

FOIA MARKER

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Collection/Record Group: Clinton Presidential Records
Subgroup/Office of Origin: Council on Environmental Quality
Series/Staff Member: Kathleen (Katie) McGinty
Subseries:

OA/ID Number: 4299
FolderID:

Folder Title:
Wetlands

Stack:	Row:	Section:	Shelf:	Position:
S	61	7	1	3

THE WHITE HOUSE
WASHINGTON

Baucus^{NO}
Chafee^{NO}
Graham^{NO}
Johnston
Pryor - ~~David~~
Stevens
Leahy^{NO}
Lugar
Bond

Senators
who have
Been
Invited

Mineta NO
Bochert NO
Applegate NO
Shuster NO
Hayes NO
Edwards
DeLaBarra NO
Roberts NO
Snoods NO
Fields NO
Sutton NO
Miller NO
Young NO

House

020375

United States Senate

WASHINGTON, DC 20510

May 25, 1993

The President
The White House
Washington, D.C. 20510

Dear Mr. President:

When the Senate considered the Department of the Environment Act, Senator Jonn Breaux announced on the Senate floor that your Administration had accepted a recommendation to form a working group on wetlands issues for the Clean Water Act reauthorization.

The stated purpose of the group is to provide a forum to allow appropriate agency heads to work together with members of Congress to develop a consensus on wetlands policy issues.

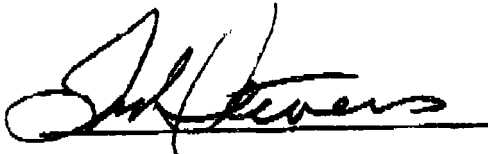
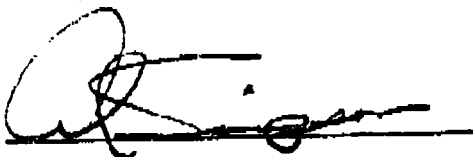
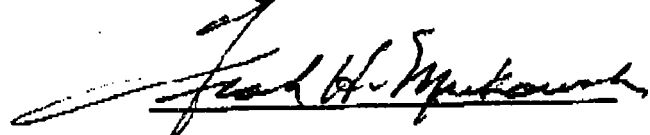
The wetlands issue is a complex one in which regional differences, such as those identified by the Lower Mississippi Delta Development Commission which you chaired, require different approaches which should be addressed by the new working group.

The current Section 404 program needs to be modified. We believe that if changes recommended by the working group are to have bipartisan support necessary to move through the Senate, Senate Republicans should join our Democratic colleagues in assisting the group to develop a consensus. Members of both parties as well as the private sector should participate.

We know of your interest in this issue. We hope to work with you to develop a wetlands policy that works for the environment, but also for the landowners, small businesses, and local economies.

With best wishes,

Cordially,

The President
May 25, 1993
Page Two

John W. Damer

Phil Tra

Jack W. Damer

W. W. Damer
Paul Damer

Bob Packwood

Nancy L. Damer

Shirley Latch

Paul Damer Paul Damer 44

Paul Damer

Richard S. Damer

Larry Damer

Kent Lott

Laurel Faircloth

Frank Brown

John Damer

Bob Smith

Halcolm Wells

Jessie Hens

Don Nickles

The President
May 25, 1993
Page Three

Conne Mack

Ly Zhang

Strom Hammond

Jedley

Rick Bond

425

Mike McConnell

Nick Tator

Tom Duhon

Dirk Kuyt

P. Brannon

UP 815

United States Senate

WASHINGTON, DC 20510

April 28, 1993

93 APR 29 P2:44

President Bill Clinton
The White House
Washington, D.C. 20500

Dear Mr. President:

Among the most controversial and difficult unresolved issues currently facing us is the future of Federal wetlands policy. Last year, both the Congress and the Administration were unable to break the political gridlock that continues to threaten the effectiveness of and public support for the wetlands regulatory program. We now have the opportunity to resolve this issue fairly as we move forward with reauthorization of the Clean Water Act. We ask you to join us in an effort to seek a reasonable compromise on this important issue.

You may remember that the Lower Mississippi River Delta Development Commission, which you chaired, filed a report with President Bush and the Congress in May of 1990 that found that the nation's wetlands policy was the source of "significant problems for agriculture, aquaculture and commercial and industrial development" in the Delta Region. The Commission's report contained realistic and progressive recommendations regarding improvements to Federal wetlands policy. These recommendations included a clear and fair jurisdictional definition, recognition of the differences in functions and values of wetlands, incentives for landowner conservation, reduction of regulatory duplication, regulation of activities that drain wetlands and expanding the role of the states in the Federal regulatory program.

We ask that you establish a working group of all appropriate members of your Cabinet, including the Administrator of the Environmental Protection Agency, and the Secretaries of the Interior, Agriculture, Defense, Transportation, Energy and Housing and Urban Development, to work with us, other Congressional leaders and the public during Congressional consideration of the Clean Water Act to forge a consensus on this difficult policy issue.

President Bill Clinton
Page 2

We look forward to working constructively with you on this vital environmental issue which is of such great importance not only to our region but to our entire nation.

Sincerely,

David Pryor

David Pryor

Dale Bumpers

Dale Bumpers

Harlan Mathews

Harlan Mathews

Wendell Ford

Wendell Ford

John Breaux

John Breaux

Jim Bennett Johnston

Jim Bennett Johnston

Jim Sasser

Jim Sasser

014588

DON SUNDQUIST
7TH DISTRICT, TENNESSEE

COMMITTEE
WAYS AND MEANS

WASHINGTON OFFICE
399 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-4207
202-226-2811

Congress of the United States
House of Representatives
Washington, DC 20515-4207

DISTRICT OFFICES:
117 SOUTH 2D STREET
CLARKSVILLE, TN 37040
615-882-4408

5906 SHELBY OAKS DRIVE
SUITE 213
MEMPHIS, TN 38134
901-382-5811

93 APR 22 P 2 : 33

April 19, 1993

President Bill Clinton
The White House
1600 Pennsylvania Ave., N.W.
Washington, D.C. 20500

Dear Mr. President:

The debate over federal wetland policy has proven to be one of the most contentious and difficult environmental issues facing our country. While the gridlock in Washington continues, my Tennessee constituents daily face an ineffective, confusing and restrictive wetland regulatory program that causes them great hardship, has diminished the value of their property, and restrained job growth and economic opportunities. The time has come for policy makers in Washington to end the gridlock and face this issue head on.

