



Upper  
Mississippi River  
Basin Association

ILLINOIS, IOWA, MINNESOTA, MISSOURI, WISCONSIN

January 20, 2006

Mr. Charles Spitzack  
U.S. Army Corps of Engineers  
St. Paul District  
Army Corps of Engineers Centre  
190 Fifth Street East  
St. Paul, Minnesota 55101-1638

Dear Mr. Spitzack:

Thank you for the opportunity to comment on the draft Operational Model for the proposed Upper Mississippi River-Illinois Waterway System River Council, presented for consideration at the November 15-17, 2005 meetings of the UMRBA, EMP-CC and NECC. The UMRBA member states and staff have participated in the workshop discussions over the past year and provided comments on the institutional framework presented last April. The Corps of Engineers, its partner agencies, and stakeholders have obviously devoted considerable effort to these ongoing discussions regarding modified and/or new institutional arrangements. While there continue to be mixed views on the appropriate role and most viable structure for the River Council, we would urge that, if the Corps and Fish and Wildlife Service are committed to pursuing such an approach, it be initiated as soon as possible, and in an incremental fashion. Further discussions about the design and function of the River Council are unlikely to resolve the remaining uncertainties and concerns. Rather, it is by facing the practical challenges of implementation that we will find the best solutions. More importantly, we face very real and immediate challenges related to the integrated implementation of the long-established Environmental Management Program (EMP) and the planning efforts underway for the yet-to-be-authorized Navigation and Environmental Sustainability Program (NESP). These transitional issues must be addressed, regardless of whether a River Council is or will be established.

UMRBA's specific comments on the November 15-17, 2005 River Council draft Operational Model focus on three areas: the role of the UMRBA in the proposed institutional arrangements, UMRBA staff support for the River Council, and considerations related to the form and function of the River Council.

***Role of UMRBA***

UMRBA's role, as described on page 8 of the draft Operational Model, seems generally consistent with what UMRBA has previously suggested. As indicated in our comments

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last June, UMRBA's focus will most likely be on implementation policy and balance, goals and objectives, state sovereignty and statutory responsibilities, and the relationship between the programs under the purview of the River Council (e.g., NESP, EMP, and O&M) and other river-related programs and issues (e.g., Clean Water Act implementation, state floodplain management, hazardous spills, etc.). However, the proposal on page 8 that the UMRBA quarterly meeting agenda "include updates on decisions and activities of the Corps and FWS..." does not fully describe the role that UMRBA is interested in playing. While "updates" are an important means of conveying information, the states would welcome a more interactive and substantive dialogue with the Corps and FWS, particularly with regard to policy issues.

The proposal to hold River Council meetings in conjunction with UMRBA's quarterly meetings is a good one and will certainly be more effective and efficient than holding separate meetings. However, it will be important to clearly define and focus the issues for discussion in each of these forums, to avoid unnecessary redundancy. In particular, if UMRBA meetings are held on the day following River Council meetings, the states could use UMRBA meetings to follow up on River Council actions. In particular, UMRBA meetings may focus on planning state advocacy efforts, developing coordinated joint state positions on issues discussed at the River Council, or addressing other issues beyond the purview of the River Council.

### ***UMRBA Staff Support for River Council***

As has been discussed at many of the Institutional Arrangements workshops and meetings over the past year, the UMRBA would be interested in an arrangement whereby UMRBA would provide staff support to the River Council. While the Operational Model for the River Council characterizes the UMRBA staff role as "administrative support" (p.14), it would likely involve more than what is typically considered "administrative." UMRBA staff could provide meeting support and counsel, similar to the role currently served for the EMP-CC. In particular, the UMRBA staff, in consultation with the River Council Co-chairs, could:

- help to identify and frame issues for River Council consideration;
- develop and distribute meeting agendas and background materials;
- make arrangements for meeting facilities and provide on-site support;
- prepare and distribute meeting minutes and action items;
- assist in synthesizing River Council positions and preparing resolutions, issues papers, and other outputs of River Council deliberations; and
- facilitate communication among River Council members, as necessary, between meetings.

### ***River Council Considerations***

*Scope and Responsibility* — The scope of River Council responsibilities continues to lack clarity and consistency. It is often described as focusing on five specific Corps authorities (EMP, NESP, O&M, Major Rehabilitation, and Regulatory Works) and three Fish and Wildlife Service functions (Refuge management, Ecological Services, and Fisheries). Yet, the River Council is also described more broadly as “a means for government agencies and other stakeholders to work together in managing the UMRS at the system level” (p. 11), “a forum for identifying opportunities and conflicts and addressing issues related to integrated management of the UMRS at the system level” (p.18), and focusing on “river and floodplain management at the systemic level” and on “integration with other purposes and programs at the systemic level” (p. 19). The obvious emphasis on system level issues is certainly appropriate. However, as stated in our June 13, 2005 comments on the institutional framework document, UMRBA continues to believe that the focus of the River Council should be on 1) coordinating implementation of specific Corps programs and authorities, including EMP, NESP, and O&M, and 2) on maintaining balance between and seeking integration of ecosystem and navigation needs.

