United States Department of the Interior

FISH AND WILDLIFE SERVICE
Kansas Ecological Services Field Office
2609 Anderson Avenue
Manhattan, Kansas 66502

December 9, 2011

Kale Horton, Project Manager
Regulatory Branch
Kansas City District, Corps of Engineers
700 Federal Building
601 East 12th Street
Kansas City, MO 64106-2896

RE: CENWK-CO-RW (2011-1460, 2011-1462, 2011-1465, 2011-1466, & 2100-1463)

FWS Tracking # 2012-CPA-0072

Dear Mr. Horton:

This letter is in response to your request for comments on the proposal from five companies (Kaw Valley Companies, Inc., Holliday Sand & Gravel Company, Master's Dredging, Penny's Aggregates, Inc., Meier's Ready Mix/Victory Sand Mining & Dredging, LLC) to commercially dredge/mine sand & gravel from ten locations on the Kansas River in Kansas.

According to information in the public notice, these operations utilize hydraulic cutter-suction dredges mounted on barges to transport a slurry of sand and gravel to shore based facilities for processing. Excess water is drained from the sand and gravel and transported to settling ponds before being discharged back to the Kansas River.

Kaw Valley Companies (2011-1460) is requesting to combine their existing permitted reaches into one reach commencing at river mile 9.4 and terminating at river mile 16.9. This request will require modification to the Regulatory Plan which restricts the maximum length of any reach authorized for dredging under the terms of a single permit at 1.5 miles. Additionally the applicant is requesting an increase in maximum allowable extraction within this new reach to 500,000 tons.

Holliday Sand & Gravel (2011-1462) is requesting reauthorization in the general location of the dredging reaches as currently permitted. This request is to authorize commercial dredging operations from river miles 18.65 to 20.15 and river miles 20.55 to 21.15. The applicant is proposing a 0.45 mile extension of their existing dredging reach located at river miles 21.0 to 21.15. The requested permit reach is 20.55 to 21.15. This request falls within the restrictions of the Regulatory Plan for the minimum distance between adjacent permitted reaches.

Master's Dredging (2011-1465) is requesting that the currently closed reach from river miles 26.1 to 27.6 be reopened to dredging. Master's Dredging is also requesting that the currently closed reach at river miles 35.4 to 36.4 be permanently closed and moved to river miles 28.3 to 29.8. Additionally, Master's Dredging is requesting reauthorization of current dredging operations from river miles 42.6 to 44.1 and river miles 47.1 to 48.0.

Penny's Aggregates (2011-1466) is requesting reauthorization of the same dredging reaches as currently permitted from river miles 45.2 to 46.7 and river miles 49.6 to 51.35.

Meier's Ready Mix/Victory Sand (2011-1463) is requesting reauthorization of the same dredging reach as currently permitted from river miles 77.1 to 78.6. Additionally, the applicant is requesting that the currently closed reach from river miles 90.1 to 91.6 be reopened to commercial dredging.

The combined actions will increase the total of dredged material approximately 45 percent from 2.2 million tons to 3.2 million tons while opening 5.85 river miles to new dredging sites and reopening 3 miles of currently closed river miles to dredging.

We have reviewed the permit application pursuant to our authorities under the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.); section 404(b) of the Clean Water Act (33 U.S.C 1344); Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403), the Migratory Bird Treaty Act of 1918 (MBTA), as amended (16 U.S.C. 703 *et seq*); the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*); and executive orders 11990 (wetland protection) and 11988 (floodplain management).

New research conducted by Kansas State University (KSU studies), which is investigating the environmental effects of dredging on the Kansas River, is scheduled to be released around the end of December/first of next year. This study will provide important, new information concerning sand and gravel dredging on the Kansas River including how dredging affects bed and river elevations, migrating headcuts, floodplain water table elevations, bank stability, and fish communities. It would be prudent to wait until the study is available before making decisions on these permit applications. As the current permits don't expire until December 31, 2012, we recommend that all dredging permits be held in abeyance until the research is released and the public and resource agencies have an opportunity to study the data and submit additional comments.

In addition to the pending KSU study, new information relevant to river stability, water quality, aquatic species and habitat, recreation, and the range of dredging alternatives has become available since the Environmental Impact Statement (EIS) was completed in 1990. This information should be considered in the environmental review of these permits and if warranted, analyzed in an updated National Environmental Policy Act document.

Endangered Species Comments

The FWS previously requested an analysis of impacts to four listed species, the least tern (*Sterna antillarum*), federally listed as endangered, the piping plover (*Charadrius melodus*), federally listed as threatened, pallid sturgeon (*Scaphirhynchus albus*), federally listed as endangered, and the bald eagle (*Haliaetus leucocephalus*), which is no longer a federally listed species. The Corps initiated informal consultation under Section 7 of the Endangered Species Act in a letter dated March 20, 2006. At that time the Corps determined that commercial dredging on the Kansas River was not likely to adversely affect the above species. In a letter dated April 13, 2006 we concurred with your determination.

However, since that time, five pallid sturgeons have been caught in the lower Kansas River below the Water One weir in Johnson County. Although the reach above the weir has not yet been surveyed for pallid sturgeon, it is likely pallid sturgeon are migrating upstream at least as far as the Bowersock Dam. The KSU study and other information, which were not available for the 2006 Biological Opinion, may offer details as to how dredging affects the pallid sturgeon and its habitat. Therefore, if the permits are to be issued, we recommend that the Corps complete a Biological Assessment which analyzes effects to the sturgeon under the requested proposals. The analysis should address the potential for impacting habitat including removal of sandbars and islands, deepening of the channel, the effect of migrating headcuts on spawning habitat, the effect on the riparian cottonwood forest resulting from changes in bed elevation and bank widening, and the effect of noise and disturbance from sand dredging operations.

Although the bald eagle is no longer protected by the Endangered Species Act, it is still protected under the Bald and Golden Eagle Protection Act (Eagle Act) and the Migratory Bird Treaty Act (MBTA). Maps produced by the Corp show that active nests are located near many of the proposed dredging sites including one active nest near river mile 27.1, one nest near river mile 46.2, two active nests near river mile 51, and one active nest near river mile 90. Inactive nests are also protected and there are many of these in the vicinity of proposed dredging sites. The Eagle Act not only protects nesting and roosting trees but also protects the eagles from disturbance including noise and human activities. If the permits go forward, special conditions based on guidelines and conservation measures found the Act should be attached to the permit. We will work with you to draft specific conditions for dredging sites.

If the permits go forward, we recommend that the special conditions for least terns and piping plovers listed in your March 20, 2006 be continued, i.e. "if at any time a pair nests within three river miles of a dredge site, we propose to contact the Service in order to determine the impacts, if any, dredging has on the species. At that time appropriate measures will be taken to minimize foreseeable impacts."

