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March 8, 2017

Chairman Garret Graves  
Subcommittee on Water Resources and the Environment  
Committee on Transportation and Infrastructure  
U.S. House of Representatives  
2251 Rayburn House Office Building  
Washington, DC 20515

Re: Testimony for the March 9, 2017 Subcommittee Hearing on *Building a 21<sup>st</sup> Century Infrastructure for America: The Role of Federal Agencies in Water Infrastructure*

Dear Chairman Graves:

Thank you very much for allowing Bay Planning Coalition to submit written testimony to the Subcommittee on this important matter.

Founded in 1983, Bay Planning Coalition is a non-profit, 501(c)(4) membership-based organization that represents the interests of and convenes public and private entities involved in commerce, industry, infrastructure, recreation and the natural environment connected to the San Francisco Bay and its watershed. It has more than 150 members from across a range of relevant sectors, including business and industry, government, professional service firms, and various associations.

San Francisco Bay is the largest estuary on the west coast of North and South America, and one of the world's great natural harbors. It is home to seventeen federal navigation channels that serve five ports, seven marine oil terminals and refineries, and over 100 marinas and small recreational boating facilities. The continued operation of these ports and navigation channels is vital to the nation's movement of goods. A large number of critical imports and exports go through them, including agricultural products from California's expansive Central Valley, and a large number of consumer products – many of which are ultimately transported by rail throughout the United States. This activity is an important part of the state's economy, which currently ranks sixth globally.

The Bay is also a vibrant natural resource that serves as a nursery to the Pacific Ocean's fisheries and is home to native fish, migrating salmon, and hundreds of thousands of birds on the Pacific flyway. The health of the estuary is so important to Bay Area residents that, in 2016, voters in the nine counties that touch the Bay approved an annual parcel tax to protect and restore the Bay by a 70%-30% tally.

#### A REMARKABLY SUCCESSFUL COLLABORATION

Perhaps the best example of how local, state, and federal agencies can collaborate with a broad diversity of stakeholders for a common purpose started in the 1980s when the Bay's industrial, dredging, environmental, fishing and regulatory communities overcame an impasse known as "mudlock."

During this time, the fishing industry and environmental groups became increasingly concerned that dredged sediment dumped at authorized sites in the Bay was causing a decline of native fish due to increased turbidity and possible contamination.

Concurrently, regulatory and resource agencies were not issuing dredging permits in a timely or coordinated manner due to conflicting policies and regulations. Indeed, it was not uncommon that one agency's permit would expire prior to other agencies issuing their related permits. In 1989, the Bay dredging conflict became so heated that the fishing and environmental communities used their boats to create a blockade around the main disposal site in the Bay, and dredging of the ports, marinas and federal channels came to a standstill.

In response, the U.S. Army Corps of Engineers (the Corps), the U.S. Environmental Protection Agency (EPA), the San Francisco Bay Conservation and Development Commission (BCDC), and the San Francisco Bay Regional Water Quality Control Board (Water Board) worked with stakeholders to create the Long Term Management Strategy for the Placement of Dredged Sediment in the San Francisco Bay Region (LTMS) Management Plan. It was adopted in 2001 and stands out as a remarkably successful collaborative effort.

In the Management Plan, which was created with a large amount of input from a wide variety of non-governmental institutions, including Bay Planning Coalition, the LTMS partner agencies (USACE, USEPA, BCDC and the Water Board) concluded that dredged sediment is a valuable natural resource, rather than a waste product, and that beneficially re-using dredged sediments could restore habitat, maintain levees, improve fisheries, and improve the estuary's water and sediment quality.

Also with extensive stakeholder input, the LTMS partner agencies drafted and adopted the following four goals:

- Maintain channels necessary for navigation in an economically and environmentally sound manner and eliminate unnecessary dredging activities in the Bay and Estuary;
- Conduct dredged material disposal in the most environmentally sound manner;
- Maximize the use of dredged material as a resource; and,
- Maintain the cooperative permitting framework for dredging and disposal applications.

Bay Planning Coalition is a strong supporter of the LTMS and beneficially using dredged sediment in the most efficient and environmentally sound manner. Since its inception, the LTMS has successfully reduced in-Bay disposal by 45% (to 1.25 million cubic yards per year). The LTMS is also responsible for beneficially using over 23 million cubic yards of dredged sediment to restore habitat at a wide variety of wetlands restoration projects. It is now actively seeking to support additional beneficial reuse sites throughout the region.

Just as important, the LTMS created the Dredged Material Management Office (DMMO), which has streamlined the dredging permit process and takes a programmatic approach to endangered species issues and sediment quality review necessary for the disposal approval process under the Clean Water Act. The DMMO coordinates permits, has reduced project approval periods, has increased certainty for the dredging community, and provided better assurances for the resource agencies and environmental groups. Throughout the history of the LTMS, navigation safety has been maintained and improved. The LTMS demonstrates the success that arises from integrating economic and environmental goals.

