

March 18, 2008

Chris Mammoliti, Aquatic Biologist
The Watershed Institute
1200 SW Executive Dr.
Topeka, KS 66615

Re: Jacob's Creek Landing Log Jam
Neosho River

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Dear Mr. Mammoliti:

This is in response to your February 18, 2008 letter e-mailed to me that day regarding alternatives being explored to clear or partially clear the logjam at Jacob's Creek Landing on the Neosho River. You requested our review and comments on each alternative as well as information about possible permitting requirements.

To deal with permitting issues first, during our initial review of the log jam in 2004 we were informed that the jam was located on the Flint Hills National Wildlife Refuge and the property is owned by the Corps of Engineers. Assuming that the entire project area is on federal property and the federal government is a sponsor of any project to remove the jam, it appears that the proposed removal and associated modifications would not be subject to regulation under the Obstruction in Stream Act (K.S.A. 82a-301 *et seq.*) or The Levee Law (K.S.A. 24-126). If the jam has moved upstream of federal property and the proposed removal included work on property not owned by the federal government, we might have some regulatory responsibility under the aforementioned statutes.

In any case, whether on federal land or not, if the project requires the use of surface water or groundwater for hydraulic dredging, dewatering, construction, or other beneficial uses, and if those uses cannot be covered under an existing water right or an existing permit to appropriate water, an application must be filed with DWR pursuant to the Kansas Water Appropriation Act (K.S.A. 82a-701 *et seq.*). Please inform us when a specific plan of action is proposed so that we can better assist you in determining whether it will require any permits or approvals from DWR. We would also suggest checking whether permits or approvals may be required from other agencies or units of government.

The rest of this letter constitutes our comments on the three alternatives noted in your February 18 letter. Although the project goals were not specifically identified, it appears that the major goal is to restore access for boaters and other recreational users to the boat ramp, the river, and the reservoir.

Alternative 1: Two significant concerns that come to mind are (1) disposal of 845,000 cubic yards of debris which apparently has little or no economic value, and (2) preventing in the long term a recurrence of the log jam. To some degree the first issue is a concern for all three alternatives, but especially for this the complete removal alternative. The second concern arises because apparently nothing is being proposed to address the root causes of the logjam. It seems likely that one of the root problems is sedimentation in John Redmond Reservoir and in this arm of the reservoir in particular. Without a concurrent proposal to address sediment accumulation below the log jam site, or to substantially reduce sediment transport into the river above this point, it appears that over time the jam will probably redevelop. Of course there may be other issues that should be addressed to prevent the recurrence of the logjam or at least delay its recurrence.

Alternative 2: Again, two main concerns present themselves. The first is the same as for Alternative 1 - the disposal of a large, although somewhat smaller, quantity of debris. The second concern is whether this alternative would accomplish any meaningful improvements. It is not clear that any significant benefits would be derived from this alternative as the only access restored would be to the river upstream of Jacob's Creek Landing. If the affected individuals and project sponsors feel this is a viable alternative, then perhaps this concern is moot.

Alternative 3: This alternative again has the debris disposal problem, and the total debris estimate is just less than that for Alternative 1. The concern expressed above about the log jam redeveloping may also apply here, perhaps to a lesser degree since the new channel appears to be on a slightly steeper grade and of course does not have existing sediment accumulation. Alternative 3 appears to have the most impact on undisturbed land, including wetlands.

From an objective point of view, perhaps a fourth alternative - to buyout the properties adversely affected by the log jam - should be considered when the economics of the alternatives are evaluated. Another similar possibility would be to allow owners of the impacted properties to exchange them for property owned by the Corps with recreational opportunities similar to what has been lost at Jacob's Creek Landing. The latter possibility might be administratively challenging, but it may be more economical than those listed in your letter.


Finally, while your letter focuses on basic aspects of three alternatives, at some point it will be necessary to consider the economic feasibility of the project. It seems unlikely that any of the proposed alternatives could be considered viable because the expense of the alternatives may far outweigh the recreation values that will be restored, and perhaps any other values that can be identified. The proposed alternatives identified in your letter do not indicate whether there are significant adverse environmental impacts

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Neosho River
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that the alternatives would address. Based upon informal comments by Corps officials, it does not appear that the operation of the dam and reservoir has been adversely affected by the log jam. In this context, it may be prudent to consider the do-nothing alternative.

Please let me know if you have any questions about our comments.

Sincerely,


Matt A. Scherer, III, P.E.
Water Structures Program Manager
(785) 296-3083

cc: Ed Byrd, Water Structures
Katie Tietsort, Water Commissioner, Topeka FieldOffice



KANSAS

DEPARTMENT OF WILDLIFE AND PARKS

KATHLEEN SEBELIUS, GOVERNOR

3/4/2008

Chris Mammoliti
The Watershed Institute and Land Truse
1200 S.W. Executive Drive
Topeka, KS 66615

Track: 20080095
CF
Ref: D1.1103

Re: Restore and maintain access to Neosho River at Jacob's Creek Landing

Dear Chris Mammoliti

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 project's proximity to John Redmond makes it likely to impact critical habitat for the state-listed Bald Eagle. Any of the three alternatives would need to mitigate any loss of habitat and acquire a separate action permit from our agency prior to the start of the project.

