

Waterways

July 2014



A publication of the Upper Mississippi Waterway Association

PO Box 7006

St., Paul, MN 55107

e-mail: umwa@umwa.net

<http://www.umwa.net>

Inside this issue:

House Okays Water Bill,
Senate Look Unlikely 1

Exec Dir's Column 2

Other items of interest 3

House Okays Water Bill, Senate Look Unlikely

As many Association members have been pointing out, WRRDA passage was important, but the heavy lifting begins with project funding. And they're not alone in their concern.

Gary Neimeyer, past president of the National Corn Growers Association told [AgWeb](#) recently that, "We've been down this road many times before... I think we have the political understanding of the importance of this. We as people who are utilizing the system need to get out and make sure that our congressmen and our senators know exactly how important it is."

Funding challenging

Just how difficult funding can be was demonstrated last week when the House passed HR4923 by a 253 to 170 vote with 9 members not voting. [The Energy and Water Development and Related Agencies Appro-](#)

[riations Act, 2015](#), is a spending bill which includes \$5.5 billion for the Civil Works Program of the Army Corps of Engineers. That's \$25 million more than 2014

take up the bill which means that both houses will need to pass a continuing resolution before October 1, or risk another partial or complete government shutdown.

Meanwhile, efforts continue to let lawmakers and others know how important the country's aging waterway infrastructure is to the economy and the future. Last week in Washington, [Lt. Gen. Thomas P. Bostick](#), commanding general of the Corps talked to a Civil Works



Above: Dewatering the old Mississippi system locks graphically shows their age.

and includes \$1.1 billion from the Harbor Maintenance Trust Fund.

Another important provision of the bill is a prohibition of any changes to federal jurisdiction over "navigable waters" under the Clean Water Act.

That's the good news. The bad news is that the U.S. Senate is unlikely to

Infrastructure roundtable conference and talked about infrastructure challenges and solutions.

US in 14th place

He says the U.S. is 14th in infrastructure as measured by the Global Competitiveness Report (2012-13) from the World Economic Forum.

"Our infrastructure is slipping," Bostick says. "The

(Continued on page 4)

From the Executive Director...

DNR Rulemaking: Four Decades in the Making

Genesis of Minnesota Critical Areas

Forty-one years ago, Minnesota passed the Critical Areas Act of 1973 to preserve and protect the State's unique natural, recreational, transportation and cultural features along a 72-mile corridor between Dayton in the north and just beyond Hastings in the south; the designation was made permanent in 1979. Less than a decade later, the Mississippi National River and Recreation Area (MNRRA), which shared the same boundary as the earlier established 72-mile strip, was established by Congress as a unit of the National Park Service. In 1991, the Minnesota legislature designated the MNRRA corridor as a state critical area.

It might seem odd that the State Legislature twice designated the identical 72-mile corridor as a 'critical area': originally in 1973 and again in 1991. But consider this: The first designation by the Legislature offered only limited State resources to the newly named critical area, whereas Minnesota's 1991 designation of MNRRA, now a unit of the National Park Service, as a state critical area brought Federal wherewithal to the table where previously only limited State resources were available. That was an excellent move by the State in that it focused Federal recognition and stature to a heretofore regional effort to protect what, in reality, is a nationally significant environmental and economic treasure.

Over the intervening years, responsibility shifted within the State from the EQB to the DNR, resulting in lapsed authority and bumpy ride involving nine administrations, six governors and three political parties.

Finally, in 2014 the legislature directed DNR to resume the rulemaking process with a \$100,000 appropriation from the Clean Water Legacy Fund and an order to file a report with the Legislature by January 15, 2014.

Local governments up to speed

Last fall, DNR met with more than a dozen Local Government Units (LGU) to

explain and answer questions about the draft rules; 14 cities filed comments including Minneapolis, St Paul, Anoka, Rosemount and others. That courtesy has not yet been extended to the business community, however.

A major concern is that LGUs will have an option of discontinuing administration of statewide shoreland management within the MRCCA. This was brought to light in a *StarTribune* article earlier this month explaining that the so-called 'flexibility provision' would allow cities to rewrite local zoning ordinances that don't fully comply with the rules in certain cases. "That's just not acceptable", said Friends of the Mississippi River, "Why have a rule that says you have to follow [the] rules unless you don't want to, then maybe we'll let you break them?"

Fortunately, the St. Paul Port Authority has been working to coordinate a meeting between the agency and businesses, tentatively set for July 21. In the meanwhile, we are left to speculate on the intent and meaning of the draft rules. Here are several potential conflicts:

Definition of terms

One conflict involves the similarity of language defining commercial use of the river; one rule uses the term "river-dependent commercial use" whereas another uses "surface water-oriented commercial use". The former is specifically listed in the proposed rules now being considered, while the latter is defined in a portion of State Administrative Rules that are subject to the above mentioned flexibility provision.

