

**Comments to the Mississippi River Commission
Given by Michael Klingner, PE on behalf of the
Upper Mississippi, Illinois, and Missouri Rivers Association (UMIMRA)
Cape Girardeau, MO
August 14, 2015**

In 2008 this Commission recommended the Upper Mississippi River Comprehensive Plan. This meeting marks the 7 year anniversary of that vote. Unfortunately instead of getting a Comprehensive Plan that will help communities and stakeholders responsibly plan high water events, we are getting over burdensome regulation that ignores risk and puts human lives and property at risk.

Our members have found the current interpretation of section 408 permitting unworkable. A Comprehensive Plan would solve the issues that section 408 has presented, but until we can implement a Comprehensive Plan, we cannot be held hostage by outrageous requirements and brick walls preventing flood protection in the Upper Mississippi Basin.

Therefore, in the interim, UMIMRA Recommends the following changes for the Sec. 408 Permit review. These changes will aid in a transparent and efficient review for local sponsors, ensuring a science based approval process and ensuring a systemic flood control system to the benefit of public health and safety.

- **Section 408 permits should not be required of improvement projects conducted before July 31, 2014.**

All modifications reviewed/accepted by USACE prior to July 31, 2014 should not require approval under 33 U.S.C. 408. Guidance for the review of modifications and alterations to Corps of Engineers Projects did not exist prior to 2006 and was under refinement with USACE internal training and clarification between 2006 to July 2014. Therefore, the ability of USACE to review proposed modifications and alterations would have been limited to other approvals such as Section 404 of the Clean Water Act and 33 CFR 208.10—Local flood Protection Works; Maintenance and Operation of Structures and Facilities. Considering the inability for a review to be performed and no formal notification and information to local sponsors for a 408 submittal prior to July 31, 2014, it should not be acceptable for USACE to request after the fact 408 approvals.

- **Bridge and Levee improvements must be held to the same 408 Hydrology & Hydraulic standards.**

The applicable state regulations on levees and bridge regulations should govern what is deemed "substantial adverse changes in water surface profiles". This procedure should be in place until such time that USACE can determine what, if any, additional measures may be required in sensitive areas above St. Louis or above the Mississippi River & Tributaries Levee System (MR&T) (Lock & Dam #24, River Mile 273.4 to Cairo, IL River Mile 0)

- **A systemic Hydrologic Engineering Centers River Analysis System (HEC-RAS) model should be made available by the USACE- hydrologic model calibration should not be at the cost of the local sponsor.**

The USACE should produce base models for locations of proposed modifications. It shall not be tasked upon the Sponsor to fund the collection of modeling data being requested by USACE. One model benefits all stakeholders by creating systemic, rather than piecemeal, flood risk management. The development of these base models, if not already completed, should be accomplished as a part of the federal funding to update the Flow Frequency Profiles, as being requested by UMIMRA and other NGOs.

Until the federal funding is available, the local sponsor retains the option to fund the requested impacted model area.

- **Local Sponsors have the right to accept additional levels of risk on their freeboard.**

A Local Sponsor, as a political subdivision of its respective State, is comprised of a Board of Commissioners or Supervisors that retain the legal right to accept additional levels of risk on behalf of their landowners. This is already the case when a pipeline requests access to the levee, it should be the same when a neighboring district makes the same request in the name of flood control.

- **Local Sponsors must be allowed to maintain flood protection based on up-to-date science.**

As flow frequency profiles are updated, local sponsors should be allowed, under general operation and maintenance responsibilities, to make changes in order to maintain their current frequency-based level of protection and/or Federal Emergency Management Agency (FEMA) certifications. This simply would allow the local sponsor to stay up to date with the latest information that changes due to climate, land use, river channel changes or improved modeling technology. Local Sponsors should not be held hostage to outdated science when improvements are in the interest of public health and safety, and helps reduce State and Federal flood damage recovery costs.

- **Levees should be evaluated for the top of the levee height as they stand today when calculating impacts during modeling.**

It is improper for the USACE to focus on levee heights as they were authorized while the USACE is fully aware that those levees were originally overbuilt and in some cases have been permitted to improved over the last 60 years. Using outdated levee heights is a disservice to the public and a waste of time and energy.

- **The USACE should not calculate flood storage areas if there is no flood easement in place.**

Modeling directly tied to the calculation of water surface profile changes resulting from loss of storage are unjustifiable in the Upper Mississippi River Basin unless some type of formal agreement or easement has been consented to by the Local Sponsor to take on flood waters.

- **Mitigation calculations should be based on modeling impacts measured at worst case 500 year events and using the FEMA allowance of one-foot increased water profile.**

UMIMRA advocates that mitigation calculations should be consistent with the Upper Mississippi River Comprehensive Plan design criteria, as originally developed by all three U.S. Army Corps of Engineer Districts (St. Paul, Rock Island and St. Louis) which used the FEMA 1.0 foot induced head allowance for systemic planning and implementation.

- **Permit review should be conducted in months, not years.**

UMIMRA recommends that Section 408 Review time be limited to a maximum of 90 days at the District level, maximum 60 days at the Division level, and maximum 30 days at the Headquarters level. This would ensure that review time is limited to 6 months, rather than the multi-year review that districts are currently experiencing.

In closing, UMMIRA acknowledges that all of these issues could be avoided with the implementation of the Upper Mississippi River Comprehensive Plan. However, these issues must be addressed in the interim for the sake of public safety. The current 408 guidance (EC 1165-2-216) clearly states in the introduction while outlining the purpose that the procedural guide is to be tailored at the district level. The Upper Mississippi is a very unique system, with many federal sand levees, yet we are over 60 years with no major federal improvement plan in place, even though flood profiles have been updated three times and in need of a fourth. It is UMMIRA's opinion that our recommendations could easily be adopted under this guidance. We know that disaster will strike the Upper Mississippi again, the question is will we be ready? Or will we require the loss of more human lives and the destruction of more livelihoods and communities before we find it pertinent to act?

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