



## **TWG: PERMIT PROCESS**

**Meeting:** #2      **Date:** September 20, 2018      **Time:** 10am-12 p.m.

### **Attendees (Conference call participants):**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Jennifer Martin, representing Sandy Bahr, Sierra Club - Grand Canyon Chapter | <input checked="" type="checkbox"/> Marinela Papa-Konomi, MCDOT                                   |
| <input checked="" type="checkbox"/> Tricia Balluff, City of Phoenix  | <input type="checkbox"/> Betsi Phoebus, Jacobs  |
| <input checked="" type="checkbox"/> Rion Bowers, Bowers Environmental Consulting                                 | <input checked="" type="checkbox"/> Karla Reeve-Wise, PDEQ  |
| <input type="checkbox"/> Mike Cabrera, Pima County Flood Control   | <input checked="" type="checkbox"/> Suzanne Shields, Pima County Regional Flood Control District  |
| <input checked="" type="checkbox"/> Tom Klimas, WestLand Resources, Inc.   | <input type="checkbox"/> Jennifer Simpkins, Kimley-Horn   |
| <input type="checkbox"/> Theresa Knoblock, Tierra Right of Way Services  | <input checked="" type="checkbox"/> James Stewart, ASARCO   |
| <input checked="" type="checkbox"/> Emily Lester, ADOT   | <input checked="" type="checkbox"/> Laura Stewart, ACS (Archaeological Consulting Services, Ltd.) |
| <input checked="" type="checkbox"/> Sheila Logan, HILGARTWILSON, LLC   | <input checked="" type="checkbox"/> Scott Thomas, Fennemore Craig                                 |
| <input checked="" type="checkbox"/> Amanda McGennis, Arizona Chapter Associated General Contractors              | <input checked="" type="checkbox"/> Marc Wicke, SRP   |
| <input checked="" type="checkbox"/> David McIntyre, McIntyre Environmental LLC                                   | <input checked="" type="checkbox"/> Duane Yantorno, ASARCO  |
| <input type="checkbox"/> Susan Montgomery, Inter-Tribal Assoc. of Arizona  |   |

### **Staff Support:**

- Andy Koester, ADEQ       Kelly Cairo, GCI

### **Discussion Items:**

- Tricia reviewed Google Docs and will send out some instructional screenshots to the group.
  - The References folder is for original source material (e.g., CFR documents, guidance documents, MOAs, permitting forms, etc.). When uploading a document to the References folder, members should also include the name and location of the document in the Excel file. This will provide a convenient list of all resources.
  - There is no save button; however, Google Docs saves every two minutes.
  - There is a way to leave comments by highlighting the language you'd like to comment on, then selecting "Insert" then "Comment."
  - Contributors should use, "suggest edits," when making edits to other's work.
  - Those who are the primary source of work should simply insert information.
  - In the white paper, include citations or hyperlinks to references.
- Schedule
  - Duane noted that ADEQ is considering expanding the schedule. Marinela said that as all of the TWG members are volunteers, she hopes that the schedule will be expanded. Suzanne noted that it takes longer than expected to prepare the written information, obtain comments and meet with TWG subcommittees.
  - The quality of the final product is extremely important.
  - Duane needed a subgroup conference call. Members did develop their sections independently. TWG members should contact Kelly to arrange for conference calls.
  - It will be important to post information according to deadlines to allow TWG members to review and/or print updated information prior to meetings.
- Other

