

For expenses necessary for administration of laws pertaining to regulation of navigable waters and wetlands, \$86,000,000, to remain available until expended.

None of the funds in this Act shall be used to identify or delineate any land as a 'water of the United States' under the Federal Manual for Identifying and Delineating Jurisdictional Wetlands that was adopted in January 1989 or any subsequent manual not adopted in accordance with the requirements for notice and public comment of the rulemaking process of the Administrative Procedure Act nor shall any funds be used for application or enforcement of the provisions of section 404 to activities undertaken on such lands.

None of the funds in this Act shall be used to finalize or implement the proposed regulations to amend the fee structure for the Corps of Engineers regulatory program which were published in Federal Register, Vol. 55, No. 197, Thursday, October 11, 1990.

PL 102-104 under the regulatory program section

HR 2427 for 102nd Congress

On August 17, 1991, the President signed into law the Energy and Water Development Appropriations Act, 1992 (1992 Appropriations Act), Pub. L. No. 102-104, 105 Stat. 510. Inter alia, the 1992 Appropriations Act prohibited the use of fiscal year 1992 funds to "identify or delineate" any wetlands as "water[s] of the United States" under the Corps' 1989 guidance manual or "any subsequent manual not adopted in accordance with the requirements for notice and public comment * * * of the Administrative Procedure Act." See Tit. I, 105 Stat. at 518. The statute further provided, however, that the Corps could complete any "ongoing enforcement action[] [or] permit application" regarding wetlands delineated under the 1989 manual if the affected landowner elected to continue on the basis of such a delineation (in lieu of a new delineation), or if the Corps determined "after investigation and consultation with other appropriate parties, including the landowner or permit applicant, that the delineation would be substantially the same under either the 1987 or the 1989 Manual." Ibid.

The Corps informed petitioners by letter of the terms of the 1992 Appropriations Act. C.A. App. A4929- A4230. The letter stated the Corps' preliminary determination that the difference between the 1988 and 1991 delineations of the Double Diamond Ranch was not based on any difference between the Corps' 1987 and 1989 manuals, and that a new delineation of the relevant property under the 1987 manual would be substantially the same as the 1991 delineation. Id. at A4929. The Corps informed petitioners, however, that they had the right to seek a new delineation under the 1987 manual. Id. at A4929- A4930. The Corps explained that any such request "should specifically identify where use of the 1987 Manual would result in substantial differences when compared to using the 1989 Manual." Id. at A4930. Petitioners informed the Corps that they would not seek

a new delineation, stating that "a technically competent wetland delineation of the [property] completed pursuant to either manual should result in substantially similar results." Id. at A4934.