



Meeting Summary

**ADEQ WATER QUALITY DIVISION
CLEAN WATER ACT § 404
STAKEHOLDER MEETING #1 SUMMARY**

DATE: June 6, 2018
TIME: 9 a.m. - noon
LOCATION: Wyndham Garden Phoenix Mid-Town,
3600 N. Second Ave., Phoenix

STAKEHOLDER ATTENDEES (Attached)

ADEQ STAFF

Trevor Baggione
Mindi Cross
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
- Next Steps
- Pros and Cons of Program Assumption
- Opportunities to Improve and Benefits of Existing U.S. Corps Process
- Issues for Consideration
- Evaluation

WELCOME

Water Quality Division Director Trevor Baggione welcomed the group. He noted his appreciation for the stakeholder response and participation as the department develops the new program.

REVIEW AGENDA AND INTRODUCTIONS

Meeting facilitator Theresa Gunn greeted attendees and explained the meeting format. Approximately 87 stakeholders participated, with 72 attending in person and 15 attending via WebEx or conference call. Some online stakeholders may not have identified themselves.

OVERVIEW AND NEXT STEPS

Krista Osterberg, ADEQ, presented an overview: Clean Water Act § 404 Assumption. The presentation is available online at:

http://static.azdeq.gov/wqd/rulemaking/404_assumption_presentation_060618.pdf.

Highlights of topics included:

- What is Clean Water Act § 404 Dredge and Fill?
- What does “assumption” mean?
- 404 Assumption requirements
- Congressional intent and national program assumption
- CWA Regulation in Arizona
- Arizona, the assumption process, and statutory authority
- Timeline
- Issues for consideration in state assumption

Highlights of comment and question topics included:

- Role of the stakeholder in MOAs
- Wholesale adoption of rules/regulations, such as 401(b)
- Would ADEQ go to Legislature to request a state NEPA-like process? Similar to taking a primacy bill to the Legislature?
- Does SB 1493 require “no more stringent” than federal requirements?
- Why did other states take a partial approach?
- Why is ADEQ moving forward with assuming the program?
- Funding to support staff – what will the overall budget include?
- Will we talk about mitigation (banking and in lieu fee) as related to the 404?
- Why is ADEQ moving forward and do they have the resources to properly administer the program?
- Will ADEQ receive federal funding to run the program and if funding is short will they be able to continue all responsibilities?
- Official mechanism to affect this transfer?
- Where is ADEQ in this process?
- How will you build the expertise and fund this?
- Have you reached out to other states to benefit from their experience in assuming the program?
- Will the state have to go through the NEPA process in order to assume the 404 program?
- Currently the primary policy documents for the 208 program, the CPP and the WQMP are 25 and 40 years old. Is the LEAN process going to address updating base documents?
- Do stakeholders know you will require a fee?

PROS AND CONS OF PROGRAM ASSUMPTION

Gunn led the attendees through a series of interactive exercises. Participants were asked to list the pros and cons of ADEQ assuming the 404 program. Each table then identified their top three pros and cons and reported to the full group.

Comments provided from each table are noted below. A complete list individual worksheet of comments is available separately.

Exercise A: Our table's top three pros and cons

Pros

- ADEQ expertise
- Arizona-based decisions/guidance
- Consistency and predictability
- Consolidated permitting at local level
- Defined timeframe – possibly shortened
- Electronic interface
- Equitably stringent
- Expedited response time for approval
- Faster permit processing
- Faster permitting time
- Greater flexibility in making modifications during permitting process
- JD 404 and 402
- Local control
- Local control and representation
- Local implementation would capitalize on local expertise
- Local knowledge and perspective opportunity
- Local organization
- Local vs. federal control; state vs. federal
- More local interaction with agency
- No NEPA
- No NEPA nexus
- No NEPA/NEPA nexus
- Permitting timeframes
- Political influence, “local accountability”
- Possibility of faster process of permit approval
- Possible physical presence in offices other than Phoenix
- Potential for faster issuance of permits
- Potential for process to be faster/more streamlined
- Potential for quicker permitting process
- Potential formalization of guidance
- Rules/guidelines will be written to address Arizona arid conditions
- Stakeholder input
- State-run program would allow greater access to coordination with other state agencies and local stakeholders

