

# South Carolina Mitigation Association

Executive Committee  
Meeting Minutes  
February 19, 2019

## Opening

The regular meeting of the Executive Committee of the South Carolina Mitigation Association was called to order at 9:00 on February 19, in Columbia, SC (and via Conference Call) by Tara Allden.

## Committee Members (Present | Absent)

Tara Allden  
Allen Conger  
Daniel Johnson  
Adam McIntyre (Absent)  
Ross Nelson  
Jack Smith  
Ryan Smith  
Blair Wade

## General Discussion

- The membership meeting will be hosted in Columbia on 13 March and begin at 10:00 am. David Wilson and Sean Connolly will be the guest speakers.
- Tara initiate a brief discussion related to pro-rating membership rates. No action taken.

## Revised Definition of WOTUS discussion

- Tara introduced the synergy among the mitigation associations with respect to developing and drafting a response to the proposed revised definition of WOTUS.
- This proposed rule will get tied up in litigation for three to five years. The SCMA should consider that phase in the evolution scenario with regards to SCMA's response.
- The impact on Disadvantaged Businesses Enterprises should be identified (and leverage) in the response.
- Geoff Gisler (Senior Attorney with SELC in Chapel Hill) presented background and provided feedback on the proposed rule.
  - Intermittent vs. perennial streams is the major change
    - Intermittent considered jurisdictional if system has flow for a portion of the year and rainfall is in the 30<sup>th</sup> and 70<sup>th</sup> percentile of rainfall

- A discussion related to where the water is coming from and how long it is there.
  - If it's fed by snow melt or groundwater the stream qualifies as intermittent
  - Minimum flow suggested (5cf/s)
  - The agencies will move to protecting perennial streams (or a minimum flow requirement)
- The rule will be complex to implement
- Regarding wetlands
  - Adjacent to jurisdictional water
  - Should a specific distance (from the jurisdictional water) be included for jurisdictional determination?
  - For wetlands, a distance limit (from the jurisdictional water) is anticipated
- The final rule will likely be more limited than the proposed changes.
- Effect on the restoration and mitigation industries -- \$210m - \$470m
  - Potentially a reduction in mitigation and revenue for the mitigation industry due to the loss of jurisdictional resources
  - However, assessing this industry is problematic and thus 'they punt'
  - EPA does quantify the benefit to the 'development' industry (avoided permitting and avoided mitigation cost)
- "Willingness to pay value" of wetland benefits
- Discussion:
  - Procedural – 60-day comment period ends April 15. Agency are required to respond to submitted comments
  - Who are the potential litigants – more typically conservative conservation groups, mitigation associations
  - Best contributions – economic analysis of impacts to restoration industry
  - Good point from Jack regarding conservation easements
  - Agencies are required to address all relevant aspects, so when they don't, it is a procedural problem as well as a substantive problem
  - Implementation complexities
  - Timing
  - How can we help
  - Allen initiated a discussion related to association vs. individual comments. Geoff stated that the EPA must respond to all the comments they receive. Thus, Geoff encourages comments at multiple levels (individual, local, regional).

- Jack initiated a discussion related to the industry. Geoff suggested that data related to the restoration industry will be valuable and will support our response.
- Tara inquired about the substance of the comment letter, should it be more specific to procedure? Geoff suggested that a letter can address (comment on) both material and procedural actions, the more relevant information related to the industry (revenue) the better. Geoff encouraged the industry (and conservation groups) to ‘tell the full story’ and identify EPA’s lack of evaluation related to the industry.
- Geoff stated that implementation of the proposed revisions will be a real mess.
- Allen requested abbreviated information that he can share with clients, etc. Tara offered to coordinate.

### **SCMA/SCDOT meeting**

- The meeting is scheduled for 12 March
- No additional feedback on the proposed RFPs.

### **Membership Update**

- No updates

### **Regulatory Committee**

- No updates

### **Legislative Committee**

- No updates

### **Partnership Committee**

- No updates

### **Technical Committee**

- No updates

### **Website**

- No updates

### **Financial**

- No updates

### **Action Items**

- See above

### **Adjournment**

- Tara Allden adjourned the meeting.
- Daniel Johnson submitted the minutes.
- Approved by: [Name]