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West Hayden Island
Federal/State Wetland Regulations

Final Meeting Notes
March 12, 2013

Attendees: Mike Turaski (USACE), Tom Taylor (USACE), Mike McCabe (DSL), Cathy Corliss (Port), Greg Theisen (Port), Dana Green (Port), Mike Rosen (BES), Heidi Berg (BES), Melissa Brown (BES), Dave Helzer (BES) and Mindy Brooks (BPS)

Meeting Purpose: To discuss the evaluation procedures the federal and state agencies use when evaluating impacts to wetlands and other waters, and mitigation proposals as part of a CWA 404 and Removal Fill permit application.

Notes

Back ground and context provided by Greg, Mindy and Dave. The discussion at the meeting specifically did not include mitigation for riverine habitat. Nor did it include avoidance and minimization.

1) USACE and DSL operate under different policies and statutory responsibilities; but often they agree with each other in terms of evaluation of impacts and mitigation actions.

2) Without a delineation performed for WHI you don't actually know what you have out there.

3) The first question DSL and the Corps ask is if the wetland is jurisdictional – this requires wetland delineation and will be determined based on hydrology, soils and vegetation.
   a) Likely all wetlands on WHI will be jurisdictional under USACE authority because of adjacency to the Columbia River.
   b) Wetlands don't have to have a surface hydrologic connection to be jurisdictional; groundwater hydrology also is considered.
      i) All the wetlands are engaged at an approximately 30-year flood event.

4) After the wetland delineation is completed an assessment of wetland functions is performed.
   a) ORWAP is a common tool, but not the only tool. It could be one of multiple applied. If local information, such as the NRI, or tools, like buffers, are available the state and federal agencies would like to see it included.
      i) The evaluation is largely an office, with a single site visit, approach.
         (1) Delineations, completed by the applicant/consultant, are ground-truthed by DSL, but the assessment of wetland functions is not always. USACE may go on to the site or may rely on DSL or the professional performing the evaluations.
      ii) ORWAP assesses a range of biological and physical functions and values. If available, it includes inputs from local functional inventory information.

iii) ORWAP uses habitat associations to determine the likely wildlife species. No wildlife inventories are necessary. ORWAP is not a single-species oriented assessment; it is about larger groups of species and functions that can be assigned scores.

b) The interaction between the wetland and the surrounding habitats/land-use is taken into consideration. State and federal agencies are assessing for both ecological function and societal values.
   i) The forest buffer around a wetland and the functions of that buffer in relationship to the wetland are included in the assessment. The formula for determining the boundary of a wetland buffer is dependent on the function(s) being assessed. Size and function of boundaries in relation to existing wetland are taken into account
   ii) The distance radiating outward from the wetland is based on the functions or wildlife species of interest identified in the functional assessment.
   iii) DSL considers what the local requirements are and works with the local jurisdictions. If there aren't local requirements, they review the public comments.

5) The functional assessment and proposed mitigation are reviewed by other federal, state and local agencies as well as the public.
   a) There may be a wide range of comments received. Comments relevant to issues clearly within the jurisdictional authority of the reviewer must be addressed by the applicant. Those comments outside jurisdictional authority will not have a requirement to be addressed but will be noted for the record.
      (1) There are differences between how DSL and USACE respond to comments.
   b) The outcomes (mitigation to replace impacted functions) can differ between the DSL and USACE. The differences are negotiated through the process.

6) Wetland mitigation is predictive, intending to replace the functions of the impacted wetland.
   a) Mitigation is compensatory and can be made up of creation, restoration or enhancement.
   b) The objective of the mitigation is a functional lift based on existing functional assessment.
      i) Replacing the impacted functions is a statutory requirement for DSL. Ratios were an outgrowth of that requirement. Ratios are a way to manage risk and account for temporal losses.
   c) Using ORWAP involves a numerical evaluation. Generally, the reduction or loss of functions at the impact site is made up at the mitigation site. However, it's the big concept that DSL and USACE are interested in.
      i) First, does the proposal fundamentally work and are functions being replaced.
      ii) Second, the agencies look at the numbers and ratios. Ratios help address things like temporal losses.
      iii) Because the ORWAP functional assessment produces a grouped numeric score there is a greater reliance on the narrative aspect of the compensatory mitigation package when demonstrating replacement of functions and values.
      iv) It's a negotiated process.
   d) Choosing the mitigation site is vitally important. Site selection impacts whether or not functions can be replaced with the proposed compensatory mitigation.

i) If the likelihood of success is low then the site won't be accepted. If the likelihood of success is moderate then DSL will adjust the performance standards, monitoring period, etc. to make the likelihood of success greater.
ii) Monitoring is generally 5 years, but it can go up to 20 years to ensure success. Under the longer timeframe the reporting requirements are often less frequent.

e) On-site mitigation may or may not be ecologically preferable. But closer is preferred.
   i) USACE has a priority ranking for compensatory mitigation that is nested within and complimentary to the watershed approach. Under the current mitigation rule, if a mitigation bank is available it should be considered first. Then fee in lieu and then the applicant is responsible for mitigation, which may be on or off site depending on site-specific conditions.
      (1) Deviations from the hierarchy can be approved when an environmentally preferable reason is documented.
   ii) There is a mitigation bank with a service area that may include WHI located in Washington; however, applicant would not be required to use if DSL could not accept mitigation there.
f) Is it always in-kind mitigation? For the USACE, usually, but not always.
   i) If a particular watershed is really lacking in some function, like water quality, then the mitigation may focus on water quality even if that wasn't the primary impacted function. However, this is not exercised at the expense of other significant and adversely affected functions.
   ii) In addition the condition of the wetland (the example given was one of reed-canary grass invaded wetland) is taken into account when addressing in-kind. They don't approve another reed-canary grass infested wetland as mitigation for an existing.
g) Statewide the DSL is pursuing and getting a net gain in wetland function.

7) Is DSL going to assume 404 authority from USACE?
   a) There are negotiations but the outcome is very uncertain.
   b) Also, under Section 10 the Columbia River (and presumably the wetlands in the floodplain) is not assumable.
   c) Regardless of the outcome of the 404 assumption process, the wetlands on WHI will be regulated by both the USACE and DSL in the future because of USACE Section 10 authority.[1]

[1] Although not discussed, it is assumed the USACE review of wetland impacts and mitigation may be different since the USACE authority would come under Rivers and Harbor Act rather than Clean Water Act.