



INLAND WATERWAYS USERS BOARD

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

July 24, 2017

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 Act of 2014* (Public Law 113-121, June 10, 2014, hereinafter referred to as WRRDA 2014), the Inland Waterways Users Board (“Board” or “Users Board”) hereby submits its third 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 tax payments used to fund a portion of construction and major rehabilitation of the nation’s inland waterways infrastructure. Appendix A contains the current membership and organizational structure of the Inland Waterways Users Board.

* “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)

Overview

On June 7th of this year, at the Rivertown Marina on the banks of the Ohio River in Cincinnati, Ohio, President Trump spoke to hundreds of attendees on the importance of increasing the level of investment in our Nation's infrastructure, including our inland waterways infrastructure. Accompanied by Secretary of Agriculture Sonny Perdue, Secretary of the Interior Ryan Zinke, and Environmental Protection Agency Administrator Scott Pruitt, the President emphasized that our waterways are vital for the Nation's industry and economic growth, declaring that "the rivers carry the lifeblood of our heartland." A White House press release on the President's speech noted that:

- "According to the American Society of Civil Engineers (ASCE), our inland waterways delivered more than 575 million tons of cargo, valued at \$229 billion.
- According to the Department of Transportation, inland waterways support more than 270,000 jobs and \$30.9 billion in economic activity.
- 60 percent of the grain meant for export uses inland waterways to reach the Gulf of Mexico.
- American Steel production is entirely dependent on the inland waterways system.
- Up to 25 percent of the country's energy cargo, including coal, and petroleum are moved on inland waterways."

The Inland Waterways Users Board has worked for three decades to increase awareness of the waterways' critical importance, and Board members were very heartened to see the President drawing America's attention to what is too often an out-of-sight-out-of-mind reality. Congress has acted to address the waterways' modernization investment needs in recent years, responding to requests from the Board and other commercial users of the system to prioritize project construction, raise additional revenues from the fuel tax, and increase investment in the system's infrastructure.

The Board applauds this renewed commitment to modernize and upgrade our Nation's inland waterways transportation system and the infrastructure that enables the system to function effectively. The entire Nation benefits in significant ways when inland waterways system investments occur. These investments must continue to be made if America's economy and standard of living are to remain the envy of the world.

FISCAL YEAR 2017

Consolidated Appropriations Act, 2017

On May 5, 2017, President Trump signed into law the Consolidated Appropriations Act, 2017 (Public Law 115-31) making appropriations through the remainder of Fiscal Year (FY) 2017 for the Civil Works Program of the U.S. Army Corps of Engineers (Corps) as well as for most of the rest of the federal government. Approved in overwhelming bipartisan votes in both the House of Representatives and the Senate just days earlier, the legislation brought closure for FY 2017 to numerous funding issues that had been held in abeyance for more than seven months of the fiscal

year as a result of previous Congressional enactment of three Continuing Resolutions (P.L. 114-223, P.L. 114-254 and P.L. 115-30), each of which provided only temporary fiscal year funding.

For the Corps Civil Works Program, the Consolidated Appropriations Act provided \$6.038 billion on a full-year basis, a 0.8% increase above the Fiscal Year 2016 enacted funding level, but almost a 31% increase above the Obama Administration requested amount. The Act, along with its accompanying explanatory statement, called for “full use” of all estimated annual revenues in the Inland Waterways Trust Fund (IWTF), prioritizing allocation of additional Construction account appropriated amounts to IWTF-funded projects and providing necessary flexibility for the Corps to allocate even more than the “full use” amount to those projects by beginning to draw down the surplus in the IWTF. The Corps also was directed to use allocated funds to prevent the unnecessary expiration of existing contract options applicable to three active IWTF construction projects.

Continuing the trend of the past few years, the Consolidated Appropriations Act provided \$3.149 billion for the Corps Operation and Maintenance (O&M) account, the fourth consecutive year of record-level funding for that account. Within the O&M account total, at least \$46.5 million more than President Obama’s request of \$631 million was appropriated for inland navigation and \$1.3 billion was appropriated for activities funded from the Harbor Maintenance Trust Fund (HMTF), which again hit the spending target set in WRRDA 2014.

The Inland Waterways Users Board remains deeply appreciative of the very strong Congressional appropriations for the Corps inland navigation mission and of the continuing Congressional recognition of the inland waterways system’s importance to the economic and social well-being of the nation.

