

ADEQ WATER QUALITY DIVISION PROPOSED WATERS OF THE UNITED STATES RULE REVISION STAKEHOLDER MEETING #2 SUMMARY

DATE: Feb. 12, 2019
TIME: 9:30-11:30 a.m.
LOCATION: Flagstaff Aquaplex, 1702 N. 4th Street, Flagstaff

STAKEHOLDER ATTENDEES (Attached)

ADEQ STAFF

Krista Osterberg
David Lelsz
Andy Koester
Patti Spindler

ADDITIONAL ATTENDEES

Kelly Cairo, GCI
Theresa Gunn, GCI

AGENDA

The complete agenda is available online and includes:

- Review Agenda and Introductions
- Overview of the Proposed Rule Revision
- Stakeholder Comment
- Next Steps
- Meeting Evaluation

REVIEW AGENDA AND INTRODUCTIONS

Meeting facilitator Theresa Gunn, GCI, welcomed attendees and explained that the purpose of the meeting was to gather input from stakeholders on the benefits and risks to Arizona of the proposed WOTUS rule. She facilitated introductions. Four stakeholders participated in person, and 10 attended via webinar or phone. Not all stakeholders identified themselves.

OVERVIEW OF THE PROPOSED RULE REVISION

Krista Osterberg, ADEQ Surface Water Quality Improvement Value Stream Manager, explained that the draft rule has not yet been published in the Federal Register. Once this occurs, a 60-day EPA comment period will begin. The rule as written has the potential to significantly affect water programs in Arizona.

Highlights of Osterberg's presentation follow:

- Two major CWA permitting programs in Arizona include AZPDES discharge permits (402 program) and dredge and fill permits (404 permits). The 404 program is currently administered by the Army Corps of Engineers and ADEQ is seeking primacy. WOTUS changes would affect both programs.

- A water’s connectivity to a traditionally navigable water (TNW) determines whether it is affected by permit programs.
- “Waters of the state” means all waters within the jurisdiction of this state including all perennial or intermittent streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, aquifers, springs, irrigation systems, drainage systems and other bodies or accumulations of surface, underground, natural, artificial, public or private water situated wholly or partly in or bordering on the state.
- ADEQ has the authority to set standards for any water of the state and enforce against those standards.
- ADEQ’s existing Surface Water Quality Standards apply to “surface waters,” which are defined as WOTUS.
- ADEQ protects “underground” water via the Aquifer Protection Program (APP), which regulates discharges to groundwater. Should an APP-regulated discharge also discharge to waters of the state, APP regulations would provide a degree of protection to those waters of the state (to the level of the Aquifer Water Quality Standards). APP protects Arizona’s aquifers as drinking water sources. Aquifer Protection standards generally align with drinking water maximum contaminant levels (MCLs), and are applied to surface discharges.
- The 2015 CWA rule is not implemented in Arizona due to a federal court injunction.
- Important changes in the proposed rule to note:
 - Exclusion of ephemerals
 - Significant nexus test removed
 - Ecological connectivity no longer used to define an adjacent wetland or other jurisdictional waters
 - Ephemeral streams sever jurisdiction for upstream waters (except TNWs)
- 90 percent of Arizona’s river miles are ephemeral.
- State is aware that it may be a necessity to regulate and enforce non-WOTUS waters.

STAKEHOLDER COMMENT

Gunn requested attendees consider the questions below. Responses provided on worksheets and via online survey will be posted on the ADEQ website. She noted that discussion of these comments may help inform other stakeholder’s comments. Osterberg requested additional public comment through the online survey through March 15. Highlights of discussion are included below.

How does the proposed WOTUS rule revision benefit Arizona?

- (no responses received)

Does the proposed WOTUS rule revision pose a risk to Arizona? If so, what is the risk?

- Severance of upstream waters: there are some valuable habitats and water conveyances that are now protected that would be vulnerable.
- Proposal has no specific Arizona-impact analysis.

- Lower Salt River and Gila River, Santa Cruz and tributaries such as the Agua Fria would be excluded from protection. These waters have AZDPES associated with them, so these are major impacts not described in the proposal.

Are there any issues not addressed by the rule revision or are not clear?

- How is ground water affected?
- Are there overlapping regulations that might protect these potentially vulnerable areas?

Thoughts about state having a waters of the state program?

- Strikes me as an all or nothing proposed rule. Concern is the large ephemeral washes have substantial functions and values. What the state should be thinking about will depend on how the rule is proposed. Believe there is a middle ground between this and the 2015 CWA regarding jurisdiction and areas that will require additional protection at the state level.
- FEMA regs allow me to create a concrete channel, which would eliminate many of the valuable functions of the wash.
- Timing on ADEQ analysis?
- Are there any overlapping regulations that might protect waters or ESA?

