

Facilitated Discussion  
Compensatory Mitigation and the Watershed Approach

## Support

- Bill Gilmore, NC DENR, EEP: + Strongly endorse watershed plan process.
- Suzanne Klimek, NC EEP: (Support Gilmore) + Supports watershed approach: It is important to have incentives to drive site selection process based on environmental need, thus it is critical to have the watershed approach included in rule. To see what NC is doing go to nceep.net and see NC's watershed plans online.

## Ways to make it work

- Ann Redmond, WilsonMiller, Inc.: Defense of regional general permit as a method of programmatic implementation. *FL example: 50,000 acres that encompassed all or some of three watersheds; the mitigation strategy defined impacts and mitigation on basis of each watershed; in addition, the conservation or green infrastructure strategy, defined areas not to be developed and determined what remained for development under constraints of general permit, conservation units were designed (and mapped) based on a series of four broad criteria (had 13 conservation units each with a first importance (and different levels of importance): some to address water quality issues, some to address biodiversity issues, which encompassed about 30% of the entire area); one of the three watersheds (where entire watershed was within programmatic area) was a special high value watershed because of its estuarine characteristics had its own mitigation sequence (within watershed, no banks etc.), but for the other two mitigation sequence was redefined in that case based on the area, for best environmental bang for buck, each watershed had own bank, used GIS to study areas to find most appropriate areas for restoration; this plan took a couple of years to work it out to come up with system that would work for everyone, but it supports for using regional general permit as an effective tool*
  - Connie Bersok, FL DEP: (Support Redmond) FL example was a win-win situation, made permitting easier for regulatory agencies and provided assurance for banker, this type of program seems to fit in with the rule.
  - Ann Redmond, WilsonMiller, Inc.: response: 5% of wetlands in the area could never be developed, and it addressed cumulative and secondary impacts in the watershed
- George Howard, Restoration Systems: Bankers in NC are asked to not work in areas with watershed plans, in absence of watershed plans in NC bankers go through an extensive process to find the best land for the mitigation (even if it is expensive), maybe the banks should start formalizing the processes they use to find their sites, but most of formal government plans do not want to identify pieces of land targeted for restoration which is not valid
  - Suzanne Klimek, NC EEP: (Response Howard) Clarify George's point that bankers cannot work where there are watershed plans, actually bankers are asked not to work in areas where NC has done detailed

planning and where they are engaged with land owners so there is no competition, and there is another level of planning where bankers are given incentives to go into 14 digits HUC that they have identified as needed restoration.

- Jeanne Christie, ASWM: The watershed approach must be a public planning process, and there should be accountability in the system. Examples of regional permits are very good. Right now the district engineer has no ability to provide information to applicant and there is no accountability.

### **Other applications**

- Julie Sibbing, NWF: Watershed plans that prioritize what gets restored first have other purposes than just for mitigation, plans could be used for other federal and non-profit restoration work, if we could start to prioritize all of these efforts we could get more bang for the buck;
  - George Howard, Restoration Systems: (Support Sibbing) need to have watershed planning process apply not only to mitigation, but also to other restoration programs, which are dealing with much larger areas than mitigation (e.g. CREP, WRP, DU); watershed planning is just as important for impacts and restoration (in determining ratios etc.) as for mitigation;
  - Jennifer McCarthy, USDA, NRCS: (Response Sibbing, Howard) Put in support for NRCS programs and money for habitat and wetland restoration; watershed approach is a key part of NRCS strategic plan, in process of accepting grant proposal for different watershed districts to conduct watershed plans with other stakeholders, conservation security program (largest NRCS program) is based on watershed approach, so agency is looking at facilitation local groups to do watershed plans.
  - Siobhan Fennessy, Kenyon College: (Response Sibbing, McCarthy), a number of pilot projects have funded to do watershed plans and prioritization of restoration sites and there is a lot of data out there, and we know a lot about how to do the plans, but it needs to be made available, could make a lot of progress very rapidly if the information was made available.

### **General Concerns**

- Peggy Strand, Venable LLP: Should separate the issues of the data (scientific), the vehicle (regional general permit, county plan, private plan) and the political and stakeholder level (where public information comes in, federal guidance, state and county guidance). All three of these are important consideration, but they need to be addressed separately. The rule proposes to use plan if you have or data if you don't, and in the near future there will be a disparity between the quality of the data and the science, and the quality of the political plan and whether that plan is useful? There needs to be a balance between limited data, limited plans and desire that the watershed plan is important. Also, there will be an issue to separate the concepts of watershed plans (science) and land use plans (political).

- Mike Rolband, Wetlands Studies and Solutions Inc.: concerned that watershed plan is not practical to implement because they are expensive and in VA much of the land that is identified for restoration/mitigation is not really available.

### **Specific Concerns**

- George Kelly, Environmental Bank and Exchange: At the permit level, how do you deal with a specific applicant with specific mitigation needs in context of watershed plans that are specific to certain functions (e.g. to water quality), how do you address the impacted functions with specific conditions of the watershed plan;
- George Kelly, Environmental Bank and Exchange: How do you address service areas within a watershed plan, especially if the watershed plan is smaller or larger than the service area?
- George Kelly, Environmental Bank and Exchange: If watershed plans get very specific about prime sites for restoration and mitigation, this can lead to 'spot lighting effect' which can increase land prices and cause problems when working with landowners.
- Julie Sibbing, NWF: Need to fund watershed plan models so plans can be done quicker and more accurately.
- Jan Goldman-Carter, NWF/CWN Wetlands Groups: Should include in watershed definition a purpose statement that ties watershed planning to the Clean Water Act goals.

### **As it relates to the rule**

- Michael Thabault, US FWS: The rule is missing a way to enforce a minimum level of data quality needed to justify/craft mitigation proposal (or list of data sources that the Corps will accept for use in mitigation plan), if watershed plan is absent, in order to create consistency in the process.
- Bill Gilmore, NC DENR, EEP: Currently part of ILF fees pay for watershed planning, so if ILF programs are eliminated will that eliminate watershed planning money? Is it in best interest of state to have private banking institutions pay for watershed planning, and will those plans be shared with all stakeholders? Watershed plans need to be available to everyone and they need to be comprehensive not just for a specific type of impact. .
- Julie Sibbing, NWF: This rule is not the watershed approach rule, because without watershed plan don't have watershed approach, often times the applicant doesn't have the necessary information to prioritize what needs to be restored first and may then do whatever is cheapest or easiest, the solution may be, in absence of watershed plan, require mitigation be done as close to in-kind and on-site as possible;