

PUBLIC NOTICE



**US Army Corps
of Engineers
Kansas City District**

**Permit Numbers: See Attached Drawings
Issue Date: August 8, 2003
Expiration Date: September 7, 2003**

30-Day Notice

APPLICANTS: See attached drawings.

PROJECT LOCATION (As shown on the attached drawings): See attached drawings.

AUTHORITY: Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403).

ACTIVITY (As shown on the attached drawings): Six companies are currently authorized to dredge sand and gravel from 12 locations (cumulative total for all companies) on the Kansas River for commercial sale. The existing permits were originally conditioned to expire on December 31, 2001. The expiration dates were extended to allow the Kansas City District sufficient time to analyze dredge monitoring data prior to evaluating permit renewal requests.

In January 1990, the Kansas City District completed preparation of a document entitled "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 land. 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 Regulatory Plan can be downloaded at:

http://www.nwk.usace.army.mil/regulatory/public_notices/ks-river-regulatory-plan.pdf

Commercial sand and gravel dredging operations on the Kansas River utilize hydraulic pumps 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 and returned to the river. The requested permits, if issued, would be subject to the restrictions and monitoring requirements stipulated in the District's Regulatory Plan. All sites proposed are existing sites. The permits would be valid for ten years.

Due to unacceptable degradation (average of greater than 2 feet degradation in a 5-mile-long reach of river), Kansas River miles 25.95 – 40.5 are no longer open to commercial dredging. No permit applications will be accepted in this reach of river at this time.

WETLANDS: No wetlands have been identified.

ADDITIONAL INFORMATION: Additional information about this application may be obtained by contacting Joshua A. Marx, U.S. Army Corps of Engineers, Kansas City Regulatory Office, 700 Federal Building, 601 East 12th Street, Kansas City, Missouri 64106-2896 at telephone 816-983-3658 (FAX 816-426-2321) or via email at joshua.a.marx@usace.army.mil. All comments to this public notice should be directed to the above address.

STATE AUTHORIZATION: The applicant has applied for a permit from the Kansas Department of Agriculture pursuant to Kansas Statutes Annotated 82a-301 to 305.

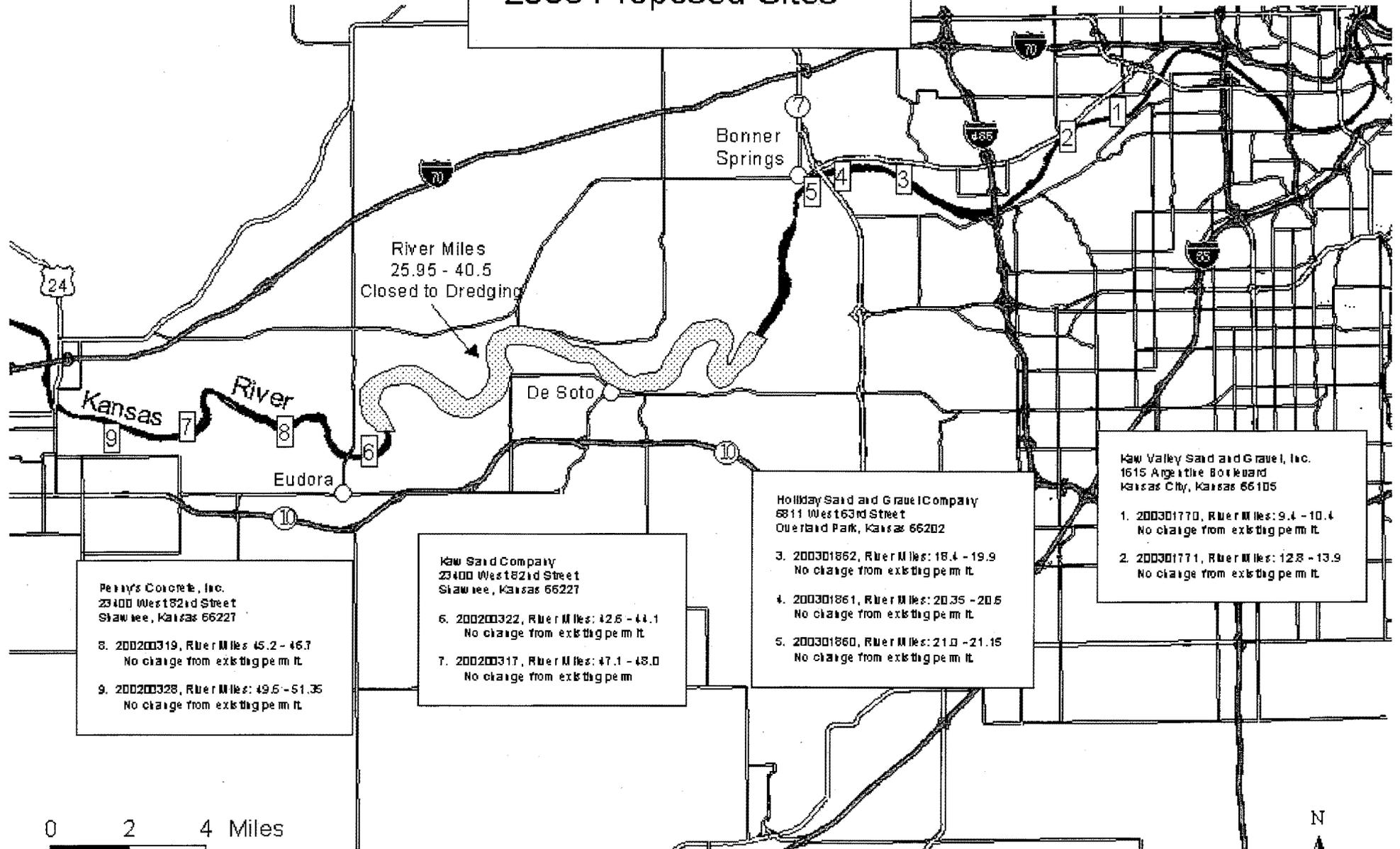
CULTURAL RESOURCES: Kansas City District will comply with the National Historic Preservation Act of 1966 and 36 CFR 800. We have checked the National Register of Historic Places and the Federal Register and no property listed in the Register or proposed for listing is located in the permit area. This is the extent of our knowledge about historic properties in the permit area at this time. However, we will evaluate input by the State Historic Preservation Officer and the public in response to this public notice, and we may conduct or require a reconnaissance survey of the permit area to check for unknown historic properties, if warranted.

ENDANGERED SPECIES: In compliance with the Endangered Species Act, a preliminary determination has been made that the described work will not affect species designated as threatened or endangered or adversely affect critical habitat. In order to complete our evaluation of this activity, comments are solicited from the U.S. Fish and Wildlife Service and other interested agencies and individuals.

FLOODPLAINS: This activity is being reviewed in accordance with Executive Order 11988, Floodplain Management, which discourages direct or indirect support of floodplain development whenever there is a practicable alternative. By this public notice, comments are requested from individuals and agencies that believe the described work will adversely impact the floodplain.

PUBLIC INTEREST REVIEW: The decision to issue a permit will be based on an evaluation of the probable impact including the cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, esthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs and, in general, the needs and welfare of the people. The evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency under authority of Section 404(b) of the Clean Water Act (33 USC 1344). The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above.

Kansas River Dredging 2003 Proposed Sites



River Miles
25.95 - 40.5
Closed to Dredging

Perry's Concrete, Inc.
23400 West 182nd Street
Shawnee, Kansas 66227

- 8. 200200319, River Miles: 45.2 - 46.7
No change from existing permit.
- 9. 200200328, River Miles: 49.6 - 51.35
No change from existing permit.

Kaw Sand Company
23400 West 182nd Street
Shawnee, Kansas 66227

- 6. 200200322, River Miles: 42.6 - 44.1
No change from existing permit.
- 7. 200200317, River Miles: 47.1 - 48.0
No change from existing permit.

Holiday Sand and Gravel Company
6811 West 163rd Street
Overland Park, Kansas 66202

- 3. 200301862, River Miles: 18.4 - 19.9
No change from existing permit.
- 4. 200301861, River Miles: 20.35 - 20.5
No change from existing permit.
- 5. 200301860, River Miles: 21.0 - 21.15
No change from existing permit.

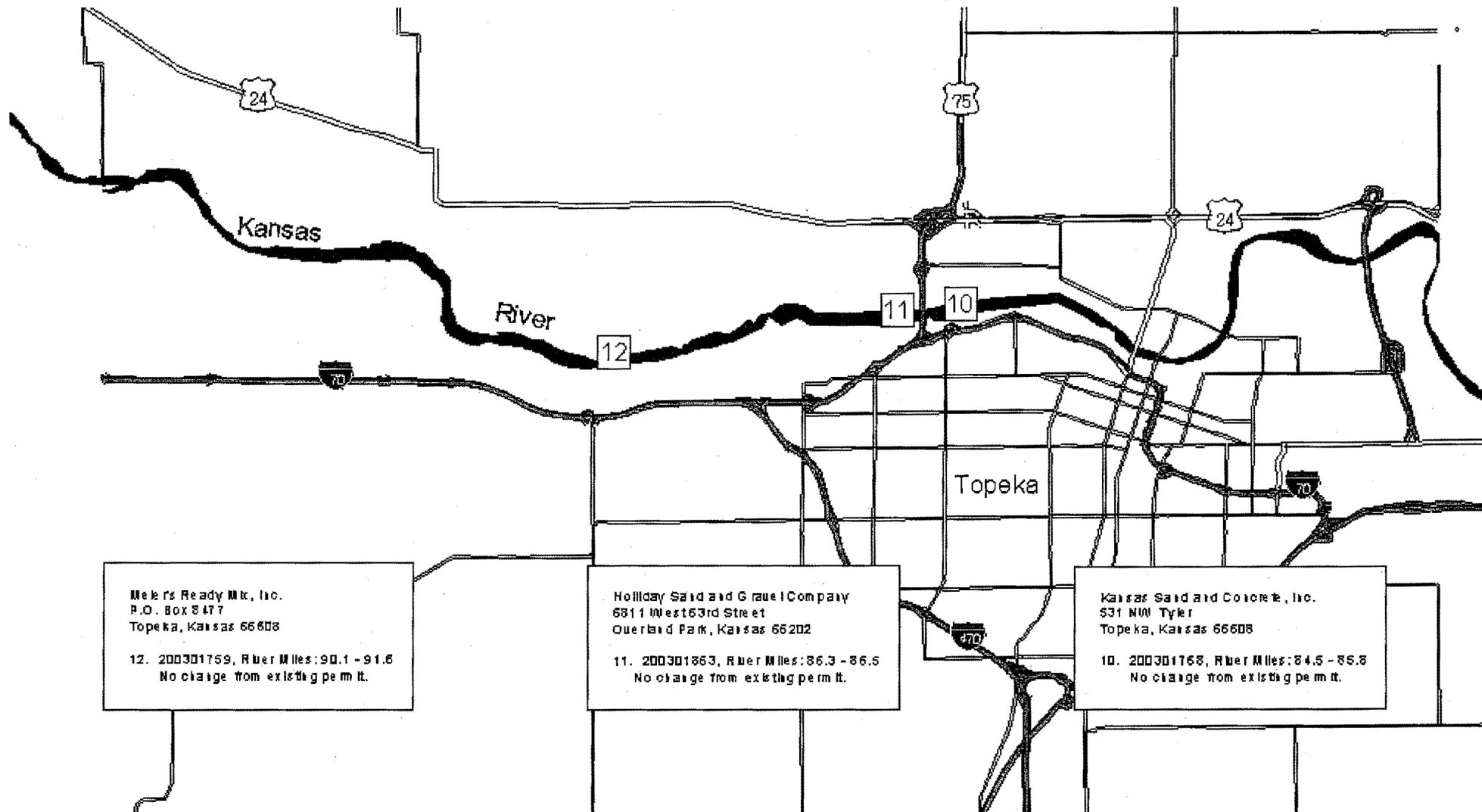
Kaw Valley Sand and Gravel, Inc.
1615 Argentine Boulevard
Kansas City, Kansas 66105

- 1. 200301770, River Miles: 9.4 - 10.4
No change from existing permit.
- 2. 200301771, River Miles: 12.8 - 13.9
No change from existing permit.

0 2 4 Miles



Kansas River Dredging 2003 Proposed Sites



Meiers Ready Mix, Inc.
P.O. Box 8477
Topeka, Kansas 66608

12. 200301759, River Miles: 90.1 - 91.6
No change from existing permit.

Holliday Sand and Gravel Company
6811 West 63rd Street
Overland Park, Kansas 66202

11. 200301853, River Miles: 86.3 - 86.5
No change from existing permit.

Kansas Sand and Concrete, Inc.
531 NW Tyler
Topeka, Kansas 66608

10. 200301768, River Miles: 84.5 - 85.8
No change from existing permit.

0 2 4 Miles



PUBLIC NOTICE



US Army Corps
of Engineers
Kansas City District

Permit No. 200600407
Issue Date: January 30, 2006
Expiration Date: February 20, 2006

21-Day Notice

APPLICANT: Mr. Vincent Meier
Victory Sand and Gravel
2400 NW Water Works Drive
Topeka, KS 66606

PROJECT LOCATION (As shown on the attached drawings): The project is located in Section 23, Township 11 south, Range 16 east, in Shawnee County, KS. (GRANTVILLE QUAD MAP)

AUTHORITY: Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403).

ACTIVITY (As shown on the attached drawings): The applicant is proposing to dredge Kansas River aggregate for commercial purposes from the Kansas River at river miles 77.1 to 78.6. This proposal is a relocation of existing permit 199700116. Permit 199700116 is currently located at river miles 86.3 to 86.5 and will be closed to dredging on August 1, 2006, due to average riverbed degradation exceeding two feet in this reach of the Kansas River.

In January 1990, the Kansas City District completed preparation of a document entitled "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 land. 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 Regulatory Plan can be downloaded at:

http://www.nwk.usace.army.mil/regulatory/public_notices/ks-river-regulatory-plan.pdf

Commercial sand and gravel dredging operations on the Kansas River utilize hydraulic pumps 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 and returned to the river. The requested permit, if issued, would be subject to the restrictions and monitoring requirements stipulated in the District's Regulatory Plan. This permit would be valid for 5 years.

Note: The proposed dredge return water outfall structure is eligible for Nationwide Permit 7 (Outfall Structures and Maintenance) under the authority of Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) and Section 404 of the Clean Water Act (33 USC 1344).

WETLANDS: The applicant completed a wetland delineation for the proposed plant location. No wetlands would be impacted by this proposal.

ADDITIONAL INFORMATION: Additional information about this application may be obtained by contacting **Joshua A. Marx U.S. Army Corps of Engineers; Kansas City Regulatory Office; 601 East 12th Street; Kansa City, Missouri 64106; at telephone 816-983-3658 (FAX 816-426-2321) or via email at Joshua.a.marx@usace.army.mil.** All comments to this public notice should be directed to the above address.

STATE AUTHORIZATION: The applicant may be required to apply for a permit from the Kansas Department of Agriculture pursuant to Kansas Statutes Annotated 82a-301 to 305.

CULTURAL RESOURCES: Kansas City District will comply with the National Historic Preservation Act of 1966 and 36 CFR 800. We have checked the National Register of Historic Places and the Federal Register and no property listed in the Register or proposed for listing is located in the permit area. This is the extent of our knowledge about historic properties in the permit area at this time. However, we will evaluate input by the State Historic Preservation Officer and the public in response to this public notice, and we may conduct or require a reconnaissance survey of the permit area to check for unknown historic properties, if warranted.

ENDANGERED SPECIES: In compliance with the Endangered Species Act, a preliminary determination has been made that the described work is not likely to adversely affect species designated as threatened or endangered or adversely affect critical habitat. In order to complete our evaluation of this activity, comments are solicited from the U.S. Fish and Wildlife Service and other interested agencies and individuals.

FLOODPLAINS: This activity is being reviewed in accordance with Executive Order 11988, Floodplain Management, which discourages direct or indirect support of floodplain development whenever there is a practicable alternative. By this public notice, comments are requested from individuals and agencies that believe the described work will adversely impact the floodplain.

PUBLIC INTEREST REVIEW: The decision to issue a permit will be based on an evaluation of the probable impact including the cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, esthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs and, in general, the needs and welfare of the people. The evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency under authority of Section 404(b) of the Clean Water Act (33 USC 1344). The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water

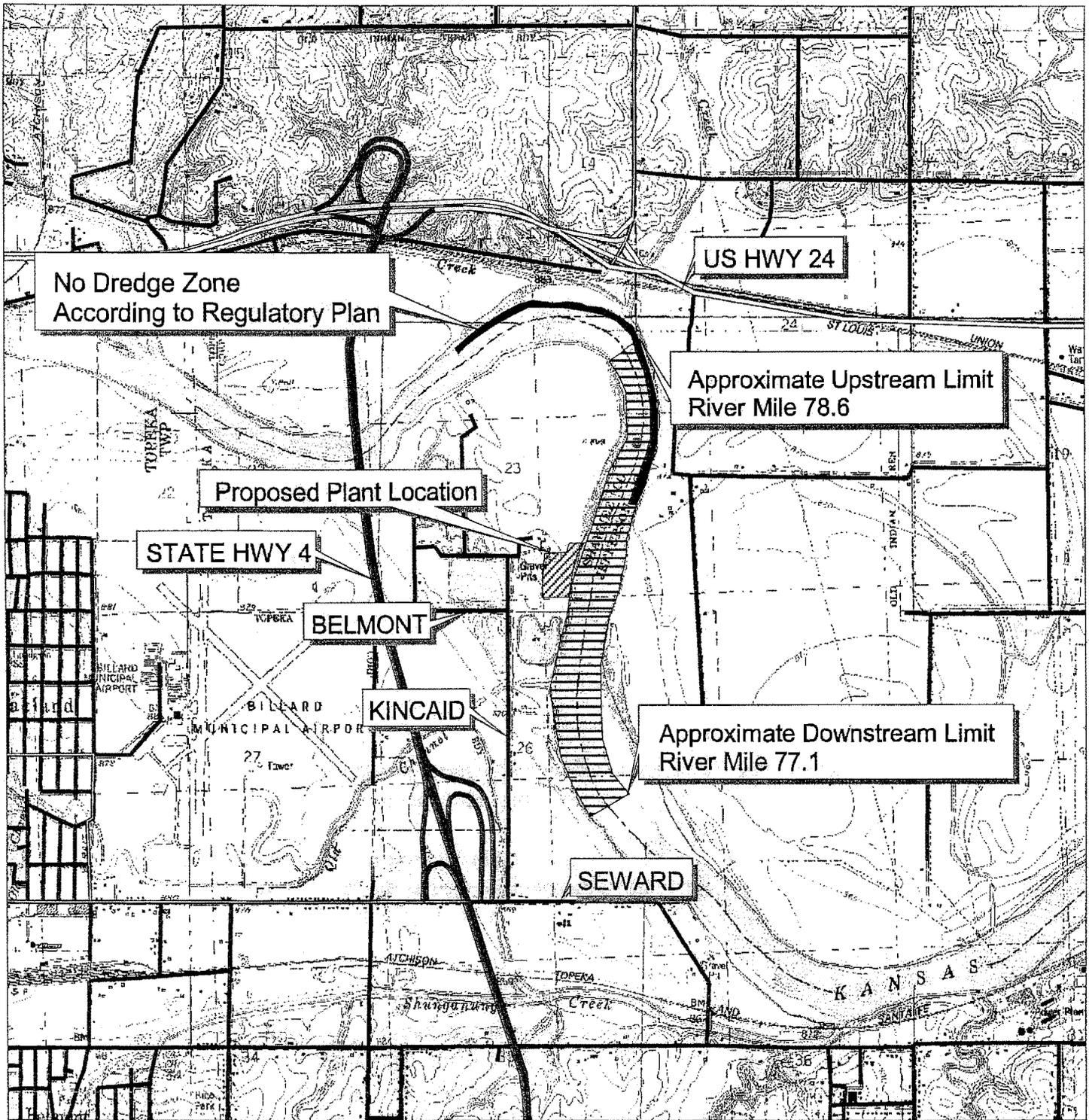
quality, general environmental effects, and the other public interest factors listed above. Comments are used in preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

COMMENTS: This notice is provided to outline details of the above-described activity so this District may consider all pertinent comments prior to determining if issuance of a permit would be in the public interest. Any interested party is invited to submit to this office written facts or objections relative to the activity on or before the public notice expiration date. Comments both favorable and unfavorable will be accepted and made a part of the record and will receive full consideration in determining whether it would be in the public interest to issue the Department of the Army permit. Copies of all comments, including names and addresses of commenters, may be provided to the applicant. Comments should be mailed to the address shown on page 1 of this public notice.

PUBLIC HEARING: Any person may request, in writing, prior to the expiration date of this public notice, that a public hearing be held to consider this application. Such requests shall state, with particularity, the reasons for holding a public hearing.

NOTICE TO EDITORS: This notice is provided as background information for your use in formatting news stories. This notice is not a contract for classified display advertising.

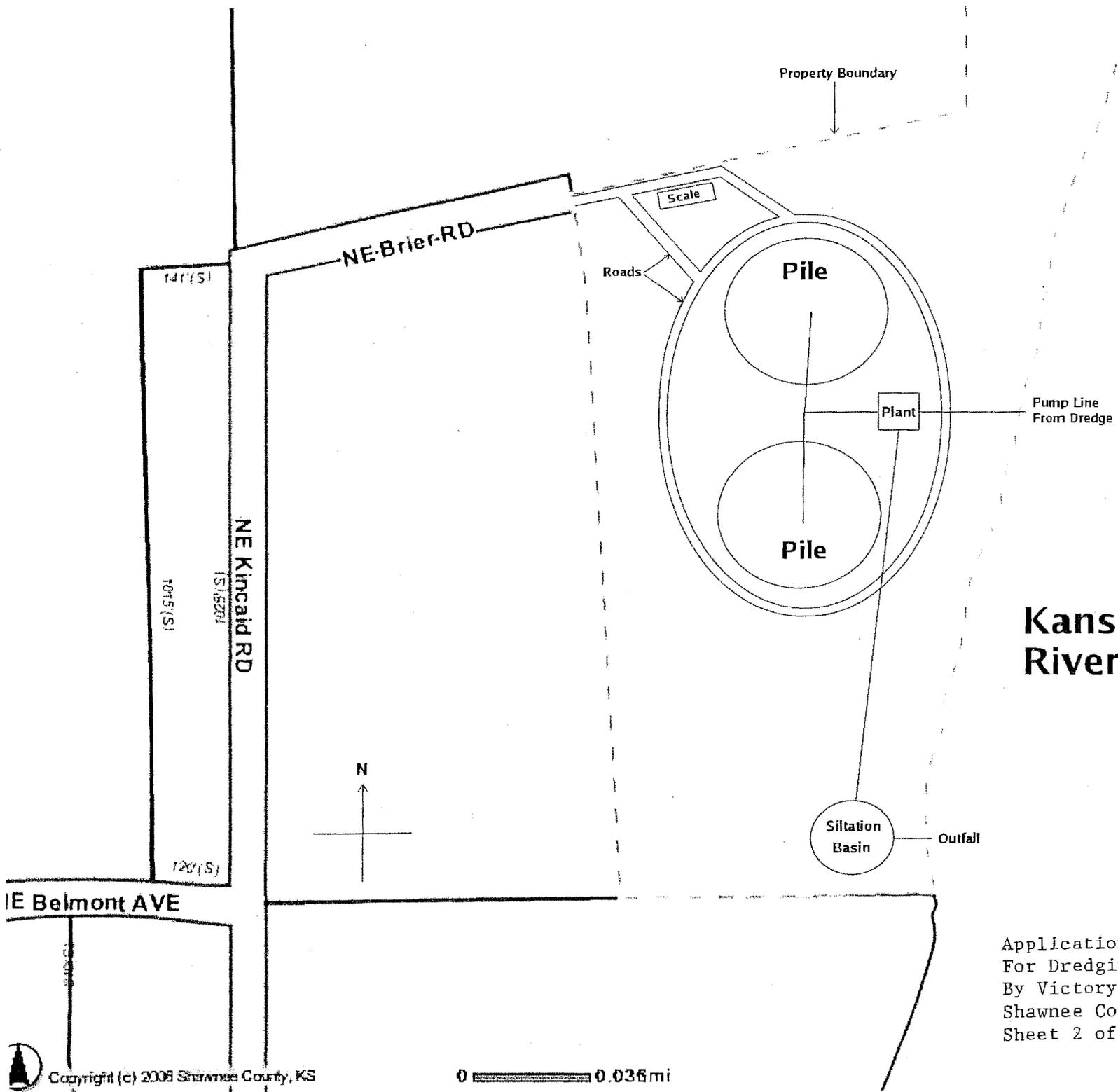
Victory Sand Mining and Dredging, L.L.C.



Application by
Victory Sand and Gravel

Application No. 200600407
For Dredging in the Kansas River
By Victory Sand and Gravel
Shawnee County, Kansas
Sheet 1 of 2

Base Number: 200600407
Purpose: Aggregate Dredging
State: KS
County: Shawnee
Legal: Sec. 23, T11 south, R16 east
River Mile: 77.1 - 78.6
Lat: 39-04-53.8680
Long: 95-35-41.2440



Kansas River

Application No. 200600407
 For Dredging in the Kansas River
 By Victory Sand and Gravel
 Shawnee County, Kansas
 Sheet 2 of 2



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Kansas Field Office
315 Houston Street, Suite E
Manhattan, Kansas 66502-6172

September 16, 2003

Joseph S. Hughes, Chief
Regulatory Branch
Kansas City District, Corps of Engineers
700 Federal Building
601 East 12th Street
Kansas City, Missouri 64106-2896

Attn: CENWK-CO-RW (Kansas River Dredging: Public Notices 200200319, 200200328, 200200322, 200200317, 200301862, 200301861, 200301860, 200301770, 200301771, 200301759, 200301863, 200301768)

FWS Tracking # 2003-1577

Dear Mr. Hughes:

This letter is in response to your August 8, 2003 request for comments on the proposal for the continuation of commercial sand and gravel dredging on the Kansas River at 12 locations from river mile 90.1 to river mile 9.4. Due to unacceptable degradation, Kansas River miles 25.95 - 40.5 are no longer open to commercial dredging. This letter constitutes the response of both the U.S. Fish and Wildlife Service (Service) and the National Park Service (NPS).

In accordance with section 7(c) of the Endangered Species Act (16 U.S.C. 1531 et seq.) and the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), we have reviewed the proposal. We offer the following comments.

We have determined that three federally listed bird species are known to nest along the Kansas River: the threatened bald eagle (*Haliaeetus leucocephalus*) and piping plover (*Charadrius melodus*), and the endangered least tern (*Sterna antillarum*). One fish species, the endangered pallid sturgeon (*Scaphirhynchus albus*), utilizes the lowermost reaches of the Kansas River sporadically, especially during high water events. Successful nesting by the piping plover and least tern has to date been confined to the Kansas River upstream from the mouth of the Delaware River. All successful bald eagle nests have been upstream of Lawrence; however, during summer 2003 a pair of bald eagles unsuccessfully attempted to nest a short distance downstream from Lawrence. Whether this pair will attempt to nest again in subsequent years, and whether this may represent an expansion of the bald eagle nesting population further

End 10.3

downstream, remain to be determined. The very few modern records of pallid sturgeon in the Kansas River have all been below Lawrence, presumably due to the presence of Bowersock Dam as a migration barrier.

Individuals of each of the three bird species have been observed during wildlife surveys in recent years on the river both upstream and downstream from Lawrence, yet successful reproduction has occurred only upstream. Instream habitat visibly changes as one goes further downstream, with many fewer sandbars, islands, and shallow backwater areas present in the river. Unvegetated sandbars and islands provide ideal nesting habitat for terns and plovers, and shallow water areas provide spawning and nursery areas for most fish species in the river. Terns feed on small fish species and the fry of larger species, while bald eagles are dependent on healthy reproducing populations of larger fish. Piping plovers find an adequate invertebrate prey base along the sand/water interface of quiet water areas. The pallid sturgeon is believed to also require backwater areas for reproduction and survival of young fish.

An analysis should be conducted to determine what effect, if any, commercial sand and gravel dredging may have on the habitats of these listed species. This analysis should first consider the potential for impacting habitat which currently exists, such as removal of sandbars and islands, 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. Secondly, the analysis should attempt to determine what role commercial dredging is playing in preventing habitat creation or maintenance in the actively dredged reaches of the Kansas River. Results of these analyses may indicate that either or both these sources of potential impact may be adversely affecting one or all of these listed species, in which case the Corps should request an initiation of formal consultation pursuant to section 7 of the Endangered Species Act. If the Service concurs with a finding that the proposed action is not likely to adversely affect any listed species, there will be no need for further consultation.

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 a relatively large plains river having good scenic values. The potential for recreational opportunities, including canoeing, is uncommonly good and represents a significant resource. The Kansas River is one of only three navigable rivers in the state of Kansas and provides the principal river-based recreation opportunity in Kansas. This segment of the Kansas River is widely used for canoeing, bank fishing, and boat fishing as evidenced by the large number of public and private developed and undeveloped accesses to the river. Because of its accessibility, it is an important resource to the Kansas City-Lawrence-Topeka area, the highest density population corridor in the state. Dredging impairs the quality of the recreational experience by physically altering the scenic beauty of the river, the machinery presents a large in-stream obstacle, and the serenity is disturbed by machinery noise. We recommend that the Corps evaluate the impact of dredging on recreational activities in the Kansas River and explore means to ease the conflicts between the users.

The Corps has initiated the "Regulatory Plan for Commercial Dredging Activities on the Kansas River (Plan)". However, in our opinion, the Plan is not comprehensive enough to provide the information to evaluate the total impacts to the river and ascertain that the dredging activities avoid, minimize, and mitigate those impacts. The Plan is too myopic in scope as it limits the criteria to changes in the geomorphology of the river bed at the dredge sites. We recommend that the monitoring program be expanded to include biological monitoring, water quality parameters including turbidity, an evaluation of sediment contamination, as well as an evaluation of the geomorphology of the entire river.

The Plan requires that a complete set of aerial photographs be taken of the Kansas River every four years but there is no mention of what will be done with the aerial photography or how it will be evaluated. We recommend that the aerial photography be 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..

The biological component is needed to assess the biological community of the river with the resultant data used as a gauge to assess the effects of dredging over time on the biological communities of the Kansas River. Species distributions and abundances should be surveyed regularly as part of the biological monitoring.

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, eradicating 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>).

Cumulative impacts analysis should be updated and kept current. Many changes in the watershed, both natural and manmade, can lead to cumulative impacts. However, the Corps appears to be lacking the information necessary to conduct an evaluation of cumulative impacts.

For instance, one important component in assessing bank instability is the amount of bank stabilization occurring along the river. The Corps acknowledges in the Plan that river bed degradation causes bank instability. Bank instability often leads to permit applications for bank stabilization. The Final Environmental Impact Statement, dated January 1990, states that there were 34 areas of bank stabilization in the lower Kansas River between its mouth and Bowersock Dam (Lawrence) and in the Topeka area. However, the Corps has been unable to provide current information on bank stabilization (amount or location) and stated that obtaining the figures would be difficult. Information concerning authorized bank stabilization projects should be available by querying the Corp's RAMS database. Alternatively, this information could also be ascertained by an evaluation of aerial photos of the Kansas River. In addition, we recommend the use of a systems analysis method including a conceptual model to do risk analysis.

We are concerned about increased turbidity in the Kansas River caused by the return water from the dredging operations, especially from those operations that do not employ a settling pond. Increases in turbidity cause decreased light penetration, reduced photosynthesis, shifting compositions of benthic invertebrates, and shifting populations of fish. Freshwater mussels are particularly sensitive to substrate alteration. Increased sedimentation alters fish nursery habitat and may impair other aquatic organisms. We recommend that turbidity levels be monitored. The permit should be modified to require the return water be routed through settling ponds for all dredging operations. Settling ponds should be properly sized, be protected so that they are not inundated during flooding, and should be located far enough away from the river so that the warm, silty water can not enter the river.

Sediments act as long-term sources of contamination as the result of the resuspension of sediment particles by disturbance. An area of the Kansas River included in the dredging permits is under a fish consumption advisory due to chlordane contamination. Many pollutants, including chlordane, agricultural chemicals, and heavy metals, attach to sediments. Dredging operations resuspend the sediments in the water column by churning the water and the subsequent discharge of return water. A thorough review should be undertaken of potentially toxic sediment contaminants in or near the stream bed where dredging operations are occurring or where bed sediments may be disturbed (upstream and downstream) by the operations.

For many reaches of the River the Corps the Corps has not established a total annual extraction limit. We recommend that the annual bedload be calculated for each site and that aggregate extraction be restricted to a portion lower than that amount.

We are disturbed by the lack of 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. Every operator should be required to develop a formal reclamation plan. In terms of National Environmental Policy Act (NEPA) regulations, mitigation includes: (1) avoidance of direct or indirect impacts or losses; (2) minimization of the extent or magnitude of the action; (3) repair, rehabilitation or restoration of integrity and function; (4) reduction or elimination of impacts by preservation and maintenance; and (5) compensation by replacement or substitution of the resource or environment. Thus, restoration is a part of mitigation, and according to the preceding definitions, the aim of restoration should be to restore the biotic integrity of a riverine ecosystem, not just to repair the

damaged abiotic components. Due to the importance of recreation on the Kansas River, mitigation for impacts to recreation should also be implemented.

The Service recommends that either a mitigation fund, with contributions paid by the operators, or royalties from gravel extraction be used to fund the mitigation and restoration programs as well as for effectiveness monitoring.

We find it objectionable that these permits are no longer being reviewed under Section 404. Sand and gravel dredging operations discharge dredged sediment back into the river which would appear to be a discharge of dredged material into navigable waters. Dredging increases the turbidity of the river at the dredging site and downstream. The increased turbidity caused by the input of dredged return water has the potential to cause adverse impacts to the aquatic environments including resuspension of contaminants, decreased light penetration, reduced photosynthesis, shifting compositions of benthic invertebrates, and shifting populations of fish. Freshwater mussels are particularly sensitive to substrate alteration. Increased sedimentation alters fish spawning and breeding habitat and the habitat of other aquatic organisms. These impacts should be evaluated under Section 404 guidelines. These permits have been reviewed under Section 404 and Section 10 in the past. We do not believe that the permits have been modified to any extent that would nullify the relevance to Section 404. In addition, The permit review should adhere to a 5 year review as per Section 404 guidelines. Review under Section 404 would also allow for an alternatives analysis and economic benefit analysis, both of which should be updated.

Although the alternative of off-channel sand sources has been investigated in the past, this alternative should be reexamined due to changes in economics, advances in technology, and information about the impact of sand and gravel dredging to aquatic habitat and riverine systems. In addition, an alternative that appears to have been overlooked is the use of substitutes for sand and gravel. Slag, expanded aggregate, shredded tires, shells, crushed stone, and recycled concrete and asphalt have been found to be acceptable substitutes for sand and gravel (<http://pubs.usgs.gov/of/2002/ofr-02-153/OFR-02-153-508.pdf>).

The National Marine Fisheries Service's National Gravel Extraction Policy includes recommendations to minimize impacts to streams and rivers. Although formulated to protect the freshwater habitat of anadromous fish, we believe the following are relevant for the Kansas River and would reduce the current level of impacts to the Kansas River basin.

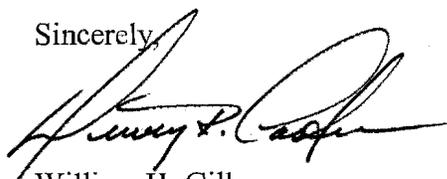
1. Restrict the operation and storage of heavy equipment within riparian habitat. Any new access roads should not encroach into the riparian zones.
2. Stockpiles should be located out of the floodplain of the river or as far away from the channel as possible. An undisturbed buffer of a minimum 200' in width should be maintained at the top of the bank for the length of the excavation and the access area should be replanted once excavation is completed.
3. Mining should not take place during spawning seasons or other critical habitat times. The Corps should coordinate with KDWP and the Service on these dates.

4. Configurations, slopes, and elevations of graded areas should be varied during reclamation to provide habitat diversity.
5. All commercial dredging operations on the Kansas River should employ a settling pond.

Despite evidence that past commercial sand and gravel dredging on the Kansas River and cumulative impacts from other activities has caused serious environmental problems the Corps issued permits during the 1990s to allow the continuation of these operations. The Corps devised the Plan in an effort to minimize and monitor the impacts. However, we believe that the Plan falls far short of minimizing the impacts, does not require the collection of enough information to thoroughly evaluate the health of the river basin, and does not define how some of the information that is required will be used or evaluated. The tremendous changes in the composition of fish fauna in the Kansas River from the 1950's through the 1980's has been documented. We can only presume that changes in aquatic and terrestrial fauna that live in the Kansas River basin continue along with the degradation of their habitats, however at this time we do not have enough information to determine the current impacts on fish and wildlife resources from this project. We recommend that the EIS be updated and the Regulatory Plan monitoring components be expanded. However, in the opinion of DOI, based on the Final Regulatory Report and Environmental Impact Statement - Commercial Dredging Activities on the Kansas River, Kansas (1990), Final Report for Analysis of Channel Degradation and Bank Erosion in the Lower Kansas River (1984), and Report on the Impacts of Commercial Dredging on the Fishery of the Lower Kansas River (1982), and the lack of more current data, we must, at this time, conclude that the project may result in substantial and unacceptable impacts to aquatic resources of national importance. We recommend that the permits be held in abeyance pending the resource agencies review of the updated information, analysis of impacts to Federally listed species, and any subsequent Section 7 consultation.

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,

For: 
William H. Gill
Field Supervisor

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

WHG/shb



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Kansas Field Office
315 Houston Street, Suite E
Manhattan, Kansas 66502-6172

March 1, 2006

Joshua Marx, Project Manger
U.S. Army Corps of Engineers
Kansas City Field Office
700 Federal Building
601 East 12th Street
Kansas City, Missouri 64106-2896

RE: CENWK-CO-RW (200600407)

FWS Tracking # 2006-P-0101

Dear Mr. Marx:

Thank you for the opportunity to provide comments on the proposal from Victory Sand and Gravel to dredge aggregate for commercial purposes from the Kansas River at river miles 77.1 to 78.6. This proposal is a relocation of existing permit 199700116 which is currently located at river mile 86.3 to 86.5 which will be closed to dredging on August 1, 2006 due to average riverbed degradation exceeding two feet in this reach of the Kansas River. The project is located in the Kansas River at river miles 77.1 to 78.6, Section 23, Township 11 south, Range 16 east, Shawnee County, Kansas.

We have reviewed the permit application pursuant to our authorities under the National Environmental Policy Act (NEPA); 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); 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).

Three federally listed bird species are known to nest along the Kansas River: the bald eagle (*Haliaeetus leucocephalus*) and piping plover (*Charadrius melodus*), federally listed as threatened, and the least tern (*Sterna antillarum*), federally listed as endangered. Successful nesting by the piping plover and least tern has to date been confined to the Kansas River upstream from the mouth of the Delaware River. All successful bald eagle nests have been upstream of Lawrence. Although none of the three species have documented nesting sites in this section of the river, suitable habitat appears to exist. All three species have expanded their nesting ranges on the river in recent years so it is possible, that if undisturbed, any or all of the three species could utilize this section of the river for nesting in the future.

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If any project activity appears likely to harass or disturb any of these three species observed at or near any site, the Service should be notified prior to commencement of the activity, so that an assessment may be made of the potential for adverse impacts. An activity which harasses any listed species and disrupts its normal breeding, feeding or sheltering activities to the extent that harm or injury results is a prohibited taking under the Endangered Species Act.

The bald eagle (*Haliaeetus leucocephalus*) utilizes the Kansas River throughout the year, for nesting during the summer and for feeding year around. Eagles use large live trees and snags for perches. If any trees at least 50 feet tall and/or 24 inches dbh within 100 feet of the water's edge are to be removed, or if 10 or more trees greater than 12 inches dbh within 100 feet of the water's edge are to be removed, consultation with the Service may be required pursuant to section 7 of the Endangered Species Act (16 U.S.C. 1531 et seq.).

Unvegetated sandbars and islands provide ideal nesting habitat for terns and plovers, foraging habitat for shorebirds and waterbirds, and nesting sites for aquatic turtles. Shallow water areas provide spawning and nursery areas for most fish species in the river. Terns feed on small fish species and the fry of larger species, while bald eagles are dependent on healthy reproducing populations of larger fish. The sand/water interface of quiet water areas provide an invertebrate prey base for piping plovers. Mining should not take place during spawning seasons or other critical habitat times. The Corps should coordinate with KDWP and the Service on these dates.

Dredging increases the turbidity of the river at the dredging site and downstream. The increased turbidity caused by the input of dredge return water has the potential to cause adverse impacts to the aquatic environments including resuspension of contaminants, decreased light penetration, reduced photosynthesis, shifting compositions of benthic invertebrates, and shifting populations of fish. Freshwater mussels are particularly sensitive to substrate alteration. Increased sedimentation alters fish spawning and breeding habitat and the habitat of other aquatic organisms.

An analysis should be conducted to determine what effect, if any, commercial sand and gravel dredging may have on the habitats of the three listed species and other aquatic organisms. This analysis should first consider the potential for impacting habitat which currently exists, such as removal of sandbars and islands, 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. Secondly, the analysis should attempt to determine what role commercial dredging is playing in preventing habitat creation or maintenance in the actively dredged reaches of the Kansas River.

We believe the application 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 plan. A mitigation fund, with contributions paid by the operators, or royalties from gravel extraction could be used to fund the mitigation and restoration programs as well as for effectiveness monitoring.

You provided information additional information concerning the project via a telephone conversation with Susan Blackford, of my staff. As we understand, current cross section surveys of the river bed extend only one-tenth of a mile downstream from the proposed site while regulations mandate such surveys five miles up and downstream of each dredging site. There are current surveys for the five mile reach upstream of the site which show that the river bed has degraded approximately three-quarters of a foot since the baseline elevations were taken in 1992. We recommend that cross section surveys be completed for the entire five mile reach downstream of the proposed site before dredging is allowed to begin.

Plant facilities and operations including aggregate stockpiles, sorting equipment, access roads, and heavy equipment should be kept out of the riparian zone and as far away from the channel as possible. An undisturbed vegetative buffer of a minimum 200' in width should be maintained at the top of the bank for the length of the excavation and the access area should be replanted once excavation is completed.

Invasive species have been identified as a major factor in the decline of native flora and fauna and their ecosystems. Nearly half of the species currently listed as Threatened or Endangered under the U.S. Federal Endangered Species Act are considered to be at risk primarily because of competition with and predation by non-indigenous species (Nature Conservancy 1996; Wilcove et al. 1998). 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 (Global Invasive Species Programme Toolkit). 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. Proactive measures to prevent the inadvertent spread of exotic and invasive species would appear to satisfy this directive. Therefore, the following BMP 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 (hotter than 40° C or 104° F) 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 the water will be cleaned and dried following the above procedure.

During a meeting on May 14, 2003 concerning sand dredging/mining on the Kansas River the Corps discussed the possibility of setting up a Special Area Management Plan for the section of river between Topeka and Lawrence. What is the status of this plan?

The Corps has initiated the "Regulatory Plan for Commercial Dredging Activities on the Kansas River (Plan). However, in our opinion, the Plan is not comprehensive enough to provide adequate information to evaluate total impacts to the river and determine that the dredging activities avoid, minimize, and mitigate those impacts. The Plan is too limited in scope as it

limits the monitoring criteria to 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, an evaluation of sediment contamination. 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, eradicating 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 analysis 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 is the amount of bank stabilization occurring along the river. As of the Final Environmental Impact Statement, dated January 1990, 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 16 years since the FEIS, updating the number of bank stabilization projects in these reaches would help immensely 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 RAMS 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.

Sediments act as long-term sources of contamination as the result of the resuspension of sediment particles by disturbance. Many pollutants, including chlordane, agricultural chemicals, and heavy metals, attach to sediments. Dredging operations resuspend the sediments in the water column by churning the water and the subsequent discharge of return water. A thorough review should be undertaken of potentially toxic sediment contaminants in or near the stream bed where dredging operations are occurring or where bed sediments may be disturbed (upstream and downstream) by the operations. Return water from the dredging operations, especially from those operations that do not employ a settling pond, are likely to make contaminants formerly bound to sediments bioavailable to aquatic organisms. The permit should be modified to require the return water be routed through settling ponds for all dredging operations. Settling ponds should be properly sized and be protected so that they are not inundated during flooding.

The applicant should be made aware of the MBTA and its relevance to this project. Under the Migratory Bird Treaty Act, construction activities in prairies, wetlands, stream and woodland habitats, including the removal of upland borrow, and those that occur on bridges (e.g., which may affect swallow nests on bridge girders) that would otherwise result in the taking of migratory birds, eggs, young, and/or active nests should be avoided. Although the provisions of MBTA are applicable year-round, most migratory bird nesting activity in Kansas occurs during the period of April 1 to July 15, although some migratory birds are known to nest outside this period. If the proposed construction project may result in the take of nesting migratory birds, the Service recommends 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 cannot be avoided temporally or spatially by the planned construction activities. Adherence to these guidelines will help avoid the take of migratory birds and the possible need for law enforcement action.

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,



Michael J. LeValley
Field Supervisor

cc: EPA, Kansas City, KS (Wetland Protection Section)
KDWP, Pratt, KS (Environmental Services)
KDHE, Topeka, KS (Bureau of Water)
Laura Calwell, Kansas Riverkeeper, Friends of the Kaw

MJL/shb



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

30 SEP 2003

Mr. Joshua Marx
U.S. Army Corps of Engineers
Kansas City Regulatory Office
601 East 12th Street
Kansas City, Missouri 64102

Dear Mr. Marx:

Re: Kansas River Dredging for Commercial Sand and Gravel Operations

The U.S. Environmental Protection Agency (EPA) reviewed the above referenced public notice, dated August 8, 2003, regarding an application for a Department of the Army, Corps of Engineers individual permit in accordance with Section 10 of the Rivers and Harbors Act, which we believe should also include Section 404 of the Clean Water Act (33 U.S.C. §1344). The purpose of the individual permit(s) would authorize the permitting of ten separate commercial sand and gravel dredging operation(s) on the Kansas River.

The dredging process will consist of the extraction of stream bed materials with the discharge of suspended materials downstream. Sand and gravel operations addressed by this public notice are located at various sites on the Kansas River from river miles 91.6 to 84.5 and miles 45.2 to 9.4, excluding the section from river mile 25.9 to 40.5 which are no longer available for commercial dredging. The applicants for this project are:

Meier's Ready Mix, Inc.
Holiday Sand and Gravel
Kansas Sand and Gravel
Penny's Concrete
Kaw Sand Company

Currently, EPA does not have enough information to know whether the sediment discharged from these operations results in only "incidental fall back" or requires a 404 Permit. It is our understanding that, historically, other dredging operations such as those on the Missouri River require, and have been issued, 404 permits. An explanation of the differences between dredging operations which results in differencing decisions concerning Clean Water Act (CWA) compliance has not been explained. Lacking scientific or engineering data, it is not understood why dredging operations on the Kansas River would be an exception to the normal 404 permitting process.

As you are aware 33 C.F.R §232.2 (d)(2)(i) provides:

“The Corps and EPA regard the use of mechanical earth-moving equipment to conduct land-clearing, ditching, channelization, in-stream mining or other earth moving activity in water of the United States as resulting in a discharge of dredged materials unless project-specific evidence indicates that the activity results in only “incidental fall back”.

Fallback from dredging operations can be in the form of colloidal (fine particles) which are not visible to the human eye. As the colloidal or suspended particles move downstream they are deposited on the stream bed and banks. Without project-specific evidence to determine the amount of this deposition we believe that the determination of incidental fall back is premature. It is our understanding that the incidental determination was made based on a visual observation.

EPA is very concerned that there are possible ecological impairments associated with these activities and that the need for a 404 permit should be addressed. The project, as proposed, may have a negative impact to the hydrology, ecology and water quality of the stream. Environmental impact issues of concern are:

A. Sediment Flow

These types of projects alter the natural processes of erosion, transport and deposition of sediments within the stream bed. The suction dredge operation extracts the material from the river bottom by sucking up the bed material (sand, gravel) into the floating dredge. According to the public notice, “Excess water is drained from the sand and gravel and returned to the river.” This water/sediment material is washed downstream and deposits on sandbars and banks of the stream. The dredge operation(s) have the potential to increase the amount of suspended material downstream from the dredging operation. EPA believes a sediment discharge volume should be established for each of the operations to determine whether they have only “incidental fallback” or require a 404 permit. Due to the close proximity of the dredging operations, EPA believes that the proposed cumulative discharges should also be consider and measured.

B. Ecology

Migration of aquatic life is very important. The dredging operations have the potential to alter stream flow patterns and have a direct effect on local flora from the impoundment of sediment and surface water. The benthic community is an important link in the aquatic food chain and could be directly affected by the sediment load of the stream. It is important that a natural balance of sediment and organic material be provided for aquatic communities. Increased sediment loading during the dredging process has the potential to off-set the natural balance of sediment loading for the stream’s aquatic communities. This project has the potential to negatively effect the downstream habitat for both flora and fauna due to the

sediment loading from the discharge of the sediment materials. The additional sediment load could effect filter feeders such as clams. The Kansas River is designated for a "special aquatic life use" which means that it is a surface water that contains combinations of habitat types and indigenous biota not found commonly in the state, or it is a surface water that contains representatives populations of threatened or endangered species.

C. Hydrology

Change in stream flow patterns has a direct effect on the velocity of the stream and directly effects the downstream characteristics of the stream. Alterations in the river bed directly affect the dynamics of the stream and can result in increased erosion downstream as well as localized flooding due to the deposition of sediment. These potential negative factors would be derived from the change in sediment load, which is due to the proposed up stream change in the channel structure (morphology). It is important to maintain the existing stream morphology to ensure that the natural biological degradation processes occur. The existing morphology of the stream should be incorporated into the design of all projects associated with the stream. The design of this project should include measures to minimize impacts to the sediment loading and stream morphology. Wherever possible, the natural morphology of the channel should remain unchanged. The proposed sand and gravel operation(s) have the potential to cut off the natural stream flow by redepositing downstream. The downstream change in the elevation of the stream would increase the velocity in selected areas, thereby increasing the scour and erosion of the stream channel downstream from the mining sites. The areas of heavy deposit may be subject to localized flooding due to the change in elevation of the stream bed.

D. Cumulative Impacts

The cumulative impacts from the biological, chemical and physical aspects of these projects should be considered. We are concerned about the potential adverse impacts this project will have on the stream ecosystem and the receiving waters downstream. The potential loss of seasonal aquatic habitat of invertebrate animals and forage fish could be significant. The proposed change in flows pattern have the cumulative potential to negatively alter the quality of the downstream aquatic communities. The cumulative impacts on the stream system should be considered for this project. An overall watershed approach to planning should have been considered for this project, following the Corps regulatory guidance letter of December 24, 2002. We are concerned about the potential impacts this project could have on the stream ecology. The effects to the existing critical ecosystems, if any, should have been addressed. The cumulative impact, as stated in the Environmental Impact Statement (EIS) of 1991, for this project also includes economic costs associated with the water treatment facilities located on the river, recreation costs to the local vendors, asthenic cost, water quality and quantity issues and related costs, and ecological costs associated with aquatic species. We recommend updating the EIS in order to demonstrate the effects of these operations.

recreational value of the river. The local economy could be adversely impacted by the reduction in eco-tourism funds associated with the recreation on the river. An updated cost-benefit analysis may be required to determine the impact to the local economy.

EPA would prefer that a volumetric determination of the discharged materials from the dredging operation be made available for consideration. It appears appropriate that an evaluation of sediment transport be conducted for all the effected reach(s) of the Kansas River and a determination made regarding the amount of sediment transported downstream from each dredge operation.

For the reasons stated above, EPA believes that a Section 404 permit as well as a Section 10 permit may be required.

Based on information provided to us, we recommend that the application be revised and, if indicated by the additional studies for incidental fallback, that a 404 permit be required. We appreciate the opportunity to provide comments to your public notice. These comments have been prepared in accordance with our authority under the Clean Water Act as amended by the Water Quality Act of 1987. Please keep us apprised of the status of this application by providing us with a written disposition of the outcome. Please forward any permits to us. If you have any questions, please contact Larry Long, Hydrologist, at (913) 551-7561.

Sincerely,



Cheryl A. Crister

Chief

Water Quality Management Branch

cc: Susan Blackford, USFWS, Manhattan, KS
Scott Satterwaite, KDHE, Topeka, KS
Chris Hayes, KS DWP, Pratt, KS
Ed Byrd, KDA, Topeka, KS



STATE OF KANSAS
DEPARTMENT OF WILDLIFE & PARKS

Office of the Secretary
1020 S Kansas Ave., Room 200
Topeka, KS 66612-1327
Phone: (785) 296-2281 FAX: (785) 296-6953



September 11, 2003

Joshua A. Marx
U.S. Army Corps of Engineers
Kansas City Regulatory Office
700 Federal Building
601 East 12th Street
Kansas City, MO 64106-2896

Re: Sand and Gravel Dredging Operations - Kansas River
U.S. Army Corps of Engineers Permit Numbers: 200301770, 200301771, 200301860,
200301861, 200301862, 200200317, 200200319, 200200322, 200200328, 200301759,
200301768, and 200301863

Dear Mr. Marx:

The Governor's Natural Resources Sub-cabinet has the following comments and recommendations in response to the Corps of Engineers' public notice regarding the above-referenced permits.

First, we request that a public hearing be held to consider the applications. The concerns outlined below merit a public hearing to allow the Corps, permit holders and the public to discuss issues and potential solutions. The Kansas River is a significant resource for the State. It provides public water supply, recreation, protection for threatened and endangered species habitat, aggregate production and other uses. The protection and utilization of that resource is of interest to all Kansans. A public venue is appropriate to insure that the wide array of opinions on proper management of the river is heard.

We have identified five major areas of concern to be addressed in the Corps's permitting process:

1. The potential impact of dredging operations on public water supply intakes, other water supply intakes, bridges, pipeline crossings, and other structures.

It is important that the Corps continue to assess the impact of dredging operations, especially bed degradation, on infrastructure components in the river. The Corps should share this information with the State, operators, and other interested parties.

Encl 10.4

Joshua A. Marx
U.S. Army Corps of Engineers
September 11, 2003
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2. The potential impact of dredging operations on the river's banks.

The Corps should identify areas where bank degradation occurs and the relationship of those areas to dredging operations. If there is a relationship between dredging operations and bank degradation, the Corps should consider permit conditions to reduce impacts to an acceptable level.

3. The impact of dredging operations on use of the Kansas River for recreation.

Permitting should seek to ease conflicts between use of the river for recreation – canoeing and fishing – and dredging operations. For public safety, dredging operators should display appropriate markings so canoeists and others using the river can identify obstacles, especially cables and other less visible appurtenances. Dredging operations should create a means to bypass barriers to passage.

4. The potential impact of dredging activities on fish and wildlife.

In the attached Appendix A, Fish and Wildlife Concerns are addressed regarding potential impacts of dredging activities and monitoring efforts.

5. The potential for dredging activities to adversely affect water quality.

In the attached Appendix B, Water Quality Concerns are addressed. There must be measures to prevent violations of the State's water quality criteria and to develop water quality protection plans as are required by other industries.

At this time insufficient scientific evidence exists to make a definitive judgement about the impacts of dredging of sand and gravel from the Kansas River under the Corps's regulatory plan dated January, 1990. Therefore, we suggest that permits be renewed for a maximum of ten years, subject to addressing the issues raised in this letter. The Corps should retain jurisdiction to develop scientific evidence to make a decision about river dredging during this ten year period.

For the first five years, the Corps should assemble information on using pits in the floodplain as a source of aggregate, rather than river dredging. If the studies indicate the dredging operations have detrimental impacts to the Kansas River and transition to pits is practical, the Corps should notify permit holders that permits will not be renewed when they expire.

After five years, the Corps should notify permit holders, the public and the State, if the regulatory plan is eliminating unacceptable impacts on the river, or if additional controls to the

Joshua A. Marx
U.S. Army Corps of Engineers
September 11, 2003
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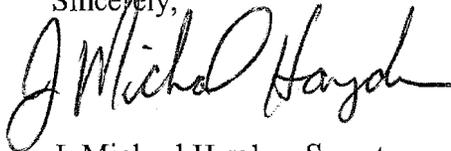
regulatory plan would achieve that goal. Any new permit conditions should be imposed at that time as well. Those permit conditions might include reductions in annual production throughout the valley or in specific reaches, closure of more reaches of the river to in-stream dredging or other measures developed by the Corps.

If the Corps decides all or parts of the river need to be closed to stream dredging, permit holders should be allowed five years for transition from dredging in the river to using pits in the floodplain. This would also allow permit holders ten years of operation under the known conditions set forth in the Corps's current regulatory plan. In short, it provides a means to balance the protection of the river with utilization of the river's resources.

Because of the multi-faceted nature of the dredging issue, including ramifications that go beyond what the Corps of Engineers must examine in its permitting process, we intend to recommend to the Governor that a task force be assembled. This task force will examine the impacts of river dredging on the Kansas River and alternative sources of aggregate. The economic, environmental and social impacts of both in-river dredging and reductions or elimination of such dredging will be studied. The task force will examine the State's regulatory framework that addresses aggregate production from floodplain pits to evaluate our ability to manage the impacts of dredging operations if they must be moved completely to pits. Members of this task force should come from industry, permit holders, the public, local governments and affected State government agencies. State agencies with expertise in these issues will participate in an advisory capacity for the task force. The task force will also consider the information the Corps of Engineers can make available, including the above-recommended studies.

