



DEPARTMENT OF THE ARMY

KANSAS CITY DISTRICT, CORPS OF ENGINEERS

700 FEDERAL BUILDING

KANSAS CITY, MISSOURI 64106-2896

REPLY TO
ATTENTION OF:

CEMRK-CO-RW

STATEMENT OF FINDINGS
COMMERCIAL SAND AND GRAVEL DREDGING
SEVENTEEN APPLICATIONS FOR RENEWAL OF EXPIRING PERMITS
KANSAS RIVER

This statement of findings pertains to issuance of seventeen Department of the Army (DA) permits under authority of Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to the companies and at the locations listed in Enclosure 1, for authorization to dredge sand and gravel from the Kansas River for commercial purposes. The permits renew DA authorization for commercial dredging activities at locations where existing DA authorization is expiring.

Several of the permits include minor changes to the river miles authorized in the expiring permits (Permits 96-02337, 97-00114, 97-00106 and 97-00109, see Enclosure 1). Permit 96-02135 combines two expiring permits into a single permit (see Enclosure 1). Permit Application No. 97-00112, submitted by Penny's Concrete, Inc. for a new permit in a previously undredged reach of the river has been withdrawn by the applicant.

Note: On January 23, 1997, the U.S. District Court for the District of Columbia ruled that part of the "Excavation Rule," promulgated on August 25, 1993, exceeds the statutory authority of the Corps of Engineers and is invalid. Accordingly, excavation where the only discharge is incidental fallback of dredged material into waters of the U.S. is not regulated under Section 404 of the Clean Water Act. Based on the District Court's recent decision, the subject commercial sand and gravel dredging activities are not regulated under Section 404.

Background Information. An environmental impact statement (EIS) has been prepared by KCD to address potential environmental impacts associated with commercial sand and gravel dredging operations on the Kansas River. The EIS is incorporated into a document, entitled "Final Regulatory Report and Environmental Impact Statement - COMMERCIAL DREDGING ACTIVITIES ON THE KANSAS RIVER, KANSAS," which was completed in January of 1990. The EIS examines various alternatives which may be adopted to resolve the environmental issues relating to commercial dredging activities on the river. The selected alternative presented in the EIS is a

comprehensive "Regulatory Plan" which limits the environmental impacts associated with commercial dredging activities to an acceptable level. The subject permits have been conditioned to require compliance with the limitations and requirements of the district's Regulatory Plan.

1. I have reviewed and evaluated, in light of the overall public interest, the environmental, social, engineering, and economic considerations, as shown in the environmental assessment and other pertinent documents. This review includes the written and stated views of other interested Federal and non-Federal agencies and the concerned public relative to the work in waters of the United States. My review has included consideration of regulations published in 33 CFR 320-330. Factors bearing on my review include conservation, economics, esthetics, general environmental concerns, historical and archeological values, fish and wildlife values, flood damage prevention, land use, navigation, recreation, water supply, water quality, energy needs, safety, food production, and, in general, the needs and welfare of the people.

2. In evaluation of this work and in considering the comments received from coordination of the public notice for the proposed permits, the following points were considered:

a. Federal Agencies.

(1) The U.S. Fish and Wildlife Service (FWS), in a letter dated 17 January 1997 (Enclosure 2), stated that if the Kansas River dredging monitoring data indicates that dredging-related impacts are negligible they have no objections to issuance of the requested permits. The KCD has completed its evaluation of the monitoring data and has concluded that dredging-related impacts are negligible. Therefore, no further coordination is necessary with FWS.

(2) The Environmental Protection Agency (EPA), in a letter dated 23 January 1997 (Enclosure 3), stated that they do not have any comments relating to issuance of the proposed permits. They noted that they have concerns regarding the timeliness, consistency and quality of the dredge monitoring data submitted by Landplan Engineering, the applicant's consultant. They recommended that future data quality be increased. They also recommended that KCD closely monitor a 3.8-mile-long reach of river between river miles 25.5 and 29.3 to ensure that riverbed degradation in the reach does not exceed 2 feet.

