



**US Army Corps  
of Engineers®**

# AQUATIC RESOURCES NEWS

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### *A Note from Headquarters*

Good Day everyone! We at HQ are staying busy these days with budget allocation in full swing, a new Assistant Secretary of the Army for Civil Works (Ms. Jo Ellen Darcy) on board and just the regular day to day business of Regulatory. However, there is one issue that seems to be consuming the majority of our time at the moment. That would be the proposed suspension of NWP 21 Surface Coal Mining (AKA Mountain Top Mining) in the six Appalachian states of Tennessee, Kentucky, Virginia, West Virginia, Ohio and Pennsylvania. As many of you may have heard this is a very contentious issue and is receiving a lot of national attention these days. We recently conducted 6 public hearings in the states that would be affected. The hearings went well, but that was only due to the great planning that took place. As you can only imagine, with over 6,000 people attending these hearings, planning was the key to success. There will be more news in the future on this issue and HQ will keep you posted as to the results. That is the really big news from this end, so stay safe and have a great holiday season!!!

*Meg Gaffney-Smith*

### *A Note from the Editor*

Welcome back and thank all of you for showing interest in revitalizing the Aquatic Resources Newsletter. As you may have noticed, the format has changed slightly. From now on, we will be placing the Newsletter on the HQ Regulatory Homepage at [http://www.usace.army.mil/CECW/Pages/aqua\\_news.aspx](http://www.usace.army.mil/CECW/Pages/aqua_news.aspx) and sending a message to "Reg-All" when it is available. We expect to produce issues 2-3 times per year.

This issue primarily deals with updates on various items of national interest. Of special note is an article on the first in-lieu program approved since the final mitigation rule was issued. We are looking to the field to provide topics that you might like to see explored by the newsletter. Please forward your suggestions to me, at the e-mail address listed in the "Newsletter Communication" section on the last page of this newsletter. Also, if you have actions which you think may be of interest to other project managers and would like to provide articles for the newsletter, please feel free to do so, once you've coordinated it with your district regulatory chief. I look forward to hearing from you.

*Katherine Trott*

### *IWR News*

This year, IWR has welcomed several former regulators into its fold. Katherine Trott joined IWR coming directly from HQ Regulatory. Jeannette Baker joined the IWR staff coming from the Philadelphia District. Janet Cushing joined IWR from the USGS, but she was in the Jacksonville District Regulatory Division about 8 years ago. And finally, John Markham is on a 6-month detail at IWR from the Los Angeles District.

## ***State of Oregon In-Lieu Fee Program— Challenges and Successes under the New Rule***

*Mike Turaski and Dana Hicks*

The Oregon Department of State Lands (DSL) is the sponsor of a statewide in-lieu-fee (ILF) program that was approved by the Portland District in February 2009. This program is designed to provide compensatory wetland mitigation (CWM) in areas of Oregon where there is a need for an alternative to permittee-responsible mitigation.

There are currently 17 mitigation banks selling credits to the general public in Oregon. All but a few of those banks are in the Willamette Valley. That leaves permit applicants in large portions of the state to plan and implement their own CWM, with varying degrees of success. When the Federal mitigation rule was being finalized in late 2007, DSL already had a “payment-in-lieu” (PIL) program that allowed permittees across the state to meet mitigation requirements by paying money into a wetland mitigation fund. That program did not meet Federal requirements, so in anticipation of the forthcoming rule DSL approached the Corps to discuss the feasibility of developing a Corps-approved ILF program. The Portland District recognized the need for CWM projects that are better linked to the landscape, and that have more rigorous technical analysis and review, than can be achieved for permittee-responsible mitigation.

Impacts to wetlands and other waters in Oregon are often co-regulated by the Corps and DSL, and the agencies have a history of partnering to accomplish shared objectives. Flexibility and finesse are needed to reconcile the authorities and policies that guide each agency. In this case, the requirements of the Federal mitigation rule and requirements of Oregon statutes and administrative rules both had to be met. Several aspects of the statewide ILF program reflect this approach, and may be of interest to regulators in other districts.

