

Upper St. Anthony Falls Lock and Dam, Lower St. Anthony Falls Lock and Dam and Lock and Dam 1

Section 216 Disposition Study

Q&A – March 8, 2019

Note: Section 2010 of the Water Resources Reform and Development Act of June 10, 2014 directed that Upper St. Anthony Falls (USAF) Lock and Dam be closed to navigation. The Act did not deauthorize or direct further disposition of the USAF lock. The lock continues to be operated for flood damage mitigation, but does not offer any navigation benefits.

Note: Section 1225 of the Water Resources Development Act of October 24, 2018 (WRDA 2018) directed that the disposition study for Upper St. Anthony Falls (USAF) lock and dam should be conducted separately from Lower St. Anthony Falls (LSAF) lock and dam and Lock and Dam 1 (LD1). Section 1225 also specified that the USAF study should be expedited. Section 1168 of the WRDA 2018 directed that dam removal be considered in all Corps disposition studies. The full text of WRDA 2018 can be found here: <https://www.congress.gov/bill/115th-congress/house-bill/8/text>

STUDY OVERVIEW

Q: What is a Disposition Study?

A: When a project built by the Corps is no longer serving its authorized purpose, Section 216 of the Flood Control Act of 1970 gives the Corps the authority to evaluate that project. These evaluations are termed “Disposition Studies” or “Section 216 Studies”. The study looks at whether or not the costs of operating the project outweigh the public benefits.

Q: When will these studies be done?

A: The Corps completed an initial assessment of Upper St. Anthony Falls lock and dam, Lower St. Anthony Falls lock and dam and Lock and Dam 1 (USAF, LSAF and LD1) in 2015, which showed these projects would be good candidates for disposition studies. A combined study for USAF, LSAF and LD1 was begun in 2018. This combined study was put on hold after the WRDA 2018 was passed in October 2018. A disposition study just for USAF will be started in summer 2019. The studies for LSAF and LD1 will be deferred, and will likely start in early 2021.

Q: Why was there a delay between passing the WRDA 2018 and restarting the studies?

A. When Congress passes legislation that affects the Corps, Corps headquarters writes implementation guidance. The delay in the study is to make sure the intent of Congress is reflected in the implementation guidance. Corps headquarters published a 60-day request for public input to the implementation guidance in mid-December 2018, and held a listening session on February 11, 2019. The final implementation guidance is expected in April 2019, after which the study may continue.

Q. What are the costs of operating these sites?

A. The Federal government spends approximately \$1.6M on average every year to keep USAF, LSAF and LD1 operating and the navigation channel between them dredged. These are the potential yearly savings to the government if the projects are deauthorized and disposed of. The breakdown in costs between USAF, LSAF and LD1 is complicated as there is an overlap in staffing between the sites, but a rough breakdown would be 8% USAF, 64% LSAF and 28% LD1.

Q: Will Lower St. Anthony Falls and Lock and Dam 1 be considered for a future disposition study?

A: Yes.

Q. Will any other sites be considered?

A. At this point only USAF, LSAF and LD1 will be studied.

Q: When will the LSAF and LD1 disposition study take place?

A: The LSAF and LD1 disposition study is planned to begin after completion of the Upper St. Anthony Falls study; likely in early 2021.

Q. Will there be more public meetings?

A. Yes. As promised at the public meetings held in July 2018, because the study scope has changed, the Corps will conduct additional public meetings. There will be a round of meetings in 2019 just for USAF. When the LSAF and LD1 studies begin, there will be another round of public meetings, likely in early 2021.

Q: How else will the public be involved in this process?

A: USACE will release a Draft Disposition Report and Environmental Assessment for public review and comment. A 60-day review period is planned, during which additional public meetings may be held.

STUDY SCOPE AND ALTERNATIVES

Q: What are the potential actions/alternatives being evaluated in the USAF disposition study?

A: At Upper St. Anthony Falls, the study will evaluate 1) no action, 2) partially deauthorize and partially dispose (retaining flood mitigation

features), and 3) deauthorize and completely dispose. In addition, Section 1225 of WRDA 2018 directs the Corps to consider other measures to “preserve and enhance recreational opportunities and the health of the ecosystem” and “maintain the benefits to the natural ecosystem and human environment.” Section 1168 of WRDA 2018 requires the Corps to consider “modifications that would improve the overall quality of the environment in the public interest, including removal of the project or a separable element of a project”

Q. What does “No Action” mean?

A. No action means to maintain the status quo and continue to operate and maintain the site as it is at the time of the study, or projected to be in the foreseeable future. Under no action, the USAF site would remain closed to navigation and would be operated only for flood damage mitigation. Any Real Estate permits or outgrants (such as the agreement between the Corps and the National Park Service) could continue. “No Action” at LSAF and LD1 will be defined according to what the existing conditions are when that study begins.

