

ADEQ WATER QUALITY DIVISION PROPOSED WATERS OF THE UNITED STATES RULE REVISION STAKEHOLDER MEETING #3 SUMMARY

DATE: Feb. 20, 2019
TIME: 9-11 a.m.
LOCATION: Pima County Water & Energy Sustainability Center, 2955 Calle Agua Nueva, Tucson

STAKEHOLDER ATTENDEES (Attached) Patti Spindler

ADEQ STAFF
Trevor Baggione
David Lelsz
Andy Koester

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. Approximately 30 stakeholders participated in person, and 25 attended via webinar or phone. Not all stakeholders identified themselves.

OVERVIEW OF THE PROPOSED RULE REVISION AND STAKEHOLDER COMMENT

Trevor Baggione, ADEQ Water Quality Director, explained that the draft rule was published in the Federal Register on Feb. 14, with comments due April 15. Baggione said that the Association of Wetland Managers have requested a 60-day extension to the comment period.

Baggione provided a presentation describing current Clean Water Act permitting programs and proposed changes to WOTUS.

- Two major CWA permitting programs in Arizona include AZPDES discharge permits (402 program) and dredge and fill permits (404 permits).
- Federal goals of the proposed rule revision:
 - Balance between federal and state waters
 - Preserve state sovereignty

- Meet objectives of the Clean Water Act
 - Clarity and predictability
- The proposed rule revision would change regulated waters. Ephemeral washes and streams would be excluded from regulation of the CWA. Ephemeral flows are in response to precipitation. Flows that result from snowfall runoff and groundwater would be included. Important changes in the proposed rule to note:
 - Exclusion of ephemerals
 - The significant nexus test was removed
 - Ecological connectivity no longer used to define an adjacent wetland or other jurisdictional waters
 - Ephemeral streams sever jurisdiction for upstream waters (except TNWs)
- 10 percent of Arizona river miles are perennial or intermittent. The remaining 90 percent are ephemeral waterways, and therefore would not be regulated under the CWA.
- There will be a gap between the proposed CWA and today's CWA.
- ADEQ will need a means to fill this gap. There will need to be a way to protect urban lakes and ponds, for example.
- "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 statutory authority to develop standards for waters of the state.
- Arizona does not have state level surface water standards—ADEQ has the authority, but has only developed standards for Waters of the US ADEQ does have enforcement authority for those standards.
- ADEQ has permitting, compliance and enforcement authority for aquifers and certain related surface waters.

Gunn requested attendees consider the questions below. Responses provided on worksheets and via online survey will be posted on the ADEQ website. She requested additional public comment through the online survey through March 15.

- How does the proposed WOTUS rule revision benefit Arizona?
- Does the proposed WOTUS rule revision pose a risk to Arizona? If so, what is the risk?
- Are there any issues not addressed by the rule revision or are not clear?
- Thoughts about state having a waters of the state program?

Highlights of comments and questions included:

- Would the current TNWs, like the Salt and Gila, because they don't reach the Colorado, no longer be regulated?
- Are current TNWs going to be included?
- Will the Corps reassess TNWs?

- Are there certain distances (e.g. reach lengths) for an ephemeral to sever jurisdiction?
- Would the proposed rule include urban lakes and ponds?
- Will ephemeral tributaries be rendered non-WOTUS?
- What is the logic of taking those bodies out of protection? There is nothing in the proposal that directs states to create a program.
- Can individual states be excluded from proposed rule change? The CWA as currently defined, helps to protect important cultural resources and sacred sites along ephemeral washes. Without this rule in place, these heritage resources will be lost.
- What would be the time frame for Arizona to step forward to protect these waters? How would industry be affected?
- What is the nexus for sub-surface waters? For example, a wash with two pools of water, and the water that runs underground. A lot happens in sub-surface waters, which differs in Arizona, that is not being addressed federally or statewide.
- Why did AZ participate in the stay on the 2015 rule?
- What happens to existing AZPDES permits once they are no longer WOTUS?
- Why didn't ADEQ propose state WOTUS?
- How will the proposal affect stormwater?
- What will ADEQ do to protect anglers?
- Setting standards isn't permitting. What does that mean about enforcement?
- MSGP permit would not be needed?
- Has EPA made any statements about what happens to programs that fund WOTUS?
- Will there be transparency of these comments and ADEQ's letter to EPA?
- Gov. Ducey already said he supports the rule—what's the value of this exercise?
- Regarding wilderness areas, I am worried that the safeguards will be gone.
- How does any of this benefit stewardship of Arizona waters? Can't even solve the CAP problem. Lose money from EPA also.
- How does the new rule handle effluent-dependent waters?
- I am concerned about the gap in the map between Colorado River and waters shown near Yuma.
- The Santa Cruz is a positive example about how the CWA and standards have had a positive change.
- I think this is a tremendous risk for public health and safety.
- I understand the state can't exceed federal standards. How can you support this? We don't know where all of the seeps are. Humans are dependent on a healthy ecosystem, as are other animals.
- I worry about conservation. We have documented ephemeral washes with perennial streams which are important to the desert landscape. Safeguards will be gone.
- What is ADEQ's perspective on regulation of groundwater? Groundwater is our drinking water.
- Would ADEQ consider linking groundwater with surface water?
- How does cleaning surface water not impact drinking water? Can't dismiss need to protect surface water. This is a big opportunity for the state to create regulations for our state. Arid region regulations are needed. Recommend that the Tucson area consider creating a consensus to speak with a voice.

