



# ADEQ 2017 Triennial Review Surface Waters and Designated Uses (Appendix B) Workgroup

December 18, 2017



- Discussion of Dec 6<sup>th</sup> minutes
- Objectives for meeting:
  - Topics 1 & 2 comments & summary discussion
  - Topics 3 & 4, discussion
  - Writing assignments
  - Schedule of meetings
  - Deliverable & timeframe



- Workgroup interest in definitions & available maps
- ADWR map is NHD with some updates; not coordinated with ADEQ
- Definitions in WQS section 101
- eMaps: designated use layers added
- Rationale for listing waters in AppB
  - 40CFR131.10 - CWA Designation of uses
  - ARS 49-221 – Water Quality Standards
  - AAC R-18-11-104 Designated uses

# Appendix B currently listed waters (n=919)

# waters, total	# waters, additional	Designated use
633	633	Ag Livestock watering
221	10	Ag Irrigation
83	11	DWS
109	56	AZPDES Permits
83	8	Impaired
	201	Other (56 lakes, 34 A&Wc, 62 A&Ww, 49 A&We – many are split reaches or tribs to lakes)
	919	Total

199 “Other” waters
Mainstem rivers
Lakes, 9 EDW + 50 other
Tribs to Lakes
Segments of other listed waters
National Park waters
Fort Huachuca waters
AGFD stocked ponds (Wellton Ponds)
USFS important perennial/ recreational streams
State Parks (Roper Lake)
Canals
T&E habitats/ OAWs
EPA-FC use
Non-WOTUS waters with JD
WWTP permit expired
Corrections- to remove

- Add these waters:
  - 13 AZPDES permitted waters
  - 23 Impaired waters
  - 3 missing stream segments
  
- Remove these waters:
  - 4 COE JD – Not WOTUS lakes
  - 4 Corrections (3 lakes filled in/removed, 1 stream on Indian land)



## listings: comments

- Some waters should be removed –not WOTUS; what is proper procedure?
- AZPDES – will adding AZPDES permitted reaches to Appendix B have any effect on designated uses? Or, is the listing just for ADEQ tracking purposes; to have all designated uses listed in Appendix B?
- How do canals that don't fall into categories designated in Appendix B for canals fit into the tributary rule (e.g. flood control structures)? Needs clarity – are these considered tributaries?
- ADEQ should add waters of the US and waters of the state to Appendix B for which there are designated uses to be protected that are distinct from those under the tributary rule, based on input from the public as well as agencies such as U. S. Army Corps of Engineers, Arizona Game and Fish Department, Arizona State Land Department and others.

# Topic #1: How can ADEQ improve AppB

## listings: comments

- ADEQ should consider adopting “surface water” definition language or by reference to CWA
- 1. The inclusion of the words ephemeral and wash were considered and intentional. The definition admits the inclusion of certain waters of the state that are not already Waters of the US.
- 2. Certain ephemeral streams have been deemed jurisdictional by the Corps through Approved Jurisdictional Determinations and Traditional Navigable Water determinations. Ephemeral streams contribute significantly to the objectives of the Clean Water Act and the state’s Environmental Quality Act.
- 3. 49-221 has two parts, requiring standards for navigable waters. Navigable waters means Waters of the US as defined under the Clean Water Act. Part B enables Director to adopt rules for waters of the state other than part A, but they have discretion. Appendix B already includes water bodies that are not waters of the US. So ADEQ has the authority already, and they don’t need to make the distinction between the two in the definition under 18-11-41.
- 4. As EPA and the Corps have pointed out, ADEQ lacks authority to define waters of the US. Furthermore, the Corps of Engineers have issued and will continue to issue significant nexus decisions for Arizona at the project level that provide foundation for making distinctions between waters of the state and waters of the US.
- 5. The uncertainties in the definition of waters of the US will remain for a number of years. However, ADEQ does have authority over waters of the state that are not also waters of the US. Thus it is not necessary to ensure the definition of surface waters remains consistent with the definition of waters of the US. Furthermore, it is unnecessary to distinguish between the two in the rules.
- 6. Distinguishing between waters of the US and waters of the state that are not also waters of the US is better done at the time of the decisions pertaining to permit issuance or other decisions of the Director, based on the best available information at the time, than in a definition.

