



October 22, 2014

VIA ELECTRONIC MAIL

Mr. Kevin Baumgard
Deputy Chief, Operations Division
U.S. Army Corps of Engineers, St. Paul District
180 5th Street East, Suite 700
St. Paul, Minnesota 55101

Re: Comments on Federal Register Notice 56575 Regarding Levels of Service Changes for Lower St. Anthony Falls Lock and Dam and Lock and Dam 1

Dear Mr. Baumgard:

On behalf of the undersigned organizations and our hundreds of thousands of members and supporters in Minnesota and nationwide, we thank you for the opportunity to provide comments on the proposed Levels of Service at Lower St. Anthony Falls (Lower) and Lock and Dam #1 (#1) that were presented in Federal Register Notice 56575.

Our coalition includes organizations representing conservation, environmental, sportsmen and women, businesses and private property owners, all of whom are concerned about the threat Invasive Asian carp (Invasive carp) pose to our natural resources and way of life here in Minnesota. Utilizing the existing infrastructure of the Mississippi locks is one of the best tools we have right now to address this threat.

Members of our Coalition advocated for closure of the Upper St. Anthony Falls Lock in order to form an effective barrier to Invasive carp passage, thereby helping protect thousands of miles of rivers and streams and thousands of lakes upstream. Closure of this lock also provides us with additional opportunities to protect our waters by reducing the number of times the locks at Lower and #1 are opened. For these reasons and those stated more fully below, **we strongly encourage the Corps to adopt Level of Service 6, Service By Appointment, at Lock and Dam #1 and Level of Service 4, Scheduled Service, at the lock at Lower St. Anthony Falls.**

Lock Usage Data Incomplete

According to the US Army Corps of Engineers internal guidance, Levels of Service are established based upon the commercial lockage data for each unique lock.¹ Per the Corps' Federal Register Notice (Notice) published on September 22, 2014:

“With the expected closing of the Upper St. Anthony Falls lock, **it is anticipated the remaining two Minneapolis locks will have less than 500 commercial lockages per year.** To meet IMTS guidance, it is proposed Lower St. Anthony Falls and Lock and Dam 1 transition to one 10-hour shift per day/7 days per week during the 2015 navigation season and beyond. The navigation season on the Upper Mississippi normally begins in March, depending on river conditions, and wraps up by the **end of November.**” (Emphasis added).

While the Notice does not provide the data upon which the anticipated use number (less than 500 commercial) was based, we were informed during a meeting with your office on September 29, 2014, that the levels of service for the two Locks will be based on a five year average (2010-2014) of commercial lockages, subtracting those locks that are dependent on the operation of Upper St. Anthony Falls Lock and Dam.

We note that the 2014 navigation season has not yet wrapped up and will not until later in November, as indicated in the Notice. As such, the most recent years' worth of data is not available to inform our review. Per our letter dated October 10, 2014, to Col. Koprowski, we noted this lack of information and requested a 90-day extension to allow time for this information to be collected and distributed. We again note that our ability to provide input in a fully informed way has been compromised by this lack of information.

In the Corps response letter to our Coalition's request to extend the comment period (attached hereto as Exhibit 2), it notes that “data from the 2014 navigation season will be useful in our final decision, but it will not be the only factor we use.”² Neither the response letter nor in conversations with our group have you clarified what other factors you will use to determine the Levels of Service at #1 and Lower. In contrast, during the aforementioned September meeting, representatives of the Corps clearly stated multiple times that the decision on the Levels of Service will be based solely on the 5-year navigation data.

Without the 2014 navigation data and clarity on what other factors the Corps will use to make this decision, our group is extremely limited in our ability to provide more detailed and focused comments relevant to the proposed Levels of Service changes at #1 and Lower.

¹ Exhibit 1, Richard C. Lockwood, “Inland Marine Transportation System Levels of Service Overview,” U.S. Army Corps, June 6, 2012, p 9-10.

² Exhibit 2, Letter to Christine Goepfert, Stop Carp Coalition, from Col. Koprowski, Corps of Engineers District Commander, October 21, 2014, p. 2.

