NWC’s 55th Annual Meeting in Little Rock a Resounding Success

With 1800 miles of navigable waterways along five rivers, Arkansas is third in the nation in the number of inland waterway miles. The Mighty Mississippi River, forming the eastern border of the state, is the main trade corridor for goods produced in the northern part of the United States, while the Arkansas, Ouachita, Red, and White Rivers also serve important transportation routes to gateway ports near the Gulf of Mexico. In addition, the McClellan-Kerr Arkansas River Navigation System (MKARNS), the largest civil works project ever undertaken by the U.S. Army Corps of Engineers at the time of its opening, has numerous flood control projects, hydroelectric power plants, and soil conservation and recreational areas.

A sell-out crowd converged in Little Rock to hear from top Federal officials and industry experts about the multiple benefits Arkansas’ water resources bring to the region and the nation. Kicking off the meeting was a panel from Corps’ headquarters, led by Major General Ed Jackson, the new Deputy Commanding General for Civil and Emergency Operations, who discussed the importance of building sustainable partnerships in support of the nation’s water resources. Building on that theme, Steve Stockton, Director of Civil Works, offered that the Corps is well-positioned to bring together

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stakeholders, states, and other Federal agencies to consider multi-purpose projects in a balanced way. Mark Mazzanti, Chief of Programs Integration, provided an in-depth look at funding and budgetary priorities and challenges, highlighting key initiatives: life cycle cost management, asset management, deauthorizations, and alternate financing.

The multiple benefits enjoyed by Arkansas' vast network of waterways were touted by a panel of regional experts: Gene Higginbotham, Executive Director of the Arkansas Waterways Commission; Ben Noble, Executive Director of the Arkansas Rice Federation; Sherrel Johnson, the Project Coordinator for the Union County Water Conservation Board; and the Corps' Little Rock District Commander, Col. Courtney Paul.

Overarching policy issues impacting water resources development and operations were addressed by an array of distinguished industry experts. Julie Ufner from the National Association of Counties offered perspectives on various policy initiatives. Her concerns about the Waters of the U.S. rule were echoed by Randy Veach from the Arkansas Farm Bureau, who noted that the nation's farmers are caretakers of the land and strive for sustainable agriculture—essential for food, fiber, and shelter. Jill Jamieson discussed infrastructure investment and financing opportunities and challenged attendees to consider alternative finance and delivery tools to accelerate project and service delivery.

All presentations are on our website: waterways.org/2015-annual-meeting/

After the conference program, attendees enjoyed a festive evening at the Clinton Presidential Library, where Walt Coleman, a fifth generation Arkansas dairy farmer and National Football League referee, in a lively and entertaining presentation, reminded everyone that when it comes to life, it’s not just about winning or losing, it’s about playing by the rules and being confident in how you “call the game.”

(Pictured: Walt Coleman and Gene Higginbotham)
NWC Elects New Officers and Directors

Congratulations to the new Officers and Directors for 2015–2016 elected at NWC’s Annual Meeting. Elected to serve as Chairman of the Board, Jamie McCurry, Georgia Ports Authority; Vice Chairman: Randy Richardson, Port of Memphis; President, Amy Larson, National Waterways Conference, Inc.; First Vice President: Tim Feather, CDM Smith; Vice President: David Yarbrough, Tulsa Port of Catoosa; Secretary and Counsel: Steven Burns, Balch & Bingham, representing Alabama Power; and Treasurer: Cline Jones, Tennessee River Valley Association.

Elected to serve on the Executive Committee are Tom Ray, Texas Water Conservation Association; Rich Brontoli, Red River Valley Association; Jim Weakley, Lake Carriers Association; Rob Rash, St. Francis Levee District; Lucy Fletcher, AGRI Services of Brunswick; Mike Fallon, Halff Associates; Deidre Smith, Oklahoma Department of Transportation; Judy Adams, Alabama State Port Authority, and Brad Pickel, Atlantic Intracoastal Waterway Association.

