



**ASSISTANT SECRETARY OF THE ARMY  
WASHINGTON**

August 20, 2004

Dear Colleague:

Last week a group of private organizations released a document that criticized the decisions of the Corps of Engineers in making jurisdictional determinations under our Clean Water Act Section 404 authority. This document deserves, and has received, very little attention. Nonetheless, I wanted to write to each of you to assure you that you continue to have my support and that of the entire Army leadership, and that you continue to enjoy our full trust and confidence in your professionalism, judgment and dedication as you make the inherently difficult calls necessary for an effective regulatory program.

Essentially, the authors of the document disagree with the Supreme Court decision in SWANCC, and believe it was wrongly decided. This is their privilege, and I respect in every way their right to take issue with the Supreme Court. However, they appear to believe that the appropriate response of the Corps to the SWANCC decision is contumacious disregard reminiscent of the massive resistance movement of the 1960s. I do not agree with this position.

The duty of the Corps of Engineers is to try to understand and apply the decisions of the Supreme Court to the best of our ability. This is not always easy, and a great deal of thought has been given by many talented people to the appropriate response to SWANCC by the Corps. As you know, we are currently working on a major effort to achieve greater consistency and predictability in our jurisdictional determinations as suggested by a recent report by the General Accounting Office.

From among many thousands of jurisdictional determinations, the document released last week took issue with 15. My impression is that the authors of the document either understand very little of our program or have suppressed their understanding for the purposes of the document. The document is compiled from records provided by the Corps in response to FOIA requests, and I want to express my sincere appreciation to all of you who worked so hard to respond to these requests on top of your already heavy caseloads. I do regret that the recipients did not make better use of the fruits of your efforts.

While I reject both the tone and the content of the recently released document, I am sure we can all agree that the Regulatory Program is not perfect. As you know, I have made improvement in the efficiency and effectiveness of the Regulatory Program one of my three priorities as ASA(CW). We have made a great deal of progress on numerous fronts, both on our own and in cooperation with other federal agencies.

One of the strangest aspects of the recently released document is the implication that the Bush Administration wants to roll back protection of wetlands. That is certainly not the spirit I have seen reflected in the many Corps Districts I have visited, where day in and day out you are working very hard to preserve and protect aquatic resources of all kinds. President Bush requested a \$10 million increase in our budget for the Regulatory Program in FY05. I can assure you that we did not justify that request based on a rollback in protection of wetlands. We justified it based on a need to bring more resources to bear on this important regulatory function.

My bottom line message to you is simple: do not be discouraged by election-year pronouncements. Your leadership at the Corps, the Army, and the Administration are behind you 100% as you make the hard, day-to-day calls in the field. We are proud of your dedication and professionalism. Some will say we have "abandoned" wetlands; others will say we have not gone far enough in implementing SWANCC. We will doubtless find room for differences of opinion among ourselves on some aspects of the program. Thoughtful criticism, aimed at making our program stronger and better, is always welcome.

There has been a good deal of debate on the meaning of the SWANCC decision. Stripped to its basics, though, the decision tells the Corps that somewhere on the landscape there is a line. On one side of the line, the Corps has CWA jurisdiction. On the other side of the line, the Corps does not have CWA jurisdiction. The answer to the question of where that line may be is quite vexatious. But any solution that suggests that there is no line must necessarily be false, wrong and invalid.

I know that much of what you do requires seeking to impose bright-line distinctions and categorizations on what is in many cases a seamless continuum in nature. I also know that much of what you do involves applying a uniform set of rules and regulations on a landscape of infinite and bewildering variety.

Wherever I go, people who know you and who have seen the Corps' regulatory program in action stand in awe of your abilities, your tact, your good will, and your knowledge. I am very proud of what you do.

Very truly yours,



John Paul Woodley, Jr.  
Assistant Secretary of the Army  
(Civil Works)