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Form 3-265	U.S. FISH & WILDLIFE SERVICE	FAXFORM	Page 1 of 3 Pages
TO: Ranjeet Bhatia, Environmental Policy, The White House FAX: (202) 456-2710		Deliver on regular mail run Call to have picked up	
FROM: Joseph P. Mazzone FAX: (505) 766-2289 Assistant Regional Director-Refuges and Wildlife, Region 2			
SUBJECT: Playa Del Rio Condemnation			

October 15, 1993

Copy of a letter dated October 7, 1993, from Martin Steinmetz, Office of the Solicitor, Southwest Region, to Eric Williams, Department of Justice, is forwarded for your information. I will continue to keep you posted. Please do not hesitate to call me at (505) 766-1829 if you have questions.

cc: RD Rogers



REFERENCE NO.

United States Department of the Interior



OFFICE OF THE SOLICITOR

Regional Office, Southwest Region

P.O. Box 3156

Tulsa, Oklahoma 74101

October 7, 1993

Mr. Eric Williams, Esq.
Department of Justice
Environment and Natural Resources Division
Land Acquisition Section
P.O. Box 561
Ben Franklin Station
Washington, D.C. 20044

Re: Playa del Rio Condemnation on behalf of the Department of
the Interior

Dear Mr. Williams:

Pursuant to our telephone conversation on October 5, 1993, we are enclosing copies of the pertinent portions of U.S. law that gives the Secretary of the Interior authority to acquire lands for refuges and other purposes. The Playa del Rio condemnation request which was forwarded to your office for processing involves the acquisition of land for addition to the Lower Rio Grande Valley National Wildlife Refuge (hereafter "the Refuge"). Since the establishment of the Refuge in 1979, over 62,000 acres of land have been acquired within the 132,500-acre approved boundary. Playa del Rio is within the Refuge approved boundary and its acquisition whether by condemnation, negotiated purchase or otherwise is of paramount importance to the U.S. Fish and Wildlife Service ("Service"). The Service has been unable to negotiate a purchase of the property due primarily to clouds on the title.

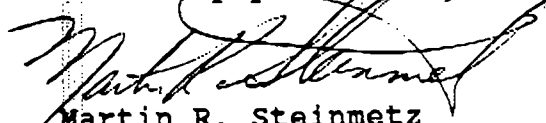
The Department of the Interior and Related Agencies Appropriations Act of 1993, Pub. L. No. 102-381, 106 Stat. 1374 (1992), allocated to the Service \$76,192,000, to be derived from the Land and Water Conservation Fund for land acquisition. Approximately \$2.5 million of FY 1993 funds are being held to complete this acquisition. The House and Senate in the FY 1994 budget have called for an additional \$2,360,000 of Land and Water Conservation Fund money for land acquisition additions to the Lower Rio Grande Valley National Wildlife Refuge. These documents are included for easy reference.

In our telephone conversation you expressed the concern that the Service presently seeks to condemn all the acreage comprising Playa del Rio (11,950.196 acres) yet at some future time may decide to only acquire something less than the whole requiring an amended complaint. The Service is trying to accommodate the State of Texas which desires to place the beach portions of Playa del Rio in

the State park system. The Texas Parks and Wildlife Department (TPWD) must go through many bureaucratic hoops to condemn or otherwise acquire state lands. To date the State of Texas has not indicated how it intends to proceed to acquire those portions of Playa del Rio that it desires. Because this property is so environmentally sensitive the Service has indicated that if the State of Texas cannot later condemn or otherwise acquire the beach portions of this property comprising about 2,386.549 acres then the Service intends to acquire all of Playa del Rio. Hopefully, this explanation alleviates your concerns.

Please be advised that the incorporation of Playa del Rio into the National Wildlife Refuge system is extremely important to the Department of the Interior. Prior to forwarding our condemnation request we have corresponded with Mr. Chuck Wendlandt, Assistant U.S. Attorney in Corpus Christi, Texas, concerning the details of our attempts to acquire this property. Due to numerous title defects we determine that acquisition of this property by condemnation is the only viable alternative. We encourage your support in this matter and request that you keep us closely informed on the disposition of our condemnation referral.

Sincerely yours,



Martin R. Steinmetz
Attorney

cc: Regional Director, U.S. Fish and Wildlife Service, Region 2,
Albuquerque, New Mexico
Attn: Mr. Joe Mazzoni and Mr. Tom Smith

Memo: Will
From: Ranjeet
Date: 10/7/93
Subject: Playa del Rio

I have spoken with Martin Steinmetz, in the Solicitor's office of the USFWS's Tulsa office. He filled me in on the happenings with the Playa.

FDIC has negotiated a price with USFWS and the two parties are in agreement about the sale. Due to the price of the land, 5.6-5.8 million, USFWS will not have the necessary funds until late November. As a result they are filing a condemnation with DOJ. The filing has been forwarded to DOJ here in Washington, and herein lies the delay. William Collins, Director of Land Acquisitions, can not decide whether to keep the case in WDC or move it out to the field. Apparently Babbitt has made several calls on the issue and it has become a highly visible matter.

Martin assured me that he has been in close contact with Governor Richard's Office and that her fears have been quelled: the land will not be sold to developers. Therefore we need no longer worry about the Governor's concerns.

I did ask him what we could do to facilitate the process. He requested that we push DOJ to make a decision on the handling of the condemnation and furthermore, that the case be sent back to the field, where the people knowledgeable about the case could resolve the issue most effectively.

Should I pursue the matter?

Handwritten notes:
L/ops -
It seems like 176
PROCEEDING FOR -
PLEASE KEEP THIS FOR
FUTURE ACTION

MEMORANDUM

Date: September 7, 1993
To: Will and Katie
From: Ranjeet Bhatia
Re: Playa del Rio

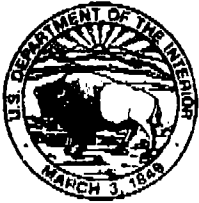
I write this in follow up to Governor Ann Richards' concerns regarding the fate of her state's Playa Del Rio wetlands property. Governor Richards had asked that we look into the FDIC's plans for the sale of the property and ensure that the land would not be sold to developers.

I spoke to Kevin Stein, FDIC Associate Director, Division of Resolution. Kevin informed me that his office controls the Playa Del Rio property and that FDIC has no intention to sell the property to developers. He explained that FDIC does have plans to sell the property to the Department of Interior, but detailed his frustration with the Fish and Wildlife Service over delays in the sale and transfer of the property.

Russ Earnst, Deputy Assistant Director-Ecological Services, FWS, advised me that the details of the sale were near completion, and that he expected the purchase of the property to be completed by the end of the fiscal year. I did ask him to fax me an expected course of action. His fax is attached.

208-9646
Russ Earnst

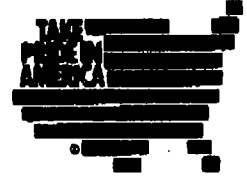
Ran
Can you check on the
status, and then draft
a response.
Please advise.
Will



United States Department of the Interior

FISH AND WILDLIFE SERVICE

WASHINGTON, D.C. 20240



ADDRESS ONLY THE DIRECTOR,
FISH AND WILDLIFE SERVICE

In Reply Refer To:
FWS/AES

SEP 01 1993

Memorandum

To: Office of the White House - OEP
Attention: Rgnj Bhatia

From: Deputy Assistant Director - Ecological Services

Subject: Playa del Rio Project, Texas

The Fish and Wildlife Service (Service) is requesting the Federal Deposit Insurance Corporation (FDIC) confirm agreements reached to date regarding the expedited sale of the subject property to the Service and the State of Texas. We will advise the Office of the Solicitor that the Department of Justice file the condemnation complaint as soon as we have FDIC concurrence. We reached verbal agreement with FDIC staff that the only way to resolve numerous outstanding title issues and bring this transaction to timely closure is via condemnation.

If the case cannot be settled through filing of the initial complaint this Fall, we intend to request approval from our Appropriations Committees to file a Declaration of Taking.

We are working closely with FDIC and the State of Texas and expect successful acquisition in the near future.

Russ Earnest

8.20.93

Katie

Stelle?

Please

know

Thanks

Christina

Al wants
you to
handle

any comments?

8.23



AUG 11 1993

STATE OF TEXAS
OFFICE OF THE GOVERNOR
AUSTIN, TEXAS 78711

ANN W. RICHARDS
GOVERNOR

August 6, 1993

The Honorable Al Gore
Vice President of the United States
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear Mr. Vice President:

Several months ago I wrote to alert you to an opportunity to preserve a unique parcel of property on the Texas - Mexico border. The property is commonly known as Playa Del Rio. It contains 12,000 acres of wetland and upland habitat that is home to a number of endangered species and migratory waterfowl. The property is controlled by the Federal Deposit Insurance Corporation (FDIC) through an assistance agreement with First Heights Federal Savings Bank in Houston.

The property was initially slated to be sold to development interests. After Secretary Babbitt, Congressmen Gonzalez and Vento, and the State of Texas expressed concerns about FDIC's plans, the FDIC Board voted to change course and sell the property to conservation interests.

Unfortunately, we may have declared victory prematurely. I am told that FDIC is backpedaling and threatening to sell the land to developers. While FDIC may simply be posturing, I consider the threat to be a real one.

I would greatly appreciate any assistance that you or your staff can provide in ensuring that Playa Del Rio is protected.

Sincerely,

ANN W. RICHARDS
Governor

enclosures

Later - wants you to handle
John 8/20/93

Al - This is really important. I am furious that FDIC is reversing course. Please help. A.



STATE OF TEXAS
OFFICE OF THE GOVERNOR
AUSTIN, TEXAS 787

March 30, 1993

ANN W. RICHARDS
GOVERNOR

The Honorable Al Gore
Vice President of the United States
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear Mr. Vice President:

I wanted to bring to your attention an issue that concerns many Texans. Despite pleas from Secretary Babbitt, Congressmen Gonzales and Vento, and the State of Texas, the Federal Deposit Insurance Corporation (FDIC) intends to approve the sale of one of the most environmentally sensitive properties in the state to development interests.

The property, commonly known as Playa Del Rio, is located in South Texas along the U.S. - Mexico border at the mouth of the Rio Grande River. Playa Del Rio's 12,000 acres of wetland and upland habitat are home to a number of threatened or endangered species including the ocelot, the jaguarundi, the piping plover, the peregrine falcon, and the northern aplomado falcon. The property lies in the path of the Central Flyway and it is used by waterfowl traveling to and from Mexico. Playa Del Rio's coastal marshes border the state's South Bay Coastal Preserve, a rare hypersaline lagoon important to the Gulf of Mexico's finfish stocks.

Playa Del Rio is currently owned by Heights Federal Savings Bank of Houston and is managed under a covered asset agreement with the FDIC. The FDIC must approve the sale of the property before it can occur.

The federal government has spent approximately \$65 million to acquire habitat along the Rio Grande River. Playa Del Rio has long been slated for acquisition as the coastal cornerstone for the U.S. Fish and Wildlife Service's Rio Grande Corridor project.

It would be tragic if we were to lose this ecological treasure because of the FDIC's inability to cooperate with other

All - This is not a routine letter of concern. This is a big deal to me and to Texas. Please help me. Ann

The Honorable Al Gore
March 30, 1993
Page 2

governmental entities. Any assistance that you can provide to help protect this important part of our natural heritage would be most appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Ann", with a large, sweeping initial "A" and a long, horizontal flourish extending to the right.

ANN W. RICHARDS
Governor



STATE OF TEXAS
OFFICE OF THE GOVERNOR
AUSTIN, TEXAS 78711

ANN W. RICHARDS
GOVERNOR

August 6, 1993

Mr. Andrew Hove, Jr.
Acting Chairman
Federal Deposit Insurance Corporation
550 Seventeenth Street, N.W.
Washington, D.C. 20249

Dear Mr. Hove:

I wrote to you several months ago expressing my serious concern regarding the proposed sale of Playa Del Rio to development interests. It is my understanding that FDIC reconsidered the sale and that the FDIC Board voted to sell the property to the state and federal governments. I wholeheartedly supported and applauded that action.

You can imagine my surprise when I heard that, once again, FDIC is considering selling this ecologically-rich property to developers. I am fearful that the negotiations over property's final disposition have entered into a period of legal brinkmanship that, in the end, will serve little public purpose. It is my hope that all parties involved will continue to work together to resolve the issues surrounding this sale. To do otherwise risks losing part of our common natural heritage that is irreplaceable.

Thank you for your attention to this matter. I trust that the FDIC will continue to work to ensure that this property is preserved for the benefit of future generations. Please contact me if my office can provide any assistance toward this end.

Sincerely,

A large, stylized cursive signature of Ann W. Richards.
ANN W. RICHARDS
Governor

cc: The Honorable Al Gore
Vice President of the United States

*Please do not
sell this land for
development. It is
wrong.*
AR

A SUMMARY OF

"PROTECTING AMERICA'S WETLANDS: A FAIR, FLEXIBLE, AND EFFECTIVE APPROACH"

August 24, 1993

INTRODUCTION

The Clinton Administration is proposing a comprehensive package of improvements to the Federal wetlands program that reflects a new broad-based consensus among Federal agencies. For years, many have argued that the Federal government badly needed to improve its wetlands program to make it fairer and more effective. But for too long, contradictory policies from feuding Federal agencies have blocked progress, creating uncertainty and confusion. This wetlands package reflects a sharp break through the past gridlock caused by warring Federal agencies and contains a balanced, common sense, workable set of improvements that will make the program simpler, fairer, better coordinated with state and local efforts and more effective at protecting wetlands.

BACKGROUND

The Nation's wetlands perform many functions that are important to society, such as improving water quality, recharging groundwater, providing natural flood control, and supporting a wide variety of fish, wildlife and plants. The economic importance of wetlands to commercial fisheries and recreational uses is also enormous.

The Nation has lost nearly half of the wetland acreage that existed in the lower 48 States prior to European settlement. The Nation's wetlands continue to be lost at a rate of hundreds of thousands of acres per year due to both human activity and natural processes. This continued loss occurs at great cost to society.

Notwithstanding the importance of wetland resources, Federal regulatory programs to protect wetlands have caused considerable controversy. Critics of Federal wetlands regulatory programs have effectively characterized those programs as unfair, inflexible, inconsistent, and confusing. Supporters of wetlands protection have responded -- with equal effectiveness -- by emphasizing the environmental and economic benefits associated with protecting the Nation's wetlands.

As both sides have voiced their strongly held opinions, the debate over Federal wetlands policy has become increasingly divisive, with agencies fighting agencies and generating enormous confusion among the public and the states and stalling needed reforms in the program. In short, wetlands policy had become one of the most controversial environmental issues facing the Federal government, slowing work on the reauthorization of the overall Clean Water Act.

THE INTERAGENCY WORKING GROUP ON FEDERAL WETLANDS POLICY

The Administration convened the Interagency Working Group on Federal Wetlands Policy in early June with the goal of developing a package of Clinton Administration initiatives to end the wetlands wars, break the deadlock over Federal wetlands policy and develop a set of workable improvements to the program. The group has been chaired by the White House Office on Environmental Policy and has included the participation of the Environmental Protection Agency (EPA), the Army Corps of Engineers (Corps), the Office of Management and Budget, and the Departments of Agriculture (USDA), Commerce, Energy, Interior, Justice, and Transportation.

The working group sought the views of a broad range of stakeholders representing all perspectives in the wetlands debate. For example, the group has received presentations that have included: a bipartisan group of eight members of the U.S. Congress; representatives of State and local government; environmentalists; the development community; agricultural interests; scientists; and others.

After listening to this broad range of interests, the working group established five principles that serve as the framework for the Administration's comprehensive package of wetlands reform initiatives.

FIVE PRINCIPLES FOR FEDERAL WETLANDS POLICY

- 1) The Clinton Administration supports the interim goal of no overall net loss of the Nation's remaining wetlands, and the long-term goal of increasing the quality and quantity of the Nation's wetlands resource base;
- 2) Regulatory programs must be efficient, fair, flexible, and predictable, and must be administered in a manner that avoids unnecessary impacts upon private property and the regulated public, and minimizes those effects that cannot be avoided, while providing effective protection for wetlands. Duplication among regulatory agencies must be avoided and the public must have a clear understanding of regulatory requirements and various agency roles;
- 3) Non-regulatory programs, such as advance planning; wetlands restoration, inventory, and research; and public/private cooperative efforts must be encouraged to reduce the Federal government's reliance upon regulatory programs as the primary means to protect wetlands resources and to accomplish long-term wetlands gains;
- 4) The Federal government should expand partnerships with State, Tribal, and local governments, the private sector and individual citizens and approach wetlands protection and restoration in an ecosystem/watershed context; and
- 5) Federal wetlands policy should be based upon the best scientific information available.

A COMPREHENSIVE PACKAGE OF REFORMS

Building upon these principles, the working group has developed a comprehensive package of initiatives that will significantly reform Federal wetlands policy, while maintaining protection of this vital natural resource. This package includes regulatory reforms and innovative, non-regulatory policy approaches; it includes administrative actions that will take effect immediately, and legislative recommendations for Congress to consider during the reauthorization of the Clean Water Act. The Clinton Administration looks forward to working closely with the Congress to implement this new approach to Federal wetlands policy.

The reform package includes the following initiatives:

- **To affirm its commitment to conserving wetlands resources, the Administration will issue an Executive Order embracing the interim goal of no overall net loss of the Nation's remaining wetlands resource base, and a long-term goal of increasing the quality and quantity of the Nation's wetlands;**
- **To increase fairness in the wetlands permitting process, the Corps will establish an administrative appeals process so that landowners can seek speedy recourse if permits are denied without having to go to court;**
- **To make sure that decisions are made without delay, the Corps will establish deadlines for wetlands permitting decisions under the Clean Water Act;**
- **To reduce uncertainty for American farmers, yesterday the Corps and EPA issued a final regulation ensuring that approximately 53 million acres of prior converted cropland -- areas which no longer exhibit wetlands characteristics -- will not be subject to wetlands regulations;**
- **To reduce duplication and inconsistency for American farmers, the Soil Conservation Service will be the lead Federal agency responsible for identifying wetlands on agricultural lands under both the Clean Water Act and the Food Security Act;**
- **To close a loophole that has led to the degradation and destruction of wetlands, yesterday the Corps and EPA issued a final regulation to clarify the scope of activities regulated under the Clean Water Act;**
- **To emphasize that all wetlands are not of equal value, yesterday EPA and the Corps issued guidance to field staff highlighting the flexibility that exists to apply less vigorous permit review to small projects with minor environmental impacts;**
- **To ensure consistency and fairness, the Army Corps of Engineers, the Environmental Protection Agency, the Soil Conservation Service, and the Fish and Wildlife Service will all use the same procedures to identify wetland areas;**

- To increase the predictability and environmental effectiveness of the Clean Water Act regulatory program and to help attain the no overall net loss goal, the Administration endorses the use of mitigation banks;
- To reduce the conflict that can result between wetlands protection and development when decisions are made on a permit-by-permit basis, the Administration strongly supports incentives for States and localities to engage in watershed planning;
- To provide effective incentives for farmers to restore wetlands on their property, the Administration will continue to support increased funding for the USDA's Wetland Reserve Program; and
- To help attain the long-term goal of increasing the quantity and quality of the Nation's wetlands, the Administration will promote the restoration of damaged wetland areas through voluntary, non-regulatory programs.

CONCLUSION

This package breaks the gridlock that has paralyzed wetland policy in the past and represents a major advance in reforming and improving the wetlands program nationwide. It reflects the President's broader commitment to "reinventing" government to make it more responsive, more effective and more efficient.

The critics of the wetlands regulatory program have performed a service to the country by highlighting the need for meaningful reform in the administration of wetland regulatory programs. Many of the much needed reforms contained in this package -- such as permit deadlines, an appeals process, mitigation banking, and increasing the role of state and local government in wetlands regulation -- have been proposed by those seeking improvements in the operation of the current regulatory program.

The supporters of wetlands protection have also performed a service by helping to inform the Nation of the environmental and economic importance of wetlands, a valuable natural resource that was once routinely destroyed. Their strong commitment to protecting and restoring this vital resource is also reflected in this package. For example, a loophole has been closed in Federal regulations that allowed the degradation and destruction of wetlands; the "Alaska 1% rule," which would have greatly relaxed wetlands protection in Alaska, will be withdrawn; and the Administration will draft an Executive Order affirming its commitment to the preservation and restoration of wetland areas.

By adopting an approach based upon the effective protection of an important natural resource in a manner that is fair and flexible, the Clinton Administration proposes a wetlands policy that recognizes both the value of wetland resources and the need to minimize regulatory burdens.

***PROTECTING AMERICA'S WETLANDS:
A FAIR, FLEXIBLE,
AND EFFECTIVE APPROACH***

WHITE HOUSE OFFICE
ON ENVIRONMENTAL POLICY

August 24th, 1993

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I. INTRODUCTION

The Clinton Administration is proposing a comprehensive package of improvements to the Federal wetlands program that reflects a new broad-based consensus among Federal agencies. For years, many have argued that the Federal government badly needed to improve its wetlands program to make it fairer and more effective. But for too long, contradictory policies from feuding Federal agencies have blocked progress, creating uncertainty and confusion. This wetlands package reflects a sharp break through the past gridlock caused by warring Federal agencies and contains a balanced, common sense, workable set of improvements that will make the program simpler, fairer, better coordinated with state and local efforts and more effective at protecting wetlands.

The Nation's wetlands perform many functions that are important to society, such as improving water quality, recharging groundwater, providing natural flood control, and supporting a wide variety of fish, wildlife and plants. The economic importance of wetlands to commercial fisheries and recreational uses is also enormous. The Nation has lost nearly half of the wetland acreage that existed in the lower 48 States prior to European settlement. The Nation's wetlands continue to be lost at a rate of hundreds of thousands of acres per year due to both human activity and natural processes. This continued loss occurs at great cost to society.

Notwithstanding the importance of wetland resources, efforts to protect wetlands have caused considerable controversy. It is estimated that 75 percent of the Nation's wetlands in the lower 48 States are located on private property. It is, therefore, imperative to recognize and consider fully the impacts of wetlands protection policies on individuals who own wetland property. Statutory, regulatory, and policy objectives should be accomplished in a manner that avoids unnecessary impacts upon such landowners.

Given the environmental and economic significance of wetlands, the alarming rate of wetlands loss, and concerns for private landowners, the Interagency Working Group on Federal Wetlands Policy began developing a comprehensive package of initiatives in June. The policy positions contained in this paper strongly support the effective protection and restoration of the Nation's wetlands, while advocating much-needed reforms to increase the fairness and flexibility of Federal regulatory programs.

II. A DIVISIVE DEBATE

Federal programs to protect the Nation's wetlands have been the focus of considerable controversy in recent years. Much of the attention focused upon the 1989 Interagency Wetlands Delineation Manual (1989 Manual). The 1989 Manual was prepared jointly by the U.S. Army Corps of Engineers (the Corps), the Environmental Protection Agency (EPA), the Fish and Wildlife Service (FWS) of the Department of the Interior, and the Department of Agriculture's Soil Conservation Service (SCS). It was developed in response to criticism that Federal agencies

were not using a single set of common procedures to "delineate" -- or identify -- wetlands under the jurisdiction of programs administered by these agencies.

But rather than alleviating concerns about inconsistency, the 1989 Manual only further fueled the controversy. Critics claimed that the 1989 Manual represented a major expansion of regulatory jurisdiction without opportunity for public participation. In response, the Bush Administration embarked upon a closed-door effort to revise the 1989 Manual. This process resulted in the technically flawed 1991 Manual that would have dramatically and indefensibly reduced the amount of wetlands subject to protection. The proposed 1991 Manual generated even further controversy and resulted in even greater polarization of the debate on Federal wetlands policy.

In addition to assailing the 1989 Manual, critics of Federal wetlands regulatory programs effectively characterized those programs as unfair, inflexible, inconsistent, and confusing. Supporters of wetlands protection responded -- with equal effectiveness -- by emphasizing the environmental and economic benefits associated with protecting the Nation's wetlands.

As both sides voiced their strongly held opinions, the debate over Federal wetlands policy became increasingly divisive. The opposition that developed to both the 1989 and 1991 Manuals demonstrated the policy deadlock that had developed. Wetlands policy has become one of the most controversial environmental issues facing the Federal government, just as Congress embarks upon the reauthorization of the Clean Water Act.

III. THE INTERAGENCY WORKING GROUP ON FEDERAL WETLANDS POLICY

The Administration convened the Interagency Working Group on Federal Wetlands Policy in early June with the goal of developing a package of Clinton Administration initiatives to break the deadlock over Federal wetlands policy. The group has been chaired by the White House Office on Environmental Policy and has included the participation of the EPA, the Army (the Corps of Engineers), the Office of Management and Budget, and the Departments of Agriculture, Commerce, Energy, Interior, Justice, and Transportation.

The working group sought the views of a broad range of stakeholders representing all perspectives in the wetlands debate. For example, the working group has received presentations that have included: a bipartisan group of eight members of the U.S. Congress; representatives of State and local government; environmentalists; the development community; agricultural interests; scientists and others.

After listening to this broad range of interests, the working group began its policy deliberations by establishing the following five principles that serve as the framework for the Administration's comprehensive package of wetlands reform initiatives.

IV. FIVE PRINCIPLES FOR FEDERAL WETLANDS POLICY

- 1) The Clinton Administration supports the interim goal of no overall net loss of the Nation's remaining wetlands, and the long-term goal of increasing the quality and quantity of the Nation's wetlands resource base;
- 2) Regulatory programs must be efficient, fair, flexible, and predictable, and must be administered in a manner that avoids unnecessary impacts upon private property and the regulated public, and minimizes those effects that cannot be avoided, while providing effective protection for wetlands. Duplication among regulatory agencies must be avoided and the public must have a clear understanding of regulatory requirements and various agency roles;
- 3) Non-regulatory programs, such as advance planning; wetlands restoration, inventory, and research; and public/private cooperative efforts must be encouraged to reduce the Federal government's reliance upon regulatory programs as the primary means to protect wetlands resources and to accomplish long-term wetlands gains;
- 4) The Federal government should expand partnerships with State, Tribal, and local governments, the private sector and individual citizens and approach wetlands protection and restoration in an ecosystem/watershed context; and
- 5) Federal wetlands policy should be based upon the best scientific information available.

V. A COMPREHENSIVE PACKAGE OF REFORMS

Building upon these principles, the working group has developed a comprehensive package of initiatives that will significantly reform Federal wetlands policy, while maintaining protection of this vital natural resource. This package includes regulatory reforms and innovative, non-regulatory policy approaches; it includes administrative actions that will take effect immediately, and legislative recommendations for Congress to consider during the reauthorization of the Clean Water Act. The Clinton Administration looks forward to working closely with the Congress to implement this new approach to Federal wetlands policy. In addition, the Administration will establish an ongoing interagency working group, to be chaired by the Office on Environmental Policy, to monitor the implementation of the initiatives contained in the reform package.