New Directors to serve for a 3-year term through 2018, representing Associations are Karin Jacoby, MOARC Association; Meagan Kaiser, Upper Mississippi, Illinois & Missouri Rivers Association (UMIMRA); Jim Weakley, Lake Carriers Association; Shane Kinne, Missouri Corn Growers Association, and Sean Duffy, Big River Coalition. To fill a term ending in 2017, Craig Stepan, Tennessee Tombigbee Waterway Development Authority. Elected to represent Corporate members, Lucy Fletcher, AGRI Services of Brunswick; Roger Lindner, Burlington River Terminal; Phyllis Harden, Pine Bluff Sand and Gravel Co.; Chris Faust, Gavilon, and Fonda New, QRI, Inc. To fill a term ending in 2017, Mike Betteker, Tetra Tech, Inc. Representing Public members, Rob Rash, St. Francis Levee District; Andrew Sinclair, Virginia Port Authority; Eric England, Caddo-Bossier Port; Mike Reed, Sny Island Levee Drainage District, and Dustin Boatwright, Little River Drainage District.

Making a Difference

Building on his theme of “Making a Difference” and the Corps’ commitment to excellence, General Jackson recognized three employees from the Little Rock District and presented them with the commander’s coin: Dan Smith, dam safety program manager; William Hill, lock and dam operator at the David D Terry L&D; and Matt Brock, Dardanelle Marine Terminal.

Visit us at waterways.org. Send your ideas and suggestions for the National Waterways Conference to info@waterways.org.
“Water’s a Big Deal at DOT”

So proclaimed Lauren Brand, Associate Administrator in the Office of Intermodal System Development at the Maritime Administration. In support, Brand highlighted the key objectives of Marad’s National Maritime Strategy: ports, waterways, a competitive US flag fleet, education and training, and maritime technology innovation. As part of that strategy, Brand honed in on two key programs.

Marad’s Strong Ports Program has as its objectives to improve the state of repair, capacity, efficiency, and environmental sustainability of all U.S. ports, to improve port competitiveness for public (Federal, State, and local) and private funds through enhanced planning and engagement, and to support ports with executing projects with Federal investment.

Designation of projects as part of the America’s Marine Highway Program demonstrates a coordinated effort between Federal, state, and local governments; barge operators; and major shippers to develop new transportation alternatives while enhancing economic prosperity. Pointing to the M-55 Container-on-Barge designation as an excellent example of government working at various levels with private industry to create innovative solutions to freight challenges and provide public benefits, Brand advised the attendees that the next application deadline is December 31st.

Look at Marad’s website to view two new videos unveiled for the first time in Little Rock. www.marad.dot.gov/ports/strongports/

“Water is not priced to reflect its value”

In discussing efforts to ensure a long-term, affordable water supply Gail Melgren, Executive Director of the Tri-State Water Resource Coalition, posited that water is not priced to reflect its value.

<table>
<thead>
<tr>
<th>Average swimming pool is ~20,000 Gallons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pool of <strong>topsoil</strong> (bags) cu ft $2.64 =</td>
</tr>
<tr>
<td>Pool of <strong>gasoline</strong> at $2.50 =</td>
</tr>
<tr>
<td>Pool full of <strong>milk</strong> at $4 per gallon =</td>
</tr>
<tr>
<td>Pool full of <strong>perfume</strong> at 1 oz/$29 is 1 gal/$3,712 =</td>
</tr>
<tr>
<td>Pool full of <strong>water</strong> (in Cassville) at $3.70 (cost per 1000 gallons) X 20,000 gallons = $74.00 + $11.61 (base) =</td>
</tr>
</tbody>
</table>

Visit us at waterways.org. Send your ideas and suggestions for the National Waterways Conference to info@waterways.org.
Industry Events

October 19–22
PIANC – Dredging Conference
Savannah, GA
www.pianc.org

October 21–23
Troy University Center for Water Resources Economics
Phoenix City, AL
michael@troy.edu

October 28–30
Int’l Propeller Club of the U.S.
Savannah, GA
www.propellerclubhq.com

November 11–13
Waterways Council, Inc.
New Orleans, LA
www.waterwayscouncil.org

November 12–13
Atlantic Intracoastal Waterways Association
Jacksonville, FL
www.atlintracoastal.org

November 18–20
Mississippi Water Resources Association Annual Conference
Biloxi, MS
www.mswater.org

November 19
RRVA Wichita Falls Water Resources Conference
Wichita Falls, TX
www.rrva.org

December 3–5
Mississippi Valley Flood Control Association
New Orleans, LA
www.mvfca.org

2016 Events

March 13–17
Pacific Northwest Waterway Association
Washington, DC
www.pnwa.net

March 17–19
Women on the Water
Vallejo, CA
womenonthewater@dot.gov

April 19–21
American Waterways Operators
Washington, DC
www.americanwaterways.com

NWC Events

March 7–9, 2016
Legislative Summit
Washington, DC

September 21–23, 2016
Annual Meeting
Norfolk, VA

March 6–8, 2017
Legislative Summit
Washington, DC

Welcome New Members!

