



**DEPARTMENT OF THE ARMY**  
U.S. ARMY ENGINEER DISTRICT, LOUISVILLE  
CORPS OF ENGINEERS  
INDIANAPOLIS REGULATORY OFFICE  
8902 OTIS AVENUE, SUITE S106B  
INDIANAPOLIS, INDIANA 46216-1055  
FAX: 317-547-4526

July 21, 2016

Operations Division  
Regulatory Branch (North)  
ID No. LRL-2008-1366-1c1

Mr. Rick Diericx  
Dynergy Operating Company  
1500 Eastport Plaza Drive  
Collinsville, Illinois 62234

Dear Mr. Diericx:

This is in regard to your application received October 14, 2015, and the revised applications dated April 5, 2016, and May 11, 2016, for a Department of the Army permit. You request authorization to discharge 858 cubic yards of fill material along 485 linear feet of the Middle Fork Vermilion River right descending bank, for planted stone toe protection. The project is identified as Location No. 2 at the Dynergy Vermilion site and is located at Latitude: 40.1798° N, Longitude: 87.7354° W, in Section 20, Township 20 North, Range 12 West, near Oakwood, Vermilion County, Illinois. We have reviewed the submitted data relative to Section 404 of the Clean Water Act.

We have determined that the proposed project is authorized under the provisions of our Nationwide Permits (NWP) 33 CFR 330 (13) for Bank Stabilization as published in the Federal Register on February 21, 2012. We do require compliance with the enclosed Terms and General Conditions of the NWP, the enclosed General and Regional Conditions of the Section 401 Water Quality Certification issued by the Illinois Environmental Protection Agency dated April 2, 2012, and the following Special Conditions:

1. The stone toe protection and vegetative plantings shall be monitored annually for success in accordance with the monitoring plan by SCI Engineering in the report dated May 2016. Annual monitoring reports shall be submitted to the U.S. Army Corps of Engineers, Indianapolis Regulatory Office by December 31 of each monitoring year. The permittee's responsibility to complete the successful stabilization and plantings will not be fulfilled until you have demonstrated success and received written verification from the U.S. Army Corps of Engineers.
2. Your authorization under this Corps permit is conditional upon your compliance with the required conditions of the enclosed National Park Service, Section 7(a) Wild and Scenic River Act determination, dated July 5, 2016. Failure to comply with the conditions of the determination would constitute non-compliance with your Corps permit. The National Park Service is the appropriate authority to determine compliance with the conditions of their determination.

This verification is valid until the NWP is modified, reissued, or revoked. All of the existing NWPs are scheduled to be modified, reissued, or revoked prior to March 18, 2017. It is incumbent upon you to remain informed of changes to the NWPs. We will issue a public notice when the NWPs are reissued. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant nationwide permit is modified or revoked, you will have twelve (12) months from the date of the modification or revocation of the NWP to complete the activity under the present terms and conditions of this nationwide permit. The enclosed Compliance Certification must be signed and returned when the project is completed.

Attached to this NWP verification is a preliminary jurisdictional determination (JD), a Notification of Appeal Process (NAP) fact sheet, and Request for Appeal (RFA) form. However, a preliminary jurisdictional determination is not appealable and impacting "waters of the U.S." identified in the preliminary JD will result in you waiving the right to request an approved JD at a later date. An approved JD may be requested (which may be appealed), by contacting me for further instruction.

If you have any questions concerning this matter, please contact me by writing to the above address or by calling 317-543-9424. Any correspondence should reference our assigned Identification Number LRL-2008-1366-1c1.

Sincerely,



Laban C. Lindley  
Team Leader  
Indianapolis Regulatory Office

Enclosures

Copy Furnished (via email): NPS (Santiago)  
IEPA (Fraught)  
IDNR (Yockey)  
IDNR (Diedrichsen)  
SCI Engineering (Billings)

Compliance Certification

Permit Number: LRL-2008-1366-1c1

Name of Permittee: Dynege Operating Company

Date of Issuance: July 21, 2016

Upon completion of the activity authorized by this permit and any mitigation required by this permit, sign this certification and return it to the following address:

USACE - Louisville District  
Indianapolis Regulatory Office  
8902 Otis Avenue, Suite S106B  
Indianapolis, IN 46216-1055

Please note that your permitted activity is subject to a compliance inspection by an U.S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

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Signature for Permittee  
(Rick Diericx)

Date

## TERMS FOR NATIONWIDE PERMIT NO. 13 – Bank Stabilization

Bank stabilization activities necessary for erosion prevention, provided the activity meets all of the following criteria:

- (a) No material is placed in excess of the minimum needed for erosion protection;
- (b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in minimal adverse effects;
- (c) The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in minimal adverse effects;
- (d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in minimal adverse effects;
- (e) No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the United States;
- (f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and,
- (g) The activity is not a stream channelization activity.

