



Meeting Summary

ADEQ WATER QUALITY DIVISION TRIENNIAL REVIEW 2018 STAKEHOLDER MEETING #3 SUMMARY

DATE: May 7, 2018
TIME: 1-3 p.m.
LOCATION: ADEQ, Room 3175, 1110 West Washington Street, Phoenix

STAKEHOLDER ATTENDEES (Attached)

ADEQ STAFF

Krista Osterberg
Rik Gay
Jason Sutter
Sam Rector
Heidi Welborn

Susan Fitch
Afag Abbasova

ADDITIONAL ATTENDEES

Theresa Gunn, GCI
Kelly Cairo, GCI

AGENDA

The complete agenda is available online and includes:

- Review Agenda and Introductions
- Welcome
- Triennial Review Group Topics
- Stakeholder Input
- Next Steps
- Evaluation

REVIEW AGENDA AND INTRODUCTIONS

Meeting facilitator Theresa Gunn greeted attendees and facilitated introductions. Approximately 40 stakeholders participated in the meeting, with 19 attending in person and 21 via WebEx or conference call. Some attendees may not have identified themselves.

WELCOME

Krista Osterberg welcomed the group. She explained that the Triennial Review meetings are designed to continue to gather stakeholder input and provide an overview of the workgroup topics and recommendations.

TRIENNIAL REVIEW GROUP TOPICS

ADEQ staff members presented Triennial Review Group Topics as noted below. Highlights of the presentation and comments and questions follow.

Schedule and Overview

Sam Rector explained that the state has initiated a Triennial Review of Water Quality Standards. He reviewed federal requirements and the schedule. Presentation highlights included:

- Water quality standards shall consist of designated uses, criteria to protect those uses, and an antidegradation policy.
- Under the CWA, all Waters of the US have a set of what are considered “de facto” uses that must be protected. ADEQ has established specific designated uses to address unique Arizona conditions.
- There are two basic categories of water quality standards: narrative and numeric
- Narrative standards describe “free from” standards (e.g. “free from toxic pollutants” or “free from trash”) and generalized categories.
- The three main types of numeric standards include those for human health, aquatic and wildlife and agriculture standards.
- EPA recommended criteria includes:
 - CWA Priority Pollutants
 - 304(a) Criteria
- Information that informs Arizona’s standards includes:
 - Drinking water MCLs
 - Regulated pesticides and pollutants
- Triennial Review Schedule
 - May – Stakeholder comments/suggestions
 - Mid-May – Begin drafting standards package
 - Mid-July – Draft standards and rules available for review
 - August – Stakeholder meetings
 - September – File NPRM with Secretary of State
 - November – Public hearing
 - April 2019 – Rules effective

Outstanding Arizona Waters

Krista Osterberg reviewed the Outstanding Arizona Waters (OAW) Workgroup Summary. She explained that the workgroup was formed because OAWs were identified as a topic of interest at the initial stakeholder meeting. Workgroup members were chosen based on their interest in this topic and in order to represent a range of interests. She discussed the project scope and each of the four questions the workgroup considered. Highlights of the presentation, questions and comments follow.

Question #1: How can ADEQ define “good water quality” (R18-11-112(D)(3)) more clearly to avoid confusion in determining whether a water is eligible for OAW consideration?

- The “good water quality” requirement (added in 2002) has resulted in regulatory uncertainty regarding whether/how much water quality data should be required at the

time of nomination to determine if water quality is “good,” and how to treat evidence of certain pollutants that comes to light after the designation.

