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WISE USE MOVEMENT

P.O. Box 17804, Seattle, WA 98127

July 20, 2016

U.S. Army Corps of Engineers
Attn: CECW-CO-R
441 G Street NW
Washington, D.C. 20314-1000

Email: NWP2017@usace.army.mil

RE: COE-2015-0017 / RIN 0710-AA73; Proposal to Reissue and Modify Nationwide Permits

Dear U.S. Army Corps of Engineers:

The Wise Use Movement has reviewed the Notice of Proposed Rulemaking (81 FR 35186+, June 1, 2016), Proposal to Reissue and Modify Nationwide Permits. The following are the comments of the Wise Use Movement:

GENERAL COMMENTS

Unlike the U.S. Army Corps of Engineers (Corps), The Wise Use Movement strongly supports the protection, preservation, restoration, and enhancement of our Nation's Wetlands. We find that, overall, the proposal to reissue and modify Nationwide Permits (NWP) for the discharges of dredged or fill material into waters of the United States does not promote the goals and policies of the Federal Clean Water Act: "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." *33 U.S.C. Sec. 1251(a)*.

In addition, the Corps fails to comply with 33 U.S.C. Sec. 1344(e) for general permits because many of the NWPs are not a category "similar in nature" or have more than a minimal adverse environmental effect when performed separately and more than a minimal cumulative adverse effect on the environment. Unlike the Corps, the Wise Use Movement finds that "categories of activities that are similar in nature" should be interpreted narrowly, not broadly, in order to meet the goals of the Clean Water Act (*81 FR 35190*). In addition, because the Corps has no way of estimating the total amount of wetland filling under each NWP, it has no way of determining whether each NWP would have "only minimal cumulative adverse effect on the environment."

The Wise Use Movement requests that NWP 12 (Utility Line Activities); 14 (Linear Transportation Projects); 21 (Surface Coal Mining Activities); 29 (Residential Developments); 39 (Commercial and Institutional Developments); 40 (Agricultural Activities); 44 (Mining Activities); 48 (Commercial Shellfish); and 50 (Underground Coal Mining Activities) be rescinded and not re-issued, because they do not cover categories of activities that are similar in nature.. All other NWPs should include a requirement for an alternatives analysis.

We find that, contrary to the assertion of the Corps, NWPs are NOT an important tool for “protecting the environment by providing incentives to minimize impacts to jurisdictional waters” (81 CFR 35191). Through the issuance of NWPs, rather than individual permits, the Corps allows for filling our Nation’s Wetlands without any alternative analysis or public notice and comment.

The Wise Use Movement strongly objects to the Environmental Protection Agency’s (EPA) Sec. 404(b)(1) “Guidelines,” which remove NWPs from alternatives analysis (See 40 CFR Sec. 230.5 and 230.7.) The highest and best way to protect our remaining Nation’s Wetlands is to avoid filling them in the first place. This can be accomplished by adhering to the principle that avoidance is primary and alternatives to wetland filling are available. This goes completely out the window when EPA and the Corps issued dozens of NWPs for which no alternatives analysis is required. The Wise Use Movement requests that EPA review its Sec. 404(b)(1) “Guidelines,” to determine why it has refused to require alternative analysis for NWPs, and requests the Corps to add an alternatives analysis to all NWPs.

The Wise Use Movement also strongly opposes the ½ acreage limitations on NWPs 12, 14, 21, 29, 39, 42, 43, 44, 50, 5, and 52 (81 FR 3519) . An acre is 43,560 square feet. One-half acre is 21,780 acres. A typical residential city lot is 5,000 square feet. Perhaps the Corps, with its history of constructing extremely large environmental damaging dam projects, is not capable of understanding the importance of micro-habitats that promote biological diversity. Our Nation’s Wetlands did not existing in the form of one large “Wetland Mitigation Bank” per watershed, but rather as a mosaic of biologically productive ecosystems scattered throughout the landscape. Perhaps if the Corps were to identify the ½ acreage “limitation” as four 5,000 square foot city lots it would sink in that NWPs allow four city lots of wetlands to disappear under the above listed NWPs. NWPs should not be allowed for any wetland loss above 5,000 square feet.

