

Testimony of
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Introduction

Chairman Boxer, Ranking Member Inhofe, and distinguished members of the Senate Committee on Environment and Public Works, thank you for the opportunity to be here today to discuss the "Water Resources Development Act of 2012."

My name is Amy Larson and I am the President of the National Waterways Conference. The Conference would like to thank Chairman Boxer for her leadership in developing WRDA 2012, as well as Ranking Member Inhofe and this Committee, for its long tradition of cooperation and collaboration in addressing the nation's critical water resources needs.

Established in 1960, the Conference is the only national organization to advocate in favor of national policy and laws that recognize the vital importance of America's water resources infrastructure to our nation's well-being and quality of life. Supporting a sound balance between economic and human needs and environmental and ecological considerations, our mission is to effect common sense policies and programs, recognizing the public value of our nation's water resources and their contribution to public safety, a competitive economy, national security, environmental quality and energy conservation. Conference membership is comprised of the full spectrum of water resources stakeholders, including flood control associations, levee boards, waterways shippers and carriers, industry and regional associations, port authorities, shipyards, dredging contractors, regional water supply districts, engineering consultants, and state and local governments. In that regard, our membership is keenly interested in the enactment of comprehensive water resources legislation and we look forward to working with the Committee as we move forward in this process.

As this Committee well knows, reliable, well-maintained water resources infrastructure is fundamental to America's economic and environmental well-being, and is essential to maintaining our nation's competitive position within the global economy. Our water resources infrastructure provides life-saving flood control, abundant water supplies, shore protection, water-based recreation, environmental restoration, and hydropower production, essential to our

economic well-being. Moreover, waterways transportation is the safest, most energy-efficient and environmentally sound mode of transportation.

With that in mind, I would like to offer a general, over-arching comment on the draft legislation, before addressing specific provisions. It would appear that the drafting of various provisions throughout the bill has been hampered by the moratorium on earmarks. While efforts in Congress to eliminate wasteful spending are laudable, and especially important given today's fiscal challenges, deferring to the Executive Branch complete decision-making as to which projects should be authorized or receive funding, how much (if any) funding should be allotted to each, and all related priority decisions, has resulted in the stoppage or delay of critical projects. Moreover, the Administration's priorities, as articulated in the budget, have not been established through an open, deliberative process, in contrast to the open process used by this Committee in developing past WRDAs.

Projects such as those undertaken by the U.S. Army Corps of Engineers are different from other Federal programs in several respects: each project is formulated separately to address a separate and discrete problem; projects are individually considered and recommended by the Administration and are authorized separately by the Congress based on the benefits accruing from each one; each project comprises a separate and distinct Federal investment decision generally independent of other projects and is, therefore, subject to individual appropriations; and, each project also comprises a separate and distinct non-Federal investment decision since non-Federal sponsors agree to pay significant portions of project costs.

It is important to note that water resources projects are scrutinized, arguably, to a greater extent than any other capital investment program in the government through highly detailed studies. Proposed projects are subjected to comprehensive analyses using merit-based criteria, an integral component of which includes extensive public involvement wherein public input is widely sought and incorporated at frequent intervals. The Water Resources Development Act of 1986 imposed significant increases in non-Federal cost-sharing and other items of local cooperation, and the 1996 WRDA increased these non-Federal cost-sharing responsibilities still further. The water resources project approval process was strengthened in WRDA 07 through a

series of reforms, including the requirement that each project be subjected to an external independent peer review.

Historically, Congress authorizes projects that meet very rigorous tests, specifically, those that survive very detailed analyses and which non-Federal governments support through contributions of substantial shares of project costs. These decisions have been made in a collaborative manner, subject to a consultative, deliberative process, involving all stakeholders – and their representatives. We would respectfully suggest that this Committee, by means of its open and deliberative process, and whose members have the benefit of first-hand knowledge of the importance of particular projects to their states, is the appropriate forum in which to make these major investment decisions, and we would encourage the Congress to reconsider how this country invests in the nation's water resources infrastructure.

Analysis of the Discussion Draft

We appreciate the opportunity to offer these initial comments on the draft legislation. Given the complexity of the draft, particularly the numerous policy reforms in Title II, my testimony first looks at major program proposals, and then offers some preliminary comments on Title II at the end. We look forward to working with the Committee to provide additional input as it works to refine this legislation.

Title 1

As previously mentioned, we believe that the Congress is best suited to make the individual, discrete investment decisions regarding our nation's water resources.