- Streamline process: permitting timeframe, fee for expedited

Cons

- Ability to maintain funds
- Concern about in-house expertise to run program with so few other states to follow and no experience running 404 program
- Consistency: tribal vs. federal vs. state
- Cost/schedule/timeline
- Could tie up state courts
- Duplicative processing
- Endangered species (section 106) consultation would become more challenging
- Endangered species and cultural resource concerns
- Environmental review
- Fee-based
- Fee-based
- Fees
- Fees – and they're unknown
- Fees – guaranteed funding over time
- Fees could fluctuate, no dedicated funding (impacts quality/quantity of program)
- Funding issues: liability, program funding
- Funding/resources of adequate staff, need to build staff to maintain adequately trained staff
- Greater EPA ability to prevent permit issuances (greater EPA control)
- Increased EPA control (relationship between ADEQ/EPA)
- Increased scrutiny by Corps on tribal and Colorado River projects, since their jurisdiction is reduced
- Initial staffing and funding
- Knowledge transfer/program as strong as first two people
- Lack of clarity of federal laws and federal oversight: NHPA, ESA
- Lack of expertise and knowledge with 404 program
- Loss of priority?
- No escalation process? Can we escalate above ADEQ?
- Political influence
- Political influence to decisions very likely
- Poor working relationships with other agencies
- Potential for increased cost (fee-based) – just because we pay a fee doesn't mean things will happen faster
- Potential for increased EPA oversight
- Potential for regulating "gray areas" to morph into something more stringent
- Potentially weak enforcement – No NEPA enforcement. NEPA-like is not the same as NEPA. Would need DEFINED environmental review. SAME level of NEPA quality review. Removes fed. NEPA action.
- Public perception of state vs. fed
- Resources – Lack of staff, in-house knowledge and budge

- Section 10/tribal overlap with state assumption will require additional review
- Trained staff
- Transition
- Uncertainty of ESA/cultural resource compliance
- Uncertainty regarding guidelines implementation of species and cultural provisions
- Underfunded program may not function properly

OPPORTUNITIES TO IMPROVE AND BENEFITS OF EXISTING US CORPS PROCESS

Gunn asked participants to consider the US Corps of Engineers process and consider what works well and what could be improved. Each table then collected their top three things to keep and three opportunities for improvement and reported to the full group.

Comments provided from each table are noted below. A complete list of individual worksheet comments is available separately.

Exercise B: Our table's top three pluses and deltas of the current process

Things to Keep

- ADOT relationship with Corps currently good
- Compensatory mitigation
- Compensatory mitigation
- Compensatory: ILF
- Coordination with federal agencies
- Corps ensures environmental compliance
- Corps exhibits independent judgement on demands from other federal agencies
- Cost=none, state agencies not have fees? Cost shifting. No cost to appeal?
- Defined limits of permit authority (scope of analysis)
- Electronic permitting
- Endangered species and cultural resource coordination
- Federal guidelines already developed, including arid west and wetland delineation formalized
- Formal/INFORMAL inter-agency coordination
- Forms and templates
- General/nationwide permit option
- General: online application
- Good communication with "customers" permittees; flexibility; negotiation
- In-lieu fee programs work well
- Interagency coordination (under USACE); facilitate interactions among government agencies
- JD: Once completed, JD is a good tool to rely on, once limits are set
- JDs online
- Jurisdictional: greater clarity of What's jurisdictional vs. non
- Keep mitigation banking
- Keep NWP, possibly ADD MORE Arizona-specific permits
- Keep preliminary JD concept

