Mitigation Investment Holdings

John Coates
Florida Department of Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000
Submitted via email: WQEA_2023@floridadep.gov

RE: Draft Water Quality Enhancement Area Rule Language 62-332 F.A.C.

Dear Mr. Coates,

Mitigation Investment Holdings (MIH) is a developer of environmental mitigation credits and turn-key project solutions. We participate in wetland, stream, species, and nutrient credit markets nationally and are active in Florida. MIH is supportive of FDEP's efforts to expand water quality efforts in the state and to offer Water Quality Enhancement Areas (WQEAs) as an off-site compliance option. In order to maximize the value and water quality improvements from WQEAs, our comments are intended to help design an active credit market that is appealing to both permittees as potential buyers as well as credit generators as sellers.

Equivalent Standards

Any entities permitted to generate credits for sale as an off-site compliance option must be held to equivalent standards, and for permanent credits this must include equal requirements for the long-term stewardship and protection of sites. In the absence of equivalent standards, not all credits will have the same level of durability and in some areas water quality may suffer. Further, when requirements differ this can lead to market distortions, where lower quality credits can transact at low prices, creating an environment where credits subject to higher standards cannot be sold at the price necessary to be profitable.

Straight-Forward Transaction Requirements

MIH encourages FDEP to evaluate the design of nutrient credit markets in North Carolina and Virginia. These markets have a level of credit transaction activity that is currently unique within the US, driven by post-construction stormwater requirements offset with perpetual credits. Given the recent updates to Florida's stormwater requirements for nutrient management, WQEAs could provide a valuable compliance option if designed to minimize friction, or complexity, in transactions. Generally speaking, in NC and VA nutrient markets credits can be sold to offset any impact within the HUC8-based service area of the nutrient bank. If there are localized TMDLs, in North Carolina a standard service area that is smaller than the HUC8 may be established. In Virginia, if the stormwater from a development project discharges to a locally impaired waterway, then specific upstream requirements apply. In these post-construction stormwater markets where perpetual credits transact, there are not location value factors applied to sales within the primary service area of a bank. This design allows for frictionless sales, where it is clear to a buyer what credit quantity they need to purchase from any nutrient bank with a primary service area that covers the location or discharge point of the stormwater from a development project. The more complex it is to determine this credit need, and if this needs to be determined separately for every WQEA a developer could purchase from, the more challenging the transaction and negotiation and the less appealing a WQEA is as a compliance option.

Regulatory Certainty

Another key aspect to market design in NC and VA is the regulatory certainty provided for both credit buyers and sellers.

For credit buyers seeking stormwater compliance, the purchase of a perpetual credit from an approved nutrient bank fulfills their compliance requirements. There is no lingering liability for the purchaser.

Generating credits at a nutrient bank also has clear expectations in NC and VA, and the credit generation of a bank is based on proper implementation of an approved project. The preliminary modeling and therefore upfront investment required to determine the viability of a nutrient bank site is limited. This level of certainty and appropriate upfront investment helps ensure nutrient banks are financially attractive. Additionally, credit yield is not variable or influenced by climactic conditions, changes in the watershed, or other situations outside the control of the bank site. This level of certainty, or a similar level of regulatory certainty, is key to creating a market where generating credits is appealing for a business. If credit yield requires significant preliminary modeling or is highly unpredictable or variable, it may be more appealing to not participate in the market than to generate credits and create the potential risk for compliance issues.

MIH is hopeful about the potential for WQEAs to make a meaningful difference in water quality in Florida. With proper design, FDEP can create an active market that generates water quality improvements and enables economic activity in Florida.

Sincerely,
Jenny Thomas

Mitigation Investment Holdings
248 Southwoods Centre
Columbia, IL 62236