

1. Administrative Details

Proposal Name: Feasibility study of reauthorization of the project for navigation, St. Thomas (Charlotte Amalie) Harbor, U.S. Virgin Islands

by Agency: Virgin Islands Port Authority

Locations: VI

Date Submitted: 08/20/2018

Confirmation Number: 9ebddb80-e167-4dab-940f-0ad7493e795a

Supporting Documents

File Name	Date Uploaded
Crown Bay Channel Exhibit - Charlotte Amalie.pdf	08/20/2018
SAJN-049.pdf	08/20/2018
Wico Channel Exhibit - Charlotte Amalie.pdf	08/20/2018
c75s1ch832.pdf	08/20/2018
1949 Annual Report St Thomas.pdf	08/20/2018
WRDA1986.pdf	08/20/2018
Sprauve v West Indian Co Ltd-1.pdf	08/20/2018
DOC611.pdf	08/20/2018

2. Provide the name of the primary sponsor and all non-Federal interests that have contributed or are expected to contribute toward the non-Federal share of the proposed feasibility study or modification.

Sponsor	Letter of Support
Virgin Islands Port Authority (“VIPA”) (Primary)	<p>The Harbor is a critical component of the USVI’s economic recovery plan to return the Territory to economic health following Hurricanes Irma and Maria and generate longer-term economic development. The Territory’s major economic contributor is its tourism industry. The Harbor is the cruise-ship port for the Territory’s capital city, Charlotte Amalie, one of the largest and busiest cruise ship ports in the Caribbean. Further, just about everything that is used or consumed in the Territory arrives by ship. Food, clothing, machinery, mail, furniture, vehicles, building supplies--it all enters through the ports. These key factors make the ports in the Territory a critical component in the strength and growth of our Islands’ economy. Any investment or improvement to our port facilities helps to secure our Territory’s economic future and our Country’s national security. VIPA is the instrumentality of the Government of the USVI (“GVI”) responsible for the development, improvement, operation, and maintenance of ports in the Territory. Its mandate is to promote the wise use of these facilities for the betterment of the Virgin Islands and its people, to assist the GVI in fostering and sustaining sound economic development, and provide a safe and secure environment at its ports. VIPA requests and supports re-federalization of the Harbor in order to access federal resources--for maintenance dredging, and improvement and O&M of navigational systems, etc.--to improve the Harbor’s ability to accommodate new, massive Oasis-class cruise ships and additional Quantum-class cruise ships and thereby compete in the fiercely competitive Caribbean port-of-call market, and to improve the safety and security of the Harbor and navigation for all surface vessels, which provide the lifeblood of the Territory’s economy. Based on discussions with Congressional staff, VIPA understands the first step in the process is to seek funding for a study of the feasibility of re-federalizing the Harbor.</p>

3. State if this proposal is for a feasibility study, a modification to an authorized USACE feasibility study or a modification to an authorized USACE project. If it is a proposal for a modification, provide the authorized water resources development feasibility study or project name.

[x] Feasibility Study

4. Clearly articulate the specific project purpose(s) of the proposed study or modification. Demonstrate that the proposal is related to USACE mission and authorities and specifically address why additional or new authorization is needed.

In the aftermath of Hurricanes Irma and Maria, the GVI and VIPA considered how to use USACE funding to repair damage to the Harbor (e.g., dredging of material deposited in navigation channels, turning basins, anchorage areas, etc.), maintenance dredging (every 10 years due to shoaling), and needed improvements to navigation systems. Based on that review, the GVI and VIPA sought resumption of USACE O&M dredging. USACE HQ indicated to Congressional staff that the formerly federally-authorized Harbor needs to be re-authorized and that a feasibility study appeared to be a necessary prerequisite. Without conceding whether a study is needed in order to re-authorize the Harbor, in light of USACE's position VIPA and the GVI request that USACE conduct a feasibility study for O&M dredging and improvements to navigation systems, which are core missions of USACE and needed for the use and safety of the critically-needed port of Charlotte Amalie. The "St. Thomas Harbor, Virgin Islands" project was authorized by the River and Harbor Act of August 26, 1937 (Ch. 832; 50 Stat. 850; 75th Cong., 1st sess.) (attached). A map (Map 49) of the authorized project is attached. The project was described in the attached 1949 Annual Report of the Chief of Engineers. The project was de-authorized by WRDA 1986, § 1002 (attached). That de-authorization occurred solely because the West Indian Company (WICO)--which was at that time a Dutch-owned corporation and not part of the GVI--had reclamation rights in the Harbor that had been preserved in the 1917 treaty between the US and Denmark (when the USVI became a US possession). In 1993, the GVI purchased WICO, and following that transaction WICO became a subsidiary of the Virgin Islands Public Finance Authority, a public corporation and instrumentality of the GVI, and thus part of the GVI. *Sprauve v. West Indian Company Limited*, 799 F.3d 226 (3rd Cir. 2015). Thus, the only reason for the de-authorization was extinguished about 25 years ago.

5. To the extent practicable, provide an estimate of the total cost, and the Federal and non-Federal share of those costs, of the proposed study and, separately, an estimate of the cost of construction or modification.

	Federal	Non-Federal	Total
Study	\$150,000	\$0	\$150,000
Construction	\$800,000	\$0	\$800,000

Explanation (if necessary)

In recognition of the persistent economic challenges in the Insular Areas of the U.S., which include the USVI, the Insular Areas Act (48 U.S.C. § 1469a) authorizes that “any department or agency, in its discretion, may (i) waive any requirement for matching funds otherwise required by law to be provided by the Insular Area involved.” Accordingly, USACE should exercise its discretion and waive any local match requirement in this case. If the USACE declines to exercise that discretion and seeks a local __non-federal match, the GVI and__ or VIPA, to the extent allowed by law, may direct a portion of the Community Development Block Grant - Disaster Recovery (CDBG-DR) Program funding from the United States Department of Housing and Urban Development (HUD) to pay for that local __non-federal share. To the extent that CDBG-DR is not used to pay local __non-federal share, VIPA and__or the GVI are willing to pay the local __non-federal share of the feasibility study.

6. To the extent practicable, describe the anticipated monetary and nonmonetary benefits of the proposal including benefits to the protection of human life and property; improvement to transportation; the national economy; the environment; or the national security interests of the United States.

The cost savings realized from re-federalizing the channels could be used to fund much needed capital improvements to the Territory's marine facilities, which will enhance safety and provide better accommodations for vessels calling on the Territory. This will result in job growth opportunities, leading to a stronger, more resilient USVI economy. See also response to #2 above.

7. Does local support exist? If 'Yes', describe the local support for the proposal.

Yes

Local Support Description

VIPA is the instrumentality of the Government of the USVI ("GVI") responsible for the development, improvement, operation, and maintenance of ports in the Territory. Its mandate is to promote the wise use of the se facilities for the betterment of the Virgin Islands and its people, to assist the GVI in fostering and sustaining sound economic development, and provide a safe and secure environment at its ports. VIPA requests and wholeheartedly supports re-federalization of the Harbor in order to access federal resources--for maintenance dredging, and improvement and O&M of navigational systems, etc.--to improve the Harbor's ability to accommodate new, massive Oasis-class cruise ships and additional Quantum-class cruise ships and thereby compete in the fiercely competitive Caribbean port-of-call market, and to improve the safety and security of the Harbor and navigation for all surface vessels, which provide the lifeblood of the Territory's economy.

8. Does the primary sponsor named in (2.) above have the financial ability to provide for the required cost share?

Yes

Map Document

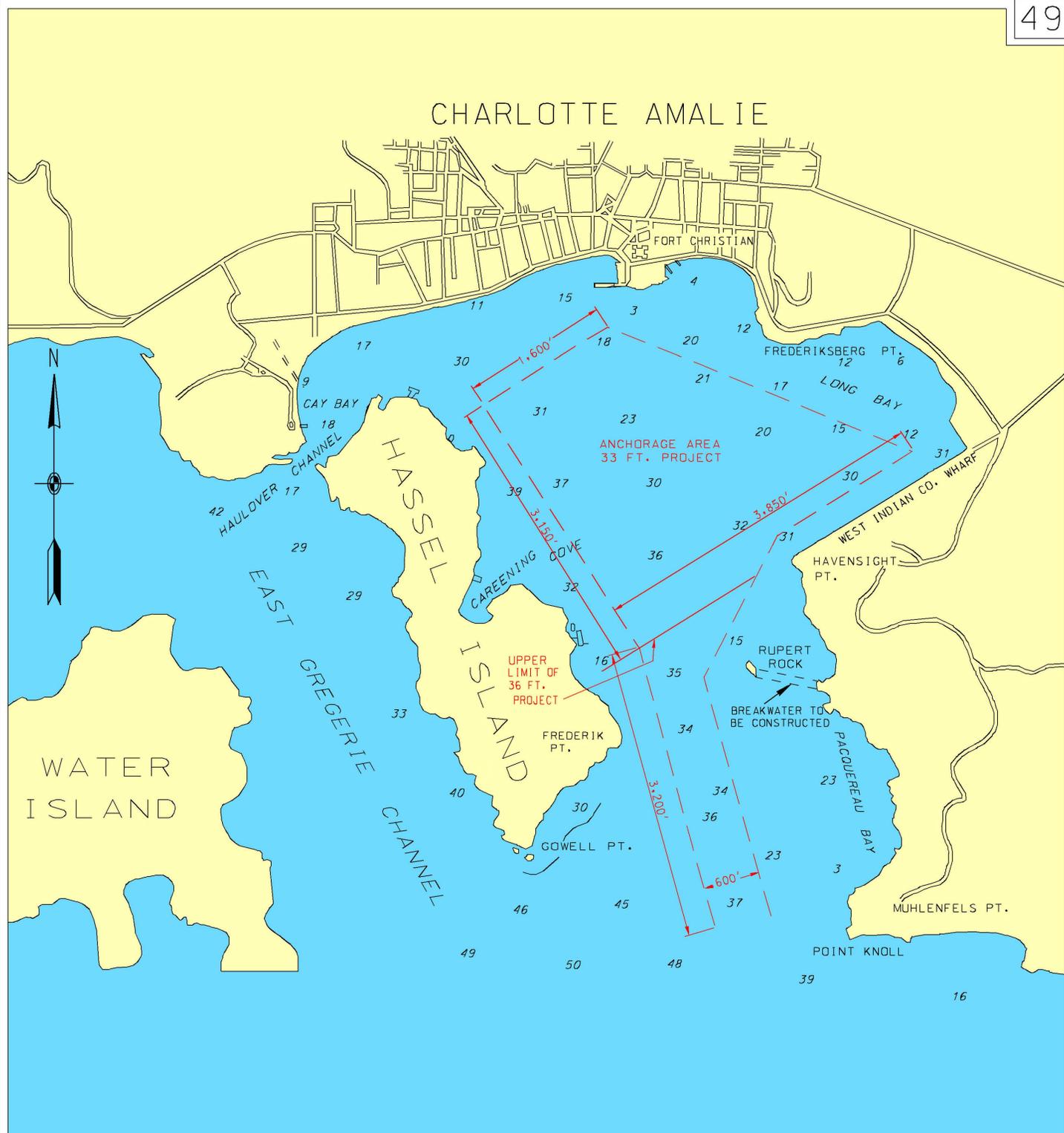
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Crown Bay Channel Exhibit - Charlotte Amalie.pdf

Additional Proposal Information

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SAJN_049.pdf



PROJECT: An entrance channel 36 feet deep and 600 feet wide; removal of Scorpion Rock to 36-foot depth, and anchorage area 33 feet deep; a breakwater 700 feet long between Rupert Rock and mainland.

MEAN TIDAL RANGE: 0.8 feet

AUTHORIZATION FOR EXISTING PROJECT		
ACTS	WORK AUTHORIZED	DOCUMENT
26 Aug. 1937	Dredging entrance channel 36 feet deep and anchorage area 33 feet deep, removal of Scorpion Rock, and construction of breakwater 700 feet long.	H. Doc. 200/75/1

ST. THOMAS HARBOR, V.I.

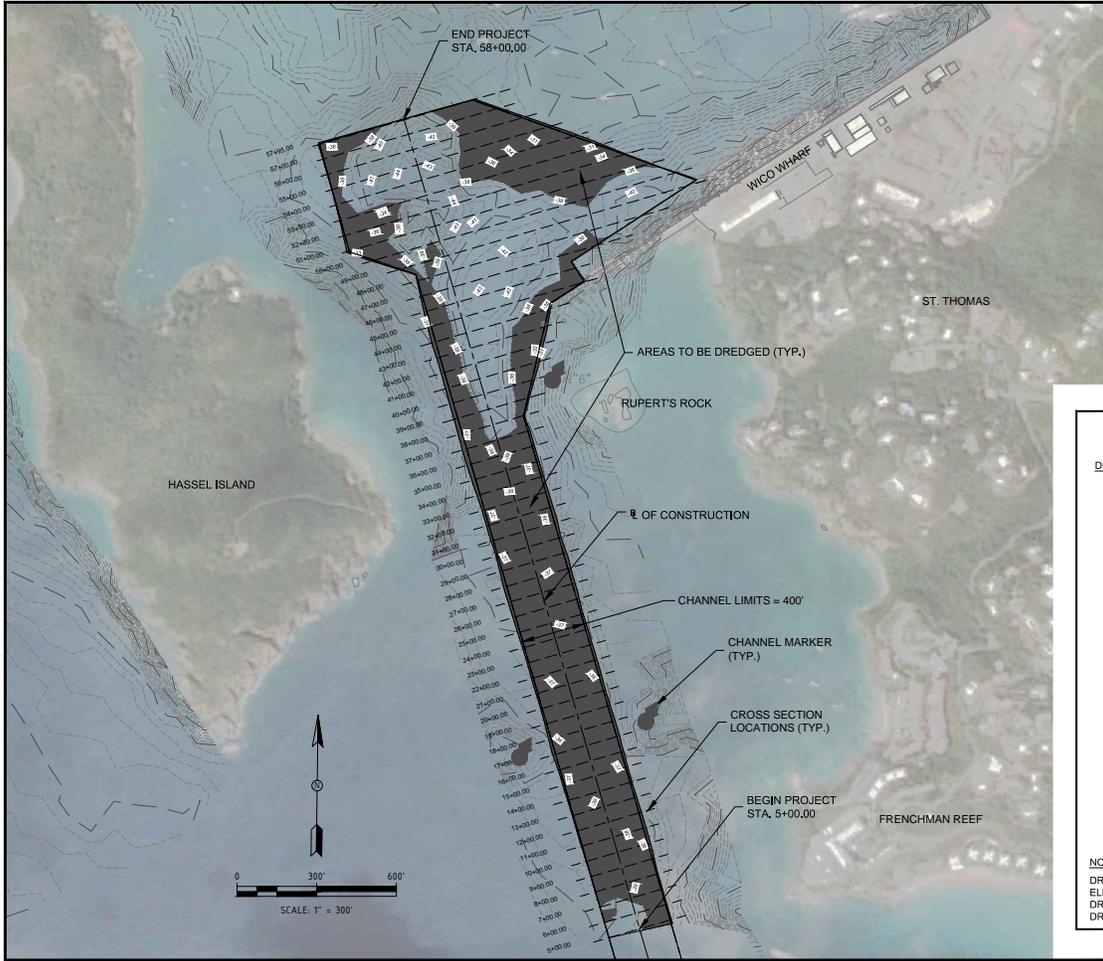
SCALE IN FEET

U.S. ARMY ENGINEERS DISTRICT, JACKSONVILLE
CORPS OF ENGINEERS, JACKSONVILLE, FLORIDA

Additional Proposal Information

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Wico Channel Exhibit - Charlotte Amalie.pdf



