



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
SEATTLE DISTRICT, CORPS OF ENGINEERS
P.O. BOX 3755
SEATTLE, WASHINGTON 98124-3755

Civil Works Branch

NOV 7 2011

The Honorable Billy Frank, Jr.
Chairman
Northwest Indian Fisheries Commission
6730 Martin Way East
Olympia, WA 98516-5540

Dear Chairman Frank:

Thank you for your letter dated July 25, 2011 addressed to Colonel Anthony Wright, Commander, U.S. Army Corps of Engineers (Corps), Seattle District (Seattle District) regarding the consultation process on the Corps' levee vegetation policy. I assumed District Command duty on July 29, 2011 and I want to thank you for meeting with me and my staff on October 12, 2011. We recognize the cultural and spiritual significance of salmon to Northwest Tribes and the vital role Tribes play in a recovery of those species. We also recognize the concerns expressed in your July 14, 2011 "Treaty Rights at Risk" report. The Corps is very interested in working with the 20 Treaty Tribes the Northwest Indian Fisheries Commission (NWIFC) represents in Puget Sound and other agencies to promote levee integrity and recover habitat, salmon, and other aquatic species. This letter briefly addresses the Seattle District's ongoing efforts to prepare a Programmatic Biological Assessment covering its Public Law 84-99 activities for the Green River Basin, the Corps' national levee vegetation policy development and the Seattle District's concurrent actions, and a proposed manner the Corps and NWIFC can work with Tribes to inform that policy moving forward.

As indicated in prior correspondence with the National Oceanic and Atmospheric Administration and the U.S. Fish and Wildlife Services (the Services), the Seattle District is preparing a Programmatic Biological Assessment (PBA) covering its Public Law (PL) 84-99 activities, including issues of levee vegetation management under that program. This PBA will address the Green River Basin. A circumscribed scope of analysis is justified in light of the complexity and novelty of the technical and legal issues involved in conducting such a comprehensive evaluation. Following completion of an Endangered Species Act (ESA) Section 7 consultation on the Green River Basin, consultation could be incrementally extended to cover the balance of the Seattle District using the Green River analysis as a template. Consultation with affected Tribes, including those your NWIFC represents, could be conducted as preparation of the PBA concludes, contemporaneous with Section 7 consultation with the Services. There has been progress on the Green River PBA. However, due to the flooding on the Missouri River last summer, a good portion of the funding that had been dedicated to Green River analysis and BA document preparation was pulled back by the Corps' national headquarters to assist in that

flood response effort. We have asked for the funding to be replaced and are optimistic it will be once Fiscal Year 12 funds are appropriated and released to Seattle District.

Application of the Corps' national vegetation standards is one of many criteria used to determine eligibility for Federal rehabilitation assistance under PL 84-99 for levees and floodwalls. In February 2010, a draft Policy Guidance Letter (PGL) was issued by Corps Headquarters on the process for requesting variances from the national vegetation standards in Engineer Technical Letter 1110-2-571. The process provides opportunities to tailor vegetation maintenance to local conditions and requirements such as the ESA or Tribal Treaty rights, while still providing levee integrity. More recently, as first discussed in the July 12, 2011 Levee Vegetation Information Session, the Corps developed a draft System-Wide Improvement Framework (SWIF) policy. The SWIF process facilitates collaboration for addressing complex levee system deficiencies, which may entail protected resources under the Endangered Species Act (ESA) or Tribal Treaty rights. As currently conceived, a vegetation variance request under the PGL can be part of the SWIF process. A copy of the draft SWIF approach is enclosed.

The Corps' national-level efforts to promulgate these policies, inclusive of the current time schedule, are summarized in a October 26, 2011 letter from the Assistant Secretary of the Army for Civil Works to the Secretary of the Interior, the Environmental Protection Agency Administrator, the Undersecretary of Commerce for Oceans and Atmosphere, and the Council on Environmental Quality enclosed for your reference. Because the PGL would only establish a new process for reviewing and making decisions on requests for variances, it would not directly and substantially affect any Trust resources or Treaty rights. However, the Corps recognizes application of that process, by evaluating and deciding upon a specific request for a new variance or a change to an existing variance, could affect Trust resources and Treaty rights. Further, the Corps is aware that early involvement of potentially affected Tribes in these decisions will be critical to developing sustainable solutions that protect Trust resources and Treaty rights. Consequently the Corps is committed to completing environmental review and Tribal consultation when making these decisions about levee infrastructure systems.

