National Wildlife Federation
Water Resources Development Act of 2020
Summary of Selected Policy Provisions

The Water Resources Development Act of 2020, P.L. 116-260, Division AA was enacted on December 27, 2020 as part of the FY2021 Omnibus and COVID Relief and Response Act. Key provisions of WRDA 2020 are summarized below (see T&I Section by Section Summary for additional provisions). Section I summarizes key policy provisions that benefit the environment, underserved communities, and Tribes. Section II summarizes policy provisions that are particularly harmful to the environment. Section III summarizes key provisions that advance restoration of important ecosystems.

SECTION I
POLICY PROVISIONS THAT BENEFIT THE ENVIRONMENT, UNDERSERVED COMMUNITIES, AND TRIBES

Advancing the Use of Natural and Nature-Based Measures

Sec. 114—Small Flood Control Projects
Authorizes the Corps to incorporate, where appropriate, natural or nature-based features in carrying out its Continuing Authorities program for small flood risk management projects.

****Sec. 115—Flood Protection Projects**
Clarifies that the cost-share for natural and nature-based features is the same as for non-structural flood and storm damage reduction measures, 65% Federal and 35% non-Federal; and includes natural infrastructure in 33 U.S.C. 701b–11(a) to help ensure that the Corps fully evaluates natural and nature-based measures. This provision incentivizes use of natural and nature-based measures by ensuring that they are treated in the same way as nonstructural measures because each of these types of measures can provide sustainable, environmentally-protective, and less costly protections to communities while improving public health and well-being.

Sec. 116—Feasibility Studies; Review of Natural and Nature-Based Features
Requires each feasibility study for a flood or storm damage reduction project to include a summary of: (1) any nature-based feature alternatives considered, including their long-term costs and benefits; and (2) if such alternatives are not included, an explanation of why they were not included in the recommended plan.

****Sec. 118—Pilot Programs on the Formulation of Corps of Engineers Projects in Rural Communities and Economically Disadvantaged Communities**
Requires that studies carried out under the Pilot Program for Economically Disadvantaged Communities incorporate natural or nature based features to the maximum extent practical. Section 118 is described in more detail below.

Sec. 119—Permanent Measures to Reduce Emergency Flood Fighting Needs for Communities Subject to Repetitive Flooding
Provides new authority to study, design, and construct water resources projects for communities that have experienced repetitive flooding events and have received emergency flood fighting assistance under the P.L. 84-99 program. Such projects are to incorporate significant use of natural or nature based features to the maximum extent practical. The maximum Federal share for a project planned under this section is $17.5 million, and the Corps is required to consider a community's ability to pay in determining whether to require a non-Federal cost share.

Sec. 123—Review of Corps of Engineers assets
Directs the Corps to develop an inventory of projects: (1) which are no longer necessary for the Corps' mission responsibilities; (2) where long-term cost savings or increased resiliency could be achieved through incorporation of natural or nature-based features, or (3) which no longer meet the authorized purposes due to deferred maintenance requirements. Study must be completed within 18 months of enactment (by June 2022).

Addressing the Needs of Underserved Communities and Tribes

Sec. 111—Resiliency Planning Assistance
Directs the Corps to prioritize resiliency planning assistance to economically disadvantaged communities and communities subject to repetitive flooding (via 33 U.S.C. 709a), and emphasizes the need for the Corps to provide technical assistance to non-Federal interests for greater resiliency planning.

Sec. 112—Project Consultation
Requires the Corps to update its policies on environmental justice considerations; directs the Corps to strengthen its Tribal consultation requirements; and directs the Corps to promote meaningful involvement with minority communities, economically disadvantaged communities, and Indian Tribes in carrying out water resources development projects.

Also requires the Corps to submit long overdue reports on: (a) "any potential disproportionate and adverse health or environmental effects of programs, policies, and activities of the Corps of Engineers related to water resources development projects on minority communities, low-income communities, rural communities, and Indian Tribes (required by WRDA 2018 § 1214); and (b) the "results of a review by the Secretary of existing policies, regulations, and guidance related to consultation with Indian tribes on water resources development projects or other activities that require the approval of, or the issuance of a permit by, the Secretary and that may have an impact on tribal cultural or natural resources" (required by WRDA 2016 § 1120(a)(3)).

Sec. 117—Federal Interest Determination
Directs the Corps to complete a Federal interest determination for feasibility studies that will benefit economically disadvantaged communities, if requested by the non-Federal interest. Also directs the Corps to issue a report (in certain circumstances) to non-Federal interests in economically disadvantaged communities on how they could modify a project request to ensure that the project is in the Federal interest.