ABBREVIATIONS

BL #	BASELINE
BP	BEGIN PROJECT
CY	CUBIC YARD
ELEV.	ELEVATION
EP	END PROJECT
HORIZ.	HORIZONTAL
MLLW	MEAN LOWER LOW WATER
N.T.S.	NOT TO SCALE
PC	POINT OF CURVATURE
SF	SQUARE FEET
STA.	STATION
TYP.	TYPICAL
VERT.	VERTICAL

DREDGE MATERIAL

DRAWING NO.	DREDGE MATERIAL TOTAL AREA (SF)	DREDGE MATERIAL TOTAL AREA (CY)
C4.0	1,090	3,011
C5.0	2,933	9,724
C6.0	4,343	15,697
C7.0	5,525	20,154
C8.0	5,488	19,986
C9.0	5,983	22,134
C10.0	4,796	18,460
C11.0	4,866	17,809
C12.0	3,670	14,251
C13.0	4,191	15,827
C14.0	1,693	7,598
C15.0	2,155	5,343
C16.0	4,397	8,141
C17.0	6,595	12,213
C18.0	6,274	25,028
C19.0	4,216	7,808
C20.0	2,721	9,930
	70,936 SF	232,195 CY

NOTE:
 DREDGING OF WICO ENTRANCE CHANNEL
 ELEVATION BASED ON MLLW
 DREDGE TO ELEV. = -40.00 (CHANNEL), -38.00 (TURNING BASIN)
 DREDGE VOLUME = 232,195 CY



REV.	NO.	DATE	DESCRIPTION

WICO CHANNEL DREDGING
 CHARLOTTE ANGLE
 ST. THOMAS, U.S. VIRGIN ISLANDS

Drawn: DC
 Checked: DC
 Appr.: D.C.
 Date: 05-23-18
 Proj. No.:

Dredging Description
 Drawing No. **C-2.0**
DREDGE PLAN

Additional Proposal Information

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franchises, privileges, and concessions may be imposed for the purposes of the insular and municipal governments, respectively, as may be provided and defined by the Legislature of Puerto Rico; and when necessary to anticipate taxes and revenues, bonds and other obligations may be issued by Puerto Rico or any municipal government therein as may be provided by law, and to protect the public credit: *Provided, however,* That no public indebtedness of Puerto Rico and the municipalities of San Juan, Ponce, and Mayaguez shall be allowed in excess of 10 per centum of the aggregate tax valuation of its property, and no public indebtedness of any other subdivision or municipality of Puerto Rico shall hereafter be allowed in excess of 5 per centum of the aggregate tax valuation of the property in any such subdivision or municipality, and all bonds issued by the Government of Puerto Rico, or by its authority, shall be exempt from taxation by the Government of the United States, or by the Government of Puerto Rico or of any political or municipal subdivision thereof, or by any State, Territory, or possession, or by any county, municipality, or other municipal subdivision of any State, Territory, or possession of the United States, or by the District of Columbia. In computing the indebtedness of the people of Puerto Rico, municipal bonds for the payment of interest and principal of which the good faith of the people of Puerto Rico has heretofore been pledged and bonds issued by the people of Puerto Rico secured by bonds to an equivalent amount of bonds of municipal corporations or school boards of Puerto Rico shall not be counted, but all bonds hereafter issued by any municipality or subdivision within the 5 per centum hereby authorized for which the good faith of the people of Puerto Rico is pledged shall be counted.

And it is further provided, That the internal-revenue taxes levied by the Legislature of Puerto Rico in pursuance of the authority granted by this Act on articles, goods, wares, or merchandise may be levied and collected as such legislature may direct, on the articles subject to said tax, as soon as the same are manufactured, sold, used, or brought into the island: *Provided,* That no discrimination be made between the articles imported from the United States or foreign countries and similar articles produced or manufactured in Puerto Rico. The officials of the Customs and Postal Services of the United States are hereby directed to assist the appropriate officials of the Puerto Rican Government in the collection of these taxes."

Approved, August 26, 1937.

[CHAPTER 832]

AN ACT

August 26, 1937

[H. R. 7051]

[Public, No. 392]

Authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes.

Rivers and harbors,
improvements.
Work authorized.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following works of improvement of rivers, harbors, and other waterways are hereby adopted and authorized, to be prosecuted under the direction of the Secretary of War and supervision of the Chief of Engineers, in accordance with the plans recommended in the respective reports hereinafter designated and subject to the conditions set forth in such documents; and that hereafter Federal investigations and improvements of rivers, harbors, and other waterways shall be under the jurisdiction of and shall be prosecuted by the War Department under the direction of the Secretary of War and the supervision of the Chief of Engineers, except as otherwise specifically provided

Jurisdiction.

by Act of Congress, which said investigations and improvements shall include a due regard for wildlife conservation:

Chelsea River or Creek (Boston Harbor), Massachusetts; Rivers and Harbors Committee Document Numbered 24, Seventy-fifth Congress;

Chelsea River or
Creek (Boston), Mass.

Town River, Quincy, Massachusetts; House Document Numbered 96, Seventy-fifth Congress;

Town River, Quincy,
Mass.

Scituate Harbor, Massachusetts; Rivers and Harbors Committee Document Numbered 26, Seventy-fifth Congress;

Scituate, Mass.

Cuttyhunk Harbor, Massachusetts; House Document Numbered 81, Seventy-fifth Congress;

Cuttyhunk, Mass.

Edgartown Harbor, Massachusetts; Senate Commerce Committee Document, Seventy-fourth Congress;

Edgartown, Mass.

New Bedford and Fairhaven Harbor, Massachusetts; Rivers and Harbors Committee Document Numbered 25, Seventy-fifth Congress;

New Bedford and
Fairhaven, Mass.

Providence River and Harbor, Rhode Island; House Document Numbered 173, Seventy-fifth Congress;

Providence River
and Harbor, R. I.

Newport Harbor, Rhode Island; Rivers and Harbors Committee Document Numbered 36, Seventy-fifth Congress;

Newport, R. I.

New London Harbor, Connecticut; Rivers and Harbors Committee Document Numbered 82, Seventy-fourth Congress;

New London, Conn.

Milford Harbor, Connecticut; House Document Numbered 77, Seventy-fifth Congress;

Milford, Conn.

Bridgeport Harbor, Connecticut; House Document Numbered 232, Seventy-fifth Congress;

Bridgeport, Conn.

Stamford Harbor, Connecticut; Rivers and Harbors Committee Document Numbered 29, Seventy-fifth Congress;

Stamford, Conn.

Flushing Bay and Creek, New York; Rivers and Harbors Committee Document Numbered 35, Seventy-fifth Congress;

Flushing Bay and
Creek, N. Y.

Greenport Harbor, New York; Rivers and Harbors Committee Document Numbered 88, Seventy-fourth Congress;

Greenport, N. Y.

Long Island Intracoastal Waterway, New York; House Document Numbered 181, Seventy-fifth Congress;

Long Island Intra-
coastal Waterway,
N. Y.

New York Harbor: Ambrose, Anchorage, and Hudson River Channels; Senate Commerce Committee Document, Seventy-fifth Congress;

New York Harbor.

Fire Island Inlet, New York; Rivers and Harbors Committee Document Numbered 33, Seventy-fifth Congress;

Fire Island Inlet,
N. Y.

Newtown Creek, New York; Rivers and Harbors Committee Document Numbered 4, Seventy-fifth Congress;

Newtown Creek,
N. Y.

Irvington Harbor, New York; House Document Numbered 244, Seventy-fifth Congress;

Irvington, N. Y.

Raritan River, New Jersey; Rivers and Harbors Committee Document Numbered 74, Seventy-fourth Congress;

Raritan River, N. J.

Lemon Creek, Staten Island, New York; Rivers and Harbors Committee Document Numbered 27, Seventy-fifth Congress;

Lemon Creek,
Staten Island, N. Y.

Sandy Hook Bay off Atlantic Highlands, New Jersey; House Document Numbered 292, Seventy-fifth Congress;

Sandy Hook Bay,
Atlantic Highlands,
N. J.

Cohansey River, New Jersey; Senate Commerce Committee Document, Seventy-fifth Congress;

Cohansey River,
N. J.

Barnegat Inlet, New Jersey; Rivers and Harbors Committee Document Numbered 85, Seventy-fourth Congress;

Barnegat Inlet, N. J.

Delaware River between Philadelphia, Pennsylvania, and Trenton, New Jersey; Rivers and Harbors Committee Document Numbered 90, Seventy-fourth Congress;

Delaware River,
Philadelphia, Pa., to
Trenton, N. J.

Saint Jones River, Delaware; Rivers and Harbors Committee Document Numbered 18, Seventy-fifth Congress;

Saint Jones River,
Del.

Mispyllion River, Delaware; Rivers and Harbors Committee Document Numbered 83, Seventy-fourth Congress;

Mispyllion River,
Del.

- Indian River Inlet and Bay, Del. Indian River Inlet and Bay, Delaware; Rivers and Harbors Committee Document Numbered 41, Seventy-fifth Congress;
- Susquehanna River, Havre de Grace, Md. Susquehanna River at Havre de Grace, Maryland; House Document Numbered 322; Seventy-fifth Congress;
- Rock Hall, Md. Rock Hall Harbor, Maryland; House Document Numbered 204, Seventy-fifth Congress;
- Island Creek, Md. Island Creek, Maryland; House Document Numbered 75, Seventy-fifth Congress;
- Waterway, Little Choptank River to Choptank River, Md. Cambridge, Md. Waterway from Little Choptank River to Choptank River, Maryland; House Document Numbered 91, Seventy-fifth Congress;
- Fishing Bay, Md. Cambridge Harbor, Maryland; Rivers and Harbors Committee Document Numbered 7, Seventy-fifth Congress;
- Nanticoke River, Md. Fishing Bay, Maryland; House Document Numbered 186, Seventy-fifth Congress;
- Wicomico River, Md. Nanticoke River, Maryland; House Document Numbered 242, Seventy-fifth Congress;
- Upper Thoroughfare, Deals Island, Md. Wicomico River, Maryland; Senate Commerce Committee Document, Seventy-fifth Congress;
- Crisfield, Md. Upper Thoroughfare, Deals Island, Maryland; House Document Numbered 76, Seventy-fifth Congress;
- Cypress Creek, Md. Crisfield Harbor, Maryland; Rivers and Harbors Committee Document Numbered 2 and House Document Numbered 72, Seventy-fifth Congress;
- Northeast River, Md. Cypress Creek, Maryland; House Document Numbered 161, Seventy-fifth Congress;
- Back Creek, Md. Northeast River, Maryland; House Document Numbered 248, Seventy-fifth Congress;
- Fishing Creek, Md. Back Creek, Anne Arundel County, Maryland; House Document Numbered 73, Seventy-fifth Congress;
- Saint Jeromes Creek, Md. Fishing Creek, Maryland; House Document Numbered 241, Seventy-fifth Congress;
- Neale Sound, Md. Saint Jeromes Creek, Maryland; House Document Numbered 174, Seventy-fifth Congress;
- Chincoteague Bay, Va. Neale Sound, Maryland; House Document Numbered 159, Seventy-fifth Congress;
- Onancock River, Va. Chincoteague Bay, Virginia; House Document Numbered 233, Seventy-fifth Congress;
- Coan River, Va. Onancock River, Virginia; House Document Numbered 74, Seventy-fifth Congress;
- Hoskins Creek, Va. Coan River, Virginia; Rivers and Harbors Committee Document Numbered 30, Seventy-fifth Congress;
- James River, Va. Hoskins Creek, Virginia; Rivers and Harbors Committee Document Numbered 8, Seventy-fifth Congress;
- Deep Creek, Va. James River, Virginia; Rivers and Harbors Committee Document Numbered 68, Seventy-fourth Congress;
- Lafayette River, Va. Deep Creek, Virginia; Rivers and Harbors Committee Document Numbered 76, Seventy-fourth Congress;
- Cashie River, N. C. Lafayette River, Virginia; Rivers and Harbors Committee Document Numbered 5, Seventy-fifth Congress;
- Pamlico and Tar Rivers, N. C. Cashie River, North Carolina; Rivers and Harbors Committee Document Numbered 31, Seventy-fifth Congress;
- Waterway, Pamlico Sound to Beaufort Harbor, N. C. Pamlico and Tar Rivers, North Carolina; Rivers and Harbors Committee Document Numbered 22, Seventy-fifth Congress;
- Bay River, N. C. Waterway connecting Pamlico Sound and Beaufort Harbor, North Carolina; Rivers and Harbors Committee Document Numbered 92, Seventy-fourth Congress;
- Bay River, North Carolina; Rivers and Harbors Committee Document Numbered 72, Seventy-fourth Congress, and House Document Numbered 185, Seventy-fifth Congress;

