

THIRD-PARTY COMPENSATORY MITIGATION UPDATE

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Regulatory Program Workshop

October 2016



US Army Corps of Engineers
BUILDING STRONG



- Bank and ILF Evaluation Process
- IRT Process in CA
- SPD Banking Template Updates
- Status of Banking in SPK
- What's New?

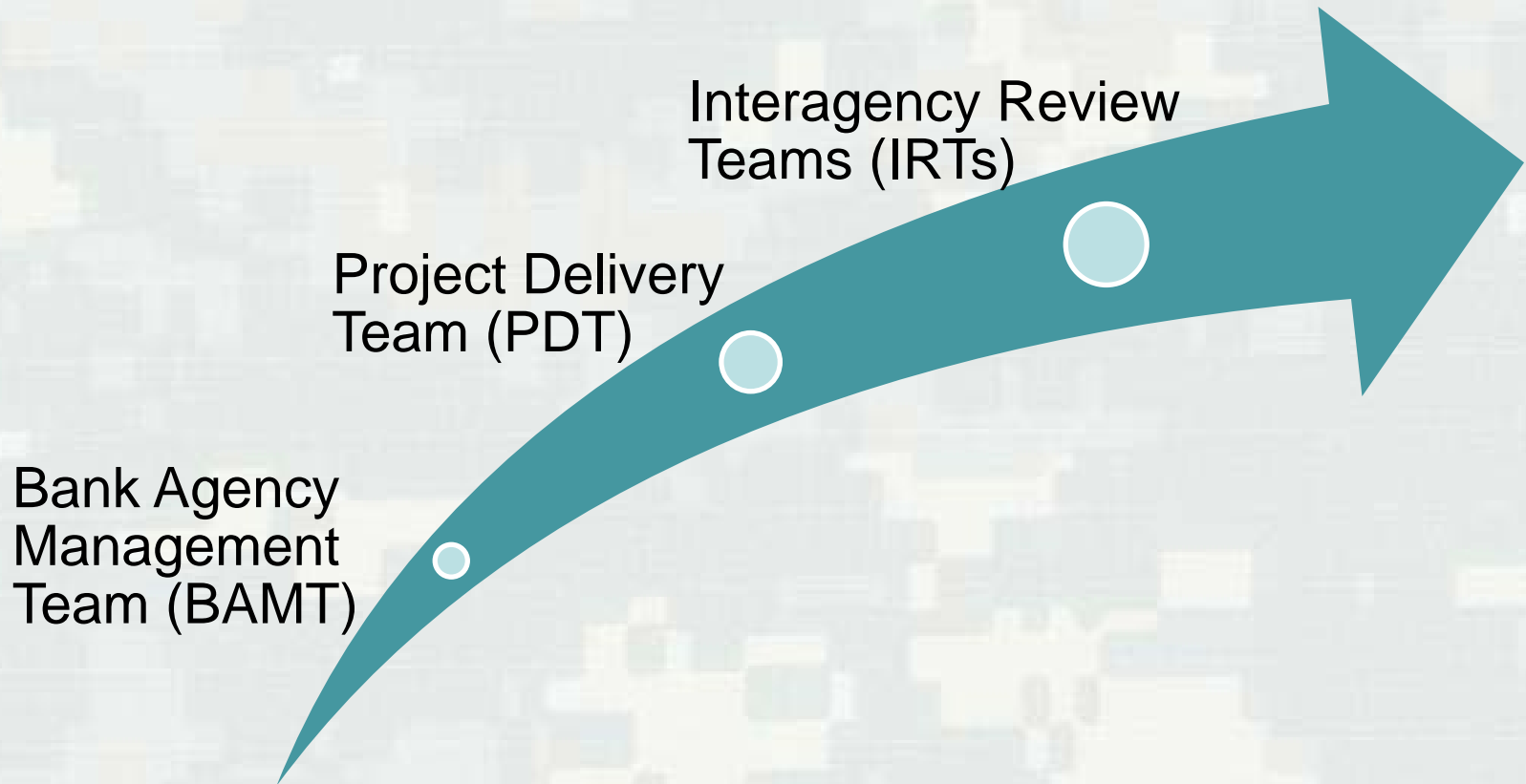


2011 8-Party MOU

- Replaced 2006 MOU
- 2011 MOU improves on 2006 MOU by adding:
 - ▶ SPK, SPL, and SPN Commanders as signatories
 - ▶ The State Water Board as a signatory
 - ▶ Collaboration on development of templates
 - ▶ A dispute resolution role for the BAMT relative to PDT disagreements or impasses
 - ▶ A responsibility for IRTs to seek BAMT approval for significant deviations from templates or guidance in the development of individual banks or ILF programs



Who's Involved?



