



---

# Board of Supervisors Memorandum

---

July 2, 2013

## **Enabling Instrument for Clean Water Act Section 404 In-Lieu Fee Program**

### Background

The Regional Flood Control District (District), Tucson Audubon Society (TAS), and U.S. Army Corps of Engineers (Corps) have been working since December 2012 to develop an In-Lieu Fee Program (ILF Program). This program will allow the District and TAS to develop and implement environmental restoration projects on lands the District has acquired through the Floodprone Land Acquisition Program. By providing environmental restoration, this ILF Program would allow the District and TAS to fund these restoration efforts by the sale of mitigation credits to public and private entities within southern Arizona that must provide compensation to mitigate for impacts to Waters of the United States (Waters) in southern Arizona. The District and TAS developed this partnership because we believe it is critical that mitigation funds collected for disturbance of Waters that occur in Pima County remain in Pima County for environmental mitigation.

This ILF Program provides an opportunity to develop environmental restoration sites that can be coordinated with activities under the County's Multi-species Conservation Plan and to create a consolidated network of sites and species connectivity between the riparian areas and upland areas.

To proceed with establishment of the ILF Program, the Corps has developed the attached Enabling Instrument, which is the contractual document used by the Corps to authorize our operation of an ILF Program. This Enabling Instrument has been reviewed and negotiated by the District, TAS, and the Corps' technical and legal staff. The TAS Board of Directors has approved and signed the document. We are now presenting the Enabling Instrument to the Board of Directors of the Flood Control District for review and approval.

The Enabling Instrument identifies:

- The Service Area for the District and TAS to provide compensatory mitigation, which has been defined as the Santa Cruz River Basin, including the Rillito River and Brawley Wash and their tributaries (see Exhibit B to the attached Enabling Instrument) with the potential to extend the Service Area to include the San Pedro – Wilcox Basin.
- Mitigation Areas within the Santa Cruz River Basin have been tentatively identified and include, but are not limited to, Sopori Ranch, Canoa Ranch, the Upper Canada del Oro Wash, the confluence of the Rillito River and Canada del Oro Wash with the Santa Cruz

River, the Santa Cruz River at Trico Road, Black Wash at Snyder Hill Area, and Pantano Wash confluence with Rincon Creek.

- The proposed ILF Program and potential mitigation sites were reviewed to assure the program is complementary to the Multi-species Habitat Conservation Plan.
  - For each mitigation area, a site specific plan will be developed to restore, enhance and/or establish, and preserve aquatic resources using science based development, maintenance and monitoring strategies.
  - Each mitigation project will include a financial evaluation of costs for establishment, management, and long-term care to establish a total project cost to be reflected in the value of the credits to be sold. Credit determination will be presented in accordance with negotiated credit requirements and a credit release schedule referenced to site performance standards.
- Funds received from the Corps through the sale of credits will be earmarked and held by the District in a Program Account for each mitigation project in order to meet Financial Assurance requirements. The District's financial obligation for the Program will be limited to the funds in the Program Account.
  - Conservation easements will be established on mitigation project areas as they are developed to protect and preserve the environmental value of the mitigation project.

The District is developing a contractual agreement with the TAS to delineate responsibilities. This agreement will be presented to the Flood Control District Board.

The District and TAS are also developing a site specific mitigation plan for the Canoa Ranch along the Santa Cruz River. This initial project plan is for approximately 100 acres. This site will provide compensatory mitigation needs for disturbance in the Upper Santa Cruz Sub-basin. A second conceptual plan is being developed for the Cienega Creek to serve mitigation needs in the Rillito Sub-Basin. Other sites will be developed at strategic locations to meet planned development activities and to serve ongoing mitigation needs to community for decades to come.

#### Recommendation

I recommend the Board of Supervisors approve the attached Resolution and Order authorizing the execution of the In-Lieu Fee Program Enabling Instrument between the Pima County Regional Flood Control District, the US Army Corps of Engineers, and the Tucson Audubon Society.

The Honorable Chairman and Members, Pima County Board of Supervisors  
Re: **Enabling Instrument for Clean Water Act Section 404 In-Lieu Fee Program**  
July 2, 2013  
Page 3

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C.H. Huckelberry", with a long, sweeping underline that extends to the right.

C.H. Huckelberry  
County Administrator

CHH/mjk – June 19, 2013

Attachments