FY 2017 Work Plan

Well ahead of the deadline established by Congress, the Corps of Engineers made public on May 24, 2017 the details of the Fiscal Year 2017 Work Plan for the Corps’ Civil Works Program. The FY 2017 Work Plan was developed based on account-specific appropriation amounts and project-selection criteria contained in Division D of the recently-enacted Consolidated Appropriations Act, 2017.

Overall, the Board is very pleased with the project-specific funding allocations contained in the FY 2017 Work Plan for inland waterways system navigation projects.

In the Construction account, the Work Plan allocates \$409 million for lock and dam modernization projects that are partly funded from the Inland Waterways Trust Fund. The project allocations track very closely the recommendations made in the Board’s 29th Annual Report to the Secretary of the Army and the United States Congress of December 2016, as follows:

Project	Users Board Recommendation (\$ million)	FY 2017 Work Plan Allocation (\$ million)
• Olmsted Locks & Dam	\$250.0	\$250.0
• Lower Monongahela Locks and Dams 2-3-4	\$84.7	\$82.0
• Kentucky Lock Addition	\$39.0	\$39.0
• Chickamauga Lock	\$37.0	\$37.0
• Emsworth Locks & Dam	-	\$1.0
TOTAL	\$410.7	\$409.0

With one exception, the Work Plan allocation for each of these ongoing construction projects constitutes the amount that the Corps of Engineers reported to the Board was the amount the Corps believed it needed to “fully and efficiently” obligate for continued construction of the project during FY 2017. The exception is the \$1 million for Emsworth, which the Board has been told is the amount that is necessary to fiscally close out that 12-year \$160 million major rehabilitation project.

The Board recognizes that funding the five projects at these levels probably will slightly exceed the “full-use” appropriation amount based on estimated FY 2017 IWTF fuel tax revenues. However, knowing that the IWTF began Fiscal Year 2017 with an unobligated balance of \$57.4 million, the Board estimates that the end-of-FY 2017 IWTF balance at these allocation levels should still be at or slightly below \$50 million and that expediting completion of the projects leading to earlier realization of the substantial national economic benefits the projects will produce strongly supports these allocation decisions.

The Board is particularly pleased that the Work Plan allocations were able to accommodate the funding needs of the four Users Board priority lock and dam modernization projects which, without additional funding for three of them, were in danger of having existing contract options expire to the detriment of those projects’ costs and schedules. Thanks to the emphasis placed on this issue in the managers explanatory statement accompanying the Continuing Appropriations Act and to the Corps’ expeditious actions to provide the needed funds to the appropriate contract management personnel in the relevant Corps district offices, \$27.4 million in threatened options for the Kentucky Lock Addition project were exercised before they expired on May 31, 2017. At Chickamauga Lock, the May 31st option expiration date was able to be extended to July 31st, allowing the option to be exercised by the end of July. And at the Lower Monongahela Locks and Dams 2-3-4 project, the threatened options will be exercised next month. In its 29th Annual Report of December 2016, the Board highlighted the need to address this challenge and is most appreciative of the actions taken by the Congress and the Corps in response to the Board’s recommendation.

In allocating Operation and Maintenance account funds, the recently-released FY 2017 Work Plan closely tracks the requirements of the Consolidated Appropriations Act, 2017, and accompanying explanatory materials. Congress added \$455.87 million in “additional funding for ongoing work”

to the Obama Administration’s FY 2017 O&M budget request of \$2.705 billion[†]. This “additional funding” was apportioned to categories and subcategories as follows:

- Navigation Maintenance \$24.365 million
 - Deep-draft Harbors and Channels \$268.000 million
 - Donor and Energy Transfer Ports \$28.000 million
 - Inland Waterways \$46.500 million
 - Small, Remote, or Subsistence Navigation \$49.000 million
- Other Authorized Purposes \$40.000 million

Funding associated with each category was eligible to be allocated to any eligible O&M project within that category, while funding associated within each subcategory only could be allocated to eligible projects within that subcategory. Eleven criteria were specified by Congress for the Corps to use in allocating the additional funding to specific projects.

