



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
**U.S. ARMY CORPS OF ENGINEERS**  
441 G STREET, NW  
WASHINGTON, DC 20314-1000

MAY 3 2013

Mississippi Valley Division  
Regional Integration Team

Honorable Claire McCaskill  
Chairman, Subcommittee on Financial and Contracting Oversight  
United States Senate  
340 Dirksen Senate Office Building  
Washington, D.C. 20510-6250

Dear Senator McCaskill:

This is in response to your letter dated March 25, 2013, co-signed by Senator Ron Johnson, to Lieutenant General Thomas P. Bostick, requesting information on U.S. Army Corps of Engineers planning studies conducted between 1973 and 1995 to address flooding problems in the Granite City, Illinois area, and a Clean Water Act (CWA) Section 404 enforcement case in the same area affecting Mr. Stephen Lathrop. An identical letter is being provided to Senator Johnson.

The subject area is located in the flood plain of the Mississippi River and is protected from major Mississippi River floods by the federally-constructed Metro-East Sanitary District levee system. Interior areas have been prone to flooding, and since the Flood Control Act of 1965, multiple Corps flood studies have been conducted at the request of state and local constituents. In 1973, the Corps completed a reconnaissance report for the Dobrey Slough area in Granite City. While storage solutions, such as a lake were discussed, the study results identified two conduit options to reduce flood damages by removing water more quickly from the Dobrey Slough area. The reconnaissance report was incorporated into the next phase, a feasibility study for East St. Louis and Vicinity Interior Flood Control. This feasibility study looked at several alternatives including those from the reconnaissance report. Only one of the alternatives was deemed economically justified, Blue Waters Ditch, which was implemented and constructed in 1989 at a cost of \$3,846,996. Multiple other alternatives, including the two proposed within the reconnaissance report for Dobrey Slough, were deemed economically unjustified. The Corps expended \$421,476 on the reconnaissance report for Dobrey Slough and other portions of this project in 1973. Currently, an ecosystem restoration feasibility study for East St. Louis and Vicinity, is underway and the Corps is addressing comments provided by the Assistant Secretary of the Army (Civil) Works. To date the Corps has expended \$4,269,389 on this current ecosystem restoration study.

In November of 1990, Mr. Lathrop mechanically graded, cleared, filled, and excavated approximately six acres of jurisdictional wetlands on his property known as Pine Lake Estates without a Clean Water Act Section 404 permit from the Corps. These jurisdictional waters of the

United States, which were part of the Dobrey Slough and associated wetland complex, were impacted to create a lake and adjacent upland area for future residential development. This work, accomplished without the appropriate permit, was a violation of federal law.

Mr. Lathrop stated that his actions helped in reducing flooding consistent with Corps studies, within the area. After reviewing the actions detailed in Mr. Lathrop's file, the Corps concluded the development of a lake with subsequent side casting of excavated material, was not consistent with the goals and objectives outlined in the reconnaissance report. Even if Mr. Lathrop's work had been consistent with the objectives of the report, he still would have needed a permit prior to commencing construction. Following published regulations at 33 C.F.R. Part 326, the Corps initiated procedures to resolve Mr. Lathrop's Clean Water Act violation.

The Corps made every effort to work with Mr. Lathrop to have him voluntarily restore the impacted site and resolve his Clean Water Act violation. However, Mr. Lathrop did not comply with the Corps requests. After more than three years of negotiations, the Corps referred the case to the U.S. Environmental Protection Agency (USEPA) for resolution in November 1994, in accordance with the established 1989 memorandum of agreement between the Department of the Army and the USEPA. Following the referral, the USEPA worked with Mr. Lathrop to resolve the violation and together they developed a draft restoration plan. In accordance with the draft plan, the functions associated with the wetlands impacted would be mitigated on a site located adjacent to the initial violation. After reaching agreement with Mr. Lathrop on a draft restoration plan, the USEPA notified the Corps in mid-1995 that they were declining to take the lead on the enforcement action. In late 1995, the Corps re-engaged with Mr. Lathrop to resolve the violation. Mr. Lathrop was offered an opportunity to submit an after-the-fact (ATF) permit application for the work he completed and to implement the draft restoration plan developed by the USEPA.

Mr. Lathrop did not provide either an ATF application or conduct the restoration. In 1999, the Corps and USEPA agreed that the naturally re-vegetated lake area, although smaller in size than the initially impacted wetland area, was adequate compensation to enable the administrative closure of the violation.

In early 2000, Mr. Lathrop applied for a Clean Water Act Section 404 permit to impact six acres of wetlands on an adjacent 80-acre farm, known as Eagle Lake Estates. He also included in that application, plans to develop six lots on the original Pine Lake Estates violation site. Mr. Lathrop requested a new wetland delineation be conducted on the site by the Natural Resource Conservation Service (NRCS) in November 2000. Following Mr. Lathrop's request, the NRCS determined the Eagle Lakes Estates site to be mostly prior converted cropland with a small area of jurisdictional wetlands located within the site. Waters of the United States regulated under the Clean Water Act do not include prior converted croplands. Based on the

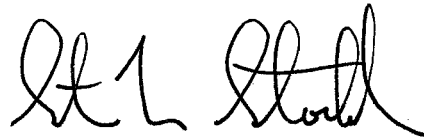
NRCS determination, Mr. Lathrop withdrew his application in late November 2000 after redesigning the Eagle Lake Estates development to avoid all jurisdictional wetlands.

Following receipt of a letter from NRCS on December 15, 2000 confirming the prior converted croplands determination, and receipt on December 19, 2000 of confirmation from Mr. Lathrop that his project was redesigned to avoid all jurisdictional waters of the United States, the Corps sent a letter to Mr. Lathrop on December 21, 2000 confirming if he avoided the jurisdictional wetlands on the 80-acre property, as indicated by his revised development plan, a Clean Water Act Section 404 permit would not be required. At Mr. Lathrop's request, the Corps sent him several additional clarification letters between December 2000 and June 2001, to reassure him that no permit was required for the Eagle Lake Estates site if he avoided jurisdictional waters, and that the Cease and Desist letter on the Pine Lake Estates site was no longer in effect, although he did not have authorization to do any new construction on that site without a permit. The Corps has had no further contact with Mr. Lathrop with regards to developing either site since June 27, 2001.

On April 17, 2013, my Washington D.C. staff met with Senator Johnson's staff to discuss the studies Congress authorized the Corps to undertake in this area of Illinois, convey general Corps regulatory program practices and policies, and to discuss issues surrounding Mr. Lathrop's case. The Corps followed published processes and adhered to all appropriate procedures in an attempt to resolve this enforcement case. As part of the overall regulatory program of the Corps, enforcement is based on a policy of regulating the waters of the United States by discouraging activities that have not been properly authorized and by requiring corrective measures to ensure those waters are not misused as a way to maintain the integrity of the program. Swifter resolution could have been achieved if Mr. Lathrop would have been willing to voluntarily resolve the violation. The Corps stands ready to assist Mr. Lathrop through the process on any future permit actions.

I hope this information is helpful in explaining the history of this issue. If you have additional questions or concerns, please contact me or have your staff contact Mr. Joe Redican, Civil Deputy, Mississippi Valley Division Regional Integration Team at (202) 761-4523.

Sincerely,



Steven L. Stockton, P.E.  
Director of Civil Works