California Approved Templates

- BEI (2008)
 - ▶ PDT update in process
- Long-Term Management Plan Template (2008 and updated SPD Regional Mitigation and Monitoring Guidance 2015)
- Conservation Easement (2010)
- Property Assessment and Warranty (2009)



Purpose of the Templates

- Insuring all applicable legal and regulatory requirements are met
 - ▶ Consolidates requirements from multiple agencies
 - ▶ Include requirements from mitigation rule
- Aiding prospective bankers develop banking documents
- Implementing equivalent, effective standards
- Ensuring predictability and efficiency
- Expediting Mitigation Bank Review



How do the Interagency Review Teams Work in SPK?

California	Nevada, Utah and Colorado
Unique IRT formed for each bank	Unique IRT formed for each bank
USACE chair (Project Manager)	USACE chair (Project Manager)
Co-chairs from any agency awarding credits (common)	Co-chairs from any agency awarding credits (uncommon)
Agency subject matter experts advise IRTs	USACE subject matter expert advises IRTs
Standing monthly meetings – specific bank focus.	<i>Ad hoc</i> meetings as needed
Quarterly meetings – general banking focus	
State-wide approved templates for consistency	

Getting an IRT Meeting

>2 Weeks before Meeting

Sponsor prepares
submittal per checklist

Sponsor requests an
appointment

POC tentatively
schedules



~2 Weeks before Meeting

IRT Chair verifies completeness

POC locks in agenda



1 or 2 Days before Meeting

Sponsor submits any visuals for
meeting

POC sends visuals to remote
participants



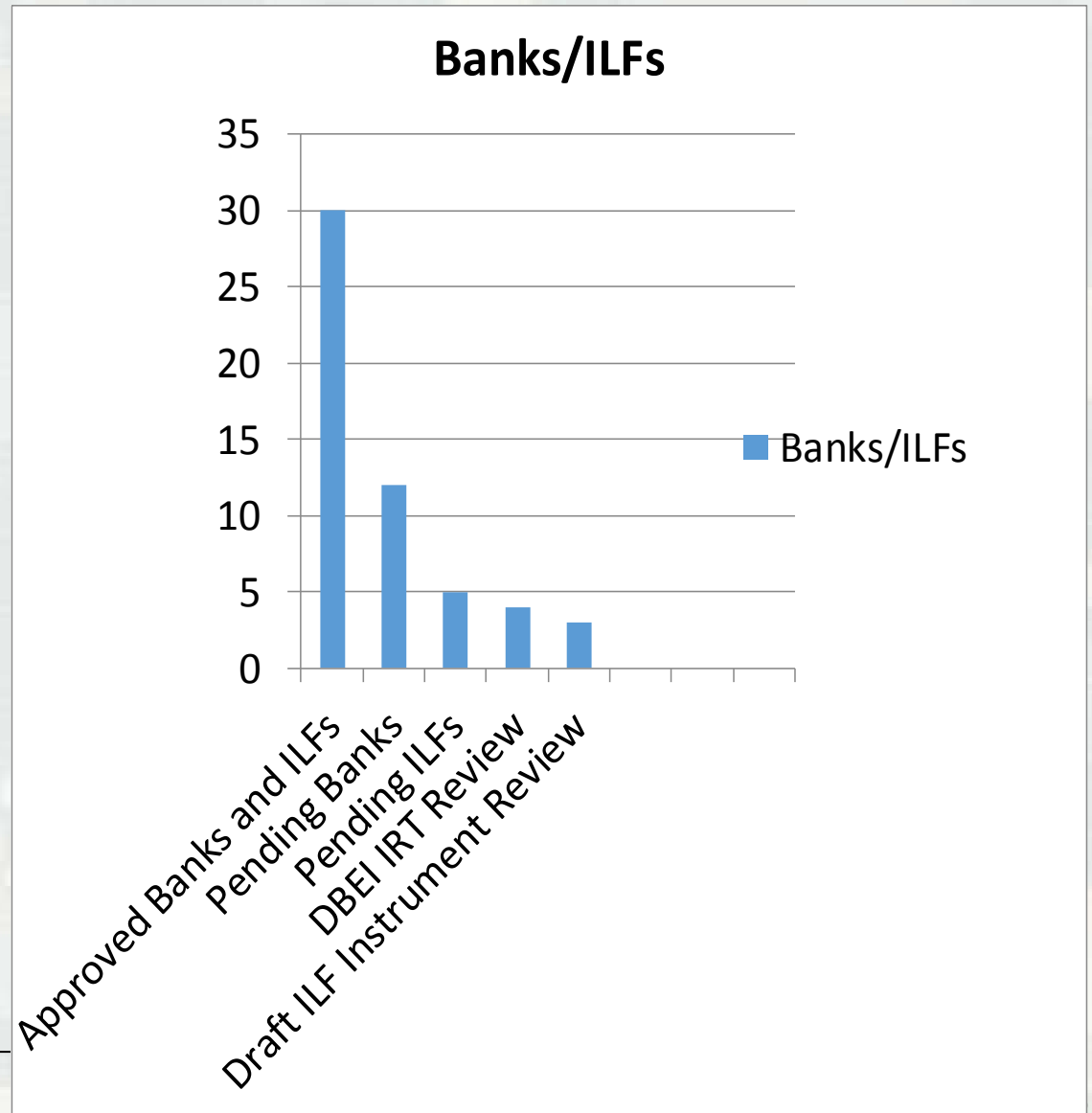
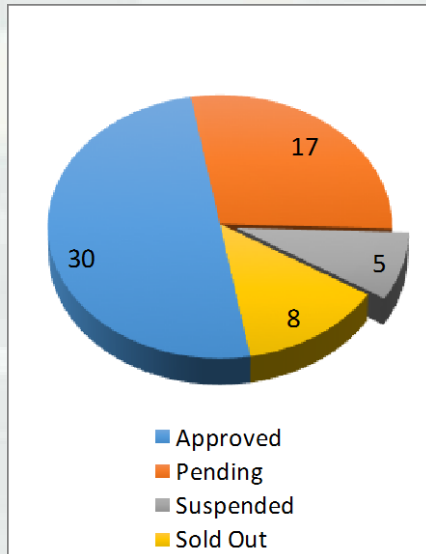
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Standing Agenda

