

Missouri Clean Water Commission  
Capitol Plaza Hotel and Convention Center  
415 W. McCarty Street  
Jefferson City, Missouri 65109

November 7, 2012

**Water Quality Certification for the Jameson Island Shallow Water Habitat Project**

**Issue:** Changes to the project have been considered, and feasible revisions to one of the alternatives are consistent with project goals and water quality considerations. The previous order from the Commission would not allow the revised project to proceed. The project would be further revised to reduce the width of the excavated chute to 75 feet, mechanically excavate the chute down to the ordinary high water mark, hydraulically dredge the remaining material in the chute, and allow high flows of the river to complete the establishment of the side channel.

**Background:** This is a continuation of the matter that has been before the Commission several times this year. The Commission has reviewed the application from the U.S. Army Corps of Engineers (Corps), held a hearing and toured the project area. The Department has worked with the Corps toward modifications of the project so that it is consistent with the ten principles outlined by the Department at the June 11, 2012 public hearing. Details of the possible revisions to the project are shown on the drawings attached to the following U. S. Army Corps of Engineers letter.

**Recommended Action:** Rescind the Commission's Order as issued September 12, 2007 and modified March 12, 2008, and direct staff to public notice for 30 days the 401 water quality certification for this project, as revised by the Corps in its letter dated October 16, 2012. Following the public notice, the draft certification would return to the Commission for final approval. Further, staff are to process future requests for water quality certifications for future shallow water habitat projects based on specific characteristics of the project on a case by case bases and consistent with the ten principles presented earlier. Staff are further directed to advise the Commission as applications for future projects of this nature are received by the Department so the Commission can be involved in the review and discussion of such projects as they desire.

**Suggested Motion Language:** I move that the Commission rescind its September 12, 2007 order, as modified on March 12, 2008, relating to U.S. Army Corps of Engineers' shallow water habitat construction projects and direct staff to public notice the water quality certification for the project for 30 days, consistent with the principles staff outlined in the June 11, 2012 hearing. Following the public notice, the draft certification would return to the Commission for final approval. Further, staff shall evaluate any future shallow water habitat projects on their specific characteristics on a case by case basis. Finally, staff shall advise the Commission upon receipt of any future requests by the Corps for 401 water quality certification for shallow water habitat projects.

**List of Attachments:**

- October 16, 2012 Letter from the U.S. Army Corps of Engineers
- September 24, 2012 Letter from the Department
- September 12, 2007 Order of the Missouri Clean Water Commission Regarding U.S. Army Corps of Engineers Shallow Water Habitat Construction Projects
- March 12, 2008 Amended Order of the Missouri Clean Water Commission Regarding U.S. Army Corps of Engineers Shallow Water Habitat Construction Projects





DEPARTMENT OF THE ARMY  
KANSAS CITY DISTRICT, CORPS OF ENGINEERS  
635 FEDERAL BUILDING  
KANSAS CITY, MISSOURI 64106-2896

REPLY TO  
ATTENTION OF:

October 16, 2012

Planning, Programs and  
Project Management Division

Mr. John Madras  
Director, Water Protection Program  
P.O. Box 176  
Jefferson City, Missouri 65102

Dear Mr. Madras:

I am writing in response to your letter dated September 24, 2012. Per your request, we have analyzed the potential modification to Alternative 4 as described in the Jameson Island Unit Shallow Water Habitat (SWH) Restoration Project Implementation Report (PIR). This modification would include the mechanical excavation and side-casting of material down to the ordinary high water mark. The remainder of the excavation would be completed with a hydraulic dredge.

To remain consistent with the DRAFT 404(b)(1) evaluation, the analysis of this modification included the same construction footprint as Alternative 4 of the PIR. Two additional modifications would be necessary to maintain that footprint. The modifications include reducing the width of the pilot channel to seventy-five (75) feet wide, and combining the two spoil areas on each side of the chute, as proposed in the PIR, into one spoil area on the outside bend of the chute. The modifications were necessary to limit the height of the spoil piles and to fit the cross section of the pilot channel and the spoil area fit within the two hundred (200) foot wide clearing limits of Alternative 4.

For the Jameson Island project, the average elevation for the ordinary high water mark is approximately six (6) feet below the elevation of the existing ground surface. Some areas within the project limits are as high as ten (10) feet above the ordinary high water mark, and some low lying areas are already below the ordinary high water mark elevation. Given an average depth of excavation of six (6) feet and side slopes of 1:5 to 1, the top width of the pilot channel will total ninety-three feet. A twenty foot wide haul road was assumed for construction traffic. This left a width of eighty-seven feet for the spoil area. Given those constraints, the average dimensions of the spoil area will have an average height of nearly seven (7) feet and a top width of fifty-nine (59) feet with 2:1 side slopes.