**Mitigation Bank Revolving Fund.** DSL is using existing mitigation dollars (from their PIL) as seed money to fund projects. The ability of DSL to generate credits with this money is constrained by their own requirement that the aquatic resource benefits be above-and-beyond the existing obligation associated with the projects that paid into the PIL program in the first place. Use of existing funds avoids the need for advance credit sales and therefore decreases the risk of the program for both DSL and the Corps. The instrument maintains flexibility, however, by allowing a

potential 15% credit release upon approval of the mitigation plan.

**Statewide Compensation Planning Framework.** DSL prioritized eleven potential service areas (usually sub-basins), and outlined the criteria to be used to select projects. The framework identifies the functions and services that projects should address, based on historic, existing, and desired resource conditions. This information was compiled from existing statewide assessments (such as the Oregon Conservation Strategy) as well as localized watershed assessments and action plans.

**Augmented Interagency Review Teams.** The Corps is the chair of the Interagency Review Team (IRT), which includes Environmental Protection Agency, US Fish and Wildlife Service, Oregon Department of Fish and Wildlife, and Oregon Department of Environmental Quality representatives. The IRT for the program was expanded to include the Oregon Department of Transportation, which is a major purchaser of CWM credits in the state, and also has expertise in practical aspects of CWM design and implementation. Further, the IRT can be “augmented” for individual projects with representatives from local planning agencies, affected Tribes, or other state and Federal agencies. This fosters involvement from the communities where projects are located, and provides better consistency with watershed management efforts.

**Wetland Grants and Cost-Sharing.** DSL is establishing ILF projects through grants to partners (such as watershed councils) who will be responsible for implementation, monitoring, and maintenance. Collaborative projects are encouraged, because they tend to be bigger and more ecologically comprehensive. The amount of credits that DSL can generate for such projects will be based solely on aquatic resource functions provided as a result of DSL’s contribution, over and above those provided by other funding sources. The Corps, in consultation with the IRT, will determine the amount of mitigation credit available to DSL for each collaboratively funded project.

**Financial Assurances and Contingency Fund.** Private mitigation banks in the state are typically required to provide financial assurances that are stricter than those required for the statewide ILF program. DSL is not able to take on financial obligations in excess of the funds that are available within the ILF program account, due to constraints imposed by the Constitution of Oregon. To address this concern, DSL established a contingency fund equivalent to 30% of the cost of all credits sold from active ILF projects.

## ***State of Oregon In-Lieu Fee Program—Challenges and Successes under the New Rule*** (continued from page 2)

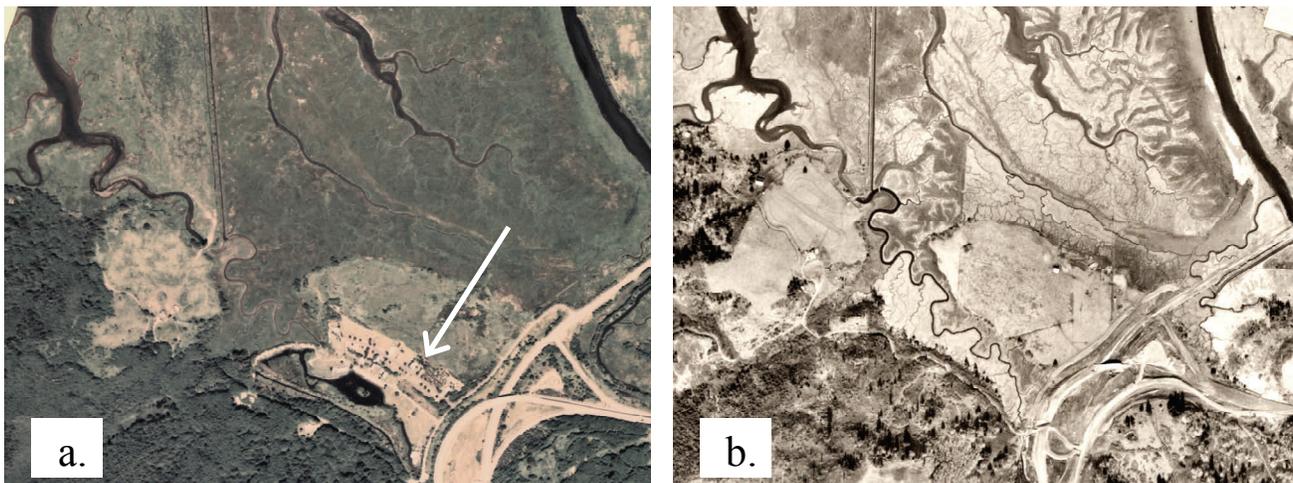
**Enforcement and Compliance Arrangements.** DSL is responsible for fulfilling mitigation requirements for projects that purchase credits from the ILF program. This means that DSL, not the organization that receives the DSL wetland grant funds, is responsible for complying with mitigation plans and meeting performance standards. This encourages important on-the-ground participation by organizations that might otherwise be dissuaded by administrative burdens and the risk of being subject to enforcement actions.

