

May 7, 2021

Via: WRDA2020@usace.army.mil and <http://www.regulations.gov/>

Ms. Amy Frantz

U.S. Army Corps of Engineers

Headquarters, U.S. Army Corps of Engineers

441 G Street NW., Room 3F91

Washington, DC 20314-1000

Re: Implementation Guidance for the Water Resources Development Act of 2020, COE-2021-0002

Dear Ms. Frantz:

The undersigned 74 conservation, faith, civic, social justice, and recreation organizations appreciate the opportunity to comment on the U.S. Army Corps of Engineers (Corps) implementation guidance (Guidance) for the Water Resources Development Act of 2020. On behalf of our millions of members and supporters across the country, we urge adoption of the recommendations outlined below, which will assist the Corps in prioritizing natural and nature-based solutions, addressing environmental injustice, and increasing the nation's resilience to climate change.

We also urge the Corps to ensure that staff have the training and resources needed to plan and evaluate natural and nature-based solutions and effectively carry out consultation and public engagement responsibilities. Corps staff must also invest the time needed to build authentic and respectful relationships with Tribes, communities of color, and economically disadvantaged communities.

Implementation Guidance Recommendations

Section 110 (Implementation of Water Resources Principles and Requirements) directs the Corps to develop final agency procedures to implement the Principles, Requirements and Guidelines (PR&G), which elevate consideration of natural systems for addressing water resources problems. Because this section provides clear direction—including requiring robust and formal opportunities for input from resource agencies, outside experts, and the public—the Corps can and should move directly to developing the final agency procedures. Should the Corps nevertheless develop Guidance, the Guidance should: (a) restate the requirement to solicit broad stakeholder input, including but not limited to formal public notice and comment; (b) direct inclusion of clear criteria in the final procedures to drive development and selection of plans that comply with the National Water Resources Planning Policy, advance resilience, increase equitable outcomes, take all steps possible to avoid environmental harm; and account for lost ecosystem services as a project cost; and (c) require immediate implementation of the final agency procedures while also directing staff to initiate an update to the planning guidance notebook to incorporate the PR&G requirements and other needed updates.

Section 115 (Flood Protection Projects) incentivizes the use of natural and nature-based measures and places those measures on a level playing field with nonstructural measures. The Guidance should direct the Corps to: (a) fully consider natural and nature-based alternatives through the final array of alternatives for flood and storm risk management studies (as is required for other nonstructural measures), and inform all non-federal sponsors, stakeholders, and the public about this requirement; (b) describe the types of activities that qualify as natural and nature-based measures; (c) formally notify all

current and future non-federal sponsors and study partners that natural and nature-based measures are subject to the same cost-share requirements as other nonstructural measures; (d) establish a natural and nature-based features Community of Practice; (e) integrate training on natural and nature-based features into the core classes of the planning training curriculum; and (f) require immediate implementation of Section 115 while also directing staff to initiate an update to the planning guidance notebook to provide critical guidance on the formulation and evaluation of natural and nature-based features, and other needed updates.

Because Section 115 directly affects the assessment of natural and nature-based features under Section 1149(c) of WRDA 2018 (Inclusion of Alternative Measures for Aquatic Ecosystem Restoration),¹ our organizations also urge the Corps to revise the Section 1149(c) Guidance to: (a) clarify that Section 1149(c) must be implemented in a manner that is consistent with the new requirements of WRDA 2020 Section 115; (b) clarify that natural and nature-based measures are presumed to be “practicable” unless it is clearly demonstrated that such measures cannot provide, or significantly contribute to, an appropriate level of protection; and (c) direct a full evaluation of natural and nature-based alternatives through the final array of alternatives for flood and storm risk management studies.

Section 118 (Pilot Programs on the Formulation of Corps of Engineers Projects in Rural Communities and Economically Disadvantaged Communities) directs the Corps to establish two pilot programs to evaluate opportunities to reduce flood, hurricane, and storm risks for economically disadvantaged and rural communities. Studies carried out under the Pilot Program for Economically Disadvantaged Communities will be at full federal expense and must incorporate natural or nature-based features to the maximum extent practical. The Guidance should: (a) ensure extensive outreach to promote awareness of the pilot programs and application opportunities, using best practices² and processes developed pursuant to WRDA 2020 Section 112 to ensure early and meaningful community and Tribal engagement; (b) direct the Corps to work with the Federal Emergency Management Agency and Environmental Protection Agency to identify communities that could benefit from the pilot programs; (c) direct the Corps to provide technical assistance with pilot program applications; and (d) ensure robust consideration and incorporation of natural and nature-based features, including as provided for under WRDA 2020 Section 115 and WRDA 2018 Section 1149(c).

