

Congress of the United States
Washington, DC 20515

May 28, 2020

Peter A. DeFazio
Chairman
House Committee on Transportation
and Infrastructure
2165 Rayburn House Office Building
Washington DC, 20515

Sam Graves
Ranking Member
House Committee on Transportation
and Infrastructure
2165 Rayburn House Office Building
Washington DC, 20515

Grace F. Napolitano
Chairwoman
House Committee on Transportation
and Infrastructure
2165 Rayburn House Office Building
Washington DC, 20515

Bruce Westerman
Ranking Member
House Committee on Transportation
and Infrastructure
2165 Rayburn House Office Building
Washington DC, 20515

Dear Chairman DeFazio, Ranking Member Graves, Chairwoman Napolitano, and Ranking Member Westerman,

As Members of Congress representing communities in close proximity to ports along the Delaware River, we write to thank you for your continued support that has helped generate job growth and stimulate local economies throughout the region. The Delaware River is one of America's most crucial instrumentalities for commerce, bolstering countless sectors across the mid-Atlantic. While many of our ports engage in healthy competition, they rely on an even playing field to ensure equal opportunity among the various industry actors that base their business operations on port activity.

We wish to bring to your attention concerning language from the Senate draft of the America's Water Infrastructure Act of 2020 (AWIA 2020) that disturbs the balance between ports in the region. The unprecedented language is designed to provide the Port of Wilmington and the proposed Port of Edgemoor in Delaware an unfair competitive advantage over other ports along the Delaware River. Three of these AWIA 2020 provisions appear to be designed to put pressure on the Army Corps of Engineers to approve and issue permits for the development and expansion of these ports without the required studies and analysis to which other similar port projects have been subject, and to allow these ports to use federal confined disposal facilities for dredged material ("CDFs") at minimal to no cost as compared to the significant expenses incurred by other ports for their maintenance dredge material.

The current development and expansion of these ports is only possible due to the decades-long federal Delaware River Main Channel Deepening Project ("Deepening Project"), whose non-Federal sponsor, the Philadelphia Regional Port Authority ("PhilaPort") and the Commonwealth of Pennsylvania, have contributed over \$140 million to the Deepening Project. In contrast, the State of Delaware declined to participate in cost sharing and actively opposed the Deepening Project by, among other things, filing legal challenges to various actions by the Army Corps of Engineers, none of which were ultimately upheld and which added to the cost of the Deepening Project.

Accordingly, we respectfully request that the following provisions of the Senate's Discussion Draft of AWIA be excluded from any House version or conference language in an effort to maintain parity among the ports along the Delaware River.

1) Section 1014 Annual report to Congress on water resources infrastructure.

Currently, national benefits are the primary consideration in approving Army Corps participation in projects. This section directs the Secretary of the Army to consider local or regional benefits rather than national. The proposed Edgemoor and enlarged Wilmington projects are not projected to increase maritime traffic or to add new employment. It instead relies on attracting ships which currently berth in existing Pennsylvania and New Jersey ports. Wilmington and Edgemoor cannot demonstrate net value to the country, or even to the tri-state area, but are seeking massive federal investment. Indeed, Pennsylvania's \$140 million investment in dredging the main channel will have enabled Delaware to steal Pennsylvania jobs and business.

2) Section 1015 Operation and maintenance.

Exempts projects under \$200,000,000 from peer review, which constrains the Secretary's ability to determine the need for such projects and for the subsequent federal expenditures associated with that project. The peer review process was implemented after prior congressional concerns for this class of project.

3) Section 1004 Maintenance and construction of water resources development projects by nonfederal interests.

This section is limiting the discretion of the Secretary to determine the basis for the federal decision to participate in a nonfederal project by making that decision subject to the limitations in the Senate version of the current legislation. Subsequent revisions then set the limits.

4) Section 1026 Wilmington Harbor South Disposal Area, Delaware.

Disposal sites for the material dredged in a deepening project are in finite supply. This section specifies that this CDF must accept dredge material from the proposed port of Edgemoor and that the State of Delaware will decide its other uses, thereby usurping a disposal site that has been designated for the Deepening Project. It also directs that once the site is full, it must be transferred to Delaware, no matter what the Corps may otherwise determine.

This provision essentially takes a viable federal site and turns it over to the State of Delaware. This is essentially a taking of federal facility that was created for the federal government to carry out its maintenance responsibilities.

5) Section 1027 Conveyance of Wilmington Harbor North Disposal Area, Delaware.

Removes the discretion from the Secretary as to how to utilize the disposal area for the Port of Wilmington. It denies the federal government the revenues that could be generated by the selling of the lands. (See Section 1032 which also conveys land to the City of Montgomery Ala. but directs that the City pay the fair market value to the federal government).

6) Section 1048 Replacement capacity.

Currently, nonfederal projects, such as every port in Pennsylvania and New Jersey, are required to dispose of the material dredged during maintenance operations in privately owned and operated facilities at considerable cost. Federal sites are currently reserved for materials dredged in federal projects such as the main channel deepening project and maintenance programs. This section requires the federal government to take Delaware's nonfederal dredged material, saving those ports the cost

borne by other ports on the river and impacting the capacity of the Corps' sites. Additionally, the federal government will effectively be in competition with the private contractors currently operating disposal sites on the river.

7) Section 1094 Sense of Congress relating to annual maintenance dredging.

In reviewing similar provisions in other legislation, when such provisions are directed to federal agencies, they typically suggest how to approach an entire category of projects, not approval of a specific project already under review. This provision appears to be designed to put pressure on the Army Corps of Engineers to issue permits and approvals for the expansion of the Wilmington port without the required studies and analysis to which other similar port projects have been subject.

8) Section 1095 Selection of dredged material disposal method for certain purposes.

The selection of options for disposal is removed from the Secretary and turned over to non-federal interests who likely will not act in the interest of the nation but in their own self-interest.

These provisions limit the Secretary's discretionary authority to determine the extent of the federal government's involvement in a proposed use of federal sites by non-federal interests, by bypassing numerous regulations and procedures based in current laws including expanding the basis by which the Secretary makes its determinations of federal interest to include local and regional benefits, and by taking over for use by the proposed Edgemoor development the use of existing federal sites which were located, developed and sized to maintain existing federal projects, the Senate's draft of AWIA 2020 is effectively eliminating all relevant requirements to determine federal interest in the Edgemoor project.

Therefore, we respectfully request the Committee's opposition to any efforts to include these Senate provisions in the Water Resources Development Act of 2020 and to likewise oppose those provisions during your Conference Committee.

We thank you for your consideration of these requests, as they will ensure an equal playing field for ports along the Delaware River. If you have any questions related to these shared concerns, please do not hesitate to contact our offices.

Sincerely,



Brendan F. Boyle
Member of Congress



Brian Fitzpatrick
Member of Congress

Cosigning Members of Congress:

Mary Gay Scanlon

Donald Norcross

Madeleine Dean

Lloyd Smucker

Matt Cartwright

Bonnie Watson Coleman

Dwight Evans

Andy Kim

Scott Perry