



REPLY TO  
ATTENTION OF

Executive Office

**DEPARTMENT OF THE ARMY**  
PHILADELPHIA DISTRICT, CORPS OF ENGINEERS  
WANAMAKER BUILDING, 100 PENN SQUARE EAST  
PHILADELPHIA, PENNSYLVANIA 19107-3390

June 24, 2010

Mr. Collin P. O'Mara, Secretary  
State of Delaware  
Department of Natural Resources and Environmental Control  
89 Kings Highway  
Dover, Delaware 19901

Dear Secretary O'Mara:

Thank you for your letter dated June 15, 2010, which provided an update on DNREC's ongoing review and identified remaining issues of concern regarding the Delaware River Main Channel Deepening Project. As you indicated, many of these issues were discussed by DNREC and Corps technical staff prior to and during the meeting held at your offices on June 14, 2010. As a result of those discussions, the Corps provided some additional documentation during and subsequent to the meeting to further address DNREC's concerns. We will provide written responses to the comments included in your letter and any associated additional information prior to the public hearing, which we understand has been scheduled for July 13 and July 14, 2010.

With regard to issue number six in your letter, Coastal Zone Management Act Federal Consistency, enclosed are copies of the following letters:

1. Letter to the Delaware Coastal Management Program (DCMP) requesting concurrence with the CZM consistency determination, dated December 20, 1996
2. Letter from the DCMP deferring final consistency concurrence, dated February 14, 1997
3. Letter to the DCMP listing agreements pursuant to the DCMP's consistency concurrence, dated April 30, 1997
4. Letter from the DCMP concurring with the Corps' consistency determination, dated May 1, 1997

The Corps submits this documentation and will participate in the public hearing in accordance with the representations made by each party to the United States District Court in Delaware Department of Natural Resources and Environmental Control v. United States Army Corps of Engineers, et al. The Corps does not waive any right, claim or defense with respect to matters that come before the Court in that lawsuit.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Tickner', with a long horizontal flourish extending to the right.

Thomas J. Tickner  
Lieutenant Colonel, Corps of Engineers  
District Commander

Enclosures

CENAP-PL-E  
6554/am  
09 DECEMBER 1996

BRADY *JTB*

PASQUALE *JP*

LULEWICZ *L.L.*

BURNES *MA 12/16*

CALLEGARI *cut*

Environmental Resources Branch

DEC 20 1996

Ms. Sarah Cooksey  
Delaware Coastal Management Program  
Division of Soil and Water Conservation  
Delaware Department of Natural Resources  
and Environmental Control  
89 Kings Highway, P.O. Box 1401  
Dover, Delaware 19903

Dear Ms. Cooksey:

The purpose of this letter is to request Federal consistency concurrence with the Delaware Coastal Management Program (DCMP) pursuant to Section 307 (c) of the Coastal Zone Management Act, as amended, for the Delaware River Main Channel Deepening Project. In a letter dated January 31, 1992 (Enclosure 1), your office provided a conditional consistency determination, subsequent to review of the amended Draft Environmental Impact Statement prepared during the feasibility phase of study. That letter indicated that an additional determination would be required at the conclusion of the Preconstruction Engineering and Design (PED) Study.

The Delaware River Main Channel Deepening Project was authorized by Congress in October 1992 as part of the Water Resources Development Act of 1992. The recommended plan of improvement modifies the depth of the existing navigation channel from 40 to 45 feet at mean low water, with an allowable dredging overdepth of one foot. The modified channel would follow the existing channel alignment from Delaware Bay to Philadelphia Harbor and Beckett Street Terminal, Camden, New Jersey, with no change in channel widths. The plan also includes channel bend widenings, as well as partial deepening of the Marcus Hook Anchorage. Approximately 33.4 million cubic yards of material would be dredged for initial project construction. In addition, 229,000 cubic yards of rock would be removed from the channel in the vicinity of Marcus Hook, Pennsylvania. Annual maintenance dredging for the 45-foot channel would increase to 6,007,000 cubic yards from the current 4,888,000 cubic yards for the 40-foot channel, for a net increase of 1,119,000 cubic yards. In the riverine portion of the project area, dredged material would be placed in nine active, Federal upland dredged material

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disposal sites, and four new upland sites identified as 17G, 15D, 15G and Raccoon Island. In Delaware Bay, dredged material from initial project construction would be used for wetland restoration at Egg Island Point, New Jersey and Kelly Island, Delaware, and for stockpiling of sand for later beach nourishment work at Slaughter and Broadkill beaches in Delaware.

