

# Environmental Statutes, Executive Orders, and Governing Agencies

---

This chapter lists environmental statutes and executive orders relevant to the Project. The chapter also describes the roles of government agencies in administering and managing lands and activities in and around the Project area. Further details about how the statute, executive order, or agency specifically relates to this Project are included in the relevant environmental sections of Chapter 3.

## 7.1 FEDERAL

### 7.1.1 U.S. Coast Guard

The USCG protects the maritime economy and the environment, and defends the maritime borders of the United States. The USCG Sector Commander Upper Mississippi is responsible for safety of navigation, security, and law enforcement along the Missouri River. The USCG Sector Upper Mississippi River Prevention Department is responsible for maintaining and setting buoys and shore aids along the Missouri River. The USCG Sector Upper Mississippi River Response Department uses USCG small boats, other law enforcement partnerships, and first responders to patrol and respond to emergencies and incidents on the Missouri River. The USCG District Commander, Eighth Coast Guard District, has administrative supervision over reaches of the Missouri River within the limits of his district and is responsible for enforcement under his direction of emergency regulations to govern navigation on the river.

### 7.1.2 U.S. Army Corps of Engineers

O&M of the BSNP is managed by two USACE Districts. The river from Rulo to the mouth is managed by the Kansas City District, which has a river field office at Napoleon Missouri. The river from Sioux City Iowa to Rulo is managed by the Omaha District, which has a river field office immediately upstream of Omaha. These districts have water management functions for regulation of tributary dams in the

Missouri River basin. The Northwestern Division has water management responsibilities for the Missouri River Mainstem System and coordinating responsibilities on tributary reservoir regulation.

### 7.1.3 Waterways Action Plan

The WAP provides general information and target gauges to be used as a guideline for a crisis on the waterways in the Mississippi River basin. The WAP is intended to serve as a guide for officials of the USCG, the USACE, and the marine industry to facilitate the safe and orderly movement of traffic during a navigational crisis, while minimizing the loss of life and damage to the environment and equipment.

### 7.1.4 River and Harbors Appropriation Act of 1899

The RHA (33 USC 1344) prohibits constructing bridges, dams, dikes, or causeways over harbors or navigable waters of the United States in the absence of Congressional consent and approval of plans by the Chief of Engineers and Secretary of the Army (33 USC 401). The RHA prohibits any obstruction or alteration of any navigable water of the United States (33 USC 403). The purpose of the RHA was to place the navigable waters of the United States under the exclusive control of the United States to prevent any interference with their navigability, whether by bridges or other obstructions, except by express permission of the U.S. Government. It preserves the public right of navigation and prevents interference with interstate and foreign commerce. The Missouri River is designated as a navigable water under the RHA. Impacts to navigation are addressed in Section 4.4 of this EIS.

### 7.1.5 Marine Protection, Research and Sanctuaries Act of 1972

Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (33 USC 1413) authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits for the transportation of dredged material for disposal in the ocean. Notice and opportunity for public hearing must be provided prior to issuance of a permit, it must be determined that the disposal will not unreasonably degrade or endanger human health, welfare, or amenities; or the marine environment; ecological systems; or economic potentialities. Section 302 of the act authorizes the Secretary of Commerce—after consultation with other interested federal agencies and with the approval of the President—to designate as marine sanctuaries those areas of the ocean waters, of the Great Lakes and their connecting waters, and of other coastal waters that are determined necessary in order to preserve or restore such areas for their conservation, recreational, ecological, or aesthetic values.

### 7.1.6 Coastal Zone Management Act of 1972

Section 307(c) of the Coastal Zone Management Act of 1972, as amended (CZMA) (16 USC 1456[c]), requires federal agencies conducting activities, including development projects, that directly affect a state's coastal zone, to comply to the maximum extent practicable with an approved state coastal zone management program. Indian tribes doing work on federal lands will be treated as a federal agency for the purpose of the CZMA. The CZMA also requires any non-federal applicant for a federal license or permit to conduct an activity affecting land or water uses in the state's coastal zone to furnish a certification that the proposed activity will comply with the state's coastal zone management program. Generally, no permit will be issued until the state has concurred with the non-federal applicant's certification. This provision becomes effective upon approval by the Secretary of Commerce of the state's coastal zone management program.

### 7.1.7 Federal Power Act of 1920

The Federal Power Act of 1920 (16 USC 791a et seq.), as amended, authorizes the Federal Energy Regulatory Commission (FERC) to issue licenses for construction, operation, and maintenance of dams, water conduits, reservoirs, power houses, transmission lines, and other physical structures of a hydropower project. When such structures would affect the navigable capacity of any navigable water of the United States (as defined in 16 USC 796), the plans for the dam or other physical structures affecting navigation must be approved by the Chief of Engineers and the Secretary of the Army. In such cases, the interests of navigation should normally be protected by a DA recommendation to FERC for inclusion of appropriate provisions in the FERC license rather than issuance of a separate DA permit under 33 USC 401 et seq. For any other activities in navigable waters not constituting construction, operation, and maintenance of physical structures licensed by FERC under the Federal Power Act of 1920, as amended, the provisions of 33 USC 401 et seq. remain fully applicable.

