TOPIC: Spanish Lake Mitigation Bank

DATE: 20 February 2015 (Updated 01 April 2016)

CONTACTS: Raul Gutierrez (480-612-1188)

PURPOSE/ACTION NEEDED: Informational

SUMMARY:
Spanish Lake Mitigation Bank transferred ownership from Lago Espanol, LLC, to Spanish Lake, LLC. Only surface rights were transferred, with Lago Espanol keeping the subsurface mineral rights. Oil and gas activities are allowed under the 1999 Conservation Servitude set up by Lago Espanol (the owner at the time) and the Corps of Engineers.

Oil and gas activities on site have increased over the last few years. Spanish Lake was concerned with the increase in activity and asked EPA to step in. After two site visits, it was concluded that Spanish Lake's issues need to be handled by the Corps (wetland jurisdictional determinations, individual and general permits) or with the previous Lago Espanol and/or the oil and gas companies (property rights, property access).

When the ownership of the bank was transferred to Spanish Lake, the credit valuation was redone using the Modified Charleston Method developed by the New Orleans District of the Corps of Engineers and the Interagency Review Team (EPA, USFWS, US NMFS, LDNR, LDWF). This resulted in fewer available credits for sale. The Corps looked at their assessment again and was going to reward an increase in credits, but the use of MCM is no longer allowed under the FY15 budget.

BACKGROUND:
Spanish Lake Mitigation Bank is located in the Spanish Lake and Bluff Swamp Basins of Ascension and Iberville parishes, and was established in 1999. The bank sponsor at the time was Lago Espanol, LLC.

March 8, 1999 – Conservation Servitudes are signed in Ascension and Iberville parishes. Section 2(b), on page 2, allows for oil and gas resource exploration and extraction activities with approved Department of the Army permits. This is discussed further in Section 4 on page 4. Copies of both of these servitudes are attached.

March 17, 1999 – Interagency agreement is signed, Lago Espanol is recognized by the Corps as an approved bank, and the first credits are released.

January 7, 2011 – Lago Espanol, LLC, is renamed Spanish Lake, LLC. When the property was sold to Spanish Lake, Lago Espanol kept the mineral rights for the bank.

August 5, 2013 – Areas with too much salt in the soil were not performing well and were removed (closed) from the bank. Credits sold from these areas were debited from other parts of the bank that were attaining performance standards/success criteria. Closed units can no longer be used to generate credits, but are considered in compliance with the Interagency Agreement and still covered under the Iberville

Conservation Servitude executed in March 1999. Coincidentally, all of the identified well sites are in or adjacent to these closed units.

ISSUES:

Subsurface rights and production activities

This issue is a civil matter that should be settled between the two parties, in this case Spanish Lake and the owners of the well pads. The Conservation Servitude allows for oil and gas activities on site.

Sites 1-3: Pontchartrain Well, Natalbany Heirs Well, Natalbany Well 18

These wells were permitted under New Orleans District Regional Permit 13 (NOD-13). Any issues with permitting of these activities should be handled by the Corps, as they are the issues of such permits.

Site 4: Natalbany 8

This well went through the Individual Permitting process. The public notice made no mention of the location of the project within a mitigation bank. It is agreed that the use of another bank for compensating for unavoidable impacts to wetlands was in violation of the Interagency Agreement.

Site 5: Pipeline

Bryant Smalley (OSC for Region 6) found no issues with the placement of the pipelines on the surface of the soil. A 404 permit would have been needed had the pipes been buried. The pipes would also have to be pressure tested, and any leaks of other issues with the pipes would not be immediately evident, nor as easy to fix.

NOD-13

This general permit, used for proposed and ongoing oil and gas exploration expired on December 31, 2012. One recommendation we can make is that Mitigation Banks should be included in the general permit as an area exempt from any authorized work, along with national parks, monuments, wildlife refuges, etc.

Update (01 April 2016):

The New Orleans District of the US Army Corps of Engineers (Corps) has adopted the Louisiana Rapid Assessment Method (LRAM) to assess credits for impacts and compensatory mitigation. The Corps converted the credits for Spanish Lake Mitigation Bank and kept the mitigation type (Re-establishment, Rehabilitation, Enhancement, etc.) as Preservation for this bank. The bank has objected and is requesting the mitigation type be reclassified as enhancement due to the role the sponsors played in opening the culverts in Alligator and Frog bayous where they empty into Bayou Manchac. While the culverts are located off the bank, the MBI is written so that the sponsors may be able to claim enhancement credits for their efforts in restoring a more natural hydrologic regime to the Spanish Lake Basin. At this time, it is incumbent on the sponsor to provide additional information and a formal request to the Corps to have the credits reclassified as enhancement. Once the Corps feels that the request and information provided

are adequate, they will forward the documents to the Interagency Review Team for additional review and comments.