



TWG: Significant Degradation

Meeting: #3

Date: Sept. 25, 2018

Time: 10-11:30 a.m.

Attendees:

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| <input checked="" type="checkbox"/> Nancy Allen, City of Phoenix | <input checked="" type="checkbox"/> Bruce Larson, Bowman Consulting |
| <input checked="" type="checkbox"/> Rion Bowers, Bowers Environmental Consulting | <input type="checkbox"/> Brian Lindenlaub, WestLand Resources, Inc. |
| <input checked="" type="checkbox"/> Jeremy Casteel, HilgartWilson | <input checked="" type="checkbox"/> Sandy Bahr for Jennifer Martin, Sierra Club |
| <input checked="" type="checkbox"/> Lee Decker, Gallagher & Kennedy | <input checked="" type="checkbox"/> Karla Reeve Wise, PDEQ |
| <input checked="" type="checkbox"/> Angela Garcia, Salt River Pima-Maricopa Indian Community | <input checked="" type="checkbox"/> Monica Salguero, ASARCO |
| <input checked="" type="checkbox"/> Stanley Hart, Save the Scenic Santa Ritas | <input type="checkbox"/> Myron Smith, KGHM |
| <input checked="" type="checkbox"/> Robert Kellock, USAF Retired | <input checked="" type="checkbox"/> Van Wolf, Salmon, Lewis & Weldon, P.L.C. |

Staff Support:

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| <input checked="" type="checkbox"/> Heidi Welborn, ADEQ | <input type="checkbox"/> Theresa Gunn, GCI | <input checked="" type="checkbox"/> Kelly Cairo, GCI |
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Discussion Items:

- Status of Workspace
 - Jeremy loaded additional reference documents on the Google site including screen shots that show how to use Google Docs.
- White Paper Structure and Discussion
 - Direction for white paper is to address current state of main topics, including Significant Degradation, Alternatives Analysis, and Avoidance Minimization and identify sub-topics under each which will be evaluated and/or recommended for implementation.
 - The group supported renaming “Vision for Assumed Program” to “Minimal/Appropriate Requirements for Equivalent Protection and Hard Spots” or the equivalent. Minimal is a typical construct in federal language. However, there was concern that “minimal” sends the wrong message, since the requirements should be what is needed for a good program. “Recommended” may be better.
 - The group agreed that dissenting views should not be called out by simply minority opinion. The white paper could include more information, such as explaining that there are a variety of differing viewpoints on an issue.
 - Discussed that ADEQ programs are not generally geared toward habitat, the 402 program differs fundamentally.
 - Question was asked why don’t we just adopt what the Corps currently requires? This would be a great way to be as stringent as the federal government, but no less stringent.
 - MI and NJ didn’t directly adopt the programs, they tailored it to their states. Additionally, MI has more flexibility due to their existing Wetlands language.

- MI statements in rules were deemed sufficient to meet 404(1)(b) requirements.
- Our recommendations can be to amend statutes. Therefore, we could recommend amending the “no less stringent” language.
- Group discussed that ADEQ is the end user of our recommendation. Our task is to address the main topics. ADEQ needs a recommendation on how to implement the program.
- Alternatives analysis includes evaluating the data gaps.
- In working with various Corps districts and project managers, those seeking permits encounter different interpretations of the rule.
- Jeremy asked the group to further investigate tasks by subgroup.
- Sandy cautioned that there can be disconnect between subgroups. This makes it difficult for nonconsultants to review and understand everything that is happening.
- The question was asked when will we talk about the fact that there is no NEPA process.
- In general, the absence of a future NEPA process has been discussed at previous meetings. One of the group’s tasks is to evaluate whether the absence of NEPA, such as CFR Part 325, creates issues for implementation and what, if any, parts could be carried forward.
- There was general concern that the deadlines are unreasonable. The product this group can deliver in December will not be as good as a product with a longer deadline. These recommendations will have long term consequences. Heidi noted that the white paper is neither the end of the stakeholder process, nor the end of the process in general.
- Group discussed that one approach is to adopt 404(B)(1) guidelines by reference. Group would need to point out the problems with interpretation, etc. Considerations would include addressing a variety of state issues, and regional guidelines. Focus needs to be what works for Arizona. Whether EPA will accept it is a different issue.
- Point was made that an EPA-appropriate analysis is not necessarily a Corps-appropriate analysis or vice versa.
- The expertise in the TWG is strong on the consulting/permittee side. Only a few are knowledgeable about the permitting side. Should we ask someone from the permit administrator side, such as the Corps or EPA, to talk to us? If so, an additional meeting may need to be scheduled to avoid delays in moving forward with the white paper deliverable. If so, would need specific questions, this may not be appropriate forum for overarching permit process. This is being discussed.
- The TWG is would like more information about the role and makeup of the Executive Committee.
- Jeremy reported that the Corps has mentioned that other states abandon pursuit of assumption due to fear of litigation.
- All of these groups should have recommendations for MOAs with other agencies as necessary to assume the program, as appropriate.

Future Discussion Needed:

- (8/30) What is the process for AZ projects that do not qualify nationwide program?
- (8/30) Need to determine if limits can be changed and specific to the state

- (8/30) The criteria established to determine significant degradation are subjective and murky
- (8/30) Can you apply the AA process and adapt to streamline, considering guidance and case law?
- (8/30) Explore what is necessary for alternative analysis (Corps has a template)
- (8/30) Need to standardize the data to be used, where acceptable (i.e., watershed, durations, etc.)
- (8/30) Minimize is often misunderstood; not only avoid impact but leave a better place
- (8/30) Need to consider the AZ process since NEPA does not apply to non-federally funded projects
- (8/30) Ensure the process allows for public involvement
- (8/30) In at least one jurisdiction, about 60-70% of permits are declined due to poor project purpose; could requirements be put in rule or guidance
- (8/30) Public Interest regulation is currently not in the CWA, how will AZ maintain those interests?
- (8/30) How is flood control sig deg considered?
- (9/25) Possible presentation and Q/A from permit administrator side, such as the Corps or EPA

Resources Needed:

- State current processes for these categories, such as the process for 401 certification
- Arizona code on Tier Two streams (alternatives analysis language could be useful)
- ADEQ anti-degradation policy from 2008 that was not finalized (see “Sig-Deg” in the shared folder)

Action Items:

- (9/25) Subgroups will investigate current state and recommended state for each of the topic areas noted below and provide a framework/outline of the information by the next meeting. The TWG will review the information before including it in the white paper.
 - SigDeg: Nancy, Jennifer, Lee
 - AA: Karla, Rion, Van, Brian
 - Avoidance & Minimization: Monica, Jeremy, Bruce
- (9/25) Kelly to create tasks lists for subgroups (completed 9/28)
- (9/25) Kelly to verify Webex and call in information for all meetings (ongoing)

Next Meeting Agenda:

- Current state and recommended state for significant degradation, alternatives analysis, and avoidance & minimization.