



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

October 18, 1993

Honorable G. Edward Dickey
Acting Assistant Secretary (Civil Works)
Department of the Army
Washington, D.C. 20310

Dear Dr. Dickey:

In accordance with the provisions of the section 404(g) Memorandum of Agreement (MOA) between the Department of the Interior and the Department of the Army, as revised on December 21, 1992, I am requesting your review of the U.S. Army Corps of Engineers, Sacramento District Engineer's decision to issue a section 404 permit for the project described in Public Notice No. 199200719. This permit would authorize the applicant, Sacramento Area Flood Control Agency (SAFCA), to discharge fill in wetlands to construct, raise, and widen certain levees for the purpose of flood control. The proposed project will result in the direct loss of approximately 10 acres of wetlands including vernal pools, riparian woodlands, perennial marsh, and seasonal wetlands, and the indirect loss of up to 379 acres of additional wetlands and approximately 33,000 acres of agricultural lands that provide high quality habitat for wildlife.

On September 10, 1993, the District Engineer notified the U.S. Fish and Wildlife Service (Service) of his intent to proceed with permit issuance. After a thorough review of background information on the project, I have determined that this case warrants elevation in accordance with the criteria found in Part IV of the revised section 404(g) MOA (Elevation of Individual Permit Decisions). That is, I have concluded that the proposed project will have substantial and unacceptable adverse effects on aquatic resources of national importance.

I am concerned that the District Engineer's proposed permit decision will allow filling of wetlands within the Natomas Basin and lead to substantial adverse indirect impacts on significant waterfowl and shorebird populations through the inducement of development activities in the Basin. The Department of the Interior, acting through the Service, is vested with the authority and obligation to protect, conserve and enhance the Nation's fish and wildlife resources. These matters fall within our jurisdiction under the Fish and Wildlife Coordination Act, section 404(m) of the Clean Water Act, the Fish and Wildlife Act of 1956, and the Migratory Bird Treaty Act as amended to implement international treaties regarding the conservation of migratory bird populations.

I have concluded that the proposed project will have a substantial and unacceptable adverse impact on waterfowl and shorebird populations in the Central Valley, each of which I have determined to constitute aquatic resources of national importance. Because of the loss of over 3.5 million acres of natural wetlands in the Central Valley, waterfowl and shorebirds make significant use of agricultural areas, particularly rice lands. Sixty percent of the ducks, geese and swans of the Pacific Flyway, and millions of shorebirds, utilize agricultural lands and the remaining 280,000 acres of natural wetlands within the Central Valley.

Numerous Federal and State laws have been enacted, and international treaties ratified, to protect waterfowl and shorebird populations and their habitat within the United States. The North American Waterfowl Management Plan is a joint U.S.-Canada-Mexico agreement that provides a blueprint for international cooperation to increase waterfowl and shorebird populations in North America. These various laws and programs underscore the national and international importance assigned to protection of migratory birds. The American Basin, which includes the Natomas Basin, has been identified by the Service as the highest priority for wintering waterfowl protection in the Central Valley.

While I recognize fully the need to protect the existing residents of the Natomas Basin from flooding, I have serious concerns about continued development within an area that will remain subject to periodic flooding. Proposed development plans within the Natomas Basin would add over 170,000 people and over \$13 billion in new buildings and their contents. Facilitating urbanization over such a large floodplain does not appear to be consistent with Executive Order 11988. However, should the Army continue to find the proposed project in the public interest, I recommend that a less environmentally damaging alternative be adopted. Less damaging alternatives include a compartment levee around the existing development, or project construction with incorporation of mitigation for both direct and indirect impacts to wildlife resources.

Until October 1992, the proposed project was a component of the American River Watershed Investigation (ARWI) conducted by the Sacramento District (District) to provide flood protection to Sacramento and the Natomas Basin. The Environmental Impact Statement for the ARWI identified a total of 379 acres of wetlands and 33,000 acres of agricultural lands that would be lost within the Natomas Basin from direct and indirect impacts of

the proposed Natomas component of the ARWI. The District conducted an extensive analysis of these impacts and concluded that implementation of the Natomas portion of the Federal ARWI project "would allow growth to occur in areas of the floodplain where high base flood elevations would otherwise make urban development infeasible."