Fish and Wildlife Coordination Act Comments

A 57 mile-long stretch of the Kansas River through Wyandotte, Johnson, Leavenworth, Douglas, and Jefferson Counties was listed in the National Rivers Inventory (NRI) in 1982. This nominated stretch of the Kansas River extends upstream from the I-635 bridge near Kansas City, Kansas to its confluence with the Delaware River near Perry, Kansas. The NRI is a register of rivers that may be eligible for inclusion in the National Wild and Scenic River System and is maintained by the National Park Service (NPS). These rivers were included on the NRI based on the degree to which they are free-flowing, the degree to which the rivers and their corridors are undeveloped, and the outstanding natural and cultural characteristics of the rivers and their immediate environments. Section 5(d) of the National Wild and Scenic Rivers Act requires, "In all planning for the use and development of water and related land resources, consideration shall be given by all Federal Agencies involved to potential national wild, scenic and recreational river areas." The intent of the NRI is to provide information to assist in making balanced decisions regarding the use of the nation's river resources. A Presidential directive and subsequent instructions issued by the Council on Environmental Quality required each Federal agency, as part of its normal planning and environmental review processes, take care to avoid or mitigate adverse effects on rivers identified in the NRI. Further, all Agencies are required to consult with

NPS prior to taking actions that could effectively foreclose wild, scenic, or recreational status for rivers on the inventory.

The nomination was based on the River's scenic, recreational, fisheries, wildlife, and cultural values. The Kansas River is one of only three navigable rivers in the state of Kansas and provides important river-based fishing and wildlife viewing in Kansas. Because of its accessibility, it is an important resource to the public in the highest density population corridor in the state. In-channel dredging affects the quality of the recreational experience by physically altering the scenic beauty of the river, presenting in-stream obstacles to water users, modifying river morphology and introducing noise. In addition, the Department of the Interior and the State of Kansas support development of the Kansas River Water Trail as a priority in America's Great Outdoors Initiative. The Trail would be the first public water trail in Kansas. Recreation on the Kansas River has greatly increased since the 1990 Environmental Impact Statement. Therefore, we think it is prudent that the Corps evaluate the impact of in-channel dredging on recreational activities in the Kansas River prior to issuing of any new permits.

Several of the proposals request re-opening a site that is currently closed due to degradation exceeding the 2-foot threshold as required by the Regulatory Plan. There was no information presented in the public notice, nor has any information been shared with the Service regarding the extent of recovery of bed elevations in these areas. However, as a result of the monitoring of dredge sites the Corps has recognized that bed elevations can vary significantly within a two year time period. Until these closed reaches are able to sustain bed elevations over the threshold for at least a four year period (two monitoring cycles), they should not be reopened. A four-year period should be the minimum amount of time to demonstrate that sediment removal by dredging is sustainable.

The Service recommends that the Corps reexamine the Regulatory Plan in terms of the comments received on the Missouri River dredging permits along with the soon-to-be-released KSU studies, monitoring results, and other available information. These comments and studies reflect more current science and could inform a more adaptive management approach for the Kansas River. We recommend that the Regulatory Plan be updated and should be based on a sediment budget for the Kansas River. The Regulatory Plan, as well as the 404(b) (1) analysis, should also consider other changes in the river system since 1990, including climate. Until such actions can be completed, we recommend that no increase of dredged materials or the opening of new river miles be allowed.

We believe that each site should have a mitigation and restoration plan. Mitigation and restoration should be an integral part of the management of sand and gravel extraction projects, should occur concurrently with extraction activities, and should be an ongoing process. We request the opportunity to review and comment on the mitigation plans. A mitigation fund, with contributions paid by the operators, or royalties from gravel extraction could be used to fund the mitigation, restoration, and monitoring programs.

In addition, the Plan currently only monitors changes in the geomorphology of the river bed at the dredge sites. We recommend that the monitoring program be expanded to include biological and water quality monitoring, and an evaluation of whether dredging is contributing to the bioavailability of contaminants. Many pollutants, including PCB, chlordane, agriculture chemicals, and heavy metals, attach to sediments. Sediments act as long-term sources of

contamination as the result of the resuspension of sediment particles by disturbance. Dredging operations may increase the bioavailability of sediments in the water column by churning the water and discharge of return water. KDHE issued a 2011 fish consumption advisory for the Kansas River from below the Bowersock Dam at Lawrence to Eudora at the confluence of the Wakarusa River due to polychlorinated biphenyls (PCBs). Pollutants also affect wildlife that prey on fish and aquatic insects from the Kansas River including least terns, piping plovers, pallid sturgeon, and bald eagles. We would be happy to work with the Corps and other parties to design a biological monitoring plan.

Monitoring of river bed degradation should be expanded to the entire length of the river. Monitoring only at the dredge sites does not give a clear and accurate picture of the effects of dredging on the channel bed. Rivers usually readjust their profile during high flows, filling in dredging pits and giving the illusion that extraction has had no impact on the channel. Surveys of bed elevations taken along the entire length of the channel will provide a more accurate assessment of the distribution of downcutting (erosion) along the length of the channel. The organization American Rivers has calculated that the bed of the Kansas River has been lowered an average of 4.6m (http://www.amrivers.org/mostendangered/kansas1996.htm). According to The Kansas Water Office report Kansas River Channel Degradation (2005) degradation is occurring in nearly every reach of the Kansas River. The Topeka Public Water Supply weir at River Mile 87 has experienced 2 feet of degradation since 1988.

Cumulative impacts should be updated and kept current. Many changes in the watershed, both natural and manmade, can lead to cumulative impacts. For example, the Corps acknowledges in the Plan that river bed degradation causes bank instability. One important component in assessing bank instability, and therefore the impact of dredging, is the amount of bank stabilization occurring along the river. As of the 1990 Final EIS there were 34 areas of bank stabilization in the lower Kansas River between its mouth and Bowersock Dam (Lawrence) and in the Topeka area. Since it has been 21 years since the FEIS, updating the number of bank stabilization projects in these reaches would help in evaluating whether the Regulatory Plan has reduced or slowed bank erosion. Information concerning authorized bank stabilization projects should be available by querying the Corp's database. Alternatively, this information could also be ascertained by an evaluation of aerial photos of the Kansas River. The Plan requires that a complete set of aerial photographs be taken of the Kansas River every four years. If the aerial photography were digitized the photo sets could then be compared to determine the amount of channel widening, locations of new bank stabilization, total amounts of bank stabilization, bar formation activity, etc. We request that the photos and resulting data be available to the resource agencies for review.

