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November 10, 2014

The Honorable Jo-Ellen Darcy
Assistant Secretary of the Army (Civil Works)
108 Army Pentagon
Washington, DC 20310-0108

Dear Assistant Secretary Darcy:

I write to urge immediate resolution of matters that are delaying the U.S. Army Corps of Engineers from advancing the Caño Martín Peña ecological restoration project in San Juan, Puerto Rico. Earlier this year, the non-federal sponsor for this project—*Corporación del Proyecto ENLACE del Caño Martín Peña* (ENLACE)—submitted to the Army Corps a thorough feasibility report. Despite concerted efforts by ENLACE to advance the project to the design phase, I am informed that your office is withholding a feasibility determination and approval of the feasibility report due to disagreement over: (1) the identified disposal site for the material and sediments that would be dredged from the channel, and (2) application of a federal navigation easement that would affect both the total project cost and whether historic waterworks infrastructure within the channel area can remain in place. I respectfully request an opportunity to meet with you at your earliest convenience to discuss these matters in detail. I also make the following points that I believe justify your immediate approval of the feasibility report in its current form, as already submitted to you by ENLACE.

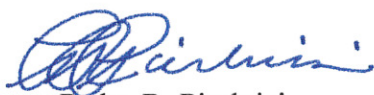
First, it is premature at this stage in the project delivery process, and inconsistent with the past practices and current regulations of the Army Corps, to consider material and sediments beneath the waters of Caño Martín Peña that would be dredged as hazardous toxic radioactive waste (HTRW). Given that Caño Martín Peña is not a site designated by the U.S. Environmental Protection Agency for remediation under the *Comprehensive Environmental Response, Compensation and Liability Act* (CERCLA), federal regulations exclude such dredge material and sediments from HTRW classification. Moreover, ENLACE demonstrates that the Army Corps has previously approved feasibility reports for similarly-situated environmental restoration projects in other jurisdictions that treat disposal of such dredge material and sediments the same way as is proposed in the feasibility report for Caño Martín Peña. In light of these facts, I am concerned that your office may be applying a different standard to the Caño Martín Peña project than is applied for other projects of similar scope and purpose. If ENLACE is made to comply with this different standard, I am concerned that the scientific testing of the material and sediments that would be dredged for HTRW evaluation would become a cost-prohibitive step that ENLACE would not be able to overcome. ENLACE estimates that it would be forced to incur approximately \$600,000 in additional costs to conduct such testing and to make revisions to the feasibility report for this purpose.

Second, whether or not a federal easement for navigation applies for Caño Martín Peña under the *River and Harbors Appropriation Act of 1899* remains at issue. An easement is needed in order to preclude waterworks infrastructure existing in the channel area—which dates back to the 19th century—from having to be dismantled or relocated as part of the project. Without such an easement the project cost escalates beyond the authorization limit in place, thereby making the project infeasible. I am informed that your office takes the position that an easement should not apply for Caño Martín Peña, but I am unclear as to why the Army Corps would withhold application of an easement if it has the discretion to do so. The Army Corps should accept the feasibility report in its current form and apply the requisite easement so that the project can remain viable by remaining within the authorized cost limit.

The Caño Martín Peña project, which is of paramount importance for my constituents, has reached a critical juncture in the Army Corps project delivery process. Timely approval of the feasibility report and advancement of this project into the next phase is in the clear interest of the public health of the approximately 27,000 residents that live within the eight residential communities surrounding Caño Martín Peña. These residents remain exposed to pollution and contamination. As a result, their health is placed at risk each day this project is delayed. Additionally, the environmental restoration purpose of this project is crucial for providing a healthy habitat for the endangered plants and wildlife native to the estuary environment of the Caño Martín Peña, some of which are found nowhere else in the world but in Puerto Rico. These realities were reinforced to me last month when I visited Caño Martín Peña to meet with ENLACE and to speak to members of the affected communities. I witnessed firsthand how this project will make a substantial difference in their lives. It is for these reasons that I urge your personal intervention in this process and timely resolution of all matters that are delaying approval of the Caño Martín Peña feasibility report.

I look forward to working with you to advance this project into the preconstruction, engineering, and design (PED) phase as soon as possible, and to ensure that this project receives full capability funding in the Department of the Army's civil works budget. I thank you for your attention to these matters and for all of the technical assistance that the Jacksonville District has provided to ENLACE to date in support of the project.

Sincerely,



Pedro R. Pierluisi
Member of Congress

cc: The Hon. Stuart Delery, Acting Associate Attorney General, Co-Chair, the President's Task Force on Puerto Rico
The Hon. Jerry Abramson, Director (Selected), White House Office of Intergovernmental Affairs, Co-Chair, the President's Task Force on Puerto Rico
The Hon. Alejandro García-Padilla, Governor of Puerto Rico
The Hon. Carmen Yulín Cruz, Mayor of the Municipality of San Juan