TWG: COMPENSATORY MITIGATION

Meeting: #6  Date: November 8, 2018  Time: 10:00 am

Attendees:
☒ Robert Anderson, Fennemore Craig
☐ Joe Bardswich, Golden Vertex Corp
☒ Amanda Best, Westland Resources
☒ Michael Byrd, Prescott Creeks
☒ Mark Edelman, Arizona State Land Department
☐ Julia Fonseca, Pima County Sustainability
☐ Angela Garcia, Salt River Pima-Maricopa Indian Community
☐ Jonathan Horst, Tucson Audubon Society
☐ Bob Iannarino, Psomas
☒ Amanda McGennis, Arizona Chapter Associated General Contractors
☐ Myron Smith, KGHM
☐ Brenna White, Department of Interior, National Park Service

Guests and Proxies
☒ Lee Decker, for Dave Kimball, Gallagher & Kennedy
☐ Scott Thomas, for Robert Anderson, Fennemore Craig
☒ Jennifer Ward, for Joe Bardswich, Golden Vertex Corp

Staff Support:
☒ Andy Koester, ADEQ  ☐ David Lelsz  ☐ Heidi Welborn  ☒ Theresa Gunn, GCI  ☐ Kelly Cairo

White Paper

- Amanda will continue to flush out the qualitative assessment methodology
- Committee members should use the document on Google docs to make changes and add content
- Like the background information provided by Amanda as it helps explains the current state and provides background for changes
- Paper needs to be reordered to focus on current state, gaps, and ideal state
- Amanda will reorder the document and reduce redundancy
- Need to flush out 3.7.6 with content under section 3
- Theresa provided an update on the CRAM and will prepare information for the paper
- Michael – benefits/challenges with in-lieu fee programs
  - Smaller programs struggle with the capacity to develop a project due to sporadic nature for need for mitigation credits
Contemplate a statewide mitigation program with one entity managing all mitigation needs in the state (North Carolina DEQ)
  - Tim Baumgartner runs a statewide program in North Carolina
  - Is the program only for the 404 program mitigation or other state mitigation programs?
  - ADOT has been Prescott Creeks largest customer in their mitigation program

- Rob will continue to draft additional challenges with current mitigation program
- Rob will add text to provide justification using existing rule language to support recommendation of out of watershed mitigation
- Amanda to reorder the document and send to Theresa today
- Theresa will post new draft to the Google Docs and notify group
- Comments on draft by November 16
- Review paper during the meeting on November 19

**Potential for Fees**

Andy asked the group to consider where there are tasks such as annual reporting, inspections, etc. which would result in a fee driven product.

- Fees will be a challenge because mitigation is already expensive
- Would not want to put additional costs on ILF sponsors
- Encourage permittees to go ILF
- ILF sponsors send annual reports to Corps and they who has the opportunity to inspect and review the project progress
- Permitee mitigation has reporting and potential inspections requirements
- Ensure current reporting obligations in the white paper so ADEQ could know what to expect
- Will the Corps hand over the responsibility (inspection) of current permits to ADEQ
- Need to capture the uncertainty on who provides oversight of the ILFs – who will they report to
- Restrictive covenants requirement for ADEQ?
  - Covenants to prevent fill of the waters on the site outside of the permit waters
  - Not a requirement to have the restrictive covenants
  - Used to get credit for preserving the other waters on the site but was not allowed after 2008
  - Covenants are preservation of HOA open space
  - Burdensome covenants without getting much mitigation credit
  - Rob will add a discussion on covenants in the permittee responsible mitigation section

**Action Items**

- All writers to have content added to the white paper by November 16

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

- Need to determine if the covenants/easements of current permittees need to be amended/recorded to change Corps references to ADEQ
• Need to determine who assumes oversight and enforcement of mitigation plans for current permits which would be transferred to ADEQ

**Next Meeting**

• November 19, 1:30 p.m.
• Review draft white paper