In this regard, I am asking you to organize a wetland summit, similar to your economic and timber summits, to bring together all parties in a spirit of cooperation and action. The current permit program is not working. The public is losing support for an important environmental resource, jobs are being lost, opportunities for wetland restoration and enhancement go unaddressed and local governments are losing property taxes without any presence of water. Meanwhile, wetlands are being lost to unregulated activities, federal agencies waste efforts fighting with each other and regulators consume resources protecting all wetlands as if of equal value and functions.

Your leadership is crucial to ending the gridlock and setting new priorities, establishing new procedures and finding new solutions. We must all unite behind efforts to re-invent government's partnership with private landowners in an effort to protect and enhance our nation's wetland resources.

I hope you will call together a wetland summit and I look forward to working with you on this important issue.

Best Regards,



Don Sundquist
Member of Congress

011645

DON EDWARDS
16TH DISTRICT, CALIFORNIA

WASHINGTON OFFICE
(202) 226-3072

DISTRICT OFFICE
1042 WEST HEDDING STREET
SUITE 100
SAN JOSE, CA 95128
(408) 348-1711

SOUTH COUNTY
(408) 883-8207

Congress of the United States

House of Representatives

Washington, DC 20515-0516

March 31, 1993

VICE CHAIRMAN
COMMITTEE ON THE
JUDICIARY

CHAIRMAN
JUDICIARY SUBCOMMITTEE
ON CIVIL AND
CONSTITUTIONAL RIGHTS

VICE CHAIRMAN
COMMITTEE ON VETERANS'
AFFAIRS

COMMITTEE ON FOREIGN
AFFAIRS

President Bill Clinton
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

We understand that you have been contacted by a group of 20 members of Congress regarding their concerns about the nation's policy on wetlands. While we agree that wetlands policy needs to be reviewed and reformed, we must respectfully refute some of the criticisms they raised, and disagree over the need for a national "wetlands summit."

Wetlands are one of our most valuable natural resources, and strong measures are needed to protect them. We agree with our colleagues that more incentives and public funding are needed to encourage the preservation of privately held wetlands. However, many good programs already exist that have proven to be very successful in encouraging the preservation of wetlands, such as the Wetlands Reserve Program. What these programs lack is adequate funding.

Much of the controversy surrounding wetlands stems from the fact that we lack a clear wetlands policy. As you know, the wetlands delineation manual has been subject to revisions over the past several years. Because it was considered a technical document, some revisions were adopted without formal public review. The situation has stabilized as all agencies now use the 1987 manual. In addition, a study by the National Academy of Sciences is underway to determine the best methods for delineating wetlands. Congress directed the Academy to take regional differences into consideration during this process. That study is expected to be completed by late 1994.

The whole debate over the proper definition of wetlands illustrates the difficulties caused by our uncertain wetlands policy. Field staff have lacked adequate and consistent training and agencies do not have the proper resources to carry out their responsibilities. In addition, the permit process needs to be streamlined and made more flexible so that the differences between large and small permits can be taken into account.

We are particularly concerned by claims that wetlands are not compatible with good economic policy and that they adversely

impact private property owners. On the contrary, wetlands policy must recognize that the preservation of these natural resources has benefits for all property owners, and that they protect human health and safety.

Safeguards need to be put in place to help small private landowners negotiate the wetlands regulatory process. Permit applications that drag on for several months into years can certainly create burdens for the small property owner.

H.R. 350, the Wetlands Reform Act, was introduced to respond to these and other shortcomings of the current system. This bill, which has the support of all the major environmental groups, is compatible with your view that protecting the environment is consistent with maintaining a strong economy.

- To encourage the protection of privately held wetlands, the measure would create new tax incentives to encourage owners of wetland property to protect their land in its natural state.
- More staff and resources would be directed to the agencies responsible for permits and wetlands delineations, and training, education and outreach programs would be improved.
- Small permit applications would be expedited through the creation of a "fast track" for minor permits, to enable such applications to be processed within 60 days.
- Funds would be earmarked for the Corps of Engineers to assist small landowners with wetlands delineations.
- The scope of the permit program would be expanded to include all activities that are harmful to wetlands.
- Follow-up procedures would be put in place to determine the effect of the general and individual permit programs on wetlands, as well as the success of any mitigation activities.

We feel very strongly that legislative action on the Clean Water Act and wetlands must proceed without further delay. Calling a "wetlands summit" might help bring this issue into the spotlight, but we feel that more than enough opportunities for the airing of diverse views on wetlands have taken place. For example, the National Wetlands Policy Forum convened in 1987 brought together state government officials, environmentalists, the agricultural community, developers and other industry groups for a comprehensive review of how best to manage wetlands. The forum resulted in the recommendation that a "no net loss of wetlands" policy be adopted. In addition, numerous congressional hearings were held in the last legislative session, and many public forums were held throughout the country.

We fear that the agenda of those supporting a wetlands summit is to cause further delays in finally bringing this issue to conclusion. More worrisome is the fact that the cosigners of the letter to you are interested in seriously weakening current protections for wetlands and opening protected areas to destruction.

We hope that you will move forward in support of efforts to reauthorize the Clean Water Act with provisions to strengthen wetlands protections. We would certainly welcome your endorsement of H.R. 350, the Wetlands Reform Act, and look forward to working with you to enact an environmentally and economically sound national policy on wetlands.

Sincerely,

✓ Don Edwards

Don Edwards, M.C.

Tony Beilenson

Anthony C. Beilenson, M.C.

Bruce F. Vento

Bruce F. Vento, M.C.

Lane Evans

Lane Evans, M.C.