This NWP also authorizes temporary structures, fills, and work necessary to construct the bank stabilization activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Invasive plant species shall not be used for bioengineering or vegetative bank stabilization.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) involves discharges into special aquatic sites; or (2) is in excess of 500 feet in length; or (3) will involve the discharge of greater than an average of one cubic yard per running foot along the bank below the plane of the ordinary high water mark or the high tide line. (See general condition 31.) (Sections 10 and 404)



**US Army Corps  
of Engineers®**

Louisville District

# Nationwide Permit Conditions

The following General Conditions must be followed in order for any authorization by NWP to be valid:

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.  
(b) Any safety lights and signals prescribed by the US Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the US.  
(c) The permittee understands and agrees that, if future operations by the US require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the US. No claim shall be made against the US on account of any such removal or alteration.
2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.
3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.
4. Migratory Bird Breeding Areas. Activities in waters of the US that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.
6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.
8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).
10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.
11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.
12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high

- tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the US during periods of low-flow or no-flow.
13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.
  14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.
  15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.
  16. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, US Forest Service, US Fish and Wildlife Service).
  17. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
  18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.  
(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.  
(c) Non-federal permittees must submit a pre-construction notification (PCN) to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the PCN must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete PCN. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from Corps.  
(d) As a result of formal or informal consultation with the USFWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the USFWS or the NMFIS, The Endangered Species Act prohibits any person subject to the jurisdiction of the US to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS and NMFIS at <http://www.fws.gov> or <http://www.fws.gov/npac> and <http://www.noaa.gov/fisheries.html> respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for obtaining any "take" permits required under the USFWS's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the USFWS to determine if such "take" permits are required for a particular activity.

20. Historic Properties. (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA is complete.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who,

with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the US are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the US to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the US, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(5) Compensatory mitigation requirements (e.g., resource type and amount) to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the US, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(h) Where certain functions and services of waters of the US are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

24. **Safety of Impoundment Structures.** To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has

been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. **Water Quality.** Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. **Coastal Zone Management.** In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. **Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or USEPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. **Use of Multiple Nationwide Permits.** The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the US authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the US for the total project cannot exceed 1/3-acre.

29. **Transfer of Nationwide Permit Verifications.** If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature: "When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

(Transferee)

(Date)

30. **Compliance Certification.** Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

- (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(f)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

31. Pre-Construction Notification (PCN). (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a PCN as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

- (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or
  - (2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).
- (b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

- (1) Name, address and telephone numbers of the prospective permittee;
- (2) Location of the proposed project;
- (3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the US expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);
- (4) The PCN must include a delineation of wetlands, other special aquatic sites, and waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the US. The 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;
- (5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of PCN Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP activities that require PCN notification and result in the loss of greater than 1/2-acre of waters of the US, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require PCN notification and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require PCN notification, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (USEFWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the PCN notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each PCN notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of PCN notifications to expedite agency coordination.

Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project.

## **Illinois EPA Water Quality Certification**

### **General Conditions for 2012 Nationwide Permits**

**General Condition 1:** An individual 401 water quality certification will be required for any activities permitted under these Nationwide Permits for discharges to waters designated by the State of Illinois as Outstanding Resource Waters under 35 Ill. Adm. Code 302.105(b).

**General Condition 2:** Projects requiring authorization under Section 404 of the Clean Water Act must implement Best Management Practices (BMPs) to protect water quality, preserve natural hydrology and minimize the overall impacts to aquatic resources during and after construction. If the project involves a water with an approved Total Maximum Daily Load (TMDL) allocation for any parameter, measures which ensure consistency with the assumption and requirements of the TMDL shall be included. TMDL program information and water listings are available at [www.epa.state.il.us/water/tmdl/](http://www.epa.state.il.us/water/tmdl/). If the project involves an impaired water listed on the Illinois Environmental Protection Agency's Section 303(d) list for suspended solids, turbidity, or siltation, measures designed for at least a 25-year, 24-hour rainfall event shall be incorporated. Impaired waters are identified at [www.epa.state.il.us/water/tmdl/303d-list.html](http://www.epa.state.il.us/water/tmdl/303d-list.html).

**General Condition 3:** Prior to proceeding with any work in accordance with any Nationwide Permit, potential impacts to threatened or endangered species shall be identified through use of the State's Ecological Compliance Assessment Tool (EcoCAT) at <http://dnrecocat.state.il.us/ecopublic/>. If potential impacts to State threatened or endangered species are identified, the Illinois Department of Natural Resources shall be consulted with.

**Attachment 4**

**ILLINOIS EPA WATER QUALITY CERTIFICATION  
REGIONAL CONDITIONS FOR NATIONWIDE PERMIT 13**

1. The bank stabilization activities shall not exceed 1000 linear feet.
2. Asphalt, bituminous material and concrete with protruding material such as reinforcing bars or mesh shall not be:
  - A. used for backfill;
  - B. placed on shorelines/streambanks; or
  - C. placed in waters of the State.
3. Any spoil material excavated, dredged or otherwise produced must not be returned to the waterway but must be deposited in a self-contained area in compliance with all state statutes, as determined by the Illinois EPA.
4. Any backfilling must be done with clean material and placed in a manner to prevent violation of applicable water quality standards.
5. The applicant shall consider installing bioengineering practices in lieu of structural practices of bank stabilization to minimize impacts to the lake, pond, river or stream and enhance aquatic habitat. The applicant shall document the selection process for the bank stabilization technique(s) and the basis for the selection of the bank stabilization practices. Bioengineering techniques may include, but are not limited to:
  - A. adequately sized riprap or A-Jack structures keyed into the toe of the slope with native plantings on the banks above;
  - B. vegetated geogrids;
  - C. coconut fiber (coir) logs;
  - D. live, woody vegetative cuttings, fascines or stumps;
  - E. brush layering; and
  - F. soil lifts.

## NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Dynege Operating Company	File Number: LRL-2008-1366	Date: 07/21/16.
Attached is:		See Section below
<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
<input type="checkbox"/>	PERMIT DENIAL	C
<input type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION	D
X	PRELIMINARY JURISDICTIONAL DETERMINATION	E

**SECTION I -** The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/ccwo/reg> or Corps regulations at 33 CFR Part 331.

**A: INITIAL PROFFERED PERMIT:** You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT:** You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

**SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**ADDITIONAL INFORMATION:** The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

If you have questions regarding this decision and/or the appeal process you may contact:

Laban C. Lindley, Team Leader  
US Army Engineer District, Louisville  
Attn: CELRL-OPF-N  
8902 Otis Avenue, Suite S106B  
Indianapolis, IN 46216-1055  
TEL (317)-543-9424; FAX (317) 547-4526

If you only have questions regarding the appeal process you may also contact:

U.S. Army Corps of Engineers  
ATTN: Jacob Siegrist  
Appeal Review Officer CELRD-PD-REG  
550 Main Street, Room 10524  
Cincinnati, OH 45202-3222  
TEL (513) 684-2699; FAX (513) 684-2460

**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

\_\_\_\_\_  
Signature of appellant or agent.

Date:

Telephone number:

U.S. Army Corps of Engineers  
Preliminary Jurisdictional Determination

**BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD):** July 6, 2016

**B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:**

Rick Diericx  
Dynergy Operating Company  
1500 Eastport Plaza Drive  
Collinsville, Illinois 62234

**C. DISTRICT OFFICE, FILE NAME, AND NUMBER:** CELRL-OPF-N, Dynergy Operating Company – Middle Fork Vermilion River Bank Stabilization – Location No. 2, LRL-2008-1366-LCL.

**D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:**

*(USE THE ATTACHED TABLE TO DOCUMENT MULTIPLE WATERBODIES AT DIFFERENT SITES)*

State: IL County: Vermilion City: near Oakwood

Center coordinates of site: Latitude and Longitude (NAD 83):

Latitude: 40.1798° North, Longitude: 87.7354° West

Authority:  Section 404  Section 10

Name of nearest waterbody: Middle Fork Vermilion River

Identify (estimate) amount of waters in the review area:

Non-wetland waters: 500 linear feet: 150 width (ft).

Cowardin Class: Riverine

Stream Flow: Perennial

Wetlands: N/A.

Cowardin Class: N/A.

Name of any water bodies on the site that have been identified as Section 10 waters:

Tidal: N/A.

Non-Tidal: N/A.

**E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

Office (Desk) Determination. Date: July 6, 2016

Field Determination. Date(s): *Date*

U.S. Army Corps of Engineers  
Preliminary Jurisdictional Determination

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. §331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable. This preliminary JD finds that there "may be" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

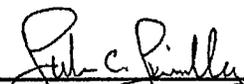
U.S. Army Corps of Engineers  
Preliminary Jurisdictional Determination

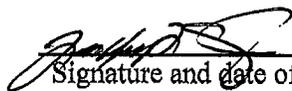
**SUPPORTING DATA. Data reviewed for preliminary JD (check all that apply)**

- checked items should be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Bank Stabilization site plans, SCI Engineering May 2016.
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - Office concurs with data sheets/delineation report.
  - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps: *Click here to enter text.*
- Corps navigable waters' study: *Click here to enter text.*
- U.S. Geological Survey Hydrologic Atlas: *Click here to enter text.*
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: Collison and Danville NW, IL 1:24K quad.
- USDA Natural Resources Conservation Service Soil Survey. Citation: *Click here to enter text.*
- National wetlands inventory map(s). Cite name: *Click here to enter text.*
- State/Local wetland inventory map(s): *Click here to enter text.*
- FEMA/FIRM maps: *Click here to enter text.*
- 100-year Floodplain Elevation is: *Click here to enter text.*  
(National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): Illinois Orthophotography 2011.
  - or  Other (Name & Date): Site photos 2016.
- Previous determination(s). File no. and date of response letter: *Click here to enter text.*
- Applicable/supporting case law: *Click here to enter text.*
- Applicable/supporting scientific literature: *Click here to enter text.*
- Other information (please specify): *Click here to enter text.*

**IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.**

 7/16/16  
\_\_\_\_\_  
Signature and date of Regulatory Project  
Manager (REQUIRED)

 V.P. Operations Support 7-7-2016  
\_\_\_\_\_  
Signature and date of  
person requesting preliminary JD  
(REQUIRED, unless obtaining  
the signature is impracticable)



# United States Department of the Interior

National Park Service  
Midwest Region  
601 Riverfront Drive  
Omaha Nebraska 68102-4226

1.A.1(MWR-LCPP/PC)

July 5, 2016

RECEIVED  
DATE

JUL 11 2016

Indianapolis Regulatory Office

Mr. Laban C. Lindley  
U.S. Army Corps of Engineers  
Louisville District  
Indianapolis Regulatory Office  
8902 Otis Avenue, Suite S106B  
Indianapolis, Indiana 46216

Dear Mr. Lindley,

The National Park Service (NPS) has reviewed the application for a Department of the Army permit, under Section 404 of the Clean Water Act, for the Vermilion Power Station Bank Stabilization Project (Project), Location #2, Vermilion County, Illinois. The project sits on the right descending bank of the Middle Fork Vermilion National Scenic River (River). The River is a state-administered component of the National Wild and Scenic River System (System). It was added to the System in recognition of its outstanding scenic, recreational, ecologic, geologic, and historic river values.

