



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 19 1994

OFFICE OF
WATER

Honorable G. Edward Dickey
Acting Assistant Secretary of the Army (Civil Works)
Department of the Army
Washington, DC 20310-0130

Dear Dr. Dickey:

In a December 22, 1993, letter, EPA Region IV requested elevation, under Section 404(q), of a decision by Colonel Stanley G. Phernambucq, U.S. Army Corps of Engineers (Corps), Vicksburg District, to issue a Section 404 permit to the Delta Environmental Land Trust Association (DELTA) for the development of mitigation banks in Louisiana, Mississippi, and Arkansas. For the reasons elaborated below, I have decided not to pursue elevation of this permit decision. I appreciate your willingness to continue to work with us to develop a final permit authorizing necessary discharges, a formal agreement defining the operation of the proposed mitigation banks, and associated implementation documents that respond to the issues raised in the Region IV letter.

Since receiving the December 22 letter, your staff has worked very closely with EPA to revise the mitigation banking agreement in response to our mutual concerns. The result of this effort is an improved agreement that complies with the relevant requirements of EPA and Army Section 404 regulations and is consistent with provisions of our August 23, 1993, mitigation banking guidance. As a result of our coordination, the agreement effectively addresses such issues as the bank's use to compensate for only those functions and values that the bank will perform, increased compensation ratios for temporal losses of forested wetlands, and clarification of liability for long-term maintenance of established banks. This agreement also refers extensively to the completion of instruments associated with development of the proposed mitigation banks such as easements, management plans, and restoration plans. As revised, the agreement provides for critical coordination among the Vicksburg District, EPA Regions IV and VI, and the Fish and Wildlife Service in the review and completion of these plans.

I also appreciate your willingness to work with EPA in making final the terms and conditions of the Section 404 permit authorizing discharges associated with the development of the banks and in completing the final provisions of the banking agreement. We look forward to working with your office to complete this review in a timely manner.

I know we share the perspective that mitigation banking provides the conceptual basis for more effectively compensating for unavoidable wetlands losses permitted under Section 404 and for helping to meet the Administration's long-term goal of an increase in the quality and extent of the Nation's wetlands. In that regard, our agencies have placed high priority on the development of guidance for our field staff to clarify how mitigation banking can be implemented most effectively under the Section 404 regulatory program. Among the key issues we will need to address is to define the kinds of wetland uses that are, or are not, compatible with the operation of mitigation banks and to clarify a system for debits/credits that reflects temporal changes in the functions banks perform. In the interim, effective coordination among the agencies is essential if we are to ensure that banking proceeds in only the most environmentally responsible manner.

We appreciate your efforts to respond to our concerns in this case and look forward to coordinating with your office and the Vicksburg District in completing the provisions for the proposed DELTA mitigation banks. If you have any questions, please do not hesitate to contact me or Mr. Gregory Peck at (202) 260-8794.

Sincerely,



Robert Perciasepe
Assistant Administrator

cc: John H. Hankinson, Jr.
Regional Administrator
EPA Region IV

Jane N. Saginaw
Regional Administrator
EPA Region VI