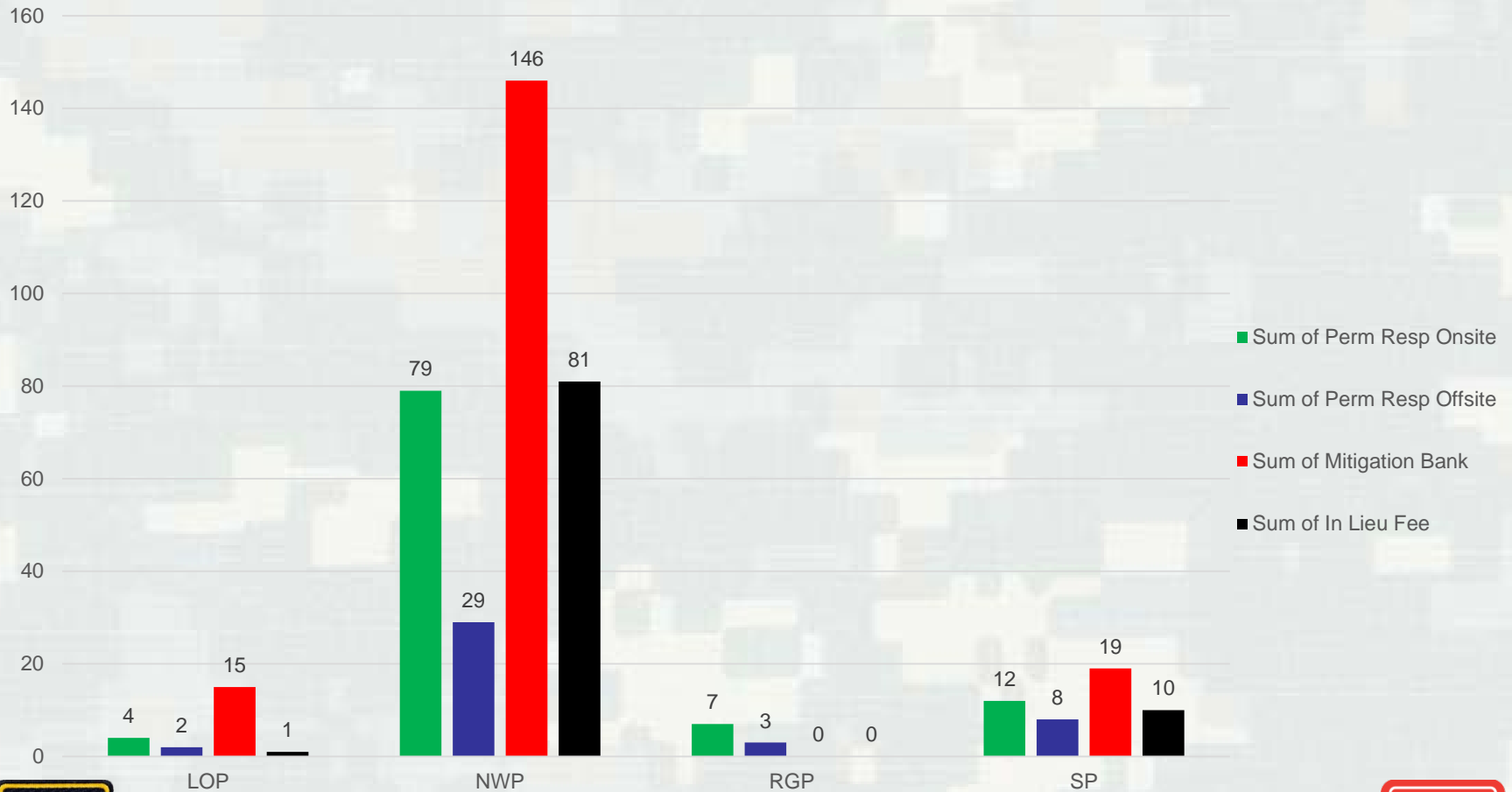
- Agency Only (1-2 hours)
 - ▶ Follow through from last meeting
 - ▶ Status check (report on pending banks)
 - ▶ IRT Operations (topical)
- With Sponsors (4 one-hour appointments)
 - ▶ 45 minutes for Sponsors with IRT
 - ▶ 15 minutes for agency only
- Agency only wrap up (30 minutes)



