Statement of

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Vice President
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on behalf of

The Associated General Contractors of America

to the

U.S. Senate

Committee on Environment and Public Works

For a hearing on

“Improving American Economic Competitiveness through Water Resources Infrastructure”

September 18, 2019

The Associated General Contractors of America (AGC) is the leading association in the construction industry representing more than 27,000 firms, including America's leading general contractors and specialty-contracting firms. Many of the nation's service providers and suppliers are associated with AGC through a nationwide network of chapters. AGC contractors are engaged in the construction of the nation's commercial buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, waterworks facilities, waste treatment facilities, levees, locks, dams, water conservation projects, defense facilities, multi-family housing projects, and more.
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Chairman Barrasso, Ranking Member Carper and Senators of the Environment and Public Works committee, thank you for inviting me to testify on this vitally important topic.

My name is Jamey Sanders. I am Vice President of Choctaw Transportation Company located in Dyersburg, Tennessee. We are a fourth-generation construction company specializing in heavy marine construction and port operations. I have spent all of my life in this industry and care deeply about the vitality of our water resources infrastructure and understand the challenges ahead. I currently serve as the chair of the Federal and Heavy Construction Division for the Associated General Contractors of America (“AGC”) and have been involved with AGC for most of my life.

For years, AGC has worked with this Committee to ensure the safe and efficient delivery of high-quality facilities and infrastructure for our nation. AGC appreciates and thanks the Committee for its continued efforts to help develop and improve our nation’s water resources infrastructure and improve water infrastructure. By taking steps to enact a bill authorizing a water resource development act (WRDA) in the 116th Congress and keeping this critical legislation on a two-year reauthorization schedule, this Committee is demonstrating its commitment to fostering economic growth. AGC also commends the Committee for the major legislative reforms it enacted in 2014, 2016, and 2018 to streamline how the federal government approves and completes water resources infrastructure projects. I hope that my testimony today will help the Committee build on that progress in the next WRDA bill.

As my statement will discuss, the scope and breadth of the various study and approval requirements that apply to WRDA projects often represent a significant factor in the lengthy time it takes to complete many water infrastructure projects. As many are aware, there is a backlog of more than 1,000 authorized water resources construction projects that will cost more than $98 billion to complete. In order to build 21st century infrastructure, we need to be able to build it sometime this century. I am here today to tell you that contractors are able and willing to tackle this backlog, but we need Congress’ help in untying the regulatory and layered bureaucratic knots from contractors’ hands.

As the Assistant Secretary of the Army for Civil Works, R.D. James, often says his focus is to “move dirt.” AGC could not agree more, and we urge that this motto to be at the forefront as Congress drafts WRDA 2020.

In my testimony today, I will discuss:

I. The need for and value of WRDA 2020;
II. Why dedicated, predictable and sufficient funding is necessary to meet system needs and realize its full high value / high return benefits;
III. Which bureaucratic processes remain ripe for improvement; and
IV. AGC’s recommendations to help Congress to ensure the safe and efficient delivery of critical water resources infrastructure projects.

I. THE NEED FOR AND VALUE OF WRDA 2020

The benefits of our nation’s waterways system are the envy of the world and are well known to all who sit on this Committee. WRDA 2020 is needed and would authorize funding for critically needed U.S. Army Corps of Engineers (Corps) Civil Works projects, including navigation (e.g., dredging and locks), flood control (e.g., levees), hydropower (e.g., dams), recreation (e.g., parks) and water supply.

Water resource infrastructure is critical to the economy and yields high returns on investment. Harbors maintained by the Corps handle 95 percent of America’s import and export trade, while the inland waterways system moves freight at half the cost of rail and one-tenth the cost of truck transportation. Spending just above $5 billion a year on this program generates an estimated net benefit of $87.1 billion in economic development, a 16-to-1 return, and $27.3 billion in revenue to the U.S. Treasury, a 5-to-1 return.3 Critically, these projects prevent an estimated $48.5 billion in economic loss annually from damaging storms and severe weather. Recent events, such as the many devastating natural disasters and increased global competitiveness, further highlight the importance of investing in our nation’s water infrastructure.

II. DEDICATED, PREDICATBLE & SUFFICIENT FUNDING IS NECESSARY TO MEET SYSTEM NEEDS AND REALIZE ITS FULL POTENTIAL BENEFITS

Dedicated, predictable and sufficient funding is critical for any federal project. While WRDA 2020 has jurisdiction over authorizing projects, our nation’s long-term water infrastructure needs warrant the protection of water resources trust funds.