The KCD has met with Landplan Engineering to discuss monitoring data requirements and to develop better data collection and submittal procedures. The district expects future data submittal

to be more timely and consistent. The district is aware that the reach of river located between river miles 25.5 and 29.3 is degrading. The district will closely inspect the next data collection to determine if the subject reach of river should be closed to dredging.

b. State and Local Agencies.

(1) The Kansas Department of Wildlife and Parks, in a letter dated 2 January 1997 (Enclosure 4), stated that as long as the permitted work meets the guidelines stipulated in KCD's Regulatory Plan, no special mitigation measures and no Department of Wildlife and Parks permits or special authorizations would be needed.

(2) No comments were received from local agencies. No action is required.

c. Organizations.

(1) The Kansas Audubon Council, in a letter dated 15 January 1997 (Enclosure 5), stated that they object to issuance of permits to authorize dredging at previously undredged locations on the river. They commented that they do not object to reissuance of permits for dredging operations at existing dredge locations provided the work does not violate applicable public regulations. They asked that a public hearing be held to address their concerns.

The seventeen permits being issued by KCD will renew authorization for dredging at locations where existing permits are expiring. No permits are being issued to authorize dredging in previously undredged reaches of the river. The request for a public hearing is addressed in the section titled Public Hearing Requests, below.

(2) The Northern Flint Hills Audubon Society, in a letter dated 18 January 1997 (Enclosure 6), stated that they object to issuance of a permit to Penny's Concrete, Inc. to dredge in a previously undredged reach of the river (Application No. 97-00112). They asked that a public hearing be held to address their concerns. They also requested an extension to the 30-day public comment period.

Penny's Concrete has withdrawn its permit application for this project. Therefore, no further consideration will be given to the proposal. The request for a public hearing is addressed in the section titled Public Hearing Requests, below. The KCD has

accepted and considered all comments received since issuance of the public notice (a period exceeding three months). Therefore, extension of the comment period is not warranted.

(3) The Kansas Natural Resources Council, in a letter dated 16 January 1997 (Enclosure 7), stated that they object to issuance of a permit to Penny's Concrete, Inc. to dredge between river miles 72.5 and 74.0. They asked that an EIS be prepared for the proposal and requested a public hearing to address their concerns.

Penny's Concrete has withdrawn its permit application for this project. Therefore, no further consideration will be given to the proposal. The request for a public hearing is addressed in the section titled Public Hearing Requests, below. An EIS has been prepared to address Kansas River dredging. The district has determined that preparation of a second EIS to address this project is not warranted.

(4) The Kansas Canoeing Association, in a letter dated 16 January 1997 (Enclosure 8), stated that they object to issuance of a permit to Penny's Concrete, Inc. to dredge in a previously undredged reach of the river (Application No. 97-00112). They asked that a public hearing be held to address their concerns.

Penny's Concrete has withdrawn its permit application for this project. Therefore, no further consideration will be given to the proposal. The request for a public hearing is addressed in the section titled Public Hearing Requests, below.

(5) Mr. Sam Segraves, in a letter dated 15 January 1997 (enclosure 9), stated that he was commenting on behalf of the members of the Kansas Canoe Association and the American Canoe Association. Mr. Segraves stated that he is concerned that sufficient information was not provided in the public notice issued by KCD to address the Penny's Concrete permit application No. 97-00112. He asked that a new public notice be issued with more details regarding the project or that the 30-day public comment period be extended an additional 30 days to allow more time to submit comments.

Mr. Segraves provided a second comment letter dated 26 February 1997 (Enclosure 10). He restated his objection to issuance of proposed permit No. 97-00112 to Penny's Concrete. He also expressed concern regarding the lack of information in the public notice for this project. He asked that KCD adopt a policy to prohibit dredging between the Seward Avenue boat ramp in Topeka and Bowersock Dam in Lawrence.

