Dear Oregon Mitigation Bank Sponsors and Agents:

On June 21, 2017, thirty-two mitigation bankers and their agents attended a meeting on the proposed new aquatic resource mitigation program for Oregon. This latest meeting was intended to update you on changes made to the agencies' proposed function- and value-based mitigation framework since our last meeting with mitigation bankers in November 2015. Management and staff from the Department of State Lands, U.S. Environmental Protection Agency, and the U.S. Army Corps of Engineers presented the framework developments to date and invited dialogue about the new framework.

On behalf of the hosting agencies, we appreciate your participation in the meeting, as well as the written feedback provided on the meeting survey and through follow-up emails.

Meeting Goals

The goals of the June meeting were to have bankers:

1. Understand how questions, issues, and concerns raised at the November 2015 Bankers' Meeting have been considered by the agencies;
2. Understand how the new framework will work and be applied to mitigation banking;
3. Understand the agencies' proposed implementation schedule and the benefits to bankers for participating in the new framework;
4. Provide feedback on the proposed mitigation framework;
5. Dialogue with agency staff through a question and answer period.

Meeting Summary

The agency managers emphasized that the proposed functions- and value-based framework is intended to improve on the deficiencies of the current acrege-based approach and to implement the Federal 2008 Compensatory Mitigation Rule as well as Removal-Fill Law. Further, the agencies reviewed the primary comments provided by bankers in November 2015 and summarized what has changed in the revised draft mitigation framework.

Agency staff used scenarios to demonstrate how the proposed protocol would be used for determining (1) the number of wetland credits that would be generated at a new bank; (2) the eligibility of a site for wetland mitigation; and (3) the amount of wetland mitigation required of a permit applicant. Agency staff also presented the benefits that can be expected for current and future bankers, as well as for the State and Federal regulatory programs. These benefits include:

- Current bankers' remaining bank credits will carry over under the new framework.
- The rate of required mitigation will never be less than 1 credit per 1 acre impacted.

- Consistency as new permit applicants and new banks will use the new framework once new policies are effective.
- A new market for stream mitigation.
- A larger market for banks that meet watershed priorities because these banks will typically not be required to replace impacted wetlands by class (HGM and Cowardin), or functions and values.
- Improved environmental outcomes through the use of wetland and stream assessment tools to inform replacement of aquatic resource functions and values, not just acreage.
- Streamlined state and federal rules and procedures to provide better regulatory integration and consistency.

Comments and Discussion

You raised thoughtful questions and provided important comments during the meeting, and have since given the agencies valuable feedback for our consideration.

What We Heard

The primary points that emerged from the comments and discussion are:

1. Concerns remain about transitioning due to the need for more examples using the new protocol and data from real permits and ORWAP assessments.
2. There are questions about how credit accounting would be applied and affect bankers (e.g., use of the soil adjustment factor).
3. Concerns exist over a fair marketplace, particularly with banks located in service areas shared with other banks, and for both bankers and applicants alike.
4. Concerns exist regarding potentially tipping the mitigation selected by permit applicants toward Permittee Responsible Mitigation and away from the purchase of bank credits.
5. Bankers are concerned with any disruption of the terms of their Mitigation Bank Instrument (MBI) agreements.
6. Most bank sponsors addressed watershed priorities as part of their MBI development.
7. The agencies need to consider how the stewardship adjustment factor will apply for public mitigation banks.
8. Clear agency guidelines are preferred over the use of agency discretion.

Mitigation Procedures for Existing Bank Sponsors

Existing mitigation banks will continue to operate according to their mitigation bank instruments (MBIs) and be referred to as "Legacy Banks" under the new policies. Applicants purchasing credits from a legacy bank will not be subject to changes in eligibility or mitigation accounting.

As was communicated in February 2016, a legacy bank is defined as a bank with an approved Mitigation Banking Instrument (MBI), or a proposed bank that meets all of the following criteria:

- A prospectus is determined complete by the Interagency Review Team (IRT) co-chair agencies prior to the effective date of the new policies; and

- A Mitigation Banking Instrument (MBI) is determined complete by the IRT co-chair agencies within one year of the effective date of the new policies; and
- The final Instrument includes a sunset clause that clearly articulates how long the bank sponsor has to begin construction of the project before the Instrument is terminated.

We anticipate that new mitigation policies will become effective in February 2019. At this time, all new banks not meeting the definition of a legacy bank, and all permittee-responsible mitigation will follow the new program policies.

The sponsor of a legacy bank may request to voluntarily transition their banks to the new mitigation program by requesting a modification to their MBI. No timelines for voluntary transition have been determined. Agency staff will respond to modification requests in the order received based on available agency resources. DSL will be transitioning all in-lieu fee projects to the new mitigation policies in order to provide improved environmental outcomes and to provide additional information regarding the effects of the new program policies.

Next Steps

The agencies continue to develop draft policies around wetland and stream compensatory mitigation, and are reaching out to additional stakeholder groups over the next several months. We encourage you to continue providing your comments. You can comment via DSL's dedicated email box AquaticResourceMitigationProject@dsl.state.or.us, or by contacting any one of the Project Team leads: Dana Hicks at dana.hicks@state.or.us or 503-986-5229; Tom Taylor at thomas.j.taylor@usace.army.mil or 503-808-4386; or Tracie Nadeau at nadeau.tracie@epa.gov or 503-326-3685.