial Use of Water & Land Related Resources

MOARC

MISSOURI AND ASSOCIATED RIVERS COALITION EST. 1952

- A major flaw in this proposal is that it proposes water supply issues and plans and would get bogged down into a water supply controversy and divert resources from flood control.
- The main stem lakes are balanced between flood control space for floods, and water availability for other purposes during droughts. You can't increase flood storage in the lakes without a trade off in less water availability for flows during drought. What flood protection projects would be feasible in the upper basin when all or the large majority of the damages in 1993, 2011 and 2019 were in the lower basin?
- The state governors and the impacted communities have challenged the Corps of Engineers to do business differently in light of the terrible impacts of the flood in 2019, and the potential for flooding in 2020. This proposal does not do that. It just leads to more studies and wasting of time and kicking the can down the road without leading to actual flood protection for communities in a reasonable timeframe.
- The cost sharing in this bill is uncertain, the cost sharing in Senator Blunt's proposal is better and clearer. However, the provisions in this bill for small or disadvantaged communities to get a break on cost sharing are good.

Sec. 1039. Levee Accreditation Process; Levee Certifications, and, Sec. 1071. Report on Single Levee Standard.

MOARC urges these provisions be stricken. Together sections 1039 and 1071 offer more USACE management of residual risk in flood plains at the expense of focused intergovernmental efforts to prevent catastrophic levee failure. These AWIA provisions will likely be interpreted by the Agencies as a congressional directive to use internally developed USACE Risk Assessments for all programs, including accreditation purposes. Although the USACE says Congress has told them to move toward risk-based decision-making, as of now risk assessments are directed by Congress to be used primarily for increased risk awareness, not for core USACE program operations and decision-making. While the former may be considered a value-add (although use of LSAC has not necessarily proven that to be true), the latter would be a fundamental shift not in the best interests of effective flood protection or local sponsors. USACE is not authorized to make PL 84-99 or other project investment decisions based on their risk assessments—these provisions, if passed, would almost certainly change that. Until such time when local sponsors and the communities they protect derive clear benefit and have confidence in use of USACE risk assessments, including their transparency, reliability and reproducibility, their use should not be expanded for either regulatory purposes or investment decisions.

Sec. 1047. Levee safety.

MOARC strongly supports this provision as written, which will refocus the Corps and local levee sponsors on the safety of levee infrastructure. It also helps restore to the Corps and local levee sponsors the proper mission of "safe levees" and at the same time keep "floodplain management" with FEMA and designated State and local flood plain management agencies. By amending WRDA 2007 to direct the Corps to identify specific engineering and maintenance deficiencies and remedies for each levee included in the National Levee Database, it helps to provide local sponsors with the information that could be used for effective communication and non-federal land-use planning and project purposes. This is an important task that is not now being consistently performed, but that would undoubtedly lead to more useful data-driven, informed decision-making. The proposal also directs the Corps to consult local levee sponsors and provide opportunity for comment while performing levee deficiency identification.

MOARC urges consideration of these points to achieve improved flood protection and better water and related land resources management in the Missouri River basin, and thanks you for your consideration of these comments.

Best Regards,

Tom Poer, P.E., PMP, ENV SP

PO Box 22647 · Kansas City, MO 64113

Flood Control & Risk Management, Water Quality & Supply, Power, Environment, Agriculture, Shipping & Ports and Recreation

March 27, 2020

Honorable John Barrasso, Chairman
Committee on Environmental and Public Works
United States Senate
Washington D.C. 20510

Honorable Thomas R. Carper, Ranking Member
Committee on Environmental and Public Works
United States Senate
Washington D.C. 20510

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of farmers and ranchers living along the Missouri River, our organizations wish to formally express support for the Lower Missouri River Flood Prevention Program Act. This bill, championed by Senators Blunt, Hawley, Fischer, Sasse, Grassley, Ernst, Moran, and Roberts, will provide much-needed direction to relevant federal agencies in addressing Missouri River flooding. We applaud these Senators for taking a stand for their constituents who live, work, and farm along and on the river.

2019 was a tough year for those who farm along the river. Historic rainfall and snowpack runoff caused major flooding in the lower Missouri River basin. Hundreds of levees in Nebraska, Iowa, Missouri and Kansas were breached as a result of these events. As the 2020 growing season begins many of these levees remain unrepaired, leaving many acres of farmland unprotected. Estimates from the U.S. Army Corps of Engineers (USACE) indicate that it could be over two years before flood protection is restored to pre-flood levels.

Inadequate flood protection puts those who live and work along the river in a very tenuous position. Farmers are facing crop insurance rates three to four times the normal level. Other critical infrastructure behind breached levees also remains at risk, creating continued uncertainty and a very real risk of future flooding.

It is time that we consider new initiatives related to river management. The Lower Missouri River Flood Prevention Program Act seeks to address this problem by directing USACE to implement a system-wide approach to water development projects that reduces the risk of flooding and improves flood protection along the lower Missouri River. We believe the bill ensures we are moving forward with flood protection that can help safeguard farmers and infrastructure such as roads, bridges, and railroads into the future. Continuing the status quo is not a viable option. We must act to ensure that everything possible is being done to prevent devastating floods in the future. Doing so will not only protect lives and infrastructure but alleviate the need for expensive repairs that simply restore inadequate levels of flood protection.

We appreciate the work that your committee does to serve the needs of farmers and ranchers, and ask that you do everything in your power to assist in moving this legislation over the finish line. Our organizations stand ready and willing to assist in those efforts.

Sincerely,

Missouri Farm Bureau
Iowa Farm Bureau
Nebraska Farm Bureau
Missouri Levee and Drainage District Association
Coalition to Protect the Missouri River

cc: The Honorable RD James

MISSOURI LEVEE AND DRAINAGE DISTRICT ASSOCIATION

TOM WATERS, CHAIRMAN
36257 HIGHWAY Z
ORRICK, MISSOURI 64077
(816) 591-7949

LANNY FRAKES, VICE-PRESIDENT
13371 SW ST., RT. KK
RUSHVILLE, MISSOURI 64484
(816) 688-7820

CARL LENSING
CHAIRMAN EMERITUS
447 HIGHWAY 94
RHINELAND, MISSOURI 65049
(573) 236-4577

Twitter: @missourilevees
Website: www.molevees.org

DAN KUENZEL, SECRETARY
7385 BLUFF ROAD
WASHINGTON, MISSOURI 63090
(636) 239-1536

ROBERT J. VINCZE, ATTORNEY
P.O. BOX 792
ANDOVER, KANSAS 67002
(303) 204-8207

WRITTEN COMMENTS:

America's Water Infrastructure Act of 2020
And
The Drinking Water Infrastructure Act of 2020
April 29, 2020

Submitted Electronically: QFR@epw.semate.gov

U.S. Senate
Committee on Environment and Public Works
401 Dirksen Senate Office Building
Washington, DC 20510-6175

Dear Chairman Barrasso and Ranking Member Carper:

Thank you for the opportunity to provide written comments regarding The draft legislation, America's Water Infrastructure Act of 2020, and the Drinking Water Infrastructure Act of 2020. As you know, 2019, was a year filled with flooding and hardship for those along the Missouri River. The need for improved flood control infrastructure has never been more evident. The Environment and Public Works Committee has an opportunity to help those whose lives have been turned upside down by the unprecedented 279-day flood in 2019, and who continued to be threatened by flooding this year due to unrepaired levee breaches and the threat of above average rainfall forecasted for the Missouri River Basin.

Lower Missouri River Flood Prevention Program

Eight Senators from all four Lower Missouri River Basin States (Iowa, Kansas, Nebraska and Missouri) have introduced Senate Bill 3403, which would establish a Lower Missouri River Flood Prevention Program. It is our hope the EWP Committee will incorporate language in the Bill into the America's Water Infrastructure Act of 2020.

It is important to those along the Missouri River to see this Bill move forward. The program established by the Bill would allow the U.S. Army Corps of Engineers to study, design, and construct water resources development projects and provide flood

protection to affected communities in the lower basin from Sioux City, Iowa to St. Louis, Missouri. A significant part of the Bill is the ability for the Corps of Engineers to move quickly to construction where work can begin based on a feasibility study conducted by the District Commander and Approved by the Northwestern Division Commander.

We know, and the Corps knows, there are places along the Missouri River in desperate need of flood control improvements. Damage sustained during the 2019, flooding can only be repaired back to the pre-flood level of protection under Public Law 84-99, the Corps' levee rehabilitation program, yet many places need improvements to avoid a reoccurrence of the devastation suffered over the past year. Including the provision of the Lower Missouri River Flood Prevention Program in the America's Water Infrastructure Act of 2020, would help move this forward quickly and send help to the communities impacted by Missouri River flooding much sooner. These communities, landowners and businesses cannot wait for more rounds of study after study or experiments followed by more experiments. Actual construction is the means by which people along the Missouri River can rebuild their communities and begin to bring back their economies. They need Congress to act now so work can begin.

National Levee Database

The National Levee Database includes 28,039 miles of levees, including 45,655 levee structures across the United States. This searchable database provides a wide array of information about the levees protecting communities, however it is not without flaws. To put it more bluntly, it has many flaws.

This database was compiled without the help of or input from local levee sponsors. There are many inaccuracies, disinformation, and false statements in the database. The information in the database has not been verified by local sponsors and currently the US Army Corps of Engineers has no money to work with sponsors to verify information or make improvements to the database.

The Missouri Levee and Drainage District Association encourages the EPW Committee to consider providing funding for correcting the many, many errors in the information provided in the National Levee Database. This important tool is accessible to the public as well as state and federal agencies looking for levee information. It is vital to have accurate information when planning projects in areas protected by levees. Relying on some of the false information, which has not been verified by local levee sponsors, could be extremely dangerous and costly.

Levee Safety Program

The Missouri Levee and Drainage District Association supports language in the America's Water Infrastructure Act of 2020, regarding the Corps of Engineers' Levee Safety Program, which will help preserve and improve flood protection contributions by well-built and maintained levee systems. Language in Section 1047 of the Draft Bill would help identify engineering and maintenance deficiencies and move toward finding ways to fix levees with problems. As flood control becomes more and more

important across the country, it is imperative to make sure our levees are safe and engineered to provide the necessary level of protection for the areas they protect.

Currently, the Levee Safety Program's focus has seemed to be more about what is located within the levee's area of protection. Knowing what is located behind a levee is important. But, knowing the levee's ability and capacity to protect what is located in that area is even more important. The language in Section 1047, puts the focus on the actual levees and seeks to make sure our levees are well designed and maintained.

Levee Certification and Accreditation

Section 1039 in the draft bill calls for residual risk assessment of the floodplain and what is located in the floodplain, rather than assessing the actual ability of a levee system to provide protection, when determining whether to certify a levee. Levees should be accredited or certified based on the actual levee structure and its ability to provide protection regardless of what is located in the area it protects. Sound engineering evaluations of the flood control structure should be used in the process, not residual risk guesses based on floodplain management decisions geared toward implementing more land use regulations, flood insurance sales and property buyouts. We believe Section 1039 is a focus in the wrong direction for improved flood control infrastructure and should be removed from the bill.

The Missouri Levee and Drainage District Association represents levee districts, drainage districts, associations, businesses and individuals affected by the Missouri River and its tributaries. The flood of 2019, has caused great hardships in Missouri, Iowa, Kansas and Nebraska. We need your help to not only recover from the flood, but to help ensure we do everything possible to keep it from happening again. We need improved flood control infrastructure!

Thank you for this opportunity to provide comments regarding this important legislation. Your work has great impacts on the people who live and work along our nation's waterways.

Respectfully submitted,

Tom Waters, Chairman
Missouri Levee and Drainage District Association
36257 Highway Z
Orrick, Missouri 64077
Phone: (816)591-7949
E-mail: waters4@ix.netcom.com

Testimony of
Mr. David Yarbrough, PE, on behalf of the Ports of Oklahoma
April 22, 2020
Senate Committee on Environment and Public Works
Hearing on
"AMERICA'S WATER INFRASTRUCTURE ACT OF 2020"

Thank you for the opportunity to provide testimony related to the next America's Water Infrastructure Act being considered by the United States Senate and House of Representatives in 2020. My name is David Yarbrough, and I am the Director of the Tulsa Port of Catoosa, along with my colleagues, Scott Robinson, Director of the Port of Muskogee, and Fred Taylor, Port Director of Oakley's Port 33. I am also the chairman of the National Waterways Conference, whose mission is "to effect common sense policies and programs, recognizing the public value of our Nation's water resources and their contribution to public safety, a competitive economy, national security, environmental quality and energy conservation." This testimony, from the Ports of Oklahoma, will focus on the importance of the inland waterways transportation system and will specifically address the benefits that the McClellan-Kerr Arkansas River Navigation System (MKARNS) provides the nation.

Inland Waterways Value to the Nation
Although it is approaching its fiftieth birthday, the MKARNS is considered one of the newer components of the United States' inland navigation system. Yet it is emblematic of the condition of these national assets with rapidly deteriorating infrastructure, under-funded and un-funded construction projects, and a substantial backlog of deferred, critical maintenance. Fortunately, Congress has renewed its attention to the nation's inland navigation system since enactment of the Water Resources Reform and Development Act of 2014, but more is required to recapitalize these projects into the realities of 21st century markets and economies.

The projects along the nation's rivers, including almost 250 navigable locks and associated features, has served us well, but as these projects depreciate, they also lose performance. Loss of performance results in unscheduled closures and emergency repairs, adding significant cost to taxpayers. The corresponding analogy would be a car manufactured in 1970-- A 1970 Pontiac GTO is fun to look at and is more fun to drive, but it's not the car that you can drive to work every day in 2020 and expect efficiency and reliability.

Maintenance activities, though not as popular as a ribbon-cutting or ground-breaking at a new construction project, are critical to ensure a safe and functional transportation system to move products like grain, fertilizer, raw materials for manufactured goods, industrial commodities and petroleum processing plants to foreign markets. Those who rely on the nation's inland navigation system have taken steps to voluntarily aid in the recapitalization of these projects, including successfully advocating for a 45% increase to the diesel fuel tax enacted into law in 2014. These funds are ultimately deposited into the Inland Waterways Trust Fund (IWTF) which pays for 50% of the recapitalization costs for the nation's inland navigation system. This tax is currently one of the highest federal fuel taxes being paid by any mode of transportation.

These "marine highways" move commerce directly to and from 38 States throughout the heartland and Pacific Northwest, serving industrial and agricultural centers, and facilitating imports and exports at gateway ports on the Gulf Coast. As a result, today's energy producers, manufacturers, farmers and other commodity shippers have the chance to compete in a tightening, global marketplace. The inland navigation system also sustains more than 541,000 high-wage jobs, strongly bolstering the U.S. economy, all while transporting freight in the safest, most energy-efficient, and environmentally sustainable way.

The nation's inland waterway system delivers substantial benefits to the Nation: navigation, recreation, municipal and industrial water supply, hydropower, flood mitigation or control and national security. With transportation cost and efficiency being key to profitability in many industries, national and regional economic development opportunities are augmented by the nation's inland navigation system.

Businesses choose to locate near our rivers, in part, because of opportunities the nation's inland waterway transportation system provides. When transporting bulk commodities, the inland navigation system presents the most economical and environmentally friendly form of transportation on earth, emitting the least amount of pollutants and consuming the least fuel per ton-mile. Semi-trucks are an expensive, yet essential part of inland waterway transportation, often conveying freight the first and last miles, but, every single barge is equivalent to 60-80 trucks that are not adding to congestion and wear on the nation's roads. In 2017, there were more than 550 million tons of product transported on the nation's inland navigation system – that is a reduction of over 22 million trucks' worth of freight traffic in one year. As most of the nation's locks and dams are well beyond their 50-year design life, approximately $7.3 billion in investment is required for those projects that are currently under construction or authorized by Congress for future construction.

MKARNS Value to the Nation

The McClellan-Kerr Arkansas River Navigation System, or MKARNS, is a 445-mile, 9-foot deep navigation channel consisting of 18 locks and dams that begins at the confluence of the White River and Mississippi River and ends near Tulsa, Oklahoma. Construction of this system was authorized by Congress in 1946. Construction commenced in 1957 and was completed in 1971.

There are five major public port facilities, and sixty-two private ports and terminals that support the movement of the major commodities that are shipped on the MKARNS. These commodities

include coal, petroleum products, wheat, soybeans, fertilizers, sand and gravel, iron and steel-products, and oversized/over-dimensional manufactured goods.

But, the MKARNS provides benefits for the nation beyond providing safe and reliable transportation cost savings for producers in over 20 states. For instance, since construction of the MKARNS, more than $20 billion in flood damages have been prevented (almost $650 million in 2018 alone), and the hydropower assets on the system provide electricity to approximately 7 million Americans daily. Additionally, the oldest method of moving freight is still the greenest, providing immense, positive, environmental impacts – a single barge load of cargo eliminates the exhaust from 60 semitrucks or the fuel and emissions produced from moving 15 rail cars.

There are 3 important investment challenges facing the MKARNS moving into the future.

Three Rivers and Critical Maintenance
First, this Committee was instrumental in including the Three Rivers Chief's Report in America's Water Infrastructure Act of 2018, authorizing overdue navigation improvements where the White and Arkansas River meet the Mississippi River. The existing structures are rapidly deteriorating, and should any of these components fail, the MKARNS would not be a functioning commercial waterway for many months. As one of the nation's only inland waterway systems that remains operational during all 12 months of the year, any impact to the system would impact producers in the over 20 states that rely on the MKARNS.

Our second challenge is funding for the critical maintenance backlog on the MKARNS. While I mentioned earlier in this testimony that MKARNS is one of the newer systems, it is a rapidly aging system exacerbated by long-deferred maintenance. As this system was completed nearly 50 years ago, the maintenance needs of the MKARNS are becoming more acute with each passing year. Defined as a component which has a 50% probability of failure within the next five years, funding for critical maintenance on the MKARNS has been deferred, and years of neglect has led to a situation where the MKARNS is facing a critical maintenance backlog of approximately $230 million. A failure of any one of these components can shut down much of the MKARNS for days, weeks, or even months. Unscheduled outages negatively impact shippers striving for on-time deliveries of critical commodities being shipped on the river. Other modes of transportation will typically increase their rates for scheduled outages, and unscheduled outages are priced even higher. Studies have shown that unscheduled outages on the MKARNS cost port and waterway industries $2,000,000 per day, and that complete disruption of operations could result in a daily loss of $21 million in GDP within the State of Oklahoma and $23 million to the State of Arkansas.

Impacts of doing nothing
The historic 2019 flood gave us a first-hand demonstration of what the nation would face without the MKARNS. That flood event directly impacted MKARNS customers in not just Oklahoma and Arkansas, but also in the States of Kansas, Texas, Colorado, Missouri, Nebraska, Minnesota, South Dakota, North Dakota, Montana, and Idaho. These customers were forced to find other transportation alternatives for their goods, and these alternatives were far more

expensive than shipping by barge. Waterway users incurred additional transportation costs of $40-$80 per ton resulting in losses totaling millions of dollars per month. In some cases, production facilities were shuttered.

12-foot Channel Deepening
Our third challenge, and one that has been a long-sought modification to the MKARNS, is to bring the project in to a condition that reflects the reality of a 21st century economy --the deepening of the current 9-foot channel to 12-feet of depth. Congress authorized the construction of this project in 2003 and provided funds to initiate the project in 2004. At that time, the Corps of Engineers constructed several project features, and yet since that time, no additional funds have been provided to the Corps to continue the project. Federal investment would allow the project to resume to completion and the greater depths will allow an additional 40% per barge to be transported compared to the current channel. This deepening project would result in a savings to shippers of $43.1 million annually.

When combined, these three challenges on the MKARNS require a substantial investment of approximately $600 million to bring the system into a state of good repair and reflect the realities of the 21st century marketplace. But, the costs of inaction are far greater. In an average year, the MKARNS moves more than 11 million tons of cargo at a value of $3.5 billion. Nationally, the MKARNS provides for 56,000 full/part-time jobs, $289 million in business taxes, $8.5 billion in sales impacts and $1.6 billion in transportation cost savings. Without the MKARNS, these benefits would be significantly reduced, and in some cases vanish altogether.

The nation presently finds itself in the grips of a pandemic that has caused an economic disruption to the lives of every American. We are steadfast in our belief that this too shall pass. This nation has gone through economic turmoil in the past, and we will probably face it again in the future. A significant reason why this nation has been able to weather these turbulent times is because of how all modes of the nation's transportation infrastructure deliver our products to world markets faster and more efficiently than our competitors.

"Neglect" is not too strong of a word to use when it comes to investment in the nation's inland navigation system, and I believe Congress needs to re-prioritize investment towards infrastructure maintenance projects like those on the MKARNS. In the last several Water Resources Development Acts, Congress has done an excellent job in prioritizing investments that were overdue for the nation's coastal harbors and other deep-water channels. As the average age of inland projects is close to 60-years old, we believe now is the time to also prioritize investment in the nation's inland navigation system. As illustrated earlier in this testimony, these projects provide multiple outputs that benefit all Americans.

I would respectfully request the Committee incorporate the two visual aids attached to this testimony into today's hearing record that further explain the benefits of the MKARNS.

Thank you again for the opportunity to testify before the Committee on Environment and Public Works on the importance of the MKARNS and the nation's inland navigation system.

The Honorable John Barrasso, M.D.

Statement for the Record – Monterey One Water

An Information-Gathering Process on Draft Legislation entitled, America's Water Infrastructure Act of 2020 and The Drinking Water Infrastructure Act of 2020: Stakeholder Comments

May 1, 2020

The Committee on Environment and Public Works is requesting stakeholder input in order to draft portions of America's Water Infrastructure Act of 2020 and the Drinking Water Infrastructure Act of 2020. This forum for accepting comments from stakeholders is much appreciated, as utilities face a myriad of current and future challenges to ensure uninterrupted services for our communities.

Monterey One Water (M1W) is a public agency responsible for the safe treatment and utilization of wastewater in northern Monterey County, which is situated along California's central coast. M1W serves approximately 265,000 community members from ten member entities. This translates to the treatment of approximately 17 million gallons of municipal wastewater each day to protect public health and the environment. In addition, M1W produces recycled water to irrigate approximately 12,000 acres of some of the most fertile cropland in the world and recently began production of advanced purified recycled water for injection into a groundwater basin, that adds to the local potable water supply.

In the wake of the COVID-19 pandemic, M1W projects a significant decline in revenue due to the following factors:

a. A reduction in fees received due to anticipated permanent closing of businesses, particularly restaurants which operate on low margins, and from hotels who have seen a dramatic drop in occupancy.
b. An increase in delinquencies of fees due to M1W due to cash flow issues affecting many businesses and community members in the area. Currently, we estimate delinquencies ranging between 5-20%.
c. A reduction in connection fees received from new development resulting from the pandemic.

This projected loss in total revenue of between $3-$7 million (10-22%) will require M1W to utilize reserve funds to cover expenses and to operate within a drastically reduced budget. This reality will put a strain on our current workforce, reduce investment in our infrastructure, and postpone needed projects.

These fiscal challenges also create future risk for the Agency. M1W's inability to maintain its reserve fund directly affects our ability to access cash or lines of credit in case of unexpected expenses and/or emergency equipment failures – both of which are more likely to occur when maintenance and capital projects have been deferred. In addition, M1W must maintain required debt coverage ratios, in accordance with its debt covenants, to cover its existing debt obligations.

M1W is concerned about replacing aging infrastructure, meeting emerging regulatory requirements, preparing for the future, and ensuring sustainability in everything we do. Our staff will diligently work to navigate these challenges, however receiving federal financial support will help ensure that M1W and other public utilities continue to provide the fundamental services of water and wastewater treatment to support their respective residents and businesses.

May 1, 2020

The Honorable John Barrasso
Chairman
Environment & Public Works Committee
U.S. Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Thomas Carper
Ranking Member
Environment & Public Works Committee
U.S. Senate
456 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Comments on America's Water Infrastructure Act of 2020 bill

Dear Chairman Barrasso and Ranking Member Carper,

May 30, 2020 marks the 72-year anniversary of the historic 1948 Vanport flood in Portland, Oregon. On May 30, 1948, a railroad embankment operating as a part of the Portland Metro Levee Systems was breached by high river levels and the entire City of Vanport was washed away, leaving over 18,500 people homeless in less than 24 hours. The Multnomah County Drainage District operates, maintains and administers the 27 miles levee that includes three other districts including Peninsula Drainage District #1, Peninsula Drainage District #2, and Sandy Drainage Improvement Company ("the Districts")

This levee system protects both regional and national critical infrastructure which, if compromised, would have devastating impacts to the state, region, and nation. Regular authorizations to Water Resources Development Act (WRDA) allow the U.S. Army Corps of Engineers (Corps) to support local sponsors like us to keep our community safe. We would like to thank you for leadership and commitment to our nation's water infrastructure and keeping your pledge to keep the WRDA on a biannual schedule. Thank you for the opportunity to submit comments on the AWIA released by the Committee on April 21, 2020.

MCDD Flood Protection Multnomah County Drainage District #1
1880 NE Elrod Drive Portland, OR 97211 / 503.281.5675 phone / 503.281.0392 fax / www.mcdd.org

The Districts Supports the Following Provisions in the AWIA Discussion Draft Under Title I – Water Resources Development.

Sec. 1004 – Maintenance and construction of water resources development projects by non-Federal interests.

Sec. 1010 – Project Modifications for improvement of environment.

Section 1011 – Non-Federal Implementation pilot program – Reinstatement of Section 1043 from Water
Resources Reform and Development Act of 2014.

Section 1014 – Annual Report to Congress on water resources infrastructure.

Section 1017 – Continuing Authority Programs.

In addition to the language addressing the CAP program in the discussion draft, **the Districts urge that language be added to establish a new CAP Authority for Watershed (Multi-Purpose) Projects.**

Local sponsors need to demonstrate to their constituents that they're receiving maximum benefit their earned tax dollars. Maximizing public benefits through a new category for watershed projects which serve multi-purposes under the U.S. Army Corps of Engineers' Continuing Authorities Program (CAP) would be a relatively low-cost, low-risk and high reward way of delivering such projects.

The CAP authorities are generally structured to support either navigation, flood control or ecosystem restoration. Watershed projects that cut across the individual authorities are not possible under a strict interpretation of the individual sections. For example, a flood control project that uses natural channel and green infrastructure practices and recreational trails or a navigation project that can reduce flooding would not be eligible for funding under current CAP authorities. These types of projects could be possible under this new watershed category.

The Districts recommend that a new Watershed CAP project authority be established for multi-purpose projects with an authorization level of $12,000,000.

The Districts also supports the following language changes to Sec. 1017 as currently written in the discussion draft.

"(B) DISADVANTAGED COMMUNITY. — The term "disadvantaged community" means a city, town, or other incorporated or unincorporated political subdivision, *census tract, or census-designated area that*—"
And then strike (a)(1)(B)(i) and renumber.

Also, (a)(2) should be adjusted to read: "Subject to paragraph (3), in carrying out a project under a continuing authority program in a small community or a disadvantaged community, *or by a local sponsor who's revenue stream is derived from a small community or a disadvantaged community*, if the Secretary determines...."

The waiver needs to be able to include projects that occur in jurisdictions that are short-changed in the revenue stream due to the population that supports the jurisdiction, even if the immediately adjacent area is not the disadvantaged community (for example, ag land and values that are important to a regional economy supported by a nearby but not adjacent disadvantaged community).

Section 1022 – Expediting repairs and recovery from flooding.
The Districts urge that the Committee also include language here or in the accompanying report language to clarify Waters of the United States Section 404(f) exemption for routine maintenance of flood control maintenance activities.

The Districts urge Congress to clarify the existing maintenance exemption for flood damage reduction systems to affirm its application to routine maintenance for flood damage reduction systems including flood control channels and detention basins. This clarification is critical and could be achieved in AWIA 2020 Report language.

Clean Water Act §404(f)(1)(B) identifies certain maintenance activities as non-prohibited discharges of dredged or fill material. However, some federal agency field offices have inconsistently interpreted this provision of the Clean Water Act. The Districts request that Congress affirm its intent for §404(f)(1)(B) to include routine maintenance of channels, including removal of debris and trash, and vegetation management.

Clean Water Act §404(f)(1)(B): "for the purpose of maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, flood control channels, detention basins and bridge abutments or approaches, and transportation structures identified as part of the flood control system."

Increase Permit Terms for General Permits– Amend Section 404 of the Clean Water Act to increase the statutory five-year term limit for General Permits, including general permits for operations and maintenance of flood control channels.

Sec. 1044 – Project Partnership Agreement.
Section 1047 – Levee Safety.
Section 1070- Federal interest determination.
Section 1073 – Completion of Reports.

Sec. 1083 – Corps of Engineers projects in underserved communities, economically distressed areas, or rural areas.

The Districts support Section 1083, with recommended modification, the intent of the more holistic approach to project selection and funding proposed by Section 1083. The approach is consistent with recommendations of the 2004 National Academy of Sciences Analytical Methods and Approaches for Water Resource Project Planning report requested by WRDA 2000.

The Report specifically states (Page 7):

> Benefit-cost analysis should not be used as the lone decision criterion in judging whether a proposed planning or management alternative in a Corps planning study should be approved. Benefit cost analysis is a useful decision-making guide, and it is important that Corps planning studies retain the discipline imposed by comparing project benefits and costs. But it should be used only as one criterion in reaching final judgment on a proper alternative; criteria such as stakeholder opinions, political preferences, equity, and non-market values such as biodiversity are important factors in water resources investments and policy decisions that are not captured in benefit-cost analysis. Rather than being the product of lengthy analysis (as currently embodied within the P&G), benefit-cost analyses in future Corps studies should aim to be more concisely presented, with clear explanations of assumptions and models employed.

Section 1083 Promotes the inclusion of Equity for small, financially disadvantaged or rural areas, but it does not more broadly address the full recommendation made by the National Academy. The Districts encourages that section 1083 be revised to more fully address the recommendations of the National Academy with regard to NED, addressing the limitations of monetized economic analysis and other restrictions in law that prevent the Corps from implementing modern economic theory and "best practices" into their project selection criteria. The Corps continues to struggle with revisions to their Principles and Guidelines and Planning Guidance Notebook necessary to align them with "best practice" in modern economics. Expanding the proposed Section 1083 Congressional direction to more broadly apply assessments of equity, non-monetary benefits, and local and stakeholder preferences for all projects (not just rural and DAC) would lead to a more balanced and equitable approach to project selection that better promotes overall equity and environmental outcomes for all stakeholders.

Thank you again for your time and consideration.

Sincerely,

Sunny Simpkins
Deputy Director of Policy, Planning and Administration
ssimpkins@mcdd.org

May 1, 2020

The Honorable John Barrasso
Chairman
Senate Environment & Public
Works Committee
Washington, D.C.

The Honorable Thomas R. Carper
Ranking Member
Senate Environment & Public
Works Committee
Washington, D.C.

Re: National Association of Clean Water Agencies (NACWA) Statement to the Senate Environment and Public Works Committee Regarding the "America's Water Infrastructure Act (AWIA)" of 2020 Discussion Draft

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of the National Association of Clean Water Agencies (NACWA) and our over 330 public wastewater and stormwater utility members nationwide, both large and small, who collectively serve 150 million Americans daily, we greatly appreciate the opportunity to provide a statement on the Senate's draft bipartisan *America's Water Infrastructure Act (AWIA) of 2020*.

Each day, clean water professionals around the country work to ensure that families, hospitals, schools, and businesses in their communities have the safe, reliable, and affordable clean water services they need. The ongoing COVID-19 pandemic has only reinforced the vital importance that water and wastewater infrastructure and services play in our communities to help mitigate the spread of the disease.

The Congressional Budget Office (CBO) finds that the federal cost-share of water and wastewater utility costs is less than 5 percent, a far lower cost-share than other important infrastructure sectors. While the Clean Water Act (CWA) called for a strong Federal-state-local partnership, overwhelmingly, the costs of compliance fall to local ratepayers.

NACWA commends the committee for its continued bipartisan dedication to strong federal clean water infrastructure investments, modernizing the nation's approach to clean and safe water, and for its ongoing engagement and collaboration with the clean water sector. AWIA provides a very important step forward toward ensuring clean water agencies have the tools and resources they need to provide clean water services.

While the Committee was already hard at work to advance this important water infrastructure legislation prior to the COVID-19 pandemic, this health crisis and resulting economic shutdown make the need even more urgent. NACWA estimates that the financial impacts to the clean water sector will reach $16.8 Billion on an annual basis. This number conservatively estimates 20 percent loss of revenue to utilities as water usage declines from industrial, commercial, and institutional sources. This estimate also factors in that customer delinquencies are rising as households face increased financial strain and that utilities, in an effort to ensure vital access to sanitation and hygiene, have largely halted shutoffs for non-payment. These costs of providing services regardless of ability to pay are estimated to reach $4.3 Billion.

Unfortunately, these estimates are for clean water alone – the drinking water sector forecasts that over the course of a full year, the pandemic will reduce drinking water system revenues by $13.9 billion—or nearly 17 percent of the sector's annual total. This includes nearly $5 Billion in losses from increased customer delinquencies, and more than $500 million in costs from suspending water service shutoffs for nonpayment.

These financial impacts threaten to postpone planned capital investments, increase workforce challenges, and force communities to make additional tough decisions about rate increases at a time so many households are struggling. For these reasons, NACWA strongly urges swift, significant federal assistance to the crucial water and wastewater sector.

The provisions incorporated in AWIA are a crucial step in this process. We appreciate the opportunity to offer our support for many of these important provisions and offer suggestions to further advance water affordability and clean water compliance. The funding authorizations proposed in the bill are crucial – but unfortunately do not approach the full investment needs of the public clean water sector. We look forward to continued work with the Committee to advance these priorities further.

Clean Water State Revolving Fund (CWSRF)

The CWSRF is a critical financing tool that communities and public clean water utilities, both large and small, leverage to help meet their federal obligations under the CWA.

U.S. wastewater and stormwater infrastructure are at a major juncture and increased federal investment is critical to ensure the clean water gains of the past fifty years are maintained and expanded. Local communities currently bear the majority of clean water costs, with 95 percent of water infrastructure investment coming through local ratepayer and state funding. At the same time, public utilities are being asked to do more – to address aging infrastructure, manage increasingly complex water quality challenges and regulatory requirements, all while maintaining rates that are affordable for all customers.

Additional federal investment is needed as sewer and water rates continue to increase and outpace the rate of inflation. NACWA's 2019 *Cost of Clean Water Index* indicates that the average cost of wastewater services rose by 1.9 percent in 2019 and 3.9 percent in 2018, surpassing the increase in the rate of inflation as measured by the Consumer Price Index (CPI) each year. The national average amount that a single-family residence pays for wastewater collection and treatment is now $513 per year, and that figure is over $900 in some parts of the country. This is the 18th consecutive year that wastewater service charges have increased faster than inflation, doubling the average wastewater service charge since 2003.

The CWSRF has a demonstrated record of success in communities across the country, both large and small. It has been instrumental to the success of clean water utilities in complying with National Pollutant Discharge Elimination System (NPDES) permits, implementing secondary (biological) treatment of wastewater, reducing the frequency and size of sewer overflows during wet weather events, implementing innovative stormwater and nutrient management projects, and upgrading aging infrastructure and improving overall local water quality.

NACWA strongly supports AWIA's CWSRF program reauthorization at incremental increases of $2 billion for fiscal year (FY) 2021, $2.5 billion for FY 2022, and $3 billion for FY 2023, for a total of $7.5 billion over three years. At the same time, NACWA encourages the Committee to

consider even higher authorized amounts over the next three years to provide additional support to the public clean water sector as it seeks to recover from the economic fallout of the COVID-19 pandemic.

Sewer Overflow and Stormwater Reuse Municipal Grants (CWA Sec. 221)

Controlling sewer overflows and ensuring proper management of stormwater are essential to protecting public health and the environment. Compliance with increasingly stringent water quality standards, however, is very costly, placing financial strain on many communities and their ratepayers, especially in older communities dealing with aging infrastructure and population and economic shifts.

The 1994 *Combined Sewer Overflow Policy*, which has led to massive infrastructure investment costs, was originally proposed to be paired with federal grant funding which did not materialize, leaving combined sewer communities and local ratepayers bearing the costs through years of rate increases. NACWA strongly applauds the program's authorization in the *America's Water Infrastructure Act (AWIA) of 2018*, (P.L.115-270) and the first round of appropriations in FY 2020.

The sewer overflow and stormwater reuse municipal grants are a rare opportunity for clean water utilities to receive federal grants and will be critical to helping communities and their ratepayers more affordably reduce wet weather Combined Sewer Overflow (CSO) and Sanitary Sewer Overflow (SSO) discharges into local waterbodies and manage stormwater for beneficial reuse.

NACWA strongly supports AWIA's reauthorization of the sewer overflow and stormwater reuse municipal grants program at the increased levels of $250 million annually for FY 2021 and FY 2022.

Water Infrastructure Finance and Innovation Act (WIFIA)

The WIFIA program is a compliment to the SRFs, providing an additional financing tool to address water infrastructure investment by leveraging limited federal resources. For example, EPA's FY 2020 appropriations legislation provided $55 million for WIFIA to leverage into as much as $11.5 billion worth of loans and loan guarantees for major drinking water and wastewater infrastructure projects.

The WIFIA program has provided valuable financing for a growing number of large clean water investment projects around the country. NACWA strongly supports its reauthorization and the reform proposed by section 3010, which would reduce the number of final rating opinion letters required for each WIFIA applicant from two to one. This will ease the administrative burdens on clean water agencies pursuing WIFIA assistance.

NACWA supports the AWIA's reauthorization of WIFIA through 2024 at the core annual funding level of $50 million.

Water Infrastructure and Workforce Investment

Jobs in the water sector provide a good career with competitive wages that tend to pay more on average compared to all occupations nationally. Over the next decade however, the water utility

workforce is expected to incur a retirement rate of over one-third. This number is not only alarming given the important daily work of these professionals but is also problematic given the extensive education and training these jobs require.

AWIA 2018 responded to this issue by establishing a new competitive grant program at EPA for water workforce development activities.

NACWA strongly supports the reauthorization and increased funding for this competitive grant program under AWIA 2020 at $2 million annually though FY 2024 and appreciates the bill's clarification that public water and clean water utilities are directly eligible for these grants. We thank the committee and encourage further collaboration with the water sector to address workforce development needs.

Clean Infrastructure Resiliency and Sustainability Program

Building on the Drinking Water System Infrastructure Resilience and Sustainability Program established in AWIA 2018, NACWA strongly supports AWIA 2020's authorization of the Clean Infrastructure Resiliency and Sustainability program at $5 million in annual grants through FY 2024 for public clean water utilities of all sizes. Publicly owned treatment works (POTWs) will use these grants to assist in the planning, design, construction, implementation, operation, or maintenance of a program or project to increase the resiliency or adaptability of water systems to natural hazards.

NACWA strongly supports this program. Clean water facilities are critical infrastructure that need to be resilient to all types of natural hazards. For example, during intense wet weather events clean water utilities are essential to protecting communities from waterborne disease, reducing environmental impacts, and preventing basement backups and property damage.

As communities across the country continue to face increasingly extreme weather events and natural disasters, these funds will be crucial in helping them better mitigate against the impacts.

Providing Clear Congressional Authorization for Supplemental Environmental Projects (SEPs) in Clean Water Act Settlement Agreements

One issue not addressed in the draft AWIA 2020 legislation that NACWA requests the Committee include is language clearly authorizing the use of Supplemental Environmental Projects (SEPs) in CWA settlement agreements between the federal government and local governments.

SEPs have historically been used for many years by the U.S. Department of Justice (DOJ) and the U.S. Environmental Protection Agency (EPA), under both Republican and Democratic administrations, in CWA consent decrees and settlement agreements with local governments. SEPs allow local governments, in lieu of paying a fine to the US Treasury, to instead invest these same dollars in local projects that improve the environment. This allows local governments to use these dollars to directly improve their local environment instead of sending the money to the federal government.

SEPs have been widely embraced by the federal government, local governments, clean water utilities, and local citizen groups. However, DOJ recently issued a new policy prohibiting the use of SEPs going forward in new settlement agreements because they are not specifically

authorized by Congress in the language of the CWA. DOJ took this action despite strong opposition from EPA.

Congress could easily address this concern – and preserve SEPs as an important tool for EPA, DOJ and local governments – by including language in AWIA that clearly authorizes their use in CWA consent decree and settlements.

NACWA strongly urges the Committee to address and clarify the allowable use of SEPs in AWIA 2020.

Pilot Program for Alternative Water Source Projects

NACWA supports AWIA's reauthorization of this important program at $25 million annually for FY 2022 to FY 2024 to help provide communities across the country with the tools they need to improve water quality and ensure sustainable water supplies.

Small and Disadvantaged Community Analysis

Water affordability and access to water services are key concerns for the water sector. The proposed EPA analysis of the historical distribution of funds to low income communities, rural, minority and indigenous peoples under Safe Drinking Water Act and CWA programs can shed important light on the prevalence and distribution of federal assistance for water and wastewater, and we support this step.

However, NACWA is concerned that EPA needs to move more quickly to address the overarching concern of water affordability. NACWA has worked closely with EPA and the water sector in support on an update to EPA's financial capability guidance. We strongly support Section 16 of H.R.1497, as passed by the House Transportation & Infrastructure Committee, on this issue and urge its incorporation into a final AWIA package.

Clean Water Advanced Technology

AWIA 2020 includes several technology provisions that NACWA supports to help ensure public clean water utilities have the innovative and cost-effective technologies to address increasing and complex water quality challenges.

AWIA establishes an EPA water data sharing pilot program that would provide competitive grants to states to create platforms, such as websites or data hubs, for intrastate information sharing among communities regarding water quality, water infrastructure needs, and water technology. In order to receive federal dollars, eligible state and their unites of local governments or regional consortiums must have a coastal watershed with significant pollution levels, a water system with significant pollution levels, or significant individual water infrastructure deficits.

This provision, along with the committee's Drinking Water Infrastructure Act of 2020 provisions, which requires an EPA study to examine the state of existing and emerging technology that enhances or could enhance the treatment, monitoring, affordability, efficiency, and safety of drinking water provided by public water systems and creates a technology grant program for public water systems that serve a population of 100,000 or fewer people or a

disadvantaged community, incorporates the NACWA supported Advanced Research Projects Agency – Water (ARPA-H2O) concept and legislation.

NACWA requests that as the Committee moves forward on this legislation, it incorporate clean water into eligibility for both of these sections and new programs.

Given the growing stormwater needs around the country, NACWA was also pleased to see inclusion in AWIA the establishment of five Centers of Excellence for stormwater control research to assist research institutions and institutions of higher education with research on new and emerging stormwater control technology.

Lastly, NACWA is glad to support establishment of a pilot grant program for small utilities to invest in transforming waste-to-energy. This program, authorized at $17.5M in FY 2021 and FY 2022, will help facilitate investment in sludge collections systems, anaerobic digesters, methane capture or transfer, and other technologies.

Wastewater Infrastructure Discretionary Grant Program

NACWA strongly supports this section to establish an EPA discretionary grant program to provide POTWs, other governmental entities or State infrastructure financing authorities federal grants for wastewater infrastructure projects. In selecting grant recipients, the EPA must give priority to projects for which the grant would assist in completing an overall financing package for the project and that would help bring the POTW into CWA compliance. It would also allow for the eligible entity to include more than 1 project in a single application.

Federal support for water and wastewater infrastructure has long relied overwhelmingly on loan financing, while the costs of CWA compliance have grown. This important grant program would help communities come into compliance more affordably.

NACWA supports the $50 million annual authorization for this program for FY 2022 to FY 2024.

Connection to Publicly Owned Treatment Works

NACWA supports the establishment of a new EPA program to provide grants to POTWs or nonprofit organizations to assist households who choose to connect to a public wastewater system. The program will cover the costs of low-income individuals to connect their household to a publicly owned treatment works and is funded at $20 M in FY 2021 and FY 2022.

Increased Funding for Technical Assistance to Small and Medium Publicly Owned Treatment Works

Small and mid-sized clean water agencies can face unique challenges that are different from larger systems and need access to resources needed to ensure CWA compliance. NACWA supports the $40 million for FY 2021 to FY 2024 authorized under AWIA to provide on-site technical assistance to owners and operators of small and medium POTWs through a circuit rider program, as well as increased funding under CWA Sec. 104(u) for technical assistance.

NACWA again thanks the Committee for its bipartisan work and collaboration with the clean water sector on this draft legislation. We appreciate your consideration of our comments provided in this statement and look forward to working with you further to advance this important clean water legislation. To discuss please contact:

Jason Isakovic, Director, Legislative Affairs at jisakovic@nacwa.org
Kristina Surfus, Managing Director, Government Affairs at ksurfus@nacwa.org

April 28, 2020

The Honorable John Barrasso
Chairman
Committee on Environment and Public Works
United States Senate
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Tom Carper
Ranking Member
Committee on Environment and Public Works
United States Senate
456 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper,

On behalf of America's 3,069 counties, parishes and boroughs, the National Association of Counties (NACo) thanks you for your bipartisan leadership to deliver new water resources and drinking water authorizations that will provide badly needed port infrastructure projects for county-owned and operated ports, as well as funding certainty to local governments, who are responsible for funding 95 percent of all local water infrastructure needs.

Counties appreciate lawmakers' successful efforts to include a directive in the 2018 Water Resources Development Act (WRDA) authorization instructing the U.S. Army Corps of Engineers (Corps) to consult with local governments on future and pending WRDA projects, as well as annual district budgets, deauthorized projects and guidance documents. In 2016, counties spent $22 billion on sewage and solid waste management alone, and we annually invest $134 billion in the construction of infrastructure and maintenance and operation of public works, including public water and wastewater systems. As committed public servants with significant infrastructure responsibilities, ensuring our residents have affordable access to safe, clean public drinking water is a top priority for counties. We look forward to working with this Congress to once again achieve our shared goals as new water authorizations are considered.

As front line administrators of local government, county officials know where federal resources can be maximized and must have a seat at the table as water projects with the potential to impact our local communities are considered. A strong intergovernmental partnership is critical as water legislation is developed, and we appreciate the opportunity to provide input on the Committee's drafts. As the Committee considers the *America's Water Infrastructure Act of 2020* (AWIA 2020) and the *Drinking Water Infrastructure Act of 2020* (DWIA), we offer the following considerations for counties:

Maintain biennial authorizations

WRDA is critical in assisting county governments to protect, maintain and further develop our water infrastructure systems, including ports, waterways and clean and safe drinking water. The biennial timeline of this legislation provides state and local governments with added stability and certainty to meet water infrastructure needs while also supporting the safety, environmental protection and economic development of our communities. Following a seven-year gap in the passage of legislation, counties appreciate lawmakers' efforts to successfully enact P.L. 113-121, the *Water Resources Reform and Development Act of 2014* (WRRDA), P.L. 114-322, the *Water Infrastructure Improvements for the Nation Act of 2016* (WIIN) and P.L. 115-270, the *America's Water Infrastructure Act of 2018* (AWIA 2018), each on a bipartisan basis. We strongly urge Congress to stay this course and approve bipartisan WRDA legislation in 2020 and on a biennial cycle moving forward.

Extend section 404 permits from five to ten years

Counties appreciate the inclusion of AWIA 2020 Sec. 1022, Expediting Repairs and Recovery from Flooding, as it directs the Corps to prioritize and expedite processing of Clean Water Act (CWA) Section 404 permits to complete repairs, reconstruction, improvements and upgrades to flood control infrastructure damaged by flooding events that occurred during calendar years 2017 through 2020.

We have seen critical water infrastructure projects significantly delayed due to the permitting process and urge the Committee to further streamline this directive by removing routine maintenance of human-made public flood protection facilities and infrastructure when no endangered species habitat is present, expanding eligibility beyond flooding events and extending all CWA Section 404 permits from five years to ten years.

Expand consultation with local governments

Counties appreciate the inclusion of local government consultation in AWIA 2018 regarding decertified levees and urge the Committee to further expand upon this provision in AWIA 2020. Counties also applaud the inclusion of AWIA 2020 Sec. 1011, Non-Federal Implementation Pilot Program, which extends the pilot program allowing counties to sponsor water projects through FY 2026.

Counties support, in consultation with federal and/or state governments, the preservation of local decision-making in undertaking water resource projects within a county's jurisdiction to ensure that community concerns are incorporated into project planning. Further, we support the requirement for the federal government to consult with local governments in the decision-making process, which includes the authority to assume full responsibility for planning and implementing flood control projects, assessing and mitigating environmental impacts and determining the necessity or advisability of flood control projects by the federal government.

Reauthorize state revolving loan funds

Counties support federal funding for any and all current and future federal mandates. We also support the State Revolving Loan Fund (SRF) programs, the Clean Water State Revolving Loan Fund (CWSRF) and the Drinking Water State Revolving Loan Fund (DWSRF), as supplements to, not substitutes for, direct federal grant programs. While these funds provide communities low-cost financing for a wide range of water quality infrastructure projects, counties urge Congress to also make available grants and technical assistance to small, rural and/or disadvantaged communities that are unable to meet community needs solely with loans and to direct states to provide adequate matches to federal funds provided through the SRF, while also ensuring flexibility in the administration of these loans.

Counties appreciate the inclusion of AWIA 2020 Sec. 2015, Reauthorization of Clean Water State Revolving Funds, that would provide $7.5 billion over FY 2022 through FY 2024 to the CWSRF, as well as Sec. 4 of DWIA that would provide $300 million in FY 2021 to the DWSRF for contaminant remediation activities and also mandate that a state use 20 percent of its funds to assist communities who may be struggling to meet regulatory compliance.

Unlock the Harbor Maintenance Trust Fund

Counties appreciate recent action by Congress in P.L. 116-136 to unlock annual receipts from the Harbor Maintenance Trust Fund (HMTF) for use by the Corps to deliver badly needed water resource projects and urge the Committee to continue on this course of action by fully unlocking the HMTF in AWIA 2020 to address the over $90 billion backlog in authorized water resource projects.

Counties support the full expenditure of HMTF collections on dredging and harbor maintenance activities and also encourage Congress to provide equity for deep draft ports, who make significant contributions to the HMTF but do not have significant dredging needs, by allowing them to utilize trust fund dollars for limited port-related uses other than dredging.

Update the benefit-cost analysis for federally funded water infrastructure projects

Counties believe that the current process for conducting cost-benefit analyses for flood control projects does not properly acknowledge the value of agricultural land or socio-economic factors. To address this, we urge the Committee to require the Corps and the White House Office of Management and Budget (OMB) to add a quantitative indexed value to life-safety, agricultural land value and the impacts of crop flooding, protection of low-income communities and environmental benefits to determine the benefit of federal investments in flood control projects.

Counties support authorizing the Corps to implement the 2013 *Principles and Guidelines (P&G) for Federal Investments in Water Resources* to allow rural communities to fairly compete for federal funding by considering non population-based criteria for water projects.

Increase funds for utilizing natural infrastructure to improve community resilience to storms, floods

Counties welcome the inclusion of natural infrastructure throughout the AWIA 2020 discussion draft and ask that these provisions remain. We support continued and increased funding for federal programs that assist counties with planning, implementing or modifying projects that enhance the resiliency of natural infrastructure.

Support research into harmful algal bloom prevention and mitigation

Harmful algal blooms and hypoxic events are some of the most scientifically complex and economically damaging obstacles challenging our ability to protect our nation's aquatic ecosystems. A single bloom can cost a local economy millions of dollars. In Sarasota County, Florida, it is estimated to cost $4 million to treat respiratory illnesses alone caused by an algal bloom. On average, $22 million are lost annually during blooms. Alarmingly, almost every state in the U.S. is facing some HAB event, with the number of hypoxic water bodies in the U.S. increasing dramatically by 30-fold since the 1960s and impacting over 300 aquatic life systems.

Counties appreciate the inclusion of AWIA 2020 Sec. 1093, Harmful Algal Blooms Demonstration Program, in the discussion draft and support the full renewal of the *Harmful Algal Bloom and Hypoxia Research and Control Act* (HABHRCA). We also encourage the Committee to expand the locations for HABHRCA-eligible projects beyond the Great Lakes, Lake Okeechobee, Florida and its other current applicable tributaries and to direct the U.S. Environmental Protection Agency (EPA) to collaborate with other federal agencies to identify nutrient reduction strategies and scalable HAB mitigation processes.

Increase funding for publicly owned dams and levees

Federal funding should be made available through grants, loans and federal cost-share programs designed to assure that unsafe or deficient dams and levees are brought into compliance with national minimum safety standards and to assure that necessary maintenance and upgrades can be conducted to meet these standards on an ongoing basis.

Counties appreciate the efforts made by the Committee to include new EPA grant funding opportunities to assist publicly owned treatment works. We also support increased federal commitments to fund the repair and rehabilitation of America's nonfederal, publicly-owned dams and levees with priority funding given to structures presenting the highest risk of failure to homes, schools, businesses or important infrastructure. Further, we urge Congress to strengthen the intergovernmental partnership by requiring consultation between federal, state and local governments when the EPA elects to undertake rehabilitation projects for unsafe or deficient dams and levees located within a county jurisdiction.

Invest in transboundary water and sewage infrastructure along America's international borders

Counties support authorizing funding for projects identified by the EPA and other appropriate federal agencies that would address transboundary sewage and/or contaminated water flows that occur along our country's international borders.

AWIA 2020 includes provisions for establishing international checkpoints for invasive species along the U.S. and international borders, and counties urge Congress to establish a similar program that will address sewage and contaminated water flows entering our systems from neighboring countries. In 2017, millions of gallons of toxic chemicals and raw sewage were dumped into the Tijuana River, impacting U.S. Border Patrol agents and water quality along the U.S. and Mexico border.

Maintain funding for continued consumer education and scientific study of ocean acidification

Counties support federal efforts to address the increasing problem of marine debris. This includes, but is not limited to, the following:

- Support for the continued reauthorization of P.L. 109-449, the *Marine Debris Research, Prevention, and Reduction Act* (MDRPRA), or similar legislation, and increased authorization for the National Oceanic and Atmospheric Administration (NOAA) to provide additional resources for grants to coastal counties for beach cleanup efforts and derelict fishing gear removal
- Research on the effectiveness of offshore cleanup methods
- Federal policies that encourage states and localities to educate small business communities and consumers about the significant environmental harm of single-use plastic bags/bottles, the benefits of associated county-wide bans and the benefits associated with implementing reuse/recycle policies at the local level

As the Committee continues to draft AWIA 2020, counties urge you to consider the importance of programs that address ocean acidification and marine debris removal. These programs provide important environmental benefits to coastal counties and parishes and have a direct impact on the national aquatic ecosystem.

Thank you for your bipartisan action to deliver new and timely water reauthorizations. Further, we appreciate the opportunity to offer input on behalf of America's counties and stand ready to work with our federal partners to strengthen the intergovernmental partnership and ensure that the safety and modernization of our nation's water infrastructure needs and the ability of all our residents to access safe, clean drinking water remain top national priorities.

Sincerely,

Matthew D. Chase
CEO/Executive Director
National Association of Counties

National Association of Flood and Stormwater Management Agencies
PO Box 56764
Washington, DC 20040
202-289-8625 www.nafsma.org

May 1, 2020

To: Senate Environment and Public Works Committee - QFR@epw.senate.gov

Contact: Susan Gilson, Executive Director, National Association of Flood & Stormwater Management Agencies
PO Box 56764, Washington, DC 20040
202-289-8625 sgilson@nafsma.org

Subject: America's Water Infrastructure Act of 2020 Discussion Draft Comments

The National Association of Flood and Stormwater Management Agencies (NAFSMA) is an organization of public agencies whose function is the protection of lives, property, the environment and economic activity from the adverse impacts of storm and flood waters. Since its formation in 1978, NAFSMA's mission has been to advocate public policy, encourage technologies and conduct education programs that facilitate and enhance the public service functions of its members.

Many NAFSMA members are partners with the U.S. Army Corps of Engineers on flood damage reduction and ecosystem restoration projects and also participate in FEMA's National Flood Insurance Program and work closely with the agency on flood risk and hazard mitigation efforts. A good number of NAFSMA members are also responsible for their region's National Pollutant Discharge Elimination System (NPDES) stormwater management permits. As a result of these critical responsibilities of NAFSMA's members, the association has been closely engaged with WRDA legislation since cost-sharing was first initiated in the 1986 WRDA.

NAFSMA appreciates all of the efforts of the Senate Environment and Public Works Committee to keep WRDA on its two-year reauthorization track and especially appreciates many of the provisions Congress has included in recent bills to assist partners with issues that improve the relationship and process for carrying out much-needed flood risk management and ecosystem projects.

Thank you for the opportunity to submit comments on the AWIA released by the Committee on April 21, 2020.

NAFSMA Supports the Following Provisions in the AWIA Discussion Draft Under Title I – Water Resources Development.

Sec. 1004 – Maintenance and construction of water resources development projects by non-Federal interests.

Sec. 1010 – Project Modifications for improvement of environment.

Section 1011 – Non-Federal Implementation pilot program – Reinstatement of Section 1043 from Water Resources Reform and Development Act of 2014.

Section 1014 – Annual Report to Congress on water resources infrastructure.

Section 1017 – Continuing Authority Programs.

In addition to the language included addressing the CAP program in the discussion draft, ***NAFSMA urges that language be added to establish a new CAP Authority for Watershed (Multi-Purpose) Projects.***

Local sponsors need to demonstrate to their constituents that they're receiving the most for their hard-earned tax dollars. Maximizing public benefits through a new category for watershed projects which serve multi-purposes under the U.S. Army Corps of Engineers' Continuing Authorities Program (CAP) would be a relatively low-cost, low-risk and high reward way of delivering such projects.

The CAP authorities are generally structured to support either navigation, flood control or ecosystem restoration. Watershed projects that could cross these individual authorities have not been possible under a strict interpretation of the individual sections. For example, a flood control project that uses natural channel and green infrastructure practices and has recreational trails or a navigation project that can reduce flooding would not be eligible for funding under current CAP authorities. These types of projects could be possible under this new watershed category.

NAFSMA recommends that a new Watershed CAP project authority be established for multi-purpose projects with an authorization level of $12,000,000.

NAFSMA also supports the following language changes to Sec. 1017 as currently written in the discussion draft.

"(B) DISADVANTAGED COMMUNITY. — The term "disadvantaged community" means a city, town, or other incorporated or unincorporated political subdivision, *census tract, or census-designated area that*—"

Strike (a)(1)(B)(i) and renumber the elements of (a)(1)(B).

Also, (a)(2) should be adjusted to read: "Subject to paragraph (3), in carrying out a project under a continuing authority program in a small community or a disadvantaged community, *or by a local sponsor who's revenue is derived from a small community or a disadvantaged community*, if the Secretary determines...."

NAFMSA supports a waiver that can apply to projects in jurisdictions whose revenue is supported by disadvantaged communities, even if the project is not immediately within the disadvantaged community. For example, a project that is regionally important to a rural agricultural area whose workers reside in nearby disadvantaged communities should be eligible for such a waiver.

Sec. 1020 – Criteria for funding environmental infrastructure projects.

Sec. 1021 – Aging Infrastructure.

Section 1022 – Expediting repairs and recovery from flooding.

NAFSMA urges that the Committee also include language here to extend this provision to apply to floods through 2022 and to also add language here or in the accompanying report language to clarify Waters of the United States Section 404(f) exemption for routine maintenance of flood control maintenance activities.

NAFSMA urges Congress to clarify the existing maintenance exemption for flood damage reduction systems to affirm its application to routine maintenance for flood damage reduction systems including flood control channels and detention basins. This clarification is critical and could be achieved in AWIA 2020 Report language.

Clean Water Act §404(f)(1)(B) identifies certain maintenance activities as non-prohibited discharges of dredged or fill material. However, some federal agency field offices have inconsistently interpreted this provision of the Clean Water Act. NAFSMA requests that Congress affirm its intent for §404(f)(1)(B) to include routine maintenance of channels, including removal of debris and trash, and vegetation management.

Clean Water Act §404(f)(1)(B): "for the purpose of maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, flood control channels, detention basins and bridge abutments or approaches, and transportation structures identified as part of the flood control system."

Increase Permit Terms for General Permits– Amend Section 404 of the Clean Water Act to increase the statutory five year term limit for General Permits, including general permits for operations and maintenance of flood control channels.

Expediting the Regulatory Process, Including 408 Categorical Permissions (CPs).

Establish Section 408 CPs including standard plans and checklists streamline review of certain minor requests (i.e., fences, bollards, trails, signage, lighting, landscaping, soil investigations, levee explorations, instrumentation, levee ramps and crossings, flow meters, water quality monitoring stations and utility crossings, etc.). There is also opportunity to request USACE HQ establish regular meetings to coordinate and develop engineering CPs, leveraging experience from across the country (i.e. Omaha, Kansas, Sacramento).

Require USACE to provide environmental permits and complete its mitigation requirements before a new civil works project is turned over to the non-federal sponsor. This would reduce future issues that would restrict or prohibit operations and maintenance activities.

Sec. 1042 – Credit or Reimbursement

Section 1043 – Emergency Contracting.

Sec. 1044 – Project Partnership Agreement.

Sec. 1047 – Levee Safety.

Sec. 1053 – Establishing permanent features from emergency response measures.

Sec. 1054 – Studies of water resources development projects by non-federal sponsors.

Sec. 1070- Federal interest determination.

Sec. 1073 – Completion of Reports.

Sec. 1077 – Non-Federal interest payment obligations.

Sec. 1083 – Corps of Engineers projects in underserved communities, economically distressed areas, or rural areas.

NAFSMA supports Section 1083, with recommended modification, the intent of the more holistic approach to project selection and funding proposed by Section 1083. The approach is consistent with recommendations of the 2004 National Academy of Sciences Analytical Methods and Approaches for Water Resource Project Planning report requested by WRDA 2000.

The Report specifically states (Page 7):

> Benefit-cost analysis should not be used as the lone decision criterion in judging whether a proposed planning or management alternative in a Corps planning study should be approved. Benefit cost analysis is a useful decision making guide, and it is important that Corps planning studies retain the discipline imposed by comparing project benefits and costs. But it should be used only as one criterion in reaching final judgment on a proper alternative; criteria such as stakeholder opinions, political preferences, equity, and non-market values such as biodiversity are important factors in water resources investments and policy decisions that are not captured in benefit-cost analysis. Rather than being the product of lengthy analysis (as currently embodied within the P&G), benefit-cost analyses in future Corps studies should aim to be more concisely presented, with clear explanations of assumptions and models employed.

Section 1083 Promotes the inclusion of Equity for small, financially disadvantaged or rural areas, but it does not more broadly address the full recommendation made by the National Academy. NAFSMA encourages that section 1083 be revised to more fully address the recommendations of the National Academy with regard to NED, addressing the limitations of monetized economic analysis and other restrictions in law that prevent the Corps from implementing modern economic theory and "best practices" into their project selection criteria. The Corps continues to struggle with revisions to their Principles and Guidelines and Planning Guidance Notebook necessary to align them with "best practice" in modern economics. Expanding the proposed Section 1083 Congressional direction to more broadly apply assessments of equity, non-monetary benefits, and local and stakeholder preferences for all projects (not just rural and DAC) would lead to a more balanced and equitable approach to project selection that better promotes overall equity and environmental outcomes for all stakeholders.

Section 1089 – Report on benefits calculation for flood control structures.

Sec. 1098 – Small Flood Control Projects.

NAFSMA Is Concerned About the Following Provisions in Title I of AWIA 2020:

Sec. 1033 – Maintenance of high risk flood control projects

NAFSMA is concerned about USACE walking away from maintenance of a high risk flood control project without having a suitable replacement.

Sec. 1039 – Levee Accreditation Process and Section 1071 – Levee Certifications.

NAFSMA is concerned that these two provisions taken together will result in reduced intergovernmental efforts to prevent catastrophic levee failures. While these provisions may be designed to offer more USACE management of residual risk in floodplains, they may be interpreted as a Congressional directive to use internally developed USACE Risk Assessments for all programs, including for FEMA levee accreditation purposes. USACE is not currently authorized to make PL 84-99 or other project investments decisions based on these internal risk-based decision documents. Until levee sponsors and the communities they protect derive clear benefit and gain confidence in the use of USACE risk assessments, including their transparency, reliability and reproducibility, their use should not be expanded for regulatory or investment decisions.

NAFSMA proposes that provisions to address the following issues be included as part of the Water Resources Development Title I of AWIA 2020.

Language to Ease Divestiture of USACE-Constructed Projects or Facilities to Interested Local Sponsor Control in As-Is Condition (unless negotiated otherwise).

Call for a USACE Civil Works Study or Establishment of Clearinghouse to Identify Tools and Best Practices to Address Shelter and Security Issues for Federally-Partnered Flood Control Projects

An overwhelming challenge and growing need for the water resources community has been the recent increasing use of property associated with critical flood risk management infrastructure as homeless encampments. In many cases, these flood control projects have been constructed through partnerships with the federal government and are now operated and maintained at the local level. The growing national challenge of providing affordable housing and health care for those without permanent homes can provide serious risks not only for those who are living in these encampments, but also for those living and working behind these structures due to the potential damage to the structures or to the land around the structure and associated spillways.

Although local flood districts and public works departments are working with their local and state housing, mental health and non-profit agencies to try to address this issue, the problem is well beyond what sponsors anticipated when assuming operation and maintenance responsibility for these federally-partnered projects.

NAFSMA urges Congress to call for a national study of flood risk due to homeless encampments on or around flood control facilities led by USACE Civil Works in cooperation with their non-federal partners on flood risk management projects, including NAFSMA, and a possible initiative is needed to develop tools and create a clearinghouse of best practices and initiatives that are being utilized in the federal government as well as throughout the country to address this growing flood risk management challenge as part of AWIA 2020.

This study should be provided to Congress within a year of enactment of AWIA 2020.

NAFSMA Supports The following Provisions Under Title II – Clean Water of AWIA 2020.

Sec. 2001 – Clean water infrastructure resiliency and sustainability program.

Sec. 2006 – Pilot program for alternative water source projects.

Sec. 2007 – Sewer overflow and storm reuse municipal grants.

Sec. 2008 – Water infrastructure and workforce investment.

Sec. 2014 – Water infrastructure financing reauthorization.

The NAFSMA Leadership is looking forward to discussing these issues in further detail with you in the coming weeks. In the meantime, please feel free to contact NAFSMA Executive Director Susan Gilson at 202-289-8625 or 202-368-9088 with any questions.

Attached is a list of the NAFSMA leadership.

NAFSMA very much appreciates your consideration and all that you do to address the nation's water resources priorities.

NATIONAL ASSOCIATION OF FLOOD & STORMWATER MANAGEMENT AGENCIES
PO Box 56764, Washington, DC 20040 • Phone: 202-289-8625

2020 LEADERSHIP

EXECUTIVE COMMITTEE

Janet Bly (President)
At Large
General Manager
Miami Conservancy District
38 E Monument Avenue
Dayton, OH 45402
T: 937-223-1271
jbly@mcdwater.org

Mark Pestrella
(Vice President) *At Large*
Director
LA County Dept. of Public Works
900 South Fremont Avenue
Alhambra, CA 91802
T: 626-458-4001
mpestrella@dpw.lacounty.gov

Steve Parrish (Secretary)
At Large
General Manager/Chief Engineer
Clark County Regional Flood Control District
600 S Grand Central Parkway
Suite 300
Las Vegas, NV 89106
T: 702-685-0000
sparrish@regionalflood.org

Stephen Graham
(Treasurer) *At Large*
Assistant General Manager
San Antonio River Authority
P.O. Box 839980
San Antonio, TX 78283
T: 210-227-1373
sgraham@sara-tx.org

DIRECTORS

Melanie Richardson – *At Large*
Chief Operating Officer Watersheds
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3614
T: 408-265-2600
mrichardson@valleywater.org

Leslie M. Gallagher – *At Large*
Executive Officer
Central Valley Flood Protection Board
3310 El Camino Avenue, Suite 170
Sacramento, CA 95821
T: 916- 574-0291
Leslie.gallagher@cvflood.ca.gov

Ken MacKenzie – *Region VIII*
Executive Director
Urban Drainage and Flood Control District
2480 West 26th Avenue, #156-B
Denver, CO 80211
T: 303-455-6277
kmackenzie@udfcd.org

Russell Poppe – *At Large*
Executive Director
Harris County Flood Control District
9900 Northwest Freeway
Houston, TX 77092
T: 713-684-4000
russ.poppe@hcfcd.hctx.net

Catherine O'Connor – *Region V*
Director of Engineering
Metropolitan Water Reclamation District of Greater Chicago
111 East Erie Street
Chicago, IL 60611
T: 312-751-2169
Catherine.o'connor@mwrd.org

James Oliver – *At Large*
General Manager
Tarrant Regional Water District
P.O. Box 4508
Fort Worth, TX 76164
T: 817-335-2491
F: 817-877-5137
joliver@trwd.com

Jennifer Smith – *Region IV*
Deputy City Engineer
City of Charlotte
600 East Fourth Street
Charlotte, NC 28202
T: 704-336-7924
jgsmith@ci.charlotte.nc.us

2020 LEADERSHIP

DIRECTORS (CONT'D)

Sunny Simpkins – *Region X*
Deputy Director
Planning, Policy & Administration
Multnomah County Drainage District
1880 NE Elrod Drive
Portland, OR 97211
T: 503-281-5675, ext. 313
ssimpkins@mcdd.org

Robert Turner – *Region VI*
Floodplain Management Committee Co-Chair
Regional Director
SoutheastLouisiana FloodProtectionAuthorityEast
2045 Lakeshore Drive, Room 422
New Orleans, LA 70122
T: 504-512-6330 F: 504-280-2412
rturner@slfpae.com

Jason Uhley – *Region IX*
General Manager/Chief Engineer
Riverside County Flood Control & Water Conservation District
1995 Market Street
Riverside, CA 92501
T: 951-955-1250
juhley@rcflood.org

COMMITTEE CHAIRS

Flood Management Committee

Vincent Gin, P.E.
Deputy Operating Officer
Watershed Stewardship and Planning
Santa Clara Valley Water District
San Jose, CA 95118-3614
T: 408-630-2633
Vgin@valleywater.org

Mark Strudley, Ph.D.
Flood Control Division Manager
Santa Cruz County Department of Public Works
Santa Cruz County Flood Control and Water Conservation District, Zone No. 7
701 Ocean Street, Room 410
Santa Cruz, CA 95060
Main: 831-454-2160
Direct: 831-454-2807
mark.strudley@santacruzcounty.us

Joan Valle
Chief of Regulatory
Riverside County Flood Control & Water Conservation District
1995 Market Street
Riverside, CA 92501
Direct: 951-955-8856
Mobile: 951-522-1071
jvalle@rivco.org

Floodplain Management Committee

Joshua Stuckey
Chief Administration Officer
Public Infrastructure Coordination
Harris County Public Infrastructure Department
1001 Preston, 7th Floor
Houston, TX 77002
T: 713-274-3609
josh.stuckey@hcpid.org

Shea Thomas
Watershed Services Manager
Urban Drainage & Flood Control District
2480 W. 26th Avenue, Ste. 156-B
Denver, CO 80211
T: 303-455-6277
sthomas@udfcd.org

Stormwater Management Committee

Melissa Bryant
Environmental Sciences Department Manager
San Antonio River Authority
PO Box 839980
San Antonio, TX 78253
T: 210-302-3611
mbryant@sara-tx.org

Marc Recktenwald
Water Quality & Environment Permitting Program Manager
City of Charlotte
Charlotte Mecklenburg Stormwater Services
600 East Fourth Street
Charlotte, NC 28202
T: 704-336-3122
mrecktenwald@ci.charlotte.nc.us

Executive Director

Susan Gilson
P.O. Box 56764
Washington, DC 20040
T: 202-289-8625
sgilson@nafsma.org

Advisory Board

Joe Chapman *2019*
Vice President
AECOM
6000 Fairview Road, Suite 200
Charlotte, NC 28210
704-564-0840
Joe.Chapman@aecom.com

Karin Jacoby, P.E. *2019*
Attorney
Husch Blackwell
4801 Main Street, Suite 1000
Kansas City, KS 64112
T: 816-983-8304
Karin.jacoby@huschblackwell.com

Todd G. Williams, M.Sc. *2019*
National Practice Leader, Water (Interim)
Michael Baker International
2929 N. Central Avenue, Suite 800
Phoenix, AZ 85012
T: 602-798-7556
Todd.williams@mbakerintl.com

5285 Westview Drive, Suite 202
Frederick, MD 21703

301.624.2400
nassco.org

April 30, 2020

The Honorable John Barrasso
Chairman
Committee on Environment
& Public Works
U.S. Senate
Washington, D.C.

The Honorable Thomas R. Carper
Ranking Member
Committee on Environment
& Public Works
U.S. Senate
Washington, D.C.

RE: NASSCO Comments on draft America's Water Infrastructure Act of 2020

Dear Chairman Barrasso and Ranking Member Carper:

NASSCO, Inc. writes in support of the Committee draft America's Water Infrastructure Act of 2020 (AWIA 2020). This important legislation will provide much needed funding and financing resources to communities to make necessary investments in underground water infrastructure. Many of the provisions included in the clean water section of AWIA 2020 align with NASSCO's Policy Recommendations to Congress[1].

Established in 1976, NASSCO is the professional and industry association for the municipal agencies, companies, and individuals who inspect, maintain, rehabilitate, install, and manufacture products and equipment for underground wastewater, drinking water and stormwater infrastructure. Among NASSCO's many resources for water professionals, the Association has developed industry-standard training programs specifically designed to educate cities and contractors on the proper identification and uniform coding of sewer and stormwater infrastructure conditions. The Pipeline Assessment Certification Program® (PACP) helps municipalities develop asset management programs, identifying the most critical areas for water infrastructure maintenance or rehabilitation. This is an important step in maintaining and investing in water infrastructure, minimizing failures to the collection and conveyance systems. Maintaining and rehabilitating underground water infrastructure is critical to protecting public health, protecting the environment, and promoting economic growth in communities.

NASSCO's members rely heavily upon robust federal, state, and local investments in water infrastructure. The challenges most communities have around balancing regulatory compliance with project funding resources have resulted in much of our nation's underground water infrastructure to be past its design life, which increases pipe failure rates and results in emergency repairs that are extremely disruptive to residents, businesses, and harmful to the environment. Additionally, fixing emergency pipe failures is significantly more expensive than planned maintenance through adherence to an established and well-funded asset management plan.

[1] https://www.nassco.org/government-relations

For these reasons, NASSCO welcomes the opportunity to support the draft AWIA 2020 bill and strongly backs the provisions detailed below. The Association has included further recommendations for some of those provisions to help them meet the goals of those programs and the needs of our nation. Provisions that align with NASSCO's Policy Recommendations[2] document to Congress are indicated with an asterisk (*).

- **Sect. 2007* – Sewer Overflow and Stormwater Reuse Municipal Grants:** *NASSCO recommends extending the authorization until fiscal year 2024*
- **Sect. 2015* – Clean Water State Revolving Fund Reauthorization**
- **Sect. 2014* — WIFIA reauthorization**
- **Sect. 2011 — Connection to Publicly Owned Treatment Works:** *NASSCO recommends extending the authorization until fiscal year 2024*
- **Sect. 2012 — Use of Clean Water SRF:** *NASSCO particularly supports the expansion of SRF funding eligibility for design and engineering of projects.*
- **Sect. 2016* -- Wastewater Infrastructure Discretionary Grants:** *NASSCO strongly supports additional assistance to rural, small and disadvantaged communities to meet their federal and state regulatory compliance obligations.*
- **Sect. 2002* — Increased Funding for Technical Assistance:** *NASSCO strongly supports additional assistance to rural, small and disadvantaged communities to meet their federal and state regulatory compliance obligations.*
- **Sect. 2018* — Stormwater Infrastructure Technology:** *NASSCO particularly supports the provisions of this section to provide Planning and Design Grants and Implementation Grants and urges that funding levels be increased for those grants and the authorization be extended until fiscal year 2024. Additionally, NASSCO urges that the cost-share be adjusted to 80% federal and 20% nonfederal.*
- **Sect. 2008 — Water Infrastructure and Workforce Investment Grants**
- **Sect. 2003* – Small and Medium Publicly Owned Treatment Works Circuit Rider Program**
- **Sect. 2001* — Clean Water Infrastructure Resiliency and Sustainability Program:** *NASSCO urges that the funding levels for this program be increased.*

As stated above, NASSCO members are the municipal agencies and companies that assess and rehabilitate wastewater and stormwater collections and conveyance infrastructure. The provisions included in the Committee's draft AWIA 2020 legislation will greatly aid their efforts to maintain and improve our nation's underground infrastructure. If the Committee has any questions or needs additional information, please contact Steve Dye, NASSCO's government relations consultant, at sdye@nexusgr.com or 202-246-1070. Thank you for drafting and leading the passage of this important bipartisan legislation in Congress.

Sincerely,

Sheila Joy

Sheila Joy
Executive Director

---

[2] https://www.nassco.org/government-relations

MOVING WATER FORWARD

50 S. 16th Street, Suite 2725 • Philadelphia, PA 19102 | 777 6th Street NW, 11th Floor • Washington DC, 20001

Chairman John Barrasso
United States Senate
307 Dirksen Senate Office Building Washington, DC 20510

Ranking Member Tom Carper
United States Senate
307 Dirksen Senate Office Building Washington, DC 20510

April 28, 2020

Dear Chairman Barrasso, Ranking Member Carper, and Members of the Committee --

As Congress, and the U.S. Senate Committee on Environment & Public Works (EPW) in particular, turns its attention to reauthorizing the Water Resources Development Act (WRDA), I am writing to congratulate you on making the draft legislation public and request that you incorporate language incentivizing struggling systems to partner with other systems as a means to come into compliance with environmental and other regulations; clean water state revolving fund eligibility expansion; and low-income customers assistance provisions into any final bill. All of these provisions enjoy the support of National Association of Water Companies (NAWC) members.

NAWC's membership of over 100 companies provides drinking water and wastewater services to 73 million customers (22% of the population) in the United States, either directly or through public-private partnerships. Investor-owned, regulated water companies operate approximately 16% of the nation's community water systems, delivering 4.6 billion gallons of drinking water per day through over 100,000 miles of distribution pipelines that they maintain. We are proud to be a part of communities across the nation and are committed to making continued investments to ensure clean, reliable and affordable water and wastewater service.

Accordingly, we ask that you include the following items in the bill text:

STRENGTHENED PARTNERSHIPS — The water sector faces many challenges—from aging infrastructure, to emerging contaminants to a highly fragmented water grid.

According to the National Academies Press, approximately 95% of water utilities in the US serve fewer than 10,000 people, making economies of scale very difficult to achieve. Higher costs mean that small communities may not have the capital necessary to make investments needed

to remain in compliance with the Safe Drinking Water Act and the Clean Water Act. In fact, according to the EPA, there are more than 1,200 small water systems across the US that are in serious non-compliance with drinking water standards, creating a major public health risk.

Now more than ever, as utilities are facing additional COVID-19-related stressors such as reduced cash flow and increased demands on their workforces, it makes sense to incentivize struggling systems to seek help from neighboring utilities to help modernize everything from billing and payroll to the water testing and treatment needed to ensure the delivery of clean and safe water.

Partnering with a larger, stronger utility that can share knowledge and resources is a proven way for chronically non-compliant systems to address some of these challenges. However, a significant hurdle stands in the way. If a struggling utility incurs new violations, the helping utility can be held liable, even if they had nothing to do with the violation. This serves as a clear disincentive for stronger utilities to help those in need.

The bipartisan Voluntary Water Partnerships for Distressed Communities Act (S. 2596), introduced by Senators Duckworth and Braun, would make it easier for community water systems to engage in voluntary partnerships that drive efficiency and improve water treatment and infrastructure. This bill prevents utilities helping non-compliant systems from being liable for any violations incurred by the struggling utility (with the exclusion of those leading to imminent health threats) as long as the struggling utility is on an EPA-approved path to compliance.

We understand that the sponsors have addressed all outstanding stakeholder concerns with the legislation. NAWC strongly supports including the text of S. 2596 in the WRDA reauthorization bill once those concerns have been resolved.

CLEAN WATER SRF ELIGIBILITY — The Drinking Water State Revolving Fund (SRF) program's low-interest loans are incredibly important to infrastructure modernization. Many NAWC member companies utilize the Drinking Water SRF program to reduce costs for consumers when modernizing, fixing or installing drinking water infrastructure. However, private wastewater providers are not eligible to receive Clean Water SRF monies.

As the country increases its investment in this important sector, all Americans deserve to benefit from this program. Having access to the Clean Water SRF would benefit customers of private wastewater systems in the same way as customers of public systems since private companies are required by state economic regulators to pass any savings directly on to their customers. In fact, the National Association of Regulatory Utility Commissioners, the national organization of state public utility commissioners, has passed three separate resolutions calling on Congress to expand eligibility so all of their constituents have the opportunity to benefit from this program.

Expanding access to the Clean Water SRF under federal law would not earmark specific amounts of funding to those companies or even require states to award any loans at all to private wastewater providers. Rather, it would simply allow states to invest money where they believe taxpayers will benefit most, just as they can with the Drinking Water SRF.

Expanding access could take on even more importance as Congress looks to provide COVID-19 assistance to struggling systems and customers, and jumpstart the economy by increasing spending on infrastructure. The state revolving funds have been discussed by Members of Congress and stakeholders alike as a potential means to flow billions of relief dollars into the economy. Continuing to deprive NAWC member companies and their customers of access to the Clean Water SRF program would freeze them out of these potential benefits.

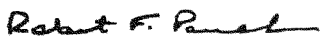
NAWC has worked with both the National Association of Clean Water Agencies and the Council of Infrastructure Financing Authorities (CIFA) on language that would expand access to the Clean Water SRF once a certain appropriations threshold is met. NAWC strongly urges the Committee to include this language, which we have attached, in this year's WRDA reauthorization package. Note that, at the request of CIFA, the language would expand the uses for which non-profit entities could use SRF monies.

PROVIDING LOW-INCOME SUPPORT — At all times, but particularly as the nation continues to struggle with the impacts of the COVID-19 pandemic, it is critically important that we come together to support our most vulnerable customers and citizens. Accordingly, NAWC strongly supports the inclusion of language to authorize direct assistance to low-income Americans and their families who may be struggling to pay their water and wastewater bills.

Thank you for considering these NAWC priorities for inclusion in the bill text. Please let us know if you have any questions or need additional information. Our point of contact is:

Colin Hayes
923 15th Street, NW, Second Floor
Washington, DC 20005
colin@lotsixteen.com
202.834.6795

Sincerely,



Robert F. Powelson
President and CEO
National Association of Water Companies

Clean Water State Revolving Fund

§1383. Water pollution control revolving loan funds

(a) Requirements for obligation of grant funds

Before a State may receive a capitalization grant with funds made available under this subchapter and section 1285(m) of this title, the State shall first establish a water pollution control revolving fund which complies with the requirements of this section.

(b) Administration

Each State water pollution control revolving fund shall be administered by an instrumentality of the State with such powers and limitations as may be required to operate such fund in accordance with the requirements and objectives of this chapter.

(c) Projects and activities eligible for assistance

The amounts of funds available to each State water pollution control revolving fund shall be used only for providing financial assistance-

(1) to any municipality or intermunicipal, interstate, or State agency for construction of publicly owned treatment works (as defined in section 1292 of this title);

(2) for the implementation of a management program established under section 1329 of this title;

(3) for development and implementation of a conservation and management plan under section 1330 of this title;

(4) for the construction, repair, or replacement of decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage;

(5) for measures to manage, reduce, treat, or recapture stormwater or subsurface drainage water;

(6) to any municipality or intermunicipal, interstate, or State agency for measures to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse;

(7) for the development and implementation of watershed projects meeting the criteria set forth in section 1274 of this title;

(8) to any municipality or intermunicipal, interstate, or State agency for measures to reduce the energy consumption needs for publicly owned treatment works;

(9) for reusing or recycling wastewater, stormwater, or subsurface drainage water;

(10) for measures to increase the security of publicly owned treatment works, regardless of ownership type;

(11) to any qualified nonprofit entity, as determined by the Administrator, to provide assistance to owners and operators of small and medium publicly owned treatment works-

(A) to plan, develop, and obtain financing for eligible projects under this subsection, including planning, design, and associated preconstruction activities; and

(B) to assist such treatment works in achieving compliance with this chapter; and

(12) to any qualified nonprofit entity, as determined by the Administrator, to provide assistance to an eligible individual (as defined in subsection (j))-

(A) for the repair or replacement of existing individual household decentralized wastewater treatment systems; or

(B) in a case in which an eligible individual resides in a household that could be cost-effectively connected to an available publicly owned treatment works, for the connection of the applicable household to such treatment works.

(13) to any nonprofit for construction or acquisition of treatment works (as defined in section 212);

(14) to privately-owned public utilities:

(A) for construction of treatment works (as defined in section 212) including projects for water conservation, efficiency, reuse, energy efficiency, and security at such treatment works.

(B) Limitations

i. upon the total amount appropriated for that fiscal year for water pollution control revolving funds under this Section being $2,000,000,000 or greater; and

ii. beginning in the fourth year after the total amount appropriated for water pollution control revolving funds under this Section is $2,000,000,000 or greater, if the total

amount appropriated for water pollution control revolving funds is not less than $2,000,000,000 for three consecutive fiscal years"

Drinking Water State Revolving Fund

§300j–12. State revolving loan funds

(2) Use of funds

(A) In general

Except as otherwise authorized by this subchapter, amounts deposited in a State loan fund, including loan repayments and interest earned on such amounts, shall be used only for providing loans or loan guarantees, or as a source of reserve and security for leveraged loans, the proceeds of which are deposited in a State loan fund established under paragraph (1), or other financial assistance authorized under this section to community water systems and nonprofit noncommunity water systems, other than systems owned by Federal agencies.

April 29,2020

Honorable John Barrasso, Chairman
Senate Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, D.C. 20510
SUBJECT: Stormwater Related-Research on Effects to Groundwater

Dear Senator Barrasso,

The National Ground Water Association supports your efforts to enact the Water Resources Development Act of 2020.

We respectfully ask that you please include a provision in Section 2018 regarding stormwater-related research to provide for guidance for protecting groundwater from contamination from stormwater infiltrated to the subsurface that may be an actual or potential drinking water source. Stormwater infiltration is being permitted under the National Pollutant Discharge Elimination System without adequate research to provide states, communities and businesses the guidance to protect underground sources of drinking water.

We have attached suggested changes to Section 2018 that are consistent with the intent of that section and address groundwater protection.

Thank you very much for your consideration.

Sincerely,

Charles Job
Regulatory Affairs Manager, National Capital Office
National Ground Water Association
8504 Silverfield Circle
Montgomery Village, MD 20886
202-660-0060
cjob@ngwa.org

Attachment

Address 601 Dempsey Road, Westerville, Ohio 43081-8978 U.S.A.
Phone 800 551.7379 • 614 898.7791 **Fax** 614 898.7786
Email ngwa@ngwa.org **Websites** NGWA.org and WellOwner.org

ATTACHMENT

NATIONAL GROUND WATER ASSOCIATION – PROPOSED WORDING

WATER RESOURCES DEVELOPMENT ACT 2020

PROPOSED INCLUSION OF: Stormwater Infiltration Effects on Groundwater Quality in Section 2018

CONTACT NAME: Charles Job

MAILING ADDRESS: National Ground Water Association

National Capital Area Office

8504 Silverfield Circle

Montgomery Village MD 20886

EMAIL ADDRESS: cjob@ngwa.org

PHONE NUMBER: 202-660-0060

CHANGES NEEDED/PURPOSE:

Changes are needed in the draft Water Resources Development Act Section 2018, STORMWATER INFRASTRUCTURE TECHNOLOGY, to address the effects of stormwater infiltration technology on groundwater quality that may impact drinking water sources. Three "state-of-the-technology" reports have been prepared over the last 25 years with two of these reports since 2018.

National Research Council. 1994. Ground Water Recharge Using Waters of Impaired Quality. https://www.nap.edu/catalog/4780/ground-water-recharge-using-waters-of-impaired-quality

Environmental Protection Agency. 2018. The Influence of Green Infrastructure Practices on Groundwater Quality: The State of the Science. EPA/600/R-18/227. https://cfpub.epa.gov/si/si_public_record_report.cfm?Lab=NRMRL&dirEntryId=342610

National Academies of Science. 2019. Improving the EPA Multi-Sector General Permit for Industrial Stormwater Discharges. https://www.acwa-us.org/wp-content/uploads/2020/02/NRC-NAS-Study-on-Industrial-Stormwater-Improving-the-EPA-Multi-Sector-General-Permit-for-Industrial-Stormwater-Discharges-2019.pdf

All three reports highlight the vulnerability of groundwater quality from stormwater infiltration. Each report points to aspects of aquifers and the groundwater environment that should be considered when designing, permitting, and implementing stormwater infiltration (storm drains, retention/infiltration basins, infiltration galleries and other mechanisms). However, none of the reports provide guidance to design stormwater infiltration systems that are protective of groundwater. All reports clearly state that more research needs to be done because, relative to research on surface water systems, comparatively little has been done regarding stormwater infiltration impacts on groundwater quality. The reports

indicate that the research is needed to provide definitive guidance on where infiltration may be appropriate and done with adequate protections including groundwater monitoring. The research has not been done and as a result, National Pollutant Discharge Elimination System permit processes are being implemented without adequate guidance to public and industry sectors regarding stormwater management, risking significant impacts on communities that rely on groundwater for drinking water supply. Consequently, EPA is fostering a process to transfer pollutants from one water source to another – from surface water to groundwater – without having done the necessary research and development to support protective measures for downgradient and downstream public and aquatic (where groundwater discharge to surface water occurs) receptors. Additionally, the recent Supreme Court decision in County of Maui, Hawaii v. Hawaii Wildlife Fund, No. 18–260, April 23, 2020, raises similar issues about point source discharges via groundwater to surface waters.

Additional funds are needed to add to the small research effort started by EPA in 2015 and soon to be completed only in 3 hydrogeologic settings and over 3 years (this is a problem because groundwater travels slowly through the subsurface so effects may not be observed for 5 to 20 years or more).

Proposed changes are in **bold**:

Page 271

22 SEC. 2018. STORMWATER INFRASTRUCTURE TECHNOLOGY.

.
.
.

18 (b) CENTERS OF EXCELLENCE FOR STORMWATER

19 CONTROL INFRASTRUCTURE.—

20 (1) ESTABLISHMENT OF CENTERS.—

21 (A) IN GENERAL.—The Administrator

22 shall provide grants, on a competitive basis, to

23 eligible institutions to establish and maintain

24 not less than 3, and not more than 5, centers

25 of excellence for new and emerging stormwater

1 control infrastructure, to be located in various

2 regions throughout the United States.

Page 272

3 (B) GENERAL OPERATION.—Each center

4 shall—

5 (i) conduct research on new and

6 emerging stormwater control infrastructure

7 that is relevant to the geographical region

8 in which the center is located, including

9 stormwater and sewer overflow reduction,

stormwater infiltration effects on groundwater quality in at least three hydrogeologic settings characteristic of the region,

10 other approaches to water resource en

11 hancement, alternative funding approaches,

12 and other environmental, economic, and so

13 cial benefits;

14 (ii) maintain a listing of—

15 (I) stormwater control infrastruc

16 ture needs **including groundwater monitoring**; and

17 (II) an analysis of new and

18 emerging stormwater control infra

19 structure that is available

including infrastructure addressing groundwater effects of infiltration alternatives;

Page 273

14 (vi) collaborate with institutions of

15 higher education and private and public or

16 ganizations, including community-based

17 public-private partnerships, in the geo

18 graphical region in which the center is lo

19 cated **and with the research program office of the Environmental Protection Agency**; and

Page 274

17 (4) AUTHORIZATION OF APPROPRIATIONS.—

18 There is authorized to be appropriated to carry out

19 this subsection **$7,000,000** for each of fiscal years

20 2022 and 2023.

April 29, 2020

Honorable Tom Carper
Senate Environment and Public Works Committee
456 Dirksen Senate Office Building
Washington, D.C. 20510

SUBJECT: Stormwater Related-Research on Effects to Groundwater

Dear Senator Carper,

The National Ground Water Association supports your efforts to enact the Water Resources Development Act of 2020.

We respectfully ask that you please include a provision in Section 2018 regarding stormwater-related research to provide for guidance for protecting groundwater from contamination from stormwater infiltrated to the subsurface that may be an actual or potential drinking water source. Stormwater infiltration is being permitted under the National Pollutant Discharge Elimination System without adequate research to provide states, communities and businesses the guidance to protect underground sources of drinking water.

We have attached suggested changes to Section 2018 that are consistent with the intent of that section and address groundwater protection.

Thank you very much for your consideration.

Sincerely,

Charles Job
Regulatory Affairs Manager, National Capital Office
National Ground Water Association
8504 Silverfield Circle
Montgomery Village, MD 20886
202-660-0060
cjob@ngwa.org

Attachment

NGWA
Address 601 Dempsey Road, Westerville, Ohio 43081-8978 U.S.A.
Phone 800 551.7379 • 614 898.7791 **Fax** 614 898.7786
Email ngwa@ngwa.org **Websites** NGWA.org and WellOwner.org

ATTACHMENT

NATIONAL GROUND WATER ASSOCIATION – PROPOSED WORDING

WATER RESOURCES DEVELOPMENT ACT 2020

PROPOSED INCLUSION OF: Stormwater Infiltration Effects on Groundwater Quality in Section 2018

CONTACT NAME: Charles Job

MAILING ADDRESS: National Ground Water Association

National Capital Area Office

8504 Silverfield Circle

Montgomery Village MD 20886

EMAIL ADDRESS: cjob@ngwa.org

PHONE NUMBER: 202-660-0060

CHANGES NEEDED/PURPOSE:

Changes are needed in the draft Water Resources Development Act Section 2018, STORMWATER INFRASTRUCTURE TECHNOLOGY, to address the effects of stormwater infiltration technology on groundwater quality that may impact drinking water sources. Three "state-of-the-technology" reports have been prepared over the last 25 years with two of these reports since 2018.

National Research Council. 1994. Ground Water Recharge Using Waters of Impaired Quality. https://www.nap.edu/catalog/4780/ground-water-recharge-using-waters-of-impaired-quality

Environmental Protection Agency. 2018. The Influence of Green Infrastructure Practices on Groundwater Quality: The State of the Science. EPA/600/R-18/227. https://cfpub.epa.gov/si/si_public_record_report.cfm?Lab=NRMRL&dirEntryId=342610

National Academies of Science. 2019. Improving the EPA Multi-Sector General Permit for Industrial Stormwater Discharges. https://www.acwa-us.org/wp-content/uploads/2020/02/NRC-NAS-Study-on-Industrial-Stormwater-Improving-the-EPA-Multi-Sector-General-Permit-for-Industrial-Stormwater-Discharges-2019.pdf

All three reports highlight the vulnerability of groundwater quality from stormwater infiltration. Each report points to aspects of aquifers and the groundwater environment that should be considered when designing, permitting, and implementing stormwater infiltration (storm drains, retention/infiltration basins, infiltration galleries and other mechanisms). However, none of the reports provide guidance to design stormwater infiltration systems that are protective of groundwater. All reports clearly state that more research needs to be done because, relative to research on surface water systems, comparatively little has been done regarding stormwater infiltration impacts on groundwater quality. The reports

indicate that the research is needed to provide definitive guidance on where infiltration may be appropriate and done with adequate protections including groundwater monitoring. The research has not been done and as a result, National Pollutant Discharge Elimination System permit processes are being implemented without adequate guidance to public and industry sectors regarding stormwater management, risking significant impacts on communities that rely on groundwater for drinking water supply. Consequently, EPA is fostering a process to transfer pollutants from one water source to another – from surface water to groundwater – without having done the necessary research and development to support protective measures for downgradient and downstream public and aquatic (where groundwater discharge to surface water occurs) receptors. Additionally, the recent Supreme Court decision in County of Maui, Hawaii v. Hawaii Wildlife Fund, No. 18–260, April 23, 2020, raises similar issues about point source discharges via groundwater to surface waters.

Additional funds are needed to add to the small research effort started by EPA in 2015 and soon to be completed only in 3 hydrogeologic settings and over 3 years (this is a problem because groundwater travels slowly through the subsurface so effects may not be observed for 5 to 20 years or more).

Proposed changes are in **bold**:

Page 271

22 SEC. 2018. STORMWATER INFRASTRUCTURE TECHNOLOGY.

.
.
.

18 (b) CENTERS OF EXCELLENCE FOR STORMWATER

19 CONTROL INFRASTRUCTURE.—

20 (1) ESTABLISHMENT OF CENTERS.—

21 (A) IN GENERAL.—The Administrator

22 shall provide grants, on a competitive basis, to

23 eligible institutions to establish and maintain

24 not less than 3, and not more than 5, centers

25 of excellence for new and emerging stormwater

1 control infrastructure, to be located in various

2 regions throughout the United States.

Page 272

3 (B) GENERAL OPERATION.—Each center

4 shall—

5 (i) conduct research on new and

6 emerging stormwater control infrastructure

7 that is relevant to the geographical region

8 in which the center is located, including

9 stormwater and sewer overflow reduction,

stormwater infiltration effects on groundwater quality in at least three hydrogeologic settings characteristic of the region,

10 other approaches to water resource en

11 hancement, alternative funding approaches,

12 and other environmental, economic, and so

13 cial benefits;

14 (ii) maintain a listing of—

15 (I) stormwater control infrastruc

16 ture needs **including groundwater monitoring**; and

17 (II) an analysis of new and

18 emerging stormwater control infra

19 structure that is available

including infrastructure addressing groundwater effects of infiltration alternatives;

Page 273

14 (vi) collaborate with institutions of

15 higher education and private and public or

16 ganizations, including community-based

17 public-private partnerships, in the geo

18 graphical region in which the center is lo

19 cated **and with the research program office of the Environmental Protection Agency**; and

Page 274

17 (4) AUTHORIZATION OF APPROPRIATIONS.—

18 There is authorized to be appropriated to carry out

19 this subsection **$7,000,000** for each of fiscal years

20 2022 and 2023.

Scott Taylor
California Stormwater Quality Association
Chair

Randy Neprash
Minnesota Cities Stormwater Coalition
Vice Chair

Jennifer Watson
Tennessee Stormwater Association
Treasurer

Member Organizations

Arizona Stormwater Outreach for Regional Municipalities

California Stormwater Quality Association

Central Massachusetts Regional Stormwater Coalition

Georgia Association of Water Professionals

Indiana Association for Floodplain & Stormwater Management

Iowa Stormwater Education Partnership

Kentucky Stormwater Association

Louisiana Urban Stormwater Coalition

Maine Water Environment Association

Montana MS4 Communities

Minnesota Cities Stormwater Coalition

Nebraska Floodplain & Stormwater Managers Association

Pennsylvania Water Environment Association

Tennessee Stormwater Association

Utah Stormwater Advisory Committee

Virginia Municipal Stormwater Association

Washington Stormwater Center

Water Environment Federation

Seth Brown
National Municipal Stormwater Alliance
Executive Director

April 28, 2020

The Honorable John Barrasso
Chairman
Committee on Environment and Public Works
U.S. Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Thomas R. Carper
Ranking Member
Committee on Environment and Public Works
U.S. Senate
456 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso and Ranking Member Carper,

The National Municipal Stormwater Alliance (NMSA) writes in support of the America's Water Infrastructure Act of 2020. This important legislation will provide much needed funding and financing resources to communities in the Municipal Separate Storm Sewer System (MS4) program. NMSA members represent over 3,000 of the 7,500 total municipal MS4s across the country who are the stewards of urban stormwater conveyance and treatment systems.