Martin O. Sabo

Martin Olav Sabo, M.C.

Bill Richardson

Bill Richardson, M.C.

Howard L. Berman

Howard L. Berman, M.C.

Edolphus Towns

Edolphus Towns, M.C.

Ronald V. Bellums

Ronald V. Bellums, M.C.

Louis Stokes

Louis Stokes, M.C.

Jim McDermott

Jim McDermott, M.C.

Carolyn B. Maloney

Carolyn B. Maloney, M.C.



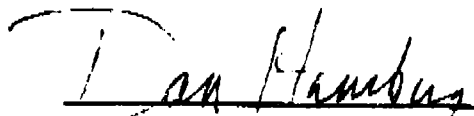
Thomas H. Andrews, M.C.



David E. Shays, M.C.



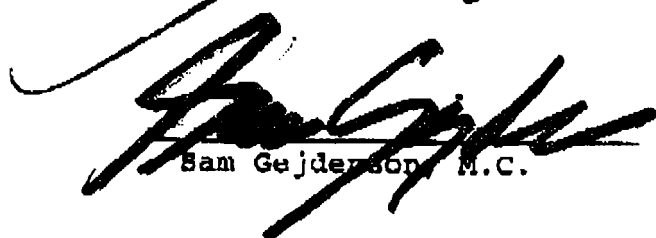
Bernard Sanders, M.C.



Dan Hamburg, M.C.



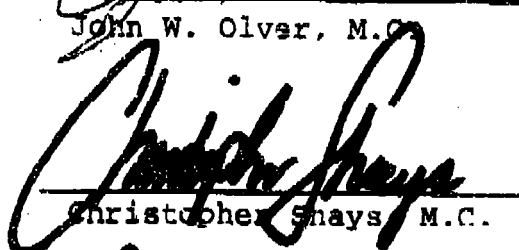
Ron de Lugo, M.C.



Sam Gejdenson, M.C.



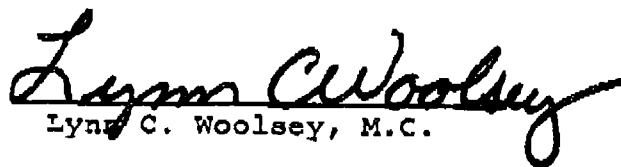
John W. Oliver, M.C.



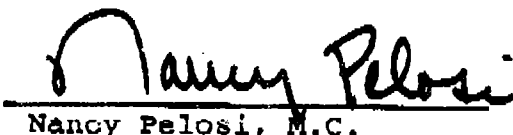
Christopher Shays, M.C.



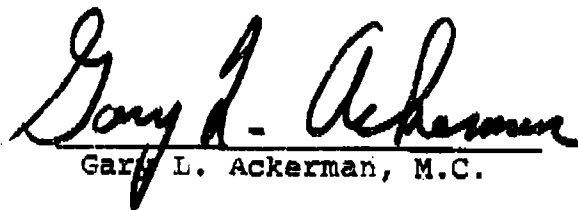
Pete Stark, M.C.



Lynn C. Woolsey, M.C.



Nancy Pelosi, M.C.



Gary L. Ackerman, M.C.

MEMORANDUM

TO: Mack McLarty, via fax 202/456-1121
FROM: Bill Burton, 202/879-3442, 703/351-0381
DATE: May 5, 1993
SUBJECT: Breaux/Wetlands Followup

I spoke with Katie McGinty last night regarding the wetlands issue raised by Sen. Breaux in his letter to the President (I faxed you a brief memo on this issue yesterday). According to Katie, an agreement was worked out with Sen. Breaux under which an interagency task force would be created to look at the wetlands issue. This was done as part of the compromising that went into the bill creating the Department of Environment (which bill, as you know, passed the Senate yesterday).

Katie says that Breaux is pleased with where we now are on the Mississippi wetlands issue.

respond to [signature] Bill

MEMORANDUM

TO: Mack McLarty, via fax 202/456-1121

FROM: Bill Burton, 202/879-3442, 703/351-0381

DATE: May 4, 1993

SUBJECT: Breaux letter to POTUS re Delta wetlands

SUMMARY: Democratic Senators from Louisiana, Arkansas, Tennessee and Kentucky want the President to do for wetlands policy in the Mississippi Delta what he is doing for old-growth forest policy in the Northwest. They are NOT calling for a wetlands summit, but they are asking for the President to focus on the problem and to appoint a cabinet-level task force to work with Congress and the public to work out a balance between economic development and environmental protection in the Delta.

DISCUSSION: You received, from Sen. Breaux's office, a copy of a letter to the President dated April 28, 1993, concerning wetlands in the Mississippi Delta. The letter was signed by Sens. Breaux and Johnston of Louisiana, Pryor and Bumpers of Arkansas, Sasser and Mathews of Tennessee, and Ford of Kentucky.

The letter reminds the President that, as governor, he chaired the Lower Mississippi River Delta Commission which reported to President Bush three years ago that there were significant problems involving economic development and wetlands protection in the Mississippi Delta. The letter asks the president to establish a cabinet-level group to work with Congressional leaders and the public to find a consensus on wetlands policy.

Please advise what direction you would like to take on this request.

Handwritten notes:
This letter was received from Sen. Breaux's office on 5/4/93.
The letter was signed by Sens. Breaux and Johnston of Louisiana, Pryor and Bumpers of Arkansas, Sasser and Mathews of Tennessee, and Ford of Kentucky.

Signature: Bill

Sen. Breaux
Wallace Henderson
224-4623

Mack

I acknowledged
this.

My

Facsimile Transmission From:
U.S. SENATOR JOHN BREAUX
United States Senate
Washington, D.C. 20510
(202) 224-4623

PLEASE DELIVER THIS INFORMATION AS SOON AS POSSIBLE

NUMBER OF PAGES INCLUDING COVER SHEET: 11

DATE: 4/28/93

TO: Mack McLarty

FAX NUMBER TRANSMITTED TO: 456-1121

FROM: Senator John Breaux

RE: For your information, today I have sent the following
letter to President Clinton. A hard copy will be sent to
you this week.

