

WATER RESOURCES DEVELOPMENT AND FEDERAL USER CHARGES

Water Resources Development Legislation

On October 12, 1996, President Clinton signed into law the Water Resources Development Act of 1996 (Pub. L. 104-303). The passage of this law reestablished the biennial process begun in 1986 for enacting legislation authorizing water resource projects.

The 1996 Act authorized 12 new navigation projects¹⁸: ten deep-draft and two shallow-draft. The specific projects and their costs are contained in Appendix L. The authorized expenditures for these 12 projects amounted to \$1.38 billion. The ten deep-draft projects accounted for \$758.3 million with Federal funding representing 63.8 percent. The funding for the \$622.7 million in shallow-draft projects is split 50 percent from Federal general funds and 50 percent from the Inland Waterway Trust Fund. Under the Act, dredged material disposal facilities for operations and maintenance (O&M) will now be considered a general navigation feature and cost shared in accordance with Title I of 1986 Water Resources Development Act (WRDA 86) (Pub. L. 99-662).

Status of Water Resource Trust Funds

The following series of tables provides the financial status of the two water resource trust funds. Table 36 presents a summary of the Harbor Maintenance Fee collections by

Table 36
Harbor Maintenance Fee and Trust Fund Collections by Source
FY 1992 through FY 1997
(Thousands of Dollars)

Source	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997
Imports	\$342,402	\$361,678	\$391,679	\$418,858	\$409,708	\$434,037
Exports	142,916	169,141	168,241	214,821	209,217	214,017
Foreign Trade Zones	16,974	20,959	21,895	14,548	27,982	48,976
Domestic	28,451	31,858	34,558	20,241	26,788	34,516
Passenger	3,275	4,748	4,811	2,792	3,179	3,988
Net Collections	\$534,018	\$588,384	\$621,184	\$671,260	\$676,874	\$735,534

Source: Office of Inspection and Control, U.S. Customs Service, Department of the Treasury

Note: HMF collections will differ from deposits into the HMTF due to reporting time and estimating error.

¹⁸

There were an additional six navigation projects conditionally authorized contingent upon successful completion of Corps of Engineers final report by December 31, 1996.

source for fiscal years 1992 through 1997. Imports continue to represent the largest source of revenue for the Harbor Maintenance Trust Fund (HMTF). For FY 1997, import fees accounted for 59 percent of the annual collections with exports at 29.1 percent and domestic trade with 4.7 percent.

Table 37 provides a summary of the Harbor Maintenance Trust Fund revenue and transfer activity over the last 6 fiscal years. For FY 1997, the trust fund received \$735.5 million from the Harbor Maintenance Fee (HMF), an increase of 8.7 percent over FY 1996. The expenditures for dredging purposes totaled \$546.3 million--up 11.1 percent--leaving a balance in the trust fund of \$1.1 billion, an increase of \$240.2 million.

Table 37
Harbor Maintenance Trust Fund for FY 1992 - FY 1997
Revenues and Transfers
(Thousands of Dollars)

	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997
Beginning Balance:	<u>\$72,795</u>	<u>\$120,931</u>	<u>\$303,277</u>	<u>\$451,385</u>	<u>\$621,194</u>	<u>\$866,063</u>
Revenues:						
Harbor Maintenance Fee	\$505,827	\$628,462	\$622,253	\$670,532	\$698,267	\$735,534
Toll Receipts	8,733	8,739	11,112	173	-	-
Interest ¹	<u>16,520</u>	<u>13,521</u>	<u>12,826</u>	<u>30,186</u>	<u>40,870</u>	<u>53,632</u>
Net Revenues	\$531,080	\$650,722	\$646,191	\$700,891	\$739,137	\$789,166
Net Available:	\$603,875	\$771,653	\$949,468	\$1,152,276	\$1,360,331	\$1,655,230
Transfers:						
Corps of Engineers	\$462,229	\$446,434	\$476,620	\$519,196	\$482,126	\$535,987
St. Lawrence Seaway	10,950	13,584	10,765	10,193	9,539	10,322
SLS Toll Rebates	9,565	8,074	9,546	1,512	-	-
Dept. of Transportation	16	160	175	181	169	193
Administrative Costs	<u>184</u>	<u>124</u>	<u>-</u>	<u>-</u>	<u>3,000</u>	<u>3,000</u>
Net Expenditures:	\$482,944	\$468,376	\$497,106	\$531,082	\$494,834	\$549,502
Surplus/Deficit	\$120,931	\$303,277	\$452,362	\$621,194	\$865,497	\$1,105,728

Source: Funds Accounting Branch, Financial Management Service, Department of the Treasury

1- Does not include \$1.5 million (in FY 97) of "Interest Income-Discout which is not available for obligation.

