

AAPA WRDA 2020 Requests – Sep 2019

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 profit-making 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.
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 hat cost basis that the project sponsor pays for dredged material capacity is the actual construction cost and not market value.
- 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. Draft legislative language provided – it was Rep. Brian Babin (R-TX) Amendment 90 in WRDA 2016.
- 7. 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’.

September 2019