The purpose of the Draft Supplemental Environmental Impact Statement (DSEIS) (Enclosure 2) is to provide additional information and environmental analysis to address environmental concerns raised during review of the 1992 Feasibility Report and Environmental Impact Statement. Environmental analyses completed during the PED Study include: three - dimensional hydrodynamic modeling of the Delaware estuary to evaluate potential changes in salinity and circulation patterns; benthic invertebrate sampling to assess habitat quality at selected beneficial use sites in Delaware Bay; biological effects based testing to determine the impact of open water disposal on aquatic ecosystems; detailed environmental assessments of selected upland dredged material disposal sites; consultation with both the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, pursuant to Section 7 of the Endangered Species Act; cultural resource investigations in dredging and disposal locations; and coordination with the regional oil spill response team to review the adequacy of existing Delaware River spill contingency plans.

A consistency review was performed by this office based on the DNREC guidance document: *Delaware Coastal Management Program - Comprehensive Update and Routine Program Implementation, March, 1993*. After a detailed review of all applicable regulations and policies associated with the construction design for the aforementioned project, it is our finding that the proposed activity complies with Delaware's approved coastal management program and will be conducted in a manner consistent with the program. A table and outline of the applicable Delaware CMP policies is enclosed with this letter for your consideration (Enclosure 3). An attachment that addresses the specific concerns of your letter of January 31, 1992 is also attached (Enclosure 4). In addition, a number of meetings and field trips have been held between our staffs to resolve outstanding DNREC concerns (Enclosure 5).

Please review the enclosed information and provide your concurrence with our determination of Coastal Zone Consistency by February 17, 1997. Technical appendices and/or extra copies of the report are available upon request. If you have any questions regarding this project, please contact John Brady of the Environmental Resources Branch at (215) 656-6555.

Sincerely,

Robert L. Callegari  
Chief, Planning Division

Enclosures

MFR: Coordinated with CENAP-PL-DP. Letter to DNREC requesting CZM consistency determination for Delaware River Main Channel Deepening Project. Letter transmitting SEIS for public review and comment.



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL  
DIVISION OF SOIL AND WATER CONSERVATION  
88 KINGS HIGHWAY  
P.O. BOX 1401  
DOVER, DELAWARE 19903

OFFICE OF THE  
DIRECTOR

TELEPHONE: (302) 739-3451

February 14, 1997

Mr. Robert L. Callegari  
U.S. Army Corps of Engineers  
Philadelphia District  
Wanamaker Building  
100 Penn Square East  
Philadelphia, Pennsylvania 19107-3390

*RE: Federal Consistency Certification  
Delaware River Main Channel Deepening Project*

Dear Mr. Callegari:

The Delaware Coastal Management Program (DCMP) has received and reviewed the Army Corps of Engineers' federal consistency determination and the January 1997 Draft Supplemental Environmental Impact Statement for the Delaware River Main Channel Deepening Project. Based upon the DCMP's review of this project and pursuant to National Oceanic and Atmospheric Administration Regulations, 15 CFR 930, the DCMP will be unable at this time to provide the Army Corps of Engineers with final federal consistency concurrence due to additional information requirements outlined in this letter.

In 1992, the DCMP granted conditional federal consistency concurrence to the Army Corps of Engineers for the Draft Environmental Impact Statement and Feasibility Stage of the Delaware River Main Channel Deepening. The conditions of the concurrence were that additional testing, assessments, and impact evaluations be conducted during the Pre-construction, Engineering and Design phase of the project and that at the end of this phase another consistency determination be submitted to the DCMP. In December of 1996, the DCMP received the Draft Supplemental Environmental Impact Statement to the original 1992 Environmental Impact Statement along with the federal consistency determination for this phase.

The information contained within this 1997 Draft Supplemental Environmental Impact Statement is not sufficient for the DCMP to make an informed decision on whether or not this project is consistent with its program policies. Specifically, the information and data that the DCMP needs to evaluate are:

1. The final design and plans for the Kelly Island beneficial use site;
2. The complete and final summary and analysis of the Mono-ortho, dye-ortho and coplanar congener specific PCB's for the channel sediment samples;

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1. A re-design of the Kelly Island was provided.
2. Final report was provided.

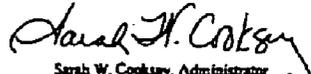
3. Additional information regarding the potential for increased erosion at Pea Patch Island associated with the deepening of the Main Channel.
4. The methods and specific time of year that dredging is scheduled to occur, in efforts to protect Delaware's wildlife resources; and.
5. The impacts of dredging upon the declining population of Atlantic Sturgeon in the Delaware River.

In light of the information requested above, the DCMP would like to request a meeting with the Corps to discuss the specific needs and informational requirements that need to be met. Prior to such a meeting, more formal, detailed, and specific comments will be forwarded to the Corps.

Since this project is so large in size and that the information in hand is not yet complete, the DCMP will defer it's final consistency concurrence until this critical information is received. At such time that the requested information is received, and adequate review time is provided, the DCMP will make a final concurrence decision.

The DCMP would like to thank the Corps for their cooperation in working with us so far, and we look forward towards achieving this project's success together.

Sincerely,

  
Sarah W. Cooksey, Administrator  
Delaware Coastal Management Program

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3. Corps model studies and results on the potential for increased erosion at Pea Patch Island associated with the 45 foot project were provided.

