

May 1, 2020

The Honorable John Barrasso
Chairman
Committee on Environment and Public Works
U.S. Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Tom Carper
Ranking Member
Committee on Environment and Public Works
U.S. Senate
456 Dirksen Senate Office Building
Washington, D.C. 20510

Chairman Barrasso and Ranking Member Carper:

The Nature Conservancy (TNC) applauds your commitment to producing bipartisan water resources legislation every two years and the inclusive process you have conducted to develop the draft legislation titled the America's Water Infrastructure Act of 2020 and the Drinking Water Infrastructure Act of 2020. The projects and policies included in water resources legislation are vital to the economy, the environment, and the public safety of communities across the country.

We also appreciate your continued support for nature-based solutions to lessen flood impacts, restore ecosystems, and support the economy. Nature—such as reefs that break waves and wetlands that absorb floodwaters and buffer shorelines—often provides our most effective line of defense against storms and extreme rain events while also delivering a host of additional environmental and community benefits. Used alone or in combination with traditional grey infrastructure, natural infrastructure solutions can cost less than and outperform hard infrastructure solutions. We encourage you to work with stakeholders on additional ways to promote consideration and use of natural infrastructure at the U.S. Army Corps of Engineers (Corps).

We are writing to share with you our comments on the discussion drafts for the America's Water Infrastructure Act of 2020 and the Drinking Water Infrastructure Act of 2020, including recommended changes to the bill text. By incorporating the attached recommendations, your legislation can build more resilient and multi-benefit water resources projects.

We want to highlight our support and thank you for several provisions in the discussion draft for the America's Water Infrastructure Act of 2020 that respond to recommendations TNC offered early in your development of the legislation. They are:

- Section 1098, which clarifies that natural infrastructure is an eligible project for the small flood control continuing authorities program,
- Section 1042(b), which enables the non-federal project sponsor to get credit towards its cost share for the full value of goods and materials donated to a project,
- Section 1049, which directs the Corps to complete implementation guidance for previous legislative changes to its emergency flood response program, and
- Section 1044, which gives the non-federal project sponsor additional information about its long-term obligation to operations and maintenance costs.

We urge you to retain these provisions, and in some cases strengthen them per our attached recommendations, in the final legislation.

We have also identified in our comments provisions where we have concerns and provisions we would oppose if they were included as written in the America's Water Infrastructure Act of 2020. Where possible, we have offered suggestions to address our concerns with the discussion draft. We would welcome a dialogue with you on how to resolve those sections.

The attached comments reflect our initial analysis of your discussion drafts. As we continue to review the legislation and refine our feedback, we look forward to working with you and members of the Senate to pass critical water resources legislation into law this year.

Sincerely,

A handwritten signature in black ink that reads "James M. Hague". The signature is written in a cursive, flowing style.

James M. Hague

Attachment: TNC Comments on the America's Water Infrastructure Act of 2020

TNC Comments on the America's Water Infrastructure Act of 2020

Sec. 1001. Upper and Lower Missouri River comprehensive flood protection studies.

TNC appreciates the attention your discussion draft gives to critical flooding issues on the Missouri River and thanks you for the emphasis on the Corps considering “nonstructural flood control and floodplain management strategies, including the consideration of natural features or nature-based features.” In collaboration with local levee districts, TNC is pursuing multiple setback levees on the Missouri River that provide an equal or greater level of flood protection while producing additional benefits for nature. Given the potential for setback levees to address flood risk on the Missouri River, we urge you to modify Section 1001(b)(1) by adding at the end, “and the setting back of levees and removing structures from areas of recurring flood vulnerability where advantageous to reduce system flood risk and damages, and where locally acceptable.”

Sec. 1012. Thin layer placement pilot program.

TNC appreciates Congress’ continued support for the beneficial use of dredged material by the Corps of Engineers and the pilot program to promote innovation at the Corps. We support this section to increase the number of pilot projects from 20 to 40 and identify at least 10 thin layer placement projects. TNC has successfully used thin layer placement, for example, at the Blackwater Wildlife Refuge in Maryland to adapt to rising sea levels.

Sec.1018.Shore damage prevention or mitigation

TNC understands Section 1018 to allow a non-federal interest to meet its mitigation obligation in whole or in part using funds provided by the U.S. Fish and Wildlife Service. Non-federal interests should not be able to use federal taxpayer funds to meet their mitigation responsibilities and as such TNC opposes inclusion of Section 1018.

Sec. 1031. Dam remediation for ecosystem restoration.

TNC supports Section 1031 because dam remediation proposed by this provision would enable a broader range of environmental flow releases from the dam while sustaining other authorized purposes.

Sec. 1037. Interagency task force on small dams and fish passages.

