United States Senate
Environment and Public Works Committee
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Follow-up Questions for Written Submission

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Questions from Senator Barbara Boxer

1. In your testimony, you discuss the significant and careful review that projects undergo in development of a Chief’s Report.

   a. Can you elaborate on the process and criteria for a project with a completed Chief’s Report?

   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.

Similarly, the extensive reviews can be quite costly and time-consuming. For example, the independent external peer reviews, initiated by Section 2034 of WRDA 07, may include economic and environmental assumptions and projections, project evaluation data, economic analyses, environmental analyses, engineering analyses, formulation of alternative plans, methods for integrating risk and uncertainty, models used in evaluation of economic or environmental impacts of proposed projects, and any biological opinions of the project study.

A report containing the recommendations of the Chief of Engineers is completed only after the study and review processes are completed, comments have been resolved to the extent possible and the Chief has made a determination on the merits of the proposed project after considering all available input.

b. Would you be confident that the 18 projects with completed Chief’s Reports and referred to Congress by the Assistant Secretary of the Army have been thoroughly reviewed and worthy of being authorized?

Yes, I am very confident that all 18 projects with positive recommendations on Chief’s Reports are worthy investments for the Nation.

In addition to the Chief’s Reports, there may, in all likelihood, be other worthy projects that Congress may want to consider as well. 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.

2. In your testimony you support the creation of the National Levee Safety Program. Can you expand on the couple of features you feel will be most important to starting this new program?

Our organization is amenable to the idea, broadly, that if state governments want USACE to partner with their localities to strengthen flood damage reduction capability, then the states will have to develop and implement levee safety programs that meet certain minimum guidelines. Regional circumstances and variations will have to be considered as this concept advances. In any case, the legislation must guarantee that the program guidelines are: (1) the product of co-equal input from Federal and non-Federal representatives; (2) voluntary at the State level; and (3) developed consistent with the public notice and due process requirements of the Administrative Procedure Act. Similar to other public safety aspects of most law enforcement activities in the United States, the basic life and limb safety burden is most
appropriately handled at the state and local levels. Surveillance, evacuations, land use practices, building codes, public outreach, and other risk reduction measures should be left and/or clarified in the bill as state and local domain. While the Federal sponsor does have an interest and responsibility for life safety concerns, its primary consideration has been and should continue to be based on economic return (National Economic Development benefits). To the degree that we can more explicitly state, in law and policy, what the clear Federal, state, and local roles are regarding flood damage reduction and flood safety, the better off we will be.

By using future WRDA legislation to more clearly delineate Federal and non-Federal risk reduction responsibilities, we would bring many critical project delivery and operational benefits to the forefront. Mandatory national levee safety standards are neither desirable nor practicable. The case-by-case variables are just too great, in our estimation, for any effective development and application of top-down regulations. Universal standard setting will have a chilling and costly impact on an already overburdened USACE project delivery process. The current controversy over USACE levee vegetation management, dealt with in another part of the Chairman’s Discussion Draft, is instructive on the difficulties associated with overly prescriptive national standard-setting in this policy area. Peer-reviewed models for levee safety programs, however, can serve to shore-up life safety risk concerns by informing case-by-case design and maintenance guidelines with “best practices” knowledge while cost-effectively reaffirming responsibility for life and limb safety at the appropriate non-Federal levels.

Voluntary adoption and implementation of effective, peer-reviewed state levee safety programs must be premised upon the inclusion of cost-shared levee project improvement and rehabilitation funding for Federal program projects, including prioritized remedial design and construction modifications at federally built projects.

Since 2009, USACE has completed a substantial portion of its nationwide Inspection/Inventory for USACE program levees, and late last year the agency organized much of this field data within the National Levee Database authorized by the 2007 WRDA. Both initiatives, appropriately, have been focused, first, on the Federal program levees. Non-Federal levees, for the most part, are unstudied and uncharacterized at this stage and, thus, should not be covered by legislative directives at this time. Baseline information on these non-Federal levees would be obtained from the Inspection/Inventory called for in the Discussion Draft, after which time it would make more sense to contemplate their inclusion in a comprehensive Levee Safety Program.

Finally, we would be concerned about overly summarized project rating tools contemplated under the Hazard Potential Classification System (and related USACE Levee Safety Classification System (L-SAC)). The goal of categorizing “worst first” to prioritize national needs and funding decisions is an understandable public policy aim, but it isn’t clear to us that the L-SAC process is doing a good job on that goal. However, public dissemination of this summary, potentially arbitrary data could present extraordinary, unintended economic challenges at the local level. L-SAC type summary ratings have the potential to strike widespread blows against regional property values, local revenue collection, job creation, area reinvestment, and overall regional economic outputs.
3. The draft bill includes provisions for helping ensure the complete expenditures of the HMTF. Can you explain why full spending of the HMTF is necessary and important to our national commerce?

