

ADEQ WATER QUALITY DIVISION CLEAN WATER ACT § 404 STAKEHOLDER MEETING #5 SUMMARY

DATE: Oct. 2, 2018
TIME: 9 a.m. - noon
LOCATION: Wyndham Garden Phoenix Mid-Town, 3600 N. Second Ave., Phoenix

STAKEHOLDER ATTENDEES (Attached)

ADEQ STAFF

Trevor Baggiore
Andy Koester
David Lelsz
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
- Technical Work Group Status
- Stakeholder Input
- Technical Work Groups
- Next Steps
- Evaluation

WELCOME

Water Quality Division Director Trevor Baggiore thanked attendees for their continued participation in these meetings. He pointed out that approximately one hundred volunteers are serving on technical work groups and provide invaluable contributions through their time commitment and technical expertise.

REVIEW AGENDA AND INTRODUCTIONS

Meeting facilitator Theresa Gunn explained the meeting format and facilitated introductions. Approximately 37 stakeholders participated, with 27 attending in person and at least 10 attending via WebEx or conference call. Some stakeholders may not have identified themselves.

TECHNICAL WORK GROUP STATUS

Technical work group (TWG) chairs provided an update on accomplishments to date and next steps. Gunn encouraged attendees to note their comments and questions on the worksheets provided and hold questions until the end of the presentations. Additionally, she asked attendees to return worksheets so that information could be provided to ADEQ. Highlights of the presentation follow.

Permit Process TWG, Tricia Balluff, Chair

Accomplishments:

- To use resources effectively to meet the Dec. 20 schedule, the TWG formed seven subgroups to draft initial thoughts on each topic that are then brought to the larger working group for discussion. This includes a sub-group that is charged with understanding the New Jersey and Michigan programs.
- The team has started drafting the white paper, starting with the current state since it forms the base for the other sections and has made excellent progress on detailing the current state for permit process topics.
- Subgroups have begun work on the recommended future state for an ADEQ-assumed program and will discuss this at the next meeting.

Next Steps:

- Review current state in the draft white paper and provide input.
- Insert draft recommended future state sections into the white paper for the main group to discuss, fleshing out details, and eventual consensus votes.

Compensatory Mitigation TWG, Mark Edelman, Chair

Accomplishments:

- Received update on the CRAM (California Rapid Assessment Method) and its potential to provide a quantitative assessment methodology for Arizona.
- Corps presentation on current state and discussion of 2008 rule.
- Began identification of benefits/problems with current process.

Next Steps:

- In-depth presentation and discussion on current state for qualitative assessment and how it can be improved.

Cultural and Historic Resources, Steve Glass, Chair (Lee Decker, TWG member)

Accomplishments:

- Discussion of the current state of the consultation process and the importance tribal consultation.

Next steps:

- Development of the white paper.

Endangered Species Act, Carrie Marr, Chair (Nichole Engelmann, TWG member)

Accomplishments:

- Reviewing literature, comparing programs, etc. of other states that have the program and those that do not.
- Understanding how the current system works, 404 and ESA laws and regulations.
- Understanding the options: Is there a federal nexus? Is there a way to keep the nexus? If there is not, permittees will not be able to obtain incidental take coverage through section 7.

Fees, Jerry Worsham, Chair

Accomplishments:

- Reviewing the background historical data from the Army Corps of Engineers on the number of 404 permits issued and timeframes to issue those permits obtained by David Lelsz. The statistical evaluation of that data will be used to better understand the program.
- The TWG is reviewing how other states with 404 permit authority structure fees. Coordination with the Permit Process team will be needed before work can be completed.
- Obtained ADEQ's estimate for Full Time Employees (FTEs) needed to run the 404 Program if they take it over. Other states have between 16-86 FTEs, but this count includes additional work. ADEQ thinks they will be in the 8-10 FTE range.

Next Steps:

- Starting work on the white paper based on the TWG-FEEs Charter. Rebecca Hudson-Nunez with Freeport McMoRan will be working with others to start the initial draft.

Jurisdictional Designation Process, Jack Moody, Chair

Accomplishments:

- Agreed on a basic understanding of Ordinary High-Water Mark.
- Identified benefits and positive attributes to the current Jurisdictional Determination/Delineation Process.
- Identified problems and negative attributes to the current Jurisdictional Determination/Delineation Process.

Next Steps:

- Working on identifying the ideal state of the JD process and the gaps between the current process and the ideal process.

Significant Degradation, Alternative Analysis, Minimization, Jeremy Casteel, Chair

Accomplishments:

- Identification of sub-groups to focus on each of the main issues (SigDeg, Alternatives Analysis, and Avoidance/Minimization).
- Progress on identifying relevant guidance and evaluating the differences in state and federal policy. To date we believe that significant degradation has comparable policy which needs analyzed.

