LEGISLATIVE SUMMIT RECAP

WRDA and Infrastructure Take Center Stage at the 2018 Legislative Summit

When NWC members convened in Washington during the week of March 5th for the 2018 Legislative Summit, discussions centered around possible water resources legislation taking shape in Congress and the Administration’s recently-released infrastructure concepts.

U.S. House Transportation and Infrastructure Committee Chairman Bill Shuster touted the ongoing work in the House to craft a bill and build consensus to move legislation out of committee by late spring, with floor action before the 4th of July recess, opening the door to conference negotiations over the summer. Declaring the theme of this year’s legislation as “WRDA Works,” Shuster noted the importance of authorizing Chief’s reports, as well as proposals for studies and projects included in the 7001 Report, the mechanism established in the 2014 water resources legislation, the Water Resources Reform and Development Act, to provide non-federal interests the opportunity to submit requests for authorization based on local needs.

Shuster also raised concerns about the Corps’ processes, declaring it “imperative” that the Corps becomes more efficient. To that end, he indicated that the Committee needs to look at whether moving the civil works function out of the Department of Defense would address some of those concerns, a suggestion not universally embraced by Summit attendees. (See related article on page 3.)

A similar timeline for moving companion legislation in the Senate was supported by Brian Clifford,

Deputy Staff Director for the Senate Environment and Public Works Committee, who delved into the Senate’s process for moving forward with WRDA.

How and whether WRDA is linked with the Administration’s infrastructure concepts remains an open question. Support for the Administration’s proposal came from Mr. Ryan Fisher, the Principal Deputy Assistant Secretary of the Army for Civil Works, as well as Alex Herrgott, point man at the White House from his perch as Associate Director for Infrastructure at the Council on Environmental Quality.

Fisher discussed three initiatives that go hand-in-hand: streamlining permit and project reviews to lead to “one Federal decision;”

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reducing regulatory burdens, and rebuilding America as laid out in the Administration’s infrastructure plan. Herrgott echoed those views, noting that the Administration and Congress are working together to actualize the President’s vision and implement solutions that work. (See related photo on page 10.)

Maritime Administrator Mark “Buz” Buzby, USN Ret., commented on Marad’s priorities, as well as the pivotal role of Secretary of Transportation Elaine Chao in developing the Administration’s proposal. DOT’s focus will be on improving rural infrastructure, streamlining regulatory permitting, supporting the maritime workforce and giving authority back to the States. He noted that Marad’s Strong Ports program and its efforts to expand and modernize gateway ports will support growth in freight transportation and global trade.

Speaker presentations are available on NWC’s website at https://waterways.org/2018-legislative-summit/

USACE Overview

NWC’s federal partners at the U.S. Army Corps of Engineers played a central role in the Summit’s program, with budgetary and operational insight provided by Eddie Belk, Chief of the Programs Integration Division, and Tom Smith, Chief of Operations and Regulatory. Belk provided an overview of the Civil Works program, with a portfolio of more than 3000 projects valued at approximately $268 billion. Expanding demands of an aging infrastructure significantly outpace the annual appropriations and resources, creating additional challenges. Noting the calls for change in permitting and project delivery, Belk highlighted several initiatives within the Corps, including working closely with their federal partners, delegating decision-making, and supporting the White House infrastructure initiative.

Honing in on efforts to improve civil works delivery, Belk described a multi-pronged agency-wide effort with senior executives leading various aspects, including utilizing risk-informed decision-making, synchronizing headquarters functions to support districts and divisions, integrating policy and guidance, and incorporating social and environmental benefits into project formulation, design and implementation. Similarly, he identified actions underway to implement the infrastructure initiative.

LTG Todd Semonite, Commanding General and Chief of Engineers, and NWC President Amy Larson reaffirmed their commitment to working together on issues of mutual concern by signing a 5-year extension to their Memorandum of Understanding.

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NWC Hosts WRDA Briefings

While Congressional committees turn their attention to advancing legislation later this year (see related article on page 1), NWC convened a panel of water resources experts for “WRDA 101” briefings for Congressional staff. The sessions, with both the House Transportation and Infrastructure Committee and the Senate Environment and Public Works Committee, provided an overview of the Corps civil works program as well as discussed the importance of timely WRDAs to authorize needed studies and projects and provide policy direction to the Corps.

