

The Confederated Tribes of the Grand Ronde Community of Oregon

Cultural Resources  
Phone (503) 879-4639 or (800) 422-0232  
Fax (503) 879-2126

9615 Grand Ronde Rd.  
Grand Ronde, OR 97347

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April 9, 2003

U.S. Army Corps of Engineers  
ATTN: CENWP-OP-GP (Ms. Karla G Ellis)  
P.O. Box 2946  
Portland, OR 97208

RE: ID # 200200175, Smith and Bybee Lakes Wildlife Area

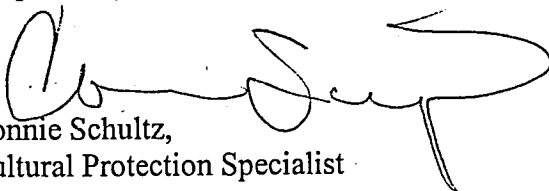
Dear Ms. Ellis:

Our office has received the permit notification for the Smith and Bybee Lakes dam removal and culvert installations.

Because a significant cultural resource area is identified near the project location, there is concern regarding the amount of new ground disturbing activities. At this time, the Tribe will recommend a cultural survey for review. Completion of a cultural survey can eliminate additional cost and time in the event of an inadvertent discovery during construction.

Please contact me to discuss the details of this project at 503-879-2185.

Respectfully,

  
Connie Schultz,  
Cultural Protection Specialist

DATE: 4/10/03

MEMORANDUM FOR REGULATORY CASE FILE: 2002-175

SUBJECT: Call from Mickey Jones

• Cercla Site

• State has consent decree (1 death in 10,000 exposure)

• Federal funding if enough req. EIS

503-284-0502 Mr. Jones phone #

Mickey asked several questions:

1) Will a second PN go out for the highway structure once decided upon.

2) if there is enough federal involvement (funds) is an EIS required?

and also made several comments:

1) Mickey feels an EIS is necessary due to Cercla status

2) He also mentioned a consent decree for the site that the state has.

Karla G. Ellis  
PROJECT MANAGER (Signature)

## Headley, Mary J NWP

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**From:** Borda, Donald NWP  
**Sent:** Thursday, April 10, 2003 11:02 AM  
**To:** Ellis, Karla G NWP; Headley, Mary J NWP  
**Subject:** RE: Mickey Jones

Thanks, Karla. We may want to inform the applicant about Mr. Jones' call and give them a heads-up on what's coming and maybe see if they can enlighten us on the CERCLA and consent decree issues. In hindsight, I apologize for getting you involved in this. I should have described this project to you and Mary, allowed you to create the Public Notice to get the process started, but had Mary's name as the PM. Since this one will be heavily contested, I will transfer it to Mary. Thanks again. Don

Mary,

Karla inherited this project from Dan Gresham, through me. Dan requested to have several projects reassigned that were not in his current work area. He was initially going to issue a NW27 for this one, but once I saw it and realized it may be involved with an ongoing court case with Mikey Jones, I touched base with Judy and OC, who recommended an IP review. Karla drafted the Public Notice and I critiqued it and we sent it out. Mr. Jones is now asking some tough questions which I feel needs Team Leader attention, so I'm going to transfer it over to you. Let me know if we need to discuss strategy. Karla will probably be receiving the comments from the Public Notice, but she can forward them to you. Thanks. Don

-----Original Message-----

**From:** Ellis, Karla G NWP  
**Sent:** Thursday, April 10, 2003 9:00 AM  
**To:** Borda, Donald NWP  
**Subject:** Mickey Jones

Hello Don- I just received a call from Mickey Jones regarding the Smith and Bybee Lakes project. He feels that an EIS needs to be done because the site is listed as a CERCLA site, and proceeded to tell me statistics about death rates from sediment etc. He also mentioned something about the state having a consent decree in the area, of which I don't know about.

He wanted me to ask that "if a project has enough federal funding would that require an EIS to be done?" Mr. Jones also asked if I was going to prepare a second public notice to address the issue of the "plug", which I am assuming is referring to the fishway design.

At this point I'm not entirely sure what the purpose of his call was, but figured I should let you know what he has said so that we are all on the same page with this one.