Although the Oregon program was the first ILF program approved under the 2008 rule on Compensatory Mitigation for Losses of Aquatic Resources, it should be noted that the statewide instrument did not include any specific mitigation projects. The instrument is currently being modified to incorporate two projects, each chosen for the potential to provide important aquatic resource functions and values, and each located in an area with high demand for compensatory mitigation. Once these and other projects are approved, we think that the Oregon program will provide real benefits, in terms of better CWM site selection, implementation, and long-term management. While other entities are welcome to propose developing their own ILF program in the state, the DSL program offers some unique opportunities for partnering and strategic planning.

**Photo Illustration (below).** One of DSL's in-lieu fee projects is a partnership with the Siuslaw National Forest and involves restoration of marshes, tidal channels, and a stream in the Salmon River estuary. The project area had been converted to a mobile home park (Figure 1a). By removing a dike and re-grading the site to closely resemble historic conditions (Figure 1b), the project will provide benefits to Coho and Chinook salmon, as well as waterbirds, amphibians, and abiotic functions.

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**Figure 1. Siuslaw National Forest—Salmon River Tidal Marsh Restoration—Tamara Quays Project.**  
a) 1986 color photo (left). Arrow indicates site of Tamara Quays mobile home park. b) 1962 black & white photo (right).

## *Also of Interest*

**Compensatory Mitigation Workshop.** HQUSACE and IWR conducted a compensatory mitigation workshop, 18-21 August 2009 in Chicago. The workshop included sessions on the Corps-EPA mitigation rule, requirements and decision making, wetland and stream credit determinations, monitoring and plan review, mitigation compliance and oversight, financial assurances, site protection, long-term management, data entry in ORM, a mitigation banker's perspective, and field review of several mitigation sites. Over 70 attendees from 20 Districts attended the workshop. Presenters included Dave Olson (HQUSACE), Robert Barron and Cindy Wood (Jacksonville District), Jae Chung and John Markham (Los Angeles), Scott McLendon (Wilmington), and Paul Scodari and Steve Martin (IWR). HQ intends to offer additional workshops in 2010. Thanks to the Chicago District for facilitating this important workshop. *(Steve Martin)*

**RIBITS Update.** RIBITS (Regional Internet Bank Information Tracking System) is a web-based application that was developed by the Corps' Engineering Resource Development Center (ERDC) and its contractor, Applied Research Associates (ARA), to track mitigation bank activity.

The Corps, with support from EPA, is implementing RIBITS nationally. The current version provides users (including the public) with bank sponsor contact information, credit types, service areas, credit ledgers, copies of mitigation bank instruments, monitoring reports, and other information related to mitigation banking. RIBITS also provides national and district specific information on mitigation concepts, bank establishment, and assessment protocols.

The team (HQUSACE, IWR, ARA) is undertaking a number of enhancements to RIBITS that will allow us to better capture district mitigation processes and make data available to regulators and the public, including improved reporting and geospatial capabilities. We plan to adapt RIBITS to track in-lieu fee mitigation programs and conservation banking (species banking) efforts. RIBITS will also be integrated with ORM. This integration will allow RIBITS to have better access to impact data and will provide better data on third-party compensatory mitigation to the ORM. RIBITS can be accessed through ORM (3 lines below the link to the ORM production database). Participation is voluntary and on a first-come, first-served basis.