Lock Usage Data 2009-2013

Information has been made available by the Corps regarding lock use at the two locks from 2009-2013 (attached hereto as Exhibit 3). According to this data, the average commercial lockages for Lower and #1 were 879 and 653, respectively.³ However, those numbers include commercial traffic that will be eliminated due to the closure of Upper St. Anthony Falls. The only remaining commercial traffic will be tour boats (or excursion boats), thus the number of commercial lockages will be dramatically lower. The Notice indicates “less than 500 commercial lockages” are anticipated, but we believe that there will be “limited” or “little to no commercial lockages” at both locks post-Upper St. Anthony closure, and thus Levels 4-6 are more applicable.⁴

Level of Service 6 at Lock and Dam #1 would provide commercial lockages by appointment. This level is appropriate due to the threat of aquatic nuisance species, which we address later in this comment letter on pages 3-6.

Level of Service 4 at Lower St. Anthony Falls would allow for scheduled service for tour boat companies that already must schedule their charters and tours well in advance. This level would accommodate tour boats that want to offer their passengers the experience of locking through and the opportunity to see St. Anthony Falls, the Stone Arch Bridge and the Minneapolis skyline from the Lower St. Anthony Falls pool. This level would also continue to accommodate recreational use of the Lower lock. It is not clear what impact the closure of Upper St. Anthony Falls lock will have on recreational use of the Lower lock, but the Corps is currently allowing lockages of one recreational boat at a time. However, with proper advance communication, many recreational users of the Lower lock would likely be open to waiting to lock with other recreational or commercial boats or use the lock within a scheduled service.

Given that there will be a dramatic reduction in commercial use of Lock and Dam #1, and Invasive carp pose a threat as more fully described below, we strongly believe that the Corps should move to Level of Service 6 for Lock #1. Given that the Lower St. Anthony Falls lock will also see a dramatic reduction in commercial traffic, we believe the Corps should move to Level of Service 4 for the Lower lock.

Other Factors to Consider in the Determination of Levels of Service

The Corps’ Invasive Species Management Plan⁵ (Management Plan) builds upon the Corps’ Environmental Operating Principles⁶ and was intended to be applied to invasive species issues in the execution of all Civil Works programs and projects. One of the goals of the Management

³ Exhibit 3, Five-Year General Data Summary – Minneapolis Locks, December 13, 2013, supplied by Russ Snyder, Army Corps, to the City of Minneapolis.

⁴ Exhibit 1, Lockwood at 10.

⁵ <http://www.nae.usace.army.mil/Portals/74/docs/regulatory/InvasiveSpecies/policy.pdf>, Finalized in March 2009 in response to the National Invasive Species Management Plan and Executive Order 13112

⁶ <http://www.usace.army.mil/Missions/Environmental/EnvironmentalOperatingPrinciples.aspx>

Plan is the prevention of the introduction and establishment of invasive species to reduce their impact on the environment, economy, and health of the United States. The Management Plan recommends that the Corps “take steps to intercept pathways that are recognized as significant sources for the unintentional introduction of invasive species.”⁷

The Mississippi River system is under threat from Invasive carp as well as other aquatic nuisance species (ANS).^{8,9} According to the Corps own Great Lakes and Mississippi River Interbasin Study (GLMRIS), ANS have been introduced throughout the Mississippi River and Great Lakes basins as a result of international commerce, travel and local practices. The executive summary of the GLMRIS states:

In recent years, successful invasions of ANS have severely impacted the economic and environmental resources of the Great Lakes and Mississippi River basins. Aquatic nuisance species threaten native plants and animals, reduce biodiversity, harm important terrestrial and aquatic ecosystems, degrade water quality, transport diseases, and result in economic, political, and social impacts. For these reasons, invasive species are of national and global concern. ANS populations span geographic and jurisdictional boundaries; thus, efforts to manage invasive species must be coordinated across watershed and jurisdictional boundaries. **According to the National Invasive Species Council’s 2008 Management Plan, the best defense against aquatic nuisance species is prevention, stemming the tide of new introductions.** (Emphasis added)

One giant step in the prevention of Invasive carp in the Upper Mississippi River Basin occurred when Congress passed a bill and President Obama signed into law the 2014 Water Resources and Development Act.¹⁰ Section 2010 of this law mandated closure of the Upper St. Anthony Falls lock. Had the threat of Invasive carp migration north of Upper St. Anthony Falls not been real, lock closure would likely never had been considered by the Minnesota congressional delegation and certainly would not have received the widespread local, state, federal and stakeholder support that it did.