TNC supports inclusion of Section 1037 because it provides an important venue to address issues of hydrologic connectivity in the United States. However, we recommend several changes to the section to provide clarity on the task force’s scope and expand its impact. First, we recommend you replace the undefined term “small dam” with “low-head dam,” which has a definition in existing regulations, everywhere it appears. We recommend you add the chief of the U.S. Forest Service (USFS) to list of task force members because many low-head dams are on USFS property. We also recommend adding the opportunity for public review and comment before the task force delivers its report to Congress. Lastly, we note that there are no funds authorized for the task force or preparation of the study. In lieu of a specific authorization of appropriations for Section 1037, we urge you to clarify that funds authorized by Section 1073 can be used for the operations of the task force and development of its report to Congress.

Sec. 1041 and Sec. 1401. Brandon Road study.

TNC supports the authorization of construction at Brandon Road and also urges Congress to use the project to advance the broader goal of preventing the passage of all aquatic invasive species (AIS) in both directions between the Mississippi River and Great Lakes basins while minimizing the

impact to commercial navigation. The Brandon Road Chief's report envisions using the engineered channel at Brandon Road to test new AIS control measures. TNC urges Congress to emphasize the importance of testing new control measures in Section 1041 and consider giving the Corps authority to implement new control measures, with the consent of the non-federal sponsor, once they have been proven effective. While technologies implemented at Brandon Road can only stop AIS from the Mississippi River basin, once proven, they can be used in other locations within the Chicago Area Waterways System to prevent AIS from the Great Lakes reaching the Mississippi River basin too.

Sec. 1042. Credit or reimbursement.

TNC supports the changes made by Section 1042(b). This provision directs the Corps to credit the value of donated materials when calculating the non-federal cost share, which will make it easier for non-federal entities to contribute resources to Corps projects.

Sec. 1044. Project partnership agreement.

TNC supports the change made in Section 1044 to give non-federal sponsors of Corps projects a better understanding of their operations and maintenance responsibilities in the project partnership agreements. However, non-federal sponsors for many types of Corps projects still must assume liability for operations and maintenance in perpetuity. We remain concerned this is an obstacle for non-federal sponsors, including nonprofits like TNC, and may impede many potential Corps projects. We hope we can continue to work with you on solutions to give non-federal sponsors financial certainty in the project partnership agreements.

Sec. 1049. Implementation guidance for post-flood improvements.

TNC supports this section that directs the Corps to complete implementation guidance for Section 1176 of the Water Infrastructure Improvements for the Nation Act, which deals with changes to Section 5 of the Flood Control Act of 1941 (commonly referred to as PL 84-99 or the Emergency Readiness and Response program). However, we note that the Corps also has not issued implementation guidance for all the changes made to PL 84-99 by the Water Resources Reform and Development Act of 2014. Specifically, the Corps needs to complete implementation guidance for Section 3029(a)(1) of WRRDA 2014. We request that you amend Section 1049 to direct the Corps to complete this implementation guidance as well.

Sec. 1052. Reviewing hydropower at Corps of Engineers facilities.

TNC is concerned about the new authority proposed in Section 1052 and requests more clarity on how the evaluations proposed in the inserted subsection (c)(2) could lead to the operational changes described in inserted subsection (c)(3). The process of updating water control manuals is underfunded and behind schedule. When the Corps updates water control manuals, it should explore maximizing a range of project benefits, while continuing to meet the project's authorized purposes, rather than benefiting hydropower production alone. Should your legislation retain Section 1052, we recommend including consideration of other operational changes, such as changes to benefit environmental flows, and authorizing appropriations for updating water control manuals.

Sec. 1057. Support for mitigation efforts for small dams in National Heritage Corridors.

TNC is concerned that Section 1057 shifts the mitigation responsibility of a non-federal hydropower project to the federal taxpayer and opposes inclusion of this section.

Sec. 1074 and Sec. 1308, related to the Comprehensive Everglades Restoration Plan.

TNC supports provisions in Sections 1074 and 1308 to bolster the Comprehensive Everglades Restoration Plan (CERP). We also urge you to include an additional provision to ensure success of CERP and maintain the strong coalition supporting it. One of the key principles of CERP is that careful consideration is given to protecting water supplies for people and nature as restoration occurs. This concept was memorialized in CERP as the Savings Clause. The Savings Clause addresses water supply protection for agricultural and urban interests, the Seminole and Miccosukee Tribes of Florida, Everglades National Park and water supply for fish and wildlife. The Corps has consistently applied the Savings Clause requirements to CERP projects. However, the Corps is now in the process of updating Lake Okeechobee operations and has determined the Savings Clause is not applicable to Lake Okeechobee operations, even though lake operations are a critical component of CERP implementation. Key CERP projects cannot function effectively without being linked to lake operations, including projects that are currently under construction and are being included in the Lake Okeechobee operations update. Therefore, we urge you to amend Section 1106 of the America's Water Infrastructure Act of 2018 (132 Stat. 3773) to read as follows.

Sec. 1106. Lake Okeechobee Regulation Schedule Review.

