Record Attendance at NWC’s 58th Annual Meeting, Celebration of New Orleans’ 300th Anniversary

The Port of New Orleans and the Big River Coalition, with the support of the Associated Branch Pilots, the Crescent River Pilots, the Lake Charles Pilots, and the New Orleans-Baton Rouge Steamship Pilots Association, welcomed a record crowd for NWC’s 58th Annual Meeting as the City celebrates its 300th Anniversary.

Founded near the mouth of the Mississippi River, New Orleans retains much of the French and Spanish culture and architecture that reflect its diverse and rich heritage. Today it is a vibrant city, proving its resilience over time.

That resilience was on display, through presentations from Ms. Brandy Christian, President and CEO of the Port of New Orleans; Col. Michael Clancy, USACE New Orleans District Commander; Sean Duffy, Executive Director of the Big River Coalition; and Bob Turner, Director of Engineering and Operations, Southeast Louisiana Flood Protection Authority-East. Kicking off the program was Major General Richard Kaiser, Commander of the Mississippi Valley Division, filling in for MG Spellmon, the Deputy Commanding General for Civil and Emergency Operations, who stayed at Corps headquarters in Washington, along with the Honorable RD James, Assistant Secretary of the Army for Civil Works, to lead the response to Hurricane Florence. MG Kaiser touted the Corps’ strength and ability to provide engineering solutions for the Nation’s toughest challenges. He highlighted the Corps’ current mission set, in which it is relied upon to deliver a massive portfolio of programs, projects and support for others, illustrated with a rather daunting slide showing the Corps’ efforts not only leading civil works for the Nation, but also military and installation support, rehabilitating the Mosul Dam, and supporting natural disaster response, to name but a few. He described the efforts, under the direction of the Chief of Engineers LTG Todd Semonite, to lead a World Class USACE through...
Robust Funding for the Civil Works Program

For the first time in nearly 2 decades, the Congress approved a series of appropriations bills prior to the start of the fiscal year on October 1st. Referred to as a minibus, the measure combines Energy-Water, Military Construction-Veterans Affairs and Legislative Branch FY19 funding bills. The remainder of federal government will operate on a continuing resolution while details of those bills are hashed out.

Action on the energy and water bill provides a degree of certainty to the U.S. Army Corps of Engineers civil works program that is missing when the agency is forced to operate under the stopgap measure known as a continuing resolution. In addition, Congress provided robust funding for the nation’s water resources infrastructure, a healthy $7 billion, $172 million above the fiscal year 18 funding and significantly more than the Administration’s budget of $4.78 billion.

Broken down by account, Investigations receives $125 million, with a direction to start six new studies; Construction at $2.183 billion, with five new starts and a shift in the cost-share formula for the Chickamauga Lock from 50-50 to 85 federal and 15 non-federal with the objective of moving forward on this long-delayed project; $368 million for Mississippi River and Tributaries; and a whopping $3.739 billion for Operation and Maintenance. That amount reflects the growing awareness of the risks presented by our aging infrastructure and the need to ensure these essential projects deliver their promise to the nation.

With respect to the Administration’s proposal to reorganize the Corps of Engineers, the bill stops that effort in its tracks:

None of the funds made available by this Act or any other Act may be used to reorganize or to transfer the Civil Works functions or authority of the Corps of Engineers or the Secretary of the Army to another department or agency.

In the joint explanatory statement accompanying the bill, the conferees were more pointed:

The conferees are opposed to the proposed reorganization as it could ultimately have detrimental impacts for implementation of the Civil Works program and for the numerous non-federal entities that rely on the Corps’ technical expertise, including in response to natural disasters.

The conferees are extremely concerned that an action of this magnitude, which crosses multiple jurisdictional lines and has far-reaching consequences, was not properly brought to Congress as a proposal, allowing for oversight and hearings as

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Congress Enacts Water Resources Legislation

For the third time in as many congresses, both the House and Senate have passed comprehensive water resources legislation. The bill now heads to the President for his signature. The America’s Water Infrastructure Act of 2018 (S. 3021) emerged in early September, the result of a compromise between House and Senate negotiators seeking to hammer out a water resources development act before the end of the 115th Congress. This action keeps a commitment made by leadership that began with the Water Resources Reform and Development Act of 2014 and continued with the Water Resources Development Act of 2016, a title in the larger Water Infrastructure for Improvements to the Nation Act (WIIN).

