

EPA Region 10 Comments.txt

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Sent: Sunday, April 25, 2010 9:29 AM  
To: Wade, Dougl as J HQ02  
Cc: Szerl og. Mi chael @epamai l. epa. gov; Pal mer. John@epamai l. epa. gov  
Subj ect: COE-2010-0007

Importance: Hi gh

Dear Mr. Wade:

The following represents EPA Region 10's comments on the Corps proposed process for requesting a variance from Vegetation Standards from Levees and Floodwalls.

The U.S. Environmental Protection Agency, Region 10 (EPA) has reviewed the Corps' February 9, 2010 Public Notice in the Federal Register (75 FR 6364) entitled, " Process for Requesting a Variance From Vegetation Standards for Levees and Floodwalls" , Docket Number COE-2010-0007. This proposal outlines a proposed standard application process and required information for requesting a variance from certain Corps' requirements which limit the amount, location and type of vegetation permitted on flood protection levees and floodwalls. The proposal also specifies that, upon adoption of the process, holders of current variances must submit requests under the new process by September 30, 2010, or their existing variances maybe rendered invalid. Finally, the proposal identifies that the Corps, as the reviewing agency, is ultimately responsible for compliance under both the National Environmental Policy Act (NEPA) and also the Endangered Species Act (NEPA).

The EPA Region 10 Office of Ecosystem, Tribal and Public Affairs (ETPA) is the office which carries out the agency's responsibilities under Section 404 of the Clean Water Act (404). We have coordinated with the Region 10 Office of Water and also with colleagues in the National Marine Fisheries Service (NMFS) in providing comments on the proposed action. We are concerned that the proposed process does not address or encourage levee design which promotes better protection for fish spawning and nursery habitat, or identifies measures to protect water quality along stream reaches which contain or are proposed to contain these structures. We are also further concerned that the requirement for current variance holders to submit a request to the Corps for review by September 30, 2010 in order to maintain their current variance is too short a time frame to allow adequate notice to variance holders, or provide adequate review time for reviewing agencies. Such a constricted time limit poses an undue burden on both variance holders to develop the application package, and reviewing agencies to adequately review information for an entire class of activities in a 90-day time frame. In cases where such measures were part of conservation recommendations to promote recovery of federally listed species under Section 7 of the Endangered Species Act (ESA), the Corps could be interfering with variance holders' ability to comply with ESA, and failing in its own responsibilities for ESA compliance.

In the Pacific Northwest, there are a number of federally listed salmonid species or salmonid runs in our surface waters. The recovery of these species is dependent on providing good water quality as well as good habitat for their various life stages. The presence of appropriate riparian vegetation promotes both of these goals since it shades waters (thus mitigating against water temperature increases) and provides structure in riparian habitat. Removal of such vegetation results in increased water temperatures along stream lengths, which lowers dissolved oxygen and can promote other adverse ecological effects. These water quality degradations can cumulatively result in habitat unfit for salmonid life support, and can result in water being listed (or staying listed) under 303(d) of the Clean Water Act for violation of state water quality standards. Federal agencies who regulate any activities which

can cause or contribute to violation of water quality standards, either through direct or indirect means, have a responsibility to ensure that the activities under their review take all practicable measures to avoid any such violations.

While the placement of vegetation on flood levees is not an activity which is regulated under Section 404, the placement of flood levees or levee systems often is. Where a discharge of fill into waters of the United States is required for the construction of flood levees, the placement of vegetation on such structures may be a type of measure which is directed under Subpart H of the 404(b)(1) Guidelines (Guidelines); i.e., an action to minimize adverse effects of a discharge of fill, and thus could be considered necessary for compliance with the Guidelines where it has no other adverse environmental effects. We believe, therefore, that before this proposed process becomes final, the Corps should engage in discussion with NMFS and other involved agencies to identify the best practices for levee vegetation design which will protect water quality and protect and provide good habitat. We believe that such measures could be achieved without placing the structural integrity of the levees, and ultimately, public safety at risk. We recommend that the Corps delay implementation of this proposed process to allow the development and incorporation of these best management practices. We also recommend that the Corps provide in its final action a more reasonable timeframe for variance holders to submit applications for review under this process. We are aware that NMFS has engaged in discussions toward this end with the Northwest Division and Seattle District Corps, and recommend that this discussion be allowed to complete a useful resolution prior to the finalization of the proposed process.

In summary, EPA does not believe that public safety or the structural integrity of flood control measures should be put at risk. We do believe, however, that the identification of best management practices for vegetating levees can achieve the positive environmental goals we have identified without compromising safety, and we believe that we have a responsibility to explore the possibilities and identify such practices. Toward that end, we recommend that the Corps complete the work it has begun in developing these practices before finalizing the proposed process or ending existing vegetation variances.

Thank you for the opportunity to provide comments on this matter. Should you have any questions or require further information, please do not hesitate to contact me at (206) 553-6114 or at [thiesing.mary@epa.gov](mailto:thiesing.mary@epa.gov).

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