NMSA is supportive of this legislation as significant portions of the Act address the needs of the MS4 sector in many important and impactful ways. The provision of grants and other vehicles to support communities with regulated stormwater programs are key in the support needed for MS4s who face the challenge of treating urban stormwater runoff that impacts the waters we depend upon for daily life.

While NMSA supports the Act, we do have some suggestions to enhance the legislation. The specific items are identified in the following section with a brief summary of the proposed language edits as well as an explanation for the changes along with specific language edits. We provide this information in this format to reduce the effort needed by Committee staff as they attempt to interpret input and integrate this input into the final version of the legislation.

Several of the NMSA suggestions are based on the concept that the main goals of stormwater research are to:

- Improve the effectiveness, cost-efficiencies, and protection of public safety and water quality for local implementation programs; and
- Promote better regulatory compliance for local implementation programs.

America's Water Infrastructure Act of 2020. Section 2018. STORMWATER INFRASTRUCTURE TECHNOLOGY

1. The scope for the Centers of Excellence (Centers) is too small. They should be able to work on more than just "new and emerging technologies", "new and emerging stormwater control infrastructure" and "new and emerging, but proven, stormwater control infrastructure". It is important to recognize that the main goal of stormwater research is to improve the effectiveness, cost-efficiencies, and protection of public safety and water quality for local implementation programs.

   Additionally, the types of projects that are eligible for funding as Stormwater Control Infrastructure Project Grants (Section 2018(c) (page 274)) is too limited. A broader range of types of projects are appropriate for funding under this section and are needed by local regulated stormwater permittees and stormwater practitioners

   It would be cumbersome to list all the types of work the Centers should do each time and the types of eligible projects throughout the section. NMSA suggests creating a new phrase, "appropriate stormwater technologies" and providing a definition for this term in the "Definitions" subsection (pages 270 and 271) at the beginning of the section.

   NMSA suggests adding the following language to Section 2018(a) (page 271):

   (5) The term "appropriate stormwater technologies" means:

   - *(A) New and emerging stormwater control infrastructure,*
   - *(B) New and emerging, but proven, stormwater control infrastructure,*
   - *(C) Existing stormwater control infrastructure and practices for which:*
     - *a. questions of effectiveness have been identified (e.g., phosphorus release in stormwater pond sediments);*
     - *b. questions of the protection of public health and/or water quality have been identified (e.g., possible groundwater contamination from infiltration SCMs);*
     - *c. additional research is needed to support "crediting" for regulated local implementors in the context of TMDL Waste Load Allocations and/or MS4 permits (e.g., street sweeping, urban trees);*
     - *d. research on existing networks (instead of individual SCMs or specific types of SCMs) of multiple types of installed SCMs could yield significant results; or*
     - *e. local permitted stormwater programs could be more effective, cost-efficient, and/or protective of public health and water quality.*
   - *(D) Source control; or*
   - *(E) Technologies related to improved local compliance with stormwater regulations and TMDL Waste Load Allocations.*

   With this new term defined, NMSA suggests substituting "appropriate stormwater technologies" for the terms "new and emerging technologies", "new and emerging stormwater control infrastructure" and "new and emerging, but proven, stormwater control infrastructure" throughout the current draft Section 2018.

2. Local stormwater permittees and stormwater practitioners, along with other types of practitioners in this field, should have an explicit role in identifying and prioritizing the "stormwater control infrastructure needs" as listed in current draft Section 2018(b)(1)(B)(ii)(I) (page 272).

   NMSA suggests adding the following section as 2018(b)(1)(B)(ii), before the current subsection beginning "(ii) maintain a listing of...".

   (ii) develop and implement a stakeholder process to identify and prioritize the research gaps and research needs for urban stormwater. The stakeholders shall include researchers, local regulated stormwater program staff, stormwater practitioners, environmental groups, and federal, state, and local stormwater regulators. This stakeholder process shall be modeled on similar processes and frameworks that are currently within state programs. This stakeholder process shall be implemented once every two years.

3. The required cost share to be provided by eligible entities for Stormwater Control Infrastructure Project grants is 35 percent. Many federal grant programs used to implement stormwater infrastructure require no cost-share by localities, such as the HUD Community Development Block Grant Program, while those which require a cost-share are normally no higher than 20 percent, such as FHWA BUILD grants. The stormwater sector has significant funding challenges. Fewer than ¼ of all MS4 programs have a dedicated user-fee funded revenue source, most rely on general fund resources. Further, a recent national survey of MS4s produced an annual estimated funding gap of $7.5 billion. Given the current stress on municipal budgets due to the COVID-19 crisis, it is not reasonable to expect communities to pay a larger portion of cost-sharing for federal grants than other infrastructure sectors.

   NMSA suggests changing the following section as 2018(b)(6) (page 279) as noted below

   *(A) IN GENERAL. – Except as provided in subparagraph (C), the Federal share of a grant provided under this subsection shall not exceed **80** percent of the total project cost.*

4. The organizations that are deemed eligible for the Centers of Excellence (Centers) should be broadened. While universities and research institutions clearly provide services that "(have) demonstrated excellence in researching and developing new and emerging stormwater control infrastructure," other types of organizations, such as nonprofits and community groups, provide similar services. The proposed broadened definition is also used to qualify some institutions for Planning and Development Grants under Section (c)(2)(a) - (see Item 5 below)

   NMSA suggests editing the following language in Section 2018(a)(4) (page 272) to read as follows:

   *(4) ELIGIBLE INSTITUTION. - The term "eligible institution" means an institution of higher education, a research institution, **or a nonprofit organization** that has demonstrated excellence in researching and developing new and emerging stormwater control infrastructure"*

5. Some activities are best led by eligible entities while others are best led by eligible institutions. Two specific activities that are currently associated with funding to eligible entities that should be considered to be led by eligible institutions include the development of standards as well as training and educational materials. Eligible entities often do not have the interest nor the technical

resources to develop technical standards. Similarly, technical training materials are often developed and delivered by universities and technically-oriented nonprofits.

NMSA suggests adding the following language to Section 2018(a) (page 271):

(5) REGULATORY STANDARDS.-The term "regulatory standards" means the level of water quality treatment required to meet NPDES permit requirements.

(6) TECHNICAL STANDARDS.-The term "technical standards" means technical direction on the implementation of infrastructure as well as the measurement and verification on the performance of water technologies and practices.

NMSA suggests editing the following language in Section 2018(c)(1) (pages 274-275) to read as follows:

*GRANT AUTHORITY.-The Administrator shall provide grants, on a competitive basis, to eligible entities, **and to eligible institutions in specified instances,** to carry out stormwater control infrastructure projects that incorporate new and emerging, but proven, stormwater control technology in accordance with this subsection.*

NMSA suggests editing the following language in Section 2018(c)(2)(A)(ii) (page 275) to read as follows:

*Identifying and developing **regulatory** standards necessary to accommodate…*

NMSA suggests editing the following language in Section 2018(c)(2)(A)(v) (page 275) to read as follows:

*Developing training and educational material **by either eligible entities or eligible institutions** regarding new and emerging, but proven, stormwater control infrastructure for distribution to…*

NMSA suggests adding the following language in Section 2018(c)(2)(A)(vi) (page 275) to read as follows:

(vi) Identifying and developing technical standards by either eligible entities or eligible institutions necessary to accommodate stormwater control infrastructure projects, including those projects that incorporate new and emerging, but proven, stormwater control technology.

6. One of the most important functions of the Centers should be to interpret and translate research results into actionable materials and information for local stormwater permittees and stormwater practitioners. This should be stated explicitly.

   NMSA suggests adding the following section as 2018(b)(1)(B)(viii) (page 273):

   (viii) develop programs of technology transfer and/or information diffusion to interpret and translate research results into actionable materials and information for local stormwater permittees and stormwater practitioners. These programs shall include "lessons learned" to guide local stormwater program implementation. These programs shall address improvements for local compliance with stormwater regulations and TMDL Waste Load Allocations.

7. One of the most important functions of the National Electronic Clearinghouse Center should be to interpret and translate research results into actionable materials and information for local stormwater permittees and stormwater practitioners. This should be stated explicitly.

   NMSA suggests adding the following section as 2018(b)(3)(B)(iii) (page 274)

   (iii) develop the Center in coordination with and as part of the programs of technology transfer and/or information diffusion to interpret and translate research results into actionable materials and information for local stormwater permittees and stormwater practitioners, including "lessons learned" to guide local stormwater program implementation and improvements for local compliance with stormwater regulations and TMDL Waste Load Allocations.

8. The Report required in Section 2018(d) (page 280) should be prepared with the active participation of the stakeholders from the stormwater sector. This should be stated explicitly.

   NMSA suggest adding the following text at the end of Section 2018(d) (page 281):

   This Report shall be prepared with the active participation of a stakeholder group including researchers, local regulated stormwater program staff, stormwater practitioners, environmental groups, and federal, state, and local stormwater regulators.

9. A common challenge when implementing stormwater infrastructure projects is addressing site conditions that limit the feasibility and cost-effectiveness of project implementation to meet regulatory requirements. This challenge is exacerbated for programs that rely on retention-based performance standards as physical issues, such as soils with high clay content or a high seasonal groundwater table. Some states and local programs have developed policies to allow for flexibility when meeting stormwater regulatory requirements to accommodate these challenges. However, fewer than half of MS4 permits provide specific language allowing MS4s to develop these flexible options. This lack of flexibility reduces the opportunities for regulated communities to meet regulatory requirements as well as limiting the flexibility to encourage implementation in projects where they are most needed within a community: challenges associated with water quality as well as quantity/flooding issues are not heterogeneously distributed across MS4 jurisdictions. Changes to existing legislation are needed to facilitate the provision of flexibility in MS4 permits.

   NMSA suggests two items that would be articulated in two new sections within AWIA 2020 (Section 2019 and 2020).

   Both additions are proposed to be placed within TITLE II – CLEAN WATER. The first addition would be Section 2019 that is titled as "Alternative Stormwater Compliance." The proposed addition is listed below:

   (a) ANALYSIS. -Not less than 1 year after the date of enactment of this Act, the Environmental Protection Agency will develop a compendium of alternative stormwater management compliance programs, policies, and approaches used by the agency and/or state-delegated agencies. This document will include examples of flexible approaches to meet stormwater requirements from states and localities across the country. The compendium will describe the performance and advantages of alternative compliance options, including offsets, in lieu, and market-based examples. It will serve to

inform the development of alternative compliance policies by Environmental Protection Agency and/or state-delegated agencies and/or the local stormwater authorities

The second addition would be Section 2020 that is titled "Federal Water Pollution Control Act amendments." The proposed addition is listed in conceptual language, as opposed to legislative language, as we defer to the Committee on how best to integrate this proposed change. Our suggestion is that the following language be added to (33 U.S.C. 1251 et seq and 1342 (p)(4) and (6)):

Alternative stormwater management compliance measures may be used if on-site SCM options have technical or physical limitations or are deemed otherwise impractical, there are concerns for public health and safety, or it is desirable to meet other objectives, such as Total Maximum Daily Load allocations. Alternative stormwater management compliance measures include the following:

(1) Off-site compliance through the construction of off-site facilities that provide all required treatment, retention, detention or other performance standard conditions not addressed at the project site or addresses other stormwater-related issues or priorities within the community, such as ecological restoration, flooding, open space, or resilience,
(2) Modification of performance standards due to site constraints or public health concerns.
(3) Payment of an offset fee for all or a portion of treatment, retention, detention, or other performance standard conditions not provided at the project site.
(4) Purchase of credits or similar currency that accounts for treatment or retention provided at another location at the proportion not provided at the project site.
(5) A combination of items 1–4.

Alternative compliance programs may be delivered by market-based solutions. The specific policies and elements of alternative stormwater management compliance adopted by Environmental Protection Agency and/or the state-delegated authorities will be defined by Environmental Protection Agency and/or the state-delegated agencies and/or the local stormwater authorities.

Definitions

- ***Stormwater Control Measures****—A technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in the most cost-effective manner.*[1]
- ***Green Infrastructure Practices****—The range of measures that use plant or soil systems, permeable pavement or other permeable surfaces or substrates, stormwater harvest and reuse, or landscaping to store, infiltrate, or evapotranspirate stormwater and reduce flows to sewer systems or to surface waters.*[2]
- ***Natural Channel Design****—The application of fluvial geomorophology to create stable channels that do not aggrade or degrade over time and maximize stream functions given site constraints.*[3]

---

[1] https://yosemite.epa.gov/oa/eab_web_docket.nsf/Attachments%20By%20ParentFilingId/54E1B2AAA29D010D85257C5100567581/$FILE/EPA-BAFB-00001211%20(1412-1434).pdf
[2] https://www.epa.gov/green-infrastructure/what-green-infrastructure
[3] https://www.epa.gov/sites/production/files/2015-07/documents/ncd_review_checklist.pdf

- ***On-site Stormwater Control Measures***—*The use of stormwater control measures on a site to meet regulatory requirements associated with the treatment of urban stormwater runoff.*
- ***Market-based Solutions***—*The off-site provision of required stormwater controls on another site, or in another way, that is seen as more cost effective to a property owner or developer, but equally effective in attainment of the regulatory standard.*[4]
- ***Off-site Compliance***—*A general term that covers off-site mitigation and refers to meeting all redevelopment stormwater requirements, as specified in the local stormwater bylaw or ordinance, at an off-site location(s).*[5]
- ***Off-site Facility***—*A stormwater management measure located outside the subject property boundary described in the permit application for land development activity*[6].
- ***Offset Fee***—*Monetary compensation paid to a local government for failure to meet pollutant load reduction targets.*[7] *Common terms used to describe this fee are "fee-in-lieu" (FIL)or an "in-lieu fee" (ILF).*
- ***Total Maximum Daily Load***—*The calculation of the maximum amount of a pollutant allowed to enter a waterbody so that the waterbody will meet and continue to meet water quality standards for that particular pollutant.*[8]

America's Water Infrastructure Act of 2020. Section-by-Section

10. Stormwater infrastructure projects are eligible for Clean Water SRF assistance as clarified in the Water Resources Reform and Development Act (WRRDA) 2014.

    NMSA suggests adding the phrase "and stormwater runoff" as noted in bold in the sentence below as an amendment of the last sentence of Sec. 2012. Use of Clean Water State Revolving Funds. (page 42).

    This section allow allows for assistance with design and engineering wastewater ***and stormwater runoff*** *treatment systems to be an eligible use of the CWSRFs.*

---

[4] https://www.epa.gov/sites/production/files/2020-01/documents/final_draft_stormwater_finance_task_force_report_for_board_review.pdf
[5] https://www3.epa.gov/region1/npdes/stormwater/ma/ma-off-site-mitigation-guidance-manual.pdf
[6] https://www.epa.gov/sites/production/files/2015-12/documents/modelillicit_0.pdf
[7] *Ibid.*
[8] https://www.epa.gov/tmdl/overview-total-maximum-daily-loads-tmdls

NMSA appreciates the opportunity to provide input on this important piece of legislation and stands ready to provide further input now or at a later time if there is a need for further explanation or enhanced contextual framing for the comments and edits provided in this letter.

Thank you for considering our support and our input. Please contact me at seth.brown@nationalstormwateralliance.org or (202) 774-8097 with any questions regarding this material covered in this document.

Sincerely,

Seth P. Brown, PE, PhD
Executive Director
National Municipal Stormwater Alliance
1727 King Street, Suite 300
Alexandria, VA 22314
(c) 202.774.8097
(e) seth.brown@nationalstormwateralliance.org

April 28, 2020

Chairman John Barrasso
Committee on Environment & Public Works
United States Senate
Washington, DC 20510

Ranking Member Tom Carper
Committee on Environment & Public Works
United States Senate
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper,

I write to you on behalf of the more than 5,500 individuals that make up the National Onsite Wastewater Recycling Association (NOWRA). Our members include installation contractors, service providers, manufacturers, suppliers, system designers, educators, and regulators. NOWRA works to educate and serve its members and the public by promoting sound federal, state, and local policies, to improve standards of practice, and increase public recognition of the need for and benefits of onsite and decentralized wastewater infrastructure. The most widely known examples are septic systems; however, there are a wide range of decentralized treatment technologies. These systems can sustainably serve a single home, a neighborhood, or an entire community including commercial and industrial facilities.

More than 85 million Americans—25% of the population—rely on decentralized recycling systems to treat their wastewater. Decentralized systems are used as the wastewater infrastructure for 30% of all new single-family homes built in the United States. Contrary to popular belief, decentralized system users are not found just in rural areas. Many systems serve suburban/urban communities. Even the U.S. EPA has reported to Congress and formally recognized that decentralized systems will continue to be a part of the nation's wastewater infrastructure.

Despite the widespread use of decentralized systems, this population receives less than one-half of one percent (1/2 of 1%) of funding distributed through the Clean Water State Revolving Fund (CWSRF). While the ratio of sewered to decentralized infrastructure is roughly 3:1, the funding disparity reflects a ratio of 200:1. This is fundamentally unfair to millions of taxpayers whose tax dollars fund the infrastructure needs of others while their own needs are ignored.

Most unfortunately, more than a million homes across the country lack adequate plumbing and nearly 200,000 homes lack a sewage system altogether, according to data from the U.S. Census Bureau.

National Onsite Wastewater Recycling Association – 4601 Fairfax Dr., Suite 1200, Arlington VA 22203
Ph.: 571-242-2571; Fax: 703-997-5609; email: executivedirector@NOWRA.org – Web: www.NOWRA.org

Because of all this, it's critical that new sources of funding be directed to the critical infrastructure of decentralized wastewater systems. NOWRA supports language included in the draft text of *America's Water Infrastructure Act of 2020* (AWIA 2020) that creates a decentralized grant program for those in the most need for improved wastewater treatment. Below are policy recommendations for your consideration regarding Section 2010 of the draft text of AWIA 2020.

- **National Program**—While the need exists for increased decentralized system funding in the regions of the Mid-Atlantic, Appalachia and the Southeast; these needs also extend to the rest of the country as well. Thus, NOWRA recommends that the Committee does not limit eligibility of this grant program to any specific geographic regions of the country.

- **Larger System Eligibility**—While individual decentralized wastewater treatment systems (septic) are most common; larger, "cluster" decentralized systems may be most appropriate and cost efficient in some cases. For this reason, NOWRA recommends expanding eligibility to include these systems. We support adding the following language to Section 2010:

  "(3) for the installation of a larger decentralized wastewater system designed to provide treatment for 2 or more households in which eligible individuals reside, if—
  "(A) site conditions at the households are unsuitable for the installation of an individually owned decentralized wastewater system;
  "(B) multiple examples of unsuitable site conditions exist in close geographic proximity to each other; and
  "(C) a larger decentralized wastewater system could be more cost-effectively installed.

- **Authorized Funding**—Decentralized systems are often times the most appropriate and cost effect way to treat the wastewater of families in the most need of sanitation assistance. However, a failing onsite system can result in sewage overflow into people's yards, and even their homes, causing serious public health and water quality concerns. Because of the enormous need to improve the lives of 1.7 million Americans, NOWRA recommends increasing the authorized funding level for Section 2010 to $50 million for both FY 2021 and FY 2022.

- **Expand Section 2011 Eligibility**—While the grant program created in Section 2010 recognizes the possibility that connecting a household to centralized sewer might be the most cost effective use of grant funding, NOWRA recommends that the grant program created in Section 2011 also recognize that installing, repairing or replacing a decentralized wastewater system may be the most cost effective use of grant funding. NOWRA proposes incorporating similar eligibility language for that program along the lines of the following:

  "A) IN GENERAL.—In any case in which an eligible individual who submits to a private nonprofit organization an application for a subgrant under this section resides in a household that would be better served by a decentralized wastewater system, the private nonprofit organization shall conduct a cost analysis to determine whether

installing a decentralized wastewater system would be a more cost-effective use of subgrant funds, as compared to the eligible uses described in paragraph (1).
"(B) USE OF FUNDS.—If a cost analysis under subparagraph (A) demonstrates that installation of a decentralized wastewater system is more cost-effective than the eligible uses described in paragraph (1) with respect to the household, the eligible individual may use a subgrant provided under this subsection to install a decentralized wastewater system.

NOWRA commends the Committee for producing draft legislation that takes important steps forward in improving the nation's water infrastructure. We hope the Committee incorporates these recommendations into AWIA 2020 as it moves forward. NOWRA stands ready to work with the Committee in this process in hopes of improving and enacting this legislation as soon as possible.

Sincerely

Carl W. Thompson, P.E.
President, NOWRA

PS: For additional information or questions please contact NOWRA's Executive Director, Eric Casey, as 703-836-1950 or at wecasey@comcast.net; and Tracy Hammond at 202-251-7435 or thammond@polsinelli.com.

April 29, 2020

The Honorable John Barrasso
Chairman
Senate Committee on Environment and Public Works
Washington, DC 20510

The Honorable Tom Carper
Ranking Member
Senate Committee on Environment and Public Works
Washington, DC 20510

Dear Chairman Barrasso and Ranking Members Carper:

Since 1919, the National Parks Conservation Association (NPCA) has been the leading voice of the American people in protecting and enhancing our National Park System. On behalf of our 1.3 million members and supporters nationwide, we thank you for keeping the Water Resources Development Act on its two-year cycle. We offer these comments on the draft America's Water Infrastructure Act, which the committee released for public comment last week.

The U.S. Army Corps of Engineers (USACE) is an important partner in many places where NPCA works to protect and restore national park waterways and landscapes, the communities that surround them and the millions of people who visit them each year. From Gateway to the Grand Canyon, Everglades to Olympic, water is central to the features, wildlife, recreation and aesthetic of these esteemed places. However, national parks, once viewed as isolated and remote, are increasingly affected by activities occurring in their watersheds. These beyond park boundary activities often enhance or detract from the visitor experience.

To protect, restore and enhance our national parks, NPCA requests you consider the following:

Title I

Subtitle A – General Provisions

Sec. 1002 – Great Lakes comprehensive flood protection study. NPCA appreciates the committee's support for protecting and restoring the Great Lakes, which is why we support directing the Army Corps to conduct another comprehensive study on Great Lakes shoreline

Headquarters
777 6th Street, NW, Suite 700
Washington, DC 20001
P 202.NAT.PARK | 800.628.7275 NPCA.org

resiliency in areas affected by flooding in 2019. Congress has already authorized one Great Lakes Coastal Resiliency study, which has yet to receive funding. We urge both efforts to be coordinated to avoid duplication. The results of these studies will benefit Sleeping Bear Dunes National Lakeshore (MI), Indiana Dunes National Park (IN), and five other parks, lakeshores, monuments and memorials in the region.

Sec. 1003 – North Atlantic Coast Comprehensive Study. NPCA believes the North Atlantic Coast Comprehensive Study provides much-needed information to North Atlantic coastal communities to help them adapt to rising oceans, intense storms and increased flooding caused by climate change. This section requires the Army Corps to continue its study to determine the feasibility for a hurricane and storm damage risk reduction project for any major metropolitan area geographically located within the study area identified in the North Atlantic Coast Comprehensive Study that was not included as a high-risk focus area in the initial study. This benefits national parks along the northeast Atlantic coast like Cape Cod National Seashore (MA) and Boston Harbor Islands National and State Parks (MA). We ask that the section be amended to add coastal and/or tidal flooding to the study's hurricane and storm reduction purpose.

Sec. 1017 – Continuing authority programs. This section establishes a cost-share waiver for small or disadvantaged communities seeking to carry out a project under a continuing authority program (CAP) with the Corps. Many national park gateway communities are small and could benefit from this waiver authority along with underserved cities and communities of color. We also support the increases in the authorization levels for the Section 204, 206, and 1135 Continuing Authorities Programs.

Sec. 1025 – Susquehanna, Delaware, and Potomac River Basin Commissions. This section amends section 5019 of WRDA 2007 (121 Stat. 1201; 128 Stat. 1307) to reauthorize the Susquehanna, Delaware and Potomac River Basin Commissions and transfer them under the purview of the Environmental Protection Agency (EPA). The 1961 Delaware River Basin Compact (Public Law 87-328) created funding obligations of the signatory parties, including the federal government and 4 states within the Basin. Subsequently, in 1988, an agreement was reached to apportion signatory contributions. But, despite a provision in WRDA 2007 (Public Law 110-114, Section 5019b) directing the Secretary of the Army to allocate funds in accordance with existing agreements, the federal obligation has only been met once since 1996. We hope transferring these obligations to the Environmental Protection Agency will produce better results with the federal government meeting its obligation to Delaware River communities.

Sec. 1035 – Chesapeake Bay environmental restoration and protection program. The Chesapeake Bay is home to several thousand species of plants and animals, from blue crab to bald eagle. The region is steeped in history, including the legacy of American Indians, arrival of European settlers, inspiration of the American Revolution, and tragedy of the Civil War. This natural and cultural history are protected by more than 50 national parks. To help restore and protect this national treasure, NPCA supports increasing funding for the Chesapeake Bay Environmental Restoration and Protection Program and providing support for public outreach for this program.

Sec. 1041 – Brandon Road Study. Asian carp are a persistent and urgent threat facing the Great Lakes and their national parks. NPCA supports the Brandon Road project as a way of building additional defenses against the tremendous damage invasive carp will have on outdoor recreational activity in the region. We urge Congress to provide a cost-share that recognizes the national importance of this project – full federal expense. We hope the Committee will also include an additional project authorization, which was called for in the Brandon Road study, that allows the Corps to rapidly study and implement options and technologies at Brandon Road that improve the efficacy of the aquatic nuisance species (ANS) measure similar to those associated with the electric barrier.

Sec. 1061 – Rio Grande Environmental Management Program, Colorado, New Mexico, and Texas. NPCA supports extending the authorized appropriations needed to carry out the Rio Grande Environmental Management Program in Colorado, New Mexico and Texas. Diversions, dams, levees along with other changes caused by urban development have contributed to significant degradation of the Rio Grande River watershed. This program provides the Army Corps with the ability to contribute to habitat restoration along the river, work that will benefit parks like Bandelier National Monument (NM).

Sec. 1073 – Completion of reports. NPCA supports authorizing $50 million in appropriations for the completion of reports required under WRRDA 2014, WIIN 2016, AWIA 2018 and this year's bill. We have called for the expedited completion of the critical studies, reviews and guidance required under WRRDA 2014 and WIIN 2016 that would help increase our understanding of the current status and cost effectiveness of the nation's levies. These reports and guidance are key to ensuring the reliability of levees and building public awareness of the potential risks caused by levee failures and benefits of setbacks, levy realignments and re-established flood plains. We have also supported studies in AWIA 2018 that call on the National Academy of Sciences (Sec. 1103) and the comptroller general (Sec. 1204) to study reforms to the Corps project formulation process and benefit-cost analyses. These reports can help guide future changes to how projects are evaluated to ensure that all benefits – including ecosystem services – and all costs are accurately accounted for.

Sec. 1074 – Delegation of work for Comprehensive Everglades Restoration Plan. NPCA supports amending the 2000 Comprehensive Everglades Restoration Plan (CERP) to allow the delegation of project design and construction of critical Everglades restoration projects to non-federal sponsors, in compliance with all existing federal laws. This adjustment ensures that CERP projects advance as efficiently as possible through the shared partnership between the Corps and the non-federal sponsor.

Sec. 1080 – Disposal of dredged material. NPCA supports the beneficial use of dredged material to help restore national park sites and their landscapes. These materials – when environmentally sound – can contribute to climate resiliency, expand flood and storm reduction effectiveness, address coastal and tidal flooding, increase habitat for endangered species and improve recreational access. The beneficial use of dredged material has been successful in Gateway

National Recreation Area (NY), Indiana Dune National Park (IN) and around other park sites and park ecosystems. This provision ensures that, when evaluating the placement of dredged materials from the operation and maintenance of water resources development projects, the Army Corps considers the suitability of the material to be dredged for a full range of beneficial uses, the economic and environmental benefits and impacts and feasibility of using the material for those uses.

Sec. 1091 – East Rockaway Inlet to Rockaway Inlet and Jamaica Bay Reformulation, New York. NPCA supports authorizing the Army Corps to carry out the East Rockaway Inlet and Rockaway Inlet and Jamaica Bay Reformulation project. Although not in Gateway National Recreation Area, the project could impact national park service beaches because of down shore transport of sand. Thankfully, this project incorporates natural and nature-based features making it a potential model for other Army Corps projects.

Sec. 1093 – Harmful Algal Blooms Demonstration Program. Nutrient pollution impairs park waterways across the country. The demonstration program authorized by this section will determine the causes of, and how to effectively treat and eliminate, harmful algal blooms in the Great Lakes and Lake Okeechobee, Florida. The lessons learned will be valuable in addressing this source of pollution for waterways across the country. We urge this section add a requirement that the Army Corps widely disseminate the results of the projects sponsored under the demonstration program. Consultation and coordination with other relevant federal agencies, including the EPA, the Department of Agriculture, the Department of the Interior and relevant state agencies, will be important to achieving the provision's goals.

Sec. 1098 – Small Flood Control Projects. NPCA supports this provision, which amends the Section 205 small flood Continuing Authority Program, to cover projects that use natural or nature-based features in addition to non-structural or structural approaches. Natural or nature-based features can be more cost effective. Restoring or protecting sand dunes or wetlands in place of traditional human built projects like levies, jetties or groins is also more sustainable than traditional structural approaches, more resilient to a changing climate, provide multiple benefits to communities where they are already applied, reduce operations and maintenance requirements and reduce post-disaster spending.

Sec. 1102 – Development of Categorical Exclusions. NPCA asks for this section to be removed from the bill. Directing other departments and agencies, like the Department of the Interior, to adopt the Army Corps' categorical exclusions for major projects could undermine meaningful review of work that impacts public lands and waters. Categorical exclusions should be used carefully since they allow projects to move forward without corresponding public input, impact evaluation and analysis of alternatives that could be more beneficial.

In addition, NPCA asks that a new section be added clarifying that natural and nature-based projects qualify for the same cost share as non-structural projects. As noted above, natural and nature-based projects can be more cost-effective, sustainable and resilient than structural alternatives. They can also create unique co-benefits for communities and reduce operation and

maintenance costs and post-disaster spending. Nonstructural alternatives provide similar benefits, so while both solutions should be handled the same in terms of cost-share, they are currently treated differently. The non-federal cost-share for nonstructural alternatives is lower than for natural infrastructure, creating disincentives for its use. We ask that the cost share for nonstructural and natural infrastructure projects be set at the same level currently applied to nonstructural projects, which is 35 percent.

Subtitle B – Studies and Reports

NPCA supports the following projects:

Sec.1202 – Expedited completion.
This section requires the Secretary to expedite the completion, review or validation of the following applicable decision documents:

2. The project for ecosystem restoration, Hudson-Raritan Estuary, New York and New Jersey
29. The project for ecosystem restoration, Western Everglades, Florida
30. The project for ecosystem restoration, Canal 111, South Dade, Florida
31. The project for ecosystem restoration, Caloosahatchee River C–43, West Basin Storage Reservoir, Florida
37. The project for navigation, Upper St. Anthony Falls Lock and Dam, Minnesota
39. The project for hurricane and storm damage risk reduction, Fire Island to Montauk Point Reformulation, New York
49. The project for ecosystem restoration, Hudson River Habitat Restoration, New York

Sec.1207 – Nassau County Back Bays coastal storm risk management. This section exempts the Nassau County Back Bays Costal Storm Risk Management feasibility study from the requirements under section 1001(a) of WRRDA 2014 (33 U.S.C. 2282c(a)).

Subtitle C – Deauthorizations, Modifications and Related Provisions

Sec.1308. Comprehensive Everglades Restoration Plan. We support this provision, which states that no projects within the Comprehensive Everglades Restoration Plan (CERP) should be subject to deauthorization prior to 2030. Everglades restoration through CERP is a multi-year, large-scale effort with many interconnected component projects. Premature deauthorization of component projects within CERP could have negative implications for progress on the broader restoration effort.

Subtitle D – Water Resources Infrastructure

NPCA supports:

Sec.1401 – Project authorizations.

Ecosystem restoration—

1. Anacostia River, Prince George's County
2. Great Lakes and Mississippi River Interbasin Study–Brandon Road
9. Loxahatchee River Watershed

Hurricane and storm damage risk reduction—

1. East Rockaway Inlet to Rockaway Inlet and Jamaica Bay Reformulation, Atlantic Coast

Subtitle F – Invasive Species

NPCA appreciates the committee including provisions to address invasive species. Invasive species destroy the natural resources in our national parks. They cost the United States more than $120 billion in damages every year. In 2011 alone, the Department of the Interior spent $100 million on invasive species prevention, early detection and rapid response, control, management, research, outreach and restoration.

Our parks are places to see the damage caused by invasive and nuisance species. Over 6,500 non-native species have been documented on park lands, 70 percent of which are plants. According to the National Park Service, more than 2.6 million acres of park lands are affected by invasive plant species, and 234 National Park Service areas have invasive animals in need of management.

NPCA particularly supports the following sections:

- Sec. 1603 – Aquatic invasive species research. We support requiring the Army Corps to research prevention of aquatic invasive species in addition to management and eradication.
- Sec. 1604 – Invasive species mitigation and reduction. We support expanding new watercraft inspection stations along the Canadian border, which will help prevent the spread of invasive species in national parks in the Northwest and Northern Rockies; the Upper Missouri River pilot project, which could benefit waters in and near Yellowstone National Park (WY); the section on federal partnerships with states and other federal agencies, which could benefit parks in the Platte River Basin (E.g., Scott's Bluff National Monument, NE), parks in the Upper Colorado Basin (E.g., Rocky Mountain National Park, CO) and, the Upper Snake River basin (E.g., Grand Teton National Park, WY), and the Upper Missouri River Basin (E.g., Yellowstone National Park, WY, and more downstream); and the new Fish and Wildlife Service pilot program to remove invasive plant species in the Lower Colorado River, Rio Grande, Texas Gulf Coast, and Arkansas-White-Red Basins.
- Sec. 1606 – Invasive species assessment, prioritization and management. We support authorizing the South Florida Ecosystem Restoration Task Force to develop a priority list of invasive species and to use this list to guide technical assistance, research and activities to eliminate invasive plants and animals in the South Florida ecosystem.
- Sec. 1607 – Asian carp prevention and control pilot program. We support creating an invasive Asian carp prevention and control pilot program to carry out projects that manage and prevent the spread of, reduce the population of or eradicate invasive carp. This could benefit park units like the St. Croix National Scenic Riverway (MN, WI) or Mississippi National

River Recreation Area (MN) in the Upper Mississippi Basin or Cumberland and Tennessee River watersheds.

Title II – Clean Water

NPCA appreciates the Committee including provisions to address the backlog of work needed to repair and restore our nation's wastewater and stormwater infrastructure. Many park waters are impaired because of old, failing wastewater and stormwater infrastructure. Acadia National Park (ME), Cuyahoga Valley National Park (OH) and Delaware Water Gap National Recreation Area (NJ, PA), among others, face bacteria contamination and other water impairments caused by sewer overflows or stormwater runoff. In addition, we are pleased that the draft bill makes existing federal programs more accessible to the communities that need them the most like low income, rural and communities of color. By lowering or eliminating the local cost share or increasing funding for technical assistance and direct grants, these communities will get the support they need in their efforts to deliver quality drinking and wastewater services.

NPCA particularly supports:

- Sec. 2007 – Sewer overflow and stormwater reuse municipal grants. We support reauthorizing the existing Sewer Overflow and Stormwater Reuse Municipal Grant program and increasing its funding level to help communities and parks facing water pollution problems caused by sewer overflows and polluted stormwater runoff.
- Sec. 2015 – Reauthorization of Clean Water State Revolving Loan Funds. We appreciate the committee increasing the authorization for the Clean Water State Revolving Loan Funds. There is even greater need for additional support. We urge the Committee increase the authorization amounts further to address the large amount of deferred work communities face in repairing or replacing their old wastewater and stormwater infrastructure. We also urge the Committee to include a 20 percent set aside within the Clean Water SRF through the Green Project Reserve to support natural and nature-based projects that provide social, economic, and environmental benefits to communities.

Title III – Tribal and Other Matters

Sec. 3006 – Great Lakes Restoration Initiative. We support the Great Lakes Restoration Initiative. The GLRI supports work that results in fewer toxic hot spots, improved wetlands and other wildlife habitat, greater invasive species control and less polluted agricultural runoff. It has sponsored habitat restoration work in Indiana Dunes National Park (IN) and invasive species research at Sleeping Bear Dunes National Lakeshore (MI). Although one year of new authorization is important, we ask that all five years of new authority -- as outlined in S. 2295 (introduced by Sen. Stabenow and has 12 cosponsors) -- be included.

Sec. 3009 – Puget Sound Coordinated Recovery. Puget Sound wildlife and nature are protected at Mt. Rainier, North Cascade and Olympic National Parks. Northwest history and culture are preserved at Klondike Goldrush National Historic Park and Bainbridge Island Japanese American

Exclusion National Memorial. This section focuses needed attention at coordinating and supporting this important landscape's protection and restoration.

NPCA appreciates the committee continuing to move forward with a water resources bill every two years. We also appreciate the overall avoidance of streamlining provisions that would be controversial. There is a lot of good work ready to be done and we urge you to continue to move forward in a bi-partisan basis.

Thank you for considering our views. Please do not hesitate to contact me if you have any questions. I can be reached at clord@npca.org or 202.257.4365.

Sincerely,

Sincerely,

Chad Lord
Senior Director, Water Policy
National Parks Conservation Association
777 6th Street NW, Suite 700
Washington, DC 20001

April 28, 2020

United States Senate
Committee on Environment and Public Works
Via email to: QFR@epw.senate.gov

America's Water Infrastructure Act of 2020 and The Drinking Water Infrastructure Act of 2020: Stakeholder Comments

Dear Chairman Barrasso, Ranking Member Carper, and Members of the Committee, thank you for the opportunity to provide stakeholder comments on discussion drafts of America's Water Infrastructure Act of 2020 ("AWIA") and The Drinking Water Infrastructure Act of 2020 ("DWIA"). The Natural Resources Defense Council (NRDC) appreciates the Committee's attention to our nation's water resources and offers the following suggestions to strengthen these important pieces of legislation. We particularly call your attention to our comments on provisions governing additional subsidization under the State Revolving Funds in both DWIA (section 4) and AWIA (section 2012).

Drinking Water Infrastructure Act of 2020 ("DWIA")

Additional Subsidization (DWIA Section 4(a)(1)(A)) Should Be Limited to Disadvantaged Communities and Communities with Emergencies

The bill creates a new subsection (42 U.S.C. § 300j-12(a)(2)(H)) dealing with additional subsidization without recognizing that there is already a subsection (42 U.S.C. § 300j-12(d)) that addresses additional subsidization. We are concerned that this duplication could cause confusion. Further, it is troubling that, unlike the existing subsection 300j-12(d), this new subsection does not limit or even prioritize additional subsidization to certain recipients (i.e., "disadvantaged" communities that meet the "affordability criteria" developed by a state), but rather allows *any* Drinking Water State Revolving Fund (DWSRF)-eligible project to receive additional subsidy. Additional subsidization should continue to be reserved for public water systems that are disadvantaged, through existing subsection (d), and provided for systems such as those for which an emergency has been declared that would be assisted under proposed (a)(2)(H)(i)(II)(bb)(BB) [page 5 lines 12-22].

We are also concerned that the language in new subsection (a)(2)(H)(i)(I) is ambiguous in funding "initial financing for the public water system." It should be clarified that this funding is not for the creation of new systems, but rather first tranche funding for current disadvantaged systems. We do not believe that this additional subsidization should be available for public water systems that are not for disadvantaged communities. Such a change would siphon badly-needed resources away from disadvantaged communities subsidized under subsection (d).

NATURAL RESOURCES DEFENSE COUNCIL
1152 15TH STREET NW | WASHINGTON, DC | 20005 | T 202.289.6868 | F 202.289.1060 | NRDC.ORG

We recommend that the new proposed section (a)(2)(H) be restyled as an amendment to (d), and that it should only allow additional subsidization for disadvantaged systems and those that have to buy, refinance, or restructure debt obligations and that have had an emergency declared, such as for lead (as in proposed (a)(2)(H)(i)(II)(bb)(BB)). At a minimum, if this provision is not limited to disadvantaged communities, (a)(2)(H)(i)(I) should be clarified as noted above to be clear that it is not referring to creation of new systems, and (a)(2)(H)(i)(II)(bb)(AA) should explicitly give first priority to disadvantaged communities. Finally, we urge that the current 6% minimum for disadvantaged communities in (d)(2)(B) be increased to 20%.

In summary, we recommend that this provision be replaced by one that amends the existing 300j-12(d) to:

- Establish a 20% minimum of DWSRF grants to go for additional subsidization for disadvantaged communities; and
- Clarify that the provisions in DWIA section 4(a)(1)(A), by being folded in existing 300j-12(d), are only available to:
    - Disadvantaged communities, or
    - Communities which have had an emergency declared with respect to lead or other contaminant, with a priority for disadvantaged communities.

Remediation of Contamination (DWIA Section 4(b)) Should Allow PFAS Cleanups Promptly

The provision for remediation of groundwater would, in clause (III)(aa) (page 8 line 21 to page 9 line 2), require that grants for remediation must comply with the priorities established in section 1452(b)(3)(A) of the Safe Drinking Water Act (SDWA) (42 U.S.C. § 300j-12(b)(3)(A)). Unfortunately, because (b)(3)(A)(ii) provides priority for projects that "are necessary to ensure compliance with the requirements of this subchapter," PFAS contamination cleanup would not be eligible for perhaps a decade (if and when EPA issues PFAS standards, they would not be enforceable under SDWA 1412(b)(10) for most likely 5 years following promulgation). We would recommend that this language in clause (aa) at page 9 line 2 be amended to read "in subsection (b)(3)(A)(i) and (iii) and shall consider the need to ensure compliance with standards under (bb)."

Authorizing Funds for Certain Additional Efforts (Such as Filters) to Assist Small and Disadvantaged Communities, Including Increased Federal Cost Share (DWIA Section 6)

We support this provision, but we recommend that it be clarified that "filters" as used in this section refers to point of use or point of entry filters. It also should be clarified that funding for a small system under this section shall not be used to prop up a small nonviable system that could comply by connecting or partnering with another public water system. A system receiving funds should be required to demonstrate that, after receiving funds, it will have the "technical, managerial, and financial capacity with respect to each national primary drinking water regulation in effect, or likely to be in effect, on the date of commencement of operations" as described by SDWA section 1420(a).

Small System Operational Sustainability (Potable Water Loss Reduction (DWIA Section 8)

The application process for this grant program should include information needed to establish priorities for funding. These include the system's record of impairment of water quality due to leaks and losses, the economic status of the service area to elevate consideration of disadvantaged communities, and the volume of potable water losses per service connection.

The definition of "eligible entity" should be amended to explicitly include Native American Tribes, and "small system" should be revised to include systems operated by or serving Native American Tribal communities.

To the maximum extent practical, the Administrator should require that systems document baseline conditions with a water loss audit report using the terms and methods of the American Water Works Association Manual M36, and commit to annual release of water loss audit reports to benchmark progress in loss reduction.

Finally, the amount of funding authorized for this program is not commensurate with the need, and limited funding will likely discourage worthwhile applicants. Rather than $10 million per year for 4 years, we recommend $25 million per year for 5 years.

Midsize Drinking Water System Infrastructure Resilience (DWIA Section 9)

The application process for this grant program should include information needed to establish priorities will elevate consideration of disadvantaged communities for funding. Additionally, the first clause under subsection (c) on the use of funds should be clarified to ensure that eligible water conservation and efficiency measures include efficiency measures on customer premises, e.g., "(1) the conservation of water or the enhancement of water-use efficiency, <u>including water efficiency measures on customer premises</u>."

Needs Assessment for Nationwide Rural and Urban Low-Income Community Water Assistance (DWIA Section 10)

We strongly support this provision. To ensure that the study achieves its stated objective of improving "access to affordable and functional drinking water services," we recommend that Congress amend this provision as follows:

First, require the study to address access to affordable wastewater and municipal stormwater services, not only drinking water services. Most people who receive public water service also receive public wastewater service, and the large majority of them pay for the two services on the same bill. We note that a similar provision was introduced in bipartisan legislation last year (S. 2687, section 4), but that the provision there addressed all three types of services.

Second, add the following to the "inclusions" for the study, in the new SDWA sec. 1459G(b)(2):

- Require that the "methods to increase access to affordable and functional drinking water services" to be considered must include actions that can be implemented by federal, state, and local governments and by community water systems.
- Require that the study include a description not only of the cost of each "method," but also of the benefits of each method, including financial, public health, and other benefits to the utility, its ratepayers, and the community it serves.
- Require EPA to consult not only with relevant stakeholders (as already in the draft), but also to convene academic and other experts together with stakeholders for input on defining "access to affordable and functional drinking water services."

Lead in School Drinking Water (DWIA Section 11)

Based on our work in numerous states, we recommend that instead of slightly tweaking the lead in school testing program, SDWA section 1464 should be revised to focus on a "filter first" approach. This is the approach recently proposed by a bipartisan group of state legislators in Michigan, and is now used in Washington, DC.[1] Rather than spending funds on testing, which is not reliable unless done at all drinking water outlets in a school repeatedly (since lead levels can vary widely from day to day and location to location), it is less expensive, more efficient, and more public health-protective to simply place "hydration stations" with NSF-certified filters at several locations in each school, and to gradually take long-term steps over time remediate the lead problem.[2] There is a model bill that would achieve this approach, upon which the Michigan bill is modeled; it will soon be considered in other legislatures.[3]

Water Infrastructure Discretionary Grant Program (DWIA Section 14)

We question the need for this new grant program, which contains no means-testing to prioritize grant funding for disadvantaged communities in particular. A number of other grant programs exist for water infrastructure that do include a needed focus on assisting disadvantaged communities. The funds proposed for this new program should be:

- Channeled through the existing DWSRF additional subsidization program in 1452(d); or
- Placed in one of the other water infrastructure grant programs with means testing; or
- Channeled into this new EPA-run program, with the program amended to include prioritization for disadvantaged communities.

PFAS Drinking Water Standard

At the end of the draft DWIA (page 46), the draft states, "The Committee continues to review the PFAS language that passed both the Committee and the full Senate in 2019 but failed to be enacted into law for inclusion in a managers' amendment to the bill when the bill is considered." We agree that PFAS are highly dangerous widespread contaminants. Due to their nature, protections should be as protective as possible. Any potential National Primary Drinking Water Regulations (NPDWRs) should be protective of public health and as close as is feasible to maximum contaminant levels goals that consider risks to vulnerable populations (as was the case prior to 1996). We are happy to discuss with the Committee if there are plans to include drinking water standards language.

---

[1] Legislators announce bipartisan 'Filter First' bills to protect children from lead in drinking water at schools and daycare centers, https://senatedems.com/ananich/2019/10/16/legislators-announce-bipartisan-filter-first-bills-to-protect-children-from-lead-in-drinking-water-at-schools-and-daycare-centers/.

[2] NRDC, Get the Lead Out of Drinking Water in Schools: Model Law, https://www.nrdc.org/experts/joan-leary-matthews/get-lead-out-drinking-water-schools.

[3] *Id.*

Clean Water State Revolving Fund

Reauthorization of Clean Water State Revolving Fund (AWIA Section 2015)

We strongly support significantly increasing authorized funding levels for the Clean Water State Revolving Fund (CWSRF). The EPA's Clean Watersheds Needs Survey, last conducted in 2012, estimates that we need to invest over $271 billion in our wastewater and stormwater infrastructure over the next 20 years just to meet current environmental and health standards.[4] The draft reauthorization in AWIA begins to make progress toward meeting our nation's clean water infrastructure needs by increasing authorized funding from the current level of $1.6 billion per year to $3 billion per year by FY2024. However, we urge the Committee to increase this amount even further by reauthorizing the CWSRF at a level of $10 billion per year for at least the next five years. This investment would not only support public health and a clean environment, but would also generate much-needed economic activity and create hundreds of thousands of jobs.[5]

No Rollbacks of Clean Water Act Requirements

We thank the Committee for keeping the draft of AWIA free from provisions changing or weakening Clean Water Act permitting requirements (such as section 7 of H.R. 1497, as reported by the House Transportation and Infrastructure Committee). We urge the Committee to ensure the bill remains free of such provisions as it moves forward.

Additional Subsidization (AWIA Section 2012)

We are concerned about this section of the bill for several reasons. First, and most critically, it seems that the language in new proposed section (k)(1) contains a significant drafting error. The section-by-section for AWIA indicates that the intent of this provision was to "amend the [Clean Water Act] and codif[y] language carried in previous appropriations bills, requiring ten percent of the state's Clean Water State Revolving Funds (CWSRF) to be used for grants, negative interest loans, and loan forgiveness or to buy, refinance or purchase debt" (i.e., additional subsidization). In other words, the intent of the provision was to establish a minimum amount of additional subsidization that a state must provide each year (10% of the annual capitalization grant).[6] We strongly support such a change because it would ensure a certain amount of assistance for disadvantaged communities that cannot afford traditional CWSRF low-interest loans. (Indeed, the DWSRF already contains a minimum requirement for

---

[4] U.S. EPA, Clean Watersheds Needs Survey (2012), https://www.epa.gov/cwns.

[5] *See* The Value of Water, The Economic Benefits of Investing in Water Infrastructure (2017), http://thevalueofwater.org/sites/default/files/Economic%20Impact%20of%20Investing%20in%20Water%20Infrastructure_VOW_FINAL_pages.pdf (finding that closing the water infrastructure funding gap of $82 billion per year would result in over $220 billion in total annual economic activity to the country and create approximately 1.3 million jobs).

[6] *See* the most recent Appropriations Act, from last December (H.R. 1865), which established a one-time 10% minimum for additional subsidization: "Provided further, That 10 percent of the funds made available under this title to each State for Clean Water State Revolving Fund capitalization grants and 14 percent of the funds made available under this title to each State for Drinking Water State Revolving Fund capitalization grants shall be used by the State to provide additional subsidy to eligible recipients in the form of forgiveness of principal, negative interest loans, or grants (or any combination of these), and shall be so used by the State only where such funds are provided as initial financing for an eligible recipient or to buy, refinance, or restructure the debt obligations of eligible recipients only where such debt was incurred on or after the date of enactment of this Act..."

additional subsidization.) However, the language of the draft bill as actually drafted actually sets a maximum cap on additional subsidization ("a State shall use not more than 10 percent of a capitalization grant" to provide additional subsidies (page 257 lines 21-24). We believe this to be an error. Not only does this language not effectuate the drafters' intent to set a minimum requirement for additional subsidization, it also significantly lowers the statute's existing 30% cap on additional subsidization contained in 33 U.S.C. § 1383(i)(3)(B). If enacted, this change would be devastating to the disadvantaged communities that rely on additional subsidization through the CWSRF. The bill should instead should direct states to use "no less than 10 percent" of their capitalization grants on additional subsidization.

Beyond this potentially erroneous language, we find it extremely confusing that the bill creates a new subsection (k) in 33 U.S.C. § 1383 dealing with additional subsidization without recognizing that there is already a subsection (i) that addresses additional subsidization. It also troubling that, unlike existing subsection (i), this new subsection does not limit additional subsidy to certain projects or recipients (such as disadvantaged communities), but rather allows *any* CWSRF-eligible project to receive additional subsidization. Additional subsidization should continue to be reserved for the communities that most need it.

Next, the reference to additional subsidization for "initial financing for the eligible recipient" in proposed new section (k)(1)(A) causes further confusion. We assume the intent is not to refer to financing for the creation of a new utility, but rather initial financing for the project being funded (as opposed to refinancing of a pre-existing project, which is the subject of the next subsection in the draft). We strongly recommend that this provision should not single out creation of new utilities as eligible for additional subsidization; one of the challenges with the wastewater utility sector is excessive fragmentation of service across too many individual utilities.

We urge the Committee to reconsider and revise this section of the bill. If the intent is to establish a minimum amount of additional subsidization for the CWSRF, set at 10% of the annual capitalization grant, the bill should adopt the much more straightforward approach of directly amending the statute's existing additional subsidization provision, 33 U.S.C. § 1383(i). The House of Representatives' pending CWSRF reauthorization bill, H.R. 1497, contains language that would achieve this outcome without creating the confusion or unintended consequences of AWIA section 2012. That bill, H.R. 1497, also includes a provision we strongly support (in paragraph (2) of section 11) that would raise the 30% cap on additional subsidization for states that invest their own funds into their CWSRF programs. We recommend that AWIA incorporate that provision as well.

Study of Distribution of SRF Funds to Small and Disadvantaged Communities (AWIA Section 2017)

We strongly support this provision. To ensure that the study achieves its intended objectives, we recommend that Congress specifically require the study to:

- Identify factors that facilitate and or inhibit the submission of funding applications for projects that would predominantly benefit the specified communities;
- Consider the relationship between states' criteria for project prioritization and processes for awarding assistance and the resulting distribution of funds for projects that predominantly benefit the specified communities;

- Consider the effects of states' use of additional subsidization or other preferential loan terms, including the establishment and application of a state's affordability criteria under 33 USC 1383(i)(2), on the value of funding provided for projects that predominantly benefit the specified communities;
- Consider the extent to which funding to water or wastewater systems that serve multiple communities is directed to projects that predominantly benefit the specified communities;
- In consultation with other relevant agencies, consider the relationship between funding distributed to the specified communities pursuant to the SRFs and water and wastewater infrastructure funding distributed to those communities pursuant to other federal programs, such as the USDA Rural Utilities Service, HUD Community Development Block Grants, and Economic Development Administration Public Works Program grants; and
- Require EPA to update annually its assessment of the distribution of funds for projects that predominantly benefit the specified communities. This should include a requirement for each state to report, and for EPA to publish as part of its annual reports on the DWSRF and CWSRF programs, the following information:
    - the state's affordability criteria established under existing section 1383(i)(2);
    - the number and identity of applicants for and recipients of financial assistance that meet those criteria;
    - the total amount of financial assistance provided to recipients meeting those criteria;
    - the amount of additional subsidization provided to recipients meeting those criteria;
    - a description of the state's efforts to solicit applications for projects that serve municipalities that meet those criteria or that otherwise predominantly benefit the specified communities; and
    - such other information as EPA may require to enable EPA to update its assessment.

Green Project Reserve

We support the permanent adoption of the Green Project Reserve within the Clean Water State Revolving Fund, directing at least 20 percent of funding to projects that incorporate green infrastructure and other nature-based solutions that provide social, economic, and environmental benefits to communities.

Additional Recommendations to Enhance Infrastructure Affordability

We offer the following additional recommendations to ensure that investments under the CWSRF are affordable for all communities and households.

First, to ensure that funding is directed to disadvantaged communities (i.e., those meeting a state's CWSRF "affordability criteria"), AWIA should require states to prioritize projects serving these communities when selecting projects to receive funding. This would create parity with the DWSRF, which already requires states to give projects in disadvantaged communities a higher priority in their intended use plans (see 42 U.S.C. § 300j-12(b)(3)(A)(iii)). AWIA should also require states to make all reasonable efforts to solicit applications for projects serving these communities when preparing annual intended use plans.

Second, to promote household-level affordability, the bill should authorize states to use CWSRF funds to support local affordability programs for low-income households, and provide increased technical

support and reporting requirements concerning the use of funds for these programs. AWIA should also require each utility receiving CWSRF funds to submit, and EPA to publish, the following:

- A description of the utility's rate-setting processes, rate schedules (by customer class, e.g., residential, commercial, institutional, and industrial), and any affordability programs it offers;
- The utility's policies concerning shutoffs of residential customers for non-payment, and data on the frequency and duration of such shutoffs; and
- A plan, developed with public input, for how the utility will ensure that any increased rates or charges necessary to finance the project do not impair the affordability of service for low income ratepayers.

We would be happy to provide proposed legislative language for all of these recommendations.

Climate Resilience

Clean Water Infrastructure Resiliency and Sustainability Program (AWIA Section 2001)

We support the creation of this program to increase resilience of publicly owned treatment works (POTWs) to natural hazards. Wastewater infrastructure is one of the most vulnerable forms of public infrastructure to flood damage because POTWs and supporting systems are often sited in low-lying areas, close to the receiving waters to which they discharge effluent. NRDC found that FEMA provided $7.29 billion for repairing water and sewer infrastructure repairs in the aftermath of federally declared disasters between 1998-2014.[7] Given the number of catastrophic floods, hurricanes, and wildfire disasters that have struck the nation between 2015-2019, this number has undoubtedly gone up dramatically (and it should be noted that FEMA funding is only one source of funding for the repair and retrofit of water infrastructure). According to a study published by the American Geophysical Union by researchers at University of California and the Argonne National Laboratory, sea level rise poses grave threats to the nation's clean water infrastructure. Just 1 foot of sea level rise would inundate 60 POTWs that serve more than 4 million people. Three to four feet of sea level rise would inundate an additional 83 POTWs serving another 5.9 million people, and 6 feet of sea level rise would inundate a total of 394 POTWs serving 31 million people across the country.[8]

AWIA currently proposes a 75/25 cost share. NRDC recommends that the EPA Administrator be authorized to issue a waiver of the cost share (to 90/10 or even 100/0) for communities that meet statutory disadvantaged community criteria.

Assessment of Coastal Water Infrastructure Vulnerabilities (AWIA Section 3004)

For similar reasons as described above, NRDC supports this assessment of coastal facilities and their vulnerability to flooding, sea level rise, and storm surge.

---

[7] NRDC, Post-Flood Public Assistance Grants 1998-2014, https://www.nrdc.org/sites/default/files/NRDC-fema-assistance-grants-graphs.pdf.

[8] Hummel et al., "Sea Level Rise Impacts on Wastewater Treatment Systems Along the U.S. Coasts," Earth's Future, Vol. 6, Issue 4, https://agupubs.onlinelibrary.wiley.com/doi/full/10.1002/2017EF000805.

Technical Assistance for Small and Rural Communities

Technical Assistance Funding in AWIA Section 2002 and DWIA Section 6

We strongly support increases to technical assistance funding for small, rural, and tribal communities. Many such communities, including those in Indian Country and along the U.S.-Mexico border, struggle with aging or inadequate wastewater treatment systems, or do not have access to basic wastewater services. New and increased funding programs would help to ameliorate those problems.

Circuit Rider Program for Small and Midsize POTWs (AWIA Section 2003)

We support this program. This section authorizes small grants to non-profit entities to assist small and medium sized systems with the analysis required by WRRDA 2014 (CWA sec. 602(b)(13)) for new capital projects to maximize the potential for water conservation and energy efficiency. We recommend that technical support should also cover analyses of fiscal sustainability required under 603(d)(1)(E)(i). We also believe that this section would be even more useful if accompanied by a requirement for EPA to provide meaningful guidance to states and project applicants regarding the types of analysis required by WRRDA 2014.

Grants for POTWs for Energy and Water Efficiency (AWIA Section 2004)

This is a very limited program, with caps of $20,000 on individual grants and $5 million per year total. Given this small size, its value would be enhanced by adding a requirement to publicly report data on installed projects to demonstrate the cost-effectiveness of funded investments. EPA should provide a standardized report form and compile the results.

Other Funding Increases and New Grant Programs

New and Enhanced Funding Programs

We support the Sewer Overflow and Stormwater Reuse Municipal Grant Program (AWIA Section 2007), the new Stormwater Infrastructure Technology Grants (AWIA Section 2018), the increased water workforce development grants (AWIA Section 2008), and increases to the tribal drinking water program (DWIA Section 12).

We support the new decentralized wastewater grant program (AWIA section 2010), but we urge the Committee to consider extending eligibility to recipients in other regions besides the mid-Atlantic, southeast, and Appalachia. While these are areas of likely need for connection to water systems, it is not clear that other areas of the country do not face this issue at a significant level as well. We also recommend that the Committee raise the authorization amount to parallel the amount in AWIA section 2011, i.e., $20 million per year.

We also support the grant program to reimburse homeowners for connection to a POTW (AWIA section 2011). We note that clarification needed for the date of a prior connection to be eligible for reimbursement, to allow funds to be available primarily for new connections going forward.

Finally, regarding the new wastewater infrastructure discretionary grant program in AWIA section 2016, we question the need for this new grant program, which contains no means-testing to prioritize grant

funding for disadvantaged/needy communities in particular. A number of other grant programs exist for water infrastructure, with their focus on assisting disadvantaged communities. The funds should be channeled through the existing SRF additional subsidization program (once fixed per the above comments on AWIA section 2012) and/or one of the other water infrastructure grant programs with means testing. Alternatively, the bill could amend this new program to include prioritization for needy communities.

Environmental Justice

Codification of EJSCREEN (AWIA Section 3003)

We support the continuation of EJSCREEN as a publicly available tool. The language could be made more relevant to the water context by adding language regarding the Administrator's further exploration of inclusion of water-related factors and data in EJSCREEN or another equivalent tool.

Provisions Relating to the U.S. Army Corps of Engineers

Reject Efforts to Add Provisions from S. 1932

NRDC would strongly oppose adding provisions of S. 1932 (Gardner/Feinstein) to the discussion draft, including the purported "compromise" version of S. 1932. This controversial legislation unreasonably authorizes dramatically higher appropriations for environmentally harmful new dams than for sustainable water supply solutions like water recycling and improved water use efficiency, it fails to ensure that new dams and water storage projects meet commonsense requirements to achieve net ecosystem improvements in order to obtain taxpayer funding, and it includes other anti-environmental provisions. Because the bill would harm salmon and other native fish and wildlife and fails to provide sustainable water supply solutions, it is strongly opposed by conservation groups and commercial and recreational fishing organizations. Finally, S. 1932 would extend the provisions of a last-minute legislative rider that was added to the 2016 Water Infrastructure Improvements for the Nation Act by Senator Feinstein, which nearly brought down the entire bill. We strongly urge the Committee to avoid inclusion of controversial anti-environmental provisions like S. 1932.

Great Lakes Comprehensive Flood Protection Study (AWIA Section 1002)

NRDC is supportive of conducting such a study, but it should be expanded in two important ways. First, any study of high water conditions should examine the impacts of stormwater flows and urban flooding. High water conditions can result in stormwater outlets being submerged; with nowhere for stormwater to go, this can contribute to flooding inland of the shoreline. Second, the study should not be restricted to high water conditions alone. The challenges on Great Lakes include record lows and record highs in relatively short time spans (in 2013 the Great Lakes were at historic low levels and in 2020 they are at historic highs). It is not one extreme or the other that is more important, but the fact that climate change has made extreme conditions much more likely. The study should look not just at high water but also the potential for lower lake levels in the future that could put drinking water intakes, harbors, cooling water intakes etc. at risk. In pursuing this second recommendation, the Study could be retitled the "Great Lakes Extreme Conditions Study."

Levee Safety Review (AWIA Section 1047)

This provision sets up a levee safety review for all levees in the National Levee Database. The study is much needed, but should not be limited to identifying "engineering and maintenance deficiencies" as described in paragraph (d). In addition, the study should be required to identify all levees whose height exceeds its permitted or authorized top-of-levee elevation. The Corps of Engineers has documented multiple cases where levees on the Mississippi River between St. Louis and the Quad Cities have been raised without permits or approvals by the Corps or state officials. These illegally raised levees are likely contributing to increased flooding in adjacent areas and communities. The Corps of Engineers should therefore conduct a broader assessment of illegal levee raising and as part of this study document how many levees in the National Levees Database currently exceed their permitted elevations.

One Accreditation Standard (AWIA Section 1071)

This provision directs the Army Corps and FEMA to study having one accreditation standard. NRDC supports this study. In conducting the assessment of having one accreditation standard, the Corps and FEMA should also make recommendations for how to better capture levees in FEMA's Flood Insurance Rate Maps (FIRMs) and address the mandatory purchase of flood insurance by property owners who live behind the levees. In 2013 the National Academy of Sciences published "Levees and the National Flood Insurance Program: Improving Policies and Practices."[9] To date, none of this report's recommendations have been implemented. In particular, FEMA and the Corps should evaluate the current "all-or-nothing" approach to levees that are accredited to provide protection against the 100-year flood and the effective removal of those areas from FIRMs. By adopting a more risk-based approach to both accreditation and treatment of levees on FIRMs and the mandatory purchase requirement of coverage under the National Flood Insurance Program, more people would better understand their flood risks, be more likely to purchase flood insurance coverage, and would be better informed about the conditions of levees that they assume are protecting their communities.

Changes to Benefit-Cost Analysis (AWIA Section 1083)

This provision changes benefit-cost analysis to allow Corps projects to rely on regional benefits, when national economic benefits are lacking. We strongly object to this provision in its current form. The elastic definitions of "rural areas" and "underserved communities" remove any effective targeting of this provision to genuinely underserved populations with neglected community flooding issues. Allowing Corps projects in rural areas that lack economic merit to be justified on regional benefits alone is a strategy for promoting economically unjustifiable (and environmentally damaging) flood control for low-lying farmland with costly levees, stream channelization, and pumps. These bottomland landholdings are often in large tracts held by agribusiness, as in the Yazoo Backwater area. Decades of damaging Corps projects were finally restrained by the application of more credible economic evaluations supporting the use of federal funds. If the Corps were unleashed from the NED benefits test (e.g., national economic development benefits, not regional benefits), many problematic rural drainage projects would be the likely result.

This provision should be narrowed to urban and community water supply and flood damage reduction projects (including relocation as well as structural measures) in disadvantaged communities, applying

[9] http://nas-sites.org/levees/.

definitions used elsewhere in WRDA. Defining communities as "underserved" by population criteria alone is absurd.

NEPA Categorical Exemptions (AWIA Section 1102)

We urge the Committee to drop section 1102 from the bill. This provision authorizes expanded use of categorical exemptions under the National Environmental Policy Act ("NEPA"). However, NEPA provides citizens with an essential right to know what their government is proposing and to provide input on the projects that affect their communities, and NEPA has a long track record of improving projects and reducing impacts to communities and the environment. NRDC opposes greater exemptions from NEPA and urges the Committee to drop this provision from the bill.

*

Thank you for considering these comments. To discuss any of our recommendations, please contact Rebecca Hammer, NRDC's Deputy Director of Federal Water Policy, at rhammer@nrdc.org or (202) 513-6254.

April 29, 2020

United States Senate
Committee on Environment and Public Works
Via email to: QFR@epw.senate.gov

America's Water Infrastructure Act of 2020 and The Drinking Water Infrastructure Act of 2020: Stakeholder Comments (Supplemental Submission)

Dear Chairman Barrasso, Ranking Member Carper, and Members of the Committee, thank you for the opportunity to provide stakeholder comments on discussion drafts of America's Water Infrastructure Act of 2020 ("AWIA") and The Drinking Water Infrastructure Act of 2020 ("DWIA"). The Natural Resources Defense Council (NRDC) submits these comments as a brief supplement to the comprehensive comments we submitted yesterday, to add certain recommendations that were inadvertently omitted.

Drinking Water State Revolving Fund (DWSRF)

Recommendations to Enhance Infrastructure Affordability

We offer the following recommendations for consideration in DWIA to ensure that investments under the DWSRF are affordable for all communities and households.

First, to ensure that funding is directed to disadvantaged communities (i.e., those meeting a state's DWSRF "affordability criteria"), DWIA should require states to make all reasonable efforts to solicit applications for projects serving these communities when preparing annual intended use plans. This would build on the existing SDWA provision requiring states to give projects in disadvantaged communities a higher priority in their intended use plans (42 U.S.C. § 300j-12(b)(3)(A)(iii)).

Second, to promote household-level affordability, the bill should authorize states to use DWSRF funds to support local affordability programs for low-income households, and provide increased technical support and reporting requirements concerning the use of funds for these programs. DWIA should also require each utility receiving DWSRF funds to submit, and EPA to publish, the following:

- A description of the utility's rate-setting processes, rate schedules (by customer class, e.g., residential, commercial, institutional, and industrial), and any affordability programs it offers;
- The utility's policies concerning shutoffs of residential customers for non-payment, and data on the frequency and duration of such shutoffs; and
- A plan, developed with public input, for how the utility will ensure that any increased rates or charges necessary to finance the project do not impair the affordability of service for low income ratepayers.

We would be happy to provide proposed legislative language for all of these recommendations.

Thank you for considering these comments. To discuss any of our recommendations, please contact Rebecca Hammer, NRDC's Deputy Director of Federal Water Policy, at rhammer@nrdc.org or (202) 513-6254.

Written Statement

Doug Carlson
Chief Executive Officer
National Utility Contractor Association

to the

United States Senate
Committee on Environment and Public Works

Information-Gathering Process on Draft Legislation
America's Water Infrastructure Act of 2020
Drinking Water Infrastructure Act of 2020

April 28, 2020

The National Utility Contractors Association (NUCA) represents nearly 1,700 utility and excavation contractors, manufacturers, and suppliers who provide the materials and workforce to build and maintain our nation's intricate network of water, sewer, gas, telecommunications, and electric infrastructure. NUCA appreciates the opportunity to comment on recent legislation that would take important steps to refurbish America's water and wastewater infrastructure.

Congress Must Fund Sufficient Resources for Effective Programs

On April 23rd, the America's Water Infrastructure Act (AWIA) and the Drinking Water Infrastructure Act (DWIA), which would collectively deepen ports, address floodwater challenges, and assist local communities with resources to repair and rebuild local drinking water and sewer systems, was introduced by Senators Barrasso and Carper.

While the focus of AWIA is on water resources projects overseen by the U.S. Army Corps of Engineers, the legislation includes language that would reauthorize the Environmental Protection Agency's (EPA) Clean Water State Revolving Fund (SRF) program, and would incrementally increase annual funding levels to $3 billion. Specifically, AWIA would authorize:

- FY2021: $2 billion
- FY2022: $2.5 billion
- FY2023: $3 billion

In addition, AWIA would reauthorize the Water Infrastructure and Innovation Act (WIFIA), which provides long-term, low-cost credit assistance for regionally and nationally significant water and wastewater projects.

AWIA would also reauthorize the use of existing sewer overflow and storm reuse grants for construction and planning/design of treatment works to address overflows of combined sewers, sanitary sewers, or stormwater systems, as well provide grants to promote workforce development in the water utility sector.

Resources are also provided in the legislation that would assist publicly-owned treatment systems to comply with federal water quality regulations. In fact, the bill would set aside 10 percent of Clean Water SRF funding for grants, negative interest loans, or other ways to forgive loan debt for struggling municipalities and other local government entities.

The Drinking Water Infrastructure Act would provide needed resources through the Drinking Water SRF to assist local communities respond to drinking water emergencies such as lead contamination in local water reservoirs. DWIA also provides language that would provide SRF debt for local governments at a time when complying with water quality standards is more challenging than ever.

NUCA supports funding traditional financing programs as well as new grant programs to assist localities while the COVID-19 pandemic continues. However, the funding levels provided in both AWIA and DWIA do not provide sufficient resources to bridge the gap between what is needed and what is currently invested in America's environmental infrastructure. In fact, while there are marginal increases in Clean Water SRF funding, DWIA includes no increases in funding for the Drinking Water SRF other than $300 million in grants to assist in the remediation of drinking water contamination.

To be clear, NUCA understands the need to provide relief to local government entities, but resources should not come at the expense of critical SRF dollars. In addition, both AWIA and DWIA include a range of provisions for "alternative" water source projects and water and wastewater "efficiency" programs.

Estimated funding needs reflect the community utility for all of these measures, but ensuring a viable and robust funding source for "pipe and mortar" water and wastewater projects is needed now more than ever.

For the past several years, EPA has estimated that hundreds of billions of dollars is needed to invest in America's water and wastewater infrastructure. While NUCA appreciates the increases in the SRF programs, Congress must consider a more robust investment to service known shortcomings in infrastructure around our nation, in all 50 states. In addition, the WIFIA program has proven successful since its establishment – the only problem is a lack of funding. Reauthorizing WIFIA at current levels will not sufficiently address that nation's environmental infrastructure needs, nor will it make WIFIA a sustainable funding source.

Opportunities for Private Investment

In addition to traditional public funding, Congress should consider measures that would open the door for private sector investment through innovative financing, such as lifting the cap on private activity bonds (PABs) for water and wastewater infrastructure projects.

NUCA understands this would require action by the Senate Finance Committee, but we encourage the Senate Environment and Public Works Committee to consider and embrace the advantages of PAB reform for water and sewer infrastructure projects.

Removing the state volume cap on PABs for water and wastewater infrastructure would increase private capital investment and enable more public-private partnerships (P3), which would not only optimize the development, construction and long-term operation of the project, but it would allow local governments to approve projects with confidence. In fact, P3 agreements generally provide that the private sector partner assumes not only the cost but the financial risk and long-term debt of the project while retaining ownership of the infrastructure and the project itself.

Construction as a Job Creator

While investment in water and wastewater infrastructure enhances public health and environmental protection, it also creates in every community where it is undertaken more high-paying jobs, generates

significant economic activity and expands the local tax base. Industry studies have indicated that every $1 billion invested in water and wastewater infrastructure creates up to some 28,000 new jobs with average annual earnings of more than $50,000 and increases demand for products and services in other industries by more than $3 billion.

Due to the economic ripple effect that construction employment offers, investment in water infrastructure generates measurable employment in hundreds of standard industry classifications recognized by the U.S. Census Bureau. Moreover, a $1 billion investment also tens of millions of dollars in state and local tax revenue at a time when they unarguably need it most.

NUCA appreciates the opportunity to comment on both AWIA and DWIA, and we appreciate the efforts of the committee to address our significant infrastructure challenges. With these two bills, Congress has the opportunity to put Americans back to work on important construction projects that create tens of thousands of jobs, improve public health and safety, enhance environmental protection and raise the overall quality of life for communities across the United States.

For More Information

Doug Carlson
Chief Executive Officer
National Utility Contractors Association
3925 Chain Bridge Rd
Suite 300
Fairfax, Virginia, 22030
O: 703-890-7809
M: 704-607-2993
doug@nuca.com

Eben Wyman
Principal
Wyman Associates
10 G Street, NE
Suite 600
Washington, DC 20002
703-750-1326 (direct)
703-740-6126 (mobile)
202-248-5063 (office)
eben@wymanassociates.net

President – Christine Arbogast
Vice President – Kevin Ward
Treasurer – Tom Myrum
Executive Vice President – Ian Lyle

May 1, 2020

Chairman John Barrasso
Environment and Public Works Committee
United States Senate
410 Dirksen Senate Office Building
Washington, DC 20510

Ranking Member Tom Carper
Environment and Public Works Committee
United States Senate
410 Dirksen Senate Office Building
Washington, DC 20510

Submitted Electronically via: QFR@epw.senate.gov
Contact Name: Ian Lyle
Address: 4 E Street SE, Washington, DC 20003
Email: ilyle@nwra.org
Phone: 202-360-6429

RE: Comments of the National Water Resources Association on the America's Water Infrastructure Act of 2020

Dear Chairman Barrasso and Ranking Member Carper,

On behalf of the National Water Resources Association (NWRA), I want to thank you for giving us the opportunity to share our views on the America's Water Infrastructure Act (AWIA) of 2020 and Drinking Water Infrastructure Act of 2020.

The NWRA is a nonpartisan, nonprofit federation of state water resources associations, regional associations, agricultural, and municipal water providers. Our members provide water and hydropower to approximately 50 million individuals, families, agricultural producers, and other businesses in a manner that supports communities, the economy, and the environment.

The Western water community uses a variety of tools to effectively and efficiently manage and conserve our finite water supply. This has become increasingly important as we deal with multi-year drought conditions and a changing climate, which impacts our water supply in semi-arid regions.

NWRA supports your efforts to move a Water Resources Development Act forward in 2020. We support much of the text currently included in AWIA 2020 and make the following priority recommendations:

I.) Work with the Energy and Natural Resources Committee to develop a Bureau of Reclamation Title;

II.) Include a provision codifying the Administration's withdrawal of the Water Supply Rule;

NWRA
National Water Resources Association

President – Christine Arbogast
Vice President – Kevin Ward
Treasurer – Tom Myrum
Executive Vice President – Ian Lyle

III.) Address longstanding concerns with the Principles, Requirements, and Guidelines.

I. Bureau of Reclamation Title
We stand in support of many sections of AWIA, but ask that a Bureau of Reclamation (Reclamation) title be included in the measure. Reclamation is the nation's largest wholesale water provider. Most Reclamation projects are physically located in the west, but this infrastructure benefits the entire nation through the food, fiber, power and economic benefits it generates. Congress, recognizing the importance of Reclamation included a Reclamation title in the 2018 AWIA (Public Law No: 115-270), which passed the Senate 99-1. The Committee, recognizing the importance of Reclamation, has included several provisions that involve Reclamation projects in the current draft of AWIA. We believe the Committee should expand this effort.

Recommendation:
We ask that the Committee build on the successful effort of Public Law No: 115-270 and work with the Senate Energy Committee to develop a Bureau of Reclamation title for AWIA 2020. Principles that could make up a reclamation title include: language providing resources to address aging infrastructure, establishing a low interest revolving loan program, including Reclamation projects in programs that combat invasive species.

II. Codify Withdrawal of Water Supply Rule (81 FR 91556)
On January 19, 2020, the Administration announced it was directing the Corps to withdraw the Water Supply Rule. This announcement came in response to a bipartisan letter signed by nineteen western senators, including leading members of the Environment and Public Works Committee.

Recommendation:
Water users are appreciative of the Administration's effort to withdraw the rule. It is a wise step that should be codified. Codification of the withdrawal would protect western water rights, protect the role of states in water management, and provide water managers with the certainty they need to supply water to our nation's communities.

III. Address Concerns with the Principles Requirements and Guidelines
In 1983, the Corps developed the "Principles and Guidelines for Water and Land Related Resources Implementation Studies". Section 2031 of the Water Resources Development Act of 2007 (WRDA 2007) directed the Secretary of the Army to revise the 1983 Principles and Guidelines and consult with other entities, including the National Academy of Sciences (NAS). Subsequently, there was a reassignment of the rulemaking to the Council of Environmental Quality (CEQ) by the Administration, with the intent to apply the new guidance to all federal programs with jurisdiction on water resource project planning. The resulting revised PR&Gs reflect an instance in which Congress has been alerted to problematic implementation of regulatory authority in need of further congressional direction.

The "Proposed National Objectives, Principles and Standards for Water and Related Resources Implementation Studies" (Principles) was published on December 9, 2009, and an expert

4 E Street SE, Washington, DC 20003
Phone: (202) 698-0693 | Fax: (202) 698-0694

NWRA
National Water Resources Association

President – Christine Arbogast
Vice President – Kevin Ward
Treasurer – Tom Myrum
Executive Vice President – Ian Lyle

committee was appointed by the National Research Council of the National Academy of Science (NRC) that convened from March to August 2010 to review the Principles document. The findings and recommendations of the NRC report were extensive, with strong recommendation of need for further revision for clarity and granularity within the federal programs the Principles were to apply. Importantly, there were numerous areas of ambiguity noted, where the NRC expert team recommended a need for a clear indication of whether the document was intended to be used as a general guidance or as a decision document that specifies planning steps to be followed. Given the appearance of the latter, the NRC expert team felt the document was not sufficient to apply to the wide range of water resource projects it would effectively regulate.

CEQ published the final "Principles and Requirements" for comment in the federal register on March 27, 2013. Interagency guidelines were then released by CEQ in December 2014 (collectively, PR&G). There is little, if any, evidence that the comments by the NRC or other entities were addressed in the final rule or the implementing guidelines. The revised PR&G is highly contentious within the infrastructure community and has repeatedly been criticized for not being developed consistent with Congressional intent. Congress, noting these concerns, has prohibited the Corps from implementing the PR&G in numerous appropriations bills.

Recommendation:
The Corps should heed Congressional direction and avoid implementation of the revised PR&Gs. We ask that Congress direct the Secretary of the Army, in coordination with the CEQ to rescind the revised PR&Gs with the intent to reopen the stakeholder process, limit the scope of the Principles and Requirements guidance to the specific charge by Congress in the 2007 WRDA, and to eliminate any revisions of related internal operating documents and procedures that were put in place as a result of the revised PR&Gs until the new final guidance document is appropriately adopted.

IV. Additional Items

In addition to the top three priorities outlined above, we would also like to provide support or recommendations on the following provisions:

Section 1001. Upper and Lower Missouri River comprehensive flood protection studies
NWRA stands in support of the comprehensive studies that would be authorized by Section 1001 of AWIA 2020. Our organization is comprised of many non-federal sponsors and looks forward to the report that will address changes to the general plan for flood control in the Basin. Our members are glad to learn of new potential opportunities for increased non-federal management in the Basin.

Section 1005. Watercraft inspection stations
NWRA supports efforts to address invasive species. We believe the technical correction included in Section 1005 will ensure appropriate implementation of important efforts to combat the spread of invasive species.

Section 1017. Continuing authority programs.

4 E Street SE, Washington, DC 20003
Phone: (202) 698-0693 | Fax: (202) 698-0694

NWRA
National Water Resources Association

President – Christine Arbogast
Vice President – Kevin Ward
Treasurer – Tom Myrum
Executive Vice President – Ian Lyle

This section establishes a significant cost-share waiver for "small" or "disadvantaged" communities seeking to carry out a project under a continuing authority program (CAP) with the Corps. Small communities often struggle to make improvements to water infrastructure due to smaller rate bases. NWRA supports the effort to increase federal cost share for these communities.

We recommend expanding the pilot program to also include Bureau of Reclamation projects that serve small or disadvantage communities.

Section 1021. Aging Infrastructure
NWRA supports the aging infrastructure studies by the Corps for federal agencies and non-federal entities that own, operate, and maintain water infrastructure. We believe this will allow our members to learn about future infrastructure needs so that they can implement a plan to increase the longevity of the existing infrastructure.

Section 1037. Interagency task force on small dams and fish passages.
This section requires the Secretary to establish an interagency task force to study small dams and fish passages. The Secretary must also submit a report to Congress by December 31, 2021, that includes recommendations for a national strategy for identifying, prioritizing, and successfully removing or refurbishing small dams of concern by 2030. The interagency committee includes representatives from multiple federal agencies including the Corps, Reclamation, the Environmental Protection Agency, and several other agencies. This report will include recommendations related to dam removal and remediation.

Dam removal can be contentious and affect communities and local governments. NWRA recommends that the Committee direct the interagency task force consult with states, local governments, and stakeholders like water providers when developing the report.

Section 1042. Credit or Reimbursement
NWRA supports Section 1042. This section would benefit local project sponsors and the federal government by ensuring those that are capable of making Corps approved repairs can do them in a more efficient manner, freeing up federal resources for those areas within a disaster area that need additional assistance.

Section 1054. Studies of water resources development projects by non-Federal interests.
This section amends section 203 of WRDA 1986 (33 U.S.C. 2231) to permit a non-federal interest to undertake not just a federally authorized feasibility study of a proposed project, but also conduct a feasibility study on modifications or improvements to a project constructed by the Corps. NWRA supports this section.

Section 1083.Corps of Engineers projects in underserved communities, economically distressed areas, or rural areas.
This section allows the Secretary to recommend a project for funding without the need to demonstrate that the project is justified by national economic development benefits. This is contingent on the community that is served by the project being small, financially disadvantaged,

4 E Street SE, Washington, DC 20003
Phone: (202) 698-0693 | Fax: (202) 698-0694

NWRA
National Water Resources Association

President – Christine Arbogast
Vice President – Kevin Ward
Treasurer – Tom Myrum
Executive Vice President – Ian Lyle

or rural, as well as the long-term life safety, economic viability, and environmental sustainability of the community being threatened without the project. The economic evaluation of such a project must include non-monetary benefits, as well as monetary benefits. NWRA supports this section.

Section 1101 Flexibility for projects.
This section establishes a two-year goal for the completion of Corps feasibility studies. NWRA supports efforts to improve permitting efficiency. We support Section 1101.

Section 1102.Development of categorical exclusions.
This section directs the Secretary to share a list of the Corps' categorical exclusions for environmental review with other federal agencies and directs those federal agencies to conduct a rulemaking process if they determine that it is appropriate to adopt similar categorical exclusions. This section includes the Department of the Interior, Department of Agriculture, Department of Energy, and other federal agencies
NWRA supports efforts in increase the utilization of categorical exclusions. We support Section 1102.

Section 1506. GAO study on Federal dams with reservoirs.
This section requires the Comptroller General of the United States to identify dams with reservoirs owned or operated by the Federal Government that no longer serve a federal purpose or have been considered for divestment, breaching, or removal. The Secretary must submit a report to Congress within 180 days of enactment of this Act that includes a list of such dams. We recommend that the Committee direct the GAO to include in the report if there is a non-federal entity that has in interest in the dam.

Sections: 1602.Invasive species in impaired waters, 1603.Aquatic invasive species research, 1604.Invasive species mitigation and reduction, 1609.Invasive species in Alpine Lakes pilot program.
NWRA appreciates and supports the efforts to address invasive species threats that would be authorized and expanded under these sections.

Section 2004.Small publicly owned treatment works efficiency grant program.
This section creates an EPA grant program to assist small publicly owned treatment works that serve less than 10,000 people, or are disadvantaged, with replacing or repairing equipment to increase the water efficiency or energy efficiency. NWRA supports this effort.

Section 2014. WIFIA
NWRA supports WIFIA. However, this section does not include authorization for appropriations for the Corps like it does for the EPA WIFIA program. Therefore, we ask for your assistance in ensuring the USACE WIFIA program is authorized and able to receive the necessary appropriations to begin the issuance of loans. We would like to see that the USACE WIFIA program be authorized at $50 million dollars through 2024 like the EPA WIFIA program.

Section 2015. Reauthorization of Clean Water State Revolving Loan Funds.

4 E Street SE, Washington, DC 20003
Phone: (202) 698-0693 | Fax: (202) 698-0694

NWRA
National Water Resources Association

President – Christine Arbogast
Vice President – Kevin Ward
Treasurer – Tom Myrum
Executive Vice President – Ian Lyle

NWRA supports efforts to increase funding to the Clean Water State Revolving Loan fund. Increasing this funding to $3 billion by 2023 is necessary to support the health of our nation and our economy.

Sec.3010.Final rating opinion letters.
Under this section WIFIA project applicants will only need to provide one final Agency rating opinion letter, similar to other programs, prior to final acceptance and financing of the project. NWRA supports this streamlined provision.
Thank you for your time and consideration. NWRA looks forward to seeing the aforementioned sections implemented, and working with you to include a Reclamation title in this measure.

Respectfully,

Ian Lyle
Executive Vice President
National Water Resources Association (NWRA)

4 E Street SE, Washington, DC 20003
Phone: (202) 698-0693 | Fax: (202) 698-0694

NWSA
NATIONAL WATER SUPPLY ALLIANCE

May 1, 2020

The Honorable John Barrasso
Chairman
Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Thomas R. Carper
Ranking Member
Committee on Environment and Public Works
456 Dirksen Senate Office Building
Washington, DC 20510

Via email: QFR@epw.senate.gov

Dear Chairman Barrasso and Ranking Member Carper:

The National Water Supply Alliance (NWSA) welcomes the opportunity to review and comment on the Senate Environment and Public Works Committee's draft bill, "America's Water Infrastructure Act of 2020" (EDW20246). NWSA applauds your commitment to maintaining a regular two-year cycle on water infrastructure legislation.

NWSA offers the following comments.

(1) Section 1052 Reviewing Hydropower at Corps of Engineers Facilities

An operational change for the benefit of hydropower should be carefully considered, particularly in regards to impacts on water supply storage at Corps of Engineers reservoirs. Water in and flowing through a reservoir belongs to the state. As such, NWSA recommends that Section 1052 include language that the hydropower interest secure a state water right or otherwise comply with state water allocations and law for the Corps of Engineers to implement an operational change at a reservoir.

(2) Section 1054 Studies of Water Resources Development Projects by non-Federal Interests

NWSA supports the strengthening of flexibility for non-Federal interests to conduct feasibility studies. NWSA further recommends providing this flexibility for conducting reallocation studies.

President, Darren Gore, PE, City of Murfreesboro, TN
Vice President, Dan Buhman, PE, Tarrant Regional Water District
Secretary, Katherine Zitsch, PE, BECC, Atlanta Regional Commission
Treasurer, Glenn Page, PE, Cobb County-Marietta Water Authority
Past President, Earl Lewis, PE, Kansas Water Office
Director, Andrew Dehoff, PE, Susquehanna River Basin Commission
Director, Jennifer Verleger, Esq, PE, State of North Dakota
Director, Brad Brunett, Brazos River Authority
Director, Greg Volkhardt, PE, Tacoma Water
Dave Mitamura, Executive Director

National Water Supply Alliance
Advancing the Interests of Water Supply Providers
P.O. Box 342396, Austin, TX 78734 (512) 608-7742

A reallocation study, however, is not a feasibility study and is therefore not currently eligible for this flexibility. NWSA recommends that Section 1054 be further enhanced to explicitly include reallocation studies as an eligible activity under Section 203 of the Water Resources Development Act of 1986.

Thank you for your consideration of NWSA's comments. I am available to discuss in more detail at your convenience. My contact information is below my signature line.

Sincerely,

Dave Mitamura
Executive Director
National Water Supply Alliance
P.O. Box 342396
Austin, TX 78734
davem@nationalwatersupply.org
(512) 608-7742

The National Water Supply Alliance is a national organization formed to advance the interests of water supply providers before the United States Congress and federal agencies whose actions impact water supply storage and projects. Our members include state, regional, and local governments, as well as wholesale water providers and utilities who rely on water supply stored in federal facilities maintained by the U.S. Army Corps of Engineers. NWSA was formed to give water supply providers across the nation a unified voice to advocate for the preservation and enhancement of the nation's water supply, protection of traditional State authorities, and to ensure that water supply interests share equitably in the benefits provided by the U.S. Army Corps of Engineers.

www.nationalwatersupply.org

CHAIRMAN OF THE BOARD
David Yarbrough, P.E.
Tulsa Port of Catoosa
Catoosa, OK

VICE CHAIRMAN
Tom Ray, P.E.
Texas Water Conservation Association
Waco, TX

PRESIDENT
Julie A. Ufner
National Waterways Conference, Inc.
Arlington, Virginia

FIRST VICE PRESIDENT
Timothy D. Feather, Ph.D.
CDM Smith
Carbondale, IL

VICE PRESIDENT
Rob Rash, P.E.
St. Francis Levee District
West Memphis, AR

SECRETARY and COUNSEL
Steven A. Burns
Balch & Bingham LLP
Birmingham, Alabama

TREASURER
Linda Christie
Tarrant Regional Water District
Fort Worth, TX

Dedicated to a greater understanding of the widespread public benefits of our nation's water resources infrastructure.

Telephone:
(703) 224-8007
Fax:
(866) 371-1390
Web Site:
www.waterways.org

May 1, 2020

The Honorable John Barrasso
Chairman
Environment & Public Works Committee
U.S. Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Thomas Carper
Ranking Member
Environment & Public Works Committee
U.S. Senate
456 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Initial NWC comments on draft America's Water Infrastructure Act of 2020 bill

Dear Chairman Barrasso and Ranking Member Carper,

On behalf of the National Waterways Conference (NWC), we would like to thank you for your leadership and commitment to our nation's water infrastructure, as well as keeping your pledge to keep the Water Resources Development Act (WRDA) on a biannual schedule. Regular authorizations of WRDA allow the U.S. Army Corps of Engineers (USACE or Corps) to move forward with critical feasibility studies, projects and modifications to keep our communities strong.

WRDA is especially important to our membership who represents a full spectrum of water resources stakeholders, including navigation, inland and deep draft ports and waterways, flood control associations, levee boards, waterways shippers and carriers, industry and regional associations, shipyards, dredging contractors, regional water supply districts, hydropower producers, engineering consultants and state and local governments. Additionally, many of our members are non-federal sponsors of Corps civil works projects, responsible for significant financial commitments for the construction and maintenance of these projects. They work diligently and collaboratively with our federal partners to ensure the nation can reap the multiple benefits provided by these investments.

On behalf of our members, we appreciate the opportunity to provide initial comments on the committee's draft WRDA bill, America's Water Infrastructure Act of 2020

(AWIA 2020), which was released last week. As we continue to analyze the bill and refine our comments, we wanted to offer some initial feedback which may be helpful as the committee moves forward. Our initial comments focus on the Congressional, non-federal sponsor and stakeholder consultation requirements, as well as section 1013 on Annual Report to Congress on Authorized Studies and Projects.

Strengthening engagement with non-federal project sponsors and stakeholders

AWIA 2020 contains a number of consultation requirements for the Corps to interact with U.S. Congress, non-federal sponsors and stakeholders. We would like to offer two ideas for consideration.

First, AWIA 2020 contains a number of provisions including, but not limited to, sections 1036, 1082 and 1089, that require the Corps to report back to the Senate EPW and House Transportation and Infrastructure (T&I) Committees on the status of various guidance, programs and studies. **Because these findings are relevant to non-federal interests who operate and manage water resources, we would ask Congress to take it a step further and require the Corps to make these reports publicly available via the Federal Register and through direct distribution lists.**

Second, AWIA 2020 includes several Corps consultation requirements with non-federal sponsors for reports and other actions. As you know, non-federal sponsors are taking on more responsibilities and obligations for carrying out feasibility studies and projects, as well as operations and maintenance requirements. As duties shift, it becomes even more important that there is clear understanding between the Corps and non-federal interests about roles, requirements and expectations.

Section 1105(b)(1)(B) of WRDA 2018 provided an opportunity for interested non-federal stakeholders to "engage" with the Corps on the development and issuance of guidance, which contemplates more than simply the submission of written comments. Section 1105(c)(1) provided a minimum of 60 days after issuance of the public notice to submit comments, while section 1105(c)(2) allows the Corps to reach out to non-federal sponsors and stakeholders and "circulate drafts of implementation guidance…for informal input and recommendations."

Furthermore, the accompanying House Report on section 1105 further clarifies congressional intent (page 26):

> *The Committee reemphasizes the need to engage with non-Federal project sponsors and their associated representatives to coordinate and consult on implementation guidance. This bill directs the Corps to adopt an open process to gather input and initiate a dialogue with those non-Federal sponsors who have a stake in how programs and activities are carried out. Hosting one-way communications through Webinars and other non-participatory forums jeopardizes the necessary modifications and adjustments to the Corps programs and activities that are authorized in WRDAs. The Corps should work to ensure all non-Federal project sponsor and relevant stakeholders voices are heard and incorporate those considerations and Congressional intent into final implementation guidance.*

To that end, we would ask that the Corps put a written process in place to provide sufficient time and input for robust and meaningful engagement as intended by Congress in WRDA 2018. Additionally, NWC would encourage the committee and Corps develop written policies governing interaction with non-federal sponsors and stakeholders for guidance, memos, work plans, manuals and other documents.

Working together to compile authorized water infrastructure studies and projects

We would also draw your attention to the section 1013 on an Annual Report to Congress on Authorized Studies and Projects. It is our understanding that this section would implement a procedure similar to the 7001 process, which was enacted in the Water Resources Reform and Development Act of 2014. Section 1013 has the laudable goal of compiling a comprehensive list of all authorized studies and projects, including those in the President's annual budget request and/or USACE work plans, as well as identification of those studies and projects that have not been funded. While we understand the purpose of this request, we are concerned that the process contemplated by this provision, would impose unnecessary and undue burdens on non-federal sponsors and stakeholders who would be required to submit this information. In effect, this would create an unwieldy process that may undermine the good intentions behind this provision. We look forward to continuing conversations on this to find a more streamlined, efficient way to accomplish this goal without additional burdens.

We thank you for the opportunity to provide initial comments on AWIA 2020. We will be following up with more detailed comments. We look forward to working with you

to strengthen our water resources, protecting local communities and bolster our national economy. If you have any questions, please contact me at 703.224.8007 or julie@waterways.org.

Sincerely,

Julie A. Ufner
President

National Wildlife Federation Recommendations
America's Water Infrastructure Act of 2020
(Senate Discussion Draft)

United States Senate Committee on Environment and Public Works
An Information-Gathering Process on Draft Legislation entitled, America's Water Infrastructure Act of 2020 and The Drinking Water Infrastructure Act of 2020:
Stakeholder Comments

Contact Information

Melissa Samet, Senior Water Resources Counsel
415-762-8264, sametm@nwf.org,

Jessie Ritter, Director Water Resources and Coastal Policy
202-797-6886, ritterj@nwf.org

National Wildlife Federation
1200 G St. NW, Suite 900
Washington, DC 20005

National Wildlife Federation Recommendations

America's Water Infrastructure Act of 2020
(Senate Discussion Draft)

The National Wildlife Federation thanks the Committee for its work to prepare this discussion draft of America's Water Infrastructure Act of 2020, and for the opportunity to provide comments on this important legislation.

The nation's natural infrastructure—healthy rivers, floodplains, wetlands, and shorelines—protects communities, allows fish and wildlife to thrive, and drives the outdoor economy. It is also a vital but underused tool for reducing flood and storm damages and improving the effectiveness and resilience of levees and other water resources infrastructure. As we anticipate more frequent and severe storms and weather events, it is essential that the U.S. Army Corps of Engineers use and protect these natural systems to help absorb floodwaters and buffer communities. The National Wildlife Federation urges Congress to enact common sense reforms to advance the use and protection of natural infrastructure to benefit people and wildlife alike. Detailed recommendations for a suite of reforms to improve the nation's water resources planning and resilience, as well as examples of the efficacy of natural infrastructure solutions, are appended to these recommendations.

We appreciate the Committee's attention in this discussion draft to the nation's clean water infrastructure needs, and commend the committee for the consideration given to the unique needs of low-income, minority, rural, tribal, and other disadvantaged communities. We also appreciate the Committee's provisions that advance critical studies and planning processes that will improve the resilience of the nation's water resources. However, we are concerned with provisions in this draft that could work against resiliency and shortcut critical environmental reviews. As this legislative process advances, the National Wildlife Federation urges Congress to defend the nation's vitally important environmental laws and ensure that they remain fully applicable to all aspects of Army Corps planning, construction, operations, and maintenance.

To help achieve the above-mentioned goals, the National Wildlife Federation urges the Senate to make the changes to America's Water Infrastructure Act of 2020 (Discussion Draft) outlined in these comments.

Title I – Water Resources Development

Add a provision to clarify that natural infrastructure projects qualify for the same cost share as nonstructural projects. This would remove an arbitrary barrier to the use of natural infrastructure to reduce flood and storm damages, creating incentives for its use. Both natural infrastructure and nonstructural solutions can provide vital flood and storm damage reduction benefits while protecting and restoring water quality, recreational opportunities, and thriving populations of fish and wildlife. These solutions should be treated consistently for cost-share purposes, but are not.

The total non-federal cost share for nonstructural solutions is capped at 35% (including land, easements and rights-of-way), eliminating unfair burdens on non-federal sponsors for alternatives that often require less construction but more land. However, the total non-federal cost share for a natural infrastructure project can be as high as 50% of total project costs because the Corps typically applies the structural flood project cost share requirements, which requires that the non-federal sponsor pay 35% of project costs plus the costs of all LERRDs, up to a combined maximum of 50% of project costs. 33 U.S.C. § 2213(a).

