**Applicants' Objections and USACE Response**

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| **Category: Global Permitting Issues** | |
| 1. The applicants appeal the tonnage limits imposed on each individual dredger in the issued permits in that the adoption of these limits is arbitrary and capricious and the limits are based on inaccurate and incomplete data.<br>• The USACE lacked data to conclude that limiting dredging will effect overall bed degradation.<br>• The analysis of bed loads in the EIS is flawed.<br>• The drafters of the EIS rely on inaccurate measurements and methods to conclude that commercial dredging leads to localized bed degradation.<br>• The tonnage caps on dredging based on bed load are unreliable and arbitrary.<br>• The USACE can protect at risk areas while allowing sufficient tonnage. | The decision of overall and localized tonnage limits was not arbitrary and is fully described in Sections 2.4.1 and 3.4.6.3 and Appendix A of the Final EIS. Alternatives to the Proposed Action were identified through review of factors including the record of previous dredging permits, analysis of bed-material load estimates and recent and historical degradation. The USACE estimated the bed-material load using a reasoned approach and the best available information. Rob Jacobson, Research Hydrologist with the U.S. Geological Survey, in response to the Draft EIS public comment period stated "…I think the preparers of this report did a state-of-the-art job of estimating bed-material loads. Using a variety of available models is entirely appropriate to provide some measure of variance."(see comment letter 50 in Appendix F of the Final EIS) The EIS process, which has included public scoping meetings, comment periods, and review and comment on the Draft EIS, has provided a forum for public review and comment.<br><br>As discussed in Sections 3.4.6.3 and on page 10-116 of the Final EIS, the causes of degradation on the LOMR are complex and vary at different locations along the river. The EIS focused on the contribution of dredging to bed degradation because dredging is the applicants' sole proposed activity and permitting it constitutes the proposed major federal action. The geomorphology analysis found that bed degradation has occurred at most locations where dredging occurs and is most severe in intensely dredged areas near the major sand plants in Kansas City, Jefferson City, and St. Louis/St. Charles (see Figures 3.4-31 and 3.4-32 from the Final EIS). Further, a statistically significant linkage between total dredging amount in a dredging reach, dredging intensity, and bed degradation was identified (see Figures 3.4-34 and 3.4-35) that demonstrates the contribution of dredging to bed degradation.<br><br>After reconsidering the tonnage limits as requested, we have concluded that the limits we have proposed are not arbitrary or capricious and are necessary to prevent levels of degradation and associated impacts that would be contrary to the public interest. In all river segments other than the Kansas City segment the proffered annual extraction amount is equal to or greater than the average amount extracted annually between 2004 and 2008. In the Kansas City segment, because of the potential economic, public safety, and environmental impacts and in consideration of potential alternative sources to help |

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| | meet the public demand for sand, increasing the proffered annual extraction limit would be contrary to the public interest. The annual extraction limits will not be changed in the Final Proffered Permits. |
| 2. The applicants appeal the USACE's adoption and use of segments and fixed segment boundaries for permitting purposes and, specifically, the imposition of an additional tonnage limit within the specific segments. | In August 2007, the USACE issued a Combined Decision Document that concluded that past dredging had contributed to significant bed degradation in the Missouri River and that an EIS would be required for the next dredging permit decision. As discussed on pages 10-113 to 10-116 of the Final EIS, a basic principal of river geomorphology is that a river with a given volume and velocity will have the capacity to carry a specific bed-material load. Bed degradation occurs when a river's sediment transport capacity is greater than the supply of sediment and the effective shear stress of the flowing water is sufficient to erode the bed until the sediment supply is once again in balance with the transport capacity. The addition of sediment from tributaries and the extraction of sand by commercial dredging are two highly variable factors that affect the sediment supply of the LOMR. Also, there are limited locations where sufficient hydrologic and sediment data have been collected to allow computation of sediment bed load estimates. As discussed in Section 3.3 of the Final EIS, the USACE used the best available information to divide the LOMR into segments based on major tributaries, bedrock geology, slope breaks, width of the alluvial floodplain, and the USGS gage locations where the sediment supply was likely to change and could be measured. This would facilitate better and more specific environmental impact assessment and enable the USACE to better determine appropriate dredging levels based on the local bed material load. The USACE then assessed allocations of the segment tonnage among the applicants based on equity considerations as is further discussed in response to Global Issue 10 below.<br><br>After reconsidering the segmentation of the river as requested, we have concluded that the segment boundaries are not arbitrary or capricious, are necessary to prevent levels of degradation and associated impacts that would be contrary to the public interest, and will not be changed in the Final Proffered Permits. During the current permit cycle and subsequent permits, the USACE will continue to take information as it becomes available relative to allocations and segments. It will use that information to assess the effects of the segment boundaries on degradation and the applicants to determine if any |

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| | modifications are warranted. |
| 3. The applicants appeal the permit decision because the USACE failed to consider the USACE-controlled river structures, including the BSNP, as part of the analysis of the causes and contributors to bed degradation, which has resulted in disproportionate action against commercial dredging. | The USACE Regulatory Program does not control maintenance of the BSNP and changes to the BSNP are not part of the action proposed by the applicants. Therefore, the BSNP and other potential causes of degradation do not form part of the proposed federal action that is the center of study pursuant to NEPA. To make it thus would add enormous expense and time that would be borne by the applicants and cannot be required by the agency. However, the USACE is required under both NEPA (40 C.F.R. 1508.7) and the 404(b)(1) Guidelines [40 C.F.R. 230.11(a)] to evaluate the cumulative impacts of the proposed federal action on the environment. The agency did analyze the impacts associated with BSNP as part of its cumulative impacts assessment (see Chapter 5 of the Final EIS and Section 4.2.2 of the ROD). The applicants seem to believe that the cumulative impact analysis requires a quantification of the impact of each individual factor (such as the BSNP) that could affect an aspect of the environment (such as river geomorphology), and if the proposed action would cause less impact when compared to all the other past, present, and future causes, then it should be permitted. This interpretation of the requirements to evaluate cumulative impacts is inaccurate. Cumulative impact assessment analyzes the changes that are attributable to the proposed federal action when added to other past, present, and reasonably foreseeable future actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. The cumulative impact analysis is critical because it helps determine whether the proposed action is going to be the action that causes the cumulative impacts to reach a threshold of unacceptable impacts (in terms of the public interest) to the resources of concern. Even in the presence of other potentially substantial causes to a problem, the proposed federal action may not be in the public interest if it contributes materially to a severely degraded resource.<br><br>As discussed in Section 3.2.4.2 of the Final EIS, Congress authorized the USACE to construct the BSNP to create a stable navigable waterway that was not aggrading, degrading, or meandering across the floodplain. The BSNP is a system of dikes designed to train and re-direct the river to an alignment engineered for the appropriate gradient and water velocities that will balance the sediment carrying capacity of the river with the sediment supply. However, bed degradation can occur when a variable changes and the river's sediment transport capacity becomes greater than the supply of sediment |

