

THIRD-PARTY COMPENSATORY MITIGATION UPDATE

Krystel Bell

Regulatory Program Workshop

14 April 2017

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TOPICS COVERED

- Regulatory Context
- Corps Role in Bank/In-Lieu Fee (ILF) Reviews
- Banking in California
 - Sacramento District Processes
- Local Resources
- What's New



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2008 MITIGATION RULE 33 C.F.R. PARTS 325 AND 332

- Compensatory mitigation for impacts to aquatic resources
- Detailed standards and requirements for compensatory mitigation
- Addresses where and how compensatory mitigation is to be done
- Three sources:
 - Mitigation banks
 - In-lieu fee programs
 - Permittee-responsible mitigation



Federal Register

Thursday,
April 10, 2008

Part II

Department of Defense

Department of the Army, Corps of
Engineers
35 CFR Parts 325 and 332

Environmental Protection Agency

40 CFR Part 230
Compensatory Mitigation for Losses of
Aquatic Resources; Final Rule



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COMPENSATORY MITIGATION SOURCES AND PREFERENCE HIERARCHY 332.3(B)

- Mitigation banks
 - One or more sites where resources (e.g., wetlands, streams) are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts authorized by DA permits
 - Sells compensatory mitigation credits to permittees
 - Commercial bank or single client bank
 - Responsibility transferred to bank sponsor
- In-lieu fee programs
 - Limited to government or non-profit natural resource management entities
 - Collects fees from permittees to do larger compensatory mitigation projects
 - Responsibility transferred to in-lieu fee program sponsor
- Permittee-responsible mitigation (on- or off-site)
 - Permittee or contractor does compensatory mitigation project
 - Permittee retains responsibility



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33 CFR 332.8 MITIGATION BANKS AND IN-LIEU FEE (ILF) PROGRAMS

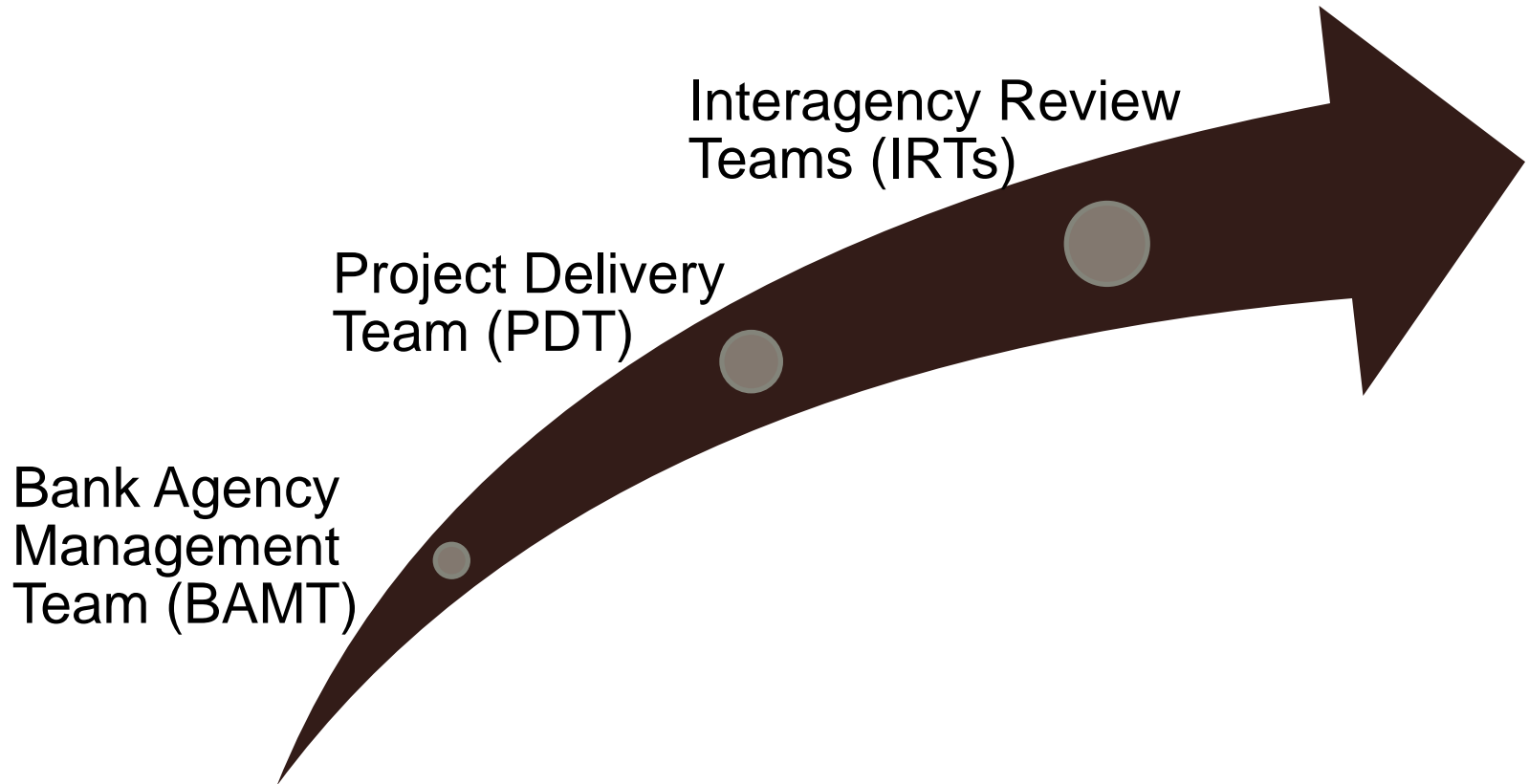
- Corps regulatory authority to review and approve mitigation banks and ILF programs.
- Defines the process for review and approval.
- Describes the role of the Interagency Review Team (IRT)
 - USEPA, USFWS, NOAA, NRCS, and other federal agencies as appropriate may participate on the IRT.
 - May also include representatives from tribal, state, and local regulatory and resource agencies



