



JUN - 7 2019



Dear Intergovernmental Association Colleague:

The U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) (hereafter, known as the Agencies) are planning to propose revisions to the jointly-promulgated regulations titled “Compensatory Mitigation for Losses of Aquatic Resources” (Mitigation Rule) (40 CFR Part 230, Subpart J and 33 CFR Part 332). The Agencies are seeking your early input on this forthcoming proposal.

This action is intended to implement a legislative principle in the Administration’s February 2018 Legislative Outline for Rebuilding Infrastructure in America, entitled “Remove Duplication in the Review Process for Mitigation Banking by Eliminating the Interagency Review Team.”¹ This legislative principle is aimed at improving the efficiency of the process by which federal, state, local agencies, and tribal nations review proposed mitigation banks or in-lieu fee programs and provide comments to the Corps. Consistent with this principle, the agencies are considering removing the Interagency Review Team (IRT) process for proposed mitigation bank and in-lieu fee program evaluation and seek suggestions for rule changes that continue to provide opportunities for federal, tribal, state, and local input, while making the review process more efficient. The agencies also seek suggestions for retaining the IRT while identifying efficiencies in the instrument review process. The Agencies thus intend to propose amend the Mitigation Rule to ensure the review process for mitigation banks and in-lieu fee programs are timely and efficient, while protecting the environment. The Agencies are also soliciting input on whether modifications to the rule text are needed to: better address compliance with the Miscellaneous Receipts Act (31 U.S.C. 3302(b)); clarify the requirements of in-lieu fee program accounts; address credit accounting for multipurpose mitigation banks and in-lieu fee programs; and facilitate state assumption of Section 404 Program. Finally, the Agencies seek input on approaches to quantify stream mitigation credits that better reflect the total amount of stream ecosystem restored, enhanced, or preserved in rivers and larger streams, or stream-wetland complexes, while maximizing available credits and opportunities for larger compensatory mitigation projects within a given watershed. (For example, whether linear feet, square feet, or some other metric that considers stream length, width, order, and/or flow regime should be the preferred credit metric.

Although this action does not trigger pre-proposal consultation requirements under the EPA’s policy for implementing Executive Order 13132, entitled “Federalism,” early coordination with state and local government officials’ representative national organizations is a priority for both agencies. To that end, we would like to invite you to a briefing to be held at EPA Headquarters on **Thursday, June 20, 2019, at 1:00 p.m. in Room 2530 of the William Jefferson Clinton North building, 1200 Pennsylvania**

¹ This principle can be found in Part 3.I.B.10 (p. 39) of the February 2018 Legislative Outline for Rebuilding Infrastructure in America, available at: <https://www.whitehouse.gov/wp-content/uploads/2018/02/INFRASTRUCTURE-211.pdf>

Avenue, NW, Washington, DC. To attend, please RSVP via this electronic scheduler to which this letter is attached.

Specifically, representatives from the National Governors Association, the National Conference of State Legislatures, the U.S. Conference of Mayors, the Council of State Governments, the National Association of Counties, the National League of Cities, the International City/County Management Association, the National Association of Towns and Townships, the County Executives of America and the Environmental Council of States will be invited to this briefing. Additionally, the Agencies are inviting staff from the Western Governors' Association, the National Association of Clean Water Agencies, the Association of Clean Water Administrators, the Association of State Wetland Managers, the Western States Water Council, the National Association of State Departments of Agriculture, and the American Public Works Association to participate.

The Corps contact is Krystel Bell at (202) 761-4614 or Krystel.L.Bell@usace.army.mil. The EPA contact for this consultation and coordination process is Charles Kovatch, Office of Wetlands, Oceans, and Watersheds, at MitigationRuleStates@epa.gov. Please do not hesitate to contact them should you have any questions.

We look forward to hearing from you on this important matter.

Sincerely,



D. Lee Forsgren
Deputy Assistant Administrator
U.S. Environmental Protection Agency



Ryan A. Fisher
Principle Deputy Assistant Secretary
of the Army (Civil Works)