



TWG: COMPENSATORY MITIGATION

Meeting: #2

Date: September 13, 2018

Time: 2:00 pm

Attendees:

- | | |
|--|---|
| <input type="checkbox"/> Robert Anderson, Fennemore Craig | <input checked="" type="checkbox"/> Dave Kimball, Gallagher & Kennedy |
| <input type="checkbox"/> Joe Bardswich, Golden Vertex Corp | <input type="checkbox"/> Keith Knutson, Arizona Game and Fish Department |
| <input checked="" type="checkbox"/> Michael Byrd, Prescott Creeks | <input checked="" type="checkbox"/> Shawn Lowery, Arizona Game and Fish Department |
| <input checked="" type="checkbox"/> Mark Edelman, Arizona State Land Department | <input checked="" 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 type="checkbox"/> Bob Iannarino, Psomas | |
| <input type="checkbox"/> Spencer Kamps, Home Builders Association of Central Arizona | |

Guests and Proxies

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| <input checked="" type="checkbox"/> Jason Jones, ADEQ | <input checked="" type="checkbox"/> Bill Miller, US Army Corps of Engineers |
| <input checked="" type="checkbox"/> Scott Thomas, Rob Anderson Proxy | |

Staff Support:

- | | |
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| <input checked="" type="checkbox"/> Andy Koester, ADEQ | <input checked="" type="checkbox"/> Theresa Gunn, GCI |
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CRAM – California Rapid Assessment Method

Jason Jones, ADEQ Senior Scientist, reviewed the CRAM and what Arizona is doing. See presentation on Google Drive. Arizona is participating in development of the model to determine if it can be used to streamline assessments in Arizona.

- If successful could be used to assess performance of mitigation program
- Arizona doesn't have rapid assessment methods but looking how to assess ephemeral streams
- 0.8% of state is a wetland (Lowest percentage of all states) – inventory has been updated
- Completed Arizona sampling this summer
- CA is doing data correlation to determine if the model tracks with the results of the intensive assessment
- No other states have done the episodic riverine
- Assessment is as objective and requires training to do accurately (during training in AZ four teams came within 10 points of each other)

US Corps Compensatory Mitigation Program

Bill Miller provided an overview of the current program.

- Ephemeral streams were an issue.
- Impact greater than one acre.
- Nationwide are less than an acre and not habitats, etc. Are not typically mitigated but are reviewed by regulator.

No net loss drives the program, but has challenges:

- Difficult to gauge the in-lieu fee banks and if the fees resulted in equal restoration
- Historically - No way to protect restored properties from future development
- How to handle ecological?

Performance Standards

- Don't have a functional or conditional assessment method available in AZ. Corps has been hoping some agency might step in and develop.
- Hydrogeologic Methodology (HGM) takes 15 years to develop fully for a region. CRAM may be a quicker way to create the methodology for Arizona.
- Must use qualitative method instead of quantitative.
- Mitigation Ratio Checklist first completed by project manager and then reviewed by all regulators.
- Other states use qualitative methods and like them, but have different conditions.
- HGM doesn't transition into the regulatory world.
- Would like to see CRAM used in AZ for 404.
- New Mexico has a CRAM type program but doesn't apply to ephemerals. Still need AZ tailoring for different eco systems.
- Oregon has been working on a rapid assessment tool for a few years and make have some applicability.
- Pre-2008 preference was permittee responsible mitigation on site or as close as possible.
 - Expensive; not qualified; no long-term success.
- 4 in-lieu sponsors AZ Game and Fish; Prescott Creeks; Tucson Audubon Society; LaPaz County Endangered Species Fund (non geographic – Section 10 fish impacts).
- Challenge – need to have a project within the watershed of the project. Could have permittee responsible or allow out of watershed.
 - No mitigation banks in AZ (considerations include investors, sell credits, build out first, thinking like a business, sell credits as a reasonable rate)
 - In lieu fee banks are typically NGOs and agencies and get monies up front. Corps feels this is riskier.
 - Over last 8 years
 - 16.5 credits per year – to construct project
 - Only sold approximately 8.5 credits per year
 - Difference is proposed projects did not move forward

- Annual averages/vs. spikes in some years
- A credit equals one acre for now. Ideally it would be in term of functions and values.
- Credit demand may be impacted by the definition of WOTUS. Actual practice in the field in determining any changes is pending WOTUS-based rule changes.
- Seeing more developers willing to rely on AJDs.
- Game and Fish, before 2008, developed legacy projects that worked well. With new construct of real estate protection puts more requirements on the agency and the permittee. Cost per credit can sky rocket and dwindle.
- Additional mitigation bank concerns
 - Front loading the mitigation
 - Potential that G&F could create properly funded mitigation banks, haven't explored but could be a possibility
 - From federal perspective no prohibition, but may be some state issues, may have a hang up in the financial assurances
 - Set up front by mitigation bank
 - Locked up and only used for maintenance, but provides certainty on the applicant side. Corps would love to know there were credits available, but market isn't supportive now

Financial Assurances

- One level with construction to assure construction.
- Once performance standards are met there needs to be endowment or a trust/fund to guarantee the site can be maintained in perpetuity.
- In lieu credits are determined by bank but reviewed by Corps. Can sell credits early and phases through project development.
- Mitigation bank – Corps doesn't get involved.
- AZ is about \$100,000 per credit – reassessed annually to ensure funds available.
- Financial instruments which can be used could be considered for investments

Real Estate Protection

- Can cities cross easements for utility? Have to maintain function. Grazing and fishing may be allowed in restoration area.

Integrated Review Team (IRT)

- Reviews everything and conflict management but can slow down a project
- Biologists reviewing real estate and financial instruments
- Need to capitalize more to focus on management and resource
- Includes EPA, Phoenix, US Fish and Wildlife
- Team of experts to implement program

Questions:

- How many FTEs to administer CM portion of program? Every regulator has a role in assessing CM. Bill spends about 30% of his time managing the program. There is support outside of the Phoenix office: 64 in lieu in nation and 4 active in AZ.
- Site Protection Assessment Forms templates need to be tweaked.
- EPA typically likes to see more mitigation than Corps feel is justified and when disagreed the Corps makes the decision.
- Most of impacts in ephemeral restoration and are difficult to restore. Seems like all is out of kind. Near term won't be re-soled. Long term could use RIVETS – restore the uplands habitats and species (US Fish and Wildlife) giving larger sites for in-kind.
- Are we undervaluing ephemeral streams? Dry washes easy to find but will they be in the future?

What is the biggest challenge?

- First thing having CRAM – low hanging fruit
- How to balance demand of credits annually to have successfully in lieu fee sponsors
- Lots of moving parts to be integrated and makes it complicated

Research from Other States

- David Kimball's analysis of flexibility of CM standards
- ADEQ has sent questions to other states
- Andy to update David on how to proceed
- Need to have communications regarding mitigation. What are we trying to target? Bare bones to gain assumption? What if state gets authorization and then adds on in the future? What if we adopt the rule and not take the time to deal with ambiguities and how it applies to unique environment in Arizona? To what extent can and should we address the problems to be a more functional state program?
- How did MI and NJ change their program after the 2008 rule?

Action Items

- Save the CRAM and Corps presentation to the Google Drive
- Feedback back to David on how to contact other states
- Inform TWG members to contact Sallie if information is needed from the Corps
- Doodle poll for a new meeting time

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

- Determining what you need to do
- Assessment methodologies

Next Agenda Items

- Define where do we want to go – Define the gaps
- Where is it we are going
- Send gaps and opportunities for streamlining