

Appendix C: Federal Real Estate Use Agreement for Overton Bottoms South and Cora Island Units

ORIGINAL

Agreement No. DACW41-4-09-0013

**DEPARTMENT OF THE ARMY
FEDERAL REAL ESTATE USE AGREEMENT
TO OTHER FEDERAL GOVERNMENT DEPARTMENT OR AGENCY
TO USE PROPERTY LOCATED ON
MISSOURI RIVER BANK STABILIZATION AND NAVIGATION
FISH AND WILDLIFE MITIGATION PROJECT
MISSOURI**

THE SECRETARY OF THE ARMY, hereinafter referred to as the Secretary hereby grants to **U.S. FISH AND WILDLIFE SERVICE**, hereinafter referred to as the Grantee, a Federal Real Estate Use Agreement for Fish and Wildlife activities, over, across in and upon the lands identified in **EXHIBIT "A"**, attached hereto and made a part hereof, hereinafter referred to as the premises.

The Secretary and the Grantee enter this Real Estate Use Agreement under the authority of Fish and Wildlife Coordination Act, Public Law 85-624.

THIS FEDERAL REAL ESTATE USE AGREEMENT is granted subject to the following conditions.

1. This Federal Real Estate Use Agreement is hereby granted for a term of twenty-five years beginning **September 30, 2009** and ending **September 29, 2034** but revocable at will by the Secretary. It is understood by the parties that other tracts may be added to this Real Estate Use Agreement by appending documents to this Real Estate Use Agreement. Notwithstanding the date a tract is added to the Real Estate Use Agreement, the term for all tracts shall end on September 29, 2034.
2. The consideration for this Federal Real Estate Use Agreement is the operation and maintenance of the premises by the Grantee for the benefit of the United States and the general public in accordance with the conditions herein set forth.
3. All correspondence and notices to be given pursuant to this Federal Real Estate Use Agreement shall be addressed, if to the Grantee to the **Refuge Manager; Big Muddy NFWR, U.S. Fish and Wildlife Service, 4200 New Haven Road, Columbia, Missouri 65201** and if to the **Secretary, to the District Engineer, Attention: Chief, Real Estate Division, Kansas City District, 601 East 12th Street, Kansas City, Missouri 64106-2896**; or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapper addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.
4. The use and occupancy of the premises shall be without cost or expense to the Department of the Army and under the general supervision and subject to the approval of the District Engineer, Kansas City District, or his duly authorized representative, hereinafter referred to as said officer and to such rules and regulations as may be prescribed from time to time by said officer.
5. The Grantee acknowledges that it has inspected the premises, knows its condition, and understands that the same is granted without any representations or warranties whatsoever and without any obligation on the part of the Department of the Army.

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6. The Grantee shall, at its own expense and without cost or expense to the Department of the Army maintain and keep the premises in good repair and condition. This term does not limit or restrict the Secretary's ability to reimburse Grantee for the Grantee's costs of operating, maintaining, repairing and rehabilitating the premises during the term of this Federal Real Estate Use Agreement in accordance with Paragraph 17 of this agreement.

7. Any interference with the use of or damage to property under control of the Department of the Army incident to the exercise of the privileges herein granted shall be promptly corrected by the Grantee to the satisfaction of said officer.

8. The Grantee shall pay the cost, as determined by the officer having immediate jurisdiction over the premises, of producing or supplying any utilities and/or other services furnished by or through the Department of the Army for the use of the Grantee.

9. No additions to or alterations of the premises shall be made without the prior written approval of the District Engineer or said officer.

10. On or before the expiration of this Federal Real Estate Use Agreement or its relinquishment by the Grantee, the Grantee shall vacate the premises and remove its property therefrom. If, however, this Federal Real Estate Use Agreement is revoked by the Secretary, the Grantee shall vacate the premises and remove its property therefrom within such time as the District Engineer may designate.

11. The Grantee shall comply with all applicable laws and regulations wherein the premises are located, to the extent doing so is consistent with the sovereign immunity of the United States.

12. A Preliminary Assessment Screening (PAS) documenting the known history of each tract with regard to the storage, release or disposal of hazardous substances thereon is/are attached hereto and made a part hereof as **EXHIBIT "B"**. The Grantee has the right to enter the premises and inspect the premises, and to attach the Grantee's findings as to each tract covered in this Real Estate Use Agreement as **EXHIBIT "C"** which is/are incorporated herein. Upon expiration, revocation or relinquishment of this Federal Real Estate Use Agreement another PAS shall be prepared which will document the environmental condition of the tracts at that time.

