

INLAND WATERWAYS USERS BOARD 31st ANNUAL REPORT

**To The SECRETARY OF THE ARMY
And the UNITED STATES CONGRESS**

December 2018



Olmsted Locks and Dam, Ohio River

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Introduction and Background

The Inland Waterways Users Board (the “Board” or “Users Board”) is composed of 11 members who represent different geographical sections of the nation and different commodities such as farm products, coal, petroleum products, and petrochemicals. The Board traditionally meets three or four times each year to develop and make recommendations to the Secretary of the Army and the Congress regarding construction and major rehabilitation investments, and spending levels on the commercial navigation features of the inland waterways system.

In exercising its authorized mandate, the Board must carefully balance fuel tax revenues flowing into the Inland Waterways Trust Fund (IWTF) against the inland navigation project construction and major rehabilitation expenditures proposed and advocated by waterways users, exporters, the Administration, Congress, and others. Commercial users currently pay a 29-cent-per-gallon diesel fuel tax for contribution to the IWTF.

It should be noted that the commercial users are the only beneficiaries of the inland waterways system who pay a user fee/fuel tax. Those beneficiaries who receive flood control, water supply, recreational, and similar benefits do not pay a fuel tax or fee to contribute to the construction or maintenance of the system providing these benefits. The revenues deposited into the Inland Waterways Trust Fund pay up to 50 percent of new and replacement construction and major rehabilitation projects with the Federal government paying the remaining amount. Maintenance of the existing fuel-taxed waterways system is and has always been a 100 percent Federal responsibility.

The Board firmly believes that future balanced budgets and our nation’s future economic competitiveness will be built upon solid national infrastructure, of which the inland waterways are a significant, key component. Thus, the Board strongly endorses an appropriations and allocation process that will allow optimum use of the Inland Waterways Trust Fund and allow construction projects to proceed at full U.S. Army Corps of Engineers capability funding levels.

The Board is convinced that funds spent to maintain and improve our waterway infrastructure yield a very high return on investment that will have a positive impact on this nation’s economy for decades and generations to come. The United States’ ability to compete and grow in the global economy is contingent upon our ability to efficiently transport raw goods, commodities, and finished products throughout the U.S. and for export. We have the best, most efficient waterways system in the world, one that is studied and emulated around the globe. However, the United States cannot maintain its world-class system without immediate attention to much needed new construction and major rehabilitation projects, and effective use of realistic tools and models to study projects for future funding. This will require proper allocation and expenditure both of Inland Waterways Trust Fund monies and of General Treasury revenues.

Inland Waterways Users Board Meetings

In accordance with section 2002 of the Water Resources Reform and Development Act of 2014 (WRRDA) requiring (1) the Users Board to “meet not less frequently than semi-annually” and (2) the Secretary of the Army to “communicate not less frequently than once each quarter to the Users Board the status” of inland waterways system project activity throughout the nation, the Board held four formal meetings during calendar year 2018, as follows:

- Meeting No. 86 on March 1st in Chattanooga, Tennessee
- Meeting No. 87 on May 25th in Pittsburgh, Pennsylvania
- Meeting No. 88 on August 28th in Paducah, Kentucky
- Meeting No. 89 on November 29th in St. Charles, Missouri

Either on the day preceding or on the day following each Board meeting, a project site visit and briefing by the U.S. Army Corps of Engineers (Corps or USACE) was conducted, including at Chickamauga Lock and Dam prior to Meeting No. 86, Charleroi Locks and Dam prior to Meeting No. 87, Kentucky Locks and Dam following Meeting No. 88, and LaGrange Lock and Dam prior to Meeting No. 89. Prior Public notice of all four Users Board meeting was published in the Federal Register, and all four meetings were open to the public and held under the provisions of the Federal Advisory Committee Act of 1972, as amended.

Inland Waterways Trust Fund

Annual revenues deposited into the Inland Waterways Trust Fund during Fiscal Year (FY) 2018 continued to increase. According to the Treasury Department’s IWTF status report for the month ending September 30, 2018, revenue totaling \$116.8 million was deposited into the IWTF during FY 2018, \$115 million in diesel fuel taxes and \$1.8 million in interest. The \$116.8 million total constituted a \$2.4 million increase above annual total for FY 2017 and a \$5.7 million increase of IWTF revenue total for FY 2016, as reflected in Table 1.

Table 1: Inland Waterways Trust Fund Annual Revenues (millions of dollars)

<u>Fiscal Year</u>	<u>Diesel Tax Receipts</u>	<u>Interest</u>	<u>Total Revenues</u>
2014 ¹	\$81.7	\$0.0	\$81.8
2015 ²	\$97.9	\$0.0	\$97.9
2016	\$110.9	\$0.2	\$111.1
2017	\$113.7	\$0.7	\$114.4
2018	\$115.0	\$1.8	\$116.8

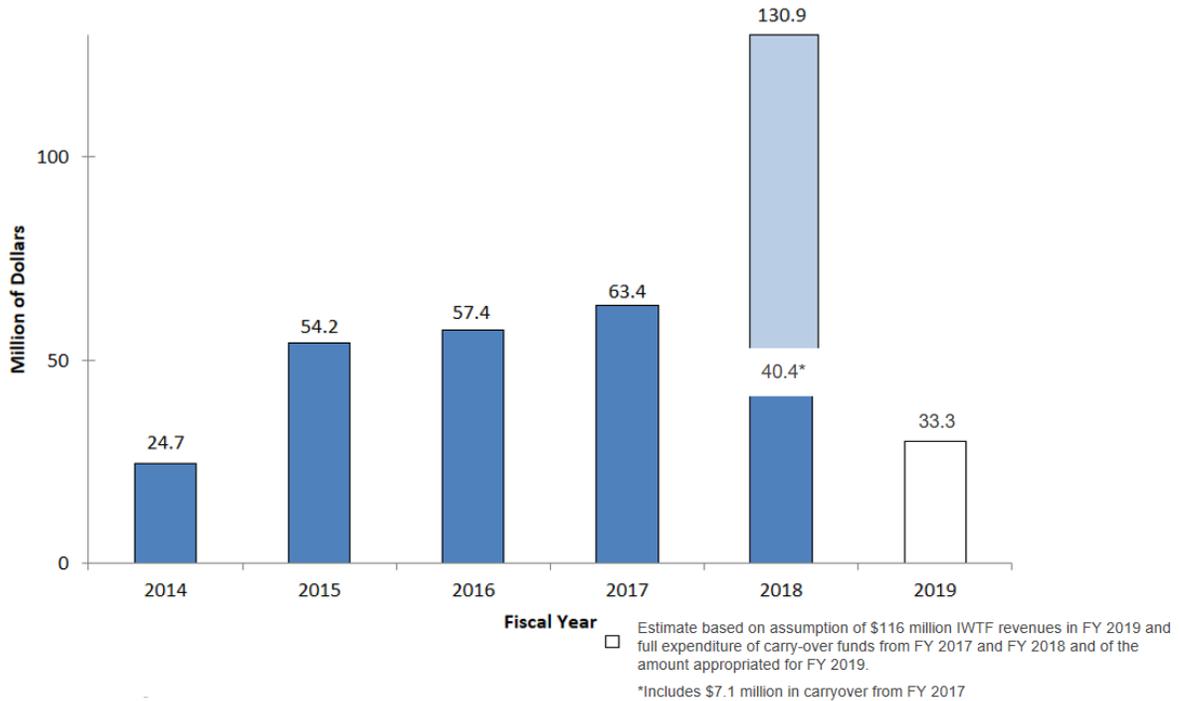
The end-of-year balance in the Inland Waterways Trust Fund as of September 30, 2018, the end of the 2018 federal fiscal year, was \$130.9 million, far higher than the Board expected, far higher

¹ Full year fuel tax collection at 20 cents per gallon.

² Half-year fuel tax collection at 20 cents per gallon and half-year at 29 cents per gallon.

than it has been in the ten previous fiscal years, and the Board believes far higher than Congress intended. Figure 1 illustrates how the end-of-year balance in the IWTF has changed from year to year since Fiscal Year 2014.

Figure 1: Inland Waterways Trust Fund End-of-Year Balance



A review of Corps project-specific allocations and recent Department of Treasury monthly reports on the status of the Inland Waterways Trust Fund helps explain this unusual IWTF balance increase. Table 2 shows the estimated annual draw from the IWTF for each of the IWTF-supported construction projects funded during the last five fiscal years (FY 2014 through FY 2018).

