



**LITTLE NIANGUA RIVER REGION
MODOT STREAM MITIGATION BANK**

Environmental Unit
Design Division

March 2008



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This Instrument, regarding the establishment, use, operation, and maintenance of The Missouri Department of Transportation Little Niangua River Region Stream Mitigation Bank (hereinafter, Bank), is made and entered into by and among The Missouri Highways and Transportation Commission, acting for its subordinate, The Missouri Department of Transportation (MoDOT), The U.S. Army Corps of Engineers (USACE), The U.S. Environmental Protection Agency (USEPA), the U.S. Fish and Wildlife Service (USFWS), The Federal Highway Administration (FHWA), The Natural Resources Conservation Service (NRCS), The Missouri Department of Natural Resources (MDNR), and The Missouri Department of Conservation (MDC), with reference to the following:

I. PREAMBLE

A. PURPOSE

The purpose of this instrument is to provide guidelines and assign responsibilities for the establishment, use, operation, and maintenance of the Bank. The Bank will be used for compensatory mitigation for unavoidable impacts to waters of the United States, including streams and other aquatic resources. Such impacts are expected to result from MoDOT activities authorized under Section 404 of the Clean Water Act (CWA). Use of the Bank must meet all applicable requirements and be authorized by the appropriate authorities.

MoDOT will comply with CWA Section 404(b)(1) Guidelines by applying the following mitigation sequence for MoDOT project impacts and in general Bank establishment:

1. Avoid wetland and aquatic (streams and natural lakes) impacts through the use of practicable alternatives;
2. Minimize wetland and aquatic impacts using all reasonable actions to reduce impacts; and
3. Compensate for unavoidable wetland and aquatic impacts and loss of aquatic function.

This Bank Instrument does not guarantee that the USACE will accept the use of the Bank for a specific project. On-site mitigation opportunities must be evaluated on a project-by-project basis prior to use of a Bank. However, as stated in the federal mitigation banking guidance, use of a Bank to compensate for small impacts associated with linear projects and authorized by nationwide permit is preferred to on-site mitigation.

The Kansas City District will act as the Lead USACE District for this Banking Instrument.

B. MITIGATION BANK GOALS AND OBJECTIVES

The goal of this project is to restore stream function and habitat within the Little Niangua River to mitigate for stream impacts resulting from MoDOT highway construction projects that are located within or near the proposed geographic service area boundary.

There are four low water crossings within Camden County on the Little Niangua River. MoDOT plans to modify three of these low water crossings, Howard's Ford, Green's Slab and Griswald's Slab. Each crossing will involve removal of a portion of the crossing where the flow is greatest, following the installation of two 30-foot spans. The remainder of the crossing will not be altered. These three crossings were chosen for two reasons. The first is because they are all three similar structures and the survey method to determine the linear feet of upstream influence the crossing has on sediment deposition works for all three. This method did not work for Bannister Ford, the fourth low water crossing, and therefore a different method would have had to be developed. Second, is the ease of modification of the three chosen structures. Each is similar to the others and the modifications involved will be similar. Bannister was not chosen because modification was unique in that the structure itself is not the impediment, but the bottom slabs were. In removal of these bottom slabs, the integrity of the structure would be questionable.

The Little Niangua River supports known populations of Niangua darter, a federally listed endangered species (Figure 1). The Niangua darter was assigned federal protection in 1985 under the Endangered Species Act and the recovery plan was approved in July 1989. Recovery goals include reducing existing and potential threats to existing populations, documenting that population size is stable or increasing for an area, and establishing new populations in additional drainages. Darter populations in the Little Niangua River are likely one of the largest and stable of the eight extant populations.

Low water crossings are barriers to fish movement because of high velocities and scour holes. Removal of these structures should enable darter populations to reconnect, thus increasing opportunity for genetic diversity and boosting population growth. Removal and replacement of these structures also improves channel stability and sediment transport, as well as minimizing the continued long term expense of repairs by county road crews.

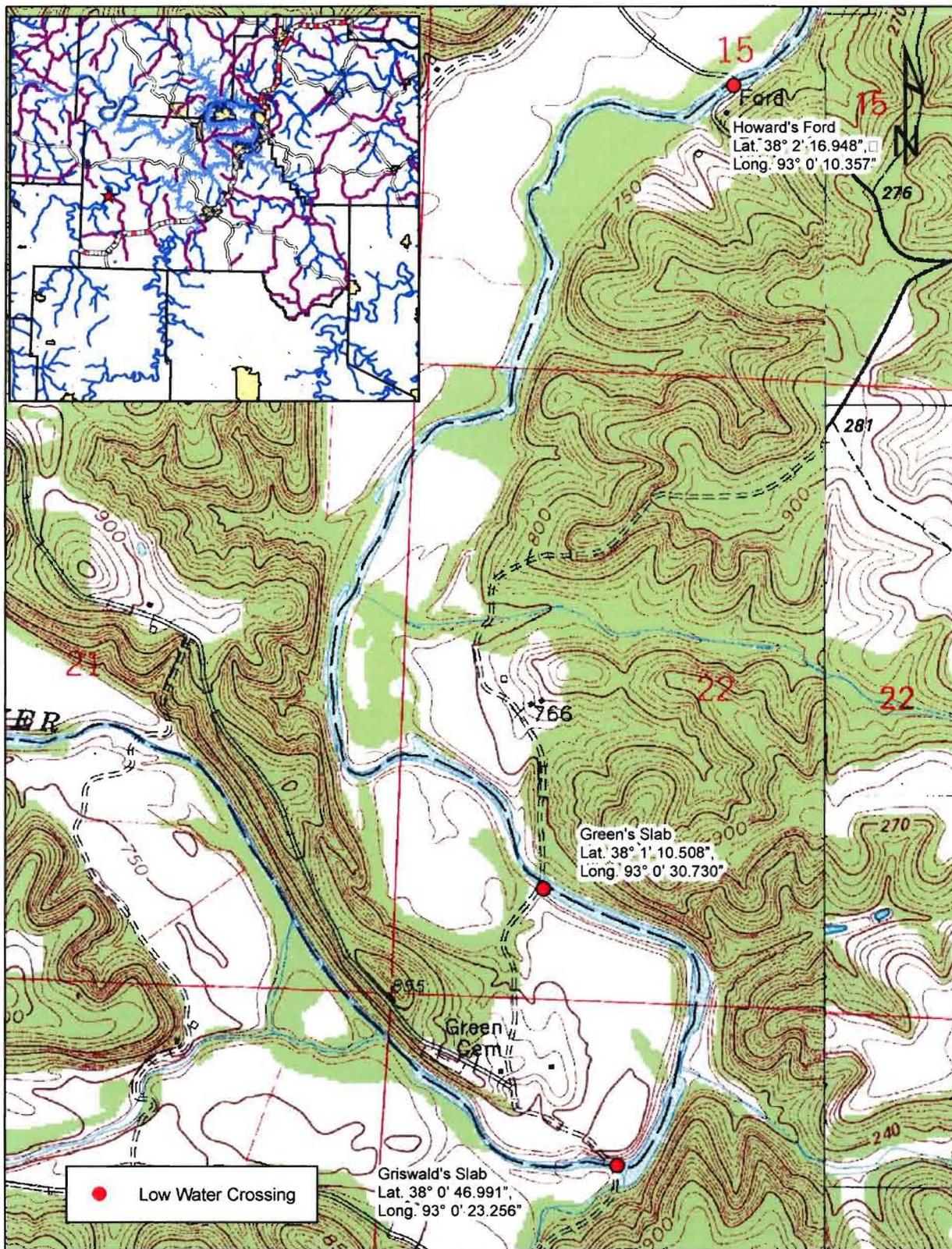


Figure 1: MoDOT Little Niangua River Region Mitigation Bank, Camden County, Missouri, location map.

C. *ESTABLISHMENT AND USE OF CREDITS*

Whereas, in accordance with the provisions of MoDOT's Umbrella Instrument (UI), this Bank Development Plan (BDP), and upon satisfaction of the success criteria contained herein, a total of 76,947 credits are available to use as compensatory stream mitigation in accordance with all applicable requirements (Table 1). The anticipated number of credits will be based on the degree of environmental gain as it relates to aquatic habitat restoration and enhancement, as defined in the USACE RGL No. 02-2, to the standards of the success criteria defined in Section IV.D.

