

TWG: JURISDICTION DETERMINATION

Meeting: #7 **Date:** November 20, 2018 **Time:** 1:00-3:00 p.m.

Attendees:

- | | |
|--|--|
| <input checked="" type="checkbox"/> Michael Bryce, Graham County, AZ | <input checked="" type="checkbox"/> Sheila Logan, Hilgart Wilson |
| <input checked="" type="checkbox"/> Mike Cabrera, Pima County Flood Control | <input type="checkbox"/> Robert Lynch, Robert S. Lynch & Associates |
| <input checked="" type="checkbox"/> Tricia Gerrodette | <input checked="" type="checkbox"/> Roger McManus |
| <input type="checkbox"/> Ned Hall, Freeport-McMoRan Inc. | <input checked="" type="checkbox"/> Jack Moody, Slater Hanifan Group |
| <input type="checkbox"/> Adam Hawkins, Global External Relations | <input checked="" type="checkbox"/> Mark Murphy, NV5, Inc. |
| <input checked="" type="checkbox"/> Jill Himes, Himes Consulting, LLC | <input checked="" type="checkbox"/> Leigh Padgitt, City of Phoenix |
| <input type="checkbox"/> Spencer Kamps, Home Builders Association of Central Arizona | <input checked="" type="checkbox"/> Marinela Papa-Konomi, MCDOT |
| <input type="checkbox"/> Theresa Knoblock, Tierra Right of Way Services | <input checked="" type="checkbox"/> Betsi Phoebus, Jacobs |
| <input checked="" type="checkbox"/> Dennis Krahn, Eldorado Holdings | <input checked="" type="checkbox"/> Jessica Rybczynski, Aztec |
| <input type="checkbox"/> Brian Lindenlaub, Westland Resources, Inc. | <input type="checkbox"/> Jennifer Simpkins, Kimley-Horn |
| | <input checked="" type="checkbox"/> Scott Thomas, Fennemore Craig |

Proxy

- Todd Dillard for Robert Lynch, Robert Lynch & Associates

Staff Support:

- David Lelsz, ADEQ
- Theresa Gunn, GCI

Update on USACE JD Data

David Lelsz met with USACE staff to discuss the time required for PJD and AJD reviews. Assumed the PJD was similar in level of analysis as a general permit but discovered the level of effort to review a PJD is similar to an individual permit; much more detailed. Time for administration review for completeness is quite short. At least 20% of the applications are insufficient and require a field visit.

JDs are highly variable in the number of watercourses and the number of features on each watercourse; both of which add time. More indicators for each feature reduce the amount of review time. ADEQ does an analysis on both lapse and touch times.

- Lapse time – number of days from complete application to a permit issued
- Touch time – amount of physical time spent working on the permit

Often, the PJD and permit are submitted at the same time and the applicant gets both the permit and the JD at the same time. Corps does not have a timeframe for a JD, but they do for permits. Pre-application meetings are beneficial in streamlining the process.

Group discussed the feasibility of using ADEQ’s Appendix B of watercourses as the first cut of determinations.

- Not all tributaries and waters are named and are not on the list
- The analysis was not done to determine if the listed waters are Waters of the US and would not agree to using the Appendix B without that analysis
- Still need to know what the lateral limits are not just the watercourse

- Would reduce the amount of jurisdictions by a great number and may mean the rule is less stringent
- If an ideal world, we would already have a list of jurisdictional waters
 - But the watercourses change over time

Wetlands Delineation

Jill Himes reviewed the benefits, problems, ideal process, gaps and closures.

