

TWG: COMPENSATORY MITIGATION

Meeting: #4 **Date:** Oct. 11, 2018 **Time:** 10:00 am

Attendees:

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| <input type="checkbox"/> Robert Anderson, Fennemore Craig | <input type="checkbox"/> Spencer Kamps, Home Builders Association of Central Arizona |
| <input type="checkbox"/> Joe Bardswich, Golden Vertex Corp | <input type="checkbox"/> Dave Kimball, Gallagher & Kennedy |
| <input checked="" type="checkbox"/> Amanda Best, Westland Resources | <input checked="" type="checkbox"/> Keith Knutson, Arizona Game and Fish Department |
| <input type="checkbox"/> Michael Byrd, Prescott Creeks | <input type="checkbox"/> Shawn Lowery, Arizona Game and Fish Department |
| <input checked="" type="checkbox"/> Mark Edelman, Arizona State Land Department | <input type="checkbox"/> Amanda McGennis, Arizona Chapter Associated General Contractors |
| <input checked="" type="checkbox"/> Julia Fonseca, Pima County Sustainability | <input type="checkbox"/> Myron Smith, KGHM |
| <input type="checkbox"/> Angela Garcia, Salt River Pima-Maricopa Indian Community | <input type="checkbox"/> Brenna White, Department of Interior, National Park Service |
| <input checked="" type="checkbox"/> Jonathan Horst, Tucson Audubon Society | |
| <input checked="" type="checkbox"/> Bob Iannarino, Psomas | |

Guests and Proxies

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| <input checked="" type="checkbox"/> Lee Decker, for Dave Kimball, Gallagher & Kennedy | <input checked="" type="checkbox"/> Jennifer Ward, for Joe Bardswich, Golden Vertex Corp |
| <input checked="" type="checkbox"/> Scott Thomas, for Robert Anderson, Fennemore Craig | |

Staff Support:

- Andy Koester, ADEQ David Lelsz Heidi Welborn Theresa Gunn, GCI Kelly Cairo

Select Vice-Chair

No nominations or volunteers. Mark will take selection of vice-chair off future agendas.

Qualitative Assessment Method

Amanda asked if we have an understanding of what can and can't be changed under a state program. Scott said that there is significant latitude currently under the Corps process. The Corps can issue a permit absent an EPA objection. EPA objection authority would remain. Lee suggested that there may be an opportunity to adopt CM rules and regulations, but improve upon procedures such as the mitigation ratio checklist currently used. An MOU with EPA might be drafted to achieve these goals and provide EPA agreement in advance.

Amanda reviewed the current state and presented Qualitative Assessment Methods. Highlights of the presentation, comments and questions included:

- For the purposes of providing an example, the fictitious “Acme” mine is used.
- Information reflects 2013 information from the COE, as well as 2017 revisions to the mitigation ratio checklist and other documents. These documents have been sent to the TWG.
- Westland Resources developed qualitative assessment method and presented this with the Corps. The Corps reviewed the methods and Westland has refined the process based on input from the Corps.
- 2017 revisions to the mitigation ratio checklist require a preservation baseline ratio of 1:1 for low value impacts; 3:1 for moderate impacts; and 5:1 for high impacts. Amanda said it is not clear what situation would result in a 1:1 preservation baseline ratio. Further adjustment in Step 3 could require an adjustment to a 20:1 ratio for preservation sites.
- Is there a step that allows for a beneficial ratio adjustment, such as performing the work in advance of the project? Adjustments to the mitigation ratio can be made to lower the ratio in Steps 2a (Functional Comparison), 6 (Type Conversion), and 8 (Temporal Loss). However, if the mitigation is implemented in advance, there is a risk to doing so, and no guarantee to the permittee that they will be able to use previously developed mitigation based on only a verbal commitment from the Corps.
- For some steps in the mitigation ratio process (i.e. Steps 4 (Mitigation Site Location), 5 (Net Loss of Aquatic Resource), and 7 (Risk and Uncertainty) the best adjustment is 0.
- Does the process allow you to go outside the HUC? Yes, you can go outside the HUC. If outside the HUC 8, requires mitigation adjustment in Step 4. Additional mitigation would likely be required.
- Scott brought up the issue of EPA commenting on the preference of in-kind mitigation, ephemeral impacts should be mitigated by ephemeral stream creation/re-establishment.
- Are there situations that have allowed creation of ephemeral streams. Westland has seen one example where ephemeral systems are being proposed for re-establishment in old agricultural areas.
- Is there a credit for restoring groundwater? No, the Corps does not regulate groundwater. To the extent the process of restoring groundwater would result in the creation or re-establishment of surface flows, perhaps in steps 2 (functional comparison) and 6 (type conversion). Type conversion only offers an adjustment of 1 or 0. There is no existing precedent or example of this which Amanda can recall.
- Creation of surface waters is expensive and due to limitations of Steps 5, 6, 7, and 8, there is little incentive for creation.
- Corps approved of the qualitative assessment method used by Westland, but that method was not approved by the EPA.
 - Should be clear in MOA or rules that this information is intended to be included.
 - EPA (region 9) has commented perennials should only be compared to perennials; ephemerals to ephemerals; etc. This method combines waters and mitigation based on functions they provide. Julia and Amanda acknowledged there are differing functions between ephemeral waters, (for example some are close to the groundwater table and others have very little or sporadic connections to groundwater). The Corps method requires a comparison of impacts (typically ephemeral in Arizona) to mitigation (often are intermittent or perennial systems because they are regionally significant).

- Lee pointed out that other districts do not have any focus on ephemerals, in part due to local conditions.
- Would CRAM for ephemerals result in the same problem for out-of-kind mitigation, or would it help solve this problem? Uncertain, but would still be comparing ephemerals and perennials. A solution might be to focus on functions of the impact.
- What kind of field results? 1:1, 6:1. Early calculations show 11:1, likely at preservation sites. In lieu fee 1:1 to 3:1 ratios.
- Why different for in lieu fee? Considerations include less risk and uncertainty and expectation of high functional gains at the mitigation site due to process in becoming an approved ILF site and IRT oversight.
- There is a lot of incentive to go to an in lieu fee. Most permittees don't want to be required to manage mitigation sites in perpetuity, which has included plans to manage and fund for 100 years.

Other

- Heidi discussed a public document that is a draft MOA with COE and Florida DEQ, which could be useful to this TWG.

Action Items

- Each member to define ideal state in their areas of concentration (i.e., In-Lieu Fee Sponsors, the legal and environmental consultant community, and permittees/end-users)
- Reschedule the 11/22/18 (Thanksgiving Day) meeting in accordance with the results of the Doodle poll that was sent out after TWG Meeting #3.

Future Discussion *(This is a cumulative list. Items will be removed when discussed)*

- Describe a desired future state for the components of Compensatory Mitigation that have been presented and discussed in our TWG meetings.
- Prepare an outline for our White Paper and a timeline for completion by 12/20/18
- Volunteer or Assign roles for writing and compiling the components of the White Paper

Next Agenda Items

- Ideal future state
- White Paper outline
- White Paper timeline