Q: What does “deauthorize” mean?

A: If a project has been authorized for specific purposes, and subsequently constructed and operated by order of Congress, then that project must be also be deauthorized by order of Congress before it can be disposed of.

Q: What does “disposal” mean?

A. “Disposal” is a process, usually carried out by the General Services Administration (GSA), in which property that is excess to the needs of the Federal government is disposed of. Disposal can be via transfer of ownership or sale. GSA Disposal of a property usually is in an “as is” condition, although terms of transfer or sale can be as directed by Congress.

Q. What does “partial disposal” mean?

A. Partial disposal would mean that the government would retain the lands and project features necessary to continue to operate for any remaining authorized purposes. Any lands and project features not necessary for authorized purposes could be disposed of. In the case of USAF, the Corps has been directed to consider partial disposal while retaining those lands and features necessary for flood damage mitigation (e.g. the flood control tainter gate).

Q: How will dam removal be evaluated by the Corps?

A. An array of alternatives will be developed for each site and qualitatively screened and either carried forward for more detailed evaluation or dismissed as infeasible. It is likely that dam removal at USAF can be dismissed in the initial screening due to the reliance of the Minneapolis water supply on the USAF dam. A similar screening for LSAF and LD1 will be done in that study.

Q: Is dam removal included in the USAF Disposition Study scope?

A: Section 1168 of the Water Resources and Development Act of 2018 directed that removal of all or part of the project be considered in all disposition studies. This includes the study for USAF.

Q: Does the Corps own the USAF dam?

A. Not entirely. At USAF, only the lock and a small portion of the dam which ties into the stone arch bridge are owned by the Federal government. The majority of the dam is owned by Excel Energy and would not be included in the Corps’ disposition study.

Q. Is dam removal likely at USAF?

A. Not likely. While Section 1168 of WRDA 2018 requires that dam removal be considered in all disposition studies, subsequent correspondence on the intent of Congress from Senators Klobuchar and Smith, and a joint letter from the city of Minneapolis and Friends of the Lock and Dam, and a letter from Minneapolis Public Works all indicate that dam removal at USAF is not a desired outcome. The pool elevation maintained by the USAF dam is required for water supply for the City of Minneapolis. The disposition study will discuss this issue of dam removal at USAF, and why it may or may not be feasible.

Q: Will dam removal be considered at LSAF and LD1?

A. Yes. Section 1168 of WRDA 2018 requires that dam removal be considered in all disposition studies, so it will be considered in the study for LSAF and LD1.

Q. How would dam removal be funded?

A. It is likely to be either a combination of Federal and non-Federal funding, or entirely non-Federal funding if deauthorization and disposal occurs before removal. Section 1168 of WRDA 2018 states that the Corps can use existing authorizes to partner “with other Federal and non-federal entities with appropriate capabilities to undertake infrastructure removal.”

Q. How is the study funded?

A. Disposition studies are 100% Federally-funded. Specifically-authorized feasibility studies are usually cost shared between the Federal government and a local sponsor.

Q: What if Federal funding is not available?

A. If Federal funds are not available for the disposition study, Section 1225 of WRDA 2018 allows the Corps to accept funds contributed by a

State or a political subdivision of a State under 33 U.S.C. 701h-1. This essentially lets the Corps accept funds for disposition studies, with the understanding that they must be paid back.

Q: Why must the study funds be paid back to the State or political subdivision of a state?

A. To avoid undue external influence on a function of the Federal government.

Q. What is a political subdivision of a state?

A. As defined in Minnesota Statute 465.719, Subdivision 1(a):
““Political subdivision” means a county, a statutory of home rule charter city, a town, a school district, or other political subdivision of the state.”

Q. Why are contributed funds restricted to those that come from a State or political subdivision of a State?

A. The implication is that a State or political subdivision of a State is an elected body, and therefore responsible to the electorate.

Q: Will the USAF Disposition Study evaluate opportunities to modify the project?

A: Yes. Section 1225 of WRDA, in particular, and the Intent-of-Congress letter provided by Senators Klobuchar and Smith, direct the Corps to work with the City of Minneapolis, who, in turn, support the Falls Initiative for USAF, as envisioned by the non-profit group Friends of the Lock and Dam. Further information on this proposal can be found at the following website: <http://thefalls.org>. The Disposition Study will also explore opportunities to modify the project to “preserve and enhance recreational opportunities and the health of the ecosystem” and “maintain the benefits to the natural ecosystem and human environment.”

Q: What is meant by “preserve and enhance?”

A. If a benefit to the natural ecosystem or human environment exists, it should be identified in the study, and preserved or replicated in the proposed alternatives. An example would be “preserve public access to the river”. If there are opportunities to enhance the natural ecosystem or human environment, these should be identified and included in the proposed alternatives. An example would be “improve public access to the river”. While the study will evaluate opportunities to enhance the natural ecosystem or human environment, the cost of implementing those opportunities may be borne by a non-Federal entity.

