Implementing and Monitoring Mitigation

Joint Legislative Task Force on Water Resource Mitigation

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Overview

- Implementing and Monitoring Water-for-Water Mitigation
  - Instream flow restoration
  - Agricultural well mitigation
  - Domestic well mitigation
- Implementing and Monitoring Out-of-Kind Mitigation
  - Concepts from ecological restoration and mitigation banking

Implementing Instream Flow Restoration

- Once water right is identified, file a water right change application with Ecology to change the purpose and place of use to instream flow.
- Ecology issues Report of Examination (ROE) that reviews extent and validity of water right, evaluates impact on other water rights, identifies primary and secondary reach of instream water rights (new place of use), and develops Trust Water Right schedule which lays out when water will be protectable instream.
- After ROE is completed, Ecology and water right owner develop Trust Water Right agreement, including terms for managing water, and water right owner deeds water to Ecology.

Monitoring Instream Flow Restoration

- Permanent transactions typically involve removal of water diversion and delivery infrastructure, unless only a portion of water right part of a transaction.
- Easement for monitoring granted to instream flow restoration proponent; generally allows access to monitor land on annual basis to ensure land is fallowed and infrastructure is not being used.
- Use stream gauge for monitoring water instream, typically existing stream gauges but where not available new gauges installed.
- Partnership with Ecology, WDFW, tribes, conservation districts and others needed to monitor instream flow and enforce against out-of-priority withdrawal.
- Works well in basins with lots of collaboration and good knowledge of water rights.

Implementing Agricultural Well Mitigation

- Once water right is identified, file a water right change application with Ecology to change the purpose and place of use to instream flow and mitigation.
- Ecology issues Report of Examination (ROE) that reviews extent and validity of water right, evaluates impact on other water rights, identifies primary and secondary reach of water rights, and develops Trust Water Right schedule which lays out when/where water will be protected instream and where mitigation will be available.
- After ROE is completed, Ecology and water right owner develop Trust Water Right agreement, including terms for managing water, and water right owner deeds water to Ecology.
- Simultaneously with water right change application, file new permit application for mitigated agricultural uses, including location, number, and size of wells or new surface diversion approach (water wheeling).
- New permits contain development schedule giving agricultural users time to develop their water use (underlying water right protected from relinquishment).

Monitoring Agriculture Well Mitigation

- Permanent transactions typically involve removal of historic surface water diversion and delivery infrastructure and building of new infrastructure for agricultural use.
- Use stream gauge for monitoring water let instream in critical reach, typically existing stream gauges but where not available new gauges installed.
- Partnership with Ecology, WDFW, tribes, conservation districts and others needed to monitor instream flow.
- Works well in basins with lots of collaboration and good knowledge of water rights.
- Metering of new wells (or other new diversion method) typically a component of mitigation strategy to ensure that ongoing water use is within limits of mitigating water right and to help agricultural users provide evidence of development of their well use.

Implementing Domestic Well Mitigation

- Once water right is identified, file a water right change application with Ecology to change the purpose and place of use to instream flow and mitigation.
- Ecology issues Report of Examination (ROE) that reviews extent and validity of water right, evaluates impact on other water rights, identifies primary and secondary reach of water rights, and develops Trust Water Right schedule which lays out when/where water will be protected instream and where mitigation will be available.
- After ROE is completed, Ecology and water right owner develop Trust Water Right agreement, including terms for managing water, process for distribution of water to mitigated uses, and water right owner deeds water to Ecology.
- Much more complex to develop approach to how mitigation water will be used because water is destined to mitigate much smaller uses over much larger area over longer period of time.
- Not many places have done this.

Kittitas County
Water Mitigation Program

- Purchased senior water rights (in the form of existing private water banks or existing agricultural rights) for about 900 domestic uses (10 years of building) to date.
- Transfer water rights to instream flow and mitigation (except existing water banks, where TWRA was assigned to County).
- Developed model for anticipated location of new domestic uses throughout Kittitas County.
  - Model included evaluation of both permit-exempt and permit-required groundwater water uses.
  - Transferred water rights to instream flow and mitigation.
- Entering into Master Trust Water Right Agreement with Ecology for all water rights purchased.