The current bill emerged after House passage of H.R. 8, the Water Resources Development Act of 2018, but while the Senate’s earlier attempt, S. 2800, which passed unanimously out of committee, did not see floor time. The compromise agreement easily sailed through the House on a voice vote, and

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Congratulations to NWC’s New Officers and Directors Elected at the Annual Meeting

Officers

Chairman of the Board: Randy Richardson, Port of Memphis
Vice Chairman: David Yarbrough, Tulsa Port of Catoosa
President: Amy Larson, National Waterways Conference, Inc.
First Vice President: Tim Feather, CDM Smith
Vice President: Tom Ray, Texas Water Conservation Association
Vice President: Rob Rash, St. Francis Levee District

Secretary and Counsel: Steven Burns, Balch & Bingham representing Alabama Power
Treasurer: Linda Christie, Tarrant Regional Water District

Executive Committee

Mike Fallon, Halff Associates
Deidre Smith, Arkansas Waterways Commission
Judy Adams, Alabama State Port Authority

Brad Pickel, Atlantic Intracoastal Waterway Association
David White, Virginia Maritime Association
Blake Roderick, Pike and Scott County Farm Bureaus
Bryan Day, Little Rock Port Authority
Phylis Harden, Pine Bluff Sand and Gravel
Charles Brittingham, Cassidy and Associates

Board of Directors

Representing Associations

For a term ending in 2021:
Sean Duffy, Big River Coalition;
Shane Kinne, Missouri Corn Growers Association; William Doyle, Dredging Contractors of America; Justin Loucheim, The Fertilizer Institute;
Mitch Mays, Tennessee Tombigbee Waterway Development Authority.

For a term ending in 2019:
Jordan Howard, Associated General Contractors of America.

For a term ending in 2020:
David Kennedy, Boat US.

Representing Corporate Members

For a term ending in 2021:
Phylis Harden, Pine Bluff Sand and Gravel; Fonda New, QRI, Inc.;
Vincent “Pete” Ciaramitaro, Southern Towing Company; Josh Childress, Oakley Barge Line; Stanford Lynch, Freenese and Nichols.

Representing Public Members

For a term ending in 2021:
Dustin Boatwright, Little River Drainage District; Eric England, Port of Caddo-Bossier; Mike Reed, Sny Island Levee Drainage District;
Andrew Sinclair, Port of Virginia; Phylis Saathoff, Port Freeport.

Visit us at waterways.org. Send your ideas and suggestions for the National Waterways Conference to info@waterways.org.
Revolutionary Strategic Change. The Chief of the Programs Integration Division, Eddie Belk, delved into the Corps budget, with the welcome news that the Congress has just agreed upon the civil works fiscal year 2019 appropriation of $6.9985 billion, about $2.2 billion above the Administration’s FY19 budget request.

Perspectives of the Corps’ federal partners were offered by Sean Strawbridge, the CEO of the Port of Corpus Christi, who discussed the energy renaissance happening at U.S. ports; Lauren Salvato from the Upper Mississippi River Basin Authority, who discussed challenges and improvements to the project partnership agreement process; and Earl Lewis, Assistant Director of the Kansas Water Office and the Executive Director of the newly formed National Water Supply Alliance, working towards elevating the stature of water supply issues, managing reservoirs for multiple purposes and seeking common ground with often-competing interests.

An assessment of funding opportunities was provided by Nicki Fuller, the Executive Director of the Southwestern Power Resources Association, and Jorianne Jerberg, who leads EPA’s WIFIA program. Closing out the program, John Anderson and Geoff Bowman from Van Scyoc Associates looked into the crystal ball to offer a glimpse of the remainder of the year and Congress and what might lie ahead.

