

## **DETERMINATION AND FINDINGS**

**I. AUTHORITY:** The Economy in Government Act, 31 U.S.C. § 1535 and FAR Subpart 17.5—Interagency Acquisitions under the Economy Act.

**II. PROPOSAL:** The U.S. Army Corps of Engineers proposes to borrow specialized dredging equipment from the Department of Agriculture (U.S. Forest Service) for the purpose of accomplishing small scale dredging for environmental purposes in back waters of Pool 5 on the Upper Mississippi River. The specialized dredging equipment is in the Forest Service's existing inventory; the Forest Service will perform no contracting for the Corps of Engineers. The purpose of this project is to improve fisheries habitat in selected backwater areas and provide fine material to be placed upon old dredge material for use as topsoil to facilitate the establishment of vegetation. This topsoil will allow stagnant sand areas to be converted back to floodplain forest via planting of tree seedlings. This purpose of this agreement is to establish the rights, responsibilities, terms and conditions regarding the loan of equipment to the Corps of Engineers. The contemplation of the parties is that this will be a no cost transaction unless the borrowed equipment is lost or damaged. In the event of loss or damage, the Corps of Engineers will be responsible for the repair or replacement of the lost or damaged equipment.

### **III. FINDINGS:**

- A. Formal authorization for the Corps to perform operation and maintenance activities on the Upper Mississippi River System was given in the Rivers and Harbors Acts of 1927, 1930, 1932, and 1935. Authority for the proposed environmental dredging is contained in the Forest Cover Act of 1960 which provides a mandate for multiple use forest management. The Act provides "for the protection and development of forest or other vegetative cover and the establishment and maintenance of other conservation measures on reservoirs under the Chief of Engineers jurisdiction, so as to yield the maximum benefit and otherwise improve such areas". The Forest Cover Act also provides authority for the Corps to manage project lands and waters for conservation purposes, including fish and wildlife conservation. The proposed work is identified in the Upper Mississippi River Operational management Plan, 201 Annual Plan.
- B. The Corps of Engineers will use the borrowed equipment in accordance with the **Terms and Conditions for Loan and Use of Dredging Equipment**. In general, those Terms and Conditions provide that the Forest Service will loan the dredging of equipment to the Corps of Engineers without cost and in exchange the Corps of Engineers will transport, operate and maintain the borrowed equipment and, at the conclusion of the environmental dredging, return the equipment to the Forest Service in the condition it was in when received, ordinary wear and tear excepted. The equipment provided by the U.S. Forest Service will be operated by the St. Paul District's Maintenance and Repair Section based out of Fountain City, Wisconsin. Dredging for environmental purposes will occur in the Upper Mississippi River Pool 5 near River Mile 744.5. Funding for this effort, including

any contingent liabilities under the proposed agreement, will be Operation and Maintenance, General.

- C. The estimated cost of renting similar dredging equipment from the private sector is approximately \$20,000 per month plus transportation cost (mobilization and demobilization). This would total over \$80,000 for the four month summer work period. The risk of loss or damage to the borrowed equipment is low and, in the event of a total loss, it is anticipated that the Corps of Engineers' liability would not exceed \$80,000. The Corps of Engineers is reserving \$15,000 for the cost of any necessary minor repairs. Aside from the remote chance of a total loss of the equipment, the probable out of pocket cost from using the Forest Service dredge would be no more than \$15,000. The primary purpose of the proposed project is to vegetate old channel maintenance material deposits by providing topsoil and seeding. Obtaining topsoil from an upland source and barging to the site is not economically prudent. Obtaining fine material from dredging nearby is the most economical way to accomplish the project. Dredging has the added benefit of restoring deepwater habitat that has been lost from past channel maintenance activities and continued erosion of these historical deposits. The dredging, including obtaining the federally owned dredge, is a means of accomplishing the primary purpose and, as a result, is incidental to the primary purpose. Contracting for this work would be difficult because of the unknowns and the need for flexibility. Bald eagle nesting occurs near both sites, requiring a floating spring seasonal restriction on the work. Both sites are located in the Closed Area of the refuge and, as a result, construction activities will be prohibited during the fall waterfowl hunting season. Dredging production in backwaters is difficult to predict because of potential access problems, spatial changes (both in stratigraphy and spatial extent) in suitability of material for topsoil and stumps. We need the ability to work on-site in cooperation with our Federal and State partners to constrict, expand or modify the proposed site boundaries and/or depth of fine material excavation as the work progresses. The length of time that the material will take to adequately dry to allow spreading of the fine material is unknown. It is very likely that the material will not be dry enough before the seasonal restrictions concerning the waterfowl season kick-in. This would require spreading and seeding in spring 2011. As a result it is more economical to borrow the dredge on a temporary basis than to rent similar equipment or contract directly from the private sector.
- D. There is no National Economy Act Memorandum of Agreement (MOA) between the Corps and USFS.
- E. The proposed interagency transaction would be conducted under authority of the Economy Act, 31 U.S.C. § 1535.
- F. This Scope of Work does not conflict with the authority or responsibility of any other Agency as listed in FAR part 8 or DFARS part 208.

G. The work is expected to be completed by 30 October 2010.

H. Use of an interagency equipment loan is in the best interest of the Government. Rental equipment cannot be obtained as conveniently or economically by contracting directly with a private source.

I.

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**Dated**

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**Dennis Anderson  
Project Manager  
St. Paul District**

[Note: if this is Operations and Maintenance funding, someone from Operations Division should be signing these findings.]

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**Dated**

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**Jon L. Christensen  
Colonel, Corps of Engineers  
District Engineer  
St. Paul District**

#### **IV. DETERMINATION:**

I have reviewed the requirement for loan of specialized dredging equipment. In light of the foregoing findings, I determine that (1) funding in the amount of \$\$\$\$ for contingent liabilities associated with this agreement has been reserved, (2) it is in the best interest of the United States for the Corps of Engineers to borrow this equipment from the Forest Service to accomplish this environmental dredging, (3) the Forest Service has this equipment available for loan from its existing inventory, (4) the specialized dredging equipment cannot be provided as conveniently or economically by a commercial enterprise, and (5) the loan of this equipment by the Forest Service to the US Army Corps of Engineers does not conflict with any other agency's authority.

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**Dated**

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**Kevin Henricks  
Chief, Contracting Division  
St. Paul District**

In accordance with paragraph 4.4 of Department of Defense Instruction 4000.19, I approve this Determination and Findings.

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**Dated**

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**Michael J. Walsh**  
**Brigadier General, U.S. Army**  
**Division Engineer**

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**CERTIFICATION OF LEGAL REVIEW:**

The Determination and Findings in support of the St. Paul District's proposed loan of dredging equipment from the U.S. Forest Service has been fully reviewed by the Office of Counsel, St. Paul District, and is approved as legally sufficient.

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**Dated**

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**Joseph M. Willging  
District Counsel  
U.S. Army Engineer District, St. Paul**

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