



Upper  
Mississippi River  
Basin Association

ILLINOIS, IOWA, MINNESOTA, MISSOURI, WISCONSIN

November 14, 2016

The Honorable Mitchell McConnell  
The Honorable Harry Reid  
U.S. Senate  
Capitol Building  
Washington, D.C. 20510

The Honorable Kevin McCarthy  
The Honorable Nancy Pelosi  
U.S. House of Representatives  
Capitol Building  
Washington, D.C. 20515

Dear Senator McConnell, Representative McCarthy, Senator Reid, and Representative Pelosi:

On behalf of the Upper Mississippi River Basin Association (UMRBA), I am writing to offer our five member states' perspectives on the 2016 Water Resources and Development Act (WRDA) for your consideration in reconciling the Senate and House WRDA measures (S. 2848 and H.R. 5303, respectively). 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 (Upper Mississippi). The Upper Mississippi 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, the states respectfully request that Congress:

- Advance the Navigation and Ecosystem Sustainability Program (NESP) to modernize the Upper Mississippi's lock and dam system while improving the health and resilience of the river's ecosystem.
- Create a more equitable approach to non-federal cost share agreements, by establishing a reasonable cap on operations and maintenance obligations and crediting the value of donated goods. In addition, replace the current blanket indemnification requirement with a more shared assumption of liability. The current agreement requirements are inconsistent with some state constitutions and law.
- Allow for beneficial use of dredged material to both ease the constraint on available disposal sites while reducing the cost of environmental restoration and road and bridge projects.
- Ensure that all proposed flood risk management projects align with a systemic approach to reducing risk with a more accurate and comprehensive assessment of any implications.
- Expedite the Cedar Rapids flood risk management project and Chicagoland Underflow Plan as well as the authorization of the Dubuque and Upper Des Plaines flood control project.
- Authorize a comprehensive evaluation of water and sediment movement throughout the Upper Mississippi's watershed in order to proactively reduce flood risk and improve the navigation channel's reliability. This would replace Section 4010 of the Senate WRDA, which focuses only on flood risk management.
- Integrate more natural and nature-based solutions in water resource projects.

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***Advancing the Navigation and Ecosystem Sustainability Program*** – The authorization of the Navigation and Ecosystem Sustainability Program (NESP) in WRDA 2007 was a landmark achievement for the Upper Mississippi and the nation. If funded, the program would strategically invest in modernizing seven locks at the most congested sites, enhancing efficiencies to navigation through several small-scale measures, and restoring and protecting the river’s treasured ecological resources. The Governors of the five basin states have jointly called on the Administration and Congress to fund NESP. This request is echoed by a diverse coalition of Mississippi River stakeholders including industry, commodity groups, labor unions, environmentalists, and local communities.

However, the Administration has taken a flawed and short-sighted approach to evaluating NESP’s benefits, resulting in its value being underestimated and the program remaining unbudgeted. In particular, the Administration’s analysis does not consider the full economic implications that a closure of the entire navigation system would have if a single chamber locks fail nor does it consider the constraints of land-based modes of transportation to assume the additional traffic demand. In October 2016, the U.S. Department of Agriculture published an estimate that a one-year closure of Lock and Dam 25 on the Upper Mississippi would result in a loss of more than 7,000 jobs, \$1.3 billion of labor income, and approximately \$2.4 billion of economic activity to the corn and soybean industry alone. Such losses can be avoided by constructing a second, 1,200-foot chamber at key locks as authorized in NESP. The Upper Mississippi states are extremely frustrated with the lack of progress and call on Congress to find a way to fund NESP’s implementation.

***Creating a More Equitable Approach to Non-Federal Cost-Sharing*** – We are tremendously encouraged by Congress’ interest in resolving challenges facing non-federal sponsors in executing the Corps’ project partnership agreements (PPAs). The most pressing challenges include the blanket requirement to fully indemnify the federal government, the inability to accept donated goods as a cost-share credit; and the requirement that sponsors assume responsibility for perpetual operations, maintenance, repair, replacement, and rehabilitation (O&M). The Upper Mississippi states as well as regional non-profit organizations and local communities find our partnership with the Corps extremely valuable. Our efforts to resolve these issues speak to the states’ interest in continuing to work collaboratively with the Corps.

