STATE OF ARIZONA
STATE OF ARKANSAS
STATE OF COLORADO
STATE OF IOWA
STATE OF KANSAS
STATE OF LOUISIANA
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STATE OF MINNESOTA
STATE OF MISSOURI
STATE OF NEW YORK
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COMMONWEALTH OF PENNSYLVANIA
STATE OF SOUTH DAKOTA
STATE OF UTAH
STATE OF WEST VIRGINIA
STATE OF WISCONSIN
STATE OF WYOMING

September 26, 2011

The Honorable John L. Mica
Chair, Transportation and
Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20515

The Honorable Nick J. Rahall, II
Ranking Member, Transportation and
Infrastructure Committee
2163 Rayburn House Office Building
Washington, DC 20515

The Honorable Doc Hastings
Chair, Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515

The Honorable Edward Markey
Ranking Member, Committee on Natural
Resources
1329 Longworth House Office Building
Washington, DC 20515

The Honorable Barbara Boxer
Chair, Committee on Environment
and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable James M. Inhofe
Ranking Member, Committee on
Environment and Public Works
456 Dirksen Senate Office Building
Washington, DC 20510

Dear Committee Chairs:

We, the Attorneys General of seventeen states, write to you about a matter of vital importance: blocking the continued spread of damaging invasive species between the Great Lakes and Mississippi River Basins. All our States, which are in or connected to these basins, face severe harm as non-native aquatic species, such as zebra and quagga mussels, invade our waters, disrupting ecosystems and damaging our economies. We all face the threat that more invasive species will move, in both directions, between the basins through the key biological pathway that artificially connects them, the Chicago Area Waterway System (CAWS). As chief legal officers of our respective States, we share common interests in protecting our citizens, economies, and public trust resources from the harm caused by further invasions.

For the reasons outlined in the enclosed briefing paper, we believe that immediate federal action is urgently needed to permanently solve this problem. Specifically, the United States Army Corps of Engineers (Corps), which operates and controls key infrastructure in the CAWS, should be required to accelerate its Congressionally-mandated study of options "to prevent the spread of aquatic nuisance species between the Great Lakes and Mississippi River Basins

through the Chicago Sanitary and Ship Canal . . . ,"[1] and then expeditiously implement changes to the CAWS infrastructure that will completely sever the ecological connection between the basins. We anticipate that will be done while still protecting public health and safety and accommodating, if not improving, commercial and recreational navigation and economic activity within the region.

Unfortunately, the Corps has made clear it will not take timely action without further, specific direction from Congress and the President. Congress first authorized the Corps to study options for preventing the spread of aquatic invasive species through the CAWS in 2007,[2] and specific funding was provided in 2009. The Corps labeled the project as the Great Lakes and Mississippi River Interbasin Study (Study).[3] After initially stating that it intended to complete the CAWS-area portion of the Study in 2012, the Corps now indicates that it does not expect to complete even that portion of the Study until 2015.[4] And, despite an overwhelming number of public comments earlier this year urging it to accelerate the Study,[5] the Corps has not announced any change in its protracted schedule. Moreover, the Corps has also unilaterally weakened the Congressionally-mandated standard of "preventing" the spread of invasive species to merely "reducing the risk."[6]

The Corps' protracted time frame to complete a narrower Study is not commensurate with the seriousness and urgency of the continuing threat of biological invasions – in both directions – through the CAWS. Indeed, it is simply unacceptable.

Against this background, further congressional action is urgently needed. Fortunately, legislation specifically addressing this issue has already been introduced: H.R. 892 and S. 471. Both bills would:

- Direct the Secretary of the Army, acting through the Corps, to study the watersheds of the Illinois, Chicago, and Calumet Rivers that drain into Lake Michigan to determine the feasibility and best means of implementing the hydrologic separation of the Great Lakes and Mississippi River Basins to prevent the introduction or establishment of populations of aquatic nuisance species between the Basins through the CAWS and other aquatic pathways.

- Require the study to: (1) include options to address flooding, Chicago wastewater and stormwater infrastructure, waterway safety operations, and barge and

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[1] Water Resources Development Act of 2007, 110 P.L. 114; 121 Stat. 1041, § 3061(d).

[2] Fn 1.

[3] See http://glmris.anl.gov/.

[4] See http://glmris.anl.gov/documents/docs/glmris_brochure.pdf, "Study Timeline."

[5] See http://glmris.anl.gov/involve/scopingcomments/index.cfm.

[6] *Id.*, "GLMRIS Study Scope."

recreational vessel traffic alternatives; and (2) analyze the environmental benefits and costs of each option.

- Direct the President or his designee to oversee the study to ensure its timely completion.

H.R. 892 has been referred to the House Transportation and Infrastructure Committee Subcommittee on Water Resources and Environment as well as the House Natural Resources Committee Subcommittees on Water and Power and on Fisheries, Wildlife, Oceans, and Insular Affairs. S. 471 has been referred to the Senate Committee on Environment and Public Works. Unfortunately, no further action has been taken on these bills while the threat of invasive species migration through the Basins grows.

We respectfully request the appropriate congressional committees take up these bills, or similar legislation, at the earliest available opportunity. We also request consideration of additional provisions to further strengthen and clarify the mandate for timely, focused, and effective action by the Corps. For example, these should include:

- A specific deadline for completion of the study focused on the CAWS by the end of 2012.

- A requirement that the Corps focus on completely preventing, not merely reducing the risk of, more transfers of invasive species through the CAWS.

- A requirement that the Corps build upon, rather than duplicate, ongoing independent studies of options for hydrologic separation of the Basins, such as that being conducted by the Great Lakes Commission.

Thank you for considering this vital issue. If you have any questions regarding this matter, please feel free to contact Michigan Attorney General Bill Schuette, or Peter Manning or Bob Reichel of his Environment, Natural Resources, and Agriculture Division at 517-373-7540.

Sincerely,

Tom Horne
Attorney General of Arizona

Dustin McDaniel
Attorney General of Arkansas

John W. Suthers
Attorney General of Colorado

Thomas J. Miller
Attorney General of Iowa

Derek Schmidt
Attorney General of Kansas

James D. "Buddy" Caldwell
Attorney General of Louisiana

Bill Schuette
Attorney General of Michigan

Lori Swanson
Attorney General of Minnesota

Chris Koster
Attorney General of Missouri

Eric T. Schneiderman
Attorney General of New York

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Marty Jackley
Attorney General of South Dakota

Mark L. Shurtleff
Attorney General of Utah

Darrel V. McGraw, Jr.
Attorney General of West Virginia

J. B. Van Hollen
Attorney General of Wisconsin

Greg Phillips
Attorney General of Wyoming

WDS/RPR
Encs.