All speaker presentations, including that of MG Robert Griffin discussed in more detail in a related article, are available on NWC’s website at; waterways.org/2018-annual-meeting

“ANNUAL MEETING RECAP” FROM PAGE 1

NWC Urges FWS and NMFS to Improve Endangered Species Act Regulations

BY STEVEN BURNS

NWC recently submitted comments in response to proposals of the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) to revise the agencies’ regulations under the Endangered Species Act (ESA). The Services’ proposals addressed Section 7 consultations, criteria for listing and critical habitat designations, and special protective regulations under ESA Section 4(d) for species listed as threatened.

Consultations

Section 7 of the ESA requires federal agencies to consult with FWS or NMFS, depending on the species, if a proposed federal action may affect a threatened or endangered species or designated critical habitat. For purposes of the ESA, a federal action includes a federal permit or license for a private party’s actions, such as hydroelectric relicensing at the Federal Energy Regulatory Commission (FERC) or an approval by the Corps of Engineers under Section 404, Section 10, or Section 408.

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passed the Senate with a 99-1 vote. Title I of the larger bill is the Water Resources Development Act of 2018 (WRDA 2018).

With a variety of project and policy provisions, WRDA 2018 offers a bit of something to everybody. The meat remains the authorization and modification of a list of projects and feasibility studies. A number of studies and reports would examine the ability of the Corps to carry out its mission and responsibilities and the effects of moving the civil works function to a new or existing agency or subagency; the economic principals and analytical methodologies used to formulate, evaluate and budget projects; the benefit-cost procedures used by OMB in determining whether to include a project in the budget; a list of existing non-powered dams that have potential for hydropower development, and a report on all federally authorized ports and harbors to identify those that could become innovative ports for offshore wind development and the barriers to such development.

Hearing stakeholder calls for more transparency and improved public engagement, WRDA 2018 calls for public notice and the opportunity for stakeholder involvement in the development of implementation guidance for that Act, WRRDA 14, WRDA 16 and any future WRDA. It would also require Corps real estate data to be made publicly available, as well as a balance sheet for all projects for which a non-federal cost share is required. In an apparent direction to OMB, it would require that a project be budgeted under the business line for which it was originally authorized.

Seeking to streamline dredging activities and enhance the storm damage reduction program, WRDA 2018 establishes a pilot program to award long-term contracts (5 year) which may include multiple locations in a geographical region, would allow single contracts for multiple projects in one geographic region, would expedite approval of dredged material management plans, expands to 20 projects the pilot program for the beneficial use of dredged material established in WRDA 16, and calls for the identification of potential opportunities for beneficial use of dredged material. Other programs from the prior 2 bills would be extended and, in some cases, expanded, including the reauthorization of the levee safety program; reauthorization of the lock operations program and allowing consideration of recreational boat traffic and related economic benefits in making funding decisions for the locks on the Allegheny River; the assessment of fees for surplus water contracts and water storage agreements; and the reauthorization and expansion of the 2014 pilot program allowing nonfederal implementation of project delivery. Similarly, various provisions provide...
USACE Issues Updated 408 Guidance

The U.S. Army Corps of Engineers has issued Engineer Circular 1165-2-220, updating the process and criteria used to review requests to alter civil works projects. Section 408, named for its U.S. Code citation at 33 USC 408, was enacted as section 14 of the Rivers and Harbors Act of 1899. As expressed by the Corps in the 408 background materials, the purpose of the review is to ensure that the Congressionally-authorized benefits of a USACE project are not undermined by an alteration made by others, and to ensure that the alteration is not injurious to the public interest.

Earlier this year, NWC submitted comments in response to the Corps' draft EC, which can be found here: waterways.org

Accompanying the new EC, the Corps put forth a summary of the comments received and the responses to those comments. The comments generally support the improvements to the 408 review to support implementation of the final Principles and Requirements for Federal Investments in Water Resources released in March 2013 or the final Interagency Guidelines released in December 2014. The Corps shall continue to use the document dated March 10, 1983, and entitled “Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies” during the fiscal year period covered by the Energy and Water Development Appropriations Act for 2019.”