The State of Missouri Stream Mitigation Method was used to calculate the number of credits available for modification of three low water crossings on the Little Niangua River. MoDOT will submit an Impact Worksheet for each permit application where mitigation is proposed for this Bank. MoDOT conducted a survey of the river bottom both upstream and downstream of the structure, in order to estimate the stream length influenced by the low water crossing. The protocol that was followed for credit establishment upstream of a particular crossing is as follows: An elevation was shot at the top deck of the low water crossing. A second elevation was shot on the upstream side of the crossing in the streambed. In-stream survey shots were then taken progressing upstream to determine the elevation equivalent to the elevation of the crossing deck. This determines the height of the aggradation. The distance between these survey points was calculated as the length of upstream influence. The downstream credit was calculated by determining the distance to the downstream edge of the scour hole below the structure, and subsequently multiplying this distance by two. This total distance is the length of downstream influence (Figure 2) and used in the box labeled *Stream Length in Reach* in the Stream Mitigation Bank Credit Assessment Worksheet (worksheet). Net Benefit in the worksheet was determined based on two factors, sediment transport and benefits to a federally threatened and endangered species, the Niangua darter. Within the *Excellent* category, one example of restoration actions includes "removing dams and large weirs, pipes, culverts, and other manmade in-stream structures with >50 linear feet of direct fill/impact, then restoring the stream channel to referenced, stable morphologic patterns (i.e. Replace culverts with span bridges)". Although the stream channel is not fully restored, approximately 50% of the channel will be open to sediment transport, fish and aquatic organism passage. The structures will pass a greater amount of water during high water events, thereby having a degree of influence on flood events. They will be bottomless and allow scour holes to be filled following a couple of flood events, allowing organism passage during low flows.

In a survey for the Niangua darter done in June 2007, by MDC and UMC, there were high densities of Niangua darters just downstream of Howard's Ford and upstream of Burnt Mill Spring (and upstream of Bannister Ford). The survey also discovered previously unknown populations of the Niangua darter downstream of Bannister Ford.

The credits generated by the Bank shall be used as compensatory mitigation for unavoidable and adverse environmental impacts to aquatic resources of the United States and where legal requirements apply to other natural resources, as these impacts result from public transportation projects constructed by MoDOT.

Low Water Crossing Affected Length Determination: (z)

Upstream

1. Find deck elevation
2. Find length of upstream channel needed to achieve deck elevation, this should approximate the length of stream altered by the placement of the LWC (y)

Downstream

3. Affected channel downstream includes the distance from the crossing to the downstream edge of the created scour hole - times 2. (x times 2) If there is no noticeable scour hole - there is no downstream influence.

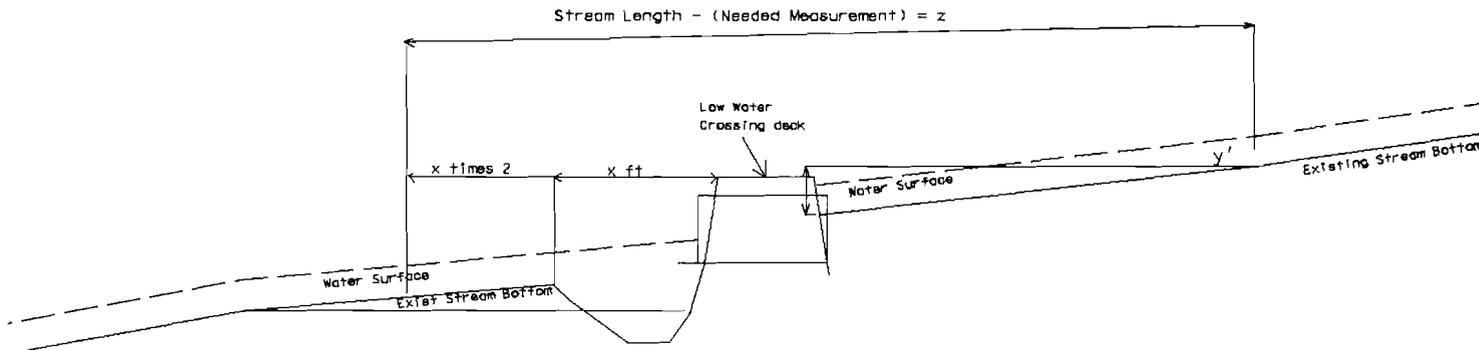


Figure 2. Survey Methodology to determine length of influence on the stream.

Stream Mitigation Bank Credit Assessment Worksheet

Stream Type	Ephemeral 0.01	Intermittent 0.6	Perennial			
			<15' 0.8	15'-30' 1.0	30'-50' 1.2	>50' 1.4
Priority Area	Tertiary 0.1	Secondary 0.4	Primary 0.8			
Net Benefit [Riparian (for each side of stream)]	Additional Improvements (select values from Table 1 times 1.2 multiplier)		Riparian Creation, Enhancement, Restoration, and Preservation Factors (select values from Table 1) (MBW = Minimum Buffer Width = 25' + 2' / 1% slope)			
System Protection Credit	Condition: MBW restored or protected on both streambanks To calculate: (Net Benefit Stream Side A + Net Benefit Stream Side B) / 2					
Net Benefit (Stream)	Moderate 1.0	Good 2.0		Excellent 3.5		
Monitoring/Contingency (for each side of stream)	Level I 0.075	Level II 0.3	Level III 0.5			
Control/Site Protection	Corps approved site protection without third party grantee 0.075		Corps approved site protection with third party grantee, or transfer of title to a conservancy 0.3			

Factors		Green's Slab	Griswalds Slab	Howards Bend
Stream Type		1.4	1.4	1.4
Priority Area		0.8	0.8	0.8
Net Benefit	Stream Side A	0	0	0
	Stream Side B	0	0	0
System Protection Credit Condition Met (Buffer on both sides)		0	0	0
Net Benefit (Stream)		3.5	3.5	3.5
Monitoring/Contingency	upstream	0.3	0.3	0.3
	downstream	0.3	0.3	0.3
Control/Site Protection	Stream Side A	0	0	0
	Stream Side B	0	0	0
Sum Factors (M) =		6.3	6.3	6.3
Stream length in Reach (do not count each bank separately) (LF) =		4133.66	4568	3512.18
Credits (C) = M X LF		26,042	28,778	22,127
Total Credits Generated C X Mitigation Factor (MF) =		26,042	28,778	22,127

Total Riparian Restoration Credits Generated = 76,947 credits

Table 1. Missouri Stream Assessment Method Mitigation Worksheet.

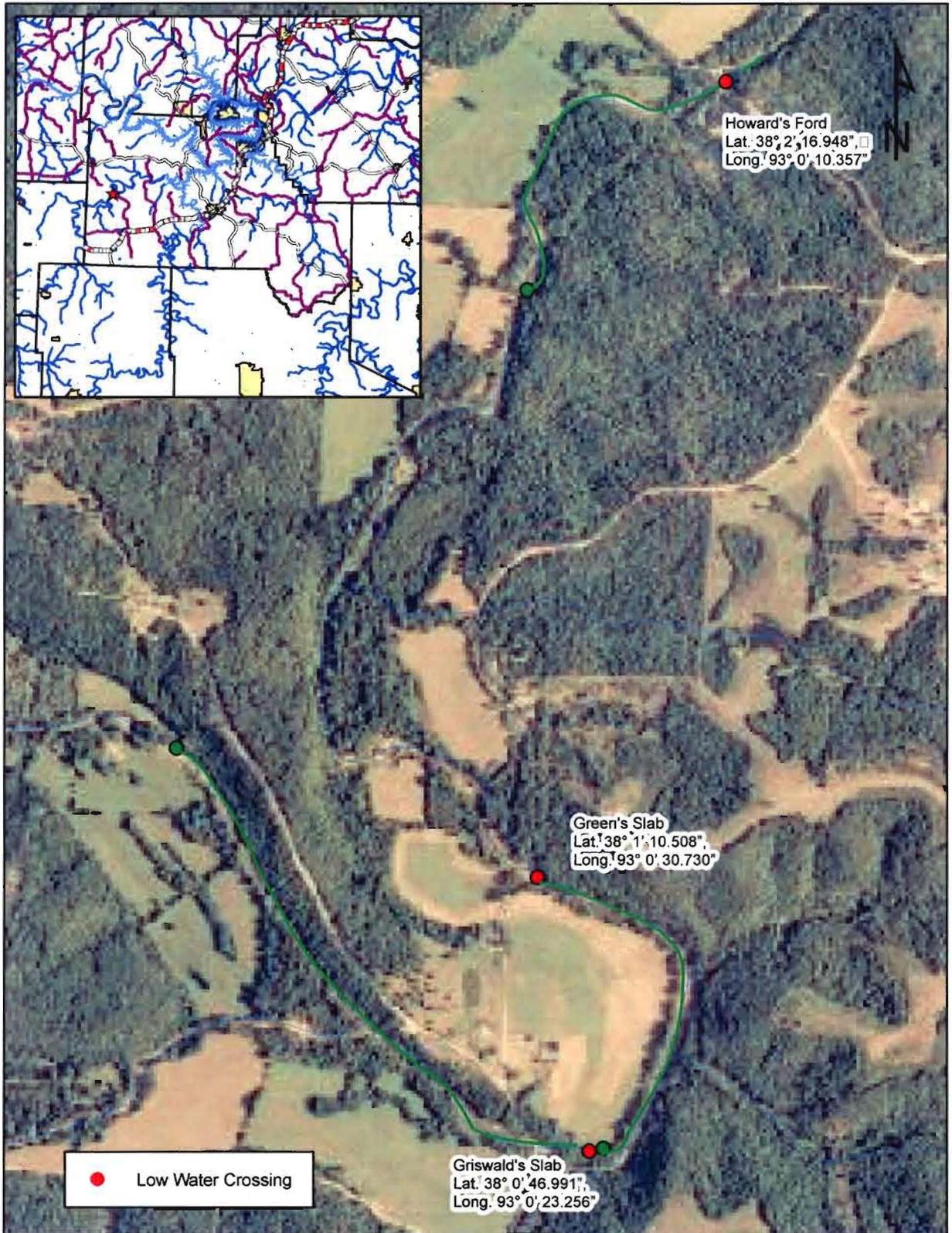


Figure 3. Distance upstream determined to be influenced by each low water crossing.