To that point, revenues in the Inland Waterway Trust Fund (IWTF) and the Harbor Maintenance Trust Fund (HMTF) should be used for their intended purposes. AGC appreciates the recent FY 2020 Energy & Water Development appropriations bill, S. 2470, advanced out of the Senate Appropriations Committee, which—for the sixth consecutive year—makes full use of the estimated annual revenues from IWTF and meets the spending targets in WRDA 2014 for the HMTF. Congress should protect these critical trust funds and require the full annual use of the revenues towards authorized and intended purposes.

But dedicated and predictable funding will only get us so far if it is not enough to undertake the projects authorized. To this point, a 2018 article4 asserted that the federal government has appropriated only a small percentage of the authorized projects from WRDA 2014 and 2016. According to the article, of the 64 projects worth $25.3 billion that Congress authorized in those laws, 49 of them had not received any federal money. It went on to note that the federal government spent only $689.1 million on the projects, 2.7 percent of the authorization. Clearly, this funding issue is one that must be addressed if the projects this Committee plans to authorize in WRDA 2020 are intended to be realized in a timely fashion.

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III. BUREAUCRATIC PROCESSES REMAIN RIPE FOR IMPROVEMENT

a. Preconstruction Phase Issues

Even fully-funding a water resources infrastructure project does not mean that it can commence in a timely fashion. Budgetary and environmental bureaucratic processes can stand in the way.

Currently, our nation’s water resources projects are subject to two budgetary vetting procedures. The Chief Reports submitted to Congress show that the project benefits are at least as great as the cost. However, the Office of Management and Budget (OMB) subjects these projects to a second, more rigorous benefit-cost ratio (BCR). OMB often requires the benefits be 2.5 greater than the cost. OMB’s separate BCR often requires additional reviews and adjustments resulting in delays and additional scope adjustments.

On the environmental side, construction companies cannot legally break ground on the project until all the necessary environmental approvals are granted, which sometimes can take up to a decade or more. While we must be good stewards of the taxpayer dollars and protect our environment, we must find ways to move dirt more quickly to deliver the benefits to communities that depend on quality water resources infrastructure.

Both of these preconstruction process issues may be to blame for slow to commence disaster recovery projects. For instance, in February 2018 Congress appropriated $17.4 billion to the Corps for disaster recovery projects. It took almost six months for the Corps to release its work plan and contractors are still waiting on many of these projects to be put out to bid.

The delays in commencing and completing critical water resources infrastructure projects have broad and far ranging ripple effects that extend beyond just a particular water resources infrastructure project. For example, just in the last week at Victoria Bend located at Mile 895 on the Mississippi River, shoaling caused by the historic 2019 flooding in the Midwest caused major delays in towboats transporting hundreds of barges loaded with all types of vital commodities that help drive our nation’s economy. As many as 85 towboats were sitting still for several days waiting for emergency dredging operations by the Corps to reopen the river to traffic costing many companies and consumers untold dollars which we will never get back.

\[\text{footnote text:} 5\text{ Projects funded by the American Recovery and Reinvestment Act (stimulus package) were effectively exempt from NEPA (via “categorical exclusions”) to speed up project investment and still there were no “shovel ready” projects. In addition to the NEPA review process, there are dozens of separate environmental statutes that may apply to any one construction project – spanning many federal government agencies that each required their own permits, permissions, licenses and approvals.}\]


“Congress established federal policy for evaluating Corps projects in the Flood Control Act of 1936 (49 Stat. 1570) by stating that a project should be undertaken ‘if the benefits to whomsoever they may accrue are in excess of the estimated costs’ and if a project is needed to improve the lives and security of the people. For flood risk reduction projects and navigation projects, the Corps performs a benefit-cost analysis (BCA) to compare the economic benefits of project alternatives to the investment costs of those alternatives. For ecosystem restoration projects, the Corps performs a cost-effectiveness analysis to evaluate for each project alternative its associated costs and its anticipated environmental benefits. Disagreement persists about various aspects of these analyses, including the use of BCAs in decision-making, how (and which) benefits and costs are captured and monetized, and how to value future benefits and costs (which relates to the use of a discount rate to evaluate how future costs and benefits are valued in the present). The quality and reliability of BCAs shape federal decision-making and the efficacy of federal and nonfederal spending on federal water resource projects. Executive branch budget-development guidance for the Corps over the last decade has used a benefit-cost ratio (BCR) threshold as one of the primary performance metrics for selecting which construction projects to propose for funding. Recent requests have included ongoing projects that have benefits that are at least 2.5 times the project costs (i.e., BCR>2.5) or address a significant risk to human safety. In contrast, the threshold for an Administration recommendation for construction authorization is typically that the benefits exceed the costs (i.e., BCR>1). An issue for Congress and nonfederal project sponsors is the uncertain prospects for construction for the suite of congressionally authorized projects that do not meet the budget-development BCR threshold.”\]

\[\text{footnote text:} 7\text{ Public Law No: 115-123.}\]
b. Construction Phase Issues

The construction business is a people business. The people on the jobsite, both contractor and owner, will ultimately determine project success. In the private sector, owners have various incentives to complete a project on time and on budget, or even ahead of schedule or under budget. These private owners have finite resources. Their employees can be hired, fired, rewarded or held accountable with relative ease based on performance. There are clear incentives for getting the job done as efficiently as possible.