We recognize that the Corps must continue to provide a high level of service to commercial and recreational users of the Mississippi River to fulfill your navigation mission. Nonetheless, in a situation similar to the Chicago Area Waterway System (CAWS), unique natural resource circumstances exist at and should be taken into consideration when evaluating any potential change in Levels of Service. As stated in the GLMRIS:

⁷ Management Plan, p 3.

⁸ A nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural or recreational activities dependent on such waters. See 16 U.S.C. § 4702(1) (2010).

⁹ http://glmris.anl.gov/documents/docs/glmrisreport/GLMRIS_Report.pdf

¹⁰ The Upper St. Anthony Falls Lock and Dam will be closed no later than 10 June, 2015, in accordance with the Water Resources Reform and Development Act signed into law by President Obama on June 10, 2014.

Currently, the CAWS [Chicago Area Waterway System] and other aquatic pathways along the MR [Mississippi River] and GL [Great Lakes] basin divide provide opportunity for ANS to transfer and cause environmental, economic, and social/political impacts within the invaded basin.¹¹

According to our research, a District Commander can request exceptions to the baseline level of service “based upon the unique circumstances of the lock or river system.”¹² The Corps Levels of Service decision should heavily weigh the unique circumstances and threat of Invasive carp migration to the Upper Mississippi River basin, the goals of the Corps’ Management Plan as well as the Corps’ Environmental Operating Principles.

According to research and monitoring conducted by the University of Minnesota, Minnesota Department of Natural Resources, United States Geographical Service, National Park Service, and the United States Fish and Wildlife Service, a breeding population of Invasive carp has not yet been established.¹³ Nonetheless, the increasing numbers of captured Invasive carp caught as far north as Pool 2 indicate that at least Silver and Bighead carp are able to navigate through the lock system.

Adopting Levels of Service that reduce the risk of Invasive carp migration is a cost-effective way to use existing Corps infrastructure to fulfill both your navigation and natural resources missions. As stated by the National Invasive Species Council’s 2008 Management Plan, “the best defense against aquatic nuisance species is prevention, stemming the tide of new introductions.”¹⁴ By lowering the number of times the locks open, we have a chance to limit the number of Invasive carp that might pass upstream. The Corps has spent hundreds of millions on the CAWS to prevent Invasive carp from getting into the Great Lakes. The cost of lowering the Level of Service to Level 6 at Lock #1 will be minimal and may, in fact, save the Corps money.

Additionally, the unique status of this portion of the Mississippi River should weigh heavily in favor of restricting operation to the maximum extent possible at Lock #1. Both Lower and Lock #1 are located within the boundary of the Mississippi National River and Recreation Area (MNRRA), a unit of our National Park System. Congress established MNRRA to protect, preserve, and enhance the nationally significant historic, cultural, natural, scenic, recreational, scientific, and economic resources of a 72-mile reach of the Mississippi River.¹⁵ The national significance of this stretch of the Mississippi River must be recognized and taken into account when making a determination regarding the Levels of Service given the threat Invasive carp pose both to the natural and recreational values of this river.

¹¹ GLMRIS at 33.

¹² Exhibit 1, Lockwood at 8.

¹³ <http://www.dnr.state.mn.us/invasive-carp/index.html>, <http://www.nps.gov/miss/naturescience/asiancarp.htm>, <http://www.nps.gov/sacn/naturescience/asian-carp-action-plan.htm>

¹⁴ http://www.invasivespecies.gov/home_documents/2008-2012%20National%20Invasive%20Species%20Management%20Plan.pdf

¹⁵ Public Law 100-696, Sec. 701 (b).

