



[Submitted by Email to: WRDA2022@usace.army.mil]

March 21, 2023

The Honorable Michael L. Connor
Assistant Secretary of the Army (Civil Works)
108 Army Pentagon, Room 3E446
Washington, D.C. 20310-0108

**Re: Comments on Implementation of the Water Resources Development Act of 2022,
Docket ID No. COE-2023-0002**

Dear Secretary Connor:

On behalf of the National Waterways Conference (NWC), we are providing written comments on provisions included in the Water Resources Development Act (WRDA) of 2022 as the U.S. Army Corps of Engineers (Corps) develops implementation guidance for this legislation.

WRDA is especially important to our members, who represent a broad spectrum of non-Federal water resources stakeholders, including flood control agencies, levee boards, waterways shippers and carriers, agricultural interests, industry and regional associations, hydropower producers, port authorities, shipyards, dredging contractors, regional water supply districts, 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 multiple benefits provided by these investments.

NWC is submitting to the Corps the following comments on WRDA 2022 and on the Corps' process and plans for developing implementation guidance for this legislation. We appreciate this opportunity to share our views with the Corps and look forward to continued involvement in the discussion about the implementation of WRDA 2022.

1) THE CORPS NEEDS TO STRENGTHEN ITS ENGAGEMENT WITH NON-FEDERAL PROJECT SPONSORS AND STAKEHOLDERS IN ORDER TO DEVELOP A CONSENSUS POSITION ON WRDA 2022 IMPLEMENTATION ISSUES.

WRDA 2022 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 is becoming even more important to have a clear understanding between the Corps and non-Federal interests about the respective parties' roles, responsibilities, requirements, expectations, and authorities.

To that end, we are pleased that the Corps is engaging in stakeholder outreach on the implementation of WRDA 2022, through virtual informational public listening sessions and written comments feedback. We believe these outreach mechanisms offer a valuable opportunity for the Corps to engage with stakeholders, while giving stakeholders a better idea of the types of comments that would be most valuable to the Corps. Several of our members participated in these listening sessions.

We are also pleased to see that the Corps has created a publicly available docket (on *regulations.gov*) for the Corps' general outreach on the implementation of WRDA 2022. (We note that the Corps has been somewhat slow to post in the docket, for review by the public, the minutes from the Corps' listening sessions and some comments submitted by stakeholders.)

There is concern, however, that the Corps' outreach process is insufficiently transparent and inadequately focused for the Corps to obtain the type of specific, detailed feedback needed to develop informed, consensus implementation guidance documents on particular issues to garner the support of stakeholders.

NWC wants to partner with the Corps to establish policies and create implementation guidance products that are reasonable, transparent, technically supported, and workable for both the Corps and its non-Federal sponsors. This is especially important because WRDA 2022 has numerous provisions that have the potential for substantial economic implications around the Nation, potentially involving, among other things, disaster response, increased resiliency, inland waterways and navigation, water supplies and resources management, and levee systems.

RECOMMENDATIONS: *More communications and information exchange between the Corps and stakeholders will lead to better products and fewer unintended consequences. As the Corps moves forward with developing WRDA 2022 implementation guidance, the Corps and stakeholders would benefit from further engagement on those particular implementation issues that are identified (or "flagged") as most problematic, concerning, or otherwise significant.*

Therefore, NWC encourages the Corps to supplement its current general outreach process by taking what it learned from the general public listening sessions and written comments and conduct more robust, focused, and transparent outreach with stakeholders on those most significant issues that have been identified, with the aim of developing a consensus position with the stakeholders.

As part of this focused outreach process, the Corps should make available and circulate, to non-Federal stakeholders for input and recommendations, drafts of the implementation guidance on particular identified issues, and solicit input and recommendations from stakeholders on such issues. The Corps then should take into consideration, and address, the input and recommendations that it receives from stakeholders. This would be in keeping with the intent behind section 1105 of WRDA 2018, pertaining to “Non-Federal Engagement and Review.” (See 33 USC 2202.) By allowing stakeholders to comment on the text of specific guidance proposals before they are finalized, the Corps will help to ensure that the full range of issues has been considered and the resulting guidance does not have unintended consequences and will help foster increased cooperation between the Corps and non-Federal stakeholders.

Related to this, since WRDA 2022, as well as previous WRDAs, contain a number of consultation requirements for the Corps to interact with Congress, other agencies, non-Federal sponsors, and other stakeholders, we would like to offer additional comments for consideration:

First, as noted earlier, it is becoming more important to have a clear understanding between the Corps and non-Federal interests about the respective parties’ roles, requirements, and expectations related to a particular issue or matter related to either WRDA 2022 or to previous WRDAs. To help ensure there is a clear understanding about the respective parties’ roles, requirements, and expectations, we again encourage the Corps to increase its outreach to non-Federal interests and other stakeholders. The Corps also needs to develop written policies governing interactions with non-Federal sponsors and stakeholders for guidance, memos, work plans, manuals, reports, and other documents, at Headquarters as well as in the Corps’ District and Division offices. Regarding outreach to non-Federal interests and other stakeholders, the Corps should consider NWC as a resource with which it can consult on implementation issues.

Second, the legislation contains several provisions that require the Corps to report back to the House Transportation and Infrastructure and the Senate Environment and Public Works 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 projects, we would request the Corps to take it a step further and make these reports publicly available, including through publication of notices in the Federal Register and through direct distribution lists, when feasible.

2) THE CORPS NEEDS TO DEVELOP GUIDANCE ON, AND ACT EXPEDITIOUSLY TO IMPLEMENT, SPECIFIC SECTIONS OF WRDA 2022.