Invasive Species

Invasive species have been identified as a major factor in the decline of native flora and fauna and impact aquatic resources. Executive order 13112 Section 2 (3) directs Federal agencies to not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere and to ensure that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions. Tools to perform Hazard Analysis and Critical Control Points (HACCP) planning for invasive species control are available at http://haccp-nrm.org/. HACCP planning focuses attention on critical control points where non-target species can be removed. Documenting risks

and methods used to remove non target species gives managers a strategic method to make consistent decisions based on identified risks. Planning builds a logical framework of information to weigh risks for species spread against management benefits. Invasive species of particular concern in Kansas include the zebra mussel (*Dreissena polymorpha*), Eurasian watermilfoil (*Myriophyllum spicatum*), purple loosestrife (*Lythrum salicaria*), Johnson grass (*Sorghum halepense*), sericea lespedeza (*Lespedeza cuneata*), salt cedar (*Tamarix spp.*), and reed canary grass (*Phalaris arundinacea*). Additional information on aquatic invasive species in Kansas can be found on KDWP's website http://www.kdwp.state.ks.us/news/fishing/aquatic_nuisance_species. Human actions are the primary means of invasive species introductions. Prevention of introductions is the first and most cost-effective option for dealing with invasive species. We strongly encourage the inclusion of best management practices for the prevention of invasive species transfer in all mitigation plans. At the minimum the following should be included as a permit condition:

> All equipment brought on site will be thoroughly washed to remove dirt, seeds, and plant parts. Any equipment that has been in any body of water within the past 30 days will be thoroughly cleaned with hot water greater 140° F (typically the temperature found at commercial truck washes) and dried for a minimum of five days before being used at this project site. In addition, before transporting equipment from the project site all visible mud, plants and fish/animals will be removed, all water will be eliminated, and the equipment will be thoroughly cleaned. Anything that came in contact with water will be cleaned and dried following the above procedure.

Migratory Bird Treaty Act

The applicant should be made aware of the Migratory Bird Treaty Act (MBTA) and their responsibilities under it. The MBTA prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests. Takings could result from projects in prairies, wetlands, stream and woodland habitats, and those that occur on bridges and other structures if swallow or phoebe nests are present. While the provisions of MBTA are applicable year-round, most migratory bird nesting activity in Kansas occurs during the period of January (owls, and hawks) through August (goldfinches). If the proposed project appears likely to result in the take of migratory birds, I recommend a field survey during the nesting season of the affected habitats and structures to determine the presence of active nests. Our office should be contacted immediately for further guidance if a field survey identifies the existence of one or more active bird nests that you believe cannot be avoided temporally or spatially by the planned activities.

In conclusion we recommend that all dredging permit be held in abeyance until after the KSU study is released and that the Corps then hold another public comment period to allow additional input from the resource agencies and public. Furthermore, there is a significant body of new data and information which should be considered in the evaluation of these permits. We recommend that the Corps re-evaluate both the Regulatory Plan and EIS.

Thank you for the opportunity to comment on this project. If you have any questions, please contact me or Susan Blackford of my staff at (785) 539-3474.

Sincerely,

Mike LeValley
Field Supervisor

cc: EPA, Kansas City, KS (Wetland Protection Section)
KDWP, Pratt, KS (Environmental Services)
KDHE, Topeka, KS (Bureau of Water)

MJL/shb

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

JAN 03 2012

OFFICE OF
THE REGIONAL ADMINISTRATOR

Colonel Anthony Hofmann
District Engineer
U.S. Army Corps of Engineers
601 East 12th Street
Kansas City, Missouri 64106-2896

Dear Colonel Hofmann:

This letter is in reference to the November 9, 2011 Public Notice, for the Rivers and Harbors Act Section 10 permit applications by Kaw Valley Companies, Inc. (NWK-2011-1460), Holliday Sand & Gravel Company (NWK-2011-1462), Master's Dredging (NWK-2011-1465), Penny's Aggregates, Inc. (NWK-2011-1466), and Meier's Ready Mix/Victory Sand Mining & Dredging, LLC (NWK-2011-1463). These applicants propose to dredge sand and gravel from the bed of the Kansas River, also known colloquially as "the Kaw."

The U.S. Environmental Protection Agency Region 7's December 9, 2011 letter (attached), raised concerns about potential adverse impacts to Waters of the United States from the proposed dredging permits. The EPA advised the Corps that the proposed dredging may result in substantial and unacceptable impacts to the Kansas River, which the agency designates an aquatic resource of national importance.

The EPA's further analysis of these proposed permits has resulted in this agency's determination that the proposed dredging activities will result in substantial and unacceptable impacts to the Kansas River. Pursuant to Part IV paragraph 3(b) of the August 11, 1992 Memorandum of Agreement, between the EPA and the U.S. Army Corps of Engineers regarding Section 404(q) of the Clean Water Act, the agency hereby notifies the Corps of this determination.

Many reasons support the EPA's designation of the Kansas River an aquatic resource of national importance. The River's 170 miles drain approximately 53,000 square miles of Nebraska, Colorado and Kansas. Its prairie watershed encompasses Kansas' Flint Hills and other scarce and distinctive prairie systems. Its vital habitats support threatened and endangered species that utilize the river corridor, such as least tern, piping plover, and pallid sturgeon. One of only three public rivers in Kansas, the Kaw provides unique recreational opportunities attracting participants from across the nation. Vital infrastructure on the Kansas River includes dams, public water intakes, and bridges. The river supplies a primary source of drinking water for over one million people living in northeast Kansas. All these services are of a national importance. Additionally, the reach of the River between Interstate-635 and the Delaware River confluence is on the National Park Service's Nationwide Rivers Inventory, a federal designation that the River possesses "one or more 'outstandingly remarkable'" natural or cultural values judged to be of more than local or regional significance (http://www.nps.gov/ncrc/programs/rtca/nri/).

RECYCLED RIDER

According to the Corps' November 9, 2011 Public Notice, the dredging applicants propose to 1) expand the geographic scope of the dredging, including re-opening previously closed reaches of the Kansas River; and 2) remove approximately 45 percent more sand and gravel than the cumulative allowable extraction limits of the present dredging authorizations. The Public Notice requested comments to assess whether new circumstances or information about the environmental concerns and effectiveness of the 1990 "Final EIS" and 1991 "Regulatory Plan" warrant their reconsideration as the Corps administers permit applications for commercial dredging of the Kansas River.

The EPA's December 9, 2011 letter, requested additional information and updated environmental review regarding river stability, water quality, aquatic species and habitat, recreation, and the range of alternatives. The agency continues to emphasize that the Corps needs to provide data outlined in that letter, provide additional opportunity for public comment, and incorporate new data into this environmental review prior to issuing any new permits for these applications. The EPA has not received the requested additional information that would resolve the following issues:

- The impacts of dredging on bed and bank stability of the Kansas and Missouri Rivers: The EPA believes current monitoring is inadequate to assess bank stability, presence of migrating head cuts, overall sediment load of the Kansas River, impacts to infrastructure, effects on the water table, or other environmental concerns. Further, the current monitoring scheme and other data from the state of Kansas demonstrate that bed degradation is occurring at several locations along the Kansas River and indicates that the Kaw cannot sustain current, let alone proposed future, dredging. The EPA continues to recommend that the Corps complete additional analysis regarding the potential impact of dredging on bed degradation and stability of the Kansas River, its tributaries, and the Missouri River. This analysis should consider new information, including the study funded by the Kansas Department of Wildlife, Parks and Tourism and carried out by Kansas State University researchers on the Kansas River due for release in January 2012. We recommend that the Corps provide additional opportunity for public comment after the release of the KSU study. Additionally, the agency recommends that the Corps prepare a sediment budget for the Kansas River that ties in with ongoing Missouri River Feasibility Study to inform permit decisions prior to reauthorization of the next round of Kansas River or Missouri River dredging permits under their 5-year review cycles.

