May 1, 2020

The Honorable John Barrasso  
Chairman  
Environment & Public Works Committee  
U.S. Senate  
410 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Thomas Carper  
Ranking Member  
Environment & Public Works Committee  
U.S. Senate  
456 Dirksen Senate Office Building  
Washington, D.C. 20510

Re: Initial NWC comments on draft America’s Water Infrastructure Act of 2020 bill

Dear Chairman Barrasso and Ranking Member Carper,

On behalf of the National Waterways Conference (NWC), we would like to thank you for your leadership and commitment to our nation’s water infrastructure, as well as keeping your pledge to keep the Water Resources Development Act (WRDA) on a biannual schedule. Regular authorizations of WRDA allow the U.S. Army Corps of Engineers (USACE or Corps) to move forward with critical feasibility studies, projects and modifications to keep our communities strong.

WRDA is especially important to our membership who represents a full spectrum of water resources stakeholders, including navigation, inland and deep draft ports and waterways, flood control associations, levee boards, waterways shippers and carriers, industry and regional associations, shipyards, dredging contractors, regional water supply districts, hydropower producers, engineering consultants and state and local governments. Additionally, many of our members are non-federal sponsors of Corps civil works projects, responsible for significant financial commitments for the construction and maintenance of these projects. They work diligently and collaboratively with our federal partners to ensure the nation can reap the multiple benefits provided by these investments.

On behalf of our members, we appreciate the opportunity to provide initial comments on the committee’s draft WRDA bill, America’s Water Infrastructure Act of 2020.
(AWIA 2020), which was released last week. As we continue to analyze the bill and refine our comments, we wanted to offer some initial feedback which may be helpful as the committee moves forward. Our initial comments focus on the Congressional, non-federal sponsor and stakeholder consultation requirements, as well as section 1013 on Annual Report to Congress on Authorized Studies and Projects.

**Strengthening engagement with non-federal project sponsors and stakeholders**

AWIA 2020 contains a number of consultation requirements for the Corps to interact with U.S. Congress, non-federal sponsors and stakeholders. We would like to offer two ideas for consideration.

First, AWIA 2020 contains a number of provisions including, but not limited to, sections 1036, 1082 and 1089, that require the Corps to report back to the Senate EPW and House Transportation and Infrastructure (T&I) Committees on the status of various guidance, programs and studies. Because these findings are relevant to non-federal interests who operate and manage water resources, we would ask Congress to take it a step further and require the Corps to make these reports publicly available via the Federal Register and through direct distribution lists.

Second, AWIA 2020 includes several Corps consultation requirements with non-federal sponsors for reports and other actions. As you know, non-federal sponsors are taking on more responsibilities and obligations for carrying out feasibility studies and projects, as well as operations and maintenance requirements. As duties shift, it becomes even more important that there is clear understanding between the Corps and non-federal interests about roles, requirements and expectations.

Section 1105(b)(1)(B) of WRDA 2018 provided 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) provided 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 sponsors and stakeholders and “circulate drafts of implementation guidance...for informal input and recommendations.”

Furthermore, the accompanying House Report on section 1105 further clarifies congressional intent (page 26):
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.

To that end, we would ask that the Corps put a written process in place to provide sufficient time and input for robust and meaningful engagement as intended by Congress in WRDA 2018. Additionally, NWC would encourage the committee and Corps develop written policies governing interaction with non-federal sponsors and stakeholders for guidance, memos, work plans, manuals and other documents.

Working together to compile authorized water infrastructure studies and projects

We would also draw your attention to the section 1013 on an Annual Report to Congress on Authorized Studies and Projects. It is our understanding that this section would implement a procedure similar to the 7001 process, which was enacted in the Water Resources Reform and Development Act of 2014. Section 1013 has the laudable goal of compiling a comprehensive list of all authorized studies and projects, including those in the President’s annual budget request and/or USACE work plans, as well as identification of those studies and projects that have not been funded. While we understand the purpose of this request, we are concerned that the process contemplated by this provision, would impose unnecessary and undue burdens on non-federal sponsors and stakeholders who would be required to submit this information. In effect, this would create an unwieldy process that may undermine the good intentions behind this provision. We look forward to continuing conversations on this to find a more streamlined, efficient way to accomplish this goal without additional burdens.

We thank you for the opportunity to provide initial comments on AWIA 2020. We will be following up with more detailed comments. We look forward to working with you
to strengthen our water resources, protecting local communities and bolster our national economy. If you have any questions, please contact me at 703.224.8007 or julie@waterways.org.

Sincerely,

[Signature]

Julie A. Ufner
President