

EPA Region 7 comments on the Missouri River Dredging Public Notices

The EPA's National Environmental Policy Act and Clean Water Act Section 404 Regulatory staff have reviewed and coordinated the following comments on the Missouri River Dredging Public Notices including:

Capital Sand Company, Inc. (NWK-2011-00361),
Hermann Sand & Gravel, Inc. (NWK-2011-00362),
Holliday Sand & Gravel Company (NWK-2011-00363),
Con-Agg of Missouri, LLC. (NWK-2011-00364),
Limited Leasing Company (MVS-2011-00177*), and
J.T.R., Inc. (MVS-2011-00178*)

Comparing the Proposed Dredging Totals (Public Notice Table 3) to limits in the 2011 permit and Record of Decision there are several increases proposed:

St. Joseph Segment:

ROD Allowable: 860,000 t/year

Proposed: 860,000 t/year (Holliday only)

No increase from limits in ROD.

Kansas City Segment:

ROD Allowable: 540,000 t/year

Proposed: 540,000 t/year (Holliday only)

No increase from limits in ROD.

Waverly Segment:

ROD Allowable: 1,140,000 t/year

Proposed: 1,140,000 t/year in 2016 (Holliday and Capital)

Increase after 2016.

2017 through 2020 exceeds ROD allowable maximum for segment.

Jefferson City Segment:

ROD Allowable: 1,630,000 t/year

Proposed: 1,660,000 t/year (Capital, Hermann, Con-Ag)

Increase from ROD.

Capital and Con-Ag are proposing the same quantities as their 2011 permits. Hermann's proposal is 30,000 t/year higher than their 2011 permit.

St. Charles Segment:

ROD Allowable: 1,710,000 t/year

Proposed: 1,900,000 t/year

Increase from ROD.

Capital (160,000 t/year) and Hermann (30,000 t/year) are proposing increases over 2011 permits. Limited Leasing and J.T.R. are proposing the same quantities as their 2011 permits.

Totals:

ROD Allowable/Proposed:

2016	5,880,000/5,730,000 t/year	under
2017	5,880,000/5,807,000 t/year	under
2018	5,880,000/5,884,000 t/year	over
2019	5,880,000/5,961,000 t/year	over
2020	5,880,000/6,038,000 t/year	over

The applicants propose no increases in permit limits for the St. Joseph and Kansas City segments, although currently authorized amounts for both segments are the maximum allowable under the 2011 ROD. The applicants propose no increase in permit limits for the Waverly segment for 2016, but Holliday proposes increasing amounts from 2017 through 2020 well in excess of the allowable amount. Under the 2011 ROD, the allowable amount of dredging constituted a 40% increase over previous dredging. We are concerned that a permitted increase above the 2011 allowable increase could change what has been an aggrading segment into a degrading segment. For the Jefferson City segment, the applicants are proposing an increase above what is currently allowable. Two applicants are requesting the same quantity and Hermann is proposing a 30,000 t/year increase over its previous permitted quantity and above the allowable quantity for the segment. This segment is considered to be degrading in certain reaches. The Corps should provide recently collected data which indicates both that the segment can support an overall increase in dredging and that those individual reaches can sustain that increase locally. For the St. Charles segment, two applicants are requesting a significant increase in their permitted quantities while two other applicants are requesting no increase in their permits

resulting in an overall significant increase in the permitted amount well above that allowable under the 2011 ROD. The St. Charles segment is considered a degraded segment and the 2011 ROD allowed for continuing dredging slightly above the quantities previously harvested. We have serious concerns with permitting increased amounts of dredged material removal from this segment.

Applicant proposals for the St. Joseph and Kansas City segments are for quantities currently permitted and constitute the maximum allowed under the 2011 ROD. We recommend the Corps confirm that those levels are not causing further degradation within each segment using data collected since 2011. We recommend that the Corps consider proposed increases only to those levels allowed under the 2011 ROD for all three remaining reaches. Again, we recommend the Corps confirm that those levels would not cause degradation within each segment using data collected since 2011, particularly within the Jefferson City and St. Charles segments which are already degraded either locally or segment-wide. We do not believe there is justification for increases in permitted dredging quantities above those levels allowable under the 2011 ROD. The Environmental Assessment supporting this action and tiering from the 2011 FEIS would have to demonstrate no significant impact to these segments from any such increases. Otherwise, a supplemental EIS would have to be prepared. We continue to urge the Corps to develop a sediment budget for the lower Missouri River which could serve as the basis for firmly identifying levels of dredging which are sustainable and would not contribute to continuing bed and habitat degradation in the lower river. We consider the current approach of monitoring for river bed loss while adjusting permitting quantities every permit cycle to be a temporary and inefficient means of regulating this activity. In any case, we would appreciate the opportunity to review the draft EA and provide comments prior to the finalization of any FONSI and the Corps' permitting decisions.