### 7.1.8 Federal Highway Administration

The FHWA is a division of the U.S. Department of Transportation that specializes in highway transportation. The agency's primary activities are grouped into two programs, the Federal-Aid Highway Program and the Federal Lands Highway Program. The role of FHWA in the Federal-Aid Highway Program is to oversee federal funds used for constructing and maintaining the national highway system (primarily interstate highways, U.S. routes, and most state routes). The FHWA oversees projects using these funds to ensure adherence to federal requirements for project eligibility, contract administration, and construction standards. Under the Federal Lands Highway Program, the

FHWA provides highway design and construction services for various federal land management agencies, such as the USDA Forest Service and the NPS. In addition to these programs, FHWA performs research in the areas of automobile safety, congestion, highway materials, and construction methods.

#### 7.1.9 Federal Water Pollution Control Act (Clean Water Act)

The Federal Water Pollution Control Act (33 USC 1251 et seq.) is more commonly referred to as the CWA. The CWA is the primary legislative vehicle for federal water pollution control programs and the basic structure for regulating discharges of pollutants into waters of the United States. The CWA sets goals to eliminate discharges of pollutants into navigable waters, protect fish and wildlife, and prohibit the discharge of toxic pollutants in quantities that could adversely affect the environment. Section 404 of the CWA requires authorization from the Secretary of the Army, acting through the USACE, for the discharge of dredged or fill material into all waters of the United States, including wetlands. Under Section 402 of the CWA (the National Pollution Discharge Elimination System), after notice and hearing, the USEPA issues permits to individual point sources to allow the discharge of pollutants in compliance with effluent and other standards.

#### 7.1.10 Executive Order 11990: Protection of Wetlands

EO 11990 (May 24, 1977) directs all federal agencies to refrain from assisting in or giving financial support to projects that encroach on public or privately owned wetlands. It further requires that federal agencies must support a policy to minimize the destruction, loss, or degradation of wetlands. Such a project (that encroaches on wetlands) may not be undertaken unless the agency has determined that (1) there are no practical alternatives to such construction; (2) the proposed action includes all practical measures to minimize harm to wetlands that would be affected by the project; and (3) the impact will be minor.

#### 7.1.11 Water Resources Development Act of 1986

The Water Resources Development Act of 1986 authorized the implementation of the Missouri River Mitigation Project. The act provided for acquisition and development of 29,900 acres of land, and development of fish and wildlife habitat on an additional 18,200 acres of existing public land in the states of Iowa, Nebraska, Kansas, and Missouri.

### 7.1.12 Water Resources Development Act of 1999

The Water Resources Development Act of 1999 authorized modifying the Missouri River Mitigation Project by increasing the amount of acreage to be acquired by 118,650 acres.

### 7.1.13 Water Resources Development Act of 2007

The Water Resources Development Act of 2007 authorized a study of the Missouri River to determine actions required to mitigate the loss of aquatic and terrestrial habitat, recover federally listed species, and restore the ecosystem.

### 7.1.14 Endangered Species Act

The primary federal law protecting threatened and endangered species is the ESA, (16 USC 1531-1544), amended in 1988. The ESA provides for protection and conservation of federally listed endangered and threatened species and the habitats upon which they depend. Under Section 7(c) of the ESA, federal agencies, such as the USACE, are required to consult with the USFWS to ensure that they are not undertaking, funding, permitting, or authorizing actions likely to jeopardize the continued existence of listed species or to destroy or adversely modify designated critical habitat. The ESA and the federal regulations on endangered species coordination (50 CFR 402.12) require that federal agencies prepare biological assessments of the potential effects of major actions on listed species and critical habitat. Associated with authorizations for dredging, the USACE must consult with the USFWS with respect to the potential effects of dredging on federally listed threatened and endangered species under ESA Section 7. Section 3.10 of this Draft EIS discusses the presence of any animal and plant species listed as threatened or endangered pursuant to the ESA, and describes the habitat necessary to support these species. State-listed species of conservation concern are addressed in Section 3.8 (for aquatic species) and Section 3.9 (wetlands, floodplains, and terrestrial species).

