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THE WHITE HOUSE

WASHINGTON

January 19, 1977

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR:

JAMES T. LYNN

FROM:

JAMES E. CONNOR *JEC*

SUBJECT:

Implementation of a Waterway  
User Charge

Confirming telephone call to your office, the President reviewed your memorandum of January 17 on the above subject and approved the following recommendation:

"The Secretary of the Army is prepared to submit legislation embodying the features recommended by Secretary Coleman and me if you concur."

Please follow-up with appropriate action.

THE WHITE HOUSE  
WASHINGTON

January 19, 1977

MR PRESIDENT:

Implementation of a Waterway User  
Charge

Staffing of the attache memorandum resulted in the following recommendations:

Cannon - Concurs with OMB

Schmults - Strongly agree with DOT and OMB.

Marsh - No recommendation

Friedersdorf - "Oppose transmittal of any bill at this  
time."

Seidman - "approve - we might as well be right again and make  
make another group of our friends unhappy."

NSC - See comments attached TAB C.

Jim Connor



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

JAN 17 1977

DECISION

MEMORANDUM FOR: THE PRESIDENT  
FROM: James T. Lynn *Obier*  
SUBJECT: Implementation of a Waterway User Charge

Inland waterway users (primarily barge lines and recreational boaters) do not pay for the use of federally constructed and maintained canals, locks and channels. Similarly, Great Lakes and ocean shipping do not pay for use of federally constructed and maintained channels from deep water to port facilities with the exception of the St. Lawrence Seaway. In FY 1976, the Federal Government spent about \$700 million for the operation, maintenance, rehabilitation, and new construction of these waterways.

Administration Action

Every Administration since Roosevelt has proposed some form of waterway user charge.

In November, 1974, you transmitted a bill to Congress to recover 100% of the cost of operating and maintaining (O&M) each segment of the inland waterways system from the users of that segment. Recovery was by 1) a vessel ton-mile excise tax upon the transport of property based upon the O&M costs for each segment of the waterway; and 2) a \$10 lockage fee for recreational craft. The Congress took no action.

During formulation of the 1977 Budget, you agreed to an OMB recommendation to submit legislation to collect inland waterway user charges. Because waterway user charges were to be included in more inclusive water policy recommendations called for by Section 80 of the Water Resources Development Act of 1974 (recommendations which I do not believe you should now make), legislation has not been transmitted to date.

Your tax message of January 4, 1977, to the Congress included a proposal to institute a waterway user charge, which is

restated as a commitment in your 1978 budget.

### Congressional Action

At the close of the last session, the Senate Public Works Committee reported out in its version of the Water Resources Development Act of 1976 a requirement that commercial waterway users pay a user charge to offset a portion of Federal expenditures. The major features of the Senate Committee's proposal were:

- o Applies only to inland commercial -- not recreational -- waterway users.
- o Would collect 50 percent of O&M expenditures phased in over the first five years.
- o In the sixth year of enactment, would begin to phase in over the next five years (6 thru 10) an additional charge to recoup 50 percent of Federal capital and rehabilitation expenditures.

Although the Senate Committee's user charge provision was withdrawn on the Senate floor (along with the provision authorizing the controversial replacement of Locks and Dam 26 on the Upper Mississippi), a commitment was made by the Senate to act on both issues early in the next session of Congress.

### Issues Involved

Assuming that it is desirable for that part of the private sector benefitted by Federal navigation expenditures to bear some or all of the cost, three issues must be decided.

1. What form of user charge should be used?
  - a. Uniform, system-wide fuel tax which would charge each user the average cost of using the system?
    - easy to understand
    - easy to administer

- users of high cost waterways pay less than actual costs, and vice versa -- high degree of "cross subsidies"
  - would not discourage undertaking high cost projects
- b. A segment fee which would charge each user a different price for the use of each waterway to reflect differences in costs along the system
- moderately difficult to design and understand
  - moderately difficult to administer
  - users of high cost waterways would pay proportionately more than users of low cost waterways -- no "cross subsidies"
  - reduces incentives for users to press for oversized and inefficient new projects.
2. What portion of Federal costs should be recovered from users?
- a. Capital vs. operating costs.
- Federal costs now total \$700 million annually.
  - Non-Federal governments now pay an average of about 7% of capital (construction) costs by providing lands and rights-of-way.
  - Federal Government pays all of operations and maintenance costs (maintenance dredging, operation of locks, providing navigation aids such as lights and buoys).
  - Users pay none of costs.
- b. Impacts on waterways.
- Definitive studies on impacts of changes have not been done although some studies are completed.
  - High percentages of capital recovery discourage building of high cost, inefficient new projects but have no effect

on existing projects except where facilities have to be replaced.