Thanks for your help. Karla

*EC* Mickey Jones is  
going to sue  
regarding Sediment  
wants us to pull it  
& have a public  
meeting

Electronic copy  
of BA

US FWS archael,  
do walk-thru  
eval.

**From:** "Jim Muck" <Jim.B.Muck@STATE.OR.US>  
**To:** <stewarte@metro.dst.or.us>  
**Date:** 4/24/03 3:50PM  
**Subject:** Re: OR Bass & Panfish

I think Bill was more upset at me, (ODFW) for not opposing the structure, and that we only care about salmonids.

Thanks for your reply, Jim

Jim Muck  
District Fish Biologist  
North Willamette Watershed District  
503-657-2000 \*231  
Jim.B.Muck@State.OR.US

>>> "Elaine Stewart" <stewarte@metro.dst.or.us> 04/24/2003 3:34:22 PM >>>

Just had a friendly chat with Bill this afternoon. He didn't sound very upset. Gave me a heads-up that OR Bass & Panfish is writing a comment letter to the Corps re the fill/removal ap. The letter will say they support the dam removal but oppose putting a new structure in (they prefer that the lakes be an open system, but Bill & club members acknowledge it's not possible to achieve other objectives like veg. management that way). They are concerned that fish will not get back out when water drains.

Bill and I have a good relationship - we disagree very cordially about this issue.

FYI, we're of course meeting with NOAA Fisheries on the consultation. We've been working with Ben Meyer, and a couple of hydrogeologists to ensure the fish passage meets their needs/wishes. Fish passage that is adequate for salmonids would, I would think, meet the needs of warmwater species as well.

-Elaine

>>> "Jim Muck" <Jim.B.Muck@STATE.OR.US> 04/24/03 03:24PM >>>

Bill Egen called and is upset at the Bybee and Smith Lakes water control structure. I don't remember this structure as a threat to Bass? Please call me at 503-880-9592 (Fridya is Best)

Jim

Jim Muck  
District Fish Biologist  
North Willamette Watershed District  
503-657-2000 \*231  
Jim.B.Muck@State.OR.US

U.S. Army Corps of Engineers

Attn: CENWP-OP-GP (Ms. Karla G. Ellis)

P.O. Box 2946

Portland, OR 97208-2946

REC

4003

REF: Corps of Engineers Action I.D. # 200200175

Oregon Division of Lands # 25189-GA

April 24, 2003


To whom it may concern;

The original dam on Smith & Bybee Lakes was put in place some 30 years ago. It's purpose was to keep the area inundated with water after an outbreak of Avian Botulism which killed several thousand ducks and geese. The dam later blew out and was replaced with the present structure.

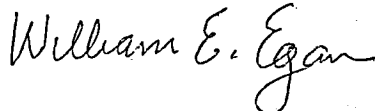
The goals of METRO have been stated to manage this area in a natural state with tidal water from the Columbia River effecting the Willamette, the Columbia Slough and thus the lakes. The dam restricts this, as will the proposed new structure. METRO's principal argument has been that Smith & Bybee Lakes are important rearing areas for salmonoids. The current system allows for entry into the lakes at high water and they become trapped. The lakes themselves are 10-12 degrees warmer than the Willamette and warmer yet than the Columbia River. The trapped fish soon die.

The Oregon Bass & Panfish Club support removal of the current structure, BUT oppose its replacement. There is no reason for a dam on Smith & Bybee Lakes. Cold and warm water fisheries would be better served by the dam's removal, allowing free access to the lakes. Salmonoids would no longer be trapped, and when the lakes go dry as they do in low water years the warm water fish would be able to escape as well.

We believe the pool chute style fishway would be ineffective for salmon escapement and would allow for heavy predation by birds, mammals, and fish. The stop log channels would have to be constantly monitored. METRO wants to use the structure to control Canary Grass but, this may not be in the best interests of fish and wildlife.

The Oregon Bass & Panfish Club supports removal of the current dam structure but OPPOSES its replacement. 

