



**TWG:** Significant Degradation    **Meeting:** #7    **Date:** November 20, 2018    **Time:** 10-11:30 a.m.

### Attendees:

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Nancy Allen, City of Phoenix                  | <input type="checkbox"/> Bruce Larson, Bowman Consulting                       |
| <input type="checkbox"/> Rion Bowers, Bowers Environmental Consulting             | <input checked="" type="checkbox"/> Brian Lindenlaub, WestLand Resources, Inc. |
| <input checked="" type="checkbox"/> Jeremy Casteel, HilgartWilson                 | <input checked="" type="checkbox"/> Jennifer Martin, Sierra Club               |
| <input checked="" type="checkbox"/> Lee Decker, Gallagher & Kennedy               | <input checked="" type="checkbox"/> Karla Reeve Wise, PDEQ                     |
| <input type="checkbox"/> Angela Garcia, Salt River Pima-Maricopa Indian Community | <input type="checkbox"/> Monica Salguero, ASARCO                               |
| <input checked="" type="checkbox"/> Stanley Hart, Save the Scenic Santa Ritas     | <input type="checkbox"/> Myron Smith, KGHM                                     |
| <input type="checkbox"/> Robert Kellock, USAF Retired                             | <input checked="" type="checkbox"/> Van Wolf, Salmon, Lewis & Weldon, P.L.C.   |

### Staff Support:

- |   |   |   |
|---|---|---|
| <input checked="" type="checkbox"/> Heidi Welborn, ADEQ | <input checked="" type="checkbox"/> Theresa Gunn, GCI | <input type="checkbox"/> Kelly Cairo, GCI |
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### White Paper Status

- Alternative analysis section drafted
- Dissention opinions may not be known until the paper is further evolved

### December Stakeholder Meeting

- December 6 Webinar
- Each chair is to present 1-2 slides on the draft recommendations

### Significant Degradation

State has a starting point with significant degradation but one person feels the state may need to expand the definition and establish an approved anti-deg policy that covers 404 instead of only 402

- ADEQ's current anti-degradation policy is one rule back and does not include the 404 program
- Need to have metrics in rule instead of policy to determine significant degradation
- Should probably measure on watershed basis
- Do the 401 considerations become part of the 404 analysis?
  - EPA stated B (1) guidelines is a stringent analysis and goes beyond water quality
  - 401 doesn't apply if assume primacy
  - Projects will have to meet the 404 B (1) Guidelines
  - Carry forward that the State surface water quality standards which cannot be exceeded

### Alternative Analysis

- Need to have more discussion that Guidelines do not contemplate the same level of analysis for all projects
- Spectrum of opportunity in providing analysis

- Scope of Analysis – group will need to make a recommendation
  - Focus on aquatic environment, but EPA doesn't feel the B (1) analysis currently being done isn't enough
  - There are several court cases that address scope of analysis
    - Have to consider effects of the discharge but other effects (secondary impacts)
    - A recent case stated could only look at the dredge and fill only not the project itself
    - Believe the scope is the dredge and fill, but EPA feels that is too narrow
    - For sig deg analysis should review the area of dredge and fill and then consider cumulative and secondary impacts
    - For alternative analysis it should focus on the discharge of the alternatives (impact to aquatic resources)
- Sig Deg TWG will recommend that analysis be related to only dredge and fill activities in Waters, plus adjacent wetlands
- Overall project purpose (FLA 404 Handbook, Appendix A) is defined more consistent with the Corps than EPA
  - Should use the FLA language as our recommendation for scope of analysis
- Alternatives need to support the purpose and need
  - 404 analysis on the aquatic resources
  - Grey areas are how to conduct the secondary and cumulative analysis and often involves consultation with outside agencies
- ADEQ should require a robust purpose and need statement; the alternatives should support the purpose/need
- Cumulative effects would be acceptable, but Secondary Effects sections may need definition
- Scope of analysis is in the sig degradation section and carries over into alternatives analysis
- White paper should define and recommend application of the Guidelines should be limited to aquatic resources. The AA section should reference this recommendation and carried the thinking forward.
- Sig Degradation is wholly aquatic resource based including the human use of those resources
- Alternative analysis is more focused on project purpose and need
- Brian will add more examples on the project purpose and needs and add more detail based on today's recommendations

### **Avoidance and Minimization**

- Jeremy working on the section
- Recommendation that ADEQ develop educational materials

### **Open Discussion**

- Use "Corps 404 program" when referring to current program
- Refer to future state as "State Assumed Program"

- Permits TWG considering major vs minor permits may have a different level of analysis under the 404 B (1) guidelines
- The group reviewed the charter to ensure the specific considerations are being covered

### **Future Discussion Needed:**

- (8/30) Need to determine if limits can be changed and specific to the state
- (8/30) The criteria established to determine significant degradation are subjective and murky
- (8/30) Can you apply the AA process and adapt to streamline, considering guidance and case law?
- (8/30) Need to standardize the data to be used, where acceptable (i.e., watershed, durations, etc.)
- (8/30) Ensure the process allows for public involvement
- (8/30) In at least one jurisdiction, about 60-70% of permits are declined due to poor project purpose; could requirements be put in rule or guidance
- (8/30) Public Interest regulation is currently not in the CWA, how will AZ maintain those interests?
- (11/6) Need to understand how to determine project scope for analysis

### **Action Plan**

- All new copy added to the white paper end of day November 29
- Please provide Jeremy with text to add to Google Docs if having issues with main document
- All members to have reviewed document prior to the next meeting

### **Next Meeting Agenda:**

- December 4, 2018