

**Joint Meeting of the
Upper Mississippi River Basin Association
and the
Upper Mississippi River Restoration Program
Coordinating Committee**

**August 9, 2016
12:30 — 2:00 p.m.**

**Agenda
with Background and
Supporting Materials**

**Joint Meeting of the
Upper Mississippi River Basin Association
and the
Upper Mississippi River Restoration Program Coordinating Committee
August 9, 2016**

AGENDA

9:30 – 11:30 a.m. UMRBA Quarterly Meeting [See separate packet]

2:30 – 5:00 p.m. UMRR Coordinating Committee Quarterly Meeting [See separate packet]

| Time | Attachment | Topic | Presenter |
|------------|------------|---|--|
| 12:30 p.m. | | Welcome and Introductions | <i>Robert Stout, MO DNR and Don Balch, USACE</i> |
| 12:35 | A1-8 | Strategic Vision and Plan for UMRR <ul style="list-style-type: none">▪ FY 2015-2025 UMRR Strategic Plan▪ Preparing for Selection of the Next Generation of Habitat Projects▪ Observations of Ecological Health▪ Measuring Ecosystem Resilience▪ Challenges with Increasing Competition for Federal Funding▪ Key Messages and Recommendations in 2016 Report to Congress | <i>Marv Hubbell, USACE</i> <i>Jeff Houser, USGS</i> <i>Marv Hubbell, USACE</i> |
| 1:30 | B1-10 | USACE Project Partnership Agreement (PPA) Provisions <ul style="list-style-type: none">▪ Corps' Interpretation of Indemnification and OMRR&R Provisions | <i>Don Balch, USACE</i> |
| 2:00 p.m. | | Adjourn (Joint UMRBA – UMRR Coordinating Committee) | |

ATTACHMENT A

Excerpt from the 2015-2025 UMRR Stratgic Plan

(A-1 to A-8)

VISION

A HEALTHIER AND MORE RESILIENT UPPER MISSISSIPPI RIVER ECOSYSTEM
THAT SUSTAINS THE RIVER'S MULTIPLE USES

MISSION

TO WORK WITHIN A PARTNERSHIP AMONG FEDERAL AND STATE AGENCIES
AND OTHER ORGANIZATIONS; TO CONSTRUCT HIGH-PERFORMING HABITAT
RESTORATION, REHABILITATION, AND ENHANCEMENT PROJECTS; TO PRODUCE
STATE-OF-THE-ART KNOWLEDGE THROUGH MONITORING, RESEARCH, AND
ASSESSMENT; TO ENGAGE OTHER ORGANIZATIONS TO ACCOMPLISH THE
UPPER MISSISSIPPI RIVER RESTORATION PROGRAM'S VISION

GOALS

1. Enhance habitat for restoring and maintaining a healthier and more resilient Upper Mississippi River ecosystem
2. Advance knowledge for restoring and maintaining a healthier and more resilient Upper Mississippi River ecosystem
3. Engage and collaborate with other organizations and individuals to help accomplish the Upper Mississippi River Restoration vision
4. Utilize a strong, integrated partnership to accomplish the Upper Mississippi River Restoration vision

ASSUMPTIONS

Assumptions that provide an underlying foundation for this Strategic Plan's goals and objectives:

1. Conditions in the Upper Mississippi River result from a combination of tributary inputs from the watershed, natural and man-made structures within the river corridor, and management of river flow. Human actions over time, within the river and its watershed, have produced stresses to the river's condition and degraded its ecological health.
2. Existing stresses (e.g., point and nonpoint source pollution, navigation, flood control structures, invasive species) are likely to remain, and new stressors are likely to emerge. Thus the river will continue to degrade without continued management and rehabilitation designed to minimize the effects of stresses. Managing stresses that originate within the watershed will require coordination with other relevant agencies, programs, and land managers to address these challenges at their sources.
3. The man-made infrastructure within the river corridor that supports navigation and other human uses will remain in place for the foreseeable future, but modifications to structures or operations may occur.
4. Upper Mississippi River Restoration's datasets (and other information) will be used to evaluate progress in advancing ecosystem and management objectives, identify future restoration needs, and determine if the Upper Mississippi River is recovered to a quality sufficient to support a healthy and resilient river ecosystem.