RIBITS is operational in seven Districts and is being developed for another seventeen Districts. IWR is overseeing a contract to compile and load legacy mitigation bank data into RIBITS. **Our objective is to load mitigation bank data from all Corps Districts into RIBITS by April 2010. Chiefs, the deadline for using the existing contract at no additional cost to your district is April, 2010.** *(Steve Martin)*

## **Upcoming Meetings and Seminars**

Please mark you calendars!

The Regulatory Branch Chief's Meeting is tentatively scheduled to be held February 9 – 10, 2010 at the Beacon Hotel & Corporate Quarters in Washington, DC.

The Regulatory Executive Seminar is tentatively scheduled to be held March 16 – 18, 2010 at the Beacon Hotel & Corporate Quarters in Washington, DC. This seminar targets incoming District Engineers and provides a streamlined overview of the Regulatory Program.

Association of State Wetland Managers (ASWM) – The ASWM State/Tribal/Federal Coordination Meeting will be held February 23-25, 2010 at the National Conservation Training Center in Shepherdstown, WV.

The National Regulatory Conference will be held from May 24 – 28, 2010 and hosted by the Albuquerque District.

TBD – Regulatory Leadership Development Seminar – This seminar will target new Regulatory Branch/Section Chiefs and Senior Project Managers and cover many topics of interest to new or prospective Regulatory supervisors. *(Jeanette Baker)*

**RIX Mitigation Info Reorganization.** As many of you know, RIX contains a lot of valuable information on topics of interest to Regulators around the country. One area of particular interest is information compensatory mitigation. However, finding the information can often be difficult because the mitigation information is scattered throughout the site. At the request of Regulatory HQUSACE, the Institute for Water Resources has initiated an effort to reorganize the mitigation information currently located on the RIX site as well as other mitigation information not currently contained in RIX. This reorganized information will then be uploaded either onto ORM2 or a Corps SharePoint site for easy access by Regulators everywhere. *(Jeanette Baker)*

## *Also of Interest* (continued from page 4)

**Shared Vision Planning.** Shared Vision Planning (SVP) is a collaborative approach developed by the Institute for Water Resources to formulating water management solutions that combines three disparate practices: 1) traditional water resources planning, 2) structured public participation and 3) collaborative computer modeling. Although each of these elements has been successfully applied, what makes Shared Vision Planning unique is the integration of traditional planning processes with structured public participation and collaborative computer modeling.

The goal of Shared Vision Planning is to improve the economic, environmental and social outcomes of water management decisions. Shared Vision Planning facilitates a common understanding of a natural resource system and provides a consensus-based forum for stakeholders to identify tradeoffs and new management options. Shared Vision Planning creates user-friendly and understandable computer models that are relevant to stakeholder interests and adaptable to changing conditions.

There is a web site designed to inform visitors about [Shared Vision Planning](#) and how it is being applied in real-world situations. It features a step-by-step [demonstration](#), information about the [origins of SVP](#), current and historical [case studies](#), and thorough explanations of shared vision planning [models](#), [resources](#) and [training](#) for those interested in implementing the approach. We are currently exploring the use of SVP in the regulatory process. (*Katherine Trott*)

**Update on Development of Regional Supplements to the 1987 Corps Wetland Delineation Manual.** Developing and publishing regional supplements to the 1987 Corps Wetland Delineation Manual has been a multi-year effort led by the Corps Engineer Research and Development Center (ERDC). This year sees the finalization of the last two of the ten regional supplements: The Eastern Mountains and Piedmont and the Hawaii and Pacific Islands. These two documents have undergone an independent peer review process, as well as the public comment period. In addition, the Caribbean Islands and Northcentral/Northeast supplements began their one-year implementation period. The Alaska and Arid West supplements have been finalized and we expect to finalize the Western Mountains, Valleys and Coast and the Great Plains supplements by the end of this calendar year, with the Midwest and Atlantic and Gulf Coastal Plain supplements being finalized in 2010 after the one year implementation period is complete, comments reviewed and changes made. We have received many positive comments about the regional supplements from Corps regulators as well as private consultants and academia. The

supplements received praise at the 2009 Society of Wetland Scientists meeting this year in Wisconsin.

The next two exciting steps are to update the original 1987 Manual and to update the 1988 National Plant List. The Manual, presumably with a new name, will address over-arching issues such as plant community and hydrology data collection methods. References to specific plant, hydrology and hydric soils criteria will be removed, as they are now located within each supplement.