2011 8-PARTY MOU

- Replaced 2006 MOU
- 2011 MOU improves on 2006 MOU by adding:
 - SPK, SPL, and SPN Commanders as signatories
 - The State Water Board as a signatory
 - Collaboration on development of templates
 - A dispute resolution role for the BAMT relative to PDT disagreements or impasses
 - A responsibility for IRTs to seek BAMT approval for significant deviations from templates or guidance in the development of individual banks or ILF programs

WHO'S INVOLVED?



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CORPS ROLE AS IRT CHAIR

- 33 CFR 332.8 drives our involvement in the review of proposed Mitigation/Conservation Banks and ILF Programs and/or sites.
- We can only speak to our regulations, guidance, etc.
- Do not control or direct other IRT agencies review timelines when they are Co-Chairs
- Rarely involved in the review of Conservation Banks



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CALIFORNIA APPROVED TEMPLATES

- **BEI (2008)**
 - PDT update in process
 - PN Issued Fall 2015
 - Met with Banking Community to discuss comments on templates (summer 2016 and February 2017)
 - Pending additional updates/discussion
- Long-Term Management Plan Template (2008 and updated SPD Regional Mitigation and Monitoring Guidance 2015)
- **Conservation Easement (2017) - Finalized**
- Property Assessment and Warranty (2009)



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PURPOSE OF THE TEMPLATES

- Insuring all applicable legal and regulatory requirements are met
 - Consolidates requirements from multiple agencies
 - Include requirements from mitigation rule
- Aiding prospective bankers develop banking documents
- Implementing equivalent, effective standards
- Ensuring predictability and efficiency
- Expediting Mitigation Bank Review



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IRTS IN SACRAMENTO DISTRICT

California	Nevada, Utah and Colorado
Unique IRT formed for each bank	Unique IRT formed for each bank
USACE chair (Project Manager)	USACE chair (Project Manager)
Co-chairs from any agency awarding credits (common)	Co-chairs from any agency awarding credits (uncommon)
Agency subject matter experts advise IRTs	USACE subject matter expert advises IRTs
Standing monthly meetings – specific bank focus.	<i>Ad hoc</i> meetings as needed
Quarterly meetings – general banking focus	
State-wide approved templates for consistency	