Strengthen Section 1001 (Upper and Lower Missouri River comprehensive flood protection studies). The National Wildlife Federation supports section 1001 which requires two comprehensive studies to assess strategies for reducing flood risks along the Missouri River, that among other things, are to carefully assess use of natural infrastructure solutions. However, these important studies should also carefully consider the significant implications of operation and maintenance of the little-used Missouri River navigation system on increasing flood risks, destroying vitally important natural infrastructure, harming fish and wildlife, and requiring extensive taxpayer outlays for post-disaster rebuilding. To help ensure that these critical issues are fully assessed, we recommend amending § 1001(c)(5) (page 9, lines 3-6) to read:

> "(5) address whether changes to operation and maintenance of the navigation system could reduce flood risks and increase resilience of the river and river communities."

Strengthen Section 1002 (Great Lakes comprehensive flood protection study). The National Wildlife Federation supports section 1002 which directs the Secretary to conduct a comprehensive study on shoreline protection and resiliency in areas of the Great Lakes that were affected by flooding in 2019. There is no question that a comprehensive resiliency study for the Great Lakes region is long overdue. We note that a similar study was authorized in WRDA 2016 but has yet to receive funding, and encourage that these efforts be coordinated to minimize any inadvertent duplication. This study should also carefully assess the impacts of shoreline armoring, which arbitrarily displaces sand and interrupts the natural deposit and withdrawal cycle of the shoreline that can lead to long-term damage and additional shoreline erosion. To help ensure that this critical issue is addressed, we recommend adding a ninth criterion to § 1002(b) (page 14) to read:

> "(9) The impacts of shoreline armoring on long-term shoreline resiliency."

Amend Section 1011 (Non-Federal implementation pilot program). The National Wildlife Federation has seen significant problems with the processes used by some non-federal sponsors when preparing feasibility studies. These problems include, but are not limited to: major confusion regarding which activities are the responsibility of the Corps and which are the responsibility of the non-federal sponsor; the inability of the non-federal sponsor to conduct required technical analyses; the inability of the non-federal sponsor to effectively engage the public and other federal agencies; and the inability of the public to obtain information about the process being used. We urge Congress to address these types of problems as part of any extension of this or any similar program. To this end, we strongly recommend that the Senate amend this section to require the Corps to develop guidelines that provide a clear roadmap to the process that is to be used, the entities responsible for each step of the process, and the entity responsible for responding to public inquiries and requests for information.

Amend Section 1013 (Annual report to Congress on authorized studies and projects). The National Wildlife Federation urges Congress to add an additional criterion to Section 1013(b) to ensure that projects that require additional studies or evaluations as a matter of law are not inadvertently funded for construction until those studies are finalized and fully integrated into the decision-making process. Many civil works projects were authorized decades ago and unquestionably require additional studies, as a matter of law, before they can properly move to construction. These reviews should be completed and carefully considered before decisions are made to fund project construction. To address this critical issue, we recommend adding a new subsection to § 1013(c)(1)(A) (page 24) to read:

> "(iv) Authorized water resources development projects that require additional or supplemental reviews under the National Environmental Policy Act, Clean Water Act, Endangered Species Act, or other federal environmental law shall be identified as eligible only for funding to complete the required reviews."

Section 1017 (Continuing authority programs). The National Wildlife Federation supports granting non-federal cost share reductions for small and disadvantaged communities seeking to implement Continuing Authorities Program projects. Many communities might otherwise lack the resources needed to undertake projects that could significantly reduce their risk or improve their environment. We also support the increases in the authorization levels for the Section 204, 206, and 1135 Continuing Authorities Programs. We encourage use of the Section 205 Continuing Authorities Program to advance nonstructural and natural and nature-based flood damage reduction projects. We also urge the Senate to increase the authorization levels for the Upper Mississippi River Restoration program established by section 1103(e)(3) of the Water Resources Development Act of 1986 (33 U.S.C. 652(e)(3)). The authorization level for this important program has remained flat for decades, even as the health of the vitally important Upper Mississippi River continues to decline.

Support Section 1019 (Sediment management plan). The National Wildlife Federation supports the development of five-year sediment management plans by Army Corps districts undertaking any dredging activities, and their publication for public review and comment. Such plans would help to identify and inform strategic opportunities to increase ecologically-responsible beneficial use of sediment for ecosystem restoration and community resilience.

Support Section 1021 (Aging infrastructure). The National Wildlife Federation supports funding enhanced inspection of aging infrastructure. Because the nation's water resources infrastructure is overbuilt, as a nation we have more infrastructure than we can adequately maintain. Lack of adequate maintenance funds has resulted in a lack of oversight and maintenance of infrastructure that no longer serves its authorized purpose. Over time, this can create dangerous situations such as crumbling water resources infrastructure that may fail unexpectedly. Prioritizing and funding inspection of such infrastructure, and planning for safe removal as appropriate, will protect public safety and improve ecosystem health.

Amend Section 1022 (Expediting repairs and recovery from flooding). While the National Wildlife Federation appreciates the importance of expediting flood recovery efforts, as written this section would allow approval of costly, and potentially dangerous levee construction without an appropriate analysis of less costly and less dangerous solutions and without fully addressing important and long-standing public interest criteria. As written, this provision could also undermine the Army Corps' important mandate to ensure that the plan does not impair the usefulness of a civil works project or harm the public. To address these concerns, the National Wildlife Federation recommends that § 1022

be amended by striking subsection (b), and adding the phrase "section 14 of the Act of March 3, 1899 (33 U.S.C. 408)" as a new subsection (c)(4).

Support Section 1035 (Chesapeake Bay environmental restoration and protection program). The National Wildlife Federation supports this section which increases the authorized level of appropriations for the important Chesapeake Bay environmental restoration program to $90 million, and sets a per project total cost limit of $15 million for this program. Section 1035 also directs the Secretary to carry out public outreach and workshops to assist non-federal interests in understanding and participating in this program.

Strengthen Section 1036 (Implementation guidance; reports: and briefings). The National Wildlife Federation supports this provision that will help ensure effective oversight of critical Army Corps obligations. We note, however, that there will be situations where existing data may not provide information that is essential to assessing the adequacy of the Corps' compliance with these obligations. To help address that issue, we recommend adding language to § 1036(b) to clarify that in completing the required reports, the Corps is expected to obtain new data to evaluate future conditions if the existing data does not account for likely future changes in hydrologic conditions.

Support Section 1037 (Interagency Task Force on Small Dams and Fish Passages). The National Wildlife Federation supports this provision that establishes an interagency task force to, among other things, develop a national strategy for identifying, prioritizing, and successfully removing or refurbishing small dams of concern. Removing small dams is a common-sense solution for improving public safety, reducing flood risks, improving water quality, restoring essential fish and wildlife habitat, and improving ecosystem and environmental health. Removing small dams is one of the most effective and efficient ways to restore fish and aquatic habitat.

Amend Section 1040 (Rehabilitation of flood control pump stations affecting Corps of Engineers flood risk management projects). The National Wildlife Federation urges Congress to amend this section, which authorizes increases to the capacity of eligible pumping stations and related drainage measures subject solely to a determination "that the rehabilitation is feasible." Operation and construction of pumping plants can result in highly significant adverse impacts to wetland resources, water quality, in-stream flows, and wildlife habitat. Increasing pumping capacity can also increase flood risks for communities and businesses along the waters that receive the pumping plant discharges. Increasing pumping plant capacity and related drainage can also require major new construction in highly sensitive habitats. Congress should ensure that the full range of impacts are carefully assessed prior to any decision to increase pumping plant capacity by amending § 1040 to require full compliance with federal environmental laws, including the National Environmental Policy Act and Clean Water Act, before a decision may be made regarding increasing any pumping plant capacity.

Amend Section 1041 (Brandon Road study). The National Wildlife Federation urges Congress to establish a 100 percent federal cost share for any project authorized to be constructed as a result of this feasibility study. Full federal funding is appropriate because the critical benefits provided by this project have vital national implications. No one state (in this case Illinois) should be burdened with the responsibility for paying to protect other states from the ravages of invasive carp. The Brandon Road project will also demonstrate the effectiveness of technology that other states, like Kentucky and Tennessee, can take advantage of in dealing with their own carp problems.

Strike Section 1052 (Reviewing hydropower at Corps of Engineers facilities). The National Wildlife Federation urges Congress to strike this section which would require the Corps to evaluate and recommend operational changes to increase hydropower outputs, subject only to the final recommendations being consistent with authorized project purposes. Under this section, impacts to the environment are to play no role despite the fact that the impacts will almost certainly include highly significant harm to river and floodplain health, in-stream flows, water quality, fish and wildlife resources, and possibly public safety. At a minimum, this section should be amended to require that any resulting recommendations be consistent with the National Water Resources Planning Policy (42 USC 1962-3), assess and address adverse environmental impacts, and be made only after full compliance with the National Environmental Policy Act, Clean Water Act, Endangered Species Act, Fish and Wildlife Coordination Act, and other applicable environmental laws.

Amend Section 1053 (Establishing permanent features from emergency response measures). The National Wildlife Federation recognizes the burden that repeated emergency flood response efforts can place on small or disadvantaged communities. However, we are concerned that this section fails to ensure a full evaluation of alternative approaches, including natural infrastructure and levee setbacks, that may be able to provide the same or better levels of protection at less cost and with fewer future flood risks to the community and others. This section instead prioritizes somehow transforming a feature that was designed to be a temporary, rapid-response solution into one that is permanent. To ensure cost-effective, meaningful protection to these at-risk communities, the National Wildlife Federation recommends amending § 1053 to require a full evaluation of nonstructural and natural infrastructure solutions, including levee setbacks, and to waive the non-Federal cost share for feasibility studies carried out pursuant to this section that fully assess a natural infrastructure solution (*see* the related recommendation for Facilitating Flood Risk Management Planning for Underserved Communities discussed in our attached statement).

Amend Section 1054 (Studies of water resources development projects by non-Federal interests). While the National Wildlife Federation recognizes that some non-federal sponsors have the capacity and expertise needed to develop feasibility studies, the process established under 33 U.S.C. 2231 (which is being amended by section 1054) fails to establish any baseline capacity criteria and fails to lay out the processes that should be followed when a non-federal sponsor is carrying out federal planning responsibilities. This lack of direction has resulted in significant problems with feasibility studies carried out by some non-federal sponsors, including but not limited to: major confusion regarding which activities are the responsibility of the Corps and which are the responsibility of the non-federal sponsor; the inability of the non-federal sponsor to conduct required technical analyses; the inability of the non-federal sponsor to effectively engage the public and other federal agencies; the inability of the non-federal sponsor to carry out required actions that can be implemented only by federal agencies; and the inability of the public to obtain information about the process being used. We urge the Senate to amend § 1054 to ensure that these problems are addressed, and to refrain from expanding the non-federal sponsor planning process as proposed until these underlying problems are fixed. To this end, we strongly recommend that Congress direct the Corps to develop detailed guidelines that provide a clear roadmap to the planning process that is to be used by non-federal sponsors, the entities responsible for each step of that process, and the entity responsible for responding to public inquiries and requests for information.

Strike Section 1069 (Inland Waterway Transportation). The National Wildlife Federation urges the Senate to strike this section that would significantly increase the Federal cost share for construction and major rehabilitation of navigation projects on the inland waterways systems. Section 1069 would create

an enormous additional subsidy for the navigation industry which already pays just 10% of the costs of the inland waterway system, even though that system moves only 4 to 5% of U.S. freight commercial tonnage (as of 2014). By contrast freight rail operators pay 100% of the costs of the rail system, and cars and trucks pay about 80% of the costs of maintaining the highway system (through a fuel tax).

These enormous additional subsidies will facilitate unwise investments that harm the environment and can increase flood risks for river communities. Documenting significant declines in traffic on the inland waterway system and existing capacity, a 2018 report by the Congressional Research Service calls into question the need for new construction on the system. For example, as highlighted in that report: traffic on the Upper Mississippi River system has been declining and even during their "busiest months" the seven locks targeted for expansion under the NESP program average just 10 tows per day; the Upper Ohio River has seen a "long-term downward trend in traffic levels"; and the volume of coal, which accounts for 80% of tonnage, transported on the Lower Monongahela River, is half of what it was in the late 1990s and three of the last four operating coal-fired electric power plants on the river closed between 2013 and 2017.

Amend Section 1070 (Federal interest determination). The National Wildlife Federation supports reinstatement of a pre-feasibility study assessment of whether a project may be in the federal interest and, as a result, appropriate for feasibility-level review. However, it is important that this assessment not make a final determination of federal interest or prematurely impose limits on the evaluation of alternative solutions, which should instead be determined only after the full evaluation required by the feasibility study and environmental review process. To help achieve this goal, we urge the Senate to amend § 1070(b)(1) (page 113, lines 6-9) to read:

> "(1) IN GENERAL.—Before initiating a study under subsection (a), the Secretary shall determine the Federal interest in carrying out the feasibility study based on a preliminary analysis of potential solutions and environmental impacts that may be examined in the feasibility study.

Support Section 1073 (Completion of reports). The National Wildlife Federation supports the authorization of $50 million in appropriations to complete any outstanding reports from previous bills and amendments in those acts. We recommend that this funding be used to prioritize completion of the studies authorized by Section 1102 and Section 1103 of America's Water Infrastructure Act of 2018. These studies are essential for improving the efficiency of the Army Corps' planning and construction activities and for ensuring accurate evaluation of project costs and benefits, including consideration of the social and environmental costs and benefits of project alternatives over a project's full lifecycle.

Support Section 1074 (Delegation of work for comprehensive Everglades Restoration Plan Projects). The National Wildlife Federation supports this amendment to the 2000 Comprehensive Everglades Restoration Plan (CERP) to allow for the delegation of project design and construction of critical Everglades restoration projects to the non-federal sponsor, in compliance with all existing federal laws. This adjustment will help to ensure that CERP projects advance as efficiently as possible through a shared partnership between the Corps and the non-federal sponsor.

Amend Section 1080 (Disposal of dredged materials). The National Wildlife Federation supports efforts to improve the strategic use of clean and appropriately sourced dredged materials to maximize environmentally sound flood and storm damage reduction measures and increase other environmental benefits. To efficiently and effectively implement assessment of the identified beneficial use criteria,

the National Wildlife Federation recommends amending the first portion of § 1080(a) (page 124, lines 16-22) to read as follows:

> "(a) Upon enactment of this Act, the Secretary shall ensure that, when evaluating the placement of dredged materials from operation and maintenance of water resources development projects, the Corps of Engineers shall consider . . ."

Strike Section 1089 (Report on benefits calculation for flood control structures). While the National Wildlife Federation strongly supports improvements to the Corps benefit-cost analysis process, this study directive runs counter to the long-standing, fundamental policy of sound floodplain management (confirmed by the Association of State Floodplain Managers)—levees "should be used only as a method of last resort for providing a LIMITED means of flood risk reduction for existing development" because levees create a false sense of security and incentivize increased development behind structures that inevitably will overtop or fail leading to catastrophic threat to life and property. Instead of pursuing a study that seeks information and recommendations related solely to accounting for reduced flood insurance costs behind a levee, Congress should ensure that the Corps conducts the study required by section 1103 (study on economic and budgetary analyses) of America's Water Infrastructure Act of 2018, which would ensure a comprehensive look at the Corps' benefit-cost analysis process.

Strike Section 1090 (High water-low water preparedness). This provision creates an enormous loophole for carrying out major navigation construction as so-called "emergency mitigation projects" whenever the Corps makes a determination that a wide-array of situations exist or are "anticipated to exist." This section is so vaguely written that it could allow the use of undefined emergency procedures to carry out virtually any type of activity, including construction of new locks, lock bypass channels, and major rehabilitation. Critically, the Corps already has extensive authority to utilize emergency procedures to quickly carry out navigation dredging where the failure to do so "would result in an unacceptable hazard to life or navigation, a significant loss of property, or an immediate an unforeseen significant economic hardship if corrective action is not taken." 33 C.F.R. § 335.7, *see also* 33 C.F.R. § 337.7. The Corps may also rely on 33 C.F.R. 230.8 to promptly carry out other types of emergency actions.

Section 1093 (Harmful algal blooms demonstration program). The National Wildlife Federation supports the authorization of this program to determine the causes of, and how to effectively treat and eliminate, harmful algal blooms within the Great Lakes and Lake Okeechobee, Florida, and applicable tributaries. Harmful algal outbreaks have plagued these systems for many years, imperiling the local economies and ecosystems. Consultation and coordination with other relevant federal agencies, including the EPA, USDA, and relevant state agencies, will be important to achieving the goals of this provision.

Support Section 1095 (Selection of dredged material disposal method for certain purposes). The National Wildlife Federation supports this section which could facilitate the strategic use of clean and appropriately sourced materials dredged from Federal projects to maximize environmentally sound flood and storm damage reduction measures and increase other environmental benefits.

Support Section 1098 (Small flood control projects). The National Wildlife Federation supports this provision which amends the section 205 small flood projects Continuing Authority Program to cover projects that use natural or nature-based features in in addition to structural and non-structural

approaches. Natural and nature-based features (which are another term for natural infrastructure) can provide highly effective and cost-effective flood damage reduction benefits while also protecting the environment.

Support Section 1099 (Comprehensive study of Mississippi River System from Old River Control Structure to Gulf of Mexico). The National Wildlife Federation supports the authorization of a $25 million study on the lower Mississippi River from the Old River Control structure south. The Mississippi River is one of our nation's most commercially and ecologically important waterways, but it also faces significant threats from climate change and more extreme weather. This study can identify solutions for enhancing the resilience of communities and ecosystems along the lower Mississippi River in both Louisiana and Mississippi that face increasing risks of flooding, and provide critical habitats for birds, wildlife, and economically important fisheries.

Strike Section 1101 (Flexibility for projects). The National Wildlife Federation urges the Senate to strike Section 1101. This section undermines meaningful project reviews by arbitrarily reducing the already short timeline goal for completing complex feasibility studies and environmental reviews by a full year, regardless of project scope. This section also directs the Secretary to take shortcuts to meet the new two-year goal and creates confusion regarding the Corps' ability to utilize existing statutory criteria to extend the timeline for completing particularly complex project studies beyond three years when necessary. This will put additional pressure on the capacity-constrained Corps to finalize studies, even when critical information needed to assess environmental and public safety impacts is missing. This section priorities the speed of planning over identifying solutions that will solve the water resources problem in a cost-effective, safe, and environmentally sound manner.

Strike Section 1102 (Development of categorical exclusions). The National Wildlife Federation urges the Senate to strike Section 1102. This section undermines meaningful project reviews by directing an extensive array of federal agencies to adopt civil-works related categorical exclusions to speed up project reviews, including for categories of activities that clearly have significant effects, individually and cumulatively, such as repair and rehabilitation of roads and levees, construction of new roads, and some types of dredging. (33 C.F.R. §230.9). Categorical exclusions should be used judiciously since they allow projects to proceed without review under the National Environmental Policy Act and the corresponding public input, evaluation of impacts, and analysis of potentially more effective alternatives.

Strengthen Section 1202 (Expedited Completion). The National Wildlife Federation urges Congress to amend section 1202(53) to add language requiring the Corps to make the final report and all supporting documents related to the required economic review of the navigation and ecosystem sustainability program available to the public, including on the internet. Despite the Corps' current requirements to provide such planning information to the public, we have been advised that the Corps does not intend to do so for this project. Given the controversial history of the project, it is essential that information used in the decision-making process be made publicly available for review.

Support Section 1308 (Comprehensive Everglades Restoration Plan). The National Wildlife Federation supports this provision which states that no projects within the Comprehensive Everglades Restoration Plan (CERP) should be subject to deauthorization prior to 2030. Everglades restoration through CERP is a multi-year, large-scale effort with many interconnected component projects. Premature deauthorization of component projects within CERP could have negative implications for progress on the broader restoration effort.

Amend Section 1501 (Small water storage projects). The National Wildlife Federation has serious concerns with this provision that would create an entirely new Corps program focused on constructing new water supply dams and reservoirs, which will divert scarce Corps resources away from other programs and the agency's $100 billion project backlog. Critically, despite being labelled as "small", the covered storage projects can have highly significant adverse impacts on the nation's water resources, river and wetland health, and fish and wildlife. At a minimum, we urge the Senate to amend § 1501 to clearly state that such projects can proceed only upon full compliance with federal environmental laws, including the National Environmental Policy Act, Clean Water Act, Endangered Species Act, and Fish and Wildlife Coordination Act.

Amend Section 1507 (GAO Report on certain federal dams and reservoirs). The National Wildlife Federation appreciates the accounting of water control manual updates that this section would provide. However, we object to the section's sole focus on obtaining policy recommendations "to allow for increased water storage" at the identified Federal dams and reservoirs. There are many competing uses for water stored in Federal dams and reservoirs, including the critical need for ensuring adequate downstream river flows to support fish and wildlife, downstream water quality, and recreational opportunities at many locations. To ensure evaluation of process and policy changes for addressing these critical needs, we recommend amending § 1507(3) (page 208, lines 9-12) to read:

> "(3) recommendations for changes to the process and policies referred to in paragraph (2) to allow for effective use of forecast-informed management to improve ecosystem health, including more natural river flows, and water storage capabilities at the Federal dams and reservoirs described in paragraph (1)."

Subtitle F (Invasive Species). The National Wildlife Federation appreciates and supports the inclusion of this Subtitle F on invasive species. Invasive species are a significant threat not only to the U.S. economy but also to biodiversity and strong, coordinated federal and state action is required to address this threat. We are pleased to see the inclusion of the Asian Carp and Upper Missouri pilot programs, the focus on the South Florida Ecosystem and western river systems, and the overall emphasis on prevention programs and innovative strategies.

Title II – Clean Water

It is increasingly clear that our nation's water infrastructure is no longer up to the task of keeping our lakes, rivers, and streams clean and safe – threatening America's drinking water supply, natural flood protection, fish and wildlife habitat, and access to outdoor recreation. Pipes, septic tanks, and treatment facilities have exceeded their intended lifespans and are breaking down, with climate change further stressing these systems. Often, the most severe impacts are being disproportionately borne by low-income communities and communities of color. The EPA estimates that we need to invest over $270 billion in maintaining and repairing our wastewater infrastructure over the next twenty years just to meet current environmental and public health standards.

Overall, the National Wildlife Federation appreciates the Committee's commitment to increasing investment in our nation's water infrastructure, and to ensuring that low-income, minority, rural, and other disadvantaged communities have access to the programs in this Title, as well as technical support. Additionally, the National Wildlife Federation applauds the committee for drafting a bill that does not

advance damaging regulatory provisions that would lengthen the terms of National Pollutant Discharge Elimination System permits issued to state and municipal dischargers.

To help address the need for additional water infrastructure funding to safeguard our water resources, the National Wildlife Federation urges the Senate to consider the below recommendations for Title II of America's Water Infrastructure Act of 2020 (Discussion Draft).

Support Section 2001 (Clean water infrastructure resiliency and sustainability program). The National Wildlife Federation supports Section 2001, which establishes a Clean Water Infrastructure Resiliency and Sustainability Program. This program will help water systems across the country improve their resilience in light of the growing threat of natural hazards, including through funding natural infrastructure projects. Climate change poses a further threat to our already stressed wastewater and stormwater infrastructure.

Support Section 2002 (Increased funding for technical assistance). The National Wildlife Federation supports Section 2002, which increases the authorized amount for technical assistance grants to $75 million, and directs at least $50 million of that funding to rural, small, and tribal communities.

Support Section 2007 (Sewer overflow and stormwater reuse municipal grants). The National Wildlife Federation supports Section 2007, which reauthorizes and increases funding for Clean Water Act Section 221 grants to help communities address stormwater and sewer overflows, including through the use of green infrastructure. Additionally, this section creates a 15% set aside to help address rural needs.

Amend Section 2012 (Use of clean water State revolving loan funds). The National Wildlife Federation strongly urges the Committee to amend Section 2012, which as drafted creates confusing and contradictory language regarding subsidization of CWSRF funds. As currently drafted, Section 2012 requires states to use a *maximum* of 10% of the state's Clean Water State Revolving Funds for grants, negative interest loans, and loan forgiveness, by stating "a State shall use not more than 10 percent of a capitalization grant" to provide the additional subsidies. This contradicts the existing cap contained in Section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1383(i)) which establishes a maximum cap of 30% of each state's CWSRF funds for providing additional subsidization. This section 2012 also creates a new subsection dealing with additional subsidization without appearing to recognize the existing subsidization provision in 33 U.S.C. 1381(i). Rather than create a new additional subsidization subsection, we recommend that 33 U.S.C. 1383(i) be amended to require that no *less* than 10% of each state's annual CWSRF capitalization grant be directed in the form of additional subsidization. This will help communities that need assistance the most, including small and historically disadvantaged communities, receive funding to address water quality needs.

Support Section 2014 (Water infrastructure financing reauthorization). The National Wildlife Federation supports Section 2014, which would reauthorize the Water Infrastructure Finance and Innovation Act (WIFIA) at $50 million annually.

Strengthen Section 2015 (Reauthorization of clean water State revolving funds). While the National Wildlife Federation is pleased to see that the draft bill reauthorizes the Clean Water State Revolving Fund (CWSRF), we recommend that the Committee amend Section 2015 to more adequately address our clean water infrastructure challenges by significantly increasing the authorized amount to at

least $6 billion – a level that will better enable states to address their significant water infrastructure improvement needs. As mentioned above, the EPA estimates that we need to invest over $270 billion in maintaining and repairing our wastewater infrastructure over the next twenty years just to meet current environmental and public health standards. We also recommend that the reauthorization codify a 20% set aside of CWSRF funds for the green project reserve for projects that incorporate green and nature-based infrastructure. Investing in water infrastructure—including green infrastructure—protects water quality, enhances wildlife habitat, and creates quality job opportunities for America's workers.

Support Section 2017 (Small and disadvantaged community analysis). The National Wildlife Federation strongly supports Section 2017, which directs EPA to carry out an equity analysis using the EPA's Environmental Justice Mapping and Screening Tool to look at how states have historically dispersed Clean Water and Drinking Water State Revolving Funds to small and disadvantaged communities and identify new opportunities to improve the distribution of these funds in a more equitable way to low-income communities, rural communities, and indigenous communities. A detailed analysis like this will help inform changes to the framework of the SRF program to lower the cost of infrastructure financing in vulnerable communities and ensure that states provide loans and grants in a more equitable way.

Title III – Tribal and Other Matters

Support Section 3003 (Mapping and screening tool). The National Wildlife Federation supports Section 3003, which requires the EPA to continue to update the existing Environmental Justice Screening and Mapping Tool, or an equivalent tool, annually. This section also requires EPA to make this tool available to the public.

Strengthen Section 3006 (Great Lakes Restoration Initiative). The National Wildlife Federation supports reauthorizing the Great Lakes Restoration Initiative, which helps protect and restore the world's largest freshwater ecosystem. The section increases authorized funding for the program to $375 million for FY22. The National Wildlife Federation recommends strengthening this section by including the entirety of S. 2295, the Great Lakes Restoration Initiative Act of 2019, which authorizes the program for five years and ramps up federal funding each fiscal year, to $475 million annually in FY 2026. This increase will help accelerate ongoing work to restore wetlands and wildlife habitat, reduce polluted runoff, prevent invasive species, clean up toxic contaminants, and respond to emerging threats.

Support Section 3007 (San Francisco Bay restoration grant program). The National Wildlife Federation supports Section 3007, which establishes a grant program to support San Francisco Bay restoration. This federal funding will help restore the Bay Area's wetlands, improve local water quality, and improve coastal resilience. The San Francisco Bay Delta Estuary is the largest estuary on the west coast of North America, supports a wide array of plant, fish, and wildlife species, and helps sustain the region's economy.

Support Section 3009 (Puget Sound coordinated recovery). The National Wildlife Federation supports Section 3009, which provides federal assistance for activities that protect the water quality of Puget Sound and creates a Puget Sound Recovery National Program Office at the EPA. This bill will help coordinate efforts to restore Puget Sound, which is critical to the region's quality of life.

Contact Information

Melissa Samet, Senior Water Resources Counsel
415-762-8264, sametm@nwf.org,

Jessie Ritter, Director Water Resources and Coastal Policy
202-797-6886, ritterj@nwf.org

National Wildlife Federation
1200 G St. NW, Suite 900
Washington, DC 20005

Statement of the National Wildlife Federation
Melissa Samet, Senior Water Resources Counsel

U.S. Senate Committee on Environment and Public Works
Recommendations for Improving the Nation's Water Resources Planning and Resilience

April 28, 2020

Chair Barrasso, Ranking Member Carper, and Members of the Committee, the National Wildlife Federation appreciates the opportunity to provide this statement on recommendations for improving the nation's water resources planning and resilience.

The National Wildlife Federation is the nation's largest conservation education and advocacy organization with 6 million members and supporters, and affiliate conservation organizations in 52 states and territories. Our members represent the full spectrum of people who care deeply about wildlife: they are bird and wildlife watchers, hikers, gardeners, anglers, hunters, foresters, and farmers. The National Wildlife Federation has championed clean and healthy rivers and streams since our founding in 1936. Conserving our wetlands, streams, rivers, and shorelines for wildlife and communities is at the core of our mission.

The National Wildlife Federation has extensive experience with all aspects of U.S. Army Corps of Engineers (Corps) planning, including ecosystem restoration, flood damage reduction, navigation, and reservoir operations. We also have the benefit of understanding needed water resources project and policy improvements from hundreds of organizations across the country. The Federation leads the Water Protection Network, a coalition of more than 250 local, regional, and national organizations working to ensure that America's water resources policies and projects are environmentally and economically sound. The Federation also has a long history working on large-scale ecosystem restoration efforts around the country that involve the Corps, including in the Everglades and Mississippi River Delta.

Healthy rivers, floodplains, wetlands, and shorelines are essential for resilient communities, resilient populations of fish and wildlife, and a vibrant outdoor economy. These natural systems also reduce the need for structural flood and storm damage reduction projects and improve the effectiveness and resilience of levees and other water resources infrastructure. As we anticipate more frequent and severe storms and weather events, it is essential that we consider all tools at our disposal, including the use of natural systems to help absorb floodwaters and buffer communities.

The value of natural systems for protecting communities is well recognized. In a 1972 study evaluating options to reduce flooding along Charles River in Massachusetts, the Corps concluded:

> "Nature has already provided the least-cost solution to future flooding in the form of extensive [riverine] wetlands which moderate extreme highs and lows in streamflow. Rather than attempt to improve on this natural protection mechanism, it is both prudent and economical to leave the hydrologic regime established over millennia undisturbed."[1]

Wetlands prevented $625 million in flood damages in the 12 coastal states affected by Hurricane Sandy, and reduced damages by 20 to 30 percent in the four states with the greatest wetland coverage.[2] Coastal wetlands reduced storm surge in some New Orleans neighborhoods by two to three feet during Hurricane Katrina, and levees with wetland buffers had a much greater chance of surviving Katrina's fury than levees without wetland buffers.[3] As aptly noted by the Reinsurance Association of America: "One cannot overstate the value of preserving our natural systems for the protection of people and property from catastrophic events."[4]

Through our extensive experience with Corps projects across the country—and with communities affected by those projects—it is clear that the Corps must do much more to protect, restore, and use healthy natural systems. To help ensure that the Corps can achieve these vital goals, the National Wildlife Federation respectfully urges Congress to continue to advance important ecosystem restoration projects and enact the following new policy reforms to:

- **Remove Arbitrary Barriers to Using Natural Infrastructure.** Congress should clarify that natural infrastructure projects qualify for the same cost share as nonstructural projects. The decade-old nonstructural cost share requirement eliminates the risk of unfairly burdening non-federal sponsors for alternatives that often require less construction but more land by capping total non-federal costs at 35% (including land, easements and rights-of-way). Natural infrastructure and nonstructural measures are both cost-effective solutions for reducing flood risks and increasing resilience while avoiding harm to the environment, and should be treated consistently for cost-share purposes.

- **Facilitate Flood Risk Management Planning for Underserved Communities.** Congress should help underserved communities fully evaluate their flood risk reduction options by waiving their non-federal cost share for flood and storm damage reduction feasibility studies, and requiring that those studies evaluate natural infrastructure solutions. Study costs can be a significant barrier for addressing flooding that disproportionately impacts minority, low-income, and/or indigenous populations. This reform would help underserved communities evaluate their flood

---

[1] American Rivers, Unnatural Disasters, Natural Solutions: Lessons From The Flooding Of New Orleans (2006) (quoting USACE, from Massachusetts Department of Fish and Game, *Functions of Riparian Areas for Flood Control*, http://www.mass.gov/dfwele/river/pdf/riparian_factsheet_1.pdf.)

[2] Narayan, S., Beck, M.B., Wilson, P., et al., The Value of Coastal Wetlands for Flood Damage Reduction in the Northeastern USA. Scientific Reports 7, Article number 9463 (2017), doi:10.1038/s41598-017-09269-z (available at https://www.nature.com/articles/s41598-017-09269-z).

[3] Bob Marshall, *Studies abound on why the levees failed. But researchers point out that some levees held fast because wetlands worked as buffers during Katrina's storm surge,* The New Orleans Times-Picayune (March 23, 2006).

[4] Restore America's Estuaries, *Jobs & Dollars BIG RETURNS from coastal habitat restoration* (September 14, 2011) (http://www.estuaries.org/images/81103-RAE_17_FINAL_web.pdf).

risk reduction options, including natural infrastructure, which can be a sustainable, environmentally protective, and less expensive solution for avoiding and reducing risks while also improving public health and well-being.

- **Utilize Federal and State Expertise.** Congress should direct the Corps to utilize recommendations made pursuant to mandatory Fish and Wildlife Coordination Act reviews that derive from the special expertise of federal and state fish and wildlife experts – *e.g.*, methods and metrics for assessing fish and wildlife impacts and mitigation opportunities. The Corps often ignores these critically important recommendations, leading to projects that cause unnecessary harm and to mitigation plans that do not work. Utilizing these carefully developed state and federal expert recommendations is a common sense, cost-effective way to make projects better and improve planning efficiency.

- **Ensure Compliance with Long-Standing Mitigation Requirements.** Congress should ensure that Corps projects properly comply with long-standing Congressional directives to mitigate fish and wildlife impacts by clarifying the types of project studies that trigger the civil works mitigation requirements. The Corps has failed to apply these requirements in a number of critical situations in clear violation of Congressional intent and direction. Explicitly defining the types of studies that trigger mitigation will help protect the nation's fish and wildlife, as long-required by Congress.

- **Accurately Account for Project Costs and Benefits.** Congress should modernize the criteria used to assess costs and benefits during project planning, including by accounting for increased ecosystem services as a project benefit and lost ecosystem services as a project cost. Ecosystem services are the contributions that ecosystems provide to our well-being, including benefits like flood control, water purification, and habitat for wildlife. Corps benefit-cost analyses often significantly understate actual construction costs; fail to account for the costs of environmental damage; and include benefits from activities that are contrary to law, policy, and sound resource management. Accurately accounting for costs and benefits is critical for making effective decisions regarding the planning, budgeting, prioritization, and authorization of Corps projects.

- **Increase the Corps' Organizational Capacity to Improve Resilience.** Congress should increase the Corps' capacity to improve the resilience of the nation's water resources by establishing a Directorate of Ecological Services (with significant budgeting authority) within the Office of the Chief of Engineers. This Directorate should be tasked with ensuring that existing programs, authorities, and operations take full advantage of natural infrastructure and adopt modern, comprehensive planning approaches. The Corps' structure prevents the agency from capitalizing on the many free services provided by natural systems. It also promotes piecemeal planning that has increased flood risks and flood recovery costs for some communities.

Protecting the nation's waters and increasing the resilience of the nation's water resources infrastructure will also require Congress to defend the integrity of the laws that drive these outcomes, including the National Environmental Policy Act, the Clean Water Act, and the Endangered Species Act. We also urge this committee to carefully oversee the Corps' compliance with the letter and spirit of these laws when planning, constructing, and operating projects.

In our statement below, we describe the multiple benefits provided by healthy natural systems that are essential for resilient communities, wildlife, and water resources infrastructure. We then highlight the need to advance key ecosystem restoration projects to restore healthy systems, and provide more detailed explanations of the policy reforms outlined above.

1. Healthy Natural Systems Provide Multiple Benefits for People and Wildlife

Healthy natural systems provide multiple benefits for communities, wildlife, and the outdoor economy. Protecting, restoring, and using healthy systems to protect communities will increase the resilience of the nation's water resources infrastructure.

Healthy Natural Systems Protect Communities

As highlighted earlier in this statement, healthy natural systems provide critical protections for communities. Healthy rivers, floodplains, wetlands, and shorelines can significantly reduce the need for new flood and storm damage reduction projects, and provide important protections for structural projects like levees and floodwalls.

For example, wetlands act as natural sponges, storing and slowly releasing floodwaters after peak flood flows have passed, and coastal wetlands buffer the onslaught of hurricanes and tropical storms. A single acre of wetland can store one million gallons of floodwaters.[5] Just a 1 percent loss of a watershed's wetlands can increase total flood volume by almost seven percent.[6] Restoring a river's natural flow and meandering channel, and giving at least some floodplain back to the river, slows down floodwaters and gives the river room to spread out without harming homes and businesses.

Wetlands prevented $625 million in flood damages in the 12 coastal states affected by Hurricane Sandy, and reduced damages by 20% to 30% in the four states with the greatest wetland coverage.[7] Coastal wetlands reduced storm surge in some New Orleans neighborhoods by two to three feet during Hurricane Katrina, and levees with wetland buffers had a much greater chance of surviving Katrina's fury than levees without wetland buffers.[8] California's wetlands provide an estimated $16.6 billion in benefits each year (in 2013 dollars) by reducing flood damages, recharging groundwater, purifying water supplies, providing recreational opportunities, and supporting healthy populations of fish and wildlife.[9]

Healthy Natural Systems Sustain Wildlife

Healthy rivers, floodplains, and wetlands provide vital fish and wildlife habitat and allow people and wildlife to benefit from natural flood cycles. In a healthy, functioning river system, precipitation events and other natural increases in water flow can deposit nutrients along floodplains creating fertile soil for bottomland hardwood forests. Sediment transported by these increased flows form islands and back

---

[5] Environmental Protection Agency, *"Wetlands: Protecting Life and Property from Flooding." EPA 843-F-06-001.* (2006) (factsheet).

[6] Demissie, M. and Abdul Khan. 1993. "Influence of Wetlands on Streamflow in Illinois." Illinois State Water Survey, Contract Report 561, Champaign, IL, Table 7, pp. 44-45.

[7] Narayan, S., Beck, M.B., Wilson, P., et al., The Value of Coastal Wetlands for Flood Damage Reduction in the Northeastern USA. Scientific Reports 7, Article number 9463 (2017), doi:10.1038/s41598-017-09269-z (available at https://www.nature.com/articles/s41598-017-09269-z).

[8] Bob Marshall, *Studies abound on why the levees failed. But researchers point out that some levees held fast because wetlands worked as buffers during Katrina's storm surge,* The New Orleans Times-Picayune (March 23, 2006).

[9] Harold Mooney and Erika Zavalata (editors), Ecosystems of California, University of California Press (2016) at 684.

channels that are home to fish, birds, and other wildlife. By scouring out river channels and riparian areas, these events prevent rivers from becoming overgrown with vegetation. They also facilitate breeding and migration for a host of fish species, and provide vital connectivity between habitat areas. In the deltas at the mouths of rivers, increased flows release freshwater and sediment, sustaining and renewing wetlands that protect coastal communities from storms and provide nurseries for multibillion dollar fisheries.

Wetlands are some of the most biologically productive natural ecosystems in the world, and support an incredibly diverse and extensive array of fish and wildlife. America's wetlands support millions of migratory birds and waterfowl. Up to one-half of all North American bird species rely on wetlands. Although wetlands account for just about 5 percent of land area in the lower 48 states, those wetlands are the only habitat for more than one third of the nation's threatened and endangered species and support an additional 20 percent of the nation's threatened and endangered at some time in their life. These same wetlands are home to 31 percent of the nation's plant species.[10]

Healthy Natural Systems Drive the Outdoor Economy

Healthy rivers, floodplains, and wetlands are economic drivers for outdoor recreation and commercial fishery-based economies. Projects that restore those resources are also an important creator of jobs that are by necessity local and cannot be exported.

For example, wetlands are an economic driver for fish and wildlife associated recreation. Hundreds of species of birds, waterfowl, and wildlife and 90 percent of fish caught by America's recreational anglers are wetland dependent. In 2016, fishing, hunting, and other wildlife-associated recreation contributed $156.3 billion to the national economy. "This equates to 1% of Gross Domestic Product; one out of every one hundred dollars of all goods and services produced in the U.S. is due to wildlife-related recreation." Anglers alone spent "$46.1 billion on trips, equipment, licenses, and other items to support their fishing activities" while people who "fed, photographed, and observed wildlife," spent $75.9 billion on those activities.[11]

Ninety five percent of commercially harvested fish and shellfish are wetland dependent. Healthy coasts "supply key habitat for over 75% of our nation's commercial fish catch and 80-90% of the recreational fish catch."[12] Healthy rivers are equally important to these fisheries and the economic benefits they provide. Commercial fishing in the Apalachicola River and Bay (which relies on river flows to remain healthy) contributes $200 million annually to the regional economy and directly supports up to 85 percent of the local population.

Projects that restore natural systems also create jobs. Restore America's Estuaries reports that coastal restoration "can create more than 30 jobs for each million dollars invested" which is "more than twice as many jobs as the oil and gas and road construction industries combined."[13]

---

[10] Environmental Protection Agency, Economic Benefits of Wetlands, EPA843-F-06-004 (May, 2006) (factsheet).
[11] U.S. Fish and Wildlife Service, *2016 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation: National Overview*, Issued August 2017. This study is the source for all quotes and data in this paragraph.
[12] Restore America's Estuaries, *Jobs & Dollars BIG RETURNS from coastal habitat restoration* (September 14, 2011) (http://www.estuaries.org/images/81103-RAE_17_FINAL_web.pdf).
[13] *Id*.

In Louisiana, a proposed $72 million project to restore a 30,000-acre expanse of degraded marsh near downtown New Orleans known as the Central Wetlands Unit would create 689 jobs (280 direct jobs and 400 indirect and induced jobs) over the project's life.[14] Implementation of the entire $25 billion dollars of restoration in Louisiana's Master Plan over the next fifty years would multiply those jobs hundreds of times over. In Florida, restoration of the Everglades will produce more than 442,000 jobs over the next 50 years and almost 23,000 short- to mid-term jobs for the actual restoration work. Restoring the Everglades is also predicted to produce a return of four dollars for each dollar invested.[15]

Coastal restoration projects carried out under the U.S. Fish and Wildlife Service's Partners for Fish and Wildlife Program and Coastal Program in FY2011 returned $1.90 in economic activity for every dollar spent on restoration. In California, the rate of return was $2.10 for every dollar spent.[16] The Department of the Interior's FY2010 investment of $156 million for ecosystem restoration activities in the Chesapeake Bay, Great Lakes, and Everglades supported more than 3,200 jobs and contributed more than $427 million in economic outputs.[17] The Department of the Interior supported 12 to 30 jobs for every million dollars spent on restoration in FY2018.[18]

In Oregon, a $411 million investment in restoration from 2001 to 2010 generated an estimated $752 to $977 million in economic output. The 6,740 restorations projects completed during that time supported an estimated 4,600 to 6,500 jobs, including jobs in construction, engineering, wildlife biology, and in supporting local businesses such as plant nurseries and heavy equipment companies. On average, $0.80 of every $1 spent on a restoration project in Oregon stays in the county where the project is located and $0.90 stays in the state.[19]

2. Congress Should Mainstream Use of Natural Infrastructure to Reduce Flood Damages

America faces significant water resource challenges, driven in part by more intense coastal storms, more frequent and severe flooding, unprecedented droughts, and the unintended consequences from many already-constructed water resources projects. Natural infrastructure is a critical—but underused—tool for solving many of these challenges, while also increasing resilience by protecting and improving the health of the nation's rivers, floodplains, wetlands, and shorelines.

Natural infrastructure, both alone and in conjunction with structural projects, provides important protections from storms and floods. Natural infrastructure avoids the risks of catastrophic failure and overtopping of levees, a risk that has caused the Association of State Floodplain Managers to urge communities to use nonstructural measures whenever possible instead of constructing new levees,

---

[14] Environmental Defense Fund, Profiles in Restoration: The Central Wetlands Unit, Part VI (May 3, 2010) (http://blogs.edf.org/restorationandresilience/category/central-wetlands-unit/).
[15] Everglades Foundation, Everglades Restoration a 4-to1-Investment (http://everglades.3cdn.net/79a5b78182741ae87f_wvm6b3vhn.pdf).
[16] U.S. Fish and Wildlife Service, *Restoration Returns—The Contribution of Partners for Fish and Wildlife Program (PFW) and Coastal Program Restoration Projects to Local US Economies*, February 2014 (http://www.sfbayjv.org/resourcedocs/usfws-restoration-returns.pdf).
[17] The Department of the Interior's Economic Contributions (Department of the Interior, 2011) at 5, 106 (http://www.doi.gov/news/pressreleases/upload/DOI-Econ-Report-6-21-2011.pdf).
[18] U.S. Department of the Interior Economic Report FY2018 (Department of the Interior, 2019) at 4 (https://doi.sciencebase.gov/doidv/files/2018/pdf/FY%202018%20Econ%20Report.pdf).
[19] Whole Watershed Restoration Initiative, Oregon's Restoration Economy, Investing in natural assets for the benefit of communities and salmon (2012)(http://www.ecotrust.org/wwri/downloads/WWRI_OR_brochure.pdf).

which should be limited to the option "of last resort."[20] Natural infrastructure can also provide important buffers that increase the effectiveness and resilience of structural measures.

Many approaches to water resources planning can restore and protect vital natural infrastructure. These include re-establishing the natural form, function, hydrology, and inundation of rivers, floodplains, and wetlands by removing or modifying levees (including moving levees further away from the river, *i.e.*, levee setbacks), dams, river training structures, cut offs, and culverts. Other approaches include purchasing flood or flowage easements; relocating flood-prone properties; using wetland buffers to protect levees; placing protections on wetlands and floodplains; utilizing water conservation and efficiency measures; establishing a navigation scheduling process; and improving management of existing water resources projects.

Living shorelines are an important example of natural infrastructure. Living shorelines are constructed with natural materials including vegetation, fiber logs, and marsh sills to protect coasts from erosion.[21] Living shorelines enhance coastal habitats, including by creating nursery grounds for fish and shellfish, providing feeding grounds for shorebirds and wading birds, and helping reduce water pollution. Living shorelines can be more effective at preventing erosion than structural projects and are highly resilient to storms, as demonstrated by a substantial body of scientific literature. A survey of the North Carolina coast after Hurricane Irene showed no visible damage in living shoreline projects, while 76 percent of bulkheads suffered damage.[22]

There is ample evidence that natural infrastructure solutions can provide highly effective flood and storm damage reduction for communities. For example:

- In the **Gulf Coast regions of Texas, Louisiana, Mississippi, and Florida**, nature-based solutions to reduce coastal flood risks are significantly more cost effective than structural solutions. A 2018 study shows that in this region, the average benefit-cost ratio for nature-based solutions is 3.5 compared to 0.26 for levees/dikes and 0.73 for home elevations. Restoring wetlands could prevent $18.2 billion of losses while costing just $2 billion to carry out. Restoring oyster reefs could prevent $9.7 billion in losses while costing just $1.3 billion. Restoring barrier islands could prevent $5.9 billion in losses while costing just $1.2 billion.[23]

---

[20] Association of State Floodplain Managers White Paper, National Flood Policy Challenges, Levees: The Double-edged Sword, Adopted February 13, 2007.

[21] While living shorelines may not be appropriate everywhere, they are a demonstrably viable, often more effective, and environmentally-preferable alternative to traditional structural projects like bulkheads.

[22] S. Sharma et al., *A Hybrid Shoreline Stabilization Technique: Impact of Modified Intertidal Reefs on Marsh Expansion and Nekton Habitat in Northern Gulf of Mexico,* 90 Ecological Engineering, 339-50 (2016); Amanda S. Lawless et al., *Effects of shoreline stabilization and environmental variables on benthic infaunal communities in the Lynnhaven River System of Chesapeake Bay*, 457 J. of Experimental Marine Biology & Ecology, 41-50 (2014); J. E. Manis et al., *Wave Attenuation Experiments Over Living Shorelines Over Time: A Wave Tank Study to Assess Recreational Boating Pressures,* 19 J. of Coastal Conservation, 1-11 (2015); S. Crooks & R. K. Turner, *Integrated coastal management: sustaining estuarine natural resources*, in 29 Advances in Ecological Res., 241–289 (Nedwell, and Raffaelli., eds. 1999); Rachel K. Gittman et al., *Marshes with and without Sills Protect Estuarine Shorelines from Erosion Better than Bulkheads During a Category 1 Hurricane*, 102 Ocean & Coastal Mgmt., 94-102 (2014).

[23] Borja G. Reguero et al., "Comparing the Cost Effectiveness of Nature-Based and Coastal Adaptation: A Case Study from the Gulf Coast of the United States," PLoS ONE 13, no. 4 (April 11, 2018), https://doi.org/10.1371/journal.pone.0192132.

- In southern **California**, the Surfers' Point Managed Shoreline Retreat Project is restoring 1,800 feet of shoreline with cobble beach and vegetated sand dunes east of the mouth of the Ventura River to "provide resilience and offset risk from sea level rise and storms for 50 years" while maintaining beach access and other coastal resources. Since the project began, Surfers' Point has become Ventura County's most visited beach. Even with only one of two phases completed, the restored beach and dunes withstood 2015-2016 winter high wave conditions without damage, while other locations such as the Ventura Pier and promenade were damaged and the Pierpont neighborhood east of the project site was inundated.[24]

- In northern **California**, the Napa Valley Flood Control Project is using a community-developed "living river" plan to reduce flood damages along the flood-prone Napa River. This plan replaces the Corps' originally-proposed floodwalls and levees with terraced marshes, wider wetland barriers, and restored riparian zones. The Project will restore more than 650 acres of high-value tidal wetlands of the San Francisco Bay Estuary while protecting 2,700 homes, 350 businesses, and over 50 public properties from 100-year flood levels, saving $26 million annually in flood damage costs.[25] Though only partially complete, the project was credited for lowering flood levels by about 2 to 3 feet during the 2006 New Year's Day flood.

- In **Florida**, the Corps is using wetland restoration in the Upper St. John's River floodplain to provide important flood damage reduction benefits. The backbone of this project is restoration of 200,000 acres of floodplain which will hold more than 500,000 acre-feet of water—enough to cover 86 square miles with 10 feet of water—and will accommodate surface water runoff from a more than 2,000 square mile area. The Corps predicts that this $200 million project will reduce flood damages by $215 million during a 100-year flood event, and provide average annual benefits of $14 million. This project was authorized by Congress in 1986 to reduce flood damages along the river.

- In **Illinois**, a 2014 study conducted for the Chicago Wilderness Green Infrastructure Vision, found that natural systems are the least costly and most efficient way to control flooding. Wetlands in the seven-county Chicago metropolitan area provide an average $22,000 of benefits per acre each year in water flow regulation. This study also found that watersheds with 30 percent wetland or lake areas saw flood peaks that were 60 to 80 percent lower than watersheds without such coverage, and that preventing building in floodplain areas could save an average of $900 per acre per year in flood damages.[26]

- In **Iowa**, the purchase of 12,000 acres in easements along the 45-mile Iowa River corridor saved local communities an estimated $7.6 million in flood damages as of 2009. The easement

---

[24] Jean Judge et al., "Surfers' Point Managed Shoreline Retreat Project," in *Case Studies of Natural Shoreline Infrastructure in Coastal California: A Component of Identification of Natural Infrastructure Options for Adapting to Sea Level Rise (California's Fourth Climate Change Assessment).* (The Nature Conservancy, 2017), 9-15, https://scc.ca.gov/files/2017/11/tnc_Natural-Shoreline-Case-Study_hi.pdf.

[25] Napa County California website at https://www.countyofnapa.org/1096/Creating-Flood-Protection.

[26] Will Allen, Ted Weber, and Jazmin Varela, *Green Infrastructure Vision: Version 2.3: Ecosystem Service Valuation.* (The Conservation Fund: 2014), 13-15, https://datahub.cmap.illinois.gov/dataset/c303fd2e-beaf-4a75-a9ec-b27c6da49b69/resource/028c9b69-bb19-425e-bb92-3d33656bea4c/download/tcfcmapgiv23ecosystemservicesfinalreport201412v2.pdf.

purchase effort began after the historic 1993 floods when river communities in east-central Iowa recognized the need for a more effective approach to reducing flood damages.

- In **Massachusetts**, a 1972 Corps study showed that upstream wetlands were playing a critical role in reducing flooding in the middle and upper reaches of the Charles River by storing millions of gallons of water and preventing $17 million each year in flood damages. This led the Corps to preserve 8,000 floodplain acres to ensure future flood storage, at a cost of just one-tenth of the structural project it had previously planned to build. This approach was sanctioned by Congress in 1974 when it authorized the Charles River Natural Valley Storage Area. These floodplain wetlands are credited with reducing major floods, including in 1979, 1982, and 2006. The Corps estimates that this project has prevented $11.9 million in flood damages while providing recreational benefits valued at between $3.2 and $4.6 million.[27]

- In **New York**, restoration of wetlands and lands adjacent to 19 stream corridors in Staten Island "successfully removed the scourge of regular flooding from southeastern Staten Island, while saving the City $300 million in costs of constructing storm water sewers."[28] Some 400 acres of freshwater wetland and riparian stream habitat has been restored along 11 miles of stream corridors that collectively drain about one third of Staten Island's land area. A 2018 study commissioned by the City of New York found that using "hybrid infrastructure" that combines nature, nature-based, and gray infrastructure together could save Howard Beach, Queens $225 million in damages in a 100-year storm while also generating important ecosystem services.[29]

- In **Oregon**, the Portland Bureau of Environmental Services restored 63 acres of wetland and floodplain habitat, restored 15 miles of Johnson Creek, and move structures out of high risk areas to reduce flood damages in the Johnson Creek neighborhood. In January 2012, when heavy rainfall caused Johnson Creek to rise two feet above its historic flood stage, the restored site held the floodwaters, keeping nearby homes dry and local businesses open. An ecosystem services valuation of the restored area found that the project would provide $30 million in benefits (in 2004 dollars) over 100 years through avoided property and utility damages, avoided traffic delays, improved water and air quality, increased recreational opportunities, and healthy fish and wildlife habitat.[30]

- In **Texas**, restoration of a 178-acre urban wetland—formerly an abandoned golf course—acted as a sponge to store 100 million gallons of water during Hurricane Harvey, protecting 150 homes in Houston's Clear Lake community from serious flooding. This project will store up to a half billion gallons of water and protect up to 3,000 homes when it is completed in 2021.[31]

---

[27] American Rivers, Unnatural Disasters, Natural Solutions: Lessons From The Flooding Of New Orleans (2006) (Charles River Valley Natural Storage Area case study); and https://www.arcgis.com/apps/MapJournal/index.html?appid=0bf97d033a8642b18c2e8075d4b5ecfe.
[28] Cooper Union, Institute for Sustainable Design, *The Staten Island Bluebelt: A Study In Sustainable Water Management* (http://cooper.edu/isd/news/waterwatch/statenisland). These effort was started in 1990.
[29] The Nature Conservancy, *Urban Coastal Resilience: Valuing Nature's Role*. (2015), https://www.nature.org/content/dam/tnc/nature/en/documents/urban-coastal-resilience.pdf.
[30] "Johnson Creek Restoration, Portland, Oregon," Naturally Resilient Communities, accessed November 12, 2019, http://nrcsolutions.org/johnson-creek-restoration-portland-oregon/.
[31] Exploration Green, 2018, https://www.explorationgreen.org/.

- In **Vermont**, a vast network of floodplains and wetlands, including those protected by 23 conservation easements protecting 2,148 acres of wetland along Otter Creek, saved Middlebury $1.8 million in flood damages during Tropical Storm Irene, and between $126,000 and $450,000 during each of 10 other flood events. Just 30 miles upstream, in an area without such floodplain and wetland protections, Tropical Storm Irene caused extensive flooding to the city of Rutland.

While sometimes necessary and appropriate, large scale structural projects, on the other hand, typically cause significant harm to the environment and can have negative secondary effects. For example, such projects often increase flooding downstream, induce development in high risk areas, and come with the very real risk of catastrophic failure and overtopping endangering surrounding communities.

The National Wildlife Federation appreciates the WRDA 2018 provision that directs the Corps to consider the use of natural infrastructures, alone or in combination with structural measures, whenever those solutions "are practicable."[32] Despite this, the Corps continues to fail to adequately consider natural infrastructure solutions where they are practicable for storm and flood damage reduction.[33]

As a result, it is clear that Congress will need to take additional steps to ensure that the Corps mainstreams the use of natural infrastructure solutions. One approach is to create natural infrastructure incentives for non-federal sponsors by: (1) clarifying that natural infrastructure solutions are subject to the decade-old limitation on the total non-federal cost share for non-structural measures, which eliminates the potential for excessive land-related cost burdens on non-federal sponsors; and (2) facilitating full consideration of cost-effective flood and storm damage reduction solutions for at-risk communities by adopting targeted criteria for waiving the non-federal cost share for feasibility studies while also requiring that those studies fully evaluate natural infrastructure solutions that can provide sustainable and less expensive protections.

3. Congress Should Ensure Continued Progress on Ecosystem Restoration Projects

The National Wildlife Federation greatly appreciates the committee's role in overseeing the Corps' implementation of important projects designed to restore the nation's waters. We urge Congress to ensure that the Corps continues to advance important ecosystem restoration projects, including those designed to restore coastal Louisiana and America's Everglades.

Restoring Coastal Louisiana

As a partner in the Restore the Mississippi River Delta Coalition, the National Wildlife Federation has worked for years to restore critical habitat in coastal Louisiana. The Louisiana Coast is in the midst of a land loss crisis with dramatic implications for our national economy and world class natural resources. Since the 1930s, the state has lost about 1,900 square miles of land to the Gulf. Recent catastrophes, such as Hurricanes Katrina and Rita, and the Deepwater Horizon oil disaster, exacerbated the coastal crisis. Without action, Louisiana is projected to lose up to another 4,000 square miles within the next 50 years.

---

[32] America's Water Infrastructure Act of 2018, Pub. Law 115-270, § 1149(c).

[33] The Corps' implementing guidance states that this WRDA 2018 provision requires no changes at all in the way the Corps plans projects. U.S. Army Corps of Engineers, Implementation Guidance for Section 1149 of the WRDA of 2018 (April 12, 2019).

In Title VII of the Water Resources Development Act of 2007, Congress authorized the Louisiana Coastal Area program, consisting of high priority projects for slowing the current trend of coast-wide wetland loss and resource degradation. Despite the fact that these projects were found to be in the federal interest, very little federal money has been appropriated to the Louisiana Coastal Area program since its authorization. Instead, several of the projects it contains, though renamed, have been advanced by the state with oil spill settlement dollars.

Title VII of WRDA 2007 also tasked the Corps with developing, in concert with the state of Louisiana, a comprehensive coastal management plan "for protecting, preserving, and restoring the coastal Louisiana ecosystem." To date, the Corps has not engaged in such a process. In the meantime the state of Louisiana has produced two successive Coastal Master Plans, in 2012 and 2017, based upon a widely lauded scientific and stakeholder engagement processes, which propose fundamental changes to the management of the lower Mississippi River. Among these are diversions of river water into the collapsing Mississippi River delta at Ama on the west bank of the river, and Union on the east bank.

Louisiana's 2017 *Comprehensive Master Plan for a Sustainable Coast (CMP)*, based upon a science-based selection process, propose diversion projects upriver from New Orleans at Ama and Union that could fulfill the goals of the CMP and reduce the flood threat downriver. Ama would divert water that would otherwise need to be carried by the Bonnet Carre Spillway, away from the Lake Pontchartrain basin in Louisiana and Mississippi Sound in Mississippi and Alabama. The Union Diversion would divert water into the Pontchartrain Basin upriver from Bonnet Carre, allowing it to pass through the swamps surrounding lakes Maurepas and Pontchartrain, where wetlands would reduce the amount of excess nutrients reaching Mississippi Sound and Lake Pontchartrain, reducing harmful algal blooms.

The state of Louisiana submitted proposed Ama and Union Diversion feasibility studies for inclusion in the Section 7001 report that Congress will soon receive. The National Wildlife Federation urges Congress to authorize these proposed studies, and to examine outcomes from other ongoing studies to improve overall flood control, navigation, and ecosystem restoration of the lower Mississippi River. We also encourage an increased federal investment in and commitment to the goals of the Louisiana Coastal Area program, as we work to restore a coastal ecosystem that is facing some of the highest rates of sea level rise and subsidence in the world.

Restoring America's Everglades

The National Wildlife Federation appreciates the committee's continued support for efforts to restore America's Everglades. The "River of Grass" is an ecological treasure, supporting a vast array of threatened and endangered plants and wildlife. It provides the drinking water for 8 million people and is a vital source of Florida's commercial and recreational fishing, outdoor recreation, and tourism. Located along the southern tip of Florida, the Everglades' network of mangroves and wetlands, along with the surrounding coral reefs and seagrasses, function as the first line of defense against hurricanes, storms, and flooding, reducing storm surges and absorbing floodwaters.

The best tool we have to make Florida more resilient is Everglades restoration. Centuries of draining Florida's wetlands and altering the flow of water have limited water management flexibility in parts of South Florida, causing recurring sea grass die-offs and toxic algae outbreaks that wreak havoc on Florida's economy and wildlife. Key Everglades restoration projects aim to help capture and clean water from Lake Okeechobee and send it south to the Everglades and Florida Bay, where it is desperately needed. This will reduce the volume and frequency of damaging discharges and toxic algae outbreaks in Florida's delicate coastal estuaries.

The Comprehensive Everglades Restoration Plan, authorized in WRDA 2000, laid out a roadmap to restore America's Everglades, with both the federal government and the state responsible for 50 percent of project costs. In recent years, the state of Florida has funded Everglades restoration at more than $200 million a year, while federal appropriations have significantly lagged behind. In order to maximize the benefits of, and advance the progress made towards, restoring America's Everglades, the federal government must invest at least $200 million in Army Corps Everglades restoration efforts each year. In addition to robust, consistent funding for Everglades restoration to proceed, it will be important that component projects with the Comprehensive Everglades Restoration Plan are not prevented from advancing due to any new construction starts limitations.

Brandon Road Lock and Dam Project

The National Wildlife Federation has worked for many years on protecting the Great Lakes and all of our nation's waters from the ongoing threat and harm of aquatic invasive species, specifically the invasive Asian carp. Asian carp have devastated iconic fisheries throughout the country and now threaten the Great Lakes and their connected inland lakes and rivers, too. Asian carp are not just a Great Lakes problem, or a Mississippi River problem, or a Kentucky Lake problem. They are an American problem, and it will take a united national effort to stop them.

Specifically in the Great Lakes, invasive Asian carp will undermine fisheries throughout the Great Lakes region – as filter feeders with no native predators, they reproduce rapidly and consume the base of the food chain, starving out forage, native and sport fish. Silver carp are a safety threat to boaters and anglers, leaping out of the water when disturbed by boat motors, and even paddles, threatening tourism-reliant communities.

The Corps submitted a Chief's Report for the Brandon Road Lock and Dam project in the summer of 2019. This Lock is about 50 miles south of Chicago and represents our best opportunity to provide a long-term structural deterrent to Asian carp. The Brandon Road plan would install a gauntlet of smart technologies to stop invasive Asian carp while allowing commercial navigation to continue. All the Great Lakes governors and the Ontario and Quebec premiers have signed on to a resolution supporting the plan. In addition, over 200 hunting, fishing, outdoor recreation industry and conservation organizations support the Brandon Road plan. This project is essential to help protect the fishery, the economy and quality of life in the Great Lakes region.

4. Congress Should Ensure that the Corps Effectively Analyzes and Mitigates for the Adverse Impacts of Corps Projects on Fish and Wildlife

For decades, Congress has required mitigation for adverse impacts to fish and wildlife caused by Corps water resources projects. Congress established detailed planning requirements to ensure effective mitigation in WRDA 2007, where it also clearly stated that the mitigation requirements must be met whenever the Corps selects a project alternative in "any report."[34] The Act's legislative history reiterates that the "increased mitigation requirements apply to all new studies and any other project

[34] 33 U.S.C. § 2283(d)(1)("the Secretary shall not submit any proposal for the authorization of any water resources project to Congress in any report, **and shall not select a project alternative in any report**, unless such report contains" the detailed mitigation plan required by WRDA 2007) (emphasis added).

that must be reevaluated for any reason."[35] Rather than follow these clear directives, the Corps has explicitly limited its compliance with the WRDA 2007 mitigation requirements to reports submitted to Congress for authorization.[36]

To assist the Corps in properly evaluating fish and wildlife impacts and needed mitigation, the Corps is also required to consult with the U.S. Fish and Wildlife Service on fish and wildlife impacts from individual Corps projects and on opportunities for mitigating any such impacts. State fish and wildlife agencies are also encouraged to consult with the Corps on project-specific impacts and mitigation opportunities. The Corps is required to give "full consideration" to these expert recommendations.

Regrettably, the Corps often fails to adhere to these important requirements, leading to projects and long-term project operations that cause profound harm to the nation's fish and wildlife. For example, both of these requirements were ignored during the Corps' recent update to the Apalachicola-Chattahoochee-Flint (ACF) water control manual with devastating consequences.

For decades the Corps' operation of the ACF system has starved Florida's vitally important Apalachicola River and Bay of essential freshwater flows. The impacts have been so devastating that the state of Florida advised Congress that "the ecosystem and, indeed, the very way of life for generations of Floridians will be devastated" if flow patterns that mimic the historic flow regime are not restored for the Apalachicola River.[37] However, instead of improving conditions in the Apalachicola River and Bay, the Corps' new water control manual will make the already dire conditions even worse by holding significantly more water back for upstream water supply, initiating drought restrictions earlier and more frequently, and severely restricting flows to the Apalachicola River more often and for longer periods of time.[38]

Many of the problems with the new ACF water control manual could have been avoided had the Corps addressed the important recommendations made by the U.S. Fish and Wildlife Service in the project's Final Fish and Wildlife Coordination Act Report. These recommendations included utilizing a different approach for analyzing impacts and for developing alternatives that would reduce the adverse environmental and wildlife impacts *without* jeopardizing other authorized purposes.

In this update, the Corps also refused to adopt a mitigation plan for "substantially adverse" damage to fish and aquatic resources in the Chattahoochee River. The Corps argued that it is not required to

---

[35] Congressional Record Senate, S11981 September 24, 2007 (Consideration of Water Resources Development Act of 2007—Conference Report, Senator Barbara Boxer Environment and Public Works Committee Chair).
[36] U.S. Army Corps of Engineers, Implementation Guidance for Section 2036 (a) of the Water Resources Development Act of 2007 (WRDA 07) - Mitigation for Fish and Wildlife and Wetlands Losses (August 31, 2009). The Corps' interpretation violates the most fundamental principles of statutory construction by: (1) ignoring an entirely independent clause in the statute ("and shall not select a project alternative in any report"); and (2) failing to give meaning to the adjective "any" that qualifies the term "report" in that independent clause. See, e.g., *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001); *U. S. v. Nordic Village*, 503 U.S. 30, 36 (1992); *Perrin v. United States*, 444 U.S. 37, 42 (1979); *United States v. Manasche*, 348 U.S. 528, 538-539 (1955).
[37] Testimony of Jonathan P. Steverson, Executive Director of the Northwest Florida Water Management District, "Effects of Water Flows on Apalachicola Bay: Short and Long Term Perspectives", United States Senate Committee on Commerce, Science and Transportation Field Hearing, August 13, 2013 at 4.
[38] The excessive damage that would be caused by the new water control manual has forced the state of Alabama and conservation organizations, including the National Wildlife Federation, to challenge the manual in court.

mitigate for this significant harm because the new water control manual does not have to be submitted to Congress for approval.

To address these problems, Congress should: (1) clarify the types of project studies that trigger the civil works mitigation requirements to ensure application of these requirements as Congress unquestionably intended; and (2) direct the Corps to evaluate and develop mitigation for fish and wildlife resources in a manner that is consistent with recommendations developed by federal and state fish and wildlife experts pursuant to the Fish and Wildlife Coordination Act that derive from the special expertise of these experts (*e.g.*, methods and metrics for evaluating fish and wildlife impacts and needed mitigation).

5. Congress Should Modernize the Corps' Benefit-Cost Analysis Process to Better Account for Project Costs and Benefits, Including by Accounting for Ecosystem Services

The Corps' benefit-cost analysis process is biased towards the approval of costly, large-scale structural projects even when less costly, natural infrastructure or nature-based solutions are available. This bias can lead to the construction of projects that significantly and unnecessarily undermine resilience.

Among many other problems, Corps cost analyses do not account for costs associated with detailed technical design specifications; full life-cycle costs; or costs associated with delays due to lack of funding and/or sub-optimal funding streams. As a result, Corps cost estimates can dramatically understate the actual costs to both taxpayers and non-federal sponsors to construct a project. Importantly, Corps cost analyses also fail to account for the costs of lost ecosystem services.

Examples of Projects With Grossly Inaccurate Original Cost Estimates			
Project	**Original Estimate (millions)**	**2010 Estimate (millions)**	**Percentage Increase**
Louisiana Hurricane Protection	$85	$738	**768%**
Sacramento Flood Protection	$57	$270 to $370	**374% to 549%**
Rio de Flag River	$24	$85	**254%**
Monongahela Locks & Dam	$556	$1,700	**206%**
Olmstead Lock & Dam	$775	$2,124	**174%**
Folsom Dam Flood Gates	$215	$450 to $650	**109% to 202%**
McAlpine Locks & Dam	$220	$427	**94%**
Marmet Lock	$223	$406	**82%**
South Florida Ecosystem Restoration	$1,540	$1,970	**28%**
Oregon Inlet Jetty (annual costs)	$4.5	$5.5	**22%**

A 2013 Government Accountability Office (GAO) report found that at least two-thirds of the 87 Corps flood control projects budgeted for construction between FY2004 and FY2012 experienced cost increases. One project cost $10 million more than the authorized estimate because the construction site could not be accessed without carrying out major rehabilitation of a tunnel access point. The cost of a pumping plant required by a second project increased from the original estimate of $800,000 to $10.7 million due to design changes required to handle the actual site conditions.[39]

[39] Government Accountability Office, Army Corps of Engineers, Cost Increases in Flood Control Projects and Improving Communication with Nonfederal Sponsors, GAO-14-35 (December 2013) at 11, 14, 15.

The Corps' benefit analyses are equally problematic. They fail to account for benefits resulting from increases in ecosystem services; often lack justifications for claimed benefits; and include benefits that would be derived from activities that are contrary to law, policy, and sound resource management. For example, Corps benefit analyses may include: (1) agriculture and development benefits created by draining wetlands; (2) development benefits resulting from new or intensified use of floodplains or wetlands, including future induced development; (3) flood damage reduction benefits from new or intensified use of lands subject to flood easements or permanent conservation easements; and (4) benefits from draining wetlands on federally owned lands.

Corps benefit-cost analyses are also plagued by invalid assumptions, inaccurate data, and basic math errors. GAO has found that a number of major Corps studies "understated costs and overstated benefits, and therefore did not provide a reasonable basis for decision-making" because they "were fraught with errors, mistakes, and miscalculations, and used invalid assumptions and outdated data."[40] GAO also found that these problems were pervasive at the Corps, concluding that "the Corps' track record for providing reliable information that can be used by decision makers ... is spotty, at best."[41] In one case, the Department of the Army Inspector General found that the Corps had deliberately and intentionally manipulated data to achieve a positive benefit-cost ratio that would support large scale construction of longer locks on the Upper Mississippi River.[42]

The many problems with Corps benefit-cost analyses may result in the approval of projects whose actual costs and benefits bear little to no relation to the benefit-cost ratio used to obtain congressional approval. To help the Corps accurately account for project costs and benefits, Congress should modernize the criteria used to assess costs and benefits—and level the playing field for natural infrastructure—including by requiring the Corps to account for increased ecosystem services as a project benefit and lost ecosystem services as a project cost.

6. Congress Should Increase the Corps' Capacity to Improve the Resilience of Water Resources Infrastructure, Including By Taking Full Advantage of Existing Authorities

Many existing programs and projects can be modernized to increase resilience while still satisfying authorized project purposes. Changes can be initiated through supplemental environmental impact statements, general or limited reevaluation studies, or through congressional adoption of a "study resolution" that allows the Corps to examine a particular water resources problem in a specific area that has already been investigated.

Water control manuals, operating plans, and operations and maintenance activities can readily be reevaluated through the National Environmental Policy Act (NEPA) review process—and many of these activities likely require a supplemental review as a matter of law. At a minimum, these types of studies should be used to ensure that Corps projects do not inadvertently increase flood risks, divert flood waters onto other communities, or create ecosystem-wide harm to vital natural systems.

For example, to reduce significant inadvertent increases in flood heights, the NEPA process should be used to evaluate alternatives to the Corps' use of river training structures to reduce dredging costs in

---

[40] Government Accountability Office (GAO-06-529T), Corps of Engineers, Observations on Planning and Project Management Processes for the Civil Works Program, March 2006.
[41] *Id.*
[42] U.S. Department of the Army Inspector General, *Report of Investigation*, Case 00-019, 2000, at 6.

the middle Mississippi River. The Corps' extensive use of river training structures to maintain navigation in the middle Mississippi has increased flood heights by *6 to 15 feet* in this portion of the river and destroyed vital fish and wildlife habitat.[43] Importantly, navigation can be readily maintained even if many of these structures were modified or removed to reduce flood risks.

Updating out-of-date water control manuals can improve the health of the environment and reduce flood risks. Many water control manuals have not been updated in decades and as a result, they cannot account for current needs or environmental conditions, including changes in rainfall, flood levels, snowmelt patterns, and land use patterns. Outdated plans also fail to use modern scientific tools or state-of-the-art management approaches that can both ensure effective operation of federal projects *and* protect the environment. The impacts can be devastating.

Outdated operating procedures and flawed planning aggravated already horrific flooding in Houston during Hurricane Harvey. During Harvey, the Corps of Engineers released at least 13,000 cubic feet of water per second from the Addicks and Barker reservoirs to reduce the risks of overtopping and to protect homes upstream.[44] But those same releases caused extensive flooding downstream in Buffalo Bayou, flooding some 4,000 homes that would otherwise have remained dry despite Harvey's onslaught.[45] More than 5,000 of the 14,000 homes located inside the reservoirs also flooded. The in-reservoir homes were built on some 8,000 acres of land that the Corps opted not to buy when the reservoirs were constructed in the 1940s, even though the Corps knew the land would flood during large flood events. At least 4,000 homes were built inside the reservoirs since Tropical Storm Allison devastated large areas of Houston in 2001.[46]

Updating the management plans for these reservoirs and quickly completing critical structural upgrades would help protect Houstonians during future flood events.[47] These reservoirs have been classified as two of the six most dangerous flood control dams in the United States for many years. Storage capacity could be restored by removing silt and sediment that have accumulated over the last 60-plus years of operation, and public safety would be improved by upgrading gages and other tools that track the quantity of water released from the reservoirs and by ensuring that the public is fully aware of the potential for flood risks from both typical and emergency reservoir operations.

The importance of improving reservoir management and safety is not limited to Houston. The Corps operates 707 dams that it owns across the country, operates 75 hydropower facilities, and manages flood control operations at 134 dams constructed or operated by other federal, nonfederal, or private

---

[43] The middle Mississippi River is the 195-mile segment between the confluence of the Missouri River (located north of St. Louis, MO) and the confluence of the Ohio River (located near Cairo, IL). The middle Mississippi is the first section of free-flowing River below the River's lock and dam navigation system. The middle Mississippi, like the rest of the River, has been severely degraded by the Corps' approach to maintaining navigation on the river.
[44] Preliminary U.S. Geological Survey data suggests that the actual releases were much higher than what was supposed to be a maximum release of 13,000 cubic feet per second because the gages measuring the releases were not working properly (https://af.reuters.com/article/africaTech/idAFL2N1LQ0IL).
[45] KHOU.com, Houston Texas, *Buffalo Bayou to remain at record level; Barker, Addicks reservoirs have peaked* (September 1, 2017) (http://www.khou.com/weather/hurricanes/hurricane-harvey/controlled-release-of-barker-addicks-reservoirs-to-impact-thousands/468348109).
[46] Al Shaw, Lisa Song, Kiah Collier, Neena Satija, *How Harvey Hurt Houston, in 10 Maps,* ProPublica (January 3, 2018) (https://projects.propublica.org/graphics/harvey-maps).
[47] A 2009 master plan limits releases from the reservoirs to 2,000 cubic feet per second. http://www.swg.usace.army.mil/Portals/26/docs/2009%20Addicks%20and%20Barker%20MP.pdf at 8.

agencies. Many of these dams have operating plans that date back 50 years, including many of central California's 35 federal flood control dams where outdated plans are damaging rivers and wildlife and threatening community safety.

Updating operations and maintenance plans can also produce significant improvements to river health and resilience. For example, the vast majority of operations and maintenance plans for the Mississippi River navigation system are more than 40 years old.[48] As a result, the Corps continues to carry out the same operation and maintenance activities that have devastated the ecological health of the Mississippi River and the species that rely on it. These outdated operations and maintenance activities are destroying critical backwater, side channel, wetlands, and instream habitats; altering water depth; destroying bathymetric diversity; causing nonnative species to proliferate; and severely impacting native species.[49] Modern approaches exist for operating this system that would both maintain a vibrant navigation system and improve the health of the river.

Where multiple studies are authorized or required for a river or coastal system, those studies could be used to inform a comprehensive review of potential improvements to the system. For example, multiple planning process are underway, should be initiated through new environmental reviews, or are authorized for the Mississippi River, including:

(a) Studies examining whether and how the Corps should dispose (i.e., transfer ownership to a non-federal interest/recommend removal) of the Upper St. Anthony Falls, Lower St. Anthony Falls and Lock and Dam 1—these studies are underway.

(b) Updates to the water control manuals, and required environmental impact statements, for the Upper Mississippi River lock and dam system—these studies should be initiated through a new environmental review with a goal of establishing a more natural hydrologic regime for the River that includes regular periods of lower flows to allow regeneration of wetlands and wildlife habitat.

(c) A new update to the Corps' navigation maintenance actions for the middle Mississippi River between St. Louis, MO and Cairo, IL—this study should be initiated through a new environmental review with a goal of significantly reducing flood height increases caused by excessive construction of river training structures designed to reduce navigation dredging costs.

(d) An assessment of alternative management regimes for the Old River Control Structure, which controls the amount of water diverted from the Mississippi River to the Atchafalaya Basin—this study was authorized in WRDA 2018.

(e) A study examining whether to increase the height of significant portions of the Mississippi Rivers & Tributaries Project mainline levee system—this study is underway.

---

[48] As a result of extensive pressure, the Corps recently reassessed some, but not all, of its management activities for a segment of that system known as the Middle Mississippi River.

[49] U.S. Geological Survey, Ecological Status and Trends of the Upper Mississippi River System 1998: A Report of the Long Term Resource Monitoring Program (April 1999); Johnson, B. L., and K. H. Hagerty, editors. 2008. U.S. Geological Survey, *Status and Trends of Selected Resources of the Upper Mississippi River System,* December 2008, Technical Report LTRMP 2008-T002 (Upper Midwest Environmental Sciences Center, La Crosse, Wisconsin).

(f) Lower Mississippi River Restoration feasibility studies that will look at restoration projects for eight separate reaches—these studies were authorized in WRDA 2018.

(g) Assessment of projects to restore Louisiana's coastal wetlands, including through Mississippi River sediment diversions—these studies are underway.

These studies could—and should—be used to inform a comprehensive plan for increasing the resilience of the Mississippi River and its extensive water resources infrastructure. This could be achieved by evaluating and adopting alternatives that protect and restore the natural functions of the Mississippi River, as required by the National Water Resources Planning Policy. This policy, which was established in WRDA 2007, requires that "all water resources projects" are to protect the environment by "protecting and restoring the functions of natural systems and mitigating any unavoidable damage to natural systems."[50]

Congress should increase the Corps' capacity to improve the resilience of the nation's water resources infrastructure by establishing a Directorate of Ecological Services within the Office of the Chief of Engineers tasked with ensuring that the Corps takes full advantage of existing programs, authorities, and operations to use natural systems to protect communities from floods, minimize expenditures for emergency response and rebuilding, improve wildlife habitat, and strengthen the outdoor-based economy. This Directorate should have significant budgeting authority.

Conclusion

The National Wildlife Federation calls on the committee and Congress to enact the common sense reforms outlined in this statement that would promote the resilience of the nation's waters and water resources infrastructure. We also respectfully ask the committee to continue to advance critical ecosystem restoration projects, defend the integrity of the nation's vitally important environmental laws, and oversee the Corps compliance with the letter and spirit of these laws when planning, constructing, and operating projects.

Contact Information

Melissa Samet, Senior Water Resources Counsel
415-762-8264, sametm@nwf.org,

Jessie Ritter, Director Water Resources and Coastal Policy
202-797-6886, ritterj@nwf.org

National Wildlife Federation
1200 G St. NW, Suite 900
Washington, DC 20005

[50] 42 U.S.C 1962-3 (established by § 2031(a) of the Water Resources Development Act of 2007, and immediately applicable to all water resources projects).

National Wildlife Federation Recommendations

Drinking Water Infrastructure Act of 2020

(Senate Discussion Draft)

The National Wildlife Federation thanks the Committee for its work to prepare this discussion draft of the Drinking Water Infrastructure Act of 2020, and for the opportunity to provide comments on this legislation. We appreciate the Committee's attention in this discussion draft to America's drinking water infrastructure needs, including efforts to address contaminants like PFAS and lead. We also commend the committee for the consideration given to the unique needs of low-income, minority, rural, tribal, and other disadvantaged communities.

It is increasingly clear that our nation's water infrastructure is no longer up to the task of keeping our lakes, rivers, and streams clean and safe – threatening America's drinking water supply, natural flood protection, fish and wildlife habitat, and access to outdoor recreation. Pipes and treatment facilities have exceeded their intended lifespans and are breaking down, with climate change further stressing these systems. Often, the most severe impacts of these outdated systems are being disproportionately borne by low-income communities and communities of color. The EPA estimates that we need to invest over $473 billion in maintaining and repairing our drinking water infrastructure over the next twenty years just to meet current environmental and public health standards.

To help address the need for additional investments to upgrade and maintain water infrastructure to safeguard our communities and water resources, the National Wildlife Federation urges the Senate to consider the below recommendations to the Drinking Water Infrastructure Act of 2020 (Discussion Draft):

Strengthen Section 4 (Drinking Water State Revolving Fund):

> Drinking Water Relief for Small, Rural, and Disadvantaged Communities: The National Wildlife Federation urges the Committee to amend Section 4, which as drafted creates confusing and contradictory language regarding additional subsidization of DWSRF funds. As currently drafted, this creates a new subsection dealing with additional subsidization without appearing to recognize the existing subsidization provision in 42 U.S.C. 300j-12(d). Rather than create a new additional subsidization section, we recommend that 42 U.S.C. 300j-12(d) be amended to require no less than 20% of each state's annual DWSRF capitalization grant be directed in the form of additional subsidization. Additional subsidization should continue to be reserved for public water systems that are disadvantaged, through existing subsection (d), and provided for systems such as those for which an emergency has been declared that would be assisted under proposed (a)(2)(H)(i)(II)(bb)(BB) [page 5 lines 12-22].

Strengthen efforts to address PFAS contamination: The National Wildlife Federation supports the language in Section 4 of the draft bill that builds on PFAS provisions in the most recent National Defense Authorization Act, by increasing to $300 million the FY 21 authorization level for grants to help clean up contaminants, with an emphasis on per- and polyfluoroalkyl substances (PFAS). These substances contaminate our nation's drinking water supplies endangering public health, and are routinely found in wildlife species, from bluegills and great blue herons to largemouth bass and deer.

We hope the Committee will consider strengthening the PFAS provisions in the bill. The National Wildlife Federation supports efforts that would establish protective safeguards under the Clean Water Act, by setting pretreatment standards and effluent limitation guidelines for PFAS to limit the discharge of these chemicals entering our waters. This will help support efforts to reduce pollution at the industrial level before it gets into public water systems and treatment plants. The National Wildlife Federation is also supportive of regulating PFAS under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This would allow the EPA to access additional resources to clean up PFAS contamination and, depending on a given state's cleanup standards, could hold companies financially responsible for their PFAS releases. Additionally, the National Wildlife Federation supports setting specific science-based maximum contaminant levels (MCLs) for individual PFAS (including but not limited to PFOA and PFOS) that are best understood and especially harmful, and we also recommend setting a science-based MCL for total PFAS in drinking water. Alternatively, we would also support directing the EPA to set a science-based MCL for certain PFAS that are best understood, and a treatment technique for the rest.

Support Section 6 (Assistance for Small and Disadvantaged Communities): The National Wildlife Federation supports this section, which expands the existing Assistance for Small and Disadvantaged Communities program and reauthorizes and increases funding for the existing Drinking Water Infrastructure Risk and Resiliency program through 2024.

Support Section 10 (Needs Assessment for Nationwide Rural and Urban Low-Income Community Water Assistance): The National Wildlife Federation strongly supports this provision, which would require the EPA to study the prevalence of low-income households in the United States that do not have access to affordable public drinking water systems. The report must also issue recommendations on ways to increase access to affordable and functional drinking water services.

Contact Information

Glenn Watkins, Water Resources Policy Specialist
202-797-6615, watkinsg@nwf.org,

Jessie Ritter, Director Water Resources and Coastal Policy
202-797-6886, ritterj@nwf.org

National Wildlife Federation
1200 G St. NW, Suite 900
Washington, DC 20005

April 24, 2020

The Honorable John Barrasso
Chairman
Committee on the Environment and Public Works
United States Senate
307 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Tom Carper
Ranking Member
Committee on Environment and Public Works
United States Senate
513 Hart Senate Office Building
Washington, DC 20510

The Honorable Peter DeFazio
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
2134 Rayburn House Office Building
Washington, DC 20515

The Honorable Sam Graves
Ranking Member
Committee on Transportation and Infrastructure
U.S. House of Representatives
1135 Longworth House Office Building
Washington, DC 20515

Dear Chairman Barrasso, Ranking Member Carper, Chairman DeFazio and Ranking Member Graves:

On behalf of the state and local elected leaders that our organizations represent, we appreciate the opportunity to provide input as the authorization process for the 2020 Water Resources Development Act (WRDA) continues. In light of the national emergency and pandemic our nation is currently facing, maintaining a strong water infrastructure system, ensuring access to clean and safe drinking water and supporting the nation's economic growth and maintenance of global competitiveness, is more important than ever. Our members recognize the substantial benefits provided to the nation by our water resources and hope to work together to ensure passage of a new bipartisan WRDA bill in 2020. We also appreciate that the Senate's Environment and Public Works Committee has taken a positive first step towards this goal by releasing bipartisan drinking water and water infrastructure legislation. As your committees develop legislation, we offer the following as a framework for the proposal.

Biennial Authorization
WRDA is critical in helping to protect, maintain and further develop our water infrastructure systems including ports, waterways, and clean and safe drinking water. It provides states and local governments

with added stability and certainty to meet water infrastructure needs while also supporting the safety, environmental protection, and economic development of our communities. Following a seven-year gap in the passage of WRDA, Congress was able to enact the Water Resources Reform and Development Act of 2014 (WRRDA), the Water Infrastructure Improvements for the Nation Act of 2016 (WIIN), and the America's Water Infrastructure Act of 2018 (AWIA) on a bipartisan basis. We strongly urge Congress to stay this course and approve this vital bipartisan legislation in 2020, and continue to maintain a two-year authorization schedule moving forward.

Intergovernmental Collaboration
Recognizing the role of state and local governments in implementing federal laws, in 1995, Congress passed the Unfunded Mandates Reform Act (UMRA) to promote and foster collaboration between federal, state and local governments to control, if not eliminate, the imposition of unfunded federal mandates imposed on states and localities. Additionally, in 1999, Executive Order 13132 was signed, explicitly requiring all federal agencies to formally consult with state and local governments on proposed regulations that will have a substantial direct impact on state and local governments. We were encouraged by the 2018 provisions requiring the U.S. Army Corps of Engineers (the Corps) to develop a process to formally consult with stakeholders, including states and local governments, on future and pending WRDA projects, annual district budgets, deauthorized projects and guidance documents, ensuring their unique perspectives on water infrastructure projects within their community are considered. Our organizations encourage you to continue to build on this meaningful consultation with state and local governments in order to foster a greater consensus and increase the effectiveness of the Corps overall.

State Revolving Funds
Robust support for programs state and local governments depend on is now more important than ever in these times of increasingly tight state and local budgets. Our members depend on the Drinking Water and Clean Water State Revolving Funds (SRFs), an integral state-federal partnership, to ensure a wide range of water quality projects for our citizens. This low-cost financing provides opportunity for critical water infrastructure projects. We urge authorization and continued support, and flexibility, in this upcoming WRDA. Given the current fiscal realities in communities across the nation due to the impacts of COVID-19, we encourage Congress to expand flexibilities and partnerships surrounding the use of these funds in addition to reducing or temporarily eliminating their associated matching components.

Maintenance and Modernization of our Nation's Ports and Harbors
Our organizations have long held that the accumulation of harbor tax receipts at the federal level is not only a break in faith from the purpose of the Harbor Maintenance Tax (HMT), but also results in the imposition of a competitive burden without providing needed improvements to achieve effectiveness to offset added taxes. While an estimated $1.7 billion in annual HMT revenue is currently being collected specifically to meet the nation's annual authorized harbor maintenance needs for harbors of all sizes, annual appropriations have historically been significantly less than annual collections.

As such, we were pleased to see the inclusion of a provision in the recently passed Coronavirus, Aid, Relief and Economic Security (CARES) Act authorizing the Corps to fully utilize annual receipts from the Harbor Maintenance Trust Fund by exempting the fund's annual revenues from discretionary spending caps. However, the act did not go far enough and an estimated $9.3 billion is still under lockdown with Congress unable to retroactively spend the full balance of the fund on projects vital to the maintenance and modernization of our ports. During this time of economic uncertainty, it is vital that we ensure our nation's ports remain competitive globally and have the resources necessary for expansion, modernization and repair. Continued encouragement and support of the beneficial use of dredged material will also be essential for meeting economic and environmental goals.

Flooding Mitigation and Resilience
With the rise in increasingly catastrophic weather events, such as heavy downpours and severe storms, intense flooding has become an unwelcome reality for a growing number of states and local governments. We support congressional efforts that provide the necessary aid to states and local governments to ensure that they are able to mitigate potential flood and storm damage, including through the use of natural infrastructure and dam safety initiatives. As these severe weather events become more commonplace, our members and their constituents ask for a strong federal partner and funding in making our communities more resilient.

We look forward to working with you to ensure that the safety and modernization of our nation's water infrastructure needs remain a top national priority. If you have any questions please don't hesitate to contact us: Alex Whitaker (NGA) at 202-920-7454 or awhitaker@nga.org; Kristen Hildreth (NCSL) at 202-624-3597 or kristen.hildreth@ncsl.org; Adam Pugh (NACo) at 202-942-4269 or apugh@naco.org; Carolyn Berndt (NLC) at 202-626-3101 or Berndt@nlc.org; Judy Sheahan (USCM) at 202-861-6775 or jsheahan@usmayors.org.

Sincerely,

Bill McBride
Executive Director
National Governors Association

Tim Storey
Executive Director
National Conference of State Legislatures

Matthew D. Chase
Executive Director
National Association of Counties

Clarence E. Anthony
CEO and Executive Director
National League of Cities

Tom Cochran
CEO and Executive Director
The United States Conference of Mayors

CC: All members of the Senate Environment and Public Works Committee
All members of the Transportation and Infrastructure Committee

May 1, 2020

The Honorable John Barrasso
Chairman
Committee on Environment & Public Works
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Thomas Carper
Ranking Member
Committee on Environment & Public Works
United States Senate
456 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso and Ranking Member Carper,

New York and New Jersey's coastal communities and ecosystems are on the front lines of climate-driven flood impacts, facing increasing precipitation, sea levels, and storm surge intensity and frequency. Extreme periodic events, combined with the daily threat of tidal flooding, will have drastic economic and social costs for individuals, businesses, and governments at all levels without urgent and coordinated action. The following undersigned organizations are working to build resilience in the New York and New Jersey region, which has more than 16 million residents who face many growing challenges and are in need of comprehensive solutions that ensure the equitable resilience, accessibility, and ecological integrity of our communities.

To that end, we are supportive of the following aspects of the bill and request continued momentum to move these initiatives to implementation:

- Authorization and expedited implementation of the Hudson-Raritan Estuary Comprehensive Restoration Plan (Sec 1202)
- Support for the Clean Water Infrastructure Resiliency and Sustainability Program (Sec 2001)
- Authorization and expedition of the Rahway Flood Risk Management Feasibility Study (Sec 1205)
- Support for the expedited completion of Fire Island to Montauk Point Reformulation Study for hurricane and storm damage risk reduction (Sec 1202)
- Authorization and expedited implementation of the East Rockaway Inlet to Rockaway Inlet and Jamaica Bay Reformulation (Sec 1091)

We also recommend that the Committee **amend Sec. 1003 to consider all comprehensive sources of coastal flood risk, not just hurricane and storm damage.** We support feasibility studies to continue analyses started in the North Atlantic Coast Comprehensive Study (NACCS). We believe that the scope of the analysis proposed in Sec. 1003 could go further to have greater impact. We urge the Senate to broaden the scope to reflect and account for all comprehensive sources of coastal flood risk – hurricanes and other coastal storms, sea level rise, and downstream flooding from the watershed – and to plan for measures that accurately manage risk and damages for densely populated metropolitan areas within the study area. We also advise that this broader scope be applied to ongoing and future feasibility studies conducted as a result of the NACCS, including the New York-New Jersey Harbor and Tributaries Study. Such a change is necessary to develop accurate and viable solutions reflective of the landscape and future conditions.

In addition, more than 40 organizations have recognized the need to fund and expand the authorization for the New York-New Jersey Harbor and Tributaries Study (NYNJHATS) to address significant shortcomings in the scope of the study and improve the outcomes to provide meaningful and effective solutions for the region against a comprehensive array of coastal flood risks, including sea level rise, hurricanes and extratropical storms, and low frequency precipitation events within the coastal watershed. Therefore, the undersigned request that Congress include modification to PUBLIC LAW 84-71 (1955) and PUBLIC LAW 113–2 (2013) to include a comprehensive approach to evaluating flood risk, as well as consideration of the economic and ecosystem services of proposed structural, nonstructural and natural or nature-based solutions, and community engagement.

Thank you again for the opportunity to provide input on the draft of the America's Water Infrastructure Act of 2020.

Respectfully submitted,

Roland Lewis
President and CEO
Waterfront Alliance
217 Water Street, Suite 300
New York, New York 10038
(212) 935-9831
rlewis@waterfrontalliance.org

Jessica Roff
Director of Advocacy and Engagement
Riverkeeper
20 Secor Road
Ossining, New York 10562
(202) 321-0020
jroff@riverkeeper.org

Don Riepe
Northeast Chapter Director
American Littoral Society
28 West 9th Road
Broad Channel, New York 11693
(718) 474-0896
don@littoralsociety.org

Natalie Snider
Senior Director, Coastal Resilience
Environmental Defense Fund
1875 Connecticut Avenue, Suite 600
Washington, DC 20009
(202) 572-3282
nsnider@edf.org

May 1, 2020

Honorable John Barrasso
Chairman
Senate Committee on Environment and Public Works
307 Dirksen Senate Office Building
Washington, DC 20510

Honorable Tom Carper
Ranking Member
Senate Committee on Environment and Public Works
513 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of the undersigned organizations, we appreciate the opportunity to provide comments on the Drinking Water Infrastructure Act of 2020. As associations in the water and sanitation sectors, we are proud to provide over two centuries of collective experience in working with communities, manufacturers and the workforce to address a continually evolving list of water quality issues.

We applaud the committee for putting forward bipartisan solutions to the challenges posed by our water infrastructure. We also applaud the committee's efforts to ensure that communities who are most vulnerable have access to clean drinking water. In particular, we support the expansion of the Assistance for Small and Disadvantaged Communities program by allowing for the purchase of water filters and point of use/point of entry technologies. These devices can make life-changing differences to communities faced with inadequate infrastructure or comprised water sources. To ensure that these communities receive the quality of products they need, we would propose that the following clarifying language be added:

> SEC. 6. ASSISTANCE FOR SMALL AND DISADVANTAGED COMMUNITIES.
> (a) EXISTING PROGRAMS.—Section 1459A of the Safe Drinking Water Act (42 U.S.C. 300j–19a) is amended—
> (1) in subsection (b)(2)—
>
> > (A) in subparagraph (B), by striking ''and'' at the end;
> > (B) in subparagraph (C), by striking the period at the end and inserting a semicolon; and
> > (C) by adding at the end the following:
> > ''(D) the purchase of filters *and point of use/point of entry water treatment technologies that are certified to an applicable standard set by the American National Standards Institute by an independent third-party certification organization accredited by the American National Standards Institute* for the removal of contaminants of concern;

Ensuring access to safe drinking water poses a challenge for water systems in the United States and across the globe, especially during disruptive emergencies and disaster recoveries. The residential water filtration industry is encouraging policies to help communities address their growing list of water quality challenges and fight the increasing health threats posed by counterfeit, ineffective or even unsafe residential water treatment products in the marketplace. We ask that your committee consider the following proposals related to residential water treatment devices in this legislation:

1. *Require Certified Filters and Point of Use/Point of Entry Technologies Be Distributed In Long-Term Disaster Recovery* - Section 1431 of the Safe Drinking Water Act (SDWA) grants authority to the Administrator of the EPA to take action to protect the public health when a contaminant is found in a public drinking water system and the pertinent state and local authorities have either not taken action or taken inadequate action to address the contamination. Such action may include but not be limited to requiring the "provision of alternative water supplies." The use of bottled water may not be sustainable for an extended period of time so for water emergencies lasting more than a few weeks, a water supply other than bottled water is strongly recommended. Congress should add language to Sec 1431 of the SDWA directing EPA to provide guidance that point-of-use and point-of-entry filtration devices and technologies used in a water emergency be independently certified, by a third-party certifier accredited by the American National Standards Institute (ANSI), to the relevant national standard issued by ANSI. This is the only verifiable method to ensure that filters will effectively reduce the level of specified contaminants in the drinking water supply and protect public health.

2. *Require Consumer Confidence Reports (CCRs) To Provide Information On Filters and Point of Use/Point of Entry Technologies Where Water Is Unsafe* - Section 1414 of the Safe Drinking Water Act (SDWA) requires community water systems to provide a CCR annually by mail or electronic delivery to each public water supply customer. The report must list the detection of regulated contaminants and their maximum contaminant levels. While the report requires that a statement be included that the presence of contaminants in drinking water does not necessarily indicate that the drinking water poses a health risk, the only requirement for how consumers can protect themselves is to include the phone number for the EPA hotline. The law specifically allows water systems to provide additional educational information but does not require them to do so. Best practices for communicating risk to consumers is to include actions that individuals can take to protect themselves and their families. Failure to provide adequate information and guidance creates confusion and increases anxiety. Lacking credible sources on how to protect themselves, consumers may obtain factually incorrect information that could potentially put their health at greater risk. Community water systems should be required to provide greater educational material to consumers on actions they can take to protect themselves, including the use of water filters and point of use/point of entry technologies certified by third-party certification bodies accredited by the American National Standards Institute (ANSI).