- Maintain and mirror general permit as currently being implemented: helps keep cost/project and time
- Mapping standards are good
- NEPA process currently easy with Corps, nationwide permits NEPA already completed
- No fees
- No fees
- NW permit/general permit process
- Opportunity for public involvement in 404 permitting process
- Permit timelines 60 days, individual permit process easy if you know the process – 6 month to 1 year
- Permitting: defined scope of analysis – clear element, step wise overview to program.
- Permitting: limit impact – process/approval can be relatively simple.
- Permitting: nationwide process is consistent, predictable.
- Regular interaction with USACE throughout process
- Required review timeframes
- Section 7 process good – section 10 process lengthy
- Simplified NWP application
- Streamlined general permits
- Strong and robust environmental standards
- Technical: applicant defines alternatives to a degree
- Technical: most mining projects will still require NEPA since federal land
- Technical: practicable alternatives – logistic, cost, technical; defined framework helps focus review
- Transition Corps database on JDs
- Use third-party consultants to do JDs
- We like the existing interagency dynamic (more of a “con” under first exercise) potential for this dynamic to be lost with state assumption

Opportunities for Improvement

- 404(b)(1) no NEPA
- Arizona-focused mitigation approaches, including for ephemeral washes
- Clarification of 404 and 401 guidelines criteria associated with determining the LEDPA
- Clarify obligation to evaluate alternatives
- Clear and consistent definition of process and jurisdiction
- Compensatory mitigation: better formulas/worksheets, more transparent or quantitative process (as opposed to qualitative)
- Compensatory: not enough land banks
- Consistency of decisions (i.e. consistency with the alternative analysis)
- Current PJD only is less of a priority and takes longer
- Develop objective criteria to upstream JD limit
- Development of efficiencies for a NEPA-like process
- Disparity of JD by different permit writers
- Evaluate improvement off-site projects alternatives currently part of 404 (b)(1)
- Flexibility for mitigation options

- GIS online mapping for JD locations would be nice
- If you don't know the process, the application can sit
- Improve the IRT process: Interagency review team; External team that reviews mitigation, etc.
- Increase certainty
- Increased coordination among state agencies
- Interagency: often causes delay
- JD decision inconsistency among project managers
- JD: access to public view
- JD: rules are written for eastern and coastal states, do not apply to AZ
- JD: transparency/predictability
- JD: uncertainty due to federal level politics
- JD: unpredictability of interpretation of JD; influenced by politics
- Long-term planning of financial maintenance of mitigation projects
- More in-lieu fee programs needed
- No timeframes
- NWP: with room for state specificity and flexibility – remove local/regional add-on requirements
- Opportunity for effective local input
- Permitting: improve public relationship/partnership on individual permits
- Permitting: little public engagement/understanding – public perception of Corps declining, individual permit – improve public perception
- Permitting: training/templates available for individual permits
- PJDs
- Process/TIME for determination/decision
- Process: faster processing
- Standardize/improve predictability of mitigation ratios
- State species could be addressed
- Technical: Mandated to select LEPA from presented options
- Technical: takes too long
- Timeframes for agency decisions needed, including for JDs
- Transparent process: permit training for applicants and public
- Violations low priority

ISSUES FOR CONSIDERATION

Gunn asked attendees to consider major steps and roadblocks in ADEQ's path to assumption of the section 404 program, and areas of focus to consider in developing the program and rule.

Comments reported at the meeting are noted below. A complete list of comments is available separately.

Exercise C: What other issues need to be addressed during rulemaking?