Title IV would similarly grant to the Secretary the discretion whether to initiate water resources studies. We believe it is in the best interest of the nation that these decisions be made in the open and transparent legislative process that has traditionally been used in the development of water resources legislation.

Title VI – Levee Safety

Title VI of the bill, a furtherance of the Levee Safety Act passed by Congress as part of the 2007 WRDA, would begin the actual establishment of a comprehensive levee safety program. This part of the Chairman's discussion draft also takes into account draft recommendations made to Congress by the National Committee on Levee Safety in 2009.

The importance of well-built and well-maintained levees cannot be understated. Levees are both abundant and integral to economic development and flood risk reduction in hundreds of large and small communities, industrial zones, urban areas, agricultural regions, and vitally strategic zones around the United States. The National Committee on Levee Safety estimates that tens of millions of people live and work in leveed areas. By some estimates, nearly 50 percent of Americans live in counties with levees or related flood protection infrastructure. Corps of Engineers' levee systems provide a 6:1 return ratio on flood damages prevented compared to initial costs, and the Mississippi River and Tributaries system provides a 34:1 return on investment ratio.

Levees also serve an important role in our nation's energy framework by protecting many power plant facilities, as well as the oil, gas and petrochemical industries along the Texas and Louisiana Gulf coast and the agri-business economy throughout California's Central Valley, the Mississippi Delta Region and the Midwest. Well-conceived levees, floodwalls and appurtenant infrastructure protect fire and police departments, hospitals, and schools. They are critical to the viability of our overall public infrastructure network, protecting other infrastructure, including roads, bridges, railroads, port facilities and wastewater treatment plants.

Levee infrastructure, like our aviation, water and wastewater, transit, dams and waterways transport, is in need of attention. Effective and improved management of levees is necessary for the continued enjoyment of the economic, societal and cultural benefits yielded by this public works investment. For that reason, we applaud the Chairman for including a levee safety proposal to begin a critical public dialogue.

As the legislation calls for, a one-time inventory and inspection of all levees identified in the national levee database is a critical first step to the establishment of a successful levee safety program. The baseline information garnered from such an inventory, including much of the non-federal stock of levees, should then be included and maintained in an expanded national levee database in order that critical safety issues, true costs of good levee stewardship, and the state of individual levees can inform priorities and provide data for needed assessments and decision-making.

The draft stipulates that the states and Indian tribes are uniquely positioned to oversee, coordinate and regulate local and regional levee systems. Our organization and many others are still thinking through delegated authority, but we would recommend that any levee safety guidelines developed pursuant to the legislation must preserve state and local government prerogatives, so that such guidelines could properly serve as a "guide" for states, but the decisions on whether to adopt and implement should be left to the discretion of the states. Further, the provisions requiring the Secretary to establish such guidelines should be amended to require that they be developed consistent with the public notice and due process requirements of the Administrative Procedure Act. Given that participation in the grant program to be established under this title calls for adherence to the guidelines, principles of fairness would dictate that those guidelines be developed through an open and transparent process.

Given the critical importance of levees throughout the country, we support the appointment of an administrator of the levee safety program, within the Corps of Engineers, whose sole duty is the management of that program. We also appreciate the intent behind the creation of the National Levee Safety Advisory Board to provide advice on consistent approaches to levee safety, to monitor levee safety and to assess the effectiveness of the national program. However, given the fiscal constraints facing the nation, we believe it would be premature to stand up the Board before completion of the inventory and inspection of the nation's levees. The results of the inspection, which will increase our understanding of levee system locations, conditions, and the national flood risk situation, could then be used to determine whether such a Board is necessary, and if so, to help frame and focus its work.

The draft calls for the Comptroller General to prepare a report on the possibilities for alignment of Federal programs to provide incentives and "disincentives" to promote shared responsibility for levee safety and to encourage the development of strong levee safety programs. While we support efforts to enhance levee safety, we are concerned about what possible "disincentives" might be contemplated by this directive.

Water resource development for transportation, manufacturing, irrigation, and recreation has always been a part of this country's heritage and will continue to be for future generations. We cannot penalize people who live in communities near the water or behind levees. Rather, we should fully identify and assess the problems through completion of the inventory discussed above, and then work through an open, informed, systematic approach to bring deficient flood control structures to a level of protection we can live with and afford.

