



Meeting Summary

**ADEQ WATER QUALITY DIVISION
CLEAN WATER ACT § 404
STAKEHOLDER MEETING #3 SUMMARY**

DATE: June 26, 2018
TIME: 9-11 a.m.
LOCATION: Wyndham Garden Phoenix Mid-Town,
3600 N. Second Ave., Phoenix

STAKEHOLDER ATTENDEES (Attached)

ADEQ STAFF

Trevor Baggione
Andy Koester
Samuel Nuanez
Krista Osterberg
Heidi Welborn

ADDITIONAL ATTENDEES

Kelly Cairo, GCI
Theresa Gunn, GCI

AGENDA

The complete agenda is available [online](#) and includes:

- Welcome
- Review Agenda and Introductions
- Overview of Previous Meeting
- Overview Stakeholder Input
- Technical Work Groups
- Next Steps
- Evaluation

WELCOME

Water Quality Division Director Trevor Baggione welcomed the group. He thanked stakeholders for attending and participating in meetings. He explained that ADEQ intends to assume the Clean Water Act §404, and that input from these and other upcoming meetings will be vital in identifying any challenges to assumption and how to work through those challenges.

REVIEW AGENDA AND INTRODUCTIONS

Meeting facilitator Theresa Gunn explained the meeting format and facilitated introductions. Approximately 81 stakeholders participated, with 42 attending in person and at least 39

attending via WebEx or conference call. Some stakeholders may not have identified themselves.

OVERVIEW OF PREVIOUS MEETING

Krista Osterberg, ADEQ, provided an overview of the previous meetings held on [June 6 in Phoenix](#) and on [June 7 in Tucson](#). Meeting notes are available online. She also distributed a flow chart of the current COE permit process.

Highlights of the presentation included:

- What is Clean Water Act § 404 Dredge and Fill?
- 404 Assumption Components
 - Corps and EPA MOAs
 - Jurisdictional Determinations
 - Permitting (including mitigation)
 - 404(b)(1) “guidelines” rules review
 - Enforcement Authority
- Next Steps: Proposed Process and Timeline
 - June-Nov. 2018: Initial stakeholder meetings and work groups
 - Nov. 2018-Feb. 2019: Assumption roadmap document
 - Jan.-Feb. 2019: Draft high-level program and rule components
 - Feb.-Aug 2019: Rule draft development
 - Aug. 2019-April 2020: Formal rule process; MOA development; program description

OVERVIEW OF STAKEHOLDER INPUT

Andy Koester, ADEQ, provided an overview of stakeholder input received at the last meetings. A complete comment matrix for each meeting is available for download [online](#). He provided word cloud representations of pros and cons to state assumption, reviewed the plus/delta responses regarding the current process, and other issues for consideration as submitted by stakeholders.

Koester asked for input regarding any concepts that might have been missed and additional questions. Highlights of comments and questions included:

- Extension of permits, especially during transition
- Scope – COE authority on project vs. ADEQ approval of that project
- Cost implementation fees
- Baseline budget, outside of the times when fees are collected
- Is Arizona trying to cut out any option for citizen lawsuits against any 404 permit issues?
- Importance of a general permit
- Ability to react to true emergencies
- How will small businesses that want to comply, but can't afford the fee be addressed?
- Avoid pay-to-play
- There is no state process comparable to NEPA
- Consultation – ESA and protect the species

- General permits should not be misapplied
- Transition concerns: avoid delays in projects
- Consultation should be formal and reflect protective measures
- Law does not compel ADEQ to assume the process. Should be a step where people were asked.

TECHNICAL WORK GROUPS

Heidi Welborn, ADEQ, reviewed proposed technical work groups, the selection process, structure, and schedule. TWG expectations include providing a recommendation relative to current law by Nov. 20, 2018. The groups will have charters, which will include a description of deliverables. Groups are expected to include 12-15 members, with the selection process designed to include balanced interests. The applications will be available online via survey and distributed to those on the CWA404 list on Friday, with a submittal deadline of July 11. *(Note: The submittal deadline was changed to 8 a.m., July 16, to accommodate stakeholder concerns voiced at the June 28 meeting held in Tucson.)*

Potential Work Group Topics:

- Permit process
- Fees
- Endangered species act
- Cultural resources and tribal considerations
- Significant degradation and alternatives analysis and minimization
- Compensatory mitigation

(Note: A workgroup for jurisdictional determination was added based on feedback. Also, the title of the "Cultural resources and tribal considerations" was changed to "Cultural and Historic Resources" to clarify that the workgroup is not and was never intended as a substitute for state consultation with tribal nations in Arizona.)

