April 1, 2020

Submitted via Todd.T.Semonite@usace.army.mil

Lieutenant General Todd T. Semonite
Chief of Engineers & Commanding General
U.S. Army Corps of Engineers
441 G Street NW
Washington, DC 20314-1000

Re: Request for extension of all commenting periods and postponement of public hearings amid COVID-19 pandemic

Dear Lt. Gen. Semonite:

The 79 undersigned organizations write regarding the status of all proposals, permits, and actions pending with the U.S. Army Corps of Engineers (USACE). On March 13, 2020, the Executive Office of the President declared a national emergency, finding and proclaiming that “the COVID-19 outbreak in the United States constitutes a national emergency, beginning March 1,
2020.” Despite the ongoing crisis of lethal proportion, USACE seems to be conducting business as usual. For instance, on March 23, USACE opened commenting on a permit application for a 2,000-acre aquaculture project off the coast of Huntington Beach, California.¹ USACE has thus far refrained from extending the fast-approaching April 6 deadline for comments on an Environmental Impact Statement for the San Francisco Bay to Stockton Navigation Improvement Project.² And USACE disregarded urgent requests from advocacy groups, community members, and local elected officials in Surfside Beach, Texas to extend the March 13 public comment deadline for Clean Water Act permitting on the proposed Sea Port Oil Terminal export project.³ We are alarmed by the agency’s behavior during a time in which the country is in a national emergency and contending with the COVID-19 pandemic.

It is of paramount importance that USACE abstain from reaching any pending non-essential decisions or announcing new, non-essential opportunities for comment, and hold open all current commenting periods until 60 days after the national emergency is lifted. We also urge you to reschedule all public hearings once it is safe for the public to gather.⁴

As you are aware, public participation is a central hallmark of our democracy. Notice and comment periods, such as those highlighted above, have become the principal method for the public to participate in the administrative process. To that end, the Administrative Procedure Act has formalized the public’s opportunity to weigh-in by mandating agencies to “give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments.” 5 U.S.C. § 553(c). This mandate improves the quality of agency action and ensures that the administrative process has both public accountability and legitimacy.

The public’s ability to monitor open rulemakings and develop useful comments for agency decision-makers is being hindered, if not blocked outright, during this public health crisis and national emergency. Moreover, many frontline, rural, and low income communities have limited access to the internet or can only access it through facilities such as public libraries outside of their homes. Holding open all active public comment periods until stakeholders can resume normal operations without risk of exposure to COVID-19 will ensure that the public is truly able to meaningfully participate in the administrative process consistent with the letter and spirit of the APA.

Extending public comment periods will also benefit USACE and project applicants by ensuring more robust and valuable public feedback, which will lead to more successful agency action across the board. Moreover, this would reduce the need for public servants to work in agency offices where they would be unnecessarily exposed to COVID-19.

² U.S. Army Corps of Engineers, Final EIS for San Francisco to Stockton Navigation Improvement Project (March 6, 2020).
⁴ In making this national request, we join the requests submitted by 51 organizations located in the Gulf of Mexico, which specifically focuses on projects in the Gulf region. See Letter from 51 Gulf organizations to Asst. Secretary R.D. James (March 26, 2020).
There is no doubt that the arrival of the COVID-19 pandemic has significantly deprived members of the public from having opportunities to meaningfully participate in – or even become aware of – open rulemakings and pending decisions. Communities are closing. The public is sheltering in place. People are losing their own lives and the lives of loved ones. Now is not the time to push through “business as usual” agency activity.

Sincerely,

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Food & Water Action  
Friends of the Los Angeles River  
Friends of the Rivers of Virginia (FORVA)  
Glynn Environmental Coalition  
Great Egg Harbor Watershed Association  
Green Justice  
Greenpeace  
Healthy Gulf  
Hip Hop Caucus  
Inland Ocean Coalition  
International Marine Mammal Project of Earth Island Institute  
Kentucky Resources Council, Inc.  
Kentucky Waterways Alliance  
Lake Champlain Committee  
Louisiana Audubon Council  
Louisiana Bucket Brigade  
Miami Waterkeeper  
Mill Creek Alliance  
Mission Blue  
Mississippi River Collaborative  
Moore Charitable Foundation  
National Wildlife Federation  
Nebraska Wildlife Federation  
New Jersey Highlands Coalition  
North Carolina Wildlife Federation  
Northwest Atlantic Marine Alliance  
NY4WHALES  
Ocean Conservation Research  
Oceanic Preservation Society  
Ohio River Foundation  
Oil Change International  
Pacific county Marine Resources Committee  
Planning & Conservation League  
Protect the Bay Coalition  
Raritan Riverkeeper  
Recirculating Farms Coalition
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<td>Sunflower Alliance</td>
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