The reform package includes the following initiatives:

- **To affirm its commitment to conserving wetlands resources, the Administration will issue an Executive Order embracing the interim goal of no overall net loss of the Nation's remaining wetlands resource base, and a long-term goal of increasing the quality and quantity of the Nation's wetlands;**

- To increase fairness in the wetlands permitting process, the Corps will establish an administrative appeals process so that landowners can seek recourse short of going to court;
- To increase fairness and efficiency in the wetlands permitting process, the Corps will establish deadlines for wetlands permitting decisions under the Clean Water Act;
- To reduce uncertainty for American farmers, yesterday the Corps and EPA issued a final regulation ensuring that approximately 53 million acres of prior converted cropland -- areas which no longer exhibit wetlands characteristics -- will not be subject to wetlands regulations;
- To reduce duplication and inconsistency for American farmers, the Soil Conservation Service will be the lead Federal agency responsible for identifying wetlands on agricultural lands under both the Clean Water Act and the Food Security Act;
- To close a loophole that has led to the degradation and destruction of wetlands, yesterday the Corps and EPA issued a final regulation to clarify the scope of activities regulated under the Clean Water Act;
- To emphasize that all wetlands are not of equal value, yesterday EPA and the Corps issued guidance to field staff highlighting the flexibility that exists to apply less vigorous permit review to small projects with minor environmental impacts;
- To ensure consistency and fairness, the Army Corps of Engineers, the Environmental Protection Agency, the Soil Conservation Service, and the Fish and Wildlife Service will all use the same procedures to identify wetland areas;
- To increase the predictability and environmental effectiveness of the Clean Water Act regulatory program and to help attain the no overall net loss goal, the Administration endorses the use of mitigation banks;
- To reduce the conflict that can result between wetlands protection and development when decisions are made on a permit-by-permit basis, the Administration strongly supports incentives for States and localities to engage in watershed planning;
- To provide effective incentives for farmers to restore wetlands on their property, the Administration will continue to support increased funding for the USDA's Wetland Reserve Program; and

- **To attain the long-term goal of increasing the quantity and quality of the Nation's wetlands, the Administration will promote the restoration of damaged wetland areas through voluntary, non-regulatory programs.**

The complete package of reform initiatives follows. (Some initiatives are listed under more than one heading for the sake of clarity.) By proposing an approach based upon effective protection and restoration of the Nation's wetlands, while adopting much-needed reforms to increase the fairness and flexibility of regulatory programs, the Administration's reform package offers a tremendous opportunity to move beyond the divisiveness that has characterized the wetlands policy debate in recent years.

A. ADDRESSING LANDOWNER CONCERNS

Issue Definition: The program that regulates wetlands under Section 404 of the Clean Water Act has been criticized as being slow, unpredictable and unfair. For example, it has been claimed that permits take too long to obtain; that wetlands delineations are sometimes slow, inaccurate, and inconsistent; and that it is unfair that the Corps does not provide a process by which landowners can appeal a jurisdictional determination or the denial of a wetlands permit short of suffering the expense of going to court.

Administration Position: The Clinton Administration believes that the Federal government has a responsibility to the public to conduct such regulatory programs in a manner that is efficient, responsive and fair. Therefore, the Administration supports the following reforms that will reduce the impact of regulation on the public, while meeting our objectives to protect wetlands:

● ***Deadlines for Permit Action*** Within one year the Corps will modify its regulations, through a public rulemaking process, to establish regulatory deadlines for reaching decisions regarding permit applications. The regulations will generally require the Corps to reach permit decisions within 90 days from the date of issuance of the public notice, unless precluded by other laws, such as the National Environmental Policy Act. The Administration will strongly support the additional personnel and funding necessary to meet these deadlines for permit action.

● ***The Adoption of an Appeals Process*** Within one year, the Corps will develop an administrative appeals process under the Section 404 regulatory program. The process, which will be implemented after a public rulemaking, will be designed to allow for administrative appeals of the Corps' determination that it has regulatory jurisdiction over a particular parcel of property, permit denials, and administrative penalties. The process will allow third parties to participate in applicant appeals of permit denials and will require that applicants exercise their right to appeal before initiating judicial action. The Administration will strongly support the additional personnel and funding necessary to implement successfully the appeals process.

The USDA already has an appeals process in place and landowners will be able to appeal SCS wetlands delineations through that administrative process.

● ***Delineation Training and Certification*** All employees of Federal agencies who conduct wetlands delineations will be required to complete the interagency wetlands delineation training program to improve accuracy and consistency in delineation in Federal wetlands programs or have comparable training and experience. As appropriate, State and Tribal agencies will also be encouraged to participate in the Federal training program. In addition, by the end of 1993, the Corps will propose regulations for implementing a certification program for private sector delineators.

By requiring training of Federal delineators, jurisdictional determinations can be done more accurately and consistently across the country. By encouraging the growth of a pool of certified private sector wetlands consultants, jurisdictional determinations can be performed far more quickly than if the job is solely the responsibility of Federal agency personnel. In addition, the Corps will streamline the process by which it considers and accepts delineations performed by certified wetlands consultants.

● ***Promote Voluntary, Cooperative Programs.*** With 75 percent of the Nation's remaining wetlands in the lower 48 States located on privately owned property, it is clear that cooperation with the private sector in implementation of wetlands protection and restoration activities is critical. Advance planning (see next issue) offers an excellent opportunity to involve the public in general, and property owners in particular, in developing and implementing wetlands protection and restoration plans. The Administration will support planning activities that include cooperative activities with property owners, and will increase support for programs that assist landowners in the implementation of such plans through restoration, technical assistance and information programs.

B. ADVANCE PLANNING AND WATERSHED MANAGEMENT

Issue Definition: Typically, decisions affecting wetlands are made on a project-by-project, permit-by-permit basis. This often precludes the effective consideration of the cumulative effects of piecemeal wetlands loss and degradation. It also hampers the ability of State, Tribal, regional, and local governments to integrate wetlands conservation objectives into the planning, management, and regulatory tools they use to make decisions regarding development and other natural resource issues. This can often result in inconsistent and inefficient efforts among agencies at all levels of government, and frustration and confusion among the public.

In contrast, advance planning, particularly comprehensive planning conducted on a watershed basis, offers the opportunity to have strong participation by State, Tribal, and local governments and private citizens in designing and implementing specific solutions to the most pressing environmental problems of that watershed. Advance planning generally involves at least the

identification, mapping, and preliminary assessment of relative wetland functions within the planning area. More comprehensive advance planning may identify wetlands that merit a high level of protection and others that may be considered for development, and may also incorporate wetlands conservation into overall land use planning at the local level. Advance planning can provide greater predictability and certainty to property owners, developers, project planners, and local governments.

Administration Position: To encourage greater use of comprehensive advance planning, particularly with State, Tribal, regional, and local involvement, and to identify wetlands protection and restoration needs, opportunities, and concerns, the Administration supports the following actions:

- ***Provide Incentives for States/Locals to Integrate Watershed and Wetlands Planning.*** The Clean Water Act should authorize the development of State watershed protection programs, which should include local and regional involvement and Federal approval of the State programs. Wetlands should be incorporated into the overall watershed approach, with minimum standards for wetlands protection and restoration planning. Approved watershed plans would receive a high priority for technical and financial support for activities such as mitigation banking, advance identification, and watershed-based categorization under the Section 404 regulatory program. There would also be a high priority given to developing Programmatic General Permits that defer to local regulatory programs implementing approved watershed plans.
- ***Endorse State/Tribal Wetlands Conservation Plans.*** Congress should endorse the development of State/Tribal comprehensive wetland plans, with the goal of supporting State and Tribal efforts to protect and manage their wetlands resources. EPA is currently funding the development of 22 State Wetlands Conservation Plans; Congress should provide EPA the authority to use its Wetlands Grants program to fund both their development and implementation.
- ***Provide for Greater Integration of Advance Planning Into the Section 404 Regulatory Program.*** The Administration will support efforts to better integrate advance planning into the Section 404 regulatory program, including appropriate local or watershed-based categorization frameworks and regionalized improvements to implementation of the existing Nationwide Permit 26 in headwaters and isolated waters. Such opportunities are expected to grow as States, Tribes, and regional and local governments progress on watershed plans, State Wetlands Conservation Plans, and other wetlands-related planning processes. Where State, Tribal, regional, or local governments have approved watershed plans that address wetlands, EPA and the Corps will give high priority to assisting with the development of categorization of wetland resources for the purpose of Section 404. Categorization approaches should be local or regional in nature, and reflect the full range of impacts and functions that affect wetlands within the watershed or planning area.

● ***Programmatic General Permits (PGPs) Under Section 404.*** The Corps will issue guidance which specifies the circumstances under which State, Tribal, regional, and local governments with existing regulatory programs may assume a more active role in wetlands protection while reducing duplication with Federal programs. PGPs are extremely useful in reducing unnecessary duplication between Federal and non-Federal regulatory programs and in generally enhancing the role of State and local governments and of advance planning, in decisions regarding wetlands and other aquatic resources. The Administration recommends that Congress amend Section 404(e) of the Clean Water Act to provide explicitly for issuance of PGPs, with appropriate environmental safeguards, for approved State, Tribal, regional, and local regulatory programs.

● ***Improve Nationwide Permit 26 Through Regionalization.*** In order to improve the implementation of existing Nationwide Permit 26 (NWP 26) in isolated waters and in headwater areas, the Corps, in coordination with appropriate Federal, State, and Tribal agencies, and with the opportunity for public notice and comment, will undertake a field level review of NWP 26 to develop regional descriptions of the types of waters, and the nature of activities in those waters that will not be subject to authorization under NWP 26. Advance planning efforts that have assessed the functions and values of local isolated wetlands and headwaters, and have considered factors such as cumulative losses and scarcity of particular classes of waters, will be used to facilitate this effort.

● ***Mitigation Banking.*** Wetland mitigation banking refers to the restoration, creation, enhancement, and, in certain defined circumstances, preservation of wetlands expressly for the purpose of providing compensatory mitigation in advance of discharges into wetlands authorized under the Section 404 regulatory program. Advance planning can be used to identify appropriate locations for, and uses of, mitigation banks. EPA and the Corps have issued guidance to their field staff that clarifies the manner in which wetlands mitigation banking fits in the Section 404 regulatory program. Congress should endorse the appropriate use of banking, with environmental safeguards, as a compensatory mitigation option under the Section 404 regulatory program, and explicitly allow use of the State Revolving Fund to capitalize mitigation banks.

● ***Promote Voluntary, Cooperative Programs.*** With approximately 75 percent of the Nation's remaining wetlands in the lower 48 States located on privately owned property, it is clear that cooperation with the private sector in implementation of wetlands protection and restoration activities is critical. Advance planning offers an excellent opportunity to involve the public in general, and property owners in particular, in developing and implementing wetlands protection and restoration plans. The Administration will support planning activities that include cooperative activities with property owners, and will increase support for programs that assist landowners in the implementation of such plans through restoration, technical assistance, and education and information programs.

- ***Revise the Executive Order on Wetlands.*** The existing Executive Order on wetlands (E.O.11990) will be revised to direct the Federal agencies to take a watershed/ecosystem approach to wetlands protection and restoration. In addition, it will require Federal agencies that conduct or assist with multi-objective natural resource planning to incorporate wetlands protection into their programs to the extent practicable.

- ***Provide Better and Coordinated Information and Technical Assistance on Wetland Issues.*** The Federal agencies will coordinate efforts to provide States, Tribes, regional and local governments, and the public with timely, consistent information concerning wetlands programs. The agencies will develop a strategic plan for delivering information on regulatory programs, and encourage the development of innovative education and outreach materials and initiatives to assist the public in understanding wetlands issues.

The Administration will also direct the Wetlands Subcommittee of the Federal Geographic Data Committee to complete reconciliation and integration of all Federal agency wetland inventory activities. In addition, the Administration will coordinate wetlands restoration, research, inventory, monitoring, cooperative programs, and information and education activities.

C. AGRICULTURE

Issue Definition: Two Federal statutes regulate certain activities in wetlands on agricultural lands. The Food Security Act Wetlands Conservation provision, which is known as the Swampbuster program, is administered by the Soil Conservation Service (SCS) of the U.S. Department of Agriculture, in consultation with the Fish and Wildlife Service of the Department of the Interior. The Clean Water Act Section 404 program is administered jointly by the Department of the Army and the Environmental Protection Agency. American farmers have at times been subjected to needless duplication and frustrating inconsistency in the implementation of these two statutes.

Administration Position: The Administration recognizes the valuable contribution of agricultural producers to the Nation's economy and more generally to the American way of life. We also appreciate the challenges faced by farmers as they try to comply with wetlands regulations, as well as other environmental requirements affecting farm operations. As a result, the Administration is committed to ensuring that Federal wetlands programs do not place unnecessary restrictions or burdens on farmers and other landowners, while providing necessary environmental safeguards.

The Administration has identified a number of actions that can be taken to reduce the impact of these two wetlands protection programs on American agriculture. At the heart of this effort is a commitment on the part of all Federal agencies involved to work closely and cooperatively to coordinate their work under these two statutes so as to increase efficiency, minimize duplication, and reduce inconsistencies between the programs.

The following initiatives demonstrate our commitment to protect and restore the Nation's wetlands and eliminate unnecessary impacts on the farm community:

- ***Prior Converted Cropland Rulemaking.*** EPA and the Corps have just completed a rulemaking which assures American farmers that an estimated 53 million acres of prior converted cropland will not be subject to regulation under Section 404 of the Clean Water Act. These lands were converted from wetlands to croplands prior to the passage of the Food Security Act of 1985, which established the Swampbuster program, and no longer exhibit wetlands characteristics. The Administration is also recommending that Congress include in the Clean Water Act a definition of "waters of the United States" that explicitly excludes from Clean Water Act jurisdiction areas determined to be prior converted cropland.

- ***A Package to Eliminate Duplication and Inconsistency***

The SCS, EPA, the Corps, and FWS signed an interagency agreement on August 23, 1993 that will reduce existing overlap and inconsistencies in the implementation of Federal wetlands programs affecting agricultural lands by undertaking, within 120 days, the following initiatives:

- ***Make the SCS the Lead Agency on Agricultural Lands.*** The SCS, the Corps, EPA, and FWS will develop procedures to provide that SCS wetland delineations will represent the final government position on the extent of Swampbuster and Clean Water Act jurisdiction on agricultural lands. Interagency training programs will be developed to ensure that agency field staff are properly trained, that standard, agreed-upon methods are utilized in making delineation and mitigation determinations, and that EPA and the Corps, consistent with their statutory authorities, have the ability to monitor SCS determinations on a programmatic basis. SCS, EPA and the Corps will also coordinate enforcement responsibilities on agricultural lands to ensure that the Federal government's activities are equitable, and consistent.

- ***Guarantee Consistency in Delineations on Agricultural Lands.*** In order to ensure consistency in identifying wetlands on agricultural lands, the Corps, EPA, SCS, and FWS will all use the same procedures to delineate wetlands. The agencies will develop field guidance for implementing the 1987 Wetlands Delineation Manual to establish procedures for identifying wetlands in areas managed for agriculture. The agencies will also expedite current efforts to revise the SCS Food Security Act Manual to eliminate inconsistencies between wetlands delineation procedures in the FSA Manual and the 1987 Manual.

- ***Greatly Increase Farmers' Certainty in Agency Decisions.*** The Corps, in coordination with EPA, SCS, and FWS, will propose a Nationwide General Permit for discharges associated with "minimal effects" and "frequently cropped with mitigation" conversions determined by SCS and FWS to qualify for exemption

from Swampbuster provisions. This will provide greater certainty to the Nation's farmers that they can rely on SCS/FWS mitigation determinations. While the Nationwide permit will include appropriate conditions to protect valuable wetlands, an individual review by the Corps and EPA will generally not be required.

- ***Clarify that Certain Man-Made Wetlands Are Not Jurisdictional.*** The Corps and EPA will incorporate examples of certain man-made wetlands, such as non-tidal drainage and irrigation ditches excavated on upland, and irrigated lands that would revert to upland if irrigation ceased, into their regulations to clarify the types of waters that are generally not subject to Clean Water Act jurisdiction because they are created out of upland.

- ***Wetlands Reserve Program.*** The Wetlands Reserve Program (WRP) offers a significant opportunity to assist farmers who are interested in restoring wetlands on their property. Response by farmers to the nine State pilot program was overwhelming, with proposals for 250,000 acres of restoration by over 2300 farmers. The 1994 Appropriations conference report provides for 75,000 new acres to be enrolled in the WRP. When passed this will more than double -- to 20 -- the number of states where producers can participate in the program. The recent Midwest flood has created a particularly pressing need to assist farmers in the voluntary restoration of wetlands that have historically provided valuable flood protection. Congress should fully fund the Administration's budget requests for the WRP in 1995, and should expand the program in the 1995 Farm Bill.

D. CATEGORIZATION

Issue Definition: A persistent criticism of the Section 404 regulatory program is that the permit process is inflexible to the extent that "all wetlands are treated the same" from a regulatory perspective. Such criticisms have led to calls for a nationwide categorization system to rank wetlands based upon their relative function and importance to society.

One proposed approach would require that all of the Nation's wetlands be mapped and categorized "up front" as either "high-", "medium-", or "low-value." The ranking based upon this *a priori* categorization would, in turn, govern the regulatory response at the time of a specific permit application.

Administration Position: While conceptually *a priori* categorization and ranking may seem attractive, its technical, fiscal and environmental implications make it unworkable. For example, simply mapping the lower 48 States at a scale suitable for detailed regulatory use would involve a mammoth undertaking yielding nearly 14 million maps and costing in excess of \$500 million. Assessing the functions of every wetland in the country would be a far larger and more complicated task and would require staffing and funding many times that necessary to complete mapping alone.

There is currently no scientific basis for a nationwide ranking of functionally distinct and diverse wetland types; any such scheme would be extremely difficult and require many years to develop. The suggestion contained in one legislative proposal that the Federal government buy all "high-value" wetlands would be infeasible from a budgetary standpoint. The Congressional Budget Office estimates the acquisition costs alone for the lower 48 States to range between \$10 billion and \$45 billion.

Finally, an *a priori* categorization and ranking approach would not provide for consideration of the individual impacts associated with specific projects. This makes little sense from the standpoint of either development or wetlands protection. For example, small projects with minor impacts would be arbitrarily prevented from proceeding in a "high-value" wetland area. At the same time, large and environmentally damaging projects would be automatically approved if they were located in "low-value" wetland areas. A nationwide *a priori* categorization scheme would further complicate the Section 404 program and would conflict with the Administration's goals of administering a scientifically sound regulatory program that is efficient, predictable and understandable.

In contrast to nationwide *a priori* categorization, opportunities exist to provide greater predictability and certainty in the regulatory process while increasing participation at the State and local levels. Local or regionally developed advance planning at the watershed level can provide a scientifically sound and workable framework for early consideration of variations in wetland functions within the Section 404 program. Appropriate functional assessment techniques can be applied to all wetlands within the boundaries of a particular watershed or planning area, and reasonably foreseeable development needs can be superimposed upon this inventory and assessment to identify appropriate regulatory responses in advance of specific permit applications. Highly functional and ecologically significant wetlands can be identified as deserving a very high standard of protection; conversely, wetlands with limited function and ecological significance, or activities that would cause minimal environmental harm, can be identified as appropriate for general permits or other regulatory streamlining methods.

In the context of individual permit reviews, the Section 404(b)(1) Guidelines currently provide the Corps and EPA with the flexibility to appropriately scale the regulatory response to reflect the relative function of the affected wetland, the character of the proposed discharge, and the probable environmental impact.

The Administration recognizes that "all wetlands are not the same" and that permit applicants deserve a timely and predictable regulatory response that is appropriate for the project being proposed. To this end, the Administration proposes the following actions:

- **Issue Section 404(b)(1) Guidelines Flexibility Guidance.** EPA and the Corps have issued guidance to their field staff to clarify and standardize implementation of the flexibility afforded by the 404(b)(1) Guidelines to make regulatory decisions regarding the analysis of project alternatives based on the relative severity of the environmental

impact of proposed discharges. This guidance clarifies that small projects with minor impacts are subject to less rigorous permit review than larger projects with more substantial environmental impacts.

- ***Develop Improved Analytical Tools for Wetlands Functional Assessment.*** The agencies will expedite development of a new approach for wetland functional assessment known as the Hydrogeomorphic Classification System (HGM). The HGM methodology is being developed by the agencies and the academic community as an improved analytical tool to make timely and accurate assessments of wetland functions. This tool will assist the agencies in assessing the relative severity of environmental impact of proposed discharges to determine an appropriate regulatory response consistent with the 404(b)(1) Guidelines flexibility guidance referenced above.

- ***Encourage Advance Planning Efforts.*** The agencies will provide technical assistance for advance planning efforts addressing wetlands conservation, and will counsel planning participants on methods to link local or regional planning with Section 404 regulatory decision making. Wetland categorization will be supported within the context of an approved advance plan to provide landowners with early identification and characterization of wetlands on their property, streamlined permit review, and more flexible mitigation sequencing where appropriate.

- ***Regionalize General Permits for Activities in Defined Categories of Waters.*** The Section 404 program already embodies a form of wetlands categorization through use of Nationwide Permit 26 (NWP 26), a "category of waters" general permit that authorizes discharges into isolated waters and headwaters. The Corps will undertake, in close coordination with relevant State and Federal agencies, a field level review and evaluation of NWP 26 for the purpose of regionalizing and improving its use. Congress should amend Section 404(e) to recognize the concept of regionalized "category of waters" general permits.

E. GEOGRAPHIC JURISDICTION

The term "geographic jurisdiction" encompasses a set of wetlands issues that concern the determination of which waters fall within the jurisdiction of the Section 404 program of the Clean Water Act. These issues include the delineation manual that specifies the methodology by which wetlands are identified; the definitions of "wetlands" and "waters of the United States;" "artificial" wetlands; and isolated waters. (For "Delineation Training and Certification" see ADDRESSING LANDOWNER CONCERNS.)

Issue Definition: Delineation Manual

As previously indicated, there has been a great deal of controversy surrounding the manuals that Federal agencies use in the field to delineate wetlands. The 1989 Manual was strongly criticized by some who claimed that it was an attempt by the bureaucracy to greatly *expand* the geographic

jurisdiction of wetlands regulation without opportunity for public involvement. The proposed 1991 Manual that followed was roundly criticized by those who claimed that it would greatly *reduce* the scope of geographic jurisdiction applied to wetlands. In an attempt to resolve this controversy, in the fall of 1992 the Congress directed EPA to fund a National Academy of Science (NAS) study of wetlands delineation. That study is expected to be completed in the Fall of 1994. Since January 1993, both the Corps and EPA have adopted the 1987 Manual, which was in use in some parts of the country prior to the issuance of the 1989 Manual.

Administration Position: The Clinton Administration supports the use of the 1987 Wetlands Delineation Manual by the Corps, EPA, SCS, and FWS pending the evaluation of the NAS study. (See "Guarantee Consistency in Delineations on Agricultural Lands" under AGRICULTURE.) The use of the 1987 Manual by the Corps and EPA has increased confidence and consistency in identifying wetlands and has diminished the controversy associated with the 1989 and 1991 manuals. If the Federal agencies jointly conclude that the 1987 Manual should be revised to respond to recommendations of the NAS, any proposed changes will be the subject of a process that will provide full opportunity for public comment. In addition, any proposed changes will be field tested by the agencies prior to final adoption to determine their impact in the real world.

To increase public confidence in the Section 404 regulatory program, the Administration recommends that the Congress endorse the continued use of the 1987 Manual in the reauthorization of the Clean Water Act, pending recommendations that may result from the NAS study.

Issue Definition: Defining "Waters of the U.S." and "Wetlands"

The Clean Water Act regulates discharges to "navigable waters," which are defined in the statute as "waters of the United States." However, the Act does not contain a definition of "waters of the United States." Similarly, while the Act refers to "wetlands," the statute does not define the term. Explicit definitions of these terms in the statute, consistent with longstanding regulatory definitions, would clarify Congressional intent with regard to the scope of geographic jurisdiction under the Act.

Administration Position: The Administration recommends that Congress incorporate the definition of "waters of the United States" contained in existing EPA and Corps implementing regulations. To provide additional consistency among Clean Water Act and Food Security Act programs, Congress should also incorporate the definition of "wetlands" contained in the Clean Water Act regulatory definitions, which is essentially identical to the wetlands definition in the 1990 Farm Bill. (The Clean Water Act regulatory definition of wetlands is preferable because some States have used the definition in State wetlands statutes. To adopt a different definition at Federal and State levels of government would only create further confusion in the regulatory program.)

The EPA/Corps definition of "waters of the United States" explicitly includes recently promulgated language clarifying that "prior converted croplands" are not waters of the

United States for purposes of the Clean Water Act. Congress should include this clarifying language in statute as well.

The Administration also recommends that Congress add examples of "isolated waters" (e.g., prairie potholes, vernal pools, and playa lakes) to the statutory definition of wetlands. From a scientific standpoint, isolated wetlands perform many of the same vital functions performed by other aquatic areas widely accepted as wetlands, such as flood control and groundwater recharge, as well as providing critical habitat for migratory waterfowl and other wildlife, and contribute to achieving the objectives of the Clean Water Act both individually and as a class.

Issue Definition: "Artificial" Wetlands

Neither the Clean Water Act nor its implementing regulations distinguishes between natural and created wetlands. However, certain "artificial" wetlands do not normally exhibit the values and functions typically attributed to natural wetlands. These artificial wetlands are created inadvertently from upland by human activity and would revert to upland if such activity ceased. The fact that these areas are not specifically excluded from the jurisdiction of the Clean Water Act in either statute or regulation has caused confusion.

Administration Position: The EPA and the Corps will incorporate examples of artificial wetlands, such as non-tidal drainage and irrigation ditches excavated on upland, into their regulations to clarify the types of waters that are generally not subject to Clean Water Act jurisdiction because they are created out of upland.

F. MITIGATION AND MITIGATION BANKING

Issue Definition: Mitigating the harmful effects of necessary development actions on the Nation's waters is a central premise of Federal wetland regulatory programs. The Section 404 regulatory program relies upon a sequential approach to mitigating these harmful effects by first avoiding unnecessary impacts, then minimizing environmental harm, and, finally, compensating for remaining unavoidable damage to wetlands and other waters through, for example, the restoration or creation of wetlands.

Mitigation banking refers to a wetland restoration, creation, or enhancement effort undertaken expressly for the purpose of compensating for unavoidable wetland losses in advance of development actions, when compensatory mitigation is not appropriate, practicable, or as environmentally beneficial at the development site. Units of restored or created wetland are expressed as "credits", and accumulated credits are subsequently withdrawn to offset "debits" incurred at the development site.

