Upper
Mississippi River
Basin Association
ILLINOIS, IOWA, MINNESOTA, MISSOURI, WISCONSIN

September 4, 2018

Major General Richard Kaiser
Division Commander
U.S. Army Corps of Engineers
Mississippi Valley Division
P.O. Box 80
Vicksburg, Mississippi 39181-0080

Dear General Kaiser:

On behalf of the Upper Mississippi River Water Level Management Regional Coordinating Team, I am writing to respectfully request your leadership in resolving policy impediments to implementing environmental pool management in the Upper Mississippi River System (UMRS) navigation pools. In response to the *Ideker Farms Inc., et. al. v. United States of America* ruling, the U.S. Army Corps of Engineers (Corps) recently reversed its longstanding practice of allowing deviations to water control plans as a means for enhancing other river management purposes. While environmental pool management was a previously acceptable deviation, the Corps is now requiring that individual pool water control plans be revised. We believe that the policy reversal is unnecessary and prevents the Corps from managing the Upper Mississippi River System (UMRS) in ways that both meet the authorized purpose of the lock and dam system (i.e., the 9-foot navigation channel) while integrating environmental principles.

The 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. Enclosed for your reference are relevant excepts of the Engineering Regulation as well as Appendix E regarding USACE Environmental Operating Principles.

It is our understanding that the water control plans were last updated in the 1990s and therefore are nearly 30 years old. We believe the Corps' management of the 9-foot navigation channel would benefit by incorporating knowledge gained from environmental pool management and other hydraulic changes in updated water control plans. While we recognize that updating the master manuals is expensive, we believe it would result in substantial cost-savings over time and a healthier UMRS ecosystem. We also understand that multiple UMRS pool plans are integrated together in a master manual. According to Engineering Regulation 1110-2-240, deviations are meant to be temporary and any deviation occurring in three consecutive years or three out of five consecutive years should trigger a revision to the water control manual.

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Therefore, we respectfully request that the Corps:

1) Allow for deviations to the master water control manuals for the UMRS locks and dams to provide for environmental pool management, per Engineering Regulation 1110-2-240.
2) Secure FY 2019 work plan money to conduct a review of the UMRS master water control manuals and include language that specifically allows for environmental pool management deviations. We recommend that the Mel Price Lock and Dam Water Control Manual be used as a reference (see enclosure).

The Coordinating Team's membership includes representatives from all five UMRS states, the three UMRS Corps Districts, U.S. Fish and Wildlife Service, U.S. Geological Survey, U.S. Environmental Protection Agency, U.S. Department of Agriculture, National Weather Service, Upper Mississippi River Basin Association, American Rivers, Audubon, The Nature Conservancy, and Waterways Council. The Team has found that environmental pool management and drawdowns can be a powerful ecosystem restoration tool for the UMRS and it can be done without compromising management of the 9-foot navigation channel. We are committed to promoting systemic, routine, and coordinated water level variation; addressing policy and funding needs; advancing interdisciplinary monitoring and research; and informing and engaging the public.

We also want to express our sincere appreciation regarding the approval of the Upper Mississippi River Restoration Pool 13 fact sheet that includes a pool-scale drawdown. We applaud your commitment to integrated, collaborative management of the UMRS.

Please feel free to contact me with any questions or to discuss this request in more detail.

Sincerely,

Kirsten Wallace
UMRBA Executive Director

Enclosures: Excerpts of the Engineering Regulation 1110-2-240
Attachment E of the Engineering Regulation 1110-2-240

cc: Col. Sam Calkins, MVP Commander
Col. Steve Sattinger, MVR Commander
Col. Bryan Sizemore, MVS Commander

Excerpts of Engineering Regulation 1110-2-240 and Mel Price Lock and Dam Water Control Plan

Engineering Regulation 1110-2-240

Section 2-3 (e): Policy Requirements for Water Control Management

USACE water control management activities shall be carried out in accordance with the USACE role as an environmental steward. Thus, all USACE water control management activities shall be guided by the USACE Environmental Principles in accordance with authorized or approved purposes and comply with the National Environmental Policy Act (NEPA) as provided in ER 200-2-2 and other applicable environmental laws, executive orders, and regulations. The Planning and Policy Division (HQUSACE (CECW-P) is the point of contact for information on the USACE NEPA documents, NEPA oversight activities, review of other agencies' EIS and NEPA documents about legislation, regulations, national program proposals or other major policy issues. Project operations in support of enhanced ecosystem sustainability are encouraged when compatible with other project purposes.

Section 2-3 (g): Policy Requirements for Water Control Management

USACE shall take a systems approach in development of water control plans and in development and implementation of regulatory strategies. Considerations include hydrologic and ecological relationships within and among systems, comprehensive scope, multiple users, project purposes, and economic impacts throughout the system. A systems approach shall be taken when implementing operation plans.