Arkansas Farm Bureau
Little Rock, AR
Stanley Hill

Barnhart Crane & Rigging
Fairhope, AL
John Mickler

Monroe County
Chamber of Commerce
Aberdeen, MS
Skip Skaggs

Spartan Marine
Fort Smith, AR
Andy Billups

The Fertilizer Institute
Washington, DC
Justin Louchheim

Upper Trinity Regional Water District
Lewisville, TX
Thomas Taylor

Webco Industries
Sand Springs, OK
Dana S. Weber

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Wotus Rule Blocked Nationwide

The U.S. Court of Appeals for the Sixth Circuit in Cincinnati issued an order halting nationwide implementation of the “Waters of the U.S.” rule finalized by the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers in late August. The order granted a request by 18 states who are challenging the validity of the rule on various grounds. The states contend that the rule’s expansion of regulatory jurisdiction is beyond the agencies’ statutory authority and that the process utilized to develop the final rule violates the rulemaking requirements of the Administrative Procedure Act (APA). Previously, a U.S. District Court in North Dakota had blocked the rule for 13 states included in a petition filed before that court.

A threshold question that must be addressed is which court—the Court of Appeals or the District Court—has the authority to hear the numerous appeals. Under the Clean Water Act, certain types of challenges can go directly to Federal appeals court, bypassing district courts. In the Sixth Circuit, the state petitioners contend that the district courts should properly decide the merits of the case, while the respondent U.S. Government contends the appeals court would be the appropriate forum. That Court concluded that given the pervasive nationwide impact of the new rule on state and Federal regulation, among other reasons, staying the rule until the jurisdictional issue is resolved would be in the public interest. All briefs on that issue are due to the Sixth Circuit by November 4th, with oral argument scheduled for December 8th. A decision could be issued fairly quickly thereafter.

In reaching its decision, the Court also concluded that the petitioners have demonstrated a substantial possibility of success on the merits. With respect to the rule’s treatment of tributaries, “adjacent waters” and waters having a “significant nexus” to navigable waters, the Court opined that “it is far from clear that the new Rule’s distance limitations are harmonious with” Justice Kennedy’s opinion in the Rapanos case concerning the permissible parameters of “waters of the United States.” Moreover, regarding petitioners’ assertion that the final rule does not comply with the APA because the proposed rule did not include any proposed distance limitations in its use of terms like “adjacent waters” and significant waters,” the Court ruled that the agencies “have failed to identify anything in the record that would substantiate a finding that the public had reasonably specific notice that the distance-based limitations adopted in the Rule were among the range of alternatives being considered.”

In the meantime, the Judicial Panel on Multidistrict Litigation rejected a government request to consolidate nine separate district court cases challenging the regulation. The U.S. Department of Justice (DOJ) had sought to consolidate those cases in the U.S. District Court for the District of Columbia, but the panel denied that request, finding that the jurisdictional issue relies on questions of law rather than fact, and that “centralization will not serve the convenience of the parties and witnesses, or further the just and efficient conduct of this litigation.”

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Concerned that the panel’s ruling would mean that multiple lawsuits would proceed on parallel tracks in seven district courts, DOJ has asked the District Court in North Dakota—the court furthest along in the process—to halt its proceedings until the Sixth Circuit decides the jurisdictional issue. Arguing that the preliminary injunction means that the plaintiffs are already protected from harm, DOJ contends that staying proceedings until the Sixth Circuit rules on jurisdiction would prevent parties from wasting time and energy if the case ultimately ends up in appellate court. The 13 states in the North Dakota lawsuit have opposed the government’s motion, pointing out that court has already determined that it has jurisdiction, and instead they seek to proceed on the merits. Similar pleadings have been filed in the other courts.

