NATIONAL WATERWAYS CONFERENCE

Since 1960

Testimony of
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Before the
United States House of Representatives
Committee on Transportation and Infrastructure
Subcommittee on Water Resources and Environment

Hearing on the Foundations for a New Water Resources Development Act
Tuesday, April 16, 2013
10:00 AM EST
2167 Rayburn House Office Building

Introduction

Chairman Gibbs, Ranking Member Bishop, and distinguished members of the House Water Resources and Environment Subcommittee, thank you for the opportunity to be here today to discuss the "Foundations for a New Water Resources Development Act."

My name is Amy Larson and I am the President of the National Waterways Conference. The Conference would like to thank Chairman Gibbs for his leadership, as well as Ranking Member Bishop and this Committee, for its long tradition of cooperation and collaboration in addressing the nation's critical water resources needs.

Established in 1960, the Conference is the only national organization to advocate in favor of national policy and laws that recognize the vital importance of America's water resources infrastructure to our nation's well-being and quality of life. Supporting a sound balance between economic and human needs and environmental and ecological considerations, our 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. Conference membership is comprised of the full spectrum of water resources stakeholders, including flood control associations, levee boards, waterways shippers and carriers, industry and regional associations, port authorities, shipyards, dredging contractors, regional water supply districts, engineering consultants, and state and local governments. In that regard, our membership is keenly interested in the enactment of comprehensive water resources legislation and we look forward to working with the Committee as we move forward in this process.

As this Committee well knows, reliable, well-maintained water resources infrastructure is fundamental to America's economic and environmental well-being, and is essential to maintaining our nation's competitive position within the global economy. Our water resources infrastructure provides life-saving flood control, needed water supplies, shore protection, water-based recreation, environmental restoration, and hydropower production, essential to our economic well-being. Moreover, waterways transportation is the safest, most energy-efficient and environmentally sound mode of transportation.

Water Resources Policy At a Crossroads

As the Congress considers comprehensive water resources legislation, the nation is at a crossroads on the issues of how to both authorize and fund critical water resources projects. Much attention has been given in the past few years to the use of Congressionally directed spending, or earmarks, for all federal spending decisions. Efforts in Congress to eliminate wasteful spending are laudable, especially important given today's fiscal challenges and necessary to maintain the public's trust. However, deferring all decisions to the Executive Branch, particularly as they relate to water resources projects, represents a fundamental change to the way this country has established its priorities. Congress has traditionally asserted its constitutional prerogatives, including the lawmaking power generally and the power of the purse specifically, to determine which projects to initiate, which should receive funding, and the level and priority of funding for each. This self-imposed limit on project-specific directives and funding levels represents a fundamental abdication of Congress's constitutional role. Such action has resulted in the stoppage, interruption and delay of critical projects.

By necessity, the Executive Branch has filled the vacuum left by the Congress. That is problematic for reasons that go beyond upsetting the balance of power between branches of Congress. The Administration's priorities, as reflected in the Budget, have seldom been set through an open, deliberative process as have those that have withstood the heavy scrutiny of the congressional committee system. Permanently adopting in WRDA such a system would result in centralizing all water resources decision-making, excluding the input of both stakeholders and their elected officials from the process of establishing federal priorities. Such a system would undermine the very foundation and integrity of the nation's civil works program.

Projects such as those undertaken by the U.S. Army Corps of Engineers are different from other Federal programs in several respects: each project is formulated separately to address a separate and discrete problem, taking into account site-specific factors including population, local social and economic needs, topography and hydrology, and natural resources; projects are individually considered and recommended by the Administration and are authorized separately by the Congress based on the benefits accruing from each one; each project comprises a separate and distinct Federal investment decision generally independent of other projects and is, therefore, subject to individual appropriations; and, each project also comprises a separate and distinct non-Federal investment decision since non-Federal sponsors agree to pay significant portions of project costs.

Water resources projects are scrutinized, arguably, to a greater extent than any other capital investment program in the government through highly detailed studies. Proposed projects are subjected to comprehensive analyses using merit-based criteria, an integral component of which includes extensive public involvement wherein public input is widely sought and incorporated at frequent intervals. The Water Resources Development Act of 1986 imposed

significant increases in non-Federal cost-sharing and other items of local cooperation, and the 1996 WRDA increased these non-Federal cost-sharing responsibilities still further. The water resources project approval process was strengthened in WRDA 07 through a series of reforms, including the requirement that each project be subjected to an external independent peer review.