Section 2-3 (h): Policy Requirements for Water Control Management

USACE shall incorporate risk and uncertainty analysis in water control management activities, including development of water control plans, analysis of proposed deviations (as defined in Appendix F) and their potential consequences, and developing regulatory strategies. It is also imperative to have public involvement in risk reduction strategies and be able to effectively communicate the concept of risk. USACE guidance on risk and uncertainty analysis includes ER 1105-2-101 and EM 1110-2-1619.

Section 3-4 (a): Deviation from the Approved Water Control Plan

All water control manuals shall contain provisions authorizing the operating agency to deviate temporarily from operations prescribed by the project's approved water control plan when necessary to alleviate critical situations or possibly to realize increased benefits during an operation season without significantly affecting the fulfillment of the project's authorized purposes. A risk and uncertainty analysis shall be performed to determine potential consequences of the deviation.

Section 3-4 (c): Deviation from the Approved Water Control Plan

Each request for a planned deviation shall be evaluated on its own merits. Examples include deviations for interim risk reduction measures and scheduled construction, maintenance, or inspections activities. Planned deviations shall receive advance approval from the division commander. The deviation request should be self-supporting and self-explanatory. The following information shall be submitted in written form to the division commander for consideration:

1) Description of the proposed deviation, including purpose, proposed change from the approved water control plan, duration, and other details about the deviation.

2) The outcomes of adhering to the water control plan and of employing the proposed deviation.

3) Alternative deviation plans to include the application of risk and uncertainty in the analysis and the consequences of each.

4) Effects of the proposed deviation on project and system operation, and on other project purposes such as flood control, hydropower, water quality, water supply, navigation, recreation, or fish and wildlife.

5) Review of the Potential Failure Mode Analysis (PFMA) for the dam and an analysis of the effect of the deviation on the probability of failure and consequences associated with the deviation.

6) The potential flood threat with and without the proposed deviation.

7) Current and predicted maximum storage, elevation, river stage, and other pertinent information with and without the deviation.

8) Review of the alternatives under provisions of pertinent laws and regulations, including, but not limited to, NEPA and ESA, when applicable.

9) A description of the coordination that has been done with affected entities, both USACE and non-USACE, the effect on other local, regional, state, tribal, and federal agencies.

10) Written comments from agencies, organizations, businesses, and individuals who may be impacted by, or supportive of the proposed change in flows, including federal, state, and local agencies; tribes; industries, organizations, and other stakeholders; and the public.

11) Discussion of any other relevant issues.

12) District commander, or designee, recommendation.

Mel Price Lock and Dam Water Control Plan

Section 7-14 (a): Special Regulation Considerations

Environmental Pool Management: This program attempts to create a habitat by maintaining a drawdown for at least 30 days during the May-September timeframe. The drawdown will not be maintained, nor will it occur, if it impacts the ability to maintain a nine-foot navigation channel. In addition, since there are a large number of recreation and commercial facilities on the lower end of the pool, the drawdown for Environmental Pool Management is normally limited to one foot. This program has been extremely successful in the creation of emergent wetland plants since its inception in 1994.

Appendix E

USACE Environmental Operating Principles

E-1 Environmental Operating Principles.

USACE has reaffirmed its commitment to the environment by formalizing a set of "Environmental Operating Principles" applicable to all its decision-making and programs.

The Environmental Operating Principles relate to the human environment and apply to all aspects of business and operations. They apply across Military Programs, Civil Works, Research and Development, and across the Corps. The Principles require a recognition and acceptance of individual responsibility from senior leaders to the newest team members. Re-committing to these principles and environmental stewardship will lead to more efficient and effective solutions, and will enable the Corps of Engineers to further leverage resources through collaboration. This is essential for successful integrated resources management, restoration of the environment and sustainable and energy efficient approaches to all Corps of Engineers mission areas. It is also an essential component of the Corps of Engineers' risk management approach in decision making, allowing the organization to offset uncertainty by building flexibility into the management and construction of infrastructure. These include:

a. Foster sustainability as a way of life throughout the organization.
b. Proactively consider environmental consequences of all Corps activities and act accordingly.
c. Create mutually supporting economic and environmentally sustainable solutions.
d. Continue to meet our corporate responsibility and accountability under the law for activities undertaken by the Corps, which may impact human and natural environments.
e. Consider the environment in employing a risk management and systems approach throughout the life cycles of projects and programs.
f. Leverage scientific, economic and social knowledge to understand the environmental context and effects of Corps actions in a collaborative manner.
g. Employ an open, transparent process that respects views of individuals and groups interested in Corps activities