

Thank you for your comment, Robert Reichel.

The comment tracking number that has been assigned to your comment is GLMRISANS50170.

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GLMRISANS

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Attachment: GLMRIS ANS Control Comments - AG Schuette Ltr 02.17.12.pdf

Comment Submitted:

See attached letter from Michigan Attorney General Bill Schuette



BILL SCHUETTE  
ATTORNEY GENERAL  
STATE OF MICHIGAN

February 17, 2012

GLMRIS ANS Control Comments  
111 North Canal, Suite 600  
Chicago, IL 60606

Re: "Inventory of Available Controls for Aquatic Nuisance Species of Concern – Chicago Area Waterway System"

To Whom It May Concern:

This is in response to the U.S. Army Corps of Engineers' (Corps) request for public comments on the paper entitled "Inventory of Available Controls for Aquatic Nuisance Species of Concern – Chicago Area Waterway System" (Paper) recently released as part of the Great Lakes and Mississippi River Interbasin Study (GLMRIS).

As noted in the Paper (p. 1), Section 3061(d) of the Water Resources and Development Act of 2007 authorized what the Corps refers to as the GLMRIS and directed the Corps to:

[C]onduct, at Federal expense, a feasibility study of the range of options and technologies available to *prevent the spread of aquatic nuisance species between the Great Lakes and Mississippi River Basins through the Chicago Sanitary and Ship Canal* and other aquatic pathways. (Emphasis added.)

The Paper lists some 90 "available controls," grouped into 27 categories that the Corps asserts "may be applied to prevent the transfer of Organisms of Concerns – CAWS [Chicago Area Waterway System] between the GL [Great Lakes] and MR [Mississippi River] basins by aquatic pathways." (Paper, p. 10.) It states that the Corps intends to "screen the identified controls to determine which warrant further consideration" and "formulate plans comprised of one or more of the screened controls" for evaluation. (Paper, p. 13.)

Unfortunately, the Corps' approach outlined in the Paper:

- unlawfully weakens the Congressional directive to study options to *prevent* the spread of aquatic nuisance species (ANS) through the CAWS;
- wastes precious time and money considering numerous "options" that cannot effectively and sustainably block the spread of invasive species, in both directions, through the CAWS; and

- unnecessarily delays detailed planning for the most effective permanent solution – hydrologic separation of the basins at strategic locations in the CAWS.

For the reasons outlined below, the State of Michigan urges the Corps to expedite and focus the CAWS portion of the GLMRIS on specific options for hydrologic separation, building upon, rather than duplicating, studies already conducted by the Great Lakes Commission<sup>1</sup> and Natural Resources Defense Council.<sup>2</sup>

**1. Preventing the spread of aquatic nuisance species, not merely reducing the risk, must be the goal.**

In the Paper, as in previous public descriptions of the GLMRIS, the Corps improperly – indeed unlawfully – purports to re-define the term “preventing” used by Congress in section 3061(d) of the Water Resource and Development Act of 2007. Section 2 of the Paper states:

*Prevent* includes the reduction of risk to the maximum extent possible, because it may not be technologically feasible to achieve an absolute solution.” (Paper, p. 5.)

The Corps has no legal authority to re-write statutory language in that fashion.

This is not a matter of semantics. By diluting the statutory objective from “preventing the spread” of ANS to mere “risk reduction,” the Corps dramatically expands the universe of options that it chooses to consider and includes options that cannot be expected to actually “prevent” the spread of ANS. As the Paper itself illustrates, the result is unnecessary complexity, delay, and expense.

**2. The Corps is wasting time and money evaluating numerous options that clearly cannot sustainably and effectively prevent the spread of ANS through the CAWS.**

It is evident from the face of the Paper, and the supporting documentation in Appendices B and C of the Paper, that the vast majority of the 90 “controls” identified cannot reasonably be expected, either alone, or in combination, to provide an effective, permanent solution that prevents the spread of ANS, in both directions, through the CAWS. For example, as the Corps acknowledges, measures such as accelerated water velocity (B-1), screens (B-13), sensory deterrent systems, including electric barriers, and vertical drop barriers (B-14) are not expected to prevent downstream movement of aquatic organisms.

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<sup>1</sup> Restoring the National Divide; Separating the Great Lakes and Mississippi River Basins in the Chicago Area Waterway System (January 2002 <http://www.glc.org.caws/>).

<sup>2</sup> Rebuilding Chicago’s Stormwater and Wastewater Systems for the 21st Century: Understanding Hydrologic Conditions in the Region Technical Report, October 2010. See <http://www.nrdc.org/water/Chicagoriver/files/Chicago%20River.pdf>.

Many of the identified controls including, for example, alteration of water quality (B-2), aquatic herbicides (B-3), biocides (B-4 – B-6), lethal water temperature (B-9), pesticides (B-12) and sensory deterred systems, including electric barriers (B-14) would require application of chemicals, modification of water quality, or operation and maintenance of expensive, complex systems on a continuing basis, in perpetuity. Such approaches cannot reasonably be considered sustainable and reliable means of permanently preventing the spread of ANS through the CAWS.

Moreover, as the Corps itself acknowledges, many of the options it identifies are experimental and/or of limited effectiveness. (*See, e.g.,* acoustic fish deterrents (B-1), targeted disease agents (B-7), deleterious gene spread (B-8), pheromones (B-11) and Williams' Cage (B-14). Accordingly, they should be excluded from any further evaluation of "available" options for preventing the spread of ANS in the CAWS.

**3. The Corps should expedite and focus its study on the option – hydrologic separation – that will most effectively and sustainably prevent the spread of ANS through the CAWS.**

Among the 90 "controls" listed by the Corps, only one available option – hydrologic separation (B-9) – can reasonably be expected to permanently and reliably prevent the spread of ANS, in both directions, through the CAWS. The need for and feasibility of that option has already been documented by the report recently issued by the Great Lakes Commission and the Great Lakes and St. Lawrence Cities Initiative (Report). Among the three alternatives considered in that Report, the Mid-System Alternative provides the best and most cost-effective approach for separating the basins at strategic locations in the CAWS. Moreover, as the Report explains, such a permanent separation can be accomplished in a manner that maintains and enhances water quality, flood management, and transportation.

There is no need for the Corps to duplicate the valuable work already included in that Report. Instead, the Corps should build upon it, focusing the development of plans for implementing the key elements of the Mid-System Alternative to be implemented at the earliest possible date.

Sincerely,



Bill Schuette  
Attorney General

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