The National Flood Insurance Program (NFIP) reauthorization, enacted over the summer as a part of this committee's MAP-21 transportation reauthorization, was stripped of a provision that would have mandated flood insurance purchase and imposed land use restrictions for all property owners behind levees and dams, regardless of their federal rating. Our organization worked closely with numerous members of the Senate, including members of this committee, to eliminate this arbitrary and punitive "residual risk" provision. It should not be the policy of the United States to discourage existing and future economic activity in areas protected by sound levees, dams and other flood control infrastructure. Many of our Nation's most fertile lands and economically strategic assets lie in areas now protected by well-conceived levees and dams. Rather than identify disincentives that would result in significant economic harm, we would instead suggest the adoption of incentivized approaches to provide direct assistance and conditional flexibility to "good actor" communities who are diligently working to bring their deficient levees into compliance with changed Federal requirements. The Army Corps' "SWIF" program to allow non-federal sponsors the opportunity to maintain PL 84-99 eligibility, for example, is the sort of post-Katrina transitioning that we are convinced works best to protect lives, property, and federal taxpayer interests. We understand that the National Levee Issues Alliance has provided committee staff with draft language to facilitate these incentivized approaches and we would support this kind of initiative.

Finally, the theme of "shared responsibility" between the Federal, state and local governments is threaded through the discussion draft. We share this sentiment, but believe that for hundreds of leveed areas and millions of Americans, "shared responsibility" must mean more than just increased government oversight and standard-setting for levees. It must also include shared responsibility for the financing of actual infrastructure improvements in support of comprehensive flood safety.

Title VII – Inland Waterways

Title VII of the draft legislation sets forth various provisions designed to improve the reliability of the inland waterways to ensure our nation's river system continues to operate as an affordable, reliable, energy-efficient and environmentally friendly mode of transport.

Our inland waterways serve as the backbone of the nation's transportation system, ensuring domestic and international trade opportunities, and low-cost, environmentally sound movement of goods. More than 600 million tons of cargo – including agricultural products, petroleum, chemicals, coal, iron, steel, and other raw materials – moves on the waterways at a cost that is typically 2 to 3 times lower than other modes of transportation, translating into an annual savings of $7 billion for America's economy. A typical 15-barge tow carries the equivalent of 216 rail cars or 1,050 large semi tractor-trailer trucks, and generates fewer emissions than the other modes.

As this Committee knows, ensuring the reliability of our inland waterways is essential to maintaining the nation's economic and environmental well-being and competitive position in the global economy. To that end, we generally support the proposed reforms to the project delivery process applicable to the construction and major rehabilitation of the nation's aging locks and dams, based upon the Capital Development Plan endorsed by the Inland Waterways Users Board. The details of many of the proposed reforms would need to be further clarified and refined, including what kind of formal training and certification would be required for project managers, on what basis the Chief of Engineers would certify project managers, and the duties

and responsibilities of the users board representative appointed to serve on a project development team. We would recommend that the Secretary be directed to consult with the Users Board in implementing these requirements. We would also recommend that the required report on the study, design or construction of navigation projects be semi-annually rather than quarterly, given the various provisions elsewhere in the draft legislation concerning both the need to streamline the planning and project delivery process along with the possible imposition of additional burdens prolonging the process.

Integral to the project delivery reforms is the need to ensure sufficient funding for these important projects. While a proposal to increase the revenue in the Inland Waterways Trust Fund is not considered in the draft legislation, we would encourage this Committee, along with the Finance Committee and the Senate as a whole, to give careful consideration to other proposals under development to enact a long-term funding solution to ensure the continued reliability of the nation's inland waterways. Revitalization of the Inland Waterways Trust Fund, together with the reforms to the Harbor Maintenance Trust Fund discussed below, would position America's ports and waterways to take advantage of the tremendous opportunities offered by the Panama Canal Expansion.

Title VIII – Harbor Maintenance

Title VIII of the draft addresses harbor maintenance. As this Committee knows, the nation's ports and harbors are critical components of our transportation infrastructure, and regular maintenance is required to ensure their efficient use. The Harbor Maintenance Tax is intended for that specific purpose, and annual revenues from the tax are generally about $1.5 billion annually. However, only about $800 million – half of the revenue collected – is used for its intended purpose.

As a consequence, the nearly 1,000 federal ports and harbors have not been adequately maintained, and indeed, those ports that handle nearly 90 percent of commercial traffic are dredged to their authorized depths and widths only 35 percent of the time. This chronic failure to provide sufficient funding has resulted in channels getting narrower and shallower due to

inadequate dredging, which has resulted in ships having to light-load, increasing the cost of shipping, the risk of vessel groundings, collisions, and pollution incidents.