- Morehead City Harbor and Beaufort Inlet, North Carolina; Senate Commerce Committee Document, Seventy-fourth Congress;
- Channel from Back Sound to Lookout Bight, North Carolina; House Document Numbered 251, Seventy-fifth Congress;
- Inland Waterway, Beaufort, North Carolina, to the Cape Fear River, including waterway to Jacksonville, North Carolina; Rivers and Harbors Committee Document Numbered 16, Seventy-fifth Congress;
- Cape Fear River, North Carolina, above Wilmington; Rivers and Harbors Committee Document Numbered 17, Seventy-fifth Congress;
- Intracoastal Waterway from Cape Fear River, North Carolina, to Savannah, Georgia; Rivers and Harbors Committee Document Numbered 6, Seventy-fifth Congress;
- Ashley River, South Carolina; House Document Numbered 449, Seventy-fourth Congress;
- Shipyard River, South Carolina; Rivers and Harbors Committee Document Numbered 38, Seventy-fifth Congress;
- Savannah River below Augusta, Georgia; Rivers and Harbors Committee Document Numbered 39, Seventy-fifth Congress;
- Waterway between Beaufort, South Carolina, and Saint Johns River, Florida; Senate Commerce Committee Document, Seventy-fourth Congress;
- Intracoastal Waterway from Jacksonville to Miami, Florida; House Document Numbered 180, Seventy-fifth Congress;
- Melbourne Harbor, Florida; House Document Numbered 390, Seventy-fourth Congress;
- Miami Harbor, Florida; Rivers and Harbors Committee Document Numbered 86, Seventy-fourth Congress;
- Caloosahatchee River and Lake Okeechobee Drainage Areas, Florida; Rivers and Harbors Committee Document Numbered 28, Seventy-fifth Congress;
- Charlotte Harbor, Florida; Rivers and Harbors Committee Document Numbered 95, Seventy-fourth Congress;
- Sarasota Bay, Florida; House Document Numbered 80, Seventy-fifth Congress;
- Saint Petersburg Harbor, Florida; Rivers and Harbors Committee Document Numbered 71, Seventy-fourth Congress;
- Steinhatchee River, Florida; Rivers and Harbors Committee Document Numbered 87, Seventy-fourth Congress;
- Intracoastal Waterway from Apalachicola Bay to Saint Marks River, Florida; House Document Numbered 291, Seventy-fifth Congress;
- Saint Marks River, Florida; Rivers and Harbors Committee Document Numbered 77, Seventy-fourth Congress;
- Saint Josephs Bay, Florida; Rivers and Harbors Committee Document Numbered 10, Seventy-fifth Congress;
- Carrabelle Bar and Harbor, Florida; House Document Numbered 184, Seventy-fifth Congress;
- Pensacola Harbor, Florida; Rivers and Harbors Committee Document Numbered 96, Seventy-fourth Congress;
- Mobile Harbor, Alabama; Rivers and Harbors Committee Documents Numbered 69, Seventy-fourth Congress, and 44, Seventy-fifth Congress;
- Bayous La Loutre, Saint Malo, and Yscloskey, Louisiana; House Document Numbered 275, Seventy-fifth Congress;
- Bayou Dupre, Louisiana; House Document Numbered 321, Seventy-fifth Congress;
- Vinton Waterway, Louisiana; House Document Numbered 160, Seventy-fifth Congress;
- Morehead City and Beaufort Inlet, N. C.
- Channel, Back Sound to Lookout Bight, N. C.
- Waterway, Beaufort, N. C., to Cape Fear River, etc.
- Cape Fear River, N. C., above Wilmington.
- Intracoastal Waterway, Cape Fear River, N. C., to Savannah, Ga.
- Ashley River, S. C.
- Shipyard River, S. C.
- Savannah River, below Augusta, Ga.
- Waterway, Beaufort, S. C., to Saint Johns River, Fla.
- Intracoastal Waterway, Jacksonville to Miami, Fla.
- Melbourne, Fla.
- Miami, Fla.
- Caloosahatchee River and Lake Okeechobee Drainage Areas, Fla.
- Charlotte, Fla.
- Sarasota Bay, Fla.
- Saint Petersburg, Fla.
- Steinhatchee River, Fla.
- Intracoastal Waterway, Apalachicola Bay to Saint Marks River, Fla.
- Saint Marks River, Fla.
- Saint Josephs Bay, Fla.
- Carrabelle Bar and Harbor, Fla.
- Pensacola, Fla.
- Mobile, Ala.
- Bayous La Loutre, etc., La.
- Bayou Dupre, La.
- Vinton Waterway, La.

- Calcasieu River and Pass, La. Calcasieu River and Pass, Louisiana; House Document Numbered 299, Seventy-fifth Congress;
- Bayous Petit Anse, etc., La. Bayous Petit Anse, Tigre, and Carlin, Louisiana; Rivers and Harbors Committee Document Numbered 40, Seventy-fifth Congress;
- Waterway, White Lake to Pecan Island, La. Waterway from White Lake to Pecan Island, Louisiana; House Document Numbered 78, Seventy-fifth Congress;
- Sabine-Neches Waterway, Tex. Sabine-Neches Waterway, Texas; Rivers and Harbors Committee Document Numbered 3, Seventy-fifth Congress;
- Louisiana and Texas Intracoastal Waterway, La. and Tex. Louisiana and Texas Intracoastal Waterway, Louisiana and Texas; Senate Commerce Committee Document, Seventy-fifth Congress;
- Texas City Channel, Tex. Texas City Channel, Texas; Rivers and Harbors Committee Document Numbered 47, Seventy-fifth Congress;
- Channel, Pass Cavallo to Port Lavaca, Tex. Channel from Pass Cavallo to Port Lavaca, Texas; Rivers and Harbors Committee Document Numbered 37, Seventy-fifth Congress;
- Brazos Island, Tex. Brazos Island Harbor, Texas; Rivers and Harbors Committee Document Numbered 32, Seventy-fifth Congress;
- Ouachita and Black Rivers, Ark. and La. Ouachita and Black Rivers, Arkansas and Louisiana; Senate Commerce Committee Document, Seventy-fifth Congress;
- Mississippi River, Missouri River to Minneapolis, Minn. Mississippi River between Missouri River and Minneapolis, Minnesota: The existing project is hereby modified in accordance with the recommendation of the District Engineer in the report submitted in Rivers and Harbors Committee Document Numbered 34, Seventy-fifth Congress;
- At Minneapolis, Minn. Mississippi River, Minneapolis, Minnesota: Extension of the nine foot channel above Saint Anthony's Falls, in accordance with the plan contained in House Document Numbered 137, Seventy-second Congress, first session; subject to such changes therein as may be found advisable by the Chief of Engineers, and the final approval of the plan by the Board of Engineers for Rivers and Harbors, as necessary to provide adequate terminal facilities for Minneapolis;
- Black River, Wis. Black River, Wisconsin; Rivers and Harbors Committee Document Numbered 23, Seventy-fifth Congress;
- Indiana Harbor and Canal, Ind. Indiana Harbor and Canal, Indiana; Rivers and Harbors Committee Document Numbered 13, Seventy-fifth Congress;
- Ontonagon, Mich. Ontonagon Harbor, Michigan; Senate Commerce Committee Document, Seventy-fourth Congress;
- Cornucopia, Wis. Cornucopia Harbor, Wisconsin; Senate Commerce Committee Document, Seventy-fifth Congress;
- Green Bay, Wis. Green Bay Harbor, Wisconsin; Rivers and Harbors Committee Document Numbered 73, Seventy-fourth Congress;
- Big Suamico River, Wis. Big Suamico River, Wisconsin; House Document Numbered 498, Seventy-fourth Congress;
- Manitowoc, Wis. Manitowoc Harbor, Wisconsin; Rivers and Harbors Committee Document Numbered 80, Seventy-fourth Congress;
- Racine, Wis. Racine Harbor, Wisconsin; Rivers and Harbors Committee Document Numbered 46, Seventy-fifth Congress;
- Pensaukee, Wis. Pensaukee Harbor, Wisconsin; House Document Numbered 478, Seventy-fourth Congress;
- Harbors at Washington Island, Wis. Harbors at Washington Island, Wisconsin; House Document Numbered 90, Seventy-fifth Congress;
- Grand Haven, Mich. Grand Haven Harbor, Michigan; Rivers and Harbors Committee Document Numbered 1, Seventy-fifth Congress;
- Frankfort, Mich. Frankfort Harbor, Michigan; House Document Numbered 511, Seventy-fourth Congress;
- Detroit River, Mich. Detroit River, Michigan; House Document Numbered 205, Seventy-fifth Congress;
- Monroe, Mich. Monroe Harbor, Michigan; Rivers and Harbors Committee Document Numbered 45, Seventy-fifth Congress;

- Cheboygan Harbor, Michigan; House Document Numbered 134, Seventy-fifth Congress; Cheboygan, Mich.
- Saginaw River, Michigan; Rivers and Harbors Committee Document Numbered 21, Seventy-fifth Congress; Saginaw River, Mich.
- Put in Bay, Ohio; House Document Numbered 132, Seventy-fifth Congress; Put in Bay, Ohio.
- Rocky River Harbor, Ohio; House Document Numbered 70, Seventy-fifth Congress; Rocky River, Ohio.
- Cleveland Harbor, Ohio; Rivers and Harbors Committee Document Numbered 84, Seventy-fourth Congress; Cleveland, Ohio.
- Fairport Harbor, Ohio; Rivers and Harbors Committee Document Numbered 79, Seventy-fourth Congress; Fairport, Ohio.
- Ashtabula Harbor, Ohio; Rivers and Harbors Committee Document Numbered 78, Seventy-fourth Congress; Ashtabula, Ohio.
- San Diego Harbor, California; Rivers and Harbors Committee Document Numbered 89, Seventy-fourth Congress; San Diego, Calif.
- Newport Bay, California; Senate Commerce Committee Document, Seventy-fifth Congress; Newport Bay, Calif.
- San Francisco Harbor, California; Rivers and Harbors Committee Document Numbered 12, Seventy-fifth Congress; San Francisco, Calif.
- Sacramento River flood control, California; Senate Commerce Committee Document, Seventy-fifth Congress; Sacramento River flood control, Calif.
- Humboldt Bay and Harbor, California; Rivers and Harbors Committee Document Numbered 11, Seventy-fifth Congress; Humboldt Bay and Harbor, Calif.
- Crescent City Harbor, California; Senate Commerce Committee Document, Seventy-fifth Congress; Crescent City, Calif.
- San Joaquin River, California; Rivers and Harbors Committee Document Numbered 15, Seventy-fifth Congress; San Joaquin River, Calif.
- Suisun Channel, California; Rivers and Harbors Committee Document Numbered 97, Seventy-fourth Congress; Suisun Channel, Calif.
- Old River, California; House Document Numbered 151, Seventy-fifth Congress; Old River, Calif.
- Yaquina Bay and Harbor, Oregon; Senate Commerce Committee Document, Seventy-fifth Congress; Yaquina Bay and Harbor, Oreg.
- De Poe Bay, Oregon; House Document Numbered 202, Seventy-fifth Congress; De Poe Bay, Oreg.
- Skipanon Channel, Oregon; House Document Numbered 201, Seventy-fifth Congress; Skipanon Channel, Oreg.
- Columbia River between the mouth of the Willamette and Vancouver, Washington; Rivers and Harbors Committee Document Numbered 81, Seventy-fourth Congress; Columbia River, Willamette River to Vancouver, Wash.
- Columbia and Lower Willamette Rivers, below Vancouver, Washington, and Portland, Oregon; House Document Numbered 208, Seventy-fifth Congress; Columbia and Lower Willamette Rivers below Vancouver, Wash., and Portland, Oreg.
- Westport Slough, Oregon; House Document Numbered 79, Seventy-fifth Congress; Westport Slough, Oreg.
- Elokomin Slough, Washington; House Document Numbered 510, Seventy-fourth Congress; Elokomin Slough, Wash.
- Columbia River between Vancouver, Washington, and Bonneville, Oregon; Rivers and Harbors Committee Document Numbered 94, Seventy-fourth Congress; Columbia River, Vancouver, Wash., to Bonneville, Oreg.
- Bellingham Harbor, Washington; Rivers and Harbors Committee Document Numbered 70, Seventy-fourth Congress; Bellingham, Wash.
- Olympia Harbor, Washington; Rivers and Harbors Committee Document Numbered 75, Seventy-fourth Congress; Olympia, Wash.
- Tacoma Harbor, Washington; Rivers and Harbors Committee Document Numbered 91, Seventy-fourth Congress; Tacoma, Wash.
- Sitka Harbor, Alaska; House Document Numbered 268, Seventy-fifth Congress; Sitka, Alaska.

