AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

EXAMINING THE U.S. ARMY CORPS OF ENGINEERS

HEARING

BEFORE THE

SUBCOMMITTEE ON
THE INTERIOR, ENERGY, AND ENVIRONMENT

OF THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

MARCH 6, 2018

Serial No. 115–71

Printed for the use of the Committee on Oversight and Government Reform



Available via the World Wide Web: http://www.fdsys.gov
http://oversight.house.gov

U.S. GOVERNMENT PUBLISHING OFFICE

30–940 PDF WASHINGTON : 2018

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

Trey Gowdy, South Carolina, *Chairman*

John J. Duncan, Jr., Tennessee
Darrell E. Issa, California
Jim Jordan, Ohio
Mark Sanford, South Carolina
Justin Amash, Michigan
Paul A. Gosar, Arizona
Scott DesJarlais, Tennessee
Blake Farenthold, Texas
Virginia Foxx, North Carolina
Thomas Massie, Kentucky
Mark Meadows, North Carolina
Ron DeSantis, Florida
Dennis A. Ross, Florida
Mark Walker, North Carolina
Rod Blum, Iowa
Jody B. Hice, Georgia
Steve Russell, Oklahoma
Glenn Grothman, Wisconsin
Will Hurd, Texas
Gary J. Palmer, Alabama
James Comer, Kentucky
Paul Mitchell, Michigan
Greg Gianforte, Montana

Elijah E. Cummings, Maryland, *Ranking Minority Member*
Carolyn B. Maloney, New York
Eleanor Holmes Norton, District of Columbia
Wm. Lacy Clay, Missouri
Stephen F. Lynch, Massachusetts
Jim Cooper, Tennessee
Gerald E. Connolly, Virginia
Robin L. Kelly, Illinois
Brenda L. Lawrence, Michigan
Bonnie Watson Coleman, New Jersey
Raja Krishnamoorthi, Illinois
Jamie Raskin, Maryland
Jimmy Gomez, Maryland
Peter Welch, Vermont
Matt Cartwright, Pennsylvania
Mark DeSaulnier, California
Stacey E. Plaskett, Virgin Islands
John P. Sarbanes, Maryland

SHERIA CLARKE, *Staff Director*
ROBERT BORDEN, *Deputy Staff Director*
WILLIAM MCKENNA, *General Counsel*
BECCA BROWN, *Counsel*
KILEY BIDELMAN, *Clerk*
DAVID RAPALLO, *Minority Staff Director*

SUBCOMMITTEE ON THE INTERIOR, ENERGY AND ENVIRONMENT

BLAKE FARENTHOLD, TEXAS *Chairman*

Paul A. Gosar, Arizona, *Vice Chair*
Dennis Ross, Florida
Gary J. Palmer, Alabama
James Comer, Kentucky
Greg Gianforte, Montana

Stacey E. Plaskett, Virgin Islands
Jamie Raskin, Maryland
Jimmy Gomez, California
(Vacancy)

CONTENTS

Page

Hearing held on March 6, 2018 1

WITNESSES

James C. Dalton, SES Director of Civil Works, U.S. Army Corps of Engineers
Oral Statement 4
Written Statement 6
Mr. Sean Strawbridge, Chief Executive Officer, Port of Corpus Christi Authority
Oral Statement 9
Written Statement 11
Ms. Kirsten Mickelsen, Executive Director, Upper Mississippi River Basin Association
Oral Statement 18
Written Statement 21
Mr. Jim Weakley, President, Lake Carriers' Association
Oral Statement 27
Written Statement 29

APPENDIX

Statement for the Record of The Honorable John R. Moolenaar, submitted by Chairman Farenthold 56
Letter from the South Florida Water Management District Executive Director, submitted by Mr. DeSantis 58
Questions for the Record for Mr. James C. Dalton, submitted by Members of the Committee 63

EXAMINING THE U.S. ARMY CORPS OF ENGINEERS

Tuesday, March 6, 2018

HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON THE INTERIOR, ENERGY, AND ENVIRONMENT
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
Washington, DC

The subcommittee met, pursuant to call, at 10:00 a.m., in Room 2154, Rayburn House Office Building, Hon. Blake Farenthold [chairman of the subcommittee] presiding.

Present: Representatives Farenthold, Ross, Palmer, Comer, Gianforte, Plaskett, and Raskin.

Also present: Representatives DeSantis and Mitchell.

Mr. FARENTHOLD. The Subcommittee on Interior, Energy, and Environment will come to order.

Without objection, the Chair is authorized to declare a recess at any time.

We are going to start with my opening statement.

Good morning. Today the Subcommittee on the Interior, Energy, and Environment will examine the U.S. Army Corps of Engineers, which plays a critical role in the development and execution of engineering projects across the nation. Today we will discuss ways in which communications and interactions between the Corps, localities, and the public can be improved, and project delivery can be streamlined.

The U.S. Army Corps of Engineers is one of the largest engineering agencies in the world. They manage a wide range of projects that affect our constituents on a daily basis, from dredging to flood protection to construction at our military bases. America relies on the Corps' ability to complete projects that keep their communities safe and keep vital transportation lanes open to grow our economy.

For example, in the district I represent in Texas, we have been working with the Corps of Engineers for three decades on the Corpus Christi Ship Channel Improvement Project. This project would allow larger ships that can now transit the wider and deeper Panama Canal to access the Port of Corpus Christi Channel from the Gulf of Mexico, lowering transportation costs and making U.S. energy more competitive. While many dredging projects facilitate imports from foreign countries, this project will result in roughly $7 billion in increased exports from U.S.-produced energy products.

With the recent announcement of the President's budget, we received the good news that the Trump Administration proposed $4.8 billion for the Corps' civil works budget, which includes $13 million

in funding for the Corpus Christi Ship Channel Expansion Project in Fiscal Year 2019. This was not an easy win for our district. Despite having been authorized by Congress three times, this project has been continuously delayed by bureaucracy and what I believe to be the prior Administration's hostility to oil and gas.

This project is not alone in that manner. The Army Corps of Engineers currently has a stunningly large backlog for their projects. Approximately $96 billion worth of projects are being bogged down in red tape and, quite frankly, Congress' broken appropriations process.

Recent flooding in the Houston area during Hurricane Harvey can also be linked to long overdue public works projects that the Corps is involved with to update, improve, and add reservoirs and levees.

Corps delays and congressional hurdles to funding are costing billions of dollars in lost economic benefits and increased cost, and in areas with flood control issues are costing lives. In talking to my colleagues here in Congress, it seems like almost every member of Congress has a Corps issue. In fact, we have quite a few members who do not serve on this committee who have asked to participate because they see a problem in their district. We expect to see some of them today.

We need to ensure that the Army Corps of Engineers is doing what it can to get these projects done in a timely, cost effective, and safe manner.

I look forward to hearing ideas and suggestions from our panel today and am hopeful this committee can help create solutions to improve the working relationship between the Corps and our localities, our businesses, and the American people.

With that, I will now recognize the Ranking Member of the subcommittee, Ms. Plaskett, from the Virgin Islands for her opening statement.

Ms. PLASKETT. Mr. Chairman, thank you for calling this important hearing regarding the work of the U.S. Army Corps of Engineers.

I would also like to thank the witnesses from the Army Corps and local organizations who will provide valuable insights and ideas.

The Army Corps performs a very important role throughout our country, from issuing permits that balance economic development and environmental protection to assisting with the Federal Government's response to natural disasters. This past fall, the 103 American citizens living in my territory, the U.S. Virgin Islands, were hit by two devastating hurricanes. Today, they are still struggling to recover.

Unfortunately, the Army Corps was extremely slow in the support for this recovery. First, the Army Corps is responsible for overseeing the removal of 1 million cubic yards of debris from the islands of St. Thomas and St. John. I have heard serious concerns from my constituents that the Army Corps acted much more slowly than the local Department of Public Works, which completed debris removal on St. Croix.

Second, the Army Corps were staggeringly slow in installing the blue tarp roofs on houses that were seriously damaged by hurri-

canes. According to reporting in the St. Croix Source, a local paper, weeks after the hurricanes devastated the Virgin Islands, the Army Corps had only installed 282 of these temporary roofs.

The U.S. Virgin Islands is, unfortunately, accustomed to the slow pace of assistance from agencies such as the Army Corps. For seven years, Coral World Ocean Park on St. Thomas waited for the Army Corps to conclude the Section 4.404 permitting process in order for the park to obtain the permit it needed to continue with an expansion project that would enhance tourism. This delay nearly caused the project to be abandoned. Such a setback by Coral World Ocean Park would have been truly devastating given that the park is a major tourist attraction that employs local Virgin Islanders at a time when people are working hard to get back on their feet.

But let's be clear, and I really want this to be clear: I am not questioning the dedication of the hard-working people of the Army Corps. I believe that you all are doing what you can to serve the American people. What I am questioning is whether the Corps is hurting from being significantly understaffed and underfunded, and I would like to know what we, not as Democrats, not as Republicans, but as members of Congress, can do to help.

Today we need to have an important discussion. We need to hear what the Army Corps will do differently in the future to address challenges. We especially need to hear from the Army Corps what it needs from Congress in order to perform its work better for the American people. Through oversight and accountability, hearings like these will cause the Army Corps to serve the American people with the speed and the effectiveness they deserve.

Thank you, Mr. Chairman.

Mr. FARENTHOLD. Thank you very much.

Now I am pleased to introduce our witnesses.

We have Mr. James Dalton, who is the Director of Civil Works for the U.S. Army Corps of Engineers.

We have my constituent, Mr. Sean Strawbridge, the Chief Executive Officer of the Port of Corpus Christi Authority.

We have Ms. Kirsten Mickelsen, the Executive Director of the Upper Mississippi River Basin Association; and Mr. Jim Weakley, the President of the Lake Carriers' Association.

Welcome to you all.

Pursuant to committee rules, all witnesses will be sworn in before they testify. Would you all please stand and raise your right hand?

[Witnesses sworn.]

Mr. FARENTHOLD. Let the record reflect all the witnesses answered in the affirmative.

You may be seated.

In order to allow for discussion, we would like you to limit your oral testimony to 5 minutes. Your entire written statement will be made a part of the record.

If you will take a look in front of you, you will see you have a clock that will count down the time. It has a red light, a yellow light, and a green light. It works just like the traffic lights. The green light means go, the yellow light means hurry up, and the red light means stop.

Please also remember to press the button to turn on your microphone, and the closer you are to the microphone, the better we can hear you and the better you will sound.

So we will start with Mr. Dalton. We will give you the first 5 minutes, sir.

WITNESS STATEMENTS

STATEMENT OF JAMES C. DALTON, SES

Mr. DALTON. Thank you, Mr. Chairman. Mr. Chairman and Ranking Member Plaskett and distinguished members of the committee, on behalf of the Honorable R.D. James, Assistant Secretary of the Army for Civil Works, and General Semonite, Chief of Engineers, I would like to thank you for the opportunity to testify today.

Again, I am James Dalton, and I currently serve as the Director of Civil Works for the Corps. Previously I served as the Chief of Engineering and Construction for the Corps' headquarters, and I have also served at the district and division levels.

Since Congress first authorized our navigation mission in 1824, the Corps has worked hard to develop and implement solutions to our nation's water resource challenges. We were able to do this because we have a world-class workforce of talented and dedicated professionals who are passionate about what they do. None of our work is done alone, however, but with the full participation and hard work of many others. We appreciate the value and depend upon the support of the Administration, the Congress, and all of our partners to succeed in our mission.

I am very proud of the work that the Corps accomplishes, but I am equally aware that the organization can improve, and I have been and remain committed to instituting changes to the Corps' delivery process in order to become more efficient and effective.

The Corps faces a multitude of challenges, some old and some new. Much of our infrastructure is well beyond its design and economic life, yet the requirements have never been greater. The demands on the Federal budget continue to grow as our infrastructure ages, and we find more and more annual appropriations going to O&M at the expense of both investigations and construction.

Today we have $96 billion in construction requirements, representing the Federal share on a multitude of projects. We have close to 100 ongoing feasibility studies, which, if authorized, will simply add to the Federal budget requirement. Our feasibility studies are formulated with the assumption of efficient funding, and all of them are multi-year projects, yet we budget on an annual basis with no assurance that the adequate funding will be available from year to year. This certainly creates frustration and uncertainty with our non-Federal sponsors.

Together we must remove the barriers to develop and improve our water resources infrastructure. We must encourage and incentivize alternative project delivery, streamline Federal procedures for delivering projects, and reduce unnecessary Federal oversight to facilitate timely delivery of projects. We recognize the Corps' role in the future may be different than it has been in the

past and that our level of involvement in project delivery may vary from project to project.

The Corps is fully engaged in support of multiple efforts aimed at streamlining our regulatory processes. Currently, the Corps is addressing topics such as establishing discipline and accountability in the environmental and permitting review for infrastructure, reviewing the nationwide permitting program to identify modifications that will increase the efficiency of decision-making, and working with the EPA in reviewing the 2015 Waters of the U.S. rule. Our goal is simply to simplify the process for gaining infrastructure permits.

The Corps continues to work on policy and administrative changes that can improve infrastructure delivery. We are flattening the organization by delegating decision-making authorities and other responsibilities from the Washington level to the division and district levels. We are also transitioning to a more risk-informed decision-making organization because we often find our technical experts that are close to the issues can make the decisions based on their experience, knowledge, and competence in an area.

We are also looking at how best to capture the total value of a project and working with most communities that have massive plans for their areas. We are also reviewing existing authorities that may leverage non-Federal financing such as WRDA 1986 Section 203 and Section 204. Section 203 authorizes the non-Federal to undertake a feasibility study.

The Corps simply wants to be part of the solution, not part of the problem. We recognize the need to address internal policies, regulations and processes, and cultural impediments in order to remain relevant in the future. We want to be value-added to delivering solutions, whatever role we may have in that endeavor.

Thank you, Mr. Chairman and members of the subcommittee. This concludes my testimony, and I look forward to answering any questions you might have. Thank you.

[Prepared statement of Mr. Dalton follows:]

DEPARTMENT OF THE ARMY

U.S. ARMY CORPS OF ENGINEERS

COMPLETE STATEMENT OF

MR. JAMES DALTON

DIRECTOR OF CIVIL WORKS

BEFORE

SUBCOMMITTEE ON INTERIOR, ENERGY AND ENVIRONMENT

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

UNITED STATES HOUSE OF REPRESENTATIVES

ON

Examining the U.S. Army Corps of Engineers

March 6, 2018

Mr. Chairman and Members of the Subcommittee:

I am honored to testify before you today on the U.S. Army Corps of Engineers (Corps) and approaches to enhance project delivery and optimize communication and interaction with local communities where it conducts its work and projects.

The U.S. Army Corps of Engineers has played a significant role in the development of the Nation's water resources. The Civil Works program of the Corps has three main missions: commercial navigation, flood and storm damage reduction, and aquatic ecosystem restoration. In this regard, the Corps works with our Nation's coastal ports to maintain their channels, operates and maintains the inland waterways, supports State and local flood risk management activities, works to restore significant aquatic ecosystems, and operates and maintains multipurpose dams, as well as the reservoirs behind them. There are about 250 million day-visits a year for recreation at Corps lands and reservoirs, making the Corps one of the top Federal recreation providers.

The infrastructure that the Corps maintains includes 13,000 miles of coastal navigation channels (including the channels of the Great Lakes), 12,000 miles of inland waterways, 715 dams, 241 locks at 195 navigation sites, 14,700 miles of levees, and hydropower plants at 75 locations with 353 generating units. These projects help provide risk reduction from flooding in our river valleys and along our coasts, facilitate the movement of approximately two billion tons of waterborne commerce, and provide up to 24 percent of the Nation's hydropower.

The Corps constructed much of this infrastructure in the first half of the twentieth century and dedicates a significant amount of its resources to maintain the key features of this infrastructure. The traditional Civil Works approach to constructing and maintaining these projects is not sustainable. The Corps estimates that it could take over 100 years for the Corps to construct all currently authorized Civil Works projects under the current approach.

The Corps continues to work on policy and administrative changes that can improve infrastructure delivery. More specifically, we are looking internally at our organization, authorities, policies, regulations and procedures in order to identify opportunities for increased efficiency and effectiveness. This will include efforts to reduce redundancy and delegate authority for decision making to the most practical and appropriate level.

For example, Section 14 of the Rivers and Harbors Act of 1899, as amended, and codified in 33 USC 408 (Section 408) provides that the Secretary of the Army may, upon the recommendation of the Chief of Engineers, grant permission to other entities for the permanent or temporary alteration or use of any Corps Civil Works project. The Corps has implemented the following improvements to the Section 408 review process: delegation of Section 408 decisions to the lowest level possible (resulting in more than 95% of Section 408 decisions being made at the Corps district level) and further clarifying when Section 408 permission is required, when Section 408 permission is not

required, and when the requirements of Section 408 may be met by another Corps process and/or authority (resulting in the reduction of redundancies).