### 7.1.15 Fish and Wildlife Coordination Act of 1958

The Fish and Wildlife Coordination Act of 1958 (FWCA) (16 USC 661 et seq.) provides that whenever the waters of any stream or other body of water are proposed to be impounded or diverted, or the channel deepened or otherwise controlled or modified, the USACE must consult with the USFWS or NMFS, as appropriate, and the agency administering the wildlife resources of the states involved. This consultation is intended to promote the conservation of wildlife resources by providing equal consideration for fish and wildlife in water project planning, and to provide for development and improvement of wildlife resources in connection with water projects. Federal agencies undertaking

water projects are required to include recommendations made by the USFWS and state fish and game agencies in project reports, and to give full consideration to these recommendations. The consultation must consider conservation of wildlife resources with the view of preventing loss of, and damages to, such resources, as well as providing for development and improvement in connection with water resources development. Generally, compliance with NEPA requirements also meets the requirements of the FWCA. Terrestrial wildlife and their habitats are described in Section 3.9 of this EIS. Aquatic resources (including fish and fish habitat) are described in Section 3.8.

#### 7.1.16 Fish and Wildlife Act of 1956

The Fish and Wildlife Act of 1956 (16 USC 742a, et seq.), the Migratory Marine Game-Fish Act (16 USC 760c–760g), the FWCA (16 USC 661–666c) (discussed above), and other acts express the will of Congress to protect the quality of the aquatic environment as it affects the conservation, improvement and enjoyment of fish and wildlife resources. Reorganization Plan No. 4 of 1970 transferred certain functions, including certain fish and wildlife-water resources coordination responsibilities, from the Secretary of the Interior to the Secretary of Commerce. Under the FWCA and Reorganization Plan No. 4, any federal agency that proposes to control or modify any body of water must first consult with the USFWS or National Marine Fisheries Service (NMFS), as appropriate, and with the head of the appropriate state agency exercising administration over the wildlife resources of the affected state.

#### 7.1.17 Marine Mammal Protection Act of 1972

The Marine Mammal Protection Act of 1972 (MMPA) (16 USC 1361 et seq.) expresses the intent of Congress that marine mammals be protected and encouraged to develop in order to maintain the health and stability of the marine ecosystem. The MMPA imposes a perpetual moratorium on harassment, hunting, capturing, or killing of marine mammals and on importation of marine mammals and marine mammal products without a permit from either the Secretary of the Interior or the Secretary of Commerce, depending on the species of marine mammal involved. Such permits may be issued only for purposes of scientific research and for public display if the purpose is consistent with the policies of the MMPA. The appropriate Secretary is also empowered in certain restricted circumstances to waive the requirements of the MMPA.

### 7.1.18 Ocean Thermal Energy Conversion Act of 1980

The Ocean Thermal Energy Conversion Act of 1980 (42 USC 9101 et seq.) establishes a licensing regime administered by the Administrator of the National Oceanographic and Atmospheric Administration (NOAA) for the ownership, construction, location, and operation of ocean thermal energy conversion (OTEC) facilities and plant ships. An application for an OTEC license filed with the Administrator constitutes an application for all federal authorizations required for ownership, construction, location, and operation of an OTEC facility or plant ship, except for certain activities within the jurisdiction of the USCG. This includes applications for Section 10, Section 404, Section 103, and other DA authorizations that may be required

### 7.1.19 National Fishing Enhancement Act of 1984

The National Fishing Enhancement Act of 1984 (NFEA) (PL 98–623) provides for development of a National Artificial Reef Plan to promote and facilitate responsible and effective efforts to establish artificial reefs. The NFEA establishes procedures to be followed by the USACE in issuing DA permits for artificial reefs. The NFEA also establishes the liability of the permittee and the United States. The NFEA further creates a civil penalty for violation of any provision of a permit issued for an artificial reef.

### 7.1.20 Migratory Bird Treaty Act

The MBTA (16 US National Fishing Enhancement Act of 1984C 703) enacts the provisions of treaties among the United States, Great Britain, Mexico, Japan, and the Soviet Union and authorizes the Secretary of the Interior to protect and regulate the taking of migratory birds. It establishes seasons and bag limits for hunted species and protects migratory birds, their occupied nests, and their eggs (16 USC 703, 50 CFR 21, 50 CFR 10). Most actions that result in taking or in permanent or temporary possession of a protected species constitute violations of MBTA. The USFWS is responsible for overseeing compliance with the MBTA.

### 7.1.21 Noise Control Act of 1972

The federal Noise Control Act of 1972 (PL 92-574) established a requirement that all federal agencies administer their programs to promote an environment free of noise that would jeopardize public health or welfare. The USEPA was given the responsibility for:

- Providing information to the public regarding identifiable effects of noise on public health and welfare;

- Publishing information on the levels of environmental noise that will protect the public health and welfare with an adequate margin of safety;
- Coordinating federal research and activities related to noise control; and
- Establishing federal noise emission standards for selected products distributed in interstate commerce.

### 7.1.22 National Trails System Act

The Katy Trail between St. Charles and Boonville is officially designated as part of the Lewis and Clark National Historic Trail. As stated in the National Trails System Act, these trails are protected under the act and were created:

In order to provide for the ever-increasing outdoor recreation needs of an expanding population and in order to promote the preservation of, public access to, travel within, and enjoyment and appreciation of the open-air, outdoor areas and historic resources of the Nation, trails should be established (i) primarily, near the urban areas of the Nation, and (ii) secondarily, within scenic areas and along historic travel routes of the Nation which are often more remotely located (NPS 2010).

