



Upper
Mississippi River
Basin Association

ILLINOIS, IOWA, MINNESOTA, MISSOURI, WISCONSIN

April 22, 2016

The Honorable James M. Inhofe
The Honorable Barbara Boxer
U.S. Senate
Committee on Environment and Public
Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable William Shuster
The Honorable Peter A. DeFazio
U.S. House of Representatives
Committee on Transportation and
Infrastructure
2165 Rayburn House Office Building
Washington, D.C. 20515-6256

Dear Senator Inhofe, Representative Shuster, Senator Boxer, and Representative DeFazio:

We are very pleased with your commitment to improving the nation's water resources by undertaking a new water resources development act, which we believe offers an opportunity to ensure that important investments authorized by Congress can be effectively advanced. On behalf of the Upper Mississippi River Basin Association, I am writing to express our five member states' interests in advancing the Navigation and Ecosystem Sustainability Program (NESP) authorized by Congress in 2007 and resolving challenges for non-federal sponsors to execute project partnership agreements (PPAs) with the U.S. Army Corps of Engineers (Corps). We also wish to express a note of caution regarding the need to develop consensus prior to authorizing a public-private partnership (P3) on inland waterways. In addition, we respectfully request that the geographic scope of the St. Louis Riverfront Project is extended to allow the Meramec River Basin Ecosystem Restoration Feasibility Study to effectively examine and address critical upriver influences that impact the Upper Mississippi River System (Upper Mississippi). Formed by the Governors of Illinois, Iowa, Minnesota, Missouri, and Wisconsin in 1981, UMRBA represents its member states' common water resource interests and works collaboratively with state and federal agencies that have management responsibilities on the Upper Mississippi as well as with partners from the navigation industry, environmental nonprofit organizations, and local communities who work directly to improve the river.

Navigation and Ecosystem Sustainability Program (NESP) – The Governors of the five Upper Mississippi states have clearly and repeatedly articulated the need to implement NESP to ensure that Congress' vision of the Upper Mississippi as a nationally significant ecosystem and a nationally significant navigation system remains for many generations. Our states strongly support NESP for its dual purpose approach to advancing navigation and ecosystem improvements in an integrated, balanced, adaptive, collaborative, and fairly funded manner.

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The Upper Mississippi is an incredibly valuable commercial transportation corridor that directly connects the Midwest to international market – lowering input costs for manufacturing, energy, agriculture, and other economic sectors while also facilitating exports – and it is a tremendous ecological treasure that draws in \$17.1 billion annually in revenue from tourism and outdoor recreation while also supplying affordable drinking water to many of our residents. The states further recognize that the river is an economic engine for the national economy and plays a key role in achieving international food security, moving 60 percent of the nation’s corn and soybean exports. The river is a critical component of the national surface transportation system and provides a highly valuable corridor for important migratory fish and wildlife habitat.

NESP was born through thoughtful and deliberate dialogue and compromise and is widely supported by Congress; the Inland Waterways Users Board and the navigation industry, more broadly; a diverse collective of sport and recreational conservation groups; agricultural commodity groups; labor interests; and local communities.

Congress has repeatedly recognized the substantial national benefits that would result from implementation of NESP, directing the Administration to implement NESP in the 2014 Water Resources Reform and Development Act (WRRDA) and in annual appropriations measures. However, the Administration has largely ignored Congress’ requests, citing the need to reevaluate the national merit of NESP without taking any action to do so.

Therefore, we respectfully request that Congress adopt an amendment to NESP’s authorization stating that the program is in the national interest as the overall benefits of the program exceed its costs. Similar language in other Corps programs and project authorizations has eliminated unnecessary, costly economic analyses that are cumbersome and do not reflect many national economic benefits, such as alleviating traffic on already congested land-based transportation modes.

Project Partnership Agreements (PPAs) – In a February 3, 2016 letter to you, we articulated the challenges to the states in executing the Corps’ PPAs and respectfully requested that Congress consider resolving these issues in the forthcoming WRDA. In recent years, the Corps has taken a more restrictive approach to indemnification that is inconsistent with states’ constitutions and statutes as well as nonprofit organizations’ policies. The Corps also now legally binds non-federal sponsors to undefined and unbounded operations and maintenance obligations on ecosystem restoration projects.

These challenges impair the ability of states, local governments, and nonprofit organizations to execute PPAs. This is a national issue affecting cost-share projects throughout the country. Congress recognized these challenges in WRRDA 2014 and requested that the National Academy of Public Administration evaluate the PPAs. However, there has been no subsequent progress. Therefore, we respectfully suggest that the forthcoming WRDA include provisions to resolve these specific issues.

