
APRIL, 2001
NMBA NEWSLETTER

Here Comes
THE JONES BILL

Congressman Walter Jones (N. Car. Rep.) is introducing his wetland mitigation banking legislation this Congressional session. You will recall that the "Jones Bill" would codify the standards for wetland banking in federal statutes. The standards are similar to the Wetland Mitigation Banking Guidance, but would become permanent wetland law. The bill will be referred to the Water Resources Subcommittee of the House Transportation and Infrastructure Committee. No hearings or action have been scheduled yet.

The Association strongly supports the Jones Bill. We have worked with Congressman Jones' office and with the Subcommittee staff on this legislation.

Stand By for
STUDIES THIS SPRING

Two studies of wetland mitigation will be released this Spring. The National Academies of Science (NAS) National Research Council (NRC), established a committee of experts to evaluate scientific issues of wetland mitigation. The Committee is finalizing its study of wetland mitigation. The report, *Mitigating Wetland Losses*, is expected in late April or May 2001. The report will address the science of wetland mitigation and compare different methods of mitigating wetland losses, including wetland mitigation banks and in-lieu-fees.

In the same time frame, the General Accounting Office (GAO) expects to release a study of in-lieu-fees in early May. GAO was asked by the House Transportation and Infrastructure Committee to investigate the Corps of Engineers' practices of allowing compensatory wetland mitigation in the form of in-lieu-fee payments.

The Association provided information to both the NAS Committee and to the GAO investigators. Members assembled extensive documentation of wetland mitigation banks. Some members also showed the investigators their banks and appeared at meetings of the NAS Committee.

We expect that after these two studies are released, Congress will hold hearings on wetland mitigation. Your Association will participate in those hearings.

WHAT'S NEW IN RULES

The Corps and EPA are hard at work addressing the so-called "Tulloch" rule. At the end of the Clinton Administration, the government published a final regulation addressing draining and ditching of wetlands. Members will recall that the courts struck down earlier federal regulations over these activities. The latest rule established a presumption that digging ditches in wetlands to drain them would cause a discharge and therefore would require a permit from the Corps. This rule was subject to the Bush Administration decision to review all "end of term" Clinton Administration regulations. The agencies must decide by April 16, 2001 whether this regulation will be implemented.

The U.S. Supreme Court decision on isolated waters and wetlands is also under active review in the agencies. On January 9, 2001, the decision in *Solid Waste Agency of Northern Cook County (SWANCC)* set the wetland regulatory program into chaos as the Supreme Court held that the federal government could not rely on migratory bird use alone to claim jurisdiction over intrastate, isolated water bodies. On January 19, 2001, on the eve of President Bush's Inauguration, the Clinton Administration released a memorandum addressing this decision. Since that time several Congressmen have asked the new Administration to rescind the memo.

SWANCC has implications for the extent of the wetland regulatory program. Field offices of the Corps and other agencies are grappling with the extent of their jurisdiction, particularly in locations characterized with playas, wet meadows, prairie potholes, vernal pools or other physically isolated wetlands or waterbodies. The Association has been participating in dialogue with the agencies, in the field, and at headquarters as the post-*SWANCC* policies are developed. The process of developing guidance has been prolonged, in part because the new Administration has not yet appointed officers at the Assistant Administrator and Assistant Secretary level. We expect that there may be congressional hearings in the Spring.

GAO
Takes On the
CORPS' OWN MITIGATION

The General Accounting Office (GAO) has just begun a study of the mitigation efforts of the Corps of Engineers for its own water resources projects. In 1999, the National Academy of Sciences published a report, *New Directions in Water Resources: Planning for the U.S. Army Corps of Engineers*. This report noted that a lot of the mitigation planned for Corps water projects, such as dams and water diversions, was not being carried out. The backlog of incomplete mitigation was so great that the Corps probably could not complete all the mitigation it has promised to do. The current GAO study, authorized in the 2001 Water Resources Development Bill, is looking in greater detail at the mitigation track record for Corps projects.

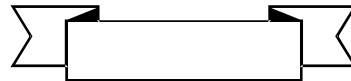
MITIGATION OPPORTUNITIES

EPA has a task force on hypoxia, charged with evaluating the problem and possible solutions. The Hypoxia Task Force has released two reports, one general and one with greater details. The reports can be accessed at the Office of Water website, www.epa.gov.ow. Among the recommenda-

tions is the suggestion that wetland restoration efforts within the basin are a good way to compensate for hypoxia impacts.

WILL WE SEE YOU IN FLORIDA?

We will be holding our annual membership meeting at the Terrene Institute's 4th National Mitigation Banking Conference in Fort Lauderdale Florida at the Radisson Bahia Mar. The meeting is scheduled from 4:30 - 5:30 on April 18th. We have a lot to cover in that time, including updates of the various federal activities and election of officers. The board of directors will meet after the general session. I highly encourage all members to come to the Terrene Conference. Many of the decision makers from the federal government will be there, as well as most of the members of the Association. What better excuse do you need to go to Florida in the spring.



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