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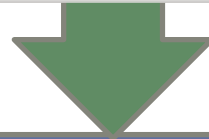
GETTING AN IRT MEETING

>2 Weeks before Meeting

Sponsor prepares
submittal per checklist

Sponsor requests an
appointment

POC tentatively
schedules



~2 Weeks before Meeting

IRT Chair verifies completeness

POC locks in agenda



1 or 2 Days before Meeting

Sponsor submits any visuals for
meeting

POC sends visuals to remote
participants



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LOCAL RESOURCES

- Final Regional Compensatory Mitigation and Monitoring Guidelines (South Pacific Division, December 2014)
- Updated Map and Drawing Standards (SPD, February 2016)
- Standard Operating Procedure for Determination of Mitigation Ratios (SPK, July 2013)
- Regulatory Program Uniform Performance Standards for Compensatory Mitigation Requirements (SPD, August 2012)



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WHAT'S NEW

- Federal Register - Endangered Species Act (ESA) Compensatory Mitigation Policy
 - Published 2 Sep 2016, 45 day comment period
 - Proposed to improve consistency in the use of compensatory mitigation as recommended or required under the Act
 - Goal to improve (i.e. a net gain) or, at a minimum, to maintain (i.e. no net loss) the current status of affected resources
 - 29 March 17, Order 3349 from Secretary of the Interior, directing review of Department of the Interior mitigation policies.
 - The secretarial order directed each bureau and office to "reconsider, modify, or rescind" related policies on mitigation or climate change.



WHAT'S NEW CONT'D

- IWR – Compensatory Mitigation Site Protection Handbook for the Corps' Regulatory Program (July 2016)
- TNC's Long-Term Stewardship Calculator (April 2016)
 - Can be used by Land Managers, Mitigation Providers, and Regulators
 - Free with accompanying handbook

LONG-TERM STEWARDSHIP CALCULATOR: ACCOMPANYING HANDBOOK



LONG-TERM STEWARDSHIP COSTS CALCULATOR

NOTE: Enter values in blue-shaded cells.
Click on individual Tasks and Descriptions for additional guidance.

Project Name:	Acres:	State (or state equivalent):	Country:	Prepared by:	Date:
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Unit Cost Estimates:			
	Quantity	Units	Cost
Regular staff hourly rate (inc benefits)		hour	\$ -
Short-term staff hourly rate (inc benefits)		hour	\$ -
<i>Click + to the left to expand additional hourly rates (see instructions below).</i>			
Travel Costs:			
Mileage OR cost (round-trip)		miles	\$ -
Mileage rate	0.54	\$/mile	
Vehicle Travel Cost:			\$ -
Overnight lodging cost (per night)	\$ -	\$/night	
Per diem (meals)	\$ -	\$/day	

Additional Rates:	
Capitalization rate	0.00%
% of annual costs covered by fund (50% or 100%)	100%
Contingency (10-20%)	
Administrative (recommended min 10%)	

Instructions:

To expand additional hourly rates, the sheets must be unprotected (on the Review tab, click Unprotect Sheet). Then click the + to expand the hourly rates. Note this unprotects cells with formulas - take care not to inadvertently change formulas.

Rows may be copied and pasted where needed to add additional tasks. To copy and paste, select the rows by clicking on the row numbers on the left side (to select multiple rows, click and drag the cursor down). Right-click the selected rows and choose "Copy." Select and right-click on the row above which you want to paste the copied rows, then choose "Insert Copied Cells." After pasting, check Subtotal formulas to make sure pasted rows are included in the sums.

After all costs have been estimated for all necessary tasks, rows for unused tasks may be deleted.

Do not delete columns.

REGULATORY IN-LIEU FEE AND BANK INFORMATION TRACKING SYSTEM (RIBITS) UPDATES

- The Find Credits page now includes searching for Credit Classifications within Groups. This allows users to generate reports on bundled credits like Vernal Pool Establishment (404 & ESA).
- The Find Credits page now allows users to save searches as well.
- When editing a bank or ILF site, an administrator can select a person and Edit that person's roles for multiple banks/ILF sites. This means user permissions can be altered for an individual quickly for multiple banks and sites in 1 or more districts.
- On the Manage Emails page, there is a link entitled "Email Settings for People" that allows administrators to turn emails on or off for users including Regulators.