Next Steps:

- Continuing to identify opportunities where additional instructions and recommendations to applicants may improve understanding of the alternatives analysis.
- Evaluating what types planning and construction methods can be suggested to applicants which may help them avoid and minimize impacts to resources (Waters, T&E, habitat, etc.).

STAKEHOLDER INPUT

Highlights of comments and questions included:

- The schedule/deadlines make it difficult to participate.
- Fees are not an appropriate way to fund the program – should be funded through the general fund and approach the Legislature on this issue.
- There is no NEPA-equivalent program in Arizona.
- Is there a mechanism to share information between committees? Doing so would also provide an opportunity to coordinate lists of questions to pose to other states.

- ADEQ would like the JD group to recommend a methodology for preparing JDs, such as using ADEQ resources or consultant resources to accomplish this task.
- ADEQ will schedule additional meetings of the chairs for coordination to address areas that overlap. An Executive Committee also will be formed and is currently in the planning stage. There was a suggestion that one person from each TWG participate in the Executive Committee.
- Are you aware of the programmatic assessment that would reduce the role of the State Historic Preservation Office?
- Is the Permit Process group addressing what occurs with a failure to obtain a permit? Objection process? What is the current process? What if failure to get a permit is discovered from a complaint.
- How are the TWGs dealing with the potential that ADEQ will not pursue assumption? Should the committees identify whether it is not viable? Response: TWGs charters call for identification of obstacles and recommendations on how to address these obstacles in the white papers.
- Will the Fees TWG address who should conduct the JD? This is a very big issue, particularly to the smaller groups. Will ADEQ or a consultant complete this work? Who will pay for it?
- How will Arizona deal with ever-changing environmental rules, both during transition and in future rule changes?
- What will the Corps role be after ADEQ assumption?
- Processes in permitting and processes in dealing with changes will be important.
- Director Baggiore noted that coordination continues regarding waters that pass through both state and tribal lands.
- How can the state be both as stringent than the current program and no more stringent at the same time (especially without NEPA)? Why not adopt the current program? Heidi Welborn, ADEQ, explained that the state can't legally adopt the program. ADEQ does want the program to be as protective as the current process; however, the state cannot be more restrictive than the Clean Water Act. She believes that there are other methods to achieve the goal of protection.
- Don't think ADEQ has asked the governor or the Legislature for what is needed to create a good program.
- Don't see how ADEQ can hit the fine line of being as stringent but no more stringent at the same time. Sounds like this will create a situation for lawsuits all around.
- Under the current state, the Corps has the ability to move forward with a permit over an EPA objection, yet ADEQ does not have this level of authority.
- How will threatened and endangered species, and the public process be addressed? The ESA TWG is addressing T&E species, looking at sections 7 and 10, and how to address these issues under a state program.
- Federal permittees are concerned that with the loss of NEPA, they may be subject to duplicative processes under the state.
- Will there be any further opportunities for stakeholder input after the white papers are submitted? ADEQ staff responded that there will be multiple opportunities to provide input, ranging from informal processes, such as this meeting, and continuing through the formal public hearing process.

Worksheet comments/questions included:

- General: I was intrigued to hear Trevor describe an AZ404 program that could be "as protective as" and "no more stringent than" a federal 404 program. It would be good if that situation were possible; but I would recommend that the state legislature remove the "no more stringent than" clause from the authorizing statute. Otherwise, Az will end up with an inadequate AZ 404 program.

- ESA: Each federally listed species needs an HCP administered by AZ G&F with oversight from USFWS. This is a huge time and financial commitment. Permit needs to comply with HCP.
- Fees: Should not be fee based.
- Jurisdictional Designation: Need broad stroke delineation overlay, questionnaire areas outside of delineation, do not need determination or delineation.
- Significant Degradation, Alternative Analysis and Avoidance/Minimization: State needs a mitigation commission to ID & oversize restoration sites & mitigation sites.
- Permit Process: Don't look at Michigan as an example for environmental quality.
- Cultural and Historic Resources: Tough to get the tribes to commit to a timeline or anything. Need to achieve a program and agreement with tribes on some permits so they don't need to comment on every permit.

NEXT STEPS

Andy Koester reviewed next steps including:

- Late-November 2018 – Stakeholder Meeting
- December 20, 2018 – TWG White Papers Due
- 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 October 4. Results are attached.