The Corps should also participate on the task force because of its vital role in permitting, and in recognition of the Corps's technical understanding of the impacts of river dredging. The Corps has assembled the most complete set of data about dredging impacts. If the Corps implements our recommendations, the task force will work together so recommendations will be forthcoming at the five year decision point. We welcome the opportunity to coordinate this task force's efforts with the studies and assessments we have recommended the Corps undertake in that five year period.

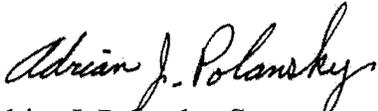
Sincerely,

A handwritten signature in black ink that reads "J. Michael Hayden". The signature is written in a cursive, flowing style.

J. Michael Hayden, Secretary
Kansas Department of Wildlife and Parks
Chairperson of the Natural Resources Sub-cabinet

Joshua A. Marx
U.S. Army Corps of Engineers
September 11, 2003
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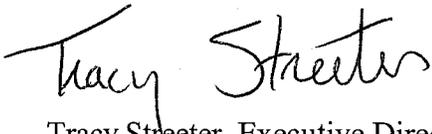
Members of the Natural Resources Sub-Cabinet:



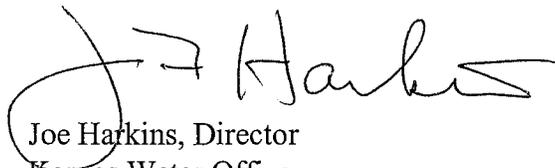
Adrian J. Polansky, Secretary
Kansas Department of Agriculture



Roderick L. Bremby, Secretary
Kansas Department of Health and Environment



Tracy Streeter, Executive Director
State Conservation Commission



Joe Harkins, Director
Kansas Water Office

Appendix A

Fish and Wildlife Concerns

Prepared by the Kansas Department of Wildlife and Parks

The Kansas River and its associated riparian corridor provide important habitats for aquatic and terrestrial wildlife species. Of concern is the potential for dredging operations to alter stream channel morphological features and terrestrial habitats along the riparian corridor. Dredging tends to create deeper water habitats with slower currents as opposed to a variety of habitats with varying depths of water under more normal conditions. This could lead to changes in channel morphological features upstream and downstream from the actual dredged area. The result would degrade habitats of many aquatic species. This alteration of morphological features could also lead to channel degradation that in turn can cause changes in the channel which further leads to lateral erosion as pointed out in the report titled *The Kansas River Corridor--Its Geologic Setting, Land Use, Economic Geology, and Hydrology* (<http://www.kgs.ukans.edu/Publications/KR/index.html>).

Lateral erosion leads to loss of the quantity and quality of the riparian corridor which is an important source of habitats for terrestrial and semi-aquatic wildlife species. The Kansas River is state-designated as critical habitats for the state-threatened flathead chub and sturgeon chub. All the waters within a corridor along the main stem of the river are designated as critical habitats for the state and federally-endangered Least Tern and state and federally-threatened Piping Plover. These two bird species rely on bare sand bars for nesting and forage along the river channel. The riparian corridor along the river is designated as critical habitats for the state and federally-threatened Bald Eagle. The eagle relies on large trees along the riparian corridor and on mid-channel bars for perching and roosting sites during the winter months (i.e., approximately mid November to mid March).

We recommend that the Corps of Engineers consider adding a condition to the permits that includes a biological monitoring component to assess the biological community of the river. The resultant data from the monitoring efforts could then be used as another gauge to assess the effects of dredging over time on the biological communities of the Kansas River.

Water Quality Concerns

Prepared by the Kansas Department of Health and Environment

The State recommends that the Corps include in each permit the following requirements pertaining to water quality protection:

1. **WATER QUALITY STANDARDS:** Measures must be taken to prevent violations of the water quality criteria described in K.A.R.28-16-28e. The applicant is directed to pay particular attention to preventing pollution impacts of turbidity, pH, temperature, nutrients, microbial pathogens, pesticides, chemicals, deposits of solids, suspended solids, floating debris, scum, visible oil and grease, or solvents from equipment leaks and dissolved or emulsified grease concentrations in waters of the state during the dredging activities and after completion of dredging activities.

2. **WATER QUALITY PROTECTION PLAN:** The applicant shall prepare and implement a written water quality protection plan to protect local water resources at the dredging site(s). The water quality protection plan shall identify components of the permitted activity (i.e. solid waste handling, fuel storage and leaks, sediment from construction, post operational maintenance etc.) which may or will result in the discharge of pollutants to waters of the state. For each component which may discharge pollutants to waters of the state, the plan shall set out the physical, structural and management measures being implemented to prevent or minimize the discharge of pollutants to waters of the state. Kansas Department of Health and Environment can assist with development of this plan.

a. *This activity is on the Kansas River, designated by the State of Kansas as a Special Aquatic Life Use (SALU) water, due to the presence of a combination of habitat and rare, threatened or endangered species K.A.R. 28-16-28 (a) (2) (A). **Therefore, the water quality protection plan, referenced to earlier in this condition, shall be submitted to:***

Kansas Department of Health and Environment, Bureau of Water, Watershed Management Section, 1000 SW Jackson, Ste 420, Topeka, KS 66612-1367.

b. All waste materials produced by the dredging operation shall be disposed of in accordance with the provisions of the Kansas solid waste management statutes and regulations (K.S.A. 65-3401 and K.A.R. 28-29-1 et. seq.) or applicable local rules. Good house keeping including personal refuse such as food containers, sacks etc. should also be considered.

c. Fuels and other maintenance chemicals necessary for the dredging activities should be stored away from the water body and in such a manner that accidental spillage

is reduced or can be temporarily contained before reaching the water body. Maintenance areas should also be located in this manner.

d. Should a spill of gasoline or discharge of pollutants occur, the appropriate County emergency staff should be contacted **first** by dialing 911. The Kansas Department of Health and Environment shall then be notified immediately: **(785)- 296-1679 (24 hours a day.)** KDHE Northeast District Office will monitor spill cleanup by calling (785) 842-4600. The Kansas Adjutant Generals Office should also be contacted (785/296-8013) as well as the National Spill Response Center (1-800-424-8802). **Spill prevention and response plan development is encouraged. At the minimum, the above numbers shall be posted.**

e. The applicant shall take appropriate measures to capture any floating debris released to surface waters as a result of this project.

f. The applicant shall avoid degrading activities resulting in damage to or the inability to operate public water supply intakes. Degradation of the river bed compromising the operation of these intakes should be prohibited.



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KATHLEEN SEBELIUS, GOVERNOR

September 14, 2006

Joshua A. Marx
U.S. Army Corps of Engineers
700 Federal Building
601 East 12th Street
Kansas City, MO 64106-2896

Dear Mr. Marx:

The Governor's Natural Resource Sub-cabinet appreciates the opportunity to comment on the proposed changes to the Kansas River dredging permits. In our September 11, 2003 letter to you on the same subject we identified five areas of concern that needed to be addressed. Our comments will cover those same issues.

1. The potential impact of dredging operations on public water supply intakes, other water supply intakes, bridges, pipeline crossings, and other structures.

In January 2005, the Kansas Water Authority directed the Kansas Water Office to study existing information regarding degradation affecting the Kansas River and report back at the June 2005 meeting. The Corps of Engineers was critical to the success of that work. The result of that analysis was that degradation is occurring at various locations of the river. However, identification of the exact cause of that degradation is difficult at best.

The Kansas Water Authority recommended funding to further quantify the extent of the degradation along the entire length of the river and begin the process of determining causes at the various locations. The Governor's Natural Resource Sub-cabinet continues to be concerned about the effects of degradation on infrastructure within and below the riverbed. However until the work authorized by the Kansas Water Authority is completed, we cannot identify corrective actions to limit the extent of the degradation or its impact on the infrastructure.

We request that the Corps of Engineers continue to work with the technical advisory committee working on this issue to identify both the extent of the degradation as well as its causes.

2. The potential impacts of dredging operations on the river's banks.

While not specifically identified by the Kansas Water Authority directives, the technical advisory committee recognizes the close relationship of degradation to the stability of the Kansas River's banks. As such the technical advisory committee has identified the need for an inventory of the location and type of structures and hard points along the banks of the Kansas River. This work has just recently begun. The Corps of Engineers has extensive information on a number of these

structures and hard points. We request that you continue to work with the technical advisory committee and share the information that is available within the Corps of Engineers files.

After this work has been completed both the state and the Corps of Engineers will be able to better assess the relationship of dredging operations to bank erosion issues.

3. The impact of dredging operations on the use of the Kansas River for recreation.

We note that in your proposed changes to the dredging permits you would require dredge operators to coordinate with the United States Coast Guard on recreational boating issues. In addition, operators would be required to develop and implement a recreational boating safety and warning plan to ensure safety of recreational users on the river. We support this proposed change and believe is a step in the right direction.

We propose that the dredge operator also coordinate with the Kansas Department of Wildlife and Parks. The Department of Wildlife and Parks is working with local units of government to implement a plan to improve recreational access to the Kansas River. Additional coordination on the front end will reduce conflict and improve operations for both the dredging and recreational committees.

4. The potential impact of dredging activities on fish and wildlife.

The work of the Kansas Water Authority technical advisory committee has also identified changes to the fish and wildlife communities within the Kansas River as an area of concern. The Kansas Water Authority recommended funding for a biological survey of the Kansas River during the last legislative session. The funding was approved and a study will soon be underway by the Kansas Biological Survey to develop an index of biological integrity for the lower portions of the Kansas River.

Continued coordination and sharing of information between the state and the Corps of Engineers is critical to the success of this effort. Once this study is completed the state and Corps of Engineers will be a better position to identify corrective actions that may be necessary to improve the fish and wildlife habitat of the Kansas River.

5. The potential for dredging activities to adversely affect water quality.

The Governor's Natural Resources Sub-cabinet supports the provisions of the Corps of Engineers Regulatory Plan for Commercial Dredging Activities on the Kansas River, addressing water quality detailed in section IX: Restrictions Concerning Water Quality. We concur that the required use of siltation basins for dredge return water should be considered on a case-by-case basis; that the dredge return water should be returned to the river via a sluiceway or by piping; and that silt and debris removed by siltation basins should not be reintroduced to the river, but disposed of properly.

The Natural Resources Sub-cabinet also supports the additional proposed change to require restoration of abandoned sites. The Corps of Engineers should coordinate this activity with the State Conservation Commission which has authority over reclamation of standing gravel pits within state to ensure that the activities required are consistent with state standards. In addition, local county authorities should be consulted as they often have additional requirements above and beyond state standards.

The cooperative working relationship that has developed between the State of Kansas and the

Corps of Engineers on dredging permits over the last couple of years has improved both the understanding of the issues and the actions necessary to improve the quality of the Kansas River for all citizens. This coordination must continue as we begin implementation of additional studies and recommendations from existing studies.

Thank you again for the opportunity to comment on the proposed changes to the Kansas River dredging permits.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Michael Hayden". The signature is fluid and cursive, with a long horizontal stroke at the end.

J. Michael Hayden, Secretary
Kansas Department of Wildlife and Parks
Chairperson of the Natural Resources Sub-cabinet

The University of Kansas

Kansas Biological Survey

2 September 2003

Mr. Joshua A. Marx
U.S. Army Corps of Engineers
Kansas City Regulatory Office
700 Federal Building, 601 E. 12th Street
Kansas City, MO 64106-2896

Re: Comments relating to the Regulatory Plan for Commercial Dredging Activities on the Kansas River.

Dear Mr. Marx:

We have had an opportunity to review the Regulatory Plan and in general are pleased with the way the document addresses physical aspects of dredging-related impacts to the Kansas River. However, we would like to share our concerns relative to the apparent lack of a biological monitoring component in the Monitoring Plan. Considering that dredging in, and water quality of the Kansas River have been the focus of much attention in recent years from environmental and recreational interests, confining the monitoring criteria strictly to aspects of geomorphology is likely to be perceived as too narrow and deficient in scope.

This letter reflects the consensus opinion of several aquatic ecologists having various scientific specialties in the Kansas Biological Survey, all having broad experience with biological inventories and assessments of numerous large rivers, streams, and lakes in our region through grant-funded research. Coincidentally, two of them are also among authors of the 1982 study "Impacts of Commercial Dredging on the Fishery of the Lower Kansas River" (DACW 41-79-C-0075). As a consequence of these factors, and per our mandate from the legislature, we are frequently asked to render opinions about the environmental condition and health of the lower Kansas River. Over the years these inquiries have come from individuals such as fishermen, environmental interest groups, dredge operators and other diverse users. Answering these questions has been difficult because of the paucity of recent quantitative, comprehensive information and sampling data on the Kansas River for important biological indicators of general condition and abundance/diversity of fish, benthic macroinvertebrates, and plankton. Therefore, we have been constrained in our ability to offer an informed opinion about what exactly is the current state of the biological community of the river even in general terms, much less how the community might be impacted by continued dredging

under the new permit guidelines.

Since the 1950's the composition of the fish fauna of the Kansas River has undergone tremendous change. Kansas' threatened fish species inhabiting the Kansas River include the federally endangered pallid sturgeon (*Scaphirhynchus albus*), while state-listed threatened species include the flathead chub (*Platygobio gracilis*), sturgeon chub (*Macrhybopsis gelida*), and western silvery minnow (*Hybognathus argyritis*). Several SINC species are present including the blue sucker (*Cycleptus elongatus*), highfin carpsucker (*Carpiodes velifer*), plains minnow (*Hybognathus placitus*), and river shiner (*Notropis blennioides*). It is thought that these dramatic environmental changes are probably not the result of any single factor, such as dredging, but rather are likely due to a combination of disturbances, such as agricultural runoff, urbanization, impoundments, and channel modifications.

As you may recall, much of the historical and baseline information currently available for assessing fish populations and community structure in the lower Kansas River is derived from just two distinct points in time. These data were obtained through intensive sampling efforts under the direction of Dr. Frank Cross at the University of Kansas. The first of these efforts was conducted over several years in the early 1950's. The second of these occurred as a by-product of monthly sampling over a three-year period for the above-mentioned dredging study. One of the most disturbing conclusions drawn from an internal comparison of these studies was that the fish community had changed dramatically in the lower river over a mere 25-30 year period, with once-dominant species being nearly or completely replaced by others. This temporally dynamic and rapidly occurring alteration in the Kansas River fish community strongly suggests habitat conditions were far from being stabilized then, and very likely have continued to change even more in the interval between 1982 and the present day (although as mentioned before, this supposition cannot be verified because of the lack of recent data).

The Kansas River is occasionally sampled for fish and macroinvertebrates by various other agencies, such as KS Wildlife and Parks, KDHE, USGS, USFWS, and perhaps others, but these efforts are small, infrequent, inconsistent, and thus not thorough enough to allow us to comprehend what is occurring in the Kansas River ecosystem at the present time. We do not want to downplay the value of these other efforts. Instead, we wish to emphasize that much more extensive efforts undertaken and in all seasons will be necessary to gain a meaningful understanding of the present state of the river and its fishery. Such key information useful to all these agencies is currently lacking, even though its acquisition would provide knowledge vital to the river's regulation, management, and conservation, and would, thereby, protect the public interest into the future.

This may be a very appropriate time for the USACE and other interested parties to consider laying the groundwork for a significant ecological assessment of the lower Kansas River. It has been 25 years since publication of the most recent fisheries inventory (1982 dredging study), and roughly 50 years since the first extensive survey under the direction of Dr. Cross (early 1950's). Performing a comparable study today would provide an ideal time-line for detecting rate of change in the system over the past half-century, and create a new database reflecting the current status of the river's aquatic organisms and indicator information essential to the identification of stressors. This includes an important need to update occurrence, population, and distribution information for a number of fish species in the Kansas River, including threatened and endangered species. Such a study would

also provide a wealth of other new information valuable to the Corps, other federal and state agencies, universities, and the general public.

As the Corps' Monitoring Plan relates to their intention to issue new 10-year dredging permits on the Kansas River, we believe the plan is deficient because it does not include criteria for biological monitoring. It has been well established that dredging contributes to transforming habitats within the river through the gradual depletion and movement of sand, and that those effects are cumulative. Such effects are manifested in detectable changes to the fish and invertebrate fauna, both locally at operating dredge sites and progressively downstream in reaches where dredging was abandoned due to sand depletion. At the time of publication of the 1982 study, this situation was due in part to the fact that the rate of extraction was exceeding the rate of deposition (replenishment from upstream). Presumably the new regulatory plan and extractive rate restrictions will serve to alleviate the former condition, but under the current monitoring program there is no way to demonstrate how the plan will actually and ultimately affect the biota. Biological information and data are both vital to making any meaningful determination relating to the protection of human and wildlife values.

There would be considerable value in performing biological monitoring and assessment in addition to other criteria listed in the monitoring program. As a means of explaining their applicability, the following "Uses" are for the most part relevant and borrowed directly from the EPA's Biocriteria and Bioassessment website (www.epa.gov/ost/biocriteria):

Uses of Biocriteria and Bioassessment Data:

Biological assessments can be used to measure the response of biological communities to incidents such as spills and discharges, determine the extent of damage caused, and determine the rate and degree of waterbody recovery. Biological evidence gathered can be used to assist enforcement agencies with both civil and criminal enforcement actions.

1. Biocriteria, used in the framework of biologically-based aquatic life use designations, help shift the regulatory focus from performance-based standards to impact-based standards.
2. Biological assessment data provide direct measurements of water quality conditions and can also be used in National Water Quality Inventory reports. This is a distinct advantage over chemistry and toxicity monitoring data because bioassessment data can be used to identify biologically impaired waters, verify impacts of point source discharges, assess the effects of habitat alteration, and capture episodic or non-point source pollution.
3. Bioassessment data help identify causes and sources of impacts to an aquatic community. Different biological components of an aquatic community will respond differently to certain types of stressors. These responses can be valuable to help identify the stressor.
4. Water quality standards, set by states and tribes, identify designated uses for each waterbody. Bioassessment data may be used to indicate whether these waterbodies support the designated uses. If they do not, TMDLs are used to set allowable loads of a single pollutant from all contributing point and nonpoint sources.

5. Biological assessments are used to directly measure the response of the biological community to actions taken to restore waterbodies.
6. Bioassessments and biocriteria can support the issuance and reissuance of National Pollutant Discharge Elimination System (NPDES) permits by providing a biological picture of a receiving water response to discharges and control measures.
7. Bioassessment and biocriteria shift the focus of water quality programs from strict pollutant source control, e.g. permitting, to broader resource management. Many programs in watershed management plans can use biological data.

One shortcoming of the 1982 dredging study was plainly its limitation to three years duration. In spite of this, it could be concluded from somewhat minimal data that cumulative habitat changes (and the kinds of organisms present) at and below dredge sites were detectable over time from beginning to end of the field study. While the ultimate fate of the river under the influence of long-term dredging, when combined with other factors, is readily apparent in the physical appearance of the Kansas River near Kansas City, the actual rate of change and a summarization of its effect on the aquatic community remains largely speculative. It would be extremely useful to revisit the same dredge sites utilized for the 1982 study (most of which still exist in approximately the same locations) within the context of a complete bioassessment for the lower Kansas River in order to examine the impact (or recovery) that has occurred at these locations over a much longer time frame.

The Kansas Biological Survey requests that a public hearing be held to consider the applications. Because the Kansas River is an important and significant natural resource of the state, we feel a public hearing is both appropriate and necessary to achieving a broadened consensus contributing to its best possible management in the interests of all Kansans.

In conclusion, we believe there is a special opportunity at the present time to address two very important sustainability needs of the lower Kansas River. There is every reason to believe combining a biological component to the regulatory plan for dredging with a comprehensive bioassessment of the river would have wide applicability and usefulness to the Corps and other agencies charged within its jurisdiction. The Kansas Biological Survey is well-positioned and fully capable of coordinating with the needs of other agencies to assist the Corps with all aspects of such an endeavor. We would welcome the opportunity to meet with your representatives to discuss your needs and explore the potential of a mutually beneficial interaction.

Sincerely,



Dr. Edward Martin, Director and State Biologist
Kansas Biological Survey



K A N S A S

KANSAS WATER OFFICE

KATHLEEN SEBELIUS, GOVERNOR

Joseph Harkins, Director

September 15, 2003

Joshua A. Marx
U.S. Army Corps of Engineers
Kansas City Regulatory Office
700 Federal Building
601 East 12th Street
Kansas City, MO 64106-2896

Re: Sand and Gravel Dredging Operations - Kansas River
U.S. Army Corps of Engineers Permit Numbers: 200301770, 200301771, 200301860,
200301861, 200301862, 200200317, 200200319, 200200322, 200200328, 200301759,
200301768, and 200301863

Dear Mr. Marx:

In response to the Corps of Engineers' public notice regarding the permits referenced above, the Kansas-Lower Republican Basin Advisory Committee requests that the Corps hold a public hearing to consider the applications for dredging permits.

The Kansas-Lower Republican Basin Advisory Committee is an advisory committee created by the Kansas Water Authority to provide public input into the state water resources planning process. The committee is representative of diverse constituencies within the Kansas-Lower Republican Basin and monitors water resources in the basin.

When the committee met on September 11th, it spent considerable time reviewing an issue paper on degradation in the Kansas River. Following that review, the committee voted unanimously to request a public hearing to receive public comment on the dredging permit applications your agency has received.

Although the committee has no formal position on dredging, the committee believes that degradation of the Kansas River is an established fact, and that causes of that degradation should be determined and prevented. A public hearing is an important first step.

(Continued on next page.)

901 S. KANSAS AVENUE, TOPEKA, KS 66612-1249

Voice 785-296-3185 Fax 785-296-0878 www.kwo.org

Joshua Marx Letter
Page 2

Sincerely,

A handwritten signature in black ink, appearing to read "Carl Nuzman". The signature is written in a cursive style with a long horizontal flourish at the end.

Carl Nuzman, Chairman
Kansas-Lower Republican Basin Advisory Committee

CN/rm

KANSAS

DEPARTMENT OF WILDLIFE AND PARKS

KATHLEEN SEBELIUS, GOVERNOR

2/17/2006

Track: 20060057

SN

Ref: D5.0900

Mr. Josh Marx
USACE, Kansas City Reg. Office
601 E. 12th
Kansas City, MO 64106

Dear Mr. Marx:

We have reviewed PN 20060407, an application for Victory Sand and Gravel to dredge aggregate from the Kansas River between river miles 77.1 – 78.6, generally located NE of Topeka in sec. 23-11-16 Shawnee County, KS. The project was reviewed for potential impacts on crucial wildlife habitats, current state-listed threatened and endangered wildlife species, and public recreation areas for which this agency has some administrative authority.

The Kansas River is designated as critical habitat for the state listed Sturgeon Chub (*Macrhybopsis gelida*) at this location and the applicant will need to apply for a permit from KDWP for this action if it is determined habitat is suitable for the species. Information on the species and the regulations protecting designated critical habitats (including a permit application) can be found on KDWP's website <http://www.kdwp.state.ks.us/> or by contacting KDWP's Environmental Services Section at 620.672.5911 (email: nated@wp.state.ks.us).

After reviewing the COE's 1991 Regulatory Plan related to commercial dredging on the Kansas River, we have a few questions on the project's relation to the Regulatory Plan.

1. *To what extent has bed degradation occurred in the proposed reach?* As mentioned in our phone conversation, downstream cross-sections within the proposed reach indicate riverbed degradation has occurred at varying degrees since the inception of the Regulatory Plan's monitoring protocol. In accordance with the Regulatory Plan's **Restrictions Concerning Riverbed Degradation** (appendix A, page A-3), it appears that if the River attains a 2 foot drop in bed elevation within any 5 mile reach, dredging activities will be terminated regardless of the cause of the degradation. In order to insure aquatic habitat for the Sturgeon Chub and other native fish species is not significantly degraded by the proposed action, we would like to review the cross-sectional information gathered by the applicant and other relevant data collectors (if applicable), to determine the extent of degradation within the proposed reach and what limitations may be required if future dredging activity is permitted. During a recent survey of the Kansas River, 14 fish species of fish were collected in the reach proposed for the dredging activity, while only 3 species were collected in the reach currently being dredged for aggregate (Eitzmann et al., 2005). This disparity is likely due to the more diverse habitat provided by sand bars, high-banks, etc. at the proposed reach compared to the homogeneous habitat (deeper, slow-water, no sand bars) at the existing reach.

2. *Do the appropriate dredging buffers apply along bank stabilization structures?* The Regulatory Plan **Restrictions Concerning Manmade Structures Part VII, E (Bank Stabilization Structures, page A-10-11)** indicates that a 200' buffer will be required riverward from structures such as jetties and hardpoints. A review of aerial photographs indicates that a series of structures, possibly hard points, occur on the outside bend of the River within the project's proposed reach. A site visit or photographs would be helpful in determining if these structures meet the requirement for buffering from dredging activity.

3. *Do the appropriate dredging buffers apply along the banks of the Kansas River?* The Regulatory Plan **Restrictions Concerning Natural Formations** Part VIII, B (2) (Riverbanks, page A-13) indicates that RM 78.0 – 80.3 is classified as a sharp river bend and may be susceptible to accelerated bank erosion if dredging activities are not buffered from the bank. The Plan calls for a 200' buffer from the OHWM in these areas. Part B (4) (page A-14) calls for a 100' buffer from the OHWM on any riverbank not specified in parts (1) and (2) of the document (page A-13). We are aware of the notation on the map included in the PN that identified a NO DREDGE ZONE; however, it did not appear to address Part B(4). An aerial photograph with these buffers delineated to scale would be much more helpful in determining how much of the River will be impacted.

4. *Are provisions in place to protect water based recreation interests at dredging locations?* The impacts of water based recreation were not listed as an adverse impact associated with commercial dredging activity within the introduction of the Regulatory Plan (page A-1). The KDWP has operational programs and facilities that are designed to insure and promote recreation on the Kansas River, including an existing boat ramp facility located at RM 76.5, directly downstream of the proposed activity. Watercraft travel both up and downstream of the boat ramp, during both day and nighttime conditions. If the project is implemented, conditions to insure safe passage through the proposed operation should be implemented so that the public's use of the River is not impeded by the proposed activity. Adequate lighting of dredging infrastructure within the River should be conditioned with the 404 permit, if approved.

In addition to the questions related to the Regulatory Plan, we have some recommendations for remedial actions for the Corps to consider. We recommend the applicant continue to monitor the abandoned reach and all monitoring cross-sections relevant to that location to determine if aggradation occurs with removal of dredging activity. Adequate cross-sectional locations should be implemented up and downstream of the proposed reach, if permitted. Mitigation/remediation options include:

1. Implement ecologically sound bank stabilization measures such as bendway weirs along eroding banks in the area
2. Wetland and/or riparian restoration
3. It may be worthwhile to consult w/USFWS on restoration of sandbar habitat for Least Terns. Removal of vegetation that invades sand bars due to flow moderation by upstream reservoirs limits the success of Least Tern nesting. Dan Mulhern of USFWS may have additional recommendations (785.539.3474)

Thank you for the opportunity to provide these comments and recommendations.

Sincerely,



Nate Davis, Aquatic Ecologist
Environmental Services Section

xc: KDWP Reg FW Sup, Wolfe KDWP Dist Bio, Sanders KBS, Liechti
KDHE, Mueldener USFWS, LeValley USEPA, Mulder Friends of Kaw, Calwell

Eitzmann, J. A. Makinster, and C. Paukert. 2005. Population dynamics of Blue Suckers in the Kansas River. Kansas Department of Wildlife and Parks Wildlife Surveys and Research: Assessment of streams on public lands. Kansas cooperative Fish and Wildlife Research Unit, Div. of Biology, Kansas State Univ., Manhattan, KS.

STATE OF KANSAS



TOPEKA

SENATE CHAMBER

CHRIS STEINEGER

SENATOR, SIXTH DISTRICT

51 S. 64TH ST.

KANSAS CITY, KANSAS 66111

(913) 287-7636

STATE CAPITOL BLDG., ROOM 523-S

TOPEKA, KANSAS 66612-1504

(785) 296-7375

E-MAIL: STEINEGER@SENATE.KS.US

1-800-432-3924

(LEGISLATIVE HOTLINE DURING SESSION)

COMMITTEE ASSIGNMENTS

RANKING MINORITY MEMBER:

PUBLIC HEALTH AND WELFARE

MEMBER: ASSESSMENT AND

TAXATION

COMMERCE

ELECTIONS AND LOCAL

GOVERNMENT

HEALTH CARE REFORM

OVERSIGHT

LEGISLATIVE POST AUDIT

RULES AND REGULATIONS

STATE BOARD OF EMERGENCY

MEDICAL SERVICES

SRS TRANSITION OVERSIGHT

Donald Curtis

District Engineer

U.S. Army Corps of Engineers

601 E. 12th St.

Kansas City, MO-64106-2896

Dear Mr. Curtis:

I write to you regarding the proposed extension/renewal of permits for sand dredging operations along the Kansas River. I represent southern Wyandotte County including the portion of the river that contains these dredging ops. Being third generation Wyandotte Countian, and having been born, raised, and currently residing with in eyesight of the Kaw, I am very familiar with the industries' long -term presence in my community. In fact, many of the older families who have owned and operated the dredging companies are old family friends of my family.

While I do disagree with some of the environmentalists' claims and allegations about damage caused to the river, nonetheless, I believe Kansans need to do a better job of protecting, preserving, and cleaning up our rivers. Having traveled around the United States and western Europe, I have seen many rivers which are far better utilized for recreation and other public purposes. than are the rivers in Kansas and Kansas City. Although Kansans are way behind the curve in being thoughtful and creative about river usage, I hope we will catch up some day.

With those thoughts in mind, I am concerned about the extension of these new permits from five years to ten. I ask that these permits be kept at five years as they have in the past. Five year permits have worked well for years, and obviously have not hindered the industry from operating. A five year permit is still a "long leash" for the sand industry, and it is a leash they are accustomed to.

My other request is that you have a public hearing soon regarding the permit renewals. I realize the public comment period is one way for people to express their views; however, in Kansas we have a long history of populism, and a public hearing is a great tradition for allowing people to have their say. (You can bet the Iraqis never had public hearings under Saddam!)

This request is being sent to you both in email and hardcopy format and I ask that you respond likewise to my Kansas City address and to senatorchris@kc.rr.com.

Sincerely,

Chris Steineger

Cc Joseph Hughes, Joshua Marx

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WaterOne

One Mission. . .
Quality Water

Water District No. 1 of Johnson County

September 15, 2003

Mr. Joshua A. Marx
U.S. Army Corps of Engineers
Kansas City Regulatory Office
700 Federal Building
601 East 12th Street
Kansas City, MO 64106-2896

Re: Comments on 2003 Kansas River Dredging Permits

Dear Mr. Marx:

As we discussed in our telephone conversation of August 13, 2003, this letter is to forward WaterOne's concerns regarding approval of the multiple Dredging permits on the Kansas River, mentioned in your August 8, 2003 Public Notice.

The Water District has no issues with granting of the permits as it pertains to the removal of the sand from the river at these locations. WaterOne is, however, concerned with water quality and water quantity in the river. Of particular interest to WaterOne is any increase in suspended material, tastes and odors, and spills such as fuel or hydraulic fluids that are carried along in the stream flow. These issues can cause the shutdown of our intake and treatment processes at Kansas River mile 15.0.

We respectfully request that the Corps of Engineers consider our comments. If there are any questions regarding this letter, please feel free to contact me at 913-895-5813.

Sincerely,

Paul D. Corkill, P.E.
Manager of Facilities Engineering

PDC/dcm

cc: Mike Armstrong
Eric Arner
Tom Schrempp

Friends of the Kaw



“To protect and preserve the Kansas River”

February 15, 2006

Joshua Marx
U.S. Army Corps of Engineers
601 E. 12th Street
Kansas City, MO 64106-2896

RE: Permit 200600407

Dear Mr. Marx,

Friends of the Kaw, a not-for-profit grassroots environmental organization, asks that Victory Sand and Gravel be denied a permit to move their commercial sand and gravel dredging operation to river mile 77.1 –78.6. Since Friends of the Kaw’s inception in the early 1990’s we have opposed in-river dredging for sand and gravel in the Kansas River because in-stream sand dredging activity:

- Damages bridges, pipelines, jetties, dams, weirs and other manmade structures due to bank destabilization;
- Degrades habitat, diminish fish diversity and fish population due to siltation;
- Impairs recreation, navigation and water quality;
- Degrades the riverbed and the shoreline; and
- May cause re-suspension and concentrate chlordane, PCB’s and other persistent bio-accumulative toxins downstream.

We have diligently worked to influence public opinion by working with state and federal regulators, Kansas’s governmental agencies dealing with water quality, and the citizens of Kansas. At the present time the Kansas Water Office has convened a Technical Advisory Committee (TAC) to further study channel degradation in the Kansas River and report to the Kansas Water Authority. The TAC is comprised of membership from appropriate federal and state agencies as well as stakeholders including Friends of the Kaw and Kansas Aggregate Producers Association. In the TAC’s executive summary of the report issued in June of 2005 it states:

1. While the degree and magnitude of channel changes varies throughout the length of the Kansas River, **degradation is occurring to some level in nearly every reach**

Kansas Riverkeeper

P.O. Box 1612, Lawrence, KS 66044

Kansas City: 913-963-3460; Lawrence: 785-312-7200

Report River Pollution: 1-866-RIV-KEEP

Email: Riverkeeper@KansasRiver.com

Website: www.KansasRiver.com



Encl 10.7

of the river. However, the scale of degradation appears to be the greatest in the lower reaches of the river. Localized streambed change on the Kansas River ranges from some aggradation to greater than 12 feet of degradation in some locations over the last 30 years.

2. Degradation of the Kansas River has **created an unstable river channel in various reaches which has resulted in secondary impacts such as lowering of the water surface elevation in the river channel and connected alluvial aquifer water table, alteration of aquatic and terrestrial habitat, and reduction in the integrity of manmade structures.** Degradation of the channel of the Kansas River has **directly impacted several structures and well fields including the intakes at WaterOne and the Kansas City Board of Public Utilities Kaw Generating Station, the City of Topeka and WaterOne weir, Bowersock dam and the well fields for Water One and the cities of Olathe and Junction City.**
3. Kansas River channel degradation has the **potential to impact the river's biological community.** Lowering of the streambed in some reaches has resulted in an alteration to deeper, slower moving water, which has allowed a shift to life more typically adapted to lake-like conditions.
4. Quantification and rank ordering of the primary causes of channel degradation has not been determined over the entire reach of the Kansas River, though causes for specific locations on the river are discernable. At present, there appear to be four known causes for channel degradation in the Kansas River: long-term natural processes, **commercial sand and gravel dredging**, reservoir operations and channel degradation of the Missouri River.

Friends of the Kaw would like to note in regard to:

- Statement 1 that degradation is occurring in all river reaches where commercial sand dredging operations are currently located.
- Statement 2 that all of the impacted structures with the exception of the well fields in Junction City are in areas that are or were actively dredged.
- Statement 3 that while commercial sand and gravel dredging is only one factor of several impacting degradation we do not feel it is justified to impact yet another location on the Kansas River to a new dredging activity and further degradation.

Other considerations that concern Friends of the Kaw about the specific location of this application and that need to be further addressed are:

- The upper third of the proposed dredging area is in a "No Dredge Zone" according to the Regulatory Plan. Dredging activity could cause destabilization of the bank also ultimately effect the stability of US Highway 24 that is just north of the Kansas River at the upstream limit of proposed dredge area.
- The Seward Access Ramp is located 0.5 mile south of the downstream limit of the proposed dredge area and could be adversely affected with the deposit of silt on the

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ramp. If the permit is approved the additional maintenance of this access needs to be addressed as it links with the newly constructed public boat ramp at the Lecompton Bridge and allows the public the opportunity to experience a float along a very beautiful stretch of the Kansas River that is easily accomplished in a day.

- The Seward Access will also link to the new recreational access planned by Kansas Department of Wildlife and Parks at State Park 24 providing another opportunity for a day float through the city of Topeka.
- The TAC has determined the need for establishing a base inventory of the Kansas River to gauge the impact of further degradation and study. If this application is approved the baseline cross-sections, water surface elevations and aerial photographs need to be made for future comparison.
- Regardless of approval or disapproval of this permit reclamation plans for the abandoned site of Victory Sand and Gravel at river miles 86.3 to 86.5 and Kansas Sand and Concrete at river miles 84.5 to 85.8 need to include bank stabilization with reestablishment of native vegetation and use of natural stone where appropriate and removal of all abandoned equipment and inventory. This area also needs continued control site maintenance and data collection for a reasonable period of time after operations are abandoned.
- If this permit is approved stipulations for an adequately sized and designed siltation pond with a predetermined maintenance procedure and schedule need to be established.
- In accordance with section 323.2 (3) (i) of the Corps of Engineers, Dept. of the Army DoD which states "Discharges of pollutants into waters of the United States resulting from the onshore subsequent processing of dredged material that is extracted for any commercial use (other than fill.) These discharges are subject to the section 402 of the Clean Water Act even though the extraction and deposit of such material may require a permit from the Corps or applicable State section 404 program." we believe that this dredging operation is required to obtain an NPDES permit.
- In accordance with Section 404(a) of the Clean Water Act, the Army Corp of Engineers (the "Corps") is authorized to issue permits for the discharge of "dredged or fill material" into the waters of the United States. 33 U.S.C. § 1344(a). Under the Corps own regulations, permits are "required for the discharge of dredged or fill material into waters of the United States." 33 C.F.R. § 323.3(a). The "term discharge of dredged material means any addition of dredged material into, including redeposit of dredged material other than incidental fallback within, the waters of the United States." 33 C.F.R. § 323.2(1)(3). *Emphasis added.*

The Corps regulations state, "[t]he Corps and EPA regard... in-stream mining or other earth-moving activity in waters of the United States as resulting in a discharge of dredged material unless project-specific evidence shows that the activity results in only incidental fallback." 33 C.F.R. § 323.2(2). *Emphasis added.* These regulations define "incidental fallback" as the "redeposit of small volumes of dredged material that is

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incidental to excavation activity in waters of the United States when such material falls back to substantially the same place as the initial removal. 33 C.F.R. § 323.2(2).
Emphasis added. 01:07:09 01 09:00

In-stream commercial sand and gravel dredging discharges do not result in “only incidental fallback.” By definition, for a dredging discharge to be considered “incidental fallback” such discharge must fall “back to substantially the same place as the initial removal.” *See id.* In the instance, commercial sand and gravel dredging on the Kansas River has resulted in the lowering of the Kansas River’s streambed. The lowering of the Kansas River’s streambed is evidence that dredging discharges do not fall back to “substantially the same place as the initial removal.” *See id.* If this were the case, the streambed would not be lowered.

Friends of the Kaw advocates that discharges from sand and gravel dredging operations on the Kansas River are not “incidental fallback” and that such discharges are subject to the Corps’ permitting process. It is Friends of the Kaw’s position that the Corp cannot issue a blanket determination that commercial dredging operations on the Kansas River result only in incidental fallback and that the Corp is bound by 33 C.F.R. § 323.2(2) to provide project-specific evidence showing that such dredging activity results in only incidental fallback.

Friends of the Kaw believes the answer to the continued need for sand is to take sand from the flood plain next to the river. We applaud Kansas Sand and Concrete, Inc., also being required to relocate because of unacceptable channel degradation at their current location (r. m. 84.5 to r. m. 85.8), for making plans to move their operation to a pit mine. We agree that finding an appropriate pit mine site is not an easy task but as shown by Kansas Sand and Concrete, Inc. it is possible.

One of the objectives of the Technical Advisory Committee on Kansas River Channel Degradation is to make recommendations on future uses of the Kansas River. This committee is in the process of examining pertinent information and input from stakeholders and has not made any final recommendations. Based on the preliminary findings and ongoing nature of future investigation by the Technical Advisory Committee on Kansas River Channel Degradation, Friends of the Kaw requests that this application be denied. If approval is considered a public hearing should be held.

Sincerely,



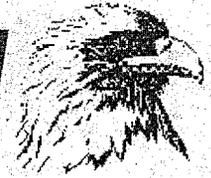
Laura Calwell, Kansas Riverkeeper for Friends of the Kaw

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Friends of the Kaw

To protect and preserve the Kansas River



August 19, 2004

Colonel Michael A. Rossi
U. S Army Corps of Engineers
Kansas City Regulatory Office
700 Federal Building
601 East 12th Street
Kansas City, Missouri 64016-2896

Dear Colonel Rossi,

Friends of the Kaw is a 501 c 3, grass root, environmental organization whose mission is to protect and preserve the Kansas River for present and future generations. We were formed in response to the consideration of new sand dredging permits on the Kansas River above Bowersock Dam in the early 1990's. Because of the degradation caused by commercial sand mining on the Kansas River, our organization will not rest until the current operations have moved to off-river locations. We understand that commercial sand is necessary for a healthy economy but a move to off-river locations should be eminent.

Although in-river dredging provides low-cost aggregate for construction, it has a significant negative impact on the river. The removal of aggregate has long-term consequences for bed deterioration and bank stability. Since the river is a dynamic system, disturbance of any part of the system affects other parts. Riparian areas along the river may also be compromised by installation of equipment and removal of aggregate. Cables securing dredging equipment to the banks also present serious obstacles to canoeists and other recreational users of the river by making some reaches of the river hazardous for recreation. In addition, dredging increases water turbidity, affecting and destabilizing the aquatic environment and can affect water quality.

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Because of the numerous requests for a public hearing prior to the reauthorization of dredging permits by the general public and written testimony from:

U. S. Environmental Protection Agency, Region 7
U. S. Department of Interior, Fish and Wildlife Service
Kansas Department of Wildlife and Parks for the Governor's Natural Resources Sub-cabinet
Kansas Biological Survey
WaterOne of Johnson County
Kansas - Lower Republican Basin Advisory Committee
Friends of the Kaw
Kansas Sierra Club
Kansas Natural Resource Council
Kansas Wildlife Federation
Kansas Canoe Association

we encourage you to schedule a public hearing before making a decision to approve or disapprove ten year proposed dredging permits.

Friends of the Kaw has demonstrated that there is overwhelming public support, both from citizens and from state, local, and federal government, for ending dredging in the Kansas River. Your office and predecessor, has received hundreds of these comments. Friends of the Kaw strongly encourages you to review these comments and schedule a public hearing so that all issues are presented. Would you please contact me at 913 963 3460 as soon as possible to set up a meeting in regard to this issue. Thank you for your consideration.

Sincerely,

Laura Calwell, Kansas Riverkeeper
Friends of the Kaw, Inc.

cc: Mollie Mangerich
Lance Burr
Charles Benjamin
Joe Harkins

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Friends of the Kaw

To protect and preserve the Kansas River



November 20, 2003

Colonel Curtis
Federal Building
601 E. 12th Street
Kansas City, MO 64106-2896

Re: Commercial sand and gravel dredging on the Kansas River

Dear Colonel Curtis,

Thank you for meeting with myself, Charles Benjamin, Dan Ward and Dave Murphy on November 13, 2003. I also appreciated the opportunity to meet with Joseph Hughes and Joshua Marx.

Friends of the Kaw continues to urge the Army Corps of Engineers to hold a public hearing on this matter to allow the public due process.

For the record, I would like to explain Friends of the Kaw's background on sand dredging in the Kansas River. Our grassroots organization was formed in 1994 to oppose the granting of the license to Victory Sand and Gravel Company (public notice #94-00623) to dredge sand in the Kansas River from 57.5 to 59 river miles. As you are probably aware that application was denied because "proposed dredging operation would significantly impact the recreational and aesthetic value of the reach of river located between Bowersock Dam, at Lawrence (river mile 51.8), and the mouth of the Delaware River, near Lecompton (river mile 51.8)". Since that time, Friends of the Kaw has been a factor in the denial of all applications for new sand and gravel dredging permits in the Kansas River. Our reasons for opposing in-river sand dredging are detailed in our recent public comment to the proposed renewal of 12 permits.

I want to emphasize Friends of the Kaw's first and primary concern is the overall health of the Kansas River, its water quality and environs. The opportunity to safely recreate on the Kansas River is a secondary concern and also a tool to educate advocates for our first concern. Friends of the Kaw has worked for the past ten years to raise public awareness of plight of the Kansas River, damage done by in-river sand mining and availability of sand in the Kansas River valley. Friends of the Kaw will not be satisfied until all dredging is denied in the Kansas River however, we understand that change is a process and are willing to help formulate and participate in that process.

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I also believe that change, whether it is for personal or business reasons, many times does not happen until it is forced to happen. In the case of some sand dredging companies on the Kansas River, why would they incur the hassle and expense of moving off-river unless they had to? I contend that that is human nature. Several proactive sand companies on the Kansas River are voluntarily moving their operations off-river probably because of long term availability of sand and they have been blocked from relocating to new locations up river by a growing public sentiment against in-river mining.

Thank you for letting me share my thoughts about comments made during our meeting last week. Please let us know if there is any information we can obtain or any way we can help you to facilitate a process or decision in this matter.

Sincerely,



Laura Calwell, Kansas Riverkeeper for Friends of the Kaw

Kansas Riverkeeper

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Friends of the Kaw

To protect and preserve the Kansas River



September 3, 2003

Joshua Marx
U.S. Army Corps of Engineers
601 E. 12th Street
Kansas City, MO 64106-2896

RE: Commercial Sand Dredging on the Kansas River

Dear Mr. Marx,

On behalf of Friends of the Kaw, Inc. (FOK) I request that the U.S. Army Corps of Engineers (USACE) schedule a public hearing before any decision is made to grant future commercial sand and gravel permits on the Kansas River. Friends of the Kaw (FOK) also requests that testimony from the 1995 hearings held at the Perry-Lecompton High School on the Victory Sand and Gravel permit between Lawrence and Topeka, which was denied by the USACE, be submitted into the public record as comment on this issue.

FOK requests a public hearing to discuss:

1. Damage caused by dredging to the Kansas River and its ecosystem:

The most recent history and studies since the late 1970's and every engineering study done by the USACE have concluded that commercial sand and gravel dredging on the Kansas River is the primary cause of riverbed degradation on the Kansas River. These studies agree that other contributing factors may be at work, but that dredging is the primary and most significant cause of the river's degradation. Except for the Topeka area and the reaches downstream of Lawrence, most of riverbed upstream of Lawrence remains comparatively stable.

The "Final Regulatory Report and Environmental Impact Statement - Commercial Dredging Activities on the Kansas River" from the USACE dated January 1990 establishes the following facts:

- a. "Past commercial dredging activities on the river have had a severe impact on the river's morphology and ecology and on non-dredging interests located in and along the river. Future dredging activities have a high potential to worsen existing problems and to extend dredging impacts into previously undisturbed reaches of the river."
- b. "Nothing less than a total cessation of dredging would be expected to entirely eliminate adverse impacts upstream of river mile 22. The sand transport rate in and out of most reaches of the river. is approximately 1:1. Those reaches of the river are essentially in equilibrium, since the quantity of sand transported into the reach is approximately equal to the quantity transported out of the same reach."

- c. "In the winter of 1986 Kansas City District determined that as little as 2 - 3 feet of additional riverbed degradation in the lower Kansas River and in the Topeka area would result in millions of dollars in economic losses to non-dredge concerns. Lower riverbed and water surface elevations would increase: (a) bank erosion (loss of property), (b) maintenance of land stabilization structures, (c) well field operating costs (lower elevations in the flood plain) (d) water supply costs (where lower water surfaces elevations in the river inhibit the operation of water intakes), and (e) pipeline and bridge maintenance."
- d. "Dredging is responsible for widespread destruction of terrestrial and aquatic habitat by creating lake-like conditions that are not normal to the Kansas River, by depositing a blanket of silt on the riverbed in which native organisms cannot survive, and by the destruction of riparian habitat for wildlife."
- e. "The shift from a relatively shallow, fast flowing, sandy, braided channel to a deep, sluggish, silty channel, with significantly reduced habitat diversity, has altered the species composition of the fishery by reducing the number of fish species and the total number of fish. (The 1982 report by Frank Cross demonstrated that both the number fish and the diversity were reduced to half as a result of dredging.) This pollution caused by sand dredging is causing the long term loss of the ecological integrity of the Kansas River and that this pollution and habitat degradation is integral to the very process used by the commercial sand dredge industry on the Kansas River and, therefore, cannot be prevented, mitigated or be significantly reduced by best management practices or any other practice other than the complete cessation of dredging;"

Other factors which cause physical damage to the Kansas River and its ecosystem and/or cause adverse economic repercussions for the state of Kansas because of dredging are:

- a. "Headcutting" is the term used to describe what is happening to land upstream of sand dredging operations. As the channel is cut deeper the banks are undercut and fall into the river. It takes about six tons of soil to make one ton of sand in the Kansas River. The sand dredgers are taking valuable farmland. No estimates have ever been done on the economic cost associated with this loss.
- b. Economic losses to end users of utilities and tax payers because of costly repair to the Turner Bridge, damage to the Johnson County Water One weir, damage to the Atchison, Topeka and Santa Fe Railroad (now abandoned), the loss of the water intake at the Sunflower Army Ammunition Plant, the cost of installing a weir above Eudora to protect the bridge from a migrating riverbed, the undermining of the dam and lowering of the riverbed and loss of electrical generating capacity at Bowersock Mill electric plant.
- c. The following threatened and endangered species (T&E) are designated by the Kansas Department of Wildlife and Parks and live in and/or along the Kansas River: The Smooth Earth Snake, the redbelly snake, the flathead chub, the silverband shiner, the sicklefin chub,



the sturgeon chub, the western silvery minnow, the chestnut lamprey, the flat floater mussel, and the white-faced ibis. The federal list designated by the United States Fish and Wildlife Service includes the bald eagle, the peregrine falcon, the piping plover, the least tern, the whooping crane, and possibly others. Species In Need of Conservation (SINC) on the Kansas River include the eastern hognose snake, and the timber rattlesnake. Species such as the piping plover and least tern require high, well-scoured sandbars for nesting. Although the USACE claims that dredging does not directly remove sandbars, historic comparisons prove that the dredged reaches have fewer sandbars than they once did. Further, a current comparison of un-dredged reaches to dredged reaches will prove that sandbars in the dredged reaches have become relatively rare. No satisfactory Environmental Impact Statement has examined the impacts that in-stream mining has had on the avian and other populations.

- d. The Kansas River is home to not just the T&E species and SINC listed above, but numerous other birds that rely on the riparian areas, sandbars, mud flats, shallows, and pools for their habitat. The river is also on the flyway of many other species, including some of the species listed above, plus migratory shorebirds and waterfowl. These birds are negatively impacted by sand dredging because their habitat is modified, their food sources are reduced and contaminated, and their nesting sites are lost.
- e. Mainstream degradation in dredged reaches has limited the accessibility of tributaries such as Little Kaw Creek (mile 22.3) to river fishes except during high flows. Silt deposited during high mainstream flows blocks the mouth of these streams. Removal of sand from the river by dredging causes the streambed to become covered with silt and silt sand. This alteration of the natural riverbed causes a loss of the river's biological integrity. Benthic organisms that are native to the normally sandy substrate cannot survive as layer upon layer of silt are deposited on the riverbed. Fish populations are decimated which are also native to the normally sandy substrate.
- f. There has been discussion between the Kansas Department of Wildlife and Parks and the USACE and the USFWS that the pallid sturgeon is being considered for reintroduction to the Kansas River. The native range of the endangered pallid sturgeon includes the Kansas River. Although the Johnson County weir at Mill Creek and Bowersock Dam in Lawrence have blocked the passage of this endangered species, its habitat still includes the Kansas River between the Missouri River and Lawrence. The pallid sturgeon prefers fast moving, sandy-bottomed rivers such as the Kansas River as it existed prior to the widening and siltation caused by dredging.
- g. The Kansas River was once a rich fishery, but now the fish in the river below Lawrence are inedible due to chlordane contamination. We are concerned that sand dredging may be re-suspending and



concentrating chlordane contaminated sediment, thus exacerbating the problem particularly for the lower income population that use fish caught from the lower portion of the Kansas River to supplement their diet and thus endangering their health.

2. Recreational value of the Kansas River

In 1996 the state legislature authorized the "Kansas River Recreation Study" which was completed and presented to the legislature on January 12, 1997. This study concluded that:

- a. The Kansas River is an underdeveloped and underutilized state recreational resource;
- b. The state has no other stream recreation resource of this type;
- c. Recreation on the Kansas River has a direct economic benefit of conservatively 3 million dollars per year;
- d. Neither recreational users nor landowners need or want highly developed and costly infrastructures;
- e. The primary need is for non-motorized boating activities such as canoeing, kayaking, rafting, etc. and continuous segments of the river that are linked together by public access and that are free of commercial operations;
- f. Increased access is a benefit to landowners due to reduction in the need for crossing of private property, and parking issues.

The Kansas River is one of three rivers in the state that are available for public recreation. The other two rivers are the Missouri River, which is not suitable for un-motorized boats because of swift current and barge traffic and the Arkansas River, which is used primarily in the Wichita area. The Kansas River passes within an hour's drive of more the 50% of the state's population and within an hour's drive of roughly another 1,000,000 people in Kansas City, Missouri.

Recreation on the Kansas River has increased dramatically in the past decade. Since 1995 FOK has encouraged and sponsored Educational Float Trips, which have introduced thousands of people to the beauty of the Kansas River. FOK has also spearheaded the construction of new public boat ramps in St. George, Perry and Kansas City, Kansas. Other Kansas communities such as Bonner Springs, Desoto, Lecompton, Manhattan, Fort Riley and Junction City are also considering construction of recreational access. In the past five years two canoe rental and livery services have opened to serve the recreational needs on the Kansas River, the Kansas River Canoe Company in Lawrence and Kansas River Outfitters in Manhattan. This resurgence in the public's interest in river recreation comes with a need to protect the cultural, aesthetic and economic benefits that are improving the quality of life along this recreational corridor. Along with canoeists, hunters, fishermen, birders, campers and other recreational users of all ages and cultures are enjoying the Kansas River.

These people are the citizens of Kansas.

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The specific areas used by dredging operations are a visual, noisy blight. The riverbed and bank erosion can destroy the natural beauty and tranquility of the river for great distances upstream. The banks become steep and unfriendly with deposits of concrete rubble and other unattractive materials to stabilize banks. Dredging machinery such as pontoons, barges and cables that stretch across the channel are a hazard and lower the recreational value of the river experience. The dredge machinery also kicks up sediment and the sites discharge dirty water from pipes and ditches causing the river to be muddier and less pleasing to the recreational population. Sand dredging operations on the Kansas River are not compatible with river recreation.

3. Availability of sand from pit mines:

a. In 1985 the USACE contracted with Booker Engineers-Architects-Planners to determine what would happen to the sand and gravel market if the dredgers were moved off the river. The Booker report states that a move from the river to the flood plain would increase the average delivered price of a ton of sand and gravel approximately 6 percent in the market area served by the dredgers. The increase being largely transportation costs.

b. The Scrivens, L.L. report of 1986 establishes that there are "adequate, and equivalent sources of the same grade and quality of sand available off the river" which also supports that there are other sources of sand that are less harmful to the river environment.

We believe the value of tourism and recreation to the Kansas River communities and state of Kansas and the overall health of the Kansas River and it's ecosystem far out weigh the economic benefit of sand dredging in the Kansas River particularly when sand is economically available off river.

4. JOK objects to the new permits being 10 years in length because:

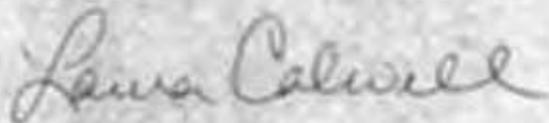
- a. The current Plan has failed to protect the river, the associated habitat and the infrastructure. The USACE's Plan, which allowed two additional feet of riverbed degradation beyond the 1992 baseline has caused at least fifteen miles of river to be degraded beyond the established limits. Now this section of the Kansas River, from mile 23.95 to 40.5, is being proposed as "no longer open to commercial dredging," because "unacceptable degradation (average of greater than 2 feet degradation in a 5-mile-long reach of river)."
- b. The financial cost to non-dredging interests has far exceeded any cost/benefit to the general public. Riverbed degradation has already cost non-dredging interests tens of millions of dollars and those costs keep escalating. The public needs to know the cost and the risks to non-dredging interests in today's dollars, under the existing and proposed conditions. The last economic estimates were done in the mid 1980s by the Corps of Engineers. Today those studies are nearly



20 years old. By the end of the next 10-year permit cycle those studies will be 30 years old.

In conclusion, Friends of the Kaw suggests issuance of a 5-year UNRENEWABLE permits which will allow commercial sand and gravel companies currently using sites on the Kansas River to transition their businesses to pit mines in the Kansas River valley.

Sincerely,



Laura Caldwell, Kansas Riverkeeper

Kansas Riverkeeper

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Riverkeeper@KansasRiver.com



Friends of the Kaw

To protect and preserve the Kansas River



DAVID M. BARK
U.S. Army Corps of Engineers
401 E. 10th Street
Kansas City, MO 64108-2000

Dear Mr. Bark:

As per our conversation on April 19, 2004 I am submitting comments concerning sand and gravel discharge water from settling ponds. These remarks were prompted by my witness and documentation of discharge of jet blast water from Holiday Land and Gravel operation #20-J0103 at river miles 21.0 - 21.15 on April 3, 2004.

