



## **TWG: PERMIT PROCESS**

**Meeting:** #3      **Date:** Oct. 4, 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 checked="" type="checkbox"/> Betsi Phoebus, Jacobs   |
| <input checked="" type="checkbox"/> Rion Bowers, Bowers Environmental Consulting                                 | <input checked="" type="checkbox"/> Karla Reeve-Wise, PDEQ  |
| <input checked="" type="checkbox"/> Mike Cabrera, Pima County Flood Control                                      | <input type="checkbox"/> Suzanne Shields, Pima County Regional Flood Control District             |
| <input checked="" type="checkbox"/> Tom Klimas, WestLand Resources, Inc.   | <input checked="" type="checkbox"/> Jennifer Simpkins, Kimley-Horn                                |
| <input checked="" 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 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       David Lelsz, ADEQ       Kelly Cairo, GCI

### **Discussion Items:**

#### Writing/Commenting Process

- Duane explained that the federal nexus subgroup is editing a separate Word document, coming to agreement, then uploading to the draft white paper to seek larger group comments.
- After discussion the group agreed to this process:
  - Subgroup agrees on a section of text and uploads to draft white paper
  - Anyone can comment, and should focus on content
  - The full TWG will discuss and comment, with changes occurring live during the meeting or through subgroup follow up
  - Tricia will provide final oversight for consistency. This would be language and style changes, not content changes. There was support for this approach.
    - Scott also recommended looking for opportunities to provide concise language.
    - Kelly recommended that comments include specific language that the editor can paste into the document
  - Tricia stressed the importance of commenting in a timely manner. Group participation is important to avoid assumptions of consensus because TWG members did not make comments.
  - Action item: Tricia will write up the new comment and discussion process and send it to the group.

## Deadline

- Tricia asked if the group if they supported Sandy's suggestion of writing a letter to ADEQ regarding deadline extension. There was general agreement to do so. Tricia noted that it was not necessary for everyone to sign the letter. Tricia recommended including a proposed extension date for white paper completion.
- Action item: Duane agreed to take the lead on drafting a letter by 10/10. *(Please note: Tricia and Duane will meet with Trevor Baggiore to discuss extending the timeframe. Pending the outcome of the discussion, the option to write the letter will be reevaluated.)*

## Timeframes

- David provided a brief summary of COE permitting timeframes. See Google Docs, References, Timeframes.
  - The COE uses permitting timeframes, not licensing timeframes.
  - ADEQ records elapsed time, as well as dead time and touch time metrics.
  - COE data includes artifacts, many of which have been weeded out by ADEQ.
  - Nationwide and individual permit data are provided in separate tabs on the worksheet.
  - Outlier data numbered in the tens, not hundreds.
  - Ten years of data was provided and includes permits issued through February of 2018.
  - Overall mean was 171 days.
  - Data does not distinguish between applications submitted concurrently with a JD request vs separately.
  - White paper/current status: should mention the limitations of the data provided.
  - Data quality may be questionable.
  - JD data can be reviewed as well.
  - Timeframe group can schedule additional discussion with David as needed.

## Whitepaper

- Section 404 Permit Transition, Current State
  - Individual permits: Added language regarding transfer of permits
- Permit Transition Vision (future state)
  - Program (1): Added a suggestion on adopting relevant NWPs and RGs.
    - A benefit to this approach is maintaining NEPA for general permit coverage. ADEQ could adopt NWPs by rule; sub-group should identify an initial list of which permits are applicable to Arizona.
    - Some general conditions might need state-specific supplements for compliance (e.g., ESA and NHPA general conditions that may require consultation with USFWS or SHPO). White paper should include a note that ESA, and Cultural/Historic TWGs are addressing these issues in depth.
    - Regional general permit for the state with tiered permitting options could be a good idea.
    - One option for program transition is to adopt current nationwide and regional permits that apply; suggest additional general permits.

- Should discuss options other than taking over the current program. Second option could be creating new Arizona-specific general permits. There was a concern that if ADEQ begins with adopting the NWP program, they will not be likely to update that program or change to a state-developed general permit program after the transition is complete.
- Want to ensure that regionwide general permits and related issues are not overlooked.
- There was agreement to offer two options for the future state as noted above. Tiers and thresholds also can be added as sub-options (e.g., full, continuing adoption of NWP program or adopt NWP program as a transition and change to state general permits later). For Option 2, see Karla's recommendation in the draft white paper under permit types/future state.
- (2): Group agreed on continuing a simple straight time extension request for individual permits with no modification of scope, as is currently provided by the COE.
- (3): Group agreed to add information about background process for extensions.
  - Administratively continuing permits seems redundant with a simple time extension request as agreed to in #2. Merge this section with #2 and recommend an ADEQ response time for such streamlined requests with no scope change.
  - Grandfathering discussion was noted (i.e., currently when a project is authorized under an NWP and is under contract/construction prior to a new NWP program issuance, that project can continue under the prior NWP for up to 1 year. Something similar is needed for ADEQ program).
  - Streamline transitions of completed applications (e.g., transition of a general permit application across the change from one general permit program to a renewed and possible revised general permit program)

### **Critical Information Resources:**

- (9/20) Michigan/Corps MOU

### **Administrative Decisions:**

- Karla proposed reading/commenting deadlines. The group agreed to complete assignments by Oct. 16.

### **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.
- (10/4) Need to cover enforcement and citizen suits. Enforcement of existing permits, and enforcement related to violations. Believe this should be included in permit types.

- (10/4) Mechanics of permit applications currently include staggered data submission. Will need to figure out how this will work with timeframes. Likely put this in the permit process or forms area.

## **Action Items:**

- (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 contact ADEQ for the NJ and Michigan/Corps MOUs, including any updates. (contacted Andy 9/23)
- (10/4) David/Kelly to upload data analysis to Permit Process TWG. (Completed 10/5)
- (10/4) Tricia will reach out to other TWG chairs regarding coordination with ESA and other suggestions.
- (10/4) Tricia will ask Sallie Diebolt about any behind the scenes work that occurs upon request for a permit extension. This may be related to annual reporting requirements. Also, she will ask how and whether the COE has considering improving their process. (Completed 10/5)
- (10/4) Tricia will add the information from today's discussion to the live Google white paper. (Completed 10/5)
- (10/4) Tricia will provide a summary of the new commenting process. (Completed 10/5)
- Duane to draft deadline extension letter by 10/10. *(Please note: Tricia and Duane will meet with Trevor Baggione to discuss extending the timeframe. Pending the outcome of the discussion, the option to write the letter will be reevaluated.)*

## **Decisions:**

- Extend all meetings to 9-noon.
- Next meeting primary topic: Discussion of the draft current state and draft future state for Timeframes and Permit Types