Similarly, the Corps continues to make significant progress in the Regulatory program. Section 1134 of the Water Infrastructure Improvements for the Nation Act (WIIN) 2016 amended Section 2040 of the Water Resources Development Act of 2007 and directed the Corps to research, develop, and implement an electronic system to allow for the electronic preparation and submission of applications for permits and requests for jurisdictional determinations. Currently the Corps accepts electronic submission of applications or jurisdictional determination requests via email and the application form is a fillable PDF available on Corps District websites. The information received helps the Corps track the number and type of applications, as well as status and completion of reviews. The Corps will continue to explore if additional automation advances could make the process more streamlined.

The Corps recognizes the importance of establishing a "one federal decision" structure for environmental reviews with the goal of shortening environmental timelines to two years on average while still protecting the environment. In particular, we appreciate the need to eliminate redundant and unnecessary reviews, concurrences and approvals, as well as the importance of firm deadlines to complete reviews and make decisions. As a member of the Federal Permitting Improvement Steering Council (Permitting Council), which carries out the statutory responsibilities identified in Title 41 of the Fixing America's Surface Transportation Act (FAST-41), the Corps is committed to work with fellow Council members in support of the goals of FAST-41 to improve the timeliness, predictability, and transparency of the Federal environmental review and authorization process for covered infrastructure projects. In addition, as a Council member, we have committed to incorporate the objectives of FAST-41 and Executive Order (EO) 13807 "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects" into the Corps directives, manuals, policies and plans, as applicable and to the extent practicable.

The Corps focuses on work that provides the highest economic, environmental, and safety returns to the Nation. The Corps also operates and maintains water resources infrastructure that may no longer meet its authorized purposes or for which the needs of the Nation have changed. As such, we are conducting studies – there are currently five ongoing studies - to ascertain the viability of deauthorizing projects and removing them from the Corps inventory. Section 216 of the Flood Control Act of 1970 allows the Corps to study completed projects or their operation when found advisable due to significantly changed physical or economic conditions.

The way that we use our water resources can affect the Nation's economy, its environment, and public safety. The Corps stands ready to help in addressing the water resources challenges of the 21st Century. Thank you, Mr. Chairman and Members of Subcommittee. This concludes my statement. I look forward to answering any questions you or other Members of the Committee may have.

Mr. FARENTHOLD. Thank you, Mr. Dalton. We appreciate your being here.

Mr. Strawbridge, you are recognized now for 5 minutes.

STATEMENT OF SEAN STRAWBRIDGE

Mr. STRAWBRIDGE. Chairman Farenthold, Ranking Member Plaskett, and members of the subcommittee, thank you for the honor of appearing before the subcommittee and participating in this distinguished panel on such an important topic.

My name is Sean Strawbridge, and I am testifying before this committee in my capacity as the Chief Executive Officer for the Port of Corpus Christi Authority. I also bring to you a perspective shaped by over 25 years of experience working on energy, transportation, and trade-related issues.

There are 926 seaports in the United States, accounting for approximately 26 percent of the national GDP. My port, the Port of Corpus Christi, is currently the fourth largest port in the United States in total revenue tons, and the largest energy export gateway in the nation in market value. It is also a national strategic military seaport in support of the American war-fighter overseas.

Recently, the Energy Information Administration accelerated its forecast for when the United States would become a net exporter of its energy production from 2026 to 2022. The last time the United States was a net exporter of its energy production was 1953, nearly 70 years ago. The Port of Corpus Christi is at the apex of this energy renaissance as the global gateway for American energy.

In describing our experience with the United States Army Corps of Engineers, one has to go back 28 years to 1990 when Congress mandated the commencement of a feasibility study to determine costs and impacts of deepening and widening the Corpus Christi Ship Channel from 45 feet to 54 feet. It has been a long and at times painstakingly slow and bureaucratic process to move this project to fruition.

The feasibility study was completed in 2003. The OMB approval came for the project in 2007. Congress authorized the project in WRDA in 2007, and again reauthorized in WRDA 2014, and in WIN 2016 there was clarifying guidance language that was provided for the Corps to follow.

During this lengthy approval process, the project costs grew enormously. At the time of the initial authorization, the Corps' chief report estimated costs of construction at $188 million. In the 10 years it took to finally execute the project partnership agreement with the Corps, that cost estimate had ballooned to $327 million.

The Port of Corpus Christi could be handling more energy exports. Our project alone is forecasted to increase exports by an estimated $36 billion annually, or one-tenth of the current trade deficit with China. Estimated transportation cost savings for our customers are in excess of $300 million. We are extremely pleased that the President recently recommended the project in its Fiscal Year 2019 budget, yet we remain understandably concerned about how long it took to reach this point and how long it will likely take for the Federal Government under the current process to execute their

mandated scope and cost share for this urgently needed energy infrastructure project.

The Port of Corpus Christi's cost share for this project is $102 million, and we are pleased to report we have our cost share in the bank ready to go. In fact, we have already funded the first construction contract completely and transferred $32 million of port money to the Corps last September to commence construction, yet construction has yet to begin and we continue to wait for the Corps to secure that first dredging contract.

At the current Federal funding levels and Corps' estimated timeline for construction, this project could conceivably take another decade to complete. Yet, we believe we can execute on the project much faster and much more cost effective. If we apply the same inflationary formula that increased the project cost over the past decade, the estimated project cost could conceivably be over $525 million, or more, and continue to frustrate America's energy exports.

I want to emphasize that overall the Port of Corpus Christi enjoys an excellent working relationship with the dedicated and professional women and men of the Army Corps of Engineers. But recognizing their, at times, strained capability to execute on projects and the significantly underfunded project appropriations there is only one step towards solving some of these issues.

I believe I can speak for most ports in the nation and certainly for the Port of Corpus Christi when I share the belief that interactions with the Corps of Engineers work best when there is alignment on project importance, greater transparency and sharing of information between the parties, and a willingness to collaborate in the spirit of reaching consensus.

The time for policy and structural changes which expedite completion of infrastructure projects across the nation is upon us. We have been and continue to be a good partner to the Federal Government. Thus, one suggested solution is to grant more authority for ports to execute on Corps construction projects. Ports are already in the construction and dredging business today. We are responsible for dredging from the Federally-authorized channels to our docks. We can execute on these projects much faster and with less expense if given that opportunity. Giving the Corps the ability to delegate its authority to states and port authorities to manage certain projects is a model already followed by the United States Department of Transportation. The Federal Highway Administration grants similar authority to states to build surface transportation projects.

In closing, the Port of Corpus Christi takes very seriously its role serving as a trustworthy steward of the Corpus Christi Ship Channel and the significant economic impact it provides to the region, the state, and the nation. And it is in this spirt of supporting our highest national interests that I have offered this testimony.

Thank you again for the opportunity to testify in front of this subcommittee.

[Prepared statement of Mr. Strawbridge follows:]

PORT CORPUS CHRISTI

Statement of Sean Strawbridge,
Chief Executive Officer of the Port of Corpus Christi Authority,
for the
Subcommittee on the Interior, Energy, and Environment of
The Committee on Oversight and Government Reform on
"Examining the U.S. Army Corps of Engineers"

Chairman Farenthold, Ranking Member Plaskett, and Members of the Subcommittee:

Thank you for the honor of appearing before the subcommittee as part of this distinguished panel on such an important topic.

My name Sean Strawbridge. I am testifying before this committee in my capacity as Chief Executive Officer for the Port of Corpus Christi Authority. I also bring to you a perspective shaped by over twenty-five years of experience working on transportation, logistics, and trade issues.

The Nation's 926 seaports account for approximately 26% of the National GDP, accounting for trillions of dollars in economic output and trade value. My Port, the Port of Corpus Christi, is currently the 4th largest port in the United States in total tonnage, and the largest energy export gateway in the nation in market value. What makes the Port of Corpus Christi a leader in U.S. energy exports is the compliment of 1.) The proximity to two of the largest energy producing fields in the country, the Permian Basin and the Eagle Ford Shale; 2.) The significant refining capacity in the region; 3.) The large chemical and natural gas processing facilities; and 4.) The deep draft navigation Corpus Christi Ship Channel and associated export facilities which provide a gateway to global energy consumers.

The Port of Corpus Christi is also one of three National Strategic Military Load Centers for the Department of Defense in support of the American Warfighter overseas.

Today, the United States is experiencing a resurgence in its energy production not seen since the 1950's. Recently the Energy Information Administration (EIA) accelerated its forecast for when the United States would become a net exporter of its energy production, from 2026 to 2022. This forecast is based on the continuing trend of increased energy production levels, and the fast

PORT CORPUS CHRISTI

growing export of U.S. produced energy. The Port of Corpus Christi is at the apex of this energy renaissance as the global gateway for American energy.

I want to focus my testimony on highlighting benefits of one project in particular, though in speaking to many of my contemporaries, we share similar experiences and challenges in progressing our economically and strategically vital projects.

In describing my project, the Corpus Christi Ship Channel Improvement Project, one has to go back 28 years, to 1990, when Congress mandated the commencement of a study to determine cost and impacts of deepening and widening the Corpus Christi Ship Channel from 45' to 54'. It has been a long and at times painstakingly slow and difficult process to move this project to fruition. Thus I will suggest to this Committee opportunities to improve the process of completing badly-needed major port infrastructure projects.

I believe our particular experience may be useful as the federal government considers policy changes in the spirit of improving our Nation's infrastructure and positioning this country for energy resiliency not seen in over two generations.

Federal Ship Channels in general are the main arteries in the physical movement of goods and trade, and the Corpus Christi Ship Channel is our lifeblood for the export of American energy overseas. The Corpus Christi Ship Channel Improvement Project is our most important project, and is mission critical in our Nation's quest for energy dominance.

From the initial Congressionally-suggested feasibility study in 1990, the U.S. Army Corps of Engineers' Chief's Report on the project was completed in 2003, 13 years after commencement of the feasibility study. The Office of Management & Budget approved the Project in 2007. The Channel Improvement Project, as it is formally known, was congressionally authorized in WRDA 2007 and again in WRRDA 2014. At the time of initial authorization, the Chief's report estimated the cost of construction of the project at $188 million. In the 10 years it took to finally execute the Project Partnership Agreement with the Corps in September of 2017 that cost estimate had ballooned to $327 million.

Last month, we were for the first time included in the President's Corps Civil Works Budget for FY'19. That's the good news. The bad news is the budget recommendation falls significantly short of the need. If our Nation expects to remain competitive in the global marketplace, we must

expedite the project delivery process or risk lengthy development schedules and significant cost impacts to our national waterways infrastructure projects.

The economic impact of the shale revolution are difficult to understate. The increasing exportation of U.S. oil and gas has widespread economic, geopolitical, and security implications, and the global balance of power is certainly shifting to our shores. More American allies, and others around the world, recognize the benefit of shifting away from Middle Eastern or Russian energy supplies. An American barrel of oil is a safer, more secure barrel. Why? Because unlike a Middle Eastern or Venezuelan barrel, ours are not controlled by a cartel. Unlike a Russian barrel, an American barrel is not subject to the whims of a despot who can decide unilaterally and individually to whom he will sell its energy to. This has made an American barrel a more attractive barrel on the international marketplace. Even China and the aforementioned Venezuela are buying significant quantities of U.S. oil and gas, which continues to reshape our trade balance with those countries.

As I said, the Port of Corpus Christi is nation's leading energy port, responsible for roughly half of all energy exports. Over the past decade the Port of Corpus Christi has experienced epic record growth in our energy exports, increasing from essentially zero to an estimated $36 billion in crude oil, natural gas liquids, and finished petroleum and chemical projects.

The Port of Corpus Christi is also positioned to become a leading export hub for Liquefied Natural Gas or "LNG". An estimated $18 billion-dollar LNG liquefaction facility with a capacity of 22 million tons per annum is currently under construction and is scheduled to come online later this year, providing LNG exports to China, Europe, and the Americas under long term contractual commitments.

Yet the Port of Corpus Christi could be handling even more energy exports. The expansion of the Panama Canal and the increasing availability of supertankers offer an opportunity for United States oil and gas exporters to increase volumes and competitiveness. Our customers tell us that larger, deeper draft cargo ships could save them fifty to seventy-five cents per barrel, a major global competitive advantage. At over 600 million barrels a year of energy exports in Corpus Christi alone, these transportation cost savings are in excess of $300 million per year for our Port customers.

As more energy is produced in the U.S., these molecules must find an outlet. Over $5 billion in new pipelines from the Permian Basin to Corpus Christi alone are underway. We anticipate these

PORT CORPUS CHRISTI

new pipelines to be completed by 2020-2021. When this new production take-away capacity is completed, the Port of Corpus Christi must also be ready to handle the anticipated increase in volume. We cannot become the constraint in the continuing growth of energy exports with a Channel Improvement Project that is stymied by lengthy delays and cost overruns.

We are extremely pleased that the President's Budget Recommendation for Fiscal Year 2019 includes long-sought funding for initial construction work on deepening and widening of the Corpus Christi Ship Channel. Yet we remain concerned about how long it took to reach this point, and how long it will take the federal government to fund their currently mandated and agreed upon cost-share for this urgently needed infrastructure project.

Unconstrained in funding, the Port of Corpus Christi estimates the Ship Channel Improvement Project should take approximately 4 years to complete. That is in-line with the market demands. However at the current funding streams and Corps capability, it is highly unlikely the project will be completed in that timeframe.

The Port of Corpus Christi cost share portion of the $327 million project estimate is $102 million. We are pleased to report we have our cost share today, in the bank, ready to go. In fact we have already funded the first construction contract completely and transferred $32 million of Port dollars to the Corps of Engineers last September to commence construction. Yet construction has yet to begin as we continue to wait for the Corps to secure the first dredging contract.

Our funding "ask" of the Administration and the Corps over the past several months was $60 million in each of the next three Fiscal Years budget, with an additional $45 million in Corps Work Plan monies over the same period. The Port would fund the rest. The return on this investment, we estimate, is an incremental $36 billion in energy export value, or one tenth of the current trade deficit with China.

The President's FY'19 Civil Works budget has recommended $13 million in Navigation Construction dollars for this project. At that funding stream, this project could conceivably take over a decade to complete, and at the same inflationary formula that increased the project cost over the past decade, the cost of the Project could balloon to $528 million or more, and continue to frustrate American energy exports.

I want to emphasize that overall, the Port of Corpus Christi enjoys an excellent working relationship with the dedicated women and men of the Army Corps of Engineers. They are true

PORT CORPUS CHRISTI

professionals. But recognizing their strained capacity to execute on projects and the significantly underfunded appropriations relative to Corps project demand is only the first step toward solving some of these issues and finding other solutions for success.

I will share some brief examples of impediments we've experienced in recent years. These impediments included:

- Corps officials under the previous administration refusing to approve the start of funding for the deepening and widening of the Corpus Christi Ship Channel claiming that prior funding approvals did not apply to our project. The Corps would not provide any written policy guidance on this issue. In the absence of written guidance, it required additional legislation to reinforce the intent of Congress that the entire project should move forward.

- Delays in funding the Channel Improvement Project have resulted in the Corps calling for repeated economic analyses because of the expiration of previous approvals. The current Limited Review Report or LRR, the third for this project, was completed in 2015, prior to the repeal on the ban of U.S. crude exports. Another economic analysis will likely be called for this year. Each time an LRR is undertaken costs the Project another year or more and missed budget cycles.

- While OMB informed the Corps of the need for a separate economic analysis for the deepening project element in July 2013, the Project Sponsor, that is the Port of Corpus Christi, was not notified of this requirement until November 2014, over 15 months later. No explanations. No guidance. No communication.

I believe I can speak for most Ports in the Nation, and certainly the Port of Corpus Christi in particular, when I share a belief that interactions with the Corps of Engineers work best when there is an agreement on project importance, greater transparency in sharing of information and collaborative efforts on in reaching an accord. This belief was best demonstrated last September when the Port of Corpus Christi and the Corps of Engineers executed a Project Partnership Agreement after a multi-day negotiation in which all parties were in the same room. Once provided an opportunity to share in ideas and information, we were able to move swiftly. It can be done.

The time for policy and structural changes that facilitate funding and expedite completion of infrastructure projects across the nation is upon us. The Port of Corpus Christi is ready to go on the deepening and widening of the Corpus Christi Ship Channel. We are a good partner to the Federal Government. We have raised our funds. We have transferred $32 million dollars of our

money to the Corps to accelerate contract one for the initial segment of the deepening and widening. We have the remaining $70 million dollars of our share of the Project set aside.