The Corps’ Congressional affairs expert, Jennifer Greer, Chief of the Future Directions Branch, was joined by a bipartisan team of former Congressional staff members, including John Anderson, Vice President at Van Scyoc Associates and former Staff Director of the House Transportation and Infrastructure Water Resources and Environment Subcommittee; Charles Brittingham, Senior Vice President at Cassidy & Associates, former Majority Senior Water Resources Policy Advisor for the Senate Environment and Public Works Committee; and Ted Illston, Water and Natural Resources Strategies, LLC and formerly Senior Counsel, Senate Environment and Public Works Committee.

With more than 100 years of expertise among them, attendees were treated to a robust and entertaining discussion, touching upon topics ranging from the importance of working with local Corps districts to resolve issues, the practical challenges of moving legislation this year, the give-and-take of conference negotiations, and how to get over the finish line by the end of the year.

Both authorizing committees have held a series of hearings and roundtable policy discussions already, receiving testimony from Corps leaders and industry experts on what policy items should be included in legislation this year, along with status updates on implementation of the 2014 and 2016 laws. It is expected that WRDA efforts will gain momentum when Congress returns from the Easter recess.

The Civil Works Program of the U.S. Army Corps of Engineers in 2018

BY FRED CAVER

Over the past few years, there have been increasing expressions of frustration from a number of quarters related to how the U.S. Army Corps of Engineers executes its traditional civil works program. That surprisingly expansive and complex program carries out the Federal role in planning, designing, constructing, operating and maintaining much of the nation’s water resources infrastructure, including inland and deep-draft navigation, flood control, hydropower generation, water supply, aquatic ecosystem restoration, regulation of certain water-related activities and even ancillary activities such as outdoor recreation where Corps facilities provide more recreation opportunities for more Americans than does even the Park Service.

Of late, however, some have questioned the Corps’ role in this program. “Why should such civil activities continue to be housed in a military organization in today’s world?” “Why should the Federal role in waterborne transportation be overseen by the Corps when other aspects of our transportation system are handled by DOT?”

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proposal, addressing concerns relating to financing, project delivery, and permit streamlining.

Smith focused on the Corps’ navigation program, noting the benefits to our national economy as well as challenges faced by aging infrastructure and constrained funding. Highlighting what can be achieved with full funding, he pledged that Olmsted Locks and Dam will be operational by the end of the year, with a ribbon cutting ceremony perhaps in August.

Lieutenant General Todd Semonite, the 54th Chief of Engineers and Commanding General, presented a year-in-review, marking achievements and accomplishments since speaking to summit attendees in 2017. Responding to concerns about application of benefit-cost ratios in determining what projects receive funding, the Chief opined there are opportunities to fix and adjust the BCR, and that the Corps must finish projects that it starts.

Semonite delved into the importance of the Corps’ partnerships and collaboration with its nonfederal partners, and capped off his remarks by signing a 5-year extension of the USACE-NWC Memorandum of Understanding.

Offering a Collaborative Approach to Promoting Natural Infrastructure

Don McNeill, Strategic Growth Manager from Caterpillar and the Director of the Natural Infrastructure Initiative (NII), provided Legislative Summit attendees an overview of the effort he’s leading to address global infrastructure needs, seeking to utilize natural infrastructure where viable. NII is an informal group of companies and organizations, including Bill Hanson from Great Lakes Dredge and Dock, a member of NWC’s Board of Directors.

Seeking greater acceptance of, and increased investments in, natural infrastructure, McNeill emphasized “natural AND built infrastructure, not OR.” He highlighted the opportunities to beneficially use dredged material in the United States, an idea supported by NWC Board member Sean Duffy of the Big River Coalition, who touted the coastal restoration of up to 1500 acres as part of the Mississippi River ship channel deepening. Sean also shared that the Coalition calls its beneficial use program “Sediment Recycling,” and touts that this effort has created approximately 6,500 acres in the environmentally sensitive birds’-foot delta since it started in 2009.