Table 2: Inland Waterways Trust Fund Annual Allocations (millions of dollars)

	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Olmsted Locks & Dam	\$41.4	\$31.9	\$40.2	\$37.5	\$26.3
Monongahela River Locks & Dam 2, 3 & 4	\$36.4	\$28.0	\$29.5	\$41.0	\$49.0
Emsworth Locks & Dam	-	(\$1.4)	-	\$0.5	-
Kentucky Lock	-	\$7.4	\$22.9	\$18.0	\$19.8
Chickamauga Lock	\$0.9	\$1.5	\$14.8	\$20.0	\$38.3
LaGrange Lock & Dam	-	-	-	-	\$5.0
Lockport Lock Pool	\$14.4	-	-	-	-
TOTAL	\$93.1	\$67.4	\$107.4	\$117.0	\$138.4

Table 3 shows the annual transfer from the IWTF to the Corps for each of the last five years, beginning with FY 2014.

Table 3: Annual Transfer from the IWTF to the Corps (millions of dollars)

Fiscal Year	2014	2015	2016	2017	2018
Amount Transferred	\$97.9	\$68.5	\$108.0	\$108.4	\$49.3

The following table compares the information contained in Tables 1, 2, and 3, and shows that the \$130.9 million end-of-FY 2018 balance in the Inland Waterways Trust Fund results, not from inadequate appropriated funding, but from an evident insufficient transfer from the Inland Waterways Trust Fund to the Corps to accommodate the project allocations made for FY 2018.

Table 4: Annual IWTF Revenues, Project Allocations, and Transfers to the Corps of Engineers (millions of dollars)

	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Revenues into the IWTF	\$81.8	\$98.0	\$111.1	\$114.4	\$116.8
IWTF Project Allocations	\$93.1	\$67.4	\$107.4	\$117.0	\$138.4
IWTF Transfers to USACE	\$97.9	\$68.5	\$108.0	\$108.4	\$49.3

According to the Corps, the current IWTF Fund balance build-up is temporary and largely due to lack of final FY 2018 appropriations amounts until the Consolidated Appropriations Act (P.L. 115-141), which was signed March 23, leaving too little time before the end of FY 2018 to allocate and spend the newly-appropriated funding. The delayed receipt of funding resulted in a carry-over balance in the IWTF of \$130.9 million, comprised of \$7.1 million in unobligated carry-over for FY 2017-approved projects, \$90.5 million in unobligated carry-over for FY 2018-approved projects, leaving an estimated \$33.3 million available to be obligated to new project requirements beginning in FY 2019.

The Board understands that a number of factors, including the timing of funding availability, affect the end-of-fiscal year balance in the Inland Waterways Trust Fund from year to year. Some variation is to be expected in the normal course of business. The Board is also mindful that in years past the balance in the Trust Fund was allowed to grow to unacceptable levels because diesel fuel taxes collected from the commercial users of the inland waterways system were not being spent as intended to modernize the system. The Board recommends that such wasteful practice not be repeated. Congressionally appropriated inland waterways modernization funding should be allocated, obligated, and expended as expeditiously as practicable consistent with best engineering and management practice. It is the Board's understanding, and the Chief of Engineers' commitment to deliver completed Corps projects more consistently on-time and within budget. The Corps is urged to treat this situation as a matter of high importance, minimizing the amount of appropriated funding carried-over from one fiscal year to the next and reducing the end-of-fiscal-year balance in the Inland Waterways Trust Fund to levels consistent with fully spending each year's appropriated amounts.

Fiscal Years 2018 and 2019

During calendar year 2018, Congress wisely continued to reject the recommendations contained in the President's Budget proposals for the U.S. Army Corps of Engineers Civil Works Program for both FY 2018 and FY 2019. In March, the FY 2018 Energy and Water Development and Related Agencies Appropriations Act (Division D of P.L.115-41, the Consolidated Appropriations Act, 2018) became law. Less than six months later, Congress passed and sent to the President for his signature the conference report containing the FY 2019 Energy and Water Development and Related Agencies Appropriations Act (Division A of P.L.115-244, the Energy and Water, Legislative Branch, and Military Construction and Veterans Affairs Appropriations Act, 2019).

Where the Administration had proposed a 20.7 percent cut for the overall Civil Works Program for FY 2018, Congress instead appropriated \$6.827 billion, a 13.1 percent increase above the prior fiscal year and \$1.825 billion above the President's proposed funding level. Similarly, for FY 2019 Congress rejected the Administration's proposal to cut the Corps Civil Works Program by more than \$2 billion (29.9 percent) from the FY 2018 appropriated amount and instead provided \$6.999 billion for FY 2019, a 2.5 percent increase above the FY 2018 appropriations.

Both the President's Budget proposals for FY 2018 and FY 2019 would have severely hampered ongoing construction of inland waterways system modernization projects funded in part from the Inland Waterways Trust Fund. If Congress had not rejected the President's Budget proposal, a complete work stoppage would have occurred at three ongoing high-priority projects (Monongahela River Locks & Dams 2, 3 & 4, Kentucky Lock, and Chickamauga Lock), all of which already had hundreds of millions of dollars each allocated and obligated to project construction. In addition, the LaGrange Lock and Dam major rehabilitation project, which is a Board priority, would not have begun in FY 2018, nor would it have been funded to completion in FY 2019. The President's proposal also included an onerous and damaging new tax and fee regime that would have imposed more than one billion dollars in additional costs onto the only system beneficiary currently paying to construct that system, the commercial users of the inland waterways.³

On behalf of the entire inland waterways system industry, the Users Board again expresses its deep gratitude to the Congress for its support and understanding of the importance of the inland waterways system to the well-being of the nation.

FY 2018 Construction Work Plan

In enacting the FY 2018 Energy and Water Development and Related Agencies Appropriations Act (E&WD Appropriations Act), Congress added \$112 million to the \$26.25 million requested in the proposed President's Budget to be appropriated from the Inland Waterways Trust Fund. Together with the required General Treasury revenue match, this resulted in a total of \$399 million being made available to be allocated during the year to the construction of high-priority lock and

³ For a fuller discussion of the shortcomings of the FY 2018 and FY 2019 President's Budget proposals, see Appendix C.

dam modernization projects; the U.S. Army Corps of Engineers delegated the responsibility to select the individual projects and allocate specific amounts to each of those projects. Table 5 shows the lock and dam projects selected by the Corps and the amount allocated to each in the FY 2018 Work Plan compared to the amount proposed for each in the President’s Budget request.

Table 5: FY 2018 Work Plan Construction Allocation (millions of dollars)

	<u>Work Plan Allocation</u>	<u>President’s Budget Request</u>
Olmsted Locks & Dam	\$175.0	\$175.0
Monongahela River 2, 3 & 4	\$98.0	\$0
Kentucky Lock	\$39.5	\$0
Chickamauga Lock	\$76.5	\$0
LaGrange Lock & Dam	\$10.0	\$0
TOTAL	\$399.0	\$175.0

The Board applauds these allocation decisions, which closely track Users Board recommendations made in our 30th Annual Report and in our April 2018 Post-Budget Advice and Recommendations 60-Day report. (See Appendix C.)

FY 2019 Construction Work Plan

On November 20, 2018, the U.S. Army Corps of Engineers publicly announced the project specific details of its FY 2019 Work Plan, which allocated the \$6.999 billion that Congress appropriated to the Corps Civil Works Program in the September 23, 2018, Energy and Water Development and Related Agencies Appropriations Act, 2019 (Division A of P.L. 115-224). Instead of the President’s FY 2019 Budget proposal to fund the construction of a single IWTF project (Olmsted) at a \$35 million level, Congress appropriately required an almost order-of-magnitude increase in construction investments during FY 2019 in on-going IWTF-supported modernization projects. Congress left it to the Corps to make project-specific allocations of the additional \$110.755 million from the IWTF and matching General Treasury revenue funds that were appropriated in P.L. 115-244 for IWTF-supported projects, resulting in project-specific FY 2019 Work Plan allocations as indicated below in Table 6.

Table 6: FY 2019 Work Plan Construction Allocations (millions of dollars)

	<u>Work Plan Allocations</u>	<u>President’s Budget Request</u>
Olmsted Locks & Dam	\$50.0	\$35.0
Monongahela River 2, 3 & 4	\$89.0	\$0
Kentucky Lock	\$43.6	\$0
Chickamauga Lock	\$89.7	\$0
LaGrange Lock & Dam	\$57.5	\$0
TOTAL	\$329.8	\$35.0

The FY 2019 Work Plan, among other things, declared that both the Olmsted and LaGrange projects were being funded to completion in the Work Plan.

Fiscal Year 2020 Funding

With the project allocations made in the FY 2019 Work Plan, the funding status of the five lock and dam modernization projects currently under construction is summarized below in Table 7.