3. *Water Filter and Point of Use/Point of Entry Technology Inclusion In The SNAP And WIC Programs* - Industry supports making changes to USDA's Supplemental Nutrition Assistance Program (SNAP) and Supplemental Nutrition Program for Women Infants and Children (WIC) programs to allow the purchase of certified water filters and point of use/point of entry treatment technologies. This step will help to ensure that vulnerable populations are better safeguarded from exposure to lead and other contaminants in their drinking water. Currently, families are allowed to purchase bottled water under the SNAP program and "Ready to Feed" baby formula under the WIC program to protect against lead exposure. Allowing the purchase of certified water filters and point of use/point of entry technologies is a more comprehensive and affordable solution that ensures WIC and SNAP resources ultimately go to where intended.

Our organizations are prepared to provide your committee with any additional information, including draft bill language, regarding the clarifying language proposed above. If you have questions regarding this request, please contact Christopher Lindsay, senior director for government relations for IAPMO, at Christopher.lindsay@iapmo.org or 202-445-1198.

Thank you for your consideration,

NSF International
789 N. Dixboro Road, Ann Arbor, MI 48105

International Association of Plumbing and Mechanical Officials (IAPMO)
4755 E. Philadelphia Street, Ontario, CA 91761

Water Quality Association (WQA)
4151 Naperville Road, Lisle, IL 60532

National Grain and Feed Association
www.ngfa.org

1400 Crystal Drive, Suite 260
Arlington, VA 22202

P: (202) 289-0873
F: (202) 289-5388

May 5, 2020

The Honorable John Barrasso
Chairman
Committee on Environment and Public Works
U.S. Senate
Washington, DC 20510

The Honorable Thomas R. Carper
Ranking Member
Committee on Environment and Public Works
U.S. Senate
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper:

The National Grain and Feed Association (NGFA) greatly appreciates the opportunity to provide these stakeholder comments on the Committee's America's Water Infrastructure Act (AWIA) of 2020 discussion draft, and respectfully requests that they be considered during the Committee's markup of the legislation on May 6, 2020.

Established in 1896, NGFA consists of more than 1,100 grain, feed, processing, exporting and other grain-related companies that operate more than 7,000 facilities and handle more than 75 percent of all U.S. grains and oilseeds. Its membership includes grain elevators; feed and feed ingredient manufacturers; grain and oilseed processors and millers; exporters; livestock and poultry integrators; biofuels companies; and associated firms that provide goods and services to the nation's grain, feed and processing industry. NGFA also consists of 33 affiliated State and Regional Agribusiness Associations. In addition, NGFA has a strategic alliance and is co-located with the North American Export Grain Association and has a strategic alliance with the Pet Food Institute.

NGFA members move grain by truck, rail, barge and ocean-going vessels. American agriculture's competitive advantage largely depends on the quality, reliability, accessibility and cost-effectiveness of the national transportation system for inland waterways and ports, rail and motor carriers. We applaud Congress for committing to examine and reauthorize water infrastructure policies and projects every two years as part of the Water Resources and Development Act process.

As you know, the majority of U.S. locks and dams have outlived their 50-year design life. Most are not of sufficient capacity to handle modern 1,200-foot barge tows, while others are requiring more maintenance which costs shippers valuable time and resources. This particularly is important because the ability to utilize the inland river system is essential to the competitiveness of America's agricultural exports – roughly 60 percent of U.S. grains and oilseeds transit the inland waterways en route to foreign markets and comprise up to 20 percent of U.S. farm income. The inland waterway transportation network also relieves congestion and wear-and-tear on highways, and helps discipline rail rates. It is with these considerations in mind that NGFA strongly and consistently supports policies that would expedite the modernization of the locks-and-dam system.

NGFA believes that changing the cost-share formula for inland waterway construction and major rehabilitation of navigation projects, as proposed in the AWIA 2020 draft legislation, is both a necessary and prudent policy reform for which there is a precedent. For instance, in WRDA 2016, Congress changed the cost-share formula for deep draft ports from 50 percent general revenue and 50 percent non-federal sponsor funding to 75 percent general revenue and 25 percent non-federal sponsor. Congress

also previously altered the cost-share for both the Olmsted locks-and-dam project and the Chickamauga lock project.

As such, NGFA commends and strongly supports Section 1069 of the draft AWIA 2020 legislation, which would amend the cost-share formula for the construction and major rehabilitation of each inland waterways navigation project from the current 50:50 percent general revenue: Inland Waterways Trust Fund (IWTF) funding to 65 percent general revenue and 35 percent IWTF. If adopted, this provision would expedite such projects and bring the U.S. inland waterways transportation system into the 21st century.

As this Committee continues to proceed with advancing the AWIA 2020 bill through the legislative process, the NGFA appreciates this opportunity to convey its members' views and looks forward to working with you to enact provisions, such as Section 1069, that would enhance U.S. agriculture's competitiveness, contribute to the overall efficiency of the U.S. transportation system, and promote overall U.S. economic growth and job creation.

We wish members of this Committee good health and success as they advance the AWIA 2020 legislation. Please do not hesitate to reach out to the NGFA if you have any questions or information requests.

Sincerely,

Bobby Frederick
Vice President, Legislative Affairs and Public Policy
National Grain and Feed Association

May 1, 2020

The Honorable John Barrasso
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington DC 20510

The Honorable Thomas Carper
Ranking Member, Senate Committee on Environment and Public Works
513 Hart Senate Office Building
Washington DC 20510

RE: Comments of The Northwest Seaport Alliance on AWIA 2020 and the importance of HMT provisions

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of The Northwest Seaport Alliance (NWSA), a partnership of the ports of Seattle and Tacoma, I would like to thank you for your support of seaports and the US transportation system and your leadership in improving the infrastructure that supports goods movement and trade. I am pleased that you have prioritized passage of a WRDA bill this year in keeping with past practice of passing this legislation every two years, and we appreciate the opportunity to comment on the America's Water Infrastructure Act of 2020 (AWIA).

The NWSA's top federal priority is Harbor Maintenance Tax (HMT) reform. It is of critical importance to us that additional provisions are added to AWIA to enact comprehensive HMT reform.

While the HMT is a critical tool for maintaining the nation's infrastructure, the current law has several shortcomings, and US ports view HMT reform as one of the most significant steps our nation can take to help US seaports. We support the request of the American Association of Port Authorities and the US port industry to include provisions in the bill that would establish permanent authorization of the donor and energy transfer ports program with expanded uses and funding and that would provide funding assurances for emerging harbors and the Great Lakes region.

In particular, the highest priority for the NWSA are the provisions that achieve greater equity for HMT donor ports, and we urge the Committee to include them in AWIA. Imports through donor ports generated 51% of national HMT revenues in 2019. Yet historically these ports have received only 3% of appropriations from the Harbor Maintenance Trust Fund because their naturally deep harbors require minimal maintenance dredging, the primary purpose for which HMT funds are used. This translates into only pennies for the ports of Seattle and Tacoma for every HMT dollar we generate.

A further challenge for the NWSA is that because the tax is not assessed on importers who route cargo through non-US ports and afterwards move the cargo into US markets by land, the HMT creates an incentive to divert cargo from Puget Sound ports to ports in Canada. For Northwest ports and others

P.O. Box 2985 | Tacoma, WA 98401-2985 | 800-657-9808
The Northwest Seaport is a marine cargo operating partnership of the Port of Seattle and Port of Tacoma.

near our nation's borders, this represents a growing competitive disadvantage and threat to our economy. In addition to putting transportation sector jobs at risk, it also reduces the vessel capacity, supply of containers and other services that US farmers and manufacturers depend on to export their products overseas.

The Federal Maritime Commission (FMC) validated that the HMT's cost is a factor in cargo diversion, finding in a 2012 study that the tax is responsible for approximately half of the US-bound cargo that pass through Canadian ports. Furthermore, the US government is projected to lose several hundred million dollars in HMT revenue over the next 10 years because of cargo diversion to both Canada and Mexico. The HMT donor port provisions the US port industry is supporting would correct this unintended shortcoming of the original HMT law by allowing donor ports to issue meaningful rebates to shippers.

Thank you again for your leadership in advancing AWIA and the opportunity to comment. I hope to work with you on these issues in the weeks ahead. If you would like to discuss further, please feel free to contact my Federal Government Relations Manager Ryan McFarland at mcfarland.r@portseattle.org or 206-225-4675.

Sincerely,

John Wolfe
Chief Executive Officer

May 5, 2020

The Honorable John Barrasso
Chairman
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

The Honorable Thomas Carper
Ranking Member
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of the over 31,000 small and rural community members of the National Rural Water Association (NRWA), we are writing you in support of your legislation, "American's Water Infrastructure Act of 2020" and "The Drinking Water Infrastructure Act of 2020." We enthusiastically support enactment of these bills, and appreciate the many helpful and beneficial provisions for rural America in your water legislation.

Most of the country's drinking water and wastewater utilities are small: approximately 80 percent of the county's approximately 17,000 wastewater utilities serve a population of fewer than 10,000 persons, and over 90 percent of the country's approximately 50,000 community water systems serve a population of fewer than 10,000 persons.

Small and rural communities have more difficulty affording public water service due to lack of population density and lack of economies of scale. This challenge is compounded by the fact that rural communities have lower average median household incomes and often have higher rates of poverty. Likewise, we have a much more challenging time complying with our federal Clean Water Act permits and Safe Drinking Water Act regulations, and operating complex water treatment systems due to the lack of technical resources in small communities. While we have fewer resources, we are regulated in the exact same manner as a large community - and often operate similarly complex water treatment, distribution and collection systems that are smaller in scale but no less sophisticated to operate.

Your legislation includes numerous beneficial provisions such as expansion of technical assistance, subsidized funding initiatives within the state revolving funds targeted to the communities with the greatest need, new targeting of funding assistance to disadvantaged communities, etc. The positive effects of these provisions is explained in our written statement (April 20, 2020) to the Committee. We also appreciate the fact that your legislation does not include any new federal unfunded mandates on local governments.

Thank you for including a voice for rural America in the crafting of your legislation. The Environment and Public Works Committee is very important to rural and small town America. Every federal dollar that has been granted to the many thousands of small towns to build, expand, and maintain their drinking water and wastewater infrastructure through the State Revolving Funds was authorized by this committee. Also, every federal regulation under the Safe Drinking Water and the Clean Water Act was likewise authorized by this committee. We are grateful for the numerous ways this committee has included rural America in the crafting of federal water and environmental policy.

Sincerely,

Sam Wade, CEO

***The National Rural Water Association** is the country's largest public water utility organization with over 30,000 members. Safe drinking water and wastewater service are generally recognized as the most essential public health, public welfare, and civic necessities.*

Written Comments of

Khalid Bazmi, P.E.
Interim Director/County Engineer
OC Public Works

601 North Ross Street, 4th Floor
Santa Ana, CA 92701

(714) 667-3213
khalid.bazmi@ocpw.ocgov.com

"An Information-Gathering Process on Draft Legislation entitled, America's Water Infrastructure Act of 2020 and The Drinking Water Infrastructure Act of 2020: Stakeholder Comments"

May 1, 2020

Chairman Barrasso, Ranking Member Carpo, and Senators of the Environment and Public Works Committee: thank you for opening the process to allow for written comments to be submitted by other stakeholders. Orange County Public Works (OCPW) appreciates the opportunity to provide input into the information-gathering process regarding the draft of America's Water Infrastructure Act of 2020. We support the passage and enactment of this vital piece of legislation and look forward to seeing it progress.

My name is Khalid Bazmi and I am the Interim Director and County Engineer for OCPW. A department of the County of Orange, OCPW provides innovative services and manages infrastructure projects for California's third most populous county and the sixth most populous county in the nation with over 3 million residents. Our primary mission is to protect and enrich the community through efficient delivery and maintenance of public works infrastructure, planning, and development services.

As you move forward with your work to draft the AWIA 2020, OCPW would like to recommend the following comments be taken into consideration.

Issues Identified by OCPW to be Addressed in AWIA 2020

Westminster & East Garden Grove Flood Risk Management Project

In 2003, the Corps and the County of Orange/Orange County Flood Control District entered into a 50/50 cost share agreement to develop feasible alternatives through a flood risk management study aimed at reducing risks to life, safety and property due to deficiencies in the East Garden Grove-Wintersburg Watershed.

Once completed, the project will lead to increased flood protection for 6 cities and impact 11 cities overall, prevent approximately $4 billion in damages from a 100-year flood event, and protect over 1 million residents which is one-third of the County population, business owners and U.S. Naval Weapons Station operations in Seal Beach currently at flood risk. Additionally, the project will provide adequate flood protection and alleviate home and business owners in the affected communities from paying flood insurance premiums totaling over $13 million annually.

We thank you for including this critical project in the list of projects under Section 1202 and look forward to the signed Chief's Report (expected in mid-June), and receiving project authorization in WRDA 2020.

Reinstatement of Section 1043

WRDA Section 1043(b) authorized a non-federal implementation pilot program. The program authorizes a local agency, under certain circumstances, to administer and deliver the federally funded project. Local agencies understand permitting, environmental and market constraints and are well equipped to deliver projects faster and more efficiently.

Orange County has demonstrated its ability to complete capital improvement projects, as evidenced by its $1.3 B Capital Improvement Program and is seeking to be authorized to carry out projects.

Particularly, OCPW would like to use the 1043 program to construct portions of the Westminster & East Garden Grove Flood Risk Management Project, expected to be included in this year's Chief's Report, construct portions of the Santa Ana River Mainstem Project, a $2.8 billion cooperative flood control

project, and advance differed maintenance projects, including the Surfside-Sunset Coastal Storm Damage Protection project.

We commend the committee for the inclusion of this program and extending it through December 31, 2026. With the Corps itself identifying Section 1043(b) as a vital tool to be able to complete their growing list of projects, allowing them to accelerate them while creating efficiencies, we look forward to partnering together to build out key water infrastructure projects.

Surfside-Sunset Beach Coastal Storm Damage Protection Project

Orange County's beaches are vital elements of our community and essential to our quality of life and economy. Our Surfside-Sunset Beach Coastal Storm Damage Protection Project extends along 17 miles of the Orange County coastline. As a result of both flood control measures and various other shore protection and harbor works, Anaheim Bay and Newport Bay no longer receive a natural supply of sand.

Historically, the beach re-nourishment cycle for this project has followed a 5-year cycle; however, it has now been over 10 years since the last re-nourishment. This portion of our coastline has historically been replenished with sand from the San Gabriel and Santa Ana Rivers. This naturally occurring process was severely restricted by the Corps in the 1940s when they constructed federal navigation and flood control facilities in Long Beach and the Anaheim Bay, creating narrowed beaches prone to extreme erosion.

This was explicitly stated in House Document 602, a study conducted by the Corps and presented to Congress in 1962, which acknowledged the federal government's responsibilities for the disruption to the naturally occurring replenishment processes. Congress accepted the findings from that study and passed Public Law 87-874, approving and authorizing the project.

If approved under the 1043 program, OCPW would be able to complete the next stage of this long overdue project in a meaningful way to make the Surfside community whole. The Corps should make an annual commitment to seek funding for this important project.

Make Clarifications to Waters of the United States Section 404(f) Application for Routine Maintenance of Flood Control Maintenance Activities

OCPW urges for clarification to the existing maintenance exemption for flood damage reduction systems to affirm its application to routine maintenance for flood damage reduction systems including flood control channels and detention basins. This clarification is critical to our efforts to maintain our channels.

Clean Water Act §404(f)(1)(B) identifies certain maintenance activities as non-prohibited discharges of dredged or fill material. However, some federal agency field offices have inconsistently interpreted this provision. OCPW requests that you affirm its intent for §404(f)(1)(B) to include routine maintenance of channels, including removal of debris and trash, and vegetation management.

Additionally, we request that you amend Section 404 of the Clean Water Act to increase the statutory five-year term limit for General Permits, including general permits for operations and maintenance of flood control channels, to ten years.

Address Issues with the Benefit Cost Ratio (BCR)

The current BCR/National Economic Development (NED) approach is clearly an issue. OCPW is seeking a broadening of the scope of benefit categories that the Corps must consider in determining the feasibility of potential flood risk management projects with the goal of maximizing economic benefits and aligning the NED plan with the Federal Emergency Management Agency's (FEMA) requirement to provide 100-year flood protection.

The methodology currently used by the Corps to calculate the Benefit Cost Ratio does not capture all the benefits and includes arbitrary cost multipliers. We believe there are several excluded or unaccounted benefits, including:

- Savings to ratepayers under the National Flood Insurance Program (NFIP) administered by FEMA;
- Infrastructure critical to commerce, transportation systems, national security and protection; and
- Disadvantaged and low-income communities and social well-being

Making Section 214 of WRDA 2000 More Responsive to Non-Federal Interests

Section 214 of WRDA 2020 agreements allow the County to cover the staffing cost for work on those permits. The agreements contain a safeguard and a framework for implementation. OCPW currently has two WRDA Section 214 agreements with the Corps: USACE Section 404 Permitting and USACE Section 408 permitting.

The 214 program has evolved to be a useful tool for nonfederal entities seeking Corps approvals in various sections. When executed, the agreements save agency resources and reduce pressure on limited personnel and resources. The potential improvements being sought by OCPW would make the program more responsive and efficient for non-federal partners.

Requested changes include:

- Assuring that final decisions are delegated to the lowest level;
- Allowing augmentation of limited personnel and resources;
- Assuring that available funding can be used during general government shut-downs;
- Requiring the Corps to review its implementation guidance for further streamlining and improvements; and
- Deleting burdensome reporting requirements and replacing them with customer satisfaction reports.

Thank you again for the opportunity to submit these comments in support of the committee's information gathering process. OCPW applauds members and staff for moving forward with the important work of developing 2020 water resources legislation and look forward to seeing it move forward. We are always available as a resource should you have any questions.

"A River Basin of Opportunity, A Century Plus of Commitment"

ORVA
Ouachita River Valley Association
Serving Arkansas and Louisiana

President
Ouachita River Valley Association

1 May 2020

MEMORANDUM FOR Senate Committee on Environment and Public Works

SUBJECT: America's Water Infrastructure Act of 2020 (AWIA 2020) and the Water Resources Development Act of 2020 (WRDA 2020)

1. We have reviewed the AWIA 2020 which will be used as a basis for the WRDA 2020 in the Senate. The Ouachita River Valley Association (ORVA) is pleased to forward comments during this information gathering process on the subject draft legislation.

2. Specifically, the AWIA 2020 addresses the language that ORVA seeks as outlined in Title I, Subtitle B, Section 1204, Items 3 and 33. This section requires that the Secretary provide assistance to the applicable non-federal stakeholders associated with the studies or projects identified below, during the Corps outreach required under section 7001(b) of WRRDA 2014:

3. Modification of the project for navigation, Ouachita-Black Rivers, Arkansas and Louisiana, authorized by section 101 of the River and Harbor Act of 1960 (74 Stat. 481) to include water supply as an authorized purpose.

33. Modification of the Mississippi River and Tributaries (MR&T) Project authorized by the first section of the Act of May 15, 1928 (45 Stat. 534, chapter 569) to include the portion of the Ouachita River Levee System at and below Monroe, Louisiana, to Caldwell Parish, Louisiana.

3. The Association is grateful for the inclusion of the language as discussed above and fully supports this draft legislation. The language greatly benefits the people of Arkansas and Louisiana, bringing huge economic benefits to the entire Ouachita River Basin.

4. Point of Contact is Mr. David Weeks, Executive Director. He can be reached via mobile phone at 318-366-3834 or electronic mail at david.weeks.ORVA@outlook.com. The Association mailing address is: Post Office Box 913, Camden, Arkansas 71711.

RANDY DENMON
President
Ouachita River Valley Association

May 1, 2020

Honorable John Barrasso
Chairman
United States Senate
Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington DC 20510

Honorable Tom Carper
Ranking Member
United States Senate
Committee on Environment and Public Works
456 Dirksen Senate Office Building
Washington, DC 20510

Re: America's Water Infrastructure Act (AWIA) of 2020

Dear Chairman Barrasso and Ranking Member Carper:

The Pacific Northwest Waterways Association (PNWA) appreciates the introduction of the America's Water Infrastructure Act of 2020 (AWIA 2020), and the Committee's work to keep this important legislation on a biennial cycle. The commitment to our nation's navigation and water infrastructure will continue to build on past success while generating desperately needed jobs and economic development at this critical time in our history.

PNWA is a non-profit, non-partisan trade association that advocates for federal policies and funding in support of regional economic development. PNWA is a collaboration of businesses, public agencies and individuals who combine their economic and political strength in support of navigation, energy, trade and economic development throughout the Pacific Northwest. Our membership has grown to include over 135 entities including public ports, barge companies, steamship operators, grain elevator operators, agricultural producers, forest products manufacturers, electric utilities, irrigation districts, and public agencies throughout Washington, Oregon, and Idaho. For over 85 years, PNWA members have advocated for efficient, reliable, and environmentally sustainable waterways. We are pleased to provide our feedback on this important legislation.

Harbor Maintenance Trust Fund

Significant Harbor Maintenance Trust Fund (HMTF) reforms were included in the Water Resources Reform & Development Act (WRRDA) of 2014 and the Water Resources Development Act (WRDA) of 2016. PNWA supports full expenditure of annual HMT collections as provided in the CARES Act of 2020. PNWA also supports addressing the needs of specific categories of ports including donor/energy transfer ports and emerging (small) harbors and ports. PNWA believes that all cargo benefits from fees assessed via the HMT when those fees are fully utilized for the intended purpose to maintain the navigability of the rivers and harbors.

Section 214

Section 214 was made permanent in WRDA 2014, and allows the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits. Section 214 has allowed local governments, including ports, to move forward with vital infrastructure and ecosystem restoration projects. In the Northwest, mitigation bank credits are often the preferred form of mitigation for several Federal agencies that protect fish, wildlife, and the environment. Having fully approved mitigation banks with credits available for use is critical to the completion of port infrastructure and navigation projects. The credits are used to support mitigation efforts, environmental programs, and activities that support a public purpose—not private shareholders. Unfortunately, several mitigation banks in the Northwest have yet to be permitted due to a lack of

4224 NE Halsey Street, Suite 325
Portland, OR 97213

Telephone: 503-234-8550
Fax: 503-234-8555

regulatory staff. Section 214 funding would help address this backlog, yet ports have not been allowed to use the authority for their mitigation bank projects. If the port intends to sell credits from their mitigation bank, the Corps deems this to be a profit-making venture. PNWA supports expansion of Section 214 authority to allow for expediting the processing of mitigation bank permits regardless of whether the non-Federal government entity plans to sell mitigation bank credits.

Columbia River turning basins

The Columbia River Channel Deepening project was completed in 2010 and deepened the federal navigation channel from 40 feet to 43 feet. Since the completion of the deepening, over $900 million in public and private investments has occurred at Lower Columbia River ports, terminals, rail, and other facilities. As part of the deepening project, several turning basins were established and constructed to allow loaded ships to safely maneuver. A Section 7001 proposal was completed for the turning basins at Vancouver, Longview, and establishing the Lower Martin turning basin near River Mile 77. The current vessel use of the river system suggests a turning basin near River Mile 77 should be established. PNWA supports authorizing language for the Corps to re-evaluate the Lower Columbia River Channel Improvement Project turning basins for efficiencies. The turning basin improvements will maximize the efficiency and safety of shipping on the Lower Columbia River.

Cap Sante Marina deauthorization

Finally, to expedite future port development, the Port of Anacortes is seeking to deauthorize a portion of the Federal Channel within Cap Sante Marina. However, the area does not include the wooden pile breakwater at the entrance to Cap Sante Marina. The areas for deauthorization include the existing federal channel at the point of origin west of T-Dock and extending east and full width of the channel up to a point 15-foot offset from the southernmost tip of the existing USACE timber breakwater. The dimension is approximately 250 feet wide by 960 feet long. The second area for deauthorization begins at a point 15-foot offset from the southernmost tip of the USACE timber breakwater and extends north and full width of the channel to the channel point of termination south of the existing O-Dock and the dimension is approximately 200 feet wide by 620 feet long. The deauthorization of this portion of the Federal Channel is critical to attracting investment, development, and jobs.

Thank you for the opportunity to provide comments on the draft AWIA 2020 legislation. If you have any questions, please feel free to contact me.

Sincerely,

Kristin Meira

Kristin Meira
Executive Director
Pacific Northwest Waterways Association

Pacific Northwest Waterways Association
4224 NE Halsey Street, Suite 325
Portland, OR 97213

Telephone: 503-234-8550
Fax: 503-234-8555

PAPIO-MISSOURI RIVER
NATURAL
RESOURCES
DISTRICT

8901 S. 154TH ST.
OMAHA, NE 68138-3621
(402) 444-6222
FAX (402) 895-6543
www.papionrd.org

April 30, 2020

Chairman John Barrasso
Environment and Public Works Committee
United States Senate
410 Dirksen Senate Office Building
Washington, DC 20510

Ranking Member Tom Carper
Environment and Public Works Committee
United States Senate
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper,

I want to thank you for giving the Papio-Missouri River Natural Resources District (Papio-Missouri River NRD) the opportunity to share our views on the America's Water Infrastructure Act (AWIA) of 2020.

The Papio-Missouri River NRD is working on several priority flood control reservoir projects that will ensure urban development in Nebraska's largest city will not be at risk of catastrophic flood damages and expensive flood insurance. These reservoir projects ensure that thousands of homes and businesses are removed from the floodplain or prevented from being placed in it. It is estimated that these reservoirs provide $27 million of annual economic benefit and reduce individual property owner's expenses by thousands of dollars a year. There is little doubt these projects are of great benefit to our communities, but they need to be built for those benefits to be realized.

Section 1042 – Credit or Reimbursement

The Papio-Missouri River NRD stands strongly in support of Section 1042. This section would benefit the local sponsor and the federal government by ensuring those that are capable of making Corps approved repairs can do them in a more efficient manner, freeing up federal resources for those areas within a disaster area that need additional assistance.

If this authority would have been in place during the 2019 flood, the NRD's would have been able to mobilize and make temporary repairs to flood induced infrastructure damage in a matter of days, preventing further damages from occurring in another high water event. Permanent flood induced infrastructure repairs could have been made in a matter of weeks. Currently, the Papio-Missouri NRD still has a temporary repair in place on Union Dike that protects the City of Valley, and it will not be completely repaired until well after the 2020 flood season. That said, some local sponsors can do the work far more effectively and efficiently than the Corps.

Furthermore, we believe that the NRD's could have made these repairs for a fraction of the cost paid by the federal government (USACE). The total cost shareable amount for the Union Dike temporary repair is about $1.44 million whereas a private sponsor preformed a similar repair on a comparable system for nearly $368,000.00.

Simply put, if passed, this legislation would allow a number of local sponsors throughout the country to react faster and in more efficient manner than they currently can.

Section 2014 – WIFIA

The Water Resources Reform and Development Act of 2014 (WRRDA 2014) gave the United States Army Corps of Engineers (USACE) and the Environmental Protection Agency (EPA) the authority to provide direct loans and loan guarantees to nonfederal entities for qualifying projects. Flood damage reduction projects fall under the USACE's authority. Knowing the federal government cannot spend billions of dollars to address the growing USACE project backlog, we believe the WIFIA program will provide us the certainty needed to fund multi-year projects in Nebraska.

While we have received word from USACE that the program has been developed and stands ready to receive appropriations, section 2014 of AWIA 2020 does not include authorization from appropriations like it does for the EPA WIFIA program. Therefore, we ask for your assistance in ensuring the USACE WIFIA program is authorized and able to received the necessary appropriations to begin the issuance of loans. The Papio-Missouri River NRD would like to see that the USACE WIFIA program be authorized at $50 million dollars through 2024 like the EPA WIFIA program.

Federal funding for the USACE WIFIA program would not be a hand out. Rather, it would be an investment in our nation's infrastructure whose benefits would be felt for 100 years and longer. We believe the USACE WIFIA loan program should be a model for other infrastructure investment throughout the country. As an organization, we hope that once the loans are repaid the funds can be re-invested for future projects or new initiatives. Consequently, future federal allocations can be greatly reduced as these funds, with interest, can be repurposed for years to come.

Section 1001 - Upper and Lower Missouri River comprehensive flood protection studies.

The Papio-Missouri River NRD stands in support of the comprehensive studies that would be authorized by Section 1001 of AWIA 2020.

As a non-federal sponsor in the Missouri River Basin, our organization looks forward to the report that will address changes to the general plan for flood control in the Basin and is glad to learn of new potential opportunities for increased non-federal management in the Basin.

Thank you for your time and consideration, and we look forward to working with you on this legislation.

Sincerely,

John Winkler
General Manager
jwinkler@papionrd.org

May 1, 2020

United States Senate
Committee on Environment and Public Works
Submitted electronically to qfr@epw.senate.gov

Dear Chairman Barrasso, Ranking Member Carper, and Members of the Committee,

Thank you for the opportunity to provide comments on the discussion drafts of America's Water Infrastructure Act of 2020 ("AWIA") and The Drinking Water Infrastructure Act of 2020 ("DWIA"). The Pacific Coast Federation of Fishermen's Associations and the Golden State Salmon Association represent hundreds of stakeholders who are members of the salmon fishing industry of California and the West Coast. These fishermen and women's livelihoods are dependent upon the multibillion-dollar salmon fisheries that would not exist but for our healthy and productive Western rivers.

Water use and infrastructure have significant impacts to salmon and, therefore, our members' livelihoods, and for this reason we wish to comment on these bills. Negative impacts to the economic productivity of commercial and recreational fisheries should be avoided in AWIA and DWIA, and we urge you to ensure that the provisions of these bills are benign to or improve the situation of salmon populations. In particular, we are concerned that, as with the WRDA legislation passed at the end of the 114th Congress, harmful language could be added to these bills.

Although it is not present in the base text of AWIA or DWIA, PCFFA and GSSA would strongly oppose the addition of language that extend in any manner the provisions of Subtitle J of the WIIN Act (P.L. 114-322). We would also strongly oppose the inclusion of S. 1932 (Gardner/Feinstein), including the "compromise" version of S. 1932 circulated earlier this year and are grateful that you have excluded them from the base text of these discussion drafts.

S.1932 includes language that would remove authorizing committee oversight from the appropriation of funding for new water infrastructure and would increase subsidies for projects that would harm salmon fisheries. The bill also disrupts the process by which federal agencies analyze the feasibility and economic impacts of water infrastructure projects in the West. We have attached two letters previously sent to the Energy and Natural Resources Committee detailing our concerns.

S.1932 and WIIN Act Subtitle J represent California water politics at their worst. We applaud the committee's decision to omit this harmful language from its discussion drafts and urge you to continue to prevent their inclusion in AWIA and DWIA.

If you or your staff wish to contact us further about these concerns please write to Mike Conroy, executive director of PCFFA at mike@ifrfish.org and Barry Nelson, senior policy consultant for GSSA at barry@westernwaterstrategies.com. Thank you for your consideration.

Sincerely,

Mike Conroy
Executive Director
Pacific Coast Federation of Fishermen's Associations

John McManus
President
Golden State Salmon Association

Enclosure

September 25, 2019

The Honorable Lisa Murkowski, Chairman
Committee on Energy and Natural Resources
United States Senate
304 Dirksen Senate Office Building
Washington DC
20510

The Honorable Joe Manchin, Ranking Member
Committee on Energy and Natural Resources
United States Senate
304 Dirksen Senate Office Building
Washington DC
20510

RE: **S.1932 (Gardner) - Oppose**

Dear Chairman Murkowski and Ranking Member Manchin,

On behalf of the undersigned organizations, collectively representing the salmon fishing industry on the West Coast, including commercial and recreational fishermen, charter boat operators, tackle manufacturers and retailers, tribal interests, restaurants and more, we ask you to oppose S.1932, the Drought Resiliency and Water Supply Infrastructure Act. S.1932 would result in negative impacts to our members and the salmon fisheries on which they depend.

The provisions of S.1932 that are opposed by our organizations include:

- Appropriation of funds for Western water storage and conveyance projects without the establishment of criteria to prevent deleterious impacts to aquatic life, including salmon and other fish species;
- Failure to require that federally funded water storage projects include a proportional share of project yield for fisheries benefits;
- Failure to require that funded water storage projects comply with state law;
- Reduction of congressional oversight over the authorization of Western water projects, including the removal of such oversight by your committee;
- Public subsidies of water storage projects with primarily or exclusively private beneficiaries;
- Interference with independent federal agency analysis of the feasibility and potential fisheries and environmental impacts of proposed storage projects;

- An imbalanced approach to funding, including the use of federal taxpayer dollars to finance fishery mitigation obligations currently financed by project beneficiaries.

These concerns are explained in more detail in the attached fact sheet.

This legislation could be used to fund projects that may significantly impact recreational and commercial salmon fisheries. In particular, the bill would facilitate continued federal funding for the proposed raise of Shasta Dam, which our organizations oppose. Federal biologists have determined that this project would result in further significant reductions in salmon productivity in California's Central Valley, which is important to fishing businesses in all West Coast states as well as Southeast Alaska. Although the construction of the Shasta dam raise project is barred by California state law, S.1932 would nonetheless allow continued federal funding for the project.

The salmon fishing industry on the West Coast has been significantly impaired by water project construction and operations for many years. Unfortunately, rather than ensuring that new water project funding and operations mandates benefit salmon fisheries, S.1932 would continue to negatively impact our industry and our members.

We therefore urge you to oppose S.1932 when it comes before your committee.

Thank you for considering our views.

Sincerely,

John McManus
President
Golden Gate Salmon Association

Danielle Cloutier, Ph.D
Pacific Fisheries Policy Director
American Sportfishing Association

Noah Oppenheim
Executive Director
Pacific Coast Federation of Fishermen's Associations & Institute for Fisheries Resources

Larry Collins
President
San Francisco Crab Boat Owners Association

Richard Pool
President
Pro Troll & Water4Fish

Marc Gorelnik
President
Coastside Fishing Club

Linda Behnken
Executive Director
Alaska Longline Fishermen's Association

Jeremy Brown
President
Coastal Trollers Association

Randy Repass
Founder
West Marine

Mike Aughney
President
USAFishing.com & Reel Magic Sport Fishing

Ken Elie
President
Outdoor Pro Shop

Cc: Senator Cory Gardner
Senator Dianne Feinstein
Senator Martha McSally
Senator Kyrsten Sinema
Senator Jacky Rosen
Senator Kamala Harris
Senator Ron Wyden
Senator Maria Cantwell
Senator Catherine Cortez Masto

Attachment: Fact Sheet re. S.1932

S.1932 CONTAINS PROVISIONS THAT COULD HARM SALMON, THE ENVIRONMENT, AND TAXPAYERS

Lack of Environmental Criteria for Storage Funding: The bill does not include provisions to effectively screen out proposed water storage projects that harm fisheries and the aquatic environment, and does not establish criteria to prioritize projects that would provide net environmental benefits. The bill does not prohibit mitigation for environmental damage from being treated as an environmental benefit. The bill could also allow recreational benefits to be used to offset environmental impacts in the calculation of the federal benefits from a proposed project.

Further, the bill allows "operational flexibility" to be treated as a federal benefit (Sec. (3)(f)). The bill does not define operational flexibility in a manner that would make it a credible and quantifiable benefit. Without such a definition, there is a risk that new storage projects could be classified to provide operational flexibility benefits simply because they would store water.

The bill also does not require operational flexibility to be used in an environmentally beneficial – or even neutral - manner. Historically, federal storage facilities have given the Bureau of Reclamation the operational flexibility to alter natural hydrology in a manner that has caused significant fisheries impacts including the complete dewatering of the San Joaquin River.

New innovations in water storage have shown how projects can reduce impacts and provide net environmental benefits, including reestablishing fish passage to previously inaccessible historic spawning habitat. (See, for example, the Inland Empire Utilities Agency's Chino Basin Project, which has been awarded state funding by the California Water Commission.) S.1932 does not include provisions to prioritize innovative, beneficial water management approaches.

Failure to Require Compliance with State Law: The storage provision (Sec. 3(h)) does not prohibit funding for projects that are inconsistent with state law. This would allow continued federal funding for the proposed Shasta Dam raise project, which is prohibited by California state law. In addition to advancing a project that could result in significant harm to salmon fisheries, such appropriations would waste taxpayer funds on a project that cannot be constructed. For example, a state court recently prohibited the Westlands Water District from serving as a local sponsor for the project.

Reducing Congressional Oversight: The bill would require only a single federal authorization for study funds for a storage project (Sec. 3(g)(2)). All subsequent federal study funding would be authorized administratively (Sec. 3(g)(3)). Likewise, a single authorization for project construction funding would eliminate any requirement for subsequent congressional action for construction funds. Under S.1932, following an initial congressional authorization, congressional approval would not be required for subsequent funding despite lack of oversight or any problems that might arise from a project after authorization.

Subsidizing Local Cost Share for Damaging Storage Projects: Section 6, which is described as a mechanism for funding innovation pilot projects, does not include criteria to ensure that funded projects are either innovative or pilot projects. This section does not include language that would prohibit the use of appropriated funds to subsidize the local cost share for proposed

surface storage projects, which is a burden on taxpayers and reduces the funds available for beneficial projects.

Interference with Independent Federal Analysis: The bill limits the ability of federal agencies to perform independent analysis of surface storage projects. It requires federal agencies to "rely on reports prepared by sponsors of non-Federal storage projects, including feasibility or equivalent studies, environmental analysis and other pertinent reports and analyses." (Sec. 3(d)(6)(A)). The Department of the Interior would be bound to use these non-federal analyses even if they prove to be incomplete, inaccurate, or fail to include the best available science, which could result in the underestimate of impacts to fisheries. Further, this provision would prohibit the Department of the Interior from preparing studies to supplement these non-Federal analysis, except at the request of the non-Federal sponsor.

Funding for Conveyance Projects: The broad new definition of a storage project contained in S.1932 includes conveyance facilities (Sec. 3(a)(3)(A)(ii)) and Sec. 3(a)(4)(A)(ii)). Federal funding for conveyance facilities made available via appropriations for water storage projects would conflict with state law in California, which requires water users, not taxpayers, to pay for certain conveyance facilities.

Sharing Water Yield: The bill authorizes, but does not require, storage projects receiving federal funding to dedicate a proportional share of new water supply to environmental purposes (Sec. 3(d)(3)(B)(iii)). The lack of a yield sharing provision in S.1932 increases the risk that storage projects will be authorized on the basis of marginal benefits to fisheries and other aquatic wildlife and instead result in damage to those resources.

Lack of Criteria for Ecosystem Restoration Funding: The bill does not include criteria to ensure that funding for ecosystem restoration (Sec. 7) delivers significant environmental benefits. For example, this section does not require independent scientific review, nor does it require enforceable contracts to ensure that ecosystem benefits are delivered by project operators. In addition, the bill would authorize funds to be used to finance projects to benefits species "listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) that are adversely affected by the operation of water projects of the Bureau of Reclamation". This language would allow federal funds to be used for mitigation requirements under ESA biological opinions. Such mitigation requirements have been treated by the Bureau of Reclamation as reimbursable federal expenses – meaning that they are passed on to Bureau water contractors, which appropriately disincentivizes adverse impacts to fish and wildlife. S.1932 authorizes shifting these mitigation expenses from Bureau contractors to taxpayers.

Finally, the bill does not explicitly authorize or prioritize funding for benefits to economically and environmentally important species such as non-listed salmon runs, on which our members depend.

Imbalanced Funding: The allocation of authorized funding inappropriately prioritizes storage ($670M) over other activities such as water recycling ($100M) and ecosystem restoration ($140M). Further, there is no funding for water use efficiency, which can be the most cost effective and environmentally benign way to meet water needs.

April 3, 2020

The Honorable Lisa Murkowski, Chairman
Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington DC 20510

The Honorable Joe Manchin, Ranking Member
Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington DC 20510

RE: **S.1932 (Gardner) – Oppose**

Dear Chairman Murkowski and Ranking Member Manchin,

On behalf of the undersigned organizations, collectively representing the salmon fishing industry on the West Coast, including commercial and recreational fishermen, charter boat operators, tackle manufacturers and retailers, tribal interests, seafood restaurants, and more, we write to respectfully urge your opposition to S.1932, the Drought Resiliency and Water Supply Infrastructure Act, both as introduced and based on the amendments recently released publicly.

In September of last year our organizations and many others highlighted our significant concerns with S.1932, which would result in negative impacts to our members and the resources on which they depend (see attached letter.) Since then, proposed amendments to the bill have been released that alter its character to some degree. However, S.1932 would nonetheless continue to harm salmon runs and our industry and would in some cases increase the likelihood of those impacts if enacted.

In addition to the issues highlighted by our organizations in September, the provisions of S.1932 and the proposed amendments that are opposed by our organizations include:

- *Increased* appropriation of funds for Western water storage and conveyance projects without the establishment of criteria to prevent deleterious impacts to aquatic life, including salmon and other fish species;
- Failure to establish adequate oversight of storage and conveyance projects, including the elimination of oversight by your committee of state-led projects where the federal cost share is less than $700 million;
- *Increased* public subsidies of water storage projects with primarily or exclusively private beneficiaries;
- Broad definitions of storage and conveyance projects, with no limitations on the partitioning of projects, which could enable multiple federal contributions for related projects;
- Provision of public funds enabling conversion to permanent water supply contracts, with repayments allocated to the financing of additional storage and conveyance projects;
- Interference with independent federal agency analysis of the feasibility and potential fisheries and environmental impacts of proposed storage projects;
- A new, overly broad definition of "natural storage" projects that does not preclude traditional storage and conveyance projects that harm fisheries and aquatic habitat;
- Appropriations of public funds for water agencies serving private beneficiaries to support settlements that offer habitat restoration in lieu of improved flow requirements, including California's "voluntary agreements" process;
- Authorization of funding for projects that result in "relocation of diversion to less fishery-sensitive areas," an overbroad definition that could include projects that would result in significant harm to fisheries.

Despite, and in some cases because of the amended language, S.1932 could be used to fund projects that may significantly impact recreational and commercial salmon fisheries. Rather than improving the legislation, these amendments expand federal agency authority to circumvent Congressional oversight and allocate public funds to additional categories of storage and conveyance projects that would result in deleterious impacts to fisheries and our members.

We therefore continue to urge you to oppose S.1932, both as introduced and in an amended form when it comes before your committee.

Thank you for considering our views.

Sincerely,

John McManus
President
Golden State Salmon Association

Danielle Cloutier, Ph.D
Pacific Fisheries Policy Director
American Sportfishing Association

Noah Oppenheim
Executive Director
Pacific Coast Federation of Fishermen's Associations & Institute for Fisheries Resources

John Barnett
President
San Francisco Crab Boat Owners Association

Richard Pool
President
Pro Troll & Water4Fish

Marc Gorelnik
President
Coastside Fishing Club

Linda Behnken
Executive Director
Alaska Longline Fishermen's Association

Jeremy Brown
President
Coastal Trollers Association

Randy Repass
Founder
West Marine

Mike Aughney
President
USAFishing.com & Reel Magic Sport Fishing

Ken Elie
President
Outdoor Pro Shop

PORT EVERGLADES DEPARTMENT – Chief Executive & Port Director's Office
1850 Eller Drive, Fort Lauderdale, Florida 33316
954-468-0140 FAX 954-523-8713

May 1, 2020

The Honorable John Barrasso
Chairman
Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Tom Carper
Ranking Member
Environment and Public Works Committee
456 Dirksen Senate Office Building
Washington, D.C. 20510

Via email: QFR@epw.senate.gov

Re: Harbor Maintenance Trust Fund; Donor and Energy Transfer Ports

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of the Broward County Port Everglades Department, thank you for the opportunity to submit written comments to you regarding your draft America's Water Infrastructure Act of 2020 (AWIA). We appreciate your effort in developing the bill and prioritizing water infrastructure generally.

We write today to support the inclusion of language in the bill regarding the Harbor Maintenance Trust Fund (HMTF), specifically requesting that the Donor and Energy Transfer port program be made permanent with expanded funding and authorized uses. We also request that specific attention be given to ensuring that cruise passenger revenue paid into the HMTF be included when determining donor port designations.

As one of two donor ports in Florida, Port Everglades is also one of the busiest cruise ports in the world. The U.S. Army Corps of Engineers should be required to use up-to-date cargo and cruise passenger HMTF revenue when determining whether ports are donor ports or not. Legislative or Statement of Managers language could make certain that the Corps uses the most recent HMTF cargo data available, updates its calculations frequently, and incorporates revenue remitted to the Trust Fund by cruise passengers.

With that in mind, we suggest the following report language and are happy to work with you further to develop legislative text should you wish to use that approach.

> *REPORT LANGUAGE (HOUSE) OR STATEMENT OF MANAGERS LANGUAGE (SENATE) RELATED TO THE CORPS' DONOR PORT GUIDANCE*
>
> *Maintenance of Corps of Engineers navigation projects at seaports is accomplished by dollars from the Harbor Maintenance Trust Fund. The Fund is replenished by a Harbor Maintenance Tax paid by commercial shippers on the value of cargo that transits the seaports. In addition, the Tax is paid by the cruise industry, which also benefits from the federal channels.*
>
> *Section 2106 of the Water Resources Reform and Development Act of 2014 established a program to address the large disparity that exists between the amount of Harbor Maintenance*

Tax collected at some ports and the dollars spent from the Harbor Maintenance Trust Fund at that port. The statute provides that ports meeting certain criteria, including receiving less than 25 percent of the taxes collected at that port, shall be designated Donor Ports and shall receive special consideration. Specifically, Donor Ports may use the Trust Fund to address other navigation infrastructure needs at their port besides federal channel maintenance and may use the Trust Fund to reimburse shippers that use the port and have paid the tax.

It has come to the attention of the Committee the Corps fails to include Harbor Maintenance Tax revenues from the cruise industry when it calculates revenues from each port. As a result, some ports may not receive full credit for the revenues collected from their maritime activities.

The Committee understands the data related to cruise ship activity may not be readily available from U.S. Customs and Border Protection because the cruise industry has not been asked to report where the tax revenues were collected. Nevertheless, the Committee believes the Corps should account for Harbor Maintenance Tax revenues collected at a port by the cruise industry when determining which ports are Donor Ports.

The Committee directs the Corps to follow the requirements of Section 2106 of WRRDA fully and reassess the Donor Port designation based upon the collection of harbor maintenance taxes in the most recently completed fiscal year, including the harbor maintenance taxes collected from the cruise industry in the calculation for each port.

Thank you again for your work on the America's Water Infrastructure Act of 2020. We look forward to working with you to advance this bill and ensure it addresses the most critical needs of ports.

Sincerely,

Glenn A. Wiltshire, Acting Chief Executive & Port Director
Broward County Port Everglades Department
1850 Eller Drive
Fort Lauderdale, FL 33316
gwiltshire@broward.org
954-523-3404 – Office
954-895-5442 – Cell

CC: Senator Marco Rubio
Senator Rick Scott
Congressman Ted Deutch
Congressman Alcee Hastings
Congresswoman Debbie Wasserman-Schultz
Congresswoman Frederica Wilson

May 1, 2020

Honorable John Barrasso
Chairman
United States Senate
Committee on Environment and Public Works
410 Dirksen Office Building
Washington, DC 20510-6175

Honorable Tom Carper
Ranking Member
United States Senate
Committee on Environment and Public Works
456 Dirksen Senate Office Building
Washington, DC 20510

RE: Comments on Draft America's Water Infrastructure Act of 2020

Dear Chairman Barrasso and Ranking Member Carper:

The Port of Everett is pleased to submit the following comments for the committee's consideration on the America's Water Infrastructure Act of 2020.

1. Section 2102 should be preserved, and the Army Corps needs to issue guidance within 120 days of the passage of the act.
The Water Resources Development Act (WRDA) of 2014 which authorized Harbor Maintenance Trust Fund funding for harbor maintenance projects for "high- and moderate-use harbors," designating donor ports that are high-use harbors as 10 million tons annually, and moderate-use harbors as more than 1 million and less than 10 million tons annually. WRDA 2014 subsequently authorized Section 2106, "Additional Measures at Donor Ports and Energy Transfer Ports," which was further refined by WRDA 2016. Sec. 2102 has yet to receive clarification, guidance or appropriations. As a moderate-use port that does not benefit from Section 2106 funds, the Port of Everett believes that the funding mechanisms for the operations and maintenance of harbor projects needs to be reaffirmed in the America's Water Infrastructure Act of 2020 and that guidance on the program and funding need to be issued within 120 days of the passage of the act.

Further, as Section 2106 and subsequent revisions in Section 1110 of WRDA 2016, provides greater access to HMTF funds, ports eligible for Sec. 2106 funds that are also eligible for Sec. 2102 funds must choose between either program to prevent a disproportionate share of HMT dollars from going to any single entity. Precedent for such a requirement exists in Section 1110 of WRDA 2016 that requires ports that are both considered Donor Ports and Energy Ports to decide which designation they may receive funding through.

2. Increase Beneficial Use of Dredged Materials Pilot Project from 20 to 40.
The Port of Everett supports the proposal to increase the number of projects in the Beneficial Use of Dredged Materials Pilot Project from 20 to 40. River dredging projects in Western Washington generate

1205 Craftsman Way, Suite 200, P.O. Box 538, Everett, WA 98206 Phone 425.259.3164 Fax 425.252.7366
Website: www.portofeverett.com

large amounts of sediment where it is becoming exceedingly difficult to secure economically feasible placement sites capable of handling the volumes of dredge materials. The potential to use dredge materials at additional types of sites for disposal that would, among other eligible projects, protect ecosystem restoration, reduce storm damage, stabilize stream systems and enhance shorelines, will support other federal priorities and potentially reduce the costs of dredging and dredge material placement while supporting other federal priorities. The Port of Everett is the local sponsor of a federally authorized dredging project on the Snohomish River that generates large amounts of dredge materials. The Port was supportive of an application in 2018 to the pilot project that would have used our dredged materials to restore parts of the nearshore in Puget Sound.

The Port of Everett thanks you for your leadership on the introduction of the America's Water Infrastructure Act of 2020 and urge your consideration of our priorities for inclusion in the final bill. If you have questions or comments on these proposals, please contact Adam LeMieux at AdamL@portofeverett.com or 425-572-2829.

Respectfully,

Lisa Lefeber, CEO
Port of Everett

1205 Craftsman Way, Suite 200, P.O. Box 538, Everett, WA 98206 Phone 425.259.3164 Fax 425.252.7366
Website: www.portofeverett.com

April 30, 2020

The Honorable John Barrasso
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Thomas Carper
Ranking Member, Senate Committee on Environment and Public Works
513 Hart Senate Office Building
Washington, DC 20510

RE: America's Water Infrastructure Act (AWIA) of 2020 – Harbor Maintenance Trust Fund (HMTF)

Dear Chairman Barrasso and Ranking Member Carper:

Thank you both for your longstanding leadership to advance port infrastructure, transportation networks and goods movement. Especially now, as we endure the impacts of the global COVID-19 pandemic, your leadership to support the maritime industry is critical. We appreciate the hard work of Committee staff and are grateful for the opportunity to submit comments on the America's Water Infrastructure Act (AWIA) of 2020.

A robust and healthy port industry is vital to our nation, and donor ports play a key role in supporting national port infrastructure. Southern California is home to America's leading container port complex (San Pedro Bay), the largest in North America, handling 40 percent of our nation's imports and 25 percent of exports, which includes substantial commodity and industrial exports from the U.S. heartland. According to a 2018 economic study prepared for the Port of Long Beach, 45% of parts and accessories for machine tools and engines imported to and 51% of dry bulk exported from Wyoming are coming through the San Pedro Bay port complex. In Delaware, zinc and zinc articles make up 31.5% of imported and 40.9% of exported goods moving through the Port of Long Beach. The United States Department of Agriculture ranks the Port of Long Beach (Port) one of the top 10 U.S. ports, moving 13% of U.S. containerized waterborne agricultural exports and cumulatively supporting $374 billion of total economic output across the U.S. economy. The Port alone supports 2.6 million jobs throughout the United States and moves over seven and a half million twenty-foot equivalent units every year with cargo valued at $200 billion.

Together, the Ports of Long Beach and Los Angeles move more than one-third of the nation's cargo and generate approximately 25% of the nation's Harbor Maintenance Tax (HMT) revenues. Now, more than ever, as we are faced with trying economic times, the Harbor Maintenance Trust Fund (HMTF) program needs to be modernized to include the equitable distribution of HMTF revenues and the expanded use of the funds toward important maintenance needs that will help sustain and grow our nation's ports.

415 W. Ocean Blvd., Long Beach CA, 90802-6194 | WWW.POLB.COM

Port of
LONG BEACH
THE PORT OF CHOICE

The Honorable John Barrasso
The Honorable Thomas Carper
April 30, 2020
Page 2 of 2

As your Committees moves forward with drafting AWIA of 2020, we respectfully request your support for including additional modifications to HMTF. Specifically, we are seeking your consideration of two important and long overdue updates to the HMTF:

- Improved Donor Equity: The six donor ports, as defined in the Water Resources Reform Development Act of 2014, account for 50% of all HMTF revenue, but receive less than two percent in return. A more equitable return to donor ports (10%) should come from any increase in overall spending that occurs from going to full spend.

- Expanded In-Water Use: Any additional funding must be accompanied with an expansion in the types of projects eligible for HMTF expenditures. Slope stability remains a priority for the Port. In addition, expanded in-water uses would benefit the Port by allowing for the maintenance and repair of existing rock dikes, concrete/steel bulkheads, pile, wharves, mooring dolphins and other marine structures which all directly relate to the Port's ability to maintain navigation and berthing. These similar considerations are needed to ensure that existing marine structures can perform as designed to support navigation and berthing both before and after seismic events.

The utility of these modification are only achieved if they are addressed in tandem. We urge the inclusion of both items in AWIA as a piecemeal approach will only prolong the inequities currently facing donor ports.

Again, thank you for your leadership in the ports and supply chain industry. We look forward to continuing working with you and your Committee staff on AWIA of 2020. If we may be on any assistance, please do not hesitate to contact Eleanor Torres, Director of Government Relations, at (562) 756-8383 or Eleanor.Torres@polb.com, or me at (562) 822-8554 or Mario.Cordero@polb.com.

Sincerely,

Mario Cordero
Executive Director

cc: Senator Dianne Feinstein
Senator Kamala Harris

THE PORT OF LOS ANGELES 425 S. Palos Verdes Street Post Office Box 151 San Pedro, CA 90733-0151 TEL/TDD 310 SEA-PORT www.portoflosangeles.org

Eric Garcetti *Mayor, City of Los Angeles*

Board of Harbor Commissioners: Jaime L. Lee *President*; Edward R. Renwick *Vice President*; Diane L. Middleton *Commissioner*; Lucia Moreno-Linares *Commissioner*; Anthony Pirozzi, Jr. *Commissioner*

Eugene D. Seroka *Executive Director*

April 29, 2020

The Honorable John Barrasso
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Tom Carper
Ranking Member, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

RE: America's Water Infrastructure Act of 2020 (AWIA 2020)

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of the Port of Los Angeles, I would like to thank you for your continued leadership and commitment to the ports industry. During the present COVID-19 public health crisis, ports have been highlighted for their integral role in getting critical supplies to our frontline medical workers and maintaining the supply chains that keep our economy afloat. As America's busiest container port, serving all 435 Congressional districts across the country, we embrace our responsibility to the nation and appreciate your continued support. That support was meaningfully expressed with the inclusion of full utilization of the Harbor Maintenance Trust Fund (HMTF) into the Coronavirus Aid, Relief, and Economic Security (CARES) Act. It is in that spirit that I provide comments on the America's Water Infrastructure Act of 2020 (AWIA 2020).

Omission of Harbor Maintenance Tax (HMT)

HMT is fundamental for our nation's maritime infrastructure maintenance, however its full potential will continue to be stymied without additional reform. In addition to full utilization as provided by CARES, AWIA 2020 must expand eligible uses and address donor port equity to optimize use of these precious funds. If the spending provision of the CARES Act is not accompanied by these additions in AWIA 2020, unintentional harm to donor ports may occur and future remedies will be untenable or difficult to achieve.

I seek three important updates to HMT to be included in AWIA 2020:

- Permanently Improve Donor Equity – The six donor ports as defined in the Water Resources Reform and Development Act (WRRDA) 2014 account for 50 percent of all HMT revenue, but receive less than two percent in return. Of the nearly $380 million in HMT revenues generated annually by the donor ports of Los Angeles and Long Beach, we receive less than three percent in return. A more equitable return to donor ports should be a priority. Donor ports must be permanently recognized and receive a 10 percent return on the funds they contribute to the HMTF.

- Expand Eligibility for In-Water Infrastructure – Some of the most crucial maintenance needs at the donor ports are not allowed under existing HMT spending authorization. As a result, the minimal funds they receive are not addressing their most urgent maintenance needs. For example, in Los Angeles, we have nearly $260 million in concrete and corrosion repairs on the decks, beams, and mooring bitts. Expanded eligibility to include in-water concrete repairs would facilitate vital, fundamental maintenance.

- Expand Eligibility to Fortify Against Seismic Activity – Any seismic activity that disrupts port operations could have devastating effects locally and nationally. Maintaining in-water infrastructure to withstand seismic events is an important eligibility expansion.

Sec.1058 - Report on Barriers to Infrastructure Development at United States Ports.
I applaud the inclusion of this study. As outlined above, ports play a key role in the national economy and ensuring that our precious infrastructure dollars are used efficiently and effectively is paramount. Reducing barriers to invest and enhance our ports will be especially critical in the wake of a COVID-19-related economic downturn.

Sec.2008 - Water Infrastructure and Workforce Investment.
This section reauthorizes an existing competitive grant program created in AWIA 2018 that I would like to see expanded to include workforce development in the maritime industry. As the nation embarks on an economic revitalization, equipping our ports and harbors with a skilled, prepared workforce is vital. Additionally, the industry is increasingly utilizing data in the supply chain, putting new skill sets in high demand.

Sec.3002 - Grants to Ports to Reduce Emissions from Waterborne Vessels.
I strongly support the creation of this grant program. For over a decade the Port of Los Angeles has been focused on strategies to reduce vessel emissions. We have invested in alternative shore-power, emission capture technology, and vessel speed reduction. The proposal for $20 million is a step in the right direction; however, additional resources will be needed to make substantive reductions in emissions.

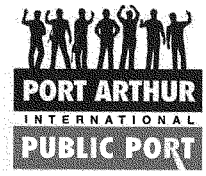
To reiterate, a robust and healthy port industry is vital to our nation's economy and donor ports play a fundamental role in supporting the national freight system. In order for full spending of HMT to be impactful, the trust fund balance must be linked to an allocation plan that expands the uses of HMT dollars to address donor equity issues and to maintain a state of good repair of the nation's port infrastructure.

During these challenging times, I applaud your efforts and continued support to address the vital infrastructure needs of our country, including the unique requirements of our nation's ports. I hope to work with you both as this bill moves forward. Please feel free to reach out to my Director of Policy and Legislative Affairs Jennifer Cohen (Jcohen@portla.org or 310-732-3901) to discuss further.

Sincerely,

EUGENE D. SEROKA
Executive Director
Port of Los Angeles

cc: Senator Dianne Feinstein
Senator Kamala Harris



May 1, 2020

Honorable John Barrasso
Chairman United States Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building Washington DC 20510-6175

Honorable Tom Carper
Ranking Member
United States Senate Committee on Environment and Public Works
456 Dirksen Senate Office Building Washington, D.C. 20510

Re: America's Water Infrastructure Act of 2020

Dear Chairman Barrasso and Ranking Member Carper:

As Port Director/CEO for the Port of Port Arthur located in Port Arthur, TX on the Sabine Neches Waterway and home to the highest energy refining capacity in the nation we face great challenges to keep our facilities properly dredged. Passage of AWIA 2020 as well as developing a pathway forward for access to Energy Port designation will go a long for ports like Port of Port Arthur to help our country remain competitive, increase U.S exports and create local jobs.

AWIA 2020 is an opportunity to conclude many years of efforts and complete legislative action regarding the Harbor Maintenance Trust Fund, HMTF. AAPA's HMTF proposed legislation with its 4 pillars, has been split into 2 pieces with the 'full use' pillar addressed in the CARES Act of 2020. The remaining 3 pillars are: (1) permanent authorization of the Donor and Energy Transfer Ports program with expanded uses and funding; and funding assurances for (2) emerging harbors and the (3) Great Lakes region. While these provisions were not included in the EPW draft AWIA release, we look forward to working with you to secure their inclusion prior to Senate passage. This legislative proposal benefits over 800 ports around the Nation that will see advantages through the inclusion of the remaining 3 pillars.

If you have any questions please feel free to contact me.

Sincerely,

Larry Kelley
Port Director/CEO
221 Houston Ave
Port Arthur, TX 77640
409-983-2011.

PORT OF TEXAS CITY

TEXAS CITY TERMINAL RAILWAY COMPANY

May 1, 2020

EPW Committee,

The Port of Texas City is requesting the EPW Committee to include the AAPA's HMTF legislative language in the Senate's EPW WRDA legislation.

AWIA 2020 is an opportunity to conclude many years of efforts and complete legislative action regarding the Harbor Maintenance Trust Fund, HMTF. AAPA's HMTF proposed legislation with its 4 pillars, has been split into 2 pieces with the 'full use' pillar addressed in the CARES Act of 2020. The remaining 3 pillars are: (1) permanent authorization of the Donor and Energy Transfer Ports program with expanded uses and funding; and funding assurances for (2) emerging harbors and the (3) Great Lakes region.

While these provisions were not included in the EPW draft AWIA release, we look forward to working with you to secure their inclusion prior to Senate passage. This legislative proposal benefits over 800 ports around the Nation that will see advantages through the inclusion of the remaining 3 pillars.

Sincerely,

Jason Hayley
Vice President
Port of Texas City
2425 HWY 146 N.
Texas City, TX 77590
Office: 409-945-4461, ext. 1020
Cell: 409-682-4074
jhayley@tctrr.com

Portland Cement Association
200 Massachusetts Ave NW, Suite 200
Washington D.C., 20001
202.408.9494 Fax: 202.408.0877
www.cement.org

April 22, 2020

The Honorable John Barrasso
Chairman
Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Tom Carper
Ranking Member
Environment and Public Works Committee
456 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso and Ranking Member Carper:

Thank you for conducting an information gathering process to hear from stakeholders regarding America's Water Infrastructure Act of 2020 and the Drinking Water Infrastructure Act of 2020. We appreciate the opportunity to share the cement industry's perspective.

The Portland Cement Association (PCA) represents 91 percent of the U.S. cement production capacity with a presence in all 50 states. Concrete forms when portland cement is mixed with water and aggregate (sand and rock) and allowed to harden. Cement holds the mixture together and has a similar role to flour in cake mix. Concrete plays an important role in the construction of water infrastructure projects across the country.

Our nation's waterways play a critical role in the movement of cement from manufacturing plant to market. Annually, the cement industry ships approximately 35 percent of our product from plants to terminals by barge demonstrating these systems are vital for American commerce. Additionally, water infrastructure construction is a critical market for cement in the United States. For every billion spent on water construction approximately 211,000 metric tons of cement will be consumed.

Passage of America's Water Infrastructure Act of 2020 is important to continuing the two-year cycle of passing legislation to authorize and advance new U.S. Army Corps of Engineers projects. PCA supports the authorization of new Chiefs Reports, including those focused on restoration, flood risk management, and hurricane and storm risk reduction totaling $6.32 billion in capital investment in water infrastructure projects across the country. The legislation also initiates feasibility studies on a number of other projects, including a few in response to the severe flooding that occurred on the Mississippi River and Great Lakes last year.

The cement industry also supports the steps taken by America's Water Infrastructure Act to cut red tape by setting a goal for the U.S. Army Corps of Engineers to complete a feasibility study for a project within two years. Communities across the country are depending on advancing these water infrastructure projects. Completing a feasibility study in a timely manner is an important step to delivering these projects.

Not only will America's Water Infrastructure Act advance important ecosystem restoration, flood risk management, and hurricane and storm risk reduction projects, the legislation takes important steps to invest in needed public health water infrastructure projects in communities across the country. For these reasons, the cement industry supports the $8.8 billion investment the bill makes in programs to help communities invest in their aging wastewater and drinking water infrastructure.

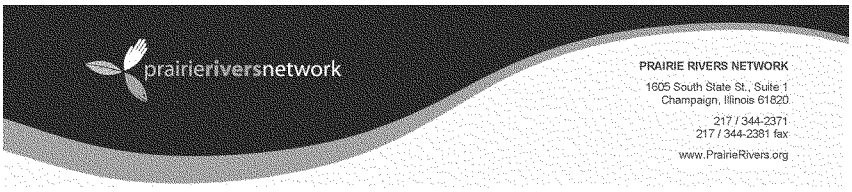
For example, the cement industry supports reauthorizing the Clean Water State Revolving Fund (SRF). As our nation's wastewater infrastructure ages and the cost of compliance with environmental requirements continues to increase, communities are faced with growing difficulties in paying for critical improvements. The Clean Water SRF helps communities invest in these needed improvements. Additionally, since its first authorization in 2014 the Water Infrastructure Finance and Innovation Act (WIFIA) program has provided low-interest loans to communities to help make needed drinking water and wastewater infrastructure improvements. The cement industry is pleased WIFIA is reauthorized for three years as part of the legislation.

Additionally, the cement industry supports the policy and programs included in America's Water Infrastructure Act and the Drinking Water Infrastructure Act to improve the resiliency of the nation's water infrastructure. Over the past several years, the United States has experienced an increase in the number of natural disasters ranging from hurricanes to flooding that have put great pressure on the drinking water and wastewater systems of communities across the country. It is important to help communities invest in projects to improve their resiliency and adapt to the changing climate. For these reasons, we support the authorization of the Clean Water Resiliency and Sustainability Program to help wastewater systems plan, design, construct, and implement a program or project to increase the resiliency or adaptability of the water system to a natural hazard. Likewise, the cement industry supports the creation of the Midsize Drinking Water Resiliency Program to help drinking water systems do the same.

Again, thank you for your continued leadership in advancing critical water infrastructure legislation. PCA looks forward to working with you to advance both pieces of legislation. If you have any further questions, please feel free to contact me at (703) 321-6792 or soneill@cement.org.

Sincerely,

Sean O'Neill
Senior Vice President
Government Affairs



PRAIRIE RIVERS NETWORK
1605 South State St., Suite 1
Champaign, Illinois 61820
217 / 344-2371
217 / 344-2381 fax
www.PrairieRivers.org

May 1, 2020

Prairie Rivers Network is submitting the following comments and requests for revisions in response to the draft legislation for America's Water Infrastructure Act of 2020, initially released by the Senate Committee on Environment and Public Works.

Prairie Rivers Network (PRN) is an Illinois-based river conservation and clean water advocacy organization. Our mission is to protect water, heal land, and inspire change. With the support of over 1,200 members throughout Illinois and the country, PRN strives to use science and collective action to protect and restore the health of lands and waters throughout the state.

Federal policies like the Water Resources Development Act (WRDA) and this year's America's Water Infrastructure Act (AWIA) can have a significant impact on millions of miles of rivers and streams across the country. As outlined in the comments below, PRN is particularly interested in promoting the ecological health of the Upper Mississippi system while addressing flood risk for communities along our rivers. We feel these issues can be addressed through amendments to several sections contained within AWIA. We respectfully submit the following comments for the committee's review.

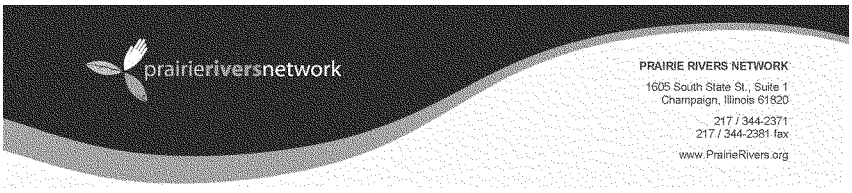
Amend Section 1011 (Non-federal implementation pilot program)

We urge Congress to address the current problems facing the Public-Private Partnership Pilot Program on the Upper Mississippi River. We also strongly recommend the Senate amend this section to require the United States Army Corps of Engineers (Corps) develop guidelines that provide a clear roadmap to the process that is to be used, the entities responsible for each step of the process, and the entity responsible for responding to public inquiries and requests for information.

Currently, there are several problems facing the Public-Private Partnership Pilot Program on the Upper Mississippi River. These include, but are not limited to: major confusion regarding which activities are the responsibility of the Corps and which are the responsibility of the non-federal sponsor; the inability of the non-federal sponsor to conduct required technical analyses; the inability of the non-federal sponsor to effectively engage the public and other federal agencies; and the inability of the public to obtain information about the process being used. We believe the steps mentioned above will help alleviate these issues.

Amend Section 1017 (Continuing authority programs)

We recommend Section 1017 be amended to include the following:



PRAIRIE RIVERS NETWORK
1605 South State St., Suite 1
Champaign, Illinois 61820
217 / 344-2371
217 / 344-2381 fax
www.PrairieRivers.org

a) UPPER MISSISSIPPI RIVER RESTORATION PROGRAM.
   1) Section 1103(e)(3) of the Water Resources Development Act of 1986 (33 U.S.C. 652(e)(3)), is amended by striking "$22,750,000 for fiscal year 1999 and each fiscal year thereafter" and inserting "$34,921,250 for fiscal year 2021 and each fiscal year thereafter".
   2) Section 1103(e)(4) of the Water Resources Development Act of 1986 (33 U.S.C. 652(e)(4)), is amended by striking "$10,420,000 for fiscal year 1999 and each fiscal year thereafter" and inserting "$15,994,700 for fiscal year 2021 and each fiscal year thereafter".

The Upper Mississippi River Restoration (UMRR) Program was authorized by the Water Resources Development Act of 1986, making it the first large river environmental restoration initiative in the United States. The program has significant project success and a strong spending record, but the habitat on the Upper Mississippi River continues to degrade one to four times faster than current restoration efforts. The above amendment is intended to adjust the funding for the UMRR Program for inflation, something that has not been done in the history of the program.

Amend Section 1022 (Expediting repairs and recovery from flooding)

We recommend that Section 1022 be amended by striking subsection (b) and adding the phrase "section 14 of the Act of March 3, 1899 (33 U.S.C. 408)" as a new subsection (c)(4).

It is more important than ever to ensure that communities have the tools necessary to recover from flood events. However, there are several levee districts along the Upper Mississippi River that have illegally raised the height of their levees without proper permits and approval from state and federal agencies. The current language of this section could exacerbate this issue, approving costly and potentially dangerous levee construction without an appropriate analysis of less costly and less dangerous solutions and without fully addressing important and long-standing public interest criteria. As written, this provision could also undermine the Army Corps' important mandate to ensure that the plan does not impair the usefulness of a civil works project or harm the public.

Amend Section 1040 (Rehabilitation of flood control pump stations affecting Corps of Engineers flood risk management projects)

We urge Congress to amend this section that allows increasing the capacity of eligible pumping stations and related drainage measures subject solely to a determination "that the rehabilitation is feasible." Congress should ensure that the full range of impacts are carefully assessed prior to any decision to increase pumping plant capacity by amending Section 1040 to require full

prairieriversnetwork

PRAIRIE RIVERS NETWORK
1605 South State St., Suite 1
Champaign, Illinois 61820
217 / 344-2371
217 / 344-2381 fax
www.PrairieRivers.org

compliance with federal environmental laws, including the National Environmental Policy Act and Clean Water Act.

Operation and construction of pumping plants along the Upper Mississippi River already causes significant adverse impacts to wetland resources, water quality, in-stream flows, and wildlife habitat. Increasing pumping capacity can increase flood risks for communities and businesses along the waters that receive the pumping plant discharges. Increasing pumping plant capacity and related drainage can also require major new construction in sensitive habitats. As such, proposals to increase pumping capacity associated with any flood risk management project deserve careful review beyond the scope of rehabilitation.

Amend Section 1047 (Levee Safety Review)

The Army Corps of Engineers should conduct a broader assessment of illegal levee raising and as part of this study document how many levees in the National Levee Database currently exceed their permitted elevations.

As mentioned previously, several levee districts along the Upper Mississippi River have raised levees without proper approval. These factors likely contribute to increased flooding in adjacent areas and communities. Therefore, it is vital that any assessment of levees should identify all levees whose height exceeds its permitted or authorized top-of-levee elevation.

Amend Section 1053 (Establishing permanent features from emergency response measures)

We recommend amending Section 1053 to require a full evaluation of nonstructural and natural infrastructure solutions, including levee setbacks; and explicitly ensuring that evaluation of these projects must comply fully with federal environmental laws.

Considering alternatives to the current system is an important step to alleviate the burden of flooding on small or disadvantaged communities along the River. Nonstructural and natural infrastructure solutions could provide better levels of protection, while reducing costs and future flood risks for communities and others.

Strike Section 1054 (Studies of water resources development projects by non-federal interests)

We urge the Senate to strike § 1054 and to refrain from expanding the non-federal sponsor planning process until the underlying problems addressed earlier in this document are addressed. To this end, we strongly recommend that Congress direct the Corps to develop detailed

prairieriversnetwork

PRAIRIE RIVERS NETWORK
1605 South State St., Suite 1
Champaign, Illinois 61820
217 / 344-2371
217 / 344-2381 fax
www.PrairieRivers.org

guidelines that provide a clear roadmap to the planning process that is to be used by non-federal sponsors, the entities responsible for each step of that process, and the entity responsible for responding to public inquiries and requests for information.

Strike Section 1069 (Inland Waterway Transportation)

We urge the Senate to strike this section that would significantly increase the Federal cost share for construction and major rehabilitation of navigation projects on the inland waterways systems.

This section would provide an unnecessary subsidy for a declining navigation industry. An investment of this nature will harm the environment and could increase flood risk for Mississippi River communities. Documenting significant declines in traffic on the inland waterway system and existing capacity, a 2018 report by the Congressional Research Service calls into question the need for new construction on the system. For example, as highlighted in that report: traffic on the Upper Mississippi River system has been declining and even during their "busiest months" the seven locks targeted for expansion under the NESP program average just 10 tows per day. For these reasons, we recommend this section be removed completely.

Strike Section 1089 (Report on benefits calculation for flood control structures)

Instead of pursuing a study that seeks information and recommendations related solely to accounting for reduced flood insurance costs behind a levee, Congress should ensure that the Corps conducts the study required by section 1103 (study on economic and budgetary analyses) of America's Water Infrastructure Act of 2018, which would ensure a comprehensive look at the Corps' benefit-cost analysis process.

Levees create a false sense of security up and down the Mississippi River. This false sense of security incentivizes development and ultimately places life and property in danger in the event of a levee failure or overtop.

Strike Section 1090 (High water-low water preparedness)

This provision creates an enormous loophole for carrying out major navigation construction as so-called "emergency mitigation projects" whenever the Corps makes a determination that a wide array of situations exist or are "anticipated to exist." This section is so vaguely written that it could allow the use of undefined emergency procedures to carry out virtually any type of activity, including construction of new locks, lock bypass channels, and major rehabilitation. Critically, the Corps already has extensive authority to utilize emergency procedures to quickly carry out navigation dredging where the failure to do so "would result in an unacceptable hazard to life or navigation, a significant loss of property, or an immediate an unforeseen significant

prairieriversnetwork

PRAIRIE RIVERS NETWORK
1605 South State St., Suite 1
Champaign, Illinois 61820
217 / 344-2371
217 / 344-2381 fax
www.PrairieRivers.org

economic hardship if corrective action is not taken" more quickly than would be allowed if normal procedures were followed. 33 C.F.R. § 335.7, see also 33 C.F.R. § 337.7. The Corps may also rely on 33 C.F.R. 230.8 to promptly carry out other types of emergency actions.

Amend Section 1202.53 (Expedited completion)

We recommend amending Section 1202.53 to ensure the Corps follows all legally required protocols associated with Independent External Peer Review (33 USC 2343), the National Environmental Policy Act, the Endangered Species Act, and the Methodology for Updating Benefit-to-Cost Ratios (BCR) for Budget Development (CWPM 12-001).

This point is in response to the Corps' effort to update the economic evaluation for the Navigation and Ecosystem Sustainability Program. While we support a full economic re-evaluation of the program, we have significant concerns with the way the Corps has handled the update. The Corps has "lost" two comment letters from the Nicollet Island Coalition (a group in which PRN is a member), stated publicly that the final report will not be made public, failed to produce legally mandated responses to the 2008 Independent External Peer Review panel recommendation, and appear to not be following the Corps internal guidance for economic re-evaluation. Given this, we propose the above amendment to ensure environmental and economic implications are fully considered.

To conclude, we thank you for the opportunity to provide comment on America's Water Infrastructure Act of 2020, and appreciate your careful consideration of our recommendations. Please use the contact information below if you have questions.

Sincerely,

Ryan L. Grosso

Ryan Grosso
Water Resources Associate
Prairie Rivers Network
1605 S. State St., Suite 1, Champaign, IL 61820
rgrosso@prairierivers.org
(217) 344-2371 ext. 203

Public Comment on Water Infrastructure Acts 2020

VIA EMAIL ONLY: QFR@epw.senate.gov

The Senate Committee on Environment and Public Works
410/456 Dirksen Senate Office Building
Washington, D.C. 20510

29 April 2020

Dear EPW Colleagues:

Thank you for the invitation to provide input on "America's Water Infrastructure Act or 2020 and the Drinking Water Infrastructure Act of 2020". Please find below my public stakeholder input on the invasive species elements (Sections 1601-1609) of the draft legislation. My comments correspond with the provided document EDW20246 Discussion Draft S.L.C. (305 pages). I have provided contact information at the end of the document.

Comments by Section

Sec. 1601. Definition of invasive species.

- The definition referenced here is outdated in U.S. policy use. Executive Order 13751 (Dec 2016) provides the most recently negotiated/adopted definitions:

'Invasive species' means, with regard to a particular ecosystem, a non-native organism whose introduction causes or is likely to cause economic or environmental harm, or harm to human, animal, or plant health.

  - Note 1: The term "alien" has largely been dropped in practice in the U.S. because of concerns that it will be confused with use of the term in the immigration context. This fear has been a barrier to the engagement of NGOs and others on this issue.
  - Note 2: The term must be used *with regard to a particular ecosystem*. All species are native somewhere and thus vital rather than harmful aspects of natural systems. It is important that entire species are not regarded as "bad." In acutality, the issue focuses on invasive populations, not species.
  - Note 3: From a policy perspective, it would be useful for this Act to scribe the E.O. 13751 definition into law for future, consistent reference.

These points also relate to definition of invasive species in other sections, e.g., page 220 under Invasive Species Management Pilot Program.

Sec.1602. Invasive species in impaired waters.

- Eradication is hard to achieve for aquatic systems that have already been strongly invaded. Frequently, control is the only option given current budgets, tools, and technologies.
- Early detection and rapid response (EDRR) are key to making eradication and control feasible.
- See the Special Issue in Biological Invasions that I recently coordinated/published regarding increasing federal capacities for EDRR: https://link.springer.com/journal/10530/22/1
- For line 10, I recommend editing as follows:

Jamie K. Reaser, PhD
Jamiekreaser@gmail.com

"to support efforts for the early detection of and rapid response to aquatic invasive species, including eradication and control measures, in waterways..."

Sec.1603.Aquatic invasive species research.

- Page 216, replace the term "management" with the terms "eradication and control" for clarity and consistency with definitions of terms in Executive Order 13751. Line 9 should thus read

"prevention, eradication, and control"

- Line 11, before Asian carp, insert "but not limited to"

Sec.1604.Invasive species mitigation and reduction.

- Page 220, see remark under Sec. 1602 regarding definition of invasive species.
- Page 220, line 17. It is important that existing plans are taking into consideration and coordinated, rather than a totally new effort being undertaken as a result of this language. To the extent practicable, these plans should leverage and incorporate applicable goals and recommendations established in existing Aquatic Nuisance Species Task Force (ANSTF)-approved State Aquatic Invasive Species management plans and other Upper Missouri River Basin planning efforts, including Federal/State interagency Asian carp partnerships. Edit to read:

""(2) DEVELOPMENT OF PLANS.—The Secretary shall, in consideration of and coordination with existing work and structures of the Aquatic Nuisance Species Task Force, carry out a pilot program under which the Secretary shall collaborate with States in the Upper Missouri River Basin in developing, updating, and expanding, as relevant, voluntary aquatic invasive species management plans to mitigate the effects of invasive species on public infrastructure facilities located on reservoirs of the Corps of Engineers in those States.

- Page 221, line 3. With the exception of Colorado, all of the western states have an aquatic nuisance species plan approved by the ANSTF. These plans might not identify USACE infrastructure facilities as a specific component, but they should be used as the basis for this work. USACE should review and consider the ANSTF state plans in developing a management plan under subparagraph (A). I suggest combining (A) and (B) into a single concept as I have provided with my edits above in yellow.
- Page 221, line 13. Change to Prevention and Management (or Prevention, Eradication, and Control to be explicit). Population reduction is not necessarily eradication or control.
- Page 221, line 15. See previous remarks on definition. Should refer to E.O. 13751 definition and/or establish the E.O. 13751 definition in law via this Act.
- Page 222, line 9. Replace 'manage' with 'eradicate'. The directive is too limited as written—it doesn't allow for emerging priorities. Change to:

"...eradicate invasive plants including, but not limited to, the Russian olive..."

- Page 222, line 14. Need to be specific about the term 'plant' as it has implications for program breadth. Is this technically taxa in the plant kingdom, or those that some people on consider

"true" plants because they are rooted in the terrestrial environment? It should read "a member of the Plant Kingdom" for greatest potential impact.

- Page 223, line 12. A lack of region-appropriate native plant material is a substantial barrier to achieving this aim. See the National Seed Strategy (https://www.fs.fed.us/wildflowers/Native_Plant_Materials/documents/SeedStrategy081215.pdf). I highly recommend adding funding for a grants program for native seed and plant propagation to be used in these restoration activities. These funds could be targeted to Tribes and/or communities at risk. Thus, the first aspect of the pilot program would be to:

"Administer grants to [Tribes and/or communities at risk] for the propagation of plants, including seed, native to the region for use in riparian area restoration activities"

- Page 223, line 23. And Tribes?
- Page 223, line 25. Why just terrestrial plants? Aquatic invasive plants are at least as problematic.

Sec.1605. Terrestrial noxious weed control pilot program.

- For consistency and clarity, replace the term 'noxious weed' with 'invasive plants'. Note: Noxious weeds might also include native plants.
- Page 224, Line 4. Coordination needs to happen at the field-level with appropriate, authorized State and Tribal bodies. FICMNEW is not a Departmentally-authorized body and consists of a small number of individuals largely in the DC area (mostly USDA not Interior) rather than as collective of field-based practitioners with expert knowledge of and authority to address on-the-ground priorities. Remove reference to FICMNEW and replace with:

"in consultation with applicable State and Tribal invasive plant councils and/or committees"

- Line 7. Add reference to eradication.

"strategies for terrestrial invasive plant eradication and control on Federal"

- Line 14. Add reference to Tribes.

"may utilize cooperative agreements with county, State, and Tribal..."

Sec.1606.Invasive species assessment, prioritization, and management.

- Page 226. Under (II) and (III). Remove the term 'management'. Eradication and control are invasive species management. Management is not defined as a separate, distinct term. See Executive Order 13751.

Sec.1607.Asian Carp Prevention and Control Pilot.

- Page 226. Line 22. Should be Prevention, Eradication, and Control Pilot.
- Page 226. Line 23. Overall note. Any new pilot program implemented through the USACE should build on the existing nationally-coordinated effort among Federal agencies and States (and Tribes) to implement the Asian Carp National Plan. There is a comprehensive inter-(sub)basin collaborative in place throughout the Mississippi Basin and its tributaries that is led by the U.S.

Fish and Wildlife Service with Federal and State partners to prioritize management actions, science, and communication on Asian carp detection, prevention, containment and control. A new USACE effort to implement control and containment projects in the Tennessee – Cumberland Sub Basins, if done in the context of existing partnerships, could enhance that synergy and expand the capacity and resources for Asian carp in the SE United States significantly.

- Page 226. Line 25 need to include reference to eradication:

"Asian carp prevention, eradication, and control pilot program..."

- Page 227. Line 2. Need to prevent introduction, not just spread.
- Per comments above, control and eradication are management.
- Reducing a population size is not necessarily controlling a population.
- Why limit to only "innovative" approaches --- the goal should be "effective and cost-efficient" with an encouragement to innovate as needs dictate.
- Edit lines 1-4 to read:

"...to carry out projects to prevent the introduction and spread of Asian carp, innovating new technologies, methods, and measures as required for effectiveness and cost-efficiency."

- Page 227. Line 7. Prevention requires action above and below current populations.
- Page 227. Line 8. Change 'found' to 'detected' The use of e-DNA enables us to detect aquatic invasive species even if we cannot find (catch) the organisms (which can be impossible for small populations in large waterbodies).

"...in which Asian carp are expanding into or have been detected..."

- Page 227. Line 13. To ensure consideration and coordination of existing work, add at the end:

"utilizing lessons learned and best practices such as those described in the National Plan for Asian carp entitled "Management and Control Plan for Bighead, Black, Grass, and Silver Carps in the United States" approved by the Aquatic Nuisance Species Task Force.

- Page 228. Line 3. Must include U.S. Fish and Wildlife Service for coordination. And Tribal agencies?

"The U.S. Fish and Wildlife Service and other applicable Federal States, Tribal, and local agencies."

- Page 228. Line 5. Need to include sub-basin work:

"and associated sub-basin partnerships of the Mississippi River."

- Page 228. Line 7 & 8. Needs to be consistent with Federal Advisory Committee Act provisions. Follow (E) with:

"All non-Federal consultations should be consistent with the provisions of the Federal Advisory Committee Act."

- Page 228. Line 10 & 13. In this context, the term 'removal' might not be understood to mean 'project ended,' it could be taken to mean structures are removed. In lines 10 and 13 replace 'remove' with 'Termination/terminate'.
- Page 229. Line 1. Change 'Remove' to 'Terminate'.
- Page 229. Line 4. Consistent with the Paperwork Reduction Act and Federal goals for cost-efficiency, rather than require an additional report, insert language in Section 1608 to include the requested information in the current WRDA report.

Sec.1608.Aquatic Invasive Species Prevention.

- Page 230. Line 6. Since the geographic scope has been broadened to include the entire Mississippi River Basin (including the 6 specified sub-basins), consider that the comprehensive report to Congress on Asian carp (as described in WRRDA 2014, Sec 1039(b)) be modified from annually to biennially. This will likely result in more accurate and meaningful report.
- Page 230. For accuracy and clarity, after line 6, revise Section 1608(b)(1)(B) to strike "and the document prepared by the Asian Carp Regional Coordinating Committee entitled ''FY 2012 Asian Carp Control Strategy Framework'' and dated February 2012." and insert "the Mississippi River Basin Asian Carp Control Strategy Frameworks, and the Asian Carp Regional Coordinating Committee's Asian Carp Action Plan."

Sec.1609.Invasive Species in Alpine Lakes Pilot Program.

- Page 231. Line 14. Reducing a population size is not necessarily the same as controlling a population. Edit to read:

"...measures necessary to prevent, control, or eradicate..."

- Why only in areas in which the Secretary is carrying out environmental projects? How are environmental projects defined?

ADDITIONS

I would strongly like to see two additional provisions that are backed by recent Federal studies:

1) Preventing and Managing Invasive Species that Impact Infrastructure
    - NISC Secretariat Fact Sheet: https://www.doi.gov/sites/doi.gov/files/uploads/invasive_species_impacts_on_infrastructure.pdf
    - ISAC White Paper: https://www.doi.gov/sites/doi.gov/files/uploads/isac_infrastructure_white_paper.pdf
    - NISC Secretariat Report: https://www.doi.gov/sites/doi.gov/files/uploads/invasive_species_impacts_on_federal_infrastructure.pdf

    a) Create authority under America's Water Infrastructure Act(s) that complements/coordinates with Lacey Act authority to declare invasive species that harm or are likely harm

infrastructure as "injurious wildlife" and grant U.S. Fish and Wildlife Service the authority to manage them as such. Note: Lack of authority to address invasive species that impact infrastructure is a huge regulatory gap that needs to be filled. Filling this gap would be a major contribution to addressing invasive species and protecting infrastructure.

b) Require federal agencies to, on an annual basis, report to Congress [name Committees] the impacts of invasive species on federal and federally-managed infrastructure, as well as measures taken to prevent and respond to these impacts.

2) Invasive Terrestrial Animals Pilot Program parallel to the Invasive Terrestrial Plants Pilot Program. See the following report from the USNPS:
   - https://irma.nps.gov/Datastore/DownloadFile/594922
   - Related paper in *Biological Invasions*: https://link.springer.com/article/10.1007%2Fs10530-019-02128-0

CONTACT INFORMATION

Dr. Jamie K. Reaser
1207 Bull Yearling Road
Stanardsville, VA 22973
1.434.990.9494
jamiekreaser@gmail.com

RECLAMATION
DISTRICT
108

975 Wilson Bend Road
P.O. Box 50
Grimes, CA 95950-0050
(530)437-2221
Fax: (530)437-2248
www.rd108.org
www.facebook.com/irrigation rd108
https://twitter.com/rd108irrigation

Board of Trustees
Roger Cornwell, President
Frederick J. Durst I, Vice President
Hilary Reinhard
Sean Doherty
Todd Miller

General Manager
and Secretary
Lewis Bair

Deputy Manger
Meegan Nagy
William Vanderwaal

May 1, 2020

The Honorable John Barrasso
Chairman, Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Thomas Carper
Ranking Member, Senate Committee on Environment and Public Works
456 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of Reclamation District 108, thank you for the opportunity to provide comments on the *America's Water Infrastructure Act of 2020* (AWIA 2020) discussion draft.

I am writing to encourage the Committee to consider authorizing a pilot project to improve the effectiveness and create efficiencies in assistance made available through the Corps of Engineers under Public Law 84-99 for the repair of damaged flood control works and hurricane shoreline protection works.

As you know, the intent of the PL 84-99 program is to restore the damaged system before the next flood or storm season. This has become increasingly more difficult with more frequent and severe storms. The cost of the program has also increased due to the frequency and severity of the storms. The purpose of the legislation is to focus additional resources on a growing, unacceptable infrastructure problem, to reduce the backlog and accelerate the repair of damaged flood control works and hurricane shore protection works, and to evaluate the technical, financial, and organizational benefits of allowing qualified applicants to accomplish this work. If enacted, the legislation will be an important force magnifier, bringing additional resources to address a vexing problem.

This legislation would establish a 5-year pilot program to evaluate the cost effectiveness and project delivery efficiency of allowing non-Federal pilot program applicants to repair and restore certain flood control and hurricane shore protection works that have been damaged by floods or extraordinary storm events. The program focuses on flood control works and hurricane shore protection works that are available for assistance under legislation commonly referred to as Public Law 84-99, and ordinarily would be repaired by the U.S. Army Corps of Engineers at full Federal expense. This legislation would allow States, Tribes, and local governments to repair and restore those works, provided they enter into agreements with the Secretary to accomplish that work and to comply with terms and conditions in those agreements that are intended to ensure the work is acceptably performed and fulfills its intended purpose.

Specifically, RD 108 requests the Committee's favorable consideration of the following bill language:

SEC. XXX. PILOT PROGRAM FOR NON-FEDERAL REPAIR AND RESTORATION OF FLOOD CONTROL WORKS AND HURRICANE SHORE PROTECTION WORKS

(a) In General -- The Secretary shall establish a pilot program to evaluate the cost effectiveness and project delivery efficiency of allowing non-federal pilot program applicants to repair and restore certain flood control works and hurricane shore protection works that are eligible for Federal assistance and ordinarily would be repaired and restored by the Corps of Engineers, provided the non-Federal pilot program applicants agree they can accomplish the work at a reduced cost, and comply with certain terms and conditions in agreements with the Secretary that are intended to ensure the repair and restoration work is acceptably performed and fulfills its intended purpose.

(b) Purposes – The purposes of the pilot program are –

(1) to focus additional resources on a growing infrastructure problem caused by changed hydrological conditions;

(2) to accelerate the repair and restoration of damaged flood control works and hurricane shore protection works identified for repair and restoration in a Corps of Engineers Program Information Reports, and that are eligible for Federal funding under Sec. 5 of the Act of August 18, 1941, as amended (33 U.S.C. 701n);

(3) to incentivize non-federal applicants by allowing excess funds to be used for additional hazard mitigation projects; and

(4) to evaluate the technical, financial, and organizational benefits of allowing non-federal pilot program applicants to carry out the engineering, design, construction and mitigation associated with the repair and restoration of such works in accordance with certain terms and conditions specified in agreements with the Secretary.

(c) Administration – In carrying out the pilot program established pursuant to subsection (a), the Secretary shall within 90 days of enactment of this legislation --

(1) publish a notice to the public containing:

i. a description of the pilot program;

ii. a list of all the flood control works and hurricane shore protection works that have been damaged by floods or extraordinary storm events, and have been identified as currently in need of repair and restoration in a Corps of Engineers Program Information Report, and

are eligible for assistance under Sec. 5 of the Act of August 18, 1941, as amended (33 U.S.C. 701n); and

iii. a statement of the amount of Federal funding that has been allocated to the repair and restoration of those works.

(2) Issue an invitation to potential non-federal pilot program applicants to submit a letter of intent to their Corps of Engineers Division containing –

i. a statement of their willingness and capability to repair and restore the damaged flood control or shore protection works, and their readiness to execute the agreement required in subsection (e) regarding the payment for and performance of this work.

ii. a proposed plan and schedule for completing the repair and restoration work that identifies key events and milestones dates, based on estimated funding levels.

iii. a letter of support from the non-federal sponsor if the applicant is different.

(3) Repeat this information sharing process as circumstances necessitate based on the identification of new damage to works as described in paragraph (c)(1)(ii) and thereafter for so long as the authority in subsection (d) remains viable, including providing updated information on the matters addressed in paragraphs (c)(1)(ii) and (c)(1)(iii) of this subsection and any agreements that have been entered into under subsection (d).

(d) Number of Agreements. After considering the responses provided pursuant to subsection (c)(2), and for a five-year period following enactment of this Act, the Secretary is authorized to execute up to 5 agreements per Division per year allowing non-Federal program applicants to carry out the engineering, design, permitting, construction and mitigation associated with the repair and restoration of one or more damaged flood control works and hurricane shore protection works.

(e) Requirement for Agreement – Before the initiation of any repair or restoration work under this authority, the Secretary and the non-Federal pilot applicant shall enter into a legally enforceable agreement that:

(1) identifies the flood control works or hurricane shore protection works, or portions thereof, that will be repaired or restored;

(2) sets forth an estimated cost of the engineering, design, permitting, construction and mitigation efforts based on the cost estimate in the Corps of Engineers Project Information Report;

(3) authorizes the non-Federal pilot program applicant to accomplish the repair and restoration;

(4) requires the non-Federal pilot program applicant to submit its plan for accomplishing the repair and restoration to the Corps of Engineers for

approval to ensure that the repair and restoration work will address the issues in the Corps of Engineers Project Information Report;

(5) specifies that the construction may be carried out consistent with streamlining efforts contained in the Director's Policy Memorandum of 24 Jan 2019 (CECW-ZB 2019-02), allow non-Federal interests to approve project specific exceptions to Corps policy and guidance in the construction of projects, provided that the exception does not violate existing law, eliminate or alter procedures that are based on an official rule making, violate policy or guidance from an authority outside of the Corps, reduce the quality or performance of the project over its authorized lifetime, or materially increase the probability or severity of a loss of life (factors from CECW-ZB 2019-02);

(6) requires the Secretary to make a payment to the non-Federal pilot program applicant equal to 75 percent of the estimated cost of the engineering, design, permitting, construction and mitigation efforts set forth in the agreement;

(7) requires the non-Federal pilot program applicant to pay any sums above this amount as necessary to complete the repair and restoration work;

(8) specifies that should any funds remain from the amount the Secretary has provided because the repair and restoration has been completed for less than such amount, the non-Federal pilot program applicant shall apply such sums to facilitate the accomplishment of the repair and restoration of further flood control works or hurricane shore works eligible for funding under Sec. 5 of the Act of August 18,1941, as amended (33U.S.C. 701n); and

(9) contains such other provisions that the Secretary and non-Federal pilot program applicant agree are consistent with and advance the purposes of this legislation.

(f) Definitions – For purposes of this Act, a non-Federal pilot program applicant is defined as –

(1) a legal subdivision of a state government or a state itself;

(2) a local unit of government;

(3) a state chartered organization, such as a levee board; or

(4) a qualified Indian tribe or tribal organization.

(g) Report to Congress – Not later than 7 years after the date of the enactment of this Act, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report describing the level of non-Federal participation in the pilot program, any benefits resulting from that participation, and the effectiveness

of this program in reducing the backlog of, and accelerating the repair and restoration of damaged flood control works and hurricane shore protection works.

We again appreciate the opportunity to provide these comments to the Committee and are grateful for your consideration. If you have any questions, please contact me at (o) 530-437-2221, (mobile) 530-979-1536, or by email at LBair@rd108.org, Meegan Nagy at (mobile) 530-812-6269 or by email at mnagy@rd108.org, or Roger Gwinn at (mobile) 202-770-7140 or by email at rgwinn@tfgnet.com.

Sincerely,

Lewis Bair

General Manager

April 27, 2020

Senator John Barrasso
Chair, Senate Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, D.C. 20510

Senator Tom Carper
Ranking Member, Senate Environment and Public Works Committee
456 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso and Ranking Member Carper,

On behalf of the Rural Community Assistance Partnership (RCAP) Network and the thousands of communities we support nation-wide, I write to commend you on your thorough and inspiring legislation: Drinking Water Infrastructure Act of 2020 and America's Water Infrastructure Act of 2020. Your support for rural communities across the country is commendable.

RCAP is a national network of non-profit organizations working to provide technical assistance, training, resources, and support to rural communities across the United States, tribal lands, and U.S. territories. RCAP field staff live and work in the states and communities RCAP serves.

RCAP's mission is to help small, rural communities operate their drinking water and wastewater systems in an efficient, effective, and sustainable way. We provide training and technical assistance to members of small, rural communities who are involved in the management of their water systems. As you know, rural communities across the United States are in need of specific consideration from Washington due to their inherent remoteness, lack of economies of scale, and shortage of physical and human infrastructure to create redundancies which can be relied upon in case of emergency. Conversely, these are some of the most iconic and threatened places in America, making it all the more important that they receive as much help as they need.

For these reasons, I applaud all the direct assistance that you provide to small and disadvantaged communities, including your reauthorization and expansion of the Assistance for Small and Disadvantaged Communities program. Further, your inclusion of a fully authorized fund to provide resources to communities facing drinking water emergencies, and specifically reauthorizing technical assistance to those public water systems is extremely helpful to those communities most unable to weather a crisis. I also applaud your reauthorization of the 2% set aside in the Drinking Water State Revolving Fund to provide assistance to water utilities that need guidance on how to best comply with the Safe Drinking Water Act, as well as the expansion of the Voluntary School and Childcare Lead Testing Grant Program to allow nonprofit organizations that service schools and childcare locations eligible grant recipients.