- There was not consensus from the workgroup. Non-consensus recommendations included:
 - Strike requirement for good water quality
 - Revise existing language to clarify that good water quality means that the uses for which it is being nominated are protected based on available information at the time of nomination
 - Require nominated waters to be supported by sampling results in multiple locations and over all seasons and flow conditions that cover a range of parameters sufficient to ensure all applicable standards are being met
 - If a water is designated based on data limited to certain flow conditions, Tier-3 antidegradation requirements should only apply at those same flow conditions
- (Question): What is Tier 3? (Response): When a water body becomes an OAW, new or expanded discharges are not allowed to that water body.
- (Question): Who can nominate a water body? (Response): Anyone can nominate a water. Ultimately it is the decision of the ADEQ director. A nominated water must undergo a full public process.
- (Comment): OAW sampling requirements are significant and cost a good deal of money.
- (Comment): I prefer the recommendation for striking the requirement for good water quality for the very reason that requiring the water to be of "good quality" specifically incentivizes the pollution of said water bodies to escape protection.
- (Question): What is currently the requirement for “good quality?” (Response): When water meets or exceeds water quality standards, but not traditionally at the level of “attaining all uses.”
- (Comment): As a storm water manager we have to sample for a number of parameters. I would be interested in making that change because sampling “multiple locations over all seasons” results in requiring \$12,000 of sampling. I would prefer monsoon and winter rain sampling periods to save money. I also recommend the use of “key locations,” because I wouldn’t want the cost of sampling to limit nominations for an OAW.
- (Comment): Agree with this comment. The financial commitment would be an onerous burden for making a nomination. Nomination is a lot of work.
- (Comment): To me, this reads as if an OAW is deemed as a crucial spawning location it would not be eligible to be designated OAW due to the requirement to meet “good water quality standards.”
- (Comment): The existing rule requires that available water quality data be brought forward. Once the protection is in place, ADEQ develops an information base.
- (Comment): There are already MS4 and MS5 rules. Shouldn’t these be consistent? Seems these rules would compete with others.
- (Comment): If you list a water without a lot information on water quality, how would you do that without baseline information?

- (Comment): The “good water quality” language was put in by ADEQ for a good reason. Many waters were requested to be placed on the OAW list. There should be criteria to list a water at ADEQ’s discretion, and not use this designation as a zoning tool.
- (Comment): In Arizona, water is a limiting resource and affects the economy. Any water body should be considered regardless of “good water quality.”
- (Comment): If the “good water quality” designation was removed, would there be baseline information to understand if water degraded? (Response): This is touched on in Question 2, and whether ADEQ should be responsible for collecting data.

Question #2: Once a water has become an OAW what action should be undertaken to ensure that it is being maintained and protected as a Tier 3 water under R18-11-107(D)?

- The workgroup discussed potential solutions, but did not come to consensus. Some solutions considered policy and procedure changes versus a rule change. They provided a recommendations summary, but there have not been position papers submitted. Recommendations included:
 - OAWs should be protected following the criteria provided in R18-11-107.01(C) (*Antidegradation*).
 - ADEQ should establish a schedule for monitoring OAWs post-designation, perhaps with varying levels (eg. waters with known or suspected sources of degradation would be a higher priority for monitoring).
- (Comment): If ADEQ is responsible for establishing the baseline, consistent standards should be established for doing so. Once a water is on the list, it would be difficult to have that water removed, so it’s important to establish this properly.
- (Comment): If ADEQ is responsible for establishing the baseline, I am concerned this would be one more reason for the department not to do so, in part due to the expense.
- (Comment): As mentioned before, there are concerns over the costs for nominees to nominate water bodies. Therefore, I believe the requirement for the nominees to provide data could be prohibitive. I also support the idea that degradation should trigger additional monitoring by ADEQ, as well as sharing of best management practices.
- (Question): What happens with the non-consensus recommendations when they are conflicting such as in this case?
- (Comment): I mirror the concern that requiring the nominee to provide excessive amounts of data may take some water bodies out of the running when they desperately need protection.
- (Comment): I agree with the last statement. It’s better that the state do the initial work.

Question #3: What actions should ADEQ take if data shows that water quality is degrading in or if impairment status is determined on a water that is listed as an OAW?

- There were some consensus points including:
 - If degradation is suspected in an OAW, ADEQ should prioritize monitoring
 - If an OAW becomes impaired post-designation it should be considered as a high priority for TMDL development or alternative restoration action
- There were also a variety of non-consensus recommendations.
- (Comment): Looking at the matrix provided, I am concerned that many voices said that restoration would be important and this is not reflected on paper.