Administration Position: The sequential approach to mitigation provides a logical, predictable, and reasonable framework for mitigating impacts associated with proposed

G. RESTORATION

Issue Definition: This Nation has lost nearly half of the wetland acreage that existed in the lower 48 States prior to European settlement. Much of this loss was due to Federal policies from an earlier era that encouraged the drainage of wetlands. The effect of this wetland loss is reflected in declining populations of fish, waterfowl, and other living things dependent upon the aquatic environment; in degraded water quality; and, most recently, in the extent of flooding in the Midwest.

The Section 404 regulatory program under the Clean Water Act and the Swampbuster provisions under the Food Security Act are attempts to stem this loss of wetlands. At best, the regulatory approach can ensure no further overall net loss. But to achieve a positive increase in the Nation's wetlands will require the restoration of some damaged wetlands.

Our ability to restore wetlands, particularly inland wetlands in agricultural areas, has been well-established over the last decade. A number of private and governmental entities have successfully restored degraded or lost wetlands to productive status. For example, the Fish and Wildlife Service, in cooperation with private landowners across the Nation, has implemented 9,500 restoration projects affecting 200,000 acres. Last year, a 50,000 acre pilot of the USDA Wetlands Reserve Program received proposals from 2,300 farmers to restore 500,000 acres.

Administration Position: Restoring some former wetlands that have been drained previously or otherwise destroyed to functioning wetlands is key to achieving the Administration's interim goal of no overall net loss of the Nation's remaining wetlands, and its long term goal to increase the quality and quantity of the Nation's wetlands base.

In support of a broad-based effort to restore a portion of the Nation's historic wetlands base that has been destroyed or degraded in the past, the Administration proposes to take the following actions:

- **Wetlands Reserve Program.** The fiscal year 1994 Agriculture Appropriations conference report provides for 75,000 new acres to be enrolled in the Wetlands Reserve Program. When passed this will also more than double – to 20 – the number of States eligible for participation in the program. The Administration will also use this program in the Midwest to restore wetlands in the course of providing financial assistance to farmers and improved flood protection for all those affected by the recent flooding. The Administration will also pursue full funding of the President's budget request for the Wetlands Reserve Program in FY 1995, and will seek to have this program expanded in the 1995 Farm Bill.

- **Promote Wetlands Restoration through Voluntary, Cooperative Programs and Outreach Activities.** Wetlands conservation efforts have historically focused largely on wetlands regulation and acquisition. These programs continue to be essential to a

development actions. The Administration supports the use of mitigation banking in appropriate circumstances as a means of compensating for authorized wetland impacts.

The Administration is proposing the following actions to ensure that mitigation of environmental impacts within the Section 404 program is effective, predictable, and consistent with a watershed management perspective:

- ***Issue Mitigation Planning Guidance.*** The Corps, in coordination with EPA, FWS, SCS, and the National Marine Fisheries Service (NMFS), will issue guidance to their field staff to clarify the requirements for developing compensatory mitigation conditions in Section 404 permits. This guidance is intended to increase the success of mitigation projects in offsetting impacts to wetlands and other waters resulting from permitted activities. This guidance will assist permit applicants by providing greater consistency and certainty with regard to how Section 404 mitigation requirements are applied.

- ***Endorse the Use of Mitigation Banking Under the Section 404 Regulatory Program.*** While a number of technical and procedural questions regarding the establishment and long term management of mitigation banks remain, conceptually mitigation banking, with appropriate environment safeguards, offers numerous advantages. Banking provides for greater certainty of successful compensatory mitigation in the permit process by requiring mitigation to be established before permits are issued. Banks are often ecologically advantageous because they consolidate fragmented wetland mitigation projects into one large contiguous parcel that can more effectively replace the lost wetland functions within the watershed. Mitigation banks also provide a framework for financial resources, planning and technical expertise to be brought together in a fashion often not possible with smaller mitigation projects.

Recognizing the advantages offered by mitigation banking to compensate for wetlands losses, Congress should endorse the appropriate use of banking as a compensatory mitigation option under the Section 404 regulatory program, within environmentally sound limits. Congress should also explicitly allow use of the State Revolving Fund by States to capitalize mitigation banks.

- ***Issue Mitigation Banking Guidance.*** EPA and the Corps, in coordination with FWS, NMFS, and SCS have issued guidance to their field staff to clarify the manner in which wetlands mitigation banking is appropriately used within the Section 404 regulatory program. This guidance provides interim direction pending the results of additional studies, but will encourage, within environmentally sound limits, the use of mitigation banks for compensatory mitigation under Section 404.

- ***Develop Improved Analytical Tools.*** The agencies will expedite current efforts being coordinated by the Corps Waterways Experiment Station to develop an improved wetland functional assessment tool, the Hydrogeomorphic Classification System, to assist in conducting impact analysis and determining appropriate and effective mitigation measures.

comprehensive strategy for achieving the Administration's wetlands goals. However, stemming the net loss of the Nation's wetlands base and achieving a long-term increase in wetlands acreage is dependent upon restoring wetlands that have been drained, diked, or otherwise destroyed in the past.

The universe of restorable former wetlands is predominantly on private lands, and the Administration presently has in place a number of Federal programs that focus on or incorporate voluntary, cooperative efforts to restore wetlands on private lands (e.g., FWS's Partners for Wildlife program, Bay and Estuary program, and North American Waterfowl Management Plan Joint Ventures; USDA's Wetlands Reserve, Water Bank, Water Quality Incentives, Forestry Incentives, and Stewardship Incentives programs.) The Administration will review existing Federal programs that seek to restore wetlands through cooperative, voluntary agreements and outreach efforts with private and other non-Federal landowners, and will examine opportunities to expand such programs, including education and outreach activities.

- *Revise the Executive Order on Wetlands.* The existing executive order on wetlands will be revised to incorporate the Administration's interim and long term wetland goals and to establish wetlands restoration as an essential vehicle for Federal and quasi-Federal agencies to achieve those goals through a voluntary approach.

H. ROLES OF FEDERAL AGENCIES

Issue Definition: Public support for Federal wetlands protection programs, such as the Clean Water Act Section 404 regulatory program and the Food Security Act Swampbuster program, has suffered during recent years from a perception that multiple agency roles in the Administration of these programs has contributed to confusion, delays, overlap, and a general sense that no single agency is "in charge".

Administration Position: The Administration is initiating steps to streamline the implementation of Federal wetlands protection programs by reducing duplication, overlap, and delay. For example, a memorandum of agreement has recently been signed to give the Soil Conservation Service, in consultation with the Fish and Wildlife Service, the lead agency for making wetlands delineations and mitigation decisions on agricultural land (see AGRICULTURE).

The Administration is committed to providing for effective and timely participation by the agencies with roles in Federal programs affecting wetlands while emphasizing the ultimate role of a single Federal agency decisionmaker. This increased coordination among the relevant agencies will be accomplished through the following mechanism:

- *Continue Implementation of the 1992 Interagency Section 404(q) MOAs.* EPA, the Corps, FWS, and NMFS have issued guidance to their field staff to improve interagency

coordination procedures established in the 1992 Memoranda of Agreement under Section 404(q). These MOAs define a process for expedited review and resolution of agency concerns regarding individual permit decisions. The MOAs also establish procedures for resolving concerns involving the implementation of Section 404 program policy that can be accomplished without delaying individual permit decisions.

The agencies will continue to use the 1992 MOAs and, based on this experience, determine whether additional guidance or revisions to the MOAs are necessary. It is critical to the ultimate effectiveness of the Section 404 program to preserve the responsibilities of Federal resource agencies such as the EPA, FWS and NMFS to reflect their relative expertise and authorities while reducing duplication, overlap, and delay. It is equally critical to recognize and understand the Corps' leadership and final decision-making role as "project manager" for the evaluation of permit applications under the Section 404 regulatory program.

I. ROLE OF STATE, TRIBAL, AND LOCAL GOVERNMENT

Issue Definition: Decisions on where and how to protect or restore wetlands can be often most appropriately made at State, Tribal, or local levels. However, the current Section 404 regulatory program is run at the Federal level, except for certain waters in one State (Michigan). Many States, Tribes, and local governments have their own wetlands programs, which often overlap, are inconsistent with, or are simply distinct from Federal programs. This has resulted in inefficiency, frustration by the regulated public, and significant confusion.

Administration Position: The Administration is committed to increasing State, Tribal, and local government roles in Federal wetlands protection and restoration efforts. To increase consistency and clarity and reduce the confusion generated by the current relationship between the Federal government and State, Tribal, and local governments in wetlands protection and restoration, and to bring decision making to more appropriate levels, the Administration is taking the following actions:

● ***Assist States, Tribes, and Local Governments in Taking a Stronger Role in Wetlands Protection.*** The Administration will provide technical and financial assistance and guidance to States, Tribes, and local governments to assist them in taking more of a leadership role in wetlands protection, e.g., through State/Tribal assumption of Section 404, development of comprehensive State/Tribal Wetland Conservation Plans, application of State/Tribal Section 401 Certification authority to wetlands, development of Programmatic General Permits under Section 404, and better coordination between State, Tribal, and local permit programs and the Section 404 program.

● ***Provide Incentives for States, Tribes, and Regional and Local Governments to Integrate Watershed and Wetlands Planning.*** The Clean Water Act should authorize the development of State/Tribal watershed protection programs, requiring local and regional

involvement and Federal approval of the State/Tribal programs. Wetlands should be incorporated into the overall watershed approach, with minimum requirements for wetlands protection and restoration planning. Approved watershed plans would receive a high priority for technical and financial support for activities such as mitigation banking, advance identification, and categorization under the Section 404 regulatory program. There would also be a high priority given to developing Programmatic General Permits that defer to local regulatory programs implementing approved watershed plans.

● ***Increase Deference to State, Tribal, Regional, and Local Wetlands Decisionmaking.*** The Corps will issue guidance which specifies the circumstances under which State, Tribal, regional, and local programs can effectively regulate Section 404 activities, through issuance of Programmatic General Permits (PGPs). The guidance will also clarify the safeguards required to ensure that these programs adequately protect wetlands and other waters.

The use of PGPs is designed to increase the roles of State, Tribal, regional, and local governments in wetlands protection, provide an incentive for watershed planning efforts, and reduce redundancy and overlap between these programs and the Federal Section 404 program. The Administration recommends that Congress amend Section 404(e) of the Clean Water Act to provide explicitly for issuance of PGPs with appropriate environmental safeguards for approved State, Tribal, regional, and local regulatory programs.

● ***Endorse State/Tribal Wetlands Conservation Plans.*** Congress should endorse the development of State/Tribal comprehensive wetland plans, with the goal of supporting State and Tribal efforts to protect and manage their wetlands resources. EPA is currently funding the development of 22 State Wetlands Conservation Plans; Congress should provide EPA the authority to use its Wetlands Grants program to fund both their development and implementation.

● ***Encourage State/Tribal Assumption of Section 404.*** Congress should provide EPA the authority to use its Wetlands Grants program to fund both development and implementation of State assumption of the Section 404 program. In addition, Congress should authorize partial assumption of the Section 404 program by States and Tribes as an interim step toward full assumption. By authorizing partial assumption of discrete areas within State or Tribal jurisdiction, the State/Tribe can get experience with the program as it develops full statutory equivalency, and the Federal government can defer to the State/Tribe as early as possible.

● ***Provide States/Tribes with Access to Wetlands Delineation Training.*** State and Tribal agencies will be encouraged to participate in the Federal interagency wetlands delineation training and certification programs to strengthen their abilities to conduct wetlands delineations, and to improve consistency in wetlands identification among State and Federal wetlands programs.

J. SCOPE OF REGULATED ACTIVITIES

Issue Definition: The Clean Water Act Section 404 program regulates "discharges" of dredged and fill material to wetlands and other waters of the United States. In the past, these terms have been interpreted in a way that created regulatory "loopholes" under which certain projects could be designed, using expensive and sophisticated methods, so that they did not require Section 404 authorization.

The environmental effects of these projects on wetlands are no different than less sophisticated projects involving discharges of dredged or fill material, which have been regulated under Section 404. Also, these loopholes have led to inconsistencies in how the Section 404 program has been implemented around the country.

Administration Position: The Administration has issued a final regulation, and is asking Congress to take corresponding legislative action, to close these regulatory loopholes by clarifying the types of activities that involve discharges of dredged or fill material subject to Section 404 review.

The following actions will result in better protection of wetlands, and improve the fairness, predictability, and consistency of the Section 404 program.

- **Clarify Definition of "Discharge of Dredged Material."** Under the final rule, this term is defined to ensure that discharges into wetlands and other waters of the United States will be consistently regulated when they are associated with excavation activities, such as ditching, channelization, or mechanized landclearing, that have environmental effects of concern. The rule explicitly excludes from Section 404 regulation discharges associated with activities that have only *de minimis*, or inconsequential, environmental effects. In an effort to reduce the impact of these changes on the regulation of minor activities with only minimal adverse environmental effects, the Corps will coordinate with EPA to develop additional general permits authorizing such minor activities. The revised definition does *not* affect the existing exemptions in Section 404(f) for ongoing farming, ranching, and silvicultural activities.

- **Clarify Definition of "Discharge of Fill Material."** The agencies also are clarifying the definition of "discharge of fill material" to ensure that activities in waters of the United States that involve the non-traditional use of pilings (e.g., shopping malls, parking garages) will require Clean Water Act authorization. In an effort to reduce the impact of these changes on the regulation of minor activities with only minimal adverse environmental effects, the Corps will coordinate with EPA to develop additional general permits that authorize such activities.

- *Legislative Clarification of Scope of Activities Regulated Under Section 404.* Congress should amend the Clean Water Act to make it consistent with the agencies' rulemaking.

K. STATE OF ALASKA

Issue Definition: The extent and nature of Alaska wetlands reflect, in part, climatological and physiographic conditions found in no other State. More than 99 percent of Alaska's wetlands remain, and much of the State's developable lands are wetlands. This abundance of wetlands in combination with Alaska's short building season, leads some to claim that the Section 404 program places a heavier burden on Alaskans than on the rest of the country.

The previous Administration attempted to address some of these concerns by proposing the "Alaska 1% rule" which would have exempted wetlands in Alaska from mitigation requirements until one percent of Alaska's wetland resources had been developed. The "Alaska 1% rule" was published for public comment in November 1992, and 83 percent of the over 6,500 comments received objected to the rule, raising concerns about its potential impact on the environment.

Objections to the proposed rule focused on several key considerations:

- An additional 1.5 million acres of Alaska's wetlands would be destroyed before the one percent threshold would be met, including potentially all of Alaska's 345,000 acres of extremely valuable coastal wetlands. Wetlands losses in Alaska have historically been greatest in coastal areas where the State's population is concentrated. For example, losses of high value coastal wetlands near the cities of Anchorage and Juneau are estimated to exceed 50 percent of their historic base.
- The proposed rule would hinder management efforts for several Federally listed or proposed threatened and endangered species that utilize Alaska's coastal wetlands, as well as hastening the listing of additional candidate species.
- Although full in-kind compensation is often not possible or practicable, opportunities do exist for restoration or rehabilitation of disturbed areas in proximity to a proposed development that have the potential to benefit affected fish and wildlife populations.
- There is enough flexibility in the existing Section 404 regulatory program to respond to Alaska's unique concerns administratively. During the last 20 years, of the approximately 4,000 permit applications received by the Corps' Alaska District, only 108 (2.7 percent) were denied; the remaining applications were either issued as individual or general permits, or withdrawn. Of the more than 3,000 individual permits issued, only 15 (0.5 percent) required compensatory mitigation.

Administration Position: Because of the significant adverse environmental consequences that it would allow, the "Alaska 1% rule" will be withdrawn. The best way to address Alaska-specific concerns regarding the Section 404 program is through targeting the specific areas where questions about program policies or implementation have been raised. Finalizing the proposed "Alaska 1% rule" would have far broader and avoidable adverse environmental consequences.

The EPA and the Corps will, within the next 90 days, initiate meetings with the Federal resource agencies, State and local government agencies, representatives of native villages, industry groups including oil and fishing interests, and environmental groups, to consider other environmentally appropriate means to assure regulatory flexibility and the feasibility of alternative permitting procedures in Alaska.

In addition, the Administration is proposing a number of actions to improve implementation of the Section 404 regulatory program nationwide (e.g., issuing guidance on flexibility in the Section 404(b)(1) Guidelines, mitigation banking, mitigation planning, advance planning, programmatic general permits; establishing an administrative appeals process; providing for more explicit consideration of wetland functions; and regionalizing Nationwide Permit number 26. See earlier discussion for details). These actions, in combination with any Alaska-specific proposals developed as a result of the process outlined above, should contribute significantly to addressing Alaska's concerns with implementation of the Section 404 regulatory program.

L. TAKINGS

Issue Definition: Some critics of the Section 404 regulatory program have asserted that Federal efforts to protect wetlands constitute a "taking" of private property and require compensation under the Fifth Amendment of the Constitution. Critics of the program have proposed legislation that would characterize permit denial decisions, and other Section 404 regulatory actions, as "takings" requiring compensation.

Administration Position: The Administration strongly supports private property rights. The equitable administration of any Federal regulatory program involves more than strict technical considerations and must include sensitivity to the rights and expectations of citizens. Implementation of the Section 404 program often requires a balancing of environmental protection, public interests, and individual interests.

Many activities undertaken on wetlands either are not regulated at all, are explicitly exempted from regulation, or are authorized by general permits. In situations where individual permits are required, the Federal agencies can work with permit applicants to design projects that meet the requirements of the law and protect the environment and public safety, while protecting the property rights of the applicant.

However, in rare instances the public interest in conserving wetlands may substantially interfere with the rights of landowners. In such instances, Federal action will be based

on the proposition that restrictions on the actions of the property owners in question are called for in order to protect the property rights, safety, environmental or economic interests of other individuals or the community at large.

In those situations where the necessary restrictions on use amount to a taking of the property, the owner will, of course, be entitled to compensation. Moreover, where a property owner believes that government action amounts to a taking, the courts are available to review such claims and to determine whether compensation is due. Due to the unique nature of each situation, these issues must be considered on a case-by-case basis. Therefore, the Administration does not support a legislative approach to this issue.

The Administration is strongly committed to reducing the impact of the 404 program on landowners. Many of the Administration positions that have been described in this paper are designed to make the program as efficient, predictable, consistent, and equitable as possible (see ADDRESSING LANDOWNER CONCERNS, AGRICULTURE and CATEGORIZATION).

VI. CONCLUSION

This comprehensive reform package represents a tremendous opportunity to move beyond the unnecessary polarization that has characterized the wetlands policy debate in recent years. While divisive, that debate has not been without value.

The critics of the wetlands regulatory program have performed a service to the country by highlighting the need for meaningful reform in the administration of wetland regulatory programs. Many of the much-needed reforms contained in this package -- such as permit deadlines, an appeals process, the use of mitigation banks, and increasing the role of State and local government in wetlands regulation -- have been proposed by critics of the current regulatory program.

The supporters of wetlands protection have also performed a service by helping to inform the Nation of the environmental and economic importance of wetlands, a vital natural resource that was once routinely destroyed. Their strong commitment to protecting and restoring this vital resource is also reflected in this package.

There will, no doubt, be individuals on each side of this divisive debate who will not be entirely pleased with every element of this reform package. But our approach provides effective protection of an important natural resource in a manner that is both fair and flexible, thus recognizing both the value of wetland resources and the need to minimize regulatory burdens.

VII. POSTSCRIPT: LESSONS FROM THE FLOOD

The entire Nation shares the pain of those Americans experiencing the physical destruction and economic loss caused by the disastrous floods that have devastated the Nation's heartland. Many lives have been lost, and billions of dollars in damage have been caused to property and crops. In the short term, we must use the tools available to us to assist those struggling to deal with severe economic hardship due to the floods. We must concentrate our attention on helping people rebuild their lives by protecting our riverfront communities and providing assistance to businesses and the agricultural community adversely affected by the floods.

We must also look to the future, and learn from these floods how to more effectively protect human health and safety, property, and the environment. Many scientists have concluded that past manipulation of the rivers in the Midwest has contributed to the current level of devastation by separating the river channels from their natural floodplains, eliminating millions of acres of additional flood storage capacity. Wetlands within the floodplain and higher in the watershed reduce floods by absorbing rain, snow melt, and floodwaters and releasing it slowly, thereby reducing the severity of downstream flooding.

We must be cautious not to repeat policies and practices which may have added to the destruction caused by these floods. One way to assist landowners while alleviating some flood risks is through funding wetlands restoration and acquisition programs targeted to help those in flood-ravaged areas. Programs such as the USDA Wetlands Reserve Program provide farmers with much needed support and increase the quantity of flood-absorbing wetlands in this region.

Of course, we recognize that wetlands and river system restoration and protection alone will not suffice. It will be critically important that we quickly rebuild many of the flood control structures. However, we have learned the importance of also looking at alternative non-structural measures that may provide as much or better flood damage reduction at the same or lower cost. Such measures would include using more natural river corridor systems and wetlands. In the longer term, it is important that *all* potential flood control measures, both structural and non-structural, be considered and evaluated from a pragmatic and cost-benefit standpoint.

It is not a question of whether to protect cities and farms; it is a question of how best to protect them. In the case of riverfront communities, protective levees may be the only reasonable answer, but in other circumstances, non-structural measures may make more sense. We can identify ways to protect and restore our river and wetlands systems so that they work *for* us, integrated with structural flood control measures. Of course, wetlands that provide flood control generally will also provide other important functions, such as fish and wildlife habitat, water quality improvement, and recreational opportunities. In our response to this flood-borne tragedy, the Administration will pursue measures that are the most effective means to prevent this catastrophe from happening again. Doubtless this will involve a combination of repair and construction of flood control structures together with restoration of natural flood attenuating river and wetlands systems.

PPW 755 Heidi

Goal: reverse those policies, practices, & programs through legislative changes or changes within the agencies purview.

Cops of agencies be lead agency responsible. (project & team manager)
O&A provides oversight.

FEMA, SCS, EPA, HUD, DOI, DOT
Developing & identify alternatives.

Rep from each agency are local, one headquarters.

one environmental body - to review data & models
issue comment to O&A (not compromise)

- regional workshops for tribal, state, local government

7 months.

Scoping
analysis/priority
Draft EIS preparation
Public Review
Final EIS preparation
Public Review
Record of Decision

public coordination
& consultation would occur throughout

state, local

Executive Council from all parts of government
& all major sectors of society.

~~Executive Council~~ facilitates

Issue analysis

Info sharing: secretariat will distribute to
the ones.

at
the
top
of
the
hierarchy
to
do
reports.

Long Term Flood Management

① Dick Sanderson O. Fed. Act. EPA (260-5053)

use as mechanism
promote EIS process
fed reg notice (ideas?) ?

"What's his idea" ?

② Michael DOT his idea?

make copy

Director join DOT & Sanderson tom. mid day

obj. future process that can generate good ideas over next
six months on major long term FM issues

~~Change~~ ~~identity~~ time frame ^{change} (10 months) ^{total}
6 months to draft EIS

will be ~~circulate~~ circulated around office
today. Drafts Rein will be a formally approved
on copy for the meeting

Decision Concept

- ① Strategic Design:
 - ① Focus Areas: Public Participation of stakeholders prior to development decisions
 - ② Ecosystem Health Approach: consideration of local & global environmental costs
 - ③ Target alternative solutions & technologies
 - ④ new decision support > status quo
- ② Facilitator - caretaker

Training curricula & programs - teach

- ① Leadership Training - To all members of decision making process
- ② Issues Analysis
 - each state's region's will pick the issues of development & redevelopment
 - * Problem is the feds lose control of cost & "new ideas"
- ③ Information sharing - seek out to organize, identify & disseminate information to decision makers.
sustainable development

Report coordination

Objectives

create a community/region based venue for integrated, participative decision making for the sustainable development of the upper Mississippi corridor

support collaboration community/region/national

public/private partnerships w/ authority & resources to implement non-decision action agenda.

Clearing House & Planner Control. 1st step for media, community planners, researchers, issue teams, government officials and citizens.

opinion surveys

interactive databases: storage of all files

L.T.M.S.

B.1

GIS: EMTC

need to decide what should be ~~of~~ link for force const.
prioritized areas for purchase
lot of mgs from EDF

— American Rivers

Did the engineering of the upper miss. make
flood damage worse, why are we working against nature
with the river.

no gov. agency is responsible for national flood protection. no
comp. plan to coordinate agency federal, state, & local

National Flood Insurance must take to address damages will be
paid off.

at best
at fed level there are 25 subdivisions of 12 departments
or agencies who have responsibility

Fed Emg. M. Agency draws a voluntary interagency
task force but has no authority to make D.S.

Good Com Source / 1/6 in content, EPA advocates preservation

no in content plan, AS primary structure by structure

NAVIGATION

low level of BTR participation in program of NEPI?
2A of 11 potential buyers
million

upper & lower class

who's in charge

7 Things

more 2000

- ① top level public & private leadership
- ② community based participation
- ③ Facilitation by internationally recognized power experts
- ④ Communication & computer oriented technology capability
- ⑤ Interactive databases, clearinghouse, news service & media relations
- ⑥ strategic issues analysis for credible technical info on future conditions
- ⑦ oversight policy & data policy to support decision making process.



U.S. Department of
Transportation

Office of the Secretary
of Transportation

400 Seventh St., S.W.
Washington, D.C. 20590

*who
does not
know*

FAX TRANSMISSION COVER

DATE: 8-20-93 TIME: 12:05

TO: William Stelle

FAX NO: 202-456-2710 TELEPHONE: 202-456-6224

FROM: Susan GASKIN'S for Michael Huerta

202/ 366-1111 or 366- 8015
202/ 366-7952 (FAX)

Number of pages to follow: 10

Comments:

Mr. Huerta is sending the materials that he promised you yesterday. He said that the group is available to meet with you this evening, or weekend, if you feel it is necessary. Please call if you have questions or comments.

OK 1/2/93

RiverDecisions: A Leadership Collaboration Project

This is a people-to-people initiative to strengthen and integrate the decisions of leaders in all sectors of society and at every level of Government to build an economically enduring, jobs sensitive, and environmentally healthy future for today's people and tomorrow's children in the upper Mississippi River area.

The recent flooding throughout the Mississippi River Basin has had tragic consequences for many. But it also presents a unique window of opportunity during which the leadership of the region from all sectors -- business, labor, government, and the environment -- recognize that the stakes are too high for anyone to consider anything less than the long-term benefit of the entire region. The problem of building the future environmental, employment, and economic sustainability of the region requires approaching the problem as partners, with mutual problems and joint efforts to solve them.

Yet even when people are willing to work as partners there can be barriers: Federal, state, or local agencies have divided or conflicting authorities. No one has the authority to deal with the problem as a whole. There are traditional antagonisms. Communication is often difficult or fragmented. Information may not be credible to all sectors.

