

DEPARTMENT OF THE ARMY

COMPLETE STATEMENT

OF

THE HONORABLE MS. JO-ELLEN DARCY
ASSISTANT SECRETARY OF THE ARMY (CIVIL WORKS)

AND

LIEUTENANT GENERAL THOMAS BOSTICK
CHIEF OF ENGINEERS

BEFORE

TRANSPORTATION AND INFRASTRUCTURE COMMITTEE
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT

UNITED STATES HOUSE OF REPRESENTATIVES

ON

ONE YEAR ANNIVERSARY AFTER ENACTMENT: IMPLEMENTATION
OF THE WATER RESOURCES REFORM AND DEVELOPMENT ACT OF
2014

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Mr. Chairman and distinguished members of the Subcommittee, we are honored to testify before you on the implementation of the Water Resources Reform and Development Act (WRRDA) of 2014.

WRRDA 2014 provides new and revised authorities to the Secretary of the Army with regard to the Nation's water resources. The Assistant Secretary of the Army for Civil Works (ASA(CW)) is responsible for the overall supervision and development of guidance for these authorities, and their implementation, and the U.S. Army Corps of Engineers (Corps) is charged with implementing the specific studies and projects. WRRDA 2014 authorizes 34 projects for construction at a total cost of approximately \$25.7 billion, and authorizes the modification of eight projects at a total cost of approximately \$2.2 billion. In addition, WRRDA 2014 deauthorizes 18 specific projects and establishes a process for considering additional deauthorizations under which the Corps would produce a list of inactive projects and separable elements of projects with a Federal cost of at least \$18 billion.

WRRDA 2014 also contains many programmatic changes. Since some of these provisions have the potential to significantly affect the way the Corps and our stakeholders operate, we sought public input in developing implementation guidance. We held four listening sessions between August and September of 2014 with over 800 individuals participating in the sessions. We gained valuable information from these stakeholders regarding their views on the implementation of many of the WRRDA 2014 provisions. Additionally, we accepted written comments. In October 2014, the comments from the listening sessions and the written comments were compiled, organized by the section of the Act to which they relate, and distributed to the subject matter experts within the Corps for their use in drafting implementation guidance.

The purpose of implementation guidance is to provide a common understanding of how the law will be implemented and which policies will need to be amended to ensure consistent application of the law across the Corps. Implementation guidance is prepared in a thoughtful, deliberative manner to ensure that it is appropriately considered and coordinated, which takes time to complete. The guidance is thoroughly vetted within the Corps to include Counsel and then coordinated with the staff from the Office of the (ASA(CW)) and the Army Office of General Counsel. Where provisions directly affect work within the Divisions and Districts, we are developing guidance in consultation with the appropriate District, Division, and Headquarters Regional Integration Team.

We have continued to maintain a strong focus on implementation guidance to national policy provisions and to those project and program provisions where funds have been appropriated. We recently established a team of senior field staff to help develop guidance for those provisions for which guidance has not yet been completed. All completed guidance is posted on the Corps website at http://www.usace.army.mil/Missions/CivilWorks/ProjectPlanning/LegislativeLinks/wrrda2014/wrrda2014_impguide.aspx.

We will focus our testimony on the major categories of the national policy provisions contained within the Act and the key provisions in those categories. These categories include Deauthorizations and Backlog Prevention, Project Development/Delivery, Sponsor Led Studies and Construction, Work-In-Kind Credits, Expediting the Evaluation and Processing of Permits, Alternative Financing, Levee Safety, Navigation, and Water Supply and Reservoir Management.

DEAUTHORIZATIONS & BACKLOG PREVENTION

Section 6001 of WRRDA 2014 authorizes a process for the deauthorization of water resources development projects that were authorized prior to WRDA 2007 and have (a) not begun construction, or (b) if they have begun construction, have not received any Federal or non-Federal funding in the past six years. It requires the ASA(CW) to submit to Congress, and make publicly available, a list of authorized construction projects or separable elements that fit these criteria by September 2015. The Corps is currently developing this list.