For clarity, I have attached renderings of the Recommended Plan Alternative 4, the potential modification to mechanically excavate the top three (3) feet of material (analyzed in my previous letter dated August 15, 2012), and the potential modification to mechanically excavate down to the ordinary high water mark.



The following table includes a short summary of some of the differences between the potential modifications previously analyzed and the potential modifications that you have requested:

	Potential Modification - Mechanically Excavate Top Three Feet of Material	Potential Modification - Mechanically Excavate to the Ordinary High Water Mark
Depth of Excavation	3 feet	6 feet (average)
Spoil Pile Height	2.6'	6.9'
Total Project Cost	\$2,991,046	\$3,282,195

The Corps has thoroughly analyzed the potential modifications that you have requested, and have identified four primary concerns with the potential modifications:

1. As a result of the temporary spoil piles, the benefits to the Howard County Levee District will be lower than that of Alternative 4 or the previous potential modifications analyzed by the Corps.
2. Our physical and biological monitoring of sites constructed with similar temporary spoil piles has shown that they do not develop the quantity or quality of habitat as quickly as other methods of construction.
3. The reduction in constructed chute width increases the chance the chute could be blocked by woody debris and deposition of fine sediments. These risks are slight and dependant on sequence of future flow events. In the event that a blockage of the chute would occur, additional construction to remove debris or to clear sediment plugs may need to be implemented.
4. The cost to the taxpayer is almost \$300,000 higher than the previous potential modifications analyzed by the Corps without achieving any greater environmental benefit, or any long term benefit to water quality.

The analysis performed by the Corps has determined that the potential modification of mechanically excavating down to the ordinary high water mark is feasible for the Jameson Island project. The concerns listed above support that the Recommended Plan Alternative 4 with the potential modification of mechanically excavating the top three (3) feet of material is a technically superior alternative to this option. The analysis did not support spending additional taxpayer resources for this modification as it provides no greater environmental or flood risk management benefits.

Each SWH construction project undergoes a thorough National Environmental Policy Act (NEPA) analysis which assesses a broad range of potential alternatives and beneficial uses to the excavated material. In addition, the outcome of exhaustive technical analysis of water quality by the Corps, the National Academies of Science, the MDNR and many other agencies supports the recommencement of restoration of shallow water habitat in Missouri and the reintroduction of alluvial material into the Missouri River. Should conditions be placed on this permit that requires additional mechanical excavation, we would object to the use of any potential modification as a precedent for future SWH construction projects. Setting a precedent for all SWH construction projects may limit the Corps' ability to put to beneficial use the excavated



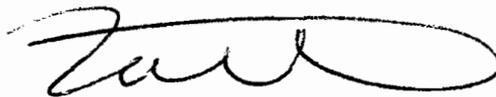
material in the future. We recommend that MDNR evaluate each project on a case-by-case basis and provide 401 water quality certification based on the merits of the project and not on the precedent of a single project.

We greatly appreciate these additional efforts by MDNR to identify additional measures that would avoid and/or minimize project related water quality and environmental impacts. Working together we have completed a full evaluation of a wide range of alternatives and potential measures to improve the project. There is clearly sufficient technical information, as documented in our PIR and subsequent analysis of potential modifications, to support State certification of the Jameson Island SWH Restoration Project under Section 401 of the Clean Water Act. We reiterate our earlier requests that the Missouri Clean Water Commission address the previous order, and the MDNR provide Section 401 Water Quality Certification for the project.

We have determined that the potential modifications we have analyzed (those referenced in this letter and my letter dated August 15, 2012) are considered feasible and consistent with our Section 404(b)(1) Evaluation. Alternative 4 as described in the PIR remains the Recommended Plan for the project. Should any modifications to the Recommended Plan become conditions to the MDNR certification, the modifications analyzed in my letter dated August 15, 2012 are more technically justifiable as they provide greater environmental benefits, flood risk management benefits, and constitute the wisest use of taxpayer resources.

I am providing a copy of this letter to all of the members of the Clean Water Commission. Should you require any additional information, please contact me at 816-389-3019 or by email at [Zachary.L.White@usace.army.mil](mailto:Zachary.L.White@usace.army.mil).

Sincerely,

A handwritten signature in black ink, appearing to read 'Zachary L. White', written in a cursive style.

