



US Army Corps of Engineers

Omaha District

PUBLIC NOTICE

Application No: NWO-2012-2182-BIS
Applicant: Lower Heart River Water Resource District
Waterway: Missouri River – Heart River
Activity: Dredging
Issue Date: September 17, 2012
Expiration Date: October 2, 2012

15 Day Notice

North Dakota Regulatory Office

1513 South 12th Street

Bismarck ND 58504

NOTICE OF PENDING PERMIT EVALUATION

Introduction. The District Engineer, U.S. Army Engineer District, Omaha, Nebraska is evaluating a Department of the Army (DA) permit application from the **Lower Heart River Water Resource District** to dredge through a portion of sandbar and Missouri River channel at the Missouri and Heart River confluence to minimize the risk of ice jam flooding above the confluence. This application is being evaluated under Section 10 of the Rivers and Harbors Act [33 USC 403, et seq.] and Section 404 of the Clean Water Act [33 USC 1251, et seq.]. Section 10 regulates activities in, or affecting, navigable waterways. Section 404 regulates the discharge of dredged or fill material in the Nation's waters. The Missouri River is an interstate waterway that is navigable under Section 10 and subject to Section 404. Burleigh County Highway Department's project includes activities regulated under both Federal laws.

- **PUBLIC NOTICE.** The purpose of this public notice is to inform the public; Indian Tribes; Federal, state and local agencies/officials; and other interested parties of a **15-day comment period** in which written comments in conjunction with Burleigh County Highway Department's project may be submitted to the US Army Corps of Engineers. Solicitation of comments regarding impacts to endangered species, historic properties, water quality, general environmental concerns and other public interest factors are discussed on **pages 3 and 4**. Written comments must be postmarked by **Tuesday, October 2, 2012**, prior to closure of the public notice administrative record.
- **PUBLIC HEARING.** Before the expiration date of this notice, anyone may request, in writing, that a public hearing be held to consider this application. Requests shall specifically state the reason(s) for holding a public hearing. The District Engineer shall determine whether a hearing is necessary to obtain additional public interest information. If a public hearing is warranted, interested parties will be notified of the time, date, and location.

Background Information. The Flood of 2011 deposited a significant amount of sand and sediment throughout the Missouri River, Garrison Reach. An existing sandbar island located near the Missouri and Heart River confluence was enlarged by the 2011 event, attaching the deposit to the right bank of the Missouri River, blocking a historic channel braid from flowing along the bank to the mouth of the Heart River. This blockage and decreased channel capacity increases the potential for ice jam development and flooding.

PROJECT PROPOSAL.

- **DETAILS.** A complete DA permit application was received on **September 13, 2012**.
- **PROJECT PURPOSE.** The Applicants "**stated project purpose**" is "to reduce flood risk due to ice jamming".
The US Army Corps of Engineers has determined the **basic project purpose** is "flood risk management" and the **overall project purpose** is "to restore Missouri River flows through a

backwater channel to increase channel capacity at the mouth of the Heart River”.

- PROJECT LOCATION. The project is located at Missouri River mile 1311.0 R, at the confluence of the Missouri and Heart Rivers, near Fort Lincoln State Park. The legal description at the project site is Section 13, Township 138 North, Range 81 West, Morton County, North Dakota.
- PROJECT DESCRIPTION. Authorization has been requested to dredge 11,000 cubic yards (cy) of accumulated sand and sediment to construct a pilot channel across 1,200 feet of an existing 45 acre +/- sandbar, to an elevation of 1620.0 mean sea level (msl) to restore a backwater channel braid along the Missouri River right bank to the mouth of the Heart River. The pilot channel would have a 20-foot bottom width, with 10:1 side slopes. In addition, approximately 2,000 cy of sediment would be dredged from a shallow area downstream of the mouth of the Heart River, extending approximately 800 feet in length by 100 feet, to an elevation of 1618.0 msl. The shallow area would have a 50-foot bottom width and 3:1 side slopes. Dredged material is proposed to be discharged on the sandbar as shown on the attached plansheet, with another 300 cy of sandbar material to be reshaped and redeposited within a 1.7 acre area at the lower end of the sandbar. Approximately 9.1 acres of sandbar would be directly affected by excavation and redeposition (spoil), with 4.5 acres being removed.
- PROJECT'S LIFE CYCLE. Dredged channels would likely require maintenance due to instability of sandbar material, flow variability and climatic conditions.
- CONSTRUCTION METHODS. Large earthmoving equipment, such as: long-arm excavators, crane excavation and dozers are expected to be utilized.
- PROJECT BENEFITS. The project will restore a flow-through side channel from the Missouri River to the mouth of the Heart River and increase channel capacity; thereby, minimizing risk of ice jam formation, flooding along the Heart and Missouri Rivers and overtopping the Heart River levee system.
 - ANTICIPATED ENVIRONMENTAL IMPACTS.
 - Wetlands. No wetlands are proposed to be impacted by this project.
 - Woodlands. No woodlands are proposed to be impacted by this project.
 - Flowage and Circulation Patterns. The project would restore flow and circulation along the right bank of the Missouri River and increase channel capacity at the confluence of the Heart and Missouri Rivers.
- COMPENSATORY MITIGATION. No mitigation is proposed or expected to be required.
- ALTERNATIVES. An alternatives analysis has not been conducted; however, a pre-application consultation was held with state and federal resource agencies on September 12, 2012, with various alternatives discussed. An alternatives analysis is not required for an application to be determined complete or for the publishing of a public notice.

