



October 9, 2012

Legislation

Congress adjourned through election. Congress has now adjourned through the November 6th election. Both chambers will return on November 13 for a “lame duck” session, which may last up to Christmas.

During the lame duck session, Congress will debate the looming “fiscal cliff” – the expiration of the Bush era tax cuts and “sequestration” – the \$1.2 trillion in automatic spending reductions as a consequence of the congressional “Super Committee’s” failure to develop a long term solution to the nation’s fiscal challenges and deficit reduction.

It is projected that the spending cuts under sequestration will result in an 8.2 percent (approximately \$6 million) reduction in the Inland Waterways Trust Fund – the fund that is comprised of federal and industry revenue to support construction and major rehabilitation of the nation’s locks and dams.

Senators urge action on lock and dam infrastructure. U.S. Senators Dick Durbin (D-IL), Mark Kirk (R-IL), Claire McCaskill (D-MO), Roy Blunt (R-MO), Tom Harkin (D-IA) and Chuck Grassley (R-IA) sent a letter to the Environment and Public Works Committee which, on September 20, began work on a new Water Resources Development Act (WRDA) bill, to include funding and legislative language that would establish a long-term strategy to expedite construction and operation of critical lock and dam projects along the Mississippi River.

“The system of locks and dams along the Upper Mississippi are in desperate need of modernization. The current system was built 70 years ago and updates are needed to fit the requirements of modern barge technology. Many of the older locks are only 600 feet in length, while most current barge tows using the waterway are twice as long. That means these goods take twice as long to get down river and into the marketplace,” wrote the Senators. “As the Environment and Public Works Committee considers a new Water Resources Development Act (WRDA) bill, we encourage you to work with all stakeholders to find a way to expedite the construction and operation of these critical projects.”

Recently, during one of the most important periods of the year for Midwestern agriculture, traffic on the Upper Mississippi River was shut down due to the failure of a protecting wall at Locks 27 at Chain of Rocks Canal north of St. Louis. According to the Senators, shut downs like this could impact the not just current shipments on the river, but the overall reliability and timeliness of using the inland waterways system, which is of significant national interest.

Surface Transportation Board

Berkshire plans to divest of short lines to comply with BNSF acquisition. In a September 13th letter to the U.S. Surface Transportation Board (STB), BNSF Railway admitted that Berkshire Hathaway mistakenly did not disclose its ownership in two short line rail companies during its acquisition of the railroad in February of 2010. By not making the disclosure, the acquisition of BNSF was not subject to approval by the STB.

The Surface Transportation Board is the regulatory agency created by the United States Congress to resolve railroad rate and service disputes and review and approve proposed railroad mergers and acquisitions.

According to the letter, “When Berkshire purchased BNSF, neither Berkshire nor BNSF believed that the transaction was subject to the jurisdiction of the STB, because Berkshire was not a rail carrier and Berkshire did not believe it owned or controlled any other rail carriers.” Berkshire therefore concluded it was not subject to STB jurisdiction.

However, Berkshire and BNSF recently became aware that “two of Berkshire’s more than 75 operating business groups with nearly 2,000 subsidiaries do in fact have (rail) entities within their organizational structure.” As a result, the acquisition of BNSF would have been subject to STB review and approval.

The letter cites the two rail holdings as: 1.) CBEC Railway, Inc. – a six mile railroad in Council Bluffs, Iowa, which primarily serves MidAmerican Energy Company – a company owned by Berkshire Hathaway and 2.) The White City Terminal Union Railway – a 12 mile railroad in Oregon that is a subsidiary of the Marmon Group. The Marmon Group is an association of 150 manufacturing and service businesses that was acquired by Berkshire in 2008.

Prior to the acquisition of BNSF, Berkshire owned sizable interests in Union Pacific Railroad and Norfolk Southern Railway. During the transaction, Berkshire divested its ownership in the two railroads.

In its response to BNSF, the STB stated that “prompt divestiture (of the CBEC Railway and White City Terminal Union Railway) is an appropriate remedy under agency precedent.” The STB further instructed that the divestitures must conclude no later than December 31, 2012.