

Missouri Conservation Heritage Foundation
Stream Stewardship Trust Fund

MEMORANDUM OF UNDERSTANDING BETWEEN THE MISSOURI CONSERVATION
HERITAGE FOUNDATION AND
THE U.S. ARMY CORPS OF ENGINEERS, KANSAS CITY DISTRICT

This is a Memorandum of Understanding (MOU) between the U.S. Army Corps of Engineers, Kansas City District (hereinafter "Corps") and the Missouri Conservation Heritage Foundation (hereinafter "Foundation") to implement the establishment of the Stream Stewardship Trust Fund (hereinafter "Trust Fund"), as described below. The Trust Fund will provide an additional option to compensate for stream impacts caused by Corps-regulated activities in Missouri and to provide greater flexibility to Corps permittees. The Corps and the Foundation agree to follow the In-lieu-Fee Mitigation (ILF) procedures set forth below.

1. Purpose

The purpose of this MOU is to create the Stream Stewardship Trust Fund, which will provide an additional stream impact compensation alternative for Corps permittees. The goal of this Trust Fund is to provide certain permittees more flexibility in meeting their stream mitigation requirements, while creating a financial source to restore, preserve, and enhance stream systems within Missouri. The Trust Fund will be used in permit actions involving Corps Nationwide Permits (NWP) as set forth in the Code of Federal Regulations, Kansas City District Corps Regional General Permits and in other permit actions if accepted by all involved parties. The use of this Trust Fund for compensatory mitigation may occur only after the relevant permitted activity has complied with Corps regulations and policy regarding avoidance and minimization.

2. Program Operation

The Trust Fund is a compensatory mitigation option in permit approval cases where the Corps has determined that the requirement to avoid and/or minimize stream impacts is not applicable (in the case of nationwide permits), impossible, impractical, or not in the best interest of the environment, and that the Corps will allow off-site mitigation for impacts to "waters of the U.S." caused by the issuance of Section 10 of the Rivers and Harbors Act and/or Section 404 Clean Water Act permits. In these cases, the Foundation, as described below, will act as a passive recipient of the mitigation resources, which are required of the permittee by the Corps. The Foundation will play no role in the Corps' decision to approve or deny a permit or whether mitigation is a necessary condition of any such permit. Once mitigation funds are received by the Foundation, the Foundation will evaluate, prioritize, and financially support select stream restoration, enhancement and preservation projects sponsored by the Missouri Department of Conservation. Proposed projects will be prioritized and funded by the Foundation based on regional stream needs, maximum return on expended monies, level of threat to the stream system, and overall anticipated benefits to stream resources. The Trust Fund and all of its actions will operate separately from the Corps regulatory actions except as specified in these ILF

mitigation procedures. Required compensatory mitigation payment amounts are based on market forces and the anticipated cost of stream mitigation projects (e.g., restoration, enhancement, preservation) in the area where stream impacts were permitted. The compensatory mitigation payments are based on average cost estimates to correct activity-specific impacts to stream resources.

3. Mitigation Resources

Mitigation resources shall consist of funds offered as mitigation by applicants to compensate for stream impacts in connection with issuance of Corps permits. These mitigation resources will be delivered to the Foundation in cash or by certified check. The Foundation will receive and expend mitigation resources in the manner and with the limitations described below.

4. Mitigation Activities

The Trust Fund will be used to support stream projects sponsored by the Missouri Department of Conservation. Stream benefits will result from the projects supported by the Trust Fund because of the Missouri Department of Conservation mandate, staff expertise regarding stream systems, resources (i.e., equipment, staff, regional knowledge of stream needs/priorities), statewide coverage, and willingness to cooperate with the Foundation. The Foundation will evaluate, prioritize, and financially support select stream projects proposed by the Missouri Department of Conservation. A minimum of 50% of Trust Fund resources will be spent within the Missouri Department of Conservation Management Unit (i.e., Missouri River, Mississippi River, Ozark, Appendix II) in which an individual permittee's compensatory mitigation requirement occurred. Proposed projects will be prioritized and funded by the Foundation based on regional stream needs, maximum return on expended monies, level of threat to the stream system, and overall anticipated benefits to stream resources. All other factors being equal, preference will be given to mitigation in the order of restoration, then enhancement, then preservation. Approval will be limited to projects that restore, enhance, or preserve Missouri's diverse stream systems. Trust funds may be used to manage stream resources that are acquired in fee or easement, i.e. reasonable cost of ongoing management may be included in projects that acquire stream resources, either in fee or easement.