United States Senate

WASHINGTON, DC 20510

April 28, 1993

President Bill Clinton
The White House
Washington, D.C. 20500

Dear Mr. President:

Among the most controversial and difficult unresolved issues currently facing us is the future of Federal wetlands policy. Last year, both the Congress and the Administration were unable to break the political gridlock that continues to threaten the effectiveness of and public support for the wetlands regulatory program. We now have the opportunity to resolve this issue fairly as we move forward with reauthorization of the Clean Water Act. We ask you to join us in an effort to seek a reasonable compromise on this important issue.

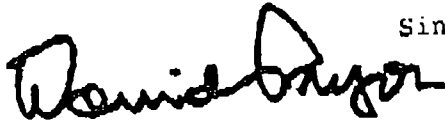
You may remember that the Lower Mississippi River Delta Development Commission, which you chaired, filed a report with President Bush and the Congress in May of 1990 that found that the nation's wetlands policy was the source of "significant problems for agriculture, aquaculture and commercial and industrial development" in the Delta Region. The Commission's report contained realistic and progressive recommendations regarding improvements to Federal wetlands policy. These recommendations included a clear and fair jurisdictional definition, recognition of the differences in functions and values of wetlands, incentives for landowner conservation, reduction of regulatory duplication, regulation of activities that drain wetlands and expanding the role of the states in the Federal regulatory program.

We ask that you establish a working group of all appropriate members of your Cabinet, including the Administrator of the Environmental Protection Agency, and the Secretaries of the Interior, Agriculture, Defense, Transportation, Energy and Housing and Urban Development, to work with us, other Congressional leaders and the public during Congressional consideration of the Clean Water Act to forge a consensus on this difficult policy issue.

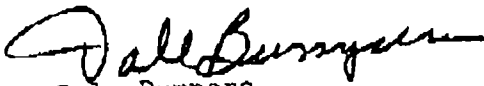
President Bill Clinton
page 2

We look forward to working constructively with you on this vital environmental issue which is of such great importance not only to our region but to our entire nation.

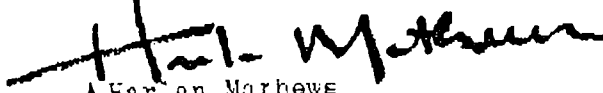
Sincerely,



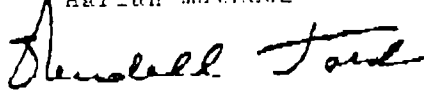
David Pryor



Dale Bumpers



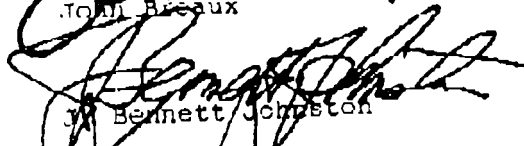
Harlan Mathews



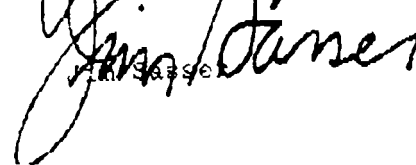
Wendell Ford



John Breaux



J. Bennett Johnston



Jim Saxton

FINAL REPORT

THE DELTA INITIATIVES

MAY 14, 1990

LOWER MISSISSIPPI DELTA DEVELOPMENT COMMISSION MEMBERS

State Commissioners

- Chairman Bill Clinton, Governor of Arkansas
- Vice Chairman Ray Mabus, Governor of Mississippi
- Secretary Ed Jones, Former U.S. Congressman
- Charlie Kruse, Missouri Department of Agriculture
- Buddy Roemer, Governor of Louisiana
- Lee Troutwine, Kentucky Department of
Local Government
- Dr. Rhonda Vinson, Department of Economic
Development, Southern Illinois University
at Carbondale

Presidential Appointees

- Webb Franklin, Former U.S. Congressman
- John Shepherd, Attorney at Law

Lower Mississippi Delta Development Commission

May 14, 1990

The President
The White House
Washington, D. C. 20500

Dear Mr. President:

This is the final report to you and the Congress of the United States of America on the work of the Lower Mississippi Delta Development Commission. It is more than just another government report to be added to countless shelves of government studies that have gone before.

This is a Handbook for Action -- one that can turn the Delta and its 8.3 million people into full partners in America's exciting future, full participants in the changing global economy.

The Lower Mississippi Delta Development Commission was established under Public Law 100-460 in October 1988 through legislation introduced by a bi-partisan group of senators and representatives from the seven states making up the Lower Mississippi Delta region, as well as Congressmen from other parts of the nation. The Lower Mississippi Delta area is comprised of 219 counties in Arkansas, Louisiana, Mississippi, Missouri, Illinois, Tennessee and Kentucky. Together they form the poorest region of the United States.

The Commission was given this mission: to study and make recommendations regarding economic needs, problems, and opportunities in the Lower Mississippi Delta region, and to develop a ten-year regional economic development plan.

To begin its work, the Commission had to collect all the information, opinions and ideas available in the region. And that is exactly what has been done. We have blanketed the Delta, seeking input from many thousands of people who attended public hearings, spoke to us, gave us written testimony or participated through providing research and statistical information. We have reviewed a mountain of material and considered every single, specific suggestion made by the citizens of the Delta -- and they had many ideas on how to improve the overall quality of life for all the people of the region.

In October 1989, we issued an interim report entitled "The Body of the Nation", which outlined the problems and opportunities of the Delta, the vast human and natural resources and many impressive efforts now underway to move our region forward.

We agreed that the Delta was an enormous, untapped resource for America, that it can and should be saved. We agreed that our goal should be nothing less than full partnership for the Delta: rates of employment and income at or better than the national average.

The President
May 14, 1990
Page 2

Now, in this Final Report, all of the information, all of the opinions and ideas we have collected have been put together into an ambitious, aggressive plan for the development of the region.

It is a handbook for action that anybody can pick up -- a congressman, a governor, a legislator, a chamber of commerce president, a mayor, a teacher, or a student -- and see what he or she can do to help.

