

Agenda Item 7.6(c)...9/15/04

Recommendation of Brazos G Water Policy Workgroup on 5/18/04

TOPIC:

ENVIRONMENTAL – REGIONAL OR STATEWIDE ENVIRONMENTAL MITIGATION SYSTEM

BRAZOS G RWPG POLICY RECOMMENDATION:

No recommendation was made by the Brazos G Water Policy Workgroup.



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Author: Boeker

Version: 4 November 13, 2003

Policy Topic: Environmental--
Regional or statewide environmental mitigation system

Brief Description of Issue: What are potential advantages to developing a system or project to address environmental mitigation for water projects on a regional or statewide basis?

Possible Solutions, Impacts, Considerations:

Establishing a mitigation system would require identifying a lead entity to address question such as:

- Who would assess the need for mitigation on a regional, watershed, or statewide basis?
- Who would fund and administer such an effort?
- Who would secure necessary approvals from regulatory agencies?
- What additional legislation, if any, would be required at the state or federal level?

Background:

The National Environmental Policy Act as amended requires the mitigation of certain effects of major water projects, such as a reservoir. Federal regulations (40 CFR 1508.20) define mitigation to include:

- a. Avoiding the impact altogether by not taking a certain action or parts of an action.
- b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- c. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- d. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- e. Compensating for the impact by replacing or providing substitute resources or environments.

The Texas Commission on Environmental Quality may require major water rights applicants to take reasonable actions to mitigate the adverse impacts of a proposed application on fish and wildlife habitat (Water Code §11.152).

During preparation of a regional water plan, water management strategy evaluation requires review of the effects of each strategy on environmental factors including environmental water needs, wildlife habitat, cultural resources, and effect of upstream development on bays, estuaries, and arms of the Gulf of Mexico. Mitigation and other environmental costs are included as part of the estimate of water management strategy costs. One approach that may be particularly applicable to the construction of a reservoir would be to estimate the acreage that would have to be set aside for mitigation purposes and the approximate costs to purchase this amount of land. Note that a more comprehensive estimate of the amount and types of mitigation necessary would require a more detailed environmental study by potential project sponsors, which could be part of the feasibility studies necessary to secure required permits.

Major water projects often provide benefits beyond the area where the project is located. However, there may be local concerns that the direct project impacts and the indirect impacts of mitigation will occur primarily near the area where the project is located. A regional approach to mitigation may allow both the benefits of mitigation (such as wildlife protection and recreation) and negative aspects (taking land out of production and removing it from county tax rolls) to extend over a larger area. The actual incidence of impacts, both positive and negative, will vary from project to project. A limiting factor to such an approach is the current regulatory preference for mitigation taking place near the affected area. "Mitigation should be required, where practicable, in areas adjacent or contiguous to the discharge site (on-site compensatory mitigation) (U.S. Army Corps of Engineers, 2002).

Mitigation banking provides an example of a more regional approach to mitigation. This includes "wetland restoration, creation, or enhancement for the purpose of compensating for unavoidable wetland losses in advance of authorized impacts to similar resources." While not the preferred option, in some cases "off-site, in-kind mitigation is acceptable" (Morales, no date). This sets up opportunities for developing mitigation banks. The

Texas Department of Transportation has established several mitigation banks. This has advantages such as saving time as mitigation can occur in advance of construction projects, and allows for mitigation at a scale more likely to be successful than a series of smaller individual efforts.

Recommendations : To be developed

Sources:

1. Morales, Lisa T., *Local Government Involvement in Mitigation Banking*, Washington, D.C: U.S. Environmental Protection Agency.
2. U.S. Army Corps of Engineers, Regulatory Guidance Letter, December 24, 2002, "Guidance on Compensatory Mitigation Projects for Aquatic Resource Impacts Under the Corps Regulatory Program Pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbor Act of 1899." Available at http://www.epa.gov/owow/wetlands/pdf/RGL_02-2.pdf