

Sent via electronic mail to mitbank@wildlife.ca.gov

September 3, 2025

Habitat Conservation Planning Branch
Attn: Conservation and Mitigation Banking
California Department of Fish and Wildlife
P.O. Box 944209
Sacramento, CA 94244-2090

Re: ACWA Comment Letter regarding Draft Conservation and Mitigation Banking Guidelines

Dear Habitat Conservation Planning Branch staff,

The Association of California Water Agencies (ACWA) appreciates the opportunity to provide comments to the California Department of Fish and Wildlife (Department) on the draft Conservation and Mitigation Banking Guidelines (Guidelines). ACWA represents approximately 470 local public water agencies that supply water for domestic, agricultural, and industrial uses to over 90 percent of California's population.

Public water agencies recognize the importance of clear, efficient, and outcome-based processes for mitigation banking. However, ACWA is concerned that the draft Guidelines would add unnecessary complexity that undermines banking's effectiveness as a conservation tool. ACWA offers the following input on the draft Guidelines and Conservation and Mitigation Banking Program.

1. Address the following changes in the draft Guidelines.

a. Revise New Section on Multiple Parcels Analysis

Section 4.1.2 of the draft Guidelines may require—on a case-by-case basis—splitting a proposed bank into multiple banks across linear features (e.g., road, railroad), even if the habitat remains ecologically functional. This approach fragments conservation areas, creates duplicative processes and reviews, and increases costs without ecological justification. ACWA recommends revising this new parcel combination provision to allow for the logical consolidation of non-contiguous parcels, regardless of linear features.

Importantly, impact analyses for species are not performed on a parcel-by-parcel basis but are instead intended to ensure mitigation is “roughly proportional in extent to the impact of the taking on the species.” Dividing banks along linear features undermines this principle and may preclude mitigation that is appropriately scaled to a project's impacts. Revising the contiguous policy will also better align with how the Department manages their own lands—the Department does not bifurcate and manage their lands and preserves differently based solely on the presence of a linear feature.

ACWA recognizes that the review of multiple parcels or properties for a single bank may entail a larger and more time-intensive lands package review than a single property being proposed for a bank. However, this is not always the case, and in some instances, a single property may have a more complex title review/history than non-contiguous parcels. The Department should address these staff time concerns by leveraging their authority to assess a bank agreement package review fee that is commensurate to the complexity of the underlying properties' review.

b. Avoid Imposing Complex Amendments for Delays Outside of Sponsor Control

Section 5.4.6 of the draft Guidelines requires bank sponsors to consult with the Department and potentially submit a complex amendment, along with new documentation and a fee, if a bank sponsor has not moved toward establishment within 12 months of the Department approving the bank. This requirement fails to recognize that delays often arise from circumstances outside of the banker's control. Forcing applicants into an amendment process in such cases creates unnecessary costs and paperwork, while doing little to advance conservation outcomes. ACWA recommends that the Department remove this new 12-month consultation and amendment requirement, instead allowing for flexibility where progress is delayed by factors beyond the applicant's responsibility.

c. Honor Existing Agreements and Avoid Retroactive Template Updates

The draft Guidelines do not provide assurances that existing agreements between bank proponents and the Department will be honored over time. Without such protections, sponsors are required to continually update their Bank Enabling Instrument (BEI) or Conservation Bank Enabling Instrument (CBEI) whenever templates are revised, even when the template changes are not material to the ecological performance of the bank. This creates unnecessary administrative burdens, delays, and uncertainty—while providing no conservation benefit. ACWA recommends that the Department explicitly honor existing agreements, ensuring that past approvals remain valid, and that template update requirements only apply to new or existing banks seeking an amendment for a material change to the agreement terms.

d. Streamline Amendment Processes

The draft Guidelines force simple updates through an unnecessarily burdensome administrative process. For example, updating an existing bank to use the current BEI or CBEI template is an agency amendment and should not be subject to additional fees. In such cases, requiring complex amendments consumes limited staff resources and increases costs and delays for applicants. If the Department will require existing banks to amend BEIs/CBEIs to conform to current templates, ACWA recommends that the amendment definitions be revised in Section 2.2 and Section 5.4.7 to ensure that only substantive changes require a complex amendment, while routine template updates and other changes non-material to ecological performance of the bank are streamlined as a simple amendment.

e. Remove Barriers to Department Participation in Banks

Section 7.7 of the draft Guidelines unnecessarily precludes the Department from establishing an expedited pathway to authorize federally approved credits for permits under its jurisdiction with the statement that an existing bank is "considered a new bank for [the Department]." This

approach creates barriers to coordination with federal agencies and introduces unnecessary delays. It is particularly concerning considering the increasing demand for Department-approved mitigation credits. ACWA recommends that the Department revise Section 7.7 to provide a clear and efficient path for the Department to be added as a signatory to an existing bank, whether through a consistency determination process or, at a minimum, by allowing existing banks to advance directly to the agreement review stage with the Department.

