Appendix 14

CENWK-OD-R

MEMORANDUM THRU OD

FOR COLONEL ANDREW D. SEXTON

SUBJECT: Request to hold a public hearing concerning Department of the Army permit application No's. NWK-2011-00361, NWK-2011-362, NWK-2011-363, NWK-2011-364, MVS-2011-177, and MVS-2011-178 by the Missouri River Dredgers to authorize commercial dredging in the Missouri River.

1. PURPOSE: To obtain the Commander's decision to approve or deny the requested public hearing.

2. REGULATORY PROGRAM GUIDANCE CONCERNING PUBLIC HEARINGS:

a. Reference: Corps of Engineers Regulatory Program, Title 33 Code of Federal Regulation (C.F.R.) 320-332.

b. Regulation 33 C.F.R. Part 327.3(a) defines a public hearing as, "... a public proceeding conducted for the purpose of acquiring information or evidence which will be considered in evaluating a proposed DA permit action, or Federal project, and which affords the public an opportunity to present their views, opinions, and information on such permit actions or Federal projects." Regulation 33 C.F.R. Part 327.4(a) states that, "A public hearing will be held in connection with the consideration of a DA permit application or a Federal project whenever a public hearing is needed for making a decision on such permit application or Federal project." Regulation 33 C.F.R. Part 327.4(b) further states that, "Requests for a public hearing ... shall be granted, unless the district engineer determines that the issues raised are insubstantial or there is no valid interest to be served by a hearing."

c. Corps Headquarters Regulatory Program Standard Operating Procedures states, "Public hearings are held at the discretion of the district engineer when a hearing would provide additional information that is necessary for a thorough evaluation of pertinent issues but is not otherwise available. ... District engineers generally will grant requests for public hearings if the issues raised are substantial or there is a valid interest to be served by a hearing. When evaluating the need for a public hearing the Districts should consider: (1) the extent to which the issues identified in conjunction with a request for a public hearing are consistent with the Corps need to make its 404(b)(1) Guidelines and public interest determinations (i.e., the extent to which the issues are within the Corps scope of analysis); (2) the extent to which the issues identified in conjunction with a request for a public hearing represent information not otherwise available to the Corps; and (3) whether the issues identified are already addressed by comments submitted in response to the public notice. ... Districts should also consider alternate means of

obtaining necessary information, such as public meetings or workshops to help gather information to make permit decisions. These are more informal and less expensive forums that can provide a more effective interaction with the public than public hearings. Districts may also use information gathered from public meetings held by other agencies or entities to assist in decision-making."

3. FACTS AND DISCUSSION:

a. WaterOne, in a letter dated 2 April 2015, (Enclosure 1), requested a public hearing to gain a broader view on the purported wide-spread impacts of commercial dredging on Missouri River stakeholders.

b. OD-R contacted WaterOne to further discuss their concerns. Via email and a phone call on 8 April 2015 and an in person discussion on 4 August 2015, Matthew Sailor spoke with Ms. Darci Meese of WaterOne about the details of their request. Ms. Meese indicated that WaterOne had no new information that could be presented in a public hearing and ultimately used for the USACE to formulate its permitting decision. In fact, that is why WaterOne commented that the permit review be suspended. WaterOne is a public stakeholder in the Missouri River Bed Degradation Feasibility Study which is currently underway. The Study which indentifies the causes and the future rate of degradation in the Kansas City area is not anticipated to be completed until 2017. It is WaterOne's belief that dredging in the Kansas City area is causing severe degradation and affecting WaterOne's public water utilities. Thus, WaterOne requested the issuance of the commercial dredging permits be suspended until more information is gathered from the Missouri River Bed Degradation Feasibility Study.

c. OD-R believes that the requested public hearing should be denied for the following reasons:

(1) The requester has presented no new information to be considered as part of the Corps public interest review of these actions. Thus, there is no valid interest to be served by a hearing.

(2) A public meeting was conducted on 26 August 2010 to discuss the Draft Environmental Impact Statement (EIS) on Missouri River commercial dredging. A court reporter was provided at the meeting to allow meeting attendees to submit oral comments. In addition, agencies, organizations, and interested parties provided written comments on the Draft EIS. In some cases, the Draft EIS was amended with updated

or corrected information, and in some limited cases, additional analyses were required to adequately address the issue raised. Comments received during the Draft EIS comment process were considered in the preparation of a Final EIS. Not only did the Final EIS address all comments, but within the document, USACE identified and selected an environmentally preferred alternative that reduced dredging overall in the Missouri River and significantly in the Kansas City Segment. It was determined the environmentally preferred alternative should not cause more than slight degradation in the short and long term and would balance all public interest facets.

