Changes to HCCC ILF Program Instrument

Between June 7, 2012 and June 15, 2012

The following changes were required by the US Army Corps of Engineers Office of Legal Counsel. Note that a few minor edits such as deleting or inserting extra spaces are not shown below. Explanations for the revisions are included where necessary.

Basic Agreement

- P. 9 of 24, line 20: Change "the" to "a"
    - Clarifies that there is more than one service area and each service area has sub-accounts for tracking purposes
- p. 11 of 24, line 26: Change "Appendix W" to "Appendix X"
- p. 16 of 24, line 3: Insert ", the Corps, Ecology,"
- p. 24 of 24, lines 1-11: Insert signature block for EPA
- Cover sheet and footers: Changed dates from June 7 to June 15

Technical Appendices

- p. 3, second bullet: Change "Corps and Ecology" to "district engineer"
    - Because ILF is a federal rule, it is ultimately the DE that has the overriding authority
- p. 4, last paragraph: Change "the HCCC ILF Program, in consultation with the IRT," to "in the Hood Canal service areas, the sponsor, resource agencies, and tribes"
    - See explanation in following bullet
- p. 4, last paragraph: Change "They include" to "These may include" in 2 different places
    - The inclusion of examples of "difficult to replace resources" in the federal rule went through public comment and rule making. Specifically including other "difficult to replace resources", as identified by the HCCC IRT, could set precedent for other areas without any public review and/or input. Corps Office of Counsel, as well as Corps management, expressed concern about this. Therefore, we identified that we are talking about the Hood Canal Program specifically and loosened the language a bit to say "may include" rather than the definitive of "do include". The message and intent remains the same.
- p. 4, last paragraph: Insert "for rivers and streams" to clarify channel migration zones
- p. 9, first definition: Insert "or separate the link between" to definition of decouple
- p. 15, next to last bullet: Delete "(including looking at off-site alternatives to achieve the project purposes)"
    - Bringing in the 404(b)(1) Alternatives Analysis and off-site alternatives was discussed at length with Corps management and Office of Counsel. Both felt strongly that references to 404(b)(1) were inappropriate to include in the ILF Program Instrument for several

reasons. The regulatory permitting process is a separate and distinct process and a permittee does not enter into the ILF Program until mitigation sequencing has already occurred. Once a permittee enters into the ILF Program, the 404(b)(1) Alternatives Analysis, if necessary, would have already occurred. In addition, 404(b)(1) is a federal law, not a requirement of state, local, or tribal governments, which this Program also covers. And finally, the phrase "including looking at off-site alternatives to achieve the project purposes" does not belong in the ILF Instrument because, again, it is a federal requirement, and because even as a federal requirement it is not a requirement for many of our projects, such as water-dependent projects and impact projects utilizing the Corps Nationwide Permit Program.

- p. 21, first full sentence: Change "45 days" to "30 days" to fit permit window timelines
    - The Corps has a 45-day timeline to make a permit decision on certain Nationwide Permits. If we exceed this limit, we are considered in "default" and lose our ability to comment on the compensatory mitigation and provide mitigation special conditions in the permit. Therefore, the Corps needs those 15 days to coordinate and address comments of the IRT, acting in an advisory role, for these impacting projects utilizing the Nationwide Permit process.
- p. 31, last paragraph: Change "Salmon Recovery Fund" to "salmon recovery funds"
- p. 31, last paragraph: Change "the HCCC will not proceed with the mitigation project" to "the HCCC will not proceed with the mitigation project in question, but will instead proceed with an alternative mitigation project, as outlined in this instrument."
    - Corps Office of Counsel had concerns that reading this sentence could be construed that no mitigation would be required and wanted clarification.
- p. 122, only paragraph: Change "Monitoring reports must be provided upon request by the district engineer" to "The district engineer must provide monitoring reports upon request"
- Cover sheet and footers: Changed dates from June 7 to June 15