- The extent to which dredging impacts water quality of the Kansas River: The EPA's December 9, 2011 letter, provided information regarding Clean Water Act Section 303(d) impairments and Total Maximum Daily Loads for the relevant segments of the Kansas River. Dredging significantly degrades waters by increasing turbidity, total suspended solids, and re-suspending metals, pesticides, nutrients and organic contaminants present in the sediments, thus exacerbating water quality problems. The EPA continues to request documentation of the processes utilized at each permittee's facility, and a characterization of the nature and scope of each facility's discharges back to the river. The agency recommends that the potential impacts to water quality both during extraction of materials and from return water into the Kansas River be assessed in the environmental review.

- The extent to which commercial dredging in the Kansas River affects aquatic species and their habitats: Additional information should include data documenting the Corps' consideration of the impacts of dredging on recovery of pallid sturgeon in the Missouri River basin and other threatened or endangered species listed by the KDWPT or the U.S. Fish and Wildlife Service. The EPA recommends the Corps' environmental review consider new monitoring data and document additional consultation with KDWPT and USFWS.

- The extent to which dredging affects recreation and public safety on the Kansas River: The EPA continues to recommend that potential effects of dredging on maintaining recreational uses of the river be reevaluated under current and foreseeable future conditions. The environmental assessment should quantify the changes in economics surrounding recreation on the Kansas River due to increases in recreational and related business opportunities on the River, public safety concerns, and stability of public recreation infrastructure, aesthetics and noise.

- Consideration of a reasonable range of alternatives: The EPA believes the 1990 Final Environmental Impact Study did not adequately assess the full range of alternatives for current and foreseeable future conditions for the local and regional economies. The agency recommends the Corps reexamine the range of alternatives, and reassess all alternatives utilizing current data, including the alternative of moving to suitable pit mines off-river and/or restricting dredging to impounded areas.

For the reasons cited in this and in our previous letter, and in consultation with USFWS and KDWPT, the EPA believes the proposed dredging projects will result in substantial and unacceptable adverse impacts to aquatic resources of national importance. Based on the information currently available, the EPA believes the 2011 Public Notice, 1990 Final EIS and 1991 Regulatory Plan do not contain sufficient information and current environmental review necessary on which to base permit decisions. Thus, the agency recommends that permits not be issued until sufficient environmental information is available about the potential impacts from current and proposed dredging projects, and the Corps has provided greater opportunity for public participation and comment.

The EPA appreciates the opportunity to comment on these proposed permits, and looks forward to meeting with the Corps to discuss information needs and next steps. If you have any questions regarding our comments, please contact me or Steve Kovac of my staff at (913) 551-7698.

Sincerely,

Karl Brooks

Enclosure

cc: Mr. Kale Horton, Kansas City District, Corps
Mr. Mark Frazier, Kansas City District, Corps
Ms. Susan Blackford, USFWS
Mr. Jason Luginbill, KDWPT
Mr. David Bender, KDWPT
Scott Satterthwaite, KDHE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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Kale Horton, Regulatory Program Manager
U.S. Army Corps of Engineers
Kansas City District
601 E. 12th Street
Kansas City, Missouri 64106

Dear Mr. Horton:

Thank you for the opportunity to provide comments regarding applications by five companies for permits under Section 10 of the Rivers and Harbors Act of 1899 for proposed dredging activities on the Kansas River. The public notice describes the applicants' proposals which would result in a 45% increase in the amount of material dredged from the Kansas River and include an increase in the maximum length authorized for dredging under the terms of a single permit, an expansion of a permitted dredging reach for one applicant, reopening several previously closed river reaches to dredging and reauthorization of dredging in several river reaches currently permitted. The current permits expire on December 31, 2012. The U.S. Army Corps of Engineers, Kansas City District, issued an Environmental Impact Statement in January 1990 in support of its issuance of the existing permits. The District is soliciting comments to assess the potential for new circumstances or information relevant to the environmental concerns and effectiveness of the 1990 EIS and the current Regulatory Plan which was the Corps' preferred alternative within that EIS.

Given the age of the current EIS, public expectations regarding the content of an assessment of commercial dredging effects on Kansas River geomorphology and ecology by Kansas State University to be released at the end of this calendar year, the content of the District's assessment of hydrologic and geomorphic changes to the Kansas River in a September 2010 report, the listing of pallid sturgeon as an endangered species under the Endangered Species Act in 1990, and the issuance by the District of an EIS assessing commercial sand and gravel dredging impacts on the Missouri River in 2011, we encourage the District to proceed under the National Environmental Policy Act with a comprehensive review of the impacts of these commercial sand and gravel dredging permits on the physical and biological resources of both the Kansas River and the reach of the Missouri River below its confluence with the Kansas River prior to the reissuance of any permits authorized by Section 10 of the Rivers and Harbors Act. This approach is consistent with CEQ's "Forty Most Asked Questions Concerning NEPA Regulations (1981)" in reference to the requirements of 40 CFR 1502.9(c). The U.S. Environmental Protection Agency (EPA) specifically requests the opportunity to review and comment on that NEPA compliance analyses and documentation prior to the District drafting proposed permits. We encourage the District to allow for full public participation in the assessment of this regulatory action, including provisions for public comment through a public hearing.

RECYCLED 100% FIBER

We offer the following comments and recommendations regarding the development of the District's compliance document under NEPA consistent with 40 CFR 1501.7.