We appreciate Chairman Boxer’s recognition of the importance of fully spending the revenues from the Harbor Maintenance Trust Fund for their intended purposes. However, we do not agree that the provisions in the discussion draft would ensure those expenditures. While the text of subsection 8002(a) is consistent with the text of S.412, the Harbor Maintenance Act, the text of subsection 8002(b) does not include the point of order that would enforce the guarantee in paragraph 8002(b)(1). Without the point of order, that guarantee is not enforceable in the House or the Senate.

As stated in my testimony, we agree that the proper expenditure of receipts from the HMTF should not result in a reduction of funding for other projects and programs in the Corps’ civil works program. We believe that overall investments in our nation’s water resources infrastructure are woefully inadequate. To that end, we are concerned that paragraph 8002 appears to the casual reader to address the inadequate funding of harbor maintenance programs, but it actually does not fix the problem.

Similarly, it is not clear how paragraph 8002(b)(2) as drafted would operate. It is not clear whether the baseline for determining whether the amount of appropriations in question is a reduction compared to the previous fiscal year's appropriation or the Administration's request for the fiscal year in question. Also, it does not specify who would be empowered to make a determination of whether a reduction in appropriations for such programs was the result of an increase in appropriations from the HMTF or due to another reason. If the Administration forwarded to the Congress an annual budget request that would increase appropriations from the HMTF while slightly decreasing total non-HMTF funding from the previous fiscal year and explained that such reduction is based on other factors, would that render paragraph 8002(b)(2) inoperative?

Subsection 8003(a) of the draft bill would expand the authorized uses of HMTF revenue to include 100% of the cost of maintaining navigation channel depth greater than 45 feet, but not greater than 50 feet. Subsection 8003(b) of the draft bill would authorize under certain circumstances the HMTF to reimburse the costs of maintaining harbor berths and disposing of associated dredged materials. Currently, both of these costs would be paid for by the nonfederal interest. It is difficult to determine how great an additional demand on the HMTF these provisions would impose. Given that there is a tremendous backlog of unmet currently authorized harbor maintenance needs, we cannot support legislation expanding the authorized uses of the HMTF that does not also effectively ensure that annual HMTF revenues are fully provided to the Army Corps of Engineers for currently authorized purposes.

Section 2018 appears to be targeted at harbor deepening projects that are completed using non-federal funds and it is reasonable to assume that some nonfederal interests would do so due to inadequate federal funding of authorized Army Corps of Engineers navigation construction projects. Since the operations and maintenance of such deepened channels would otherwise be reimbursed with HMTF revenue, we have no objection to this provision.
To understand why full spending of the HMTF is necessary and important to our national commerce, it is important to recognize that our ports and harbors are gateways to domestic and international trade, connecting the United States to the world. U.S. ports and harbors handle more than 2.5 billion tons of domestic and international trade annually. These ports are responsible for moving more than 99 percent of the country’s overseas cargo, and that volume is projected to double within the next 15 years. With the expansion of the Panama Canal in 2015, many of our ports will realize substantial volume growth. In 2007, there were 13.3 million port-related jobs – 9% of all jobs in the US – that accounted for $649 billion in personal income. A $1 billion increase in exports creates an estimated 15,000 new jobs. The navigation channels maintained by the Army Corps of Engineers allow for the most efficient transportation of these goods and help keep U.S. exports competitive in the world market. The vast majority of U.S. harbors and navigation channels experience a loss of channel depth due to deposits of silt that must be removed by maintenance dredging that is reimbursed by the HMTF. Failure to keep up with this maintenance dredging results in a loss of channel depth, light loading of large cargo vessels, lost competitiveness of U.S. ports and exports, and loss of jobs.

Full expenditure of the HMTF supports to the Administration’s *We Can’t Wait* initiative, a government-wide effort to streamline the permitting and review process for nationally and regionally significant infrastructure projects, under which 7 projects at 5 major ports were expedited earlier this year. Post-Panamax vessels today make up 16 percent of the world’s container fleet, but account for 45 percent of the fleet’s capacity. Those numbers are projected to grow significantly over the next 20 years, and full expenditure of HMTF will be critical to ensure that the nation’s ports are prepared to accommodate those new vessels. In addition, the National Export Initiative, which strives to increase oversees trading opportunities for U.S. businesses, will benefit from better maintained ports and harbors.