Table 38 represents the FY 1997 income statement for the Inland Waterway Trust Fund. The trust fund is funded by the proceeds from a tax on fuel used in commercial transportation on the inland waterways. The fuel tax was increased to 20 cents per gallon in 1995, which is the maximum tax rate called for when the tax schedule was amended by WRDA 86. During FY 1997, the trust fund received over \$113 million from the fuel tax and investment interest and transferred approximately \$89 million to the Corps for project improvements. The balance in the trust fund at the end of FY 1997 was \$304.5 million.

Table 38
Inland Waterway Trust Fund - FY 1997
(Thousands of Dollars)

RECEIPTS:	
Excise Taxes	\$96,420
Interest on Investments	18,474
Interest on Investments - Accrued	(1,441)
TOTAL RECEIPTS:	\$113,453
NONEXPENDITURE TRANSFERS:	
Transfers to Corps of Engineers	(\$89,453)
NET INCREASE/(DECREASE)	\$24,000

Source: U.S. Army Corps of Engineers

Table 39 identifies the specific waterway projects--new construction and major rehabilitation--for which the Corps expended funds during fiscal year 1997. For each project, the table shows the amount of trust fund expended in FY 1997 and the total allocated through FY 1996. The table also includes the total project cost, which is financed equally from the trust fund and general revenues.

Table 39
Inland Waterway Trust Fund
Corps of Engineers Project Disbursements for FY 1997
(Millions of Dollars)

Authorized Projects	Allocation Through FY 1996	Allocation For FY 1997	Total Cost (Est.)
Construction Projects			
Olmsted Lock & Dam - IL & KY	\$86.2	\$35.5	\$1,020.0
Kentucky Lock & Dam - KY	3.3	1.3	533.0
McAlpine Locks & Dams - KY & IN	4.9	2.0	268.0
Grays Landing Lock & Dam - PA	86.9	0.1	181.0
Monongahela River Locks & Dams 2,3,4 - PA	13.1	8.1	695.0
GIWW, Sargent Beach, TX	17.2	8.6	58.8
Marmet Locks & Dam, WV	4.0	1.0	282.2
Robert C. Byrd Locks & Dam, WV & OH	159.8	10.3	373.0
Winfield Lock & Dam, WV	<u>86.2</u>	<u>14.6</u>	<u>221.6</u>
Sub-Total	\$461.6	\$81.5	\$3,632.6
Major Rehabilitation Projects			
Lock & Dam 14, Mississippi River, IA	\$0.4	\$1.2	\$20.9
Lock & Dam 24, Mississippi River, IL & MO	0.4	1.4	25.7
Lock & Dam 25, Mississippi River, IL & MO	2.8	1.6	22.9
Lock & Dam 3, Mississippi River, MN	<u>0.0</u>	<u>0.0</u>	<u>12.4</u>
Sub-Total	\$3.6	\$4.2	\$81.9
Total	\$465.2	\$85.7	\$3,714.5

Source: U.S. Army Corps of Engineers

Harbor Maintenance Fee on Exports Ruled Unconstitutional by the U.S. Supreme Court

On March 31, 1998, the Supreme Court, in a unanimous decision, ruled that the harbor maintenance fee (HMF) was an unconstitutional tax on exports (United States Shoe Corp. v. United States, -U.S.-, 118 S.Ct. 683 (1998)). The decision came after oral arguments were heard on March 4. In its opinion, the Court held, "that the tax, which is imposed on an ad valorem basis, is not a fair approximation of services, facilities, or benefits furnished to exporters, and therefore does not qualify as a permissible user fee."

This ruling will result in refunds to exporters of the fees paid. The issue concerning the number years eligible for the refund is before the U.S. Court of International Trade. At a minimum, these refunds could total several hundred million dollars. Another consequence of this decision could lead to a challenge of the fee on imports under the General Agreement on Tariffs and Trade (GATT). A tax or fee, which is applied to only exports or imports, can be considered as discriminatory with respect to the GATT. Based on past experience, if the application of the HMF were limited to just the domestic traffic, the annual HMTF revenues would decrease by approximately 90 percent.

The Supreme Court's action was a result of a case brought before the U.S. Court of International Trade (CIT) by an exporter, United States Shoe. On October 25, 1995, the CIT agreed with shippers (United States Shoe Corp. v. U. S., 907 F. Supp. 408 (Ct. Int'l Trade 1995)) that the harbor maintenance fee as applied to exports is unconstitutional. The trade court concluded that the fee violated the Constitution's "Export Clause," which bans taxes or duties on any U.S. exports. The court rejected the government's argument that the HMF was a user charge and not a tax. In its ruling, the court indicated that, to be constitutional, the main purpose of the underlying law should be regulation and the revenue raised should be to only to recover the cost of services provided. Specifically, the ad valorem basis of the HMF is not a "fair approximation" of the benefits received. For example, large deep-draft bulk carriers could benefit more but pay less than smaller vessels carrying high valued cargo. Further, the fact that the trust fund has been running a surplus was an indication that the HMF was imposed to raise revenue.