The Corps needs to develop guidance to clarify the implementation of particular sections of WRDA 2022, including the following sections identified below:

Sec. 8101. Federal breakwaters and jetties. Jetties and breakwaters are essential components of our Nation's navigation system. This section directs the Secretary of the Army (Secretary) to repair or maintain jetties and breakwaters to dimensions that include increases in projected wave action or height over the life of the project, and to classify such work as routine operations and maintenance if the functionality of the structure will be diminished due to changes in wave action or height, or the structure is degraded due to a lack of regular Federal maintenance.

RECOMMENDATIONS: *NWC members and other stakeholders have highlighted the importance of repairing or maintaining jetties and breakwaters, to maintain navigation. It is important for the Corps to be as flexible as possible to meet sustainability, resiliency, and protection needs of the communities that are protected by these critical pieces of Corps infrastructure.*

In developing implementation guidance for this section, the Corps needs to clarify for stakeholders how and in what circumstances it will implement these directives, and provide specific criteria for determining when structural changes would be warranted. The Corps also needs to clarify how it will ensure that non-Federal stakeholders are given an equal role and say in determining whether, when, and what structural changes would be warranted. Further, the Corps needs to clarify how it will evaluate the economic impacts proposed revisions would have on stakeholders. These decisions must not be made by the Corps alone in a vacuum, but rather, need to be made jointly and cooperatively with the relevant non-Federal (local) stakeholders.

Sec. 8102. Emergency response to natural disasters. This section authorizes the Secretary to repair or restore a hurricane or shore protection project or structure beyond the original design level of the project to increase the resilience or effectiveness of the project and account for

increases in projected wave action, height, or storm surge to meet the authorized purposes of the project. It is unclear to stakeholders, however, how and in what circumstances a non-Federal stakeholder could request, or the Corps would decide or agree to, or require, projects or structures to be repaired or restored beyond their original design levels.

RECOMMENDATIONS: *The Corps needs to clarify for stakeholders how and in what circumstances it will implement these provisions and provide specific criteria for determining when changes to projects or structures would be warranted. Because the provisions in this section relate to the Corps' "Public Law (PL) 84-99 program" (the Corps' natural disaster procedures program under 33 CFR Part 203, which implement Section 5 of the Flood Control Act of 1941, as amended (33 U.S.C. 701n)), the Corps needs to be sure to specify, both in any implementation guidance and revisions the Corps might make to its natural disaster procedures regulations (at 33 CFR Part 203), how this section will be implemented. The Corps also needs to clarify how it will ensure that non-Federal stakeholders are given an equal role and say in determining whether, when, and what changes to projects or structures would be warranted. Further, the Corps needs to clarify how it will evaluate the economic impacts proposed changes would have on stakeholders. As already noted, such decisions must not be made by the Corps alone in a vacuum, but rather, need to be made jointly and cooperatively with the relevant non-Federal stakeholders.*

Sec. 8103. Shoreline and riverbank protection and restoration mission. This section allows the Corps to carry out studies and projects for the protection and restoration of coastal shorelines and riverbanks to reduce flood and hurricane and storm damage hazards, and authorizes the Secretary to cover the first \$200,000 of the costs to study these projects. Under previously existing law (*i.e.*, section 212 of WRDA 1999, 33 USC 2332), the Corps was required to “develop, and submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate, criteria for selecting and rating projects to be carried out under this section;” and “establish policies and procedures for carrying out the studies and projects undertaken under this section.” (See 33 USC 2332(d)(2).)

RECOMMENDATIONS: *The Corps needs to clarify for stakeholders how and in what circumstances it will implement these provisions, and update or establish specific criteria, policies, and procedures for carrying out the studies and projects undertaken under this section, including criteria for selecting and rating of projects, as required under previously existing law.*

The Corps also needs to clarify how it will ensure that non-Federal stakeholders are given an equal role and say in determining whether and when studies and projects will be carried out.

Sec. 8106. Scope of feasibility studies. This section directs the Corps, at the request of a non-Federal interest of a study, to formulate project study alternatives that reduce comprehensive flood risk or hurricane and storm damage risk, or that address water supply or water supply conservation, when conducting certain feasibility studies.

RECOMMENDATIONS: *This section provides a means for the Corps to take affirmative steps towards addressing important water resources needs of non-Federal stakeholders. Including the reduction of flood or hurricane and storm damage risk, water supply, or water supply conservation as part of a feasibility study, where appropriate, can identify important additional benefits for a prospective project. Also, adding water conservation at existing projects can substantially increase supplies in areas that are prone to both floods and droughts, allowing needed water to be stored when flows are high and utilized over time.*

The Corps needs to clarify for non-Federal stakeholders how, to whom, and with what supporting information a non-Federal stakeholder should make such a request, and in what circumstances the Corps will implement these provisions. *It is important for the Corps to give non-Federal stakeholders an equal role and say in determining what flood or storm damage protection or drought risk reduction (including levels and measures) is appropriate.*

Sec. 8107. Water supply conservation. This section amends section 1116 of WRDA 2016 (“Water Supply Conservation”) to make permanent the discretionary authority given to the Corps under section 1116 of WRDA 2016 to evaluate and enter into agreements with non-Federal sponsors to carry out water supply conservation measures at water resources development projects in states affected by drought. (Under section 1116 of WRDA 2016, the Corps may, upon the request for evaluation of water supply conservation measures by a non-Federal interest located in one of the states where drought emergencies were declared or were in effect, negotiate a Memorandum of Agreement outlining the scope of the evaluation and providing for the receipt of non-Federal funds from the non-Federal interest to cover the costs of the evaluation.) This section 8107 also specifies that the Corps may evaluate a water supply conservation measure utilizing a natural feature or nature-based feature to reduce drought risk. The Corps issued implementation guidance for section 1116 of WRDA 2016 in July 2017.

