DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
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DEC 11 2013

The Honorable Barbara Boxer
Chairman
Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Bill Shuster
Chairman
Committee on Transportation
& Infrastructure
2165 Rayburn House Office Building
Washington, DC 20515

The Honorable David Vitter
Ranking Member
Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Nick J. Rahall, II
Ranking Member
Committee on Transportation
& Infrastructure
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairmen Boxer and Shuster and Ranking Members Vitter and Rahall:

The Administration strongly supports rebuilding our Nation's infrastructure. Investing in the Nation's water resources builds the foundation for long-term economic growth, addresses significant risks to public safety, and protects and restores our environment. The Administration commends the Senate Environment and Public Works Committee and the House Transportation and Infrastructure Committee for their bipartisan work, and the Administration is committed to working with the Congress on enactment of legislation to carry out these goals.

In Statements of Administration Policy to the Senate on May 6 and to the House on October 23, the Administration shared its views on the legislation prepared for consideration for each chamber. The Administration is pleased to share additional views with you in this letter in order to make sure that the Department of the Army operates efficiently and effectively in carrying out important water projects for the Nation in a cost-effective and environmentally sound manner.

Project Backlog

To promote fiscal responsibility, new project authorizations should be limited to those projects most likely to provide a high economic and environmental return to the Nation or address a significant risk to public safety within the Corps three primary mission areas: flood and storm damage reduction; commercial navigation; and aquatic ecosystem restoration. The Corps has a significant backlog of authorized projects and increasing operation and maintenance requirements, making it especially important that new authorizations be limited to the projects most likely to generate a high return to the Nation. The Administration supports authorizations of projects in Sections 401 and 402 of H.R. 3080 that the Administration recommended to the Congress for authorization, based on a finding that the project is likely to provide a high economic and environmental return to the Nation, or address a significant risk to public safety, within the three main missions of the Corps. As one tool to reduce the increase in the project backlog, the Administration also recommends the repeal of statutory provisions that limit the ability of the

Corps to plan projects appropriately, including the 1974 law that mandates use of a discount rate that does not property reflect the opportunity costs of capital for investments in a proposed Federal water resources project.

The Administration supports Title III of H.R. 3080 to de-authorize projects that no longer meet the Nation's needs or are too costly and recommends the Conference Committee support additional de-authorizations. The Administration would like to work with the Congress to identify other projects that may be appropriate for de-authorization at this time and to create an annual process to identify potential projects for de-authorization.

Project Streamlining

In March 2012, the President launched a government-wide initiative to improve the efficiency of Federal review and permitting of infrastructure projects while producing measurably better outcomes for communities and the environment, through Executive Order (EO) 13604, which added more transparency, accountability, and certainty into the review and permitting process. Since signing this EO, Federal agencies have expedited the review and permitting of 51 major projects, including bridges, transit projects, railways, ports and waterways, roads, and renewable energy projects. In implementing the EO, Federal agencies also identified and are working to institutionalize a set of best practices for efficient review and permitting, which range from expanding information technology (IT) tools to strategies for improving collaboration, such as having multiple agencies review a project at the same time, instead of consecutively.

The Administration supports the use of the current foundational environmental framework for all water resource project decisions. The National Environmental Policy Act and other basic Federal environmental statutes provide transparency, support informed decision making and promote strong environmental outcomes. Legislation should include project permitting and delivery provisions that protect communities, taxpayers, and the environment, and complement our Nation's foundational environmental laws in a way that fosters transparency, science-based decision-making and improved environmental outcomes. The Administration is concerned that provisions in the House and Senate bills could increase litigation risk, and actually slow project approval, depending on agency resources.

The Administration strongly objects to the expanded definition of "environmental review process" in Section 2045 of the Water Resources Development Act (WRDA) of 2007 (33 U.S.C. 2348) as amended by Section 2033 of S. 601 and Section 103 of H.R. 3080 to include virtually any permit, approval, review or study required under any environmental law. This provision would set up a direct conflict with existing bedrock environmental laws, such as the Endangered Species Act and Clean Water Act, and will almost certainly lead to confusion, delay, and litigation. The Administration objects to provisions in H.R. 3080 which would greatly reduce the statute of limitations from 6 years to 150 days, thus greatly limiting the public's ability to challenge agency actions, and provisions that would eliminate the ability of the public to comment on a Final Environmental Impact Statement before issuing a Record of Decision (Section 103(b)(1)(h)). Eliminating the ability of the public to comment after a Final Environmental Impact Statement has been issued prevents the agency from making any further changes to a project, missing an important opportunity to address concerns from the public and limit risk of litigation.