GUIDING PRINCIPLES

Core principles to guide implementation of this Strategic Plan:

1. Deliver innovative, high quality projects, products, and services that create value to the Upper Mississippi River Restoration program partners and serve as a knowledge base for the Upper Mississippi River and other river systems nationally and internationally.
2. Promote focused research and analyses of monitoring data to predict how management actions will affect river structure and function and use habitat projects to help evaluate those predictions and improve management capabilities.
3. Make decisions using the best available science, data, and other information that will benefit current and future generations of humans and biota.
4. Routinely disseminate information about program activities and outcomes to program partners and other organizations and individuals to promote transparency and knowledge sharing.
5. Apply the principles of adaptive management to continually learn and improve as a program and in implementing restoration and science techniques.
6. Maintain and support the effective interagency and interdisciplinary partnership through communication and collaboration of the Upper Mississippi River Restoration Coordinating Committee, Analysis Team, and habitat project planning and sequencing teams to ensure high quality program delivery.
7. Serve as a dedicated partner to other agencies and programs in the integrated, multi-purpose management of the Upper Mississippi River and its watershed.

DEFINING SUCCESS

Criteria for evaluating success in achieving this Strategic Plan are as follows:

1. Restoration projects that enhance the health and resilience of the Upper Mississippi River and demonstrate progress in achieving this Strategic Plan's goals and objectives.
2. A highly integrated program in which research and monitoring informs restoration and management efforts and in which restoration efforts are readily available for scientific use.
3. The ability to detect and communicate the status and trends of the Upper Mississippi River as related to indicators of ecosystem health and resilience as well as management objectives.
4. A highly engaged regional partnership that is supportive of the program and its outputs.
5. The Upper Mississippi River Restoration is recognized as a premier program in large river restoration and science and is a source of guidance for similar programs nationally and internationally.



GOAL 1

ENHANCE HABITAT FOR RESTORING AND MAINTAINING A HEALTHIER AND MORE RESILIENT UPPER MISSISSIPPI RIVER ECOSYSTEM

The Upper Mississippi River Restoration (UMRR) uniquely and effectively combines ecosystem restoration with scientific monitoring and research to restore and maintain a healthier and more resilient Upper Mississippi River ecosystem. Integrating a broad range of restoration techniques, including approaches that strive to use or mimic the river's natural processes (e.g., flow regime, sedimentation, successional stages), UMRR habitat projects enhance critical fish and wildlife habitat, restore the river's floodplain structure and function, and counteract the negative effects of human activity throughout the Upper Mississippi River basin. Individually and cumulatively, these projects improve the river's ability to support multiple human and biota uses, including recreation, water supply, and commercial navigation. The process of identifying and sequencing habitat projects is an interagency and public endeavor. The projects are then jointly planned by interdisciplinary teams of partner agencies/organizations, with input from the interested public. The best available science and decision support tools are used throughout project formulation and evaluation to optimize investment and most effectively and efficiently advance UMRR's vision. UMRR continually improves its restoration techniques through adaptive management to enhance restoration effectiveness and efficiency, learning from its long term systemic monitoring, project-specific monitoring, and focused research. Recognizing that the Upper Mississippi River ecosystem is affected in many ways by human activity within the river and its watershed, UMRR engages directly and indirectly with other organizations and individuals whose actions and decisions create synergies and leverage capabilities in advancing UMRR's vision.

| | |
|----------------------|--|
| Objective 1.1 | Address key ecological needs at various spatial scales through habitat projects that reflect best available knowledge and advance UMRR's vision |
| Strategy 1 | Identify and select habitat projects that will most effectively and efficiently advance UMRR's vision, utilizing an interagency, science-driven, systemic planning approach |
| Strategy 2 | Plan, design, and construct habitat projects to best, and most efficiently, address their defined objectives and advance the UMRR's vision, using structural and non-structural measures and considering ecological benefits at various spatial scales |
| Strategy 3 | Perform operation and maintenance on UMRR's habitat projects to ensure key features are working properly and effectively advancing the projects' goals and UMRR's vision |
| Objective 1.2 | Apply adaptive management principles to address risk and uncertainty and continually enhance restoration and knowledge of the Upper Mississippi River ecosystem |
| Strategy 1 | Refine and implement a framework to operationalize UMRR's adaptive management efforts, including when and how to apply certain adaptive management techniques and documenting, communicating, and integrating the results and conclusions |
| Strategy 2 | Apply monitoring and adaptive management principles to set learning objectives (for select projects), adjust project designs based on ecological models, evaluate the ecological responses to project features, modify constructed project features if not performing as intended or to enhance effectiveness, assess operation and maintenance activities, and enhance future restoration efforts |
| Strategy 3 | Employ deliberate and explicit adaptive management analyses (hypothesis testing) using selected habitat projects to explore priority science questions or learning objectives and evaluate the effects of UMRR's restoration efforts on the Upper Mississippi River ecosystem's health and resilience |

