



ADEQ WATER QUALITY DIVISION PROPOSED WATERS OF THE UNITED STATES RULE REVISION STAKEHOLDER MEETING #1 SUMMARY

DATE: Feb. 8, 2019
TIME: 9-11 a.m.
LOCATION: ADEQ, 1110 W. Washington Street, Phoenix

STAKEHOLDER ATTENDEES (Attached)

ADEQ STAFF

Trevor Baggione
Afaq Abbasova
Renee Alexander
Jill Hankins
Chris Henninger
Mark Joyner
Andy Koester
David Lelsz

Ivan Lopez
Krista Osterberg
Leigh Padgitt
Patti Spindler
Jason Sutter
John Woods

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 facilitated introductions. Approximately 80 stakeholders participated in person, via webinar or by phone. Not all stakeholders identified themselves.

OVERVIEW OF THE PROPOSED RULE REVISION

Water Quality Division Director Trevor Baggione thanked attendees for participating. He explained that EPA's proposed rule has not yet been published and the 60-day comment period has not yet begun. Several organizations have already requested extensions to the comment period.

ADEQ is interested in gathering stakeholder input on the proposed rule to not only understand how these updates might affect stakeholders, but also for consideration in preparing ADEQ's comments to EPA. He encouraged stakeholders to provide comments to EPA as well.

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

- CWA has two permitting programs, 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.
- The 2015 Clean Water Act Rule doesn't apply to Arizona because Arizona joined a lawsuit that resulted in the issuance of a stay.

Highlights of comments and questions included:

- If a ditch had return flow would it be a covered water?
- Would a perennial tributary be regulated?
- How will you deal with flood protection areas built by the Corps that would cut off a stream?
- What about surface water and AZPDES permits?
- What do you think implications of ephemeral washes now considered a point source?
- If a discharge in a wash reaches a regulated water, the challenge becomes what did that water pick up before joining a WOTUS.
- Whose definition of perennial/intermittent is used?

Baggiore and staff members noted the following:

- If a conveyance is an excluded waterbody, it could be considered a point source and would be regulated under the 402 program, but not Section 404.
- Ephemeral reaches sever jurisdiction for anything upstream.
- Groundwater is not regulated under the CWA.
- The proposed rule does not specifically categorize effluent dependent waters, but indicates that EDWs would be treated as tributaries and would be jurisdictional as long as they contribute intermittent to perennial flow downstream to a TNW in a typical year.
- 90% of waters in Arizona are ephemeral and would not be regulated.
- Definitions of perennial/intermittent are in the rule. ADEQ does not know whether EPA is trying to align definitions with any others.

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. Highlights of discussion follow.

How does the proposed WOTUS rule revision benefit Arizona?

- Can eliminate some urban lakes that don't have a connection to a river.
- Clarity for landowners.
- A landowner can develop 100% of land (this may not be a benefit to all Arizonans).
- Notice of intent to discharge would be eliminated in 90% of Arizona waters.

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

- I am skeptical the state will step up to protect surface water.

- Since funding is based on a formula of number of permits and number of linear stream miles, wouldn't this cause funding risk due to fewer permits and fewer linear stream miles?
- Risk will depend how ADEQ will regulate discharges to ephemerals – waters of the state are expansive.
- A challenge of a waters of the state program is that there would be four or five years of uncertainty, and it would take time for ADEQ to develop programs to fill the gaps.
- Inappropriate wiping out of ephemeral washes could create quite a bit of enhanced runoff. Quite a few contaminants could then get into the soil and/or into the waters, whether state or U.S.

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

- Can waters of the state definition be more strict than the federal definition?
- How will changes impact ADEQ's effort to assume the 404 program?
- Has EPA or Corps identified what they call WOTUS, as far as traditionally navigable waters?
- It would be beneficial for those operating a recharge basin that is an impoundment, if the permittee would be able to report "no discharge" instead of having to test.
- With shallow wells, what is the distinction between surface and ground water?
- If Arizona created a waters of the state program, how should these waters be regulated?
- Would there be a change in handling incidents reported to the National Response Center?
- How will intermittent discharges to potential future non-regulated ephemeral waters will be controlled?
- It's not clear if Arizona wants to restrict waters of the state to surface water or extend its definition and protection to perennial, intermittent, ephemeral washes and groundwater.

Other questions and comments:

- Is ADEQ also soliciting advice from other experts?
- Suggestion for a structured formula to creating JDs.
- Arizona could take a lead in the west to aggressively protect groundwater.
- Does Arizona consider groundwater, property of the state?
- Could possible changes to definitions include non-US waters as waters of the state?
- What additional authority would Arizona need for waters of the state?
- The current context of surface waters and ground water is not a reflection of reality.
- Arizona's special conditions of ephemeral stream flow and subsurface waters for maintaining the desert ecosystem and contributing to wetlands and other surface waters need to be more comprehensively addressed by the state.