We have partnered with The Nature Conservancy and Audubon to develop legislative language to resolve the PPA issues in a fair, practical manner. This includes provisions that 1) create a more shared approach to liability consistent with state law, 2) set a reasonable limit on the duration of a project sponsor's obligations for operations, maintenance, repair, rehabilitation, and replacement (OMRR&R) to 50 years or when project objectives are achieved, and 3) account for the value of donated goods that nonprofit organizations contribute to a project as a cost share credit. We welcome your consideration of these provisions. As Congress and the federal government continue to prioritize non-federal cost share projects, we believe that these challenges to PPA execution must be resolved in order for existing and newly authorized projects to be successfully and efficiently implemented.

Public-Private Partnerships (P3s) – The lock and dam infrastructure on the Upper Mississippi is in dire need of substantial investment in both repair and modernization. It is the result of many years of inadequate federal investment in the inland waterways system, and particularly the Upper Mississippi. There is an incredible, longstanding discrepancy between the Upper Mississippi's contributions to the Inland Waterways Trust Fund and the return investment in the region's navigation infrastructure. In addition, Upper Mississippi lock and channel maintenance is consistently underfunded. Given the tremendous need for the Upper Mississippi to remain a functional transportation corridor, Upper Mississippi stakeholders are concerned about the future state of the infrastructure.

Our states have urged the Administration, Congress, industry, and other key stakeholders to identify and explore innovative financing and project delivery approaches where appropriate to maximize infrastructure investment on the waterways. We supported authorization of a pilot project program in WRRDA 2014 as a means to examine the benefits and feasibility of innovative approaches to financing. We have also asserted that any such financing mechanism must be fair, equitable, effective, and generally enjoy consensus. The nation's inland waterway system is an interconnected system of its major rivers and tributaries and must be treated as such. Financing mechanisms that single-out a particular lock or sub-system must also consider implications to the entire system nationwide. Recognizing that the inland river system is a public good that is shared by many diverse interests, any financing mechanism must also consider impacts to all user groups. For these reasons, our states have historically opposed lockage fees. We are open to discussing nontraditional financing mechanisms that would deliver improved operational efficiency and reliability.

To date, there has been insufficient dialogue, and certainly no consensus, on a specific approach to financing a P3 project on the Upper Mississippi and Illinois Rivers. Consultation with the diverse set of basin partners must occur and consensus must be achieved before Congress should consider authorizing a P3 project on the Upper Mississippi. Our states have identified a suite of implementation questions that still need to be addressed through thoughtful and deliberative dialogue among the river's key stakeholders in order to ensure that a given P3 approach is a sound investment and receives sufficient support to be viable. Some of the more pressing questions relate to the structure and operation of a governance model for a P3 financing authority, the process and decision makers involved in selecting and prioritizing P3 projects, and assumption of risk if

an investor withdraws. In addition, the Upper Mississippi has a strongly rooted history of integrated, balanced management that has been instrumental in sustaining its many economic, ecosystem, and social values. Any P3 project must seek to sustain the river's ecological resources and maintain the strong, collaborative partnership among all the river's users.

Expansion of St. Louis Riverfront Authority – Our states hold as a general principle that Upper Mississippi management must recognize the interconnectedness of its subwatersheds in executing the myriad water resource management responsibilities. The 2004 Reconnaissance Study for the St. Louis Riverfront Project lent important insights about the degraded condition of the Meramec River and opportunities to improve its ecosystem and provide downstream benefits to the Upper Mississippi, as the Meramec feeds into the Mississippi just below St. Louis. The 2000 House Transportation and Infrastructure Committee resolution authorizing the Riverfront Project Study restricts the geographic scope on the Missouri side of the Mississippi River to the St. Louis and Jefferson counties, affecting the subsequent ongoing Meramec River Basin Ecosystem Restoration Feasibility Study. Recognizing the critical potential upriver restoration opportunities, we respectfully request that the forthcoming WRDA extend the geographic scope of the St. Louis Riverfront Project to allow the Meramec feasibility study to include the entire basin.

Extending the geographic scope to encompass the entire basin would allow for the Corps and State of Missouri (as the cost-share sponsor) to study the potential for projects in secondary tributaries to restore and maintain the ecological importance of the Meramec and Upper Mississippi Rivers, benefiting public health and safety, the economy, and water quality. For example, the Big River, a tributary to the Meramec River, and its floodplain are contaminated with lead from historic mining and smelting operations. Restoration is critical within the Big River to prevent further spread of contaminated sediment to the Meramec and Upper Mississippi Rivers.

Thank you for your consideration of the Upper Mississippi basin states' perspectives on this critical legislation. We appreciate your substantial undertaking in advancing a water resources measure that will allow the nation to better address its critical water resource needs.

Please do not hesitate to contact me at 651-224-2880 if you have any questions or would like to discuss the Upper Mississippi basin states' positions in further detail.

Sincerely,



Dru Buntin
Executive Director
Upper Mississippi River Basin Association

cc: Staff of Senate Committee on Environment and Public Works
Staff of House Transportation and Infrastructure Committee
Staff of House Subcommittee on Water Resources and Environment