Package A

- For property <u>with</u> access to outdoor irrigation
- 275 gallons/day (annual average)
- $3,080 one time fee

Package B

- For property <u>without</u> access to outdoor irrigation
- 275 gallons/day (annual average)
- 25 gallons/day for up to 500 square feet lawn or outdoor use
- $3,995 one time fee

Customer Process

Obtain Water Mitigation

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Record metering agreement and proof of mitigation with Kittitas County Auditor

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Obtain approved Adequate Water Supply Determination (AWSD)from KCPHD

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Obtain Building Permit

Monitoring Domestic Well Mitigation

- Must monitor the instream flow component of the mitigation program as well as the domestic use component of the program.
- Instream flow monitoring similar to above examples:
  - Reliance on existing stream gauge for monitoring water instream, typically existing stream gauges but where not available new gauges installed.
  - Partnership with Ecology, WDFW, tribes, conservation districts and others needed to monitor instream flow.
  - Works well in basins with lots of collaboration and good knowledge of water rights.
- Metering of new wells typically a component of mitigation strategy to ensure that ongoing water use is within limits of mitigating water right and to help County/water users provide evidence of development of their well use.

Kittitas County Metering Program

- Measuring water usage for:
  - Customer compliance
  - Kittitas County compliance
- $180/year
- Customer responsible for equipment
- Meters read via cellular technology

Implementing Out-of-Kind Mitigation

- These are concepts borrowed from ecological restoration/mitigation banking world: (1) wetlands, (2) species conservation (including salmon) and (3) Natural Resources Damages restoration under CERCLA and OPA.
- Mitigation driven by collaboration between mitigation sponsor and Interagency Review Team: Ecology (co-chair), Corps (co-chair), EPA, USFWS, NMFS, tribal government, WDFW, and local government.
- Defined by development of Prospectus, which lays out proposed restoration that will create ecological uplift on particular site.
- Development of restoration construction plan and modeling of ecological uplift that will result.
- Documented in Mitigation Banking Instrument.

Mitigation Banking Instrument

- Describes location and purpose of restoration as well as the location of eligible mitigation (service area).
- Lays out proposed restoration, enhancement, and preservation projects on restoration site.
- Provides information on proposed ecological functions that will be improved and where on restoration site.
- Includes performance standards that will be used to measure success of ecological uplift. Requires that any deviation from these to be approved by IRT Co-chairs.
- Contains detailed property ownership information, including conservation easement to ensure restoration will be perpetual.
- Describes financial assurances that will be provide by mitigation sponsor over the various phases of project.
- Require long-term stewardship endowment.

Lifecycle of a Restoration Project

Siting/ Design	Construction	Monitoring/ Maintenance	Long Term Site Management
~1 year	Defined Period 5 to 10 years	Defined Period Up to 30 years	Greater than 30 Years Possibly Indefinite

Adaptive Management

← Defined Period
Up to 30 years →

Common Financial Assurances Mechanisms

- **Letter of credit**: a document issued by a financial institution that guarantees the payment up to a stated amount for a specified period of time.
- **Insurance**: a contract between two parties, whereby the insurer agrees to pay on behalf the mitigation sponsor for the claims made against the policy for a specified period of time.
- **Surety bond**: provides financial backing to the mitigation sponsor and guarantee the sponsor's obligations.
- **Escrow account**: a contract between two parties for the benefit of a 3rd party; the escrow account collects and holds the funds to pay for costs until such time as a specific activity or date arises.
- **Self-insurance**: need to make sure the sponsor has sufficient financial resources to meet financial thresholds or provide corporate guarantee.

Financial Assurances By Project Phase

Financial Assurance Mechanism	Restoration Project Phases				
	Siting/Design	Construction	Monitoring/ Maintenance	Adaptive Management	Long-Term Site Management
Third-Party Instruments LOCs, Insurance, Surety Bonds, Escrow Accounts	🟢	🟢	🟢	🟢	🔴
Individual Self-Insurance Financial Test, Corporate Guarantee	🟢	🟢	🟢	🟡	🔴
Trust Fund	🟢	🟢	🟢	🟢	🟢
Public/Private Risk Sharing Revolving Fund, Risk Pooling (Risk Retention Groups)	🟡	🟡	🟡	🟢	🟢

Conclusion

- Implementing and monitoring mitigation is complex.

- Designing, implementing and monitoring mitigation takes time, financial resources, collaboration, and creativity.

- There are existing tools that can be used to help move this effort forward. Many will have to be adapted to the water resource challenges Washington is currently facing but there is a foundation.

Questions?

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