

Wetland Mitigation Banks: National Trade Associations' March 12th Comments on U.S. Army Corps of Engineers (Fort Worth District) Proposed Guidelines



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A number of national trade associations filed March 12th comments with the United States Army Corps of Engineers ("Corps") on a Corps district's proposed:

Guidelines Covering Specific Elements for the Establishment of New Mitigation Banks in the Fort Worth District ("Guidelines")

See Public Notice CESWF-18 MITB.

The trade associations filing the comments include:

- American Farm Bureau Federation
- Associated General Contractors of America
- Associated General Contractors of Texas
- National Mining Association
- National Rural Electric Cooperative Association
- National Stone Sand and Gravel Association
- The Fertilizer Institute
- U.S. Chamber of Commerce

Mitigation banks in this context are generally described as a site, or group of sites, where resources such as wetlands, streams, and riparian areas are restored, established, enhanced, and/or preserved to provide compensatory mitigation for impacts authorized by Section 404 Clean Water Act or other permits. A commercial mitigation bank will typically sell compensatory mitigation credits to permit applicants that are required to mitigate impacts. The number of potential credits permitted for mitigation banks and the credits required for impact permits are determined by the Corps as part of the 404 permit process.

A mitigation bank may be created and developed by either a public agency or private entity. Further, they would typically serve a defined region (i.e., the mitigation service area). The bank is the site itself. The currency sold by the banker to the permittee is a credit. Such credit represents the wetland, riparian, etc., ecological value equivalent to the restoration of a specific area.

The trade associations' March 12th letter notes that they have members whose operations will be impacted by the Corps Fort Worth Guidelines. However, they further state that their interest in the Guidelines goes beyond Fort Worth District projects, stating in part:

Specifically, the associations highlighted the need to address implementation of the Corps' 2008 Mitigation Rule as part of the Corps' review of regulations that may be appropriate for repeal, replacement, or modification pursuant to Executive Order 13777, "Enforcing the Regulatory Reform Agenda." 82 Fed. Reg. 33, 470 (July 20, 2017). The proposed guidelines contain a number of the policies that the associations highlighted as being candidates for revision under E.O. 13777, as they are unnecessary, impose costs that exceed benefits, and inhibit job creation. Additionally, the proposed guidelines conflict with Executive Order 13766, "Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects" (Jan. 30, 2017), which calls upon federal agencies to "streamline and expedite. . . environmental reviews and approvals for all infrastructure projects." 82 Fed. Reg. 8,657.

Key concerns addressed in the letter include:

- Subsurface mineral rights
- Burdensome financial assurance requirements
- Low limits on invasive species

[A copy of the March 12th comments can be downloaded here.](#)