

September 25, 2014

Mr. Bruce Carlson
HQUSACE
441 G Street NW
Washington, DC 20314

Dear Mr. Carlson:

The American Association of Port Authorities (AAPA) commends the U. S. Army Corps of Engineers (Corps) for conducting listening sessions and soliciting comments for use in your Water Resources Reform and Development Act (WRRDA) of 2014 Implementation Guidance. AAPA represents the leading port authorities in the western hemisphere and on behalf of our U. S. members we offer the following recommendations:

Title 1, Section 1014, Studies and Construction of Water Resource Development Projects by Non-Federal Interests

Section 203 eliminated the restriction related to the non-Federal port sponsor conducting a feasibility study “on its own”, signaling Congress’ clear intent that the Corps be able to offer technical assistance. The Implementation Guidance should very clearly establish the sponsor’s authority to request economic and environmental analysis and have this work provided by the Corps on a cost reimbursable basis. This is discussed in greater detail in comments to Section 1043 below.

Implementation guidance should address the issues of reimbursement, sponsor credit and funding. The unreliability of reimbursement has been a major obstacle to the successful implementation of this authority in the past. Neither the Administration nor the Appropriations Committees have been enthusiastic about giving a budget priority to funding reimbursement after construction has been completed. We urge the Administration to revisit this issue and consider giving budgetary priority to reimbursement of design and construction by capable non-Federal interests. Alternatively, the Administration should provide a way for non-Federal sponsors to request funding as part of the Corps budget development process for that fiscal year’s appropriation to reimburse design or construction work. If necessary, implementation can provide (analogous to contracts with private entities) that a certain sum of reimbursement be withheld until the project is 100% complete, a practice used in the private sector.

Title 1, Section 1043, Non-Federal Implementation Pilot Program

The section provides for a pilot program for non-Federal sponsor project management of feasibility studies as well as project design and construction. The success of feasibility studies under this section may well depend on Corps support for economic and environmental analysis on sponsor-led studies. AAPA strongly urges implementation guidance be written from a perspective that the Corps will undertake technical assistance on a reimbursable basis when requested. This includes access to the Corps Deep Draft Navigation Planning Center of Expertise for study economics and the local District for environmental coordination. Similarly, the implementation guidance for the design phase needs to clearly articulate that the sponsor can obtain Corps technical assistance on a cost-reimbursable basis.

In addition, the implementation guidance should address the sponsor's role in submitting information to the Corps District in support of annual budget development. This budget estimate should be treated similarly to the annual budget estimate provided by the Corps project manager. The desired result is to enable sponsor-led and Corps-led projects to compete on a level playing field for funding throughout all phases – study, design and construction.

Title 2, Section 2102, Operation and Maintenance (O&M) of Harbor Projects

This section establishes a new O&M funds distribution approach to address increased Harbor Maintenance Tax related appropriations including funding for expanded uses at donor ports, emerging harbors, underserved and Great Lakes ports. WRRDA implementation guidance needs to clearly state that the Section 2102 process will be used whenever O&M appropriations exceed the baseline fiscal year 2012 appropriation, which is \$898 million.

Subparagraph (a) on expanded uses authorizes the use of funds for berth dredging and removal of legacy contaminated sediment for donor ports. The Implementation Guidance should address the role of the Non-Federal Project Sponsor. AAPA recommends that the Non-Federal Project Sponsor should:

- Be the point of contact for discussions with the Corps District on expanded use work.
- Be responsible for providing data on qualifying expanded use work - scope, budget estimate and priority.
- Prioritize qualifying expanded use work within their port and provide this information to the Corps District in writing on an annual basis. Should private berths be determined to be eligible under berth dredging, the Sponsor should include them in the prioritization effort.
- Determine the Corps and non-Corps efforts in accomplishing the expanded use work. This is viewed as a port by port issue in relation to whether the Corps should perform all, some or none of the expanded use work. Such a decision should be provided in writing from the Sponsor to the Corps on an annual basis.

Implementation Guidance should establish a nationally consistent format to submit this information, including a data field for brief narrative remarks. The Implementation Guidance should establish that the Corps will rely on this information in funding distribution decisions.

The Implementation Guidance should acknowledge that expanded use funds for berth dredging can be performed to port permitted depth. Port berth dredging permits are often deeper than the Corps project depth for safe under-keel clearance throughout the tidal cycle and when ships leave a dock, a phenomenon known as ship squat.

Title 2, Section 2106, Additional Measures at Donor Ports and Energy Transfer Ports

Section 2106 authorizes appropriating up to \$50 million for distribution to qualifying ports; however, the appropriations bill is not written in the same manner as WRRDA and instead provides programmatic funding in addition to project specific funding. Implementation Guidance should establish that Section 2106 work should only be pursued when funds are specifically appropriated for this purpose by Congress.

The Implementation Guidance should address the role of the Non-Federal Project Sponsor. The Non-Federal Project Sponsor should provide their distribution decision to the Corps District on an annual basis. AAPA respectfully requests that the Corps meet with the donor and energy transfer ports to discuss the funding distribution processes since the legislation is unclear. We recommend these discussions occur at your earliest convenience, but at least as soon as Section 2106 funding is appropriated.

The Implementation Guidance should also establish as an interim measure that the Corps work with Customs and Border Protection to establish the process for payments to the importers and shippers, so the process can be quickly implemented when funds are appropriated.

The Corps of Engineers Navigation program is critical to our nation's ability to maintain a world-class marine transportation system. By implementing the recommendations in this letter, we will achieve a more efficient and fair system in the future.

If additional information or clarification is needed, please contact Jim Walker at 703-684-5700 or Jwalker@aapa-ports.org.

Sincerely,



Kurt J. Nagle
President and CEO