

# Chicago Area Waterway System Aquatic Invasive Species Stakeholder Group

## April 28, 2020 Webex Meeting Summary

### **Welcome, Introductions and Review of Agenda**

Kathy Luther, NIRPC, welcomed those in attendance to the CAWS-AIS Stakeholder Group meeting. Members and guests introduced themselves and the group reviewed the agenda. Dominique Edwards, NIRPC, provided the background administration functions of the Webex and explained the landscape features.

### **Great Lakes Day and Water Resources Development Act (WRDA)**

Matt Doss, GLC, provided an overview of the Great Lakes Day events held in Washington, D.C. in March. The Great Lakes Commission (GLC) and the Northeast-Midwest Institute convened at Great Lakes Day. Both organizations and the Healing Our Waters Coalition, attended congressional office events. GLC and the Northeast-Midwest Institute sponsored a breakfast reception where 20 members of the congressional delegation addressed the 200 guests in attendance. Some of the topics highlighted by the members were the great lakes restoration, asian carp and aquatic invasive species, and the Brandon Road project.

Molly Flanagan, Alliance for the Great Lakes, noted that due to the COVID-19 pandemic, events are moving in a dramatically different reality than during the Great Lakes Day event. Molly acknowledged the efforts by the Great Lakes Coalition in organizing the environmental conservation communities, who brought in over 100 advocates to meet with the congressional offices and the Alliance for the Great Lakes. Molly feels that progress made prior to the COVID-19 virus may now seem irrelevant. Organizations have refocused their priorities, and the communications between water and public health need to be reinforced because the great lakes are the largest source of fresh surface water supply, and many in our communities do not have access to safe drinking water. Many environmental and conservation organizations, as well as partner groups across the country, are working at the local, state, and federal levels to insure there is a moratoria on water shut off and restoring water service to all households.

Matt McKenna, Northeast-Midwest Institute, provided an update on the Water Resources Development Act (WRDA). Matt stated priorities have changed on Capitol Hill in Washington, impacting the remainder of the congressional sessions. The Senate Environmental and Public Works (EPW) Committee met last week and released a discussion draft of a WRDA Bill. The legislation, which is called America's Water Infrastructure Act of 2020, includes provisions that relate directly to Asian carp. The Senate Bill authorizes the Great Lakes and the Mississippi River Basin study and the Brandon Road projects, to adjust the cost share for 75% construction with 25% non-federal expense for any project authorized to be constructed, as opposed to the normal 65/35. The bill also expands on an existing program for aquatic invasive species prevention, slowing the spread of Asian Carp beyond the Upper Mississippi and Ohio River Basins and tributaries to all six sub-basins of the Mississippi. In addition, the bill addresses the Great Lakes Restoration initiative for FY 2022 at \$375 million. Matt also stated the Transportation and Infrastructure Committee is currently writing a bill, with the member's request due May 1, 2020. Lynn Muench asked Matt to provide details of the Mississippi River program. At this time, Matt does not have any further details but will try to gather more information on the programs. Kevin Irons, IDNR, offered an update on the Mississippi River Basin program. The program has a budget of \$14 million for the Mississippi River Basin and of that \$14 million, the sub-basins of the Ohio River, Upper Mississippi River, Lower Mississippi River, and the Tennessee Cumberland and Missouri, are identifying budgets for work in 2020.

Matt Doss Announced he was leaving the Great Lakes Commission on April 30 to begin work at the Great Lakes and St. Lawrence Cities Initiatives, but still plans to be involved with the CAWS group. Matt expressed his appreciation in working with the CAWS group and NIRPC. Erika Jensen, GLC, will be the new representative in the CAWS group.

## **Brandon Road Project Update**

Andy Leichty, United States Army Corps of Engineers (USACE), stated the Corps is continuing to work with the State of Illinois to complete a design agreement on the Brandon Road project. Andy confirmed that the design agreement and the funding will both need to be available to advance the project. The state of Illinois is working with the State of Michigan to create an Intergovernmental Agency (IGA) agreement to help share the cost of the design for the sponsor. The next funding opportunity for the USACE will be in FY 2021, but if they obtain approval for accelerated funding, they could use the sponsors funds to begin the project while waiting for the federal funding. Without the approval, the sponsor and federal funding will both need to be submitted together.

Loren Wobig, Illinois Department of Natural Resources (IDNR), began his presentation by thanking Matt Doss for his service at the Great Lakes Commission. Loren stated the IDNR was tracking three paths for the Brandon Road project, with the first being the IGA between Michigan and Illinois, followed by the accelerated funds provision and lastly the Planning Engineering and Design (PED) agreement. The states of Illinois and Michigan were very close to having a finalized agreement in early March. Gretchen Whitmer, Governor of Michigan, vetoed a supplemental appropriations bill due to the enormous amount of funding going to the COVID-19 response. Michigan submitted a revised IGA to Illinois, which the IDNR reviewed and forwarded to their legal team, before sending to Governor Pritzker's office. The accelerated funds have been cleared through the USACE headquarters and will go through appropriating committees in Washington, D.C. before returning to the PED, allowing the PED process to begin prior to the USACE receiving any funding in their next funding cycle. Two weeks ago, the IDNR received a response from the USACE headquarters rejecting all of the requests Illinois submitted in the PED agreement, resulting in Illinois preparing a draft letter to Colonel Sattinger, USACE, addressing each of the rejected items. The IDNR requested clarification on the issues they had with the payment deadlines that were outlined, and was told there would be no fees or penalties. Clauses (WHEREAS) were added to the agreement, stating the district court had determined in a previous lawsuit settlement that the USACE would obtain permits from Illinois for ecosystem projects on designated public waters; in this case, the Brandon Road project on the Des Plaines River. The USACE rejected this clause and a draft response has been created stating Illinois wants to move forward with the project, recognizing the Illinois Public Water law and funding constraint.