The stretch above Lock #1 is a highly-visited section of the river called the Gorge. As noted, both Silver and Bighead carp have been caught below Lock #1 in Pool 2. By reducing the number of times we open Lock #1, we have the opportunity to protect the river's ecosystem and visitor experience in a larger portion of MNRRA. If we fail to do so and Invasive carp are able to establish populations in this stretch of the river, more than half of this national park will be impacted by a loss of natural habitat, and this portion of the park will become largely inaccessible to visitors due to the threat of harm Silver carp pose to recreational boaters.

Closure of Upper St. Anthony Falls was a significant step in the fight against Invasive carp and other ANS in the Mississippi River. However, to further reduce the risk of northward Invasive carp migration via the main stem of the Upper Mississippi River to the maximum extent possible, our Coalition requests that the Corps designate Level of Service 6 at Lock and Dam #1 and Level of Service 4 at Lower St. Anthony Falls.

Additional Request for a Comment Period Extension

In the Corps response to our Coalition's request for a 90-day extension to the public comment period, it is stated that that the Corps must make a decision on the levels of service prior to mid-March 2015.¹⁶ Since the Notice closes on October 22, 2014, this would mean that the Corps requires an almost five month period to determine and notify the public of any Levels of Service changes. The Corps does not clarify why an almost five month period is required or why a longer comment period (to allow the public to review the 2014 navigation data) would hinder their decision making process.

Rather, the Corps makes it clear that they have already determined that a Level of Service 3 will be established for #1 and Lower:

A final decision on **when** we transition from our current 19 hours per day navigation operational schedule to the proposed 10 hours per day schedule..."¹⁷ (Emphasis added)

By making that statement, the Corps is clearly stating that they have already made their decision to change the Levels of Service at #1 and Lower, without public input, except from the navigation industry.

Further, the response letter stated:

I am of the view that oral presentations from the general public are not likely to generate additional useful information beyond that already being provided through the submission of written comments.¹⁸

¹⁶ Exhibit 2 at 2.

¹⁷ Id.

¹⁸ Id. at 1.

The Stop Carp Coalition strongly believes that the public should have access to all relevant information associated with Levels of Service changes, including 2014 navigation data, and clear descriptions of the other factors the Corps will use to make a decision. We also believe it is inappropriate to conclude that the “general public” would not provide “additional useful information” through a public hearing. Public hearings are intended to bring together diverse groups of stakeholders and to engage a wide audience in information sharing and discussion. Oftentimes, it is through sharing of diverse opinions that additional information may come to light. A public hearing can also be a valuable opportunity for the Corps to present their proposal to the “general public” who may not be aware of the issue or may have additional questions that were not addressed in your Notice.

Without additional opportunity to comment and review new lockage data, the Corps is arbitrarily limiting meaningful public comments and review. For that reason, we again request a public hearing and an extension of the comment period for the Federal Register notice. Specifically, we would like to request an additional 60 day public comment period beyond the current October 22, 2014 close date.¹⁹

Should you have any questions, please contact Christine Goepfert, National Parks Conservation Association, at 612-270-8564 (office) or cgoepfert@npca.org. Thank you.

Sincerely,

Stop Carp Coalition

Coalition Members:

Christine Goepfert, Upper Midwest Program Manager
National Parks Conservation Association

Jason Dinsmore, Regional Representative
National Wildlife Federation

Scott Strand, Executive Director
Minnesota Center for Environmental Advocacy

Jeff Forester, Executive Director
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Whitney Clark, Executive Director
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¹⁹ A December 22, 2014 Federal Register closure date would allow almost three months for the Corps to evaluate public comments, make a decision and notify the public of any level of service change.

Katie Nyberg, Executive Director
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Deanna White, State Director
Clean Water Action – Minnesota

Barry Drazkowski, President
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Jeff Broberg, President
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Cc:

Senator Amy Klobuchar

Senator Al Franken

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