DEPARTMENT OF THE ARMY
KANSAS CITY DISTRICT, CORPS OF ENGINEERS
635 FEDERAL BUILDING
601 E 12TH STREET
KANSAS CITY MO 64106-2824

REPLY TO
ATTENTION OF

MAR 3 1 2011

Regulatory Branch
(NWK-2008-1765)

Mr. David Penny
The Master's Dredging Company, Inc.
P.O. Box 9
Lawrence, Kansas 66044

Dear Mr. Penny:

This letter concerns your application No. 2008-1765, dated March 24, 2008, requesting Department of the Army (DA) permit authorization to extract up to 1,000,000 tons of sand and gravel per year from the Missouri River with a mobile, floating, hydraulic cutter-head, suction dredge plant.

I have reviewed the recently completed Final EIS for Missouri River Commercial Dredging (Final EIS), the Record of Decision (ROD) and all other available information regarding your current proposal along with the proposals of other commercial sand dredgers on the Missouri River. I have concluded that authorization of dredging from the lower 498 miles of the Missouri River in excess of the annual tonnage of aggregate outlined in the Least Environmentally Damaging Practicable Alternative (LEDPA) of the ROD, would result in unacceptable impacts on the aquatic environment of the Missouri River. I have determined that issuance of any permits for extraction of aggregate in excess of the LEDPA annual tonnage would be contrary to the public interest because less environmentally damaging practicable alternatives are available which would meet your objectives of obtaining sand and gravel. Annual extraction and past authorized amounts have exceeded the LEDPA annual tonnage in recent years so even the currently authorized dredgers face reduced extraction limits, hence, there is no additional available tonnage. Therefore, I am denying your request for authorization to extract up to 1,000,000 tons of sand and gravel per year from the Missouri River.

Please note that the Corps of Engineers has published an administrative appeal regulation at 33 Code of Federal Regulations (C.F.R.) Part 331. The purpose of this regulation is to establish administrative appeals policies and procedures for final Corps of Engineers' geographic jurisdictional determinations and permit denials with prejudice. The appeals process allows you to pursue an administrative appeal of a final Corps of Engineers' decision or determination with which you disagree. The Final EIS and Record of Decision used to evaluate your proposed activity can be viewed and downloaded at:
http://www.nwk.usace.army.mil/regulatory/Dredging/MO/MOdredging.htm.

This letter contains a permit denial for your commercial dredging permit application. If you object to this decision, you may request an administrative appeal under Corps regulations at 33 C.F.R. 331. Enclosed you will find a Notification of Administrative Appeal Options and Process (NAP) and Request for Appeal (RFA) form. If you request to appeal this decision you must submit a completed RFA form to the Northwestern Division Office at the following address:

Division Engineer
ATTN: David W. Gesl
Administrative Appeals Review Officer
U.S. Army Corps of Engineers
P.O. Box 2870
Portland, OR 97208-2870
Telephone: 503-808-3825

In order for an RFA to be accepted, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 C.F.R. 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by May 31, 2011.

It is not necessary to submit an RFA form to the Division Office if you do not object to the decision in this letter.

We are interested in your thoughts and opinions concerning your experience with the Kansas City District Regulatory Program. We have placed an automated version of our Customer Service Survey form at: http://per2.nwp.usace.army.mil/survey.html. At your request, we will mail you a paper copy that you may complete and return to us by mail or fax.

If you have any questions concerning this matter, please contact Mr. Cody S. Wheeler at 816-389-3739 (FAX 816-389-2032).

Sincerely,

Anthony J. Hofmann
Colonel, Corps of Engineers
District Commander

Enclosure

# NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

| Applicant: The Master's Dredging Company, Inc. | | File Number: 2008-1765 | Date: Mar. 31, 2011 |
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| Attached is: | | | See Section below |
| | A. INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission) | | A |
| | B. PROFFERED PERMIT (Standard Permit or Letter of Permission) | | B |
| XX | C. PERMIT DENIAL | | C |
| | D. APPROVED JURISDICTIONAL DETERMINATION | | D |
| | E. PRELIMINARY JURISDICTIONAL DETERMINATION | | E |

SECTION I - The following identifies your rights and options regarding a modification, reconsideration, or administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/inet/functions/cw/cecwo/reg or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or request modification of the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- REQUEST MODIFICATION: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the District Engineer. Your objections must be received by the District Engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the District Engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the District Engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer (address on page 2). This form must be received by the Division Engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer (address on page 2). This form must be received by the Division Engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept the approved JD, appeal the approved JD, or submit new information and request reconsideration of the approved JD.

- ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer (address on page 2). This form must be received by the Division Engineer within 60 days of the date of this notice.
- RECONSIDERATION BASED ON NEW INFORMATION: You may submit new information to the District Engineer for reconsideration of an approved JD. You must submit the information within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - Fill out this section and return this form to the appropriate office only if submitting a request for modification or reconsideration to the District Engineer, or if submitting a request for Administrative Appeal to the Division Engineer. All such submittals must be made within 60 days of the date of this notice.

Submit the following requests to the District Engineer

A. Modification of an INITIAL PROFFERED PERMIT (Item A).
D. Reconsideration of an APPROVED JURISDICTIONAL DETERMINATION based on NEW INFORMATION (Item D RECONSIDERATION).

Submit the following requests to the Division Engineer

B. Administrative Appeal of a PROFFERED PERMIT (Item B).
C. Administrative Appeal of a PERMIT DENIAL (Item C).
D. Administrative Appeal of an APPROVED JURISDICTIONAL DETERMINATION (Item D APPEAL) (for reasons other than reconsideration of an approved JD based on new information).

(Note: Preliminary Jurisdictional Determinations (Item E) are not appealable. If you have concerns regarding a preliminary Jurisdictional Determination, you can request an approved Jurisdictional Determination).

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

SUBMITTAL OF NEW OR ADDITIONAL INFORMATION: The District Engineer may accept and consider new information if you request a modification to an initial proffered permit (Part A), or a reconsideration of an approved JD (Part D). An administrative appeal to the Division Engineer is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the administrative record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

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| If you have questions regarding this decision and/or the appeal process you may contact:<br>DISTRICT ENGINEER<br>**Attn: Mark D. Frazier**<br>**Chief, Regulatory Branch**<br>**U.S. Army Engineer District, Kansas City**<br>**601 E. 12th Street, Suite 402**<br>**Kansas City, MO 64106-2896**<br>**Telephone: 816-389-3990**<br>(Use this address for submittals to the District Engineer) | If you wish to submit an appeal or have questions regarding the appeal process you may contact:<br>DIVISION ENGINEER<br>**Attn: David W. Gesl**<br>**Administrative Appeals Review Officer**<br>**U.S. Army Engineer Division, Northwestern Division**<br>**P.O. Box 2870**<br>**Portland, OR 97208-2870**<br>**Telephone: 503-808-3825** |

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

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| _____<br>Signature of appellant or agent. | Date: | Telephone number: |