

Wetland Mitigation Banking Forum

“What Does Success Look Like?”

On December 5, 2006, Ecology hosted a forum to discuss wetland mitigation banking in Washington State. After opening remarks from Director Jay Manning and a status report on wetland banking in Washington State by Ecology’s Lauren Driscoll, panelists were asked to present their ideas on what a successful banking program looks like to them. Panelists for the event represented perspectives ranging from entrepreneurial bankers, to bank users, to regulators, to stakeholders with environmental or land use concerns:

Name & Title	Organization	Interest
Sky Miller, Northwest Regional Manager	Wildlands, Inc.	Entrepreneurial Banking
Dee Arntz	Audubon Wetnet	Wetland protection advocacy
Mike Shelby, Executive Director	Western Washington Agricultural Association	Preservation of agricultural lands
Bill Leonard, Alternative Mitigation Program Manager	Washington State Department of Transportation	Major user of mitigation banks
Gail Terzi, Environmental Analyst	U.S. Army Corps of Engineers	Federal regulator
Peggy Bill, Senior Conservation Director	Cascade Land Conservancy	Mitigation banking advocacy as a conservation tool

Each panelist made a brief presentation, with the remainder of the forum dedicated to comments, questions and answers between the panelists and the audience of nearly 130 people with an interest in wetland banking. Following is a summary of the opening remarks and panelists forum.

Director Jay Manning’s Opening Remarks

Ecology’s interest in making wetland banking successful is part of a larger goal of improving the success of mitigation in general. The mandate for wetland mitigation is “no net loss,” but some studies show that about 50% of time wetland mitigation fails. When mitigation doesn’t work we need to look for alternatives to traditional approaches, including mitigation banking. Developers don’t want long-term responsibility for maintaining mitigation sites, and banks offer a solution to that problem.

Many are skeptical that banks will make developing too easy, but the fundamental rules of mitigation won’t change. The first rule is to avoid impacts altogether. When impacts cannot be avoided, then they must be minimized. Only after the traditional approach to

sequencing – avoid and minimize – have been applied will off-site approaches like mitigation banking become a viable alternative. Banking is not about getting to “yes” in all circumstances.

Lauren Driscoll – Update on Washington’s Banking Program

Ecology drafted a rule for certifying wetland banks through a negotiated rule process in 2001 but did not complete rule adoption. In 2004, the legislature provided Ecology with funding to administer a pilot rule to test the draft rule in preparation for final adoption. With the help of an advisors group, six projects were selected for the initial processing with another six to be processed as time allowed. Ecology is currently working with an advisory group to identify problems with implementation of the program over the last two years and provide recommendations for improvements to the program prior to rule adoption. Ecology is targeting for a late 2007 rule adoption.

Dee Arntz – Audubon Wetnet

We need to keep in mind that mitigation banking is not a “silver bullet.” Ecology should think and act primarily as a protector of the wetland resource. The first concern should not be how fast a permit gets through, but rather be focused on avoiding impacts first and the quality of the mitigation. We need to fully compensate for lost functions, and there has to be monitoring. The program needs to have greater focus on public information and education. Banks should focus on watershed functions and provide good replacement of functions that have been destroyed. Before releasing credits from banks we need to make sure the bank is performing according to performance standards. Ecology’s program needs to be properly funded and staffed to ensure proper review and monitoring.

Mike Shelby – Western Washington Agricultural Association

Wetland banking poses issues related to the preservation of agricultural and forest lands to the farming community. The Growth Management Act was designed to help protect the future of agriculture, but agricultural land is often attractive to those who want to develop a mitigation bank. We need to find a way to balance the restoration and preservation of wetlands and critical habitat with the protection of our farm lands, which also provide open space and rural character to our communities.

Sky Miller – Wildlands, Inc.