RECOMMENDATIONS: *Many stakeholders are becoming increasingly concerned about extreme weather conditions and droughts around the Nation, and the impacts they are having on regional water resources and economies. The Corps should update the “Water Supply Conservation” implementation guidance for section 1116 of WRDA 2016, to clarify for stakeholders how it will implement the provisions of section 8107 of WRDA 2022. The Corps also needs to clarify how it will ensure that non-Federal stakeholders are given an equal role and say in determining whether, how, and when water supply conservation measures will be carried out.*

Sec. 8117. Corps of Engineers support for underserved communities; outreach. This section authorizes the Secretary to increase outreach to potential non-Federal interests, including those in economically disadvantaged communities, on Corps’ water resources development authorities and to provide additional publicly available resources for increased community engagement with Corps programs. As part of this, this section requires the Secretary to, among other things, develop and make publicly available technical assistance materials, guidance, and other information with respect to the water resources development authorities of the Secretary; issue guidance for, and provide technical assistance through technical service programs to, non-Federal interests to assist such interests in pursuing technical services and developing proposals for water resources development projects; and provide, at the request of a non-Federal interest, assistance with researching and identifying existing project authorizations or authorities to address local water resources challenges.

RECOMMENDATIONS: *The outreach and implementation measures specified in this section are important for potential non-Federal interests, including and especially those in small, rural, and other economically disadvantaged communities, that may be in need of water resources development related technical assistance.*

Small, rural, and other economically disadvantaged communities face unique challenges that their larger counterparts mostly do not face, usually related to funding and staffing. Many employees of small, rural, and other economically disadvantaged communities may wear many hats and may not have the technical expertise to either process the information or know how to use it. Often these smaller communities do not apply for funds because they do not have the bandwidth to use them because of staffing limitations, paperwork requirements, and the like.

The Corps needs to reach out to non-Federal interests on the best and most efficient means for developing, supporting, and implementing public awareness, education, and regular outreach

and engagement efforts with respect to the water resources development authorities of the Secretary, and issue guidance and make available the forms of technical assistance as called for in section 8117. The Corps also should make training and online resources available to these communities.

Furthermore, it is recommended that the Corps engage with national associations that are direct liaisons to small, rural, and other economically disadvantaged communities and non-Federal interests that can work with the Corps on guidance and outreach.

Sec. 8120. Technical assistance for levee inspections. This section requires the Secretary to provide credit or reimbursement for the cost of carrying out an inspection in any instance where, as a condition of eligibility for Federal assistance under section 5 of the Act of August 18, 1941, the non-Federal sponsor of a levee project is required to undertake an electronic inspection of the portion of such project that is under normal circumstances submerged.

RECOMMENDATIONS: *Levee sponsors work with and for their communities and cooperate with their Federal partners to operate and maintain projects while keeping costs affordable for the residents who pay for the levees' ongoing functionality. In recent years, levee sponsors have faced more challenges as they maintain and upgrade existing levees. Operational and construction costs have grown, as have Federal mandates, while the revenue base, for many sponsors, has not. Non-Federal levee sponsors are put in the untenable position of having to comply with various requirements to remain eligible for Federal emergency assistance, while maintaining their system to Corps expectations for standards of care. As a result, assistance authorities like those specified in this section are important for many levee sponsors.*

Consequently, it is important for the Corps to work with levee sponsors to clarify and coordinate how the intergovernmental partners will together implement the provisions of this section, including providing clear, reliable, and in advance information that specifies the process that non-Federal sponsors would need to use to apply for credit or reimbursement, what information they need to provide to the Corps in support of the application, any timelines or deadlines the Corps will use for applications, approvals, or denials, and whether and how there will be an appeals process.

With proper implementation, this section can be an important means for the Corps to work with and help its local sponsors improve the reliability of levee systems protecting people and property from floods.

Sec. 8121. Assessment of Corps of Engineers levees. This section directs the Secretary to work with levee sponsors to periodically assess Corps (*i.e.*, Federally authorized and under Corps jurisdiction) levees and to evaluate opportunities for any modifications through a report to Congress. The Secretary is also directed to assess Federally authorized levee systems operated by non-Federal interests under certain specified circumstances. The Secretary is to include in the national levee inventory database the information generated by the assessments under this section and, after including levee sponsors and integrating their verified data and views, make such information publicly available.

RECOMMENDATIONS: *As with the previous section, the authorities specified in this section provide another opportunity for the Corps to return to working together with non-Federal sponsors of levee projects to improve the reliability and resiliency of levee systems protecting people and property from floods and, equally importantly, to improve and ensure the quality and accuracy of the data and other information on levee systems around the Nation. This can only be done by including levee sponsors in an integral way at the outset of the decision-making process.*

*Any work performed under this authority should be done consistent with Office of Management and Budget (OMB) guidelines implementing the Information Quality Act (Section 515 of P.L. 106-554; also referred to as the Data Quality Act) to ensure the “quality, objectivity, utility, and integrity” of information disseminated to the public. (See *id.*)*

It is important for the Corps to work closely together with levee sponsors to clarify and coordinate how it will implement the levee assessment provisions of section 8121, including identifying the transparent processes that the Corps will use to obtain or develop the reliable and accurate data and other information needed to support this effort.

Section 131 of WRDA 2020 (33 U.S.C. 3303(d); sometimes referred to as the “Boozman” provision) is relevant here. This provision directed the Corps to work with levee sponsors to identify, for each reviewed or inventoried levee, specific levee engineering and maintenance deficiencies, if any, and then describe recommended remedies to correct each identified deficiency and associated costs. In this way, the Corps can fulfill its clear mandate from Congress to improve levee safety by not only producing advisory level levee risk information, but also ensuring safer and more reliable flood control infrastructure. To validate the assessments authorized under section 8121 of WRDA 2022 (many of which have already been directed by

Congress and performed by the agency), the Corps must also report publicly on the historic flood damages that have been prevented by the system under assessment.

