ADEQ Arizona Department of Environmental Quality MEETING SUMMARY

TWG: **COMPENSATORY MITIGATION**

Meeting: #3 **Date:** September 27, 2018 **Time:** 10:00 am

Attendees:

☒Robert Anderson, Fennemore Craig

☐Joe Bardswich, Golden Vertex Corp

☒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

☐Spencer Kamps, Home Builders Association of Central Arizona

☒Dave Kimball, Gallagher & Kennedy

☐Keith Knutson, Arizona Game and Fish Department

☒Shawn Lowery, Arizona Game and Fish Department

☐Amanda McGennis, Arizona Chapter Associated General Contractors

☐Myron Smith, KGHM

☐Brenna White, Department of Interior, National Park Service

Guests and Proxies

☒Jennifer Ward, Joe Bardswich Proxy

Staff Support:

☒Andy Koester, ADEQ

☒Theresa Gunn, GCI

Select Vice-Chair

No nominations or volunteers

Arizona's Goal in 404 Permitting Assumption

- Outline what makes sense, provide information to show it is credible and submit to EPA for their review
- Don't see a lot of change to the regulations, but do see improvements in the procedures and guidance
- How will assumption of the 404 program change EPA's role: Corps now stands strong
- Where can we provide flexibility
- Look at the flexibility in process
- What is the ongoing program dialogue regarding what we can or cannot do
- How do we involve the EPA early on
- The statute says what it says and we cannot go above it
- Given the legal limitations, we're probably tied to the rule
- We need to define where we need to spend our time

Assessment Methodology

- Appreciated the CRAM discussion
- Assessment methodologies have been a significant obstacle
- Encouraged about the direction of the CRAM and Corps interest in moving it forward
- Concerned AZ doesn't have an assessment methodology based on our climate, hydrology and geomorphology
- In favor of rapid assessment methodology, if can be adapted to our environment
- Workgroup could recommend ADEQ move forward in developing CRAM for Arizona
- Corps process could be improved for the qualitative assessment
- EPA believes ephemeral systems are as valuable as perennial
- Mitigation Ratio method needs to be improved and will have to be discussed with the EPA
- Needs to consider how CRAM work for all stakeholders
- Qualitative is open to subjective review; need more reliability
- Market wants certainty; and no certainty in Arizona
- Need a template; methodology to let permittees know what is expected
- Not sure what standards EPA will approve in Arizona; will they allow flexibility
- Concern about the error margin in assessments conducted by different individuals
- If we import CRAM will need to have a higher level of consistency

The group will look at two approaches: 1) how to improve the existing qualitative process; and 2) determine if the new CRAM will be an appropriate quantitative tool.

2008 Compensatory Mitigation Rule

- Extremely small number of credits sold in Arizona on an annual basis
    - Not working well for in-lieu banks efforts to maintain a program
    - Tucson is selling 1.7 credits annually
    - Doesn't allow for economies of scale
    - Less likely mitigation banks will move into the state
    - Do not know when and at what volume credit sales come in
    - Prescott Creeks – only one small sale in last two years
    - AZ Games and Fish – statewide projects; develop trend analysis by talking to Mining Association and ADOT; operational since 1999; sold 10 credits in last year; don't establish sites near other in-lieu banks
    - Timeline for implementation is unrealistic due to inability to accumulate enough capital to establish long-term endowments and implement on the ground improvements
    - Credit sales based on the economy
    - WOTUS definition could change in-lieu fee programs
    - Long-term financial assurance has driven up the costs of the credits (2/3 of the credit cost is to the endowment for management)
    - New 15 acres project is $180,000 per acre
- In-kind mitigation (restoration within watershed) is almost impossible
- In-kind can mean both watershed and resource itself, structural type
- The mitigation rule is too wishy washy

- If we simply don't have ephemeral in lieu fee projects out there, the out of kind mitigation could protect higher quality waters
- Rule doesn't define watershed; EPA uses HUC codes and Game and Fish defines watersheds more broadly
- What support will in-lieu fee banks need from ADEQ
    - We would most likely have to have to start working very soon on the enabling instruments
    - We're providing the reparations to unavoidable impacts
    - What happens to existing projects
    - What if only 2% of credits have been sold
    - What happens with the current enabling instruments
    - Would want to work with ADEQ in a similar way as we are with the Corps
    - Make development plans better meet the demand, if possible ("crystal ball") this has been the biggest collaborate effort
    - Corps has been a key collaborator with the sites throughout the process
    - Look to them for a significant amount of guidance for structure and market needs
    - It's unclear what needs to happen and exactly how it needs to happen
    - Moving forward we would look to ADEQ for the same level of support
    - Is ADEQ willing to step into the shoes of the program
    - ADEQ just jumping in on an existing instrument could be difficult; CWA doesn't allow for a transition period; took 5 years to transition to new 2008 rules
- Getting the mitigation plan done under the new rule is very complicated and expensive; financial assurance and endowment costs are very high
- It would be good to be able to use State Trust land for mitigation (preservation approach) but it is far down the list of priorities in current rule
- Permittee-responsible mitigation has not worked for State Land from a land use, time value and practicality point of view
- How are mitigation ratios developed

Action Items

- Each member to define their ideal state
- Send a Doodle Poll to change the meeting day currently scheduled on Thanksgiving Day

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

- Determining what you need to do
- Assessment methodologies
- Current Qualitative Assessment

Next Agenda Items

- Amanda Best to review current qualitative process and suggestions for improving
- Where do we need to spend our time