Importantly, banks authorized through the Interagency Review Team process are already vetted by the Department and are established using templates developed and updated through the framework of the 2011 multi-agency Memorandum of Understanding Concerning Mitigation and Conservation Banking and In-Lieu Fee Programs in California (2011 MOU). While the draft Guidelines cite statutory limitations, ACWA and its member agencies believe that the Department has the authority to streamline this process without requiring a legislative fix. For example, the statute references the 2011 MOU and authorizes the Department to issue Guidelines for the purpose of establishing a coordinated statewide banking program.

Finally, ACWA recommends revising the requirement that all existing banks seeking to add the Department as signatory “must” use the current BEI or CBEI template. This should not be a default requirement, but instead only necessary if warranted due to conflicting standards between the Department and agencies that authorized the existing bank. As long as agency standards governing the material terms of the bank agreement are consistent, bank sponsor and staff resources should be saved by avoiding an unnecessary template update.

f. Provide Clear Direction on Performance Standards

ACWA understands that Review Team staff and bank sponsors are spending increasing amounts of time negotiating performance standards, which vary bank by bank. The draft Guidelines lack details on how performance standards are developed, applied, and tied to adaptive management or credit release schedules, as well as the criteria that should inform agency staff review. This creates uncertainty for bank sponsors and agency staff about what is realistic, feasible, and scientifically appropriate while weakening accountability for ecological outcomes. ACWA recommends that the draft Guidelines provide clear criteria for evaluating performance standards with a focus on standards linked to adaptive management actions and credit release milestones. Performance standards should be designed to achieve meaningful outcomes, not imposed as requirements that create additional burdens without directly linking to credit release milestones or improving ecological results.

g. Ensure Department Accountability for Statutory Deadlines

While statutory timelines exist for bank approvals, the Department has encountered difficulties in consistently meeting them, in part due to limited staff capacity. The Department’s legislative reports indicate compliance with statutory timelines only ~28-44% of the time.^{1,2,3} The Department’s timelines are regularly missed but without any consequence to the Department

¹ California Department of Fish and Wildlife. 2022. *Report to the Legislature: California Conservation and Mitigation Banking*. Page 6.

² California Department of Fish and Wildlife. 2023. *Report to the Legislature: California Conservation and Mitigation Banking*. Page 6.

³ California Department of Fish and Wildlife. 2024. *Report to the Legislature: California Conservation and Mitigation Banking*. Page 6.

besides a compounding backlog. At the same time, the draft Guidelines impose significant penalties on applicants for missing deadlines, such as requiring a new fee or updating/re-reviewing documents. This imbalance creates uncertainty for bank sponsors and undermines trust in the process. The 2023 Environmental Policy Innovation Center Report documents persistent delays in the Department’s approval of conservation banks and highlights the need for process improvements to accelerate approvals.⁴ ACWA urges the Department to use the draft Guidelines as an opportunity to address these bottlenecks and improve on past performance.

If the Department has difficulty issuing “complete” determinations within the existing 30-day statutory period, ACWA recommends that the draft Guidelines adopt a standard of review similar to the California Endangered Species Act regulations (California Code of Regulations, Title 14, § 783.5(b)) to provide a clear process for determining completeness. More broadly, ACWA recommends that the draft Guidelines establish enforceable review timelines for Department staff, provide mechanisms for agency accountability, and ensure that applicant obligations are balanced with clear commitments from the Department.

h. Clarify Standards to Reduce Case-by-Case Discretion

The draft Guidelines rely heavily on “case-by-case” determinations (e.g., Sections 4.1.2, 5.2.3, 5.4.7) which create uncertainty for applicants and may delay approvals. Without defined standards, applicants cannot plan projects with confidence. ACWA recommends providing clear definitions and standardized criteria to reduce ambiguity and increase predictability.

i. Avoid Creating Unnecessary Requirements

The draft Guidelines introduce several new procedures that did not previously exist (see Comments 1a and 1b), many of which appear to address situations that the Department may only encounter occasionally. Unnecessarily broad establishment of new processes creates additional complexity and administrative burden, without providing meaningful conservation benefits. ACWA recommends that the draft Guidelines limit new procedural requirements to issues that are widespread or recurring, rather than codifying ad hoc solutions for isolated cases.

j. Prioritize Outcomes Rather Than Process

The Select Committee on Permitting Reform’s Final Report states that “**every aspect of permitting should emphasize outcomes over process.**”⁵ The draft Guidelines currently lack a clear objective or outcome, instead emphasizing procedural requirements at the expense of ecological and conservation results. For example, if templates are updated, a bank sponsor has no assurance that their bank agreement will continue to be honored. ACWA recommends that the draft Guidelines clearly define their objectives—such as expediting approvals for banks, providing practitioners assurances and consistency, meeting statutory language, and supporting important public-service projects—and ensure that any new processes, templates, or submittal requirements are directly linked to achieving meaningful outcomes. Recognizing the urgency of

⁴ Madsen, B. 2023. *Conservation Banking in California: A Review of California Department of Fish and Wildlife Approval Timelines and Insights from Stakeholders*. Environmental Policy Innovation Center, Washington, D.C.