The Corps is directed to produce reports on other matters as well. It must provide definitions for the terms “coastal project” and “inland project” as they are used within the flood and coastal storm damage reduction business line, along with funding for projects within that business line. In addition, a report is to be forthcoming on a list of completed cost-share projects with an update on when any excess non-federal funds will be returned to the local sponsor. Finally, the Corps is directed to submit work plans within 60 days, consistent with the conditions and requirements in the conference report, with a reminder that a study or project may not be excluded for being inconsistent with Administration policy and an admonition that the Office of Management and Budget “is adding additional burdens to the Corps’ processes that may result in unnecessary delays and potentially overriding technical and expert judgments by the Corps.”

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The Proposal to Transfer the Civil Works Missions to Other Federal Agencies

BY MG (RET) ROBERT GRIFFIN

Earlier this year, the Administration released a proposal to reform and reorganize the Executive Branch agencies, entitled Delivering Government Solutions in the 21st Century. One component of this sparsely developed concept, referred to as the “OMB Proposal,” would be to transfer the U.S. Army Corps of Engineers Civil Works mission out of the Department of Defense, moving the commercial navigation mission to the Department of Transportation and all remaining missions—flood and storm damage reduction, aquatic ecosystem restoration, regulatory and all other activities—to the Department of the Interior.

The purported rationale behind this proposal is to increase consistency of Federal policy and actions, resulting in more rational public policy outcomes and better Federal investment decisions. For the reasons explained below, this idea appears short sighted and fails to fully grasp either the integral nature of water resources or the critical nature of the Corps of Engineers’ role as stewards of much of the nation’s water resources infrastructure.

The “Bottom Line Up Front” (BLUF): While there is currently language blocking the planning and implementation of the OMB Proposal in the FY19 Energy and Water Development Appropriations, there remains a real threat to equitably considering and balancing the nation’s multiple water resource user needs by the one agency currently charged with this mission. The threat remains because of the one-year limit on the prohibitive language and the fact that as long as an idea remains alive in Washington, D.C., it has the potential to spring to life at a later date.

The USACE Civil Works mission is unique in the world, having great technical expertise within its Department of the Army civilian workforce, being led by Army Engineer commanders who are trained decision makers with a “bias for action.” Fragmenting the various civil works missions across multiple Federal agencies will greatly impede user synchronization of our shared and often competing water resources, and will guarantee that disputes and water allocations will ultimately be decided by the courts rather than properly by the legislative and administrative branches.

The OMB Proposal: The Executive Branch’s 2018 Government Reform and Reorganization Plan (administered by OMB) proposes over 30 initiatives and reorganizations. The USACE specific recommendation proposes to transfer the Civil Works transportation (i.e., navigation) related missions to the Department of Transportation (DOT) and all

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NWC offered several recommendations to the Services in this area:

- **Include existing structures and operations in the “baseline” for the environmental analysis.** At times, the Services and the courts have discussed environmental issues in a manner that confused historic conditions (such as the original construction of a dike or dam) with the effects of the proposed action. NWC recommended that the Services include existing conditions in the baseline and to clearly indicate effects of the proposed action as anything beyond existing conditions. Similarly, NWC also urged the Services to revise the definition of “effects of the action” so that term only includes effects that are caused by the proposal and to exclude whatever other effects may occur regardless of the proposal.

- **Avoid automatically extending a consultation obligation to ongoing private activity under a previous federal action.** Some courts have found that ongoing activity under previously approved federal forest or land management plans can trigger Section 7 consultations, if the federal agency maintains discretionary involvement or control over ongoing private activity. On the other hand, FERC does not believe ongoing...
hydro project operations under an existing license necessarily trigger a Section 7 consultation. FERC’s position was backed by a federal appellate court. NWC urged the Services not to change the ESA regulations in a manner that suggested changing or broadening the application of the ESA to those operating under previous federal approvals.