- Could ADEQ amplify the APP program?
- Can ADEQ use the groundwater protection program to cover any gaps?
- Would state stringency preclude the state from standards?
- Will ADEQ propose legislation?
- I have concerns about the rule change and concerns about our water. Part of our letters should suggest that ADEQ initiate discussion of rule changes.
- Why would you want to align standards with TNW?
- Does ADEQ identify costs and benefits?
- What factors went into their economic analysis? Did it include impacts to small businesses and private well-users?
- Will ADEQ take a role in educating the public, government and legislature about this plan? Public and developers may be interested in understanding how waters will be affected and the potential for negative impact.

Baggiore and staff members noted the following:

- Anything downstream of Lake Pleasant would not be regulated. The Corps treats Lake Pleasant as TNW. We don't know if the Corps will reassess.
- Distances for ephemerals are not included the proposed rule.
- The proposed rule would not cover isolated urban lakes and ponds. Baggiore noted that the current definition does not include urban ponds and lakes under the CWA.
- Because ephemeral tributaries would be rendered non-WOTUS, permitting would no longer be required for AZPDES.
- The intent of proposed rule is to clarify state versus federal protections. It does not mean these waters don't merit some level of protection. States would be responsible for protecting waters. The federal proposal does not tell states how and what to do. ADEQ is not currently proposing rules as part of the proposed WOTUS rule.
- Believe the federal government is trying to let states determine how to regulate their waters, which would vary from state to state.
- There will likely be challenges to the proposed rule and several years until any implementation.
- A waters of state program would require legislation.
- Sub-surface waters are not regulated. Under the proposed rule, sub-surface waters would not be covered. This issue is not a matter of Arizona adopting WOTUS. Even with additional authority under a waters of the state program, the WOTUS definition would still apply in Arizona.
- The decision for Arizona to participate in the case to not adopt 2015 rules came out of attorney general's office. They ask our thoughts on these types of issues, but it is ultimately their decision.
- Under the proposed rule, existing AZPDES permits would no longer be a legal requirement. This would be up to the permittee.
- ADEQ has relied on federal definition for WOTUS. However, if the CWA coverage changes, ADEQ and stakeholders must consider what a state program should include, to cover waters left in the gap. Under current legislative authority, ADEQ can set standards, but not issue permits for Waters of the State.