In adhering to this Congressional guidance, the Corps FY 2017 Work Plan provided significant additional funding to address inland navigation O&M needs. Some noteworthy increases were allocated as follows:

<u>Project</u>	<u>Additional Amount</u> <u>(\$ million)</u>	<u>Percentage Increase (%)</u>
• McClellan-Kerr Arkansas River Navigation System, AR	\$4.783	11.3%
• Ohio River Locks and Dams, KY	\$9.761	31.6%
• Gulf Intracoastal Waterway, LA	\$8.000	24.4%
• J. Bennett Johnston Waterway, LA	\$12.200	140.0%
• Mississippi River between Missouri River and Minneapolis (MVP portion), MN	\$7.660	11.5%

[†] Because the final agreement reflected in the Consolidated Appropriations Act adjusted some project-specific allocations downward from amounts requested in the Obama Administration’s FY 2017 Budget proposal based on updated work-projection information, the Act’s \$3.149 billion appropriation for the O&M account is slightly lower than the sum of \$455.98 million and \$2.705 billion.

FISCAL YEAR 2018

Administration Budget Proposal for Fiscal Year 2018

On May 23, 2017, the day before the Corps publicly released the FY 2017 Work Plan, the Administration announced the details of the Fiscal Year 2018 President’s Budget proposal for the entire federal government. The documents supporting the May 23rd release provided project, program, and policy information to more fully explain the general overview-level proposed funding decisions that the Administration had announced in March with the release then of what has been characterized as the Trump Administration “skinny” budget proposal.

Table 1 below provides a prior year comparison at the appropriations level of the Trump Administration’s detailed FY 2018 President’s Budget proposal for the Corps of Engineers Civil Works Program.

Table 1: FY 2018 Corps Civil Works Program Budget Proposal Comparison (millions of dollars)

	FY 2017 Request	FY 2017 Enacted	FY 2018 Request	FY 2018 Request vs FY 2017 Request	FY 2018 Request vs FY 2017 Enacted
Investigations	85.0	121.0	86.0	+1.0 (1.2%)	-35.0 (-28.9%)
Construction	1,090.0	1,090.0	1,876.0	-70.0 (-6.4%)	-856.0 (-45.6%)
[For Inland Waterways Trust Fund Projects]	[225.0]	[409.0]	[175.0]	[-50.0 (-22.2%)]	[-234.0 (-57.2%)]
Mississippi River & Tributaries	222.0	362.0	253.0	+31.0 (14.0%)	-109.0 (-30.1%)
Operation and Maintenance	2,705.0	3,149.0	3,100.0	+395.0 (14.6%)	-49.0 (-1.6%)
[For Harbor Maintenance Trust Fund]	[951.0]	[1,252.0]	[965.0]**	[+14.0 (1.5%)]	[-287.0 (-22.9%)]
Other*	518.0	529.0	543.0	+25.0 (4.8%)	+13.2 (2.5%)
TOTAL	4,620.0	6,037.8	5,002.0	+382.0 (8.3%)	-1,035.8 (-17.1%)

*Regulatory, Expenses, Flood Control & Coastal Emergencies, FUSRAP, and ASA(CW)

**\$923M for O&M, \$37M for Construction, \$5M for MR&T

As suggested in the “skinny” budget, the overall President’s Budget for the Corps Civil Works Program for FY 2018 is proposed to be \$5.002 billion. This is only the second time in at least ten years that an Administration has proposed a Corps budget of \$5 billion or more—FY 2010’s \$5.125 billion proposal was the other—but it falls more than \$1 billion below the \$6.038 billion that Congress just appropriated in the Consolidated Appropriations Act (P.L. 115-31) to Corps for FY 2017.

Within the overall \$5.002 billion total, the Administration proposes to fund the Construction account at \$1.020 billion, \$50 million below the Obama Administration FY 2017 request level of \$1.070 billion and \$736 million below what Congress appropriated for FY 2017. The Operations and Maintenance account benefits most in the Trump Administration’s FY 2018 request, a highest-ever-request of \$3.100 billion for FY 2018 compared to the Obama FY 2017 request level of \$2.705 billion and only \$49 million below the Congressionally-appropriated O&M level of \$3.149 billion. This is the first time that any Administration has requested more than \$3 billion for the

Corps O&M account in “regular” fiscal year appropriations. As in previous years’ President’s Budget proposals, the Investigations account, which funds Corps project feasibility studies and Preconstruction Engineering and Design (PED) work, is proposed to be cut substantially at a requested level of \$86 million, essentially the same as last year’s \$85 million Obama request level but \$35 million below the FY 2017 appropriated amount. The Mississippi River and Tributaries Account FY 2018 proposal is \$253 million, \$31 million above the FY 2017 Obama-requested level but far below the Congressionally-appropriated amount of \$362 million.

