



July 13, 2022

The Honorable Tom Carper
The Honorable Shelley Moore Capito
U.S. Senate
Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

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

Dear Senators Carper and Moore Capito and Representatives DeFazio and Graves:

As Congress develops its priorities for the Water Resources Development Act (WRDA) of 2022, I am writing to offer our five member states' perspectives on the bill's provisions for your consideration in reconciling the Senate and House measures. 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 the federal and state agencies as well as the navigation industry, environmental organizations, local communities, and others who work directly to improve the Upper Mississippi River System. UMRBA's member states are strongly committed to the principles of sustainability and multi-use as the foundation of the river's management. Thus, we are pleased that Congress is moving to address important water resource needs in a comprehensive measure that incorporates those same principles.

To ensure effective, multi-purpose management of the Upper Mississippi River System, UMRBA respectfully requests that Congress include provisions in WRDA 2022 to:

Project Partnership Agreements — Create a more equitable and reasonable approach to non-federal cost share agreements by:

- A) Replacing the current blanket indemnification requirement with a more shared approach to liability. Indemnifying a third party (including the federal government) is in direct conflict with many states' constitutions and laws. It requires the non-federal party to promise financial resources for an indeterminate liability that might occur at an unknown time, at an unknown cost, and for an unknown reason. Many state constitutions preclude agencies from obligating funds without an encumbrance against an appropriation and do not allow for incurring any indebtedness of any nature on

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behalf of the state until an appropriation for it has been made by the legislature. In addition, indemnification requires a state to assume liability beyond the extent to which many states' tort law permits.

- B) Establishing a defined cap on operations and maintenance obligations. The current PPAs legally obligate non-federal sponsors to undefined and unbounded operations, maintenance, repair, replacement, and rehabilitation (OMRR&R) obligations for the water resource project. This is challenging for non-federal sponsors to legally assume because 1) the projects have a period of analysis of 50 years and 2) given the dynamic nature of the river ecosystem, ecosystem management needs will undoubtedly change beyond the projects period of analysis.

Upper Mississippi River Restoration — Increase the annual authorized appropriation levels for the Upper Mississippi River Restoration (UMRR) program to \$75 million for habitat rehabilitation and enhancement projects and \$40 million for long term resource monitoring. This request for increased funding includes an adjustment for inflation as well as additional capacity and capability to meet increasing ecosystem rehabilitation needs and monitoring needs in light of changing hydrology and invasive species. Enclosed is a fact sheet summarizing the justification for the increased annual funding authorization to UMRR.

Water Level Management — Direct the Corps to utilize its existing authorities to implement water level management on the Upper Mississippi River System consistent with ecological goals determined by relevant federal agencies and states. We would encourage that the term “pilot” be stricken from the language in Section 339 of the House WRDA 2022 to reinforce that the Corps has the authority to implement water level management at its discretion.

The authority to implement water level management is provided in the Corps' operations of the 9-foot navigation channel, the Upper Mississippi River Restoration (UMRR) program, and the Navigation and Ecosystem Sustainability Program (NESP). Engineering Regulation 1110-2-240 clearly states that environmental pool management is within the Corps' Congressionally-directed authority to provide a 9-foot navigation channel on the UMRS. UMRBA provides a convening forum for resource agencies and conservation and navigation representatives to discuss policy and technical issues related to WLM. We would welcome a conversation with Congress about a recent agreement among resource agencies for implementing water level management through an adaptive management framework.

Hydraulic Evaluation — Authorize a routine hydraulic evaluation of flow frequency probabilities and water surface profiles on the Upper Mississippi River System as provided in Section 220 of the House Transportation and Infrastructure Committee WRDA 2022 measure. Accurate and accessible information is necessary for developing a systemic flood resiliency plan and for improving management capabilities. Flow frequency probabilities and water surface profiles are foundational needs for facilitating informed deliberations regarding the future of flood management. These modeling tools inform flood forecasting,

management, mapping, response, mitigation, attenuation, and ultimately, decision making related to policy and funding needs.

Inland Waterway Trust Fund — Permanently adjust the cost share of inland waterway construction and major rehabilitation projects to 25 percent from the Inland Waterway Trust Fund and 75 percent from the general Treasury. This adjustment will accelerate the completion and improve the efficiency of lock construction and major rehabilitation projects, including the remaining six lock projects included in the Navigation and Ecosystem Sustainability Program.

Thank you for your consideration of this request. Please contact me at 651-224-2880 or kwallace@umrba.org if you have questions or would like to discuss UMRBA's position in further detail.

Sincerely,

A handwritten signature in blue ink that reads "Kirsten Wallace". The signature is written in a cursive style and is enclosed in a thin blue rectangular border.