I also thank you for increasing the authorization of appropriations in the Clean Water Act (CWA) for technical assistance grants to nonprofit agencies assisting rural, small and tribal municipalities. The support made available by these grants provide much needed training on water quality,

assistance on applying for financing for local water infrastructure projects, and information regarding planning, design, construction, operation and maintenance of both centralized and decentralized wastewater systems.

To further your support of decentralized systems, I encourage you to expand the Section 2010 grants to be awarded nationally. These grants are tremendously important for constructing, refurbishing, and servicing decentralized wastewater systems by low income households. Individual decentralized wastewater systems for households in rural communities are many times the most cost-effective form of wastewater treatment available, and—just like a centralized wastewater treatment plant--maintaining these decentralized systems is extremely important. Support for low income families no matter what region of the country they live is imperative for the upkeep and servicing of these systems and for everyone's health and safety.

Finally, I also encourage you to work with Senators Duckworth and Braun to include S. 2596, the bipartisan Voluntary Water Partnership for Distressed Communities Act of 2019. As small communities across the country seek solutions for common economic, operational and compliance challenges, we urge you to use RCAP's March 2020 research report entitled "Resiliency Through Water and Wastewater System Partnerships: 10 Lessons from Community Leaders," as a resource, as it highlights the experiences of those who chose water and/or wastewater system partnerships as a solution.[1] Small, rural water systems are collaborating to build capacity and become more financially and structurally resilient, enabling them to successfully sustain their systems for years to come. Neighbors helping neighbors is one of the things that makes America great. We urge Congress to support and encourage the ability for water systems to work together.

All communities—of any size and in any location—deserve clean, safe, reliable, and affordable drinking water and wastewater services. Your legislation makes tremendous advances in this regard, and I sincerely applaud your efforts. The RCAP Network stands ready to work with you and support these important provisions.

Sincerely,

Nathan Ohle
Chief Executive Officer
Rural Community Assistance Partnership, Inc.
1701 K Street NW, Suite 700
Washington, DC 20006
nohle@rcap.org
202.774.7992

[1] "Resiliency Through Water and Wastewater System Partnerships: 10 Lessons from Community Leaders," https://www.rcap.org/blog/regionalizationresearch/

Comment to Senate Committee on Environment and Public Works *

YOLO BYPASS INITIATIVE, CALIFORNIA

To: EPW Committee, attn: QFR@epw.senate.gov

From: Mike Strachn, on behalf of the Sacramento Area Flood Control Agency (SAFCA)

Contact: Michael Strachn, Dawson & Associates

Mailing address: 1225 I Street, NW, Suite 250, Washington, DC 20005

Email address: mstrachn@dawsonassociates.com

Phone number: (202) 289-2060

Comment: Request that WRDA 2020 include authorization of a comprehensive basin-wide Corps of Engineers-lead study of the Yolo Bypass Region of California. Study would address Corps of Engineers policies and existing authorities to address multiple categories of benefits for flood risk management, ecosystem restoration, water supply and quality, agricultural sustainability and recreational opportunities with a view toward addressing longstanding water resources challenges and finding multi-disciplinary solutions. Study would also assess underlying and possibly new agency policies for assessing water resources projects nationwide. No project would be authorized by the Study, though the policy changes resulting from it could lead to future site-specific studies for consideration by Congress.

Study would be accompanied by development of a Master Plan to facilitate federal and non-federal project-related and regulatory actions within the Region and serve as a model nationally.

Bipartisan EPW Committee staff has been briefed on this request, as have offices of Senators Feinstein and Harris. We would be pleased to provide additional information.

* From the Committee's website:

"Written comments from other stakeholders shall each be electronically submitted as a single file in PDF format to the Committee at QFR@epw.senate.gov. *Written comments shall include a contact name, mailing address, email address, and phone number. Written comments that do not comply with each of these requirements will not be accepted.*"

Salton Sea Authority

May 1, 2020

Via email to OFR@epw.senate.gov

The Honorable John Barrasso
Chairman
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Thomas R. Carper
Ranking Member
Senate Committee on Environment and Public Works
456 Dirksen Senate Office Building
Washington, DC 20510

Re: America's Water Infrastructure Act of 2020: Proposed Clarification of Authorizations for the Salton Sea

Dear Chairman Barrasso and Ranking Member Carper:

Thank you for your leadership and for the opportunity to comment on your draft legislation, *America's Water Infrastructure Act of 2020*. I am submitting comments on behalf of the Salton Sea Authority (SSA), which request a provision in the legislation to clarify prior Salton Sea WRDA feasibility study authorizations. SSA is a Joint Powers Authority comprised of the Torres Martinez Tribe, Riverside and Imperial Counties, Imperial Irrigation District and Coachella Valley Water District.

The Salton Sea, California's largest lake, occupies approximately 370 square miles in Imperial and Riverside counties in southeastern California. It provides habitat for over 400 species of birds and is a critical stop on the Pacific Flyway. Since the early 2000s, inflows to the Salton Sea have been decreasing due to drought, agricultural water conservation measures to benefit regional water supply security, and other causes. Decreasing inflows to the sea have resulted in the exposure of emissive lakebed, diminishing habitat values and negatively impacting area air quality. The region is in severe non-attainment with federal air quality standards, and has the highest rate of childhood asthma and respiratory illness in California.

In 2007, the state of California finalized the Salton Sea Ecosystem Restoration Program Preferred Alternative Report (Preferred Alternative) which identified the construction of a Perimeter Lake at the Salton Sea to facilitate the construction of habitat complexes at the sea's north and south ends as the preferred course of action. WRDA of 2007 authorized the Secretary to review California's Preferred Alternative to determine the feasibility of projects to be

82995 Highway 111, Suite 200, Indio, CA 92201
Phone: 760.863.2695 Fax: 760.262.3008
info@ssajpa.org http://saltonseaauthority.org

undertaken under the program, to cost share in the construction of projects under the program, and authorized $30 million for such work. PL 110-114 § 2032. This authority was enhanced in the WIIN Act of 2016. PL 114-322 § 1181.

Since these original studies and authorizations, much work has been undertaken to advance Salton Sea restoration at the state and local level, including significant planning efforts and the provision of nearly $300 million in state of California Salton Sea funding. SSA is currently evaluating the feasibility of the Perimeter Lake. The purpose of the attached language is to ensure that the completed study of a Perimeter Lake would satisfy the requirements of 33 U.S.C. § 2231 which provides that a non-federal sponsor may undertake and submit a feasibility study for the Secretary's approval, providing that the study has been authorized by Congress. It is not anticipated that Corps of Engineers funding for a feasibility study will be sought, as a Corps-led study would duplicate the significant state and local planning resources already dedicated to this effort.

Thank you for your efforts on this critical piece of legislation, and for your consideration of these comments.

Sincerely,

Phil Rosentrater
GM/Executive Director

Attachment: Salton Sea Authority Proposed Language and Explanatory Text

cc: Senator Diane Feinstein
Senator Kamala Harris
Representative Juan Vargas
Representative Raul Ruiz

Salton Sea Authority

Attachment: Salton Sea Authority Proposed Language and Explanatory Text
For America's Water Infrastructure Act of 2020

A non-federal sponsor may undertake a feasibility study and submit that study for the Secretary's approval, providing that the study has been authorized by Congress. 33 U.S.C § 2231. The language below clarifies two prior WRDA authorizations for a Corps of Engineers feasibility study relating to the Salton Sea in the Imperial and Riverside counties, California. The language would ensure that a contemplated Salton Sea non-federal sponsor feasibility study meets the congressional authorization requirements of 33. U.S.C. § 2231.

Two prior WRDA's authorized the Corps to conduct a feasibility study of Salton Sea management projects and to partner in those projects at the Salton Sea. WRDA of 2007 authorized the Secretary to review the state of California's Salton Sea Ecosystem Restoration Program Preferred Alternative Report (Preferred Alternative) to determine the feasibility of projects to be undertaken under that program to restore the Salton Sea, to cost share in the construction of projects under that program, and authorized $30 million for such work. PL 110-114 § 2032. The state of California's Preferred Alternative identified the construction of a Perimeter Lake at the Salton Sea to facilitate the construction of habitat complexes at the sea's north and south ends. This authority was enhanced in the WIIN Act of 2016, which directed that the Secretary "shall carry out a program to implement projects to restore the Salton Sea," and specified that the Secretary could partner with the Salton Sea Authority in undertaking this work. PL 114-322 § 1181.

The state of California and the Salton Sea Authority have further refined the Perimeter Lake project described in the Preferred Alternative, which will be anchored by the Species Conservation Habitat project at the Salton Sea's south end, and by the North Lake at the north end. The language below clarifies the prior congressional authorization for a feasibility study of the Preferred Alternative with more specificity as a Perimeter Lake. It is contemplated that a non-federal feasibility study may be performed for the Perimeter Lake, and this statutory clarification is sought to ensure that such study could be submitted for consideration as a feasibility study under 33 U.S.C. § 2231.

Proposed Water Resources Development Act Language:

Section 1181 of the WIIN Act of 2016 (114-322) is amended to authorize the feasibility study of "the project for a Perimeter Lake, or a northern or southern subset thereof, for the Salton Sea, California."

430 S Keystone Avenue, Emmaus, PA 18049
https://sanexen.com/
Ph. (844)421-8185

4830 Northpointe Drive, Zanesville, Ohio 43701
www.flow-liner.com/
Ph. (740)453-9387

Statement of

Mr. Ben Côté
President
Sanexen Water, Inc.

and

Mr. Jeff Tanner
President
Flow-Liner Systems, Ltd.

To the
U.S. Senate
Committee on Environment and Public Works

"An Information-Gathering Process on Draft Legislation entitled, The Drinking Water Infrastructure Act of 2020: Stakeholder Comments"

May 1, 2020

Chairman Barrasso, Ranking Member Carper and members of the committee:

We represent two companies, Sanexen Water, Inc. and Flow-Liner Systems, Ltd., that offer innovative, cost-efficient, trenchless pipe lining technologies. Sanexen Water, Inc. manufactures and installs Aqua-Pipe®, a trenchless technology that cures in place inside an existing water main pipe during installation. Sanexen's team of engineers developed the technology that is a Class IV structural "pipe-within-a-pipe" in an existing water main and it eliminates the need to excavate road foundations. Flow-Liner, Ltd. and Sanexen Water also install NEOFIT® +PLUS trenchless pipe lining technology that prevents lead and copper from entering the public water supply from the interiors of delivery piping. NEOFIT® +PLUS pipe lining system is designed for 1/2- to 2-inch small-diameter potable water service piping. Both Aqua-Pipe® and NEOFIT® +PLUS are certified by National Sanitation Foundation (NSF) to American National Standards Institute (ANSI) Standard 61. We appreciate the opportunity to provide comments on the draft legislation entitled, The Drinking Water Infrastructure Act (DWIA) of 2020.

While the Safe Drinking Water Act (SDWA) 42 U.S.C. §300f et seq. (1974)) has undergone some revisions since its enactment our concerns are that the laws and regulations established for the safe conveyance of drinking water have not kept up with the development of drinking water infrastructure technologies. Moreover, in October of last year the Environmental Protection Agency

(EPA) proposed revisions to the National Primary Drinking Water Regulations: Proposed Lead and Copper Rule (LCR). The rule §141.84 that created the Lead Service Line Replacement (LSLR) Requirements, has not been significantly revised since it went into effect November 9, 1992, nearly three decades ago. In the early 1990's, replacement of LSL was likely the only option available and the rule required water systems to replace at least 7 percent of the LSLs from the initial number of LSLs in its distribution system. Since 1992, there have been substantial technological advancements in the water industry's approach to drinking water materials used by water systems to convey safe drinking water to consumers. Some of the advancements in drinking water conveyance include monitoring technologies, nanotechnology in filtration, and trenchless technologies for efficient pipe renewal.

While certified drinking water infrastructure technologies are cost-effective and adhere to the focus of the Safe Drinking Water Act (42 U.S.C. §300f et seq. (1974)) by helping to reduce the concentration of lead in water for human consumption, it has been our experience that water systems throughout the U.S. are in much need of clarity about what technologies are useable to remove lead in drinking water. That is why we are very encouraged and support the Committee's draft language in "Section 13, Advanced Drinking Water Technologies of the DWIA. We submit that improvements to the law can be made in the DWIA that will help in bringing the needed clarity to water systems about the use of advanced technologies for potable water pipelines.

Specifically, in-line technology should be considered a "*demonstrated beneficial technology*" in terms of the law and declared a proper replacement for lead pipe in service lines. Thus, where the statute demands replacement, in-line technologies should be allowed to be installed in existing lead service lines. With prudent adjustment to the law and rules, the nation's drinking water systems and owners of homes and other buildings with lead service lines will benefit from hundreds of millions of dollars in savings while improving the safety of their drinking water.

Deeming in-line technologies as a replacement for lead service lines that are contaminating the water supply to a structure is perfectly consistent with the intent and express language of the law. This is because a safe synthetic liner is allowed as a substitution for the offending lead lining of the service line. "Substitution" is a recognized synonym for the term "replace" in all major dictionaries. See e.g. dictionary .com and Merriam-Webster.

We believe there is already plenty of leeway for the EPA to declare that substitution of a tested and approved technology for the exposed interior of lead pipes constitutes "replacement". In Chevron, U.S.A., Inc. v. NRDC, Inc., 467 U.S. 837 (1984), Petitioner argued that it was lawful for an Environmental Protection Agency (EPA) regulation implementing permit requirements in the Clean Air Act Amendments of 1977 (Act) to allow states to issue "bubble" permits, in which all of the pollution-emitting devices within the same industrial groupings at source location could be regulated as though they were encased within a single bubble. It was argued this was a reasonable construction of the statutory term "stationary source". On appeal, the judgment below was reversed. In support of its ruling on certiorari approving the EPA interpretation, the Supreme Court held that if a statute was silent or ambiguous with respect to the specific issue, the question for a court was whether the agency's action was based on a permissible construction of the statute. Further, considerable weight was to be accorded to an agency's construction of a statutory scheme. The Court noted that while the legislative history of the statute was silent on the issue before it, it did reveal that the EPA's interpretation was fully consistent with one of the two principal

goals of the statute -- namely, allowance of reasonable economic growth. Accordingly, the EPA's interpretation was entitled to deference.

The law requires only the replacement, not the physical disposal of lead lines. Thus, it is permissible for EPA to allow in-line insertion of a synthetic pipe to substitute for the offending inside wall of the lead delivery pipe that remains in place. This is because "substitution", an ancient word derived from taking a subject's place, is cited in all major dictionaries as a synonym for "replacement".

The substitution of in-line technology will save hundreds of millions of dollars and decrease disruption, noise and inconvenience of traditional dig-up and haul methods at the job site. It also will reduce the transportation related pollution of the haul away phase, and the concentration of lead in land disposal locations.

We urge the Committee to consider the following:

- Requirements for service line "replacement" under the Safe Drinking Water Act be defined to include technologies that functionally remove and replace the interface between a service pipe and the water with a new permanent barrier between the water delivered and the interior of the piping. This would be an alternative to the expensive and disruptive work of physical excavation and removal of service lines.

- Add the following words and their respective definitions:
  Replace – means both **a) Physically removing** the existing potable water pipe from the ground or structure and replacing it physically with a new NSF-61 certified potable water pipe, using equipment and "trenching" to dig typically 3.5+ feet in the ground from the curb stop to the home/building. (Trenchless replacement typically requires the contractor to excavate the inside of the home) and **b) Rehabilitation** by trenchless lining technology that inserts pre-tested and approved in-line installation material into existing service line, i.e. installing an expandable pressure pipe liner in the interior of the existing LSL separating water contact from the host pipe. (This method is replacement by substitution of a liner for the service pipe wall. It greatly lowers GHG emissions and is accomplished without disturbing above ground structures such as landscaping, sidewalks, driveways, decking and yards, nor does it typically require the contractor to excavate inside the home.)

- If a material receives proper certifications such as IAPMO IGC 354-2019 and National Sanitation Foundation (NSF)-61 and prove that lead contaminants are removed in compliance with the lead and copper rule, this material should receive a designation as an approved material for water utilities use.

- In all public education and outreach material to drinking water ratepayers, information and data should acknowledge and encourage use of innovative, certified drinking water technologies that prevent entry of contaminants to drinking water as well as those that remove contaminants from drinking water.

- In all drinking water programs administered by EPA incentives should be provided to water systems for innovation and use of energy and environmentally friendly drinking water technologies.

- Incentives to water utilities should be offered to those engaging with EPA water programs (DWSRF, WIFIA, AWIA) and are practicing under open competition and actively considering all certified technologies that meet the goals of protecting public health from drinking water contaminants, are efficient and cost-effective.
- EPA, along with industry stakeholders should develop a program focusing on new technology education, acceptance, and use into practical applications within a water system's asset management plan. EPA should also ensure that all drinking water technologies be represented on the National Drinking Water Advisory Committee

We submit that there are gaps between water industry research and development and the education of water systems and water ratepayers on innovative drinking water technologies that lead to their acceptance and use in cost-effective applications for drinking water infrastructure. This has led to much uncertainty among public water systems throughout the U.S. about the types of new, certified materials that may be used to comply with federal laws and regulations.

Such uncertainties stymie technological advancement by public water systems that are usually non-profit entities managed by local or state governments who are typically beset with financial challenges and are risk averse. Clearly, we are at a time in the water industry where the gravity of the water infrastructure challenges and human health consequences mandate that maintaining status quo methodologies and technologies is unacceptable.

In conclusion, we commend the US Senate Environment and Public Works Committee on your leadership in tackling a complex but pressing issue impacting every citizen across the nation. The drinking water industry will benefit from clarity of legal and regulatory expectations for the use of current and future certified drinking water technologies. We urge Congress to remove the uncertainties and allow the water industry to continue developing and installing innovative technologies that provide U.S. drinking water ratepayers timely, safe, affordable drinking water.

For questions or concerns about our comments please contact:

Tim Cansler
Cansler Consulting, LLC
9711 Washingtonian Boulevard, Suite 550
Gaithersburg, MD 20878
Phone: (202)714-2822
Email: tcansler@canslerconsulting.com

Thank you for the opportunity to comment on "An Information-Gathering Process on Draft Legislation entitled, The Drinking Water Infrastructure Act of 2020."

Sincerely,

Ben Côté
President
Sanexen Water, Inc.

Jeff Tanner
President
Flow-Liner Systems, Ltd.

SavethePoudre.org
Poudre Waterkeeper

P.O. Box 20, Fort Collins CO 80522
info@savethepoudre.org
www.savethepoudre.org

April 29, 2020

To: U.S. Senate, Environment and Public Works Committee
From: Save The Poudre

RE: Halligan Dam Project Should Be Removed From "AWIA 2020"

Via email to: QFR@epw.senate.gov

Dear EPW Committee,

It has come to our attention that the draft bill, "America's Water Infrastructure Act 2020", contains language supporting "priority funding for the expedited completion" of "The Project for Water Storage Halligan Dam, Colorado"[1].

We write to inform the committee that the Halligan Dam Project is on the North Fork of the Cache la Poudre River, northwest of Fort Collins, Colorado. This proposed dam project:

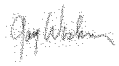
- Is highly controversial – it has been in permitting for many years, has seen dramatic cost escalations, and is not needed by the City of Fort Collins whose water use is decreasing, not increasing.
- Would be built in order to drain more water out of the already severely degraded Cache la Poudre River, including through downtown Fort Collins which is a prized recreational section of the river.
- Would be built causing the flooding of wetlands under jurisdiction of the Clean Water Act.
- Would impact critical habitat for the Preble's Meadow Jumping Mouse, which is under the jurisdiction of the Endangered Species Act.
- And is not necessary because the City has other less damaging alternatives that can meet its water supply needs

We provided comments to the U.S. Army Corps of Engineers during the Draft EIS process that highlight the immense negative impacts of this proposed dam and its extreme controversy. Those comments are attached to this letter as an appendix.

We strongly encourage you to remove priority funding for the expedited completion of this project from the AWIA 2020.

Thank you for considering our request.

Feel free to contact me with any questions,



Gary Wockner, PhD
Executive Director, Save The Poudre, 970-218-8310

[1] https://www.epw.senate.gov/public/_cache/files/f/3/f324ef43-e2f3-40c1-ab62-6902e362263c/89AC4D3754131408F71FB879B39AE0AF.america-s-water-infrastructure-act-2020-final-draft.pdf (page 198)

Eubanks & Associates, LLC
LAW FOR THE PUBLIC INTEREST

2601 S. LEMAY AVE
UNIT 7-240
FORT COLLINS, CO 80525
(970) 703-6060

1509 16TH STREET NW
WASHINGTON, DC 20036
(202) 556-1243

February 21, 2020

Via Electronic Mail

Mr. Cody Wheeler
Halligan EIS Project Manager
U.S. Army Corps of Engineers, Omaha District
9307 South Wadsworth Blvd.
Littleton, CO 80128-6901
NWO.HalliganEIS@usace.army.mil

RE: Comments on the U.S. Army Corps of Engineers' Draft Environmental Impact Statement for the Halligan Water Supply Project

On behalf of the non-profit conservation organizations, Save the Poudre and WildEarth Guardians (collectively, "Conservation Organizations"), we hereby submit the following comments on the U.S. Army Corps of Engineers' ("Corps") Draft Environmental Impact Statement ("DEIS") for the Halligan Water Supply Project ("the Halligan Project" or "the Project"). These comments incorporate by reference all previous comments submitted individually and collectively by the Conservation Organizations and their officers. In general, these comments provide an overview of the Conservation Organizations' primary concerns regarding numerous legal and factual deficiencies within the Corps' DEIS for the Halligan Project. To aid in the Corps' review of the Project and preparation of a Final EIS, the Conservation Organizations submit the following expert report to accompany their comments:

- Attachment A: *Water Demand Factors, Water Conservation, and Climate Change Impacts: Comments on the Draft Environmental Impact Statement for Halligan Water Supply Project*, Lisa Buchanan, M.S. (LRB Hydrology & Analytics)[1]

As discussed in further detail below, the DEIS falls well short of the Corps' duty to take a "hard look" the Halligan Project under the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321-4370m. In conducting its NEPA review, the Corps ultimately relied on an unduly narrow construction of the Project's purpose and turned a blind eye to reasonable alternatives that satisfy Fort Collins' stated objectives while simultaneously reducing the Project's adverse environmental impacts. For similar reasons, the Corps' environmental review, in its present form, fails to demonstrate that the Project can (or will) comply with the criteria set

[1] Lisa Buchanan has over 20 years of experience in analyzing a wide range of issues related to the hydrology of the State of Colorado. Her recent work, on behalf of both public and private entities, has focused on examining the unique water quality and demand issues that confront the Front Range. Ms. Buchanan earned both a Master of Science in Civil Architectural and Environmental Engineering and a Bachelor of Arts in Environmental Population Organismic Biology from the University of Colorado, Boulder.

recycled paper

forth in Section 404 of the Clean Water Act ("CWA"), 33 U.S.C. § 1344, and its implementing regulations.

The Conservation Organizations would prefer to avoid the time and expense associated with litigating over each of the numerous analytical shortcomings found within the DEIS and its cursory examination of the environmental impacts associated with the Halligan Project. Nevertheless, the Halligan Reservoir, the Cache la Poudre River, and its watersheds are incredibly important to the Conservation Organizations and their members across the State of Colorado. Thus, to the extent the Corps intends to rely on the DEIS in its present form to justify permitting the Project to proceed, the Conservation Organizations will be forced to examine all available options, including litigation. For this reason, the Conservation Organizations strongly encourage the Corps to reexamine the concerns highlighted in the following comments.

DISCUSSION

I. The Purpose and Need Statement is Too Restrictive and Impermissibly Constrains the Range of Reasonable Alternatives, in Violation of NEPA

NEPA requires that an Environmental Impact Statement ("EIS") "briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives." 40 C.F.R. § 1502.13. The purpose and need statement necessarily dictates the range of "reasonable" alternatives that the agency must consider in evaluating the environmental impacts of a proposed action. Therefore, an agency cannot define its objectives in unreasonably narrow terms. *See, e.g.*, *Colo. Envtl. Coal. v. Dombeck*, 185 F.3d 1162, 1175 (10th Cir. 1999) (providing that "the statements of purpose and need drafted to guide the environmental review process" may not be "unreasonably narrow"). Moreover, while an agency must take a private applicant's objectives into account when developing the purpose and need statement, it is the agency's responsibility to "defin[e] the objectives of an action." *Id.*

In the DEIS, "[t]he Corps determined that the Halligan Project's basic purpose is to supply water." DEIS at 1-3. The Corps further determined that the Project's overall purpose is "[t]o provide additional system firm yield for Fort Collins in order to satisfy an additional need of approximately 7,900 acre-feet per year to meet its projected 2065 municipal and industrial demands with water of a quality comparable to the water now delivered to its customers." DEIS at 1-4.

In developing the basic and overall purposes for the Project, the Corps considered Fort Collins' "water supply reliability criteria," which Fort Collins defined as "no system shortages while maintaining a minimum of 15 percent annual demand in storage at the end of each month through the 1-in-50 year critical drought." *Id.* Fort Collins asserts the Halligan Project will serve those criteria and "provide an increased water supply by creating long-term carryover storage and operational storage." *Id.* at 1-4–1-5. Rather than accepting outright Fort Collins' desire to create additional new storage, however, "[t]he Corps determined that *storage was only one of several ways to achieve the needs of Fort Collins*." *Id.* at 1-5 (emphasis added). Accordingly, the Corps explained that "specifying new storage within the purpose statement would possibly

eliminate many [alternatives that address some or all of Fort Collins' need] because they do not necessarily rely solely on storage." *Id.*

Despite indications in the DEIS to the contrary, however, the Corps ultimately relied on the Project's overall purpose to dismiss reasonable alternatives and strategies that, in isolation or in combination with one another, would have satisfied the Project's basic purpose of supplying water but did not allow Fort Collins to create new reserve storage. Indeed, during its consideration of preliminary alternatives, the Corps screened out several alternatives, including "agricultural conservation" measures and the acquisition of water rights from existing reserves, *see* DEIS at § 2.5.2, because those options did not produce a sufficient "firm yield," which Fort Collins and the Corps defined to include "15 percent of annual demand *in storage*." *Id.* at 1-9 (emphasis added). On the same grounds, the Corps summarily dismissed the practicality of the No-Action Alternative. While conceding that "under the No-Action Alternative Fort Collins would be able to meet its future demand," including throughout historically significant droughts, the Corps concluded that this alternative was not feasible because "it would not meet the storage reserve factor—a critical aspect of the project need and purpose . . . ." *Id.* at 2-35–2-36. The rationale behind the Corps' sudden and arbitrary reversal—from rejecting an explicit storage component in the Project's purpose statement to finding that storage constitutes "a critical aspect of the project need and purpose"—is never explained in the DEIS.

The Tenth Circuit has previously rejected purpose and need statements that narrowly express the project's objectives as requiring the agency to adopt a particular alternative. For example, in *Davis v. Mineta*, 302 F.3d 1104, 1119 (10th Cir. 2002), *abrogated on other grounds by Dine Citizens Against Ruining Our Env't v. Jewell*, 839 F.3d 1276 (10th Cir. 2016), the court evaluated a purpose and need statement for a traffic project that sought to improve traffic flow in part by building an additional river crossing. *Id.* The court rejected this reading, noting that "[a]lthough the scope of the Project certainly contemplates additional road capacity across the Jordan River, [it] d[id] not believe that a fair reading of the Project purposes and needs requires that this additional capacity necessarily be achieved by" construction of the additional crossing. *Id.* The court further stated that "if the Project did narrowly express its purposes and needs as requiring a new crossing . . . [it] would conclude that such a narrow definition of Project needs would violate NEPA given the more general overarching objective of improving traffic flow in the area." *Id.*

As with the project reviewed in *Mineta*, the Corps cannot define the Halligan Project's purpose so narrowly as to require that its objectives may only be met through the construction of additional storage reserves that require the permanent inundation of jurisdictional wetlands and the destruction of vital habitat for various protected species. This is particularly true where, as here, reasonable alternatives predicated upon reducing water demand in Fort Collins exist and would accomplish the Halligan Project's "more general overarching objective," *see id.*, of "supply[ing] water," *see* DEIS at 1-3 (reporting the "basic project purpose" of the Project). Narrowing the Halligan Project's objectives to accommodate the project proponent's goals violates NEPA. Accordingly, the Conservation Organizations strongly encourage the Corps to re-examine its insistence on including the construction of storage reserves as a necessary condition of the Project's purpose and need statement.

II. The Corps Failed to Consider a Reasonable Range of Alternatives, Including Those that Would Result in Reduced Adverse Environmental Impacts and Increase System Resilience

NEPA requires that the Corps "[r]igorously explore and objectively evaluate *all* reasonable alternatives" to the proposed action, including a "no action" alternative. 40 C.F.R. § 1502.14(a) (emphasis added); *see also id.* § 1508.9(b); *Custer Cty. Action Ass'n v. Garvey*, 256 F.3d 1024, 1039 (10th Cir. 2001). Because NEPA's overriding purpose is to "help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment," 40 C.F.R. § 1500.1, NEPA's implementing regulations, which are binding on all federal agencies, provide that the consideration of alternatives for reducing adverse impacts "is the heart of the environmental impact statement." 40 C.F.R. § 1502.14. Accordingly, EISs "should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public." *Id.* The regulations further mandate that the EIS must "[i]nclude reasonable alternatives not within the jurisdiction of the lead agency," but that may nonetheless meet the overall objectives of the action while ameliorating environmental impacts. *Id.*

A. The Absence of Alternatives that Do Not Require the Construction or Acquisition of New Reservoir Storage Fails to Present a Comparative Analysis

The DEIS for the Halligan Project ultimately evaluated in detail four similar action alternatives, including Fort Collins' preferred alternative, and the No-Action Alternative. Under Fort Collins' preferred alternative, the Corps would raise the Halligan Dam (located on southern boundary of the Halligan Reservoir) by 25 feet to increase the Reservoir's current capacity from 6,400 acre-feet to roughly 14,525 acre-feet—in the process flooding roughly 133 acres surrounding the extant Halligan Reservoir. *See* DEIS at 2-4. According to the Corps, this alternative would yield 7,900 additional acre-feet to meet Fort Collins' projected water-supply and drought-reserve demands through the year 2065. *Id.* at 2-47. The price tag for the Project, which is estimated to cost $120 million to $150 million, makes it one of the most expensive water supply projects in Fort Collins' history. *See* Kevin Duggan, *Costs Keep Rising for Proposed Fort Collins Water Storage Project*, COLORADOAN (Sept. 11, 2019, 6:11 AM), https://www.coloradoan.com/story/news/2019/09/11/halligan-reservoir-expansion-costs-keep-rising-fort-collins/2276036001/.

The remaining three action alternatives are each a variation on a common theme—the creation of new storage capacity that enables Fort Collins to continue to exercise its appropriated water rights. Under the first, the "Expanded Glade Alternative," Fort Collins would purchase additional storage capacity in the Northern Integrated Supply Project's ("NISP") Glade Reservoir—another water supply project under consideration by the Corps—by increasing the depth of that reservoir to include 6,075 acre-feet of water. DEIS at 2-10. The second action alternative, the "Gravel Pits Alternative," envisions developing 3,875 acre-feet of new storage along the Main Stem of the Cache la Poudre River by flooding over 15 former gravel excavation pits. *Id.* at 2-18. Finally, the "Agricultural Reservoirs Alternative" would have Fort Collins

purchase 6,475 acre-feet of dedicated storage in North Poudre Irrigation Company's ("NPIC") extant Reservoirs Number 5 and 6. *Id.* 2-26.

In addition to the action alternatives, the Corps examined a No-Action Alternative, through which Fort Collins would: (1) reoperate the existing Joe Wright Reservoir, without additional modification; (2) acquire additional NPIC shares to obtain the four Colorado-Big Thompson Project storage components implied in each share; and (3) institute more frequent drought restrictions within Fort Collins' service area. DEIS at 2-33. The water acquisitions necessary under the No-Action Alternative are estimated by the Corps to cost Fort Collins approximately $38.2 million, a fraction of the preferred alternative's present estimated cost. *Id.* at 4-352; *see also* Duggan, *supra* (projecting costs associated with Fort Collins' preferred alternative to range between $120-150 million).

The Corp's unduly narrow purpose and need statement, which, as explained above, included an implicit storage-reserve requirement, ultimately led to the development of the four action alternatives that are functional equivalents of one another. Each alternative, therefore, includes an examination of nearly identical environmental impacts. For example, the primary environmental effects associated with each action alternative (with the exception of the Agricultural Reservoirs Alternative) are related to the inundation of surrounding jurisdictional wetlands and the loss of habitat for the Preble's meadow jumping mouse. The nearly uniform environmental effects across all action alternatives, therefore, highlights the lack of comparison obfuscated by the Corps' narrow range of alternatives, and falls well short of the Corps' duty under NEPA. *See, e.g.*, *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council*, 462 U.S. 87, 100 (1983) (imposing a clear-cut procedural obligation upon federal agencies to take a "hard look" at alternatives that would entail less significant impacts on resources affected by a given project).

The Corps' failure to rigorously explore a single action alternative that would result in lower impacts on wetlands, the Poudre River, and habitat used by several protected species—e.g., an alternative that would not require the construction or acquisition of new reservoirs—is a flagrant violation of NEPA. Importantly, a central purpose of the proposed action (issuance of a 404 permit) is—and, under the CWA, *must* be—to evaluate whether less environmentally damaging practicable alternatives are available for non-water dependent projects. This definition of the "purpose" of the proposed federal action *necessarily* requires the Corps to consider reasonable action alternatives that would *better* protect wetland and riparian habitat, and minimize the adverse impacts on these important habitats, than Fort Collins' preferred approach. *Cf. Union Neighbors United, Inc. v. Jewell*, 831 F.3d 564, 577 (D.C. Cir. 2016) ("Accordingly, because the Service in these circumstances did not consider any other reasonable alternative that would have taken fewer Indiana bats than Buckeye's plan, it failed to consider a reasonable range of alternatives and violated its obligation under NEPA.").

Courts have rejected precisely this type of avoidance approach by agencies in the past. *See, e.g.*, *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 813 (9th Cir. 1999) (concluding that the EIS violated NEPA when the two action alternatives considered in detail were "virtually identical"). Indeed, "the evaluation of 'alternatives' mandated by NEPA is to be an evaluation of alternative means to accomplish the general goal of an action; it is not an evaluation of the alternative means by which a particular applicant can reach his goals." *Van*

Abbema v. Fornell, 807 F.2d 633, 638 (7th Cir. 1986). While an agency must take a private applicant's objectives into account when developing the purpose and need statement, it is the agency's responsibility to "defin[e] the objectives of an action and then provide legitimate consideration to alternatives that fall between the obvious extremes." *Colo. Envtl. Coal.*, 185 F.3d at 1175. Here, however, it appears that the Corps merely paid lip service to the exploration of non-storage alternatives, accepted Fort Collins' objectives as its own, and developed alternatives that skewed the analysis towards the applicant's preferred alternative.

The Corps' analysis is devoid of *any* meaningful consideration of alternatives that fall between the "obvious extremes"—i.e., the construction or acquisition of additional reservoir storage and the No-Action Alternative. Furthermore, by considering only alternatives that involve large-scale storage-acquisition projects with no functional difference between environmental impacts, the DEIS essentially considered *only* the impacts from alternatives representing *one* of the extremes. Such an approach cannot satisfy the agency's obligations under NEPA to examine "*all* reasonable alternatives," including those that lie outside the jurisdiction of the agency. *See Citizens for Envtl. Quality v. United States*, 731 F. Supp. 970, 989 (D. Colo. 1989) ("Consideration of alternatives which lead to similar results is not sufficient under NEPA[.]"); *Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024, 1038 (9th Cir. 2008) (finding that SEIS "lacked a reasonable range of action alternatives" because "the [three action] alternatives are essentially identical" and thus are "not varied enough to allow for a real, informed choice"). Of course, NEPA does not prohibit the Corps from ultimately adopting an approach that relies on the construction of additional reservoir capacity; however, it is deeply "troubling that the [agency] saw fit to consider from the outset only those alternatives leading to that end result." *California v. Block*, 690 F.2d 753, 768 (9th Cir. 1982).

While NEPA does not require the Corps to "consider every possible alternative to a proposed action, nor must it consider alternatives that are unlikely to be implemented or those inconsistent with its basic policy objectives," *Seattle Audubon Soc'y v. Moseley*, 80 F.3d 1401, 1404 (9th Cir. 1996), it is particularly troubling here that the Corps failed to consider *any* alternatives that were more consistent with the basic policy objectives of the CWA and its implementing regulations than those which were subjected to detailed consideration. As the Corps acknowledged, the Halligan Project is not "water dependent." Hence, there is a presumption that "practicable alternatives that do not involve special aquatic sites" exist, and that these alternatives "have less adverse impact on the aquatic ecosystem." 40 C.F.R. § 230.10(a)(3). These presumptions hold unless "clearly demonstrated otherwise." *Id.* Yet, the Corps failed to examine in detail any combination of alternatives that would avoid the acquisition or construction of new reservoir space and the destruction of jurisdictional wetlands. Accordingly, the Corps' alternatives analysis fails to present a reasonable range of alternatives, and violates NEPA. *See Muckleshoot Indian Tribe*, 177 F.3d at 813-14 (holding that consideration of only "two virtually identical" action alternatives was inadequate).

B. The DEIS Excluded Alternatives that Would Reduce Environmental Impacts for a Fraction of the Cost of the Preferred Alternative

The Tenth Circuit has held that an agency's obligation to take a "hard look" at the environmental impacts associated with a proposed project under 40 C.F.R. § 1502.14(a)

precludes it from "summarily reject[ing]" alternatives which, "standing alone," do not meet the purpose and need but may nevertheless accomplish the project's objectives when employed "in conjunction" with each other. *See Mineta*, 302 F.3d at 1120. Indeed, in considering the NEPA review of a reservoir construction project in Denver, Colorado, much like the one at issue here, the Tenth Circuit recently reaffirmed this principle, recognizing that NEPA imposed upon the Corps a duty to consider the collective ability of "enhanced water conservation measures" to achieve the proposed project's objectives. *See Audubon Soc'y of Greater Denver v. U.S. Army Corps of Eng'rs*, 908 F.3d 593, 604 (10th Cir. 2018).

Although the Court in *Audubon Society* ultimately found that the Corps had adequately discharged its duty to consider the conjunctive feasibility of conservation measures in that case, the facts driving the Denver project differ vastly from the Halligan Project. In *Audubon Society*, "[t]he Corps thoroughly described the current status of the water providers' conservation plans and explained that, because the future unmet water need is so great, the water providers will develop even more stringent water conservation measures, *even after the [proposed project] is completed*." 908 F.3d at 604 (emphasis added). Moreover, the post-project shortfalls described in *Audubon Society* were further complicated by "increasing water demand in the Denver metro area . . . ." *Id.* at 600. The same is not true in Fort Collins. When compared to the shortfalls found in Denver, the difference between Fort Collins' projected supply and demand is not so drastic as to preclude the Corps from analyzing a collection of "enhanced water conservation measures" to achieve the Project's objective. Indeed, as mentioned above, the Corps recognized that even the No-Action Alternative would satisfy Fort Collins' future demand, while falling only "600 acre-feet short of the storage reserve factor in the 1-in-50 year drought." DEIS at 2-34.

Setting aside the already slender margin projected by the Corps between Fort Collins' future supply and demand, the actual difference is likely to be even more modest. To estimate Fort Collins' future demand for purposes of necessity in the DEIS, the Corps applied an average of water-use levels between 2004 and 2014 to the City's projected population growth through 2065 (the DEIS's planning horizon). DEIS at 1-12. According to the Corps, Fort Collins' average consumption between 2004 and 2014 equated to approximately 132 total gallons per capita per day ("GPCD"). *Id.* Thus, to calculate future demand, the Corps assumed that consumption, in terms of GPCD, would remain static over the duration of the 50-year planning horizon. However, recent data collected by Fort Collins undermine the Corps' fundamental assumption. According to Fort Collins, water consumption continues to *decrease*—even as the population in the city grows. *See Water Conservation Annual Report*, CITY OF FORT COLLINS, CO. (2018),https://www.fcgov.com/utilities//img/site_specific/uploads/annualreport _2018_full-for-website.pdf?1563296852/ (reporting a 32% decrease in demand since 2000). Indeed, in 2017, total demand in Fort Collins dropped by 33%; "[r]esidential use dropped at an even greater clip: It went from 126 gallons of water per person per day to 73—a 43 percent decline." Nick Coltrain, *Fort Collins Water Use Keeps Dropping, Even as Population Grows*, THE COLORADOAN (July 6, 2018, 10:56 PM), https://www.coloradoan.com/story/news/2018/ 07/06/fort-collins-water-conservation-efforts-rebate-program-reduce-usage/760676002/. As a result, Fort Collins "has since shifted to a 2030 goal of 130 gallons per capita per day and plans to make another goal change come 2022." *Id.* Consequently, the Corps' assumption regarding future demand is flawed and must be revised before its NEPA review is completed.

While overestimating the projected demand in Fort Collins, the DEIS simultaneously underestimates the efficacy of the city's water-conservation measures. As the attached expert report highlights, the Corps' inclusion of the entire 1995 to 2014 GPCD data to calculate baseline consumption obscures the impact that more recent water-conservation measures have had on Fort Collins' GPCD. *See* Lisa Buchanan, *Water Demand Factors, Water Conservation, and Climate Change Impacts: Comments on the Draft Environmental Impact Statement for Halligan Water Supply Project*, at 8. Had the Corps compared pre-2004 data (for baseline demand) with post-2003 consumption data—i.e., the period which includes modern water savings—the reduction in GPCD between pre- and post-conservation periods is more than twice that noted in Chapter 1 of the DEIS. *Id.* at 1. Thus, the DEIS substantially under-estimates the potential for current conservation measures to reduce future demand when implemented in additional areas of the Fort Collins Utility service area. Furthermore, the Corps' reliance on outdated consumption data in the DEIS is particularly egregious because "residential metering" was not completed in Fort Collins until 2003, meaning "the full amount of water use was not recorded" in that time period and water savings attributable to current conservation measures are likely to be even greater than that projected by the Corps. *Id.* The Corps also fails to account for additional future conservation efforts, beyond current measures, even though the Fort Collins 2015 Water Efficiency Plan "identifies several areas of opportunity for developing new programs and approaches to increase water efficiency. The Water Utility is currently considering a number of efficiency measures for future implementation . . . ." *Id.* at 4 (emphasis omitted). Demand projections do not account for any future conservation—either via expanded implementation of current measures or through new conservation programs.

In short, recent data demonstrating the accelerating efficacy of water-conservation measures in Fort Collins undermines the Corps' projected modest shortfalls between future need and available supply. Thus, the practicality of employing additional water-saving measures to close this relatively small gap, without incurring the adverse impacts associated with all other action alternatives described by the DEIS, makes these measures a reasonable method for achieving the Halligan Project's basic purpose. For this reason, the Corps' consideration of additional conservation measures is required under NEPA's "hard look" mandate. *Cf. Audubon Soc'y of Greater Denver*, 908 F.3d at 604 (relieving the Corps of considering a combination of "enhanced conservation measures" only after projected demand exceeded supply "even after the [proposed project] is completed.").

Practical conservation measures to further reduce Fort Collins' water consumption, thereby allowing the City to achieve its projected water-demand targets in the DEIS, exist and have been proven effective in other cities throughout the West. Beyond simply achieving the stated objectives of the Project, these measures can be implemented for a fraction of the cost Fort Collins is proposing to spend on the Halligan Project. For example, arid municipalities in the West, including Las Vegas, Los Angeles, and Tucson, have instituted robust turf-replacement programs to encourage "xeriscaping," which, in turn, has yielded stunning water-consumption reductions. In Las Vegas, Southern Nevada Water Authority's Water Smart Landscapes program is responsible for a 5,000 gallon-per month (or 21%) reduction in water consumption in single family homes, as well as a 1% increase in property value. *See* Johnathan E. Baker, *Subsidies for Succulents: Evaluating the Las Vegas Cash-for-Grass Rebate Program*, HARV. ENVTL. ECON. PROGRAM (June 2017), https://heep.hks.harvard.edu/files/heep/files/dp74_baker.pdf/. Similarly,

in Los Angeles, the Metropolitan Water District's "cash-for-grass" program has prompted citizens to "replace 170 million square feet of lawn" with more water-efficient landscaping, which will allow the city to "save enough water for 160,000 families." Molly Peterson, *Metropolitan Water District's $340 Million 'Cash-for-Grass' Program Runs Dry*, S. CAL. PUB. RADIO (July 8, 2015), https://www.scpr.org/news/2015/07/08/52975/mwd-s-450-million-cash-for-grass-program-runs-dry/.

Although Fort Collins has in place as similar pilot program aimed at reducing outdoor irrigation in residential communities, it is woefully underfunded. Diverting even a fraction of the proposed outlay for the Halligan Project would yield significant reductions in Fort Collins' water consumption. Adequately funding and implementing more robust water-conservation measures, combined with the reserve storage strategies described in the No-Action Alternative, i.e., reoperation of the Joe Wright Reservoir and acquisition of additional NPIC shares, would allow Fort Collins to satisfy its projected future demand while maintaining the 15 percent "safety factor" identified in the DEIS—all with far less environmental impacts.

The feasibility of increased turf-reduction programs in Fort Collins may be further bolstered through combination with additional conservation measures that were summarily rejected during the Corps' alternatives-screening phase. Although the DEIS claims the Corps considered various combinations of operational elements during its development of action alternatives, closer examination reveals that many less environmentally destructive alternatives were preliminarily dismissed from consideration without any discussion of their combined ability to meet the Project purpose. *See* DEIS at 2-42. For example, the Corps rejected early on in its screening process the feasibility of "non-[Colorado-Big Thompson] agricultural conservation," which focuses on the reduction of losses within agricultural water systems, because its firm yield coefficient would be speculative and inadequate on its own. *See id.* at 2-48. For similar reasons, the Corps rejected other operational alternatives, including the possibility of securing a permanent lease of Colorado-Big Thompson units from current holders. *Id.* at 2-52. Notably absent from the Corps' analysis, however, is any discussion of whether a combination of these less environmentally destructive elements may achieve the Project purpose when used "in conjunction" with one another. *Mineta*, 302 F.3d at 1121–22.

Rather than confront the efficacy of these measures, the Corps summarily dismissed them by claiming that conservation measures "need not be considered" because Fort Collins' projected "need already takes into account the water savings expected from future planned conservation measures" and "demand still exceeds the amount that could be conserved." DEIS at 1-13. Yet as the prior discussion demonstrates, both Fort Collins' projected demand and the practicality of existing conservation measures were grossly miscalculated in the Corps' analysis. Accordingly, the Corps may not rely on such self-serving and conclusory assertions to escape its duty to take a "hard look" at alternatives that, "together and/or in conjunction with [existing alternatives]" feasibly accomplish the Halligan Project's goal of supplying water. *Mineta*, 302 F.3d at 1121; *accord Audubon Soc'y*, 908 F.3d at 604.

For the foregoing reasons, before completing its NEPA review of the Halligan Project, the Conservation Organizations strongly encourage the Corps to develop and make available for comment at least one project alternative that examines the feasibility of employing an array of

enhanced conservation measures without the construction or acquisition of new reservoir storage. In the absence of such an alternative, the Corps' analysis cannot pass muster under NEPA (or the CWA).

III. The DEIS Cannot Support the Issuance of a Section 404 Permit for the Halligan Project under the CWA

The CWA is a comprehensive statute designed to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). To this end, the CWA generally prohibits the discharge of dredged or fill materials into waters of the United States unless authorized by a permit ("Section 404 permit"). *Id.* § 1311. When reviewing Section 404 permit applications, the Corps must follow binding guidelines jointly established by the Corps and the EPA ("404 Guidelines" or "Guidelines"). These Guidelines are codified at 40 C.F.R. part 230.

The Guidelines prohibit the Corps from issuing permits for projects where there "is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences." 40 C.F.R. § 230.10(a). The Guidelines further prohibit the Corps from issuing a permit where it "will cause or contribute to significant degradation of the waters of the United States," which includes adverse effects on the "life stages of aquatic life and other wildlife dependent on aquatic ecosystems," "loss of fish and wildlife habitat," and "loss of the capacity of a wetland to assimilate nutrients, purify water, or reduce wave energy." 40 C.F.R. § 230.10(c). The Corps is also prohibited from issuing a permit where it "[c]auses or contributes . . . to violations of any applicable State water quality standard." *Id.* § 230.10(b).

In applying these criteria, the Corps must make detailed factual determinations as to the potential environmental effects of the proposed action, *see id.* §§ 230.11, 230.12(b) and it must indicate whether the project complies with the Guidelines in a record of decision that incorporates the its environmental review under NEPA. *See* 33 C.F.R. § 325.2(a)(6). For the reasons discussed below, the DEIS in its present form utterly fails to demonstrate the Corps' compliance with these Guidelines. Accordingly, the Corps may not rely on its analysis to permit the Project to proceed.

A. The DEIS Fails to Demonstrate that Less Damaging Practicable Alternatives to the Halligan Project Do Not Exist

The Corps' burden in identifying the least damaging practicable alternative under the Guidelines is heaviest for non-water dependent projects planned for a "special aquatic site," such as a wetlands area. *See Holy Cross Wilderness Fund v. Madigan*, 960 F.2d 1515, 1524 (10th Cir. 1992). To be "practicable," an alternative must be "available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes." 40 C.F.R. § 230.10(a)(2).

Where projects are not water dependent, there is a presumption that "practicable alternatives that do not involve special aquatic sites" exist, and that these alternatives "have less

adverse impact on the aquatic ecosystem." 40 C.F.R. § 230.10(a)(3). These presumptions hold unless "clearly demonstrated otherwise." *Id.* The Tenth Circuit has explained that in such a case, the Corps may not issue a § 404 permit unless the applicant, "with independent verification by the [Corps] , . . . provide[s] detailed, clear and convincing information proving " that an alternative with less adverse impact is "impracticable." *Utahns for Better Transp.*, 305 F.3d at 1186-87 (requiring denial of a permit "where insufficient information is provided to determine compliance"); *see also Greater Yellowstone Coal. v. Flowers*, 321 F.3d 1250, 1262 n.12 (10th Cir. 2003) ("[U]nder the CWA, it is not sufficient for the Corps to consider a range of alternatives to the proposed project: the Corps must rebut the presumption that there are practicable alternatives with less adverse environmental impact.").

The DEIS does not demonstrate that the preferred alternative would be the least damaging practicable alternative—nor can it reasonably do so. The Corps itself acknowledged that the basic purpose of the project—"to supply water"—is "non-water dependent," which requires the Corps to presume that: "(1) practicable alternatives not involving special aquatic sites are available, and (2) such alternatives are less damaging to the aquatic ecosystem, unless clearly demonstrated otherwise." DEIS at 1-3 (citing 40 C.F.R. § 230.10(a)(3)). The DEIS, in its present form, fails to rebut this presumption, and therefore the Corps' reliance on its analysis to approve the Halligan Project would be unlawful under the CWA.

As explained above, the Corps screened out, and thus failed to consider, alternatives that would have achieved the Projects' objectives through less environmentally damaging means. *See supra* Sec. II.B (discussing combined conservation measures to meet Project objectives). By excluding from consideration any combination of operational conservation measures, such as enhanced turf-replacement programs and agricultural conservation measures, the Corps all but ensured the only available alternatives were those that relied on the construction or acquisition of additional reservoir capacity (despite the fact that reservoir capacity is not essential to the basic project purpose of supplying more water). Yet, the narrow margin between the feasibility of the No-Action Alternative and Fort Collins' projected demand—i.e., the estimated 600-acre-foot shortfall needed to satisfy Fort Collins' "safety factor"—reveals that modest conservation measures could achieve the Project's objectives without permanently destroying jurisdictional wetlands and wildlife habitat. In the absence of extensive analysis by the Corps of those conservation measures as a feasible alternative to Fort Collins' preferred action, the agency cannot carry its heavy burden under Guidelines, and the permit may not be lawfully issued under the Clean Water Act. *See Utahns for Better Transp.*, 305 F.3d at 1187 ("[W]here insufficient information is provided to determine compliance, the Guidelines require that no permit be issued.")

B. The DEIS Demonstrates that Permitting the Halligan Project under Section 404 Will Result in the Significant Degradation of Wetlands

Under the 404 Guidelines, the Corps may not permit discharges of fill material that will "cause or contribute to significant degradation" of wetlands. 40 C.F.R. § 230.10(c). Effects contributing to significant degradation include "significantly adverse effects" on: "the life stages of aquatic life and other wildlife dependent on aquatic ecosystems"; "aquatic ecosystem diversity, productivity and stability" including "loss of fish and wildlife habitat"; and

"recreational, aesthetic, and economic values." *Id.* The Corps is directed to make factual findings on the potential short-term and long-term effects of the proposed discharge on various physical, chemical, and biological components of the aquatic environment. *Id.* § 230.11. The extent and duration of the impacts on wetlands, as well as the wetlands' uniqueness, are relevant considerations. *See Bering Strait Citizens for Responsible Res. Dev. v. U.S. Army Corps of Eng'rs*, 524 F.3d 938, 949 (9th Cir. 2008). If the Corps finds that the project would significantly degrade wetlands, it may issue a permit conditioned on minimization of, or compensation for, impacts. *See City of Olmstead Falls v. EPA*, 435 F.3d 632, 637-38 (6th Cir. 2006); *Ohio Valley Envtl. Coal. v. U.S. Army Corps of Eng'rs*, 674 F. Supp. 2d 783, 790 (S.D. W. Va. 2009). However, inadequacies in plans for minimization or compensation may invalidate the decision to allow discharge. *See All. to Save the Mattaponi*, 606 F. Supp. 2d at 134.

Here, the "significantly adverse effects" attributable to the Halligan Project are numerous. As noted above, the Project involves the enlargement of the Halligan Reservoir by 14,253 acre-feet, which will increase the Reservoir's surface area by approximately 133 acres. As a result, conservative estimates in the DEIS project a permanent loss of roughly 16.74 acres of jurisdictional wetlands that are critical to the ecological health of the Cache la Poudre River and its watersheds. The Corps' own analysis concedes that this loss would be considered a "major effect." DEIS at 4-156. Furthermore, inundation of the Reservoir also entails the permanent destruction of 4.03 acres of perennial steams, 3.5 acres of which are riffle-and-pool complexes, a stream feature given special designation under the Corps' regulations due to their "valuable habitat for fish and wildlife." *See* 40 C.F.R. § 230.45(a). The loss of these unique riffle-and-pool complexes is, in turn, likely to devastate the fragile coldwater stream communities that rely upon these features, including various species of fish, benthic macroinvertebrates, and algae.

Equally troubling is the Halligan Project's anticipated destruction of habitat for species of concern protected under state and federal law. For example, the Halligan Project will undoubtedly have significant adverse effects on the conservation and recovery of the Preble's jumping mouse. 40 C.F.R. § 230.10(c) (prohibiting the issuance of a permit where it would adversely affect the life stages of wildlife). Specifically, the construction and operation of the Project will cause the "impairment or destruction of habitat" to which the Preble's meadow jumping mouse is limited. 40 C.F.R. § 230.30(b)(2) (directing the Corps to consider the proposed discharge's impacts to habitat for endangered and threatened species). According to the DEIS, the Halligan Project will permanently destroy over 11 acres of documented Preble's jumping mouse habitat, as well as an additional 87 acres that may be used by the mouse throughout its life-cycle. DEIS at 4-295. Although the Corps claims that "water levels would rise slowly enough that any Preble's meadow jumping mice in the inundation area would be able to escape the rising water," it concedes that "rising water would eventually inundate existing Preble's meadow jumping mouse nests in the area." *Id.* Tragically, the rising waters in the Preble's habitat are likely to "drown[] young [mice] during their active or nesting period," and "drown individual mice hibernating during their inactive period . . . ." *Id.* In the absence of robust minimization and mitigation measures to curb this inevitable destruction, Fort Collins' preferred alternative cannot pass muster under the CWA and its implementing regulations (nor the Endangered Species Act). 40 C.F.R. § 230.10(c), (d).

By way of comparison, the Corps' No-Action Alternative yields *none* of the devastating degradation attributable to Fort Collins' preferred alternative. Indeed, "[a]ll components of the No-Action Alternative are non-structural and require no ground disturbance of any type, and therefore would not affect wetlands, other waters, or riparian resources," DEIS 4-181, nor would they pose any threat to protected species. *Id.* at 4-310. Because this option is, in combination with some additional conservation measures, easily capable of meeting the Project objective, the Conservation Organizations strongly encourage the Corps' to revisit its arbitrary dismissal of the No-Action Alternative and/or other conservation measures that alone or in combination can satisfy the very modest shortfall estimated by the Corps during a 50-year drought event.

CONCLUSION

For the foregoing reasons, the DEIS for the Halligan Project is legally deficient and must be revised before any permit is issued to Fort Collins under Section 404 of the CWA. If the Corps nonetheless proceeds to issue the permit based upon the present record, it will be doing so in clear violation of federal environmental law. In lieu of taking that step, the Conservation Organizations urge the Corps (and Fort Collins) to explore less environmentally destructive alternatives, and to solicit public comment on those additional alternatives.

Sincerely,

/s/Matthew R. Arnold
Matthew R. Arnold
Eubanks & Associates, LLC
1509 16th St. NW
Washington, DC 20036
843-718-4513
matt@eubankslegal.com

/s/William S. Eubanks, II
William S. Eubanks, II
Eubanks & Associates, LLC
2601 S. Lemay Ave.
Unit 7-240
Fort Collins, CO 80525
970-703-6060
bill@eubankslegal.com

cc: Gary Wockner
Executive Director,
Save the Poudre: Poudre Waterkeeper

Jen Pelz
Wild Rivers Program Director,
WildEarth Guardians

Water Demand Factors, Water Conservation, and Climate Change Impacts: Comments on the Draft Environmental Impact Statement for Halligan Water Supply Project

2/11/2020

Lisa Buchanan at LRB Hydrology & Analytics for Save the Poudre

Table of Contents

Executive Summary

1.0 Introduction **1**

2.0 Demand Projections Must Be Updated in the DEIS **1**

2.1 Benefit of Current Conservation Efforts Under-Estimated in DEIS.....1
2.2 The DEIS Must Update Demand Projections to Incorporate New City Development Plans 2
2.3 The DEIS Must Re-evaluate Future Water Needs Using the New Demand Estimation Tool 3
2.4 The DEIS Does Not Account for Future Conservation Efforts 3
2.5 Demand Sensitivity Analysis to Determine Target Demand Parameters 4

3.0: Climate Change Impacts.....4

3.1 WSVS Model Description.....5
3.2 Climate Change has Already Impacted Current Conditions.....6

4.0 The DEIS Needs to Incorporate and Address WSVS Results.....10

4.1 Does Lower Streamflow in the North Fork of the Poudre
Affect the Efficacy of the Halligan Project? 10
4.2 Environmental Impacts to Streamflow.....10
4.3 Sustainability of the Summer Low Flow, Peak Flow Bypass, and Winter Release Plans..... 11

List of Figures

Figure 1: Annual Maximum SWE at Joe Wright Reservoir SNOTEL Site (#551).....9
Figure 2: Average of Daily Air Temperature @ Joe Wright Reservoir SNOTEL Site: Winter and Spring.....9
Figure 3: Average of Daily Air Temperature @ Joe Wright Reservoir SNOTEL Site: Summer &
September 10
Figure 4: Annual Maximum Snow Water Equivalent at Lake Irene SNOTEL Site (#565).....10
Figure 5: Average Daily Temperature @ Lake Irene SNOTEL Site: Winter and Spring.....11
Figure 6: Average Daily Temperature @ Lake Irene SNOTEL Site: Summer & September.....11

Executive Summary

These comments on the Draft Environmental Impact Statement Halligan Water Supply Project (DEIS, 2019) reflect insights and analytical approaches from the Fort Collins Water Supply Vulnerability Study Draft Report (WSVS, 2019).

The DEIS analysis includes a projection of Fort Collins' water demand over a 50-year planning period. It appears that projection is conservatively high because the contribution of water conservation to reduce demand is underestimated. All Alternatives outlined in the DEIS will depend on ongoing water conservation efforts by the City of Fort Collins. In all cases, water conservation plays an important and likely singular role in achieving water supply security for the city. This report comments on the DEIS methods for estimating future water demands including:

- Incorrect calculations in Chapter 1 of the DEIS that substantially under-estimate the effect of current water conservation efforts (Section 2.1);
- The need to use more current city planning information (Section 2.2) and the new and more detailed WSVS Demand Estimation Tool (Section 2.3) to revise water demand projections for the EIS;
- The need to incorporate enhanced future water conservation efforts into EIS demand projections (Section 2.4);
- That the WSVS model be used to evaluate a water conservation goal, the outcome of sensitivity analysis on demand factors, that balance the effects of long-term climate change on Fort Collins water supply system under the No Action Alternative. Attainment of the conservation goal will increase the city's resilience to climate change impacts (Section 2.5).

Per the WSVS report, climate shifts cause significant long-term impacts to system performance which could limit growth/development in the City of Fort Collins. Given the importance of climate change on the City of Fort Collins water supply system, the WSVS report findings must be incorporated into the EIS; particularly with regard to how climate change affects the efficacy of the Halligan Water Supply project. The EIS must address the following as relates to climate change:

- Preliminary analysis of temperature and precipitation data at SNOTEL sites within the City's watersheds on the east and west slopes indicate that climate change is and has been happening at least since the 1980s. If climate change continues unabated, increases in air temperature may exceed those evaluated in the WSVS analysis. Thus, climate change through 2070, the planning horizon for the reports, could be more severe than what was considered in the WSVS report (Section 3.2).

- Climate impacts on streamflow on the North Fork of the Poudre must be evaluated to determine if future flows under different climate scenarios will be sufficient to fully utilize both the Halligan and Seaman Reservoirs (Section 4.1).

- Environmental impacts evaluated in the Common Technical Platform (CTP) Hydrology Model must be updated to reflect new information on climate change impacts to streamflow (Section 4.2).

- The sustainability and efficacy of the summer, winter, and peak flow enhancements must be re-evaluated in light of climate change impacts (Section 4.3).

1.0 Introduction

The DEIS and WSVS were released in November and June, 2019, respectively. The latter provides results of a concerted modeling effort to evaluate the potential impacts of climate change on and the vulnerability of the Fort Collins water supply system to various failure modes. Results of the WSVS analysis, though pertinent to the DEIS, were not be incorporated into the DEIS. Both reports are now available; therefore, the following comments on the Halligan DEIS include information from the WSVS report that pertain to the DEIS. Historical precipitation and temperature data from watersheds on both the east and west slopes are also presented to assess how local climate conditions have changed from 1980 to the present and how they compare to climate stressors used in the WSVS report.

2.0 Demand Projections Must Be Updated in the EIS

The DEIS analysis includes a projection of Fort Collins' water demand over a 50-year planning period. It appears that projection is conservatively high because the contribution of water conservation – current efforts and future enhancements – to reduce demand is underestimated. All Alternatives outlined in the DEIS will depend on ongoing water conservation efforts by the City of Fort Collins. In all cases, water conservation plays an important and likely singular role in achieving water supply security for the city. This section comments on shortcomings in the DEIS methods and suggests alternatives.

2.1 Benefit of Current Conservation Efforts Under-estimated in DEIS

The DEIS (Chapter 1, page 38) does not adequately define current and future water savings from ongoing and increased conservation efforts. Water conservation savings due to current efforts were under-estimated because the pre-conservation period was incorrectly defined. In Chapter 1 of the DEIS, the basis for demand projections in the DEIS, the pre-conservation average of 151 gallons per capita daily water use (gpcd) was calculated as the average of annual values from 1995 to 2014. More correctly, the pre-conservation period should only have extended through 2003, because the first significant Fort Collins Utilities (FCU) conservation programs were instituted following the 2002 drought. This change results in a pre-conservation average of 172 gpcd (data in Exhibit 3 of the TM HE-1 report). The post-conservation period encompassed 2004 to 2014 (ending when the DEIS was initiated) with an average of 132 gpcd (TM HE-1, 2016, page11). The DEIS therefore calculates the change in consumption due to current conservation efforts as the difference of 151 minus 132 or 19 gpcd. Estimated water savings from current conservation efforts increase substantially to 172 minus 132 or 40 gpcd when the correct pre-conservation period is used. The DEIS has substantially under-estimated the potential for water conservation savings by as much as fifty percent.

In addition, consumption values prior to 2003 likely are under-estimated since residential metering was not complete – i.e. the full amount of water use was likely not recorded - until 2003. Per the Technical Memorandum (TM HE-1, 2016 – page 13):

> *"The Utility achieved universal metering in 2003. Commercial, industrial, and multi-family customers had been metered for many years prior to 2003, but single family homes were not."*

If metering had been comprehensive prior to 2003, the pre- and post-2004 difference in average water use likely would be higher, again increasing water saved due to water conservation measures estimated by this method. Per TM HE-1, 2016 page 16;

> *"A water supply shortfall of about 4,700 AF is anticipated by 2040 and a shortfall of about 7,900 AF is projected by 2065."*

By using the 2004 to 2014 average gpcd in projecting future water demand, the DEIS has incorporated the benefit of conservation efforts through 2014. These efforts have already decreased per capita water use by approximately 23 percent (172 to 132 gpcd). However, as market penetration of current conservation programs increases the per capita consumption will drop below 132 gpcd. Expansion of current water conservation efforts will reduce the projected shortfall in 2065 noted in the DEIS.

2.2 The DEIS Must Update Demand Projections to Incorporate New City Development Plans

Future demand projections in the WSVS report (WSVS, 2019, page 4.2) utilize three city development scenarios from the City of Fort Collins "City Plan" update. The planning update was adopted by the Fort Collins City Council on April 16, 2019. The EIS needs to update water demand projections to reflect these three planning scenarios:

1. City Plan 2 – anticipates more dense residential development in some targeted areas of the City compared to the current average residential density;
2. City Plan 3 – includes even more dense residential development than Plan 2 with a significant shift toward multi-family densities; and
3. City Plan 3 + 20% - twenty percent increase in Plan 3 residential and general commercial demands that could be due to increased population, additional large commercial users, and/or expansion of the service territory.

City Plans 2 and 3 call for higher-density development than current residential areas. In particular, under Plan 3, development will favor multi-family density. Multi-family customers use less water, on average, compared with single-family customers. Therefore, higher density scenarios will have lower average per capita water consumption. Average historical residential water usage, shown in Exhibit 3 of the Technical Memorandum HE-1 (TM HE-1, 2016), between 2004 and 2014 was 97 gpcd (including single-family, duplex, and multi-family customers). When commercial (though not large commercial users) and public water use are included this value increased to 132 gpcd, the number used to forecast water demand for the DEIS. The DEIS demand projections, at a minimum, must be updated to reflect each of the city development plans. In particular, a lower per capita water usage must be applied to population increases to reflect the anticipated density and type of future development.

2.3 The DEIS Must Re-evaluate Future Water Needs Using the New Demand Estimation Tool

Section 4.1 of the WSVS report describes a new method used in the WSVS analysis to project future water demand: the Demand Estimation Tool. The new Demand Estimation Tool, developed as part of

the WSVS modeling efforts, forecasts monthly water demand under future climate conditions based on land use parameters, density, customer type, and annual weather patterns (Section 4 and Appendix C of the WSVS Report). Linear regression of demand models were developed for individual groups of water customers: single-family, duplex, and multi-family residential, and three sizes of commercial customers. Independent variables include temperature, precipitation, land area of various customer groups, whether the land is currently developed or undeveloped, planned land use and the type of customer. Monthly water consumption, on a per-premise instead of a per-capita basis, was determined for each of the five identified water use categories and for each of the three development trajectories. Per Section 4.2, page 4.4, of the WSVS report:

> *"The Demand Estimation Tool . . . . was used to generate monthly water demand values for the 86-year simulation period based on the climate conditions in that month (tied to the hydrologic trace and climate condition being simulated) and the development scenario assumptions. . . .The purpose of the analysis is to investigate water resources system performance at a fixed point in the future (i.e., fixed population and development conditions) over the range of 86 years of variable hydrology. The WSVS analysis does not attempt to capture the incremental increase in demand from current conditions to some future condition over the 86-year simulation period."*

Water use data from 2001 to 2016 were used to define the regression equations. <u>The 2004 to 2016 time frame for constructing linear regression demand models is preferred</u> since 1) residential water use was not fully metered prior to 2003; and 2) significant conservation efforts started after the 2002 drought. Also, "*none of the WSVS simulations include the effects of water use restrictions; thus the demands developed by the Demand Estimation Tool were not reduced in accordance with the FCU Water Shortage Response Policy,*" WSVS, 2019, page 4.3. Inclusion of water use restrictions, already part of FCU policy, into demand simulations would further reduce demand projections.

Regression analyses of water demand depend on limited historical data that only reflect the effects of previous water conservation efforts. As the citation above indicates, these WSVS demand projections do not include reductions that will be seen from future, enhanced water conservation efforts. They also do not reflect water use restrictions that would be implemented in times of drought and further reduce future demand in water short years.

2.4 The DEIS Does Not Account for Future Conservation Efforts

Including the effects of climate change and using the new demand estimating tool, the WSVS analysis projected demand in 2070 to reach 37,700 AFY, 39,200 AFY, and 45,200 AFY for City Plan 2, City Plan 3, and City Plan 3 + 20%, respectively (Chapter 4, WSVS report). This compares to the DEIS estimate, that used an average 132 gpcd applied to increased population numbers without climate change effects, of 38,400 AFY (Exhibit 7, TM HE,2016) in 2065. In both analyses, water-use data reflecting <u>existing</u> conservation efforts (existing through 2014 or 2016 for the DEIS and WSVS, respectively) were used to calculate unit (per-capita or per premise) water use that was then applied to population or premise numbers projected for 2065 or 2070. <u>Neither analysis accounts for future demand reduction due to expanded implementation of current conservation measures. Nor do they account for additional future</u>

conservation efforts. In both documents, future demands are over-estimated and must be re-evaluated in the EIS to account for future conservation enhancements.

Per the Harvey Economics Demand TM (TM HE-1, 2016, pages 12 and 14), one goal of the Fort Collins water supply policies is to continue reduction in per capita water use. The 2009 Water Conservation Plan outlined measures planned for future implementation of water conservation. The 2015 Water Efficiency Plan *"describes the Water Utility's water efficiency goals and outlines a plan for attaining greater water efficiency in the future."* It also, *"identifies several areas of opportunity for developing new programs and approaches to increase water efficiency. The Water Utility is currently considering a number of efficiency measures for future implementation . . . ."* Clearly, Fort Collins plans to implement additional water conservation measures in the future. Yet, the reduction in water use that will result from implementation of these future measures has not been included in projected water demand analyses in either the DEIS or the WSVS.

2.5 Demand Sensitivity Analysis to Determine Target Demand Parameters

The firm yield of the Halligan Reservoir project will likely be impacted by climate-change-induced reduction of long term flows in the North Fork of the Poudre (see Section 3.0 below), potentially reducing the efficacy of the expanded reservoir. Therefore, it is advisable to determine, via a sensitivity analysis, how much conservation is required to justify the No Action Alternative for current and future climate conditions. Achieving this conservation target will make Fort Collins more resilient to climate change impacts. The WSVS model evaluated a range of future precipitation and temperature conditions and resultant streamflow but did not perform a sensitivity analysis on demand parameters. Varying water consumption per premise in model runs not only determines how sensitive the water supply system is to demand but also can provide a target demand for future conservation efforts by the city.

Past reductions in per capita water consumption indicate that the City of Fort Collins has successfully started its water conservation program. However these efforts are still young. With experience and additional investment, conservation will be significantly enhanced. Numerous programs could be pursued, in all customer sectors, to reduce indoor, outdoor and process water use.

Performing a sensitivity analysis of demand factors in the WSVS analysis will assist FCU and the planning department to plan future development that is resilient to climate change impacts. Results also will help determine what demand per premise is required to alleviate climate change impacts in existing residential and commercial areas of the city. This modeling will provide the target demand per premise required to be more resilient to potential future climate conditions.

3.0 Climate Change Impacts

Though results of the WSVS analysis were available before the DEIS was published, it is likely that there was not sufficient time to incorporate these results into the DEIS analysis. However, since climate change has the potential to reduce long term streamflow in water supply basins that Fort Collins depends on, WSVS results must be incorporated into the EIS. The following sections describe:

- the WSVS methods and the overall results of the WSVS analysis; and
- based on data from SNOTEL sites in both the east and west slope watersheds, how climate change since 1980 has already increased temperatures and, if climate change continues unabated, temperature increases by 2050 to 2070 could be much greater than those modeled in the WSVS analysis.

3.1 WSVS Model Description

Since future hydrology in the Poudre basin is not guaranteed to repeat the past record, the first step in WSVS hydrologic modeling was to synthesize one hundred 86-year hydrologic sequences or traces (Appendix D, WSVS Report). To do so, the median annual flow of the reconstructed 1615 to 1990 paleo record was used as the threshold to define wet and dry years in the 86-year historical record. Rolling 86-year periods of the reconstructed paleo record provided the sequence of wet and dry years in each synthesized hydrologic trace. Monthly temperature and precipitation data from either wet or dry years of the historical record were then randomly selected to develop input data sets for the JFRCCVS (Joint Front Range Climate Change Vulnerability Study) runoff model to simulate future streamflow in the Poudre main-stem and the North Fork of the Colorado River.

A matrix of 20 combinations of climate-induced future temperature and precipitation values were then applied to the above baseline hydrologic traces to evaluate climate-driven impacts to streamflow. Variation was measured as the deviation from 1980 to 2010 averages of temperature, precipitation, and Poudre River flow at the mouth of the canyon. The range of variability in these parameters was determined by outputs from the CMIP5 (Coupled Model Inter-comparison Project Phase 5) climate change models – temperature increases of 0 to 8°F and +15 to -10 percent precipitation changes from baseline. Modeled streamflow was then incorporated into the Fort Collins System Model (FCSys) to evaluate the vulnerability of Fort Collins water supply system to climate-change-induced temperature and precipitation conditions. Results were evaluated to determine if city water supply goals outlined in the Water Supply and Demand Management Policy (WSDMP) could be achieved. These goals include (WSVS, 2019; page ES-2):

- *"meeting demands calculated using a per capita use factor of 150 gallons per capita per day,*
- *through the 1-in-50-year drought,*
- *with no shortages or water restrictions,*
- *while maintaining a minimum of 20 percent of annual demand in reservoir storage at all times (storage reserve factor)."*

The 150 gpcd noted in the WSDMP document is calculated differently than the DEIS value as detailed in Appendix A of TM HE-1, 2016. Thus, it does cannot be directly compared to other per capita values in the DEIS.

The WSVS analysis shows that:

- *"With the exception of significant wetter climates, all demand scenarios have a shortage, showing the FCU system is unable to satisfy this level of service goal"* – i.e. to have no shortages during the 1-in-50 year drought (WSVS, 2019; page ES-11).

- *"The most impactful risks are long term . . . . Short term risks . . . . can have extreme impacts on system performance for a short period but are masked by climate shifts that cause significant long-term impacts to performance* (WSVS, 2019; page ES-14)."

3.2 Climate Change has Already Impacted Current Conditions

The 1980 to 2010 time period represents current conditions in the WSVS model. Climate changes to precipitation and air temperature, in the CMIP5 model, the USGS National Climate Change Viewer, and therefore, in the WSVS exercise, are predicted to occur in the future between 2050 and 2074. However, climate change is and has been happening from the 1980s to the present. Data from SNOTEL sites within FCU watersheds show that temperatures have been steadily rising while the annual maximum snow water equivalent may have declined slightly over the period of record. Though it cannot be assumed that linear trends in temperature and precipitation will continue into the future, current patterns suggest that temperature increases may exceed modeled changes in the WSVS report. Therefore, if current trends continue, the WSVS may under-estimate the effects of climate change on streamflow in the Poudre mainstem and North Fork of the Colorado River.

Fort Collins receives both Poudre River water from the eastern slope and Colorado River water from the western slope. Maximum snow water equivalent (SWE) and daily temperature data from two SNOTEL sites, Joe Wright Reservoir and Lake Irene, were obtained from the NRCS data base to look at potential climate change trends in these two watersheds. Figures 1 through 3 provide precipitation and temperature data at the Joe Wright Reservoir SNOTEL site located in the Poudre River basin just east of the continental divide at an elevation of 10,120 feet. Maximum SWE, the potential annual water supply, has declined approximately 4.5 inches SWE over the 39-year period of record, though, variability, particularly in the 2000s, increases the uncertainty around the linear regression model.

Figures 2 and 3 show average daily temperatures for winter (November through February), spring (March through May), summer (June through August), and September at the Joe Wright Reservoir SNOTEL site. September alone was used to represent fall conditions for each water year since the next water year begins in October. Increasing air temperature trends are seen throughout the year. Simple linear fits for temperature show higher statistical significance (R^2) than for SWE. If the linear regression equations are representative of air temperature changes, then, over the last 29 years, average air temperatures in various seasons have increased between 5.2 and 6.7 degrees Fahrenheit at this site. Though it cannot be assumed that this linear trend will continue into the future, current patterns suggest that future temperature increases may exceed that modeled in the WSVS.

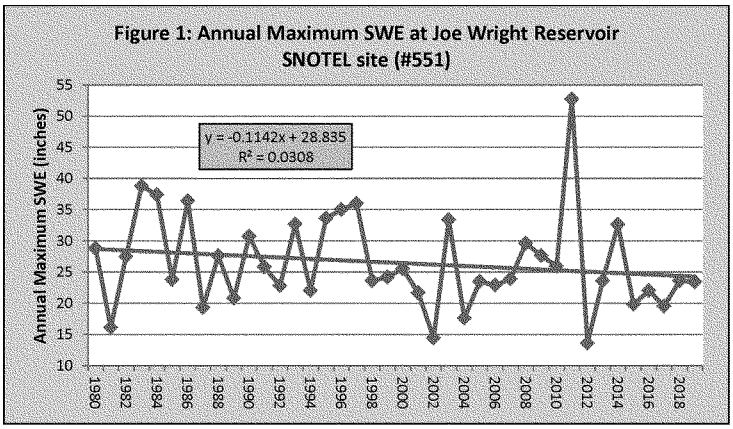


Figure 1: Annual Maximum SWE at Joe Wright Reservoir SNOTEL site (#551)
Annual Maximum SWE (inches)
y = -0.1142x + 28.835
R² = 0.0308
55
50
45
40
35
30
25
20
15
10
1980
1982
1984
1986
1988
1990
1992
1994
1996
1998
2000
2002
2004
2006
2008
2010
2012
2014
2016
2018

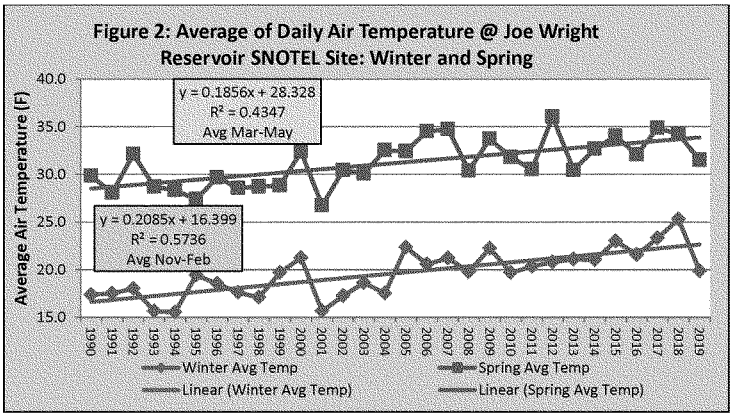
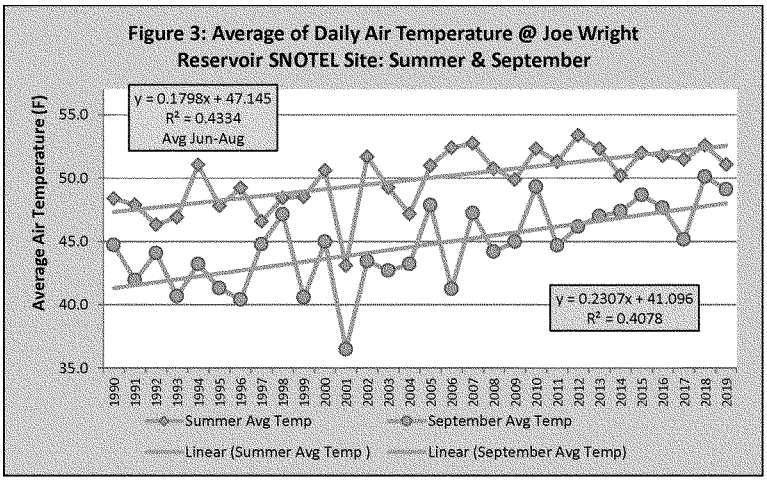
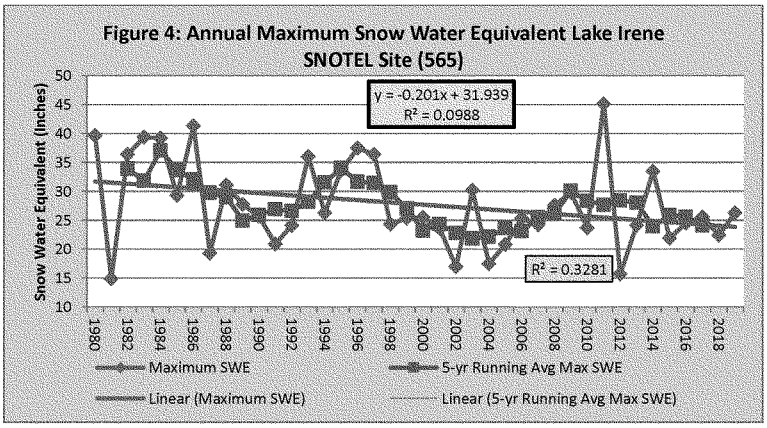


Figure 2: Average of Daily Air Temperature @ Joe Wright Reservoir SNOTEL Site: Winter and Spring
Average Air Temperature (F)
y = 0.1856x + 28.328
R² = 0.4347
Avg Mar-May
y = 0.2085x + 16.399
R² = 0.5736
Avg Nov-Feb
40.0
35.0
30.0
25.0
20.0
15.0
1990
1991
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019
Winter Avg Temp
Spring Avg Temp
Linear (Winter Avg Temp)
Linear (Spring Avg Temp)

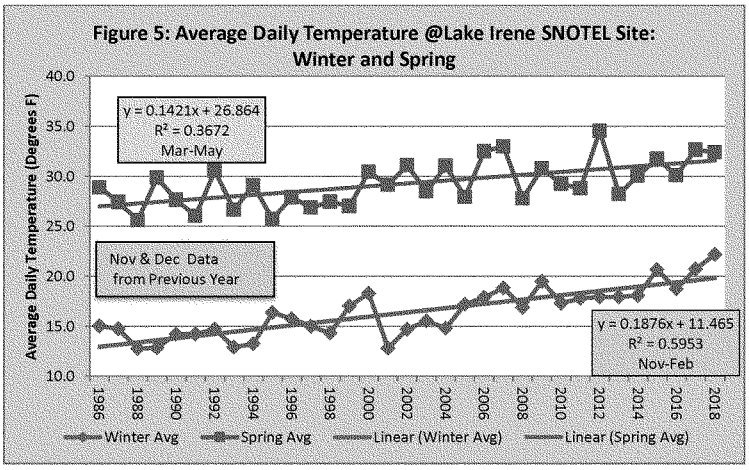


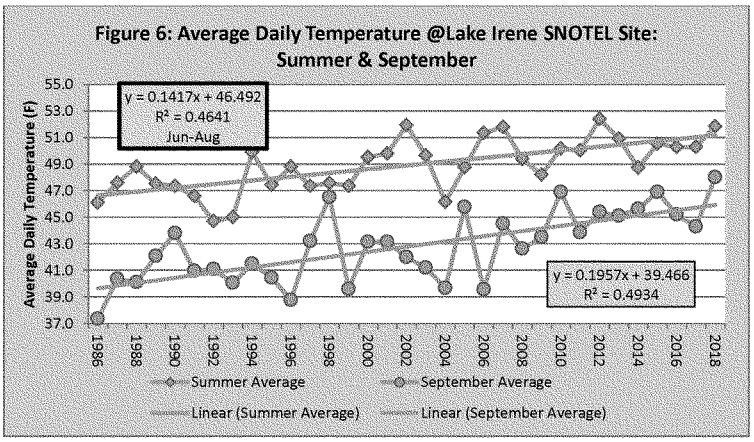
Figures 4 through 6 show precipitation and temperature data from the Lake Irene SNOTEL site, in the Colorado River basin, located west of the continental divide at 10,700 feet. Maximum SWE (Figure 4), the potential annual water supply, has declined approximately 7.6 inches SWE over the 38-year period of record, though, variability, particularly in the 2000s, increases the uncertainty around the linear regression model (R^2=.0988). The five year running average of maximum annual SWE is also included in Figure 4.



Figures 5 and 6 show average daily temperatures recorded at the Lake Irene SNOTEL site, in the Colorado River basin, for winter, spring, summer, and September. September alone was used to

represent fall conditions for each water year since the next water year begins in October. Temperature trends are similar to the Joe Wright Reservoir SNOTEL location. If the linear regression models are accurate, then average seasonal temperatures have risen by 4.5 to 6.2 degrees Fahrenheit over the 32-year period of record at this site. Again, though it cannot be assumed that this linear trend will continue into the future, current patterns suggest that future temperature increases may exceed that modeled in the WSVS.





Higher temperatures increase evaporative losses from snowpack and soils reducing spring and annual runoff. Also winter temperatures appear to be increasing at a faster rate than other seasons at both sites likely increasing the potential for winter rain events.

Several other SNOTEL sites in the Poudre River basin, particularly in the North Fork of the Poudre watershed and at lower elevations, must be evaluated for a more complete picture of the potential impact that climate change has already had on precipitation and temperature in the basin. Temperature increases, and, potentially, reduction in precipitation, at two of the highest SNOTEL sites on both the west and east slope up to the present day – not in the future – should be cause for concern for FCU and other water utilities. Climate change is already impacting the water supply.

4.0 The DEIS Must Incorporate and Address WSVS Results

Because climate change impacts to temperature and precipitation translate into reduced streamflow in Fort Collins watersheds, the EIS must address how climate change will affect flows in the North Fork of the Poudre and the efficacy of the Halligan Project. In addition, environmental impacts and the efficacy of enhancement measures must be addressed under lower streamflow conditions.

4.1 Does Lower Streamflow in the North Fork of the Poudre Affect the Efficacy of the Halligan Project

WSVS modeling of climate change impacts focus on resultant Poudre River flows at the Canyon Mouth and in the North Fork below Seaman Reservoir. The median of paleo-reconstructed annual flows at the Canyon Mouth from 1615 to 1999 is 286,712 AF (Future Hydrologic Analysis TM and Woodhouse, 2006). "*The hottest, driest climate conditions [modeled in this effort] reduced the Poudre River at the Canyon Mouth mean annual streamflow by an average of 30 percent*" to approximately 196,090 AF (WSVS, page ES-4). The WSVS report does not discuss how North Fork flows will change and if, under climate change conditions, there is sufficient flow in the North Fork to utilize the expanded volumes of both Halligan and Seaman Reservoirs – if the projects are implemented.

The EIS must discuss how inflows to the expanded Halligan Reservoir might change, how often the expanded portion of Halligan Reservoir fills, and what reservoir levels are achieved under various climate change scenarios. In essence, the EIS needs to evaluate the firm yield of the expanded Halligan Reservoir under various climate change scenarios. This analysis will evaluate the efficacy of the project under potential future conditions.

4.2 Environmental Impacts to Streamflow

The WSVS model estimated how stream flow is expected to decrease under various climate change scenarios. This information must be incorporated into the EIS evaluation of the project and cumulative environmental impacts. Both current and future hydrological conditions were modeled in the DEIS using the Common Technical Platform Hydrologic Model as described in NISP document, CDM Smith & Dinatale Water Consultants, April 2018. Current condition streamflow was modeled using 1950 to 2005 monthly naturalized Poudre River flows with 2010 demands, infrastructure, and operations but without the proposed NISP, Halligan, and Seaman projects. Future condition streamflow and water rights yields

were modeled using naturalized flows for the same time frame but with anticipated 2050 demands and operations including the three projects and RFFAs. This approach assumes that historical water availability will repeat in the future. EIS environmental impacts must incorporate the added impacts of climate change on streamflow in the basin.

4.3 Sustainability of the Summer Low Flow, Peak Flow Bypass, and Winter Release Plans

The Summer Low Flow, Peak Flow Bypass, and Winter Release Plans all are designed to enhance stream conditions in the North Fork of the Poudre between Halligan and Seaman Reservoirs. Both the Summer and Winter Plans would be curtailed if Fort Collins needs to issue water restrictions for the coming summer or if a water supply emergency occurs. The Peak Flow Bypass Plan would forego all diversions to the enlarged pool for three days to allow a simulated peak runoff event to occur on the North Fork. This would also be curtailed if it would cause a water supply shortage, violate FCU's Storage reserve factor, or for the reasons that could curtail the other two enhancements. Based on the WSVS modeling, the EIS m include how often these plans would be curtailed under various climate change scenarios to evaluate the enhancement potential under different climate conditions.

EXPLORE, ENJOY, AND PROTECT THE PLANET.

April 28, 2020

The Honorable John Barrasso
Chairman
Environment and Public Works Committee
United States Senate
Washington, DC 20510

The Honorable Tom Carper
Ranking Member
Environment and Public Works Committee
United States Senate
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper:

Sierra Club and our 3.8 million members and supporters thank the Environment and Public Works Committee for giving us the opportunity to comment on two important bills dealing with our water resources: America's Water Infrastructure Act of 2020 (AWIA) and the Drinking Water Infrastructure Act of 2020 (DWIA). We are supportive of many of the provisions in both bills, as drafted. However, we look forward to reviewing the legislation following mark-up, before making a formal endorsement.

America's Water Infrastructure Act and the Drinking Water Infrastructure Act may be separate bills, but together they complement each other and will enhance the state of our water resources as a nation. Sierra Club strongly supports both these bills moving together through the Senate.

Our comments here will focus on specific provisions as drafted in AWIA and DWIA. However, we do want to thank the Committee for what was not added in AWIA and DWIA. Sierra Club appreciates the exclusion of streamlining or weakening of bedrock environmental laws such as the Clean Water Act, Endangered Species Act and the National Environmental Policy Act. If such rollbacks were to be included, we would consider opposing these bills.

50 F Street, NW, Eighth Floor Washington, DC 20001 • (202) 547-1141

EXPLORE, ENJOY, AND PROTECT THE PLANET.

The DWIA is crafted to address the needs of small and affected communities that are out of compliance of a drinking water program. The bill amends the Safe Drinking Water Act to reauthorize certain provisions, expand eligible communities to add Host Communities, ensure funding for water emergencies and allow counties to act on behalf of an unincorporated area in order to pursue a source water petition. All these provisions are seen as value added for communities around the country.

The DWIA also lays out several new programs: a pilot program to map lead in service lines, two new programs aimed at disadvantaged communities with a population size of 10,000-100,000, a program to expand the water infrastructure resilience and sustainability program and a program to advanced drinking water technology. The new programs in this bill will begin to address communities left behind in water programs and begin to establish programs to help them better protect their water resources and community health.

Overall, Sierra Club supports the proposed provisions in the DWIA that seek to ensure that existing federal programs are more accessible to the communities that need them most such as low income, rural and communities of color. By lowering or eliminating the local cost share, increasing funding for technical assistance and direct grants, the Senate can assist these communities in their efforts to deliver quality drinking and wastewater services.

Sierra Club is very supportive of the inclusion of per- and polyfluoroalkyl substances (PFAS) in the DWIA. This provision builds on critical language enacted in the last National Defense Authorization Act that authorized grants to water systems for addressing emerging contaminants by adding authorization for grants to be awarded for cleanup of contamination as well and increasing the annual authorization to $300 million.

While including PFAS is a critical first step, Sierra Club would also like to see the Senate move further by ensuring that all communities are protected from these man-made chemicals. We would support the Committee moving forward with strengthening amendments and the PFAS language that passed both the Committee and the full Senate in 2019, but failed to be enacted into law to be considered in negotiations.

Lastly, and just as importantly in the DWIA, Sierra Club strongly supports the provision making "Buy America" for the Drinking Water State Revolving Loan Fund permanent. We also support

EXPLORE, ENJOY, AND PROTECT THE PLANET.

the provision codifying appropriations language that requires states to use 20 percent of the Drinking Water State Revolving Funds for grants, negative interest loans, or to buy, refinance or purchase debt.

Sierra Club strongly supports the provision in the America's Water Infrastructure Act to reauthorize the Clean Water State Revolving Fund and increase the program's authorization to $3 billion over three years. While this amount will go far in fixing our crumbling water infrastructure, We call on the Committee to negotiate for more money given the need of our states to complete projects that mitigate water pollution.

Sierra Club also supports the new restoration projects in Lake Tahoe, Puget Sound, and San Francisco Bay. We also support the continued funding for restoration projects of iconic waterways such as the Chesapeake Bay, the Everglades and the Great Lakes. The AWIA also correctly calls for restoration of abandoned and inactive non-coal mines which have been polluting communities for decades. We also recognize the importance of the AWIA calling for priority funding for and completion of the ecosystem restoration in Cano Martin Pena, Puerto Rico.

While we appreciate the AWIA taking on harmful algal blooms, Sierra Club asks that the Committee seriously consider future comprehensive bills focusing on the source of the problem originating from rising temperatures and an influx of excess nitrogen and phosphorus from agricultural runoff, stormwater, and wastewater. These excess nutrients have accelerated the growth of these naturally occurring organisms, causing blooms of historic proportions. The Army Corps provision will do little to prevent and mitigate this ongoing problem in the AWIA.

Additionally, we would support the removal of the development of categorical exclusions in Section 1102 of AWIA and also the two year goal for feasibility studies on projects like the navigation improvements on the lower Missouri River in Missouri found in Section 1201.

Ensuring that all communities have access to clean water is a priority for Sierra Club and we are supportive of the provision to provide low-income communities and communities of color access to basic sewage systems. The AWIA rightfully authorizes a new grant program for low- and moderate-income households to connect to existing wastewater infrastructure or install or upgrade decentralized wastewater systems. We would welcome more money into this program recognizing the great need of many communities around the country.

50 F Street, NW, Eighth Floor Washington, DC 20001 • (202) 547-1141

SIERRA CLUB

EXPLORE, ENJOY, AND PROTECT THE PLANET.

Sierra Club supports the programs targeted to aid disproportionately impacted communities in the AWIA. Due to a history of systemic racism and segregation, low-income communities and people of color have been burdened with higher levels of pollution in their backyards. These groups are also disproportionately vulnerable to the increasingly devastating health consequences because of pollution. One strategy advanced in the AWIA to address these inequities is the funding to reduce emissions from waterborne vessels at ports. The bill also requires the Environmental Protection Agency to maintain and update "EJScreen," a powerful public tool to map environmental justice issues and communities.

Sierra Club supports the provision dealing with invasive species around our waterways. Native ecosystems exist in a state of natural balance. Invasive plants and animals pose a significant threat to native species and could fundamentally undermine the broader ecosystem. Dealing with invasives from the source to prevent the spread and dealing with already established invasives is equally important and the AWIA lays out plans to have a multi-focused approach. However, we prefer for those programs to look beyond the use of toxic herbicides and pesticides to control invasive species.

Overall, the AWIA recognizes that our nation's water infrastructure must keep up with a changing climate. In the last decade, more hurricanes, floods, fires, and droughts wreaked a level of destruction on the planet that, according to scientists, is just a taste of what is to come. The AWIA has the opportunity to protect our water resources and our communities. Sierra Club supports efforts in the bill to map coastlines that are experiencing changes due climate change, efforts to provide funding for storm and hurricane restoration of our shorelines and efforts to complete a full analysis of coastal infrastructure vulnerabilities to climate change, including analyses of sea level rise, storm surge, extreme weather, and other flood risks.

Water is basic to all life. Water quality and quantity are integral to issues such as energy, land use, and maintenance of a healthy environment for plants, wildlife and humanity. Proper management of water is essential so that present and future generations may survive and flourish. Sierra Club appreciates the efforts of the Environmental and Public Works Committee for drafting a bill that looks to the future of our water infrastructure and for allowing us to comment on the draft proposal.

50 F Street, NW, Eighth Floor Washington, DC 20001 • (202) 547-1141

SIERRA CLUB

EXPLORE, ENJOY, AND PROTECT THE PLANET.

Sierra Club looks forward to a continued dialogue with Committee staff on both the America's Water Infrastructure Act of 2020 and the Drinking Water Infrastructure Act of 2020. Thank you for the opportunity to comment.

Sincerely,

Dalal Aboulhosn
Sierra Club
50 F St NW
Suite 800
Washington, DC 20001
dalal.aboulhosn@sierraclub.org
202-675-6278

770 Fairmont Avenue, Suite 100
Glendale, California 91203-1068
(818) 500-1625 FAX (818) 543-4685

April 30, 2020

The Honorable John A. Barrasso
Chairman
U.S. Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510-6175

The Honorable Thomas R. Carper
Ranking Member
U.S. Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510-6175

Re: America's Water Infrastructure Act of 2020, Section 1604, Invasive species mitigation and reduction

Dear Chairman Barrasso and Ranking Member Carper:

The Six Agency Committee (SAC) is composed of six major Southern Californian public agencies with Colorado River water and power interests, including the Coachella Valley Water District, Imperial Irrigation District, Los Angeles Department of Water and Power, Metropolitan Water District of Southern California, Palo Verde Irrigation District, and San Diego County Water Authority. The SAC supports the operation of the Colorado River Board of California, which represents California's interests in the resources of the Colorado River, and funds various projects and studies of importance to California's Colorado River stakeholders.

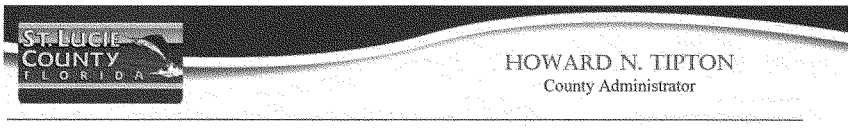
The SAC supports the provisions included in Section 1604 (Invasive Species mitigation and reduction) of the America's Water Infrastructure Act of 2020 currently under consideration by the Committee. For many years, the seven Colorado River Basin states have identified saltcedar management as a method by which to conserve and potentially augment the supply of the Colorado River. Currently, the SAC is funding a study to assess the state of the science, evaluate benefits to water supplies, and identify shovel-ready pilot projects to remove and replace saltcedar in riparian areas on federal and non-federal lands in the Lower Colorado River Basin. The study is scheduled to be completed later this year.

The measures and funding identified in Section 1604 will aid the Colorado River Basin States' efforts to control and manage saltcedar, restore native habitats, and conserve the water supplies of the Colorado River. To ensure adequate funding is available for the pilot program identified in Section 1604, given the challenges of implementing, maintaining, and quantifying the effects of invasive plant removal, the SAC urges the Committee to consider inclusion of additional funding for these important efforts.

The SAC appreciates the opportunity to provide comments to the Committee on this matter. Please contact me at csharris@crb.ca.gov or 818-500-1625 if you have any questions or require additional information.