Sincerely,



William E. Egan  
Information Officer  
Oregon Bass & Panfish Club  
(503) 286-7734



# CITY OF PORTLAND, OREGON ENDANGERED SPECIES ACT PROGRAM



1900 SW 4th Ave., Suite 4100, Portland, Oregon 97201-5350 503-823-FISH (3474), FAX 503-823-7800 [www.fish.ci.portland.or.us](http://www.fish.ci.portland.or.us)

April 25, 2003

U.S. Army Corps of Engineers  
ATTN: CENWP-OP-GP (Ms. Karla G Ellis)  
P.O. Box 2946  
Portland, Oregon 97232-2736

Applicant:  
Metro Regional Parks and Greenspaces  
600 NE Grand Ave  
Portland, OR 97232-2736

To whom it may concern:

The City of Portland's Endangered Species (ESA) Program would like to express its support for Metro's Smith and Bybee Lakes water control structure replacement project on the North Slough. The Smith and Bybee Lakes Wildlife Area project is a valuable opportunity to restore 1600 acres of seasonal wetlands by replacing the current dam and tidegate with a fish friendly water control structure. The removal of the water control structure is a move in the right direction for the recovery of threatened salmon and trout species in the lower Columbia River.

This construction project is located between the North Slough and Smith and Bybee Lakes. The Portland ESA Program has been assisting Ducks Unlimited in conducting a baseline fish presence/absence survey in the tidal, lower Columbia Slough and the North Slough since fall of 2001. The sampling has revealed that, among other fish, juvenile chinook; federally listed as threatened under the Endangered Species Act, and coho; listed as endangered under the State of Oregon's Endangered Species Act, are both utilizing the North and Columbia slough.

Replacement of the water control structure will help listed fish and wildlife species. Fish will be able to gain access, through a fish ladder, to Smith and Bybee Lakes. This project will open up hundreds of acres of historical emergent and forested wetlands that can provide downstream migrating juvenile salmonids use as rearing habitat and flood refugia.

In summary the ESA Program would like to see more of these kind of projects in and around the City of Portland to help preserve and recover listed salmonid species.

Sincerely,

Chad Smith  
Environmental Technician  
City of Portland  
Endangered Species Act Program

DATE: 4/30/03

MEMORANDUM FOR REGULATORY CASE FILE: \_\_\_\_\_

SUBJECT: Tidegate Removal & Work in Main Slough.

Mr. Bill Egan of Oregon Bass & Panfish Club called regarding wooden tidegate removal in the main slough near Smith & Bybee Lakes. He believes the work to be fairly recent, and is now providing access by boat & canoe to Smith & Bybee Lakes. He also believes work has occurred up and down the slough and that Ramsey Lake has been cutoff.

It is wondering if there is a permit for this action.

It had been about a year since he was last there.

Karl G. Ellis  
PROJECT MANAGER (Signature)



## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Oregon Fish and Wildlife Office  
2600 S.E. 98th Avenue, Suite 100  
Portland, Oregon 97266  
(503) 231-6179 FAX: (503) 231-6195

Reply To: 7310.006

File Name: PN02-175, Culvert Install., Smith & Bybee Lakes, Mult. Cty., OR

TS#:03-2987

May 5, 2003

Colonel Richard W. Hobernicht, District Engineer  
Portland District, Corps of Engineers  
ATTN: CENWP-OP-GP (Karla Ellis)  
P.O. Box 2946  
Portland, Oregon 97208-2946

Dear Colonel Hobernicht:

The Fish and Wildlife Service (Service) has reviewed the project plans to remove a dam and tidegate and install box culverts at Smith and Bybee Lakes as advertised by the following public notice. No action will be taken by the Service at this time because of limited funding and staff. This letter does not fulfill the requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.). If the Corps of Engineers (Corps) determines, based on a Biological Assessment or evaluation, that threatened and endangered species and/or critical habitat may be affected by the project, the Corps is required to consult with the Service following the requirements of 50 CFR 402 which implement the Act. In addition, we may reexamine our position and provide supplementary comments if additional information becomes available that shows the project would adversely impact fish or wildlife.

We request that the applicant be required to adhere to all conditions and requirements specified by other Federal and State resource agencies.