The Administration supports provisions in the House and Senate bills that encourage early collaboration among agencies, which is fully consistent with Administration efforts to improve project delivery, and appreciates changes made to the Senate bill which require the concurrence of

other agencies when setting project delivery timelines. Some of these provisions could be improved to ensure resource agencies are able to carry out other statutory obligations, such as the Endangered Species Act. For example, Section 2045(k)(4)(B)(iii) of WRDA of 2007 as amended by S. 601, should be modified to allow for a deadline extension at the request of a cooperating agency.

The Administration objects to financial or procedural penalties on agencies that are unable to meet timelines for project delivery. These provisions are particularly troubling in the context of declining Federal resources including recent budgetary cuts and staff furloughs due to sequestration. Financial penalties may actually slow project delivery as agencies will withhold resources to budget for possible penalties. In addition, the Administration objects to onerous reporting requirements, such as Section 2045(k)(6)(D)(ii) of WRDA of 2007 as amended by Section 2033 of S. 601 which require an Inspector General audit if an agency does not have the financial resources to complete a review under the deadline, taking valuable time and resources away from completing environmental reviews, in general.

The Administration prefers the House project dispute and elevation process. Such disputes should be kept at the agency level, as in the House bill. Further, existing law and regulations (40 CFR Part 1504) already allow for project elevation to the Council on Environmental Quality for dispute resolution. The Administration prefers the Senate bill over the House bill with regard to provisions that maintain a collaborative relationship between the Corps and the resource agencies in establishing and managing project review schedules. The Administration supports language in Section 2045 of the Water Resources Development Act of 2007 (33 U.S.C. 2348) as amended by Section 2033 of S. 601 encouraging the coordination among the lead and cooperating agencies for projects, including requiring the concurrence from cooperating agencies. The Administration recommends modifications to this provision to allow a Federal agency to decline the invitation to be a cooperating agency if it: (1) has no jurisdiction or authority; (2) has no expertise or information relevant to the project; or (3) does not have adequate funds to participate.

Cost Sharing

The Administration believes that building and maintaining our water resources infrastructure is a shared responsibility between Federal and non-Federal beneficiaries. Where an investment primarily serves an identifiable group or geographic area, those beneficiaries should pay all or a substantial share of the costs. Changes in cost sharing responsibilities between Federal and non-Federal beneficiaries will have the unintended consequence of reducing the number of projects in which the Federal government can invest.

The Administration supports maintaining current policy as provided in H.R. 3080 instead of Section 2047 of the S. 601, which directs the Secretary to assume 65 percent of the costs of the operation, maintenance, repair, rehabilitation, and replacement of any flood gate, as well as any pumping station constructed within the channel as a single unit with that flood gate, that (1) was constructed as of the date of enactment as a feature of an authorized hurricane and storm damage reduction project; and, (2) crosses an inland or intracoastal waterway. Currently non-Federal sponsors are responsible for 100 percent of these costs. Operations, maintenance, repair, rehabilitation, and replacement of these projects should continue to be cost-shared as provided in current law, in the same manner as are all other flood and storm damage reduction features.

The Administration objects to Section 216 of H.R. 3080 and Section 7008 of S. 601. The Olmsted project should continue to be funded 50 percent from the General Treasury and 50 percent

from the Inland Waterways Trust Fund as provided in current law. These provisions would shift hundreds of millions of dollars in costs from the companies that transport most of the commercial goods on these waterways to Federal taxpayers. H.R. 3080 would reduce the Inland Waterways Trust Fund share for the remaining cost of the Olmsted project (about $1.5 billion) from 50 percent to 25 percent, and increase the share from the General Fund of the Treasury from 50 percent to 75 percent. S. 601 would make the remaining cost (about $1.5 billion) of the Olmsted project fully funded by the General Fund of the Treasury and eliminate the use of Inland Waterways Trust Fund revenues to fund the balance of the project.