Table 7: Status of Construction Funding for Ongoing Priority Modernization Projects (millions of dollars)

	<u>Allocated through FY 2019</u>	<u>Remaining after FY 2019</u>
Olmsted Locks & Dam	\$2,790.4	\$0.0
Monongahela River 2, 3 & 4	\$1,012.7	\$111.0
Kentucky Lock	\$585.7	\$644.2
Chickamauga Lock	\$421.6	\$344.8
LaGrange Lock & Dam	\$67.5	\$0.0
TOTAL	\$4,878.1	\$1,100.0

Thanks to strong appropriations from the Congress, major progress has been achieved in recent years toward the goal of completing the construction of these important inland waterways system projects. Programmatically, construction funding for this suite of projects is 82 percent complete. Two of the projects, Olmsted and LaGrange, are projected now to have all of the Inland Waterways Trust Fund and matching General Treasury revenue support that is needed to complete construction in the next few years.

The Board also understands that these “efficient” funding amounts are lower than the Corps “capability” spending levels for at least the Chickamauga project. For example for FY 2019, the Chickamauga’s capability funding amount was \$40 million higher than the project’s \$77.7 million efficient funding amount. The \$89.7 million the project will receive in the FY 2019 Work Plan, therefore, is \$12 million above the project’s “efficient” funding amount but \$28 million below what the Corps could have used productively for the Chickamauga project in FY 2019, as reflected in its “capability” funding requirement. The Inland Waterways Trust Fund end-of-FY 2018 balance, when combined with expected inland waterway diesel fuel tax revenues going into the IWTF during FY 2019, should be sufficient to support an FY 2019 allocation to Chickamauga at the higher “capability” level, particularly in light of the Congressionally-directed 15 percent IWTF to 85 percent General Treasury revenue cost share change for the project in FY 2019. Unfortunately, in making FY 2019 Work Plan allocations, the Administration chose to not take advantage of this opportunity to expedite Chickamauga’s completion and prevent unnecessary project cost escalation.

The Users Board believes that opportunities like this to more fully utilize IWTF resources to optimally invest in lock and dam modernization should not be missed again in the future.

The Users Board believes that, in developing the proposed budget for FY 2020, the President should recommend capability funding for each of the three ongoing IWTF-supported construction projects, Lower Monongahela, Kentucky, and Chickamauga, all of which require additional funding after FY 2019 to complete construction of the those projects. The Board recommends the

President should not repeat its zero-funding proposal these projects in the FY 2020 budget. Congress should appropriate capability-level funding for each of these high-priority and substantially-under-construction inland waterways system modernization projects in FY 2020. Based on information provided by the Corps, at the November 29th Board Meeting No. 89, the Board understands these FY 2020 capability amounts to be \$59 million for Lower Monongahela, \$90.3 million for Kentucky, and \$104.3 million for Chickamauga. Given the carry-over into FY 2019 of \$33 million in unobligated IWTF deposited funds and the level of funding appropriated by Congress for FY 2019, the Board believes these capability amounts can readily be accommodated in light of expected IWTF diesel tax revenues for FY 2019 and FY 2020.

Users Board Recommendations

- **For FY 2020, and exclusive of any additional funding that might be forthcoming in one-time “Infrastructure Investment” legislation, the Administration and Congress should base IWTF project funding recommendations and funding decisions on assumed annual inland waterways fuel tax revenues deposited into the IWTF at a level of \$115 million during FY 2020.** For the past few years, the Administration has consistently and increasingly under-estimated IWTF diesel tax revenues for the budget proposal fiscal year. The Board-recommended \$115 million level for FY 2020 is almost \$2 million below actual IWTF receipts for FY 2018 and only \$1 million higher than the average of the three most-recently-completed fiscal years (FY 2016-2018). As the nation’s economy continues to improve in 2019 and 2020, the Board is hopeful that revenues into the IWTF will commensurately increase. In the event that actual revenues fall short of this projection, the balance of funds remaining in the IWTF should be more than adequate to support the Board’s recommended level of lock and dam construction funding for FY 2020 and, even more so, with the Board-recommended cost sharing changes for FY 2020. Any infrastructure investment legislation include the 25 construction and major rehabilitation projects that could be constructed.
- **For FY 2020, Congress should appropriate for the construction of inland waterways modernization projects an amount sufficient to provide capability or full and efficient funding, whichever is higher, for each of the Board’s ongoing priority projects that require additional funding, including \$59 million for Lower Monongahela, \$90.3 million for Kentucky, and \$104.3 million for Chickamauga.** Together with an estimated \$115 million in inland waterway diesel fuel tax revenues to be deposited into the Inland Waterways Trust Fund for FY 2020, sufficient funds should reside in the Inland Waterways Trust Fund to support this level of funding for each of these projects and still leave a healthy balance in the Inland Waterways Trust Fund going into the next fiscal year.
- **Congress should modify the cost sharing for future spending on IWTF-financed construction projects to require 25 percent of the project cost to be derived from the Inland Waterways Trust Fund and the remaining 75 percent to come from General Treasury revenues.** This change recognizes that, in April 2015, the inland waterways diesel fuel tax was increased by 45 percent to 29 cents per gallon. It would mirror the same cost share change that Congress made in the Water Infrastructure Improvements for the Nation Act of 2016 and the Water Resources Development Act of 2016 (Public Law 114-322) for the construction of ports to depths between 45 and 50 feet. It is a logical programmatic follow-on

to the cost share change made for the Chickamauga project by Congress in the FY 2019 Energy and Water Development and Related Agencies Appropriations Act (P.L. 115-244). It would eliminate existing unintended barriers to needed infrastructure investment that the current inland waterways construction cost sharing requirement creates for future years. With this cost sharing change, there will be sufficient funds in the IWTF to continue full and efficient funding for the ongoing inland waterways projects already under construction and to allow consideration of additional important and time sensitive projects.

- **The Secretary of the Army should urge the Secretary of Defense to appoint the new Users Board members by in time for Board Meeting No. 91 that is scheduled to take place in May 2019.** It is important to have these appointments in place so there is no vacancy on the Board to ensure that the entire inland waterways system is represented according to Section 302 of P.L. 99-162.
- **For FY 2020, the Administration and Congress should continue to increase the robust levels of funding provided during each of the past six fiscal years for the Operation and Maintenance (O&M) activities of the Corps affecting inland and coastal navigation throughout the nation.** Additional funding will help address the Corps deferred O&M and will be completely consistent with the broadly-supported objective of improving our national standard of living, growing the nation's economy, and increasing our international competitiveness.
- **In making funding investment and allocation decisions for lock and dam modernization projects already under construction, policymakers should base project-specific economic analysis primarily on a project's Remaining-Benefit/Remaining-Cost Ratio (RBRCR) rather than on its Benefit Cost Ratio (BCR).** We also included this recommendation in our 29th and 30th Annual Reports. In our 29th Annual Report, we went into some detail to explain how relying on BCRs instead of RBRCRs for budgeting additional investment in ongoing construction projects would likely prolong project construction schedules, misallocate new investment dollars, and waste scarce financial resources. The Board continues to believe that a project's RBRCR typically provides a far better measure of the likely economic return to be expected from further construction expenditures on projects already under construction than does the project's BCR.
- **Funding should be allocated during FY 2020 from the Corps Investigations appropriation account for Preconstruction Engineering and Design (PED) of lock modernization projects on the Upper Mississippi River and Illinois Waterway System authorized in title VIII of the Water Resources Development Act of 2007 (Public Law 110-114).** Strong bipartisan and bicameral Congressional support exists for the Navigation and Ecosystem Sustainability Program (NESP). In late 2017, 40 Members of the U.S. House of Representatives--20 Republicans and 20 Democrats from ten different States wrote the President to request inclusion of PED funding in both the FY 2018 Work Plan and the FY 2019 President's Budget request. A similar Senate letter signed by ten Senators was also sent on December 22, 2017. Again in 2018, numerous U.S. Senators and Members of the House of Representatives have requested funding on a bipartisan basis for resumption of PED for NESP.

Moving forward with PED in this fashion will position the NESP projects to proceed to construction as soon as funding becomes available for them.

- **Unless Congress specifically indicates to the contrary, the Least-of Rule should not be permitted to prevent the allocation of funding under a continuing resolution (CR) to lock and dam modernization projects that received allocated funding for the previous fiscal year and continue to require additional construction funding.** Particularly when Congress adds funds for IWTF-supported projects in not-yet-final appropriations legislation, the failure to include funding for that project in the President’s Budget proposal should not be what controls the decision to allocate or not allocate CR-provided funds to the project. Instead, project allocation decisions involving CR-provided funding should be based whenever possible on a realistic estimate of the level of full-year funding likely to be appropriated by the Congress and any expressions by the Congressional Appropriations Committees of desired spending outcomes for the additional funding being provided.
- **Congress should continue to fund the U.S. Army Corps of Engineers Civil Works Program under “regular order” and pass annual Energy and Water Development appropriations bills in a timely manner instead of continuing to resort to last-minute continuing resolutions, often of short-term duration, to fund federal agencies and their programs.** Relying on last-minute partial-year appropriations funding for lock and dam construction and operation and maintenance creates unnecessary, wasteful, and entirely preventable inefficiencies that delay project completion and increase project costs, all of which could be minimized or eliminated by an improved Congressional appropriations process. During calendar year 2018, the 115th Congress succeeded in enacting the FY 2019 Energy and Water Development Appropriations Act and seeing it signed into law before the beginning of the 2019 fiscal year, the first time that had happened in far too long. The 116th Congress must follow this laudable accomplishment for FY 2020 and beyond.

