

Written Statement of

Stephen E. Sandherr
Chief Executive Officer
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to the

United States Senate

Committee on Environment and Public Works

For an Information-Gathering Process on Draft Legislation entitled,

America's Water Infrastructure Act of 2020 and

the Drinking Water Infrastructure Act of 2020: Stakeholder Comments

April 22, 2020



The Associated General Contractors of America (AGC) is the leading association in the construction industry representing more than 27,000 firms, including America's leading general contractors and specialty-contracting firms. Many of the nation's service providers and suppliers are associated with AGC through a nationwide network of chapters. AGC contractors are engaged in the construction of the nation's commercial buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, waterworks facilities, waste treatment facilities, levees, locks, dams, water conservation projects, defense facilities, multi-family housing projects, and more.

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Associated General Contractors of America, Arlington, VA
Committee on Environment and Public Works
United States Senate
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Chairman Barrasso, Ranking Member Carper, and Senators of the Environment and Public Works Committee: thank you for inviting me to provide a written statement on the importance of federal investment in our nation's water resources infrastructure and water infrastructure and the discussion drafts of the America's Water Infrastructure Act of 2020 and the Drinking Water Infrastructure Act of 2020.

My name is Stephen Sandherr. I am Chief Executive Officer of the Associated General Contractors of America ("AGC"). AGC is the leading association in the construction industry representing more than 27,000 firms, including America's leading general contractors and specialty-contracting firms. Many of the nation's service providers and suppliers are associated with AGC through a nationwide network of chapters. AGC contractors are engaged in the construction of the nation's commercial buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, waterworks facilities, waste treatment facilities, levees, locks, dams, water conservation projects, defense facilities, multi-family housing projects, and more.

Before I begin, I want to thank you and the rest of the Senate for taking prompt and bipartisan actions to assist the nation's businesses, especially the construction industry, and the American people during the COVID-19 pandemic. As I will detail in my written statement, federal investments in infrastructure, such as the two discussion drafts discussed herein, can play an essential role in rebuilding our economy and creating well-paying jobs for the American people.

For years, AGC has worked with this Committee to ensure that our nation has the infrastructure it needs now and in the future. AGC appreciates the Committee's continued efforts to improve our nation's water resources infrastructure and water infrastructure. An outline for my written statement is as follows:

- I. Water Resources Development Act
 - A. The Case for a Water Resources Development Act
 - B. AGC's Funding and Policy Recommendations
 - C. AGC's Feedback on Title I of America's Water Infrastructure Act of 2020

- II. Water Infrastructure
 - A. The Case for Water Infrastructure
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 - C. AGC's Feedback on Title II of America's Water Infrastructure Act
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I. Water Resources Development Act

A. The Case for a Water Resources Development Act (WRDA)

Water resource infrastructure is critical to the U.S. economy and Americans' quality of life, which is well known to those who sit on the Committee. It yields high returns on our investment. Our ports, harbors, and inland waterways play an essential role in moving goods domestically and internationally. Harbors maintained by the U.S. Army Corps of Engineers (Corps) handle 95 percent of America's import and export trade, while the inland waterways system moves freight at half the cost of rail and one-tenth the cost of truck transportation. Spending just above \$5 billion a year on this program generates an estimated net benefit of \$87.1 billion in economic development, a 16-to-1 return, and \$27.3 billion in revenue to the U.S. Treasury, a 5-to-1 return.¹ Inland waterways transportation generates fewer emissions than other forms of transportation—a single barge can move a ton of cargo 647 miles using only a gallon of fuel.² Critically, between 2008 and 2017, Corps projects prevented an estimated \$87.3 billion in average annual damage, and every dollar invested in Corps flood risk management projects yields nearly \$10 in potential savings.³

Water resources projects support jobs in the construction industry, but also generate and sustain jobs in other industries. According to Waterways Council, Inc., America's inland waterways sustain 541,000 barge transportation jobs alone and annually generate more than \$1 billion in new job income.⁴ Recent events, such as the many devastating natural disasters and increased global competition, further underscore the importance of investing in our nation's water resources infrastructure. Simply put, a new WRDA bill is needed. It will authorize critical Corps Civil Works projects, including navigation (*e.g.*, dredging and locks), flood control (*e.g.*, levees), hydropower (*e.g.*, dams), and water supply as well as set the policies and programs that guide the development and execution of water resources projects now and in the future.