The streambank stabilization work associated with the Project meets the criteria of a federally-assisted water resources project and is subject to the requirements of the attached determination under Section 7(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.)(Act). The NPS has determined the Project will not have a direct and adverse effect on the free-flowing condition, water quality, and outstandingly remarkable values for which the River was designated, provided that the required conditions of this determination are met.

The NPS is providing this final determination at the request of the U.S. Army Corps of Engineers, the federal assistance agency, on behalf of the Secretary of the Interior (Secretary) as required by the Act. The NPS has a continuing interest in ensuring that impacts to the River and its values are minimized or avoided.

The NPS has continued to express concern about other aspects of this location, the location of the fly ash disposal ponds, as well as the potential for detrimental effects to the water quality of the River in the event of pond discharges. The River would benefit greatly from the removal of the ash ponds, the associated embankments, the streamside pump house, and all non-operational infrastructure that remains within the river corridor, and again urge you to address these issues.

Sincerely,

Cameron H. Sholly  
Regional Director

cc:

Mr. Kraig McPeck  
Field Supervisor  
U.S. Fish and Wildlife Service  
Ecological Services Field Office  
1511 47th Avenue  
Moline, Illinois 61265

Mr. Louis G. Yockey  
Region 3 Landscape Architect  
Greenways and Trails Planner  
One Natural Resources Way  
Springfield, Illinois 62702-1271

Mr. Rick Diericx  
Dynegy Operating Company  
1500 Eastport Plaza Drive  
Collinsville, Illinois 62234-6135

**FINAL SECTION 7(a) EVALUATION AND DETERMINATION**  
**Vermilion Power Station Bank Stabilization Project – Location 2**  
**Middle Fork Vermilion National Scenic River**  
**Vermilion County, Illinois**  
**Prepared by the National Park Service**  
**June 2016**

**INTRODUCTION:**

The Middle Fork Vermilion National Scenic River (River) is a State-administered component of the National Wild and Scenic Rivers System (System) as designated under Section 2(a)(ii) of the Wild and Scenic Rivers Act (Act) (Public Law 90-542) on May 11, 1989. The River is to be administered and managed to protect and enhance the river's free-flowing condition, water quality, and outstanding remarkable values (ORV). The River's ORV include scenic, geologic, fish and wildlife, ecologic, recreational, and historic resources.

Section 10(a) of the Act is considered the anti-degradation policy of the Act and states:

*Each component of the national wild and scenic rivers system shall be administered in such manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values.*

As a State-administered river with no adjacent Federal ownership, the State of Illinois is charged with the day-to-day management of the River. The National Park Service (NPS), on behalf of the Secretary is responsible for making evaluations and determinations of effect in accordance with Section 7(a) of the Act. A Section 7(a) evaluation and determination is prepared to assess whether a proposed water resource project within a designated river segment or a tributary located within the established boundary of a river would have a direct and adverse effect on the values for which a river was designated.

Section 7(a) of the Act states the following:

*... no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration.*

Water resources projects include, but are not limited to, dams; water diversion projects; fisheries habitat and watershed restoration/enhancement projects; bridge construction or demolition; bank stabilization projects; boat ramps; and other activities that require a Section 404 or Section 10 Permit from the U.S. Army Corps of Engineers (USACE). The Act prohibits Federal assistance to water resource projects the NPS has determined will have a direct and adverse effect on the values for which the River was established, and, the NPS cannot consent to projects with impacts to River values that cannot be avoided or eliminated in order to ensure the River's condition at the time of designation will remain improved or not degraded.

The River is classified as “Scenic” at the project location. Section 2(b) of the Act defines Scenic River Areas as follows:

*Those rivers or sections of river that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines undeveloped, but accessible by roads.*

Classification establishes a baseline condition and reflects the level of development existing at the time of designation. Classification does not imply that additional development that degrades the original condition of the River is permitted in the future (Federal Register, 1982) nor does it imply management intent. All rivers must be managed to protect and enhance the values that caused them to be eligible for inclusion in the System, regardless of their classification. All rivers are afforded equal protection under the Act.

Federally-assisted water resources projects that are determined to have a direct and adverse effect on the values for which rivers were added to the System are prohibited, unless these impacts can be avoided or eliminated. The maintenance of structures associated with preexisting instream conditions (i.e., water intakes, outfalls, and bank treatments) is allowed when necessary and appropriate, for the purposes of protecting existing public infrastructure or protecting the river from existing threats to river values. Every effort must be made by project proponents to conform to practices that will minimize impacts to the river and enhance river values to the greatest extent possible.

Seventeen and one tenth miles (17.1) of the River were designated as a Federal Wild and Scenic River under Section 2(a) (ii) of the Wild and Scenic Rivers Act (WSRA) in 1989. Of those 17.1 miles, approximately 3.5 miles along the right descending bank are privately owned as part of the Vermilion Power Plant Complex. Dynegy Operating Company owns the plant and operated the facility until it was decommissioned in 2011.