We also believe the plan comes just in time for the Delta and its people. The 1990s have brought us an entirely new world marked by the triumph of democracy and market economies. This new world provides economic opportunities for Americans prepared to compete in it, and enormous challenges for those who are not. The people of the Delta cannot become full partners in America's future without an honest assessment of where we are in the emerging global economy and what we have to do to increase the capacity of all our people to succeed in it. That is what we have tried to do in our interim report of October 1989 and in this final report.

If we do not implement a single recommendation made in this report, a lot of Americans who live in the Delta are going to do fine in the 1990s: those who are well-educated, on the cutting edge of change, and able to take advantage of the emerging global economy. But millions of people will be left behind, and the region as a whole, including its successful residents, will not achieve its full potential.

We call on you, our Congress, our state and local leaders, and our citizens to assume responsibility for the Delta's future.

Being in the vanguard of change need not be a distinction limited to the freedom-hungry citizens of Eastern Europe or Poland or the aggressive business people of Singapore or Korea. The people of the Delta belong in that vanguard. They want to be there, and they can be if each of us will do our part.

Respectfully,



Bill Clinton
Chairman

Natural Resources

ISSUE:	Wetlands (Freshwater)
TEN YEAR GOAL:	All remaining high quality wetlands will be protected without preventing economic development by the year 2001
SITUATION:	The national wetlands policy has caused significant problems for agriculture, aquaculture and commercial and industrial development. More than 21 million acres of Lower Mississippi River Delta land is designated as wetlands. The "Joint Federal Manual for Identifying and Deleting Jurisdictional Wetlands" increased the river delta lands described as wetlands in the region from a former 15-18% of the land to approximately 70%-80%. The Manual is used for Section 404 permits and the Food Security Act regulation. Serious questions have been raised concerning the exact intent of Congress and inadequate public access to the Manual. Current definitions do not adequately differentiate the quality of wetlands. For example, a pristine cypress swamp and a commercial loblolly pine plantation may be placed in the same wetlands classification. Relative wetlands values are not considered. All these problems place individuals and industries in a state of confusion. Landowners and planners are not adequately informed of the new wetlands policies, and farmers are not accustomed to obtaining permits to improve land that has a long history of cultivation. Current interpretations of the national wetlands policy have placed major limitations on the Delta's economy because commercial and industrial development is being impaired. Expansion of the successful catfish, crayfish, and baidfish industries is severely limited. Construction of surface water storage systems to preserve critical ground water supplies and increase economic returns through irrigation from agriculture also has been hampered. "Determination of mitigation" requirements showing the effects of construction are not being made early enough in the permitting process to allow for reasonable financial planning. With up to 80% of river delta land classified as wetlands, large scale mitigation may not be practical. Current interpretations of national policy even require land users to create new wetlands when croplands are improved or converted to commercial, industrial or aquaculture uses.

RECOMMENDATIONS:

- **All levels of government and the private sector** should actively support preservation of high quality wetlands. The North American Waterfowl Management Plan is one example of active support for this recommendation.
- **States** should establish an area-wide system of "mitigation banking" for land converted from wetlands. (See glossary.)
- **Congress** should eliminate the "dredge removal" loophole in Section 404 of the Clean Water Act of 1972 (CWA 72). Present rules allow wetlands to be drained if the removed material is hauled away and deposited in a non-wetlands area.
- **Congress** should establish a wetlands protection program with incentives for landowners to protect and establish high quality wetlands. the program should put emphasis on the conservation and re-establishment of bottomland hardwoods.
- **Congress** should exempt pre-Food Security Act (FSA) croplands from wetlands regulations of Section 404 of the CWA 72 and the Food Security Act of 1985.
- **Congress** should direct appropriate federal agencies to develop procedures that clearly identify mitigation requirements.
- **Congress** should direct appropriate federal agencies to establish minimum-sized wetlands for regulation.
- **Congress** should assign the responsibility for identification and maintenance of a wetlands inventory to one agency, and require consultation with other affected agencies.

Natural Resources

ISSUE:

Coastal Marshlands/Wetlands

TEN YEAR GOAL:

Establish an equilibrium in the loss of coastal marshes and wetlands by the year 2001.

SITUATION:

Louisiana contains 40% of United States coastal marshes and 80% of the nation's coastal marsh loss is occurring in the state. Current loss is estimated to be thirty-five square miles annually. This is an urgent crisis and should be given top priority for resolution.

Louisiana wetlands serve as incubators for 90% of the commercial fish and 42% of the recreational fish harvested in the Gulf of Mexico. The Louisiana commercial seafood industry economic impact is estimated to be \$2.3 billion.

Coastal marshlands and wetlands are valuable habitats for wildlife. Louisiana wetlands provide wintering habitat for 66% of the ducks and geese using the Mississippi flyway. Wetlands provide essential habitat for many non-game species of wildlife. National flood control and navigation policies, although designed to foster national economic development, have caused in large part the loss of lower Mississippi Valley marshlands and wetlands.

RECOMMENDATIONS:

- **Congress** should require the U.S. Army Corps of Engineers (CoE) to create marshes with dredged material from Corps-maintained channels in the lower Mississippi Delta.
- **Congress** and **states** should develop an approach for meeting the goal of an immediate no net loss on permitted wetland activities.
- **Congress** should require stabilization of banks along river and stream channels maintained by the CoE.
- **Congress** and **states** should direct appropriate agencies to accelerate planning and construction of approximately 20 freshwater and sediment diversions designed to replicate natural action of the river to restore vegetated marshlands and wetlands.
- **Congress** and **states** should direct appropriate agencies to accelerate installation of non-point source discharges into coastal wetlands to offset salinity intrusion and improve quality of water flowing into oyster reefs and fishing grounds.