D. MITIGATION BANKING REVIEW TEAM (IRT)

The IRT members shall consist of the appropriate representatives from:

- U.S. Army Corps of Engineers, Kansas City District (Lead District)
- U.S. Environmental Protection Agency, Region VII, Kansas City
- Natural Resources Conservation Service, Columbia State Office
- U.S. Fish and Wildlife Service, Columbia Field Office
- Federal Highway Administration, Jefferson City Office
- Missouri Department of Conservation, Jefferson City
- Missouri Department of Natural Resources, Jefferson City

E. DISCLAIMER

This Banking Instrument does not in any manner affect statutory authorities and responsibilities of the signatory parties.

II. AUTHORITIES

The establishment, use, operation, and maintenance of the Bank will be carried out in accordance with the following authorities:

A. FEDERAL AUTHORITIES

- Clean Water Act (33 USC 1251 *et seq.*)
- Rivers and Harbors Act of 1899 Section 10 (33 USC 403 *et seq.*)
- Fish and Wildlife Coordination Act (16 USC 661 *et seq.*)
- Transportation Equity Act for the 21st Century (TEA-21)
- Department of the Army, Section 404 Permit Regulations (33 CFR Parts 320-330) - Policies for Evaluating Permit Applications to Discharge Dredged or Fill Material
- Environmental Protection Agency, Section 404(b)(1) Guidelines (40 CFR Part 230) - Guidelines for Specification of Disposal Sites for Dredged or Fill Material
- Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation Under the Clean Water Act, Section 404 (b)(1) Guidelines (February 6, 1990)
- Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (FR, Vol. 60, No. 228, Pages 58605-58614, 1995) (60 FR 58605)
- National Historic Preservation Act, Section 106 (16 USC 470)
- National Environmental Policy Act (42 USC 4321 *et seq.*), including the Council on Environmental Quality's implementing regulations (40 CFR Parts 1500-1508)
- Federal Highway Administration Guidance on Mitigation of Impacts to Wetlands (23 CFR Part 777) Revised March 30, 2001
- Clean Water Act, Section 404 (33 USC 1344)
- Federal Guidance on the Use of the TEA-21 Preference for Mitigation Banking to fulfill Mitigation Requirements under Section 404 of the Clean Water Act.

- Army Corps of Engineers Regulatory Guidance Letter (RGL) 02-2, Guidance on Compensatory Mitigation Projects for Aquatic Resource Impacts Under the Corps Regulatory Program Pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899
- Federal Agricultural Improvement and Reform Act of 1996, Public Law 104-494. 16 USC 3801 *et seq.*
- Fish and Wildlife Service Mitigation Policy (46 FR pages 7644-7663, 1981)

B. STATE AUTHORITIES

- 10 CSR 20-6.060 Missouri State Water Quality Certification
- 10 CSR 20-7.031 Missouri State Water Quality Standards
- Chapter 644 Missouri Revised Statutes, Missouri Clean Water Law

III. ESTABLISHMENT OF THE BANK

A. SPONSOR AGREEMENTS

MoDOT agrees to coordinate their planning, establishment, monitoring, bookkeeping, and reporting activities through MoDOT's Environmental Unit. MoDOT agrees to perform all necessary work to restore aquatic habitat in accordance with the provisions of this Banking Instrument. MoDOT agrees to perform this work until it is demonstrated to the satisfaction of the Chair USACE District for the bank, in coordination with the IRT, that the project complies with all conditions contained herein and within the associated BDP.

B. SPONSOR PERFORMANCE AND MODIFICATIONS

Credits shall become available in accordance with the schedule specified in Section IV.E of this Banking Instrument. In the event MoDOT determines that modifications must be made in a BDP to ensure successful establishment of habitat within a Bank, MoDOT shall submit a written request for approval of such modification to the IRT, through the Chair USACE District for the individual Bank. Documentation of implemented modifications shall be made consistent with Section III.DC.

C. REAL ESTATE PROVISIONS

The crossings to be replaced are on the Camden County road system. Other previously completed crossings replacements on the Little Niangua in Hickory County have drafted a 30-year agreement between the resource agencies and the county to maintain the new crossing (APPENDIX D). MoDOT has developed a similar agreement with Camden County. All three low water crossings are on the Little Niangua River (Figure 1). The crossings will be taken into the State Road System for replacement, bid through the normal MoDOT bidding process, constructed and inspected by MoDOT, then transferred back to the County under terms of the agreement.

D. AS-BUILT REPORT

MoDOT agrees to submit an as-built report within 90 days following completion of construction

of the Bank. The as-built report for the original construction will describe in detail any deviation from that described in a BDP and will include photo documentation showing the completed structures.

IV. OPERATION OF A BANK

A. SERVICE AREA

The Bank is established to provide mitigation to compensate for impacts to the waters of the United States, exclusively streams, within the regulatory jurisdiction of the USACE, Kansas City District, as shown in Figure A. The service area and mitigation ratios are to be established according to the guidance already established within the UI.

The service area for this Instrument is number seven, as outlined in the UI. The primary service area of the Bank consists of that portion of the Osage River Basin designated as Ozark/Osage Ecological Drainage Unit (EDU) (Maries River, Tavern Creek, Saline Creek, Lake Ozark, Niangua River, Grand Auglaize Creek, Gravois Creek, Pomme de Terre River, Osage River, Sac River, Cedar Creek, Turnback Creek) in MDC's Aquatic Gap Analysis Pilot Project. Aquatic Ecological System type called Tavern Creek. Bank credits will generally be authorized for use within the Osage River EDU, but may be authorized in the same larger Aquatic Subregion on a case-by-case basis as outlined in the UI, including the following areas:

Within the Kansas City District, Truman Satellite Office regulatory boundaries: Polk, Hickory, Camden, Dallas, and portions of Greene, Webster, Laclede, Pulaski, Lawrence, Dade, Cedar, St. Clair, Benton, Morgan, Christian, Barton, Vernon and Miller Counties;

Within the Kansas City District, State Regulatory Office regulatory boundaries: portions of Cole, Osage, and Maries Counties.

Examples of MoDOT projects that could be included in the Bank through the Banking process:

- Route 50 improvements (from Jefferson City to Sedalia)
- Route 54 improvements (just south of Jefferson City-Cole County, to El Dorado Springs-Cedar County)
- Route 5 improvements (from Morgan County to Lebanon-Laclede County)
- Route 63 improvements (within Osage and Maries Counties)
- Route 65 improvements (from Springfield-Greene County, to north of Lincoln-Benton County)
- Route 13 improvements (from Springfield-Greene County, to just north of Lowry City-St. Clair County)
- Route 160 improvements (within the jurisdiction of Kansas City District)
- Interstate 44 improvements (within the jurisdiction of Kansas City District)

