From Proposal to Permit: Practical/Legal Considerations for HCPs

IPAA Strategic Planning Conference

Parker Moore

February 14, 2017
Starting off on the Right Foot

• Define expectations/needs
  – What species?
  – What area?
  – What duration?
  – What schedule?
  – What permit structure?

• Meet with FWS
  – Be open and direct
  – Explain positions and have legitimate rationale
Staying on Schedule

- Reimbursable Agreement with FWS
  - Dedicated staffing
- Fund NEPA contractor
  - Experience counts – circulate RFP
  - MOU
- Synchronize HCP and NEPA work
  - Plan for Solicitor’s Office review
- Request & memorialize commitments
- Be proactive & responsive!
- Don’t sweat the small stuff
- Drive the point home
- And yes, expect delays
Key Legal Issue – Covered Species

• Which Species Should You Cover?
  – FWS position: broader is better
  – Applicant position: maintain control over HCP

• What Does The Law Say?
  – ESA § 10: FWS may permit “any taking”
  – FWS regs: Identify “the species sought to be covered” 50 C.F.R. § 17.22(b)
  – HCP Handbook: Depends on who you ask
Key Legal Issue - Mitigation

• What does the ESA require?
  – Minimize & mitigate impacts of taking to max. extent practicable

• FWS will push for avoidance, conservation & recovery

• Reserve flexibility
  – Banking, in lieu fee, permittee responsible
  – Stacking for “like” species
  – Research??
Interacting with FWS

- Recognize FWS inexperience
- **KNOW** the law, the policy & the science
- Be tough but fair
- Information sharing protocol
- Memorialize decision points
- Document, document, document!
- Elevate only if necessary
Interacting with Consultants

• Value experience

• Define clear expectations
  – Detailed schedule
  – Detailed scope of work
  – Budget – reasonable assumptions
  – Minimize change orders

• Define roles – HCP vs. NEPA
  – Capitalize on expertise
  – Avoid overreach
Thank You!

Parker Moore
Principal
Washington, DC
Project Development, ESA, NEPA & Wetlands
pmoore@bdlaw.com | (202) 789-6028

This presentation is not intended as, nor is it a substitute for, legal advice. You should consult with legal counsel for advice specific to your circumstances. This presentation may be considered lawyer advertising under applicable laws regarding electronic communications.