The states support Section 114 of the House WRDA measure because it establishes a 50-year limit on O&M obligations for ecosystem projects. We would also support the common-sense alternative option offered that O&M requirements would cease once the project goals for restoring ecological health and resilience have been achieved. In addition, the states support Section 1016 of the Senate WRDA measure that would allow the value of donated goods that are provided specifically to project construction as part of a non-federal sponsor’s cost-share contribution. Donated goods secured by the non-federal sponsor reduce the federal cost for a project and should be accounted as a cost share contribution. Currently, the Corps accounts for the donated goods by lowering the overall project construction cost without providing credit to the non-federal sponsor.

The states are disappointed that neither the House nor Senate attempted to resolve the blanket indemnification requirements, which are inconsistent with some state constitutions and law. We believe a comprehensive review of the PPA models would be a helpful exercise, and so we support Section 143 of the House WRDA measure. However, in a June 30, 2016 letter, Corps Director of Civil Works Steve Stockton explained that Congressional action is required to create a more shared

approach to liability by citing Sections 101(j) and 103(j)(1) of WRDA 1986. We share Mr. Stockton's assessment that these issues will remain unresolved until Congress authorizes an alternative approach to liability. The states are certainly not seeking to shift liability to the federal government, but rather to place legal decisions of liability in context. A shared assumption of liability would be consistent with the collaborative approach to project development.

***Allowing for Beneficial Use of Dredged Material*** – The Upper Mississippi states have long encouraged beneficial use of dredged material. This practice extends the life of disposal sites while reducing the cost of environmental restoration and road and bridge projects. Dredged material can be beneficially used for shoreline stabilization, building islands, and restoring floodplain forests. The Corps' requirement to pursue the lowest-cost, environmentally-acceptable option, regardless of potential benefits, is the most limiting factor affecting beneficial use. Thus, we are pleased that Congress recognizes that dredged material from channels and harbors may provide greater benefits by advancing other authorized purposes when compared with the cost of mere disposal. Because we are confident that there is substantial value in removing the lowest cost standard, we prefer Sections 2008 and 2017 of the Senate's 2016 WRDA measure as it would authorize the beneficial use of dredged material for other purposes. However, we would also support the House's pilot project approach authorized in Section 108 of its measure.

***Creating a More Integrated, Comprehensive, Systemic Approach to Flood Risk Management on the Upper Mississippi*** – Flood risk management on the Upper Mississippi, with its vast geographic scale, tremendous economic productivity, and globally significant resources, presents extraordinary challenges. The social, economic, and environmental consequences of flood response, recovery, and mitigation decisions can be profound. We believe that land use and weather patterns have changed the way surface water flows into the Upper Mississippi's tributaries and ultimately its main stem. Therefore, the Upper Mississippi states are eager to work with the Corps, other federal agencies, local governments, levee and drainage districts, and environmental, navigation, and agricultural interests to develop an integrated, comprehensive, and systems-based approach. Such an approach would seek to minimize the threat to health and safety resulting from flooding by implementing both structural and nonstructural floodplain management measures. We believe that the right technical tools such as a unified HEC-RAS model to allow all stakeholders to fully understand the implications of how individual actions will affect the systemic management of flood risk. When improvements to current level of protection are proposed, it is critical that an accurate and comprehensive assessment of any potential impacts is available for open discussion among regional partners. Therefore, we have concerns with Section 3001 of the Senate WRDA measure that would authorize the Corps to allow an increase in the level of protection at specific locations beyond the currently authorized level of protection.

We strongly support Congress' direction to expedite the Cedar Rapids flood risk management project and Chicagoland Underflow Plan as well as the authorization of the Dubuque and Upper Des Plaines flood control project. These projects have all undergone thorough evaluations and are supported by the relevant federal and state agencies, local communities, and river stakeholders.