Type of Permit: Section 404 of the Clean Water Act (33 U.S.C. 1344)  
Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403)

Notice No./Date  
02-175/April 8, 2003

Applicant Name  
Metro Parks & Greensp.

Due Date  
May 8, 2003

Other Bureaus of the Department of the Interior do not expect to submit comments on this notice at this time.

Sincerely yours,

for Kemper M. McMaster  
State Supervisor  
Acting for U.S. Department of  
the Interior Coordinator

May 7, 2003

U.S. Army Corps of Engineers  
ATTN: CENWP-OP-GP (Ms. Mary Headley)  
P.O. Box 2946  
Portland, OR 97208

RE: Action ID 200200175 – Metro Parks and Greenspaces Application  
Smith and Bybee Lakes Management Area

Dear Ms. Headly:

The Friends of Smith and Bybee Lakes (the Friends), a non-profit group that advocates for the protection and restoration of the Smith and Bybee Lakes Wildlife Area (the wildlife area), **fully supports** the purposed actions described in this public notice. The replacement of the present water control structure with the proposed culvert design will restore the hydrology of the lakes to a more natural condition and restore the habitat of the wildlife area.

The small impact to wetlands will provide many benefits to the ecosystem of the wildlife area and Lower Columbia Slough. Restoring tidal fluctuations in the lakes will allow flushing to occur, improving the overall water quality of the area. The lakes were historically connected to the lower slough, and the proposed open culvert design allows for fish migration in and out of the lakes. Before the present structure was installed, the area had extensive forested wetland and riparian forests surrounding the emergent marsh. Holding the water levels artificially caused the die off of approximately 350 acres of this valuable habitat. In the past few years, with low water levels, the forests have started to regenerate. The proposed structure will allow these valuable areas to regenerate, along with returning the lakes to emergent marsh. This will restore song and shore bird habitats, much needed habitat in the Lower Columbia Slough ecosystem.

The Friends lead monthly canoe trips in the wildlife area and the lower slough. Realizing the change in hydrology will limit canoeing opportunities during the summer and fall months, we encouraged Metro to design the proposed structure to allow canoe access to this area as it is deeper. The proposed design allows canoe access to the wildlife area through the North Slough year around.

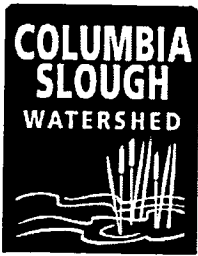
Removing the present structure and replacing it with an open culvert system will improve the ecosystem of the wildlife area and the Lower Columbia Slough. It will allow for fish passage into the lakes, exchange of water with the slough and regeneration of forested and emergent wetlands and riparian habitats. The Friends encourage the Corps of Engineers to issue this permit in a timely matter so that the work can proceed as planned.

If you have any questions about our comments, please connect me at 503.235.6272 or by email at [emroth@hevanet.com](mailto:emroth@hevanet.com).

Sincerely,

Emily Roth  
Director, Friends of Smith and Bybee Lakes

Cc: Elaine Stewart, Metro Parks and Greenspaces  
Kirk Jarvie, ODSL



# The Columbia Slough Watershed Council

7040 NE 47<sup>th</sup> Avenue Portland, Oregon 97218-1212

Tel: 503.281.1132 Fax: 503.281.5187 Email: [jay.mower@columbiaslough.org](mailto:jay.mower@columbiaslough.org)  
[www.columbiaslough.org](http://www.columbiaslough.org)

Jay Mower, Coordinator

May 8, 2003

REC'D MAY 10 2003

U.S. Army Corps of Engineers  
ATTN: CENWP-OP-GP (Ms. Karla G. Ellis)  
P.O. Box 2946  
Portland, OR 97208-2946  
VIA FACSIMILE 503.808.4505

Re: Support for Corps Action ID: #200200175

Dear Ms. Ellis,

The Columbia Slough Watershed Council is writing to express its support for the project to install a new water control structure at Smith and Bybee Lakes Wildlife Area. This project will restore much of the historic hydrology to the area, allowing the impounded lakes to revert back to a mix of bottomland forest, emergent wetland and open water.