Note: This section also allows the Corps to pre-determine the federal interest in carrying out a feasibility study "and the projects that may be proposed in the study" for up to 3 studies in each fiscal year. A determination of the federal interest in projects that may be proposed in a study should be made only after the full evaluation required by the feasibility study and environmental review process.

****Sec. 118—Pilot Programs on the Formulation of Corps of Engineers Projects in Rural Communities and Economically Disadvantaged Communities**
Directs establishment of two pilot programs within 180 days of enactment (by June 2021) to evaluate opportunities to reduce flood, hurricane, and storm risks for economically disadvantaged and rural communities.

1. Pilot Program for Economically Disadvantaged Communities: The Corps will select 10 studies to be carried out at full Federal expense, and these studies shall, to the maximum extent practical, incorporate significant use of natural or nature based features or a combination of such features. In selecting projects, the Corps shall consider: (1) the percentage of people living in poverty in the counties in which the project is located; (2) the percentage of families with income above the poverty threshold but below the average household income in the counties where the project is located; (3) the percentage of the population that identifies as belonging to a minority or indigenous group in the counties in which the project is located; and (4) whether the project is addressing flooding or hurricane or storm damage effects that have a disproportionate impact on a rural community, a minority community, or an Indian Tribe.

2. Pilot Program for Rural and Economically Disadvantaged Communities: The Corps may make a recommendation on up to 10 flood or storm damage reduction projects without demonstrating that the project is justified solely by national economic development benefits provided: (1) the project serves an economically disadvantaged or a rural community; (2) the long-term life safety, economic viability, and environmental sustainability of the community would be threatened without the project; (3) the project benefits exceed the project costs as required by 33 U.S.C. 701a; and (4) the project recommendations are consistent with the PR&G.

Sec. 160—Definition of Economically Disadvantaged Community
Directs the Corps to define the term 'economically-disadvantaged community' for purposes of this Act within 180 days (by June 2021) and provide for public notice and comment on this definition.

Improving Planning—Implementing the PR&G and Advancing Resiliency

****Sec. 110—Implementation of Water Resources Principles and Requirements**
Directs the Corps to issue final agency procedures for the Principles, Requirements, and Guidelines (PR&G) within 180 days (by June 2021) and regular updates to those procedures. Requires public notice and comment for the development and updating of those procedures. Implementation of the PR&G is a critical step in improving water resources project planning and resiliency. The National Wildlife Federation was instrumental in the 2007 Congressional directive requiring development of the PR&G (§ 2031 of WRDA 2007) to update the Corps' woefully out of date planning guidelines, and in ensuring that the PR&G require federal agencies to fully account for environmental and societal costs and benefits when planning new water resources development projects.

Sec. 111—Resiliency Planning Assistance
Amends the Corps' Floodplain Management Service program to allow the Corps to provide technical assistance to non-Federal interests and other Federal agencies for greater resiliency planning. Directs the Corps to prioritize technical assistance to economically disadvantaged communities or communities subject to repetitive flooding.

Sec. 113—Review of Resiliency Assessments
Requires the Corps to update existing planning guidance related to sea level rise based on the best available, peer-reviewed science, in coordination with Federal and state agencies within 180 days (by June 2021). Reiterates the Corps' discretion to consider benefits accrued over time as a result of sea level rise, and when requested by the non-Federal interest, requires the Secretary to consider whether the need for the project is predicated upon or exacerbated by conditions related to sea level rise.

Facilitating Beneficial Use of Dredged Material

Sec. 125—Beneficial Use of Dredged Material; Dredged Material Management Plans
Facilitates strategic use of clean and appropriately sourced dredged materials to maximize environmentally sound flood and storm damage reduction measures by: (1) establishing a national policy to maximize the beneficial use of material obtained from Corps projects; (2) increasing the number of authorized beneficial use demonstration projects and prioritizing projects in economically disadvantaged communities; (3) improving assessment of the "federal standard" by requiring the Corps to calculate environmental benefits of the beneficial use; (4) directing the Corps to develop five-year regional dredged material management plans; and (5) emphasizing greater coordination across the Corps' dredging contracts.

Addressing Harmful Algal Blooms

Sec. 128—Harmful Algal Bloom Demonstration Program
Authorizes a $25 million demonstration program to determine the causes of and implement measures to effectively detect, prevent, treat, and eliminate harmful algal blooms in the Great Lakes; tidal and inland waters of New Jersey; coastal and tidal waters of Louisiana; waters of counties in the Sacramento-San Joaquin Delta in CA, the Allegheny Reservoir Watershed in NY, and Lake Okeechobee, FL; and in Federal Reservoirs in the Upper Missouri River Basin and North Platte River Basin.