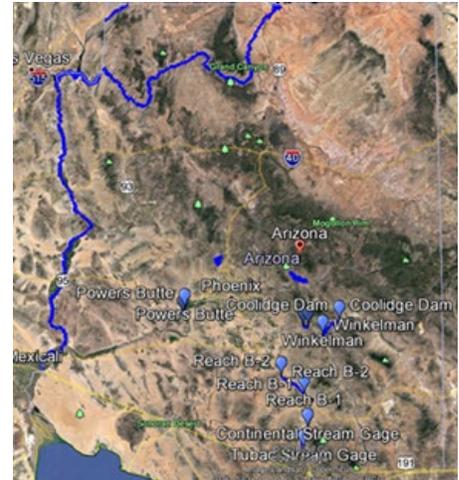
- The submittal is very in depth and takes a significant amount of review time
- The State of New Mexico has a manual that includes the plants and conditions in the arid environment
- The Southwest guidance aids with unstable soils
- Include reference for the Corps supplements for arid west and mountain and valley
- Add to Problems: address the national wetland inventory; Corps and Fish and Wildlife wetland definitions are different
- Add to Ideal Process: all three soil, vegetation and wetland hydrology is needed to determine a wetland
- May want to include in paper the need to adjust the wetlands definition
 - Do we need to mention the gap between the Corps and USFW wetland definitions?
- Regulations are sometimes applied too broadly; what is reasonable
- Not sure wetland delineation has been brought into regulation; which may provide flexibility on how to change the current process
- Closure option: Ensure ADEQ staff has the knowledge commiserate with the Corps
 - Corps has annual training program for its staff in technical areas as well as training to be consistent in making the same determinations
- ADEQ has developed a map of permits in process and could be used for JDs as well
 - Why might the landowner object to a JD being shown on a map?
 - It is protection of private landowner information
 - Anything relevant to a permit is open knowledge; but not the details
 - Ideal is to have all JDs available
 - Should be OK to show where the JDs online without the backup documentation
 - Recommendation to have the data more readily available (include JDs and TNWs)
 - What is relevant is the boundary of the JD, features and the date
- Is a TNW jurisdictional; if designated a TNW is it jurisdictional
 - Do we need to discuss the process in which TNWs are designated?
 - Who makes the decision? (ADEQ/Corps)
- Recommend ADEQ identifies a process to determine TNWs
 - Corps has looked at as needed but no a state evaluation of all TNWs

TNWs

During the meeting, ADEQ staff received an email with the Corps list of TNWs. Below is the information from that email.

- Roosevelt Lake
- Lake Mead
- Lake Powell
- Gila River TNW-Powers Butte to Gillespie Dam

- Gila River Coolidge Dam to Winkelman
- Gila River-Ripsey 1 to Ripsey 2 (near Kearny)
- Santa Cruz R, Tubac gage station to Continental Gage station
- Santa Cruz R, Roger Rd WWTP to Pima/Pinal county line
- Lake Pleasant TNW
- Virgin River
- Colorado River Mainstem-Lake Meade to Lake Powell
- Colorado River Mainstem-Hoover Dam to SIB



Timeframes

- Concerned about the short timeframes being calculated as calendar days
- The more complex applications will take more time

White Paper

- Jill will do a second revisions of the white paper to combine the commonalities between the AJD, PJD and Wetlands and pull out what is different
- Focus on the gap/closure options and discuss at the next meeting
- Scott to assist helping understand how the two other options of a future change in WOTUS definition or based on the clean water act for the appendix B and C
 - Change considerations assuming a new WOTUS definition

EPA Involvement in JDs

What will be the ability of ADEQ to push back on EPA direction beyond the scope of the program?

- EPA currently has 15 days to review Corps AJDs
- AJD is only a delineation – not a permit or license
- Ideal State Recommendation:
 - When state issues an AJD; EPA agrees with the decision
 - To be addressed in the assumption MOU/MOA with the EPA
- Delineations are subjective and lots of variables resulting two different decisions on the same ground; need to have consistency
- Appeal process for when differences

Future Discussion Needed: (This is a cumulative list. Items will remain until discussed)

- (9/12) Does the EPA have the authority to veto Jurisdictional Determinations?
- (9/12) Does the Army Corps have a definition of ephemeral?
- (10/24) Significant Nexus Analysis – need to have separate conversation on the topic
- (10/24) State specific forms and guidance and methods to make the process more objective (AJD and PJD)
- (10/24) Should there be a fee for AJD/PJD – free or reasonable fee
- (10/24) Is it possible to have a preliminary screening or letter if already a known JD
- (10/24) Which comes first connectivity or OHWA?

Action Items:

- Did New Jersey have agreement with EPA or Corps regarding AJDs; if so, what was the agreement

- Sheila to draft a flow chart
- Jill will do a second revisions of the white paper to combine the commonalities between the AJD, PJD and Wetlands and pull out what is different

Next Meeting

- Next meeting: December 5, 1:30-3 pm
- Agenda: Discuss the white paper gaps and closures