- NWC urged FWS and NMFS to include in their environmental analysis only those effects that are reasonably certain to occur. We believe that will encourage the agencies not to devote unnecessary resources to environmental issues that are speculative or otherwise unlikely to result from the proposed action.

**Listing and Critical Habitat Designations**

In recent years, FWS and NMFS have considered whether habitat not currently occupied by the species should be included when designating critical habitat. That leads to concerns that otherwise lawful activity could be restricted or regulated, when the potential for benefit to the species in question is unclear or speculative. NWC urged the Services to limit designation of unoccupied areas as critical only where (1) occupied habitat is insufficient for conservation of the species, and the unoccupied habitat is essential; and (2) there is a reasonable probability within some foreseeable time that the area could serve as habitat, taking into consideration such factors as the condition of the area, ownership, available resources, and the presence or absence of any regulatory mechanism to compel conversion of an area to suitable habitat. NWC also recommended that the Services identify specific features or areas within designated critical habitat that can be modified without triggering a consultation obligation. Finally, NWC supported proposed language to clarify that threats to a species that may occur in the “foreseeable future” be limited to those where “the Services can reasonably determine that the conditions potentially posing a danger of extinction . . . are probable.”

**Protective Regulations for Threatened Species**

ESA Section 9 imposes the “take” prohibition only on endangered species. Section 4(d) authorizes the Services to issue special protective regulations for threatened species, which may or may not include the take prohibition. However, current regulations of FWS extend the take prohibition automatically when a species is listed as threatened even though, by definition, such a species faces a lesser degree of threat compared to endangered species. NWC’s comments supported language requiring FWS to consider on a species-specific basis whether the take prohibition or some other form of regulation is in the best interest of a threatened species. We also encouraged FWS to develop a schedule to issue 4(d) rules for species already listed as threatened.

The comments are available on NWC’s website, waterways.org.

Steven Burns is a Partner with Balch and Bingham, representing Alabama Power. He serves as NWC’s Secretary and Counsel, and is the Chairman of the Legislative Policy Committee. He can be reached at sburns@balch.com or (205) 226-8736.

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**Port KC Announces New President**

The Board of Commissioners of Port KC, in Kansas City, MO, have selected long-time economic development and civic executive Jon Stephens as President and CEO. With more than two decades of leadership experience spanning development, tourism and civic affairs Stephens comes to his new role from the Unified Government of Wyandotte County & Kansas City, Kansas, where he served most recently as Director of Economic Development. Stephens began his new role at Port KC on October 8th.
other civil works missions to the Department of the Interior (DOI).

In the early stages of this effort, USACE produced a graphic entitled the “OMB Proposal Graphic” which helped to inform what specific functions could be transferred and the likely gaining agencies and their subsidiaries. https://waterways.org/wordpress2/wp-content/uploads/2018/09/The-Future-of-the-Civil-Works-Program.pdf. The components of the USACE Integrated Water Resources System that exists at a USACE civil works project site typically include recreation, water supply, hydropower, navigation, flood risk management, aquatic ecosystem restoration, regulatory and perhaps shoreline protection.

The Role of OMB: OMB’s predominant mission is to assist the President in overseeing the preparation of the Federal budget and to supervise its administration in the various Executive Branch agencies—in other words, OMB is the resource manager (RM) for the Executive Branch. As the President’s RM, they also ensure that whatever dollars get spent support the President’s agenda as much as practicable. This creates a natural “friction point” between USACE and OMB—that is, USACE is very effective developing water resource solutions (through its planning and design process) and executing water resource programs (through its contracting and construction process) as directed by Congress while OMB is charged with “tamping down” demand for Federal dollars when those funds can be used elsewhere supporting the President’s agenda.

The unspoken “Iron Triangle” of the USACE Civil Works Program has always been the Congress, the Corps and the Project Sponsor, because if these three entities were aligned, water resource projects were proposed, funded and executed in an efficient manner. However, all this changed with the end of Congressional earmarks in 2011. As a result, OMB now has a much greater say in the funding and prioritization of USACE water resource projects, as OMB resource managers are now functioning as program managers. Given this unsustainable business model, there is a faction within OMB that favors shutting down or severely limiting the Civil Works project pipeline (the USACE planning process along with their design and construction capabilities) and transferring the various water resource functions into numerous other Federal agencies and subsidiaries—a recipe for conflict and resulting inaction.