Historically, Congress authorizes projects that meet very rigorous tests, specifically, those that survive very detailed analyses and which non-Federal governments support through contributions of substantial shares of project costs. These decisions have been made in a collaborative manner, subject to a consultative, deliberative process, involving all stakeholders – and their representatives. As the Congress grapples with significant fiscal challenges, including how to avoid the earmark abuses of the past, we would respectfully suggest that this Committee, by means of its open and deliberative process, and whose members have the benefit of first-hand knowledge of the importance of particular projects to their states, is the appropriate forum in which to make these major investment decisions, and we would encourage the Congress to reconsider how this country invests in the nation's water resources infrastructure.

Investments in water infrastructure projects are investments in our nation's long-term security. Our nation simply cannot afford the negative economic impacts, the diminished export capabilities and the detriment to our way of life that surely would result if we fail to continue these investments. The Congress has a vital role to play in these important – and independent – investment decisions and should assure that the decisions are reached through an open and inclusive process where the needs and priorities of all are considered.

Inland Waterways

Our inland waterways serve as the backbone of the nation's transportation system, ensuring domestic and international trade opportunities, and low-cost, environmentally sound movement of goods. More than 600 million tons of cargo – including agricultural products, petroleum, chemicals, coal, iron, steel, and other raw materials – move on the waterways at a cost that is typically 2 to 3 times lower than other modes of transportation, translating into an annual savings of $7 billion for America's economy. A typical 15-barge tow carries the equivalent of 216 rail cars or 1,050 large semi tractor-trailer trucks, and generates fewer emissions than the other modes.

As this Committee knows, ensuring the reliability of our inland waterways is essential to maintaining the nation's economic and environmental well-being and competitive position in the global economy. To that end, we generally support the proposed reforms to the project delivery process applicable to the construction and major rehabilitation of the nation's aging locks and dams, based upon the Capital Development Plan endorsed by the Inland Waterways Users Board. The details of many of the proposed reforms would need to be further clarified and refined, including what kind of formal training and certification would be required for project managers, on what basis the Chief of Engineers would certify project managers, and the duties and responsibilities of the users board representative appointed to serve on a project development team. We would recommend that the Secretary be directed to consult with the Users Board in implementing these requirements. We would also recommend that the required report on the study, design or construction of navigation projects be semi-annually rather than quarterly, given the various provisions elsewhere in the draft legislation concerning both the need to streamline

the planning and project delivery process along with the possible imposition of additional burdens prolonging the process.

Integral to the project delivery reforms is the need to ensure sufficient funding for these important projects. In addition to the revenue increase proposed by the Inland Waterways Users Board, we are giving careful consideration to other proposals under development to enact a long-term funding solution to ensure the continued reliability of the nation's inland waterways. It is important for the inland waterway system to function as an integrated system. Efforts to prioritize funding and raise revenue must not disrupt the proper functioning of the system as a whole. It is not surprising, of course, that it can cost more dollars per unit of cargo to build, operate, and maintain the tributary elements of the inland waterway system. There are inherent capacity limits on the smaller rivers, and some require locks and dams and channel maintenance to maintain their viability. However, if that factor is the primary basis to determine civil works funding decisions, let there be no mistake that the effect will be the slow death of some of our tributary systems. For the waterways to continue to fuel import and export activities, the Congress should look beyond mechanical, simplistic formulas. We should not ask what we need to do to keep the waterway system alive; rather, we should ask how best to harness the power and convenience of the waterways to generate jobs and improve our way of life.

Revitalization of the Inland Waterways Trust Fund, together with the reforms to the Harbor Maintenance Trust Fund discussed below, would position America's ports and waterways to take advantage of the tremendous opportunities offered by the Panama Canal Expansion.

Harbor Maintenance Trust Fund

The nation's ports and harbors are critical components of our transportation infrastructure, and regular maintenance is required to ensure their efficient use. The Harbor Maintenance Tax is intended for that specific purpose, and annual revenues from the tax are generally about $1.5 billion annually. However, only about half of the revenue collected is used for its intended purpose.