Highlights of suggestions for additional TWGs, comments and questions included:

- Workgroup: should ADEQ assume the process?
- Will the scope of the TWG be defined or flexible (regarding the legal scope, EPA guidance)? If we believe the COE guidance should be changed for the ADEQ process, can we do this?
- Hard to know if we support the process without seeing the process
- Will there be a workgroup to design guidance for implementation of the 404 Permit in the field? Are activities and mitigation (field inspections) going to occur to make sure there is coordination between non-point source program and the 404 permit?
- Where will TWG meetings be held?
- Workgroup: Dedicated to MOAs and defining responsibilities
- Need to understand the universe of applicants. Should reach out to COE to understand the universe of permits.
- Enforcement process should be included
- Emergency flood control management: maintaining flood control washes, ephemeral; Permit? Auditing?

NEXT STEPS

Osterberg reviewed next steps including:

- Work Group Applications Due: July 11, 5 p.m. (*Note: Updated deadline is July 16, 8 a.m.*)
- July – November, 2018: Technical Work Group Meetings and Periodic Stakeholder Meetings
- January – August, 2019: Develop Program and Draft Rule with Stakeholder Input
- August 2019: Formal Rule Process Begins
- Email: CWA404@azdeq.gov

Highlights of additional comments and questions included:

- MOA with EPA – considerations in the permit process?
- Definition of WOTUS will continue to be an issue
- Break JDs into a separate TWG
- What will be the time commitment of TWG participants?
- Concerned that tribes aren't meeting until later in the process

EVALUATION

Gunn encouraged stakeholders to complete meeting evaluations. The evaluation was also available online through July 5. Results are attached.

STAKEHOLDER ATTENDEES (IN PERSON AND BY PHONE) AND ORGANIZATION

Robert Anderson	Fennemore Craig
Sandy Bahr	Sierra Club - Grand Canyon Chapter
Tricia Balluff	City of Phoenix
Don Black	Bureau of Reclamation
Mason Bolitho	Haley & Aldrich, Inc.
Rion Bowers	Bowers Environmental Consulting
Ryan Bowley	BHP
Matthew Camba	Woodplc
Corey Caulkins	Arcadis
Lee Decker	Gallagher & Kennedy
Michael Denby	APS
Todd Dillard	Robert S. Lynch & Associates
Eileen Dunn	ADOT
Mark Edelman	Arizona State Land Department
Marina Estrella	City of Phoenix
Jeremy Gerlach	Veridus
Tricia Gerrodette	Friends of the Sonoran Desert
Byron Green	Bureau of Reclamation
Adam Hawkins	Global External Relations
Ronik Hiraskar	Morrison Maierle
Bob Hollander	City of Peoria Public Works-Utilities Department
Christina Hoppes	City of Tempe
Rebecca Hudson_Nunez	Freeport-McMoRan
Elena Iyua	San Carlos Apache Tribe
Justine Jimmie	San Carlos Apache Tribe
Nancy Johannesmeyer	ASARCO
Dan Johnson	Florence Copper Inc.
Dave Kimball	Gallagher & Kennedy
Tom Klimas	WestLand Resources, Inc.
Keith Knutson	Arizona Game and Fish Department
Emily Lester	ADOT
Brian Lindenlaub	WestLand Resources, Inc.
Sheila Logan	HILGARTWILSON, LLC
Steven Magana	(did not provide)
Mark Mahoney	(did not provide)
Julia Manfredi	ADOT
Jennifer Martin	Sierra Club

