Appendix 8

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

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

REPLY TO
ATTENTION OF

May 8, 2015

Regulatory Branch
(NWK-2011-361;NWK-2011-362;
NWK-2011-363; NWK-2011-364;
MVS-2011-177; MVS-2011-178)

Mr. David Shorr
Lathrop and Gage, LLP
314 East High Street
Jefferson City, MO 65101

Dear Mr. Shorr:

This letter pertains to the applications submitted by Capital Sand Company Inc., Hermann Sand and Gravel, Inc., Holliday Sand and Gravel Company, Con-Agg of Missouri, LLC, Limited Leasing Company, and J.T.R., Inc. (dredgers) for Department of the Army permits, received on March 1, 2015. We circulated a public notice describing the dredgers' proposed activities and received the enclosed comments for your information.

The Corps is currently evaluating your applications and responding to the public comments in the following ways. In addition, we have made the following determinations to further evaluate your applications in our overall permit review process:

1) The Kansas City District Corps of Engineers is currently performing an analysis of dredging volumes and locations, bed surveys, and water surface profiles from 2011-2014, compared to baseline data. We will use this information in our 2015 permit renewal process and provide this to you when the analysis is complete in June 2015.

2) The cumulative extraction totals requested by Holliday Sand and Gravel Company and Capital Sand Company, Inc. exceed the highest alternative evaluated under the 2011 Final Environmental Impact Assessment (EIS) and Record of Decision (ROD). Thus, to properly evaluate these proposed actions the Corps will evaluate a higher tonnage alternative in the Waverly Segment. The decision to authorize the requested tonnages has not and cannot be made until a thorough public interest review has been completed.

3) As a response to requests made by the U.S. Fish and Wildlife Service, we will be updating our Biological Assessment (BA) for Missouri River commercial dredging activities that was prepared in conjunction with the Final EIS. To aid in this effort, we request the dredgers prepare a biological report that incorporates the most recent and best available scientific information associated with pallid sturgeon larvae behavior, young-of-year occurrences, habitat selection, habits, and ecology. Most importantly, an analysis of the direct and indirect effects caused by dredging on the aforementioned life history characteristics should be performed and presented in a format easily incorporated into our current BA.

We have also received substantive comments from several governmental agencies and private industry. These comments are summarized in the list below and should be addressed in your rebuttal letter to the Corps. Less substantive comments can be found within each agency/companies' response to the Public Notice attached to this letter or viewed at the following website, http://www.nwk.usace.army.mil/Missions/RegulatoryBranch/MissouriRiverCommercialDredging.aspx .

These should also be addressed within the same rebuttal letter:

1) The U.S. Environmental Protection Agency (EPA) indicated that the requested extraction totals in the Waverly, Jefferson City, and St. Charles river segments exceed the original authorized extraction totals permitted in 2011. The EPA also emphasized the requested extraction totals in the Waverly Segment exceeded the highest evaluated alternative in the 2011 Final EIS for Missouri River Commercial Dredging and the ROD. Thus, the EPA does not believe there is justification for the requested tonnage increases above those authorized in the 2011 ROD.

2) The EPA believes the 404(b)(1) Guidelines have not been met and there are other less environmentally damaging practicable alternatives available because sand and gravel mining are not water dependent.

3) The EPA also has concerns that commercial dredging on the Missouri River is causing significant degradation of our Nation's waters by adversely affecting human health and welfare, aquatic life and other wildlife, aquatic ecosystem diversity, productivity and stability, and/or recreation, aesthetic and economic values.

4) The U.S. Fish and Wildlife Service (Service) believes significant new information regarding population status, larval ecology, and habitat conditions of the endangered pallid sturgeon have surfaced since the issuance of the 2011 dredging permits. Considering new and historic information, the effects of dredging should be analyzed for all life stages and habitats of the pallid sturgeon; therefore the Corps should update and/or revise the 2011 Biological Assessment.

5) The Missouri Department of Transportation requests that dredging not be allowed with 1,000 feet of any bridge pier or abutment to eliminate the potential for scouring and protect the structural integrity of state's infrastructure.

6) WaterOne believes that the Missouri River commercial dredging permits should not be renewed until the conclusion of the Missouri River Bed Degradation Feasibility Study. The company believes that dredging is a significant contributor to river degradation and hence, a threat to public and private infrastructure.

If you choose, you may respond to this letter or to the enclosed comments in one or more ways. You may try to resolve any specific comments by modifying your proposal(s) on your own initiative and notifying us. If you wish to meet with any agency or other commenter, please contact Mr. Matthew Sailor and he will arrange a meeting. Also, you may rebut or comment to us on any or all of the substantive points in the enclosed comments or furnish justification of the need for your activity. However, we emphasize that you are not assured that your permit(s) will be issued merely because you resolve objections or modify your proposal(s).

The Corps of Engineers will make the final decision on your application(s), and we will not issue your permit(s) if issuance would be contrary to the public interest. We will consider the enclosed comments and your response, if any, along with other relevant factors in our determination of the public interest. Finally, you may choose to take no action on the enclosed objections. In that case, we will decide whether to issue the requested permit(s) based on the information in your application(s), on the public notice comments, and on any other information we have developed about your activity from our own evaluation.

If we issue your permit(s), they may contain conditions that are necessary to address specific environmental issues or other public interest concerns. Some of those issues may be included in the enclosed comments, and others may be minor issues which are not in the enclosed comments.