As written, the draft rule seems to correctly assign more legitimacy to river-dependent than to water-oriented commercial use. After all, river-dependent is a term given to certain industries who locate riverside, as direct access to water is an integral part of the normal conduct of business. Water-oriented industries, on the other hand, use the river as an amenity, not a necessity.

Protection of minimum standards

A second and allied conflict involves minimum standards for land development

"In the meanwhile, we are left to speculate on the intent and meaning of the draft rules..."

that would protect and preserve the Mississippi River as an essential element for, among other things, regional transportation. As this is one of the rules now being considered, it must be clarified that regional water transportation is an essential leg of the three-legged stool depicting the river as a multi-use resource for the benefit of environmental protection, commercial navigation and recreational use.

The issue of amenities came to light in staff comments filed by Minneapolis which states that the reason the city is where it is, is because the water flow and falls have driven industry, energy and commerce since Minneapolis was born and that the riverfront should continue to play that role.

It then defined its new commercial role as no longer industry and energy, but amenities that will be used to attract talent to the

newly envisioned 'world class riverfront'. In essence Minneapolis is calling for final rules to contain enough flexibility "to reflect and support local leadership in highly urbanized and developed areas."

Staff comments from St. Paul, on the other hand, offer a different view: It expresses the need to include additional language to reinforce the idea that MRCCA rules and standards are to manage the MRCCA as a multipurpose resource, consistent with its natural characteristics and its existing development.

To underscore this point, St. Paul challenges the proposed rules that state scenic views and vistas must be treated as primary conservation areas. It states that in the alternative "the most iconic and appreciated scenic views and vistas in the river corridor includes views of fully developed commer-

cial and industrial areas that exemplify the Mississippi as a working commercial and industrial river and transportation corridor . . ." and that . . . "This is something the draft rules seem to miss the mark on generally."

We hasten to point out that comments of Minneapolis and St. Paul are the unofficial remarks of staff and not a formal statement of city policy.

Takings

The third and final conflict we'll discuss is the potential of 'Takings'. As you know, taking of private property for public use without just compensation is a prohibition in the 5th Amendment of the Constitution, and seems to be an underlying issue in this Rule-making. Unfortunately, court rulings are clear that the taking prohibition is anything but black-or-white.

(Continued on page 4)

"St. Paul challenges the proposed rules that state scenic views and vistas must be treated as primary conservation areas..."

Other items of interest:

- Minnesota's Section of the American Society of Civil Engineers (ASCE) is marking its centennial with a [rededication of the Peavey-Haglin Experimental Concrete Grain Elevator](#) in St. Louis Park near Highways 7 and 100. The landmark silo was designated a civil engineering landmark in 1983.
- A new barge is demonstrating [the environmental and economic benefits of water transportation](#) along the Hudson River, running between upstate New York and the New Amsterdam Market in Manhattan. The vessel brings farm products from the country to urban customers and returns with products for upriver customers. The Ceres is a 39-foot vessel, powered primarily by sails, with a small engine for close maneuvering.
- County Commissioners in Michigan's Ottawa County have come out in support of [a plan to allow river barges on the Great Lakes](#). There's already an exemption on the western shore of Lake Michigan between Chicago and Milwaukee and supporters want a similar exemption along the eastern shore including the ports of Grand Haven and Holland, between Chicago's Calumet Harbor and Muskegon.

(Continued from page 1)

federal government can't do this on its own. At this financial pace, there's only so much that can be done.

Bostick says that in 1936, the annual civic works spending was about \$70 per person but in 2011, it was \$18 per person (and in 2011 dollars).

Underscoring the need for infrastructure renewal is a growing demand for American exports. [Feed-stuffs newsletter](#) says China is buying more U.S. soybeans and soybean meal because of increasing pork production in that country. South American transportation issues have pushed Chinese buyers toward U.S. markets and driven soybean stocks here to their lowest levels in 50 years.

(Continued from page 3)

Instead, they say, all cases depend upon the unique circumstances of each case and a body of law extending all the way to the U.S. Supreme Court.

The article in the *Star-Tribune* claims that the draft also allows the DNR to change boundaries of land-use districts created by the rules. This opens up a slippery-slope issue that could expose the river to development where it was never intended. In reverse, say others critical of the Rules, it could deny the development in areas where previously allowed.

In any event, the outcome of this Rulemaking is some months away and could very well depend upon the weight given to the flexi-

bility provisions and other issues under consideration.

We understand the DNR will accept comments on this working draft through August 15 before they are revised and proposed for formal rule adoption. UMWA is in the process of preparing comments.

More information is available on the DNR's project website:

www.dnr.state.mn.us/input/rules/mrcca/index.html.

**Upper Mississippi Waterway Assoc.
PO Box 7006
St. Paul, MN 55107**

Address label here