Zachary L. White, P.E.  
Project Manager  
Jameson Island SWH Restoration Project

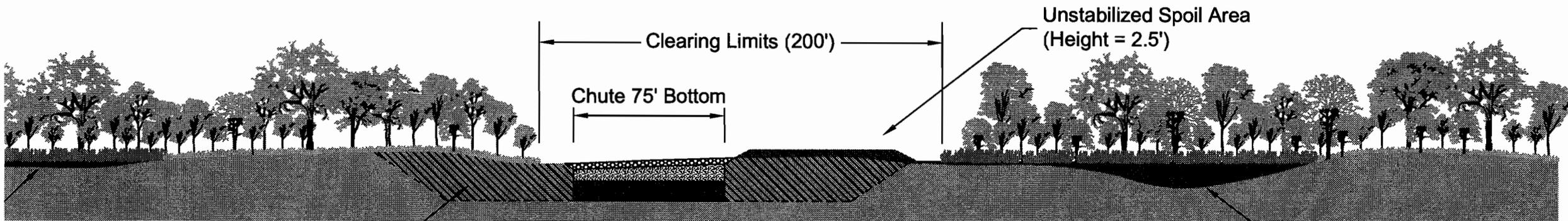


Future River Widening  
And Natural River Meander

### Jameson Island Recommended Alternative 4

- Mechanical
- Dredging

Typical Scour Hole

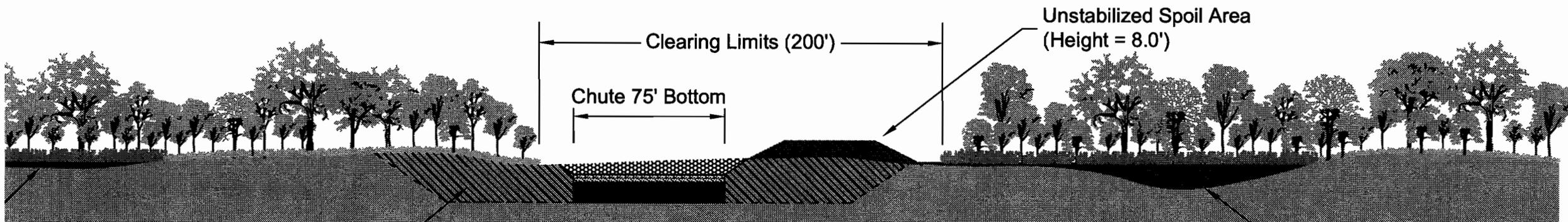


Future River Widening  
And Natural River Meander

### Jameson Island Potential Modifications

- Mechanical
- Dredging

Typical Scour Hole



Future River Widening  
And Natural River Meander

### Jameson Island Ordinary High Water Mark

- Mechanical
- Dredging

Typical Scour Hole

STATE OF MISSOURI  
DEPARTMENT OF NATURAL RESOURCES

Jeremiah W. (Jay) Nixon, Governor • Sara Parker Pauley, Director

www.dnr.mo.gov

SEP 24 2012

Mr. Zachary L. White, P.E.  
Department of the Army  
Kansas City District, Corps of Engineers  
700 Federal Building  
Kansas City, Missouri 64106-2896

Re: Jameson Island Shallow Water Habitat Project

Dear Mr. White:

Thank you for your letter of August 15, 2012 and your attendance at the September 5, 2012 meeting of the Missouri Clean Water Commission. We appreciate the effort the Kansas City District has made in considering comments and analyzing potential changes to the project.

Your letter suggests changes in excavation technique, management of the spoil material and the extent of construction of the pilot channel. Excavation would mechanically remove the top 36 inches of material from the width of the chute. The pilot channel would be reduced from 100 feet to 75 feet in width. The Department greatly appreciates the Corps' willingness to make these changes in response to the concerns of the citizens of Missouri. However, we believe these changes do not address all of the principles endorsed by the Commission.

Therefore, we would also like the Corps to analyze a potential change to the project that would include mechanically excavating the pilot channel down to the elevation of ordinary high water. Hydraulic dredging would then complete the excavation so that flow would enter the pilot channel and eventually widen the chute to the design cross-section. We believe this would allow the mechanically excavated material to enter the river at times of high flow when the river is typically carrying more material.

This change, incorporated into the Corps' most recent proposal, would allow the Department to not only take to the Commission a plan that meets all the Commission endorsed principles, but to work with the Corps to expeditiously draft the 401 Water Quality Certification.

We anticipate having this matter on the Commission's agenda at their next meeting November 7, and would appreciate your response at the earliest convenience as we send information to the Commissioners about three weeks before their meeting.



Mr. Zachary L. White, P.E.  
Page Two

Thank you for your consideration.