Hundreds of acres of emergent wetlands will return to Smith-Bybee when the new structure is in place and operating. These emergent wetlands are in short supply in the watershed, and their restoration is an important aspect of this project.

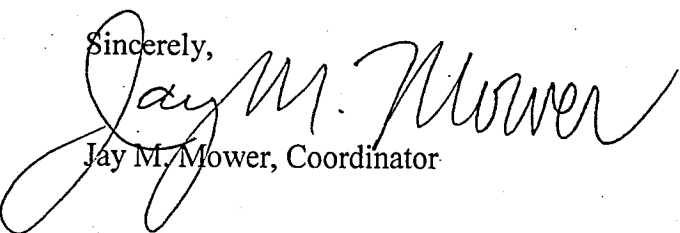
Smith-Bybee is the largest natural area remaining in the watershed, and it provides habitat for myriad wildlife. The new water control structure will continue to support the existing wildlife community, as well as new groups such as wading birds and shorebirds.

The new water control structure will include fish passage, which will provide the opportunity for young salmonids to access more than 1,500 acres of off-channel rearing and refuge habitat. This type of salmonid habitat is very limited and sorely needed in the lower Willamette River basin.

The wildlife area will continue to provide the educational and recreational opportunities that are important to the watershed council. We have supported Metro and Ducks Unlimited in their efforts to secure funding for the project. This work has been planned for many years, and is an important restoration project for the lower Slough.

We urge the Corps of Engineers to approve the permit so work can begin this summer.

Sincerely,

  
Jay M. Mower, Coordinator

William Michael Jones  
2716 NE Mason  
Portland, OR 97211  
503-284-0502

May 8, 2003

Thomas E. White  
Secretary, United States Army  
Office of the Army  
The Pentagon  
Washington, D.C. 20460

Commander, U.S. Army Corps of Engineers-Portland  
Attn: CENWP-PM-F (CRCIP)  
P.O. Box 2946  
Portland, OR 97208-2946

Larry Evans  
c/o ATTN: CENWP-OP-GP (Ms. Karla G. Ellis)  
Portland District, US Army Corps of Engineers  
P.O. Box 2946  
Portland, OR 97208-2946

RE: CWA 404 permit (action #200200175) and CWA 401 certification (25189-GA).

This public interest review is untimely for several reasons: The application is so incomplete that comment at this time is an exercise in futility. For example:

1. The proposed structure is a water control structure. This water control structure would allow Metro to drain the Smith and Bybee Lakes, destroying up to 2,000 acres of waters of the United States, yet there is no water management plan. There is no explanation of the word "restoration" as it appears in the Public Notice. There is not even a discussion of the goals of the water management.
2. There is no lead federal agency at this time. The claim found in the public notice that U.S. Fish and Wildlife (USF&W) is the lead Agency is, according to USF&W, a falsehood.

3. This federally-financed project is, to this point, without any NEPA component. Public comment is an integral part of NEPA. Should the Corps decide at a later time that they are the lead agency and produce the environmental analysis itself, without public comment, the Corps' decision without the lack of public comment, which is the central feature of NEPA, will invalidate a positive decision on this permit.
4. Known hazardous sediments will be dredged during construction. No construction monitoring plan or plan to mitigate construction disturbance of these sediments exists. Those plans would be subject to the notice and opportunity requirements of 33 U.S.C. § 1433(a) and a valid public interest review.
5. Known hazardous sediments will be dredged and permanently disposed of in the Smith and Bybee Lakes area as a result of this project. No location or monitoring program is part of the Notice letter.
6. Known hazardous sediments will be transported by the daily tide caused by the rise in the Columbia River from the North Slough into Smith and Bybee Lakes. Scientific documents describing the effects of this tide are found as Appendix A to this letter.  
*L Fishman 1987 sediment SYN.*
5. People who live in North Portland are well aware of the Portland District Corps' penchant for issuing a CWA 404 permit the same day -- or shortly after -- construction begins. The construction becomes the notice, the only notice given to the citizens of St. Johns. I ask that issues raised in this comment be answered prior to construction and that a reasonable time for appeal be allowed.

Metro counts on the same indolence that produced this boilerplate notice letter to put away relevant concerns with simple false statements or simply the failure to answer.