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| | and the effective shear stress of flowing water is sufficient to erode either the bed or the banks, increasing the sediment supply. Dredging removes a portion of the supply of sediment and will push an aggrading river toward equilibrium and stability, cause a previously stabile river to degrade, and cause an already degrading river to degrade more rapidly (see pages 10-28 and 10-113 to 10-116 of the Final EIS for further discussion of dynamic equilibrium and the potential causes of degradation). Dredging has occurred to various degrees at different locations along the LOMR for the past 75 years but did not exceed 1 million tons per year until 1958 (see Figures 1.5-1 from the Final EIS). Dredging levels in the LOMR surpassed 2 million tons per year in 1965 and peaked at 8.7 million tons per year in 2002. Figure 1.5-2 shows dredging levels by river mile for dredging that has occurred in the last 10 years. Figure 3.4-25 shows the change in the changes in river stages and average bed elevation seen at the Kansas City, Missouri river gage since 1927. Comparison of the three figures reveals that the rate of degradation almost mirrors the level of dredging. Dredging is not one of the project purposes authorized by the 1944 Flood Control Act and the BSNP was not originally designed to accommodate ever increasing levels of dredging.<br><br>The existing environment of the LOMR reflects the historic changes to the flow regime, the mainstem dams, and the BSNP structures as described throughout Chapter 3 but particularly in Section 3.4.6.3 of the Final EIS. The cumulative impacts of these actions in the past, present, and reasonably foreseeable future have been qualitatively described in Chapter 5 of the Final EIS using the best available data. For several reasons the USACE did not quantify the amount of bed degradation or other environmental impacts caused by each individual factor such as the BSNP. Those reasons are:<br>1. Neither the law nor regulations require cumulative impacts to be quantified so precisely<br>2. Data of that precision and accuracy was not available and would be expensive to generate,<br>3. The purpose of the EIS was to disclose the impacts of dredging, not the causes and solutions of bed degradation,<br>4. The applicants were unwilling to pay for the additional analysis, and<br>5. Although it will take several years and its progress is subject to availability of funds, the Corps has begun the Degradation Feasibility Study to look at overall causes and |

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| | potential solutions to degradation for those factors other than dredging in the MO River.<br><br>As discussed in Sections 3.4.6.2 and shown on Figures 3.4-31 and 3.4-32 of the Final EIS, bed degradation has occurred at most locations where dredging occurs and is most severe in intensely dredged areas around the sand plants in Kansas City, Jefferson City, and St. Louis/St. Charles. As discussed in Section 3.5 of the Final EIS and Section 4.2.1.1 of the ROD, those most severely degraded reaches are also located in cities with more levees, revetments, drinking water and industrial water intakes, bridges, and pipeline crossings located on the LOMR than occur in rural reaches of those segments or in the Waverly and St. Joseph segments. The Kansas City segment has degraded approximately 12 feet since 1940 and as a result has experienced failed revetments and dikes, collapsed river banks, damaged or disabled water intakes, damaged bridges on tributaries, damaged levee toes, and failed outfalls. Based on the impacts to infrastructure already observed in the most degraded Kansas City segment, it appears likely that other segments, particularly the Jefferson City and St. Charles, would experience adverse impacts with the occurrence of moderate to substantial degradation in the long-term future. Adverse impacts that could be expected include compromised performance of water intakes that provide drinking, cooling, and industrial process water thus requiring expensive modifications to intake structures, premature pump wear, and damage that threaten the reliability of electric generation and public drinking water supply; scouring of existing bridge foundations (particularly on tributaries near the LOMR); exposure of and/or damage to petrochemical, sewer, or water pipelines (and associated accidental releases) under the river; and bank and revetment failure that could impair navigation and threaten the integrity of nearby levees. As discussed in Section 4.2.1.5 of the ROD and Section 4.10 of the Final EIS, the economic effects related to continued river bed degradation are difficult to quantify but would be proportional to the amount of degradation expected to occur. Additional degradation in any segment of the river would result in additional expenditures in those segments for infrastructure repair, maintenance, and replacement and would increase the potential for levee failure and jeopardize billions of dollars in investment protected by the regional levee systems. However, the ROD concluded that the annual extraction limits of the proffered permit, with the dredging concentration limits and a monitoring and adaptive management |

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| | framework, should result in no more than slight degradation in the short-term and long-term, is the LEDPA, complies with the Section 404(b)(1) Guidelines, and is not contrary to the public interest.<br><br>After considering this reason for appeal, we have concluded that the Final EIS and ROD have evaluated and considered the cumulative impacts of the USACE-controlled river structures, including the BSNP, using the best available information as required by law. We also conclude that the proffered permit conditions are necessary and practicable and that increasing the authorized extraction limits in any of the segments at this time would be contrary to the public interest. |
| 4. The ROD impermissibly piles assumption upon assumption to reach its flawed alternative sources conclusion. | The analysis of the capacity of alternate sources to meet displaced supplies from the LOMR under the various Project alternatives is presented in Section 2.3.2.1 and Section 2.3.2.2 of the Final EIS. This reason for appeal is similar to public comments given in response to the Draft EIS which are addressed on pages 10-13 and 10-14 of the Final EIS. .<br>Estimates of additional capacity to produce sand and gravel from the Kansas and Mississippi Rivers were based on the difference between maximum permitted levels of existing dredging permits and historical production data reported by the USACE. Based on this information, there is currently authorized, but unused, sand production capacity in these river systems that represents a short-term alternate source of sand and gravel in the region.<br><br>The Final EIS also estimated the excess capacity of existing sand and gravel mining operations that could potentially serve as alternate sources to material dredged from the LOMR. Actual production data for individual mines were not available from the MDNR, as this information is considered confidential and proprietary. Further, because of confidentiality restrictions, it was not feasible to query mining operators about their available capital and production capacity. As a result, excess capacity was estimated based on the difference between peak production periods and current production levels, and the assumption that sand and gravel production could at least return to peak levels if needed to help offset reductions in LOMR dredging in the short term. As noted above, it was not possible to evaluate each mining operation relative to available capital, |

