



The Assistant Secretary of the Army
(Civil Works)

NEWS RELEASE

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Immediate

Army Issues New Regulatory Guidance for Mitigation Banks – Improving Efficiency and Consistency in the Corps Regulatory Program

On February 22, 2019, the U.S. Army Corps of Engineers (Corps) issued Regulatory Guidance Letter (RGL) 19-01 “Mitigation Bank Credit Release Schedules and Equivalency in Mitigation Bank and In-Lieu Fee Program Service Areas.” Developed in collaboration with the U.S. Environmental Protection Agency, RGL 19-01 provides guidance to District Commanders on two issues relating to that authority: credit release schedules for mitigation banks and consistency in establishing service areas for mitigation banks and in-lieu fee programs.

In 2015, the Corps conducted an analysis of the implementation of the 2008 Mitigation Rule. The analysis compared the processing timeframes for Department of the Army permits between the use mitigation bank or in-lieu fee credits and permittee-responsible mitigation to meet compensatory mitigation requirements. Permit processing timeframes were reduced by approximately 50 percent with the use of mitigation bank or in lieu fee credits.

Consistent with flexibility within the 2008 Mitigation Rule, RGL 19-01 will provide a substantial benefit to the Nation by facilitating the release of more credits available for sale to permittees shortly after successful construction of a mitigation bank. The Army anticipates that allowing for additional credits for sale will result in mitigation credits be sold at a more competitive, fair and comparable prices.

“Having more credits available for sale to permittees can allow for even more reduced permitting timeframes for the important infrastructure, energy, and other administration priority activities,” said R.D. James, Assistant Secretary of the Army for Civil Works “Homebuilders and many others who need authorization from the Corps for their proposed activities will also benefit from increase in available mitigation credits.”

The credit release is contingent on the bank sponsor successfully constructing the mitigation bank in accordance with the Corps approved mitigation plan and providing sufficient financial assurances that the bank will meet the approved ecological performance standards.

This guidance will benefit the mitigation bankers businesses, the permittees, as well as the aquatic resources. The Army anticipates that improved guidance in releasing mitigation credits will encourage more investment in mitigation banks, thereby improving the quantity and quality of aquatic habitat being restored Nation-wide.

In addition to addressing the credit release schedules for mitigation banks, the RGL also addresses service areas for mitigation banks and in-lieu fee programs. In 2004, Congress



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mandated that the Corps in developing the 2008 Mitigation Rule to "apply equivalent standards and criteria to each type [on-site, off-site, and in-lieu fee mitigation and mitigation banking] of compensatory mitigation". Therefore, the guidance makes clear that with each District, the Corps should ensure that the same criteria are used to establish similar service areas for mitigation banks and in-lieu fee programs.

To read RGL 19-01, the 2008 Final Mitigation Rule and for more information on the Corps' Regulatory Program, please go to <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/>.