Juneau, Alaska.	Juneau Harbor, Alaska; House Document Numbered 249, Seventy-fifth Congress;
Wake Island.	Wake Island; House Document Numbered 84, Seventy-fifth Congress;
Welles, Midway Island.	Welles Harbor, Midway Island; House Document Numbered 49 and Rivers and Harbors Committee Document Numbered 9, Seventy-fifth Congress;
San Juan, P. R.	San Juan Harbor, Puerto Rico; Rivers and Harbors Committee Document Numbered 42, Seventy-fifth Congress;
Arecibo, P. R.	Arecibo Harbor, Puerto Rico; Rivers and Harbors Committee Document Numbered 43, Seventy-fifth Congress;
Guayanes, P. R.	Guayanes Harbor, Puerto Rico; House Document Numbered 243, Seventy-fifth Congress;
Saint Thomas, Virgin Islands.	Saint Thomas Harbor, Virgin Islands; House Document Numbered 200, Seventy-fifth Congress.
Central Valley project, Calif. Transfer of jurisdiction. 49 Stat. 1038, 1622.	SEC. 2. That the \$12,000,000 recommended for expenditure for a part of the Central Valley project, California, in accordance with the plans set forth in Rivers and Harbors Committee Document Numbered 35, Seventy-third Congress, and adopted and authorized by the provisions of section 1 of the Act of August 30, 1935 (49 Stat. 1028, at 1038), entitled "An Act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes", shall, when appropriated, be available for expenditure in accordance with the said plans by the Secretary of the Interior instead of the Secretary of War: <i>Provided</i> , That the transfer of authority from the Secretary of War to the Secretary of the Interior shall not render the expenditure of this fund reimbursable under the reclamation law: <i>Provided further</i> , That the entire Central Valley project, California, heretofore authorized and established under the provisions of the Emergency Relief Appropriation Act of 1935 (49 Stat. 115) and the First Deficiency Appropriation Act, fiscal year 1936 (49 Stat. 1622), is hereby reauthorized and declared to be for the purposes of improving navigation, regulating the flow of the San Joaquin River and the Sacramento River, controlling floods, providing for storage and for the delivery of the stored waters thereof, for the reclamation of arid and semiarid lands and lands of Indian reservations, and other beneficial uses, and for the generation and sale of electric energy as a means of financially aiding and assisting such undertakings and in order to permit the full utilization of the works constructed to accomplish the aforesaid purposes: <i>Provided further</i> , That, except as herein otherwise specifically provided, the provisions of the reclamation law, as amended, shall govern the repayment of expenditures and the construction, operation, and maintenance of the dams, canals, power plants, pumping plants, transmission lines, and incidental works deemed necessary to said entire project, and the Secretary of the Interior may enter into repayment contracts, and other necessary contracts, with State agencies, authorities, associations, persons, and corporations, either public or private, including all agencies with which contracts are authorized under the reclamation law, and may acquire by proceedings in eminent domain, or otherwise, all lands, rights-of-way, water rights, and other property necessary for said purposes: <i>And provided further</i> , That the said dam and reservoirs shall be used, first, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses; and, third, for power.
<i>Proviso.</i> Expenditure of fund not reimbursable.	
Project reauthorized. 49 Stat. 115, 1622.	
Purposes declared.	
Repayments authorized.	
Uses specified.	
Marshall Ford Dam, Colorado River project, Tex.	SEC. 3. That for the purpose of improving navigation, controlling floods, regulating the flow of streams, providing for storage and for delivery of stored waters, for the reclamation of lands, and

other beneficial uses, and for the generation of electric energy as a means of financially aiding and assisting such undertaking, the project known as "Marshall Ford Dam", Colorado River project, in Texas, is hereby authorized and adopted and all contracts and agreements which have been executed in connection therewith are hereby validated and ratified, and the Secretary of the Interior, acting through such agents as he may designate, is hereby authorized to construct, operate, and maintain all structures and incidental works necessary to such project, and in connection therewith to make and enter into any and all necessary contracts including contracts amendatory of or supplemental to those hereby validated and ratified.

SEC. 4. The Secretary of War is hereby authorized and directed to cause preliminary examinations and surveys to be made at the following-named localities, the cost thereof to be paid from appropriations heretofore or hereafter made for such purposes: *Provided*, That no preliminary examination, survey, project, or estimate for new works other than those designated in this or some prior Act or joint resolution shall be made: *Provided further*, That after the regular or formal reports made as required by law on any examination, survey, project, or work under way or proposed are submitted no supplemental or additional report or estimate shall be made unless authorized by law: *And provided further*, That the Government shall not be deemed to have entered upon any project for the improvement of any waterway or harbor mentioned in this Act until the project for the proposed work shall have been adopted by law:

Northeast Harbor, Maine.

Presumpscot River, Maine.

Portland Harbor, Maine, north of House Island, to determine advisability of removing shoal.

Inland waterway between Merrimack River, Massachusetts, and Hampton Harbor, New Hampshire, by way of Black Rock Creek and Blackwater River.

Harbor of refuge at or in the vicinity of Swampscott, Massachusetts.

Ipswich River, Massachusetts.

Boston Harbor, Massachusetts.

Scituate Harbor, Massachusetts.

Saugus River, Massachusetts.

Nantasket (Hull) Gut, Massachusetts.

Wellfleet Harbor, Massachusetts.

Padanaram Harbor, at South Dartmouth, Massachusetts.

Warren River and Barrington Harbor, Rhode Island.

Connecticut River, below Hartford, Connecticut, including North Cove in the town of Old Saybrook.

Clinton Harbor, Connecticut.

Mianus River, Connecticut.

Westcott Cove, Connecticut.

Norwalk Harbor, Connecticut.

Greenwich Harbor, Connecticut.

Orowoc Creek, New York,

Huntington Harbor, New York.

Northport Harbor, New York.

Bronx Kills and Harlem River, New York.

Rondout Harbor, New York.

Waterway from Albany to Schenectady, New York, by way of Hudson and Mohawk Rivers, with a view to securing a depth of twenty-seven feet and suitable width.

Contracts and agreements.

Construction, operation, etc., of structures.

Preliminary examinations and surveys authorized.

Proviso.
Restriction.

Reports.

Adoption.

Surveys designated.

Great Kills, Staten Island, New York.

Inland waterway from Delaware River to Chesapeake Bay, Delaware and Maryland, with a view to dredging a turning basin in the vicinity of the Chesapeake Cruising Club Docks at Chesapeake City.

Cedar Creek, New Jersey.

Inland waterway through Cumberland, Cape May, and Atlantic Counties, New Jersey, connecting the mouth of Fortescue Creek with Atlantic City.

Waterway from Pleasantville, New Jersey, through Lake Bay, to deep water at Atlantic City, including connecting channel to Ocean City.

Baltimore Harbor and Channels, Maryland.

Choptank River, Maryland.

Duck Point Cove and Tedious Creek, Maryland.

Lower Thoroughfare, Deals Island, Maryland.

Town River, at Oxford, Maryland.

Hearns Creek, Dorchester County, Maryland.

Middle River and Dark Head Creek, Back River to Chesapeake Bay via Harts Island Narrows, and a cut-off channel from Gunpowder River to Chesapeake Bay via Spry Island Narrows, Maryland.

Saint Patricks Creek, Saint Marys County, Maryland.

Eli Cove, an arm of Stoney Creek, Anne Arundel County, Maryland.

Saint Catherines Sound, Saint Marys County, Maryland.

Mill Creek, Anne Arundel County, Maryland.

Plum Point Creek, Calvert County, Maryland.

Channel to Island Creek, Saint Georges Island, Saint Marys County, Maryland.

Channel connecting Herring Bay via Rockhole Creek to West River, Anne Arundel County, Maryland.

Pocomoke River, Maryland, from a point above Snow Hill to deep water in Pocomoke Sound.

Inland waterway from Ocean City, Maryland, to Chincoteague Bay.

Channels to and near Jefferson Islands, Chesapeake Bay, Maryland, with a view to their establishment as an aid to navigation and the establishment of a harbor of refuge.

Smallers Drain, Assateague Island, Virginia.

Channels at and near Hog Island, Virginia, with a view to their protection and preservation; also the protection of Hog Island and property thereon from erosion and storms.

Assateague Channel, Accomac County, Virginia, with a view to its protection and preservation; also the protection of Chincoteague Island and property thereon from erosion and storms.

Channel leading from Broadway Road, near Cashville, Accomac County, Virginia, to deep water in Onancock River.

Chincoteague Bay, Accomac County, Virginia, with a view to providing a protected anchorage and harbor for small boats at Chincoteague, Virginia.

Folly Creek, Accomac County, Virginia.

Hulls Creek and Rogers Creek, Northumberland County, Virginia.

Greenvale (Fairweather) Creek, Lancaster County, Virginia.

Whitings Creek, Middlesex County, Virginia.

Meachims Creek, Middlesex County, Virginia.

Woods Creek, Middlesex County, Virginia.

Queens Creek, Mathews County, Virginia, to provide adequate channel to deep water in Hills Bay.

Garden Creek, Mathews County, Virginia.

Western shores of Chesapeake Bay from Plum Point, York County, Virginia, to the waters at Hampton Roads, with a view to protecting the navigable waters of Chesapeake Bay and Hampton Roads from shoaling.

Burwells Bay, Virginia.

Southern branch of Elizabeth River, Norfolk Harbor, Virginia.

Inland waterway from Norfolk, Virginia, to Beaufort Inlet, North Carolina, with a view to the protection of lands in the vicinity of the lock at Great Bridge against flooding by storm tides.

Belhaven Harbor, North Carolina.

Dolls Creek, North Carolina.

Neuse River, North Carolina, with a view to improvement for navigation and flood control between the Johnson County line and New Bern.

Channel leading from the southeasterly end of Rollinson Channel, North Carolina, to the wharves in front of the town of Hatteras, North Carolina.

Channel from Edenton Bay, North Carolina, into Pembroke Creek to United States Fish Hatchery.

Channel from Pamlico Sound through Pugh's Channel to the town of Rodanthe, North Carolina.

Contentnea Creek, North Carolina, from a point near Wilson to its confluence with the Neuse River, with a view to improvement in the interest of navigation and flood control.

Beresford Creek, South Carolina, from Cooper River to Bridge Farm Wharves.

Waterway, approximately eight feet deep and fifty feet bottom width, from Crescent Lake, Florida, by way of Haw Creek to Bunnell, thence by way of a land cut to the sea at Flagler Beach.

Canaveral Harbor, Florida.

Channel from the Intracoastal Waterway to a point at or near Vero Beach, Florida.

Channel from main channel of the Intracoastal Waterway to the mainland at Sebastian, Florida.

Indian River, Indian River (Vero Beach), Saint Johns River Waterway, Florida.

Waterway from Punta Rasa, Florida, by way of the Caloosahatchee River and Canal, Lake Okeechobee, and Saint Lucie Canal and River, to the Intracoastal Waterway at Stuart.

Caloosahatchee River and Lake Okeechobee Drainage Areas, Florida, with a view to constructing additional levees between Kissimmee River and Fisheating Creek.

Hillsboro River, Florida, from the upper end of the existing project to Sulphur Springs.

Waterway from Anclote River, by way of Lake Butler, to a point near Safety Harbor on Old Tampa Bay, Florida.

Anclote River, Florida.

Pithlachascotee River, Florida.

Fenholloway River, Florida.

Hudson Creek, Pasco County, Florida.

Weekiwachee River, Florida.

Florida River, Liberty County, Florida, and the Apalachicola River at and near the mouth of the Florida River.

Waterway between a suitable point on the channel from Apalachicola River to Saint Andrews Bay, Florida, and a suitable point in Saint Josephs Bay where the depth of said bay is thirty feet or more.

East Pass Channel from the Gulf of Mexico into Choctawhatchee Bay, Florida.

Valley Creek, Alabama, to a point at or near Birmingham.

Gulfport Harbor, Mississippi.

Bayou Legare, Mississippi, at the mouth of the Jordan River.

Back Bay of Biloxi, Mississippi.

Mississippi River at and near New Orleans, Louisiana.

Lake Pontchartrain, Louisiana, between the New Basin Canal and the Industrial Canal, for a harbor of refuge.

Bayou Teche, Louisiana: Upper portion, with a view to improvement in the interest of navigation and flood control.

Deep-water channel from New Iberia to the Gulf of Mexico.

Colorado River, and its tributaries, Texas, with a view to its improvement in the interest of navigation and flood control.

Goose Creek, Texas. Deep-water channel and port.

Arroyo Colorado, Texas. A channel from a point at or near Mercedes, Texas, to its mouth, thence south in Laguna Madre to Port Isabel.

Survey of channel for the purposes of navigation from Jefferson, Texas, to Shreveport, Louisiana, by way of Jefferson-Shreveport Waterway, thence by way of Red River to mouth of Red River in the Mississippi River, including advisability of water-supply reservoirs in Cypress River and Black Cypress River above head of navigation.

Sabine-Neches Waterway, Texas.

Texas City Channel, Texas.

Brazos River, Texas, a comprehensive survey with a view to preparing plans, estimates of the cost of improvements for navigation, flood control, water conservation, and reclamation, excluding therefrom work now in progress under the Works Progress Administration. The expense of such survey shall be paid from appropriations heretofore or hereafter made for examinations, surveys, and contingencies of rivers and harbors.

Channel from Palacios, Texas, and Camp John A. Hulen, to the Intracoastal Waterway.

Channel connecting San Antonio Bay, Texas, with the Gulf of Mexico.

Allens Creek, a tributary of the Brazos River in Austin County, Texas, in the interest of navigation and of flood control.

Mill Creek, a tributary of the Brazos River in Austin County, Texas, in the interest of navigation and of flood control.

Navidad River, Texas, in the interest of navigation and of flood control.

Lavaca River, Texas, in the interest of navigation and of flood control.

Channel or channels across Padre Island, Texas, from Laguna Madre to the Gulf of Mexico.

Corpus Christi, Texas, with a view to its protection by the construction of breakwaters, sea walls, or jetties.

Canal from Ouachita River to Huttig, Arkansas.

Carter Lake, Iowa and Nebraska.

Meredosia Bay, Illinois River, Illinois.

Tanners Creek, Dearborn County, Indiana.

Gladstone Harbor, Michigan.

Escanaba Harbor, Michigan.

Miller Bay, Lake Winnebago, Wisconsin.

Mona Lake (Lake Harbor) Channel, Michigan.

Kenosha Harbor, Wisconsin.

The Indiana shore of Lake Michigan with a view to the establishment of a harbor at the most suitable site.

Harbors at Glen Haven and Glen Arbor, Michigan.

Petoskey Harbor, Michigan.

The coasts of the Great Lakes with a view to the establishment of harbors of refuge for light-draft vessels.

Saginaw Bay, Michigan.

Grand Traverse Bay, Michigan.

Put in Bay, Ohio.

Ottawa River, Ohio.

Erie Harbor, Pennsylvania, beach numbered 2.

Wilson Harbor, New York.

Rochester (Charlotte) Harbor, Genesee River, New York.

Upper Newport Bay, California.

Harbor at Playa Del Ray, California.

Monterey Harbor, California.

San Lorenzo River, California.

Sonoma Creek, California.

Noyo River, California, including harbor at the mouth thereof.

Benicia Harbor, Solano County, California.

Collinsville Cut, Solano County, California.

Werner Cut, near Werner, Contra Costa County, California.

Alamitos Bay, Los Angeles County, California.

Smugglers Cove (Short Sands Beach), Oregon.

Necanicum River, Oregon.

Channel at Knappton, Washington.