"The Kansas River was once a rich fishery, but now the fish in the river below Lawrence are inedible due to chloroac and PCB contamination. We are concerned that sand dredging may be re-suspending and concentrating chloroac and PCB contaminated sediment, thus exacerbating the problem particularly for the lower income population that is often caught from the lower portion of the Kansas River to supplement their food supply and thus endangering their health."

Friends of the Kaw asks that if pending permits are approved that language be inserted in permit to require settling ponds of existing operations be maintained as needed on a regular basis.

Sincerely,

David Caldwell, Kansas Riverkeeper for Friends of the Kaw

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riverkeeper@KansasRiver.com



Kansas Riverkeeper

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riverkeepers@KansasRiver.com



February 27, 2006



**Kansas Natural
Resource Council**

To:
Joshua A. Marx
U.S. Army Corps of Engineers
Kansas City Field Office
700 Federal Building
601 East 12th Street
Kansas City, MO 64106-2896

cc:
Kansas Department of Health and Environment
Bureau of Water, Watershed Management Section
1000 SW Jackson, Street
Topeka, KS 66612-1367

From:
Kansas Natural Resource Council
PO Box 2635
Topeka, KS 66601

Contact:
Dave Murphy
3978 Iowa Lane
Ottawa, KS 66067
murphyds@direcway.com
785-242-8343

Dear Mr. Marx:

The comments below pertain to Permit Number 200600407, issued January 30, 2006, as proposed by Victory Sand and Gravel.

We hereby request that the Corps of Engineers deny this permit based on the following points:

- The operator has demonstrated at his existing permit location that he cannot operate without exceeding the riverbed degradation limits in the *Regulatory Plan for Commercial Dredging Activities on the Kansas River*;
- The requirements of the *Regulatory Plan for Commercial Dredging Activities on the Kansas River* do not allow dredging in part of this reach;
- The permit application does not specify adequate controls to prevent violation of Section IX of the *Regulatory Plan for Commercial Dredging Activities on the Kansas River* concerning control of the discharge water;
- The history of dredging has shown that dredging causes physical damage to the river;
- Dredging in this reach will negatively impact the economic, aesthetic, use and value of recreational uses, safe navigation and the fishery in that area;
- A 100% shore based operation is economically viable and would not result in damage to the river.

We address these concerns to The Corps and to the State of Kansas with the following explanations:

A. This application, as submitted, would failure to comply with the *Regulatory Plan for Commercial Dredging Activities on the Kansas River* and the Clean Water Act.



1. Section VIII B.2. of the regulatory plan addresses the protection of riverbanks that are naturally unstable (i.e. bends in the river): Under the regulatory plan, a dredge is not allowed to operate within 200 feet of the outside of the bend at river mile 78-79.3. Yet the permit specifies that it would dredge upstream to river mile 78.6. That is 6/10ths of a mile inside the no-dredge zone of that river bend.
2. The Regulatory Plan's Monitoring Program Section I indicates that "when a dredged reach of the river is abandoned, the producers may be required to continue control site maintenance and data collection, within the abandoned section for a reasonable period of time". This monitoring plan should be spelled out and required as part of this permit since it is a request for relocation of an existing permit. We feel that this language is important since other dredge sites have been abandoned leaving steep riverbanks unprotected and/or a visual eyesore.
3. Since no plan was included in the permit application for testing discharge waters for toxics, the applicant must be required to use an adequate siltation basin. The permit application needs to be expanded to provide technical details on the siltation basin and process in the following areas:
 - a) The maintained volume of the settling pit must be large enough to (a) allow for the settling of the silt and sand-silt prior to discharge and (b) contain enough silt and silt-sand between maintenance periods so that daily silt and silt-sand accumulations do not displace adequate settlement volumes. What is the minimum water volume that will be maintained in the settling basin and what is the maximum rate of flow into and through the basin? What is the ratio of flow to basin volume and what limits should be placed on inflow and effective pit volume? What are the prescribed maintenance, cleaning, disposal, monitoring and reporting plans for the siltation basin?
 - b) The property on which the Applicant will operate is not large enough to provide for the disposal of the silt and silt-sand from the siltation basin. What are the provisions for silt disposal or miscellaneous debris collection and disposal as required by the regulatory plan?
 - c) The river is about 85% silt and silt-sand. For every ton of sand and gravel taken out, 5.66 tons of silt will be generated. The Applicant is requesting to take 300,000 tons of sand per year from the river. Thus, they will generate approximately 1,680,000 tons of silt and sand-silt annually. This would require a siltation basin significantly larger than the operating piles of sand. However, the rendering provided with the permit show the siltation basin to be smaller than even one of the sand piles. Given the volume of material that will need to be processed through the siltation basin, specific data on the operation of the siltation basin and dredge should be provided – size, depth, flow rate, maintenance frequency, dredge flow rates, etc – so that an informed judgment as to the adequacy of the siltation basin can be made.
 - d) The plan did not address how dredging operations would be conducted during those periods when maintenance of the Applicant's only settling basin is being performed. The plan should spell out in detail the operator's plans for suspending dredging operations during basin maintenance activities or the alternative process to be used that will still meet all requirements of the Regulatory Plan and Clean Water Act.
4. The range of this permit is nearly contiguous with the river mile 80-90 Survey Ranges established under the regulatory plan's Monitoring (sub-section III.B. of that section). Since dredging impacts are most noticeable downstream of the dredge, the Monitoring plan should be amended to include river miles 70 – 80. This will allow for both upstream and downstream monitoring and evaluation of the dredge impacts. This extension will include the area around the Seward Boat

Ramp – a widely used public access point for river recreation – that would now be immediately downstream of the dredge site. Monitoring conditions at this boat ramp and further downstream will provide quantitative data on the impact of dredging to established recreational areas. If a permit is granted, prior to the onset of operations, baseline cross-section, water surface elevations and aerial photographs must be taken and analyzed so that future changes can be accurately assessed.

B. The Kansas Department of Health and Environment (KDHE) is required by the Clean Water Act and state law to issue permits to point source discharges. Nothing could be more point source than the pipe from the siltation basin spewing a discharge into the river. KDHE should require this applicant and all in-river dredge operations on the Kansas River to have an NPDES permit for all discharges to the river.

The suspended solids in these discharges continue to add turbidity to the water and silt over the natural streambed, causing negative affects on aquatic organisms (Cross 1982). The sediments in the Applicants proposed reach are known to contain Chlordane and likely contain other toxic materials since the location is downstream of most of the Topeka area's watershed. To our knowledge, the state has never conducted modern interstitial testing of the suspended solids or downstream sediment of existing dredge operations to determine whether they contain higher than normal toxic substances that were previously buried in the riverbed. (EPA's 2001 Draft Report to Congress - The Incidence and Severity of Sediment Contamination in Surface Waters of the United States [EPA 823-R-01-01] and "EPA Contaminated Sediments" www.epa.gov/waterscience/cs/).

C. Sand and gravel dredging on the Kansas River has, and is, causing widespread degradation of the riverbed, river banks, increased siltation of the riverbed, and as a result poses a threat to water resources and the biological integrity of the river.

The "Final Regulatory Report and Environmental Impact Statement – Commercial Dredging Activities on the Kansas River" from the US Army Corps of Engineers dated January 1990 reached the following conclusions:

"Past commercial dredging activities on the river have had a severe impact on the river's morphology and ecology and on non-dredging interests located in and along the river. Future dredging activities have a high potential to worsen existing problems and to extend dredging impacts into previously undisturbed reaches of the river."

"Nothing less than a total cessation of dredging would be expected to entirely eliminate adverse impacts upstream of river mile 22. The sand transport rate in and out of most reaches of the river...is approximately 1:1. Those reaches of the river are essentially in equilibrium, since the quantity of sand transported into the reach is approximately equal to the quantity transported out of the same reach."

"In the winter of 1986 KCD determined that as little as 2 – 3 feet of additional riverbed degradation in the lower Kansas River and in the Topeka area would result in millions of dollars in economic losses to non-dredge concerns. Lower riverbed and water surface elevations would increase: (a) bank erosion (loss of property), (b) maintenance of land stabilization structures, (c) well field operating costs (lower elevations in the flood plain) (d) water supply costs (where lower water surfaces elevations in the river inhibit the operation of water intakes), and (e) pipeline and bridge maintenance."

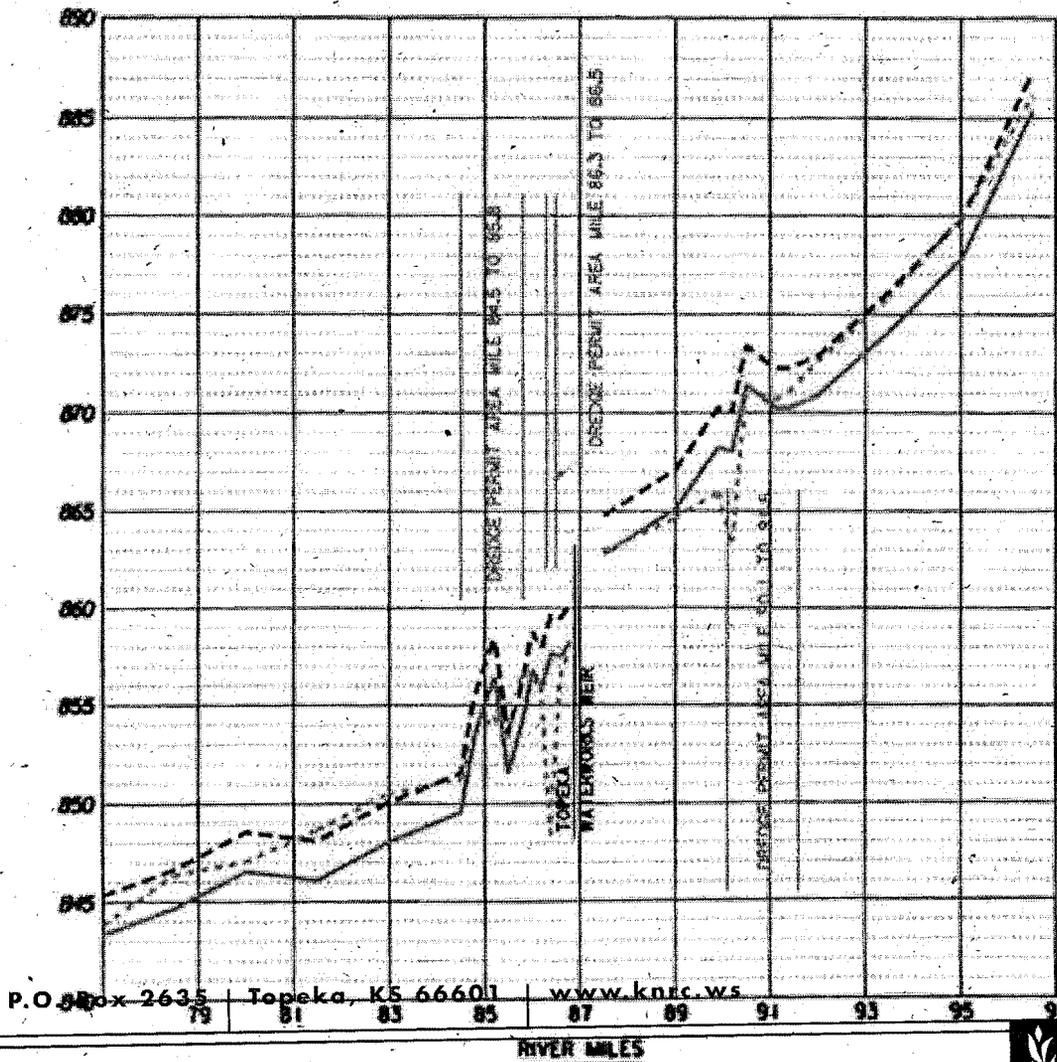
"Dredging is responsible for widespread destruction of terrestrial and aquatic habitat by creating lake-like conditions that are not normal to the Kansas River, by depositing a blanket of silt on the riverbed in which native organisms cannot survive, and by the destruction of riparian habitat for wildlife."

"The shift from a relatively shallow, fast flowing, sandy, braided channel to a deep, sluggish, silty channel, with significantly reduced habitat diversity, has altered the species composition of the fishery by reducing the number of fish species and the total number of fish. (The 1982 report by Frank Cross demonstrated that both the number fish and the diversity were reduced to half as a result of dredging.) This pollution caused by sand dredging is causing the long-term loss of the ecological integrity of the Kansas River and that this pollution and habitat degradation is integral to the very process used by the commercial sand dredge industry on the Kansas River and, therefore, cannot be prevented, mitigated or be significantly reduced by best management practices or any other practice other than the complete cessation of dredging;"
The Simons, Li report of 1986 establishes that there are "adequate, and equivalent sources of the same grade and quality of sand available off the river."

As shown by Figure 1 below, the Applicant was removed from the river at his prior site because the Applicant caused eight feet of riverbed degradation at that site, exceeding by three times the two foot regulatory allowance.

Figure 1

TOPEKA AREA



P.O. Box 2635 Topeka, KS 66601

www.knrc.ws

RIVER MILES

D. The Kansas River is one of only three rivers in the entire state that is designated as “navigable”. Without the “navigable” designation the other streams in the state are illegal to float, swim or fish without permission from every landowner on both sides.

More than 40% of the state’s population lives in the 10 counties that border the Kansas River. The river passes within an hour’s drive of more than 50% of the state’s population and within an hour’s drive of roughly another 1,000,000 people on the other side of the Missouri state line. Because of the proximity of our people and the power of the river’s beauty, the Kansas River is the best recreational resource in the state. By some accounts, it is also the state’s most important fishery and migratory flyway.

In 1996 the state legislature authorized the “Kansas River Recreation Study” which was completed and presented to the legislature on January 12, 1997. This study concluded that:

“The Kansas River is an underdeveloped and underutilized state recreational resource;

The state has no other stream recreation resource of this type;

Recreation on the Kansas River has a direct economic benefit of nearly 3 million dollars per year;

Neither recreationists nor landowners need or want highly developed and costly infrastructures;

The primary need is for non-motorized boating activities such as canoeing, kayaking, rafting, etc. and continuous segments of the river that are linked together by public access and that are free of commercial operations; and

Increased access is a benefit to landowners due to reduction in the need for crossing of private property, and parking issues.”

The growth of the recreational industry on the Kansas River has been extraordinary in the last ten years – by some accounts as much as a 1000% increase. Boating, fishing, hunting and birding activities on the river have all seen an increase. In the same time period, the economic viability of off river sand operations has increased to the point that subsidizing in stream extraction is not necessary. The larger economic benefit is served by making recreational use of the river easier and more widespread.

Dredging activities have so damaged the river that weirs and cofferdams have been built and new ones are being proposed to prevent water intakes from being exposed to air. These structures are hazards to navigation and hamper recreational use of the river. None of the existing structures are equipped with portages, navigational bypasses or public access. Therefore, to prevent the proliferation of more of such structures, dredging must be stopped, especially in reaches that have, here to for, never been dredged.

E. Not only do the weirs and other structures built as a result of dredging impact recreation use of the river, they negatively impact fish, avian and other species. The weirs act as a blockade to fish and other aquatic organisms. In their response to three proposed weir alternatives in Johnson County the Kansas Department of Wildlife and Parks stated:

*“We consider all three alternatives proposed to be an impact level 3, meaning the project as it is currently designed should not be implemented and some alternate approach should be considered. The Kansas River is designated critical habitat for several state/federal listed threatened and endangered species including the Sturgeon Chub (*Macrhybopsis meeki*), Flathead Chub (*Platygobio gracilis*), Bald Eagle (*Haliaeetus leucocephalus*), Least Tern (*Sterna antillarum*) and Piping Plover (*Charadrius melodus*). Low-head weirs can have several negative effects on native riverine species and river function including blocking fish migrations, disrupting*

the transport of alluvial materials leading to channel instability and augmenting downstream erosion, and increases in the formation of pool habitat thereby altering the natural channel conditions and leading to invasion of fish species more adapted to pool conditions. In addition, nesting habitat for avian species would be lost by the formation of a backwater pool."

Mainstream degradation in the dredged reaches has suspended the mouth of some side streams, such as Little Kaw Creek (mile 22.3) above the main channel. Mainstream degradation has limited the accessibility of these tributaries to river fishes except during high flows. Silt deposits during high mainstream flows block the mouth of these streams.

As described earlier, dredging causes the streambed to become covered with silt and silt sand. This alteration of the natural riverbed causes a loss of the river's biological integrity. Benthic organisms that are native to the normally sandy substrate cannot survive as layer upon layer of silt is deposited on the riverbed. Fish populations are decimated.

Threatened and endangered species such as the piping plover and least tern require high, well-scoured sandbars for nesting. Although the USACE claims that dredging does not directly remove sandbars, historic comparisons prove that the dredged reaches have fewer sandbars than they once did. The Kansas River is home to not just threatened and endangered species but numerous other birds that rely on the riparian areas, sandbars, mud flats, shallows, and pools for their habitat. The river is also on the flyway of many other species plus migratory shorebirds and waterfowl. These birds are negatively impacted by sand dredging; their habitat is modified, their food sources are reduced and contaminated, and their nesting sites are lost.

F. As the riverbed degrades it has also undermined and destabilized railroad bridges, utility lines, dam, water intakes, jetties and riparian lands. One of the main goals in the USACE's current Regulatory Plan was to ensure that the Sunflower water intake was to be protected. Yet, as a result of continued sand dredging that should never been allowed on the river, it is now protruding from the water. The water district has proposed a low head weir (dam) on the Kansas River at the location of the old Sunflower water intake. The estimated cost to the people of Johnson County is between \$6 - \$8 million dollars. Although alternatives exist, and are less destructive of the river than a weir, those alternatives are estimated to be even more expensive.

Johnson County's dam below Mill Creek and the two weirs in Topeka had to be built due to the degradation of the riverbed and river stage caused by sand dredging. The initial cost of the construction of these weirs was many millions of dollars. As riverbed degradation continues to undermine these structures, repeated repairs and maintenance adds additional costs. The Johnson County weir has been repaired many times due to repeated degradation of the riverbed from dredging. At this writing, Water One of Johnson County is proposing to build a cofferdam above their existing weir - all of these costs are born by non-dredging interests.

Construction and maintenance are not the only costs we pay for dredging induced weirs. These structures blockade the river for recreational and commercial navigation, reducing the economic benefits of these activities to our local economies.

In 1985, the USACE contracted with Booker Engineers-Architects-Planners to determine what would happen to the sand and gravel market if the dredgers were moved off the river. The Booker report states that a move from the river to the flood plain would increase the average delivered price of a ton of sand and gravel approximately 6 percent in the market area served by the dredgers. The increase being largely transportation costs. Since the Booker study in 1986, some dredgers have successfully moved off the river while others have resisted the change citing

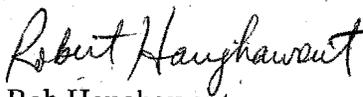
difficulties with local and state government bureaucracies. The fact that the study is now some 20 years old, and the markets have changed significantly, means that the data should not be relied upon to justify in river dredging.

Availability of high quality sand is important to the state and our communities. These interests face many economic hazards but the least among those risks is from off-river sand mining. The USACE, in conjunction with local and state interests should cooperate to evaluate the best off-river options for everyone concerned.

In summary, this permit should be denied. The requirements of the *Regulatory Plan for Commercial Dredging Activities on the Kansas River* do not allow dredging in part of this reach; the discharge of the land based operation will violate Section IX of the *Regulatory Plan for Commercial Dredging Activities on the Kansas River*; the history of dredge has shown that dredging causes physical damage to the river; dredging in this reach will negatively impact the economic, aesthetic, use and value of recreational uses, safe navigation and the fishery in that area; the economic alternatives are available if they would only be pursued in earnest; and the long history of dredging on the Kansas River and The Corps own studies have demonstrated the harmful impacts of dredging. The Kansas Department of Health and Environment should deny certification on this applicant or require this applicant to have an NPDES permit for all discharges from their land-based operations.

The Kansas Natural Resource Council requests that a public hearing be conducted so that additional detailed evidence can be presented by all stakeholders. We are willing and prepared to be a part of an ongoing process to create a solution that meets the needs of our communities, the river and the aggregate companies. But another dredge on the Kansas River is not the solution.

Sincerely,



Bob Haughawout
President
Kansas Natural Resource Council

Marx, Joshua A NWK

From: Jay Barnes for KNRC [jay@knrc.ws]
Sent: Monday, August 25, 2003 5:13 PM
To: Marx, Joshua A
Subject: Kansas River Dredging Permits

Kansas Natural Resource Council herewith requests that applications for renewal of dredging permits be denied. We further request that ALL APPLICATIONS FOR RENEWAL OF DREDGING PERMITS BE OPENED FOR PUBLIC HEARINGS before approval or disapproval decisions are made.

The USACE permit process requires consideration of the following factors in approval decisions. KNRC has information in each of these subjects for consideration and we hold that public hearings are the appropriate venue to present that information:

- the relative extent of public and private need for the proposed dredging;
- the practicability of reasonable alternatives;
- the extent and permanence of effects on public and private users;
- water quality;
- needs and welfare of the people (including health risks and exposure);
- recreation;
- shore erosion; and
- the Clean water Act provisions of Section 404(b)(1) when less damaging alternatives exist.

KNRC respectfully submits that original permits were issued based on information that included science and technologies now well out of date. Failure to consider the 10-year renewal applications for dredging permits with such obvious impact on the river without current best available information would be a disservice to both the public and private sectors.

Please use the address below to inform KNRC of your decision on public hearings and on the permits. If you do not hold hearings, please include explanation of your decision not to do so.

Jay Barnes, Executive Director
Kansas Natural Resource Council
PO Box 21346
Wichita, KS 67208
316-686-6043
jay@knrc.ws
Visit us on the web at www.knrc.ws

KANSAS WILDLIFE FEDERATION



The voice of outdoor Kansas

September 1, 2003

Mr. Joshua Marx
US Army Corps of Engineers
Kansas Regulatory Office, 700 Federal Building
601 E. 12th Street
Kansas City, MO 64106

Via fax: 816-983-3658

RE: Dredging on the Kansas River

Dear Mr. Marx,

I am writing to you in my role as Executive Director of the Kansas Wildlife Federation. KWF was organized in 1951 to speak up for hunters and anglers in this state, and to provide quality outdoor adventures. We represent more than 2,000 people in the state through individual memberships and club affiliations. Additionally, we are the state affiliate of the National Wildlife Federation and represent approximately 10,000 NWF members in Kansas. We spend millions of dollars each year on guns, ammunition, rods, reels, permits, guides, lodging, and more.

KWF is calling for the Corps hold hearings on the effects of gravel dredging in the Kansas River. Failure to do so before granting another round of 10-year permits for a dozen different sites along the river would be a serious lapse in your duty to act as stewards for America's waters.

In the two decades since the Corps has allowed dredging along the Kansas River, a great deal of information has been brought to light about the effects that excavating the river bed has on both wildlife and human infrastructure. While the Corps claims to have all of the information it needs, that information is unacceptably out of date.

Among the more critical points we need you to take into consideration:

- Dredging machinery placed in the middle of the river blocks access for recreational boaters and anglers on one of Kansas' only navigable waters
- Sediment dumped back into the water from the dredging operations suffocates fish spawning grounds
- The excavated riverbed may be full of chlordane, which bioaccumulates in the surviving fish populations

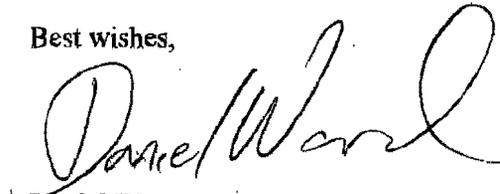
- Dredging weakens riverbanks both upstream and downstream from the excavation. As the riverbanks become destabilized, bridges, pipelines, and other structures are undermined. Kansas taxpayers have already paid millions to refurbish road crossings and waterworks along the Kansas River.

To amplify this last point, it is particularly worth noting that gravel dredging in the river seems to have played a role in weakening Bowersock Dam in Lawrence, as well as infrastructure such as water systems and pipelines. Failures in these structures would not just be expensive, but a serious event in the lives of people in the area.

In light of the above, it is our position that through in-stream gravel dredging, Kansas taxpayers are bearing a heavy burden for a minimal benefit to one small industry.

I look forward to hearing from you as to your plans on this matter. Please do not hesitate to contact me with any questions.

Best wishes,

A handwritten signature in black ink that reads "Daniel Ward". The signature is written in a cursive, flowing style with a large initial "D".

Daniel Ward
Executive Director



KANSAS WILDLIFE
FEDERATION

The voice of outdoor Kansas

February 20, 2006

Joshua Marx, U.S. Army Corps of Engineers
Kansas City Regulatory Office
601 East 12th St.
Kansas City, MO 64106

RE: Permit 200600407

Dear Mr. Marx,

The Kansas Wildlife Federation is a statewide non-profit organization of hunters, anglers and conservationists interested in natural resource management in Kansas. We are opposed to the continued sand dredging on the Kansas River. We request that permit 200600407, applied for by Victory Sand and Gravel, be denied.

As discussed in the Technical Advisory Committee on Kansas River Channel degradation, the Kansas River is in an overall state of degradation. Continued in-river sand dredging adds to this degradation. We also have concerns that the upper limit of this permit lies within a "No Dredge Zone" according to the Regulatory Plan.

In-stream sand dredging activities:

- Damage bridges, pipelines, jetties, dams, weirs and other manmade structures due to bank destabilization;
- Degrade habitat, diminish fish diversity and fish population due to siltation;
- Impair recreation, navigation and water quality;
- Degrade the riverbed and the shoreline; and
- May re-suspend and concentrate chlordane and other persistent bio-accumulative toxins downstream.

The Kansas Wildlife Federation believes the answer to the continued need for sand is to take sand from the flood plain next to the river. We applaud Kansas Sand and Concrete, Inc., also being required to relocate because of unacceptable channel degradation at their current location (r. m. 84.5 to r. m. 85.8), for making plans to move their operation to a pit mine. We agree that finding an appropriate pit mine site is not an easy task but it is possible, as shown by Kansas Sand and Concrete, Inc.

Should you decide to conduct a public hearing on this matter, we would attend.

Sincerely



Steven G. Sorensen
President

Marx, Joshua A NWK

From: Bonnie C. Liscek [bliscek@attglobal.net]
Sent: Saturday, September 06, 2003 3:18 PM
To: Marx, Joshua A
Subject: RE: COMMERCIAL SAND AND GRAVEL DREDGING ON THE KANSAS RIVER

P.O. Box 3741
Lawrence, KS 66046
(785) 841-5423

September 6, 2003

Joshua A. Marx
U.S. Army Corps of Engineers
Kansas City Regulatory Office
700 Federal Building
601 E. 12th Street
Kansas City, MO 64106-2896

Dear Mr. Marx:

RE: COMMERCIAL SAND AND GRAVEL DREDGING ON THE KANSAS RIVER

The Jayhawk Audubon Society respectfully requests that the U.S. Army Corps of Engineers deny the extension of any permits for sand and gravel dredging on the Kansas River. Please hold a public hearing on this issue prior to making a decision, and notify us of the meeting date, time, and location.

Sincerely,

Bonnie C. Liscek
President
Jayhawk Audubon Society

Marx, Joshua A NWK

From: thomas.kneil [thomas.kneil@wichita.edu]
Sent: Thursday, August 21, 2003 2:30 PM
To: Marx, Joshua A
Subject: Kansas River Dredging

21 August, 2003

Joshua A. Marx
U. S. Army Corps of Engineers

Dear Mr. Marx:

As an organization that is committed to the protection of rivers in the nation and particularly those in Kansas and elsewhere along the Arkansas River corridor, we are opposed to the reissuing of dredging permits on the Kansas River. The added cost to the sand extracting companies to develop sand pits *adjacent* to the river is minor compared to the environmental costs when dredging takes place within the river itself. Sand dredging in south-central Kansas is in pits in the river flood plain but not in the river itself and is cost effective.

We respectfully request that public hearings on these permits be held prior to their issuance.

For the Arkansas River Coalition,

Thomas R. Kneil, PhD
President of the Board of Directors
Arkansas River Coalition
P.O. Pox 3056
Wichita, KS 67201-3056
316-744-1016
thomas.kneil@wichita.edu



KANSAS PADDLER Home Page: <http://www.kansas.net/~tjhittle>

Wednesday, September 03, 2003

Josh Marx
USACE
KC Regulatory Branch Office
700 Federal Building
KC, MO 64106

fax: 816-426-2321

Dear Mr. Marx,

I am writing as the President of the Kansas Canoe Association. Our organization has taken the stand that we are against further dredging on the Kansas River. We are asking that you have a public hearing that will allow alternative positions to be heard.

If you have not traveled the Kansas River, you could not know what a beautiful river it is. In a state that has so few public rivers, it is disgusting that there are plans to further degrade one of Kansas' natural resources. We feel that there are many other ways for the Sand and Gravel Industry to find the sand and gravel they need.

I have seen first hand what dredging has done to the river. East of Lawrence is an excellent example. It is no longer a river. It is more like a canal. While many other states go to great lengths to protect their rivers and try to improve the water quality, in Kansas, we just let groups with political clout do whatever keeps them happy. The next generations will look back and wonder why this was allowed to happen. What we have done in the past 50 years is appalling.

Please allow the public hearing.

Sincerely,

Jackie Rawlings, President KCA

Jackie Rawlings, President
700 Gillespie Dr.
Manhattan, KS
66502



700 S.W. Jackson Street
Suite 804
Topeka, Kansas 66603-3758

TEL 785 233-4400
FAX 785 233-2022
nature.org/kansas

KANSAS
CHAPTER
Saving the Last Great Places

September 2, 2003

Joshua A. Marx
U.S. Army Corps of Engineers
Kansas City Regulatory Office
700 Federal Building
601 E. 12th Street
Kansas City, MO 64106-2896

RE: COMMERCIAL SAND AND GRAVEL DREDGING ON THE KANSAS RIVER

Dear Mr. Marx:

On August 8, 2003 the U.S. Army Corps of Engineers issued a Public Notice regarding the Corp's consideration to granting 10-year extensions on 12 sand and gravel dredging permits on the Kansas River. The public has until September 7th to send their comments to the Corps.

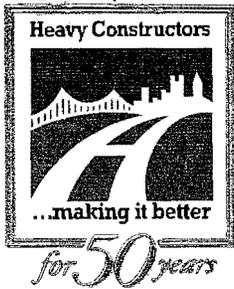
The Kansas River was identified as a priority conservation area in The Nature Conservancy's Central Tallgrass Prairie Ecoregion Conservation Plan published in 2000. The Conservancy's plan was developed with the help of scientists from agencies and organizations from the 6 states the ecoregion falls within, including the help of scientists from the Kansas Natural Heritage Program of the Kansas Biological Survey at the University of Kansas. Priority conservation sites are selected to represent the best viable examples of the wide range of biodiversity in our state. The Kansas River is a unique aquatic resource in Kansas and within the region, providing habitat for several "big river" species of fish and wildlife.

Any activity that modifies the hydrology of the river or otherwise alters habitat certainly has the potential to adversely impact fish and wildlife. There is good reason to believe this is already happening because of existing dredging activities. Local, state and regional experts should be consulted to fully assess impacts. Because of the scope of the issues the Corps must consider and the magnitude of the impact of their decisions, we believe it is essential that the Corps hold public hearings to adequately consider all studies and information available, and most importantly, to hear the views of all stakeholders and the concerned public.

I respectfully request that the Corps hold public hearings on these Kansas River sand and gravel dredging permits. Thank you for your consideration of this request. Please feel free to contact me or have one of your staff contact me if you need further information or clarification.

Sincerely,


Alan Pollom
State Director



The Heavy Constructors Association of The Greater Kansas City Area

September 5, 2003



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President

KEVIN FAHEY
Vice President

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Concrete Paving Division

GREG KAAZ
MICHAEL PURSELL
Excavation Division

DAVID BEEMER
DON GODFREY
Utility Division

Joshua A. Marx
U.S. Army Corps of Engineers
Kansas City Regulatory Office
700 Federal Building
601 East 12th Street
Kansas City, Missouri 64106-2896

RE: Request for Comments on Renewals of Kansas River Dredging Permits for various companies.

Dear Mr. Marx:

The Heavy Constructors Association of Greater Kansas City submits these comments in support of renewal of river dredging permits on the Kansas River.

The Heavy Constructors Association is a chapter of the Associated General Contractors of America (AGC). The Heavy Constructors Association represents over 150 companies in the heavy, highway and utility construction industry in Kansas and Missouri. These companies include general contractors, materials suppliers/producers, equipment dealers, insurance companies, etc.

We base our request for renewal of the Kansas River dredging permits on the following points:

1. Public need. Sand and gravel dredged from the Kansas River is used to produce a number of products for public consumption. Chief among these is concrete which is used to construct both private and public facilities. Non-renewal of the permits will have a direct cost impact on public and private construction projects as replacement materials are substituted at a higher cost.

2. Renewable resource. Administered properly, sand and gravel dredging of the Kansas River is a renewable resource. We believe this has been the experience under U.S. Army Corps of Engineers (USACE) oversight/administration and with industry cooperation.

3. Environmental protection. We believe the proper environmental safeguards are in place to ensure the viability of the Kansas River for

Page 2 of 2
September 5, 2003
Mr. Joshua A. Marx

generations to come. USACE monitoring and administration ensure that operations are suspended when appropriate to guard against environmental degradation and harm to animal and aquatic species of the Kansas River.

4. Recreational use. Renewal of the permits would in no way limit or prohibit recreational uses of the Kansas River.

We respectfully request approval of the above-referenced permits. Please let me know if you have any questions or if I may be of any assistance.

Sincerely,



Edward DeSoignie
Executive Director

Marx, Joshua A NWK

From: Roger Boyd [rboyd@bakeru.edu]
Sent: Monday, September 08, 2003 12:20 PM
To: Marx, Joshua A
Cc: Roger.Boyd@bakeru.edu
Subject: River Dredging

Dear Sir:

As you have no doubt discovered from the letters and emails that you have received, dredging on the Kansas River is a hot issue. I have taken Boy Scouts on the river from Junction City to Lawrence twice in the past several years as well as numerous shorter trips. I have also been monitoring the Least Terns and Piping Plover nesting success on the Kansas River for the USACOE the past five summers. It is difficult to measure whether dredging has any impacts on nesting. If we had access to a dredge to build nesting islands then it would be positive. However, that is not the case. Canoeing past an operating dredge can be traumatic for young scouters, even for older scouters in fear of the younger ones, it can be traumatic.

It appears that most dredge operations do fine off site with very little additional expense. It appears that we would not be having a negative impact to dredgers to remove them from the river and leave the river to a more natural flow.

I believe that the USACOE should have a public hearing on this issue. It is important to the people to let their voices be heard.

Sincerely,
Roger L. Boyd, Ph.D.
Professor and Chair of Biology
Baker University
Baldwin City, KS 66006

Marx, Joshua A NWK

From: Cindy Oliver [zeuscat2@sunflower.com]
Sent: Monday, August 11, 2003 1:56 PM
To: Marx, Joshua A
Subject: Kansas River Dredging

Dear Mr. Marx,

I wanted to write to request that the permits for dredging NOT be renewed for the next decade.

I was lucky enough in my childhood in the 70's to have an access point to the Kansas River near Big Springs, and spent many hours searching for tadpoles in pools on the sandbars, and looking for turtles, fossils and arrowheads. I moved to Lawrence from Manhattan 2 years ago, and was disappointed at the state of the river in this area due to the dredging. Friends and I canoed frequently in the rivers around Manhattan, but on my canoe trip here, I saw how different the river is, stripped and changed from the dredging. It would require slightly more work to dredge a little away from the Kansas River, but would make a huge improvement to the River environment and the people that enjoy it and those who would rely on it for local recreation.

Thank you for your attention,
Cindy Oliver

Marx, Joshua A NWK

From: Scott Hooper [scott@hooper.net]
Sent: Wednesday, September 03, 2003 8:44 AM
To: Marx, Joshua A
Subject: Dredging in the Kaw

Mr. Marx --

Dredging in the Kansas River has gone on far too long, and I urge the Corps of Engineers to deny renewal of permits to continue this damaging process.

Aside from damage to the environment -- destruction of wildlife habitat, reduced water quality, degradation of the river itself and its shoreline -- dredging also damages bridges, jetties and other manmade structures. It also reduces opportunities for people like me to get out on the river and enjoy it.

Please deny the permits before you for consideration.

-- Scott Hooper
7229 Canterbury
Prairie Village, Kansas 66208

Marx, Joshua A NWK

From: jdeem [jdeem@ku.edu]
Sent: Monday, September 15, 2003 4:55 PM
To: Marx, Joshua A
Subject: Kansas River Dredging

Dear Josh Marx,

As a concerned resident of Kanas, and the world, I'm asking you to put an end to dredging on the Kansas river. The destructive manner in which sand is dredged from the river is senseless - especially when safe and feasible alternatives are available in the river flood plains. Stop dredging in Kansas, and start resolving the damage that has already been done. Let the public in on the hearing for pending permits on the Kansas River. There are far too many people (and wildlife) who enjoy - or have the potential to enjoy the Kansas River free of dredging. Let these people speak, and the wildlife be spoken for.

Sincerely,
Jessica Deem

September 7, 2003

U.S. Army Corps of Engineers
Kansas City Regulatory Office
700 Federal Building
601 E. 12th St.
Kansas City, MO 64106-2896

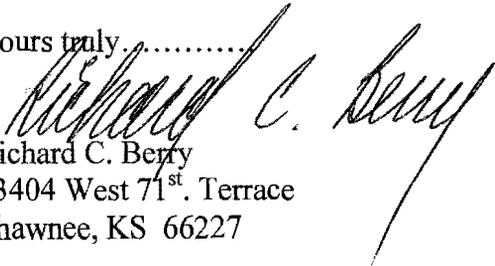
Attention: U.S. Army Corps of Engineers:

This issue really matters. You won't have another chance to stop the dredging on the Kansas River for another 10 years. You have a chance to make a difference, a real difference within the state of Kansas. By finally realizing that continued support of the dredging companies is no longer a viable option, you now have this single opportunity to improve the environment, the water quality, the wildlife habitat, and the recreation of the citizens in the state of Kansas.

I feel qualified to speak to you and to make this request. I have been a resident of the state of Kansas for the better part of 50 years. I have been a active member of the Kansas Canoe Association as well as Friends of the Kaw. I have paddled the length of the river several times in canoes and kayaks, and I have spent many wonderful nights camping on the river's incredible sand bars. I worked actively to bring Robert Kennedy Jr. here in the spring of 2002 and to kick off the "Riverkeeper" program. I have always hoped that someday others would recognize the Kansas River for what it really is -- a park, a recreational facility and resource. It is not a garbage dump where anyone who wishes can dig it up and haul it away, pour their poisonous chemicals and waste into it, cut the trees, undermine the trees, or throw their trash in it. If more people such as you would have the vision and the foresight, the Kansas River would and could be a recreational corridor, 170 miles in length, a beautiful place for all to enjoy. It is the best single natural resource in the state of Kansas. When are we going to manage it as though it were? When are you going to stand up to industry and tell them "no more?"

If there were no other sources for sand, then there would have to be a different approach, but that is not necessary in this instance. You even admitted in the recent article in the "Kansas City Star" that when "excessive riverbed degradation occurs, the corps will not allow dredging there". You seem to have a clue about it all. I am not sure my words are going to convince you. I just ask that before some of you make this decision..... get yourselves some canoes and spend just 3 hours paddling the Kansas River and see what you think as you look at the damage done, damage that is being done, and what you think of the dredging crap that blocks the channels. Then go back to your offices and make a tough decision that should have been made a long time ago! Thank you for listening.

Yours truly.....


Richard C. Berry
23404 West 71st. Terrace
Shawnee, KS 66227

U S Army Corps of Engineers
Kansas City Regulatory Office
700 Federal Building
601 E 12th St.
Kansas City, MO 64106-28906

Subject: Dredging sand from the Kaw

I firmly believe it should be allowed to continue with the supervision you have been able to maintain. In a sense it is miniscule what effect it has but by the same token as sand continues to build up in its natural process and the drifts just cause the river to fill and wander around taking farmland and other valuable property.

Granted with all the land being covered with concrete, blacktop, homes and building the flows are different than in eons ago however the flood control dam offsets some of these effects.

I recommend that sand dredging be allowed to continue versus the land mining that would replace it.

In my younger days I was a soil conservation contractor and involved with road building, conservation and state lakes for erosion control and some channel changing and have always been interested in studying the history past of channels of where rivers used to travel when flying and studying the past from the air.

Lets let the dredging continue.


Gifford Knapp
28585 West 85 Terrace
DeSoto, KS 66018
913 583 3487

Marx, Joshua A NWK

From: Craig Graves [waygraves@yahoo.com]
Sent: Sunday, February 19, 2006 9:40 PM
To: Marx, Joshua A NWK
Subject: Dredging permit 200600407

2/19/2006

Joshua Marx, U.S. Army Corps of Engineers
Kansas City Regulatory Office
601 East 12th St.
Kansas City, MO 64106

RE: Permit 200600407

Dear Mr. Marx,

I am a member of Friends of the Kaw and am opposed to the continued sand dredging on the Kansas River. I request that permit 200600407 applied for by Victory Sand and Gravel be denied. As discussed in the Technical Advisory Committee on Kansas River Channel degradation the Kansas River is in an overall state of degradation and continued in-river sand dredging is insult to injury. I also have concerns that the upper limit of this permit lies within a "No Dredge Zone" according to the Regulatory Plan. In-stream sand dredging activities:

- Damage bridges, pipelines, jetties, dams, weirs and other manmade structures due to bank destabilization;
- Degrade habitat, diminish fish diversity and fish population due to siltation;
- Impair recreation, navigation and water quality;
- Degrade the riverbed and the shoreline; and
- May re-suspend and concentrate chlordane and other persistent bio-accumulative toxins downstream.

Friends of the Kaw believes the answer to the continued need for sand is to take sand from the flood plain next to the river. We applaud Kansas Sand and Concrete, Inc., also being required to relocate because of unacceptable channel degradation at their current location (r. m. 84.5 to r. m. 85.8), for making plans to move their operation to a pit mine. We agree that finding an appropriate pit mine site is not an easy task but as shown by Kansas Sand and Concrete, Inc. it is possible. I would also attend a public hearing on this matter.

Sincerely,

Karen Way Graves
435 Edgerton Ave
Manhattan, KS 66502
waygraves@yahoo.com

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RECEIVED
REGULATORY BRANCH

06 MAR -1 PM 2:17

February 21, 2006

United States Army Corps of Engineers
Kansas City Regulatory Office
601 East 12th
Kansas City, MO 64106

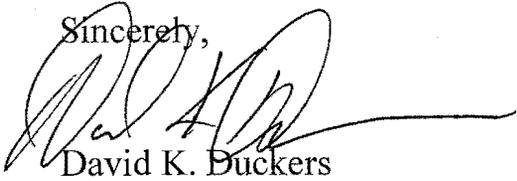
RE: Permit No. 200600407

Dear Mr. Marx:

I am a member of the Friends of the Kaw and am opposed to continued sand dredging on the Kansas River. I request that Permit No. 200600407 applied for by Victory Sand and Gravel be denied. As was discussed in the Technical Advisory Committee on Kansas River Channel Degradation of the Kansas River is in an overall state of degradation and continued in-river sand dredging is an insult to injury. I also have concerns that the upper limit of this permit lies within a "no dredge zone" according to the regulatory plan.

Friends of the Kaw believe the answer to the continued need for sand is to take sand from the flood plain next to the river. We applaud Kansas Sand and Concrete, Inc. also being required to relocate because of unacceptable channel degradation at their current location, for making plans to move their operation to a pit mine. We agree that finding an appropriate pit mine site is not an easy task, but as shown by Kansas Sand and Concrete, Inc. it is possible. I would also attend a public hearing on this matter.

Sincerely,



David K. Duckers
610 North 28th Street
Kansas City KS 66102

United States Army Corps of Engineers
Kansas City Regulatory Office
601 East 12th St.
Kansas City, MO 64106

RECEIVED
REGULATORY BRANCH
06 FEB 22 AM 9:28

RE: Permit 200600407

Dear Mr. Marx,

I am a member of Friends of the Kaw and am opposed to the continued sand dredge permit 200600407 applied for by Victory Sand and Gravel be denied. As discussed Kansas River Channel degradation the Kansas River is in an overall state of degradation is insult to injury. I also have concerns that the upper limit of this permit lies with Regulatory Plan. In-stream sand dredging activities:

- Damage bridges, pipelines, jetties, dams, weirs and other manmade structures;
- Degrade habitat, diminish fish diversity and fish population due to siltation;
- Impair recreation, navigation and water quality;
- Degrade the riverbed and the shoreline; and
- May re-suspend and concentrate chlordane and other persistent bio-accumulants

Friends of the Kaw believes the answer to the continued need for sand is to take sand from the appropriate pit mine site is not an easy task but as shown by Kansas Sand and Concrete, Inc., also being required to relocate because of current location (r. m. 84.5 to r. m. 85.8), for making plans to move their operations to a public hearing on this matter.

Sincerely,
(Your Name & Address)

Jannette Herstein
15541 126th St
Winchester, Mo. 66097

Marx, Joshua A NWK

From: KatFRior@aol.com
Sent: Monday, February 27, 2006 10:23 AM
To: Marx, Joshua A NWK
Subject: (no subject)

I may be late with this message but wanted to weigh in. I hope Victory Sand and Gravel's application to dredge the Kansas River is denied. As a member of Friends of the KAW and other Kansas environmental organizations I strongly oppose in-river dredging. It has no eye to the long term best interest of the river and instead makes the river more vulnerable. I hope the Corps is looking out for Kansas river. Kathy Riordan, Prairie Village, KS

Marx, Joshua A NWK

From: Sarah Hill-Nelson [hillnel@swbell.net]
Sent: Wednesday, February 08, 2006 2:19 PM
To: Marx, Joshua A NWK
Subject: Permit #200600407

February 8th, 2006

Joshua Marx, U.S. Army Corps of Engineers
Kansas City Regulatory Office
601 East 12th St.
Kansas City, MO 64106

RE: Permit 200600407

Dear Mr. Marx,

I am a member of Friends of the Kaw and am opposed to the continued sand dredging on the Kansas River. I request that permit 200600407 applied for by Victory Sand and Gravel be denied. As discussed in the Technical Advisory Committee on Kansas River Channel degradation the Kansas River is in an overall state of degradation and continued in-river sand dredging is insult to injury. I also have concerns that the upper limit of this permit lies within a "No Dredge Zone" according to the Regulatory Plan. In-stream sand dredging activities:

- Damage bridges, pipelines, jetties, dams, weirs and other manmade structures due to bank destabilization;
- Degrade habitat, diminish fish diversity and fish population due to siltation;
- Impair recreation, navigation and water quality;
- Degrade the riverbed and the shoreline; and
- May re-suspend and concentrate chlordane and other persistent bio-accumulative toxins downstream.

Friends of the Kaw believes the answer to the continued need for sand is to take sand from the flood plain next to the river. We applaud Kansas Sand and Concrete, Inc., also being required to relocate because of unacceptable channel degradation at their current location (r. m. 84.5 to r. m. 85.8), for making plans to move their operation to a pit mine. We agree that finding an appropriate pit mine site is not an easy task but as shown by Kansas Sand and Concrete, Inc. it is possible. I would also attend a public hearing on this matter.

Sincerely,

Sarah Hill-Nelson

Sarah Hill-Nelson
The Bowersock Mills and Power Company
P.O. Box 66
Lawrence, Kansas 66044
business line: 785-766-0884
home: 785-840-9402
bowersockpower@swbell.net
www.bowersockpower.com
"Producing clean, renewable hydropower since 1874."

2/15/2006

Marx, Joshua A NWK

From: John Rogers [johnrog@yahoo.com]
Sent: Wednesday, February 08, 2006 11:39 AM
To: Marx, Joshua A NWK

2/8/06

Joshua Marx, U.S. Army Corps of Engineers
Kansas City Regulatory Office
601 East 12th St.
Kansas City, MO 64106

RE: Permit 200600407

Dear Mr. Marx,

I am a member of Friends of the Kaw and am opposed to the continued sand dredging on the Kansas River. I request that permit 200600407 applied for by Victory Sand and Gravel be denied. As discussed in the Technical Advisory Committee on Kansas River Channel degradation the Kansas River is in an overall state of degradation and continued in-river sand dredging is insult to injury. I also have concerns that the upper limit of this permit lies within a "No Dredge Zone" according to the Regulatory Plan. In-stream sand dredging activities:

- Damage bridges, pipelines, jetties, dams, weirs and other manmade structures due to bank destabilization;
- Degrade habitat, diminish fish diversity and fish population due to siltation;
- Impair recreation, navigation and water quality;
- Degrade the riverbed and the shoreline; and
- May re-suspend and concentrate chlordane and other persistent bio-accumulative toxins downstream.

Friends of the Kaw believes the answer to the continued need for sand is to take sand from the flood plain next to the river. We applaud Kansas Sand and Concrete, Inc., also being required to relocate because of unacceptable channel degradation at their current location (r. m. 84.5 to r. m. 85.8), for making plans to move their operation to a pit mine. We agree that finding an appropriate pit mine site is not an easy task but as shown by Kansas Sand and Concrete, Inc. it is possible. I would also attend a public hearing on this matter.

Sincerely,

John Rogers
Lawrence

Relax. Yahoo! Mail [virus scanning](#) helps detect nasty viruses!

2/15/2006

Marx, Joshua A NWK

From: Mike Hunter [mikeh@huntermidwestinc.com]
Sent: Thursday, February 02, 2006 3:23 PM
To: Marx, Joshua A NWK
Subject: FW: Victory Sand and Gravel Relocation Permit

Mr. Marx,

It has come to my attention that Victory Sand and Gravel must move from their present location and have applied for another river location, permit number 200600407.L.

My understanding is the move is precipitated by the degradation of the river bed in their present location. It is a shame we have to lose a precious resource such as our river beds to make us take action. However, the Corps and people like yourself who make up the Corps, should be commended for setting definite standards that must be adhered to and will be enforced.

As a Kansas citizen of long standing I am opposed to reissuing another in river dredging permit to ANYONE. River dredging is simply not good - it is bad and should be stopped. As a business man, I can relate to the many expenses of running a successful business. I know it will cost Victory to move off river, but it must be done, much like Kansas Sand and Gravel's recent choice to be responsible and relocate to a pit mine. I am tired of paying taxes and increased fees to repair bridges, weirs, pipelines, etc as result of river degradation. I know sand dredging is not the only culprit causing degradation, but it is ONE, and one that we can control.

That is what I am asking you and the Corps to do. Do not issue another in river dredging permit.

Thank you for your time.

Cordially,
Mike Hunter
913-831-7880

Joshua Marx, U.S. Army Corps of Engineers
Kansas City Regulatory Office
601 East 12th St.
Kansas City, MO 64106

2\2\06

RE: Permit 200600407
Dear Mr. Marx,

As one of thousands of recreational users of the Kaw River I am opposed to the continued sand dredging on the Kansas River. I request that permit 200600407 applied for by Victory Sand and Gravel **be denied**. As discussed in the Technical Advisory Committee on Kansas River Channel degradation the Kansas River is in an overall state of degradation. Continued in-river sand dredging is exceeding the USACE's own EIS of 1979 wherein it clearly states that bed degradation had already exceeded acceptable limits. For over 25 years the USACE has failed to stand by its own recommendations. **It is time to close the books on in-stream sand and gravel dredging.**

I also have concerns that the upper limit of this permit lies within a "No Dredge Zone" according to the Regulatory Plan. With the slow and cautious return of the Eagles to this habitat, it seems libelous to impact that delicate process again. This treasured resource must no longer be compromised.

In-stream sand dredging activities:

- Damage bridges, pipelines, jetties, dams, weirs and other manmade structures due to bank destabilization;
- Endanger recreational boating with cross stream cables and dredging booms.
- Widen stream beds forcing ribboning of navigable channel as a result of increased headcutting. This impairs recreation, navigation and water quality.
- Degrade habitat, diminish fish diversity and fish population due to siltation.
- Degrade the riverbed and the shoreline; and May re-deliver concentrated deposits of chlordane and other persistent bio-accumulative toxins downstream..

The answer to the continued need for sand is to take sand from the flood plain in the broad and ample alluvial Kansas River valley.

Examples: I applaud Kansas Sand and Concrete, Inc., also being required to relocate because of unacceptable channel degradation at their current location (near this above permit application r. m. 84.5 to r. m. 85.8), for making plans to move their operation to a pit mine. We agree that finding an appropriate pit mine site is not an easy task but as shown by Kansas Sand and Concrete, Inc. it is profitable. Other dredging operations are, in good conscience, preparing to follow this "off river policy". Dredgers who understand the damage they are doing have confided in us that their days of river dredging are numbered. They will move to off river sites in order to join the effort to protect this great natural resource and thereby contribute to re-establishment of wetlands.

I, and hundreds of other river network people would attend a public hearing on this matter. The last time we did this on the Kansas River, over 300 testified against one dredger and his lawyer. Testimony lasted until 1 AM. **Their permit was denied.**

Sincerely,

Mike Calwell

Mike Calwell
5610 W 61st terr
Mission, KS 66202

Marx, Joshua A NWK

From: Richard Gramza [rgramza@bgiweb.com]
Sent: Thursday, February 02, 2006 8:42 AM
To: Marx, Joshua A NWK
Subject: River Dredging Permit

February 2, 2006

Joshua Marx, U.S. Army Corps of Engineers Kansas City Regulatory Office
601 East 12th St.
Kansas City, MO 64106

RE: Permit 200600407

Dear Mr. Marx,

I am a member of Friends of the Kaw and am opposed to the continued sand dredging on the Kansas River. I request that permit 200600407 applied for by Victory Sand and Gravel be denied. As discussed in the Technical Advisory Committee on Kansas River Channel degradation the Kansas River is in an overall state of degradation and continued in-river sand dredging is insult to injury. I also have concerns that the upper limit of this permit lies within a "No Dredge Zone" according to the Regulatory Plan. In-stream sand dredging activities:

- It compromises a source of our drinking water in Olathe;
- Damage bridges, pipelines, jetties, dams, weirs and other manmade structures due to bank destabilization;
- Degrade habitat, diminish fish diversity and fish population;
- Impair recreation, navigation and water quality;
- Degrade the riverbed and the shoreline; and
- May re-suspend and concentrate chlordane and other persistent bio-accumulative toxins downstream.

Friends of the Kaw believes the answer to the continued need for sand is to take sand from the flood plain next to the river. We applaud Kansas Sand and Concrete, Inc., also being required to relocate because of unacceptable channel degradation at their current location (r. m. 84.5 to r. m. 85.8), for making plans to move their operation to a pit mine. We agree that finding an appropriate pit mine site is not an easy task but as shown by Kansas Sand and Concrete, Inc. it is possible. I would also attend a public hearing on this matter.

Sincerely,
Richard Gramza
1905 W. Oak St.
Olathe, KS 66061

Marx, Joshua A NWK

From: Michael OShea [mjosh8488@yahoo.com]
Sent: Thursday, February 02, 2006 1:06 PM
To: Marx, Joshua A NWK
Subject: Permit 200600407 - please deny

Joshua Marx, U.S. Army Corps of Engineers
Kansas City Regulatory Office

RE: Permit 200600407

Dear Mr. Marx,

I paddle on the Kansas River and am very concerned about the sand dredging on this. I request that permit 200600407 applied for by Victory Sand and Gravel be denied. As discussed in the Technical Advisory Committee on Kansas River Channel degradation the Kansas River is in an overall state of degradation and continued in-river sand dredging is adding insult to injury. I also have concerns that the upper limit of this permit lies within a "No Dredge Zone" according to the Regulatory Plan.

In-stream sand dredging activities can:

- Damage bridges, pipelines, jetties, dams, weirs and other manmade structures due to bank destabilization;
- Degrade habitat, diminish fish diversity and fish population due to siltation;
- Impair recreation, navigation and water quality;
- Degrade the riverbed and the shoreline; and
- May re-suspend and concentrate chlordane and other persistent bio-accumulative toxins downstream.

The continued need for sand can be satisfied by taking sand from the flood plain next to the river. We applaud Kansas Sand and Concrete, Inc., also being required to relocate because of unacceptable channel degradation at their current location (r. m. 84.5 to r. m. 85.8), for making plans to move their operation to a pit mine. We agree that finding an appropriate pit mine site is not an easy task but as shown by Kansas Sand and Concrete, Inc. it is possible. I would also attend a public hearing on this matter.

Sincerely,

Michael J. O'Shea
9109 Emily Circle
Manhattan KS 66502

Marx, Joshua A NWK

From: Charles W. Sanders, Jr. [chassan@ksu.edu]
Sent: Thursday, February 02, 2006 12:24 PM
To: Marx, Joshua A NWK
Subject: Preserving the Kansas River

3 February 2006

Joshua Marx, U.S. Army Corps of Engineers
Kansas City Regulatory Office
601 East 12th St.
Kansas City, MO 64106

Dear Mr. Marx,

Please allow me to submit the following comments in regards to Permit 200600407 and the proposed dredging of the Kansas River.