Kirsten Wallace
Executive Director
Upper Mississippi River Basin Association

cc: Upper Mississippi River Delegation

Enclosure



Upper Mississippi River Basin Association

ILLINOIS, IOWA, MINNESOTA, MISSOURI, WISCONSIN

Contact: Andrew Stephenson, Policy and Programs Director
(651) 224-2880, astephenson@umrba.org

Upper Mississippi River Basin Association WRDA 2022 Request: Upper Mississippi River Restoration Annual Authorized Appropriation

The Upper Mississippi River Restoration (UMRR) program fulfills the direction of Congress to manage the Upper Mississippi River System (UMRS) as a nationally significant ecosystem. UMRR was the first federal program to combine ecosystem restoration, monitoring, and science on a large river system. With over 35 years of successful operation, UMRR is one of this country's premier ecosystem restoration programs. UMRR involves close collaboration among federal, state, and public partners and effectively combines ecological restoration and a built-in long term monitoring and research enterprise. UMRR focuses primarily on two core elements:

- Planning, construction, and evaluation of fish and wildlife habitat rehabilitation and enhancement projects
- Long term resource monitoring, computerized data inventory and analysis, and applied research

Each element strengthens the other and, together, their integration is a critical part of achieving UMRR's vision of a healthier and more resilient UMRS that sustains the rivers' multiple uses.

Request for WRDA 2022

- 1) Increase annual appropriation authorization for UMRR habitat rehabilitation and enhancement projects (HREPs) from \$40 million to \$75 million.

Benefit to the Nation:

UMRR has improved critical fish and wildlife habitat on 112,000 acres through 59 projects. These projects restore natural water velocities and depths, improve vital sediment transport and distribution, create islands of varying elevations to restore natural floodplain features, and provide capabilities to mimic natural water level conditions. Collectively, these processes support a wide range of fish and wildlife while improving the river's overall ecological integrity.

Value of the increased appropriation authorization:

Additional annual funding would allow UMRR to construct more projects more efficiently, including by awarding larger and more comprehensive construction contracts. This can help decrease mobilization and demobilization costs due to fewer separate contracting actions, maximize agency and partner review efforts, and can result in more competition, more competitive bids, and additional opportunities for small businesses. Assuming flat funding at \$33.17 million, UMRR plans to construct 24 projects benefitting 76,000 acres through FY 2031. Increased appropriations could accelerate these restoration activities.

- 2) Increase annual appropriation authorization for UMRR long term resource monitoring (LTRM) from \$15 million to \$40 million.

Benefit to the Nation:

UMRR combines environmental long term resource monitoring (LTRM), research, systemic data acquisition, and modeling to provide a solid scientific foundation upon which many agencies base management actions and policy for the Upper Mississippi River System. UMRR's monitoring and science efforts have produced the most extensive fisheries dataset for a great river in the world, the largest aquatic vegetation dataset in the world, and tracked spatially and temporally dynamic water quality changes over nearly three decades of monitoring. LTRM captures the impacts from invasive carp expansion to the abundance and diversity of native fishes, trends in nutrient concentrations, plant community changes and recovery in portions of the river system, and forest loss across the system. LTRM also provides important insights and tools that aid habitat restoration. As the only large river with extensive long term monitoring of its ecosystem, greater understanding of this system helps to inform river management throughout the nation and across the world.

Water quality, vegetation, and fisheries are monitored annually through a network of six state-operated field stations, which are located on the Upper Mississippi River in Pool 4 (Lake City, Minnesota), Pool 8 (La Crosse, Wisconsin), Pool 13 (Bellevue, Iowa), Pool 26 (Alton, Illinois), and the Open River reach (Cape Girardeau, Missouri), as well as the La Grange Pool of the Illinois River (Havana, Illinois).

Value of the increased appropriation authorization:

Additional annual funding would allow the UMRR to conduct systemic monitoring of other critically important major resources in the system such as mussels and macroinvertebrate populations, support needed analysis to forecast changes to the river's ecosystem resulting from changing hydrologic conditions, and develop new tools and models to better understand and manage the ecosystem. Additional funds may also help address the notable spatial gap in monitoring from Pools 13 to 26. Monitoring in this stretch of the river could expand our knowledge of the spread of invasive carp as well as ecological and water quality changes in response to climatic, hydrologic, and watershed land use changes.

About the Upper Mississippi River Basin Association — The Upper Mississippi River Basin Association (UMRBA) is a five-state interstate organization formed by the Governors of Illinois, Iowa, Minnesota, Missouri, and Wisconsin to coordinate the states' river-related programs and policies and work with federal agencies that have river responsibilities. The UMRBA is structured as a 501(c) non-profit association, with the Board of Directors composed of all duly Governor-appointed representatives and alternatives. For more information about UMRBA, visit its website at www.umrba.org.