As part of the power plant operations, three coal ash storage ponds were constructed within the active floodplain of the River. Collectively, the ponds hold over 3 million cubic yards of coal ash and related by-products of coal combustion. The newest “East Pond” is the reason for this determination as it is impeding the lateral migration of the River and has the potential of mass discharge to the River without intervention. The NPS has expressed concern about the current location of the fly ash disposal ponds, within the active meander pattern of the River, as well as the potential detrimental effects of pond discharges to the water quality value of the River. The location of the fly ash disposal ponds is not consistent with the purpose of the River and the removal of the ash ponds as well as associated embankments, streamside pump house, and non-operational infrastructure that remains within the river corridor would protect and enhance the River and its values.

The NPS is also concerned that the River has migrated beyond a recommended safety threshold, less than 30 linear feet at its narrowest point, from the base of the embankment of the existing East Fly Ash Disposal Pond (primary pond), exposing the River to the potential for embankment failure and the discharge of the contents of the ponds into the River. In the absence of the immediate removal of the fly ash ponds, the re-establishment of the bank and associated armoring is necessary as a temporary practice for the protection of the River and its values, until such time the ponds are removed.

**LOCATION:**

The project is located on the right descending bank of the River at "Location #2" in the vicinity of the eastern embankment of the primary pond), on the property of the Vermilion Power Station, 10188 E. 2150N, Oakwood, Illinois 61858, near Latitude 40°10'44.36" N and Longitude 87°44'09.05" W.

**TIMING/DURATION:**

October 2016 to November 2016

**PURPOSE:**

The purpose of the project is to re-establish a severely eroded bank and prevent the migration of the River into the embankment of the east ash primary disposal pond that currently exists within the floodplain of the River.

**NEED:**

The proposed project is necessary, in the absence of pond/ash removal and reclamation of the area, to protect the River and its values and to reduce the potential of embankment failure and possible discharge of the contents of the primary pond into the River.

**PROJECT DESCRIPTION:**

The Project as proposed will re-establish approximately 485 linear feet of eroded streambank along the right descending bank of the River. A combination of rock channel protection, back-filled soil, dormant willow stakes, and other native vegetation will be used to re-construct a fortified bank with a substantial vegetated component.

The proposed design will use sandbar willow incorporated into the stone toe beginning 2 feet below the ordinary high water mark. The native plant material will be planted throughout the bank fill in order to provide additional bank stability, a lowered rock profile, and ecological benefits. Some rock channel protection (RCP) or riprap will be visible

**SECTION 7(a) EVALUATION:**

The project includes construction activities within the waterway of the River and meets the criteria of a water resources project. The project is subject to a determination under the "Direct and Adverse Effect" evaluation standard of Section 7(a) of the Act.

This section analyzes the effects the proposed action would have on the River's water quality, free-flowing condition, and ORVs. Information to make this final determination is derived from the "Revised Permit Application Form and Project Report," dated May 12, 2016. The Louisville District of the USACE has provided the application packet containing this information and a request for a final determination.

In a previous Section 7(a) Determination dated August 2010, the NPS determined that a similar proposed project would have a direct and adverse effect on the free-flowing condition and scenic values for which the River was designated. The NPS also recommended to the following actions:

1. Establish a Safety Threshold: According to the geomorphological study (Study), the ash pond is in no immediate danger from the River, but may be subject to fluvial processes in the future. An appropriate safety threshold should be established in order to assess when corrective action may be necessary to protect the River. Future corrective alternatives may include pond relocation.”
2. Establish a Streambank Monitoring Protocol: The existence of the ash pond within the meander pattern of the River is a considerable threat to the River. The NPS concurs with Recommendation 1 of the Study that suggests the project proponents actively monitor the movement of the River in order to assess the ongoing status of the streambank, its proximity to set safety thresholds, and the threat of the pond to the River.
3. Seek Alternative Ash Disposal Locations: At its current location, the primary fly ash disposal pond presents a water quality hazard and a constraint to natural river processes. The NPS recommends that the proponents consider the mutual benefits of pond relocation for facility management and the River’s values.

This determination assumes the existing fly ash ponds will remain in place for the foreseeable future. As evident from field visits on October 10, 2014 and March 3, 2016, the River continues to erode the right descending bank and has reached a minimum distance that requires bank stabilization, in the absence of fly ash/pond removal and the restoration of the floodplain, to prevent the potential for the discharge of fly ash to the River. This determination does not preclude any action to remove the existing ponds from the floodplain and re-establish the natural function of the River.

#### Free-flowing Condition:

Section 16(b) of the Act defines the term “free-flowing” as “existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway,” and further stipulates that the existence of structures at the time of designation, “...shall not be construed to authorize, intend or encourage future construction of such structures with components of the national wild and scenic river system.”

The River currently drains approximately 426 square miles of watershed to the site as it flows through a rural landscape. It is described as clean, winding with some pools and shoals as evaluated in the Study. The streambed is incised into shale with little potential for channel degradation. The River has a highly sinuous pattern within the project area and is currently within 30 feet of the base of the ash pond embankment at its most narrow distance from riverbank. The right descending streambank is undercut and experiencing severe erosion consistent with natural stream processes, accelerated by high flow events and bedrock/shale substrates that have effectively facilitated rapid lateral movement and bank loss. The River continues to erode the right descending bank and has reached a threshold that requires bank stabilization in the absence of fly ash/pond removal and the restoration of the floodplain.