Strategy 4 Communicate and integrate learned information into future restoration alternatives and scientific investigations to guide and optimize UMRP's investment in enhancing restoration and knowledge of the Upper Mississippi River ecosystem



GOAL 2

ADVANCE KNOWLEDGE FOR RESTORING AND MAINTAINING A HEALTHIER AND MORE RESILIENT UPPER MISSISSIPPI RIVER ECOSYSTEM

The Upper Mississippi River Restoration (UMRR) effectively and comprehensively integrates long term monitoring, research, modeling, and data management to provide critical knowledge about the Upper Mississippi River's ecosystem health and resilience, providing a solid foundation upon which to base management actions and policy. With long term data collected over more than 25 years, the UMRR's database is one of the most extensive and comprehensive on any large river system in the world. UMRR's scientific expertise, breadth of information, monitoring protocols, modeling capabilities, and data management and dissemination infrastructure create extensive possibilities to learn about the river's natural functions and processes, human influences, and opportunities to best address critical restoration needs. USACE operates this substantial undertaking in true partnership fashion, with USGS providing scientific leadership and conducting research and analysis and the five partner states operating the six long term resource monitoring field stations and contributing in many ways to UMRR's scientific design and execution. The knowledge derived from UMRR is used extensively by resource managers, planners, administrators, scientists, academics, legislators, and the general public within the Upper Mississippi River region. UMRR also often exchanges knowledge with, and serves as a model for, other large river programs nationally and internationally, and at the same time, obtains valuable information and insights to even further enhance knowledge of the Upper Mississippi River ecosystem.

- | | |
|--------------------------|--|
| Objective 2.1 | Assess, and detect changes in, the fundamental health and resilience of the Upper Mississippi River ecosystem by continuing to monitor and evaluate its key ecological components of aquatic vegetation, bathymetry, fish, land use/land cover, and water quality |
| Strategy 1 | Evaluate the Upper Mississippi River's ecological status and trends through comprehensive, integrated analyses of key ecological indicators using UMRR's long term data |
| Strategy 2 | Conduct scientific analysis, research, and modeling using UMRR's long term data, and any necessary supplemental data, to gain knowledge about the Upper Mississippi River ecosystem status and trends and process, function, structure, and composition |
| Strategy 3 | Continue to improve the effectiveness of long term data collection, analysis, storage, and dissemination to maintain the data's integrity, long-term consistency, relevance, and usability ⁵ |
| Strategy 4 | Evaluate additional ecological components as priorities and resources allow to gain an even broader understanding of the Upper Mississippi River ecosystem and expand possibilities for important scientific analyses |
| Objective 2.2 | Provide critical insights and understanding regarding a range of key ecological questions through a combination of monitoring, additional research, and modeling in order to inform and improve management and restoration of the Upper Mississippi River ecosystem |
| Strategy 1 | Conduct focused research and analyses to gain critical, management-relevant information about the Upper Mississippi River ecosystem's process, function, structure, and composition as well as the dynamics and interactions among system components |

⁵ More information on the long term resource monitoring sampling effort and statistics can be found at <http://www.umesc.usgs.gov/ltrmp.html>.

