

Appendix 1 Laws and Policies Related to Water Quality and Ecosystem Restoration

This section provides an overview of existing laws that impact or may impact the HLD project. The laws and policies in this section fall into two categories: the regulation of water quality and incentives for floodplain and wetland restoration.

National

Clean Water Act

Section 404: Permits for Dredged or Fill Material

The principle federal program that provides regulatory protection for wetlands is found in Section 404 of the CWA. Its intent is to protect water and adjacent wetland areas from adverse environmental effects due to discharges of dredged or fill material. Established in 1972, Section 404 requires landowners or developers to obtain permits from the Corps of Engineers (Corps) to carry out activities involving disposal of dredged or fill materials into waters of the United States, including wetlands.

The Section 404 program applies to agricultural lands. But the Corps and EPA exempt “prior converted lands” (wetlands modified for agricultural purposes before 1985) from Section 404 permit requirements under a Memorandum of Agreement (MOA), and the Clean Water Act exempts “normal farming activities”.¹

Section 402: National Pollution Discharge Elimination System

The National Pollutant Discharge Elimination System (NPDES) Program’s purpose is to protect human health and the environment. The Clean Water Act requires all point sources discharging pollutants into waters of the United States obtain an NPDES permit. By point sources, EPA means discrete conveyances such as pipes or man made ditches. Although individual homes connected to a municipal system or lacking surface discharge do not need permits, facilities must obtain permits if their discharges go directly to surface waters. Some

pollutants that may threaten public health and the nation's waters include human wastes, ground-up food from sink disposals, laundry and bath waters, toxic chemicals, oil and grease, metals, and pesticides.²

Section 303: Water Quality Standards and Implementation Plans

Section 303(d) of the 1972 Clean Water Act, requires states, territories and authorized tribes to develop lists of impaired waters. These impaired waters do not meet water quality standards that states, territories, and authorized tribes have set for them, even after their point sources installed the minimum required levels of pollution control technology. The law requires that these jurisdictions establish priority rankings for waters on the lists and develop Total Maximum Daily Limits (TMDLs) for these waters.

What is a TMDL: A TMDL specifies the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards. It also allocates pollutant loadings among point and nonpoint pollutant sources (NPS). By law, the EPA must approve or disapprove lists and TMDLs established by states, territories, and authorized tribes. If a state, territory or authorized tribe submission is inadequate, the EPA itself establishes the list or the TMDL. EPA issued regulations in 1985 and 1992 that implement section 303(d) of the Clean Water Act - the TMDL provisions.

The New TMDL Rule: These recommendations guided the development of proposed changes to the TMDL regulations, which EPA issued in draft in August of 1999. After a long comment period including hundreds of meetings and conference calls, debate, and the Agency's review and consideration of over 34,000 comments, the final rule was published on July 13, 2000. However, Congress added a "rider" to one of their appropriations bills that prohibits EPA from spending FY2000 and FY2001 money to implement this new rule.

Current TMDL Program: The current rule remains in effect until 30 days after Congress permits the EPA to implement the new rule. Development and

completion of TMDLs continues under the current rule, as required by the 1972 law and court orders. The regulations that currently apply are those that were issued in 1985 and amended in 1992 (40 CFR Part 130, section 130.7).³

Section 319: Nonpoint Source Management Program

Section 319 establishes a national program to control nonpoint sources of pollution, stressing a watershed-based approach to nonpoint source management. Management programs may include protection and/or restoration of wetlands and riparian areas to reduce NPS pollution. EPA provides funding under Section 319 (h).⁴

Compliance with Section 319 requires states to prepare a report identifying waters incapable of attaining CWA standards. Reports must identify categories of NPS polluters, describe the process for identifying best management practices, describe measures for controlling each category of NPS, and identify state and local programs for controlling pollution and improving water quality. Furthermore, Section 319 requires the preparation of state management program for controlling NPS pollution.⁵

Conservation Reserve Program

The Conservation Reserve Program (CRP), administered by the Commodity Credit Corporation (CCC) through the Farm Service Agency (FSA), is a voluntary program for agricultural landowners. The CRP provides annual rental payments based on the agriculture rental value of the land. The CRP also provides cost-share assistance for up to 50 percent of the participant's costs in establishing approved conservation practices such as long-term, resource-conserving, vegetative covers. The enrollment contracts last 10-15 years. The Natural Resources Conservation Service, Cooperative State Research and Education Extension Service, state forestry agencies and local Soil and Water Conservation Districts provide program support.⁶

The Estuary Restoration Act of 2000

The Estuary Restoration Act (Clean Waters and Bay Act of 2000, 106 Public Law 457). Establishes an estuary restoration program consisting of partnerships between the public and the private sector. Projects and recommendations will be made by the partnerships and

reviewed by the Habitat Restoration Council and an advisory board consisting of scientific experts, state and local government representatives and non-governmental representatives. The Council will determine which projects are to be approved and the Secretary of the Army will carry out the approved projects. The goal of the Acts is to restore 10 million acres of Estuaries by 2010.⁷