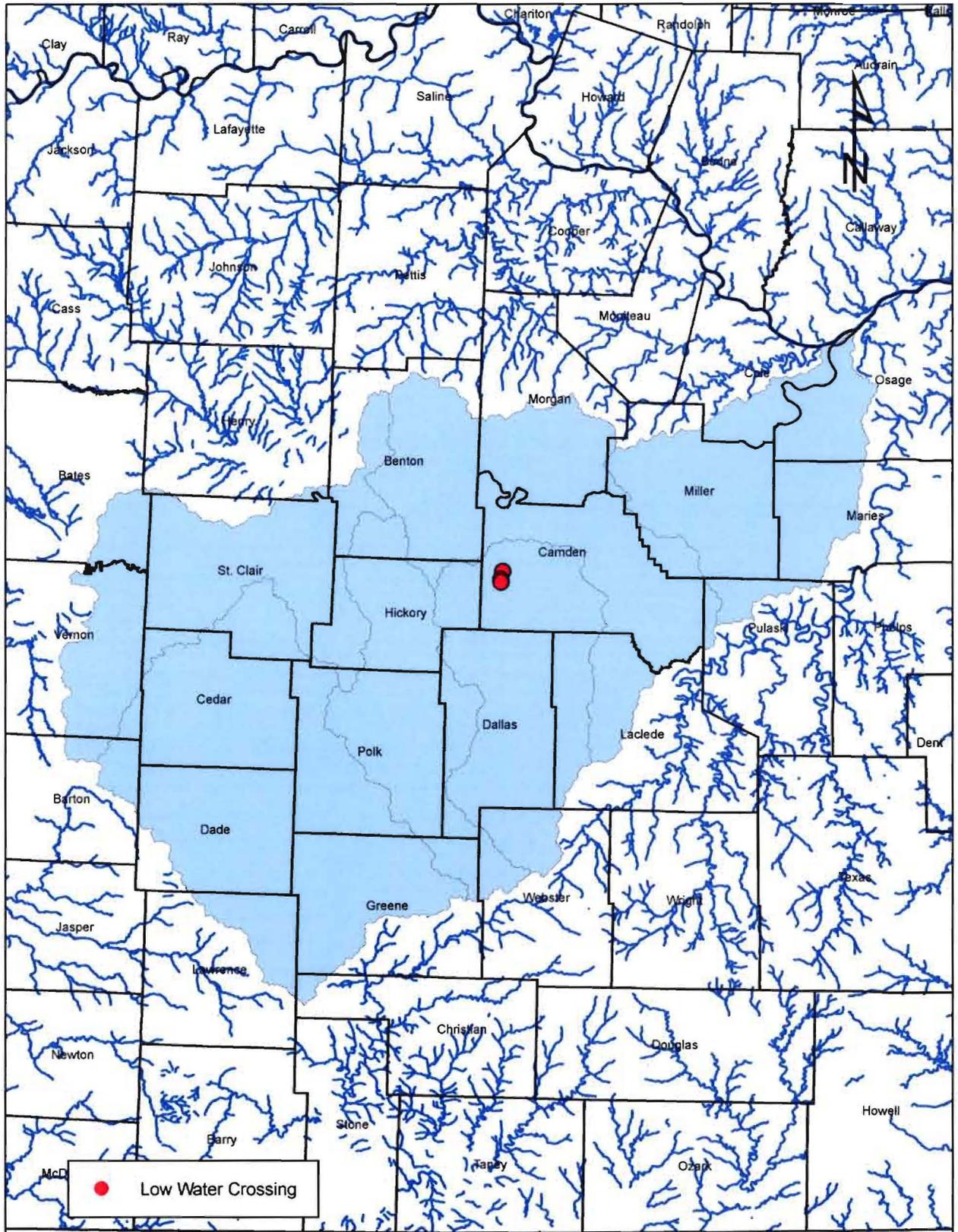


Figure 4. Little Niangua River Region Service Area Boundary.

Mitigation ratios may increase when impacts located in one EDU are mitigated at a Bank located in another EDU or other Aquatic Subregion. The USACE District with jurisdiction over the area of impact will be responsible for authorizing the use of credits from an individual Bank and determining the appropriate mitigation ratio in accordance with applicable requirements.

B. PROJECT ELIGIBILITY

The intended use of the Bank is for compensatory mitigation of aquatic impacts for federally or state-funded transportation projects. For projects with minor aquatic resource impacts that are authorized by nationwide Section 10/404 permits, use of a Bank generally is “preferable to on-site mitigation” (60 F.R. 58605 *et seq.*, November 28, 1995). Larger aquatic resource impacts may be appropriately mitigated in a Bank if the essential biological and/or physical functions of the impacted site can be adequately replaced.

In general, it is agreed that the Bank may be used to provide full or partial compensatory mitigation for unavoidable impacts to aquatic resources from transportation projects within its service area that receive a Section 10/404 regional or nationwide general permit. For projects requiring individual Section 10/404 permit authorization, the Chair USACE District, considering IRT member responses to the individual permit public notice, will determine projects that are eligible to use a Bank.

Use of the Bank to compensate for impacts outside its primary service area may be authorized when such use of a Bank is determined to be environmentally desirable and practicable, as determined on a case-by-case basis by the USACE Districts and the IRT. More mitigation credits may be required in such cases where the impacts are outside the primary service area of the Bank that is used. Credits may also be used to compensate for environmental impacts authorized under other environmental laws for federal, state, or local wetland, watershed, stream, or endangered species programs.

C. PROJECT INELIGIBILITY

The permitting USACE District will make decisions about the appropriate compensatory mitigation for impacts of a specific project on a case-by-case basis, during evaluation of any permit application. The permitting USACE District may determine during the public interest review or through coordination with the IRT that compensatory mitigation through use of credits from a Bank may be inappropriate for some projects. Likewise, signatories recognize that the USACE District can review any proposed project and determine that another form of compensatory mitigation is ecologically preferable because of case-specific circumstances.

D. SUCCESS CRITERIA

The following general criteria and those specified in subsequent BDPs will be used to assess basic project success:

1. Initial Success

MoDOT will demonstrate that it has an agreement with Camden County to modify these three low water crossings with span structures. The agreement will allow Camden

County to regularly perform maintenance activities on these structures, but will not allow them to modify the structures without concurrence from MoDOT and the USACE.

2. Final Success

Final success will be demonstrated once the structures are modified. Corps approval of the as-built report will serve as the formal acknowledgement of final success.

E. SCHEDULE OF CREDIT AVAILABILITY

Upon submittal of all appropriate documentation by MoDOT and subsequent approval by the Chair USACE District, in consultation with the other members of the IRT, it is agreed that credits will become available for use by MoDOT in accordance with the following schedule:

1. Initially, 15 percent of total anticipated credits shall be available for debiting immediately after the IRT's approval of a BDP and MoDOT has achieved initial success, as described in Section IV.D.1.
2. An additional 28 percent of total anticipated credits shall be available for debiting immediately after modification of any one of the low water crossings; MoDOT shall demonstrate final success as described in Section IV.D.2.
3. Up to an additional 28 percent of total anticipated credits shall be available for debiting immediately after modification of either one of the two remaining low water crossings; MoDOT shall demonstrate final success as referenced above.
4. The remaining credits shall be made available for debiting immediately after modification of the third low water crossing; MoDOT shall demonstrate final success as referenced above.

F. BANK CLOSURE

Individual Bank closure will occur when the terms and conditions of a BDP have been determined by the Chair USACE District, in consultation with the IRT, to be fully satisfied or until all credits have been debited, whichever is later.

V. MAINTENANCE AND MONITORING OF A BANK

A. ACCOUNTING PROCEDURES

MoDOT will maintain a ledger for bank credits and debits for the Bank. The ledger will record the date and number of credits released when the credit availability criteria are met. The debits and credits balance will be recorded and balanced for stream credits (see Section for a sample ledger). MoDOT shall submit an annual ledger showing all transactions for each Bank to the Chair USACE District for distribution to the IRT members.

B. MAINTENANCE AND MONITORING PROVISIONS

MoDOT agrees to ensure that all necessary work is performed to maintain a Bank consistent

with the maintenance criteria established in a BDP. The County shall continue with such maintenance activities until closure of a Bank. Deviation from the approved BDP maintenance plan is subject to review and written approval by the Chair USACE District in consultation with the IRT. MoDOT and Camden County Commission have entered into an agreement that releases MoDOT from all liability in regards to the crossing, and it will require the County to conduct all future maintenance on the structure(s). A stipulation of the MoDOT/County agreement requires the county to incorporate aquatic organism and sediment transport considerations into subsequent design and construction whenever the crossings are to be repaired or replaced. An additional stipulation of the agreement is that the county shall, after flood events, visually inspect the improved crossings for scour and structure undermining and remove debris that may accumulate on the crossing center bents and abutments.

MoDOT will monitor the structural crossings and stream channel for any notable changes on a yearly basis for five years, and will include this information in the annual Bank Report.

C. REPORTING

MoDOT shall annually submit to the Chair USACE District a report in digital format describing the debits and credits for the Bank Reports will be submitted each calendar year by December 31 for Bank, and will contain the following:

1. A US Geological Survey map showing the location of the Bank. A digital point location will also be included;
2. A narrative summarizing the condition of the individual Bank and all regular maintenance activities;
3. Appropriate topographic maps (e.g., 1-2-foot contour intervals) showing location of sampling plots, permanent photo points, and location of transects;
4. Results of qualitative fish, shellfish, and wildlife observations;
5. Ledger showing stream impacts debited in the Bank and the Bank's stream credit balances (see Sections V.A and Table 2). List of deficiencies identified for the Bank; and

D. CONTINGENCY PLANS/REMEDIAL ACTIONS

Should the Chair USACE District, in consultation with the IRT, determine that remedial action is necessary because a Bank has failed to achieve the success criteria specified in Section IV.D, MoDOT shall develop and implement remedial action plans in coordination with the Chair USACE District and the IRT. In the event MoDOT fails to implement necessary remedial actions at the Bank site within 90 calendar days or other time period determined by the Chair USACE District in consultation with the IRT, the Chair USACE District will notify MoDOT that debiting from the bank is suspended.

If the Chair USACE District determines that the Bank is operating at a deficit, MoDOT will be notified that debiting of credits from that Bank should immediately cease. The Chair USACE District, in consultation with the IRT and MoDOT, will determine what remedial actions are necessary to correct the situation.