- Anticipate contractor's ability to request expedited processing of 404 permits?
- Interest in openness to consultants

- Engineering side of this: those issuing permits need to understand plans, hydrology and hydraulics issues
- Primacy in same department – coordination of all permits
- MOA – spell out responsibilities of all agencies and stakeholder input
- Smooth coordination/transition from Corps permit to ADEQ; issues with extending Corps permit that EPA has objected to
- Variability of permit fees/continuation of staff during any economic downturn
- De minimis permit
- Section 408
- Balance and cost to timing
- Government to government consultation/tribes
- How to incorporate impact analysis beyond federal trust
- Activities of reservations can affect non-tribal land
- Need tribal consultation process defined
- How will the public be engaged in this process? The timing of meetings during the day may be prohibitive.
- Any technical assistance to the public?
- Make sure terms and acronyms are defined for public attendees.
- What stops the state from disallowing protections?
- Bill does not compel ADEQ to take on this assumption.
- General public should be brought in prior to public hearings
- Need to make sure to look at civil and criminal enforcement. Want ADEQ to especially consider criminal actions.
- How will ADEQ enforce?
- Have other states attempted assumption and failed? Should review these situation
- 404 and 408 interaction
- Federal money covering this or not?
- What is the current volume of permits? Is the staffing adequate?
- How will Arizona avoid a pay-to-play trap?
- Promise to keep federal protections?
- Base policy documents should be reviewed frequently
- Where is the money for monitoring and enforcement?

EVALUATION

Gunn encouraged stakeholders to complete meeting evaluations. The evaluation was also available online through June 14. Results are attached.

STAKEHOLDER ATTENDEES (IN PERSON AND BY PHONE) AND ORGANIZATION

David Allred	City of Avondale
Robert Anderson	Fennemore Craig
Sandy Bahr	Sierra Club - Grand Canyon Chapter
Tricia Balluff	City of Phoenix
Joe Bardswich	Golden Vertex Corp.
Richard Bark	Freeport-McMoRan Inc.
Sarah Beloshapka	EcoPlan Associates, Inc.
Rion Bowers	Bowers Environmental Consulting
Jeremy Browning	GovGroup
Chuck Budinger	ADOT
Michael Byrd	Prescott Creeks
Mike Cabrera	Pima County Flood Control
John Carr	Coconino County
David Castanon	(did not provide)
Jeremy Casteel	Logan Simpson
Marvin Clark	Pure Global Solutions
Tressia Contreras	FNF Construction, Inc.
Ferrin Crosby	Apache County
Clay Crowder	Arizona Game and Fish Department
Lee Decker	Gallagher & Kennedy
Jason Delto	SCFUELS
Lauren Dempsey	U.S. Air Force
Sallie Diebolt	U.S. Army Corps of Engineers
Eileen Dunn	ADOT
Elizabeth Duvall	Arcadis
Jeremy Gerlach	Veridus
Tricia Gerrodette	(did not provide)
Greg Hall	(did not provide)
Bob Haneline	(did not provide)
Ken Hardison	Arizona Auto Parts
Wayne Harrison	Wood
Tom Hawk	Imerys Perlite USA Inc
Adam Hawkins	Global External Relations
Maher Hazine	Pine Strawberry Water Improvement District
Jill Himes	Himes Consulting, LLC
Bob Hollander	City of Peoria Public Works-Utilities Department

Mark Horlings	(did not provide)
Nancy Johannismeyer	ASARCO
Spencer Kamps	Home Builders Association of Central Arizona
Dave Kimball	Gallagher & Kennedy
Hesston Klenk	Resolution Copper
Tom Klimas	WestLand Resources, Inc.
Keith Knutson	Arizona Game and Fish Department
Horst Kraus	(did not provide)
Michael Langley	U.S. Army Corps of Engineers
Stacey LeBlanc	Bright International Corp.
Brian Lindenlaub	WestLand Resources, Inc.
Sheila Logan	HILGARTWILSON, LLC
Steven Magana	(did not provide)
Julia Manfredi	ADOT
Jennifer Martin	Sierra Club
April Mattox	Yavapai County
Mead Mier	(did not provide)
Swan Montgomery	Pascuayaqu Tribe (Yavapai Apache Nation) ATTY, Inter Tribal Assoc. of AZ
Jack Moody	SLATER HANIFAN GROUP
Laura Nordan	ADOT
Christine Nunez	City of Surprise
Rick Obley	Lennar
Matthew Oller	Flood Control District of Maricopa County
Laura Opall	BBLM-Safford Field Office
Marinela Papa_Konomi	MCDOT
Haley Paul	National Audubon Society
Bridgette Pena	Ak-Chin Indian Community
Nicole Petker	Queen Creek
Betsi Phoebus	Jacobs
Monica Rabb	City of Glendale
Kris Randall	U.S. Fish and Wildlife Service
Cyndi Ruehl	Arizona Department of Water Resources
Meghan Scott	Noble Law Office
Megan Sheldon	City of Glendale Water Services Department
Ramona Simpson	Town of Queen Creek
Myron Smith	KGHM