The Justice Department filed (February 1, 1997) a notice of appeal to the U.S. Court of International Trade decision before the U.S. Court of Appeals for the Federal Circuit. On June 3, 1997, in a 5-1 decision, the U.S. Court of Appeals upheld the CIT ruling that the HMF on exports was unconstitutional (United States Shoe Corp. v. United States, 114 F.3d 1564 (Fed. Cir. 1997)). This decision was appealed to the Supreme Court, as discussed above.

The U.S. port industry is concerned over the court decision because of the impact it will have on the funding mechanism for operations and maintenance dredging of Federal navigation channels at public ports. The American Association of Port Authorities "urges that legislation be enacted as soon as possible to establish an alternative funding mechanism for maintaining our Federal navigation channels. It's critical to our Nation's competitiveness that there be no lapse in funding for channel maintenance."

The Administration believes that a healthy port system plays an important role in ensuring a strong national economy. A number of alternative financing mechanisms for operations and maintenance activities are being studied. The general structure of the fee will continue to have the users be responsible for the costs of maintaining the system. The replacement fee will be

formulated on a nationwide basis that does not significantly alter the existing competitive balance among U.S. ports. In addition to the existing activities funded by the Harbor Maintenance Trust Fund, the Administration believes that the fee should support the Federal share of Corps of Engineer's construction activities for port and harbor deepening projects. The inclusion of the Corps' construction projects recognizes that a competitive port system requires an adequate investment in new construction.

The Administration also supports establishing a clear link between the amount of Federal revenue collected annually from the replacement fee and the amount of annual appropriations. To address these budgetary issues, the Administration proposes to allow the new user-fee receipts to be available to finance appropriated spending without affecting the overall budget picture--including Pay-As-You-GO and spending caps. Under this favorable budgetary arrangement, Congress would be able to appropriate in a fiscal year an amount up to the total level of annual receipts without affecting the discretionary caps.

INTERMODAL TRANSPORTATION ACCESS

The Nation's economy, international competitiveness, and national security are becoming more dependent on the effectiveness of our intermodal transportation system. The benefits of an integrated intermodal system can only be achieved by cost effectively linking the various modes of transportation. Good intermodal access is a vital aspect for the continued development of U.S. ports. Today, U.S. ports are focusing on adequate waterside and landside transportation infrastructure as a prerequisite to support the growing demand in freight transportation. In addition, ports are exploring further development into information and technology infrastructure. This is considered necessary as U.S. ports of the future will also play a greater role as centers for information and data communication flows.

Landside Access

Landside access is a major challenge that most U.S. ports face. Intermodal connections between the transportation modes are typically the weakest links in the Nation's transportation system. U.S. ports and terminals, as the land/water transportation interface, are the pivotal links for the movement of our Nation's international trade. Ninety-five percent of overseas international trade, by volume, passes through the U.S. ports. Between 1970 and 1995, U.S. international waterborne freight nearly doubled. In 1996, U.S. ports handled nearly 1.1 billion tons of freight at a value of \$625.6 billion. It is forecasted that international waterborne freight volume will triple by year 2020. This unprecedented growth in international freight poses an enormous challenge for U.S. ports and their landside access connections. The Ports of Long Beach and Los Angeles handle 20,000 truck and 30 train movements per day. By 2020, these figures are projected to grow to 50,000 trucks and 100

trains. The \$1.8 billion Alameda Corridor project is designed accommodate this growth by consolidating rail movements into a high-speed rail corridor with adjacent highway improvements. The movement of international freight in today's trading environment requires a competitive logistics system that emphasizes quality service and total cost. The importance of such a system lies in the strategic value of its operation, in which freight moves through an integrated origin-to-destination "pipeline" that supports Just-In-Time production, reduces inventory levels, and decreases warehousing needs. Inefficiencies at any point in the pipeline can disrupt the total system, resulting in reduced productivity and profitability for transport providers and, ultimately, added costs for shippers and consumers. This point is best illustrated by last fall's situation in Southern California, when peak holiday cargo flows and a port labor shortage were coupled with Union Pacific's merger problems and railcar shortages leading to near gridlock and extension cargo delays. Issues of landside access have proven to be problematic for ports and terminals of all types, but are particularly acute for those handling cargoes that move intermodally.

