US Army Corps of Engineers.
Northwestern Division

TO:

AUG 0 5 2010

U.S. Army Corps of Engineers, Chief of Engineers, LTG Robert Van Antwerp, 441 G Street NW, Washington, DC 20314-1000

U.S. Department of the Interior, U.S. Fish and Wildlife Service, Acting Director, Mr. Rowan Gould, 1849 C Street NW, Washington, DC 20240-0001

National Oceanic and Atmospheric Administration, Administrator, Dr. Jane Lubchenco, 1401 Constitution Avenue, NW, Room 5128, Washington, DC 20230

1. The federal executives in the Northwestern United States have enjoyed a long-standing record of collaboration and problem solving through a range of significant environmental challenges over the last several decades, and we remain fully committed to this collaborative problem solving. With this in mind, we write this letter to share our regional perspective on existing and proposed policy and regulations related to vegetation on levees that may be in conflict with federal law and agency guidelines, leading to understandable confusion and consternation on the part of levee owners, and likely to generate substantial objections by Members of Congress and their constituents.

2. The proposed USACE Policy Guidance Letter (PGL)—"Variance from Vegetation Standards for Levees and Floodwalls ", as published in the Federal Register for public comment (February 9, 2010), proposes to place legitimate concerns about levee integrity due to vegetation at odds with current Endangered Species Act law and well-established consultation protocols. Additionally, it is generally deficient on a number of salient points (outlined below) and specifies an effective date of September 30, 2010 which we respectfully suggest is untenable given the current state of vegetation on levees in our region and how dependent certain species of fish are on the shade and water-cooling and other life-cycle habitat features such vegetation provides.

3. We observe the following deficiencies in the proposed PGL.

a. There is an inconsistency in the definition of a "levee system" (Paragraph 5) and the requirement for individual sponsors to initiate an application for a variance. In most cases, a levee system will incorporate multiple individual sponsors with varying jurisdictions covering only a portion of the levee system. This renders the variance procedure awkward and more difficult than necessary for the sponsors.

b. The proposed PGL appropriately ascribes a variance request for the purposes to: "preserve, protect and enhance natural resources and/or protect the rights of Native Americans…" However, it does not give due consideration to instances where sound science

and ongoing research indicates that specific vegetation types may provide benefits (e.g., erosion control) or not have consequential negative impacts (e.g., small, shallow root systems) to levee integrity and public safety. Furthermore, without consideration of science and ongoing research, the proposed PGL misses the opportunity to leverage new knowledge to facilitate win-win solutions that accommodate both levee integrity concerns and endangered species habitat. Finally, a "do no harm" approach may be warranted in many instances wherein individual sponsors may not have the means to "deal with the root system after cutting down the tree", a dangerous and likely outcome of the current policy that emphasizes tree removal as one way to maintain compliance with Corps' vegetation standards for levees.

c. The process outlined in the proposed PGL seems overly cumbersome, leading all the way to Washington DC for final approval by the Corps' Levee Safety Officer who has no responsibility for operating the levee system in conjunction with local authorities. We believe this approach misses a huge opportunity to leverage the very successful and productive regional decision-making model operating in the Northwest for several decades. Thus we believe the PGL should be revised to accommodate these collaborative approaches that will achieve the applicable public safety and environmental objectives of the program.

d. We would encourage a close interdepartmental coordination effort at the Washington DC level where opportunities to align the various agency policies and processes with the law are the greatest. Clearly, the concurrent goals of public safety (levee integrity) and ESA compliance are achievable but only when the various agencies coordinate such policy/law conflicts in advance of public release and implementation.

4. We propose for your immediate consideration and decision on the following:

a. Give us until December 2011 to:

(1) Develop a regional framework based on common ground around which to devise implementable local solutions.

(2) Apply the regional framework in close coordination and collaboration with local individual sponsors who ultimately must implement and resource these solutions.

(3) Allow the emerging science and ongoing research (initial Corps report due out in September 2010) to inform possible revision of the proposed PGL.

(4) Work with local constituencies and Members of Congress in a strategic communications campaign to inform the public and levee sponsors on the way ahead outlined in the regional framework.

