



TWG: Fees

Meeting: #7

Date: Nov. 27, 2018

Time: 10:00 a.m.

Attendees:

- | | |
|---|--|
| <input type="checkbox"/> Sandy Bahr, Sierra Club | <input checked="" type="checkbox"/> Amanda McGennis, Arizona Chapter Associated General Contractor |
| <input checked="" type="checkbox"/> Mason Bolitho, Haley & Aldrich | <input checked="" type="checkbox"/> Rebecca Hudson Nunez, Freeport-McMoRan |
| <input checked="" type="checkbox"/> Jeremy Browning, Gov Group | <input type="checkbox"/> Marcia Sorensen, City of Peoria |
| <input checked="" type="checkbox"/> Marina Estrella, City of Phoenix | <input checked="" type="checkbox"/> Jerry D. Worsham II, Cavanagh Law Firm |
| <input checked="" type="checkbox"/> Adam Hawkins, Global External | <input checked="" type="checkbox"/> Duane Yantorno, Asarco |
| <input checked="" type="checkbox"/> Christopher "Kit" MacDonald, U.S. Forest Service - Coconino and Kaibab National Forests | |

Staff Support:

- David Lelsz, ADEQ Theresa Gunn, GCI

Use of CWA Section 106 Funding for 404 Assumption

Conflicting legal opinions on whether the funds can be used for the 404-program development.

- Funds can be used to build the program, but not run the program.
- ADEQ may be able to use the funds but still waiting on a legal opinion.
- EPA funding averages \$1.7 million annually based on complexity of the surface waters in a state. C
- Currently the funding is being used for surface water monitoring (10%) and the balance is used to fund people.
- Monies go into the Performance Partnership Grant program.

Issue is how to get the program developed and running.

- Once the program is running, the Department will be able to better understand the costs of the program.
- What happens to the surplus money from the Corps when the program is assumed by the State (assuming the Corps would have less staff and work load)?
- Could part of that Corps appropriation can be allocated to the State 404 program?
 - Add to the list of issues to be discussed at the national 404 meeting next week: A Congressional action to allocate a portion of the Corps funding to the State DEQ
 - Should consider the impact of this request on the relationship with the Corps
 - Need to determine portion of the current \$2 million 404 Corps allocation that would be used on activities which the state is assuming
- If asking for state general funds for starting the program, it would be good to show other options for funding

Projected Annual 404 Budget

The budget has not been further revised until we can determine scope of work and number of staffing needed. Current assumption is \$2.1 million annual budget need and to split between individual permits and other permits.

APP Fees

Mason reviewed the APP fees in the current ADEQ rule for permitting and annual fees. APP program is just under \$2 million revenue with 70% of the monies from annual fees.

- 404 Program doesn't have an obvious method for charging annual fees

Agency Funded Corps Staff

Pima County and ADOT both fund dedicated permit writers (s). If the agencies intend to continue to fund the dedicated permit writers, may result in gap in permit fees. The cost of the actual number of permits may exceed the price of the permit writer. (i.e. ADOT pays \$172,000 annually for a permit writer and averages 4 permits a year. The proposed fees for 4 permits may be much greater than being paid for the individual permit writer.)

White Paper Status

The group reviewed the current draft.

- Duane to research programmatic general permits and determine what needs to be added to the paper
- Duane to reorder Section 5 to match Jerry's
- Mason to send APP write up to Rebecca to insert into the paper
- David to ask 401 certification team to review the paragraph on page 2 "Water Quality Certification"
- Rebecca to add to map that Corps retains jurisdiction of permitting of tribal lands and the Colorado River "Exhibit 1: Defined CWA 404 Permit USACE Jurisdictions"
- Marina to summarize the memo from David and add caveat that it is an estimate before determination of which permits would be issued (Exhibit 2)
- Need to have discussion on Section 5
- Duane to add more information on the JD fees
- Discussion of whether length of time to issue permits is a drawback to the current Corps process
 - Reword the drawback to state there is a cost to a delay in receiving permits
- Rebecca will streamline the narrative after receiving the content from other members
- Enforcement, compliance, inspection fees need to be discussed at the next meeting
 - ADEQ can currently charge fees for inspections
 - Any funds from enforcement go back to the state general fund not the program
- Jerry to expand upon the recommendation on fees of where they might come from

Action Items:

- (10/2) Acquire a copy of an "Emergency Operations involving the discharges of dredged and/or fill materials into waters of the U.S." RGP (Fires – David)

- (10/16) David to see AG costs associated with challenges for Rosemont and Florence APP permits, Title 5 (Air)
- (10/16) David to check on litigation numbers regarding number of cases and costs (how funded) for NJ and MI
- (10/16) Capture Arizona AGO costs for Superfund, Air, etc. to help qualify the data
- (10/16) David to discuss fee information/preliminary figures with Trevor Baggio; viability of general fund use and ADEQ existing fund use/sweep. (David will brief Trevor and will have an offline conversation as needed with Jerry, then the TWG)
- (10/16) David to obtain min/max/ave fees for wastewater treatment and mine/other industrial
- (10/30) Sandy agreed to address pros and cons of general fund, with Jeremy
- Send copy of CWA 106 Funding Award Letter to members (David)
- Draft a paragraph for the white paper regarding the possibility of allocating Corps surplus monies to states that have assumed the 404 program (Adam)
- ADOT to contact Jerry regarding the ADOT funding of a USACE dedicated permit writer
- Send JD white paper on process to TWG (Theresa)

Next Meeting Agenda

- Last review of white paper
- Schedule another meeting for Wednesday, Dec 19, 9 a.m.; Room 6645