Improving the Non-Federal Planning Processes

Sec. 134—Non-Federal Project Implementation Pilot Program
Subsection (a) directs the Corps to develop implementation guidance critical for improving this program within 120 days (by April 2021). Requires the guidance to describe the laws and regulations that a non-Federal interest must follow in carrying out a project under the pilot program and identify whether the Corps or the non-Federal interest bears the risk in the event that a project carried out under the pilot program fails to comply with the project authorization or legal requirements.

Note: It is important to advocate for the final Guidance also establishing: a clear roadmap to the laws and processes that must be followed; the entities responsible for each step of the process (i.e., the Corps or the non-Federal sponsor) including the entity responsible for responding to public inquiries and requests for information; the entity that bears the risk if the required laws and processes are not followed; and the steps to be followed if the non-federal sponsor lacks the resources to conduct required technical analyses.

Sec. 161—Studies of Water Resources Development Projects by Non-Federal Interests
Clarifies that studies carried out by non-Federal interests under section 203 of WRDA 1086 (33 U.S.C. 2231) must comply with all of the requirements that would apply to a feasibility study undertaken by the Secretary, including all applicable environmental laws. Directs the Corps to issue critically-needed revised guidelines implementing these requirements within 90 days (by March 2021).

Note: It is important to advocate for the final Guidance also establishing: a clear roadmap to the laws and processes that must be followed; the entities responsible for each step of the process (i.e., the Corps or the non-Federal sponsor) including the entity responsible for responding to public inquiries and requests for information; the entity that bears the risk if the required laws and processes are not followed; and the steps to be followed if the non-federal sponsor lacks the resources to conduct required technical analyses.

SECTION II
POLICY PROVISIONS THAT ARE PARTICULARLY HARMFUL TO THE ENVIRONMENT

Facilitating Unwise Navigation Projects

Sec. 109—Inland Waterway Projects

Significantly increases the Federal cost share for construction or major rehabilitation of inland waterways projects from 50% to 65% through 2031. Projects that initiate construction during this time period carry the modified cost share through project completion. These massive additional subsidies will facilitate unwise investments that cause significant harm the environment and can increase flood risks for river communities.

Note: The inland waterway navigation industry currently pays just 10% of the costs of the inland waterway system, even though that system moves only 4% to 5% of U.S. freight commercial tonnage (as of 2014). By contrast freight rail operators pay 100% of the costs of the rail system, and cars and trucks pay about 80% of the costs of maintaining the highway system (through a fuel tax). A 2018 Congressional Research Service report documents significant declines in traffic on the inland waterway system and ample existing capacity, calling into question the need for new construction on the system. For example: traffic on the Upper Mississippi River system has been declining and even during their "busiest months" the seven locks targeted for expansion under the NESP program average just 10 tows per day; the Upper Ohio River has seen a "long-term downward trend in traffic levels"; the Lower Monongahela River has seen the volume of coal transported on the river—which accounts for 80% of the tonnage transported—cut in half since the late 1990's and three of the last four operating coal-fired electric power plants on the river closed between 2013 and 2017.

Prohibiting Actions Needed to Ensure Survival of the Endangered Pallid Sturgeon

Sec. 129—Missouri River Interception-Rearing Complex Construction

Subsection (b) undermines the survival of the endangered pallid sturgeon by prohibiting the Corps from restoring certain types of river habitats that are critical for the survival of pallid sturgeon pending completion of a report, undefined future research, and a future plan—each of which could take many years to complete, if they are completed at all. The location of these river restoration efforts (technically known as "interception-rearing complexes") are already based on a balancing of the scientifically determined needs of the pallid sturgeon with avoiding impacts to other project purposes.

Increasing the Capacity of Corps Pumping Stations Without Critical Safeguards

Sec. 133—Rehabilitation of Corps of Engineers Constructed Pump Stations

Allows the Corps to increase the capacity of Corps-constructed pump stations and related drainage measures, or otherwise rehabilitate those pump stations, based solely on a determination that the work "is feasible." Construction and operation of facilities to increase pumping capacity and related drainage can cause significant harm to wetlands, water quality, in-stream flows, and wildlife habitat. Increasing

pump capacity can also increase flood risks for communities and businesses along the waters that receive the pumping plant discharges. Increasing pump station capacity and related drainage measures should be subject to the same laws, studies, and criteria that must be followed when the Corps makes a recommendation for any other type of flood or storm damage reduction project.