According to the Study in 2009, a 50-foot margin between the toe of the pond’s embankment and the riverbank existed at the time, with the potential for the River to capture a secondary “high flow” channel before the safety threshold would be reached. Upon further observation, approximately 20 feet of the bank line has been lost to erosion since the 2009 study and visual inspection of the high flow channel in 2016 found the channel to be virtually unchanged since 2009 with no evidence of increased flow or active erosion. It does not appear the River is currently claiming the high flow channel or abandoning the main channel near the East Ash Pond.

As proposed, the project would maintain the geometry of the River, prior to the accelerated scour, and incorporate significant vegetative components within the RCP. The project would result in the hardening of the streambank effectively halting the lateral migration in a highly sinuous reach of the River. And maintain the condition prior to designation – the existence of fly ash disposal ponds within the adjacent floodplain and prevent possible mass discharges of fly ash to the River.

The NPS has determined the project as proposed will not have direct and adverse effect on the free-flowing condition for which the River was established.

#### Water Quality:

The protection of the water quality in designated rivers is explicitly directed as part of the Congressional declaration of policy under Section 1(b) of the Act. Additional management policies under Section 12(c) of the Act reinforce the primary role of the Environmental Protection Agency (EPA) and appropriate State water pollution control agencies in enforcing the Clean Water Act and related water quality standards on the River. Wild and Scenic River-administering agencies work in cooperation with the EPA and State agencies to address water quality issues that affect the River as directed by the Act.

According to the *Middle Fork of the Vermilion Corridor Management Plan (CMP)*, the Illinois Environmental Protection Agency has found the River to have “no known impairment” attributable to non-point pollution. The water quality of the River is generally good to excellent, dissolved oxygen levels are at acceptable levels, and the River supports a diverse assemblage of pollution-intolerant macroinvertebrates, unionid mussels, and six species of darters. Notwithstanding the generally good water quality within the River, storm water runoff contributes occasional phosphorus loads. The River also receives organic waste pollution attributable to animal feed lots and domestic septic systems, and the ash ponds along the River present an active threat of leaching to the River’s water quality.

The location of the ponds is especially threatening to the water quality of this active River system. The East ash pond is designed to contain fly ash, bottom ash, and boiler slag among other materials that are potentially hazardous to water quality. The current materials identified in the Vermilion Power Station’s National Pollutant Discharge Elimination System permit include: fly ash and bottom ash transport water, ash hopper overflow, demineralizer regenerant wastes, water treatment clarifier sludge, water filter backwash waste, coal pile runoff, area runoff, non-chemical cleaning wastes, boiler room and dust collector area floor drains, and pyrites from coal crushing.

Project activities would include the removal of riparian vegetation and disturbance of the banks in order to install the project. The area would be restored and vegetation replaced to a condition consistent with existing riparian vegetation. Some sediment loading associated with the project is expected during construction. Any turbidity associated with project construction would be temporary.

The NPS has determined the project will not have a direct and adverse effect on the water quality of the River.

#### Scenic Values:

The River derives its scenic quality from its inconspicuous roads, forested conditions, bluff lines, and largely undeveloped shorelines. The landscape is mostly old agricultural fields, mixed hardwood forests, and wetlands. Few buildings are visible from the river, except for the power plant smoke stack and the pump house further downstream from the project site. Gabion baskets, some of which are in disrepair and undermined by the River, line the right descending bank, upstream of the project site, and vegetated pond

embankment can be seen from the River. These structures and constructed landscape features occur and are experienced in relative succession as one paddles the River along the power plant property.

The project site has a limited forested corridor, less than 30 feet at its narrowest point and the current bank, though eroding, exhibits the natural tendencies of a migrating stream. Though many of the structures, the gabions upstream from the project site, the pump house downstream from the project site, and the ash ponds/embankment existed and have been visible since the time the River was established, the existing wooded corridor has contributed to the scenic quality of the area. The relatively vegetated condition of the pond embankment, along with the heavily wooded opposite bank, minimize the visual contrast, but the embankment remains a dominant landscape feature.

In order to install the practice, the existing undercut bank would be replaced with a stone toe interplanted with willow poles and other native vegetation. The upper bank and denuded corridor would be re-planted with native vegetation, consistent with the existing river corridor. Although in time the bioengineered design would likely establish sufficient vegetated growth to reduce the profile of the rock, it is unlikely the RCP would be completely covered.

Considering the prevailing character of the area and limitations imposed by the pre-existing ash pond, the project is necessary until such time the fly ash storage ponds are removed. A predetermined minimum safety margin has been met and the pond presents a significant threat to the River and its scenic value.

Provided the conditions of this determination are fully implemented, the NPS has determined the project will not have a direct and adverse effect on the scenic values of the river.

#### Recreational Values:

The River offers many quality river-related recreational opportunities. These include canoeing and fishing among other corridor-based activities like hiking and wildlife viewing. In the vicinity of the project at Kickapoo State Park, fishing activity on the River is heavy. According to the CMP, this use is attributable to the excellent smallmouth bass fishing in the area and the relatively high interest in angling within the east-central region of the State of Illinois. Canoeing in the region is also high. The typical canoeing season on the River is between March 15 and November 30 with an average of 230 canoeable days. The State of Illinois's 2009 Statewide Comprehensive Outdoor Recreation Plan identifies canoeing as one of the state's top ten growing activities and water resources as a priority to conserve for quality water-based recreational experiences.