- Yes, both types of waters should be listed; why wouldn't you list them for clarity? Adding these waters to Appendix B provides a record of decision making.
- No, impaired waters don't need to be listed in Appendix B. Most of the impaired waters proposed to be added to Appendix B are small tribs; if their uses are covered by the trib rule then they may not need to be specifically listed in Appendix B.
- ADEQ's eMaps can provide a current map of impaired waters for the public who need to know designated uses and impairments.

- Yes, both types of waters should be listed; why wouldn't you list them for clarity? Adding these waters to Appendix B provides a record of decision making.
- Yes, waters with AZPDES permits should be listed in Appendix B. The EDW use is only applied in special cases and Appendix B captures this decision making. The EDW use is not always applied where there are AZPDES permits because of infrequent discharges; Appendix B captures this decision making.
- regarding voting on the waters to be listed, would like clarification on the AZDEPS items. It's in a spreadsheet labeled "impaired" waters and not sure that the APDES waters are impaired or if you're trying to provide a cross-over from the AZPDES waters. Think that's a crucial part of the understanding for all.

- The federal regulations in 40 C.F.R. 131.31(b) that attempt to impose fish consumption on certain segments in Arizona are entirely outdated and should be withdrawn by EPA. Attached is a copy of EPA's 1998 approval of ADEQ's 1996 water quality standards revisions that addressed and resolved the fish consumption status of all of the segments in 40 C.F.R. 131.31(b), including with supporting UAAs, with the exception of Davidson Canyon (in the 1996 standards, Davidson Canyon was listed in Appendix B as A&We for the entire reach -- however, for the triennial review in 2002, ADEQ divided Davidson Canyon into appropriate reaches, with the non-ephemeral reaches carrying the fish consumption use and this was approved by EPA (see second attachment)). ADEQ should prepare a letter to EPA explaining the outdated nature of 40 C.F.R. 131.31(b) and requesting that it be withdrawn.
- We reviewed the information ADEQ provided regarding their 1990-era Use Attainability Studies at the time they were being vetted by EPA. The study submitted for Davidson Canyon was flawed, and found not acceptable by EPA, as their letter indicated. So we are not sure how reliable the other studies might be.
- just want to confirm that this is in relation to adding the FC list (part of the excel spreadsheet) to the listed waters. Since the definition of Fish Consumption "FC" is related to the use of surface waters and if the waters are intermittent/ephemeral, it doesn't seem to make sense to add those.

- On issue 3, I agree that the 1998 EPA approval letter, specifically the approval of submitted use attainability analyses (UAAs) for many of the waters in question, obviates the need to add the fish consumption (FC) use to any of the waters identified in 40 CFR 131.31. This is because either (1) the state has added the FC use to the water or portions thereof, or (2) the state has prepared, and EPA has approved, UAAs justifying not adding the FC use to waters (or portions thereof) where it is not designated. EPA noted in the preamble to the final 1996 rule setting forth the federal FC designations that it would “expeditiously” remove those designations if and when it approved UAAs showing that the FC use was not attainable in the waters (see 61 Fed. Reg. 20686, 20687 (May 7, 1996)), but obviously did not do so. I think ADEQ should suggest to EPA that 40 CFR 131.31 be deleted from the CFR.
- The 1998 EPA letter did not approve the UAA for Davidson cyn, which at the time was listed as a single segment. In the 2002 triennial review, Davidson Canyon was separated into ephemeral and non-ephemeral segments. The fish consumption use was added to the non-ephemeral segments (where it still remains), but not the ephemeral segments (a decision that would be supported by the blanket UAA that I understand ADEQ prepared demonstrating that the FC use is not attainable in ephemeral waters). The Davidson Canyon segmentation and use designations were approved by EPA as part of its review of the 2002 triennial review (see correspondence dated October 22, 2002, which approved the 2002 rulemaking except for specific items, none of which related to the Davidson Canyon segmentation). Therefore, I think Davidson Canyon has been fully addressed as well, and 40 CFR Part 131.31 no longer serves any purpose. ADEQ certainly shouldn't be adding FC use designations based on that now outdated rule.

1. How can ADEQ clarify the Tributary Rule (R18-11-105) to clearly define when a stream segment should have designated uses and subsequent surface water quality standards applied to it?