For construction projects funded in part out of the Inland Waterways Trust Fund, the President’s Budget proposes a FY 2018 appropriation of only \$175 million, a \$50 million reduction from the Obama Administration’s President’s Budget proposal for FY 2017 and a \$234 million 57.2% reduction below what Congress appropriated and the Corps has included in the FY 2017 Work Plan for this category of projects. Only one lock and dam modernization project would receive funding in President Trump’s FY 2018 Budget proposal, Olmsted, while three other ongoing high priority lock and dam projects--Lower Mon, Kentucky, and Chickamauga--each of which has had between \$250 million and \$800 million already appropriated and allocated to it, will be left without additional funds in FY 2018, 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 double the amount collected each year from the commercial users of the inland waterways system, increasing FY 2018 revenues collected by \$108 million and 10-year revenues by \$1.037 billion by “establishing an annual fee” which is not defined in the budget documents. The FY 2018 President Trump’s Budget does not propose to spend any of that additional revenue in FY 2018, which increases the end-of-FY 2018 IWTF balance to \$243 million--from the Administration-projected end-of-FY 2017 level of \$56 million. The net effect for FY 2018 of these proposals would be to collect from commercial operators on the inland waterways \$213 million in taxes and fees, but only spend \$26.3 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 existing 29-cent-per-gallon diesel fuel tax revenues, which is what drives the end-of-FY 2018 IWTF balance up to the \$243 million shown in the budget documents.

Inland Waterways Trust Fund

Fiscal Year 2016 ended with an unobligated balance of \$57.35 million in the Inland Waterways Trust Fund. Total receipts into the IWTF amounted to \$111.13 million during the fiscal year, and transfers by the Treasury Department to the Corps of Engineers for lock and dam construction work totaled \$108.0 million, resulting in a \$3.13 million increase in the IWTF’s balance during FY 2016.

This \$111.13 million in IWTF revenues for FY 2016, derived from the 29 cent-per-gallon diesel fuel tax paid by commercial users of the inland waterways system that went into effect on April 1, 2015, was 3.8% higher than the \$107 million that the Obama Administration had assumed would be collected during FY 2016 in that President’s Budget proposal. For FY 2016, each penny of the

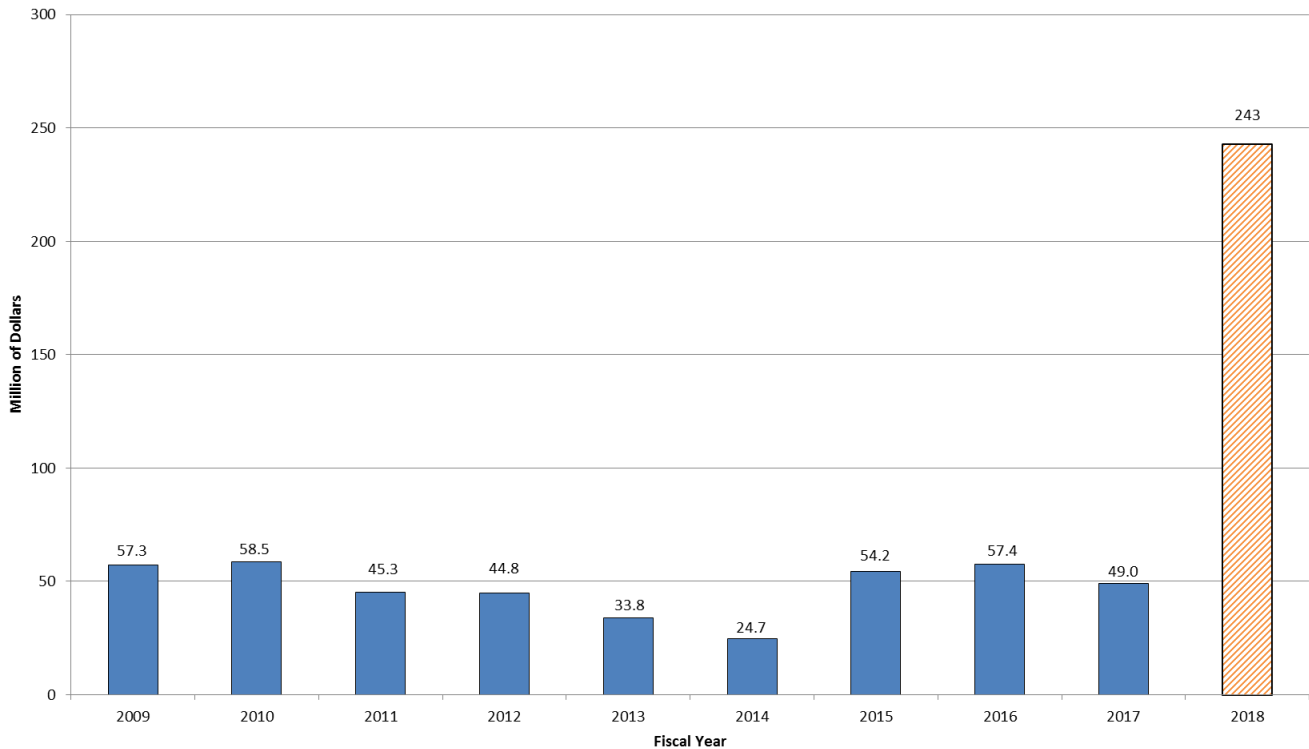
29-cent tax generated \$3.82 million in collected annual IWTF revenues, slightly lower than the \$4 million in average annual revenues that were deposited in the Inland Waterways Trust Fund over the preceding 10-year period.