Osterberg and staff members noted the following:

- Regarding severance of upstream waters, ADEQ has some internal projects to see which areas would no longer be included, and what kinds of programs would be needed. There will be another stakeholder process to hear about the appropriate level of state protection. While some authority is in place, this would likely require additional rule writing.
- In the proposed rule, groundwater is specifically excluded from WOTUS. The state has aquifer protection standards that are essentially the same as drinking water rules.
- ADEQ is beginning to delve into Arizona-specific impacts.
- As far as addressing the gap in coverage and potential funding gaps, ADEQ will share concerns about noted waters with the EPA.
- Rule revision may affect 404 permits. ADEQ has permission to pursue assumption on WOTUS.
- In the future, there may be a need for a state 404 program. Would need public input as the rule progresses.
- ADEQ is looking at APP, flood control and other ordinances as the first step in determining whether there are existing protections that might apply to waters.
- This proposed rule will likely undergo litigation. It is in the state's best interest to be proactive. Much of the analysis of the impacts to Arizona will be complete by the end of the federal comment period. Gap analysis is being worked on, and there will be a significant public process.
- Patti Spindler requested information from attendees on waterbody examples in the Flagstaff area, particularly those that are ephemeral or intermittent environments.

NEXT STEPS

Stakeholders were reminded to send comments to EPA on the proposed rule. The EPA deadline will be 60-days post publishing in the Federal Register. Additional information is available on the EPA website.

Comments due to ADEQ by March 15 are intended to help inform ADEQ's statement to EPA. Comments may be sent to ADEQ via the link to Survey Monkey. ADEQ will post comments on website.

ADEQ intends to share the draft letter with stakeholders prior to sending it to EPA via a statewide webinar.

An additional WOTUS meeting covering the same content will be held in Tucson on Feb. 20.

EVALUATION

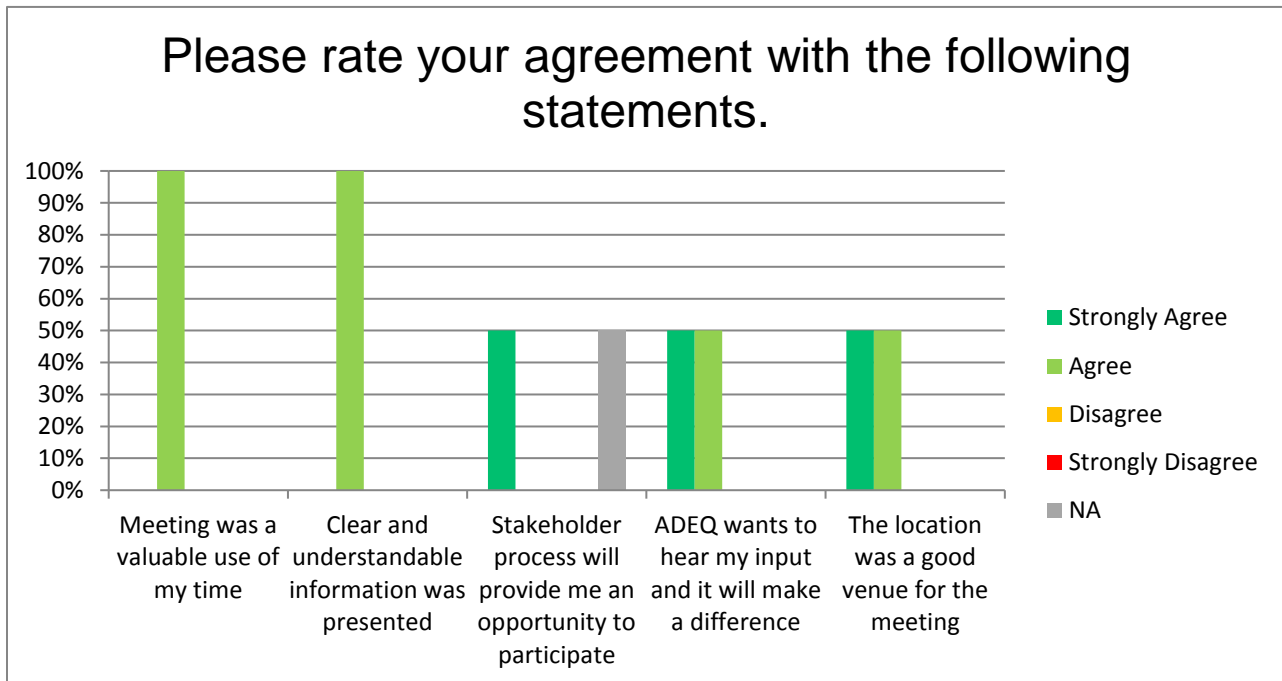
Gunn asked stakeholders to complete the meeting evaluation. The evaluation also was available online through Feb. 17.

EVALUATION RESULTS

Two stakeholders returned meeting evaluation surveys. Some stakeholders did not answer all questions.

Attendees were asked to rate their agreement (Strongly Agree, Agree, Disagree, Strongly Disagree, Not Apply) with the following statements:

- Meeting was a valuable use of my time
- Clear and understandable information was presented
- Stakeholder process will provide me an opportunity to participate
- ADEQ wants to hear my input and it will make a difference
- The location was a good venue for the meeting



What was the best thing about today?

- (no responses)

What should be changed for future meetings?

- Better advertisement in the professional community to get better attendance/participation. I saw this third hand. Was it advertised on ASCE (AZ), AFMA, and other organization websites/emails?

STAKEHOLDER ATTENDEES* (IN PERSON AND BY PHONE/WEBEX) AND ORGANIZATION

Name	Organization (if applies)
Joan Card	
Andrea Hamilton	
Mike Kearly	Natural Channel Design
Jack Moody	
Philip Tamayo	AIRGAS

**(Please note: Not all stakeholders provided their names and/or organizations.)*