RiverDecisions specific contributions will include:

- *local* Creating a process for community-based participation in regional decisions. This forum will provide a unique venue in which all levels of government, the public and private sectors, the labor community, the business community and the environmental community, can all communicate together on an equal footing and with adequate support mechanisms to encourage success.
- Providing credible process facilitation by internationally-recognized process experts.
- Supporting the participation process with computing and communication technology that encourages individual participation, while linking this participation region-wide.
- Providing mechanisms for information sharing including interactive databases, a clearinghouse, news service, and media relations.
- Providing leadership training in essential skills of collaboration including public involvement, group decision making techniques, dispute resolution, team building skills, team skills, high performance work options, and other topics relevant to implementation of the process.

- Conducting strategic issues analysis to provide credible technical information about future conditions upon which decision making can be based.
- Conducting overnight polling and data gathering to support the decision making process.

RiverDecisions will be a non-profit endeavor, directed by an Executive Council representing all levels of government and all major sectors of society. The Global Environment & Technology Foundation (GETF) will provide the secretariat for RiverDecisions, putting together a team of nationally and internationally recognized experts to establish and manage this process. GETF is a tax exempt 501 (c) (3) organization which specializes in putting together partnerships between government and the private sector to create projects for sustainable human development.

Specific steps in the development of the program include:

- Prepare initial concept paper.
- Meet with potential conveners to approve concept and identify seed funding.
- Develop 90 day action plan.
- Conduct first official meeting of RiverDecisions conveners.
- Establish secretariat.
- Select Executive Council.
- Approve 90 day action plan.
- Convene Phase I strategic issues workshop.

Total cost of the multi-year project is estimated at \$5 to 6 million. An initial \$100,000 seed money is required for initial project design and launch.

RiverDecisions is a dedicated process of learning, dialogue, and decision. Its product is ACTION. Action that is stronger because of the commitment that comes from involvement. Action that is more effective because the mistakes of the past are learned and not repeated. Action that makes a difference because it is focused by the people on the priorities of the people.

703-750
6401

To which
variation
try to
avoid
public eye

RiverDecisions Concept Paper -- 8/2/93 WORKING DRAFT

RiverDecisions: A Leadership Collaboration Project

This is a people-to-people initiative to strengthen and integrate the decisions of leaders in all sectors of society and at every level of Government to build an economically enduring and environmentally healthy future for today's people and tomorrow's children in the upper Mississippi River area.

Now is the time to think about the future of the upper Mississippi. Without new thinking the overwhelming needs to recover and rebuild, along with inertia, will push many to recreate the old behaviors. Now is the opportunity to learn from what went right and what went wrong and what needs to be improved. Now is the opportunity to create a new vision and new reality for the River and her people.

9 lower
gumb
Robin

RiverDecisions is a dedicated process of learning, dialogue, and decision. Its product is ACTION. Action that is stronger because of the commitment that comes from involvement. Action that is more effective because the mistakes of the past are learned and not repeated. Action that makes a difference because it is focused by the people on the priorities of the people.

For the last 25 years competing demands in the River corridor have grown and the flood has helped to clarify these demands. Meeting competing demands in a way that can sustain economic development and the ecology will require that we start treating the River and its surroundings as a system and not only a collection of projects, parcels and cumulative entitlements. We need new flexible means to reach equitable and fair balance among ecological, economic, and other social demands. Such flexibility and balance calls for new principles such as Sustainability.

No longer
Died by
place

Achieving economic and environmental sustainability is too critical a task to rely on the efforts of one government program, one profession, or one sector of society. The stakes are too high. We must approach the challenges of sustainable development as partners sharing the problems and jointly arriving at sustainable solutions. Public/private partnerships which forge cooperative relationships and place the long term sustainability of human development in the mainstream of social policy and resource decision-making are becoming a necessary precondition to building a viable future. While RiverDecisions will advocate the need to find new partnerships, visions and goals of sustainability, it will not advocate a specific approach. Its

11 reason for existence is to help regional and community leaders find creative and workable solutions for themselves. 11

just good enough

I. OBJECTIVES

- Create a community/regional based venue for integrated, participative decision-making for the sustainable development of the upper Mississippi River corridor.
- Support the collaborative and information sharing processes of community/regional/national leaders as they work together to chart a future of economically and environmentally sustainable development for the region.
- Build the public/private partnerships which have the authority and resources to implement the RiverDecisions action agenda.

II. OPERATIONS CONCEPT

Working together on common problems from different perspectives is difficult. It requires learning, openness, knowledge sharing, risk-taking, self-restraint, and leadership talent. The RiverDecisions operational concept is to create the venue for this cooperative dialogue, provide leadership education and information for the greater effectiveness of discussion and decision, and professionally support and facilitate each phase of this collaboration to be successful.

The operations which are required to launch and sustain the RiverDecisions initiative are outlined below. The specific applications of these operations will be participatively designed and implemented by the leaders in the sectors of interest and communities affected.

Strategic Design

Primary components of this strategic process will include an emphasis on public participation, conflict resolution, collaborative problem solving, alternative choices, multi-disciplinary teams, baseline sustainable development studies (the metrics of sustainability), strategic planning, life-cycle consequences, and monitoring and evaluation.

To effectively address the human development issues in the River corridor will require the application of a comprehensive planning and action focused process that is both multidisciplinary and participatory. A sustainable planning process encompasses far more than integrating and improving environmental impact studies once a project is conceptualized. It requires leaders to examine more carefully the aggregate consequences of individual

decisions or impacts, emphasizing a systems perspective that encompasses the net contribution to sustainable human development. The participatory process must be accepted by key stakeholders as essential, rather than incidental, to effective decisions. It must begin at the earliest stages of every project or process, in some cases before decisions are made to have a "project or process." If the process is to be supported and implemented, serious consideration needs to be given to the culture, values, market mechanisms, political situations and technology of the region or community involved. Focus areas in the application of such a planning process are:

- Public Participation (engage stakeholders prior to development decisions, educate stakeholders on impacts of development alternatives);
- Ecosystem Holistic Approach (National, regional, and community planning, consideration of local to global environmental costs);
- Target alternative solutions and technologies;
- Develop and utilize new decision support systems capable of integrating the new complexities.

emphasize
no money if not
is not an issue

Process Facilitation

Stakeholders often find it difficult to move beyond their interests and to conduct impartial processes that recognize all the parties' underlying needs. They frequently frustrate each other and bog down early in a dialogue that amounts to stating and defending positions. Facilitation can help groups move beyond such impasse and to create new options which none of the stakeholders had seen.

The use of a neutral party can dramatically enhance the opportunity to reach collaborative solutions through the management of the process by someone without a stake in the solution. The facilitator is a "caretaker" of the process. While the facilitator has no substantive stake in specific outcomes, they do have values. Their goal is to help parties achieve agreements which the parties can keep and implement.

As caretaker of the process, the facilitator can suggest different forums and procedures, and help to reframe issues. The facilitator helps groups move beyond positions, to identifying interests and values underlying these positions. The facilitator helps groups find their shared interests (often to the surprise of stakeholders) and ways that specific interests can be met while helping meet the interests of the other. By focusing debate on interests rather than just positions, groups greatly enhance their possibilities to jointly create new options. However, such debate rarely occurs without the assurance of fair and equitable formats and processes which facilitation supplies.

Specifically, the role of the facilitator is to help parties define clear statements of desired outcomes; to help decide whom to involve in meeting; to assist in the design of effective meeting agendas; to draw people out and keep dialogue going; to propose strategies for problem solving; to deal with needs for scientific or technical information; to help build high-quality, consensus decisions; to insure follow-up by organizing information produces; and to ensure planning for implementation.

Facilitation provides a forum which encourages collaboration and moves beyond adversarial approaches. It creates attention for the procedural and psychological needs as well as substantive interests of the parties. Facilitation helps frame problems so they are solvable. Since it is unlikely that groups will agree to solutions if they do not agree to the problems, facilitation helps stakeholders focus on common problems and to avoid having parties unconsciously moving in different directions and frustrating themselves. Facilitation allows managers and decision makers to actively participate in the substance without having to worry about process. It liberates the experts to do what they do best: discuss the substance. The simultaneous focus on substance and process often overloads decision makers. Facilitation can accommodate multiple sets of interests and stakeholders.

X Leadership Training

Effective community learning requires discovering the strongest performance capacities of the community and building upon that inherent strength. Getting the most results from fiscal and social investment is the key. Identifying and building on the leadership and productive talent of the people of the community is the greatest lever for effectiveness and enduring change that can be placed in the hands of decision makers.

will teach
The RiverDecisions project will design training curricula and programs to accompany and teach this comprehensive planning and collaboration process to government, professional, and industry users. This educational component will include attention to public involvement, group decision-making techniques, dispute resolution, team skills, the metrics of sustainability, and other items relevant to promoting the understanding and implementation of this process.

Issue Analysis

pick the
The strategic issues of development and re-development in the River corridor will be chosen through collaborative dialogue by regional leaders. A framework and common approach to issue analysis and related information sharing will be developed and supported by the RiverDecisions Secretariat. While most information gathering will be accomplished by local and regional

organizations, supplementary impact analysis and strategic issue tracking will be provided.

Information Sharing

The RiverDecisions Secretariat will implement information technologies to identify, collect, organize and disseminate information needed for the analysis and implementation of area sustainable development decisions. Major emphasis will be made to the collection and dissemination of environmental, economic, technological, and social information to decision makers at the individual, corporate and institutional levels.

Leaders provide the critical interface between information sources and society. A key challenge of sustainable development is to incorporate humanity's increasing knowledge of natural and human processes into development decisions. This challenge can only be met if the individuals making development decisions have access to, understand and make use of information that enables them to consider the long-term environmental consequences of their actions.

Project Coordination

Project coordination includes the responsibilities for project management - planning, scheduling, cost estimating, control, and management team development - and the active project leadership to assure that project goals and objectives are met. Project management is a way of thinking that requires program activities to be conducted in a systematic approach. The motivation for this structured approach includes several critical elements, namely:

- requires that the project objectives be defined in advance;
- aids communications by establishing a common project terminology;
- focuses attention on coordinated action;
- permits measurement of progress in a more accurate fashion;
- highlights problem areas for management action; and

Accordingly, RiverDecisions programs and projects will be planned and coordinated in accordance with the following requirements:

- Planning must clearly relate cost and schedule to the scope of work; be based on the current best estimates; and be clearly defined and documented. A work breakdown structure (WBS) will be prepared in conjunction with the scope of work and should be developed to the level of detail where responsibility for work performance is assigned. Responsibility for each element of the WBS should be established.

- Planning should cover the entire duration of an activity.
- Plan preparation must involve performing organizations to a degree sufficient to permit meaningful resource planning by all organizations.
- Plans must contain performance measurement criteria (allowable variance), including progress measurement and reporting requirements, and be kept current, reflecting approved changes in scope , schedule, and budget.

III. ORGANIZATION

Participants

- Individual citizens
- Community leaders
- Business leaders
- Academic and research leaders
- Non-governmental organization leaders
- Municipal, county, state, & national government officials

Structure

- RiverDecisions Executive Council (The Policy Boss)
- Community Leadership Cooperatives
- Issue Teams (Multiple)
- Issues Integration Team
- RiverDecisions Secretariat (The Get-it-Done Staff)

IV. RESOURCES

People

- Project coordination team (C)
- Communications team (U)
- Process design team (T)
- Facilitation team (Q)
- Survey management team
- Issues analysis teams (V)

Money

- \$100,000 seed money for initial project design and launch
- Initial total project "ballpark" estimate --- \$5 to 6 million.

Time

- Two- to three-year overall commitment

Information

- Clearinghouse

The complexity of the issues, information, and stakeholder interests related to the sustainable development of the upper Mississippi area calls for a central repository and "honest-broker" clearinghouse for relevant information. This clearinghouse would be the first stop for media, community planners, researchers, issue teams, government officials and citizens. It would also function as Rumor Control Central.

- News service

GETF proposes to "hit the ground running" by assuring that all River area constituencies receive fresh, focused, and reliable information concerning issues and activities in the regional sustainable development arena. With sustainable human development as our fundamental goal, major efforts will have to be made in the timely collection, sorting, and dissemination of relevant environmental, economic, technological, and social information for decision makers at all levels. Therefore, timely and reliable information to assure "no surprises", to anticipate and manage conflict, and to identify emerging trends is our objective to effectively balance the demands of environment and development within the River corridor.

- Media relations

Coordinating and managing media relations is an integral component of RiverDecisions. To reach local and national audiences, GETF will plan for the effective use of media and public relations, one-to-one contacts and the development of timely informational materials.

The overarching philosophy of the GETF media/public relations approach is **involvement and participation** at all levels of the community, with concerned business interests, and appropriate federal partners. The media audience target includes local community leaders, and political, business, media and opinion leaders.

Key objectives of the media plan will include:

- Generating immediate awareness of the RiverDecisions initiative.
- Establishing immediate familiarity with the issues surrounding the situation.
- Delivering a compelling "call to action" message to stimulate participation and support for the process.

- Developing an immediate broadscale reach to deliver maximum message exposure to target audiences.

A media mix of television, newspaper and magazines will be recommended based on timing requirements and budget.

Media tactics will include news media placement, speaking engagements, special events or news conferences, press materials, media training, entertainment programming, video news releases and press tours.

- Opinion surveys

Determining public perception and need is key to prioritizing and effectively targeting sustainable development actions. A region-wide survey will be conducted by a national team led by the Gallup Corporation to provide benchmark information on the public's perception of how the region is progressing toward a sustainable future. Follow up surveys will be administered to measure changes in opinion and progress. The design of this survey process would be guided by the Executive Council to assist in defining research objectives, identifying audiences to be surveyed, developing the survey instrument, and evaluating the results. The final scope, complexity, and effort required will be determined by the approved research objectives.

These surveys will provide government leaders, NGO's and all interested groups with indicators of success and areas in need of improvements for regional sustainability. These surveys will provide comprehensive comparative data with regard to sustainability, the results of which can be positioned for the highest possible circulation. These results could also be analyzed in a myriad of ways and communicated regionally to underscore the importance of sustainability as it relates to human development and the quality of life around the River area.

- Collaborative computing

Today's computer and telecommunications technologies can be economically brought into the service of multi-party negotiations and problem solving. The management of "single-text" materials and "what-if" options analysis are greatly facilitated by these tools. Distributed work processes across the entire region are now available through computer conferences and data exchange.

- Interactive databases

Each interest group and government agency (at every level) collects and maintains files and databases for their own purposes. These data sources can be the source of conflict or agreement. Effective collaborative problem solving requires knowledge sharing and the active integration of relevant facts into the issue analysis process. RiverDecisions will bring to bear the latest available data-sharing technology to support basin wide cooperation.

V. BENEFITS

- Understand the strengths of the region's people to successfully participate in sustainable economic activity, create jobs, and increase per person productivity.
- New objective, predictive, performance-oriented information to attract, develop, and position new business in the River area.
- Increase the options for Government officials and community leaders in development planning and decision-making.
- Produce new learning in national and regional human development arenas and focus attention on the upper Mississippi success model.

VI. MILESTONES

- Call to Action
- Prepare initial concept paper
- Approve concept & identify seed funding
- Advance team planning session
- FIRST meeting of RiverDecisions convenors
- Secretariat established
- Executive Council named
- 90 day action plan approved
- Phase 1 Strategic issues workshop convened

VII. NEXT STEPS

- Advance team on-site planning session
- Convene FIRST meeting, with seed funding, to define project scope and launch project design and action planning.

M E M O R A N D U M

TO: OEP Staff
FR: Will Stelle
RE: Press Calls on Wetlands
DATE: August 24, 1993

At 10:00 am this morning the White House is sending out a press release on the President's new Wetland program, listing this office as the originating Office.

We will get a large number of press calls.

1. If they want more information, tell them that there is a press availability scheduled for 1 pm today at the Agriculture Department (room 107A).

2. In addition, press packages containing a detailed description of the President's program are available through Heidi.

3. If they have any further questions, please direct all calls to Heidi in the Press Office at 456-7035. Heidi will field all the calls and direct them back to me here or to the agencies as appropriate.

cc. Katie McGinty
Cathy Zoi
Heidi Kukis

To Will Stelle -

Dick Sanderson asked me to get this to you by 3:30 today. He will be circulating this proposal through the agency for formal submittal to the OEB/UEP Task Force. (I believe he hopes to have the completed by the Wednesday meeting)

Shannon Conniff
260-5067

OPTIONAL FORM 90 (7-90)

FAX TRANSMITTAL

of pages ► 13

To	WILL STELLE	From	DICK SANDERSON
Dept./Agency	UEP	Phone #	260 5053
Fax #	456-2710	Fax #	260 5067

NSN 7540-01-317 7368

5099 101

GENERAL SERVICES ADMINISTRATION

P.S. Your fax has been busy since 3:30!
I've been trying to transmit since then!

Programmatic Environmental Impact Statement (PEIS) Addressing
Long-Term Recovery from the Great Flood of '93

INTRODUCTION: There exists a requirement for a dual track process to address both the emergency rehabilitation of some 500 levees along the Mississippi/Missouri River system that were breached or otherwise damaged as a result of the 1993 midwest floods and a collateral effort to review the situation affecting the remaining 1000 - 1200 levees in the longer term. The Disaster Field Office (DFO) coordination and approval process, established by the Office of Environmental Policy/Office of Management and Budget (OEP/OMB), installed "on-the-ground" decision-making authority and dispute resolution elevation mechanisms for the emergency mode which has been agreed upon and implemented among the appropriate governmental bodies. This paper outlines a parallel track based upon the recognized process of programmatic environmental impact statements (PEIS). This process offers both dispute resolution processes and intergovernmental coordination for the longer term issues while allowing the immediate emergency levee rehabilitation work to proceed at a timely pace.

PURPOSE: The PEIS would to serve as a catalyst bringing the federal agencies together with local sponsors and local, state, and Tribal governments to develop a programmatic-level, comprehensive approach to coordinated long-term recovery and subsequent management of the greater Mississippi River System (including the Missouri River) floodplain and watershed impacted by or contributing to the flood. The National Environmental Policy Act (NEPA) process, generally understood by the federal agencies, and recognized by the public as a coordination tool, provides a mechanism to assess the broad alternatives available.

The PEIS would address working within the current system of federal policies, practices and programs and it would look to revise those policies, practices and programs through legislative changes or changes within agency purview and, thereby, serve to unify the federal and states' floodplain management policies with each other and with other national goals (e.g., address wetlands losses). It would serve as a mechanism to address avoidance and minimization of flood damages from repeat flood disasters. It would also serve to address flood impact minimization to landowners formally protected by levees that are not receiving federal rehabilitation assistance. It would guide development of site-specific options. Its analyses would be at a programmatic level.

The simultaneous goals of the PEIS effort would be:

- To reduce repeat flood loss damages and thereby reduce the cost of the flood events to individuals and publicly sponsored works (e.g., roads, sewage treatment plants, levees)

- To restore the natural and beneficial functions and values of the Upper Mississippi and Missouri River floodplains and watersheds, and

- To coordinate federal actions and responsibilities and coordinate these with state, Tribal and local responsibilities and actions.

MANAGEMENT OF THE PEIS: We would recommend that the Corps of Engineers be the Lead Agency responsible for preparation of the PEIS due to its in-house planning and engineering expertise and experience with implementing the National Environmental Policy Act (NEPA). The OEP/OMB would provide oversight. While the Corps is nominally the lead, the nature of the proposal requires conferring upon FEMA, SCS, EPA, HUD, DOI, and DOT full and active involvement as the Cooperating Agencies. The Cooperating Agencies would assist by identifying alternatives, performing research and analysis necessary to frame the alternatives and their impacts, and in writing sections of the PEIS. Other agencies may also wish to become involved as Cooperating Agencies.

An Interagency PEIS Planning Team, with the Corps representative being the Project and Team Manager, is suggested. The Interagency PEIS Planning Team would be composed of 2 representatives (one from headquarters and one from the field or regional office) knowledgeable of their agencies' issues, programs, and capabilities. The agency representatives would be responsible for coordinating PEIS support activities with the remainder of their agency.

There may also be a need for a non-governmental body, i.e., independent panel, to review data and models used in PEIS analyses.

ISSUE RESOLUTION: The unique interagency character of this proposal requires that a mechanism be established at the outset of this effort to raise and resolve interagency disputes. Issues unable to be resolved via consensus by the Interagency PEIS Planning Team could be raised by any Team Member to its counterpart member of the Office of Environmental Policy/Office of Management and Budget Long-Term Recovery Task Force for consideration and resolution. Where resolution is not possible, that issue will be identified in the draft PEIS for public comment.

PUBLIC COORDINATION: Involvement of Tribal, state, and local governments, non-governmental organizations and the general public is critical to the success of the PEIS to address coordinated and comprehensive approach to long-term recovery of the impacted areas. Public coordination and consultation would occur throughout the PEIS planning effort. Beyond normal NEPA

scoping procedures, regional workshops are recommended.

TIME FRAME: It is anticipated that with full interagency support the PEIS process could be completed in seven (7) months. To meet this admittedly optimistic timeframe will require expeditious handling of issues, activities, mobilization of federal research laboratories, dedication of a large number of staff, and contractor assistance. A rough breakdown of the actions follows:

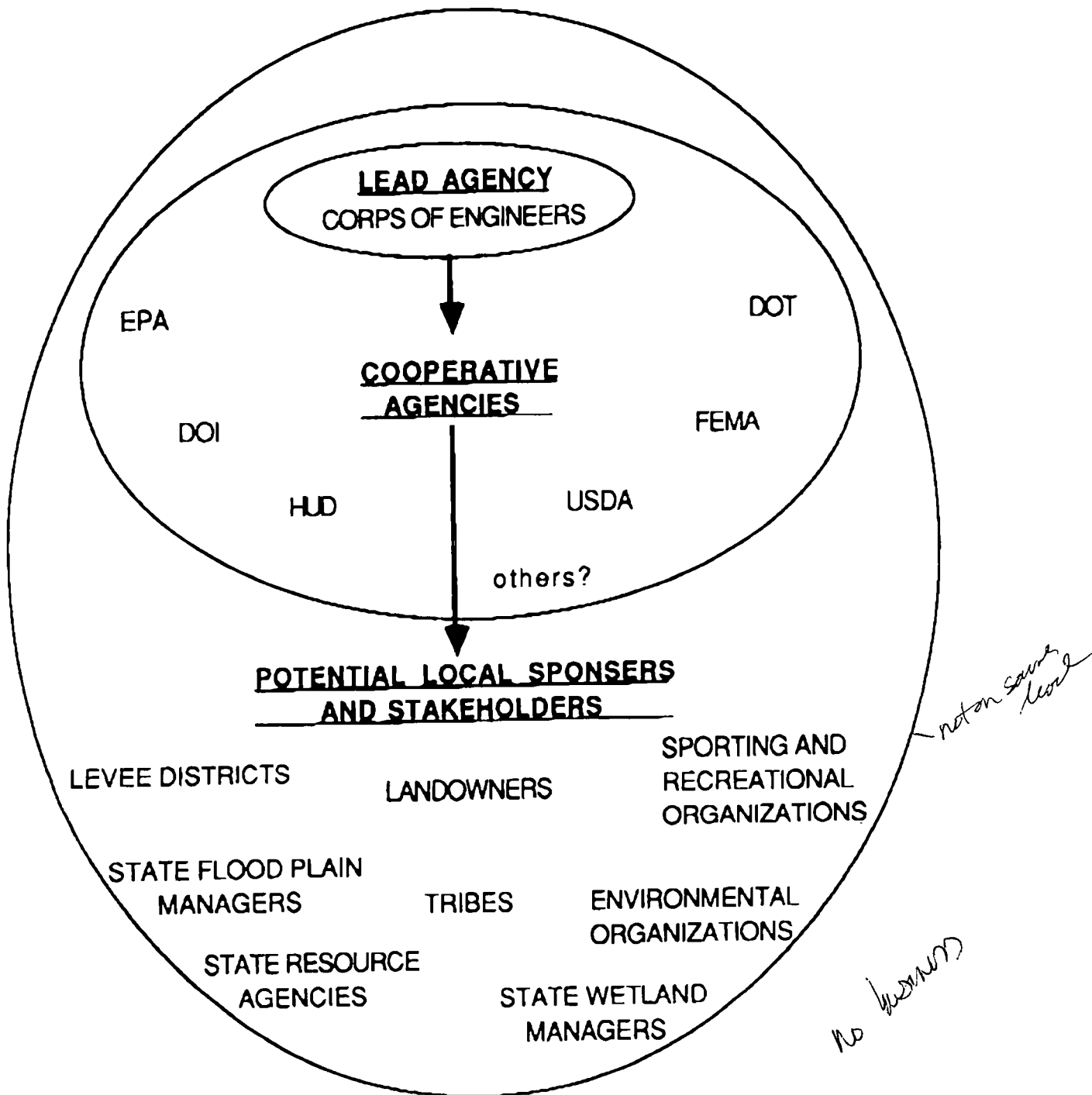
- Scoping - (Sept - Oct)
- Analysis/Modeling - (Sept - Dec)
- Draft EIS preparation - (Dec)
- Public Review - (45 days, January)
- Final PEIS preparation - (February)
- Public Review (March)
- Record of Decision (March 31)

Public coordination and consultation would occur throughout the PEIS planning effort.

ATTACHMENTS: A Management Hierarchy Schematic and a descriptive framework for the PEIS are attached.

RECOVERY PROGRAMMATIC ENVIRONMENT IMPACT STATEMENT

Schematic representation of
Management Heirarchy



**Programmatic Environmental Impact Statement on
the Long-Term Recovery and Management of the
Upper Mississippi and Missouri Rivers Watersheds**

NOTE: This proposed draft outline provides the basic structure for a Programmatic Environmental Impact Statement (PEIS) and examples of some of the issues that could be addressed in the PEIS. The examples are not intended to be a comprehensive list of all the issues, policy questions and environmental values that would be addressed in the PEIS.

EXECUTIVE SUMMARY

Summary of key conclusions and findings including unavoidable impacts, irreversible and irretrievable commitment of resources, relationship between short-term and long-term uses of resources, site-specific versus policy questions, maintenance of long-term productivity, and impacts of the no-action alternative. It identifies areas of controversy and unresolved issues. The Executive Summary summarizes how environmental laws (e.g., the National Environmental Policy Act (NEPA), Clean Water Act, Endangered Species Act, Farmland Protection and Policy Act, Stafford Disaster Assistance Act, Fish and Wildlife Coordination Act, National Historical Preservation Act, etc.), executive orders (E.O. 11990, Protection of Wetlands, and E.O. 11988, Floodplain Management), and other policies were considered.

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ACRONYMS AND ABBREVIATIONS

1.0 INTRODUCTION

1.1 PURPOSE AND NEED FOR THE PEIS

A PEIS would be an appropriate vehicle to serve as a catalyst bringing the federal agencies together with state resource, planning and regulatory agencies, Tribal governments and other potential local sponsors to develop a comprehensive approach to long-term recovery and subsequent operation and management of the greater Mississippi River System (including the Missouri River). The process, generally understood by the federal agencies and recognized by the public as a coordination tool, provides a mechanism to assess the broad alternatives available. It would address working within the current system of federal policies,

practices and programs and it could look at options to revise those policies, practices and programs through legislative changes or changes within agency purview and, thereby, serve to unify the federal and states' floodplain management policies and other national goals (e.g., address wetlands losses). It could also serve to develop a process for developing site-specific options.