Approved Bank/ILFs in SPK (October 2016)



SPK's Mitigation By The Numbers



National Fish and Wildlife Foundation's ILF Program

- SPK Boundary in CA
- Approved Oct 2014
 - ▶ Credits to offset impacts under:
 - CWA and RHA
 - Porter-Cologne Water Quality Control Act
 - ESA (NMFS only)
- 2 Credit Types: Vernal Pools and Aquatic Resource
- 12 VP Service Areas
- 17 Aquatic Resource :Service Areas
- RFP for ILF issued April 2016
 - ▶ ILF Site proposals finalized in 2017



What's New

- November 2015 Presidential Memorandum
 - ▶ Directed all Federal agencies that manage natural resources, “to avoid and then minimize harmful effects to land, water, wildlife, and other ecological resources...”
- IWR – White Paper on Financial Assurances (Update, March 2016)
 - ▶ Update reflects experiences with financial assurances for compensatory mitigation since the original 2011 publication.



What's New Cont'd

- IWR – Compensatory Mitigation Site Protection Handbook for the Corps' Regulatory Program (July 2016)
- Federal Register - Endangered Species Act (ESA) Compensatory Mitigation Policy
 - ▶ Published 2 Sep 2016, 45 day comment period
 - ▶ Proposed to improve consistency in the use of compensatory mitigation as recommended or required under the Act
 - ▶ Goal to improve (i.e. a net gain) or, at a minimum, to maintain (i.e. no net loss) the current status of affected resources
- TNC's Long-Term Stewardship Calculator
 - ▶ Can be used by Land Managers, Mitigation Providers, and Regulators

Free with accompanying handbook



Looking Forward

- BEI and CE Template Updates
 - ▶ Public Notice Summer 2015
 - ▶ Endowment funding matches percentages of credits released
 - ▶ Credit release language modified
 - ▶ Modified force majeure language
 - ▶ New language related to non-compliance and default
 - ▶ Endowment Fund Management language updated
 - Including corrected CPI adjustment date
- Stakeholder Meeting September 2016
- Templates Winter 2016?



Questions?

SPD Resources: <http://www.spd.usace.army.mil/Missions/Regulatory/Public-Notices-and-References/Article/558934/final-regional-compensatory-mitigation-and-monitoring-guidelines/>

IWR White Paper on Financial Assurances:
http://www.iwr.usace.army.mil/Portals/70/docs/iwrreports/Financial_Assurance.pdf

IWR Site Protection Handbook: <http://www.iwr.usace.army.mil/Media/News-Stories/Article/932624/new-handbook-on-compensatory-mitigation-site-protection/>

TNC's Long-Term Stewardship Calculator:
<https://www.conservationgateway.org/ConservationPlanning/ToolsData/Pages/stewardshipcalculator.aspx>

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