In addition to assessing for any direct and indirect impacts to the Missouri River resulting from the proposed dredging amounts, the Corps should evaluate for any cumulative impacts on the major tributaries especially since there are proposed and existing dredging permits on many of those tributaries (such as Osage, Gasconade, and Kansas Rivers).

Clean Water Act Compliance

The applicant must demonstrate the need for the project. EPA believes that the project does not meet the requirements under 230.10(a-d) of the Section 404(b)(1) Guidelines.

Alternatives Analysis– 40 CFR 230.10(a)

Alternatives

At this point the sequencing requirements under the 404(b)(1) Guidelines have not been met as the range of alternatives is incomplete. The applicant must provide an alternatives analysis and describe any additional alternatives for the proposed project. Alternatives should include and compare dredging less quantity, setting maximum depth limits, using different dredging techniques, and various processing methods. Investigating different locations, including off river locations should be considered as part of the analysis. An evaluation of the direct, secondary and cumulative impacts for practicable alternatives should be provided. Potential indirect effects that may result from increased river bed degradation related to dredging include erosion, induced

instability, headcutting, and related channel effects from dredging activities to the River and its tributaries.

Least Environmentally Damaging Practicable Alternative

The LEDPA for the proposed project has not been identified. There are likely less damaging practicable alternatives, it is likely that the proposed project is not the LEDPA. Sand can also be mined outside of Waters of the U.S. and may ultimately be the LEDPA. The sustainable amount of sediment that can be mined needs to be determined.

Compliance with other Environmental Standards – 40 CFR 230.10(b)

Water Quality and Toxic Effluent standards

The proposed projects could cause or contribute to violations of state water quality standards; or contribute to the violation of toxic effluent standards under Section 307 of the Clean Water Act, or further degrade water quality. A recent visit on one of the tributaries to the Missouri river by FWS past an active dredging site on the river indicated that the activity was causing unsightly color and turbidity, and may be inducing physical, chemical, or hydrologic changes that would impair the natural biological community. It may be less damaging to sort material off river and allow fines to settle before being the process water is discharged back to the river.

Endangered species

The project could jeopardize the continued existence of habitat for state and federally listed endangered species. We encourage the Corps to condition the permit based on the comments of the Missouri Department of Conservation, Kansas Department of Wildlife Parks and Tourism, and USFWS to assure that endangered species are being protected.

Significant Degradation -- 40 CFR 230.10(c)

EPA has concerns regarding significant degradation as determined through Guidelines subparts C through F (40 CFR 230.20 – 230.54). The Guidelines prohibit granting of a CWA Section 404 permit if project activities will cause or contribute to significant degradation of the Nation's waters including degradation to: (1) human health and welfare; (2) aquatic life and other wildlife; (3) aquatic ecosystem diversity, productivity, and stability; and (4) recreation, aesthetic, and economic values.

Human health and welfare

Safety to boaters should be considered during dredging, and where/how the equipment is stored as to not interfere with navigation.

Aquatic life and other wildlife

As mentioned above the river and its tributaries have state and federally listed endangered species occurring in the river and its tributaries.

Aquatic ecosystem diversity, productivity, and stability

The proposed work would likely disturb or remove in river habitat, increase depths, and cause water quality changes that could impact aquatic ecosystem diversity, productivity, and/or stability. If monitoring determines that any of the projects are causing changes to the aquatic ecosystem, then the permit should be reviewed.

Recreation, aesthetic, and economic values

The River is utilized by the public for recreation activities including boating, and fishing. Reducing the water quality of a river has aesthetic impacts which have been shown to translate into reductions in recreation use and ultimately the economics of nearby communities.

Avoidance, Minimization, and Compensation-- 40 CFR 230.10(d)

The EPA has concerns regarding avoidance, minimization, and compensation. As identified in the "Alternatives Analysis" section above there are additional opportunities for avoidance and minimization. The applicant has not demonstrated that impacts have been fully minimized. The EPA also has concerns regarding the lack of identification of the LEDPA. No mitigation was proposed in the public notice, however a link to the EIS discusses options for mitigation that could be used.

Conclusion

It does not appear that 40 CFR 230.12(a)(3)(iv) is currently being met as there is not sufficient information to make a reasonable judgment as to whether the proposed discharge will comply with the 404(b)(1) Guidelines. The burden of proof to demonstrate compliance with the Guidelines rests with the applicant; where insufficient information is provided to determine compliance, the Guidelines require that no permit be issued. Thank you for the opportunity to review and comment on the public notice. Please provide this office a copy of the updated NEPA documentation, including the decision document, alternatives analysis, and mitigation plans that may be developed for the proposed permits. If you have any questions or would like to discuss further, please contact Jason Daniels at 913-551-7443 or Larry Shepard at 913-551-7441.