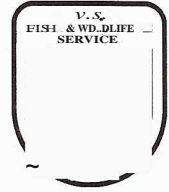
As far as evaluating the options outlined in this letter, we recommend a fourth option: Do nothing. All of the proposed actions seem likely to destroy wetlands, riparian vegetation, and increase the sediment load entering John Redmond Reservoir. The current log-jam, while inconvenient for the purpose of recreation, represents a refuge for fish and wildlife and a trap for sediment. The log-jam also appears to have created or enlarged numerous upstream wetlands, which are important habitat for numerous herpetofauna and birds. As a result, we feel all three alternatives are likely to be highly detrimental to wildlife in the area and recommend doing nothing. If recreational use of the Neosho River is a necessity, we recommend creating a new landing upstream of the existing landing. This strategy seems likely to disturb less land, avoid dramatically affecting the river's hydrology, take less time, and probably cost dramatically less.

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

Sincerely,



James Larson, Aquatic Ecologist
Environmental Services Section



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Kansas Ecological Services Office
2609 Anderson Avenue
Manhattan, Kansas 66502-2801

March 13, 2008

Chris Mammoliti
The Watershed Institute
1200 S.W. Executive Drive
Topeka, KS 66615

RE: John Redmond Log Jam

FWS Tracking # 2008-B-0300

Dear Mr. Mammoliti:

This letter is in response to your request for the Fish and Wildlife Service review of three potential alternatives to provide access at Jacob's Landing on the Neosho River above John Redmond Reservoir. The three alternatives were identified as 1) complete removal of logs and sediment; 2) removal of logs and sediment upstream from Jacob's landing; and 3) removal of logs and sediment upstream from Jacob's landing and construction of a new channel downstream to John Redmond Reservoir.

We have reviewed the information you provided and have discussed the proposal and alternatives with the staff of the Flint Hills National Wildlife Refuge.

Based on the information provided in your letter and a presentation given at a meeting on February 12, 2008, we believe that the Upstream Removal option (option #2) offers the best solution to providing access at the Jacob's Creek Landing with fewer environmental impacts. However, this opinion has been formed without detailed information on environmental costs and benefits. We would expect that an Environmental Assessment or Environmental Impact Statement would have to be produced for any of the proposed actions. The information contained in such documents may cause us to form a different opinion.

The third option is for upstream removal with the construction of a new channel downstream to the John Redmond Reservoir. This option would provide additional benefits such as providing access from the Neosho River to the Reservoir, restoration of the white bass run and subsequent enhancement of white bass fishing opportunities in the Reservoir, and possible creation of Neosho madtom habitat within the newly created channel. The white bass runs have been eliminated or greatly reduced by the logjam and fishing success for white bass has been

significantly reduced because of the elimination of the runs (Patrick Gonzales, pers. comm.). However, without more detailed information on environmental costs and benefits, we do not know if we would be supportive of this action. However, as you stated in the meeting, the Neosho River will probably create its own new channel if given enough time and that situation should be evaluated against a man-made new channel..

As you prepare your plans, please consider provisions to accommodate the following two concerns.

Invasive species have been identified as a major factor in the decline of native flora and fauna and impact aquatic resources. Invasive species of particular concern in Kansas include the zebra mussel (*Dreissena polymorpha*), Eurasian watermilfoil (*Myriophyllum spicatum*), purple loosestrife (*Lythrum salicaria*), Johnson grass (*Sorghum halepense*), sericea lespedeza (*Lespedeza cuneata*), salt cedar (*Tamarix spp.*), and reed canary grass (*Phalaris arundinacea*). Additional information on aquatic invasive species in Kansas can be found on KDWP's website http://www.kdwp.state.ks.us/news/fishing/aquatic_nuisance_species. Human actions are the primary means of invasive species introductions. Prevention of introductions is the first and most cost-effective option for dealing with invasive species. 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 measure to prevent the inadvertent spread of exotic and invasive species would appear to satisfy this directive. Therefore we recommend the implementation of the following BMP:

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


You should also be aware of the Migratory Bird Treaty Act (MBT A) and plan your work in accordance with its provisions. The MBTA prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests, except when specifically authorized by the Department of the Interior.. Takings could result from projects in prairies, wetlands, stream and woodland habitats, and those that occur on bridges and other structures if swallow or phoebe nests are present.. While the provisions of MBT A are applicable year-round, most migratory bird nesting activity in Kansas occurs during the period of April 1 to July 15. However, some migratory birds are known to nest earlier than this (e.g., hawks and owls) and some later (e.g., goldfinches). If the proposed project appears likely to result in the take of migratory birds, I recommend a field survey during the nesting season of the affected habitats and structures to determine the presence of active nests. Our office should be contacted

immediately for further guidance if a field survey identifies the existence of one or more active bird nests that you believe cannot be avoided temporally or spatially by the planned activities.

While the MBTA has no provision for allowing unauthorized take, the USFWS realizes that some birds may be killed during project construction and implementation even if all reasonable measures to protect them are used. The USFWS Office of Law Enforcement carries out its mission to protect migratory birds through investigations and enforcement, as well as by fostering relationships with individuals, companies, and industries that have taken effective steps to minimize their impacts on migratory birds, and by encouraging others to enact such programs. It is not possible to absolve individuals, companies, or agencies from liability even if they implement avian mortality avoidance or similar conservation measures. However, the Office of Law Enforcement focuses its resources on investigating and prosecuting individuals and companies that take migratory birds without regard for their actions--or without following recommendations to avoid take.

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

Sincerely,


Mike LeValley
Field Supervisor

cc: KDWP, Pratt, KS (Environmental Services)
FWS, Hartford, KS (Patrick Gonzales)

MJL/shb