However, in the Decision Document for the proposed permit decision, the District states that, "[t]o conduct an evaluation for the secondary and indirect effects...would call for an evaluation of activities that are too speculative and remote in nature to be reasonably foreseeable at this time." It is the Department's opinion that: 1) the District has been inconsistent in the evaluation of indirect, growth induced impacts related to the Natomas Area Flood Control Improvement Project; 2) the indirect impacts of the project are reasonably foreseeable; and 3) appropriate and practicable mitigation should be required for the project's indirect impacts on wildlife resources.

Finally, I believe that the significant adverse indirect, growth induced impacts associated with this project have not been adequately addressed within the District's Environmental Assessment. I recommend that the District provide a more comprehensive environmental document addressing the indirect, growth-induced impacts of the proposed project.

If, following careful evaluation of the proposed project's indirect impacts, the District finds the proposal to be the least environmentally damaging practicable alternative that fulfills the project purpose, any permit issued should include the following as a special condition:

A comprehensive basin-wide floodplain management plan shall be developed by the Corps, Service, SAFCA, local governmental agencies, and other entities as appropriate. This plan must ensure adequate mitigation (through impact avoidance, minimization, and compensation) for wildlife losses associated with indirect project impacts. These mitigation measures shall be comparable to measures identified by the Service for the American River Watershed Investigation. The plan must be approved by the Corps, in consultation with the Fish and Wildlife Service, prior to commencement of any work authorized by the permit.

The permittee's current mitigation and monitoring plan should also be modified and implemented in accordance with recommendations previously provided by the Fish and Wildlife Service to ensure that the direct impacts of the proposed project are adequately mitigated.

Honorable G. Edward Dickey

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Enclosed is additional information addressing these and other issues relating to the proposed permit decision. Please do not hesitate to contact me if you have any questions.

Sincerely,



George T. Frampton, Jr.
Assistant Secretary for Fish
and Wildlife and Parks

Enclosure



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108



REPLY TO
ATTENTION OF

NOV 15 1993

Honorable George T. Frampton, Jr.
Assistant Secretary for
Fish and Wildlife and Parks
Department of the Interior
Washington, D. C. 20240

Dear Mr. Frampton:

This is in response to your letter of October 18, 1993, in which you requested higher level review of issues related to a Department of the Army permit being considered by the Army Corps of Engineers Sacramento District. The permit, which is associated with the Natomas Area Flood Control Improvement Project, would authorize the discharge of dredged or fill material into approximately 21 acres of wetlands to facilitate the raising of existing levees and other flood control improvement features. The purpose of the project is to provide 200-year flood protection to approximately 35,000 residents.

Your request for elevation was made pursuant to Part IV of the 1992 Section 404(q) Memorandum of Agreement (MOA) between the Department of the Army and the Department of the Interior (DOI). The primary concern raised was not the impacts associated with the direct loss of 21 acres of wetlands, but the potential loss of an additional 379 acres of wetlands and approximately 33,000 acres of agricultural uplands in the currently undeveloped portion of the Natomas floodplain.

Part IV of the MOA establishes procedures for elevation of specific permit cases. To satisfy the explicit requirements for elevation, the permit case must pass two tests: 1) the proposed project would occur in aquatic resources of national importance (ARNIs); and 2) the project would result in substantial and unacceptable impacts to ARNIs.

We have carefully reviewed the concerns raised in your letter and the Sacramento District's decision documents and draft permit for this case. Our review included a meeting with DOI and Fish and Wildlife Service (FWS) staff. Based on our evaluation, we have concluded that some of the wetlands either directly or indirectly impacted by the flood control project may qualify as ARNIs. We could not, however, conclude that the proposed

project will result in substantial and unacceptable impacts to ARNIs. This is based on our belief that the District's mitigation plan is adequate to offset the direct loss of 21 acres of wetlands and that impacts to the additional 379 acres of wetlands will be addressed through the permit process as specific development projects are proposed. Further, we do not concur that "waterfowl and shorebird populations" per se constitute an ARNI. In the instant case, the avian species are primarily utilizing agricultural uplands and not waters of the United States.