Lower Mississippi Delta Development Commission Members and Staff

State Commissioners

Chairman Bill Clinton, Governor of Arkansas
Vice Chairman Ray Mabus, Governor of Mississippi
Secretary Ed Jones, Former U.S. Congressman, Tennessee
Charles Kruse, Missouri Department of Agriculture
Buddy Roemer, Governor of Louisiana
Lee Troutwine, Kentucky Department of Local Government
Dr. Rhonda Vinson, Department of Economic Development,
Southern Illinois University at Carbondale

Presidential Appointees

Webb Franklin, Former U.S. Congressman
John Shepherd, Attorney at Law

State Alternates

Tom Craighead, Kentucky Department of Local Government
Carole Hemminghaus, Missouri Department of Agriculture
Cornelius Lewis, Governor's Office, Louisiana
Mike McGuire, Tennessee Department of Economic Development
Bob Nash, Arkansas Development Finance Authority
Anne Sapp, Governor's Office, Mississippi
David Morris, Illinois Department of Commerce and Community Affairs

Staff Members

Wilbur F. Hawkins, Executive Director

Jan Albright
Earl Anthony
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Ray Bryant
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Patrice Cunningham
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Helen Glover

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Anthony Haynes
Stan Hyland
Arthur Johnston
Nikki Jones
Sean Kirpatrick
Christine Lewis

Susan Mayer
Pamela Moore
Ronnie Murphy
Judy Oakman
Debbie Rayford
Ron Register
Emma Roberson
Kevin Smith
Phyllis Vann

Research Associates

Howard Avlesworth
Elizabeth Brown
Carol Coletta
Carol Rasco
Susan Jones and members of the Tourism Steering Committee

State Advisory Committees

Arkansas State Advisory	Chairs. Mr. Earnest Cunningham & Mr. Rodney Slater
Illinois State Advisory	Chairs. Dr. Rhonda Vinson & Mr. Dave Morris
Kentucky State Advisory	Chair. Ms. Carol Rogers
Louisiana State Advisory	Chair. Dr. Paul Dunn
Mississippi State Advisory	Chair. Mr. Jimmy Heidel
Missouri State Advisory	Chair. Mr. Charles Kruse
Tennessee State Advisory	Chair. Mr. Mike Sparks

SNOW
 In lieu of the matter proposed, insert the following:
~~At the appropriate place, insert the following new section:~~

SEC. ____ . WETLAND DETERMINATIONS BY A SINGLE AGENCY.

In consultation with the Secretary of Agriculture, the Secretary of the Environment, the Secretary of the Army, and the Secretary of the Interior, the President shall, within 90 days of the date of enactment of this Act, make recommendations and report to the Congress on measures to--

(1) provide that a single Federal agency be responsible for making technical determinations, including identification of wetlands, on agricultural lands with respect to wetland or converted wetland in order to reduce confusion among agricultural producers; and

(2) provide that the Soil Conservation Service be the Federal agency responsible for all such technical determinations concerning wetlands on agricultural lands.

AMENDMENT No 341

By BAUCUS - Glenn

Bill/Res. No. S. 171

..... to AMDT. No. 340

WETLANDS DRAFT - JULY 25, 1992

I. Summary of Problem

Wetlands are among our most important ecosystems. They provide critical fish and wildlife habitat, including habitat for approximately one half of our threatened or endangered animals and two thirds of our threatened and endangered plants, and spawning grounds for 96% of the Nation's commercially-important fisheries. They also hold and filter large volumes of runoff water, serving important water quality and flood control functions. Since Colonial times, however, the contiguous states have lost over half of their wetlands to farming and other land development. (The percentage varies from state to state; Arkansas has lost 72% of its wetlands.) Of our remaining wetlands, only a small portion are on lands owned by the public, rendering most vulnerable to future development. In fact, we continue to lose almost 300,000 acres of wetlands each year. Current programs to protect these programs are not working, but they are under attack by landowners who claim that wetlands regulation denies them fair uses of their property.

II. History of Problem

Until the Clean Water Act was passed in 1972, few measures were taken to regulate activities in wetlands. Indeed, through much of our history wetlands were viewed as "worthless" swamps and bogs. The only perceived "problem" was how best to drain or fill wetlands so they could be developed. The only wetlands that received protection were those that were purchased or otherwise in direct public ownership as part of parks, wildlife refuges, etc. These only amount, however, to __% of our total remaining wetlands.

The 1972 Clean Water Act sought to "restore and maintain the physical, chemical and biological integrity of the Nation's waters." Section 404 of the Act expressly prohibited the discharge of dredge or fill material into the waters of the United States without a permit from the U.S. Army Corps of Engineers (COE). (While most discharges into water bodies regulated by the Clean Water Act were under the jurisdiction of the new Environmental Protection Agency, the dredge and fill program was left with COE, which administered the predecessor program under the Rivers and Harbors Act of 1899. This earlier law, however, was used primarily to regulate navigation, and not to protect wetlands and other aquatic ecosystems.)

While the 1972 Clean Water Act did not mention wetlands expressly, a number of courts ruled that "waters of the United States" included wetlands. Therefore, under section 404 of the law all discharges of dredge or fill material into wetlands required a permit from the Corps of Engineers. EPA has the authority to veto permits issued by the Corps, but has exercised this authority only a handful of times over the past 20 years.

Considerable controversy has surrounded the question of which areas are wetlands subject to the Corps' regulatory jurisdiction. In 1977, Congress amended the law to exempt ongoing farming, logging and ranching activities, but not future conversions of wetlands to such uses. In 1986, faced with an argument that wetlands were not subject to regulation under the Act or the Commerce Clause of the U.S Constitution, the U.S. Supreme Court agreed that wetlands adjacent to other water bodies were subject to regulation under the Clean Water Act.¹ In addition, since section 404 addresses only the direct discharge of dredge and fill material, only about 20% of all activities that destroy or impair wetlands are covered by the program. Other wetland-destroying activities, such as draining, ditching and channelizing, are not covered. In addition, a large number of activities that technically require section 404 permits are covered by "general", "regional" or "nationwide" permits, under which activities in wetlands may occur so long as certain conditions are met. In all, the Corps issues approximately 10,000 individual wetlands permits each year, denies 500, and approximately 40,000 activities qualify under regional or nationwide permits.

