



Meeting Summary

**ADEQ WATER QUALITY DIVISION
CLEAN WATER ACT § 404
STAKEHOLDER MEETING #4 SUMMARY**

DATE: June 28, 2018
TIME: 9-11 a.m.
LOCATION: Pima County/Joel D. Valdez Main Library, Lower Level Meeting Room,
101 N. Stone Ave., Tucson

STAKEHOLDER ATTENDEES (Attached)

ADEQ STAFF

Randy Matas
Andy Koester
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 Deputy Director Randy Matas welcomed attendees and thanked them for their participation in these 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 50 stakeholders participated, with 21 attending in person and at least 29 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

Highlights of comments and questions included:

- What is driving the schedule? Why are the TWG applications due July 11?
- A feasibility assessment should be conducted. Why now? Why are you doing this? This is an ambitious schedule. We don't want you to adopt the current federal program. This is not reflected in the past meeting notes.
- There are differing levels of understanding of the 404 process. Need to explain the current process.
- This is a very short time for rule-making and affects processes internally at the county.
- Email notification and notes availability were an issue.
- What is the use of a TWG if ADEQ has already decided to assume the program? Do you want to know we really don't want you to do this?
- Public interest is key in considering pursuit of this program.
- Currently in an abhorrent political situation – fearful of state assumption, seems rules will change.
- Who made this decision to move forward?

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:

- What was the ratio of pro to con comments?
- Worksheets should have additional discussion.

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.)*

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:

- Forming TWGs seems naïve – the recommendations will be ignored due to political concerns.
- Work group: specific to JD process.
- Litigation and maintaining citizen suits is a concern.
- Is citizen oversight excluded in ARS?
- Concerned that ADEQ considers itself a bureaucracy that answers to the Legislature.
- Disappointed that only received a one-page description showing how to get a 404 individual permit. Don't understand what ADEQ is trying to replace.
- Are you aware of ADEQ tribal consultation? Will there be the appropriate level of coordination?
- Recommend tribal consultation occurs outside the TWG process.
- Separate TWG for JDs. Current COE work is preliminary JD. (It is also difficult to obtain final JD, biological nexus.)
- Public process needs to begin at the beginning.
- ADEQ "customer" concept vs. COE – which does not consider permit applicants as customers.
- Where do we deal with pay-to-play mentality?

- Who chooses TWG members?
- These are unrealistic self-imposed deadlines for TWGs.
- How will the project team's workload be affected?
- Motivations of special interest groups in influencing new rules could result in dilution of CWA.
- Outcome of the working groups need to be evaluated for consistency and quality with conformity with the EPA and Corps' Regulatory Guidance Letters.
- Work group: Benefit/detriment of ADEQ assumption of program.
- The JD group should be a science-based group, not policy-based.
- Don't believe local knowledge is currently a problem. This should be further explained. Perhaps local politics is the local issue.
- Sounds like a political argument.
- Stop talking about "customers" as the permittees and "obstacles" as the ESA or NEPA process.
- Tribes need to be involved right away.
- NEPA compliance is not listed.
- NEPA is very important.
- Rushed deadlines.
- Why does the state want to do this? We would give up the ability to have more stringent requirements, so what is the point?
- The Legislature stated that this process was to get out from the current stringent process.
- Local knowledge could instead be defined as common sense supported by facts in the field and science.
- How much will the changes to the WOTUS rules affect the JD process?
- Would the state take over the JD process/determinations?
- WIFA funds/program uses a NEPA-lite process which does not satisfy many of us.
- ADOT projects become "state" money, even though they were originally federal dollars and therefore not subject to NEPA.
- What oversight does the Legislature and governor's office have in this process?
- What if a TWG recommends MORE stringency through a NEPA process? Would ADEQ pursue legislation to change laws to become more stringent?
- Work group: waters appropriate for assumption. Could ADEQ seek to assume less waters than all the COE allows?
- Previous statement about federal dollars becoming state dollars is not accurate. For example, every local ADOT project that uses a federal dollar falls under NEPA requirements.
- Report out to the public may be needed before moving further. Request flexibility in the timeline.
- When will online applications be available?
- Should solicit comments on TWGs prior to finalizing and forming TWGs.
- What will be the knowledge base on the TWG? Most of us are not equipped to offer technical knowledge. Need to get hydrologists and biologists on these groups. Need scientists that work for the public.

- Main problem: timeline.
- Past work groups have included only one or two agency representatives. Need non-consultant members, such as county representatives.
- False equivalency of ASARCO vs. Pima County. This is reflective of ADEQ mentality. ADEQ wants to evade politics and the next federal election.
- What is the status of UIC primacy?
- The state has undergone changes due to water depletion. Need to make decisions on logic and science regarding water resources.

