Message

From: Ettinger, John [ettinger.john@epa.gov]
Sent: 9/17/2013 3:14:04 PM
To: John F MVN-Contractor Ettinger [John.F.Ettinger@usace.army.mil]
Subject: Fw: EPA Comments on Chef. M Phase III JPN MVN-2008-03065-MS

From: Ettinger, John
Sent: Tuesday, September 17, 2013 10:08:32 AM
To: Pfeffer, Stephen D MVN
Cc: Richard Hartman; Patti Holland; Patrick Williams; Lisa Abernathy; Kyle Balkum; Kelley Templet
Subject: EPA Comments on Chef. M Phase III JPN MVN-2008-03065-MS

Stephen:

EPA has reviewed the August 19, 2013, joint public notice (JPN) regarding the proposal by Chef Menteur Credit Co., LLC, to construct Phase III of the Chef Menteur Pass Mitigation Bank in Orleans Parish, Louisiana (MVN-2008-03065-MS).

Our comments on this JPN pertain to the decision of whether to authorize the proposed activity pursuant to Clean Water Act Section 404. EPA approval of the proposed permit should not necessarily be interpreted as support for adoption of Phase III within the terms of the current mitigation bank instrument (MBI). Given compliance issues associated with this mitigation bank and the challenges of ensuring that fill material reaches appropriate elevations, careful consideration of credit release rates for Phase III would be warranted.

EPA has long supported the general location for this proposed mitigation bank. Restoration of the area at issue would be consistent with Federal, state, and local coastal restoration efforts in that it would address a landscape feature recognized to be of high environmental importance. We would not object to issuance of a permit for the proposed project.

Care must be taken to ensure that the proposed restoration activities do not result in inadvertent harm to existing wetlands in the area. To that end, a permit for this proposed work should contain conditions requiring the following:

- The placement of pipelines and any other construction materials and equipment on existing wetlands should be avoided and minimized to the maximum extent practicable.
- Work crews should avoid and minimize transit across existing wetlands to the maximum extent practicable.
- Rutting and/or other damage to existing wetlands should be restored at the time of construction completion.

In addition, we would note that the proposed restoration work involves what appears to be the placement of fill material on existing wetlands for the purposes of marsh nourishment. We do not object to such work, but here again note that there is a potential for unintended adverse impacts to wetlands due to overfilling. To avoid such adverse impacts, a permit for such work should contain a condition stipulating that no more than six inches of fill material may be placed on an existing vegetated wetland.

Decisions regarding credit release rates for Phase III (particularly initial/pre-construction credit release) should take into consideration past compliance issues, uncertainties regarding settlement rates and optimal elevation criteria, and the status of the first two phases. The credit release schedule established in the existing MBI limits the amount of credits released prior to construction in order to minimize potential temporal wetland losses and manage the risk of project failure or default. Given that Phase II construction has not been completed, a decision to allow additional pre-construction credit release (via Phase III) would result in an initial credit release (in terms of overall acreage) substantially beyond what was contemplated in deliberations regarding the terms of the current MBI. Such a decision would be the equivalent of allowing an increase in the initial/pre-construction credit release for the earlier phases. Doing so could establish a significant precedent for mitigation banking; essentially creating a way for banks to increase initial credit releases above and beyond the terms of their respective MBI. To avoid increasing the risk of temporal losses and/or bank failure or default, we would recommend that no credits associated with Phase III be released until appropriate post-construction elevations have been met for the previous phases.

Thanks in advance for your consideration of these comments. Please let me know if you have any questions or would like to discuss this matter further.

John Ettinger
U.S. EPA Region 6
Office: (504) 862-1119
Cell: (214) 577-2517