

March 21, 2023

Submitted via Regulations.gov

Ms. Amy Frantz

U.S. Army Corps of Engineers

441 G St NW, Room 3F91

Washington, DC 20314-1000

**Re: Implementation Guidance for the Water Resources Development Act of 2022,  
Docket ID No. COE-2023-0002**

Dear Ms. Frantz:

The undersigned 31 conservation organizations appreciate the opportunity to comment on the U.S. Army Corps of Engineers (Corps) implementation guidance (Guidance) for the Water Resources Development Act (WRDA) of 2022. On behalf of our millions of members and supporters across the country, we urge adoption of the recommendations outlined below to help ensure that federal investments in the nation's water resources utilize the most environmentally sound and forward-thinking approaches to project planning to protect communities, redress environmental injustices, and allow wildlife to thrive in the face of climate change.

### **Implementation Guidance Recommendations**

**Sec. 8103 (Shoreline and riverbank protection and restoration mission)** authorizes the Corps to carry out projects for the protection and restoration of coastal shorelines and riverbanks, including projects that advance "the conservation and restoration of the natural functions and values of rivers and shorelines." The Guidance should direct the Corps to prioritize consideration and use of natural and nature-based features, including by directing the Corps to first explore solutions that use natural and nature-based features or nonstructural measures.

**Sec. 8105 (Public recreational amenities in ecosystem restoration projects)** authorizes the Secretary, at the request of the local sponsor, to study the incorporation of public recreational amenities into ecosystem restoration projects if those amenities would be consistent with the project's ecosystem restoration purposes. The Guidance should clarify that a recreational amenity will be inconsistent with this project purpose if it adversely impacts, impedes, constrains, or prevents the restoration or formation of natural processes needed to ensure long-term and self-sustaining ecosystem restoration (e.g., armoring a portion of a natural meandering river channel to support construction of a parking lot).

**Sec. 8106 (Scope of feasibility studies)** directs the Secretary, at the request of the Non-Federal sponsor, to formulate project study alternatives to: (a) maximize net benefits from the reduction of the comprehensive flood risks resulting from all sources of flood in a flood or storm risk reduction study; and (b) maximize the combined net benefits from the primary purpose of any type of feasibility study and for water supply or water conservation. The Guidance should: (1) confirm that this provision applies to ongoing and already authorized studies; (2) initiate the revision of relevant engineering regulations to integrate this provision; (3) clarify that the Corps is not constrained from formulating project alternatives to meet the Section 8106 criteria in the absence of a request to do so from the Non-Federal sponsor; (4) direct the Corps to advise the Non-Federal sponsor in writing about the provisions of Section 8106; and

(5) direct the Corps to advise the public about the provisions of Section 8106 in National Environmental Policy Act scoping notices.

**Sec. 8107 (Water supply conservation)** makes permanent the Corps' authority to evaluate and approve water supply conservation measures at water resources development projects in States that have experienced repeated droughts, and specifies that such measures include the use of a natural feature or nature-based feature to reduce drought. The Guidance should: (1) highlight the importance of fully considering natural and nature-based measures as a water supply conservation measure when carrying out Section 8107 reviews; (2) include the full definition of natural and nature-based measures, as defined at 32 USC 2289a; (3) provide examples of natural and nature-based measures that can improve water supply conservation, including such things as protecting and/or restoring wetlands (including isolated wetlands) and streams (including headwater and intermittent streams).

**Sec. 8115 (Tribal and economically disadvantaged communities advisory committee)** directs the Secretary to establish a Tribal and Economically Disadvantaged Communities Advisory Committee, in accordance with the Federal Advisory Committee Act within 90 days. The Committee is to advise the Secretary on ways to effectively deliver water resources development projects, programs, and assistance to Indian Tribes and to economically disadvantaged communities located in urban and rural areas. The Guidance should direct the Corps to: (1) establish two separate Federal Advisory Committees, or two separate fully-staffed Federal Advisory Subcommittees with a robust number of appointed members—a Tribal Federal Advisory Committee to account for the status of Tribes as sovereign nations and the unique challenges those nations face and an Economically Disadvantaged Communities Federal Advisory Committee to provide advice relevant to such communities; (2) immediately begin the process of identifying potential members and soliciting nominations for membership, including through robust outreach and consultation with Tribes (via the Corps' Tribal Nations Technical Center of Expertise), economically disadvantaged communities, relevant non-governmental organizations and existing federal Environmental Justice Advisory Councils and working groups; and (3) ensure that existing funds will be used to establish the Federal Advisory Committee(s).