- Strategy 2 Conduct research projects that improve our understanding of critical ecological conditions and processes by examining the effects of select habitat restoration projects on those conditions and processes
- Strategy 3 Utilize other information, as needed, to augment UMRR's long term data sets for comprehensive analyses of the river's health and resilience
- Strategy 4 Develop and improve ecological models and other decision support tools to enhance science capabilities and understandings, and improve understanding of the potential effects of future management actions
- Strategy 5 Effectively communicate to habitat project planners and managers regarding how research findings may be applied to habitat projects



GOAL 3

ENGAGE AND COLLABORATE WITH OTHER ORGANIZATIONS AND INDIVIDUALS TO HELP ACCOMPLISH THE UPPER MISSISSIPPI RIVER RESTORATION VISION

The Upper Mississippi River is a large, complex, and dynamic ecosystem that is heavily influenced by human activity throughout its watershed. While UMRR makes significant contributions to enhancing the river ecosystem's health and resiliency, it cannot and should not attempt to meet all management needs for improving river's health. No one agency or program can solely manage this multi-use ecosystem. Rather, successful management of the UMR requires thoughtful and meaningful coordination among numerous agencies, organizations, and individuals with varying mandates and missions. This includes state and federal agencies with responsibilities related to natural resources, water quality, agriculture, transportation, and recreation; non-governmental organizations; industry representatives; academics; and the public. UMRR can aid other programs and projects that have influence on the Upper Mississippi River's condition. For example, UMRR's various datasets are readily available for broad use by Clean Water Act programs and other river managers and researchers. It will be increasingly important for UMRR to work within a watershed context and create synergies with programs and projects that will affect the Upper Mississippi River's health and resilience. In addition, interactions with other organizations and individuals that manage and conduct research nationally and internationally offer UMRR cost efficiencies and insights not otherwise available.

| | |
|----------------------|---|
| Objective 3.1 | Work with key organizations and individuals in the Upper Mississippi River watershed |
| Strategy 1 | Ensure rich collaboration with key organizations and individuals in the Upper Mississippi River watershed in advancing complementary visions, missions, and goals |
| Strategy 2 | With key watershed programs and projects, jointly develop and communicate common messages about the restoration and knowledge needs of the Upper Mississippi River |
| Strategy 3 | Seek knowledge from other organizations and individuals for the purposes of being aware of activities that may influence UMRR's work and enhancing programmatic efforts |
| Strategy 4 | Directly engage relevant organizations or individuals in implementing UMRR's efforts, as appropriate |
| Objective 3.2 | Provide information to organizations and individuals whose actions and decisions affect the Upper Mississippi River ecosystem |
| Strategy 1 | Enhance the delivery and utility of UMRR's knowledge in order to increase understanding of the Upper Mississippi River's ecosystem drivers and means to achieve the UMRR vision |
| Strategy 2 | Provide decision makers with timely, relevant, understandable, and usable knowledge about the needs and tools available to advance the UMRR's vision |
| Objective 3.3 | Exchange knowledge with other organizations and individuals nationally and internationally |
| Strategy 1 | Serve as a resource for similar programs nationally and internationally |
| Strategy 2 | Seek knowledge from other organizations and individuals nationally and internationally to enhance UMRR's efforts in advancing its vision |

GOAL 4

UTILIZE A STRONG, INTEGRATED PARTNERSHIP TO ACCOMPLISH THE UPPER MISSISSIPPI RIVER RESTORATION VISION

As the federal agency authorized to implement Upper Mississippi River Restoration (UMRR), USACE is accountable for program management and execution. As a result, UMRR has been shaped in many ways by USACE policies and procedures. Yet, UMRR is truly a partnership program. UMRR's authorization directs USACE to implement the program in consultation with the Department of Interior and the five basin states. For the specific purposes of providing interagency coordination, the UMRR Coordinating Committee was established to serve as the program's primary consultative body to discuss and seek consensus on UMRR budgetary and policy issues. In addition, the Analysis Team provides scientific and technical advice and recommendations on Goal 2-related activities, including work priorities and research activities. The planning and sequencing of habitat projects is guided by interagency teams in USACE's three regional Districts (St. Paul, Rock Island, and St. Louis). Partners commit substantial resources to participate in these coordinating groups. This thoughtful and meaningful collaboration has been vital to UMRR's success and now serves as a model for other ecosystem programs regionally, nationally, and internationally.