*State Membership* — Although there has been considerable discussion about the appropriate “level” of representation from member organizations to the River Council, it is an issue that has not yet been fully resolved. However, there appears to be an expectation that member agencies and organizations will designate “senior managers,” given that the Corps and Fish and Wildlife Service co-chairs are described in that way in the draft Operational Model. In addition, on page 15, it states that “each member organization needs to supply the support necessary to ensure that the representative to the Council is fully prepared for the agenda and action items.” Again, this suggests that senior agency leaders are expected to participate in the Council, with staff support. From the states’ perspective this may not be a reasonable expectation. Rather, if state representatives are to be “knowledgeable of Corps and FWS programs,” as described on page 12, it may be more realistic to assume that state representation on the River Council will more closely resemble the current EMP-CC membership, at least with regard to natural resource agency representatives.

How River Council members are designated is also an issue of considerable interest to the states. Although the draft Operational Model proposes a selection process for members of nongovernmental organizations, the issue of how federal and state River Council seats will be filled is not addressed. From the states’ perspective, the most appropriate method of identifying state River Council members would be to request that each state’s UMRBA member appoint their state’s members of the River Council. UMRBA was created by the basin Governors to address interstate issues on the Upper Mississippi River, and UMRBA representatives are Governor-appointees vested with the responsibility of coordinating

among the agencies of their state on matters related to the Upper Mississippi River. In particular, the April 1997 Joint Governors' Proclamation states that one of UMRBA's responsibilities is to "review and comment on federal projects, programs, and policies of regional significance..." It also calls on the President to "ensure that all federal departments and agencies with authorities related to the Upper Mississippi River cooperate with the Upper Mississippi River Basin Association and utilize that forum for coordination of their river-related policies and programs with the basin states."

The question of which state agencies should be represented on the River Council has also been a matter of ongoing discussion. The Operational Model proposes that each state have two members, one representing a "natural resources" perspective and the other representing "economic development." This provision appropriately recognizes that states have multiple responsibilities related to the river and that state authorities are often divided among different agencies. However, it should be noted that "economic development" is not necessarily synonymous with either transportation or agriculture, if, in fact, those are the perspectives being sought. Given the differences in how state governments are structured, it would be preferable to defer to the UMRBA representative to make the most appropriate agency appointments to the River Council, given the organizational structure of their state.



*Memorandum of Understanding* — The draft Operational Model proposes to use an interagency Memorandum of Understanding (MOU) to establish the River Council. However, it does not describe why such a document is either necessary or desirable. Given that MOUs are frequently of limited value and difficult to execute in a timely fashion, particularly when they involve so many parties, it would seem preferable to use some other less bureaucratic mechanism.

*Relationship to EMP-CC and NECC/ECC* — UMRBA continues to be concerned about whether the River Council is an adequate substitute for the EMP-CC, NECC, and ECC. The draft Operational Model implies that these existing groups will be terminated when the River Council is established. In particular, the text box on page 7 regarding the A-Team states that "the River Council will be taking over the role of the EMP-CC..." While there is no similar specific mention of NECC and ECC in the draft Operational Model, the closing paragraph on page 16 states that "the River Council will reduce the need for the NECC/ECC and GLC and EMP-CC..." Although GLC no longer exists, the other groups are indeed providing important coordinating forums for NESP and EMP respectively, as they have for many years. Members of these committees are extremely knowledgeable about the Corps' programs and activities for which the committees were originally established. From the states' perspective, the meetings of these groups provide valuable opportunities for the exchange of information and views on the implementation of these programs. Given the more expansive responsibilities contemplated for the River Council

and the expectation that Council membership will include senior managers, it is doubtful the functions that EMP-CC and NECC/ECC have been serving in the past will be fulfilled by the Council. This fact suggests that, from the states' viewpoint, it may be more appropriate to focus the initial efforts of the River Council specifically on EMP-CC and NESP implementation, including issues related to the integration of these programs. The Council can then transition incrementally to include additional river programs and activities, as necessary and appropriate.

Thank you for the opportunity to comment and we look forward to continuing to work with you on these challenging collaboration issues.

Sincerely,

  
Todd Ambs,   
UMRBA Chair

c.c. Brigadier General Robert Crear (MVD)  
Colonel Duane Gapinski (MVR)  
Colonel Lewis F. Setliff III (MVS)  
Colonel Michael Pfenning (MVP)  
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