Penny's Concrete has withdrawn its permit application for this project. Therefore, no further consideration will be given to the proposal. A new public notice was not issued for the project; however, KCD has accepted and considered all comments received since issuance of the public notice (a period exceeding three months). The KCD has determined that extension of the comment period is not warranted. The request for a public hearing is addressed in the section titled Public Hearing Requests, below. The district does not have sufficient information available, at this time, to justify prohibiting dredging between the Seward Avenue boat ramp and Bowersock Dam. The state of Kansas is currently preparing a study that will address recreational opportunities along the Kansas River. The study's findings are expected to become available in January of 1998, and may be used in the future by the district to evaluate the impact of commercial dredging activities on recreational opportunities along the river.

(6) Mr. Lance Burr, in a letter dated 17 January 1997 (Enclosure 11), stated that he was commenting on behalf of Friends of the Kaw, the K.U. Biology Club and himself. Mr. Burr stated that he objects to issuance of a permit to Penny's Concrete, Inc. (Application No. 97-00112) to dredge in a previously undredged reach of the river. Mr. Burr asked that KCD comply with the following requests:

(a) The district should issue a second public notice announcing the Penny's Concrete proposal.

(b) The 30-day public comment period should be extended an additional 30 days if the district does not reissue the public notice.

(c) The district should hold a public hearing to address the project.

(d) The district should provide him with additional information concerning the nature of the proposed dredging operation.

(e) The district should prepare an Environmental Impact Statement for the reach of river upstream of Bowersock Dam, in particular the reach between the dam and the Seward Avenue boat ramp at Topeka.

(f) The district should conduct a study of potential impacts to recreational opportunities and aesthetics in the reach of river between Bowersock Dam and Topeka prior to taking any action on the subject permit request.

(g) The district should not issue the requested permit until auditing procedures are in place to verify the annual material extraction volumes and the total extraction volumes for all dredge operations have been calculated for a period of at least one year.

(h) The district should not issue the requested permit until all monitoring requirements have been satisfied.

(i) The district should not issue the requested permit until the expiration provisions of the Regulatory Plan are enforced.

Penny's Concrete has withdrawn its permit application for this project. Therefore, no further consideration will be given to the proposal. A second public notice was not issued for the project; however, KCD has accepted and considered all comments received since issuance of the public notice for this proposal (a period exceeding three months). The request for a public hearing is addressed in the section titled Public Hearing Requests, below. Mr. Burr was provided with additional details by telephone regarding the proposed project. The district completed preparation of an EIS to address commercial dredging activities on the Kansas River in 1990. The district has determined that a new EIS or a supplement is not warranted.

(7) Mr. Lance Burr, in a second letter dated 17 January 1997 (Enclosure 12), stated that he was commenting on behalf of the members of Friends of the Kaw. Mr. Burr stated that he objects to KCD's decision to extend the expiration date of the existing permits until a permit decision can be made on the subject applications. He reiterated many of the concerns he expressed in his first letter of the same date (See (6), above) and provided additional recommendations for consideration. The recommendations presented in Mr. Burr's second letter that were not expressed in his first letter are as follows:

(a) The district should hold all current dredging applications in abeyance until it compiles monitoring data relating to the proposed dredging operations.

(b) The district should not reissue dredging permits until it has developed auditing procedures to verify the Kansas River producers annual extraction totals.

(c) The district should not reissue dredging permits until the state of Kansas completes its Kansas River recreation study.

(d) The district should reevaluate the Regulatory Plan and hold a public hearing to address all dredging on the river.

(e) The district should conduct a study or prepare an Environmental Impact Statement to address the impact of dredging on recreation and the river's ecology.

The KCD has evaluated all dredge monitoring data collected under the provisions of the district's Regulatory Plan. The data does not indicate that dredging operations authorized since 1991, have resulted in unacceptable morphological impacts to the river. The district does not have any information indicating that the producers are violating the annual material extraction limits imposed by their permits. Therefore, the proposed permits will not be held in abeyance until auditing procedures are developed by the district. The district has determined that preparation of a study or Environmental Impact Statement to address the impact of dredging on recreation and/or the river's ecology is not warranted. Five Kansas state agencies are jointly preparing a Kansas River recreation study. The study will be available in January of 1998. The district does not believe that reissuance of permits to continue dredging at existing dredge sites will adversely impact the state's ability to complete its study.

d. Individuals. One hundred and thirty three comment letters (Enclosure 13) were received from individuals in response to the public notice for the eighteen applications shown in Enclosure 1. One hundred and twenty five of the commenters objected to issuance of a permit to Penny's Concrete, Inc., in the previously undredged reach of river between Lawrence and Topeka (Application No. 97-00112). Eight of the commenters objected to all dredging on the river. Eighty commenters requested a public hearing to address their concerns. Nearly all of the public hearing requests were from commenters objecting to the Penny's Concrete Inc., Application No. 97-00112.