VI. RESPONSIBILITIES OF THE IRT

A. AGENCY OVERSIGHT

The agencies represented on the IRT agree to provide appropriate oversight in carrying out provisions of the Banking Instrument. The IRT will strive to obtain consensus on its actions. The Chair USACE District for each individual Bank will have the responsibility for making final decisions within 120 days of the date the public notice was published where consensus cannot otherwise be reached.

B. AGENCY REVIEW

MoDOT will distribute electronic copies of the Bank Instrument and application, annual reports, credit release requests, remedial action plans, and Bank closure reports to the IRT members. The agencies represented on the IRT agree to review and provide written comments on all Bank Instruments and applications, annual reports, credit release requests, remedial action plans, and Bank closure reports within 45 calendar days. If a IRT agency chooses not to participate in a particular portion of the review process, they may notify the USACE District and MoDOT. If the USACE does not receive written comments within 45 calendar days, the District shall assume report approval and proceed to the next stage of the review process. This does not guarantee that mitigation proposals or permit applications will be approved within 45 days. Written comments may be submitted using e-mail correspondence.

C. CREDIT RELEASE

The Chair USACE District agrees to review in consultation with the IRT, reports evaluating the success of the Bank and release approved credits within 60 days.

D. COMPLIANCE INSPECTIONS

The agencies represented on the IRT shall conduct compliance inspections, as determined necessary by the Chair USACE District in consultation with the IRT, to verify whether all success criteria have been met and whether credits may be released in the Bank. The Chair USACE District shall report their findings to MoDOT in writing and recommend corrective measures, if any, until the terms and conditions of a BDP have been determined to be fully satisfied or until all credits have been debited, whichever is later.

VII. OTHER PROVISIONS

A. FORCE MAJEURE

MoDOT will not be responsible for any stream impacts that may relate to Bank actions (i.e., relating to changes in stream morphology resulting from removal of the proposed low water crossings) that may be attributed to natural catastrophes such as flood, drought, disease, regional pest infestation, etc., that the Chair USACE District, in consultation with the IRT, determines is beyond the control of MoDOT to prevent or mitigate.

B. DISPUTE RESOLUTION

Resolution of disputes about application of this Banking Instrument shall be in accordance with those stated in the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 F.R. 58605 *et seq.*, November 28, 1995). The Lead USACE District has the responsibility of making final decisions for this umbrella Banking Instrument and the Chair USACE District has the responsibility of making final decisions regarding an individual Bank when consensus cannot be reached between the IRT members and/or MoDOT.

C. VALIDITY, MODIFICATION, AND TERMINATION OF THE BANKING INSTRUMENT

This Banking Instrument will become valid on the date of the last participant's signature. This Banking Instrument may be amended or modified with the written approval of all signatory parties. The Lead USACE District can reconvene the IRT for amendments to this agreement and the Chair USACE District can reconvene the IRT for an amendment to the BDP for an individual Bank. However, unless an individual Bank is in substantial noncompliance with its BDP, amendments to this agreement or its BDP cannot include changes that postpone the use of approved credits or render the Bank unavailable for mitigation.

Any of the IRT members may terminate their participation in this agreement upon written notification of termination to all signatory parties. Participation of the IRT members will terminate 90 calendar days after written notification. Either the Lead USACE District or MoDOT may terminate this agreement by giving a 90-day written notice to the other party and the IRT. MoDOT or the Chair USACE District for an individual Bank may terminate that BDP by giving a 90-day written notice to the other party and the IRT.

D. CONTROLLING LANGUAGE

To the extent that specific language in this document changes, modifies, or deletes terms and conditions contained in those documents that are incorporated into the BDP by reference, and that are not legally binding, the specific language within this Banking Instrument shall be controlling. The Banking Instrument shall be controlling for all items it covers in detail. The BDP shall be controlling for those items within it that the Banking Instrument states will be outlined in detail or may be modified in the BDP. Any bank that would contradict the controlling language of this Banking Instrument could be developed and approved independently in accordance with the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks. Definitions for types of Banking that may occur are taken from RGL No. (02-2).

VIII. SIGNATURES

BANKING INSTRUMENT LEAD USACE DISTRICT



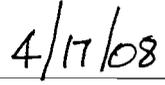
Roger A. Wilson, Jr.
Colonel, Corps of Engineers
District Commander

6 Apr 09
Date

MBRT CONCURRENCE



William A. Spratlin
Director
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency, Region VII



Date

RECEIVED
REGISTRY DIVISION
08 APR 29 AM 9:02

MBRT CONCURRENCE

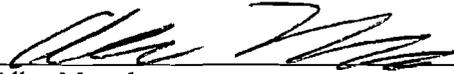


Charles Scott
Field Supervisor
U.S. Fish & Wildlife Service

4/1/08
Date

RECEIVED
REGULATORY BRANCH
08 APR -4 PM 2:25

MBRT CONCURRENCE



Allen Masuda
Division Administrator, Missouri Division
Federal Highway Administration

9/16/08

Date

MBRT CONCURRENCE

for Earl Palast
Daniel Schuette, Director
Division of Environmental Quality
Missouri Department of Natural Resources

4/21/08
Date

RECEIVED
LABORATORY DIVISION
08 MAY - 1 PM 12: 54

MBRT CONCURRENCE



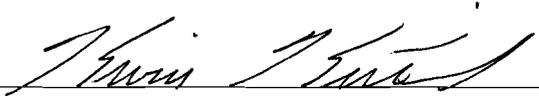
Jane Epperson
Policy Supervisor, Missouri Department of Conservation

3/25/08

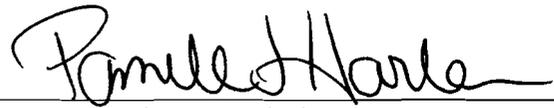
Date

FOR MISSOURI DEPARTMENT OF TRANSPORTATION

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

By  4-18-08
Title Chief Engineer

ATTEST:


Secretary to the Commission

Approved as to Form:


Commission Counsel



Photograph 1: Taken 10/30/07. Looking upstream at Howard's Ford.



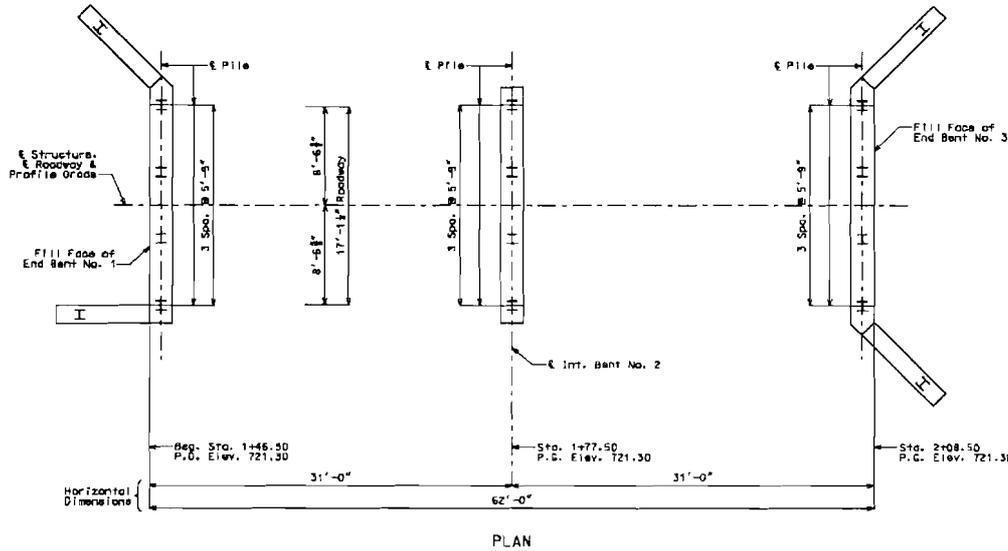
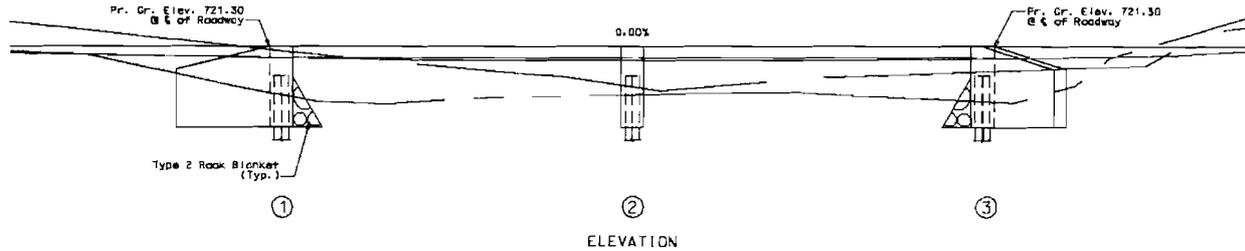
Photograph 2: Taken 10/30/07. Looking east at Green's Slab.



Photograph 3: Taken 10/30/07. Looking east at Griswald's Slab.

