



May 7, 2021

Honorable Jaime Pinkham  
Assistant Secretary of the Army (Civil Works)  
108 Army Pentagon  
Room 3E446  
Washington, DC 20310-0108

Dear Secretary Pinkham:

The passage of the 2020 Water Resources Development Act (WRDA) reinforced Congress' commitment to integrated, multipurpose management on the Upper Mississippi River and water resources across the nation. In the same action, Congress supported the region's goals for improving disaster preparedness, economic growth and resilience, and ecological health on the Upper Mississippi River. This includes:

- Substantially increasing the annual authorized appropriation for the Upper Mississippi River Restoration program
- Alleviating constraints to the Inland Waterways Trust Fund that will fund the Navigation and Ecosystem Sustainability Program (NESP)
- Removing the largest policy impediment to beneficial use of dredged material – i.e., modifying the Federal low-cost standard
- Authorizing the construction of GLRMIS construction for a total cost of \$858 million as well as the Grand River Basin ecosystem restoration project in Iowa and Missouri and the Meramec River Basin ecosystem restoration project in Missouri

On behalf of the Upper Mississippi River Basin Association (UMRBA), I am writing to offer our input for your consideration as you develop guidance for implementing the provisions authorized in WRDA 2020. UMRBA is a five-state organization representing the joint perspectives of the Governors of Illinois, Iowa, Minnesota, Missouri, and Wisconsin with members from the states' departments of agriculture, natural resources, transportation, environmental protection, and economic development. Since its inception in 1981, UMRBA has served as the dedicated regional forum for our five states to remain informed and engaged on Upper Mississippi River issues in partnership with the U.S. Army Corps of Engineers and other federal agencies with river-related management responsibilities.

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**Inland Waterways Trust Fund** — We are pleased by the adjustment of the Inland Waterway Trust Fund cost share allocation to inland waterway lock construction and major rehabilitation projects. We believe it will help ensure that the Upper Mississippi River and nation's inland waterways are able to reliably and efficiently serve an integral role in domestic and international transportation. But, federal investment in the nation's waterways infrastructure must be equitable. There is a dismaying discrepancy between the Upper Mississippi River System's contributions to the Inland Waterways Trust Fund and the return investment in the river's infrastructure. UMRBA respectfully requests that the Administration place a higher priority on financing the Navigation and Ecosystem Sustainability Program for the Upper Mississippi River System.

**Project partnership agreements** — In advancing our shared commitment to multi-use management, the states and Corps Districts work collaboratively to develop solutions through sound water resource projects. In addition, local communities and nonprofit organizations also serve as key partners in sponsoring water resource solutions constructed by the Corps. However, implementing the solutions that involve the states or other nonfederal entities serving as cost-share sponsors is impeded, or are dramatically slowed, by the terms required in the cost-share project partnership agreements (PPAs).

The key impediments include the terms requiring the nonfederal sponsor to assume complete liability for constructed projects (except for when fault or negligence is proven) and operations, maintenance, repair, replacement, and rehabilitation (OMRR&R) in perpetuity. These terms are simply not reasonable and are not acceptable to many states, local communities, and nonprofit organizations. At a fundamental level, the current PPA terms conflict with many states' constitutions and tort law. There are examples of lost opportunities with nonfederal project sponsors to complete ecosystem restoration projects due to the very one-sided PPA terms.

We understand that Congressional action is required to remove the indemnification requirement, and therefore, encourage the Administration to participate actively with Congress, UMRBA, and other nonfederal sponsors to seek a legislative solution to shared liability. We understand that the Corps has discretion to provide a clear termination date for the OMRR&R responsibilities. Section 143 of WRDA 2020 directs the Corps to include a brief description and estimation of the anticipated OMRR&R costs for nonfederal sponsors in the project partnership agreements. We respectfully request that the provision also include a defined end-term based on the expected useful life of the project's construction features – i.e., match the 50-year project design life.

In addition, we also suggest that a provision be added providing greater specificity regarding adaptive management to address risk and uncertainty with respect to achieving project outcomes as well as the need and ability to perform OMRR&R obligations dependent on whether the project features perform as intended.

Congress has attempted to facilitate nonfederal cost share projects by alleviating the problematic provisions of the project partnership agreements in the 2014, 2016, 2018, and 2020 WRDAs. The National Academy of Public Administration published a November 2018 report evaluating the Corps' public project partnership agreements. Chapter 3 of that report includes the perspectives of nonfederal sponsors in partnering through the PPAs.

**Beneficial Use of Dredged Material** — Increasingly in recent years, the Corps has undertaken emergency measures to reopen or maintain the navigation channel as a result of channel conditions. Emergency situations are costly to industry and the taxpayers, place the states in difficult, reactive positions of having to expedite environmental reviews, and create undue impacts on communities and environmental resources. The lack of places to put dredged material often results in channel constrictions and, sometimes, imminent closures. Many permanent placement sites previously used within the Mississippi River are at capacity. In addition, several existing island transfer sites have limited remaining capacity. Dredged material placed at island transfer sites will need to be offloaded to permanent sites prior to reaching capacity limitations that could result in channel restrictions or emergency dredging events in the future. This issue of limited capacity is severe throughout the Upper Mississippi River System. It is becoming a more pressing issue as flooding events occur more often.