4. Please refer to Section 1.1.9 and Table 1-1 of this SEIS. Specific information on the impacts of dredging on the wading bird colony at Pea Patch Island has been provided and is discussed in this SEIS in Section 10.4.3.6.

5. This information has been provided.



DEPARTMENT OF THE ARMY  
PHILADELPHIA DISTRICT CORPS OF ENGINEERS  
WARRAMER BUILDING 100 PENN SQUARE EAST  
PHILADELPHIA PENNSYLVANIA 19107-5001

Planning Division

30 APR 1997

Sarah W. Cooksey  
Delaware Coastal Management Program  
89 Kings Highway  
P.O. Box 1401  
Dover, Delaware 19903

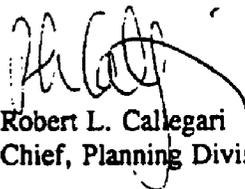
Dear Ms. Cooksey:

Pursuant to the Delaware Coastal Management Program's (DCMP's) federal consistency certification of the Delaware River and Bay Main Channel Deepening Project, the Philadelphia District of the Army Corps of Engineers agrees to the following:

1. To use "best management practices" during construction of the Kelly Island wetland restoration to minimize the chances of additional turbidity in Delaware Bay as a result of fine-grained material that could possibly escape from this site.
2. To include the latest design of the Kelly Island wetland restoration, dated March 1997, and the subsequent maintenance of this site after construction.
3. To assist the State of Delaware in addressing the ongoing erosion problem at Pea Patch Island.
4. To investigate the feasibility of using blasted rock from the channel deepening in the Marcus Hook region for erosion control/shoreline stabilization and habitat enhancement projects.
5. To restrict dredging for either the initial construction or subsequent maintenance of the 45 foot channel within close proximity so that no disturbance occurs to the wading bird colony at Pea Patch Island between 1 April and 30 August.
6. To coordinate with the State of Delaware Department of Natural Resources and Environmental Control during the preparation of Plans and Specifications to attempt to identify specific areas within the area to be dredged that are used by this species for spawning if there is a continuing concern for Atlantic Sturgeon.
7. To address during the Plans and Specifications phase the impacts to benthic resources from the placement of sand stockpiles underwater, specifically at site MS-19 and evaluate the possibility of placing such sand material on the shore for replenishment, protection, and wildlife habitat.

The Army Corps of Engineers understands that the DCMP's federal consistency certification of the Delaware River and Bay Main Channel Deepening project does not in any way guarantee that the State of Delaware will participate in funding the non-federal sponsorship of this project. The Corps looks forward to the federal consistency certification of this project by the Delaware Coastal Management Program based upon the agreements outlined above.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Callegari', is written over a printed name and title.

Robert L. Callegari  
Chief, Planning Division



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL  
DIVISION OF SOIL AND WATER CONSERVATION

89 KINGS HIGHWAY  
P.O. BOX 1401  
DOVER, DELAWARE 19903

OFFICE OF THE  
DIRECTOR

TELEPHONE: (302) 739 - 3451

May 1, 1997

Robert L. Callegari  
Chief, Planning Division  
Philadelphia District  
U. S. Army Corps of Engineers  
100 Penn Square East  
Philadelphia, Pennsylvania 19107-3390

**RE: Consistency Certification  
Delaware River Main Channel Deepening Project**

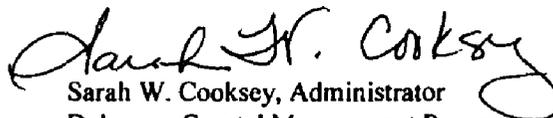
Dear Mr. Callegari:

The Delaware Coastal Management Program (DCMP) has received and reviewed your consistency determination for the above referenced project. Pursuant to National Oceanic & Atmospheric Administration regulations (15 CFR 930), the DCMP concurs with your consistency determination for the deepening of the Delaware River Federal navigation channel from a depth of 40 feet to 45 feet. The DCMP certifies this project consistent with its program policies after review of the 1997 Draft Environmental Impact Statement, post-informational studies, and conditions agreed to by the Corps of Engineers in their April 30, 1997 letter. Our concurrence will be based upon the restrictions and/or conditions placed on any and all permits issued to you for this project.

This consistency certification in no way guarantees that the State of Delaware will contribute funding to the non-federal sponsorship of this project. Due to the large scale of this project, the DCMP requests that the Corps of Engineers hold an informational public meeting for the citizens of the State of Delaware so that they may be aware of this project and understand its scope.

The DCMP would like to thank the Corps for their coordination and cooperation in the review of this project and we look forward to working with you in the future. If you have any questions regarding this determination please contact me at (302) 739-3451.

Sincerely,

  
Sarah W. Cooksey, Administrator  
Delaware Coastal Management Program

SWC/jll  
cc: Secretary Christophe A.G. Tulou, DNREC

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