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| | operating parameters, and regulatory compliance issues. Accordingly, it is acknowledged that the figures reported in the EIS for available capacity are only planning-level estimates.<br><br>The alternate source analysis also considered the capacity of alternate sources to meet road construction material specifications as required by the MoDOT. This analysis is based on (1) the estimated quantity of sand and gravel from the LOMR that has been historically used by the MoDOT (i.e., baseline demand); and (2) available capacity at sand and gravel mining operations that have been identified as meeting MoDOT specifications. From a supply perspective, alternate sources that were assumed to provide material meeting MoDOT specifications include the Kansas, Mississippi, and Meramec Rivers, as well as other approved land-based sources of Class A sand identified by the MoDOT. (Final EIS pages 10-13 and 10-14) |
| 5. The ROD failed to quantitatively assess the environmental impacts of its proposed alternative sources solution. | In the Final EIS, the USACE has addressed the relative impacts of commercial dredging in the Missouri River and the impacts of obtaining sand and gravel from alternate sources in each resource section of Chapter 4. The best available information was used. The potential impacts on trucking, agricultural lands, and emissions were addressed along with impacts on other resource areas. The impacts of the use and development of alternate sources were addressed with the available data. By necessity, the analysis was less geographically specific, as it was not possible to identify how production and technology within the market may respond, or to specify the actual locations of expanded or new mining operations. |
| 6. The continuous monitoring requirements included in the permits are overly burdensome, beyond the scope of USACE authority, bear no relation to protecting any USACE interest in dredging, and violate the protections of the Kansas, Missouri and United States constitutions. | The USACE has determined that requiring the applicants to monitor the location, operational status, and extraction rate of their dredges is necessary to ensure compliance with critical special conditions that protect vulnerable public infrastructure, endangered species habitat, and historical and cultural resources. The USACE believes that monitoring 24 hours per day, 365 days per year would be helpful to both the USACE and the applicants when the USACE receives public reports of observed non-compliance. However, the USACE has considered the applicants request and will modify the Final Proffered Permits to require monitoring of the dredges only when they are dredging in the Missouri River. The USACE believes it does have the authority and may require full-time monitoring in the future if it has sufficient reason to question the applicants' compliance with the special permit conditions that exclude dredging from |

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| | critical resources at specific locations. |
| 7. There is no basis for the USACE's denial of a 100% carryover of annual authorized tonnage. | The USACE issued dredging permits have historically authorized an approximate annual extraction amount. In 2007 the approximate annual extraction amounts became an absolute annual limit intended to prevent continued escalation of dredging levels and associated bed degradation. When the USACE proposed more restrictive and lower segment dredging limits in the 2011 permit decision after completion of the draft EIS, the applicants suggested the idea of allowing the applicants to save some of their authorized annual extraction amount for a segment and carry it over to be extracted the following year in addition to that years amount. The USACE and the applicants discussed benefits to a potential 10% carryover. The applicants never asked to be able to carryover 100% of the authorized annual extraction amount for a segment, nor did the EIS assess that type of regime and potential impacts associated with it, which could be substantially different. As discussed on page 3-40 of the ROD, the USACE determined that allowing 10% carryover was reasonable and would not be likely to result in more than slight long-term bed degradation or associated impacts. Based on available information, the USACE cannot allow greater quantities of carryover at this time. |
| 8. The USACE's actions are contrary to federal constitutional law in that the USACE, in restricting the applicants' access to river bed material have taken a property right without adequate compensation. | The USACE has followed the applicable statutes and regulations during the permit process and the USACE asserts that these statutes and regulations are not unconstitutional. As explained on page 10-76 of the Final EIS and page 3-31 of the ROD, contrary to the claims of the applicants Section 404 permits do not create vested or unalterable legal rights. They are subject to reevaluation and modification based on available information. In addition, the permits in question have completed their established lifespan. The USACE can provide no assurance of renewal of a permit as it is required to assess the public interest in such an activity. Although dredging has been permitted in the past, the federal action is the proposed reauthorization of dredging and the central question of the associated public interest review is whether or not and under what restrictions dredging should be authorized in the future. The USACE recognizes equity and property considerations as it determines the appropriate way to incorporate the findings of the public interest review, including the EIS, into its Record of Decision and ultimately its permits.<br><br>As clarified on page 10-107 of the Final EIS, USACE jurisdiction is not limited by |

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| | property rights or directed at property. Jurisdiction stems from the nature of the proposed activity within waters of the United States (as defined by regulation), regardless of property ownership where those waters are situated or incidental effects that regulating the activity may have on the use of the property. USACE permits do not grant or revoke property rights, although administration of the CWA and Rivers and Harbors Act of 1899 may incidentally affect the use of the property. The USACE acknowledges that the states own both the land and the minerals comprising the river bed, have the responsibility to manage it for the benefit of the public, and can authorize and collect royalties for using that state land or extracting the mineral resource if they choose. The USACE has taken into account comments from the states relative to the values and impacts associated with dredging and the bed of the river Final EIS. |
| 9. The USACE uses and relies upon unpublished data and sources in the ROD and the EIS. the inclusion of such material, which is not available to the applicants and is not subject to external analysis or peer review, is arbitrary and capricious and contrary to law. | As discussed in the Final EIS on pages 10-109 and 10-110, the Draft EIS and its underlying analysis sought to use the best and most current available information. Much of this data is published, but in some cases, these data are unpublished, in development, or in the "grey literature" (i.e., in reports and data files that are not widely known or available, such as agency reports). This does not mean that these reports were draft or unfinished. The use of these types of data in NEPA documents is widely practiced; without the use of unpublished data and reports, a vigorous and comprehensive analysis would not have been possible.<br><br>The USACE has strived to make it clear when such unpublished data were used and to show the underlying analysis and summary of results in the EIS and the appendices. All data and information cited in the EIS are also compiled within the Administrative Record for the EIS. It is therefore available either in the designated information repositories or upon request through the Freedom of Information Act. The USACE has cited personal communications or unpublished data only as sources of information for its analysis, not as support for conclusions regarding impacts or their significance." |

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| 10. The amount of tonnage reduced in many of the permits is so limited that it cannot be measured to demonstrate or determine an impact on the river bed. The inability to determine a specific impact by a proposed cut in production renders the action speculative and pure conjecture, and therefore arbitrary. | The applicants inaccurately imply that the federal action being proposed is "reducing" dredging levels. By definition the federal action in this case is the proposed reauthorization of dredging and the central question of the associated public interest review is whether or not and under what restrictions dredging should be authorized in the future. The applicants also imply that if evaluated independently, the various dredging operations would have an insignificant and immeasurable impact on the river. However, the USACE is required under both NEPA (40 C.F.R. 1508.7) and the 404(b)(1) Guidelines [40 C.F.R. 230.11(a)] to evaluate the cumulative effects on the environment. Cumulative effects are the changes that are attributable to the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. Accordingly, the USACE has prepared the combined Final EIS and ROD for all the currently proposed dredging permits. As discussed in the response to the second issue raised by the dredgers, "Global Issue 2," the USACE divided the LOMR into five segments based on physical characteristics and the USGS gage locations where the bed material load was likely to change and could be measured. As discussed in the response to Global Issues 1 and 2, the annual extraction limits for each segment were determined by evaluating previous dredging records, analysis of bed-material load estimates, and recent and historical degradation. The ROD determined that the dredging limits and conditions of the proffered permit should result in no more than slight degradation in the short-term and long-term, is the LEDPA, complies with the Section 404(b)(1) Guidelines, and is not contrary to the public interest. As discussed on pages 3-41 and 3-42 of the ROD, the USACE allocated the annual extraction limit for each segment among the various applicants based on capability, investment, and equity by giving each applicant the percentage of the segment limit that is equal to the percentage of the total average amount extracted from that segment between 2004 and 2008 that was dredged by each applicant. Allocating the annual extraction limit for a segment among the applicants that work in that segment may result in seemingly inconsequential reductions in dredging for the individual permits, but cumulatively among all the applicants the reductions are an essential part of the LEDPA.<br><br>After considering this reason for appeal, we have concluded that the annual extraction amounts in the permit proffered to each individual applicant are based on the cumulative impacts analysis using the best available data and reasonable analysis methods and are |