Yet we are still waiting for approval of the first contract, and have been told it will be July before the contract will be awarded, nearly ten months after we were required to provide our funds. That is unacceptable.

Thus here is our suggested solution. Grant more authority for ports to execute on Corps construction projects. Ports are already in the construction and dredging business today. We are responsible for dredging from the federally authorized ship channels to the docks. We can execute on these projects much faster, and likely with less expense, if given the opportunity.

The Corps should be given the ability to delegate authority to states and port authorities to manage certain projects. A model for this authority can be found in the way that the Federal Highway Administration grants similar authority to states to build surface transportation projects.

In this construct, the Port Authority, as the non-federal project sponsor, can serve as construction manager for the Project. We can administer the contracts. The Corps can conserve resources and save costs through serving as a regulator and providing federal oversight. We can reduce the number of contracts necessary for the Project which will allow the work to be completed sooner and potentially at a lower cost.

The Corps should work to facilitate Assumption of Maintenance agreements when a Port wants to deepen a channel beyond the federally-funded amounts. It costs much less to dredge to a deeper depth as part of a single operation and the national need for deeper ship channels is urgent.

The Corps should also recognize ports ability to manage local real estate and allow for ports to take greater control of local real estate easements to facilitate projects. Perpetual easements should be extinguished and instead the use of term easements should be mandated. The Corps of Engineers should not exert undue influence or power over States land rights and potentially violate States' 11 Amendment Rights, as it has in our case.

Finally, the national benefits of port infrastructure projects need to be given greater weight. We were often advised the costs of our Project made it difficult to include in a limited Corps budget, yet the significant national economic and geopolitical benefits of our project do not appear to receive similar emphasis within the Corp of Engineers.

PORT CORPUS CHRISTI

In closing, the Port of Corpus Christi takes very seriously its role serving as a trustworthy steward of the Corpus Christi Ship Channel and the significant economic impact to the region, the State, and the Nation.

This Project will allow for billions of dollars of increased exports annually, boosting economic growth, create thousands of well-paying jobs, and improving our balance of trade. It will support energy security for the United States and its allies. The requisite infrastructure improvements will also enhance the Port's ability to support military deployments in its role as a Military Strategic Seaport.

In summary, prompt completion of the Corpus Christi Ship Channel Improvement Project will greatly benefit the United States. It is in the spirit of supporting our highest national interests that I have offered this testimony.

Thank you for this opportunity to appear before this Subcommittee.

Mr. FARENTHOLD. Thank you, Mr. Strawbridge.
Ms. Mickelsen, you are recognized now for 5 minutes.

STATEMENT OF KIRSTEN MICKELSEN

Ms. MICKELSEN. Thank you, and thank you, Chair Farenthold, Ranking Member Plaskett, and members of the subcommittee. I appreciate today's opportunity to talk with you all about our experiences working with the Corps and how we might improve our working relationship with the agency.

My name is Kirsten Mickelsen. I am the Executive Director of the Upper Mississippi River Basin Association. We represent the five states that border the Upper Mississippi River from where the Ohio River confluence comes in, all the way up to the Twin Cities and the Illinois River.

We were formed in 1981 by the governors of those states to serve as an advocate, provide a forum for coordination and information sharing and collaborating with Federal agencies that have responsibilities for managing the river, such as the Corps. So our board members are made up of governor-appointed liaisons, and we represent Departments of Transportation, Agriculture, DNR, Economic Development, and those with water quality responsibilities. So, what that allows us to do is to take a step back and really think about how we manage a large ecosystem like the Upper Mississippi River in an integrated and a comprehensive lens and context.

The Upper Mississippi River, I just want to talk about it for a second for those of you who are unfamiliar with it. It is a very significant national resource. It generates $584 billion annually, supporting only nine sectors, and only two counties bordering the river. It is very important to our states for transportation, water supply, whether for manufacturing or drinking water, fish and wildlife habitat, recreation and economic development. Congress recognized this in 1981 by declaring the Upper Mississippi River a nationally significant ecosystem and a nationally significant navigation system, and has remained committed to this.

The river is highly complex, and it is very challenging to manage. There are a lot of uses that depend on it, and if you do one management action it could have implications for others. So the Corps has really been a strong partner for the states and our local partners and how we think about best managing that river. And maybe given that we have three districts managing the Upper Mississippi River, including St. Paul, Rock Island, and St. Louis, and we have five states and a lot of local governments and parties that are interested in the river, we are almost forced to coordinate and collaborate and discuss. And we really appreciate the Corps and the staff of the districts that are committed to managing the river in ways that support all uses and are supported by collaborative, knowledge-based solutions, and we look forward to that remaining.

There are a few reasons why we do this well. One is that we have these communication forums with well-defined decision-making processes that are inclusive of the states and all of our stakeholders, and we make a collective effort to share information that turns into knowledge and that informs decision-making. Through that flow and deliberative dialogue and planning, we are able to

find solutions that are effective, efficient, and sustainable to address water resource challenges.

With specific construction projects, whether they are structural or non-structural measures that our states and our non-profit partners want to partner on and to advance collectively, we find that achieving these shared solutions are challenged by constraining budgets and policies.

I wanted to just pick today—I could talk all day long about policies that affect our ways of implementing these projects, but I wanted to focus in on the Corps' cost-share agreement, project partnership agreements, and the way that they are structured. I am sure several of you in the room are maybe stakeholders that have alluded to these challenges, but they are really structured in a way that protects the Federal Government and requires a non-Federal sponsor, whether that is the state or a non-profit or a port authority, potentially, to assume all liability and to assume O&M in perpetuity.

Our state attorneys general are unable to execute these agreements, constitutions don't allow for it, or tort law, and we would like to see that addressed. In the testimony I offer language that we are hoping to seek through WRDA. But basically, it is a directive that I think the Corps needs to realign these agreements.

What our states are asking for is not to step away from liability but to examine any legal challenges in context. So that is what this language hopes to do. Again, we hope to seek it in WRDA. There is an explanation as to why the language as it currently is in the cost-share agreements conflicts with our state constitutions and tort law, and I hope you will take a look at that.

Also, to pick on the piece of O&M, these projects are designed to be 50 years. The Corps used to have a 50-year term limit in the agreement and took that away. So now the states and non-profits are, in perpetuity, forever, assigned to take care of the O&M as prescribed by the Corps.

And one other reason that I just want to talk about this being problematic is that the Corps has the ultimate decision for planning, for materials that are used, for the construction and design. They are the only point of contact with the constructor, but yet you are asking the non-Federal sponsor to assume all liability, regardless of context and only for fault and negligence, which is hard to prove.

So again, we are hoping to get that addressed in WRDA. We think that will allow us to partner. We think as the Federal Government continues to want to involve non-Federal sponsors on these cost-share projects, and we find a way to address this so that the cost-share agreements reflect the Corps' attitude to really partner on addressing the water resource issues.

One other thing I just wanted to mention while I was here is that our non-profit partners in WRDA 2007 classified them as a non-Federal cost-share sponsor, and we think that that provides a lot of great opportunities, particularly for ecosystem restoration projects. But right now, the Corps does not accept gifts that were donated to the non-Federal sponsor, like rock or something like that, that maybe a private entity would want to donate to the Corps, because they don't account for the value of that good. They

only account for the cost that it was for that agency. We think that would also have maybe implications to port authorities or maybe to the states that receive donated goods. So we hope that that also is changed so that it enables our non-Federal partners to stand forward and get the credit that they deserve for bringing resources to the table.

[Prepared statement of Ms. Mickelsen follows:]

Testimony of the Upper Mississippi River Basin Association
Regarding the U.S. Army Corps of Engineers'
Partnerships with Local Communities

Submitted to the
House of Representatives Committee on Oversight and Government Reform
Subcommittee on the Interior, Energy, and Environment

March 6, 2018

Chair Farenthold, Ranking Member Paskett, and members of the Subcommittee, I appreciate today's opportunity to talk with you all about our experiences working with the Corps of Engineers (Corps) and how we might improve our working relationships with the agency. The Upper Mississippi River Basin Association (UMRBA) was formed in 1981 by the Governors of Illinois, Iowa, Minnesota, Missouri, and Wisconsin to serve as a forum for coordinating river-related state programs and policies and for collaborating with federal agencies on regional issues. As such, UMRBA works closely with the Corps on a variety of programs and projects for which the Corps has responsibility. In addition, all five of UMRBA's member states work directly with the Corps as non-federal cost share sponsors of construction projects.

Multi-Purpose Management

The Upper Mississippi River System is both a multi-billion dollar economic engine and a majestic, treasured ecosystem abundant with fish and wildlife – generating revenues in excess of $584 billion annually and supporting over 1.86 million jobs in manufacturing, agriculture, tourism, recreation, navigation, and energy sectors. At the same time, the Upper Mississippi River also provides an irreplaceable water supply source for citizens and communities throughout the Midwest. Over 60 percent of America's corn and soybean exports move through the Upper Mississippi, ensuring farmers' competitiveness in the world market. Additionally, the Upper Mississippi supports a $24.6 billion tourism and recreation industry built upon the serenity and adventure of the river's landscape and abundant opportunities for fishing and hunting.

Recognizing the tremendous ecological and economical value of the Upper Mississippi to the region and nation, Congress declared in 1986 that the river is "a nationally significant ecosystem and a nationally significant commercial navigation system." Congress has since remained committed to that vision, funding programs and projects in all federal agencies that aim to improve its economic and ecological health and resilience.

The Upper Mississippi is a highly complex and dynamic ecosystem that is foundational to the Midwest and national economy, but faces substantial challenges to its integrity and sustainability. Disruptions from flooding and sedimentation affect millions and degrade the river ecosystem. Managing the river system is also complex as any actions affect a wide range of economic, ecological, and social factors. Thoughtful and deliberative dialogue among federal, state, and local stakeholders is required to determine the most efficient, effective, and sustainable solutions.

For decades, UMRBA and its five member states have worked hand-in-hand with the Corps and our other federal partners as well as local communities, levee districts, industry, and conservation, labor, and commodity groups. Overall, the Corps has been a strong partner is the states' pursuit of integrated, balance, adaptive, collaborative management of the Upper Mississippi. The three Corps Districts covering the Upper Mississippi basin (i.e., St. Paul, Rock Island, and St. Louis) have helped the states to foster a deeply-rooted culture of interagency partnership that has been critical in sustaining and enhancing the river's many economic, ecological, and social values.

Challenges driving the Corps' management of the river system seem to stem from budget and policy constraints that are outside of District staff control. While District staff have done a tremendous job of working within these constraints, the Upper Mississippi states are concerned with the Corps' ability to continue to maintain a safe and reliable navigation system, manage flood risk, and ensure a healthy ecosystem that can support the diverse community of native fish and wildlife species. Still, we have found that District staff are committed to working with river partners to find the best solutions under its agency's constraints as well as to any financial and policy constraints of its local partners.

Project Partnership Agreements

Of particular interest to the Upper Mississippi basin states are the existing terms of the Corps cost-share agreements for working with non-federal sponsors, namely project partnership agreements (PPAs). In advancing our shared commitment to multi-use management as described above, the states and Corps Districts work collaboratively to develop solutions through sound water resource projects. In addition, local communities and nonprofit organizations also serve as key partners in sponsoring water resource solutions constructed by the Corps.

However, the Corps requires that non-federal sponsors assume complete liability for the constructed projects (except for when fault or negligence is proven) and operations and maintenance responsibilities in perpetuity. These terms are simply not acceptable to many states, local communities, and nonprofit organizations. At a fundamental level, the terms conflict with many states' constitutions and tort law. The undefined terms and costs for liability and O&M are also unreasonable and unacceptable to the Corps local partners.

We are very encouraged that the Subcommittee is interested in hearing from the Corps' partners to understand our experiences and perspectives and to work on solutions that would allow the Corps to work more efficiently and effectively with us. Congress understands the Corps' PPA terms to be problematic. Section 1013 of the 2014 Water Resource and Reform Development Act (WRRDA) directed the Corps to contract with the National Academy of Public Administration to employ a comprehensive review of the preparation, negotiation, and approval of PPAs. However, no progress has been made and many important water resource projects have been stalled or withdrawn as a result.

Given Congress' and the Administration's preference for projects to be cost shared with non-federal sponsors over projects paid at full federal expense, it will be imperative to resolve the impediments to PPA execution so that important water resource projects can be implemented and taxpayer money is not wasted finding alternative solutions.

Indemnification

Currently, the Corps requires that the non-federal cost share sponsor fully indemnify the federal government, basing that requirement on Section 103(j)(1) and Section 101(j) of the 1986 Water Resources Development Act. The enclosed June 30, 2016 letter from Corps Director of Civil Works Steve Stockton explained that Congressional action is required to create a more shared approach to liability.

We believe that the following provision would resolve the legal challenges for states, local communities, and nonprofit organizations entering into cost share PPAs with the Corps by allowing for more shared approach to liability. While the language is specific to states, we understand that it would trigger the Corps to rewrite its liability provision in the cost-share agreements that it uses for local communities and nonprofit organizations.

> Section X – Enabling State Sponsorship
>
> Notwithstanding any other provision of law, no Federal requirement that a State indemnify the Federal government as a condition of carrying out a water resources development project shall apply if such requirement is incompatible with relevant State law.

Indemnifying the federal government is in direct conflict with states' constitution and laws for the following two reasons. One, the Corps requires the non-federal sponsor to essentially promise financial resources for an indeterminate liability that might occur at an unknown time, at an unknown cost, and for an unknown reason. For example, Minnesota's Constitution Article XI Section 1 states that no money may be paid out of the treasury except pursuant to an appropriation. In addition, Minnesota statute (i.e., §16A.15, subd.3 and §16A.138) does not allow the state to obligate funding without an encumbrance against an appropriation and do not allow for incurring any indebtedness of any nature on behalf of the state until an appropriation for it has been made by the legislature. Second, the Corps requires the non-federal sponsor to assume liability beyond the extent to which many states' tort law permits.

Non-federal sponsors are required to execute the PPAs, with the liability clause, early in the planning stage and before the designs are complete. The Corps then takes full control of the land, design of the project, and agreements with the construction contractors. The Corps is also the only point-of-contact to the construction contractors. This results in a completely one-sided approach to project design, implementation, and assumption of risk that favors the federal government.

Operations, Maintenance, Repair, Rehabilitation, and Replacement

Historically, the Corps limited the non-federal sponsors' operations, maintenance, repair, rehabilitation, and replacement (OMRR&R) obligations to 50 years, which is the expected life of a constructed project. In 2012, the Corps changed its policy that requires non-federal sponsors to maintain responsibility for OMRR&R obligations in perpetuity. This shift has resulted in the loss cost share partners at a time when the federal government is promoting its partnerships with the states and private entities.

The 2016 Water Infrastructure Improvements for the Nation (WIIN) Act attempted to bring some resolution to non-federal OMRR&R obligations. Section 1161 caps non-federal sponsors' OMRR&R obligations to 10 years following the Corps' determination that the project's physical features are functioning as intended. The decision process is integrated into existing adaptive management evaluations for individual projects. However, the non-federal sponsor remains dependent on the Corps as to when its O&M obligations are complete. It also does not provide the specificity needed for sponsors to estimate total project costs. Therefore, we are seeking the following provision to restore the 50-year cap as an option:

> Section X – Completion of Ecosystem Restoration Projects
>
> Section 1161 of the Water Infrastructure Improvements for the Nation Act of 2016 (33 U.S. C. 2330a) is amended by adding at the end of paragraph (e) "or at the end of 50 years if the Secretary fails to act within that timeframe."

Donated Goods

We also understand that the Corps does not credit nonprofit organizations for the value of donated goods that are specifically provided for a project that it sponsors. This is because the transaction is completed before the project and therefore appears as $0 in accounting. We believe that the addition of nonprofit organizations to sponsor Corps projects provides great opportunities to improve the nation's water resources and that the accounting policy should be resolved.



Kirsten Mickelsen, Executive Director
Upper Mississippi River Basin Association
408 St. Peter Street, Ste 415
St. Paul, Minnesota 55102
651-224-2880

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, DC 20314-1000

JUN 3 0 2016

Mr. Dru Buntin
Upper Mississippi River Basin Association, Executive Director
415 Hamm Building
408 St. Peter Street
St. Paul, Minnesota 55102

Dear Mr. Buntin:

Thank you for your letter dated May 11, 2016, and your longstanding leadership involving a broad range of U.S. Army Corps of Engineers programs impacting the Upper Mississippi River. I am responding to your letter requesting information regarding statutory provisions that require the non-federal sponsor to be responsible for operation, maintenance, repair, rehabilition, and replacement (OMRR&R) of a project, that require indemnification, and that determine crediting for in-kind contributions.

