



DEPARTMENT OF THE ARMY
PORTLAND DISTRICT, CORPS OF ENGINEERS
P.O. BOX 2946
PORTLAND, OREGON 97208-2946

September 4, 2003

REPLY TO
ATTENTION OF:

Operations Division
Regulatory Branch
Corps No. 200200175

Mr. William Michael Jones
2716 NE Mason Street
Portland, Oregon 97211

Dear Mr. Jones:

In our letter to you dated May 30, 2003, the US Army Corps of Engineers (Corps) stated that you would be notified of a final determination regarding whether or not a public hearing would be held regarding the Smith and Bybee Lakes Wildlife Area permit proposal. In accordance with 33 CFR Part 327, public hearings are held if the Corps determines additional information from such a hearing is needed to make a final permit decision. Generally, public hearings are held if comments to the public notice raise substantial issues which cannot be resolved informally. Public hearings are conducted on an as needed basis at the discretion of the District Engineer.

Listed below are the issues identified in your letter, and the Corps response:

a. *The public notice did not include a water management plan.*

Response: Metro's objective is to restore to the maximum extent possible the natural hydrology to existing wetlands. Metro has a certificate of water right from the Oregon Water Resources Department to store water in the wetlands (Permit 45974 and Reservoir Permit R-8298). Successful ecological restoration depends on restoring underlying ecological processes to the extent possible; in wetland restoration, one key process is hydrology. The submitted water management plan, dated May 31, 2003, allows Metro to mimic historic water regimes, particularly the spring freshet, by prolonging the recession of floodwaters out of the wetlands.

b. *No lead federal agency.*

Response: As indicated in the Public Notice, the US Fish and Wildlife Service (USFWS) is the lead federal agency for this project. The project received funding from USFWS, US Forest Service (through a grant to Ducks Unlimited), Columbia Land Trust, and Metro.

c. *The project is without any National Environmental Protection Act (NEPA) component.*

Response: A memo from USFWS, received May 19, 2003, documents their Determination of Categorical Exclusion and compliance with NEPA regulations. In addition, the Corps environmental assessment, in the form of a Department of the Army decision document, including a Finding of No Significant Impact, is in full compliance with NEPA implementation regulations.

d. *Known hazardous sediments will be dredged during construction; no monitoring plan or plan to mitigate construction sediment disturbance exists; hazardous sediments will be permanently disposed in Smith and Bybee Lakes area; and hazardous sediments will be transported by the daily tide.*

Response: The lower portion of the slough has been historically impacted by the city's combined sewer overflow (CSO). There are 13 CSOs that discharge into the lower slough. In addition, golf course and industrial site runoff discharge into the slough system. Historically, gravel roads within the Columbia Basin were treated annually with transformer oil to control dust, and mosquitoes were controlled with broadcast pesticide. Decades of unrestricted runoff have resulted in the accumulation of contaminants in sediments throughout the Columbia Slough watershed.

Metro provided a study summary of the *Smith-Bybee Lakes Management Area – 1994-95 Screening Level Risk Assessment*. The study characterized sediments in the Columbia Slough watershed and prioritized sites for additional work. Data from over 300 sediment-sampling sites throughout the Columbia Slough system were collected over a 6-year timeframe. Of these, about 65 sampling sites occurred within the wildlife area, including sites in the North and Columbia Sloughs and both Lakes. Of the 65, 3 sites were identified as 'priority sites.' The 3 priority sites were located adjacent to the combined sewer overflow outfalls and private industrial properties with known high levels of contaminants.

There is known background pollution throughout the Columbia Slough system, including the Lakes. The results of a recent Columbia Slough sediment study (*Smith-Bybee Lakes Management Area-1994-95 Screening Level Risk Assessment*, completed by the City of Portland Bureau of Environmental Services (BES)) indicate that current ecological and human health risks within the wildlife area are comparable to the rest of the Columbia Slough system. The North Slough, Columbia Slough, and Smith and Bybee Lakes were hydrologically connected for much of the last century, when most of the pollution in the system was generated.