In federal construction, there are not always similar economic or ideological incentives to efficiently or quickly complete the job. Federal employees may be entrenched and protected—in many ways—from being held accountable. Federal employees may not have the resources necessary to quickly manage administrative tasks. Jobsites can be in remote locations where field staff can be left to their own devices. The agencies are not paid based on how quickly or efficiently they complete work. Rather, they are paid based on the amount of project funding Congress appropriates.

To our knowledge, there are no clear incentives for agencies or their employees to deliver a project on time or on budget, let alone ahead of schedule or under budget. One of the greatest challenges federal contractors face on their construction projects jobsite is obtaining decisions, especially timely ones, from federal agency employees. As with any construction project, unforeseen issues may emerge. The problem comes with getting the federal agency to decide to act—or not. Decisions may have to move up the chain of command. If the right person or persons are not available, the decision sits on their desks.

What I have said above, however, is not applicable to every agency or agency employee. Just as there are good contractors and subpar ones, there are good federal construction employees and not so good ones. Just as the federal government tries to avoid the poor performing contractors, we try to avoid poor performing federal construction employees or, at least, bid accordingly. And, after major disasters like Hurricane Katrina, no agency—state or federal—was more motivated and able to rise to the occasion to rebuild the greater New Orleans area better than the Corps. It is those times when there are not major disasters, or the eyes of the country are not on us that we must find ways to ensure federal agencies and employees are properly motivated—economic or otherwise—to perform in an effective and efficient manner. Congress must find ways to better incentivize federal agencies—including the Corps—to deliver construction projects more quickly, more efficiently to help improve our Nation’s resulting benefits.

IV. AGC RECOMMENDATIONS FOR WRDA 2020

AGC puts forth the following list of recommendations for the Committee’s consideration as a WRDA 2020 bill is drafted. These recommendations will minimize delays during project planning and permitting to ensure faster delivery of critical water infrastructure projects.

1. PUT TRUST IN THE TRUST FUNDS: Congress should ensure that revenues from the Inland Waterways Trust Fund (IWTF) and Harbor Maintenance Trust Fund (HMTF) are fully appropriated on a multi-year basis and used for their intended purpose. The IWTF and the HMTF should not be subject to the annual, discretionary appropriations process. Instead, they should be categorized as mandatory spending and taken off the discretionary budget. Just as our nation’s roads, bridges and transit systems—improvements to which are funded through the Highway Trust Fund—have access to multi-year funding through contract authority, so too should our waterway highways have access to truly dedicated, multi-year funding.

2. REFORM BENEFIT-COST ANALYSES: Congress should reform the benefit-cost analyses (BCAs) and eliminate duplicative and confusing accounting process. Currently, our nation's water resources projects are subject to two vetting procedures. The Chief Reports submitted to Congress show that the benefits are at least as great as the cost. However, OMB subjects these projects to a second, more rigorous,
benefit-cost ratio. OMB often requires the benefits be 2.5 greater than the cost. OMB’s separate BCA often requires additional reviews and adjustments resulting in delays and additional scope adjustments.

3. **ONE FEDERAL DECISION**: Over the last 50 years, Congress enacted a host of laws that seek to ensure a balance among environmental, economic and health concerns. To implement those laws, Congress provided a range of federal agency review and permitting processes. **Congress should require federal agencies to follow a “One Federal Decision” process for all environmental reviews and authorizations for major infrastructure projects.** This will allow for a single National Environmental Policy Act (NEPA) review for a project that ends with a single Record of Decision (ROD) issued by the lead agency. Indeed, recognize that separate NEPA reviews for a given project consume significantly more agency resources than a joint NEPA document because of repeated interagency consults (endangered species, historic properties, coastal zone impacts, state water quality standard certification), repeated public comment/hearing responsibilities and increased opportunity for conflict, for example. Agencies need to stop redoing NEPA at various steps of the project development and permitting process. A clear focus on delivering and outcomes versus process.