### 7.1.23 National Environmental Policy Act of 1969

This Draft EIS was prepared pursuant to regulations implementing NEPA (42 USC 4321 et seq.). NEPA requires federal agencies to consider the environmental effects of their actions. It also requires that an EIS be included in every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment. The EIS must provide detailed information regarding the proposed action and alternatives, the environmental impacts of the alternatives, potential mitigation measures, and any adverse environmental impacts that cannot be avoided if the proposal is implemented. Agencies are required to demonstrate that these factors have been considered by decision makers prior to undertaking actions. This Draft EIS was prepared pursuant to NEPA. A 45-day comment period will follow this Draft EIS to provide an opportunity for tribal and public comment. Following the comment period, the USACE will prepare the Final EIS and an ROD. Depending on the chosen alternative, the USACE may issue or deny permits to the Dredgers.

### 7.1.24 Migratory Bird Conservation Act

The Migratory Bird Conservation Act (MBCA) (16 USC 715 et seq.) requires that lands, waters, or interests acquired or reserved for purposes established under the MBCA be administered under regulations promulgated by the Secretary of the Interior. The MBCA involves conservation and

protection of migratory birds—in accordance with treaties entered into between the United States and Mexico, Canada, Japan, and the former Union of Soviet Socialist Republics; protection of other wildlife, including threatened or endangered species; and restoration or development of adequate wildlife habitat. The migratory birds protected under this act are specified in the respective treaties. In regulating these areas, the Secretary of the Interior is authorized to manage timber, range, agricultural crops, and other species of animals, and to enter into agreements with public and private entities.

#### 7.1.25 The Bald and Golden Eagle Protection Act

The Bald and Golden Eagle Protection Act<sup>1</sup> (16 USC 668-668c), enacted in 1940 and amended several times since then, prohibits anyone, without a permit issued by the Secretary of the Interior, from "taking" bald eagles, including their parts, nests, or eggs. As of August 9, 2007, the bald eagle is no longer protected under the federal ESA, and Section 7 consultation with the USFWS is no longer necessary. However, the bald eagle remains protected under the Bald and Golden Eagle Protection Act.

#### 7.1.26 National Historic Preservation Act of 1966

Section 106 of the NHPA (16 USC 470) requires that federal agencies evaluate the effects of federal undertakings on historical, archeological, and cultural resources and afford the ACHP opportunities to comment on the proposed undertaking. Section 110 of the NHPA (16 USC 470) requires each federal agency to establish a preservation program for identification, evaluation, nomination, and protection of historic resources on federal properties.

#### 7.1.27 The Lewis and Clark National Historic Trail Act of 1978

The Lewis and Clark National Historic Trail Act of 1978 (16 USC 1244[a][6]) recognizes the national significance of the Historic Trail and its associated sites. The USACE is considering Project effects to historic properties that may have associations with the Historic Trail.

#### 7.1.28 Archaeological Resources Protection Act

The Archaeological Resources Protection Act (16 USC 470aa-470ll) provides for protection of archaeological sites located on public and American Indian lands; establishes permit requirements for excavation or removal of cultural properties from public or American Indian lands; and establishes civil

---

<sup>1</sup> Bald Eagle Protection Act of 1940 (16 USC 668-668d, 54 Stat. 250) as amended -- Approved June 8, 1940, and amended by PL 86-70 (73 Stat. 143) June 25, 1959; PL 87-884 (76 Stat. 1346) October 24, 1962; PL 92-535 (86 Stat. 1064) October 23, 1972; and PL 95-616 (92 Stat. 3114) November 8, 1978.

and criminal penalties for unauthorized appropriation, alteration, exchange, or other handling of cultural properties.

#### 7.1.29 Antiquities Act of 1906

The Antiquities Act of 1906 (16 USC 431 et seq.) resulted from concerns about protecting mostly prehistoric Indian ruins and artifacts, collectively termed "antiquities," on federal lands in the West. It authorized permits for legitimate archaeological investigations and penalties for persons taking or destroying antiquities without permission. The Antiquities Act authorized presidents of the United States to proclaim "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest" as national monuments, "the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected."

#### 7.1.30 The Abandoned Shipwrecks Act of 1988

The Abandoned Shipwrecks Act of 1988 (43 USC 2101-2106) establishes government ownership over the majority of abandoned shipwrecks located in waters of the United States and creates a framework within which shipwrecks are managed. Enacted in 1988, it affirms the authority of state governments to claim and manage abandoned shipwrecks on state submerged lands. The Abandoned Shipwrecks Act makes the laws of salvage and finds not apply to any shipwreck covered under the Abandoned Shipwrecks Act and asserts that shipwrecks are multiple-use resources. The Abandoned Shipwrecks Act means that a historically valuable shipwreck can be treated as an archaeological or historical site instead of a commercial property.