STAKEHOLDER ATTENDEES (IN PERSON AND BY PHONE) AND ORGANIZATION

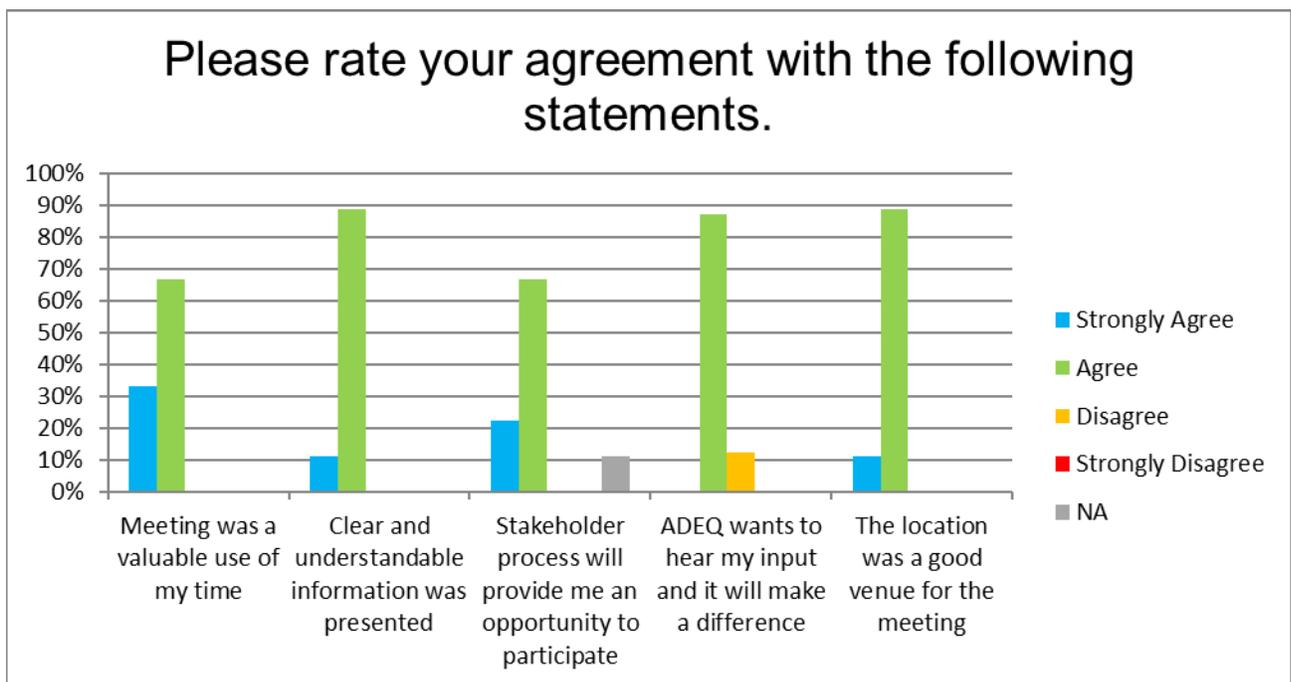
Sandy Bahr	Sierra Club - Grand Canyon Chapter
Tricia Balluff	City of Phoenix
Jeremy Browning	GovGroup
Therese Carpenter	U.S. Army Corps of Engineers
Jeremy Casteel	Hilgart Wilson, LLC
Wayne Colebank	Logan Simpson
Lauren Dempsey	U.S. Air Force
Sallie Diebolt	U.S. Army Corps of Engineers
Mark Edelman	Arizona State Land Department
Nichole Engelmann	USF&W
Marina Estrella	City of Phoenix
Heather Finden	City of Phoenix Water Services Division
Tim Flood	ADHS
Jill Hankins	Alpine Environmental
Rebecca Hudson-Nunez	Freeport-McMoRan
Dennis Krahn	Eldorado Holdings
Sheila Logan	HILGARTWILSON, LLC
Jack Moody	SLATER HANIFAN GROUP
Leigh Padgitt	City of Phoenix
Marissa Reitz	Drake Cement
Jennifer Simpkins	Kimley-Horn
Ramona Simpson	Town of Queen Creek
Steve Swarr	Rossi
Rebecca Sydnor	Wood
Scott Thomas	Fennemore Craig
Jerry Worsham	The Cavanagh Law Firm, P.A.
Duane Yantorno	ASARCO

ADEQ STAKEHOLDER MEETING EVALUATION RESULTS

Nine 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?

- ADEQ professionalism; there are multiple members in multiple groups who don't think ADEQ can succeed and are working to ward recommendations to bail on assumptions. I prefer to let the process unfold and truly address if EXEC committee can reign this in, it would help.
- Critical that ADEQ establishes W/stakeholders and tribes.
- Great to hear input and activities by groups. Also good for ADEQ to hear potential schedule issues from work-groups needing to rely on decisions by others.
- Hearing from other working groups.
- Info from chairs.
- Updates from the other groups.
- Very informational and helped answer questions.

What should be changed for future meetings?

- Allow for small group discussions, information sharing, more interaction w/chairs.
- Because of the time, I am concerned that more members of the public/stakeholders couldn't attend evening meeting?
- Microphone and phone system.
- Provide info to all work-groups through website not google docs.
- Test SYSTEM; if it was venue, fix. Last meeting also had tech difficulties.