Section 6003 terminates the authorization for any project or separable element of a project authorized for construction by WRRDA 2014 unless construction has been initiated within seven years of enactment.

Implementation guidance for these provisions has been completed.

PROJECT DEVELOPMENT/DELIVERY

Under this Administration, the Army has taken steps to improve and streamline the Corps Planning process. Section 1001 is patterned after an ongoing effort under which the Corps is to complete most feasibility studies within three years and for not more than \$3 million total cost per study. This “3x3x3” rule has enabled the Corps to focus planning and management on a risk-based approach to its decision-making, with vertical team alignment through the Office of the ASA(CW). The Secretary may approve a study extension that will cost more than \$3 million and/or take more than three years to complete if it is determined that that the study is too complex to complete within the three year timeframe or within \$3 million. If an extension is approved, an updated feasibility study schedule and cost estimate will be prepared and notice will be provided to the non-Federal project sponsor and Congress. Implementation guidance for this provision has been completed.

Section 1002 repeals the requirement that the Corps conduct a reconnaissance study prior to initiating a feasibility study. The preliminary analyses that were previously conducted during the reconnaissance phase of a study are now done in the early stages of the feasibility study including the establishment of a detailed project schedule. The elimination of the reconnaissance phase allows the non-Federal sponsor and the Corps to proceed directly to the feasibility study, but could also result in added costs where the

Corps previously would have recommended, based on a reconnaissance report, to not proceed to the feasibility phase. Implementation guidance for this provision has been completed.

Section 1005 is intended to accelerate Corps studies by requiring early coordination between the Corps, as the lead agency, and other Federal agencies with relevant jurisdiction in the environmental review process. This section also creates opportunities for non-Federal sponsors to assume greater responsibilities in protecting public health, safety, and the environment by becoming a joint lead agency with the Corps and by preparing environmental compliance documents. It is designed to streamline the process for complying with the requirements of the National Environmental Policy Act (NEPA) concurrently with the requirements of other Federal laws and policies and applies to feasibility studies initiated after the enactment of WRRDA 2014 that have an Environmental Impact Statement (EIS). It promotes early and proactive engagement of other Federal, state, and local agencies, and communication and interaction throughout project development. Currently, the Corps is engaging with other agencies and evaluating the complexities of this provision.

Section 7001 requires that the Secretary of the Army annually submit to Congress a report that identifies completed feasibility reports, proposed feasibility studies, and proposed modifications to authorized water resources projects or feasibility studies. Section 7001 also requires a notice to be published annually in the Federal Register requesting proposals from non-Federal interests. The annual report reflects information provided by non-Federal interests in response to that notice.

The Secretary must certify whether the proposals submitted by non-Federal interests in response to the notice meet the five criteria of Section 7001:

- The proposal is related to the missions and authorities of the Corps;
- The proposal requires specific congressional authorization, including by an Act of Congress;
- The proposal has not been congressionally authorized;
- The proposal has not been included in any previous annual report; and
- If authorized, the proposal could be carried out by the Corps.

In the first annual report submitted on January 30, 2015 under this provision, we gained experience in interpreting the requirements of the section, including the criteria, and in applying them in a consistent manner to all proposals submitted. For example, not all of the submissions had uniform cost and benefit information, which required the Corps to use its best judgment when describing the expected benefits of each proposed study or modification. The Corps interpreted the criteria of being “related to the missions and authorities of the Corps of Engineers” to mean that the project fit within one of the Corps three primary mission areas (commercial navigation, aquatic ecosystem restoration, and flood and storm damage reduction). Non-Federal proposals relating to water supply, hydropower, and recreation were considered for inclusion in the report where they were proposed in conjunction with one or more of these three primary mission areas.

The request for proposals for the 2016 Annual Report, published in the Federal Register on May 26, 2015, reflects the following changes from the Federal Register Notice published last year: (1) the Corps interpretation of the criteria for inclusion has been broadened so that the 2016 Annual Report will be more inclusive of proposals to be considered in the Report, and (2) the notice provides additional clarification regarding each of the criteria for inclusion in the 2016 Annual Report.

Implementation guidance for this provision has been completed, but may be revised as we gain more experience with this report.