RIBITS


Regulatory In-lieu Fee and Bank Information Tracking System



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RIBITS CONT'D


RIBITS
Regulatory In-lieu Fee and Bank Information Tracking System

[\[Home\]](#)
[\[Find Google Maps\]](#)
[\[User Profile\]](#)
[\[Resources\]](#)
[\[Calendar\]](#)
[\[Help on Page\]](#)

Navigation

- Home
- Missiles Concepts
- Banks & ILF Sites
- ILF Programs
- Reporting
- Bank & ILF Establishment
- Assessment Tools
- Credit Classifications
- Related Sites
- Find Credits
- Help

Filter View

[Helpdesk]

- USACE District
- State
- FWS Field Office
- NOAA Fisheries Region

Sacramento

Optional Login

[\[Logout/KBELL\]](#)

Information on this site is publicly available. Logon are for management use only.

Find Credits - Sources of Credits for Impact Location

About the Results

Save Search

Search Criteria

Reset Search Criteria

Click click or Shift-Click the map in the desired location to set the latitude and longitude for your query.

Linear Impact

Project No:

Latitude:

Longitude:

Single Client: Yes (primarily governmental use)

State:

Species:

Service Area Bank: Secondary Tertiary


Available Credits: Allow Zero

Search?

Map Region

Roads
 Elevation
 Contours
 USACE Floods
 ILF I/L
 FWS Field Office

NOAA Regions
 Service Areas



Map data ©2017, Google, (CC) Imagery ©2017, TerraMetrics, Terms of Use



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RIBITS CONT'D


RIBITS
 Regulatory In-lieu Fee and Bank Information Tracking System

[\[Home\]](#) [\[Go to Google Maps\]](#) [\[User Profile\]](#) [\[Preferences\]](#) [\[Calendar\]](#) [\[Help on Page\]](#)

Navigation

- Home
- Mitigation Concepts
- Banks & IIF Sites
- IIF Programs
- Reporting
- Bank & IIF Establishment
- Assessment Tools
- Credit Classifications
- Related Sites
- Field Credits
- Help

Filter View

[Go Back]

- USACE District
- State
- FWS Field Office
- NOAA Fisheries Region

Optional Logins

[Logout RIBITS]

Information on this site is publicly available. Logins are for management use only.

Field Credits - Sources of Credits for Impact Location

About the Results

Save Search

Search Criteria

Reveal Search Criteria

Click or Shift-Click multiple locations on the map to create a line segment to indicate the location of an impact project.

State Client Yes (primarily governmental use)

Habitat:

- City Stream
- Longwood Channel (Sacramento)
- Emerald Marsh Creation (Sacramento)
- Emerald Marsh (Sacramento)

Species:

- City Stream -
- AB 300 (CA)
- Active Wash - (Uncoupled) (CA)
- Alameda riparian (AWS) (CA)

Service Area/Reach:

- Primary
- Secondary
- Tertiary

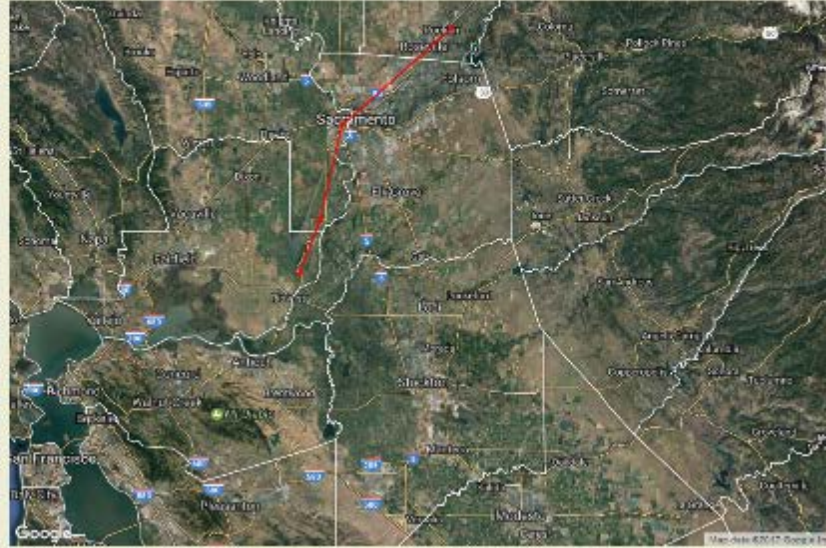
Available Credits: Allow Zero

Search?