The statutory requirements regarding indemnification and responsibility for OMRR&R reflect Congress' longstanding division of responsibilities for implementation of water resources development projects, and help to ensure that the significant federal investment required for the construction of such projects is sustained. These requirements were reaffirmed in the Water Resources Development Act of 1986 (WRDA 86).

Section 103(j)(1) of WRDA 86 requires that prior to initiation of a water resources development project, a non-federal sponsor must enter into a binding agreement to pay 100 percent of the OMRR&R costs of a project, other than a navigation project. The law does not place a time limit on this requirement for OMRR&R, which applies to ecosystem restoration projects as well as to flood risk management and other water resources development projects. In developing the operation and maintenance manual for individual projects, the Corps can recognize that the requirements of OMRR&R for a project may change over time.

In addition, Section 103(j)(1) and Section 101(j) of WRDA 86 require that in this binding agreement, the non-federal sponsor must agree to hold and save the United States free from damages due to the construction or operation and maintenance of the project, except for damages due to the fault or negligence of the United States or its contractors. Please note the exception to indemnification for damages due to the fault or negligence of the United States or its contractors.

Finally, Section 2003 of WRDA 2007 amended Section 221 of the Flood Control Act of 1970 to authorize credit for in-kind contributions. This law provides that credit afforded for in-kind contributions is limited to "the actual and reasonable costs of the materials, services, or other things provided by the non-federal interest." Where materials, services, or other things are donated by a third party, the non-federal sponsor incurs no cost and thus is not eligible for credit under Section 221. It should be noted that Section 203 of WRDA 1992 does allow for parties other than the non-federal sponsor to contribute cash, funds, materials, and services toward implementation of an ecoysystem restoration project. Such donations would reduce the total project cost of a project, thereby benefitting both the Federal Government and the non-federal sponsor with a lower project cost and lower cost share amounts.

These statutory requirements are reflected in the Project Partnership Agreements, the binding agreements required prior to initiation of water resources development projects. Changes to these requirements would require legislative action, as they are statutory. Given the longstanding nature of the requirements and the important interests they serve, the Corps would want to engage in detailed discussions with your staff to find the best way to address your concerns without negatively impacting the Civil Works program.

Thank you for your interest in the Corps Civil Works program. If you have additional questions or concerns, please contact me or your staff may contact Mr. Joseph Redican, Deputy Chief, Mississippi Valley Division Integration Team, at (202) 761-4523.

STEVEN L. STOCKTON, P.E.
Director of Civil Works

Mr. FARENTHOLD. Thank you very much.
Mr. Weakley?

STATEMENT OF JIM WEAKLEY

Mr. WEAKLEY. Good morning. I represent 13 American companies operating 45 vessels. We employ 1,600 people and move 100 million tons of cargo, generating 103,000 jobs, with an economic impact of $20 billion. I will describe the Great Lakes Navigation System and focus my testimony on how a gap in Corps policy, combined with flawed assumptions and illogical conclusions, risks 11 million jobs.

The Great Lakes Navigation System, including the Soo Locks in Michigan, is a transportation network for iron ore and other commodities that enable the manufacturing of steel, automobiles, appliances, ships, and other products in the U.S. We depend on the Army Corps to maintain this marine highway. Without the locks connecting Lake Superior to the lower locks, we could not do our job.

Our decade-plus quest for a valid benefit-to-cost ratio for a replacement Soo Lock project has been stymied by the Corps' resistance to common sense.

The cargo, if there was a lock outage, the Corps assumed could move by rail. We immediately pointed out that the rail connections don't exist and that the Great Lakes steel mills can't receive ore by rail. A Department of Homeland Security study confirmed this. DHS concluded that a six-month outage of a larger lock would cause 11 million Americans to be unemployed, more than 800,000 unemployed in each of Michigan, Texas, and Ohio. A recession would result.

It took congressional intervention to force the Corps to re-look at their assumptions. The Corps admitted to us that the lack of a rail alternative is new to them, and that their policies don't say how a BCR should account for this.

We engaged with the Corps at the beginning and at every step of this $2 million, more than 2-year economic reevaluation. We included rail, mining, steel, and vessel experts, and the Corps' report should be drafted soon. Within the past six weeks, however, we learned of two new fatal flaws that will reduce the BCR to less than half of what it should be.

According to the Corps economists, a rail transportation alternative at the lock would cost between $4 and $10 billion, with the Corps' contractor estimate of $6.5 billion. That cost should be compared to the cost of building a new lock, but that is not what the Corps is doing. They are using an unsuitable averaging model to set the cost of the rail alternative at $2 billion. Averaging makes sense when you can rent capacity from an existing railroad, but not when you have to build rail infrastructure. That is like building a 900-foot lock instead of a 1,200-foot lock because the average size of the vessel is smaller than the maximum size of the vessel. If you only paid 30 percent of the cost of building the railroad capacity in need, it doesn't mean that you get to use the needed capacity 30 percent of the time; it means that you never get to use that capacity because 30 percent is not enough to complete the rail connection.

The Corps is also unnecessarily adding part of the cost of the rail connection to the cost of building the new lock in the BCR calculation.

Despite our efforts to engage the Corps, we fear that $2 million of taxpayer funding will again result in a significantly flawed BCR that will under-count the project's transportation savings. This risks failure of Great Lakes iron ore transportation and a substantial portion of our manufacturing economy. Eleven million jobs are at risk, not because the Corps has to but because they choose to.

Thank you.

[Prepared statement of Mr. Weakley follows:]

**STATEMENT OF JAMES WEAKLEY, PRESIDENT,
LAKE CARRIERS' ASSOCIATION, BEFORE THE
SUBCOMMITTEE ON THE INTERIOR, ENERGY AND ENVIRONMENT OF THE
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
10:00 a.m., March 6, 2018**

"Examining the U.S. Army Corps of Engineers"

Good morning. Thank you for the opportunity to speak to you today. I am Jim Weakley, President of the Lake Carriers' Association (LCA). We represent 13 American companies that operate 45 U.S.-flag vessels on the Great Lakes and carry the raw materials that drive the nation's economy: iron ore and flux stone for the steel industry, aggregate and cement for the construction industry, coal for power generation, as well as sand and grain. Collectively, our members can transport more than 100 million tons of dry-bulk cargo per year and employ more than 1,600 men and women, all of whom are U.S. citizens or legally admitted aliens, and provide annual wages and benefits of approximately $125 million. In turn, the cargos our members carry generate and sustain more than 103,000 jobs in the eight Great Lakes states and have an annual economic impact of more than $20 billion.

I would like to provide a brief overview of the Great Lakes Navigation System (GLNS), its different market segments, and how we work with the U.S. Army Corps of Engineers (USACE) to maintain the waterway. Then, I'll focus the majority of my testimony on the Soo Locks, our 10-year struggle to fix a fatal flaw in a USACE study, and describe how the USACE is exploiting a lack of policy guidance to undervalue system redundancy for what they admit is the "Achilles heel of American manufacturing."

The GLNS

The GLNS enables maritime commerce on America's Fourth Sea Coast. The five Great Lakes are tied together by three connecting channels (the St. Marys River, the Detroit/St. Clair River system, and the Welland Canal) and the so-called "Achilles Heel of North American Manufacturing," the USACE navigation locks at Sault Ste. Marie, Michigan (Soo). The St. Lawrence Seaway is the umbilical cord that connects the GLNS and its 68 U.S. ports and 35 Canadian ports to global trade. The Great Lakes are a bi-national system supporting both domestic and international trade. For example, the navigation channel crosses the U.S./Canadian border 17 times in the Detroit/St. Clair River portion of the system alone. If measured as a single region, the eight Great Lakes states and two Canadian provinces represent the world's third-largest economy.

Although there is a great desire to move international *container* traffic through the GLNS, the majority of the cargo moved today is bulk. The international ocean going fleet vessels, sometimes referred to as "salties," primarily bring steel into the Great Lakes region and take grain out. Approximately 225 salties call annually on both sides of the border moving 10 million tons of cargo annually.

"Lakers," the vessels LCA represents, are ships and barges specifically designed for the Great Lakes trade. Most are self-unloading dry-cargo vessels, although some lack the self-unloading equipment and others move liquid bulk material. Both the United States and Canada reserve their domestic waterborne movements of cargo for "coastwise qualified" vessels. Our nation's Jones Act vessels are American-owned, American-built, and American-crewed. In 2017, U.S.-flag lakers transported approximately 84 million tons of iron ore, coal, limestone, cement, salt, sand, and grain in domestic moves (between two U.S. points) under the Jones Act, and they carried 2 million tons of cargo between U.S. and Canadian ports. In 2014, Canadian-flag lakers transported 69 million tons of cargo. About half of that total moved domestically (between two points in Canada), including Canadian points on the Great Lakes, the Canadian Arctic or its east coast, and about half between U.S. Great Lakes ports and Canadian ports.

History of Soo Locks

In 1855, the State of Michigan opened the first Soo lock to allow ships to navigate the 21-foot height differential between Lake Superior and Lake Huron. Between then and 1969, a new lock was built there every 19 years on average. There are currently four locks at the Soo: the Davis (opened in 1914), the Sabin (opened in 1919), the 800-foot long MacArthur (opened in 1943-designed and built in 13 months), and the 1,200-foot long Poe (opened in 1969). The Davis and Sabin are no longer operational. In 1986, the Congress authorized a new 1,200-foot long lock at the Soo to provide lock redundancy and system resiliency. The new lock would be built in the footprint of the Davis and Sabin and would be the first new lock built there in more than 50 years. Currently, 90% of the tonnage transiting the Soo Locks has to transit the Poe Lock because the MacArthur Lock is too small for the larger, modern vessels that carry iron ore. The completion of the new lock would restore the same level of resiliency that existed in 1919 by providing two locks of the same size.

GLNS and Soo Lock Economic Importance

LCA members are the linchpin of what has been called "one of the nation's most economically vital systems, the iron mining—integrated steel production—manufacturing supply chain..."[1] In general, iron ore, the primary raw material for steel, is transported by our ships from mines in Minnesota and the Upper Peninsula of Michigan to steel mills in Indiana, Ohio, Michigan, and Pennsylvania. So crucial is that waterborne supply chain that the Department of Homeland Security (DHS) has warned that an interruption of domestic shipping services through

[1] "The Perils of Efficiency: An Analysis of an Unexpected Closure of the Poe Lock and its Impact," Department of Homeland Security (October 2015), at 1. While this report is focused on the impact of a failure of the Poe Lock, through which vessels that are part of this supply chain must pass, the analysis also demonstrates the significant impact of shipping on the Great Lakes economy and beyond. Attachment 1 contains a summary of the study.

the Poe Lock would have "catastrophic impacts on the regional and National economy,"[2] including the interruption of steel production and the plunging of the North American economy into a "severe recession."[3]

The DHS study estimated that 11 million Americans would become unemployed if shipping through the Poe Lock was interrupted for a six-month period beginning at the start of the shipping season. According to DHS, the State of Michigan's unemployment would reach 22%, exceeding its peak unemployment rate of 15% during the Great Recession of 2008. This is a direct result of interrupting the manufacturing made possible by the 60 million tons of key raw materials transiting the Poe Lock on an annual basis.

However, this is a national problem. In fact, the unemployment spikes in the event of an interruption in Great Lakes shipping will ripple through the United States, a result of the far-reaching impacts of the automobile manufacturing and general steel industries. Three States, Michigan (944,000), Texas (865,000), and Ohio (826,000), would experience job losses in excess of 800,000 people. The DHS study also determined that nearly 100% of North American appliance, auto, construction equipment, farm equipment, mining equipment, and railcar manufacturing would cease. The $1.1 trillion decrease in gross domestic product would result in widespread bankruptcies and a likely recession. DHS concluded that, "In terms of an impact to the North American economy, it is hard to conceive of a single asset more consequential than the Poe Lock."[4] The USACE, which operates the Soo Locks, has taken security measures to ensure the protection of the locks.

The USACE does its best to maintain the two operational locks despite extreme winter weather. The risk of a lock outage as a result of an accident, mechanical failure or terrorist attack, however, is a matter of great concern not just for our industry, but also for our nation. The jobs of 11 million Americans depend on the flow of iron ore between Lake Superior and the lower Great Lakes.

This Hearing

This hearing examines how the USACE can improve communications and interactions with stakeholders regarding its work and projects.

We have had good results with the USACE on some issues. For example, in the previous decade we were facing a dredging crisis. We were simultaneously being squeezed by drought-induced low water and a lack of funding for maintenance dredging of Great Lakes navigation channels. The combination of both trends did not bode well for the future of Great Lakes shipping. We began communicating our concerns with the three USACE district offices that cover the Great Lakes. We recognized that was only the first step and eventually engaged with the division and headquarters offices. The combination of these communications and congressional intervention (when WRDA 2014 designated the USACE navigation projects in the Great Lakes as the GLNS, directed the USACE to maintain them as an integrated system, and

[2] *Id.* at 29.
[3] *Id.* at iii.
[4] *Id.* at 55.

provided a GLNS allocation from the Harbor Maintenance Trust Fund) stabilized our Great Lakes dredging crisis.

Our communications with the USACE regarding the Soo Lock, however, have been less successful. Our experience with the 1986 congressionally authorized project to build a second 1,200-foot lock project has been a frustrating decade-long struggle. That lock has not yet been completed due to a significant flawed assumption in the USACE's calculation of the benefit-to-cost ratio (BCR) for the new lock: that rail could move any cargo stranded by a Poe Lock outage. Once we learned of this flawed assumption, we immediately pointed it out to the USACE. We were met with strong resistance and an emphatic denial of what was an easily verifiable claim by us. Apparently, the USACE had not encountered a situation where railroad transportation as the next least-cost transportation alternative to a navigation lock did not already exist. The USACE refused to acknowledge the flaw and recalculate the BCR. It wasn't until Senator Carl Levin (D-MI) and Congressman Dan Benishek (R-MI) intervened that the USACE finally agreed to develop an "Economic Reevaluation Report" (ERR) to update the new lock's BCR. Fortuitously, the DHS conducted its separate study that confirmed the lack of rail connectivity to move the iron ore from mine to mill.

The ERR is intended to take a fresh look at the flawed assumptions in the previous BCR. We have had small successes in the process along the way. The USACE now acknowledges that the steel mills (with some minor exceptions) are not capable of receiving raw materials by rail. We have convinced the USACE to use feedback from the steel industry and others in the USACE's long-term forecast of commodity movements through the Soo Locks. We also worked together to assume more reasonable stockpiling capacity at the mills and iron ore receiving docks. Based on conversations with USACE officials, however, we now know that they are using different flawed assumptions that will again undervalue the project. The small successes described above will not overcome the impacts of the new flawed assumptions and methodologies that the USACE recently told us they intend to incorporate in the ERR.

2018 ERR Flaws

Estimating the cost of alternative transportation

The biggest challenge in the ongoing ERR is how to deal with the lack of *existing* alternative transportation. The USACE admitted to us that their Principles and Guidelines and policy documents provide no specific guidance on what to do if an alternative transportation mode doesn't exist. For navigation projects, the USACE compares the transportation costs of the "with-project" condition (including the construction cost of the new lock) with the transportation cost of the next least-cost alternative (which is normally rail) in a "without-project" condition. The difference between the two costs is the "benefit" used in the BCR. For the Soo Lock project's "without-project" condition, the USACE assumes that the private sector would build new rail connections from the iron ore mines to Escanaba, Michigan (which is located on Lake Michigan and not Lake Superior), and refurbish and rebuild the shuttered iron ore loading dock and loading yard in Escanaba. This would effectively provide a route to transport iron ore around the Soo Locks during a Poe Lock outage. The ore could then be loaded onto large lakers at Escanaba (assuming enough of them are not trapped above the Soo Locks) and transported to

the steel mills. USACE economists told us that the estimated the cost of building this alternative rail infrastructure is between $4billion to $10 billion, depending on the annual capacity required. This is consistent with the findings of a USACE contractor, who in 2016 estimated this cost at $6.5 billion for an annual capacity of almost 18 million tons of iron ore.

