



MUCKLESHOOT INDIAN TRIBE

Fisheries Division

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April 25, 2010

U.S. Army Corps of Engineers
Attn: CECW-CE, Douglas J. Wade, Headquarters
Engineering and Construction Community of Practice
C441 G Street NW
Washington, DC 20314-1000

RE: Process for Requesting a Variance from Vegetation Standards for Levees and Floodwalls
Docket Number 2010-0007

Dear Mr. Wade:

We are writing in response to the February 9, 2010 Federal Register Notice by the Army Corps of Engineers (Corps) proposing to modify the process for a variance from the national standards for levee vegetation management in the Public Law 84-99 program. The Muckleshoot Indian Tribe has federally reserved treaty fishing rights for salmon and steelhead in areas that include, but are not limited to, the Green, White, Puyallup, and Lake Washington river basins in Puget Sound, Washington. More than 45 miles of levees in our treaty area are affected by the Corps' levee vegetation policy. We urge the Corps to withdraw this proposal and instead develop alternatives that (1) recognize regional differences, and (2) are consistent with natural resource protection, including federal Clean Water and Endangered Species Act requirements.

The Green River supports major fisheries resources. In 2009 alone, a total of 461 trees were cut down along the lower river to comply with Corps levee maintenance policy under the current regional variance. The tree removal occurred despite a Clean Water Act Section 303(d) listing for exceeding temperature and dissolved oxygen standards established to protect aquatic life, and federal threatened species listings for Puget Sound Chinook salmon and steelhead utilizing the Green River. Trees along the river provide shade to help control local air and water temperatures, and perform other fish habitat functions. Given climate trends and urbanization, riparian forest stands must be increased, rather than decreased, to help maintain a viable salmon migration corridor. Although setting back levees far from the river bank is the preferred approach, tree shade is essential at sites where levees are located at the river bank line.

The current Seattle District regional variance from the Corps' national levee maintenance standard

allows 4-inch diameter trees on levees, and larger trees within 15 feet of the base of the levees. The existing variance, while better than the national standard which allows only grass on levees, is inadequate because 4- inch trees cannot meet shade or habitat requirements. According to the new proposal, however, no future variance granted will allow any trees on the upper third of the levee, nor within 15 feet of the base of the levee on either side. Ironically, the proposed policy would require the Corps to remove thousands of new trees recently planted by the Corps as part of PL-84-99 levee rehabilitation along the Green River. Further, the proposed application process appears overly burdensome and offers local partners little assurance that a variance allowing any trees will be granted.

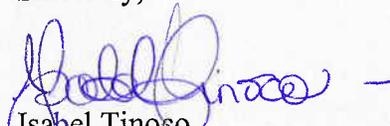
In February 2009, the Seattle District Corps hosted a Levee Vegetation Symposium in Renton attended by over 200 participants. At the symposium, the Corps committed to work with NOAA Fisheries and other interested stakeholders to further assess performance of vegetated levees under Pacific Northwest conditions. The Corps committed to work to find ways to resolve growing conflicts between Corps levee maintenance standards and the federal laws meant to protect natural resources, in light of the Corps and partners' flood safety responsibilities. King County indicates that it has a 20-year record of success in integrating native vegetation in levees in a manner that improves the structural stability of the levees.

The proposed levee vegetation variance process is a step backward. It suggests that Corps levee policies will remain in conflict with federal Clean Water Act and Endangered Species Act standards, and will perpetuate the presumption against using mature vegetation and bioengineering in levee design and maintenance. If the Corps continues to find that mature trees and levees are incompatible due to safety concerns, then we recommend that the PL 84-99 program be modified to require that local sponsors set back un-vegetated levees far enough to accommodate a functional floodplain and a riparian forest buffer, and to assist the sponsors in doing so.

The proposal is troubling for many reasons, including the failure of the Corps to engage in programmatic consultation on its levee maintenance program and related policies with federal fishery agencies, as required by Section 7 of the Endangered Species Act. The proposal has the potential to result in miles of barren riprap levees along our rivers, jeopardizing the future survival of listed Chinook and steelhead stocks essential to the maintenance of healthy Muckleshoot treaty fisheries. We therefore request that the Corps withdraw this proposal and direct the Seattle District to develop levee vegetation variance policy options, in consultation with affected Tribes and resource agencies. These options must be compatible with the survival and rebuilding salmon and steelhead stocks.

To follow-up on the issues and requests identified in this letter, please contact Holly Coccoli at 253-876-3360. Thank you for your attention to our concerns,

Sincerely,


Isabel Tinoso
Director

Cc:

Philip Anderson, Director, Washington Department of Fish and Wildlife

Steven Landino, NOAA Fisheries Northwest Region

Laurie Mann, TMDL Lead, US Environmental Protection Agency Region 10

Ted Sturdevant, Director, Washington Department of Ecology

Barry A. Thom, Acting Regional Director, NOAA Fisheries Northwest Region

Ken Berg, Manager, Washington Fish and Wildlife Office, US Fish and Wildlife Service

James Weber, Northwest Indian Fisheries Commission