Record Funding for Civil Works in FY18 Omnibus

After operating under a series of stopgap funding measures since the start of the fiscal year last October, House and Senate negotiators reached agreement on a massive spending bill to fund the federal government for the remainder of the year before heading home for the 2-week Easter recess.

The U.S. Army Corps of Engineers civil works program will receive funding of $6.8 billion, an increase of $789 million from the FY17 levels. Taken together with the historic $17.4 billion in the storm damage supplemental passed earlier this year, the Corps is uniquely positioned to address a significant backlog of work in its inventory.

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The FY18 funding includes $3 billion for navigation projects and studies, with $1.4 billion from the Harbor Maintenance Trust Fund, which is $100 million more than the FY17 funding level and exceeds the target of $1.34 billion established in WRRDA 14. The agreements calls for full use of revenues from the Inland Waterways Trust Fund, a reflection of Congressional support for the program, together with a direction to the Corps to take the necessary steps to ensure that new construction can commence upon the completion of ongoing projects. Similarly, flood and storm damage reduction projects receive additional support, with a funding level of $1.9 billion, an increase of $215 million above FY17.

Further breaking down the funding by account, Investigations receives $123 million; Construction $2.085 billion; Mississippi River and Tributaries $425 million; Operation and Maintenance $3.630 billion; and $200 million for Regulatory.

The agreement includes six new starts in Investigations, two of which shall be for navigation studies, one for flood and storm damage reduction, and one for environmental restoration. The remaining two shall be for additional navigation and storm damage reduction studies. Six new construction starts are funded, including one in the Mississippi River and Tributaries account. The remaining five include one navigation, one flood and storm damage reduction, and one coastal storm damage reduction project, with the remaining two coming from navigation or storm damage reduction.

The Corps is required to develop a ratings system for evaluating studies and projects that are eligible for additional funding, with an admonition that studies or projects may not be excluded for being “inconsistent with Administration policy.” Similarly, administration budget metrics may not disqualify a project or study from receiving funding; moreover, the Congress noted it sees no reason for funds to remain unallocated.

The Corps is directed to submit a detailed work plan within 60 days of enactment, so by May 22nd, to both Committees on Appropriations. The report must include a detailed description of the ratings system, how funds are to be allocated, and a summary of work to be accomplished. Importantly, the report is to identify those projects and studies that would have been eligible but did not receive funding, and the reasons therefor.

Reflecting the ongoing concerns that the effort to update the Principles and Guidelines was not consistent with the language or intent of section 2031 of WRDA 2007, the Corps continues to be directed to use the 1983 Principles and Guidelines. It is prohibited from using any funds to implement the 2013 Principles and Requirements or the 2014 Interagency Guidelines, a reflection of Congressional intent in favor of a balanced approach to the planning, development and management of water resources, in accordance with a clear, concise and workable set of principles.
“Hasn’t the Corps grown too slow, inflexible and process-oriented to be a contributor in addressing our infrastructure needs in the 21st century?” “The Corps has become insular and bureaucratic in recent years—an organization often driven by its lawyers where ‘no’ is the safe and easy answer—so shouldn’t its responsibilities be shifted to a more customer-friendly group?”

These and many other questions have prompted both the Congress and the Administration to begin reviewing the Corps’ role and examining options. I, for one, consider such reviews to be entirely appropriate and healthy. Bureaucracies (and the Corps certainly is one) at all levels, both in government and the private sector, tend to become entrenched over time and encrusted with process. Too often, no one remembers why certain processes were implemented. “We just do it that way because we always have” is the unspoken refrain. Bureaucracies tend to be slow and cautious, which is jarring in a digital world which moves at the speed of light.

Even casual observers would acknowledge that today’s Corps is less connected to its project partners and stakeholders than in the past and less apt to find a way past questionable or outdated rules, regulations, policies and guidelines to satisfy legitimate needs. Even as someone who has both loved and been frustrated by the Corps for nearly 50 years (and actually longer given that my mother worked there as well) and has worked in and with the Corps at literally every level, I find myself asking many of these same questions.