Acknowledgements

The Inland Waterways Users Board wishes to welcome Major General Scott A. Spellman to his new assignment as the U.S. Army Corps of Engineers Deputy Commanding General for Civil and Emergency Operations and Executive Director to the Board. The Board thanks Mr. Mark R. Pointon, the Designated Federal Officer for the Board, and Mr. Kenneth E. Lichtman from the U.S. Army Corps of Engineers Institute for Water Resources for the support they provide. Corps division and district staff, Corps Headquarters staff, and Corps Institute for Water Resources staff have provided thorough and timely information throughout the year, which the Board greatly appreciates.

Appendix A

History

The Inland Waterways Fuel Tax was established to support inland waterways infrastructure development and rehabilitation. Commercial users are required to pay this tax on fuel consumed in inland waterways transportation. Revenues from the tax are deposited in the Inland Waterways Trust Fund and generally fund 50 percent of the cost of inland navigation projects each year as authorized. From the beginning of 1995 through March 31, 2015, the amount of tax paid by commercial users was \$.20 per gallon of fuel, which in recent years generated approximately \$80 to \$85 million in contributions annually to the Inland Waterways Trust Fund. With the President's December 2014 signing of Public Law 113-295, the diesel fuel tax rate increased to \$.29 per gallon effective April 1, 2015, generating additional revenues for the Inland Waterways Trust Fund.

Reflecting the concept of "Users Pay, Users Say," the Water Resources Development Act of 1986 (Public Law 99-662) (WRDA 86) established the Inland Waterways Users Board (the Board), a Federal advisory committee, to give commercial users a strong voice in the investment decision-making they are supporting with their cost-sharing tax payments. The principal responsibility of the Board is to recommend to the Congress, the Secretary of the Army and the U.S. Army Corps of Engineers the prioritization of new and replacement inland navigation construction and major rehabilitation projects. Specifically, Section 302 of WRDA 86 tasked the Board as follows:

"The Users Board shall meet at least semi-annually to develop and make recommendations to the Secretary regarding construction and rehabilitation priorities and spending levels on the commercial navigational features and components of the inland waterways and inland harbors of the United States for the following fiscal years. Any advice or recommendation made by the Users Board to the Secretary shall reflect the independent judgment of the Users Board. The Users Board shall, by December 31, 1987, and annually thereafter file such recommendations with the Secretary and with the Congress."

On June 10, 2014, the President signed the Water Resources Reform and Development Act (Public Law 113-121) which, among other things, modified WRDA 86's Section 302 to amend and increase the responsibilities of the Users Board. Section 2002 of WRRDA replaced subsection (b) of the 1986 Act's Section 302 as follows:

"(1) IN GENERAL. – The Users Board shall meet not less frequently than semiannually to develop and make recommendations to the Secretary and Congress regarding the inland waterways and inland harbors of the United States.

(2) ADVICE AND RECOMMENDATIONS. – For commercial navigation features and components of the inland waterways and inland harbors of the United States, the Users Board shall provide –

(A) prior to the development of the budget proposal of the President for a given fiscal year, advice and recommendations to the Secretary regarding construction and rehabilitation priorities and spending levels;

(B) advice and recommendations to Congress regarding any feasibility report for a project on the inland waterway system that has been submitted to Congress pursuant to section 7001 of the Water Resources Reform and Development Act of 2014;

(C) advice and recommendations to Congress regarding an increase in the authorized cost of those features and components;

(D) not later than 60 days after the date of the submission of the budget proposal of the President to Congress, advice and recommendations to Congress regarding construction and rehabilitation priorities and spending levels; and

(E)” advice and recommendations on the development of a long-term capital investment program in accordance with subsection (d).

(3) **PROJECT DEVELOPMENT TEAMS.** – The chairperson of the Users Board shall appoint a representative of the Users Board to serve as an advisor to the project development team for a qualifying project or the study or design of a commercial navigation feature or component of the inland waterways and inland harbors of the United States.

(4) **INDEPENDENT JUDGMENT.** – Any advice or recommendation made by the Users Board to the Secretary shall reflect the independent judgment of the Users Board...

... (d) **CAPITAL INVESTMENT PROGRAM.** –

(1) **IN GENERAL.** – Not later than 1 year after the date of enactment of this subsection, the Secretary, in coordination with the Users Board, shall develop and submit to Congress a report describing a 20-year program for making capital investments on the inland and intracoastal waterways based on the application of objective, national project selection prioritization criteria.

(2) **CONSIDERATION.** – In developing the program under paragraph (1), the Secretary shall take into consideration the 20-year capital investment strategy contained in the Inland Marine Transportation System (IMTS) Capital Projects Business Model, Final Report published on April 13, 2010, as approved by the Users Board.

(3) **CRITERIA.** – In developing the plan and prioritization criteria under paragraph (1), the Secretary shall ensure, to the maximum extent practicable, that investments made under the 20-year program described in paragraph (1)—

(A) are made in all geographical areas of the inland waterways system; and

(B) ensure efficient funding of inland waterways projects.

(4) **STRATEGIC REVIEW AND UPDATE.** – Not later than 5 years after the date of enactment of this subsection, and not less frequent than once every 5 years thereafter, the Secretary, in coordination with the Users Board, shall –

(A) submit to Congress and make publicly available a strategic review of the 20-year program in effect under this subsection, which shall identify and explain any changes to the project-specific recommendations contained in the previous 20-year program (including any changes to the prioritization criteria used to develop the updated recommendations); and

(B) make revisions to the program, as appropriate.

(e) **PROJECT MANAGEMENT PLANS.** – The chairperson of the Users Board and the project development team member appointed by the chairperson under subsection (b)(3) may sign the project management plan for the qualifying project or the study or design of

a commercial navigation feature or component of the inland waterways and inland harbors of the United States.”

Section 2002 of WRRDA 14 further clarifies the role of the Users Board in a new subsection (f) of Section 302, as follows:

“(f) *ADMINISTRATION.* –

(1) IN GENERAL. – *The Users Board shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.), other than section 14, and, with the consent of the appropriate agency head, the Users Board may use the facilities and services of any Federal agency.*

(2) MEMBERS NOT CONSIDERED SPECIAL GOVERNMENT EMPLOYEES. – *For the purposes of complying with the Federal Advisory Committee Act (5 U.S.C. App.), the members of the Users Board shall not be considered special Government employees (as defined in section 202 of title 18, United States Code).*

(3) TRAVEL EXPENSES. – *Non-Federal members of the Users Board while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code.”*

On July 19, 2017, in Charleston, West Virginia at the 84th meeting of the Inland Waterways, Users Board, the Oath of Office was administered to ten of the eleven current members of the Users Board for a term of office lasting two years. The Oath of Office was administered to the eleventh current Board member on November 3, 2017, in Vicksburg, Mississippi, at the Users Board’s 85th meeting.

