

TWG: JURISDICTION DETERMINATION

Meeting: #3 **Date:** September 27, 2018 **Time:** 1:00-3:00 p.m.

Attendees:

- | | |
|--|--|
| <input 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 checked="" type="checkbox"/> Robert Lynch, Robert S. Lynch & Associates |
| <input type="checkbox"/> Linda Cheney, El Dorado Holdings, Inc. | <input type="checkbox"/> Roger McManus |
| <input type="checkbox"/> Tricia Gerrodette, Friends of the Sonoran Desert | <input checked="" type="checkbox"/> Jack Moody, Slater Hanifan Group |
| <input 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 type="checkbox"/> Jill Himes, Himes Consulting, LLC | <input type="checkbox"/> Marinela Papa-Konomi, MCDOT |
| <input type="checkbox"/> Spencer Kamps, Home Builders Association of Central Arizona | <input 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 type="checkbox"/> Jennifer Simpkins, Kimley-Horn |
| <input checked="" type="checkbox"/> Brian Lindenlaub, Westland Resources, Inc. | <input checked="" type="checkbox"/> Scott Thomas, Fennemore Craig |

Proxies:

- Van Wolf, Proxy for Roger McManus

Staff Support:

- David Lelsz, ADEQ
- Theresa Gunn, GCI

Waters of the US and JD Process and Role of the Group

- The work group is not tasked with making JDs and the detail such as upstream limits
- There is room for improvement in how the Corps make determinations
- We can identify the problems with the current process and define the ideal state as described in the group charter
- Clearly define the difference between AJD and JD – delineation vs. determination
 - AJD (approved jurisdictional determination) – states watercourses are jurisdictional or not jurisdictional and the extent of the jurisdictional limits. Uses a Significant Nexus Analysis to make this determination.
 - PJD – (preliminary jurisdictional delineation) – conceding it is jurisdictional and going straight to delineation
 - JD – (Jurisdictional Determination) – refers to either a PJD or an AJD
 - Determination – is the watercourse in or out
 - Delineation – limits of the JD based on high water marks

Current State Benefit and Problem Analysis:

- All comments submitted by the members were collected and put into one document
- Development community is looking to do what is right without adding another layer of government
- Need to have access to previous AJDs/PJDs without FOIA; a database on website
- PJDs upstream should not affect downstream AJDs
- PJDs become mute if AJDs is streamlined to 60 days

- Could be realistic to streamline AJDs especially if there are some mapping at high level of areas which are not or may be jurisdictional
- Do we want early involvement from EPA in a JD to reduce the risk of denial of a permit?
- The group divided into 3 sub-groups; each sub-group will review in detail each of the following areas:
 - Preliminary Jurisdiction Determination: Leigh (lead), Jessica
 - Approved Jurisdiction Determination: Brian (lead), Mark, Dennis
 - Wetland Delineation: Jill Himes (lead)

Corps Permitting Data:

- JD and 404 applications are separated in their data
- Not able to tell which JDs apply to the permit applications
- Need to determine which of the specific applications are special conditions
- How many PJDs were issued and how many AJDs over the last 10 years?
- 2999 JDs in the last 10 years; the JDs for the assumable permits was 128; this number is not reasonable
- Do not think the last 10 years will not reflect the number of permits in the next 10 years due to economic conditions
- Each feature in a JD gets a line item which is increasing the number in the database
- May be selecting No Jurisdiction because of applicability to the permit
- Use Column C to sort by Dept of Army number
- Want from the data: number of JDs and how much time it took to get the JD
 - Separate by PJD and AJD
 - AJDs will vary in size
- Based on experience in PJD it is 3-6 months; and AJD is more than 12 months
- Data does not include the clock stop time

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

- Does the EPA have the authority to veto Jurisdictional Determinations?
- Does the Army Corps have a definition of ephemeral?
- How do we make the process more objective?
- Is an objective of the JD TWG to identify the limits of jurisdiction?

Action Items:

- Each subgroup to prepare before next meeting documentation of current state (applications, forms, timelines); identifications of gaps and preliminary list of recommendations
- David to discuss data with Jack and Sheila to better understand

Next Meeting Agenda

- Report from each sub-group