

STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO REGION

STAFF SUMMARY REPORT (Shin-Roei Lee)  
MEETING DATE: February 11, 2009

ITEM: 8

SUBJECT: Review of Wetland Compensatory Mitigation in California – Status Report

DISCUSSION: Eric Raffini from U.S. EPA, Region IX, will present the findings and recommendations of U.S. EPA’s review of all existing third-party wetland mitigation projects within California.

The recently approved (June 2008) U.S. Army Corps of Engineers (Corps)/U.S. EPA mitigation regulation emphasizes a watershed-based approach to compensatory mitigation, and, in particular, establishes a “soft” preference for the use of third-party mitigation (mitigation banks and in-lieu fee programs) over other forms of mitigation. However, reviews conducted by the General Accounting Office, National Resource Council, Environmental Law Institute and others have indicated that there is a lack of effective oversight of all compensatory mitigation projects. Oversight of compensatory mitigation projects includes assessing compliance with permit conditions, tracking mitigation bank and in-lieu fee program debits and credits, and field assessment of mitigation projects to ensure function-based performance standards are being met.

Locating and implementing compensatory mitigation for projects impacting wetlands and other water bodies is becoming a challenge in this Region and around the West. Third-party compensatory mitigation can be an appropriate solution to this challenge. To prepare for an expected increase in third-party compensatory mitigation, Eric Raffini and Valentina Cabrera-Stagno of U.S. EPA, Region IX, reviewed all existing third-party mitigation projects within California. They compiled data from Corps and U.S. EPA files on 41 approved mitigation banks and in-lieu fee programs operating within California’s three Corps districts (Los Angeles, San Francisco, and Sacramento). For a subset of mitigation projects (15), they performed an in-depth review of monitoring reports, credit ledgers and performance standards to assess compliance. This review was then followed up with field visits to the mitigation sites.

The primary goals of the review were to assess 1) whether mitigation banks and in-lieu fee programs are meeting the performance standards and conditions set forth in their establishing documents, and 2) do the performance standards lead to projects that adequately replace the wetland functions and services lost from impacted wetlands and other water bodies?

Eric Raffini’s presentation will also include a multi-media tour of California’s banks using aerial imagery captured in Google Earth.

Conclusions and recommendations from the review include:

- Develop State/Corps district guidance on performance standards and monitoring requirements
- Tie performance standards to reference conditions
- Include specific performance standards, monitoring requirements and assessment methodology in each Bank Enabling Instrument (BEI)
- Keep track of mitigation banks after each BEI is approved
- Conduct compliance visits
- Better manage and track credit sales

Given our success in using Wetland Tracker to track compensatory mitigation projects, U.S. EPA staff is planning to use Wetland Tracker to track mitigation banks and in-lieu fee programs.

RECOMMEN-  
DATION: No action needed.