Appropriations Update

With the Federal government funded by a continuing resolution through December 11th, discussions are ongoing on Capitol Hill to develop an omnibus funding package for the remainder of the fiscal year. Both the House and Senate Appropriations Committees have approved all 12 annual appropriations bills, and the recent agreement to set new spending levels and raise the debt ceiling are reasons for optimism.

The bills funding the Corps of Engineers’ civil works program are substantially higher than the Administration’s request of $4.7 billion. The House-approved version would fund the program at $5.637 billion, while the Senate Committee bill provides $5.5 billion. Construction funding is strong in both bills, at $1.635 billion in the House and $1.641 billion in the Senate, compared to the Administration’s request of $1.172 billion. Both bills recommend full use of the revenues from the Inland Waterways Trust Fund. Operation and Maintenance would be funded at $3.094 billion by the House and $2.909 billion by the Senate. The Senate bill hits the WRRDA target of $1.254 billion from the Harbor Maintenance Trust Fund, with the House mark coming in at $1.17 billion. The Senate report also directs the General Accountability Office to study the economic importance of small inland ports, including revenue and job creation, and include a recommendation for the establishment of a dedicated revenue stream for dredging of these ports.

Investigations would be funded at $111 million in the House bill, compared to $109 million by the Senate. The Senate report directs the Corps to complete a survey on the Upper Mississippi River Comprehensive Plan and make recommendations in support of an overall flood risk management plan for the entire main stem of the Mississippi River. The Mississippi River and Tributaries project would receive $330 million under the Senate bill, an increase of $105 million over the budget request, with the House bill providing $275 million.

The Regulatory program would be funded at $200 million in both bills, a decrease of $5 million from the Administration’s request. The Senate bill would fund the Office of the Assistant Secretary of the Army (Civil Works) at $3 million, consistent with the FY15 enacted level, but a decrease from the Administration’s request of $5 million. The House bill includes $4.75 million, provided that 75 percent of that funding would be restricted until at least 95 percent of the additional funding provided in each account has been allocated to specific programs, projects, or activities.
EMA’s Deputy Associate Administrator for Insurance and Mitigation, Roy Wright, attended NWC’s Annual Meeting in Little Rock to provide an update on the Federal Flood Risk Management Standard and the then-ongoing effort to finalize the Implementing Guidelines. Expressing that he heard our concerns, Wright predicted that the final standard would reflect many of the comments and concerns raised during the listening sessions and in the written comments.

Major topics addressed during the process to synthesize and adjudicate the large volume of comments included:

- the scope and applicability of E.O. 11988 and the FFRMS and the associated implications for implementation;
- the concept of best available data and information, especially as it relates to the climate-informed science approach and mapping information available to determine the floodplain;
- questions about the impact of E.O. 13690 on the National Flood Insurance Program (NFIP) and other Federal Emergency Management Agency (FEMA) programs;
- concerns about consistency in implementation across Federal agencies;
- requests for clarification or additional information on critical actions and nature-based approaches;
- suggestions and questions about the development of agency-specific guidelines and implementation plans;
- questions and suggestions about how other levels of government should be involved in the process and, in particular, how state, local, tribal, or territorial standards will be addressed; and
- clarification on how E.O. 13690 applies to leved areas.

A few weeks later, the Water Resources Council convened and issued the final guidelines to implement the Federal Flood Risk Management Standard.

In terms of applicability, the final guidelines distinguish between “actions,” including permitting and licensing activities which will continue to be subject to the 100-year standard, and “federally funded projects,” to which the FFRMS applies. This may be a positive development as the draft version issued earlier this year, the final guidelines prescribe three options by which Federal agencies must establish the floodplain: the preferred climate informed science approach, the freeboard value approach (base flood elevation plus two or three feet), and the 0.2 percent annual chance flood (the 500-year floodplain).