We are interested in your thoughts and opinions concerning your experience with the Kansas City District, Corps of Engineers Regulatory Program. Please feel free to complete our Customer Service Survey form on our website at: http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey. You may also call and request a paper copy of the survey which you may complete and return to us by mail or fax.

In summary, we are forwarding the enclosed comments for your information. If you wish to respond in any way for consideration in our final decision, we encourage you to do so. However, we intend to finish processing your application as soon as possible. If you do not reply within 15 days, we will assume you are declining this opportunity to respond. If you have any questions concerning this matter, please feel free to write or contact me or Mr. Matthew Sailor at (816) 389-3739 or by email at matthew.c.sailor@usace.army.mil.

Sincerely,

David R. Hibbs
Assistant Chief
Regulatory Branch

Enclosures

Copies Furnished (electronically w/o enclosures):

Environmental Protection Agency,
Watershed Planning and Implementation Branch
U.S. Fish and Wildlife Service, Manhattan, Kansas
U.S. Fish and Wildlife Service, Columbia, Missouri

Kansas Department of Wildlife, Parks and Tourism
Kansas Department of Health and Environment
Kansas Department of Agriculture

Copies Furnished (electronically w/o enclosures):

Missouri Department of Natural Resources,
Water Protection Program State Historic Preservation Office
Missouri Department of Conservation

Jason Branstetter, Capital Sand Company Inc.
Steve Engemann, Hermann Sand and Gravel, Inc.
Mike Odell, Holliday Sand and Gravel Company
Alan Barnes, Con-Agg of Missouri, LLC
Brian Viehmann Gateway Dredging and Contracting, LLC

Charles Frerker, USACE, MVS-OD-F
Danny McClendon, USACE, MVS-OD-F

Missouri River Commercial Dredging

Collapse All Expand All

⊟ 2015 Documents

Comments Received in Response to March 13, 2015 Public Notice:

- Congressional Interests
  - Representative Vicky Hartzler - Comment dated April 6, 2015 – Encl 1
  - Representative Emanuel Cleaver, II - Comment dated April 2, 2015 – Encl 2
  - Representative Sam Graves - Comment dated March 30, 2015 – Encl 3
- Federal Agencies
  - US Environmental Protection Agency - Comment Undated – Encl 4
  - US Fish and Wildlife Service - Comment dated April 6, 2015 – Encl 5
  - US Fish and Wildlife Service - Comment dated April 3, 2015 – Encl 6
- State/Local Agencies
  - Missouri Department of Natural Resources - Comment dated April 3, 2015 – Encl 7
  - Missouri Department of Transportation - Comment dated March 30, 2015 – Encl 8
- Commercial Dredgers
  - Gateway Dredging and Contracting, LLC - Comment Undated – Encl 9
  - Richard Geekie on behalf of Holliday Sand - Comment dated April 3, 2015 – Encl 10
  - Holliday Sand and Gravel - Comment dated April 2, 2015 – Encl 11
- Private Individuals/Entities
  - The Heavy Constructors Association - Comment dated April 8, 2015 – Encl 12
  - Comanche Construction - Comment dated April 6, 2015 – Encl 13
  - Missouri Concrete Association - Comment dated April 6, 2015 – Encl 14
  - Heavy Construction Laborers' Local No. 663 - Comment dated April 3, 2015 – Encl 15
  - Midwest Block & Brick - Comment dated April 3, 2015 – Encl 16
  - Continental Cement - Comment dated April 3, 2015 – Encl 17
  - Lathrop & Gage, LLP - Comment dated April 2, 2015 – Encl 18
  - Water One - Comment dated April 2, 2015 – Encl 19
  - Geiger Ready Mix - Comment dated April 2, 2015 – Encl 20
  - Emery Sapp & Sons - Comment dated April 1, 2015 – Encl 21
  - International Union of Operating Engineers - Comment dated April 1, 2015 – Encl 22
  - Associated Industries of Missouri - Comment dated March 31, 2015 – Encl 23
  - D&C Farms, LLC (Don Borgman) - Comment dated March 31, 2015 – Encl 24
  - Carefree Industrial Park - Comment dated March 30, 2015 – Encl 25
  - The Associated General Contractors of America (AGCMO) - Comment dated March 25, 2015 – Encl 26
  - Form Letters - Comments dated March 31, 2015 – Encl 27 – includes 12 letters:
    - 2 Apr 2015 – Gary Church
    - 31 Mar 2015 – Bernie Sherin email
    - 31 Mar 2015 – Mark Kreiser
    - 31 Mar 2015 – Todd Hinton
    - 6 Apr 2015 – Jason Luebbering
    - 31 Mar 2015 – Cooper C. Snyder
    - 31 Mar 2015 – Dan Murphy
    - 31 Mar 2015 – Unknown signature (CON-AGG)
    - 31 Mar 2015 – Unknown signature (CON-AGG)
    - 31 Mar 2015 – James Jackson
    - 31 Mar 2015 – Pace Construction
    - 31 Mar 2015 – Stan Johnsen
- **March13, 2015 Public Notice**

Enclosures to 8 May 2015 R+R ltr to David Shore

⊞ ~~2011 Documents~~
⊞ 2010 Documents
⊞ 2009 Documents
⊞ ~~2008 Documents~~
⊞ 2007 Documents

~~Resource Publications~~

National ~~Center for Computational Hydroscience and Engineering~~

~~USGS - 2005 Missouri Mineral Yearbook~~

~~Analytical and Experimental Investigation of Riverbed Degradation~~

Links

USGS - Contaminants in the Mississippi River, 1987-02

Big Muddy NWR Expansion EIS

Environmental Impact Statement