

## **AAPA WRDA Requests April 2017**

1. **Scope/schedule discussions.** WRRDA Section 1001 - Expedite the study process by reaching a quick initial agreement on scope and schedule that will expedite the Sponsor and Corps signing a Feasibility Cost Share Agreement. Currently there is hesitancy for a non-Federal sponsor to sign an agreement obligating up to \$1.5 million without an agreement on scope and schedule.
2. **Define Feasibility Study start/stop milestones.** WRRDA Section 1001 – The goal is to more clearly establish successful Feasibility Study completion within the 3-year Congressional requirement. Recommendation is to start upon signing the Feasibility Cost Share agreement and stop when the Record of Decision is signed.
3. **Define qualifying funding for backlog prevention.** WRRDA 2014 Section 6003. This provision provides that projects authorized in WRRDA 2014 would be deauthorized if they have not received Construction funding within 7 years. The proposed modification to Section 6003 would provide that Investigations funding for Pre-construction Engineering and Design (PED) would also preclude deauthorization. This is considered vital as only one of eight coastal navigation channel improvement projects authorized in WRRDA 2014 (Savannah) has received construction funding. Also, the WRDA 2016 Backlog Prevention (Section 1302) provision allows 10 years and provides that construction funding, or funding for *a post authorization study* would preclude deauthorization.
4. **Expand authorized use of contributed funds to expedite permit evaluations.** WRRDA 2014 Section 1006 enabled the Corps to accept funds to expedite permit review process. The critical path in the permit review and issuance process has become timely response from environmental resource agencies. Expanding the authorized use of contributed funds to be used for other agency environmental reviews, with the express concurrence by the contributor, would expedite the required reviews. This could be established as a test case, similar to the initial Corps permit contributed funds authorization.
5. **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. Each of these projects must meet the requirements of being environmentally acceptable, economically justified, and constructed in accordance with federal permits and appropriate engineering and design standards. In many cases, the construction or modification of the channels by non-federal users reduces federal costs and initiates national economic benefits well before a federal project can be accomplished. 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. (Note: This was Cong Babin Amendment 90 in WRDA 2016)

6. **Clarification of Corps Section 408 reviews.** Under [Section 408](#), permission of the Corps is required for a proposed activity that would modify, among other things, "any sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States." This language was originally enacted in the Rivers and Harbors Act of 1899 to protect engineered structures built by the Corps that serve particular functions, such as erosion control (sea walls), water retention (dikes, levees), and vessel access (piers). Over time, however, the Corps has expanded its regulatory authority beyond the limits of the statute. Specifically, the Corps now requires a review of any proposal for a physical modification or structure within the boundary of a Corps project, even if it has no bearing at all on navigation or flood control. That has resulted in an overlay of additional administrative procedure, unnecessary cost, and regulatory uncertainty. This amendment reinforces the original intent of the Rivers and Harbors Act by focusing the Corps on actual navigation and flood control assets, allowing them to devote their full attention and resources to important safety evaluations and the expedited review and execution of project modification requests. (Note: This was Cong Babin Amendment 73 in WRDA 2016)
7. **Benefit-to-Cost Ratio (BCR) for Locally Preferred Plan (LPP).** Non-Federal Sponsors (NFS) can pay 100% of the cost above the National Economic Development (NED) plan for channel improvement to pursue construction of a LPP. Current Administration policy is that the Benefit-Cost-Ratio (BCR) reporting, budgeting and subsequent new construction start decisions are based on the LPP. AAPA requests that these reports and decisions should be

based on the NED plan, since this is the extent of the Federal government's cost-shared investment.

8. **Expedited permit evaluations for non-Federal construction of Congressionally authorized projects.** Congressionally authorized projects have completed National Environmental Policy Act (NEPA) requirements with a final Environmental Impact Statement or Environmental Assessment and Record of Decision on the project. Federal construction of these projects could proceed without additional NEPA compliance requirements. However, if a non-Federal entity wants to construct the project the non-Federal interest are required to obtain Section 404 and Section 10 permits from the Corps that involve NEPA activities and public review that duplicates those same activities in the feasibility study and Congressional authorization process. AAPA urges a WRDA provision that directs an expedited environmental review and permitting process for non-Federal construction of authorized projects.
9. **Dredged Material Placement Facility Cost Recovery.** The Corps is authorized to enter into agreements with the non-Federal Project Sponsor to build additional placement area capacity for the non-Federal Sponsor or their designee to use. The requested provision specifies that the cost basis is the actual construction, operation and maintenance cost.
10. **Restructure the 10% Lands, Easements, Rights-of-way and Relocations (LERR) repayment.** Cost sharing for navigation projects varies with the project depth plus an additional 10% for LERR that the Non-Federal Sponsor can pay back over 30 years. AAPA recommends be LERR be consolidated into the cost share percentages, for example 60% Federal and 40% Non-Federal plus 10% LERR would become 50% Federal and 50% Non-Federal. Ports report a perception and financial issue with using locally obtained funds to make payments to the U.S. General Treasury to cover the unrelated 10% fee/surcharge. The proposed restructuring provides that the local funds are up front for the project's construction and brings navigation projects to be in line with other authorities such as flood damage reduction and environmental restoration.
11. **Utility relocations for channel improvement projects.** The Corps revised their 1995 policy implementing WRDA 1986 Section 101(a)(4) on utility relocations and removals. AAPA requests a review of Congressional intent with respect to cost-sharing of utilities serving the general public versus cost sharing for all utility crossings. AAPA believes public ports should not have to cost share in relocation/removals of private sector utility crossings. These owners accepted the Corps permit condition that the utility would be

relocated/removed upon notice from the Government. Consider deleting policy requirement of a letter from the Governor prior to using navigational servitude for relocations.

12. **Enabling P3 Opportunities.** AAPA participated in development of ASCE's report, "Alternative Financing and Delivery of Waterways Infrastructure". Existing legislation is WRRDA Section 5014. The report identifies recommendations for addressing how some alternative financing and delivery issues might be resolved. AAPA recommends the following recommendations be addressed in WRDA legislation:

- a. Address the budget scoring issue where the entire project construction cost is deducted from Year One of the Federal agency budget
- b. USACE needs the authority to enter into long-term contracts
- c. Demonstration projects – TIFIA included an 'experimental mode' DoT found a 1934 authority.