Appendix 3

Sailor, Matthew NWK

From: Ledwin, Jane [jane_ledwin@fws.gov]
Sent: Monday, April 06, 2015 8:27 AM
To: Cerchi, Antonella I NWK; Sailor, Matthew NWK
Cc: Campbell-Allison, Jennifer; Bax, Stacia; Wyatt Doyle; Daniels, Jason; bryan simmons; Amy Salveter
Subject: [EXTERNAL] Re: U.S. Army Corps of Engineers, Kansas City District - Regulatory Branch Public Notice Posting (UNCLASSIFIED)

Categories: Red Category

Dear Mr. Sailor:

Please consider the following information as an addendum to my April 3 email:

The Northern long-eared bat is listed as threatened under the ESA effective May 4, 2014, and should be included in the Corps' assessments. The Northern long-eared bat occurs throughout Missouri, and similar to the Indiana bat, roosts in caves (or habitats similar to caves) during the winter and under loose tree bark or in tree cracks or crevices during the summer. The listing includes an interim special rule under section 4(d) of the ESA that exempts take associated with selected activities, provided those activities include specific conservation measures. As noted for the Indiana bat, seasonal tree clearing would avoid potential take of individuals, should they occur at the site. Please refer to the following link for more information on the listing decision and special rule:

http://www.fws.gov/midwest/news/778.html

The Corps should include the Northern long-eared bat in their ESA considerations and provide the Service with a determination of effect. If you have questions or need additional assistance, please contact me.

Best regards -

Jane Ledwin

Jane Ledwin
Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
101 Park DeVille Drive
Columbia, Missouri 65203
Phone 573/234-2132, extension 109
cell 573/356-1721
email jane_ledwin@fws.gov

On Fri, Apr 3, 2015 at 1:27 PM, Ledwin, Jane <jane_ledwin@fws.gov> wrote:

Dear Mr. Sailor:

Please refer to the U. S. Army Corps of Engineers' (Corps) March 13, 2015, Public Notice regarding the renewal of Missouri River Commercial Dredgers five-year permit for commercial sand and gravel mining in the Missouri River. Dredging permits would cover specific reaches of the river below Rulo, Nebraska. The U.S. Fish and Wildlife Service (Service) has reviewed that information and submits the following comments pursuant to the Fish and Wildlife Coordination Act (15 U.S.C. 661 et sec) .), the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4327), and the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531-1543).

The Public Notice identifies the following applicants seeking a 5-year renewal of their dredging permits for the Missouri River: 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), J.T.R., Inc. (MVS-2011-00178). The applicants would conduct their activities in the following locations:

- Capital Sand Company, Inc.: Waverly, Jefferson City, and St. Charles Segments
- Hermann Sand & Gravel, Inc.: Jefferson City and Waverly Segments
- Holliday Sand & Gravel Company: St. Joseph, Kansas City, and Waverly Segments
- Con-Agg of Missouri, LLC: Jefferson City Segment
- Limited Leasing Company: St. Charles Segment
- J.T.R., Inc.: St. Charles Segment

The Public Notice also identifies by applicant and specific river reach, annual requested tons of material to be mined. The proposed permits would retain special conditions of the existing permits that would avoid, or minimize effects to fish, wildlife, and their habitats.

According to the Public Notice, the Corps identifies the following federally listed species as potentially occurring in the project area: endangered Indiana bat (Myotis sodalis), threatened piping plover (Charadriusmelodus), endangered least tern (Sterna antillarum), endangered pallid sturgeon (Scaphirhynchus albus) and threatened decurrent false aster (Boltonia decurrens). The Corps concludes that, based on the information in the 2011 Biological Assessment, the activities would either have no effect or no adverse effect on those species. The Service concurs with the Corps' determination of no effect for the Indiana bat, piping plover, least tern, and decurrent false aster. However, at this time, we cannot concur with a not likely to adversely affect determination for the pallid sturgeon.

Since the 2011 Biological Assessment, there has been significant new information regarding pallid sturgeon population status, larval ecology (e.g., drift distance and location), and conditions/monitoring of the river itself. In addition, "new" permit conditions and monitoring have been in place for five years, providing a wealth of information on the effects of the proposed activities not available for the 2011 Biological Assessment. Therefore, the Corps should update that document to include new information on the species, ecology, behavior of larvae, occurrence of young-of-year habitats, etc.