As a consequence, the nearly 1,000 federal ports and harbors have not been adequately maintained, and indeed, those ports that handle nearly 90 percent of commercial traffic are dredged to their authorized depths and widths only 35 percent of the time. This chronic failure to provide sufficient funding has resulted in channels getting narrower and shallower due to inadequate dredging, which has resulted in ships having to light-load, increasing the cost of shipping, the risk of vessel groundings, collisions, and pollution incidents.

With 13 million jobs and $4 trillion in economic activity dependent on these ports and harbors, we cannot let them fall into further disrepair. Because waterborne transportation is often the least expensive means of transporting vital commodities and goods, maintaining this essential infrastructure bolsters our economic competitiveness and strengthens the economy.

We strongly support legislation that would ensure that the revenues collected into the Harbor Maintenance Trust Fund are used for their intended purposes. We agree that the proper expenditure of such receipts should not result in a reduction in funding for other projects and programs in the Corps of Engineers' civil works program. We would further caution against any expansion of the activities that would be eligible for funding under this proposal until such time as there is a mechanism that ensures that the revenues collected will be used for the intended

purposes. Otherwise, simply shifting the already scarce resources in a chronically underfunded program would only serve to further undermine the stability of our critical water resources infrastructure.

Levee Safety

We support the establishment of a comprehensive levee safety program, and as a starting point for discussion, refer to the draft recommendations made to Congress by the National Committee on Levee Safety (NCLS) in its 2009 report.

The importance of well-built and well-maintained levees cannot be understated. Levees are both abundant and integral to economic development and flood risk reduction in hundreds of large and small communities, industrial zones, urban areas, agricultural regions, and vitally strategic zones around the United States. The National Committee on Levee Safety estimates that tens of millions of people live and work in leveed areas. By some estimates, nearly 50 percent of Americans live in counties with levees or related flood protection infrastructure. Corps of Engineers' levee systems provide a 6:1 return ratio on flood damages prevented compared to initial costs, and the Mississippi River and Tributaries system provides a 44:1 return on investment ratio.

Levees also serve an important role in our nation's energy framework by protecting many power plant facilities, as well as the oil, gas and petrochemical industries along the Texas and Louisiana Gulf coast and the agri-business economy throughout California's Central Valley, the Mississippi Delta Region and the Midwest. Well-conceived levees, floodwalls and appurtenant infrastructure protect fire and police departments, hospitals, and schools. They are

critical to the viability of our overall public infrastructure network, protecting other infrastructure, including roads, bridges, railroads, port facilities and wastewater treatment plants.

Levee infrastructure, like our aviation, water and wastewater, transit, dams and waterways transport, is in need of attention. Effective and improved management of levees is necessary for the continued enjoyment of the economic, societal and cultural benefits yielded by this public works investment. A critical first step to the establishment of a successful levee safety program would be the one-time inventory and inspection of all known levees across the United States, including non-Federal program levees. The baseline information garnered from such an inventory, including much of the non-federal stock of levees, should then be included and maintained in an expanded national levee database in order that critical safety issues, true costs of good levee stewardship, and the state of individual levees can inform priorities and provide data for needed assessments and decision-making.

A levee safety program should, at its threshold, provide for clarification of Federal and non-Federal roles, recognizing that U.S. Army Corps of Engineers' project involvement is driven by economic return (NED benefits); and state, regional and local authorities maintain plenary responsibility for life safety and/or landside risk reduction measures such as evacuation, land use practices, building codes, and risk communication. As such, a levee safety program must not impose top-down Federal mandates, but must instead recognize that the states and Indian tribes are uniquely positioned to oversee, coordinate and regulate local and regional levee systems. The establishment of new federal standards, panels or commissions would be especially harmful in the absence of meaningful, cost-shared Federal funding for Fed-built levee infrastructure. Thus, any levee safety guidelines developed pursuant to the legislation must appropriately accommodate place-based variation and preserve state and local government prerogatives, so that

such guidelines could properly serve as a "guide" for states, but the decisions on whether to adopt and implement should be left to the discretion of the states. Further, any such guidelines called for by a WRDA should be developed through an open and transparent process, consistent with the public notice and due process requirements of the Administrative Procedure Act.