- (Comment): There is a difference between degradation and impairment. The cause is really what we should consider. This is not an easy answer.
- (Comment): The only reason an OAW should be declassified is if the reason for doing so no longer exists. (Response): Welborn requested the commenter assist by providing proposed language regarding this concept.
- (Comment): It might be helpful to include an explanation about taking an OAW off the list.
- (Comment): I feel degradation should prioritize monitoring, and should definitely not warrant declassification.
- (Comment): I would also think that degradation should trigger a plan to not only monitor but improve water quality.
- (Comment): When nominating an OAW, can an area be considered for protection that has high historic value that has been recorded, for example for sustaining an endangered species? For example, a water may have some recent water quality threats but it may still have outstanding value.
- (Comment): I agree that the point of the CWA was to restore waters that had been impacted.
- (Comment): There needs to be a way to get something off the list if it needs to be removed. I don't think an additional layer is needed.
- (Comment): We may need to clarify why waters are listed in order to understand why they should be delisted. (Response): OAW is tied to significant uses.
- (Comment): I don't think it is correct to speak in terms of "declassifying" an OAW. It should be considered a revision to a water quality standard. Other requirements related to a water would still apply.
- (Comment): Declassifying means the director would have the authority to unilaterally remove an OAW from the list. This is in contrast to the process where the water is added to list.
- (Comment): I don't believe declassifying is allowed under the CWA. This should be thought of as CWA standard.
- (Comment): I didn't read that declassification is at the director's discretion. I believe it needs to go through the full rule-making process.
- (Comment): We may want to use different wording, such as a de-listing, which reflects the rule-making process.

Question #4: Should ADEQ consider modifying the flow-regime based OAW eligibility requirements in this rulemaking? If so, what changes are recommended by the workgroup, and why?

- Discussion points included:
 - From 1981 to 2002, flow regime was not used to determine OAW eligibility.
 - In 2002, the rule was amended to refer to "perennial" waters; also when "free flowing condition" and "good water quality" requirements were added. This was modeled on similar Federal Wild and Scenic Rivers criteria.
 - In 2009, the rule was further amended to include intermittent waters.
- Non-consensus recommendations included:
 - Remove flow regime from eligibility criteria entirely
 - Retain the current wording; no changes

- Revert to limiting eligibility to perennial waters
- (Question): Are the definitions the same as those used in stormwater rules? (Response): Yes. In the current language, ephemeral is not included. (Comment): I would agree with that.
- (Comment): I support intermittent waters as well.
- (Comment): We have to expand what we view as significant in order to protect our waters.
- (Comment): I echo last comment. In Arizona, ephemeral waters are unique to the southwest and they should be included as potential waters for protection.
- (Comment): I agree.
- (Comment): There are many wildlife species that are adapted to temporary water sources. It doesn't make sense to exclude ephemeral waters from OAW.
- (Comment): I am concerned about monsoon rains, which are essentially storm waters, to be fighting with OAW requirements. Storm water has different CWA requirements.
- (Comment): Many free flowing waters in Arizona are ephemeral. I appreciate the dilemma. If Arizona water is critical for some ecosystem, I hope we find a way to accommodate these issues. Some ephemeral waters are in areas where there used to be free flowing waters.
- (Comment): Do we need to overlay these standards over others for ephemeral waters? I wonder if we have gone astray from the intent.
- (Comment): Ephemeral and other waters are already protected through other standards, do we need to also consider them outstanding?
- (Comment): I support removing flow regime requirements.
- (Comment): I agree about the biological value of seasonal and intermittent waters in the desert. This doesn't have to mean sampling of high flow storm water events. Some important waters flow for several months and have seasonal base flow.
- (Comment): What is the legal basis for declassifying? (Response): This would occur through the rule-making process. ADEQ has not delisted a water in the past.
- (Comment): We have interrupted streams in Arizona. This is why the flow regime is complicated and differs from year to year.
- (Comment): ADEQ told us that it is not going to consider the nomination of the Upper Verde or any other waters during this rulemaking process. We were previously told this would be the time to do so. (Response): ADEQ realized it was not appropriate to make a decision on a water while the rule in flux. The nomination is being considered, and the water will not need to wait for the next three year review to be listed.

Gunn urged stakeholders to continue to send in information via email and comment cards.

