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# How aggregate operators can control timelines and risks through mitigation banks

by Ray Ewing and Dan Maltese

Aggregate companies live in an unpredictable world — risks include the ups and downs of the market, fuel costs, labor rates and constantly changing and more stringent environmental regulations.

This means that many in the industry will welcome any development that offers a way to build more stability and predictability into the process of extracting aggregate resources.

Some of this stability comes through developing fixed price, long term contracts for their product, or a long term contract for the price of fuel. For some businesses, stability comes through forward buying of a commodity or foreign currency.

In the same way, many aggregate companies welcome the chance to put some predictability on the cost of meeting their environmental obligations, including compensation for environmental impacts that are an inevitable part of their business.

So it's not surprising that business solutions have developed to help meet this need.

Enter: the "mitigation bank."

These companies develop environmental impact "credits" that other entities — such as aggregate producers — can buy to offset the impacts of their projects. Mitigation banks do this by buying or securing rights to property, improving that property's capacity and function as natural habitat, and then selling credits to offset environmental impacts elsewhere.

From their start about ten years ago, mitigation banks have spread throughout much of the U.S. The concept is well established and accepted, and regulatory agencies are familiar with this way of meeting environmental obligations. In fact, mitigation banks are the preferred way to meet environmental obligations under the U.S. Army Corps of Engineers 2008 compensatory mitigation rules.

Regulators like the fact that the environmental benefits are more than plans on paper — that the new habitat actually exists and is delivering on its promises. As well, mitigation banks can help aggregate companies with simpler regulatory approval, since the regulators do not need to review and approve mitigation plans that are site specific. The added certainty brought by mitigation banks allows aggregate companies to plan their budgets and timelines with greater certainty.

## Meeting the needs of the aggregate industry

A good business works hard to understand its customers' needs and then develops its products and services around those needs. Mitigation banks do this.

So before they establish a bank, these companies determine what needs industries have in a region and tailor their plans to meet those needs. They also work to understand what regulators might value particularly highly in the geographic area in question — more wetlands, for example, or habitat for a specific species of plant or animal.

They often start with buying a heavily impacted property, such as a farm on which the natural drainage patterns have been altered or significantly degraded by cattle or historic farming practices. Then, the mitigation banker will take steps that will add most value from a habitat point of view — stabilizing degraded streams in

the area or enhancing the riparian buffer along stream edges to stabilize the banks and provide wildlife habitat. Some mitigation banks focus on endangered species, and their work might involve buying properties with natural caves and then partially sealing entrances to keep people out, but allow bats in to hibernate.

During the design and permitting process, the bank works with environmental regulators through an Interagency Review Team (IRT) to determine how many credits can be generated and, thus, sold. Then, the IRT and the banker agree on a service area for the bank, often based on a specific drainage basin. The credits must be drawn from the same service area as that in which the company's impacts take place.

To make more credits available from a property, some mitigation bankers employ "credit stacking," which occurs when a property is used for several environmental purposes. That is, they might return a stream impacted by farming to its natural course in order to establish some stream credits and also create some new wetland acreage or artificial bat habitat.

## How mitigation banks meet the aggregate sector's needs

Mitigation banks work on the principle that any impact to a natural habitat, such as a wetland or stream, must be mitigated by creating compensatory habitat, generally nearby. Aggregate companies can currently do this in three ways:

- Permittee responsible, in which the aggregate company does the work of developing the compensatory habitat, and then has responsibility for ensuring that the habitat delivers the promised environmental benefits (the permit owner bears the legal responsibility for environmental performance);

- In-lieu fee programs, in which the aggregate company pays a fee to an entity, such as a state program, that then undertakes development of the compensatory habitat (which can be a costly option); and

- Mitigation banks, in which a third party company buys and develops the habitat, takes responsibility for having it approved by regulators, and then sells credits to companies, such as those in aggregates, having environmental impacts (in effect, outsourcing the offsetting work)

In addition to these three approaches, there are three main ways aggregate producers can work with mitigation banks:

## In-house mitigation banks

Some entities plan to have multiple environmental impacts over the years, making them, in effect, "volume buyers" of offset credits. Such entities can reasonably set up their own in-house mitigation bank — one that buys properties, improves their environmental quality, and works with the IRT to have the credits approved for release. The in-house bank then transfers credits, as required by their in-house development projects.

This approach may be best suited for entities that have a continual stream of projects that require environmental permitting. As well as being able to predict the timing, it is also important that they be able to predict the geographic location of projects, so they can be sure that their bank has credits available in the service area where they are needed.

## Buying an entire third party bank

A second way to buy credits in volume is to find a third party bank, with credits available in the right service area, and then buy the whole bank.

This option may involve more significant up front costs. However, it can also mean a lower overall cost per credit because the company that created the bank will likely favor the certainty of sold credits and offer volume discounts, due to guaranteed recovery of its development expenditures and reduction in its own financial risk.

## Buying credits from a public bank

A third option can sometimes offer a high degree of flexibility in responding to changing market conditions. It involves the aggregate company seeking a bank operating in the same service area that has credits available for purchase and buying those credits for use towards its projects.

While this way to obtain credits can be flexible, it depends on another entity — the bank — having credits available in the service area where they are needed. Another downside to this approach is that the mitigation bank will likely expect a higher price for the credits because the bank has built the credits "on spec" in hopes that a buyer will come along — and will expect to be compensated for that risk. As well, the mitigation bank may be well aware that without the credits, the aggregate company cannot go ahead with its plans, and so will price its credits accordingly.

## Success in working with a mitigation bank

Here are some tips for success in working with mitigation banks:

Compare offers: While certification by the IRT means that credits can be considered a commodity, prices of those credits may vary significantly. So it pays for aggregate companies to shop around for the credits they need for their projects.

Location sensitive pricing: Some areas offer a plentiful supply of mitigation banks, driving down the cost per credit. Fewer banks in other areas may mean higher prices. Aggregate companies need to check prices in the relevant service area to avoid unexpected impacts on their capital cost projections.

Stay current on banks in your area: Mitigation banks live in a fast changing environment. Depending on demand, they may build their projects in stages — working on

one part of their property to make credits available and using the proceeds from those sales to develop other sections of the property. This means that even if a bank has no credits available right away, that situation may change in the near future.

By staying current on the plans of each mitigation bank active in their service areas, aggregate companies can learn what credits may come on-stream in upcoming months or years, adding flexibility into their own plans.

## RIBITS helps companies find credits they can use

Staying current on mitigation bank developments is easier thanks to an online source, RIBITS (Regulatory In-lieu fee and Bank Information Tracking System), developed by the U.S. Army Corps of Engineers with support from the Environmental Protection Agency and the U.S. Fish and Wildlife Service. RIBITS provides information on mitigation and conservation banking and in-lieu fee programs across the country.

RIBITS allows users to access information on the types and numbers of mitigation and conservation bank and in-lieu fee program sites, mitigation credit availability, and service areas, as well as information on national and local policies and procedures that affect mitigation and conservation bank and in-lieu fee program development and operation. See <http://geo.usace.army.mil/ribits/index.html>

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Aggregate operators can help build predictability into their environmental permitting process for new operations and expansions through mitigation banks.

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