Requirements for Mitigation Bank and In-Lieu Fee Program Instruments

Mitigation bank and in-lieu fee program instruments must include the following information:

- Description of the proposed service area(s). Service areas may be based on the watershed, ecoregion, or physiographic province, and/or other geographic area in which the bank or in-lieu fee program is authorized to provide compensatory mitigation
- Accounting procedures
- Provision stating that legal responsibility for providing mitigation lies with the sponsor once a permittee secures credits from the sponsor
- Default and closure provisions
- Reporting protocols
- Any other information deemed necessary by the district engineer

For a mitigation bank, a complete instrument must also include the following information (33 CFR 332.4(c)(2)-(14)/ 40 CFR 230.94(c)(2)-(14)):

- Objectives
- Site selection factors considered
- Site protection instrument (conservation easement, declaration of restrictions, title transfer, etc.)
- Baseline information – description of ecological characteristics of the proposed mitigation bank site
- Description of number of credits to be provided
- Mitigation work plan – detailed written specification and work descriptions for the mitigation bank site
- Maintenance plan – description and schedule of maintenance requirements
- Performance Standards – ecologically-based standards used to determine whether the project is achieving its objectives
- Monitoring requirements
- Long-term management plan – description of mitigation site management after meeting all performance standards to ensure long-term sustainability of the site
- Adaptive management plan – a management strategy to address unforeseen changes in site conditions or other aspects of the project. It guides decisions for addressing circumstances that adversely affect a mitigation project
- Financial assurances – a description of any financial assurances that will be provided to ensure that the mitigation project will be completed in accordance with its performance standards.
- A credit release schedule tied to achievement of specific milestones.

For an in-lieu fee program, a complete instrument must include the following information:

- Compensation planning framework (33 CFR 332.8(c)/40 CFR 230.98(c));
- Specification of the amount of advance credits (33 CFR 332.8(n)/40 CFR 230.98(n)) and the fee schedule for these credits;
- Methodology for determining future project-specific credits and fees;
- Description of the in-lieu fee program account (33 CFR 332.8(i)/40 CFR 230.98(i)).