

A Conceptual Framework for Restoration Banking Revised October 22, 2004

The concept of restoration banking has been discussed among industry and trustee groups for several years. Simply put it is the ability of an entity to place a number of discounted service acre years (DSAYs), pre-assigned by the state and federal natural resource trustees, into a virtual “bank”. Under this concept, a parcel of property is evaluated for natural resource service levels and those levels given a set number of DSAYs. At some later date, the entity owning the DSAYs can use them to offset a natural resource damage claim to the extent allowed under the applicable state and federal regulations.

The DSAYs and the property should be viewed as two separate issues. Under this scenario, the DSAYs are the common currency that can be bought, sold, transferred, donated, etc. separately from the property. However, the pre-assigned DSAYs are dependent on the property being maintained by the owner (or conservation group holding an easement on the property). When the DSAYs are needed to offset a natural resource liability, the property that generated them will have to be re-evaluated by the trustees. So long as the property is maintained in a manner that insures continued natural resource service flows, the original DSAYs assigned to it should remain constant.

At the time the DSAYs are placed into the “bank”, the trustee will notify the property owner (or person establishing the bank) with formal, written documentation to that effect. The documentation will be binding on the trustees in that the DSAYs can be applicable, as noted above, to offset natural resource damage liability. It is likely that the DSAYs will be set in accordance with the types of habitats and resources (service flows) found on that particular property at the time of initial evaluation. For example, if the property is primarily wetlands, the DSAYs will be estimated on that basis. When the DSAYs are sold or transferred to another entity, and that entity wishes to offset a liability for injury and damage to a habitat other than wetlands, then a “conversion factor” may apply. In other words, DSAYs from an acre of wetland may be worth more or less from a natural resource service flow standpoint than DSAYs from a comparable acre of an upland habitat. The trustees, in consultation with the DSAYs owner, will negotiate this conversion factor. These “conversion factors” can be based on the prevalence or scarcity of the particular habitats in question, depending on the geographical area where the property is located. Conversion factors are not likely to apply where similar “banked” and “injured” habitats are found; however, as noted below, this can depend on how the property has been maintained from the time the DSAYs are assigned until its final disposition.

During the time the DSAYs are held in the bank, it will continue to be the responsibility of the holder of the DSAYs, and the property owner, to ensure that the property is maintained in such a way that the pre-assigned DSAYs are likely to remain intact. This may include restricting development, public access, or

taking action to restrict or eliminate invasive species, and other such actions that would insure service flows are not impacted. Where the property owner chooses not to maintain the property, or to use it for some purpose other than maintaining the DSAYs, then the pre-assigned number of DSAYs may change significantly.

A property owner may withdraw a property from the bank, with no penalty, at any time. Upon withdrawing the property, all pre-assigned DSAYs are no longer valid. An entity may decide to re-enter the bank at a later date, but the number of DSAYs assigned to the original parcel of property may increase or decrease depending on a site-specific evaluation by the trustees. When a property owner chooses to no longer maintain the property in such a way that the original DSAYs are intact, they will be required to notify the relevant trustees and the owner of the DSAYs in writing. Similarly, when a property owner chooses to sell the property they must notify the relevant trustees and owner of the DSAYs in writing. While the property is held in the bank, and provided the habitats and service flows have not declined significantly, the number of DSAYs afforded by the property will remain constant. There will be no “interest” or DSAYs gained, nor lost, during the time the property is in the bank.

The “bank” may exist as a virtual bank, or in some cases, an interested non-governmental, conservation group, may choose to hold the property and / or take title to it. It is recognized that the conservation group or other entity cannot guarantee that the DSAYs pre-assigned to the property remain. Only the state and federal natural resource trustees, in consultation with the property owner, can validate the amount of DSAYs for the parcel of property. Once the DSAYs from a property have been used to offset a natural resource liability, they cannot be used for this purpose again. In other words, the ability to offset a natural resource damage liability with DSAYs from any given parcel of property is a singular event. Where the number of DSAYs provided by a parcel of property is greater than those required to offset a natural resource damage liability, the remaining DSAYs will continue to be applicable for this purpose at a later date, given the caveats noted earlier.

The number of DSAYs afforded by a property could be increased even after all of them have been used to offset a natural resource liability. For example, the property owner (or conservation group) may choose to undertake additional enhancements or restoration, in consultation with the natural resource trustees, and thereby increase the level of natural resource services. Those additional service flows and DSAYs can be transferred, donated or sold to and used by other entities needing to offset their own liabilities. The number of DSAYs and the ability to apply them for offsetting a natural resource damage claim, is negotiated between the relevant natural resource trustees and the entity needing to offset their claim.

The geographical “boundary” for the use of the pre-assigned DSAYs is a matter to be negotiated between the owner of the DSAYs, or the property owner, and

the natural resource trustees. In general the DSAYs should be readily applicable within the same state, watershed, flyway or ecoregion, provided the geographical boundaries are agreed to by all parties involved. There may be situations where the DSAYs could be assigned to a property in one state, watershed, or flyway, yet are used to offset injuries and damages in an adjacent state, watershed, flyway or ecoregion. A decision on the constraints of these geographical boundaries should be made on a case by case basis, and involve the natural resource trustees, owner of the DSAYs, and the property owner.

Required Inputs

1. Estimate of service flows and DSAYs provided by a given parcel of property
2. Agreement binding the trustees to the pre-assigned estimate, with provisions that this may change depending on the maintenance of the property in question