Tammy Newcomb, Department of Fisheries and Wildlife, thanked the IDNR for their positive engagement when meeting every Friday to discuss strategies and actions. She reiterated Mr. Wobig's response, stating the administration in Michigan has vacated the Brandon Road project but is looking to revisit the supplemental at a future date. The funding for the project resides in an infrastructure fund, which is a separate fund from the general fund. The funding of \$8 million is in the infrastructure fund and earmarked for the Brandon Road project. A supplemental request was made to the legislature to authorize the funding to be moved to the IDNR's budget for the ability to place in an escrow account.

Marc Smith, National Wildlife Federation, referenced Loren Wobig's comment on the IDNR creating a separate outside agreement when the conditions that Illinois proposed were rejected by the USACE. Marc inquired if all of the conditions the IDNR proposed could be combined in one outside agreement and assign a clean design agreement serving as a template for the USACE to advance concerns, while not delaying the initial PED agreement? Loren confirmed, adding if the outside agreements are not in the PED agreement itself, the USACE will not have a legally binding document that would outline how to become business partners. Unless the agreement is modified by Governor Pritzker's office, requests will be made to the USACE inquiring if they will abide by the Illinois Public Works law. An answer from the USACE will need to come first before it can be decided how to proceed as a non federal partner.

Marc Smith asked Andy Leichty if there were instances where the USACE has entered into an agreement with the local sponsor that has had similar water laws or similar laws that would have dual jurisdiction regarding public water laws. Andy noted the USACE works with the sponsors to take into consideration the laws and

impact of a project, which follows their NEPA process and how it will impact public water laws and considerations for the public.

Molly Flanagan noted there have been missed funding opportunities in FY 20 due to Illinois' unwillingness to sign the design agreement. Loren responded there is a desire of Illinois to move forward in getting the PED agreement signed. Typically, the non federal sponsor comes up with the project, proving the importance to the USACE. The USACE would then provide a list of necessary agreements to sign. In this case, congress told the USACE they wanted the project at Brandon Road and set it up where you need to have a non federal sponsor, which is a reversed situation for this project (in that the federal government came to the state of Illinois stating they had developed the Brandon Road project, and Illinois, as a partner with the federal government on this project to sign the contract). Tammy Newcomb added it is expected the funding from Michigan will be approved in advance of Illinois signing the PED agreement and this funding is a critical piece to getting the PED agreement signed.

## **2-Way Working Group Update**

Joe Exl, NIRPC, stated that from the in-person meeting held in December 2019, NIRPC was assigned the responsibility of facilitating a small working group to continue the Great Lakes and Mississippi River Interbasin Study (GLMRIS) and 2-Way Working Group discussions. The working group was tasked to draft talking points that would be available for the CAWS-AIS working group to utilize. The information obtained from the IDNR, The Nature Conservancy, and the Prairie Rivers Network was forwarded to the CAWS Steering Committee. The Steering Committee did not feel a consensus under one letter could be reached for the entire group and decided the individual organizations should submit their own letters. Kathy Luther noted it was not the content of the letter but rather the Steering Committee had concerns that with the Brandon Road project not being committed yet, it may send a confusing message about the priorities.

Dave Hamilton, The Nature Conservancy, expressed his desire to continue the 2-Way Working Group efforts. Dave asked for support as a group for the 2-way solution and that funding GLRMIS by the USACE's work is not inconsistent with the Brandon Road project.

Marc Smith noted the original concept of the CAWS Advisory Committee was to look at control points to stop the 2-way, and the original USACE authorization was to look into ways to prevent the transfer of invasive species from going in between both basins. Marc stated he also wants to pursue the 2-way solution to stop the transfer of species coming from the Great Lakes to the Mississippi River. It is consistent with the USACE's authorization and the CAWS Advisory Committee in it's support for the past 10 years. Marc questioned why the CAWS group cannot pursue and promote both initiatives because the USACE is still authorized to look into the 2-way solutions and possibly provide federal funding? Marc recommended a small group of people draft a letter for review supporting funding for the USACE for a feasibility study. Kay Nelson suggested Dave and Marc's comments be revisited at the next Steering Committee meeting on May 19. Robert Hirshfeld reminded the committee that it was no longer essential to have a group consensus.

## **Next Steps**

- Matt McKenna's talking points on the WRDA Reauthorization and Federal Budget will be sent to the group.
- Joe Exl's presentation on the 2-Way Working Group update will be sent to the group.

Kathy Luther thanked everyone for their participation and for their patience with the technical difficulties experienced during the meeting.