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April 30, 2021

Deb Haaland, Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

RE: Initiate Species Mitigation Rule-Making

Dear Secretary Haaland:

The Ecological Restoration Business Association (ERBA) represents companies across the country that create and deliver wetland, stream, species, water quality, and other environmental offsets across multiple federal and state compliance programs. Our members include mitigation bankers, In-Lieu Fee (ILF) programs, and providers of restoration and ecological services, including creation of habitat for protected species. Collectively, ERBA members have overseen permitting on hundreds of conservation bank projects and thousands of acres of high quality habitat, not including the hundreds of thousands acres restored under the Clean Water Act and other environmental programs. We write today to request your immediate attention to development of a species mitigation rule in accordance with the Congressional mandate of the 2021 National Defense Authorization Act (NDAA) Section 329.

We thank you for your Congressional leadership as the lead co-sponsor of this NDAA language and your recognition of the benefits a rule will provide for protected species. ERBA supports all efforts by the Department of the Interior (DOI) to promulgate a species mitigation rule, and we offer our technical assistance as DOI takes advantage of this unique and urgent moment to better mitigate species impacts. DOI's action will support the Administration's goals of addressing biodiversity loss, the impacts of climate change, accelerating renewable energy development and creating green jobs.

Federal mitigation policies that establish measurable performance standards, specific timelines for agency review and approval, and equivalent requirements for all forms of mitigation are critical to responsible development and incentivizing private investment in environmental markets. For example, the 2008 Compensatory Mitigation Rule (the "404 Rule") has largely been a success story for wetland and stream resources, as well as for regulators, practitioners, and permittees who benefit from the durability and predictability of established regulation. This regulatory certainty continues to attract significant investment in the 404-mitigation sector, evidenced by the fact that mitigation credits have grown by 120% in the decade since the Rule's promulgation.

Endangered species would greatly benefit from a similar robust and consistent federal mitigation approach. ERBA supported the progress represented in the 2016 USFWS Service-Wide and Endangered Species Act compensatory mitigation policies (the "2016 Policies"). However, their 2018 rescission was a step back for investment in conservation and demonstrated the vulnerability of guidance. For this reason, we strongly encourage DOI to take full advantage of the Congressional directive to pursue a rule-making as the preferred option, versus or in addition to issuance of new mitigation policy guidance.

ERBA and its member companies stand ready to provide experienced technical and market insights from the practitioner perspective. Based on our professional experience, we understand the importance of incorporating fundamental guiding principles into the development of a mitigation policy. We offer the following principles—realized through years of extensive collaboration with resource regulators—for further discussion between ERBA and DOI:

- i. **Durability.** Mitigation projects should be required to provide permanent land protection and fully-funded stewardship of the mitigation site.
- ii. **Science Based.** To ensure mitigation is designed and implemented to meet the desired species' outcomes, the best available science on conservation biology should inform species' conservation goals and objectives.
- iii. **Risk-reduction.** Performance assurances (including advance implementation, adaptive management, financial assurances, credit release schedules, and robust oversight and monitoring) should be required to ensure the success of mitigation projects.
- iv. **Additionality.** Mitigation projects must add a quantifiable benefit for the species beyond their identified ecological baseline.
- v. **Equivalency.** To attract investment in different forms of species mitigation, all forms must be consistently held accountable to equivalent mitigation requirements and standards.
- vi. **Advance.** Mitigation completed and monitored in advance of impacts is preferable because it reduces ecological performance risk and provides species benefits sooner.

In addition to these principles, ERBA cannot over-emphasize the significance of stable regulation for advancing environmental markets. A species mitigation rule is an opportunity for DOI to establish a formal structure and greater assurances for mitigation providers and stakeholders on the requirements and standards for successful species mitigation projects. In preparation for this rulemaking, we recommend that DOI pursue comprehensive stakeholder outreach to inform the best structure for the prospective rule and ensure the result is a transparent, durable regulation built on well-established mitigation principles.

ERBA would like to meet with your office in the near future to discuss these important concepts and principles, and how we can collaborate with DOI for adoption of a strong species mitigation rule. Please contact Sara Johnson at sjohnson@ecologicalrestoration.org at your earliest convenience to schedule a meeting time. Thank you for your thoughtful consideration of ERBA's comments. We are eager to serve as an industry resource and look forward to working with you and the Department of the Interior.

Best regards,

Sara Johnson, Executive Director
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Greg DeYoung, Species Committee Chair
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