As an environmentally concerned Kansan and member of Friends of the Kaw, I strongly oppose additional dredging on the Kansas River. I ask that this permit, submitted by Victory Sand and Gravel be denied as one step in the process to bring the river back from the sad state detailed in the report of the Technical Advisory Committee on Kansas River Channel degradation. The upper limit of this permit lies within a 'No Dredge Zone' according to the Regulatory Plan, and for that reason alone the permit should be denied. As you know, a proven alternative to in-stream dredging is to take sand from the flood plain next to the river, and we also applaud the efforts of progressive companies like Kansas Sand and Concrete, Inc. who are moving their operations to a pit mine.

Thank you, sir, for your cooperation and your efforts to preserve the beauty of the Kansas.

Charles W. Sanders, Jr.
3017 Tumbleweed Terrace
Manhattan, KS 66502
chassan@ksu.edu

Marx, Joshua A NWK

From: MrLSGarlow@aol.com
Sent: Saturday, February 11, 2006 8:29 AM
To: Marx, Joshua A NWK
Subject: Please Deny Victory Sand & Gravel application

Joshua Marx, U.S. Army Corps of Engineers
Kansas City Regulatory Office
601 East 12th St.
Kansas City, MO 64106

RE: Permit 200600407 - Victory Sand and Gravel

Dear Mr. Marx,

I am a 52 year old businessman, attorney, voter (registered Republican), church-goer, Boy Scout leader, Chamber of Commerce member, father and 30 year resident of Kansas. I am also a member of Friends of the Kaw.

I am strongly opposed to the continued sand dredging on the Kansas River. I request that permit 200600407 applied for by Victory Sand and Gravel be denied.

I am certain you are well aware of the scientific findings that the Kansas River is in an overall state of degradation and continued in-river sand dredging creates a threat of further injury. I understand that the upper limit of this permit lies within a "No Dredge Zone" according to the Regulatory Plan. In-stream sand dredging activities:

- Damage bridges, pipelines, jetties, dams, weirs and other manmade structures due to bank destabilization;
- Degrade habitat, diminish fish diversity and fish population due to siltation;
- Impair recreation, navigation and water quality;
- Degrade the riverbed and the shoreline; and
- May re-suspend and concentrate chlordane and other persistent bio-accumulative toxins downstream.

I support the position of Friends of the Kaw, which promotes a change in the historic sand-mining activities in and around the Kaw. The FUTURE of sand-mining must be REGULATED in a way to restrict sand-mining to the adjacent areas of flood plain next to the river.

As a Kansas business man who runs a company with over 300 employees and 8 business locations, I understand the "costs" of doing business. I understand that finding an appropriate pit mine site is not an easy task but as shown by Kansas Sand and Concrete, Inc. it is possible.

I feel strongly enough about this issue that I would attend a public hearing on this matter.

Regards,
Stephen Garlow
2415 Harvard Road
Lawrence KS 66049

Marx, Joshua A NWK

From: Jim Stanker [jim.stanker@candoelec.com]
Sent: Tuesday, February 14, 2006 9:09 AM
To: Marx, Joshua A NWK
Subject: RE: Permit 200600407

Joshua Marx
U.S. Army Corps of Engineers
Kansas City Regulatory Office
601 East 12th St.
Kansas City, MO 64106

RE: Permit 200600407

Dear Mr. Marx,

I am a member of Friends of the Kaw and am opposed to the continued sand dredging on the Kansas River. I request that permit 200600407 applied for by Victory Sand and Gravel be denied. As discussed in the Technical Advisory Committee on Kansas River Channel degradation the Kansas River is in an overall state of degradation and continued in-river sand dredging is insult to injury. I also have concerns that the upper limit of this permit lies within a "No Dredge Zone" according to the Regulatory Plan.

It is also my understanding that in addition to the environmental consequences of continued dredging of the river, that other (hazardous) waste violations occur on this site. We rely on the Corps of Engineers to do the right thing in protecting our natural resources.

Thank you.

Jim Stanker
6423 Hadley
Merriam, Kansas 66202

Marx, Joshua A NWK

From: Paul Post [paulpost@paulpost.com]
Sent: Thursday, February 09, 2006 4:00 PM
To: Marx, Joshua A NWK
Subject: Sand dredging on the Kansas River, ,Permit No. 200600407

Joshua Marx, U.S. Army Corps of Engineers
Kansas City Regulatory Office
601 East 12th St.
Kansas City, MO 64106

RE: Permit 200600407

Dear Mr. Marx,

I am a member of Friends of the Kaw and am opposed to the continued sand dredging on the Kansas River. I request that permit 200600407 applied for by Victory Sand and Gravel be denied. As discussed in the Technical Advisory Committee on Kansas River Channel degradation the Kansas River is in an overall state of degradation and continued in-river sand dredging is insult to injury. I also have concerns that the upper limit of this permit lies within a "No Dredge Zone" according to the Regulatory Plan. In-stream sand dredging activities:

- Damage bridges, pipelines, jetties, dams, weirs and other manmade structures due to bank destabilization;
- Degrade habitat, diminish fish diversity and fish population due to siltation;
- Impair recreation, navigation and water quality;
- Degrade the riverbed and the shoreline; and
- May re-suspend and concentrate chlordane and other persistent bio-accumulative toxins downstream.

Friends of the Kaw believes the answer to the continued need for sand is to take sand from the flood plain next to the river. We applaud Kansas Sand and Concrete, Inc., also being required to relocate because of unacceptable channel degradation at their current location (r. m. 84.5 to r. m. 85.8), for making plans to move their operation to a pit mine. We agree that finding an appropriate pit mine site is not an easy task but as shown by Kansas Sand and Concrete, Inc. it is possible. I would also attend a public hearing on this matter.

Sincerely,

Paul D. Post
2101 SW 2nd Street
Topeka, Kansas 66606
785 354 1972

Page 1 of 1

Marx, Joshua A NWK

From: Mollie Mangerich [mmangerich@ci.lawrence.ks.us]
Sent: Wednesday, February 15, 2006 11:06 AM
To: Marx, Joshua A NWK
Subject: Comment: permit 200600407 applied for by Victory Sand and Gravel

Joshua Marx, U.S. Army Corps of Engineers
Kansas City Regulatory Office
601 East 12th St.
Kansas City, MO 64106

RE: Permit 200600407

Dear Mr. Marx,

I am a member of Friends of the Kaw and am opposed to the continued sand dredging on the Kansas River. I request that permit 200600407 applied for by Victory Sand and Gravel be denied. As discussed in the Technical Advisory Committee on Kansas River Channel degradation the Kansas River is in an overall state of degradation and continued in-river sand dredging is insult to injury. I also have concerns that the upper limit of this permit lies within a "No Dredge Zone" according to the Regulatory Plan. In-stream sand dredging activities:

- Damage bridges, pipelines, jetties, dams, weirs and other manmade structures due to bank destabilization;
- Degrade habitat, diminish fish diversity and fish population due to siltation;
- Impair recreation, navigation and water quality;
- Degrade the riverbed and the shoreline; and
- May re-suspend and concentrate chlordane and other persistent bio-accumulative toxins downstream.

Friends of the Kaw believe the answer to the continued need for sand is to take sand from the flood plain next to the river. We applaud Kansas Sand and Concrete, Inc., also being required to relocate because of unacceptable channel degradation at their current location (r. m. 84.5 to r. m. 85.8), for making plans to move their operation to a pit mine. We agree that finding an appropriate pit mine site is not an easy task but as shown by Kansas Sand and Concrete, Inc. it is possible. I would also attend a public hearing on this matter.

Sincerely,

Mollie Mangerich

GREG NEWLIN
1022 OHIO STREET SABETHA, KANSAS 66534
newlin@mewlan.com cell 785-547-6275

February 2, 2006

Joshua Marx
U.S. Army Corps of Engineers
Kansas City Regulatory Office
601 East Twelfth Street
Kansas City, Missouri 64106

RE: Permit 200600407

Dear Mr. Marx,

I am a member of the Friends of the Kaw and opposed to the continued sand dredging on the Kansas River. I request that permit 200600407 applied for by Victory Sand and Gravel be denied. As discussed in the Technical Advisory Committee on Kansas River Channel degradation, the Kansas River is in an overall state of degradation and continued in-river sand dredging is adding insult to that injury. I also have concerns that the upper limit of this permit lies within a "No Dredge Zone" according to the Regulatory Plan. In stream dredging activities cause:

- Damaged bridges, pipelines, jetties, dams, weirs and other manmade structures due to bank destabilization.
- Degrades the habitat, diminishes fish diversity and fish population due to siltation.
- Impairs recreation, navigation and water quality.
- Degrades the riverbed and shoreline.
- May re-suspend and concentrate chlordane and other persistent bio-accumulative toxins downstream.

Friends of the Kaw believes the answer to the continued need for sand is to take sand from the flood plain next to the river and keep these companies out of the river. We applaud that Kansas Sand and Concrete, Inc. are being required to relocate because of unacceptable channel degradation at their current location (r.m. 84.5 to r.m. 85.8), and for making plans to move their operation to a pit mine. It is agreeable that finding an appropriate pit mine is not an easy task by as shown by Kansas Sand and Concrete, Inc. it is possible. Please inform me of any hearing we can attend on this matter, as well as available bus parking.

Sincerely,



Gregory Newlin

RECEIVED
REGULATORY BRANCH
06 FEB -7 PM 2:26

United States Army Corps of Engineers
Kansas City Regulatory Office
601 East 12th St.
Kansas City, MO 64106

Date

RE: Permit 200600407

Dear Mr. Marx,

I am a member of Friends of the Kaw and am opposed to the continued sand dredging on the Kansas River. I request that permit 200600407 applied for by Victory Sand and Gravel be denied. As discussed in the Technical Advisory Committee on Kansas River Channel degradation the Kansas River is in an overall state of degradation and continued in-river sand dredging is insult to injury. I also have concerns that the upper limit of this permit lies within a "No Dredge Zone" according to the Regulatory Plan. In-stream sand dredging activities:

- Damage bridges, pipelines, jetties, dams, weirs and other manmade structures due to bank destabilization;
- Degrade habitat, diminish fish diversity and fish population due to siltation;
- Impair recreation, navigation and water quality;
- Degrade the riverbed and the shoreline; and
- May re-suspend and concentrate chlordane and other persistent bio-accumulative toxins downstream.

Friends of the Kaw believes the answer to the continued need for sand is to take sand from the flood plain next to the river. We applaud Kansas Sand and Concrete, Inc., also being required to relocate because of unacceptable channel degradation at their current location (r. m. 84.5 to r. m. 85.8), for making plans to move their operation to a pit mine. We agree that finding an appropriate pit mine site is not an easy task but as shown by Kansas Sand and Concrete, Inc. it is possible. I would also attend a public hearing on this matter.

Sincerely, (Your Name & Address)

*Max Graves
1013 Columbus Ct
Lawrence, KS 66049*

*Although not a member I am
wholeheartedly in favor of this
message.*

Marx, Joshua A NWK

From: Lisa Grossman [lgrossman@earthlink.net]
Sent: Wednesday, February 15, 2006 11:52 AM
To: Marx, Joshua A NWK
Subject: oppose new sand dredging permit

2/15/06

Joshua Marx, U.S. Army Corps of Engineers
Kansas City Regulatory Office
601 East 12th St.
Kansas City, MO 64106

RE: Permit 200600407

Dear Mr. Marx,

As a member of Friends of the Kaw I am opposed to continued sand dredging on the Kansas River. I ask you to please deny permit 200600407 applied for by Victory Sand and Gravel. Thank you very much for your attention to this matter.

Sincerely,

Lisa Grossman
825 Maine
Lawrence, KS 66044

Chris Collins, Inc.

February 2, 2006

Joshua Marx, U.S. Army Corps of Engineers
Kansas City Regulatory Office
601 East 12th St.
Kansas City, MO 64106

RE: Permit 200600407

Dear Mr. Marx,

I am Kansas Canoe & Kayak Association (KCKA) Board member and I am opposed to the continued sand dredging on the Kansas River. I request that permit 200600407 applied for by Victory Sand and Gravel be denied. As discussed in the Technical Advisory Committee on Kansas River Channel degradation the Kansas River is in an overall state of degradation and continued in-river sand dredging is insult to injury. I also have concerns that the upper limit of this permit lies within a "No Dredge Zone" according to the Regulatory Plan. In-stream sand dredging activities:

- Damage bridges, pipelines, jetties, dams, weirs and other manmade structures due to bank destabilization;
- Degrade habitat, diminish fish diversity and fish population due to siltation;
- Impair recreation, navigation and water quality;
- Degrade the riverbed and the shoreline; and
- May re-suspend and concentrate chlordane and other persistent bio-accumulative toxins downstream.

Friends of the Kaw and KCKA believe the answer to the continued need for sand is to take sand from the flood plain next to the river. We applaud Kansas Sand and Concrete, Inc., also being required to relocate because of unacceptable channel degradation at their current location (r. m. 84.5 to r. m. 85.8), for making plans to move their operation to a pit mine. We agree that finding an appropriate pit mine site is not an easy task but as shown by Kansas Sand and Concrete, Inc. it is possible. I would also attend a public hearing on this matter.

Sincerely,



Marx, Joshua A NWK

From: Stan & Peggy Chappell [chappells@everestkc.net]

Sent: Thursday, February 16, 2006 10:00 PM

To: Marx, Joshua A NWK

Subject: Permit 200600407

Dear Mr. Marx,

I am a member of Friends of the Kaw and am opposed to the continued sand dredging on the Kansas River. I request that permit 200600407 applied for by Victory Sand and Gravel be denied. The Kansas River is in an overall state of degradation already, and continued in-river sand dredging is just adding insult to injury. As you probably know, in-stream sand dredging damages bridges and other manmade structures due to bank destabilization. It also degrades habitat and diminishes fish diversity and population.

We Friends of the Kaw believe the answer to the continued need for sand is to take sand from the flood plain next to the river, rather than dredging. Thank you for considering my views on this matter. I hope you will deny this dredging permit.

Sincerely,
Stan Chappell
9632 Riggs Street
Overland Park, KS 66212
913/341-7319

Marx, Joshua A NWK

From: redmon [redmon@networksplus.net]
Sent: Thursday, February 16, 2006 11:11 PM
To: Marx, Joshua A NWK
Subject: Kaw River dredging

16 Feb 06

Joshua Marx, U.S. Army Corps of Engineers
Kansas City Regulatory Office
601 East 12th St.
Kansas City, MO 64106

RE: Permit 200600407

Dear Mr. Marx,

I am a member of Friends of the Kaw and am opposed to the continued sand dredging on the Kansas River. I request that permit 200600407 applied for by Victory Sand and Gravel be denied. As discussed in the Technical Advisory Committee on Kansas River Channel degradation the Kansas River is in an overall state of degradation and continued in-river sand dredging is insult to injury. I also have concerns that the upper limit of this permit lies within a "No Dredge Zone" according to the Regulatory Plan. In-stream sand dredging activities:

- Damage bridges, pipelines, jetties, dams, weirs and other manmade structures due to bank destabilization;
- Degrade habitat, diminish fish diversity and fish population due to siltation;
- Impair recreation, navigation and water quality;
- Degrade the riverbed and the shoreline; and
- May re-suspend and concentrate chlordane and other persistent bio-accumulative toxins downstream.

Friends of the Kaw believes the answer to the continued need for sand is to take sand from the flood plain next to the river. We applaud Kansas Sand and Concrete, Inc., also being required to relocate because of unacceptable channel degradation at their current location (r. m. 84.5 to r. m. 85.8), for making plans to move their operation to a pit mine. We agree that finding an appropriate pit mine site is not an easy task but as shown by Kansas Sand and Concrete, Inc. it is possible. I maybe able to attend a public hearing on this matter.

Sincerely,

Dave & Ann Redmon
2232 Cedar Acres Dr
Manhattan, KS 66502

Marx, Joshua A NWK

From: chucko@webmail.benedictine.edu
Sent: Friday, February 17, 2006 12:12 PM
To: Marx, Joshua A NWK
Subject: Proposed Dredging of Kansas River

Dear Mr. Marx,

I am writing regarding proposed Permit 200600407. I request that the permit applied for by Victory Sand and Gravel be denied. I canoe and fish on a regular basis on the Kansas River and believe that the proposed dredging will continue the degradation of what could be one of the great natural attractions of Kansas. The Kansas River is really the only canoeing river in the state --- the Missouri is too fast because of channelization --- and continued in-river sand dredging is ruining the resource and the experience.

I believe that the answer to the continued need for sand is to take it from the flood plain next to the river. The dredging activities degrade habitat and reduce fish and bird diversity, destabilize the banks and lead to damage of bridges, jetties and other manmade structures, and generally degrade the riverbed and the shoreline.

Kansas has so little in the way of water-related natural resources --- certainly we don't need the sand so badly that we must continue to destroy those resources we have.

Thank you for your attention. I would also attend a public hearing on this matter.

Chuck Osborn
17237 286th Rd.
Atchison, KS 66002

Marx, Joshua A NWK

From: pennyjohn@peoplepc.com
Sent: Sunday, February 19, 2006 9:22 PM
To: Marx, Joshua A NWK
Subject: Permit 200600407

United States Army Corps of Engineers
Kansas City Regulatory Office
601 East 12th Street
Kansas City, Missouri 64106

Dear Mr. Marx,

I am writing to express my opposition to the continued sand dredging on the Kansas River. Please deny the permit 200600407 which is applied for by Victory Sand and Gravel. As a longtime member of Friends of the Kaw, I oppose sand dredging that degrades our beautiful Kansas River and am especially disturbed that part of this particular permit lies within a "no dredge zone". I hope that you will help protect this most important natural resource of the Kansas River for recreation, enjoyment of the environmental beauty, habitat for wildlife and aquatic species, and the source of drinking water for many Kansans. Thank you for considering my request.

Sincerely,

Penny Seavertson
10555 Kill Creek Road
De Soto, Kansas 66018

Marx, Joshua A NWK

From: MARY HELEN KORBELIK [mhkor@kc.rr.com]
Sent: Monday, February 20, 2006 5:34 PM
To: Marx, Joshua A NWK
Subject: Victory Sand and Gravel Dredging Permit

Dear Mr. Marx:

I am a member of the Friends of the Kaw and want to ask you not to approve the permit for Victory Sand and Gravel to dredge in the Kaw or Kansas River.

Clean fresh water is becoming a big issue all over the world. With droughts in Africa, many people have to walk 40 miles to get water as their sources have dried up. Spain and France are having another drought this year. Last year water was rationed in France. China has many polluted rivers due to their increased industrial development.

We in the U.S. who are blessed with fresh clean water need to be vigilant in keeping it that way. After all, our drinking water comes from the Kansas and Missouri Rivers.

I am opposed to the degradation of the Kansas River and think that Victory Sand and Gravel can find an appropriate pit mine site. The river belongs to all of us...fishermen, boaters, hikers along the banks, and those of us who drink the water. A commercial company should not degrade the river for the rest of us.

Thank you for reading this,

Mary Helen Korbelik
mhkor@kc.rr.com
913-362-6463

Marx, Joshua A NWK

From: George & Marcia Weeks [gmweeks@mobil1.net]

Sent: Sunday, February 19, 2006 11:16 AM

To: Marx, Joshua A NWK

Subject: sand dredging on Kansas River

Dear Mr. Marx,

I am opposed to the continued sand dredging on the Kansas River. I request that permit 200600407 be denied. Because the Kansas River is in an overall state of degradation, any further dredging will damage habitat and fish diversity, impair recreation, destabilize banks, and may concentrate toxins downstream. Sand can be taken from the flood plain next to the river as shown by what Kansas Sand and Concrete Co. has done. I will attend an hearing on this matter if necessary.

Sincerely, George Weeks

MR. MARX

20 February 2006

United States Army Corps of Engineers
Kansas City Regulatory Office
601 East 12th St.
Kansas City, MO 64106

RE: Permit 200600407

Dear Mr. Marx,

I am a member of Friends of the Kaw and am opposed to the continued sand dredging on the Kansas River. I request that permit 200600407 applied for by Victory Sand and Gravel be denied. As discussed in the Technical Advisory Committee on Kansas River Channel degradation the Kansas River is in an overall state of degradation and continued in-river sand dredging is insult to injury. I also have concerns that the upper limit of this permit lies within a "No Dredge Zone" according to the Regulatory Plan. In-stream sand dredging activities:

- Damage bridges, pipelines, jetties, dams, weirs and other manmade structures due to bank destabilization;
- Degrade habitat, diminish fish diversity and fish population due to siltation;
- Impair recreation, navigation and water quality;
- Degrade the riverbed and the shoreline; and
- May re-suspend and concentrate chlordanes and other persistent bio-accumulative toxins downstream.

Friends of the Kaw believes the answer to the continued need for sand is to take sand from the flood plain next to the river. We applaud Kansas Sand and Concrete, Inc., also being required to relocate because of unacceptable channel degradation at their current location (r. m. 84.5 to r. m. 85.8), for making plans to move their operation to a pit mine. We agree that finding an appropriate pit mine site is not an easy task but as shown by Kansas Sand and Concrete, Inc. it is possible. I would also attend a public hearing on this matter.

Sincerely,

Steven H. Budgeux
4461 Booth Street, Kansas City, KS.
66103

CC: FOK

Dear Mr. Mart,

8-27-03

I see a report that dredging permits are up for renewal on the Kansas River. There is considerable evidence of this dredging has dug up trouble-chloroane-contaminated sediment that is at the bottom of the River.

Also this dredging has contributed to damaging the Bridges and dams on the River I, as a citizen of the State of Kansas am opposed to this dredging and respectfully request a PUBLIC HEARING prior to any new permits being issued. Respectfully yours.

Raymond F Fisher

Josh Marx
U.S. Army Corps of Engineers
Kansas City Regulatory Branch
700 Federal Building
601 East 12th Street
Kansas City, MO 64106-2896

September 16, 2003

Dear Mr. Marx:

The Regulatory Plan that was put in place in 1990 was meant to address concerns about the negative impact of instream sand mining. It states that the plan "...is a general policy document developed to aid the Corps of Engineers in administering future permit applications for commercial dredging operations..." It states throughout this document that each permit application will undergo public review. This should never be changed.

I am not an attorney, but I believe the Corp would have some major legal problem if it were to grant blanket permits to every dredging operation that wanted a permit. Each permit would be granted, or not, on it own merits.

In 1995 there was an outcry from hundreds of people living in communities along the Kansas River. Since the Kaw is one of only three publicly owned rivers in the state and the most widely used river for recreation as well as municipal water usage, it seems that there are other concerns overriding the wishes and desires of the aggregate "extractors" (as opposed to "producers.") Two of the Plan's three stated objectives are already weighted in favor of these extractors. (See page A-2 of the Plan.)

Monitoring is crucial to carrying out the regulation of sand dredging. By granting ten year permits would you be negating the monitoring plan? The river, being a dynamic system, requires diligent monitoring.

I am opposed to a ten year review and grant cycle for all dredgers. It seems to me the purpose of such a change is only to make the process easier for the Corps and making it easier is not in the best interest of the river. To review and grant all permits at the same time would actually put more of a burden on the Corps and could lead to a shoddy review process.

I request a public hearing on this matter to bring to light, for interested parties, the real reasons for such a change and the opportunity to hear the pros and cons from of such a change.

Eileen Larson
2043 E. 1250 Road
Lawrence, KS 66044
785-843-3648
eg152@earthlink.net

Marx, Joshua A NWK

From: Carol Hartegan [CHartegan@everestkc.net]

Sent: Saturday, September 06, 2003 2:42 PM

To: Marx, Joshua A

Subject: RE: COMMERCIAL SAND AND GRAVEL DREDGING ON THE KANSAS RIVER".

Mr Marx,

I understand that US Corp of Engineers is considering renewal of permits, for another 10 years, that would allow six companies to continue operating 12 sand and gravel dredges on the Kansas River in Johnson and Douglas counties. .

I urge you to deny the extension of any permits for sand and gravel dredging on the Kansas River. And, please hold a public hearing on this issue prior to making a decision.

Sincerely,

Carol Hartegan

8930 Millstone Dr

Lenexa KS 66220

913-888-8930

chartegan@everestkc.net

Marx, Joshua A NWK

From: Dan and Linda Knupp [knupp@wamego.net]
Sent: Saturday, September 06, 2003 3:52 PM
To: Marx, Joshua A
Subject: RE: COMMERCIAL SAND AND GRAVEL DREDGING ON THE KANSAS RIVER

Mr. Marx,

I would like to urge the Army Corps of Engineers to consider NOT extending permits for dredging the Kansas River in Douglas and Johnson Counties. As I am sure you know that this dredging causes damage to bridges, pipelines, jetties, dams, weirs and other manmade structures due to riverbank destabilization; degrades wildlife habitat; diminishes fish diversity and fish populations due to siltation; impairs river based recreation; degrades water quality in the river; and degrades the riverbed and shoreline.

At a reasonable time before making a decision on this it would be good for you to hold hearings allowing public input.

Thank your for your consideration.

Dan Knupp
15560 Elm Slough Rd
Wamego KS 66547

Marx, Joshua A NWK

From: Laura Turnbull [lturnbull@ci.lenexa.ks.us]
Sent: Thursday, August 21, 2003 10:08 AM
To: Marx, Joshua A
Subject: dredging on the Kaw River

Mr. Marx,

In my capacity as Watershed Planner for the City of Lenexa, KS, I work on water quality issues, project review, public education and NPDES Phase II compliance. I am concerned about continued dredging on the Kaw River but admit that I need to learn more about the process and impacts. I feel this issue merits public meetings so that interested parties can make informed decisions about supporting or not supporting these types of operations.

Thank you for your attention.

laura g. turnbull, ASLA

Watershed Planner
City of Lenexa, Planning Dept.
12350 W. 87th Street Parkway
Lenexa, KS 66215
ph. 913.477.7715
fx. 913.477.7730

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Marx, Joshua A NWK

From: n0ryq@juno.com
Sent: Wednesday, August 20, 2003 5:59 PM
To: Marx, Joshua A
Subject: Kansas River Dredging

Kansas River Dredging

I want dredging stopped in the river.

I would like to ask for a public hearing on the 12 dredging permits pending for the Kansas River

Jon Held
Manhattan
785-539-0216
email also at jheld@ksu.edu

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Marx, Joshua A NWK

From: sarah woellhof [sarahw0024@yahoo.com]
Sent: Monday, August 25, 2003 2:40 PM
To: Marx, Joshua A
Subject: Kansas River dredging

Dear Mr. Marx:

Please consider holding one or more public hearings in regards to the upcoming river dredging contracts arranged by the Corp of Engineers. Others within the state of Kansas need to be able to voice their opinions too. Too much is being sacrificed at too low a cost in my opinion. Thank you, Sarah Woellhof, 1746 Medford Av., Topeka, KS 66604

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<http://sitebuilder.yahoo.com>

Marx, Joshua A NWK

From: Jill Krebs [jill@sunflower.com]
Sent: Monday, August 25, 2003 7:33 PM
To: Marx, Joshua A
Subject: Kansas River Dredging

Dear Mr. Marx,

Please, please, please hold new hearings on all dredging permit renewals!!!!

--
Jill Krebs
935 Avalon Rd.
Lawrence, KS 66044

jill@sunflower.com

785.832.0739

Marx, Joshua A NWK

From: Carol Cumberland [ccumb@swbell.net]

Sent: Monday, August 25, 2003 3:35 PM

To: Marx, Joshua A

Subject: Kansas River Dredging

RE: Saving the Kansas River

In view of the importance of our Rivers in Kansas I demand that the Corps hold new hearings on all dredging permit renewals.

Yours truly,
Carol Cumberland
1106 Gretchen Lane
Wichita KS 67206
316-265-0467 day
316-685-4867 eve

Marx, Joshua A NWK

From: rodlin@cableone.net
Sent: Tuesday, August 26, 2003 8:26 AM
To: Marx, Joshua A

To: joshua.a.marx@usace.army.mil

I request that the Corps hold new hearings on all dredging permit renewals.

Thank you

R. Sobieski
Emporia, Ks 66801

Marx, Joshua A NWK

From: Jim Mason [jmason15@cox.net]
Sent: Friday, August 29, 2003 6:48 AM
To: Marx, Joshua A
Subject: Kansas River Dredging

Mr. Marx,

I understand the Corps is considering reissuance of permits for instream dredging on the Kansas River.

As a member of the board of the Kansas Natural Resource Council, I am particularly concerned with anything that would negatively impact the quality of our surface waters. It has been well established that instream dredging operations for sand and gravel produce negative impacts in large and unavoidable quantities.

Re-suspension of toxins previously sequestered in river mud, massive increases in turbidity, destabilization of the river bottom, navigational hazards for recreational boaters, the esthetic impact of having an industrial operation in a natural setting and the cascading effects of bank erosion and bottom profile recession upstream from the site are some of these deleterious effects.

The same material that is sought from the river channel may be had from the area outside the channel via "sand pit" operations in the flood plain, which have none of the undesirable effects I mention above. I believe it is long overdue that we should ban all instream dredging and I encourage the Corps to consider this when it evaluates the reissuance of permits. I also believe this process should include public hearings. Thank you.

Jim Mason
1145 Jackson
Wichita, KS 67203
jmason15@cox.net

1645 Barker Ave
Lawrence KS 66044
August 25, 2003

Joshua A. Marx
USACE KS City Reg. Office
700 Federal Bldg.
Kansas City MO 641106-2896

Dear Mr. Marx:

I am opposed to re-issuance of any permits to dredge for sand in the Kansas River without USACE conducting a public hearing.

The Kansas River is one of only three public access rivers in Kansas . It holds my dream of great potential for development into a 170-mile linear park for the people of Kansas.

Sand and gravel dredging has been very damaging to the chemical, physical and biological integrity of the Kansas River for more than half a century. I am concerned that no environmental impact statement has ever been done that included any part of the river upstream of Bonner Springs. The information in those studies that have been done is out of date and incomplete.

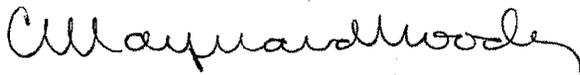
The views of the concerned public as well as regional, state and local experts need to be considered by the Corps. However, without meaningful public participation, dredging permitting by your agency will continued the destruction to the Kansas River for another 10 years.

Damaged bridges, degraded habitat, impaired recreation, riverbank destabilization, resuspension of concentrate chlordane & other persistent bioaccumulative toxins downstream are all consequences dredging exacerbates.

The public needs the opportunity to express concerns about their river.

Thank you for your consideration of this request.

Sincerely,



Carey Maynard-Moody

Marx, Joshua A NWK

From: Dirk or Naomi Durant [durant@ks-usa.net]
Sent: Friday, August 29, 2003 7:53 PM
To: Marx, Joshua A
Subject: Kansas River dredging

Mr. Josh Marx:

River dredging is something that should be added to that list of things that "used to be done that way". Knowing what dredging does to the river and its ecosystem means we can no longer pretend that damage is not happening. Please do not issue any more permits for river dredging, or renew old ones. At the very least, hold public hearings before doing so. Thank you for your consideration.

Yours truly,

Dirk Durant

111 S. 3rd St.

Lindsborg, KS 67456

Marx, Joshua A NWK

From: RipleyLake@aol.com
Sent: Friday, August 29, 2003 5:50 PM
To: Marx, Joshua A
Subject: Sand and Gravel/Kaw River

Dear Mr. Marx:

As a resident of Shawnee, KS, and a great fan of the Kaw River, I urge that the Corps delay renewing the permits for dredging in the Kaw until the impact of such operations can be better studied and appreciated by all parties concerned. We believe that adequate sand and gravel is available in the existing flood plain along the Kaw to be profitable for extraction by the operators without having to dredge from the river, proper. The very low fees operators currently pay at least should be raised to compensate for the known damage that their dredging is causing to natural and man-made structures in, along, and over the River. We also believe that the permitting process must not go forward without public hearings on this matter so that the media and the public will be aware of the benefits and the costs of this pending decision.

In the nearly nine years we have lived in Shawnee, we have come to love our River, and know many others who may not take the time to contact you, share our views.

Thank you.

Eugene R. Wilson
14117 West 56th Court
Shawnee, KS 66216

(913) 268-6284

cc: Congressman Dennis Moore
Senator Sam Brownback
Senator Pat Robertson

Marx, Joshua A NWK

From: monika meuli [meuli@ikansas.com]

Sent: Sunday, August 31, 2003 12:10 PM

To: Marx, Joshua A

Subject: Kansas River Dredging

I would like to request a public hearing on the 12 pending dredging permits for the Kansas River. Stop the dredging and the damage it causes.

Marx, Joshua A NWK

From: Anne Millhollen [hplam_1998@yahoo.com]
Sent: Wednesday, September 03, 2003 7:25 AM
To: Marx, Joshua A
Subject: dredging the Kansas River

Dredging in the Kansas River has been very controversial in Kansas. I urge you not to automatically renew dredging permits for the river and instead hold public hearings on the issues involved.

Thank you for your time.
Anne Millhollen
1303 Steven Dr.
Hays, KS 67601

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Yahoo! SiteBuilder - Free, easy-to-use web site design software
<http://sitebuilder.yahoo.com>

Marx, Joshua A NWK

From: Dewey Ziegler [dziegler@kumc.edu]
Sent: Tuesday, September 02, 2003 3:44 PM
To: Marx, Joshua A
Subject: dredging of Kansas river

Urge you hold new hearings on all dredging permit renewals. Public deserves input on this issue since dredging causes massive alteration on the river and its banks. There are environmental issues and economic ones

Marx, Joshua A NWK

From: Larry Rhodes [lrhodes@inlandnet.net]

Sent: Tuesday, September 02, 2003 11:46 PM

To: Marx, Joshua A

Subject: RE: COMMERCIAL SAND AND GRAVEL DREDGING ON THE KANSAS RIVER

This is a request to delay granting extensions of sand and gravel dredging permits; and to hold public hearings in the matter. Thank you.

Larry Rhodes
Topeka, KS
www.inlandnet.net/~lrhodes/

Marx, Joshua A NWK

From: Nancy [nancy@woodwardcpa.com]

Sent: Wednesday, September 03, 2003 7:51 AM

To: 'joshua.a.marx@usace.army.mil'

Subject: Re: Commercial Sand and Gravel Dredging on the Kansas River

Please hold a public hearing on the extension of permits for sand and gravel dredging on the Kansas River prior to renewing any extensions.

Thank you, Nancy Morris

Marx, Joshua A NWK

From: BethLBarnett@aol.com
Sent: Wednesday, September 03, 2003 8:24 AM
To: Marx, Joshua A
Subject: "RE: COMMERCIAL SAND AND GRAVEL DREDGING ON THE KANSAS RIVER".

Please deny the extension of any permits for sand and gravel dredging on the Kansas River. The corps should hold a public hearing on this issue prior to making a decision.

Thank you.

Beth Barnett
6246 Mission Rd
Shawnee Mission KS 66205

Marx, Joshua A NWK

From: Craig Volland [hartwood2@mindspring.com]
Sent: Wednesday, September 03, 2003 9:56 AM
To: Marx, Joshua A
Subject: RE: COMMERCIAL SAND AND GRAVEL DREDGING ON THE KANSAS RIVER"

Dredging for sand in the Kansas River is highly damaging to the river ecosystem and structure. It's not necessary because aggregate companies could easily mine nearby dry lands for sand deposited in years past.

Please deny any new permits or renewals for this dredging. Please convene a public hearing before you make a decision. Thanks.

Craig Volland
609 N. 72nd St
kansas city, Ks. 66112

Marx, Joshua A NWK

From: Doug and Ruth Ann Guess [draguess@networksplus.net]
Sent: Wednesday, September 03, 2003 11:18 AM
To: Marx, Joshua A
Subject: Commercial sand and gravel dredging on the Kansas river

Sept. 3, 2003

Joshua A. Marx
U.S. Corps of Engineers

Dear Mr. Marx:

Please deny the extension of any permits for sand and gravel dredging on the Kansas river, at least until there has been a public hearing on this matter. The Kansas river belongs to all of us, and it must be protected from the continuation of such a severe form of environmental damage.

Thank you,

Doug and Ruth Ann Guess
Lawrence, KS

Marx, Joshua A NWK

From: Cox SMTP central [jweinman1@cox.net]
Sent: Wednesday, September 03, 2003 1:49 PM
To: Marx, Joshua A
Subject: Commerical Sand and Gravel Dredging on the Kansas River

Dear Mr. Marx,

I am writing to ask that you please deny the extension of any permits for sand and gravel dredging on the Kansas River. Gravel dredging has many negative impacts including damage to bridges, pipelines, dams and other manmade structures due to riverbank destabilization. It also degrades wildlife habitat, the quality of the water, riverbed and shoreline.

I ask that you hold a public hearing on this issue prior to making the decision.

Thank you for your time.

Sincerely,

Jennifer Weinman

Marx, Joshua A NWK

From: gwen [pengwen@kc.rr.com]

Sent: Wednesday, September 03, 2003 2:03 PM

To: Marx, Joshua A

Subject: Re: COMMERCIAL SAND & GRAVEL DREDGING ON KANSAS RIVER

Dear Mr. Marx,

I'm contacting you to ask that you please deny the extension of any permits for sand and gravel dredging on the Kansas River.

Also, please hold a public hearing on this issue prior to making a decision, in order to hear from a variety of points of view.

Have a super day and thank you for your consideration.

Gwen Aronson

Marx, Joshua A NWK

From: Micheline Burger [mburger@sbcglobal.net]
Sent: Wednesday, September 03, 2003 12:43 PM
To: Marx, Joshua A
Subject: Kansas River dredging

RE: COMMERCIAL SAND AND GRAVEL DREDGING ON THE KANSAS RIVER

As concerned Kansas residents, we are requesting that the U.S. Army Corps of Engineers deny the extension of any permits for sand and gravel dredging on the Kansas River. We also request that the Corps to hold a public hearing on this issue prior to making a decision.

We are concerned that dredging will cause the following:

- Damage to bridges, pipelines, jetties, dams, weirs and other manmade structures due to riverbank destabilization.
- Degradation of wildlife habitat;
- Diminution of fish diversity and fish populations due to siltation;
- Impairment to river based recreation;
- Degradation of water quality in the River;
- Degradation of the riverbed and shoreline.

Please deny the extension of any permits for sand and gravel dredging.

Thank you for your consideration.

Phil and Micheline Burger
26622 W. Greentree Ct.
Olathe, KS 66061

Marx, Joshua A NWK

From: Lance W. Burr, Atty [lancewburr@sunflower.com]
Sent: Wednesday, September 03, 2003 2:40 PM
To: Marx, Joshua A
Subject: Kansas River Dredging

Dear Mr. Marx:

I am opposed to dredging on the Kansas River and request a public hearing before any permits are approved or re-approved. Dredging activities:

- Damage bridges, pipelines, jetties, dams, weirs and other manmade structures;
- Degrade habitat, reduce fish species diversity and fish populations;
- Impair recreation, navigation and water quality;
- Degrade the riverbed, the shoreline and groundwater;
- May re-suspend and concentrate chlordane downstream; and
- Destruction and removal of sand beaches used for recreational purposes.

The Corps has no data from reaches upstream of Bonner Springs to support a cost/benefit decision in favor of in-river dredging.

For these reasons and many others, dredging is causing the chemical, physical and biological degradation of the Kansas River and it should be stopped now. Please write me back to let me know what you think.

Sincerely,

Lance W. Burr

Marx, Joshua A NWK

From: ldaggett@cox.net
Sent: Wednesday, September 03, 2003 2:50 PM
To: Marx, Joshua A
Subject: RE: COMMERCIAL SAND AND GRAVEL DREDGING ON THE KANSAS RIVER

Please deny any new applications for sand and gravel dredging in the Kansas River. These activities have the following negative impacts on the Kansas River:

- Damage to bridges, pipelines, jetties, dams, weirs and other manmade structures due to riverbank destabilization.
- Degradation of wildlife habitat;
- Diminution of fish diversity and fish populations due to siltation;
- Impairment to river based recreation;
- Degradation of water quality in the River;
- Degradation of the riverbed and shoreline.

I also ask that you hold public hearings on this matter prior to rendering any decision.

Thank You,

Larry Daggett
905 Saint James
Wichita, KS 67206

Marx, Joshua A NWK

From: April Hudson [ahudson@aceks.com]
Sent: Wednesday, September 03, 2003 3:24 PM
To: Marx, Joshua A
Subject: RE: Commercial Sand and Gravel Dredging on the Kansas River

Dear Mr. Marx:

I would like to ask you to please deny the extension of any permits for sand and gravel dredging on the Kansas River. I understand you are considering renewing the permits for another ten years, allowing six companies to continue operating on the Kansas River in Johnson and Douglas Counties. Prior to any decision you make, I would ask that a public hearing be held to fully explore the negative impact of in-stream sand and gravel dredging.

Sincerely,

April D. Hudson
608 N. 8th Street
Humboldt, KS 66748

Marx, Joshua A NWK

From: Fairchild, Kathryn [kathryn.fairchild@pearson.com]
Sent: Wednesday, September 03, 2003 3:28 PM
To: 'joshua.a.marx@usace.army.mil'
Subject: Re: Commercial Sand and Gravel Dredging on the Kansas River

Dear Mr. Marx,

I am writing to urge to deny renewal for sand and gravel dredging on the Kansas River.

I am convinced that dredging is not healthy for our river, which is in serious trouble as it is. Dredging contributes to riverbank instability and can cause damage to bridges, dams and other river structures. It is also very harmful to wildlife and fish and adds more pollution to the already poor water quality - water that is used for drinking water and for recreation. And there are other sources of sand and gravel available besides the river.

I recognize that dredging is not the only cause of degradation of the river, but it is an important contributor. The Kaw could be such a beautiful resource for all of us.

I also recognize that this is an issue about which reasonable citizens can disagree. Therefore, before taking any action, I think a public hearing is in order. I think it's high time to stop putting the commercial greed of a few ahead of the public good.

Thank you for your time.

Respectfully,
Kathryn Fairchild

Kathryn Fairchild
DCS Call Center Supervisor
Ombudsman Research Specialist
Pearson Government Solutions
kathryn.fairchild@pearson.com

This email may contain confidential material. If you were not an intended recipient, Please notify the sender and delete all copies. We may monitor email to and from our network.

Marx, Joshua A NWK

From: Shawn Tolivar [stolivar@kumc.edu]
Sent: Wednesday, September 03, 2003 2:55 PM
To: Marx, Joshua A
Subject: "COMMERCIAL SAND & GRAVEL DREDGING ON THE KANSAS RIVER"

Dear Mr. Marx:

I am opposed to dredging on the Kansas River and request a public hearing before any permits are approved or re-approved. Dredging activities:

Damage bridges, pipelines, jetties, dams, weirs and other manmade structures;

Degrade habitat, reduce fish species diversity and fish populations;

Impair recreation, navigation and water quality;

Degrade the riverbed, the shoreline and groundwater; and

May re-suspend and concentrate chlordane downstream.

The Corps has no data from reaches upstream of Bonner Springs to support a cost/benefit decision in favor of in-river dredging.

For these reasons and many others, dredging is causing the chemical, physical and biological degradation of the Kansas River and it should be stopped now. Please write me back to let me know what you think.

Sincerely,

Shawn Tolivar
Avid kayaker on the Kansas River

Shawn Tolivar
The University of Kansas Medical Center
Web Systems Admin
Internet Development Unit
913-588-7134

Marx, Joshua A NWK

From: Stephen Garlow [Sgarlow@rilinglaw.com]
Sent: Wednesday, September 03, 2003 6:24 PM
To: Marx, Joshua A
Subject: Stop the Kaw River Dredging

Dear Mr. Marx:

As a resident of Kansas for 25 years, as a frequent user of the Kansas River and its riparian areas, as an adult leader in Boy Scouts, as a father of three, as an attorney, as a taxpayer, as a registered Republican, as an environmental advocate, as a businessman, as a homeowner, and as a concerned citizen, I request that the Army Corps of Engineers schedule and conduct Public Hearings before making a decision about denial, renewal or extension of dredging permits on the Kaw River. The limited study and research on the impact of sand dredging and mining has identified several detrimental impacts on the river morphology, fisheries and aquatic life. I have been on the river and witnesses the damage caused to destabilized river banks by the dredging operations; in addition, the dredging has a detrimental impact on recreational users of the river and riparian wildlife. I believe the sand dredgers are wrongly profiting on a public resource, and reasonable economic alternatives exist (off river mine pits). Public Hearings should be conducted on this important issue.

Respectfully submitted,
L. Stephen Garlow

L. Stephen Garlow
Riling, Burkhead & Nitcher, Chtd
808 Massachusetts St.
Lawrence, KS 66044
785-841-4700 ext. 226
785-843-0161 (fax)
sgarlow@rilinglaw.com

Confidentiality Notice: This transmittal and accompanying documents are privileged and confidential, intended only for use by addressee named above and no one else. If you received this transmittal in error, please immediately telephone sender and delete this message.

Marx, Joshua A NWK

From: bgriff [bgriff@lvnworth.com]

Sent: Wednesday, September 03, 2003 5:22 PM

To: Marx, Joshua A

Subject: Commercial Sand and Gravel Dredging on the Kansas River

I would like the Corps to hold hearings on the issuing of permits to dredge sand from the Kansas River. Thank you.

Bill Griffith
Atchison

Marx, Joshua A NWK

From: Kelly Armstrong [liebhaberin@yahoo.com]
Sent: Thursday, September 04, 2003 11:29 AM
To: Marx, Joshua A
Subject: dredging

Dear Mr. Marx,

Please deny the extension of any permits for sand and gravel dredging on the Kansas River. Please hold a public hearing on this issue prior to making a decision.

Sincerely,
Kelly Armstrong

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Marx, Joshua A NWK

From: John Taylor [john@thtax.com]
Sent: Thursday, September 04, 2003 8:54 AM
To: JOSUHA A MARX
Subject: Kansas River Comm'l Sand Dredging Permits

I ask you to not extend permits for sand dredging on the Kansas River.

As a recreational user of the Kansas River, and a resident of Kansas, I can tell you that this dredging has a negative impact on the Kansas River. It destabilizes the riverbank, and degrades the water quality and the shoreline. It is a major impairment to recreational use of the river.

Sand is not a scarce commodity. It is not in the public interest to degrade the Kansas River to obtain sand which is readily available elsewhere.

Please consider holding a public hearing on this prior to making a decision.

John Taylor
517 E Park
Olathe, KS 66061

Marx, Joshua A NWK

From: Trix Niernberger [tniernberger@cox.net]
Sent: Sunday, September 07, 2003 10:47 AM
To: Marx, Joshua A
Subject: COMMERCIAL SAND AND GRAVEL DREDGING ON THE KANSAS RIVER
Importance: High

Joshua A. Marx
U.S. Army Corps of Engineers
Kansas City Regulatory Office
700 Federal Building
601 E. 12th Street
Kansas City, MO 64106-2896

Dear Mr. Marx:

Please deny the extension of all permits for sand and gravel dredging on the Kansas River. I'm requesting you hold a public hearing on this issue prior to making a decision.

Dredging causes damage to wildlife habitat and diminishes the fish diversity of the river. It also hurts river recreation and the water quality of the river.

Thank you for your consideration.

Sincerely,
Trix Niernberger
436 N Pershing
Wichita, KS 67208
tniernberger@cox.net

Marx, Joshua A NWK

From: Suleiman, Gibran CIV DES [gibran.suleiman@riley.army.mil]
Sent: Friday, September 05, 2003 8:31 AM
To: 'joshua.a.marx@usace.army.mil'
Subject: In stream sand dredging

Mr. Marx,
I would like to voice my opinion on the issue of in stream sand dredging. I feel that the pros and cons of the issue need to be visited further upon before any dredging permits are renewed. I would request that the COE invite the public to an open hearing to discuss this issue and that the COE sincerely takes in to consideration what is best for the Kansas River and the wildlife that it supports and also what's best for the citizens of Kansas. Thank you for your time.

Best Regards,

Gibran Suleiman, Manhattan

Marx, Joshua A NWK

From: Robert Wilshire [rjwilshire@yahoo.com]

Sent: Friday, September 05, 2003 6:58 AM

To: Marx, Joshua A

Subject: "RE: COMMERCIAL SAND AND GRAVEL DREDGING ON THE KANSAS RIVER

Mr Marx,

I oppose extending any sand and gravel dredging permits for the Kansas River in Johnson and Wyandotte Counties for several reasons. In-stream sand and gravel dredging has the following negative impacts on the Kansas River:

- * Damage to bridges, pipelines, jetties, dams, weirs and other manmade structures due to riverbank destabilization.
- * Degradation of wildlife habitat;
- * Diminution of fish diversity and fish populations due to siltation;
- * Impairment to river based recreation;
- * Degradation of water quality in the River;
- * Degradation of the riverbed and shoreline.

Also, I think there should be public hearings on this issue. Thanks you for interest in this matter.

Robert Wilshire
5444 Cedar St
Roeland Park, KS 66205-2219
913/384-6645 (H)
913/573-2846 (W)

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Marx, Joshua A NWK

From: Alan Poisner [apoisner@kumc.edu]
Sent: Saturday, September 06, 2003 10:54 AM
To: Marx, Joshua A; seawolf@kssierra.org
Subject: RE: COMMERCIAL SAND AND GRAVEL DREDGING ON THE KANSAS RIVER".

Mr. Joshua A. Marx
U.S. Army Corps of Engineers
Kansas City Regulatory Office

Dear Mr. Marx:

I am adding my name to those who want to deny permits for further dredging on the Kansas River in Johnson and neighboring counties. Also, if any decision is to be made, it should be after public hearings so that the communities can be heard.

Thank you for your consideration.

Alan Poisner, M.D.
5211 W. 121st St.
Overland Park, KS 66209

Marx, Joshua A NWK

From: LynneBodle@aol.com
Sent: Thursday, September 04, 2003 7:02 PM
To: Marx, Joshua A
Subject: Kansas River Dredging

Dear Mr. Marx:

This letter is to implore you not to issue further dredging permits for the Kansas River. Much damage has already been done to the river, its inhabitants, its environs, and the manmade structures (bridges, water intakes, etc.) dependant on the riverbed and water flow.

I understand that there is need for sand for industrial purposes, but the flood plain surrounding the river has sand that can easily be obtained.

Please schedule a public hearing regarding the 12 dredging permits pending. We, the public, deserve a chance to be heard on this important issue for OUR river!

Thank you.

Lynne Bodle

Marx, Joshua A NWK

From: Nancy Stump [Nancy@pacealliance.com]
Sent: Friday, September 05, 2003 2:06 PM
To: Marx, Joshua A
Subject: RE: COMMERCIAL SAND AND GRAVEL DREDGING ON THE KANSAS RIVER

Regarding Commercial Sand and Gravel Dredging on the Kansas River...

It would be overall a good thing if the dredgers stayed the out of the river. There are numerous negative impacts to native fisheries and it impedes what little recreational canoeing there is. There's probably bigger issues related to the river, besides the degradation of the shoreline and water quality associated with dredging, but this is a major contributing factor to the detrimental condition of the river.

Since my family resides in Douglas County, this is a major issue for us. Lawrence was voted one of the "healthiest" towns in the nation, one of the few negatives being the bad condition of the Kansas River..

We also ask the Corps to hold a public hearing on this issue prior to making a decision.

Thank you,
Paul and Nancy Stump
259 N. 1250 Road
Berryton, KS 66409

Marx, Joshua A NWK

From: Mary Ann Beattie [docmab74@yahoo.com]
Sent: Thursday, September 04, 2003 12:05 PM
To: Marx, Joshua A
Subject: Kansas River dredging

Re: Commercial Sand and Gravel dredging on the Kansas River

Please deny a permit for dredging on the Kansas River. Dredging will damage manmade structure such as bridges due to riverbank destabilization, impair river recreation, degrade water quality and the riverbed and shoreling, degrade wildlife habitat and diminish fish populations due to siltation. Mary Ann Beattie

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Marx, Joshua A NWK

From: Micah Niermann [nikkilou@earthlink.net]
Sent: Saturday, September 06, 2003 5:16 PM
To: Marx, Joshua A
Subject: taxes

Please stop issuing permits for dredging. As an outdoorsman and taxpayer, I can't see why I have to end up paying for someone to ruin my river. Thanks for your time, Micah Niermann

Marx, Joshua A NWK

From: noracecelia@earthlink.net

Sent: Friday, September 05, 2003 10:05 AM

To: Marx, Joshua A

Subject: RE: COMMERCIAL SAND AND GRAVEL DREDGING ON THE KANSAS RIVER

Dear sir:

This message is to ask you to deny the extension of any permits for sand and gravel dredging on the Kansas River. Please consider holding a public hearing on this issue prior to making a decision. As our Kansas chapter of the Sierra Club points out,

“ In-stream sand and gravel dredging has the following negative impacts on the Kansas River:

- Damage to bridges, pipelines, jetties, dams, weirs and other manmade structures due to riverbank destabilization.
- Degradation of wildlife habitat;
- Diminution of fish diversity and fish populations due to siltation;
- Impairment to river based recreation;
- Degradation of water quality in the River;
- Degradation of the riverbed and shoreline.”

I urge you to be thoughtful, considerate and fair on this issue.

Sincerely,

Nora Murphy
705 Mississippi Street
Lawrence, Kansas 66044

Marx, Joshua A NWK

From: Nancy Smith [nsmith@motherearthnews.com]
Sent: Tuesday, August 19, 2003 4:26 PM
To: Marx, Joshua A
Subject: Kansas River Dredging opposition

Please do not allow the continued dredging of the river bottom;the negative consequences we now understand are too great. Thank you for your thoughtful decision. --Nancy Smith, 24874 Linwood Road, Lawrence, Kansas 66044.

Marx, Joshua A NWK

From: redmon [redmon@networksplus.net]
Sent: Wednesday, August 20, 2003 7:36 AM
To: Marx, Joshua A
Subject: kaw river dredging

Dear Mr. Marx--

I am a active paddler of the Kansas River and opposed to further dredging there. It's time to face the fact that dredging has enormous damaging effects downstream for us taxpayers. The alternative is riverside mining of sand. Please do not approve further dredging permits in the Kansas River.

Sincerely,

Dave Redmon
2232 Cedar Acres Drive
Manhattan, KS 66502

Marx, Joshua A NWK

From: Keith Ratzloff [klr@k-state.edu]
Sent: Thursday, August 21, 2003 9:20 AM
To: Marx, Joshua A
Subject: Kansas River Dredging

I am writing to express my concern regarding the dredging of the Kansas River. Already listed as one of the dirtiest rivers in the nation, the dredging just adds to this problem. I have been to many pristine rivers, in particular in Missouri, where dredging is not allowed and it is embarrassing to our state to have such dirty water when comparing. Why is our state the only one that is not concerned with one of our most precious resources.

Please do not allow any additional permits or renew any of the permits.
Thank you for your consideration. Keith

Marx, Joshua A NWK

From: Shari Hilliard [shilliard@kc.rr.com]
Sent: Wednesday, August 20, 2003 10:58 PM
To: Marx, Joshua A
Subject: Kansas River Dredging

I can't believe the Corps of Engineers is considering renewing dredging permits on the Kansas River. Does the Corps think so little of our natural resources, or just so little of Kansas? How can you let these companies degrade a natural resource that belongs to EVERYONE so they can save a few dollars by dredging in the river instead of beside it!! From what I'm told, its costing EVERYONE. I can't see how the small amount of money these companies pay offsets the damage that dredging does to bridges, not to mention degrading a natural resource and impeding public access.

I live in Bonner Springs and drive over that river bridge every day. How is anyone else suppose to use the river, when the dredger is right in the middle of the river at low water levels! You would think they owned the river. We get our water from that river and we've been having water trouble lately. Could it have something to do with dredging? I wouldn't be surprised.

I URGE you not to renew the dredging permits on September 7th. For once I'd like to see the government DO THE RIGHT THING, instead of the easy thing.

Marx, Joshua A NWK

From: Bob Cole [bobcole@ecodevo.com]
Sent: Monday, September 08, 2003 2:49 PM
To: Marx, Joshua A
Subject: dredging permits

I have to admit I'm surprised that there is an in-river dredging permit system still in place on the Kansas River. I was under the impression that all such sand and gravel extraction was now taking place out of the stream bed on adjacent lands.

We're very interested in helping increase recreational awareness and uses of the Kansas River - one of only two "navigable" and therefore publicly accessible waterways in Kansas. One of our communities, St George, with help from others, just built the first new canoe/boat landing on the Kansas River in 30 years. We're trying to help them promote its use, and add more landings downstream.

I note on your map that the proposed permits are between just upstream from Topeka to Kansas City. On the face of it - in stream dredging seems a heavy industrial use totally incompatible with recreational uses of the river. While these permitted areas are not in our immediate area - they certainly do seem to affect the recreational potential of the down river areas.

Unless there is a very compelling reason to do otherwise - isn't it possible to find a better way to balance the needs of heavy industry and recreational uses of this river?? I note that in our immediate area - our sand and gravel operations are on adjacent lands, not in the stream bed. The result is that our stretch of the river is available for a variety of recreational uses, limited only by access, which we are trying to improve. Simultaneously - we have a robust sand and gravel industry on adjacent lands.

Would sure like to see you give heavy consideration to "Multiple Use" as a driving concept for your decision making process. Making possible present and future potential recreational uses, rather than locking up a long stretch of the river solely for heavy industry for a 10 year period, would be a boon to the outdoor recreation and tourism potential of the Kansas River Corridor.

Thanks for your consideration.

