

**Talking Points for ASA (CW)
Mitigation Banking Conference
Austin, Texas – 3 to 6 May 2010**

Thank you Mr. Kelly for that warm welcome. Ms. Taggart and Ms. Noble it is a pleasure being here with you today. Good afternoon everyone. I'm happy to be here for my first Mitigation Banking Conference. I heard--and can tell—that this is a record attendance. Congratulations to all who organized this!

Representatives from our office and the Corps Headquarters office have been attending this conference for many years and have always had a good time and have walked away with a lot of information. I am told that because the conference is being held in Austin, I am assured a good time and great music.

Today, I would like to talk about how the Army Civil Works two distinct programs, the Corps Regulatory and the Corps Civil Works Planning Programs, are involved with the use of mitigation banking.

Because the Regulatory Program's use of mitigation banking is the most mature, over 15 years old, I would like to begin with that program. Oldest goes first.

Issues related to impact assessment and compensatory mitigation come up regularly in our office. The Regulatory Program affects more people annually than almost any work the Corps does. I know Regulatory is a particularly tricky job. Where else do you know you're doing a good job when someone is mad at you? If one side tells you you're doing a great job, you immediately question yourself....So thank you for being patient enough to make people mad at you and do a great job.

This program, staffed by only 1,300 field regulators, has a tremendous impact on our Nation's economy and environment. It affects over \$220 billion of construction and economic activity annually. The environmental effects of the Regulatory Program are very significant. Without regulation, our wetland resources would suffer for economic benefits, as happened much earlier in our Country's development history. But, if permitting were based strictly on environmental benefits, there would not be the robust

development we see in our Country today. The Regulatory Program provides the necessary balance.

Think about the acres of wetlands and miles of streams that have been protected because of our efforts to require minimization and avoidance. Though less frequently discussed, these efforts of minimizing environmental losses through careful site evaluation and planning are a key aspect of the Regulatory Program.

Mitigation banking has been a key part of the regulatory story for past 15 years. In FY 2009, the Corps permitted over 70,000 activities. There are over 620 approved mitigation bank sites in 41 states across the country. In the state of Texas, there are 19 existing wetland mitigation banks with 41 mitigation banks in the works. Texas has one of the largest wetland mitigation banks in the Nation, the Pineywoods, on the Neches River, which is approximately 19,000 acres. This bank represents how private, state, and federal collaboration can result in effective solutions for aquatic resource compensatory mitigation. The establishment of these banks has had a positive effect on the

regulated public; especially those applicants with smaller unavoidable impacts.

There are also over 187 proposed bank sites and we appreciate many of you working with us to help move banking instruments over the goal line.

Early Corps data indicated that over half of Corps permits entail compensatory mitigation. Looking at this early data, in about 30% of those permits, compensatory mitigation requirements were fulfilled through mitigation banks. We now estimate that Nationwide, approximately 40% of permits that require compensatory mitigation fulfill these obligations through mitigation banks. It is important to note that this figure represents the entire United States. Although the Corps must first consider mitigation banks when determining appropriate compensatory mitigation, many watersheds do not have mitigation banks or the necessary types of credits may not be available to the applicant.

Working together, we can continue to protect aquatic resources, replace unavoidable losses, and sustain economic growth.

2009 was an important year for the Regulatory Program. It was the first full year that the Mitigation Rule was used, and although questions came up from time to time, it seems that the rule is being used successfully.

I understand that there have been some "concerns" with consistent implementation of the rule and that the Corps has met with some of you to discuss issues and look for solutions. As with any new rule, there are growing pains.

For example --- learning how to think from a watershed perspective, and stick to the new timelines for moving through the mitigation bank approval process. I urge you to continue to explore these issues with the Corps and to work out solutions to ensure that banks continue to be an option for project applicants.

I am pleased with efforts being made to improve the ecological success of compensatory mitigation projects. Mitigation banking has helped move the wetland and stream mitigation science forward. I urge you to continue to share

the information you collect from your experience in banking with the Federal agencies.

This President and our Regulatory Program are focused on collaboration and transparency. Together, the stakeholders, federal and state partners can strengthen the environmental review, and keep the regulated public in the know.

To that end, we have held 2 workshops that aim to continue our employees understanding of the mitigation rule. We are also working to understand the impacts of mitigation on a watershed framework with regard to NEPA and the Clean Water Act. We are working on the completion of ten regional supplements for wetland delineation by 2012, and refining techniques to assess stream structure and function.