As part of this, the Corps should, in coordination with local levee sponsors, address in implementation guidance for conducting levee assessments under this section, factors including what types of levees and levee modifications may be considered in the assessments, how the Corps plans to assess the sorts of modifications that may be considered in various circumstances for achieving the section's identified objectives (including of increasing flood risk reduction benefits, achieving greater flood resiliency, and achieving greater environmental benefits without undermining flood risk reduction or flood resiliency for levee-protected communities), how it plans to consider and identify functionality, risks, and protections associated with levee systems, and how it plans to prioritize levee systems. Associated cost estimates and net benefits should accompany any alternatives that are considered and may be presented to the public. Non-Federal sponsors of levee projects should have an equal role and say in determining what levees, modifications (including the associated risk reduction levels and measures), and other factors are appropriate.

In addition, because the levee assessments required under this section potentially have substantial economic and regulatory implications in other programs (potentially including, among others, levee accreditation programs, FEMA flood insurance, and modification or repair of existing levee systems under authorities such as P.L. 84-99), it is important for the Corps to be transparent and describe how and where the information generated from the required levee assessments can and will be used, both within and outside of the Corps, in other programs.

Further, because of the importance of the information to be included in section 8121's required reports to Congress, it is also equally important for the Corps to provide non-Federal sponsors of levee projects an opportunity to review and comment on the reports before they are finalized and submitted to Congress.

Sec. 8122. National low-head dam inventory. This section amends the National Dam Safety Program Act to require the Secretary to develop, and make publicly available, an inventory of all low-head dams in the United States and to periodically update the inventory in consultation with relevant Federal and State agencies.

RECOMMENDATIONS: *The authorities specified in this section are important for many stakeholders that are involved with managing water resources, water supplies, watersheds,*

waterways navigation, public safety, hydropower, and other activities and projects. The Corps should clarify how and in what circumstances it will reach out to and coordinate with involved stakeholders in the development of the inventory pursuant to this section.

Sec. 8123. Expediting hydropower at Corps of Engineers facilities. This section amends section 1008 of the Water Resources Reform and Development Act (WRRDA) of 2014 (“Expediting hydropower at Corps of Engineers facilities”) to re-emphasize the policy from WRRDA 2014 that the development of non-Federal hydroelectric power at Corps civil works projects, including locks and dams, shall be given priority, and direct the Corps to assess opportunities to increase the development of, and develop new, hydroelectric power at existing Corps water resources development projects.

RECOMMENDATIONS: *The Corps developed implementation guidance for Section 1008 of WRRDA 2014 in November of 2015. That guidance largely focused on appointing Federal Energy Regulatory Commission (FERC) coordinators at the Major Subordinate Command and district levels, and developing a report to Congress required by section 1008 of WRRDA 2014 that was to, among other things, describe the initiatives carried out by the Corps to encourage the development of hydroelectric power by non-Federal entities at Corps civil works projects. (The FERC coordinators are the points of contact for all FERC project specific hydropower related activities, including coordination with FERC regarding the licensing process of non-Federal entities, with the FERC licensee or preliminary permit holder (non-Federal entity) regarding all aspects of non-federal hydropower development on a Corps dam or facility, and with the district 408 coordinator as part of the 408 permitting process.)*

The current implementation guidance on expediting hydropower does little to address how the Corps plans to carry out assessing opportunities to increase the development of, and develop new, hydroelectric power at existing Corps water resources development projects, or to provide greater regulatory certainty for project developers by creating an efficient, consistent, and coordinated nationwide process for reviewing applications to retrofit non-powered dams with hydropower generation.

The Corps needs to update its guidance to clarify how it will move forward in assessing opportunities to increase the development of hydroelectric power at existing Corps water resources development projects, including updating and detailing the Corps’ process for reviewing applications to retrofit non-powered dams with hydropower generation. For

example, the Corps needs to standardize the process for reviewing applications to retrofit non-powered dams with hydropower generation across all Corps districts.

Currently, each Corps district has its own process for reviewing applications, which creates regulatory uncertainty for developers, who must learn to navigate a unique process in every Corps district. In addition, there appears to be little oversight of each Corps district's process for reviewing these applications. This means that, if developers run into challenges in the individual Corps districts, they have limited opportunities for recourse. Without such updates to the implementation guidance, expediting hydropower at Corps facilities will continue to lag.

The Corps also should ensure that all relevant stakeholders with an interest in the operation or modification of a Corps storage reservoir, including water supply and flood control interests, be notified of any request to add hydropower to existing projects, and be provided an opportunity to provide input on any actions to modify a project.

Sec. 8130. Beneficial use of dredged material; management plans. This section directs the Secretary to develop a strategic plan for fully implementing the Federal authority for maximizing the beneficial use of dredged material. In developing the strategic plan, the Secretary is to consult with relevant Federal agencies, solicit and consider input from state and local governments, and consider input received from other stakeholders involved in beneficial use of dredged material.

RECOMMENDATIONS: *It has long been recognized that dredged material can be used as a resource rather than treated as a waste product. Beneficial uses can include habitat creation and restoration, beach nourishment and erosion mitigation, landfill cover, and land site remediation. With proper funding and planning, and a willingness of environmental agencies and the public, beneficial use of dredged material from a harbor or waterway can have a significant impact on improving the condition of the harbor or waterway, while also alleviating existing demand for development and use of new disposal sites.*

Since WRRDA 2014, there has been a heightened focus on the beneficial use of dredged material, further recognizing the mutual benefits that can be accrued between navigation, ecosystem restoration, and other beneficial uses. This initiative continues to be of interest and importance to many stakeholders interested and in need of dredging and sediment material management, and in placement of sediment for hurricane and storm protection, erosion

mitigation, bank stabilization, conservation and restoration of the natural functions and values of rivers and shorelines, and other purposes.

The Corps has developed several guidance documents pertaining to the beneficial use of dredged material. These include Engineering and Design Manual No. EM 1110-2-5015 in 2015 (“Dredging and Dredged Material Management”), and implementation guidance documents for Section 125 of WRDA 2020 in 2021 and 2022. Nevertheless, many feel that the Corps has been slow to implement its authority for maximizing the beneficial use of dredged material.