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| **Objection** | **Response** |
| | not arbitrary or capricious. We also concluded that the proffered permit conditions are necessary and practicable and that increasing the authorized extraction limits in any of the segments at this time would be contrary to the public interest. |
| Category: Individual Permitting Issues – J.T.R., Inc., and Limited Leasing Company | |
| 1. Adequate tonnage exists in the lower river to support the request of the applicant. The decision by the USACE in limiting the tonnage in the permit was arbitrary, capricious, and based on insufficient and incorrect data. See Global Issue 1 | As discussed in the responses to Global Issues 1, 2, and 10, the annual extraction limits for each segment were determined by evaluating previous dredging records, analysis of bed-material load estimates, and recent and historical degradation. Figures 3.4-21 and 3.4-22 show significant drops in the CRP water surface elevations and the river bed elevations in the St. Charles segment from the 1990s to 2009. Figures 3.4-31 and 3.4-32 are the same figures but also show the cumulative dredging levels from 1998 to 2007. The annual extraction amounts for the St. Charles segment in the proffered permits is equal to the average amount extracted annually from the reach from 2004 to 2008 but requires the applicants to spread the extraction out more and not concentrate all around the sand plants where degradation has been most severe.<br><br>After considering this reason for appeal, we conclude that the annual extraction amounts proffered in the St. Charles segment are based on the cumulative impact analysis using the best available data and reasonable analysis methods and are not arbitrary or capricious. We also conclude that the limits and conditions of the proffered permits are necessary and practicable and that increasing the authorized extraction limits in the St. Charles segment at this time would be contrary to the public interest. |
| 2. The monitoring provision relating to 24/7, 365 days per year, is unreasonable and unconstitutional. Global Issue 6 is hereby incorporated by reference. | The USACE will modify the Final Proffered Permits to require monitoring of the dredges only when they are dredging in the Missouri River. See the response to Global Issue 6. |

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| 3. The segment amount is arbitrary and capricious, and its distribution and allocation unreasonable. Global Issue 2 is hereby incorporated by reference. In addition to the Global Issue, segment limits in the St. Charles segment inappropriately advance beyond District jurisdictional boundaries creating confusing and differential regulatory positions by the Kansas City District and the St. Louis District. Multiple applicants are forced to overlap operations and "regulate" competitors operations in the segment. | As discussed in the responses to Global Issue 2 and J.T.R./Limited Leasing Company Issue 1, the annual extractions limits for the St. Charles segment was determined by evaluating previous dredging records, analysis of bed-material load estimates, and recent and historical degradation. As discussed on pages 3-41 and 3-42 of the ROD, the USACE allocated the annual extraction limit for each segment among the various applicants based on capability, investment, and equity by giving each applicant the percentage of the segment limit that is equal to the percentage of the total average amount extracted from that segment between 2004 and 2008 that was dredged by each applicant.<br><br>After considering this reason for appeal, we believe that the segment limit for the St. Charles segment and the requirement to spread extraction out more within the segment are based on a reasonable analysis of the best available data and is not arbitrary or capricious. We also believe that allocation of the segment limit among the applicants was fair and reasonable and not arbitrary or capricious. . |
| 4. The amount of tonnage at the mouth of the Missouri River and reaches allocated to this permit are underestimated. Global Issue 1 is hereby incorporated by reference. The mouth of the river and its interface with the Mississippi River is treated the same as all other areas of the river. The sediment deposition, bed load, hydrology and hydraulics are vastly different than any other portion of the river providing material in excess of the amounts indicated in the ROD and EIS. | See the responses to Global Issue 1 and J.T.R./Limited Leasing Company Issue 1. |
| 5. The permit decision fails to take into account the impact of the Bank Stabilization and Navigation Project. Global Issue 3 is hereby incorporated by reference. | See the response to Global Issue 3. |

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| 6. The permit's limitation of 300,000 tons per 5-mile reach is arbitrary. Global Issues 1 and 2 are hereby incorporated by reference. | The 300,000 tons per 5-mile reach concentration limit is fully discussed in Section 2.7.4 and 3.4.6.3 of the Final EIS (page 2-89) and Section 4.2.3.1.2 of the ROD (page 4-24). Figures 3.4-31 and 3.4-32 from the Final EIS show that bed degradation has occurred at most locations where dredging occurs and is most severe in intensely dredged areas near the major sand plants in Kansas City, Jefferson City, and St. Louis/St. Charles. To estimate potential dredging intensity effects on river bed degradation, historical dredging data were used to determine where dredging occurred and at what intensity. This information was then compared with observed patterns of local bed degradation by analyzing changes in local bed elevations in relation to dredging intensities using linear regression. The results suggest that dredging up to approximately 300,000 tons per 5-miles per year is a level of local dredging intensity that is reasonably unlikely to result in local bed degradation.<br><br>After reconsidering the 300,000 tons per 5-mile reach concentration limit, we have concluded that it is based on a reasonable analysis of the best available data and is not arbitrary or capricious. We also conclude that without the concentration limit in the designated 5-mile reaches, the remaining limits and conditions of the proffered permits would likely result in a level of bed degradation and associated impacts to other resources that would be contrary to the public interest. |
| Category: Individual Permitting Issues – Capital Sand Company Sand | |
| 1. Adequate tonnage exists to meet the applicant's request at Washington, Missouri, and in the St. Charles segment. The failure to allow the applicant's request was arbitrary and capricious in that it was not based on accurate or complete data. Global Issue 1 is hereby incorporated by reference. Adequate tonnage exists is this section of the river to support the applicant's request. The decision by the USACE in limiting the tonnage in the permit was arbitrary, capricious, and based on insufficient and incorrect data. | Degradation is occurring in the St. Charles segment as demonstrated in Figures 3.4-21 and 3.4-22 of the Final EIS and discussed in the responses to Global Issues 1 and 2. The USACE has determined that there is not additional material in the Jefferson City segment. As discussed below in the response to Capital Sand Company Issue 8, the USACE will consider future requests to expand dredging reaches in the segments but not the tonnage limits. |