- High percentages of recovery of operation and maintenance costs directly affect the economics of existing waterways.
  - o For existing waterways, traffic diversions and waterway closings tend to increase in proportion to O&M recovery, up to about 50% recovery.
  - o Above 50%, impacts increase more slowly than recovery.
  - o Recovery of 50% O&M will eventually close 6 to 8 inefficient inland waterways which contribute about 3 to 5% of total traffic and nearly 40% of total O&M costs. 1/
- Impacts on Great Lakes and coastal harbors have not been quantified. Some high-cost harbors could be severely affected by loss of traffic.

c. Tactical considerations

- Since the only actions taken in the Congress on user charges has been the 50% recovery proposal by the Senate Public Works Committee, the figure probably represents the upper limit on what is achievable.
- Senator Domenici, the force behind the Senate Public Works Committee action, indicates that he would prefer a bill along the lines of that reported by the committee, and would expect a user tax bill to be bottled up by Senator Long's Finance Committee.

3. How rapidly should cost recovery be phased in?

a. Existing projects

- Private investments on existing projects were made in anticipation of the continuation of no recovery from users.

1/ Pearl, Kaskaskia, Arkansas, Kentucky, Willamette, Apalachicola-Chattahoochee, Allegheny, Black and Ouachita.

- On some waterways impacts will be severe.
  - A phase in over several years facilitates adjustment to the new rules of the game.
- b. Projects not yet under construction.
- No private investments are yet in place
  - Therefore, any final recovery level will not disappoint expectations -- only prevent uneconomic new projects from going ahead.

### Options Considered

#### #1. The Status Quo

- Capital costs
  - o Local interests may pay up to an average of 7% of total capital costs by providing lands, right-of way, etc. in kind. Users pay nothing.
- Operating and maintenance costs
  - o Non-Federal interests pay nothing.

#### #2. Developed by the Water Resources Council

- 10% recovery of future capital and operating costs (including payments in kind)
- Method of payment unspecified.
- Future recommendations after 18 months of additional study.

#### #3. Originally suggested by DOT

- Fuel tax to recover 10% of all future costs (in addition to payments in kind)
- Automatic increase to 20% after 3 years unless DOT Secretary intervenes.



#4. Developed by OMB and now concurred in by Secretary Coleman

- Collection by user charges and fees on a segment cost related basis.
- 50% of operations and maintenance costs, phased in over 5 years, from commercial users.
- Such additional amounts deemed appropriate to each segment at the discretion of the Secretary of the Army, from recreational users, either through license fees or lockage fees.
- A requirement of 50% of recovery capital costs, to be collected from commercial users (not States and communities) effective immediately with respect to all projects not yet under construction.

The table in Tab A compares the above options.

Analysis

In selecting from the above options, three principles have been followed:

- o the segment fee approach is better, if you can get it passed.
- o as much cost reimbursement should be imposed as possible.
- o cost reimbursement imposed as fast as possible.

All of the options are analyzed as to their pros and cons under Tab B.

Secretary Coleman and I are agreed that Option 4 comes closest to meeting these criteria. Because it closely follows the Senate Committee approach, it has some likelihood of passage. It has been modified from the Senate approach as follows:

- o It covers all developed waterway systems, except the St. Lawrence Seaway (inland, Great Lakes, ocean going), commercial users and recreational users) while the Senate Committee bill covered only commercial users of inland waterways.

- o It charges the full 50% plus on capital expenditures immediately instead of phasing in over years 6 to 10 after enactment.
- o It provides for some reasonable and equitable percentage from recreational users in addition to the 50% of total costs from commercial users.
- o It bases user charges to cover operating and maintenance costs on the prior 3-year average of actual expenditures rather than the last fiscal year's expenditures.

Each of these modifications can be justified on programmatic grounds.

Other of your advisors have the following opinions

<u>Agency</u>	<u>Opinion</u>
Commerce and Army	Oppose transmittal of any bill at this time. Recommend further study.
State	Oppose former DOT option (#3) fuel tax on users of coastal ports.
Agriculture and Federal Maritime Commission	Oppose policy of user charge in this case.
Justice, Federal Power Commission, Council of Economic Advisors, Council on International Economic Policy, and Council on Wage and Price Stability	Support the user charge principle and do not oppose the OMB bill.

Tab B summarizes the pros and cons for each option.

#### Recommendation

The Secretary of the Army is prepared to submit legislation embodying the features recommended by Secretary Coleman and me if you concur.

APPROVE



DISAPPROVE



TAB A

Comparison of User Charge Options

<u>Option Characteristics</u>	<u>Options</u>			
	<u>Status Quo</u>	<u>WRC</u>	<u>Former DOT (Fuel Tax)</u>	<u>OMB (Segment Fee)</u>
Fees keyed to cost of facilities or segment	NA	Undefined	No	Yes
Approximate dollar recovery (ultimate \$ in M)	0	70*	150* (20% recovery level)	400 (50% capital and 50% O&M recovery)
Ultimate percentage recovery	7% in kind	10%	20% plus "in kind"	50% plus recreation and "in kind" payments
Phase in period	NA	10% now	10% now 20% in 3 yrs.	50% capital now--50% O&M in 5 yrs.
Inland Waterway Tonnage diverted to other modes at \$160M recovery level	NA	Barely Significant at \$70M level	6-12%	4-8%
Number of inland waterways which could be closed down at \$160M recovery	NA	1 at \$70M level	3-8% (less than 5% of total traffic)	6-8 (3-5% of total traffic)
Affects recreation users	NA	Undefined	No	Yes
Ease of Administration	NA	Undefined	Easy	Moderate difficulty
Congressional Acceptability	High	Moderate	Moderate	Low

\* Subject to change pending further study.