Q: Will modification also be considered at LSAF and LD1?

A. The scope of the LSAF and LD1 disposition study has not been established, yet, but the study must adhere to the same requirements of WRDA 2018, which directs that partial disposition and dam removal be considered.

Q. Will additional studies be required after the disposition studies?

A. Possibly. The level of detail needed to fully evaluate the proposals at USAF may require additional design documentation beyond the scope of the disposition study. If dam removal is identified as the recommended alternative at LSAF or LD1, there will certainly need to be additional studies, as the funding for disposition studies is somewhat limited. A specifically-authorized or major rehabilitation study may be called for. These studies are subject to availability of funding through the Federal and Corps budgeting process, although Section 1225 of WRDA 2018 allows the Corps to accept funds contributed by a State or a political subdivision of a State. Lack of Federal funding will not necessarily mean the studies cannot proceed.

Q. Does the Corps need a local sponsor for modifications or dam removal?

A. Not necessarily. If it is in the Federal and public interest, dam removal or modifications may be recommended to be carried out independent of a local sponsor. However, it is more likely that the Corps would recommend disposition of the project and with a new owner would be required to evaluate effects of dam removal prior to any construction activity. A middle road would be for the Corps to partner with a non-Federal sponsor to share in the cost of a feasibility study, design and construction of the modification or removal, and any other implementation costs.

Q: What about invasive Asian Carp?

A: The opportunity for invasive Asian carp to move upstream of USAF lock and Dam by using the navigational lock decreased with the cessation of lockages at USAF. The disposition study will evaluate invasive species when examining various alternative to make sure new pathways are not created.

IF DEAUTHORIZATION IS RECOMMENDED...

Q: After the study, does Congress need to pass additional legislation?

A: If the study recommends deauthorization and disposal Congress will have to pass legislation to deauthorize and dispose of the Federal properties.

Q: Who will be the new owners?

A: The future owners of the projects will either be the Federal government (as it is now), or a combination of the Federal government and a project sponsor, or an as yet undetermined future owner. Unless directed otherwise by Congress, following deauthorization, the properties will be declared as “excess” and the General Services

Administration will dispose of them according to Federal law. In order of priority:

1. The properties are offered first to other Federal agencies that have a program need.
2. If no other Federal agencies require the property, GSA will consult with the Department of Housing and Urban Development to determine if the property is suitable for homeless use. A homeless conveyance must be considered before other public benefit conveyances are considered.
3. Negotiated sale to state or local government or non-profit organization for public purpose. The price may be steeply discounted if partnering with another federal agency.
4. Competitive public sale of property through auction or sealed bid.

Q: Will the Corps recommend a future owner?

A. The Corps will try to identify interested future owners during the course of the Disposition study, and may make a recommendation. The final action will require Congressional approval.

Q: How will the disposition study affect current hydropower license applications at USAF?

A: The Federal Energy Regulatory Commission, licenses hydropower projects at both Federal and non-Federal locations. FERC has received correspondence related to private hydropower proposals at USAF, and is also aware of the on-going disposition study.

Q: What will happen to the Crown hydropower license amendment?

A: If Upper St. Anthony Falls lock and dam remains in Federal ownership, the Corps and Federal Energy Regulatory Commission (FERC) will continue to cooperate under the Memorandum of Understanding signed between the two agencies on July 20th, 2016. If

Upper St. Anthony Falls lock and dam is no longer in Federal ownership, Crown hydropower would still need FERC to grant an amendment to their existing hydropower license, but would need agreements with the new property owner.

Q: How would modifications or dam removal be regulated?

A: The National Environmental Policy Act requires that all proposed Federal actions be evaluated for their impact on the environment. Similarly, the Minnesota Environmental Policy Act requires that all proposed state actions, in addition to some private activities, be evaluated for their impact on the environment. These acts require public disclosure of potential future actions and their associated impacts. In addition, USACE issues regulatory permits for proposed actions in Waters of the U.S., so the Corps will be involved in reviewing potential future modifications of the site(s).

Q: Can the Upper St. Anthony Falls lock still be used if the Federal Government does not own it?

A: Future use will depend on who the future owner is, and which areas these owners will permit to be open to the public, and the owners' capabilities. If the Corps retains a presence at USAF, it will operate for flood mitigation, but not for navigation. Other owners or co-owners would operate according to pertinent regulations (State, Federal, Local).

IF DEAUTHORIZATION IS NOT RECOMMENDED...

Q: What if the no action alternative is selected and the Federal government keeps the site?

A. The Corps will continue to operate and maintain the sites as long as authorized and funded to do so.