Sincerely,

Christopher S. Harris
Secretary



HOWARD N. TIPTON
County Administrator

ST. LUCIE COUNTY
BOARD OF COUNTY
COMMISSIONERS

CATHY TOWNSEND
CHAIR
DISTRICT 5

CHRIS DZADOVSKY
VICE-CHAIR
DISTRICT 1

SEAN MITCHELL
DISTRICT 2

LINDA BARTZ
DISTRICT 3

FRANNIE HUTCHINSON
DISTRICT 4

DAN MCINTYRE
COUNTY ATTORNEY

MAILING ADDRESS
2300 VIRGINIA AVENUE
FORT PIERCE, FL 34982

PHONE
(772) 462-1156

TDD
(772) 462-1428

FAX
(772) 462-2131

E-MAIL
PHELANK@STLUCIECO.ORG

WEBSITE
WWW.STLUCIECO.GOV

May 1, 2020

The Honorable John Barrasso
Chairman
Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Tom Carper
Ranking Member
Environment and Public Works Committee
456 Dirksen Senate Office Building
Washington, D.C. 20510

Via email: QFR@epw.senate.gov

Re: Authorization of Fort Pierce, Florida Section 203 study

Dear Chairman Barrasso and Ranking Member Carper,

On behalf of the St. Lucie County, Florida Board of County Commissioners, thank you for the opportunity to submit written comments to the Committee on the Environment and Public Works regarding your draft America's Water Infrastructure Act of 2020 (AWIA). We appreciate your effort in developing the bill, yet we have concerns with the lack of construction authorization provided in the bill for the Fort Pierce, Florida Section 203 study. We understand you may already be taking steps to correct this problem; if so, thank you in advance.

As you know, Section 203 of the Water Resources Development Act (WRDA) of 1986 (P.L. 99-662), as amended authorizes non-Federal interests to undertake feasibility studies of proposed water resources development projects for submission to the Secretary of the Army. While our effort with the Fort Pierce project in St. Lucie County that is now ready for authorization has been a long and winding road that began in 1996, more importantly, several years ago we decided in concert with the Corps of Engineers to complete the study effort under the Section 203 authority. This resulted in a determination by the Assistant Secretary of the Army for Civil Works indicating that "the proposed project contained in the Integrated Feasibility Study and Environmental Assessment is feasible" and ready for Congressional authorization (see attached letters from ASA James to Senators Barrasso and Carper).

As you may now recognize, the Fort Pierce study is not appropriately authorized in the draft AWIA, with it being instead included in Section 1202 – Expedited Completion. Our study does not need "expedited completion;" it is ready for authorization now. The Fort Pierce Section 203 study and others like it with completed positive Review Assessments (like Houma and Baptiste-Collette, both of Louisiana) should be authorized in a way that is similar to what was done for the Everglades Agricultural Area reservoir in Section 1308 of AWIA of 2018. We recognize that this authorization will require an additional limited report to be completed, but such report cannot begin until after the study is federally authorized via the AWIA or other legislation.

The Fort Pierce Florida Section 203 study provides for a new federal beach project with added coastal structures (t-groins) that will provide cost savings and help extend the life of a nourishment project from every two to every four years. Authorization will also provide a 50-year federal project life. This project is critical to our community, as evidenced by the fact that we have worked on this iteration of it since 1996.

Thank you again for your work on the America's Water Infrastructure Act of 2020 and for proactively working with our delegation to correct problems with the bill. We appreciate your willingness to consider changes to reflect that the Fort Pierce, Florida Section 203 study is ready for authorization via the AWIA.

Sincerely,

Howard N. Tipton
County Administrator

Contact Information
Joshua Revord, Coastal Engineer
St. Lucie County
3150 Will Fee Rd.
Fort Pierce, FL 3498
RevordJ@stlucieco.org
(772) 462-1269

CC: Senator Marco Rubio
Senator Rick Scott
Congressman Brian Mast
House Transportation and Infrastructure Committee

Attachments:

1) January 15, 2019 letter from ASA Secretary James to Chairman Barrasso re: Fort Pierce, Florida
2) January 15, 2019 letter from ASA Secretary James to Ranking Member Carper re: Fort Pierce, Florida
3) December 17, 2018 Office of Management and Budget Clearance Letter re: Fort Pierce, Florida
4) June 2018 Review Assessment of St. Lucie County, Florida Fort Pierce Shore Protection Project Section 203 Integrated Feasibility Study and Environmental Assessment
5) Everglades Agricultural Area Reservoir authorization legislative text from AWIA 2018, Section 1308

DEPARTMENT OF THE ARMY
ASSISTANT SECRETARY OF THE ARMY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

JAN 15 2019

The Honorable John A. Barrasso
Chairman
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with Section 203 of the Water Resources Development Act of 1986, as amended, I am responsible for determining whether St. Lucie County's Fort Pierce Florida, Section 203 Integrated Feasibility Study and Environmental Assessment (June 2018), and the process under which the study was developed, comply with Federal laws and regulations. In addition, I must submit to Congress the results of my review, including a determination of whether St. Lucie County's recommended project is feasible; any recommendations I may have concerning the recommended plan; and any conditions that I may require for construction of the proposed project.

I have determined that the proposed project contained in the Integrated Feasibility Study and Environmental Assessment is feasible. However, should Congress authorize the project for Federal participation, there are concerns associated with the plan and design which will require resolution prior to implementation. The results of my review are documented in the enclosed Review Assessment. Conditions for construction of the project include completion of NEPA and environmental compliance activities.

The Office of Management and Budget (OMB) advises that there is no objection to the submission of my Review Assessment to Congress. OMB noted that if authorized, St. Lucie County's proposed project would need to compete with other proposed investments for funding in future budgets. However, before St. Lucie County's proposed project would be eligible for funding in future Budgets, an additional report must be prepared that adequately addresses the concerns, recommendations, and conditions identified within the Review Assessment. A copy of OMB's letter, dated December 17, 2018, is enclosed. I am sending an identical letter to Ranking Member Carper and the House Committee on Transportation and Infrastructure.

Sincerely,

R.D. James
Assistant Secretary of the Army
(Civil Works)

Enclosures

DEPARTMENT OF THE ARMY
ASSISTANT SECRETARY OF THE ARMY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

JAN 15 2019

The Honorable Thomas R. Carper
Ranking Member
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Senator Carper:

In accordance with Section 203 of the Water Resources Development Act of 1986, as amended, I am responsible for determining whether St. Lucie County's Fort Pierce Florida, Section 203 Integrated Feasibility Study and Environmental Assessment (June 2018), and the process under which the study was developed, comply with Federal laws and regulations. In addition, I must submit to Congress the results of my review, including a determination of whether St. Lucie County's recommended project is feasible; any recommendations I may have concerning the recommended plan; and any conditions that I may require for construction of the proposed project.

I have determined that the proposed project contained in the Integrated Feasibility Study and Environmental Assessment is feasible. However, should Congress authorize the project for Federal participation, there are concerns associated with the plan and design which will require resolution prior to implementation. The results of my review are documented in the enclosed Review Assessment. Conditions for construction of the project include completion of NEPA and environmental compliance activities.

The Office of Management and Budget (OMB) advises that there is no objection to the submission of my Review Assessment to Congress. OMB noted that if authorized, St. Lucie County's proposed project would need to compete with other proposed investments for funding in future budgets. However, before St. Lucie County's proposed project would be eligible for funding in future Budgets, an additional report must be prepared that adequately addresses the concerns, recommendations, and conditions identified within the Review Assessment. A copy of OMB's letter, dated December 17, 2018, is enclosed. I am sending an identical letter to Chairman Barrasso and the House Committee on Transportation and Infrastructure.

Sincerely,

R.D. James
Assistant Secretary of the Army
(Civil Works)

Enclosures

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

December 17, 2018

The Honorable R.D. James
Assistant Secretary of the Army (Civil Works)
108 Army Pentagon
Washington, DC 20310-0108

Dear Mr. James:

Per your July 30, 2018, request, the Office of Management and Budget has reviewed a July 2018 Review Assessment of the St. Lucie County, Florida Fort Pierce Shore Protection Project, Section 203 Integrated Feasibility Report and Environmental Assessment. Your Review Assessment includes the determination that St. Lucie County's plan is feasible, but also specifies conditions that must be met to proceed to construction and identifies multiple unresolved concerns that could directly impact the feasibility of the recommended plan as well as the total cost. We have concluded that it would be premature to take a position on authorization or funding of the project at this time given the outstanding issues your review has identified that need to be addressed.

We appreciate the Corps' efforts to enable greater non-Federal sponsor participation in the planning and construction of projects such as through Section 203 of the Water Resources Development Act of 1986, as amended. However, as your review assessment illustrates, there remains significant uncertainty with regard to several key components of this project, including the cost. I'd like to work with you to establish clear standards for such studies so that non-Federal sponsors and the public are aware of the criteria and standards by which such reports will be evaluated.

The Office of Management and Budget does not object to your submitting this Review Assessment to Congress. However, when you do so, please advise the Congress that, should the Congress authorize this project for construction, it would need to compete with other proposed investments in future Budgets. Further, the Assistant Secretary of the Army for Civil Works must submit an additional report to OMB adequately addressing all outstanding concerns and conditions delineated in the Review Assessment before the project would be eligible for funding in the Budget.

Sincerely,

John Pasquantino
Deputy Associate Director

Review Assessment

of

St. Lucie County, Florida
Fort Pierce Shore Protection Project
Section 203 Integrated Feasibility Study and Environmental Assessment
(June 2018)

July 2018

Executive Summary

St. Lucie County Florida, conducted a feasibility study to address hurricane and coastal storm damages in the area of Ft. Pierce. The study was conducted under Section 203 of the Water Resources Development Act (WRDA) of 1986 (P.L. 99-662), as amended. The office of the Assistant Secretary of the Army for Civil Works (OASACW) has conducted a concurrent review of this submittal with the Headquarters, U.S. Army Corps of Engineers (Corps) with the purpose of determining federal interest and that the study demonstrates engineering, economic and environmental feasibility that all reports seeking construction authorization must demonstrate.

Based on the results of the review process, the Secretary has made the determination that the project is feasible. In the event that the recommended plan is authorized for federal participation, it is expected that all unresolved concerns contained within this Review Assessment would be addressed prior to project implementation. Unresolved concerns with the recommended plan are related to incremental analysis, nourishment intervals, screening of nonstructural measures, Executive Order 11988 compliance, environmental consequences, design sustainability, and cost estimates. Conditions for construction of the project include completion of NEPA and environmental compliance activities.

Table of Contents

Executive Summary i
I. Background 1
II. St. Lucie County's Section 203 Recommended Plan 1
A. Location 1
B. Congressional Interest: 1
C. Senators: 1
D. Problems: 1
E. Project Objectives: 1
F. Recommended Plan: 2
G. Price Level: 2
I. Total Project Cost 2
J. Benefits: 2
K. Cost Share: 2
III. Section 203 Review Assessment Summary 3
A. Feasibility determination (Whether the project is feasible (i.e. technically sound, economically justified and environmentally compliant)? 3
B. Recommendations concerning the plan or design of the proposed project. 3
C. Identify any conditions required for construction of the project 3
IV. Review History and Findings 3
A. June 2018 Feasibility Study 3
B. March 2017 Feasibility Study. 8

I. Background

St. Lucie County Florida, conducted a feasibility study to address hurricane and coastal storm damages in the area of Ft. Pierce. The study was conducted under Section 203 of the Water Resources Development Act (WRDA) of 1986 (P.L. 99-662), as amended. The office of the Assistant Secretary of the Army for Civil Works (OASACW) conducted a concurrent review of the submittal with the Headquarters, U.S. Army Corps of Engineers (Corps, also referred to as USACE) with the purpose of determining federal interest and that the study demonstrates engineering, economic and environmental feasibility that all reports seeking construction authorization must demonstrate.

This Review Assessment provides the results of the Washington-level review. This review has been conducted to determine whether the study and the process under which the study was developed, each comply with Federal laws and regulations; a determination of whether the project is feasible; and identification of any conditions that the Secretary may require for construction of the project.

II. St. Lucie County's Section 203 Recommended Plan

This section provides a summary of the recommended project, as contained within the Ft. Pierce, Section 203 Integrated Feasibility Study and Environmental Assessment (June 2018).

A. Location: The study area encompasses 2.4 miles of shoreline in Fort Pierce, Florida, from the south jetty at Fort Pierce Inlet (FDEP survey monument R-34) to approximately 600 feet south of R-46 (i.e., R-46.6).

B. Congressional Interest: Brian Mast (FL-18).

C. Senators: Bill Nelson and Marco Rubio (Florida)

D. Problems: St. Lucie County conducted this study to investigate alternatives for improving hurricane and coastal storm damages in vicinity of the Ft. Pierce inlet.

E. Project Objectives: The purpose of the study is to reduce storm damages associated with hurricane and costal storms. The recommended project seeks to improve the performance of the currently authorized shore protection project (SPP) to decrease the required nourishment frequency and, hence, reduce project costs while maintaining or improving the project benefits. Inherent in this objective is the continuation of the current SPP objectives, which include:

- Maximize storm damage reduction to property and infrastructure within the project area over a 50-year planning horizon (2021 – 2070).
- Maintain environmental quality in the project area and adjacent areas, including sea turtle and nearshore hardbottom habitat and aesthetics, over a 50-year planning horizon (2021 – 2070).

- Maintain recreational use of beach and nearshore areas in the project area including beach going, surfing, fishing, and wildlife viewing over a 50-year planning horizon (2021 – 2070).

F. Recommended Plan:
The Recommended Plan includes beach and dune nourishment along 7,000 ft of shoreline from the Ft. Pierce inlet's south jetty (R-34) to R-41. The design includes construction of a 120 ft-wide equilibrated berm from R- 34 to R-36, a 130 ft-wide equilibrated berm from R-36 to R-41, and a dune feature with a 20-ft wide dune crest at an elevation of 12.4 ft relative to the 1988 North American Vertical Datum (NAVD88). The project berm will have an elevation of 7.4 ft NAVD and a 1V:10H foreshore slope. The feeder beach design distributes sand downdrift to provide storm damage reduction benefits for the R-41 to R-46.6 segment. A hopper dredge will be used to fill the template with sand from Capron Shoal, an offshore source located approximately 4 miles from the project site.

The plan also includes construction of shoreline stabilization structures at the project's north end to address severe non-uniform erosion rates. The plan includes construction of five T-head groins (T1 – T5) within approximately 1,570 ft from the south jetty, a T-head weir (W6) approximately 1,800 ft from the south jetty, and a detached breakwater (B7) approximately 2,070 ft from the south jetty.

G. Price Level: October 2017

H. Interest Rate: 2.75%

I. Total Project Cost: $131,066,611

J. Benefits: Benefits, in the form of reduced damages, land loss, and recreation are estimated at $168,287,623,000, yielding net benefits of $37,221,012 and a benefit-to-cost-ratio of 1.28 to 1.

K. Cost Share: Based on an analysis of shoreline ownership and access it is expected that initial construction will be cost shared approximately 46% Federal and a non-Federal rate of approximately 54%. For periodic nourishment, the Federal participation rate is approximately 35% and non-Federal rate is 65%.

III. Section 203 Review Assessment Summary

In accordance with section 203 of WRDA 1986, as amended, the Secretary is required to provide a report to Congress that describes the following:

A. Feasibility determination (Whether the project is feasible (i.e. technically sound, economically justified and environmentally compliant)?

The Secretary has determined that the recommended plan is feasible.

The study documents that the recommended plan is economically justified, but it does not provide information to defend the scale or estimated cost of the project being recommended. In the event that the recommended plan is authorized for federal participation, it is expected that unresolved issues contained within the Review Assessment would be addressed prior to implementation.

B. Recommendations concerning the plan or design of the proposed project.

All unresolved concerns with the plan and design of the project, as contained within this Review Assessment, would need to be addressed prior to implementation. Unresolved concerns with the plan are related to incremental analysis, nourishment intervals, screening of nonstructural measures, Executive Order 11988 compliance, environmental consequences, design sustainability, and cost estimates.

Although the current analysis supports the conclusion for justification of the sponsor's recommended plan, there remains a risk that future analysis could affect project justification or further modify the recommended features of the project. In addition, cost sharing amounts cannot be calculated until additional analysis is completed to identify the national economic development (NED) plan in accordance with the Principles and Guidelines and current law. Cost sharing requirements or the identification of an NED plan may result in a change to the sponsors preferred plan. These risks have the potential to affect budgeting and implementation of the project.

C. Identify any conditions required for construction of the project

Conditions for construction of the project include completion of NEPA and environmental compliance activities.

IV. Review History and Findings

Two Washington-level review cycles were conducted for the study. The following sections document the issue resolution process from those reviews.

A. June 2018 Feasibility Study. Review of the revised Feasibility Study generated new comments that had not been previously identified. The new comments pertain to the

long-term sustainability of the recommended plan and the cost estimate for implementation. Resolution of these comments were not required to determine project feasibility, but are noted for future corrective action.

1. Future Without Project Conditions – Tide Gauges.
Concern: The future conditions used in the report are developed using Daytona Beach Shores and Miami Beach tide gauges, which are closest to the project area, but which also have discontinuous records. Daytona Beach Shores has a discontinuous record ending in 1984, while Miami Beach has a record from 1931-1981 with a minor discontinuity. This is not mentioned anywhere, but certainly introduces uncertainty into the expected sea levels out 50 years based on these tide gauges, given that Fernandina Beach, Mayport, and Key West (long records but farther away) show increasing trends over the past 10-20 years (yr) and especially in the five-yr moving averages.

Basis of Concern: Use of discontinuous records could impact elevations important in planning and design, with subsequent implications to completeness, effectiveness, efficiency, and acceptability of the alternatives. Lack of compliance with Corps policy and technical guidance ER 1100-2-8162 and ETL 1100-2-1.

Significance of Concern: Moderate

Action Needed to Resolve Concern: Prior to implementation, conduct analysis of all tide gauges listed above with attention to their behavior over the period covered by Daytona /Miami. Consider using interpolated or otherwise combined records to develop more realistic trend data. If there is no noticeable sensitivity when using the additional longer and continuous gauge records, provide graphical evidence and a statement to this effect.

2. Future Without Project Conditions –Application of Sea Level Change Analysis Result.
Concern: There is no evidence in the Engineering Appendix or Main Report that the results of the sea level change analysis were applied in the remainder of the study. For example, there is a nice discussion of the erosion and volume reduction associated with sea level, but no mention of the additional volume required to renourish due to this erosion, which would trickle through to costs. The design of the groins would require a 100-yr life cycle per ER 1110-2-8159. There was no discussion about whether and how the 100-yr expected sea levels would impact the design, resulting elevations, or require adaptations to changing conditions over the 100 yr engineering horizon. Sensitivity to sea level was discussed on p. 18 of the Economics appendix but no backup information was provided. There is no justification for the sentence on p. 28 of the Economics Appendix that "The minimal effect of sea level rise does not alter this BCR."

Basis of Concern: Not considering expected sea level conditions could impact elevations and volume important in planning and design, with subsequent implications

to completeness, effectiveness, efficiency, and acceptability of the alternatives. Lack of compliance with ER 1110-2-8159, ER 1100-2-8162, and ECB 2106-25.

Significance of Concern: Moderate

Action Needed to Resolve Concern: Provide evidence of whether and how the results of the sea level change analysis were used in determining renourishment requirements over the 50-yr period of economic analysis. Be sure to address not only sea level itself, but the effects of se level change on tides, surge, waves, and other local factors (e.g., interannual or interdecadal variability) which impact performance and reliability. Conduct analyses to describe current and future without project conditions related to the effects of expected sea level change over the engineering horizon of 100 yrs on the design of the groins and any adaptation measures that could be required to provide continued performance and reliability over that time period. Provide data and analysis to support the discussion of sensitivity to sea level (p. 18) and support the statement on p. 28 of the Economics Appendix that "The minimal effect of sea level rise does not alter this BCR."

3. Sea Level Rise Policy and Technical Guidance.
Concern: The main report refers to EC 1165-2-211 which was superseded in 2011 by EC 1165-2-212 and in 2013 by ER 1100-2-8162. The most current policy and technical guidance should be used in the planning and engineering analyses. The main report states on p. 126 that " However, policymakers have not decided whether the practice of protecting development should continue as sea level rises or be modified to avoid adverse environmental consequences and increased costs of shore protection." This may indeed be true for local policymakers – clarification is needed as to which policymakers are referred to here. Also on p. 126 is this statement: "Most shore protection structures are designed for the current sea level, and retreat policies that rely on setting development back from the coast are designed for the current rate of sea level rise (SLR). Those structures and policies would not necessarily accommodate a significant acceleration in the rate of sea-level rise." The Corps has a policy (ER 1100-2-8162) and methods for implementation (ETL 1100-2-1) which support decision-making about potential future actions including structure design that account for significant changes in sea level. We do this to be sure that the project plan accounts for observed and expected changes over the design life in a way that supports the expected return on the Federal investment.

Basis of Concern: Neglecting to consider Corps policy and technical guidance could impact elevations important in planning and design, with subsequent implications to completeness, effectiveness, efficiency, and acceptability of the alternatives.

Significance of Concern: Moderate

Action Needed to Resolve the Concern: Prior to implementation, conduct a SLR/Climate Change analysis of the plan, in accordance with relevant Corps guidance, for the purpose of validating the project features/specifications and their expected

performance throughout the project life-cycle (100 years). Current policy and guidance require consideration of rising sea level, including modification as necessary for major infrastructure (i.e., the groins) to continue to provide their authorized services out 100 yrs (per ER 1110-2-8159). This needs to be done prior to implementation to be sure the estimated costs and benefits are correct and that the loadings and threshold elevations are correct. Ignoring the policy and guidance may make the 4-yr renourishment interval look very optimistic, in which case the question arises, is constant renourishment an effective use of Federal cost-share funding? As for the groins, loading and threshold elevations will be driven by changing sea level, which alters tide, surge, wave, and other components of hydraulic loading.

4. Alternative Cost Estimates
Concern: No cost estimates (construction or total project) are shown/detailed in the main report or the cost appendix.

Basis for Concern: Without total project cost estimates developed for alternatives that are able to be compared, how do we know the correct alternative was selected? There are some tables with costs in the economic appendix but there is not a table that compares all alternatives carried forward.

Significance of Concern: High

Action Needed to Resolve Concern: Provide/show total project cost estimates for the alternatives carried forward from the initial screening process.

5. NED Cost Estimate
Concern: Cost estimate for shoreline structures is provided, but the dredging portion is hard to discern from the documents provided.

Basis for Concern: The dredging work for the NED plan is outlined briefly, but there aren't quantities input into an estimate in the cost appendix or the sub-appendix; the cost appendix just shows a mob cost a dredging unit rate. There needs to be an estimate that shows all of the planned construction costs and the non-construction costs of the contract (or contracts, if multiple are planned for initial construction). There is not a sufficient narrative for the estimate that mentions contractor structure, acquisition strategy, market conditions, etc. What are the unit prices for shoreline structures based on? Is profit included? Overhead percentages? Are any productivity factors applied? These are some of the questions that can't be answered based on the information provided.

Significance of Concern: High

Action Needed to Resolve Concern: Prior to implementation, the cost estimate (appendix) should be revised with all relevant information for the project, including features, unit costs, expected breakout of construction contracts and backup documentation, outlined above and in ER 1110-2-1302, Civil Works Cost Engineering.

6. Contingency/Risk Analysis
Concern: Contingency of 23% is taken from a prior risk analysis that was prepared by USACE Jacksonville District for the Fort Pierce SPP, not this particular project.

Basis for Concern: The prior risk analysis was based on a different cost estimate for a different project, though it is acknowledged that the project location is the same. However, since the cost basis for the previous project was likely different than what the current estimate is, there may be existing factors that contribute to greater (or lower) uncertainty for this particular study, such as cost basis (ie, historical unit prices), quantities, availability/capacity of borrow areas, etc.

Significance of Concern: High

Action Needed to Resolve Concern: Prior to implementation, recommend developing a new risk analysis and associated contingency percentage based on the cost estimate presented in Appendix B.

7. Account code for Environmental Monitoring
Concern: Costs included in the 30 account (PED) for environmental monitoring may need to be moved in the 06 account, Fish & Wildlife Facilities.

Basis for Concern: Per ER 1110-2-1302, Civil Works Cost Engineering, the 06 account Fish & Wildlife Facilities should include "...items such as ladders, elevators, locks and related facilities for passage of fish at dams and navigation locks and maintenance of fish runs; and provision for wildlife preservation. In support of wildlife, this feature includes environmental mitigation and monitoring costs." Costs associated with the monitoring of wildlife species should be included there – so monitoring for anything like nesting birds, manatees, etc. should be covered in 06.

Significance of Concern: Low

Action Needed to Resolve Concern: For information only.

8. Induced Flooding costs
Concern: Costs for mitigation of induced flooding beyond the Corps of Engineers standard do not appear to have been captured.

Basis for Concern: Though they would be separate from construction costs, would there be any mitigation required? This should be captured if it has not already been done.

Significance of Concern: Medium

Action Needed to Resolve Concern: Prior to implementation, verify and address if there would be any costs necessary, and if so, estimate the magnitude of those.

B. March 2017 Feasibility Study.

A GENERAL COMMENTS

1. Policy issues raised by project recommendation.

Concern: Section 203 is not an appropriate authority to study the extension of the period of cost shared nourishment. However, while extension of the period of cost shared nourishment is not appropriate under 203, studying the feasibility of adding groins is acceptable. Therefore, in this particular case, this Section 203 report will be reviewed, but the report must include a discussion regarding the period of nourishment in light of the specific Congressional direction that such extended nourishment not exceed 15 years.

Basis of concern: Project authorization and Section 1037 of WRRDA 2014 states: "...the Secretary shall, at the request of the non-Federal interest, carry out a study to determine the feasibility of extending the period of nourishment ...for a period not to exceed 15 additional years...."

Significance of concern: High, as it affects the ability to support the recommended plan.

Action needed to resolve concern: The report needs to be revised to reconcile the conflict between its recommendation to reauthorize the project for an additional 50 years of Federal participation in nourishment and the explicitly stated limitation of 15 years in Section 1037.

Local Sponsor Response: During a meeting with project stakeholders on Monday, October 16, 2017, USACE and ASA(CW) representatives confirmed that Section 203 is the appropriate authority for 50- year federal participation in a new modified project that includes construction of shoreline stabilization structures, which is anticipated to greatly improve project performance by doubling the nourishment interval from two years to four years, together with beach nourishment at a reduced frequency than currently authorized, which results in significant cost savings. Under this guidance, St. Lucie County will submit a revised report requesting authorization of the new modified project with a 50-year project life, as opposed to an extension of the current project.

ASACW/HQUSACE Initial Assessment: Comment is resolved.

ASACW/HQUSACE Final Assessment: Comment is resolved.

2. Policy issues raised by project recommendation.

Concern: As noted on page 7 of the report, shore protection at the project site was previously constructed and is currently authorized for 50 years of nourishment, ending in 2020. The draft GRR (as reflected in part 3.8.1 on page 70 of the report and elsewhere)

now recommends seeking authorization by Congress of a wholly new round of initial construction, as well as a second extension of nourishment for 50 more years. However, initial construction of the dune and berm for this area has been completed. The report should not refer to any further nourishment for this area as initial construction. Instead, this is an extension of nourishment. Even if the dune and berm profile were to change, this is still be treated as nourishment albeit with modified dimensions. For CSDR Congress recognized that both these features are sacrificial and that eventually the project will erode if not nourished. Thus, they provided for Federal cost sharing of the initial construction and for a limited period for cost sharing in nourishment. At the end of the period of Federal participation in nourishment, you don't start again with initial construction. Section 1037 of WRRDA 2014 dictates that Congressional authorization for an extension of the period of nourishment and other modifications to the project authorization (i.e. additional hardscapes or other project adjustments).

Basis of concern: Section 1037 of WRRDA 2014.

Significance of concern: High, as it affects the ability to support the recommended plan.

Action needed to resolve concern: The report needs to be revised to remove references to new initial construction.

Local Sponsor Response: As mentioned, during a meeting on Monday, October 16, 2017, St. Lucie County representatives received guidance from USACE and the ASA(CW) to submit a Section 203 report requesting 50-year authorization of the proposed structures and beach nourishment as a new modified project as opposed to an extension of the current project. Therefore, the revised report will retain the "initial construction" terminology for construction of the proposed structures and the associated beach fill placement (i.e., the first nourishment under the new 50-year period of federal participation).

ASACW/HQUSACE Initial Assessment: Comment will be resolved pending review of the revised report. Recommend the report include language that distinguishes between the original construction and construction of the proposed modifications, such as adding a qualifiers "initial construction of the proposed modification".

ASACW/HQUSACE Final Assessment: Comment is resolved.

3. Policy issues raised by project recommendation.

Concern: The recommendation assumes that no further nourishment of the project will occur following the currently authorized period of Federal participation in nourishment, which would appear to conflict with USACE planning policy requiring benefits to be calculated based on the most likely future without project condition. The report fails to address the apparent discrepancy between this assumption and Administration planning and budget policy as well as the current OMRR&R obligations of non-Federal interests.

Basis of concern: As noted in 1.6.1.2 on page 8 of the report in the report, the Administration has not supported funding of any new phases of currently authorized shore protection projects beyond the "ongoing phase . . . or to honor previous contractual agreements". Moreover, under the current ongoing nourishment period for the project, the sponsor is presumably obligated to operate, maintain, repair, replace, and rehabilitate the project following the completion of construction and all nourishment cycles contemplated under existing agreement.

Significance of concern: High, as it affects the ability to support the recommended plan.

Action needed to resolve concern: The report needs to be revised to reconcile the conflict between its recommendation and current limitations imposed by Administration budget policy as well as the sponsor's current OMRR&R obligations as well as its obligations under state law.

Local Sponsor Response: The assumption that no further nourishment will occur is valid, as the County won't be able to financially support a non-federal project, and FDEP cost sharing, subject to annual state-wide project rankings, is not guaranteed. The County has an obligation to support the federal project by providing the non-federal cost share and complying with the FDEP permit conditions; the County does not have an obligation to fund and construct nourishment projects absent federal funding and participation. The County did not construct any nourishment projects between 1971 and 1980 (i.e., between initial construction and the first nourishment project) or between 1980 and 1999 (i.e., between the first and second nourishment projects) when federal funding was unavailable. The County's non-federal nourishment actions have been limited to small-scale emergency truck haul projects to protect public infrastructure when storm damage appeared imminent; the Future Without Project (FWOP) simulation in Beach-fx incorporates emergency nourishment, as such projects would likely occur without a federal SPP.

ASACW/HQUSACE Initial Assessment: Comment is resolved. Upon review of the project agreement, Corps Counsel has determined that the OMRR&R provision does not require continued nourishment of the project.

ASACW/HQUSACE Final Assessment: Comment is resolved.

4. Lack of adequate technical review documentation.

Concern & Basis of concern: Per ER 1165-2-209, App B, par j, the non-Federal interests "must certify the quality and technical accuracy of the feasibility study" by "documenting the quality control, quality assurance, and technical reviews that were conducted... In addition, the study must meet the requirements for independent peer review". The only certification included with the submittal was a technical review certification on a May 2007 version of the report. In addition to the problem of the certification not being for the current report, that certification also only asserts that staff members from Taylor Engineering not directly involved in the preparation of the document reviewed the report and all significant issues were resolved. However, no supporting documentation as to what these comments were and how they were resolved were included, nor does the documentation indicate what the relevant qualifications of the reviewers are. The documentation does not meet the standards employed by the Corps for Agency Technical Review. Additionally, it does not appear that a Type I Independent External Peer Review (IEPR) was conducted, nor was information provided as to why a Type 1 IEPR exclusion would be warranted.

Significance of concern: High. Without adequate documentation the Review Team is unable to attest to or support the technical quality of the report (including cost).

Action needed to resolve concern: Sponsor should include full documentation of peer review of the current report, including a) relevant qualifications of reviewers, b) individual comments and concerns raised by the review and how they were resolved, and c) documentation of Type 1 IEPR, OR documentation to support an exclusion from such a review.

Local Sponsor Response: Cliff Truitt and Jerry Scarborough, highly qualified Taylor Engineering employees, are conducting an internal technical review (ITR); their qualifications are appended to this document. The revised report will include documentation of the ITR process.

We understand Type I IEPR is only mandatory if any of the following are true:

a) Significant threat to human life. The decision document phase is the initial concept design phase of a project. Therefore, when life safety issues exist, a Type I IEPR that includes a Safety Assurance Review is required;

b) Where the estimated total cost of the project, including mitigation costs, is greater than $200 million based on a reasonable estimate at the end of the reconnaissance phase. If a project has a cost estimate of less than $200 million at the end of the reconnaissance phase, but the estimated costs subsequently increase to more than $200 million, a determination will be made by HQUSACE whether a Type I IEPR is required;

c) Where the Governor of an affected State requests a peer review by independent experts; or

d) Where the DCW or the Chief of Engineers determines that the project study is controversial due to significant public dispute over either the size, nature, or effects of the project or the economic or environmental costs or benefits of the project.

The above criteria are not true for the NED Plan discussed in the original report; thus, an IEPR is not required.

ASACW/HQUSACE Initial Assessment: Comment is unresolved. EC 1165-2-214 states that selection of technical reviewers will be based on "expertise, experience, and skills, including specialists from multiple disciplines as necessary to ensure comprehensive review". For coastal storm risk management (CSRM) projects, ATR teams generally include reviewers with expertise in plan formulation, economics, environmental compliance, geotechnical engineering, coastal engineering, cost engineering, and real estate. Based on the resumes provided, it does not appear that a complete technical review team has been developed to cover all relevant disciplines. Additional reviewers would likely need to be utilized to ensure a comprehensive technical review.

The review documentation to be provided should include a discussion of why Type I IEPR should be waived. The documentation should include specific rationale on why the study does not meet any of the mandatory triggers listed above in the comment response. Note that a Type I IEPR waiver is not allowable if the project includes an EIS. At a minimum, a Type II IEPR, which includes a Safety Assurance Review (SAR), will be required for future implementation documents. Corps policy directs that an SAR be conducted for any project involving public safety.

The report and/or the submittal of the report must articulate the steps taken to ensure a comprehensive technical review was conducted for the report.

Local Sponsor Response: Sub-Appendix H-2 includes documentation of the technical review. The appendix includes the review comments — provided by the specialists in plan formulation, economics, environmental compliance, geotechnical engineering, coastal engineering, cost engineering, and real estate — and Taylor Engineering's responses to the comments. Additionally, the Sponsor provides the following summary of their Peer Review effort:

Independent Technical Review
Per ER 1165-2-209, App B, par j, the non-Federal interests "must certify the quality and technical accuracy of the feasibility study...by documenting the quality control, quality assurance, and technical reviews that were conducted for all information presented in the feasibility study." Accordingly, Sub-Appendix H-2 includes documentation of the independent technical review conducted by specialists in plan formulation, economics, environmental compliance, geotechnical engineering, coastal engineering, cost engineering, and real estate. As documented in Sub-Appendix H-2, specialists included

independent staff members from Taylor Engineering not involved in the study as well as experts external to Taylor Engineering. The peer review documentation includes the original review comments from the specialists and Taylor Engineering's responses to the comments.

Independent External Peer Review (IEPR)

In addition to the technical review for quality control and quality assurance, the study must meet the requirements for peer review. St. Lucie County understands a Type II IEPR, which includes a Safety Assurance Review (SAR), will be required for future implementation documents but not for Federal approval of this Section 203 feasibility study. However, a Type I IEPR is not required for this study. As discussed below, the proposed project does not meet any of the four mandatory triggers for a Type I IEPR:

(a) Significant threat to human life. The decision document phase is the initial concept design phase of a project. Therefore, when life safety issues exist, a Type I IEPR that includes a Safety Assurance Review is required;

> **Discussion:** The proposed project includes beach nourishment and construction of shoreline stabilization structures for coastal storm risk management. The project does not pose a significant threat to human life. Thus, a Type I IEPR is not required. As mentioned, St. Lucie County understands a Type II IEPR, which includes a Safety Assurance Review (SAR), will be required for future implementation documents but not for Federal approval of this Section 203 feasibility study.

(b) Where the estimated total cost of the project, including mitigation costs, is greater than $200 million based on a reasonable estimate at the end of the reconnaissance phase. If a project has a cost estimate of less than $200 million at the end of the reconnaissance phase, but the estimated costs subsequently increase to more than $200 million, a determination will be made by HQUSACE whether a Type I IEPR is required;

> **Discussion:** The Cost Engineering Appendix documents a total 50-year project cost of $131,066,611, well below the $200 million threshold. Thus, a Type I IEPR is not required.

(c) Where the Governor of an affected State requests a peer review by independent experts; or

> **Discussion:** The Governor of Florida has not requested an independent peer review; thus, a Type I IEPR is not required. The Florida Department of Environmental Protection (FDEP) has reviewed the proposed project and has approved St. Lucie County's scope of work (for state cost sharing purposes) for preparation of this Section 203 feasibility study. The proposed project, similar to other projects that have been approved by FDEP and constructed by local sponsors, is a typical solution to address the issues at hand. Thus, the Governor has not requested a peer review.

(d) Where the DCW or the Chief of Engineers determines that the project study is controversial due to significant public dispute over either the size, nature, or effects of the project or the economic or environmental costs or benefits of the project.

> **Discussion:** St. Lucie County has held numerous public meetings to inform and solicit feedback from the public and has made the draft report available for public review and comment. There has not been a public dispute over either the size,

nature, or effects of the project or the economic or environmental costs or benefits of the project. Thus, a Type I IEPR is not required.

Based on the above discussion, this study qualifies for a Type I IEPR waiver. Of note, a Type I IEPR waiver is not allowable if the project includes an EIS; however, the proposed project does not include an EIS.

ASACW/HQUSACE Final Assessment: Comment is resolved.

5. Study authority.

Concern. Page i. of the executive summary and part 1.2 on page 1 of the draft GRR do not include a complete explanation of the statutory authority which support the study or the plan recommendations. The study was prepared under the authority of Section 203 of WRDA 1986, as amended (33 U.S.C. 2231), but this is not expressly stated.

Basis of concern: ER 1105-2-100, Appendix G; Exhibit G-1, para. 1 ("General Requirements for . . . Feasibility Phases . . . Study Conduct. Studies conducted in accordance with all applicable laws and policies."); Exhibit G-1, para. 5 ("Legal and institutional problems to project implementation are to be identified, and a plan to resolve them is to be presented"); para. G-6.h.(1)(b) ("Document compliance with applicable statutes and policies") Exhibit G-4 ("Include the full text of the study resolution(s) or other authority"); & G-5 ("Include the full text of the study resolution(s) or other authority"); G-7 ("Include the full text principle resolution(s) or other authority.").

Significance of concern: Low.

Action needed to resolve concern. The report needs to be revised to clearly cite and explain the use of Section 203 as the authority for the study and the recommended plan.

Local Sponsor Response: The revised report includes the following sentence to the Study Purpose and Scope paragraph on page i of the Executive Summary and Section 1.3 on page 1 of the report: "St. Lucie County prepared this study under the authority of Section 203 of WRDA 1986, as amended (33 U.S.C. 2231). The NED Plan includes construction of shoreline stabilization structures, which is anticipated to greatly improve project performance by doubling the nourishment interval from two years to four years, together with beach nourishment at a reduced frequency than currently authorized, which results in significant cost savings. The NED Plan represents a new modified project, which falls under the authority of Section 203."

ASACW/HQUSACE Initial Assessment: Comment is resolved.

ASACW/HQUSACE Final Assessment: Comment is resolved.

6. Credit for Federal share of study.

Concern. The report does not appear to acknowledge or address the impact on the sponsor's cost share of Section 203(d) of WRDA 1986, which authorizes a sponsor to be credited toward its required cost share for construction in an amount equal to the portion

of the cost of the study that would have been the responsibility of the United States if the study were developed by the Corps.

Basis of concern. ER 1165-2-208 para. 5.c. ("Section 203 provides that if a project for which a feasibility study developed by non-Federal interests is authorized after the Secretary submits the report to the Congress, the Secretary shall credit toward the non-Federal share of the cost of construction of such project an amount equal to the portion of the cost of developing the study that otherwise would have been the responsibility of the United States if such study had been developed by the Secretary. The costs of the non-Federal interests are subject to audit to determine allowability, allocability, and reasonableness. Under the Corps of Engineers SMART Planning policy and the "3x3x3 rule" established by Planning Bulletin 2014-01, in general, $3 million is the maximum total cost of feasibility studies undertaken by the Corps of Engineers. Therefore, for a feasibility study undertaken by a non- Federal interest, credit may not exceed $1.5 million, which would have been the maximum Federal cost for a feasibility study, unless a greater amount for credit is specifically authorized in law.").

Significance of concern: Medium, as it could affect the cost sharing for the project.

Action needed to resolve concern. The report should be revised to address the impact of any credit granted for the sponsor's costs in preparing the GRR toward its required share of the project upon authorization.

Local Sponsor Response: Table E.1 in the Executive Summary of the revised report includes the following footnote that acknowledges the County's potential credit: "[1]The local sponsor is potentially eligible for a credit, equal to the sponsor's cost to conduct this study, towards the non-Federal share of construction costs; this potential credit does not affect the calculated cost sharing percentages."

ASACW/HQUSACE Initial Assessment: Comment is resolved.

ASACW/HQUSACE Final Assessment: Comment is resolved.

7. Sponsor letter of intent.

Concern. The report does not appear to include a current sponsor letter affirming its support for the recommended plan.

Basis of concern: A written letter of intent is also required from the sponsor to ensure that sufficient local support for the project will enable it to be implemented, as required by ER 1105-2-100, Appendix G, at G-9 ("The non-Federal sponsor's acceptance of, or desired departures from, the terms of the applicable model PCA must be presented, including: 1) applicable cost sharing and financial policies; 2) policies regarding provision and valuation of non-Federal lands, easements, rights-of-way, and disposal areas provided by non-Federal sponsors; 3) policies governing non-Federal project construction, and 4) other provisions required by law and policy for new start construction projects.").

Significance of concern: Low to medium.

Action needed to resolve concern: The Sponsor should provide a current letter of intent and add a reference to it in the report as well as include it as a referenced attachment.

Local Sponsor Response: Appendix J of the revised report will include the letter of intent.

ASACW/HQUSACE Initial Assessment: Comment is resolved, pending back-check of the revised report.

Local Sponsor Response: Sub-Appendix H-1 includes the letter of intent.

ASACW/HQUSACE Final Assessment: Comment is resolved.

8. Sponsor statement of financial capability.
Concern. The report does not appear to include a sponsor self-certification of financial capability.

Basis of concern: See CECW-PC memorandum dated 12 June 2007, Lean Six Sigma (L6S) Actions to Improve the Project Cooperation Agreement Process – Non-Federal Sponsor's Self-Certification of Financial Capability (eliminating USACE financial analyses of sponsors) ("a non-Federal sponsor will sign the Non-Federal Sponsor's Self-Certification of Financial Capability For Decision Documents (enclosure 3) for such purpose.").

Significance of concern: Low to medium.

Action needed to resolve concern: A sponsor financial self-certification should be provided and cited in the report as a referenced attachment.

Local Sponsor Response: Appendix K of the revised report will include the financial self-certification.

ASACW/HQUSACE Initial Assessment: Comment is resolved, pending back-check of the revised report.

Local Sponsor Response: Sub-Appendix H-1 includes the financial self-certification.

ASACW/HQUSACE Final Assessment: Comment is resolved.

9. Executive Order 11988.
Concern: The main report has a single paragraph pertaining to Executive Order (EO) 11988. ER 1165-2-26 highlights 8 steps that must be followed and properly documented to ensure project decisions are in compliance of EO 11988. Of particular concern, the

early screening of nonstructural measures demonstrating that no alternatives to a project in the floodplain exist.

Basis of concern: Reference ER 1165-2-26.

Significance of concern: Significant. It is unclear if formulation and public involvement are sufficient to satisfy EO 11988 requirements.

Action needed to resolve concern: Conduct and follow the 8-steps as outlined in ER 1165-2-26.

Local Sponsor Response: We request clarification regarding specific action/documentation needed to resolve the concern. The content and organization of the report and plan formulation are very similar to other recent CSRM feasibility studies completed by USACE and satisfy the 8 steps outlined in ER 1165-2-26. As mentioned in the Executive Summary, St. Lucie County has held numerous public meetings regarding the study.

ASACW/HQUSACE Initial Assessment: Comment is unresolved. A meeting with the sponsor can be held if further clarity of the guidance is needed. Typically a summary section is included in decision documents which outlines the required 8-steps and describes where and how the steps were followed in the report. The greatest concern is that nonstructural alternatives did not appear to be given appropriate consideration in lieu of a structural alternative. For example, Table 3.1 appears to screen out most, if not all, of the nonstructural alternatives based on local objectives including recreation and protection of tourism-based economy. Also, it does not appear that nonstructural alternatives were looked at as standalone given the stated planning objective, "Objective 1: Maintain the functionality of the currently authorized SPP, but increase the nourishment interval from two years to a minimum of four years by implementing shore stabilization structures." The intent of the executive order is to consider, assess, and communicate alternatives to construction in floodplains. Based on the above, it is unclear that appropriate consideration has been done.

Related to the stated concerns about alternatives screening (also covered in comment B-3 below), it has been determined that in 2014 the St. Lucie County and the city of Fort Pierce submitted a proposal to the Corps of Engineers which was included in the Section 7001 (of the Water Resources Reform and Development Act of 2014) Report to Congress. The proposal was for a project to include inlet sand bypassing and shoreline stabilization structures. The proposal included a letter of support from the Florida Department of Environmental Protection, dated December 2, 2014, which generally stated that implementation of adequate sand bypassing would alleviate the need for erosion control structures and that the project would rank highly on the State's annual funding priorities. This proposal (alternative) is not discussed in the current report. Therefore it is not clear why this is no longer being considered. The current report must present a complete explanation of the plan formulation process: full suite of alternatives (structural and nonstructural) considered to address the water resource problem(s),

description of screening criteria used for evaluation and rationale for rejecting any alternative. If it is too speculative whether bypassing would be conducted and therefore shouldn't be part of the FWOP (per the response to comment B-3 below) condition; then bypassing should at least be a measure considered in the formulation process. Bypassing appears to be a reasonable and practicable alternative, and by NEPA standards and 404(b)(1) guidelines standards (in addition to plan formulation standards), the report should have a valid reason to eliminate it. It is necessary to explain and justify what appears to be a discrepancy between the current project recommendation and the 2014 proposal.

Local Sponsor Response: Section 3.11 of the main report addresses Compliance with Executive Order (EO) 11988. We made substantial revisions to the plan formulation discussion throughout Chapter 3, including a completely revised Table 3.1 describing the preliminary screening process. The screening process includes the sediment impoundment basin as an alternative but discusses the reasons why it cannot be considered as part of the NED Plan at this time.

ASACW/HQUSACE Final Assessment: The concern remains unresolved at this time – see response to comment B1. In the event that the recommended plan is authorized for federal participation, it is expected that this unresolved issue would need to be addressed prior to implementation.

B PLAN FORMULATION

1. Future Without Project Condition.

Concern: The assumptions underlying the Future Without Project (FWOP) condition are unclear and the assessment of environmental conditions within the FWOP are inadequate and inappropriate. In addition to other comments that the FWOP does not consider the NFS conducting required OMRR&R or State of Florida plans/requirements for sand bypassing at the inlet, the report also makes multiple claims throughout the document that landowners will resort to armoring in the FWOP, leading to additional impacts. However, pg. 43 of the report states that "it was assumed that no local armoring would occur" in the FWOP and for Beach-fx modeling. For most of Chapter 2 the FWOP/no-action alternative is described as "not expected to differ from Existing Conditions." This inaccurate assumption does not take into consideration any reasonably foreseeable actions that are expected to occur through 2070 including trends in coastal storms (increasing frequency and/or intensity), non-Federal OMRR&R, bypassing/inlet management, or ongoing threats to or recovery/restoration of environmental resources, etc.

Basis of concern: The FWOP condition/no-action alternative is critical both in terms of compliance with the P&Gs and a legally sufficient NEPA document, as the alternative that other alternative plans are compared against. Without a clear and accurate picture of the FWOP, then the benefits and environmental consequences/EQ effects of the proposed plan cannot be ascertained. See 2-4b. (3) and (4) of ER 1105-2-100; Section 3.4.7.(c)(1)-(6) of the P&G; also Question 3 of CEQ's 40 most asked questions of NEPA.

Significance of concern: High, as it affects plan justification.

Action needed to resolve concern: Ensure assumptions of the FWOP are clear up front in the document and consistent throughout the report. Revise discussions of the FWOP/no-action alternative in Chapter 2 considering the most-likely condition of each resource in 2070, considering any non-Federal actions that may affect the status (recovering, declining, and stable) of that environmental resource.

Local Sponsor Response: The revised report corrects the inconsistency on page 43. As noted in the same paragraph on page 43, the Beach-fx FWOP simulations included emergency armoring for eligible properties; thus, the environmental reporting in Chapter 2 is correct. As mentioned in the above response to General Comment 3, the assumption that no further nourishment will occur is valid, as the County won't be able to financially support a non-federal project and does not have an obligation to do so. The County has an obligation to support the federal project by providing the non-federal cost share and complying with the FDEP permit conditions; the County does not have an obligation to fund and construct nourishment projects absent federal funding and participation. The County did not conduct any nourishment projects between 1971 and 1980 (i.e., between initial construction and the first nourishment project) or between 1980 and 1999 (i.e., between the first and second nourishment projects) when federal funding was unavailable. The FWOP analysis cannot include bypassing from the sediment deposition basin, as the basin has not been constructed and proven effective. Once the basin is constructed and proven effective, a future report can address and incorporate any resulting project changes. While the State of Florida specifies sand bypassing goals for Ft. Pierce Inlet, the Federal government is responsible for mitigating the adverse effects of the Federal Ft. Pierce Inlet; the NED plan discussed in the report, which is based on adequate and appropriate assessments and assumptions, satisfies the Federal government's responsibility and the State's bypassing objectives.

ASACW/HQUSACE Initial Assessment: Comment is resolved pending review of revisions made to the report. It is recommended that the report also indicate why sand bypassing was screened as a measure for the reasons indicated above.

Local Sponsor Response: As mentioned in the response to the previous comment, we made substantial revisions to the plan formulation discussion throughout Chapter 3, including a completely revised Table 3.1 describing the preliminary screening process. The screening process includes the sediment impoundment basin as an alternative but discusses the reasons why it cannot be considered as part of the NED Plan at this time.

ASACW/HQUSACE Final Assessment: The Review Team cannot resolve this comment. Should the proposal be authorized by Congress, it is recommended that any post-authorization analysis of the plan consider the smaller sediment bypassing basin as part of FWOP condition, and carry forward the full sediment bypassing basin as a viable measure for further analysis and confirmation/identification of the NED plan. Information provided by the non-federal interest continues to demonstrate that the

smaller sediment bypassing basin is reasonably likely to occur within the 50 year period of analysis and should therefore be considered as part of the FWOP per paragraph 2-4.b. of ER 1105-2-100. The non-federal interest contends that bypassing is not a valid measure based on uncertainty over its effectiveness until the pilot is in place and proven effective. However, sand bypassing has been effective as part of an inlet management plan in other nearby inlets along the Atlantic coast of Florida (Jupiter Inlet, Sebastian Inlet, and Boca Raton Inlet) by at least partially mitigating the effects of the inlet on longshore transport, thereby reducing the total cubic yards of sand needed from offshore or upland sources for renourishment events or helping extend the time period between larger renourishment events. Section 161.142 of Florida Statutes supports bypassing for similar reasons and states, "Accordingly, the Legislature finds it is in the public interest to replicate the natural drift of sand which is interrupted or altered by inlets to be replaced and for each level of government to undertake all reasonable efforts to maximize inlet sand bypassing to ensure that beach-quality sand is placed on adjacent eroding beaches. Such activities cannot make up for the historical sand deficits caused by inlets but shall be designed to balance the sediment budget of the inlet and adjacent beaches and extend the life of proximate beach-restoration projects so that periodic nourishment is needed less frequently." Using principles of risk and uncertainty, it still appears that bypassing has been prematurely eliminated as a viable measure as a part of a complete plan. This lends doubt as to whether the non-federal interest's recommended plan is truly the NED plan.

2. Future Without Project Condition.

Concern: The entire analysis is predicated on the assumption that the previously authorized project stops at 50-years and the non- Federal sponsor and other non-Federal entities have neither continued responsibility nor incentive for maintaining the authorized dune and berm. Section 3.4 of the Economic Appendix states, "To simulate the most- likely without project scenario, this study assumed that the existing artificial berm will completely erode in 10 years." This assumption is incorrect, as the project remains an authorized Federal project even after the period of Federal participation in nourishment ends. The assumption that, in the absence of Federal participation in continued nourishment, erosion would be allowed to continue and non-Federal entities (city, county, state) would make no effort to perform further nourishment seems unlikely as it would appear to be ignoring the threat to public and private infrastructure as well as impacts on tourism revenue. It also seems at odds with Florida laws including the Local Government Comprehensive Planning Act of 1975 and the 1985 Growth Management Act, as described on page 55 of the report.

Basis of concern: ER 1165-2-130.

Significance of concern: Significant. Addressing this policy concern will have a major impact on whether a plan can be recommended for authorization.

Action needed to resolve concern: Update the analysis to reflect a realistic level of effort to maintain the protection provided by the project as the Future Without Project Condition and revise the plan formulation and recommended plan accordingly.

Local Sponsor Response: As mentioned in the above response to General Comment 3, the assumption that no further nourishment will occur is valid, as the County won't be able to financially support a non- federal project and does not have an obligation to do so. The County has an obligation to support the federal project by providing the non-federal cost share and complying with the FDEP permit conditions; the County does not have an obligation to fund and construct nourishment projects absent federal funding and participation. The County did not conduct any nourishment projects between 1971 and 1980 (i.e., between initial construction and the first nourishment project) or between 1980 and 1999 (i.e., between the first and second nourishment projects) when federal funding was unavailable. The County's non-federal nourishment actions have been limited to small-scale emergency truck haul projects to protect public infrastructure when storm damage appeared imminent. The Beach-fx FWOP simulations included such emergency nourishments.

The reference to the fill eroding in 10 years is an outdated statement that the original report failed to correct. The FWOP simulation actually assumed the fill would erode in 20 years; the revised report will update the outdated/inconsistent language that referenced "10 years". This assumption is valid based on prior project performance. As documented in Table 3.8 of Appendix A, several minor channel maintenance dredging events occurred during the 1980's and early 1990's following the 1980 federal nourishment project. These projects failed to prevent the fill from eroding away; by the early to mid- 1990's, severely eroded conditions characterized the entire study area, prompting the County to conduct emergency truck haul projects and other emergency measures while awaiting renewal of federal participation.

ASACW/HQUSACE Initial Assessment: Comment is resolved. See response to comment A-3.

ASACW/HQUSACE Final Assessment: Comment is resolved.

3. Planning objectives.

Concern: Plan formulation and selection is fundamentally flawed, as it was based off of one planning objective that is too specific to allow for a meaningful evaluation in terms of the P&G, an objective NEPA analysis, nor a Section 404(b)(1) guidelines alternatives analysis (40 CFR 230.11(a)). Further, the planning process for this report seems to be inappropriately skewed towards erosion abatement and maintaining a recreational beach/supporting tourism, whereas USACE's mission is focused on Coastal Storm Risk Management, with recreation being incidental (see 3-4 and 3-4 b.(2) of ER 1105-2-100). Page 47 of the report lists the planning objective as "Maintain the functionality of the currently authorized SPP, but increase the nourishment interval from two years to a minimum of four years by implementing shore stabilization structures." Therefore, any measure or alternative that doesn't include shore stabilization structures and a minimum 4 year nourishment interval would not meet the objective. This pre-maturely eliminated multiple feasible and reasonable measures from the plan formulation process including all non- structural measures (elevation, acquisition, flood proofing), dunes and

vegetation, and sand covered soft structures. The formulation is also flawed in that it did not consider sand bypassing as an alternative to hard structures in the hot spot just south of the jetty, which the report acknowledges as something the State of Florida has recommended; or if there is a need for measures to address other sources of coastal storm damage such as flooding/storm surge on the back side of the barrier island.

Basis for concern: See Appendix B 2.a. of ER 1165-2-209 which requires that problems and opportunities "should not prescribe a particular alternative, and should facilitate formulating all reasonable alternative that would potentially satisfy the need for a project." Also see Question 4c of CEQ's 40 most asked questions of NEPA, which states "the statement must be objectively prepared and not slanted to support the choice of the agency's preferred alternative over the other reasonable and feasible alternatives."

Significance of concern: High, as it affects plan formulation and selection, as well as NEPA and CWA Section 404 compliance.

Action needed to resolve concern: Revise the planning objectives for the study to address the problem(s) and opportunity(ies) related to Coastal Storm Risk Management within the study area. Conduct an objective formulation process inclusive of non-structural and structural measures, combining measures as needed to develop complete, efficient, effective, and acceptable alternative plans that can be objectively evaluated and compared consistent with the P&G, NEPA requirements, and Section 404(b)(1) guidelines.

Local Sponsor Response: The recommended plan is based on Beach-fx results, which pertain to coastal storm risk management (CSRM), not recreation; recreation benefits were calculated separately after identification of the NED Plan. The analysis did not pre-determine a nourishment interval; as discussed in Appendix A, results of numerical modeling indicated structures could retain fill for 4 years, at which point the fill was completely eroded away in certain areas. The study only reports the Beach-fx results of structures with a 4-year nourishment interval, as this proved the optimum scenario. The Beach-fx model iterations included results with 2-year and 3-year nourishment intervals for scenarios with and without structures; however, the benefits and costs proved less favorable. The early screening of non- structural solutions is valid and consistent with similar recently completed USACE CSRM feasibility studies. The revised report will include additional explanation/discussion as necessary to clarify the plan formulation and screening process. The report cannot include bypassing from the sediment deposition basin, as the basin has not been constructed and proven effective. Additionally, the basin's maximum estimated annual contribution to bypassing is less than the documented annual erosion rate (and less than FDEP's recommended annual bypassing rate); thus, structures will be required regardless to meet the Beach-fx results. An effective basin could help extend the nourishment interval beyond 4 years and greatly improve the BCR, thus a future study should consider the effects of the sediment impoundment basin after construction and performance monitoring.

ASACW/HQUSACE Initial Assessment: Comment is unresolved. The response provided did not address the crux of the comment that the one planning objective is too narrowly defined to allow for an objective plan formulation process, objective NEPA analysis, or objective 404(b) (1) guidelines analysis. We would be willing to meet with the sponsor to provide further assistance on this matter. As a reference, the Planning Manual (IWR report 96-R-21) provides a good discussion on planning objectives on pages 79-95. In particular, see page 86 – "Though specific, an objective should not specify an absolute target as the only level of the desired result;" and "objectives should not include solutions, i.e., neither individual management measures, alternative plans, nor programs...Objectives should not specify the measures or plans that can be used to meet the objective."

Local Sponsor Response: As mentioned, we made substantial revisions to the plan formulation discussion throughout Chapter 3. We added a new Table 3.2 containing additional Beach-fx results for the incremental analysis of beach nourishment and revised the Section 3.8 discussion. Section 3.5 of the Economics Appendix also includes a revised discussion of the screening process that identified the Recommended Plan.

ASACW/HQUSACE Final Assessment: The comment remains unresolved and the concern in the initial assessment still applies. In the event that the recommended plan is authorized for federal participation, it is expected that this unresolved issue would need to be prior to implementation.

4. FDEP and St. Lucie County partnership implementation actions.
Concern: The implementation actions listed on Page 54 list "Evaluate possible alternatives to facilitate bypassing of sand from the shoreline north of the inlet to the down drift beaches." Later in the report on pages 101- 102, and Page7, references that the non- Federal sponsor provides local sponsorship to the State of Florida for implementing the State's Fort Pierce Inlet Management Plan. In 2004, Taylor Engineering completed a study for the non-Federal sponsor to identify an annual bypassing operation that could either meet the state adopted bypassing requirements or, at a minimum, supplement the Corps SPP just south of Fort Pierce Inlet. "The study identified two alternatives – north jetty sand tightening with mobile sand bypassing plant and north jetty sand tightening with nearshore dredging – reasonable attractive alternatives to bypass sand across the inlet." In addition, page 101 continues to state that the non- Federal sponsor has "recently" (i.e. 2010) completed a feasibility study of a third alternative – construction of a sediment basin in the inlet. Finally, on page 107 – Coastal Zone Management Act of 1972, notes "that the current State of Florida permit for shore protection project requires the local sponsor to provide the State with a sediment bypassing plan. "To that end, the State of Florida and the local sponsor are examining the potential for a sediment deposition basin within Fort Pierce Inlet."

Basis of concern: The report is silent on the current (i.e. 2017) status of the State's Fort Pierce Inlet Management Plan for including a sediment deposition basin in the inlet and

what assumptions with regard to the FWOP and FWP conditions were made during this study of future improvements to the Fort Pierce shore protection project.

Significance of concern: High. Could impact the recommended plan and accurately estimate the project costs and benefits. It appears that the last report of bypassing report was 2010.

Action needed to resolve concern: It is highly recommended that the report provide more complete discussion of the inlet management plan, an update on the status of dredging a deposition basin in the inlet, and what effects (if any) the implementation of this features would have on the recommended plan.

Local Sponsor Response: As mentioned in our response to the previous comment, we cannot include bypassing from the sediment deposition basin, as the basin has not been constructed and proven effective, nor has construction funding been appropriated. The past recommendation of north jetty sand tightening and a mobile bypassing plant did not have sufficient support from the local community for implementation. The revised report will provide additional explanation to clarify these points.

ASACW/HQUSACE Initial Assessment: Comment is resolved pending review of revised report.

Local Sponsor Response: Chapter 3 includes a more thorough accounting of the sediment deposition basin.

ASACW/HQUSACE Final Assessment: This concern remains unresolved– see assessment for Comment B1. In the event that the recommended plan is authorized for federal participation, it is expected that this unresolved issue would need to be addressed prior to implementation.

5. Screening of Nonstructural Plans.

Concern: The plan formulation screens out all nonstructural measures, most often using local objectives as a rationale. The purpose of a Federal project is to reasonably maximize net National Economic Development (NED) benefits. As written, the report does not provide sufficient detail for screening nonstructural measures from Federal consideration.

Basis of concern: ER 1105-2-100 Paragraph 2-3.c.(5); Paragraph 2-3d.(2).
Significance of concern: Significant. Could have an impact on plan recommendation.

Action needed to resolve concern: Provide more sufficient and appropriate rationale for screening of nonstructural measures or fully analyze those nonstructural measures. Also, please note the overlap with the comment on Executive Order 11988.

Local Sponsor Response: As mentioned, the early screening of non-structural solutions is valid and consistent with similar recently completed USACE CSRM

feasibility studies. The revised report will include additional explanation/discussion as necessary to clarify the screening process.

ASACW/HQUSACE Initial Assessment: Comment is unresolved. More explanation discussion is needed to resolve the concern. As noted in response to comment A-9, it appears that the nonstructural plans were not fully considered and screened based on local objectives of recreation and tourism.

Local Sponsor Response: The previously mentioned revisions to Chapter 3 (particularly revisions to Section 3.6 and Table 3.1) address the above comment regarding screening of non-structural solutions.

ASACW/HQUSACE Final Assessment: The comment remains unresolved. Sufficient information is not included in the report to screen out all of the nonstructural measures and make a determination if the recommended plan is truly the NED Plan. In the event that the recommended plan is authorized for federal participation, it is expected that this unresolved issue would need to be addressed prior to implementation.

C ENVIRONMENTAL

1. Environmental Consequences:

Concern: The environmental consequences chapter of the report is insufficient to comply with NEPA or CEQ evaluation procedures of the P&G in that it does not consider any environmental impacts from the placement of the T-groins and breakwater and only assesses the recommended plan against the no-action alternative. Even if these hard structures are proposed to be completely within the footprint of the beach fill design template, they will become exposed over time between nourishment intervals and will lead to impacts not previously considered in other NEPA documents/feasibility reports. These structures can obstruct access to nesting beaches for sea turtles, cause adverse visual/aesthetic impacts, interfere with recreation potentially creating a safety hazard for swimmers, and completely eliminate intertidal and subtidal habitat (depending on location of MHW) within their footprint. While mitigation was conducted for hard bottom impacts of the original design template, it is not clear if these hard, permanent structures would lead to new impacts not considered with just beach nourishment (in that hard bottom and other submerged resources could recolonize the area between nourishment events, but will not be able to do so within the footprint of the T-groins or breakwater).

Basis of concern: Appropriate assessment of environmental consequences per 40 CFR 1502.16 "the environmental effects of alternatives including the proposed action." See Question 7 in CEQ's 40 most asked questions of NEPA; Section 3.3.5(h) of the P&G; Sections 3.4.10 and 3.4.11 of the P&G.

Significance of concern: High, as it affects environmental acceptability of the recommended plan.

Action needed to resolve concern: Re-write the environmental consequences chapter to assess all effects of the recommended plan and the final array of alternatives consistent

with the requirements in NEPA 40 CFR 1502.16 and CEQ evaluation procedures within 3.4.11 of the P&G including the duration, location, and magnitude of those effects. Any conclusions in this chapter including whether compensatory mitigation is required should be based on all of the effects of a given alternative, paying particular attention to those impacts not previously considered for the existing beach fill template with a 2 year nourishment cycle using Capron Shoal as a borrow source.

Local Sponsor Response: The revised report includes appropriate edits in Chapter 4 to address the above review comment.

ASACW/HQUSACE Initial Assessment: Comment is resolved pending review of revisions made to the report.

Local Sponsor Response: We revised Chapter 4 to include additional information.

ASACW/HQUSACE Final Assessment: The Review Team cannot resolve this comment as satisfactory consideration to environmental consequences has not been conducted and documented. In the event that the recommended plan is authorized for federal participation, it is expected that this unresolved issue would need to be addressed and the associated environmental compliance activities must be completed prior to implementation of the project.

2 Agency Consultation.

Concern: Note that updated consultation will need to be completed to comply with several environmental requirements including Section 7 of the Endangered Species Act, Fish and Wildlife Coordination Act, Essential Fish Habitat amendments to the Magnuson Stevens Fisheries Conservation and Management Act, Section 401 water quality certification, Coastal Zone Management Act, and other Federal environmental laws. The report describes how consultation/compliance was initiated for some of these requirements in the 2007-2008 timeframe. However, changed circumstances over the last 10 years including listing of new species and updated evaluation procedures will require re-initiation of consultation. It also appears that analysis of impacts to fish and wildlife including a determination that compensatory mitigation is not needed (EFH, FWCA), CZM consistency, and the proposed use of programmatic BiOps (ESA) did not consider impacts from T-groin/breakwater construction. Environmental compliance needs to cover all impacts associated with the recommended plan to be legally and policy compliant.

Basis of concern: Legal and policy compliance with environmental laws and regulations. Environmental compliance requirements will need to be satisfied prior to USACE endorsement of any final report.

Significance of concern: Medium/High, as it affects environmental acceptability of the plan.

Action needed to resolve concern: See ER 1165-2-209, Appendix B 2.h.(1). It is recommended that the NFS enter into a MOA (per Section 1126 of WRDA 2016) with the local USACE district office to formally initiate consultation under these requirements as they are inherently governmental and compliance cannot be satisfied by a non-Federal entity. If the NFS elects to not pursue a MOA for environmental compliance, then the NFS needs to submit the necessary information to initiate these consultations (draft environmental compliance documents such as a Biological Assessment inclusive of T-groin and breakwater impacts) with a Section 203 feasibility report.

Local Sponsor Response: St. Lucie County intends to enter into a MOA with USACE Jacksonville District for assistance with agency consultation.

ASACW/HQUSACE Initial Assessment: No further action is required. Upon further review by Army Counsel, it was determined that section 1126 does not provide authority for the Army to enter into an MOA to accept non-Federal funds to complete inherently governmental actions, such as agency consultation. Further, since this is a non-Federal study conducted pursuant to section 203, there is no requirement for the non-Federal interest to perform these functions. However, we encourage the non-Federal interest to provide as much information regarding environmental considerations as possible to further future environmental compliance actions should this project be authorized by Congress.

ASACW/HQUSACE Final Assessment: The Review Team is unable to certify environmental acceptability of the proposed project, given that environmental compliance and consultations have not occurred on the entirety of the proposal. Since at this point the Section 203 Report is not a Federal Action, NEPA and other Federal environmental compliance has been determined not to be required at this time.

However, should the proposal be authorized by Congress, the proposal will become a Federal action subject to NEPA and other Federal environmental compliance. While the study includes references to multiple previous NEPA documents and environmental consultations, there appears to be multiple gaps in environmental compliance for the current proposal. Future NEPA and other environmental compliance may rely heavily on previous information and incorporate such information by reference, but updated compliance/consultation will likely be required as part of any post-authorization analysis for the following requirements:

- National Environmental Policy Act
- Endangered Species Act
- Fish and Wildlife Coordination Act
- Essential fish habitat consultation
- Marine Mammal Protection Act
- Clean Water Act (404 compliance and 401 certification)
- Coastal Zone Management Act

3 404(b)(1).

Concern: The Section 404(b)(1) analysis is insufficient to make a determination of

compliance with the guidelines. Appendix G provides no discussion of impacts associated with T-groin/breakwater placement and does not include an analysis of alternatives demonstrating that the selected plan is also the least environmentally damaging practicable alternative. Appendix G also provides no discussion of actions to minimize adverse effects consistent with 40 CFR 230.10(d) and Subpart H of the 404(b)(1) guidelines (40 CFR230.70-230.77).

Basis of concern: 40 CFR 230.5(c) states "Examine practicable alternatives to the proposed discharge...or discharging into an alternative aquatic site with potentially less damaging consequences." 40 CFR 230.10(a) "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impacts on the aquatic ecosystem" 40 CFR 230.10(d) "no discharge of dredged or fill material shall be permitted unless appropriate and practicable steps have been taken which will minimize potential adverse impacts of the discharge on the aquatic ecosystem. Subpart H identifies such possible steps."

Significance of concern: Medium/High, as it affects environmental acceptability of the plan.

Action needed to resolve concern: In the beginning of Appendix G, provide an analysis of the final array of alternatives' impacts on the aquatic environment to make a determination whether the recommended plan is the least environmentally damaging in accordance with 40 CFR 230.10(a)-(d) prior to going into the factual determinations. Provide an adequate description of all practicable steps that have been taken to minimize potential adverse impacts on the aquatic ecosystem, consistent with 230.10(d) and Subpart H of the 404(b)(1) guidelines. Ensure that the 404(b)(1) guidelines compliance determination includes all impacts of each of the alternatives, inclusive of the permanent loss of waters of the U.S. associated with T-groin and breakwater construction.

Local Sponsor Response: The revised report includes the recommended edits to Appendix G.

ASACW/HQUSACE Initial Assessment: Comment is resolved pending review of revisions made to the report.

Local Sponsor Response: We added a significant amount of additional information to Appendix G and Chapter 4 of the main report.

ASACW/HQUSACE Final Assessment: Comment is unresolved based on the information provided. In the event that the recommended plan is authorized for federal participation, it is expected that this unresolved issue would need to be addressed and the associated environmental compliance activities must be completed prior to implementation of the project.

4. Completeness of NEPA Documentation.

Concern: Some components of a complete NEPA document are missing from the report including a NEPA purpose and need statement (40 CFR 1502.13), a list of preparers (40 CFR 1502.17), and an adequate discussion of the built environment as part of the affected environment/existing conditions in Chapter 2. The discussion of the built environment only covers hurricane evacuation routes and does not cover existing buildings, land use, and other critical infrastructure (police/fire stations, hospitals, transportation corridors, water supply/treatment facilities, power plants/substations, etc.) that are critical components in assessing coastal storm risk. Further, this discussion is lacking socioeconomic data such as demographics, population, and environmental justice that are relevant to managing coastal storm risk for that population.

Basis of concern: A legally sufficient NEPA document will include all components required in the CEQ regulations (40 CFR 1500 et seq) and USACE NEPA implementing regulations at 33 CFR 230 & ER 200-2-2.

Significance of concern: Medium.

Action needed to resolve concern: Add a statement indicating the NEPA purpose and need for the study to Section 1.3 of the report. Add a list of preparers to the report. Develop Section 2.4 of the report to include a brief discussion of existing structures/land use including any critical infrastructure as well as a discussion on demographics within the study area.

Local Sponsor Response: The revised report includes the requested information in Section 1.3 and includes a new Section 2.4.1 as shown below to address land use and existing structures. Similar to other USACE feasibility studies (e.g., South St. Lucie and Flagler County), this report includes the socioeconomic data in Appendix C — Economics. However, to address the review comment, the revised report also includes this information in Section 2.4.4 as shown below. Appendix I of the revised report includes a list of preparers.

"2.4.1 Land Use and Structures

Existing Conditions

No structures (e.g., piers, docks) exist in the project area on the beach or in the nearshore. Three beachfront parks (Jetty Park, South Beach Park, and Kimberley Bergalis/Surfside Park) occur within the project area. The remainder of the upland along the project area is largely residential area with single family or multi-family residences and rental units. Several small commercial buildings and restaurants occur immediately south of Jetty Park at the north end of the project area. U.S. Hwy A1A runs parallel to the shoreline typically about 150 to 250 ft inland of the beach. No critical public structures (e.g., police or fire stations, hospitals, power substations, water supply or treatment facilities) exist within the project area.

Future Without-Project Conditions (No-Action Alternative)

Further beach erosion will threaten the land uses and structures along the beach."

"2.4.4 Demographic Characteristics

According to the US Census Bureau, the 2010 population of St. Lucie County was 277,789 with a land area of 571.93 square miles. Over the past several years, the county has seen rapid population growth. Between 2000 and 2010, the county grew by approximately 44%. Since then, the population has grown by 7.5% to reach an estimated 298,563 in July 2015. The ethnic makeup of St. Lucie County is relatively homogeneous, with Caucasians (non-Hispanic) composing approximately 59.0% of the population. The largest minority groups are African American and Hispanic, which make up approximately 20.3% and 17.9% of the population. All other racial groups combined comprise about 2.8% of the total population. The median age for residents is 43.3 and those aged 60 years and over represent 27.4% of the population. Overall, St. Lucie County is largely an adult population with those aged 18 years and older at 77.7%.

Future Without-Project Conditions (No-Action Alternative)

The FWOP condition is not expected to differ from existing conditions."

ASACW/HQUSACE Initial Assessment: Comment is resolved pending review of revisions made to the report.

Local Sponsor Response: The revised report includes the above additions. Chapter 7 includes the list of preparers.

ASACW/HQUSACE Final Assessment: Comment cannot be resolved with the information provided. In the event that the recommended plan is authorized for federal participation, it is expected that this unresolved issue would need to be addressed and the associated environmental compliance activities must be completed prior to implementation of the project, including review by the public and State & Agencies.

D ECONOMICS

1. Depth Damage Functions.

Concern: The Report uses depth-damage functions for large buildings that were created specifically for this study. It is unclear from the analysis whether these damage curves have been peer reviewed.

Basis of concern: Appropriate site specific depth-damage functions being applied; see ER 1105-2-100 Paragraph E-24.f.(2)(f).

Significance of concern: Minor/Moderate.

Action needed to resolve concern: Provide adequate peer review documentation of the depth damage functions.

Local Sponsor Response: The revised report includes documentation of an ITR, which peer-reviewed the depth-damage functions.

ASACW/HQUSACE Initial Assessment: Comment will be resolved upon review of the additional information.

Local Sponsor Response: Sub-Appendix H-2 includes the technical review comments regarding the depth damage functions. The economics specialist provided review comments regarding the Economics Appendix and separate review comments regarding the Sub-Appendix C-2 Christopher P. Jones Draft White Paper – Large Building Flood Damage Functions.

ASACW/HQUSACE Final Assessment: Comment is resolved.

2. Interest During Construction.

Concern. It is unclear from the economic analysis if Interest During Construction (IDC) was included in the economic costs.

Basis of concern: IDC is an important economic cost that must be accounted for in plan selection and justification; ER 1105-2-100 Appendix D Para D-3.e. (11).

Significance of concern: Moderate/Significant. If alternative plans have significantly different construction schedules then this could impact plan selection. It will also impact the benefit-to-cost ratio.

Action needed to resolve concern: Update the economic analysis to appropriately include Interest During Construction (IDC).

Local Sponsor Response: St. Lucie County will ensure that the economic costs in the revised report include IDC. The County intends to request USACE Jacksonville District (via a MOA) or other independent personnel to review the cost calculations.

ASACW/HQUSACE Assessment: Comment will be resolved upon review of the additional information.

Local Sponsor Response: As documented in Sub-Appendix H-2, the economics specialist provided the following review comment regarding IDC:

Interest during construction is computed and shown for projects for which costs and benefits are expressed in present value at a point in time after initiation of construction.

Costs (and benefits) occurring before this point in time must be converted to a present value equivalent in the same way that costs and benefits taking place after this point in time are converted. IDC is simply the interest part of the time value conversion equivalent. In the case of this project, all costs and benefits are converted to equivalent time values at the beginning of the 50-year period of analysis, the beginning of FY2021. There are no costs occurring prior to this point in time, so there is no "IDC." For some used to the convention of reporting and calculating IDC, who may not be familiar with the underlying concept, the absence of an IDC line item in the B/C evaluation may seem like a problem, standing out as a "red flag." It is not a problem. Any point in time can be used for these calculations. The numbers will be different, but the B/C ratio will be exactly the same, as will the alternative with the largest net benefits. The internal rate of return will also be the same, as will the rank order of alternatives, etc. The findings of the economic evaluation will also for all practical purposes be the same whether FY2017 or FY2021 prices are used throughout. The important thing is consistency in the present value calculations and in the price level used in the evaluation process.

ASACW/HQUSACE Final Assessment: The Review Team cannot resolve this comment. IDC is a required component of economic analyses. In the event that the recommended plan is authorized for federal participation, it is expected that this unresolved issue would need to be addressed prior to implementation.

3. Incremental Analysis.

Concern: The plan formulation and economic analysis appear to have only looked at incremental analysis for various dune and berms sizes. It is unclear that incremental analysis of length of project and number and size of T-groins was conducted. For example, according to Table 2 of the Economic Appendix, Reaches 4 and 5 account for approximately 82% of the economic value. It must be demonstrated that a project in those reaches alone would not provide higher net NED benefits than the full project length. Size and number of T-Groins must also be incrementally evaluated.

Basis of concern: Reference ER 1105-2-100 Paragraph f.(4) and Paragraph 2-4.e.

Significance of concern: Significant. Calls into question the recommended plan.

Action needed to resolve concern: Conduct an incremental analysis and clearly demonstrate that the recommended plan is incrementally justified. It is not incrementally justified, then the portions that are not must be removed from the NED Plan and taken out of the recommendation or a Locally Preferred Plan (LPP) must be approved by the ASA(CW) at 100% non-Federal sponsor responsibility. Please note that the Future Without Project Condition comment will impact the incremental analysis.

Local Sponsor Response: Beach-fx is a planning tool with no capability to directly simulate the effect of structures. Thus, an incremental analysis of the number and size of structures is not feasible with Beach-fx (USACE's mandatory economic model). The structure design and numerical modeling performed is sufficient for a feasibility study. Taylor Engineering developed the current design based on accepted

methodologies specified in USACE's Coastal Engineering Manual; USACE Jacksonville District reviewed and approved of the design during review of the 2008 GRR. The design and permitting phase subsequent to approval of this study would further evaluate and refine the structure design. The structures as currently designed (and cost estimated) prove more economical than nourishment only. The incremental analysis would only improve upon the design and BCR.

We can run Beach-fx to analyze various project lengths. However, as mentioned in the report, the distribution of value by length is uniform throughout the project area; the lower total values for Reach 1-3 reflect the much shorter reach lengths compared to Reach 4-5. The FWOP damages in Reach 1-3 are greater than their proportional length of the project area, likely due to the higher background erosion rates in this area. Additionally, as mentioned above, Beach-fx is a planning tool, not a design tool. The extensive knowledge we have of the project's performance, particularly that the fill acts as a feeder and effectively nourishes 2.3 miles of beach with only 1 mile of fill placement, must be considered in conjunction with the Beach-fx results to identify a logical project design. The project mitigates for erosion caused by a federal inlet, and excluding the highest erosion area adjacent to the south jetty does not seem logical.

ASACW/HQUSACE Initial Assessment: Comment is unresolved. Policy established in the Principles and Guidelines as well as in the Planning Guidance Notebook require an incremental analysis of separable elements. Those are defined by law as having independent hydrologic effects and stand alone benefits. For storm damage reduction projects, this includes length of sand placement (berm and dune) as well as the number of groins. The Federal objective is to maximize net National Economic Development benefits subject to protecting the environment. Without this analysis, the recommended plan cannot be supported.

Although the report states that the NED plan includes the "optimized" berm and dune dimensions, there is no data presented to support this assertion. The revised report should include (in the Economics Appendix at least) summary data showing the average annual costs and benefits by reach for each of the various berm and dune alternatives that were analyzed. In addition, the report should show that a sufficient number of alternatives were analyzed in order to demonstrate that the NED plan has been properly "bracketed", ie, that there are not smaller or larger plans that would have produced higher net benefits.

This is a practice that all storm damage reduction projects are held to. For example, the recently conducted St Lucie County feasibility study included numerous alternatives by length and size that demonstrated economic justification while optimizing design. Another example is the St John's County feasibility study. Those reports can be provided as reference upon request.

With respect to Beach-fx, the model, a methodology has been developed by the USACE ERDC laboratory to attempt to account for the shoreline changes of groins. The groin

effects would have to be estimated outside Beach-fx and then modeled as a planned nourishment, with the groin effects entered as a berm width change. The value of the groins would be demonstrated by life cycle cost savings with and without the groins. Recommend a meeting with the sponsor and the appropriate ERDC personnel to work through the issue.

Local Sponsor Response: Section 3.12 includes a discussion of Incremental Justification of the Recommended Plan. As mentioned, the Economics Appendix and Chapter 3 include additional information regarding the incremental analysis of beach nourishment scenarios. Sub-Appendix A-4 includes the Incremental Analysis of Structures. Sub-Appendix A-5 includes the 2002 Design Documentation Report that provides additional information regarding the design of the structures but fell short of providing details of the incremental analysis mentioned in the document.

ASACW/HQUSACE Final Assessment: The concern remains unresolved. The information provided does not adequately address the comment nor does it address Federal Interest in the plan selected based on incremental analysis. It is noted that the information shows overall justification of the project, but it does not support the scale of the project being recommended. In the event that the recommended plan is authorized for federal participation, it is expected that this unresolved issue would need to be addressed prior to implementation.

4. Nourishment Interval.

Concern: The analysis appears to have only looked at 2 year and 4 year nourishment intervals. Nourishment intervals should be optimized to maximize net NED Benefits. Greater nourishment intervals than 4 years should be analyzed to demonstrate that it is not more efficient to do less frequent nourishments. This is considered equivalent to an incremental analysis.

Basis of concern: Reference ER 1105-2-100 Paragraph f.(4) and Paragraph 2-4.e.

Significance of concern: Significant. Could impact the recommended plan.

Action needed to resolve concern: Conduct an analysis of intervals greater than 4 years to clearly demonstrate that 4 years estimates is the NED Plan. Please note that the Future Without Project Condition comment will impact the incremental analysis.

Local Sponsor Response: As mentioned above, the analysis did not pre-determine a nourishment interval. As discussed in Appendix A, results of numerical modeling indicated structures could retain fill for 4 years, at which point the fill was completely eroded away in certain areas. The study only reports the Beach-fx results of structures with a 4-year nourishment interval, as this proved the optimum scenario. The Beach-fx model iterations included results with 2-year and 3-year nourishment intervals for scenarios with and without structures; however, the benefits and costs proved less favorable. Beach- fx is not capable of modeling structures; thus, the study had to mimic the effect of structures by reducing the planform change rate in

Beach-fx for Reaches 1–3. The rates could be reduced even further to attempt to achieve a 5-yr nourishment interval to demonstrate the additional cost effectiveness; however, the current model results provide a BCR sufficient for federal authorization, and the numerical model results indicated nourishment appeared necessary after 4 years. Future efforts such as a subsequent design phase for the structures and construction and performance monitoring of the sediment impoundment basin will strive to decrease the federal nourishment frequency and, hence, project costs. The recommended beach fill design for the nourishment-only case is based on an incremental analysis of beach fill widths that did not limit the nourishment interval.

ASACW/HQUSACE Initial Assessment: Comment is unresolved. It is unclear from the response if the concern has been addressed. It appears from the response that the criteria for a nourishment is the design berm with advanced fill rather than life cycle erosion with nourishment triggers. Follow-on discussions with subject matter experts are suggested.

Local Sponsor Response: In the main report, we added a new Table 3.2 containing additional Beach-fx results for the incremental analysis of beach nourishment scenarios and revised the Section 3.8 discussion. Section 3.5 of the Economics Appendix also includes a revised discussion of the screening process that identified the optimal plan.

ASACW/HQUSACE Final Assessment: The concern remains unresolved. The information provided does not adequately address the comment nor does it address Federal Interest in the plan selected based on incremental analysis. It is noted that the information shows overall justification of the project, but it does not support the scale of the project being recommended. In the event that the recommended plan is authorized for federal participation, it is expected that this unresolved issue would need to be addressed prior to implementation.

5. Parking and Access.

Concern: The parking and access appendix F demonstrates very limited parking beginning at Seaway Inlet Dr and south to monument R-038. According to Figures 2.2a and 2.2b of the appendix, there are only 18 parking spaces for greater than 2,560 linear feet of shoreline; note that lengths stop on figure 2.2b show the actual length is greater than that. This minimal number of parking spaces calls into question the extent of access the public has to the shoreline. At a minimum, it must be document that parking is sufficient to meet recreational demand claimed in the project benefits.

Basis of concern: Reference ER 1165-2-130 Paragraph 6.h.(2).

Significance of concern: Significant. Lengths of shoreline with insufficient parking may not warrant Federal participation.

Action needed to resolve concern: Clearly demonstrate that sufficient parking exists to meet recreation demand claimed or readjust the cost apportionment appropriately to the non-Federal sponsor.

Local Sponsor Response: The revised report will include an updated parking and access analysis.

ASACW/HQUSACE Initial Assessment: Comment will be resolved upon review of the additional information. More documentation to satisfy the minim requirements is needed. Minimum requirements must be demonstrated to support Federal cost share or those areas that do not meet requirements will be 100% non-federal cost share.

Local Sponsor Response: Appendix F contains an updated Public Access and Cost Share analysis.

ASACW/HQUSACE Final Assessment: Comment is resolved.

E COST & COST SHARING

1. Cost Share – Use of Section 111.

Concern: The cost apportionment contained in the Main Report and Appendix F adjusts the Federal cost share from 44% to 77.76% citing a Section 111 determination from 1982. Sec 111 of the Rivers and Harbors Act of 1968 is not a standing authority to adjust cost share in perpetuity. The authority allows for specific mitigation features that can be tied to Harbor Projects and has a maximum per project Federal cost of $10M as of the Water Resources Reform and Development Act (WRRDA) 2014.

Basis of concern: 33 U.S.C. 426i.

Significance of concern: Significant. The comment will affect the estimate of project cost sharing.

Action needed to resolve concern: The recommendation should not include Sec 111 cost share to the newly recommended project. Update the cost share to reflect the legal requirements.

Local Sponsor Response: St. Lucie County understands that carrying forward the prior Sec 111 determination is not appropriate for this Section 203 study; thus, the revised report will not include the Sec 111 cost share. St. Lucie County intends to pursue the Sec 111 cost share through the appropriate authority following approval of the Section 203 study.

ASACW/HQUSACE Initial Assessment: Comment will be resolved when revisions can be reviewed. Updated cost share removing the Sec 111 will satisfy the concern.

Local Sponsor Response: Appendix F contains an updated Public Access and Cost Share analysis. Costs shares documented in the main report (Table ES.1) and used in the Cost Engineering Appendix reflect the results in Appendix F.

ASACW/HQUSACE Final Assessment: Comment is resolved.

2. Cost Share for Undeveloped Public Lands.
Concern: The cost apportionment contained in the Main Report and Appendix F uses 50/50 per ER1105-2-100/ER 1165- 2-130. The concern is that, due to Section 2008(c) of WRDA 2007, ER 1105-2- 100/1165-2-130's guidance on applying a 50/50 cost share for hurricane and storm damage reduction measures for undeveloped public lands is not valid if the benefits justifying the measures are hurricane and storm damage reduction benefits and not recreation benefits and should be cost shared65/35.

Basis of concern: 33 U.S.C. 426i.

Significance of concern: Moderate. The comment will affect the estimate of project cost sharing.

Action needed to resolve concern: The cost share for undeveloped public lands should be corrected to 65/35. Update the cost share to reflect the legal requirements.

Local Sponsor Response: The revised report will apply the recommended 65/35 cost share.

ASACW/HQUSACE Initial Assessment: Comment will be resolved when revisions can be reviewed. Updated cost will satisfy the concern.

Local Sponsor Response: Appendix F contains an updated Public Access and Cost Share analysis with the revised cost share.

ASACW/HQUSACE Final Assessment: Comment is resolved.

3. Cost Share for Periodic Nourishment.
Concern: The cost apportionment contained in the Main Report and Appendix F do not appear to account for the cost share of initial placement versus periodic nourishment. Initial placement is cost shared 65/35 (where justified) but periodic nourishment is cost shared 50/50 (where justified).

Basis of concern: ER 1105-2-100/ER1165-2-130.

Significance of concern: Significant. The comment will affect the estimate of project cost sharing.

Action needed to resolve concern: For the final recommended plan, the project costs and cost apportionment should be divided into initial placement and periodic nourishment and applied appropriately. Update the cost share to reflect the legal requirements.

Local Sponsor Response: The revised report will apply the recommended 65/35 and 50/50 cost shares.

ASACW/HQUSACE Initial Assessment: Comment will be resolved when revisions can be reviewed. Updated cost will satisfy the concern.

Local Sponsor Response: Appendix F contains an updated Public Access and Cost Share analysis with the revised cost share.

ASACW/HQUSACE Final Assessment: Comment is resolved.

4. Price Level.
Concern: The report uses a cost price level of FY 2021 for the recommended plan. The appropriate cost for use is the constant dollar at current price level, which is the fiscal year of thesubmission.

Basis of concern: ER 1105-2-100 Appendix D D-3.d.(2) and Director of Civil Works Memorandum dated 25 August 2011 SUBJECT: Corps of Engineers Civil Works Cost Definitions and Applicability.

Significance of concern: Moderate.

Action needed to resolve concern: Adjust the cost estimate to the appropriate price level at the time of the submission. For example, an FY17 submission should be FY17 price level or an FY18 submission should be an FY18 price level. Note that the economic analysis must also be portrayed using the appropriate price level.

Local Sponsor Response: The comment appears contradictory to the guidance provided in ER 1165-2- 209 which states the following: "All NED/NER costs (and if applicable, benefits) must be computed at their present value at the time of the base year..." Regardless, we will adjust the costs in Table ES.1, Table 3.2, Section 3.8.5, and Table 3.6. Appendix C — Economics provides costs in both FY2017 and FY2021 price levels.

ASACW/HQUSACE Initial Assessment: Comment is unresolved. The comment is not contradictory to ER 1165-2-209. This comment is referring to price level for the cost estimate that will be recommended for authorization and will establish the Sec 902 Limit for the project. Costs and benefits are developed at current price levels and then discounted and annualized for the NED (Economic) costs. Additional information from subject matter experts can be provided upon request.

Local Sponsor Response: The revised report reflects a FY2018 price level.

ASACW/HQUSACE Final Assessment: Comment is resolved.

5. Cost sharing and items of local cooperation.
Concern: Part 3.8.4 on page 72 of the report and part 6.0 on page 110 of the report include a discussion of cost sharing and a list of items of local cooperation for the project that do not appear to comply with current law and policy. For example, both these parts

of the report include what appears to be a hybrid cost sharing percentage that attempts to combine full Federal funding of construction and nourishment costs asserted to be attributable to mitigation of damages from a Federal navigation project (based on a study in 1982 pursuant to Section 111 of the River and Harbors Act of 1968, 33 U.S.C. 426i) along with non- Federal cost sharing of additional work under Section 103 of WRDA 1986. As noted by other reviewers, the Federal cost of the project exceeds the current Federal participation limit under Section 111. Moreover, the cost sharing asserted for the cost- shared portion of work under Section 103 appears to be based upon the pre-WRDA 1999 authorization of the project, which presumably would not apply to a newly sought authorization for initial construction and future nourishment of the project. In addition, the list of items of cooperation appear to omit any mention of the bar on use by the sponsor of Federal funds for its share, or the requirement to provide its required cost share during the period of design as well as construction.

Basis of concern: ER 1105-2-100 para. 4-3(b)(2) ("The non-Federal sponsor cost sharing requirements, including their responsibilities for implementation and operation of the project must be clearly documented.").

Significance of concern: Medium.

Action needed to resolve concern: Both part 3.8.4 on part 6.0 of the report should be revised to correctly reflect the required cost sharing for the project. In addition, the list of items of local cooperation should be revised in part 6.0 to reflect current law and policy. Included below is an example of a list which comports with Corps policy and statutory cost sharing requirements, which can be used as a starting point for the District to revise to the extent needed to prepare a list applicable to the project:

a. Provide a minimum of 35 percent of initial project costs assigned to coastal and storm damage reduction, plus 100 percent of initial project costs assigned to protecting undeveloped private lands and other private shores which do not provide public benefits, and 50 percent of periodic nourishment costs assigned to coastal and storm damage reduction, plus 100 percent of periodic nourishment costs assigned to protecting undeveloped private lands and other private shores which do provide public benefits, and as further defined below:

(1) Provide, during design, 35 percent of design costs allocated to coastal and storm damage reduction in accordance with the terms of a design agreement entered into prior to commencement of design work for the project;

(2) Provide all lands, easements, rights-of-way, including suitable borrow areas, and perform or assure performance of all relocations, including utility relocations, as determined by the Federal government to be necessary for the initial construction, periodic nourishment or operation and maintenance of the project;

(3) Provide, during construction, any additional amounts necessary to make its total contribution equal to 35 percent of initial project costs assigned to coastal and storm damage reduction plus 100 percent of initial project costs assigned to protecting undeveloped private lands and other private shores which do not provide public benefits;

b. Prevent obstructions or encroachments on the project (including prescribing and enforcing regulations to prevent such obstructions or encroachments) such as any new developments on project lands, easements, and rights-of-way or the addition of facilities which might reduce the outputs produced by the project, hinder operation and maintenance of the project, or interfere with the project's proper function;

c. Inform affected interests, at least yearly, of the extent of protection afforded by the flood risk management features; participate in and comply with applicable Federal floodplain management and flood insurance programs; comply with Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12); and publicize floodplain information in the area concerned and provide this information to zoning and other regulatory agencies for their use in adopting regulations, or taking other actions, to prevent unwise future development and to ensure compatibility with protection levels provided by the flood risk management features;

d. Operate, maintain, repair, replace, and rehabilitate the completed project, or function portion of the project, at no cost to the Federal government, in a manner compatible with the project's authorized purposes and in accordance with applicable Federal and state laws and regulations and any specific directions prescribed by the Federal government;

e. For so long as the project remains authorized, ensure continued conditions of public ownership and use of the shore upon which the amount of Federal participation is based;

f. Provide and maintain necessary access roads, parking areas, and other public use facilities, open and available to all on equal terms;

g. At least twice annually and after storm events, perform surveillance of the beach to determine losses of nourishment material from the project design section and provide the results of such surveillance to the Federal government;

h. Give the Federal government a right to enter, at reasonable times and in a reasonable manner, upon property that the non-Federal sponsor owns or controls for access to the project for the purpose of completing, inspecting, operating, maintaining, repairing, rehabilitating, or replacing the project;

i. Hold and save the United States free from all damages arising from the initial construction, periodic nourishment, operation, maintenance, repair, replacement, and rehabilitation of the project, except for damages due to the fault or negligence of the United States or its contractors;

j. Keep, and maintain books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to the project, for a minimum of 3 years after completion of the accounting for which such books, records, documents, and other evidence are required, to the extent and in such detail as will properly reflect total cost of the project, and in accordance with the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and local governments at 32 CFR, Section 33.20;

k. Perform, or ensure performance of, any investigations for hazardous substances that are determined necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC 9601-9675, that may exist in, on, or under lands, easements, or rights-of-way that the Federal government determines

to be necessary for the initial construction, periodic nourishment, operation and maintenance of the project;
l. Assume, as between the Federal government and the non-Federal sponsor, complete financial responsibility for all necessary cleanup and response costs of any hazardous substances regulated under CERCLA that are located in, on, or under lands, easements, or rights-of-way required for the initial construction, periodic nourishment, or operation and maintenance of the project;
m. Agree, as between the Federal government and the non-Federal sponsor, that the non-Federal sponsor shall be considered the operator of the project for the purpose of CERCLA liability, and, to the maximum extent practicable, operate, maintain, repair, replace, and rehabilitate the project in a manner that will not cause liability to arise under CERCLA;
n. Comply with Section 221 of Public Law 91-611, Flood Control Act of 1970, as amended, (42 U.S.C. 1962d-5b) and Section 101(e) of the WRDA 86, Public Law 99-662, as amended, (33 U.S.C. 2211(e)) which provide that the Secretary of the Army shall not commence the construction of any water resources project or separable element thereof, until the non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element;
o. Comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended, (42 U.S.C. 4601-4655) and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights-of-way necessary for construction, operation, and maintenance of the project including those necessary for relocations, the borrowing of material, or the disposal of dredged or excavated material; and inform all affected persons of applicable benefits, policies, and procedures in connection with said act;
p. Comply with all applicable Federal and state laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a et seq.), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 et seq.), and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)); and
q. Not use funds from other Federal programs, including any non-Federal contribution required as a matching share therefore, to meet any of the non-Federal sponsor's obligations for the project unless the Federal agency providing the funds verifies in writing that such funds are authorized to be used to carry out the project.

Local Sponsor Response: The revised report will apply the cost shares discussed under comments 1-3 above and will include the recommended edits to part 6.0.

ASACW/HQUSACE Initial Assessment: Comment is resolved.

696

Local Sponsor Response: See Chapter 6.

ASACW/HQUSACE Final Assessment: Comment is resolved.

1910 (36 Stat. 633), and the Act of July 3, 1930 (46 Stat. 919), and lying upstream of a line commencing at point N627942.09, E879709.18 thence running southwesterly about 125 feet to a point N627832.03, E879649.91 is no longer authorized beginning on the date of enactment of this Act.

SEC. 1307. DELAWARE RIVER NAVIGATION PROJECT.

Section 1131(3) of the Water Resources Development Act of 1986 (100 Stat. 4246) is amended by striking "ten feet" and inserting "35 feet".

SEC. 1308. COMPREHENSIVE EVERGLADES RESTORATION PLAN, CENTRAL AND SOUTHERN FLORIDA, EVERGLADES AGRICULTURAL AREA, FLORIDA.

(a) AUTHORIZATION.—Subject to subsection (b), the Secretary is authorized to carry out the project for ecosystem restoration, Central and Southern Florida, Everglades Agricultural Area, Florida, in accordance with section 601 of the Water Resources Development Act of 2000 (114 Stat. 2680), as recommended in the addendum to the Central Everglades Planning Project Post Authorization Change Report, Feasibility Study and Draft Environmental Impact Statement prepared by the South Florida Water Management District and dated May 2018, with such modifications as the Secretary considers appropriate.