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

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

Kathy Arnold	Rosemont Copper Company
Laura Berglan	Pascua Yaqui Tribe
Jim Binick	Granite Basin Engineering
Paula Bluemer	Town of Marana
Sheila Bowen	Metropolitan Domestic Water Improvement District
Rion Bowers	Bowers Environmental Consulting
Jeremy Browning	GovGroup
Michael Bryce	(did not provide)
Michael Byrd	Prescott Creeks
Mike Cabrera	Pima County Flood Control
Samantha Carlson	(did not provide)
Darlene Coombes	North Wind Group
Lauren Dempsey	U.S. Air Force
Sallie Diebolt	U.S. Army Corps of Engineers
Dave Eaker	(did not provide)
Peter Else	Lower San Pedro Watershed Alliance
Terrence Enk	Freeport-McMoRan Inc.
Roger Featherstone	Arizona Mining Reform Coalition
Travis Fern	Earthworks Environmental LLC
Tim Flood	ADHS
Tricia Gerrodette	Friends of the Sonoran Desert
Nicole Gillett	Tucson Audubon Society
Ned Hall	Freeport-McMoRan Inc.
Gayle Hartmann	Save the Scenic Santa Ritas
Donald Hlava	Arizona Mining Association
Robert Kellock	(did not provide)
Ana Kennedy_Otto	Arizona Farm Bureau Federation
Dennis Krahn	Eldorado Holdings
Greg Kramer	MEGlobal
Lainie Levick	University of Arizona
Roger McManus	(did not provide)
Christina McVie	(did not provide)
Kate Moran	Leonard Rice Engineers, Inc.
Mark Murphy	(did not provide)

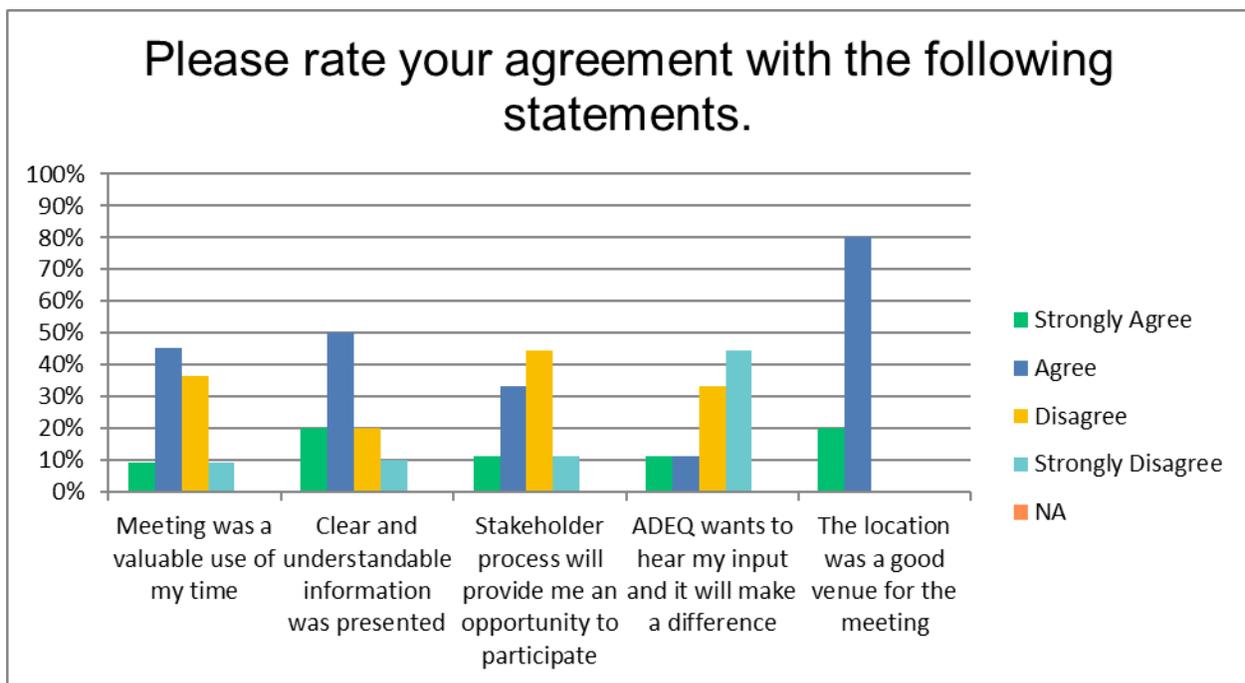
Rebecca Nunez	Freeport-McMoRan Inc.
Chelsi Remme	Psomas
Jessica Rybczynski	Aztec
Monica Salguero	ASARCO
Randy Serraglio	Center for Biological Diversity
Carolyn Shafer	Patagonia Area Resource Alliance
Suzanne Shields	Pima County Regional Flood Control District
Carol Shinsky	(did not provide)
David Steele	SIMG Inc.
Coby Teal	ADOT
Oren Thomas	Prescott Creeks
Lindsay Vicini	Rick Engineering Co.
Karla Wise	Pima County
Duane Yantorno	ASARCO
Jeff Zimmerman	Moyes Sellers & Hendricks

ADEQ STAKEHOLDER MEETING EVALUATION RESULTS

Thirteen 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?

- I continue to be impressed with ADEQ staff's professionalism, and genuine interest in public comments, and their good responses despite tough questions and opposition to the program.
- I heard overwhelming public opposition to this terrible idea.
- "Sleeper" opinions were expressed.
- This was a big disappointment.

What should be changed for future meetings?

- A consideration of who is NOT in the room. More scientists needed.
- ADEQ should come to the meeting prepared to address the major concerns of the PRIOR meeting, not just to push the participants to follow ADEQ's predetermined

schedule.

- Authoritative references sought and published!
- Clear and understandable information was presented: nothing substantive on current 404 staffing and budget.
- Despite signing in with an email address did not receive any info.
- Presentation ONLINE? When/WHERE?
- Questions 2-4 are leading questions.
- Stakeholder process will provide me an opportunity to participate: not meaning fully.
- There should not be any future meetings. This process should be abandoned immediately, based on obvious public opposition.
- Theresa is a good facilitator, although she is clearly working to further ADEQ's goals, but unfortunately this process is essentially "death by meeting" for a member of the public. It will certainly result in a legal logjam.