(1) The following comments relate to the Penny's Concrete, Inc., Application No. 97-00112 and to issuance of any new permits in the previously undredged reach of river between Lawrence and Topeka:

(a) Several commenters objected to the public notice format. They stated that the Penny's Concrete proposal for a new dredge site should have been addressed in a public notice separate from the notice describing the 17 permit renewal requests.

(b) Sixty two commenters expressed concern that the project would adversely impact aesthetic values and/or recreational opportunities along the river.

(c) Thirty commenters expressed concern that the project would adversely impact fish and wildlife resources.

(d) Twenty one commenters expressed concern that the project would adversely impact environmental and ecological resources.

(e) Twenty commenters objected to issuance of the requested permit prior to completion of the state's ongoing Kansas River recreation study.

(f) Eighteen commenters expressed concern that the project would remove sandbars from the river.

(g) Sixteen commenters expressed concern that the proposed dredging operation would pose a safety hazard to boaters.

(h) Seven commenters expressed concern that the project would cause river bank erosion.

(i) Six commenters expressed concern that the project would adversely impact river morphology.

(j) Six commenters noted that the state proposes to construct a boat ramp at the town of Lecompton. The ramp would increase recreational use of the reach of river between Topeka and Lecompton.

(k) Three commenters requested that the 30-day comment period be extended.

(l) Three commenters expressed concern that the project would adversely impact water quality.

(m) Three commenters expressed concern that the project would adversely impact endangered species.

(n) Three commenters expressed concern that the project would adversely impact navigation.

(o) Two commenters stated that the requested permit should not be issued until dredge monitoring efforts within the reach have been completed.

(p) Two commenters expressed concern that the project would adversely impact tourism.

(q) One commenter expressed concern that the project would create traffic problems in the town of Neuman.

Penny's Concrete has withdrawn its permit application for this project. Therefore, no further consideration will be given to the proposal. A second public notice was not issued for the project; however, KCD has accepted and considered all comments received since issuance of the public notice for this proposal (a period exceeding three months). The request for a public hearing is addressed in the section titled Public Hearing Requests, below. Since Application No. 97-00112 has been withdrawn and since the remaining permit requests are for renewal of expiring permits, the district has concluded that the concerns expressed in (a) through (q) have been resolved.

(2) The following comments relate to all dredging activities on the river:

(a) Five commenters expressed concern that dredging activities adversely impact aesthetic values and/or recreational opportunities along the river.

(b) Four commenters expressed concern that the work would adversely impact fish and wildlife resources.

(c) Three commenters expressed concern that the proposed dredging operations would pose a safety hazard to boaters.

(d) Three commenters stated that the requested permits should not be issued until dredge monitoring efforts have been satisfactorily completed.

(e) Two commenters expressed concern that the work would adversely impact environmental and ecological resources.

(f) Two commenters expressed concern that the project would remove sandbars from the river.

(g) Two commenters expressed concern that the project would cause river bank erosion.

(h) One commenter expressed concern that the work would adversely impact water quality.

(i) One commenter objected to issuance of the requested permits prior to completion of the state's ongoing Kansas River recreation study.

(j) One commenter stated that existing dredging operations on the river should not be allowed to alter their permitted river miles.