Section 111 (Resiliency Planning Assistance) directs the Corps to prioritize resiliency planning assistance to economically disadvantaged communities and communities subject to repetitive flooding, and emphasizes the need for the Corps to provide technical assistance to improve resiliency planning. The Guidance should direct the Corps to: (a) work with the Federal Emergency Management Agency, the Environmental Protection Agency, and others to identify communities that could benefit from resiliency planning; (b) develop strategies for effective outreach to make communities aware of the availability of resiliency planning technical assistance; and (c) consider a community’s ability to pay in establishing the non-federal cost share for such assistance.

Section 112 (Project Consultation) directs the Corps to update its policies on environmental justice considerations; strengthen its Tribal consultation requirements; promote meaningful involvement with minority communities, economically disadvantaged communities, and Indian Tribes in carrying out

¹ WRDA 2020 Section 116(a) also makes technical corrections to WRDA 2018 Section 1149(c).

² See, e.g., National Environmental Justice Advisory Council, Model Guidelines for Public Participation at <https://www.epa.gov/sites/production/files/2015-02/documents/recommendations-model-guide-pp-2013.pdf> or the proposed Environmental Justice for All Act at <https://www.congress.gov/bill/116th-congress/house-bill/5986/>.

water resources development projects; and issue long overdue reports. The Guidance should: (a) ensure that Tribes drive the development of the Corps' Tribal consultation procedures, including by directing the Corps' Tribal Nations Technical Center of Expertise (TNTCX) to robustly engage with Tribes and Tribal leaders to obtain recommendations and to incorporate recommendations obtained through consultations underway pursuant to the January 26, 2021 Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships; (b) direct the Corps to work with the Environmental Protection Agency and other federal agencies with environmental justice advisory committees to identify best practices³ for ensuring early and meaningful community and Tribal engagement; and (c) direct the Corps to engage in robust outreach to Tribes, underserved communities, and environmental justice organizations to obtain recommendations for improving the Corps' processes.

Section 113 (Review of Resiliency Assessments) requires the Corps to update existing planning guidance related to sea level rise and increased inland flooding and take other actions that are fundamental to developing and operating effective and resilient projects that affect coastal areas. The Guidance should direct the Corps to consult with climate experts from academia, other federal and state agencies, and non-governmental organizations, in carrying out this update.

Section 116 (Feasibility Studies; Review of Natural and Nature-Based Features) requires each flood or storm damage reduction feasibility study to include a summary of any natural or nature-based feature alternatives considered, including their long-term costs and benefits; and if such alternatives were rejected, explain that decision. The Guidance should require the summary to clearly describe the: (a) level of analysis and evaluations conducted for the rejected natural or nature-based alternatives; (b) specific flood damage reduction benefits that could have been achieved; (c) quantified and unquantified co-benefits that could have been obtained, including increased resiliency; (d) estimated cost of the rejected alternatives; and (e) specific reasons why the alternative was not selected.

Section 123 (Review of Corps of Engineers Assets) directs the Corps to develop an inventory of projects: (1) that are no longer necessary for the Corps' mission responsibilities; (2) for which incorporation of natural or nature-based features could produce long-term cost savings or increased resiliency; or (3) that no longer meet the authorized purposes due to deferred maintenance requirements. The Guidance should direct the inventory to also include projects that could be re-operated to increase resiliency and allow wildlife to thrive (e.g., through changes to water control manuals or lock and dam operations).

Section 125 (Beneficial Use of Dredged Material; Dredged Material Management Plans) facilitates strategic use of clean and appropriately sourced dredged materials for restoration and other projects, which is particularly important in regions like the Mississippi River Delta where insufficient sediment transport severely aggravates coastal wetland losses. The Guidance should: (a) prioritize the required regional dredged material management plans, accounting for environmental benefits in the assessment of the federal standard, and developing projects for economically disadvantaged communities; and (b) establish formal sidebars to beneficial reuse projects to protect public safety and the environment, including requiring that the sediments being beneficially reused are free of toxic contamination and are fully compatible with the restoration site, and that the sediments are being reused for a sustainable and legally-compliant project.⁴

³ Id.