**Sec. 8117 (Corps of Engineers support for underserved communities; outreach)** authorizes \$30 million for the Secretary to develop, support, and implement public awareness and outreach to potential non-Federal interests regarding the Corps' water resources development authorities and programs, and directs the Corps to prioritize such efforts towards economically disadvantaged communities. The Guidance should direct the Corps to: (1) incorporate applicable public awareness and outreach recommendations already identified by interagency environmental justice committees and working groups; (2) conduct robust outreach to communities of color, economically disadvantaged communities, and non-governmental social justice organizations to identify methods for improving the Corps' outreach and educational materials; (3) account for community resource constraints and competing priorities for community leaders, staff, and members when scheduling meetings, webinars, and other outreach efforts; (4) develop educational materials in layperson language and translate those materials into the languages used in the community upon request; (5) hold virtual public meetings on platforms that are fully accessible to all participants, including for example, the platform used to host the WRDA 2022 implementation guidance stakeholder meetings or Zoom; and prohibit the use of Facebook or similar platforms that are not fully accessible to all participants for holding virtual meetings; (6) visit rural or isolated communities in person (when safe to do so) to provide information; and (7) develop procedures for engaging with communities across the geographical, cultural, and economic spectrums.

**Sec. 8123 (Expediting hydropower at Corps of Engineers facilities)** directs the Secretary to assess opportunities to increase hydroelectric capacity at existing Corps projects that have existing hydroelectric

facilities and to add hydropower facilities to existing Corps projects that currently do not have such facilities if doing so would be consistent with authorized project purposes. The Guidance should: (1) clarify that Section 8123 reviews must comply with federal environmental laws and policies and not simply evaluate the impacts on a project's authorized purposes; and (2) require formal public notice and comment as part of the required stakeholder input.

**Sec. 8127 (Environmental dredging)** directs the Secretary to coordinate efforts with other Federal, regional, and State agencies responsible for remediating contaminated sediments at certain authorized Corps restoration projects, and with EPA to report to Congress within 180 days. The Guidance should direct the Corps to document lessons learned to inform efforts to remove or remediate contaminated sediments associated with other Corps projects.

**Sec. 8134 (NEPA reporting)** directs the Secretary to provide a publicly accessible annual report to Congress on the timeframes for completing National Environmental Policy Act reviews of Corps projects and the Corps use of categorical exclusions in lieu of environmental reviews. The Guidance should direct the Corps to provide important contextual information in those reports, including the project type and location, the most recent construction cost estimate, a summary of the recommended alternative and its environmental impacts, and links to the latest environmental review or categorical exclusion.

**Sec. 8140 (Policy and technical standards)** requires the Secretary to revise, rescind, or certify as current, each policy and technical standards publication applicable to the Corps' civil works programs. The Guidance should direct the Corps to: (1) establish a detailed schedule, with key milestones, to ensure that the revisions, rescissions or certifications will happen every five years; (2) prioritize completion of the many required updates to the Corps' Planning Guidance Notebook, ER 1105-2-100 (issued in 2000 and partially updated in 2007); (3) require public review and comment for proposed revisions to policy and technical standards publications; (4) notify interested stakeholders and the public when a policy or technical standard publication is revised, rescinded, or certified as current; and (5) update the Corps' website to provide a single site where all Corps policy and technical standards publications can be readily accessed and easily searched by Corps planners and the public.

**Sec. 8145 (Lower Mississippi River Basin demonstration program)** directs the Secretary to establish an environmental assistance program to design and construct projects for flood or coastal storm risk management or aquatic ecosystem restoration for non-Federal interests in the Lower Mississippi River Basin; and develop a comprehensive Lower Mississippi River Basin restoration plan to guide implementation that prioritizes improving water quality, reducing hypoxia, and using nonstructural, natural, and nature-based features in combination with structural measures. The Guidance should: (1) stress the requirement to prioritize projects that use nonstructural, natural, or nature-based measures; and (2) direct robust outreach to Tribes, communities of color, economically disadvantaged communities, indigenous communities, non-governmental social justice organizations, and non-governmental conservation organizations to obtain input into the comprehensive plan.

**Sec. 8150 (Non-federal interest advisory committee)** requires the Secretary to establish a Non-Federal Interest Advisory Committee to provide recommendations for more effective and efficient delivery of water resources development projects, programs, and other assistance within 90 days. The Guidance should direct the Corps to: (1) carry out robust outreach to non-governmental conservation organizations and other sectors that are to be represented on the Committee to obtain recommendations and nominations for membership; (2) formally solicit nominations to the Committee; and (3) use existing funding to establish the Committee.

**Sec. 8152 (Rehabilitation of pump stations)** authorizes the Corps to increase the capacity of non-Federal pump stations integral to a broader Corps flood or coastal storm risk management project (adding to its existing authority to do this for Federal pump stations) and related drainage measures if the Corps determines that the work “is feasible.” The Guidance should clarify that the Corps may not increase the capacity of a pump station or carry out related drainage measures unless the Corps carries out a full review that complies with the federal laws and policies applicable to the evaluation of any other type of flood or storm damage reduction project, including the National Environmental Policy Act; Clean Water Act; Endangered Species Act; and Water Resources Development Act civil works mitigation directives and National Water Resources Planning Policy.

**Sec. 8153 (Report to Congress on Corps of Engineers reservoirs)** directs the Secretary to expedite completion of the critically important update to the Corps’ report on reservoirs required by WRRDA 2014. The Guidance should: (1) establish a detailed schedule, with key milestones, to ensure completion of this long-overdue report by December 2023; and (2) direct the posting of this report on a publicly accessible website within 5 days of completion.

