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NEWS from U.S. Senator Bob Dole

(R.—Kans.)

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DOLE INITIATES EFFORT TO DELAY FEDERAL DREDGING AND FILLING RULES

WASHINGTON, D.C.--Sen. Bob Dole sent a letter Friday to President Carter requesting a 90-day moratorium on Phase 3 of the controversial Section 404 "dredging and filling" federal permit program. Dole's letter was co-signed by 26 other United States Senators, who agreed that the Army Corps of Engineers permit program would likely cause increased delays, duplications, and expenses for farmers, forestry activity, and the construction industry.

Phase 3 of the federal dredge-and-fill regulations is scheduled to go into effect on July 1, 1977, and would give the Army Corps of Engineers authority to regulate any dredging or filling activities on all the nation's tributaries and streams, up to their headwaters. This is in addition to similar authority over all rivers, lakes, and adjacent wetland areas in the country.

The House of Representatives has already passed legislation which would substantially reduce federal oversight authority, and eliminate the basis for Phase 3. The Senate Environment and Public Works has scheduled hearings on the issue during the month of June, and Dole said the President should give Congress "an opportunity to complete its action towards resolving the issue." Dole said it would be both confusing and counter-productive for Phase 3 to take effect July 1, when Congress will likely cancel that portion of the program within a few weeks.

According to Senator Dole, "Congress never intended for this dredging and filling permit program to grow so large. What we originally intended as a measure to regulate the disposal of dredged spoil in navigable waters has been blown completely out of proportion by the courts. Congress has the responsibility and the intention to clarify, once and for all, the scope of Section 404, so that farmers, ranchers, and those engaged in forestry and construction activity will not be unduly hassled by the Army Corps of Engineers."

Section 404 was enacted in 1972 as a part of the Federal Water Pollution Control Act, and was to apply only to "navigable waters." At the request of environmental groups, the legislation was reviewed by a federal district court in 1975, which interpreted Section 404 as applying to "all waters of the United States." Subsequently, the Corps of Engineers--which has authority for administering the permit program--issued federal regulations which those engaged in agriculture and forestry activities say will require permits for routine duties like digging stock ponds and irrigation ditches, and constructing temporary roadways through wetland areas. Ranchers, and highway and housing construction personnel express the same concern about Phase 3 of the program.

Signing the letter were Senators:

Bob Dole	Edward Zorinsky	James A. McClure	John Tower
Malcolm Wallop	Lloyd Bentsen	Milton R. Young	J. Bennett Johnston
John C. Danforth	Pete Domenici	Ted Stevens	John C. Stennis
Robert Morgan	John Melcher	Clifford P. Hansen	William V. Roth, Jr.
Jake Garn	Russell B. Long	James O. Eastland	Walter D. Huddleston
George McGovern	Dewey F. Bartlett	Barry Goldwater	Bob Packwood
Sam Nunn	Jesse Helms	Carl Curtis	

Text of letter follows--

Many of our country's citizens--particularly those engaged in farming, ranching, forestry, and construction activities--are extremely concerned about federal regulation under the auspices of Section 404 of the Federal Water Pollution Control Act. As representatives of those citizens, we want to register our own concern about the expanding jurisdiction of the "dredge and fill" permit program, and respectfully request a 90-day moratorium on implementation of "Phase III" regulations by the Army Corps of Engineers.

When Congress originally authorized the Section 404 Corps permit program in 1972 it was principally intended to regulate the disposal of dredged fill material in "navigable waters" of the United States. A U.S. District Court interpretation of Congressional intent during 1975 effectively expanded the Corps' regulatory jurisdiction over a variety of dredging and filling operations on virtually all waters of the United States. Subsequently, Interim Final Regulations were issued by the Corps of Engineers in 1975, to implement the much expanded permit program in three stages.

Phase III is scheduled to take effect on July 1, 1977. Under the regulatory provisions, Corps permit authority will cover a broad range of major and minor dredging and filling operations on the nation's rivers, streams, and tributaries, up to their headwaters.

At this time, we believe a temporary, 90-day moratorium on the implementation of Phase III is advisable for the following reasons:

1. The House of Representatives has already approved major revisions in the Section 404 program, including a more restrictive definition of "navigable waters" which would eliminate the legislative basis for Phase III (H.R. 3199). The Senate Committee on Environment and Public Works has scheduled hearings on the issue during June and recommendations for changes in Section 404 will likely follow.
2. The Secretary of Agriculture has endorsed the intent of H.R. 3199, has supported clarification of the definition of navigable waters, and has stated, "We believe the enactment of Phase III on July 1, 1977, will significantly increase . . . delays, duplications, and expenses" in production of food, fiber, and forest products.
3. Preparation of "Final Regulations" with additional details by the Corps of Engineers for the Section 404 program has been considerably delayed. Provisions for a "nationwide permit system," along with additional exemptions, were published only last week. There will not be adequate time for thorough consideration and public comment on all aspects of Final Regulations for Phase III prior to the effective date of July 1, 1977.

In short, there are serious problems associated with the implementation of Phase III in July, and Congress is now moving towards a legislative resolution of the "dredge and fill" permit issue. We are asking that you direct the Corps of Engineers and the Environmental Protection Agency to delay implementation and enforcement of Phase III of Section 404 regulations for 90 days, pending a final resolution of associated issues by Congress.

We appreciate your earliest attention to this matter, and will look forward to hearing from you in this respect.