



The American Waterways Operators

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Lynn M. Muench

Senior Vice President - Regional Advocacy

November 20, 2008

BG William E. Rapp
Commander, Northwestern Division
U.S. Army Corps of Engineers
1616 Capitol Ave, Suite 365
Omaha, NE 68102-4909

Re: *Missouri River Mainstem System 2008-
2009 Annual Operating Plan*

Dear BG Rapp:

The American Waterways Operators (AWO) is the national trade association for the inland and coastal tugboat, towboat and barge industry. AWO member companies include the owners and operators of the vast majority of inland towboats and barges impacted by the U.S. Army Corps of Engineers' *Missouri River Mainstem System 2008-2009 Annual Operating Plan (2008-2009 AOP)*. We appreciate the opportunity to comment.

The AWO membership is committed to finding a balance between maintaining flood control and sufficient water levels for navigation, utility and industrial use and developing scientifically valid methods to protect endangered species. AWO comments are strongly supported by the August 16, 2005, Eighth Circuit Court rulings which clearly define navigation and flood control as the primary purposes of the Missouri River system. The Court specifically noted that, "If future circumstances should arise in which ESA (Endangered Species Act) compliance would force the Corps to abandon the dominant FCA (Flood Control Act of 1944) purposes of flood control or downstream navigation, the ESA would not apply."

Over the past several years, time and again, large, unpredicted rain events have created significant damage to Missouri River Basin floodplain farmers, utilities, landowners and municipalities. To avoid future economic devastation, AWO continues to ask the Corps to discontinue the artificial spring releases (floods) for the ostensible practice of triggering the naturally unpredictable behavior of pallid sturgeon spawning.

AWO believes that current U.S. Geological Survey (USGS) research has already bridged the conflicting mandates of the FCA and ESA, and refers the Corps to the USGS 2007 *Sturgeon Research Update: Confirmed Pallid Sturgeon Spawning in the Missouri River*. This study indicates that manmade spring rises are not needed to cue a pallid sturgeon spawning as the U.S. Fish and

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Wildlife Service's (USFWS) Amended Biological Opinion hypothesizes. The USGS scientific research indicates that pallid sturgeons have a protracted spawning which occurs over a multi-month period, strongly implying that spawning is not triggered by a single event and that a manmade spring rise is not needed to cue spawning. **AWO respectfully recommends that the Corps work with USFWS to carefully consider this study and remove the mandate for manmade spring rises, and transition its efforts toward a program that is scientifically verifiable and beneficial to pallid sturgeon recovery.**

The 2008-2009 AOP also indicates that the July 1, 2009 storage check could allow increased navigation releases above minimum service levels. It also indicates that if reservoir storage is adequate for something greater than minimum service levels, the bird operations could jeopardize that navigation release. **AWO respectfully recommends that the Corps develop plans to accommodate both protection of the listed bird species and navigation if reservoir levels allow higher than minimum service flows.** The Corps should do everything possible to keep the birds nesting high, early in the nesting season, to ensure that navigation flows can be increased if adequate water exists in the reservoirs.

AWO has previously expressed its concern over the impact of the 2008 flooding, which resulted in multiple breached or damaged flood control and navigation structures. Many of these structures still remain damaged. A parallel concern exists over habitat restoration projects such as the notching of dikes, constructing side-channel chutes and the widening of the river channels which have impacted the flow depths of the Missouri River contributing to a more unreliable environment for vessel navigation. **AWO respectfully recommends that the Corps suspend all future spring rises (floods) until all flood control and navigation structure repairs are completed and a study to determine the impact of those recovery efforts on channel depth and navigation service levels is completed.**

In closing, AWO urges the Corps to proceed on the above recommendations without delay while finalizing the proposed 2008-2009 AOP. Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Lynn M. Muench". The signature is written in black ink and is positioned above the printed name.

Lynn M. Muench