TAB B

Analysis of Options

#1. Status quo

Pro

- Avoids the political controversy and economic adjustment problems resulting from the closing or decline of existing harbors and waterways where the traffic can't pay the O&M costs.
- Does not prejudice the later establishment of comprehensive water policy reform by setting a precedent on water navigation.

Con

- Continues the current subsidy of shippers and their customers and recreational boaters by the general tax-paying public.
- Continues the operation of certain uneconomic waterways and harbors which are a net loss to the Nation's economy.
- Continues to treat waterway and harbor users differently from users of other transport modes, adversely affecting the latter, especially rail.
- Continues strong incentives for shipping interests and non-Federal governments to seek new projects that are either economically infeasible or economically too large.
- Fails to support the congressional interest in reform (represented by the Senate Public Works Committee report of navigation cost sharing at 50%). Option achieves no reform.
- Retreats from your decision to receive user charges in the 1977 Budget.

#2. WRC Option: 10% recovery with 18 month study.

Pro

- Moves in the direction of more payments by users.
- Allows additional study before further increases.

- Would probably not cause closing or significant decline of traffic in any existing harbors or waterways.
- Moves slightly toward more equal treatment of competing transport modes.

#### Con

- Continues the faults of the status quo except for a slight reduction in subsidy of shippers and boaters by the taxpayers.
  - Methods of implementing the option are not defined.
  - Option's reform is slight compared to Senate-Public Works Committee reported bill.
  - No room to negotiate with opponents and still have any reform.
3. DOT Initial Option. Fuel tax - 10% initial recovery, a planned 20% recovery level following a 3-year study period, with potential but unspecified phased increases in future years.

#### Pro

- Consistent with user charges on other modes such as highway and aviation, and is thus easily understood.
- Easy to administer, except that deep-draft ships could avoid bunkering in this country. Tonnage duties would incorporate vessels exempt from fuel tax.
- Spreads the cost over a large base, mitigating the impact on individual users or waterway segments.
- Moves toward more equal treatment of competing transport modes.
- Gains acceptance of user charges principle. May be politically acceptable, since potential or perceived impacts are minor.

#### Con

- Because of the system-wide averaging of costs, would continue the operation and maintenance of harbors and waterways which cost the Nation more than their value to users.

- Continues the incentives for non-Federal governments to seek economically oversized or infeasible projects. Shipping and boating interests would still have similar incentives, although they would be somewhat reduced.
- Little room to negotiate with opponents and still have reform.

4. OMB Segment Fee Option: 50% recovery of all cost plus an additional percentage ("practicable and equitable") for recreational users. Five year phase in O&M costs.

Pro

- Users of low cost waterways and harbors would not subsidize users of high cost facilities.
- Greatly reduces Federal taxpayer subsidy of shippers and boaters.
  - o Commercial users pay(50%) of O&M and 50% of capital.
  - o Recreational users pay an additional percentage which is "practicable and equitable".
- Moves substantially toward more equal treatment of competing transport modes.
- Fully supports the Senate Public Works Committee interest in reform in this cost sharing area.
- Could provide precedent for similar reform for other water resource project purposes.
- Provides sufficient room to negotiate with congressional opponents while still ending with substantial reform. For example, economic adjustment impacts on existing projects could be eased by extending the phase-in period for O&M on existing projects beyond the proposed 5 years.



Con

- Would prevent construction of a number of planned projects not yet under construction, and severely impact several projects now under construction or recently opened, and would be therefore opposed by substantial interests in Congress.
- Would require major economic adjustments by communities and industries using existing high cost harbors and waterways which would incur severe competitive disadvantages from having to pay for waterway use.




MEMORANDUM

NATIONAL SECURITY COUNCIL

January 19, 1977

MEMORANDUM FOR JIM CONNOR

FROM: Jeanne W. Davis   
SUBJECT: Waterway User Charge Legislation

We have been asked to comment on Waterway User Charge legislation which the President has been requested to approve today. We are concerned that the memorandum from Jim Lynn to the President makes no mention of the international implications of setting additional fees for foreign vessels using deep draft ports such as the Port of Baltimore. In many cases, the U.S. has reciprocal agreements with other countries waving port charges. In addition, large fee increases might be seen by other countries as affecting freedom of navigation.

Key personnel at State have not reviewed this legislation, and we suggest that they be given the opportunity. However, since the legislation authorizes the Secretary of the Army to implement the fees, international implications might be taken into account at a later time.

If the President intends to approve the draft legislation today, we suggest that the Speaker letter contain language stating that "nothing in this legislation is intended to violate U.S. obligations under international law or to affect freedom of navigation or the right of innocent passage in the territorial sea." However, this too should be cleared by State's 7th Floor.