May 1, 2020

The Honorable John Barrasso  
Chairman  
Committee on Environment and Public Works  
United States Senate  
Washington, DC 20510

The Honorable Thomas R. Carper  
Ranking Member  
Committee on Environment and Public Works  
United States Senate  
Washington, DC 20510

RE: ACEC Comments on America’s Water Infrastructure Act of 2020 (AWIA) and the Drinking Water Infrastructure Act of 2020 (DWIA).

Dear Chairman Barrasso and Ranking Member Carper:

Thank you for releasing bipartisan draft legislation to maintain and improve water infrastructure across the United States. On behalf of the American Council of Engineering Companies (ACEC), representing more than 6,000 firms engaged in the design of transportation, water and energy infrastructure, we appreciate the opportunity to provide input.

This legislation takes on special significance as Americans respond to, and recover from, the effects of the COVID-19 pandemic. The draft AWIA and draft DWIA offer an opportunity to meet long-standing infrastructure needs as well as recover from the impact of the virus. ACEC fully supports your efforts as represented in the draft bills, and respectfully offers the following recommendations for improvement.

Though the draft reauthorizations represent incremental and welcome levels of investment, there is a well-documented demand for water infrastructure improvements that dwarfs the proposed funding levels in the drafts. ACEC strongly recommends more aggressive efforts to more realistically address water infrastructure needs. Not only will public health benefit, investment in water infrastructure would support the US economic recovery and global competitiveness for decades to come.

**WRDA, CWA, and SDWA reauthorizations should reflect a broader commitment to resilience.** Commitments to resilient design for mitigation of future risk under all water infrastructure reauthorizations (WRDA, CWA, SDWA) are welcomed, as reflected in AWIA Section 2001, and draft DWIA Section 9. Nevertheless, while periodic, piecemeal and static flood risk studies such as directed in draft AWIA Sections 1001, 1002 and 1003 may be momentarily useful, both the draft AWIA and the draft DWIA lack a statement of national commitment to a model of dynamic and continuous, iterative data-driven watershed risk management, as recommended by the Fourth National Climate Assessment. Mitigation of future drought risk could be similarly managed.
The WRDA backlog should be reduced and be reviewed to mitigate future risk. The draft AWIA should reflect a commitment to reduce the estimated $96 billion backlog that includes an effort to evaluate the backlog to mitigate future risk. Design has a shelf life for existing and future flood risk, as draft AWIA Sections 1001, 1002 and 1003 implicitly recognize. Climate, land-use, and commercial vessel change make decades-old design obsolete. Existing structures no longer perform to meet acceptable levels of future risk. Data driven and analytical approaches (iterative risk management) can more effectively manage coastal and riverine watersheds to meet future flood risks as anticipated by well-known trends in precipitation and sea-level rise. Title I of the draft AWIA would be improved with a provision that authorizes a pilot iterative risk management program with the objective of protecting critical infrastructure e.g. transportation, water and energy.

WRDA reauthorization should articulate strong partnership between the Corps and the private engineering sector. As reflected in report language in WRRDA 2014, America’s engineering industry continues to provide critical technical expertise, innovation, and local knowledge to federal and state agencies in order to efficiently deliver water resource projects to the public. The next WRDA bill should also recognize the valuable contributions made by the nation’s engineering industry to the work of the Corps of Engineers and encourage the Corps to reinforce that partnership by taking full advantage of engineering industry capabilities to strengthen project performance.

Robust funding for the State Revolving Fund (SRF) programs is critical to meet system needs, and timely as part of an infrastructure-based recovery agenda. We believe Section 2015 of the draft AWIA, which provides increases in authorized funding levels for wastewater SRF financing to $3 billion over three years incrementally, to be a good start, and we urge the Committee to build on this as the legislative process moves forward. The need is readily apparent – according to the EPA, water and wastewater utilities will need at least $750 billion over the next 20 years simply to maintain current service. The American Water Works Association estimates that $1 trillion is necessary to maintain and expand drinking water systems service to meet demands over the next 25 years. ACEC also supports increased funding for the WIFIA program to supplement the SRF programs and help to address the funding challenges going forward.

Buy America provisions should not unreasonably block critical drinking water projects. Section 4 of the draft DWIA makes permanent the American Iron and Steel requirements for the Drinking Water State Revolving Loan Fund, also known as “Buy America.” Excessively rigid “Buy America” provisions can threaten projects to meet essential human health needs. Threshold, prohibitive cost barriers to project finance raised by such provisions should be considered for automatic waiver for DWSRF funded projects.

Emerging contaminant remediation funding should be aligned with the national legal framework for hazardous substance designation and regulation of drinking water maximum contaminant levels. Section 4 of the draft DWIA provides $300 million in grants to assist in the remediation of contamination from emerging contaminants, e.g. PFAS. It is not clear how Section 4 is aligned to the national legal framework to address emerging contaminants
in wastewater and drinking water with the current scientific, evidence-based regulatory approach.

**The Brooks Act should be applied to engineering of DWSRF and other grant funded draft DWIA projects.** For decades, the federal government and most states have used Qualifications-Based Selection (QBS) for the procurement of engineering services. Section 4 of the draft DWIA provides grants for remediation of “eligible sites.” QBS applies to most federal infrastructure programs, including the CWSRF, and we urge the Committee to extend this competitive procurement process to the drinking water program. Procurement decisions on the basis of demonstrated experience and expertise – as required through a QBS process – is particularly needed today as utilities seek to address emerging contaminants, new hazardous substance designations and drinking water MCLs. The evolution of drinking water systems engineering, and the federal role to meet the emerging contaminant challenges, require specialized engineering services that are best identified and procured through QBS.

**Oppose so-called “open competition” materials mandates that interfere with engineering judgement.** ACEC strongly opposes legislation that seeks to mandate the consideration of plastic pipe and other materials in a manner that interferes with the ability of licensed engineers to make design decisions in the best interests of the water utility clients they serve. Such efforts have been routinely rejected in the states, and we urge the Committee to oppose such language as it moves its water agenda forward.

Once again, thank you for your leadership in moving these important legislative initiatives forward, and ACEC looks forward to working with you to secure their passage.

Sincerely,

Linda Bauer Darr  
President & CEO

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