⁴ Adverse impacts from beneficial reuse can include: re-suspending significant quantities of toxic sediments that harm people and wildlife, burying vital fish and wildlife habitat by placing sediment in an inappropriate location,

Section 160 (Definition of Economically Disadvantaged Community) directs the Corps to define the term ‘economically disadvantaged community’ for purposes of WRDA 2020 and provide for public notice and comment on this definition. The Guidance should direct the Corps to: (a) ensure robust public input and direct engagement with environmental justice community groups and organizations, Tribes and Tribal organizations, state and local governments, academia, and non-governmental organizations in developing this definition; (b) carefully evaluate and fully consider the definitions used in the introduced Environmental Justice for All Act (H.R. 5986); and (c) consult and coordinate with the Council on Environmental Quality, Environmental Protection Agency, and other federal agencies to promote alignment of definitions across federal programs as appropriate.

Section 301 (Deauthorization of Inactive Projects) establishes a unified process for the deauthorization of \$10 billion in antiquated or inactive water resources development projects, and requires a complete re-study of unconstructed projects with studies more than 20 years old. The Guidance should also direct comprehensive re-study and reevaluation of projects where construction has not taken place for 20 years, even if minor construction had been initiated before that date.

WRDA 2016, 2014, and 2007 (Various Mitigation Provisions) establish clear and important requirements to help the Corps plan and implement ecologically successful compensatory mitigation.⁵ However, implementing Guidance does not accurately describe these requirements, leading to a failure to require mitigation for the operation of major navigation and river management projects, even when the projects’ operating plans are reevaluated through supplemental environmental reviews that acknowledge the operating plans will cause significant harm to aquatic habitat for decades to come. To correct these legal errors, the Corps should issue new mitigation Guidance to clarify that: (a) the full suite of statutory mitigation requirements must be satisfied whenever any type of study document selects a project alternative, including environmental impact statements and supplemental environmental impact statements that are not submitted to Congress to support project authorization; (b) programmatic mitigation plans may not be used in lieu of a project specific mitigation plan unless the programmatic plan also meets the detailed plan and other requirements established by WRDA 2007; and (c) the Corps must comply with the regulatory program mitigation requirements (including 40 CFR §§ 230.91-230.98) in addition to the statutory mitigation requirements as a matter of law.⁶

Conclusion

Our organizations urge the Corps to prioritize swift and effective implementation of the Water Resources Development Act provisions highlighted in these comments, including by adopting the Guidance recommendations outlined above. These essential provisions will make communities safer and improve the resilience and health of the nation’s waters, wildlife, and people.

Sincerely,

harming fish and wildlife habitat by reusing sediments that are incompatible with the sensitive habitats upon which they are placed, and causing significant adverse impacts at the project providing the sediment source.

⁵ WRDA 2016, Section 1162 (Fish and Wildlife Mitigation), WRRDA 2014, Section 1040 (Fish and Wildlife Mitigation), and WRDA 2007 Section 2036(a) (Mitigation for Fish and Wildlife and Wetland Losses).

⁶ The mitigation guidance incorrectly states that the regulatory program requirements will be met if planners follow the guidance in ER 1105-2-100, but the regulatory mitigation requirements are not found in ER 1105-2-100.

Marion "Penny" Freistadt
Volunteer
350, Core Group

Beth Butler
Executive Director
A Community Voice

Olivia Dorothy
Director, Upper Mississippi River
American Rivers

Joseph Zupan
Executive Director
Amigos Bravos

Georgia Ackerman
Riverkeeper and Executive Director
Appalachicola Riverkeeper

Joe Lovett
Executive Director
Appalachian Mountain Advocates

Chad Berginnis, CFM
Executive Director
Association of State Floodplain Managers

Dean A. Wilson
Executive Director
Atchafalaya Basinkeeper

Anne Millbrooke
Authorized Signer
Bozeman Birders

Michael William Mullen
Riverkeeper
Choctawhatchee Riverkeeper

John Koferl
President
**Citizens Against Widening the Industrial Canal
(CAWIC)**

Carin High
Co-Chair
Citizens Committee to Complete the Refuge

Peter Digre
Co-Chair
**Climate Reality Project: New Orleans, LA
Chapter**

Elizabeth Soychak
Volunteer Organizer
Coalition Against Death Alley

Sandra Meola
Director
Coalition for the Delaware River Watershed

Emily Vuxton
Policy Director
Coalition to Restore Coastal Louisiana

Derek Brockbank
Executive Director
Coastal States Organization

Suzanne O'Neill
Executive Director
Colorado Wildlife Federation, Inc.