UMRBA's member states believe that securing innovative and effective ways to utilize dredged material for public or private use can minimize the amount of the material needing to be stored temporarily or permanently. Beneficial use as a consistent, dependable, and actionable strategy could greatly expand the system's capacity to accommodate large sedimentation events while also avoiding, minimizing, and/or mitigating social and environmental impacts of dredging operations and material placement. This approach will extend the lifespan of existing Corps' facilities and reduce the need for land acquisition over the long term.

We applaud District staff who have done a tremendous job of working within significant resource constraints to maintain a safe and reliable navigation system. We understand the complex and challenging issues with having to manage the dredged material and we want to work collectively to transition from reactive to proactive and strategic channel maintenance and management strategies. That includes moving from opportunistic beneficial use to planned beneficial use, where those partnerships are arranged and integrated into channel management schedules.

We understand the tremendous opportunity in Congress' change to the Federal standard calculation – not only for the Upper Mississippi River but for the coasts, Great Lakes, and rivers across the country. We see implementation guidance as particularly important to ensuring that beneficial use can play a significant role in the river's long term resilience to sedimentation as well as in advancing integrated river management. Therefore, we respectfully request that a representative team of interdisciplinary and interagency experts from the Upper Mississippi River and other regions across the country serve on a team to

consider implementation guidance. UMRBA would welcome the opportunity to participate in such a dialogue.

Given the numerous project types and unique ecological and social factors throughout the country, we encourage the Corps to consider how to balance the need for long term flexibility with the necessary direction that Districts will require. UMRBA understands that the policies related to beneficial use are complex, including methods for calculating environmental and economic benefits and efficiencies. We want to offer a few observations of beneficial use limitations as examples:

- The use of dredged material for ecosystem restoration projects is often omitted because such projects cannot generally accommodate a full 40-year dredging volume.
- The Corps’ real estate policies and procedures inhibit beneficial use in two fundamental ways: 1) the requirement for placement activities to occur on lands owned in fee-title deters willing landowners who offer good beneficial use opportunities and 2) beneficial use options must be included in a planning document and identified as being within the federal interest to pursue. These two things result in an inability to be opportunistic with respect to beneficial use. We encourage implementation guidance that provides an approach for amending the planning documents, in consultation with the states and other agency partners, to incorporate beneficial use opportunities as they arise and are found to be in the Federal interest.
- The federal standard changes over the course of a plan or even the span of an individual beneficial use project as a result of “newer” alternative options and changes to placement sites – i.e., the federal standard included in a dredged material management plan cannot be used as a “not-to-exceed” value. We believe that there should be a balance between allowing for new alternatives to be considered or options that were once too expensive to be reevaluated over the course of a plan while maintaining a manageable planning process. We encourage the use of a suite of metrics involving environmental and social benefits to allow for the appropriate flexibility in the plans to reflect the reality of changing costs and new alternatives.
- Accounting policies and procedures (e.g., cost categories) do not provide for an allowable comparison of beneficial use projects with standard dredged material placement activities – e.g., unique handling requirements or stabilization measures. We would encourage a review of those accounting practices to operationalize the beneficial use of dredged material.

**Floodplain Resilience Planning** — We are pleased by Congress’ support for the Corps’ Section 729 planning authority to advance resilience planning on the Upper Mississippi River System. UMRBA would be the cost-share sponsor of the Section 729 study as directed by Congress in Section 214 of WRDA 2020. UMRBA is interested in using the planning authority to develop integrated, systemic plans to managing floods, drought, and sediment in the Upper Mississippi River System floodplain. We believe that it will be important to consider the changing weather, landscape, hydrology, and geomorphology as

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well as the region's economic, social, and ecological values when advancing each of the following specific objectives:

- Develop an integrated, comprehensive, and systems-based plan to minimize the threat to health and safety resulting from flooding by using structural and nonstructural floodplain management measures
- Develop new, or renew existing, comprehensive long-term channel management plans that are sustainable, cost-effective, and ecologically sensitive
- Develop mitigation strategies for multi-year drought events that would increase the resilience of communities and economies adjacent to, or dependent on, the Upper Mississippi and Illinois Rivers

For decades, UMRBA and its five member states have worked hand-in-hand with the Corps and our other federal partners as well as local communities, levee districts, industry, and conservation, labor, and commodity groups. The Corps has been a strong partner in the states' pursuit of integrated, balanced, adaptive, and collaborative management of the Upper Mississippi River System. The Corps has helped the states to foster a deeply-rooted culture of interagency partnership that has been critical in sustaining and enhancing the river's many economic, ecological, and social values.

We are eager to continue our partnership with the Corps in advancing integrated, multi-purpose management of the Upper Mississippi River System. Please contact me or UMRBA's Executive Director Kirsten Wallace at 651-224-2880 to arrange an opportunity to discuss our request in more detail.

Sincerely,



Dru Buntin  
Chair  
Upper Mississippi River Basin Association

cc: Vance Stewart, Performing the Duties of ASA(CW)  
MG Diana Holland, MVD Commander  
Amy Franz, CEW-P