Baggiore and staff members noted the following:

- Part of the purpose of this meeting is to solicit input from experts. Individuals representing the flood control district are in attendance. ADEQ will continue to evaluate whether additional outreach is needed.
- ADEQ would look forward to developing a state program that would fill the gap created by the new proposed WOTUS rule. We would conduct a separate stakeholder process to consider what a state program might look like.

- This proposed rule and the potential effects on permits should not be confused with the MSGP, the multisector stormwater general permit. Stormwater discharges are currently only regulated if there is a discharge to WOTUS. If a discharge is to an ephemeral wash, then it would not be regulated under the proposed rule.
- The definition of Arizona navigable waters comes from definition of WOTUS.
- Waters of the State is defined in statute, and ADEQ has authority to set standards only.
- Waters of the State cannot have more stringent rules than those at the federal level.
- Arizona may need a state-level 404 program. The final determination of this rule is likely to take a few years. Due to uncertainty, ADEQ is continuing to pursue the 404 program as-is, with an eye to potential changes.
- ADEQ is looking at the potential funding loss for 319 and 106 programs, if the proposed rule is established. If the funding causes a significant change, it would mean CWA programs in our state are smaller. Also, a waters of the state program would have to be funded.
- All groundwater is protected as a drinking water source.
- Groundwater is already considered waters of the state.
- ADEQ regulates groundwater quality. ADWR regulates water quantity and any associated ownership issues.
- Arizona has the authority to set standards and monitor waters of the state, under state statute. ADEQ enforces against violations of water quality standards.
- Discharges to the surface with a reasonable potential to affect groundwater are regulated through APP.
- ADEQ would need authority to pursue a program that would include non-US waters in waters of the state.
- ADEQ currently is authorized to set standards for waters of the state.
- Surface water definitions are tied to the WOTUS definition in the current draft WQS rule revision.
- The proposed rule preamble includes some explanation of effluent dependent waters and WOTUS. This section includes a specific request for comment from EPA.
- The Arizona ephemeral water definition includes a water that flows only in response to precipitation.
- Arizona only has a few traditionally navigable waters, as named by the US Army Corps of Engineers. The current list from the Corps is included in the Section 404/Jurisdictional Determination Technical Work Group White Paper found on the ADEQ website.
- ADEQ does not believe there would be a change in response to the National Response Center, since these incidents involve short-term emergency responses.
- The Granite Reef recharge would still require an AZPDES permit under the proposed WOTUS change.
- ADEQ did not develop surface water standards when the waters of the state provision was put into law. Waters of the state is reviewable by state court and could be subject to change by federal legislation.

NEXT STEPS

Gunn encouraged attendees interested in the Section 404 program to visit the ADEQ website for updated information and white papers submitted by many of the technical work groups.

Baggiore noted that EPA will conduct stakeholder meetings toward the end of February. Comments to ADEQ are due March 15 so that staff members may begin to develop comments. He encouraged stakeholders to contact ADEQ regarding specific scenarios.

Additional WOTUS meetings will be held Feb. 12 in Flagstaff, and Feb. 20 in Tucson. These meetings will provide the same content and are intended to solicit comments throughout the state.