⁵ Select Committee on Permitting Reform. 2025. *California Assembly Select Committee on Permitting Reform: Final Report – March 2025*. Page 7.

mitigation and restoration, the Department should demonstrate a commitment to facilitating functional, effective practices that deliver real-world benefits.

k. Emphasize a Constructive and Collaborative Tone

The overall tone of the draft Guidelines is overly rigid—emphasizing re-review, resubmission, and new fees—rather than providing constructive pathways to resolution. This seemingly punitive approach risks discouraging investment in banking and creating an adversarial dynamic between Department staff and bank sponsors. ACWA recommends that the draft Guidelines adopt a more collaborative tone, one that emphasizes problem-solving, flexibility, and opportunities to remedy deficiencies. Clear guidance combined with a constructive framework would better serve both conservation outcomes and program participation.

2. **Assess how the Conservation and Mitigation Banking Program can best achieve its desired outcomes.**

a. Evaluate the Efficacy of the RCIS Program

The Regional Conservation Investment Strategies (RCIS) Program was intended to create a streamlined permitting pathway. Although a few RCISs have been approved, to date, no projects have successfully used them to implement a Mitigation Credit Agreement (MCA). The absence of clear guidance for how MCA credits will be recognized for permitting impacts equivalent to conservation bank credits has prevented RCISs from becoming a viable tool. Meanwhile, significant staff time and resources have been invested in this program with no measurable return, despite the Department’s acknowledgement that the Conservation and Mitigation Banking Program is inadequately staffed. ACWA recommends that the Department assess the RCIS Program’s role, provide clear direction on the acceptance of MCA credits, and ensure federal agencies are engaged. This will help determine whether RCISs can become a useful mitigation tool or whether resources should be refocused on optimizing existing processes and pathways to conservation (e.g., the Conservation and Mitigation Banking Program).

b. Eliminate Redundant Staff Reviews

The current review process allows staff to revisit and reevaluate provisions that have already been standardized in the templates, such as financial assurances and other boilerplate language. This practice leads to duplicative reviews, wasted staff and applicant resources, and causes unnecessary delays without advancing project outcomes. Department staff should limit the scope of their reviews to issues that are material and unique to the specific bank site. Department management should ensure continuity and progress in processing bank applications when new staff are assigned. ACWA recommends that the Department clearly define the scope of staff review and provide guidance to ensure that reviews remain targeted, efficient, and predictable.

c. Collaborate With the California State Land’s Commission

The California State Lands Commission’s (SLC) stated mission is to “[provide] the people of California with effective stewardship of the lands, waterways, and resources entrusted to its care based on the principles of equity, sustainability, and resiliency, **through preservation, restoration, enhancement**, responsible economic development, and the promotion of public

access.” The Department’s current and proposed Guidelines and procedures prevent needed marine mitigation projects on California’s subtidal lands. At present, a coastal developer can create a developer-sponsored mitigation project on subtidal lands leased from SLC to offset their own project’s impacts, but a mitigation developer cannot create a mitigation bank through this same process—due to the Department’s requirement for a conservation easement. ACWA recommends the Department acknowledge SLC’s mission and work with SLC to accept mitigation banks proposed on leased subtidal lands as meeting the conservation easement requirement, consistent with California Civil Code § 815.1.

ACWA appreciates the Department’s consideration of these comments. If you have any questions regarding these comments, please contact us at StephenP@acwa.com.

Sincerely,



Stephen Pang
State Relations Advocate
Association of California Water Agencies

cc: The Honorable Charlton Bonham, Director, California Department of Fish and Wildlife
Ms. Valerie Termini, Chief Deputy Director, California Department of Fish and Wildlife
Mr. Josh Grover, Deputy Director, Ecosystem Conservation Division, California Department of Fish and Wildlife
Ms. Isabel Baer, Acting Branch Chief, Habitat Conservation Planning Branch, California Department of Fish and Wildlife
Mr. Marwan Khalifa, Interim Executive Director, Association of California Water Agencies
Ms. Cindy Tuck, Deputy Executive Director, Association of California Water Agencies