



NATIONAL MITIGATION BANKING ASSOCIATION

Winter 2011

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President's Corner

This year has been one that the NMBA has focused on the Preference section of the Mitigation Rule (33 CFR 332.3) and on pushing for tax reform in Congress. The Preference was a focus of questions to regulatory officials at the national conference in Austin and the focus of several articles in both the National Wetlands Newsletter and the Ecosystem Marketplace. We have pushed the issue in private meetings with the Chief of Regulatory, Meg Gaffney Smith and in letters to the Assistant Secretary of the Army, JoEllen Darcy. This is a key issue as many members have been tracking mitigation within their service areas and find that the Corps is not applying that provision of the rule effectively.

I am pleased to share positive results of Association efforts with regard to implementation of the Preference. In late October, the Corps instructed each District to carefully document the selection of mitigation when considering permitting decisions. The documentation includes an explanation of how the decision regarding mitigation is in compliance with the preference for mitigation banks in the 2008 Mitigation Regulations. This additional level of transparency is a direct outcome of a long-term team effort and addresses key areas of concern among the NMBA member community.

On the tax front, the general deadlock of Congress over the last year kept our tax issue from being incorporated into a larger bill, which is needed for passage. Nonetheless, great progress has been made. One of the key issues with tax legislation is the understanding the "score," or how this legislation would affect the general balance of expenditures and revenues. Thanks to hard work from our representatives in DC, Peggy Strand and Ray Beeman of Venable, and the hard work by NMBA member Resource Environmental Solutions, the tax bill made it to the Joint Committee on Taxation, where a score will be developed. While the score itself has not yet emerged, the homework is complete, questions are answered and the scoring process is enabled. Next year is a new opportunity to push for tax relief for our industry.

Thank all of you for your support for the NMBA. We look forward to continuing the good fight in the upcoming year.

Dave Urban

NMBA President

What's Up In Washington

November 2, 2010 changed the scene in Washington, D.C. Fortunately, mitigation and conservation banking have traditionally had strong bi-partisan support. We have always kept the lines of communication open with majority and minority in Congress – as they have changed over the years -- and we are looking forward to working with the next Congress.

Legislation. Our major legislative item remains clarifying the tax treatment of wetland mitigation bank credit sales as capital gains rather than ordinary income. The House (H.R. 3609) and Senate (S. 2876) bills introduced in the 111th Congress are pending, but if not enacted, all bills "die" at the end of a Congress. That means that the bills will need to be reintroduced in the new, 112th Congress and then managed through the legislative process.

The work already done on the tax bills will not be lost in the new Congress, but there will be a lot of work to bring the legislation to fruition. Many thanks are due to the Association's Legislative Committee for consistent work on the tax



legislation. The strategy for the 112th Congress will be laid out by the Legislative Committee and the Board in the next weeks and months.

Regulation. President Dave Urban and Vice President Steve Collins had a very productive meeting with Regulatory Branch Chief Meg Gaffney Smith and her staff, to address the key issue of the regulatory preference. We were assured by Meg that the Corps intends to document its decisions in selecting mitigation, including documenting how it has applied the preference for mitigation banking. In late October, the Corps issued instructions to its Districts for documentation of mitigation choices in permitting. We were pleased to see that the instructions require an explanation of whether there are mitigation banks with available credits, and why mitigation other than such banks is selected. More information on this October 2010 Corps Instruction is available on the NMBA Website.

Conservation Banking. Dave Urban and Steve Collins also had a very good meeting with Gary Frazer, Assistant Director for Endangered Species at Fish and Wildlife Service. The discussion focused on raising the level of commitment and training for conservation banking. Gary was very supportive, and the Conservation Banking Committee of the Association is working on implementation steps from that successful meeting. This includes additional training, additional meetings within the Service, and more involvement by private bankers in conservation banking training.

The Association committees provide the system for input and participation. Please get involved so that we can serve members needs well. If you have any questions or need more information, contact Peggy Strand at:

mstrand@venable.com

Member Milestones

ENTRIX is Now Cardno ENTRIX

October 18, 2010 marked a significant date for a company we last knew as ENTRIX. The new company name, Cardno ENTRIX, reflects the recent merger and alliance with Cardno Limited.