National Environmental Policy Act of 1969 [“NEPA”] (42 USC 4321 *et seq.*; Public Law 91-190) **NEPA Statement:** NEPA is the Nation’s basic charter for protection of the environment. NEPA is to provide decision-makers and the public full disclosure of the environmental consequences of taking an action so they can make informed decisions. NEPA itself does not impose substantive duties mandating particular results, but prescribes the necessary process for preventing uninformed agency action. At this time, the Corps anticipates completion of an Environmental Assessment will achieve the appropriate level of NEPA compliance for this project.

National Historic Preservation Act of 1966 [“NHPA”] (80 Stat 915; 16 USC 470a, et seq.)

and amendments, including the 1992 amendments (PL 89-665 and PL 96-515). **Cultural Resources Statement:** The Omaha District will comply with the NHPA and amendments and the procedures set forth in 33 CFR, Appendix C. We will evaluate input by Indian Tribes, the North Dakota State Historic Preservation Officer (NDSHPO), and any interested parties in response to this public notice. All work would occur on recently deposited sand and sediment within the active river channel; therefore, the Corps has made a preliminary determination that the project has no potential to cause effect to properties listed, or eligible for listing, on the National Register of Historic Places.

Section 404(b)(1) Guidelines [“Guidelines”] (40 CFR 230 Subpart B): These Guidelines are the substantive environmental criteria used in evaluating the discharges of dredged or fill material in waters of the United States under Section 404 of the Clean Water Act and are applicable to all 404 permit decisions. The purpose of these Guidelines is to restore and maintain the chemical, physical, and biological integrity of United States waters through the control of discharges of dredged or fill material. Fundamental to the Guidelines is an understanding that dredge or fill material should not be discharged into such waters unless it is demonstrated that such discharges would not have unacceptable adverse impacts either individually or in combination with existing and/or probable impacts of other activities affecting the environment.

Section 401 of the Clean Water Act [“Water Quality Certification”] (33 USC Section 1341)

Water Quality Certification Statement: The North Dakota Department of Health, Division of Water Quality, 918 East Divide Avenue, Bismarck, North Dakota 58501-1947 will review the proposed project for State certification in accordance with the provisions of Section 401 of the Clean Water Act. The certification, if issued, will express the State's opinion that the project undertaken by Lower Heart River Water Resource District will not result in a violation of applicable water quality standards. Although water quality certification is a prerequisite for issuance of a DA permit, certification alone does not guarantee a DA permit will be issued for the project.

Endangered Species Act of 1973 [“ESA”] (16 USC 1531, et seq.) **ESA Statement:**

This project is within the known range of the endangered Interior least tern (*Sterna antillarum*), Whooping crane (*Grus americanis*), Pallid sturgeon (*Scaphirhynchus albus*), Black-footed ferret (*Mustela nigripes*) and Gray wolf (*Canis lupus*), as well as, the threatened Piping plover (*Charadrius melodus*). Critical habitat for the Piping plover has also been identified in the Missouri River. Pursuant to the Endangered Species Act, the Corps has made a preliminary determination that the project, as proposed, would have “no effect” on the Gray wolf and Black-footed ferret; “may affect, but not likely to adversely affect” the Interior least tern, Whooping crane, Pallid sturgeon and Piping plover; and “likely to adversely affect” critical habitat for the Piping plover. Consultation with the US Fish and Wildlife Service will occur pursuant Section 7 of the ESA.

Public Interest Review [33 CFR 325.3(c)(1)]: The public interest review procedures call for weighing the benefits that reasonably may be expected to accrue. These are balanced against its reasonably foreseeable detriments and results in reaching a determination that

expresses the public interest. Public interest factors include all factors which may be, or may become, relevant to this project, such as conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, 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, considerations of property ownership and, in general, the needs and welfare of the people. The decision whether to issue a permit is based on an evaluation of those factors and the probable impact, including cumulative impacts, and reflects the national concern for both the protection and utilization of important natural resources.

The 404(b)(1) Guidelines and the Public Interest Review are both administrative processes required as part of the Regulatory Program, but they are independent of each other. A project must be in compliance with the Guidelines and must not be contrary to the public interest in order to be permitted by the Army Corps of Engineers.

Anyone whose interests may be affected by the City of Fargo's proposal is invited to submit favorable or unfavorable written comments to the U.S. Army Corps of Engineers [Omaha District] **North Dakota Regulatory Office, 1513 South 12th Street, Bismarck, North Dakota 58504**. Comments must be submitted on or before the date on the front of this notice to be considered in subsequent actions on this application. For additional information, you may contact **Mr. Matthew J. Mikulecky**, Regulatory Project Manager [Matthew.J.Mikulecky@usace.army.mil] **or Mr. Joseph M. Tanko**, Acting North Dakota Regulatory Program Manager [Joseph.M.Tanko@usace.army.mil] at telephone number (701) 255-0015 **or** visit the North Dakota Regulatory Office.

Request to Postmasters: Please post this notice in a conspicuous place until the expiration date specified at the top of page one.

Notice to Editors: This notice is provided for your use in developing news stories only. No payment for publication will be provided.

ATTACHMENTS