Map Region

Roads Borders Counties USACE Districts HUD 8 FWS Field Offices

NOAA Regions Service Areas





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RIBITS CONT'D

Find Credits - Sources of Credits for Impact Location

About the Results

Save Search

Search Criteria

Reset Search Criteria
 Click on RIFM-IDs or multiple locations on the map to create a line segment to indicate the location of linear impact.

Linear Impact

Project No:

Single Chart Yes (primarily governmental use)

Utilities

- Any (Global)
- Conducted Channel (Sacramento)
- Emergency Wash Creation (Sacramento)
- Emergency Wash (Sacramento)

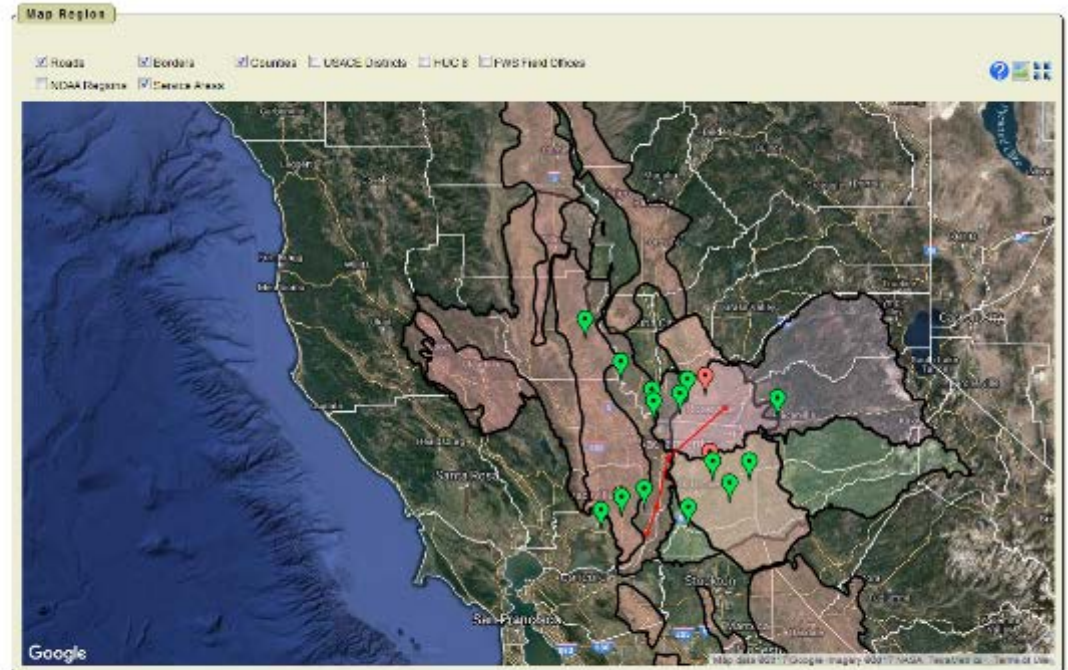
Species

- Any Species
- 40 250 (CA)
- Active Wash - Unoccupied (CA)
- Harlequin Wagtail (AWS) (CA)

Species from Bank Primary Secondary Tertiary

Available Credits Allow Zero

Search?