The Harmful Algal Bloom and Hypoxia Research and Control Act of 1998

The Coast Guard Authorization Act of 1998 and 1999 was enacted on November 13, 1998. Title VI of the law is the "Harmful Algal Bloom and Hypoxia Research and Control Act of 1998." In short, the new law (1) establishes a Federal Task Force on Harmful Algal Blooms and Hypoxia, (2) provides for assessments of ecological and economic consequences of harmful algal blooms and hypoxia, and (3) requires a plan for controlling hypoxia in the northern Gulf of Mexico by March 30, 2000.⁸

The Wetlands Reserve Program

The Wetland Reserve Program (WRP) was originally introduced as part of the 1990 Farm Bill Conservation Provisions (Food Securities Act, 16 U.S.C. 3837 *et seq.*)⁹, and revised in the 1996 Farm Bill. The United States Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS) administers the WRP. The WRP provides incentives for landowners to restore and protect wetlands by placing the land under a permanent easement, a 30-year easement, or a restoration agreement.

Enrollment requires landowner to meet three criteria and undergo a ranking process. First, the land belongs to one of five categories: agricultural land with restorable wetlands; land adjacent to wetlands; wetlands restored under federal or state programs; conservation reserve land; or riparian areas. Second, clear title to the land is established and finally a minimum of twelve months of ownership is met. Once an area is tentatively selected, the value of the land is appraised and the landowner is offered a maximum easement value of \$1,200 an acre. For 30-year easements and restoration agreements the USDA agrees to pay 75% of the site restoration costs. Under the easement the landowner controls access to the land by others, with the exception that the NRCS is always allowed to manage and inspect

the site. Recreation is permitted on the site as long as it does not degrade the wetlands, however, use requires the permission of the NRCS.¹⁰

North American Wetlands Conservation Act

The North American Wetlands Conservation Act (NAWCA) of 1989 provides matching grants to private or public organizations or to individuals who have developed partnerships to carry out wetlands conservation projects in the United States, Canada, and Mexico. The NAWCA was passed, in part, to support activities under the North American Waterfowl Management Plan, an international agreement that provides a strategy for the long-term protection of wetlands and associated uplands needed by waterfowl and other migratory birds in North America.¹¹

Illinois

Illinois Conservation Reserve Enhancement Program

The U.S. Department of Agriculture (USDA), the Commodity Credit Corporation (CCC), and the State of Illinois (Illinois) agree to implement the Conservation Reserve Enhancement Program (CREP). The goals for the CREP include:

1. Reduce the amount of silt and sedimentation entering the main-stem of the Illinois River by 20 percent;
2. Reduce the amount of phosphorus and nitrogen in the Illinois River by 10 percent;
3. Increase in the Illinois River Watershed by 15 percent the populations of waterfowl, shorebirds, non-game grassland birds, and State and federally listed threatened or endangered species; and
4. Increase the native fish and mussel stocks by 10 percent in the lower reaches of the Illinois River (Peoria, La Grange and Alton reaches).

The Illinois program establishes CRP contracts with owners and operators of farm properties to plant specific kinds of vegetation near streams and rivers, in return for rental payments and other incentives. The length of the contracts is 15 years. Participating farmers may voluntarily extend their contracts for an additional 15 or 35 years with the State

of Illinois or enter into permanent easements with the State. Illinois will prepare a conservation plan for each farm entering the program.¹²

The Illinois CREP consists of a Federal continuous sign-up CRP component and a voluntary State of Illinois incentive program. This Agreement contemplates the enrollment of up to 232,000 acres of environmentally sensitive acreage along the Illinois River and its tributaries. Authority to enroll acreage beyond the first 100,000 acres is conditioned on reassessment of the Enhancement Program by the CCC after that level of enrollment is achieved. Such assessment shall include, but not be limited to, whether the Enhancement Program is accomplishing the environmental purposes for which it was approved.

Illinois agrees to enroll landowners who decide to participate in the State Incentive Program in either 15-year or 35-year supplemental contracts with Illinois or grant a voluntary permanent easement to Illinois. Landowners are required to enroll in one of these options in order to receive benefits afforded by Illinois in the form of either incentive payments or cost-share payments for implementation of conservation practices. Landowners may participate in the Federal portion of the Enhancement Program without participating in the Illinois portion.¹³

¹ CRS Issue Brief for Congress

² US EPA, Office of Wastewater Management website.

³ US EPA, Office of Water. TMDLs.

⁴ US EPA, Office of Water.

⁵ Hubbel, M. et al. p14.

⁶ USDA, Farm Service Agency. CRP.

⁷ Treadwell, J. et al.

⁸ US EPA, Ag Center.

⁹ Hubbel, M. et al. p8

¹⁰ USDA Website. WRP.

¹¹ US Fish and Wildlife Services website.

¹² USDA, Farm Service Agency. CREP.

¹³ Ibid.