Objective 4.1 Promote a common vision and sense of purpose, transparency, and accountability among UMRR partners

- Strategy 1 Partners carry a strong, unified message regarding UMRR's value, accomplishments, and importance to the region and nation
- Strategy 2 Partners work in collaboration to enhance restoration and knowledge of the Upper Mississippi River to advance UMRR's vision
- Strategy 3 Continually learn and improve as a program and in implementing restoration and science techniques
- Strategy 4 Improve transparency and accountability within the partnership regarding program priorities and budgets
- Strategy 5 Organize and maintain institutional knowledge of UMRR's policy and programmatic efforts

Objective 4.2 Implement the UMRR as outlined in the program's adopted Joint Charter for the UMRR Coordinating Committee, Analysis Team, and Habitat Planning and Sequencing Framework Teams, as well as the FY 2015-2025 UMRR Strategic Plan

- Strategy 1 Partner agencies implement program activities in accordance to the adopted Joint Charter
- Strategy 2 Partner agencies collaboratively develop and implement the strategic plan



ATTACHMENT B

USACE Project Partnership Agreements

- **UMRBA Correspondence**
 - **UMRBA letter to the House T&I Committee and Senate EPW Committee requesting PPA challenges be resolved in WRDA 2016 (2/3/2016) (B-1 to B-2)**
 - **UMRBA letter to USACE Headquarters re action needed to resolve PPA issues (5/11/2016) (B-3)**
 - **USACE Headquarters response to UMRBA's letter re PPA statutory requirements requiring Congressional action to resolve (6/30/2016) (B-4 to B-5)**
- **2016 WRDA Provisions**
 - **PPA-related provision included in the House T&I Committee's 2016 WRDA measure (Sec. 115) (B-6 to B-8)**
 - **PPA-related provisions included in the Senate EPW Committee's 2016 WRDA measure (Sec. 1015, 1016) (B-9 to B-10)**



Upper Mississippi River Basin Association

ILLINOIS, IOWA, MINNESOTA, MISSOURI, WISCONSIN

February 3, 2016

The Honorable James M. Inhofe
The Honorable Barbara Boxer
U.S. Senate
Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

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

Dear Senator Inhofe, Representative Shuster, Senator Boxer, and Representative DeFazio:

We are very pleased to understand that you are beginning to formulate the 2016 Water Resources Development Act (WRDA). This legislation offers an important opportunity to address challenges in implementing U.S. Army Corps of Engineers' (Corps) water resource projects that require Congressional action to resolve.

In recent years, the Corps has redefined its non-federal project partnership cost share agreements (PPAs) and created two major challenges for non-federal cost share sponsors to execute the agreements. First, the Corps has taken a more restrictive approach on the indemnification provisions in the agreements that is inconsistent with states' constitution and statute and nonprofit organizations' policies. Second, the Corps now legally binds non-federal sponsors to undefined and unbounded operations and maintenance obligations on ecosystem restoration projects. On behalf of the five Upper Mississippi River basin states, I am writing to express the states' mutual concerns regarding their ability to execute agreements on the Corps' ecosystem restoration projects. Our states are eager to work with Congress and the Administration to resolve these challenges in the 2016 WRDA. Challenges related to PPAs not only affect the states, but local governments and nonprofit organizations as well. This is a national issue affecting cost-share projects throughout the country.

The Upper Mississippi River basin states have explored challenges regarding PPA execution in the context of the Corps' Upper Mississippi River Restoration (UMRR) program, with Corps Division and District leadership and candidate nonprofit partners, namely The Nature Conservancy and Audubon. We found that the problematic PPA provisions present pressing implications for constructing important fish and wildlife habitat projects in areas of critical restoration need, preventing the program from advancing its ecological goals for the river. We suggest that members' consider addressing these PPA provisions in the 2016 WRDA by modifying these requirements as they relate to ecosystem restoration projects. Ecosystem restoration projects involve a broad public benefit, are relatively inexpensive to construct compared to other Corps missions, and do not pose a significant threat to life or property.

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St. Paul, Minnesota 55102
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The Upper Mississippi River basin states and candidate nonprofit cost share sponsors suggest the following modifications to the current PPA model in order to allow them to cost share on UMRR habitat projects:

1. Modify the hold and save clause to a more equitable, shared approach to liability that does not extend beyond the liabilities that already exist under applicable constitutions and laws.
2. Include language providing that unanticipated costs for project construction are subject to a) the state's future appropriations for the project or b) the nonprofit's availability of funds for the project. In addition, construct projects in phases when appropriate to limit cost overruns.
3. Provide greater specificity regarding OMRR&R costs and requirements in the PPAs, rather than providing those requirements post-construction. PPA provisions related to OMRR&R should include:
 - a. A defined end-term that is based on the expected useful life of the project's construction features.
 - b. Language providing that unanticipated costs are subject to i) the state's future appropriations for the project or ii) the nonprofit's availability of funds for the project.
 - c. Adaptive management provisions to address risk and uncertainty regarding project outcomes and the need and ability to perform OMRR&R obligations depending on whether the project features perform as intended.

