

LEGISLATURE OF THE STATE OF IDAHO

Sixty-fifth Legislature

First Regular Session - 2019

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 111

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

RELATING TO AQUATIC RESOURCES; AMENDING TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 93, TITLE 67, IDAHO CODE, TO DEFINE TERMS, TO PROVIDE FOR THE PURCHASE OF MITIGATION BANK CREDITS, AND TO PROVIDE FOR PRACTICABLE AND ECOLOGICALLY PREFERABLE COMPENSATION ALTERNATIVES.

6 Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 93, Title 67, Idaho Code, and to read as follows:

CHAPTER 93

COMPENSATORY MITIGATION FOR IMPACTS ON AQUATIC RESOURCES

67-9301. DEFINITIONS. As used in this chapter:

(1) "Compensatory mitigation" means the restoration, reestablishment or rehabilitation, establishment or creation, enhancement, and in certain circumstances preservation of aquatic resources for the purpose of offsetting unavoidable adverse impacts that remain after all appropriate and practicable avoidance and minimization has been achieved;

(2) "Compensatory mitigation alternative" means any compensatory mitigation alternative other than the purchase of mitigation bank credits, including in-lieu fee programs and permittee-responsible mitigation;

(3) "Ecologically preferable" means capable of providing a higher likelihood than alternative proposals of replacing existing wetland acreage and functions, stream functions, water quality, and fish and wildlife resources;

(4) "Impact" or "impacts" means adverse effects;

(5) "Mitigation bank" means a site or suite of sites where resources such as wetlands, streams, and riparian areas are restored, established, enhanced, or preserved for the purpose of providing compensatory mitigation for impacts authorized by permits. In general, a mitigation bank sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the mitigation bank sponsor. The operation and use of a mitigation bank are governed by a mitigation banking instrument;

(6) "Mitigation bank credits" means credits sold by a mitigation bank representing the accrual or attainment of aquatic functions at a compensatory mitigation site. The measure of aquatic functions is based on the resources restored, established, enhanced, or preserved;

(7) "Mitigation banking instrument" means the legal document for the establishment, operation, and use of a mitigation bank;

1 (8) "Person" means any individual, partnership, corporation, association,
2 governmental subdivision or agency, or public or private organization
3 or entity of any character; and

4 (9) "Service area" means the geographic area within which impacts can
5 be mitigated at a specific mitigation bank, as designated in its instrument.

6 67-9302. PURCHASE OF MITIGATION BANK CREDITS. The purchase of mitigation
7 bank credits shall be deemed the most practicable and ecologically preferable
8 form of compensation by a person for project impacts in all cases,
9 except when a compensatory mitigation alternative has been demonstrated as
10 practicable and ecologically preferable pursuant to section 67-9303, Idaho
11 Code. A copy of any project permit application proposing to impact wetlands
12 shall be timely provided to the mitigation bank or banks in the applicable
13 service area before or at the time that it is submitted to the responsible
14 regulatory agency.

15 67-9303. PRACTICABLE AND ECOLOGICALLY PREFERABLE COMPENSATION AL-
16 TERNATIVES. An analysis shall be required to demonstrate that a compensatory
17 mitigation alternative is ecologically preferable to the purchase of mitigation
18 bank credits, if such credits are available in sufficient quantity
19 for the project at the projected time of need. The analysis must demon-
20 strate that the person's use of mitigation bank credits would result in
21 significant ecological harm and shall address the ability of the alternative
22 compensatory mitigation site or sites to replace lost wetland acreage and
23 function or lost stream functions and water quality benefits. The analysis
24 shall demonstrate that compensatory mitigation for project impacts shall
25 be sufficient to achieve no net loss of existing wetland acreage and no net
26 loss of functions in all surface waters. The analysis must also demonstrate
27 that the person's compensatory mitigation alternative has been established
28 or created and is protected in perpetuity through an enforceable protective
29 instrument, such as a conservation easement. A copy of the analysis required
30 by this section shall be provided to the mitigation bank or banks in the
31 applicable service area before or at the time that it is submitted to the
32 responsible regulatory agency to allow for review and comment prior to any
33 compensatory mitigation alternative being approved or utilized in lieu of
34 purchasing mitigation bank credits.