Given the critical importance of levees throughout the country, we support the appointment of an administrator of the levee safety program, within the Corps of Engineers, whose sole duty is the management of that program, as recommended by the NCLS report. We also appreciate the intent behind the recommendation to establish a National Levee Safety Advisory Board to provide advice on consistent approaches to levee safety, to monitor levee safety and to assess the effectiveness of the national program. However, given the fiscal constraints facing the nation, we believe it would be premature to stand up the Board before completion of the inventory and inspection of the nation's levees. The results of the inspection, which will increase our understanding of levee system locations, conditions, and the national flood risk situation, could then be used to determine whether such a Board is necessary, and if so, to help frame and focus its work.

We have heard suggestions calling for an assessment of the possibilities for alignment of Federal programs to provide incentives and "disincentives" to promote shared responsibility for levee safety and to encourage the development of strong levee safety programs. While we support efforts to enhance levee safety, we are concerned about what possible "disincentives" might be contemplated by this directive. We cannot penalize people who live in communities near the water or behind levees. Rather, we should fully identify and assess the problems through completion of the inventory discussed above, and then work through an open, informed,

systematic approach to bring deficient flood control structures to a level of protection we can live with and afford.

It should not be the policy of the United States to discourage existing and future economic activity in areas protected by sound levees, dams and other flood control infrastructure. Many of our Nation's most fertile lands and economically strategic assets lie in areas now protected by well-conceived levees and dams. Rather than identify disincentives that would result in significant economic harm, we would instead suggest the adoption of incentivized approaches to provide direct assistance and conditional flexibility to "good actor" communities who are diligently working to bring their deficient levees into compliance with changed Federal requirements. In this regard, we would support a directive and adequate funding to compel the Corps of Engineers to reverse its 2008 policy that ended Federal certification at Fed-built levees. Similarly, we support efforts to address USACE Vegetation Management Policy that compel the agency to account for peer-reviewed scientific findings, project-specific variables, and multi-purpose demands in its VFZ variance procedures. Finally, we have grave concerns about unintended consequences associated with the proposed Hazard Potential Classification System and administratively formed Levee Safety Action Classification. We understand the intent to identify populations and property at risk in the event of catastrophic infrastructure failure, but are concerned about collateral impacts to jobs, property values and area reinvestment associated with summary dissemination of forecasted government information.

Policy Reforms

WRDA provides numerous opportunities to reform and update various policies, accelerate the Corps' planning and project delivery process, and enhance the role of the non-Federal sponsor in project development. While more attention tends to be on waterways and levee issues, this is also an opportunity to enhance hydropower productivity and address critical reservoir management challenges.

The U.S. Army Corps of Engineers' (USACE) planning process, set forth in its Planning Guidance Notebook, ER 1105-2-100, is based upon the Principles and Guidelines (P&G) promulgated in 1983, along with numerous laws applicable to the Corps' missions and the Civil Works program. The P&G were set forth to provide for the formulation of reasonable plans responsive to National, state and local concerns.

The Principles and Guidelines state that the Federal objective of water and related land resources planning is to contribute to national economic development consistent with protecting the Nation's environment, in accordance with national environmental statutes, applicable executive orders, and other Federal planning requirements. In general, the plans recommended for implementation are to reasonably maximize net national benefits.

The Planning Notebook sets forth a six-step process established in the P&G to provide for a structured approach to problem solving, utilizing a rational framework for sound decision making. The six steps are: Step 1 - Identifying problems and opportunities, Step 2 - Inventorying and forecasting conditions, Step 3 - Formulating alternative plans, Step 4 - Evaluating alternative plans, Step 5 - Comparing alternative plans, Step 6 - Selecting a plan.

The six steps are explained in great detail in the Planning Notebook. On top of the requirements contained therein, Corps' studies are also subject to an extensive systematic review process. This includes internal reviews, including quality control and agency technical reviews; external reviews, including National Environmental Policy Act reviews, independent external peer reviews, and state and agency reviews; and other policy and legal reviews.

Overall, the process is extraordinarily rigorous and thorough, indeed to a much greater degree than is found in any other example of infrastructure planning. However, the process has grown to being overly burdensome, resulting in it becoming impracticable. For instance, current requirements have accreted due to the growth of law and policy, as a result of legal and technical challenges, and with individual requirements added to address some sort of shortcoming identified in a previous project.