The simultaneous goals of this effort are:

- To reduce repeat flood loss damages and thereby reduce the cost of the flood events to individuals and publicly sponsored works (e.g., roads, sewage treatment plants, levees)
- To restore the natural and beneficial functions and values of the Upper Mississippi and Missouri River floodplains and watersheds, and
- To coordinate responsibilities between federal agencies and with state, Tribal and local agencies or entities.

1.2 FUNCTION AND SCOPE OF THIS DOCUMENT

This section describes the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA) including §1501.2 which directs agencies to "integrate the NEPA process with other planning at the earliest possible time to ensure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts." The scope of the proposed PEIS will be based on, but not unduly limited by, programmatic issues raised by federal, state and local agencies and the public (including landowners, environmental groups and businesses) throughout the process of developing the PEIS. This PEIS addresses a programmatic coordinated, comprehensive approach to long-term recovery with greater levels of coordinated management of the watershed to take advantage of its natural and beneficial values. The level of detail would be consistent with a programmatic analysis.

1.3 AREAS OF CONTROVERSY

1.4 ISSUES TO BE RESOLVED

1.5 REGULATORY, POLICY AND ASSISTANCE FRAMEWORK

1.6 RELATIONSHIP TO PREVIOUS AND ONGOING NEPA ACTIONS (e.g., Corps' Upper Missouri River Master Manual, Lock and Dam 26

activities, Mississippi River Fish and Wildlife Restoration activities) The relationship of this PEIS to ongoing studies and NEPA actions would be explained in this section.

2.0 PROPOSED ACTION AND ALTERNATIVES

This section describes the current situation (no action alternative) and the proposed alternatives to it.

2.1 PROPOSED ACTION: TO BE DEVELOPED

This section describes the establishment of a unified federal policy regarding the recovery and subsequent management of the floodplains of the Upper Mississippi and Missouri Rivers.

2.2 NO ACTION ALTERNATIVE: PRE-FLOOD POLICIES AND PRE-FLOOD AND POST-FLOOD CONDITIONS

This section establishes the basis for comparing the impacts of proposed alternatives. It discusses the probable events and environmental impacts that will occur under existing plans and policies.

2.3 ALTERNATIVES: Any number of alternatives that are reasonable and serve to sharply define the programmatic issues. This section describes the wide variety of federal environmental and financial policy and program options that should be examined and possibly pursued. Issues meriting discussion within the context of one or more alternatives include:

- actions that reduce the rate of inflow from the watershed (e.g., restoration of wetlands, improved soil and water retention practices)
- siting and design of federal, state, and local government and other publicly owned or sponsored facilities with natural flood control and non-structural flood risk minimization measures
- utilization of and targeting federal programs that would assist floodplain management and flood loss reduction (e.g.,
 - the Corps' Pick-Sloan authorization to secure 3000 ft. to 5000 ft of the width of Missouri floodway;
 - the DOI's Partners of Wildlife effort [Fish and Wildlife Act of 1956], North American Waterfowl Management Plan program [North American Wetlands Conservation Act of 1989], and targeting National Wildlife Refuge System acquisitions;
 - the USDA's Wetlands Reserve Program and Farmers Home Administration wetland easement and land transfers for conservation purposes [Agricultural Credit Act of 1987];
 - the FEMA's programs of relocation and buy out of property; and

- sales by the Resolution Trust Corporation).
- strengthening and reinforcing levees and dikes in urban and industrial areas
- alternative levee design and construction methods
- relocation of floodplain structures through new and existing incentive programs
- putting incentive programs on an even keel with rebuild to pre-flood options
- flood proofing floodplain dependent structures (e.g., waste water treatment plants, drinking water treatment facilities, existing toxic/hazardous waste sites and solid waste landfills)
- requirements that runoff and flood storage capacity be built into projects qualifying for federal assistance, permits, or licenses.
- using wetlands as natural flood retention basins
- exploring the true costs of federal payments associated with current operations along the river (e.g., crop insurance vs. levee rehabilitation; improved water quality vs. drinking water treatment costs)
- federal, state and local acquisition of wetlands in higher order streams to assist continued functions
- obtaining commitments on floodplain management from local governments
- identifying areas suitable for greenways (floodways in urban areas that serve recreation and other natural and beneficial uses)
- coordinated authority for floodplain activities (e.g., a Floodplain Management Act similar to the Coastal Zone Management Act)
- moving businesses and residences to higher grounds (relocation program of Upton-Jones Act)
- flood proofing residences and businesses
- providing additional storm water retention ponds in urbanized and sub-urbanized areas to assist addressing non-point source water quality issues and asynchronization of flood peaks
- coordinated federal position on farming/crop insurance in areas between federal levees
- coordination on river flows management
- flexibility to manage rivers to allow for periodic low flow flood events (e.g., allowing predictable 5-year flood events to benefit endangered species habitat)
- sewage treatment plant construction and enhancement priorities and opportunities
- solid and hazardous waste monitoring, management or removal

2.4 COMPARISON OF ALTERNATIVES

This section compares in brief the environmental effects of

the alternatives. The impacts of long-term recovery efforts would look at the relationship of reconstruction activities to flood peaks, duration, and associated flood damages encountered in areas with high expected economic value, areas with significant risk to human health and safety, or areas with significant cultural or historic sites. It would focus on both the economic and environmental feasibility of incorporating alternative approaches to reducing flood risk, flood damages, and federal payments associated with natural disaster events (such as flood and drought).

2.4.1 COMPARISON OF ALTERNATIVES - OVERVIEW

2.4.2 COMPARISON OF ENVIRONMENTAL EFFECTS OF THE ALTERNATIVES

A comparative summary of the impact analyses presented in Chapter 5. It includes impacts to environmental values, floodplains, wetlands, sediment/soil impacts, natural systems, reconstruction integrating pollution prevention and energy efficient values into its planning and recovery efforts, and environmental equity.

3.0 CONSULTATION AND COORDINATION

This section describes the way in which the scope of the document was developed, the level and type of interagency and intergovernmental coordination during preparation of the document, and further stages of public participation that will occur.

4.0 AFFECTED ENVIRONMENT

This section identifies the pre-flood, current and reasonably foreseeable future conditions of the environment that might be impacted by alternatives proposed in the PEIS. It will focus primarily on the upper Mississippi and Missouri Rivers' watersheds, floodplains, and aquatic habitat (only where significant potential impacts have and may again occur).

4.1 Geology/Soils/Sediment/Hydrology (e.g., data on watersheds' soil types, erosion, flood risk, flood peaks and duration, floodplain storage)

4.2 Land use (includes identification of Prime and Unique farmlands)

4.3 Socioeconomics

4.3.1 Demographic Characteristics

4.3.2 Employment and Income

4.3.3 Agricultural Characteristics

4.3.4 Economic Diversification

4.3.5 Insurance Programs

4.3.5.1 Flood Insurance

- 4.3.5.2 Crop Insurance
- 4.3.6 Commercial Shipping
- 4.3.7 Recreational Uses
- 4.4 Biological Resources
 - 4.4.1 Terrestrial Habitats/Ecosystems (including Endangered and Special Status Species)
 - 4.4.2 Aquatic Habitats/Ecosystems (including Endangered and Special Status Species)
- 4.5 Transportation
 - 4.5.1 River (i.e., navigation issues)
 - 4.5.2 Surface (e.g., road, rail, including bridges)
 - 4.5.3 Pipeline
 - 4.5.4 Air (i.e., commercial and general aviation airports)
- 4.6 Hazardous/Municipal Waste and Toxic Chemicals
 - 4.6.1 Control of Hazardous Chemicals
 - 4.6.2 Municipal Solid Waste
 - 4.6.3 Emergency Response Procedures
- 4.7 Air Quality
- 4.8 Water Quality
 - 4.8.1 Drinking Water
 - 4.8.1.1 Private Wells
 - 4.8.1.2 Treatment facilities
 - 4.8.2 Sewage Treatment
 - 4.8.3 Instream Water Quality
 - 4.8.4 Sediment Quality
- 4.9 Human Health and Safety
- 4.10 Cultural Resources
- 4.11 Visual resources
- 4.12 Recreation Resources
- 4.13 Others

5.0 ENVIRONMENTAL EFFECTS

This section discusses the direct, indirect and cumulative impacts of each alternative.

5.1 ANALYTICAL METHODS

This section describes the methodology and procedures for analyzing potential environmental impacts for elements defined in 4.1 through 4.12, above.

5.2 ALTERNATIVE 1: PROPOSED ACTION

5.2.1 Geology/Soils/Sediment/Hydrology

- Impacts to soil characteristics (nutrient, erosion, compaction, etc.)
- Stream erosion and deposition patterns
- Flood storage impacts
- Hydrograph impacts

5.2.2 Land use (includes identification of Prime and Unique farmlands)

- Impacts of varying levels of flood protection

- on land use
 - Impacts of alternative recovery measures on land use
 - Floodplain management
- 5.2.3 Socioeconomic
 - Shifts in population due to shifts in policy, levels of protection
 - Impacts of relocation
 - Shifts in employment opportunities and income
 - Shifts in agricultural production (crops, values)
 - Shifts in recreation opportunities
 - Federal savings from policy/program changes
- 5.2.4 Biological Resources
 - Effects on special habitats and species
 - Watershed planning benefits to habitat, water quality, etc.
 - Flood storage capacity of natural areas
 - Hydrological impacts on biological resources
- 5.2.5 Transportation
 - Effects on availability, cost, choices, siting
 - Speed requirements
 - Siting of airport facilities
- 5.2.6 Hazardous /Municipal Waste and Toxic Chemicals
 - Current practices/situation
 - Siting effects
 - Changes in quantity/character of waste in flood zone
 - Changes in probability of incidents
- 5.2.7 Air Quality
 - Air quality impacts of open burning
 - Traffic flow impacts
 - Indoor air quality
- 5.2.8 Water Quality/Quantity
 - Effects of policies on drinking and wastewater treatment plant location and technology
 - Effects on ground water quality and quantity
 - Effects on river water quality and quantity
 - Effects on river sediment quality
 - Cost savings from increased water quality (lower treatment costs)
- 5.2.9 Human Health and Safety
 - Effects of floods of various levels on life, injury, property safety
 - Effects on disease vectors
- 5.2.10 Cultural Resources
 - Effects on historical, tribal, architectural and other cultural resources
- 5.2.11 Visual resources
 - Changes in visual quality
- 5.2.12 Recreation Resources

- Changes in recreational opportunities, access, quality
- 5.2.13 Others

5.3 ALTERNATIVE 2: NO ACTION ALTERNATIVE

Effects of continuing the status quo regarding policies, priorities, procedures, projects, and reports on the status of short-term recovery efforts. This analysis includes the same elements as Alternative 1, above.

5.4 ALTERNATIVE 3 (and all other alternatives): This analysis includes the same elements as Alternative 1, above.

6.0 ENVIRONMENTAL COMMITMENTS

This section pulls together and describes all commitments to avoid, minimize or mitigate adverse effects.

7.0 REFERENCES

8.0 LIST OF PREPARERS

This section identifies the people and agencies that will have substantial input in the preparation of the document primarily by providing data, coordination or review.

9.0 INDEX

10.0 APPENDIXES (as necessary)

Addressing Land Owner Concerns:

- 1) **CORPS**- Within a year will modify permit processing regulations through a public rulemaking process to establish regulatory deadlines for reaching decisions.
- 2) **CORPS**- Formulate administrative appeals process.
ONE YEAR
- 2) **CORPS**- Propose regulations for implementing a certification program for private sector delineators.
- 3) **CORPS**- Streamline process by which it considers and accepts delineations performed by certified wetlands consultants.
- 4) **CORPS**- Mandatory training process for federal delineators. Encourage the growth of a private sector pool.
- 5) **ADMINISTRATION**- Support planning activities with property owners and increase support for programs that assist landowners in the implementation of restoration, technical assistance, and information programs.

Advance Planning and Watershed Management

- 6) **EPA and CORPS**- Give high priority to assisting with the development of categorization of wetland resources when governments have approved watershed plans.
- 7) **CORPS**- Issue guidance which specifies the circumstances under which State, Tribal, regional, and local governments with existing programs may assume more active roles.
- 8) **CONGRESS**- Amend Section 404(e) of CWA to provide for PGP's for approved State, Tribal, regional and local regulatory programs.
- 9) **CORPS**- in coordination with federal, state, tribal, agencies, will develop regional descriptions of the types of waters and activities which do not fall under the NWP 26 authorization.
- 10) **CONGRESS**- Amend Section 404(e) to recognize the concept of regionalized "category of waters" general permits.
- 11) **ADMINISTRATION**- Develop a strategic plan for delivering information on regulatory programs and encourage the development of innovative education and outreach materials.
- 12) **ADMINISTRATION**- Direct Wetlands Subcommittee of the Federal Geographic Data Committee to complete reconciliation and integration of all Federal agency wetland inventory

activities.

Agriculture

13) **CONGRESS**- include in the Clean Water Act a definition of "waters of the U.S." that excludes from the CWA jurisdiction areas determined to be prior converted land. Incorporate the definition contained in existing EPA and Corps regulations. Also incorporate the definition of "wetlands" in the Clean Water Act.

14) **SCS, CORPS, EPA, FWS** must develop procedures to provide SCS Wetland delineations, which will represent the final government position on Swampbuster and CWA jurisdiction.

- training programs
- coordinate enforcement responsibilities.

15) **CORPS, EPA, SCS, FWS**- Develop field guidance for implementing the 1987 Wetlands Delineation Manual. Expedite efforts to revise SCS Food Security Act Manual.

16) **CORPS, EPA, SCS, FWS**- Prepare a nationwide general permit for discharges associated with "minimal effects."

17) **CORPS, EPA**- Incorporate examples of certain man-made wetlands into regulations.

18) **CONGRESS**- Must fund administration's budget request for the Wetlands Reserve Program in the 1995 Farm Bill.

Categorization:

19) **CORPS**- Expedite efforts by Waterways Experiment Station to develop an improved wetlands functional assessment tool. (Hydrogeomorphic Classification System)

20) **CORPS**- a field review and evaluation of NWP 26 for the purpose of regionalizing and improving its use.

21) **CONGRESS**- Amend Section 404(e) to recognize the concept of regionalized "category of waters" general permits

GEOGRAPHIC DISTRIBUTION

22) **CONGRESS**- Endorse continued use of the 1987 Manual in the reauthorization of CWA, pending recommendations that may result from the NAS study.

23) **CONGRESS**- Add examples of "isolated waters" to the statutory definition of wetlands.

24) **EPA and CORPS**: Will incorporate examples of artificial

wetlands into their regulations to clarify the types of waters not subject to CWA jurisdiction.

Mitigation and Mitigation Banking:

25) **CORPS, EPA, SCS, FWS, NMFS**-Issue Mitigation Planning Guidance.

26) **CONGRESS**- Endorse the use of banking as a compensatory mitigation option under Section 404 regs program. Should explicitly use the State Revolving Fund to capitalize mitigation Banks.

Restoration:

27) WRP *see 18*

28) Review existing Fed programs on voluntary restoration and examine opportunities to expand in education and outreach

29) EO will be revised to incorporate administration's interim and long term goals and to establish wetlands restoration as an essential vehicle to achieve these goals through a voluntary approach.

Role of State, Tribal, and Local Government

30) **CONGRESS**- Authorize development of state/tribal watershed programs. Approved watershed plans would receive a high priority for technical and financial support.

31) **CONGRESS**- issue guidance specifying circumstance under which state, tribal, and local programs can effectively regulate section 404 activities through issuance of PGP's

32) **CONGRESS**- endorse the development of state/tribal comprehensive wetland plans. Provide EPA the authority to use its wetlands grants program to fund both development and implementation of state wetlands conservation plans.

33) **CONGRESS**- Provide the EPA with the authority to use its wetlands grants program to fund both development and implementation of state assumption of its section 404 program, and partial assumption by states and tribes.

Scope of Regulated Activities

34) Clarify definition of "Discharge of Dredged Material"

- 35) Clarify definition of "Discharge of Fill Material"
- 36) **CORPS, EPA**- coordinate to develop low impact permits
- 37) **CONGRESS**- Should amend CWA to make it consistent with agencies rulemaking.

ALASKA

- 38) **Administration**- Withdraw 1% rule
- 39) **CORPS, EPA**- Within 90 days initiate meetings with Fed resource agencies, state, and local governments, reps from native villages, industry groups, and environmental groups to discuss other appropriate means to assure regulatory flexibility.

31
14 9) Administration- Revise the Executive Order on Wetlands.

15 10) Agencies- Develop a strategic plan for delivering information on regulatory programs and encourage the development of innovative education and outreach materials.

16 11) Administration- Direct Wetlands Subcommittee of the Federal Geographic Data Committee to complete reconciliation and integration of all Federal agency wetland inventory activities.

Agriculture

17 12) Congress- include in the Clean Water Act a definition of "waters of the U.S." that excludes from the CWA jurisdiction areas determined to be prior converted land.

18 13) Agencies- SCS, CORPS, EPA, FWS must develop procedures to provide SCS Wetland delineations will represent the final government position on Swampbuster and CWA jurisdiction.
- training programs
- coordinate enforcement responsibilities.

19 14) CORPS, EPA, SCS, FWS- Develop field guidance for implementing the 1987 Wetlands Delineation Manual. Expedite efforts to revise SCS Food Security Act Manual. 445

20 15) CORPS, EPA, SCS, FWS- Prepare a nationwide general permit for discharges associated with "minimal effects."

21 16) CORPS, EPA- Incorporate examples of certain man-made wetlands into regulations.

22 17) CONGRESS- Must fund Administration's budget request for the Wetlands Reserve Program in the 1995 Farm Bill.

Categorization:

23 18) Expedite development of Hydrogeomorphic Classification System.

24 Provide technical assistance for advance planning efforts.

25 Counsel planning participants on methods to link local or regional planning with section 404 regulatory decision making.

26 CORPS- a field review and evaluation of NWP 26 for the purpose of regionalizing and improving its use.

27 CONGRESS- Amend Section 404(e) to recognize the concept of regionalized "category of waters" general permits

GEOGRAPHIC DISTRIBUTION

18 CONGRESS- Endorse continued use of the 1987 Manual in ^{the} reauthorization of CWA, pending recommendations that may result from the NAS study.

21 CONGRESS- Incorporate the definition of "waters of the United States" contained in existing EPA and Corps regulations. And also incorporate definition of "wetlands" in the CWA. ^{- Exclude prairie converted}

30 CONGRESS- Add examples of "isolated waters" to the statutory definition of wetlands.

31 EPA and CORPS: Will incorporate examples of artificial wetlands into their regulations to clarify the types of waters not subject to CWA jurisdiction.

Mitigation and Mitigation Banking:

32 CORPS, EPA, FWS, SCS, NMFS-Issue Mitigation Planning Guidance.

33 CONGRESS- Endorse the use of banking as a compensatory mitigation option under Section 404 regs program. Should explicitly use the State Revolving Fund to capitalize mitigation Banks.

34 Expedite efforts by Corps Waterways Experiment Station to develop an improved wetlands functional assessment tool. (HYDRIEOMORPHIC classification system) To assist in impact analysis and appropriate mitigation measures.

Restoration:

35 ~~WRP~~ 22

36 REVIEW existing Fed programs on voluntary restoration and examine opportunities to expand in education and outreach

37 EO will be revised to incorporate ADM, interim and long term goals and to establish wetlands restoration as an essential vehicle to achieve these goals through a voluntary approach.

ROLES of Federal Agencies

38 nil

Role of State, Tribal, and Local Government

39 provide technical and financial assistance and guidance to states, tribes, and local governments

Addressing Land Owner Concerns:

- 1) CORPS- Within a year will modify permit processing regulations through a public rulemaking process to establish regulatory deadlines for reaching decisions.
- 2) CORPS- Propose regulations for implementing a certification program for private sector delineators.
- 3) CORPS- Streamline process by which it considers and accepts delineations performed by certified wetlands consultants.
- 4) CORPS- Mandatory training process for federal delineators. Encourage the growth of a private sector pool.
- 5) ADMINISTRATION- Support planning activities with property owners and will increase support for programs that assist landowners in the implementation of restoration, technical assistance, and information programs.

Advance Planning and Watershed Management

- 6) Congress- Authorize the development of State watershed protection programs.
- 7) Congress- Endorse State/Tribal comprehensive wetlands plans.
- 8) Congress- Authorize EPA to use its Wetlands Grants program to fund development and implementation of State Wetlands Conservation Plans.
- 9) EPA and Corps- Give high priority to assisting with the development of categorization of wetland resources when governments have approved watershed plans.
- 10) CORPS- Issue guidance which specifies the circumstances under which State, Tribal, regional, and local governments with existing programs may assume more active roles.
- 11) CONGRESS- Amend Section 404(e) of CWA to provide for PGP's for approved State, Tribal, regional and local regulatory programs.
- 12) CORPS- in coordination with federal, state, tribal, agencies, will develop regional descriptions of the types of waters and activities which do not fall under the NWP 26 authorization.
- 13) CONGRESS- Endorse the appropriate use of banking as a complementary mitigation option under Section 404, and use allow use of State revolving funds to capitalize mitigation banks.

- 40 / CONGRESS- Authorize development of state/tribal watershed programs. Approved watershed plans would receive a high priority for technical and financial support. Programmatic general permits.
- 41 CONGRESS- issue guidance specifying circumstance under which state, tribal, and local programs can effectively regulate section 404 activities through issuance of PGP's
- 42 CONGRESS- Amend 404(e) of CWA to provide for PGP's P6P5
← #9?
- 43 / Congress- endorse the development of state/tribal comprehensive wetland plans. Provide EPA the authority to use its wetlands grants program to fund both development and implementation of state wetlands conservation plans.
- 44 / CONGRESS- Provide the EPA the authority to use its wetlands grants program to fund both development and implementation of state assumption of its section 404 program, and partial assumption by states and tribes.
- 45 ^{18 & 19} / ~~ADMINISTRATIVE~~- Provide state and tribal training on wetlands delineation.

Scope of Regulated Activities

- 46 Clarify definition of "Discharge of Dredged Material"
- 47 Clarify definition of "Discharge of Fill Material"
- 48 CORPS, EPA- coordinate to develop low impact permits
- 49 CONGRESS- Should amend CWA to make it consistent with agencies rulemaking.

ALASKA

- 50 Withdraw 1% rule
- 51 CORPS, EPA- Within 90 days initiate meetings with Fed resource agencies, state, and local governments, reps from native villages, industry groups, and environmental groups to discuss other appropriate means to assure regulatory flexibility.

A SUMMARY OF

"PROTECTING AMERICA'S WETLANDS: A FAIR, FLEXIBLE, AND EFFECTIVE APPROACH"

August 24, 1993

INTRODUCTION

The Clinton Administration is proposing a comprehensive package of improvements to the Federal wetlands program that reflects a new broad-based consensus among Federal agencies. For years, many have argued that the Federal government badly needed to improve its wetlands program to make it fairer and more effective. But for too long, contradictory policies from feuding Federal agencies have blocked progress, creating uncertainty and confusion. This wetlands package reflects a sharp break through the past gridlock caused by warring Federal agencies and contains a balanced, common sense, workable set of improvements that will make the program simpler, fairer, better coordinated with state and local efforts and more effective at protecting wetlands.

BACKGROUND

The Nation's wetlands perform many functions that are important to society, such as improving water quality, recharging groundwater, providing natural flood control, and supporting a wide variety of fish, wildlife and plants. The economic importance of wetlands to commercial fisheries and recreational uses is also enormous.

The Nation has lost nearly half of the wetland acreage that existed in the lower 48 States prior to European settlement. The Nation's wetlands continue to be lost at a rate of hundreds of thousands of acres per year due to both human activity and natural processes. This continued loss occurs at great cost to society.

Notwithstanding the importance of wetland resources, Federal regulatory programs to protect wetlands have caused considerable controversy. Critics of Federal wetlands regulatory programs have effectively characterized those programs as unfair, inflexible, inconsistent, and confusing. Supporters of wetlands protection have responded -- with equal effectiveness -- by emphasizing the environmental and economic benefits associated with protecting the Nation's wetlands.

As both sides have voiced their strongly held opinions, the debate over Federal wetlands policy has become increasingly divisive, with agencies fighting agencies and generating enormous confusion among the public and the states and stalling needed reforms in the program. In short, wetlands policy had become one of the most controversial environmental issues facing the Federal government, slowing work on the reauthorization of the overall Clean Water Act.

THE INTERAGENCY WORKING GROUP ON FEDERAL WETLANDS POLICY

The Administration convened the Interagency Working Group on Federal Wetlands Policy in early June with the goal of developing a package of Clinton Administration initiatives to end the wetlands wars, break the deadlock over Federal wetlands policy and develop a set of workable improvements to the program. The group has been chaired by the White House Office on Environmental Policy and has included the participation of the Environmental Protection Agency (EPA), the Army Corps of Engineers (Corps), the Office of Management and Budget, and the Departments of Agriculture (USDA), Commerce, Energy, Interior, Justice, and Transportation.

The working group sought the views of a broad range of stakeholders representing all perspectives in the wetlands debate. For example, the group has received presentations that have included: a bipartisan group of eight members of the U.S. Congress; representatives of State and local government; environmentalists; the development community; agricultural interests; scientists; and others.

After listening to this broad range of interests, the working group established five principles that serve as the framework for the Administration's comprehensive package of wetlands reform initiatives.

FIVE PRINCIPLES FOR FEDERAL WETLANDS POLICY

- 1) The Clinton Administration supports the interim goal of no overall net loss of the Nation's remaining wetlands, and the long-term goal of increasing the quality and quantity of the Nation's wetlands resource base;
- 2) Regulatory programs must be efficient, fair, flexible, and predictable, and must be administered in a manner that avoids unnecessary impacts upon private property and the regulated public, and minimizes those effects that cannot be avoided, while providing effective protection for wetlands. Duplication among regulatory agencies must be avoided and the public must have a clear understanding of regulatory requirements and various agency roles;
- 3) Non-regulatory programs, such as advance planning; wetlands restoration, inventory, and research; and public/private cooperative efforts must be encouraged to reduce the Federal government's reliance upon regulatory programs as the primary means to protect wetlands resources and to accomplish long-term wetlands gains;
- 4) The Federal government should expand partnerships with State, Tribal, and local governments, the private sector and individual citizens and approach wetlands protection and restoration in an ecosystem/watershed context; and
- 5) Federal wetlands policy should be based upon the best scientific information available.

