TWG: JURISDICTION DETERMINATION

Meeting: #5          Date: Oct. 24, 2018          Time: 1:00-3:00 p.m.

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

Staff Support:
☒ David Lelsz, ADEQ
☒ Theresa Gunn, GCI
☐ Kelly Cairo, GCI

Approved Jurisdictional Determination Report

Current Benefits
• Clarification: the submittal process is consistent, but after discussion it was agreed the process may not be consistent and to strike the bullet
  o Point back to the LA District direction on submittal content
  o Need to include enough information to justify a decision; but it is not clear how much information is needed to support an appeal
  o Amount of information needed varies based on size of project
  o An AJD is not required for a permit
• What is the purpose of an AJD?
  o An approved AJD is legally binding; PJD was added on to be a faster process but does not provide legal certainty
  o PJD is just a consent that ordinary high water mark becomes WOTUS
  o Can ADEQ identify waters that would not be WOTUS (closed basin) and would not require any additional AJD or PJD process
  o Need to consider what is over-reach versus protection
  o Confusion between a PJD and an AJD; need to clearly define the distinction
  o Group discussed keeping both AJD and PJD as long as the PJD is a more efficient process
• AJD Form – created in 2007 by Corps and EPA; the forms and maps are part of the official record
  o The group will discuss improvements to the form at a future meeting

Current Problems
• Remove bullet regarding pre-application meetings
• Lack of guidance bullet to be changed consistent with PJD
• Strike long turn around and review times
• Change lack of access to limited

Ideal State
• Approval process should be based on the history of the Corps process; need to have opportunity to have the applicant
  o Current data shows an average of 145 days
  o Possibly consider a period for review complete application and then a number of days for review
  o Include a pre-application meeting option
• Significant Nexus Analysis needs to be defined as nexus to the TNW and a clear checklist of information needed
• Can ADEQ accept a letter for areas already under an AJD or known to be not jurisdictional (comply with a checklist) without going through the full AJD process
• Strike the second and third bullet
• Add a bullet for the AJD and PJD should be at no charge
  o It is unrealistic for permittees to cover all program costs without state general funds
• Theses submittals will be from a wide range of size and type of projects; can there be an easy/short option for small, less complex projects (a preliminary screening to lessen the field work)
  o PJD has a desktop option if current aerials available
• Add: ADEQ have commensurate level of staff expertise

Gaps
• Strike the fifth and sixth bullet
• What are the unforeseen consequences

Closure Options
Brian to update the list based on previous discussions

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?
• (10/10) Three options for WOTUS
• (10/24) PJD may be able to determine nothing is jurisdiction (no ordinary high-water mark)
• (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) Licensing Time Frames recommendations to be discussed (can JD be submitted concurrently with a permit application)
• (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?
• (10/24) Identification of TNWs in Arizona (will Corps be providing the list)
• (10/24) Does the group need a time extension
**Action Items:**
- Number bullets on handouts for easier reference
- (10/24) Identification of TNWs in Arizona (will Corps be providing the list)
- Brian to update the closure list based on the gaps discussion
- Jill update the wetland list based the AJD and PJD discussions

**Next Meeting**
- Next meeting: November 7, 1-3 p.m. at ADEQ, rm. 6100B
- Agenda
  - Significant Nexus Analysis – need to have separate conversation on the topic
  - How does Corps do the analysis and challenges (Jill to begin the outline)