## **TWO MAJOR CHALLENGES**

While the LTMS program has been relatively successful, it faces two major challenges due to the Corps' internal processes. Even while sediment is the building block of wetlands, which protect and buffer the

shoreline from storm surges and flooding, the Bay receives far less sediment now than it has in the past, which poses far-reaching challenges and requires a coordinated and proactive response to ensure wetlands can continue to accrete sediments at a sustainable rate.

First, the Corps' Civil Works Program has not met its commitments and has been less willing to partner in recent years to provide dredged material to wetlands restoration projects in need of sediments. Until approximately 2011, the Corps worked with LTMS to develop and support projects that provided multiple benefits, including navigation, flood protection, and ecosystem restoration, which are its three authorized missions. The Hamilton and Sonoma Baylands restoration projects, sponsored by the Corps and the California State Coastal Conservancy, were coupled mainly with the "new work" construction dredging performed during the Port of Oakland's deepening projects so that dredged sediment from these projects could be beneficially reused to provide flood protection to adjacent properties while creating much-needed wetland habitat to support federally endangered species. Both wetlands restoration projects were completed successfully and met their respective multi-benefit goals.

However, since then, there have been no additional "new work" dredging projects, and the Corps has consistently used its "Federal Standard" to perform annual maintenance dredging, which has resulted in millions of cubic yards of sediment being disposed of as a waste product. This unacceptable approach is viewed by the Corps as reasonable because it costs slightly less to dispose of sediment by dumping it into or outside of the Bay rather than beneficially reusing it for projects that significantly improve habitat, reduce storm surge impacts, and absorb floodwaters. Currently, the U.S. Fish and Wildlife Services' Cullinan Ranch Restoration Project, a federal wetlands restoration project located just four miles from a deep draft navigation channel maintained by the Corps (Pinole Shoal Channel), has only received a small fraction of the sediments dredged by the Corps since it was permitted to receive dredged material five years ago. In the meantime, the Corps continues to waste sediment by disposing most of it sixty miles out to sea. This is a tremendous waste of public funds and resources simply because the Corps narrowly limits its program via the Federal Standard, and has been reluctant to promote or engage with the LTMS over the concept of strategic in-Bay placement for the purpose of offshore "feeding" of Bay fringe wetlands as a potentially more efficient and environmentally sound beneficial reuse option.

Second, the Corps' contracting process has become so lengthy and cumbersome that projects regularly cannot be started or completed on time despite the best efforts of the Corps' partners and customers. The Corps' navigation dredging projects are rarely completed within the LTMS-established "environmental work windows," which are meant to help avoid impacts to listed species. At the same time, private dredging projects routinely accomplish their work within their designated work windows. The Corps' contracting process can also result in higher dredging costs and less beneficial reuse of available sediment because the Corps' Washington, D.C. headquarters refuses to include beneficial reuse in contracts as the priority placement option (with few exceptions).

While the LTMS partner agencies and the resource agencies have expended significant energy to work with the Corps to resolve this issue, it is oddly the Corps' lack of contracting clarity that has hindered its ability to beneficially reuse dredged sediment. NOAA's National Fisheries Service (NMFS), in collaboration with the LTMS, has recently promulgated an option for dredging projects to proceed or continue outside the LTMS work windows if the dredged sediment is beneficially reused at ecosystem restoration projects. As a result of this new requirement, the Corps was able to place nearly a million

cubic yards at wetland restoration sites in 2015 – something its leaders said they could not do on their own.

**LOOKING AHEAD**

At the moment there is ongoing litigation between BCDC and the Corps regarding some of these issues. The next step as we understand it is for a settlement hearing on March 27 in San Francisco. Bay Planning Coalition and the business community in general encourage resolution of the litigation as soon as possible to remove the uncertainty that it has contributed to what is already a fraught situation.

Lastly, while NMFS has made an effort to aid dredging projects, including by addressing the work window challenge, the agency continues to encounter issues associated with insufficient staffing. One of the resulting problems is that, without enough NMFS staff, the requirements for dredging operations to meet timely environmental reviews and to satisfy key Marine Oil Terminal Engineering & Maintenance Standards (MOTEMS) is significantly impacted.

Bay Planning Coalition and the LTMS agencies will continue to work with the Corps' Civil Works Program at all levels to help it meet its commitments to the region and accomplish multi-benefit projects in the most efficient and environmentally sustainable manner. I appreciate this opportunity to provide these comments to the Subcommittee and would be happy to answer any questions that you may have.

Sincerely,



John A. Coleman  
Chief Executive Officer  
Bay Planning Coalition