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
 (2 @ 31') Reinforced Concrete Slab Spans

DRAWN	STATE	PROJECT	SHEET NO.
MC	BR	1	
JOB NO. J5P0309J			
CONTRACT ID			
PROJECT NO.			
COUNTY CAMDEN			DATE
SEC/SUR 27	TWP 38N	RAS 19W	



FOR INFORMATION ONLY
 NOT FOR CONSTRUCTION

NOTE:
 For General Notes, Estimated Quantities, Pile Data
 and Location Sketch, see Sheet No. .

B.M. #1-07 - 80° SPIKE IN 9" SYCAMORE TREE -
 20' EAST OF GREEN RIDGE ROAD,
 100' ± NORTH OF LOW WATER CROSSING. ELEV. - 725.910

BRIDGE OVER LITTLE NIANGUA RIVER

STATE ROAD
 ABOUT
 PROJECT NO. STA. 1+46.50
 JOB NO. J5P0309J RTE. CRD NN-166

STD.
STD.
STD.
A7634

Designed Jan. 2008
 Detailed Jan. 2008
 Checked

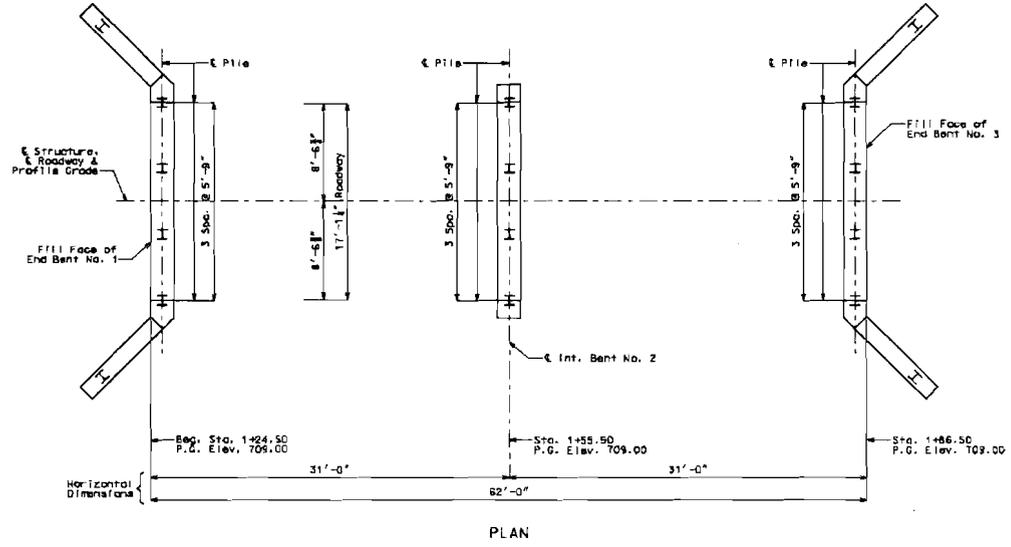
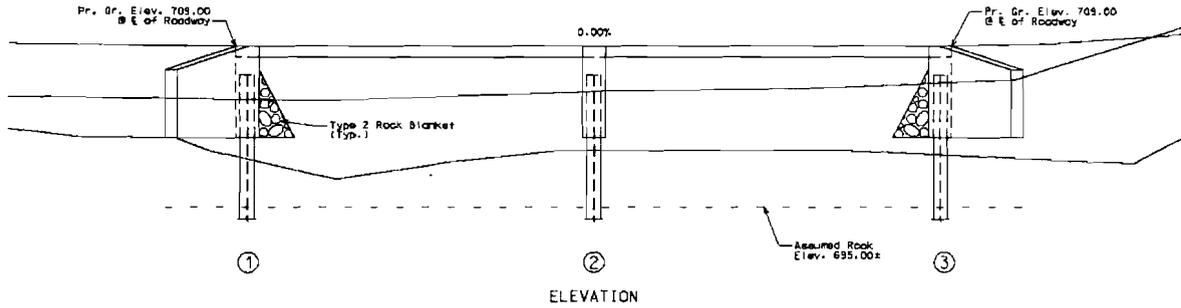
Notes: This drawing is not to scale. Follow dimensions.

Sheet No. of

d:\pwworkspace\schepm\dwg\68233\8_A7634_2011\J5P0309.dwg 01/31/08 PN 03/07/2008

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
 (2 @ 31') Reinforced Concrete Slab Spans

STATE	MO	SHEET	BR	SHEET NO.	1
JOB NO. J5P0309J					
CONTRACT ID					
PROJECT NO.					
COUNTY CAMDEN					
DATE					
SEC/SUR	15	TWP	38N	RGE	19W



FOR INFORMATION ONLY
 NOT FOR CONSTRUCTION

Note:
 For General Notes, Estimated Quantities, Pile Data
 and Location Sketch, see Sheet No. .

B.M. #3-07 - 80° SPIKE IN SOUTH SIDE OF 14" ASH TREE -
 29' SOUTH OF 2 BANNISTER HOLLOW ROAD,
 74' WEST OF LOW WATER CROSSING, ELEV. - 713.340

BRIDGE OVER LITTLE NIANGUA RIVER

STATE ROAD
 ABOUT
 PROJECT NO. STA. 1424.50
 JOB NO. J5P0309J RTE. CRD NN-166

STD.
STD.
STD.
STD.
A7633

Designed Jan. 2006
 Detailed Jan. 2008
 Checked 2008

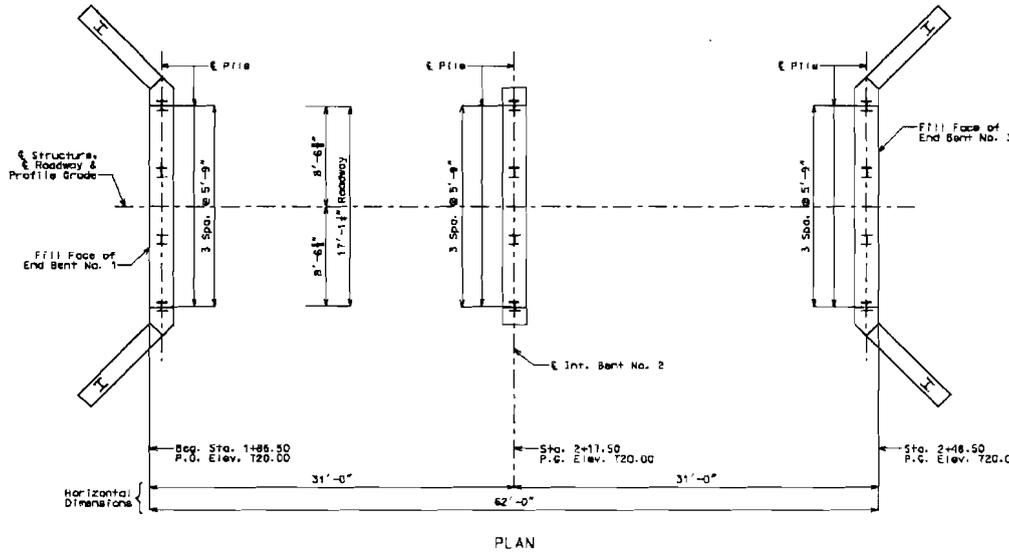
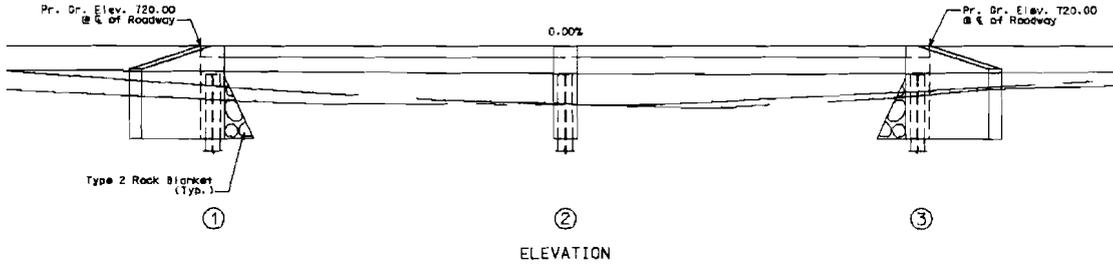
Note: This drawing is not to scale. Follow dimensions. Sheet No. of

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APPENDIX C: Profile for Green's Slab crossing.

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
 (2 @ 31') Reinforced Concrete Slab Spans

STATE	MO	DISTRICT	BR	SHEET NO.	1
JOB NO.	J5P0309J				
CONTRACT ID					
PROJECT NO.					
COUNTY	CAMDEN			DATE	
SEC/SUR	22	TWP	38N	RDE	19W



FOR INFORMATION ONLY
 NOT FOR CONSTRUCTION

Note:
 For General Notes, Estimated Quantities, Pile Data
 and Location Sketch, see Sheet No. 1.