Though a representative of Wildlands, these comments are on behalf of private mitigation bankers generally. A primary concern of private bankers concerns long bank review times. The up-front cost for mitigation banks is enormous, often with millions invested before a single credit is released. While a banker may wait multiple years for application approval, the land that has been purchased accumulates expenses, ranging from payments on the land, taxes, and maintenance. Bankers are frustrated by the uncertainty of turnaround times, not knowing when they will receive responses to information submitted in support of their applications. Bankers would like to see a formal review schedule

established either in policy or in rule. There has been general frustration with the transparency of the banking program, and the bankers feel that for banking to be successful both environmentally and economically there has to be more collaboration between the bankers and the banking program.

Bill Leonard – Washington Department of Transportation

Since 1993 WSDOT has invested more than \$15 million in banking because we believe that this is ecologically preferable to traditional mitigation approaches. For banking to succeed we need to provide environmentally meaningful mitigation, but this needs to be done in a fiscally responsible manner. If banking is going to work in Washington, we have to make sure that the process governing banking does not unintentionally create disincentives for people to move in this direction. The relationship between bankers and regulatory agencies needs to be viewed as a partnership since banking will not occur unless the needs of both parties are met. Ecology and the Army Corps need to collaborate more and establish better communication with bankers. Mitigation Banking Review Team Meetings should be open to the public, and the advisory committee that is helping develop Ecology's banking program should be used more effectively to foster better communication on an ongoing basis. The certification process needs to be shortened to 18 months or less. Routine reviews and approvals – such as mitigation bank instrument materials/chapters, and release of credits – should be completed in 45 days or less. Once banks are approved, there needs to be a firm commitment by all parties to live up to the agreements that were made. Given the problems of traditional mitigation approaches and the environmental benefits of banking, Ecology and the Corps should reexamine their policies that favor on-site, in-kind mitigation approaches.

Peggy Bill – Cascade Land Conservancy

Mitigation banking holds promise because it has all the components for success as a way of protecting the environment in partnership with public and private enterprise. Banking provides a new potential way to do business. The process requires everyone to work together in a spirit of collaboration and mutual respect. We need to find a balance between rural and urban sites, and need to work closely with the agricultural community to achieve a balance. It is important to have prime agricultural lands mapped. We must have accountability to establish predictable timelines. Much more education and outreach is needed. The program needs adequate staffing to accomplish these goals.

Gail Terzi – Army Corps of Engineers

A major impediment to making the wetland banking review timeline shorter is staffing. The Corps is currently understaffed, but receiving temporary funding from Ecology to add a banking review person. We need a final rule on banking to set parameters, and the draft federal rule and draft Ecology rule, when both are finalized, will improve timelines. Some key areas that need to be addressed to make banking successful are: 1) We need a way to address smaller environmental impacts by sending them to banks rather than allowing them to go unmitigated through Reasonable Use Exceptions or variances, 2)

We need to train staff on how and when to allow debits, 3) We need to integrate banking with the Endangered Species Act, 4) We need to recognize that banks need to be economically vital, and 5) We need to establish protocols for selecting the best bank sites in the watershed.

[Audience Question and Answer Period](#)

Not all questions were captured. Our apologies if we missed your question.

Should we have a local government perspective on the panel?

Yes, that was an oversight. Karla ? City of Tacoma agreed to speak as a local rep. She noted that they like potential for banking to meet needs of single family dwellings. Another potential is using banking for planning green space and other alternatives.

Rep from, WDFW Five years of monitoring is not enough how do you address site changes when site is so young. Response: Most of the banks are required to provide 10 years of monitoring.

Should we look at banking by function? Gail T. We looked at that with one bank and realized that the accounting would be a nightmare and could leave the bank with an excess of one type of credit such as water quality.

Could you establish a flood control bank? Sky Miller: Yes, their company has a flood control bank with a flood district down in the Sacramento area in California. Ecology – It just depends if there is a market.

Local boundaries are not driven by watersheds how do you balance that?

Would state consider putting guidelines in rule on agricultural lands? Two examples given – identified critical soils or prevention of fish losses.