February 12, 2019

Ms. Ada Benevides
Senior Policy Advisor / Planning and Policy Division
U.S. Army Corps of Engineers
441 G Street, NW
Washington, DC 20314

Dear Ms. Benevides:

The National Waterways Conference, Inc. submits these written comments in response to the press release issued by the U.S. Army Corps of Engineers (Corps) on December 14, 2018, and the stakeholder session held on February 11, 2019, to permit stakeholders to provide input on specific provisions included in the Water Resources Development Act of 2018 (Pub. L. 115-270)(WRDA 18).

Engagement with stakeholders and non-federal project sponsors

We appreciate the opportunity to submit written comments for the Corps’ consideration as it develops implementation guidance for various provisions in WRDA 18, as well as the opportunity to participate in the stakeholder session held on February 11, 2019. However, we are disappointed that this process falls far short of the type of constructive engagement contemplated by WRDA 18.

Section 1105(b)(1)(B) of WRDA 18 provides an opportunity for interested non-Federal stakeholders to "engage" with the Corps on the development and issuance of guidance, which contemplates more than simply the submission of written comments. Section 1105(c)(1) provides for a minimum of 60 days after issuance of the public notice to submit comments, while section 1105(c)(2) allows the Corps "to reach out to non-Federal stakeholders and circulate drafts of implementation guidance . . .for informal input and recommendations."

While we share the goal to issue implementation guidance in an expeditious manner, and appreciate the late-scheduled stakeholder meeting in response to requests from NWC and numerous other organizations, we would respectfully request that for future proceedings to solicit input on the development of guidance, the Corps utilize a process and method of public outreach that provides sufficient time for the robust and meaningful engagement intended by Congress and ensures widespread public notice. In that regard, we would urge the Corps to adhere to the sentiment expressed in the House
Report, discussing the provision that was enacted into law as Section 1105 in the final bill:

The Committee reemphasizes the need to engage with non-Federal project sponsors and their associated representatives to coordinate and consult on implementation guidance. This bill directs the Corps to adopt an open process to gather input and initiate a dialogue with those non-Federal sponsors who have a stake in how programs and activities are carried out. Hosting one-way communications through Webinars and other non-participatory forums jeopardizes the necessary modifications and adjustments to the Corps programs and activities that are authorized in WRDAs. The Corps should work to ensure all non-Federal project sponsor and relevant stakeholders voices are heard and incorporate those considerations and Congressional intent into final implementation guidance.


For numerous other provisions in WRDA 18 which contemplate public engagement and notification, including but not limited to sections 1104, 1107, and 1120, as well as the general dissemination of relevant information to stakeholders and non-federal sponsors, we would urge the Corps to go beyond simply posting notices on its website and using various social media platforms, and instead use a variety of more direct engagement, including its public affairs and infrastructure stakeholder distribution lists along with publication in the Federal Register, in order to ensure widespread notification of relevant information.

With respect to Section 1102, which directs the Corps to enter into an agreement with the National Academy of Sciences (NAS) to carry out a comprehensive study on the future of the Corps, and Section 1103, which directs the Corps to enter into an agreement with the NAS to study economic and budgetary analyses, we urge the Corps to ensure that its agreement with NAS allows non-federal stakeholders to recommend individuals to be considered to serve on the NAS team as well as to require NAS to solicit input and interview non-federal sponsors and partners as part of the studies. Similarly, with respect to the Section 1204 direction to GAO to study benefit-cost analyses reforms, we would urge that non-federal sponsors be permitted to provide input. For reports required by the Corps, including but not limited to Section 1211, we urge the Corps to collaborate with stakeholders and non-federal sponsors with local responsibility and expertise.

General Comments

- Section 1130 – we support prompt implementation of the expansion of the number pilot projects for the beneficial use of dredged material.

- Section 1137 – we encourage the Corps to work with the authorizing committees to support the technical correction needed to extend the authority to commence projects under the non-federal implementation pilot program, as discussed during the listening session on February 11, 2019.

- Section 1144 – reauthorizes the levee safety program from WRRDA 14. While related work is underway to issue an engineering circular, we urge the Corps to ensure outreach to nonfederal sponsors and other stakeholders, and to utilize an open process that includes constructive and meaningful engagement before finalizing any circulars.
or bulletins.

- **Section 1149** – we urge the Corps to collaborate with nonfederal sponsors in determining what is considered practicable,” to address what makes sense and is workable for the nonfederal sponsors.

- **Section 1153** – we urge the Corps to ensure that implementation guidance facilitates the ability of non-federal sponsors that seek to carry out construction projects, so that they can move expeditiously towards construction and completion.

- **Section 1160** – we request the Corps to coordinate with nonfederal sponsors in defining and carrying out this authority.

- **Section 1161** - we encourage issuance of implementation guidance promptly so that local sponsors may seek to repair damaged infrastructure to provide the necessary safety and security for their communities.

- **Section 1166** – we urge a broad interpretation of this provision to include Contributed, Advanced, and Accelerated funds in order to provide the flexibility needed for the maximum number of projects to move to construction as quickly as possible and reduce the Corps’ Civil Works backlog. The guidance should encourage the Districts to accept and expend funds under this provision even if Federal funds have not been appropriated. Further, use of this provision should not prevent a non-Federal sponsor from also pursuing authority through other provisions to allow for credit or reimbursement toward the authorized Federal cost share.

Thank you for your consideration of our comments.

Respectfully submitted,

Amy W. Larson, Esq.