Appendix B

List of the Fuel Taxed Inland and Intracoastal Waterways and System Map

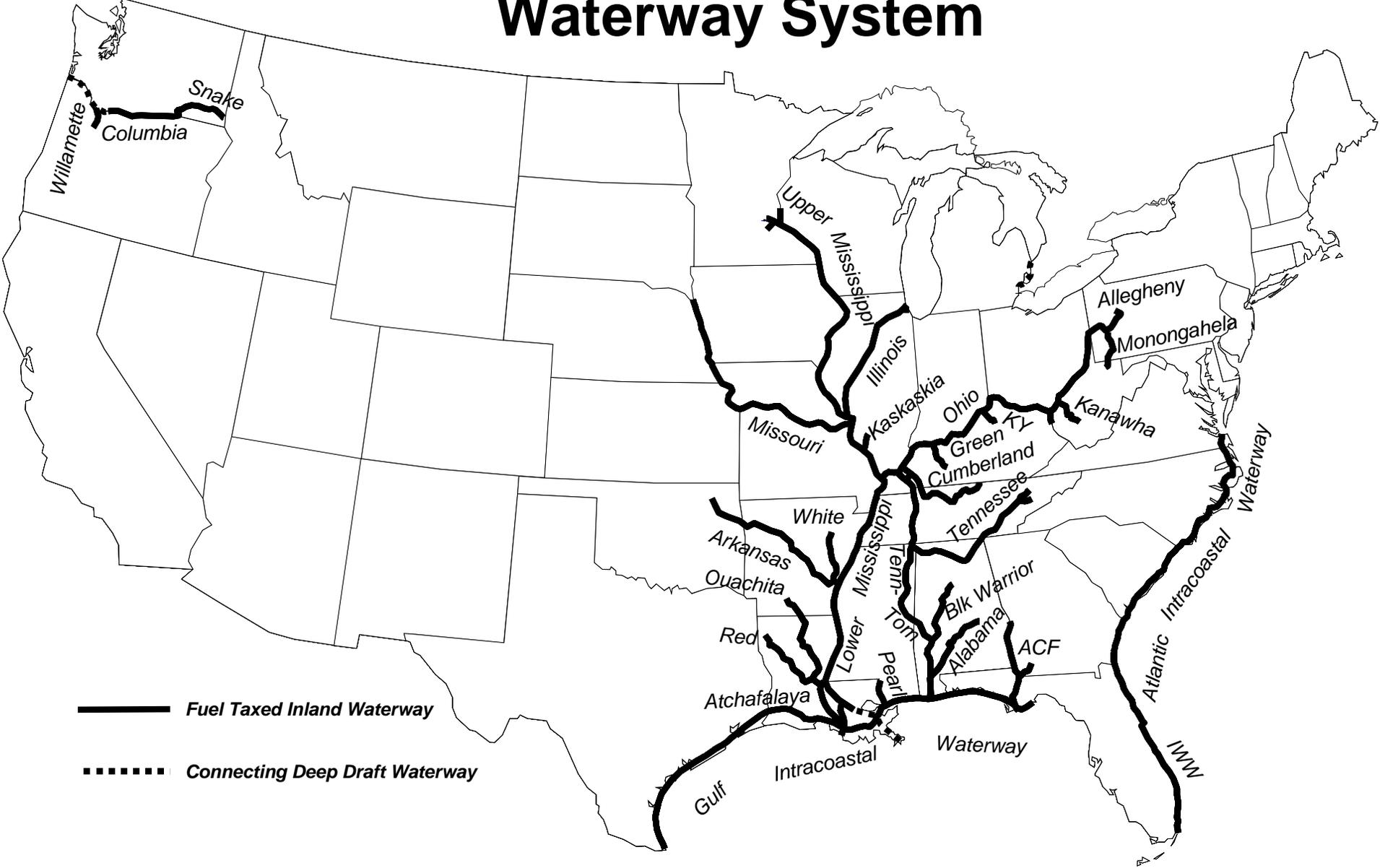
Statutory Definitions of Inland and Intracoastal Fuel Taxed Waterways of the United States

SOURCES: Public Law 95-502, October 21, 1978, and Public Law 99-662, November 17, 1986.

1. Alabama-Coosa Rivers: From junction with the Tombigbee River at river mile (hereinafter referred to as RM) 0 to junction with Coosa River at RM 314.
2. Allegheny River: From confluence with the Monongahela River to form the Ohio River at RM 0 to the head of the existing project at East Brady, Pennsylvania, RM 72.
3. Apalachicola-Chattahoochee and Flint Rivers (ACF): Apalachicola River from mouth at Apalachicola Bay (intersection with the Gulf Intracoastal Waterway) RM 0 to junction with Chattahoochee and Flint Rivers at RM 107.8. Chattahoochee River from junction with Apalachicola and Flint Rivers at RM 0 to Columbus, Georgia at RM 155 and Flint River, from junction with Apalachicola and Chattahoochee Rivers at RM 0 to Bainbridge, Georgia, at RM 28.
4. Arkansas River (McClellan-Kerr Arkansas River Navigation System): From junction with Mississippi River at RM 0 to Port of Catoosa, Oklahoma, at RM 448.2.
5. Atchafalaya River: From RM 0 at its intersection with the Gulf Intracoastal Waterway at Morgan City, Louisiana, upstream to junction with Red River at RM 116.8.
6. Atlantic Intracoastal Waterway: Two inland waterway routes approximately paralleling the Atlantic coast between Norfolk, Virginia, and Miami, Florida, for 1,192 miles via both the Albemarle and Chesapeake Canal and Great Dismal Swamp Canal routes.
7. Black Warrior-Tombigbee-Mobile Rivers: Black Warrior River System from RM 2.9, Mobile River (at Chickasaw Creek) to confluence with Tombigbee River at RM 45. Tombigbee River (to Demopolis at RM 215.4) to port of Birmingham, RM's 374-411 and upstream to head of navigation on Mulberry Fork (RM 429.6), Locust Fork (RM 407.8), and Sipsey Fork (RM 430.4).
8. Columbia River (Columbia-Snake Rivers Inland Waterways): From the Dalles at RM 191.5 to Pasco, Washington (McNary Pool), at RM 330, Snake River from RM 0 at the mouth to RM 231.5 at Johnson Bar Landing, Idaho.
9. Cumberland River: Junction with Ohio River at RM 0 to head of navigation, upstream to Carthage, Tennessee, at RM 313.5.
10. Green and Barren Rivers: Green River from junction with the Ohio River at RM 0 to head of navigation at RM 149.1.
11. Gulf Intracoastal Waterway: From St. Mark's River, Florida, to Brownsville, Texas, 1,134.5 miles.

12. Illinois Waterway (Calumet-Sag Channel): From the junction of the Illinois River with the Mississippi River RM 0 to Chicago Harbor at Lake Michigan, approximately RM 350.
13. Kanawha River: From junction with Ohio River at RM 0 to RM 90.6 at Deepwater, West Virginia.
14. Kaskaskia River: From junction with Mississippi River at RM 0 to RM 36.2 at Fayetteville, Illinois.
15. Kentucky River: From junction with Ohio River at RM 0 to confluence of Middle and North Forks at RM 258.6.
16. Lower Mississippi River: From Baton Rouge, Louisiana, RM 233.9 to Cairo, Illinois, RM 953.8.
17. Upper Mississippi River: From Cairo, Illinois, RM 953.8 to Minneapolis, Minnesota, RM 1,811.4.
18. Missouri River: From junction with Mississippi River at RM 0 to Sioux City, Iowa, at RM 734.8.
19. Monongahela River: From junction with Allegheny River to form the Ohio River at RM 0 to junction of the Tygart and West Fork Rivers, Fairmont, West Virginia, at RM 128.7.
20. Ohio River: From junction with the Mississippi River at RM 0 to junction of the Allegheny and Monongahela Rivers at Pittsburgh, Pennsylvania, at RM 981.
21. Ouachita-Black Rivers: From the mouth of the Black River at its junction with the Red River at RM 0 to RM 351 at Camden, Arkansas.
22. Pearl River: From junction of West Pearl River with the Rigolets at RM 0 to Bogalusa, Louisiana, RM 58.
23. Red River: From RM 0 to the mouth of Cypress Bayou at RM 236.
24. Tennessee River: From junction with Ohio River at RM 0 to confluence with Holstein and French Rivers at RM 652.
25. White River: From RM 9.8 to RM 255 at Newport, Arkansas.
26. Willamette River: From RM 21 upstream of Portland, Oregon, to Harrisburg, Oregon, at RM 194.
27. Tennessee-Tombigbee Waterway: From its confluence with the Tennessee River to the Warrior River at Demopolis, Alabama.

The Fuel-Taxed Inland and Intracoastal Waterway System



Appendix C

**Water Resources Reform and Development Act (WRRDA) Post-Budget
Advice and Recommendations Submission for FY 2018**



INLAND WATERWAYS USERS BOARD

Washington, D.C. 20314 -1000 (CECW-P)

April 13, 2018

The Honorable Paul D. Ryan
Speaker
U.S. House of Representatives H-
232, Capitol Building Washington,
DC 20515

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives H-
204, Capitol Building Washington,
DC 20515

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
S-230 Capitol Building
Washington, DC 20510

The Honorable Charles E. Schumer
Minority Leader
U.S. Senate
S-221, Capitol Building
Washington, DC 20510

Dear Speaker Ryan, Leader McConnell, Leader Pelosi, and Leader Schumer:

Pursuant to Section 2002(d) of the Water Resources Reform and Development Act⁴ (Public Law 113-121, June 10, 2014, herein after referred to as WRRDA), the Inland Waterways Users Board (“Board” or “Users Board”) hereby submits its fourth annual post-budget-submission “advice and recommendations” concerning investment in the Nation’s inland waterways system. The Users Board is a federal advisory committee established more than 30 years ago by the Water Resources Development Act of 1986 (Public Law 99-662). Comprised of a balanced, regionally-varied mix of the primary users and shippers utilizing the inland and intracoastal waterways for commercial purposes, the Users Board was created to give commercial users a strong voice in the investment decision-making the users are supporting with their continuing diesel-fuel-based cost-sharing tax payments. Appendix A contains the current membership and organizational structure of the Inland Waterways Users Board.