We also strongly object to “regional general permits” (RGPs), issued by local Corps Districts for areas smaller than a state. 33 U.S.C. Sec. 1344(e) provides that the Secretary may only issue general permits on a “State, regional, or nationwide basis.” This is an ascending geographical description. Therefore, there is no legal basis for the Corps to issue RGPs for small areas such as Special Area Management Plans (81 FR 35195). Such RGPs simply invite wetland filling without alternatives analysis or public notice and comment. We request that all RGPs for areas smaller than a state be rescinded.

We also strongly object to the Corps unproven and unsupported assumption (81 FR 35209) that the preferred compensatory mitigation is a wetland mitigation bank or in-lieu credits. Along with the refusal to consider alternatives to wetland filling, wetland mitigation banks or in-lieu credits is just an easy way of avoiding alternatives to wetland filling (especially for non-water

dependent uses such as NWP 29 (Residential Developments); 39 (Commercial and Institutional Developments); 40 (Agricultural Activities); or 44 (Mining Activities). We request that the preferred “compensatory mitigation” first be avoidance, and then on-site restoration of wetlands.

The Wise Use Movement does strongly support regional conditions that restrict the types of waters of the United States where the NWPs are used, such as fens, bogs, bottomland hardwoods, etc. Regional conditions should attempt to quantify those wetland classifications that have been most impacted historically by wetland filling. NWPs should not be used in States, regions, or nationwide where more than 50 percent of an historic wetland classification has been destroyed (*81 FR 35195*).

More specific comments are as follows:

NWP 12. Utility Line Activities. We request that this NWP be rescinded and not reissued. “Utility line activities” cover such a broad definition as to no longer consist of a category of activities similar in nature. In addition, utility line activities should require individual permit applications so that alternative routes can be assessed and public notice and comment provided.

NWP 17. Hydropower Projects. We request that this NWP be rescinded and not reissued. “Hydropower projects” are extremely site specific and do not consist of a category of activities similar in nature. Hydropower projects should require individual permit applications so that alternatives can be assessed and public notice and comment provided.

NWP 18. Minor Discharge. We request that this NWP be rescinded and not reissued. “Minor discharge” covers such a broad array of possible activities as to no longer consist of a category of activities similar in nature. In addition, such discharges should require individual permit applications so that alternatives can be assessed and public notice and comment provided.

NWP 19. Minor Dredging. We request that this NWP be rescinded and not reissued. “Minor dredging” covers such a broad array of possible activities as to no longer consist of a category of activities similar in nature. In addition, such dredging should require individual permit applications so that alternatives can be assessed and public notice and comment provided.

NWP 21. Surface Coal Mining Activities. We request that this NWP be rescinded and not reissued. “Surface coal mining activities” cover such a broad array of possible activities as to no longer consist of a category of activities similar in nature. In addition, such activities should require individual permit applications so that alternatives can be assessed and public notice and comment provided.

NWP 29. Residential Developments. We request that this NWP be rescinded and not reissued. “Residential developments” cover such a broad array of possible developments as to no longer consist of a category of activities similar in nature. The Corps itself recognizes this because it lumps single-family, multiple unit residential development, and residential subdivisions all together. As noted above, a single-family city lot is approximately 5,000 square feet. This NWP allows a single-family residence to fill in FOUR such city lots. This is a particularly stupid NWP because residential development does not belong in wetlands. Residential

development should be placed in uplands to avoid flooding and to avoid wetland filling that lessens the availability of a watershed to absorb flood events. In addition, such discharges should require individual permit applications so that alternatives can be assessed and public notice and comment provided.

NWP 34. Cranberry Production Activities. We request that this NWP be rescinded and not reissued. “Cranberry production activities” are extremely site specific and do not consist of a category of activities similar in nature. Cranberry production activities should require individual permit applications so that alternatives can be assessed and public notice and comment provided.