#### 7.1.31 American Indian Religious Freedom Act

The American Indian Religious Freedom Act of 1978 (AIRFA) (42 USC 1996) provides for the protection and preservation of American Indian rights of freedom of belief, expression, and exercise of traditional religions. The USACE recognizes its responsibilities with respect to the AIRFA and will coordinate with the tribes in carrying out the requirements of the AIRFA. The USACE will coordinate with tribes and the Dredgers so as not to affect American Indian traditional practices.

#### 7.1.32 Indian Sacred Sites, Executive Order 13007

EO 13007 directs federal agencies to accommodate access to, and ceremonial use of, American Indian sacred sites by American Indian religious practitioners. It states that agencies should avoid adversely affecting the physical integrity of such sites and should maintain the confidentiality of information

pertaining to such locations. The USACE will utilize all reasonable means to accommodate American Indian tribes by providing meaningful access to sacred sites in compliance with this executive order. The USACE will coordinate with tribes and the Dredgers so as not to affect American Indian traditional practices or those areas where these practices occur.

### 7.1.33 Environmental Justice, Executive Order 12898

Environmental justice refers to executing a policy of fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws. Increasing concern with environmental equity or justice evolved from a series of studies conducted in the late 1980s and early 1990s that suggested that certain types of government and corporate environmental decisions may adversely affect low-income and minority populations to a greater extent than the general population. The regulatory environment related to environmental justice is tied primarily to EO 1298 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), dated February 11, 1994. EO 12898 requires each federal agency to “make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.” The CEQ has oversight responsibility for the federal government’s compliance with EO 12898 and NEPA. The CEQ, in consultation with the USEPA and other agencies, has developed guidance to assist federal agencies with their NEPA procedures so that environmental justice concerns are effectively identified and addressed – this guidance is presented in *Environmental Justice Guidance under the National Environmental Policy Act* (CEQ 1997).

### 7.1.34 Floodplain Management, Executive Order 11988

If a federal agency program will affect a floodplain, the agency must consider alternatives to avoid adverse effects in the floodplain or to minimize potential harm. EO 11988 requires federal agencies to evaluate the potential effects of any actions they might take in a floodplain and to ensure that planning, programs, and budget requests reflect consideration of flood hazards and floodplain management.

### 7.1.35 Farmland Protection Policy Act

The Farmland Protection Program Act (FPPA) provides funds to help purchase development rights to keep productive farmland in agricultural uses. Working through existing programs, the USDA joins with state, tribal, or local governments to acquire conservation easements or other interests from

landowners. The USDA provides up to 50 percent of the fair market easement value. Projects are subject to FPPA requirements if they may irreversibly convert farmland (directly or indirectly) to nonagricultural use and if they are undertaken by a federal agency or with assistance from a federal agency.

#### 7.1.36 Prime or Unique Agricultural Lands

The CEQ Memorandum on Analysis of Impacts on Prime or Unique Agricultural Lands establishes criteria to identify and consider the adverse effects of federal programs on the prime and unique farmland; to consider alternative actions, as appropriate, that could lessen adverse effects; and to ensure that federal programs are consistent with all state and local programs for protection of farmland.

#### 7.1.37 Wild and Scenic Rivers Act

The Wild and Scenic Rivers Act (WSRA) (16 USC 1278 et seq.) designates qualifying free-flowing river segments as wild, scenic, or recreational. The WSRA establishes requirements applicable to water resource projects affecting wild, scenic, or recreational rivers within the National Wild and Scenic Rivers System, as well as rivers designated on the National Rivers Inventory. Under the WSRA, a federal agency may not assist in construction of a water resources project that would directly adversely affect the free-flowing, scenic, and natural values of a federally designated wild or scenic river. If the project would affect the free-flowing characteristics of a designated river or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area, such activities should be undertaken in a manner that would minimize adverse impacts and should be developed in consultation with the NPS. Neither of the two reaches of the Missouri River that have been designated as National Recreational Rivers under the WSRA are within the Project area. The first designated reach is the Fort Randall Reach, located 36 river miles from Fort Randall Dam (RM 880) to the Lewis and Clark Lake delta (RM 844). The second reach is the Gavins Point Reach, a 58-mile stretch of river between Gavins Point Dam (RM 810) and Ponca (RM 752).

#### 7.1.38 Federal Water Project Recreation Act

In planning any federal navigation, flood control, reclamation, or water resource project, the Federal Water Project Recreation Act (16 USC 4612 et seq.) requires that full consideration be given to the opportunities that the project affords for outdoor recreation and fish and wildlife enhancement. The WSRA requires planning with respect to development of recreation potential. Projects must be

constructed, maintained, and operated to provide recreational opportunities, consistent with the purposes of the project.

