

October 3, 2012

Jo-Ellen Darcy
Assistant Secretary of the Army (Civil Works)
108 Army Pentagon
Washington, DC 20310-0108

Dear Madam Secretary:

On behalf of the undersigned organizations representing hundreds of thousands of members in and across the Great Lakes basin, we are writing to share what we believe Congress required the U.S. Army Corps of Engineers (Corps) to do when it passed this summer's highway reauthorization bill, MAP 21. As set forth below, this new legislation simply set an accelerated timeframe in which the Corps is to complete its existing mandate to produce a feasibility study setting forth options and technologies for preventing the movement of Asian carp and all aquatic invasive species between the Great Lakes and the Mississippi River basin. By setting this deadline, Congress reiterated its charge to the Corps and emphasized the pressing need to move quickly to prevent the threat to these water bodies posed by Asian carp.

As you know, the U.S. Congress in 2007 required the Corps to "conduct... a *feasibility study* of the range of options and technologies available to *prevent* the transfer of aquatic nuisance species movement between the Great Lakes and Mississippi River basin" (emphasis added) (GLMRIS). The term "feasibility study" had a particular meaning to the Corps in 2007 – and so to Congress when it used the term in its command to the Corps – connoting a study consisting of the following components:

- 1) *A concise main report that includes the study's technical findings, conclusions, and recommendation that confirms or denies the interest in the Corps of Engineers' implementation of a candidate project;*
- 2) *Technical appendices presenting the detailed backup and results of individual tasks; and*
- 3) *A feasibility-level cost estimate for the recommended plan, and other supporting documentation.*

Thus the study produced by the Corps must reflect this understanding of what a feasibility study entails. Moreover, the Corps is to study options for *preventing* the spread of carp to the Great Lakes and Mississippi River Basin, not solely reducing the risk of introduction by some incremental amount. We believe the only permanent and sustainable solution to the Asian carp threat to the Great Lakes, and the threat of future movement of invasive, is the hydrologic separation of the Great Lakes and the Mississippi River basin: if water does not flow between the two watersheds, water-based plants, animals and diseases will not be able to migrate actively or passively. Anything short of hydrologic separation will not "prevent the transfer of aquatic nuisance species."

With the passage of MAP 21, Congress required the Corps to “expedite the completion of the report for the study authorized by section 3061(d) of the Water Resources Development Act of 2007” and set a deadline of 18 months from passage (January 2014). All other references to a study or report in Section 1538 refer back to this provision. Congress thus did not modify the Corps’ substantive duties under 2007 WRDA, but only set a deadline for the feasibility study’s completion. In MAP 21, Congress also provided additional guidance on what the Corps must do in its feasibility study, supporting the primacy of separation by including it as the only explicitly listed means for achieving prevention and charging the Corps to “focus” on such solutions.

Taken together, 2007 WRDA and MAP 21 set out the following duty: the Corps must conduct a comprehensive feasibility study by January 2014, focusing on hydrologic separation and similarly effective prevention options. The final report should include only options that “prevent” rather than “reduce the risk” of transfer of Carp and other invasive species. Each option should be clear and provide sufficient detail with pre-construction analysis for Congress and the public to make a decision. The Corps should commit resources to a narrow set of options that can achieve prevention and provide enough detail on these options to support selection of one, and then proceed expeditiously to project preconstruction engineering and design. Nowhere does the authorization allow the Corps to significantly scale back the substance of its study due to timing and/or funding concerns. That MAP 21 tells the Corps to set out in an interim report the funding needed to complete all steps and the final study strongly implies the opposite: the Corps is to tell Congress what it needs to do as a practical matter to fulfill its mandate, with the understanding that Congress will provide the funding or explicitly revise the mandate.

In summary, our organizations strongly encourage the Corps to adhere to the Congressional authority to “prevent” the spread of aquatic nuisance species between the Great Lakes and Mississippi River basins and produce a feasibility study by January 2014 that provides sufficient detail for Congress to make decision as to the best means for prevention.

Thank you for your attention to this letter, and for seriously engaging in this study, which is critical to the health of the Great Lakes and Mississippi River basins. If you have any questions please do not hesitate to contact Marc Smith with National Wildlife Federation at msmith@nwf.org, and/or Meleah Geertsma with Natural Resources Defense Council at mgeertsma@nrdc.org.

Sincerely,

Joel Brammeier
President
Alliance for the Great Lakes

Andy Buchsbaum
Regional Executive Director
National Wildlife Federation

Darrel Gerber
Program Coordinator
Minnesota Clean Water Action

Maleah Geertsma
Staff Attorney, Midwest Program
Natural Resources Defense Council

Jeff Skelding
Campaign Director
Healing Our Waters-Great Lakes Coalition