Full expenditure of the HMTF makes economic sense.
Questions from Senator James Inhofe

1. What, if any, policy priorities or changes to current law that are important to your organization are not addressed in this draft?

   a. How would you suggest we modify the draft to reflect your concerns?

      1. We would urge the Congress to take this opportunity to rethink how our nation invests in its infrastructure. While efforts in Congress to eliminate wasteful spending are laudable, and especially important given today’s fiscal challenges, deferring to the Executive Branch complete decision-making as to which projects should receive funding, how much (if any) funding should be allotted to each and all related priority decisions, has resulted in the stoppage or delay of critical projects. Moreover, the Administration’s priorities, as articulated in the budget, have not been established through an open, deliberative process.

      Federal water resources projects are different from other Federal programs, projects and activities in the following important ways: each project is formulated separately to address a separate and discrete problem; projects are separately analyzed, are recommended by the Executive Branch and are authorized and funded separately by the Congress based on the benefits accruing individually 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.

      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.

      2. Legislation that ensures the full expenditure of annual HMTF revenues for authorized purposes is a policy priority of NWC. Section 8002 of the draft bill does not adequately address this priority because it does not include any language enforcing the HMTF spending guarantee. Without the point of order, that guarantee is not enforceable in the House or the Senate. We recommend replacing paragraph 8002(b)(2) with the text of subsection (c) of S.412.

      3. 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.

4. Provide a dedicated funding stream for the nation’s small ports and harbors. With full expenditure of the HMTF, coastal ports may be eligible for funding. However, inland ports not under the HMTF program would not be included by full expenditure of the HMTF and need a dedicated funding stream to ensure their continued viability. In recent years, without Congressionally directed spending, some of these ports have paid for their own dredging, which comes with a variety of operational challenges; others have shut down for periods of time; and others expect to shut down permanently, closing down local industry.

2. I am pleased that the Chair included a Sense of the Congress on Project Acceleration. However, I would like to take this a step further and include legislative language. What does your organization recommend?

In order to effectuate meaningful reforms to the planning and project delivery process, we would encourage the Committee to review, and eliminate as warranted, the numerous cumbersome legislative and policy requirements that have accumulated over the years, significantly increasing the cost and time of studies. Without a fundamental overhaul, designed to reduce the number of issues and alternatives that the Corps is required to study, there cannot be effective change. Two particularly important actions would be to streamline the NEPA compliance process and expand the ability of local sponsors to participate in the process.

Similarly, we would suggest that the Committee consider new and/or modified policy reforms with an eye towards their impact on the planning process. We would be concerned that efforts to streamline the process would be thwarted by the implementation of new requirements. Coupled with the efforts to reform the planning process should be an extension and expansion of the provisions in Section 2003 of WRDA 2007 to simplify Project Partnership Agreements (PPAs) to make them easier to approve and execute.

3. Some have suggested that the Civil Works Program needs to be transformed to ensure it continues to effectively and efficiently address the nation’s water resources challenges. Do you have any recommendations that the Committee can consider for this WRDA bill in order to lay a foundation for future changes to the Civil Works Program?

We have been engaged with the Corps of Engineers on its “Civil Works Transformation” initiative, in furtherance of our mutual goals of ensuring a long-term robust water resources infrastructure program for the nation. We continue our collaborative efforts, including stakeholder outreach and communications.
In terms of legislative provisions to support this transformation, we offer the following suggestions:

• Authorize and implement only the highest priority investments:
  
  o Restore and reinforce the historic standard of the Chief’s Report as a principal basis for determining worthwhile investments for the Nation. Projects meeting the economic, engineering and environmental tests leading to a Chief’s Report – and proceeding through “normal order” in the Congress – would not be considered earmarks.
  
  o The Authorizing Committees could invite the Administration to indicate priorities for projects that would be included in the Act.
  
  o Set up a specific process for the Corps to report on anticipated 902 issues and for them to be considered as reauthorized without specific Congressional action
  
  o Limit the pace of authorizations by progress in reducing the backlog, and expand authorizations at a pace consistent with the reduction in the backlog

• Create the opportunity for more dynamic Corps-State-and-Interstate partnerships for a contemporary reservoir management vision
  
  o Enhance the role of the Corps in water supply, preferably through Corps/state partnerships

• Establish a means to create public-partnerships
  
  o Provide for a pilot program for a variety of projects