

Congress of the United States
Washington, DC 20515

September 12, 2023

Michael L. Connor
Assistant Secretary of the Army for Civil Works
United States Army Corps of Engineers
441 G Street NW
Washington, DC 20314-1000

Dear Assistant Secretary Connor,

We write to you expressing our concern that New York-New Jersey Harbor and Tributaries Focus Area Feasibility Study (HATS), and its upcoming Agency Decision Milestone (ADM), tentatively scheduled for release this summer, does not comply with the Water Resources Development Acts (WRDA) of 2020 and 2022 or President Biden's Justice40 Initiative (J40). With the passage of WRDA, Congress directed the Army Corps to formulate a plan that protects the region from tidal and river flooding, heavy rainfall, groundwater emergence, erosion, sea level rise and storm surge. However, after seven years of planning, the Army Corps is proposing to spend \$52.6 billion to protect our constituents from only one kind of flooding - storm surge. Members of Congress worked diligently to pass WRDA on behalf of our constituents in communities that remain vulnerable to multiple flood threats, and we urge HATS to comply. To ignore the more frequent flooding threats that plague our region is an irresponsible use of taxpayer dollars. In addition, Assistant Secretary Connor outlines environmental justice (EJ) expectations in the USACE EJ and Justice40 Guidance and states that "environmental justice is achieved when everyone enjoys the same degree of protections and equal access to Civil Works programs and services to achieve a healthy environment." Currently, the USACE's plan does not follow its own EJ and Justice40 guidance and does not appropriately center disadvantaged and EJ communities.

While we recognize that HATS has the potential to secure the protection of millions of residents in the New York-New Jersey metropolitan region from an increased frequency of storms and rising sea levels, the next phases of HATS and the protective structures that will result from the study must reflect Congressional directives specified in WRDA and the USACE EJ and J40 Guidance, namely:

- Measures that address multiple flooding threats
- Environmental justice and community engagement, including updating the cost-benefit analysis approach to ensure equity in the plan and expand the EJ areas within the region that it meaningfully protects
- Natural and nature-based features and nonstructural approaches over barriers
- Plans for a phased-approach, fast-tracking measures that protect critical infrastructure and environmental justice communities with a budget for adaptive management

To accomplish this, we are urging USACE to (1) promptly issue implementation guidance on applicable directives in 2020 and 2022 WRDA legislation, (2) factor that guidance into the current draft environmental impact study (DEIS) to conduct additional analyses and develop additional alternatives,

(3) in the spirit of USACE EJ and J40 Guidance, ensure that disadvantaged communities are properly protected, and (4) issue a Supplemental DEIS for public review and comment before reaching the Agency Decision Milestone.

In the Water Resources Development Act of 2020 (WRDA 2020), Congress secured key changes to HATS, working closely with local coalitions and local sponsors to ensure the principles important to our constituents (e.g., equity, nature, community engagement, etc.) would be reflected in planning, to include directing USACE to “*evaluate and address the impacts of low-frequency precipitation and sea-level rise on the study area.*”

Building on WRDA 2020, Congress passed WRDA 2022, which, upon request of a non-federal interest, directs the USACE under Sec. 8106 to formulate alternatives to maximize the net benefits from the reduction of comprehensive flood risk within the geographic scope of the study from the isolated and compound effects of:

- (1) a riverine discharge of any magnitude or frequency;*
- (2) inundation, wave attack, and erosion coinciding with a hurricane or coastal storm;*
- (3) a tide of any magnitude or frequency;*
- (4) a rainfall event of any magnitude or frequency;*
- (5) seasonal variation in water levels;*
- (6) groundwater emergence;*
- (7) sea level rise;*
- (8) subsidence; or*
- (9) any other driver of flood risk affecting the study area.*

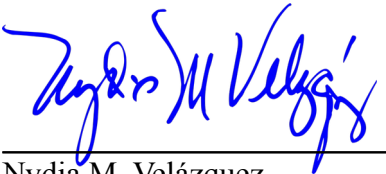
These provisions in WRDA 2020 and 2022 apply now, and New York City has invoked Sec. 8106 for HATS as evidenced in their comment letter to the Army Corps, dated March 24, 2023: “*We are pleased to see a new policy articulated in Section 8106 of WRDA 2022. USACE ‘shall formulate alternatives to maximize the net benefits from the reduction of the comprehensive flood risk’ that includes coastal storms, tidal flooding, and rainfall events.*” Therefore, the Army Corps New York District is directed by law to adhere to these provisions, even if they have not yet received implementation guidance. HATS has moved forward without such implementation, as evidenced most recently by the closure of the public comment period of the Study’s Tier 1 Draft Environmental Impact Statement (Draft EIS) and hundreds of comments concerned with multiple flood hazards, local climate projections, threats from rain-driven storms like Hurricane Ida, and the “bathtub effect” that can result from storm surge barriers trapping water from rain-

driven runoff and sewer overflows. These key issues must be addressed in the Tier 1 EIS, not as an afterthought in design. Our constituents and community coalitions have consistently raised concerns about USACE proposals, and public comments highlight that HATS conducted to date does not reflect the intent of Congress through WRDA 2020 and WRDA 2022, nor the intention of the USACE EJ and J40 Guidance.

As a reference, we have attached the May 26, 2021, letter to USACE signed by eighteen members of Congress that called for HATS to comply with 2020 WRDA directives. We are writing today to emphasize that the next Agency Decision Milestone and subsequent HATS developments must reflect full compliance with WRDA 2020 and WRDA 2022.

Thank you for prompt attention to these requests. We urge you to promptly issue the implementation guidance and use that to formulate a Supplemental DEIS that can be reviewed by the public, ensuring we meet the needs of constituents in the New York and New Jersey region.

Sincerely,



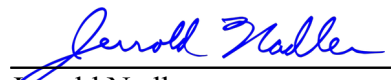
Nydia M. Velázquez
Member of Congress



Dan Goldman
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Grace Meng
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Donald M. Payne, Jr.
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Paul D. Tonko
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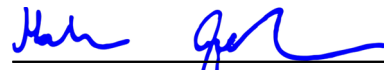
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