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| 2. Adequate tonnage exists to allow the applicant's request in the Jefferson City segment. The failure to allow the applicant's request was arbitrary and capricious in that it was not based on accurate or complete data. Global Issue 1 is hereby incorporated by reference. Adequate tonnage exists is this section of the river to support the applicant's request. The decision by the USACE in limiting the tonnage in the permit was arbitrary, capricious, and based on insufficient and incorrect data. | Degradation is occurring in the Jefferson City segment as demonstrated in Figures 3.4-21 and 3.4-22 of the Final EIS and discussed in the responses to Global Issues 1 and 2. The USACE has determined that there is not additional material in the Jefferson City segment. As discussed below in the response to Capital Sand Company Issue 8, the USACE will consider future requests to expand dredging reaches in the segments but not the tonnage limits. |
| 3. Adequate tonnage exists to allow for the applicant's request in the Waverly segment. The failure to allow the applicant's request was arbitrary and capricious in that it was not based on accurate or complete data. Global Issue 1 is hereby incorporated by reference. Adequate tonnage exists is this section of the river to support the applicant's request. The decision by the USACE in limiting the tonnage in the permit was arbitrary, capricious, and based on insufficient and incorrect data. The Waverly segment is aggrading and has surplus material. There is no basis to deny the applicants request. | See the response to Global Issue 1. The USACE took into account the bed load and conditions of the Waverly segment and authorized the highest alternative. After considering equity, the USACE proffered a permit to Capital Sand Company for an amount equal to that which it has dredged in the past. Because there is some aggradation in this segment, the USACE may be able to permit additional quantities in future permit cycles based on future river conditions. Based on currently available data, the USACE is not able to permit additional quantities in the segment. |
| 4. The monitoring provision relating to 24/7, 365 days per year, is unreasonable and unconstitutional. Global Issue 6 is hereby incorporated by reference. | The USACE will modify the Final Proffered Permits to require monitoring of the dredges only when they are dredging in the Missouri River. See the response to Global Issue 6. |

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| 5. The USACE's assumption that there are alternative sources of sand available is based on inaccurate information. The USACE failed to complete an adequate analysis to determine if material exists to meet the needs and to determine the environmental impact of acquiring sand from other sources. Global Issues 4 and 5 are hereby incorporated by reference. | See the responses to Global Issues 4 and 5. |
| 6. The impact of the reductions provided in the above permits cannot be accurately measured to determine their direct impacts. The assumption that the reduction will have any correlation to river bed degradation lacks any basis in scientific data, making the decision arbitrary. Global Issue 10 is hereby incorporated by reference. | See the response to Global Issue 10. |
| 7. The permit decision fails to take into account the impact of the Bank Stabilization and Navigation Project. The decision to omit the analysis of the BNSP was arbitrary and capricious and a direct violation of NEP A. Global Issue 3 is hereby incorporated by reference. | See the response to Global Issue 3. |
| 8. Denial of Capital Sand's permit application in the lower 40 miles of the LOMR (MVS-2008-0093). The St. Louis District had sufficient tonnage to allow the applicant's request. The failure to allow the applicant's request was arbitrary and capricious in that it was not based on accurate or complete data. | Degradation is occurring in the lower river as demonstrated in Figures 3.4-21 and 3.4-22 of the Final EIS and discussed in the responses to Global Issues 1 and 2. The USACE has determined that there is not additional material in the St. Charles segments. The applicant had applied to the Kansas City District for reauthorization of their previous permit and had applied to the St. Louis District for a new permit to dredge up to 500,000 tons between river miles 40 and 50. The Kansas City proffered a permit to the applicant to annually dredge up to 370,000 tons from the Waverly segment, up to 1,350,000 tons from the Jefferson City segment, and up to 140,000 of t tones from the St. Charles segment. The St. Louis District denied the request for an additional 500,000 tons in the |

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| | St. Charles Segment because the additional tonnage would have likely caused a level of bed degradation and associated impacts that would be contrary to the public interest.<br><br>After considering this reason for appeal, we have concluded that the annual extraction amounts proffered in the St. Charles segment are based on the cumulative impact analysis using the best available data and reasonable analysis methods and are not arbitrary or capricious. We also conclude that the limits and conditions of the proffered permits are necessary and practicable and that increasing the authorized extraction limits in the St. Charles segment at this time would be contrary to the public interest. However, the applicant may submit an application to the St. Louis District for expansion of the authorized dredging area within which the applicant can extract the 140,000 tons authorized for the St. Charles segment.. |
| Category: Individual Permitting Issues – Hermann Sand and Gravel | |
| 1. Adequate material and tonnage exists to fully support applicant's previous amounts and additional tonnage. The failure to allow the applicant's request was arbitrary and capricious in that it was not based on accurate or complete data. | The USACE will not increase the tonnage authorized in the Final Proffered Permit. See the response to Global Issue 1. |
| 2. The impact of the reductions provided in the above permits cannot be accurately measured to determine their direct impacts. The assumption that the reduction will have any correlation to river bed degradation lacks any basis in scientific data, making the decision arbitrary. The applicant's tonnage was reduced by 60,000 tons total, split between two segments. The ability to measure the impact of such small amounts of material on the bed of one of the nation's largest waterways and drainage areas and has not been demonstrated by USACE. | See the response to Global Issues 1, 2, and 10. |

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| 3. Placement of the segment line between the company's operations is arbitrary in nature and creates an effective additional reduction in tonnage. The applicant's previous permits allowed for total tonnage to be split between its Jefferson City and Hermann sand plants. The segment line restricts the ability to continue such a practice with no justification in the record of the ability to measure such insignificant amounts. | See the responses to Global Issues 1, 2 and 10. |
| 4. The amount of tonnage in the Jefferson City and St. Charles segments is so negligible that it should be exempted from all other permit conditions. | See the response to Global Issue 10 |
| 5. The monitoring provision relating to 24/7, 365 days per year, is unreasonable and unconstitutional. | The USACE will modify the Final Proffered Permits to require monitoring of the dredges only when they are dredging in the Missouri River. See the response to Global Issue 6. |
| Category: Individual Permitting Issues – Con-Agg of Missouri, LLC | |
| 1. Adequate material and tonnage exists to fully support applicant's previous amounts and additional tonnage. The failure to allow the applicant's request was arbitrary and capricious in that it was not based on accurate or complete data. | Although Con-Agg accepted and signed their Initial Proffered Permit and is not appealable, the USACE will briefly address the issues raised by Cong-Agg.<br><br>The USACE will not increase the tonnage authorized in the Final Proffered Permit. See the response to Global Issue 1. |