The Corps needs to make a greater effort to implement the Federal authority over the beneficial use of dredged material. One way to help achieve this is to promptly develop and implement the strategic plan for fully implementing that authority, as called for in section 8130. The plan should aim to ensure that beneficial use projects are equitably distributed across the nation.

Additionally, due to existing dredging needs and ongoing projects, the Corps needs to expedite the implementation of section 8130, including engaging stakeholders on its implementation and on updating the Corps’ implementation guidance documents to clarify how it will move forward in fully implementing the Federal authority for maximizing the beneficial use of dredged material.

Finally, it is noted that some small, rural ports that could serve as partners in projects may not have the necessary funds to contribute the local match. The Corps should clarify, and provide flexibility, in its implementation guidance on what kinds of compensation (e.g., in-kind contributions, etc.) can be considered a local match so that rural communities are not excluded from participation in beneficial use projects.

Sec. 8131. Criteria for funding operation and maintenance of small, remote, and subsistence harbors. This section requires the Secretary to develop criteria for the annual evaluation and ranking of maintenance dredging requirements for small, remote, and subsistence harbors and include such criteria in the annual Civil Works Direct Program Development Policy Guidance of the Corps. This section also requires a biennial report to Congress that identifies the ranking of projects based on the criteria developed under this section.

RECOMMENDATIONS: *The Corps should explain how it will develop specific criteria for the annual evaluation and ranking of maintenance dredging requirements for small harbors and remote and subsistence harbors, taking into account the criteria provided in section 8131. The*

Corps should reach out and consult with relevant stakeholders for input when developing such criteria.

The Corps should make each biennial report required under this section and section 210(e)(3) of WRDA 1986 (33 U.S.C. 2238(e)(3)) publicly available, including on a publicly available Website.

Sec. 8132. Additional projects for underserved community harbors. This section authorizes the Secretary to carry out additional projects to dredge underserved community harbors for sustaining water-dependent commercial and recreational activities at such harbors. This section also specifies cost-share requirements for such projects and requires not less than 35 percent of annual funds be used for projects that include the beneficial use of dredged material.

RECOMMENDATIONS: Many community harbors provide significant economic, recreational, and other benefits to their local and regional communities. The Corps needs to specify for stakeholders how and in what circumstances it will implement this initiative, and provide specific criteria for selecting proposed projects, including criteria related to a project's local or regional economic benefits, environmental benefits, and other social effects.

Sec. 8133. Inland waterways regional dredge pilot program. This section authorizes the Secretary to establish a pilot program to award combined operations and maintenance and construction dredging contracts of up to five years for dredging projects on inland waterways. This program is of importance to a wide range of inland waterways navigational, port, and broader commerce interests for increasing the reliability, availability, and efficiency of Federally owned and Federally operated inland waterways projects; decreasing operational risks across the inland waterways system; and providing greater efficiencies and cost savings around the Nation.

RECOMMENDATIONS: Stakeholders having considerable experience with dredging contracts that combine projects strongly support this pilot program, because they have confirmed from experience that there are considerable savings to be realized, which in turn will stretch operations and maintenance and construction funds at a time of rapidly rising dredging costs.

The Corps needs to support this program and specify for stakeholders how and in what circumstances it will implement this pilot program, including providing specific criteria for selecting proposed projects and issuing contracts, including criteria related to identifying

projects that improve navigation reliability on inland waterways, increase freight capacity on inland waterways, and have the potential to enhance the availability of containerized cargo on inland waterways.

Sec. 8134. NEPA reporting. This section requires the Secretary to track and provide an annual report to Congress on the timeframes for completing environmental reviews for water resources development projects, as required by the National Environmental Policy Act (NEPA) of 1969.

RECOMMENDATIONS: Section 8134 requires the Corps to make each annual NEPA report required under this section publicly available, including on a publicly available Website. Prior to the finalization and submission to Congress of such report, non-Federal stakeholders should be provided an opportunity to review and comment on the draft of the NEPA report, to ensure accuracy and completeness of the information included in the report.

Sec. 8135. Funding to process permits. Section 8135 amends section 214 of WRDA 2000 to authorize the Secretary to include the evaluation of a mitigation bank instrument in the expedited review of a qualifying permit under such section.

RECOMMENDATIONS: Mitigation banks are one of the Corps' preferred options for project sponsors to mitigate for impacts their projects have on aquatic resources. Many stakeholders, however, have long been concerned that the Corps' approval process for establishing mitigation banks is often very slow.

Stakeholders, including many ports and other local public entities, were pleased to see the language in the 2022 WRDA bill clarifying WRDA 2000 Section 214 authority as it relates to the expedited review of non-Federal public entities' mitigation bank proposals. They strongly support the provisions in this section, and are seeking to have the Corps move quickly to implement this provision. Mitigation banks are an important part of both responsible infrastructure development and maintenance and environmental restoration, and prompt implementation of section 8135's provisions will help support such objectives. The Corps needs to engage with non-Federal stakeholders and develop guidance that details how it will implement these provisions.

Sec. 8136. Lease durations. This section requires the Secretary to issue guidance regarding when a lease duration of more than 25 years is appropriate and in the public interest. This

guidance applies when the Corps makes a leasing decision pursuant to section 2267 of title 10, United States Code, or section 4 of the Flood Control Act of 1944.

RECOMMENDATIONS: *The Corps needs to develop the guidance that Section 8136 directs the Corps to develop and issue. Stakeholders dealing with leases with the Corps will welcome the greater clarity that such guidance will provide.*

Sec. 8139. Lease deviations. This section directs the Secretary to meet the requirements of section 153 of WRDA 2020 regarding deviations for the terms and length of leases between the Corps and non-Federal lessees. While the particular provision addressed in this section involves certain Federal lands within the State of Oklahoma that are associated with a water resources development project, the issues of leases and lease deviations with the Corps (including changes in terms from an existing lease that requires approval from the Secretary) are of considerable interest with many stakeholders who are or could be involved with such issues in other circumstances (not involving Oklahoma).