13. The Secretary will retain the exclusive authority, responsibility and liability for all environmental compliance, response, or remediation of contamination resulting from past, present or future Secretary activities. The Secretary will not be responsible for any environmental compliance or remediation requirements that occur as a result of new contamination generated or pre-existing contamination released by the Grantee or any activities of Grantee's contractors, agents or visitors. The Grantee shall not have any authority, responsibility or liability for any environmental response actions or remediation for releases resulting from the Secretary's past, present or future activities in relation to the premises or for any matters identified on **Exhibit "B"**. The Grantee will be responsible for all environmental compliance and remediation requirements resulting from new contamination generated by Grantee or pre-existing contamination released by the Grantee's activities during the term of this agreement.

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14. The Secretary reserves the right to remove and properly dispose of the existing substances which are identified in the PAS as potential sources of contamination, as required to carry out the Department of the Army environmental programs.

15. It is understood that the requirements of the Federal Real Estate Use Agreement pertaining to maintenance, repair, protection, and restoration of the premises and reimbursement for utilities and other services, shall be effective only insofar as they do not conflict with the Annual Management Plan pertaining to such matters made between the Secretary or said officer and Grantee in accordance with existing regulations, and are consistent with applicable laws.

16. The Grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises. The Grantee shall report any planned pesticide or herbicide usage to the said officer by the 1st of October of each year.

17. The Secretary is authorized to pay and the Grantee is authorized to receive reimbursement of Grantee's direct expenses for planning and development of optimum wildlife habitat including documenting and controlling invasive exotic species, establishing native vegetation and habitat, reconnecting the floodplain with the Missouri River, and protection of endangered or threatened species. Reimbursement for the cost of Grantee's employees who are directly engaged in such activities on the premises is also authorized. The Grantee, however, will not use the proceeds to pay for general administrative expenses. In order for the Secretary to pay said reimbursement, each year the Grantee shall submit its Annual Management Plan detailing specific expenses. The Secretary or said officer shall review the subject of the expense and the amount of the expense and shall authorize such payment or return to Grantee for revision. The Annual Management Plan can be revised within each yearly term as well by mutual agreement of the parties.

18. Within the limits of their respective legal powers, the parties to this Federal Real Estate Use Agreement shall protect the premises against pollution of its air, ground and water. The Grantee shall comply with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction and authority over the United States to abate or prevent pollution. The Grantee will use all reasonable means available to protect the environment and natural resources and where damage nonetheless occurs from the Grantee's activities, the Grantee shall be liable to restore the damaged resources in accordance with applicable federal law. Nothing in this term is intended to waive the Grantee's sovereign immunity or to subject the Grantee to regulation or liability beyond existing federal laws.

19. The Grantee shall not remove or disturb, or cause to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the Grantee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives written clearance to proceed. Furthermore, any future earth disturbing activities or structure removals will require coordination with the Kansas City District archeologist and my require State Historic Preservation Office (SHPO) coordination as well.

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20. This Federal Real Estate Use Agreement is subject to all existing easements, easements subsequently granted, and established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Grantee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with developments, present or proposed by the Grantee. The Grantee will not close any established access routes without written permission of the District Engineer.

21. The parties to this agreement are federal agencies constrained by federal laws and subject to Congressional appropriations. As such, it is mutually understood that all obligations in this agreement are made subject to the availability of funds.

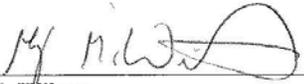
22. The Grantee will be responsible for accepting and processing any tort claims for incidents arising out of its activities on the premises. The Secretary will cooperate in providing information relating to any such tort claim. Any liability between the Secretary and the Grantee will be determined in accordance with the Federal Tort Claims Act and other applicable laws.

23. In the event this Federal Real Estate Use Agreement is renewed by a similar instrument, then numbered Condition 10 hereof will not be applicable.

24. Permit No. DACW41-4-97-211 is hereby revoked upon execution of this Real Estate Use Agreement.

THIS FEDERAL REAL ESTATE USE AGREEMENT is not subject to Title 10, United States Code, Section 2662, as amended.

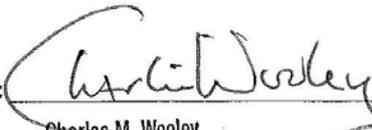
IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army, this 2 day of February, 2010.



Greg G. Wilson
Chief, Real Estate Division

THIS FEDERAL REAL ESTATE USE AGREEMENT is also executed by the Grantee this 25 day of January, 2010.

U.S. Fish and Wildlife Service

BY: 

TITLE: **Charles M. Wooley**
Acting Regional Director