#### 7.1.39 Land and Water Conservation Fund Act

The Land and Water Conservation Fund Act (LWCFA) (16 USC 4601-11) assists in preserving, developing, and ensuring the accessibility of outdoor recreation resources. The LWCFA establishes specific federal funding for acquisition, development, and preservation of lands, water, or other interests authorized under the ESA and the National Wildlife Refuge Areas Act. Funds appropriated under the LWCFA are allocated to federal agencies or as grants to states and localities. Recreation facilities on the Missouri River, as evaluated in the EIS, are not LWCFA-funded facilities.

#### 7.1.40 Clean Air Act

The CAA (42 USC 7401 et seq.), amended in 1977 and 1990, was established “to protect and enhance the quality of the Nation's air resources so as to promote public health and welfare and the productive capacity of its population.” The CAA authorizes the USEPA to establish NAAQS to protect public health and the environment. The CAA establishes emission standards for stationary sources, volatile organic compound emissions, hazardous air pollutants, and vehicles and other mobile sources. The CAA also requires the states to develop implementation plans applicable to particular industrial sources. Section 3.16 of this Draft EIS describes how this Project complies with the CAA.

#### 7.1.41 Flood Control Act of 1944

In the authorizing legislation for the Missouri River Mainstem Reservoir System, Congress authorized construction of all but one of the mainstem projects by adopting the Pick-Sloan Plan in Section 9 of the Flood Control Act of 1944. Section 9 adopted no management standards other than through incorporation of House Document 475 (the Pick Plan) and Senate Document 191 (the Sloan Plan) as revised and coordinated by Senate Document 247 (the Reconciliation Report), which itself only identifies the broad purposes of the Missouri River Mainstem Reservoir System—including flood control, irrigation, navigation, power, fish and wildlife, and recreation. Neither plan defines any further standard of any kind for management of the recommended projects or for developing the multiple-use purposes of the system.

## 7.2 STATE

### 7.2.1 State of Missouri

#### 7.2.1.1 Wildlife

The Missouri Department of Conservation is responsible for managing and protecting wildlife resources in the State of Missouri pursuant to the CSR, Title 3 Department of Conservation, Division 10 Conservation Commission. Game and nongame species are identified and protected under Chapter 4 Wildlife Code: General Provisions. Rule 3 CSR 10-4.110 General Prohibition; Applications, “prohibits the pursuit, taking, possession, or any use of wildlife except as provided in the Code.” Rule 3 CSR 10-4.110 (1) states,

No bird, fish, crayfish, mussel, amphibian, reptile, mammal, or other form of wildlife including their homes, dens, nests, eggs and larvae in Missouri shall be molested, pursued, taken, ...except as specifically permitted by these rules and any laws consistent with Article 4, Sections 40-46 of the Constitution of Missouri.... (Missouri Secretary of the State, 2010a).

Rule 3 CSR 10-4.111 Endangered Species extends “special protection to endangered species and lists those species considered to be threatened with extinction [in the State of Missouri].”

#### 7.2.1.2 Missouri Statewide Comprehensive Outdoor Recreation Plan

The Missouri SCORP includes inventories and assessments of current recreation resources (local, state, and federal) in the state (MDNR 2008). The Missouri SCORP is used as a reference by local community recreation planners, park departments, and the MDNR grants management staff when considering grant applications for funding from the Land and Water Conservation Fund, the Recreational Trails Program, and other outdoor recreation funding agencies and sources. The Missouri SCORP identifies the Katy Trail and the Historic Trail, which parallel the river in the Project area, as important trail initiatives in the state of Missouri that are or should be supported by local communities and by state and federal trail-funding agencies. Wetlands also are identified as an important recreational feature.

#### 7.2.1.3 Parks and Historic Sites

One of the responsibilities of the MDNR is to oversee Missouri state parks and historic sites (MDNR 2010).

#### 7.2.1.4 Transportation

The MoDOT is headquartered in Jefferson City and has functional control over 10 geographical transportation districts. The Project area falls within six of these districts: Northwest (District 1), North Central (District 2), Northeast (District 3), Kansas City Area (District 4), Central (District 5), and St. Louis Area (District 6) fall. The MoDOT is responsible for five major transportation alternatives in the state, including highways, aviation, waterways, public transit, and railroads.

#### 7.2.1.5 Water

In Missouri, the Clean Water Law of 1973 directs the MDNR to issue Section 401 Water Quality Certifications, NPDES permits, and storm water permits.

#### 7.2.1.6 Shipwrecks

Under the Missouri State Shipwrecks Statute (Section 253.420, RSMo), no person, corporation, partnership, proprietorship or organization shall initiate salvage operations, excavation or similar ground disturbing activities of any submerged or embedded abandoned shipwreck in the state which meets the national register of historic places criteria without obtaining a permit from the MDNR. The MDNR may approve and issue permits under this section, and is authorized to promulgate appropriate regulations for the administration of this section.