SPONSOR LED STUDIES AND CONSTRUCTION

Section 1014 provides non-Federal interests the opportunity to study, design, and construct water resources projects using their own funding, in accordance with all Federal laws and regulations applicable to studies and construction. The non-Federal sponsor may seek future credit or reimbursement for any non-Federal funds expended in excess of the non-Federal cost share of the project subject to the review and approval of the ASA(CW). Implementation guidance for this provision is under development.

Section 1043 authorizes the Secretary of the Army to establish and implement a pilot program to evaluate the cost-effectiveness and project delivery efficiency of allowing non-Federal interests to provide full project management control of feasibility studies and the construction of projects for flood risk management, hurricane and storm damage reduction, aquatic ecosystem restoration, and coastal harbor and channel and inland harbor navigation. Implementation guidance for this provision is under development.

WORK-IN-KIND CREDITS

Section 1018 amends Section 221(a)(4) of the Flood Control Act of 1970 to provide that work accomplished by a non-Federal interest prior to the completion of a feasibility study is potentially eligible for credit if the non-Federal interest executes an in-kind MOU prior to undertaking the work. This provision requires the Secretary to update existing or issue new guidance or regulations for carrying out this section. Further, it requires that these guidelines or regulations be published in the Federal Register and that the Secretary provide the public with an opportunity to comment on them. A proposed update to the relevant existing guidance (Engineering Regulation 1165-2-208) is under development.

Section 1019 amends Section 7007 of WRDA 2007 to clarify certain items that are eligible for work-in-kind credit. This provision relates specifically to projects or studies in the coastal Louisiana ecosystem. It requires that a process to carry out this provision must be established in coordination with the relevant State of Louisiana agencies.

Implementation guidance for this provision has been completed, in coordination with the State of Louisiana.

Section 1020 authorizes a non-federal sponsor to apply credit for in-kind contributions that are in excess of the non-federal share to other water resources development projects being carried out by the same non-federal sponsor, subject to certain conditions including preparation of a comprehensive plan approved by the ASA(CW). Implementation guidance for this provision is under development.

EXPEDITING THE EVALUATION AND PROCESSING OF PERMITS

Section 1006 provides permanent authority for the Corps to accept and expend funds from non-Federal public entities, and allows public utility companies and natural gas companies to participate in the program for a period of seven years. This provision directs the Secretary to ensure that the use of the authority does not adversely affect the permit processing time for other applicants within the same Corps district and ensures adequate oversight of agreements signed under this authority. Section 1006 requires the ASA(CW) to prepare an annual report on the implementation of this section, including information on each Corps district that accepts funds under this section. The report for fiscal year 2014 was transmitted to Congress on May 4, 2015.

Section 1007 requires the Secretary to establish a process for reviewing requests under Section 14 of the Rivers and Harbors Appropriation Act of 1899, as amended and codified in 33 USC 408 (commonly referred to as Section 408). These requests involve permanent or temporary alterations by others of any completed Civil Works project. The law requires the establishment of timelines for the reviews of these requests. Implementation guidance for this provision is under development.

ALTERNATIVE FINANCING

Section 1015 clarifies that non-Federal interests may contribute funds toward construction of authorized water resources projects. Implementation guidance for this section was issued on February 11, 2015. Section 1023 allows the ASA(CW) to accept funds from a non-Federal interest for any authorized water resources development project that meets or exceeds their 902 cost limit per Section 902 of WRDA 1986, as long as the Federal cost share does not increase. The ASA(CW) is required to notify Congress in accordance with the existing authority when a non-Federal sponsor is approved to contribute funds. Implementation guidance for this provision has been completed.

Section 5014 authorizes the ASA(CW) to enter into agreements with non-Federal interests, including private entities, to manage the financing, design or construction (or any combination thereof) of at least 15 authorized water resources development projects. Under this pilot program, the ASA(CW) is to evaluate the technical, financial,

and organizational benefits of allowing a non-Federal pilot applicant to carry out and manage the design or construction (or both) of one or more such projects. The Corps is investigating possibilities and constraints of using this authority to pursue different types of partnerships with non-Federal sponsors, including public-private partnerships.