EVALUATION

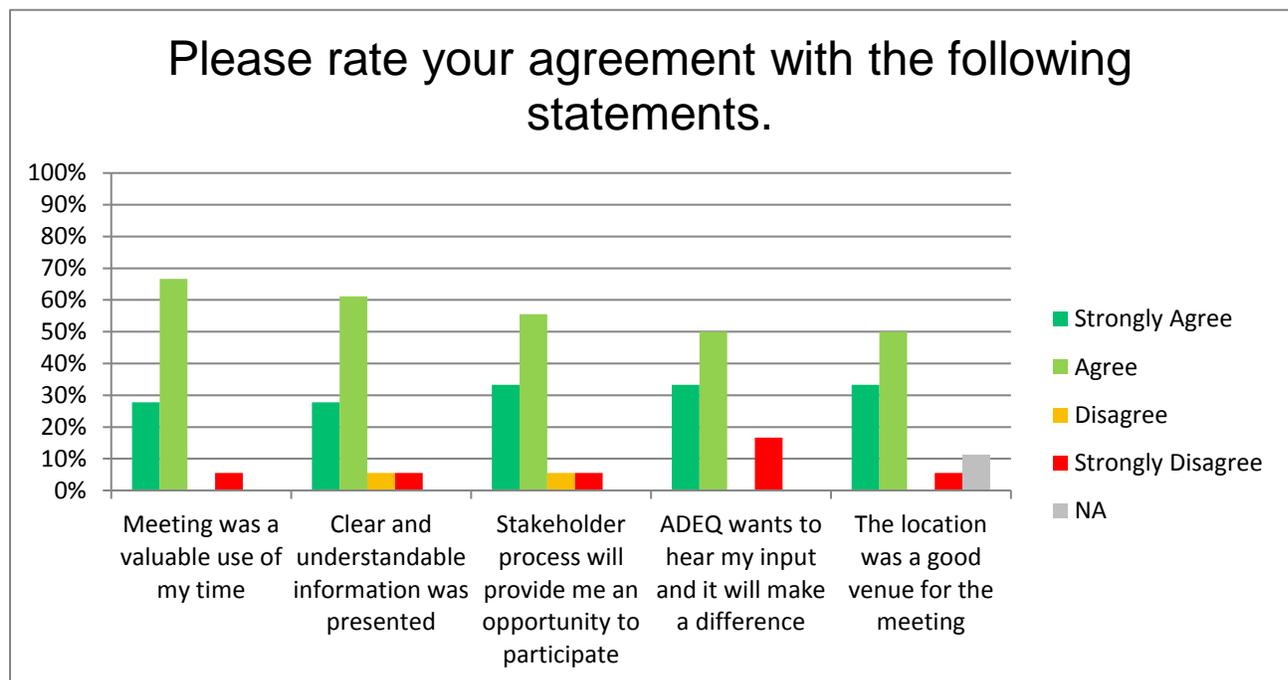
Gunn reminded stakeholders to continue to provide input to ADEQ staff by completing the online work sheet, and to evaluate the meeting. The meeting evaluation was available online through Feb. 11.

EVALUATION RESULTS

Eighteen 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?

- Clarification of waters of state authority.
- Dialogue; ADEQ high-level presentation about authority.
- Getting started.
- Hearing how ADEQ and other stakeholders view the new rule.
- I got a clearer understanding of the coverage for EDW and ephemeral.
- Opened topic for discussion. Know where uncertainty and gaps are that need to be addressed. Facilitator was great.
- Opportunity to hear interpretations of WOTUS rule from ADEQ staff and comments from stakeholders.

- The best thing about today's meeting was the state (ADEQ) refuses to be honest as to why they want to reduce the WOTUS and that they do not intend to implement pollution control in state waters under the new rule.
- Updates.
- Very well done.

What should be changed for future meetings?

- Let us know what you'd like to hear from us in advance.
- No change.
- One of the valuable parts of these meetings is identifying which entities and groups have what concerns -- and it's hard to do that with the way the online comments are handled.
- Provide questions ahead of time to participants.
- Sending the questions on the worksheet out ahead of time will help us be prepared for the specific input ADEQ wants, in addition to what we, as stakeholders, want to provide to ADEQ.
- Stakeholder sharing: not just question; propose and participate.
- The answers to questions asked by people present in the meeting room were clearly heard but frequently not the question itself. A brief re-statement of the question or comment would be helpful to online participants.
- The stakeholders on the phone when making verbal comments went unrecognized meaning no one seemed to hear them.
- Video cast meeting would be nice.

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

Name	Organization (if applies)
Tricia Balluff	City of Phoenix
Elly Barton	SRP
Kevin Boesch	LSD
Derek Castaneda	City of El Mirage
Curtis Cox	AGO
Mark Edelman	AZLD
Mike Falta	Maricopa County Flood Control
Ryan Fitzpatrick	
Laurie Frost	Pinal County
Tricia Gerrodette	
Mike H	
Ed Henan	Argus Construction Services
Jen Hetherington	City of Mesa
Bob Hollander	
Christina Hoppes	City of Tempe
Suzanne Kennedy	Arizona State University
Tom Klimas	Westland Resources
Jim Kudlinski	SRP
Megan Martin	SRP
Keith Miller	AGO
Matt Oller	Flood Control Division Maricopa County
Maya Teyechea	
Oren Thomas	
Scott Thomas	Fennemore Craig
James Unk	James Environmental Management Inc.
Linda Unk	
Robert Vertefeuille	SRP
David Weedman	Arizona Game and Fish Department
Frank Wiggins	Olson Concrete Structures
Tyler Williford	
Jerry Worsham	Cavanagh Law Firm
Duane Yantorno	Asarco
Espen Yates	Arizona Wildlife Federation
Nicole	

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