B.M. #2-01 - 80° SPIKE IN 1 1/2" HACKBERRY TREE,
 20' EAST OF GREENS FORD ROAD,
 50' NORTH OF LOW WATER CROSSING. ELEV. = 724.650

BRIDGE OVER LITTLE NIANQUA RIVER

STATE ROAD
 ABOUT
 PROJECT NO. STA. 1+86.50
 JOB NO. J5P0309J RTE. CRD NN-166

STD.
STD.
STD.
STD.
A7632

Designed Jan. 2008
 Demolished Jan. 2008
 Checked

Note: This drawing is not to scale. Follow dimensions.

Sheet No. of

APPENDIX D: Camden County Agreement.

CCO Form: DE10
Approved: 01/99 (BDG)
Revised: 10/06 (MRA)
Modified:

Route 5 and Route 54
Job No. J5P0309J
Camden County
County Agreement

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
COUNTY AGREEMENT**

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the County of Camden, Missouri (hereinafter, "County").

WITNESSETH:

WHEREAS, the Commission is required to mitigate the stream impacts from the Route 5 and Route 54 transportation projects under Job No. J5P0592A and J5P0309; and

WHEREAS, the County maintains three low water stream crossings (hereinafter, "crossings") on County Roads N-166, NN-166R and N-145 over the Little Niangua River; and

WHEREAS, the Commission will mitigate the stream impacts from the Route 5 and Route 54 transportation projects by structurally modifying these crossings thus enhancing the Niangua Darter habitat; and

WHEREAS, the Commission and County realize the importance and need for these crossings to be structurally modified to facilitate fish passage and sediment transport.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations contained herein, the parties agree as follows:

(1) DESIGNATION OF IMPROVEMENT: The public improvements designated as Job No. J5P0309J, in Camden County, shall consist of modifying the crossings over the Little Niangua River to enhance the Niangua darter habitat.

(2) IMPROVEMENTS WITHIN COUNTY: The improvements within the County are located as follows:

The crossings are located over the Little Niangua River at Howard's Ford on County Road N-166, Green's Slab on County Road NN-166R and Griswald on County Road N-145.

(3) **LOCATION:** The general location of the public Improvement is shown on an attached sketch marked "Exhibit A" and made a part of this Agreement.

(4) **PURPOSE:** It is the intent of this Agreement that the Commission shall provide without cost to the County the design and construction of modifications to the crossings to facilitate fish passage and sediment transport while still allowing for the safe passage of vehicular traffic over the crossing.

(5) **RIGHT-OF-WAY USE:** The County grants the right to use the right-of-way of public roads at the crossings as necessary for construction of said public improvement.

(6) **CLOSE AND VACATE:** The County shall temporarily close and vacate all public roads and crossings, or parts thereof, which may be necessary to permit the construction of the project in accordance with the detailed plans. When the Commission deems it necessary to close County Roads N-145, N-166 and NN-166R permanently during construction, the County shall be advised in advance of the road closure.

(7) **RIGHT-OF-WAY ACQUISITION:** No acquisition of additional right-of-way is anticipated in connection with Job No. J5P0309J or contemplated by this Agreement.

(8) **UTILITY RELOCATION:** It is understood and agreed by the parties to this Agreement that no county-owned utility facilities will require relocation or adjustment in connection with these improvements; however, should utility facilities be discovered at any time during development or construction of this improvement, relocation or adjustment of the same will be done and performed under a supplemental agreement covering the subject, and in accordance with Commission policy then in effect on division of costs for adjustment of utility facilities.

(9) **DRAINAGE:** The Commission may use any existing storm and surface water drainage facilities now in existence in the area. The County shall be responsible for receiving and disposing of storm and surface water discharged from those drainage facilities which the Commission constructs within the limits of highway right-of-way to the extent of the County's authority and control of the storm sewer facilities or natural drainage involved.

(10) **PERMITS:** The Commission shall secure any necessary approvals or permits from the Surface Transportation Board, the Public Service Commission of Missouri, or any other state or federal regulating authority required to permit the construction and maintenance of the crossings.

(11) **COMMENCEMENT OF WORK:** The Commission shall perform the work in accordance with final detailed plans approved by the FHWA (or as they may be changed from time to time by the Commission with the approval of the FHWA) at such time as federal and state funds are allocated to the public improvement in an amount sufficient to pay for the federal and state government's proportionate share of

construction costs. The obligation of the Commission toward the actual construction of the public improvement shall be contingent upon the timely completion of plans to allow for the obligation of federal funds for such construction, upon approval of the plans by the FHWA, upon the award by the Commission of the contract for the construction, and upon the approval of the award by the FHWA.

(12) MAINTENANCE: Effective upon completion of construction, the Commission shall transfer ownership to the County, and the County will accept the portions of existing public roads and crossings that were affected by these improvements.

(13) ACCEPTED WITHIN HIGHWAY SYSTEM: Effective upon initializing construction of these improvements, the Commission accepts the portion of the County road system at the crossings described in this Agreement as part of the State Highway System for the purposes of this project. However, during the construction period contemplated in this Agreement:

(A) The Commission will assume no police or traffic control functions not obligatory upon Commission immediately prior to the execution of this Agreement; and

(B) The County shall perform or cause to be performed emergency maintenance on the project site.

(14) COUNTY TO MAINTAIN: Upon completion of construction of these improvements, the County shall accept control and maintenance of the improved crossings and shall thereafter keep, control, and maintain the same as, and for all purposes, a part of the County system at its own cost and expense and at no cost and expense whatsoever to the Commission. All obligations of the Commission under this Agreement shall cease upon completion of these improvements. After the modifications to the crossings are constructed pursuant to this Agreement:

(A) The County shall incorporate aquatic organism and sediment transport considerations into subsequent design and construction whenever the crossings are to be repaired or replaced; and

(B) The County shall allow the Missouri Department of Conservation to conduct stream morphology and fish surveys to document the effects of the crossing modifications.

(C) The County shall, after flood events, visually inspect the improved crossings for scour and structure undermining and remove debris that may accumulate on the crossing center bents and abutments.

(D) The County shall only use appropriate size shot rock (and not concrete or grouted rock) on the improved crossings to fill scour voids and/or areas needing additional protection from erosion.

(15) **POLICE POWERS:** It is the intent of the parties to this Agreement that the County shall retain its police powers with respect to the regulation of traffic upon the improvement contemplated. However, the County will enact, keep in force, and enforce only such regulations relating to traffic movement and parking restrictions as may be approved by the Commission and as are not in conflict with any regulations for federal aid. The Commission shall not arbitrarily withhold approval of reasonable traffic regulations, signs, and markings which will permit the movement of traffic in accordance with accepted traffic regulation practices.

(16) **WITHHOLDING OF FUNDS:** In the event that the County fails, neglects, or refuses to enact, keep in force or enforce regulations specified or enacts regulations contrary to the provisions in this Agreement, or in any other manner fails, neglects or refuses to perform any of the obligations assumed by it under this Agreement, the Commission may, after serving written request upon the County for compliance and the County's failure to comply, withhold the expenditure of further funds for improvement and construction of the crossings in the County.

(17) **FEDERAL HIGHWAY ADMINISTRATION:** This Agreement is entered into subject to approval by the Federal Highway Administration, and is further subject to the availability of federal and state funds for this construction.

(18) **INDEMNIFICATION:** To the extent allowed by law, the County shall defend, indemnify and hold harmless the Commission, including its members and department employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the County's performance of its obligations under this Agreement.

(19) **AMENDMENTS:** Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved on or between the duly authorized representatives of the County and Commission.

(20) **COMMISSION REPRESENTATIVE:** The Commission's District Engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

(21) **COUNTY REPRESENTATIVE:** The County's Presiding Commissioner is designated as the County's representative for the purpose of administering the provisions of this Agreement. The County's representative may designate by written notice other persons having the authority to act on behalf of the County in furtherance of

the performance of this Agreement.

(22) **NOTICES:** Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be deemed given three (3) days after delivery by United States mail, regular mail postage prepaid, or upon receipt by personal or facsimile delivery, addressed as follows:

(A) To the County:

The Honorable Carolyn Loraine
Presiding Commissioner
1 Court Circle
Camdenton, Missouri 65020

Facsimile No.: (573) 346-5181

(B) To the Commission:

Mr. Roger Schwartze, P.E.
District Engineer
Missouri Department of Transportation
1511 Missouri Boulevard, P.O. Box 718
Jefferson City, Missouri 65102

Facsimile No.: (573) 751-8267

or to such other place as the parties may designate in accordance with this Agreement. To be valid, facsimile delivery shall be followed by delivery of the original document, or a clear and legible copy thereof, within three (3) business days of the date of facsimile transmission of that document.

(23) **ASSIGNMENT:** The County shall not assign, transfer or delegate any interest in this Agreement without the prior written consent of the Commission.

(24) **VENUE:** It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(25) **LAW OF MISSOURI TO GOVERN:** This Agreement shall be construed according to the laws of the State of Missouri. The County shall comply with all local, state and federal laws and regulations relating to the performance of the contract.

(26) **SOLE BENEFICIARY:** This Agreement is made for the sole benefit of the parties hereto and nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Commission and the County.

(27) **AUTHORITY TO EXECUTE:** The signers of this Agreement warrant that they are acting officially and properly on behalf of their respective institutions and have been duly authorized, directed and empowered to execute this Agreement.