The Administration recognizes the benefits provided by ports in facilitating the movement of freight in domestic and international commerce and is committed to investing in and maintaining our Nation's ports, harbors, and waterways in order to bolster our global competitiveness. However, Federal investment in ports and related infrastructure should provide a high return to the Nation without seeking to replace private investments. Section 8004 of S. 601 and Section 201 of H.R. 3080 provide for using Harbor Maintenance Trust Fund revenues for dredging non-Federal side channels, berthing areas, and legacy sediments from those areas. The cost of dredging of berthing areas and of the non-Federal side channels that provide access to such areas should remain a non-Federal responsibility.

Non-Federal sponsors are currently required to cost-share 50 percent of the incremental increase in O&M costs attributable to deepening projects below a depth of 45 feet. The Administration supports maintaining current policy as provided in H.R. 3080 instead of Section 8004 of S. 601, which would amend existing law to change the cost-sharing requirement for non-Federal sponsors to cost-share 50 percent of the incremental increase in costs attributable to deepening projects below a depth of 50 feet. Taxpayers already pay 50 percent of the long-term costs of maintaining all Federal navigation channels at depths greater than 45 feet; however, under the Senate proposal, the taxpayers would have to pay all of the costs for such work up to a depth of 50 feet.

Beach Nourishment Reauthorizations

Beach nourishment projects, which are already authorized for 50 years, should not be automatically reauthorized for an additional 15 years. These projects should be reevaluated to determine if better approaches now exist and whether the Federal role should be reconsidered rather than simply extending them for an additional 15 years. The Administration objects to Section 2030 of the Senate bill, which would allow for a fifteen year extension of nourishment for beach projects.

Rebuilding after Natural Disasters

The Nation should develop more resilient approaches to future flood and storm damage risk reduction in the face of a changing climate and also support natural infrastructure as part of the strategy to reduce such risks. Given the large costs of recovery from major floods and the number of such floods, the incidence of repeated losses in the most vulnerable areas, and the effects of changing risk factors, the Nation should reconsider the laws and policies that influence where and how we rebuild, which also determines which costs the taxpayer bears.

The Administration supports maintaining current law as provided in H.R. 3080 instead of Sections 2022 and 2040 of S. 601, which would allow the Corps to repair or restore any Federally authorized and constructed flood and hurricane storm damage reduction project to a higher

standard than previously constructed without evaluating whether new, better, or less costly approaches to reduce risk now exist. These provisions could cost Federal taxpayers billions of dollars without improving the safety of communities protected by these projects.

Other Reforms

The Administration welcomes and supports efforts to explore innovative water infrastructure financing tools, and has previously proposed ways to do so through an independent financing entity such as a National Infrastructure Bank. Any alternative financing programs proposed should result in the most efficient long-term use of the available Federal and non-Federal funds, and be consistent with Federal budgetary requirements. The Administration has concerns with the proposed Water Infrastructure Financing and Innovation Act, which would expand the Environmental Protection Agency's and the Corps' role in local water infrastructure projects and not provide Federal assistance in the most efficient manner.

The Administration supports efforts to enable non-Federal parties to move forward with certain water resources projects on their own more easily or provide additional flexibility to address environmental impacts of projects. Sections 109, 110, and 117 of H.R. 3080 would provide greater flexibility for non-Federal parties to move forward with certain water resources projects on their own and create a pilot program for public-private partnerships for projects within the Corps' main mission areas. The Administration also supports Section 2005 of S.601 for Fish and Wildlife Mitigation for programmatic environmental mitigation plans. The Administration supports legislation that would enable a more holistic approach to water resource management by adding fish and wildlife protection as an authorized purpose for all Corps dams, and by otherwise providing more administrative flexibility to revise the operating guidelines as well. However, both bills include provisions (Section 2014 in S. 601; and Section 143 in H.R. 3080) that would set back this much needed reform and give current uses of Corps projects priority over new uses. Such provisions should not negatively impact existing operations or otherwise restrict or prohibit current activities already underway at these Corps projects or increase costs. Finally, the Administration strongly opposes Sec. 146 of H.R. 3080 which would limit the Corps' ability to participate in the National Ocean Policy, a commonsense effort to cut red-tape and increase efficiency across the Federal government in the management of our oceans, coasts and Great Lakes.

Thank you for the opportunity to provide the Administration's views on this important legislation and we look forward to working with Congress to address these and other important issues. We would be pleased to provide you with greater detail about the Administration's concerns discussed above at your convenience. If I can provide further information or assistance, please feel free to call me.

Very truly yours,

Jo-Ellen Darcy
Assistant Secretary of the Army
(Civil Works)