Furthermore, the Corps should review the information being developed as part of the effects analyses effort for the Missouri River Management Plan, including review of pallid sturgeon literature and prevailing hypotheses, to help relate the new information to the potential effects of the propose activities. That should also include information regarding behavior of the dredged areas geomorphologically, changes in bed elevations and stability of adjacent habitats, and projections of bed degradation/aggradation relative to those habitats. Those effects should be analyses for all life stages of the pallid sturgeon; adults, juveniles, larvae, eggs (e.g., size/sorting of material handled and suitability for spawning). The Service is available to meet with the Corps to discuss revisions to the Biological Assessment and relevant issues if needed.

We appreciate the opportunity to offer these comments. If you have any questions or need further assistance, please contact me at the number below.

Best regards -

Jane Ledwin

Jane Ledwin
Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
101 Park DeVille Drive
Columbia, Missouri 65203
Phone 573/234-2132, extension 109
cell 573/356-1721
email jane_ledwin@fws.gov

On Fri, Mar 13, 2015 at 10:29 AM, Cerchi, Antonella I NWK <Antonella.I.Cerchi@usace.army.mil> wrote:

Classification: UNCLASSIFIED
Caveats: NONE

Public Notice for Renewal of Missouri River Commercial Dredging <http://www.nwk.usace.army.mil/Portals/29/docs/regulatory/publicnotices/2015%20Missouri%20River%20Dredging%20PN.pdf>

APPLICANTS: Capital Sand Company, Inc. (NWK-2011-00361)

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Holliday Sand & Gravel Company (NWK-2011-00363)

Con-Agg of Missouri, LLC. (NWK-2011-00364)

Limited Leasing Company (MVS-2011-00177*)

J.T.R., Inc. (MVS-2011-00178*)

*Denotes permits administered by the Regulatory Branch, U.S. Army Corps of Engineers (USACE), Saint Louis District. Remaining permits are administered by the Regulatory Branch,

USACE, Kansas City District.

PROJECT LOCATIONS: Applicants have proposed renewing permits for commercial sand and gravel dredging within five predefined segments of the Lower Missouri River:

- Capital Sand Company, Inc.: Waverly, Jefferson City, and St. Charles Segments
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- Limited Leasing Company: St. Charles Segment
- J.T.R., Inc.: St. Charles Segment

PUBLIC NOTICE COMMENT PERIOD EXPIRES: April 3, 2015

The above public notice is also found at:
http://www.nwk.usace.army.mil/Media/PublicNotices.aspx

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Information on the Regulatory Program.

http://geo.usace.army.mil/egis/f?p=340

Classification: UNCLASSIFIED
Caveats: NONE

Sailor, Matthew NWK

From: Ledwin, Jane [jane_ledwin@fws.gov]
Sent: Friday, April 03, 2015 1:28 PM
To: Cerchi, Antonella I NWK; Sailor, Matthew NWK
Cc: Campbell-Allison, Jennifer; Bax, Stacia; Wyatt Doyle; Daniels, Jason; bryan simmons
Subject: [EXTERNAL] Re: U.S. Army Corps of Engineers, Kansas City District - Regulatory Branch Public Notice Posting (UNCLASSIFIED)

Categories: Red Category

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Caveats: NONE

Public Notice for Renewal of Missouri River Commercial Dredging
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APPLICANTS: Capital Sand Company, Inc. (NWK-2011-00361)

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Limited Leasing Company (MVS-2011-00177*)

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Information on the Regulatory Program.

http://geo.usace.army.mil/egis/f?p=340

Classification: UNCLASSIFIED
Caveats: NONE

Sailor, Matthew NWK

From: WPSC.Water Quality Certification [wpsc401cert@dnr.mo.gov]
Sent: Friday, April 03, 2015 8:19 AM
To: Sailor, Matthew NWK
Cc: Simmons, Bryan; USEPA Region 7; Thorne, David; Stemburg, Janet MVS External Stakeholder; 'laura.ruman@mdc.mo.gov'; Campbell-Allison, Jennifer; Miller, Stuart; 'audrey.beres@mdc.mo.gov'; Harvey, Kathy; Feeler, Steve; Brooks, Buck; Unruh, Gayle; Hoke, John; Miller, Christopher; Bax, Stacia; Wieberg, Chris; Baker, Amanda
Subject: [EXTERNAL] Holliday Sand and Gravel Company, 2011-00363/CEK006762

Categories: Red Category

The Missouri Department of Natural Resources' Water Protection Program (DNR) has reviewed the Public Notice for Number 2011-00363 in which Holliday Sand and Gravel Company is proposing to renew their permit that expires December 31, 2015, for commercial sand and gravel dredging within five predefined segments of the Lower Missouri River. If re-issued, the permits would authorize dredging for a period of five years.