Robert L. Cole
Director
Pottawatomie County Economic Development Corporation
PO Box 288
1004 Lincoln
Wamego, KS 66547
785.456.9776

Marx, Joshua A NWK

From: KatFRior@aol.com

Sent: Monday, September 08, 2003 2:41 PM

To: Marx, Joshua A

Subject: Dredging in Kansas river

Please stop dredging in the river! The effects are toxic to living organisms and the balance of the eco-system.

THIS MESSAGE IS ONLY FOR THE USE OF THE INDIVIDUAL(S) TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED OR CONFIDENTIAL. ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS INFORMATION IS STRICTLY PROHIBITED. PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR.

TO: JOSHUA A. MARX
US ARMY CORPS ENGRS
KC Regulatory Office
700 Fed Bldg
601 E 12th Street
KC Mo 64106-2896

WILLIAM CATHER, P.A.
2935 South Seneca
Wichita, Kansas 67217-2863
(316) 522-4749 FAX (316) 529-8944

FAX: (816) 426-2321
Number of Pages including cover: _____

DATE: 9-5-03
RE: _____
CASE NO: Dredging KANSAS RIVER

PLEASE REFER TO THE ITEMS CHECKED BELOW

- _____ The enclosed is for your information and files.
- _____ Please telephone our office for an appointment.
- _____ There will be a hearing/appearance in your case at _____: _____m., on _____.
- _____ Please find enclosed a reaffirmation agreement prepared by your creditor. If you wish to reaffirm the debt, please sign it and mail it back to me. If you don't, then mail it back and indicate you do not want to reaffirm. Do not reaffirm if the debt is unsecured or the value of the secured item is less than the debt.
- _____ Please find enclosed the original of the Journal Entry/Order which I have prepared in accordance with the directions of the Judge. Please sign and return to me. If you have an objection to the Journal Entry/Order, please serve it on me within ten (10) days pursuant to Rule 170. At the expiration of the time for serving objections, I will submit said Journal Entry/Order, together with any objections to the Judge for approval.
- _____ You must be present on the _____ day of _____, _____, for the First Meeting of Creditors—341 Hearing—in room B-56 of the U.S. Courthouse (401 N. Market) at _____: _____m. The U.S. Courthouse is on the northwest corner of Market and Third Street. If you do not appear, your bankruptcy may be dismissed. Bring your car titles and all other documents requested by the Trustee, INCLUDING DRIVER'S LICENSE AND PROOF OF SOCIAL SECURITY NUMBER.
- _____ Please stamp filed and return.

Please don't Extend Dredging Permits on the Kansas River (Johnson County, Ks) I canoe this river from time to time and I like wildlife habitat, fish diversity, swimmable water quality and a normal shore to camp on.

LAW OFFICES OF WILLIAM CATHER, P.A.
BY: Bill Cather
William Cather, Attorney (SC# 07070)

Joshua A. Marx
U.S. Army Corps of Engineers
Kansas City Regulatory Office
700 Federal Building
601 E. 12th St.
Kansas City, MO 64106-2896

September 2, 2003

Mr. Marx,

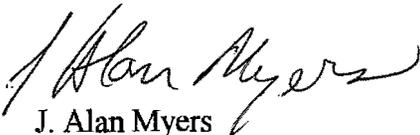
It is my understanding that the Army Corps of Engineers is considering the renewal of twelve permits for sand and gravel dredging operations on the Kansas River in Douglas and Johnson counties in Kansas.

Due to the negative impact that these operations have on the ecosystem of the Kansas River I would like to request that the Corps deny the renewal of these permits. It is my belief that there are an adequate number of non-riverbed quarries to supply our society's need for sand and gravel.

My hometown, Edwardsville, and our upstream neighbor, Bonner Springs, are working to increase tourism by promoting recreation on the Kansas River. Dredging operations detract from the beauty of the river and could potentially threaten the safety of canoeists and rafters.

You now have the opportunity to save and protect the "Kaw" from further environmental damage. Thank you for your consideration of these issues.

Sincerely,



J. Alan Myers
10613 Riverview
Edwardsville, KS 66111
913-422-7500

RECEIVED
REGULATORY BRANCH
03 SEP -4 PM 2:14

• **Marx, Joshua A NWK**

From: White, Sharon L NWK
Sent: Monday, September 08, 2003 6:58 AM
To: Marx, Joshua A NWK
Subject: FW: Public Notice on Kansas River Commercial Dredging Extended 10 day s to 17 Sep 2003

Sharon White
Regulatory Assistant
CENWK-OD-R
816-983-3660
e-mail: sharon.l.white@nwk02.usace.army.mil <mailto:sharon.l.white@nwk02.usace.army.mil>
website: www.nwk.usace.army.mil/regulatory/regulatory.htm
<<http://www.nwk.usace.army.mil/regulatory/regulatory.htm>>

-----Original Message-----

From: SCOUTHAYS@aol.com [mailto:SCOUTHAYS@aol.com]
Sent: Saturday, September 06, 2003 7:22 AM
To: White, Sharon L
Subject: Re: Public Notice on Kansas River Commercial Dredging Extended
10 day s to 17 Sep 2003

I am opposed to the dredging in the Kansas River for several reasons:
(1) we don't know for sure how devastating dredging is to our rivers
(2) the Kansas River is listed as a polluted river and should be degraded
any further. In fact, because of the Clean Water Act, just the opposite
should be happening where steps should be taken to restore it
(3) there are other ways to get gravel without dredging our rivers
(4) the river is not a private enterprise. It is a public resource that
should be preserved for "all people", not just to serve the economic interests of
a few.

Thank you for your consideration.
Debby Hays
1600 NE Duncan Road
Blue Springs, MO 64014
scouthays@aol.com

Marx, Joshua A NWK

From: Jennifer Weishaar [zingzangjmw@hotmail.com]
Sent: Sunday, September 07, 2003 5:16 PM
To: Marx, Joshua A

Joshua A. Marx
U.S. Army Corps of Engineers
Kansas City Regulatory Office
700 Federal Building
601 E. 12th Street
Kansas City, MO 64106-2896

September 7, 2003

Mr. Marx:

I am writing considering the possibility of a renewal of permits for six companies to continue operation of twelve sand and gravel dredges on the Kansas River in Johnson and Douglas counties. I am writing to ask you to deny these extensions and request a public hearing prior to any decision on such permits.

These dredges, which utilize hydraulic pumps mounted on barges to convey the sand and gravel slurry to shore based facilities, have several negative impacts on the river, including:

- Damage to bridges, pipelines, jetties, dams, weirs and other manmade structures due to riverbank destabilization.
- Degradation of wildlife habitat;
- Diminution of fish diversity and fish populations due to siltation;
- Impairment to river based recreation;
- Degradation of water quality in the River;
- Degradation of the riverbed and shoreline.

These dredges result in serious problems for our rivers and our need for a healthy and clean water supply. I strongly urge you to consider these dredges as problematic and reject the request for renewal of permits. Thank you.

Sincerely,

Jennifer Weishaar
1012 Emery Rd. Apt. D5
Lawrence, KS 66044-2560
zingzangjmw@hotmail.com

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Marx, Joshua A NWK

From: janthepayne@aol.com
Sent: Wednesday, September 03, 2003 9:51 PM
To: Marx, Joshua A
Subject: Kansas River Commercial Gravel and Sand Dredging

Mr. Marx:

I am alarmed by the possibility of the Army Corps of Engineers renewing the permits allowing the Kansas River in Johnson & Douglas Counties to continue to operate twelve sand and gravel dredges for another ten years.

Negative effects that will continue to be incurred are as follows:

- Degradation of the riverbed and shoreline.
- Impairment to river based recreation.
- Diminution of fish diversity and fish populations due to the siltation.
- Degradation of wildlife habitat.
- Damages to pipelines, bridges, weirs, dams and other manmade structures due to riverbank destabilization
- Degradation of water quality in the river.

My family goes back four generations in the area, to a time when the river was unspoiled. Please let it return to it's natural state.

Regards,

*Ms. Jan Payne
1100 E. 3rd St. N.
Wichita, KS 67214.3917*

316.641.1000

Marx, Joshua A NWK

From: ParkinsonG@aol.com
Sent: Thursday, September 04, 2003 2:25 PM
To: Marx, Joshua A
Subject: Dredging Permits

Please do not renew dredging permits on the Kansas River, particularly in Douglas and Johnson counties.

The dredging has significant impact on fish and wildlife, recreational use of the river, and water quality. It is time to stop abusing our public waterways!

Gerry Parkinson, Lawrence, Kansas.

Marx, Joshua A NWK

From: Beringer, Theodore M. [BeringerT@umkc.edu]
Sent: Friday, September 05, 2003 4:09 PM
To: Marx, Joshua A
Subject: Kansas River Sand Dredging

Joshua A. Marx
U.S. Army Corps of Engineers
Kansas City Regulatory Office
700 Federal Building
601 E. 12th St
Kansas City, MO 64106-2896

RE: COMMERCIAL SAND AND GRAVEL DREDGING ON THE KANSAS RIVER.

Recently I was able to observe the Missouri River after the order to reduce water flow had its effect. I saw sandbars along the banks that seemed like inviting beaches. It seemed apparent just from common sense that these sandbars would provide protection against erosion of those banks. Although I am unfamiliar with any specific scientific studies of the effects of dredging rivers like the Kansas River upon bank erosion and wildlife that depend upon the river's habitat, I would like to see some reasonable limits imposed upon sand and gravel dredging. Dredgers shouldn't simply have a blank check to mine sand from the River. Some limitation should be imposed to ascertain what different levels of dredging the Kansas River can accommodate without harming the wildlife habitat it supports. I don't buy the argument that the additional small expense of obtaining sand away from the river justifies doing harm to the river to avoid that expense. This part of the country does not have much dramatic landscape like seashore and mountains but I have learned to appreciate the natural appearance of many other rivers like the upper Missouri and upper Yellowstone rivers which I have visited this summer. The Kansas River might benefit from reduced dredging. Perhaps the Army Corps of Engineers could impose restrictions on dredging it until more information on its impact can be obtained.

Sincerely,

Ted Beringer
15313 W. 80th Terrace
Lenexa, Kansas 66219
beringert@umkc.edu

Marx, Joshua A NWK

From: Bernadette Kuhn [smackiswear@hotmail.com]

Sent: Monday, September 08, 2003 11:40 AM

To: Marx, Joshua A

Subject: kansas river dredging

Mr. Marx- I am very concerned about the dredging issues involving the Kaw river. I am a Lawrence resident and enjoy canoing down the river, taking walks beside it, and enjoying the wildlife it offers. The concerns of disturbing the spawning grounds and disrupting the wildlife are legitimate and pressing. Please help stop the river dredging and keep Lawrence beautiful.

thanks,

Bernadette Kuhn

Marx, Joshua A NWK

From: John R. Hooge [jhooge@sunflower.com]

Sent: Monday, September 08, 2003 9:56 AM

To: Marx, Joshua A

Subject: Kansas River Dredging

Mr. Marx:

Please record my opposition to continued licensing of dredging in the Kansas River. It is readily apparent that such dredging causes both environmental degradation and economic problems to landowners, city and other government5ts. If the real economic losses, present and future, from damage to the environment were actually tabulated, it would be even more clear. It is time we stop allowing the Kaw River to be abused even though such has been business as usual for so long.

John R. Hooge
4100 W. 12th ST.
Lawrence, KS 66044

Marx, Joshua A NWK

From: honanz@webtv.net
Sent: Saturday, September 06, 2003 12:37 PM
To: Marx, Joshua A
Subject: Commercial Dredging

We urge you to at least reduce the commercial dredging on the Kaw River. Thank you. Howard and Nancy Ziegenhorn

Marx, Joshua A NWK

From: matthew.m.reece@jpmorgan.com
Sent: Wednesday, August 20, 2003 11:50 AM
To: Marx, Joshua A
Cc: Generaux.Jack@epamail.epa.gov; burroughs@house.state.ks.us; cydney.r.reece@jpmorgan.com
Subject: Kansas River Dredging

hi josh!

i just received a note from Thomas J Hittle urging me to contact you to let you know how i feel about sand and gravel dredging in the Kansas River.

i'd be only too happy to share just a couple of my own opinions and experiences:

i've only been paddling the Kaw for the last year or so but i've come to know a couple of sections of the river well and i believe the river to be an under-appreciated recreational and natural resource. my fondest wish would be to see the banks of the Kansas River converted into a 170 mile long multi-use recreational corridor. something with biking/hiking trails and well-established trailheads/river access points.

Kansas is a state that few think of in terms of overflowing with natural beauty. but the Kaw winds thru some truly beautiful Kansas countryside. it connects the state's major cultural and population centers (except Wichita - sorry guys) and is within -man, i wish i could find this statistic- something like a one-hour drive of 90 percent of the state's population. (don't quote that, sorry, but it's something very much along those lines)

i believe a recreational corridor built around the river is something we could really be proud of. something that could attract others to come and visit. but the effects of the dredging operations on the Kaw are undermining - quite literally- the Kaw's recreational potential.

the effects of dredging are destructive and unsightly in so many ways.

- the dredging machinery itself is dangerous and nasty-looking to paddlers sharing the water. i've only paddled by dormant operations myself but between the pipes and conveyors near shore and the barges and their securing cables in the water they presented plenty of eyesore and potential danger.
- the lowering of the river level (which naturally follows the lowering of the riverbottom level) is causing the river to cut steep, deep banks and erode the adjacent farmland.
- tributaries of the Kaw consequently also have to cut deeper and more erosion-prone banks to get to the Kaw.
- the adjacent landowners are taking a number of ugly and environmentally unsound measures to keep their land from ending up in the Gulf of Mexico:
 - their efforts consist of the use of retired schoolbuses, piles of broken concrete, and hideous iron structures reminiscent of Normandy Invasion beach obstacles -among other equally inventive and ugly options- to prevent the river from eating their land.

i'm only scratching the surface of the impact of dredging - these are just the points that stick out in my own mind. i don't want to take any more of your time, i presume you'll have a few more notes like this one before the day is out. hopefully their points will flesh out some other aspects of the operations.

the Kaw is one of only 3 public, floatable rivers in Kansas. it can only improve if people use it and begin to care about its upkeep. once they begin to care -in large-enough numbers- a recreational makeover becomes a more viable possibility.

please: raise the permit fee or per-ton cost to encourage dredgers to look elsewhere for their sand.

offer incentives to encourage the mining operations to move off-river,
or do whatever is in your power to prevent the Kaw's further mistreatment at the hands of current and future
dredging operations.

thank you very much for your time and attention!

Matthew Reece
matthew.m.reece@jpmorgan.com
816 340-3276

Marx, Joshua A NWK

From: DBCanoe@aol.com

Sent: Tuesday, August 19, 2003 10:40 PM

To: Marx, Joshua A

Subject: Kansas River Dredging

As a life long resident of Kansas and who lives only a few blocks from the Kansas River I feel that we need to discontinue the practice of dredging sand from the river from an economic, health and environmental view point. There are alternatives that have less of an impact on the river and it's habitat. I feel it only makes common sense to get the Kansas River cleaned up as most of the cities along it use it for drinking water and it has valuable potential for recreational use if it were clean and free of obstructions. It is also important to protect the river habitat for wildlife!

Diana Busey
Topeka, KS

Marx, Joshua A NWK

From: Nancy Lewis [nlewis517@yahoo.com]

Sent: Thursday, August 14, 2003 9:11 PM

To: Marx, Joshua A

Subject: Dredging Permit Renewal Requests

The Kaw River Drainage District has received a public notice regarding renewal of dredging permits on the Kansas River.

Kaw River Drainage District is on the North side of the Kansas River roughly from river miles 87-97.

We are in favor of renewing these permits. We receive a substantial portion of our operating expenses from sand royalties derived from river dredging.

We do not believe that dredging has caused any major river bank erosion within our district.

We would like to see the permits for the existing sand dredging renewed.

Sincerely

Andrew Lewis

President

Kaw River Drainage District

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Marx, Joshua A NWK

From: Michael J. Hunter [mikeh@huntermidwestinc.com]
Sent: Tuesday, August 19, 2003 4:41 PM
To: joshua.a.marx@usace.army.mil
Cc: Davemurphy@direcway.com
Subject: Kansas River Dredging

Mr. Marx,

I am writing this letter to you because I believe you have the opportunity to do something great.

We need to stop river dredging on the Kaw River immediately. My understanding is that many permits are up for renewal and you have the power to say, "no." If in fact these permits are for 10 years, if issued, then your denial is more important than ever.

I have had the privilege of camping, hiking, trail riding, fishing, boating and enjoying the beauty of this great state for over 50 years. The Flint Hills, Gyp Hills, High Plains, Kaw River, Arkansas River, and too many lakes, streams, and land to mention have give me solace, enjoyment and peace.

I want to pass this on to my grandchildren - and yours.

As a business owner, I understand the importance of added cost to do business. Even a small increase can be traumatic. However, the cost to the general public of the continued dredging of the Kaw will far exceed the cost to individual dredging operators.

Please take the right stand, maybe the more difficult stand, but none the less, the right stand and deny those permits.

Thank you for the time and courtesy of reading my letter.
Mike Hunter

Michael J. Hunter
Hunter Midwest, Inc.
Registered Investment Advisor
8500 Shawnee Mission Parkway, Ste. L4
Merriam, KS 66202
913-831-7880
913-831-7883 (fax)
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Marx, Joshua A NWK

From: Robert Lindholm [rmlphoto@classicnet.net]
Sent: Tuesday, September 09, 2003 6:13 PM
To: Marx, Joshua A
Cc: jay@knrc.ws
Subject: Kansas River Dredging

Bob Lindholm
505 So. Cherry St.
Lindsborg, Kansas 67456

September 8, 2003

Josh Marx
Hearing Officer
Kansas River Dredging

Dear Mr. Marx:

Gravel mining operations in the Kansas River can have very serious harmful effects on the river. Please put dredging operations on hold until new hearing can be held on the operations.

Thank you.

Sincerely, Bob Lindholm

Marx, Joshua A NWK

From: Blue Heron [blueheron@sbcglobal.net]
Sent: Friday, September 05, 2003 11:31 AM
To: Marx, Joshua A
Subject: RE: COMMERCIAL SAND AND GRAVEL DREDGING ON THE KANSAS RIVER

Dear Mr. Marx

I am writing to ask that you not extend dredging permits for sand and gravel on the Kansas River for another 10 years. This would make a highly-stressed river environment even more so. sincerely, Paul Hotvedt

Marx, Joshua A NWK

From: Greg Bryant [gregandsusan@rainbowtel.net]
Sent: Friday, September 05, 2003 6:56 PM
To: Marx, Joshua A
Subject: NO to Kaw dredging permits

Joshua A. Marx
U.S. Army Corps of Engineers
Kansas City Regulatory Office

Dear Mr. Marx,

I urge you to deny renewal of the dredging permits on the Kaw which you're considering. Every effort from now on has got to be toward mitigation of the damage already inflicted on that river. I've seen some of the sites in question and I agree with those who say the damage is excessive and unnecessary.

Time stop this exploitation and let the industries that have been profiting from it begin paying their own way.

Thank you,
Greg Bryant
2054 Raven Road
Robinson, KS 66532

Marx, Joshua A NWK

From: joe rankin [rankinjoe@hotmail.com]
Sent: Monday, September 08, 2003 12:02 PM
To: Marx, Joshua A
Subject: kansas river dredging

Mr. Marx-

I am writing to express my concerns about the kaw river dredging. I hope you can help protect our river from wildlife disturbances and poor environmental practices. I am a student at KU and often enjoy the kaw as a place of respite. Please listen to the sensible alternatives to this problem, such as allowing sand to be harvested on the flood plain. The last thing the Kaw needs is further pollution. Please help!
sincerely,
Joe Rankin

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Marx, Joshua A NWK

From: Robert Condit [RECondit@msn.com]
Sent: Wednesday, August 20, 2003 2:19 PM
To: Marx, Joshua A
Subject: Kansas River Dredging

Sir, Please consider stopping the issuing of dredging permits on the Kansas River. I am sure you are aware of the many problems this form of mining can cause as an environmental issue as well as a damage to local municipalities on the river.

Dredging destabilizes riverbanks and removes the sand and gravel that supports the foundations of structures in the river. Kansan taxes have had to replace the Turner Bridge, to repair one water intake and completely lose another, and to repair Bowersock Dam in Lawrence.

And to also realize this is one of the few streams in the state of Kansas that is legally open for boating. Especially those of us who canoe or kayak all sections of the Kansas River. several towns on the Kansas have or are in the process of improving or adding river access points for the growing canoe and kayak use of the Kansas River. Continued dredging operations will certainly ruin this river experience if not completely block navigable sections of the river.

There are other means, less damaging to the environment and to quality of the waterways to gain the commodity of gravel and sand. Thank you for your time and consideration on this issue. I would also appreciate a reply on this issue.

Robert Condit
Lansing, Kansas

Marx, Joshua A NWK

From: Mary Arps Thompson [maryarps@mindspring.com]
Sent: Thursday, August 21, 2003 9:25 PM
To: Marx, Joshua A
Subject: KS River Dredging

Dredging must be stopped on the Kansas River.
Dredging operations only damage this natural resource, which belongs
to ALL of the people of Kansas.

Mary Arps Thompson
5001 Rock Creek Ln
Mission, KS 66205

Marx, Joshua A NWK

From: KC DC [kcdonald@hotmail.com]
Sent: Thursday, August 21, 2003 5:32 PM
To: Marx, Joshua A
Subject: STOP AND SAVE THE KANSAS RIVER

Please consider not re-issuing the permits to companies that pull sand from the KS. River.
It is time to save the river and consider land dredging operations.
We have done enough damage and we are now smart enough to know it now it the 21st century.
Lets replace this business with Tourism and Water Recreation.

Thanks for your consideration!
DC

Chat privately with Bon Jovi, Seal, Bow Wow, or Mary J Blige using MSN Messenger! <http://www5.msnmessenger-download.com/imastar/default.aspx>

Marx, Joshua A NWK

From: brad bruce [adprodigy2003@yahoo.com]

Sent: Friday, August 22, 2003 12:17 PM

To: Marx, Joshua A

Subject: kansas river dredging

Dear Mr. Marx -

Please hear me out.

The dredging of the Kansas River has got to stop. You know as well as I do the immediate ill effects dredging has on the river - from destabilizing the riverbanks to suffocating the fish. But what about the long term effects? The sand at the bottom of that river has been collecting as long as the river has been around - thousands upon thousands of years - and everything in the river, as in the rest of nature, exists to serve a purpose. And if we've learned anything in the past forty years, it's that you cannot change one thing without affecting the rest of the chain (ex. DDT kills fish, no fish means no bald eagles, etc.). Dredging that river means more than just taking some sand out of the bottom of a river and killing a few fish. It means disrupting first the world we live in, then exponentially disrupting the world of our children, our children's children, our children's children's children.

Please, no more.

Thank you for hearing me out,
Brad Bruce

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Marx, Joshua A NWK

From: janclark [janclark@everestkc.net]
Sent: Sunday, August 24, 2003 4:42 PM
To: Marx, Joshua A
Subject: Kansas River Dredging

Dear Mr. Marx,

I am writing in opposition to Corp. plans to renew dredging permits on the Kansas River. As you are aware these dredging operations are very damaging to the environment. They pollute the river ruining spawning beds for fish with chlordane. They also cost the taxpayers unnecessary expenses by destabilizing river banks, and removing sand from manmade structures along the river. They also block access for people and frighten off wildlife because of the noise. I encourage you to not reissue these permits and seek alternative ways to get sand and gravel that are available.

Sincerely,
Jan Clark
9923 Westgate Lane
Lenexa, KS 66215

Marx, Joshua A NWK

From: MW Stoakes [mstoakes@juno.com]
Sent: Wednesday, August 27, 2003 12:46 PM
To: Marx, Joshua A
Cc: jay@knrc.ws
Subject: Kansas River Dredging

6774 W. 83rd Street
Overland Park, KS 66204
August 27, 2003
mstoakes@juno.com

Dear Mr. Marx:

As a Kansas resident and member of Kansas Natural Resource Council, I'm writing to request that the USACOE hold new hearings on all dredging permit renewals. As an environmentally focused group, we're primarily concerned about what dredgers are digging up in the river such as chlordane-contaminated sediment. Also, when the dredgers dump the leftover mud back into the water, the silt suffocates the spawning beds of fish and sends particulate and chemical pollutants downstream to communities who draw their municipal water from the Kaw.

Besides the health concerns, dredging destabilizes riverbanks, both above- and below-stream of the digging, so much so that structures such as bridges are literally crumbling away. In the past two decades, taxpayers have had to replace the Turner Bridge, repair water intakes all along the river, and repair the dam at Bowersock. The alternative to dredging is simple - dig in the flood plain next to the river. This simple transition adds only modestly (less than 7%) to the cost of a load of gravel.

Finally, the Corps of Engineers has acknowledged that there are big problems with dredging - your organization has declared a twenty-mile section of the river off-limits to new permits, yet it is considering renewing a dozen existing permits without holding public hearings. Please allow individuals and groups such as ours to make the case for the health risks, the damage to riverbanks and physical structures, and the costs to taxpayers of continued dredging. Thank you for considering my comments.

Sincerely,

Mike Stoakes

August 31, 2003

Joshua A Marx
U.S. Army Corps of Engineers
Kansas City Regulatory Office
700 Federal Building
601 E 12th Street
Kansas City, Mo 64106-2896

Subject: **Commercial sand and gravel dredging on the Kansas River**

Dear Mr. Marx:

First, thank you for the time and effort that I expect you will put into this dredging issue on the Kansas River.

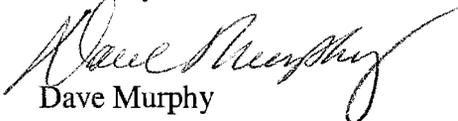
I am writing to ask you to either outright end dredging on the Kansas River or, failing to do that, to hold public hearings so that we may bring forth more information.

I respectfully request that your office make a full and complete response to all of the issues that I raise in the attached document so that we can appropriately address further discussions and reduce the repetition of the information that we can agree on.

I look forward to working with your office on this issue in any way I can.

Again, thank you for your time and effort.

Sincerely,


Dave Murphy

Cc: Colonel Curtis

Dave Murphy, 3978 Iowa Lane, Ottawa, KS 66067
Phone (913) 406-2260
davemurphy@direcway.com

Encl 10.8 (cont)

February 17, 2006

To:
 Joshua A. Marx
 U.S. Army Corps of Engineers
 Kansas City Field Office
 700 Federal Building
 601 East 12th Street
 Kansas City, MO 64106-2896

cc:
 Kansas Department of Health and Environment
 Bureau of Water, Watershed Management Section
 1000 SW Jackson Street
 Topeka, KS 66612-1367

RECEIVED
 REGULATORY BRANCH
 06 FEB 21 PM 2:37

From:
 Kansas Natural Resources Council
 PO Box 2635
 Topeka, KS 66601

Contact:
 Dave Murphy
 3978 Iowa Lane
 Ottawa, KS 66067
 murphyds@direcway.com
 785-242-8343

Dear Mr. Marx:

The comments below pertain to Permit Number 200600407, issued January 30, 2006, and expiring on February 20, 2006, as proposed by Victory Sand and Gravel. You will find nearly identical comments from the Kansas Natural Resources Council that will be submitted under a different cover and over the signature of our president. I submit these comments personally because the care of the rivers of Kansas is a personal matter to me.

I request that the Corps of Engineers deny this permit based on the following points:

- The requirements of the *Regulatory Plan for Commercial Dredging Activities on the Kansas River* do not allow dredging in part of this reach;
- The discharges from the land based operations violates Kansas Water Quality Standards;
- The discharge of the land based operation will violate Section IX of the *Regulatory Plan for Commercial Dredging Activities on the Kansas River*;
- The Corps has wrongfully, arbitrarily, and without the evidence required by law, decided not to protect the river as required under the Clean Water Act;
- The history of dredge has shown that dredging causes physical damage to the river;
- Dredging in this reach will cause economic damage to property;
- Dredging in this reach will negatively impact the economic, aesthetic, use and value of recreational uses, safe navigation and the fishery in that area;
- Dredging may re-suspend and increase the concentration of chlordanes, and other persistent toxins in the streambed; and
- The economic alternatives are available if they would only be pursued in earnest.

I address these concerns to the Corps and to the State of Kansas with the following explanations

A. The Corps needs to follow their own regulatory plan

This application, as submitted, would failure to comply with the *Regulatory Plan for Commercial Dredging Activities on The Kansas River* and would fail to protect the river, structures, other uses, and water quality as required by that regulatory plan or the Clean Water Act.

1. Section VIII B.2. of the regulatory plan addresses the protection of riverbanks that are naturally unstable (i.e. bends in the river). Under this plan the dredge cannot be allowed to operate within 200 feet of the outside of the bend at river mile 78-79.3. Yet the permit specifies that it would dredge upstream to river mile 78.6. That is 6/10ths of a mile inside the no-dredge zone of that river bend. This restriction must be specifically addressed within the permit issued and, as yet, it is not.
2. The lower section of the dredged area would be within 6/10 mile upstream of the put-in for one of the state's most beautiful river segments. Thus adding visual blight and silting over sandbars used for recreation. The siltation of this boat ramp will likely increase due to the operation of the dredge immediately upstream, making it unusable to the public.
3. The use of this boat ramp, entrance and parking area for the kind of heavy equipment the dredgers may intend to put on this boat ramp may exceed the ramps capacity and cause damage to the entrance and public parking area. The Applicant and other dredging operations on the Kansas River have proven that their operations have caused the degradation of the riverbed and shoreline in all other areas where they have operated. If any part of the Seward Boat Ramp is undermined by degradation neither the City of Topeka nor the State of Kansas should have to pay to repair or replace this structure. Therefore the permit, if issued, should require the dredger to maintain this boat ramp so that it is kept clear of silt, and keep it and the public parking area in good repair and usable to the public. The permit should also require the dredger to repair or replace the boat ramp, and restore the riverbank, the boat ramp and parking area when they discontinue operations.
4. At river mile 75 there is a low-head dam that is very difficult to portage. The banks are steep and there is no shoreline suitable for portage. Any additional riverbank degradation or siltation will make an already difficult and dangerous portage even more dangerous. We add here our objection to the unnecessary danger of this low-head dam, the lack of a navigable chute and the lack of a maintained means to safely portage this dangerous, river-wide structure. The safe navigation of this structure is the responsibility of the Corps of Engineers. The Corps has failed to provide for our safety at every chance you seem to have been given relative to structures and obstructions on the Kansas River. Putting a new dredge in proximity to this dangerous spot will adding more difficulty and dangerous for public navigation and recreation and will likely result in human deaths if this dredge impacts even slightly the public's precarious, (and unnecessary) portage of this nasty spot. If the Applicant is permit is granted the permit should require the construction, maintenance and monitoring of a portage and navigable passage at this low-head dam.
5. The range of this permit is nearly contiguous with the river mile 80-90 Survey Ranges established under the regulatory plan's Monitoring (see sub-section III.B. of that section). Since the range of the proposed dredge is so close to the existing Survey Range that Survey Range should be extended to include mile 70 - 90 and should be specifically required to monitor the site of the Seward Access and make repairs and/or replacement of that structure and bank profile if negatively impacted by riverbed or bank degradation within five years of cessation of dredging in this reach.
6. Prior to the onset of operations and prior the issuance of a permit baseline cross-section, water surface elevations and aerial photographs must be taken and analyzed so that future damage can be accurately assessed.
7. The Regulatory Plan's Monitoring Program Section I indicates that "when a dredged reach of the river is abandoned, the producers may be required to continue control site maintenance and data collection, within the abandoned section for a reasonable period of time". This monitoring plan should be spelled out and required as part of this permit. We feel that this language is important

since other dredge sites have been abandoned leaving steep riverbanks unprotected and/or a visual eyesore.

8. The Applicant's permit should not be issued until the restoration of the abandoned site has been completed. This should include re-establishing the bank's natural profile, using only natural stone and native plant materials, and by removing of all dredging equipment that is visible from the river. The Applicant, at the location that they have abandoned, had degraded the river beyond the allowance under the regulatory plan back in 2002, yet in 2006 that site is still an eyesore.
9. The Applicant's operations will not protect water quality. As set forth under Section IX.A. of the *Regulatory Plan for Commercial Dredging Activities on The Kansas River* the dredgers "may be required to pass dredged return water through a siltation basin prior to its reintroduction to the river will be considered on a case by case basis" to protect water quality. That same section acknowledges that, "water separated from the dredged slurry and returned to the river could affect water quality parameters. Dredged return water may contain inordinately high levels of silt and /or toxic substances liberated from the dredged material during processing. In addition, the return water may pick up a high concentration of suspended solids and /or toxic substances from the plant site if it is discharged directly onto the ground and allowed to run-off into the river. Therefore, the following restrictions are being imposed to limit the potential for dredged return water to adversely impact the river's water quality". Yet this permit application ignores those protections. On what basis has the Corps decided (or will decide) whether there are toxic substances being released? According to our inquiries with the Corps over the years the Corps has never tested for toxic releases from any release from any of its permitted dredge sites. Nor have we been able to discover whether EPA or KDHE has ever tested these releases or the concentration such toxins or increases in sediment loads downstream of dredge sites on the Kansas River. Since the Corps has no idea whether toxics will be released it would only make sense that the Applicant be required to use an adequate siltation basin, and we submit that the Applicant's proposed siltation basin is not adequate for the following reasons:
 - a) The siltation basin is not large enough to allow for adequate settling. The maintained volume of the settling pit must be large enough to (a) allow for the settling of the silt and sand-silt prior to discharge and (b) contain enough silt and silt-sand between maintenance periods so that daily silt and silt-sand accumulations do not displace adequate settlement volumes. Some important questions need to be answered by experts (not the dredgers). These include: What is the minimum water volume that will be maintained in the settling basin and what is the maximum rate of flow into and through the basin? What is the ratio of flow to basin volume and what limits should be placed on inflow and effective pit volume? By what calculation did the Applicant come to decide that their proposed siltation basin would provide for water quality without a prescribed maintenance, cleaning, disposal, or reporting plan?
 - b) The property on which the Applicant will operate is not large enough to provide for the disposal of the silt and silt-sand from the siltation basin. What land area will be used to spread the resulting silt and silt-sand from the settling basin? What is the size of that land area and where is it located relative to roads that are suitable for that kind of regular heavy commercial traffic? What are the provisions for siltation basin maintenance, silt disposal or miscellaneous debris collection and disposal as required by the regulatory plan. The river is about 85% silt and silt-sand. Thus for every ton of sand and gravel they take out, they will get 5.66 tons of silt. The Applicant is requesting to take 300,000 tons per year from the river. Thus they will generate approximately 1,680,000 tons of silt and sand-silt that must settle in the siltation basin, be removed from the siltation basin to maintain the basins water capacity, and be disposed of. From the size of the Applicant's siltation basin and the size of the property it is

clear that they have no intent of complying with the Water Quality Standards set forth in the plan or set forth in Kansas Water Quality Standards.

- c) If only one settling basin is used then all dredging activities must be halted during the maintenance of the Applicant's only settling basin. We have seen in the past that this is extremely unlikely to happen. We saw a case in 2002 where KDHE ordered a dredger to stop operations until they could direct their discharge to a siltation basin. The dredger blatantly refused to obey the order and continued to discharge for several more weeks causing a well documented plume of silt adjacent to and downstream of the discharge.
- d) As required under the regulatory plan, how will the wood and miscellaneous debris be screened and prevented from returning to the river? What equipment will be used and what is the design and maintenance schedule of that equipment?
- e) The Corps maintains that it has the authority to issue this permit without the authority of the Clean Water Act. Therefore, what numeric criteria will be applied for water quality standards for the return water? For the siltation of the river? For the toxics? For the silt load? For the color? For the wood and miscellaneous materials? What assurances are there that these numeric criteria are adhered to? The Corps has no ability or funding to inspect, require reports or enforce water quality standards. Certainly, they never have on the Kansas River or there would be no dredgers left. The fact is that the regulatory plan contains no numeric standards and provides for no inspections, reporting, or enforcement, and the Corps has told us repeatedly that they have no funds or personnel available for inspections or enforcement. Corps personnel have told us in the past that they do not inspect these facilities or test water discharges.
- f) Finally, The Corps of Engineers has told us in years past that, even if the state provides conditional certification, the Corps does not have the funding or resources to follow-up on, provide inspections of, or enforcement on conditional 401 certification. Thus, if conditional certification is granted, and we think it conditional certification should be denied for this reason, the state should establish its own reporting, inspection and enforcement plan for all dredging on the river, including this Applicant.

B. The Corps cannot legally issue this permit without the authority of the Clean Water Act.

The Corps has arbitrarily decided not to comply with the authority of the Clean Water Act without any evidence to support their claim that less than incidental fallback occurs as a result of dredge operations on the Kansas River.

Commercial Sand and Gravel Dredging should be regulated under the authority of the Clean Water Act's Section 404 as established by 33 CFR 323 and the preamble to the new definition of "discharge of dredged material" in that regulation. It was the intent of congress and it is the consistent with current regulations that the States Army Corps of Engineers (USACE) fulfill this obligation.

Yet the Kansas City District of the USACE has taken the arbitrary decision that it will not regulate commercial sand and gravel dredging on the Kansas River under section 404 of the CWA.. This position is not justified within the context of court decisions or within the context of current regulations, specifically within the language of 33 CFR 323.2 (d)(1) through (6) and all of 323.4.

The damage being done to the Kansas River is serious. Every relevant part of 33 CFR 323.2 (d)(1) through (6) and 33 CFR 323.4 directs a logical person to conclude that sand dredging on the Kansas River should be regulated under the Clean Water Act.

With reference to 33 CFR 323.2 (d)(1) – The fact that significant and consequential discharges occur as a result of sand dredging activities on the Kansas River was documented by KDHE in

November of 2002 at a dredge site just upstream of Cedar Creek. These discharges were also documented by Dr. Frank Cross in a USACE study in 1982. The USACE cannot say that discharges do not occur, or that they are minor, inconsequential or incidental. Yet the Corps claims, without documentation, that these discharges are only “incidental fallback”.

The discharges and redeposits that Dr. Frank Cross documented and that have been observed by others are not small volumes, nor does the discharge “fall back to substantially the same place as the initial removal.” as required under the definition of “incidental fallback”.

Paragraph (2)(i) of that section says that the Corps regards in-stream mining as “*a discharge of dredged material unless project-specific evidence shows that the activity results in only incidental fallback.*” There is no evidence to the effect that sand dredging results in only incidental fallback. In fact, all evidence is to the contrary. We again cite the work of Dr. Frank Cross. Therefore the sand dredging activities on the Kansas River are a discharge of dredged material and not incidental fallback.

Further, paragraph (4) says: “*Section 404 states, “The person proposing to undertake mechanized landclearing, ditching, channelization or other excavation activity bears the burden of demonstrating that such activity would not destroy or degrade any area of waters of the United States.”*” There is no evidence, either provided by the dredgers or produced by the Corps or any other entity, that would establish that sand dredging activities on the Kansas River have not caused and are not causing a redeposit of dredged material that has the effect of degrading the river, a water of the U.S. Therefore, without that evidence in hand, the Corps regards these activities as a discharge and therefore require Section 404 authorization.

Further, paragraph (6) states that “*for purposes of this section, an activity associated with a discharge of dredged material degrades an area of waters of the United States if it has more than a de minimis (i.e., inconsequential) effect on the area by causing an identifiable individual or cumulative adverse effect on any aquatic function*”. Clearly the work done by Dr. Frank Cross establishes that the siltation of the river caused by dredging has more than an inconsequential effect on the area by causing an identifiable individual or cumulative adverse effect on aquatic function in the Kansas River. Further, the Corps has not evidence to repudiate that evidence.

Section 323.4 describes the discharges that do not require permits. There is no language anywhere in this section that exempts sand dredging from section 404 of the CWA. However, paragraph (b) says that “*If any discharge of dredged or fill material resulting from the activities listed in paragraphs (a) (1) through (6) of this section contains any toxic pollutant listed under section 307 of the CWA such discharge shall be subject to any applicable toxic effluent standard or prohibition, and shall require a Section 404 permit*”. Since the riverbed of the Kansas River is known to contain chlordane it is clear that a 404 permit is required.

An erroneous argument that we have heard from KDHE (and at one time from the Corps but they have abandoned this argument of late) claims that the materials that are deposited downstream of the dredges are present in the riverbed anyway and the fact that dredging activities incidentally increase the percentage or distribution of those silts on the riverbed is irrelevant. As evidence that this argument is wrong I quote section d. 4 (Proposal as Complying with Applicable Law) on page 42 and 43 of the preamble to demonstrate that your position is incorrect.

“*A number of commenters suggested that the agencies should find guidance not only from the AMC and NMA decisions, but also from other court decisions discussing the discharge of dredged material. In particular, the commenters argued that the “net addition” approach in NMA has been explicitly rejected in Deaton and implicitly rejected by many others. Two commenters quoted Deaton to stress that: “...[t]he idea that there could be an addition of a pollutant without an addition of material seems to us entirely unremarkable, at least when an activity transforms some material from*

a nonpollutant into a pollutant . . . ” and that “[i]t is of no consequence that what is now dredged spoil was previously present on the same property in the less threatening form of dirt and vegetation in an undisturbed state.” 209 F.3d at 335 – 36. Based on Deaton, several commenters believed there is ample support for a rule considering the redeposit of dredged material outside the place of initial removal as constituting an addition of dredged material. The commenters also noted that such an approach is consistent with the numerous other courts that have concluded that moving around dredged material within the same water body requires a permit.”

This clearly establishes that the deposits of fine silt (or the toxins they may contain) on the riverbed of the Kansas River are not disqualified as section 404 discharges just because they are a natural part of the riverbed. Further, Dr. Frank Cross demonstrated that sand dredging causes a dramatic increase in the percentage of silt, altering the riverbeds normal 85% sand and gravel mix to as much as 100% silt and silt/sand. This is far more than incidental or inconsequential.

Chlordane binds to the silt, not sand or gravel and is found in this segment of the Kansas River. Therefore any activity that concentrates these fine sediments on the surface of the riverbed (as established by Cross 1982) is a violation of Kansas Water Quality Standards and should be controlled under the Clean Water Act.

We ask the USACE to deal with this issue in an up-front manner, with respect for the public, and to review its authority under Section 404, to produce physical evidence (as required by law) that only incidental fallback occurs.

B. 401 Certification

The Kansas Department of Health and Environment (KDHE) has previously chosen, against the advice of environmental groups, not to provide 401 Certification as requested from the Army Corps of Engineers, and as allowed under Section 401 of the Clean Water Act.

In addition to appropriate concerns about the effects of dredging on water quality as described above, sand dredge operations on the Kansas River have degraded, and continue to degrade the riverbanks, the riparian vegetation, and the stream bed in the areas where they operate (Simons, Li and Associates 1985). Sand dredging has also degraded the streambed, has lowered groundwater level in the surrounding areas and has increased the cost of pumping and water treatment (Burns & McDonnell 1986). Certification conditioning or denial would provide protection of the Kansas River based on issues related to water quality, riverbed degradation, channel migration, bank stability, damage to other structures, interference with other users or any other concerns of the state including, but not limited to impacts on river recreation and safety.

C. NPDES permits for point source discharges are needed.

The Kansas Department of Health and Environment (KDHE) is required by the Clean Water Act and state law to issue permits to point source discharges yet KDHE has turned its back on the point source discharges from dredging on the Kansas River even though these discharges are a violation of Federal and state Water Quality Standards for the reasons stated above and below.

The suspended solids in these discharges continue to add turbidity to the water and silt over the natural streambed, causing negative affects on aquatic organisms (Cross 1982). The sediments in the Applicants proposed reach are known to contain Chlordane and likely contain other toxic materials since the location is downstream of most of the Topeka area’s watershed. To our knowledge, the state has never conducted modern interstitial testing of the suspended solids or downstream sediment of existing dredge operations to determine whether they contain higher than normal toxic substances that were previously buried in the riverbed. (EPA’s 2001 Draft Report to Congress - The Incidence and Severity of Sediment Contamination in Surface Waters of the United

States [EPA 823-R-01-01] and “EPA Contaminated Sediments” www.epa.gov/waterscience/cs/). We submit that only a properly designed and properly maintained siltation basin and an approved disposal site could protect the river from such contamination, if even then. Further, the in-stream activities of dredging significantly disturbs the sediments on the riverbed and that those disturbed sediments are better left buried rather than being re-suspended in the column of water for redistribution of the riverbed’s surface downstream.

Whereas, it is KDHE’s responsibility to protect the quality of this river; and

Whereas KDHE cannot expect the Corps to inspect or enforce conditional certification;

Therefore, KNRC requests that KDHE either deny certification on this applicant and all new dredging operations or require this applicant and all in-river dredge operations on the Kansas River to have an NPDES permit for all discharges to the river.

D. Historic Damages to the river should be enough to ban further dredging.

Sand and gravel dredging on the Kansas River has, and is, causing widespread degradation of the riverbed, river banks, siltation of the riverbed, and threats to water resources and the biological integrity of the river.

The “Final Regulatory Report and Environmental Impact Statement – Commercial Dredging Activities on the Kansas River” from the US Army Corps of Engineers dated January 1990 establishes the following facts.

“Past commercial dredging activities on the river have had a severe impact on the river’s morphology and ecology and on nondredging interests located in and along the river. Future dredging activities have a high potential to worsen existing problems and to extend dredging impacts into previously undisturbed reaches of the river.”

“Nothing less than a total cessation of dredging would be expected to entirely eliminate adverse impacts upstream of river mile 22. The sand transport rate in and out of most reaches of the river...is approximately 1:1. Those reaches of the river are essentially in equilibrium, since the quantity of sand transported into the reach is approximately equal to the quantity transported out of the same reach.”

“In the winter of 1986 KCD determined that as little as 2 – 3 feet of additional riverbed degradation in the lower Kansas River and in the Topeka area would result in millions of dollars in economic losses to non-dredge concerns. Lower riverbed and water surface elevations would increase: (a) bank erosion (loss of property), (b) maintenance of land stabilization structures, (c) well field operating costs (lower elevations in the flood plain) (d) water supply costs (where lower water surface elevations in the river inhibit the operation of water intakes), and (e) pipeline and bridge maintenance.”

“Dredging is responsible for widespread destruction of terrestrial and aquatic habitat by creating lake-like conditions that are not normal to the Kansas River, by depositing a blanket of silt on the riverbed in which native organisms cannot survive, and by the destruction of riparian habitat for wildlife.”

“The shift from a relatively shallow, fast flowing, sandy, braided channel to a deep, sluggish, silty channel, with significantly reduced habitat diversity, has altered the species composition of the fishery by reducing the number of fish species and the total number of fish. (The 1982 report by Frank Cross demonstrated that both the number fish and the diversity were reduced to half as a result of dredging.) This pollution caused by sand dredging is causing the long term loss of the ecological integrity of the Kansas River and that this pollution and habitat degradation is integral to the very process used by the commercial sand dredge industry on the Kansas River and, therefore, cannot be prevented, mitigated or be significantly reduced by best management practices or any other practice other than the complete cessation of dredging;”
The Simons, Li report of 1986 establishes that there are “adequate, and equivalent sources of the same grade and quality of sand available off the river.”

Morphological and Sedimentation Impacts

The bedload of the river contains about 85% silt and 15% useable aggregate. As the flow of the river carries the bedload downstream, the dredger's in-river pit separates the heavier materials from the silt and causes the riverbed downstream to be coated with silt. This affects fish populations and other aquatic organisms downstream of the dredge. Although fish populations within the dredge pit remain high with lake-like species, the overall effect is that the river's fishery is decimated (Cross, 1982).

In addition to the deposition of silt and silt-sand on the riverbed by the process shown above, sand dredging operations discharge silt and silt-sand from the land based portion of their operations. The discharge from these return flows cause large silt and silt sand deltas and contribute dramatically to the layer of silt and silt-sand that alters the riverbed and aquatic habitat.



Figure 2. The dredge effluent, near mile 16.2 deposited a silt-sand bar in 1982.



Figure 3 depicts the average of the two Control Sites. The Control Sites were locations located at miles 23 and 25, in reaches of the river that were upstream of any dredging. At the time the reach between mile 23 and Topeka had never been dredged.

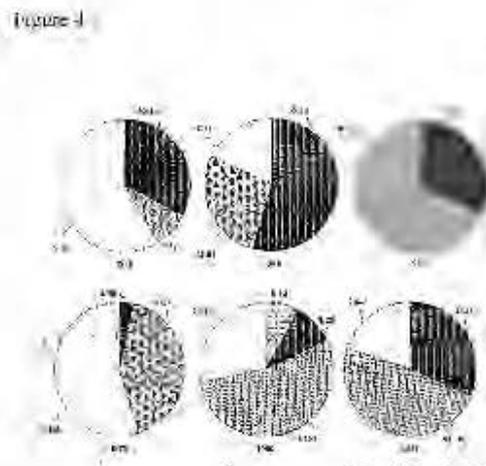


Figure 4 depicts Dredge Study Site 1 at mile 21.3 - 22.3. The site had been dredged for only one year prior to the study. The top set of charts is from the transect 200 - 300 meters upstream of the dredge. The bottom charts are from the transects 400 - 500 meters downstream. This dredge was located in an area that is naturally very rocky. The sand quickly disappeared upstream, leaving only rubble and silt. The downstream riverbed was also rapidly losing sand and was being converted to rubble and silt. Fish populations are decimated downstream of dredges where the normal sediment layers are buried under layers of silt.

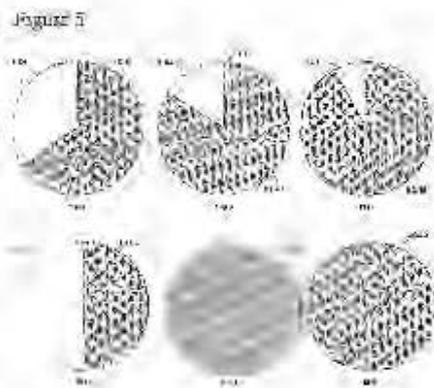


Figure 5 depicts Dredge Study Site 2 at mile 15.6-16.4. This site is immediately upstream of the Johnson County Weir. The sluggish water trapped behind the weir causes high levels of sediment deposition. The riverbed upstream was converted largely to silt while the downstream area became 100% silt.

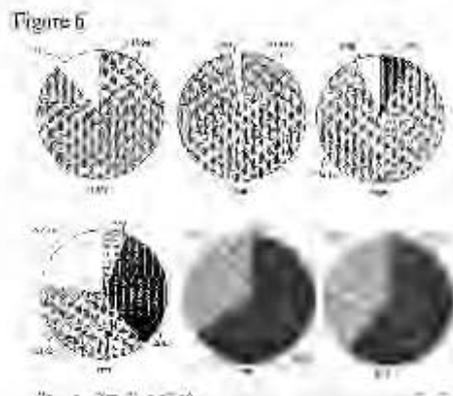
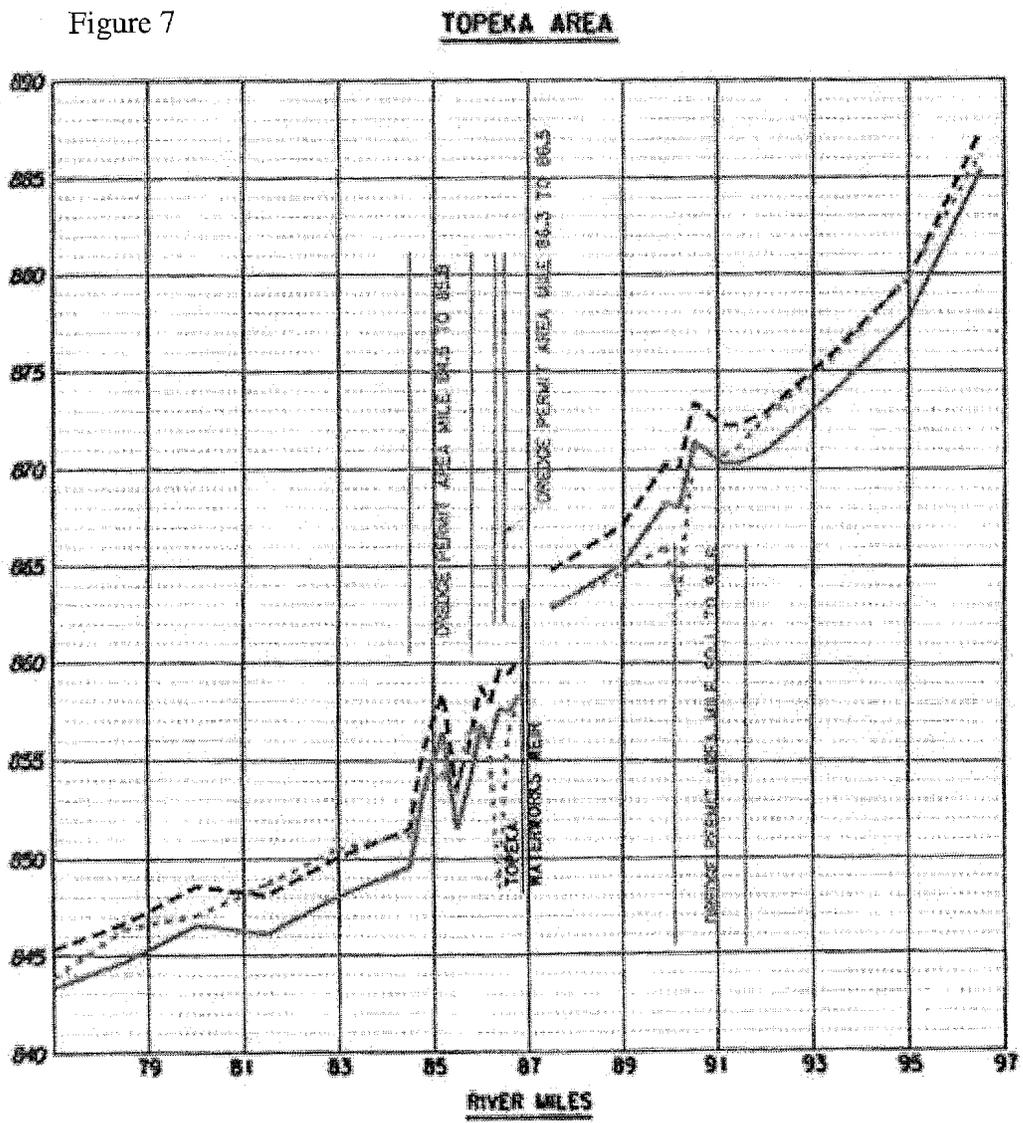


Figure 6 depicts Dredge Study Site 3 at mile 12.3 - 12.9. This reach of the river has slow current, therefore high rates of bedload deposition. The lower transect was characterized by a rubble bar. The location of this dredge was changed three times during the study. As a result of relocating the dredge below an island (the island provided good fish habitat) the island was removed and the habitat was lost that same year.

Dredging on the Kansas River degrades the riverbed. Although there may be other factors that contribute to riverbed degradation, all reaches of the river that have been dredged have been degraded far more than any other reach. This is not a coincidence. Historic damage from riverbed degradation caused by dredging damage to structures such as Topeka and Water One's weir, The KCBPU Kaw Generating Station, Bowersock Dam, and well fields for Water One and Olathe. The Applicant was removed from the river at river-mile 86.3-86.5 due to the damage they did to the river. They will repeat this damage again and again.

As shown by Figure 7 below, the Applicant was removed from the river at his prior site because the Applicant caused eight feet of riverbed degradation at that site. Thus exceeding the two foot regulatory allowance by three times the allowable limit.



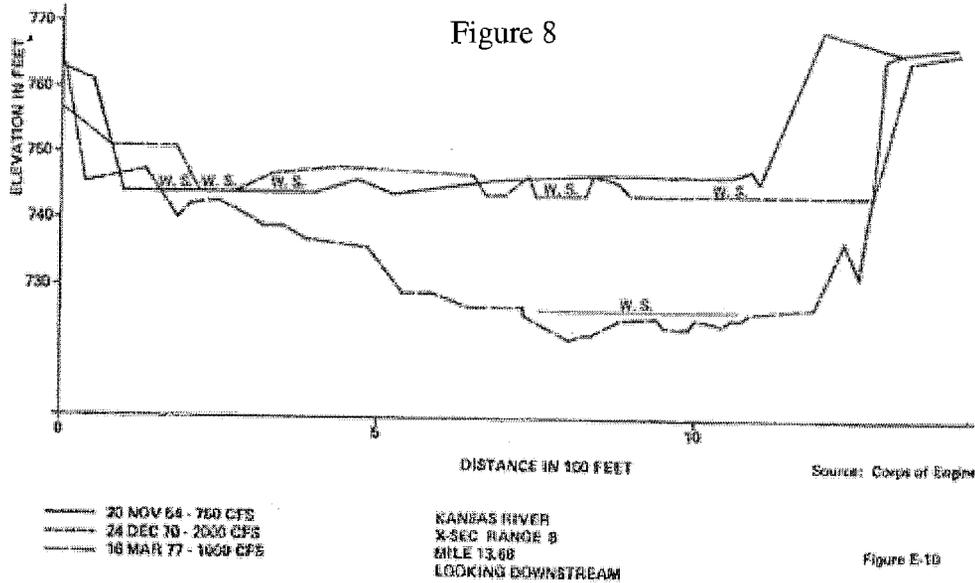


Figure 8, above, depicts typical riverbed degradation and channel widening in the most heavily dredged segments of the river. The riverbed in the dredged areas of the river degraded 10 – 15 feet in the short period between 1960 – 1976. In this same period the channel in these areas increased in width by an average of 25% and as much as 350 feet (Cross). This does not include the degradation that occurred prior to that time or since that time. As the riverbed is lowered, surface and groundwater levels are lowered. This has an effect on wetlands in the floodplain and mud flats, in channel wetlands, vegetated islands or side stream incision, and groundwater. In some areas, especially upstream of weirs and dams, the dredged areas become more like lakes that are filled with silt.