We were hopeful that Section 1013 of the 2014 Water Resources and Reform Development Act (WRRDA), requiring the National Academy of Public Administration to evaluate the PPAs, would result in the needed language modifications. However, there has been no progress to this effect and therefore we are respectfully suggesting that these solutions be included in the 2016 WRDA.

As Congress and the federal government continue to prioritize non-federal cost shared projects, we believe that these challenges to PPA execution must be resolved in order for existing and newly authorized projects to be successfully and efficiently implemented. Thank you for your consideration of the Upper Mississippi River basin states' shared perspectives on this critical legislation. We appreciate Congress' substantial efforts in enacting a 2016 water resources act that will allow the nation to better address its critical water-related management needs.

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

Sincerely,



Dru Buntin
Executive Director
Upper Mississippi River Basin Association

cc: Staff of Senate Committee on Environment and Public Works
Staff of House Transportation and Infrastructure Committee
Staff of House Subcommittee on Water Resources and Environment



Upper
Mississippi River
Basin Association

ILLINOIS, IOWA, MINNESOTA, MISSOURI, WISCONSIN

May 11, 2016

Mr. Steven Stockton
U.S. Army Corps of Engineers, Headquarters
Director of Civil Works
441 G. Street NW
Washington, D.C. 20314-1000

Dear Mr. Stockton:

We have been in continued discussions with multiple Districts and members of your staff regarding the challenges to non-federal sponsors in signing project partnership agreements (PPAs) with the Corps - namely complete indemnification, OMRR&R in perpetuity, and crediting nonprofit organizations for the value of donated goods. From that conversation, we understand that Corps attorneys have concluded that Congressional action is required to resolve these issues. We are hopeful that Congress' effort to advance a water resources development act this year will provide an opportunity for appropriate legislative action.

UMRBA has been working with the Nature Conservancy (TNC), Audubon, and members on the House Transportation and Infrastructure Committee as well as Upper Mississippi delegates of the House and Senate to include provisions that aim to address challenges with the current PPA template. Congress expressed in the *2014 Water Resources Reform and Development Act* its desire to have the Corps resolve the issues working through the National Academy of Public Administration's evaluation and recommendations for improving the cost-share agreements. However, given that the effort has not advanced, Congressional members have expressed to us their desire to have a statement from the Corps explaining what Congressional action is required.

We recognize that resolving this issue is important to the Corps for the purposes of efficiently advancing water resource projects authorized by Congress. Therefore, we would greatly appreciate your assistance in securing a statement from the Corps explaining why Congressional action is needed to 1) employ a shared approach to liability on state-sponsored projects, 2) create an appropriate limit to non-federal sponsors' OMRR&R obligations on ecosystem restoration projects, and 3) account for the value of donated goods that are specifically provided for the project by the non-federal sponsor.

Please feel free to call us to discuss further. We certainly appreciate our collaborative relationship and we look forward to continuing to work together to our address shared priorities.

Sincerely,

Dru Buntin
UMRBA, Executive Director

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DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, DC 20314-1000

JUN 30 2016

Mr. Dru Buntin
Upper Mississippi River Basin Association, Executive Director
415 Hamm Building
408 St. Peter Street
St. Paul, Minnesota 55102

Dear Mr. Buntin:

Thank you for your letter dated May 11, 2016, and your longstanding leadership involving a broad range of U.S. Army Corps of Engineers programs impacting the Upper Mississippi River. I am responding to your letter requesting information regarding statutory provisions that require the non-federal sponsor to be responsible for operation, maintenance, repair, rehabilitation, and replacement (OMRR&R) of a project, that require indemnification, and that determine crediting for in-kind contributions.

The statutory requirements regarding indemnification and responsibility for OMRR&R reflect Congress' longstanding division of responsibilities for implementation of water resources development projects, and help to ensure that the significant federal investment required for the construction of such projects is sustained. These requirements were reaffirmed in the Water Resources Development Act of 1986 (WRDA 86).