Data and Informational Needs

EPA is concerned that there may be insufficient information to fully assess environmental impacts that should be avoided in order to fully protect the environment. A sediment budget should be developed which would account for sediment transport, erosion and deposition in the Kansas River. This budget would include the mainstem river and its tributaries, particularly the four major reservoirs which serve as sediment sinks within the system. With a sediment budget, development of sustainable approaches to sediment management in the river would be significantly improved. The Kansas River's need for sediment is no less critical than its need for flow. The association between sediment and flow and between these physical components and the River's floodplain define the ecological character of this River. EPA recommends that the Corps not proceed with the issuance of dredging permits reauthorizing the extraction of any amounts of sand and gravel under any permit conditions for the Kansas River without gaining a comprehensive understanding of the sediment transport dynamics of this highly altered river system. Impacts associated with dredging within the Kansas River extend beyond the river itself. In 2011, the District finalized its EIS supporting the reissuance of dredging permits for the lower Missouri River in which the District stated that the entire lower Missouri River has been degrading since 1999 with accelerating bed loss in the reach near Kansas City. The river bed in the Kansas City reach has lost approximately four feet since 1995 and head cutting associated with this river bed degradation continues to move up the Kansas River. The interplay between the Kansas River and the Missouri River in the vicinity of the Kansas City metropolitan area with regard to sediment transport should be more completely assessed since this was not done for the 2011 EIS for the Missouri River. In addition, the District completed a Reconnaissance Study in 2009 documenting the extent and significance of bed loss in the lower Missouri River. This study was conducted to "evaluate the potential for federal interest in implementing solutions to water resources problems and opportunities related to bed degradation." One conclusion from the study was that "the dredging quantities taken from the lower Kansas River should be evaluated in regard to their potential impact on degradation of the Missouri River channel." Since the issuance of the Reconnaissance Study, the District has been working with local sponsors on a Feasibility Study for addressing river bed degradation in the Missouri River and its tributaries from Rulo, Nebraska, to St. Charles, Missouri, with particular interest in impacts to infrastructure in the Kansas City metropolitan area. In 2009, the Kansas Natural Resources Cabinet Team specifically requested that the Corps include the Kansas River in its reconnaissance and degradation study.

In the twenty years since the issuance of the District's EIS and Regulatory Plan governing commercial sand and gravel dredging in the Kansas River, additional information regarding the status of the pallid sturgeon has been gathered and its presence in the lower Kansas River has been documented. Since 2007, the Pallid Sturgeon Population Assessment Project has captured 15 pallid sturgeons in the Kansas River from River Mile 5.3 to 14.7. The extent to which commercial dredging in the River below the Johnson County Water District's weir affects the recovery of the pallid sturgeon in the Missouri River basin should be assessed prior to authorizing dredging in the lower river. Also, within that time span, the Corps has assumed responsibility for Kansas River management for the benefit of the endangered Least Tern and threatened Piping Plover. Harmonizing these ESA management operations with flow and sediment opportunities and constraints should be carefully described in the NEPA analysis.

Contemporary NEPA documentation should assess the impact of transportation costs on the economics of sand production in the region. As reviewed in the 1990 EIS, transportation costs constitute a larger

portion of the total cost than do actual production costs. The document should evaluate how transportation distance affects total product costs and whether land-based sand production becomes more competitive in instances when river reaches closest to urban markets cannot be sustainably dredged. The new NEPA analysis should also focus its assessment of the impact of the range of alternatives on local and regional economies rather than on individual companies.

Project Purpose and Need

The 1990 EIS did not actually identify project purpose or need. The contemporary NEPA documentation should identify the purpose and need for the specific action rather than state the purpose of the NEPA document. Well-defined project purpose and need will provide the foundation for both the range of alternatives and assessment of impacts.

Range of Alternatives

CEQ regulations at 40 CFR 1502.14 require the inclusion of a "no action" alternative. The 1990 EIS defined its "no action" alternative to be the reissuance of dredging permits "containing the limited restrictions imposed in the past." CEQ's "Forty Most Asked Questions Concerning NEPA Regulations (1981)" discuss two interpretations of the "no action" alternative, including one approach that incorporates no change to a current management direction. That approach is predicated on the continuation of an existing approach without requiring further federal action. This is not the case with regard to the issuance of these Section 10 permits. As with the alternative interpretation of "no action" in the CEQ guidance, the proposed activity cannot proceed without a federal decision to reissue permits. The current permits expire at the end of 2012 and "no action" by the Corps would result in permits not being issued. This is the approach undertaken in the 2011 EIS for commercial sand and gravel dredging on the Missouri River by the District and EPA believes this is the more logical approach to defining "no action" and assessing its impacts.

A range of action alternatives should include a range of total quantities dredged from the river, including alternatives specific to specific river reaches. The 1990 EIS evaluated only two alternatives for dredging with one alternative as the status quo. An accounting of the total amount of material available in the river system is necessary to determine what quantity provides for sustainable harvest. Further, all segments are connected in sediment transport and, along with tributary and stream bank inputs, upstream segments serve as a sediment source for downstream segments. Reductions in sediment transport for the whole river also have impacts in the Missouri River in the reach downstream from the confluence. However, certain individual reaches of the river have experienced higher levels of bed degradation and bank erosion in response to past dredging pressure. The range of alternatives should also include varying levels of permitted dredging quantities for individual reaches, including the possibility of closing those reaches which continue to show bed loss or which have not yet recovered from past degradation.

The range of alternatives should include permitting requirements which would address impacts on recreational use in addition to limitations or requirements focused on restricting river bed degradation. Possible restrictions to dredging might include limiting the extent to which dredging equipment crosses the width of the river so that a zone of safe passage is provided at all dredging locations.

The District should also consider the possibility of prohibiting the use of cutter head dredging in order to prevent the harvest of more consolidated sediment material rather than only the active bed load.

The 1990 EIS evaluated the termination of commercial dredging on the Kansas River as one of three alternatives. Many of the assumptions in this alternative are now dated and might not be appropriate to the contemporary impact analysis. The evaluation of alternatives to channel dredging, such as reach closure, floodplain mining and the dredging of reservoir deltas, should utilize current data. Many of the impediments to floodplain mining identified in the 1990 EIS might no longer be valid. In addition, the possibility of utilizing material deposited in tributary reservoirs, which have experienced significant delta formation and reduced water storage capacity over the last twenty years, was never addressed in the 1990 EIS. Impacts should also be evaluated for local and regional economies rather than individual companies or the local dredging industry. A properly designed project purpose and need statement assists in designing the scale of the environmental assessment and determinations of significance.

Affected Environment and Environmental Consequences

Seven Corps reservoirs and eleven Bureau of Reclamation reservoirs on tributary streams control a major portion of the flow from this system. Six of the Corps and one of the BOR reservoirs are at the lowest end of their respective river systems and functionally control the sediment discharge to the Kansas River. These reservoirs are retaining sand and sediment which historically would have passed down river and, to varying degrees, are experiencing reduced water storage capacity and increased delta formation. The sediment transport function is hampered by these reservoirs although a significant amount of sediment continues through the Kansas River and into the Missouri River.

The District's "Hydrologic and Geomorphic Changes on the Kansas River" (September 2010) describes a number of important associations between sediment transport and hydrology, but a more quantitative analysis of the relationship between hydrology and sediment and changes in river geomorphology requires a sediment budget and transport analysis. The report recognizes that this kind of analysis is beyond the scope of the 2010 document. Analyses of data for bed elevation changes in a constantly fluctuating sand-bed river could produce conclusions regarding aggredation and degradation which are subject to various interpretations. The relationships between each metric and bed elevation trends and between the trends and dredging pressure is unclear at a reach or river scale. The data, metrics and analyses of geomorphology included in the District's 2010 report appear largely inconclusive. The NEPA analysis should include a comprehensive analysis of sediment transport into, through and out of the river system. This analysis should characterize this transport at a reach scale (e.g., Simons, Li and Associates 1984 (SLA 1984) reaches) as well as for the entire system.