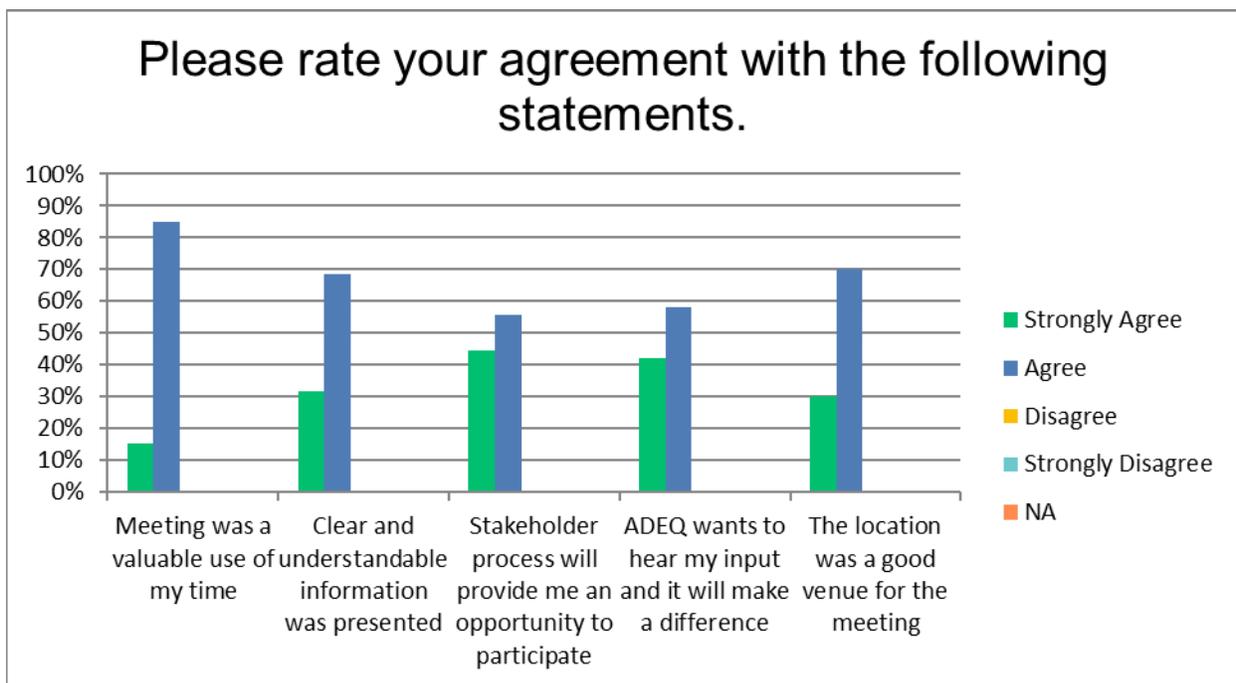
Amanda McGennis	Arizona Chapter Associated General Contractors
Mary Morissette	Resolution Copper
John Morrison_Jr	Morrison Maierle
Tim Murphy	Flood Control District of Maricopa County
Amy Murray	City of Buckeye
Scott Ogden	JE Fuller
Matthew Oller	Flood Control District of Maricopa County
Linda Palumbo	City of Phoenix
Marinela Papa_Konomi	MCDOT
Haley Paul	National Audubon Society
Betsi Phoebus	Jacobs
Joe Pinto	Maricopa County
Monica Rabb	City of Glendale
Sarah Richman	Arizona Mining
Meghan Scott	Noble Law Office
Megan Sheldon	City of Glendale Water Services Department
Jon Sherrill	City of Chandler
Ramona Simpson	Town of Queen Creek
Myron Smith	KGHM
Marcia Sorensen	City of Peoria
Loretta Stone	San Carlos Apache Tribe
Tice Supplee	Audubon Society
Hannah Telle	DEMA
Scott Thomas	Fennemore Craig
Norman Umberger	DEMA
Alan Urban	Central Arizona Governments
Gina Wallen	Kiewit Corporation
Mary_Ellen Walsh	State Historic Preservation Office
David Weedman	AGFD
Aaron Welch	Central Arizona Project
Chris Werkhoven	(private citizen)
Marc Wicke	SRP
Rusty Williams	Bureau of Reclamation
Jerry Worsham	The Cavanagh Law Firm, P.A.
Duane Yantorno	ASARCO
Dwight Zemp	(did not provide)

ADEQ STAKEHOLDER MEETING EVALUATION RESULTS

Twenty 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?

- Abundant background information.
- All good.
- Clear agenda, well-run.
- Continued participation from those involved/impacted by this process.
- Involvement.
- Knowing next steps.
- Open dialogue and input.
- Overview presentation.
- The process has started.

- Well-organized.
- Well-organized. Good management of expectations.

What should be changed for future meetings?

- Agenda ahead of time.
- Agenda available beforehand.
- Better microphone.
- Concerned about stakeholder process being driven by interests with no expertise in the process.
- More data sharing regarding current state, current distribution of permits/permitees for example.
- Need to spell out acronyms. Some folks may not know all the initials, especially in presentations. Don't assume everyone is familiar. If you put a regulation reference in PowerPoint, include how to look it up.
- Nothing.
- Send Outlook invites to all those agencies with an interest (tribal).