- The tributary rule does not need alteration. ADEQ should add streams to Appendix B when there are designated uses that are distinct from those under the tributary rule. ADEQ should add waters of the US and waters of the state to Appendix B for which there are designated uses to be protected that are distinct from those under the existing tributary rule, based on input from the public as well as agencies such as U. S. Army Corps of Engineers, Arizona Game and Fish Department, Arizona State Land Department and others.
- In favor of clarification but not sure we can get a clear definition of this vs. Ephemeral waters given the intermittent flows and the WOTUS revisions. There was discussion whether ADEQ should change their definition to mimic the EPA definition. This would at least eliminate the back and forth on which rule applies.

- Schedule ahead:
  - Draft deliverable report
  - Wed, Jan 10<sup>th</sup> 12:30-2pm, Summary discussion
  - Finalize deliverable recommendations
  - Review Proposed Final Deliverable: Jan 23, 1-2:30pm

- 2016 Revised Water Quality Standards for Surface Waters:  
[http://apps.azsos.gov/public\\_services/Title\\_18/18-11.pdf](http://apps.azsos.gov/public_services/Title_18/18-11.pdf)
- <https://www.azleg.gov/ars/49/00221.htm>
- [www.azdeq.gov](http://www.azdeq.gov)
- [Spindler.Patti@azdeq.gov](mailto:Spindler.Patti@azdeq.gov)
- 602-771-4543

# Impaired waters, not currently in Appendix B

Water-shed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 27 83)	A&Wc	A&Ww	A&We	A&W-edw	FBC	PBC	DWS	FC	AgI	AgL
MG	Arnett Creek	Headwaters to Queen Creek		A&Ww			FBC			FC		
VR	Banning Creek	Headwaters to Granite Creek	A&Wc				FBC			FC		
VR	Butte Creek	Headwaters to Miller Cr	A&Wc				FBC			FC		
MG	Cash Mine Creek	Headwaters to Hassayampa R	A&Wc				FBC			FC		
SC	Cox Gulch	Headwaters to Three R Canyon			A&We			PBC				
SR	Five Point Mountain Tributary	Headwaters to Pinto Creek at 33.22.25/			A&We			PBC				
SR	Gibson Mine Trib to Pinto Cr	Headwaters to Pinto Creek			A&We			PBC				
VR	Government Canyon	Headwaters to Granite Creek	A&Wc				FBC			FC		
SC	Humboldt Canyon	Headwaters to Alum Gulch		A&Ww			FBC			FC		
VR	Manzanita Creek	Headwaters to Granite Creek	A&Wc				FBC			FC		
VR	Miller Creek	Headwaters to Granite Creek	A&Wc				FBC			FC		
MG	Money Metals Trib	Headwaters to Unnamed trib UB1			A&We			PBC				
VR	North Fork Miller Creek	Headwaters to Miller Creek	A&Wc				FBC			FC		
VR	North Granite Creek	Headwaters to Granite Creek	A&Wc				FBC			FC		
VR	Slaughterhouse Gulch	Headwaters to Unnamed trib to Granite Creek		A&Ww			FBC			FC		
SC	Unnamed Trib (UA2) to Alum Gulch	Headwaters to Alum Gulch			A&We			PBC				
MG	Unnamed trib to Cash Mine Creek	Headwaters to Cash mine Cr	A&Wc				FBC			FC		
SC	Unnamed trib to Cox Gulch				A&We			PBC				
VR	Unnamed trib to Granite Creek (UGC)	Headwaters to Granite Creek	A&Wc				FBC			FC		
SC	Unnamed trib to Harshaw Creek	Headwaters to Harshaw Creek			A&We				PBC			
SC	Unnamed Trib to Three R Canyon				A&We			PBC				
VR	Unnamed trib to UGC (UUG)	Headwaters to Unnamed trib to Granite Creek	A&Wc				FBC			FC		
MG	Unnamed tributary to Eugene Gulch	Headwaters to Eugene Gulch			A&We			PBC				