Sources of Credits for Impact Location

[Print PDF]



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RIBITS CONT'D

Bank Name: [1 - Arroyo Seco Conservation Bank](#)

Bank Type: Private Commercial
 HUCS: 18020111,18020161,18020163
 Total Acres: 240
 Distance to impact: 12 Miles
 Bank States: California
 Comments: Sold Out - This bank was approved to sell vernal pool preservation credits (vernal pool tadpole shrimp, vernal pool fairy shrimp, Sacramento Orcutt grass and Slender Orcutt grass)

Bank Sponsor: **Conservation Resources, LLC**
 3445 American River Dr.
 Suite A
 Sacramento, CA 95864
 Phone: (916) 974-3383

Bank POC: **Kari Hawkins**
 3445 American River Dr.
 Suite A
 Sacramento, CA 95864
 Email: khawkins@conservation-resources.com
 Phone: (916) 974-3383
 Fax: (916) 974-3390

Bank Manager: **Ms. Valerie L. Layne**
Conservation Banking Coordinator
 Sacramento Fish and Wildlife Office
 2800 Cottage Way, Room W-2605
 Sacramento, CA 95825-1846
 Email: Valerie_Layne@fws.gov
 Phone: (916) 414-6600
 Fax: (916) 414-6712

Credit Type	Credit Classifications	Assessment Method	Available Credits	Jurisdiction
Species	Vernal Pool Preservation (ESA) Species		192.92	Federal

Notes:

Bank Name: [2 - Bryte Ranch Conservation Bank](#)

Bank Type: Private Commercial
 HUCS: 18020111,18020161,18020163
 Total Acres: 573
 Distance to impact: 15 Miles
 Bank States: California
 Comments: This bank is authorized to offer preservation credits for vernal pool fairy shrimp and vernal pool tadpole shrimp habitat. This bank is located within the Mather Core area of the Southeast Sacramento Valley Vernal Pool Region.

Bank Sponsor:
 Bank POC: **Marcus Bole**
 Bole & Associates
 104 Brock Drive
 Wheatland, CA 95692
 Email: mbole@aol.com
 Phone: (530) 633-0117
 Cell Phone: (916) 747-8501
 Fax: (530) 633-0119

Richard L. Thurn
 Gray and Thurn, Inc.

Bank Manager: **Mr. Jerry Bielfeldt**
 Sacramento Fish and Wildlife Office
 2800 Cottage Way, Room W-2605
 Sacramento, CA 95825-1846
 Email: jerry_bielfeldt@fws.gov
 Phone: (916) 414-6600
 Fax: (916) 414-6713

Credit Type	Credit Classifications	Assessment Method	Available Credits	Jurisdiction
Group	Vernal Pool Preservation		13.78	Federal

Notes:

Bank Name: [3 - Bullock Bend Mitigation Bank](#)

Bank Type: Private Commercial
 HUCS: 18020111,18020161,18020163
 Total Acres: 116.15
 Distance to impact: 28 Miles
 Bank States: California
 Comments: USFWS participated as an IRT member for FWCA purposes.

Bank Sponsor: **Westervelt Ecological Services, Western Region**
 600 North Market Boulevard
 Suite 3
 Sacramento, CA 95834
 Phone: (916) 646-3644
 Fax: (916) 646-3675

Bank POC: **Tina Emmett**
 Sacramento, CA
 Email: temmett@westervelt.com

Mr. Travis Hemmen
 Westervelt Ecological Services
 600 North Market Blvd., Suite 3
 Sacramento, CA 95834
 Email: themmen@westerveltecologicalservices.com
 Phone: (916) 646-3644

Mr. Mark Young
 600 Market Blvd., Suite 3
 Sacramento, CA 95834
 Email: myoung@westervelt.com
 Phone: (916) 646-3644
 Cell Phone: (916) 613-6380

Bank Manager: **Mr. Howard Brown**
Sacramento River Branch Chief
 650 Capitol Mall
 Sacramento, CA 95814
 Email: howard.brown@noaa.gov
 Phone: (916) 930-3600

Dylan Van Dyne
 District Manager

SPD Resources:

<http://www.spd.usace.army.mil/Missions/Regulatory/Public-Notices-and-References/Article/558934/final-regional-compensatory-mitigation-and-monitoring-guidelines/>

IWR White Paper on Financial Assurances:

http://www.iwr.usace.army.mil/Portals/70/docs/iwrreports/Financial_Assurance.pdf

IWR Site Protection Handbook: <http://www.iwr.usace.army.mil/Media/News-Stories/Article/932624/new-handbook-on-compensatory-mitigation-site-protection/>

TNC's Long-Term Stewardship Calculator:

<https://www.conservationgateway.org/ConservationPlanning/ToolsData/Pages/stewardshipcalculator.aspx>



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