Dale Beasley
President
Columbia River Crab Fisherman's Association

Robert Taylor
Executive Director
Concerned Citizens of St. John

Lori Simmons
Co-Founder
Defenders of Somi Se'k

Daneeta Jackson
Business Owner/Artist
Elektrik Zoo Films, Inc.

Dan Silver
Executive Director
Endangered Habitats League

Cynthia Kanner
Executive Director
Environmental Defenders of McHenry County

Cathleen Berthelot
Senior Policy Manager, Coastal Resilience
Environmental Defense Fund

Tom H. Logan
Chairman, Board Conservation Committee
Fly Fishers International

Marissa Christiansen
President & CEO
Friends of the Los Angeles River

Trevor A Russell
Water Program Director
Friends of the Mississippi River

Ronald M Stork
Policy Director
Friends of the River

Clinton Nagel
President
Gallatin Wildlife Association

Fred Akers
Administrator
Great Egg Harbor Watershed Association

Rev. Gregory T. Manning
Founder / Chair
Greater New Orleans Interfaith Climate Coalition

James M. Redwine
VP & COO
Harpeth Conservancy

Andrew Whitehurst
Water Program Director
Healthy Gulf

Emily A. Wood
Executive Director
Indiana Wildlife Federation

Tom FitzGerald
Director
Kentucky Resources Council, Inc.

Ward Wilson
Executive Director
Kentucky Waterways Alliance

Sylvia McKenzie
Founder / Director
Louisiana League of Conscious Voters

John Ruskey
Advisory Board President
Lower Mississippi River Foundation

Laura Paul
Executive Director
lowernine.org

Rachel Silverstein
Executive Director and Waterkeeper
Miami Waterkeeper

David Joseph Schmitt
Executive Director
Mill Creek Alliance

Caroline Pufalt
Volunteer
Missouri River Network, Sierra Club

Julie Hill-Gabriel
Vice President, Water Conservation
National Audubon Society

Chad Lord
Senior Director, Environment and Climate Policy
National Parks Conservation Association

Melissa Samet
Senior Water Resources Counsel
National Wildlife Federation

gerald h meral
Director, California Water Program
Natural Heritage Institute

Jon Devine
Director of Federal Water Policy
Natural Resources Defense Council

George R Cunningham
Board President
Nebraska Wildlife Federation

Eileen Murphy
Vice President
NJ Audubon

Carrie Clark
Executive Director
North Carolina League of Conservation Voters

Manley Fuller
VP of Conservation Policy
North Carolina Wildlife Federation

Rich Cogen
Executive Director
Ohio River Foundation

Lowell Graybill
President
Pennsylvania Federation of Sportsmen & Conservationists

Shawn Myers
Chairman
Pennsylvania Wildlife Federation

Jonas Minton
Water Policy Advisor
Planning and Conservation League

Ryan Grosso
Water Resources Associate
Prairie Rivers Network

Rebekah Sale
Executive Director
Property Rights and Pipeline Center

John Ruskey
Owner
Quapaw Canoe Company

Renee Fortner
Watershed Resources Manager
RiverLink Inc.

Laura Early
Executive Director
Satilla Riverkeeper

Melinda Booth
Executive Director
South Yuba River Citizens League

Sierra B. Weaver
Senior Attorney and Coast & Wetlands Program Leader
Southern Environmental Law Center

Lisa Rinaman
Riverkeeper
St. Johns Riverkeeper

Stefanie Sekich-Quinn
Coastal Preservation Manager
Surfrider Foundation

Laurie Howard
Executive Director
The Passaic River Coalition

Melanie Winter
Founder & Director
The River Project

Paul Botts
Executive Director and President
The Wetlands Initiative

Andrew Wilkins
Senior Government Relations Representative
Theodore Roosevelt Conservation Partnership

Jennifer McKay
Policy Director
Tip of the Mitt Watershed Council

Ashley Short
Tualatin Riverkeeper & In-House Counsel
Tualatin Riverkeepers

Joanie Steinhaus
Gulf Program Director
Turtle Island Restoration Network

David Groenfeldt

Director

Water-Culture Institute

Bart Mihailovich

Organizing Manager, U.S.

Waterkeeper Alliance