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| **Objection** | **Response** |
| 2. The impact of the reductions provided in the above permits cannot be accurately measured to determine their direct impacts. The assumption that the reduction will have any correlation to river bed degradation lacks any basis in scientific data, making the decision arbitrary. The applicant's tonnage was reduced by 15,000 tons. The ability to measure the impact of such small amounts of material on the bed of one of the nation's largest waterways and drainage areas and has not been demonstrated by USACE. | See the response to Global Issue 10. Con-Agg was authorized an amount equal to their average annual extraction from 2004 to 2008, although their previous permit authorized an additional 15,000 tons per year. Based on the cumulative impacts analysis using the best available data and reasonable analysis method, the ROD determined that the proffered amount was the most that could be authorized and not be contrary to the public interest. |
| 3. The amount of tonnage in the Jefferson City and St. Charles segments is so negligible that it should be exempted from all other permit conditions. | See the response to Global Issue 10 |
| 4. The monitoring provision relating to 24/7, 365 days per year, is unreasonable and unconstitutional | The USACE will modify the Final Proffered Permits to require monitoring of the dredges only when they are dredging in the Missouri River. See the response to Global Issue 6. |
| Category: Individual Permitting Issues – Holliday Sand & Gravel Company | |
| 1. The ROD Is Flawed Because The USACE Failed To Properly Consider The Cumulative Impacts of the BSNP. | See the response to Global Issue 3.<br>The applicant cites a 2 September 2010 letter from seven members of Congress to support their claim that the USACE has not properly considered the cumulative impacts of the BSNP. This and various other letters from state and federal elected officials included in the administrative record express the complaints of the applicant about the Draft EIS and encourage the USACE "to address the impact of your own engineering efforts before considering a further reduction of commercial sand dredging on the Missouri River that will result in reduced availability of the principal material for aggregate within the boundaries of the State of Missouri and parts of the State of Kansas." This letter demonstrates a lack of understanding of and is contrary to the laws governing this issue. Congress authorized the USACE to construct the BSNP to create a |

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| | stable navigable waterway that was not aggrading, degrading, or meandering across the floodplain. Congress also authorized the construction of the Missouri River Mainstem Reservoir System. Under the 1944 Flood Control Act the Missouri River is actively managed for the authorized purposes of flood control, navigation, irrigation, hydropower, water supply, water quality, recreation, and fish and wildlife. The BSNP is a system of dikes designed to train and re-direct the river to an alignment engineered for the appropriate gradient and water velocities that will balance the sediment carrying capacity of the river with the sediment supply. However, bed degradation can occur when a variable changes and the river's sediment transport capacity becomes greater than the supply of sediment and the effective shear stress of flowing water is sufficient to erode either the bed or the banks, increasing the sediment supply. Dredging removes a portion of the supply of sediment and will push an aggrading river toward equilibrium and stability, cause a previously stabile river to degrade, and cause an already degrading river to degrade more rapidly (see pages 10-28 and 10-113 to 10-116 of the Final EIS for further discussion of dynamic equilibrium and the potential causes of degradation). Dredging levels in the LOMR have increased substantially since the construction of the BSNP but dredging is not one of the project purposes authorized by the 1944 Flood Control Act and the BSNP was not originally designed to accommodate ever increasing levels of dredging. The USACE Regulatory Program does not control maintenance of the BSNP and changes to the BSNP are not part of the action proposed by the applicant so are not within the scope of the EIS. However, with the limited maintenance funds available the USACE NWK Operations Division has made reasonable efforts to adjust the BSNP to adapt to the increasing degradation levels. Additionally, as explained in the 31 August 2010 response from the Assistant Secretary of the Army (Civil Works) to a letter from Representative Ike Skelton, Congress did authorize and appropriate funding for the Missouri River Degradation Reconnaissance Study to look broadly at the causes of and potential solutions to bed degradation. The Degradation Reconnaissance Study demonstrated sufficient evidence to show that there are potentially feasible alternatives that would provide economic benefit such that it is in the federal interest to participate in a cost-shared Degradation Feasibility Study. This feasibility study is now underway.<br><br>The USACE is required under both NEPA (40 C.F.R. 1508.7) and the 404(b)(1) Guidelines [40 C.F.R. 230.11(a)] to evaluate the cumulative impacts of the federal |

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| | action on the environment. The applicant seems to believe that the cumulative impact analysis is supposed to quantify the impact of each individual factor (such as the BSNP) that could affect an aspect of the environment (such as river geomorphology) and if the proposed action would cause very little impact when compared to all the other past, present, and future causes, then it should be permitted. This interpretation of the requirements to evaluate cumulative impacts is inaccurate. Cumulative impacts are the changes that are attributable to the proposed federal action when added to other past, present, and reasonably foreseeable future actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. The cumulative impact analysis is critical because it helps determine whether the proposed action is going to be the action that causes the cumulative impacts to reach a threshold of unacceptable degradation of the resources of concern.<br><br>The existing environment of the LOMR reflects the historic changes to the flow regime, the mainstem dams, and the BSNP structures as described throughout Chapter 3 but particularly in Section 3.4.6.3 of the Final EIS. The cumulative impacts of these actions in the past, present, and reasonably foreseeable future have been qualitatively described in Chapter 5 of the Final EIS using the best available data. For several reasons the USACE did not quantify the amount of bed degradation or other environmental impacts caused by each individual factor such as the BSNP. Those reasons are:<br>1. Neither the law nor regulations require cumulative impacts to be quantified so precisely<br>2. Data of that precision and accuracy was not available and would be expensive to generate,<br>3. The purpose of the EIS was to disclose the impacts of dredging, not the causes and solutions of bed degradation,<br>4. The applicant was unwilling to pay for the additional analysis, and<br>6. The Corps has begun the Degradation Feasibility Study to look at overall causes and potential solutions to degradation for those factors other than dredging in the MO River.<br><br>As discussed in Section 4.2.1.1 of the ROD and Section 3.5 of the Final EIS, the Kansas City segment has degraded approximately 12 feet since 1940 (the rate of degradation has |