Department of Defense (DoD) and Department of the Army (DA) Plan Concurrence: In October 2018, both DoD and DA concurred with the OMB Proposal but did so with comments. https://waterways.org/wordpress2/wp-content/uploads/2018/09/OSD-DA-Memos.pdf. Practically speaking, these comments indicate strong support and understanding of what the Civil Works component of USACE brings to the warfighter as both DA and DoD clearly understand that battlefield success involves both a kinetic and an infrastructure component.

DoD stated that the USACE Military Program relies on the engineering expertise of CW personnel and that DoD must ensure the technical, expeditionary capability resident in CW that is needed by the Combatant Commands (COCOMs) remains available to DoD. They also noted that USACE currently has over 250 civilians deployed supporting US Central Command and many of those are from the CW workforce.

Mark Ruge Inducted into the Great Lakes Marine Hall of Fame

Mark Ruge, a partner in the Public Policy and Law practice group at K&L Gates, has been inducted into the Great Lakes Marine Hall of Fame for his maritime work on behalf of Great Lakes states. Mr. Ruge serves as counsel to the American Maritime Partnership, the largest coalition in the history of the U.S. maritime industry.
DA endorsed those comments among others, and added that since this action would change DoD’s response to national emergencies and disasters, the receiving agencies for the CW program need to be postured to provide engineering expertise to FEMA.

In considering the “expeditionary workforce” potential within non-DoD federal agencies, in the last five years USACE has deployed over 2300 Civil Works civilians into wartime Overseas Contingency Operations (OCO) and over 15,000 civilians into natural disaster emergency operations; over 14,000 USACE civilians (approximately 2/3 from CW) have deployed for OCO since the World Trade Center attack in 2001. A telling fact is that although USACE has advertised for OCO positions throughout the private and Federal workforce, the response to this “call for action” has remained insignificant. Put bluntly, the “expeditionary capability resident in CW that is needed by the Combatant Commands” would most certainly not be available to support contingency operations if the CW functions are transferred to other agencies with no military presence or culture.

These qualified endorsements were to be expected given that DoD’s and DA’s primary missions are to fight and win the nation’s wars, and their primary focus (rightfully) remains executing budgets of approximately $700B and $180B respectively. Of note, USACE—as a subordinate command of DA—must be careful to “inform” the process without advocating against an initiative that has been formally endorsed by both DoD and DA.

USACE—The Nation’s Water Resource Integrator: Having all civil works project purposes in the Army (much less in one federal agency) is unique in world history and exists in no other country. It came about primarily because of a rare juxtaposition of an emerging need for a national waterway infrastructure with the US Army’s readily available engineering capability during the time of the nation’s western expansion.

The US Army Chief Engineer was first named by the Continental Congress in 1775. The US Army’s Civil Works mission was established with the General Survey Act of 1824—almost 200 years ago. The Civil Works mission has expanded over the years fundamentally because the national leadership and Congress understood that water resource development is more about getting things done within an operational rather than a regulatory framework.

Mark Twain said it best, “Whiskey is for drinking; Water is for fighting over.” He understood that conflict will naturally arise as the Commerce Clause has established that interstate water usage is a Federal responsibility and that the fundamental principle at work is water is a shared resource. For water resource users, it is far better for competing needs to be integrated and resolved inside one federal agency than to have them individually championed within multiple agencies each with its own narrow focus leaving resolution to federal courts.

USACE—A Combination of Strong Leadership and Technical Competence: While serving as a district engineer (DE), I vividly recall a former Major General Director of Civil Works telling the DEs that USACE is an operational agency and not a regulatory agency. He further explained that our job was to shepherd permits and projects through the various federal regulatory agency approval process while ensuring things moved forward while balancing operational and environmental concerns. I would also note that military command is one of the very few positions where you can be punished for not doing something when action was needed. This explains why military personnel have a “bias for action” that is often absent in our larger society.