We are working with other agencies and the scientific community to enhance our understanding of stream restoration techniques that will have a greater chance for success.

Together with our Federal Partners and the mitigation banking community, we are exploring opportunities to

integrate habitat conservation planning and mitigation banking. This will ensure the preservation, protection, and restoration of habitat while simultaneously allowing economic development in accordance with Section 7 of the Endangered Species Act and Section 404 of the Clean Water Act. This is consistent with the watershed approach and makes good sense.

All of these initiatives are being addressed to help the regulated community comply and obtain permits efficiently, and help regulators do their jobs.

With the influx of \$25 million in Recovery Act funding, Divisions and Districts are staffing and completing important contract work to improve our service to the public.

Through the use of ARRA funds, we have developed outreach tools, such as the web-based avatar (not the movie) to assist the public in filing permit applications.

If you haven't tried the avatar yet, please do. It is up and running on the Corps HQ website as well as Jacksonville and the 6 districts in our Mississippi Valley Division. Several

other districts will be implementing this tool over the next year.

Now I would like to switch gears and talk about Corps Civil Works' water resources projects. They are planned and implemented with non-federal sponsors and most often are projects for flood risk reduction, hurricane and storm damage reduction, or navigation.

The use of mitigation banking is not new to the Corps Civil Works Planning Program. However, now, due to the passage of the Water Resources Development Act of 2007, when appropriate, Corps Civil Works projects must “first consider” using established mitigation banks if the wetland impacts are within their service areas. For this provision to apply, mitigation banks must have been established in accordance with the 2008 Mitigation Rule or previous Federal guidance documents.

With the requirement in WRDA 2007 to consider using banks for water resources projects, there are likely to be more opportunities for mitigation bankers in the future as projects currently in the planning process, and new projects, move

forward. For example, the Council on Environmental Quality's March 2010 document entitled "Louisiana-Mississippi Gulf Coast Restoration Working Group Roadmap for Restoring Ecosystem Resiliency and Sustainability," In the Army we would have an acronym for that, so that would be LMGCRWGRRERS... or maybe not. One of the Federal actions is "By winter 2010, review the feasibility of using mitigation banks for large scale, higher impact projects."

I am encouraged by change in the name of this conference to "Ecosystem Banking". In terms of the Corps' Civil Works program, this is especially appropriate because the Civil Works program usually mitigates for impacts to wildlife habitat, including upland habitat.

In accordance with the requirements to consider the use of mitigation banks, the Corps issued guidance on November 6, 2008, directing the field to incorporate the use of banks into the Civil Works mitigation planning process. The guidance requires that an evaluation of mitigation banking opportunities be completed for all projects requiring compensatory mitigation, and also requires that such analysis be documented in the feasibility study.

The consideration of mitigation banks is now a routine part of the Civil Works mitigation planning process.

There are still unique considerations with the use of mitigation banking on Corps Civil Works planning projects that need further attention.

As with the Regulatory program, there are not always mitigation banks with the right kinds of mitigation credits.

Considering the length of time between when a project is planned, authorized and funded...could be 10 years or more, it is unclear how a mitigation bank could keep the needed credits available without purchase.

As water resources planning projects are cost shared with a non-Federal sponsor, there may be issues from the non-Federal sponsor's perspective if a mitigation bank is outside the non-Federal sponsor's jurisdiction.

When developing compensatory mitigation, cost effectiveness must also be considered.

I know if we work together we can overcome these issues and continue to expand the use of mitigation banking. Mitigation Banking certainly offers the Corps an opportunity to mitigate for project impacts concurrent with project construction, something that Congress has directed.

I intend on focusing on compensatory mitigation --- understanding what is working and what is not, improving success rates, and making sure that the Corps is compiling the data it needs to ensure appropriate mitigation has been undertaken and in a cost effective way, for both the Civil Works Regulatory and the Planning Programs.

Thank you so to so many of you in this room for working with my office and the Corps for over 15 years, making mitigation banking the valuable tool that it is today!

I would like to know is what you think about the mitigation rule and its implementation. There are several staff from the Corps Headquarters here (“raise your hands please”) who are here to help me and you. We would be very interested in learning how you perceive the mitigation rule, issues or needs for additional or clarifying guidance.

Thank you for having me here today and asking me to speak to with you.