- Currently discharges of stormwater to Agua Fria River, for example, require a permit. Under the proposed rule, these discharges would not require a permit. The state would need to gain authority to do so.
- ADEQ could set standards to protect anglers under a waters of state program. City of Phoenix, for example, has already asked to meet with us on this topic.
- Under the proposed rule, an MSGP permit would not be needed for discharges to ephemeral streams.
- ADEQ currently receives about \$4M to run the CWA program. There is an allocation formula. ADEQ is concerned about fund reallocation and intends to include this statement in comments to EPA.
- ADEQ's intent is to collect hard-copy and online comments and post them online.
- We encourage stakeholders to write letters to the EPA.
- ADEQ will have webinar to review our comments to EPA.
- The value of these stakeholder meetings is to understand all of the implications of the rule and request clarification. We are also gathering information about what would be needed at the state level.
- The rule is not clear on effluent-dependent waters and whether they would be jurisdictional.
- If there is a reasonable potential to affect groundwater, an APP permit is required. These waters are not part of the CWA. The proposed rule would not classify groundwater as WOTUS, which is consistent with current practices.
- Potentially linking groundwater with surface water is a policy decision and would require legislation.
- As long as ADEQ has authority, we can create a Waters of the State program. Arizona may not adopt laws or policies to regulate WOTUS that are "more stringent than" the CWA. In cases where there are both federal and state programs, the state is required to be no more stringent than the federal program.
- If stakeholders are interested in ADEQ's authority, you should let legislators know of that interest.
- The triennial review included WOTUS because these are purely CWA standards.
- We will identify costs and benefits in comments to the EPA. Any WOTUS change will affect what is regulated under the 404 program and ADEQ will hire an economist to do this analysis. There is a supplementary document on the EPA website. Clearly, there would be an economic impact to the state.
- Baggiore said that it is his job to inform the governor and lawmakers of the potential impacts of this proposed rule.

NEXT STEPS

Stakeholders were reminded to send comments to EPA on the proposed rule. The EPA deadline is currently April 15, 2019.

Gunn asked attendees to recommend that their group members sign up to on ADEQ's website for additional information.

Comments to ADEQ are due March 15 and 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 will conduct a statewide webinar to share comments that the department will provide to EPA.

EVALUATION

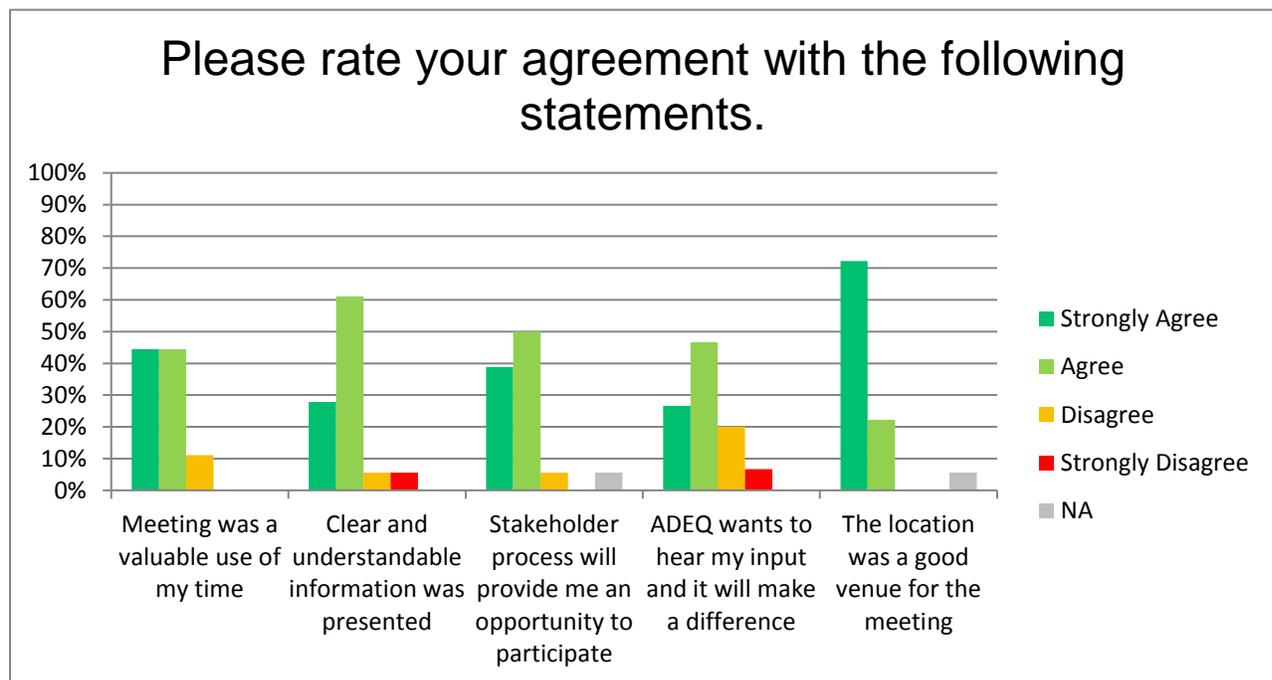
Gunn asked stakeholders to complete the meeting evaluation. The evaluation also was available online through Feb. 26.