# AZPDES Permitted waters, not currently in AppB



Water Shed	Surface Water	Segment Description	A&Wc	A&Ww	A&We	A&Wedw	FBC	PBC	FC	AgI	AgL	Comments
VR	Blowout Creek	Headwaters to Verde River			A&We			PBC				City of Cottonwood - WWTF
MG	Corgett Wash	Headwaters to Gila R				A&Wedw		PBC	FC	AgI	AgL	City of Goodyear - Corgett Wash WRF
LC	Cottonwood Wash	Headwaters to Silver Creek			A&We			PBC				Town of Snowflake WWTP
MG	Deadman Wash	Headwaters to New River confluence				A&Wedw		PBC				ANTHEM WATER CAMPUS WWTP
LC	Leroux Wash	Headwaters to the Little Colorado R			A&We			PBC				City of Holbrook-Painted Mesa WRF
SP	Mountain Mesa Drainage Way	Headwaters to San Pedro River			A&We			PBC				Town of Sierra Vista WWTP
VR	Unnamed trib to Munds Creek	Headwaters to 5000' elevation mark	A&Wc				FBC		FC			PINEWOOD COUNTRY CLUB GOLF COURSE AND DRIVING RANGE
VR	Unnamed trib to Munds Creek	5000' elevation mark to Munds Creek		a&Ww			FBC		FC			PINEWOOD COUNTRY CLUB GOLF COURSE AND DRIVING RANGE
BW	Unnamed trib to unnamed trib to Peacock Wash	Headwaters to Unnamed trib to Peacock Wash				A&Wedw		PBC				PETRO STOPPING CENTER
MG	Unnamed trib to Waterman Wash	Headwaters to Waterman Wash			A&We			PBC				City of Goodyear - Rainbow Valley WRF
MG	Unnamed wash, trib to Hassayampa River	Headwaters to Hassayampa River			A&We			PBC				Town of Buckeye-Sun Valley South WRF
MG	Unnamed Wash, trib to Queen Creek	Headwaters to Queen Creek			A&We			PBC				Entrada del Oro WWTP
MG	Unnamed Wash, trib to Winters Wash	Headwaters to Winters Wash			A&We			PBC				Balterra Wastewater Treatment Facility

- Are all A&Ww waters considered perennial or intermittent? Where are the definitions? Connection to ADWR listings?
- Request a better map, descriptor method or cross-reference for waterbody listings
- Any lake/stream that is considered WOTUS by ADEQ should be in Appendix B; request more clarity
- No benefit to listing a water in AppB if the uses are the same as required by the tributary rule; what belongs in Appendix B?
- Urban lakes maintained by runoff or groundwater pumping or privately owned with no significant nexus with surface waters, may not need to be listed in Appendix B (Coors & Paradise L)
- Federal definition of WOTUS is in flux; this will affect Appendix B list

- City of Mesa requests that Dobson Lake and Riverview Lake be removed from Appendix B
- ADEQ should consider including language to clarify that Appendix B waters & designated uses apply “If and to the extent that each listed water or reach constitutes a surface water.”
- Inclusion on appendix B should not be deemed a conclusive determination that a water is a WOTUS, given pending federal developments on the definition of WOTUS

- Should ADEQ add lakes and streams, not currently on Appendix B that have an:
  - 303d Impaired listing
  - AZPDES permit
  - to provide clarity to the applicable designated uses?
- Are there additional waters that should be explicitly listed in Appendix B?

- Impaired waters should be listed in Appendix B
- Do not support adding waters to AppB based on impairment determinations
- Re: AZPDES individual permits - Unless there is a need to add the A&Wedw use to a specific water, or a dispute on the applicable designated uses, no need to include such waters on Appendix B

1. ADEQ is proposing the addition of federally promulgated Fish Consumption designated uses to be consistent 40 CFR 131.31, do members have any concerns regarding these additions?
2. How can ADEQ clarify the Tributary Rule (R18-11-105) to clearly define when a stream segment should have designated uses and subsequent surface water quality standards applied to it?

## Purpose:

- Public record of designated uses for streams, lakes, wetlands, springs and canals in Arizona
- Dictates which water quality criteria/standards apply to surface waters
- Lists designated uses (DWS, AgI, AgL) not provided by the Tributary rule (A&W, FBC/PBC, FC)
- Record keeping for designated uses of special waters (eg. OAW, AZPDES permitted, impaired)
- Record keeping of decision making over time