



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

APR 09 2007

MEMORANDUM FOR DIRECTOR OF CIVIL WORKS

SUBJECT: Compensatory Mitigation for Losses of Aquatic Resources Proposed Rule – Status

On March 28, 2006, the Department of the Army and the U.S. Environmental Protection Agency (EPA) published in the Federal Register the subject draft rule for comment. The comment period ended on June 30, 2006 and over 20,000 comments were received. The EPA arranged for the comments to be entered into a comprehensive, interactive data base, sorted by topics and issues. The results will be used by Federal agency staff to evaluate the comments, consider revisions to the proposed rule, and draft the Preamble to the next version of the rule. The agencies received many very thoughtful and insightful comments, hence, it will take some time to work through them. According to agency staff, the next version (revised draft or final) of the rule is currently scheduled for publication in the Federal Register by December 2007.

Regardless of the details of the ultimate final rule, several basic principles will certainly apply. I intend to publish a final rule that is comprehensive, clear, concise, and effective. Hence, I encourage your Regulatory staff to continue to process mitigation project proposals, regardless of type (permittee, bank, ILF), as efficiently as possible, in accordance with guidance currently in place. Consistent use of published guidance should help minimize inconsistencies and uncertainties, and provide a predictable way forward for the regulated community. It is important that proposals for the establishment and use of mitigation banks and ILFs be given proper attention so that applicants have these important tools available to them to compensate for unavoidable losses of aquatic resources and functions.

The Regulatory Program continues to be a high priority for this office and I very much appreciate your continued support, especially in a regulatory climate characterized by finalizing the new Nationwide Permits for 2007, developing guidance in response to the Supreme Court's decision in the Rapanos and Carabell cases, and initial interagency efforts to assess and respond to a recent court decision invalidating aspects of the Excavation Rule (Tulloch). Please share this memorandum with all Corps Regulatory offices, and post it on the Corps Headquarters website.

A handwritten signature in black ink, reading "John Paul Woodley, Jr.", is positioned above the typed name.

John Paul Woodley, Jr.
Assistant Secretary of the Army
(Civil Works)