Section 103(j)(1) of WRDA 86 requires that prior to initiation of a water resources development project, a non-federal sponsor must enter into a binding agreement to pay 100 percent of the OMRR&R costs of a project, other than a navigation project. The law does not place a time limit on this requirement for OMRR&R, which applies to ecosystem restoration projects as well as to flood risk management and other water resources development projects. In developing the operation and maintenance manual for individual projects, the Corps can recognize that the requirements of OMRR&R for a project may change over time.

In addition, Section 103(j)(1) and Section 101(j) of WRDA 86 require that in this binding agreement, the non-federal sponsor must agree to hold and save the United States free from damages due to the construction or operation and maintenance of the project, except for damages due to the fault or negligence of the United States or its contractors. Please note the exception to indemnification for damages due to the fault or negligence of the United States or its contractors.

Finally, Section 2003 of WRDA 2007 amended Section 221 of the Flood Control Act of 1970 to authorize credit for in-kind contributions. This law provides that credit afforded for in-kind contributions is limited to "the actual and reasonable costs of the materials, services, or other things provided by the non-federal interest." Where materials, services, or other things are donated by a third party, the non-federal sponsor incurs no cost and thus is not eligible for credit under Section 221. It should be noted that Section 203 of WRDA 1992 does allow for parties other than the non-federal sponsor to contribute cash, funds, materials, and services toward implementation of an ecosystem restoration project. Such donations would reduce the total project cost of a project, thereby benefitting both the Federal Government and the non-federal sponsor with a lower project cost and lower cost share amounts.

These statutory requirements are reflected in the Project Partnership Agreements, the binding agreements required prior to initiation of water resources development projects. Changes to these requirements would require legislative action, as they are statutory. Given the longstanding nature of the requirements and the important interests they serve, the Corps would want to engage in detailed discussions with your staff to find the best way to address your concerns without negatively impacting the Civil Works program.

Thank you for your interest in the Corps Civil Works program. If you have additional questions or concerns, please contact me or your staff may contact Mr. Joseph Redican, Deputy Chief, Mississippi Valley Division Integration Team, at (202) 761-4523.

A handwritten signature in black ink, appearing to read 'S. L. Stockton', written in a cursive style.

STEVEN L. STOCKTON, P.E.
Director of Civil Works

1 (6) supersedes or modifies any amendment to
 2 an existing multistate water control plan, including
 3 those water control plans along the Missouri River
 4 and those water control plans in the Apalachicola-
 5 Chattahoochee-Flint and Alabama-Coosa-Tallapoosa
 6 basins;

7 (7) affects any water right in existence on the
 8 date of enactment of this Act; or

9 (8) preempts or affects any State water law or
 10 interstate compact governing water.

11 **SEC. 113. INTERSTATE COMPACTS.**

12 Section 301 of the Water Supply Act of 1958 (43
 13 U.S.C. 390b) is amended by striking subsection (f).

14 **SEC. 114. NONSTRUCTURAL ALTERNATIVES.**

15 Section 5(a)(1) of the Act of August 18, 1941 (55
 16 Stat. 650, chapter 377; 33 U.S.C. 701n(a)(1)), is amend-
 17 ed by striking “if requested” each place that it appears
 18 and inserting “after consultation with the non-Federal
 19 sponsor and if requested and agreed to”.

20 **SEC. 115. OPERATION AND MAINTENANCE OF ENVIRON-
 21 MENTAL PROTECTION AND RESTORATION
 22 AND AQUATIC ECOSYSTEM RESTORATION
 23 PROJECTS.**

24 (a) NON-FEDERAL OBLIGATIONS.—Notwithstanding
 25 section 103(j) of the Water Resources Development Act

1 of 1986 (33 U.S.C. 2213(j)), a non-Federal interest is re-
2 leased from any obligation to operate and maintain the
3 nonstructural and nonmechanical components of a water
4 resources development project carried out for the purposes
5 of environmental protection and restoration or aquatic
6 ecosystem restoration, including a project carried out
7 under section 206 of the Water Resources Development
8 Act of 1996 (33 U.S.C. 2330) or section 1135 of the
9 Water Resources Development Act of 1986 (33 U.S.C.
10 2309a), if the Secretary determines that—

11 (1) the 50-year period that began on the date
12 on which project construction was completed has
13 concluded; or

14 (2) the criteria identified in the guidance issued
15 under subsection (c) have been met with respect to
16 the project.