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| | increased as dredging levels have increased) and as a result has experienced failed revetments and dikes, collapsed river banks, damaged or disabled water intakes, damaged bridges on tributaries, damaged levee toes, exposed and/or damaged pipelines, and failed outfalls. As discussed in Section 4.2.1.5 of the ROD and Section 4.10 of the Final EIS, the economic effects related to continued river bed degradation are difficult to quantify but would be proportional to the amount of degradation expected to occur. Additional degradation in the Kansas City segment would result in additional expenditures for infrastructure repair, maintenance, and replacement and would increase the potential for levee failure and jeopardize billions of dollars in investment protected by the regional levee systems. However, the ROD concluded that the annual extraction limits of the proffered permit, with the dredging concentration limits and a monitoring and adaptive management framework, should result in no more than slight degradation in the short-term and long-term, is the LEDPA, complies with the Section 404(b)(1) Guidelines, and is not contrary to the public interest. The proffered permit conditions include increasing the annual extraction limit in the St. Joseph and Waverly segments as much as the environmentally preferred alternative allows to somewhat compensate for the reduction in the annual extraction limit in the Kansas City segment and phasing in the Kansas City segment reduction over three years to give Holliday Sand & Gravel Company time to make the changes needed to fully utilize the increased tonnage in the St. Joseph and Waverly segments. We believe the proffered permit conditions are practicable but increasing the tonnage in any of the segments or lengthening the transition period at this time would be contrary to the public interest. |
| 2. Recent Changes To BSNP Dike Levels In Kansas City Have Addressed Degradation And Should Have Been Accounted For In The EIS And ROD. The applicant specifically states that according to USACE responses to a May 2011 FOIA request, 95 dikes from RM 359.6 to 381.9 were lowered in 2009 to adjust to the lowering CRP. The applicant also believes that because these changes completed in March 2009 obviously would not show any improvement in the | Upon assessment of this objection it appears that the Final EIS may have listed the dates when the dikes in the Kansas City segment were lowered to adjust to the lowering CRP incorrectly, as the applicant stated. However, the issue of whether the dikes within the Kansas City segment were lowered in 2007 or 2009 is insignificant and essentially immaterial for four basic reasons as discussed in section 4.2.1.1 of the ROD.<br>1. The conclusions of the Final EIS are based on degradation trends over various years. As discussed in Section 4.2.3.1.3 of the ROD, monitoring is a practicable and necessary part of the LEDPA. The USACE evaluated existing models for identifying degradation from water surface profiles and hydroacoustic bed elevation surveys and concluded that the state of these models are not advanced sufficiently to |

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| 2007, 2008, or 2009 bed elevation surveys, the EIS's projection of future degradation used to select Alternative A in the Kansas City segment is not accurate and the ROD should be revised in light of these significant changes to the dikes. | accurately identify changes within one year. Accordingly, USACE concluded, based on available information, that the only practicable way to identify degradation trends and to make adaptive changes is to use multiple years of data. The uncertain effects of any recent dike modifications have not yet been demonstrated by monitoring and would not yet warrant revising the current dredging permit decision. The permit decision described in the ROD includes a degradation monitoring plan to document and quantify the results of the new dredging limits. It also includes an adaptive management framework for the evaluation of these results and reassessment of the dredging limits when the permits are reissued for 2016.<br>2. As discussed in the response to the previous reason for appeal, the Kansas City segment has degraded approximately 12 feet since 1940 and as a result has experienced failed revetments and dikes, collapsed river banks, damaged or disabled water intakes, damaged bridges on tributaries, damaged levee toes, exposed pipelines, and failed outfalls.<br>3. The Kansas City segment, of all the segments, arguably has the highest amount and value of infrastructure along the river that could be negatively impacted by further bed degradation.<br>4. Because of the level of degradation and vulnerability of the extensive river infrastructure in the Kansas City segment, bed aggradation and recovery of the river is in the public interest. The Operations and Engineering Divisions of the USACE have modified the dikes and other BSNP structures to stabilize the river and start the recovery. The USACE is also conducting the Degradation Feasibility Study to identify the best way to address the issue over the long term. It would be contrary to the public interest for the USACE Regulatory Branch to authorize a level of dredging that would be expected to nullify other efforts to recover the river. |
| 3. Objections To The Administrative Record And Reservation Of Rights. "Within days of receiving the ROD and Permit, the Dredgers collectively requested to review and copy the administrative record from the Kansas City and St. Louis Districts. There appears to be a disagreement between the USACE and the | The vast majority of the substance behind the decision is available USACE's decision has been available on its website since issuance of the EIS and ROD. The USACE recognized that the administrative record would also include additional email, correspondence, and other documents that were not yet compiled, and has at no time claimed that the administrative record in its entirety is posted on its public website or refused to provide the administrative record. Since the ROD was completed on March 31, 2011, the USACE has been earnestly and actively working to gather and review |

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| Dredgers, collectively, and Holliday specifically, as to what comprises the administrative record. Holliday believes that the administrative record likely far exceeds what the USACE has already made available on its public website, and specifically includes internal email and documents developed in the course of the project review by the USACE." | thousands of pages of ancillary documents including emails, correspondence, references used, and other documents, and compile the voluminous administrative record. This task has recently been completed and each applicant has been provided with an electronic copy of the administrative record in PDF format on DVDs. The applicants will have another 60 days following the date of this response to review the administrative record and supplement any reasons for appeal they intend to submit to the Division Appeal Review Officers. |
| 4. The data in the record demonstrates that there is enough material in the Kansas City segment to support at least 1.2 million tons. The USACE's decision to impose further restrictions on Holliday in subsequent is not based on sufficient data and purposefully omitted relevant data and is, therefore, arbitrary and capricious. | The USACE will not increase the tonnage authorized in the Final Proffered Permit. See the response to Global Issue 1. See also Pages 3-37 through 3-39 of the ROD also contains responses to similar comments received in response to the Draft EIS. |
| 5. The USACE's assumption that there are sufficient alternate sources of sand available is based on inaccurate information. The USACE failed to complete an adequate analysis to determine if material exists to meet the needs and to determine the environmental impact of acquiring sand from various other sources. | See the responses to Global Issues 4 and 5. |
| 6. The USACE failed to comply with NEPA in that the ROD failed to properly analyze the environmental impacts resulting from the permitting decision. | See the response to Global Issue 5. |