Title V, Subtitle C, the Water Infrastructure Finance and Innovation Act of 2014 (WIFIA), authorizes the Secretary of the Army and the Administrator of the Environmental Protection Agency (EPA) to provide financial assistance in order to carry out pilot projects, and to set regulations as they determine appropriate to carry out the subtitle. The Corps is investigating potential demand for a program under this title as well as administrative requirements. The Corps has also been coordinating with the EPA on program requirements and the agencies are pursuing an interagency Memorandum of Agreement (MOA) to formalize collaboration.

LEVEE SAFETY

Section 3016 authorizes the Corps to share the lessons and practices of its Levee Safety Program and work with all Federal, state, local and private levee interests in establishment of a National levee initiative. This could include: (1) build capacity and programs in states and with Tribes to oversee and regulate levees in their areas, (2) incentivize voluntary participation via Federal funding as new National guidelines are accepted, (3) implement risk as the common language of the National initiative for investments, policies, and communication, (4) recognize that shared responsibility extends to the whole floodplain, and (5) continue working closely with the Federal Emergency Management Agency (FEMA) and other stakeholders in an open and collaborative manner. An implementation plan has been developed for this provision.

Section 3013 requires the ASA(CW) to carry out a comprehensive review of the Corps guidelines related to vegetation management for levee systems. This review includes soliciting stakeholder recommendations and revising guidelines as needed. Implementation guidance is under development.

Section 3014 provides the Corps the ability to cost-share the evaluation of levees for the purposes of FEMA's National Flood Insurance Program. Implementation guidance for this provision will be incorporated into the Corps policy for performing these levee evaluations. Revisions of this policy are under development.

NAVIGATION

Section 2002 calls for a long-term capital investment strategy for the inland waterways. Under section 2005, the ASA(CW) would organize a stakeholder roundtable to assess and review issues associated with the financial management of the inland waterways. Section 2006 reduces the share of the remaining construction cost of the Olmsted Locks and Dam project that is paid by the users of the inland waterways from

50 percent to 15 percent, and provides that the General Fund would assume this cost. The Upper St. Anthony Falls Lock is on schedule to close by June 10, 2015, in accordance with Section 2010.

Section 2102 revises the authority for funding operation and maintenance of coastal and inland harbors and channels from the Harbor Maintenance Trust Fund, including provisions for emerging harbors, Great Lakes projects, and donor and energy ports.

WATER SUPPLY AND RESERVOIR MANAGEMENT

Subsection (a) of Section 1046 requires the ASA(CW) to provide a report assessing the management practices, priorities, and authorized purposes at Corps reservoirs in arid regions to determine the effects on water supply during periods of drought. For example, in response to recent drought conditions in some parts of the country, the Corps has been looking at existing drought contingency plans and evaluating whether additional studies or updates may be needed.

Subsection (b) directs the ASA(CW) to notify non-federal water supply storage sponsors at Corps multipurpose reservoir projects of the anticipated operations and maintenance activities and estimated costs of those activities for the next fiscal year and the subsequent four fiscal years. Implementation guidance for this provision is under development.

Subsection (c) provides that the ASA(CW) shall not charge a fee for surplus water under a contract entered into pursuant to Section 6 of the Flood Control Act of 1944 if the contract is for surplus water stored in the Upper Missouri Mainstem Reservoirs. By its terms, subsection (c) also provides that this restriction does not affect the authority of the ASA(CW), under 10 U.S.C. § 2695, to accept funds or to cover administrative expenses relating to certain real property transactions, and does not affect the application of Section 6 to surplus water stored outside of the Upper Missouri Mainstem Reservoirs. Implementation guidance for this provision is under development.

Subsection (d) authorizes a non-federal interest to submit a plan to the ASA(CW) for review prior to any effort to convert future use storage obligations to present use storage. Implementation guidance for this provision is under development.

Mr. Chairman, implementation of this legislation has been and remains a priority for the U.S. Army Corps of Engineers. This concludes our testimony and we would be happy to answer any questions you or other members of the Committee may have. Thank you.