Congress of the United States
Washington, DC 20515

February 12, 2015

The Honorable Jo-Ellen Darcy
Assistant Secretary of the Army for Civil Works
108 Army Pentagon
Washington, DC 20310-0108

Dear Secretary Darcy:

It has come to our attention that the U.S. Army Corps of Engineers ("Corps") is considering relinquishing federal Clean Water Act and Rivers and Harbors Act jurisdiction over the Redwood City Salt Plant site in Redwood City, California. We are concerned that this decision is being made without full consideration of the consequences for San Francisco Bay and the nation, and without appropriate consultation, due process, and consideration of the Corps' own previous determinations.

We are writing to urge the Corps to comply with the law. The Environmental Protection Agency (EPA) is a co-regulatory partner in the Clean Water Act implementation, and needs to be fully consulted during the process of developing policy and legal interpretations of the Clean Water Act Section 404, under which the Corps regulation of the Cargill site would fall. Any novel, unilateral re-interpretation of the Clean Water Act must not be created in secret, without opportunity for public input, formal consultation with the EPA, or Congressional approval.

We also urge the Corps to be consistent in its interpretation of statute. The Corps has previously indicated in a 2010 Preliminary Jurisdictional Determination (attached) that the Redwood City Salt Plant salt ponds are indeed Waters of the United States under the Clean Water Act and within the jurisdiction of the Rivers and Harbors Act. The Corps also determined in 2008 that the nearly-identical Napa Plant salt ponds just 50 miles north also fall under Clean Water Act and Rivers and Harbors Act jurisdiction. It would be remarkable for these precedents to not be given full consideration by the Corps in its upcoming Jurisdictional Determination.

Any major re-interpretations of the Clean Water Act must not occur without full public input and consultation between the Corps and EPA. We strongly urge the Corps to comply with the law in a consistent, transparent, and fair fashion.

Sincerely,

Jackie Speier

Mark DeSaulnier

PRINTED ON RECYCLED PAPER

Anna G. Eshoo

Sam Farr

John Garamendi

Michael M. Honda

Jared Huffman

Barbara Lee

Zoe Lofgren

Eric Swalwell

Mike Thompson

cc:

The Honorable John McHugh, Secretary, U.S. Army
The Honorable Gina McCarthy, U.S. EPA
Mr. Michael Boots, White House Council on Environmental Quality

**DEPARTMENT OF THE ARMY**
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
1455 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94103-1398

APR 14 2010

Regulatory Division

SUBJECT: File Number 26726S

Mr. David Smith
DMB Associates, Inc.
DMB Redwood City Salt Works
1700 Seaport Boulevard, Suite 200
Redwood City, California 94603

Dear Mr. Smith:

This letter is written in response to your initial submittal of November 12, 2009, and revised submittal of January 26, 2010, requesting a preliminary jurisdictional determination of the extent of areas that may be waters of the U.S. at your project site, the Redwood City salt production facilities and adjacent areas located north of US 101 and east of Seaport Boulevard in the City of Redwood City, San Mateo County, California.

Enclosed are maps showing the extent and location of waters and wetlands, entitled "USACE File # 26726S, Preliminary Jurisdictional Determination, DMB Redwood City Saltworks" in four sheets, dated February, 22, 2010. We have based this preliminary jurisdictional determination on the current conditions on the site as verified during a site visit performed by our staff on December 17, 2009. A change in those conditions may also change the extent of waters and wetlands that may be subject to our regulatory jurisdiction under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899. This preliminary jurisdictional determination issued pursuant to the Regulatory Guidance Letter, RGL 08-02, can be used only to determine that wetlands or other water bodies that exist on your project site may be jurisdictional waters of the United States under Section 404 of the Clean Water Act (33 U.S.C. Section 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. Section 403). The findings of this preliminary jurisdictional determination will be used to process an application for a Department of the Army permit to install structures or conduct work in navigable waters of the United States and/or discharge dredged or fill material into waters of the United States.

For purposes of computations of impacts, compensatory mitigation requirements and other resource protection measures, a permit decision made on the basis of a preliminary jurisdictional determination will treat all waters and wetlands on the site as if they are jurisdictional waters. Application for Corps authorization should be made to this office using the application form in the enclosed pamphlet. To avoid delays it is essential that you enter the file number at the top of

this letter into Item No. 1 of the application. The application must include plans showing the location, extent and character of the proposed activity, prepared in accordance with the requirements contained in this pamphlet. You are advised that preliminary jurisdictional determinations may not be appealed (see 33 C.F.R. Section 331.5(b)(9)). However, you may request an approved jurisdictional determination, which may be appealed, that precisely identifies the limits of Corps jurisdiction subject to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. You may also provide new information for further consideration by the Corps to reevaluate this preliminary jurisdictional determination.

Should you have any questions regarding this matter, please call Katerina Galacatos of our Regulatory Division at 415-503-6778. Please address all correspondence to the Regulatory Division and refer to the File Number at the head of this letter. If you would like to provide comments on our permit review process, please complete the Customer Survey Form available online at http://per2.nwp.usace.army.mil/survey.html.

Sincerely,

Jane M. Hicks

Jane M. Hicks
Chief, Regulatory Division

Enclosures

Copies Furnished without enclosures:

CA RWQCB, Oakland, CA
CA SWRCB, Sacramento, CA

wra
ENVIRONMENTAL CONSULTANTS
2169-G East Francisco Blvd.
San Rafael, CA 94901
(415) 454-8868 Phone
(415) 454-0129 Fax

DMB Redwood City Saltworks

San Mateo County, California

**Figure D-1. Preliminary Jurisdiction Determination Map for Study Area D**

Figure for use under RGL No.08-02 only; all rights reserved

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# Legend

Study Area D

Sample Points

Facility Headquarters and Levees

## Presumed Jurisdictional Areas

Bittern Complex

Crystallizer Complex

Pickle Complex

Multi-use Area Complex

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U.S. Army
Corps of Engineers
San Francisco District
Regulatory Division

# Preliminary Jurisdictional Determination

## Locations of waters of the U.S. or wetlands pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899

DMB Redwood City Saltworks
located north of US 101 and east of Seaport Boulevard
in the City of Redwood City, San Mateo County, California
(portions of APN 054-310-160, 054-300-230 and 054-300-670)

Section 404 of the Clean Water Act other waters and
Section 10 of the Rivers and Harbors Act of 1899 locations are:
Bittern, Crystallizer, Pickle and Multi-Use Area Complexes

----- Project Boundary
File Number: 26726S

Sheet 4 of 4
Date: February 22, 2010

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