(b) REQUIREMENT.—

(1) IN GENERAL.—The project authorized by subsection (a) may be constructed only after the Secretary prepares a report that addresses the concerns, recommendations, and conditions identified by the Secretary in the review assessment titled "Review Assessment of South Florida Water Management District's Central Everglades Planning Project, Section 203 Post Authorization Change Report, Integrated Feasibility Study and DRAFT Environmental Impact Statement (March 2018, Amended May 2018)" and dated May 2018.

(2) EXPEDITED COMPLETION.—The Secretary shall expedite the completion of the report under paragraph (1) and shall complete such report not later than 90 days after the date of enactment of this section.

(c) CONSULTATION.—In reviewing the report identified in subsection (a), and completing the report identified in subsection (b), the Secretary shall consult with the South Florida Water Management District on any project modifications.

(d) CONSIDERATION.—Nothing in this section shall be construed to delay the design, construction, and implementation of components and features of the project for ecosystem restoration, Central Everglades, authorized by section 1401(4) of the Water Resources Development Act of 2016 (130 Stat. 1713), that are not directly affected by the project authorized by subsection (a).

SEC. 1309. KISSIMMEE RIVER RESTORATION, FLORIDA.

The Secretary may credit work performed or to be performed by the non-Federal sponsor of the project for ecosystem restoration, Kissimmee River, Florida, authorized by section 101(8) of the Water Resources Development Act of 1992 (106 Stat. 4802), as an in-kind contribution under section 221(a)(4) of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b(a)(4)), in accordance with the report of the Director of Civil Works relating to the Central and Southern Florida Project, Kissimmee River Restoration Project, dated April

Milk River
IRRIGATION PROJECT
Joint Board of Control
1475 1st Avenue - Havre MT, 59501 Phone: 406-945-3383
Email: jenn@mrjboc.com

St. Mary Rehabilitation Working Group
PO Box 170 Havre, Montana 59501
phone (406) 265-9226 fax (406) 265-560

May 1, 2020

Honorable John Barrasso
Chairman
Energy and Public Works Committee
410 Dirksen Senate Office Building
Washington, DC 20510

Honorable Thomas Carper
Ranking Member
Energy and Public Works Committee
456 Dirksen Senate Office Building
Washington DC, 20510

Dear Chairman Barrasso:

On behalf of the St. Mary Rehabilitation Working Group (SMRWG) and the Milk River Joint Board, we would like to thank you for your leadership and giving us the opportunity to share our views on the America's Water Infrastructure Act of 2020 (AWIA).

As Congress begins to discuss AWIA and other pieces of legislation that addresses our nation's aging infrastructure, we ask that Bureau of Reclamation (Reclamation) projects be included. Congress saw the importance of including a Reclamation title in the 2018 AWIA, which passed the Senate 99-1. As drafted, AWIA 2020 includes several sections that have limited Reclamation provisions. We ask that this effort is expanded to include a full Reclamation title.

The Milk River Project is critical to the economy of Montana and the perfect example of a project that should be included in a Reclamation title. It irrigates over 140,000 acres of agricultural land and provides municipal water to thousands of residents in the communities such as Havre, Chinook and Harlem. The project's St. Mary Diversion Dam has surpassed its expected design life and must be replaced with a new structure that integrates fish screens to ensure that bull trout, an endangered species, will not be entrained. The estimated replacement cost of the diversion dam is around $47 million, of which irrigators will have to provide a 73.96% cost share.

On March 25, 2020, the Alliance for the Wild Rockies filed a lawsuit against the Department of Interior for bull trout facilities in the St. Mary Diversion Dam & Canal and the Milk River Irrigation Project, adding an additional layer of urgency for the need to begin work on the project.

Because of the pending lawsuit and devastating effects project failure would have on international and tribal treaties, national food supply, and the surrounding ecosystem, it is imperative action be taken to address this issue.

Thank you for considering the inclusion of a Reclamation title in AWIA 2020. Please contact us should you have any questions.

Sincerely,

Marko Manoukian, Co-Chair
St. Mary Rehabilitation Working Group
406-265-9226
pcextn@itstriangle.com

Wade I. Jones, President
Milk River Irrigation Project Joint Board of Control

May 1, 2020

Via email to QFR@epw.senate.gov

The Honorable John Barrasso
Chairman
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Thomas R. Carper
Ranking Member
Senate Committee on Environment and Public Works
456 Dirksen Senate Office Building
Washington, DC 20510

Re: America's Water Infrastructure Act of 2020: Proposed Addition for Flood Risk Management in Central California

Dear Chairman Barrasso and Ranking Member Carper:

Thank you for your leadership and for the opportunity to comment on your draft legislation, *America's Water Infrastructure Act of 2020*. I am submitting comments on behalf of Reclamation District 1500, Sutter Mutual Water Company, and the Basin Irrigation Drainage Authority. Reclamation District 1500 is the largest Reclamation District in California, and provides drainage and reduces flood risk for over 67,000 acres of highly productive farmland and the Town of Robbins in Sutter County, California. Sutter Mutual Water Company supplies irrigation water for the area. Basin Irrigation Drainage Authority is a Joint Powers Authority for the Reclamation District and Mutual Water Company.

We respectfully request that the draft legislation update an existing authorization to provide for an Army Corps of Engineers study of the feasibility of a flood risk management project for southern Sutter County between the Sacramento River and the Sutter Bypass. As you are aware, the Sacramento River and surrounding area presents one of the most significant flood risk challenges in the nation.

Currently, the Karnak Pumping Plant provides drainage and flood protection for the area, which includes over 67,000 acres of farmland, the Town of Robbins, and a primary emergency evacuation route serving 150,000 residents in the region of Yuba City/Marysville, California. The pumping facility was originally constructed in 1914 and last upgraded in 1952. The current pumping facility lacks any backup electricity source, in a region subject to increasingly frequent "public safety power shutoffs" due to elevated wildfire risk. In addition, replacement parts for the antiquated pumps are no longer commercially available and must be custom machined. This presents high risk of an extended, unplanned outage in flood protection and drainage.

An outage during California's rainy season could flood up to 14 miles of State Route 113, the Town of Robbins, and more than 90 percent of RD 1500's service area.
A feasibility study would help avoid this impending disaster by designing a new pump station and flood risk management infrastructure that would include modern, energy-efficient pumps and backup power. When completed, the project would result in very significant energy savings and increased resiliency.

An Army Corps flood risk management study for southern Sutter County between the Sacramento River and Sutter Bypass would be a continuation of flood risk management and related water resources studies in the Sacramento River Basin authorized in the Flood Control Act of 1962, Public Law No. 87-874, Section 209, 76 Stat. 1180, 1196 (1962). A portion of that authorization reads as follows:

> The Secretary of the Army is hereby authorized and directed to cause surveys for flood control and allied purposes…to be made under the direction of the Chief of Engineers, in drainage areas of the United States…, which include the following named localities: Sacramento River Basin and streams in northern California, draining into the Pacific Ocean for the purpose of developing, where feasible, multi-purpose water resource projects, particularly those which would be eligible under the provision of title III of Public Law 85-500.

This authority has been used for feasibility studies in areas surrounding and across the Sacramento River and Sutter Bypass from the proposed area. It is now time for the Federal government to partner with our local agencies to increase resilience in this important part of the Sacramento River Basin.

Sincerely,

Brad Mattson
General Manager
Reclamation District 1500
Sutter Mutual Water Company
Basin Irrigation Drainage Authority
brad@sutterbasinwater.com
Phone: 530-624-5650

cc: Senator Diane Feinstein
Senator Kamala Harris
Representative John Garamendi

Information-Gathering Process on Draft Legislation
America's Water Infrastructure Act of 2020
Comments on EPW Discussion Draft
May 1, 2020

For additional information:

Southwestern Power Administration (SWPA) Comments:
Barbara Smith
1000 Independence Ave, SW
Washington, DC
barbara.smith@swpa.gov
202-586-3192

Western Area Power Administration (WAPA) Comments:
Dionne Thompson
1000 Independence Ave., SW 8G-037
Washington, DC
dthompson@wapa.gov
202-586-5581

Of Potential Concern to Federal Hydropower:
Sec. 1052. Reviewing hydropower at Corps of Engineers facilities. **WAPA/SWPA**
"evaluate operational changes at the applicable project to facilitate production of non-federal hydropower, consistent with authorized project purposes."

The concern is that a non-fed project reduces the output (energy and/or capacity) of the Federal power production and also gets to use the water storage for free. Would expect any "headwater benefits" need to be factored into the evaluation and the non-fed should have to pay for its share of the O&M and capital costs of its use of the storage. Also, the PMA's should be consulted on evaluating the impact to any proposed operational changes as each has a unique marketing plan and long-term commitments to provide power and energy.

Sec. 1056 **SWPA**
To ensure this doesn't apply to reallocations, it would be best if it stated "...for existing water supply storage in a hydropower lake within the Arkansas River Basin."
Recommendation: Insert "existing" as highlighted above.

Sec. 1204(b)(5) **SWPA**
The provision negatively impacts the Hydropower purpose at Tenkiller, as well as the Water Supply purpose, the two conservation pool storage users (that *pay* for the use of that storage):
1) Reallocating storage from the inactive pool to usable storage for a specific project purpose equates to the same impact as a reallocation of the conservation pool, as the inactive pool is designed for sedimentation and hydropower head (was never intended to be utilized), essentially shoring up the conservation pool storage that is fully allocated to hydropower and water supply.

2) There is no provision for compensation to the impacted project purposes, that will continue to have to pay for their storage while being negatively impacted.
3) There is no provision for the Corps to perform a study to assess the impacts, which would allow the opportunity for public review and comment.
Recommendation: Remove provision.
If that is not possible:
Insert provision for compensation to the Hydropower purpose for negative impacts, as determined by SWPA, via financial credits towards repayment.
Revise to the Corps conducting a study of the proposed reallocation and its impact to the project purposes.

Sec. 1510 Surplus water contracts and water storage agreements. **WAPA**
This section makes permanent the current prohibition for the Corps to charge fees for surplus water under a contract entered into pursuant to section 6 of the Flood Control Act of 1944, if the contract is for surplus water stored in the Upper Missouri Mainstem Reservoirs. WAPA commented previously that any lost water not going through the turbines should be financially credited to existing COE hydropower costs.

Sec. 1511 **SWPA**
Broadens provisions for reduced water supply storage pricing (via reallocations) for low income communities by:
1) increasing the yield amount allowed from 2 mgd to 3 mgd and
2) defining low income as a community of less than 100K (rather than less than 20K) but with per capita income of less than 50% of counties in the U.S. (rather than 2/3).

The provision is an effort to provide discounted pricing for water storage which, if approved, would negatively impact federal hydropower. While the provision includes the Benefits Foregone as one of the pricing options (and the price is based on a "maximum of" the options), hydropower is under-determined and under-valued in the Corps' Benefits Foregone assessment.
Recommendation: Recommend the provision exclude reservoirs with federal hydropower. If that is not possible, provide that the relevant PMA determine the Benefits Foregone for hydropower.

Of Potential Concern to Federal Hydropower:

Sec. 1203(6) **SWPA**
Apparently a request through the process established by WRRDA 2014 has been made for the Corps to study a water supply storage reallocation at Whitney under the Water Supply Act of 1958. This is new to SWPA, as it has not been included on the proposed study lists in 2015-2019 in the Corps' Report to Congress as provided in WRRDA 2014.
https://www.usace.army.mil/Missions/Civil-Works/Project-Planning/Legislative-Links/wrrda2014/wrrda2014_proposals/

Sec. 1204(b)(38) **SWPA**
The "change in lake level management" could be of concern to the hydropower purpose. SWPA understands well the sensitivities to flood risk management in the region given the unprecedented flooding in 2019, and plans to be actively involved in any studies that could impact hydropower operations in the region.

April 30, 2020

The Honorable John Barrasso
Chairman
Committee on Environment and Public Works
U.S. Senate
Washington, DC 20510

The Honorable Thomas R. Carper
Ranking Member
Committee on Environment and Public Works
U.S. Senate
Washington, DC 20510

The Honorable Shelley Moore Capito
Chairman
Subcommittee on Transportation and Infrastructure
U.S. Senate
Washington, DC 20510

The Honorable Ben Cardin
Ranking Member
Subcommittee on Transportation and Infrastructure
U.S. Senate
Washington, DC 20510

Via Electronic Mail

Re: America's Water Infrastructure Act of 2020

Dear Chairmen Barrasso and Capito and Ranking Members Carper and Cardin:

I write on behalf of the fertilizer industry to thank you for your leadership on critical water infrastructure issues and for the opportunity to comment on the draft water resources legislation titled, *America's Water Infrastructure Act of 2020 (AWIA).*

The Fertilizer Institute (TFI) represents companies that are engaged in all aspects of the fertilizer supply chain in the United States. The fertilizer industry contributes more than $130 Billion annually to the U.S. economy by distributing vital nutrients that nourish crops to meet the global demand for food, fiber, and fuel. Half of crop yields are attributable to fertilizer, hence its importance to farmers and food production.

Waterways are essential for getting plant nutrients to farmers in a timely and efficient manner. In fact, one-third of all fertilizer moves on the inland waterways system. Following harvest, waterways and ports are also vital to move agricultural goods to markets, including export which comprises 20 percent[1] of U.S. farm income.

Our nation's locks and dams are in urgent need of maintenance and modernization. In recent years, there has been a 700 percent increase in unscheduled stoppages for repairs. TFI and its members appreciate your efforts to advance strong inland waterways legislation this year and welcome new federal authorizations that will maintain and improve the navigability of U.S. locks, dams and ports. In addition to these provisions, TFI urges your consideration of the following modifications to strengthen this critical legislation.

[1] United States Department of Agriculture Economic Research Service

Capitol View
425 Third Street, S.W., Suite 950
Washington, DC 20024

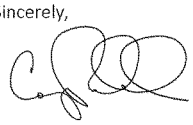
202.962.0490
202.962.0577 fax
www.tfi.org

- Further modify the cost-share for ongoing and future construction and major rehabilitation of capital improvement projects on the inland waterways system. Such a modification is needed to: (1) conform inland waterways construction cost sharing with most coastal port-deepening projects, and (2) facilitate the future efficient construction of important inland navigation projects. AWIA includes a proposed modification of the current cost-share, from the 50% General Revenues / 50% Inland Waterways Trust Fund (IWTF) to 65% General Revenues / 35% IWTF. While this is a move in the right direction, TFI strongly encourages you to consider further modifying this position to achieve the goal of a 75% General Revenues / 25% IWTF cost-share. The 75%/25% cost-share will ensure that the Army Corps of Engineers can finish priority projects faster while also reducing final project cost. Given the dilapidated state of our lock and dam infrastructure, the cost-share change is critical to keeping our nation's navigable waterways open for business and globally competitive while increasing job opportunities in this period of economic recovery.

- Prioritize funding the $8.75 billion backlog of 25 critical inland waterways projects, including the Navigation and Environmental Sustainability Program (NESP). NESP is already congressionally authorized and includes construction of seven top-priority 1,200-foot locks (LaGrange, Peoria, Upper Mississippi River Locks 20, 21, 22, 24 & 25) at the most congested locations on the Upper Mississippi River System (representing $2.8 billion of the $8.75 billion backlog).

Thank you again for your work to strengthen our nation's water infrastructure. Should you have any questions, you can reach me at crosenbusch@tfi.org or 202-962-0490 or Justin Louchheim of my staff at jlouchheim@tfi.org or 202-805-2700.

Sincerely,



Corey Rosenbusch
President and CEO
The Fertilizer Institute

Jimmy Hague
Senior Water
Policy Advisor

4245 Fairfax Drive
Suite 100
Arlington, VA 22203

Tel (703) 841-2097
james.hague@tnc.org
www.tnc.org

May 1, 2020

The Honorable John Barrasso
Chairman
Committee on Environment and Public Works
U.S. Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Tom Carper
Ranking Member
Committee on Environment and Public Works
U.S. Senate
456 Dirksen Senate Office Building
Washington, D.C. 20510

Chairman Barrasso and Ranking Member Carper:

The Nature Conservancy (TNC) applauds your commitment to producing bipartisan water resources legislation every two years and the inclusive process you have conducted to develop the draft legislation titled the America's Water Infrastructure Act of 2020 and the Drinking Water Infrastructure Act of 2020. The projects and policies included in water resources legislation are vital to the economy, the environment, and the public safety of communities across the country.

We also appreciate your continued support for nature-based solutions to lessen flood impacts, restore ecosystems, and support the economy. Nature—such as reefs that break waves and wetlands that absorb floodwaters and buffer shorelines—often provides our most effective line of defense against storms and extreme rain events while also delivering a host of additional environmental and community benefits. Used alone or in combination with traditional grey infrastructure, natural infrastructure solutions can cost less than and outperform hard infrastructure solutions. We encourage you to work with stakeholders on additional ways to promote consideration and use of natural infrastructure at the U.S. Army Corps of Engineers (Corps).

We are writing to share with you our comments on the discussion drafts for the America's Water Infrastructure Act of 2020 and the Drinking Water Infrastructure Act of 2020, including recommended changes to the bill text. By incorporating the attached recommendations, your legislation can build more resilient and multi-benefit water resources projects.

We want to highlight our support and thank you for several provisions in the discussion draft for the America's Water Infrastructure Act of 2020 that respond to recommendations TNC offered early in your development of the legislation. They are:

- Section 1098, which clarifies that natural infrastructure is an eligible project for the small flood control continuing authorities program,
- Section 1042(b), which enables the non-federal project sponsor to get credit towards its cost share for the full value of goods and materials donated to a project,
- Section 1049, which directs the Corps to complete implementation guidance for previous legislative changes to its emergency flood response program, and
- Section 1044, which gives the non-federal project sponsor additional information about its long-term obligation to operations and maintenance costs.

We urge you to retain these provisions, and in some cases strengthen them per our attached recommendations, in the final legislation.

We have also identified in our comments provisions where we have concerns and provisions we would oppose if they were included as written in the America's Water Infrastructure Act of 2020. Where possible, we have offered suggestions to address our concerns with the discussion draft. We would welcome a dialogue with you on how to resolve those sections.

The attached comments reflect our initial analysis of your discussion drafts. As we continue to review the legislation and refine our feedback, we look forward to working with you and members of the Senate to pass critical water resources legislation into law this year.

Sincerely,

James M Hague

James M. Hague

Attachment: TNC Comments on the America's Water Infrastructure Act of 2020

TNC Comments on the America's Water Infrastructure Act of 2020

Sec. 1001. Upper and Lower Missouri River comprehensive flood protection studies.
TNC appreciates the attention your discussion draft gives to critical flooding issues on the Missouri River and thanks you for the emphasis on the Corps considering "nonstructural flood control and floodplain management strategies, including the consideration of natural features or nature-based features." In collaboration with local levee districts, TNC is pursuing multiple setback levees on the Missouri River that provide an equal or greater level of flood protection while producing additional benefits for nature. Given the potential for setback levees to address flood risk on the Missouri River, we urge you to modify Section 1001(b)(1) by adding at the end, "and the setting back of levees and removing structures from areas of recurring flood vulnerability where advantageous to reduce system flood risk and damages, and where locally acceptable."

Sec. 1012. Thin layer placement pilot program.
TNC appreciates Congress' continued support for the beneficial use of dredged material by the Corps of Engineers and the pilot program to promote innovation at the Corps. We support this section to increase the number of pilot projects from 20 to 40 and identify at least 10 thin layer placement projects. TNC has successfully used thin layer placement, for example, at the Blackwater Wildlife Refuge in Maryland to adapt to rising sea levels.

Sec.1018.Shore damage prevention or mitigation
TNC understands Section 1018 to allow a non-federal interest to meet its mitigation obligation in whole or in part using funds provided by the U.S. Fish and Wildlife Service. Non-federal interests should not be able to use federal taxpayer funds to meet their mitigation responsibilities and as such TNC opposes inclusion of Section 1018.

Sec. 1031. Dam remediation for ecosystem restoration.
TNC supports Section 1031 because dam remediation proposed by this provision would enable a broader range of environmental flow releases from the dam while sustaining other authorized purposes.

Sec. 1037. Interagency task force on small dams and fish passages.
TNC supports inclusion of Section 1037 because it provides an important venue to address issues of hydrologic connectivity in the United States. However, we recommend several changes to the section to provide clarity on the task force's scope and expand its impact. First, we recommend you replace the undefined term "small dam" with "low-head dam," which has a definition in existing regulations, everywhere it appears. We recommend you add the chief of the U.S. Forest Service (USFS) to list of task force members because many low-head dams are on USFS property. We also recommend adding the opportunity for public review and comment before the task force delivers its report to Congress. Lastly, we note that there are no funds authorized for the task force or preparation of the study. In lieu of a specific authorization of appropriations for Section 1037, we urge you to clarify that funds authorized by Section 1073 can be used for the operations of the task force and development of its report to Congress.

Sec. 1041 and Sec. 1401. Brandon Road study.
TNC supports the authorization of construction at Brandon Road and also urges Congress to use the project to advance the broader goal of preventing the passage of all aquatic invasive species (AIS) in both directions between the Mississippi River and Great Lakes basins while minimizing the

impact to commercial navigation. The Brandon Road Chief's report envisions using the engineered channel at Brandon Road to test new AIS control measures. TNC urges Congress to emphasize the importance of testing new control measures in Section 1041 and consider giving the Corps authority to implement new control measures, with the consent of the non-federal sponsor, once they have been proven effective. While technologies implemented at Brandon Road can only stop AIS from the Mississippi River basin, once proven, they can be used in other locations within the Chicago Area Waterways System to prevent AIS from the Great Lakes reaching the Mississippi River basin too.

Sec. 1042. Credit or reimbursement.
TNC supports the changes made by Section 1042(b). This provision directs the Corps to credit the value of donated materials when calculating the non-federal cost share, which will make it easier for non-federal entities to contribute resources to Corps projects.

Sec. 1044. Project partnership agreement.
TNC supports the change made in Section 1044 to give non-federal sponsors of Corps projects a better understanding of their operations and maintenance responsibilities in the project partnership agreements. However, non-federal sponsors for many types of Corps projects still must assume liability for operations and maintenance in perpetuity. We remain concerned this is an obstacle for non-federal sponsors, including nonprofits like TNC, and may impede many potential Corps projects. We hope we can continue to work with you on solutions to give non-federal sponsors financial certainty in the project partnership agreements.

Sec. 1049. Implementation guidance for post-flood improvements.
TNC supports this section that directs the Corps to complete implementation guidance for Section 1176 of the Water Infrastructure Improvements for the Nation Act, which deals with changes to Section 5 of the Flood Control Act of 1941 (commonly referred to as PL 84-99 or the Emergency Readiness and Response program). However, we note that the Corps also has not issued implementation guidance for all the changes made to PL 84-99 by the Water Resources Reform and Development Act of 2014. Specifically, the Corps needs to complete implementation guidance for Section 3029(a)(1) of WRRDA 2014. We request that you amend Section 1049 to direct the Corps to complete this implementation guidance as well.

Sec. 1052. Reviewing hydropower at Corps of Engineers facilities.
TNC is concerned about the new authority proposed in Section 1052 and requests more clarity on how the evaluations proposed in the inserted subsection (c)(2) could lead to the operational changes described in inserted subsection (c)(3). The process of updating water control manuals is underfunded and behind schedule. When the Corps updates water control manuals, it should explore maximizing a range of project benefits, while continuing to meet the project's authorized purposes, rather than benefiting hydropower production alone. Should your legislation retain Section 1052, we recommend including consideration of other operational changes, such as changes to benefit environmental flows, and authorizing appropriations for updating water control manuals.

Sec. 1057. Support for mitigation efforts for small dams in National Heritage Corridors.
TNC is concerned that Section 1057 shifts the mitigation responsibility of a non-federal hydropower project to the federal taxpayer and opposes inclusion of this section.

Sec. 1074 and Sec. 1308, related to the Comprehensive Everglades Restoration Plan.

TNC supports provisions in Sections 1074 and 1308 to bolster the Comprehensive Everglades Restoration Plan (CERP). We also urge you to include an additional provision to ensure success of CERP and maintain the strong coalition supporting it. One of the key principles of CERP is that careful consideration is given to protecting water supplies for people and nature as restoration occurs. This concept was memorialized in CERP as the Savings Clause. The Saving Clause addresses water supply protection for agricultural and urban interests, the Seminole and Miccosukee Tribes of Florida, Everglades National Park and water supply for fish and wildlife. The Corps has consistently applied the Savings Clause requirements to CERP projects. However, the Corps is now in the process of updating Lake Okeechobee operations and has determined the Savings Clause is not applicable to Lake Okeechobee operations, even though lake operations are a critical component of CERP implementation. Key CERP projects cannot function effectively without being linked to lake operations, including projects that are currently under construction and are being included in the Lake Okeechobee operations update. Therefore, we urge you to amend Section 1106 of the America's Water Infrastructure Act of 2018 (132 Stat. 3773) to read as follows.

> **Sec. 1106. Lake Okeechobee Regulation Schedule Review.**
> The Secretary shall expedite completion of the Lake Okeechobee regulation schedule to coincide with the completion of the Herbert Hoover Dike project, and ~~may consider~~ shall incorporate all relevant aspects of the Comprehensive Everglades Restoration Plan described in section 601 of the Water Resources Development Act of 2000 (114 Stat. 2680), including the provisions of section 601(h)(5)."

Sec. 1089. Report on benefits calculation for flood control structures.
TNC recommends expanding the scope of the study required by Section 1089 to include both structural and nonstructural flood risk management projects, including the use of natural features or nature-based features. Natural infrastructure is an effective and cost-effective solution to flood risk management challenges and should be evaluated for its benefits to flood insurance premiums. We also urge you to require the Corps to make the report public after it is completed.

Sec. 1098. Small flood control projects.
TNC supports this section that makes natural and nature-based features eligible for funding under the small flood control continuing authorities program. Natural infrastructure, alone or in combination with grey infrastructure, can provide effective and cost-effective flood risk reduction solutions while also providing ecosystem, recreational and other benefits.

Sec. 1401. Project authorizations.
TNC supports construction authorization for the St. Louis Riverfront—Meramec River Basin project. TNC is supporting the Missouri Department of Natural Resources' efforts to restore and maintain the ecological importance of the Meramec River and its tributaries and benefit water quality, the economy, and recreation through this project.

Sec. 1506. GAO study on Federal dams with reservoirs.
TNC supports Section 1506 and requests that you broaden the scope of the GAO report to produce a list of all federal dams that meet the requirements of paragraphs (1)(A) and (1)(B). To expedite reporting to Congress, Section 1506 can retain the 180-day deadline to produce a list of "obsolete" federal dams with reservoirs and require a list of "obsolete" federal dams without reservoirs separately.

Sec. 1604. Invasive species mitigation and reduction.
TNC supports Section 1604 which addresses a variety of threats posed by invasive species. In the inserted subsection (g)(2)(B), we recommend adding "non-native phragmites," which are a significant threat in the Platte River Basin, to the list of species to target. Also, in the inserted subsection (g)(3), we recommend replacing "contribute to drought conditions" with "adversely impact water quantity or water quality."

Sec. 1607. Asian carp prevention and control pilot program.
TNC recognizes the grave threat Asian carp pose to local fisheries. Many other invasive species also pose risks to ecosystems and local economies. For example, 29 invasive species live in the Great Lakes and threaten to move into the Mississippi River basin, and 10 invasive species, including four species of Asian carp, live in the Mississippi River and threaten the Great Lakes. As part of the pilot program in Section 1607, TNC recommends expanding the focus of the projects selected to test innovative technologies, methods, and measures that combat a wide array of aquatic invasive species simultaneously. In addition, we recommend you direct the Secretary to take advantage of innovative technologies, methods, and measures that have already been identified by adding the following language after paragraph (b)(3):

> (4) CONSIDERATION.—In selecting projects to carry out under the pilot program, the Secretary shall consider a range of options and technologies for new and innovative barrier technologies and monitoring to improve the efficacy of aquatic invasive species control measures, including technologies and controls identified in the
>
> > (A) Document titled Inventory of Available Controls for Aquatic Nuisance Species of Concern – Chicago Area Waterway System dated April 2012,
> >
> > (B) State of Michigan's Great Lakes Invasive Carp Challenge, and
> >
> > (C) USFWS's Sea Lamprey Control Program.

Titles II and III, and the Drinking Water Infrastructure Act of 2020
The Nature Conservancy supports and applauds provisions in Title II and Title III and in the Drinking Water Infrastructure Act of 2020 to invest in resilience of wastewater and drinking water systems recognizing that these systems are increasingly stressed due to extreme weather and climate change (Section 2001, Sections 6 and 9). We particularly applaud the specific enabling of natural and green infrastructure investments as a means to enhance resilience of wastewater systems. We also applaud the focus on water conservation and watershed protection.

We also support the expanded funding for both the clean and drinking water State Revolving Loan Funds (SRFs) (Section 2013 and Section 4), WIFIA (Section 2014) and associated grant programs. (Sections 2010, 2016, Section 6, 9 and 14). Clearly there is a national need to invest in modernizing and enhancing water infrastructure. In addition, we applaud the grant program for sewer overflows and stormwater reuse with a recognition of the benefit of green infrastructure to achieve the goals of this program. (Sections 2007)

In addition, TNC supports the following provisions:

- Technical assistance support for small and low to moderate-income communities as this continues to be a major challenge slowing progress on improving water infrastructure. (Section 2002 and Section 3)
- The grant program for low to moderate-income households for individual household decentralized wastewater systems to address this identified need and associate goal of improving water quality. (Section 2010)
- The coastal vulnerability study of water infrastructure to be able to fully understand the threat posed by sea level rise and coastal storms. (Section 3004)
- The Puget Sound coordinated recovery program to help coordinate and advance restoration and protection of Puget Sound. (Section 3009)

The Honorable John Barrasso
Chairman
Committee on Environment & Public Works
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Thomas Carper
Ranking Member
Committee on Environment & Public Works
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

April 28, 2020

Dear Chairman Barrasso and Ranking Member Carper:

The Theodore Roosevelt Conservation Partnership is a national coalition of 60 hunting, angling, conservation, and outdoor industry organizations that seeks to ensure all Americans have access to quality places to hunt and fish. We aim to unite and amplify the voices of America's more-than 40 million sportsmen and women whose activities help sustain the $427 billion outdoor recreation economy.

We thank you for your efforts to ensure Water Resources Development Act legislation maintains its two-year authorization cycle and we appreciate the opportunity to submit comments on the Senate's recently released Water Resources Development Act - America's Water Infrastructure Act of 2020 (AWIA 2020). We submit the following comments.

TRCP supports **Sections 1074, 1093, and 1308** and the collective restoration benefits that they would provide to the Everglades and the Great Lakes. Section 1074 is a critical amendment to the Comprehensive Everglades Restoration Program (CERP) that allows delegation of project design and construction of CERP projects to non-federal sponsors. This will ensure completion of these projects through partnerships between the Corps and non-federal sponsors. TRCP also support Section 1093, which will help mitigate and eliminate harmful algal blooms in the Lake Okeechobee system, as well as in the Great Lakes. Algal outbreaks have had a profoundly negative impact on wildlife, ecosystems, and the communities that rely upon them, and this provision is necessary to help study and reduce the impact of algal bloom events. Additionally, TRCP is supportive of Section 1308, which would protect all CERP projects from deauthorized until 2030, ensuring that the strategic goals of this comprehensive plan can be fully realized without interruption. CERP, a strategic partnership to restore the Everglades between federal, state, and local interests is comprised of numerous, interconnected projects and delay of one project's delivery will imperil the Everglades' ongoing restoration initiatives. These three provisions are critical to the Everglades' continued recovery and resiliency.

We appreciate the committee's inclusion of **Section 1098**, which would amend Section 205 of the Flood Control Act of 1948 to include natural or nature-based projects. However, too many barriers still exist that prevent non-federal sponsors from using nature-based solutions. Natural infrastructure helps communities meet their infrastructure needs and provides substantial co-benefits such as improved fish and wildlife habitat, enhanced recreational opportunities, and improved water quality. Congress should incentivize the use of natural infrastructure through providing consistency in cost-sharing requirements. The non-federal cost share for nonstructural flood projects is currently 35% of total project costs, including the costs of all lands, easements, rights of way, and disposal sites (LERRDs). However, the current non-federal cost share for natural infrastructure projects can be as high as 50%

of total project costs since the Corps often considers natural infrastructure a structural project. This means the non-federal sponsor must pay 35% of project costs plus the cost of LERRDs, up to a combined maximum of 50% of project costs. Even if non-federal sponsors want to utilize natural infrastructure approaches, the additional costs disincentivize the use of natural infrastructure. Congress should clarify that natural infrastructure projects are subject to the same cost share requirements as nonstructural projects. This would be consistent with current law, Army Corps practice, and is widely supported by the conservation, sportsmen, and environmental community. 33 U.S.C. § 701n(a)(4) defines "nonstructural alternatives" for the purpose of the PL 84-99 program to include "efforts to restore or protect natural resources, including streams, rivers, floodplains, wetlands, or coasts, if those efforts will reduce flood risk."

TRCP supports **Section 1099**, a comprehensive study of the Mississippi River from the Old River Control Structure to the Gulf of Mexico. A comprehensive look this portion of the Mississippi River will help communities better respond to hurricanes, storms, and flooding events, and we appreciate the inclusion of the consideration natural and nature-based features as part of the study. We believe that natural infrastructure approaches could meet many of this region's infrastructure needs.

Invasive species have had an outsized impact on ecosystems across the country, negatively impacting native fish, wildlife, and plants, and threatening entire segments of the economy, from outdoor recreation to shipping and infrastructure projects. TRCP strongly supports **Subtitle F** in the discussion draft. The inclusion of funding for watercraft inspection and decontamination station is particularly useful for the nation's anglers, as will the stated emphasis on, and funding for, addressing the Asian Carp invasion throughout the Mississippi River basin.

We thank the Committee for its efforts to increase the authorization level for Clean Water SRF Program in **Section 2015**, but more funding is required in order to better address the country's current water infrastructure needs. Funding from the Clean Water SRF Program is utilized to improve drinking water and wastewater treatment by communities and municipalities around the country. The estimated current and future funding needs for this type of infrastructure, according to the American Society of Civil Engineers, is more than $1 trillion over the next two decades. We urge Congressional leaders to make a significant investment in the Clean Water SRF Program by increasing its authorization level to $4 billion per year.

TRCP supports the inclusion, in **Section 2006** of projects that conserve, manage, reclaim, reuse, or treat stormwater as an acceptable focus of alternative water source projects and the increase to the authorized funding level for Clean Water Act Section 220 pilot program for alternative water sources. It is critical that the country incentivize innovation in the water supply sector. Finding ways to incorporate water conservation, reuse and recycling, as well as water demand management program into more water supplier portfolios will improve drought resiliency and ecological sustainability. These outcomes benefit fish and wildlife. Transitioning to water delivery infrastructure where these tools are routine components of water supply portfolios can put people to work and allow communities more flexibility in delivering water at times when they face drought and other system disruptions.

The 2016 WIIN Act included a suite of provisions to improve western water supply infrastructure. We urge the Committee to do so again. Modernizing aging irrigation delivery systems, incentivizing natural storage infrastructure options, increasing funding for urban water conservation and water reuse and recycling projects can help put Americans back to work while responding to the increasing pressure on western river systems that face drought and accelerating pressure from growth. Projects that improve

flows and restore fish and wildlife habitat in and adjacent to rivers will have similar positive impacts, create jobs, and help the west become more drought resilient.

Finally, we applaud the Committee's bipartisan efforts that have resulted in the Committee's draft companion bill, the Drinking Water Infrastructure Act of 2020. It is imperative to improve all Americans' access to safe, reliable drinking water.

We look forward to working with you and your staff on these important issues and thank you for your continued commitment to conservation.

Respectfully submitted,

Steven K. Kline
Chief Policy Officer
Theodore Roosevelt Conservation Partnership
529 14th Street, NW – Suite 500
Washington, D.C. 20045
443-988-8632
skline@trcp.org

Steve Moyer
Vice President, Government Affairs

April 30, 2020

The Honorable John Barrasso
Chairman
Committee on Environment & Public Works
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Thomas Carper
Ranking Member
Committee on Environment & Public Works
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of 300,000 members and supporters committed to protecting and restoring coldwater trout and salmon habitat across the country, Trout Unlimited (TU) thanks you for your work to reauthorize the Water Resources Development Act within its two-year authorization cycle. We thank the committee for an opportunity to comment on America's Water Infrastructure Act of 2020 (AWIA 2020).

Trout Unlimited supports **Section 1002**, which would study the impacts of high lake levels and flooding in the Great Lakes. High lake levels threaten to erode shoreline, including valuable public access for anglers and other outdoor recreators. Shoreline erosion also brings about concern for potential contaminants and pollution from power plants, industrial sites and municipal sewage systems that sit near shores. This creates vulnerabilities for many drinking water intakes and at least one has already been moved after damage.

TU is particularly supportive of **Sec. 1035,** which increases authorized appropriations in the Chesapeake Bay to $90 million and creates an Army Corps public outreach program for non-federal stakeholders. Increased funding and information-sharing will enhance TU's ability to restore and protect headwater streams of the Bay watershed. These activities reduce sediment and nutrient loading in the Bay and improve water quality and habitat for fish and wildlife across the watershed.

TU supports a cost share adjustment for the Brandon Rd. Lock and Dam Project and appreciates the Committee's inclusion of **Section 1041.** But we would urge Congress to further adjust the project's cost share to be 100-percent federally funded given both the regional and national importance of the project.

TU supports **Section 1062** which amends WRDA to allow USACE to assist in the planning and execution of projects targeting water quality issues created by abandoned and inactive non-coal mines. TU urges

the committee to also consider water quality issues created as a direct result of abandoned coal mine pollution. For decades, TU has worked to reduced polluted runoff from abandoned mine sites—one of the heaviest contributors to water quality degradation across the country.

TU supports **Section 1093**, which outlines a demonstration program to determine the causes of, and how to effectively treat and eliminate, harmful algal blooms in the Great Lakes. Harmful algal blooms not only lead to unsafe drinking water, but also put significant economic strain on communities and small businesses that rely on recreation dollars.

We also appreciate the committee's inclusion of **Sec. 1098**, which would amend Section 205 of the Flood Control Act of 1948 to include natural or nature-based projects, although non-federal cost-share for natural infrastructure should be no more than for built infrastructure projects.

TU supports **Sec. 1010** which extends the time in which the Corps is to give priority to projects in the Upper Missouri River Basin that restore degraded ecosystems as part of managing flood risk.

TU supports **Section 1401**, which provides authorization for the US Army Corps of Engineer's project at Brandon Rd. Lock and Dam in Joliet, IL to prevent Asian carp from reaching the Great Lakes. This project is located at a critical pinch point for protecting the Great Lakes from invasive Asian carp that threaten to decimate native and wild populations of fish and, in turn, collapse the $7 billion fishing industry supported by the Great Lakes and their tributaries.

Trout Unlimited supports the increase the Committee proposes in its reauthorization of the Clean Water State Revolving Loan Fund (CWSRF) under **Section 2015**. In increasing the CWSRF incrementally from $2 billion for FY2021 to $3 billion for FY2023, the program can better address the infrastructure backlog seen across the nation. Though after decades of limited federal investment, replacing the ageing and crumbling infrastructure across the nation will necessitate a greater commitment from the federal government. For example, in the eight Great Lakes states, $77 billion in estimated needs over the next 20 years, a burden that continues to grow as communities already face unaffordable water rates and struggle to maintain already weak infrastructure. We urge the Committee reauthorize the CWSRF at no less than $3.4 billion in FY2021.

Additionally, we ask the Committee to consider the codification of the green project reserve set-aside at no less than 20-percent. Prioritizing resilient and nature-based solutions such as restoring wetlands, building rain gardens, and installing permeable roads and sidewalks can often be more cost-effective solutions providing significant environmental and community benefits.

TU enthusiastically supports **Section 3006**, which increases authorized funding levels of the Great Lakes Restoration Initiative (GLRI) to $375 million for FY2022. This program provides the necessary funding to improve water quality and restore fish and wildlife habitat throughout the Great Lakes Basin. On average, every $1 distributed from the GRLI is matched by $3 from non-governmental organizations.

TU believes recommendations developed by the Corps, such as what is proposed in **Sec. 1096**, would benefit recreational access for anglers across the country. We are particularly supportive of **Sec. 1204,** regarding **Tenkiller Ferry Lake**, which would require Army Corps to provide assistance in developing a viable recreational fishery below the Tenkiller Reservoir. In Oklahoma, TU staff and grassroots leaders have long advocated for the economic benefits of a sustainable recreational fishery in the reservoir's

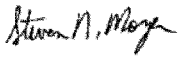
outflow. If enacted, this provision will be a strong step to enhance the recreational fishing economy and trout habitat in the region. TU favors provisions in the bill that would improve the local economic benefits of increased access for public recreation at USACE sites.

TU supports **Sec. 3009**, which would facilitate federal and non-federal efforts to improve the Puget Sound. As one of the nation's great watersheds, it is critical to support the essential work of cleaning up pollution, restoring habitat, and protecting drinking water supplies for Americans in the region.

Finally, TU urges the Committee to consider incorporating the request advanced by Senator Merkley to amend the Corps' Section 206 CAP authority to add new tools to the Corps' ability to partner with a variety of stakeholders to implement aquatic restoration projects and expand the Corps' portfolio of completed natural infrastructure projects.

Thank you for consideration of our comments. We appreciate your good work on this bill.

Sincerely,



Steve Moyer
Trout Unlimited
1777 North Kent Street
Arlington, VA 22209
smoyer@tu.org
Ph: 571-274-0593

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

CHUCK CHAITOVITZ
VICE PRESIDENT, ENVIRONMENTAL
AFFAIRS AND SUSTAINABILITY

1615 H STREET, NW
WASHINGTON, DC 20062
(202) 463-5316

May 4, 2020

The Honorable John Barrasso
Chairman
Committee on Environment
and Public Works
Washington, DC 20510

The Honorable Tom Carper
Ranking Member
Committee on Environment
and Public Works
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of the U.S. Chamber of Commerce, I write in response to your request for comments on the draft Drinking Water Infrastructure Act of 2020.

At no time in American history has building modern, resilient, and smart water infrastructure been more important for companies and communities. We applaud the committee for advancing bipartisan solutions to address our water challenges, and are pleased to add to our water policy priorities shared with you earlier this year.

Below are several suggestions the U.S. Chamber supports:

- Include public health crises, predisaster mitigation, and delivery of service to lifeline infrastructure such as electricity and health, as eligible activities under the emergency and midsize resilience programs.
- Allow public-private partnerships to leverage federal investments and mobilize private capital, especially under small and disadvantaged communities and small public system sections. The Chamber supports including the purchase of filters and point of use/point of entry technologies, which are independently certified by a third-party accredited by the American National Standards Institute.
- Increase funding for both the clean water state revolving loan fund to levels to the recent House Committee on Transportation and Infrastructure-passed legislation levels and advanced technologies section, to focus on addressing emerging contaminants, including PFAS.
- Underscore resilience and predisaster mitigation, as well as compliance in the drinking water infrastructure discretionary grant program, to ensure that we build back better than before. We also recommend that to enhance utility resilience and ensure grants and loans are used effectively, the bill call for recipients of funding to consider implementation of comprehensive, full cost evaluation and asset management programs.

In addition, a coalition letter and draft legislative language are attached outlining a proposed approach to provide flexibility with on-site and off-site measures to comply with both the MS4 and industrial permit process.

The Chamber stands ready to assist you as this legislation advances through the legislative process, and I will follow up with your staff with any questions you may have. Thank you for your leadership.

Sincerely,

Chuck Chaitovitz

Tim Maiers
Executive Director
Michael Klingner
Chairman, Illinois
Jim Koeller
Vice Chairman, Illinois
Dianne Barnett
Treasurer, Illinois
David McMurray
Executive Committee, Iowa
John Winkelman
Executive Committee, Missouri
Vicki Stoller
Director, Iowa

Bruce Brinkman
Director, Illinois
Dan Engeman
Director, Missouri
Philip Held
Director, Missouri
Al Muhlenbruck
Director, Iowa
Brent Hoerr
Director, Missouri
Danny Kuenzel
Director, Missouri
Kirby Wagner
Director, Illinois

Written Comments Regarding:

America's Water Infrastructure Act of 2020
&
The Drinking Water Infrastructure Act of 2020

May 1, 2020
Submitted Electronically: QFR@epw.semate.gov

U.S. Senate
Committee on Environment and Public Works
401 Dirksen Senate Office Building
Washington, DC 20510-6175

Dear Chairman Barrasso and Ranking Member Carper,

On behalf of the Upper Mississippi, Illinois & Missouri Rivers Association (UMIMRA), thank you for the opportunity to provide written comments regarding the draft legislation, America's Water Infrastructure Act of 2020 and the Drinking Water Infrastructure Act of 2020.

UMIMRA is a grassroots organization dedicated to improving flood protection in the Upper Mississippi River Valley. Our organization has 66 years of experience in speaking as one voice for those living, working, and investing in the Upper Mississippi River Basin.

Again in 2019, there was devastating flooding throughout the Missouri, Illinois, and the Upper Mississippi River basins. Unfortunately, flooding and its negative impacts on people's lives, our economies, and our natural resources has become all too common.

Precipitation events are becoming more intense and happening more often, which causes more runoff, which leads to more flooding. The second highest Mississippi river level ever recorded at Quincy, IL was on June 1, 2019 at 31.16 feet second only to the flood of 1993.

Now more than ever, there is a greater need for improved flood control infrastructure. The Environment and Public Works Committee has an opportunity to direct the future of water resources and send a message to all stakeholders on the importance of improvements to flood control.

Upper Mississippi River Flood Control Act

Efforts to develop and implement a systemic flood control plan for the Upper Mississippi River has been pursued since the Great Flood of 1993. The 1954 Flood Control Act, which is still guiding regulations on levee heights, was based on the flood of 1947, which in some locations was 7.5 feet lower than the 1993, 2008, and 2019 floods. The Upper Mississippi River lacks a systemic flood control plan that can be implemented before the next disaster strikes.

Earlier this year, legislation was introduced that would be a substantial step in addressing and correcting continuing flooding problems, while improving flood control plans for the Upper Mississippi River. HR 5288 - the Upper Mississippi River Flood Control Act – would require the Secretary of the Army Corps of Engineers to submit a flood plan for the Upper Mississippi River to Congress as expediently as possible.

HR 5288 amends the Water Resources Development Act (WRDA) of 1999 and requires the Army Corps to gather input from all stakeholders including levee and drainage districts, nonprofit organizations, and agricultural stakeholders. The amendments also include evaluation of public and private partnerships for funding alternatives of levee improvement projects and evaluates financing alternatives under the Army Corps Water Infrastructure Program.

The flood plan required in HR 5288 will recognize the change in weather conditions with allowances for future adjustments and plan for necessary structural improvements and storage where needed to convey major floods with minimal property damage and no loss of life.

The goal of this legislation is to use the great work that USACE performed under WRDA 99, Section 259, the Upper Mississippi River Comprehensive Plan, as the foundation of formulating an implementable systemic flood control plan. This Plan was recommended by the Mississippi River Commission on August 14, 2008, and further refined in 2011 as the Working Plan. However, this plan had numerous problems, including a low federal cost-benefit ratio, which prevented federal investment and also called for buy outs instead of flood storage easements.

This Plan would be further developed with three major components that were omitted from the original plan.
a) Areas required to store water, or voluntarily agreeing to store water, during extreme events would have a flood easement in place with the community and Levee District, as a political subdivision of the respective States, of Illinois, Iowa and Missouri. The payment structure for Flood Easements would be a federal responsibility and would adequately compensate the district and land owners. The voluntary flood easements were not included in the original plan, and would be an important foundational aspect of the adjusted plan authorized by this legislation.

b) The Second component is to provide updated authorized elevations for the system, based on current flood probabilities, and anticipated increases due to climate change. Climate change and resiliency would be another foundational aspect of the adjusted plan authorized by this legislation. This gives everyone a common, modern baseline from which to plan. The design

project flood should be similar in magnitude to the lower Mississippi, MR&T plan with the goal to treat the Mississippi as one river system.

c) Develop a common set of modern, implementable engineering design standards for levees and floodwalls for the Upper Mississippi River sub-system, using the design standards developed after Hurricane Katrina for Southeast Louisiana as a basic model. Communities and districts, would be enabled to make adjustments to meet the modern design standards so there would be a true system in place based on common levee and floodwall design standards that would include as a minimum, concrete floodwalls, removable floodwalls, clay levees, clay levees with a sand core, and sand levees. The design standards would include appropriate safety and resiliency factors, as well as common engineering design factors. Funding to bring the levees and floodwalls to the common standard can be local or state, so not a cost in the NED, but would leave the door open for potential federal funding of any structural improvements by Congress.

HR 5288 is complementary to the proposed UMRBA Watershed Plan. The watershed plan will address upland storage, drought planning, and sediment management. HR 5288 is to address the immediate need to update the authorized elevations along main stem levees, as part of the Navigation System, to prevent future disasters along the Upper Mississippi River and Illinois River. Elevations set in the 1940s for the Illinois and in the 1950s for the Upper Mississippi are clearly insufficient to meet current weather patterns.

It is the intent for USACE to have a role, led by the Mississippi Valley Division and a regional design team, in fine tuning the planning and developing the design profile for structural improvements and distributed storage areas in accordance with the plan. It is the intent that the Mississippi River Commission would be charged with management similar to the MR&T, but with a subcommittee providing representation for the Upper States.

The intent would be for the USACE to refine the 2011 Working Plan providing adequate public input. Some additional districts may volunteer to store water under extreme conditions if the flood easement structure adequately compensates the Levee Districts for the additional risk. It is anticipated that the plan be further divided into additional reaches allowing some storage planned in each reach. Although it would be beneficial to update the 2004 Flood Frequency Profiles, we do have enough information to establish flood profiles similar in magnitude to the lower five states, so all 10 states along the Upper Mississippi would have the same ability to pass a major flood with minimal property damage and no loss of life.

The goal is that all communities and the 140 levee districts within the Upper Mississippi and Illinois rivers would have new authorized elevations, profiles that can be easily updated as flood profiles are updated, and avoid the constant flood fighting, which is expensive and high risk to people and property, and requires removal after the flood event. The cost suffered in flood fighting is significant and can be avoided with a systemic flood control plan. We need a Plan in place that defines where the water goes and provides adequate protection to our critical infrastructure and prime farmland.

We urge the EWP Committee to incorporate the language in HR 5288 and the intent of the legislation into the America's Water Infrastructure Act of 2020.

Lower Missouri River Flood Prevention Program

Just as the Upper Mississippi has dealt with recently increased flooding severity, so has the Missouri River. There are many places along the Missouri River still in desperate need of flood control improvements. Damage sustained during the 2019 flooding can only be repaired back to the pre-flood level of protection under the Corps' levee rehabilitation program, Public Law 84-99. The reality of the current situation is that many places still need improvements to avoid a reoccurrence of the devastation suffered over the past year.

Senators from all four Lower Missouri River Basin States (Iowa, Kansas, Nebraska and Missouri) have introduced Senate Bill 3403, which would establish a Lower Missouri River Flood Prevention Program.

The program established by the Bill would allow the U.S. Army Corps of Engineers to study, design, and construct water resources development projects and provide flood protection to affected communities in the lower basin from Sioux City, Iowa to St. Louis, Missouri. A major emphasis of the Bill focuses on the ability for the Corps of Engineers to move quickly to initiate construction where work can begin based on a feasibility study conducted by the District Commander and approved by the Northwestern Division Commander.

We request the EWP Committee to incorporate language of 3403 into the America's Water Infrastructure Act of 2020. By doing so, would help move this much needed legislation forward quickly and send assistance much sooner to the communities impacted by Missouri River flooding. Construction and repairs of levees is needed to help people rebuild their businesses and communities along the Missouri River. Congress needs to act now so work can start.

National Levee Database

A database is only as good as the information that it contains. The National Levee Database includes 28,039 miles of levees, including 45,655 levee structures across the United States. This searchable database provides a wide array of valuable information about the levees protecting our communities and farmland.

However, the database was compiled without the help of or input from local levee sponsors and thus includes many inaccuracies, errors, and false statements. The information in the database has not been verified by local levee sponsors and currently the US Army Corps of Engineers has no money to work with them to verify information or make improvements to the database.

UMIMRA encourages the EPW Committee to consider providing funding for correcting the many errors in the information provided in the National Levee Database. This important tool is accessible to the public as well as state and federal agencies looking for levee information. It is vital to have accurate information when planning projects in areas protected by levees. Relying

on some of the false information, which has not been verified by local levee sponsors, could be extremely dangerous and costly.

Levee Accreditation Process – Section 1039 & Report on Single Levee Standard – Section 1071

Section 1039, Levee Accreditation Process; Levee Certifications, coupled with Section 1071, Report on Single Levee Standard, in the draft bill offer more USACE management of residual risk in flood plains at the expense of focused intergovernmental efforts to prevent catastrophic levee failure. These AWIA provisions will likely be interpreted by USACE and FEMA as a Congressional directive to use internally developed USACE Risk Assessments for all programs, including NFIP levee accreditation purposes. Although USACE indicates Congress has authorized this shift toward risk-based decision making, as of now assessments related to residual risk in flood plain areas are used primarily for risk awareness and communication activities, not for core USACE program operations and decision-making. USACE is not authorized to make PL 84-99 or other project investment decisions based on nebulous risk assessments. These AWIA 2020 provisions, if passed, would almost certainly change that. Until such time when local levee sponsors and the communities they protect derive clear benefit and gain confidence in use of USACE risk assessments, including their transparency, reliability and reproducibility, their use should not be expanded for either regulatory purposes or investment decisions.

Levees should be accredited or certified based on the actual levee structure and its ability to provide protection regardless of what is located in the area it protects. Sound engineering evaluations of the flood control structure should be used in the process, not residual risk guesses based on floodplain management decisions geared toward implementing more land use regulations, flood insurance sales and property buyouts. We believe Section 1039 is a focus in the wrong direction for improved flood control infrastructure and should be removed from the bill.

Levee Safety – Section 1047

The Upper Mississippi, Illinois & Missouri Rivers Association supports language in the America's Water Infrastructure Act of 2020, regarding the Corps of Engineers' Levee Safety Program, which will help preserve and improve flood protection contributions by well-built and maintained levee systems. Language in Section 1047 of the draft bill would help identify engineering and maintenance deficiencies and move toward finding ways to fix levees with problems. As flood control becomes more and more important across the country, it is imperative to make sure our levees are safe and engineered to provide the necessary level of protection for the areas they protect.

If this provision is passed it will refocus the Corps and local levee sponsors on the safety of levee infrastructure. It also helps restore to the Corps and local levee sponsors the proper mission of "safe levees" and at the same time keep "floodplain management" with FEMA and designated State and local flood plain management agencies. By amending WRDA 2007 to direct the Corps to identify specific engineering and maintenance deficiencies and remedies for each levee included in the National Levee Database, it helps to provide local sponsors with the information

that could be used for effective communication and non-federal land-use planning and project purposes. This is an important task that is not now being consistently performed, but that would undoubtedly lead to more useful data-driven, informed decision-making. The proposal also directs the Corps to consult local levee sponsors and provide opportunity for comment while performing levee deficiency identification.

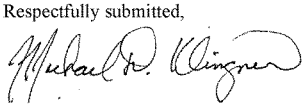
The Upper Mississippi, Illinois & Missouri Rivers Association represents levee and drainage districts, landowners, businesses, and communities affected by the Upper Mississippi River and its tributaries. The Upper Mississippi River watershed encompasses 118 million acres, which contain a total population of 13.4 million people.

The economic damages of previous floods have been staggering and costly to governments and individuals. The 1993 flood damages ranged from $15-$20 billion, and the 2008 flood cost another $15 billion. 2019 flood damages are not yet known. In contrast, the cost of a systemic plan to improve flood protection was estimated at $5 billion in 2008. Let's use our limited resources to improve our flood protection and limit the flood disasters and their impacts.

There has been a lack of investment in river infrastructure for the Upper Mississippi River: 1930 era locks and dams and 1950 era flood control. The time for investment in flood protection infrastructure is now! Maintaining and improving the Mississippi River Basin is important to America's long-term economic growth, as well as our national security.

Thank you for the opportunity to provide comments to this important legislation. The EPW Committee's work has a significant impact on the daily lives of many people who live and work along our nation's waterways and is essential to the future of our country.

Respectfully submitted,



Mike Klingner, Chairman
Upper Mississippi, Illinois & Missouri Rivers Association
616 N. 24th Street
Quincy, IL 62301
(217) 653-8456
mdk@klingner.com

US GEO

U.S. Geospatial Executives Organization (U.S. GEO) Written Comments on Senate AWIA 2020 Draft

"An Information-Gathering Process on Draft Legislation entitled, America's Water Infrastructure Act of 2020: Stakeholder Comments"

May 1, 2020

The Honorable John Barrasso, Chairman
The Honorable Tom Carper, Ranking Member
Committee on Environment and Public Works
U.S. Senate
410 Dirksen Senate Office Building
Washington, DC 20510

Chairman Barrasso and Ranking Member Carper:

The U.S. Geospatial Executives Organization (U.S. GEO) would like to thank you for the opportunity to provide feedback on the draft America's Water Infrastructure Act of 2020 (AWIA 2020).

We appreciate your inclusion of Sections 1079 (Coastal Mapping), 2018 (Stormwater Infrastructure Technology), and 3003 (Mapping and Screening Tool), among other sections that will drive the demand for geospatial data and the associated activities. Given the ongoing geospatial activities within the U.S. Army Corps of Engineers, as well as the several aforementioned specified sections, there is a need to better coordinate all geospatial activities within the Corps or Engineers moving forward. *An additional surveying, mapping and geospatial provision is still needed, and we would recommend adding a new section to AWIA 2020.*

The U.S. Army Corps of Engineers has one of the most experienced and capable surveying, mapping, and geospatial knowledge based, proficiencies and capacities in the nation. This is built on a public-private partnership that includes in-house expertise and a considerable private sector professional contractor base.

However, numerous studies, the most recent of which is the 2015 GAO report, "GEOSPATIAL DATA: Progress Needed on Identifying Expenditures, Building and Utilizing a Data Infrastructure, and Reducing Duplicative Efforts" have pointed to the need for better intra and inter-agency coordination to prevent duplication and enhance a strategic approach to the collection, analysis, application, storage, and access to geospatial data.

Congress passed and President Trump signed the Geospatial Data Act in 2018 (H.R. 302, P.L. 115-254) to address these issues across the government.

While several agencies, such as the Department of Homeland Security, Department of the Interior, and others have created Geospatial Management Offices (GMO) and the position of a Geospatial Information Officer (GIO) to guide a strategic approach to such activities in these agencies, there is an opportunity for the Corps of Engineers to leverage its considerable expertise in this area.

The provision, itemized in the remainder of this document, will establish such a Center of Excellence to coordinate Corps-wide activities, strategies, and contracting capability for the benefit of the Corps' own projects and programs, as well as to improve coordination with other agencies and stakeholders, resulting in savings, efficiencies, coordination and enhanced project delivery.

✓ **A legislative provision is needed to establish "The Office of Geospatial Management" within the Office of the Chief of Engineers.**

(b) Geospatial information functions

(1) Definitions

As used in this subsection:

(A) Geospatial information

The term "geospatial information" means graphical or digital data depicting natural or manmade physical features, phenomena, or boundaries of the earth and any information related thereto, including surveys, maps, charts, remote sensing data, and images.

(B) Geospatial technology

The term "geospatial technology" means any technology utilized by analysts, specialists, surveyors, photogrammetrists, hydrographers, geodesists, cartographers, architects, or engineers for the collection, storage, retrieval, or dissemination of geospatial information, including--

(i) hydrographic systems;

(ii) global position systems;

(iii) geographic information systems;

(iv) mapping equipment;

(v) surveying equipment; and

(vi) satellite, airborne, unmanned and terrestrial remote sensing devices.

(2) Office of Geospatial Management

(A) Establishment

The Office of Geospatial Management is established within the Office of the Chief of Engineers.

(B) Geospatial Information Officer

(i) Appointment

The Office of Geospatial Management shall be administered by the Geospatial Information Officer, who shall be appointed by the Secretary and serve under the direction of the Chief of Engineers.

(ii) Functions

The Geospatial Information Officer shall assist the Chief of Engineers in carrying out all functions under this section and in coordinating the geospatial information needs of the Corps of Engineers.

(C) Coordination of geospatial information

The Geospatial Information Officer shall establish and carry out a program to provide for the efficient use of geospatial technology and information, which shall include--

(i) utilizing commercially available services for such geospatial technology and information as may be necessary to implement the programs, projects, and activities of the Corps of Engineers;

(ii) providing leadership and coordination in meeting the geospatial information requirements of those responsible for the programs, projects, and activities of the Corps of Engineers; and

(iii) coordinating with users of geospatial information within the Corps of Engineers and other governmental and private sector partners to enhance such users understanding of the capabilities and benefits of geospatial technology and information to assure interoperability and prevent unnecessary duplication of efforts.

(D) Responsibilities

In carrying out this subsection, the responsibilities of the Geospatial Information Officer shall include--

(i) coordinating the surveying, mapping, and geospatial information needs and activities of the Corps of Engineers, including specific activities authorized in this Title;

(ii) implementing standards, as adopted by the Director of the Office of Management and Budget under the processes established under section 216 of the E-Government Act of 2002 (44 U.S.C. 3501 note), to facilitate the interoperability of geospatial information among all users of such information within--

(I) the Corps of Engineers and other offices within the Department of Defense;

(II) other Federal agencies;

(III) State and local government; and
(IV) the private sector;
(iii) coordinating with the Federal Geographic Data Committee and carrying out the responsibilities of the Corps of Engineers pursuant to Office of Management and Budget Circular A-16, Executive Order 12906, and the Geospatial Data Act (Subtitle F of Public Law 115-254);
(iv) developing a strategic plan for the execution of surveying, mapping, and geospatial activities necessary to support the programs, projects, and activities of the Corps of Engineers, in consultation with other governmental entities and nongovernmental stakeholders;
(v) keeping abreast of the capabilities of the private sector to provide the Corps of Engineers with professional services by contract that employ emerging and state-of-the-art geospatial technology, methodologies, techniques, and applications pursuant to sections 569b and 569e of this title;
(vi) assure that the Corps of Engineers maintains an adequate acquisition workforce to contract for professional firms pursuant to 40 U.S. C. 1101 et. seq. and 33 USC 569b for the timely competition, selection, award, and execution of contractors for the Corps of Engineers and any other governmental entity requesting the assistance such workforce; and
(vii) making recommendations to the Chief of Engineers on partnerships, grants, and cost-sharing agreements to --
(I) fund the creation of geospatial data;
(II) execute information sharing agreements regarding geospatial data with other Federal agencies, State, local, tribal, or foreign governments.

(3) Authorization of appropriations
There are authorized to be appropriated such sums as may be necessary to carry out this subsection for each fiscal year.

For more information, please contact U.S. GEO staff:

John "JB" Byrd, Federal Lobbyist
U.S. Geospatial Executives Organization (U.S. GEO)
10340 Democracy Lane, Suite 300
Fairfax, Virginia 22030
P: 703-787-6665
jbyrd@jmpa.us
www.usgeo.net

Clean Water • Healthy Environment • Flood Protection

April 30, 2020

The Honorable John Barrasso
Chairman, Senate Committee on
Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Thomas R. Carper
Ranking Member, Senate Committee on
Environment and Public Works
456 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of the Santa Clara Valley Water District (Valley Water), thank you for the opportunity to provide input on the draft America's Water Infrastructure Act of 2020 (AWIA 2020) and the Drinking Water Infrastructure Act of 2020. We appreciate your strong, bipartisan leadership on our nation's water infrastructure issues, and we thank you for moving this important legislation forward despite the current challenges of the COVID-19 pandemic.

As Silicon Valley's primary water agency, our duties include providing flood protection and environmental stewardship for Santa Clara County's more than 800 miles of creeks and streams, and ensuring a clean, healthy, and reliable water supply for our county's nearly two million residents. Valley Water strongly supports passage of new water resources legislation, which is an essential step toward providing critical improvements to our nation's water infrastructure and getting people back to work.

As our nation continues to grapple with the COVID-19 pandemic, investment in our nation's water infrastructure is more important than ever. Passage of these bills could create hundreds of thousands of new jobs, while also helping to maintain the hundreds of thousands of current jobs associated with water infrastructure projects across the country. This is a landmark opportunity to help rebuild the nation's economy while delivering critical flood protection, reliable and safe drinking water, harbor maintenance, and other essential infrastructure improvements.

These comprehensive bills contain numerous provisions that would improve our nation's water infrastructure and provide communities with essential flood risk reduction, increased water reliability, and safe drinking water. As the Committee considers these bills, Valley Water respectfully offers the following comments and suggested amendments that we believe will strengthen the legislation and provide maximum benefit to the American people.

America's Water Infrastructure Act of 2020

The draft AWIA 2020 includes several provisions that would provide greater flexibility to the U.S. Army Corps of Engineers (USACE) and local sponsors to move important projects, and Valley Water strongly supports including these provisions in any final bill:

1. **Expediting repairs and recovery from flooding (Section 1022).** In February 2017, a series of storms in the Bay Area caused significant flooding and damage along Coyote Creek in San José, particularly impacting low-income neighborhoods. Valley Water appreciates that Section 1022 would expedite permitting for projects that would improve

and upgrade infrastructure that was damaged during this and other storms from 2017-2020.

2. **Granting flexibility to pursue locally important projects (Sections 1014 and 1083).** These provisions would grant USACE with greater flexibility to pursue projects that consider local and regional benefits, as well as those that serve underserved communities or are in economically distressed areas. These changes would help ensure that USACE can invest in more underserved communities and allows for better assessing a project's true value to the community it serves.
3. **Expanding local control by strengthening the Continuing Authorities Program (CAP) (Section 1017).** The CAP programs are useful tools for USACE Districts to implement small-scale, limited-scope projects without additional congressional authorization. Expanding access to the CAP programs for disadvantaged communities, as well as increasing available funding, gives greater control for USACE Districts to fund worthy local projects.
4. **Investing in local estuaries (Section 3007).** The San Francisco Bay-Delta is the largest estuary on the West Coast, which includes a diverse array of aquatic habitat and serves as a critical source of drinking water, irrigation, and water supply infrastructure for millions of Californians. Yet San Francisco Bay receives significantly less federal investment than other estuaries around the country, some of which are considerably smaller in size and are located in areas with far smaller populations. Section 3007 would create an important new program under the Environmental Protection Agency, under a new office with a local director, to fund local initiatives that would improve water quality in San Francisco Bay. As the local sponsor on one of USACE's largest multi-benefit projects in the Bay Area, the South San Francisco Bay Shoreline Project, Valley Water strongly supports this effort to increase investment in restoring and protecting the health of the Bay.

To further strengthen the bill and better serve all Americans, Valley Water suggests the following amendments:

1. **Flexibility to pursue multi-benefit projects.** Multi-benefit projects can include dynamic components like ecosystem restoration that are important to local communities. Valley Water recommends including a Sense of Congress that USACE may pursue multi-benefit projects if requested by the local community and if the benefit-to-cost ratio exceeds one. Suggested language is as follows:

   It is the sense of Congress that the Secretary may pursue projects with multiple benefits, including ecosystem restoration, if requested by the local community and if the project benefit-to-cost ratio is greater than one.

   There are several projects in the Bay Area that local communities would support, and which could yield significant economic and environmental benefits, if USACE had the flexibility to pursue multi-benefit projects.
2. **Water infrastructure and workforce investment (Section 2008).** Investing in our water workforce now is essential to ensure that we have a robust workforce for the future. Large numbers of water and wastewater utility workers are eligible to retire in the next five to ten years, which could lead to a significant "brain drain" within the sector. This grant program created under the last water resources development bill provides critical resources and federal partnership to help train new and incumbent water utility

workers to ensure that we have skilled workers to meet our nation's water infrastructure needs. Valley Water strongly supports reauthorizing this program, and, in particularly we appreciate that this bill would expand the program's eligibility to public works departments and agencies. Furthermore, while this investment is critical, Valley Water strongly supports extending the authorization to Fiscal Year 2030 and increasing the funding authorization to $10 million per year. A robust, long-term investment in this program will help the water utility sector build a strong workforce for the future.

Finally, while we recognize that it is not within the Committee's jurisdiction to include a Reclamation title in water resources development legislation, Valley Water encourages the Committee to work collaboratively with the Energy and Natural Resources Committee to put forward a comprehensive bill that covers all aspects of the country's water infrastructure needs.

Drinking Water Infrastructure Act of 2020

Valley Water appreciates the Committee's commitment to putting forward legislation to ensure that all Americans have reliable access to safe, clean, and affordable drinking water. As the COVID-19 pandemic has illustrated, access to clean water is essential to public health and safety, and increased investment in our water infrastructure is critical. We appreciate that this bill makes a significant investment in our drinking water infrastructure to help small, rural, tribal, and disadvantaged communities meet their water needs.

Again, thank you for the opportunity to comment these important bills. We look forward to the bills' introduction and we stand ready to assist you in moving them forward. Should you have any questions, please feel free to contact me at (408) 630-2884 or rgibson@valleywater.org.

Sincerely,

Rachael Gibson
Deputy Administrative Officer
Office of Government Relations

VILLANOVA UNIVERSITY

DEPARTMENT OF CIVIL AND ENVIRONMENTAL ENGINEERING

28 Apr 2020

The Honorable John Barrasso
Chairman
Committee on Environment and Public Works
U.S. Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Thomas R. Carper
Ranking Member
Committee on Environment and Public Works
U.S. Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Barrasso and Ranking Member Carper,

I have read with great interest the draft of *America's Water Infrastructure Act 2020*, and in particular the sections on stormwater research. Through the Villanova Urban Stormwater Partnership, we have conducted research on emerging stormwater practices, over two decades, and were encouraged by other organizations to make recommendations to aid in drafting the bill. While I will limit my comments to focus on stormwater research, I do want to applaud the committee for addressing significant water issues.

Specific Comments:

Page 271 – line 20 – There are several institutions that have conducted research on stormwater infrastructure over time that have available research sites and data sets that can be brought to a "Center of Excellence." The hard reality of stormwater research is that the processes of infiltration, evapotranspiration, and water quality processes are time dependent. Starting with existing sites that can be enhanced, and data sets that can be brought to the center would be a great benefit. Centers could be "required" to contribute past research data and make available current field research stormwater control infrastructure to the center.

Suggested Language.

(a) IN GENERAL.—The Administrator shall provide grants, on a competitive basis, to eligible institutions to establish and maintain not less than 3, and not

800 LANCASTER AVENUE VILLANOVA PENNSYLVANIA 19085-1681 (610) 519-4960

more than 5, centers of excellence for new and emerging stormwater control infrastructure, to be located in various regions throughout the United States. Institutions that have constructed and / or conducted multiyear research on stormwater control infrastructure field sites are encouraged to apply and bring these facilities and past data to the project.

Page 275 - line 25 – Similar to other respondents, we agree that the definition of emerging should include current practices that are not well understood. For example, as we learn more about infiltration processes, variations in bioinfiltration site design are allowing longer resilient performance, and also contributing to larger storm event mitigation. As long as emerging can include a deeper understanding of current practices, the language does not need to be changed. The use of Enhancing, Emerging, and New may be more appropriate.

Page 272 – line 5 – The language "conduct research" could be further defined. Current research needs include performance, longevity and maintenance (what maintenance is needed for continued operation). Further, topics such as modeling and research on the watershed performance is a current need.

Suggested Language

(i) conduct research on the construction, performance, longevity, and maintenance of enhanced current, new and or emerging stormwater control infrastructure, that is relevant to the geographical region in which the center is located, including stormwater and sewer overflow reduction, other approaches to aggregate watershed performance, water resource enhancement, modeling, alternative funding approaches, and other environmental, economic, and social benefits;

Page 272 – line 20 - while financial programs are an important area, it Is not necessary for every center to perform research on finance.

Page 274 – line 8 – USEPA and the American Society of Civil Engineers have been past contributors in supporting the International Stormwater Database. It may be advantageous to build upon this long-term effort and for the national clearing house.

Suggested Language

(B) in addition to the other functions of that center—

(i) develop, operate, and maintain an Internet website and a public database that contains information relating to new and emerging, but proven, stormwater control infrastructure; and

(ii) work with existing stormwater data repositories such as the ***International BMP Database*** to share research; and;

(iii) post to the website information from all centers.

Lastly there are many terms across the world used for stormwater infrastructure. The National Academies study (2006) ***Urban Stormwater in the United States*** suggested use of stormwater control measures for individual practices. USEPA uses the term Stormwater infrastructure. I suggest either using Stormwater Control Measures for individual practices and Stormwater Infrastructure for a larger stormwater approach.

I appreciate the opportunity to comment. Feel free to contact me if I can be of service to the committee.

Sincerely,

Robert G. Traver, Ph.D., P.E., D.WRE, F. EWRI, F. ASCE
Edward A. Daylor Chair of Civil and Environmental Engineering
Director Villanova Center for Resilient Water Systems
robert.traver@villanova.edu
Cell – 610-316-1439

Villanova University
800 Lancaster Avenue
Villanova PA, 19085

Temporary Mailing Address
404 Belgian Road
Schwenksville PA
19473

What Coastal Communities Need in the Next WRDA

Submitted by Howard Marlowe, President of Warwick Group Consultants, LLC

Congress is beginning its biennial process of producing legislation authorizing new Army Corps of Engineers projects and policies, generally referred to as the Water Resources Development Act (WRDA). Our Nation's ports, inland waterways, dams and rivers are vital to not only the national economy but also to the economies of states and localities. With all that heavy weight on its shoulders, WRDA legislation also helps coastal states and cities become more resilient to flooding, erosion, and tropical storms.

While the coast consumes less than 3 percent of the Corps' total budget, it accounts for more than half of the nation's population, 45% of its Gross Domestic Product, 55 million jobs, and over $344 billion in federal tax revenues. This will be an especially difficult year for coastal communities. While WRDA does not provide any relief for those economic woes, it does provide policies and programs for communities to better manage their proximity to water and to deal with rising seas and strong storms.

Here are my seven recommendations for WRDA 2020 that will increase coastal resilience and produce meaningful benefits for our national, state and local economies:

1. Make Benefit-Cost Analyses Meaningful

Under law, investments in water resources projects must produce a BCR of at least 1 to 1. While calculating the costs of constructing a project is straightforward, determining which benefits should be accounted for is not. On April 3, 2020, Assistant Secretary of the Army for Civil Works R.D. James declared that "The lack of consideration of all benefits has become apparent, which raises concern that investments (sic) decisions for Civil Works projects are incomplete, leading to suboptimal investment decisions." For both coastal and inland flood risk management projects, investments that would save lives, avoid business disruptions and improve public safety are being denied because of the Corps' failure to include in project BCR calculations the monetary value of life and safety benefits under the Other Social Effects category. Secretary James has made a bold step in the direction of correcting these failures. Congress should support this directive with **WRDA legislative language that requires the full value of all four categories of benefits, National, Regional, Environmental and Other Social Effects be included in the feasibility study analysis and used to calculate a project's benefit-cost ratio.**

2. OMB is the enemy of Congressional Water Resources Policy Initiatives

Ever since Congress gave up the power to earmark the Corps of Engineers budget in 2008, the new

1717 K Street, NW, Suite 900, Washington, DC 20006 • 202.787.5770 • Fax 202.776.0136 • www.warwickconsultants.net

A Limited Liability Company

programs authorized by Congress in WRDA legislation to improve the nation's water resources programs have meant nothing because OMB has chosen not to budget any money for them. Since Congress can't do anything but add pots of money with suggestive language as to what should be done with it, new efforts to better manage coastal sediment and promote regional collaborations that will reduce costs and increase the effectiveness of projects have gotten nowhere. OMB micromanages not only every dollar the Corps spends but every rule interpreting what it is that Congress intends in WRDA. The role of Congress as a coequal branch of government and the keeper of the public purse has been nearly obliterated by OMB's reach into every detail of the Corps' activities. Many of WRDA's provisions require the appropriation of money by Congress to be effective, but Congress has deprived itself of the ability to give new life and a 21st Century vision to the Corps. **For the sake of the coastal and inland communities that rely on Corps to help them deal with riverine and ocean flooding as well as coastal and inland navigation, it is time for Congress to take back the power it gave away**.

3. Expand Coastal Watershed and Regional Sediment Management

Congress has created policies that promote watershed management and the management of sediment within them and along our coasts. Expanding either the number of Beneficial Use Pilot Programs or the total authorized levels of funding for the Corps' Section 204 Continuing Authorities Program (Regional Sediment Management) are important, but their promise can only be met with funding only comes from the separate appropriations process. States and local governments must be the advocates for funding these programs since the Corps is not in a position to take the lead. Following are some provisions that would be very helpful for inclusion in the next WRDA authorization legislation.

a. The Section 204 program is limited in its use for long-term sediment management plans in at least one of the draft WRDA proposals recognizes this by establishing a separate program for ongoing regional sediment management. It should be expanded to **encourage ports to modify their operations manuals for the disposition of material dredged from their navigation channels so that as much of that material as possible gets on or near adjacent shores for both flood risk reduction and environmental restoration purposes**. Sand is a precious and endangered natural resource and must not be dumped offshore when there is a nearshore or onshore alternative for coastal risk reduction and/or environmental enhancement.
b. It is time that it becomes congressional policy to **prohibit the offshore dumping of sand from Federal ports, harbors and channels unless it can be shown that the quality of the sand would be harmful to any beneficial use alternative.** This already is happening at the state level in some of the Great Lakes states. When analyzing benefits and costs, the same inclusive approach to assessing benefits shall apply that is described elsewhere in this memorandum. Benefit-cost analyses must also include the environmental of dumping the sediment offshore.
c. **Authorize the Corps to sell to private companies any sediment not suitable for beneficial use and to place revenues received from such sale into a Corps fund to pay the costs of projects that test the use of natural and nature-based techniques as well as alternative technologies for reducing the cost of coastal storm damage reduction projects.**

4. Encourage regionalization and collaboration among groups of states and/or local governments

The most effective way for groups of localities or states to assess their coastline for sand quantities and qualities as well as vulnerabilities to flooding and other storm damage is by conducting a Corps Section 729 Watershed Management Study, which is cost-shared and by definition cannot lead to a new federal project, but only recommendations for federal or non-federal actions to be taken. OMB practice is to consider each new Section 729 study to be a "new start", just as it would be for a feasibility study for a new federal project. Since Congress places strict limits on the number of "new start" feasibility studies," it is unlikely that a request to fund a new 729 will be successful. The answer is to r**equire that no regional study conducted under the Corps Section 729 watershed management authority be considered a "new start"**, because it does not necessarily lead to new investment decisions.

5. Encourage Local and Regional Implementation of Sea Level Rise Initiatives

Coastal communities are well aware of the threat of increased "sunny-day flooding" and sea level rise. Many have commissioned studies, but few can afford to implement resilience and adaptation initiatives recommended by experts. Local governments need the technical expertise to determine what measures best meet their needs, and a funding to plan and implement them. **Congress should authorize a program to provide grants to communities acting individually and in regional alliances, for the mitigation of damages from sea level rise and adaption to its future impact**. These grants should be for both planning and implementation and should require a non-federal match that can be waived based on the degree to which plans are implemented.

6. Support the Corps' Use of Environmental Features

a. **Enable the Corps to implement multipurpose projects that incorporate both flood risk reduction and environmental features.** Current Corps practices as well as its business lines make it impossible to incorporate environmental features into a flood risk management project.
b. **Require the Corps to evaluate proposed environmental features based on both a qualitative analysis of benefits as well as a science-based evaluation of the likelihood of achieving the project's desired results.**
c. **Retroactively amend previous disaster supplemental legislation to make it clear that the use of that word "flood" may include environmental restoration** and is not limited to the Corps' flood damage reduction protocols, models and analyses. When Congress has used the word "flood" in its disaster supplementals, Corps Headquarters has interpreted that to mean that environmental measures cannot be included in traditional flood risk reduction initiatives. There are currently studies using post-disaster funds that would benefit from this change.

7. Other Important Recommendations

The following recommendations are commonsense solutions to overcome bureaucratic barriers that have gotten in the way of more effective and cost-efficient management of the nation's coastal resources.

a. **Require that all constructed Federal Coastal Storm Damage Reduction Projects be analyzed to determine what, if any, measures can be taken to increase their effectiveness,** including raising dune height or adding dunes, modifying their original design, and incorporating opportunities for the beneficial use of sand. Most of these projects were designed over 20 to 40 years ago. Both coastal science and meteorological conditions have changed significantly since then.

b. **Amend the Section 1037 process authorized by Congress to reevaluate coastal storm damage reduction projects** for an extension of federal fiscal participation beyond 50 years to **(a) allow the Corps to give full consideration to how that project has functioned** since it was initially constructed, **(b) include all benefits to life and safety as well as other social effects** to determine if continued federal financial participation in periodic nourishments is warranted, and **(c) extend the period of federal fiscal participation for all projects now under such review for another 15 years** to enable the Corps to adapt its analyses of all benefits and non-federal sponsors time to consider financing alternatives. The Section 1037 process is not working and must be rethought.

Conclusion

Thank you for taking the time to consider these recommendations, Should you have any questions, I can be reached at howard.marlowe@warwickconsultants.net 202-787-5770

1199 North Fairfax St, Suite 900 • Alexandria, VA 22314

President
Gilbert Trejo
El Paso Water, TX

Vice President
Craig Lichty
Black & Veatch, CA

Treasurer
Diane Taniguchi-Dennis
Clean Water Services, OR

Secretary
Karen Pallansch
Alexandria Renew Enterprises, VA

Past President
Paul Jones, II
Eastern Municipal Water District, CA

April 27, 2020

The Honorable John Barrasso, Chairman
Committee on Environment and Public Works
United States Senate

The Honorable Tom Carper, Ranking Member
Committee on Environment and Public Works
United States Senate

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of our hundreds of municipal agencies, businesses, and institutional members, we thank you for your commitment to developing strong, bipartisan water infrastructure legislation in 2020.

The two bills released last week—America's Water Infrastructure Act of 2020 and the Drinking Water Infrastructure Act of 2020—include important policy changes and critical investments in water management programs, including programs that support the use of water recycling across the country. We commend you for your persistence in developing this legislation while having to concurrently respond to the economic and public health impacts of the coronavirus pandemic.

As you proceed to markup of the Drinking Water Infrastructure Act of 2020 and America's Water Infrastructure Act of 2020, we urge the following modifications for inclusion in a manager's amendment:

Pilot Program for Alternative Water Source Grants (Section 2006 of AWIA)

We thank the Committee in particular for including language to reauthorize the Pilot Program for Alternative Water Source Grants. More and more communities across the country are turning to water recycling to establish a safe, clean, sustainable water supply, to build local economies and create jobs, and to meet growing environmental and public health challenges. The Pilot Program for Alternative Water Source Grants will ensure that communities in all 50 states can access water recycling tools and resources in order to solve local challenges.

While we strongly support the reauthorization of this program, we are concerned with a provision contained in the underlying statute that arbitrarily prohibits certain Western projects from qualifying for Alternative Water Source Grant funding. The provision — 33 USC 1300 (d)(1) — prevents entities from receiving Alternative Water Source Grant funds for projects that have also received funding through the Bureau of Reclamation's Title XVI Program. As a result, communities that have received Title XVI funding for planning purposes are not eligible to apply for Alternative Water Source Grant funding for testing or construction activities. We believe this limitation is too broad and recommend narrowing it slightly so that projects that have received Title XVI funding for planning and design purposes are not put at a disadvantage.

We urge the following modification to Sec. 2006 (new language underlined, proposed deletions in strikethrough):

SEC. 2006. PILOT PROGRAM FOR ALTERNATIVE WATER SOURCE PROJECTS.

Section 220 of the Federal Water Pollution Control Act (33 U.S.C. 1300) is amended—
(1) in subsection (b), in the heading, by striking "IN GENERAL" and inserting "ESTABLISHMENT";
(2) in subsection (d)—
(A) by amending paragraph (1) to read as follows: "(1) LIMITATION ON ELIGIBILITY.—A project that has received construction funds under the Reclamation Projects Authorization and Adjustment Act of 1992 Act shall not be eligible for grant assistance under this section."; and
(B) by striking paragraph (2); and
(~~B~~C) by redesignating paragraph (3) as paragraph (2);

The above modification narrows the scope of the existing limitation so that it applies only to Title XVI projects that have received construction money, not to those that have received funding for planning and design. This would allow western entities to begin the process of developing a project through Title XVI, and seek construction support through the Alternative Water Source Grants Program.

Interagency Working Group on Water Recycling

In February 2020, the U.S. Environmental Protection Agency released the National Water Reuse Action Plan (WRAP) after more than a year of collaboration with other federal agencies and a range of external stakeholders. Through this effort, EPA broke down silos within the federal bureaucracy, and secured tangible commitments from sister agencies to help advance sound policy in support of water recycling where appropriate. For example, the U.S. Department of Agriculture is integrating water recycling into its conservation programs; the Department of State is promoting water recycling around the globe; and eight different federal agencies are working together to compile existing federal funding sources and develop an interagency decision support tool.

This EPA-led collaboration is effectively leveraging and coordinating available tools and resources throughout the federal family, has broad support among the stakeholder community, and warrants Congressional authorization to ensure it continues. As this Committee recognizes, water recycling can provide safe and sustainable water supplies to communities and businesses and is becoming an essential element in our nation's water management strategy. We value the EPA-led effort and urge that it be continued and built upon in the years ahead. We believe that this can be accomplished through the establishment of an interagency working group on water reuse to provide continuity and establish a more formal structure for engagement across federal agencies and with external stakeholders.

Therefore, we offer the following language for inclusion in AWIA:

Sec. _____. Water Reuse Interagency Working Group.

Not later than 180 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall establish and Chair an Interagency Working Group on Water Reuse for the purpose of developing and coordinating federal policy, initiatives, funding, and other resources to advance water reuse nationally. The Interagency Working Group shall be comprised of senior representatives from such federal agencies as determined by the Administrator. In carrying out the work of this working group, the Administrator shall consult regularly with representatives of relevant stakeholder organizations, including

stakeholders from the municipal water sector, industry, and non-governmental organizations. Every two years, the Administrator shall submit to Congress a report on the activities and findings of the interagency working group.

Support for Other Provisions

The WateReuse Association supports the following provisions, and we urge their continued inclusion in the bills:

- The Clean Water Infrastructure Resiliency and Sustainability Program (Section 2001 of AWIA);
- Reauthorization of the Clean Water State Revolving Fund Program at the levels provided for in the bill (Section 2015 of AWIA);
- Reauthorization of the Sewer Overflow and Stormwater Reuse Grant Program (Section 2007 of AWIA);
- Reauthorization of the Water Infrastructure Finance and Innovation Act (WIFIA) Program;
- Provision of $300 million for groundwater remediation for contaminants of concern, such as PFAS (Section 4(b) in DWIA 2020);
- WateReuse endorses the testimony submitted by the Association of Metropolitan Water Agencies (AMWA) with respect to Section 6(a)(6) and Section 9 of DWIA 2020.

Thank you for considering our views.

Sincerely,

Patricia Sinicropi
Executive Director

April 30, 2020

The Honorable John Barrasso, Chair
Committee on Environment and Public Works
United States Senate

The Honorable Tom Carper, Ranking Member
Committee on Environment and Public Works
United States Senate

Submitted electronically to: QFR@epw.senate.gov

RE: Discussion Drafts of the America's Water Infrastructure Act of 2020 and the Drinking Water Infrastructure Act of 2020

Dear Chair Barrasso and Ranking Member Carper:

Thank you for this opportunity to comment on the Discussion Drafts of the America's Water Infrastructure Act of 2020 (AWIA 2020) and the Drinking Water Infrastructure Act of 2020 (DWIA 2020). WaterNow Alliance[1] is a nonprofit network of more than 550 local water leaders nationwide dedicated to advancing sustainable, affordable, and climate resilient water strategies, and we appreciate your bipartisan efforts to make critical investments in sustainable water infrastructure with these two important bills. We also commend you for your continued work on these vital issues while also simultaneously responding to the public health and economic impacts of COVID-19.

We are encouraged by the recognition in the Discussion Drafts that federal investments in the nation's water infrastructure are essential to our economic recovery, once the immediate medical and economic needs resulting from the coronavirus pandemic have been met. Federal investment in local water systems has declined significantly over the last thirty years; local utilities and cities now represent 95% of all spending on urban drinking, wastewater, and stormwater infrastructure nationwide.[2] Particularly in the face of the considerable additional challenges posed by climate change, the time is right for a return to federal investment in water resilience.

In particular, localized, onsite and decentralized water infrastructure, management technologies, installations, and strategies have tremendous potential to provide increased water supply security and address urban flooding and water quality challenges—often at far lower cost than conventional alternatives while providing multiple community benefits. We appreciate that the bills recognize the value of decentralized strategies, and offer the following recommendations to strengthen the bills' ability to accelerate and support their widespread deployment. To this end, our comments focus on AWIA 2020 Sections 2007, 2018, and 3012, and DWIA 2020 Sections 13 and 14. In brief, we make 5 specific recommendations:

(1) Sewer Overflow and Stormwater Reuse Municipal Grants (AWIA 2020 Sec. 2007). Provide that the full range of localized, distributed water management projects that can address sewer overflows and stormwater runoff are eligible for grant funding, including specifically consumer rebates and financial incentives for green stormwater infrastructure, water use efficiency measures, and onsite reuse.

[1] www.waternow.org.
[2] Not Everything is Broken, pp. 38, 60, RAND 2017, https://www.rand.org/pubs/research_reports/RR1739.html.

(2) Stormwater Infrastructure Technology (AWIA 2020 Sec. 2018). Provide that "stormwater control infrastructure projects" include distributed green infrastructure and onsite reuse. Increase the per project implementation grant amount from $2 million to $4 million.

(3) Municipal Ombudsman (AWIA 2020 Sec. 3012). Include three additional categories of information a utility seeking assistance will be able to receive from the ombudsman to support local water use efficiency and conservation efforts: (1) accessing local municipal revenue bond proceeds to finance consumer incentives; (2) revising utility rate structures to ensure fiscal health and stability notwithstanding declining volumetric sales; and (3) identifying opportunities for issuance of Environmental Impact Bonds.

(4) Advanced Drinking Water Technologies (DWIA 2020 Sec. 13). Eliminate a potential barrier to otherwise eligible entities by removing a requirement that a potential grant applicant have plans to identify, or have already identified, ways to "employ new or emerging, yet proven, technologies." Provide that the full range of localized, distributed water management projects that can address drinking water challenges are eligible for grant funding, including specifically consumer rebates and financial incentives for water use efficiency measures and onsite reuse. Increase the per project grant amount from $500,000 to $1 million.

(5) Drinking Water Infrastructure Discretionary Grant Program (DWIA 2020 Sec. 14). Provide that onsite, decentralized water infrastructure projects that can address drinking water management challenges are fully eligible for grant funds.

A new generation of localized water solutions is coming online with extraordinary but as yet untapped potential to address the supply, water quality, flooding, and environmental contamination challenges facing cities, towns and special districts nationwide. Onsite, decentralized installations and technologies distributed widely across a community, "distributed infrastructure," includes a wide range of water management solutions. These technologies and installations serve the same functions as more conventional, centralized infrastructure—they provide clean drinking water and manage wastewater and stormwater—often more affordably while building local resilience to disasters and ability to withstand shifts resulting from climate change.[3] Far more so than conventional water infrastructure, decentralized water strategies are also able to provide economic and other co-benefits for local communities and the environment, including, permanent local green jobs, increased property values, improved public health, affordable rates, increased energy efficiency, increased wildlife habitat, improved water quality, improved air quality, reduced greenhouse gases, increased open space, and reduced crime.[4]

---

[3] Nancey Green Leigh & Heonycong Lee, *Sustainable and Resilient Urban Water Systems*, pp. 8-9, Sustainability, Vol. 11 (2019), https://www.researchgate.net/publication/331066784_Sustainable_and_Resilient_Urban_Water_Systems_The_Role_of_Decentralization_and_Planning; Optimizing the Structure and Scale of Urban Water Infrastructure: Integrating Distributed Systems, p. 5, The Johnson Foundation at Wingspread, August 2014, https://www.johnsonfdn.org/sites/default/files/reports_publications/CNW-DistributedSystems.pdf.

[4] See Moving Toward a Multi-Benefit Approach for Water Management, pp. VII-VIII, 17, 27-28, 34-35, https://pacinst.org/wp-content/uploads/2019/04/moving-toward-multi-benefit-approach.pdf; Cynthia Koehler & Caroline Koch, *Innovation in Action: 21st Century Water*

While many local utilities have adopted initiatives at various times to promote conservation, efficiency, onsite reuse, or distributed green infrastructure programs, these programs are usually relatively small scale. As detailed in WaterNow's recent report, *Innovation in Action: 21st Century Water Infrastructure Solutions (Innovation in Action)* investing in localized solutions, particularly for water use efficiency, at much higher levels is essential if the country is to realize the benefits that can accrue from these solutions in the aggregate, and be more resilient against recurring and worsening drought due to climate change.[5] For these reasons, we respectfully request that you adopt the recommended revisions listed below.

(1) *Sewer Overflow and Stormwater Reuse Municipal Grants (AWIA 2020 Sec. 2007)*

WaterNow Alliance applauds the Discussion Draft's proposed amendments to the Sewer Overflow and Stormwater Reuse Municipal Grants program recognizing the role green infrastructure plays in reducing sewer overflows and addressing stormwater runoff and to allocate grant funds to rural communities set out in AWIA 2020 Sec. 2007. Green infrastructure is, however, not the only localized water infrastructure strategy that serves these crucial water management purposes; nor is it the only type of water management strategy eligible for grant funding under the Sewer Overflow and Stormwater Reuse Municipal Grants program. "[G]reen infrastructure, water and energy efficiency improvements, and other environmentally innovative activities" are listed as the types of projects to be funded under this program.[6]

To ensure the amendment is clear that the full range of localized, distributed water management projects that can address sewer overflows and stormwater runoff are eligible for grant funding, including green infrastructure, water use efficiency, and onsite reuse; and to ensure grant funds allocated to rural communities are also used for environmentally sustainable of projects, we respectfully recommend the following modification to AWIA 2020 Sec. 2007 (new proposed language yellow-highlighted and underlined):

- ''(A) GREEN, LOCALIZED, ONSITE INFRASTRUCTURE.—To the extent'';
- "(B) RURAL ALLOCATION.—To the extent there are sufficient eligible project applications, the Administrator shall ensure that a State uses not less than 15 percent of the amount of the grants made to the State under subsection (a) in a fiscal year to carry out projects in rural areas for the purpose of planning, design, and construction of— (i) treatment works to intercept, transport, control, treat, or reuse municipal sewer overflows, sanitary sewer overflows, or stormwater; or (ii) any other measures to manage, reduce, treat, or recapture stormwater or subsurface drainage water including through the use of green infrastructure, water and energy efficiency improvements, and

Infrastructure Solutions, pp. 24, 25, 48, 51, 63, 73, 76-77, 82, 98, 106, San Francisco, Calif.: WaterNow Alliance (2019), https://tapin.waternow.org/wp-content/uploads/sites/2/2019/11/WaterNowAlliance_Innovation-In-Action_FINAL-1.pdf; see also The Impact of *Green City, Clean Waters* on Philadelphia: Measuring the Triple Bottom Line Impact of Green Stormwater Infrastructure pp. 18-26 (detailing the crime reduction and health benefits of Philadelphia's program), https://www.sbnphiladelphia.org/wp-content/uploads/2019/04/Impact-of-Green-City-Clean-Waters-on-Philadelphia-2019.pdf; see also Santa Fe Water Division: Fostering a long-standing culture of water efficiency, WaterNow Case Study, p. 5, https://tapin.waternow.org/wp-content/uploads/sites/2/2019/04/SantaFeWaterUtilitiesDivision.pdf.

[5] Cynthia Koehler & Caroline Koch, *Innovation in Action: 21st Century Water Infrastructure Solutions*, San Francisco, Calif.: WaterNow Alliance (2019), https://tapin.waternow.org/wp-content/uploads/sites/2/2019/11/WaterNowAlliance_Innovation-In-Action_FINAL-1.pdf.

[6] 33 U.S.C. § 1313(f)(2).

other environmentally innovative activities eligible for assistance under section 603(c).

These revisions will help elevate green *and* onsite water infrastructure projects as eligible projects under sewer overflow and stormwater reuse municipal grants.

(2) *Stormwater Infrastructure Technology (AWIA 2020 Sec. 2018)*

We support the Stormwater Control Infrastructure Project Grant program to provide grants on a competitive basis to eligible entities to carry out stormwater control infrastructure projects that incorporate new and emerging, but proven, stormwater control technology set out in SWIA Sec. 2018. Proven stormwater control technologies include distributed green infrastructure and onsite reuse systems. These localized stormwater strategies have been successfully applied in communities nationwide for many years, and have helped to significantly reduce sewer overflows and improve water quality.[7]

To ensure that the reference to "stormwater control infrastructure projects" set out in AWIA 2020 Sec. 2018 specifically includes decentralized, consumer-facing distributed green infrastructure and onsite reuse systems, we respectfully recommend the following modification to AWIA 2020 Sec. 2018 (new language yellow-highlighted and underlined):

- (1) GRANT AUTHORITY.—The Administrator shall provide grants, on a competitive basis, to eligible entities to carry out stormwater control infrastructure projects that incorporate new and emerging, but proven, stormwater control technology, including, but not limited, to localized, distributed green infrastructure or onsite reuse projects implemented via rebates, direct installations, and other financial incentives designed to encourage participation in water runoff management improvement program, in accordance with this subsection.

This revision will ensure that effective localized stormwater management strategies are eligible for grant funds under this laudable program.

In addition, WaterNow urges that the authorized per project grant amount be increased from $2 million to $4 million. Larger scale federal investments in new and emerging stormwater management technologies will not only allow local water providers to leverage more of their local resources, but will also significantly increase the economic and social impact of these investments.

(3) *Municipal Ombudsman (AWIA 2020 Sec. 3012)*

WaterNow supports expansion of the types of information the Municipal Ombudsman is able to provide to municipalities seeking assistance as they work to comply with the Clean Water Act to

[7] See, e.g., Cynthia Koehler & Caroline Koch, *Innovation in Action: 21st Century Water Infrastructure Solutions*, pp. 73-105, San Francisco, Calif.: WaterNow Alliance (2019), https://tapin.waternow.org/wp-content/uploads/sites/2/2019/11/WaterNowAlliance_Innovation-In-Action_FINAL-1.pdf; see also Milwaukee Metropolitan Sewerage District, Weathering the storm where rain falls, WaterNow Case Study, https://tapin.waternow.org/wp-content/uploads/sites/2/2019/03/WaterNow_MilwaukeeMetropolitan-_CaseStudy_FINAL.pdf; DC Water, Clean Rivers Project, Case Study, https://tapin.waternow.org/wp-content/uploads/sites/2/2019/03/DCWaterCaseStudyvF.pdf.

include information on establishing local funding sources, organization analyses, grant application assistance, and developing innovating funding strategies and mechanisms set out in AWIA 2020 Sec. 3012. EPA guidance on these complex issues is a valuable resource for local water managers.