- There was a suggestion that each subgroup should select a coordinator to coordinate subgroup efforts, work with Kelly to set up conference calls, and upload sections of the document.
- White Paper/Current State – Identification of information gaps
  - David Lelsz is analyzing data on Corps licensing timeframes (LTF), including averages and outliers, and will follow up with this group. LTF sub-group should include this information and note agencies (Pima County and ADOT) with dedicated staff will affect timeframes. Should also note whether a complete document was submitted and whether other consultations (e.g., Section 7) affected timeframes. Tricia will provide this to the group when it is available.
  - Decision: Need to add NWP timeframes and public process.
  - Decision: The description of how the Corps extends/modifies permits will be included with permit transition information.
  - Decision: Not necessary to include the current state of ADEQ's existing permit timelines.
  - Decision: Need to add basic information on JD timeframes. Should acknowledge processes of concurrent or separate JD/permit submissions. Substantive and administrative reviews should be noted.
  - Permit types: Need to understand how the 401 conditions would interact with a state-assumed 404 program.
  - Need to understand that EPA's role is different under a state assumption. This description should go in EPA objection process. EPA's role is essentially enhanced in a state-level 404 program.
  - Will ADEQ have an IRT team? Compensatory mitigation TWG is expected to address this.
  - Should we mention letters of permission? These primarily are associated with section 10.
  - Suzanne is continuing work on forms and online tools. Karla has uploaded many forms into folder. Would like the public notice form for permits to see what information is provided. Suzanne to upload with a note in the Excel document about where to find this.
  - Decision: Add existing ADEQ regulations regarding public notice/comment requirements (for an existing water quality program) in Public Process Current State. May need to recommend in gap analysis that some current ADEQ rules exist and may need to be changed.
  - Decision: Add discussion of regulations for public notice under a state-assumed program to Public Process Current State (can be found at 40 CFR 233.32 and 233.33).
  - EPA objection process: Rename this subgroup to EPA Role. Should include other EPA options for comment/objection. Absent of veto, Corps can issue permit over EPA objection.
  - EPA Role section: Need to add information on referral process (referenced in 404(c))– may be 404(q) elevation process.
  - EPA Role section: Clarify what applies to Corps today vs a delegated state.
- White Paper/Ideal State
  - Ideal state may have many differences of opinion. The group may explain the prevalence of each recommendation.
  - LTF: Believe we will have to recommend an ADEQ rule change to allow changes to timeframes.

- Permit Types: Recommend that 404 conditions of permit include the water quality considerations generally included in 401.
- EPA Role: Recommend permit categories for EPA waiver.
- Review of other states
  - Michigan
    - Has a joint permit application for projects that overlap with Corps area of authority.
    - Considers boundaries and whether a project will include a Corps approval. Offers two tiers of permits: general (lowest impact projects, expedited) and minor (similar to a nationwide permit). Sounds specific to their MOA.
    - Had state regulations before the CWA was passed, then followed up after CWA passage with additional, including wetland regulations.
    - Michigan program exceeds federal CWA requirements.
    - Eight situations where state permits were taken over by the Corps.
  - New Jersey
    - Predefined cultural zones. Burden on the applicant to determine if there was a national register property.
    - State consulted under ESA on species statewide.
    - Considers whether a permit will impair rights of another state's waters.
    - Wrote caveat into Corps MOA regarding navigable in fact waters.
    - Certain major discharges were automatically categorized as for EPA review.

### **Critical Information Resources:**

- Michigan/Corps MOU

### **Administrative Decisions:**

- Next meeting: Oct. 4, 10 a.m. – noon.
- Will continue to meet at SRP

### **Potential Future Discussion:**

- (9/5) White paper topics are to include methods for addressing NEPA considerations. Should also maintain the federal trust responsibility to engage tribes regarding activities occurring off tribal lands (which may ultimately affect the tribal land).
- (9/5) Coordination of 404 and 33 U.S.C. 408 permits (408 permits require NEPA).
- (9/5) Coordination for those who need a 404 from both the state and federal governments.
- (9/5) How will ADEQ and a federal authority work together? Could investigate how the 401 process works.

### **Action Items:**

- (9/5) Emily will send a list of timeframes used by ADOT to the group. (completed 9/20)

- (9/20) Suzanne to upload with a note in the Excel document about where to find public notice form for permits.
- (9/20) Scott and permit transition team: Michigan and New Jersey permit processes should be restructured to track each other, then put into an appendix.
- (9/20) Kelly to post the ESA matrix to draft documents for use by this group. (completed 9/23)
- (9/20) Tricia will connect with other members not currently participating in a subgroup. (completed 9/20)
- (9/20) Tom to send NJ section of MOA on ESA timeframes to the timeframes subgroup. Kelly will provide to ESA group also.
- (9/20) All subgroups to forward questions for Corps to Tricia. Tricia will contact Sallie with a list of questions. May be a separate conference call. Should be things we can't learn through existing regulations.
- (9/20) Scott to provide Tricia with information on Michigan funding issues. (completed 9/20)
- (9/20) Tricia will post the schedule. (completed 9/20)
- (9/20) Kelly to contact ADEQ for the Michigan/Corps MOU –from the 1980s, as well as any updates. (contacted Andy 9/23)

#### **Next Meeting Agenda**

- Revised current state
- Primary topic: Discussion of the draft ideal state