The standard is captured under a new definition, the “FFRMS Floodplain.” That is in contrast to the definition of “floodplain,” defined as the lowland and corresponding horizontal floodplain for federally funded projects. Federally funded projects are actions where Federal funds are used for new construction, substantial improvement, or to address substantial damage to structures and facilities.” Consistent with the draft version issued earlier this year, the final guidelines prescribe three options by which Federal agencies must establish the floodplain: the preferred climate informed science approach, the freeboard value approach (base flood elevation plus two or three feet), and the 0.2 percent annual chance flood (the 500-year floodplain).
relatively flat areas adjoining inland and coastal waters including flood prone areas of offshore islands, to be established based on type of action and whether the action is critical. The final version also includes a new definition for the “FEMA BFE,” the 1 percent annual chance flood elevation.

While the definitions appear to seek to provide clarity, the guidelines go on to state that:

*Although the FFRMS describes various approaches for determining the higher vertical flood elevation and corresponding horizontal floodplain for federally funded projects, it is not meant to be an “elevation” standard. The FFRMS is a resilience standard. The vertical flood elevation and corresponding horizontal floodplain determined using the approaches in the FFRMS establish the level to which a structure or facility must be resilient. This may include using structural or nonstructural methods to reduce or prevent damage; elevating a structure; or, where appropriate, designing it to adapt to, withstand, and rapidly recover from a flood event.*

Characterizing the FFRMS as a “resilience standard” rather than an elevation standard appears for the first time in the final version. As a consequence, impacted stakeholders did not have the benefit of providing comments and perspectives on the practical impact of this approach. Moreover, it is rather confusing to discern what is contemplated here, and whether this is a difference without a distinction, particularly in view of the above-stated requirement that agencies use the higher vertical flood elevation and corresponding horizontal floodplain.

Individual agencies are now expected to develop their own procedures to implement the standard. The process by which agencies will do this, including whether and how they will seek public input, has not been revealed.

FEMA, HUD, and the Corps of Engineers have issued fact sheets to address certain aspects of their respective programs. FEMA’s fact sheet provides that “[t]he FFRMS will not affect the standards or...
Portiss Named ‘Champion of Change’ by White House

Bob Portiss, Director of the Tulsa Port of Catoosa and a five-time Chairman of the National Waterways Conference, has been named by the White House and the U.S. Department of Transportation as a 2015 Champion of Change.

The White House Champions of Change Program highlights the stories and examples of citizens across the nation, who are leading projects and initiatives that move their communities forward. Champions of Change: Transportation Innovators is a national program to honor leaders who have devoted their time and efforts in developing innovative ways that transportation helps their community reach new heights.

This year’s theme is Beyond Traffic: Innovators for Transportation for the Future.

Honored in a ceremony at the White House, Mr. Portiss has been a passionate advocate for inland waterways issues at both the state and national level for not only the McClellan-Kerr Arkansas River Navigation System (MKARNS), but all of the U.S. navigable waterways. In the 1980s, Mr. Portiss and a group of MKARNS advocates formed the Coalition for Montgomery Point Lock and Dam and began a 25-year campaign to support the construction of a lock and dam at the confluence of the MKARNS and the Mississippi River to resolve issues that threatened future navigation; and through their tireless efforts Montgomery Point Lock and Dam was authorized, funded and built, opening to service in July 2005.

Mr. Portiss’ tireless advocacy for a partnership relationship with the Corps has led to system unity among stakeholders from two states and from two USACE districts; and as a result, in August 2009, the U.S. Army Corps of Engineers awarded Mr. Portiss the prestigious Bronze de Fleury Medal presented to honor those individuals who have provided significant contributions to Army engineering. In 2013, Portiss was appointed by Oklahoma Governor Mary Fallin to chair the Oklahoma Port Task Force to study and develop a comprehensive plan to accommodate the added burden on Oklahoma ports, roads, and bridges resulting from the reopening of the expanded Panama Canal.
Harvest time in the Pacific Northwest means that our roads, rails, and rivers are busy bringing wheat and other agricultural products to northwest ports for export overseas. Many of those crops are shipped via barge on the Columbia and Snake Rivers. The bulk nature of these products makes barging a particularly attractive option for Northwest farmers looking to move their products efficiently, safely, and cost effectively.

Nearly 50 percent of the nation’s wheat moves through the Columbia Snake River System, making it the country’s top wheat export gateway. The inland barge system plays a key role in supporting this wheat movement. In fact, in 2012, 10 percent of all U.S. wheat exports moved through the Snake River dams. These dams and their Federal navigation locks allow barges to provide cargo transportation between eastern Washington, eastern Oregon, and northern Idaho and export facilities on the Lower Columbia River. In addition to their navigation benefits, these dams provide clean power to keep the lights on throughout the Northwest. The entire system works in unison to provide trade and power benefits for the region, and support jobs in the Northwest and beyond.