EVALUATION RESULTS

Nineteen 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?

- Ability to ask questions and get answers.
- Ability to hear comments and questions.
- Appreciate Director Baggiore and staff taking the time to hold multiple stakeholder meetings; and for taking the show on the road (coming to us).
- Clear and simple description of what's changing.
- Clear information of the upcoming rule change.
- Good presentation.
- Hearing a wide variety of viewpoints.
- Hearing ADEQ's perspective/interpretation of new rule and where the state sees some deficiencies.
- I feel better informed and heard. I value that ADEQ took the effort to be here today. I'm proud of how engaged and progressive our water professionals and state officials are.
- I got to ask questions directly of ADEQ.

- I need to learn more about water, this was good.
- I understand the state is not prepared to protect Arizona waters and appears to support the new Corps definition of Waters of the US.
- Realizing there is a significant issue -- Arizona doesn't realize the importance of creating its own regulations.

What should be changed for future meetings?

- Begin with URL for whole proposed ruling revision. Follow with bullets of main points shown on screen. These were talked at -- need to use multiple forms of conveyance. Audio and visual.
- Consider providing a map to the meeting location. The address was not recognized by MapQuest, but was identified by the iPhone maps app.
- It would be helpful for local staff (or staff familiar with southern Arizona) to attend so that local references could be discussed, rather than Phoenix references that local stakeholders (meeting attendees) are not familiar with.
- I thought it was well-run, well-facilitated.
- Encouragement of other voices in the room -- private interests were present but not speaking.
- Location was hard to find and accessible only from a one-way road -- I was late arriving.
- None.
- Prepare for questions such as: How does surface water quality regulations impact clean water? ADEQ surface water program needs to be very clear about the purpose of surface water quality regulations.
- The answers to my questions and to many other questions was basically that ADEQ did not know or did not have a plan. This is not helpful feedback. I am very frustrated by the fact that ADEQ does not seem to be prepared for these public input sessions and that they often seem to be just going with the flow rather than having a defined agenda.
- The need for it.
- What is ADEQ's position on this issue? ADEQ doesn't seem to have a position without public input?

Additional Comments:

- ADEQ wants to hear my input and it will make a difference: Hopeful.
- ADEQ wants to hear my input and it will make a difference: Unsure.

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

Name	Organization (if applies)
Keith Bagwell	Sierra Church/Rickard Elias
Laura Berglan	Pascua Yaqui Tribe
Frank Bonthas	City of Tucson
Arturo Borgos	Asarco
Colby Bowser	
James Brown	Pima County RW RD CRAO
Evan Canfield	
Kathy Chavez	
Joneen Cockman	AZ BLM Safford
Jim DuBois	Pima County RW RD
Dara Duffy	Green Valley DWID
David Eaker	Pima County DEQ
Lori Ehrman	City of Tucson
Barbara Escobar	Pima County RW RD
Amanda Evenson	BLM
Ryan Fitzpatrick	DPW Fort Huachuca
Julia Fonseca	Pima County
Nicole Gillett	Tucson Audubon
Melanie Halash	RWRD CRAO
Jayann Hernandez	Raytheon
Chris Higgins	DPR/ENRD USARMY
Chip Humes	
Colleen Kelley	
Bailey Kennett	
Rachael King	
Caroline Klebacha	
Chad Lapora	City of Tucson
Elizabeth Leibold	City of Tucson Stormwater Management
Roger McManus	Friends of the Sonora Desert
Christina McVie	CWC-SOAZ
Mike Medine	
Sharon Megdal	UA Water Resources Research Center
Mark Murphy	NVS
Greg Olsen	
Ana Otto	
Karla Reeve-Wise	Pima County DEQ
Jackie Ronstadt	Pima County DEQ
Catherine Schladweiler	Tucson Electric Power
Ivy Schwartz	Community Water Coalition
Daniel Schwiebert	
Amanda Smith	Sonoran Institute

Heather Spitzer	Raytheon
Angie Unk	
Betsi Unk	
Chris Unk	
Derek Unk	
Mary-Ellen Walsh	SHPO
Meg Weesner	Sierra Club Rincon Group
Fred Witneas	City of Tucson

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