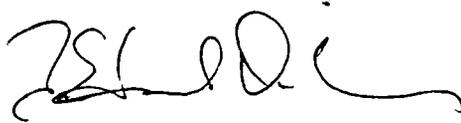
While additional review pursuant to the MOA is not required, we share your concerns that the District restricted its evaluation of indirect impacts associated with induced development resulting from the additional flood protection afforded by the permitted project. We agree that in this particular case indirect impacts are reasonably foreseeable and that the Corps has sufficient control and responsibility to warrant a more thorough evaluation of such impacts. Although a Department of the Army permit is not sufficient to trigger development in the Natomas floodplain, it is a necessary requirement. We know of no practicable development alternatives for the Natomas floodplain which would not require a Corps permit to achieve the necessary level of flood protection. Specifically, we believe that the facts in this case demonstrate clearly that the environmental consequences of the induced development are products of the Corps permit action (i.e., authorizing a flood control project that allows additional development to occur).

In light of our concerns, pursuant to my authority under 33 CFR 325.8, I will direct the District to consider fully the indirect impacts discussed above. This will be accomplished through the development of a habitat mitigation plan that addresses impacts to fish and wildlife habitat and wetlands in the area protected by the permitted flood control project. The plan will be developed by the permittee in coordination with the Corps, the FWS, the Environmental Protection Agency and State and local agencies with jurisdiction over the area. The Corps will have approval authority over the final plan. While the District will be allowed to proceed with the issuance of the permit, the permittee will be required to provide assurances that the undeveloped area is properly protected from development pending completion of the habitat mitigation plan. Prior to issuance of the permit,

however, the District will be required to modify its decision document to reflect the required consideration of indirect impacts and discuss how such impacts were addressed.

The DOI's interest and efforts in raising this case to our attention are appreciated. Our approach to resolving this case will allow a needed flood protection project to be completed in a timely manner and, as requested in your letter, facilitate a substantive evaluation of potential impacts in the undeveloped area. Should you have any questions or comments concerning this elevation, or the program in general, do not hesitate to contact me, or Mr. Michael Davis, Assistant for Regulatory Affairs, at (703) 695-1376.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Edward Dickey". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

G. Edward Dickey
Acting Assistant Secretary of the Army
(Civil Works)



DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CECW-OR

27 JAN 1994

MEMORANDUM THRU COMMANDER, SOUTH PACIFIC DIVISION

FOR COMMANDER, SACRAMENTO DISTRICT

SUBJECT: Section 404(q) Permit Evaluation Request,
Natomas Area Flood Control Improvement Project

1. On 15 November 1993, the Acting Assistant Secretary of the Army (Civil Works) (AASA(CW)) responded (enclosure 1) to the request by the Department of the Interior (DOI) for elevation of the U.S. Army Corps of Engineers Sacramento District's proposed decision to issue a permit pursuant to Section 404 of the Clean Water Act for the Sacramento Area Flood Control Improvement project. The project involves the filling of 21 acres of wetlands for the construction of the flood control project.
2. The AASA(CW) letter advised the DOI that the request for elevation under Part IV did not meet the test established in the Memorandum of Agreement. The AASA(CW) determined that the project would not result in substantial and unacceptable impacts to aquatic resources of national importance. Further, the AASA(CW) notified the DOI that they did not concur that "waterfowl and shorebird populations" per se constituted an aquatic resources of national importance.
3. The AASA(CW) did agree with the DOI that the indirect impacts (i.e., development in 379 acres of wetlands and 33,000 acres of agricultural uplands located within the proposed levees) required a more thorough analysis. The District is directed to reevaluate the indirect impacts associated with potential development facilitated by the flood control project. The District should make appropriate modifications to their environmental assessment to identify and adequately address these impacts prior to reaching a final permit decision. Should the District find that a permit can be granted, the permit condition included in the 10 January 1994 memorandum (enclosure 2) from the AASA(CW) should be incorporated into the permit document.

CECW-OR

SUBJECT: Section 404(g) Permit Evaluation Request,
Natomas Area Flood Control Improvement Project

4. If you have any comments or questions, please contact
Mr. Victor Cole at (202) 272-0201.

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STANLEY G. GENEGA
Major General, USA
Director of Civil Works