The project as proposed will affect the aesthetic quality of the area during construction and will result in an extended period of disturbance and recovery. Noise and visual intrusions in the form of a disturbed landscape, machinery, and other construction activities do affect the recreational enjoyment of the River by people in the vicinity of the project site. The project will not occur within the primary canoeing season and will not impede passage.

Considering the recreational impacts of the project will be relatively minor and of a temporary, the NPS has determined on behalf of the Secretary the project will not have a direct and adverse effect on the recreational values of the River.

#### Geologic Values:

As with many Midwestern streams, the River has been shaped by glaciers, wind, and fluvial processes. The Higginsville Geologic Area has been designated an area of geological significance and a state natural

area. The large bluff exposure is representative of local geologic characteristics and remnants from the Illinoian and Wisconsinan formations.

Considering the project area does not exhibit any notable geologic phenomenon and is not proximate to the Higgins Geologic Area, the NPS has determined the project will not have a direct and adverse effect on the geological values of the River.

#### Fish and Wildlife Values:

The River's unique mussel resources (including listed and non-listed species) are specifically mentioned in the CMP for the River and are protected by the Act. The CMP describes several aquatic organisms that are listed as threatened, endangered, or otherwise dependent on the River. These species include the bluebreast darter (*Etheostoma camurum*) (unique to the River and on the State endangered list), dusky darter (*Percina sciera*), brindled madtom (*Noturus miuris*), river redbreast (*Moxostoma carinatum*), wavy-rayed lampmussel (*Lampsilis fasciola*), round hickory nut (*Obovaria subrotunda*), purple lilliput (*Toxolasma lividus*), rainbow (*Villosa iris*), little spectacle case (*Villosa lienosa*), fluted shell (*Lasmigona costata*), and purple pimpleback (*Quadrula refulgens*). Additionally, the CMP states that game birds, raptors, and songbirds are common; game mammals, small mammals, and furbearers are numerous; and reptile and amphibian populations are diverse in the vicinity of the River. Aquatic life is also thriving with uncommon fish and aquatic insect assemblages. The River corridor is known for its species diversity where suitable habitat exists.

At the project site, the Illinois Department of Natural Resources conducted a mussel survey to determine the extent of the mussel population within 100-feet upstream of the site and 400-feet downstream of the site as requested by the NPS. The actual survey extended 200-feet upstream of the site and 700-feet downstream. Strong current and high turbidity were noted at the time of survey. No mussels, live or dead, were collected in the construction area. The substrate in the survey reach consisted of scoured bedrock representing unsuitable habitat for mussels. The only live mussel collected, a wavy-rayed lampmussel (*Lampsilis fasciola*) in sandy habitat, upstream of the construction site on the left (opposite) bank of the River.

The project will likely introduce temporary turbid conditions into the water, and create extensive noise and disturbance within the project area. The removal of vegetation and disturbance associated with the bank work would temporarily displace terrestrial wildlife, but would be unlikely to permanently disturb sensitive aquatic organisms. Considering the current character and condition of the area, the NPS concurs with the Illinois Department of Natural Resources assessment that adverse effects to protected resources including those listed above are unlikely.

The NPS has determined the project will not have a direct and adverse effect on the fish and wildlife values of the River.

#### Terrestrial Ecology Values:

The River valley is a forested intrusion into the prairie grasslands of central Illinois. Located between the Grand Prairie and Wabash Border divisions in Illinois, the area exhibits a diversity of terrestrial habitats. The River's corridor exhibits dry to mesic upland forest, floodplain forests, dry to mesic upland prairie, mesic floodplain prairie, seep springs, and stream habitats. The dominant terrestrial habitat at the project site is mixed riparian forest, fragmented by the existing service road, and influenced by the pond embankment, the ash pond, and its contents. Extensive forest habitat exists on the opposite bank as part of the Kickapoo State Park corridor.

In order to install the practice, existing forest on the project site will need to be removed, in addition to many trees that have been lost as the bank has rapidly eroded. This action would have a temporary adverse effect on the forest habitat that currently exists on the site, but with time the site would recover some of the forest habitat as the site revegetates. Although the removal of the trees would displace wildlife, the size of the impact relative to the availability of adjacent habitat in the area would be minor.

The NPS has determined the project will not have a direct and adverse effect on the terrestrial ecology values of the River.

#### Historic Resources:

According to the CMP, the corridor of the River is rich in archeological sites. The Collins Archeological Complex is included in the National Register of Historic Places. The site is described as a late woodland ceremonial center dated 900-1100 A.D. It is an important cultural resource with significant prehistoric value.

The project will occur in a previously disturbed area currently subject to fluvial processes. Impacts to cultural resources are not expected during the project, but may be possible. The project will not have a direct and adverse effect on the historic values of the River, however, should cultural resources be encountered during construction, the Illinois State Historic Preservation Office must be contacted.

#### FINAL SECTION 7(a) DETERMINATION:

Pursuant to Section 7(a) of the Act, the NPS has determined on behalf of the Secretary this project will not have a direct and adverse effect on the River's free-flowing condition and the values for which the River was designated, provided that the following conditions are met.