#### 7.2.1.7 Katy Trail State Park

Katy Trail State Park is a state park administered by the MDNR. Title 10, Division 90, Chapter 1—Organization and Description establishes that the activities of the division consist of making the various state-owned facilities accessible to all segments of today's society—including the youth, handicapped, senior citizens, and the disadvantaged—through a systematic program that will permit the division to acquire, protect, develop and interpret for the inspiration, use, and enjoyment of the people of the state a well balanced system of areas of outstanding scenic, recreational and historic significance. (Missouri Secretary of the State 2010b).

### 7.2.2 State of Kansas

#### 7.2.2.1 Kansas Statewide Comprehensive Outdoor Recreation Plan

The Kansas SCORP serves as a guide for outdoor recreation (KDWP 2009). The Kansas SCORP includes assessments of the state's outdoor recreation and establishes a list of priorities on which to

focus for the next 5 years. The Kansas SCORP is designed to meet the requirements of the Land and Water Conservation Fund Act of 1965 in order to preserve, develop, and ensure accessibility to quality outdoor recreation resources. Kansas's SCORP identifies wetlands as an important source of recreational opportunities. Wetlands in Kansas are a key part of shorebird migration and offer bird watching and wildlife viewing opportunities.

#### 7.2.2.2 Wildlife and Parks

The KDWP is responsible for managing and protecting wildlife resources in the state of Kansas pursuant to the Kansas Nongame and Endangered Species Conservation Act of 1975 (State of Kansas). This act is defined under the Kansas Statutes, specifically Chapter 32 Wildlife, Parks and Recreation; Article 9 Licenses, Permits, Stamps and Other Issues; Statutes 32-957 through 963; 32-1009 through 1012; and 32-1033; and Kansas Statute Amendments 32960a and 32-960b. These statutes and regulations also regulate special permits for development projects affecting critical habitats of threatened or endangered species. Statute 32-959, Nongame and Endangered Species Conservation Act, Nongame Species, provides the Secretary of the KDWP with the authority to identify nongame species in need of protection and "establishes limitations relating to taking, possessing, transporting, exporting...nongame species." The KDWP is also responsible for overseeing many of the outdoor recreation facilities and areas in Kansas (KDWP 2010). The KDWP has responsibility for the Kansas SCORP.

#### 7.2.2.3 Transportation

The KDOT is responsible for road and bridge maintenance, transportation planning, contract compliance, and transportation-related administrative support for the state of Kansas.

#### 7.2.2.4 Health and Environment

The KDEH prepares Section 401 Water Quality Certification for projects in Kansas, NPDES permits, and storm water permits.

### 7.2.3 State of Nebraska

#### 7.2.3.1 Game and Parks

The Nebraska Game and Parks Commission is responsible for managing and protecting wildlife resources in the state of Nebraska pursuant to the Nongame and Endangered Species Conservation

Act (State of Nebraska 2010). This act is defined under the Nebraska Revised Statutes of 1943, specifically Chapter 37, Game and Park Article 8: Nongame and Endangered Species Conservation Act; Revised Statutes 37-801 through 811. These statutes and regulations also regulate special permits for development projects affecting critical habitats of threatened or endangered species. Statute 37-806 states that species listed as endangered or threatened under the federal ESA also shall be considered to be endangered or threatened under the Nongame and Endangered Species Conservation Act. The State has the authority to list other species not covered under ESA. This statute also regulates take of state-listed species.

### 7.2.3.2 Transportation

The NDOR is responsible for building and maintaining the state and federal highways in the state of Nebraska. Eight NDOR district offices are located across the state. That portion of the Project area located in Nebraska falls within District 1 of the NDOR.

### 7.2.3.3 Environmental Quality

The NDEQ oversees Section 401 Water Quality Certification, NPDES permits, and storm water permits for projects in Nebraska.

## 7.2.4 State of Illinois

### 7.2.4.1 Transportation

The IDOT has responsibility for planning, construction and maintenance of the Illinois transportation network, which encompasses highways and bridges, airports, public transit, rail freight, and rail passenger systems.

## 7.2.5 State Noise Ordinances

The proposed Project lies within the jurisdiction of various counties and cities along the LOMR in the states of Missouri and Kansas. Some counties and cities have established policies and codes concerning the generation and control of noise that could adversely affect citizens and noise-sensitive land uses. Table 3.13-2 in Section 3.13 indicates the cities and counties located in each river segment. Appendix C provides a discussion of the counties and cities with applicable noise ordinances designed to protect its citizens from adverse noise.

## 7.3 LOCAL

### 7.3.1 St. Louis County Zoning Ordinance, Missouri

St. Louis County zoning includes the PS Zoning District. Under the PS regulations, “land, owned by public agencies or in which public agencies have some lesser legal interest, which has recreational, scenic, and health value [is subject to PS regulations] and is established to preserve the community's cultural values by preserving this land in an essentially natural or native condition” (St. Louis County Zoning Code 2010).