The Secretary shall expedite completion of the Lake Okeechobee regulation schedule to coincide with the completion of the Herbert Hoover Dike project, and ~~may consider~~ shall **incorporate** all relevant aspects of the Comprehensive Everglades Restoration Plan described in section 601 of the Water Resources Development Act of 2000 (114 Stat. 2680), **including the provisions of section 601(h)(5).**”

Sec. 1089. Report on benefits calculation for flood control structures.

TNC recommends expanding the scope of the study required by Section 1089 to include both structural and nonstructural flood risk management projects, including the use of natural features or nature-based features. Natural infrastructure is an effective and cost-effective solution to flood risk management challenges and should be evaluated for its benefits to flood insurance premiums. We also urge you to require the Corps to make the report public after it is completed.

Sec. 1098. Small flood control projects.

TNC supports this section that makes natural and nature-based features eligible for funding under the small flood control continuing authorities program. Natural infrastructure, alone or in combination with grey infrastructure, can provide effective and cost-effective flood risk reduction solutions while also providing ecosystem, recreational and other benefits.

Sec. 1401. Project authorizations.

TNC supports construction authorization for the St. Louis Riverfront—Meramec River Basin project. TNC is supporting the Missouri Department of Natural Resources' efforts to restore and maintain the ecological importance of the Meramec River and its tributaries and benefit water quality, the economy, and recreation through this project.

Sec. 1506. GAO study on Federal dams with reservoirs.

TNC supports Section 1506 and requests that you broaden the scope of the GAO report to produce a list of all federal dams that meet the requirements of paragraphs (1)(A) and (1)(B). To expedite reporting to Congress, Section 1506 can retain the 180-day deadline to produce a list of “obsolete” federal dams with reservoirs and require a list of “obsolete” federal dams without reservoirs separately.

Sec. 1604. Invasive species mitigation and reduction.

TNC supports Section 1604 which addresses a variety of threats posed by invasive species. In the inserted subsection (g)(2)(B), we recommend adding “non-native phragmites,” which are a significant threat in the Platte River Basin, to the list of species to target. Also, in the inserted subsection (g)(3), we recommend replacing “contribute to drought conditions” with “adversely impact water quantity or water quality.”

Sec. 1607. Asian carp prevention and control pilot program.

TNC recognizes the grave threat Asian carp pose to local fisheries. Many other invasive species also pose risks to ecosystems and local economies. For example, 29 invasive species live in the Great Lakes and threaten to move into the Mississippi River basin, and 10 invasive species, including four species of Asian carp, live in the Mississippi River and threaten the Great Lakes. As part of the pilot program in Section 1607, TNC recommends expanding the focus of the projects selected to test innovative technologies, methods, and measures that combat a wide array of aquatic invasive species simultaneously. In addition, we recommend you direct the Secretary to take advantage of innovative technologies, methods, and measures that have already been identified by adding the following language after paragraph (b)(3):

(4) CONSIDERATION.—In selecting projects to carry out under the pilot program, the Secretary shall consider a range of options and technologies for new and innovative barrier technologies and monitoring to improve the efficacy of aquatic invasive species control measures, including technologies and controls identified in the

(A) Document titled Inventory of Available Controls for Aquatic Nuisance Species of Concern – Chicago Area Waterway System dated April 2012,

(B) State of Michigan’s Great Lakes Invasive Carp Challenge, and

(C) USFWS’s Sea Lamprey Control Program.

Titles II and III, and the Drinking Water Infrastructure Act of 2020

The Nature Conservancy supports and applauds provisions in Title II and Title III and in the Drinking Water Infrastructure Act of 2020 to invest in resilience of wastewater and drinking water systems recognizing that these systems are increasingly stressed due to extreme weather and climate change (Section 2001, Sections 6 and 9). We particularly applaud the specific enabling of natural and green infrastructure investments as a means to enhance resilience of wastewater systems. We also applaud the focus on water conservation and watershed protection.

We also support the expanded funding for both the clean and drinking water State Revolving Loan Funds (SRFs) (Section 2013 and Section 4), WIFIA (Section 2014) and associated grant programs. (Sections 2010, 2016, Section 6, 9 and 14). Clearly there is a national need to invest in modernizing and enhancing water infrastructure. In addition, we applaud the grant program for sewer overflows and stormwater reuse with a recognition of the benefit of green infrastructure to achieve the goals of this program. (Sections 2007)

In addition, TNC supports the following provisions:

- Technical assistance support for small and low to moderate-income communities as this continues to be a major challenge slowing progress on improving water infrastructure. (Section 2002 and Section 3)
- The grant program for low to moderate-income households for individual household decentralized wastewater systems to address this identified need and associate goal of improving water quality. (Section 2010)
- The coastal vulnerability study of water infrastructure to be able to fully understand the threat posed by sea level rise and coastal storms. (Section 3004)
- The Puget Sound coordinated recovery program to help coordinate and advance restoration and protection of Puget Sound. (Section 3009)