Columbia River at and in the vicinity of Camas, Washington.

Port Angeles Harbor, Washington.

Unga Harbor, Alaska.

Seldovia Harbor, Alaska.

Waterway to connect Tenakee Inlet and Port Frederick on Chichagof Island, Alaska.

Wrangell Harbor, Alaska.

Craig Harbor, Alaska.

Grantley Harbor at Teller, Alaska.

Mouth of Sinuk River, Alaska.

Elfin Cove, Alaska.

Myers Chuck Harbor, Alaska.

Hilo Harbor, Hawaii, including consideration of methods to prevent shoaling by the flow of lava.

Keehi Lagoon, Honolulu, for a seaplane harbor.

Jobos Harbor, Guayama, Puerto Rico.

Fajardo Harbor, Fajardo, Puerto Rico.

Guayanilla Harbor, Guayanilla, Puerto Rico.

SEC. 5. That the Secretary of War is hereby authorized and directed to cause a survey to be made of the Ohio River and its tributaries to ascertain what pollutive substances are being deposited, directly or indirectly, therein and the sources and extent of such deposits, and with a view to determining the most feasible method of correcting and eliminating the pollution of these streams.

The survey herein authorized shall include comprehensive investigations and studies of the various problems relating to stream pollution and its prevention and abatement. In making these investigations and studies, and in the development and formulation of corrective plans, the Secretary of War may, with the approval of the Secretary of the Treasury, secure the cooperation and assistance of the Public Health Service, and may allot funds from the appropriation hereinafter designated to pay for such cooperation and assistance. The survey shall be completed as soon as practicable after the passage of this Act, and the Secretary of War shall report the results thereof to the Congress, together with such recommendations for remedial legislation as he deems advisable.

Ohio River, pollution deposits.

Cooperation of Public Health Service.

Report to Congress.

- Expenses. The cost of the survey, and such incidental expenses as may be necessary in connection therewith, shall be paid from appropriations heretofore or hereafter made for examinations, surveys, and contingencies of rivers and harbors.
- Little Callao Land-
ing, Big Sunflower
River, Miss.
Project abandoned. SEC. 6. That the project for the maintenance and operation of the lock and dam at Little Callao Landing, mile 62, Big Sunflower River, Mississippi, be, and the same is hereby, abandoned. That the right of Congress to alter, amend, or repeal this section is hereby expressly reserved.
- Sabine-Neches Wa-
terway.
Portion of project
at Beaumont, Tex.,
abandoned. SEC. 7. That the project for improvement of the existing channel of that section of the Sabine-Neches Waterway, Texas, south and west of Harbor Island from a point opposite Orleans Street, in the city of Beaumont, Texas, to the junction of the main channel in the Neches River, be, and the same is hereby, abandoned. That the right of Congress to alter, amend, or repeal this section is hereby expressly reserved.
- Eastside, Oreg.,
dam, etc., construc-
tion. SEC. 8. That authority is hereby granted to the State of Oregon, acting through its highway department, and to the city of Eastside, Coos County, Oregon, a municipal corporation organized under the laws of the State of Oregon, to construct, maintain, and operate, at a point suitable to the interest of navigation, a dam and dike for preventing the flow of tidal waters into Willanch Slough in Coos County, Oregon.
- Approval of plans. Work shall not be commenced on such dam and dike until the plans therefor, including plans for all accessory works, are submitted to and approved by the Chief of Engineers and the Secretary of War, who may impose such conditions and stipulations as they deem necessary to protect the interests of the United States.
- Time of construc-
tion. The authority granted by this section shall terminate if the actual construction of the dam and dike hereby authorized is not commenced within one year and completed within three years from the date of the passage of this Act. The right to alter, amend, or repeal this section is hereby expressly reserved.
- Amendment, etc.
- North Slough, Oreg.,
dam construction, etc. SEC. 9. That authority is hereby granted to the State of Oregon, acting through its highway department, to the North Slough Drainage District, and to the North Slough Diking District, organized under the laws of the State of Oregon, to construct, maintain, and operate, at a point suitable to the interests of navigation, a dam and dike for preventing the flow of tidal waters into North Slough in Coos County, Oregon, in township 24 south, range 13 west, Willamette meridian.
- Approval of plans. Work shall not be commenced on such dam and dike until the plans therefor, including plans for all accessory works, are submitted to and approved by the Chief of Engineers and the Secretary of War, who may impose such conditions and stipulations as they deem necessary to protect the interests of the United States.
- Time of construc-
tion. The authority granted by this Act shall terminate if the actual construction of the dam and dike hereby authorized is not commenced within one year and completed within three years from the date of the passage of this Act. The right to alter, amend, or repeal this section is hereby expressly reserved.
- Amendment, etc.
- Rivers and harbors,
completion of laws
relating to improve-
ment. SEC. 10. That the laws of the United States relating to the improvement of rivers and harbors, passed between March 4, 1913, until and including the laws of the first session of the Seventy-fifth Congress, shall be compiled under the direction of the Secretary of War and printed as a document, and that six hundred additional copies shall be printed for the use of the War Department.

Approved, August 26, 1937.

Additional Proposal Information

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1949 Annual Report St Thomas.pdf

Harbor Act of August 30, 1935 (H. Doc. 215, 72d Cong., 1st sess., and Rivers and Harbors Committee Doc. 1, 73d Cong., 1st sess.). The latest published map is in the former document.

Local cooperation.—Fully complied with.

Terminal facilities.—The terminals consist of two piers used by lighters, located in shoal water in the east-central section of the harbor; and a modern deep-water terminal in the northeast section of the harbor, consisting of a bulkhead wharf about 1,270 feet long with a storage shed 800 feet long and 60 feet wide immediately shoreward thereof. The facilities appear adequate for the normal needs of commerce.

Operations and results during fiscal year.—None.

Condition at end of fiscal year.—The existing project was completed in 1934.

The controlling depth in the approach channel as of December 1947 is 30 feet except for a shoal 150 feet wide with a least depth of 1.5 feet extending along the north limit for 400 feet from the inner end. In the maneuvering area, controlling depths are: 30 feet in the quarter close to the bulkhead except for a sand shoal the full width of the quarter, extending about 150 feet from the westerly end of the quarter, with a least depth of 1.5 feet and a mud shoal the full width of the quarter, extending about 400 feet from the easterly limit, with a least depth of 26 feet; 30 feet in the remaining area except for a mud shoal extending about 200 feet from the east limit with a least depth of 26 feet.

The total costs and expenditures of the existing project to the end of the fiscal year were \$249,717.94, of which \$21,000 regular funds and \$147,186.69 Public Works funds, a total of \$168,186.69 United States funds, were for new work and \$81,531.25 regular funds were for maintenance.

Proposed operations.—No work is contemplated during fiscal year 1950.

The sum of \$75,000 is needed to be appropriated during the fiscal year 1951 for maintenance dredging in entrance channel and maneuvering area.

Cost and financial summary

Total amount appropriated to June 30, 1949.....	\$249,717.94
Cost of new work to June 30, 1949.....	168,186.69
Cost of maintenance to June 30, 1949.....	81,531.25
Total net expenditures to June 30, 1949.....	249,717.94

	Fiscal year ending June 30—				
	1945	1946	1947	1948	1949
Appropriated.....		\$25,000.00	—\$39,065.44	\$28,000.00	—\$21,162.60
Cost of new work.....					
Cost of maintenance.....	\$2,239.63	116.80		6,837.40	
Total expended.....	2,239.63	116.80		6,837.40	

4. ST. THOMAS HARBOR, V. I.

Location.—The harbor is on the south coast of the island of St. Thomas, V. I., about 80 miles by water east of San Juan Har-

bor, P. R. (See U. S. Coast and Geodetic Survey Charts Nos. 920 and 933.)

Existing project.—This provides for removing Scorpion Rock at the entrance of the harbor to a depth of 36 feet at mean low water; dredging an entrance channel to this same depth and 600 feet wide; dredging an anchorage area about 3,150 feet long and from 3,650 to 1,600 feet wide to a depth of 33 feet at mean low water, and construction of a breakwater 700 feet long between Rupert Rock and the mainland. The mean tidal range is 0.6 foot; the extreme varies between about 1 foot below and 2 feet above mean low water. Irregular fluctuations due to storms and hurricanes materially affect navigation; however, they occur infrequently.

The estimated cost of new work, revised in 1949, is \$2,650,000, and the approved estimate for annual cost of maintenance, revised in 1949, is \$25,000.

The project was adopted by the River and Harbor Act of August 26, 1937 (H. Doc. 200, 75th Cong., 1st sess.). The latest published map is in that document.

Local cooperation.—Under the project, local interests are required to furnish, free of cost to the United States, necessary rights-of-way and suitable spoil-disposal areas for new work and subsequent maintenance as required, and release the United States from all claims for damage attributable to the work of improvement. Assurances of compliance with all prescribed conditions were accepted as satisfactory by the Chief of Engineers on October 3, 1938.

Terminal facilities.—The only deep-water terminal in St. Thomas Harbor is in the easterly part of the harbor and is owned and operated by the West Indian Co. This terminal is stated to be a public-service terminal available to all on equal terms. On this wharf are suitable warehouses and a large area for open storage. The terminal is connected with the town by a good road. There are no railroads on the island, but motor transportation is available for handling freight.

Numerous small wharves and quays along the north shore of the harbor serve as berths for the many small sailing vessels and motor launches plying an active trade between St. Thomas and nearby islands. These docks are owned both by private interests and by the municipality; several are equipped with hand cranes for handling heavy lifts; depth of water in the berths varies from 4 to 11 feet; and they are connected to the island highway system by well paved roads. The facilities contained in the existing project are considered adequate for the present commerce.

Operations and results during fiscal year.—None.

Condition at end of fiscal year.—No work has been done under the existing project. There have been no costs or expenditures.

The controlling depths as of September 1936 were 34 feet in the entrance channel for a width varying from 300 to 600 feet, and 33 feet in the southerly portion of the anchorage area, gradually sloping to 16 feet at the limit lines in the northerly portion.

Proposed operations.—No work is scheduled during the fiscal year 1950.

The sum of \$1,500,000 is needed to be appropriated during the fiscal year 1951 for the following schedule of work:

New work:

Pre-dredging survey, plans and specifications with Government plant and hired labor.....	\$40,000
Dredging entrance channel by contract.....	102,000
Dredging anchorage area by contract.....	1,264,000
Removal of Scorpion Rock by contract.....	94,000
Total.....	1,500,000

5. ARECIBO HARBOR, P. R.

Location.—The harbor is on the north shore of Puerto Rico about 40 miles west of San Juan Harbor. (See U. S. Coast and Geodetic Survey Chart No. 903.)

Previous projects.—A previous project was authorized by the River and Harbor Act approved August 30, 1935, subject to certain conditions of local cooperation. Local interests were unable to comply with these conditions, and further, the type of deep-water terminal proposed was objectionable to navigation interests. As a result no work was done and no expenditures were made under the project. For further details see pages 1619 and 1620 of Annual Report for 1936.

Existing project.—This provides for construction of a stone breakwater 1,200 feet long extending from Point Morrillos to Cosinera Rock; dredging an entrance channel 25 feet deep at mean low water and 400 feet wide, flared to 650 feet wide at the ocean entrance and widened for the inner 650 feet of its length to form a maneuvering area of the same depth and 900 feet wide, fronting the proposed deep-water terminal. The mean tidal range is 1.1 feet; the extreme varies between about 1 foot below and about 2.8 feet above mean low water.

The estimate of cost for new work, made in 1944, is \$1,407,000, including \$288,000 contributed by local interests. The latest (1949) approved estimate of annual cost of maintenance is \$20,000. The existing project was adopted by the River and Harbor Act of August 26, 1937. (See Rivers and Harbors Committee Doc. 43, 75th Cong., 1st sess.)

Local cooperation.—Plans and specifications of a bulkhead wharf and terminal to be constructed by the Municipality of Arecibo were approved by the Chief of Engineers on December 19, 1940, and by the Secretary of War on December 23, 1940. Plans of a provisional wharf to be constructed of native timber to serve the needs of Arecibo Harbor until conditions again become normal, after which it was proposed to construct the permanent terminal in accordance with plans already approved, were approved by the Chief of Engineers on February 1, 1943. This provisional wharf was never constructed. A temporary lighterage wharf was built to serve such traffic as might use the port until a permanent terminal could be provided. On May 27, 1947, the Puerto Rico Transportation Authority, an agency of the Government of Puerto Rico which now has jurisdiction over the operation of Arecibo Harbor,

submitted plans and specifications for a permanent deep-water terminal to supersede the plans and specifications approved by the Secretary of War on December 31, 1940. These plans were approved by the Chief of Engineers on September 17, 1947. The terms of local cooperation in reference to terminal facilities have not been complied with.

Terminal facilities.—Other than the temporary lighterage wharf, no terminal facilities are available at Arecibo Harbor. The proposed marginal wharf and terminal, to be provided as local cooperation in accordance with plans approved September 17, 1947, are considered adequate for normal commerce.

Operations and results during fiscal year.—None.

Condition at end of fiscal year.—The existing project was completed in 1944. The controlling depth is 25 feet except for a shoal area in the south half of the outer entrance channel with a least depth of 24 feet and an area at the southeasterly corner of the maneuvering area, extending about 400 feet west from the easterly limit line and about 150 feet north from the southerly limit line, with depths decreasing from 25 feet to 1 foot.

On February 1, 1943, the Chief of Engineers granted permission to the Commissioner of the Interior, Government of Puerto Rico, to postpone the construction of the permanent terminal, authorized by the Secretary of War to be built as a measure of local cooperation, and approved plans for a provisional wharf to be constructed of materials available locally, to serve the needs of Arecibo Harbor until such time as conditions again became normal, after which the permanent terminal was to be constructed. This provisional wharf was never constructed. There was built a temporary lighterage wharf designed to serve such traffic as might use the port until a permanent terminal could be provided. On May 27, 1947, the Puerto Rico Transportation Authority, an agency of the Government of Puerto Rico which now has jurisdiction over the operation of Arecibo Harbor, submitted plans and specifications for a permanent deep-water terminal to supersede the plans and specifications approved by the Secretary of War on December 31, 1940. These plans were approved by the Chief of Engineers on September 17, 1947.