Shortly after the Great Recession, AGC commissioned a study on the job and Gross Domestic Product (GDP) multiplier effects of investment in nonresidential construction⁵. For each \$1 billion of federal investment, during a time of significant unemployment and unused production capacity, supports roughly 28,500 jobs, of which 9,600 are direct construction jobs, 4,700 are indirect jobs in industries supplying goods and services, and 14,300 were "induced" jobs as workers and owners in the construction and supplier industries spent their additional wages, salaries, and profits. The GDP ultimately increases by \$3.4 billion, including \$1.1 billion of personal income. Put simply, for each construction job created, roughly two jobs are created in the supply chain and induced job positions.

¹ Kruse, J., Protopapas, A., and Olson, L. *A Modal Comparison of Domestic Freight Transportation Effects on the General Public 2001–2009*. National Waterways Foundation, Texas A&M Transportation Institute, 2012.

² Stockton, Steven I. The Military Engineer. *The Nation's Water Infrastructure*. Retrieved from: <http://themilitaryengineer.com/index.php/tme-articles/tme-magazine-online/item/455-the-nation%E2%80%99s-water-infrastructure>

³ U.S. Army Corps of Engineers. *Flood Risk Mgmt: Economic Impact*. Retrieved from <https://www.iwr.usace.army.mil/Missions/Value-to-the-Nation/Flood-Risk-Mgmt/Flood-Risk-Economic-Impact/>

⁴ Waterways Council, Inc. (2020) *Waterways System*. Retrieved from <https://waterwayscouncil.org/waterways-system>.

⁵ Economic data compiled by Ken Simonson, Chief Economist, AGC of America, from Prof. Stephen Fuller, George Mason University, and U.S. government sources. June 5, 2012.

B. AGC's Funding and Policy Recommendations

Bipartisan Approach

AGC commends Congress, and in particular, the Committee, for passing biennial water resources development acts that help to address our nation's aging system of inland waterways, coastal harbors and ports, locks and dams, flood control protections, and that maintain a commitment to restore critical environmental areas of our country.

The predictability of the biennial passage of water resources development acts cannot be understated and is critical for all stakeholders involved in the planning and execution of water resources projects. Federal and heavy construction contractors, state and local governments, the Corps, and other stakeholders have come to depend upon this predictable source of federal infrastructure investment. AGC urges Congress to avoid including controversial provisions that could jeopardize the broad, bipartisan support for passing a water resources development bill this year.

Keep the Trust in the Trust Funds

Robust and consistent investment in our nation's ports, harbors, and inland waterways is not just good public policy, it is necessary to grow our economy, maintain our global competitiveness, and sustain and create jobs. Revenues in the Inland Waterway Trust Fund (IWTF) and the Harbor Maintenance Trust Fund (HMTF) should be used for their intended purposes. AGC appreciates that H.R. 748, the Coronavirus Aid, Relief, and Economic Security (CARES Act) addresses a long-held priority of ours—ensuring that all annual revenue deposited into HMTF is appropriated for the intended purposes of maintaining the nation's ports and harbors. AGC also applauds Congress for fully using the estimated annual revenues in the IWTF for the construction and major rehabilitation costs projects on the nation's inland waterways in recent Energy and Water Development and Related Agencies Appropriations bills.

AGC holds that the IWTF and the HMTF should not be subject to the annual, discretionary appropriations process. Instead, they should be categorized as mandatory spending and taken off the discretionary budget, similar to the Highway Trust Fund. Congress should continue to fully utilize the annual revenues in the IWTF and HMTF for their intended purposes.