To streamline this overly burdensome process, the Corps has implemented its "3x3x3" program, so that feasibility studies would be completed in no more than 3 years, at a cost of no more than $3 million, and three levels of engagement. We applaud this effort, and would also recommend that as the Corps continues to refine its planning process, it develop additional guidance on what elements can be eliminated from the current process and still produce a valuable study, because simply mandating a shorter time-frame and a lower cost will not reform the process. We would caution, though, imposing a statutory requirement to complete studies within 3 years irrespective of the availability of funds, previous statutory requirements, new requirements, and without consideration of the appropriate scope of a study (including economic, environmental and engineering requirements), would undermine the planning process rather than improve it.

In that regard, the WRDA recently moved by the Senate Environment and Public Works Committee, S.601, includes provisions to streamline the extensive environmental review requirements needed to advance critical projects. Modeled after similar provisions in last year's MAP-21 transportation reauthorization, sections 2032 and 2033 provide much-needed authority to streamline requirements, avoid unnecessary duplication and coordinate the activities of various agencies that may be involved in any particular project. We would support such streamlining provisions as this Committee considers a WRDA.

While efforts like the aforementioned are significant first steps to reduce the time and expense of projects studies, we would caution that as this Committee considers other policy "reforms," such proposals must be considered through the lens of the benefits that would be realized compared to the additional cost and delay they would impose. For instance, provisions in S.601 to extend by five years the independent peer review provisions contained in WRDA 2007 and impose additional reporting requirements on the Chief of Engineers, and proposals to modify the safety assurance review provisions of WRDA 2007 would both impose additional cost and time on Corps' feasibility studies, without increasing their efficiency. In addition, efforts to implement policy reforms intended to address specific, discrete problems are undermined by the earmark moratorium, as implementing language would grant broad, sweeping authority that could be interpreted as significantly expanding the Corps' authority in ways that are beyond, or even contrary to, the Corps' mission. (See, e.g., Section 2013, Implementation of Biological Opinions, as introduced).

Alternative Financing Provisions and Pilot Programs

Numerous concepts and ideas to finance needed infrastructure improvements are currently under discussion in various fora, including within the Corps of Engineers, among the stakeholder community, and indeed within this committee. There is a growing understanding that Federal appropriations will not be sufficient to construct and maintain the nation's important water resources projects and that other sources of revenues will likely be needed in the future. Such ideas include public-private partnerships, Federally-guaranteed loans, increased user fees, and reinvestment of certain user fees back into their projects, including, for instance, hydropower and recreation fees, instead of making deposits in the general Treasury.

As these concepts are further developed and refined, it is important to note that, in keeping with the complexity and difficulty of the issues before us, there is not a one-size-fits-all solution to address these financing challenges. Rather, a variety of options will be necessary. Such solutions should allow for greater flexibility during in all phases of a project, as well as provide for increased involvement of non-federal sponsors. This would include, for instance, allowing non-federal sponsors to serve as project managers, to contribute additional funds towards projects, and receive various credits for in-kind work and in lieu of reimbursement.

We also strongly urge the Congress to make Section 214 of the Water Resources Development Act of 2000 (P.L. 106-541) permanent. That provision allows the Secretary of the Army to accept funds from non-Federal public entities, like ports, to hire additional regulatory staff to expedite the permitting process. It not only reduces permit wait times for the funding entity, but for any individual or organization that makes an application with that District of the Corps. Section 214 authority, currently used by over 41 public agencies in 20 Corps districts,

has allowed local governments to move forward with vital infrastructure and ecosystem restoration projects.

In addition to the importance of finding solutions to address the growing backlog of project development and constructions cost, it is similarly important to adequately maintain these investments. One solution I'd like to highlight was developed to address the $100 million backlog of critical maintenance along the 445-mile long McClellan-Kerr Arkansas River Navigation System that extends through the entire State of Arkansas and into Oklahoma. A bi-state organization of port and terminal interests called the Arkansas-Oklahoma Port Operations Association entered into a formal partnership with the U.S. Army Corps of Engineers to address navigation maintenance and funding issues and to mutually work towards solutions. Especially important is the formation of an emergency response program that will enable the non-federal interests to provide labor, materials, machinery and money on a joint operational basis to expedite fixing a problem that could otherwise take months to resolve due to the lack of these resources on the federal side. This initiative may avoid lengthy waterway shutdowns saving millions of dollars per day to agriculture, manufacturing, and transportation sectors that would otherwise result from a navigation shutdown.

Conclusion

Thank you for the opportunity to appear before the Committee today to discuss the foundations for a Water Resources Development Act. We look forward to working with the Committee as it is moves forward with developing this important legislation.