

Wetlands Mitigation Banking Agreement is Contract, Court Holds

The U.S. Court of Federal Claims recently held that a complaint alleging the Government's failure to abide by the terms of a wetlands mitigation bank agreement alleged contract claims over which the CFC had jurisdiction, rejecting the Government's argument that the agreement was not a contract.

The trial court further explained that, because the contract contemplated money damages for the Government's failure to make contractually required adjustments to wetlands credits for Davis' successful restoration of wetlands, it fell under the Tucker Act's jurisdictional grant:

In this case, the plain language of the Final Agreement supports the Bank's allegation (Compl. ¶ 50) that the Army Corps had a duty to fairly consider adjustments to the credit compensation. Compl. Ex. B at 11 (Umbrella Agreement) (“[A]t the end of the 5–year monitoring period ..., the credit composition will be reevaluated and may be adjusted to reflect maturation of the restored or created wetlands.”). The April 15, 2013 Complaint also alleges that the Army Corps acknowledged that the forested wetlands at issue matured. Compl. ¶¶ 45–46.

The trial court therefore denied the Government's motion to dismiss the complaint.

The full opinion in *Davis Wetlands Bank v. United States* can be read [here](#).