A COMPREHENSIVE PACKAGE OF REFORMS

Building upon these principles, the working group has developed a comprehensive package of initiatives that will significantly reform Federal wetlands policy, while maintaining protection of this vital natural resource. This package includes regulatory reforms and innovative, non-regulatory policy approaches; it includes administrative actions that will take effect immediately, and legislative recommendations for Congress to consider during the reauthorization of the Clean Water Act. The Clinton Administration looks forward to working closely with the Congress to implement this new approach to Federal wetlands policy.

The reform package includes the following initiatives:

- **To affirm its commitment to conserving wetlands resources, the Administration will issue an Executive Order embracing the interim goal of no overall net loss of the Nation's remaining wetlands resource base, and a long-term goal of increasing the quality and quantity of the Nation's wetlands;**
- **To increase fairness in the wetlands permitting process, the Corps will establish an administrative appeals process so that landowners can seek speedy recourse if permits are denied without having to go to court;**
- **To make sure that decisions are made without delay, the Corps will establish deadlines for wetlands permitting decisions under the Clean Water Act;**
- **To reduce uncertainty for American farmers, yesterday the Corps and EPA issued a final regulation ensuring that approximately 53 million acres of prior converted cropland -- areas which no longer exhibit wetlands characteristics -- will not be subject to wetlands regulations;**
- **To reduce duplication and inconsistency for American farmers, the Soil Conservation Service will be the lead Federal agency responsible for identifying wetlands on agricultural lands under both the Clean Water Act and the Food Security Act;**
- **To close a loophole that has led to the degradation and destruction of wetlands, yesterday the Corps and EPA issued a final regulation to clarify the scope of activities regulated under the Clean Water Act;**
- **To emphasize that all wetlands are not of equal value, yesterday EPA and the Corps issued guidance to field staff highlighting the flexibility that exists to apply less vigorous permit review to small projects with minor environmental impacts;**
- **To ensure consistency and fairness, the Army Corps of Engineers, the Environmental Protection Agency, the Soil Conservation Service, and the Fish and Wildlife Service will all use the same procedures to identify wetland areas;**

- To increase the predictability and environmental effectiveness of the Clean Water Act regulatory program and to help attain the no overall net loss goal, the Administration endorses the use of mitigation banks;
- To reduce the conflict that can result between wetlands protection and development when decisions are made on a permit-by-permit basis, the Administration strongly supports incentives for States and localities to engage in watershed planning;
- To provide effective incentives for farmers to restore wetlands on their property, the Administration will continue to support increased funding for the USDA's Wetland Reserve Program; and
- To help attain the long-term goal of increasing the quantity and quality of the Nation's wetlands, the Administration will promote the restoration of damaged wetland areas through voluntary, non-regulatory programs.

CONCLUSION

This package breaks the gridlock that has paralyzed wetland policy in the past and represents a major advance in reforming and improving the wetlands program nationwide. It reflects the President's broader commitment to "reinventing" government to make it more responsive, more effective and more efficient.

The critics of the wetlands regulatory program have performed a service to the country by highlighting the need for meaningful reform in the administration of wetland regulatory programs. Many of the much needed reforms contained in this package -- such as permit deadlines, an appeals process, mitigation banking, and increasing the role of state and local government in wetlands regulation -- have been proposed by those seeking improvements in the operation of the current regulatory program.

The supporters of wetlands protection have also performed a service by helping to inform the Nation of the environmental and economic importance of wetlands, a valuable natural resource that was once routinely destroyed. Their strong commitment to protecting and restoring this vital resource is also reflected in this package. For example, a loophole has been closed in Federal regulations that allowed the degradation and destruction of wetlands; the "Alaska 1% rule," which would have greatly relaxed wetlands protection in Alaska, will be withdrawn; and the Administration will draft an Executive Order affirming its commitment to the preservation and restoration of wetland areas.

By adopting an approach based upon the effective protection of an important natural resource in a manner that is fair and flexible, the Clinton Administration proposes a wetlands policy that recognizes both the value of wetland resources and the need to minimize regulatory burdens.

***PROTECTING AMERICA'S WETLANDS:
A FAIR, FLEXIBLE,
AND EFFECTIVE APPROACH***

WHITE HOUSE OFFICE
ON ENVIRONMENTAL POLICY

August 24th, 1993

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I. INTRODUCTION

The Clinton Administration is proposing a comprehensive package of improvements to the Federal wetlands program that reflects a new broad-based consensus among Federal agencies. For years, many have argued that the Federal government badly needed to improve its wetlands program to make it fairer and more effective. But for too long, contradictory policies from feuding Federal agencies have blocked progress, creating uncertainty and confusion. This wetlands package reflects a sharp break through the past gridlock caused by warring Federal agencies and contains a balanced, common sense, workable set of improvements that will make the program simpler, fairer, better coordinated with state and local efforts and more effective at protecting wetlands.

The Nation's wetlands perform many functions that are important to society, such as improving water quality, recharging groundwater, providing natural flood control, and supporting a wide variety of fish, wildlife and plants. The economic importance of wetlands to commercial fisheries and recreational uses is also enormous. The Nation has lost nearly half of the wetland acreage that existed in the lower 48 States prior to European settlement. The Nation's wetlands continue to be lost at a rate of hundreds of thousands of acres per year due to both human activity and natural processes. This continued loss occurs at great cost to society.

Notwithstanding the importance of wetland resources, efforts to protect wetlands have caused considerable controversy. It is estimated that 75 percent of the Nation's wetlands in the lower 48 States are located on private property. It is, therefore, imperative to recognize and consider fully the impacts of wetlands protection policies on individuals who own wetland property. Statutory, regulatory, and policy objectives should be accomplished in a manner that avoids unnecessary impacts upon such landowners.

Given the environmental and economic significance of wetlands, the alarming rate of wetlands loss, and concerns for private landowners, the Interagency Working Group on Federal Wetlands Policy began developing a comprehensive package of initiatives in June. The policy positions contained in this paper strongly support the effective protection and restoration of the Nation's wetlands, while advocating much-needed reforms to increase the fairness and flexibility of Federal regulatory programs.

II. A DIVISIVE DEBATE

Federal programs to protect the Nation's wetlands have been the focus of considerable controversy in recent years. Much of the attention focused upon the 1989 Interagency Wetlands Delineation Manual (1989 Manual). The 1989 Manual was prepared jointly by the U.S. Army Corps of Engineers (the Corps), the Environmental Protection Agency (EPA), the Fish and Wildlife Service (FWS) of the Department of the Interior, and the Department of Agriculture's Soil Conservation Service (SCS). It was developed in response to criticism that Federal agencies

were not using a single set of common procedures to "delineate" -- or identify -- wetlands under the jurisdiction of programs administered by these agencies.

But rather than alleviating concerns about inconsistency, the 1989 Manual only further fueled the controversy. Critics claimed that the 1989 Manual represented a major expansion of regulatory jurisdiction without opportunity for public participation. In response, the Bush Administration embarked upon a closed-door effort to revise the 1989 Manual. This process resulted in the technically flawed 1991 Manual that would have dramatically and indefensibly reduced the amount of wetlands subject to protection. The proposed 1991 Manual generated even further controversy and resulted in even greater polarization of the debate on Federal wetlands policy.

In addition to assailing the 1989 Manual, critics of Federal wetlands regulatory programs effectively characterized those programs as unfair, inflexible, inconsistent, and confusing. Supporters of wetlands protection responded -- with equal effectiveness -- by emphasizing the environmental and economic benefits associated with protecting the Nation's wetlands.

As both sides voiced their strongly held opinions, the debate over Federal wetlands policy became increasingly divisive. The opposition that developed to both the 1989 and 1991 Manuals demonstrated the policy deadlock that had developed. Wetlands policy has become one of the most controversial environmental issues facing the Federal government, just as Congress embarks upon the reauthorization of the Clean Water Act.

III. THE INTERAGENCY WORKING GROUP ON FEDERAL WETLANDS POLICY

The Administration convened the Interagency Working Group on Federal Wetlands Policy in early June with the goal of developing a package of Clinton Administration initiatives to break the deadlock over Federal wetlands policy. The group has been chaired by the White House Office on Environmental Policy and has included the participation of the EPA, the Army (the Corps of Engineers), the Office of Management and Budget, and the Departments of Agriculture, Commerce, Energy, Interior, Justice, and Transportation.

The working group sought the views of a broad range of stakeholders representing all perspectives in the wetlands debate. For example, the working group has received presentations that have included: a bipartisan group of eight members of the U.S. Congress; representatives of State and local government; environmentalists; the development community; agricultural interests; scientists and others.

After listening to this broad range of interests, the working group began its policy deliberations by establishing the following five principles that serve as the framework for the Administration's comprehensive package of wetlands reform initiatives.

IV. FIVE PRINCIPLES FOR FEDERAL WETLANDS POLICY

- 1) The Clinton Administration supports the interim goal of no overall net loss of the Nation's remaining wetlands, and the long-term goal of increasing the quality and quantity of the Nation's wetlands resource base;
- 2) Regulatory programs must be efficient, fair, flexible, and predictable, and must be administered in a manner that avoids unnecessary impacts upon private property and the regulated public, and minimizes those effects that cannot be avoided, while providing effective protection for wetlands. Duplication among regulatory agencies must be avoided and the public must have a clear understanding of regulatory requirements and various agency roles;
- 3) Non-regulatory programs, such as advance planning; wetlands restoration, inventory, and research; and public/private cooperative efforts must be encouraged to reduce the Federal government's reliance upon regulatory programs as the primary means to protect wetlands resources and to accomplish long-term wetlands gains;
- 4) The Federal government should expand partnerships with State, Tribal, and local governments, the private sector and individual citizens and approach wetlands protection and restoration in an ecosystem/watershed context; and
- 5) Federal wetlands policy should be based upon the best scientific information available.

V. A COMPREHENSIVE PACKAGE OF REFORMS

Building upon these principles, the working group has developed a comprehensive package of initiatives that will significantly reform Federal wetlands policy, while maintaining protection of this vital natural resource. This package includes regulatory reforms and innovative, non-regulatory policy approaches; it includes administrative actions that will take effect immediately, and legislative recommendations for Congress to consider during the reauthorization of the Clean Water Act. The Clinton Administration looks forward to working closely with the Congress to implement this new approach to Federal wetlands policy. In addition, the Administration will establish an ongoing interagency working group, to be chaired by the Office on Environmental Policy, to monitor the implementation of the initiatives contained in the reform package.

The reform package includes the following initiatives:

- **To affirm its commitment to conserving wetlands resources, the Administration will issue an Executive Order embracing the interim goal of no overall net loss of the Nation's remaining wetlands resource base, and a long-term goal of increasing the quality and quantity of the Nation's wetlands;**

- To increase fairness in the wetlands permitting process, the Corps will establish an administrative appeals process so that landowners can seek recourse short of going to court;
- To increase fairness and efficiency in the wetlands permitting process, the Corps will establish deadlines for wetlands permitting decisions under the Clean Water Act;
- To reduce uncertainty for American farmers, yesterday the Corps and EPA issued a final regulation ensuring that approximately 53 million acres of prior converted cropland -- areas which no longer exhibit wetlands characteristics -- will not be subject to wetlands regulations;
- To reduce duplication and inconsistency for American farmers, the Soil Conservation Service will be the lead Federal agency responsible for identifying wetlands on agricultural lands under both the Clean Water Act and the Food Security Act;
- To close a loophole that has led to the degradation and destruction of wetlands, yesterday the Corps and EPA issued a final regulation to clarify the scope of activities regulated under the Clean Water Act;
- To emphasize that all wetlands are not of equal value, yesterday EPA and the Corps issued guidance to field staff highlighting the flexibility that exists to apply less vigorous permit review to small projects with minor environmental impacts;
- To ensure consistency and fairness, the Army Corps of Engineers, the Environmental Protection Agency, the Soil Conservation Service, and the Fish and Wildlife Service will all use the same procedures to identify wetland areas;
- To increase the predictability and environmental effectiveness of the Clean Water Act regulatory program and to help attain the no overall net loss goal, the Administration endorses the use of mitigation banks;
- To reduce the conflict that can result between wetlands protection and development when decisions are made on a permit-by-permit basis, the Administration strongly supports incentives for States and localities to engage in watershed planning;
- To provide effective incentives for farmers to restore wetlands on their property, the Administration will continue to support increased funding for the USDA's Wetland Reserve Program; and

- **To attain the long-term goal of increasing the quantity and quality of the Nation's wetlands, the Administration will promote the restoration of damaged wetland areas through voluntary, non-regulatory programs.**

The complete package of reform initiatives follows. (Some initiatives are listed under more than one heading for the sake of clarity.) By proposing an approach based upon effective protection and restoration of the Nation's wetlands, while adopting much-needed reforms to increase the fairness and flexibility of regulatory programs, the Administration's reform package offers a tremendous opportunity to move beyond the divisiveness that has characterized the wetlands policy debate in recent years.

A. ADDRESSING LANDOWNER CONCERNS

Issue Definition: The program that regulates wetlands under Section 404 of the Clean Water Act has been criticized as being slow, unpredictable and unfair. For example, it has been claimed that permits take too long to obtain; that wetlands delineations are sometimes slow, inaccurate, and inconsistent; and that it is unfair that the Corps does not provide a process by which landowners can appeal a jurisdictional determination or the denial of a wetlands permit short of suffering the expense of going to court.

Administration Position: The Clinton Administration believes that the Federal government has a responsibility to the public to conduct such regulatory programs in a manner that is efficient, responsive and fair. Therefore, the Administration supports the following reforms that will reduce the impact of regulation on the public, while meeting our objectives to protect wetlands:

● ***Deadlines for Permit Action*** Within one year the Corps will modify its regulations, through a public rulemaking process, to establish regulatory deadlines for reaching decisions regarding permit applications. The regulations will generally require the Corps to reach permit decisions within 90 days from the date of issuance of the public notice, unless precluded by other laws, such as the National Environmental Policy Act. The Administration will strongly support the additional personnel and funding necessary to meet these deadlines for permit action.

● ***The Adoption of an Appeals Process*** Within one year, the Corps will develop an administrative appeals process under the Section 404 regulatory program. The process, which will be implemented after a public rulemaking, will be designed to allow for administrative appeals of the Corps' determination that it has regulatory jurisdiction over a particular parcel of property, permit denials, and administrative penalties. The process will allow third parties to participate in applicant appeals of permit denials and will require that applicants exercise their right to appeal before initiating judicial action. The Administration will strongly support the additional personnel and funding necessary to implement successfully the appeals process.

The USDA already has an appeals process in place and landowners will be able to appeal SCS wetlands delineations through that administrative process.

● ***Delineation Training and Certification*** All employees of Federal agencies who conduct wetlands delineations will be required to complete the interagency wetlands delineation training program to improve accuracy and consistency in delineation in Federal wetlands programs or have comparable training and experience. As appropriate, State and Tribal agencies will also be encouraged to participate in the Federal training program. In addition, by the end of 1993, the Corps will propose regulations for implementing a certification program for private sector delineators.

By requiring training of Federal delineators, jurisdictional determinations can be done more accurately and consistently across the country. By encouraging the growth of a pool of certified private sector wetlands consultants, jurisdictional determinations can be performed far more quickly than if the job is solely the responsibility of Federal agency personnel. In addition, the Corps will streamline the process by which it considers and accepts delineations performed by certified wetlands consultants.

● ***Promote Voluntary, Cooperative Programs.*** With 75 percent of the Nation's remaining wetlands in the lower 48 States located on privately owned property, it is clear that cooperation with the private sector in implementation of wetlands protection and restoration activities is critical. Advance planning (see next issue) offers an excellent opportunity to involve the public in general, and property owners in particular, in developing and implementing wetlands protection and restoration plans. The Administration will support planning activities that include cooperative activities with property owners, and will increase support for programs that assist landowners in the implementation of such plans through restoration, technical assistance and information programs.

B. ADVANCE PLANNING AND WATERSHED MANAGEMENT

Issue Definition: Typically, decisions affecting wetlands are made on a project-by-project, permit-by-permit basis. This often precludes the effective consideration of the cumulative effects of piecemeal wetlands loss and degradation. It also hampers the ability of State, Tribal, regional, and local governments to integrate wetlands conservation objectives into the planning, management, and regulatory tools they use to make decisions regarding development and other natural resource issues. This can often result in inconsistent and inefficient efforts among agencies at all levels of government, and frustration and confusion among the public.

In contrast, advance planning, particularly comprehensive planning conducted on a watershed basis, offers the opportunity to have strong participation by State, Tribal, and local governments and private citizens in designing and implementing specific solutions to the most pressing environmental problems of that watershed. Advance planning generally involves at least the

identification, mapping, and preliminary assessment of relative wetland functions within the planning area. More comprehensive advance planning may identify wetlands that merit a high level of protection and others that may be considered for development, and may also incorporate wetlands conservation into overall land use planning at the local level. Advance planning can provide greater predictability and certainty to property owners, developers, project planners, and local governments.

Administration Position: To encourage greater use of comprehensive advance planning, particularly with State, Tribal, regional, and local involvement, and to identify wetlands protection and restoration needs, opportunities, and concerns, the Administration supports the following actions:

- ***Provide Incentives for States/Locals to Integrate Watershed and Wetlands Planning.*** The Clean Water Act should authorize the development of State watershed protection programs, which should include local and regional involvement and Federal approval of the State programs. Wetlands should be incorporated into the overall watershed approach, with minimum standards for wetlands protection and restoration planning. Approved watershed plans would receive a high priority for technical and financial support for activities such as mitigation banking, advance identification, and watershed-based categorization under the Section 404 regulatory program. There would also be a high priority given to developing Programmatic General Permits that defer to local regulatory programs implementing approved watershed plans.
- ***Endorse State/Tribal Wetlands Conservation Plans.*** Congress should endorse the development of State/Tribal comprehensive wetland plans, with the goal of supporting State and Tribal efforts to protect and manage their wetlands resources. EPA is currently funding the development of 22 State Wetlands Conservation Plans; Congress should provide EPA the authority to use its Wetlands Grants program to fund both their development and implementation.
- ***Provide for Greater Integration of Advance Planning Into the Section 404 Regulatory Program.*** The Administration will support efforts to better integrate advance planning into the Section 404 regulatory program, including appropriate local or watershed-based categorization frameworks and regionalized improvements to implementation of the existing Nationwide Permit 26 in headwaters and isolated waters. Such opportunities are expected to grow as States, Tribes, and regional and local governments progress on watershed plans, State Wetlands Conservation Plans, and other wetlands-related planning processes. Where State, Tribal, regional, or local governments have approved watershed plans that address wetlands, EPA and the Corps will give high priority to assisting with the development of categorization of wetland resources for the purpose of Section 404. Categorization approaches should be local or regional in nature, and reflect the full range of impacts and functions that affect wetlands within the watershed or planning area.

● ***Programmatic General Permits (PGPs) Under Section 404.*** The Corps will issue guidance which specifies the circumstances under which State, Tribal, regional, and local governments with existing regulatory programs may assume a more active role in wetlands protection while reducing duplication with Federal programs. PGPs are extremely useful in reducing unnecessary duplication between Federal and non-Federal regulatory programs and in generally enhancing the role of State and local governments and of advance planning, in decisions regarding wetlands and other aquatic resources. The Administration recommends that Congress amend Section 404(e) of the Clean Water Act to provide explicitly for issuance of PGPs, with appropriate environmental safeguards, for approved State, Tribal, regional, and local regulatory programs.

● ***Improve Nationwide Permit 26 Through Regionalization.*** In order to improve the implementation of existing Nationwide Permit 26 (NWP 26) in isolated waters and in headwater areas, the Corps, in coordination with appropriate Federal, State, and Tribal agencies, and with the opportunity for public notice and comment, will undertake a field level review of NWP 26 to develop regional descriptions of the types of waters, and the nature of activities in those waters that will not be subject to authorization under NWP 26. Advance planning efforts that have assessed the functions and values of local isolated wetlands and headwaters, and have considered factors such as cumulative losses and scarcity of particular classes of waters, will be used to facilitate this effort.

● ***Mitigation Banking.*** Wetland mitigation banking refers to the restoration, creation, enhancement, and, in certain defined circumstances, preservation of wetlands expressly for the purpose of providing compensatory mitigation in advance of discharges into wetlands authorized under the Section 404 regulatory program. Advance planning can be used to identify appropriate locations for, and uses of, mitigation banks. EPA and the Corps have issued guidance to their field staff that clarifies the manner in which wetlands mitigation banking fits in the Section 404 regulatory program. Congress should endorse the appropriate use of banking, with environmental safeguards, as a compensatory mitigation option under the Section 404 regulatory program, and explicitly allow use of the State Revolving Fund to capitalize mitigation banks.

● ***Promote Voluntary, Cooperative Programs.*** With approximately 75 percent of the Nation's remaining wetlands in the lower 48 States located on privately owned property, it is clear that cooperation with the private sector in implementation of wetlands protection and restoration activities is critical. Advance planning offers an excellent opportunity to involve the public in general, and property owners in particular, in developing and implementing wetlands protection and restoration plans. The Administration will support planning activities that include cooperative activities with property owners, and will increase support for programs that assist landowners in the implementation of such plans through restoration, technical assistance, and education and information programs.

- ***Revise the Executive Order on Wetlands.*** The existing Executive Order on wetlands (E.O.11990) will be revised to direct the Federal agencies to take a watershed/ecosystem approach to wetlands protection and restoration. In addition, it will require Federal agencies that conduct or assist with multi-objective natural resource planning to incorporate wetlands protection into their programs to the extent practicable.

- ***Provide Better and Coordinated Information and Technical Assistance on Wetland Issues.*** The Federal agencies will coordinate efforts to provide States, Tribes, regional and local governments, and the public with timely, consistent information concerning wetlands programs. The agencies will develop a strategic plan for delivering information on regulatory programs, and encourage the development of innovative education and outreach materials and initiatives to assist the public in understanding wetlands issues.

The Administration will also direct the Wetlands Subcommittee of the Federal Geographic Data Committee to complete reconciliation and integration of all Federal agency wetland inventory activities. In addition, the Administration will coordinate wetlands restoration, research, inventory, monitoring, cooperative programs, and information and education activities.

C. AGRICULTURE

Issue Definition: Two Federal statutes regulate certain activities in wetlands on agricultural lands. The Food Security Act Wetlands Conservation provision, which is known as the Swampbuster program, is administered by the Soil Conservation Service (SCS) of the U.S. Department of Agriculture, in consultation with the Fish and Wildlife Service of the Department of the Interior. The Clean Water Act Section 404 program is administered jointly by the Department of the Army and the Environmental Protection Agency. American farmers have at times been subjected to needless duplication and frustrating inconsistency in the implementation of these two statutes.

Administration Position: The Administration recognizes the valuable contribution of agricultural producers to the Nation's economy and more generally to the American way of life. We also appreciate the challenges faced by farmers as they try to comply with wetlands regulations, as well as other environmental requirements affecting farm operations. As a result, the Administration is committed to ensuring that Federal wetlands programs do not place unnecessary restrictions or burdens on farmers and other landowners, while providing necessary environmental safeguards.

The Administration has identified a number of actions that can be taken to reduce the impact of these two wetlands protection programs on American agriculture. At the heart of this effort is a commitment on the part of all Federal agencies involved to work closely and cooperatively to coordinate their work under these two statutes so as to increase efficiency, minimize duplication, and reduce inconsistencies between the programs.

The following initiatives demonstrate our commitment to protect and restore the Nation's wetlands and eliminate unnecessary impacts on the farm community:

- ***Prior Converted Cropland Rulemaking.*** EPA and the Corps have just completed a rulemaking which assures American farmers that an estimated 53 million acres of prior converted cropland will not be subject to regulation under Section 404 of the Clean Water Act. These lands were converted from wetlands to croplands prior to the passage of the Food Security Act of 1985, which established the Swampbuster program, and no longer exhibit wetlands characteristics. The Administration is also recommending that Congress include in the Clean Water Act a definition of "waters of the United States" that explicitly excludes from Clean Water Act jurisdiction areas determined to be prior converted cropland.

- ***A Package to Eliminate Duplication and Inconsistency***

The SCS, EPA, the Corps, and FWS signed an interagency agreement on August 23, 1993 that will reduce existing overlap and inconsistencies in the implementation of Federal wetlands programs affecting agricultural lands by undertaking, within 120 days, the following initiatives:

- ***Make the SCS the Lead Agency on Agricultural Lands.*** The SCS, the Corps, EPA, and FWS will develop procedures to provide that SCS wetland delineations will represent the final government position on the extent of Swampbuster and Clean Water Act jurisdiction on agricultural lands. Interagency training programs will be developed to ensure that agency field staff are properly trained, that standard, agreed-upon methods are utilized in making delineation and mitigation determinations, and that EPA and the Corps, consistent with their statutory authorities, have the ability to monitor SCS determinations on a programmatic basis. SCS, EPA and the Corps will also coordinate enforcement responsibilities on agricultural lands to ensure that the Federal government's activities are equitable, and consistent.

- ***Guarantee Consistency in Delineations on Agricultural Lands.*** In order to ensure consistency in identifying wetlands on agricultural lands, the Corps, EPA, SCS, and FWS will all use the same procedures to delineate wetlands. The agencies will develop field guidance for implementing the 1987 Wetlands Delineation Manual to establish procedures for identifying wetlands in areas managed for agriculture. The agencies will also expedite current efforts to revise the SCS Food Security Act Manual to eliminate inconsistencies between wetlands delineation procedures in the FSA Manual and the 1987 Manual.

- ***Greatly Increase Farmers' Certainty in Agency Decisions.*** The Corps, in coordination with EPA, SCS, and FWS, will propose a Nationwide General Permit for discharges associated with "minimal effects" and "frequently cropped with mitigation" conversions determined by SCS and FWS to qualify for exemption

from Swampbuster provisions. This will provide greater certainty to the Nation's farmers that they can rely on SCS/FWS mitigation determinations. While the Nationwide permit will include appropriate conditions to protect valuable wetlands, an individual review by the Corps and EPA will generally not be required.

- **Clarify that Certain Man-Made Wetlands Are Not Jurisdictional.** The Corps and EPA will incorporate examples of certain man-made wetlands, such as non-tidal drainage and irrigation ditches excavated on upland, and irrigated lands that would revert to upland if irrigation ceased, into their regulations to clarify the types of waters that are generally not subject to Clean Water Act jurisdiction because they are created out of upland.

- **Wetlands Reserve Program.** The Wetlands Reserve Program (WRP) offers a significant opportunity to assist farmers who are interested in restoring wetlands on their property. Response by farmers to the nine State pilot program was overwhelming, with proposals for 250,000 acres of restoration by over 2300 farmers. The 1994 Appropriations conference report provides for 75,000 new acres to be enrolled in the WRP. When passed this will more than double -- to 20 -- the number of states where producers can participate in the program. The recent Midwest flood has created a particularly pressing need to assist farmers in the voluntary restoration of wetlands that have historically provided valuable flood protection. Congress should fully fund the Administration's budget requests for the WRP in 1995, and should expand the program in the 1995 Farm Bill.

