



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, DC 20314-1000

JUL 09 2014

CECW-CO-R

MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS, AND
DISTRICT COMMANDS

SUBJECT: Mandatory Provision to Include in All Mitigation Banking Instruments and In-Lieu
Fee Program Instruments

1. The purpose of this memorandum is to provide language for a general provision that must be included in any instrument for a new mitigation bank or in-lieu fee program. This language should also be added to previously approved mitigation banking instruments and in-lieu fee program instruments, whenever the sponsor requests a modification of an approved instrument processed in accordance with 33 CFR 332.8(d) and (g). The language of this provision and whether to include this provision is not negotiable with the sponsor. As of the date of this memorandum, the U.S. Army Corps of Engineers (USACE) will not approve any instrument, or any modification of a previously approved instrument, that does not include this language.
2. The following provision must be included in any instrument for a new mitigation bank or in-lieu fee program, or any modification of a previously approved mitigation banking or in-lieu fee program instrument:

USACE approval of this Instrument constitutes the regulatory approval required for the [INSERT NAME OF THE MITIGATION BANK OR IN-LIEU FEE PROGRAM] to be used to provide compensatory mitigation for Department of the Army permits pursuant to 33 C.F.R. 332.8(a)(1). This Instrument is not a contract between the Sponsor or Property Owner and USACE or any other agency of the federal government. Any dispute arising under this Instrument will not give rise to any claim by the Sponsor or Property Owner for monetary damages. This provision is controlling notwithstanding any other provision or statement in the Instrument to the contrary.

3. Any changes to the provision in paragraph 2 should be coordinated with HQUSACE. Please direct any questions to David Olson at (202) 761-4922, Max Wilson at (202) 761-5856, or Milton Boyd at (202) 761-8546.

FOR THE COMMANDER:

JAMES R. HANNON
Chief, Operations and Regulatory
Directorate of Civil Works