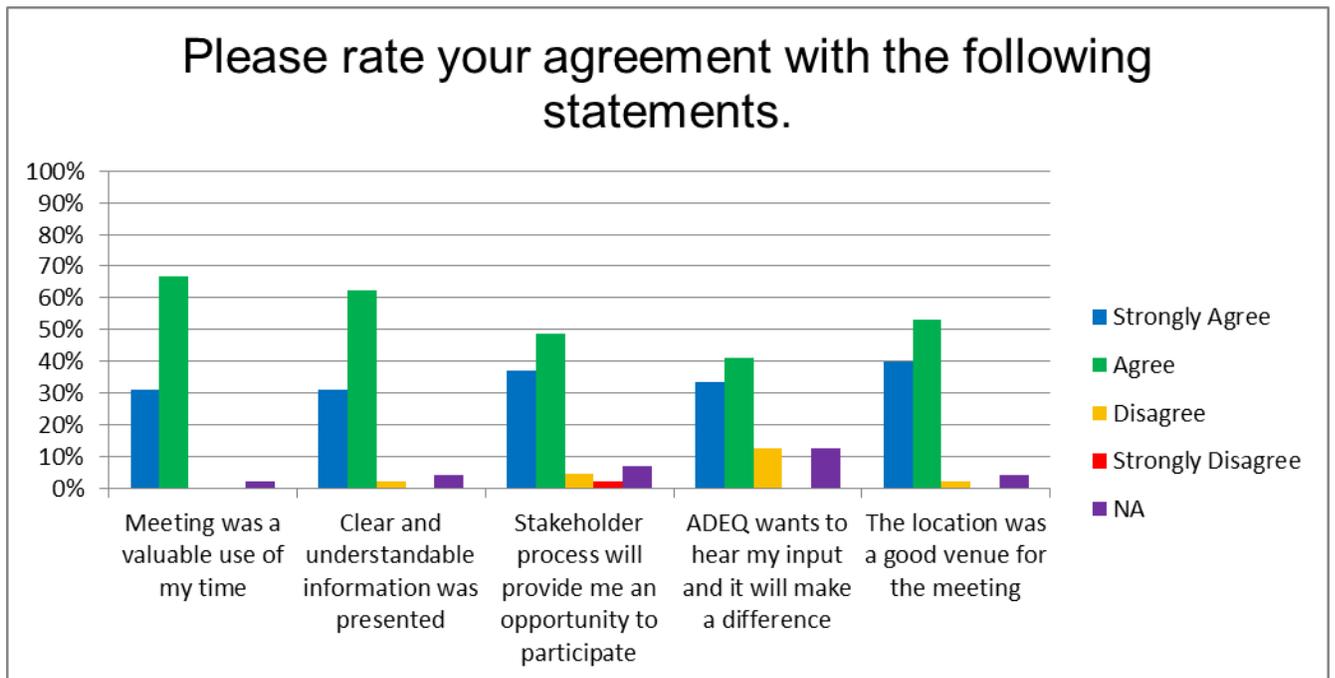
Travis Snider	EEC
Griselda Solis	Sierra Club
Marcia Sorensen	City of Peoria
Hugh Thatcher	Rio Tinto
Jason Theodorou	Arizona House of Representatives
Scott Thomas	Fennemore Craig
Alan Urban	Central Arizona Governments
David Weedman	AGFD
Chris Werkhoven	(private citizen)
Van Wolf	Salmon, Lewis & Weldon, P.L.C.
Jerry Worsham	The Cavanagh Law Firm, P.A.
Duane Yantorno	ASARCO
Scott Yenglin	Pure Global Solutions
Jeff Zimmerman	Moyes Sellers & Hendricks
Lori Zito	APS