Should the Corps fail to consider the dredging and transport of hazardous sediments because of assurances from any Metro employee that no hazardous sediments exist, I ask that you immediately notify me of that person's name. That individual would be personally liable.

**The Corps Should Hold A Public Meeting.**

After the above issues are addressed by Metro a new public notice should be issued. Then the Corps, or whoever is truly the lead agency, should hold a public meeting. Corps regulations and the Clean Water Act make credible public participation the rule rather than an exception. With this letter I ask the Corps to hold a PUBLIC MEETING to address the unaddressed issues inherent in this permit application.

A public meeting would allow issues to be raised and Metro's responses to be challenged. Without the meeting and a more complete application, Metro gains from failing to even mention the relevant issues, because when raised for the first time in written comments, Metro's response will go unchallenged.

A Public meeting would allow discussion of the mitigation of negative effects of the project. Mitigation of the negative effects of the project is required by law. Metro fails to point out any negative effects to the public while proposing their mitigation. This defeats real consideration of mitigation. A public meeting is the last and best opportunity for the public to request mitigation for the negative effects of the project.

### **Background**

This proposed action concerns a water control device at the confluence of Smith and Bybee Lakes (the "Lakes") and the North Slough. The length of the North Slough is entirely bounded by the St. Johns Landfill. Sediments in the North Slough are known to be hazardous to wildlife and humans. The water in the North Slough often does not meet a variety of State water quality standards. This request for a public meeting is the continuation of neighborhood attempts to resolve issues surrounding the nexus of the landfill hazardous waste and the potential contamination of the Lakes with North Slough sediments and leachate from the landfill.

The St. Johns Landfill / Smith and Bybee Lakes area is a dynamic system. The St. Johns landfill is a hazardous waste site. Surface waters surrounding the landfill are either impacted by leachate or are potentially impacted by leachate.

The St. John's Landfill was the City of Portland's main garbage landfill for a half century. This landfill was closed in the late 1990's and a closure plan was developed with public participation in 1989. Both the St. John's landfill and the Lakes were subject to extensive and intensive environmental planning in the late 1980's. Metro was responsible for the implementation of that planning. Metro has vitiated both the 1989 closure plan for the landfill and the natural resource management plan, placing environmental security in jeopardy in order to control the costs associated with closure. All of the subsequent changes to the closure plan have been without public notice or comment. Metro simply seems to intend to meet water quality standards in the North Slough by mixing the North Slough waters with the water in the Lakes. Placing the proposed water control structure without either a review of the environmental effects or a water management plan is irresponsible.

By 1994 it was obvious to the landfill neighbors that Metro was not going to abide by the 1989 closure plan. The EQC looked extensively into the matter in 1994. In an action taken in 1994, the EQC required Metro to produce a risk assessment for the surface waters surrounding the landfill. When the risk assessment was completed, it was obvious that the risks as presented were greatly understated. Subsequently the DEQ informed the neighbors that a more realistic risk assessment would be required. Nonetheless, even with the flawed risk assessment, sediments in the area of the proposed project were found to be of an order of magnitude of 1 in 10,000 deaths per normal exposure. This is very significant. The EPA considers 1 in 100,000 significant.

**The Corps should not usurp the duties of the EPA and DEQ by allowing the Project without full consideration.**

The DEQ is presently taking an enforcement action against Metro. See attachment B. There is recent case law that nullifies the Corps' decision in a landfill context. Metro is attempting to end run public and agency consideration of significant hazardous effects of this

project. The Corps' uninformed participation to this point aids and abets Metro's attempt to curtail consideration.

**Federal Funding Requires NEPA Executive Order And CWA Reviews As Part Of This Process.**

The federal government is the actual funding source for this project. The etiology of this funding is diverse and amorphous, but United States government funding is sufficient to require the Corps to both develop suitable NEPA Environmental Analysis and consider Executive Order 11,990, (42 Fed. Reg. 26,961 (1977)). The Executive Order goes beyond NEPA and requires substantive findings before federal or federally-assisted development can be allowed in wetlands.

