

Federal Policy: Long-Term Financing

2008 Compensatory Mitigation for Losses of Aquatic Resources

§332.7 Management

(d) *Long-term management.*

(1) The permit conditions or instrument must identify the party responsible for ownership and all long-term management of the compensatory mitigation project. The permit conditions or instrument may contain provisions allowing the permittee or sponsor to transfer the long-term management responsibilities of the compensatory mitigation project site to a land stewardship entity, such as a public agency, non-governmental organization, or private land manager, after review and approval by the district engineer. The land stewardship entity need not be identified in the original permit or instrument, as long as the future transfer of long-term management responsibility is approved by the district engineer.

(2) A long-term management plan should include a description of long-term management needs, annual cost estimates for these needs, and identify the funding mechanism that will be used to meet those needs.

(3) Any provisions necessary for long-term financing must be addressed in the original permit or instrument. The district engineer may require provisions to address inflationary adjustments and other contingencies, as appropriate. Appropriate long-term financing mechanisms include non-wasting endowments, trusts, contractual arrangements with future responsible parties, and other appropriate financial instruments. In cases where the long-term management entity is a public authority or government agency, that entity must provide a plan for the long-term financing of the site.

(4) For permittee-responsible mitigation, any long-term financing mechanisms must be approved in advance of the activity causing the authorized impacts.

§332.8 Mitigation banks and in-lieu fee programs.

(u) *Long-term management.*

(1) The legal mechanisms and the party responsible for the long-term management and the protection of the mitigation bank site must be documented in

the instrument or, in the case of umbrella mitigation banking instruments and in-lieu fee programs, the approved mitigation plans. The responsible party should make adequate provisions for the operation, maintenance, and long-term management of the compensatory mitigation project site. The long-term management plan should include a description of long-term management needs and identify the funding mechanism that will be used to meet those needs.

(2) The instrument may contain provisions for the sponsor to transfer long-term management responsibilities to a land stewardship entity, such as a public agency, non-governmental organization, or private land manager.

(3) The instrument or approved mitigation plan must address the financial arrangements and timing of any necessary transfer of long-term management funds to the steward.

(4) Where needed, the acquisition and protection of water rights should be secured and documented in the instrument or, in the case of umbrella mitigation banking instruments and in-lieu fee programs, the approved mitigation site plan.

Resources: Long-Term Financing

California Multi-Agency Project Delivery Team. May 2008. "California Long-term Management Plan Template." <http://www.conservationfund.org/our-conservation-strategy/major-programs/conservation-leadership-network/cln-resources/mitigation-resources/wetland-and-stream-mitigation-banking-resources/attachment/3-long-termmanagementplan/>

Chicago District, U.S. Army Corps of Engineers. June 2008. "Long-Term Management" and "Appendix F." In: "Interagency coordination agreement on mitigation banking within the regulatory boundaries of Chicago District, Corps of Engineers." pp. 21, 38-39. <http://www.lrc.usace.army.mil/Portals/36/docs/regulatory/pdf/MBICAJun2008.pdf>

Florida Department of Environmental Protection. May 21, 2001. "Mitigation bank standby trust fund agreement to demonstrate perpetual management." Form No. 62-342.900(6). <http://www.sjrwmd.com/rules/pdfs/40C49010.pdf>

Florida Department of Environmental Protection. May 21, 2001. "Mitigation bank trust fund agreement to demonstrate perpetual management financial assurance." Form No. 62-342.900(5). http://www.swfwmd.state.fl.us/files/database/site_file_sets/18/MB_PMFA_4-09.pdf

U.S. Department of Treasury, Financial Management Service. "Recommended bond surety companies." Renewed annually in July. <http://www.fms.treas.gov/c570/c570.html>