ADEQ STAKEHOLDER MEETING EVALUATION RESULTS

Forty-six 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 appears to have already decided they are assuming the 404 program. This makes me question how valuable my comments and concerns will be taken.
- ADEQ staff
- Assigned tables to help mingle
- Available parking reserved for meeting attendees, assigned seating helped mix up personalities, expertise, group contributions
- Being exposed to perspectives I hadn't considered
- Clear statement at end about ADEQ intent to hear diverse stakeholder views/comments
- Exercise process & learning about other viewpoints
- Getting perspective from varying stakeholders
- Great participation + various inputs from differing perspectives
- Group exercises were useful

- Hearing perspectives from variety of stakeholder types
- Hearing stakeholders pros and cons regarding program assumption and ideas about the program
- I was able to learn a lot about the process and how well it works and how it meets the needs and concerns of a variety of stakeholders.
- Interaction w/various stakeholders
- Learning who the stakeholders are
- Location
- Open discussion about process, representation
- Opportunity for cross-fertilization of ideas
- Opportunity for providing input to rule development. Improve participation + outreach to general public.
- Opportunity to participate
- Participant involvement
- Provided transparency
- Table discussion
- The process ADEQ is taking
- There were some good discussions at our table
- Understanding process, ADEQ intentions
- Understanding that there are a lot of folks on each side of this move
- Valuable- Lots of ideas and comments were heard
- We started the process

What should be changed for future meetings?

- ADEQ needs to be open to changing what they intend to do in the 404 program. Please listen to all stakeholders.
- ADEQ wants to hear my input and it will make a difference- hopefully
- Better + more sensitive microphones
- Could not hear Theresa or Krista at all- need better audio or better use of the microphone
- Defining terms; evening meetings so more of the interested public can attend
- Digital boards- type pros + cons
- Facilitation- control table comment response times- you have to cut people off.
- For web participants it would be helpful to have a video feed to see what's happening in the room.
- I like the idea of having meetings away from the ADEQ offices. The venue for this meeting was right-sized. People need to speak into the microphone to be heard by all.
- It was a really well-run meeting. Excellent info in this regard.
- It worked well
- Krista needs to speak more clearly and closer to the microphone.
- Less repeating of trends, going around room saying same thing over and over. Too long, people leaving.
- Meeting room setup was poor; narrow room with speaker and visuals at one end was not helpful for people at other end. No clear evidence that public input will make a

difference.

- More advance notice for planning purposes
- More in-depth exploration of whether ADEQ should even assume 404 or not
- More time is needed
- Nothing
- Nothing- good meeting
- Nothing- really good opportunity & stakeholder process
- Prefer venue to be at ADEQ
- Ran out of regular coffee by 9:45 :(
- Reduce table participation to ONE plus ONE con to allow tables to have valued input.
- The acronyms and information presented assumed that we (all of participants) knew the information. General public participation is needed.
- The location is a bit far for attendees coming south of Phoenix (Maricopa)
- There was difficulty in hearing other people at the table due to background noise from the other tables. Microphone use was sometimes a problem.
- Turn up amplification or talk into the mic
- Use whatever technology is available to ensure meeting room doesn't hear participants on phone
- Very little info was presented today.
- Want detail of the structure and process, but that will come with the next meetings.
- Wanted to hear thoughts from Corps.
- We need more info on the ADEQ proposal program to be able to comment/discuss- the devil is in the details.
- Why assume that the assumption is definite? Statute doesn't dictate ADEQ's push towards assumption, but allows it. Assumption should not be predestined, and should only be ultimately decided on AFTER stakeholder input, not BEFORE.