The total costs and expenditures of the existing project to the end of the fiscal year were \$1,418,504.88, of which \$1,128,074.86 United States funds and \$288,000 contributed funds were for new work and \$2,430.02 United States funds were for maintenance.

Proposed operations.—None.

No work is proposed during the fiscal years 1950 and 1951.

Cost and financial summary

Total amount appropriated to June 30, 1949.....	¹ \$1,146,547.20
Cost of new work to June 30, 1949.....	¹ 1,128,074.86
Cost of maintenance to June 30, 1949.....	2,430.02
Total net expenditures to June 30, 1949.....	¹ 1,130,504.88
Unexpended balance, June 30, 1949.....	16,042.32
Unobligated balance available, June 30, 1949.....	16,042.32

¹ In addition \$288,000 were expended from contributed funds for new work.

Additional Proposal Information

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WRDA1986.pdf

WATER RESOURCES DEVELOPMENT ACT OF 1986

OCTOBER 17, 1986.—Ordered to be printed

Mr. HOWARD, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 6]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6) to provide for the conservation and development of water and related resources and the improvement and rehabilitation of the Nation's water resources infrastructure, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) **SHORT TITLE.**—*This Act may be cited as the "Water Resources Development Act of 1986".*

(b) **TABLE OF CONTENTS.**—

Title I—Cost Sharing

Title II—Harbor Development

Title III—Inland Waterway Transportation System

Title IV—Flood Control

Title V—Shoreline Protection

Title VI—Water Resources Conservation and Development

Title VII—Water Resources Studies

Title VIII—Project Modifications

Title IX—General Provisions

Title X—Project Deauthorizations

Title XI—Miscellaneous Programs and Projects

Title XII—Dam Safety

Title XIII—Namings

Title XIV—Revenue Provisions

SEC. 951. REPORTS.

If any report required to be transmitted under this Act to the Committee on Public Works and Transportation of the House of Representatives or the Committee on Environment and Public Works of the Senate pertains in whole or in part to fish and wildlife mitigation, benthic environmental repercussions, or ecosystem mitigation, the Federal officer required to prepare or transmit that report also shall transmit a copy of the report to the Committee on Merchant Marine and Fisheries of the House of Representatives.

TITLE X—PROJECT DEAUTHORIZATIONS

SEC. 1001. (a) *Any project authorized for construction by this Act shall not be authorized after the last day of the 5-year period beginning on the date of enactment of this Act unless during such period funds have been obligated for construction, including planning and designing, of such project.*

(b)(1) *Not later than one year after the date of enactment of this Act, the Secretary shall transmit to Congress a list of unconstructed projects, or unconstructed separable elements of projects, which have been authorized, but have received no obligations during the 10 full fiscal years preceding the transmittal of such list. A project or separable element included in such list is not authorized after December 31, 1989, if funds have not been obligated for construction of such project or element after the date of enactment of this Act and before December 31, 1989.*

(2) *Every two years after the transmittal of the list under paragraph (1), the Secretary shall transmit to Congress a list of projects or separable elements of projects which have been authorized, but have received no obligations during the 10 full fiscal years preceding the transmittal of such list. A project or separable element included in such list is not authorized after the date which is 30 months after the date the list is so transmitted if funds have not been obligated for construction of such project or element during such 30-month period.*

(c) *The Secretary shall publish in the Federal Register a list of any projects or separable elements that are deauthorized under this section.*

SEC. 1002. *The following projects, with a total estimated authorized cost of \$11.1 billion, are not authorized after the date of enactment of this Act, except with respect to any portion of such a project which portion has been completed before such date or is under construction on such date:*

ALABAMA

The project for flood control, Alabama River, Montgomery, Alabama, authorized by the Flood Control Act of 1958.

The project for hydroelectric power, Alabama-Coosa River Basin, Big Wills Creek Lake, Alabama, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress.

The project for hydroelectric power, Alabama-Coosa River Basin, Crooked Creek Lake, Alabama, authorized by the River

The portion of the project for Gulf Intracoastal Waterway-Channel to Port Mansfield, Texas, authorized by section 4 of Public Law 86-248, which consists of a small craft basin at Port Mansfield, Texas.

UTAH

The project for flood control, Weber River and Tributaries, Morgan County, Utah, authorized by section 206 of the River and Harbor Act of 1968.

VERMONT

The project for flood control, Bennington, Vermont, authorized by the Flood Control Act of June 22, 1936, Public Law 738, Seventy-fourth Congress.

The project for navigation, Otter Creek, Addison County, Vermont, authorized by the River and Harbor Act of June 10, 1872.

The project for flood control, Rutland Otter Creek, Vermont, authorized by the Flood Control Act of June 22, 1936, Public Law 738, Seventy-fourth Congress, as amended by the Flood Control Act of July 31, 1947, Public Law 296, Eightieth Congress.

VIRGINIA

The project for navigation, Thimble Shoal Channel, Virginia, authorized by the River and Harbor Act of 1954 consisting of side channels 32 feet deep and 450 feet wide on both sides of the 1,000-foot channel.

The project for flood control, water quality control, recreation, fish and wildlife enhancement, and hydroelectric power generation, Moore's Ferry Lake, Virginia and North Carolina, authorized by the Flood Control Act of June 28, 1938, Public Law 761, Seventy-fifth Congress.

The feature of the project for navigation, Pamunkey River, Hanover and King Counties, Virginia, authorized by the River and Harbor Act of March 2, 1945, Public Law 14, Seventy-ninth Congress, which feature consists of a channel 5 feet deep and 50 feet wide between Bassett Ferry and Manquin Bridge.

VIRGIN ISLANDS

The uncompleted portion of the project for navigation, Christiansted Harbor-St. Croix, Virgin Islands, authorized by the River and Harbor Act of 1950, which portion consists of an approach channel 25 feet and 300 feet wide from the Caribbean Sea to and including a turning basin 25 feet deep, approximately 600 feet wide, and 900 feet long.

The portion of the project for navigation, St. Thomas Harbor, Virgin Islands, authorized by the River and Harbor Act of August 26, 1937, Public Law 392, Seventy-fifth Congress, which portion consists of construction of an entrance channel 36 feet deep and 600 feet wide, an anchorage area 33 feet deep, a breakwater 700 feet long between Rupert Rock and the mainland, and removal of Scorpion Rock to a depth of 36 feet.

Additional Proposal Information

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Sprauve v West Indian Co Ltd-1.pdf

799 F.3d 226
United States Court of Appeals,
Third Circuit.

Gershwin SPRAUVE, Appellant

v.

The WEST INDIAN COMPANY LIMITED; Joseph
Boschulte; Board of Directors of The West Indian
Company Limited

Andrea V. Smith, Appellant

v.

The West Indian Company Limited; Joseph
Boschulte, in his Personal Capacity; the Board of
Directors of the West Indian Company Limited;
Joseph Boschulte, as President and Chief
Executive Officer of the West Indian Company
Limited.

Nos. 13–4371, 14–1151.

Argued: Dec. 8, 2014.

Opinion Filed: Aug. 25, 2015.

Synopsis

Background: Two former employees brought § 1983 action against their former employer, alleging violations of the First and Fourteenth Amendments. The District Court of the Virgin Islands, [Susan D. Wigenton, J., 2013 WL 5542902](#), dismissed the claims on the grounds employer was not a government entity. Employees appealed.

[Holding:] The Court of Appeals, [Chagares](#), Circuit Judge, held that employer was an agency or instrumentality of the Virgin Islands.

Affirmed in part, reversed in part, vacated in part, and remanded.

West Headnotes (2)

- [1] **Civil Rights**
🔑 State or territorial action, or individual or private action, in general

To state a constitutional claim, plaintiffs must allege facts showing, inter alia, that the misconduct involved state action; the “under color of state law” analysis is equivalent to the “state action” analysis.

[7 Cases that cite this headnote](#)

- [2] **Civil Rights**
🔑 Employment practices

Employer, which acted as port agent for cruise lines that visited and managed mall at the port, was an agency or instrumentality of the Virgin Islands, and therefore, employer could be subject to § 1983 claims by two former employees, alleging violations of the First and Fourteenth Amendments after they were terminated; employer was established as “a public corporation and governmental instrumentality of the Government of the Virgin Islands of the United States” in a special session of the Virgin Islands legislature, and Virgin Islands government had permanent and complete control over employer. [U.S.C.A. Const.Amends. 1, 14; 42 U.S.C.A. § 1983](#).

[4 Cases that cite this headnote](#)

Attorneys and Law Firms

*226 [Karin A. Bentz](#), Esq., (Argued), [Julita K. De León](#), Esq., The Law Offices of Karin A. Bentz, P.C., St. Thomas, VI, Attorneys for Appellants Gershwin Sprauve and [Andrea Smith](#).

[Micol L. Morgan](#), Esq., (Argued), [Bailey A. Calhoun](#), Esq., Ogletree, Deakins, Nash, Smoak & Stewart, LLC, St. Thomas, VI, Attorneys for Appellee Joseph Boschulte in his individual capacity.

[Mark D. Hodge](#), Esq., (Argued), Hodge & Hodge, [Adriane J. Dudley](#), Esq., Dudley Rich Davis LLP, St. Thomas, VI, Attorney for Appellees The West Indian Company Limited; Board of Directors of the West Indian

Company Limited; and Joseph Boschulte, as President and Chief Executive Officer of the West Indian Company.

Before: CHAGARES, JORDAN and SHWARTZ, Circuit Judges.

OPINION

CHAGARES, Circuit Judge.

****1034** Gershwin Sprauve and Andrea Smith appeal the District Court’s dismissal of ***227** their cases for the failure to state a claim. The District Court found that Sprauve’s and Smith’s claims under the First and Fourteenth Amendments and 42 U.S.C. § 1983 failed because defendant West Indian Company, Limited (“WICO”), their former employer, is not a government ****1035** entity. Applying the United States Supreme Court’s decision in *Lebron v. National Railroad Passenger Corporation*, 513 U.S. 374, 115 S.Ct. 961, 130 L.Ed.2d 902 (1995), we hold that WICO must be considered a government entity for the purposes of Sprauve’s and Smith’s constitutional claims. For the reasons that follow, we will affirm in part, reverse in part, vacate in part, and remand for further consideration of Sprauve’s and Smith’s claims.

I.

We take most of the following facts from the plaintiffs’ complaints, which we assume to be true for the purposes of a motion to dismiss. *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 231 (3d Cir.2008). WICO was founded in 1912, prior to the United States’ acquisition of the Virgin Islands from Denmark in 1917. WICO began as a coal bunkering business and later grew to serve as the “Port Agent” for the cruise lines that visit the port of Charlotte Amalie in St. Thomas. Joint Appendix (“J.A.”) 3, 33. WICO also manages the Havensight Mall at that port. *Id.* In 1986, WICO began dredging activities in the St. Thomas harbor. Sprauve & Smith Br. 4. This led to public opposition and litigation regarding the scope of these activities. *Id.*

In 1993, the Government of the Virgin Islands purchased 100% of the shares of WICO through a Stock Purchase Agreement. The purchase was approved by the Legislature of the Virgin Islands in a special session in Act No. 5826 (the “Act”). J.A. 421. The Act explains that

“the Government of the Virgin Islands ... has been engaged for a number of years in proceedings, including litigation, regarding those certain rights of [WICO]” and that “acquisition of ownership of the Company by the Government would permit the final conclusion of all such proceedings and related disputes, and ensure that the development rights of the Company conferred by ... agreements and treaties would be subject in all respects to the control of the Government.” *Id.* The Act further explains that acquisition of WICO would “transfer to public ownership and control substantial real estate, including certain areas that may be suitable for development for public use.” *Id.* Section 8(b) of the Act provides:

Upon acquisition of the Facilities and all of the issued and outstanding shares of common stock of the Company by the Government, the Company is hereby granted the status and authority of a public corporation ****1036** and governmental instrumentality of the Government of the Virgin Islands of the United States and shall be deemed to be a public entity operating on behalf of the Government, rather than a private corporation....

J.A. 424.

Following this acquisition, it is undisputed that 100% of WICO shares were transferred to the Virgin Islands Public Finance Authority (“PFA”), a public corporation and governmental instrumentality created by the Government of the Virgin Islands. J.A. 229–30. The PFA is run by a board of directors appointed by the Governor of the Virgin Islands, with the advice and consent of the Virgin Islands Legislature. J.A. 33. WICO is run by its own board of directors, appointed by the PFA. *Id.*

Plaintiff Gershwin Sprauve began working at WICO in 1997 as the Manager of Mall Operations. In 2009, WICO President and Chief Executive Officer (“CEO”) Edward Thomas indicated to the WICO ***228** Board of Directors (the “Board”) that he planned to retire. Sprauve submitted his application for the position and Thomas verbally recommended Sprauve for the job to the Board. In March 2010, the Board offered the CEO position to Sprauve, but it later reneged on this offer. In December 2010, the Board extended Thomas’s contract. In 2011, Thomas again recommended Sprauve to the Board as his replacement. The Board instead convened a search

committee and eventually hired defendant Joseph Boschulte as the new CEO and President of WICO. Boschulte began his tenure in that position on May 1, 2012.

Sprauve alleges that Boschulte was hostile toward him and falsely accused him of making various mistakes in the workplace. Sprauve eventually wrote a letter to the Board complaining about Boschulte's behavior. The Board launched an investigation. Shortly after this investigation, Boschulte terminated Sprauve, alleging he failed to attend a hearing before the Legislature's Finance Committee to discuss WICO's budget. Sprauve asserts that this allegation was pretext.

Plaintiff Andrea Smith began working at WICO in 1981, before the company was purchased by the Virgin Islands. In 2012, she was promoted to Chief Financial Officer. When Edward Thomas retired, she served as the Interim President and CEO of WICO until Boschulte was hired. Smith alleges that Boschulte knew that she had been interviewed by the Board as part of its investigation into Sprauve's claim and that Boschulte ****1037** became angry with her. She alleges that he then took various retaliatory actions against her. On January 11, 2013, Boschulte terminated Smith for what he called "failure to execute." J.A. 38.