Metro has taken actions to prevent leachate movement from the St Johns Landfill to surrounding surface water and groundwater. The landfill cover is designed to prevent creation of leachate by preventing rainwater from permeating the landfill. A cutoff wall was installed along approximately 1,000 feet of the perimeter dike between the landfill and North Slough to prevent leachate movement from the landfill into the slough.

Presently, Metro is conducting a remedial investigation and risk assessment under ODEQ supervision, as part of the landfill closure process, to determine the extent of any ecological and human health risks posed by the landfill and additional remedies that may be implemented to reduce or eliminate those risks. As mentioned previously, the St Johns Landfill is a highly regulated site with an extensive monitoring program in place and is closely supervised by regulating agencies (such as ODEQ, and EPA). Metro has also recently completed sediment/soil testing and analysis on 4 sites located within the proposed work area. The testing results did not detect the presence of pesticides or organic compounds. In addition, metals that were detected were well below the screening levels of outlined in the Dredged Material Evaluation Framework, Lower Columbia River Management Area, November 1998 (Table 8-1).

e. Request that the Corps address issues raised in the public notice prior to construction, and that a reasonable time for appeal be allowed.

Response: In accordance with the Corps regulations 33 CFR 320 – on April 8, 2003, the Corps provided an opportunity for the public to comment on the proposed discharge of fill or dredged material into waters of the United States. The Corps has given full consideration to all comments submitted during the permit evaluation and decision making process. The present Appeal process, described in 33 CFR 331, allows appeals by applicants for permit denials, special conditions, or jurisdictional determination. This appeal process does not provide a means by which other entities may appeal the Corps permit or jurisdictional decision.

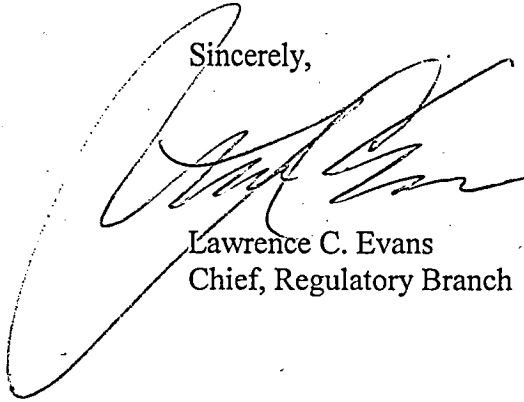
In general, the ODEQ has considered the aforementioned water quality issues in their evaluation under Section 401 of the Clean Water Act, and has incorporated special conditions in their Water Quality Certification, dated August 22, 2003. ODEQ and EPA are the public agencies responsible for monitoring and addressing issues regarding the decommissioning of the St Johns Landfill. The Corps suggests that if you have further concerns regarding water quality or sediment contamination from the landfill that you address ODEQ or EPA directly.

As mentioned above, the USFWS, as the lead federal agency, is responsible for complying with NEPA requirements. NOAA Fisheries, the responsible managing agency for ESA listed salmonids that occur within the Smith and Bybee Management Area, provided its biological opinion (BO) of the affect of Metro's proposed restoration activities. Metro's compliance with the reasonable and prudent measures contained within that BO would become a special condition of the Department of the Army Permit. The Corps suggests that if you have further concerns regarding fish or wildlife management within the Smith and Bybee Wildlife Management Area, you directly address USFWS or NOAA Fisheries.

Upon full consideration of all comments received, the District Engineer determined that a public hearing for this proposed permit action is not warranted. The District Engineer is satisfied the applicant and certifying or managing agencies have provided information to address public interest factors, sufficient to reach a final permit decision. As a result, the District Engineer has determined that the proposed discharge complies with regulatory guidelines, with the inclusion of appropriate and practicable conditions to minimize pollution or adverse effects on the affected ecosystem.

If you have questions regarding this letter, you may contact me at the letterhead address, or telephone 503-808-4370.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Lawrence C. Evans', is written over the word 'Sincerely,'.

Lawrence C. Evans
Chief, Regulatory Branch

Copy Furnished:

- US Fish and Wildlife Service (Kemper McMaster)
- Environmental Protection Agency (Valette)
- Oregon Division of State Lands (Jarvie)
- Oregon Department of Environmental Quality (Melville)
- ✓ Metro (Elaine Stewart)