

TWG: JURISDICTION DETERMINATION

Meeting: #4 **Date:** Oct. 10, 2018 **Time:** 1:00-3:00 p.m.

Attendees:

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

Staff Support:

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| <input checked="" type="checkbox"/> David Lelsz, ADEQ | <input type="checkbox"/> Theresa Gunn, GCI | <input checked="" type="checkbox"/> Kelly Cairo, GCI |
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Sub-Group Reports

Leigh reviewed and noted changes to the draft Preliminary Jurisdictional Determination (PJD) Benefit/Problem Analysis. The revised Preliminary Jurisdictional Determination Benefit/Problem Analysis will be available at the next meeting. Highlights of discussion included:

- Current benefits
 - Delineation forms are currently optional
 - Noted that all of the guidance is currently available on the Corps website. Don't see a difference between high volume and others.
 - Agreed to strike last bullet of current benefits.
 - Jack noted that tributaries are included as part of a stream and WOTUS.
- Current problems:
 - Lack of established timeframes to be added as a bullet.
 - Difficulty of access to the pre-JD.
 - The consistency of a PJD differs with different project managers.
 - Subjective interpretations of the high-water mark.
 - The group agreed to include language regarding two or more criteria
 - Lack of awareness of guidance may be the issue.
- Ideal process:
 - There was discussion whether bullets 4 and 5 apply to the PJD process.
 - The group considered the name "pre-JD." However, this name is a feature from the federal government. May want to have a robust JD process and eliminate PJD.
 - Agreed to add language that a PJD is "a preliminary, non-binding finding."
 - The TWG discussed the need to recommend an ideal process to ADEQ to determine how to address gray areas.

- Is the purpose to tee-up the JD, and determine whether it is necessary? No, it varies.
- Agreed to delete the third bullet, regarding the science of probability. This discussion may be more appropriate in the AJD process. This language should be replaced with, “a repeatable defensible number of characteristics (at least two).”
- There was a recommendation to include an understanding of how ordinary high-water marks apply to Arizona.
- Roger explained that a PJD and AJD are the land owner’s choice.
- Mark noted that it may be useful to identify the JD to better understand that purpose of these PJD recommendations.
- Gaps:
 - Last bullet should be limited to knowledge.
 - Want work done by the Corps to be transferable.
 - Jack explained that a PJD does not expire, per recent discussion with the Corps.
 - Agreed to strike third bullet.
 - Agreed to combine concept of fourth bullet with last bullet.
- Closure options:
 - Discussion included whether the features apply since a PJD is not binding.
 - Agreed to only keep first phrase of first bullet and strike the remainder.
 - Agreed to add “subject to land owner approval” to second bullet.
 - Third bullet: There was discussion about the importance of making people aware.
 - Move bullet up to ideal.
- Leigh’s PJD team to complete another pass through on this document. All of the gaps may not yet be addressed.
- The group agreed to recommended basic language about training, implementation and consistency at ADEQ.
- Is it a problem that a land owner can choose not to obtain a JD? Should another group address this concept? The TWG discussed the purpose of the white paper, which is to address the process for complying with the JD or PJD.

Update on US Army Corps JD Data

- David explained that Sheila’s analysis should be the basis for review. Highlights of discussion included:
 - All JDs/AJDs are considered together.
 - In practice, a PJD with a permit application gets approved much more quickly.
 - Sheila agreed to provide additional analysis and send an updated file to David for posting to Google Docs.

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?
- (9/12) How do we make the process more objective?
- (9/12) Is an objective of the JD TWG to identify the limits of jurisdiction?
- (10/10) Three options for PJD process.

Action Items:

- (9/27) Each subgroup to prepare before next meeting documentation of current state (applications, forms, timelines); identifications of gaps and preliminary list of recommendations
- (10/10) Leigh's and PJD team to enter all agreed upon information and complete another pass through on document.
- (10/10) Sheila to provide additional analysis of US Army Corps data and forward to David for posting.

Other

- Will working group chairs be on Executive Committee? David explained that the duties and membership have not yet been determined.
- Betsi commented that there is not truly enough time to do what the TWG has been tasked to do and would like this comment noted and forwarded to the director.

Next Meeting

- Next meeting: Oct. 24, 1-3 p.m. at ADEQ, rm. 3100 B
- Agenda
 - Review of draft AJD and Wetlands recommendations
 - Kelly requested any final docs by COB Oct. 23 to prepare for the Oct. 24 meeting.
 - Review of Oct. 2 Stakeholder meeting comments
- The group agreed to maintain the planned Nov. 7 meeting date in Jack's absence. Scott will chair the meeting.