Six weeks ago, the USACE told us that they are using the cost of approximately $2 billion to construct this rail alternative in the BCR calculation. This is clearly far less than what would be required to build this alternative rail transportation mode. The USACE told us that their assumptions for the "without-project" condition include first building a conveyor system on their Soo Lock property to move some of the cargo from large lakers stranded above a closed Poe Lock to large lakers stranded below the closed lock. Then, an additional amount of iron ore would be available below the Soo Locks by the steel industry expanding existing, and building new, stockpiles at their mills. Then, the USACE modeled the frequency and duration of Poe Lock outages in a "Monte Carlo simulation" to estimate the probabilities of such outages under a range of scenarios, some of which require transporting no cargo by railroad (using the conveyor system and stockpiles instead) and some of which require transporting large amounts of cargo by railroad (because greater amounts need to be transported than can be provided through the conveyor and stockpiles). Finally, the USACE averaged all of the railroad construction costs over all of these scenarios and came up with $2 billion. *This is less than the minimum amount the USACE economists told us would be needed to complete even minimal rail alternative infrastructure.*

While this Monte Carlo averaging approach makes sense for projects with existing railroad infrastructure (existing capacity only has to be rented as needed, not built), it makes no sense for nonexistent infrastructure (if you don't build it all, it is not available when needed). If the cost to build a new railroad to move the maximum amount of cargo needed to be transported for all of the scenarios is not invested, that capacity will never exist to transport that amount of cargo when it is needed. *We believe the USACE should include in the "without-project" condition the cost to build the rail capacity needed to transport the maximum amount of iron ore needed to be moved by rail identified in all of the Monte Carlo scenarios over the lifetime of the lock project (50 years).* The USACE's including in the BCR calculation the cost to build 30% of the needed railroad capacity doesn't mean the steel industry will have all of the needed railroad capacity 30% of the time. It means that the steel industry will have none of the needed capacity 100% of the time (because $2 billion can't complete the rail connection). That is why the averaging calculation the USACE uses for existing alternative rail transportation doesn't work for nonexistent alternative rail transportation. If the USACE calculated the new lock's required dimensions based on averaging the size of vessels using the Poe Lock, it would result in a lock too small to handle the largest vessels. Why do that for the rail connection? It makes no sense.

Poe Lock outage risk before new lock construction

Developing the new BCR requires comparing the transportation costs of the "with-project" condition (building a new lock) and the "without-project" condition (without a new lock using the next least-cost transportation alternatives). For the Soo ERR, the USACE told us that they include building the conveyor system, the stockpiles, and the rail connection in *both* the "with-project" (new lock) and the "without-project" (no new lock) conditions; but cost averaging

the rail connection in the "with-project" condition over a shorter period of time. The effect of this assumption is to increase the with-project condition cost relative to the "without-project" condition cost and thereby decrease the BCR.

We understand that building the alternative rail infrastructure would take ten years and it also would take ten years to build the new Soo Lock. The USACE, however, is assuming that the conveyor system, the stockpiles, and the rail connection will be built by 2019, a physical impossibility. The USACE claims this assumption is necessary to provide transportation for any cargo that would be stranded by a Poe Lock outage during the ten year construction period of the new lock. This makes no sense, as the steel industry has always accepted a very small risk of a Poe Lock outage since it was built. Since the new lock project was approved by Congress in 1986, the steel manufacturing and laker industries have assumed that the lock would be built and this growing risk of a Poe Lock outage would be mitigated by having a second Poe-sized lock. That would allow the Poe Lock to be taken out of service for rehabilitation without stranding any large lakers.

While the steel manufacturing industry already mitigates this currently small risk of a Poe Lock outage by stockpiling some iron ore below the Soo Locks, the railroad industry would never build $6 billion worth of infrastructure as an alternative to the Poe Lock while the USACE begins building a new lock that would render that rail connection irrelevant. We believe that the USACE ERR should assume in both the "with-project" condition and the "without-project" condition that the steel manufacturing industry would take only the reasonable step of increasing iron ore stockpiles during the project construction period. Anything more than that makes no sense and serves only as a biased attempt to drive the BCR for this project down by adding unnecessary costs to the "with-project" condition.

Conveyor system loading rate

Although it has less of an impact on the BCR than the above two flaws, the third flawed USACE assumption in the ERR is the alternative conveyor system's iron ore transfer speed. The USACE believes that they can connect a stranded vessel above the Soo Locks by a Poe Lock closure with one below by 5,000 feet (nearly a mile) of conveyor belt and safely load from one vessel to the other at a rate of 2,000 tons per hour *because they found they could buy a conveyor system that goes that fast*. We have pointed out that the limiting factor is not the size of the conveyor motors or size of the belt. It isn't even the unloading capacity of the vessel stranded above the locks. It is the ability of the vessel being loaded to safely receive the cargo.

We have pointed out to the USACE an incident when a laker went aground and another laker was brought alongside to receive its cargo. It took 26 hours to unload 24,000 tons, which yields a transfer rate of less than 1,000 tons per hour. Our actual experience demonstrates a transfer rate of less than half what the USACE claims is possible, without the added complicating factor of separating the ships by almost a mile of conveyor belt. I am not aware of this being done anywhere in the world. The effect of this flawed assumption is that it allows the USACE to assume that more iron ore can be moved using the less-expensive conveyor system and less moved using the more expensive rail alternative, thus driving down the transportation cost of the "without-project" condition and reducing the BCR.

Conclusion

These USACE assumptions defy common sense and will result in an inaccurate comparison of transportation costs, which are the basis for calculating the project's BCR. The USACE told us that *"there is no specific policy or guidance on how to calculate a least-cost rate in case of insufficient alternative capacity."* Given that there is no USACE policy requiring these flawed assumptions to be made, we do not understand why the USACE *is choosing to* reduce the "without-project" condition costs far below what would be required to actually provide the needed alternative transportation capacity over the project's lifetime *and choosing to* increase the "with-project" condition costs above what would be required to build a new lock. These fatal flaws will produce a BCR that is less than half of what it would be if common sense assumptions were used instead.

We continue to work hard to understand USACE policy and to communicate with them at all levels. We try to engage at the earliest possible moment. Better communication and Congressional intervention solved the dredging crisis. Improved communication with the USACE alone is not resolving the USACE's errors in calculating the Soo Lock project's BCR.

Despite our best efforts, the USACE has refused to calculate a BCR based on (1) "without-project" condition transportation costs that recover the *full cost* of building and operating the new alternative railroad capacity needed to transport *the maximum amount of cargo* that the USACE's analysis determined would potentially be stranded by non-availability of the Poe Lock over the project's life-time; and (2) common sense risk mitigation assumptions during the construction period of the new lock in the "with-project" condition. Instead, the USACE says it will include a narrative describing the importance of the Soo Lock project. However, this narrative will not appear in USACE and Office of Management and Budget tables that rank order project BCRs for funding decisions. Unfortunately, once again the USACE appears set on a course that will unfairly and arbitrarily minimize the Soo Lock project's BCR, grossly undercount the economic value of the project's transportation savings and national economic benefit and be a disservice to our national manufacturing economy that depends on iron ore. They are willing to risk the livelihoods of 11 million American workers with their flawed assumptions and reliance on a footnote.

Like DHS, we believe the strategic importance of the project deserves a better effort from the USACE. We also believe that the lack of policy guidance in the USACE's Principles and Guidelines should allow the USACE to include in its BCR calculation (and in the ERR) the reasonable assumptions we have advocated, and should not open the door for unreasonable and illogical assumptions. We ask for the Congress's assistance in pressing the USACE to include a more reasonable BCR calculation in the ERR.

Thank you for your interest and for the opportunity to provide my perspective. I will answer any questions you may have about these concerns.

Attachments:
(1) DHS handout "UNANTICIPATED CLOSURE OF THE POE LOCK"

Mr. FARENTHOLD. Thank you very much.

I note the presence of my colleague, the gentleman from Florida, Mr. DeSantis, and at this point I would like to ask unanimous consent that he be allowed to participate fully in this hearing.

Without objection, so ordered.

We also have a statement for the record from Mr. Moolenaar. We will include that in the record.

Without objection, so ordered.

Mr. FARENTHOLD. I usually wait until the end to ask my questions, but I am going to go ahead and take the Chairman's prerogative and go first, because this is an issue that I have been working on since Day 1 here in Congress. I am going to start with Mr. Strawbridge.

You have been working 25 years in transportation logistics and trade, and in your testimony you talk about lack of transparency, lack of communication, lack of funding as some of the challenges. Is that within individual Corps districts, or is it more of the Corps as a whole? Can you talk a little bit more about the effects of that?

Mr. STRAWBRIDGE. Mr. Chairman, thank you. I guess the short answer is it depends. In our particular case, depending upon what the issue is, we will have disagreements between our Corps district on interpretations, disagreements with their own division, and perhaps disagreements with headquarters.

We had a recent disagreement at the division level. It took one email that I wrote to senior counsel at headquarters to have it resolved. But the point is, why does the sponsor, why does the partner have to navigate all the various silos within the Corps to get an answer?

I think that things can improve. I think we have seen some improvement, particularly in a post-Harvey environment. It is disappointing to have to see a major catastrophic event kind of bring us all together. In a post-Harvey environment, we have seen some improvement. But frankly, we are a little battle weary. It should not take 28 years for us to get a dredging project to the point where it is now. So there is certainly room for improvement.

Mr. FARENTHOLD. So you got a delay widening and deepening and dredging project. The Port of Brownsville has some shoaling issues that were put out for bid and got zero bids back. Have we reached the capacity where we can't do some of these projects, Mr. Dalton? Is there a problem with capacity and getting these done?

Mr. DALTON. Thank you, Mr. Chairman. I don't think we have reached a problem with capacity here that we can't get things done. A lot of it is based on timing, just when we actually solicit for these projects. We have a concern also about some of the prices that we are getting as compared to our government reasonable prices. But when we meet with industry, we don't get the impression that they are tapped out.

Mr. FARENTHOLD. Okay.

Mr. DALTON. So I think we have the capacity.

Mr. FARENTHOLD. Mr. Strawbridge, you talked a little bit about the non-Federal sponsors taking more control of the projects. Ms. Mickelsen talked about the Corps almost entirely being in charge, the liability potentially being with the non-Federal sponsor.

Mr. Strawbridge, could you tell us a little bit about what you think, how we could fix that or some of the concerns associated with that and what some of the legal issues are?

Mr. STRAWBRIDGE. Yes, sir, Mr. Chairman. I can't agree more with Ms. Mickelsen and her position that the non-Federal sponsor is put in a—I think when we talk about these project partnership agreements, the term "partnership" is one that we have to really question, because a lot of the liability and responsibility is put on the non-Federal sponsor, including funding.

In our particular case, we do dredging. We dredge between the Federal channel and the docks. We believe that we can execute on those projects faster and likely cheaper than the Army Corps of Engineers, and so we like to advocate that we give an opportunity for those construction projects to be able to execute on those projects without having a lengthy Section 404, 408, or Section 10 permitting process, just essentially have the Corps delegate its 204 authority to its non-Federal sponsor to be able to execute on those projects.

Mr. FARENTHOLD. Mr. Dalton, can we do that under current law, or do we need to do something to—it seems like if you can get somebody else to take on some of the workload and you just supervise, that sounds like a pretty good idea.

Mr. DALTON. Yes, Mr. Chairman. So, a couple of responses to that.

One, I agree with Mr. Strawbridge that in some cases, maybe in many cases, the non-Federal entity might be able to get a project done faster and at lower cost, primarily because, in the cases that we have observed, they have gotten funding up front. So that means that contractors can commit to a schedule. They can control and manage their risk.

So we are looking at different authorities that we currently already have that allow us to do this. As I mentioned in my oral statement, WRDA 1986 has the Section 203 authority that allows a non-Federal to conduct a feasibility study, and Section 204 allows a non-Federal to actually construct a project. So we are looking at—in fact, we are exercising those authorities. I don't think in the past we have used those authorities as much as we perhaps could have.

The second part of the comment from him and Ms. Mickelsen refers to actually something written in law that says that the Federal Government is to identify the non-Federal sponsors responsible for O&M for that project, and it went from 50 years to perpetuity because our projects don't stop at 50 years. They are still ongoing. And also there are liability requirements in the WRDA.

I apologize for not having that in front of me to tell you exactly which one that is. I can certainly provide that to you as a matter of record. But that is a law that we are abiding by, in response to that.

Mr. FARENTHOLD. We do want to get the job done and, of course, we frequently do the WRDA bills, so the things that you need to be fixed and feel like would be helpful is something that we need to know about up here.

I see my time has expired. I will now recognize Ms. Plaskett for 5 minutes—5-and-a-half, since I went over.

Ms. PLASKETT. Thank you.

I have heard the concerns that you all have raised, as well as local concerns that are in the Virgin Islands as well, regarding different issues, whether it is stretching the permitting process, et cetera.

One of the ones that stood out and is most recent in the Virgin Islands has been the debris removal that was put to the Army Corps of Engineers. Major General Ed Jackson, in written testimony before the House Committee on Transportation and Infrastructure, stated as of October 31st, 2017—this is after the hurricane of September 6th—only 141 cubic yards of the estimated 1 million cubic yards of debris had been removed.

Mr. Dalton, can you give some light as to this failure to remove almost 90 percent of the debris more than a month, almost two months after the hurricane, and why the Army Corps was slow in performing this function?

Mr. DALTON. So, I am not real sure that I can provide you all the details of what happened in the past. I know that the status as of today is I think 94 percent or so of that debris has been removed, collected I should say, and we are in the process of looking for disposal methods to ensure we have those on the contract. The information I have before me says that 94 percent of the 870,000 cubic yards of debris have been collected. We anticipate a WRDDA renew vegetative transportation disposal contract in April to include disposal options and criteria.

Ms. PLASKETT. But do you understand, when you say in the past, you make it sound like it was two years ago when it was actually just a couple of months ago. But I wanted to know—I have heard the concern and I wanted to know, do you have any reasoning why it was slower in St. Thomas and St. John, where the Army Corps was responsible for it, as compared with the island of St. Croix, where the local government was responsible?

Mr. DALTON. I would have to look into that and get back with you. I don't know at this point.

Ms. PLASKETT. You are unaware of why that is?

A second one would be during the same hurricane recovery, when the Army Corps was put in charge of the installation of your blue roof program which installs the temporary tarps over homes of hurricane victims. At the time, almost well over a month that the hurricane had struck, we had about 14,000 homes that were affected. And after almost two months, only 282 of the temporary roofs had been installed, recognizing that this was still the rainy season, and so individuals' homes were still being rained on during this time.

Can you explain what were the issues that the Army Corps had in the slowness of the installation of those?

Mr. DALTON. One of the reasons, I believe, that we couldn't move as fast as we had planned to do is that the blue roof design that we had had to be modified because some of the houses didn't really have enough structure left to actually attach the roof.

Ms. PLASKETT. Got it. So you were used to installing blue roofs on homes that had portions of the roof removed, as opposed to, in the Virgin Islands after a category 5, the entire roof structure was gone.

Mr. DALTON. That's correct, Congresswoman.

Ms. PLASKETT. And then when you made this assessment that this was the problem, how was that information then sent back to the Army Corps in real time, and how were they able to make modifications and changes? Is there a process for that, a formal process for that?

Mr. DALTON. Well, the formal process in times of disasters and emergency recovery are things that we probably do a lot more direct than we would following a normal process. The normal process for making changes like that would actually include a design modification that has to be reviewed and approved, et cetera. So there is a lot more bureaucracy there than we would normally do in an emergency situation.

There, the authority was with the folks that were on the ground, and the changes were made immediate.

Ms. PLASKETT. So you used your creative engineering ingenuity to just make the changes in real time.

Mr. DALTON. Yes, Congresswoman. What I would say is that we are trying to get to a point where we allow professional judgment and engineering judgment to govern.

Ms. PLASKETT. And does Congress give you the wherewithal in the law to do that?

Mr. DALTON. We do, yes.

Ms. PLASKETT. Okay, great. Thank you.

I am also concerned—and I recognize the work, and I saw how much the Army Corps was right in the thick of things and really being supportive, even in terms of what I mentioned earlier, with Coral World and the length of processing of those permits.

Ms. Mickelsen, in your written testimony you voiced concern about the Corps' ability to manage your area, the Upper Mississippi. Do you think that understaffing and underfunding of the Corps is at the root of your concerns?

Ms. MICKELSEN. I certainly think it is an underfunding issue. It is also, I think, an issue of getting priorities in the budget and getting past cost/benefit as the criteria as currently assumed or used in OMB and the Corps, and how that differentiates.

For channel maintenance and our lock infrastructure, we have over $1 billion in backlog, and we are not able to take care of it. Also for channel maintenance, the Corps is in a very reactive position because of funding. They have not been able to take care of sediment as it is filling in the river and keep the 9-foot navigation channel open and safe and reliable. What that does to our states is, when you get a flood to drought or a drought to flood or whatever and sediment drops quickly, the Corps has been behind, and they classify that as an emergency situation.

Ms. PLASKETT. Ms. Mickelsen, you have to quickly—I am well past my time.

Ms. MICKELSEN. Oh, I am sorry. Anyway, they are in an emergency situation and the states are in-between closing the navigation channel for business or streamlining permitting and not doing their legal obligations to do that.

Ms. PLASKETT. Thank you. And that shouldn't be counted against me. Sorry.

[Laughter.]

Mr. FARENTHOLD. All right. We will recognize now the gentleman from Kentucky for 5 minutes.

Mr. COMER. Thank you, Mr. Chairman.

