



September 13, 2023

The Honorable Sam Graves, Chair
The Honorable Rick Larsen, Ranking Member
U.S. House of Representatives
Transportation and Infrastructure Committee
2165 Rayburn House Office Building
Washington, D.C. 20515-6256

The Honorable Tom Carper, Chair
The Honorable Shelley Moore Capito, Ranking Member
U.S. Senate
Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, D.C. 20510-6175

The Honorable David Rouzer, Chair
The Honorable Grace Napolitano, Ranking Member
U.S. House of Representatives
Transportation and Infrastructure Committee
Water Resources and Environment Subcommittee
2165 Rayburn House Office Building
Washington, D.C. 20515-6256

The Honorable Mark Kelly, Chair
The Honorable Kevin Cramer, Ranking Member
U.S. Senate
Environment and Public Works Committee
Transportation and Infrastructure Subcommittee
410 Dirksen Senate Office Building
Washington, D.C. 20510-6175

Dear Representatives Graves, Larsen, Rouzer, and Napolitano and Senators Carper, Moore Capito, Kelly and Cramer:

We are very pleased to understand that you are beginning to formulate the 2024 Water Resources Development Act (WRDA). Formed by the Governors of Illinois, Iowa, Minnesota, Missouri, and Wisconsin in 1981, the Upper Mississippi River Basin Association (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 is strongly committed to the principles of sustainability and multi-use as the foundation of managing the Upper Mississippi River System. This authorizing legislation offers an important opportunity to address critical water resource needs in a comprehensive measure that incorporates those same principles.

On behalf of UMRBA, I am pleased to offer our five member states' priorities for WRDA 2024 for which we respectfully request your support. UMRBA's priorities are as follows:

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

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constitutions preclude agencies from obligating funds without an encumbrance against an appropriation and do not allow for incurring any indebtedness of any nature on 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, maintenance, repair, replacement, and rehabilitation (OMRR&R) obligations. The current PPA terms legally obligate non-federal sponsors to undefined and unbounded OMRR&R 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. This policy essentially creates a permanent federal hold on non-federal property.

State Permits — Direct that Corps follow state law as required by the respective state in which the Corps is implementing water resource projects unless and until a mutually agreeable solution is reached and reverse legal mandates that would suggest otherwise – e.g., 33 CFR 336.1(c)(10).

Within the last year, it appears that Corps Headquarters has departed from past practice and is instituting a policy by which the Corps is not applying for state permits. This departure has created unnecessary friction between the Corps and states, and is in direct violation of state statute and previously issued federal decree.

This impasse creates a legal challenge for the states and a barrier to important water resource projects. It is prudent for state governments to be fair to all permit seekers and to ensure proper evaluation of any implications of water resource projects to their public and publicly entrusted resources. Further, it is illegal for at least some states and their respective officials serving as a non-federal sponsor to partner on a project that does not adhere to state law, including lack of issued state permits.

Planning flood conveyance and storage, systemically and locally — Authorize a study to develop long term, integrated approaches to improving flood conveyance and storage in the Upper Mississippi River System floodplain, systemically and locally. We believe that the Lower Missouri River Basin Flood Risk and Resiliency Study's authorization provides a model for the authorization that UMRBA envisions for the Upper Mississippi River System.

UMRBA proposes utilizing the region's deeply-rooted state-federal partnership to employ a collaborative, consent-based planning process. Integrating the best available knowledge and expertise, UMRBA's goal for the process is to create a commonly-held vision with shared goals, objectives, and implementation strategies for flood conveyance and storage that build upon the region's multi-jurisdictional governance framework and landscape public and private land ownership.

UMRBA urges that the planning authority allow for innovative approaches for communicating and engaging with the many people and businesses who are directly and indirectly affected by flooding on the Upper Mississippi River System. UMRBA strongly asserts that a transparent and collaborative process, with ongoing conversations among the affected interests and with decision makers listening to and evaluating stakeholder input, is necessary to build effective, lasting solutions.

Upper Mississippi River Restoration (UMRR) Program — Modify the UMRR authorization to:

- A) Increase the annual appropriation authorization of UMRR's long term resource monitoring to \$25 million. 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.
- B) Allow for financial support to UMRBA and the states of Illinois, Iowa, Minnesota, Missouri, and Wisconsin to directly participate in the program, expanding the capacity for cooperative planning and technical expertise.
- C) Expand the availability of restoration opportunities on General Plan lands by allowing for memorandums of agreement (MOAs) to govern projects on those lands (as opposed to project partnership agreements). This change would have an immediate impact of removing a policy barrier to implementing habitat projects on 45,000 acres of General Plan lands.

Full Federal Funding for IJA-Funded Inland Waterways Projects — Authorize full federal funding for the remaining costs for all inland waterways construction and major rehabilitation projects funded by the Infrastructure Investment and Jobs Act (IIJA). This authorization would be consistent with the intent of the IJA that these projects be paid for in full by the federal government, in part, to achieve an accelerated return on investment.

Thank you for the opportunity to provide initial comments on WRDA 2024. We will follow up with you to further explain the value of these suggested provisions. We look forward to working with you to improve our collective ability to strengthen and build resilience of the Upper Mississippi River System.

Sincerely,



Kirsten Wallace
Executive Director
Upper Mississippi River Basin Association

cc: Upper Mississippi River Congressional Delegation
Michael Connor, Assistant Secretary of the Army for Civil Works
Eddie Belk, U.S. Army Corps of Engineers
Brig. Gen. Kimberly Pepples, U.S. Army Corps of Engineers Mississippi Valley Division