



**TWG:** Significant Degradation    **Meeting:** #8    **Date:** December 4, 2018    **Time:** 10-11:30 a.m.

**Attendees:**

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Nancy Allen, City of Phoenix                  | <input checked="" 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 checked="" type="checkbox"/> Robert Kellock, USAF Retired                  | <input 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 checked="" type="checkbox"/> Jill Hankins, ADEQ |
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**White Paper Status**

The team reviewed the white paper.

- Sections are not tied together
- Scope of Analysis: Where should the discussion be?
  - Like the scope in the significant degradation section and in the alternative analysis section discuss how to apply
  - Cases cited under significant degradation scope analysis was written to focus on the significant degradation but did not consider for alternative analysis
- Alternatives should be practicable and reasonable; we don't reference reasonable
- Need to add discussion on "no action" alternative
  - No action often used to define the delta between the alternatives
- Pages 14-15: In ADEQ's CWA rule on anti-degradation references permits issued by the Corps; if not changed would have a gap in implementation of the state 404 program
  - Current ADEQ anti-deg are unique and more detailed and calls out 404 and 401 water certification
  - Satisfy anti-deg by meeting 404 B (1) guidelines for Tier 1 and Tier 2 waters
  - 401 triggered when federal agency permit/action could affect water quality
  - Once state assumes program 404 is no longer a federal action
  - Leave section but call out Corps issued permits and add ADEQ issued permits
- Brian to tie the alternative section to the previous sections
- Like bullet 3 which suggests ADEQ define what information is needed to determine significant degradation
  - Changes from an agency driven to an applicant driven process
  - Similar to APP permits

- Page 16: Alternative Analysis (paragraph one)
  - Statements are misleading because nationwide permits require notification and other requirements
  - Nationwide must meet conditions of the permit and comply with the guidelines but do not generally submit an alternative analysis to the agency
- Page 16: Purpose and Need
  - May not always be a market to analyze
- Level of analysis and monitoring is based on size of project and amount of aquatic impacts
- Recommend analysis on the watershed basis
- Do not need a conclusion (will add to ex summary)
- Emphasis ADEQ is regulating dredge and fill in an aquatic resource which is a WOTUS including wetlands
- A recommendation is to adopt the 404 B (1) guidelines but there are some definitions and other sections which do not apply in Arizona

### **Minority Opinion**

Stan Hart and Jennifer Martin are drafting a minority opinion focusing on whether the recommendations are providing an equivalent protection.

### **Charter General Considerations**

- Litigation Risk for all Parties
  - Incorporating the B (1) guidelines may have less risk than adopting an Arizona version
  - Removal of NEPA may reduce litigation risk
  - Some stakeholders may think loss of NEPA creates a loss of chances to litigate which is not a good thing

### **Action Plan**

- Lee will send information regarding “no action” alternatives
- Heidi to discuss with management a change to the current CWA Triennial rule package to cover the gap between Corps and ADEQ issued permits
- Brian to work on alternative analysis section to reference other sections of the paper
- Brian to clarify first paragraph and the project purpose and need on page 16
- Lee and Nancy to add monitoring in the sig deg
- Lee to add a statement about Guidelines are based on 2015 Rule, and definition of Waters of the US could change
- HilgartWilson staff will clean up document
- Create a summary of all recommendations in the executive summary
- Final content to Jeremy by December 11
- Final draft to TWG on Friday, December 14
- Final approval of paper during December 18 meeting



# MEETING SUMMARY

**Next Meeting Agenda:**

- December 18, 2018 at ADEQ, 10 – 11:30 a.m.