Sincerely,

WATER PROTECTION PROGRAM



John Madras  
Director

JM/ms

c: Missouri Clean Water Commission Members

**ORDER  
OF THE MISSOURI CLEAN WATER COMMISSION**

In light of recent letters from Governor Blunt affirming the powers of the Missouri Clean Water Commission, the letter from Colonel Roger Wilson of the U.S. Army Corps of Engineers requesting that the Missouri Clean Water Commission (the "Commission") clarify its position, and the permit application for the Barney Bend project, it is appropriate that the Commission state its current policy regarding the discharge of millions of tons of sediment into the Missouri River by the U.S. Army Corps of Engineers in cooperation with the U.S. Fish and Wildlife Service:

1. Under 644.029(9), RSMo, the Commission may issue orders prohibiting or abating discharges of water contaminants into the waters of the state or adopt other remedial measures to prevent, control or abate pollution.
2. Under both federal and Missouri Clean Water Law, sediment is a pollutant and its discharge into a waterbody is pollution.
3. The permits issued to the U.S. Army Corps of Engineers for habitat restoration projects under general permit MO-G69900 are for return water and stormwater runoff and do not specifically grant the discharge of soils into the waters of Missouri.
4. Therefore, the Commission hereby prohibits and orders the immediate abatement of the discharge of sediment into the waters of Missouri by all habitat restoration projects.

It is hereby **ORDERED** that all sediment of all habitat restoration projects excavated or designed to erode shall be placed on land with such a design that it will not enter the waters of Missouri now or in the future. Section 644.071, RSMo, provides that this Order may be subject to judicial review.

Issued: September 12, 2007



WPP's  
2007

**BEFORE THE MISSOURI CLEAN WATER COMMISSION**

**In re: USACE Shallow Water Habitat Construction Projects** ) **No. 07-001**  
 )

**AMENDED ORDER**

Under 644.026.1(9), RSMo, the Commission may issue orders prohibiting or abating discharges of water contaminants into the waters of the state or adopt other remedial measures to prevent, control or abate pollution.

1. Sediment is a pollutant under the Federal Clean Water Act and a water contaminant under the Missouri Clean Water Law.
2. General Permit MO-G69900 as issued to the U.S. Army Corps of Engineers' for certain habitat construction projects on the Missouri River authorizes the Corps to discharge return water and storm water runoff and does not authorize the discharge of sediment or soil into the waters of Missouri.
3. The Corps' activities in connection with the aforementioned shallow water habitat construction projects, as approved by the U.S. Fish & Wildlife Service, have resulted in the unauthorized discharge of excessive sediment into the waters of Missouri, in violation of § 644.051.1(3), RSMo.
4. The Commission, the Missouri Department of Natural Resources and the U.S. Environmental Protection Agency have imposed significant fines and penalties against various entities related to the discharge of sediment into the waters of Missouri, and required those persons to stop discharging.

Therefore, the Commission hereby prohibits and orders the immediate cessation of the discharge of sediment and topsoil into the waters of Missouri by the Corps in connection with the construction of all Missouri River shallow water habitat construction projects.

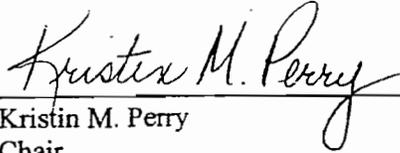
It is hereby **ORDERED** that the Corps' shall, for all Missouri River shallow water habitat construction projects, put to beneficial reuse consistent with this Amended Order or place on land in accordance with an individual permit or certification for each specific site, all topsoil and excavated sediments. No sediment or topsoil disturbed by construction activities on said projects shall enter the waters of Missouri now or in the future, except in *de minimis* amounts related to normal construction and operation as provided in the applicable approval from the Missouri Department of Natural Resources.

This Order supersedes the Commission's Order dated September 12, 2007. 644.071, RSMo, provides that this Order may be subject to judicial review.

Issued: March 12, 2008



Missouri Clean Water Commission Order No. 07-001 March 12, 2008



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Kristin M. Perry  
Chair

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Ron Hardecke  
Vice-Chair

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Samuel M. Hunter  
Commissioner

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Frank L. Shorney  
Commissioner

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Ben A. "Todd" Parnell, III  
Commissioner



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Missouri Clean Water Commission Order No. 07-001 March 12, 2008

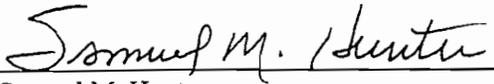
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Missouri Clean Water Commission Order No. 07-001 March 12, 2008

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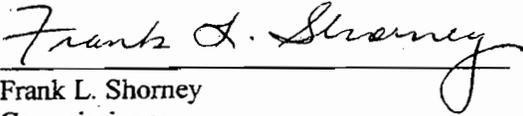
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