The District's 2010 study report relies on the eight reaches used in SLA 1984 to characterize the geomorphology of the river. This appears to be a functional approach to reach assessment which should be carried into the next NEPA document although we recommend that the delineation of river reaches should be further evaluated with regard to the presence of natural and man-made features which influence sediment transport, bed elevation or head cutting, flow and land use. The 1990 EIS identifies several natural rock formations which serve as controls against bed degradation in the lower portion of the river. This analysis should also characterize the significance of Kansas River sediment to the Missouri River in the vicinity of its confluence. Given the serious consequences of bed loss to infrastructure and habitat, we recommend a careful characterization of geomorphology data in the NEPA analysis. The objective of the data analysis should be to determine if dredging in each reach of the river is sustainable and at what quantities.

The 1990 EIS and the Regulatory Plan rely on a benchmark for determining unacceptable bed degradation. Degradation equal to or greater than 2 feet in a five mile reach will trigger closure of that

reach to dredging. The basis for not selecting an amount less than 2 feet as this degradation benchmark was identified in the District's Regulatory Report as being based on "the difficulty in monitoring such a small change in bed elevations." The NEPA analysis should provide adequate scientific information supporting any proposed benchmarks used to identify sustainable amounts of bed loss. These benchmarks should be reach-specific and based on reach morphology. Similarly, the Regulatory Plan currently allows for reopening reaches previously closed to dredging based on achievement of the "established minimum for that reach" and when "sufficient materials have accumulated." The NEPA analysis should establish more quantitative and scientifically based criteria for reopening reaches closed because of unacceptable bed degradation. These also should be reach-specific judgments.

The NEPA analysis should also characterize permittee discharges of return water to the Kansas River. EPA is considering what other Clean Water Act (CWA) programs might apply to these discharges. The Regulatory Plan requires the use of settling ponds on a case-by-case basis and the use of a sluice or pipe for dredged return water. The 1990 EIS does not discuss the manner by which individual permittees discharge their return water nor the regulatory requirements regarding these discharges. The EIS does make reference to the use of a "dredge water return outfall pipe" in the context of near- and far-field water quality effects. The NEPA analysis should provide a characterization of typical dredge return water and identify constituents commonly found in the return water and any potential risk to water quality.

Since the completion of the 1990 EIS and the implementation of the Regulatory Plan, a number of water quality management actions have been implemented by the State of Kansas. Water quality impairments for lead, copper, total phosphorous, total suspended solids and PCBs for reaches of the Kansas River proposed for dredging permits have been identified by the Kansas Department of Health and Environment (KDHE) under Section 303(d) of the CWA. Total Maximum Daily Loads or TMDLs have been completed for these reaches for bacteria, nutrients, Biochemical Oxygen Demand (BOD) and chlordane and to address impairments of the aquatic community under this same authority. The Kansas River is designated by KDHE for Special Aquatic Life Use defined as "surface waters that contain unique habitats or biota that are not commonly found in the state." Implementation provisions within the State's water quality standards pertain specifically to this designated aquatic life use and will affect the conditions by which any dredging would be permitted to operate. An assessment of current water quality status should be included in the NEPA analysis. The 1990 EIS states that "site specific water quality concerns would be addressed on an individual basis with each permit specification." The new NEPA compliance documentation should avoid this incomplete characterization of water quality condition and potential impacts and should, instead, contain a specific, detailed and complete water quality assessment of all dredged and affected downstream reaches within the 'affected environment' and 'environmental consequences' sections of the document.

Since the 1990 EIS, the degree to which the Kansas River is used by the public for recreation has increased dramatically as access to the river has improved. Since 1990, thirteen boat ramps, providing public access to the river, have been constructed. Many of these ramps have been sponsored by and located within small communities. The presence of dredging equipment and operations, whether actively operating or not, represents a potential hazard to recreation and thereby limits full utilization of the channel. The NEPA analysis should provide a full assessment of the impact of dredging on recreational use both on a river and reach scale.

References within the 'environmental impacts' section of the 1990 EIS state that dredging impacts may reduce flood frequency and hazard in reaches undergoing degradation. These statements are too broadly

applied and might not be consistent in every reach with the assessments made as part of the 2010 EIS for Missouri River commercial dredging. That EIS stated that, in some reaches and under some channel and floodplain conditions, bed degradation has resulted in increased water surface elevations and increased flood risk as a result of changes to channel roughness and shape and channel incision. In addition, threats to bank stabilization structures and levees might increase the flood risk in some reaches. The planned NEPA analysis should provide an impact analysis of changes to high flow management similar to that which was provided for Missouri River dredging permits.

Appendices

Given the age of many references relied upon by the Corps in writing the 1990 EIS, the 1991 Regulatory Plan and the 2010 analysis of river hydrology and geomorphology, it is important to include actual documentation within the NEPA analysis in the appendices. As required by CEQ regulation (40 CFR 1502.21), these references might not be reasonably available to the public or to public agencies because of their age (e.g., Burns and McDonnell 1982, SLA 1984, Brady et al, 1998).

Thank you for the opportunity to provide comments on the public notice for the applications for Rivers and Harbors Act Section 10 permits and Corps plans to comply with NEPA in support of its decision whether to issue these permits. We are aware that staff from our CWA Section 404 program are also responding to the public notice in the context of their responsibilities under section 404(q) of the CWA.

If you have any questions regarding these comments, please contact me at (913) 551-7146 or robichaud.jeffery@epa.gov, or Joe Cothern, NEPA Team Leader, at (913) 551-7148 or cothern.joe@epa.gov.

Sincerely,

Jeffery Robichaud
Deputy Division Director
Environmental Services Division

cc: Brad Horchem, WWPD/WPIB/WWSP
Vicky Johnson, WWPD/WPIB/WWSP

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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Colonel Anthony Hofmann
District Engineer
U.S. Army Corps of Engineers
601 East 12th Street,
Kansas City, Missouri 64106-2896

Dear Colonel Hofmann:

The U.S. Environmental Protection Agency Region 7 has reviewed the November 9, 2011 Public Notice for the Rivers and Harbors Act Section 10 permits Kaw Valley Companies, Inc. (NWK-2011-1460), Holliday Sand & Gravel Company (NWK-2011-1462), Master's Dredging (NWK-2011-1465), Penny's Aggregates, Inc. (NWK-2011-1466), and Meier's Ready Mix/Victory Sand Mining & Dredging, LLC (NWK-2011-1463) for the proposed dredging from eleven locations on the Kansas River, Kansas. The recommendations herein have been prepared under the authority of and in accordance with Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403). Pursuant to Part IV, Paragraph 3(a) of the August 11, 1992, Memorandum of Agreement between our agencies relative to Section 404(q) of the Clean Water Act , we believe the proposed dredging projects may result in substantial and unacceptable impacts on aquatic resources of national importance. The following is a summary of the EPA's preliminary findings with respect to the proposed projects.

