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Clark County In-Lieu Fee Program

Enabling Instrument

October 6, 2026

Objectives

- Obtain approval of the Enabling Instrument for the Clark County In-Lieu Fee Program
- Preview the Interlocal Agreement returning to the Board on October 20

Today's Discussion

- Why an in-lieu fee program
- How the Program works
- Program oversight
- Bunkerville East Mitigation Project
- Board actions and today's request

Why an In-Lieu Fee Program?

- Section 404 of the Clean Water Act requires a USACE permit to discharge dredged or fill material into waters of the U.S., and requires compensatory mitigation for unavoidable impacts
- Permittees must locate, build, and maintain their own mitigation sites at their own cost
- The result is a scattering of small sites that are costly to build and difficult to manage long term
- A County-sponsored program pools those obligations into fewer, larger projects and coordinates with the MSHCP
- Authorized under NRS Chapter 244.388 and Clark County Code Chapter 19.07

35 acres

Estimated stream and wetland impacts from Regional Flood Control District projects over the next ten years

Zero

Approved mitigation banks or in-lieu fee programs currently serving Clark County

How an In-Lieu Fee Program Works

1

Permit Conditioned

USACE issues a Section 404 permit requiring compensatory mitigation for unavoidable impacts

2

Fee Paid

The permittee purchases credits from the County rather than building a separate mitigation site

3

Funds Pooled

Fees from multiple permits are deposited into a dedicated Program Fund

4

Credits Released

The County implements and manages the project; credits release as performance standards are met

Advance credits. The Enabling Instrument grants 20 credits that may be transferred before the first project is complete. Every advance credit transferred must later be fulfilled by a completed project.

Program Oversight

Interagency Review Team

- USACE Sacramento District, EPA Region 9, and the Nevada Division of Environmental Protection, with USFWS engaged
- USACE leads review and approval of the Instrument and any future modifications
- The IRT has reviewed and approved the Instrument before you today

Financial Controls

- Credit revenue restricted to Program projects and Program administration
- Administrative costs capped at 10.4% of credit revenue
- IRT approval required to exceed an approved project budget by more than 10%
- Signatory agencies may inspect and audit Program Fund records with 30 days notice

Bunkerville East Mitigation Project

- First mitigation project under the ILF Program, located on County-owned parcels along the Virgin River
- County solicits and administers the consultant contract under NRS Ch. 332 and Clark County Fiscal Directive No. 6
- District staff participate in consultant selection and in the review of deliverables
- Consultant scope includes site investigation, restoration alternatives analysis, mitigation plan, credit release schedule, management plans, financial assurances, and permitting
- County remains lead agency and lead for USACE and IRT coordination; the District is not a party to the Instrument

$420,000

District funding for consultant support on a time and materials basis, not to exceed

October 20

Board consideration of the Interlocal Agreement; the solicitation follows once it is approved

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Board Actions

TODAY

October 6

Approve the Enabling Instrument

Establishes the Clark County In-Lieu Fee Program

PROGRAM ESTABLISHED

Between Meetings

All four parties sign; effective on the date of the last signature

County establishes the Program Fund and uploads the Instrument to RIBITS within 30 days

NEXT ITEM

October 20

Approve an Interlocal Agreement with the Regional Flood Control District

Funds consultant support for the Bunkerville East Mitigation Project

Neither item requires a County appropriation.

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Today's Action

1. **Approve the Enabling Instrument**
   Governing document required by 33 CFR Part 332.8 to establish an in-lieu fee program

2. **Authorize the Chair to sign**
   Four parties: Clark County as Program Sponsor, USACE, EPA Region 9, and the Nevada Division of Environmental Protection

3. **Delegate future modifications**
   Director, or designee, to sign Instrument modifications already approved by the Interagency Review Team

Cost recovery. Program costs are recovered through the fees permittees pay for mitigation credits.

Recommendation

Approve and authorize the Chair to sign the Enabling Instrument for the Clark County In-Lieu Fee Program between Clark County, the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency Region 9, and the Nevada Division of Environmental Protection; and authorize the Director of the Department of Environment and Sustainability, or designee, to sign subsequent Instrument modifications approved by the Interagency Review Team; or take such other action as deemed appropriate.

CLARK COUNTY NEVADA

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