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DIGITAL ASSETS,
FINANCIAL TECHNOLOGY AND INCLUSION
SUBCOMMITTEE ON CAPITAL MARKETS

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THE BORDER, AND FOREIGN AFFAIRS
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INFORMATION TECHNOLOGY, AND GOVERNMENT INNOVATION

SELECT SUBCOMMITTEE ON THE WEAPONIZATION
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January 9, 2024

The Honorable Sam Graves
Chairman
House Committee on Transportation &
Infrastructure
Washington, DC 20515

The Honorable Rick Larsen
Ranking Member
House Committee on Transportation &
Infrastructure
Washington, DC 20515

The Honorable David Rouzer
Subcommittee Chairman
House Committee on Transportation &
Infrastructure
Subcommittee of Water Resources and
Environment
Washington, DC 20515

The Honorable Grace F. Napolitano
Ranking Member
House Committee on Transportation &
Infrastructure
Subcommittee of Water Resources and
Environment
Washington, DC 20515

Dear Chairman Graves, Ranking Member Larsen, Subcommittee Chairman Rouzer, and Subcommittee Ranking Member Napolitano,

As the Transportation and Infrastructure Committee welcomes input on this Member's Day on a variety of topics of the upcoming year, I respectfully submit comment on the Water Resources Development Act. For years, this bipartisan bill supported vital projects throughout my district from sweeping port infrastructure to river and dam renovations. I will be submitting my requests through the portal but would like to highlight a few of the issues today.

1. Ensuring payment and performance protections for water infrastructure projects, H.R. 1740
 - I, along with Mr. Bost, propose to amend the Water Infrastructure Finance and Innovation Act (WIFIA) (33 USC Ch.52) to apply a policy solution that would ensure all water infrastructure projects using financing authorized under WIFIA, including the Corps Water Infrastructure Financing Program (CWIFP), have adequate protections for workers, subcontractors, suppliers, and taxpayers.
 - The proposed policy solution would have the Secretary of the Army or the EPA Administrator, as appropriate, ensure WIFIA-financed water infrastructure projects have payment and performance security protections by requiring surety bonds if the project is not subject to State or local payment and performance security requirements. If a State

has requirements for security protections of at least 50% of the construction cost, the Secretary or the Administrator must accept the State requirements. Otherwise, the project would be required to follow protections in the Federal Miller Act, which has been applied to all public works contracts greater than a given dollar threshold (currently, \$100,000) for nearly a century. This would ensure common protections are applied for the Federal interest with respect to Federal funds and other project risks related to design and construction.

- This policy solution is currently applied to transportation projects that use the Transportation Infrastructure Finance Innovation Act (TIFIA) program based on legislation I led. Congress overwhelmingly supported the adoption of the policy for TIFIA as shown by way of a unanimous floor vote, 97 – 0, to include the provision in the Infrastructure Investment and Jobs Act (IIJA). Similarly, the language was included in the House-passed transportation bill after the policy was adopted in a bipartisan en bloc amendment that passed by voice vote. The WIFIA policy solution mirrors the TIFIA solution, thereby maintaining parity between the two programs.
- For nearly a hundred years, the federal government has recognized the importance of requiring performance and payment bonds to protect its public works projects. Bonds play a vital role in ensuring that project completion will not be threatened by financially-distressed contractors; subcontractors and suppliers receive prompt payment for their labor and materials; projects are delivered within budget and on time; and, as shown by an Ernst and Young (E&Y) study, overall project cost savings. Over 95% of all public projects require bonding under either the Federal Miller Act or state-law equivalents (collectively the Miller Acts). However, the applicability of the Miller Acts' bonding requirements is not always clear on newer forms of project procurement, specifically including public-private partnerships (P3s). Therefore, the increasing trend of using P3s to procure and deliver water infrastructure could lead to a substantial amount of federally-financed projects that do not maintain the same level of protections that have been required on public infrastructure projects over the past century.
- This loophole/gap for newer forms of project procurement, which have the same risk as traditional projects, if not greater, leaves workers and taxpayers exposed to unnecessary risks. Without these protections, in the event of a contractor default, the project may come to a screeching halt for an indefinite period, leaving subcontractors and workers without pay and forcing states, and importantly, taxpayers, to absorb the additional costs of rebidding, restarting, and finishing the project.
- I propose to amend WIFIA to adopt a policy solution that would ensure all forms of project procurement for water infrastructure using WIFIA-authorized financing, including P3s, utilize the traditionally required protections for workers, subcontractors, suppliers, and taxpayers, ensuring parity for all infrastructure projects.
- Finally, aside from performance and payment security, surety bonding provides a number of additional benefits to public infrastructure projects. Ernst and Young performed a study, "The Economic Value of Surety Bonds," that highlighted a number of these additional benefits, which include, but are not limited to:

- i. Bonded projects are more likely to be completed on time or ahead of schedule than unbonded projects. What's more, unbonded projects are 10 times more likely to default than bonded projects.
 - ii. Bonded projects cost less than unbonded projects. 75% of project owners report that surety bonding reduces contractor pricing by an average of 3.2%
 - iii. If a contractor defaults on a bonded project, surety companies intervene, lowering the cost of project completion by 85% and reducing the time to complete by two times.
- 2. Better Use of Dredge Materials
 - Dredge Materials (primarily sand) should be used to better our shorelines rather than being thrown out and not being used. Dredge materials are often disposed of which are not environmentally friendly or eliminated in a way that is not the most effective for the Corps.
 - I ask the committee to value the environmental impact of moving dredge materials from location to location without meaning. I am told that such excess movement is "least cost alternative", but it would be better for the environment and serve a better future if it was used for shore maintenance or other recovery efforts.
 - Congress must value environmental impacts that may not show on the balance sheet. Such a policy must list environmental impacts and then refer to them as an additional cost saving technique rather than ignoring the future of climate.
 - I understand that there is rulemaking on how to broaden how Corps considers costs, benefits, impacts, and alternatives, but how can Congress ensure that dredge materials are included in this concept?
- 3. Continuing Authorities Program Funding Limit Raised
 - The U.S. Army Corps of Engineers (USACE) Continuing Authorities Program (CAP) is a group of nine legislative authorities under which USACE can plan, design, and implement certain types of water resources projects without additional project specific congressional authorization. The purpose of the CAP is to plan and implement projects of limited size, cost, scope, and complexity.
 - There is a limit on spending that is currently at \$10 million but should be raised to \$12.5 million or at least the cap should be adjusted with inflation.
 - The Corps needs flexibility to spend the money necessary to address the issues under CAP and the current limit is harmful to the success of the Corps.
- 4. Harbor Maintenance Trust Funds
 - I ask for visibility on the Harbor Maintenance Trust Fund.
 - There is a percentage set aside for Small Harbors but Congress doesn't know how much is going to which Small Harbors. I am concerned that not enough is going to the Small Harbors in New England. Congress wants to know which harbors are the small harbors that are benefiting from this.
 - This was created as a set-aside in WRDA '20 but the limits/rules haven't been followed for any of the percent targets that was put in law.
 - Congress must ensure that the rules are followed and not seen as optional.

In addition to policy changes, I am looking for help on moving a few projects forward.

1. New Charles River Dam

- The New Charles River Dam is located on the Charles River, between the Charlestown and North End sections of Boston. The Charles River Dam Project was authorized by the Flood Control Act of August 13, 1968 (PL 90-483). Project purposes included flood control, navigation, fish passage, and recreation. The project was completed by USACE in May 1978 at a cost of \$61.3 million. The Massachusetts Department of Conservation & Recreation (DCR) has been operating and maintaining the project successfully over the past 40 years. The project provides critical flood risk management to about 2,440 acres of urban property along the banks of the Charles River. Much of this property is in Boston, Brookline and Cambridge.
- The dam forms a tidal barrier between Boston Inner Harbor and the Charles River. The impoundment upstream of the dam is known as the Charles River “Basin”. The Basin extends 8.6 miles upstream to the Watertown Dam. Water level of the Basin is maintained within targeted elevations through dam operation. Water levels in the harbor vary with the tides. When the water level is lower in the harbor than in the Basin, the two submerged flood control sluiceways are used to drain Basin waters (gravity drainage). When the water level is higher in the harbor than in the Basin, one or more flood control pumps may be used to drain Basin waters.
- The purpose of this study is to provide technical assistance to the non-federal sponsor DCR in the assessment of the adequacy of the New Charles River Dam to meet changing climate conditions. This technical assistance is in support of the Commonwealth's water resources management planning associated with changing hydrologic conditions, climate change, long-term sustainability, and resilience. The first phase, a scoping study includes gathering background information on the Charles River Dam and identifying and selecting tasks, methodologies and models to be used for the adequacy assessment. The Phase 1 scoping study was completed in summer 2021. Phase 2 includes consideration of sea level rise and coastal storms, current and future rainfall and runoff conditions in the watershed, and evaluation of dam/reservoir operations under these changing conditions. Phase 2 started in September 2022.
- In WRDA 2022 there was a feasibility study added and I am supportive, and this year want to make sure the study had all the resources it needs to be successful.

2. Smelt Brook

- The towns of Weymouth and Braintree requested District assistance with restoring fish passage in Smelt Brook tributary to the Weymouth-Fore River under Section 1135 – Project Modifications to Improve the Environment Program. USACE has evaluated an array of potential solutions and plans to release a draft Detailed Project Report to reconnect rainbow Smelt with their historic spawning habitat in Smelt Brook in the Fall of 2022 for public comment.
- In WRDA 2022 this study was included in the report and noted that there was a lack of sufficient funds.
- I am waiting for the Detailed Project Report after the Fall of 2022 public comment period.

3. Hayward Creek

- The Town of Braintree requested District assistance with restoring fish passage in the Hayward Creek and Eaton Pond watershed under Section 1135 – Project Modifications to Improve the Environment Program.
- A federal interest determination is underway, but I know if that can be expedited.

Thank you for your hard work and dedication for the future of water resources and the USACE. If you have any questions, please contact my staff, William Seabrook, at 202-225-8273.

Sincerely,



Stephen F. Lynch
Member of Congress