One barge can hold between 100,000 and 120,000 bushels of wheat, with a four-barge tow handling 400,000 to 480,000 bushels in a single voyage. A four-barge tow, the typical configuration on this river system, moves the same amount of cargo as 538 trucks or 140 rail cars. Annually, barging on the Snake River alone keeps 112,000 semi-trucks off our highways and 32,000 rail cars from moving through the sensitive air shed of the Columbia River Gorge. Combined with the lowest emissions of any cargo transportation, barging allows Northwest producers to have a reliable, efficient, and environmentally friendly method of getting their goods to overseas markets.

Still, the myth that the region would be better off without the benefits the dams provide continues to be pushed by a small but vocal group of activists. These activists call for breaching the Snake River dams, at the expense of Northwest

CONTINUED ON PAGE 12
Barges are once again docked at the Port of Kansas City—Woodswether Terminal. This is the first barge traffic since Port KC took over the terminal in 2012.

“Riverborne Commerce will provide another transportation alternative that allows Kansas City to be competitive regionally, nationally, and internationally. The reopening of the port helps fulfill Port KC’s mission by enhancing Kansas City’s economic vitality through transportation and commerce. It provides efficient use of our waterway as a navigable resource for regional and global trade, and serves as a support nexus to rail and roadway shipping” said Michael Collins, President & CEO of Port KC.

The first two materials to move through the port are both recyclable. The first barge to dock at the port carried mill scale for Central Plains Cement. The mill scale will be blended with cement and made into asphalt. The first barge to be loaded at the port will carried scrap metal to Peoria, IL that will be melted and made into steel.

The reopening of the port is the culmination of years of work by Port KC. Over the past three years critical elements of Northwest infrastructure. Their trade benefits allow farmers efficient and consistent access to world markets. Their energy production is vital to our emission-free Northwest hydropower portfolio. Years of collaboration have made possible the shared use of the Columbia and Snake Rivers for healthy fish runs, energy, trade, and transportation.

Kristin Meira is the Executive Director of the Pacific Northwest Waterways Association and serves on NWC’s Board of Directors.
rates of the NFIP. The FFRMS will not change the minimum floodplain management criteria in 44 CFR Part 60 that communities must adopt in order to participate in the NFIP for flood-prone areas, FEMA's flood mapping standards, or the rating and claims practices of the NFIP. This means that the FFRMS will have no effect on the cost or availability of Federal flood insurance for policyholders."

The Corps of Engineers has advised that its regulatory program, with authority for issuing permits under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act, will continue to use the 100-year base flood elevation when reviewing permit applications. However, whether or not the FFRMS applies to the 408 program is less clear. HUD expects to issue a proposed rule for public comment, advising that it would not apply to single-family home mortgages for acquisition or refinancing of existing homes under the Federal Housing Administration or any other program, and further that the FFRMS would have no effect on the vast majority of privately owned homes and businesses. Application to programs at the Department of Transportation and other Federal agencies is not currently available.

In response to notice of the Water Resources Council meeting, issued just two days before the meeting but published in the Federal Register two weeks after the meeting, Senate Appropriations Committee Chairman Thad Cochran sent a letter to Interior Secretary Sally Jewell, acting as council chairman, requesting the technical, legal, and scientific justification for the new policy, including net cost-benefit and alternatives analyses. He had previously sought such information a year ago, as have many stakeholders, including NWC, but such information has not been publicly released.

Senator Cochran further expressed concern with the “Administration’s actions to resurrect” the Council given that “the Administration has not requested, nor has the Congress provided” any appropriations since 1983, and he requested that Secretary Jewell furnish a detailed accounting of any funds used to support the activities of the Council, along with the identification of any Executive Branch personnel used to support such activities.

The final guidelines and related information are available on FEMA's website: [www.fema.gov/media-library/assets/documents/110377](http://www.fema.gov/media-library/assets/documents/110377)

Chairman Cochran’s letter is available here: [waterways.org](http://waterways.org)