

**TESTIMONY OF**  
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For the Water Resources and Environment Subcommittee  
Of the House Transportation and Infrastructure Committee

**PROPOSALS FOR A 2008 WATER RESOURCES DEVELOPMENT ACT**  
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**Introduction**

Madam Chair Johnson, Ranking Member Baker and Members, I am Kurt Nagle, President of the American Association of Port Authorities (AAPA) which was founded in 1912 and represents and provides services for public port authorities throughout the Western Hemisphere. Today my testimony represents the views of the 85 leading public port authorities in the United States which comprise our U.S. Delegation.

We commend the Subcommittee on Water Resources and Environment for your leadership role in the first session of this 110<sup>th</sup> Congress in bringing about the Water Resources Development Act (WRDA) of 2007 after a seven-year delay in addressing our nation's critical water infrastructure needs. We believe that with such a large backlog of projects and policy concerns, which were not able to be included in the 2007 bill, it is prudent and necessary to consider a 2008 Water Resources Development Act to complete the job of getting the nation back on track with a regular cycle of five bills per decade.

**Ports and the Economy**

Madam Chair, as you are aware, representing a large district in the heart of the Great State of Texas with its well developed system of ports, the public port authorities are the entry and exit points for the entire U.S. water based and surface transportation system, moving over 99 percent of the nation's overseas cargo. And, without exception, ports are critical to every state in the U.S. On average, each of our 50 states relies on 13-15 ports to handle its imports and exports, which adds up to over \$5.5 billion worth of goods moving in and out of U.S. ports *every day*. The U.S. Department of Transportation projects that, compared to 2001, total freight moved through U.S. ports will increase by

more than 50 percent by 2020 and the volume of international container traffic will more than double.

Public ports generate significant local and regional economic growth, including creation of jobs. Total direct and indirect annual impact of the U.S. port industry includes:

- 8.4 million jobs, accounting for \$314 billion in personal income and nearly \$2 trillion in marine cargo-related spending (Martin Associates, Lancaster PA, 2007);
- More than 1 billion tons of domestic goods moved via water in the U.S. (U.S. Army Corps of Engineers, 2006);
- More than \$23.2 billion in U.S. Customs duty revenues in fiscal 2007, representing 70 percent of all Customs duties collected (U.S. Customs & Border Protection, 2007).

The U.S. maritime industry and efficient public port authorities have been the world's gold standard for nearly a century. However, the gold is tarnishing a bit due to lack of maintenance of many of our federal entrance channels and the high cost of new channel deepening projects.

### **Keeping Faith with Project Users**

The Harbor Maintenance Tax, first introduced in the historic 1986 WRDA, was then believed to be the answer to having users pay for benefits received from the federal government and providing a steady and reliable source of dedicated revenue for maintaining our nation's ports and harbors. Only the "users pay" part has been honored. Tax collections have provided sufficient revenue, but have been diverted to offset other expenses of the federal government. Current collections of about \$1.3 billion annually approximate the \$1.3 billion to \$1.6 billion a year estimated by the Army Corps of Engineers as needed to meet dredging needs. Only about half that amount is actually appropriated and expended annually.

Lack of maintenance dredging has far reaching negative economic and social consequences impacting: ship calls at ports, jobs created, income produced and higher transportation costs to exporters and consumers of imported goods. The problem is particularly acute for Gulf Coast ports, as well as those on the Great Lakes, where sedimentation rates are high and the need for economic stimulus is greatest.

### **Hurdles to Needed New Deepening Projects**

Dredging critics have tried to characterize new channel deepening projects as a "race to the bottom" among competing ports. The reverse is actually true, as seen in the 2007 WRDA where only two major channel deepening projects were authorized for the ports of Miami and Corpus Christi in spite of the long seven year interval between bills. A large part of the reason for few new projects is the burden of costs incurred by the local

sponsor port. As a result of the two decades old cost-share formula tying the federal/non-federal formula to a 45 feet deep channel as the index, ports needing to deepen to today's standard of 50 feet or more to accommodate the world fleet, must pay 60 percent of the cost of construction and pay 50 percent of maintenance costs for the increment over 45 feet. The local sponsor port also must bear 100 percent of the costs of deepening local channels and berthing areas, as well as multi-million dollar landside improvements to fully realize the benefits of the deeper channel.

We request that the Committee **include a provision in the 2008 WRDA to raise the index point for the deep draft navigation cost-share formula to 55 feet** in acknowledgement of the changed conditions in ship sizes and the significant growth in cargo since 1986. We do not believe that this represents any change in the "user pay" policies established in the 1986 WRDA. It simply recognizes that an adjustment is required in a physical index that is over 20 years old.

### **Need for Port and Harbor Dues Authority**

AAPA believes that ports should have broad authorities to levy fees for raising the local share of federal dredging projects. We believe that common law and precedent provide that authority, but that Section 208 of the 1986 WRDA severely limits this ability. AAPA has been advocating for several years that Congress replace section 208 with a general provision recognizing a port authority's existing ability to levy fees. This ability to levy fees was seriously eroded when section 208 was originally enacted because of the adoption of onerous limitations and requirements. These include §208(a)(3), which severely constrains the universe of vessels a fee may be levied upon; §208(a)(4), which requires non-Federal interests to undertake a burdensome assessment of the need for, and application and effects of, such fees; and, §208(a)(5) & (6), which proscribe strict procedural obligations on non-Federal sponsors for noticing the proposed fee and administering the collection and enforcement of the fee.

We recommend that all of Section 208 be replaced by a general authority restating the common law principal that ports can assess fees to recover the cost of their services. We would be willing to work with committee staff in crafting such a provision.

### **Equitable Relocation of Utilities**

As a result of Corps policy and practice, project sponsors are charged with the removal or relocation of utilities necessary to proceed with a construction project regardless of the ownership of the utilities or the unfair burden of costs placed on the sponsors. AAPA believes that the Corps should exercise its authority under Section 10 of the Rivers and Harbor Act of 1890 or use its navigation servitude authority to direct the removal or relocation of utilities within navigation channels. We recommend that Section 101 (a)(4) of the 1986 WRDA be deleted and that the WRDA express Congress' view that the

Corps should exercise its existing authority to direct the removal and/or relocation of utilities within navigation channels at 100 percent owner expense.

### **Dredging Challenges**

Due to a number of complex circumstances, including congressionally mandated restrictions on the Corps' use of multi-year contracts and ability to move funding to projects with greatest need and appropriation levels for maintenance dredging below Harbor Maintenance Tax annual revenue collections, there is a dredging crisis in America. The problem is particularly acute for ports located on the Gulf and Great Lakes, where there is no Corps dredge available to assist in the absence of a competitive private fleet.

In the 2007 WRDA, Congress took a significant step forward in removing restrictions on the use of the Corps dredges *Essayons* and *Yaquina* due to lack of availability of industry equipment and lack of a competitive bidding environment in the Pacific Northwest. We believe that those same conditions are occurring in other regions as well. Due to uncertainty in the dredging industry, dredging contract amounts are being front loaded with high mobilization costs leaving, in far too many cases, insufficient funding to actually accomplish the required annual dredging. The ultimate solution is to spend Harbor Maintenance Tax revenue. Congress should appropriate each year at least the amount collected.

### **Conclusion**

We appreciate this opportunity to express the need for a 2008 Water Resources Development Act from the public port industry's point of view and stand ready to assist the Committee in any way. Thank you.