⁴“ADVICE AND RECOMMENDATIONS. – For commercial navigation features and components of the inland waterways and inland harbors of the United States, the Users Board shall provide –... (D) not later than 60 days after the date of submission of the budget proposal of the President to Congress, advice and recommendations to Congress regarding construction and rehabilitation priorities and spending levels;”. Sec.2002(d)

BOTTOM LINE UP FRONT

The Users Board deeply appreciates the commitment that Congress continues to demonstrate to protect and improve the nation's inland marine transportation system. Repeated Administration budget proposals to seriously underfund that system have been rejected and instead, particularly in recent years, policy changes have been enacted and appropriations provided enabling the U.S. Army Corps of Engineers (USACE or Corps) to efficiently construct ongoing priority lock and dam modernization projects on which operation of the system depends. In similar fashion, Congress has repeatedly rejected ill-advised Administration proposals to burden the inland waterways system with damaging new structural changes and fees. The Board unanimously applauds these Congressional actions and urges the Congress, through adoption of the recommendations contained in this report and in our recently submitted 30th Annual Report, to maintain the progress and positive program momentum that Congress has created.

RECENT NOTEWORTHY DEVELOPMENTS

This report follows closely after our 30th Annual Report for 2017. Since the end of 2017 much of the information and the thrust of the recommendations contained in our Annual Report remain operative. However, there have been a number of new developments that are noteworthy relative to the Board views offered in this "60-day report." Those developments include updated efficient funding figures from the Corps of Engineers for the Board's priority construction projects, five months of Inland Waterways Trust Fund (IWTF) diesel tax receipt data for Fiscal Year (FY) 2018, five months of Fiscal Year 2018 tonnage data for commercial movements on the inland waterways system, official approval of the lower cost estimate to complete construction of the Olmsted Locks and Dam project, Congressional enactment of disaster relief supplemental appropriations legislation, Congressional enactment of the Fiscal Year 2018 omnibus appropriations act, submission of the President's proposed infrastructure investment principles, and submission of the proposed Federal Budget for Fiscal Year 2019. Each of these is discussed below, with the Fiscal Year 2019 President's Budget proposal given special attention later in this report.

Full and efficient project funding: The project specific funding recommendations contained in the Board's 30th Annual Report were based on then current Corps-provided information for Fiscal Years 2018 and 2019 for each of the Board's priority lock and dam modernization projects. The Corps routinely updates those figures and presented the revised full and efficient funding information at the Users Board's 86th meeting held on March 1st in Chattanooga, Tennessee. Table 1 displays the current Corps figures showing changes from the figures used in the annual report for the ongoing priority construction projects.

Table 1
Full and Efficient Construction Funding:
Ongoing IWTF Projects
(Millions of Dollars)

		FY 2018	FY 2019
Olmsted Locks and Dam	Dec 2017	175.0	30.0
	Mar 2018	175.0	35.0
Lower Monongahela Locks and Dams 2-3-4	Dec 2017	105.0	106.0
	Mar 2018	99.0	87.0
Kentucky Lock Addition	Dec 2017	41.0	79.0
	Mar 2018	41.0	59.0
Chickamauga Lock	Dec 2017	78.0	100.0
	Mar 2018	78.0	100.0
Total	Dec 2017	399.0	315.0
	Mar 2018	393.0	281.0

The Corps also reported during the Users Board meeting in Chattanooga that, assuming the necessary new start project approval is timely, provided the Fiscal Years 2018 and 2019 full and efficient funding amounts necessary to complete the LaGrange Lock and Dam major rehabilitation project by the end of Fiscal Year 2020 are \$3.6 million and \$28.8 million respectively.

Inland Waterways Trust Fund diesel fuel tax receipts: As noted in the 30th Annual Report, Fiscal Year (FY) 2018 began with a balance of \$63.4 million in the IWTF. Inland waterway diesel fuel tax receipts for FY 2017 had added \$114.4 million in revenues to the Trust Fund, an amount higher than projected in the President’s Budget. This followed FY 2016 Trust Fund receipts of \$111 million, an amount also higher than the Administration had projected.

For FY 2018, we now have six monthly statements from the U.S. Department of Treasury providing expected IWTF receipts from inland waterway diesel fuel tax payments to the Treasury, as summarized in Table 2.

Table 2
Inland Waterways Trust Fund
Diesel Fuel Tax Receipts*
(Millions of Dollars)

	FY 2017	FY 2018
October	\$2.303	\$2.072
November	\$10.825	\$11.918
December	\$10.791	\$10.647
January	\$9.186	\$6.780
February	\$9.758	\$13.165
March	\$8.985	\$9.997
Total	\$51.040	\$54.428

*U.S Department of Treasury monthly statements

Fiscal Year 2018 reported total receipts are approximately 6.6 percent higher than the Treasury-reported total for the comparable six months of Fiscal Year 2017. If this pattern were to continue for the remainder of Fiscal Year 2018, almost \$122 million would be added to the Inland Waterways Trust Fund for the current fiscal year. In our 30th Annual Report, the Board based its recommendations on an assumption that \$112 million would be added to the Trust Fund during FY 2018. We felt then that the \$112 million amount was a conservative assumption to use and continue to feel that way. Our analysis and recommendations continue to be based on this \$112 million revenue assumption both for Fiscal Years 2018 and 2019.

Commercial inland waterway movements: The Corps’ Waterborne Commerce Statistics Center tracks data concerning waterborne commerce taking place on the inland waterways system and publishes monthly reports summarizing that data. Five monthly reports have been issued for FY 2018. Table 3 below compares the reported amounts for FY 2018 with the comparable months of the two preceding fiscal years. As indicated in Table 3, the total reported tonnage for the current fiscal year is slightly below what was reported for the same five months in FY 2017, but is above the comparable amount reported for FY 2016. Comparing the trend data in Table 3 with that in Table 2, while the 2018 to 2017 tonnage trend reflected in Table 3 is different from the IWTF revenue trend reflected in Table 2 (i.e. down vs. up), the 2018 to 2016 tonnage trend like the revenue trend reflected in Table 2 (i.e. up in both) suggests that expected Trust Fund revenues for FY 2018 should be more than the \$111 million in FY 2016. This supports the use of the \$112 million IWTF revenue assumption for Fiscal Years 2018 and 2019.

Table 3
Monthly Tonnage Movement Estimates for All Commodities on the
Inland Waterways
(Millions of Short Tons)

	FY 2016	FY 2017	FY 2018
October	50.7	50.1	53.9
November	48.3	46.3	46.9
December	44.2	45.1	47.8
January	40.0	49.3	45.0
February	43.1	54.6	43.9
Total	227.2	245.4	237.5

Olmsted Locks and Dam cost estimate adjustment: In our 30th Annual Report, the Board applauded the Corps for proceeding with recent construction of the previously troubled Olmsted Locks and Dam project in a way designed to deliver the project four years earlier than planned in the Olmsted Post-Authorization Change Report, and \$330 million below the official \$3.1 billion cost estimate approved for the project. Official project cost re-calculations have now been approved to recognize the \$330 million reduction such that the \$35 million being requested in the FY 2019 President’s Budget proposal for Olmsted will now fully fund remaining construction work on the Olmsted project, assuming Olmsted receives its required \$175 million efficient funding amount in the final FY 2018 Work Plan.

The Board notes that Olmsted-like project cost reductions also appear to be occurring for the Lower Monongahela Locks and Dams 2-3-4 project (Lower Mon) due to recent efficient funding. At the Users Board meeting in Chattanooga, the Corps indicated that, with continued efficient funding for Lower Mon, the project remains on course to be completed “well below” -- which the Board understands to mean at least \$75.3 million lower than -- Lower Mon’s approved \$1.2 billion estimated cost. The Board remains hopeful that the Corps is correct and will succeed in completing construction of this project below the current budget and ahead of the current schedule.

Disaster relief emergency supplemental appropriations (P.L. 115-123, enacted on February 9, 2018): In February, Congress passed and the President signed supplemental appropriation legislation providing \$17.4 billion to the Corps of Engineers for emergency disaster response, including the repair of damages to Corps projects caused by natural disasters. Of the \$17.4 billion total, \$15 billion was provided for constructing flood and storm damage reduction projects, \$10.4 billion of which is for states and insular areas affected by Hurricanes Harvey, Irma, and Maria, and \$4.6 billion of which is for projects in states and insular areas that have experienced more than one major disaster declaration between 2014 and 2017. The legislation also appropriated \$608 million in Operation and Maintenance funding of the \$17.4 billion total to dredge federal navigation projects and repair damages caused by natural disasters, \$770 million for work associated with the Mississippi River and Tributaries project, and \$135 million for study and preconstruction and engineering work under the Corps Investigations account. While this funding is targeted at disaster-related work, the Corps is given a measure of discretion and flexibility in allocating the funding to specific projects in the Work Plan, which is under development and currently expected to be released in the June timeframe. Appropriation of this \$17.4 billion in emergency relief funding will relieve some of the pressure that otherwise would have existed on the FY 2018 omnibus appropriation funding and can be expected to accrue to the benefit of the Corps navigation mission as well as to the flood and storm damage prevention missions. Together with the FY 2018 omnibus act’s \$6.83 billion appropriation for the Civil Works Program, the Corps will have just under \$22 billion in project funding to execute beginning this year, one of if not the largest programs in its history.

