



Getting Back to Basics:

The U.S. Government's Historic Role in Developing and Maintaining Landside and Waterside Connections to Seaports

Since our founding fathers drafted the Constitution back in 1787 establishing the United States government, our legislative branch has been charged with the task of regulating commerce. It was important to those drafting the Constitution to create a system where trade and commerce could move freely between states and beyond our national borders and to defend the United States against invasion. Therefore, certain powers were granted to Congress in Article I, Section 8 of the U.S. Constitution including "the regulation of commerce with foreign nations and among the several states..." and "to establish Post Offices and Post Roads."

Over time these constitutional responsibilities have been further defined and our Constitution has formed the basis for the U.S. government to play a significant role in our nation's transportation and infrastructure system. As established in the timeline on page 2, over the years the leaders of our country saw that it was in the national interest to ensure that

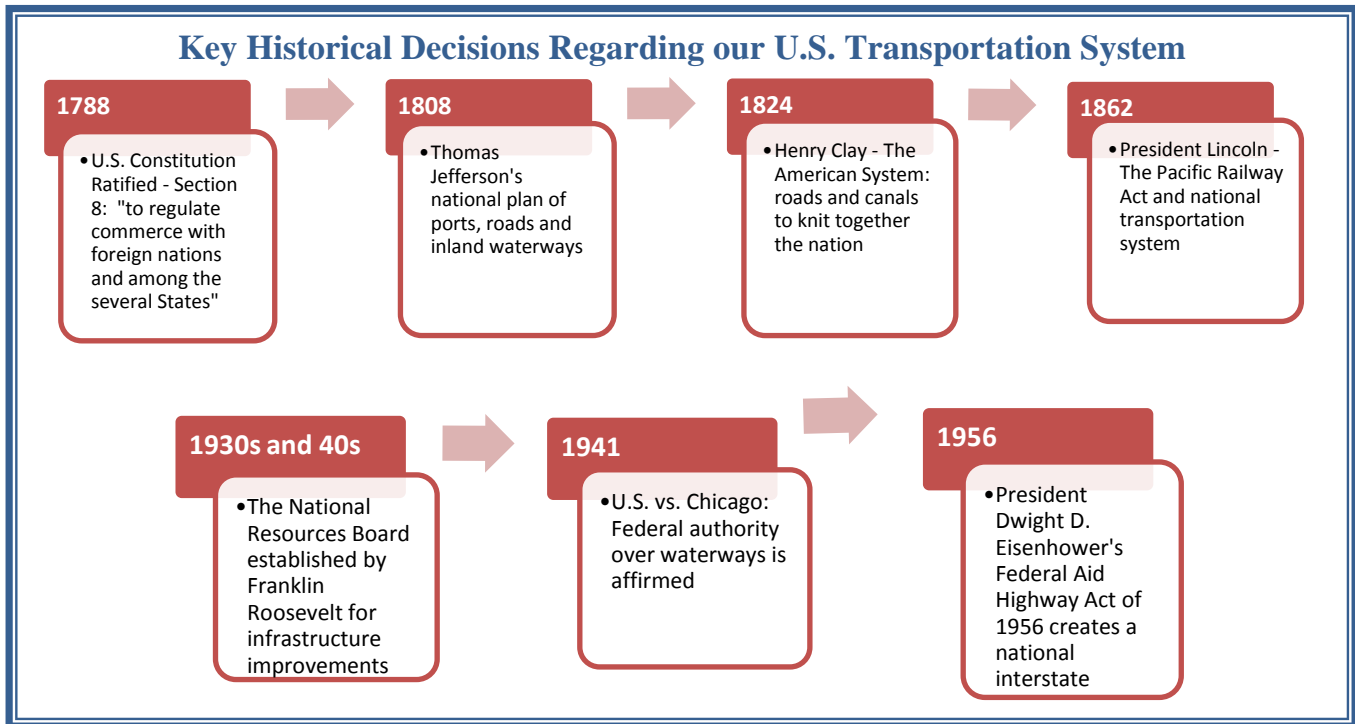
our ports, waterways, railways and highways benefited from federal oversight and support.

For four centuries, beginning with the founding of the Jamestown colony, seaports have served as a vital economic lifeline for America by bringing goods and services to people, creating economic activity and enhancing the overall quality of life. Seaports continue to be the critical link for access to the global marketplace here in the United States handling more than 99 percent of cargoes.

Maintaining our national infrastructure that supports foreign and interstate commerce is not only a federal responsibility but is in the national interest as established by our forefathers. In fact, improving waterways and coastal ports for navigation and national security is the most federal of infrastructure responsibilities, dating to the early missions assigned the Continental Army by then General George Washington.

In *Federalist Paper #42* written by James Madison, a case is made that the powers conferred by the Constitution for regulating commerce and establishing post roads are essential.

He wrote: *"Nothing which tends to facilitate the intercourse between the States can be deemed unworthy of the public care."*



Back to Basics

In these times of a tightening Federal Budget, as Congress and the Administration take on the task of prioritizing expenditures, we need to identify and prioritize core federal missions that are in the national interest and help to revitalize our economy. Modern, navigable seaports are vital to international commerce and economic prosperity. For this to be a reality, Federal government investment is needed to maintain and strengthen our

nation's infrastructure that supports foreign and interstate commerce — the underpinnings of our economic security. These are wise investments that pay dividends immediately and over time, and form the backbone of our economy and society at large. Investments in port infrastructure are multipliers, as they create infrastructure that allows long-term job creation, positioning the United States as a leader in international trade and commerce.