ENTRIX joined forces with Australian-based Cardno Limited this past June. Cardno is a family of companies whose professional services are used to plan, manage and deliver physical and social infrastructure solutions in developed and emerging economies. Founded 65 years ago in Brisbane, Australia, today, Cardno has over 150 offices worldwide with a combined resource base of more than 3,700 employees. Cardno is publicly traded on the Australian Securities Exchange [ASX: CDD].

The motivation for ENTRIX to partner with Cardno was three-fold: first, to provide clients a substantially wider range of solutions; second, to offer employees even greater career opportunities; and third, to accelerate our global growth. Cardno provides ENTRIX a valuable springboard for achieving these goals, and we see numerous synergies between our two firms.

New Corporate Name: Cardno ENTRIX
New Web Address: www.cardnoentrix.com
New Email Address: firstname.lastname@cardno.com

SAVE THE DATE 2010 National Mitigation & Ecosystem Banking Conference

*April 26-29, 2011
Hilton Baltimore Inner Harbor
Baltimore, Maryland*

Register by 1/25/11
For Early Bird Fees, please visit
www.mitigationbankingconference.com

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News & Highlights

- Cardno ENTRIX Plays Prominent Role in Numeric Nutrient Criteria Development in Florida 2010-11-19
- Cardno ENTRIX To Lead CSFA Panel on Chemicals Management, December 9 2010-11-19
- REACH Consulting Services Update 2010-10-01
- ENTRIX, Inc. Co-Brands Under Cardno Name to Reflect Expanded Global Network 2010-10-18
- ENTRIX Wins NGWA's Outstanding Project Award 2010-09-28

Member Milestones

McCollum & Sweetwater

Announces Opening of the East Austin Creek Conservation Bank

Sonoma County is now home to a new conservation bank. Recently approved by the National Marine Fisheries Service, the East Austin Creek Conservation bank near Healdsburg, California supports rearing habitat for the critically endangered Coho Salmon. Located along the Russian River, the location of the bank is designated in the Central California Coast coho salmon federal recovery plan draft as a “core recovery area,” the highest priority site for habitat restoration and preservation of this species.

Following bank approval, the California Department of Fish and Game released 5,000 juvenile coho salmon, raised in the Russian River Coho Salmon Captive Breedstock Program, into the bank in an attempt to re-establish the species in the Russian River system.

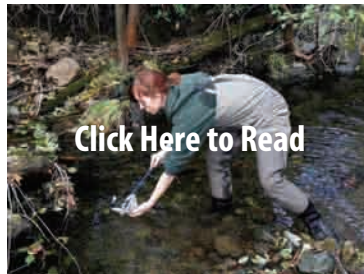
Learn more at www.mccollum.com.

The bank opening and breedstock release generated press coverage, viewable at the links below:

Channel 5 News Video



Press Democrat Article



MSUSA Finds Education a Key Ally

While much of America has heard of the Clean Water Act, many business and developers are still unsure about how it relates to and affects their projects. As Mitigation Solutions USA expands into Arkansas and Oklahoma, it has found that educating its market is just as important as actually marketing to them.

“When many developers first hear about environmental impacts and mitigation, they are initially wary and perhaps even defensive,” explains MSUSA President Terry McKenzie. “But we’ve found that when we explain the Clean Water Act, permitting rules, and mitigation options, knowledge becomes a key ally in helping our potential clients understand the benefits we bring to their endeavors.”

MSUSA has put this approach to the test, conducting workshops in new markets and offering themselves as an educational resource.

“We’ve received extremely positive feedback from these educational efforts,” says McKenzie, “and plan to continue this approach with more comprehensive programs and educational outreach efforts coming next year.”

Visit

www.mitigationsolutionsua.com

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Press Democrat URL:

<http://www.pressdemocrat.com/article/20101105/ARTICLES/101109619/1349?Title=Optimism-for-salmon>

Member Milestones

Richard P. Kane Wetland Mitigation Bank *A Unique Private/Public Partnership in the Hackensack Meadowlands of New Jersey*

A team effort led by EarthMark Mitigation Services and the Louis Berger Group that began in 2008 has resulted in a unique partnership to develop a unique ecosystem. Following is an excerpt of what the local press had to say about this revitalization activity:

Just What Jersey Needs, Another Swamp - Well, Yes, Actually

by Brian Thompson

Fewer than five miles from Manhattan as the heron flies, a new swamp is being built in the North Jersey bogland that years ago was renamed the Meadowlands. In recent years, TV commentators at Giants and Jets games would still call Giants Stadium "The Swamp." But environmentalists knew better.