The seventeen permits being issued by KCD will renew

authorization for dredging at locations where existing permits are expiring. No permits are being issued to authorize dredging in previously undredged reaches of the river. The KCD has determined that reissuance of the seventeen permits will not significantly impact recreational or aesthetic values, fish and wildlife resources, or environmental and ecological resources along the river. The district has also determined that the work will not significantly impact the river's morphology or water quality. The permits have been conditioned to require the dredge operators to allow safe passage of water craft past dredging equipment. The KCD has evaluated all dredge monitoring data collected under the provisions of the district's Regulatory Plan. The data does not indicate that dredging operations authorized since 1991, have resulted in unacceptable morphological impacts to the river. Reissuance of the requested permits is unlikely to adversely impact the state's Kansas River recreation study since all of the requested permits are existing dredging operations. The district has determined that the minor changes to existing permitted river miles requested by several of the producers will not result in significant adverse impacts.

e. Intradistrict Coordination. The Operations Technical Support Branch (CO-T), in a memorandum dated 6 January 1997 (Enclosure 14), stated that the work does not impact any Corps operated project or any local protection project for which CO-T has any responsibilities. No action is required.

3. National Historic Preservation Act. The National Register of Historic Places and the Federal Register have been checked to determine if any properties listed or proposed for listing in the National Register would be impacted by the projects. In addition, the State Historic Preservation Officer has been contacted to determine if any properties eligible or potentially eligible for listing in the National Register would be impacted by the work.

The State Historical Society did not respond to the public notice for these projects. However, the Historical Society has responded to previous public notices for the work sites and stated that the work would have no effect on any property listed on the National Register of Historic Places nor any historic or archaeological site listed in the state inventory. The KCD's evaluation of potential impacts to historic properties indicates that the projects would not impact any properties listed, proposed for listing, eligible for listing, or potentially eligible for listing in the National Register of Historic Places. No reconnaissance survey, to identify historic properties, has been conducted by the Kansas City District or the applicants.

Based on the district's findings, no survey will be required

since no recorded properties exist in the affected areas and since the majority of the permit areas have been created in modern times and have been extensively modified by previous work. The district presumes that no historic properties exist within the permit areas since the sites are of recent origin and since any historic properties which may have existed within the permit areas at one time have been lost due to extensive modification of the sites (see 33 CFR 325, Appendix C, paragraph 3b(1)).

4. National Environmental Policy Act. The KCD has prepared an EIS to address potential environmental impacts associated with commercial sand and gravel dredging operations on the Kansas River. The EIS is incorporated into a document, entitled "Final Regulatory Report and Environmental Impact Statement - COMMERCIAL DREDGING ACTIVITIES ON THE KANSAS RIVER, KANSAS," which was completed in January of 1990. The district has reviewed the EIS and has determined that preparation of a supplement or an additional EIS is not warranted for these activities.

5. Mitigation. The KCD has determined that mitigation is not warranted for these activities.

6. Public Hearing Requests. Eighty seven commenters requested a public hearing to address their concerns. Nearly all of the public hearing requests were from commenters objecting to Application No. 97-00112, submitted by Penny's Concrete, Inc. for a new permit in a previously undredged reach of the river. Penny's Concrete, Inc. has withdrawn its request for a permit at that location. Therefore, no further consideration will be given to that proposal.

The seventeen permits being issued by KCD will renew authorization for dredging at locations where existing permits are expiring. No permits are being issued to authorize dredging in previously undredged reaches of the river. The KCD has determined that it has sufficient information and public input on which to base a decision regarding issuance or denial of the requested permits and has concluded that a public hearing is not warranted for the proposals. All parties requesting a public hearing have been notified that no hearing will be conducted.

7. I find that issuance of a Department of the Army permit to the companies listed in Enclosure 1, as prescribed by regulations published in 33 CFR 320-330, is based on a thorough analysis and evaluation of the various factors enumerated above; that there are no reasonable alternatives available to the applicant that will achieve the purposes for which the work is being constructed; that the work is in accordance with the overall desires of the public as reflected in the comments of state and local agencies and the general public; that the work is deemed to

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comply with established state and local laws, regulations, and codes; that there have been no identified, significant, adverse environmental effects related to the work; that the issuance of this permit is consonant with national policy, statutes, and administrative directives; and that on balance the total public interest should best be served by the issuance of a Department of the Army permit.



ROBERT E. MORRIS
Colonel, EN
Commanding

14 Encls

11 April 1997

Date