According to Dwight D. Eisenhower:

"Our unity as a nation is sustained by free communication of thought and by easy transportation of people and goods. The ceaseless flow of information throughout the Republic is matched by individual and commercial movement over a vast system of interconnected highways crisscrossing the country and joining at our national borders with friendly neighbors to the north and south Together the uniting forces of our communication and transportation systems are dynamic elements in the very name we bear – United States. Without them, we would be a mere alliance of many separate parts."

Waterways

Pursuant to Article 1, Section 8 of the United States Constitution, Congress, by statute, has reserved jurisdiction over navigable waters for the federal government, which can determine how the waters are used, by whom, and under what conditions. As a result, the federal government takes the lead in building, maintaining, and operating the nation's navigation channels.

Authority to construct and maintain navigation projects on behalf of the United States was granted to the Corps of Engineers in the General Survey Act of 1824. In 1826, Congress passed the first Rivers and Harbors Act and provided funds to the Corps to make specific navigation improvements to the Ohio, Mississippi, and Missouri Rivers. Congress has continued to appropriate funds for specific navigation projects and the Corps has played a dual role by assessing, as well as implementing, needed projects in federal navigation channels. In 1899, Congress enacted the Rivers and Harbors Act, which makes it unlawful to undertake any modifications of navigable water channels unless authorized by the Secretary of the Army on the recommendation of the Corps of Engineers.

It is well established that the Commerce Clause is the basis for exclusive federal jurisdiction over navigable waterways. The landmark United States Supreme Court case of Gibbons v. Ogden, 22 U.S. 1 (1824) found that navigation of vessels in and out of the ports of the nation is a form of interstate commerce and that federal law takes precedence. Federal authority over navigable waterways has been repeatedly affirmed by the U.S. Supreme Court.

Highways and Intermodal Connectors

With interstate commerce and connectivity as the impetus, the federal role in ensuring a contiguous system of roads spanning the states has been implicit in our federal government since the writing of the Constitution. These powers were granted to Congress in Article I, Section 8 of the U.S. Constitution by the clauses describing "the regulation of commerce with foreign nations and among the several states ..." and the responsibility "to establish Post Offices and Post Roads." As the timeline illustrates, since the founding of this great nation, our most visionary leaders have engaged in national infrastructure initiatives. The highway system as we know it today was largely borne out of the 1939 Bureau of Public Roads report commissioned by Franklin Delano Roosevelt titled *Toll Roads and Free Roads*, which proposed a map of a transcontinental national superhighway system. This led to President Eisenhower's Federal-Aid Highway of 1956 and subsequent development of the Interstate System. Without the federal role in planning, coordinating and providing funding, our current system of inter-regional highways would not have been possible.

Today, this federal responsibility continues through the surface transportation programs funded largely by federal gas taxes. Highways, arterials and secondary roads that are identified as being important to the nation's economy, defense, and mobility are classified as part of the National Highway System (NHS) and are eligible for federal funds through the federal-aid program.

Example of United States Supreme Court Affirming Federal Authority Over Navigable Waterways:

"Commerce, the regulation of which between the states is committed by the Constitution to Congress, article 1, 8, cl. 3, includes navigation. The power to regulate commerce comprehends the control for that purpose, and to the extent necessary, of all the navigable waters of the United States which are accessible from a State other than those in which they lie. For this purpose they are the public property of the nation, and subject to all the requisite legislation by Congress. And the determination of the necessity for a given improvement of navigable capacity, and the character and extent of it, is for Congress alone."

U. S. v. CHICAGO, M., ST. P. & P. R. CO., 312 U.S. 592, 595-596 (1941)

Road infrastructure that accesses major intermodal terminals, including seaports, are designated NHS connectors by the U.S. Department of Transportation (USDOT). While accounting for less than one percent of total NHS mileage, this important infrastructure represents a critical link in the goods movement value chain, carrying truck traffic between transportation modes and to the broader network of the interstate system. According to the Federal Highway Administration, of the 616 total defined NHS intermodal connectors, 253 are connected to ocean and river ports. Of the 1,222 total miles defined as part of the NHS intermodal connectors, 532 miles are port-related infrastructure. Unfortunately, these roads are often inadequate and in poor condition, plagued by inadequate turning radii and shoulder deficiencies and have been found to have twice the percentage of mileage with pavement deficiencies when compared to non-interstate NHS routes according to a study conducted by USDOT. States and MPOs have traditionally assigned freight-focused projects a low priority when compared with passenger-related improvements. Due to their freight-focused nature, NHS connectors generally do not fare well in project selection within the State and MPO planning processes.

This critical infrastructure is more important than ever as our nation rebuilds the economy and creates jobs by expanding commerce through free trade agreements and increasing America's exports and international competitiveness. These roads are key pieces of our connection to the world marketplace.

In addition to their national economic importance, NHS Intermodal connectors are vital to defense mobilization and national security. With the military's increasing reliance on strategic ports and commercial trucking for mobility, intermodal connectors are critical to national defense planning.

Given the reliance of our national economy and defense on intermodal connectors, it is important that the federal government remain engaged in identifying, prioritizing and funding improvements to this critical infrastructure which has languished when dependent upon State and local planning processes.

Summary

From the earliest days of our nation, there has been a clear and consistent federal role and national interest in developing and maintaining landside and waterside connections to America's seaports. This vital transportation infrastructure literally connects American farmers, manufacturers and consumers to the world marketplace. More than a quarter of U.S. GDP and over 13 million jobs are accounted for by international trade.

Especially in challenging fiscal times like today, it is critical that basic, core federal missions such as these, that directly impact America's economic vitality, jobs, and global competitiveness, be recognized and prioritized.

March 2011