The U.S. Fish & Wildlife Service (FWS) determined that it no longer had the resources or personnel to update and maintain the 1988 list, which requires a Federal Register notice of a draft list, evaluation of comments, development of the appropriate National Environmental Policy Act documentation, and publication of a final list. The Corps agreed to take responsibility for this effort in an interagency Memorandum of Agreement, signed in late 2006, including providing adequate funding. The list, now known as the North American Digital Flora: National Wetland Plant List (NWPL), will be maintained by scientists at ERDC, Cold Regions Research and Engineering Laboratory (CRREL) in Hanover, New Hampshire and the data will be shared with all of the agencies and interested parties by using a publicly accessible web site ([https://wetland\\_plants.usace.army.mil](https://wetland_plants.usace.army.mil)). Updated National and Regional Lists will be prepared by National and Regional Interagency Review Panels made up of botanists or ecologists from the Corps, the Environmental Protection Agency (EPA), FWS, and Natural Resources Conservation Service (NRCS). Each regional panel will initiate draft wetland plant ratings which will be evaluated and approved by the national panel. Updating the NWPL has been a cooperative effort of the Corps, EPA, FWS, NRCS, The Biota of North America (BONAP), states, Tribes, the academic community, and the scientific portion of the public.

The public will be able to view the identical data beginning in early 2010 but will not be able to assign wetland ratings until an announcement is made in the Federal Register to solicit public input. During the public input period, members of the public will be able to make pertinent comments on a species by species basis, in addition to assigning a wetland rating for further consideration of the regional panels. The public will also be able to suggest other species of plants that may have been omitted from the NWPL. The new web site, announced in the Federal Register and by public notice in all 38 districts early next calendar year, has a designated location for suggested new additions to the list and a series of qualifications that must be met before it is processed further in the evaluation method. (*Katherine Trott*)

**Also of Interest** (continued from page 5)

**Watershed Studies Analysis.** On 15 May, Corps HQUSACE sent a brief Institute for Water Resources (IWR) questionnaire to the field regulatory chiefs to identify recent or ongoing watershed/regional studies and District points of contact. All Districts responded to the survey. IWR has also completed follow-up interviews with the majority of the respondents, in part to discuss the utility of the studies and in part to capture additional studies that may have been excluded from the original responses (e.g., mitigation-related watershed studies).

The survey of watershed studies includes SAMPs, ADIDs, EISs, regional studies for Mitigation Banks and In-Lieu Fee Programs, and cumulative impacts analyses. Briefly, the study intends to characterize the purpose(s), interagency and stakeholder collaboration, methods employed to generate or analyze data, Regulatory products, and relative success. The last such effort was a 1997 IWR report "Watershed Study Impediments: Field Regulatory Survey Discussion Paper". The intent is provide a technical document that may provide examples of watershed/regional study products that may assist other Districts as they embark on watershed studies. *(John Markham)*

**Financial Assurance Technical Document.** All thirty-eight Districts have responded and the majority of these responses are substantive. (e.g., District-specific practices, District support requests). IWR is proceeding with analyzing the survey results and arranging follow-up interviews.

Districts indicated several common problems and items that they would like to see in the upcoming technical document. Among the most frequent concerns/requests were methods for calculating dollar amounts for assurances, the positives and negatives of each form of financial assurance, how to call an assurance in case of default, how to secure and fund a third party to do remedial work, and general unfamiliarity with the financial and legal aspects of financial assurances.

The technical document will touch on those issues of demonstrated concern to the Districts, the various aspects of financial assurances, as well as issues that could present future problems for Corps personnel. *(Aaron Willis)*

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**Newsletter Distribution**

The *Aquatic Resources News* will be distributed to field staff via e-mail. The Newsletter will also be available on the HQ website within one month at: [http://www.usace.army.mil/CECW/Pages/aqua\\_news.aspx](http://www.usace.army.mil/CECW/Pages/aqua_news.aspx).

**Newsletter Communication**

To comment on the newsletter, suggest topics, submit an article, or suggest events or articles of interest, please contact the Editor, Katherine Trott, CEIWR-GI, at:

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