So, will we “blow up” the Corps’ 194-year-old civil works program and find a new way of doing that business? Time will tell I suppose, but I’ll suggest a few things to be considered along the way to avoid a common human decision-making error, which is focusing on solving one problem and, in the doing, inadvertently creating others of greater magnitude.

As we approach such decisions, it might also be useful to examine the motivations of those who press for change without caution or reflection.

A Brief History Lesson

It is interesting to note that the questions being posed today are neither new nor unique. In fact, they go back as far as the 1830s, just a few years after the Corps’ first civil works assignment, i.e., improving “western rivers,” in 1824. In 1836, the House Ways and Means Committee called the Corps to task for its estimates and spending. That same year, the House established a select committee led by Rep. Henry Wise of Virginia to look into executive department activities, particularly including the Corps. Similar reviews and concerns were raised again in the 1880s and in the years leading up to World War I.

A particularly noteworthy assault on the Corps and its civil works program was mounted in the 1930s by FDR’s acerbic and imperious Secretary of Interior, Harold Ickes, who wanted the civil works program moved to the Department of the Interior. A similar move was suggested again in the Kennedy Administration by DOI (most notably led by Commissioner of Reclamation Floyd Dominy).

Around the mid-point of the twentieth century, former President Herbert Hoover chaired two commissions dealing with the Corps and related issues and aimed at governmental reorganization. Among the charges were assertions that the Corps lacked integrity and competence and, interestingly, was responsible for destroying the environment—the first salvo in the environmental movement that would lead to major changes in the Corps in later years. The Commission’s recommendations included one that would move the civil works program to DOI. The House Appropriations committee, then-chaired by Rep. Clarence Cannon of Missouri, introduced legislation in 1951 to implement the Hoover Commission recommendations but it ultimately was not supported.

Other similar efforts included those of the Water Resources Policy Commission initiated by President Truman in 1950, the House Subcommittee to Study Civil Works headed by Rep. Robert
Jones in 1952, the second Hoover Commission in 1955, the Presidential Advisory Committee on Water Resources established by President Eisenhower also in 1955, President Nixon's Advisory Council on Executive Reorganization in 1969, and President Carter's famous “hit list” of Corps projects and campaign pledge to “get the Army Corps of Engineers out of the dam-building business.”

More recently, senior officials in President George W. Bush’s Administration strongly considered removing the civil works program from DOD—until they discovered how useful the program’s military and civilian workforce was in rebuilding Iraq.

What are the Advantages of the Current Structure and Organization?

Each of these many initiatives proposed moving civil works functions out of the Corps or, at the very least, aimed at a major restructuring of the civil works mission. In each case after consideration, decision-makers ultimately backed away from major muscle movements. Why was that?

Several cynics have suggested it eventually came down to a realization by the Congress that it was more likely to get unfiltered answers to hard questions from Army officers than civilian political appointees. But, more substantively, the reasons relate to a handful of other considerations.

First and foremost is the nature of water itself. Perhaps only like air, it is a common resource that is shared by all, essential to life and used for a number of often competing purposes, both environmental and economic. By law, the Corps sits in the difficult position of having to prevent a “tragedy of the commons”—to referee among many competing water purposes and uses with the inevitable result of receiving criticism from those on the unhappy end of its decisions.

Managing water to optimize navigation, for instance, can (and often does) conflict with environmental beneficiaries. Managing reservoirs to assure sufficient storage for an upcoming flooding season inevitably conflicts with retaining it for future water supplies. Storage and releases for hydropower generation can conflict with all of these purposes, and recreation users to boot. Optimizing all of these purposes and others concurrently to assure net benefits are maximized, as is the Corps’ charge, can disappoint project sponsors. What might happen if, say, the Corps’ navigation mission were relocated to DOT to maximize transportation benefits and interstate flood control responsibilities were sent to DOI? How would conflicts between the narrowly focused missions of those two agencies be resolved if both wanted the same water resources for competing purposes?