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USACE is a unique blend of courage, depth, responsiveness and technical capability that results from a combined workforce of 800 Army officers and 33,000 DA civilians. USACE is able to quickly mobilize and direct a very large design and construction contractor base because contracting officers are teamed with warranted engineers (administrative contracting officers) and program managers. It is one of the few federal agencies with sufficient technical expertise to perform both in-house design and provide effective oversight of their design and construction contractors.

USACE’s military culture allows them to be both adaptive and process oriented depending on the situation. While frustrating at times for permit applicants, project sponsors and congressional interests, most court challenges to USACE civil works projects and directives are lost on process errors and not operational decisions.

The Nature of Civil Works Projects—“The Long Haul”: USACE is clearly the best home for the nation’s civil works program primarily because of the enduring characteristics of large scale water related infrastructure projects. Unlike military construction projects that are fully funded and only take a few years to complete, civil works projects are very expensive, complex, have many competing interests and take decades to complete. Because of the long timeframes, civil works projects transcend one or more administrations. Since USACE is the least politically inclined of potential recipients of the various CW program components, the best chance of predictable program execution remains with USACE.

Additionally, the OMB Proposal parses out the civil program among other Federal agencies assuming that a multipurpose project is merely a collection of “uses” when in fact the use is secondary to the common denominator of “water” which by its nature is an interdependent shared resource.

USACE is Apolitical: Because USACE is apolitical, it acts as a giant “flywheel” within an Administration and smooths out some of the more aggressive stances taken by whatever Administration is in power at a given time. In short, USACE would be very tough to “weaponize” given that no political appointee resides within the organization, its military leadership’s oath of office is to the Constitution, that Congress “raises and equips Armies” (Article 1, Section 8 of the Constitution), and the Chief of Engineers is only one of two positions within the Army whose removal requires Congress’ approval (the other being the Army Surgeon General).

USACE’s Water Management Roles and Capabilities: To evaluate the efficacy of the OMB Proposal, it is helpful to consider the various roles and attributes of USACE water management and then ask the question, “is this important, and how does this get accomplished if the civil works program is divided amongst six or more agencies and subsidiaries?” Some of the more applicable roles and capabilities inherent within USACE are:

• Because of their planning, engineering, economic and environmental expertise, they are the only Federal agency that can produce basin wide water
resources solutions necessitated by control manuals which govern water use amongst competing demands and changing conditions.

- In times of crisis, they employ a disciplined “military type” approach to natural disaster response that draws on proven military leadership, and the talent and technical expertise of a large civil works and military programs expeditionary civilian workforce. They are in fact “the Swiss Army knife” for the nation.

- Their unique district level revolving fund accounting system allows them to readily accept funding from multiple sources and to rapidly deploy additional personnel, equipment and material. This revolving fund and project funded business model also allows for contraction in lean times which means they operate more as a business than other Federal agencies.

- In times of drought and flooding, they provide system wide reservoir operations coordination for Federal, state, and local reservoirs.

- They “quarterback” the wetlands and navigation permitting process and provide the technical oversight and leadership to ensure that the various responsible Federal regulatory agencies are being both fair and responsive. To that end, districts have the ability to “elevate” permitting decisions to USACE HQ if a disputed permitting issue cannot be resolved at the field level.

- USACE works hard to resolve congressional, permitting and project sponsor issues at their level to allow the Sec Army and Army Chief of Staff to focus on issues that are more directly related to their warfighting mission.

- Finally, USACE has six divisions and thirty six engineer districts within the continental US with thousands of project offices located across the nation, making the agency truly integrated into the fabric of this nation.

Do You Really Want to Live in Pottersville? In discussing the issues and challenges of the OMB Proposal, LTG (Ret) Bob Flowers said to me “Robert, show them Pottersville!” As you likely recall, in the 1946 movie “It’s a Wonderful Life.” George Bailey ultimately realizes that without him the “alternate reality” to the very pleasant town of Bedford Falls would be that Henry Potter (the richest man in town and not a pleasant person) would be presiding over a town named Pottersville.