Increase and Provide Multi-Year Appropriations

While AGC is pleased that Congress continued to authorize new water resources projects in recent WRDA bills, additional appropriations must be provided in order to realize the benefits of these projects. A 2018 article⁶ asserted that the federal government has appropriated only a small percentage of the authorized projects from WRDA 2014 and 2016. According to the article, of the 64 projects worth \$25.3 billion that Congress authorized in those laws, 49 of them had not received any federal money. It went on to note that the federal government spent only \$689.1 million on the projects, 2.7 percent of the authorization. Congress should increase funding for the Civil Works Program and the Program should receive a five-year appropriation of funding instead of the current yearly appropriations.

⁶ Fischler, Jacob (2018, July). CQ Roll Call Roll. *Authorized Flood Projects Left High and Dry on Funding*. Retrieved from: https://www.rollcall.com/news/policy/flood-project-funding-high-dry?utm_source=rollcallheadlines&utm_medium=email&utm_campaign=newsletters&utm_source=rollcallheadlines&utm_medium=email&utm_campaign=newsletters

Bureaucratic Processes Remain Ripe for Improvement

Even fully funding a water resources project does not mean that it can commence in a timely fashion. Budgetary and environmental bureaucratic processes can stand in the way. Currently, our nation's water resources projects are subject to two vetting procedures. The Chief Reports submitted to Congress show that the benefits of a project are at least as great as the cost. However, the Office of Management & Budget (OMB) subjects these projects to a second, more rigorous, benefit-cost ratio. OMB often requires that the benefits of a project be 2.5 times greater than the cost. OMB's separate benefit-cost analysis (BCA) often requires additional reviews and adjustments, resulting in delays and additional scope adjustments. Congress should reform the BCAs and eliminate the duplicative and confusing accounting process.

AGC applauds Congress' efforts to streamline the project delivery process in previous infrastructure-related legislation. However, additional steps must be taken in the next water resources development act.

In August 2017, President Trump issued Executive Order 13807, "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects." E.O. 13807 calls for "One Federal Decision," unless separate National Environmental Policy Act (NEPA) documents are requested by the project sponsor or a single environmental review is not the best method for the project. This will allow for a single review for a project that ends with a single Record of Decision (ROD) issued by the lead agency. It also aims to reduce environmental review and permitting time, to the extent permitted by law, to "not more than an average of approximately 2 years" following the publication of the notice of intent to prepare an environmental impact statement (EIS) and all federal authorizations are to be completed within 90 days after the ROD. Congress should codify the "One Federal Decision" process for all environmental reviews and authorizations for major infrastructure projects, including water resources projects and require the Corps to implement the financial penalty provisions enacted in WRDA 2014, which created a unique system of reprogramming a federal agency's funding if that agency missed its deadline for rendering a decision on a permit, license, or other approval.

Currently, projects are being delayed because minor changes or adjustments to the project design or location—or even just changes to construction means and methods—will trigger another round of lengthy coordination at the federal and state level, possibly a supplemental EIS, and several more public review periods that restart the statute of limitations and give opponents more time to sue (sometimes just to stop or to delay the project). Projects also are held up when environmental field surveys (wildlife, wetlands) become "stale" and agencies require new, updated information. Congress should direct federal agencies to develop clear standards for determining what project changes warrant a re-evaluation of previously approved environmental documentation. Additionally, there could be a limit on the text or page length of environmental analyses for activities that are repeated in the same fashion in like environments. Requiring page limits would force agencies to focus on the most significant issues and not extensively document issues not likely to affect the environment.