Five companies are currently authorized to dredge sand and gravel for commercial sale from ten locations (cumulative total for all companies) on the Kansas River. All existing commercial dredging permits will expire on December 31, 2012. The public notice states that commercial sand and gravel dredging operations on the Kansas River utilize hydraulic cutter-suction dredges mounted on barges to convey a sand and gravel slurry to shore based facilities for processing. Excess water is drained from the sand and gravel, processed, and transported to settling ponds before being routed back to the Kansas River.

Under the proposed permits, these companies propose to 1) expand geographic scope, including re-opening previously closed reaches of the Kansas River, and 2) increase by about 45% the cumulative allowable extraction limits of the dredging authorizations as summarized in Table 1:

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Table 1. Summary of Dredge Activities Described in Public Notice

	River Miles		Cumulative Allowable Extraction (Tons)	
Company	**Current Authorized**	**Requested**	**Current Authorized**	**Requested**
Kaw Valley	9.4 – 10.4	9.4 - 16.9	400,000	500,000
	12.8 – 13.9			
	15.4 – 16.9			
Holliday Sand & Gravel	18.65 – 20.15	18.65 – 20.15	300,000	300,000
	21.0 – 21.15	20.55 - 21.15	300,000	300,000
Master's Dredging		26.1 - 27.6		300,000
		28.3 - 29.8		300,000
	42.6 – 44.1	42.6 – 44.1	750,000	750,000
	47.1 – 48.0	47.1 – 48.0		
Penny's Aggregate	45.2 – 46.7	45.2 – 46.7		
	49.6 – 51.35	49.6 – 51.35	150,000	150,000
Victory Sand / Meier's Ready Mix	77.1 – 78.6	77.1 – 78.6	300,000	300,000
		90.1 - 91.6		300,000
Total			2,200,000	3,200,000

In January 1990, the U.S. Army Corps of Engineers, Kansas City District completed the "Final Regulatory Report and Environmental Impact Statement – Commercial Dredging Activities on the Kansas River, Kansas." The document was prepared to address dredging-related impacts to the Kansas River and adjacent lands. The selected alternative for the Environmental Impact Statement is a "Regulatory Plan" which consists of restrictions and a monitoring program to limit dredging-related impacts. The Regulatory Plan was implemented in 1991.

The Public Notice requests comments to assess the potential for new circumstances or information relevant to the environmental concerns and effectiveness of the Final EIS and Regulatory Plan in the administration of permit applications for commercial dredging activities on the Kansas River. This is part of the Corps' continual review process for this five year permit cycle to ensure the effectiveness of the Regulatory Plan after its initial approval in 1990.

The EPA has previously questioned the effectiveness of the Final EIS and Regulatory Plan (Vicky Johnson email comments 3/9/2011, NWK-2003-01759) considering the age of the documents and the potential for new conditions, science, and information. However, in order for the EPA to conduct a thorough evaluation of the environmental concerns and effectiveness of the Final EIS and Regulatory Plan, additional information is needed. Our initial assessment indicates that there are new circumstances and information pertaining to river stability, water quality, aquatic species and habitat, recreation, and range of alternatives that must be addressed in the environmental review of these permits.

River Stability

More information is needed to assess the impacts of dredging on bed and bank stability of the Kansas River. The monitoring data collected according to the Regulatory Plan is limited, providing only cross-sectional surveys every two years. This data is not adequate to assess bank stability, presence of migrating head cuts, overall sediment load of the River, impacts to infrastructure, effects on the water table, or other environmental concerns. This data does show that in all but one of the reference cross-sections, the river has experienced a downward trend in bed elevation since 1991.

Similarly, the September 2010 Corps' study, "Hydrologic and Geomorphic Changes on the Kansas River," examined cross-sectional data and stage-discharge relationships for the Kansas River, but did not include sedimentation modeling. This study showed that "bed elevations shift noticeably over any two-year period," with some reaches experiencing degradation, and only one reach experiencing aggradation as a result of the 1993 flood. This brings into question both the effectiveness of bi-annual monitoring to track changes in bed elevation, and the ability of the river to sustain current and future dredging. The study suggests "possibilities" for where the river recovers sediment lost to dredging, such as, bank failures and tributary degradation. Another possibility the study suggests is "that a threshold dredging level exists below which dredging reduces the total sediment yield to the Missouri River without causing significant changes to the Kansas River."

In light of the significant degradation issues in the Kansas City Reach of the Missouri River, it is important to determine the relationship between dredging, sediment delivery, and degradation of the Kansas River and the Missouri River near their confluence. The District completed a Reconnaissance Study of Missouri River bed loss in the Kansas City metropolitan area in 2009 which identified a federal interest warranting further study. In addition, the District is presently working with local sponsors on a Feasibility Study for addressing river bed degradation in the Missouri River and its tributaries from Rulo, Nebraska to St. Charles, Missouri, with particular interest in impacts to infrastructure in the Kansas City metropolitan area. Other monitoring by the Kansas Water Office is focused on addressing bed degradation of the Kansas River and protection of infrastructure along that corridor.

There are issues which need to be addressed regarding bed degradation and stability of the Kansas River, its tributaries, and the Missouri River, and the potential impacts of dredging. A study funded by the Kansas Department of Wildlife and Parks and carried out by Kansas State University researchers on the Kansas River is due for release by the end of December, which may inform the resource agencies and the public regarding the effectiveness of the Final EIS and the Regulatory Plan. Preliminary findings indicate riverbed incision in dredged reaches is most likely causing excessive bank erosion both upstream and downstream of dredge sites. Considering that the current permits do not expire until the end of 2012, we recommend that the

Corps provide additional opportunity for public comment after the release of the KSU study. Additionally, we recommend that a sediment budget be completed for the Kansas River that ties in with the Missouri River Feasibility Study to inform permit decisions prior to reauthorization of the next round of Kansas River or Missouri River dredging permits under the 5-year review cycle.

Water Quality

The Final EIS does not address current water quality issues on the Kansas River. The Kansas River segments in the proposed dredging locations are listed on the 2010 Kansas Section 303(d) list for lead (Pb), total phosphorus , total suspended solids , polychlorinated biphenyls , and copper , Table 2. Total Maximum Daily Loads have been approved by the EPA for the river for biology/sediment, Escherichia Coli, nutrients/biological oxygen demand , chlordane, biology, and fecal coliform bacteria , Table 2. Dredging has the potential to increase turbidity, TSS, and re-suspend metals, pesticides, nutrients, and organic contaminants present in the sediments, thus exacerbating water quality problems.