17 (b) FEDERAL OBLIGATIONS.—The Secretary is not
18 responsible for the operation or maintenance of any
19 project with respect to which a non-Federal interest is re-
20 leased from obligations under subsection (a).

21 (c) GUIDANCE.—In consultation with non-Federal in-
22 terests, and not later than 1 year after the date of enact-
23 ment of this Act, the Secretary shall issue guidance that
24 identifies criteria for determining, using the best available
25 science, when the purpose of a project for environmental

1 protection and restoration or aquatic ecosystem restora-
 2 tion has been achieved, including criteria for determining
 3 when a project has resulted in the return of the project
 4 location to a condition where natural hydrologic and eco-
 5 logical functions are the predominant factors in the condi-
 6 tion, functionality, and durability of the location.

7 **SEC. 116. ESTUARY RESTORATION.**

8 (a) PARTICIPATION OF NON-FEDERAL INTERESTS.—
 9 Section 104(f) of the Estuary Restoration Act of 2000 (33
 10 U.S.C. 2903(f)) is amended by adding at the end the fol-
 11 lowing:

12 “(3) PROJECT AGREEMENTS.—For a project
 13 carried out under this title, the requirements of sec-
 14 tion 103(j)(1) of the Water Resources Development
 15 Act of 1986 (33 U.S.C. 2213(j)(1)) may be fulfilled
 16 by a nongovernmental organization serving as the
 17 non-Federal interest for the project pursuant to
 18 paragraph (2).”.

19 (b) EXTENSION.—Section 109(a) of the Estuary Res-
 20 toration Act of 2000 (33 U.S.C. 2908(a)) is amended by
 21 striking “2012” each place it appears and inserting
 22 “2021”.

1 (2) carry out such construction and infrastruc-
 2 ture improvements as are required to support the
 3 headquarters and related installations and facilities
 4 of the Buffalo District of the Army Corps of Engi-
 5 neers, including any necessary demolition or renova-
 6 tion of the existing infrastructure.

7 (b) REQUIREMENT.—In carrying out subsection (a),
 8 the Secretary shall ensure that the revolving fund estab-
 9 lished by section 101 of the Civil Functions Appropria-
 10 tions Act, 1954 (33 U.S.C. 576) is appropriately reim-
 11 bursed from funds appropriated for programs that receive
 12 a benefit under this section.

13 **SEC. 1015. COMPLETION OF ECOSYSTEM RESTORATION**
 14 **PROJECTS.**

15 Section 2039 of the Water Resources Development
 16 Act of 2007 (33 U.S.C. 2330a) is amended by adding at
 17 the end the following:

18 “(d) INCLUSIONS.—A monitoring plan under sub-
 19 section (b) shall include a description of—

20 “(1) the types and number of restoration activi-
 21 ties to be conducted;

22 “(2) the physical action to be undertaken to
 23 achieve the restoration objectives of the project;

24 “(3) the functions and values that will result
 25 from the restoration plan; and

1 “(4) a contingency plan for taking corrective
2 actions in cases in which monitoring demonstrates
3 that restoration measures are not achieving ecologi-
4 cal success in accordance with criteria described in
5 the monitoring plan.

6 “(e) CONCLUSION OF OPERATION AND MAINTENANCE
7 RESPONSIBILITY.—The responsibility of the non-
8 Federal sponsor for operation, maintenance, repair, re-
9 placement, and rehabilitation of the ecosystem restoration
10 project shall cease 10 years after the date on which the
11 Secretary makes a determination of success under sub-
12 section (b)(2).”.

13 **SEC. 1016. CREDIT FOR DONATED GOODS.**

14 Section 221(a)(4)(D)(iv) of the Flood Control Act of
15 1970 (42 U.S.C. 1962d–5b(a)(4)(D)(iv)) is amended—

16 (1) by inserting “regardless of the cost incurred
17 by the non-Federal interest,” before “shall not”; and

18 (2) by striking “costs” and inserting “value”.

19 **SEC. 1017. STRUCTURAL HEALTH MONITORING.**

20 (a) IN GENERAL.—The Secretary shall design and
21 develop a structural health monitoring program to assess
22 and improve the condition of infrastructure constructed
23 and maintained by the Corps of Engineers, including de-
24 sign and development of systems and frameworks for—

25 (1) response to flood and earthquake events;