On January 28, 2013, Sprauve filed a complaint against WICO and Boschulte in the District Court of the Virgin Islands. He alleged violations of his First and Fourteenth Amendment rights under the United States Constitution, a claim under [42 U.S.C. § 1983](#) against Boschulte, and a number of claims under Virgin Islands law. WICO and Boschulte moved to dismiss Sprauve's complaint under [Federal Rules of Civil Procedure 12\(b\)\(1\)](#) and [12\(b\)\(6\)](#). The Court granted the motion. J.A. 398.

Smith filed her own complaint against WICO and Boschulte alleging violations of the First and Fourteenth Amendments, a claim under [42 U.S.C. § 1983](#) against Boschulte, and a number of claims under Virgin Islands law. WICO and Boschulte filed a motion to dismiss under [Rules 12\(b\)\(1\)](#) and [12\(b\)\(6\)](#) and Boschulte filed a motion to dismiss under [Rule 12\(b\)\(6\)](#). The District Court granted the motions. J.A. 393; Supplemental Appendix ("S.A.") 2.

The District Court conducted the same analysis in granting both WICO's and Boschulte's motions to dismiss. It explained that "[t]he first and central issue raised ... is whether WICO is a public corporation with public employees versus a private entity with private employees." J.A. 405; S.A. 9. To make this determination, the District Court first looked to decisions

of the Virgin Islands Public Employees Relations Board ("PERB"), which found that WICO employees are not public employees. J.A. 405–07; S.A. 9–10. Next, the District Court examined the language of the Act. J.A. 407; S.A. 10–11. The District Court ultimately concluded that "WICO cannot be considered a purely public entity," that its employees are not public employees, and that it is not a public corporation. J.A. 407–08; S.A. 11–12. The District Court then found that because WICO is not a public entity, its alleged conduct could not be considered to have been "under color of state law" for ***229** purposes of liability under [section 1983](#), J.A. 409; S.A. 13, and that Smith and Sprauve's direct constitutional claims fail because WICO and Boschulte are private actors. J.A. 411; S.A. 14–17. Finally, the District Court declined to exercise supplemental jurisdiction over the remaining claims under Virgin Islands law. J.A. 412; S.A. 18.

****1038** Both Sprauve and Smith timely appealed.¹

II.

The District Court had jurisdiction under [28 U.S.C. § 1331](#), [42 U.S.C. § 1983](#), and [28 U.S.C. § 1343\(a\)\(3\)](#). We have appellate jurisdiction pursuant to [28 U.S.C. § 1291](#). Our standard of review for a dismissal under [Federal Rule of Civil Procedure 12\(b\)\(6\)](#) is *de novo*. [Phillips](#), 515 F.3d at 230.²

III.

^[1] Sprauve and Smith bring claims under the First and Fourteenth Amendments and under [42 U.S.C. § 1983](#). To state a [section 1983](#) claim, Sprauve and Smith must allege facts demonstrating, *inter alia*, that the misconduct they complain of was "under color of state law." [Groman v. Twp. of Manalapan](#), 47 F.3d 628, 638 (3d Cir.1995). To state a constitutional claim, they must allege facts showing, *inter alia*, that the misconduct involved "state action." [Lugar v. Edmondson Oil Co., Inc.](#), 457 U.S. 922, 937, 102 S.Ct. 2744, 73 L.Ed.2d 482 (1982). The "under color of state law" analysis is equivalent to the "state action" analysis. [Leshko v. Servis](#), 423 F.3d 337, 339 (3d Cir.2005).

The Supreme Court has acknowledged that "[i]t is fair to say that 'our cases deciding when private action might be deemed that of the state have not been a model of consistency.'" [Lebron](#), 513 U.S. at 378, 115 S.Ct. 961

(quoting *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 632, 111 S.Ct. 2077, 114 L.Ed.2d 660 (1991) (O'Connor, J., dissenting)). Armed with that body of law, we have endeavored to determine whether state action exists in circumstances including where an activity is significantly encouraged **1039 by the state, where the state acts as a joint participant, and where an actor “performs a function designated by the state, or is entwined with government policies or management.” *Leshko*, 423 F.3d at 340. We have described this process as “labyrinthine,” *id.* at 338, “murky,” *Fitzgerald v. Mountain Laurel Racing, Inc.*, 607 F.2d 589, 591 (3d Cir.1979), and a “protean concept,” *Magill v. Avonworth Baseball Conference*, 516 F.2d 1328, 1331 (3d Cir.1975) (quotation marks omitted).

However, we may avoid this determination of whether private party conduct constitutes state action when the actor is the government. See *Lebron*, 513 U.S. at 378, 115 S.Ct. 961 (noting that “[i]t may be *230 unnecessary to traverse [the] difficult terrain [of private party state action analysis] in the present case, since Lebron’s first argument is that Amtrak is not a private entity but Government itself”).³ The Supreme Court’s decision in *Lebron* sets forth guideposts for resolving whether a corporate entity may be considered the government for purposes of constitutional claims. The plaintiffs argue that WICO is a governmental entity and is therefore subject to claims under the United States Constitution and under section 1983. Applying *Lebron*, we agree.

A.

In *Lebron*, the petitioner filed a lawsuit against the National Railroad Passenger Corporation (also known as Amtrak) claiming that it had violated his First and Fifth Amendment rights. *Id.* at 377, 115 S.Ct. 961. Amtrak was established in 1970 by Congress, *inter alia*, “in order to avert the threatened extinction of passenger trains in the United States,” *id.* at 383, 115 S.Ct. 961, and was to operate, to the extent consistent with federal law, subject to the District of Columbia Business Corporation Act, see 45 U.S.C. § 541 (1970). Amtrak later incorporated under that statute. See *Lebron*, 513 U.S. at 385, 115 S.Ct. 961. See also 45 U.S.C. § 541 (1970) (authorizing incorporation of Amtrak). A majority of Amtrak’s governing board is appointed by the Government and Amtrak is required to submit three separate annual reports to the Government. *Lebron*, 513 U.S. at 385, 115 S.Ct. 961. Nonetheless, Congress provided that Amtrak “shall not be an agency, instrumentality, **1040 authority, or entity, or establishment of the United States

Government.” 45 U.S.C. § 541 (1970).

To give some context to its analysis, the *Lebron* Court first engaged in a detailed recitation of “the long history of corporations created and participated in by the United States” with a particular focus on level of control by the Government. *Lebron*, 513 U.S. at 386, 115 S.Ct. 961. The first such corporation was the Bank of the United States, created in 1791, but the Government’s participation in that corporation was limited to holding twenty percent of the Bank’s stock. *Id.* at 386–87, 115 S.Ct. 961. The Government first participated in a corporation in which it appointed a majority of the corporation’s directors—thus controlling the corporation—in 1902. *Id.* at 387, 115 S.Ct. 961. Congress that year authorized the President to acquire the assets of the New Panama Canal Company of France, including its holdings in the Panama Railroad Company—much like Act No. 5826 authorized the Government of the Virgin Islands to acquire WICO. See *id.* The purpose of the purchase was “to facilitate construction of the Panama Canal.” *Id.* The Government “became the sole shareholder of the Panama Railroad, and continued to operate it under its original charter, with the Secretary of War, as the holder of the stock, electing the Railroad’s 13 directors.” *Id.* By the end of World War II, the number of Government corporations had grown to fifty-eight, and immediately after that war, many of those corporations were dissolved because of Congress’s perception that “Government-created and -controlled corporations had gotten out of hand in both their number and their lack of accountability.” *231 *Id.* at 389, 115 S.Ct. 961. A new wave of Government corporations began again in the 1960s and, starting in 1962, these corporations were largely designated not to be Government agencies. *Id.* at 390, 115 S.Ct. 961. Congress intended that these new Government corporations (such as the Communications Satellite Corporation (Comsat)) would compete in the private sector, “unhindered by the restraints of bureaucracy and politics.” *Id.* at 391, 115 S.Ct. 961. Despite being labeled as not Government entities, governance structures varied in these new Government corporations. While Comsat’s board was controlled by twelve privately-appointed directors (and three appointed by the President), other Government corporations such as the Corporation for Public Broadcasting, the Legal Services Corporation, and Amtrak, gave voting control to Government appointees. *Id.*

Amtrak’s first argument to the Court in *Lebron* was that Congress’s disclaimer of Amtrak’s Government agency status was dispositive of **1041 Lebron’s constitutional claims. The Court acknowledged that this disclaimer of status was controlling for matters within Congress’s

control. *Id.* at 392, 115 S.Ct. 961. The Court noted that such matters include waivers of sovereign immunity and whether statutes such as the Administrative Procedure Act and laws regarding Government procurement apply to the entity. However, the Court held that Congress could not determine whether Amtrak was a Government entity for purposes of constitutional claims. *Id.* The Court reasoned that “[i]f Amtrak is, by its very nature, what the Constitution regards as the Government, congressional pronouncement that it is not such can no more relieve it of its First Amendment restrictions than a similar pronouncement could exempt the Federal Bureau of Investigation from the Fourth Amendment.” *Id.* As a result, the Court rejected Amtrak’s first argument.⁴

The *Lebron* Court acknowledged that the question of whether Amtrak could be considered a Government agency or instrumentality for the purpose of constitutional claims against it was not answered by a statute or by prior caselaw. *Id.* at 394, 115 S.Ct. 961. So, the Court analyzed two factors to answer this question. First, the Court noted that Amtrak was established by a special statute for the purpose of furthering governmental goals. *Id.* at 397, 115 S.Ct. 961. Second, consistent with other parts of the opinion, the Court focused heavily on control of the corporation. *Id.* at 397–98, 115 S.Ct. 961. An important measure of control to the Court was whether a majority of the governing body of the corporation was appointed by the federal or state government. *Id.* For instance, the Court noted that in *Pennsylvania v. Board of Directors of City Trusts of Philadelphia*, 353 U.S. 230, 77 S.Ct. 806, 1 L.Ed.2d 792 (1957) (per curiam):

we held that Girard College, which has been built and maintained pursuant to a privately erected trust, was nevertheless a governmental actor for constitutional purposes because it was operated and controlled by a board of state appointees, which was itself a state agency. Amtrak seems to us an *a fortiori* case.

**1042 *Lebron*, 513 U.S. at 397, 115 S.Ct. 961 (citation omitted). Another measure of *232 control was its duration. The Court recognized that six of Amtrak’s eight externally-named directors were appointed by the Government and that this control was not merely temporary. *Id.* at 397–98, 115 S.Ct. 961. As a result, the Court held “that where, as here, the Government creates a corporation by special law, for the furtherance of governmental objectives, and retains for itself permanent authority to appoint a majority of the directors of that

corporation, the corporation is part of the Government for purposes of the First Amendment.” *Id.* at 400, 115 S.Ct. 961.

B.

1.

^[2] Applying the *Lebron* decision to the facts of this case, we note first that WICO was established as “a public corporation and governmental instrumentality of the Government of the Virgin Islands of the United States,”⁵ J.A. 61, in a special session of the Twentieth Legislature of the Virgin Islands in 1993. J.A. 58–63 (Act No. 5826).⁶ The government of the Virgin Islands took this action to further several government objectives. See *Horvath v. Westport Library Ass’n*, 362 F.3d 147, 153 (2d Cir.2004) (determining that “the Library was created by a special act of the Connecticut State legislature and there is no doubt that the provision of library services is a legitimate statutory objective” and **1043 holding that “the *Lebron* standard has been satisfied.”); *Hack v. President & Fellows of Yale Coll.*, 237 F.3d 81, 84 (2d Cir.2000) (holding that the first part of *Lebron* was “easily satisfied [because] the State of Connecticut created the corporate entity by special law, and higher education is a governmental objective (although not the exclusive province of government)”), *abrogated on other grounds*, *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002). See generally *Clark v. Cnty. of Placer*, 923 F.Supp. 1278, 1284 (E.D.Cal.1996) (“[A]ll that is required for the purpose of § 1983 liability under *Lebron* is that the corporation have a ‘public statutory mission.’”) (citation omitted).⁷

*233 One government objective of Act No. 5826 was to resolve all disputes—including litigation—between the Virgin Islands and WICO. J.A. 58. Another government objective of the Act was to ensure WICO’s development rights were “subject in all respects to the control of the Government.” *Id.* Still another government objective was to “transfer to public ownership and control substantial real estate, including certain areas that may be suitable for development for public use, as well as areas that may produce income ...” *Id.* See J.A. 61 (“It is hereby resolved and declared that the purchase of the Facilities pursuant to this Act, and the operation and maintenance of the Facilities, and the collection of the revenues derived from the operation of the Facilities ... constitute public purposes.”).

****1044** Second, the Virgin Islands government clearly has permanent⁸ and complete control over WICO as a result of the Act. Specifically, the Board is composed of nine directors. West Indian Co. Ltd. Fiscal Year 2015 Budget Hearings Post Audit Div., Comm. on Fin., 30th Legis. 2 (2014) (Report of Jose L. George, Post Auditor). The parties do not dispute that *all* of these directors are appointed by the PFA. *See id.* (noting that the Act directed the Governor of the Virgin Islands to transfer all of the WICO's stock to the PFA); J.A. 60 (same). *See generally Hack, 237 F.3d at 84* (holding that the *Lebron* control factor was not met and noting "[t]wo of nineteen board members is ... a long way from control"); *Hall v. Am. Nat'l Red Cross, 86 F.3d 919, 921–22* (9th Cir.1996) (applying *Lebron* and holding that the Government did not control the Red Cross because the Government appoints only eight of fifty-three on the governing board); *Barríos-Velazquez v. Asociacion de Empleados del Estado Libre Asociado de P.R., 84 F.3d 487, 492* (1st Cir.1996) (determining that *Lebron* control factor not met because "the government of Puerto Rico does not retain the power to appoint any of [the corporation's] directors"); *Am. Bankers Mortg. Corp. v. Fed. Home Loan Mortg. Corp., 75 F.3d 1401, 1407* (9th Cir.1996) (applying *Lebron* and holding that the Government's control over Freddie Mac was missing because the "government is entitled to appoint fewer than one-third of Freddie Mac's directors"); ***234** *Wilkinson v. Legal Servs. Corp., 27 F.Supp.2d 32, 45* (D.D.C.1998) (holding that *Lebron* control factor was met because "LSC's Board is composed entirely of political appointees").⁹

****1045** Accordingly, the factors set forth in *Lebron* are met and, therefore, WICO is an agency or instrumentality of the Virgin Islands and subject to the constraints of the Constitution.