The Public Notice states that the excess water is drained from the sand and gravel, processed, and transported to settling ponds before being routed back to the Kansas River. Additional information is needed on each facility's use of settling ponds, or other methods to manage the excess water, and the effectiveness of these methods for removing contaminants. We request documentation of the processes utilized at each facility, and a characterization of the nature and scope of each permittee's discharges back to the river. The potential impacts to water quality both during extraction of materials and from return water into the Kansas River must be assessed in the environmental review. The review should consider all the TMDL endpoints, the state TMDL implementation process needed to meet state water quality standards and the potential for significant degradation of waters.

Table 2. Current Water Quality Issues at Dredging Reaches.

	River Miles		Water Quality		
Company	Current Authorized	Requested	KDHE Monitoring Station	Impairments	TMDLs
Kaw Valley	9.4 – 10.4	9.4 - 16.9	203	Lead, TP, TSS	Bio/Sed, E Coli, Nutrients/BOD, and chlordane
	12.8 – 13.9				
	15.4 – 16.9				
Holliday Sand & Gravel	18.65 – 20.15	18.65 – 20.15			
	21.0 – 21.15	20.55 - 21.15			
Master's Dredging		26.1 - 27.6			
		28.3 - 29.8			
	42.6 – 44.1	42.6 – 44.1	255	Cu, PCB, Pb, TP, TSS	
	47.1 – 48.0	47.1 – 48.0			
Penny's Aggregate	45.2 – 46.7	45.2 – 46.7			
	49.6 – 51.35	49.6 – 51.35			
Victory Sand / Meier's Ready Mix	77.1 – 78.6	77.1 – 78.6	257	TSS, TP	FCB, biology
		90.1 - 91.6			

Aquatic Species and Habitat

Pallid Sturgeons (*Scaphirhynchus albus*) are protected by the Kansas Nongame and Endangered Species Conservation Act, the Federal Endangered Species Act, and state and federal regulations applicable to those acts. In the twenty years since the issuance of the Final EIS and Regulatory Plan governing commercial sand and gravel dredging in the Kansas River, information regarding the status of the pallid sturgeon and its presence in the lower Kansas River has been documented. The extent to which commercial dredging in the River below the Johnson County Water District's weir affects the recovery of the pallid sturgeon in the Missouri River basin should be assessed prior to authorizing that dredging. The proposed dredging reaches also include some segments designated by the state as "special aquatic life use waters" that contain combinations of habitat types and indigenous biota not found commonly in the state, or classified stream segments that contain representative populations of threatened or endangered species listed by the KDW&P or the U.S. Fish and Wildlife service. Fish monitoring data and other habitat assessments have been conducted within the last twenty years that can inform environmental review.

Recreation

Impacts to both the economics and public safety surrounding recreation on the Kansas River should be re-evaluated due to increase in recreational and related business opportunity on the River. The Kansas River is one of only three public rivers in Kansas and is an important

recreation resource for Kansas and Kansas City Metro Area residents. Since the Final EIS, local and state governments, as well as citizen groups, have invested in improvements (boat ramps, access points) to increase recreation and tourism on the river, including historic Kaw Point at the confluence of the Kansas and Missouri rivers. In November 2011 the Department of Interior announced they would support "the designation and development of a "Kansas River Water Trail"" under the President's America's Great Outdoors initiative (http://www.doi.gov/news/pressreleases/AMERICAS-GREAT-OUTDOORS-Salazar-Highlights-Two-Proposed-Projects-in-Kansas-to-Promote-Outdoor-Recreation-Conservation.cfm). The river supports fishing, boating, rowing, kayaking, and other activities. This year saw the first annual "Kawnivore 100", a 100-mile canoe race on the Kansas River from Manhattan to Lawrence. The river also hosts fishing tournaments that attract national attention. Recreation-based businesses and outfitters rely on maintaining beneficial uses. Dredging operations can pose a public safety concern as intakes and cables stretch into the channel posing obstacles or unseen hazards. Aesthetics and noise pose a nuisance to participants and businesses. Public parks and infrastructure (reservoirs, nature centers, hiking trails, etc) may become degraded or lost due to water quality issues or bed/bank erosion. Potential effects of dredging on maintaining recreational uses of the river must be re-evaluated under current and forseeable future conditions.

Range of Alternatives

Information and assumptions used to evaluate alternatives in the Final EIS are dated. We recommend the Corps re-examine the range of alternatives, and re-assess all alternatives utilizing current data. Impacts should be evaluated for local and regional economies rather than individual companies or the local dredging industry. The alternatives retained for full analysis in the Final EIS did not include moving to suitable pit mines off-river. The environmental review documents should include analysis of this alternative under current regulatory, economic and environmental conditions. There is currently dredging of several pit mines in the Kansas River floodplain, and this may now prove to be a practicable alternative. According to the Kansas Geological Survey, "studies along the entire river floodplain, based on physical limitations alone, have identified 74 potentially profitable pit-dredging locations" (http://www.kgs.ku.edu/Publications/KR/index.html).

Aquatic Resource of National Importance

The Kansas River is an aquatic resource of national importance. The Kansas River runs for 170 miles and drains approximately 53,000 square miles of Nebraska, Colorado, and Kansas. It is a prairie watershed supporting the Flint Hills and other prairie systems. It supports vital habitats, including Threatened and Endangered species that utilize the river corridor, such as least tern and piping plover, and possibly the pallid sturgeon. As one of only three public rivers in Kansas, it provides unique recreational opportunities attracting participants across the nation. There is vital infrastructure on the Kansas River, including dams, water intakes, and bridges. The river is a

primary source of drinking water for much of northeast Kansas. All these services are of a national importance. The reach of the River from Interstate-635 to the Delaware River is on the National Park Service's Nationwide Rivers Inventory, a designation by the federal government that the River possesses "one or more "outstandingly remarkable" natural or cultural values judged to be of more than local or regional significance" (http://www.nps.gov/ncrc/programs/rtca/nri/).

Based on our review of the available information, and in consultation with the U.S. Fish and Wildlife Service, the EPA believes the proposed dredging projects may result in substantial and unacceptable adverse impacts to aquatic resources of national importance, pursuant to Part IV, Paragraph 3(a) of the August 11, 1992, Memorandum of Agreement between our agencies relative to Section 404(q) of the CWA.

In addition to the above referenced concerns, the EPA is evaluating whether the dredge operations may be subject to other CWA permitting authorities.

We appreciate the opportunity to comment on these permits, and would be happy to meet with the Corps to discuss information needs and next steps. If you have any questions regarding our comments, please contact me AT (913) 551-7782 or Vicky Johnson of my staff at (913) 551-7564.

Sincerely,

Karen A. Flournoy

Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

cc: Kale Horton, Kansas City District, Corps
Susan Blackford, USFWS
Jason Luginbill, KDW&P
David Bender, KDW&P
Scott Satterthwaite, KDHE