My first question is for Mr. Dalton. As you know, most of our nation's locks and dams are now over 50 years old. Unsurprisingly, we are experiencing breakdowns across the Inland Waterway System that caused costly and unnecessary wait times for barges on these rivers. A prime example of this are the recent failures at locks and dams 52 and 53 on the Ohio River, which have caused several shutdowns on this busy commercial navigation route over the past year.

Thankfully, this outdated infrastructure will soon be replaced by the Olmsted Lock and Dam which is scheduled to open later this year after nearly 30 years of delays. My question to you is, what lessons has the Corps learned from the Olmsted project, and how can we improve the process for pending and future projects?

Mr. DALTON. Thank you, Congressman. I think our biggest lesson learned from Olmsted is that funding is a major component of that, because if we had funded that project to full funding, then we would be able to assign contracts, award contractors, hold contractors to a schedule, hold ourselves to a schedule rather than piecemeal the project as we did with Olmsted.

Also, a pretty important lesson learned was the way we actually constructed Olmsted, and using the modeling that we did before to decide to construct is probably something we would take a look at for future projects.

Mr. COMER. Okay. Thank you.

And for the rest of the witnesses, I would like to hear your thoughts about the importance of community involvement and input with regard to Corps-managed projects. Do you have any specific recommendations on how to improve communication and interaction between different stakeholders and the Corps? Anyone?

Ms. MICKELSEN. Well, yes. I will give a prime example. In Pool 4 at the navigation channel, the Corps has a dredge material plan, and I think there are some conflicts with lawyers and how to present plans. Basically, just one example of an instance, rather than having a community approach around dredge material disposal and what to do with that, there was a proposal that the Corps wanted to do to do eminent domain to a third-generation farmer, and basically the lawyer said that the Corps could not consult with or notify that public landowner in advance. So they dropped that plan on their doorstep literally, as well as their neighbors, and that created an uproar.

But what it did show also is that our local communities and our farmers and all those throughout the whole region are removed from the river and why it is managed and how it is managed, and we need to have these continual conversations so we know why we need to invest and what kind of measures the Federal Government needs to do to take care of our navigation channel.

Mr. COMER. Great.

Anyone else?

Mr. STRAWBRIDGE. Congressman, we at the Port of Corpus Christi have to run interference between the community and the Corps often, and what happens is we get phone calls where applications

for Corps permits or adjustments will sit fallow for months or even years, and without somebody else to turn to, they will turn to the Port Authority to assist them with that, and we are happy to do that. Again, we do value the relationship that we have with the Corps at the district, the division, and HQ. But certainly there is room for improvement with the user-friendliness of the Corps with the community.

Mr. COMER. Yes, sir.

Mr. WEAKLEY. Congressman, in my written testimony I talk about a success story when we dealt with our dredging crisis. It took us 10 years, and we spent a lot of time communicating at the district, the division, and the headquarters level, but we have turned the page on that.

In the Soo Lock project, we invoked the same process to try and engage frequently at multiple levels, and we met disappointing results in the same process.

Mr. COMER. Thank you, Mr. Chairman.

Mr. FARENTHOLD. Thank you.

I now recognize the gentleman from Alabama for 5 minutes.

Mr. PALMER. Thank you, Mr. Chairman.

Listening to Mr. Strawbridge's testimony about the frustration over the length of time to get action on dredging the Corpus Christi Channel brings up a number of issues that other members, not necessarily this committee, have brought up about the lack of action from the Corps.

You said in your testimony, Mr. Dalton, that there are more than 100 feasibility studies underway. Is that correct?

Mr. DALTON. Yes, that is correct.

Mr. PALMER. How many of those are over five years old?

Mr. DALTON. I would have to look and see. The majority of those are probably over five years old, without a doubt, because if ——

Mr. PALMER. I would like for you to give us a list of feasibility studies and how long they have been underway, if you could do that in writing. I would also like to know what are you spending on those studies.

Mr. DALTON. If I could, Mr. Congressman, those studies, we characterize those as legacy, a lot of those as legacy studies. AS you probably know, a few years ago we revised our process to complete feasibility studies within three years and $3 million, as opposed to longer. So most of those 100 feasibility studies were started long before the 3/3/3 requirement that is now law, but we will certainly provide you with a list of those. As to how much we are spending on those, I will have to look at that and provide it. Today's standard is $3 million for a feasibility study.

Mr. PALMER. Well, my problem with this is that there are various reports indicating that taxpayers would save anywhere from $3 to $8 for every $1 invested in flood mitigation, for example, and similar types of investments. If you are just going to study the projects or only going to build small parts of it, you are really not helping out there. There is no benefit to the taxpayers.

I will give you an example. There are several examples here, but I am going to give you a few examples of where the Corps spent tens of millions of dollars and has taken decades without actually building anything.

The Corps spent over $80 million on the Morganza Project in Southwest New Orleans and has not yet put a shovel in the ground.

The West Shore Project was in study phase for 42 years—I want to emphasize that, Mr. Chairman—42 years, before the Corps finally issued a project recommendation that authorized construction for 2016. I don't know what they have done as of now.

The impact of the August 2016 flood in Baton Rouge, which this committee addressed, could have been significantly reduced if the Comite Diversion had been built. That is the canal between that river and a deeper, wider channel. That had been proposed for 30 years, and it cost the taxpayers billions of dollars, and the people who were affected by that flood are never going to get over it.

These are just a few examples. The reality is that our nation has approximately 215 disasters that have cost the taxpayers over a billion dollars, and that is just since 1980. When you include the 2017 hurricanes, it will cost our nation nearly $1.5 trillion to pick up the pieces and try to respond to these, where a lot of the problems could have been avoided, could have been mitigated if the Corps would quit studying and start working. How do you respond to that?

Mr. DALTON. So, Mr. Congressman, that goes really to the heart of some of the things that we are trying to change within the organization right now.

First of all, what we did in the past with those approximately I will say 100 studies, some of those that you are referring to, we can't go back and recover that. What we are trying to do is make sure in the future that we don't do the same thing and spend that kind of money on studies.

So what we are doing is we are trying to become a more risk—make decisions more based on risk and uncertainty rather than try to model everything until we get to a 99 percent solution, and we believe that that will certainly help us to get studies done faster and for lower cost.

Mr. PALMER. Let me go back to Mr. Strawbridge and the Port of Corpus Christi. The United States is in a position to dominate the world in energy. It is absolutely critical that our ports be able to handle the shipping that is going to be necessary to do that. It is absolutely critical for our economy.

So my suggestion is, for the good of the country and to conclude my part of this hearing, is that the Corps implement the three-year strategy and that we begin immediately to work. I really think it is a good idea to delegate a lot of these projects down to the state and local level. I think that we will see projects implemented much more expeditiously, and I think it will save us a boatload of money, not to use that metaphor lightly.

I thank the Chairman. I yield back.

Mr. FARENTHOLD. Thank you very much.

We will now go to the gentleman from Montana, Mr. Gianforte.

Mr. GIANFORTE. Thank you, Mr. Chairman.

Director Dalton, thank you for being here today. I appreciate the hard work that the Corps does across the country managing a large, diverse set of projects, and in some cases, like the Houston Shipping Channel, you have done your job to get ready for the

project, and Congress has not done our job in giving you the resources. In other cases you have done your job and Congress has given you the money, and other problems come up.

This is the case with the Lower Yellowstone Intake Project in my home state of Montana. The Lower Yellowstone Intake Project has provided a dependable supply of irrigation water to 58,000 acres and over 400 family farms in Montana and North Dakota for over 100 years. To protect the endangered palette sturgeon, Congress funded a bypass channel and improvement to let the fish circumvent the intake dam and access 165 miles of additional river.

A Federal District Court has granted an injunction against the project, saying it does not do enough for the sturgeon. Certainly, doing nothing does nothing for the fish. I appreciate the Corps' willingness to continue to pursue the project and want to commend your staff in the Omaha district for their level of engagement.

That is what this hearing is about, improving communications. I know that several towns in Montana are also working with the Corps to update their levee systems, particularly the towns of Glasgow and Mile City, and navigating the confusing maze of Federal requirements and funding opportunities, and they need timely feedback from the Corps.

What can we do to improve the process to ensure folks that are trying to get these permits and projects moved along get the necessary feedback they need in a timely way from the Corps?

Mr. DALTON. Thank you, Mr. Congressman. So, we are committed to trying to communicate better with our public so that, in fact, they do have information faster than what we have done in the past. We are looking at different ways to communicate, perhaps using more social media just for general public information. But certainly for those that are working on projects that need our input, we are glad to step up and help them as much as possible.

I commend Mr. Strawbridge. He said that he didn't really think it was necessary to go straight to the headquarters to get a solution. But oftentimes what happens, until we are able to change the culture from what we have, we don't know that problems exist. We don't know that people are not getting feedback that they need until they tell us.

So we would prefer to find out sooner rather than later. Certainly we would say to you and your constituencies that if there is a problem with lack of feedback, we would like to know about that.

Mr. GIANFORTE. Okay, good. And just to follow on a question that the Chairman asked about this Section 203 and 204 delegation authority that you have to allow you to use private-sector firms to do either feasibility or construction, you mentioned that maybe you haven't used it quite as much as you could have.

When can you use it? Is it applicable—is it your understanding that Congress has given you the authority to use Section 203 and 204 for all potential Corps projects?

Mr. DALTON. Yes, sir. I am not aware of any restrictions that would say we cannot use it on certain types of projects. It is just one of the things that we are looking at now, trying to use non-Federal entities to carry out some of the work that the Chairman mentioned that could take place that we started looking at this.

So we have a handful of 203 studies that the non-Federals have taken on, as well as some 204s.

Mr. GIANFORTE. And we have talked about the backlog of feasibility projects that have kind of gone on for decades. What criteria should the Corps be using to determine when to use private-sector firms? Because by your own testimony, you said that using this Section 203 and 204 would lower the cost for taxpayers and allow us to get projects done faster. That seems like something we all should be working towards. When should you be using 203 and 204?

Mr. DALTON. What we wait for is a non-Federal to actually request or say that they have an interest in taking on a project like that. So the complexity associated with it is still the environmental requirements, because a 203 is provided to our Assistant Secretary for Civil Works, and if a decision is made to move forward with that project, now it becomes a Federal action.

Mr. GIANFORTE. So I understand that if there is a private-sector entity willing to take on that delegation from the Corps, you are game.

Mr. DALTON. For a feasibility study and construction.

Mr. GIANFORTE. Thank you.

Mr. Chairman, I yield back.

Mr. FARENTHOLD. Thank you very much.

We will now recognize the gentleman from Florida, Mr. Ross.

Mr. ROSS. Thank you, Chairman; and I thank the witnesses for being here and appreciate your testimony and presentations today.

I happen to be one of the seven House members who represent the Tampa Bay area. Mr. Dalton, I want to say thank you to you and the Corps for, over the past few months, helping to secure new start funding for the Port of Tampa to embark on the Big Bend Project. I hope that when this is completed expeditiously, that it will be an example of a good example of a partnership.

The Tampa Bay Port Authority has expanded tremendously, and in addition to cruise ports, cargo ports are doing containers, we have expanded with complementary ancillary rail for distribution of cargo. It is coming along. However, this has been going on for more than 15 years.

I guess my first question to you, Mr. Dalton, is what can we do to advance the President's goal of finding ways to get project to construction faster? I know this is kind of piggybacking on Mr. Gianforte's question earlier.

Mr. DALTON. There may be a number of things that we could do to move those projects along faster. The first is that we have to make sure that we have a completed design for those. So we are looking at the incentives. The Administration has introduced incentives and grants as perhaps ways that we could look to move projects along faster. We don't know what the fruits of that will be yet because it is something not yet tested with us, but we are looking at different means of financing projects because we think that is part of the key to move projects along faster than they have been.

Mr. ROSS. And, Mr. Strawbridge, how would you feel about that? Do you have any suggestions in addition to that to move these construction projects faster?

Mr. STRAWBRIDGE. Well, one of the challenges that we face, Congressman, is when we advocate for us to execute on the work, the Corps says that is fine, but then we are responsible for the entire cost of the project. We don't think that is fair. What we are trying to do is help out the Corps in our district in the post-Harvey recovery environment. The Corps district, appropriately so, is focused on flood risk mitigation and flood control projects. Those are life-saving projects. We are saying let us focus on those projects that create more livelihoods, like the deepening and widening of the Corpus Christi Ship Channel, without us having to bear the entire cost of the project.

Mr. ROSS. There appears to be a lot of time spent in the planning and development stage, too much time. I guess my question is, is there a duplication of engineering and studying, and can that be consolidated in an effort to try to save time?

Mr. STRAWBRIDGE. I believe it can be, sir, absolutely, I think through a separation or a division, a divide and conquer approach. Let the Corps be a regulatory and oversight permitting agency. Let us do the design, let us do the ——

Mr. ROSS. I mean, there are protocols. There are standards in the industry, and I think what is important is that technology has advanced to such a degree that we ought to be able to do these preliminary development and engineering studies a lot quicker and be accepted from one agency to the next.

Would anybody else like to comment on that?

Ms. MICKELSEN. We found that the Army Corps in the districts on the Upper Mississippi have been doing that now with ecosystem restoration projects, thinking the way you are doing, can we move parts of the design forward while we are on this planning part that we have kind of figured out, and it is going really well when they are doing that. They don't always do that, but if they could apply that metric to other projects, I am sure that would go well.

Mr. ROSS. I appreciate that.

Back to you, Mr. Dalton. I also represent an area, or have in the past, of the phosphate industry. The last vestige of this industry is just right south of my district. Quite frankly, we are in a competing global market with this, and phosphate feeds America. I mean, it feeds the world with fertilizer. There is an issue about a CWA 404 permit, that it takes six to eight years for the Corps to issue it, but yet the state can do the same thing in three to four years. Is there any explanation for that, and is that something that could be resolved or expedited by consolidation of efforts in studies?

Mr. DALTON. Congressman, I am not familiar with that particular issue and that permit. I will certainly go back and try to find out ——

Mr. ROSS. Thank you.

Mr. DALTON.—what is taking so long.

One thing I would say here is that we would like to implement things like, for instance, design build, and you can add studies into those, as Ms. Mickelsen said. But the way we currently authorize projects, they are authorized in different phases. When we were down in New Orleans with the post-Katrina work, we issued the largest design build contract that Civil Works had ever issued. That was because we had funding up front, which means that you

could actually start that project while you are actually designing it, or maybe in some cases finishing the study associated with it. You can't do that the way we are currently authorized for our projects.

Mr. ROSS. So it sounds like we can consolidate the design and engineering, but it all comes down to a function of funding to get it started.

Mr. DALTON. In our case, it is also the authorizations.

Mr. ROSS. Right.

Mr. Chairman, I yield back. Thank you.

Mr. FARENTHOLD. Thank you very much.

I notice the gentleman from Michigan, Mr. Mitchell, has arrived. He is a full committee member but not a subcommittee member. Therefore, I would like to ask unanimous consent that he be allowed to participate in this hearing.

Without objection, so ordered.

I will now recognize the other gentleman from Florida, Mr. DeSantis, for 5 minutes.

Mr. DESANTIS. Thank you, Mr. Chairman.

In Florida we have a really significant problem with Lake Okeechobee. There is a dike surrounding the lake that is at risk for failing, which obviously impacts the people who are close to there; but then also the fact that the Army Corps has sent billions of gallons of polluted water to both coasts of Florida. That has degraded the local environment and harmed the local economies. In fact, in 2016, there was a major algae bloom. It shut down some of the beaches for a time, really knee-capped the fishing industry and tourism.

So we really want to solve that problem in Florida, and we have something now called the EAA Reservoir Project, and this is something that the officials in Florida have been working with the Army Corps on now for several years. In July of 2016, we had the Assistant Secretary of the Army say that the Corps was ready to start the project as soon as the non-Federal local sponsor was ready. So in the following legislative session, the Florida legislature passed legislation directing the local sponsor to expedite the project, setting aside $800 million for the state share of the cost, signed into law May of 2017, and the Corps obviously was aware of the state legislation because it was invited to participate in a committee hearing. It actually provided state legislators with information during that hearing.

So non-Federal local sponsor notified the Corps of its desire to move forward with the project on June 26, 2017. At the Corps' request, the non-Federal local sponsor utilized the 203 process, which was authorized in WRDA from 2014, and it allows the non-Federal local sponsor to prepare a feasibility study on its own and obtain technical assistance from the Corps. They pay for it.

The state of Florida tried to do that, but for months the Corps dragged its feet and would not identify the areas for which it would provide technical assistance. It was only within the past few weeks that the Corps has finally agreed to a scope of work, but the large majority of the project planning was done without the requested assistance from the Corps.

What I would like to do is I have a letter from the South Florida Water Management District Executive Director, Ernie Marks. It

has the timeline of the correspondence with the Corps. Without objection, I would like to enter this into the record.