(5) Provide individual sponsors with existing variances (including the Seattle District Regional Variance) and new applicants with the time to apply through a revised variance application process to gain approval for their plans to move forward toward achieving the Corps

vegetation standard while the individual sponsors marshal public support and revenue to get into compliance. This may necessarily involve small steps (e.g. removal of some tree branches and/or selected vegetation for inspection visibility and/or flood fighting purposes while doing no harm).

b. Initiate coordination of proposed PGL for variance policy and/or vegetation standard among the agency headquarters to reconcile the conflict between existing law and policy. This could lead to some accommodation, including recognition of the value of science and ongoing research to inform such policy as it evolves, and allow more time for coordination and implementation to ensure our proposed regional framework is incorporated.

c. Reconcile the disconnect in the variance application process between the definition of levee system and the individual sponsors who invariably have ownership of only a portion of the system.

5. We respectfully recognize that these points may not be all inclusive, and we welcome the opportunity to review these recommendations in the context of other comments that may have been received through the review process. We believe wholeheartedly that we possess the ability to deliver on what we propose above with the allocation of time and continued vertical collaboration and alignment. We look forward to further discussion with you as we continue to tackle these urgent and compelling challenges together. Thank you for your continued support and consideration on this matter.

Very Respectfully,

William Stelle AUG 05 2010
William Stelle
Regional Administrator - Northwest Region
NOAA - National Marine Fisheries Service

Theresa E Rabon AUG 03 2010
for Robyn Thorson
Regional Director - Pacific Region
U.S. Fish and Wildlife Service

John R. McMahon JUL 30 2010
John R. McMahon
Brigadier General, US Army
Division Commander

Enclosure

Enclosure: Summary from 1 July 2010 meeting included as background information.

The Regional Administrators of the National Marine Fisheries Service (NOAA Fisheries) and the U.S. Fish and Wildlife Service (USFWS), Mr. William Stelle and Ms. Robyn Thorson respectively, met with Brigadier General John R. McMahon, Commander, Northwestern Division, USACE, on July 1, 2010 to discuss interagency cooperation to address regional concerns expressed by communities who rely on levees for flood risk reduction in Washington, Oregon, Idaho, Western Montana, and Wyoming. BG McMahon requested the meeting to begin dialogue with Mr. Stelle, Ms. Thorson, and their staffs on challenges raised by the Corps' renewed emphasis on levee vegetation maintenance and potential conflicts the Corps' policy poses to critical habitat for fish under the Endangered Species Act.

The meeting's purpose was to share the Corps' ongoing levee vegetation related activities and to achieve a common understanding of the issues related to levees including: public safety, levee vegetation maintenance, and the Corps' Rehabilitation and Inspection Program as it relates to levee certification under the Federal Emergency Management Administration's National Flood Insurance Program. The meeting's goal was to begin collaborative efforts to identify a path forward that balances each agency's congressional mandate or mission while allowing for levee vegetation maintenance.

Accordingly, the agencies agreed to work together to develop a regional framework via a roundtable process. The process as proposed follows, allowing for changes in course if and when appropriate:

- Assemble a small technical team comprised of subject matter experts representing the three agencies with the task of developing a "draft" regional framework that meets the agencies' policies and mandates. This step will include review and endorsement from the three agencies.

- Provide the "draft" framework to tribal government and state and local agencies for review and comment. The purpose of this step is to obtain their input to ensure a workable plan for state, local, and tribal resource agencies.

- Obtain the input of non-federal levee sponsors who are responsible for levee operation and maintenance and other related activities such as obtaining permits as required and requests for vegetation variances when and where appropriate. This is proposed to occur in several facilitated workshops, possibly by river basin. The intent of this effort would be to review the "draft" framework with them, and make final refinements based on local input.

- Final framework will be made available to all stakeholders and interested parties. It will be considered the roadmap for subsequent levee operation and maintenance activities in the Northwestern Region.

This proposed round table process and framework development will take time. The three agencies propose approximately 15 months to develop and implement the finalized framework. Further, it is also recognized that once the framework is in place, a transition period will be needed for levee sponsors responsible for levee maintenance on tributaries with ESA-listed fish to either submit a request for a vegetation variance or to meet the national levee vegetation standard. Consequently, after the framework is adopted, a two-year transition period (until September 30, 2013) is envisioned.

The vegetation variance policy is particularly important in the Northwest as it provides an important opportunity to allow vegetation on or adjacent to the riverward levee slope in areas where riparian habitat is critical for ESA-listed fish survival. The two-year transition period is requested to allow non-Federal sponsors to fully comply, or to develop their plan for financing and performing system-wide improvements, as allowed under the Memorandum: Temporary Extension of PL 84-99 Eligibility, dated January 9, 2009.