***Considering How Surface Water Management in the UMRS Watershed Affects Channel Maintenance Management and Flood Risk Reduction*** – The Upper Mississippi is a complex and dynamic system, where tributaries have significant influence primarily from their discharge and sediment contributions. Long term monitoring of tributary influences on the Upper Mississippi main stem suggests that a variety of factors are altering water flows and sediment inputs. This

affects the resilience of river communities as well as economic sectors dependent on a healthy and functioning river system. The increasing severity of floods and droughts in our basin has heightened the challenge of predicting sedimentation and planning effectively for dredging and disposal of dredged material. Further, investment in the Upper Mississippi's channel maintenance has not kept pace with increasing costs and the limited number of dredged material placement sites has made it difficult for Corps staff to address emerging dredging needs. As a result, we have seen an increase in emergency dredging situations that place the federal and state permitting agencies in a reactive position while also imposing unnecessary and unplanned costs and delays on the navigation industry. These situations also often involve environmental degradation that could have been avoided with advanced planning.

The states believe that, through a comprehensive evaluation of water and sediment movement throughout the Upper Mississippi's watershed to the main stem, we can better predict future influences on the river and proactively manage the system to sustain the river's multiple uses. The states certainly appreciate Congress' recognition that a more systemic, comprehensive approach is needed for flood risk reduction on the Upper Mississippi by authorizing the Corps to complete a feasibility study in Section 4010 of the Senate WRDA 2016. However, the states strongly encourage modifying this section to instead authorize a watershed study that focuses on the movement of water and sediment in the Upper Mississippi. This would allow the study to create long-term strategies for enhancing both flood risk reduction and navigation channel maintenance management.

The states are also concerned that language in Section 4010 would allow the Secretary to justify projects based on "system-wide benefits." No definition of system-wide benefits is included in the bill text. However, the Senate's WRDA 2016 explanatory summary of Section 4010 indicates that the provision would change the cost-benefit requirements for levee projects identified as potential alternatives in the 2008 Upper Mississippi River System Comprehensive Study Report and allow them to be justified based on system-wide benefits. Our states would like members to understand that it was not only a failure to meet cost-benefit requirements that prevented implementation of the alternatives analyzed. Following the release of the report in 2008, discussion among basin partners regarding the specific plans contained in the study became extremely contentious, particularly in Missouri and Illinois. There was certainly no consensus among regional partners regarding implementation of specific projects or plans. A truly comprehensive watershed study, as recommended by our states, would facilitate the engagement of the diverse set of Upper Mississippi stakeholders who must be included in order to achieve consensus on particular projects or approaches to improve flood control and risk management.

***Integrating More Natural, Nature-Based Solutions*** – The Upper Mississippi states strongly support Congress' vision that natural and nature-based solutions to water resource challenges can be cost-effective and actually enhance the longevity of project benefits. Through the Corps' Upper Mississippi River Restoration program, we have found that recreating natural features such as islands and deep water habitat to work with the ecosystem's natural processes and functions are far more resilient to external pressures, are often times less costly to construct, require less maintenance, and improve larger-scale ecological services such as drinking water quality. Unfortunately, Section 4017 of the Senate WRDA measure applies only to coastal resilience projects. The states encourage the consideration of more natural and nature-based solutions in the Upper Mississippi as well as aquatic ecosystems throughout the country. Therefore, the states strongly support Section 181 of the House WRDA measure, which directs the Corps to consider natural and nature-based features in flood risk reduction, coastal resilience, and ecosystem restoration projects.

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Thank you for your consideration of the Upper Mississippi states' shared perspectives on this critical legislation. We appreciate the efforts of Congress in undertaking a comprehensive water resources act that will allow the nation to better address its critical water-related infrastructure needs. Congressional action on this bill signifies that members believe the nation's water resources are important and in need of investment. However, the ultimate success of any water resources bill will depend on whether there is appropriate and timely funding appropriated to implement projects cost-effectively and efficiently.

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

Sincerely,

A handwritten signature in blue ink that reads "Robert D. Stout". The signature is written in a cursive style and is placed on a light-colored rectangular background.

Robert Stout  
Chair  
Upper Mississippi River Basin Association

cc: Upper Mississippi Delegation Members