
SEPTEMBER, 2001
NMBA NEWSLETTER

PRESIDENT'S MESSAGE

The Association has been busy over the Spring and Summer, since our meeting in Florida in April. Our membership has been working locally and nationally to further the interests of the mitigation business. We were very pleased with the report of the National Academy of Sciences (NAS) on wetland mitigation, issued in early summer. The General Accounting Office (GAO) also reported on the Corps of Engineers' mitigation programs, favorably addressing mitigation banks. These were solid achievements for our Association.

Important issues remain. Some of our members have seen a sharp reduction in mitigation based on the Corps' declining jurisdiction over so-called isolated wetlands in the aftermath of the January 9, 2000 Supreme Court decision in *Solid Waste Agency of Northern Cook County (SWANCC)*. Other NMBA members remain concerned about the improper use of in lieu fees, inconsistent with the Interagency Guidance on Use of In Lieu Fees. We continue to work on these issues and more. We have a full autumn coming up, and look forward to your involvement.

UPCOMING HEARINGS
ON JONES BILL

On September 12, 2001, the Water Resources Subcommittee of the House Transportation and Infrastructure Committee will hold hearings on H.R. 1474, the American Wetland Restoration Act, Walter Jones' Mitigation Banking Bill. Congressman Jones will testify and will submit NMBA testimony for the record, supporting the bill. NMBA member George Howard, of Restoration Systems LLC will testify

before the Subcommittee. The federal witnesses will be G. Tracy Mehan, recently confirmed as EPA Assistant Administrator for Water and Dominick Izzo, Principal Deputy Assistant Secretary of the Army. Others testifying include representatives of Ducks Unlimited, the National Association of Industrial and Office Properties (NAIOP) and the American Farm Bureau Federation.

This hearing is a great step forward towards enactment of mitigation banking legislation. We urge all NMBA members to write to their Congressmen and to the members of the Committee to support the Jones Bill. John J. Duncan of Tennessee is Chairman of the Water Resources Subcommittee, and Peter DeFazio of Oregon is the Ranking Minority member. Please send a short letter or card along the following lines: "Wetland mitigation banking is a win-win for the economy and the environment. I urge you to support enactment of H.R. 1474 the American Wetland Restoration Act."

You can find a summary of H.R. 1474 and the full bill at <http://www.thomas.loc.gov>. You can find the names and addresses, including email addresses, of your Congressional representatives and the Committee members at <http://www.house.gov>.

OCTOBER 1-2
MITIGATION BANKING FORUM

The Environmental Protection Agency (EPA) has scheduled its second Mitigation Banking Forum for October 1-2, 2001 in Baltimore, Maryland. EPA has invited a wide range of persons interested in wetland mitigation, including the officers of NMBA, and representatives of state and federal government, in-lieu-fee providers, environmental groups and mitigation users to address mitigation issues. EPA has invited suggestions for the agenda for this forum.

This will be a great opportunity to pursue the mitigation banking agenda. NMBA has several hot topics it wants to see raised at the Forum. We welcome suggestions from any NMBA member for topics for this Forum. Please forward your ideas to Peggy Strand at mstrand@venable.com.

NMBA feels that the 2000 In Lieu Fee Guidance is being implemented in an ad hoc, inconsistent manner nationwide, and intends to suggest this as an important agenda item. We worked hard to obtain equivalent regulatory standards for in lieu fee providers and banks, and we want to be sure that the federal agencies apply the Guidance properly. We are also concerned with the spotty implementation of the preference for mitigation banks found in various federal mitigation policies, including Federal Highway Administration regulations. NMBA is working hard to assure that federal preferences for mitigation banking are observed by agencies in their programs.

OCTOBER 3 MEETINGS WASHINGTON, D.C.

After the Forum, several NMBA officers will meeting with key Congressional and Administration officials to further the mitigation banking agenda. We will focus on efforts on obtaining preferences for mitigation banking when federal dollars are spent on mitigation. We've seen such preferences in TEA-21 and in the Water

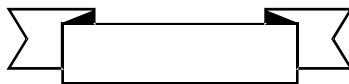
Resources Appropriations Bills. We want to work with other energy and federal spending programs to similar ends.

In addition, we plan to meet with federal agency personnel working on the post-SWANNC jurisdictional policies. Our members need to know the scope of the federal program to plan their businesses to provide mitigation.

CORPS PROPOSES REVISED NATIONWIDE PERMITS

The Corps of Engineers published proposed revisions to its Nationwide Permits on August 9, 2001, requesting comments by September 24, 2001. 66 Fed. Reg. 42069. The full proposal is available at <http://www.access.gpo.gov>. The Corps will hold an open public hearing on September 12, 2001 in Washington D.C. The Corps is proposing some changes to the NWP's and some changes to the general conditions, including Condition 19 for Mitigation. The proposal encourages use of vegetated buffers for mitigation for NWP impacts.

The NMBA plans to file comments on this proposal to emphasize the benefits of mitigation banks to compensate for NWP impacts. If any members want to offer suggestions for these comments, please contact Peggy Strand at mstrand@venable.com.



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