RECOMMENDATIONS: *The Corps should develop and issue guidance on lease deviations with the Corps, including specific criteria for determining whether to approve, deny, or request a modification to a lease deviation request, and including the circumstances under which a lease deviation is appropriate and in the public interest. Stakeholders dealing with leases with the Corps will welcome greater clarity regarding how the Corps handles lease deviations, in general.*

Sec. 8140. Policy and technical standards. This section directs the Secretary to update certain policy and technical standards publications for its Civil Works programs every five years.

RECOMMENDATIONS: *The purpose of this provision is to ensure that the Corps' policy and technical standards are current and consistent with the latest laws, technologies, and practices, which is important. However, there are many non-Federal stakeholders who are still awaiting the issuance of guidance from previous WRDA legislation. Some local Corps districts have been unable to move forward with implementing some previous WRDA sections due to a lack of implementation guidance from Corps Headquarters. This creates a quandary for some stakeholders because it has been unclear how to move forward under those sections. The Corps needs to address uncompleted implementation guidance for previous WRDAs, along with preparing implementation guidance for WRDA 2022 and updates to policy and technical standards publications.*

Additionally, there often are inconsistencies in the Corps' application of statutory, policy, and other guidance around the Nation, when there should be uniformity. The Corps needs to take affirmative steps to ensure that written policies and guidance are consistent with practices across all the Corps' districts.

Also, in some instances, the development or revision of policies and guidance might take many years. Very lengthy development periods make it likely that policies, technologies, or practices may change during the development or revision of some Corps publications. This can result in the need for further updates, which in turn, can create uncertainty and havoc for studies and other activities that are being conducted during these changes.

In light of this, implementation guidance for carrying out section 8140 should address the impacts that revisions to policies or standards can have on existing, ongoing studies and activities. For example, the implementation guidance should allow for existing studies or activities to be conducted under the originally applied policy or technical standards in effect at the time the study or activity was commenced, to provide certainty for the study and its stakeholders.

Sec. 8150. Non-Federal Interest Advisory Committee. This section provides a new program authority that requires the Secretary to establish a Non-Federal Interest Advisory Committee, in accordance with the Federal Advisory Committee Act. This Committee is directed to provide the Secretary with advice and recommendations to ensure more effective and efficient delivery of water resources development projects, programs, and other assistance.

RECOMMENDATIONS: *By many accounts, the Corps is facing a backlog of authorized but not completed civil works projects in the order of approximately \$100 billion. Aside from the need for increased appropriations to help address that backlog, there is a need for the Corps to assess how to be more effective and efficient in the delivery of water resources development projects, programs, and other assistance. Many stakeholders believe that the establishment of a Non-Federal Interest Advisory Committee will provide a good opportunity for the Corps to receive valuable insights, advice, and recommendations on conducting its civil works missions, including on efficiently and effectively delivering water resources development projects, improving the capability and capacity of the Corps' workforce to efficiently deliver such projects and other assistance, improving the capacity and effectiveness of the Corps' consultation and liaison roles on water resources needs and solutions, and strengthening partnerships with non-Federal interests to advance water resources solutions.*

Section 8150 calls on the Corps to include several categories of non-Federal interests as members of the Advisory Committee, including non-Federal interests representing coastal harbor and channel navigation, inland harbor navigation, inland waterborne transportation, flood risk management projects, coastal storm risk management projects, aquatic ecosystem restoration projects, water supply, recreation, hydropower, and emergency preparedness.

It is important to note that some of these non-Federal interests may have widely varying regional or other issues or concerns, and so the Corps should either select representatives that are reflective of all such issues or concerns, or select representatives that are reflective of each such issue or concern. For example, non-Federal entities representing certain interests on the West Coast may have some issues or concerns that differ from non-Federal entities representing similar interests on the East (or Gulf) Coasts. In such instances, it would benefit the Advisory Committee to have representatives from national associations that could speak from a multi-regional perspective, or if no such organization exists, possibly to consider having representatives from the differing regions to share a position on the Committee to ensure the Committee is getting balanced input from that category of non-Federal interests.

There are other Federal agencies that have similar non-Federal interest advisory committees (e.g., the U.S. Environmental Protection Agency has a Local Government Advisory Committee; see <https://www.epa.gov/ocir/local-government-advisory-committee-lgac>), which might serve as something of an example for the Corps.

The Corps is urged to promptly move forward with establishing and convening meetings of the Non-Federal Interest Advisory Committee. The Corps should work with the Office of the Assistant Secretary of the Army for Civil Works in establishing the committee, including announcing (including in a Federal Register notice) the creation of this group. The announcement should include a description of the committee membership (representatives) categories being sought and their proposed qualifications, the application process and what candidates need to do to apply, length of member terms, the anticipated number of meetings each year, committee administration information (including whether any travel expenses will be paid if a member attends a meeting in person), and committee duties and other requirements.

NWC is available to provide suggestions of potential candidates for the advisory committee.

Sec. 8153. Report to Congress on Corps of Engineers reservoirs. This section directs the Secretary to expedite completion of, and make publicly available, the updated report to

Congress on Corps reservoirs (entitled “Authorized and Operating Purposes of Corps of Engineers Reservoirs”), required by section 1046(a)(2)(B) of WRRDA 2014.