The biblical description of separating the various civil works purposes into the more single purpose agencies (in the name of efficiency) could well be characterized by the Tower of Babel: they spoke one common language working toward one goal and were then scattered to the four corners of the world speaking many languages.

The immediate impact of this proposal would be to break the historic linkage between USACE districts and field offices with the local populace, and replace it with uncertain points of contact in multiple Federal agencies in Washington or, at best, in one of several widely dispersed Federal regions. This would result from the reduction of approximately 26 US based engineer districts and 23,000 USACE civil works personnel (including the civil works related research and development labs and workforce). The resultant end state in the US would likely comprise ten USACE districts with possibly two divisions (one east and one west)— none with a civil works mission.

Paradoxically, the OMB Proposal would reestablish the outdated “stovepipe” business model by separating user groups into competing factions at a time when a water related integrated matrixed business model has proven far more responsive and efficient.

With the OMB Proposal, all USACE water related functions would be transferred to multiple other Federal agencies; the one agency (USACE) that is closest to being “a Federal steward of water resources” would no longer be involved in any way. Practically speaking, this means that resolving and regulating the various project purposes on many of the nation’s federal waterways and impoundments shifts to the courts and years of uncertainty.

What Can I Do? As a concerned citizen and user of our nation’s waterways, being informed is a great first step. Beyond that, there are three things to consider:

1. **Hope is not a Method** is an excellent book on leadership authored by a former Army Chief of Staff (Gen Gordon Sullivan) and is applicable to us in the sense that one could assume that either this proposal is so impractical it will not be...
taken seriously or—in the case of two outfielders letting a baseball drop between them—someone else will surely stop this initiative.

2. Our national priorities and directions are political—it is our system of government. The strength of the National Waterways Conference is that it touches many industries, users and geographies and can greatly influence this process through concerned elected officials at all levels of government.

3. Finally, current and potential project sponsors should engage immediately if you don’t like what you see in “Pottersville.” In short, put a stake through the heart of the proposal, very much like Professor Abraham Van Helsing’s approach to eliminating Count Dracula...as I have been counseled by a very smart retired USACE SES “as long as this is around, it can take a life of its own.”

Conclusion: A major concern that is associated with the OMB Proposal that bears comment is the lack of responsiveness (perceived or real) of USACE to stakeholders’ concerns and in solving their problems; specifically a “bias for action” as the nation’s premier water resource agency and problem solver has declined in both the military chain of command and the civilian work force from USACE HQ to district level. The current Chief of Engineers (LTG Todd Semonite) and the USACE senior leadership clearly understand and are working these concerns. Their efforts are backed by an Administration that supports less regulation and more action, and LTG Semonite has more energy and focus than anyone I have ever met (and I have known him personally for over 30 years). Most importantly, he knows how to drive this sense of urgency down to all parts of the organization.

Having outlined a case for keeping the Civil Works Program within the Army while acknowledging that USACE has work to do in improving processes and stakeholder relationships, I strongly caution those who believe the OMB Proposal will somehow make national level water resource operation and development more responsive and efficient.

MG (Ret) Robert Griffin was a district engineer, division commander, Director of Civil Works, and the Deputy Commanding General and Deputy Chief Engineer of the U.S. Army Corps of Engineers, 2003-2005. He is a Senior Advisor at Dawson & Associates.
credit in lieu of reimbursement for certain projects or separable elements, credit for certain work carried out by nonfederal interests, and advanced funds for projects and studies.

To further assist nonfederal sponsors, they shall not be required to obtain a permit for a project or separable element if the Secretary would not be required to obtain a permit; and, in the case of emergency repairs and restoration, the nonfederal sponsor may pay the difference in remaining costs in circumstances where the benefit is not greater than the cost.

The remaining titles of the 2018 Act address agencies other than the Corps civil works program, and apply to drinking water system improvement, energy and hydropower improvements, reauthorization of WIFIA, and wastewater and storm water provisions.

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