Antidegradation and Effluent Dependent Waters

Jason Sutter reviewed antidegradation and effluent dependent waters. He explained that the workgroup met in November of 2017 to address concerns raised by stakeholders and provide input to ADEQ. The workgroup included 10 members (eight non- ADEQ members) that discussed five topics. Highlights of the presentation and comments and questions follow.

Antidegradation Topic #1: Is the current Antidegradation Rule consistent with Federal Clean Water Act? If not, what changes should be made to correct the inconsistencies?

- The workgroup consensus was that Arizona Administrative Code Title 18, Chapter 11, Sections 107 and 107.01 are consistent with the Federal Clean Water Act and no changes are necessary.

Antidegradation Topic #2: ADEQ is proposing that the Baseline Characterization section (R18-11-107.01 (B)(3)(c)) be renumbered to R18-11-107.01 (B)(2) with the subsequent sections being renumbered. Do work group members anticipate any adverse impacts or risks associated with this change?

- The workgroup consensus is that renumbering current Baseline Characterization language to 3(a) from 3(c) would be appropriate rather than renumbering it to (B)(2). Renumbering the section will allow for the rule to follow the process steps required under a Tier 2 Antidegradation Review.
- The purpose of renumbering would be to follow the process that ADEQ would use.
- The report is not yet available for this topic, as additional work needs to occur.

Antidegradation Topic #3: ADEQ is proposing that the temporary impacts to OAWs language found in R18-11-107.01 (C)(4) be moved to its own section (5) and clarify that the temporary impacts cannot be “regularly occurring.” Do work group members anticipate any adverse impacts or risks associated with this change?

- No consensus was reached by workgroup members regarding allowable temporary impacts outside of the 404/401 program. The group did agree that temporary impacts are “not regularly occurring.”
- (Comment): I understand that you want to identify other instances outside the 404 process. I am still grappling with what circumstance you are attempting to address. (Response): There isn’t a specific instance we are trying to address. Rather, we want to address whether we can legally allow a temporary impact to occur.
- (Comment): Pima County disagrees with this proposed change to remove the “temporary impacts” language from subsection 4 and to create an independent subsection with the “temporary impacts” language. The proposed change broadens the allowance of temporary impacts to Tier 3 protected OAWs so that it would include discharges beyond those regulated under §404 which require §401 approval. During our workgroup discussions, ADEQ failed to identify the need for this broadening for temporary impacts and could not describe the types of activities that were intended to be covered in this manner. For this reason, it is not possible to offer any alternative rule language to accommodate ADEQ’s intent. Therefore, we believe that the rule language should remain as is.
- In response to a question, Sutter verified that the workgroup received comments previously provided by Jim Dubois and Julia Fonseca.

Effluent Dependent Waters Topic #1: How can the definition of an “effluent dependent water” (EDW) (R18-11-101 (17)) be changed to provide greater clarity to its applicability?

- No consensus was reached by the group related to a specific language change. However, the majority of members suggested that the definition should be revised to describe how infrequent discharges may not create an effluent dependent water.
- We will circle back with the workgroup and see if there is language that we can consider.
- A commenter verified that a discharge of EDW into an ephemeral water is included in the permit.

Effluent Dependent Waters Topic #2: Does the definition of “wastewater” (R18-11-101 (48)) clearly limit the applicability of an effluent dependent water? If not, how should the definition be changed?

- The current definition is one by exclusion. There was not consensus, but a variety of suggestions were provided. ADEQ will discuss this issue with the workgroup.
- Several attendees agreed that defining wastewater was preferable to a definition by exclusion.

STAKEHOLDER INPUT

Gunn posed the questions:

- What are the **values**, the overarching benefit, that you want to see reflected in this rulemaking?
- What **criteria** do you suggest to implement and realize those values?

Suggestions included:

- (Comment): The overarching benefit should be considered. The criterion should be whether any changes under consideration would impede Arizona standards.
- (Comment): Rules should be clear, without ambiguity. (Response): Welborn asked for input on clarity as the rule work continues.
- (Comment): I appreciate the process. We need to make sure other rules don’t conflict with the rules being considered. We also need to recognize that if a standard is not covered under this rule, there are many others. We don’t want to over-layer the use of rules if they occur elsewhere.