**Executive Order 11,990**

Executive Order 11,990 provides that federal agencies shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds:

- (1) that there is no practicable alternative to such construction, and
- (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding, the head of the agency may take into account economic, environmental, and other pertinent factors.

One of the other harms that this project must minimize is the unconsidered spreading of hazardous sediments over the 2,000 acres. The suspect study that Metro has already conducted provides data that EPA standards consider significant.

The Clean Water Act exempts a number of actions from NEPA's impact statement requirement, but the exemptions do not include new sources of water pollution. Dredge and fill material is a new source of water pollution so § 404 permits require a NEPA review. [33 U.S.C. § 1371(c)(1)].

**There is a superior alternative that must be considered.**

The permit application proposes a single alternative. Federal Code, COE Regulations and Executive Orders all require the consideration of alternatives.

NEPA requires federal agencies to evaluate the environmental impact of federal projects and actions early in the planning process through the use of Environmental Assessments (EA) and Environmental Impact Statements (EIS). The intent of an EIS is to consider alternative courses of action and demonstrate that the proposed alternative minimizes impacts and provides ways to mitigate environmental impacts.

The Public Notice contains no discussion of alternative projects. It is obvious that alternative courses of action were not considered. Superior more complete alternatives exist that were not adequately and equally evaluated as required by NEPA and the Clean Water Act.

Alternative analysis is part of the 401(b) review see 40 CFR Part 230 Section 404(b)(1)

Subpart B Section 230.10(a)

- a. Except as provided under section 404(b)(2), no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.
  1. For the purpose of this requirement, practicable alternatives include, but are not limited to:
    - i. Activities which do not involve a discharge of dredged or fill material into the waters of the United States or ocean waters;
    - ii. **Discharges of dredged or fill material at other locations** in waters of the United States or ocean waters;
  2. An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics

in light of overall project purposes. If it is otherwise a practicable alternative, an area not presently owned by the applicant which could reasonably be obtained, utilized, expanded or managed in order to fulfill the basic purpose of the proposed activity may be considered.

Alternative analysis is required in order for a CWA 404 permit to be issued. Since Metro failed to produce any alternative analysis and the Corps of Engineers abdicated its duty to require alternative analysis, the COE foists the responsibility for alternative analysis on the public. A public meeting would provide a fair opportunity to present and debate other alternatives. This debate would by its nature include effects on water quality.

To conduct an alternatives analysis, the Corps must first determine the project's purpose and then consider alternatives that will satisfy that purpose.

**The Corps Public Interest Review Has Not To This Point Undertaken The Review Required By Its Regulations, NEPA And The Clean Water Act.**

It is my understanding that the USACE must do an evaluation of the impacts that a proposed dredging or fill project may have on the surrounding environment. For example:

1. Does the Corps realize the dredge material in the Project area is contaminated and has been determined to be dangerous to humans and wildlife?
2. Has the Corps made studies or developed specific recommendations concerning the impact the project will have by spreading contaminated sediments throughout the surface water system? The entire area is under Clean Water Act jurisdiction.
3. It is also my understanding that the Corps must answer the following questions before issuing a permit:
  - (a) Will the activity increase or reduce the size of the surface water system?
  - (b) Will it alter the current or depth of the stream?
  - (c) Will it impact the shoreline?

The answer to the above three questions is yes. No water management plan has been developed by Metro. The people of North Portland have good reason to suspect Metro intends to drain the Lakes with this project. Metro has indicated a desire to rename Smith and Bybee Lakes "The Smith and Bybee Meadows."

4. Has the USACE focused on the nature (granular structure - grain size) of any sediments dredged or being placed in the surface water system or in the neighborhood area, all of which is below the High Tide Line in the navigable waters of the U.S. or in wetlands? Has the Corps reviewed any risk assessment prepared by Metro?

The application is fundamentally flawed because it does not consider the operation of the water control structure after its completion. The operation of this project can and probably will drain more than a 1,000 acre special aquatic feature. No water management plan is part of the proposal. Operation of the water control structure must become part of the CWA 404 401(b) review.