Much of the marsh surrounding the stadium had been drained and developed over the years, or allowed to silt up so that the new land was pretty much good only for muskrats.

But a project -- described as the largest such project ever in the tri-state area -- is turning some 234 acres of silted-over wasteland into a brand new swamp that is expected to give a big boost to marine life in the Hackensack River and New York Harbor.

"It's the old story of the bigger fish eating the smaller fish and the smaller fish eating the biota (small marine life) on the bottom," said Gil Hawkins, 65, a lifelong fisherman and member of the Hudson River

Fisherman's Association. And with more room for the marine life that grows in the marshy, swamp-like canals that are being carved out of what is now called the "Kane site," there will be more food for the bigger fish popular with fishermen, such as striped bass and bluefish.

Crabs are also expected to thrive along the six-and-a-quarter miles of waterway that are being dug up and replanted with spartina, a marsh grass that's popular with the little critters looking for a place to live.



"We're bring back all the natural functions, all the fish that used to flow through here and the eggs ... will all now start coming back," said Michael Rosen, Chairman of the EarthMark Companies which is the lead contractor for the 20-plus million dollar project.

"I believe it is the largest single restoration project to ever happen here in the Meadowlands," said Hackensack Riverkeeper Cap't. Bill Sheehan. And Greg Remaud of the NY/NJ Baykeeper said it is likely the largest ever in the tri-state area.

Sheehan noted this 234-acre project is actually a mitigation bank for transportation projects in the area, such as the new commuter rail tunnel being built under the Hudson River by NJ Transit. "When this project is done, they're going to provide all the credits that are needed" for several transportation projects, Sheehan said.

But there are plans for more than just fish and birds, as important as that will be to the long degraded Meadowlands. "It's going to be a very unique chance for people to get out here and enjoy things via canoe, cycling, bird watching," said Tina Schvejda, Executive Director of the Meadowlands Conservation Trust.

New habitat for birds -- 30,000 trees are being planted such as Sycamore and Swamp White Oak -- did cause a momentary problem for the FAA and the nearby Teterboro Airport. "We had to be very careful about what we did because the FAA was worried about bird strikes," said the Baykeeper's Remaud. In this case, that meant changes to keep Resident Canada Geese off the site (they actually prefer open areas to trees).

Additional press coverage can be found at:

http://www.northjersey.com/news/94989224_Work_begins_on_making_Kane_Tract_open_to_the_public.html



Featured Articles

Foreign Relations: Mitigation Across the Pond

by Ben Guillon, Director at Large

If you are thinking about starting a business in France, you may see yourself buying a vineyard, but certainly not a mitigation bank.

You may need to reconsider your business activities as France is developing its mitigation banking framework!

It started some two years ago with an announcement that the French sovereign fund, Caisse des Depots et Consignations (CDC), had started a biodiversity business called CDC Biodiversité. We may think it is strange for an investment fund to start a business in markets when there aren't any

regulations yet in place. However, CDC was created by Napoleon in 1816 with the mandate to pioneer the growth of the French economy and the development of new markets. More recently, CDC founded the European Carbon Fund which jump started carbon markets in Europe. In November 2010, CDC Biodiversité's CEO, Laurent Piermont, made a presentation at a conference in Paris about the progress of their initial pilot near Marseilles in Southern France. The 900-acre former orchard was restored to a rare type of prairie that harbors many endangered bird species, notably the little bustard and the Eurasian stone-curlew. As in mitigation banking, developers in the region will be able to purchase shares of this "reserve of natural assets" to offset their impacts on this type of endangered habitat. The system is still in its infancy, and the mitigation requirements are determined on an ad-hoc basis by a scientific committee and representatives of the environment ministry, much like an

Interagency Review Team (IRT). A major difference already exists between these two systems. In France, the developer will not transfer its liability to the mitigation banker, so he remains responsible if the restoration fails. Despite this risk, the developer community in France has shown a strong interest in using this new mitigation option, and CDC Biodiversité already indicated that they expected to expand the pilot to other habitats and regions. In addition, other European countries are tracking the French pilot project with the aim to replicate it if it is successful.

