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**To:** [Shively, Matthew S CIV USARMY CENWK \(USA\)](#)  
**Cc:** [Frazier, Mark D CIV USARMY CENWK \(USA\)](#); [Hibbs, David R CIV USARMY CENWK \(USA\)](#); [MDNR MVS External Stakeholder](#); [Bax, Stacia](#); [Irwin, Mike](#); [Hentges, Valerie](#); [Kelly, Kaitlyn](#); [Simmons, Bryan](#); [Stuart Miller](#); [Vitello, Matt](#); [Amy Rubingh](#); [Campbell, Jennifer](#); [Theresa Hyland](#); [Herrington, Karen](#); [Iwona Kuczynska@fws.gov](#); [Gaggero, Jaime](#); [Weilert, Steven](#)  
**Subject:** [Non-DoD Source] EPA comments on proposed reissuance of commercial dredging permits on the Lower Missouri River  
**Date:** Friday, May 1, 2020 6:24:58 PM

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Mr. Shively,

I have reviewed the public notice application and have the following comments:

The applicants have proposed renewing permits for commercial sand and gravel mining within five segments of the Lower Missouri River between St. Louis, Missouri and Rulo, Nebraska (approximate River Miles 0 to 498). These applicants include:

- \* Capital Sand Company, Inc. (NWK-2011-00361), Waverly, Jefferson City, and St. Charles Segments
- \* Hermann Sand & Gravel, Inc. (NWK-2011-00362), Jefferson City and St. Charles Segments
- \* Holliday Sand & Gravel Company (NWK-2011-00363), St. Joseph, Kansas City, and Waverly Segments
- \* Con-Agg of Missouri, LLC. (NWK-2011-00364), Jefferson City Segment
- \* Limited Leasing Company (MVS-2011-00177), St. Charles Segment
- \* J.T.R., Inc. (MVS-2011-00178), St. Charles Segment

The EPA has concerns regarding the proposed project, as follows: (1) characterization of basic project purpose, (2) determination of water dependency, (3) evaluation of direct, secondary and cumulative impacts for practicable alternatives, (4) identification of least environmentally damaging practicable alternative, (5) demonstration of adequate impact minimization, and (6) determination of adequate compensation.

According to the 404(b)(1) Guidelines, dredge and fill activities in WOTUS are to be evaluated through a sequencing process (as follows):

1. Can adverse impacts to the aquatic ecosystem be avoided through the selection of a least environmentally damaging practicable alternative?
2. Can any unavoidable impacts be minimized through appropriate and practicable measures?
3. Can any unavoidable adverse impacts, which remain after minimizing measures have been taken, be compensated through appropriate and applicable measures?

The basic project purpose is to mine sand and gravel for commercial purposes from the Missouri River in the states of Kansas and Missouri. A specific location cannot be included in a basic project purpose. For example, in this context, describing part of the basic project purpose as being "from the Missouri River" is inappropriate, given that

sand and gravel are readily mined from upland locations throughout the region. The EPA believes that achieving the project purpose is not dependent on the discharge of dredged material into Waters of the United States; therefore, the project is not considered water dependent. Non-water dependent projects are assumed to have alternatives that would not impact Waters of the United States. Section 404(b)(1) of the Clean Water Act, part 230.10, Restrictions on Discharge, state that no discharge shall be permitted if there is a practicable alternative which would have less impact on the aquatic ecosystem, as long as the alternative does not have other significant adverse environmental consequences. An alternative is considered practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of the overall project purpose. The applicant should be aware that increased costs of alternatives or an unwillingness to pursue practicable alternatives do not render such alternatives impracticable.

Portions of the proposed and ongoing dredging operations are located adjacent to or near units of the Big Muddy National Wildlife Refuge, a special aquatic site. Special aquatic sites also include vegetated shallows which may be present during low flows in Missouri River tributaries, as well as riffle and pool complexes, which may be present during high flows in Missouri River tributaries. Excavated and deposited sediments within dredged reaches may drift and settle within these areas, which include native fish spawning habitat. EPA recommends further setback restrictions within the St. Charles segment due to the proximity of refuge areas (Cora Island, Boone's Crossing), further setback restrictions within the Jefferson City segment (Overton Bottoms). The 2017 Missouri River Bed Degradation Feasibility Study (2017 Study) and 2011 Environmental Impact Statement (EIS) identified a range of practicable alternatives to the currently proposed mining locations, which are viable alternatives under the Section 404 Clean Water Act analysis; these alternatives include elimination of sand and gravel mining in the Missouri River, or reduction of sand and gravel mining in the Missouri River. These alternatives shift the sand and gravel mining to upland pit mines. The 2017 Study and 2011 EIS also evaluated secondary (indirect) and cumulative impacts for all practicable alternatives, including the proposed alternative. After the alternatives analysis, the applicant must identify the least environmentally damaging practicable alternative (LEDPA). Finally, the applicant must fully mitigate for all unavoidable direct, secondary and cumulative impacts of the project.