Keeping appropriate federal activities in water resources consolidated offers an opportunity to negotiate “give and take” among competing interests resulting in brokered compromises and allows federal responsibilities for water to be properly coordinated with those at state and local levels. Such compromises usually allow projects to go forward without expensive and time-consuming litigation. These agreements garner far less attention than the more newsworthy conflicts but they are far more productive and beneficial to the nation.

A second major realization usually hits the nation’s leaders only during times of extreme stress. For instance, since 2004 the Corps has completed over 5,000 projects in Iraq, a feat made possible only because thousands of civilian employees deployed there. Between Iraq and Afghanistan, there have been over 12,000 deployments of Corps civilians to direct rebuilding efforts. All were volunteers. And much of the capability they provided was only possible because of the expertise and experience gained via the civil works program. Similar feats can be seen in over 90 other countries worldwide. Does anyone foresee thousands of, say, DOT employees volunteering to deploy to dangerous and difficult locales?

Corps personnel are also on call in response to natural disasters. Whether it’s restoring 30,000 miles of downed power lines and over 60,000...
power poles in hurricane-ravaged Puerto Rico, much of the work on nearly inaccessible mountain tops, placing close to 80,000 “blue roofs” on damaged homes from Texas to the Virgin Islands, cleaning millions of cubic yards of debris so people can begin rebuilding lives after Superstorm Sandy or Hurricanes Harvey, Irma and Maria. The Corps goes where others won’t and does things others can’t.

We need to be very clear here: this capability exists because of expertise developed through the civil works mission, and because of the Army culture in applying that expertise. Could that combination be replaced in a fully civilian organization? Doubtful. Are we, as a nation, ready to tamper with this capability?

There is another, subtler, advantage to the traditional civil works arrangement. When it works best, the partnership in the Corps between military and civilian leaders results in an extraordinarily strong and resilient organization. Army officers, due to their regular rotations, offer frequent fresh perspectives and challenges to the status quo. “Because we’ve always done it that way” is never an acceptable answer. Fresh eyes and different perspectives can often improve on conventional wisdom and result in better solutions to hard problems. Civilian leaders, by contrast, offer continuity, local knowledge, a deeper technical expertise, and experience in what was tried before and either worked—or didn’t. This sort of partnership is unique in my experience, and rarely found in other organizations. And speaking of Army engineer officers, it must be noted that the civil works program is a major source of their professional development in planning, funding, designing, building, and operating major capital construction items. The Army isn’t otherwise building many big projects. So, today’s sappers do not universally get this kind of exposure.

As now configured, the Corps is also the repository for certain specialized kinds of engineering expertise and knowledge—capabilities that can’t be economically maintained in the private sector. Where else will you find any depth of experience in design of navigation locks? Or big river training structures? Or the hydrological characteristics of the Mississippi River? Whether through its Engineer Research and Development Center (the largest civil engineering research organization in the world) or in Corps districts or in the experiences of its technical personnel, there is no other place where such capabilities are resident. Could that breadth and depth of historical and technical knowledge be effectively moved to a different organization with a different culture and priorities?

The Corps is often criticized for its distributed organizational structure. All but a handful of its civil works employees are located throughout the country in district offices, not in Washington, D.C. But do we want to centralize more decision-making in Washington? As it stands, Corps employees live and work among their local partners and, in so doing, come to learn their problems and priorities first-hand. Corps projects originate locally and work their way up to Washington rather than being dictated from the top down. Which procedure do we think is best?

What other organization, after the great Mississippi River Flood of 1927, could have produced the comprehensive Mississippi River and Tributaries project involving a partnership among seven states, serving both navigation and flood control purposes and resulting in a current estimate of $67 in national benefits for every dollar it has cost? Who else could have conceived, planned, designed and constructed a $15 billion comprehensive storm damage protection system for metropolitan New Orleans in less than a decade after Katrina? Who else could have returned emergency power to Wall Street within a few days after the 9/11 attacks thereby helping to stabilize our economy? Or managed the Manhattan Project? Or built the Pentagon in 16 months? Or been entrusted to build the King Khalid Military City in Saudi Arabia?