Landside Access Impediments

Landside access is often impeded by inadequate highway and rail access from the port or marine terminal to the distribution centers. Improving landside access is, however, restrained partly due to limited planning and funding. A key to landside access improvements was the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102-240). Under ISTEA, Metropolitan Planning Organizations (MPOs) and state departments of transportation follow mandatory planning considerations and evaluate projects to meet particular transportation needs. The MPO is responsible for developing a final set of approved projects based upon the needs of the local community, both commercial and public. While landside access improvements have been gaining planning and funding considerations at the local level, ports believe additional priority and funding must be given to freight access improvements. At the national level, the Federal government, through the U.S. Department of Transportation (USDOT), has strengthened policy provisions by instituting the National Freight Transportation Policy and the reauthorization of ISTEA. Additionally, a number of comprehensive studies have been initiated to call the attention to the critical issue of landside access to U.S. ports and terminals and encourage strategies that would assist in improving accessibility issues.

In 1991, the Maritime Administration led a nationwide USDOT investigation of landside access to ports and marine terminals. This study revealed that frequently, the final few miles of rail and road nearest to the port or terminal cause major delays. The final report, titled "Landside Access to U.S. Ports," examined access impediments in four categories, including infrastructure, land use, environmental, and institutional. Table 40, taken from the final report, profiles access impediments identified by deep draft coastal ports in a 1991 American Association of Port Authorities survey.

The 1991 survey identified three key infrastructure inadequacies faced by ports and marine terminals. They were: (1) traffic congestion on major truck routes surfaced as the major infrastructure problem identified by half of the respondents and nearly two-thirds of container ports; (2) at-grade rail crossings were identified by approximately half of the respondents as major access impediments; and, (3) bridge and tunnel clearances were identified by one-third of the container ports as insufficient to accommodate growing double-stack train services.

Table 40
Landside Access Impediments - 1991 Survey

Impediment	Container Ports (25 Ports)		All Ports (54 Ports)	
	Number	Percent	Number	Percent
Truck routes usually or always congested	16	64	27	50
Numerous at-grade rail-highway crossings	14	56	25	46
Inadequate clearances for high-cube double stacks	9	36	12	22
Competition increasing for available land	21	84	40	74
Restricted access improvements due to lack of land	11	44	17	31
Regulations restrict truck or rail operations	4	16	5	9
Access improvements impeded by wetland regulations				
Usually or always	6	24	11	20
Sometimes	8	32	16	30
State DOT coordination with port				
Usually or always	10	40	22	41
Sometimes	9	36	13	24
Rarely or never	5	20	10	19

Source: AAPA 1991 Survey Results from Transportation Research Board's 1993 Report on "Landside Access To U.S. Ports"

In 1997, as the reauthorization process of the ISTEA was in progress, MARAD initiated an effort to update the status of landside access to U.S. ports and marine terminals. As in 1991, AAPA surveyed its member ports. The focal point this time was the status of physical infrastructure impediments that still linger in the Nation's ports and marine terminals. A summary of the results is presented in Table 41.

MARAD analyzed the responses from 58 ports, including 31 container ports, and identified the following key infrastructure impediments: (1) over half of all respondents including the container ports identified traffic impediments on local truck routes as the major infrastructure problem; (2) half of all respondents experience limited availability and location of turning lanes and multiple access routes; (3) half of all container ports lack near dock rail terminals that would ease transfer of containers from rail to vessel; and, (4) nearly half of container

ports and over a third of all ports reported bridge impediments pertaining to highway access and load bearing capacity.

Table 41
Updated Status on Landside Access Impediments - 1997 Survey

Impediment	Container Ports (31 Ports)		All Ports (58 Ports)	
	Number	Percent	Number	Percent
Road Access:				
Interstate	10	32	17	29
State	12	39	27	47
Local	17	55	34	59
Bridges	14	45	24	41
Rail Access:				
Bridges	11	35	18	31
Near-Dock	15	48	22	38
On-Dock	12	39	17	29
Truck Access:				
Availability & location of street signs	10	32	21	36
Turning radii	15	48	25	43
Availability & location of turning lanes	12	39	29	50
Availability & location of lanes	11	35	24	41
Availability & location of multiple access routes	12	39	29	50
Availability of designated truck routes	12	39	23	40
Existing highway weight regulations	13	42	22	38
Highway & bridge load bearing capacity	14	45	24	41

Source: AAPA 1997 Survey Results

The results of these recent surveys indicate that landside access to U.S. ports and marine terminals showed some improvement during the six-year period, from 1991 to 1997. However, there are still significant landside access impediments that persist affecting the movement of freight and ultimately the Nation's global competitiveness. Over a third of ports still experience major truck access impediments. Rail access impediments due to bridge clearances or distance from terminals still affect nearly a third of all survey respondents. Overall, one-third of all U.S. coastal ports still experience infrastructure impediments in rail and truck access.