Additional comments on workgroup topics included:

- (Comment): One of the uses of ephemeral waters is as a recharge to the aquifer, however this is not reflected in the standards. I would like to see more protection for the value that ephemeral streams provide.
- (Comment): I agree and would like to get the storage credits as well. However, all discharges have to be permitted.
- (Comment): I believe the surface water standard versus the drinking water standard is the heart of the question.
- (Comment): We should not confuse these standards, although there is some overlap. The goal is to protect the ephemeral reaches.

Additional comments for consideration included:

- (Comments): One of the motivations for a triennial review is to look at the waters of the state. What is the current thinking for Waters of the State that are not Waters of the U.S. (Response): ADEQ does not have the authority to look at Waters of the State. We would like input on Waters of the State. We have not requested authority to move forward with a Waters of the State rule-making.
- (Question): How to AZPDES permits get issued? (Response): These are handled on a case-by-case basis and can be further discussed offline.
- (Question): Has ADEQ invested in a risk assessment on how climate change would affect surface water? This is in reference to how dwindling water resources might affect surface water. (Response): We have not addressed this issue during the rulemaking and could discuss offline.
- (Comment): It seems that to properly assess and protect SWQ standards, there is a resource at ADEQ for this. Will you be talking about this during the rule-making process. Seems like there are lots of needs beyond permits. (Response): Our program currently has sufficient funding.
- (Comment): Arizona Water Watch is a volunteer monitoring program that takes advantage of citizen scientists to provide waterbody photos and data.

Osterberg thanked attendees for their ongoing participation. A Tucson meeting will be held on May 10 and cover all three topics. The sessions will also be available on WebEx.

- (Question): Will the information be on the ADEQ website? (Response): The workgroup deliverables that are finalized are on the website. Information from these public meetings will be available.

Comment Cards

Comment cards received are provided verbatim as follows:

- OAW: The 2018 TR proposed topics and their justifications for public meetings. References lack of clarity regarding whether an OAW should be removed from the list if it becomes impaired. I was a participant in the OAW meetings and while one participant did raise removal of an OAW if it becomes impaired, several participants volunteered(?) that it would be more in keeping with the intent of OAW designation for an OAW that becomes impaired to be restored, no removed. (Jennifer Martin)
- Ephemeral waters should not be eligible for OAW listing under RL8-11-112. Why? Because the 3 Anti-Degradation standards apply to OAW's by operation of law who RL8-11-107 D. The 3 states that all degradation is prohibited – that is a zero-degradation standard. 107 D, 107.0 (C)

NEXT STEPS

- Timeline
 - Provide comments to waterqualitystandards@azdeq.gov by May 17.
 - Beginning May 18, ADEQ will begin drafting the rule.
 - In mid-July draft standards will be available for review.
 - August: additional stakeholder meetings.
 - September: GRRC, draft to EPA.

Action Items

- ADEQ to provide meeting notes on the project website.

EVALUATION

Gunn encouraged stakeholders to complete meeting evaluations. The meeting evaluation was also available online through May 8. Results are attached.