D. CATEGORIZATION

Issue Definition: A persistent criticism of the Section 404 regulatory program is that the permit process is inflexible to the extent that "all wetlands are treated the same" from a regulatory perspective. Such criticisms have led to calls for a nationwide categorization system to rank wetlands based upon their relative function and importance to society.

One proposed approach would require that all of the Nation's wetlands be mapped and categorized "up front" as either "high-", "medium-", or "low-value." The ranking based upon this *a priori* categorization would, in turn, govern the regulatory response at the time of a specific permit application.

Administration Position: While conceptually *a priori* categorization and ranking may seem attractive, its technical, fiscal and environmental implications make it unworkable. For example, simply mapping the lower 48 States at a scale suitable for detailed regulatory use would involve a mammoth undertaking yielding nearly 14 million maps and costing in excess of \$500 million. Assessing the functions of every wetland in the country would be a far larger and more complicated task and would require staffing and funding many times that necessary to complete mapping alone.

There is currently no scientific basis for a nationwide ranking of functionally distinct and diverse wetland types; any such scheme would be extremely difficult and require many years to develop. The suggestion contained in one legislative proposal that the Federal government buy all "high-value" wetlands would be infeasible from a budgetary standpoint. The Congressional Budget Office estimates the acquisition costs alone for the lower 48 States to range between \$10 billion and \$45 billion.

Finally, an *a priori* categorization and ranking approach would not provide for consideration of the individual impacts associated with specific projects. This makes little sense from the standpoint of either development or wetlands protection. For example, small projects with minor impacts would be arbitrarily prevented from proceeding in a "high-value" wetland area. At the same time, large and environmentally damaging projects would be automatically approved if they were located in "low-value" wetland areas. A nationwide *a priori* categorization scheme would further complicate the Section 404 program and would conflict with the Administration's goals of administering a scientifically sound regulatory program that is efficient, predictable and understandable.

In contrast to nationwide *a priori* categorization, opportunities exist to provide greater predictability and certainty in the regulatory process while increasing participation at the State and local levels. Local or regionally developed advance planning at the watershed level can provide a scientifically sound and workable framework for early consideration of variations in wetland functions within the Section 404 program. Appropriate functional assessment techniques can be applied to all wetlands within the boundaries of a particular watershed or planning area, and reasonably foreseeable development needs can be superimposed upon this inventory and assessment to identify appropriate regulatory responses in advance of specific permit applications. Highly functional and ecologically significant wetlands can be identified as deserving a very high standard of protection; conversely, wetlands with limited function and ecological significance, or activities that would cause minimal environmental harm, can be identified as appropriate for general permits or other regulatory streamlining methods.

In the context of individual permit reviews, the Section 404(b)(1) Guidelines currently provide the Corps and EPA with the flexibility to appropriately scale the regulatory response to reflect the relative function of the affected wetland, the character of the proposed discharge, and the probable environmental impact.

The Administration recognizes that "all wetlands are not the same" and that permit applicants deserve a timely and predictable regulatory response that is appropriate for the project being proposed. To this end, the Administration proposes the following actions:

- **Issue Section 404(b)(1) Guidelines Flexibility Guidance.** EPA and the Corps have issued guidance to their field staff to clarify and standardize implementation of the flexibility afforded by the 404(b)(1) Guidelines to make regulatory decisions regarding the analysis of project alternatives based on the relative severity of the environmental

impact of proposed discharges. This guidance clarifies that small projects with minor impacts are subject to less rigorous permit review than larger projects with more substantial environmental impacts.

- ***Develop Improved Analytical Tools for Wetlands Functional Assessment.*** The agencies will expedite development of a new approach for wetland functional assessment known as the Hydrogeomorphic Classification System (HGM). The HGM methodology is being developed by the agencies and the academic community as an improved analytical tool to make timely and accurate assessments of wetland functions. This tool will assist the agencies in assessing the relative severity of environmental impact of proposed discharges to determine an appropriate regulatory response consistent with the 404(b)(1) Guidelines flexibility guidance referenced above.

- ***Encourage Advance Planning Efforts.*** The agencies will provide technical assistance for advance planning efforts addressing wetlands conservation, and will counsel planning participants on methods to link local or regional planning with Section 404 regulatory decision making. Wetland categorization will be supported within the context of an approved advance plan to provide landowners with early identification and characterization of wetlands on their property, streamlined permit review, and more flexible mitigation sequencing where appropriate.

- ***Regionalize General Permits for Activities in Defined Categories of Waters.*** The Section 404 program already embodies a form of wetlands categorization through use of Nationwide Permit 26 (NWP 26), a "category of waters" general permit that authorizes discharges into isolated waters and headwaters. The Corps will undertake, in close coordination with relevant State and Federal agencies, a field level review and evaluation of NWP 26 for the purpose of regionalizing and improving its use. Congress should amend Section 404(e) to recognize the concept of regionalized "category of waters" general permits.

E. GEOGRAPHIC JURISDICTION

The term "geographic jurisdiction" encompasses a set of wetlands issues that concern the determination of which waters fall within the jurisdiction of the Section 404 program of the Clean Water Act. These issues include the delineation manual that specifies the methodology by which wetlands are identified; the definitions of "wetlands" and "waters of the United States;" "artificial" wetlands; and isolated waters. (For "Delineation Training and Certification" see ADDRESSING LANDOWNER CONCERNS.)

Issue Definition: Delineation Manual

As previously indicated, there has been a great deal of controversy surrounding the manuals that Federal agencies use in the field to delineate wetlands. The 1989 Manual was strongly criticized by some who claimed that it was an attempt by the bureaucracy to greatly *expand* the geographic

jurisdiction of wetlands regulation without opportunity for public involvement. The proposed 1991 Manual that followed was roundly criticized by those who claimed that it would greatly *reduce* the scope of geographic jurisdiction applied to wetlands. In an attempt to resolve this controversy, in the fall of 1992 the Congress directed EPA to fund a National Academy of Science (NAS) study of wetlands delineation. That study is expected to be completed in the Fall of 1994. Since January 1993, both the Corps and EPA have adopted the 1987 Manual, which was in use in some parts of the country prior to the issuance of the 1989 Manual.

Administration Position: The Clinton Administration supports the use of the 1987 Wetlands Delineation Manual by the Corps, EPA, SCS, and FWS pending the evaluation of the NAS study. (See "Guarantee Consistency in Delineations on Agricultural Lands" under AGRICULTURE.) The use of the 1987 Manual by the Corps and EPA has increased confidence and consistency in identifying wetlands and has diminished the controversy associated with the 1989 and 1991 manuals. If the Federal agencies jointly conclude that the 1987 Manual should be revised to respond to recommendations of the NAS, any proposed changes will be the subject of a process that will provide full opportunity for public comment. In addition, any proposed changes will be field tested by the agencies prior to final adoption to determine their impact in the real world.

To increase public confidence in the Section 404 regulatory program, the Administration recommends that the Congress endorse the continued use of the 1987 Manual in the reauthorization of the Clean Water Act, pending recommendations that may result from the NAS study.

Issue Definition: Defining "Waters of the U.S." and "Wetlands"

The Clean Water Act regulates discharges to "navigable waters," which are defined in the statute as "waters of the United States." However, the Act does not contain a definition of "waters of the United States." Similarly, while the Act refers to "wetlands," the statute does not define the term. Explicit definitions of these terms in the statute, consistent with longstanding regulatory definitions, would clarify Congressional intent with regard to the scope of geographic jurisdiction under the Act.

Administration Position: The Administration recommends that Congress incorporate the definition of "waters of the United States" contained in existing EPA and Corps implementing regulations. To provide additional consistency among Clean Water Act and Food Security Act programs, Congress should also incorporate the definition of "wetlands" contained in the Clean Water Act regulatory definitions, which is essentially identical to the wetlands definition in the 1990 Farm Bill. (The Clean Water Act regulatory definition of wetlands is preferable because some States have used the definition in State wetlands statutes. To adopt a different definition at Federal and State levels of government would only create further confusion in the regulatory program.)

The EPA/Corps definition of "waters of the United States" explicitly includes recently promulgated language clarifying that "prior converted croplands" are not waters of the

United States for purposes of the Clean Water Act. Congress should include this clarifying language in statute as well.

The Administration also recommends that Congress add examples of "isolated waters" (e.g., prairie potholes, vernal pools, and playa lakes) to the statutory definition of wetlands. From a scientific standpoint, isolated wetlands perform many of the same vital functions performed by other aquatic areas widely accepted as wetlands, such as flood control and groundwater recharge, as well as providing critical habitat for migratory waterfowl and other wildlife, and contribute to achieving the objectives of the Clean Water Act both individually and as a class.

Issue Definition: "Artificial" Wetlands

Neither the Clean Water Act nor its implementing regulations distinguishes between natural and created wetlands. However, certain "artificial" wetlands do not normally exhibit the values and functions typically attributed to natural wetlands. These artificial wetlands are created inadvertently from upland by human activity and would revert to upland if such activity ceased. The fact that these areas are not specifically excluded from the jurisdiction of the Clean Water Act in either statute or regulation has caused confusion.

Administration Position: The EPA and the Corps will incorporate examples of artificial wetlands, such as non-tidal drainage and irrigation ditches excavated on upland, into their regulations to clarify the types of waters that are generally not subject to Clean Water Act jurisdiction because they are created out of upland.

F. MITIGATION AND MITIGATION BANKING

Issue Definition: Mitigating the harmful effects of necessary development actions on the Nation's waters is a central premise of Federal wetland regulatory programs. The Section 404 regulatory program relies upon a sequential approach to mitigating these harmful effects by first avoiding unnecessary impacts, then minimizing environmental harm, and, finally, compensating for remaining unavoidable damage to wetlands and other waters through, for example, the restoration or creation of wetlands.

Mitigation banking refers to a wetland restoration, creation, or enhancement effort undertaken expressly for the purpose of compensating for unavoidable wetland losses in advance of development actions, when compensatory mitigation is not appropriate, practicable, or as environmentally beneficial at the development site. Units of restored or created wetland are expressed as "credits", and accumulated credits are subsequently withdrawn to offset "debits" incurred at the development site.

Administration Position: The sequential approach to mitigation provides a logical, predictable, and reasonable framework for mitigating impacts associated with proposed

development actions. The Administration supports the use of mitigation banking in appropriate circumstances as a means of compensating for authorized wetland impacts.

The Administration is proposing the following actions to ensure that mitigation of environmental impacts within the Section 404 program is effective, predictable, and consistent with a watershed management perspective:

- ***Issue Mitigation Planning Guidance.*** The Corps, in coordination with EPA, FWS, SCS, and the National Marine Fisheries Service (NMFS), will issue guidance to their field staff to clarify the requirements for developing compensatory mitigation conditions in Section 404 permits. This guidance is intended to increase the success of mitigation projects in offsetting impacts to wetlands and other waters resulting from permitted activities. This guidance will assist permit applicants by providing greater consistency and certainty with regard to how Section 404 mitigation requirements are applied.

● ***Endorse the Use of Mitigation Banking Under the Section 404 Regulatory Program.*** While a number of technical and procedural questions regarding the establishment and long term management of mitigation banks remain, conceptually mitigation banking, with appropriate environment safeguards, offers numerous advantages. Banking provides for greater certainty of successful compensatory mitigation in the permit process by requiring mitigation to be established before permits are issued. Banks are often ecologically advantageous because they consolidate fragmented wetland mitigation projects into one large contiguous parcel that can more effectively replace the lost wetland functions within the watershed. Mitigation banks also provide a framework for financial resources, planning and technical expertise to be brought together in a fashion often not possible with smaller mitigation projects.

Recognizing the advantages offered by mitigation banking to compensate for wetlands losses, Congress should endorse the appropriate use of banking as a compensatory mitigation option under the Section 404 regulatory program, within environmentally sound limits. Congress should also explicitly allow use of the State Revolving Fund by States to capitalize mitigation banks.

- ***Issue Mitigation Banking Guidance.*** EPA and the Corps, in coordination with FWS, NMFS, and SCS have issued guidance to their field staff to clarify the manner in which wetlands mitigation banking is appropriately used within the Section 404 regulatory program. This guidance provides interim direction pending the results of additional studies, but will encourage, within environmentally sound limits, the use of mitigation banks for compensatory mitigation under Section 404.

● ***Develop Improved Analytical Tools.*** The agencies will expedite current efforts being coordinated by the Corps Waterways Experiment Station to develop an improved wetland functional assessment tool, the Hydrogeomorphic Classification System, to assist in conducting impact analysis and determining appropriate and effective mitigation measures.

G. RESTORATION

Issue Definition: This Nation has lost nearly half of the wetland acreage that existed in the lower 48 States prior to European settlement. Much of this loss was due to Federal policies from an earlier era that encouraged the drainage of wetlands. The effect of this wetland loss is reflected in declining populations of fish, waterfowl, and other living things dependent upon the aquatic environment; in degraded water quality; and, most recently, in the extent of flooding in the Midwest.

The Section 404 regulatory program under the Clean Water Act and the Swampbuster provisions under the Food Security Act are attempts to stem this loss of wetlands. At best, the regulatory approach can ensure no further overall net loss. But to achieve a positive increase in the Nation's wetlands will require the restoration of some damaged wetlands.

Our ability to restore wetlands, particularly inland wetlands in agricultural areas, has been well-established over the last decade. A number of private and governmental entities have successfully restored degraded or lost wetlands to productive status. For example, the Fish and Wildlife Service, in cooperation with private landowners across the Nation, has implemented 9,500 restoration projects affecting 200,000 acres. Last year, a 50,000 acre pilot of the USDA Wetlands Reserve Program received proposals from 2,300 farmers to restore 500,000 acres.

Administration Position: Restoring some former wetlands that have been drained previously or otherwise destroyed to functioning wetlands is key to achieving the Administration's interim goal of no overall net loss of the Nation's remaining wetlands, and its long term goal to increase the quality and quantity of the Nation's wetlands base.

In support of a broad-based effort to restore a portion of the Nation's historic wetlands base that has been destroyed or degraded in the past, the Administration proposes to take the following actions:

- ***Wetlands Reserve Program.*** The fiscal year 1994 Agriculture Appropriations conference report provides for 75,000 new acres to be enrolled in the Wetlands Reserve Program. When passed this will also more than double – to 20 – the number of States eligible for participation in the program. The Administration will also use this program in the Midwest to restore wetlands in the course of providing financial assistance to farmers and improved flood protection for all those affected by the recent flooding. The Administration will also pursue full funding of the President's budget request for the Wetlands Reserve Program in FY 1995, and will seek to have this program expanded in the 1995 Farm Bill.

- ***Promote Wetlands Restoration through Voluntary, Cooperative Programs and Outreach Activities.*** Wetlands conservation efforts have historically focused largely on wetlands regulation and acquisition. These programs continue to be essential to a

comprehensive strategy for achieving the Administration's wetlands goals. However, stemming the net loss of the Nation's wetlands base and achieving a long-term increase in wetlands acreage is dependent upon restoring wetlands that have been drained, diked, or otherwise destroyed in the past.

The universe of restorable former wetlands is predominantly on private lands, and the Administration presently has in place a number of Federal programs that focus on or incorporate voluntary, cooperative efforts to restore wetlands on private lands (e.g., FWS's Partners for Wildlife program, Bay and Estuary program, and North American Waterfowl Management Plan Joint Ventures; USDA's Wetlands Reserve, Water Bank, Water Quality Incentives, Forestry Incentives, and Stewardship Incentives programs.) The Administration will review existing Federal programs that seek to restore wetlands through cooperative, voluntary agreements and outreach efforts with private and other non-Federal landowners, and will examine opportunities to expand such programs, including education and outreach activities.

- ***Revise the Executive Order on Wetlands.*** The existing executive order on wetlands will be revised to incorporate the Administration's interim and long term wetland goals and to establish wetlands restoration as an essential vehicle for Federal and quasi-Federal agencies to achieve those goals through a voluntary approach.

H. ROLES OF FEDERAL AGENCIES

Issue Definition: Public support for Federal wetlands protection programs, such as the Clean Water Act Section 404 regulatory program and the Food Security Act Swampbuster program, has suffered during recent years from a perception that multiple agency roles in the Administration of these programs has contributed to confusion, delays, overlap, and a general sense that no single agency is "in charge".

Administration Position: The Administration is initiating steps to streamline the implementation of Federal wetlands protection programs by reducing duplication, overlap, and delay. For example, a memorandum of agreement has recently been signed to give the Soil Conservation Service, in consultation with the Fish and Wildlife Service, the lead agency for making wetlands delineations and mitigation decisions on agricultural land (see AGRICULTURE).

The Administration is committed to providing for effective and timely participation by the agencies with roles in Federal programs affecting wetlands while emphasizing the ultimate role of a single Federal agency decisionmaker. This increased coordination among the relevant agencies will be accomplished through the following mechanism:

- ***Continue Implementation of the 1992 Interagency Section 404(q) MOAs.*** EPA, the Corps, FWS, and NMFS have issued guidance to their field staff to improve interagency

coordination procedures established in the 1992 Memoranda of Agreement under Section 404(q). These MOAs define a process for expedited review and resolution of agency concerns regarding individual permit decisions. The MOAs also establish procedures for resolving concerns involving the implementation of Section 404 program policy that can be accomplished without delaying individual permit decisions.

The agencies will continue to use the 1992 MOAs and, based on this experience, determine whether additional guidance or revisions to the MOAs are necessary. It is critical to the ultimate effectiveness of the Section 404 program to preserve the responsibilities of Federal resource agencies such as the EPA, FWS and NMFS to reflect their relative expertise and authorities while reducing duplication, overlap, and delay. It is equally critical to recognize and understand the Corps' leadership and final decision-making role as "project manager" for the evaluation of permit applications under the Section 404 regulatory program.

I. ROLE OF STATE, TRIBAL, AND LOCAL GOVERNMENT

Issue Definition: Decisions on where and how to protect or restore wetlands can be often most appropriately made at State, Tribal, or local levels. However, the current Section 404 regulatory program is run at the Federal level, except for certain waters in one State (Michigan). Many States, Tribes, and local governments have their own wetlands programs, which often overlap, are inconsistent with, or are simply distinct from Federal programs. This has resulted in inefficiency, frustration by the regulated public, and significant confusion.

Administration Position: The Administration is committed to increasing State, Tribal, and local government roles in Federal wetlands protection and restoration efforts. To increase consistency and clarity and reduce the confusion generated by the current relationship between the Federal government and State, Tribal, and local governments in wetlands protection and restoration, and to bring decision making to more appropriate levels, the Administration is taking the following actions:

- ***Assist States, Tribes, and Local Governments in Taking a Stronger Role in Wetlands Protection.*** The Administration will provide technical and financial assistance and guidance to States, Tribes, and local governments to assist them in taking more of a leadership role in wetlands protection, e.g., through State/Tribal assumption of Section 404, development of comprehensive State/Tribal Wetland Conservation Plans, application of State/Tribal Section 401 Certification authority to wetlands, development of Programmatic General Permits under Section 404, and better coordination between State, Tribal, and local permit programs and the Section 404 program.

- ***Provide Incentives for States, Tribes, and Regional and Local Governments to Integrate Watershed and Wetlands Planning.*** The Clean Water Act should authorize the development of State/Tribal watershed protection programs, requiring local and regional

involvement and Federal approval of the State/Tribal programs. Wetlands should be incorporated into the overall watershed approach, with minimum requirements for wetlands protection and restoration planning. Approved watershed plans would receive a high priority for technical and financial support for activities such as mitigation banking, advance identification, and categorization under the Section 404 regulatory program. There would also be a high priority given to developing Programmatic General Permits that defer to local regulatory programs implementing approved watershed plans.

● ***Increase Deference to State, Tribal, Regional, and Local Wetlands Decisionmaking.***

The Corps will issue guidance which specifies the circumstances under which State, Tribal, regional, and local programs can effectively regulate Section 404 activities, through issuance of Programmatic General Permits (PGPs). The guidance will also clarify the safeguards required to ensure that these programs adequately protect wetlands and other waters.

The use of PGPs is designed to increase the roles of State, Tribal, regional, and local governments in wetlands protection, provide an incentive for watershed planning efforts, and reduce redundancy and overlap between these programs and the Federal Section 404 program. The Administration recommends that Congress amend Section 404(e) of the Clean Water Act to provide explicitly for issuance of PGPs with appropriate environmental safeguards for approved State, Tribal, regional, and local regulatory programs.

● ***Endorse State/Tribal Wetlands Conservation Plans.*** Congress should endorse the development of State/Tribal comprehensive wetland plans, with the goal of supporting State and Tribal efforts to protect and manage their wetlands resources. EPA is currently funding the development of 22 State Wetlands Conservation Plans; Congress should provide EPA the authority to use its Wetlands Grants program to fund both their development and implementation.

● ***Encourage State/Tribal Assumption of Section 404.*** Congress should provide EPA the authority to use its Wetlands Grants program to fund both development and implementation of State assumption of the Section 404 program. In addition, Congress should authorize partial assumption of the Section 404 program by States and Tribes as an interim step toward full assumption. By authorizing partial assumption of discrete areas within State or Tribal jurisdiction, the State/Tribe can get experience with the program as it develops full statutory equivalency, and the Federal government can defer to the State/Tribe as early as possible.

● ***Provide States/Tribes with Access to Wetlands Delineation Training.*** State and Tribal agencies will be encouraged to participate in the Federal interagency wetlands delineation training and certification programs to strengthen their abilities to conduct wetlands delineations, and to improve consistency in wetlands identification among State and Federal wetlands programs.

J. SCOPE OF REGULATED ACTIVITIES

Issue Definition: The Clean Water Act Section 404 program regulates "discharges" of dredged and fill material to wetlands and other waters of the United States. In the past, these terms have been interpreted in a way that created regulatory "loopholes" under which certain projects could be designed, using expensive and sophisticated methods, so that they did not require Section 404 authorization.

The environmental effects of these projects on wetlands are no different than less sophisticated projects involving discharges of dredged or fill material, which have been regulated under Section 404. Also, these loopholes have led to inconsistencies in how the Section 404 program has been implemented around the country.

Administration Position: The Administration has issued a final regulation, and is asking Congress to take corresponding legislative action, to close these regulatory loopholes by clarifying the types of activities that involve discharges of dredged or fill material subject to Section 404 review.

The following actions will result in better protection of wetlands, and improve the fairness, predictability, and consistency of the Section 404 program.

- **Clarify Definition of "Discharge of Dredged Material."** Under the final rule, this term is defined to ensure that discharges into wetlands and other waters of the United States will be consistently regulated when they are associated with excavation activities, such as ditching, channelization, or mechanized landclearing, that have environmental effects of concern. The rule explicitly excludes from Section 404 regulation discharges associated with activities that have only *de minimis*, or inconsequential, environmental effects. In an effort to reduce the impact of these changes on the regulation of minor activities with only minimal adverse environmental effects, the Corps will coordinate with EPA to develop additional general permits authorizing such minor activities. The revised definition does *not* affect the existing exemptions in Section 404(f) for ongoing farming, ranching, and silvicultural activities.

- **Clarify Definition of "Discharge of Fill Material."** The agencies also are clarifying the definition of "discharge of fill material" to ensure that activities in waters of the United States that involve the non-traditional use of pilings (e.g., shopping malls, parking garages) will require Clean Water Act authorization. In an effort to reduce the impact of these changes on the regulation of minor activities with only minimal adverse environmental effects, the Corps will coordinate with EPA to develop additional general permits that authorize such activities.

- *Legislative Clarification of Scope of Activities Regulated Under Section 404.* Congress should amend the Clean Water Act to make it consistent with the agencies' rulemaking.

K. STATE OF ALASKA

Issue Definition: The extent and nature of Alaska wetlands reflect, in part, climatological and physiographic conditions found in no other State. More than 99 percent of Alaska's wetlands remain, and much of the State's developable lands are wetlands. This abundance of wetlands in combination with Alaska's short building season, leads some to claim that the Section 404 program places a heavier burden on Alaskans than on the rest of the country.

The previous Administration attempted to address some of these concerns by proposing the "Alaska 1% rule" which would have exempted wetlands in Alaska from mitigation requirements until one percent of Alaska's wetland resources had been developed. The "Alaska 1% rule" was published for public comment in November 1992, and 83 percent of the over 6,500 comments received objected to the rule, raising concerns about its potential impact on the environment.

Objections to the proposed rule focused on several key considerations:

- An additional 1.5 million acres of Alaska's wetlands would be destroyed before the one percent threshold would be met, including potentially all of Alaska's 345,000 acres of extremely valuable coastal wetlands. Wetlands losses in Alaska have historically been greatest in coastal areas where the State's population is concentrated. For example, losses of high value coastal wetlands near the cities of Anchorage and Juneau are estimated to exceed 50 percent of their historic base.
- The proposed rule would hinder management efforts for several Federally listed or proposed threatened and endangered species that utilize Alaska's coastal wetlands, as well as hastening the listing of additional candidate species.
- Although full in-kind compensation is often not possible or practicable, opportunities do exist for restoration or rehabilitation of disturbed areas in proximity to a proposed development that have the potential to benefit affected fish and wildlife populations.
- There is enough flexibility in the existing Section 404 regulatory program to respond to Alaska's unique concerns administratively. During the last 20 years, of the approximately 4,000 permit applications received by the Corps' Alaska District, only 108 (2.7 percent) were denied; the remaining applications were either issued as individual or general permits, or withdrawn. Of the more than 3,000 individual permits issued, only 15 (0.5 percent) required compensatory mitigation.

Administration Position: Because of the significant adverse environmental consequences that it would allow, the "Alaska 1% rule" will be withdrawn. The best way to address Alaska-specific concerns regarding the Section 404 program is through targeting the specific areas where questions about program policies or implementation have been raised. Finalizing the proposed "Alaska 1% rule" would have far broader and avoidable adverse environmental consequences.

The EPA and the Corps will, within the next 90 days, initiate meetings with the Federal resource agencies, State and local government agencies, representatives of native villages, industry groups including oil and fishing interests, and environmental groups, to consider other environmentally appropriate means to assure regulatory flexibility and the feasibility of alternative permitting procedures in Alaska.

In addition, the Administration is proposing a number of actions to improve implementation of the Section 404 regulatory program nationwide (e.g., issuing guidance on flexibility in the Section 404(b)(1) Guidelines, mitigation banking, mitigation planning, advance planning, programmatic general permits; establishing an administrative appeals process; providing for more explicit consideration of wetland functions; and regionalizing Nationwide Permit number 26. See earlier discussion for details). These actions, in combination with any Alaska-specific proposals developed as a result of the process outlined above, should contribute significantly to addressing Alaska's concerns with implementation of the Section 404 regulatory program.

L. TAKINGS

Issue Definition: Some critics of the Section 404 regulatory program have asserted that Federal efforts to protect wetlands constitute a "taking" of private property and require compensation under the Fifth Amendment of the Constitution. Critics of the program have proposed legislation that would characterize permit denial decisions, and other Section 404 regulatory actions, as "takings" requiring compensation.