4. **INCENTIVIZE CONSTRUCTION PHASE EFFICIENCIES**: Congress should commission a Government Accountability Office report to review how Corps Civil Works Program projects are funded, how or if those projects pay for Corps’ employee salaries, if there are any financial incentives that the Corps uses to reward its employees for on time and on budget projects, and if other federal construction agencies have such incentives. The incentives to deliver a project on time and on budget should come from both parties on a construction contract: contractor and owner. Congress should investigate ways to incentivize—via carrot and not stick—project-level Corps employees to deliver projects on time and on budget.

5. **IMPROVE WATER RESOURCES CONSTRUCTION PROJECT-LEVEL PARTNERING**: AGC members and local non-federal sponsors have observed a severe reduction in water resources project-level partnering on Corps’ projects. Many see partnering as becoming the exception rather than the rule. For partnering to be effective, representatives with authority on Corps and contractor staffs must be involved. The greatest problem in this area is the lack of Corps District or Division participation on a periodic basis. As a result, there can be a lack of oversight on the project that can lead to problems. Without involvement of personnel with authority on the project or engagement in a proactive manner, problems that could have been addressed often fester until a District or Division office can no longer ignore it. By requiring that Corps engage in proactive, periodic meetings at the District/Division levels, problems can be identified either before they happen or before they become worse. For partnering to be successful, all parties must be involved early and often. Congress should establish formalized partnering on Civil Works projects to help create an environment that is more conducive to solving project-level problems and making timely decisions.

6. **ESTABLISH FIRM DEADLINES AND PENALTIES**: Congress should enact specific deadlines for completing the permitting and review process. Executive Order 13807 calls for reducing environmental review and permitting time, to the extent permitted by law, to “not more than an average of approximately 2 years” following the publication of the notice of intent to prepare an environmental impact

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8 President Trump’s Executive Order (EO) 13807: “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects” (Aug. 15, 2017) calls for “One Federal Decision,” unless separate NEPA documents are requested by the project sponsor or a single environmental review is not the best method for the project. The President has tasked the Council for Environmental Quality (CEQ) and the Office of Management and Budget with implementing the “One Federal Decision,” the regulatory process will take years and is subject to litigation. Congress should codify this “One Federal Decision” requirement.

9 For example, undergoing a comprehensive NEPA review at the project outset, followed by, perhaps, subsequent NEPA reviews during the project’s Section 408 review (requests to alter USACE civil works) and again during the Section 404 review (requests to discharge dredged or fill material into U.S. waters); both reviews are considered a “federal action” that is currently subject to NEPA.

10 See footnote 8.
statement (EIS) and all federal authorizations are complete within 90 days after the ROD. Similarly, FERC has set expeditious schedules for all federal agencies, and state agencies acting under federal delegated authority, to reach a final decision on requests for federal authorizations necessary for natural gas infrastructure projects (a 90-day deadline for other federal decisions upon the issuance of FERC's final EIS, unless a specific schedule is otherwise formally noticed by FERC).\textsuperscript{11} To ensure that deadlines are met, Congress should require the Corps to implement the financial penalty provisions enacted in WRDA 2014 that created a unique system of reprogramming a federal agency's funding if that agency missed its deadline for rendering a decision on a permit, license, or other approval.

7. LIMIT THE SCOPE OF RE-EVALUATIONS: Congress should direct federal agencies to develop clear standards for determining what project changes warrant a re-evaluation of previously approved environmental documentation (i.e., what constitutes a material change?). Currently, projects are being delayed because minor changes or adjustments to the project design or location — or even just changes to construction means and methods (e.g., change in how diverting water flow) — will trigger another round of lengthy coordination at the federal and state level, possibly a supplemental EIS, and several more public review periods that restart the statute of limitations and give opponents more time to sue (sometimes just to stop or to delay the project). Projects also are held up when environmental field surveys (wildlife, wetlands) become “stale” and agencies require new, updated information. Additionally, there could be a limit on the text or page length of environmental analyses for activities that are repeated in the same fashion in like environments.