The results of the 2017 Missouri River Bed Degradation Feasibility Study clearly indicate that mining within the Missouri River for sand and gravel isn't the least environmentally damaging practicable alternative for Holliday Sand & Gravel Company's request to mine for sand and gravel in the Kansas City area. Specifically, sand and gravel dredging has caused the river bed within the Kansas City reach of the Missouri River to be highly degraded and also causes this degradation to spread upstream to major tributaries, including the Kansas River, as well as minor tributaries. According to the 2017 study, "Bed degradation is the erosion or down cutting of the river channel. Bed degradation in this portion of the river is a significant problem that has caused considerable and costly damages to federal, state, and local infrastructure. Depending on the extent, continued bed degradation has the potential to negatively impact navigation structures, levees and floodwalls, bridges, water supply-intakes, and a host of other features. Results from this study indicate cumulative expenses (investments and repairs) in the amount of \$269 million (fiscal year 2017 dollars) would be incurred to adjust for degradation and associated low-water-surface elevations over the 50-year period of analysis if the problem is not addressed. The average annual cost would be \$5.3 million assuming the fiscal year 2017 discount rate of 2.875%." This degradation leads to channel incision and head-cutting, and not only effects the river bed, but also causes lateral instability of the river bank which ultimately leads to river bank failure and erosion. Collapse of river banks can lead to loss of life and property. The EIS also states, "Head cuts are occurring on several of the tributaries. These head cuts are affecting bank stability, causing scour and exposure of bridge piers, and causing potential loss of habitat as banks of tributary streams erode. An example is a bridge at Line Creek, located near RM 385 in the Kansas City reach. In this location, a traffic bridge located just upstream of the tributary mouth was shut down temporarily for safety concerns while temporary measures were implemented to ensure the bridge's safety. This incident occurred in FY 2009 and is an indication of the active nature of the river bed degradation and its impacts. The head cut on this tributary has now migrated to the point that a railroad bridge further upstream is also at risk." Bed degradation also causes reductions in flood control benefits provided by levees compromised by river bed degradation; without expensive repairs catastrophic levee failure would result in loss of life and property. Bed degradation further effects drinking water supply intakes, groundwater wells, and cooling water intakes for electrical utilities; these intakes provide drinking water and electricity to approximately 2.2 million people. River dredging further impacts shallow water habitat, deep water

habitat, and wetlands that provide feeding and foraging for fish, migratory birds, and aquatic invertebrates.

The majority of mitigation measures described in the 2011 EIS are minimization measures under Section 404, and do not qualify as compensatory mitigation for 404 permitting purposes. The only proposed compensatory mitigation measure in the EIS was creation of shallow water habitat for native fish, which isn't proposed in the 404 individual permit application, is counteracted by continued dredging in highly degraded reaches, and doesn't mitigate for the previously described effects of commercial dredging on public and private infrastructure, direct affects to deep and shallow water habitat, and the cumulative and indirect loss of wetlands within the adjacent floodplain.

If some or all of the applications are reapproved, we suggest further reductions to the authorized tonnages with the Kansas City reach as well as the Waverly reach, due to the tendency for bed degradation to migrate upstream. We also suggest the following special conditions be added to the permits:

- \* Due to the previous and ongoing indirect and cumulative effects of in-river commercial mining on Missouri River tributaries, we recommend the permit be conditioned that no alternate source may be obtained from any tributaries of the Missouri River.
- \* Alternate sources of mined sand and gravel should be from upland land-based sites that do not include wetlands or other aquatic resources.
- \* To avoid the spread of invasive species and contaminants, dredging equipment must be cleaned prior to the commencement of dredging, and recleaned anytime equipment utilized in locations outside the Missouri River is used for purposes described in this application.
- \* The applicants must provide compensatory mitigation for the indirect and cumulative loss of aquatic resources.
- \* Copies of any requests to modify the permit or conduct operations beyond stipulated permit conditions should be provided to the United States Environmental Protection Agency.

These comments have been prepared in accordance with our authority under Section 404 of the Clean Water Act. Thank you for the opportunity to review and comment on the public notice. If you have any questions or would like to discuss further, please contact me.

Sincerely,

Gabriel DuPree

U.S. Environmental Protection Agency, Region 7

Water Division

Watersheds and Grants Branch/Permits and Loans Branch

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# Miami Tribe of Oklahoma

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Via email: [matthew.s.shively@usace.army.mil](mailto:matthew.s.shively@usace.army.mil)

April 13, 2020

Matt Shively  
Regulatory Project Manager  
U.S. Army Corps of Engineers, Kansas City District  
601 E. 12th Street  
Kansas City, MO 64106

Re: Missouri River Commercial Dredging Permit Reissuance – Comments of the Miami Tribe of Oklahoma

Dear Mr. Shively:

Aya, kikwehsitoole – I show you respect. My name is Diane Hunter, and I am the Tribal Historic Preservation Officer for the Federally Recognized Miami Tribe of Oklahoma. In this capacity, I am the Miami Tribe's point of contact for all Section 106 issues.

The Miami Tribe offers no objection to the above-referenced project at this time, as we are not currently aware of existing documentation directly linking a specific Miami cultural or historic site along the project site. However, as the Miami forced Removal was on the Missouri River from St. Louis to Kansas City, if any human remains or Native American cultural items falling under the Native American Graves Protection and Repatriation Act (NAGPRA) or archaeological evidence is discovered during any phase of this project, the Miami Tribe requests immediate consultation with the entity of jurisdiction for the location of discovery. In such a case, please contact me at 918-541-8966 or by email at [dhunter@miamination.com](mailto:dhunter@miamination.com) to initiate consultation.

The Miami Tribe accepts the invitation to serve as a consulting party to the proposed project. In my capacity as Tribal Historic Preservation Officer I am the point of contact for consultation.

Respectfully,

*Diane Hunter*

Diane Hunter  
Tribal Historic Preservation Officer