



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.

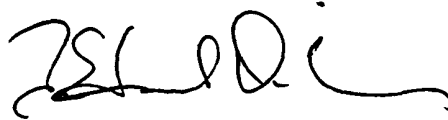
While additional review pursuant to the MOA is not required, we share your concerns that the District restricted its evaluation of indirect impacts associated with induced development resulting from the additional flood protection afforded by the permitted project. We agree that in this particular case 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', with a long horizontal flourish extending to the right.

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