For FY 2017, the Obama Administration estimated that \$109 million in diesel fuel tax revenues will be deposited into the Inland Waterways Trust Fund. Because of the uncertain nature of the Treasury Department's monthly IWTF statement, which for most months lists amounts that are only estimates and must be reconciled at the end of the fiscal year with actual revenues collected, neither the Corps nor the Board can be as confident as would be liked in Treasury Department's current monthly statement figures. That said, three-fourths of the way through FY 2017, the Board believes that IWTF diesel tax revenues for FY 2017 seem to be on track to approximate FY 2016's collected amount.

In the event that FY 2017 diesel tax revenues come close to the amount collected for FY 2016, and given the Corps FY 2017 Work Plan allocation total of \$409 million for inland navigation lock and dam construction projects, the Users Board recognizes that the unobligated balance in the IWTF as of September 30th of this year will decline slightly to a little less than \$50 million. The Board is completely comfortable with this outcome, recognizing that that occurs as a result of project-specific allocations that match very closely recommendations the Board made in the 29th Annual Report of December 2016.

For FY 2018, the President's Budget proposal assumes that only \$105 million will be collected in inland waterway diesel taxes and deposited in the Inland Waterways Trust Fund. In addition, the President proposes in his budget to collect another \$108 million during FY 2018--and \$1.037 billion over ten years---through a new user fee, described only as intended "to produce additional revenue to help finance future inland waterways navigation capital investments to support economic growth." No details have been provided to any User Board member or to any other inland waterways interest that we are aware of detailing the specifics of this proposed new user fee. Of major concern, however, to Users Board members and as mentioned earlier is the budget's proposal to use in FY 2018 only \$26.25 million of the \$213 million that the budget assumes will be collected and deposited in the IWTF during FY 2018, which would leave the IWTF with an unobligated balance of \$243 million at the end of FY 2018, as illustrated in Figure 1 below.

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



Inland Waterways Users Board Recommendations

The Users Board is gratified by the reception accorded to the recommendations made by the Board in previous annual reports. For example, prior recommendations to (1) prevent lapses in the appointment of Board members, (2) provide “full use” funding for priority lock and dam modernization projects, (3) prevent costly expiration of existing contract options, (4) expedite completion of the feasibility report for the Upper Ohio River Navigation Study, and (5) continue to increase O&M funding for navigation projects, have all been adopted in the past year.