5. Geographical Scope

The Trust Fund will be used only to restore, enhance and/or protect stream systems and associated riparian habitats in Missouri. Diverse stream types, ranging in size from ephemeral headwater reaches to the Mississippi River, serve important functions within Missouri. Stream needs and priorities will be identified by consulting the Missouri Conservation Department and with consultation at least annually by the Corps. The Foundation recognizes the valuable functions provided by stream systems and will operate the Trust Fund to restore, enhance, and preserve these resources.

6. Consultation and Approval

The Foundation will expend Trust Funds on stream projects proposed by the Missouri Department of Conservation. All proposed projects will be reviewed and prioritized by the Foundation. Collected Trust Fund resources will be tracked and at least 50% will be spent within the Missouri Department of Conservation Management Unit (Appendix 2) in which an individual applicant's compensatory mitigation requirement occurred. All expenditures of Trust Fund resources are subject to the Foundation policies and procedures.

7. Financial Controls

The Foundation shall hold any mitigation resources collected pursuant to these ILF mitigation procedures in an interest-bearing escrow account, in an investment instrument, or banking institution so as to earn interest while maximizing the safety and preservation of the principal amount of funds in the account. The Foundation shall account for the funds so held, and the account shall be subject to audit by the Corps from time to time. The Foundation will provide the Corps with an account statement annually which states the balance of the Trust Fund, investment instruments in which the Trust Fund invests, and a list of stream projects and associated costs supported by the Trust Fund. Interest earned through investments and assets left over from mitigation projects will remain with the Trust Fund for future mitigation projects and administrative costs in accordance with the ILF mitigation procedures.

8. Administrative Overhead and Interest

The Foundation will receive an overhead fee for each acquisition project at the rate of 3% of the first \$500,000, 2% for the second \$500,000, and 1% for any amount greater than \$1,000,000 in purchase price for the acquisition of property. For all Trust Fund projects (except for acquisition costs) a 10% fee will be paid to the Foundation for administrative overhead. The acquisition and/or 10% project overhead can only be collected as an expense of implementing a mitigation project.

9. Time Frame

All monies from the Trust Fund are to be allocated to specific projects within three years of the date received. If more than three years pass from the date funds are received, the Corps may request funds be allocated to another Foundation project or another non-profit entity. The Corps may grant an extension of the three-year time limit on a case-by-case basis.

10. Good Faith

The Corps and the Foundation both intend to implement these procedures to the maximum extent they are legally authorized.

11. Amendment and Termination

These ILF mitigation procedures may be changed by written amendment signed by the Corps and the Foundation. These ILF mitigation procedures may be terminated by either the Corps or the Foundation by giving ninety (90) days written notice to the other. Prior to termination, the Foundation shall provide an accounting of funds and shall complete payment on existing project contracts and any expenses incurred on behalf of the Trust Fund. Upon termination, the Corps direction of Trust Funds as set forth in section 9 will apply.

12. Authority to Sign

The signers of this MOU represent that they have the requisite authority to enter into this agreement on behalf of their respective organizations.

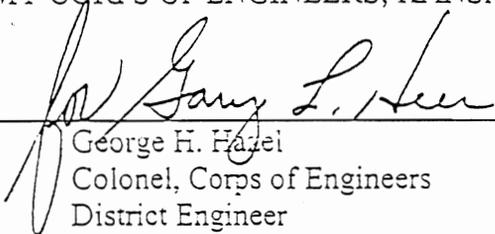
13. Execution

This MOU has been executed in two duplicate originals on this 30 day of July, 1999.

THE MISSOURI CONSERVATION HERITAGE FOUNDATION

By: 
William A. R. Dalton, President
Board of Directors

U.S. ARMY CORPS OF ENGINEERS, KANSAS CITY DISTRICT

By:  LTC EN
George H. Hazel
Colonel, Corps of Engineers
District Engineer