RECOMMENDATIONS: *Section 8153 requires the Corps to make the report to Congress required under this section publicly available, including on a publicly available Website. Prior to the finalization and submission to Congress of such report, non-Federal stakeholders should be provided an opportunity to review and comment on the draft of the reservoir report, to ensure accuracy and completeness of the information included in the report.*

Sec. 8155. Continuation of construction. This section provides the Secretary with temporary authority to continue with the construction of certain projects. This section also directs the Secretary to provide the Committee on Transportation and Infrastructure of the House and the Committee on Environment and Public Works of the Senate with a written notification of projects requiring potential modification by Congress.

RECOMMENDATIONS: *This section provides some additional, albeit temporary, flexibility in addressing projects that are running up against their cost limitations under section 902 of WRDA 1986. Many stakeholders support greater flexibility to keep projects moving, in order to reduce delays and the escalation of costs. The Corps is urged to promptly implement this section. As part of this it would be helpful to non-Federal sponsors if the Corps would compile information identifying projects that are near their maximum cost limits, including those potentially subject to the provisions of section 8155.*

Sec. 8157. Inland waterway projects. This section makes permanent the existing cost-share for any new or ongoing authorized navigation projects on the inland waterways (65 percent from the General Fund of the U.S. Treasury and 35 percent from the Inland Waterways Trust Fund) that was set to expire in 2030.

RECOMMENDATIONS: *Many stakeholders with an interest in inland navigation support a revised cost share from that in section 102 of WRDA 1986, and also support making it permanent, as section 8157 does. They believe the cost share in this section will help accelerate the construction of critical inland waterways navigation projects by allowing more work to be undertaken and completed at a faster pace, and will stretch Inland Waterway Trust Fund dollars and slow the depletion of the trust fund. The Corps needs to engage with non-Federal stakeholders on the implementation of this section and how the revised cost shares will influence inland waterways projects in the future.*

Sec. 8158. Corps of Engineers Western Water Cooperative Committee. This section requires the Secretary to establish a Western Water Cooperative Committee. The Committee is directed to work with the Secretary to ensure that water resources development projects in Western States are operated in a manner consistent with Congressional directives by identifying opportunities to avoid or minimize conflicts between the operation of those projects and water rights and water laws of Western States.

RECOMMENDATIONS: *Many Western stakeholders are very concerned about extreme weather conditions and megadroughts throughout the Western region of the United States, and the impacts they are having on regional water resources and economies. There are stakeholders that are also concerned about the interrelationship and potential conflicts between the Corps and its Federal authorities, and Western states and their state water laws, in the management of the region's water resources, including at Corps facilities.*

The immense water resource challenges in the Western United States require a strong partnership and regular communication between the water community, the Corps and other Federal agencies, tribal, state, and local governments, and other stakeholders, especially given the key role states play in water rights. A Western Water Cooperative Committee, which Section 8158 directs the Corps to establish, offers an opportunity for enhancing lines of communication and collaboration between Western stakeholders and the Corps, identifying opportunities to avoid or minimize conflicts between the operation of Corps projects and the water rights and water laws in Western states, and ultimately providing a means for creating a strong partnership between the involved parties.

There are stakeholders that are supportive of the intent behind the establishment of a Western Water Cooperative Committee because it is hoped it could provide Western states with a new means for communication, transparency, and cooperation with the Corps in the management of the region's water resources, ultimately resulting in better policies, water management, and recreational opportunities for the West that are respectful of the states and their primacy over their water laws.

However, there is some stakeholder concern that the establishment and operation of this committee may end up not being the open, transparent initiative that Congress intended with this committee. Rather, some are concerned that the Corps will, instead, use this committee as a means for usurping state water rights and standardizing the treatment and allocation of

stored water at Corps projects, without regard to the states' water rights and water laws. The Corps must refrain from letting that happen.

The Corps is urged to work closely with all relevant Western water stakeholders when moving forward with establishing the committee, to create and implement a process that is reasonable, transparent, technically supported, workable, and respectful of the states' water rights and water laws. The Corps also needs to make it clear how it will ensure that non-Federal stakeholders are given an equal role and say in the implementation of the committee's duties and status updates and outreach.

There is also some stakeholder concern that there are states downstream of Corps projects in Western states that may be adversely affected by proposed changes or modifications to policy or regulations for Corps projects. Therefore, the Committee needs to take into account the potential impacts to downstream states.

To ensure that any proposed changes, modifications, or other recommendations would not have an impact on downstream states, the Committee should make available and circulate drafts of proposals for review and comment to each of the states downstream of a project, and then should take into consideration, and address, the input and recommendations that it receives from those states. Downstream states should be provided with the Committee's final recommendations for a project. Relevant downstream states also should be provided with an opportunity to review and comment on drafts of the required reports to Congress, to ensure accuracy and completeness of the information included in the report.

Sec. 8208. Western infrastructure study. This section directs the Secretary to conduct a comprehensive study to evaluate the effectiveness of carrying out additional measures, including those that utilize natural features or nature-based features, at or upstream of reservoirs owned and operated by the Corps in the South Pacific Division, for the purposes of sustaining operations in response to changing hydrological and climatic conditions, mitigating the risk of drought or floods, including the loss of storage capacity due to sediment accumulation, increasing water supply, or aquatic ecosystem restoration.

RECOMMENDATIONS: *As noted above, many Western stakeholders are very concerned about extreme weather conditions and megadroughts throughout the Western region of the United States, and the impacts they are having on regional water resources and economies. It could be beneficial for the Corps to conduct a comprehensive Western water resources infrastructure*

study of the sort called for in section 8208, because it is important for assessing potential additional measures that can be taken to help respond to the changing hydrological and climatic conditions in the West, and potentially around other parts of the Nation as well. The usefulness of this study will largely depend on how the Corps conducts it and whether it is open to non-Federal stakeholder input.

