

NEWS ARTICLES



***Opinion* Solving The Farmer Brown Problem: How The Cost Of Mitigation Credits Can Help The EPA Reach Right Penalty Price**

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While bad actors that knowingly destroy critical ecosystems are fined by the US Environmental Protection Agency, these fines don't carry as much weight as one might think, says William Coleman, a specialist in ecological asset development. Here, he explains why regulatory violations should reflect the price of mitigation.

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5 December 2014 | Last month, the U.S. EPA (Environmental Protection Agency) announced in the case of a California central valley almond farmer who seems to have knowingly bulldozed habitat in an effort to expand his orchard operations.

The **EPA headline read**: 'EPA requires Modesto wholesaler to protect Central Valley wetland destruction of rare habitat'. The headline from the **Modesto Bee** read: 'Almond grower to pay destruction', while **Examiner.com reported**: 'Modesto almond farmer learns the hard way n laws.'

My guess is that farmer Edward Brown is crying about the EPA action...all the way to the bank!

The quick story is this: Brown leased 850 acres of land he thought suitable for planting almond. The U.S. Army Corps of Engineers (Corps), the agency charged with preventing loss of wetlands, warned Brown to 'deep rip' the ground on a portion of the 850 acre parcel. Brown ignored the Corps' warning to drag a six-foot deep metal shank thru the soil to prepare it for planting trees.

Learning of this new development, the agencies went to stop the earthmoving in time to find that the habitat had been 'filled and obliterated'.

Vernal pools are unique to California. They are shallow, clay-bottom depressions that come to season with a variety of plant and animal life unlike anything else. These seasonal wetland pools

threatened or endangered species, including three varieties of tiny 'fairy shrimp'. They are part of the biodiversity that is native to California, supporting the state's complex mix of **ecosystem services**

Ecosystem services are like factory outputs. They are the processes, the infrastructure, the support and quality of life concerns. Eco-services generate everything from fertile soils to systems that regulate the efficiency of these services depends on a mix of animal and plant species that contribute to the overall function. For the ecological factory to work at top efficiency, all the parts have to be in place doing what they are part of the mix.

Compensatory mitigation is required when impacts occur to wetlands. This has been true since the 1970s. Compensatory mitigation credits can be purchased from permitted sellers to offset these impacts. These credits are to market forces – they are priced according to supply and demand. Because vernal pools are rare, vernal pool impacts are expensive, ranging from \$200,000 to \$300,000 per credit in today's market. The highest price available in the public record. This explains why Brown decided to take his chances with plowing vernal pool habitat.

This also explains why the EPA enforcement action is woefully inadequate.

EPA decided to levy a \$160,000 penalty for violating the regulations protecting wetlands and vernal pools. It required Brown to purchase \$1 million worth of mitigation credits from a nearby ranch who had 33 acres of acreage that could be protected to offset the losses attributed to Brown.

If we run the numbers according to current market prices for vernal pool credits, we can see that the EPA penalties will cost him \$1.2 million in round numbers. If he had done as the agencies advised and purchased 33 mitigation credits priced at \$200-300,000 each, he would have spent \$7-\$10 million. By violating the regulations and subjecting himself to EPA justice, Brown has saved something like \$7 million.

To the Modesto Bee and the SF Examiner, a \$1.2 million penalty sounds like a lot. It sounds like it would be discouraged from ignoring the agency warnings and doing what Brown did. And that is what he accomplished just that. In truth, the agencies badly underpriced the penalty. EPA must not have known what the credits are worth on the open market. If the agency did know, they certainly they would have sent a message that this inadequate penalty would send.

The net effect of this decision is to encourage other farmers to follow Brown's lead; to violate the regulations and warnings and plow under rare habitat that contributes to the state's environmental quality and biodiversity.

EPA and other agencies deserve to understand more about the comparative impact of enforcement. They need to make better decisions about mitigation-related penalties that will encourage compliance and not motivating future violations of federal and state laws.



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