Many Clean Water Act (CWA) Section 404 (individual) permit delays stem from delays in other federal environmental permissions, authorizations, certifications, etc., required before a District

Engineer will sign off on the permit application.⁷ Key examples include delays and repetition with assessments/analyses under the Endangered Species Act (ESA) Section 7 consults, the National Historic Preservation Act (NHPA) Section 106 authorizations,⁸ and the Coastal Zone Management Act (CZMA) consistency determinations, which are a part of the NEPA process. Congress must take steps to reduce duplication in the permitting process. To reduce duplication, the monitoring, mitigation, and other environmental planning work performed during the NEPA⁹ review must satisfy federal environmental permitting requirements, unless there is a material change in the scope of the project. For water infrastructure projects, Congress should require the Corps to always be a cooperating agency in the NEPA process (when it is not serving as the lead agency) and, in that regard, assume the responsibility for ensuring that the above-referenced consultation requirements are completed during the NEPA review and that such consults are sufficient for the 404 federal permit authorizations.

America's Dredgers Can Meet Demand

The expansion of Corps-owned and operated dredge fleet is an inefficient and unnecessary use of taxpayers' dollars. There is more than enough capacity in the private sector to safely and efficiently meet our nation's dredging needs. In 2017, the private-sector U.S.-flagged hopper dredging fleet capacity increased by 34 percent with the addition of two large new-build vessels built in U.S. shipyards by U.S. workers. The U.S. dredging industry is also working to ensure that it meets our nation's future dredging needs. Currently, the U.S. dredging industry is investing roughly \$1.5 billion-plus in a construction shipbuilding program. Each dredge typically has a value of roughly \$125 million to build and has significant costs to operate. The Corps fleet was built and designed for a time when private industry was just starting to build hoppers and now that there are enough hopper dredges in the private fleet, there is a reduced need for the government fleet. AGC encourages Congress to not allow the Corps to purchase additional dredges.

⁷ While the Corps makes the Section 404 permit decision, other federal and state agencies have substantial roles in the permit application process. The result is a process that requires extensive interagency coordination. The Corps must comply with environmental review requirements under various federal laws before issuing a CWA Section 404 permits. These laws include NEPA, ESA at 16 U.S.C. §§ 1531, *et seq.*, NHPA at 16 U.S.C. §§ 470, *et seq.*, CZMA at 16 U.S.C. §§ 1451, *et seq.*, and many others. Each law has different requirements, and the Corps must ensure that all applicable requirements are satisfied before a permit is issued. The Corps' regulations include procedures for NEPA compliance (*see supra*) and for Section 106 compliance (33 C.F.R. § 325 App. C). As reflected in those regulations, the Corps has an independent obligation to comply with those laws.

⁸ Another suite of laws relates to historic and cultural protection and preservation. These laws have often elevated tribal nations' concerns. More generally, attention to how the project affects an area's cultural heritage (local communities) must be considered. These factors should be part of the EIS analysis (e.g., to identify sites of historic significance, the presence of Native American graves).

⁹ U.S. Congressional Research Service. Army Corps of Engineers: Water Resource Authorization and Project Delivery Processes R45185; April 19, 2019), by Nicole T. Carter and Anna E. Normand.

“The National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. §4321) requires federal agencies to fully consider a federal action's significant impacts on the quality of the human environment, and to inform the public of those impacts, before making a final decision. The U.S. Army Corps of Engineers (Corps) integrates its NEPA compliance process with the development of a feasibility study. That is, during the study process, Corps identifies impacts of potential project alternatives and any environmental requirements that may apply as a result of those impacts, and it takes action necessary to demonstrate compliance with those requirements. In Section 1005 of the Water Resources Reform and Development Act of 2014 (WRRDA 2014; P.L. 113-121), titled Project Acceleration, Congress directed Corps to expedite NEPA environmental documentation compliance for Corps studies. In March 2018, Corps issued implementation guidance for this provision. Corps published implementation guidance for the categorical exclusion portion of Section 1005 in August 2016; the provision called for the agency to survey its use of categorical exclusions and to identify and publish new categorical exclusion categories that merit establishment. Corps has not established new categorical exclusion categories pursuant to Section 1005 of WRRDA 2014.”