1. All conditions are required.
2. Safety Threshold: The River is currently located within 30 feet of the base of the existing East ash disposal pond at the corridor's most narrow point and is expected to continue to migrate towards the pond. A minimum distance to prevent embankment failure and provide adequate construction access for best management practice (bank stabilization) installation has been reached.
3. All appropriate measures must be in place to minimize sedimentation and streambed impacts prior to initiating in-stream/streambank work.
4. All in-stream/streambank work must be conducted between September 1 and November 30 unless otherwise approved upon request. Instream work shall not occur during high flow events.
5. The installation of dormant vegetated stock (willows and similar native shrubs and trees) may occur as necessary to facilitate a successful establishment of a wooded corridor.
6. Rock weirs, stream barbs, jetties, gabion walls, gabion mattresses, or other similar diversion structures shall not be constructed; Constructed bank elements shall not extend beyond the established bank line, except in the case of possible rootwad revetments, where the rootwad itself may protrude slightly.

7. If mussels are encountered during construction, work must stop and the Illinois Department of Natural Resources (IDNR) staff shall be immediately contacted and arrangements made to properly relocate all affected mussels to suitable habitat sites within the River.
8. Litter and construction debris shall be contained daily. All construction debris, including the old road base, and litter must be completely removed offsite and disposed of properly upon project completion.
9. A sediment erosion control plan must be kept on site. Spoil piles must be covered or otherwise managed to reduce sedimentation in accordance with the plan.
10. No wastewater, fuels, or other harmful fluids shall be discharged into the River.
11. Disturbed/exposed streambanks and staging and project access areas must be properly stabilized (seeded, mulched, or otherwise) with native vegetation immediately after grading to prevent erosion and establishment of invasive plant species.
12. Plant selection must reflect the natural mixture/diversity of the adjacent corridor and must result in an assemblage of trees and understory with a naturalized appearance and multiple age classes.
13. A certified forester or arborist must oversee planting and transplant selection in order to optimize survivability.
14. Annual monitoring and stewardship shall occur and replanted stock showing signs of mortality within the first 5 years must be promptly replaced by like species on a continuing basis in order to maintain a maximum riparian buffer. Mowing in this zone is prohibited unless temporarily necessary for practice establishment.
15. No structures including but not limited to bird blinds, benches, signs, dedicated trails shall be erected or otherwise placed within the riparian forest buffer.
16. If previously unknown archeological materials are discovered during land clearing activities, work must stop immediately. Consultation and coordination with the State Historic Preservation Officer must occur before work resumes.
17. The NPS and IDNR State staff must be notified upon project initiation and completion. A preconstruction meeting with equipment operators shall be held to discuss the above recommendations.
18. The NPS will be promptly notified of accidents and/or failures of project features intended to protect the free-flowing condition, water quality, or ORVs during construction activities.
19. A completion report must be provided to the NPS within 3 months of project completion, and a follow-up report 1 year after the project is completed. Both reports should include photos of the riparian corridor and practice condition throughout all stages of construction. Continued communication is requested during the 5 year monitoring period.
20. Any changes to any elements of the project or the scheduling of in-stream work, as described in the package submitted for evaluation and/or above, will require consultation with the NPS and may require additional Section 7(a) review/approvals.

Section 10(a) Consistency Statement:

The Wild and Scenic Rivers Act, seeks to preserve and protect the free-flowing condition, and preserve the immediate environs of select rivers for the benefit and enjoyment of present and future generations. Section 10(a) of the Act directs river administering agencies to “protect and enhance” the values for which these rivers are designated. The “protect and enhance” language in Section 10 (a) is interpreted by the Secretary’s Guidelines as “a non-degradation and enhancement policy for all designated river areas, regardless of classification.” The project does not protect or enhance the River or its values to the greatest extent possible and is not fully consistent with Section 10 (a) of the Act.

NPS recommends the following ameliorating measures consistent with the intent of Section 10(a) of the Wild and Scenic Rivers Act:

1. Seek Alternative Ash Disposal Locations: At its current location, the primary fly ash disposal pond is in direct conflict with the River and is encroaching upon the River. The pond presents a water quality hazard and a constraint to the River’s free flowing condition and natural river processes. The NPS recommends that the proponents consider the mutual benefits of pond relocation for facility management and the River’s values.
2. Rock Channel Protection Removal: In the event the ash disposal site is restored to a natural condition, remove rock channel protection at location #2 and re-establish a more natural bank condition.
3. Removal of the Pump House at Location #3: The pump house is no longer functional and the scenic ORV, among others would be enhanced by its removal. As part, the excess rock channel protection that exists at this location should be removed and the bank should be vegetated or naturalized. Location #3 may be a source of rock channel protection for the location #2 project to minimize the cumulative effects of the bank projects.
4. Removal of the Plant Stack: The scenic ORV of the River would be enhanced by the removal of the plant’s smoke stack.
5. Comprehensive Planning: The NPS encourages continued coordination between stakeholders and agencies regarding the long-term restoration potential at the Dynegy site and the need for a comprehensive approach to riverbank management.

Should you have any questions or concerns about this determination, please contact Regional Rivers Coordinator Hector Santiago at (402) 661-1848 or [hector\\_santiago@nps.gov](mailto:hector_santiago@nps.gov).

**APPROVED BY:**



Regional Director, Midwest Region  
National Park Service

7-6-16

Date