The question of what is a wetland for purposes of the Clean Water Act also was subject to scientific debate, since wetlands span a continuum from areas that are clearly water bodies to dry land. To resolve this issue, in 1987 the Corps of Engineers issued a manual establishing criteria for program officials to use in determining which areas are wetlands. After extensive consultation with EPA and other federal agencies, this manual was revised in 1989 to provide better scientific guidance.

In part due to poor communication and education of landowners, issuance of the 1989 manual caused considerable confusion and anxiety. Many landowners, especially farmers, were led to believe that vast land areas not previously subject to section 404 jurisdiction now could not be developed or farmed without a permit. Actually, while the 1989 manual "fine-tuned" criteria to determine wetlands jurisdiction, the changes affected a relatively small percentage of wetlands. This controversy led to the introduction of legislation in Congress, described below, and the Bush Administration's ill-fated efforts to issue yet another manual in 1991.

Another major controversy surrounding the Clean Water Act's wetlands program is compensation under the Fifth Amendment. Many landowners believe that if property values are reduced or eliminated because of wetlands regulation, they should be

¹ The Court reserved ruling on whether wetlands not adjacent to other water bodies were subject to such regulation.

compensated for this reduced value by the federal government. While relatively few permits for activities in wetlands are actually denied under section 404, a recent CBO study indicated that compensation for all reduction in property values caused by wetlands regulation would have a significant impact on the federal treasury. [Insert estimates]

Finally, many landowners complain that the section 404 program is complex and cumbersome, and that too much time is needed to determine first whether their land is covered by the wetlands program, and second whether a permit can be issued.

III. Current Status/Recent Developments

A. The Wetlands Forum and "No Net Loss"

In an effort to resolve the serious controversy over wetlands regulation, the National Wetlands Policy Forum, convened by the Conservation Foundation at the request of EPA, recommended that a national wetlands policy be established to achieve no overall net loss of the nation's remaining wetlands, as defined by acreage and wetlands function. To achieve this goal, the Forum recommended efforts to restore previously-impaired wetlands to compensate for new wetlands losses. Unfortunately, despite President Bush's campaign promise to fulfill this "no net loss" policy, the recommendations of the National Wetlands Forum have largely been ignored.

B. Wetlands Bills in Congress

Because of the serious controversy over the 1989 wetlands manual, and the failure of the Bush Administration to implement a serious no net loss policy, a large number of bills were introduced during the 102nd Congress to amend section 404 of the Clean Water Act. Some of these bills were designed to ease wetlands regulations; others were introduced to address serious loopholes in the existing program. These bills would be taken up as part of Clean Water Act reauthorization; however, this process now is not expected until next Congress. At this point, two bills stand out as the principal focus of the debate:

H.R. 4255, introduced by Representative Don Edwards (D-CA), would close many of the loopholes in existing wetlands regulation, while addressing some of the concerns of landowners about inefficiencies in the current program. H.R. 4255 would strengthen the existing program by commissioning a National Academy of Sciences study of wetlands delineation; establishing a national policy to preserve the quantity and quality of the nation's wetlands and to restore degraded wetlands; expanding section 404 coverage to include all activities that degrade wetlands, including draining, excavating and flooding; and strengthening controls over the general permit program, under

which thousands of acres of wetlands are lost each year with virtually no accountability. At the same time, H.R. 4255 would improve the permitting process by creating a "fast track" program for small-scale projects; providing more funds for wetlands mapping and training; and simplifying and clarifying rules for determining which agricultural activities are exempt from wetlands regulations.

H.R. 1330, introduced by Representative Jimmy Hayes (D-LA), is designed to relieve landowners of many of the burdens of wetlands regulation, and has been criticized widely by environmentalists. The bill would eliminate EPA's oversight role in the wetlands permitting process; rank wetlands into "high", "medium" and "low" value categories, a process criticized by virtually all wetlands scientists; eliminate all protection for so-called "low"-value wetlands and seriously weaken protection for "medium"-value wetlands; require direct federal acquisition of high-value wetlands, at considerable expense to taxpayers; expand the general permitting program; and significantly narrow the definition of wetlands covered by the law. H.R. 1330 has more total cosponsors than H.R. 4255, but has fewer Democratic cosponsors.

C. White House Interference in the Delineation Manual

In response to controversy over the 1980 wetlands delineation manual, experts within EPA, the Corps of Engineers, and other federal agencies set forth to address concerns about uncertainty in the delineation process while improving the scientific basis for the manual. Before this process could be completed, however, Vice President Quayle's Council on Competitiveness interfered in the process. Rather than improving the manual, ultimately White House officials overrode agency scientists and proposed a new version of the manual in August, 1991 which would have excluded approximately half of the Nation's remaining wetlands from the section 404 program. Wetlands scientists around the country, both in and out of government, were virtually unanimous in their criticism of the proposed 1991 manual, which ignored basic wetlands science in an effort to narrow the scope of the wetlands program.

D. Recent Supreme Court Decision on "Takings"

The U.S. Supreme Court recently decided the "Lucas" case on the extent to which regulations that diminish land value require government compensation of landowners. While this case was watched closely by wetlands advocates on both sides, the decision should have little impact on the issue, although it left open more questions than it answered about takings law. In a highly divided opinion, the Supreme Court ruled that compensation was required only where regulations completely eliminate private property value -- a rare occurrence in the wetlands arena. Even

where full loss of property value occurs, compensation still may not be needed where the government proves that the regulation is necessary to prevent a nuisance.

IV. Major Predictable Events Over Next Few Months

A. This week (Wednesday) the House of Representatives will vote on the VA-HUD-Independent Agencies Appropriations bill, which includes the EPA budget. Subcommittee Chair Bob Traxler (D-MI) included in the bill a \$500,000 line item for a National Academy of Sciences study of wetlands delineation. While not expressly stated in the bill, presumably the Administration would continue to use the 1987 manual, in lieu of proceeding with the 1991 proposed manual, until this study is completed. A Motion to Strike this provision is expected on the House floor, with a close vote anticipated.

