***Permit Number & Headline Title:***

**Public Notice of Mitigation Bank Enabling Instrument (BEI) Template Availability**

***Summary:*** The Sacramento, San Francisco, and Los Angeles Districts of the U.S. Army Corps of Engineers, along with the U.S. Fish and Wildlife Service, the California Department of Fish and Wildlife, the California Natural Resources Agency, the National Marine Fisheries Service, the United States Environmental Protection Agency, the State Water Resources Control Board, and the Natural Resources Conservation Service as potential participants in Interagency Review Teams (IRT) have updated the standard Mitigation Bank Enabling Instrument (BEI) template for use with mitigation banks that are established within the State of California or mitigation banks with service areas that extend into the state of California. This notice is to inform interested parties of the availability of the completed template.

***Public Notice:***

**SUBJECT:** On September 22, 2011, theU.S. Army Corps of Engineers’ (USACE) South Pacific Division's Sacramento, San Francisco, and Los Angeles Districts, along with the U.S. Fish and Wildlife Service (USFWS), the California Department of Fish and Wildlife (CDFW), the California Natural Resources Agency (CNRA), the National Marine Fisheries Service (NMFS), the United States Environmental Protection Agency (EPA), the State Water Resources Control Board (State Water Board), and the Natural Resources Conservation Service (NRCS), as potential participants in Interagency Review Teams (IRT) entered into the *Memorandum of Understanding Concerning Mitigation and Conservation Banking and In-Lieu Fee Programs in California* (MOU). In accordance with the MOU, the California Banking Agency Management Team (BAMT)has approved the attached Bank Enabling Instrument (BEI) for use in the development of mitigation and conservation banks within, or that propose service areas, within the State of California. The BEI replaces the May 2021, BEI template. The California Interagency Project Delivery Team (PDT), in coordination with the BAMT, developed this template, following the consideration of comments received in response to the December 2023, public notice, subsequent public meetings, and following input from the BAMT.

Bank sponsors submitting a new draft BEI between November 4, 2024, and February 4, 2025, may choose to use either the May 2021, BEI template or the November 2024, BEI template. Bank sponsors must use the November 2024, BEI template when submitting a new draft instrument on or after February 4, 2025. This requirement does not apply to the submittal of revised BEIs addressing IRT comments, where the initial draft BEI was submitted prior to February 4, 2025. However, mitigation banks currently in process may, and are encouraged to, use the November 2024, BEI template, rather than earlier versions. The applicability of the November 2024, BEI template is outlined in the table below:

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| **Applicability of November 2024, BEI template to Proposed and Approved Mitigation Banks** | | | |
|  | **Submittal of new draft BEI** | **Approved Banks (Signed BEI)** | **Banks Already in Draft BEI Stage** |
| **On or Before Feb 4, 2025** | May use the May 2021 or November 2024 BEI template | Sponsor can submit an amendment update to November 2024 BEI template (Not required) | Sponsor can submit a request to update to November 2024 BEI |
| **After Feb 4, 2025** | Sponsors must use November 2024 BEI template | N/A | N/A |

The updated template will be used jointly by the U.S. Army Corps of Engineers’ (USACE) South Pacific Division's Sacramento, San Francisco, and Los Angeles Districts, along with the USFWS, CDFW, CNRA, NMFS, EPA, State Water Board, and the NRCS, as potential participants in Interagency Review Teams (IRT). As always, we will continue to discuss the experiences of bank sponsors and others in using this template to inform potential future changes. This notice, as well as the original notice of the proposed updates, may be viewed at: <http://www.spd.usace.army.mil/Missions/Regulatory/PublicNoticesandReferences.aspx>.

**AUTHORITY:** The template will be used in the development of mitigation banks, which provide mitigation for impacts from projects which have received authorizations to proceed under the authorities of Section 10 of the Rivers and Harbors Act of 1899 for structures or work in or affecting navigable waters of the United States and/or Section 404 of the Clean Water Act for the discharge of dredged or fill material in waters of the United States. Additionally, this template will be used for mitigation banks that also propose to provide mitigation for projects which have been required to provide mitigation by USFWS, CDFW, NMFS, the State Water Board, and/or NRCS. These agencies have committed through the above-mentioned MOU to establishing a combined and coordinated approach to mitigation and conservation banking throughout the State of California. This template reflects existing regulations, policies, and guidance and represents the way in which USACE, USFWS, CDFW, CNRA, NMFS, EPA, State Water Board, and the NRCS intend to implement and provide a consistent approach to mitigation and conservation banking proposals.

**Attachments: November 4, 2024 BEI template**