With 13 million jobs and $4 trillion in economic activity dependent on these ports and harbors, we cannot let them fall into further disrepair. Because waterborne transportation is often the least expensive means of transporting vital commodities and goods, maintaining this essential infrastructure bolsters our economic competitiveness and strengthens the economy.

We strongly support legislation that would ensure that the revenues collected into the Harbor Maintenance Trust Fund are used for their intended purposes. We agree that the proper expenditure of such receipts should not result in a reduction in funding for other projects and programs in the Corps of Engineers' civil works program. We would further caution against any expansion of the activities that would be eligible for funding under this proposal until such time as there is a mechanism that ensures that the revenues collected will be used for the intended purposes. Otherwise, simply shifting the already scarce resources in a chronically underfunded program would only serve to further undermine the stability of our critical water resources infrastructure. The draft Senate legislation we were asked to review includes a conditional guarantee regarding HMTF spending, but it is not clear how this language would work.

Title II

Section 2016, Project Acceleration

We appreciate the Committee's concerns about the Corps' planning process in Section 2016, Project Acceleration. Many of our members are local sponsors who have been frustrated with increased costs and delays in the completion of feasibility studies. We applaud the Corps' efforts to streamline this process through its "3x3x3" program, (feasibility studies completed in no more than 3 years, at a cost of no more than $3 million, and three levels of engagement). We would also recommend, as the Corps continues to refine its planning process, that it develop additional guidance on what elements can be eliminated from the current process and still produce a valuable study, because simply mandating a shorter time-frame and a lower cost will not reform the process. In that regard, we would be concerned that imposing a requirement to

complete studies within 3 years irrespective of the availability of funds, previous statutory requirements, new requirements in this legislation, and without consideration of the appropriate scope of a study (including economic, environmental and engineering requirements), would undermine the planning process rather than improve it.

Our non-Federal sponsors are exploring various alternatives that may help to streamline the planning process, while still producing a report that is sufficient to stand up to legal, environmental and economic challenges. Fundamentally, in order to effectuate meaningful reforms, the Corps must be relieved of the burden of examining any issue or permutation that could possibly arise, regardless of how realistic or unrealistic. This would help curtail the excessive data collection and analysis that have significantly hampered the process. These threshold, and systemic reforms, must be implemented in order for other refinements to the process, including for example, eliminating duplication during the reconnaissance and feasibility phases, to be successful.

Given the significant focus on reforming the planning and project delivery processes, I would like to highlight some of the proposed policy reforms which we are concerned could add requirements to both the project justification and project implementation processes, resulting in additional cost and delay. For instance, Section 2002 would add a requirement for mitigation for ecological resources, including terrestrial and aquatic resources. Section 2003 would extend by 5 years the independent peer review provisions contained in WRDA 2007 and impose additional reporting requirements on the Chief of Engineers, and Section 2004 would modify the safety assurance review provisions of WRDA 2007. Both of these provisions could impose additional cost and time on Corps' feasibility studies, without increasing their efficiency.

Section 2012, Dam Optimization, grants to the Secretary very broad authority to undertake any activity deemed necessary to increase efficiency of dam operations and maintenance. This authority would include undertaking any activity related to the authorized project purposes, as well as environmental protection and restoration activities for authorized projects and other related project benefits. As a general principle, we would suggest that this provision should establish a clear policy of allocating total storage of a reservoir to the purposes

that result in highest and best use. Further, any reallocation would provide for compensation for adversely affected parties.

The role of the non-Federal sponsors is not included in this provision, and we would recommend an amendment to require that any action under this section may occur only after consultation with the non-Federal sponsors. We would also suggest that the section be amended to clarify whether the Secretary would be granted authority to carry out "any" activity (section b(1)) or only those enumerated in section b(2). The applicable reporting requirements would need similar clarification.

Section 2013, Implementation of Biological Opinions, also grants to the Secretary broad authority to carry out any activity deemed necessary to comply with a biological opinion "that directly relates to impacts from an authorized water resources project." We are concerned that this provision could be interpreted as significantly expanding the Corps' authority in ways that are beyond, or even contrary to, the Corps' mission. For example, does this provision intend that the Endangered Species Act provides supplemental statutory authority? Or does the ESA only authorize whatever conservation measures are possible within the authority granted by an agency's organic statutes?

Conclusion

Thank you for the opportunity to appear before the Committee today to discuss the draft Water Resources Development Act of 2012. We look forward to working with the Committee as it is moves this bill forward.