Fiscal Year 2018 Omnibus Appropriations Act: Following enactment of five Continuing Resolutions to provide partial-year funding for Corps of Engineers and other Federal programs, the President’s signing on March 13, 2018, of the Consolidated Appropriations Act, 2018 (P.L. 115-141, commonly referred to as the

“omnibus appropriations act”) established full-year funding levels for federal agencies through the end of Fiscal Year 2018. In drafting this legislation, Congress rejected harmful Administration proposals and once again demonstrated Congress’ strong support for the navigation component of the Corps Civil Works Program and, in particular, for the need to invest in improving the nation’s inland waterways system.

Table 4 below summarizes overall levels of funding for the Corps Civil Works Program accounts most important to navigation (i.e. Investigations, Construction, Operation and Maintenance, and Mississippi River and Tributaries) in the FY 2018 omnibus appropriations act compared both to FY 2017 actual appropriations and to the FY 2018 President’s Budget proposal.

Table 4
FY 2018 Corps Civil Works Program Funding Comparison
(Millions of Dollars)

Account	FY 2017 Enacted	FY 2018 President’s Budget	FY 2018 Omnibus
Investigations	121.0	86.0	123.0
Construction	1,876.0	1,020.0	2,085.0
Mississippi River and Tributaries	362.0	253.0	425.0
Operation and Maintenance	3,149.0	3,100.0	3,630.0
Other Accounts	530.0	543.0	564.0
Total	6,038.0	5,002.0	6,827.0

The \$6.827 billion overall FY 2018 Congressional appropriation constitutes the largest amount provided to the Corps in an annual appropriation bill. Instead of the Administration’s proposal to reduce the Civil Works Program by \$1.254 billion (21 percent) in FY 2018, Congress increased Corps FY 2018 funding by \$789 million (13%) over FY 2017. Particularly important were (1) the increase to the Operation and Maintenance account to \$3.63 billion, the fifth consecutive year of record-level funding for this important account, and (2) the more than doubling to \$2.085 billion of the Administration’s extremely ill-advised \$1.02 billion proposed amount for the Construction account. Within the Construction account, FY 2018 funding for Inland Waterways Trust Fund lock and dam modernization projects will be at least \$399 million under the legislation, far above the Administration proposal of \$175 million, and a level sufficient to fund in the current fiscal year all four of the User Board’s priority ongoing construction projects (Olmsted, Lower Mon, Kentucky, and Chickamauga) at “full and efficient” amounts, as recommended by the Board in our

30th Annual Report. As Table 1 indicates, with \$393 million required for full and efficient funding of the four ongoing projects and at least \$399 million provided in the FY 2018 omnibus appropriation act for IWTF construction projects during FY 2018, Congress has appropriated sufficient funding to begin the major rehabilitation of LaGrange in FY 2018.

The omnibus act requires the Corps, within 60 days of the act's March 13th enactment, to finalize the Work Plan allocating the newly-appropriated amounts to specific projects. The Board continues to recommend that this Work Plan allocate to each of the priority ongoing lock and dam modernization projects the relevant full and efficient amount required for each project as reflected earlier in Table 1 (\$175 million for Olmsted, \$99 million for Lower Mon, \$41 million for Kentucky, and \$78 million for Chickamauga). Additionally, the Board recommends that \$4 million in FY 2018 new start funding be allocated in the Work Plan to the LaGrange major rehabilitation project.

As it has in the past, Congress acted in accord with the Board's recommendation in our Annual Report and again properly rejected the Administration's proposal to impose a new onerous tax on the commercial users of the inland waterways system. The proposed new tax would have been in addition to the 29-cents-per-gallon diesel fuel tax that those users already pay, which is the highest fuel tax paid by any transportation mode and was increased by 45 percent just three years ago.

The Users Board continues to deeply appreciate the strong support for and commitment to modernization of the inland waterways system demonstrated by the United States Congress.

Administration Infrastructure Initiative: On February 12, President Trump publicly released his Administration's plan to increase investment in the nation's infrastructure. Described in Administration explanatory material as having "four overarching objectives" and as being designed to accomplish six main "legislative goals," the proposed plan is intended to shorten the federal project permitting process and spend \$200 billion in direct federal spending over ten years to stimulate another \$1.3 trillion in new infrastructure investment from state and local governments and the private sector. While initial White House explanatory materials stated that the \$200 billion in federal spending would be "derived (paid for) from savings from other areas of the federal budget," senior Administration witnesses testifying in support of the plan at Congressional hearings have subsequently indicated that the Administration is open to other unspecified approaches to pay for the \$200 billion in federal spending.

Among the ideas offered to the Congress as part of its infrastructure initiative, the Administration has suggested that, for inland waterway infrastructure investments, the traditional responsibility of the Army Corps of Engineers to construct and maintain the inland waterways system for the benefit of the nation should begin to be shifted to private entities. As part of this proposal, Congress would delegate a portion of its Constitutionally-derived taxation powers to the Secretary of the Army or to private “third party service providers” to impose and retain uni-dimensional fees to compensate those private entities.

While agreeing with the Administration that additional investment in our nation’s infrastructure is necessary, the Inland Waterways Users Board has seen no persuasive case made that the changes being suggested by the Administration for the inland waterways will not be harmful to the well- being of the system and to the national interest overall. The Board therefore urges that these proposed changes not be adopted at this time.

FISCAL YEAR 2019

President’s Budget Proposal for Fiscal Year 2019

On February 12, 2018, the same day the Administration publicly released its proposed Infrastructure Initiative, the Administration announced the details of the proposed Fiscal Year 2019 President’s Budget for the entire federal government. Table 5 below provides a prior year comparison at the appropriation account level of the Trump Administration’s detailed FY 2019 proposed budget for the Corps of Engineers Civil Works Program.

Table 5
 FY 2019 Corps Civil Works Program Budget Request Comparison
 (Millions of Dollars)

	FY 2018 Request	FY 2018 Enacted	FY 2019 Request	FY 2019 Request vs FY 2018 Request	FY 2019 Request vs FY 2018 Enacted
Investigations	86.0	123.0	82.0	-4.0 (-4.7%)	-41.0 (-33.3%)
Construction	1,020.0	2,085.0	876.1	-143.9 (-14.1%)	-1208.9 (-58.0%)
[Inland Waterways Trust Fund]	[175.0]	[399.0]	[35.0]	[-140.0 (-80.0%)]	[-364.0 (-91.2%)]
Mississippi River & Tributaries	258.0	425.0	244.7	-14.0 (-5.4%)	-180.3 (-42.4%)
Operation and Maintenance	3,100.0	3,630.0	3,042.0	-58.0 (-1.9%)	-588.0 (-16.2%)
[Harbor Maintenance Trust Fund]	[965.0]	[1,400.0]	[965.1]	-	-
Other*	543.0	564.0	539.0	-3.7 (-0.7%)	-24.7 (-4.4%)
TOTAL	5,007.0	6,827.0	4,784.1	-217.9 (-4.4%)	-2,042.9 (-29.9%)

*Regulatory, Expenses, Flood Control & Coastal Emergencies, Formerly Utilized Sites Remedial Action Program (FUSRAP), and Assistant Secretary of the Army (Civil Works) (ASA (CW))

Within the \$4.784 billion total amount being proposed for the Civil Works Program budget, the Administration would only allocate \$876.1 million to the Construction account, more than \$1.2 billion (58 percent) below what Congress appropriated for that account for FY 2018. The Inland Waterways Trust Fund-supported construction projects would be particularly adversely affected. The President’s Budget proposes a FY 2019 appropriation of only \$35 million for IWTF project construction work, \$364 million -- 91.2 percent -- below what Congress appropriated for these projects in the FY 2018 omnibus act and is expected to be reflected in the FY 2018 Work Plan. Only one lock and dam modernization project would receive funding in the Trump Administration FY 2019 Budget proposal, Olmsted, while the three other ongoing high priority lock and dam projects -- Lower Mon, Kentucky, and Chickamauga -- each of which will have had between \$330 million and \$920 million already appropriated and allocated by the beginning of FY 2019, will be left without additional funds in FY 2019, thereby threatening to shut these important projects down and cause serious job loss and economic damage.