C. AGC's Feedback on Title I of America's Water Infrastructure Act of 2020 (AWIA)

AGC appreciates the opportunity to provide the Committee with its feedback on Title I of the discussion draft of AWIA. AGC applauds the Committee for the process it used to solicit policy and funding priorities for this bill from all Senators and the broader stakeholder community. AGC also appreciates that the Committee developed AWIA in a bipartisan manner and appears to have excluded controversial policies that may jeopardize the bill. While AGC is still reviewing the discussion draft, there are a few sections that I would like to highlight.

AGC supports the sections in Title I that will further streamline the environmental review and permitting process, allowing for water resources projects to begin quickly and efficiently. Specifically, AGC supports Section 1101, which requires the Corps to establish a goal of completing the feasibility study by no later than two years after the date of initiation. While the Corps has made improvements, a recent Government Accountability Office study reported that Corps officials are finding that most feasibility studies are being completed within four years, although at a lower cost than prior to the 3x3x3 rule.¹⁰ Section 1101 further directs the Corps to use all existing flexibilities and exceptions to any requirement administered by the Secretary to speed up feasibility studies, all the while without disrupting the positive reforms enacted by the 3x3x3 rule and adhering to other applicable federal laws and requirements.

AGC commends the Committee for including Section 1102, which requires the Corps to work with relevant federal agencies to identify which of its categorical exclusions (CEs) would accelerate delivery of a project if they were used by those agencies and further directs those agencies to issue a notice of proposed rulemaking (NPRM) to adopt any of the Corps CEs. AGC encourages the Committee to also require the Corps to evaluate other federal agencies CEs and adopt any of those CEs through a NPRM. AGC also supports Section 1011, which extends the duration of the pilot program that allows non-federal interests to carry out feasibility studies and the sections that direct the Corps to prioritize permits for certain water resources projects or activities.

AGC appreciates emergency contracting authority included in Section 1043. This section requires that the Corps place greater importance on schedule and other non-price factors relative to cost or price during declared disasters. The recent natural disasters and the COVID-19 pandemic remind us that in times of national emergencies the faster construction contractors can get to work, the greater chance there is to protect more lives and safeguard property.

AGC commends the Committee for adjusting the cost share formula for construction and major rehabilitation projects on the inland waterway system in Section 1069. This adjustment will enable more eligible inland waterway projects to receive funding. Ultimately, AGC looks forward to working with the appropriation committees on ensuring that any increase in the federal cost share does not come at the expense of other parts of the Corps Civil Works Program. Finally, AGC applauds the Committee for not authorizing the expansion of the Corps owned dredging fleet.

¹⁰ Government Accountability Office. (2019). WATER RESOURCES PROJECTS: Army Corps of Engineers Can Further Enhance Acceleration of Feasibility Studies. (GAO Publication No. 19-561). Washington, D.C.: U.S. Government Printing Office.

II. Water Infrastructure

A. The Case for Water Infrastructure

Water is vital to the health of all Americans, our economy, and our environment. However, water infrastructure faces significant, well-documented challenges that threaten our personal well-being and that of our nation. Drinking water is delivered via more than one million miles of pipes and there are approximately 148,000 water systems across our country, providing drinking water to over 90 percent of Americans. According to the Environmental Protection Agency (EPA), there are an estimated 240,000 water main breaks per year in the United States, wasting more than two trillion gallons of treated drinking water. The EPA also estimated that there are at least 23,000 to 75,000 sanitary sewer overflows per year. According to the EPA's estimate of national drinking water and wastewater needs, over \$743 billion is needed for water infrastructure improvements.

Industry and labor studies of past water infrastructure investment have found that for every \$1 billion invested in water infrastructure over 23,000 jobs are created. American industries and agriculture depend on reliable, safe water and investments in water infrastructure contribute directly to our nation's long-term economic competitiveness and protect our environment.