**The Corps is Allowing Metro to Piecemeal Consideration of the Projects in the Surface Water System Surrounding the St. Johns Landfill.**

As of the date of this letter the Corps continues to deny the consideration of another project controlling water levels. Refusal to admit the Port's application to fill a breach in the banks of Bybee Lake is a piecemeal consideration forbidden by NEPA.

Metro's failure to notify the Corps of the contaminated sediments is not accidental. If the Corps were aware of the dangers to public health posed by the sediments and the reverse flow of the North Slough, and if the Corps were to abide by the requirements of the requirements of the 404(b)(1) review, the project as proposed would not be allowed. 40 CFR Part 230 Section 404(b)(1) Subpart B Section 230.10(b) clearly states no discharge of dredged or fill material shall be permitted if, as in this case, there is long term danger to humans and wildlife due to the transport of known hazardous sediments.

**See 40 CFR Part 230 Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material**

**Subpart B - Compliance With the Guidelines. Section 230.10 - Restrictions on discharge**

**Note:** Because other laws may apply to particular discharges and because the Corps of Engineers or State 404 agency may have additional procedural and substantive requirements, a discharge complying with the requirement of these Guidelines will not automatically receive a permit. Although all requirements in 230.10 must be met, the compliance evaluation procedures will vary to reflect the seriousness of the potential for adverse impacts on the aquatic ecosystems posed by specific dredged or fill material discharge activities. \*\*\*\*

- (b) No discharge of dredged or fill material shall be permitted if it:
  - 1. Causes or contributes, after consideration of disposal site dilution and dispersion, to violations of any applicable State water quality standard;
  - 2. Violates any applicable toxic effluent standard or prohibition under section 307 of the Act;

There is nothing in the application or in the public notice that reflects consideration of these known dangers to the public in St. Johns. The fact that Metro is well aware of the impending State action requiring a more representative risk assessment as part of an enforcement action makes consideration of this project at this time by the Corps suspect. Is the federal government willing to share the costs of remediation of contaminated sediment dispersal throughout the Lakes? The funding of this project appears to imply the acceptance of that responsibility.

**Section 404(b)(1) Guidelines require the Corps to review the appropriate studies to evaluate the project see Subpart B - Compliance With the Guidelines. Section 230.10 - Restrictions on discharge:**

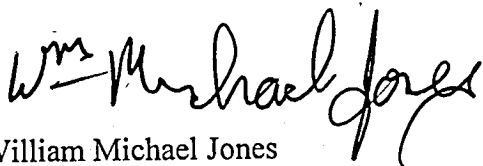
- (c) Except as provided under section 404(b)(2), no discharge of dredged or fill material shall be permitted which will cause or contribute to significant degradation of the waters of the United States. Findings of significant degradation related to the proposed discharge shall be based upon appropriate factual determinations, evaluations, and tests required by Subparts B and G, after consideration of Subparts C through F, with special emphasis on the persistence and permanence of the effects outlined in those subparts. Under these Guidelines, effects contributing to significant degradation considered individually or collectively, include:

2. Significant adverse effects of the discharge of pollutants on human health or welfare, including but not limited to effects on municipal water supplies, plankton, fish, shellfish, wildlife, and special aquatic sites.
3. Significant adverse effects of the discharge of pollutants on life stages of aquatic life and other wildlife dependent on aquatic ecosystems, including the transfer, concentration, and spread of pollutants or their byproducts outside of the disposal site through biological, physical, and chemical processes;
4. Significant adverse effects of the discharge of pollutants on aquatic ecosystem diversity, productivity, and stability. Such effects may include, but are not limited to, loss of fish and wildlife habitat or loss of the capacity of a wetland to assimilate nutrients, purify water, or reduce wave energy; . . .

In order to timely appeal a possible negative decision on this request, this letter also requests notification of the decision of the Corps employee to not have a public meeting prior to a decision on the Project. In the past, members of the public have requested both a Public Meeting and a negative determination, only to be notified by the dredging of contaminated sediments. Please allow time in your decisions on this Project for the public to protect the health of their children in other forums.

Thank you for the opportunity to comment and your consideration in this matter.

Sincerely,

A handwritten signature in black ink that reads "William Michael Jones". The signature is written in a cursive style with a large, stylized "W" and "J".

William Michael Jones