



**TWG: Significant Degradation**

**Meeting:** #2

**Date:** Sept. 11, 2018

**Time:** 10-11:30 a.m.

**Attendees:**

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Nancy Allen, City of Phoenix                  | <input checked="" type="checkbox"/> Bruce Larson, WestLand Resources, Inc.     |
| <input checked="" 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 checked="" type="checkbox"/> Monica Salguero, ASARCO                    |
| <input type="checkbox"/> Stanley Hart, Save the Scenic Santa Ritas                | <input type="checkbox"/> Myron Smith, KGHM                                     |
| <input checked="" type="checkbox"/> Robert Kellock, USAF Retired                  | <input checked="" type="checkbox"/> Van Wolf, Salmon, Lewis & Weldon, P.L.C.   |

**Staff Support:**

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|---|---|
| <input checked="" type="checkbox"/> Heidi Welborn, ADEQ | <input checked="" type="checkbox"/> Theresa Gunn, GCI |
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**Discussion Items:**

- Status of Workspace
  - Invitations have been sent for the Google Drive and Google Calendar.
  - Jeremy loaded reference documents on the Google site including reference documents from ADEQ.
- Group Feedback on Current Clean Water Act
- Current State Alternative Analysis
  - Guidance is clear on what alternatives are necessary.
    - Public confused about what goes into development of alternatives
    - Clarifying the level of detail needed may improve efficiency in the application process
  - Tension
    - Ambiguity in guidelines that allow for flexibility
    - It was agreed that a good purpose & need is required and sometimes lacking
- Surface water quality standards (2008/2009)
  - R18-11-107A (anti-degradation): Does it need updates? How does it transfer to 404?
    - Reasonable
    - Cost effective
    - Least degrading or nonimpactful
  - Social Economic
    - Ambiguity challenges W/alternatives analysis
    - Cost and benefits to public and applicant
    - Allowed if not gained in public

- Includes public notice and comments
- 4 (FR230-10-C)
  - Sign advance effects on human wealth and welfare
  - Impairing use of the water
  - Body – how can it socially and economically
  - Usually able to propose alternate that doesn't get to sig deg
  - Are we bound to the federal program?
  - Permit is service to a customer wanting to discharge
  - Modify
- 230.10 A 1-3-4
  - Corps must provide alternatives to no action; preferred action
  - EPA memo – Does the whole process apply? Does it differ by project complexity?
  - B/analysis amb. Creates opportunity to interpret
  - Cost analysis is difficult
  - Examples of level of effort based on level of impact
- Minimization
  - Minimization should first begin with avoidance
  - Minimal impact to washes, ESA, etc. results in the least environmental impact
  - Should it be “avoid” if you can and “minimize” if you can't avoid? Needs a good reason. Start with nationwide.
  - ADEQ generic list of activities can be applied to minimize – What is the minimization permits list?
  - Can phasing be put into a rule based on acres distributed after seeing what permits will be included?
  - Need consistency between project regulators
  - Need to consider different condition in AZ
  - Difficult to codify if static
  - How does emerging technology make it into the list?
- Some other state documents include arid climates
  - List of accepted activities of equivalent or better that ADEQ will accept.
  - Recommendation?
  - When will AA be applied?
  - When the activity does not meet nationwide permits
- Levels – what about tier 2 waters which included wetlands?
  - Will 401 conditional programs be absorbed? Or will they be eliminated for non-assumable waters?
- Review of White Paper Structure
  - Jeremy reviewed outline and will add some background text.
  - Need to identify topics and subtopics under each section.
  - What if EPA objects –Rename as Potential Challenges.
  - Do we need to worry about the Federal Nexus Projects? Considerations include:

- Will need to tie into the executive committee? Shouldn't spend time on this? NEPA is done before permitting now, should this be the same for future state if there is a federal nexus?
- Will the scope be the same for the NEPA based on federal agency will ADEQ need to bridge this gap?
- Will the EA and EIS analysis show alternatives that miss washes? Each Federal agency NEPA process varies?
- What is the starting point for ADEQ analysis? ADEQ would be cooperating agency will have an early review to determine if the analysis is addressing washes. Change to the Federal Nexus on the AA.
- Review implications for "Scope of Analysis" when transferred to state
- It was decided that the separate "NEPA/Federal Nexus" topic was not needed. Move NEPA/Federal Nexus discussion to the AA.
- Loss of NEPA by the state taking over the program is a major concern – what are the policy recommendations to fill in the gaps in AA/Sig Deg with the loss of NEPA? Need to mirror Corps take on NEPA to maintain stringency. There are options with state a NEPA process.

#### **Future Discussion Needed:**

- (8/30) What is the process for AZ projects that do not qualify nationwide program?
- (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) Explore what is necessary for alternative analysis (Corps has a template)
- (8/30) Need to standardize the data to be used, where acceptable (i.e., watershed, durations, etc.).
- (8/30) Minimize is often misunderstood; not only avoid impact but leave a better place
- (8/30) Need to consider the AZ process since NEPA does not apply to non-federally funded projects.
- (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?
- (8/30) How is flood control sig deg considered?

#### **Action Items:**

- (8/30) Jeremy to gather information and send links to the group (completed)
- (8/30) Theresa to send a meeting invite for future meetings (completed)
- (8/30) All members to provide information to Jeremy by September 7 on the current process for AA and Sig Deg (completed)
- (8/30) Heidi to share PPT from EPA training with Jeremy (completed)
- (9/11) Notify Theresa if you did not receive the invites to Google (completed)
- (9/11) Review current state documents and identify white paper topics/issues which need to be discussed and recommendations made (completed)

- (9/11) Update documents on Google Site (completed)

**Next Meeting Agenda:**

- Current State discussion; white paper topics/issues for discussion
- Identify the gaps