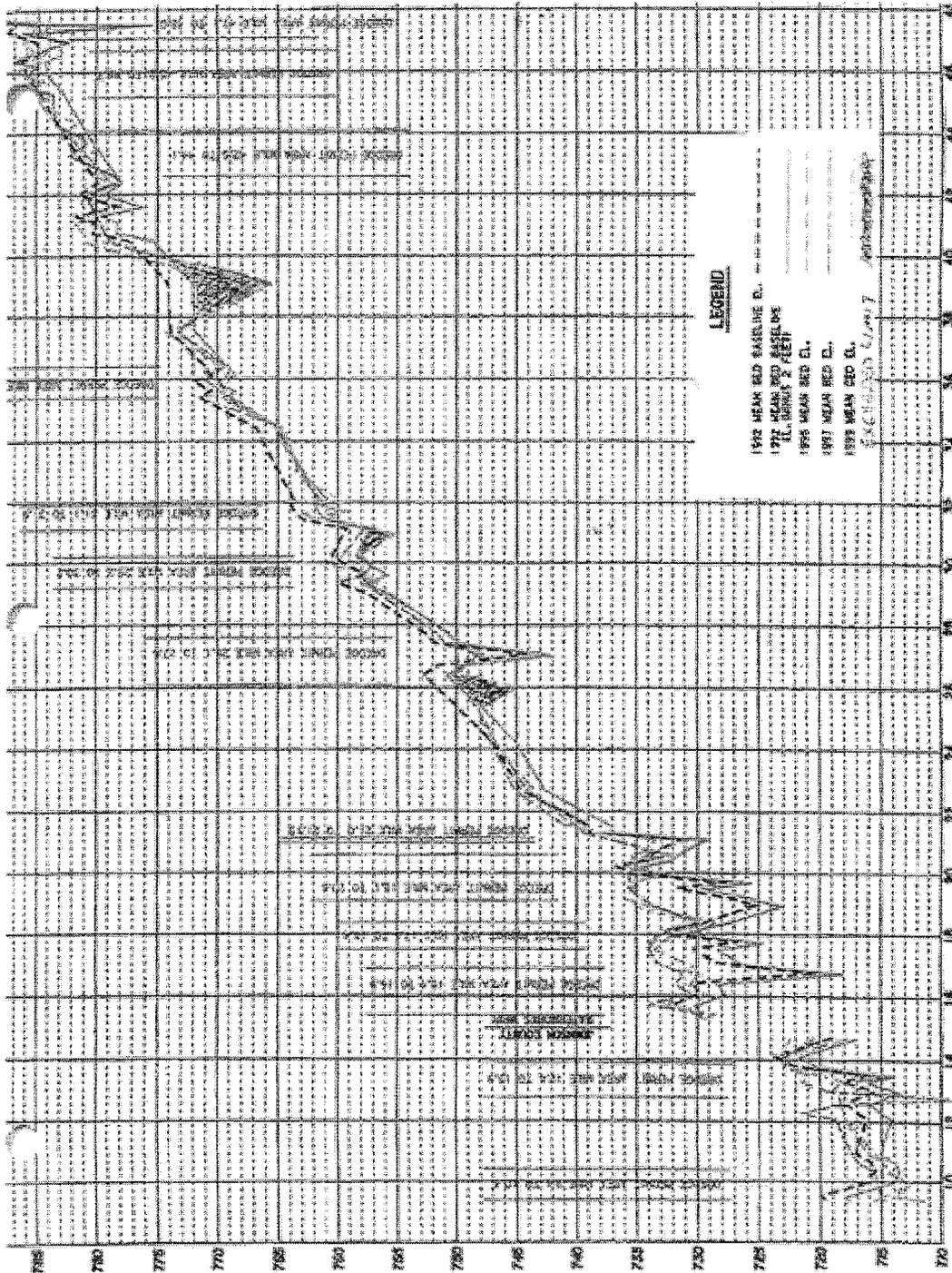


Figure 9 depicts the degradation of the riverbed between 1992 and 1999. The darkened areas are the segments where degradation had exceeded permitted limits as of 1999 (as established by the USACE). Notice the distinct increase in the degradation between Fig 8 and Fig 9 (1999-2001).

Figure 10

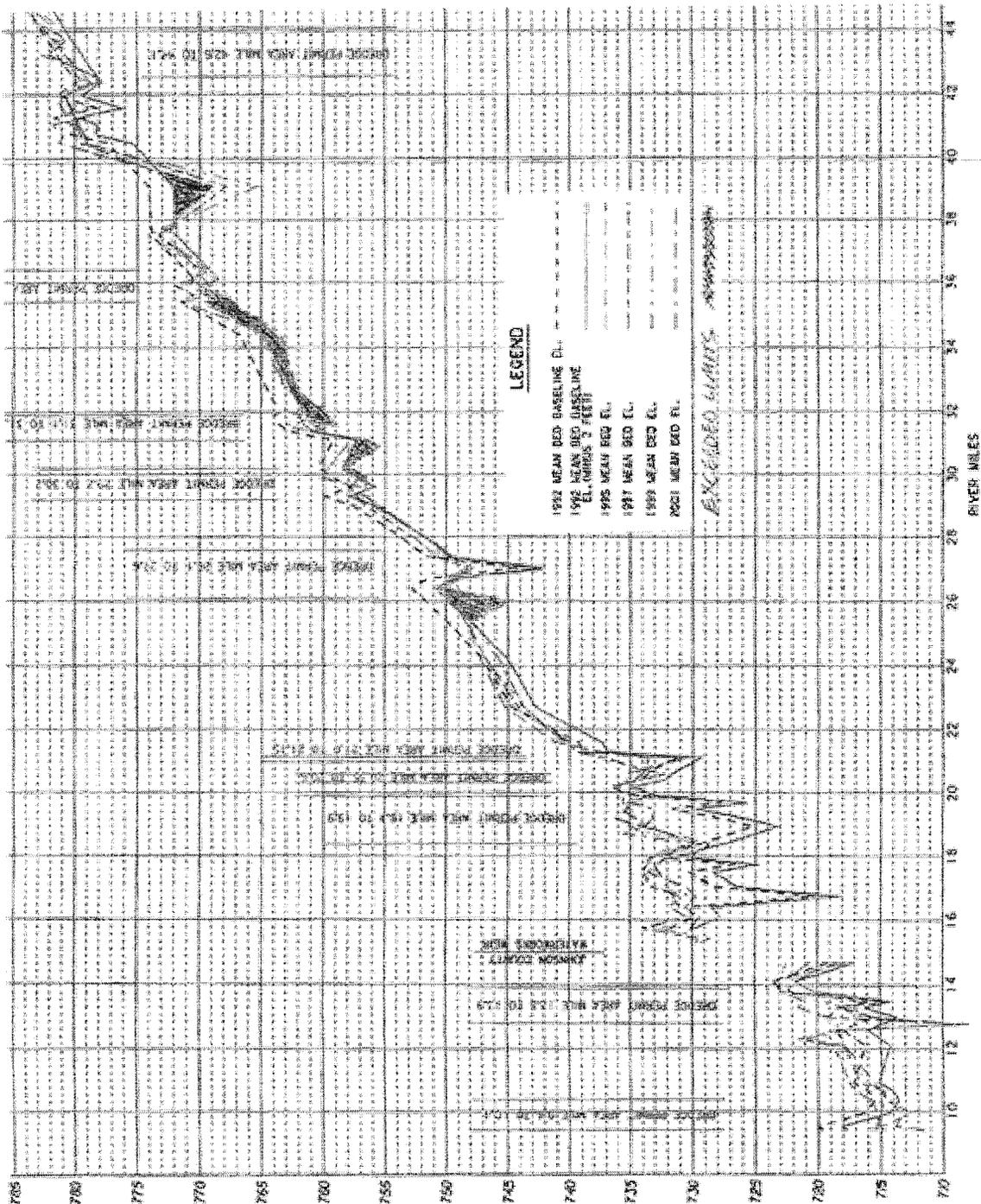


Figure 10 depicts the degradation of the riverbed between 1992 and 2001. The darkened areas are the segments where degradation had exceeded permitted limits as of 2001 (as established by the USACE). Notice the distinct increase in the degradation between 8 and 14 (1999-2001).

The river reach from mile 0 – 15 is slow-moving water that is backed up from the Missouri River to the Johnson County Water District #1 (JCWD#1) weir near Mill Creek. This reach was heavily dredged prior to 1992 and had been so badly degraded that JCWD#1 had to be built and then repeatedly repaired due to continued riverbed degradation. Under the reduced extraction rates of the 1992 USACE Plan this reach has aggraded as sand is transported from upstream and settles to the bottom under these lake-like conditions. The riverbed in this reach contains more silt than is normal in the rest of the river.

From mile 15 – 21 water from JCWD#1's weir backs up to Bonner Springs (from just below I-435 to K-7 hwy). This reach was also heavily dredged prior to 1992 and had been severely degraded. Due to the lake-like conditions and the reduced sand extraction rates this reach has begun to aggrade. Due to dredging and these lake like conditions, the substrate in this area has a higher percentage of silt than normal. Areas downstream of some dredge operations are nearly 100 percent silt and silt-sand for more than ¼ mile downstream of the dredge operation.

From about mile 21 to about mile 25 there is a natural rock dam that has stabilized the riverbed. This area has slightly aggraded since reduced extraction rates have been imposed.

At about mile 26 the riverbed has degraded beyond the limits established in the 1992 USACE Plan. This is the direct result of the dredge at that location. Downstream of this dredge the substrate has been converted to nearly 100 % silt and sand silt.

From about mile 30 to mile 40 the riverbed degradation has degraded beyond the limits established in the 1992 USACE Plan. This is the direct result of several dredge operations working in this reach. Figures 4 and 5 shows that the dredge locations correspond with the degradation. Downstream of these dredges the substrate has been converted to silt and sand silt.

From mile 40 to Bowersock Dam in Lawrence (mile 52) the river is aggrading because Penny Sand has not been extracting sand. Mr. Bill Penny has informed us that he is in the process of moving to pit mining off the river. The substrate in this reach of the river is typical of the rest of the river.

From mile 52 to mile 54 The river is impounded by Bowersock Dam.

From mile 54 to mile 75 (Topeka) the river is visually much as it was 100 years ago except where farmers have planted crops too close to the river and their fields are falling into the river.

From mile 75 to about mile 92 (the Topeka area and above) the riverbed is badly degraded by sand dredging and two weirs impound the river causing lake-like conditions above the weirs. The substrate downstream of the dredges in this area has a higher percentage of silt and sand silt.

From mile 92 to mile 171.5 the river is visually much as it was 100 years ago. There are no active dredging operations upstream of Topeka.

E. Recreational concerns relevant to dredging

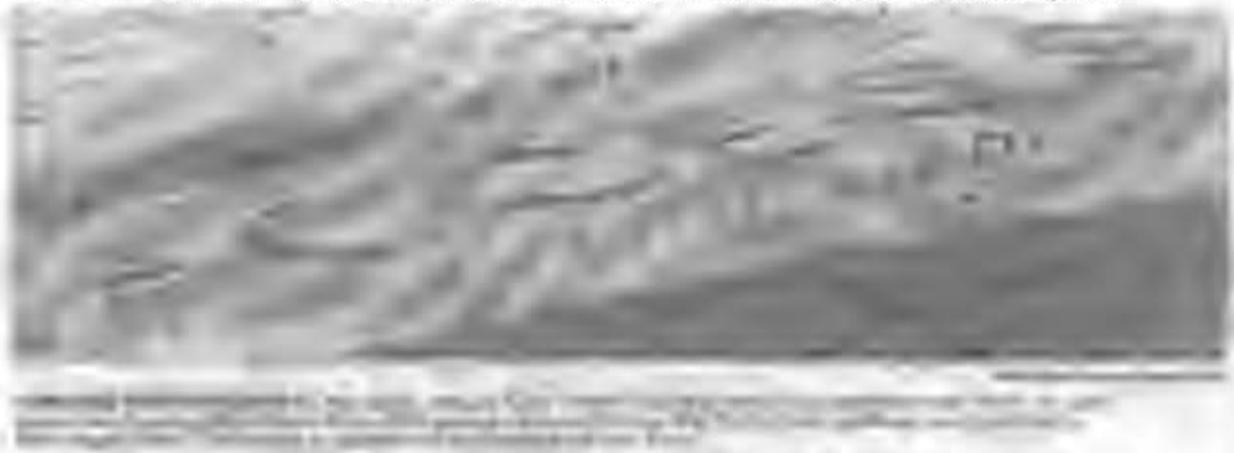
The Kansas River is one of only three rivers in the entire state that our state has designated as "navigable". Those three rivers are the Missouri, the Arkansas and the Kansas Rivers. Without the "navigable" designation the other streams in the state are illegal to float, swim or fish without permission from every landowner on both sides.

More than 40% of the states population lives in the 10 counties that border the Kansas River. The river passes within an hour's drive of more than 50% of the state's population and within an hour's drive of roughly another 1,000,000 people on the other side of the Missouri state line. Because of the proximity of our people and the power of the river's beauty, the Kansas River is the best recreational resource in the state. By some accounts, it is also the state's most important fishery and migratory flyway.



Figure 11 (above) Recreation on the Kansas River has increased as much as 1000% in less than a decade. Nearly 400 people participated in this weekend outing with Friends of the Kaw.

Figure 12 (below) On a Saturday morning in 1999 paddlers on the Kansas River use their canoes to spell the word "ACCESS" to raise awareness that access to the Kansas River is inadequate.



In 1996 the state legislature authorized the "Kansas River Recreation Study" which was completed and presented to the legislature on January 12, 1997. This study concluded that:

"The Kansas River is an underdeveloped and underutilized state recreational resource;

The state has no other stream recreation resource of this type;

Recreation on the Kansas River has a direct economic benefit of nearly 3 million dollars per year;

Neither recreationists nor landowners need or want highly developed and costly infrastructures;

The primary need is for non-motorized boating activities such as canoeing, kayaking, rafting, etc. and continuous segments of the river that are linked together by public access and that are free of commercial operations; and

Increased access is a benefit to landowners due to reduction in the need for crossing of private property, and parking issues.”

The study's recommended that the Kansas River Access Plan be implemented by the Kansas Department of Wildlife and Parks as a minimum level for access development and be included for funding in the Kansas Water Plan. This would establish a public access roughly every 10 miles. The plan has never been formally adopted but a number of new accesses have been built since 2002 that demonstrates the increasing value that our communities hold for Kansas River recreation. These new accesses include: new accesses built in St. George, Perry, Lecompton, and Kaw Point; new accesses under construction in Manhattan, De Soto and Edwardsville, new accesses in planning in Junction City, Ogden, Wamego, Topeka and Bonner Springs.

The growth of the recreational industry on the Kansas River has been extraordinary in the last ten years. Boating, fishing, hunting and birding activities on the river have increased dramatically.

Dredging activities have so damaged this river that weirs and cofferdams have been built and new ones are being proposed to prevent water intakes from being exposed to air. Johnson County's Water One proposed a weir at the Sunflower Plant over a year ago and now Water One is proposing a cofferdam above their existing weir at river mile 15. These expenses will all be paid by the public, not the dredgers.

These structures are hazards to navigation and a blight on river. None of the existing structures are equipped with portages, navigational bypasses or public access. Therefore, to prevent the proliferation of more of such structures dredging must be stopped, especially in reaches that have, here to for, never been dredged.

F. Dredging has a negative impact on aquatic organisms

The weirs act as a blockade to fish and other aquatic organisms. In their response to three proposed weir alternatives in Johnson County the Kansas Department of Wildlife and Parks stated:

*We consider all three alternatives proposed to be an impact level 3, meaning the project as it is currently designed should not be implemented and some alternate approach should be considered. The Kansas River is designated critical habitat for several state/federal listed threatened and endangered species including the Sturgeon Chub (*Macrhybopsis meeki*), Flathead Chub (*Platygobio gracilis*), Bald Eagle (*Haliaeetus leucocephalus*), Least Tern (*Sterna antillarum*) and Piping Plover (*Charadrius melodus*). Low-head weirs can have several negative effects on native riverine species and river function including blocking fish migrations, disrupting the transport of alluvial materials leading to channel instability and augmenting downstream erosion, and increases in the formation of pool habitat thereby altering the natural channel conditions and leading to invasion of fish species more adapted to pool conditions. In addition, nesting habitat for avian species would be lost by the formation of a backwater pool.*

Because the project involves potential impact to a state listed threatened or endangered species and/or its designated critical habitat, a separate action permit is needed from our agency to be in compliance with regulations pursuant to the Kansas Nongame and Endangered Species Conservation Act. A copy of this letter and permit application information have been forwarded to the project sponsor. We ask that all other necessary permits be held in abeyance until conditions necessary to protect threatened and endangered species.

Where weirs currently exist we suggest that a safe navigational bypass would partially mitigate some of the concern for aquatic species and recreational navigation.

The use of junk cars, household and industrial trash and concrete rubble has been used to stabilize the riverbank in many parts of the river (see figure 3). The state's regulations still allows the use of concrete rubble for this purpose. These policies must be changed but, until they do, the scars of dredging will remain a blight on the river for many decades after they are gone.



Figure 13 The Kansas River is the heritage of every man, woman and child. This generation, like all generations own the Kansas River. It should not be for sale to sand dredgers, nor is it available as a waste disposal cite for industry or municipalities,



Figure 14 to the left, shows an all too common practice used by landowners to stabilize the riverbank. Upstream of most dredge operations the riverbanks are unstable. Concrete rubble, junk cars and similar eyesores are used to stabilize the shoreline. These activities are a visual blight on the river.

Kansas Regulations still allow the use of concrete rubble for bank stabilization. This practice should be discontinued. Dredging only adds the need for more disfigurement of this kind.



Figure 15, to the left, shows a nice camping area on one of the sandbars in an undredged part of the river. Notice that the riparian vegetation on both sides of the river is in good condition and the banks are neither steep nor unstable.

G. Threatened and Endangered Species relative to dredging

The following threatened and endangered species (T&E) are designated by the Kansas Department of Wildlife and Parks and live in and/or along the Kansas River:

The Smooth Earth Snake (*Virginia valeriae*), the redbelly snake (*Storeria occipitomaculata*), the flathead chub (*Platygobio gracilis*), the sliverband shiner (*Notropis shumardi*), the sicklefin chub (*Macrhybopsis meeki*), the sturgeon chub (*Macrhybopsis gelida*), the western silvery minnow (*Hybognathus argyritis*), the chestnut lamprey (*Ichthyomyzon castaneus*), the flat floater mussel (*Anodonta suborbiculata*), and the white-faced ibis (*Plegadis chihii*). The federal list designated by the United States Fish and Wildlife Service includes the bald eagle (*Haliaeetus leucocephalus*), the peregrine falcon (*falco peregrinus*), the piping plover (*Charadrius melodus*), the least tern (*Sterna antillarum*), the whooping crane (*Grus americana*), and possibly others. Species In Need of

Conservation (SNOC) include the eastern longnose snake, and the greater water snake.



Figure 16. The Least Tern is one of the Kansas River's endangered species that is impacted by sand dredging.

There has been discussion between the Kansas Department of Wildlife and Parks and the USACE and the USFWS that the pallid sturgeon is being considered for reintroduction to the Kansas River. The native range of the endangered pallid sturgeon includes the Kansas River. Although the Johnson County weir at Mill Creek and Bowersock Dam in Lawrence have blocked the passage of this endangered species, its habitat still includes the Kansas River between the Missouri River and Lawrence. Dredging is destroying this habitat. The pallid sturgeon prefers faster moving sandy bottomed rivers such as the Kansas River as it existed prior to the widening, siltation, and long pools and resulting dams and weirs caused by dredging.

Other threatened and endangered species such as the piping plover and least tern require high, well-scoured sandbars for nesting. Although the USACE claims that dredging does not directly remove sandbars, historic comparisons prove that the dredged reaches have fewer sandbars than they once did. Further, a current comparison of undredged reaches to dredged reaches will prove that sandbars in the dredged reaches have become relatively rare.

No satisfactory Environmental Impact Statement has examined the impacts that in-stream mining has had on the avian population. The Kansas River is home to not just the T&E species and SINC listed above, but numerous other birds that rely on the riparian areas, sandbars, mud flats, shallows, and pools for their habitat. The river is also on the flyway of many other species, including some of the species listed above, plus migratory shorebirds and waterfowl. These birds are negatively impacted by sand dredging; their habitat is modified, their food sources are reduced and contaminated, and their nesting sites are lost.

Mainstream degradation in the dredged reaches has suspended the mouth of some side streams, such as Little Kaw Creek (mile 22.3) above the main channel. Mainstream degradation has limited the accessibility of these tributaries to river fishes except during high flows. Silt deposits during high mainstream flows block the mouth of these streams.

As described earlier, dredging causes the streambed to become covered with silt and silt sand. This alteration of the natural riverbed causes a loss of the river's biological integrity. Benthic organisms that are native to the normally sandy substrate cannot survive as layer upon layer of silt is deposited on the riverbed. Fish populations are decimated.

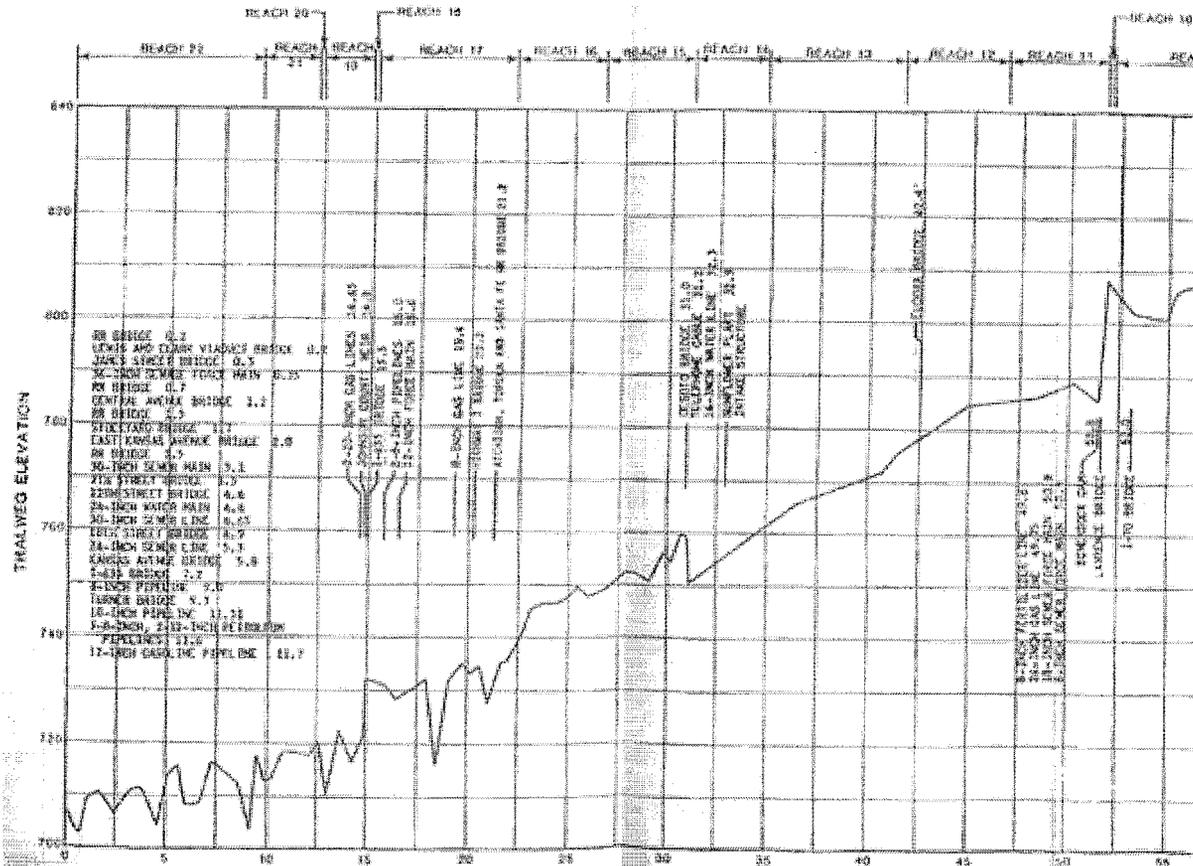
H. Economic concerns relative to dredging

One of the main goals in the USACE's current Regulatory Plan was to ensure that the Sunflower water intake was to be protected. Yet, as a result of the failed 1992 Regulatory Plan and sand dredging that should never been allowed on the river, it is now protruding from the water. The water district has proposed a low head weir (dam) on the Kansas River at the location of the old Sunflower water intake. The estimated cost to the people of Johnson County would have been \$6 – 8 million dollars. Although alternatives exist and are less destructive of the river than a weir those alternatives are estimated to be even more expensive.

Johnson County's dam below Mill Creek and the two weirs in Topeka had to be built due to the degradation of the riverbed and river stage caused by sand dredging. The initial cost of the construction of these weirs cost many millions of dollars. The repeated repairs and maintenance adds additional untold costs. As riverbed degradation continues to undermine these structures the maintenance and replacement costs grow. The Johnson County weir has been repaired many times due to repeated degradation of the riverbed from dredging. At this writing, Water One of Johnson County is proposing to build a cofferdam above their existing weir. One more expense handed to water rate-payers at the hands of the dredgers.

Figure 17 above shows structures in and along the lower part of the river as of 1986. Of the structures shown, the Johnson County weir at mile 14.9 has been rebuilt several times, the Atchison Topeka and Santa Fe RR bridge was severely undercut and repaired, the Sunflower water intake at mile 32.9 was exposed to air and no longer usable, and Bowersock Dam has been undercut and repaired. Other structures are in jeopardy.

Construction and maintenance are not the only costs we pay for dredging induced weirs. These structures blockade the river for recreational and commercial navigation adding further economic hardships to our local economies and tourism.



As the riverbed degrades it has also undermined and destabilized railroad bridges, utility lines, Bowersock dam, jetties and riparian land. The cost for the repair, maintenance and ultimate replacement is not known, but can easily be estimated to be in the tens of millions over the last decade. These figures do not include the loss of farmland, the lowered productivity of water wells or

the higher pumping costs for water utilities and private wells. All of these costs are born by nondredging interests.

“Headcutting” is the term used to describe what is happening to land upstream of sand dredging operations. As the channel is cut deeper the banks are undercut and fall into the river. It takes about six tons of soil to make one ton of sand in the Kansas River. The sand dredgers are taking valuable farm land. No estimates have ever been done on the economic cost associated with this loss.

The current Plan has failed to protect the river, the associated habitat and the infrastructure. The USACE’s Plan, which allowed two additional feet of riverbed degradation beyond the 1992 baseline has caused at least fifteen miles of river to be degraded beyond the established limits.

In 1985 the USACE contracted with Booker Engineers-Architects-Planners to determine what would happen to the sand and gravel market if the dredgers were moved off the river. The Booker report states that a move from the river to the flood plain would increase the average delivered price of a ton of sand and gravel approximately 6 percent in the market area served by the dredgers. The increase being largely transportation costs.

The financial cost to non-dredging interests could exceed any cost/benefit to the dredging industry. Riverbed degradation has already cost non-dredging interests hundreds of millions of dollars and those costs keep escalating.

The public needs to know the cost and the risks to non-dredging interests in today’s dollars, under the existing and proposed conditions. The last economic estimates were done in the mid 1980’s by the Corps of Engineers.

Since the Booker study in 1986 some dredgers have successfully moved off the river while others have resisted the change siting difficulties with local and state government bureaucracies.

Availability of high quality sand is important to the state and our communities. These interests face many economic hazards but the least among those risks is from off-river sand mining. The USACE, in conjunction with local and state interests should cooperate to evaluate the best off-river options for everyone concerned.

Local communities, counties and the state recognize the need for sand. As it becomes apparent that in-river dredging will no longer be accepted, the various government agencies must do what is needed to provide for the environmental and economic needs of their local and state economies. This will mean forging partnerships to create ways to produce sand in ways that do not produce such extensive damage to the environment.

Other dredgers have successfully taken up pit mining with good success. Victory Sand and Gravel should do so as well.

In conclusion

Sand dredging should be banned from the Kansas River. If not banned from the river it should be regulated under section 404 of the Clean Water Act and all point source discharges should be

regulated with NPDES permits. State and local communities should work with the aggregate industry to create a smooth and mutually beneficial transition off the river rather than permitting more damage to the river, local economies, fisheries and other uses of the river.

Whereas, the requirements of the *Regulatory Plan for Commercial Dredging Activities on the Kansas River* do not allow dredging in part of this reach;

Whereas, the discharges from the land based operations violates Kansas Water Quality Standards;

Whereas, the discharge of the land based operation will violate Section IX of the *Regulatory Plan for Commercial Dredging Activities on the Kansas River*;

Whereas, the Corps has wrongfully, arbitrarily, and without the evidence required by law, decided not to protect the river as required under the Clean Water Act;

Whereas, the history of dredge has shown that dredging causes physical damage to the river;

Whereas, dredging in this reach will cause economic damage to property;

Whereas, dredging in this reach will negatively impact the economic, aesthetic, use and value of recreational uses, safe navigation and the fishery in that area;

Whereas, dredging may re-suspend and increase the concentration of chlordane, and other persistent toxins in the streambed;

Whereas, the economic alternatives are available if they would only be pursued in earnest;

Whereas, it is KDHE's responsibility to protect the quality of this river using NPDES permits;

Whereas, KDHE cannot expect the Corps to inspect or enforce conditional certification since the Corps has stated that it does not, will not and cannot inspect or enforce conditions in a conditional permit; and

Whereas, the long history of dredging on the Kansas River and the Corps own studies have demonstrated the harmful impacts of dredging as stated above;

Therefore, I request that the U.S. Army Corps of Engineers deny this permit;

That KDHE deny certification on this applicant and all new dredging operations or require this applicant, and all in-river dredge operations on the Kansas River, to have an NPDES permit for all discharges from their land-based operations; and

That the Governor's Office, work with the aggregate industry, local governments, communities and environmental organizations to transition aggregate companies off the rivers of this state.

I hope that my comments can be viewed as constructive. I am willing and prepared to be a part of an ongoing process to create a solution that meets the needs of the whole community, the river, the laws, and the aggregate companies, but another dredge on the Kansas River is not the solution.

Sincerely,


Dave Murphy

March 4, 2006

RECEIVED
REGULATORY BRANCH

To:
Joshua A. Marx
U.S. Army Corps of Engineers
Kansas City Field Office
700 Federal Building
601 East 12th Street
Kansas City, MO 64106-2896

cc:
Kansas Department of Health and Environment
Bureau of Water, Watershed Management Section
1000 SW Jackson, Street
Topeka, KS 66612-1367

From:
Kansas Natural Resources Council
PO Box 2635
Topeka, KS 66601

Contact:
Dave Murphy
3978 Iowa Lane
Ottawa, KS 66067
murphyds@direcway.com
785-242-8343

Dear Mr. Marx:

The comments are an addition to my comments of February 17, 2006 and also pertain to Permit Number 200600407, issued January 30, 2006 as proposed by Victory Sand and Gravel

I recently became aware of a Tenth Circuit Court decision (Sierra Club and Mineral Policy Center v. El Paso Gold Mines, Inc., Defendant-Appellant, and Mountain States Legal Foundation Amicus Curiae. Case No 03-1105.

I have maintained over the years that the dredgers on the Kansas River use the pits in the river to separate the heavier bedload from the lighter bedload and that this process allows silt to drift downstream that coats the riverbed with an unnatural layer of silt. You have maintained that the movement of that silt from the pits cannot be regulated because it is not caused directly by the equipment in the river.

In the case cited above, the court held that a passive discharge can be regulated. In section B. (1) of the courts analysis the court states, that "...the focus here is on ownership of the point source, not the discharge-causing conduct".

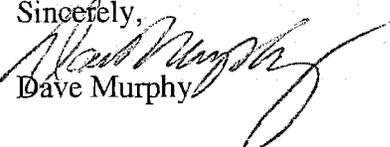
Whereas, the dredgers cannot alter the fact that their pit separates the heavier components from the lighter components of the river's bedload and neither can they prevent those lighter components from discharging downstream from their pit; I,

Therefore, request that the U.S. Army Corps of Engineers deny this permit;

That KDHE deny certification on this applicant and all new dredging operations or require this applicant, and all in-river dredge operations on the Kansas River; and

That the Governor's Office, work with the aggregate industry, local governments, communities and environmental organizations to transition aggregate companies off the rivers of this state.

I hope that my comments can be viewed as constructive. I am willing and prepared to be a part of an ongoing process to create a solution that meets the needs of the whole community, the river, the laws, and the aggregate companies, but another dredge on the Kansas River is not the solution.

Sincerely,

Dave Murphy

To: Joshua A Marx
U.S. Army Corps of Engineers
Kansas City Regulatory Office
700 Federal Building
601 E 12th Street
Kansas City, Mo 64106-2896

**Request for the denial of permits and/or public hearings
regarding
Commercial Sand and Gravel Dredging
on the Kansas River**

From: Dave Murphy
Friends of the Kaw
3978 Iowa Lane
Ottawa, KS 66067
913-406-2260

For Permit numbers:

200301759
200301863
200301768
200200319
200200328
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200301862
200301861
200301860
200301770
200301771

and any others that may apply now or in the future

September, 2 2003

Part I – The Kansas River and the History of Sand Dredging

General Background information about the Kansas River

Kansas River is 170 miles long, running across northeast Kansas from Junction City to Kansas City where it joins with the Missouri River. Including its longest tributary, the Smokey Hill River, the Kansas River is 710 miles long and ranks as the 75th longest river in the world. The basin drainage area covers over 60,600 square miles⁹, roughly an area the size of Ohio. The basin overlaps Colorado, Nebraska and Kansas all the way to the Missouri border. The landforms are broad flatlands to rolling hills dissected by the river valleys.

The riverbed is sandy to gravelly with many large sandbars and islands exposed at medium to low water levels. The channel is relatively wide and shallow with a meandering course. From Junction City to its mouth the river's gradient is about 2 feet/mile⁹. Roughly 90 percent of the basin's area is dam controlled by the U.S. Corps of Engineers. A portion of which is used to support navigation on the Missouri River. Out of 106 counties in the state, the Kansas River passes through only ten counties yet those ten counties account for over a million people, more than 40% of the state's population.

The river is home to over 60 species of fish (Cross 1982), hundreds of acres of sandbars, islands and unused camping space. Wildlife abounds. The once endangered bald eagle now uses the river as a migratory flyway. We now have three nesting pairs on the river. Many other Threatened and Endangered Species and other Species in Need of Conservation are dependent on the river and its tributaries.

Besides dredging there are many problems that face the Kansas River. Among them:

Pollution from both rural and urban source. Many of these are point sources. Others are non-point sources and

Bacterial contamination threatens animals and humans that come in contact with the water.

Pesticide contamination, such as chlordane, enters the food chain and threatens human health through the consumption of fish from the river.

Low oxygen levels caused excessive nutrients from agriculture and other sources cause stress of aquatic organisms and degrade water quality for human consumption and recreation through a process known as eutrophication.

Bank erosion caused by mismanagement of riparian vegetation along the river and dredging causes siltation and turbidity.

Siltation caused by farm field erosion, dredging and urban stormwater runoff.

Abnormal flows that do not correspond to normal seasonal fluctuations and that are being affected by agricultural consumption upstream.

Visual blights caused by dumping of household trash, industrial dumping, dredging and poor regulations on bank stabilization.

Weirs and dams that impound the river and provide no portage or bypass for navigation or fish passage.

Public Access is limiting the public's ability to use and understand the need for river and water protection/conservation.

A Physical Overlay of Dredging on the Kansas River

The river reach from mile 0 – 15 (the Missouri River to the Johnson Count Water One weir) is slow-moving water that is backed up from the Missouri River to the Johnson County Water District #1

(JCWD#1) weir near Mill Creek. This reach was heavily dredged prior to 1992 and had been so badly degraded that JCWD#1 had to be built and then repeatedly repaired due to continued riverbed degradation. Thanks to the damage done by dredging, this reach of the river is a steep banked pool that backs up from the Missouri River. Under the reduced extraction rates of the 1992 Corps' Plan this reach has aggraded as sand is transported from upstream and settles to the bottom under these lake-like conditions. The riverbed in this reach contains more fine silt than is natural to the rest of the river. Sand bars and islands have been removed. The fish are loaded with chlordane. Much of the recreational value of the river has been stripped by dredging and related factors.

From mile 15 - 21 (the Johnson County Water One weir to Bonner Springs) water from JCWD#1's weir backs up to Bonner Springs (from just below I-435 to K-7 hwy). This reach was also heavily dredged prior to 1992 and had been severely degraded. Due to the lake-like conditions and the reduced sand extraction rates this reach has begun to aggrade. However, the riverbed in this area has a higher percentage of silt than normal due to the dredges that operate in the upper extremity of this reach. Areas downstream of some dredge operations are nearly 100 percent silt and silt-sand.

From about mile 21 to about mile 25 (Bonner Springs to 1 1/2 mile downstream of Cedar Creek) there is a natural rock formation from river mile 21.8 - 22.8. This rock formation creates a natural dam that has stabilized the riverbed upstream by creating a natural pool that slows the current velocity and allows the bedload and suspended solids to settle. This area has slightly aggraded since reduced extraction rates have been imposed due to the pooling effect of the natural rock dam but I suspect that, like the reach below it, the riverbed is becoming, or may become, unnaturally silted over.

At about mile 25.5 - 40.5 (1 1/2 mile downstream of Cedar Creek to 1 1/2 miles downstream of the confluence with the Wakarusa River) the riverbed has degraded beyond the limits established in the 1992 Corps Plan. This is the reach that the Corps has closed to dredge related riverbed degradation. This is the direct result of the dredge at that location though other factors may also be at work. Figures 4 and 5 shows that the dredge locations correspond with the degradation. Downstream of these dredges the substrate has been converted to silt and sand silt.

From mile 40.5 - 51.8 (1 1/2 miles downstream of the confluence with the Wakarusa River up to Bowersock Dam in Lawrence) the river has aggraded in some areas because Penny Sand has not been extracting sand from all of his permitted sites. Mr. Bill Penny has, at this time, moved his dredges off the river to pit mining operations off the river. I commend Mr. Penny for this move and I hope that he will feel the rewards of the environmental, recreational and economic benefits both for himself and for his community.

From mile 51.8 to mile 75 (Bowersock Dam to Topeka) There are no dredges in this reach. Thus the upward movement of riverbed degradation past Bowersock Dam is impossible unless the river becomes so degraded that the dam collapses due to the undermining that is already taking place at the base of that structure. The river is impounded by Bowersock Dam and forms a lake for about 4 miles upstream. The dam is critical to the water intakes for the City of Lawrence and the Lawrence power plant. If this structure were to fail it would destabilize the river far upstream and downstream and would result in massive economic damages.

Upstream of the dam and power plants the river is visually much as it was 100 years ago except where landowners have failed to maintain but only a thin belt of trees between the river and their

fields, where farm crops are falling into the river and where illegal dumping and inappropriate bank stabilization projects have left the banks disfigured and trashy.

From mile 75 to about mile 92 (the Topeka area) There are three permits up for renewal in this reach. The riverbed has not degraded further since the tonnage limits were imposed in 1992. This is because the slow water above the low-head dams and weirs in the Topeka area trap the bedload and prevent the upward migration of channel degradation. Never the less, the substrate downstream of the dredges in this area has a higher percentage of silt and sand silt due to the discharges from dredging activities.

From mile 92 to mile 171.5 (Topeka to Junction City) There are no active dredging operations proposed at this time upstream of Topeka. The river is visually much as it was 100 years ago except where landowners have failed to maintain but only a thin belt of trees between the river and their fields, where farm crops are falling into the river and where illegal dumping and inappropriate bank stabilization projects have left the banks disfigured and trashy. There was a sand dredge operation in the Manhattan area but that closed down in the early 90's and moved off river.

The Most Recent History and Studies

Since the late 1970's every engineering study done by the U.S. Army Corps of Engineers (CORPS) has concluded that commercial sand and gravel dredging on the Kansas River is the primary cause of riverbed degradation on the Kansas River. These studies generally agree that other contributing factors may be at work, but that dredging is the primary and most significant cause of the river's degradation. Except for the Topeka area and the reaches downstream of Lawrence, most of riverbed upstream of Lawrence remains comparatively stable. It is no coincidence that the reaches of the river that have undergone severe riverbed degradation and channel widening are those reaches where the river has been heavily dredged (Topeka and downstream of Lawrence). Regardless of other contributing factors and the degree to which they may or may not contribute to the degradation, dredging has been established as the primary cause of riverbed degradation and it is the one factor that has a practicable alternative.

In 1990 the Corps established a "Regulatory Plan for Commercial Dredging Activities on the Kansas River" that, among other things, reduced tonnage extraction rates and separation distances from existing structures and river features such as side streams and natural rock dams. The Corps established a two-foot limit to further riverbed degradation, and established the baseline in 1992 against which further degradation would be measured. If the riverbed in any 5-mile reach degraded beyond that two-foot barrier the dredging in that reach would be stopped. The purpose of the 1990 Regulatory Plan, as stated in its introduction is quoted below.

"This Regulatory Plan has been developed to aid the Kansas City District, Corps of Engineers in its administration of permit applications for commercial dredging activities on the Kansas River. The Plan is intended to limit the magnitude of dredging-related impacts to the morphology and ecology of the river; to manmade structures located in and along the river; and to other public and private interests such as adjacent land, water, supplies and recreation. Adverse impacts include: (a) riverbed degradation (the term riverbed degradation refers to lowering of the riverbed elevations) (b) bank erosion; (c) channel widening; (d) lowering of water surface elevations in the river channel; (e) lowering of the water table elevations adjacent to the river; (f) a reduction in the structural integrity of bridges, pipelines, jetties, dams, weirs and other manmade structures; and (g) a loss of environmental values resulting from (a) through (e).

The adverse impacts that result from commercial dredging activities are being controlled by establishing a maximum acceptable level of impacts ("Maximum acceptable level of impacts" is defined for this Plan as the maximum level of impacts determined by the Kansas City District to be compatible with the overall public interest involved.) and by providing the restrictions necessary to keep impacts at or below the acceptable level. The maximum level of impacts established for purposes of this Plan is a level which will have only minor effects (The term "minor effects", as used in this plan, is described as those effects which are not expected to have a significant impact on nondredging concerns such as adjacent landowners and various entities responsible for structures located in and along the river, nor would those effects be expected to unduly impact environmental resources.") on the morphology and ecology of the river and on public and private interests located in and along the river.

Part II. The Environmental Impacts of Dredging on the Kansas River

A summary of the morphological, environmental and economic considerations is important to establish a baseline of agreement and understanding. A background document that the Corps should not find disagreement with is found on pages 2 - 26 of 1990. "Final Regulatory Report and Environmental Impact Statement - Commercial Dredging Activities on the Kansas River". For the sake of time I will initially quote only portions of that report to establish an initial basis of common understanding and agreement.

Historic Damage

"Past commercial dredging activities on the river have had a severe impact on the river's morphology and ecology and on nondredging interests located in and along the river. Future dredging activities have a high potential to worsen existing problems and to extend dredging impacts into previously undisturbed reaches of the river."

Only The Cessation of Dredging Will Stop the Damage

"Nothing less than a total cessation of dredging would be expected to entirely eliminate adverse impacts upstream of river mile 22. The sand transport rate in and out of most reaches of the river...is approximately 1:1. Those reaches of the river are essentially in equilibrium, since the quantity of sand transported into the reach is approximately equal to the quantity transported out of the same reach."

The Future of The River if Dredging is Allowed to Continue

"In the winter of 1986 KCD determined that as little as 2 - 3 feet of additional riverbed degradation in the lower Kansas River and in the Topeka area would result in millions of dollars in economic losses to non-dredge concerns. Lower riverbed and water surface elevations would increase: (a) bank erosion (loss of property), (b) maintenance of land stabilization structures, (c) well field operating costs (lower elevations in the flood plain) (d) water supply costs (where lower water surface elevations in the river inhibit the operation of water intakes), and (e) pipeline and bridge maintenance."

The Destruction on Biological Systems

"Dredging is responsible for widespread destruction of terrestrial and aquatic habitat by creating lake-like conditions that are not normal to the Kansas River, by depositing a blanket of silt on the riverbed in which native organisms cannot survive, and by the destruction of riparian habitat for wildlife."

"Ecological Impacts resulting from commercial dredging activities on the Kansas River are essentially a function of changes in channel morphology and are mainly influenced by riverbed degradation, bank erosion and channel widening. The effects of dredging activities on the ecology of the river and its adjacent land are not as well understood as are the effects of dredging on the morphology of the river channel. This is due to the difficulty in measuring the effects of changes in channel morphology on the myriad of aquatic and terrestrial plant and animal species found in and along the river, and to the complex interrelationship of those species to one another and their physical surroundings. Generally, the effects of changes in channel morphology on the biological community are closely related to the magnitude of channel change. Therefore, impacts on plants and animals."

"Riverbed degradation has a high potential to impact the biological community. Lowering of the riverbed promotes bank erosion and channel widening which in turn impact aquatic and terrestrial plant and animals. Bed degradation may increase water depths and slow flow velocities as it has done in the reach of river downstream of river mile 22, and/or it may

increase flow velocities upstream of a degraded reach by increasing the channel's gradient. Each of these physical changes to the river channel has a high potential to impact aquatic life. When riverbed degradation produces deeper, slower moving water, it can result in rapid siltation, which significantly changes the river's substrate. Deeper, slower flows and silty substrate make conditions intolerable for many indigenous fish and benthic invertebrates, which allows a shift to life more typically adapted to lake-like conditions. This phenomenon is exemplified in the heavily dredged reaches of river downstream of river mile 22 (and now exemplifies the river in the entire Topeka area and from Kansas City to Lawrence). Dredging activities in that reach have deepened and widened the river, flow velocities have been substantially reduced and silt overlies much of the once sandy riverbed. The shift from a relatively shallow, fast flowing, sandy, braided channel to a deep, sluggish, silty channel, with significantly reduced habitat diversity, has altered the species composition of the fishery by reducing the number of fish species and the total number of fish. When riverbed degradation increases the channel's gradient upstream of a degraded reach, a less stable channel is formed. The increased gradient accelerates flow velocities which may result in increased scour, bank erosion and channel widening. Each of these physical changes will in turn affect the biological community. Riverbed degradation may lower water surface elevations in the river channel which could lower the water table in the flood plain along the river. Reduced water table elevations could in turn adversely impact wetlands in the flood plain. The magnitude of such impacts would depend upon the amount of degradation in the river and its affect on water table elevations in the flood plain."

"Bank erosion has a high potential to impact the biological community. Bank erosion impacts aquatic organisms by increasing suspended solids concentrations in the river which reduce light transmission and increase siltation. Erosion adversely impacts wildlife populations by destroying riparian habitat. Some reaches of the Kansas River have only a narrow band of uncleared land along their banks and, when erosion destroys these fringe areas, a larger number of birds, mammals, and other terrestrial animals lose critical habitat. When this occurs, their presence along the river is diminished. Bank erosion may also result in channel widening."

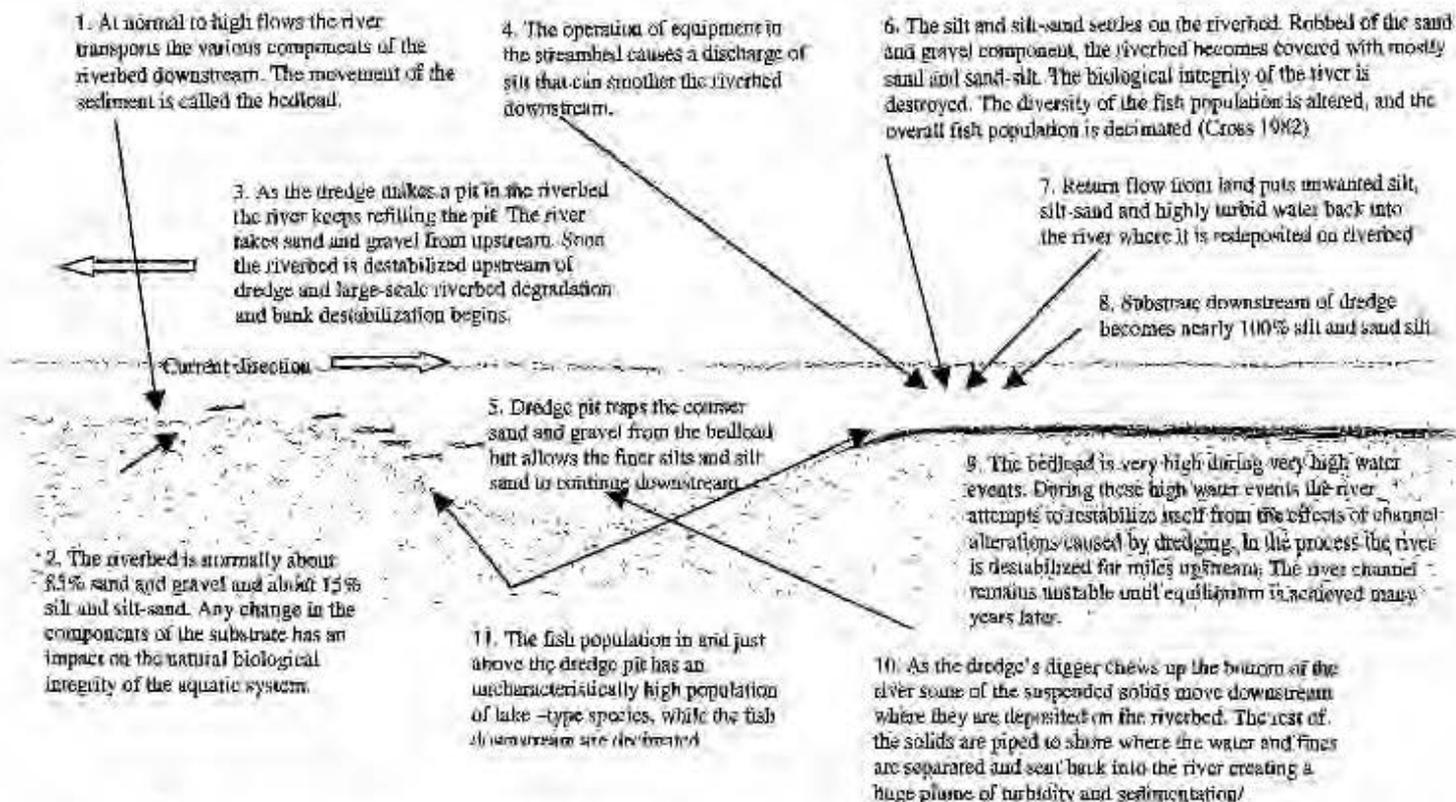
"Channel widening also has a high potential to impact the biological community. Channel widening is a product of bank erosion, and its effects on plant and animal life are similar to the effects associated with riverbed degradation. Channel widening increases the river's cross-sectional area and therefore, may reduce flow velocities and increase siltation. . . ."

Practicable Alternatives Exist

"The Simons, Li report of 1986 establishes that there are "adequate, and equivalent sources of the same grade and quality of sand available off the river."

While none of the above quote is new information to the Corps it adds to the weight and credibility of our other concerns and the cumulative impact that all of these factors are having on the overall long-term biological integrity of the Kansas River.

Figure 1



Morphological and Sedimentation

Figure 1 (not to scale)

Figure 1. The sketch above depicts how the dredger's pit separates the heavier sand from the silt, discharges the silt downstream and causes the riverbed downstream to be altered so that fish populations and other aquatic organisms are harmed downstream of the dredge. Although fish populations within the dredge pit remain high, the overall effect is that the fishery is decimated (Cross, 1982).

In addition to the deposition of silt and silt-sand on the riverbed by the process shown above, sand dredging operations discharge silt and silt-sand from the land based portion of their operations. The discharge from these return flows cause large silt and silt sand deltas and contribute dramatically to the layer of silt and silt-sand that alters the riverbed and aquatic habitat.

Figure 2. (left) The dredge near mile 16.2 deposited a silt-sand bar in 1982.



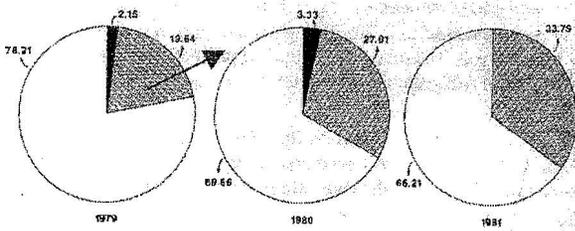


Figure 3 (left) depicts the average of the two Control Sites. The Control Sites were locations located at miles 23 and 25, in reaches of the river that were upstream of any dredging. At the time the reach between mile 23 and Topeka had never been dredged.

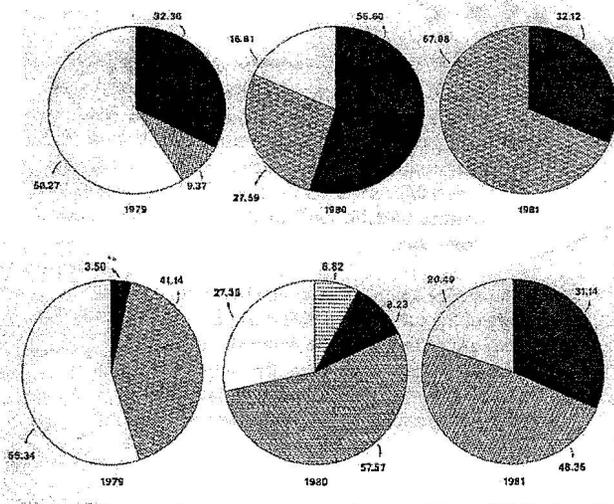


Figure 4 (left) depicts Dredge Study Site 1 at mile 21.3 - 22.3. The site had been dredged for only one year prior to the study. The top set of charts is from the transect 200 - 300 meters upstream of the dredge. The bottom charts are from the transects 400 - 500 meters downstream. This dredge was located in an area that is naturally very rocky. The sand quickly disappeared upstream, leaving only rubble and silt. The downstream riverbed was also rapidly losing sand and was being converted to rubble and silt. Fish populations are decimated downstream of dredges where the normal sediment layers are buried under layers of silt.

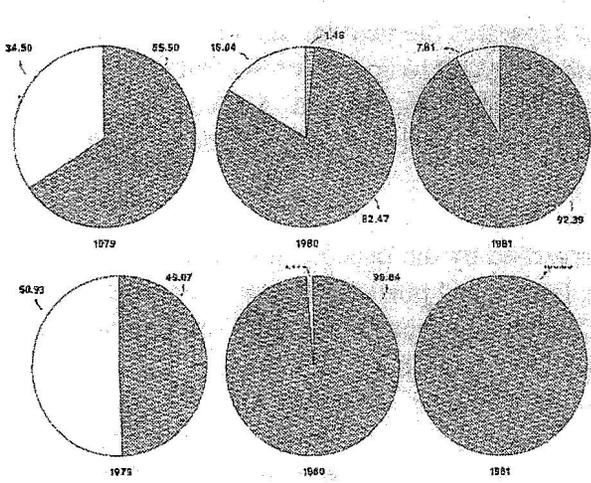


Figure 5 (left) depicts Dredge Study Site 2 at mile 15.6-16.4. This site is immediately upstream of the Johnson County Weir. The sluggish water trapped behind the weir causes high levels of sediment deposition. The riverbed upstream was converted largely to silt while the downstream area became 100% silt.