8. REDUCE DUPLICATION: Congress must take steps to reduce duplication in the permitting process. To reduce duplication, the monitoring, mitigation and other environmental planning work performed during the NEPA\textsuperscript{12} review must satisfy federal environmental permitting requirements, unless there is a material change in the scope of the project. Many Clean Water Act (CWA) Section 404 (individual) permit delays stem from delays in other federal environmental permissions, authorizations, certifications, etc., required before a District Engineer will sign off on the permit application.\textsuperscript{13} Key examples include delays and repetition with assessments/analyses under the Endangered Species Act (ESA) Section 7 consults, the National Historic Preservation Act (NHPA) authorizations Section 106 authorizations,\textsuperscript{14}

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\textsuperscript{11} 18 C.F.R. § 157.22. FERC issued a Final Rule (Order 687) and regulations establishing the process by which it would exercise its responsibilities under Section 313 of EPAct https://www.ferc.gov/whats-new/comm-meet/101906/C-2.pdf
\textsuperscript{13} "The National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. §4321) requires federal agencies to fully consider a federal action’s significant impacts on the quality of the human environment, and to inform the public of those impacts, before making a final decision. The U.S. Army Corps of Engineers (Corps) integrates its NEPA compliance process with the development of a feasibility study. That is, during the study process, Corps identifies impacts of potential project alternatives and any environmental requirements that may apply as a result of those impacts, and it takes action necessary to demonstrate compliance with those requirements. In Section 1005 of the Water Resources Reform and Development Act of 2014 (WRRDA 2014; P.L. 113-121), titled Project Acceleration, Congress directed Corps to expedite NEPA environmental documentation compliance for Corps studies. In March 2018, Corps issued implementation guidance for this provision. Corps published implementation guidance for the categorical exclusion portion of Section 1005 in August 2016; the provision called for the agency to survey its use of categorical exclusions and to identify and publish new categorical exclusion categories that merit establishment. Corps has not established new categorical exclusion categories pursuant to Section 1005 of WRRDA 2014.”
\textsuperscript{14} While the Corps makes the Section 404 permit decision, other federal and state agencies have substantial roles in the permit application process. The result is a process that requires extensive interagency coordination. The Corps must comply with environmental review requirements under various federal laws before issuing a CWA Section 404 permits. These laws include NEPA, ESA at 16 U.S.C. §§ 1531, et seq., NHPA at 16 U.S.C. §§ 470, et seq., CZMA at 16 U.S.C. §§ 1451, et seq., and many others. Each law has different requirements, and the Corps must ensure that all applicable requirements are satisfied before a permit is issued. The Corps’ regulations include procedures for NEPA compliance (see supra) and for Section 106 compliance (33 C.F.R. § 325 App. C). As reflected in those regulations, the Corps has an independent obligation to comply with those laws.
\textsuperscript{14} Another suite of laws relates to historic and cultural protection and preservation. These laws have often elevated tribal nations’ concerns. More generally, attention to how the project affects an area’s cultural heritage (local communities) must be considered. These factors should be part of the EIS analysis (e.g., to identify sites of historic significance, the presence of Native American graves).
the Coastal Zone Management Act (CZMA) consistence determinations, for example, which are a part of the NEPA process. For water infrastructure projects, Congress should require the Corps to always be a cooperating agency in the NEPA process (when it is not serving as the lead agency) and, in that regard, assume the responsibility for ensuring that the above-referenced consultation requirements are completed during the NEPA review and such consults are sufficient for the 404 federal permit authorizations.

9. **INCORPORATE REFORMS FROM S. 2302:** Encouragingly, this Committee has recently incorporated many of the above environmental review and permit streamlining recommendations in another infrastructure bill. In August, the EPW Committee unanimously passed its highway and bridge reauthorization bill (S. 2302, America’s Transportation Infrastructure Act of 2019). S. 2302 details provisions to streamline the environmental approval processes, reduce duplication and increase accountability and transparency. **AGC recommends that the Committee consider adopting similar streamlining and transparency provisions listed below in drafting the next WRDA bill.** Sec. 1301 of the bill includes the following provisions, specific to Department of Transportation (DOT), relating to environmental reviews for “major projects” that require an EIS:

- Establishes a two-year goal for completion of environmental reviews under NEPA, and a 90-day timeline thereafter for related project authorizations (permits license, approval)
- Calls for a single environmental review (NEPA) document and record of decision per project to be signed by all participating agencies
- “The final environmental impact statement for a major project shall include an adequate level of detail to inform decisions necessary for the role of the participating agencies in the environmental review process.”
- Requires the establishment of a performance accountability system for tracking major projects, which would include at a minimum the environmental reviews process schedule, whether the established schedule is being met, and time taken to complete the environmental review process
- If a cooperating agency fails to meet a deadline, the DOT Secretary shall submit a report to Congress (Senate EPW Committee and the House Transportation and Infrastructure Committee) and make it publicly available on the Intranet
- Requires the DOT Secretary to provide a report on environmental review best practices, programmatic agreements and potential changes to internal departmental procedures to speed up environmental reviews

**CONCLUSION**

AGC appreciates and thanks the Committee for its continued efforts to help improve our nation’s water resources infrastructure. Thank you again for inviting AGC to testify before the Committee today. I look forward to answering any questions you may have.