Going forward, the Board continues to believe that the overall direction reflected in the recommendations contained in our December 2016 Annual Report remains valid. Thus the Board continues to recommend for FY 2018:

- **Exclusive of any additional funding that might be forthcoming in new “infrastructure initiative” legislation, Congress should appropriate the maximum amount supportable by expected IWTF revenues for the continued construction of ongoing lock and dam modernization projects.** The Board understands that at least \$332.5 million and, depending on actual revenue receipts and specific project allocation decisions, perhaps tens of millions more than that can likely be available for these important investments.

- **To the maximum extent practicable, construction of ongoing priority lock and dam modernization projects should be funded at those projects’ “full and efficient” execution levels, which the Corps has indicated currently include \$175 million for Olmsted Locks and Dam, \$105 million for Lower Mon Locks and Dams 2-3-4[‡], \$41 million for Kentucky Lock Addition, \$71 million for Chickamauga Lock, and \$4 million for the LaGrange Lock and Dam major rehabilitation project.** While the total of these amounts exceeds the Administration’s estimate of expected FY 2018 inland waterways diesel tax revenues, the Board believes that the existing surplus in the Inland Waterways Trust Fund will be sufficient, along with matching amounts from the General Fund, to provide most, if not all, of the needed funds.
- **Congress should continue to increase appropriations for the Corps’ Operations and Maintenance account as much as possible above the Administration-requested \$3.1 billion.** The appropriation trend of the last four years should be maintained in order to attack the O&M deferred maintenance on the inland waterways and elsewhere throughout the Corps Civil Work Program.
- **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 Mississippi River Navigation and Ecosystem Sustainability Program (NESP) and (2) continue PED for the Upper Ohio River Navigation project.**
- **The Corps should continue to efficiently fund the General Re-evaluation Report (GRR) for the Inner Harbor Navigation Canal (IHNC) Lock Replacement on the Gulf Intracoastal Waterway (GIWW) so that construction can be resumed on this priority project at the earliest opportunity.**

Sincerely,



Chairman
 Mr. Martin T. Hettel
 American Commercial Barge Line
 Jefferson, Indiana

July 24, 2017

Date

[‡] This amount for Lower Mon, which was recently provided by the Corps, is \$28 million higher than the Corps-provided \$77 million amount that we included a few months ago in our 29th Annual Report of December 2016. The Board is in the process of trying to better understand the basis of the increase, but for now we are including the higher figure in these recommendations.

Appendix A

Inland Waterways Users Board Organization Membership

Chairman

American Commercial Barge Line, LLC
Mr. Martin T. Hettel
Jefferson, Indiana

Vice Chairman

Kirby Corporation
Mr. William Matthew Woodruff
Houston, Texas

Members

Campbell Transportation Company, Inc.
Mr. Michael J. Monahan
Houston, Pennsylvania

CGB Enterprises, Inc.
Mr. G. Scott Leininger
Mandeville, Louisiana

Crouse Corporation
Mr. C. Matt Ricketts
Paducah, Kentucky

Dow Chemical Company
Mr. Mike Fewell
Houston, Texas

Ingram Barge Company
Mr. Daniel P. Mecklenborg
Nashville, Tennessee

LafargeHolcim
Mr. Robert J. Innis
Dundee, Michigan

Members continued

Marathon Petroleum Company
Mr. David A. Earl
Catlettsburg, Kentucky

Parker Towing Company
Mr. Timothy Parker III
Tuscaloosa, Alabama

Tidewater Barge Lines, Inc.
Mr. David Konz
Vancouver, Washington

Copies to:

Senator Orrin G. Hatch, Chairman, Senate Committee on Finance

Senator Ron Wyden, Ranking Member, Senate Committee on Finance

Senator Thad Cochran, Chairman, Senate Appropriations Committee

Senator Patrick J. Leahy, Ranking Member, Senate Appropriations Committee

Senator John Barrasso, Chairman, Senate Committee on Environment and Public Works

Senator Thomas R. Carper, Ranking Member, Senate Committee on Environment and Public Works

Congressman Rodney Frelinghuysen, Chairman, House Appropriations Committee

Congresswoman Nita M. Lowey, Ranking Member, House Appropriations Committee

Congressman Kevin Brady, Chairman, House Committee on Ways and Means

Congressman Richard E. Neal, Ranking Member, House Committee on Ways and Means

Congressman Bill Shuster, Chairman, House Committee on Transportation and Infrastructure

Congressman Peter A. DeFazio, Ranking Member, House Committee on Transportation and Infrastructure