### 7.3.2 St. Charles County Master Plan, Missouri

The Natural Resources section of the master plan states that the “Highway 94 corridor between U.S. Highway 40/61 and the Warren County line contains a unique set of scenic features. In a study of this area prepared in 2002, approximately 30 scenic vistas or view sheds were identified along this 21-mile section of highway.” The master plan identifies a goal to “protect and manage natural resources to retain the benefits they provide by “[minimizing] the impacts of development encroaching on natural resource areas” (St. Charles County 2008).

### 7.3.3 FOCUS – Kansas City, Missouri

FOCUS is Kansas City’s comprehensive and strategic plan. The seven FOCUS component plans include a Preservation Plan, Northland Plan, and Physical Framework Plan. Section 4.12 contains additional information on FOCUS.

### 7.3.4 Platte County (Missouri) Land Use Plan

The Platte County (Missouri) Land Use Plan is the primary tool used by the County to plan for long-term growth and development (Platte County 2010). The plan contains the county zoning map.

### 7.3.5 City of Washington (Franklin County, Missouri) Zoning Map

The City of Washington is located in Franklin County, Missouri. The City of Washington Zoning Map provides an overview of the permitted uses in the City of Washington (City of Washington 2007).

### 7.3.6 City-Wide Master Plan of Wyandotte County/Kansas City, Kansas

The City-Wide Master Plan states that parks, open space, and trails “offer unspoiled views and interactions with wildlife” and recommends actions to:

- Enhance the Missouri and Kansas River corridors;
- Promote cluster development along the Missouri River Bluffs to preserve key view sheds, open space and trail connections;
- Develop portholes along the River Corridors to allow safe and convenient public access to the rivers;
- Protect the Missouri and Kansas Rivers, streams and creeks from encroaching development;
- Increase public access to and public ownership of stream corridors; [and]
- Protect, restore and create wetlands in riparian corridors to promote aquatic and wildlife breeding grounds, store floodwaters and provide aesthetic value.”  
(Wyandotte County 2008)

## 7.4 REFERENCES

CEQ (Council on Environmental Quality). 1997. Environmental Justice Guidance under the National Environmental Policy Act.

City of Washington. 2007. City of Washington Zoning Map. Website (<http://washingtonmo.govoffice2.com/vertical/Sites/%7B16AC081B-8831-40B4-BC22-1AAFE46CD04B%7D/uploads/%7B9F28CEB9-BB0F-472B-B059-3FAF10A4039A%7D.PDF>) accessed on December 21, 2009.

MDNR (Missouri Department of Natural Resources). 2010. Katy Trail State Park Trail Conditions. Website (<http://www.mostateparks.com/katytrail/conditions.htm>) accessed on March 25, 2010).

MDNR (Missouri Department of Natural Resources). 2008. Statewide Comprehensive Outdoor Recreation Plan. Website (<http://www.mostateparks.com/scorp08-12.pdf>) accessed on March 22, 2010.

KDWP (Kansas Department of Wildlife and Parks). 2010. Kansas Department of Wildlife and Parks. Website (<http://www.kdwp.state.ks.us/>) accessed on March 26, 2010.

KDWP (Kansas Department of Wildlife and Parks). 2009. Statewide Comprehensive Outdoor Recreation Plan. Website (<http://www.kdwp.state.ks.us/news/State-Parks/S.C.O.R.P.>) accessed on March 26, 2010.

Missouri Secretary of the State, 2010a. Rules of Department of Conservation Division 10—Conservation Commission Chapter 4—Wildlife Code: General Provisions. Website (<http://www.sos.mo.gov/adrules/csr/current/3csr/3c10-4.pdf>).

Missouri Secretary of the State. 2010b. Rules of Department of Natural Resources. Division 90—State Parks Chapter 1—Organization and Description. Website (<http://www.sos.mo.gov/adrules/csr/current/10csr/10c90-1.pdf>).

NPS (National Park Service) 2010. The National Trails System Act. Website (<http://www.nps.gov/nts/legislation.html>).

Platte County. 2010. Platte County Missouri Property Search Website. Website (<http://maps.co.platte.mo.us/platteco/frames.htm?origin=main>) accessed on February 1, 2010.

St. Charles County. 2008. St. Charles County Master Plan. Website ([http://cd.sccmo.org/commdev/index.php?option=com\\_content&task=view&id=83&Itemid=21](http://cd.sccmo.org/commdev/index.php?option=com_content&task=view&id=83&Itemid=21)) accessed on December 21, 2009.

St. Louis County Zoning Code 2010. Park and Scenic District Regulations website. Website (<http://www.co.st-louis.mo.us/plan/zoning/1003-103.pdf>).

Wyandotte County 2008. City-wide Master Plan, Unified Government of Wyandotte County / Kansas City, Kansas. Website ([http://www.wycokck.org/Dept.aspx?id=7822&menu\\_id=1032&banner=15284](http://www.wycokck.org/Dept.aspx?id=7822&menu_id=1032&banner=15284)).