In my later years in the Corps, I had the opportunity to interact with government water officials from a number of different countries around the world. Those officials were deeply interested in the Corps structure...
and its long history of success, to the extent that they actively studied the organization and, in nearly every case, came away impressed. I vividly recall one person telling me, “for a long time we wondered why a civil water resources function was located in a military organization. It didn’t seem to make sense. But, after a careful look, it was pure genius. Or it was a great stroke of luck, I’m not sure which.”

Isn’t it ironic that the Corps is often more appreciated outside of the U.S. than within it?

The “Slow” Corps

By the way, is the Corps slow to deliver? It certainly can be but take another look at some of those numbers above: delivering the New Orleans system in less than a decade, the Wall Street response, the Pentagon built in 16 months or the Manhattan Project from concept to ending WW II in three years. More recently, consider the Berryessa Creek project in California which went from project approval to completion in three years. And the $57 million Texas City navigation channel deepening which was also built in less than three years. Not exactly slow.

What’s the common denominator among these example projects? Here’s a hint: sufficient priority, funding and reasonable environmental rules. Much criticism of the “slow” Corps—not all of it to be certain but a lot of it—results from conditions imposed on it by law.

Just an Engineering Organization?

But frankly, at the end of the day, the Corps’ civil works program really isn’t just about engineering—or perhaps even primarily about engineering. Rather, the Corps is charged with developing balanced solutions to really difficult problems, weighing engineering, economic and environmental issues while resolving conflicts between upstream vs. downstream interests, local vs. federal priorities, the myriad single-minded mission focus contained in other federal agencies and producing sound technical solutions in a politically charged climate. It must assure that national economic development benefits are sufficiently present to protect federal investments while simultaneously finding ways to meet the needs of non-federal partners and assuring that environmental concerns are resolved. When you get down to it, the actual engineering work is usually pretty straightforward. It’s this other stuff that’s really hard.

This delicate balancing act inevitably puts the Corps squarely in the middle of conflicts. That’s by design, of course, and is at the essence of its mission, as described in law. It has for the most part stoically accepted that role and the resulting criticisms. There was a time when others understood and appreciated the role. When the Clean Water Act was passed in 1972, plenary responsibility for its administration was given to EPA. But the Corps was tasked with evaluating and issuing permits under Section 404 of the act. Why? Because the Congress rightly feared EPA, with a singular focus on environmental protection, could not sufficiently balance the needs of the environment with the nation’s economic development priorities.

So, What Now?

Any decision to reassign or devolve the Corps civil works mission should be approached very carefully and with full awareness of why it was assigned as it was in the first place. Change is inevitable and a necessary part of growth, for both individuals and organizations. But it would be foolish to make changes without a full appreciation of how those who came before us arrived at the decisions they did. We must judge what we gain from changes. And what we might lose.

Fred Caver served in the U.S. Army Corps of Engineers for 36 years. His most recent position prior to his retirement in 2005 was as Deputy Director of Civil Works, the Corps’ senior civilian for civil works. He was the Chairman of the National Waterways Conference from 2009 to 2011.

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President Donald J. Trump, joined by Vice President Mike Pence and members of his Cabinet, from left to right, Director of the National Economic Council Larry Kudlow; Mick Mulvaney the Director of the Office of Management and Budget; U.S. Secretary of Homeland Security Kristjen Nielsen; U.S. Administrator of the Environmental Protection Agency Scott Pruitt; U.S. Secretary of Interior Ryan Zinke; U.S. Secretary of Housing and Urban Development Ben Carson; U.S. Secretary of Transportation Elaine Chao; U.S. Commerce Secretary Wilbur Ross; U.S. Secretary of Agriculture Sonny Perdue; Assistant to the President Ivanka Trump; Secretary of the U.S. Army, Mark T. Esper and Assistant Secretary of U.S. Army Ricky “R.D.” James, holds the signed One Federal Decision Memorandum of Understanding in the Oval Office at the White House, Monday, April 9, 2018, in Washington, D.C., which establishes a coordinated and timely process for environmental reviews of major infrastructure projects. Photo Credit: Official White House Photo by Shealah Craighead

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