Administration Position: The Administration strongly supports private property rights. The equitable administration of any Federal regulatory program involves more than strict technical considerations and must include sensitivity to the rights and expectations of citizens. Implementation of the Section 404 program often requires a balancing of environmental protection, public interests, and individual interests.

Many activities undertaken on wetlands either are not regulated at all, are explicitly exempted from regulation, or are authorized by general permits. In situations where individual permits are required, the Federal agencies can work with permit applicants to design projects that meet the requirements of the law and protect the environment and public safety, while protecting the property rights of the applicant.

However, in rare instances the public interest in conserving wetlands may substantially interfere with the rights of landowners. In such instances, Federal action will be based

on the proposition that restrictions on the actions of the property owners in question are called for in order to protect the property rights, safety, environmental or economic interests of other individuals or the community at large.

In those situations where the necessary restrictions on use amount to a taking of the property, the owner will, of course, be entitled to compensation. Moreover, where a property owner believes that government action amounts to a taking, the courts are available to review such claims and to determine whether compensation is due. Due to the unique nature of each situation, these issues must be considered on a case-by-case basis. Therefore, the Administration does not support a legislative approach to this issue.

The Administration is strongly committed to reducing the impact of the 404 program on landowners. Many of the Administration positions that have been described in this paper are designed to make the program as efficient, predictable, consistent, and equitable as possible (see ADDRESSING LANDOWNER CONCERNS, AGRICULTURE and CATEGORIZATION).

VI. CONCLUSION

This comprehensive reform package represents a tremendous opportunity to move beyond the unnecessary polarization that has characterized the wetlands policy debate in recent years. While divisive, that debate has not been without value.

The critics of the wetlands regulatory program have performed a service to the country by highlighting the need for meaningful reform in the administration of wetland regulatory programs. Many of the much-needed reforms contained in this package -- such as permit deadlines, an appeals process, the use of mitigation banks, and increasing the role of State and local government in wetlands regulation -- have been proposed by critics of the current regulatory program.

The supporters of wetlands protection have also performed a service by helping to inform the Nation of the environmental and economic importance of wetlands, a vital natural resource that was once routinely destroyed. Their strong commitment to protecting and restoring this vital resource is also reflected in this package.

There will, no doubt, be individuals on each side of this divisive debate who will not be entirely pleased with every element of this reform package. But our approach provides effective protection of an important natural resource in a manner that is both fair and flexible, thus recognizing both the value of wetland resources and the need to minimize regulatory burdens.

VII. POSTSCRIPT: LESSONS FROM THE FLOOD

The entire Nation shares the pain of those Americans experiencing the physical destruction and economic loss caused by the disastrous floods that have devastated the Nation's heartland. Many lives have been lost, and billions of dollars in damage have been caused to property and crops. In the short term, we must use the tools available to us to assist those struggling to deal with severe economic hardship due to the floods. We must concentrate our attention on helping people rebuild their lives by protecting our riverfront communities and providing assistance to businesses and the agricultural community adversely affected by the floods.

We must also look to the future, and learn from these floods how to more effectively protect human health and safety, property, and the environment. Many scientists have concluded that past manipulation of the rivers in the Midwest has contributed to the current level of devastation by separating the river channels from their natural floodplains, eliminating millions of acres of additional flood storage capacity. Wetlands within the floodplain and higher in the watershed reduce floods by absorbing rain, snow melt, and floodwaters and releasing it slowly, thereby reducing the severity of downstream flooding.

We must be cautious not to repeat policies and practices which may have added to the destruction caused by these floods. One way to assist landowners while alleviating some flood risks is through funding wetlands restoration and acquisition programs targeted to help those in flood-ravaged areas. Programs such as the USDA Wetlands Reserve Program provide farmers with much needed support and increase the quantity of flood-absorbing wetlands in this region.

Of course, we recognize that wetlands and river system restoration and protection alone will not suffice. It will be critically important that we quickly rebuild many of the flood control structures. However, we have learned the importance of also looking at alternative non-structural measures that may provide as much or better flood damage reduction at the same or lower cost. Such measures would include using more natural river corridor systems and wetlands. In the longer term, it is important that *all* potential flood control measures, both structural and non-structural, be considered and evaluated from a pragmatic and cost-benefit standpoint.

It is not a question of whether to protect cities and farms; it is a question of how best to protect them. In the case of riverfront communities, protective levees may be the only reasonable answer, but in other circumstances, non-structural measures may make more sense. We can identify ways to protect and restore our river and wetlands systems so that they work *for* us, integrated with structural flood control measures. Of course, wetlands that provide flood control generally will also provide other important functions, such as fish and wildlife habitat, water quality improvement, and recreational opportunities. In our response to this flood-borne tragedy, the Administration will pursue measures that are the most effective means to prevent this catastrophe from happening again. Doubtless this will involve a combination of repair and construction of flood control structures together with restoration of natural flood attenuating river and wetlands systems.

Increase the quality & quantity of the Nation's wetlands resource base
avoid unnecessary impacts upon private property & the regulated public
no duplication among regulatory agencies
public must have a clear understanding of regulatory requirements & agency roles
encourage non regulatory programs to reduce government reliance on regulatory
expand partnerships with State, Tribal, & local governments, private sector

Issue an executive order for no net loss & long term increase in wetlands
Administrative appeals process (Corps)
establish deadlines for wetlands permitting decisions (Corps)
Identify procedures for Corps, EPA, DCS & FWS for identifying wetlands
mitigation banks & design regulations
provide incentives for states & localities to engage in watershed planning
continue supporting increased funding for USDA wetlands reserve Program
promote the restoration of damaged areas through voluntary mitigation programs

ADDRESSING LAND OWNER CONCERNS

- 1) Corps within a year will modify permit process regulations ^{through} a public rulemaking process (generally require 90 days)
- 2) Corps within a year will develop an administrative appeals process under Section 404
- 3) Army for federal training for wetlands delineation

miller
Ed Carrino

HP2

~~HP2~~

Steve
Arlin 703-528-1836
Boal water league

SET UP ~~WATERWAY~~ WATERSHED delineation program & have employees & State & Tribal agencies take the course

increase support for programs that assist landowners in the implementation of such plans through restoration, technical assistance, & info. programs

Advance planning & watershed management

Provide incentives for states/locals to integrate watershed & wetland planning
push to make sure clean water for watershed includes authorization of the development of state watersheds protection programs, which would incorporate wetlands

pressure congress to endorse state/tribal comprehensive wetland plans

support efforts to better integrate advance planning into section 404, when states have plans, Corps & EPA will give high priority to assisting with the development of categorization of wetland resources for sec 404

Corps needs to reconsider amendment 404(c) to provide for issuance of ROP's. Corps needs to issue guidance specifying circumstances under which, State, Tribal, regional, & local governments with reg programs may assume a more active role in wetlands protection while reducing duplication w/ Federal Programs.

Corps needs to integrate full review of NWP 26

Congress needs to endorse the appropriate use of banking, with environmental safe banks, as a compensatory mitigation option under section 404 regulatory program. & allow use of the state Reentry Fund to capitalize mitigation banks.

increase support for programs that assist landowners in implementation of voluntary programs

- reverse ex. order.

- coordinate efforts to provide states, Tribes, regional & local government.
- Develop a strategic plan for delivery w/o on reg programs to public

Agriculture: to prevent programs from placing unnecessary burdens on farmers
① Congress include in the Clean Water Act a definition of "waters of the U.S." that excludes from Clean Water Act jurisdiction areas determined to be prior converted cropland.

② ③ SES, Corps, EPA, FWS must develop procedures to provide that SES wetland delineations will represent the final Government position on Supplemental & CWA jurisdiction.
- training programs
- EPA + Corps can monitor
- SES, EPA, Corps will also coordinate adjacent riparian...

- ③ Corps, EPA, SCS, FWS - field guidance for implementing the 1987 Wetlands Delineation Manual to establish procedures for identifying wetlands in areas managed for agriculture

Expedite current efforts to revise the SCS Food Security Act Manual to eliminate inconsistencies between wetlands delineation procedures in the FSA Manual & the 1987 manual.

- ④ ↑ Farmer certainty - Corps, ^{with} EPA, SCS, FWS will prepare a nationwide General Permit for dredges associated with "minimal effects"

- ⑤ Corps & EPA will incorporate examples of certain man-made wetlands into regs.

- ⑥ Congress must fund Admin.'s budget request for the WRP in 1995 & should expand program in the 1995 Farm Bill (75,000 new acres in the 1994 Appropriation report)

Classification:

- ① expedite development of a new approach for wetland functional assessment known as the Hydrogeomorphic Classification System (HGM), help determine wetland functions.
- ② provide technical assistance for advance planning efforts, counsel planning participants on methods to link local or regional planning with section 404 regulatory requirements

③ caps w/ others - a full review & evaluation of WWP 26
for the purpose of rewording & improving its use

④ Congress should amend Section 404(c) to recognize
the concept of regulated "category of waters" general
permits.

Key point: what % of the 53 million acres is on the Mississippi
flood plain & what % of the voluntary response area response is
the nine state area was in the Mississippi flood plain. Could
there be a justification for advocating levees. (WWP)

Geographic Introduction

Congress: endorse continued use of the 1987 Manual in the reauthorization of the
Clean Water Act, pending recommendations that may result from the NBS study.

Congress: incorporate the definition of "waters of the United States" contained in
existing EPA & Corps regulations. And also, incorporate definition of "wetlands"
in the Clean Water Act.

Congress: Add examples of "isolated waters" to the statutory definition of wetlands.

EPA & Corps will incorporate examples of artificial wetlands into their regulations
to clarify the types of waters not subject to CWA jurisdiction.

Mitigation & Mitigation Banking

- 1) Issue Mitigation Planning Guidance: Corps, EPA, FWS, SCS, NMFS
- 2) Congress: endorse the use of banks as a compensatory offset mitigation option under section 404 regs program.
Should explicitly allow use of the State Revolving Fund to capitalize mitigation banks.
- 3) Expedite efforts by Corps, USFWS, EPA, NMFS to develop an improved wetland functional assessment tool (Hydrogeomorphic Classification System) to assist in impact analysis & appropriate mitigation measures

Restoration

WRP: Administration will use program for midwest. Receive full funding for Merit's budget request FY 1995 expanded in 1995 "Forest Bi"

- Admin will review existing Fed programs on voluntary restoration & examine opportunities to expand in education & outreach
- EO will be revised to incorporate admin. interim & long term goals & to establish wetland restoration as an essential vehicle to achieve these goals by a voluntary approach.

Rules of Fed Agencies

- increased coordination

① DME 1992 MWA

②

Rule of State, Tribal & Local Government coordination

- provide technical & financial assistance & guidance to states, Tribes, & local governments (Administration)
- ~~Clear water Act~~ an
- Congress: authorize the development of state/tribal watershed program approach watershed plans would receive a high priority for technical & financial support. Program the ground limits
- Corps - issue guidance specify circumstances under which state, tribal, regional & local programs can effectively regulate section 404 activities, through issuance of PGP's
- Congress - amend 404(c) of CWA to provide for PGP's
- Congress - authorize the development of state/tribal comprehensive watershed plans, provide EPA with the authority to use its wetlands grants program to fund both the development & implementation of ^{total watershed} state plans.
- Congress - provide the EPA the authority to use its Wetlands Grants Program to fund both development & implementation of state assumption of the section 404 program.
 - also partial assumption by states & tribes

move State + Total $\neq$ heavy in wetlands delisting

Scope of Regulated Activities

- clearly definition of "Discharge of Dredged material"
- of "Discharge of Fill material"

Congress & EPA should coordinate to develop low impact permits

- Congress should amend CWA to make it consistent with agencies' rule-making

ACASEA:

~~within~~ within 14 rule

within 90 days EPA & Congress coordinate meetings with Fed resource agencies, state & local government, reps from native villages, industry groups & environmental groups to discuss

check by 24 to make sure didn't miss)

Addressing Land Owner Concerns:

1) **CORPS**- Within a year will modify permit processing regulations through a public rulemaking process to establish regulatory deadlines for reaching decisions.

corps - administrative appeals process within one year

2) **CORPS**- Propose regulations for implementing a certification program for private sector delineators.

3) **CORPS**- Streamline process by which it considers and accepts delineations performed by certified wetlands consultants.

4) **CORPS**- Mandatory training process for federal delineators. Encourage the growth of a private sector pool.

5) **ADMINISTRATION**- Support planning activities with property owners and will increase support for programs that assist landowners in the implementation of restoration, technical assistance, and information programs.

Advance Planning and Watershed Management

4) **EPA and CORPS**- Give high priority to assisting with the development of categorization of wetland resources when governments have approved watershed plans.

5) **CORPS**- Issue guidance which specifies the circumstances under which State, Tribal, regional, and local governments with existing programs may assume more active roles.

6) **CONGRESS**- Amend Section 404(e) of CWA to provide for PGP's for approved State, Tribal, regional and local regulatory programs.

7) **CORPS**- in coordination with federal, state, tribal, agencies, will develop regional descriptions of the types of waters and activities which do not fall under the NWP 26 authorization.

10) Agencies- Develop a strategic plan for delivering information on regulatory programs and encourage the development of innovative education and outreach materials.

11) **ADMINISTRATION**- Direct Wetlands Subcommittee of the Federal Geographic Data Committee to complete reconciliation and integration of all Federal agency wetland inventory activities.

12) **CONGRESS**- include in the Clean Water Act a definition of "waters of the U.S." that excludes from the CWA jurisdiction

MTI level security
compatible to
size of project
budget

areas determined to be prior converted land. Incorporate the definition contained in existing EPA and Corps regulations. Also incorporate the definition of "wetlands" in the Clean Water Act.

Delineation

- 13) **SCS, CORPS, EPA, FWS** must develop procedures to provide SCS Wetland delineations, which will represent the final government position on Swampbuster and CWA jurisdiction. *statement released to wetland*
- training programs
 - coordinate enforcement responsibilities.

Delineations

- 14) **CORPS, EPA, SCS, FWS**- Develop field guidance for implementing the 1987 Wetlands Delineation Manual. Expedite efforts to revise **SCS Food Security Act Manual**.

general "minimal" permit

- 15) **CORPS, EPA, SCS, FWS**- Prepare a nationwide general permit for discharges associated with "minimal effects." *IAS State release to wetland not done prepare 9/10/85 within 120 days MTF*

eg of.

- 16) **CORPS, EPA**- Incorporate examples of certain man-made wetlands into regulations. #6

WRP

- 17) **CONGRESS**- Must fund administration's budget request for the Wetlands Reserve Program in the 1995 Farm Bill.

Categorization:

categorization

- 18) Expedite development of Hydrogeomorphic Classification System.

~~Provide technical assistance for advance planning efforts.~~

Counsel planning participants on methods to link local or regional planning with section 404 regulatory decision making.

NWP 26

- CORPS**- a field review and evaluation of NWP 26 for the purpose of regionalizing and improving its use.

general "category" permits

- CONGRESS**- Amend Section 404(e) to recognize the concept of regionalized "category of waters" general permits

GEOGRAPHIC DISTRIBUTION

Def.

- CONGRESS**- Endorse continued use of the 1987 Manual in the reauthorization of CWA, pending recommendations that may result from the NAS study.

eg of

- CONGRESS**- Add examples of "isolated waters" to the statutory definition of wetlands.

7.6)

- EPA and CORPS**: Will incorporate examples of artificial

3
wetlands into their regulations to clarify the types of waters not subject to CWA jurisdiction.

Mitigation and Mitigation Banking:

mit ✓ **CORPS, EPA, SCS, FWS, NMFS**-Issue Mitigation Planning Guidance. *issued 8/23/93 for return pending completion of Phase I (2yr)*

mit **CONGRESS**- Endorse the use of banking as a compensatory mitigation option under Section 404 regs program. Should explicitly use the State Revolving Fund to capitalize mitigation Banks.

category 1 **CORPS**- Expedite efforts by Waterways Experiment Station to develop an improved wetlands functional assessment tool. (HYdrigeomorphic classification system) To assist in impact analysis and appropriate mitigation measures.

Restoration:

rest WRP

rest outreach Review existing Fed programs on voluntary restoration and examine opportunities to expand in education and outreach

EO EO will be revised to incorporate ADM, interim and long term goals and to establish wetlands restoration as an essential vehicle to achieve these goals through a voluntary approach.

ROLES of Federal Agencies

next 110 days

nil

Role of State, Tribal, and Local Government

~~provide technical and financial assistance and guidance to states, tribes, and local governments~~

PGP **CONGRESS**- Authorize development of state/tribal watershed programs. Approved watershed plans would receive a high priority for technical and financial support. Programmatic general permits. *Amend Section 404(e) of CWA to provide for PGP for approved state/tribal watershed programs*

PGP ? **CONGRESS**- issue guidance specifying circumstance under which state, tribal, and local programs can effectively regulate section 404 activities through issuance of PGP's

PGP **CONGRESS** Amend 404(e) of CWA to provide for PGP's *use A.P.W.M. section sentence*

same as below? **CONGRESS**- endorse the development of state/tribal comprehensive wetland plans. Provide **EPA** the authority to use its wetlands grants program to fund both development and implementation of state wetlands conservation plans.

See above?

②

CONGRESS- Provide the EPA with the authority to use its wetlands grants program to fund both development and implementation of state assumption of its section 404 program, and partial assumption by states and tribes.

Scope of Regulated Activities

Clarify definition of "Discharge of Dredged Material"

Clarify definition of "Discharge of Fill Material"

general minimum permits

CORPS, EPA- coordinate to develop low impact permits *done in 8/23*

CONGRESS- Should ammend CWA to make it consistent with agencies rulemaking.

MTF

ALASKA

Administration

Withdraw 1% rule

CORPS, EPA- Within 90 days initiate meetings with Fed resource agencies, state, and local governments, reps from native villages, industry groups, and environmental groups to discuss other appropriate means to assure regulatory flexibility.

DRAFT EO TO BE completed by 12/12/85

EPA : Develop guidance to clarify the Section 404(d) regulations (from J's draft)

Congress : amend CWA 404(b)(1) to formally acknowledge the flexibility articulated in the proposed Corps/EPA guidance

PRR draft July 8

GLOBAL ENVIRONMENTAL ISSUES

EILEEN CLAUSSEN

SENIOR DIRECTOR FOR GLOBAL ENVIRONMENTAL AFFAIRS
NATIONAL SECURITY COUNCIL

DAVID DONIGER

ASSOCIATE DIRECTOR FOR
GLOBAL ENVIRONMENT, OEP

1. Climate Change
2. Multilateral Banks
(incl. World Bank/GEF)
3. Biodiversity
- ~~4. Oceans~~
(incl. ~~whales~~)
- ~~5. Nuclear~~
6. Arctic / Antarctica
7. UN Organizations
8. NEPA

DANIEL BLANK

ASSOCIATE DIRECTOR FOR
INTERNATIONAL TRADE AND
DEVELOPMENT, OEP

1. Trade and Environment
(incl. NAFTA, GATT, etc.)
- ~~2. Environmental Assistance~~
(incl. ~~U.S.AID~~)
3. Forests
4. Fresh Water
5. Desertification
- ~~6. Population~~
7. UN Commission on
Sustainable Development
8. Stratospheric Ozone

Things already done: 1) EPA, DSA without independent bank interim in yrs. MTF 0
 2) kind of analysis. Seems to expedite & address "minor impact" status EPA, DSA MTF, 1
 3) Statement that most will include provisions for training, standard determination MTF, 2
 methods, caps & EPA monitoring, enforcement coordination

WDCR

- 2) complete technical guidance for agency field staff on conducting wetlands jurisdictional determination
- 3) Corps will prepare a nationwide general permit of EPA, SCS for packages associated with "minimal effects" PWS, WMS

within 120 days

"excavation rule"

Draft EO completed in the next 120 days
 (from Q&A's)

Addressing land owner concerns

Corps establish regulatory deadlines for reach permit application decisions within one year

administrative appeals process (corps) within one year

that WRP to be proposed rule in fall, 1993 → Public comment → final rule effective 3, 94

Agreement

Integrating training programs will be developed to ensure agency field staff are properly trained.

1994 By RFP Bill will provide 75,000 additional acres
 congress will be asked to expand the RFP from Bill

Centgomery

EPA & Corps have issued guidance to emphasize further flexibility.
level of review commensurate with severity

AGM will be available for distribution in October 1993

Regional assessment methods procedural document
and specific functional assessment methods will be
available during the latter part of FY94 Corps

? MWP 26 to be revised - Corps

(Geographic Distribution
resources are developing existing b/w 1987 Corps Manual & SCS
Forest Security Act Manual.

NBS study to be finished Sept. 30, 1994

Corps must ratify "wetlands" & "waters of the U.S." definitions

Michigan

State Rules

1) assumption of 404 program, development of comprehensive
wetland conservation program, necessary for 401 Certification
criteria, PBP, better coordination b/w state, trib, permit
programs & Sect. 404

Scope of Activities Regulated

- 1) Corps & EPA are issuing decisions to their regulators
clarifying the types of activities that require discharge
of dredge or fill material subject to 404 regulation
- 2) It will appear as final rule (later?)
- 3) Corps intends to propose general permits for discharges associated
with excavation activities that have minimal impacts on the
aquatic environment.

PLASMA

w/ 60 days from 8/24/93. will initiate the meetings

MEMORANDUM

Date: September 7, 1993
To: Will and Katie
From: Ranjeet Bhatia, Office on Environmental Policy
Re: Playa del Rio

I write this in follow up to Governor Ann Richards' concerns regarding the fate of her state's Playa Del Rio wetlands property. Governor Richards had asked that we look into the FDIC's plans for the sale of the property and ensure that the land would not be sold to developers.

I spoke to Kevin Stein, FDIC Associate Director, Division of Resolution. Kevin informed me that his office controls the Playa Del Rio property and that FDIC has no intention to sell the property to developers. He explained that FDIC does have plans to sell the property to the Department of Interior, but detailed his frustration with the Fish and Wildlife Service over delays in the sale and transfer of the property.

Russ Earnst, Deputy Assistant Director-Ecological Services, FWS, advised me that the details of the sale were near completion, and that he expected the purchase of the property to be completed by the end of the fiscal year. I did ask him to fax me an expected course of action. His fax is attached.

What's going to happen

for construction projects

you get with FDI 3 end of fiscal year

Chris

THE WHITE HOUSE

WASHINGTON

August 26th, 1993

MEMORANDUM FOR: WILL STELLE
KATIE MCGINTY

FROM: RANJ BHATIA

SUBJECT: PLAYA DEL RIO

In write this in follow up to Governor Ann Richards' concerns regarding the Playa Del Rio wetlands property. Governor Richards had asked that we look into FDIC's plans for sale of the property and ensure that the land would not be sold to developers.

Kevin Stein of the FDIC Division of Resolutions informed me that they fully expect to sell the property to USFWS, but that the expected sale has suffered some delays. He did assure me that there were no plans to sell this property to developers. USFWS indicated that they have resolved the purchase agreements, and that the purchase of the property should be finalized by the end of the fiscal year.

*Kevin Stein: Assoc. Director. Operations & Control Branch
OFFICE OF SUPERVISION AND RESOLUTION*

*Doss Earnest: Deputy Asst Director
Fish & Wildlife Enhancement
USFWS.*

FDIC

Div. of Resolution

had mentioned prostitution
associate Director
for ~~the~~ plastic
resolution Fund
FRF

~~1/2/72~~

Cathy ~~Bloze~~ ^{B. Bove}

1-800-492-7114
ext 8262
410-269
8262

Oakwood Apartments
301 417
0444

①

which can interest buyer of 2

miss ②

EARN ~~EST~~

plus interest 288-4646

land & water can public

or private

ask him to check into who might want it

FDIC liquidation div

asset Disposition Branch

Opn. 393-84100

Associate Director Arthur F. Lorentzen 898-7362

1) for property available



~~302-269-3546~~ from Dallas 1-800-925 3342

direct 214-385 4700

898 7341 ~~Alan Mull~~ Alan Mull

Dir of Resolutions

entered into agreement sell to Interior

Interior 2-3 months ago

wouldn't close, maybe trying to pressure DOI

orig May/1981: DoJ Rev

Kevin Steiner 898-8779

1st message

to sell USAS ~~big~~ for months. Then having difficulty
seem to be unable to judge purchase.

Native concerning: only immediate reports

Endorsement from 3rd party clients

"bad rumor" w/ reports to developers.

"won't sell to developer"

all
Russ Emmet
1/18

memo to Victor & Will, for Sado Quire to Ann Richards

PLAYA DEL RIO:

Attorney has filed notice of
complaint. US Attorney in WDC is
being assigned the case specifically.
As soon as papers are filed the
property will be taken.

Doesn't know how long it will
be. 30-90 days or longer.

Re: The Mazzone matter.

Ass. Dir. Reg. Dir. In Refuge &
Wildlife, Responsible for land
acquisition.

505-766-1829 - left message for
Secretary 1/7/93 :4:20

FILED condemnation

in DOT. Filed-DOT
would know

Tolson

Schacter's office met 2

Martin Steinmetz

918 - 581-7502

could work in White House Lobby

Eric Williams - atty in Law by DOT

Re Chief

William Collins - Chief of Eng &

Nat. R 202 272-5983

PHOTOCOPY
PRESERVATION

has met with Texas Parks & Wildlife. Forwarded request (along with Texas) for condemnation.

FDIC has ~~received~~ ^{been} ~~asked~~ ^{asked} ~~that~~ ^{to} ~~decide~~ ^{try to squeeze out} is trying to squeeze out Mexican group. Threatened to

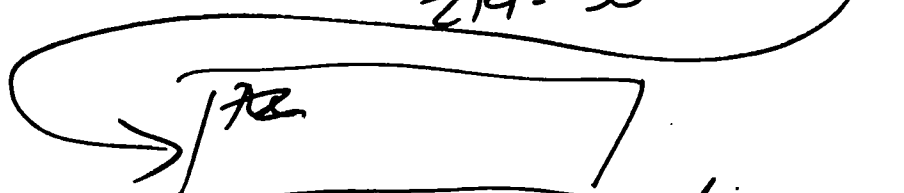
title of property. Steel.

FDIC wanted ^{indemnification} ~~but~~ ^{not} ~~filed~~ ^{deciding} ~~judgment~~

* - FDIC Atty

Philip Webb - Data Regional office

214-308-8231



The lawsuit is pending

- DOI doesn't care about ^{negotia} lawsuit

Price is set
needs condemnation filed

5.6-5.8 million 11,450 acres

state wants 2386 acres (beas)
FEB wants 93563 acres (postan)

State can't condemn. (too difficult)

USFS will condemn all of
complaint. 272
6776

Collins doesn't know whether they
keep the complaint in WDC
M.S. condemn

prefer FIELD. b/c Chuck Wendlandt
was US atty in Chapas (braty).
b/c it's done.

Eric Williams wants to keep it because
of visualization

stalled in WDC b/c they can't
decide

9/29/93 promised to work
has kept Ann Richards
