



**TWG: COMPENSATORY MITIGATION**

**Meeting:** #5      **Date:** Oct. 25, 2018      **Time:** 10:00 am

**Attendees:**

- |   |  |
|---|--|
| <input type="checkbox"/> Robert Anderson, Fennemore Craig                         | <input type="checkbox"/> Spencer Kamps, Home Builders Association of Central Arizona     |
| <input checked="" type="checkbox"/> Joe Bardswich, Golden Vertex Corp             | <input checked="" 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 checked="" 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 type="checkbox"/> Jonathan Horst, Tucson Audubon Society                   |  |
| <input type="checkbox"/> Bob Iannarino, Psomas                                    |  |

**Guests and Proxies**

- |  |   |
|--|---|
| <input type="checkbox"/> Lee Decker, for Dave Kimball, Gallagher & Kennedy             | <input 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

**Ideal Future State**

**Assessment Methodology**

The group discussed the following ideal state for assessment methodology:

- Need a quantitative methodology
- Provide more incentives/benefits for creation and restoration
- Improve the current qualitative process until the quantitative methodology is available
- Have the quantitative methodology validated so permittees know the approach is acceptable
- Need “flexible certainty” in the program
- Think outside of the box
- CRAM ephemeral model is important and would be beneficial for Arizona
  - NM has a CRAM type model is working to adapt the ephemeral CRAM to NM
  - EPA grants are available to agencies to develop quantitative assessment models

- CRAM could be helpful in developing better mitigation plan, but it will depend on administration
- It will improve the assessment of lost values; but not how to replace them
- Should provide a better understanding of the variability of ephemeral streams
- Change ratios/thresholds to provide incentive for preservation and allow preserved areas to be used for passive recreation
  - AZGF legally challenged Corps position successfully; in Arizona the public has access to preserved areas for activities such as birdwatching and hunting, but no formal trail system is provided

In summary, the members of the TWG support Arizona adopting CRAM if viable and, in the meantime, improve the qualitative methodology and provide more incentives for preservation.

## Mitigation

The following are the suggestions for an ideal state.

- Allow mitigation out-of-kind and out of watershed to provide more flexibility
  - Projects are not always available in the same watershed and permittee mitigation is difficult
- Normal ratios are varied; 11:1; 6:1; 2:1 and depend on the project manager and variability of stream functions
- Unless codified in rules it will be difficult to remove variability in the ratios but that would restrict flexibility
- Internal coordination between agency project managers will create more consistency but takes more review time
- ADEQ has adopted a priority approach to watershed monitoring; is there the potential to prioritize areas in the state where restoration is most needed?
  - This would be a way to have synergy and get more bang for the buck
  - Arizona is uniquely situated and could create a group of mitigation banks to restore high priority areas
  - A barrier would be the requirement to restore within watershed and in-kind
  - Would need to ensure it does not negatively affect current ILF projects and leave stranded assets
  - AZGF has moved away from larger projects and their attendant economies-of-scale, so they could have projects in more watersheds where the demand for credits is anticipated to proactively prepare for future demand
- EPA has enforced the in-kind restoration and may be a challenge; would need to negotiate out of kind, out of watershed and incentives for preservation with the EPA
- Constant changes in the Corps mitigation program has created challenges due to lack of certainty and consistency for ILF sponsors and 404 permittees.
- Developing new enabling agreements with ADEQ may allow ILFs to change come of the financial assurances and perpetuity requirements which pose significant challenges and increases to credit costs

- The IRT is managed by the Corps and is a multi-disciplinary group which reviews projects and provides public oversight
  - The group in Arizona is advisory and provides oversight on project development and implementation
  - In other states the groups are more directly involved and has led to a national discussion on removing the IRT role
  - Good to have a public oversight committee to peer review project design and implementation
  - Initially, ADEQ may wish to partner with the Corps and only have one IRT
  - ADEQ is a member of the IRT
  - The group does not meet often
- AZGF has had initial discussions with ADEQ legal staff about enabling agreements with ILF sponsors
- The assumption document should include a draft enabling agreement to show ADEQ's support of the ILFs
- Members of the TWG support having a strong ILF program in the state
- 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
  - Would the annual reports (when required) be sent to ADEQ instead of the Corps?
- Would like to have mitigation banks in Arizona but currently there are not enough annual credit sales to be viable
  - Mitigations banks must complete project including the 5-year performance period before selling credits
  - It would be approximately 10 years from the time a bank forms until it is able to sell credits

## **White Paper**

The group reviewed the report outline.

- 2a1 – add perennial and interment waters
- Add current challenges to both sections
- Mitigation section should include costs/risk; success criteria, availability and other challenges

Writing Assignments:

- Amanda will take lead in drafting section 2 with the goal of having 2ai and 2aii ready for review at next meeting
- Theresa will ask Jason Rust, ADEQ, for an update on CRAM and possible content for the 2aiii section
- Scott will ask Rob to write the current challenges with mitigation
- Mark will draft the ideal future state for mitigation
- Keith will prepare some bullets on the gaps for ILFs

- Theresa will contact Mike Byrd and Jonathon Horst to see if they are willing to draft current state/benefits/challenges for ILFs

## **Action Items**

- The 11/22/18 (Thanksgiving Day) meeting has been rescheduled to Monday, November 19, 1:30 pm
- White paper writers to send draft to Theresa by 8 a.m. on November 7 and she will compile and send out to the team

## **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 8 – Review draft white paper