2.

The defendants argue that WICO should not be considered a government entity because WICO employees, unlike other government employees, "are not beneficiaries of the Government Employees' Retirement System, are not covered by the Personnel Merit System, are not subject to the jurisdiction of the Public Employees Relations Board, and are not hired through the Division of Personnel." WICO Br. 17. We are not persuaded by this argument. The *Lebron* decision counsels that while statutes may be dispositive of matters within government control, "such as the [Administrative Procedure Act ... and the laws governing Government procurement,](#)" 513 U.S.

at 392, 115 S.Ct. 961, reliance on such statutes to determine the constitutional rights of citizens is "misplaced." *Id.*¹⁰ Indeed, a comparison of the facts of *Lebron* with the present case shows why the appellees' argument must be rejected. While the appellees here ask us to assume the Virgin Islands intended that WICO be considered a private entity because WICO employees are treated differently than other government employees in several respects and ask us essentially to ignore the clear language of the Act providing that WICO is "a public corporation and governmental instrumentality of the Government of the Virgin Islands of the United States," Congress *explicitly* provided that Amtrak was not a government entity. Despite Congress's clear direction, the Court in *Lebron* held that Amtrak was to be considered a Government ****1046** entity for purposes of claims under the Constitution. *Id.* at 400, 115 S.Ct. 961. *See Wilkinson, 27 F.Supp.2d at 44, 45* (holding that where Congress provided that the Legal Services Corporation in all but several respects "should be treated as a private, non-profit corporation," it is outside Congress's authority "to make the final determination of LSC's status as a government entity for purposes of determining the constitutional rights of citizens affected by its actions.") (citing *Lebron, 513 U.S. at 392, 115 S.Ct. 961*). WICO is similarly a government entity for purposes of plaintiffs' constitutional claims.

***235** The defendants also seize upon language in the Act providing that WICO is empowered to take action "under the general business corporation laws of the Virgin Islands," J.A. 60, unless such laws are inconsistent with the Act. J.A. 61. This, they contend, means that WICO operates as a private company and should be treated as such. WICO Br. 23. This argument is also foreclosed by the Supreme Court's decision in *Lebron*. In *Lebron*, the Court explained that Amtrak "is subject to the provisions of [the District of Columbia Business Corporation] Act only insofar as the [Act creating Amtrak] does not provide to the contrary." 513 U.S. at 385, 115 S.Ct. 961. The Court in *Lebron* was not persuaded by this feature of Amtrak's corporate structure and, indeed, the Court admonished that "[i]t surely cannot be that government, state or federal, is able to evade the most solemn obligations imposed in the Constitution by simply resorting to the corporate form." *Id.* at 397, 115 S.Ct. 961. We therefore reject the defendants' argument.

* * * * *

Because WICO was established as a government corporation pursuant to a special Act of the Virgin Islands Legislature to further government objectives, and WICO is permanently and completely controlled by government

appointees, it is part of the government for purposes of the constitutional claims and [section 1983](#) claims brought by Sprauve and Smith.¹¹

remand ***236** for further consideration of Sprauve’s and Smith’s claims consistent with this opinion.

All Citations

****1047** IV.

799 F.3d 226, 63 V.I. 1032

For the foregoing reasons, we will affirm the District Court’s orders in part, reverse in part, vacate in part, and

Footnotes

- 1 In both Sprauve’s and Smith’s cases the defendants also moved to quash service of process to the WICO Board and to dismiss all claims against the Board. The District Court granted these motions and the plaintiffs have not appealed these portions of the District Court opinions. In addition, plaintiff Smith conceded that her claims for negligent misrepresentation and fraud (Count XIII) and false light (Count XIV) should be dismissed. App. 370. The District Court also dismissed Smith’s free association claim (Count XVIII) on the merits, and Smith has not appealed that ruling.
- 2 The defendants filed motions to dismiss under both [Rules 12\(b\)\(1\)](#) and [12\(b\)\(6\)](#). The District Court purported to grant defendants’ motions under [12\(b\)\(1\)](#), but did so using a [Rule 12\(b\)\(6\)](#) analysis. Thus, we will treat the order as having been issued under [Rule 12\(b\)\(6\)](#). See, e.g., [Kehr Packages, Inc. v. Fidelcor, Inc.](#), [926 F.2d 1406, 1408–09 \(3d Cir.1991\)](#).
- 3 To repeat, we are only examining whether WICO is a government entity for the purpose of determining whether constitutional claims can be lodged directly against it. This Opinion does not address, for example, whether WICO is entitled to governmental immunities. We leave that issue for another day.
- 4 Our Court has similarly observed that labels alone are not dispositive of the state actor issue and emphasized that we look to the “reality over the form” of the nature of the state actor’s relationship with the state. [Leshko](#), [423 F.3d at 342](#) (concluding foster parents are not state actors despite a Pennsylvania law that designates them public employees). Thus, we consider facts, rather than labels to determine whether an entity or person is a state actor for [section 1983](#) purposes.
- 5 It is immaterial to our analysis that WICO existed as a private corporation before it became a public corporation of the Virgin Islands. See [Hall v. Am. Nat’l Red Cross](#), [86 F.3d 919, 921 \(9th Cir.1996\)](#) (holding that “[t]he first part of the *Lebron* test is satisfied” where “[t]he Red Cross originated as a private corporation, organized under the laws of the District of Columbia in 1881[and] Congress reincorporated the Red Cross in 1905...”); [Becker v. Gallaudet Univ.](#), [66 F.Supp.2d 16, 18, 20 \(D.D.C.1999\)](#) (determining that the first *Lebron* factor was satisfied although the institution was founded privately in 1856 and incorporated by Congress in 1857); [Clark v. Cnty. of Placer](#), [923 F.Supp. 1278, 1283 n. 8 \(E.D.Cal.1996\)](#) (“The court does not regard the fact that at one time the PCFA operated free of the county as a significant distinction between the matter at bar and *Lebron*.”) (citation omitted). See also [Lebron](#), [513 U.S. at 397, 115 S.Ct. 961](#) (noting a prior case where Girard College, which was founded and maintained through a privately erected trust, was held to be a governmental actor (citing [Bd. of Dirs. of City Trusts of Phila.](#), [353 U.S. at 231, 77 S.Ct. 806](#))).
- 6 We have recognized “that in deciding a motion to dismiss, courts generally may consider only the allegations contained in the complaint, exhibits attached thereto, and matters of public record.” [Beverly Enters., Inc. v. Trump](#), [182 F.3d 183, 190 n. 3 \(3d Cir.1999\)](#). The materials cited herein fit within those parameters.
- 7 By way of background, Denmark granted WICO land “located in the Long Bay area of the St. Thomas Harbor and other areas in Charlotte Amalie in the United States Virgin Islands,” J.A. 64, along with buildings and improvements on the land, as well as “rights to reclaim and develop certain submerged lands in the St. Thomas Harbor,” *id.*, and that grant was preserved when Denmark ceded the Virgin Islands to the United States in 1917. [West Indian Co., Ltd. v. Gov’t of V.I.](#), [643 F.Supp. 869, 870 \(D.Vi.1986\)](#). See J.A. 68 (noting WICO’s rights over “wharves, docks, piers, slips, [and] retaining walls.”). WICO and the Virgin Islands had many disputes between them over the course of time. See Alexander A. Farrelly, Governor of the United States Virgin Islands, State of the Territory Address at the Senate Chambers, 12 (Jan. 14, 1993) (noting WICO’s “controlling rights of Charlotte Amalie’s harbor ... has been a source of great concern to all of us. Repeatedly, various attempts by this government to exercise some degree of regulation and regain control over this strategic port of entry have been thwarted by the treaty stipulations and the courts.”). For

instance, as discussed earlier, WICO's dredging operations were hotly contested between the parties. See *West Indian Co.*, 643 F.Supp. at 870–84.

- 8 The *Lebron* Court noted that temporary Government control would not satisfy the second, or control, factor. See 513 U.S. at 395, 115 S.Ct. 961. Accordingly, the requisite control of a corporation does not exist where “the Government exerts its control [] as a creditor,” *id.*, where “a provision exists that will automatically terminate control upon termination of a temporary financial interest,” *id.*, or where the Government is acting as a conservator, *Garcia v. Fed. Nat'l Mortg. Corp.*, 782 F.3d 736, 744 (6th Cir.2015) (Donald, J., concurring) (noting holdings in *Lebron* and *Mik v. Fed. Home Loan Mortg. Corp.*, 743 F.3d 149 (6th Cir.2014) that “a necessary condition precedent to consider a once-private entity a state actor is that the government has ‘permanent’ control over the entity,” and concluding that “FHFA’s conservatorship of Freddie Mac ... is, by definition, temporary”). It is undisputed that the Virgin Islands’ control of WICO is permanent.
- 9 We note that several courts have held the *Lebron* factor of control was met in the absence of the government having the right to appoint a majority of a corporate entity’s governing board where there exist other indicia of government control. See, e.g., *Horvath*, 362 F.3d at 153 (holding that although “it is correct that only one-half, and not a majority, of the Library’s trustees are appointed by the Town ... [t]he additional fact that [almost nine tenths] of the Library’s funding comes from ... the Town convinces us that the Town maintains sufficient control over the Library”); *Becker*, 66 F.Supp.2d at 21 n. 6 (holding that the composition of the governing board was not the “sole factor” determining government control).
- 10 The appellees’ statement that WICO employees “are not subject to the jurisdiction of the Public Employees Relations Board [‘PERB’],” WICO Br. 17, refers to two decisions by the PERB regarding its limited jurisdiction. Insofar as neither PERB decision considered claims under the Constitution, we need not consider them. See *Richards v. City of Lowell*, 472 F.Supp.2d 51, 71 n. 9 (D.Mass.2007) (conducting an analysis under *Lebron* and noting “[t]he City has cited a number of cases to support its argument that the GLWIB was not a municipal agency and [the plaintiff] was not a City employee. None of these cases addresses the question of whether, for constitutional purposes, actions taken by employees of a workforce investment board may be fairly attributable to the City.”) (citation omitted).
- 11 Because our decision reverses the basis on which the District Court declined to exercise supplemental jurisdiction over Sprauve’s and Smith’s state law claims, we will also vacate that portion of the order and remand to the District Court to give it an opportunity to consider exercising its jurisdiction over those claims. See *Trinity Indus. v. Chicago Bridge Co.*, 735 F.3d 131, 141 (3d Cir.2013).

We express no opinion as to the merits of the remaining claims in this case, except as to the appellants’ direct constitutional claims against Boschulte in his personal capacity. These claims are duplicative of their section 1983 claims against him. They arise from the same basic events—Sprauve’s and Smith’s respective terminations—and raise substantially the same allegations. See, e.g., J.A. 40, 45 (Smith alleging in Count VII, under section 1983, that her due process rights were violated when her employment was terminated by Boschulte “without affording [her] notice or opportunity to be heard” and Count II, alleging that under the Fourteenth Amendment that WICO, the Board, and Boschulte, in both his personal and professional capacities “engaged in a continuing course of conduct” that deprived her of her due process rights “by not affording [her] [notice] and opportunity to be heard before terminating her employment.”) As we held in *Capogrosso v. Supreme Court of New Jersey*, “[i]nasmuch as § 1983 affords a remedy for infringement of one’s constitutional rights, identical claims raised under the Fourteenth Amendment are redundant, rendering the outcome of the § 1983 claims dispositive of the independent constitutional claims.” 588 F.3d 180, 185 (3d Cir.2009); see also *Rogin v. Bensalem Twp.*, 616 F.2d 680, 686 (3d Cir.1980) (in the context of the Fourteenth Amendment, “it would be a redundant and wasteful use of judicial resources to permit the adjudication of both direct constitutional and § 1983 claims where the latter wholly subsume the former.”). Because section 1983 affords the appellants a remedy against Boschulte in his personal capacity for the due process and equal protection claims they have brought under the Fourteenth Amendment, we will affirm the dismissal of these direct constitutional claims against him as redundant. Applying the same reasoning, because section 1983 similarly affords the appellants a remedy against him in his personal capacity for the free speech and free association claims they brought under the First Amendment, we will also affirm the dismissal of these direct constitutional claims against Boschulte.

Primary Sponsor Letter of Support

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Office of the Executive Director

August 20, 2018

Rickey Dale James
Assistant Secretary for Civil Works
Under Secretary of the Army
United States Department of the Army
108 Army Pentagon, Room 3E446
Washington, DC 20310-0108

Re: Request to Federalize the Territorial Navigational Channels for the St. Thomas–St. John District

Dear Mr. James:

I write on behalf of the Virgin Islands Port Authority in support of the Government of the US Virgin Islands' proposal to the US Army CORPS to federalize the Territorial navigational channels for the Islands of St. Thomas and St. John, and to maintain the associated NAVAIDS of same. We strongly support this application and the focus on reducing the related financial burden maintaining open waterways into and out of the US Virgin Islands vital to the economic strength and commerce of this community.

As the public Agency whose annualized prorated O & M cost is estimated at \$800K for the maintenance items, any financial relief in this area is best utilized in capitalized improvements to our marine facilities and harbors to provide better accommodation for vessels calling on the Territory. Such improvements directly affect the economic and employment opportunities of the US Virgin Islands. Though a semi-autonomous instrumentality of the GVI, VIPA is acutely aware of its "partnership" role in the GVI's quest to continually improve and maintain the local economy.

Through this letter, VIPA acknowledges its specific role and responsibilities in the fulfillment in this partnership. Should this proposal be approved and funded, VIPA is prepared to maintain its role in identifying those areas of jurisdiction that would require attention for the uninterrupted use of the public channels under this arrangement.

Rickey Dale James

Request to Federalize the Territorial Navigational Channels for the St. Thomas–St. John District

August 20, 2018

Page 2 of 2

VIPA looks forward to working with your agency for the ongoing enhancement of the Territory's economic growth directly related to its commercial marine industry.

Sincerely,



for David W. Mapp Sr.
Executive Director

cc: Governor Kenneth E. Mapp
VIPA Governing Board