Presently, the 1995 Seattle District variance remains in effect and continues to be applied. We expect this approach to be further informed by the final versions of the aforementioned draft policies which provide pathways to transition levees to applicable vegetation management standards while maintaining PL 84-99 eligibility and adhering to Indian Tribal Trust and environmental and endangered species requirements. Beginning in October 2010, the Seattle District established a multi-agency levee vegetation working group with the goals of shaping the national policy based on local conditions and developing four products to assist in collaborative approaches: (1) a model variance for the Green/Cedar Rivers; (2) a template variance application to be utilized at the election of a non-Federal interest to request a variance from the Corps' national vegetation standard; (3) a prototype transition plan that would permit an orderly progression from the standards of the 1995 variance to a newly approved variance, taking into full consideration the characteristics of each basin/watershed and fostering the goals of protecting and enhancing salmonid habitat; and (4) a communication plan.

From the outset, it was recognized that many Tribes and stakeholders in the region would likely be interested in participating. However, the working group was formed to address a

circumscribed geographic scope – the Green and Cedar River Basins – in light of considerations of complexity, scale, number, and novelty of issues. Consequently, the Muckleshoot Indian Tribe and stakeholders with a direct interest in levee management within that geographic area were invited to participate. While the Muckleshoot Indian Tribe accepted the invitation, we realize their participation does not replace formal consultation with them, any of the Indian Tribes represented by the NWIFC, or any other Federally-recognized Tribes within Seattle District's area of responsibility. The intent is that when complete, the template products developed by the working group will be made available for elective consideration and use by levee system owners in other watersheds within the Seattle District boundaries and that affected Tribes in those basins be invited to directly participate.

The draft matrix tool presented at the July 12, 2011 Levee Vegetation Information Session is a product of the Green/Cedar working group. When complete the matrix might help levee owners assess their levees and determine their actions to meet PL 84-99 eligibility criteria. The draft matrix would not replace a variance application but could be used by local sponsors as a tool to evaluate their specific situation and decide what path to pursue. The working group acknowledges the draft matrix tool requires further testing and revision to account for habitat needs, and plans to undertake this effort going forward. Additionally, King County has offered to "test" the draft matrix tool to see how it might perform in terms of the temperature Total Maximum Daily Load (TMDL) reflected in the May 2011 draft Water Quality Improvement Report. We expect this modeling to soon be accomplished. The appropriate sponsors, stakeholders, and Tribes should be included in any additional efforts to modify the Green/Cedar matrix for other specific levee systems.

Moving forward, I see two initial near-term opportunities where the NWIFC and Seattle District might work together to inform the Corps' levee vegetation approach. The first is by participating in an upcoming conference call or webinar that the Corps' Engineer Research and Development Center intends to host in the coming weeks to address past and future research efforts regarding the effects of woody vegetation on levee performance. We will forward additional information on how you and your member Tribes can participate in that call shortly. The second is to participate in a technical information meeting hosted by Seattle District for the purpose of presenting and discussing the draft PGL and SWIF with interested Puget Sound Tribes. We are planning to hold this session on Monday, December 19, 2011 at the Seattle District headquarters from 1:00-2:30 PM concurrent with planned publication of the draft PGL in the Federal Register for a 60-day public comment and will also have a dial-in number. This will allow the Corps to share the draft PGL with Tribes when it is released. I am happy to further discuss these two opportunities and look forward to your favorable consideration of them communicated to me ((206) 764-3690 Bruce.Estok@usace.army.mil) or through Ms. Lori Morris, the Seattle District Tribal Liaison ((206) 764-3625 Frances.Morris@usace.army.mil).

I genuinely appreciate the active engagement of the Commission and its member Tribes on this difficult issue and look forward to further collaboration as we strive together to address all of the considerations involved.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce A. Estok". The signature is stylized with large, sweeping loops and a prominent flourish at the end.

Bruce A. Estok
Colonel, Corps of Engineers
District Commander

Enclosures