Mr. FARENTHOLD. Without objection, so ordered.

Mr. DESANTIS. So my question for you, Mr. Dalton, is given the significance of this project to Florida, are you satisfied that the Corps has acted with the deliberate speed necessary so that we can forestall another season with these harmful discharges as soon as possible?

Mr. DALTON. So, Mr. Congressman, Section 203 was not something, as I mentioned before, that we had utilized a lot in the past. So the guidance that we created was almost done at the same time the South Florida Water Management District submitted the request to do the 203. Our initial response back, I think, had more things identified that we could not do as opposed to what we could do. We have since looked at that and tried to turn that around. So it has been a learning process for us. I think we are on a good path now to implement Section 203, and we certainly are sensitive to the releases from the Herbert Hoover dike going out to the estuaries as not something certainly desired by anyone.

Mr. DESANTIS. So you think that the Corps now is in a position with 203 that you will be able to move more quickly in dealing with these projects?

Mr. DALTON. I absolutely do. Yes, sir.

Mr. DESANTIS. Okay. Now, is the Corps prepared to act quickly upon receipt of the report on the EAA Reservoir from the South Florida Water Management District and get it to Congress within the 2018 WRDA cycle? We think it is very important that that be teed up for WRDA this year. If it is, I think that will be very beneficial to what we are fighting for down in Florida.

Mr. DALTON. With that, I would have to look at the schedule and get back with you. The reason I say that is because the project goes from the non-Federal over to our ASA to make a decision before it gets to Congress. I haven't looked at that schedule yet to say whether it meets the WRDA 2018 schedule, but I certainly will do that.

Mr. DESANTIS. Well, I would request that you do that. And I would also request that if it doesn't, that we take some steps to get that done, because if we can get it in 2018 WRDA, I think we are going to be in a much better position to be able to solve this problem, which I know you guys are interested in solving because you are sick of hearing us talk about it, and I know people down in Florida want to solve it. So if you can look at it, figure out where we are, and if we are not where we need to be, let's get it to where we need to be so we can get it in this cycle. I think that would be very, very important for Florida, and I thank you for your consideration.

I yield back.

Mr. FARENTHOLD. Thank you very much.

I will now recognize the gentleman from Michigan for 5 minutes.

Mr. MITCHELL. Thank you, Mr. Chair.

I want to thank the committee members for their acceptance of my participation here today.

The reason I came for this hearing is a significant issue in Michigan in my area and in this country is the Soo Locks. The reality

is that the extent of the cargo that goes through the Soo Locks, the economic impact on this country is huge. At this point in time, 90 percent of the tonnage that transits the Soo Lock goes to the Poe Lock. I would have to look here. The Poe Lock was opened in 1969.

In 1986, Congress authorized the building of a new, an additional 1,200-foot lock for redundancy and some resiliency to avoid the issues that are created should the Poe Lock have an issue. Thus far, surprisingly, or I guess disappointingly, nothing has happened on that.

Mr. Weakley, you expressed some concerns in your testimony about the economic analysis being done by the Army Corps. Could you highlight for me just the key components of that briefly so we can continue on with questions, sir?

Mr. WEAKLEY. Yes, sir. Briefly, I will break it down into two areas. One is what I call comparison of the construction costs, and the other is the lock inflation.

So what the Corps is doing in their analysis is they are comparing the full lock costs to one-third of the rail construction costs. What they should do is compare the full cost of constructing a lock with the full cost of constructing a rail alternative.

Mr. MITCHELL. Well, my understanding is a rail alternative is somewhere between $6 and $10 billion, depending on how much we have to project in terms of being carried on a rail line, because there isn't adequate rail coverage in that area. Is that correct?

Mr. WEAKLEY. Yes, sir. We have heard an estimate range from $4 to $10 billion from the Corps' economist, but the Corps has a contractor that estimated the cost at $6.5 billion for the rail alternative.

Mr. MITCHELL. Let me stop you there real quick.

Mr. Dalton, could you explain this to me? I mean, my background is economics and public policy. Why is it that the Army Corps would say we are only going to consider a third of what the acknowledged numbers are as we compare the economic viability of building another lock? Could you explain that to me?

Mr. DALTON. Probably, sir, not to your satisfaction, because it is one of those areas, quite honestly, talking with the economist, that I have a similar question to try and understand. We recognize to replace the lock it is somewhere between $4 and $10 billion. And the $2 billion that is currently being used, my understanding of that is looking to see if, in fact, you had to use transportation to move, in the absence of the lock, that part of this cost would be accepted by or handled by what you have in reserve at storage yards, spare capacity I would say.

Mr. MITCHELL. Let me stop you, Mr. Dalton. Have you ever been to the Soo Locks?

Mr. DALTON. I have. Yes, sir.

Mr. MITCHELL. Have you looked to see if any storage capacity is there? I am from Michigan, as you know, and I am trying to figure out how they think we are going to stack up— let me stop for a second.

Mr. Weakley, between the two of you, have you looked at the economic impact should the Poe Lock go down for any period of time? What is the economic impact?

Mr. WEAKLEY. Eleven million Americans will be unemployed, and those layoffs will begin within two weeks of a long-term outage.

Mr. MITCHELL. Mr. Dalton, how have you considered that in your economic analysis, or the Army Corps? How is that computed into the economic analysis?

Mr. DALTON. I will have to take a look to give you a more complete answer on the economics associated with it and how we are doing the economic analysis. What I would say is that the questions that Mr. Weakley are bringing up is something that we are also questioning within the Corps of Engineers, taking a look at that economics. A validation report is actually being done.

I think you mentioned that you just found out a couple of weeks ago or so that, in his words, there is a fatal flaw. So we will take a look at that. I will take a look at that.

Mr. MITCHELL. I suggest that considering a third of the cost of putting in the rail infrastructure, never mind the delay in doing that because it does not currently exist—if you look at the DHS report, they indicate the Office of Cyber and Infrastructure Analysis in the case that there is not sufficient rail infrastructure at the Soo Locks to address the issue if the Poe Lock fails, if it shuts down for any period of time.

As Mr. Weakley says, the reality is we will lose 11 million jobs within two weeks, or start losing them within two weeks of the Soo Locks coming down. So I am trying to figure out how—I would like to ask, if you would, sir, that you gather some of your economists who think that they have done a good job here. I would ask my staff to get with you. I want them to wander over. Please tell them I am an economist. I would love to talk to them about what the numbers are, because I think they fall far short of addressing the economic impact of Soo Locks, and the delay is now unacceptable to get the lock, an additional 1,200-foot lock built. We have now reached a point where we can no longer tolerate this kind of risk.

Mr. DALTON. Yes, sir.

Mr. MITCHELL. Thank you, sir.

Thank you, Mr. Chair.

Mr. FARENTHOLD. Thank you.

I have a few more questions, so we will do a second round of questions, but it doesn't look like it is going to take too long.

I want to start off and talk a little bit about the Harbor Maintenance Trust Fund. Years ago, Congress set up a user fee for funding the maintenance of our harbors, rivers, and the like. Unfortunately, that money does not all go to harbor maintenance. In fact, our appropriations committee has taken quite a bit of that back and is spending it on other things.

Mr. Weakley, I have heard from folks within your industry that they would even be willing to see an increase in that user fee if the money were actually devoted for what they were told it was going to be devoted for in the beginning. Is that accurate within the industry?

Mr. WEAKLEY. Yes, sir, not just from the Great Lakes perspective but nationwide. We led a coalition called the RAMP Coalition, Restore America's Maritime Progress, to free up some of that trust fund, to set our trust fund free. Since 1986, that trust fund has ac-

cumulated over $9 billion in excess collections. It spends about half of what it takes in, although I will say within the past couple of years, thanks to congressional intervention, more of that is being spent, although we are still significantly less than the revenues it takes in on an annual basis.

Mr. FARENTHOLD. Do any of the other members of the panel have any suggestions for ways the Harbor Maintenance Trust Fund can be improved or better used?

Mr. STRAWBRIDGE. Certainly, Congressman, a mandate that it be used for what it is collected for would be a good start. I know the American Association of Port Authorities, of which the Port of Corpus Christi Authority is a member, has taken a formal position in that regard, and we support the AAPA's position on the HMT.

Mr. FARENTHOLD. So, when I came into Congress, one of the things we did was ban earmarks. In the past, a lot of these big projects were actually funded with congressional earmarks. What sort of change have you seen, Mr. Strawbridge— and I will ask Ms. Mickelsen the same question— since the earmark ban? Has it been good? Bad? Indifferent?

Mr. STRAWBRIDGE. Certainly, Mr. Chairman, infrastructure in this country, for the most part, prior to the abolition of earmarks in 2010, much of the infrastructure in this country was built on earmarks. And in the absence of earmarks, I think the unintended consequence is that infrastructure projects take much longer and have much less funding associated with them. We certainly see that at the Port of Corpus Christi. Twenty-eight years to get us to where we are today, and we still have not turned ——

Mr. FARENTHOLD. Is it a dollars and cents or timing issue, or both? I notice you have the Federal share on the Port of Corpus Christi is over $100 million. You have about 10 percent of it this year, and basically you are just hoping you continue to get that stream.

Mr. STRAWBRIDGE. Well, it is actually over $200 million. The Federal portion today is $225 million. Our portion is $102 million. We have worked hard to raise our money. We have our money ready to go, and it has only been in the last month that we were included in the President's budget. That still is not an approved budget, so we don't know what the actual appropriation will be.

But if it goes in that same drips and drabs, this project will take over another decade to execute on. That would be nearly 40 years from the time Congress mandated we first study this project to actual execution.

Mr. FARENTHOLD. I am not a dredging expert, but I would imagine to dredge the—how long is the ship channel?

Mr. STRAWBRIDGE. We have 29 miles of ship channel that are ——

Mr. FARENTHOLD. I imagine it doesn't take 10 years to dredge that. So you have cost associated with getting the dredge out there, dredging a few miles of it, and see you next year.

Mr. STRAWBRIDGE. That is exactly right. In the absence of those targeted funds, the Corps will only contract for what has been appropriated. We believe that this contract, unconstrained by funding, we could execute on the entire project in four years or less.

Mr. FARENTHOLD. Do you think it would be cheaper?

Mr. STRAWBRIDGE. Certainly.

Mr. FARENTHOLD. Ms. Mickelsen, do you have anything to weigh in on the topic?

Ms. MICKELSEN. Yes, I do. I agree completely that it would be less expensive. I think the ban on earmarks has had the opposite effect on what we wanted. Maybe it is taking a re-look at earmarks. But it has prevented us from doing really important work. For example, the navigation ecosystem sustainability program, we have it authorized, we have it ready, but it depends on a congressional earmark. And instead of having a public forum on what our nation's priorities for funding are, we are depending on biases within the administration, within OMB or the Corps, and you have to try to inform all those levels, whether it is the districts, the division headquarters and OMB, and then you are relying on these cost/benefit analyses that are not reflective of the actual infrastructure needs.

So it is a big problem, and it is affecting the Corps' budget. The Corps is set up as a line item. Any line item budget, whether it is going to a district or whether it is a completely regional program with national benefits.

Mr. FARENTHOLD. Great.

Ms. Plaskett, do you have some more questions?

Ms. PLASKETT. Sure.

One of the things I wanted to go back to, Mr. Dalton, when we talked about the responses and some of the projects that you are working on, can you talk with me a little bit about the hurricane season that is going to be coming up on us? It is less than three months away. Almost all climate scientists agree that this change is happening. I have seen reports that say that this hurricane season is going to be as severe or more severe than last year's.

Has the Army Corps had meetings with other Federal agencies to coordinate plans and make other preparations for the possibility of what the season may look like?

Mr. DALTON. Yes, Congresswoman. What typically happens with us as hurricane season approaches is we have tabletop exercises with other Federal agencies. FEMA is often the lead for this collaboration. We talk about what we think, the possibilities of what could happen. We look at resources. One of the things that the Corps typically does is ensure that we include all of our districts or divisions and not just those that might be in affected areas, probably for the obvious reasons, because those in affected areas are not ones that we can count on immediately following an event.

Ms. PLASKETT. But when you have the tabletops to go through how you respond, do you include those people from those areas?

Mr. DALTON. We include local, like flood control ——

Ms. PLASKETT. I don't know, because I know one of your problems with the blue roof was that you didn't know how to find addresses in the Virgin Islands, and that is why you couldn't get to them. So are people involved who can present to you the issues that may be unique to an area so that you can address those on the tabletop?

Mr. DALTON. We do include some members of the community, mostly from the emergency offices, EOCs. But I will certainly take

a look to see if we should have done more than what we did, obviously, from what you are saying.

Ms. PLASKETT. Okay. Thank you.

And, Mr. Weakley, in your testimony, I wanted to know how you experienced communication issues working with the Army Corps division and headquarters.

Mr. WEAKLEY. Well, I will tell you that at the district level it has been outstanding. At the division level it hasn't been as good as the districts. To Mr. Dalton's credit, we met with him personally. In fact, he set up the dispute resolution meeting, and that is where we discovered the two fatal flaws.

What I have learned through my experience is that it is kind of incumbent on us to knock on the door, and to the Corps' credit the door is usually opened and answered.

Ms. PLASKETT. And is that door open at the local level, or is it at the regional or headquarters? Where do you find that it is easier to get that done?

Mr. WEAKLEY. To be frank, it is open at all levels, but the closer we are to Sault St. Marie, Michigan, the better they understand it, the more supportive they are. At the division level there is a significant drop-off. At the headquarters level there is a marginal drop-off.

Ms. PLASKETT. Sure.

Mr. Strawbridge, what has been your experience?

Mr. STRAWBRIDGE. At the district level I think our relationship is good. We also have Corps personnel in Corpus Christi itself.

One of the challenges we see, though, is the billet for the commander at the district, it is a three-year billet, and usually the commanders that are put in that, it is their last billet before retirement. We see that that three years is probably not enough, not a long enough billet to get the things done that we need done. We need more leadership, consistent leadership at the district level.

We have seen a marked improvement in our relationship at headquarters, and frankly we have had to go to headquarters to get guidance because we just don't get the responsiveness that we need at the local or regional level.

Ms. PLASKETT. Thank you.

Ms. Mickelsen, you were shaking your head yes. So you would agree as well?

Ms. MICKELSEN. I would agree as well that we often have to go to headquarters to get resolution on issues, and I think most of that is because, from our perspective, that is where the decision-making happens, and that influences what districts are able to do.

We have also seen that rivers are complicated and these issues are complicated, and once we get district commanders and division commanders that are two to three years in that get it and understand the need for it ——

Ms. PLASKETT. When they finally get it, then they have to go.

Ms. MICKELSEN.—then they have to go.

Ms. PLASKETT. And then the indemnification, I know you had concerns with that.

Ms. MICKELSEN. Yes, substantial concerns with that. Our states will not sign on to agreements if that indemnification clause is in

there. I think it is an additive to also being in perpetuity, which is not in law; that was a Corps decision.

Ms. PLASKETT. Thank you.

Mr. FARENTHOLD. Thank you. And you were talking about disaster relief, Ms. Plaskett. I do have a couple more questions along those lines. I think you might find these useful for your situation in the USVI as well.

Mr. Dalton, in your opinion, should fully authorized Corps projects located in disaster-prone areas be prioritized and fully funded to have the work begin immediately?

Mr. DALTON. I think any time we identify a risk to the public, and in most cases those projects you are referring to would be risk to the public, I think, yes, they should be fully funded and prioritized to reduce public risk.

Mr. FARENTHOLD. And do you think the $96 billion backlog of Corps projects, not including the disaster recovery projects like Harvey, Irma and Maria, affect the Corps' ability to assist Texas, Florida, the Virgin Islands and Puerto Rico in their recovery efforts? I mean, do you all just have too much on your plate?

Mr. DALTON. I don't know each one of those $96 billion projects, but I would say most of those projects are projects that affect, or at least at one time, when they were authorized, affected the public safety. We are looking at those projects to determine which ones of those we should actually probably de-authorize, if any, because of the age of them, and maybe circumstances have changed. But I would say the majority of those projects are life safety related.

Mr. FARENTHOLD. All right. And along those same lines, during Hurricane Harvey there was a great deal of flooding in Houston, and there has been quite a bit of publicity associated with the releases of water from the Addicks and Barker reservoirs that the U.S. Army Corps of Engineers is involved with. We have talked about it a lot in the media, but could you give us a brief synopsis from the Corps perspective of what happened there?

Mr. DALTON. Addicks and Barker are a couple of dams that were put in place to reduce the risk to Houston, downstream Houston. So when those projects were first, I believe, constructed, there was not the development upstream of the projects that exists today. So we have identified or had identified real estate that was in the flood pool of Addicks and Barker, but over time the development occurred. I believe that people were not notified properly that they were in an area that would be inundated depending on what the flood risk situation was, or the flooding was within the Addicks and Barker reservoirs.