**Sec. 8219 (Hydraulic evaluation of Upper Mississippi River and Illinois River)** directs the Secretary to periodically study the flow frequencies and water surface profiles for certain rivers in the Upper Mississippi River and Illinois River basins. The Guidance should direct: (1) the Corps’ Institute for Water Resources Hydrologic Engineering Center to carry out the assessments in consultation with academic institutions and/or the National Academy of Sciences; and (2) the Corps to contract with the National Academy of Sciences to carry out an independent external peer review of the assessments.

**Sec. 8230 (Assessment of coastal flooding mitigation modeling and testing capacity)** directs the Secretary (through the Engineer Research and Development Center (ERDC)) to evaluate and report to Congress on the Corps’ current capacity to model coastal flood mitigation systems and test the effectiveness of such systems in preventing flood damage from coastal storm surge. The Guidance should direct ERDC to: (1) consult with academic institutions and the National Academy of Sciences in carrying out the assessments; and (2) contract with the National Academy of Sciences to carry out an independent external peer review of the assessments.

**Sec. 8346 (Water Level Management on the Upper Mississippi River and Illinois Waterway)** authorizes and directs the Secretary to carry out routine and systemic water level drawdowns of the pools created by the locks and dams on the Upper Mississippi and Illinois Rivers as part of the operation and maintenance of the navigation channel projects to help redress the degrading influences of prolonged inundation or sedimentation from such projects, and to improve the quality and quantity of habitat available for fish and wildlife. This section also establishes criteria for carrying out these drawdowns to prevent adverse impacts on navigation and requires regular coordination and consultation with other relevant Federal agencies and States and public comment on proposed activities. The Guidance should direct Corps planners: (1) to establish a detailed schedule, with key milestones, to ensure that water level drawdowns will be carried out during the 2023 growing season and routinely thereafter, that regular coordination and consultations will take place, and that the public will be given an opportunity to comment; (2) that implementation of routine and systemic water level drawdowns does not require a new-start designation, does not require a stand-alone appropriation, and is to be carried out using regularly appropriated operations and maintenance funding; (3) to include routine and systemic water level drawdowns in each Corps annual work plan; and (4) to establish a monitoring plan to evaluate the benefits provided by the water level drawdowns.

**Sec. 8351 (Missouri River interception-rearing complexes)** directs the Secretary to construct interception-rearing complexes, which are critical for the survival of the endangered pallid sturgeon, at certain locations on the Missouri River. The Guidance should: (1) direct the Corps to include construction of the interception-rearing complexes in each of the Corps' annual workplans until construction is completed; and (2) direct the Corps to include a request for any funding needed to construct the interception-rearing complexes in each fiscal year budget request to Congress until such construction is completed.

Our organizations also highlight that the Corps has not yet developed critically important implementation guidance for the following sections from the Water Resources Development Act of 2020: Sec. 112 (Project consultation), Sec. 115 (Flood protection projects), Sec. 118 (Pilot programs on the formulation of Corps of Engineers projects in rural communities and economically disadvantaged communities), Sec. 134 (Non-federal project implementation pilot program), and Sec. 161 (Studies of water resources development projects by non-federal interests). The Corps also has not corrected the legal errors for the legislation that addresses Mitigation for Fish and Wildlife and Wetland Losses (Sec. 1162 of WRDA 2016, Sec. 1040 of WRDA 2014, and Sec. 2036(a) of WRDA 2007). We urge the Corps to develop and correct the implementation guidance for these sections pursuant to the recommendations provided in the attached comments on the implementation guidance for the Water Resources Development Act of 2020, COE-2021-0002, submitted by many of our organizations.

### 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 and attached. These essential provisions will make communities safer and improve the resilience and health of the nation's waters, wildlife, and people.

Sincerely,

Eileen Shader  
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**American Rivers**

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Executive Director  
**Amigos Bravos**

Anne Millbrooke  
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**Bozeman Birders**

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Attachment A: Comments from 74 Organizations on the Implementation Guidance for the Water Resources Development Act of 2020, COE-2021-0002 (May 7, 2021)

# Attachment A

Comments from Conservation Organizations on the  
Implementation Guidance for the Water Resources Development Act of 2022  
Docket No. COE-2023-0002

May 7, 2021

Via: [WRDA2020@usace.army.mil](mailto: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),<sup>1</sup> 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 practices<sup>2</sup> 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

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

<sup>2</sup> 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 practices<sup>3</sup> 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.<sup>4</sup>

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<sup>3</sup> Id.

<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

## 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,

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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.

<sup>5</sup> 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).

<sup>6</sup> 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  
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**350, Core Group**

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**A Community Voice**

Olivia Dorothy  
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**American Rivers**

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Georgia Ackerman  
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Joe Lovett  
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Anne Millbrooke  
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Peter Digre  
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Robert Taylor  
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**Concerned Citizens of St. John**

Lori Simmons  
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Daneeta Jackson  
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Dan Silver  
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David Joseph Schmitt  
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