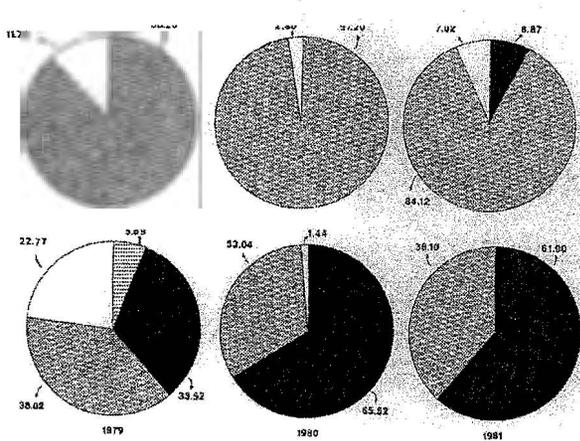


Figure 6 (left) depicts Dredge Study Site 3 at mile 12.3 - 12.9. This reach of the river has slow current, therefore high rates of bedload deposition. The lower transect was characterized by a rubble bar. The location of this dredge was changed three times during the study. As a result of relocating the dredge

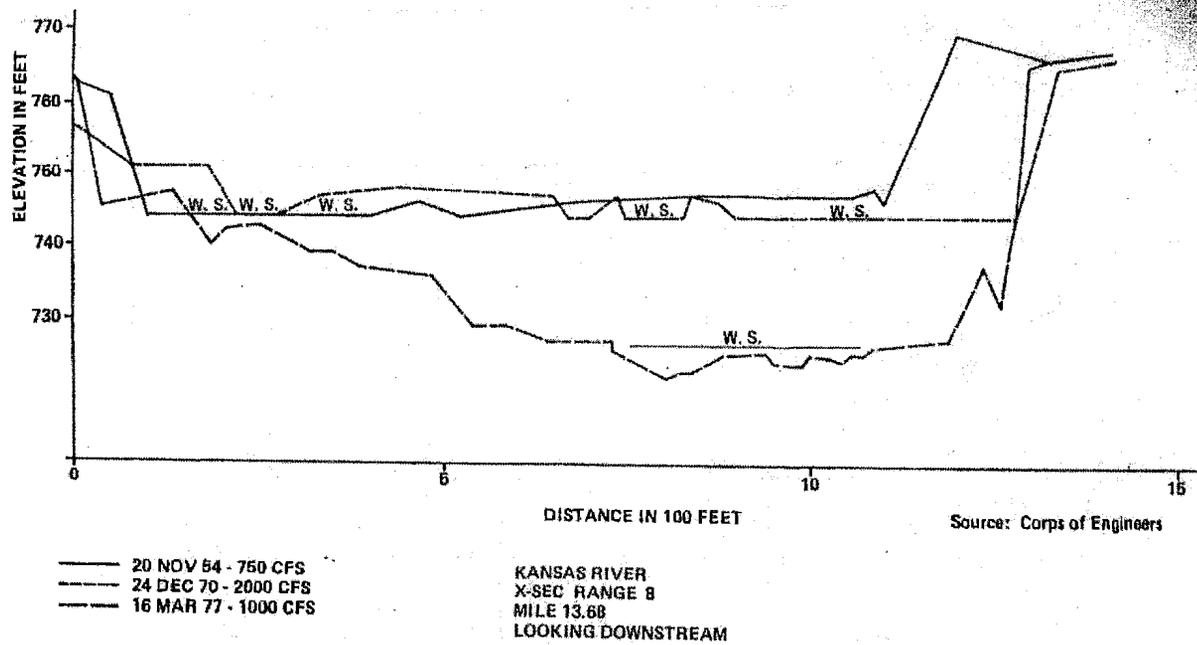


Figure 7 above depicts somewhat typical riverbed degradation and channel widening in the most heavily dredged segments of the river. The riverbed in the dredged areas of the river degraded 10 – 15 feet in the short period between 1960 – 1976. In this same period the channel in these areas increased in width by an average of 25% and as much as 350 feet (Cross). This does not include the degradation that occurred prior to that time or since that time. As the riverbed is lowered, surface and groundwater levels are lowered. This has an effect on wetlands in the floodplain and mud flats, in channel wetlands, vegetated islands or side stream incision, and groundwater. In some areas, especially upstream of weirs and dams, the dredged areas become more like lakes that are filled with silt.

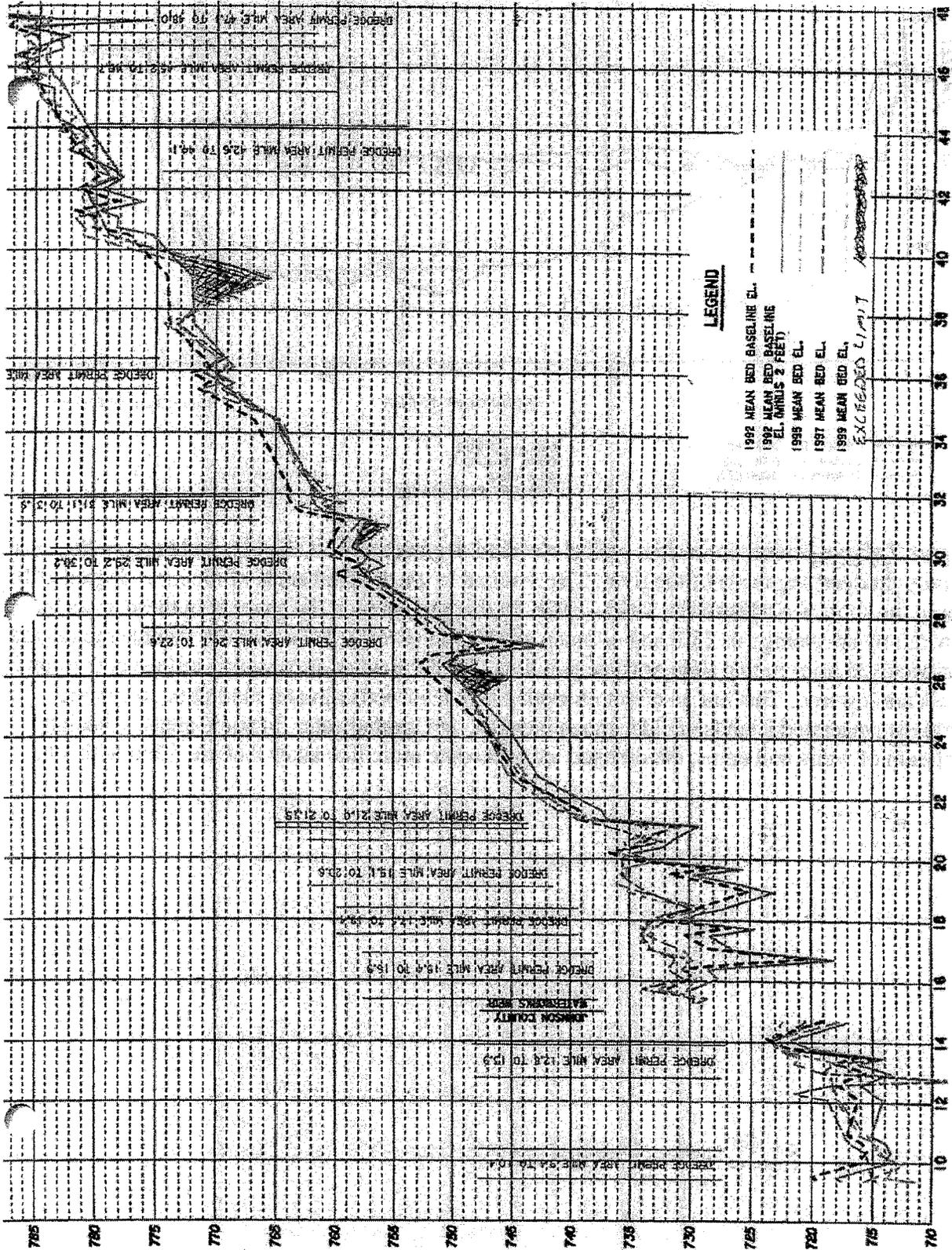


Figure 8 depicts the degradation of the riverbed between 1992 and 1999. The darkened areas are the segments where degradation had exceeded permitted limits as of 1999 (as established by the USACE). Notice the distinct increase in the degradation between Fig 8 and Fig 9 (1999-2001).

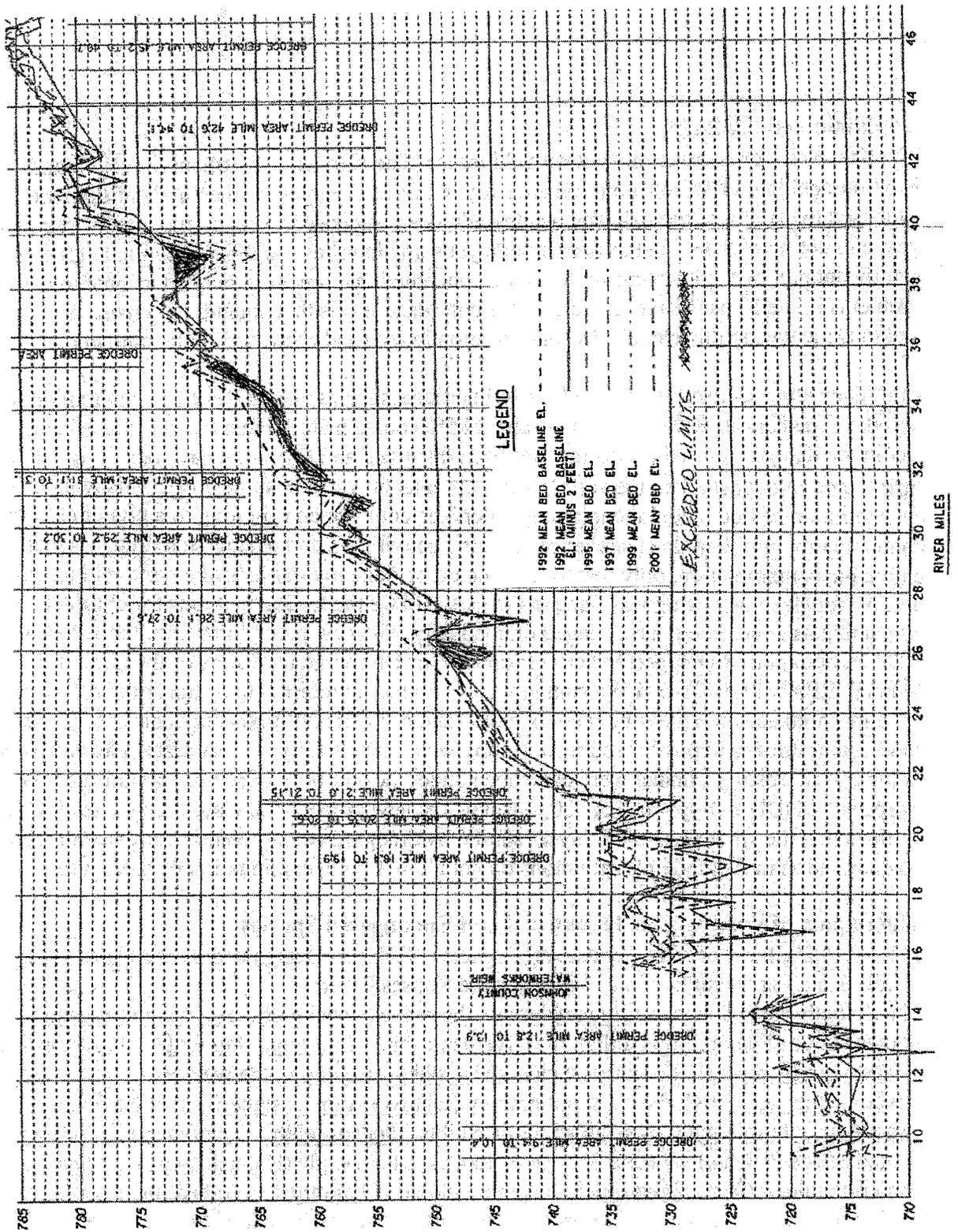


Figure 9 depicts the degradation of the riverbed between 1992 and 2001. The darkened areas are the segments where degradation had exceeded permitted limits as of 2001 (as established by the CORPS). Notice the distinct increase in the degradation between 8 and Fig 9 (1999-2001).

Contaminated Sediments

The Kansas River is contaminated with chlordane. The Kansas Department of Health and Environment has a fish consumption advisory in effect. Pregnant women and children are not supposed to eat any of the fish, and healthy adults are supposed to eat no more than 12 ounces per year and not more than 5 ounces per month, yet some families use this contaminated fish as a significant part of their protein source. I am concerned that dredging may contribute to chlordane problems in the Kansas River by raising the chlordane levels that aquatic organisms are exposed to and thus increasing this chemical's concentration in the food chain and in the human diet.

Chlordane attaches itself to the smallest soil particles such as clay and silt and can remain toxic for decades. The Kansas River substrate is about 85% coarse material that the chlordane cannot bond to. But in the dredged areas the substrate has been disturbed and finer silts have been brought to the surface and re-deposited on the surface for more than 60 years in some areas. This redeposit and concentration of fine material containing chlordane could be contributing to a higher chlordane contamination problem downstream of dredging activities. I do not state that dredging causes chlordane contamination, only that testing should be done to establish whether a relationship exists or not. Although some testing was done in the early 1980's the testing methods for chlordane and other contaminants in sediment has changed dramatically. The new procedures found in EPA/CORPS. 1998 "Evaluation of Dredged Material Proposed for Discharge in Waters of the U.S. -Testing Manual. EPA*823-B-98-004 Washington, DC. commonly referred to as the "Inland Testing Manual" are a far more accurate measure the risk toxins and of the risk of toxins to benthic organisms and the food chain. Prior methods for sediment testing were dramatically less accurate. The new procedures in the Inland Testing Manual were developed under the authority of section 404 of the CWA and the Corps is REQUIRED by 40 CFR 230 to follow the new procedures. Until the new testing procedures confirm that the silt and sand-silt layers caused by dredging are not contributing to chlordane contamination in fish federal regulations do not allow for the continuation of dredging.

The Impact of Dredging on Threatened and Endangered Species

The following threatened and endangered species (T&E) are designated by the Kansas Department of Wildlife and Parks and live in and/or along the Kansas River:

The Smooth Earth Snake (Virginia valeriae), the redbelly snake (Storeria occipitomaculata), the flathead chub (Platygobio gracilis), the sliverband shiner (Notropis shumardi), the sicklefin chub (Macrhybopsis meeki), the sturgeon chub (Macrhybopsis gelida), the western silvery minnow (Hybognathus argyritis), the chestnut lamprey (Ichthyomyzon castaneus), the flat floater mussel (Anodonta suborbiculata), and the white-faced ibis (Plegadis chihi). The federal list designated by the United States Fish and Wildlife Service includes the bald eagle (Haliaeetus leucocephalus), the peregrine falcon (falco peregrinus), the piping plover (Charadrius melodus), the least tern (Sterna antillarum), the whooping crane (Grus americana), and possibly others. Species In Need of Conservation (SINC) include the eastern hognose snake, and the timber rattlesnake.

Weirs that are built as a result of dredge induced degradation of water levels act as a blockade to fish and other aquatic organisms. The Kansas Department of Wildlife and Parks, in their response to three proposed weir alternatives at the Sunflower Plant said;

"We consider all three alternatives proposed to be an impact level 3, meaning the project as it is currently designed should not be implemented and some alternate approach should be

considered. The Kansas River is designated critical habitat for several state/federal listed threatened and endangered species including the Sturgeon Chub (Macrhybopsis meeki), Flathead Chub (Platygobio gracilis), Bald Eagle (Haliaeetus leucocephalus), Least Tern (Sterna antillarum) and Piping Plover (Charadrius melodus). Low-head weirs can have several negative effects on native riverine species and river function including blocking fish migrations, disrupting the transport of alluvial materials leading to channel instability and augmenting downstream erosion, and increases in the formation of pool habitat thereby altering the natural channel conditions and leading to invasion of fish species more adapted to pool conditions. In addition, nesting habitat for avian species would be lost by the formation of a backwater pool.

Because the project involves potential impact to a state listed threatened or endangered species and/or its designated critical habitat, a separate action permit is needed from our agency to be in compliance with regulations pursuant to the Kansas Nongame and Endangered Species Conservation Act. A copy of this letter and permit application information have been forwarded to the project sponsor. We ask that all other necessary permits be held in abeyance until conditions necessary to protect threatened and endangered species"

Although I have not been privy to the negotiations I have read that there have been discussions between the Kansas Department of Wildlife and Parks and the Corps and the USFWS that the pallid sturgeon is being considered for reintroduction to the Kansas River as part of the Missouri River management plan as a result of EPA's "Missouri River Biological Opinion" published in 2000. I don't know how far those discussions or plans have gone, but certainly the reintroduction of the pallid



sturgeon to the Kansas River has a much broader and important implication than the interests of sand companies pocket books.

The native range of the endangered pallid sturgeon includes the Kansas River. Although the Johnson County weir at Mill Creek and Bowersock Dam in Lawrence have blocked normal the passage of this endangered species to its historic habitat, the habitat of the pallid sturgeon still includes the Kansas River. Dredging is degrading this habitat. The pallid sturgeon prefers fast moving sandy bottomed rivers such as the Kansas River as it existed prior to the widening and siltation caused by dredging. The pallid sturgeon is also impaired because its food supplies, other fish species, have been diminished by dredging-related activities (Cross 1982)

Other threatened and endangered species such as the piping plover and least tern require high, well-scoured sandbars for nesting. Although the CORPS claims that dredging does not directly remove sandbars and merits some basis in logic, historic comparisons prove that the dredged reaches have fewer sandbars than they once did. In fact sandbars in the reaches of the river with the longest history of dredging are have very few sandbars and none suitable for piping plovers or least terns.

No study has been performed to examine the impacts of dredging on the avian population in general. The Kansas River is home to not just the T&E species and SINC listed above, but numerous other birds that rely on the riparian areas, sandbars, mud flats, shallows, and pools for their habitat. The river is also on the flyway of many other species, including some of the species listed above, plus migratory shorebirds and waterfowl. These birds are negatively impacted by sand dredging; their habitat is modified, their food sources are reduced and contaminated, and their nesting cites are lost. The impacts on these species affect the birds as well as recreation and tourism and are a sign that the river's entire ecological system is being thrown out of balance.

The negative effects of dredging and Corps' environmentally unsound alteration of Kansas River's natural high spring and low summer flows has combined to cause an impairment of nesting habitat for threatened and endangered shore birds, the piping plover and least tern. These impacts must be added to the "*totality of other impacts*". The conditions of the sandbars are linked to both dredging and artificial flows and therefore the effects dredging further contributes to the effects of modified flows and cannot be isolated from the totality of impacts. The legality of the dredge industry's contribution to the totality of impacts will be addressed near the end of this document.

Mainstream degradation in the dredged reaches has suspended the mouth of some side streams, such as Little Kaw Creek (mile 22.3) and now Cedar Creek (about mile 26.4). Mainstream degradation has limited the accessibility of these tributaries to river fishes except during high flows. Silt deposits during high mainstream flows block the mouth of these streams and deltas form that further block fish and navigation access to and from the stream from the river.

Dredging causes the streambed to become covered with silt and silt sand. This alteration of the natural riverbed causes a loss of the river's biological integrity. Benthic organisms that are native to the normally sandy substrate cannot survive as layer upon layer of silt is deposited on the riverbed. Fish populations are decimated and other aquatic and terrestrial organisms that depend on the sandy shallows and organisms are eliminated or reduced in number and health.

Degradation of the riverbed has changed (and will continue to change if dredging continues) the gradient of the river upstream. The higher gradient causes faster current velocities and higher riverbed and bank erosion rates. Alternately, the deeper pools in and around the actual dredge pit and upstream of weirs that were built due to dredging will trap fine sediment causing a negative impact on the chemical, physical and biological integrity of the aquatic environment.

The degradation of the riverbed causes a lowering of water levels in the river and the soil. This effects wetlands, mud flats, side streams and every interrelated organism in and along the river. I do not claim that sand dredging is the only cause of riverbed degradation, but I agree with the repeated statements of the Corps and all of their engineering studies that "dredging is the primary cause of riverbed degradation in the Kansas River".

In a letter dated August 13, 1989 the Kansas Department of Wildlife and Parks commented on a draft of the Corps' EIS. In that letter KDWP states, and I agree,

"The (Corps) EIS is misleading not because it misquotes Dr. Cross' report or because his research is flawed, but rather because of taking his conclusion of increased habitat diversity resulting in increased fish species richness out of context when applying it to your preferred management alternative." In that letter KDWP also said, *"When evaluating aquatic ecosystem impacts, especially in the lower reaches of the Kansas River, losses to obligate stream-dwelling species should not be simply balanced by gains to reservoir-tolerant species".*

We concur. Further, the Regulatory Plan does not recognize the importance of maintaining the native species and habitat and has given no value at all to the importance of restoring or protecting side streams and their associated fish and wildlife from the effects dredging has on them. Under the CWA the Corps is required to do much more than to "minimize impacts" and set up plans that "allow acceptable levels" of damage to the environment. The legal aspect of these responsibilities will be discussed near the end of this document.

Simon, Li and Associates (1985) report made recommendations for the amount of sand and gravel which may be dredged from a reach of the river on a given level of impact. The level of impact is based solely upon the amount of riverbed degradation that was projected to occur due to the removal of specific amounts of sand and gravel. The Simon, Li and Associates report provided no estimates on the adverse effects on the biological community. Further, the scope of the Simon, Li and Associates report was limited to the reach below rivermile 22. This is not satisfactory information considering the scope and breadth of the dredging industry today. The only information that the Corps has relative to the impacts of dredging to the biological community on the Kansas River are from the data and warnings from Dr. Cross (1982) yet that information was not significantly factored into the Regulatory Plan.

None of the studies conducted by the Corps provided significant (if any) information about the impacts of dredging on wetland areas. The lowering of the water table in the alluvium and the decreased frequency of overbank flows resulting from the lowered bed elevations associated with dredging must have an adverse impact to these wetland areas. The lowering of the riverbed also isolates and incises streams. This may have affects on their associated wetlands. On September 26, 1989 the EPA told the Corps that they (the Corps) should study these impacts and to create an inventory of wetlands and to include the resulting information in an EIS prior to adopting a regulatory

plan, but this was never done and still remains a violation of the Corps' responsibilities of Section 404(b)(1) of the CWA.

In a letter from EPA to the Corps dated February 7, 1986 EPA reminded the Corps that their EIS should also contain provisions for full mitigation of any impacts which occur. Yet the Regulatory Plan under which the Corps and the dredgers have been operating has provided little, if any, mitigation for the impacts of dredging as defined in 40 CFR232 and as required by the CWA.

Part III Recreational Concerns relevant to dredging

The ecological systems, our economy, our quality of life and our culture needs must be viewed as a whole to understand the total cumulative costs of dredging to water quality, to the river and environment and to our society.

The Kansas River is not one river among many where Kansans can go to recreate. It is not one among many potential sources of water for our human and natural communities. It is certainly not a place where the Corps of Engineers should be measuring the economic advantage to an industry against the river's long-term benefit to our future or making odds on whether closing a small segment of the river will be enough to end the long history of damage the dredging industry has done to the river.

Both now and in the future, the Kansas River itself is a singularly unique river eco-system upon which many tens of millions of people will rely and upon which the ecological integrity of the region depends.

The Kansas River is one of only three rivers in the entire state that our state has designated as "navigable". Those three rivers are the Missouri, the Arkansas and the Kansas Rivers. Without the "navigable" designation the other streams in the state are illegal to float, swim or fish without permission from every landowner on both sides.

More than 40% of the state's population lives in the 10 counties that border the Kansas River. The river passes within an hour's drive of more than 50% of the state's population and within an hour's drive of roughly another 1,000,000 people on the other side of the Missouri state line. Because of the proximity of our people and the power of the river's beauty, the Kansas River is potentially the best recreational resource in the state. By some accounts, it is also the state's most important fishery and



Figure 10 (above) By some accounts, recreation on the Kansas River has increased as much as 100%

in less than a decade. Nearly 400 people participated in the weekend tubing and fishing

Figure 11 (below) On a Saturday morning in 1999 paddlers on the Kansas River use their canoes to spell the word "ACCESS" to raise awareness that access to the Kansas River is inadequate.



This river is so important and so unique that the Kansas River, from the confluence with the Delaware River downstream to the I-635 bridge was included on the National Park Services inventory of rivers that potentially qualify to be included in National Wild and Scenic Rivers inventory. A presidential directive in August of 1979, and subsequent instructions issued by the Council on Environmental Quality require that each federal agency, including the Corps, as part of its normal planning and environmental review process, take care to avoid or mitigate adverse effects on rivers identified in the Nationwide Rivers Inventory.

Primary emphasis was given to maintaining and enhancing the historic, aesthetic, recreation, fish and wildlife, geologic values of the 57-mile segment of the Kansas River.

Thanks, in large part to dredging, the Kansas River has never received the advantages of this protection and restoration that the river would otherwise be entitled to. Yet instead of "maintaining and enhancing" these properties of this magnificent river the Corps established a plan that prescribed "acceptable levels of damage", that history has shown were grossly exceeded.



Figure 12 The Kansas River is the heritage of every man, woman and child. This generation, like all generations own the Kansas River. It should not be for sale to sand dredgers, nor is it available as a waste disposal site for the construction and demolition industry's concrete rubble.



Figure 13. Upstream of dredge operations the riverbanks become unstable due to head cutting. Landowners negligently have used concrete rubble, junk cars and similar eyesores to stabilize the shoreline. These activities, and dredging sites themselves, are a visual blight on the river. The bank destabilization and the control over bank stabilization materials are within the regulatory responsibility of the Corps.



Figure 14, to the left, shows a nice camping area on one of the sandbars in an undredged part of the river. Notice that the riparian vegetation on both sides of the river is in good condition and the banks are neither steep nor unstable.



Figures 15 and 16 above shows the typical weather degradation of dredge sites. The top picture shows a close up of a dredge operation and the lower picture shows the target picture. The lower picture was taken at very low water conditions so much of the silted is out of the water. The pool below this dredge is about 4 miles long and is filled with a silt that is not a silt but rather than the normal 85% sand and gravel that should be there (Cross 1982 and personal observations in 2011).



Figure 16 (left) is one of many signs that we would like to see removed from the river. The fish are contaminated with chlordane that dredgers are resuspending in the water column and redepositing in more highly concentrated in a way that brings in into greater access in the food chain.

In a letter dated September 12, 1995 from the U.S. Fish and Wildlife Service to the Corps in opposition to a proposed new sand dredge operation between Lawrence and Topeka. In that letter the USF&WS discussed dredge related impacts that have negative influences on the river's eligibility as a National Scenic River and their concerns for threatened and endangered species.

"Documented physical and biological effects of in-stream sand and gravel dredging in North American rivers and streams include accelerated channel degradation and steambank erosion. Accelerated erosion means changes in stream substrate material, water quality, and temperature, as well as changes in aquatic plants and invertebrate organisms. These changes directly and indirectly affect fish communities by eliminating or altering the food supply, spawning beds, and nursery habitats. In addition, terrestrial plant communities along the river and streams are changed directly through loss of trees and shrubs during erosion of river banks, and indirectly by the lowering of water tables. Loss of riparian plant communities affect wildlife by removing habitat which they require for food, cover, breeding, and dispersal (studies in "Impacts of In-Stream Sand and Gravel Mining on Stream Habitat and Fish Communities, Including a Survey on the Big Bib River, Marathon County, Wisconsin" P. Kanehl and J. Lyons, Wisconsin Department of Natural Resources, 1992)."

"...There are only three rivers in the State that are accessible to the public for recreational purposes, the Missouri, the Arkansas, and the Kansas. The lower reach of the Kansas River, from the confluence with the Missouri River to about 30 miles upstream, has been severely impacted by sand dredging which has taken place during the last 50 - 75 years. The impacts include severe channel degradation (8 - 15 foot deepening of the river channel), bank erosion (up to 150 feet in some locations), initiation of headcutting, and changes in the river bottom from coarse sand to silty deposits. Changes in the river channel have caused changes in the fish communities and loss of riparian habitats (Analysis of Channel Degradation and Bank Erosion in the Lower Kansas River" Simons, Li, and Associates, U.S. Army Engineer District, Kansas City, 1984; "Report on the Impacts of Commercial Dredging on the Fishery of the Lower Kansas River, Cross, F., et al., U.S. Army Engineer District, Kansas City, 1982)."

"...In 1982, the National Park Service placed the Kansas River, from the confluence of the Delaware to I-635 in the National Rivers Inventory. The Kansas River qualified for this inventory because of its outstanding scenic and recreational values, as well as its fish and wildlife resources. As evidence of recreational use, there are several boatramps developed by the Kansas Department of Wildlife and Parks along the River, a riverfront park at Lawrence, Kansas, and the Kaw River Hiking Trail adjacent to the River.

"...The sturgeon chub, a State threatened species, occurs on the Kansas River, in areas at heads of islands or exposed sand bars. Other state listed species include the western silvery minnow and the plains minnow."

"The Kansas River provides important waterfowl and shorebird resting, feeding, and staging areas during migration. In the spring and summer, sandbars and islands form protected feeding and nesting sites for Canada geese and shorebirds. Steambanks provide habitat for swallows, belted kingfishers, and other bird species as well as beaver and muskrat. The riparian plant communities consist of native tree species like cottonwood, willow, sycamore, American elm, and maple, along with shrubby and herbaceous species. These riparian areas

provide food and cover for many neotropical migrant birds, and wintering habitat for the bald eagle."

White-tail deer, raccoons, and other wildlife also use riparian habitats. Linear corridors of habitat, such as that found along the Kansas River, allow animals to disperse throughout their ranges, preventing genetic isolation and allowing the reestablishment of populations in areas where wildlife may have been eliminated."

Dredging would directly and indirectly damage aquatic and terrestrial habitats for fish and wildlife. Dredging would also impair the quality of the recreational experience by physically altering the scenic beauty of the river, the machinery would present a large, in-stream obstacle, and the serenity would be disturbed by machinery noise."

Because of the natural resource and recreational values of the Kansas River, the Fish and Wildlife Service and the National Park Service have recommended that permits to dredge in the Kansas River be denied.

We concur and add that that since this report was written there are now 13 points for public access on the Kansas River that are either in place or in various stages of development at this time (Kaw Point, Nelson Island, Cedar Creek, Eudora, two in Lawrence, LeCompton, Perry, Topeka, St George, Manhattan, Fort Riley, Junction City. There are also at least four other communities that are interested in plans for public river access on the river as well (Bonner Springs, DeSoto, a second location in Topeka, and Wamego). The public's interest in recreation on the Kansas River has virtually exploded in the last three years).

Quoting from the Kansas Department of Wildlife and Parks' letter dated August 13, 1989:

"The economic analysis in the EIS and the Regulatory Plan focuses on the costs of construction in the Kansas City area, the economic impact of the sand dredging industry to local communities with its jobs and taxes paid, and costs to nondredging entities due to losses from damage to manmade structures, water supplies, and land adjacent to the river. Since the Kansas River is one of only three public rivers in the State of Kansas and unlike the Arkansas River, has water for its entire course, we feel the value of the Kansas River as a public recreational resource has been basically overlooked in this report. By allowing the highest quality construction sand, according to this report, to be dredged at one of the nation's lowest prices, the State of Kansas is basically giving away one public resource, the Kaw River sand, at the expense of several others including public recreation".

We could not concur more fully. Yet in the Corps reply to KDWP's concern the Corps wrote, "We recognize that the Kansas Department of Wildlife and Parks has the responsibility to protect the natural resources of the state of Kansas. However, no information is readily available to indicate that recreation has been severely impacted with the existing dredging operations or will be in the future under the proposed Regulatory Plan".

We disagree with the Corps on their assumption that such information must be "readily available". I also must point out that it isn't 1989 anymore. The nature, condition and economics of river recreation is entirely different than it was in 1989 and it deserves more than a "convenient" dismissal by the Corps.

In 1996 the state legislature authorized the "Kansas River Recreation Study" which was completed and presented to the legislature on January 12, 1997. This study concluded that:

The Kansas River is an underdeveloped and underutilized state recreational resource;

The state has no other stream recreation resource of this type

Recreation on the Kansas River has a direct economic benefit of nearly 3 million dollars per year (we think this is a dramatic under-estimate of the river's potential economic draw to river communities



Figure 17 above shows some of the beauty of the Kansas River. This picture is near Lawrence.

Neither recreationists nor landowners need or want highly developed and costly infrastructures; The primary need is for non-motorized boating activities such as canoeing, kayaking, rafting, etc. and continuous segments of the river that are linked together by public access and that are free of commercial operations;

Increased access is a benefit to landowners due to reduction in the need for crossing of private property, and parking issues.

The study recommended that the Kansas Department of Wildlife should implement the Kansas River Access Plan and Parks as a minimum level for access development and be included for funding in the Kansas Water Plan. This would establish a public access roughly every 10 miles. The plan has never been adopted officially but the accesses have been built, or are being built or gaining significant momentum for development in Kansas City, Bonner Springs, DeSoto, LeCompton, Perry, Topeka, Wamego, St. George, Fort Riley and Junction City at this time and other public access points are being considered elsewhere. By the end of this year or early next year boaters and local communities will have developed public accesses at Kansas City, Shawnee, DeSoto, Eudora, Lawrence, LeCompton, Perry, Topeka, St. George, Manhattan and Fort Riley. When the last environmental impact statement considered the effect of dredging on recreation there were only two public accesses on the entire 170-mile length of the river. I have now and rapidly growing economic and public interest now that the Corps must now consider before proceeding with permits. Communities, sportsmen and businesses want recreationally friendly, natural, beautiful, unspoiled, unpolluted river, not an industrialized, polluted ditch with the banks caving in, the sandbars and bottom silted over, fish populations and mussel beds decimated, dirty water, noise, bank stabilization projects, cables and pontoons and barges across the channel and discharge pipes pouring soupy brown muck into their river. The Corps of Engineers may not WANT to see it that way, but that is exactly how the great majority of the river recreating public sees the effects of dredging on the river.

Many of the river accesses already built are becoming more difficult to use. The boat access built in about 1996 at Cedar Creek is already being isolated from the main channel because the riverbed and stage of the river has been lowered so much that in only 7 years that the creek is becoming "elevated" above the river stage. It is not just a problem for sportsmen, it is an economic and cultural and ecological disaster as our feeder rivers and streams are either incised or become isolated from the main channel. The 1992 Regulatory Plan completely ignored the protection of existing and future public access ramps. The Plan has no provision for the protection of these expensive and difficult to replace structures. These were issues that the Corps did not consider in its 1990 EIS and in its 1992 Plan but are now becoming much more significant issues to a growing number of communities and sportsmen that depend on these side streams as access points to the river and to fish and other wildlife that needs its habitat and access to and from the river preserved.

7 The access was constructed as a side water level that was lowered by dredging of the main channel. It is now, caused by dredging. The case of Mill Creek in Marion County illustrates the effect of dredging.



induced riverbed degradation) backs up the river for six miles. The 1990 EIS and the 1992 Regulatory Plan established that the water intake at the Sunflower plant must be protected. This important water resource was one of the primary purposes of the Plan, yet only a few years after the dredges moved into that area the riverbed and water level had degraded and the water intake was out of the water.

The weirs that were constructed as a result of dredging contribute to significant damage to the aquatic and terrestrial ecological systems and have negative impacts on recreation, the fishery, local community health and economics. The river forms pools above the weirs (low-head dams). The water velocity in these pools is slowed down. The suspended solids that are a normal part of the natural river's system plus the suspended solids added by dredging activities settle out in these slower pools. The river's physical and biological systems are damaged and recreation up and down the river is either severely impeded or ended by the presence of the weirs. The sedimentation pools may concentrate chlordane that contaminates fish and moves up into the food chain and makes fish in the lower Kansas River unsuitable for human consumption.

None of the existing weirs are equipped with portages, navigational bypasses or convenient public access. The Topeka weir's permit required that a portage be constructed and maintained, but no portage was ever provided despite repeated reminders to the Topeka Water Works and to the Corps. The fact that these weirs endanger the life and property of river users cannot continue to be ignored. As the recreational use of the river increases so does the impact to human life, health and local economies.

To prevent the proliferation of more weirs dredging must be stopped. Where weirs already exist safe navigational bypasses should be installed to partially mitigate some of the negative impacts of concern for aquatic species and recreational navigation but even with such a bypass a new weir cannot be justified at the Sunflower Plant or elsewhere since practicable alternatives already exist (horizontal wells and the cessation of dredge damage to water levels).

In stream dredging activities and return flows from river based dredging operations sometimes cause dramatic changes in the turbidity of the water for miles downstream. I have seen on numerous occasions where dredge discharges were so laden with sediment that sand-silt deltas were formed and sand-silt layers covered the riverbed great distances downstream. Dr. Frank Cross (1982) documented this as well. These layers dramatically diminish the biological integrity of the river and reduce our fish hatcheries, sandbars and river bottoms to unusable muddy quagmires. All of this impacts river recreation.

The use of junk cars, household and industrial trash and concrete rubble has been used to stabilize the riverbank in many parts of the river (see figure 13). Under section 404 of the Clean Water Act and under Section 10 of the Rivers and Harbors Act the Corps has the jurisdictional authority to control destructive activities that impair riparian aquatic and terrestrial ecosystems, destabilize the river channels and river beds, and provide for the specifications of and permitting of materials and procedures for bank stabilization projects.

The Kansas River was once a rich fishery, but KDHE has had a fish advisory in effect for more than a decade due to chlordane contamination in the river. I am concerned that sand dredging may be causing part of the contamination levels in the fish. Chlordane poses a threat to human health due to its upward movement in the food chain and its high risk as a health hazards in the human diet.

Part IV Economic concerns relative to dredging

First, I challenge the accuracy of I find that the low profiles are well below the 1992 mean profile from rivermile 22 to 44.6 and that the high profiles are only marginally above the 1992 mean. Although it is very possible that the corps numeric calculation of the 2002 mean profile is accurate it is critical that these numbers and calculations are reviewed to make sure that they are accurate.

The Corps' chart titled "Regulatory Monitoring Program Mean Bed Profile" dated April 2002 and the chart that it titled "Regulatory Monitoring Program High and Low Profiles" also dated April 2002 show trends that the Corps did not anticipate when it adopted the current Regulatory Plan. That Plan had been established using economic impact studies and engineering studies that were limited largely to the Kansas City area. But now that the dredging industry has distributed itself more widely along the river the impacts are greater than anyone had hoped for.

Both of these charts, especially the "Regulatory Monitoring Program High and Low Profiles" demonstrate that the riverbed elevations are rapidly degrading in all reaches of the river where dredging has occurred, except a few small reaches. Below I will discuss the new effects the current Plan has had and will review some of the history and documentation pertinent to the negative economic impacts of dredging.

Quoting from the **Kansas Department of Wildlife and Parks'** letter dated August 13, 1989:
"The economic analysis in the EIS and the Regulatory Plan focuses on the costs of construction in the Kansas City area, the economic impact of the sand dredging industry to local communities with its jobs and taxes paid, and costs to nondredging entities due to losses from damage to manmade structures, water supplies, and land adjacent to the river. Since the Kansas River is one of only three public rivers in the State of Kansas and unlike the Arkansas River, has water for its entire course, we feel the value of the Kansas River as a public recreational resource has been basically overlooked in this report. By allowing the highest quality construction sand, according to this report, to be dredged at one of the nation's lowest prices, the State of Kansas is basically giving away one public resource, the Kaw River sand, at the expense of several others including public recreation".

I could not concur more fully.

The initial cost of the construction of these weirs, dams, bridges and utilities cost tens of millions of dollars. The repeated repairs and maintenance necessitated by dredging has added untold millions of dollars to the economic costs to non-dredging interests (the general public). As riverbed degradation continues to undermine these structure the maintenance and replacement costs grow.

The *italicized* quote below is from the "Final Regulatory Report and Environmental Impact Statement" published in 1990.

Economic impacts (physical damage) occurring to nondredging interests in and along the Kansas River, as a result of commercial dredging activities, are primarily related to changes in channel morphology and are mainly influenced by riverbed degradation, bank erosion and channel widening. Generally, the magnitude of changes in channel morphology determines the magnitude of damages to nondredging interests. Therefore, as riverbed degradation, bank erosion and channel widening increases so do damages. Nondredging interests with a high potential to be impacted by dredging operations include manmade structures, land adjacent to the river, and water supplies.

Riverbed degradation is the primary cause of dredging-related impacts to manmade structures and water supplies. Riverbed degradation also promotes bank erosion and channel widening, which in turn impact manmade structures, water supplies and land adjacent to the river. Bed degradation undermines bridge pilings and piers, and exposes pipelines buried in the riverbed. Unstable bridge piling and piers must be restabilized and exposed pipelines must be reburied or secured to the riverbed in order to prevent failure of the structures. Bed degradation also undermined bank protection structures such as dikes, jetties, hard points and revetments. Slumping of bank protection works increases bank erosion, which results in a loss of public and/or private land and necessitates costly repairs to the structures if further losses are to be avoided. In addition, bed degradation undermines water intake diversion jetties and weirs. Slumping of these structures lowers water surface elevations at water intakes and reduces or eliminates water intake pumping capabilities during periods of low river stage, unless the structures are repaired. Lowering of the riverbed directly impacts (lowers) water surface elevations in the flood plain. Lower water surface elevations in the river channel and lower water table elevations in the flood plain have a high potential to adversely impact water intake and well field productivity, especially during low flows. When water intake production is impacted by riverbed degradation, a water supplier must construct new or elevated existing diversion jetties or weirs, or modify intake facilities to ensure adequate water supplies. When well field operations are impacted by riverbed degradation, a water supplier may need to increase maintenance (acid treatments to maintain peak pumping capabilities) or construct additional wells. In addition, lower groundwater elevations result in higher pumping costs due to higher pumping heads which increase power usage.

Bank erosion impacts land resources and manmade structures located and near the riverbank. Bank erosion can also result in channel widening, which may in turn impact water supplies. Channel widening increases the cross-sectional area of the river, which can result in reduced water surface elevations in the river channel and reduced water table elevations in the flood plain. When channel widening lowers water surface elevations in the river, it creates impacts to water supplies which are similar to those occurring from riverbed degradation.

Commercial dredging activities on the Kansas River have, over the course of many years, resulted in substantial economic impacts to nondredging concerns, especially in the reach of river downstream of river mile 22. Dredging-related riverbed degradation, bank erosion and channel widening have impacted manmade structures, water supplies and land resources. Structures impacted by dredging activities include the water District No 1. Weir near river mile 15, the Atchison, Topeka and Santa Fe Railway Bridge near river mile 21.2 and various pipelines located in the riverbed. The massive water intake weir built and maintained by Water District No.1 of Johnson County was originally constructed in response to declining water surface elevations resulting from riverbed degradation and has been rebuilt several times in response to continued bed degradation. Riverbed degradation near Bonner Springs has exposed the wooden piling under three of the piers supporting the Atchison, Topeka, and Santa Fe Railway Company's bridge. Sheet piling filled with grout have been placed around the exposed pilings and piers to stabilize the bridge. The riverbed near the bridge is so degraded that local scour from a 100-year flood even could cause the structure to fail. Various pipelines passing through the lower river channel have been exposed as a result of riverbed degradation. Exposed lines have either been reburied or secured to the riverbed with

ballast. In addition, bank erosion and channel widening have impacted land resources along the lower river.

Estimates of potential future economic losses to nondredging concerns from dredging-related damages to manmade structures, water supplies and land resources have been compiled by KCD. The economic impacts to bank stabilization structures, bridges, pipelines, wells, water intakes and associated weirs and jetties, and land along the Kansas River are estimated for 1 - 5 feet of riverbed degradation. The largest category of potential economic losses have been identified as impacts to bank stabilization structures. Potential dredging-related damages to bank stabilization structures in the lower river between river miles 8.2 and 50.4 range from \$774,000 for 1 foot of riverbed degradation to \$4,184,000 for 5 feet of bed degradation. Damages to bank stabilization structures in the Topeka area between river miles 84 and 97.7 range from \$212,000 for one foot of riverbed degradation to \$1,144,000 for 5 feet of bed degradation.

The estimated total potential damage to manmade structures, water supplies and land resources for 1 foot of riverbed degradation in the lower Kansas River is \$791,700 for permanent losses (refers to irreparable damages, such as the loss of land from erosion) and capital costs (refers to the costs associated with nonroutine work, such as a one-time repair of a damaged bank stabilization structure or construction of a new well), and \$29,900 for increased annual costs (refers to the costs associated with routine work, such as periodic repairs to bank stabilization structures or periodic acid treatments for wells). The estimated total potential damage in the Topeka area for 1 foot of riverbed degradation is \$214,100 for permanent losses and capital costs. No increase in annual costs would be reflected in the Topeka area for 1 foot of bed degradation. The estimated total potential damage for 5 feet of riverbed degradation in the lower river is \$5,803,000 for permanent losses and capital costs, and \$79,700 for increased annual costs. The estimated total potential damage in the Topeka area for 5 feet of riverbed degradation is \$1,418,400 for permanent losses and capital costs. No increase in annual costs would be reflected in the Topeka area for 5 feet of bed degradation.

The estimated potential economic losses presented in this report are based on conservative estimates of potential impacts to nondredging interests and reflect minimum foreseeable losses. For example, when several alternative methods are available to restore the function of an impacted structure, the least costly alternative has been factored into the losses presented in this report. However, the actual method selected to restore a structure's function may not be the least costly alternative. For instance, 5 feet of additional riverbed degradation adjacent to the Olathe well field would substantially impact well field output during low flows. Several alternatives would be available to the city to restore lost pumping capabilities. The city could increase energy usage and modify its well field operation, at an annual cost of \$11,800; it could increase the number of wells, at a capital cost of \$252,000 and an annual cost of \$1,900; or it could increase energy usage and purchase additional water, at an annual cost of \$50,700. A similar situation exists for wells operated by Water District No. 1 of Johnson County, the city of Bonner Springs, the city of DeSoto, and the Sunflower Army Ammunition Plant, and the industrial and farming concerns.

Certain potential economic losses have not been included in the losses presented in this report. For example, future structures located in and along the river could be impacted by commercial dredging activities, which could result in economic losses in excess of those presented in this report. Also impacts to structures such as Bowersock Dam and the Sunflower Army Ammunition Plant water intake facility have not been factored into the losses presented in this report, since such losses cannot be estimated at this time. Sufficient information is not available to determine how many feet of additional riverbed degradation would cause failure of Bowersock Dam. Therefore, potential economic losses associated with failure of the structure have not been presented here. The Sunflower Army Ammunition Plant's water intake is currently unable to meet emergency Army mobilization needs during low flows. Since the Army has not determined whether it will take any action to remedy the problem, potential economic losses associated with the additional riverbed degradation have not been presented here.

Economic Damages That Have Occurred Since the Inception of the Regulatory Plan

The Final Regulatory Report and Environmental Impact Statement" was published in 1990. Since that time dredging and dredging related riverbed degradation has spread the economic impacts upstream on a scale that this report does not begin to address. Since 1990, due to dredging related riverbed degradation:

- Water One has had to rebuild its weir again, the Atchison. I don't know what the cost was at this time.
- The Topeka and Santa Fe Railroad bridge was damaged and abandoned. A letter dated April 2, 1986 from that railroad company indicated that the repairs would cost an estimated 2 million dollars.
- The Cedar Creek Access is unusable at low water stages due to the lowering of the riverbed and, river stage (the level of the surface of the water) and the ensuing isolation of Cedar Creek from the Kansas River. The loss of use of this facility is a substantial loss the community and recreation in general.
- A wing dam was constructed above the Eudora bridge to protect it from being washed away by a destabilized river. The Corps may argue that other factors may have been involved but considering that this reach of the river was in the main swath of damage done by dredging over the previous 10 years, dredging cannot be dismissed as part of the problem. I don't have a figure of the cost of this bank stabilization project at this time.
- The water intake at the Sunflower Plant is no longer functional. The cost to build a new weir has been estimated at 6 - 8 million dollars.
- Bowersock Dam has had to undergo major repairs and has suffered a decrease in its ability to generate electricity due to cavitating turbines because its tail pipes are exposed to air during low water stages. At this time I don't know what the cost of those repairs were or what effects the loss of power generation revenue will have on the owners of the mill and on the communities that need and use the electricity.

We don't know the economic value of all of these losses, but I do know that these are not the only costs we have paid and will continue to pay if dredging is not stopped on the river.

The cost to Johnson County will be significant without a water intake at the Sunflower Plant unless they build a dam (estimated at \$6 - 8 million) or spend potentially even more to install lateral wells under the river. The loss of the railroad bridge in Bonner could not have been good news to the railroad company. What would the replacement value of that bridge have been? What will the cost be

of the additional fuel and wear on the other lines that the railroad must now use since this bridge is not longer functional? What is the economic loss at the Cedar Creek boat ramp in terms of a lost community asset and tourism? What was the cost of the wing dam at Eudora? What was the cost of repairs to Bowersock Dam? How much more damage can that structure take before it collapses? What will be the cost of the resulting catastrophe when that happens? What is the cost of the reduced electricity generating capacity of Bowersock Mill? What is the cost of the reduced economic value of recreation to our river communities, to tourism and to sportsmen? What is the economic cost in lost land and lost crops?

Secondary Costs Add Up

All of these direct economic costs have secondary costs that are harder to put in a column and add up to a neat total. Example: Sportsmen may decide not to use the river for hunting and fishing due to dredge related increases in chlordane contamination in the fish, the absence of fish, unusable or damaged boat access, steep/unstable river banks, mudded over sandbars and impaired wildlife habitat. The losses of the tourism, the community asset and the cost of additional travel to another river by the sportsmen are all somewhat measurable but they are not in your report. Other costs are not so easily measured, but just as important.

Can the Corps put an economic value on the health of children and pregnant women who continue to eat fish that are more highly contaminated with chlordane than they would be if the chlordane was left buried in the riverbed? Can the Corps add the cost to society of those human health related damages? Can the Corps measure the economic loss of tourism or the economic loss to river communities because their fishery is having toxins resuspended and reconcentrated in the water column and sediment, because their river is being industrialized, the banks are caving in and their boat ramps, that were so hard to get to begin with, are being cut off from the river? Can the Corps give us an economic cost that you would assign to a society that turns its back on its responsibility to future generations for the sake of convenience to an industry and a few pennies saved on a ton of sand? If the Corps can measure this and put it in a report I would like to see it.

When the Corps of engineers can figure out the price our communities and people are paying for these things then put them in writing. Until then, at least recognize that these costs exist by including them in your EIS and establish ways prevent and/or mitigate these problems.

A Legacy of Economic Damages

As the dredges are removed from the 15-mile reach that they have already damaged they leave behind a river with a steeper gradient upstream. At the same time the Corps is considering granting permits in these upstream areas where the new steeper gradient makes the river even more prone to damage than it was before. If the segment just below Bowersock starts to degrade during this next 10-year permit cycle Bowersock Dam is in the direct path of the problem. Although I cannot speak for the city of Lawrence, they are unlikely to pay the replacement or repair costs of Bowersock Dam very happily. Even if that structure survives, Bowersock Mill is limping along at an economic loss as it is. As continued riverbed degradation degrades the water stage below the dam the power plant will continue to lose the ability to produce electricity efficiently and eventually the facility will economically and mechanically fail.

Bowersock Mill is not the only entity that relies on Bowersock Dam. Western Resources operates an electric plant upstream that requires water from the pool created by the dam. The city of Lawrence

uses that same pool to draw much of its drinking water from. The infrastructure of the city of Lawrence is built around the river and this pool.

Bowersock Dam acts has served to block riverbed degradation upstream of its structure. Should that dam fail the entire river, from Bonner Springs to Topeka could be destabilized due to the sudden and dramatic gradient change.

The current Plan has failed to protect the river, the associated habitat and the infrastructure. The Corps Plan, which allowed two additional feet of riverbed degradation beyond the 1992 baseline did not protect the least fifteen miles of river that was degraded beyond the Plan's established limits. That degradation and other degradation that did not exceed the "acceptable" limit has caused a higher gradient in the riverbed upstream. This higher gradient will ultimately cause a higher rate of riverbed degradation upstream and will be accompanied by the associated economic losses.

Farm Land

"Headcutting" is the term used to describe what is happening to land upstream of sand dredging operations. As the channel is cut deeper the banks are undercut and fall into the river. It takes about six tons of soil to make one ton of sand in the Kansas River. The sand dredgers are taking valuable farm land. No estimates have ever been done on the economic cost associated with this loss.

Practicable Alternatives

In 1985 the CORPS contracted with Booker Engineers-Architects-Planners to determine what would happen to the sand and gravel market if the dredgers were moved off the river. The Booker report states that a move from the river to the flood plain would increase the average delivered price of a ton of sand and gravel approximately 6 percent in the market area served by the dredgers. The increase being largely transportation costs.

The Corps has the non-discretionary duty to require that practicable alternatives be used when water resources are being impaired. The term "practicable", as defined in 40 CFR 230 and throughout the Clean Water Act and supporting regulations, *"means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes"*.

The components of "practicable" include:

Available - Yes! Sand is available from sandpit mining throughout the Kansas River floodplain (Booker 1985).

Capable of being done - Yes! Although I recognize that there is some political resistance to dredging moving into the flood plain the dredging industry is partly responsible for fueling that problem rather than trying to build local partnerships and gain state and local support for pit mining.

Taking into consideration cost - The Corps estimated 6% increase in the delivered cost of sand equates to a relatively small percentage increase in the overall cost of a finished home or driveway, and that cost is paid by the person who wants the sand, not by his neighbors who want that sand to stay where it belongs, in the river. The dredgers have complained that they have a hard time finding landowners that are willing to sell their land. It is more likely that they are having a hard time finding landowners that are willing to sell their land for the price the dredgers are offering.

Existing technology - Yes! The aggregate industry is more able than any time before to locate suitable deposits of sand.

Logistics in light of overall project purposes - Yes! The dredging industry, the state, the counties the cities and the various components of the construction industry all need sand. It has become clear that the future of the dredging industry on the Kansas River is limited. "In light of the overall purpose" the "logistics" would be to form cooperative and mutually beneficial alliances so that everyone gets what they want. The various levels of state and local government and industry should stop conspiring to throw up roadblocks to movement into the floodplain and begin working on cooperative ways to accomplish the "overall project purposes". The "overall project purpose" is (1) to protect this river as required by law for future generations, (2) to buy or sell sand at a reasonable cost, (3) to have that sand near their market and (4) to make a profit or to be prosperous. None of these are mutually exclusive and they are all possible with the logistics I have suggested.

By any rational analysis moving off the river is a practicable alternative.

We realize it is not the Corps of Engineers job to work out the logistics between the sand industry, its customers and local government agencies. Rather it is the Corps duty to recognize that these aspects of long range planning are the responsibility of the industry to create for itself. Local communities and the state also have a responsibility to seek out for their own benefit for the sake of their own prosperity and quality of life.

What is needed now is a decision based upon federal laws, not local politics. Once that decision is reached the industry and government agencies will find the logistics to provide for their needs.

Availability of high quality sand is important to the state and our communities. These interests face many economic hazards but the least among those risks is from off-river sand mining. The dredging industry has long past its cost of producing sand onto the back of nondredging interests. This must stop.

New Economic Studies Are Called For

When the Corps did its most recent engineering and economic studies the dredging industry was concentrated in Kansas City below Bonner Springs. The Booker (1985) report concluded that, if the industry was forced to move off the river and into the flood plane, most of the increased cost of sand would come from the higher delivery cost to the market, and not from a higher production cost of the sand itself.

We quote at letter from the Corps dated May 24, 1989. The letter was a reply to House Resolution No 6096 and was addressed to Kansas House Representative Eugene P. Amos. I begin with the second paragraph.

"In the seventh "Whereas" of this resolution it states that "According to the environmental impact statement filed by the Corps, the average cost of sand in the state will rise from \$2.40 per ton to \$7.65 per ton should these proposed restrictions be implemented". This statement is incorrect."

"First, the existing average sale price of sand at Kansas River sand plants is 2.75 per ton. With an average haul length of 20 miles, the average delivered price of sand is currently \$5.25 per ton, not \$2.40 as implied in your resolution. In addition, the average delivered price used in the draft environmental impact statement (EIS) is only for the Kansas City metropolitan area, which is the principal market for sand and gravel dredged from the lower

Kansas River. The Corps of Engineers proposed Regulatory Plan should not significantly affect the price of sand in other parts of the state of Kansas.

"Second, the average delivered price of sand obtained from the lower Kansas River will rise with or without any restrictions imposed by the Corps of Engineers. This price increase will be a result of increased hauling distances required as the dredgers are forced to move upstream as the downstream sand deposits are depleted. These moves have been anticipated by the dredging industry for some time. As presented in the draft EIS, the estimated price increase will be \$1.88 from the present average delivered price of 5.25 per ton. This will result in an average delivered price of \$7.13 per ton without any Corps of Engineers restrictions. Please refer to pages 35 - 36 and 39 - 40 of the draft EIS for additional information.

We thank the Corps for clearing that mistake up. Unfortunately, by the time the Corps responded with this letter the dredgers had already misled the House committee, had created a huge political stink over a perceived increase in the statewide price of sand from \$2.40 per ton to \$7.65 per ton. And again unfortunately, those misunderstandings and political prejudice lives on today. Even so, the Corps has no responsibility to make decisions based upon misinformation distributed by the sand dredging industry or the misinformed political interests that they spawn.

Since the implementation of the 1992 Regulatory Plan the dredging industry has spread itself out along the entire length of the river between Kansas City and Lawrence, and in the entire Topeka area. Most of those new locations are now as remotely located from their market as could be any other flood plain based operation that serve those major market areas. In short, the 6% increase in the delivered price of sand has likely been nullified by the dredger's move further from their own markets.

In a letter dated February 7, 1986 the EPA questioned the accuracy of the Burns and McDonnell (1982) report that the Corps has used ever since to characterize the socioeconomic impacts of moving dredging off the river. *"Although I agree that a significant impact may result, I question the magnitude of the impact they describe in the report, and believe a more comprehensive economic impact assessment should be conducted and presented along with supporting data.*

We concur. The public needs to know the cost and the risks to nondredging interests in today's dollars, under the existing and proposed conditions. Those studies were in doubt even in 1986 and today those questionably accurate studies are roughly 20 years old, out of date and inconsistent with the conditions in today's market and today's current dredging locations. By the end of the next permit cycle those studies will be 30 years old. No respectable business in the world would rely on economic data that is 20 years old, nor should the Corps.

These are economic and cultural costs born by all people throughout the river valley because this public treasure is being squandered for 15 cents per ton in state revenues. All of these costs are born by nondredging interests.