NWP 39. Commercial and Institutional Developments. We request that this NWP be rescinded and not reissued. “Commercial and Institutional Developments” cover such a broad array of possible developments as to no longer consist of a category of activities similar in nature. The Corps itself recognizes this because it lumps building foundations, building pads and “attendant features” such as “roads, parking lots, garages, yards, utility lines, storm water management facilities, and recreation facilities such as playgrounds and playing fields.” As noted above, a single-family city lot is approximately 5,000 square feet. This NWP allows commercial and institutional developments to fill in FOUR such city lots. This is another stupid NWP because commercial and institutional development does not belong in wetlands. Commercial and institutional development should be placed in uplands to avoid flooding and to avoid wetland filling that lessens the availability of a watershed to absorb flood events. In addition, such discharges should require individual permit applications so that alternatives can be assessed and public notice and comment provided.

NWP 40. Agricultural Activities. We request that this NWP be rescinded and not reissued. “Agricultural activities” cover such a broad array of possible developments as to no longer consist of a category of activities similar in nature. The Corps itself recognizes this because it lumps building pads, as well as the installation, placement, or construction of drainage tiles (which are directly related to wetland loss), ditches, or levees, mechanized land clearing, land leveling, and relocation of existing drainage ditches, “and similar activities.” As noted above, a single-family city lot is approximately 5,000 square feet. This NWP allows agricultural activities to fill in FOUR such city lots. In addition, such discharges should require individual permit applications so that alternatives can be assessed and public notice and comment provided.

NWP 44. Mining Activities. We request that this NWP be rescinded and not reissued. “Mining activities” cover such a broad array of possible developments as to no longer consist of a category of activities similar in nature. As noted above, a single-family city lot is approximately 5,000 square feet. This NWP allows agricultural activities to fill in FOUR such city lots. In addition, such discharges should require individual permit applications so that mining activity alternatives can be assessed and public notice and comment provided.

NWP 48. Commercial Shellfish. We request that this NWP be rescinded and not reissued. “Commercial shellfish” covers such a broad array of possible shellfish activities as to no longer consist of a category of activities similar in nature. Commercial shellfish, such as geoduck harvesting, releases large amounts of plastic netting and tubes into the marine environment, a

significant source of marine debris pollution. The Corps itself recognizes this because it lumps buoys, floats, racks, trays, nets, lines, tubes, containers, “and other structures.” On June 22, 2016, the Coalition to Protect Puget Sound sued the Corps to set aside recent authorizations under NWP 48. This is just one example of the efforts that the public has had to take to challenge the unlawful implementation of the Corps NWP program.

See: http://coalitiontoprotectpugetsoundhabitat.org/?page_id=143

In addition, commercial shellfish activities should require individual permit applications so that alternatives can be assessed and public notice and comment provided.

NWP 49. Coal Remining Activities. We request that this NWP be rescinded and not reissued. “Coal remining activities” cover such a broad array of possible activities as to no longer consist of a category of activities similar in nature. The Corps itself fails to even describe the various activities that might be covered, other than to acknowledge that “the permittee may conduct new coal mining activities in conjunction with the remining activities.” In addition, such discharges should require individual permit applications so that alternatives can be assessed and public notice and comment provided.

NWP 50. Underground Coal Mining. We request that this NWP be rescinded and not reissued. “Underground coal mining” activities cover such a broad array of possible activities as to no longer consist of a category of activities similar in nature. The Corps itself fails to even describe the various activities that might be covered. In addition, such discharges should require individual permit applications so that alternatives can be assessed and public notice and comment provided.

SUMMARY

It is ironic that despite the Corps claim that NWPs are a “streamlined authorization process” (81 FR 35190 and 35191) when the Corps proposes to issue over 50 NWPs and the proposed five-year NWPs cover 23 pages of the Federal Register, with another 31 pages of supplementary information, which does not include regional conditions. In summary, the Wise Use Movement strongly urges the Corps to comply with the Clean Water Act and return to individual permit applications for the disposal of dredged or fill material in order to preserve and protect our Nation’s Wetlands.

John de Yonge

John D. de Yonge

PRESIDENT