B. AGC's Funding and Policy Recommendations

Increase Investment in Water Infrastructure

The nation's water infrastructure needs are well-documented. A variety of funding and financing tools should be deployed to address these needs, which in turn will protect the nation's environment, safeguard the public health of all Americans, and bolster the U.S. economy. Specifically, AGC urges Congress to expand funding for federal Drinking Water and Clean Water State Revolving Funds Programs and provide funding for the Water Infrastructure Finance and Innovation Act (WIFIA) Program. AGC also urges Congress to remove drinking water and wastewater from the private activity bond volume cap.

Provide Funding Predictability

The annual appropriations process can create uncertainty for state and local communities who depend on federal programs to help make improvements to their water infrastructure. AGC urges Congress to provide funding predictably through the creation of a water trust fund with dedicated revenue sources that support the 'user pays' concept for disbursement to the Clean Water and Drinking Water State Revolving Fund Programs on a multi-year basis.

Bolster Technical Assistance

States and communities across our nation understand the necessity of water infrastructure to their residents and economies. However, the ability of communities to take advantage of existing federal programs can vary. In order to mitigate this issue, Congress provided funding for technical assistance through existing programs, such as the Clean Water State Revolving Fund program. AGC urges Congress to bolster funding for technical assistance and explore other opportunities to assist all communities with improving their water infrastructure.

C. AGC's Feedback on Title II of America's Water Infrastructure Act (AWIA)

AGC appreciates the opportunity to provide the Committee with its feedback on Title II of the discussion draft of AWIA. While AGC is still reviewing the discussion draft, there are a few sections that I would like to highlight.

AGC supports the sections in Title II that improve clean water infrastructure resiliency and sustainability. Specifically, AGC supports Section 2001, which establishes a program to increase the resiliency of public owned treatment works to natural hazards. Improving the resiliency of our clean water systems will conserve water, enhance water efficiency, benefit our overall clean water infrastructure and help ensure that our nation's water resources are protected. AGC commends the Committee for including increased funding for technical assistance in Section 2002. Many of the nation's systems, particularly smaller ones, do not possess the wherewithal to administer clean water state revolving fund programs and projects. Providing technical assistance will help them pursue assistance which otherwise would have been out of reach.

AGC also appreciates the Committee efforts to provide all communities with increased funding for wastewater infrastructure through existing programs and new programs. For example, AGC supports the establishment of a wastewater discretionary grant program under Section 2016, which provides grants, on a competitive basis, for wastewater infrastructure projects. Finally, AGC supports Section 2014 and Section 2015, which reauthorizes the Water Infrastructure Finance and Innovation Act Program and the Clean Water State Revolving Fund Program, respectively. These programs continue to be instrumental in providing low-cost and accelerated financing on a wide range of water infrastructure projects.

D. AGC's Feedback on Drinking Water Infrastructure Act of 2020

AGC appreciates the opportunity to provide the Committee with its feedback on DWIA. Again, AGC is still reviewing the discussion draft, but there are a few sections that I would like to highlight.

AGC supports the sections in DWIA that provide funding to combat the threats to public health, resulting from contaminants, such as lead, in drinking water. Ensuring all Americans have dependable, clean, safe drinking water requires the necessary funding to maintain, upgrade, and build dependable systems. AGC applauds Section 8 and Section 9, which establish programs to help guarantee the operational sustainability and the resiliency of small and midsize water systems. AGC also supports Section 14, the Drinking Water Infrastructure Discretionary Grant Program, which provides grants, on a competitive basis, to address issues such as improving methods for providing a dependably safe supply of drinking water and improving water treatment efficiencies.

III. Conclusion

AGC thanks the Committee for its continued efforts to improve our nation's water resources infrastructure and water infrastructure. AGC appreciates this opportunity to give feedback on these two important discussion drafts. AGC will provide the Committee with additional feedback on AWIA and DWIA and looks forward to working with this Committee as this legislative process moves forward. AGC would be pleased to answer any questions.