Increasing Hydropower at Corps Facilities Without Assessing Environmental Impacts

Sec. 146—Reviewing Hydropower at Corps of Engineers Facilities

Requires the Corps to evaluate operational changes to increase hydropower outputs upon request, subject only to consideration of impacts to authorized project purposes. It appears that the review required by this section could ignore the significant adverse impacts of increasing hydropower outputs on river and floodplain health, in-stream flows, water quality, fish and wildlife resources, and possibly public safety. Any recommendations related to changes to hydropower outputs should be made only if they are consistent with the National Water Resources Planning Policy (42 USC 1962-3); account for and mitigate adverse environmental impacts; and are made after full compliance with environmental law, including the National Environmental Policy Act, Clean Water Act, and Endangered Species Act.

Increasing the Corps' Role in Planning and Constructing Water Supply Projects

Sec. 155—Small Water Storage Projects

Creates an entirely new Corps program focused on constructing new water supply dams and reservoirs. Individual projects carried out under this section can cost as much as $65 million. Despite being labelled as "small", the covered storage projects will have highly significant adverse impacts on the nation's rivers, wetlands, floodplains, and wildlife. This new Corps program will also divert scarce Corps resources away from other programs and the agency's $100 billion project backlog.

Sec. 221—Study on Water Supply and Water Conservation at Water Resources Development Projects

Requires the Secretary to report to Congress regarding the implications of, and any recommendations for, including municipal water supply and water conservation as a primary Corps mission. While water conservation is critically important—and should be a key focus of all Corps planning and activities—adding municipal water supply as a primary mission of the Corps will lead to significant environmental harm and divert scarce Corps resources away from other programs.

SECTION III
POLICY PROVISIONS THAT ADVANCE RESTORATION OF IMPORTANT ECOSYSTEMS

Restoring America's Everglades

Sec. 210—Lake Okeechobee Regulation Schedule, Florida

Directs the Corps to conduct a study to evaluate the implications of prohibiting or reducing discharges from Lake Okeechobee to coastal estuaries. Also requires monthly reports on the volume and location of discharges from the Lake. This will increase transparency around water management decisions and our understanding of where water is flowing through the full Everglades system during both wet and dry conditions.

Sec. 324—Central Everglades, Florida

Clarifies that the Everglades Agricultural Area Reservoir is a continuation and modification of the Central Everglades Project, which was authorized in 2016, and does not require a separate new start designation. The EAA reservoir is a key piece of the puzzle to restoring the Everglades and will help

capture and store water from Lake Okeechobee, reducing the volume and frequency of damaging discharges and algae outbreaks to the Caloosahatchee and St. Lucie estuaries.

Restoring the Lower Mississippi River and Coastal Louisiana

Sec. 212—Report on the Status of Restoration in the Louisiana Coastal Area
Directs the Coastal Louisiana Ecosystem Protection and Restoration Task Force to submit a report within one year (by December 2021) to Congress that includes policies, strategies, plans, programs, projects, and activities undertaken for addressing conservation, protection, restoration, and maintenance of the coastal Louisiana ecosystem, as well as the financial participation by each agency on the Task Force.

Sec. 212—Lower Mississippi River Comprehensive Management Study
Authorize a $25 million Corps study of the Lower Mississippi River (from Cape Girardeau, MO to the Gulf of Mexico) to identify actions the Corps can take (including nonstructural measures) to comprehensively manage the system for hurricane and storm damage reduction, flood risk management, navigation, ecosystem restoration, water supply, hydropower, and recreation. Requires investigation of key projects that will produce dual ecosystem restoration and flood risk reduction benefits for communities in Mississippi and Louisiana, including: Ama sediment diversion; Union freshwater diversion; increasing Atchafalaya flow to Terrebonne; and Manchac Landbridge diversion. The study must investigate inclusion of natural features and nature-based features, including levee setbacks and instream and floodplain restoration. The final study must be submitted to Congress within 5 years (December 2025), and the Corps must provide yearly interim status reports to Congress.

Restoring the Great Lakes

Sec. 211—Great Lakes Coastal Resiliency Study
Directs the Corps to expand its comprehensive assessment of water resources needs for the Great Lakes System, and make recommendations for potential water resources development projects, modifications of existing water resources development projects, or other measures to respond to changing hydrologic and climatic conditions in the region, including ecosystem restoration and use of natural and nature-based flood risk reduction measures.

Restoring the Chesapeake Bay

Sec. 306—Chesapeake Bay Environmental Restoration and Protection Program
Increases the authorized level of appropriations for the important Chesapeake Bay environmental restoration program to $90 million, and sets a per project total cost limit of $15 million for this program. Also directs the Secretary to carry out public outreach and workshops to assist non-federal interests in understanding and participating in this program.