

## AAPA WRDA 2020 Requests – Oct 2019

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The following WRDA revisions are requested to expedite efficient and effective delivery of navigation channel improvements and project maintenance:

1. **Full HMT funding solution.** AAPA seeks a permanent solution to full use of annual HMT revenues - tax collections plus interest on the unspent tax collections. The AAPA legislative proposal addresses the 4 key pillars: Full Use, Expanded use for D&ET ports; regional funding floors and emerging harbors funding.
2. **Benefit-to-Cost Ratio (BCR) for Locally Preferred Plan (LPP).** A navigation project's BCR is based on the National Economic Development (NED) plan benefits unless there is a Locally Preferred Plan (LPP), wherein the sponsor pays 100% of the additional cost between the NED and LPP. The LPP is used in the project authorization report and new construction start decisions, which is significantly lower than the NED number. AAPA requests that these reports and decisions be based on the NED plan, since this is the extent of the federal government's cost-shared investment.
3. **Utility Relocations for Channel Improvement Projects.** WRDA 1986 Section 101. The Corps issued a utility relocation policy in 2017 that updates policy issued in 1995. The policy changes increase project sponsor cost, efforts and time. AAPA seeks three changes resulting from the Corps 2017 policy revision: (1) return to cost sharing *public* utility relocations per the prior 1995 guidance, rather than all relocations; (2) delete the requirement for a letter from the governor, before the Corps will use Navigational Servitude to force owners to relocate these pipelines; and (3) revise the cost share depth from 45 to 50 feet, consistent with channel improvement and maintenance depths.
4. **Mitigation Banks.** Mitigation banks are USACE's preferred option for project sponsors to mitigate for impacts their projects have on aquatic resources. Unfortunately, the USACE approval process for establishing mitigation banks is often painstakingly slow. WRDA Section 214 is a tool mitigation bank applicants can use to expedite reviews in situations where a bank is used exclusively by the bank sponsor to meet its own mitigation requirements. However, if the bank sponsor intends to sell any of the credits the bank will generate, Section 214 cannot be used because USACE is concerned with its use in support of revenue-generating ventures. This interpretation fails to account for the fact that public entities whose mitigation bank plans involve selling some of the credits they generate would do so not to generate profits for shareholders, but to support their mitigation efforts, other environmental programs or other activities that serve a public purpose. Seek Congress state that USACE's authority to expedite mitigation bank reviews under WRDA Section 214 extends to public entities, regardless of whether those entities plan to sell credits. Clarifying language: *33 U.S. Code § 2352(a)(2) is amended – (1) by striking “The Secretary” and inserting the following: “(A) In General – The Secretary”; and (2) by adding at the end the following: “(B) Non-Federal Public Entity. – The Secretary may accept and expend funds contributed by a non-Federal public entity under subparagraph (A) without regard to*

*whether the entity plans to sell a portion of the credits generated by a mitigation bank instrument of the entity.”.*

**5. Dredged Material Placement Facilities.** 33 USC Section 2241.

- a. Seek Congress state that minor placement facility dike work is an authorized federal Operations and Maintenance expense. The Corps narrowly interprets the existing provision such that if an effort is not clearly specified in this list, it is not eligible.
- b. Seek Congress state that neglecting the Federal responsibility for placement site dike maintenance to the point that a major rehabilitation is required does not trigger cost-sharing by the non-Federal project sponsor.
- c. Seek Congress state that basis upon which non-Federal users pay for dredged material capacity. the project sponsor payment for dredged material capacity is based on the construction cost and not market value. Clarifying language: *33 U.S. Code § 2326(a)(1) is amended— By adding at the end the following sentence “Fees assessed for non-Federal placement at a dredged material placement facility shall be the construction costs to create such additional capacity for the project and exempt from market-rate determinations.”*

**6. Streamline the planning and maintenance processes by considering “assumed for maintenance work” to be the same as “authorized” projects.** Numerous channels in the U.S. constructed or modified by non-federal entities have been ‘assumed for maintenance’ by the Corps of Engineers. Currently, channels which have been assumed for maintenance are not considered “authorized” projects and as a result, may not be eligible or qualify for repairs, follow-on planning activities, and may be administered differently than an “authorized” channel. This proposal eliminates the 'distinction without a difference' that currently exists and allows local officials and the Corps of Engineers to provide solutions and improvements for the entire project site through a more streamlined process.

**7. Seismic Benefit Determinations.** For flood risk management projects that incidentally generate seismic safety benefits in regions of moderate or high seismic hazard, the Secretary shall realize such benefits as associated National Economic Development benefits, not subject to incidental benefit policies, and shall include such benefits in the economic analysis of the project. Reasonable maximization of National Economic Development benefits used in plan selection shall be based on total project benefits, inclusive of flood risk management and associated benefits.

**8. Study of Water Resource Development Projects by Non-Federal Interests.** 33 U.S.C 2231. WRDA 2018 Section 1152 inserted the words ‘federally authorized’ before the phrase ‘water resource development project’ in WRDA 2018 Section 1153. The Corps has interpreted the addition of ‘federally authorized’ to mean that the Corps cannot participate in any support of a 203 study until after the completed report is provided to the Secretary and that office directs the Corps to evaluate it. AAPA believes this interpretation is erroneous and seeks Congressional language that clarifies that WRDA 1986 Section 203 is a ‘federally

authorized' program, which enables the Corps to assist with non-Federal sponsor requests for assistance. The Corps should be directed to change its policy and guidance to reflect the following change. Clarifying language: 33 U.S. Code § 2231(a)(1) is amended— After the words “...water resources development project” insert “or perform a feasibility study on modifications or improvements to an existing authorized project” Clarifying language: 33 U.S. Code § 2231(a)(2) is amended— Delete the remainder of the sentence after the words “...shall issue guidelines” and insert “specifically for feasibility studies of water resources development projects conducted by non-Federal interests to provide sufficient information for the formulation of the studies, including processes and procedures pertaining to the provision by the Secretary of reviews and assistance under subsection (e),” Clarifying language: 33 U.S. Code § 2231(e)(2) is amended— Adding the following sentence at the end: The term ‘Technical’ as used in this statute means any and all assistance that does not conflict with other law or regulation.

9. **Construction of Water Resource Development Projects by Non-Federal Interests.** 33 U.S.C 2232. The law currently excludes the non-Federal sponsor to be able to use the NEPA clearances to construct a water resources development project if the report is based on a Sponsor led Section 203 study. AAPA believes that once Congress authorizes the project for construction that a non-Federal sponsor should have the same opportunities to use the NEPA documentation as the Federal government. Clarifying language: 33 U.S. Code § 2232(b)(3)(A) is amended— By deleting *In General*. ‘For a project described in subsection (a)(1) or subsection (a)(3)’ and inserting ‘For a water resource project authorized by Congress’

10. **USACE Hopper Dredge McFarland.** Section 563 of the Water Resources Development Act of 1996 (110 Stat 3784). AAPA recommends Section 563(a)(1) be amended as follows: insert ‘or its successor’ after the phrase ‘hopper dredge McFarland’.

11. **Nominal Depth.** 33 USC Section 2241. Seek Congress correct the dredging datum to the current ‘mean lower low water’ rather than the obsolete ‘mean low tide’.