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| 7. The monitoring provision relating to 24/7,365 days per year is unreasonable and unconstitutional. | The USACE will modify the Final Proffered Permits to require monitoring of the dredges only when they are dredging in the Missouri River. See the response to Global Issue 6. |
| 8. Additional carryover of authorized annual tonnage would reflect present difficult economic circumstances and better protect the River. Dredger's Global Issue 7 is hereby incorporated by reference. | See the response to Global Issue 7 |
| 9. The failure of the USACE to evaluate the BSNP constitutes a taking without just and adequate compensation and places the burden and obligation of the USACE to address concerns of the LOMR and to maintain the LOMR structures upon Holliday Sand. | See the responses to Global issues 3 and 8. |
| 10. The use of unpublished data and sources is a violation of NEPA. Dredger's Global Issue 9 is hereby incorporated by reference. | See the response to Global Issue 9. |
| 11. USACE's Review Of Holliday's Application And Final Permitting Decision Based Thereon Is Contrary To The USACE's Permit Application Review Implementing Regulations | See the responses to Global Issues 1, 2, 3, 4, 5, 7, 8, 9, and 10. |
| Category: Individual Permitting Issues – The Master's Dredging Company, Inc. | |
| 1. The Corps of Engineers' Record of Decision (ROD) gives Holliday Sand a monopoly for sand dredging on the Missouri River from above St. Joseph, MO to below Kansas City (distance of 141 miles from River Mile 498-Rulo, Nebraska to River Mile 357 below | Because the NWD ARO has accepted and is evaluating the appeal of The Master's Dredging Company's denied permit, this response is only a rebuttal of the reasons for appeal to the ARO and is not for a new permit decision.<br><br>As discussed in the response to Global Issue 2, the annual extraction amounts of the Kansas City and St. Joseph segments were those determined to be necessary to prevent |

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| KC). This ROD eliminated smaller sand companies such as the Applicant from competing on the river with Holliday Sand. Because there is no criteria which determine how the COE is to make such a determination as to which of several applying entities get the permit, the decision is arbitrary and capricious. | levels of degradation and associated impacts that would be contrary to the public interest. As discussed on pages 3-41 and 3-42 of the ROD, the USACE allocated the annual extraction limit for each segment among the various applicants based on capability, investment, and equity by giving each applicant the percentage of the segment limit that is equal to the percentage of the total average amount extracted from that segment between 2004 and 2008 that was dredged by each applicant. Holliday Sand & Gravel Company was given all the available tonnage in the Kansas City segment because they were the only applicant previously authorized to dredge there. However, the new amount in the Kansas City segment is less than the amount that Holliday Sand & Gravel Company was previously authorized to dredge. The company was authorized additional tonnage in the St. Joseph and Waverly segments so it could potentially offset part of the reduction in the Kansas City segment but still faces an overall reduction. Holliday Sand & Gravel Company has indicated that they would need three years to acquire the equipment needed to expand their dredging operation in the St. Joseph segment. The proffered permit includes a three year phase in period to give them the time they need and they have requested specific additional reaches in the segment which indicates that they may be taking the steps necessary to expand. It would be unfair to not give Holliday Sand & Gravel Company the chance to adapt. It would also be unfair to give The Master's Dredging company a temporary permit only while Holliday Sand & Gravel Company prepared to expand.<br><br>This approach is basically the same as that used in the 2007 permit decision. Kaw Valley Sand appealed the denial on this same issue and the USACE's responded in the March 24, 2008 Supplemental Permit Decision Document for Missouri River Commercial Dredging permits (included by reference in the Final EIS and ROD and available at http://www.nwk.usace.army.mil/regulatory/Dredging/MO/MOdredging.htm). The 2008 Supplemental Permit Decision Document was upheld and that reason for appeal was found to be without merit by the Northwestern Division Engineer. |

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| 2. Holliday Sand will not even be able to dredge the area where Applicant applied for because of logistical and economical feasibility reasons the COE knew or should have known based upon their knowledge or information in the record which Holliday Sand & Gravel Company submitted. The Final EIS contained objections by Holliday Sand to dredge quantity limitations: (1) to extract only 540,000 tons per year in the Kansas City section and (2) to extract only 300,000 tons per 5 mile stretch because they cannot for economic and technical reasons work more than 10 miles from their plants. Holliday Sand admitted it "did not have the equipment and pilots for long towing." Applicant's dredge request was outside of Holliday Sand's ability to dredge and within the guidelines of the ROD. | Consistent with the response above, the USACE determined that because Holliday Sand & Gravel Company is being proffered substantially less tonnage in the Kansas City segment than it has historically extracted, it was most equitable to give it the first opportunity to adapt its dredging operations and shift part of its extraction to previously undredged portions of the St. Joseph and Waverly segments. Even with the increased amount in the St. Joseph and Waverly segments, Holliday Sand & Gravel Company's overall tonnage under the proffered permit would be less than under previous permits. Holliday Sand & Gravel Company had indicated that "Two years would be adequate to obtain additional barges and modify existing towboats and unloading dock necessary to dredge 19 miles upstream from the St. Joseph segment." (see formal correspondence dated December 28, 2010 in the Administrative Record or Letter 107 in Appendix A of the ROD) The proffered permit includes a three year phase in period to give them the time they need and they have requested specific additional reaches in the segment which indicates that they may be taking the steps necessary to expand. However, if Holliday Sand & Gravel Company is unable to utilize the additional tonnage being proffered in the Waverly and St. Joseph segments by the end of 2015, the tonnage would become available to another applicant that is capable of using it. |
| 3. The Applicant's permit seeks to allow it to dredge 19 miles from Holliday's Riverside plant, and 30 miles from Holliday's St. Joseph plant. Because Holliday is limited to 840,000 tons in the St. Joseph stretch, and can only recover 300,000 tons for every 5 miles of river, it effectively can't take more that 600,000 tons without going into areas it admits it cannot reach. Thus, the permit in those areas should be granted to Applicant. The river mile marks of Applicant's dredge request in the St. Joseph section given exclusively to Holliday Sand cannot be economically utilized by Holliday Sand either | See the previous response. |

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| from its St. Joseph plant or from its Riverside plant. Applicant's permit should have been granted with at least a permit of 300,000 tons per year in this section of the Missouri River that Holliday Sand cannot utilize. This ROD for the Missouri River is against COE precedent to grant river dredging permits to companies who can utilize them and not to grant permits to companies who cannot utilize the permits. | |
| 4. Accordingly, the Permit Denial of Applicant is unreasonable, arbitrary and capricious, contrary to evidence in the record, and constitutes violations of the Commerce Clause, the Equal Protection Clause, The Due Process clause because the process and related laws should be declared void for vagueness and/or arbitrary as applied, and violates the penumbra of fundamental fairness all in the United States Constitution. | The USACE fully disagrees with this conclusion. However, these claims are outside the purview of the appeal. |
| 5. What the Corps has done by giving Holliday Sand the permit which it applied for and cannot use, is allow Holliday Sand to crush its competition in an unfair trade practice, which also results in inflated prices for sand in the Kansas City market because Holliday Sand can charge whatever it wants. As indicated in the record Holliday Sand has almost tripled the price of sand in the last decade. | See the response to the first reason for appeal from The Master's Dredging Company. |

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| 6. Finally, the ROD is void of any rationale or basis as to why it awarded Holliday Sand its permit (for an area it admittedly cannot use) over the request of Applicant. Thus, there is no recorded basis in the record for the decision made and thus it is arbitrary and capricious. | See the response to the first reason for appeal from The Master's Dredging Company |