Arizona Department of Environmental Quality

Clean Water Act § 404 Assumption

Tribal Listening Sessions

September 17: Flagstaff
September 19: Phoenix
September 20: Tucson
WELCOME
Trevor Baggiore, ADEQ Water Quality Division Director
AGENDA

- Introductions
- Background on the CWA Section 404 Program
- Arizona’s Roadmap to assumption
- Listening Session
- Next steps
BACKGROUND ON THE CWA SECTION 404 PROGRAM
DRAFT ARIZONA WATERS MAP

Arizona Ephemeral Waters

Arizona Perennial and Intermittent Waters

This map is for general reference only and may not be all-inclusive. ADEQ program's data collection efforts are ongoing. More detailed information and specific locations can be obtained by contacting the Arizona Department of Environmental Quality.

1 in = 42 miles
**SECTION 404 OF THE CLEAN WATER ACT**

- Section 404 was intended to prevent and mitigate impacts from the discharge of dredged or fill material within Waters of the United States (WOTUS).

- A person may not discharge dredge or fill material into a WOTUS without a permit.
To get a permit:

- Must show efforts to avoid or minimize impacts

- Mitigation required if impacts are avoidable
ARIZONA’S ROADMAP TO ASSUMPTION
OUTREACH

- **472 Participants**
- **6 Stakeholder Meetings**

- **91 Members**
- **70 Technical Work Group Meetings**

- **17 Members**
- **7 Executive Work Group Meetings**

Tribal Engagement

- Governor's Office on Tribal Relations sent a request for engagement
- Inter Tribal Council of Arizona hosted a listening session
- 8 tribes requested and received formal consultation
<table>
<thead>
<tr>
<th>AZ PROGRAM FEATURES</th>
<th>Comparison of Federal and State Program</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>404(b)(1) Review</strong></td>
<td>• Same as the current Federal program</td>
</tr>
</tbody>
</table>
| **Endangered Species Act Protections*** | • Same as the current Federal program  
• Some permits that need ESA § 7 incidental take protections may be “off ramped” back to Army Corps |
| **National Historic Preservation Act*** | • State Historic Preservation Act would apply instead |
| **National Environmental Policy Act** | • Not a feature of the State program |
| **Tribal Engagement** | • Applies to all permits and applications |
| **Historic Resource Protections*** | • Protections for sites in the Waters of the US  
• Identify, document, and nominate properties to the Arizona Register of Historic Places |
| **Public Interest Review** | • Army Corps requirement  
• Not a feature of the State program |
| **Public Notice*** | • State program will feature 2 public notices |
| **Enforcement** * | • Respond to complaints, proactive inspections, etc. |
BENEFITS OF ARIZONA ASSUMPTION
Improved Accountability

AZ Clean Water Act Programs

- Water Quality Standards
- Nonpoint Sources
- Total Max Daily Loads TMDL
- Monitoring & Assessment
- AZPDES Discharge Permits
- Permits & Compliance

* Dredge and Fill permits are the only section of the Clean Water Act for which Arizona does not have primary authority
HISTORY: REDUCED TIME FRAMES

AVERAGE DAYS TO AUTHORIZE INDIVIDUAL PERMITS

<table>
<thead>
<tr>
<th>Year</th>
<th>Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016</td>
<td>214.96</td>
</tr>
<tr>
<td>2017</td>
<td>192.88</td>
</tr>
<tr>
<td>2018</td>
<td>143.77</td>
</tr>
<tr>
<td>2019</td>
<td>127.92</td>
</tr>
</tbody>
</table>

ADEQ has continuously reduced the number of days to authorize Individual Permits

AVERAGE DAYS TO RETURN TO COMPLIANCE

<table>
<thead>
<tr>
<th>Year</th>
<th>Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016</td>
<td>115.55</td>
</tr>
<tr>
<td>2017</td>
<td>84.42</td>
</tr>
<tr>
<td>2018</td>
<td>91.46</td>
</tr>
<tr>
<td>2019</td>
<td>73.39</td>
</tr>
</tbody>
</table>

Through compliance assistance efforts, ADEQ has worked with customers to reduce the number of days to return to compliance
INCREASED TRIBAL NOTIFICATION

- First notice upon receipt of application
- Second notice to review draft permit
- Online tools to track
ADDITIONAL BENEFITS

- Predictable and consistent permit conditions
- Surface water data to better condition permits
INSPECTION, COMPLIANCE, ENFORCEMENT

- Inspect facilities
- Respond to complaints
- Enforce program rules and statutes
- Promote positive environmental practices
ESTIMATED PROGRAM COSTS

- $2.5 million annually
  - 10 staff
  - More than 300 actions

- Fees to be established in rule

- Customers (Applicants) to cover the costs of the program
ADEQ will review and make determination of potential impacts

If no unacceptable adverse impact, a permit may be issued

ADEQ is not authorized to issue incidental take permits

Apache trout (*Oncorhynchus apache*)
Photo courtesy of Arizona Game and Fish
Engagement with Tribes and State Historic Preservation Office

Only issue a permit if no significant degradation will occur in the WOTUS

If no significant degradation will occur in the WOTUS, ADEQ may issue permit

Identify, document, and nominate properties to the Arizona Register of Historic Places, as required by State Historic Preservation Act
LISTENING SESSION

Len Drago, ADEQ Tribal Liaison
FEEDBACK IS IMPORTANT

- ADEQ will use your input to:
  - Identify gaps in the proposed program
  - How best to interface with tribes during permitting
NEXT STEPS:
Submit Comment by Nov 18

- Go to www.azdeq.gov/404
- Review Roadmap
- Click on link on page 66
- Answer questions
COMING SOON:
WATERS OF THE STATE
To subscribe to ADEQ announcements via Govdelivery, click “subscribe” on bottom right of ADEQ home page

Subscribe specifically to the “WOAZ Stakeholder Communications” list
EMAIL: CWA404@AZDEQ.GOV

FOR MORE INFORMATION