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July 26, 2007

**VIA FAX AND U.S. MAIL**

The Honorable John Mica  
Rayburn House Office Building, 2313  
Washington, DC 20515-0907

Re: Mitigation Provisions in WRDA: Enact Section 2013 of H.R. 1495

Dear Representative Mica:

The National Mitigation Banking Association represents companies engaged in providing wetland, stream and habitat mitigation across the country. The Association supports strong environmental and economic standards for wetland mitigation. Our members establish restored, enhanced, created and preserved habitat that can be used to offset adverse impacts caused by development, including water resource projects. This is a green private industry, that provides an environmentally and economically sound solution for compensatory mitigation.

Recognizing that private mitigation banking, which is heavily regulated, can provide a secure, superior mitigation product, Congress provided a preference for approved mitigation banks when federal money is spent for transportation projects. TEA-21, 1998, 29 U.S.C. § 133(b)(11). Similar provisions have been included in WRDA bills in 2006 and earlier.

H.R. 1495, Sec. 2013, the House Water Resources Development Act, provides a "first look" for mitigation banks similar to that found in the federal transportation laws. The Senate Bill has no comparable provision. Section 2013 provides:

IN CARRYING OUT A WATER RESOURCES PROJECT THAT INVOLVES WETLANDS MITIGATION AND THAT HAS IMPACTS THAT OCCUR WITHIN THE SAME WATERSHED OF A MITIGATION BANK, THE SECRETARY, TO THE MAXIMUM EXTENT PRACTICABLE AND WHERE APPROPRIATE, SHALL FIRST CONSIDER THE USE OF THE MITIGATION BANK IF THE BANK CONTAINS SUFFICIENT AVAILABLE CREDITS TO OFFSET THE IMPACT AND THE BANK IS APPROVED IN ACCORDANCE WITH THE FEDERAL GUIDANCE FOR THE ESTABLISHMENT, USE AND OPERATION OF MITIGATION BANKS (60 FED. REG. 58605) OR OTHER APPLICABLE FEDERAL LAW (INCLUDING REGULATIONS).

While many other green industries seek a wide range of government subsidies, the mitigation banking industry has advocated for one simple principle: since mitigation banks are federally approved (on environmental bases) to offer mitigation credits, when federal money is spent on projects that need mitigation, these approved mitigation banks should get a "first look" to provide that mitigation. Section 2013 embraces that principle.

We urge the Conferees to accept Section 2013 of H.R. 1495 in WRDA.

Very truly yours,

Margaret N. Strand  
Representative of National Mitigation Banking Association

Enclosure

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## *Support Green Industry*

### *Spend Federal Mitigation Money at Private Mitigation Banks*

#### Federal Aid Highways Act (TEA-21, 1998), 29 U.S.C. § 133(b)(11):

WITH RESPECT TO PARTICIPATION IN A NATURAL HABITAT OR WETLAND MITIGATION EFFORT RELATED TO A PROJECT FUNDED UNDER THIS TITLE THAT HAS AN IMPACT THAT OCCURS WITHIN THE SERVICE AREA OF A MITIGATION BANK, PREFERENCE SHALL BE GIVEN, TO THE MAXIMUM EXTENT PRACTICABLE, TO THE USE OF THE MITIGATION BANK IF THE BANK CONTAINS SUFFICIENT AVAILABLE CREDITS TO OFFSET THE IMPACT AND THE BANK IS APPROVED IN ACCORDANCE WITH THE FEDERAL GUIDANCE FOR THE ESTABLISHMENT, USE AND OPERATION OF MITIGATION BANKS (60 FED. REG. 58605 (NOVEMBER 28, 1995)) OR OTHER APPLICABLE FEDERAL LAW (INCLUDING REGULATIONS).

#### HR 2864, Sec. 2010, Water Resources Development Act, passed in 2006:

IN CARRYING OUT A WATER RESOURCES PROJECT THAT INVOLVES WETLANDS MITIGATION AND THAT HAS IMPACTS THAT OCCUR WITHIN THE SERVICE AREA OF A MITIGATION BANK, THE SECRETARY, TO THE MAXIMUM EXTENT PRACTICABLE AND WHERE APPROPRIATE, SHALL GIVE PREFERENCE TO THE USE OF THE MITIGATION BANK IF THE BANK CONTAINS SUFFICIENT AVAILABLE CREDITS TO OFFSET THE IMPACT AND THE BANK IS APPROVED IN ACCORDANCE WITH THE FEDERAL GUIDANCE FOR THE ESTABLISHMENT, USE AND OPERATION OF MITIGATION BANKS (60 FED. REG. 58605) OR OTHER APPLICABLE FEDERAL LAW (INCLUDING REGULATIONS).

#### H.R. 1495, Sec. 2013, Water Resources Development Act, as passed by House Transportation and Infrastructure Committee, March 15, 2007:

IN CARRYING OUT A WATER RESOURCES PROJECT THAT INVOLVES WETLANDS MITIGATION AND THAT HAS IMPACTS THAT OCCUR WITHIN THE SAME WATERSHED OF A MITIGATION BANK, THE SECRETARY, TO THE MAXIMUM EXTENT PRACTICABLE AND WHERE APPROPRIATE, SHALL FIRST CONSIDER THE USE OF THE MITIGATION BANK IF THE BANK CONTAINS SUFFICIENT AVAILABLE CREDITS TO OFFSET THE IMPACT AND THE BANK IS APPROVED IN ACCORDANCE WITH THE FEDERAL GUIDANCE FOR THE ESTABLISHMENT, USE AND OPERATION OF MITIGATION BANKS (60 FED. REG. 58605) OR OTHER APPLICABLE FEDERAL LAW (INCLUDING REGULATIONS).

***NMBA Supports a clear preference or first consideration of mitigation banks in all federal infrastructure authorizations.***

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