Municipal water utilities and their ratepayers shoulder the vast majority of the cost for non-agricultural, local water infrastructure. These entities work to balance their responsibility to provide high quality, safe water for our communities with the obligation to keep rates affordable and ensure water accessibility for all. To this end, tax-free municipal bonds are generally the investment vehicle of choice since they often represent the lowest cost financing available for large-scale projects. It is well documented that localized solutions, largely implemented through consumer rebates or direct installation programs, are often far less expensive than conventional infrastructure alternatives while meeting the same water management needs.[8] However, determining *how* to pay for these solutions can be a major barrier to widespread adoption of distributed, innovative solutions. As others have noted, the opportunity to scale distributed systems requires that utilities be empowered to access capital for these investments in the same way that they access capital for conventional infrastructure.[9] To this end, as a result of efforts by WaterNow and our partners, in May 2018, the Governmental Accounting Standards Board (GASB) issued new guidance clarifying that public water providers are authorized to access capital to finance localized water programs just as they do for their tangible assets.[10] The new GASB guidance is a game changer for the nation's local public utilities.[11] If even a tiny percent of the annual capital spending for water infrastructure across the country is redeployed, or expanded, to distributed solutions, it would represent vast new investment capacity and a major expansion in the adoption of these technologies and programs.

Further, traditionally, the water utility service model, particularly for drinking water, relies on volumetric sales notwithstanding the reality that costs are 80% (or more) fixed for most agencies. Following the energy sector, utilities are beginning to shift to a more sustainable business model that treats water like a service instead of a commodity. However, this transition is expensive and politically challenging.

To ensure local decisionmakers have access to information about the full scope of local funding

---

[8] See, e.g., Conservation Limits Rate Increases for a Colorado Utility, pp. 6-8, Alliance for Water Efficiency, November 2013, http://www.allianceforwatereefficiency.org/WorkArea/DownloadAsset.aspx?id=8671.

[9] See, generally, Bond Financing Distributed Water Systems: How to Make Better Use of Our Most Liquid Market for Financing Water Infrastructure, Ceres, https://www.ceres.org/sites/default/files/reports/2017-05/Ceres_WaterBondFinancing_082814.pdf.

[10] Implementation Guide No. 2018-1, *Implementation Guidance Update—2018*, p. 2, Governmental Accounting Standards Board, https://www.gasb.org/jsp/GASB/Document_C/DocumentPage?cid=1176170563952&acceptedDisclaimer=true; see also Little-Known Accounting Policy Could Fuel Green Infrastructure Surge, KQED, May 23, 2018, https://www.kqed.org/science/1924341/little-known-accounting-policy-could-fuel-green-infrastructure-surge; see also Financing the Future of Water Infrastructure Just Got a Whole Lot Easier Part 3: Capital, Cash and Scale, WaterNow Alliance, May 2018, https://waternow.org/financing-the-future-of-water-infrastructure-just-got-a-whole-lot-easier-part-3-capital-cash-and-scale/; For more information on this policy clarification and how to use bond proceeds to debt finance distributed infrastructure see generally Go Green: Muni Bond Financing for Distributed Water Infrastructure, Earth Economics et al., June 2018, https://waternow.org/go-green-muni-bond-financing-for-distributed-water-solutions/.

[11] A layperson's guide to this policy change can be found here: https://waternow.org/wp-content/uploads/2019/01/WaterLeaderGuide-Handout.pdf.

sources available to finance sustainable, distributed water strategies and about available sustainable rate models, we respectfully recommend the following modification to AWIA 2020 Sec. 3012 (new language yellow-highlighted and underlined):

- "establishing local funding sources, accessing revenue bond proceeds, including to finance consumer incentive programs, available rate non-volumetric rate models, organization analyses, grant application assistance, and developing innovative funding strategies and mechanisms, including, but not limited to, Environmental Impact Bonds."

This addition outlines a broader range of available financing mechanisms and rate structures available to local water managers on which the Municipal Ombudsman will provide valuable assistance.

(4) *Advanced Drinking Water Technologies (DWIA 2020 Sec. 13)*

WaterNow supports the Advanced Drinking Water Technology Grant Program for water providers serving populations of 100,000 or fewer as well as disadvantaged communities set out in DWIA 2020 Sec. 13. Federal grant funds are key funding sources for these communities. However, the second eligibility criteria listed in Sec. 13 is potentially a barrier to an otherwise qualifying water provider's ability to access these much-needed grant funds. As drafted, Sec. 13 specifies that to be eligible a water provider must have "plans to identify or has identified opportunities in the operations of the public water system to employ new or emerging, yet proven, technologies, as determined by the Administrator." The requirement to have a plan or have already identified ways to employ new or emerging technologies prior to applying could overly limit eligible water providers, as smaller or disadvantaged communities often lack capacity or funding to develop such plans.

Further, proven water technologies aimed at efficient use of water include newer distributed strategies such as customer-side-of-the-meter leak detection devices and smart irrigation controllers as well as more familiar solutions such as turf change-outs, high efficiency appliances and fixtures, and lead service line replacements. These localized strategies have been successfully applied in a number of communities nationwide, and have helped to meet water management challenges and keep water rates affordable.[12]

To eliminate this potential barrier and ensure it is clear that the full range of localized, distributed water management projects that can address drinking water challenges are eligible for grant funding, we respectfully recommend the following modifications to DWIA 2020 Sec. 13 (new proposed language yellow-highlighted and underlined, proposed deletions blue-highlighted in strikethrough):

[12] See, e.g., Cynthia Koehler & Caroline Koch, *Innovation in Action: 21st Century Water Infrastructure Solutions*, pp. 43-72, San Francisco, Calif.: WaterNow Alliance (2019), https://tapin.waternow.org/wp-content/uploads/sites/2/2019/11/WaterNowAlliance_Innovation-In-Action_FINAL-1.pdf; see also Spanish Fork: Adding Capacity for Peak Demand with Smart Irrigation, WaterNow Case Study, https://waternow.org/2019/07/26/spanish-fork-how-smart-irrigation-revolutionized-water-use/; see also Santa Fe Water Division: Fostering a long-standing culture of water efficiency, WaterNow Case Study, p. 5, https://tapin.waternow.org/wp-content/uploads/sites/2/2019/04/SantaFeWaterUtilitiesDivision.pdf; Tucson Water: Efficiency Means Avoided Costs, WaterNow Case Study, https://waternow.org/2020/02/05/tucson-water-efficiency-means-avoided-costs/

- has ~~plans to identify or has identified~~ opportunities in the operations of the public water system to employ new or emerging, yet proven, technologies, including, but not limited to distributed water use efficiency and onsite water management strategies, as determined by the Administrator, that enhance treatment, monitoring, affordability, efficiency, or safety of the drinking water provided by the public water system, including technologies not identified in the study conducted under subsection (a)(1).

In addition, WaterNow urges that the authorized per project grant amount be increased from $500,000 to $1 million. Larger scale federal investments in new and emerging water management technologies will not only allow local water providers to leverage more of their local resources, but will also significantly increase the economic and social impact of these investments.

(5) *Drinking Water Infrastructure Discretionary Grant Program (DWIA 2020 Sec. 14)*

WaterNow applauds the creation of the Drinking Water Infrastructure Discretionary Grant Program set out in DWIA 2020 Sec. 14. We further support the inclusion of eligible projects that would otherwise be eligible for funding under the Drinking Water State Revolving Fund, which already authorizes funds to be used for consumer rebates and direct installations. However, this eligibility is not widely understood. To clarify that the full range of localized, distributed water infrastructure projects that can address drinking water management challenges are eligible to receive grant funds under this new program, we respectfully recommend following modification to DWIA 2020 Sec. 14 (new language yellow-highlighted and underlined):

- any other drinking water infrastructure project, including, but not limited to, localized, distributed water infrastructure projects implemented via rebates, direct installations, and other financial incentives designed to encourage participation in water conservation or efficiency programs, that the Administrator determines to appropriate.

This addition will ensure that effective localized water management strategies that are part of the portfolio of new and emerging technologies that are eligible for grant funds under this commendable program.

Support for Additional Sections

We also support the following provisions and urge their continued inclusion in the bills:

- Clean water infrastructure resiliency and sustainability program (AWIA 2020 Sec. 2001)
- Wastewater efficiency grant pilot program (AWIA 2020 Sec. 2005)
- Pilot program for alternative water source projects (AWIA 2020 Sec. 2006)
- Reauthorization of Clean Water State Revolving Loan Funds (AWIA 2020 Sec. 2015)
- Wastewater infrastructure discretionary grant program (AWIA 2020 Sec. 2016)
- Midsize Drinking Water System Infrastructure Resilience and Sustainability

Program (DWIA 2020 Sec. 9)

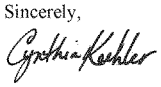
- Needs Assessment For Nationwide Rural and Urban Low-Income Community Water Assistance (DWIA 2020 Sec. 10).

Conclusion

Localized water infrastructure has enormous potential to sustainably manage our water resources now and for future generations, often more affordably than other alternatives. As detailed above, we propose revisions to certain sections of AWIA 2020 and DWIA 2020 to ensure local water providers have increased access and ability to finance and implement these cost-effective, equitable, and environmentally friendly solutions.

We appreciate your consideration of our comments and look forward to working with you to transform the nation's water infrastructure to secure our water future.

Sincerely,



Executive Director
WaterNow Alliance

Water Environment Federation®
the water quality people™

601 Wythe Street, Alexandria, Virginia 22314-1994 | p 703.684.2400 | f 703.684.2492 | www.wef.org

BOARD OF TRUSTEES

PRESIDENT
Jacqueline A. Jarrell, PE
Charlotte, NC

PRESIDENT-ELECT
Lynn Broaddus, Ph.D., M.B.A.
Minneapolis, MN

IMMEDIATE PAST PRESIDENT
Thomas E. Kunetz, PE
Chicago, IL

VICE PRESIDENT
Jamie Eichenberger, PE
Denver, CO

TREASURER
Keith L. Hobson, P.E., BCEE
Ames, IA

SECRETARY and
WEF EXECUTIVE DIRECTOR
Walter Marlowe, PE, CAE
Alexandria, VA

Rajendra Bhattarai, PE, BCEE
Austin, TX
Howard Carter
Saco, ME
Aimeé Killeen
Baton Rouge, LA
Mark Poling
Hillsboro, OR
John Trofatter
Land O Lakes, FL
Ifetayo Venner, PE, ENV SP
Tampa, FL

CLEAN WATER IS OUR FIRST AND LAST LINE OF DEFENSE WATER'S WORTH IT

April 28, 2020

The Honorable John Barrasso
Chairman
Committee on Environment
& Public Works
U.S. Senate
Washington, D.C.

The Honorable Thomas R. Carper
Ranking Member
Committee on Environment
& Public Works
U.S. Senate
Washington, D.C.

RE: Stakeholder Comments on draft America's Water Infrastructure Act of 2020

Dear Chairman Barrasso and Ranking Member Carper:

The Water Environment Federation (WEF) welcomes the opportunity to provide stakeholder comments regarding the draft America's Water Infrastructure Act (AWIA) of 2020. WEF is the educational and technical association for over 35,000 water professionals working to maintain and improve water quality and public health in communities across the country and around the world. WEF strongly supports the draft legislation and congratulates the Committee on putting forth a bill that will advance many of the water infrastructure funding and policy priorities our members have been advocating for over the years. This letter details those provisions in the draft legislation that WEF would like included in the final bill, as well as specific changes to some of those provisions that will ensure that those programs best address our nation's water infrastructure needs.

As the Committee knows, the national need for improvements to drinking water, wastewater, and stormwater infrastructure is substantial and there is broad support by the American public for increased federal funding to assist communities protect to public health, the environment, and spur economic growth. Recently the Value of Water Coalition survey[1] of public opinion found that 84% of Americans support increased federal investment to rebuild our water infrastructure. The coronavirus crisis has further highlighted the essential role that reliable water infrastructure, water professionals, and water utilities play in protecting communities. Every day our water utilities work to keep pathogens out of the environment by safely collecting and transporting wastewater from homes and businesses and then fully reclaiming and cleaning to meet strict standards. While Congress may take additional actions to provide coronavirus relief and recovery, policies and priorities set forth in AWIA 2020 will ensure that communities have the long-term tools and resources needed to serve their communities' water infrastructure needs.

1) http://thevalueofwater.org/resources

Section 2015 – Clean Water State Revolving Fund Reauthorization
WEF, our members, and our state-based Member Associations have long been strong advocates for the Clean Water State Revolving Fund (CW SRF), including supporting the creation of the program in 1987. The CW SRF program is one of the most successful federal infrastructure funding programs ever, and it is critical that Congress reauthorize it and increase the authorized fund levels to help address our national needs. Combined federal, state and local spending on water infrastructure equals about $41 billion per year, leaving an estimated national water infrastructure investment gap of $82 billion per year. If current needs are left unaddressed, the annual gap is projected to rise to $109 billion by 2026 and $153 billion by 2040, as needs from prior years accumulate. While the proposed authorization levels in the draft AWIA 2020 bill are greatly appreciated, WEF urges the Committee to further increase those levels.

The current national economic situation makes the economic and job-creation benefits of increased CW SRF more relevant than ever before. A report[2] produced by WEF and the WateReuse Association for this Committee in 2016 found that the return on investment for increased federal CW SRF funding produces significant job creation, federal revenue generation, and GDP benefits. The report found that $1 million in federal SRF capitalization grant funding generates 16.5 new high-paying jobs (~$60,000/yr. salary), $930,000 in federal tax revenues, and nearly $3 million in direct GDP and over $6 million in in-direct GDP.

WEF Recommendation: Reauthorize the Clean Water State Revolving Fund at the highest possible levels.

Section 2007 – Sewer Overflow and Stormwater Reuse Municipal Grants
Reauthorization and increased funding for the Sewer Overflow and Stormwater Reuse Municipal Grants (a.k.a. Sewer Overflow Control Grant program in the US EPA budget) will help the thousands of communities across the nation dealing with aging and inadequate combined sewer, separate sewer, and stormwater collections and conveyance infrastructure. These grants will not only help communities meet their regulatory obligation, it will also address public safety and resiliency priorities that are becoming increasing common in communities of all sized and geographic regions. Since the need for funding is unlikely to be fulfilled by the end of fiscal year 2021, WEF recommends that the Committee reauthorize this program through fiscal year 2024.

WEF Recommendation: Reauthorize and increase the Sewer Overflow and Stormwater Reuse Municipal Grants to $250 million per year through fiscal year 2024.

Section 2008 – Water Infrastructure and Workforce Investment Grants
WEF strongly supports the workforce development provisions included in the draft AWIA 2020 legislation, and urges the Committee to increase the authorized level to $10 million per year. WEF also urges the Committee to include additional provisions in AWIA 2020 to allow support for workforce development through the CW SRF.

---

[2] https://bit.ly/wef-wra-srf-economic-impact-study-report-april-29-2016

As the nation has seen during the coronavirus crisis, the work that water professionals do to protect public health is critical, both not just during times of crisis, but every day in every community in the United States. Unfortunately, the municipal drinking water, wastewater, and stormwater management sectors are all facing substantial workforce replacement needs. The aging workforce and high rate of retirement in the sector are placing pressure on utilities to find the next generation of workers. An estimated 30% to 50% of utility workers will retire over the next decade, taking with them tremendous professional knowledge and experience (WRF/AWWA, "Water Sector Workforce Sustainability Initiative," 2010). According to the U.S. Bureau of Labor Statistics, there will be an estimated 75,000 to 80,000 jobs available within utilities over the next six years. These are permanent Science, Technology, Engineering and Mathematics (STEM) cluster jobs that do not require a bachelor's degree and pay family-sustaining wages. They cannot be outsourced and are largely immune to economic externalities. These are jobs that protect public health and the environment, on par with other essential first responder jobs within communities. These jobs are in every city and county across the nation and are long-term careers that provide healthcare and retirement benefits., As our nation recovers from the coronavirus crisis, bringing the next generation of water professionals into careers in water will help communities with unemployment challenges, in addition to addressing current and future workforce needs in the sector.

The Manager's Amendment for H.R. 1497, the Water Quality and Jobs Creation Act of 2019, includes a provision that gives state CW SRF administrators the authority to use up to 1% of the federal CW SRF capitalization grant in assistance communities and utilities for workforce development, training, and retention. The draft AWIA 2020 bill grants states authority to use a portion of the CW SRF for additional subsidization, such as grants and loan forgiveness, which, therefore, could be used as workforce grants through a 1% set-aside. This small provision is voluntary based and upon a state's need but has the potential to be a significant funding source to help address water workforce development shortages. The language include in Section 12 of the Manager's Amendment of H.R. 1497 passed by the House Transportation & Infrastructure Committee is as follows:

> *WASTEWATER INFRASTRUCTURE WORKFORCE DEVELOPMENT. —Section 604 of the Federal Water Pollution Control Act (33 U.S.C. 1384) is amended by adding at the end the following:*
>
> > *"(d) WASTEWATER INFRASTRUCTURE WORKFORCE DEVELOPMENT.—A State may reserve each fiscal year up to 1 percent of the sums allotted to the State under this section for the fiscal year to carry out workforce development, training, and retraining activities described in section 104(g).".*

<u>WEF Recommendation:</u> Reauthorize the Water Infrastructure and Workforce Investments Grants program and increase funding to $10 million per year. Additionally, include legislative language allowing for up to 1% of the CW SRF federal capitalization grant to be used for water workforce development.

Section 2018 – Stormwater Infrastructure Technology

The inclusion of these provisions in AWIA 2020 is strongly supported by WEF. The basis for this provision is legislation introduced by Sen. Tom Udall, S. 2456, which WEF has previously supported. Several of the proposals in this section align with the recommendations that WEF released recently

in our annual Stormwater Policy Recommendations[3] to Congress. The need for federal support for stormwater infrastructure and resources is illustrated by findings in the 2018 WEF National Municipal Separate Storm Sewer System (MS4) Needs Assessment Survey[4]. The survey found that aging infrastructure, lack of funding, and increasing or expanding regulations were by far the top areas of concern for stormwater permittees. It also found that the estimated annual funding gap for stormwater is $7.5B, which is over 1/3 of the currently estimated annual expenditures in the stormwater sector. The provisions included in AWIA 2020 will help address many of the fundamental challenges facing the stormwater sector, including identifying and verifying the best stormwater management practices and technologies so that federal, state or local funds are spent effectively and regulatory goals are met.

WEF recommends to the Committee several changes to the provisions so that they best address the needs of the nation. First, expand the eligible institutions in Section 2018(a)(4) or eligible entities in Section 2018(a)(3) to include "nonprofit organizations". WEF is leading a national effort between States, municipal agencies, regulatory agencies, stormwater practitioners, and private entities to establish a national stormwater technology testing and verification program to ensure that stormwater management technologies meet verifiable performance standards. This effort is fairly mature in the partnership development phase, but will need additional funding resources for the implementation phase. Broadening eligibility under Section 2018(a)(3) will provide another potential source of support for this effort.

Second, WEF recommends that the cost-share for the implementation grants included in Section 2018(c) be 100% federal or at a minimum 80% federal and 20% non-federal. As detailed in the WEF MS4 Needs Assessment Survey, the shortage of funding for stormwater infrastructure investments is the most significant challenge for 64% of Phase II MS4 permittees, and over half of Phase I MS4 permittee. The majority of local stormwater infrastructure investments are not paid for through a separate financing mechanism, such as a stormwater utility fee, tax line-item or borrowing, but are paid for through a community's general budget/fund. Considering the increased financial pressures faced by local governments, a result of the coronavirus crisis, a cost-share of 100% federal, or at least 80% federal and 20% non-federal, will help ensure that the new grants are pursued by the greatest diversity of applicants and will go to communities most in need. A cost-share of 100% federal or 80% - 20% also aligns with most other federal programs that fund stormwater-related projects, such as the EPA Urban Water Small Grants (100% federal), HUD Community Development Block Grant Program (100% federal), or FHWA Transportation Alternatives Program (TAP) (80% federal). Additionally, WEF strongly supports provisions in Section 2018(c) to set-aside 15% for small, rural and disadvantaged communities, and urges the Committee to ensure that grants to those communities are 100% federal.

Third, WEF request in Section 2018(c)(2)(A)(v) that after "Developing" the term "and delivery" be added. This will enable grant recipients to use the funds for training personnel to fulfill the goal of this provision. Currently the language will only allow for the development of training materials. It

[3] http://www.wef.org/2020-stormwater-policy-recommendations
[4] https://wefstormwaterinstitute.org/programs/ms4survey/

is critical that new stormwater management technologies developed through this program or elsewhere be properly disseminated and personnel be trained suitably to ensure that it is effectively being installed and employed.

WEF Recommendations: Expand Section 2018(a)(3) & (4) to include "nonprofit organizations". Provide 100% federal or at least 80% - 20% federal-nonfederal grant funding under Section 2018(c). Also, provide 100% federal funding for the 15% set-aside for small, rural, and disadvantaged communities. Add "and delivery" to Section 2018(c)(2)(A)(v).

Section 2005 – Wastewater Efficiency Grant Pilot Program

Several years back WEF and other water organizations recognized that the staid model for treating wastewater did not reflect the tremendous opportunity that utilizing more advanced treatment processes has for recovering and using the energy, nutrients, and water resources available in wastewater. For this reason, the sector has renamed wastewater treatment facilities as Water Resource Recovery Facilities (WRRFs). Energy recovery from wastewater treatment is being employed by many WRRF that have the financial stability and technical resources to make investments in these technologies. Unfortunately, not all, particularly small, rural, and financially disadvantaged WRRFs, have been unable to install these technologies. In 2018, WEF created the ReNEW Water Project[5] to establish baseline metrics for resource recovery of energy, nutrients, and water from WRRFs. WRRFs in the United States can generate 859 megawatts annually, of which 350 megawatts can be recovered and used for wastewater treatment operations. With the proper infrastructure, biogas recovery through anaerobic digestion can produce energy that reduces the reliance on fossil fuels used in wastewater treatment, as part of a circular economy approach to wastewater treatment supported by WEF's ReNEW Water Project.

The US Environmental Protection Agency estimated that 1,351 WRRFs in the U.S. have a capacity larger than 1 million gallons per day (mgd) and have anaerobic digestion capabilities that will produce significant energy if investments in biogas energy generation infrastructure are made. Section 2005 will provide the operators of those WRRFs, such as municipal governments and public utilities, a substantial new source of funding to help them make those necessary infrastructure investments. In particular, this section will support the many smaller and medium sized WRRFs that lack larger ratepayer bases and the financial resources to make investments in biogas energy generation infrastructure. Since there is substantial national need for funding for these technologies, WEF recommends that this section be extended until fiscal year 2024.

WEF Recommendation: Include Section 2005 in the final legislation passed by Congress and authorize it until fiscal year 2024.

Additional AWIA 2020 Provisions WEF Supports

Draft AWIA 2020 contains several other sections that WEF strongly supports and our members will urge their Senators to also support when the bill is considered on the floor. In particular, but not limited to, WEF backs the following provisions:

---

[5] https://www.wef.org/resources/topics/browse-topics-o-z/resource-recovery-roadmaps/renew-water-project/

- **Section 2002 – Increased Funding for Technical Assistance**: *WEF urges the Committee to expand eligible entities under this program to include States and Interstate Agencies.*
- **Section 2004 – Small Publicly Owned Treatment Works Efficiency Grant Program**
- **Section 2014 – WIFIA Reauthorization**
- **Section 2016 – Wastewater Infrastructure Discretionary Grants**: *Please note that while this grant program is strongly supported by WEF, grant recipients should be expected to meet the same regulatory obligations and compliance deadlines in the same timely manner as all other permitted entities.*
- **Section 2012 – Use of Clean Water SRF**
- **Section 2011 – Connection to Publicly Owned Treatment Works**
- **Section 2001 – Clean Water Infrastructure Resiliency and Sustainability Program**
- **Section 2003 – Small & Medium POTW Circuit Rider Program**
- **Section 2006 – Pilot Program for Alternative Water Source Projects**

The need for expanded federal support and infrastructure funding resources is as important now during the coronavirus crisis as it is at any time in the last several decades. Federal investment in water infrastructure has declined from 63% to 9% since 1977, and unfortunately many of the infrastructure investments made during the 1970 and 1980 are nearing or past their design life. The simple act of "washing your hands" is the first line of defense in the fight against the coronavirus. The ability to safely draw water at the tap and easily dispose of the wastewater down the drain in an environmentally acceptable way covers water infrastructure at its basic foundation. Life without this basic foundation would not allow the American public to remain safe at home and for hospitals to operate during this pandemic. We cannot put at risk this basic foundation.

WEF recognizes that the Committee has demonstrated outstanding foresight and support for addressing these challenges over the last several Water Resource Development Acts. WEF thanks the Committee for maintaining that momentum in AWIA 2020 and building upon it. Please take into consideration the recommendations made in these comments, and we welcome the opportunity to elaborate further upon them if necessary. Please contact Steve Dye, WEF Legislative Director, at sdye@wef.org or 202-246-1070 for additional information.

Respectfully,

Tim Williams
Deputy Executive Director
Water Environment Federation

Written Testimony of James D. Ogsbury
Executive Director, Western Governors' Association

Submitted to the United States Senate
Committee on Environment and Public Works
May 1, 2020

America's Water Infrastructure Act of 2020
and the Drinking Water Infrastructure Act of 2020

Chairman Barrasso, Ranking Member Carper, and Members of the Committee, the Western Governors' Association (WGA) appreciates the opportunity to provide testimony to the Committee on two pieces of draft legislation: America's Water Infrastructure Act of 2020 and the Drinking Water Infrastructure Act of 2020. WGA is an independent organization representing the Governors of the 22 westernmost states and territories. The Association is an instrument of the Governors for bipartisan policy development, information sharing and collective action on issues of critical importance to the western United States.

WGA Policy Resolution 2018-08, *Water Resource Management in the West*, urges Congress to pass water resources development legislation on a regular schedule in order to provide states and local governments with certainty in meeting water infrastructure needs. Western Governors applaud the Committee's continued commitment to pass bipartisan water resources development legislation every two years. WGA Policy Resolution 2018-12, *Water Quality in the West*, expresses Western Governors' support for Congressional reauthorization and funding of the Clean Water and Drinking Water State Revolving Funds, which serve as important tools for states and local communities to address water infrastructure needs and comply with federal water quality and drinking water requirements.

Water is a precious resource everywhere, but especially in the arid West, where many communities anticipate challenges in meeting future water demands. Many communities in the West anticipate challenges in meeting future water demands. Supplies are nearly fully allocated in many basins across the West, and increased demand from population growth, economic development, and extreme weather and fire events places added stress on those limited water resources.

Strong state, regional and national economies require reliable deliveries of clean drinking water, which in turn depend on adequate infrastructure for water delivery and treatment. It is essential that the federal government, through the Environmental Protection Agency (EPA), provide adequate support to states and local water systems to meet federal drinking water requirements. Financial and technical assistance is particularly needed for small and rural systems, which often lack the resources required to comply with federal treatment standards. Some rural communities lack basic water and sanitary services needed to assure safe, secure sources of water for drinking and other domestic needs. Repairs to aging infrastructure are costly and often subject to postponement. Robust investments in water delivery, water treatment, and wastewater infrastructure also provide jobs and a foundation for long-term economic growth in communities throughout the West.

States possess primary authority to develop, use, control and distribute the surface water and groundwater located within their boundaries, subject to international treaties and interstate

agreements and judicial decrees. The federal government has long recognized the right to use water as determined under the laws of the various states. Western Governors value their partnerships with federal agencies as they operate under this established legal framework.

As the Committee continues to refine its draft of America's Water Infrastructure Act of 2020, please consider the addition of language to further address the following issues of particular concern to Western Governors:

- **Protection of states' primary authority to manage and allocate waters stored in U.S. Army Corps of Engineers reservoirs**: Congress should continue to recognize and protect states' primary authority over the management and allocation of water resources within their boundaries, including water stored at U.S. Army Corps of Engineers reservoirs. WGA requests that America's Water Infrastructure Act of 2020 include language that expressly prohibits the Corps from asserting any legal authority – or interfering with western states' authority – over state waters, including "natural flows,", stored within Corps projects.

- **Enhanced federal aquatic invasive species management authority:** Congress should provide federal agencies with the authorities necessary to effectively combat aquatic invasive species, including invasive mussels. WGA requests that the legislation include the bipartisan language in S. 2975, the Stop the Spread of Invasive Mussels Act of 2019, that would vest federal agencies, including the National Park Service and the Bureau of Land Management, with clear authority to manage watercraft upon their departure from infested waterbodies under federal jurisdiction.

- **Statutory Codification of EPA's Water Transfers Rule:** Western Governors support the legislative codification of EPA's Water Transfers Rule, 40 C.F.R. § 122.3(i), which has historically exempted certain transfers of waters from permitting under the Clean Water Act's National Pollutant Discharge Elimination System. The Rule is critical to the social and economic health of the arid West, which must rely on thousands of intrastate and regional transfers to move billions of gallons of water to satisfy domestic, agricultural and industrial needs.

As the Committee continues to refine its draft of the Drinking Water Infrastructure Act, please ensure that its programs, including the Drinking Water State Revolving Fund, are implemented in a manner that provides states with maximum flexibility. Additionally, language should direct EPA to consult with states to identify and establish priority areas, timelines, and programs that provide the largest public health and environmental benefits in its implementation of the Act.

To further inform the Committee's information-gathering process, I have attached the following items detailing Western Governors' policy on issues relevant to the draft legislation:

- WGA Policy Resolution 2018-08, *Water Resource Management in the West*;

- WGA Policy Resolution 2018-12, *Water Quality in the West*;

- WGA Policy Resolution 2019-06, *Biosecurity and Invasive Species Management*;

- December 5, 2019 letter from WGA to Senators Michael Bennet and Steve Daines, expressing Western Governors' support for S. 2975, the Stop the Spread of Invasive Mussels Act of 2019; and

- February 27, 2020 letter from WGA, the Conference of Western Attorneys General, and the Western States Water Council to Chairman Barrasso and Ranking Member Carper, commending your leadership in pursuing 2020 water resources legislation and requesting the inclusion of language to preclude interference with – or usurpation of – states' authority over water resources stored within the Corps of Engineers reservoirs.

Thank you for your leadership in the development of bipartisan water resources legislation. I hope you will consider WGA a useful resource as these important drafts move forward.

TESTIMONY CONTACT INFORMATION:

James D. Ogsbury
Executive Director
Western Governors' Association

1600 Broadway, Suite 1700
Denver, CO 80202

(303) 623-9378
jogsbury@westgov.org

WESTERN GOVERNORS' ASSOCIATION

Policy Resolution 2018-08

Water Resource Management in the West

A. BACKGROUND

1. Water is a crucial resource for communities, industries, habitats, farms, and western states. Clean, reliable water supplies are essential to maintain and improve quality of life. The scarce nature of water in much of the West makes it particularly important to our states.

2. States are the primary authority for allocating, administering, protecting, and developing water resources, and they are primarily responsible for water supply planning within their boundaries. States have the ultimate say in the management of their water resources and are best suited to speak to the unique nature of western water law and hydrology.

3. Many communities in the West anticipate challenges in meeting future water demands. Supplies are nearly fully allocated in many basins across the West, and increased demand from population growth, economic development, and extreme weather and fire events places added stress on those limited water resources. Sustainability of our natural resources, specifically water, is imperative to the foundations upon which the West was developed. Growth and development can only continue upon our recognition of continued state stewardship of our unique resources and corresponding responsibilities.

4. Strong state, regional and national economies require reliable deliveries of good-quality water, which in turn depend on adequate infrastructure for water and wastewater. Investments in water infrastructure also provide jobs and a foundation for long-term economic growth in communities throughout the West. Repairs to aging infrastructure are costly and often subject to postponement.

5. Western Governors recognize the essential role of partnership with federal agencies in western water management and hope to continue the tradition of collaboration between the states and federal agencies.

6. Tribal governments and western states also share common water resource management challenges. The Western Governors Association and Western States Water Council have had a long and productive partnership with tribes, working to resolve water rights claims.

B. GOVERNORS' POLICY STATEMENT

1. **State Primacy in Water Management:** As the preeminent authority on water management within their boundaries, states have the right to develop, use, control and distribute the surface water and groundwater located within their boundaries, subject to international treaties and interstate agreements and judicial decrees.

    a. **Federal Recognition of State Authority:** The federal government has long recognized the right to use water as determined under the laws of the various states; Western

Governors value their partnerships with federal agencies as they operate under this established legal framework.

While the Western Governors acknowledge the important role of federal laws such as the Clean Water Act (CWA), the Endangered Species Act (ESA), and the Safe Drinking Water Act (SDWA), nothing in any act of Congress or Executive Branch regulatory action should be construed as affecting or intending to affect states' primacy over the allocation and administration of their water resources.

Authorization of water resources development legislation, proposed federal surplus water rulemakings, and/or storage reallocation studies should recognize natural flows and defer to the states' legal right to allocate, develop, use, control, and distribute their waters, including but not limited to state storage and use requirements.

b. **Managing State Waters for Environmental Purposes:** States and federal agencies should coordinate efforts to avoid, to the extent possible, the listing of water-dependent species under the ESA. When ESA listings cannot be avoided, parties should promote the use of existing state tools, such as state conservation plans and in-stream flow protections, to conserve and recover species.

2. **Infrastructure Needs:** Aging infrastructure for existing water and wastewater facilities and the need for additional water projects cannot be ignored. Infrastructure investments are essential to our nation's continued economic prosperity and environmental protection, and they assist states in meeting federally-mandated standards.

a. **Federal Support for Infrastructure Investment:** Congress should provide adequate support for the CWA and SDWA State Revolving Funds. Further, Congress should fully utilize the receipts accruing to the Reclamation Fund for their intended purpose in the continuing conservation, development and wise use of western resources to meet western water-related needs, including the construction of Congressionally-authorized Bureau of Reclamation rural water projects and facilities that are part of a Congressionally-authorized Indian water rights settlement.

Congress should authorize water resources development legislation on a regular schedule and appropriate funding so all projects and studies authorized in such legislation can be completed in a timely manner.

Congress also should consider facilitating greater investment in water infrastructure, utilizing such tools as loan guarantees, revolving funds, infrastructure banks and water trust funds.

Capital budgeting and asset management principles should be used to determine funding priorities based on long-term sustainability and not annual incremental spending choices. It should be accompanied by dedicated sources of funding with appropriate financing, cost-sharing, pricing and cost recovery policies.

b. **Alternatives to Direct Federal Investment:** Federal and state policymakers should also consider other tools to promote investment in water infrastructure and reduce financing costs, including: public-private partnerships, bond insurance, risk pooling, and credit enhancements.

Congress should remove the state volume caps for private activity bonds used for water and wastewater projects, provide guaranteed tax-exempt status for bonds issued by state or local agencies to finance water infrastructure, provide loan guarantees, and otherwise support and encourage alternatives to direct federal investment of limited general funds.

c. **Hydropower:** Congress and the Administration should authorize and implement appropriate hydropower projects and programs through efficient permitting processes that enhance renewable electric generation capacity and promote economic development, while ensuring protection of important environmental resources and indigenous people's rights.

d. **Infrastructure Planning and Permitting:** Infrastructure planning and permitting guidelines, rules and regulations should be coordinated, streamlined and sufficiently flexible to: (1) allow for timely decision-making in the design, financing and construction of needed infrastructure; (2) account for regional differences; (3) balance economic and environmental considerations; and (4) minimize the cost of compliance.

3. **Western States Require Innovative and Integrated Water Management:** Western Governors believe effective solutions to water resource challenges require an integrated approach among states and with federal, tribal and local partners. Federal investments should assist states in implementing state water plans designed to provide water for municipal, rural, agricultural, industrial and habitat needs, and should provide financial and technical support for development of watershed and river basin water management plans when requested by states.

Integrated water management planning should also account for flood control, water quality protection, and regional water supply systems. Water resource planning must preserve state authority to manage water through policies which recognize state law and financial, environmental and social values of water to citizens of western states today and in the future.

a. **Water Transfers:** Western Governors recognize the potential benefits of market-based water transfers, meaning voluntary sales or leases of water rights. The Governors support water transfers that avoid or mitigate damages to agricultural economies and communities while preventing injury to other water rights, water quality, and the environment.

b. **Energy Development:** Western Governors recognize that energy development and electricity generation may create new water demands. Western Governors recommend increased coordination across the energy and water management communities, and support ongoing work to assess the interconnection of energy and water through the Regional Transmission Expansion Planning Project for the Western Interconnection and similar efforts.

c. **Conservation and Efficiency:** Because of diminished water resources and declining and inconsistent snowpack, Western Governors encourage adoption of strategies to sustain water resources and extend existing water supplies further through water conservation, water reuse and recycling, desalination and reclamation of brackish

waters, and reductions in *per capita* water use. The Governors encourage the use of and research into promising water-saving strategies.

d. **Local Watershed Planning:** Western Governors encourage federal agencies and Congress to provide resources such as technical support to states and local watershed groups. States may empower these watershed groups to address local water issues associated with water quality, growth and land management to complement state water needs.

e. **Intergovernmental Collaboration and Conflict Resolution:** Western Governors support the negotiated settlement of interstate water disputes, Indian and Hawaiian water rights claims, and other federal water needs and claims, the settlement of which are in the best interest of western states.

f. **State-Federal Coordination:** Western Governors recognize the important role of federal agencies in water resource management in the western states. Governors appreciate the efforts of federal agencies to coordinate water-related activities, particularly through the Western States Water Council, and support the continuation of these key state-federal partnerships.

4. **Western States Need Reliable Water Resource Information:** Basic information on the status, trends and projections of water resource availability is essential to sound water management.

a. **Basic Water Data:** Western Governors support the U.S. Geological Survey's Groundwater and Streamflow Information Program, the Natural Resources Conservation Service's Snow Survey and Water Supply Forecasting Program, the National Oceanic and Atmospheric Administration's weather and hydrology-related data collection, monitoring, and drought information programs, and the National Aeronautics and Space Administration's National Land Imaging (Landsat) Program with its thermal infrared sensor. Western Governors support federal efforts to coordinate water data gathering and information programs across multiple agencies.

b. **Extreme Weather Events Planning**: Western Governors recognize the significant potential impacts of extreme weather events and variability in water supplies. Western Governors urge Congress and the Administration to work closely with states and other resource managers to improve predictive and adaptive capabilities for extreme weather variability and related impacts. We specifically urge the federal government to place a priority on improving the sub-seasonal and seasonal precipitation forecasting capabilities that could support water management decision-making.

c. **Water Data Exchange:** The Western Governors' Association and the Western States Water Council have worked together to create the Water Data Exchange, an online portal that will enable states to share their water data with each other, federal agencies, and the public via a common platform. The Governors encourage the use of state water data in planning for both the public and private sectors.

5. **Drought Preparedness and Response:** As exceptional levels of drought persist across the West, Governors are leading on drought preparedness and response through the Western Governors' Drought Forum. The Drought Forum provides a

framework for leaders from states, businesses, non-profits, communities, research organizations and federal agencies to share best practices and identify policy options for drought management. The Governors have identified several areas in need of additional attention from Drought Forum partners, including:

a. **Data and Analysis:** Basic data on snowpack, streamflow and soil moisture is essential to understanding drought. Though a great deal of information already exists, enhanced drought data collection and real-time analysis at a higher resolution is essential. Governors support state and federal efforts to maintain adequate collection of drought and water data, enhance data networks where appropriate, and facilitate better use of existing information.

   The Governors appreciate the collaborative efforts on drought provided through NOAA's National Weather Service River Forecast Centers and Weather Forecast Offices, and the Office of Atmospheric Research's labs and programs, such as the National Integrated Drought Information System (NIDIS).

b. **Produced, Reused, and Brackish Water:** Technology exists to use produced, reused, recycled and brackish water -sources traditionally considered to be marginal or wastewater. Adoption of this technology has been limited by inadequate data, regulatory obstacles, financial barriers, public attitudes and logistical uncertainties. Governors support regulatory streamlining and policy options to encourage use of produced, brackish, and reused water where appropriate.

c. **Forest Health and Soil Stewardship:** Better land management practices for forests and farmland may help improve availability and soil moisture retention. Wildfires can cause sediment runoff in water systems, leading to problems for reservoir management and water quality. Governors support policies and practices that encourage healthy and resilient forests and soils in order to make the most of existing water supplies.

d. **Water Use Efficiency and Conservation:** Public awareness of drought has directed increasing attention to water conservation strategies, both in-home and on-farm. Governors encourage municipal, industrial and agricultural water conservation strategies as drought management strategy.

e. **Infrastructure and Investment:** Water infrastructure to store and convey water is crucial to drought management, but maintenance and expansion of that infrastructure is often difficult to fund. Governors support efforts to make the most of existing infrastructure, while seeking creative solutions to add more infrastructure with limited resources.

f. **Working within Institutional Frameworks to Manage Drought**: Legal frameworks and regulatory regimes can sometimes limit the ability of state, local and federal agencies to respond quickly to drought conditions. Governors believe that innovative, flexible policy solutions, such as streamlined processing of temporary water transfers, should be considered when managing drought.

g. **Communication and Collaboration:** Communication among state officials, federal agency representatives, water providers, agricultural users and citizens is a crucial component of effective drought response. The Western Governors' Drought Forum will continue to provide a framework for sharing best practices through its online resource library, informational webinars, and strategy-sharing meetings for the duration of this resolution.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. The Governors direct the WGA staff, where appropriate, to work with Congressional committees of jurisdiction and the Executive Branch to achieve the objectives of this resolution including funding, subject to the appropriation process, based on a prioritization of needs.

2. Furthermore, the Governors direct WGA staff to develop, as appropriate and timely, detailed annual work plans to advance the policy positions and goals contained in this resolution. Those work plans shall be presented to, and approved by, Western Governors prior to implementation. WGA staff shall keep the Governors informed, on a regular basis, of their progress in implementing approved annual work plans.

Western Governors enact new policy resolutions and amend existing resolutions on a bi-annual basis. Please consult www.westgov.org/policies for the most current copy of a resolution and a list of all current WGA policy resolutions.

Policy Resolution 2018-12

Water Quality in the West

A. BACKGROUND

1. Clean water is essential to strong economies and quality of life. In most of the West, water is a scarce resource that must be managed with sensitivity to social, environmental, and economic values and needs. Because of their unique understanding of these needs, states are in the best position to manage the water within their borders.

2. States have federally-recognized authority to manage and allocate water within their boundaries. The Clean Water Act (CWA) Section 101(g) expressly says that "the authority of each state to allocate quantities of water within its jurisdiction shall not be superseded, abrogated, or otherwise impaired by this Act."

3. States and the Environmental Protection Agency (EPA) work together as co-regulators under the CWA and the Safe Drinking Water Act (SDWA). Congress has delegated to states, by statute, the authority to obtain approval to implement certain federal program responsibilities. When a state has been approved to implement a program and the state is meeting minimum program requirements, the role of federal agencies like EPA should be funding, technical assistance, and research support. States should be free to develop, implement, and enforce those requirements using an approach that makes sense in their specific jurisdiction, subject to the minimum requirements of the federal acts.

4. The CWA was last reauthorized in 1987; attempts to reauthorize the Act since then have failed. Current federal regulations, guidance, and programs pertaining to the CWA do not always recognize the specific conditions and needs of most of the West, where water is scarce and even wastewater becomes a valuable resource to both humans and the environment. The West includes a variety of waters; small ephemeral washes, large perennial rivers, effluent-dependent streams, and wild and scenic rivers. In addition to natural rivers, streams and lakes, there are numerous man-made reservoirs, waterways and water conveyance structures. States need more flexibility to determine how to best manage these varying resources.

B. GOVERNORS' POLICY STATEMENT

Clean Water Act (CWA)

1. **State Authority and Implementation of CWA:** States have jurisdiction over water resource allocation decisions and are responsible for how to balance state water resource needs within CWA objectives. New regulations, rulemaking, and guidance should recognize this state authority.

   a) **CWA Jurisdiction:** Western Governors urge EPA and the Corps to engage the states as co-regulators and ensure that state water managers have a robust and meaningful voice in the development of any rule regarding CWA jurisdiction, particularly in the early stages of development before irreversible momentum precludes effective state participation.

b) **Total Maximum Daily Loads (TMDLs)/Adaptive Management:** States should have the flexibility to adopt water quality standards and set total maximum daily loads (TMDLs) that are tailored to the specific characteristics of Western water bodies, including variances for unique state and local conditions.

c) **Anti-degradation:** CWA Section 303 gives states the primary responsibility to establish water quality standards (WQS) subject to EPA oversight. Given the states' primary role in establishing WQS, EPA should directly involve the states in the rulemaking process for any proposed changes to its existing regulations. Before imposing new anti-degradation policies or implementation requirements, EPA should document the need for new requirements and strive to ensure that new requirements do not interfere with sound existing practices.

d) **Groundwater:** States have exclusive authority over the allocation and administration of rights to use groundwater located within their borders and are primarily responsible for allocating, protecting, managing, and otherwise controlling the resource. The regulatory reach of the CWA was not intended to, and should not, be applied to the management and protection of groundwater resources. The federal government should not develop a groundwater quality strategy; instead, it must recognize and respect state primacy, reflect a true state-federal partnership, and comply with current federal statutory authorities.

2. **Permitting:** Actions taken by EPA in its CWA permitting processes should not impinge upon state authority over water management or the states' responsibility to implement CWA provisions.

a) **State Water Quality Certification:** Section 401 of the CWA requires applicants for a federal license to secure state certification that potential discharges from their activities will not violate state water quality standards. Section 401 is operating as it should, and states' mandatory conditioning authority should be retained without amendment.

b) **General Permits:** Reauthorization of the CWA must reconcile the continuing administrative need for general permits with their site-specific permitting requirements under the CWA. EPA should promulgate rules and guidance that better support the use of general permits where it is more effective to permit groups of dischargers rather than individual dischargers.

c) **Water Transfers:** Water transfers that do not involve the addition of a pollutant have not been subject to the permitting requirements of the CWA's National Pollutant Discharge Elimination System (NPDES). States already have authority to address the water quality issues associated with transfers. Western Governors believe that transporting water through constructed conveyances to supply beneficial uses should not trigger NPDES permit requirements simply because the source and receiving water contain different chemical concentrations and physical constituents. Western Governors support EPA's current Water Transfers Rule, which exempts water transfers between waters of the United States from NPDES permitting requirements.

d) **Pesticides:** Western Governors generally support the primary role of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in regulating agriculture and public

health related pesticide applications to waters of the U.S. and will seek state-based solutions that complement rather than duplicate FIFRA in protecting water supplies.

3. **Nonpoint Source Pollution:** Nonpoint source pollution requires state watershed-oriented water quality management plans, and federal agencies should collaborate with states to carry out the objectives of these plans. The CWA should not supersede other ongoing federal, state, and local nonpoint source programs. Federal water policies must recognize that state programs enhanced by federal efforts could provide a firm foundation for a national nonpoint source policy that maintains the non-regulatory and voluntary nature of the program. In general, the use of point source solutions to control nonpoint source pollution is also ill-advised.

   a) **Forest Roads**: Stormwater runoff from forest roads has been managed as a nonpoint source of pollution under EPA regulation and state law since enactment of the CWA. Western Governors support solutions that are consistent with the long-established treatment of forest roads as nonpoint sources, provided that forest roads are treated equally across ownership within each state.

   b) **Nutrient Pollution**: Nitrogen and phosphorus (nutrient) pollution is a significant cause of water quality impairment across the nation, and continued cooperation between states and EPA is needed. However, nutrients produced by non-point sources fall outside of NPDES jurisdiction and should not be treated like other pollutants that have clear and consistent thresholds over a broad range of aquatic systems and conditions.

      States should be allowed sufficient flexibility to utilize their own incentives and authorities to establish standards and control strategies to address nutrient pollution, rather than being forced to abide by one-size-fits-all federal numeric criteria. Successful tools currently in use by states include best management practices, nutrient trading, controlling other water quality parameters, and other innovative approaches.

4. **CWA Reauthorization:** The Western Governors support reauthorization of the CWA, provided that it recognizes the unique hydrology and legal framework in Western states. Further, any CWA reauthorization should include a new statement of purpose to encourage the reuse of treated wastewater to reduce water pollution and efficiently manage water resources.

5. **Good Samaritan Legislation:** Congress should enact a program to protect volunteering remediating parties who conduct authorized remediation of abandoned hardrock mines from becoming legally responsible under the CWA and/or the Comprehensive Environmental Response, Compensation, and Liability Act for any continuing discharges after completion of a remediation project, provided that the remediating party – or "Good Samaritan" – does not otherwise have liability for that abandoned mine or inactive mine site.

6. **Stormwater (Wet Weather) Pollution:** In the West, stormwater discharges to ephemeral streams in arid regions pose substantially different environmental risks than do the same discharges to perennial surface waters. The Western Governors emphasize the importance of state primacy in water management, including management of ephemeral streams. State water agencies are well-equipped to provide tailored approaches that reflect the unique management needs of ephemeral streams.

7. **State-Tribal Coordination:** Western Governors endorse government-to-government cooperation among the states, tribes and EPA in support of effective and consistent CWA implementation. While retaining the ability of the Governors to take a leadership role in coordination with the tribes, EPA should promote effective consultation, coordination, and dispute resolution among the governments, with emphasis on lands where tribes have treatment-as-state status under Section 518 of the CWA.

Safe Drinking Water Act (SDWA)

8. **Federal Assistance in Meeting SDWA Standards:** Western Governors believe that the SDWA and its standards for drinking water contaminants have been instrumental in ensuring safe drinking water supplies for the nation. It is essential that the federal government, through EPA, provide adequate support to the states and water systems to meet federal requirements. Assistance is particularly needed for small and rural systems, which often lack the resources needed to comply with federal treatment standards.

9. **Drinking Water Standards:** Contaminants such as arsenic, chromium, perchlorate, and fluoride often occur naturally in the West. Western Governors support EPA technical assistance and research to improve both the efficiency and affordability of treatment technologies for these contaminants. In any drinking water standards that the EPA may revise or propose for these and other contaminants, including disinfection byproducts, EPA should consider the disproportionate impact that such standards may have on Western states and give special consideration to feasible technology based on the resources and needs of smaller water systems.

10. **Risk Assessments:** Analysis of the costs of treatment for drinking water contaminants should carefully determine the total costs of capital improvements, operation, and maintenance when determining feasible technology that can be applied by small systems. These costs should be balanced against the anticipated human health benefits before implementing or revising drinking water standards.

11. **Emerging Contaminants/Pharmaceuticals:** The possible health and environmental impacts of emerging contaminants and pharmaceuticals are of concern to Western Governors. Although states have existing authorities to address possible risks associated with emerging contaminants and pharmaceuticals, there is a need for more reliable science showing impacts on human health as more information regarding these contaminants becomes available.

12. **Hydraulic Fracturing:** States currently employ a range of effective programmatic elements and regulations to ensure that hydraulic fracturing does not impair water quality, including but not limited to requirements pertaining to well permitting, well construction, the handling of exploration and production waste fluids, the closure of wells, and the abandonment of well sites.

    Federal efforts to study the potential impacts of hydraulic fracturing on water quality should leverage state knowledge, expertise, policies, and regulations. Such efforts should also be limited in scope, based upon sound science, and driven by the states. Western Governors oppose efforts that would diminish the primary and exclusive authority of states over the allocation of water resources necessary for hydraulic fracturing.

Compliance with Federal Water Quality and Drinking Water Requirements

13. **State Revolving Funds:** Western Governors support EPA's Clean Water State Revolving Fund (SRF) and Drinking Water SRF as important tools that help states and local communities address related water infrastructure needs and comply with federal water quality and drinking water requirements. Western Governors also urge Congress and the Administration to ensure that the SRF Programs provide greater flexibility and fewer restrictions on state SRF management.

14. **Restoring and Maintaining Lakes and Healthy Watersheds:** Historically, the Section 314 Clean Lakes Program and the Section 319 Nonpoint Source Management Program provided states with critical tools to restore and maintain water quality in lakes and watersheds. Western Governors urge the Administration and Congress to support these programs. Such support should not come at the expense of other federal watershed protection programs.

15. **EPA Support and Technical Assistance:** The federal government, through EPA, should provide states and local entities with adequate support and technical assistance to help them comply with federal water quality and drinking water requirements. EPA should also collaborate with and allow states to identify and establish priority areas, timelines, and focus on programs that provide the largest public health and environmental benefits.

16. **EPA Grant Funding for Primary Service - Rural Water Programs:** Some rural communities still lack basic water and sanitary services needed to assure safe, secure sources of water for drinking and other domestic needs. Adequate federal support, including but not limited to the Rural Utilities Service programs of the Department of Agriculture and SRFs through EPA, are necessary to augment state resources.

Water Quality Monitoring and Data Collection

17. **Water Data Needs:** Western water management is highly dependent upon the availability of data regarding both the quality and quantity of surface and ground waters. EPA should provide support to the states in developing innovative monitoring and assessment methods, including making use of biological assessments, sensors and remote sensing, as well as demonstrating the value to the states of the national probabilistic aquatic resource surveys.

B. <u>GOVERNORS' MANAGEMENT DIRECTIVE</u>

1. The Governors direct WGA staff to work with Congressional committees of jurisdiction, the Executive Branch, and other entities, where appropriate, to achieve the objectives of this resolution.

2. Furthermore, the Governors direct WGA staff to consult with the Staff Advisory Council regarding its efforts to realize the objectives of this resolution and to keep the Governors apprised of its progress in this regard.

Western Governors enact new policy resolutions and amend existing resolutions on a bi-annual basis. Please consult www.westgov.org/policies for the most current copy of a resolution and a list of all current WGA policy resolutions.

Policy Resolution 2019-06

Biosecurity and Invasive Species Management

A. BACKGROUND

1. Per Executive Order 13751, "invasive species" means "with regard to a particular ecosystem, a non-native organism whose introduction causes or is likely to cause economic or environmental harm or harm to human, animal, or plant health." This definition can include aquatic and terrestrial plants and animals, forest and agricultural pests, and pathogens.

2. The 2017-2027 Hawai'i Interagency Biosecurity Plan defines biosecurity as "the set of measures taken to manage the risk from invasive species to the economy, environment, and health and lifestyle of the people." This includes pre-border measures, border measures, post-border measures, and measures that increase public awareness about invasive species.

3. The Plant Protection Act of 2000 (Pub. L. 106–224) defines "biological control" (biocontrol) as the use of biological control organisms as an "enemy, antagonist, or competitor used to control a plant pest or noxious weed." When used properly, biocontrol can be an effective tool in efforts to manage and eradicate invasive species.

4. States have different definitions of biosecurity, biological control and invasive species. They also may use regulatory and nonregulatory terms that are related to, but not synonymous with, the term invasive species, including pest, nuisance species, noxious weed, and injurious wildlife.

5. Invasive species have substantial negative effects on ecosystems, economies, and communities in the West. Studies have found that invasive species cost the U.S. more than $120 billion ever year, and the National Wildlife Federation estimates that 42 percent of threatened or endangered species are at risk due to invasive species. Invasive annual grasses such as cheatgrass, medusahead, fountain grass, and ventenata pose a major threat to western rangelands by increasing the risk of wildfire, outcompeting native grasses, and diminishing soil and water quality. Aquatic nuisance species, including invasive quagga and zebra mussels, decrease water quantity and quality, impair native wildlife, harm hydroelectric and irrigation systems, and can impede maritime transport by fouling vessel hulls. Invasive pathogens affect human health and welfare, and invasive species, such as mosquitoes, can vector human diseases. Invasive species damage multiple types of environments, from virgin forests to urban tree canopies. Invasive species harm a wide variety of economies dependent on natural resources, including agriculture, ranching, tourism, energy production and transmission, and forest products. Invasive species threaten many native plants central to western life and the cultures of Native Americans, Native Hawai'ians, Alaska Natives, and other indigenous peoples.

6. The spread of invasive species results from a combination of human activities, susceptibility of invaded environments, climate change, biology of the invading species, and dispersal. These characteristics are not dictated by geopolitical boundaries, but rather by ecosystem-level factors, which cross state and national borders. Scientists, private landowners, and state and federal land managers across the West have expressed the need to develop a more aggressive and cohesive strategy for invasive species management that includes prevention, monitoring, control, and eradication.

7. The impacts of invasive species on natural resources and human health and welfare are similar in scope and intensity to the threats posed by wildfire. Wildfire management on federal, state, tribal, and local land is coordinated through a sophisticated planning and response network, which includes the National Interagency Fire Center (NIFC).

8. Many invasive species were introduced, or their distribution was expanded, due to inadequate federal and state regulations dealing with interstate transport, international trade and interstate commerce, and a lack of communication and coordination between land management agencies.

9. Early Detection and Rapid Response (EDRR) is a coordinated set of actions to find and eradicate potential invasive species in a specific location before they spread and cause harm. The Incident Command System (ICS) is a management system designed to enable effective and efficient incident management, including invasive species rapid response, by integrating a combination of facilities, equipment, personnel, procedures, and communications operating within a common organizational structure.

10. In the West, biosecurity and invasive species management is the responsibility of a wide network of state, federal, and local agencies. Federal agencies manage invasive species on federal lands and waters under a complex system of mandates and authorities.

11. Cooperative agreements, grants, and procurement contracts between federal agencies and state and local invasive species management authorities are effective in establishing structured partnerships for collaborative invasive species management. The use of cooperative agreements lessens the burden on local federal land managers, while increasing the efficiency of invasive species management programs utilizing local collaborative goal setting. Additionally, cooperative agreements simplify project-based contracting utilizing the authorities of state and local government agencies. This can be extremely useful, especially where infestations extend across multiple landownerships or EDRR is the management objective.

12. Good Neighbor Authority (GNA) allows states to enter into agreements with the U.S. Forest Service (USFS) or Bureau of Land Management (BLM) permitting them to perform various land management activities on federal lands. These tools have been successfully used by forest and rangeland managers to achieve various land management objectives across federal, state and local government, and privately-owned lands

13. U.S. Department of Agriculture (USDA) regulation of interstate movement of commodities via airlines is focused on the protection of agricultural industries in the contiguous United States. This is particularly evident in Hawai'i, where baggage destined for the U.S. mainland is subject to federal inspection, while baggage moving from the mainland to Hawai'i is not.

14. Environmental DNA (eDNA) is DNA present in an environmental sample, as differentiated from traditional sampling of DNA directly from an intact organism. eDNA frequently is thought of as DNA in tissue and cells that have been shed by an organism but can also refer to DNA within an intact organism, if that organism is collected in the environmental sample. eDNA can be used to detect a wide range of organisms, including those that are endangered or invasive, and be used for both research and monitoring purposes.

15. The West includes a number of highly important seaports on the U.S. mainland and across the Pacific region. Maritime vessels represent a primary pathway for the movement of aquatic invasive species. With the passage of the Vessel Incidental Discharge Act in 2018, regulations regarding ballast water and other discharges are centralized under Section 312 of the Clean Water Act with the Environmental Protection Agency setting environmental standards, the U.S. Coast Guard (USCG) setting vessel requirements to meet those standards, and the USCG and interested states enforcing those requirements.

16. State invasive species councils and invasive plant councils provide policy level direction, planning, and coordination for state-level biosecurity and invasive species prevention and management actions in the West. Councils are led by state agencies, non-profit organizations, industry, private landowners, and public-private partnerships. These groups empower those engaged in the prevention, detection, and eradication of invasive species, and serve as forums for invasive species education, communication, and strategic planning. Invasive species councils can collaborate on regional-level issues and benefit from mechanisms that help them to coordinate and solve cross-boundary, cross-jurisdictional challenges.

B. GOVERNORS' POLICY STATEMENT

1. Western Governors support the creation of a Western Invasive Species Council (WISC) to help enhance coordination between existing state invasive species councils, improve communication and collaboration on regional biosecurity and invasive species control efforts, and to advocate for regional needs at the federal level. The WISC should be initially coordinated through the Western Governors' Association and should work to address cross-boundary and cross-jurisdictional challenges identified in this resolution.

2. Western Governors urge Congress and the Administration to support state, territorial, and tribal invasive species prevention, control and management programs and redouble efforts on federal lands. This should be accomplished through accountability and oversight of programs administered by the USDA, the U.S. Department of the Interior, the U.S. Department of Defense, the USCG, and the National Oceanic and Atmospheric Administration. These programs provide valuable services in the detection and elimination of invasive species, as well as coordination, public outreach, and communication.

3. Western Governors support research as needed to provide understanding of invasive species life potential range distribution, and to develop geographically-appropriate control measures. Western Governors urge Congress and the Administration to support much-needed research on biosecurity and invasive species, including programs under the National Institute of Food and Agriculture and to facilitate funding mechanisms that enable land grant universities to conduct research and development of new pesticides. Institutions conducting research on biosecurity, biocontrol and invasive species control methods should look for opportunities to pool funding resources and exchange information across

administrative lines. Invasive species managers and policymakers should be encouraged to develop new decision-making tools and economic analyses, as well as build and improve upon the decision-making tools and analyses currently in use. Invasive species managers should strive to incorporate economic analyses and regional-level, science-based decision-making tools into management decisions.

4. Western Governors strongly encourage expansion and creation of partnerships – such as invasive species councils with representation from local weed and pest districts, conservation districts, county governments, non-profit and industry organizations, local stakeholders, state, island, tribal, federal, regional and international agencies – committed to preventing the spread of invasive species, averting new unauthorized introductions, responding rapidly to new introductions, and working together to find creative regional approaches for protecting and restoring natural, agriculture, power and water conveyance infrastructure, and recreational resources. Federal agencies should build a more sophisticated and centralized biosecurity and invasive species management network, including a National Biosecurity and Invasive Species Management Center based on the model of the NIFC.

5. Congress and the federal government should ensure that invasive species funding, including support for emergency response, is sustainable, flexible and able to be maximized by federal, state and local agencies with pooled resources and collaborative funding mechanisms. Federal funding, cooperative agreements grants, and procurement contracts for state and local biosecurity and invasive species management should be structured in a deliberate and transparent way that allows for the greatest amount of flexibility and long-term planning. When possible, federal agencies should look for collaborative projects and funding opportunities that multiply state resources and support state-led biosecurity and invasive species management projects.

6. Western Governors call upon Congress to promote state-directed programs to combat invasive species. Regional leadership and state-directed programs provide place-based solutions tailored to unique regional or local conditions in land and aquatic ecosystems. The federal role should be one of partnership and policy-making that strengthen states' on-the-ground efforts and mitigates risks associated with the movement of invasive species between states.

7. Federal agencies are encouraged to expand the use of cooperative agreements with state and local governments and should ensure that they are approved in a timely manner and in collaboration with implementing state agencies. Federal agencies can also support invasive species management efforts by encouraging contract recipients to coordinate with state and local invasive species management agencies, regulatory programs, and cooperative weed and invasive species management areas. State invasive species managers should consider using Good Neighbor Authority on USFS and BLM lands for cross-boundary collaborative invasive species control, management and eradication programs.

8. Federal actions should support state biosecurity and invasive species management efforts by ensuring the timely approval of state permits for biosecurity, quarantine, biocontrol, and rapid response actions. Federal agencies should consult with Governors early and substantively regarding biosecurity or invasive species management decisions that affect state resources and state actions.

9. Federal agencies should identify individuals within district and region offices that can be contacted and assist in the planning and implementation of local cross-boundary invasive species management programs.

10. The threats that invasive species pose to western landscapes and communities are serious and should be met with a sophisticated and coordinated response commensurate with the level of their impacts.

11. Prevention is the most efficient and cost-effective method of invasive species management. Effective biosecurity, prevention, and containment methods can mitigate the need for more expensive and burdensome control and eradication programs. Prevention strategies should be coordinated across state, national, and international lines. Federal and state agencies should increase the use of innovative biosecurity prevention and detection programs, including increased use of electronic manifesting in interstate shipments for the purposes of inspection, and the use of canine detection resources.

12. Western Governors support the EDRR framework as a method to limit or eliminate new introductions and existing species expansion. Programs for the control and/or eradication of invasive species must result in more on-the-ground prevention, management and eradication. The ICS should be evaluated for use in instances of fast-spreading invasives and used as part of EDRR; state, federal, and local agencies can opt to practice and implement the ICS as part of rapid response. The Federal Emergency Management Agency can support these efforts by working with western states to create an ICS training module for invasive species rapid response. The Executive Branch can support state-led rapid response programs by: 1) increasing federal funding for state-led aquatic invasive species rapid response programs, including those that provide mechanisms for flexible, long-term support of state early detection rapid response efforts; 2) streamlining federal permitting and approval processes for treatment and management actions for new mussel detections; 3) creating a single federal authority for aquatic invasive species treatment permitting and approval in freshwater systems; and 4) simplifying reporting on new invasive mussel infestations by creating a single federal point of contact for new mussel detections.

13. Federal agencies should support states' effort to identify, study and approve the use of biological control organisms. Federal permitting models should be structured to ensure biocontrol can be utilized by states in a safe and timely manner. Biocontrol research is encouraged at a regional level, with biocontrol research information being encouraged to move freely between institutions and across state lines. Invasive species managers in the West would benefit from the creation of a new, state-of-the-art biological control facility, as well as a collaborative, multi-agency plan for maintaining and staffing new biocontrol facilities at a level that more adequately meets the expanding needs of the region. Furthermore, effective biocontrol, biosecurity, and invasive species research depends upon a highly-skilled workforce. State and federal agencies should collaborate with universities to support programs essential to biosecurity and invasive species management, such as botany, zoology, plant pathology, taxonomy, systematics, and related fields.

14. The containment of invasive quagga and zebra mussels at infested waters in the West depends upon the collaboration and mutual effort of federal, state and local agencies. Many state-led containment programs benefit from federal cooperation and funding, and state and federal agencies should be encouraged to sustain and expand these effective partnerships as necessary. However, to adequately protect the West from the movement of

aquatic invasive species, federal agencies must be able to act as full partners in invasive species containment efforts and must have the funding and authorities necessary to contain invasive species within lands and waters under their jurisdiction. To this end, federal agencies, including the National Park Service and BLM, should be vested with clear authority to manage watercraft upon their departure from infested waterbodies under federal jurisdiction.

15. Integrated pest management, biocontrol, outcome-based grazing, and targeted grazing can be effective tools to control the spread of invasive annual grasses. Federal, state, and local agencies should view invasive annual grasses as a regional threat and strive to identify and implement cross-boundary projects to control invasive annual grasses at a regional level. Such projects should include those utilizing alternative management techniques such as outcome-based grazing.

16. Agricultural industries in the Pacific Islands need to be similarly protected from the risk of interstate movement of invasive species as the contiguous U.S. mainland. USDA quarantines and commodity inspections should incorporate the priorities of the West, including non-contiguous states and territorial islands in the western region. This includes maintaining federal quarantines on pests that have not yet reached the West, like the emerald ash borer, and adopting policies that adequately protect Pacific states and territories, such as inspection of baggage moving from the contiguous U.S. to non-contiguous areas.

17. State, federal and local agencies and regional coordinating groups should develop and implement a set of best practices for conducting eDNA monitoring and incorporating positive detection results into rapid response strategies.

18. To effectively prevent, contain, and control invasive species, federal, state and local invasive species managers need federal laws that support on-the-ground action. Western Governors support a states-led review of federal biosecurity and invasive species statutes, including the Lacey Act and the National Invasive Species Act, to evaluate how they support on-the-ground management, identify any gaps in their application, and ensure that their structure and implementation are able to address 21st century biosecurity and invasive species challenges. Of particular interest are opportunities to expand the taxonomic scope of the Lacey Act to benefit U.S. biosecurity.

19. As directed by the Vessel Incidental Discharge Act, the U.S. Coast Guard and the Environmental Protection Agency should consult with Western Governors and work closely and collaboratively with states on the implementation of that act to ensure that state and regional aquatic resource protection needs are met across the West and the Pacific. Federal and state partners should collaborate on the development of evidence-based risk assessments and should work together to assess the efficacy of policies and tools that may be used in mitigating the impact of various types of discharges, including hull biofouling. Western Governors believe that protecting the diversity of marine habitats in western states and Pacific territories is best accomplished by working with states that have the greatest knowledge of their ecosystems and invasive risks.

20. Accurate, standardized, and accessible geospatial data is essential to biosecurity and invasive species management in the West. Western Governors support efforts to standardize and centralize invasive species occurrence data, streamline the exchange of

data between the nation's major invasive species data aggregators, and increase the accessibility of data to federal, state, and local land and resource managers.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. The Governors direct WGA staff to work with Congressional committees of jurisdiction, the Executive Branch, and other entities, where appropriate, to achieve the objectives of this resolution.

2. Furthermore, the Governors direct WGA staff to consult with the Staff Advisory Council regarding its efforts to realize the objectives of this resolution and to keep the Governors apprised of its progress in this regard.

Western Governors enact new policy resolutions and amend existing resolutions on a bi-annual basis. Please consult westgov.org/resolutions for the most current copy of a resolution and a list of all current WGA policy resolutions.

WESTERN GOVERNORS' ASSOCIATION

DOUG BURGUM
GOVERNOR OF NORTH DAKOTA
CHAIR

KATE BROWN
GOVERNOR OF OREGON
VICE CHAIR

JAMES D. OGSBURY
EXECUTIVE DIRECTOR

December 5, 2019

The Honorable Michael Bennet
United States Senate
261 Russell Senate Office Building
Washington, DC 20510

The Honorable Steve Daines
United States Senate
320 Hart Senate Office Building
Washington DC 20510

Dear Senator Bennet and Senator Daines:

Western Governors commend you for introducing S. 2975, the Stop the Spread of Invasive Mussels Act of 2019. This bipartisan legislation would enable state and federal agencies to more effectively combat the spread of aquatic nuisance species (ANS) in western waters.

Western Governors have long been concerned by the threat that ANS pose to western ecosystems and economies. These concerns are articulated in Western Governors' Association (WGA) Policy Resolution 2019-06, *Biosecurity and Invasive Species Management*, as well as the recent WGA Biosecurity and Invasive Species Initiative Special Report. Invasive quagga and zebra mussels are of particular interest, as these invaders annually result in millions of dollars in lost economic activity and cause significant environmental damage to waterbodies in the West. It is of paramount importance to prevent the spread of these species into uninfested waterways, including major headwaters and the Columbia River basin – the last major uninfested water system in the continental U.S.

The primary means by which these aquatic mussels spread is by traveling on the hulls and in the ballast tanks of boats leaving infested waterbodies. The application of effective inspection and decontamination practices as watercraft leave infested waters is the first line of defense against their proliferation.

Federal agencies have jurisdiction over several major infested waterbodies in the West, including Lake Mead, Lake Powell and Lake Havasu. The boat inspection and decontamination policies of the agencies managing infested waterbodies – the Bureau of Land Management (BLM), the Bureau of Reclamation (BOR), and the National Park Service (NPS) – are key to regional efforts to contain these species. These agencies operate several voluntary inspection and decontamination programs at these infested waterbodies, mostly at the request of, and in collaboration with, states. These programs are hampered, however, by a lack of clear statutory authority for federal agencies to manage all high-risk vessels (long-term slipped and moored watercraft) upon their departure from infested waterbodies under federal jurisdiction.

The containment of invasive quagga and zebra mussels at infested waters in the West depends upon the collaboration of federal, state and local agencies. Many state-led containment programs benefit from federal cooperation and funding, and state and federal agencies should be encouraged to sustain and expand these effective partnerships.

Western Governors' believe that to adequately protect the West from the movement of aquatic invasive species, federal agencies must be able to act as full partners in invasive species containment efforts and must have the funding and authorities necessary to contain invasive species within lands and waters under their jurisdiction. To this end, federal agencies, including

BLM, BOR, and NPS, should be vested with clear authority to manage watercraft upon their departure from infested waterbodies under federal jurisdiction.

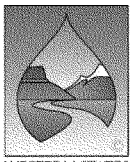
S. 2975 would add BLM, BOR, and NPS as members of the Aquatic Nuisance Species Task Force and grant all agencies on that Task Force the authority to conduct inspection and decontamination of watercraft and impound, quarantine, or otherwise prevent entry to limit the movement of aquatic nuisance species into and out of U.S. waters. It would also vest federal agencies with the clear authorities necessary to manage invasive species on lands and waters under their jurisdiction and help ensure that state and federal agencies are able to collaboratively protect the West from the spread of ANS.

Thank you for your efforts to address this critical issue. We look forward to working with you as S. 2975 moves through the legislative process.

Sincerely,

Doug Burgum
Governor of North Dakota
Chair, WGA

Kate Brown
Governor of Oregon
Vice Chair, WGA



February 27, 2020

The Honorable John Barrasso
Chairman
Committee on Environment and Public Works
United States Senate
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Thomas Carper
Ranking Member
Committee on Environment and Public Works
United States Senate
456 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper:

We write to commend the Committee for its leadership in pursuing water resources development legislation this year and to express support for your efforts to enact biennial legislation addressing the water resource needs of our states and communities. Current water resources are fully allocated in many basins across the West, and increased demand from population growth, economic development, fire events and extreme weather adds further stress on limited supplies. For purposes of drought mitigation, flood control, and supply allocation, responsible federal water resource development legislation is essential to efficient and effective stewardship of water supplies in the United States.

Strong state, regional and national economies require reliable deliveries of clean water, which in turn depend on adequate infrastructure. Investment in water infrastructure also provides jobs and a foundation for long-term economic growth in communities throughout the country.

As the Committee develops its 2020 water resources development legislation, we ask that you consider including language to address an issue of special concern: the protection of states' primary authority to manage and allocate waters stored in U.S. Army Corps of Engineers reservoirs. Specifically, we request that the legislation include bipartisan language that has been submitted by Senator Cramer and Senator Merkley that expressly recognizes states' primary authority over natural flows within river systems and excludes such waters from any Corps' definition of "surplus water." Although the Corps has recently announced that it has withdrawn its proposed rule, "Policy for Domestic, Municipal, and Industrial Water Supply Uses of Reservoir Projects Operated by the Department of the Army, U.S. Army Corps of Engineers," uncertainty remains as to how the Corps intends to define and treat so-called "surplus water" within its reservoirs. Statutory language that recognizes and preserves states' primary authority to access, manage, and allocate natural flows within river systems – and excludes such flows from any definition of "surplus water" or "impounded water" – would provide needed certainty and predictability and would thwart any future attempts by the Corps to unlawfully assert jurisdiction over such waters.

We thank you again for your leadership in the development of bipartisan water resources development legislation. We hope that you will consider the undersigned associations as a useful resource on these and other water-related matters.

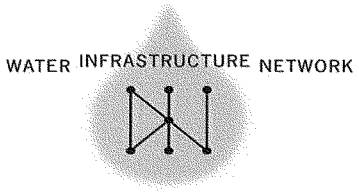
Sincerely,

James D. Ogsbury
Executive Director
Western Governors' Association

Karen White
Executive Director
Conference of Western Attorneys General

Tony Willardson
Executive Director
Western States Water Council

cc: The Honorable Kevin Cramer
The Honorable Jeff Merkley



May 1, 2020

Senator John Barrasso
Chairman,
Environment & Public Works Committee
410 Dirksen Senate Office Building
Washington, DC 20510

Senator Tom Carper
Ranking Member,
Environment & Public Works Committee
456 Dirksen Senate Office Building
Washington, DC 20510

Re: Strong Support for the America's Water Infrastructure Act and the Drinking Water Infrastructure Act / Suggested Amendments

Dear Chairman Barrasso and Ranking Member Carper,

As America's leading construction, engineering, labor, conservation, public works and manufacturing advocates for increased investment in our nation's water and wastewater infrastructure we applaud your continued bipartisan commitment to significant increases in funding for water infrastructure. The Water Infrastructure Network (WIN) strongly supports America's Water Infrastructure Act of 2020 and the Drinking Water Infrastructure Act of 2020. Our nation is facing a water infrastructure funding and finance crisis and failure to thoughtfully invest in this critical infrastructure will have dire economic, environmental and public health impacts. The bipartisan water infrastructure funding measures being advanced by the Senate Environment and Public Works Committee are a thoughtful and timely response to our daunting water infrastructure challenges.

WIN is also encouraged by actions taken in the U.S. House of Representatives to support significant new investment in America's water infrastructure. This past October, the House Transportation and Infrastructure Committee unanimously passed the $16.6 B Water Quality Protection and Job Creation Act. In April of this year, the Democratic Leadership of the House called for $40 B in new funding for the Clean Water State Revolving Fund as a major component of their coronavirus economic recovery package – Moving Forward Framework. As Congress moves to restart our economy in the wake of the Coronavirus Pandemic, WIN will be strongly advocating for substantial new investment in America's water infrastructure. Industry and labor studies of past water infrastructure investment have found that for every $1 B invested in water

infrastructure over 23,000 jobs are created. WIN looks forward to working with the leadership of the Senate Environment and Public Works Committee to ensure that water infrastructure funding is a prominent component of the evolving Coronavirus Recovery and Stimulus Package.

The water infrastructure funding crisis facing communities across our nation is on display every day. The EPA has documented over 240,000 water main breaks annually. The American Society of Civil Engineer's 2017 Infrastructure Report Card gave our nation's wastewater infrastructure a grade of "D+" and our drinking water infrastructure a grade of "D". Federal funding for the Clean Water Act State Revolving Fund (CWA SRF) and the Safe Drinking Water Act State Revolving Fund (SDWA SRF) have proven to be the most effective environmental infrastructure funding investments in our nation's history. Thousands of wastewater and drinking water treatment facilities have been constructed with SRF dollars over the past three decades, contributing directly to public health and improved water quality in lakes, rivers and estuaries across the nation.

WIN would offer two suggested changes to the water infrastructure funding legislation you have sought comment on:

- Amend Section 2014 of America's Water Infrastructure Act to increase the annual authorization for the Water Infrastructure Finance and Innovation Act (WIFIA) from $50 M to $100 M. The WIFIA program has a proven track record of significantly leveraging finite Federal funding for water infrastructure construction. The EPA Office of Water has indicated the leverage ratio for WIFIA dollars is approximately 100 to 1. A $50 M increase in annual WIFIA funding would support approximately $5 B in additional annual investment in water infrastructure construction.

- Amend the Drinking Water Infrastructure Act to include language in the bill to achieve uniformity in federal procurement policy for architectural and engineering (A/E) services as it applies to federally funded drinking water projects. Congress included language in WRDA '14 to require wastewater projects financed through the Clean Water Act State Revolving Fund (SRF) program to utilize Qualifications-Based Selection (QBS) for the procurement of A/E services, and similar requirements are in place for federal highway, transit, aviation and other infrastructure programs. Extending this requirement to include drinking water will ensure conformity in the SRF programs and overall consistency with federal law as it applies to procuring A/E services.

WIN greatly appreciates your bipartisan commitment to improving our nation's water infrastructure and your consideration of our suggested improvements to the America's Water Infrastructure Act and the Drinking Water Infrastructure Act. WIN looks forward to working with you to build broad bipartisan support for significant new investment in America's water infrastructure.

WIN Contact:

Jeff More

jmore@alpinegroup.com

(202)-841-1370

Alpine Group
Suite 210
500 North Capitol
Washington, DC 20001

DIRECTORS
VERA ROBLES DEWITT, PRESIDENT
SERGIO CALDERON, VICE PRESIDENT
WILLARD H. MURRAY, JR., SECRETARY
ROB KATHERMAN, TREASURER
JOHN D. S. ALLEN, DIRECTOR

ROBB WHITAKER, P.E., GENERAL MANAGER

Statement of The Water Replenishment District

To the United States Senate Committee on

Environment and Public Works

An Information-Gathering Process on Draft Legislation entitled, America's Water Infrastructure Act of 2020 and The Drinking Water Infrastructure Act of 2020: Stakeholder Comments

May 1, 2020

CONTACT: Robb Whitaker, P.E., General Manager
Water Replenishment District of Southern California
4040 Paramount Avenue
Lakewood, CA 90712
rwhitaker@wrd.org
Telephone: (562)921-5521
Fax: (562)921-6101

DIRECTORS
VERA ROBLES DEWITT, PRESIDENT
SERGIO CALDERON, VICE PRESIDENT
WILLARD H. MURRAY, JR., SECRETARY
ROB KATHERMAN, TREASURER
JOHN D. S. ALLEN, DIRECTOR

ROBB WHITAKER, P.E., GENERAL MANAGER

Chairman Barrasso, Ranking Member Carper, and members of the committee:

The Water Replenishment District (WRD) appreciates the opportunity to offer comments to inform the information-gathering process regarding the draft America's Water Infrastructure Act of 2020 and the Drinking Water Infrastructure Act of 2020. We are especially grateful for the Committee on Environment and Public Works' (EPW) efforts to bring attention to the water infrastructure needs of the nation.

As some of you may know, WRD manages groundwater for over four million residents in 43 cities in southern Los Angeles County. The region contains eleven percent of California's population and our 420-square mile service area uses approximately 220,000 acre-feet of groundwater per year. Fifty percent of the water consumed within WRD's service area is derived from groundwater sources. The remaining amount comes from water imported from the Bay Delta and Colorado River.

Through state-of-the-art infrastructure projects and partnerships with government at local, state, and federal levels, WRD has managed groundwater infrastructure responsibly and effectively for six decades. Through our landmark Water Independence Now Program (WIN), the district has created a completely locally sustainable source of local water for groundwater replenishment. Through WIN, WRD has reduced the strain on imported water by utilizing advanced treated recycled water from projects like our Albert Robles Center for Water Recycling and Environmental Learning and our Leo J. Vander Lans Water Recycling Plant in Long Beach. These projects can produce 21 million gallons per day of advanced treated water and replace nearly 8.4 billion gallons of imported water annually.

Still, a total of nearly half a million-acre feet of allowable extraction has not been produced over the last ten years partially due to problems with wells, well capacity and water quality. To address these issues, the Board of Directors instituted the Water Independence Now for All Plan (WIN 4 ALL), which is creating resiliency in our water infrastructure. WIN 4 ALL will maximize allowable groundwater extraction and complete water independence by the year 2040.

Given our groundwater management experience and successful projects in one of the nation's most populous regions, WRD urges the Committee to authorize increased funding for programs that can support the following projects:

Regional Brackish Water Reclamation Project: Currently 600,000-acre feet of groundwater in the West Coast Groundwater Basin cannot be pumped for potable water use because of existing high salinity levels. WRD's proposed Regional Brackish Water Reclamation Project would desalinate the plume and sustain approximately 20 million gallons per day of new potable water supplies in the Los Angeles area.

By removing this existing high salinity water from the West Coast Groundwater Basin, we could create a safe and reliable potable water supply for cities while reclaiming the ability to store water in the Basin. The storage capacity is essential to the success of future recycled water projects, such as Metropolitan Water District's Regional Recycled Water Supply Project.

DIRECTORS
VERA ROBLES DEWITT, PRESIDENT
SERGIO CALDERON, VICE PRESIDENT
WILLARD H. MURRAY, JR., SECRETARY
ROB KATHERMAN, TREASURER
JOHN D. S. ALLEN, DIRECTOR

ROBB WHITAKER, P.E., GENERAL MANAGER

The estimated cost of the treatment plant is $200 million. WRD has conducted a feasibility study which was completed in December 2019 and is seeking a project authorization in WRDA.

We are encouraged by Section 14 of the Safe Drinking Water Act, which establishes a discretionary grant program for clean drinking water projects. However, we recommend expanding eligibility for the grant program to include projects that support regions that seek to establish water independence and reduce reliance on imported water.

Wellhead Treatment for PFAS / PFOA: WRD has taken a proactive approach in dealing with the water quality issues arising from lowered response levels relating to Per- and polyfluoroalkyl substances (PFAS). Current testing indicates that several wells in the WRD Service area are affected by PFAS at, or above, the response levels. This may cause several small water systems to stop serving their water or transition to costlier important water. Certain water systems have no connection or ability to import water and will have limited options.

Through our Safe Water Program, WRD can assist eligible pumpers with treatment for PFAS. However, the program has limited funding for these operations and the district is seeking funds to assist with building treatment systems throughout the service area. The anticipated cost to treat the affected water is $75 million. We encourage the Committee to include increased funding for grant programs to address PFAS/PFOA remediation.

Leo J. Vander Lans Advanced Water Treatment Facility Direct Connect Supplemental Source Water Project: WRD has a currently unused allocation of 10,000 acre-feet per year at the Los Coyotes Water Reclamation Plant (LWCRP). Connecting the Leo J. Vander Lans AWTF (LVL) to the LCWRP through a direct connection will allow WRD to utilize the unused allocation, providing operational flexibility to the District and increasing the amount of source water made available to the LVL AWTF. WRD has initiated planning studies to determine the preferred alternative for this connection.

With expanded operational efficiency at LVL following completion of the Direct Connect Supplemental Source Water Project, WRD will work to develop additional replenishment or groundwater storage opportunities in the Central Basin. WRD has begun a utility search at the facility to confirm the potential for onsite injection wells. The cost estimate for this project is $50 million.

As the Senate EPW Committee works to finalizes these bills and other water infrastructure legislation, WRD would welcome the opportunity to serve as a resource to the Committee and its efforts to secure America's water future. Please feel free to call on us, at any time, with questions or plan a visit to our state-of-the-art facilities in Los Angeles. Thank you again for your leadership on these important issues.

xylem
Let's Solve Water

Xylem Inc.
1 International Drive
Rye Brook, New York 10573

April 27, 2020

The Honorable John Barrasso
Chairman
Committee on Environment and Public Works
U.S. Senate
Washington, D.C. 20510

The Honorable Tom Carper
Ranking Member
Committee on Environment and Public Works
U.S. Senate
Washington, D.C. 20510

Dear Chairman Barrasso and Ranking Member Carper:

We write pursuant to the Committee on Environment and Public Works' directive that interested stakeholders should submit comments on the committee's proposed legislation to address the overwhelming need to respond to the significant clean water and drinking water infrastructure needs.

The America's Water Infrastructure Act of 2020 (AWIA) and the Drinking Water Infrastructure Act of 2020 (DWIA) would help close the substantial funding gap in national, state and local efforts to address water infrastructure needs. Both bills' provisions to support infrastructure financing needs. In particular, AWIA Title II, Section 2001, Clean Water Infrastructure Resiliency and Sustainability Program and DWIA, Section 13, Advanced Drinking Water Technologies and Section 14 Drinking Water Infrastructure Discretionary Grant Program, support innovation in the water sector. In responding to the committee's request for input on these proposals, we recognize that the provisions to address water innovation are a limited response. We believe that they could be improved with an explicit emphasis on smart water technologies and increased funding authorization levels.

When Congress turns its attention to developing a national infrastructure funding initiative to support economic recovery, we hope you and your colleagues will include robust funding for water infrastructure <u>and</u> emphasize programs to accelerate adoption of smart water technologies that will make water utilities more resilient, efficient and affordable. The recommendations below would build on the Committee's approach and help communities implement smart infrastructure improvements that will position our nation to deliver water supply and water quality solutions that are cost effective and leverage the technological advances achieved in other infrastructure sectors; most notably, for example, the modernization of the electric grid.

As background, we believe that the need for a smart water infrastructure is grounded in the following:

- Current federal and local investment in water infrastructure has long been below levels that adequately address demand needs and that can deliver water systems that are resilient to stressors like droughts, floods and pandemics.
- Traditional strategies to reinvest in water infrastructure, such as indiscriminate asset replacement, are expensive, disruptive and often slow, and do little to position the sector for greater resilience and efficiency.
- Proven digital, data-driven solutions are available to modernize water networks at lower upfront cost, lower ongoing operating cost, and with improved delivery of safe and reliable water supplies. They also support greater infrastructure resilience, enabling utilities to maintain operational continuity under a wider variety of stressors.
- Federal grants assistance that places a premium on implementation of next generation water technologies would accelerate the affordable modernization of both rural and urban water infrastructure, benefitting public health, economic recovery and community access to safe water and wastewater.

Water utilities today face real challenges including staffing issues, antiquated water and wastewater infrastructure, rising water costs, increased public health concerns over lead, PFAS and other chemical contaminant in drinking water, and changing environmental conditions such as mega-droughts and devastating floods. The coronavirus pandemic has amplified these challenges, while also illustrating the essential role these services provide to protect public health and support the wellbeing of health care professionals, first responders and other front-line employees. The pandemic is also producing a dramatic decline in water and wastewater utility revenues ($13.9B in water; $12.5B in wastewater and stormwater) that will impair utilities' ability to address their future needs.

However, the pandemic can also serve as a catalyst to achieve greater operational and financial resilience if our nation invests in smart water infrastructure technologies that make water and wastewater services more reliable and efficient during times of normalcy and in times of crisis. Federal assistance to support the upgrade of infrastructure, including water, will put people back to work and generate improvements to systems that support improved public health and a robust and resilient economy. Our most recent economic and jobs stimulus initiatives focused on 'shovel ready' projects. Of course, this approach has merit. Yet our experiences demonstrated that most 'shovel ready' projects relied on conventional technologies and processes that often failed to incorporate newer technologies that can yield powerful additional economic and health benefits.

Better outcomes are possible if we take the opportunity to replicate a success story from the recent past. The challenge facing the water sector is similar to the one facing the electric utility sector during the 2008-9 financial crisis. Effective grant programs authorized in the Energy Independence and Security Act of 2007 and the American Recovery and Reinvestment Act of 2009 forever transformed the electric industry's resilience, productivity and quality of service by advancing the adoption of smart grid

technologies. They also created significant number of jobs and increased the competitiveness of American industry. **A similar historic opportunity now exists to modernize the nation's water infrastructure through a Smart Water Infrastructure stimulus program that would complement other investments in the nation's water resources. A grants program for the widespread adoption of smart water infrastructure technologies would enable a historic step forward for the water and wastewater sector and pay dividends for a generation.**

Over the past decade, water and wastewater utilities have demonstrated that implementing smart water infrastructure technologies can generate significant economic, environmental and health benefits, such as reductions in water loss, sewer overflows, and nutrient pollution. In city after city, our experience has shown that digital solutions can dramatically lower the cost of achieving improved environmental and public health outcomes. For example, in South Bend, Indiana, adoption of an advanced real-time control platform for managing sewers is estimated to have lowered the cost of achieving overflow reductions by nearly half a billion dollars. In short, the coupling of the Internet of Things with the next generation of water infrastructure can both improve the efficiency of operations and deliver safe and reliable water and wastewater services. However, the water sector is historically slow to adopt new technologies due to a lack of financial capacity and management bandwidth. A federal grants program to scale adoption of smart technologies would enable our drinking water and wastewater utilities to leapfrog decades of underinvestment and achieve significantly higher levels of performance in areas such as affordability, public health and resiliency.

This integration can be achieved through a new federal assistance program to support water agencies' effort to develop and implement a smart water infrastructure portfolio that includes areas such as:

- Advanced metering infrastructure
- Resilient wastewater collection networks
- System automation and remote monitoring systems
- Real-time decision support systems based on digital twins
- Condition-based asset management systems
- Water resources portfolio management systems

Investment in these areas can be expected to yield significant benefits in:

- **Capital savings.** Smart water infrastructure technologies enable more efficient system design and prevent over-building and unnecessary asset replacement.
- **Operating efficiency.** Smart water infrastructure technologies enable greater energy efficiency and reduce waste of inputs, making water services more cost-effective.
- **Public health**. Smart water infrastructure technologies reduce pathogens from wastewater and help ensure quality in drinking water networks.

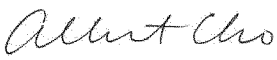
- **Environmental quality**. Smart water infrastructure technologies improve sustainability by minimizing water waste, improving effluent quality, and reducing energy consumption.
- **Resiliency and reliability.** Smart water infrastructure technologies empower utilities with automation tools that help them operate safely under a broader range of circumstances.
- **Affordability.** Smart water infrastructure technologies increase the long-term affordability of utility services by lowering the total cost of operating utilities sustainably.

These elements offer a comprehensive approach to integrate smart water technologies into our national effort to modernize the water infrastructure needs that are central to public health and a sustainable and growing economy. We strongly recommend that the committee incorporate these elements into AWIA and DWIA and include a more expansive grants program modeled on EISA 2007 and ARRA 2009 as part of a forthcoming national infrastructure program.

The opportunity to support the use of smart water technologies as part of any water infrastructure policy will help communities throughout rural and urban America to bring efficiencies to the treatment and management of water resources. It will position the nation to address the demands imposed by antiquated systems, stringent water quality and drinking water standards, legacy contaminants, resiliency, and disadvantaged communities' needs, while ensuring continued progress of an improved quality of life in the decades ahead.

We support the committee's past and current priority to put in place federal policies and programs that will deliver water infrastructure to meet the needs of our communities. We look forward to working with the committee to ensure that our federal policies deliver the highest value investment in our water infrastructure to improve public health and a robust economy. If we can provide any additional information, please do not hesitate to let us know.

Sincerely,



Albert Cho
Vice-President and General Manager
albert.cho@xyleminc.com
Mobile: 914-467-8076

Senator CARPER. One last thank you, if I could, in fact a couple of closing thank yous. I already mentioned John Kane, who has worked so hard on this legislation with everybody, not just Democrats, but Republicans, with leadership staff.

I just wanted to acknowledge and again, thank our staff director on the minority side, Mary Frances Repko, affectionately known as MF. John was joined variably by Annie and by Mark in the work on these projects and these pieces of legislation, and we are grateful to each of them. Thank you.

Senator BARRASSO. I agree. We have tremendous staff, and Beth is over there manning the clock and all activities, and Brian behind me here, Richard over here, Matt in the front, Lizzy in the back, Michael also in the back. They have all worked very hard, and there would be more people in the room were it not for the distancing, and they are watching and paying attention. But we have a tremendous staff who have worked very well together, and I know will continue to do that.

I would also like to ask unanimous consent that the staff have authority to make technical and conforming changes to each of the matters approved today, and with that, our business meeting is concluded.

[Whereupon, at 10:49 a.m., the business meeting was concluded.]

[Additional statements submitted for the record follow:]

STATEMENT OF HON. BENJAMIN L. CARDIN,
U.S. SENATOR FROM THE STATE OF MARYLAND

Mr. Chairman, I am pleased to welcome the public to participate in this week's information gathering session on the current draft of this year's Water Resources Development Act (WRDA). WRDA is important legislation for the State of Maryland and the health of our economy and our environment. For example, the Port of Baltimore plays a key role in the economic competitiveness of Maryland and the country.

The Chesapeake Bay is a national treasure whose ecosystems and landscapes are central to the identity and livelihood of our State, but it continues to face serious challenges from environmental degradation and climate change that must be addressed. I am pleased that the draft America's Water Infrastructure Act of 2020 that is now available for comment takes steps to address many of these concerns.

In recent times, Congress has successfully passed Water Resources Development Act (WRDA) reauthorization legislation on a bipartisan basis every 2 years. This year, we have the added challenge of the novel coronavirus (COVID–19) pandemic, requiring us to collaborate at a distance. To Chairman Barrasso, Ranking Member Carper, and my colleagues on the Committee, I thank you for your work on this legislation under these unusual and difficult circumstances.

Marylanders have witnessed the dangerous consequences of extreme weather, and we know preparation is one of the best ways to mitigate future disasters. We all need clean, safe water during good times and emergencies.

As a country, we must better prepare our water systems for the increasing instances of more frequent and severe floods, record setting rainfall, wildfires and other natural disasters ahead, as well as slow onset events such as sea level rise. This bipartisan legislation takes important steps toward shoring up America's aging water infrastructure against the costly threat of climate change.

The draft includes important provisions for Maryland, such as authorizing the construction of the Anacostia Watershed Restoration project in Prince George's County. It also takes steps to expand opportunities to use natural infrastructure and the beneficial use of dredged material, so that sediment dredged to maintain our navigation channels will not always end up as a waste product, but can help restore ecosystems and rebuild wetlands—an idea that has been put into practice successfully on Poplar Island in the Chesapeake Bay.

The discussion draft includes an authorization of $5,000,000 for each of fiscal years 2021–2024 to create a Federal program administered by the U.S. Environmental Protection Agency to help communities strengthen the resiliency of their publicly owned treatment works against the threats of natural hazards.

The Drinking Water Infrastructure Act of 2020 discussion draft reauthorizes and expands the U.S. Environmental Protection Agency's Drinking Water Infrastructure Resilience and Sustainability program at $10,000,000 total for each of fiscal years 2021–2024. Grants will be awarded on a competitive basis for activities to increase resiliency or sustainability such as water conservation, water use efficiency, watershed protection, and modification or relocation.

When precipitation falls on roads, streets, roofs, and sidewalks, it can push harmful pollutants like fertilizer, pet waste, chemicals, and litter into the nearest waterway. This bill also takes innovative actions to improve the availability of public and private sources of funding for the construction, rehabilitation, operation, and maintenance of stormwater infrastructure to meet the requirements of the Clean Water Act.

Urban and suburban stormwater runoff is one of the only major sources of water pollution that is growing in the Chesapeake Bay and across much of the country. Communities with stormwater permits include more than 80 percent of the U.S. population—therefore, stormwater funding is a national problem that requires action.

To all of the stakeholders reviewing the legislation and providing us with your thoughtful input, I appreciate you taking the time to share your views with us. Your perspectives and comments are important to this process and have the potential to strengthen and improve upon the current draft we have posted this week.

To all of you, I hope that you have been staying healthy and safe as you take care for yourselves and for others during this challenging time. I look forward to our ongoing communication and collaboration on this important legislation.

Thank you.

STATEMENT OF HON. TAMMY DUCKWORTH,
U.S. SENATOR FROM THE STATE OF ILLINOIS

Thank you to this Committee, particularly Chairman Barrasso and Ranking Member Carper, for its leadership in drafting legislation that makes critical investments in our Nation's water infrastructure.

As members of this Committee are well aware, access to quality drinking and wastewater services is necessary to ensuring that every American has a shot at living a healthy life. This priority is even more important today, as millions of Americans have been asked to shelter in place and avoid the spread and subsequent injury that COVID–19 can cause.

While I look forward to receiving input from stakeholders with expertise in the issues of water and related infrastructure, there are several provisions from these draft bills that I strongly support. First, I applaud that Committee for making a historic reauthorization of the Clean Water State Revolving Loan Fund and dramatically increasing its investment. I strongly support the Committee's efforts of making existing Federal programs more accessible to the communities that need them the most like low income, rural, and communities of color. By lowering or eliminating the local cost share, increasing funding for technical assistance and direct grants, we can assist these communities in their efforts to deliver quality drinking and wastewater services. I also believe that the investments in innovative technologies and reducing lead exposure are key provisions that are necessary to reducing public health threats that persist in communities across my home State and the Nation.

I also want to applaud Transportation & Infrastructure Subcommittee Chairwoman Capito and Ranking Member Cardin for their leadership in advancing the America's Water Infrastructure Act of 2020 draft to provide for critical U.S. Army Corps of Engineers projects in Illinois and across the Midwest. As drafted, WRDA 2020 includes some of my top infrastructure priorities such as an Inland Waterway Trust Fund cost share modification that will help upgrade locks and dams more quickly along the Illinois and Mississippi River, helping farmers and other industries maintain their global competitiveness. At my request, the bill also authorizes the Brandon Road project that will help protect the Great Lakes from Asian carp, provide further Federal support to restore and enhance the Chicago River, and help distressed communities in flood prone areas along the Mississippi River rebuild outdated pump stations.

I'm proud of the bipartisan cooperation this Committee has exhibited during the COVID–19 pandemic to advance this critical legislation and address the infrastructure needs of our States and communities.

○