Section 8208 calls on the Corps to consult with non-Federal interests and applicable stakeholders. Such consultations with non-Federal interests and outside stakeholders need to include the Corps seeking and taking into account their input, which is vitally important for helping ensure the Corps is able to develop a study with informative and meaningful results that has strong outside support. If the Corps conducts a study that is merely done “in house,” in a vacuum, without the benefit of adequate stakeholder input, the resulting product will be inadequate and a wasted effort. The Corps needs to work closely with relevant non-Federal interests and other applicable stakeholders in implementing this section. NWC is available to provide suggestions of potential candidates with which the Corps could consult.

Sec. 8227. Investments for recreation areas. This section expresses the sense of Congress that the Secretary should use all authorities to promote and enhance development and recreational opportunities at lakes that are part of authorized Corps projects. It also directs the Secretary to submit a report to Congress on investments needed, and plans to, support recreational activities that are part of authorized projects.

RECOMMENDATIONS: *Many local stakeholders strongly support this section and believe the Corps should make it a priority to prepare such a report, along with developing implementation guidance for promoting and enhancing development and recreational opportunities at projects with lakes. They argue that the Corps made strong commitments to many local communities that bore the impact of the construction of water resource development projects, including navigation, flood control, hydropower, and water supply, to develop quality recreational opportunities in conjunction with these projects. Additionally, many projects are now exceeding their design life and have not received sufficient funding for maintenance and modernization over those years. As a result, many projects are suffering from deferred maintenance, including deferred maintenance of the recreational facilities and sites and associated access roads at these projects.*

Local communities, particularly in rural and underserved areas, depend heavily on the economic opportunity and tax revenue generated by these recreational activities, but the widespread

deferred maintenance is negatively impacting the benefits that the recreational activities could provide. The Corps should make it a priority to prepare such a report, along with developing implementation guidance for promoting and enhancing development and recreational opportunities at projects with lakes.

Sec. 8235. Report to Congress on easements related to water resources development projects. This section directs the Secretary to review its policies and procedures related to the use of easements and to identify potential opportunities for increased use of such easements in future water resources development projects. The Secretary is to submit its findings in a report to Congress.

RECOMMENDATIONS: *The Corps should review its policies and procedures related to the use of easements in relation to the construction of projects for flood risk management, hurricane and storm damage risk reduction, and ecosystem restoration and prepare a report to Congress, as called for in this section. The report to Congress should directly consider the negative impacts, as well as potential benefits, to individual landowners of using covered easements, in addition to the ways (identified in section 8235) covered easements could promote the development of water resources development projects. It is important for the Corps to reach out to, and coordinate with, appropriate non-Federal stakeholders and relevant national associations in its review of its policies and procedures and in the development of the report. This should include holding small group meetings with such entities to get details and examples of negative impacts, as well as potential benefits, of using covered easements.*

Additionally, current challenges being faced by non-Federal interests who are long-time project owner-operators with respect to the Corps' new interpretation of the real estate requirements for existing Federally authorized projects to receive repair under PL 84-99 should be considered.

Sec. 8387. National levee safety program. This section modifies the definition of “rehabilitation” under the Levee Rehabilitation Assistance Program to include levee improvements to reduce flood risk or increase resiliency to extreme weather events. This section also directs the Secretary to prioritize levee restoration in rural and urban economically disadvantaged communities, where practicable. Further, this section extends the authorization for the Levee Safety Initiative to 2028.

RECOMMENDATIONS: *It is important for the Corps to work with levee sponsors to clarify and coordinate how the intergovernmental partners will work together to implement the provisions*

of this section, including the broadened definition of rehabilitation under the Levee Rehabilitation Assistance Program to include levee improvements to reduce flood risk or increase resiliency to extreme weather events. The Corps also needs to clarify how, and what criteria it will use, to prioritize the provision of assistance under the Levee Rehabilitation Assistance Program to economically disadvantaged communities, including economically disadvantaged communities located in urban and rural areas. We encourage the Corps to follow the requirements of the Administrative Procedure Act (5 U.S.C. § 551 et seq.) and the Information Quality Act (§ 515 of P.L. 106-554) in implementing this section.

Corps Water Infrastructure Financing Program.

COMMENTS: While not included in WRDA 2022, NWC offers our continued support for the Corps Water Infrastructure Financing Program (CWIFP). In Fiscal Years 2021, 2022, and 2023, and in the Bipartisan Infrastructure Law, Congress provided appropriations for the CWIFP for dam safety projects. It remains our hope that, in Fiscal Year 2024 and beyond, the CWIFP will be expanded beyond dams, to include funding for other water resources infrastructure, particularly for levees and levee safety work. There is a serious need for a program to assist non-Federal levee entities in addressing some of the repair and upgrades that need to be done on their levee systems.

In conclusion, NWC would like to reiterate that the Corps needs, and has an obligation, to work more closely with non-Federal project stakeholders as partners in implementing WRDA 2022, including engaging them and taking into account their comments and concerns as the Corps develops its implementation guidance.

The Corps should make a publicly available schedule for the implementation guidance development and rollout. The Corps also should give NWC, and other stakeholders, feedback that addresses NWC's and other stakeholders' concerns, as the Corps releases implementation guidance. The Corps has traditionally kept this sort of guidance on a close-hold until it is released. Increased feedback will promote better transparency, partnership, and engagement between the Corps and stakeholders, which in turn, promotes good government.

NWC thanks you for the opportunity to provide comments on WRDA 2022 implementation. We stand ready to work with you as a partner with the Corps in implementing WRDA 2022.

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on WRDA 2022 Implementation
March 21, 2023
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For more information or if there are any questions, please contact me at (202) 203-4795 or by email at julie@waterways.org.

Sincerely,

A handwritten signature in cursive script that reads "Julie A. Ufner".

Julie A. Ufner
President and CEO
National Waterways Conference

cc: Lieutenant General Scott A. Spellmon
Chief of Engineers, U.S. Army Corps of Engineers

Edward E. Belk, Jr.
Director of Civil Works, U.S. Army Corps of Engineers

Ms. Amy Frantz (CEW-P)
U.S. Army Corps of Engineers (3F91)