High level staff at the French environment ministry have also expressed strong interest in establishing tighter links with the U.S. mitigation banking sector, including bankers and regulators, so they can learn from the United States' 20 years of experience with this type of instrument.

"Credit Stacking"

Guided by Dave Urban, our NMBA President, a small group of members have prepared recommendations on the controversial topic commonly referred to as "Credit Stacking."

A team comprised of Rich Mogensen, Craig Denisoff and Randy Wilgis met several times over the last few months and prepared a list of recommendations and a draft "Definitions Paper" to be presented to the full NMBA Board for a vote with regard to next steps. Recommendations from this team include:

- 1) NMBA to establish a committee, sub-committee or working group to decide on a general position and issue a paper regarding federal/national policy, or
- 2) NMBA to establish a committee, sub-committee or working group to define each major type of credit stacking mechanisms to facilitate an educated policy discussion on both the federal and state levels, or
- 3) Do nothing.

This topic is being studied by several non-NMBA-affiliated organizations and the NMBA Board is considering how to proceed. It is quite relevant to our industry and can have significant financial implications for NMBA member companies. If the NMBA Board determines that a Committee or Sub-Committee is warranted for this topic, this group would be formalized and established in the near future and active in 2011.

Monitoring: What Works, and What Doesn't? by Talitha Haller

Any scheme that aims to save nature by paying for its ecosystem services has to begin by measuring and monitoring those services. Not all such methods, however, are created equal, say David Lindenmayer and Gene Likens in "Effective Ecological Monitoring." Through case studies and analyses, they illustrate the keys for successful ecosystem monitoring that forms the foundation for effective mitigation.

Go to this link to view full article: <http://tinyurl.com/26xmp48>

How Long a Bridge to Cross the Gap? by Becca Madsen and Matthew Cranford

The nearly 200 nations meeting now at the "COP10" Convention on Biological Diversity in Nagoya, Japan recognize the large financing 'gap' between current spending on biodiversity conservation and the amount of funding actually needed. But what is exactly is the size of the gap? And how do you build a funding bridge with this uncertainty? Go to this link to view full article: <http://tinyurl.com/2bo2swx>

Can This British Ecologist Save the English Countryside by Putting a Price on Nature?

by Alice Kenny

The English countryside may be lovely this time of year, but those autumn leaves hide an alarming loss of biodiversity. David Hill puts the blame in part on well-intentioned laws that promote piecemeal protection without regard to ecosystems or economic drivers. Policymakers are listening – but can they act? Go to this link to view full article: <http://tinyurl.com/28mjd5k>

Nagoya Report Highlights Potential for Habitat Banking in Latin America by Daniel Kandy

Nagoya's side events continue to have strong emphasis on finance and infrastructure. A new report released on October 28th looks at habitat banking in the context of the biodiversity-rich continent of Latin America, giving steps and suggestions for successful projects. Here is glimpse into the report

Go to this link to view full article: <http://tinyurl.com/26yk6ck>

Bridging the Biodiversity Finance Gap by Steve Zwick

The UN wants to halt biodiversity loss by the year 2020, and the International Union for the Conservation of Nature (IUCN) says we need up to \$300 billion per year get there. The Global Canopy Group says traditional schemes are delivering up to \$40 billion per year, but that newer mechanisms can triple that. TEEB says we can only fill the gap by changing our economy. Go to this link to view full article: <http://tinyurl.com/26yk6ck>

TEEB: What's the Buzz? by Daniel Kandy

The Economics of Ecosystems and Biodiversity consortium (TEEB) has wrapped up commenting on its 200-page guide for bringing the goals of business into line with those of the environment. Now it's time for a peek inside the massive piece of work that everyone is talking about. Go to this link to view full article: <http://tinyurl.com/22sg6xd>

New Book Successfully Argues for Protected Areas by Talitha Haller

The United Nations Convention on Biological Diversity (CBD) aims to save species on a grand scale, and protected areas are one tool for achieving that. Protected Areas are central to the Nagoya negotiations wrapping up this week. They are also the central theme of this book. Go to this link to view full article: <http://tinyurl.com/2fkopxd>

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