



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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December 19, 2001

Mr. J Robert Hume, III
Chief, Regulatory Branch
Norfolk District Corps of Engineers
803 Front Street
Norfolk, Virginia 23510-1096

RE: Approval of Use of Virginia Wetland Trust Fund for Compensatory Mitigation
Required under Virginia Water Protection Permits

Dear Mr. Hume:

On behalf of the State Water Control Board (Board) and pursuant to Section 62.1-44.15:5D of the Code of Virginia and 9 VAC 25-210-115E, I am approving use of the Virginia Wetlands Restoration Trust Fund (the "Fund") as an acceptable form of compensatory mitigation for impacts to state waters, including wetlands, permitted under Virginia Water Protection individual and general permits. According to Virginia Code Section 62.1-44.15:5D wetland compensation requirements may be met by "contributing to a fund that is approved by the Board and is dedicated to achieving no net loss of wetland acreage and functions".

This approval is given in accordance with 9 VAC 25-210-115E, after reviewing the materials you submitted in your letters of August 7 and August 23, 2001, and after considering public comments received during the 30-day public comment period that started August 27, 2001.

This approval is conditioned upon your commitment to:

- a. Demonstrate at a minimum a no net loss policy in terms of wetland or stream acreage and function by adoption of operational goals or objectives for preservation, creation or restoration of wetland or stream acreage and function;

project impact. The first annual report should be received by DEQ by September 30, 2002, and should include the following information for each hydrologic unit code (HUC) within each watershed: number of projects; acreage and type of wetland or stream impact and compensation by project using classification method such as Cowardin or HGM); contributions received and expenditures made.

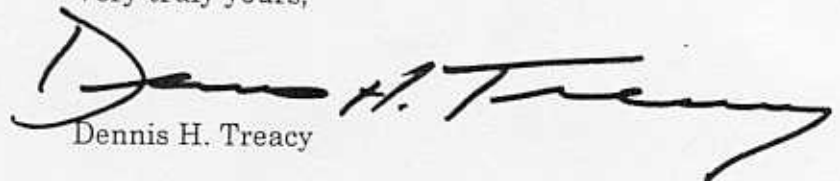
d. Use of a fee mechanism that will ensure each contribution will be adequate to compensate for the wetland or stream acreage and function lost in the impacted watershed.

e. Continue to operate under the Memorandum of Understanding between The Nature Conservancy and the U.S. Army Corps of Engineers on operation of the Virginia Wetlands Restoration Trust Fund, dated August 18, 1995, or a similar legally binding obligation.

Approval of use of the Fund by the Virginia Water Protection Permit Program does not guarantee its use for compensation for a particular project's surface water impacts, but rather is conditioned on the appropriateness of its use on a particular project based on the type and location of wetland impacts. Decisions on use of the Fund for a particular project are made on a case by case basis after considering all appropriate compensation alternatives. This will ensure that use of the Fund as compensation for impacts will ensure no net loss of wetland and stream acreage and function. Because of concerns raised during the public comment period, I encourage you to pursue new sites in the James River Basin. The SWCB retains the ability to deny use of the Fund in watersheds that are not represented by active compensation sites. The SWCB also reserves the right to approve other in lieu fee funds that meet the requirements set forth in 9VAC25-210-115E.

This approval is granted for a one-year period from the date of this letter. We will review the next annual report submitted to DEQ prior to granting further approval of the Fund. Further approval will be based upon meeting the commitments outlined above, including demonstration of no net loss of wetland or stream acreage and function. We look forward to working with your staff and that of The Nature Conservancy on the format and content of the next annual report and on the review of new compensation sites, especially in those watersheds that are currently under-represented by the Virginia Wetlands Restoration Trust Fund.

Very truly yours,


Dennis H. Treacy

c: State Water Control Board
DHT:dlm