In 2011 the U.S. Army Corps of Engineers (USACE) completed a Final Environmental Impact Statement and issued a Record of Decision for commercial dredging activities on the Missouri River; these documents disclosed environmental impacts associated with the 2011 permit decision and ongoing reissuance of dredging permits. The selected alternative in the Final Environmental Impact Statement and Record of Decision contained certain tonnage and locale restrictions on dredging in addition to a monitoring program and adaptive management framework to limit dredging-related impacts; these restrictions were presented as special conditions of the permits. The Environmental Impact Statement and Record of Decision can be downloaded at:
http://www.nwk.usace.army.mil/Missions/RegulatoryBranch/MissouriRiverCommercialDredging.aspx.

MISSOURI RIVER DREDGING TONNAGE AND SEGMENTS

Application

Number

Applicant Name And Address

River Reach Requested

2011 Authorized

Annual Tons

Requested

NWK

2011-00363

Holliday Sand and Gravel

Company (Holliday Sand)

9660 Legler Road

Lenexa, KS 66219

(Waverly Segment)

(Kansas City Segment)

(St. Joseph Segment)

770,000

2011 – 1,200,000

2012 – 900,000

2013 – 850,000

2014 – 800,000

2015 – 540,000

860,000

2016 - 770,000

2017 - 847,000

2018 - 924,000

2019 - 1,001,000

2020 - 1,078,000

540,000

860,000

No jurisdictional wetlands would be directly impacted by the proposed work. Indirect and cumulative impacts of the proposed and alternative actions on wetlands were discussed in Sections 3.9 and 4.7 and Chapter 5 of the Final Environmental Impact Statement and Section 5.3 of the Record of Decision. Potential actions to mitigate impacts on wetlands were discussed in Chapter 6 of the Final Environmental Impact Statement and Record of Decision.

We offer the following comments:

1. Unwanted dredged material and river water extracted from only the river may be placed back into the river. The applicant should not dispose of waste materials, water, or garbage below the ordinary high water mark of any other water body, in a wetland area, or at any location where the materials could be introduced into the water body or an adjacent wetland as a result of runoff, flooding, wind, or other natural forces.

2. All dredging must avoid impacting aquatic habitat, particularly breeding and rearing areas of endangered, rare, or threatened species and mussel beds.

3. Operations in the river should be conducted such that there will be no unreasonable interference with navigation by the existence or use of the activity.

4. Project activities should not accelerate bed or bank erosion.

5. The quality of downstream water supplies should not be adversely affected by this project. Any such supplies in the immediate downstream river miles should be advised at the time the project is initiated. For the presence of such supplies, you may call DNR's Water Protection Program's Public Drinking Water Branch at (573) 751-0124.

6. Sand, gravel, or other dredged materials should not be stockpiled within the channel, placed against the banks, or otherwise disposed of in a manner that will redirect erosive forces within the channel, or threaten the stability of the channel or the bank lines.

7. All comments received and the applicants' response to comments should be sent to DNR at the address below. Consideration for Clean Water Act Section 401 Water Quality Certification (WQC) cannot be made until all comments and responses have been received.

8. The request for WQC that is part of the public notice is denied without prejudice due to lack of complete application. Once the USACE is ready to issue the 404 Permit and the applicant, their consultant, or the USACE has provided to DNR a complete application per 10 CSR 20-6.060 and 20-7.031, a formal request for WQC should be made to DNR.

Thank you for the opportunity to comment on the proposed project. If you have any questions, please contact Christopher Miller by phone at (573) 526-3337, by e-mail at christopher.miller@dnr.mo.gov, or by mail at the Missouri Department of Natural Resources, Water Protection Program, P.O. Box 176, Jefferson City, MO 65102-0176. Thank you for working with DNR to protect our environment.

CM/pc

Thanks.

Pat Conger
Missouri Department of Natural Resources
Water Protection Program
P.O. Box 176
Jefferson City, MO 65102-0176

Phone (573) 751-1300 Fax (573) 522-9920
e-mail: wpsc401cert@dnr.mo.gov <mailto:wpsc401cert@dnr.mo.gov>
web site: www.dnr.mo.gov/env/wpp/401 <http://www.dnr.mo.gov/env/wpp/401>

Promoting, Protecting and Enjoying our Natural Resources. Learn more at dnr.mo.gov <http://www.dnr.mo.gov/> .

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 <u>both</u> 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 signification 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.