Part V – The Authority of the Clean Water Act

I am in receipt of a letter dated May 15, 2003 from Joseph S. Hughes, Chief Regulatory Branch, Commercial sand and gravel dredging that states that the Corps does not have the authority under the Clean Water Act's Section 404 as established by "33 CFR 232" (We think he meant 33 CFR 323 and/or 40 CFR 232). In that letter Mr. Hughes said,

"the Federal Register / Vol. 66, No.11/ Wednesday, January 17, 2001 / Rules and Regulations, page 4554, in the right column, under the Discussion of Comments (a) discusses suction dredging with relation to section 404 of the Clean Water Act. The discussion states "For example, we acknowledge that some suction dredging operations can be conducted in such a manner that if the excavated material is pumped to an upland location or other container outside waters of the U.S. and the mechanized removal activity takes place without re-suspending and relocating sediment downstream, then such operations generally would not be regulated".

Mr. Hughes goes on to argue that,

"dredging operations on the Kansas River are conducted in the manner discussed above. Based upon observations of dredging operations on the Kansas River, we conclude that discharges associated with the dredging, if any are incidental. The dredging activity may suspend solids that escape the tip of the suction pipe or cutter head, however, this is incidental to dredging, and having returned to substantially the same location, is not a discharge of dredged material. Other environmental conditions, such as water current, do not turn incidental fallback into a more than incidental discharge". Mr. Hughes's, in the final paragraph of that letter concludes, *"We determine that material redeposited by the suction dredges in these cases is incidental fallback".*

There are several mistakes in Mr. Hughes' statement and thought processes that conflict with the intent of the document he was quoting. The errors are due to Mr. Hughes' use of only select pieces of information and leaving out or not understanding the other parts of that document that pertain directly to the issues at hand.

Dredging suspends a significant volume of solids that escape the tip of the suction pipe or cutter head. The cutter head's purpose is to dig and grind up the riverbed. It does this in large volumes. This is evident from just common sense, but also from the pictures and discussion in the "Report on the Impacts of Commercial Dredging on the Fishery of the Lower Kansas River", Kansas City District, from the Corps of Engineers DACW 41-79-C-0075 in 1982 by the University of Kansas Division of Biological Sciences, under the direction of Dr. Frank Cross (Cross 1982).

In those pictures there is no conclusive evidence that the downstream deposits of silt and silt-sand deposits caused by dredging were caused, in part, by the in-river activities of dredging. If the deposits had come only from the shore based portions of the operations the study done by Cross would show that the silt and silt-sand deposits that he documented were found ONLY immediately downstream of the land based discharge pipes and ditches. If the deposits had come only from the shore then Dr. Cross would have recommended only the use of settling basins to cure the sedimentation problems that he documented.

If one looks at the data Dr. Cross collected on sedimentation they would discover that if the discharge of dredged materials came from only the pipes and ditches from the land based activities then there

would be only a ribbon of sediment that would hug the bank but that would not be found out in any part of the main channel. But such is not the case. Thus it is clear that the in-river activities were and continue to be a significant cause of discharge from dredging activities on the Kansas River. If that is true (and the Corps has no data to establish that it is not) then the authority of Section 404 of the Clean Water Act must apply to this permit process.

The Corps has no documentation that would prove otherwise and therefore cannot make the claim, as Mr. Hughes did, that only minor incidental fallback occurs. Later in this document I will establish that the Corps is required to provide such proof if they continue to contend that in-stream dredging activities do not cause a discharge of dredged materials.

Mr. Hughes' reasoning is invalid when he states that that a discharge cannot be regulated by the Corps because it is "incidental to dredging". The fact that a discharge is incidental to an activity does not mean that it can be classified under the law as "incidental fallback". My point is established by Federal Register / Vol. 66, No.11/ Wednesday, January 17, 2001 / Rules and Regulations (a) Excavation not covered. The discussion states

"The contention that excavation and other removal activities can never be regulated fails to recognize that "discharges of pollutants" can occur during removal activities even where the ultimate goal is withdrawal of material. That the CWA definition of "pollutant" does not include "incidental fallback from dredging operations" is of no significance, contrary to the suggestion of one commenter, because it does include "dredged spoils". Several commenters referenced dictionary definitions of "excavate" and "discharge" to buttress their view that a removal activity can not involve a discharge. One commenter, in particular, argued that "discharge" denotes an intentional act, and that redeposit from excavation activity may not be regulated because they do not involve an intentional act.... First, as indicated in section III. A.4 of this preamble, there is no support under the CWA for the position that a discharge must be an intentional act."

Thus in-river activities of sand dredging in the Kansas River are not considered "incidental fallback" just because they are not incidental to the activity.

Mr. Hughes also states that "having returned to substantially the same location (the discharge), is not a discharge of dredged material". This is also wrong. The fact that the immediate location of the discharge is occurring in substantially the same location from where it is dredged does not mean that it automatically qualifies as "incidental fallback". This is clearly established in the "Discussion" in Federal Register / Vol. 66, No.11/ Wednesday, January 17, 2001 / Rules and Regulations. Under C. Discussion of final rule.

"Incidental fallback is the redeposit of small volumes of dredged material that is incidental to excavation activity in waters of the United States when such material falls back to substantially the same place as the initial removal. Examples of incidental fallback include soil that is disturbed when dirt is shoveled and the back-spill that comes off a bucket when such small volume of soil or dirt falls into substantially the same place from which it was initially removed". (next paragraph)... "thus the definition in today's rule refers to the redeposit of small volumes of dredged material" ... (three paragraphs later)... "In determining if a regulable discharge of dredged material occurs, we will carefully evaluate whether there has been movement of dredged material away from the place of initial removal. In doing so, we will look to see if earth-moving equipment pushes or relocates dredged material beyond

the place of excavation, as well as whether material is suspended or disturbed such that it is moved by currents and resettles beyond the place of initial removal in such volume as to constitute other than incidental fallback, and thus be a regulable discharge".

I know that the in-river activities of these dredges cause significant discharges. I suppose it leaves one so wonder what the Corps considers "significant. Even so, the regulations seem quite clear that a discharge does not necessarily have to be substantial or significant. My point is made by the "Discussion" in the last paragraph of Federal Register / Vol. 66, No.11/ Wednesday, January 17, 2001 / Rules and Regulations, 4. Proposal as Complying with Applicable Law.

"We agree that section 404(f), and in particular the use of the term "incidental" in section 404(f)(2) provides evidence supporting our rejection of some commenters' assertion that the Act restricts us to only regulating substantial or significant redeposits of dredged material".

More clarification on the matter is found in the "Discussion" in Federal Register / Vol. 66, No.11/ Wednesday, January 17, 2001 / Rules and Regulations.

"The determination of whether an activity results in regulable discharge of dredged material or produces only (emphasis added) incidental fallback involves consideration of the location and the amount of redeposit. Because of the fact-specific nature of the assessment of these factors, and their interrelated nature, we do not believe it to be feasible or appropriate to establish hard and fast cut-off points for each of these factors. Rather, the totality of the factors will be considered in each case."

When the bedload being carried by the current drops into the dredge pit most of the heavier sand and gravel falls into the pit and much or most of the fine continue to move on downstream where they smother the riverbed. Mr. Smith, of your office, has stated that this kind of discharge of turbidity and fine sediment cannot be regulated by the Corps. But his judgement is in error as established by the "Discussion" in Federal Register / Vol. 66, No.11/ Wednesday, January 17, 2001 / Rules and Regulations, under 3. Proposal as misreading applicable case law.

"Several commenters noted distinguishing facts that they believe undermine our reliance on some of the cases we cited. For example, several commenters noted that Avoyelles addresses the issue of what is an "addition," and analysis relevant for both the discharge of fill and the discharge of dredged material. Its conclusion that the redeposit of material constitutes a "discharge" thus is relevant to today's rule."

Thus even though the dredge pit is discharging some of the same materials that just went into it, the fact is that it is a "discharge". I also point out that the fact that the discharge has been physically changed as a result of the dredge pit's effect on the bedload is very significant. The dredge pit is the first tool that the dredgers use to collect sand and gravel and separate those saleable products from the waste products that have a relatively low commercial value.

As the bedload moves into the pit the heavy materials settle out and many of the fine materials move downstream, separated from the heavier components of the natural bedload. The downstream discharge of the finer components of the bedload is a "discharge" and a "pollutant".

Mr. Smith has argued (and I paraphrase) that since the bedload is moving downstream anyway and that since that bedload naturally contains both the fine and the course components the Corps, therefore, cannot regulate what just happens to fall into the dredger's pit and what just happens to

continue downstream as a result of the incidental presence of a depression in the riverbed (the pit) that is made for and by the dredge.

We disagree and establish our point again with the "Discussion" in Federal Register / Vol. 66, No.11/ Wednesday, January 17, 2001 / Rules and Regulations, d. 4. Proposal as Complying with Applicable Law).

"A number of commenters suggested that the agencies should find guidance not only from the AMC and NMA decisions, but also from other court decisions discussing the discharge of dredged material. In particular, the commenters argued that the "net addition" approach in NMA has been explicitly rejected in Deaton and implicitly rejected by many others. Two commenters quoted Deaton to stress that: "...[t]he idea that there could be an addition of a pollutant without an addition of material seems to us entirely unremarkable, at least when an activity transforms some material from a nonpollutant into a pollutant . . ." and that "[i]t is of no consequence that what is now dredged spoil was previously present on the same property in the less threatening form of dirt and vegetation in an undisturbed state." 209 F.3d at 335 – 36. Based on Deaton, several commenters believed there is ample support for a rule considering the redeposit of dredged material outside the place of initial removal as constituting an addition of dredged material. The commenters also noted that such an approach is consistent with the numerous other courts that have concluded that moving around dredged material within the same water body requires a permit."

This clearly establishes that the deposits of fine silt on the riverbed of the Kansas River are not disqualified as section 404 discharges just because they would, if not for the dredge pit, be a natural part of the riverbed.

Dr. Frank Cross demonstrated that sand dredging causes a dramatic increase in the percentage of silt downstream of dredging activities. His data shows that dredging activities can alter the riverbeds normal 85% sand and gravel mix to as much as 100% silt. This is far more than incidental or inconsequential and clearly falls under the authority of Section 404 of the Clean Water Act.

Dr. Cross and other studies (1967 USGS report, 1977 KCD draft report, 1982 Burns and McDonnell report, 1984 Simons, Li, and Associates) conducted by the Corps conclude that the effects of dredging includes is the increase of sedimentation caused by headcutting, the widening of the channel, the deepening of the channel near dredge sites, the slowing of the current in these deeper and wider areas and the resulting settling of more fine sediments on the riverbed. Although all of these things are "incidental" to dredging they are directly related to the dredging activities and thus part of the cumulative total problem and regulable under Section 404 of the CWA.

We support this position by reminding the Corps of definition of "pollution" under the Clean Water Act.

"Pollution - the man-made or man-induced alteration of the physical, biological, chemical, and radiological integrity of an aquatic ecosystem".

Under this definition, by which the Corps is bound, the discharges from dredge pits are clearly caused by man-induced alterations of the physical media (dredge pits dug into the riverbed) which causes the downstream discharge of the physically altered bedload and *"induces the alteration of the physical, biological and chemical integrity of the (Kansas River) ecosystem"*. Thus the discharge from the in-

river dredge pits as well as the suspended solids caused by headcutting, the increased in sedimentation caused by the deepening and widening of the channel are pollutants by definition of the Clean Water Act and these regulations and are therefore regulable by the Corps of Engineers. Further, if any of these sources of sedimentation can be found not to be considered a pollutant under the definition of the CWA that does not negate the fact that the other sources named above are included under the definition as a "pollutant".

For the purpose of establishing a basis of general agreement on these facts and rather than quoting hundreds of pages from the reports cited above I quote the 1990 Final Regulatory Report and Environmental Impact Statement's page 21 and 22.

"Ecological impacts resulting from commercial dredging activities on the Kansas River are essentially a function of changes in channel morphology and are mainly influenced by riverbed degradation, bank erosion and channel widening.... Bank erosion has a high potential to impact the biological community. Bank erosion impacts aquatic organisms by increasing suspended solids concentrations in the river, which reduces light transmission and increases siltation. Erosion adversely impacts wildlife populations by destroying riparian habitat".

We recognize that the Clean Water Act does not regulate ecological impacts, but it does regulate "man-induced alterations of the physical media" which as your report states so clearly states has the direct effect of "increasing suspended solids concentrations in the water". I remind the Corps that the headcutting, the widening, the deepening, the alteration of the bedload and the discharges caused by sidecasting are all part of the "totality of the factors" that must considered.

The riverbed of the lower part of the Kansas River is contaminated with chlordane (KDHE fish consumption advisory, 2002 Kansas 305 (b) report) such that there is a TMDL on chlordane on the lower Kansas River. The chlordane is attached to the smaller silt and clay particles in the riverbed. Any part of the dredging process that either suspends silt and clay in the water column, moves them with the current, or concentrates on the surface of the riverbed are clearly regulable under this ruling.

The last paragraph of Federal Register / Vol. 66, No.11/ Wednesday, January 17, 2001 / Rules and Regulations, 4. D. Regulations on basis of toxics/pollutant releases concludes "Under today's rule, such pollutants (which constitute dredged material by virtue of having been dredged or excavated from waters of the U.S.) would be regulated if resuspended and transported to a location beyond the place of initial removal in such volume as to constitute other than incidental fallback".

The Corps' "Final Regulatory Report and Environmental Impact Statement" issued in 1990 is replete with recognition of the downstream sedimentation and altered composition of the bedload, the reduction of total fish populations numbers and species, deeper channels, lower flow velocities, large silt deposits, and lake-like conditions caused by dredging. See page 3 through 26 of that report for a non-stop description of the pollution and environmental damage caused by dredging on the Kansas River.

The fact that significant and consequential discharges of dredged material occur as a result of the in-stream activities of sand dredging on the Kansas River were documented by Dr. Frank Cross in a Corps study in 1982. In that study there are pictures of this sedimentation and enough numeric documentation to establish beyond any doubt that significant discharges of dredged materials do occur as a result of in-river activities of dredges on the Kansas River.

Quoting Mr. Hughes's letter, "*The dredging activity may suspend solids that escape the tip of the suction pipe or cutter head*". Thus, Mr. Hughes seems to be unwilling to acknowledge that a discharge does, in fact, occur. In light of the 1982 Cross study and other studies mentioned in this document, if the Corps does not have proof positive that a discharge is not occurring then it must proceed with testing or proceed as if a regulable discharge does occur.

Clarification on this point is found in the fourth paragraph in the "Discussion" in Federal Register / Vol. 66, No.11/ Wednesday, January 17, 2001 / Rules and Regulations, 4. F. 3. Implementation.

"As appropriate, the Corps will also be involved in working with the public on a project-specific basis to monitor ongoing or completed projects which proceed without a section 404 permit through site visits, remote sensing, field investigations and so forth to verify that no regulable discharges have occurred".

We know that the Corps has done no such cooperative work with the public. During the years 2002 and 2003 when I called Mr. Bob Smith, of your office about observed Clean Water Act violations perpetrated by dredgers on the Kansas River he has told me that his office does not have the time or resources to follow up on reports from the public. He informed me that his office has received false or misleading reports in the past, so his office is no longer willing to investigate reports from the public. Mr. Smith's only action was to tell the dredgers that I had reported them and to ask them what was going on (per my conversations with Mr. Smith). This kind of industry protection and lack of concern for the public interest are inconsistent with "*public participation, site visits, remote sensing, field investigations and other documentation that could verify that no regulable discharges have occurred.*"

Mr. Smith and Mr. Marx and I visited a dredge cite in the DeSoto area and Mr. Smith told me (at the site) that from his observations dredging was not contributing to any visible downstream alteration of the riverbed. I later found out that this dredge had been inoperative for many months had only just recently been reactivated. Further, the dredge was not operating at the time of our visit. Thus this dredge cite could not be operated long enough to have been an indicator of whether or not long-term changes to the riverbed occur as a result of in-river dredging activities. Even if the dredge had been active, a single observation from shore is not sufficient evidence to establish the effects of downstream sedimentation, yet Mr. Smith seemed to think it was.

Mr. Smith has told me many times that he has spent a lot of time observing dredging activities on the Kansas River, but when I escorted Mr. Smith, Mr. Marx and a group of government agency folks on a tour to hear what the dredgers had to say neither Mr. Smith or Mr. Marx knew where the dredgers were located or how to drive to their locations so I had to lead the convoy to each dredge site. This, despite the fact that these same dredges have been located at these same locations for more than a decade. This is further indication that neither Mr. Hughes, Mr. Marx nor Mr. Smith have sufficient personal knowledge to make the determination that the in-river activities of dredging on the Kansas River do not cause a discharge other than "*incidental fallback*".

My comments about Mr. Hughes, Mr. Smith and Mr. Marx are not intended to challenge their honesty or integrity but rather to establish that they have insufficient information to make the judgements that they have, so far, assumed to make without sufficient documentation.

Mr. Smith has told me that the Corps cannot regulate the effects of dredging, but that they can only regulate the discharges from dredging. I agree, but I believe that I have reasonably established that there are discharges from dredge related in-river activities and that those discharges have more than a "*de menus effect*". Thus the effect of in-river dredge related activities is an important consideration in determining whether discharges are regulable under the Section 404 of the CWA.

Further, 33 CFR 323.2 (d)(4)(i) says that section 404 authorization is not required for certain activities, but that the exemption does not apply

"unless the person demonstrates to the satisfaction of the Corps, or EPA as appropriate, prior to commencing the activity involving the discharge, that the activity would not have the effect of destroying or degrading any area of waters of the United States".

Thus the effects of dredging are directly pertinent to whether Section 404 is applicable.

A reading of Dr. Frank Cross' report or the 1990 Final Regulatory Report and Environmental Impact Statement pages 3 - 26 establishes without doubt that the dredging activities in the Kansas River clearly "*have the effect of destroying or degrading any area of waters of the United States*".

33 CFR 323.2 (d)(6) says

"for purposes of this section, an activity associated with a discharge of dredged material degrades an area of waters of the United States if it has more than a de minimis (i.e., inconsequential) effect on the area by causing an identifiable individual or cumulative adverse effect on any aquatic function".

It cannot be established (because it is not true) that dredging activities in the Kansas River result only in incidental fallback that have only a de minimis (i.e., inconsequential) effect on the area by causing an identifiable individual or cumulative adverse effect on any aquatic function.

The Corps, stated on page 26 of its 1992 EIS the following

VIII. Alternatives

Various alternatives have been examined to resolve the issues relating to commercial dredging activities on the Kansas River. The economic importance of Kansas River sand and gravel and the dependence of various construction industries on the product must be weighed against the morphologic, ecologic, and economic damages that may result from continued sand and gravel dredging activities on the river..."

The Corps argument, as stated above, is that the possible differential cost between dredged sand and pit-mined sand justifies morphologic, ecologic and economic damages that result from dredging. I point out that the Corps ignored recreational, cultural and societal damages. I also point out that the Corps reasoning is contradictory to the CWA and specifically to Section 404 and to 33 CFR Section 323.6 Special policies and procedures.

(a) The Secretary of the Army has delegated to the Chief of Engineers the authority to issue or deny section 404 permits. The district engineer will review applications for permit for the discharge of dredged or fill material into waters of the United States in accordance with guidelines promulgated by the Administrator, EPA, under authority of section 404(b)(1) of the CWA. (see 40 CFR Part 230) Subject to consideration of any economic impact on navigation and anchorage pursuant to section 404(b)(2), a permit will be denied if the discharge that would be authorized by such a permit would not comply with the 404(b)(1) guidelines. If the

district engineer determines that the proposed discharge would comply with the 404(b)(1) guidelines, he will grant the permit unless issuance would be contrary to the public interest. Thus, the only economic consideration allowed under 323.6 is whether dredging would have a negative impact on navigation and anchorage.

The term "practicable", as defined in 40 CFR 230 and throughout the Clean Water Act and supporting regulations, *"means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes"*.

The components of "practicable" include:

"Available" - Yes! Sand is available from sandpit mining throughout the Kansas River floodplain (Booker 1985).

"Capable of being done" - Yes! Although I recognize that there is some political resistance to dredging moving into the flood plain the dredging industry is partly responsible for fueling that problem rather than trying to build local partnerships and gain state and local support for pit mining. Taking into consideration cost - The Corps estimated 6% increase in the delivered cost of sand equates to a relatively small percentage increase in the overall cost of a finished home or driveway, and that cost is paid by the person who wants the sand, not by his neighbors who want that sand to stay where it belongs, in the river. The dredgers have complained that they have a hard time finding landowners that are willing to sell their land. It is more likely that they are having a hard time finding landowners that are willing to sell their land for the price the dredgers are offering.

Existing technology - Yes! The aggregate industry is more able than any time before to locate suitable deposits of sand.

"Logistics in light of overall project purposes" - Yes! The dredging industry, the state, the counties the cities and the various components of the construction industry all need sand. It has become clear that the future of the dredging industry on the Kansas River is limited. "In light of the overall purpose" the "logistics" would be to form cooperative and mutually beneficial alliances so that everyone gets what they want. The various levels of state and local government and industry should stop conspiring to throw up roadblocks to movement into the floodplain and begin working on cooperative ways to accomplish the "overall project purposes". The "overall project purpose" is (1) to protect this river as required by law for future generations, (2) to buy or sell sand at a reasonable cost, (3) to have that sand near their market and (4) to make a profit or to be prosperous. None of these are mutually exclusive and they are all possible with the logistics I have suggested.

Clearly moving off the river for sand is a practicable alternative.

We will now quote 40 CFR 230.10(a)(1) in *italics* and will periodically insert our comments.

"Although all requirements in section 230.1 must be met, the compliance evaluation procedures will vary to reflect the seriousness of the potential for adverse impacts on the aquatic ecosystems posed by specific dredge or fill materials discharge activities.

Thus, as I have argued above and will demonstrate later in this document the Corps must consider both the seriousness of the historic impacts of dredging and the **POTENTIAL** for adverse impacts.

(a) Except as provided under section 404(b)(2), no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the discharge which would have a less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.

- (1) For the purpose of the requirement, practicable alternatives include, but are not limited to:
- (i) Activities which do not involve a discharge of dredged or fill material into the waters of the United States or ocean waters;
 - (ii) Discharge of dredged or fill material at other locations in waters of the United States or ocean waters;
- (2) An alternative is practicable if it is available and capable of being done after taking into consideration costs, existing technology, and logistics in light of overall project purposes. If it is otherwise a practicable alternative, and area met presently owned by the applicant which could reasonably be obtained, utilized, expanded or managed in order to fulfill the basic purpose of the proposed activity may be considered.

We have already established that practicable alternatives exist and meet the definitions of "practicable alternatives" herein described.

(b) No discharge of dredged or fill material shall be permitted if it:

- (1) Causes or contributes, after consideration of disposal site dilution and dispersion, to violations of any applicable State water quality standard;
- (2) Violates any applicable toxic effluent standard or prohibition under section 307 of the Act;

We submit that the discharge of dredged materials causes the following contributions to violations of Kansas Water Quality Standards:

1. The covering of fine sediment that dredging causes to be deposited on the riverbed is, by definitions defined by Kansas administrative regulations as a "pollutant" by K.A.R. section 28-16-28b (ss) and (tt)
 - (ss) "Pollutant means any physical, biological, or chemical conditions, substances, or combination of substances released into surface waters of the state that results in surface water pollution, as defined in K.A.R. 28-16-28 (tt);
 - (tt) "Pollutant" means any of the following:
 - Contamination or other alteration of the physical, chemical, or biological properties of the surface waters of the state, including changes in temperature, taste, odor, turbidity, or color of the water;
 - Discharges of gaseous, liquid, solid, radioactive, microbiological, or other substances into surface waters in a manner that may create a nuisance or render these waters harmful, detrimental or injurious to any of the following:
 - Public health, safety, or welfare;
 - Domestic, industrial, agricultural, recreational or other designated uses."

Domestic, industrial and agricultural = water intakes and wells that are being damaged
 Recreation = degradation of aquatic and riparian habitat, riverbed degradation and loss of fishery
 Other designated uses = aquatic life support that is being impaired
2. The dredging process, as practiced on the Kansas River by the commercial sand and gravel companies, discharge pollutants from an "artificial source". This artificial source of pollution can only be abated by "complete restraint", as cited in K.A.R. section 28-16-28b (d).
 - "artificial sources" means sources of pollution that result from human activities and that can be abated by construction of control structures, modification of operating practices, complete restraint of activities, or any combination of these methods."
3. The dredging has already destroyed and continues to destroy the ecological integrity of the Kansas River's aquatic and terrestrial ecosystem through the impairment of the structure and function of the aquatic ecosystem, as defined by K.A.R. section 28-16-28b (v);
 - "Ecological integrity means the natural or unimpaired structure and functioning of an aquatic or terrestrial ecosystem".
4. The "highest regulatory requirements" and "all cost-effective and reasonable best management practices" have not been achieved on this river. Further, the "existing use" of aquatic life support cannot be protected concurrently with dredging activities due to the nature of the dredging process. Therefore, regardless of

whether there is a specific violation of the state's numeric criteria for turbidity, sedimentation and chlordane the designated uses of food procurement and aquatic life must be protected under the state's antidegradation policy as cited by the Kansas antidegradation policy (K.A.R. section 28-16-28(c) (a) (2):

"If existing surface water quality is better than applicable water quality criteria established in these regulations, water quality shall not be lowered unless, after full satisfaction of the inter-governmental coordination and public participation requirements of the Kansas implementation policies on antidegradation, the department has determined that a lowering of water quality is needed to provide for important social and economic development in the geographical area in which the waters are located. In those instances where the department permits the lowering of surface water quality, the existing and designated uses shall be fully protected and the highest statutory and regulatory requirements for all point sources of pollution and all cost effective and reasonable best management practices for nonpoint sources of pollution shall be achieved."

5. The suspended solids criteria in Kansas regulations does not allow the kind of damage being done to the Kansas River. I cite K.A.R 28-16-28e(c)(2)(D)
"Suspended solids. Suspended solids added to surface waters by artificial sources shall not interfere with the behavior, reproduction, physical habitat, or other factors related to the survival and propagation of aquatic or semi-aquatic life or terrestrial wildlife...."
6. We are aware of the socioeconomic and political concerns raised by the process of moving the sand dredging industry off of the river. I am also aware that the state may consider a variance for the whole industry or for specific sites. However, under the circumstances, this cannot be allowed under Kansas regulations because the sand dredging process creates "harmful effects of substances that originate from artificial sources of pollution and produce public health hazards, nuisance conditions, and impairment of designated uses". Because of these hazards, nuisance conditions and impairments the state cannot allow a variance. Therefore, regardless of whether the state is willing to take any action or voice an opinion the Corps cannot allow dredging on the Kansas River. I cite K.A.R. 28-16-28f (e) to quote the state's regulations on such variances:

"Variances. If, upon written application by any person, the department finds that by reason of substantial and widespread socioeconomic impact the strict enforcement of the water quality criteria of K.A.R. 28-16-28e(c) is not feasible, a variance may be permitted by the department."

However, the variance regulations also dictate that

"(4) No action that impacts upon water quality shall be granted a variance from the terms and conditions of K.A.R. 28-16-28e(b)."

K.A.R. 28-16-28e(b) "Surface waters shall be free, at all times, from the harmful effects of substances that originate from artificial sources of pollution and produce any public health hazard, nuisance condition, or impairment of designated use."

Two examples of potential variances that could not be allowed would include:

- The Kansas fish consumption advisory on the Kansas River. Due to chlordane contamination food procurement is impaired on the Kansas River and the state has a TMDL on chlordane. Since dredging can contribute to the relocation of chlordane in the river then dredging would also contribute to a violation of state water quality standards and under K.A.R. 28-16-28f (e) the state cannot grant a variance.
- The turbidity and suspended solids discharged from dredge related activities are substances that originate from artificial sources of pollution and produce nuisance conditions to recreation, and manmade structures.

Thus dredging cannot be permitted, regardless of other federal considerations because it would contribute to multiple violations of state water quality standards. I would add here that there is nothing in federal law that says that the state must cite any of these problems as a violation, only that the activities in question "contribute to a violation of state water quality standards" and I have proven that such is the case.

40 CFR 230.10 (c) says:

(c) Except as provided under section 404(b)(2), no discharge of dredged or fill material shall be permitted which will cause or contribute to significant degradation of the waters of the

United States. Findings of significant degradation related to the proposed discharge shall be based upon appropriate factual determinations, evaluations, and tests required by subparts B and G, after consideration of subparts C through F, with special emphasis on the persistence and permanence of the effects outlined in those subparts. Under these Guidelines, effects contributing to significant degradation considered individually or collectively, include:

- (1) Significant adverse effects of the discharge of pollutants on human health or welfare including but not limited to effects on municipal water supplies, plankton, fish shellfish, wildlife, and special aquatic sites.*
- (2) Significant adverse effects of the discharge of pollutants on life stages of aquatic life and other wildlife dependent on aquatic ecosystems, including the transfer, concentration, and spread of pollutants or their by-products outside the disposal site through biological, physical, and chemical process;*
- (3) Significant adverse effects of the discharge of pollutants on aquatic ecosystem diversity, productivity, and stability. Such effects may include, but are not limited to, loss of fish and wildlife habitat or loss of the capacity of a wetland to assimilate nutrients, purify water or reduce wave energy; or*
- (4) Significantly adverse effects of discharge of pollutants on recreational, aesthetic, and economic values.*

According to the first paragraph of this subsection the Corps is required to have sufficient data and documents to make a "factual determination". But there have been no "factual determinations, evaluations and tests as required by subparts B and G as of this time.

Further, I have established and will continue to establish in this document that the Corps cannot provide sufficient data to allow dredging to continue because the dredge related activities cause violations of this subsection. Specifically I will establish that dredge related activities have adverse effects caused by:

- ❑ The discharge of pollutants on life stages of aquatic life and other wildlife including the transfer, concentration, and spread of chlordanes or their by-products outside the disposal site through biological, physical, and chemical process.
- ❑ The effects of discharges of pollutants on aquatic ecosystem diversity, productivity, and stability. These include but are not limited to, loss of fish and wildlife habitat and the loss of the capacity of wetlands to assimilate nutrients, purify water and reduce wave energy.
- ❑ Turbidity, sedimentation, fishery degradation, habitat degradation, side streams degradation, damage to public access structures, and degradation of aesthetic values that negatively impact recreation and related economic and social values.

40 CFR 230.10 (d) says:

- (d) Except as provided under section 404(b)(2), no discharge of fill materials shall be permitted unless appropriate and practicable steps have been taken which will minimize potential adverse impacts of the discharge on the aquatic ecosystem. Subpart H identifies such possible steps.*

We have checked subpart H and have found that the Corps has taken no such steps. The Corps might suggest that it could fulfill one of the suggested steps by limiting the discharges to areas where the ecosystem has already been so badly damaged by dredging that further dredging would have no further negative impact. Yet I point out that even the worst areas damaged by dredging, such as the

Kansas City area below river mile 15, would sustain further damage and would prevent the restoration of more natural conditions and river structures would continue to be at risk if dredging were allowed to continue.

Under this section, the Corps clearly has the non-discretionary duty to require that practicable alternatives be used when water resources are being impaired. I contend and will further establish in this document that moving sand production off of the river meets all of the requirements of a "*practicable alternative*" under the law.

Therefore, and for all of the documented reasons stated above, the Corps has no basis for making the claim, as did Mr. Hughes in his letter of May 15, 2003, that the Corps "*do(es) not have the authority under section 404 of the Clean Water Act to regulate any aspect of the dredging activity that takes place on the Kansas River.*" Nor is the Corps justified in limiting its authority to section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) as stated in the Corps Public Notice dated August 8, 2003.

Part VI. Section 10 of the Rivers and Harbors Act

The requirements of the Rivers and Harbors Act is very familiar to the Corps so I will skip the introductions.

The "Public Notice states:

"Due to unacceptable degradation (average of greater than 2 feet degradation in a 5-mile long reach of river) Kansas River miles 26.95 - 40.5 are no longer open to commercial dredging. No permit applications will be accepted in this reach of river at this time."

First, I challenge the accuracy of the Corps' chart titled "Regulatory Monitoring Program Mean Bed Profile" dated April 2002. When comparing that chart to the Corps' chart that it titled "Regulatory Monitoring Program High and Low Profiles" also dated April 2002 I find that the low profiles are well below the 1992 mean profile from rivermile 22 to 44.6 and that the high profiles are only marginally above the 1992 mean. Although it is very possible that the corps numeric calculation of the 2002 mean profile is accurate it is critical that these numbers and calculations are reviewed to make sure that they are accurate.

It is also important to review the trend that is established by these two charts. Both of these charts, especially the "Regulatory Monitoring Program High and Low Profiles" demonstrate that the riverbed elevations are rapidly degrading in all reaches of the river where dredging has occurred, except a few small reaches

The Corps has more responsibility under Section 10 of the RHA than to ignore the trend established by their own data. This trend, as established by the monitoring data, shows that the riverbed will continue to degrade at a rate that the Corps cannot allow to be sustained.

The "hope" of the current Regulatory Plan was that by removing smaller quantities of sand from the river the dredges would only remove the same amount of sand that the river would transport into each reach naturally. Thus hoping that the dredging industry could operate with minimal, if any, effect on the river's profile and thus minimize the negative impacts on the river and non-dredging interests. But that is not what has happened. The riverbed elevations have changed dramatically and all reaches of the river that have been dredged (for great distances upstream and down) are showing all of the signs and symptoms of massive impacts that cannot be sustained without dire consequences.

The Corps already knows that once a riverbed is destabilized by increases in gradient, changes in riverbed profiles and deterioration of riparian vegetation a river (any river) will remain unstable for many years until equilibrium is reestablished. The monitoring data shows that this is happening. The Corps has the responsibility to recognize this and to modify its Regulatory Plan now that it has this new information.

The Corps has the responsibility to look beyond the old data and mindset of 12 years ago and to use its considerable knowledge of river morphology to recognize that dredging can no longer be allowed to continue on the Kansas River.

Part VII Conclusion

The ecological systems, our economy, our quality of life and our culture needs must be viewed as a whole to understand the total cumulative costs of dredging to our society.

The Kansas River is not one river among many where Kansans can go to recreate. It is not one among many potential sources of water for our communities. It is certainly not a place where the Corps of Engineers should be measuring the economic advantage to an industry against the river's long-term benefit to our future or making odds on whether closing a small segment of the river will be enough to end the long history of damage the dredging industry has done to the river.

Both now and in the future, the Kansas River itself is a singularly unique eco-system upon which the futures of wildlife and many tens of millions of people will rely.

By the information presented in this document I have established that the U.S. Army Corps of Engineers has the authority and the responsibility to end commercial sand and gravel dredging on the Kansas River.

Cc:

- Governor Kathleen Sebelius, Office of the Governor, Capitol, 300 SW 10th Ave., Suite. 212S, Topeka, KS 66612-1590
- Colonel Curtis, U.S. Army Corps of Engineers, 601 E 12th Street, Kansas City, MO 64101
- Secretary Roderick Bremby, Kansas Department of Health and Environment, 1000 SW Jackson, Topeka, KS 66612
- Secretary Adrian J. Polansky, Kansas Department of Agriculture 109 SW 9th · Topeka, KS 66612
- David Pope, Division of Water Resources, Kansas Department of Agriculture, 109 SW 9th · Topeka, KS 66612
- Secretary Mike Hayden, Kansas Department of Wildlife and Parks, 1020 S. Kansas, Topeka, KS 66612-1327
- Clark Duffy, Kansas Water Office, 901 S Kansas Ave, Topeka, KS 66612

January 12, 2004

Joe Hughs
601 E 12th Street
Kansas City, MO 64106

Subject: The position of the Corps of Engineers, Kansas City District on Section 404 authority over sand dredging on the Kansas River.

On January 6, 2004 you and I met with Josh Marx in your office to discuss Section 404 authority on Kansas River Sand Dredging. During the discussion we examined the various factors that would either require 404 authority to be applied or not allow 404 authority.

We agreed on most of the peripheral factors, but could not find agreement on several fundamental issues.

We agreed that if the discharge from a single dredge, or the cumulative effect of multiple dredges cause more than "incidental fallback" then section 404 of the Clean Water Act would apply.

Our points of disagreement are (1) you said that Kansas River dredgers never discharge more than incidental fallback, (2) that the Corps has wide latitude in determining what is, and what is not a regulable discharge (i.e., "incidental fallback) and (3) that the Corps is not required to have any evidence to establish that only incidental fallback results from Kansas River dredging and (4) that the Corps is not required to work with the public to monitor and collect evidence on ongoing projects that proceed without 404 authority as dredging has.

I asked you and Mr. Marx specifically if the Corps had any evidence that only incidental fallback has resulted from Kansas River dredging. Your reply was that you have no evidence and that you have no intent of producing any evidence of that nature. You said that, "the Corps has come to the general opinion that this type of dredging never causes a regulable discharge." You also said, "the Corps is allowed to use its best professional judgement to make these kinds of determinations without specific evidence".

I stated my disagreement with these points, citing the federal register and 33 CFR 323 (found at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/dredged2001.pdf>). I presented the following arguments that I would appreciate you reviewing now.

1. The Corps must produce evidence that only incidental fallback results from dredging otherwise section 404 authority is required.

The summary in the federal register, dated January 17, 2001, on page 4550 states that the Corps reaffirms the reputable presumption (which it had earlier

established) that in-stream mining results in more than incidental fallback unless the Corps, on a case-by-case evaluation, establishes that a particular activity results in ONLY incidental fallback.

Page 4558 of the Federal Register states *"Today's rule sets forth the agencies' view that the use of mechanized earth moving equipment in water of the U.S. results in a discharge of dredged material unless there is evidence that only incidental fallback results...."* 33 CFR 323.2(c)(2)(i) makes it clear that suction dredging is considered one of the many types of "mechanized earth moving equipment" included in that statement.

40 CFR 232.2 (2)(i) and (c) 33 CFR 323.2 (2)(i) state that *"The Corps and EPA regards ...in-stream mining...as resulting in a discharge of dredged material unless project specific EVIDENCE shows that activity results in ONLY incidental fallback."*;

2. The Corps is required to work with the public to monitor ongoing projects.

Page 4568 of the Federal Register states, *"As appropriate, the Corps will also be involved in working with the public on a project by project specific basis to monitor ongoing or completed projects which proceed without a section 404 permit through site visits, remote sensing, field investigations and so forth to verify that no regulable discharges have occurred."*

As I presented this information you indicated that these regulations do not apply to Kansas River dredging, though you would never say why.

3. The Corps cannot, and has not made a determination that hydraulic dredging such as is done on the Kansas River, or elsewhere, is not a regulable activity under section 404.

Page 4554 of the Federal Register makes it clear that hydraulic dredging, as done on the Kansas River, is considered a regulable activity unless project-specific evidence establishes otherwise. *"For example, we acknowledge that some suction dredging operations can be conducted in such a manner that if the excavated material is pumped to an upland location or other container outside waters of the U.S. and the mechanized removal activity takes place without re-suspending and relocating sediment downstream, then such operations generally would not be regulated."*

I reminded you that all evidence available on the Kansas River shows that dredging does resuspend and does relocate sediment downstream, but you said that the corps, never the less, does not require you to produce any project-specific evidence to prove otherwise.

4. The Corps cannot assume a broad definition of "incidental fallback".

Page 4559 of the Federal Register says, *"In our view, to constitute "incidental fallback", a redeposit logically must be BOTH "incidental" (i.e., a minor, subordinate consequence of an activity) AND "fallback" (i.e., in substantially the same place as the initial removal)."*

I reminded you that the increase in sedimentation downstream from dredges was well documented by Cross, and that the sedimentation was very substantially and it was redeposited great distances downstream. You indicated, though not stated specifically, that you could ignore that data.

With each of my points you said that I was taking only the parts of the law that supported my opinion and ignoring the rest. Just the opposite, I believe that is exactly what you are doing.

You stated that you intend to instruct the Kansas City office to proceed with dredge permit renewals without 404 authority. Since the regulations do not allow that latitude, you have decided to act in direct conflict with the law. Although you disagree with that statement you have been unable to provide a basis in law, a written directive from the Corps, or any other logical support that would refute the laws and the Federal Register as we had discussed. In that, we finally agreed to disagree.

If I have misinterpreted any of your opinions I apologize and ask that you redirect me without delay.

Even if 404 authority is not used and is not required (for some technicality of which I am not yet aware) I will appreciate anything you can do to protect the Kansas River under Section 10 of the River and Harbors Act. So with that thought, I thank you for all you can do to help our communities protect this wonderful river.

Cordially,

Dave Murphy

Cc:

Joshua Marx, 601 E 12th Street, Kansas City, MO

Colonel Curtis, 601 E 12th Street, Kansas City, MO

William H. Gill, EPA, Region VIII, 901 North 5th Street, Kansas City, KS 66101

Dave Murphy, 3978 Iowa Lane, Ottawa, KS 66067, 785-242-8343

OMAHA TRIBE OF NEBRASKA

P. O. Box 368
Macy, Nebraska 68039

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TRIBAL ADMINISTRATION

(402) 837-5391
FAX (402) 837-5308

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RECEIVED
REGULATORY BRANCH
06 FEB - 7 AM 8:16

February 2, 2006

Mr. Joshua Marx
US Army Corps of Engineers
Kansas City Regulatory Office
601 East 12th Street
Kansas City, MO 64106

RE: Permit #200600407

Dear Mr. Marx;

I am writing this letter in regards to the comment letter received by the Omaha Tribe in regards to a response for comment according to the National Historic Preservation Act.

It is our intention to state yes, it is our historical lands. However, if there has been previous disturbance of soil then no response should be required. Also, that if there should or happen to be an inadvertent discovery, your process should immediately be to contact me at the address of this letter.

The contact person will be myself and if you have any other questions, please do not hesitate to contact us at your convenience. I can be reached at (402) 846-5166.

Thank you for your time and attention.



Tony Provost - Historical Preservation Officer

End 10.9

WINNEBAGO TRIBE OF NEBRASKA

P.O. Box 687 • Winnebago, Nebraska 68071 • PH: 402-878-2272 • Fax: 402-878-2963

Web: info@winnebagoTribe.com

February 13, 2006

Joshua Marx, US Army Corps of Engineers
Kansas City Regulatory Office
601 E. 12th Street
Kansas City, Missouri 64106

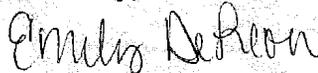
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06 FEB 17 PM 2:19

Re: Permit No. 200600407

Dear Mr. Joshua Marx,

Thank you for your letter. The Cultural Preservation Office would like to inform you that the Winnebago Tribe of Nebraska had no village sites, grave sites, or sacred sites in the area of the proposed construction. If there are cultural properties or human remains discovered in the proposed construction area, can you please notify my office at 402-878-3313. Thank you.

Sincerely,



Emily Lucy De Leon
Temporary Director,
Repatriation and Cultural Preservation Office
(402) 878-3313

TRIBAL COUNCIL

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Prairie Band Potawatomi Nation
Government Center

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REGULATORY BRANCH

06 FEB 10 AM 8:37

February 6, 2006

Joshua A. Marx
US Army Corps of Engineers, Kansas City Regulatory Office
601 East 12th Street
Kansas City, Missouri 64106

Dear **Mr. Marx:**

I am writing to inform you that I am in receipt of your recent National Historic Preservation Act (NHPA), Section 106 and Section 110 correspondence.

After reviewing the contents of your recent mailing we would like to inform that we have no objections to the following project(s):

Project(s): Permit No. 200600407

At this time we are unaware of any historical cultural resources in the proposed development area. However, we do request to be immediately contacted if any inadvertent discoveries are uncovered at anytime throughout the various phases of the project.

Please feel free to call me at (785) 966-4007 or additional information can be faxed to (785) 966-4009. We look forward to working with you.

Respectfully,

Tracy Stanhoff
Tribal Chair
NAGPRA Representative
Prairie Band Potawatomi Nation

TS/mls

Marx, Joshua A NWK

From: Dorothy McCormick [dmccormick_esto@yahoo.com]
Sent: Friday, February 03, 2006 8:44 AM
To: Marx, Joshua A NWK
Subject: Permit No. 200600407

January 23, 2006

To Whom It May Concern:

Thank you for notice of the referenced project(s). The Eastern Shawnee Tribe of Oklahoma is currently unaware of any documentation directly linking Indian Religious Sites to the proposed construction. In the event any items falling under the Native American Graves Protection and Repatriation Act (NAGPRA) are discovered during construction, the Eastern Shawnee Tribe request notification and further consultation.

The Eastern Shawnee Tribe has no objection to the proposed construction. At present, the Eastern Shawnee Tribe does not wish to participate as a consulting party on the above referenced project(s). However, if any human skeletal remains and/or any objects falling under NAGPRA are uncovered during construction, the construction should stop immediately, and the appropriate persons, including state and tribal NAGPRA representatives contacted.

Sincerely,

*Dorothy W. McCormick for Jo Ann Beckham, Administrative Assistant
Eastern Shawnee Tribe of Oklahoma*

Brings words and photos together (easily) with
[PhotoMail](#) - it's free and works with Yahoo! Mail.

Marx, Joshua A NWK

From: Repatriation Tribal Historic Preservation Office [pawneeodyssey@yahoo.com]
Sent: Thursday, February 02, 2006 9:43 AM
To: Marx, Joshua A NWK
Subject: Permit # 200600407

Dear Sir; The Pawnee Nation has no interests in Shawnee County Kansas. Thank you.
Francis Morris
Repatriation Coordinator and THPO
Pawnee Nation of Oklahoma

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TRIBAL HISTORIC PRESERVATION OFFICE

February 21, 2006

US Army Corps of Engineers
Joshua Marx
601 E. 12th St.
Kansas City, MS 64106-2896

RE: Permit No. 200600407

To Whom It May Concern:

The Osage Tribe of Oklahoma has evaluated the above reference sites, and we have determined that the sites could have religious or cultural significance to the Osage Tribe being our former reservation & homeland. However, if construction activities should expose Osage archeological materials, such as bone, pottery, chipped stone, etc., we ask that construction activities cease, and this office be contacted so that an evaluation can be made.

Should you have any questions, you can reach me at (918) 287-5332.

Thank you.

Sincerely,


John C. Shaw
Project Specialist

RECEIVED
REGULATORY BRANCH
06 MAR - 1 PM 12:13

PUBLIC NOTICE



US Army Corps
of Engineers
Kansas City District

Permit No. 200600407
Issue Date: January 30, 2006
Expiration Date: February 20, 2006

21-Day Notice

APPLICANT: Mr. Vincent Meier
Victory Sand and Gravel
2400 NW Water Works Drive
Topeka, KS 66606

PROJECT LOCATION (As shown on the attached drawings): The project is located in Section 23, Township 11 south, Range 16 east, in Shawnee County, KS. (GRANTVILLE QUAD MAP)

AUTHORITY: Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403).

ACTIVITY (As shown on the attached drawings): The applicant is proposing to dredge Kansas River aggregate for commercial purposes from the Kansas River at river miles 77.1 to 78.6. This proposal is a relocation of existing permit 199700116. Permit 199700116 is currently located at river miles 86.3 to 86.5 and will be closed to dredging on August 1, 2006, due to average riverbed degradation exceeding two feet in this reach of the Kansas River.

In January 1990, the Kansas City District completed preparation of a document entitled "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 land. 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 Regulatory Plan can be downloaded at:

http://www.nwk.usace.army.mil/regulatory/public_notices/ks-river-regulatory-plan.pdf

Commercial sand and gravel dredging operations on the Kansas River utilize hydraulic pumps 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 and returned to the river. The requested permit, if issued, would be subject to the restrictions and monitoring requirements stipulated in the District's Regulatory Plan. This permit would be valid for 5 years.

Note: The proposed dredge return water outfall structure is eligible for Nationwide Permit 7 (Outfall Structures and Maintenance) under the authority of Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) and Section 404 of the Clean Water Act (33 USC 1344).



DEPARTMENT OF THE ARMY
KANSAS CITY DISTRICT, CORPS OF ENGINEERS
700 FEDERAL BUILDING
KANSAS CITY, MISSOURI 64106-2896

March 20, 2006

REPLY TO
ATTENTION OF:

Regulatory Branch

Mr. Michael J. LeValley
U.S. Fish and Wildlife Service
315 Houston Street, Suite E
Manhattan, Kansas 66502

Dear Mr. LeValley:

I am writing to initiate informal consultation under Section 7 of the Endangered Species Act for Department of the Army Permit application numbers 200600407, 200200319, 200200328, 200200322, 200200317, 200301862, 200301861, 200301860, 200301770, 200301771, 200301759, 200301863, and 200301771 for commercial dredging on the Kansas River. Based on available information, we have determined that the action is not likely to adversely affect the Federally-listed bald eagle (*Haliaeetus leucocephalus*), piping plover (*Charadrius melodus*), least tern (*Sterna antillarum*), and pallid sturgeon (*Scaphirhynchus albus*). With this letter we are asking your concurrence with our determination.

Your September 16, 2003, letter and March 1, 2006, letter requested an analysis to determine the effects, if any, dredging on the Kansas River has on the pallid sturgeon, least tern, piping plover, and bald eagle. As you know, an Environmental Impact Statement (EIS) was completed in January 1990 for Commercial Dredging Activities on the Kansas River. At that time a Biological Assessment (BA) was completed and our determination was that dredging for commercial purposes would not likely adversely affect species of concern on the Kansas River. Dredging related impacts to species of concern remain relatively similar today, with the exception of a population increase on the river of least terns and piping plovers.

Effects on the pallid sturgeon:

No new information exists for the pallid sturgeon in the Kansas River and our conclusion remains that dredging on the Kansas River for commercial purposes is not likely to adversely affect the pallid sturgeon. Pallid sturgeon mainly inhabit the Missouri River, and are known to have entered the lower

Encl 10.10

Kansas River during floods. The last documented observation of the fish in the Kansas River was in 1952. Fish barriers consisting of weirs and a hydroelectric dam currently exist on the Kansas River at river mile 15 (barrier at low river levels), 51.8, and 86.9 making it unlikely the fish exists where the majority of the dredge sites are located.

If the pallid sturgeon is present in the Kansas River, it is likely to be located below the Bowersock Dam (river mile 51.8) during flood events. The regulatory plan minimizes habitat impacts to the species by limiting the number and location of dredge sites on the river. There are nine permitted dredge sites below Bowersock Dam and no dredge operations exist from river miles 21.15 - 42.6. Of the 51.8 river miles below the Bowersock Dam, only 9.65 river miles are permitted for dredging operations. The limited dredge sites and undredged river miles ensure that, if the fish is present, dredging related habitat impacts are minimized. In addition, dredging operations typically cease during flood events on the Kansas River.

Effects on the bald eagle:

Our conclusion remains that dredging on the Kansas River for commercial purposes is not likely to adversely affect the bald eagle. None of the existing permitted activities involve the removal of large perch trees within 100 feet of the Kansas River. In addition, the regulatory plan minimizes dredging induced bank erosion and channel widening by setting extraction limits, not allowing dredging within 100 to 300 feet of the riverbank depending on the sensitivity of the riverbend, and not allowing dredging within 100 feet of islands within the river. These restrictions ensure dredging related impacts are not likely to adversely affect the bald eagle.

The proposed Victory Sand and Mining project will not impact bald eagle perch trees within 100 feet of the river's edge. If the project is modified and any trees at least 50 feet tall and/or 24 inches dbh within 100 feet of the water's edge are to be removed, or if 10 or more trees greater than 12 inches dbh within 100 feet of the water's edge are to be removed, we will contact the service to reinitiate consultation for the project.

Effects on the least tern and piping plover:

Our conclusion is that dredging on the Kansas River for commercial purposes is not likely to adversely affect the least tern and piping plover. Extensive surveys are undertaken annually by the Kansas City District Corps of Engineers to determine the success of the birds on the Kansas River. These surveys have shown that success of the birds is predicated on

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successful reproduction and that they prefer nesting on unvegetated sand bars mainly west of Topeka. The birds appear to show an affinity towards certain nesting locations, which are not located near permitted dredge sites. Least terns were not known to historically nest on the Kansas River prior to 1996 and the surveys show that their limited fledging success is primarily attributed to flooding and/or predation. Sand dredging on the Kansas River has no impact on either of the limiting factors. No current or historical nesting sites have been within nine river miles of a dredge site. We acknowledge that dredging may have an impact on the species if they were to nest at a location in closer proximity to the dredge sites. For this reason, 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.

Based on the information above we have determined that commercial dredging on the Kansas River would not likely adversely affect species of concern on the Kansas River and we are asking for your concurrence. If you have any questions concerning this matter, please feel free to write me or call Mr. Joshua A. Marx at 816-389-3658 (FAX 816-426-2321).

Sincerely,

SIGNED

Joseph S. Hughes
Chief, Regulatory Branch
Operations Division



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Kansas Field Office
2609 Anderson Avenue
Manhattan, Kansas 66502

April 13, 2006

Joseph S. Hughes
Chief, Regulatory Branch
U.S. Army Corps of Engineers
Kansas City District
700 Federal Building
Kansas City, MO 64106-2896

RECEIVED
REGULATORY BRANCH
06 APR 14 PM 2:02

RE: Commercial dredging permits on the Kansas River

64411-2006-P-0225

Dear Mr. Hughes:

This is in response to your March 20, 2006 letter requesting Fish and Wildlife Service review and concurrence with your determination that commercial sand dredging on the Kansas River by 13 permittees is not likely to adversely affect the federally listed pallid sturgeon, bald eagle, least tern and piping plover. This determination is based on information that none of the dredge locations is near a current known location for any of these species on the river. You also indicated consultation will be reinitiated if large tree habitat utilized by wintering bald eagles will be removed at any location or if any least tern or piping plover nests are initiated within three miles of a permitted dredge operation. I recommend you also reinitiate consultation if any bald eagle pairs nest within one mile of a dredge operation.

Based on our review of your assessment of the proposed actions, I concur with the determination that the project is not likely to adversely affect federally listed threatened or endangered species. No further consultation pursuant to section 7 of the Endangered Species Act will be necessary except for the conditions described in the preceding paragraph.

Please continue to refer to our September 16, 2003 and March 1, 2006 letters for other fish and wildlife resource concerns. If you have additional questions, please contact this office again.

Sincerely,


Michael J. LeValley
Field Supervisor

cc: KDWP, Pratt, KS (Environmental Services)

Encl 10.11

KANSAS

KSR&C No. 06-01-211

Kansas State Historical Society
Cultural Resources Division

KATHLEEN SEBELIUS, GOVERNOR

February 7, 2006

Joshua A Marx
US Army Corps of Engineers
Kansas City Regulatory Office
601 E 12th St
Kansas City MO 64106

RE: Kansas River Dredging, River Miles 77.1 – 78.6 – Permit No. 200600407
Shawnee County

RECEIVED
REGULATORY BRANCH
06 FEB -8 PM 3:45

Dear Mr. Marx:

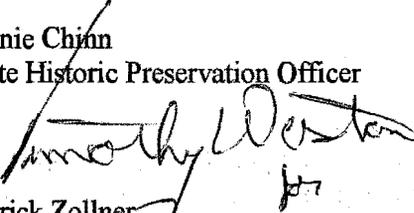
The Kansas State Historic Preservation Office has reviewed its cultural resources files for the area of the above referenced project in accordance with 36 CFR 800. The project as proposed should have no effect on properties listed on the National Register of Historic Places or otherwise identified in our files. This office has no objection to implementation of the project.

Any changes to the project area that include additional ground disturbing activities will need to be reviewed by this office prior to beginning construction. If construction work uncovers buried archeological materials, work should cease in the area of the discovery and this office should be notified immediately.

This information is provided at your request to assist you in identifying historic properties, as specified in 36 CFR 800 for Section 106 consultation procedures. If you have questions or need additional information regarding these comments, please contact Tim Weston 785-272-8681 (ex. 214). Please refer to the Kansas Review & Compliance number (KSR&C#) above on all future correspondence relating to this project.

Sincerely,

Jennie Chinn
State Historic Preservation Officer


Patrick Zollner
Deputy State Historic Preservation Officer

KANSAS

Kansas State Historical Society
Dick Pankratz, *Director, Cultural Resources Division*

KATHLEEN SEBELIUS, GOVERNOR

August 18, 2003

Joshua A Marx
US Army Corps of Engineers
Kansas City Regulatory Office
700 Federal Building
601 E 12th St
Kansas City MO 64106-2896

Re: Permit Renewal for Six Companies Dredging Sand and Gravel on the Kansas River, Topeka and Kansas City
Shawnee, Douglas and Johnson Counties

Dear Mr. Marx:

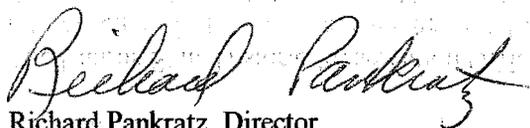
The Kansas State Historic Preservation Office has reviewed its cultural resources files for the area of the above referenced project in accordance with 36 CFR 800. The project as proposed should have no effect on properties listed on the National Register of Historic Places or otherwise identified in our files. This office has no objection to implementation of the project.

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This information is provided at your request to assist you in identifying historic properties, as specified in 36 CFR 800 for Section 106 consultation procedures. If you have questions or need additional information regarding these comments, please contact Will Banks 785-272-8681 (ex. 214) or Jennifer Epperson (ex. 225). Please refer to the Kansas Review & Compliance number (KSR&C#) above on all future correspondence relating to this project.

Sincerely,

Mary R. Allman
State Historic Preservation Officer



Richard Pankratz, Director
Cultural Resources Division