

TWG: Significant Degradation, Alternatives Analysis, and Avoidance and Minimization

Meeting: #4

Date: Oct. 9, 2018

Time: 10-11:30 a.m.

Attendees:

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

- Key points from the Oct. 2 general stakeholder meeting
 - Jeremy noted that a stakeholder made a point that we should not have state guidance that duplicates federal guidance in situations where the permittee would have to duplicate the work. This may be related to the NEPA process, such as Section 7/106 coordination. However, at times, additional information is required and this should not be considered duplicative.
 - Van cautioned that eliminating detail is not the same as streamlining a process.
 - ADEQ is still working on establishing the Executive Committee by mid-November. Purpose will be to align deliverables, and remains under development.
- White paper
 - Need to add section for State Program Implementation Options under AA. (Added)
 - Jeremy would like a skeleton of the full paper outline by Oct. 23.
 - TWG will move forward with the presumption that ADEQ will adopt the Section 404(b)(1) guidelines by reference, with limited exceptions.
 - This TWG will need to identify those limited exceptions not applicable to an Assumption.
 - Based on discussions with the Permits TWG, they are proposing to adopt the NWP's by reference, with limited exceptions.
 - Lee asked if we adopt 404(B)(1) by reference, are there any gaps? Considerations included:
 - Yes, implementation. EA or EIS requirement would be an issue at the state level. Definitions the state uses for reasonable alternatives is different. Also, no wetlands protections.

- Nancy was concerned that much of the state guidance is geared toward streams, not other waters and wetlands. Adopting the rule does not mean that ADEQ can implement the rule.
- There are aspects of the subparts of the Section 404(b)(1) Guidelines that may not apply in Arizona.
- Would need a framework and to revisit and expand certain definitions in Arizona statutes. What are the exceptions? Don't have standards for wetlands.
- Corps and EPA don't have a problem with Arizona's surface water quality standards. However, Arizona is not currently implementing a 404 program with these definitions.
- Lee believes that ADEQ is as well-suited to implement the 404(B)(1) guidelines as the Corps. EPA may look at it more closely, but if ADEQ uses the same regulations, he believes this will a consideration.
- The ESA TWG is focused on ESA provisions.
- There is ambiguity in some areas. Established water quality standards would be an area to carry forward.
- Lee reviewed language that included "...404(B)(1) or state equivalent guidelines."
- Corps is generally respectful of the stated purpose and need.
- Water dependency test.
- There are some coastal assumptions that should be clarified to address local conditions.
- Have had difficulty evaluating offsite alternatives, such as securing a different piece of property. Pima County has had to evaluate other road enhancements and whether the enhancements can provide the same functionality as building a specified road project. Nancy provided an example of an entity dealing with cumulative effects having to purchase different property for a roadway beyond the two identified possible routes.
- Current language includes, "level of documentation should reflect the significance and complexity of the discharge activity"
- Need to consider thresholds are for considering additional parcels and the consideration of "available" parcels as well as practicable.
- 404b1 does require evaluation of cumulative impacts.
- Heidi noted that state would appreciate advice on how to evaluate these different concerns and resources needed.
 - May need to integrate or dovetail 401 program with the 404.
 - Karla said that there is not an equivalent 404(b)(1) process at the state, only a 401 process. Very different than current state antidegradation policy. ADEQ would need to adopt by reference with certain modifications to be made later, or need to start from scratch otherwise.
 - Decision: There was general agreement to annotate the current guidelines to give the state suggestions for moving forward.

- TWG provide a list of considerations, hyperlinks
- Everyone should be doing this with emphasis on their topics
- Karla noted the significant time required in this process and to be careful that time is well spent
- Main points discussed in current state and considerations, plus implementation and data gaps
- Brian agreed to focus on this effort, and will provide to subgroups by Oct. 13.

Future Discussion Needed:

- (8/30) Can you apply the AA process and adapt to streamline, considering guidance and case law?
- (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) 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:

- 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:

- (10/9) Jeremy will upload additional documents (ELI docs added to Avoidance and Minimization folder)
- (10/9) Continue populating current state and move forward with population of Minimal Requirements, Program Comparison and Data Gaps, and State Implementation. Goal is to have major discussion points captured for each section by next meeting.
- (10/9) After next meeting, we should be able to move forward with completing the remaining sections in the next 3-4 weeks.

Next Meeting Agenda:

- Review finalized current state and discuss Minimal Requirements, Program Comparison and Data Gaps, and State Implementation Options sections of white paper.
- Oct 23, 10-11:30 at ADEQ