### 104TH CONGRESS 2D SESSION

# H. R. 4211

To direct the Secretary of the Army to conduct a study of mitigation banks, and for other purposes.

#### IN THE HOUSE OF REPRESENTATIVES

September 26, 1996

Mr. McCollum introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

## A BILL

To direct the Secretary of the Army to conduct a study of mitigation banks, and for other purposes.

- 1 Be it enacted by the Senate and House of Representa-
- 2 tives of the United States of America in Congress assembled,
- 3 SECTION 1. SHORT TITLE.
- 4 This Act may be cited as the "Florida Wetlands Miti-
- 5 gation Banking Study Act of 1996".
- 6 SEC. 2. FINDINGS.
- 7 Congress finds the following:
- 8 (1) Mitigating the environmental impacts of
- 9 necessary development actions on the Nation's wet-
- lands and other aquatic resources is a central

- premise of Federal wetlands programs. While mitigation is required to prevent loss of the Nation's wetland resources, mitigation should be undertaken in a manner that is flexible, efficient, reliable, and effective.
  - (2) Mitigation banking is wetland resource restoration, enhancement, creation, and in exceptional circumstances preservation, undertaken to provide mitigation "credits" to offset unavoidable wetland losses.
  - (3) Mitigation banks often provide greater flexibility, efficiency, reliability, and effectiveness in meeting mitigation requirements than on-site mitigation can and often have significant environmental advantages over individual mitigation projects, such as—
    - (A) maintaining the integrity of a larger aquatic ecosystem by consolidating compensatory mitigation into a single large parcel;
    - (B) bringing together financial resources, planning, and scientific expertise not practicable to bring to many project-specific compensatory mitigation proposals;
- 24 (C) reducing permit processing times and 25 providing more cost-effective compensatory

- 1 mitigation opportunities for projects that qual-2 ify;
  - (D) improving regulatory oversight by focusing regulatory agency resources more effectively; and
  - (E) contributing toward attainment of the goal of no net loss of the Nation's wetlands by providing opportunities to compensate for authorized impacts when mitigation might not otherwise be appropriate or practicable.
  - (4) The State of Florida has developed one of the most advanced regulatory frameworks in the Nation for authorizing the establishment and use of mitigation banks. Florida's statutes and regulations governing mitigation banks contain provisions for evaluating the suitability of mitigation banks, determining the number of mitigation "credits" to be awarded a mitigation bank, and ensuring the success and perpetual protection and management of mitigation banks. As a result, a number of mitigation banks have been successfully established and used in Florida.
  - (5) In determining whether Federal legislation or further administrative action is necessary to encourage the establishment of mitigation banks, to

- 1 allow for the use of mitigation banks to meet the re-
- 2 quirements of applicable Federal statutes and regu-
- lations, and to ensure the proper location, success,
- 4 and perpetual protection and management of mitiga-
- 5 tion banks, a study of the authorization and use of
- 6 mitigation banks in Florida is necessary and useful.

#### 7 SEC. 3. MITIGATION BANKING STUDY.

- 8 (a) In General.—The Secretary of the Army shall
- 9 conduct a study of mitigation banking in the State of Flor-
- 10 ida for the purpose of evaluating the potential and prob-
- 11 lems of mitigation banking. By July 1, 1997, the Sec-
- 12 retary shall submit a written report on the results of the
- 13 study to the President, the Committee on Environment
- 14 and Public Works of the Senate, and the Committee on
- 15 Transportation and Infrastructure of the House of Rep-
- 16 resentatives.
- 17 (b) Consultation.—In conducting this mitigation
- 18 banking study and preparing the report under this section,
- 19 the Secretary shall consult with the following:
- 20 (1) The Environmental Protection Agency.
- 21 (2) The Natural Resources Conservation Serv-
- ice of the Department of Agriculture.
- 23 (3) The Fish and Wildlife Service of the De-
- partment of the Interior.

1	(4) The National Marine Fisheries Service of
2	the Department of Commerce.
3	(5) The Florida Department of Environmental
4	Protection.
5	(6) The Northwest Florida Water Management
6	District.
7	(7) The Suwannee River Water Management
8	District.
9	(8) The St. Johns River Water Management
10	District.
11	(9) The Southwest Florida Water Management
12	District.
13	(10) The South Florida Water Management
14	District.
15	(c) Matters To Be Addressed.—The Secretary's
16	mitigation bank study and report under this section shall
17	address all subjects relating to the effective and respon-
18	sible establishment, use, and perpetual protection and
19	management of mitigation banks and shall specifically ad-
20	dress the following issues:
21	(1) Whether Federal legislation is necessary to
22	encourage the responsible establishment, use, and
23	perpetual protection and management of mitigation
24	banks.

- 1 (2) The manner in which mitigation banks 2 should be authorized.
  - (3) The legal restrictions which should be placed on lands within a mitigation bank to ensure the perpetual protection of that mitigation bank.
  - (4) The financial responsibility that entities establishing a mitigation bank should provide to ensure the success and perpetual protection and management of that mitigation bank.
  - (5) The manner in which wetland and upland areas within a mitigation bank should be evaluated in the award of mitigation "credits" to a mitigation bank.
  - (6) The manner in which mitigation "credits" from a mitigation bank can be used as compensation for unavoidable impacts to wetlands and other aquatic resources.
  - (7) The manner in which the service area of a mitigation bank should be established.
  - (8) The relationship of mitigation banks to public acquisition or restoration programs designed to restore or enhance the environment.
  - (9) The manner in which the siting of mitigations banks can be directed to assure compatibility with adjacent land uses and furtherance of local or

- regional goals for the restoration or protection of watersheds, floodplains, particular habitat types or functions, and water quality.
- 4 (10) The procedure by which Federal and any 5 State authorizations of the establishment and use of 6 mitigation banks can be coordinated to reduce dupli-7 cation and increase governmental efficiency.
- 8 (d) Public Comment.—Prior to submitting the re9 port, the Secretary shall provide notice and an opportunity
  10 for public comment on the report. The Secretary shall also
  11 solicit comments on the report from other States by sub12 mitting a copy of the report to the Interstate Counsel on
  13 Water Policy for comment.

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