STAKEHOLDER ATTENDEES (IN PERSON AND BY PHONE) AND ORGANIZATION

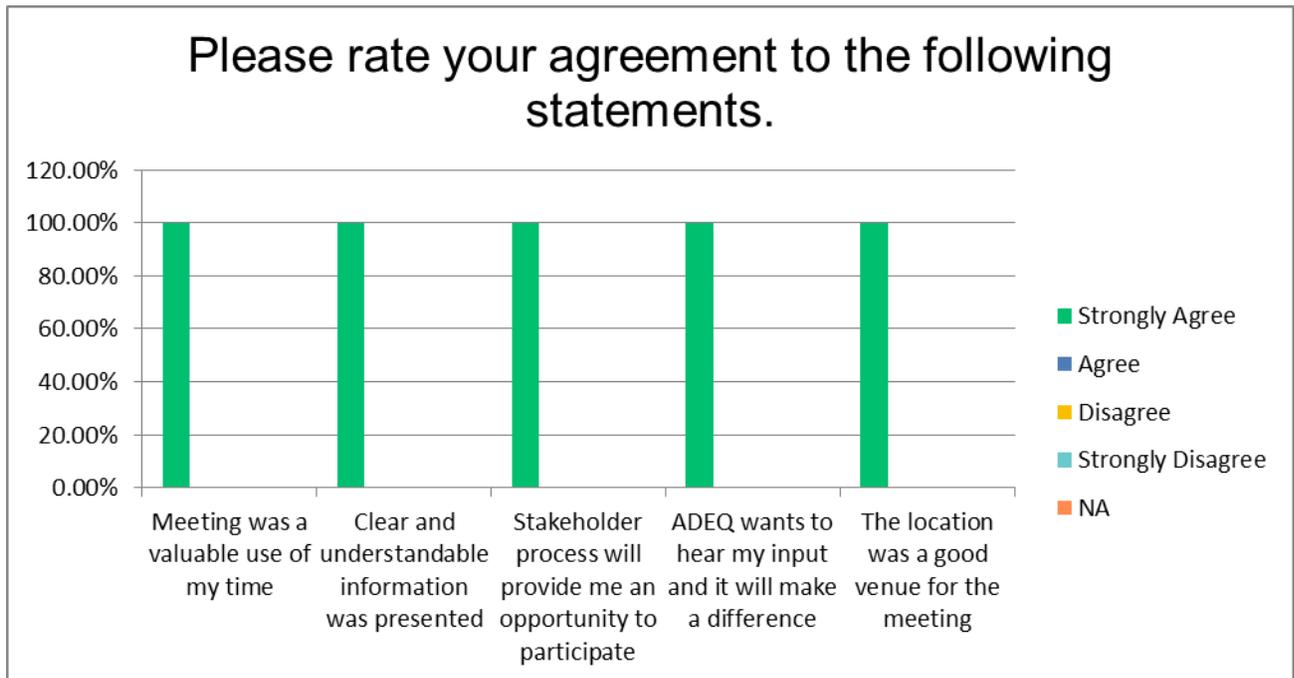
Jeremiah Armstrong	ASARCO
Sandy Bahr	Sierra Club – Grand Canyon Chapter
Dinah Bear	Farmers Investment Company
Jennifer Becker	Pima County
Justin Bern	City of Tempe
Mason Bolitho	Haley & Aldrich, Inc.
Susan Butler	(not provided)
Joan Card	Culp & Kelly, LLP
Patrick Cunningham	HighGround Public Affairs
Marc Dahlberg	Arizona Game and Fish Department
Lee Decker	Gallagher & Kennedy
Colleen Filippone	National Park Service
Tim Flood	ADHS
Julia Fonseca	Pima County Office of Sustainability and Conservation
Melanie Ford	City of Phoenix Water Services Department
Gregory Ghidotti	(not provided)
Rachel Hamby	Western Resource Advocates
Andrea Hamilton	Town of Queen Creek
Hilary Hartline	City of Phoenix, Office of Environmental Programs
Korey Hjelmeir	(not provided)
Julie Hoffman	MAG
Bob Hollander	City of Peoria Public Works-Utilities Department
Christina Hoppes	City of Tempe Water Utilities
Mark Horlings	Maricopa Audubon Society
Matt Killeen	City of Prescott
Jill Kipnes	Robert S. Lynch & Associates
Jim Kudlinski	SRP
Jeff Lemley	Global Water Resources, Inc.
Marie Light	(not provided)
Jennifer Martin	Sierra Club - Grand Canyon Chapter
Roger McManus	(not provided)
John Meyer	City of Mesa Environmental & Sustainability Division
Mead Mier	Pima Association of Governments
Meg Mittlestedt	Independent Journalist
Bridgette Pena	Ak-Chin Indian Community
Beth Polidoro	ASU
Linda Pollack	Arizona Department of Agriculture
Alex Ponikvar	ASU
Ramona Simpson	Town of Queen Creek
Scott Thomas	Fennemore Craig

ADEQ STAKEHOLDER MEETING EVALUATION RESULTS

Two stakeholders returned a meeting evaluation survey. 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?

- (No response.)

What should be changed for future meetings?

- There needs to be evening and/or weekend meetings so general public can participate.