B. It is rumored that proponents of H.R. 1330 may try to move this bill this year independent of Clean Water Act reauthorization, despite the fact that this would result in a pitched battle among Democrats in Congress. Representative Hayes reportedly is considering moving to amend the Water Resources Development Act (WRDA) to include some or all of H.R. 1330 when the WRDA is considered by the Public Works Committee or the full House. Another possibility is that Representative Hayes will wait to see what happens with the NAS vote on the EPA Appropriations bill before deciding whether to proceed with H.R. 1330.

C. The White House continues to wrestle with the decision whether to proceed with a revised version of the 1991 delineation manual. Vice President Quayle and other conservatives in the White House favor this approach, while EPA Administrator Reilly and CEQ Chair Deland oppose efforts to continue with a manual that they believe distorts wetlands science. Any decision to proceed with the manual will be extremely visible and controversial.

V. Key Issues and Analysis

Three issues predominate in the current wetlands debate: (1) what areas should be considered wetlands and subject to regulation under section 404 of the Clean Water Act; (2) what activities should be subject to wetlands regulation; and (3) to what extent should wetlands regulation require public compensation of private landowners.

The issue of what is a wetland is a scientific determination that should be left to wetlands scientists. For this reason, the Clinton-Gore ticket should continue to support referral of this issue to the National Academy of Sciences. Once these determinations are made based on sound science, sound policy

decisions can be made on the remaining two issues.

Once wetlands delineation is made based on sound science, most new activities that destroy or impair wetlands should be subject to regulation, as part of a true "no net loss of wetlands" national policy. To accomplish this goal, all activities that adversely affect wetlands must be brought into the regulatory program, and increased efforts must be made to restore wetlands that have been impaired in the past. This should not be accomplished, however, by attempting to "create" artificial wetlands in return for new losses of natural wetlands, an approach that most reputable wetlands scientists believe is not possible. Ongoing farming activities should continue to be exempt from wetlands regulations, but the rules for these exemptions should be simplified and clarified to create more certainty for farmers.

The issue of compensation of private landowners for regulatory takings is a legal issue which should be left to the courts under the Fifth Amendment. As evidenced by the recent Supreme Court decision, compensation is available to landowners who lose complete uses of their property under wetlands and other regulations.

VI. Administration Policy

As discussed above, the Bush Administration has not implemented most of the recommendations of the National Wetlands Forum. Instead, Vice President Quayle presided over efforts to substitute political expedience for sound wetlands science. Now, in an effort to avoid the political fallout over earlier policy errors, forces within the Administration appear to be at a stalemate over wetlands policy. It is likely that any decision on this issue before the election will be driven by political acceptability rather than policy considerations. More likely, the Administration will attempt to avoid any major decisions on this issue until after the election.

Common Arguments and Rebuttals

1. Wetlands regulations are putting small farmers out of business.

Response:

Normal ongoing farming and forestry practices are exempt from Section 404 of the Clean Water Act. The Act would only require a permit when the farmer wants to fill in wetlands not previously farmed, for either agriculture or development.

In recognition of the sometimes confusing permit process, however, the Edwards bill, H.R. 4255, streamlines the process and defines these exemptions more clearly.

2. Private Property rights are being abused by wetlands regulations. Under the Fifth Amendment, people are due just compensation if the government takes there property.

Response:

Wetlands regulations do not interfere with property rights. The Supreme Court has clearly defined what is a "taking," and generally the Fifth Amendment does not require compensation for anything short of total confiscation (ie, when a railroad is built through your backyard).

Regulating proper land use does not deny anyone of their property - it's the same as zoning. We do not compensate someone living in a residentially zoned neighborhood for not being allowed to build a factory in the middle of the block. Nor do we compensate the person whose property value decreases when a landfill is placed in his or her part of town.

Furthermore, the Constitution requires the government to protect public health and safety. If I fill my wetlands, then your property will flood, or your drinking water will get contaminated, or your favorite fishing hole will die.

In fact wetlands regulations are needed to protect public property rights - the right to protect the beautiful lands of our country from unnecessary flooding, groundwater contamination, loss of wildlife and seafood and the right to protect our health from the dangers of water pollution.

3. Environmental Regulations cost jobs.

Response:

Quite the opposite, the Clean Water Act could create jobs by funding the construction and repair of outdated and environmentally damaging sewer systems throughout the country.

Also, Commercial fishing and tourism are both industries that lose jobs and money without clean water.

4. Environmental regulations are stopping economic growth and cost money.

Response:

With wetlands covering only 5% of the contiguous U.S., regulations protecting these vital areas are hardly stopping development - they merely steer it away from these especially fragile and naturally productive areas.

5. Too many lands are incorrectly labelled wetlands - we need to rank them and protect the most important ones only.

Response:

The facts do not support this. All wetlands provide valuable resources such as water filtration and flood control. One of the opposition's current sayings is "if it's wet it's wet." But it is not as simple as that - wetlands are areas that are made of certain types of soil, plant life and hydrology that support a rich variety of life. Some wetlands filter pollutants out of the ground water. Some areas appear dry most of the year, but act like giant sponges during a rainy season, protecting adjacent areas from traumatic and costly floods.

WETLANDS DRAFT - JULY 25, 1992

I. Summary of Problem

Wetlands are among our most important ecosystems. They provide critical fish and wildlife habitat, including habitat for approximately one half of our threatened or endangered animals and two thirds of our threatened and endangered plants, and spawning grounds for 96% of the Nation's commercially-important fisheries. They also hold and filter large volumes of runoff water, serving important water quality and flood control functions. Since Colonial times, however, the contiguous states have lost over half of their wetlands to farming and other land development. (The percentage varies from state to state; Arkansas has lost 72% of its wetlands.) Of our remaining wetlands, only a small portion are on lands owned by the public, rendering most vulnerable to future development. In fact, we continue to lose almost 300,000 acres of wetlands each year. Current programs to protect these programs are not working, but they are under attack by landowners who claim that wetlands regulation denies them fair uses of their property.

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