TWG: JURISDICTION DETERMINATION

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

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