So in many cases, I don't think people knew that they were living

---

Mr. FARENTHOLD. Do you know whose responsibility it was to notify them?

Mr. DALTON. I think it was the real estate agent's responsibility to notify them, that they sold the homes and they were at one time identified as being in a flood pool.

Mr. FARENTHOLD. When you all decided you were going to have to release the water, how did you all communicate that to the folks beforehand? How long, and can you talk about that process? This hearing is about communications. From what I hear from my

friends in Houston, my colleagues who represent Houston, they were not given a lot of notice about that and it really caused some problems.

Mr. DALTON. So, Mr. Chairman, as you know, that whole issue right now is in litigation. So ——

Mr. FARENTHOLD. You have to be careful what you say, I guess.

Mr. DALTON. Absolutely. But from what I understand, and we have had conversations with our folks locally, is that there had been communications with the local emergency management officials, not necessarily directly with the public, but that is who we normally communicate with.

Mr. FARENTHOLD. I have about a minute left, Mr. Dalton. What would you like the public specifically in Houston to understand about the decision the Corps made with respect to those water releases and the choices the Corps made about communicating with them?

Mr. DALTON. Right now, the Corps was in a place to where in order to operate those projects to do what they were intended to do, which was to reduce flood risk to Houston, we actually held water within the operations requirements of those dams, and you get to a point where you start having overflow going around through the spillway. If we didn't release water to Houston or contained it, the water would be released anyway. So at that point, those projects, the capacity of those projects was probably just simply exceeded.

Mr. FARENTHOLD. All right. Thank you very much.

Did you have anything else, Ms. Plaskett?

[No response.]

Mr. FARENTHOLD. I would like to thank our witnesses for being here. I think we had a very productive conversation. You have given us some thoughts on ways we can reform the process.

This is the Oversight and Reform Committee. Several of us on this committee, or subcommittee, also serve on the Transportation and Infrastructure Committee, which is also involved in this project, and we will make sure the appropriate folks on that committee are able to review the testimony and the transcript of today, and hopefully we will be able to make a difference from this hearing.

Again, thank you all for being here.

The hearing record will remain open for two weeks for any members to submit written opening statements or questions for the record. I would appreciate you all responding to any of the questions we forward your way.

If there is no further business, the subcommittee stands adjourned.

[Whereupon, at 11:34 a.m., the subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Statement for the Record
The Honorable John R. Moolenaar
Member of Congress
Committee on Oversight and Government Reform
Subcommittee on Interior, Energy, and Environment
March 6, 2018

Chairman Farenthold, Ranking Member Plaskett, and members of the subcommittee, I appreciate the opportunity to submit my statement as you examine how the U.S. Army Corps of Engineers can improve communication and interaction with local communities.

I would like to highlight two important projects where there have been significant issues in communication between the Corps and local communities: the Soo Locks Replacement and Modernization project and the Brandon Road Lock and Dam project.

American iron ore powers our nation's economy.

And nearly all of that ore passes through the Soo Locks in Sault Ste Marie, Michigan.

The Locks are operated by the Army Corps of Engineers, which has done an outstanding job maintaining the locks, but has not made the construction of a new lock a top priority.

A 2015 report from the Department of Homeland Security clearly lays out what would happen if the Locks were to fail without a new, backup lock in place to handle the lake carriers that deliver ore from the Upper Midwest to manufacturers further south.

The national unemployment rate would rise to over 11 percent, which would be even higher than it was during the last national recession.

States with steel mills and auto suppliers would be badly hurt, and outside of the Midwest, there would be large job losses. In fact, even California and Texas would lose more than 500,000 jobs.

Unfortunately, the cost of a new lock has significantly increased in the more than 30 years since it was first proposed.

The Corps has not taken action because it uses an outdated formula that fails to reflect the actual value of iron ore in our economy.

Iron ore is more than its commodity price.

It is used to build automobiles, refrigerators and other products Americans use everyday.

Iron ore has added value, but the Army Corps' formula for deciding which projects are vital to national security ignores these realities and leaves the country vulnerable to a threat of its own negligence.

The Army Corps needs stop delaying its report and join its colleagues at Homeland Security and rightfully identify the Soo Locks as the Achilles heel of the American economy. It should immediately take action to get this project moving and protect the American people from a catastrophe.

While the Locks are a problem on the northern end of the Lakes, there is also the troubling problem of Asian carp getting close to Lake Michigan through the waterways around Chicago.

The Army Corps just completed one study at Brandon Road and now it is doing another.

This is unnecessary.

The problem is clear.

Asian carp have been found less than 10 miles from Lake Michigan.

This is past the electronic barrier that has been set up to keep invasive species out.

We no longer need studies. We need action.

The Army Corps is putting at risk billions of dollars in tourism, fishing, boating, and risking environmental damage from the introduction of another invasive species.

It is time for the Army Corps to act and stop doing more studies of the same old solutions.

With thousands of public comments in hand, it has more than enough information to move forward on building a barrier that will keep Asian carp out of the Great Lakes and it should begin work immediately.

Thank you.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

December 22, 2017

Mr. Ryan Fisher
Acting Assistant Secretary of the Army for Civil Works
Office of the Assistant Secretary of the Army
108 Army Pentagon
Washington, DC 20310-0108

Subject: Request for Technical Assistance on Development of a Post-Authorization Change Report for the Central Everglades Planning Project

Dear Mr. Fisher:

As I write this letter, the U.S. Army Corps of Engineers (USACE) continues to send damaging discharges from Lake Okeechobee to the Caloosahatchee and St. Lucie estuaries. Both our agencies know that an aggressive implementation of the Comprehensive Everglades Restoration Plan directly aids in addressing this unfortunate and frequent practice.

To that end, on May 9, 2017, Governor Scott signed Senate Bill 10 into state law directing the South Florida Water Management District (SFWMD) to work with the USACE to develop a Post-Authorization Change Report (PACR) for the Central Everglades Planning Project to build an Everglades Agricultural Area Reservoir that will work with other authorized projects to reduce the damaging discharge events significantly. This law directed SFWMD to work with the USACE to initiate the feasibility study on August 1, 2017 and deliver a PACR to Congress by October 31, 2018.

SFWMD initiated written communications with the USACE regarding development of the PACR in June 2017. After two months of option development and evaluation by the USACE, it became apparent the only option that would achieve the timelines set forth in Senate Bill 10 was for SFWMD to develop the PACR and to pay the USACE for technical assistance in its development in accordance with Federal authorizations.

Regrettably, it has been a very slow and disappointing experience trying to reach agreement with the USACE on the scope of work for SFWMD's requested technical assistance. SFWMD sent a letter to the ASA(CW) Office on October 12, 2017 requesting technical assistance and received a timely response from Doug Lamont, the Acting ASA(CW), stating the USACE understandably and fully supported SFWMD's effort to advance this important project to reduce damaging discharges. Since that encouraging

letter there have been numerous roadblocks and course changes by the USACE that will certainly result in project delays.

Section 1126 of WRDA-2016 and the USACE's implementation guidance for this authorization both state if costs are paid by the Non-Federal Sponsor, the USACE can provide technical assistance "relating to any aspect of a feasibility study." However, the technical assistance the USACE will provide is so restrictive that it becomes virtually useless. This is not consistent with Mr. Lamont's letter of "full support." It is also not consistent with the in-depth support the USACE provides in its many other technical assistance programs.

SFWMD has worked diligently to engage the USACE early in our feasibility study so that the PACR development will proceed on a timely basis. While I understand this is a relatively new process for the USACE, our experience over the past several months has been very frustrating and not in keeping with the partnership we have forged over several decades.

The attached summary provides a chronology of communications to demonstrate the delays and changes in course we have experienced during this process with the USACE. I respectfully request your aid in making the success of this effort a priority. I personally invite you to attend one of the public meetings in Florida about this issue where I believe you would gain a better appreciation as to why this issue is so important to Floridians.

Sincerely,

Ernie Marks
Executive Director

EM/rb
Attachment

CHRONOLOGY OF TECHNICAL ASSISTANT REQUEST

1. July 26, 2016: Secretary Jo-Ellen Darcy sent a letter to Congressman Patrick Murphy stating that the Army is prepared to initiate the EAA Reservoir PIR planning quickly, once a non-Federal Sponsor for the study is identified. (Enclosure A-1)

2. June 26, 2017: SFWMD sent a letter to COL Jason Kirk requesting that USACE Jacksonville District (SAJ) work with SFWMD to develop a Post-Authorization Change Report (PACR) for the Central Everglades Planning Project (CEPP) in accordance with the schedule and milestones defined in Florida Senate Bill 10.

3. July 24, 2017: COL Kirk responded to SFWMD's letter indicating that USACE Jacksonville District (SAJ) was evaluating options for providing the requested support; that SAJ would work with the USACE's Vertical Team to ensure the options were legally sufficient, policy compliant and implementable; and that SAJ would get back to SFWMD with a fully informed response by August 31, 2017.

4. July 26, 2017: SFWMD sent a letter to Eric Summa, Chief of the SAJ Planning and Policy Division, requesting how the SFWMD could help: a) support the USACE's efforts to participate in planning an EAA storage reservoir and meet the schedule outlined in SB-10; b) reduce the uncertainty of USACE approval if SFWMD takes a lead role in the PACR feasibility study under Section 203; and c) deliver a plan that can successfully navigate the federal administrative process and Congressional authorization process to allow a 50-50 cost-share on the construction of the recommended plan.

5. August 31, 2017: USACE-SAJ Commander COL Kirk sent a letter to SFWMD outlining five (5) optional courses of action for SFWMD to work with the USACE to plan and implement the EAA Reservoir outlined in SB-10, and recommended Course of Action #3 which was to use the USACE's existing authority to develop a Project Implementation Report (PIR) for the EAA reservoir, noting that the USACE currently did not have a budget to work on this PIR in FY2018 and that the USACE would need to identify a funding source.

6. September 27, 2017: SFWMD sent a letter to USACE SAJ Commander COL Kirk stating that SFWMD had funding to support the USACE's efforts on development of an expedited PACR in accordance with the USACE's Course of Action #1, or to pay the Corps for technical assistance in SFWMD's effort to develop a PACR under authority provided by Section 203 of WRDA-1986, as amended, as outlined in the USACE's Course of Action #4.

7. October 12, 2017: SFWMD Governing Board Chairman Dan O'Keefe sent a letter to Acting ASA (CW) Doug Lamont requesting technical assistance from the USACE on a Section 203 feasibility study to develop the CEPP PACR.

8. October 24, 2017: Doug Lamont, Acting ASA (CW) sent a letter to SFWMD stating that the ASA (CW) Office fully supported SFWMD efforts on the feasibility study and that his staff had been

directed to assist SFWMD with the preparation of a Memorandum of Agreement, and that General Holland, SAD Commander, has been delegated authority to sign the Section 203 Agreement.

9. October 24, 2017: SFWMD submitted a Draft Scope of Work for its requested technical assistance from the USACE.

10. November 9, 2017: USACE SAJ communicated to SFWMD that after review of SFWMD's Scope of Work, USACE SAJ and SAD had determined that they had authority to provide technical service requested for approximately 70% of the tasks, but that they did not believe they had authority to fulfill the remaining 30% of the requested tasks. In the interest of time, SAJ and SAD requested that SFWMD break its Scope of Work into two parts that could be covered under two separate Support Agreements. Support Agreement No. 1 would include those technical assistance tasks that SAJ and SAD believed that they had authority to provide without further coordination with Headquarters.

11. October 26, 2017: SFWMD sent a letter to Tim Murphy, SAJ Deputy District Engineer for Programs and Project Management Division, providing SFWMD's scope of work for USACE technical assistance under Support Agreement No. 1 of the Memorandum of Agreement. At USACE insistence, the Scope of Work was reduced to only include those tasks for which the USACE clearly understood to be within their authority. The important technical assistance tasks dealing with USACE Vertical Team coordination and review, government to government consultation, and Federal Register notifications were deferred to a future Support Agreement No. 2 pending USACE approval of such technical assistance. This SFWMD letter requested that USACE review each task, along with deliverables and schedule, and provide a USACE cost estimate for each task. This letter also requested that the USACE help us meet a target date of approximately mid-November for execution of the Memorandum of Agreement and Support Agreement No. 1.

12. November 29, 2017: SFWMD and USACE executed the Memorandum of Agreement for Technical Assistance Related to Development of a PACR for the Central Everglades Planning Project.

13. December 1, 2017: SFWMD sent a letter to SAJ Commander COL Jason Kirk submitting a signed version of the Support Agreement No. 1, with cost estimates and schedule, for approval and execution. SFWMD requested execution of Support Agreement No. 1 prior to its December 14 Governing Board meeting, as SFWMD was now getting pretty far along in its feasibility study and had not yet been able to engage the USACE for technical assistance.

14. December 6, 2017: At a Quarterly Executive Team conference call, COL Kirk reported that the Corps full vertical team, including the ASA (CW) Office, intended to work together to review each task in SFWMD's Scope of Work for Technical Assistance under Section 203, and determine which could be included in the final scope of work for a Support Agreement. It was at this time that USACE put Support Agreement No. 1 on hold, again delaying USACE's technical assistance

on SFWMD's ongoing feasibility study.

15. December 18, 2016: USACE-SAJ communicated via email and attachment the results of the "Full USACE Vertical Team" review of SFWMD's scope of work for requested technical assistance, which concluded that USACE could not even directly review and comment on SFWMD work products identified in Support Agreement No. 1. Rather, USACE technical assistance would be limited to merely an explanation of USACE policy and examples of compliant work products.

No response received to the Questions for the Record.

Questions for the Record for James C. Dalton, SES
Director of Civil Works
U.S. Army Corps of Engineers

Submitted by Chairman Blake Farenthold
Subcommittee on the Interior, Energy, and Environment

Issues related to the continuation of the Santa Paula Creek Channel

Because of the potential for flooding along the Santa Paula Creek channel, the U.S. Army Corps of Engineers (USACE) began construction of the flood control channel at Santa Paula Creek in June 1997. The project included removal of the existing channel and the creation of a new channel to increase capacity. The 2012 Draft Supplemental Environmental Assessment/Addendum documents less than significant modifications to the June 1995 Final Environmental Impact Statement/Environmental Impact Report (1995 EIS/EIR) and subsequent Environmental Assessments for the Santa Paula Creek Flood Control Project. It appears there has been little to no progress on the project over the past five years, allowing the potential threat of flooding to continue. To move forward with the project, USACE must meet with the National Oceanic and Atmospheric Administration (NOAA) to consult and discuss operations and maintenance of the project.

Questions:

1. **(Dalton)** What action has the USACE taken to move the Santa Paula Creek Channel project forward?

2. **(Dalton)** Has USACE been in contact with NOAA regarding the Santa Paula Creek Channel Project? If so, what was the conclusion of these discussions? If not, why not?

3. **(Dalton)** Further, what is the timeline and timeframe for completion of the Santa Paula Creek Channel Project moving forward?

Questions for the Record for James C. Dalton, SES
Director of Civil Works
U.S. Army Corps of Engineers

Submitted by Rep. Gary Palmer
Subcommittee on the Interior, Energy, and Environment

How many outstanding feasibility studies that are more than 5 years old? Please provide a list.

How much is the Army Corps currently spending on all outstanding feasibility studies?

Hearing "Get-Backs"
(Questions asked verbally during the hearing)

Questions for Mr. James C. Dalton, Director of Civil Works, US Army Corps of Engineers

1. **Question from Del. Plaskett regarding USACE disaster recovery efforts in the US Virgin Islands:** Do you have any reasoning why debris removal was slower in St. Thomas and St. John, where the Army Corps was responsible for it, as compared with the island of St. Croix, where the local government was responsible?

2. **Question from Rep. Palmer regarding the time and cost of preparing for and undertaking USACE projects:** Please provide a list of ongoing feasibility studies, as well as their duration and cost.

3. **Question from Rep. Ross regarding the phosphate industry and the Clean Water Act permitting process under Section 404:** Why does it take six to eight years for the Corps to issue a CWA section 404 permit, when a State can do the same in three to four years? Is this something that can be resolved or expedited by consolidation of efforts in studies?

4. **Question from Rep. DeSantis regarding USACE perpetration process for the EAA Reservoir project:** Is the Corps prepared to act quickly upon receipt of the report on the EAA Reservoir from the South Florida Water Management District and get it to Congress within the 2018 WRRDA Cycle?

5. **Question from Rep. Mitchell regarding economic impact calculation methods employed by USACE in specific regards to the closure of part or all of the Soo Locks:** Has the Corps accounted for the economic impact of 11 million lay-offs in their economic analysis? If not, why?