Similar to what the Obama Administration proposed and Congress has repeatedly rejected, the Trump Administration is proposing to establish an annual fee, which is not defined in the budget documents, in its FY 2019 Budget to more than double the amount collected each year from the commercial users of the inland waterways system, increasing FY 2019 revenues collected by \$178 million and 10-year revenues by \$1.8 billion. The FY 2019 President’s Budget does not propose to spend any of that additional revenue in FY 2019, which increases the year end FY 2019 balance in the Inland Waterways Trust Fund to \$340 million from the

Administration-projected pre- omnibus-act year end FY 2018 level of \$62 million. The net effect for FY 2019 of these proposals would be to collect \$283 million in taxes and fees from commercial operators on the inland waterways, but only spend \$5.3 million of those revenues for the purpose those taxes and fees were established. Not only do these proposals not spend any of the new revenue, they don't come close to spending most of the revenues generated from the existing 29-cent-per-gallon diesel fuel tax, which is what drives the year end FY 2019 Trust Fund balance up to the \$340 million shown in the budget documents.

Disregarding the FY 2019 President's Budget's proposal to break the Harbor Maintenance Trust Fund (HMTF) out of the Corps' Operation and Maintenance (O&M) account and to budget separately for the HMTF, the President's proposed FY 2019 funding for O&M is not markedly different from the Administration O&M proposal last year for FY 2018. It is however, far below what Congress appropriated for the O&M account in the FY 2018 omnibus appropriations act. The Administration's \$588 million proposed reduction, relative to the FY 2018 appropriated level, would significantly hamper Corps efforts to reduce the deferred O&M work that has built up over the years, in the view of the Board.

Inland Waterways Trust Fund

Fiscal Year 2017 ended with an unobligated balance of \$63.4 million in the Inland Waterways Trust Fund, which is well above the \$20 million minimum balance the Corps desires to keep in the IWTF. Total receipts into the Trust Fund amounted to \$114.4 million during the fiscal year, and transfers by the Treasury Department to the Corps of Engineers for lock and dam construction work totaled \$108.6 million, resulting in a \$6 million increase in the Trust Fund's balance during FY 2017.

In the FY 2018 omnibus act, Congress provided at least \$399 million for IWTF construction projects. Of this amount, \$138.3 million will be derived from the Trust Fund. Assuming that FY 2018 inland waterway diesel fuel tax revenues are at least \$112 million, as discussed earlier, and that all of the \$399 million in Congressional appropriations is obligated in the current fiscal year, the end-of-FY 2018 unobligated balance in the Trust Fund should be \$37.1 million. This \$37.1 million amount would be almost double the \$20 million minimum balance that the Corps likes to keep in the IWTF to help assure Corps compliance with Anti-Deficiency Act requirements.

For Fiscal Year 2019, under current law, the Board believes that \$129 million in Trust Fund revenues -- \$17 million of the end-of-FY 2018 balance plus \$112 million

in FY 2019 diesel tax receipts -- can and should be matched with General Fund revenues to support \$283 million in new lock and dam construction obligations in FY 2019. Proceeding in this fashion would leave the IWTF with an unobligated balance of at least \$20 million at the end of FY 2019. With the 75 percent general revenues to 25 percent IWTF cost share change being recommended by the Users Board in place by the beginning of FY 2019, all of the Board ongoing priority lock and dam modernization projects as well as the LaGrange major rehabilitation project could be fully funded, and the Trust Fund would still have more than \$75 million available to support additional project construction during FY 2019.

INLAND WATERWAY USERS BOARD RECOMMENDATIONS

The Users Board continues to support the thrust of the recommendations submitted a few months ago in our 30th Annual Report. Updated to reflect new developments and recast to provide advice to the Congress, the Board's 60-day-report recommendations follow.

- **For Fiscal Year 2019, and exclusive of any additional funding that might be forthcoming in one-time “Infrastructure Investment” legislation, Congress should base IWTF project funding recommendations and funding decisions on assumed annual inland waterways fuel tax revenues deposited into the IWTF at a level of \$112 million during FY 2019.**
- **Congress should modify the cost sharing for IWTF-financed construction projects to require 25 percent of the project cost to be derived from the Inland Waterways Trust Fund and the remaining 75 percent to come from General Treasury revenues.** This change recognizes that, in April 2015, the inland waterways diesel fuel tax was increased by 45 percent to 29 cents per gallon. It would mirror the same cost share change that Congress made two years ago in the Water Resources Development Act of 2016 for the construction of ports to depths between 45 and 50 feet. It would also eliminate the existing unintended barrier to needed infrastructure investment that the current inland waterways construction cost sharing requirement creates for future years. With this cost sharing change, there will be sufficient funds in the IWTF to continue full and efficient funding for the ongoing inland waterways projects already under construction and to allow funding for the LaGrange major rehabilitation project and for additional important and time sensitive projects.
- **For Fiscal Year 2019, each of the four ongoing priority projects should receive full and efficient funding to the maximum extent practicable,**

including \$35 million for Olmsted, \$87 million for Lower Mon, \$59 million for Kentucky Lock, and \$100 million for Chickamauga Lock. Twenty-nine million dollars should also be provided for major rehabilitation of the current LaGrange Lock and Dam. Full and efficient funding can be achieved by the Board-recommended cost sharing change discussed above and, therefore, this level of FY 2019 funding is contingent upon Congressional approval of the cost sharing envisioned by the Board. The Board realizes that, in the event that Congress does not make the cost sharing change being recommended by the Board or otherwise provide sufficient appropriations to efficiently fund all five of these high priority projects in FY 2019, a funding adjustment will need to be made for one or more of these five projects. While the Board supports funding the major rehabilitation of LaGrange Lock simultaneously while the Corps is performing major maintenance at LaGrange in 2020, which the Board has been told will require FY 2019 funding for LaGrange to accomplish, the Board's support is contingent on the development of a funding approach that does not add any additional cost or delays to the four ongoing priority projects (Olmsted, Lower Mon, Kentucky and Chickamauga).

- **For Fiscal Year 2019, Congress should continue to increase the robust levels of funding provided during each of the past five fiscal years for the Operation and Maintenance (O&M) activities of the Corps affecting inland and coastal navigation throughout the nation.** Additional funding will help address the Corps deferred O&M and will be completely consistent with the broadly supported objective to improve our national standard of living, grow the nation's economy, and increase our international competitiveness.
- **In order to ensure that construction can be initiated as soon as can be supported by available resources, funds should be appropriated and allocated to (1) resume Preconstruction Engineering and Design (PED) of lock modernization projects authorized as part of the Navigation and Ecosystem Sustainability Program (NESP) and (2) initiate PED for both the Upper Ohio Navigation project and the LaGrange Lock and Dam major rehabilitation project.**
- **The Corps should continue to efficiently fund the General Re-evaluation Report (GRR) for the Inner Harbor Navigation Canal (IHNC) Lock Replacement so that construction can be resumed on this priority project at the earliest opportunity.**

- In making funding investment and allocation decisions for lock and dam modernization projects already under construction, policy makers generally should focus project specific economic analysis primarily on a project's Remaining- Benefit/Remaining-Cost Ratio (RBRCR) rather than on its Benefit Cost Ratio (BCR).** We also included this recommendation in our [29th Annual Report](#), where we went into some detail to explain how continuing the previous Administration's favored approach of using BCRs, instead of RBRCRs, for budgeting additional investment in ongoing construction projects is likely to prolong project construction schedules, misallocate new investment dollars, and waste scarce financial resources. The Board continues to believe that a project's RBRCR typically provides a far better measure of the likely economic return to be expected from further construction expenditures on the project than does the project's BCR.
- The "Least of Rule" should not be permitted to prevent the allocation of funding under a Continuing Resolution (CR) to lock and dam modernization projects that received allocated funding for the previous fiscal year and continue to require additional construction funding.** Particularly when Congress adds funds for IWTF- supported projects in not-yet-final appropriations legislation, the failure of an Administration to have requested funding for that project in the President's Budget proposal should not be what controls the decision to allocate or not allocate CR-provided funds to the project. Instead, project allocation decisions involving CR-provided funding should be based whenever possible on a realistic estimate of the level of full-year funding likely to be appropriated by the Congress and any expressions by the Congressional Appropriations Committee of desired spending outcomes for the additional funding being provided.
- Congress must find a way to return to "regular order" and pass individual annual appropriations acts in a timely manner instead of continuing to resort to last minute continuing resolutions, often of short-term duration, to fund federal agencies and their programs.** Relying on last minute partial year appropriations funding for lock and dam construction and operation and maintenance creates unnecessary, wasteful, and entirely preventable inefficiencies that delay project completion and increase project costs, all of which could be minimized or eliminated by an improved Congressional appropriation process.

Sincerely,

Inland Waterways Users Board

April 13, 2018

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