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Swinomish Indian Tribal Community

A Federally Recognized Indian Tribe Organized Pursuant to 25 U.S.C. § 476

11404 Moorage Way

LaConner, Washington 98257-0817

April 22, 2010

Electronic Correspondence

Mr. Douglas J. Wade
CECW-CE
U.S. Army Corps of Engineers
Washington, D.C.

Re: COE-2010-0007, Process for Requesting a Variance From Vegetation Standards for Levees and Floodwalls

Dear Mr. Wade:

The Swinomish Indian Tribal Community (the "Tribe") reserved the right to take fish at "usual and accustomed grounds and stations" in Section 5 of the *Treaty of Point Elliott of 1855*. That right, so crucial to the Tribe's livelihood, survival and culture, may be affected by the proposed changes to the U.S. Army Corps of Engineers' ("USACE") Levee Vegetation Variance process.

Vegetation management and structural repairs on levees in the Public Law ("P.L.") 84-99 program has an adverse affect on fisheries resources important to the Tribe including impacts to ESA listed Puget Sound Chinook salmon and ESA listed Puget Sound steelhead. The Seattle District variance from national levee vegetation standards does not adequately address all of the adverse impacts of levee vegetation management but they do provide benefit compared to the national standards. The proposed change in process would immediately void the Seattle District variance and replace it with a cumbersome and onerous national process that would certainly have a negative affect on tribal resources including ESA listed Puget Sound Chinook and ESA listed Puget Sound steelhead.

The proposed national process is unduly burdensome requiring a separate variance application for each levee segment within a jurisdiction. It places the entire onus for development of multiple variance applications on the local sponsor. The USACE provides technical assistance to local entities on levee maintenance and repair. The USACE should also provide technical assistance in development of variances as well. In the Skagit River basin local sponsors are Dike Districts without large staffs to prepare variance applications. The new variance proposal is more burdensome than the existing Seattle District variance and the lack of adequate staff at the Dike Districts means that variances from national standards will become unlikely.

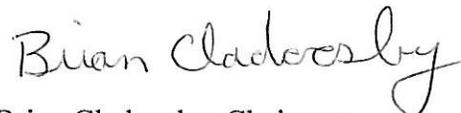
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The proposal ignores regional differences in vegetation and critical habitat. It also does not incorporate new science or fill data gaps in the actual effects of vegetation on levee stability. The importance of regional differences and filling data gaps was made clear in the *Revised Final Independent Peer Review Report for U.S. Army Corps of Engineers Vegetation Policy for Local Flood Damage Reduction Systems*, dated December 9, 2008. The independent review panel stressed that there are critical gaps in the science that drives the USACE's vegetation policy and that regional differences in vegetation and critical habitat make an overriding nationwide policy unsound.

The Tribe requests that the USACE rescind the proposed process for requesting a variance and leave the Seattle District Variance Policy in place. The Tribe also requests that the USACE conduct research necessary to fill data gaps on the effects of vegetation on levee stability and develop levee maintenance standards and variance policies that account for regional differences in vegetation and critical habitat.

The Swinomish Indian Tribal Community appreciates the opportunity to comment on the proposed variance policy.

Sincerely,

A handwritten signature in cursive script that reads "Brian Cladoosby". The signature is written in black ink and is positioned above the printed name.

Brian Cladoosby, Chairman