Congress of the United States
Washington, DC 20515

November 30, 2012

The Honorable Barack Obama
President
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

The Honorable Jo-Ellen Darcy
Assistant Secretary of the Army
108 Army Pentagon
Washington, DC 20310

Mr. William Craig Fugate
Administrator
Federal Emergency Management Agency
500 C Street SW, Room 828
Washington, DC 20472

Dear Mr. President, Secretary Darcy, Administrator Fugate:

We write to express our strong opposition to the misguided efforts of those encouraging you to make an emergency declaration under the authority of the Stafford Act due to economic losses resulting from reduced barge traffic on the Mississippi River. Because of drought-induced low water levels, you have been requested to unlawfully increase water releases from the Missouri River's system of dams and reservoirs specifically to aid navigation on the Mississippi River.

As you know, the Corps of Engineers does not have the legal authority to release Missouri River reservoir water specifically to aid Mississippi River navigation. The General Accounting Office (now known as the Government Accountability Office) concluded in a report on this precise issue that the Corps is not authorized by the Flood Control Act of 1944 to operate reservoirs on the Missouri River for the primary benefit of navigation on the Mississippi River.[1] Under the Missouri River Mainstem Reservoir System Master Control Manual, the Corps operates the Missouri River mainstem system for eight authorized purposes: flood control, hydropower, water supply, water quality, recreation, irrigation, fish and wildlife, and Missouri River navigation. Seeking to utilize significant water resources on the Missouri River for the benefit of navigation on the Mississippi River would not only be short-sighted, but would also cause harm to our states and the other authorized purposes within the Missouri River basin both in the short and long-term.

An unlawful order to increase releases of Missouri River reservoir water from the Missouri River reservoirs will undoubtedly have a negative impact on the people and many businesses in the states we represent, which are also suffering overwhelmingly from the effects of drought. As the chief of the Corps' Missouri Water Management Division has noted, "[t]he drought in the

[1] United States General Accounting Office Report to Congressional Requesters, GAO/RCED-91-3. *Corps' 1988 Missouri River Water Releases Met Guidelines.* November 1990. Page 9. Available at http://gao.gov/assets/220/213275.pdf

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Missouri River basin has affected the reservoir system in two ways: there is less water coming in and more water going out."[2] Clearly, unlawful releases of additional water from Missouri River reservoirs will only exacerbate the drought-related losses already experienced by the communities, tribes, and industries that rely on water from the Missouri River.

Increasing releases in a misguided effort to alleviate drought conditions will also increase the risk of ice-induced flooding along the Missouri River, endangering communities that have yet to recover from the devastating flooding of 2011.

Moreover, nowhere in the Stafford Act is authority granted the President to use federal resources to alleviate economic losses, including for the businesses and industries experiencing losses due to reduced Mississippi River barge traffic. Under the Stafford Act, the President is directed under a designation to direct any Federal agency "…to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe." The Stafford Act is designed to help those who are affected by a natural catastrophe, not those impacted by a so-called "economic catastrophe." The request that the President make an emergency declaration under the Stafford Act for economic assistance is misguided as it asks for an option not legally available to the President. We urge you to deny these requests without delay.

In conclusion, we can appreciate the situation that navigation users have faced this year on the Mississippi River, because we have also been impacted by the drought, but the relief requested is outside of the authorities contained in the Stafford Act.

Sincerely,

Sen. John Thune

Sen. Tim Johnson

Gov. Dennis Daugaard

Rep. Kristi Noem

Sen. John Hoeven

Sen. Kent Conrad

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[2] US Army Corps of Engineers News Release. "Continued Drought Conditions Result in Lowest September Inflows on Record." October 4, 2012. Available at http://www.nwd.usace.army.mil/Media/NewsReleases/tabid/1989/Article/4755/continued-drought-conditions-result-in-lowest-september-inflows-on-record.aspx

Gov. Jack Dalrymple

Rep. Rick Berg

Sen. Jon Tester

Sen. Max Baucus

Sen. Pat Roberts

Sen. Jerry Moran

Gov. Sam Brownback

Rep. Lynn Jenkins

Rep. Kevin Yoder

cc:
Senator Barbara Boxer, Chairman, Committee on Environment & Public Works
Senator James Inhofe, Ranking Member, Committee on Environment & Public Works
Senator Daniel Inouye, Chairman, Committee on Appropriations
Senator Thad Cochran, Ranking Member, Committee on Appropriations