(3) NWK completed a Final EIS and Record of Decision (ROD) for Missouri River commercial dredging which thoroughly evaluated the impacts of the proposed action on the human environment and laid out a robust adaptive management framework to adjust permit conditions if the River was experiencing more than slight degradation. Results to date, demonstrate the ability to slow or stall localized degradation that stems from area intensive dredging using spatial and temporal extraction limits. This was clearly indicated in ED-HR's 21 July 2015 Memo which highlighted Missouri River bed and water surface changes between 2009 to 2014 in response to dredging. Analyses conducted by the ED-HR indicated aggradation or stability within each of the River's segments since 2011, with the exception of the St. Joseph segment. The St. Joseph segment continues to degrade despite limited sand and gravel extraction occurring in this reach. ED-HR concluded that the limited recovery of bed profiles in this segment can be attributed to the extreme high water event that occurred in 2011 and not dredging.

(4) WaterOne was the only Missouri River Stakeholder participating in the Missouri River Bed Degradation Feasibility Study to negatively comment on the dredging permits and request a hearing on the proposed actions. In fact, WaterOne was the only stakeholder to ask the preliminary information associated with the Feasibility Study be incorporated in our 2016 permitting decision.

Under the Feasibility study a Mobile Bed Model was developed to predict the long-term bed condition of the Missouri River given current and foreseeable system dynamics and variables. Although the Mobile Bed Model is nearing completion, it is undergoing various reviews and edits. Even if the model is deemed ready in 2015, OD-R considers this to be preliminary information until the Feasibility Study is completed. The completion of the Feasibility Study process will also allow for full public input on the model and its applications, which is occurring now and expected to be ongoing past the review period of this permit renewal.

OD-R is privy to the progress of the Feasibility Study and its preliminary findings. Because the Feasibility Study is incomplete, OD-R will not consider preliminary outputs resulting from the developing bed degradation model in their permitting decision for Lower Missouri River Commercial Sand and Gravel Dredging renewal in 2015. Rather, OD-R will utilize its robust monitoring and Adaptive Management Framework (AMF) established as part of the ROD. The AMF was set-up to measure river channel aggradation or degradation in relation to dredging activity and river conditions. This is accomplished by utilizing data from water surface profiles, prepared annually by the Corps, and hydro-acoustic bed elevation surveys, such as those prepared by the Corps and that are required by the Dredgers in the fourth year of each permit cycle. Data are compared against 2009 survey results to measure changes in water surface and bed profiles.

(5) Due to the factors listed above, OD-R believes that a Public Hearing is not warranted for this project. Significant public involvement has already occurred for the proposed actions and continues to be underway on the issues WaterOne identified. A hearing on the subject will not present any new information that is not already available to OD-R at this time and has not previously been accounted for in our decision-making or adaptive management processes identified in the Final EIS and ROD. Thus, there is no valid interest to be served by a hearing.

4. IMPACT:

a. There would be some interest in a public hearing regarding the proposed actions simply due to the politics of the subject. However, given the lack of negative responses to the public notice, there is likely not enough interest to warrant the time the District would spend on preparing and/or conducting the hearing.

b. There has been ample opportunity for stakeholders to express and discuss their concerns surrounding commercial dredging on the Missouri River. Granting a public hearing would lengthen the decision making process on the proposed actions potentially leading to permit expiration, all the while providing no new information OD-R could use in its public interest review.

c. Not granting the request for a public hearing would essentially give stakeholders and/or the public no further opportunity to weigh-in on Regulatory permits until they are up for renewal again in 2020. However, stakeholders and the public will have ample opportunity to comment on the causes of Missouri River bed degradation throughout the remainder of the Feasibility Study and its multiple public input forums.

5. POINT OF CONTACT: Mr. Matthew Sailor, Project Manager, telephone (816) 389-3739 or email at matthew.c.sailor@usace.army.mil.

MARK D. FRAZIER
Chief, Regulatory Branch
Operations Division

Encls
1. Water One letter
2. Water One phone record

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THRU OD

TO OD-R

RECOMMENDATIONS: OD-R recommends denial of the requested public hearing.

Approve Recommendation _____ Disapprove Recommendation _____

ANDREW D. SEXTON
Colonel, EN
Commanding