(28) **SECTION HEADINGS:** All section headings contained in this Agreement are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by the County this 31 day of March, 2008.

Executed by the Commission this 14th day of April, 2008.

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

By [Signature]
Title Chief Engineer

CAMDEN COUNTY

By [Signature]
Title: Presiding Commissioner

ATTEST:

[Signature]
Secretary to the Commission

By [Signature]
Title: First District Commissioner

APPROVED AS TO FORM:

[Signature]
Commission Counsel

[Signature]
: Second District Commissioner

ATTEST:

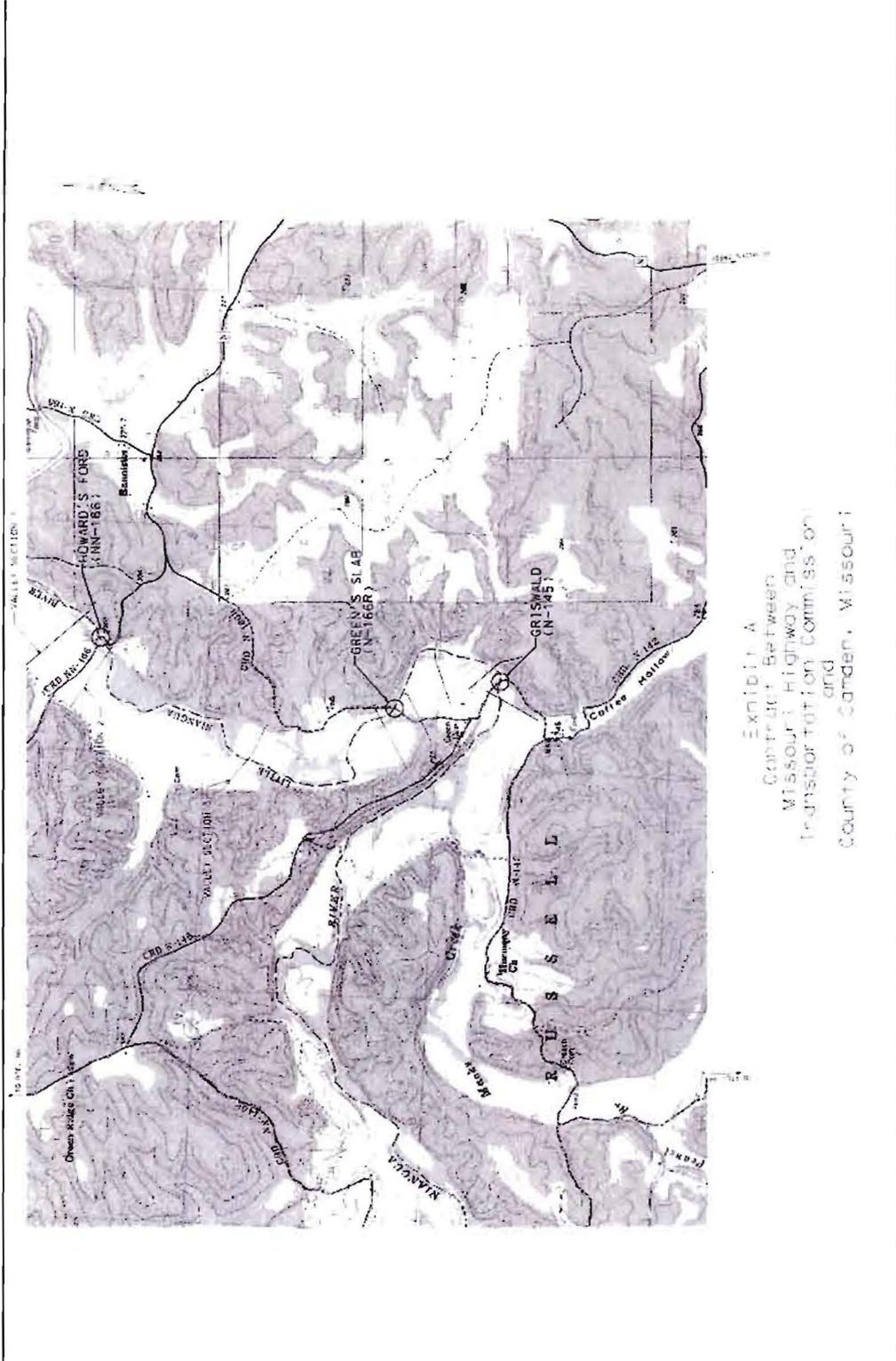
[Signature]
SECRETARY TO THE COMMISSION

ATTEST:

By _____
Title _____

APPROVED AS TO FORM:

By [Signature]
Title County Attorney



APPENDIX E: SHPO Clearance Letter.



Matt Blunt, Governor • Doyle Childers, Director

DEPARTMENT OF NATURAL RESOURCES

www.dnr.mo.gov

February 7, 2008

Robert L. Reeder
Missouri Department of Transportation
P.O. Box 270
Jefferson City, Missouri 65102

Re: Route 54, Job No. J5P0309J (FHWA) Camden County, Missouri

Dear Dr. Reeder:

Thank you for submitting information on the above referenced project for our review pursuant to Section 106 of the National Historic Preservation Act (P.L. 89-665, as amended) and the Advisory Council on Historic Preservation's regulation 36 CFR Part 800, which requires identification and evaluation of cultural resources.

We have reviewed the Section 106 Survey Memo entitled *Phase I Cultural Resource Survey: Route 54 Stream Mitigation Low Water Crossings, Camden County, MoDOT Job No. J5P0309J*. Based on this review it is evident that a thorough and adequate cultural resources survey has been conducted of the project area. We concur with your recommendation that there will be **no historic properties affected** and, therefore, we have no objection to the initiation of project activities.

Please be advised that, should project plans change, information documenting the revisions should be submitted to this office for further review. In the event that cultural materials are encountered during project activities, all construction should be halted, and this office notified as soon as possible in order to determine the appropriate course of action.

If you have any questions, please write the State Historic Preservation Office, P.O. Box 176, Jefferson City, Missouri 65102 attention Review and Compliance, or call Judith Deal at 573/751-7862. Please be sure to include the SHPO Log Number (013-CM-08) on all future correspondence or inquiries relating to this project.

Sincerely,

STATE HISTORIC PRESERVATION OFFICE

A handwritten signature in cursive script that reads "Mark A. Miles".

Mark A. Miles
Director and Deputy
State Historic Preservation Officer

MAM:jd

c Peggy Casey, FHWA
Jane Beetem, DNR/OD



APPENDIX F: USFWS Clearance Letter.



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Columbia Ecological Services Field Office
101 Park DeVille Drive, Suite A
Columbia, Missouri 65203-0057
Phone: (573) 234-2132 Fax: (573) 234-2181

June 23, 2008

Mr. Alan Leary
Senior Biological Specialist
Missouri Department of Transportation
P.O. Box 270
Jefferson City, Missouri 65102

Dear Mr. Leary:

This letter is in response to your letter dated May 23, 2008, concerning the proposal by the Missouri Department of Transportation (MoDOT) to modify three low water crossings on the Little Niangua River in Camden County, Missouri. The three crossings are Green's Slab, Griswald's Slab and Howard's Ford. The project is intended to improve habitat for the federally threatened Niangua darter (*Etheostoma ninguae*) by removing barriers that prevent fish passage. Modification of these structures will also improve channel stability and sediment transport which will also improve habitat for the darter. The MoDOT is undertaking this project to procure stream mitigation credits for impacts from projects on Route 54 and Route 5 in Camden and Miller Counties.

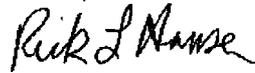
At each of the three crossings, the project will involve removing a section of the existing low water crossing where flow is the greatest and replacing these sections with two precast spans. Potential impacts will include temporary crossings at each site and the construction of coffer dams for the construction of the new piers and for settling basins around each pier. It is our understanding that a ring cofferdam constructed of sandbags will be constructed for the settling basin. The MoDOT has used similar settling basins for other bridge construction and these met water quality standards from the Missouri Department of Natural Resources.

Therefore, we concur with your determination that the proposed work is not likely to adversely affect the Niangua darter or adversely affect downstream critical habitat, provided MoDOT follows the special provisions (special construction provisions developed with MDC and the Service) outlined in your May 23, 2008, letter.

2

Should you have questions concerning this response or if we can be of any further assistance, please contact Mr. Rick I. Hansen at the address above, or by telephone at (573)234-2132, ext. 106.

Sincerely,



for Charles M. Scott
Field Supervisor

CC: MDC: Jefferson City, MO (Attn: Doyle Brown)
MDC: Lebanon, MO (Attn: Craig Fuller)
MDNR: Jefferson City, MO (Carrie Schulte)
COE, Jefferson City, MO (Ward Lenz)
COE: Kansas City, MO (Doug Bertka)

Q:\STAFF\Folders\Hansen\Little Niangua River_3 hvc's MoDOT.doc