



SHEEP MOUNTAIN ALLIANCE

July 15, 2015

Re: Western Slope In-Lieu Fee Program comments (Public Notice SPK-2014-0110)

Dear US Army Corps of Engineers, Sacramento District:

Please consider the following comments for the Western Slope In-Lieu Fee Program.

Sheep Mountain Alliance (SMA) is supportive of compensatory mitigation banking programs and the ability for permittees to pass responsibility onto a third party to carry out watershed mitigation projects. The In-Lieu Fee (ILF) program however, removes long-term liability from the permittee without requiring them to produce a detailed mitigation plan or identify a specific mitigation site. It speeds up the permitting process by the Army Corps, and can result in a mitigation plan that does not reflect the true cost of the watershed damage permitted under section 404 of the Clean Water Act (CWA).

Avoidance of watershed and ecological damage must guide watershed-based projects, and if impacts cannot be avoided then measures must be taken to minimize those impacts. In circumstances where projects are permitted under section 404 of the CWA, mitigation banking has shown to be successful, as it requires the banker to acquire a site, go through an interagency review process, and place a conservation easement or other protections on the site *prior* to the full sale of credits and release of liability.

Under the proposed ILF program however, permittees are not held to the same requirements and do not need to provide a detailed mitigation plan or specific site selection prior to the transfer of liability. The absence of a permittee-designed mitigation plan prior to a CWA-permitted project can result in a lack of oversight and also a subsequent increase in environmental and watershed impacts during the life of the project.

It is imperative that permittees be required to produce an in depth mitigation plan prior to project implementation and that they, or the project sponsor, carry out mitigation efforts where possible during the life of the CWA-permitted project. Mitigation plans must include requirements for avoiding or minimizing environmental damage at the CWA permitted site and also a location and plan for a mitigation project(s) of equal value. Similar to mitigation banking, it is critical that mitigation sites be given permanent protection under the ILF program. Long-term protection can be provided either by choosing a project on public lands or securing a conservation easement. In order to track mitigation project success a sponsor

must be required to provide measureable objectives, a monitoring plan, ecological triggers and an adaptive management plan.

Under the ILF program, permittees can purchase mitigation credits prior to project implementation and completion. As a result, the permittee may not be held responsible for additional mitigation costs that were not initially accounted for. This needs to be addressed and one option is to have a system where permittees are able to purchase half of the mitigation credits prior to project completion, and are required to purchase the remaining credits after the mitigation project and long-term monitoring has been completed and is deemed successful by the Army Corps. This will allow the sponsor to account for additional costs accrued during the life of the project, and requires the permittee to provide additional compensation when needed.

Another concern with the ILF program is that it only provides general guidelines for a timeline regarding mitigation project implementation and completion. This can result in lapsed time before a mitigation project is begun, resulting in further watershed damage. Project sponsors must be required to begin the mitigation project within one year of the initial transfer of credits and complete the project within two years after it has commenced. For large or multiple project sites, extensions on this timeline may be amended when permitted by the Army Corps. Annual project reports completed by the sponsor in consultation with the Army Corps will help to ensure the project's success and guide adaptive management plans. Furthermore, detailed requirements need to be established for documenting ILF projects, as this will be critical to ensuring future project's success.

In summary SMA recommends that the following criteria are required for projects under the proposed western slope In-Lieu Fee program:

- Require permittees to produce a detailed mitigation plan prior to CWA approved project implementation. This includes plans to avoid or minimize environmental damage at the CWA permitted site. Mitigation plans also must include identification of a specific watershed mitigation site(s), which will be established, restored or enhanced under the ILF program.
- Provide data that shows that there is a substantial need to establish, restore, or enhance a watershed at the selected mitigation site(s).
- Show that the watershed mitigation project(s) is of equal or greater value to the watershed and ecological resources damaged by the project permitted under the CWA, section 404.
- Require permanent environmental protection on the selected mitigation site(s).
- Allow the permittee to purchase half of the mitigation credits prior to project completion, and require the permittee to purchase the remaining credits once the mitigation project and long-term monitoring is completed and deemed successful by the Army Corps.

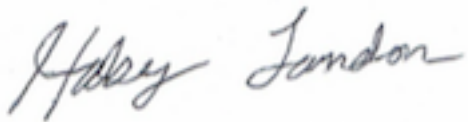
- Require that mitigation projects begin within one year of the initial transfer of credits. Projects must be completed within two years of commencement.
- Require annual project reports and document all completed ILF projects. Make all information available to the public.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in cursive script that reads "Leigh Robertson".

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A handwritten signature in cursive script that reads "Halsey Landon".

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