



Meeting Summary

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

DATE: May 10, 2018
TIME: 3-5 p.m. (Session #3)
LOCATION: ADOA North Building, Room 444. 400 W. Congress, Tucson

STAKEHOLDER ATTENDEES (Attached)

ADEQ STAFF

Krista Osterberg
Rik Gay
Jason Sutter
Susan Fitch
Sam Rector

Patti Spindler
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 42 stakeholders participated in the meeting, with 36 attending in person and six via WebEx or conference call. Some attendees may not have identified themselves.

She explained that the meeting was informal and would include a short presentation and discussion of each topic. She noted that comments provided would be included in the meeting notes, and encouraged attendees to submit written comments on comment cards that were provided or by email by May 17.

A commenter was concerned that OAW discussion would be cut off at 4 p.m. Gunn explained that the meeting would be structured to allow for as much discussion time as possible while completing the agenda.

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. She noted her appreciation for those attending the meeting.

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:

- Section 303 of the Clean Water Act requires ADEQ to conduct a triennial review of surface water quality standards and, as appropriate, adopt or modify the standards through a rulemaking process, taking into consideration:
 - Public concerns,
 - EPA guidance, and
 - New scientific and technical information.
- 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
- Arizona’s standards are informed through:
 - Drinking water MCLs
 - Regulated pesticides and pollutants
- This is the beginning of the process where we are attempting to get information before we put pen to paper.
- 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

(Question): Is there a written comment period? (Response): We are accepting written comments and suggestions prior to drafting rules by May 17. In mid-July there will be additional stakeholder meetings with additional opportunities for comment. The formal public comment period occurs as part of the public hearing schedule.

(Question): Do any of these standards address the availability of water? (Response): No, the Clean Water Act addresses the quality of water, not the quantity. ADEQ has no statutory authority to develop standards regarding the quantity. The Department of Water Resources has that authority.

(Comment): I was told I was not a stakeholder. (Response): These meetings are not a formal process. Additionally, anyone who wants to participate may do so and anyone is considered a stakeholder.

(Question): Are these rules intended to take over the rules and jobs of the federal government? Will it get rid of the CWA in Arizona? (Response): No. These meetings are to review the existing rule to see what needs to be updated by rule.

(Question): Is there a new department being established? (Response): These meetings are not to establish a new department. A commenter noted that there may be some confusion with the upcoming process to consider assuming the responsibilities of the 404 permit. Gunn let attendees know that they could sign up on an email list to receive notifications about CWA 404 meetings.

Outstanding Arizona Waters

Osterberg reviewed Outstanding Arizona Waters, which were identified as a topic of interest at the initial stakeholder meeting in 2017. Workgroup members were chosen based on their interest in this topic and 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?

- An OAW is a water of high ecological or other outstanding resource value.
- The “good water quality” requirement 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 a variety of approaches:

- 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 #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)?

- Workgroup discussion on this topic focused on the relationship between Tier 3 protections and the establishment of baseline water quality.
- Some workgroup members reiterated points made relative to Charter Question 1 regarding the concept that waters should be able to be nominated as OAWs regardless of water quality if other high values as described in the rule are present. Other members noted that Tier 3 requirements would still apply in that scenario, and that in order to ensure that an OAW is maintained in accordance with those requirements baseline water quality must be established.
- No workgroup members offered to write up positions on this topic.

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
- The non-consensus recommendations included:
 - If water quality in an OAW is determined to be degraded based on reliable and sufficient sampling, declassification as an OAW should be an option
 - ADEQ should not declassify a degraded OAW, for a variety of reasons.

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?

- Workgroup discussion noted that from 1981 to 2002, flow regime was not used to determine OAW eligibility. In 2002, the rule amended to refer to “perennial” waters; also when “free flowing condition” and “good water quality” requirements were added. 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): How does ADEQ break up reaches? (Response): This is based on confluences of other streams. Certain reaches are nominated as an OAW.

(Question): Why would ADEQ consider changing the classification of a water at this time?

(Response): ADEQ is not considering adding or removing OAW to or from the list. (Note): The commenter was referring to removing a water from the Appendix B list, which differs from the OAW list.

(Comment): There is a reach on Davidson Creek part of Appendix B that is an ephemeral reach. There is an exclusion in the rule for ephemeral waters and impaired waters.

(Response): Part of what we are trying to clarify is conflicting language.

(Question): Are you considering taking the water off the list? (Response): No, not currently.

(Question): What is the process for nominating a water for OAW?

- (Response): Normally this would be considered during a rulemaking. However, since we are considering changing the criteria, we are not looking at listing waters.
- The next opportunity will occur when we submit approval to pursue a rule-making to the governor's office. An exemption could be submitted to the governor's office. Listing or delisting a water to OAW does not have to occur specifically during a triennial review.
- ADEQ has received a request, however it is being held until the rule is finalized.
- If ADEQ changes the rule, then we could develop a check list is addressing a pending OAW request.

(Question): What is the difference between ephemeral and intermittent? (Response): This is defined by rule. Ephemeral waters only flow in response to rain or snow. Intermittent flow is in response to ground water.

(Question): What criteria used to designate an impaired water? (Response): We compare data collected from streams and lakes to standards. If there are too many exceedances, it is analyzed for comparison to maximum daily loads.

(Question): How much does climate change play into all of this? When does water get impaired from climate change? (Response): The standards are independent of climate change and are based on numerical values. The higher the concentration of pollutants, the more it will exceed the standards.

(Question): When was the last triennial review? (Response): There was a full Triennial Review in 2009. In 2016, pieces that were not approved at the federal level had to be addressed. The 2016 completion date is essentially eight years since the previous review. This 2018 Triennial Review addresses the changes that occurred in 2015 by EPA.

(Question): What percent of your budget is through permit fees? (Response): About 10% of these fees go to surface water and 75% to the permitting area. The program also receives some federal, WQARF, and UST state funds. The program does not receive general funds.

Responses to questions about the volume of comments and transparency follow:

- The meeting notes will be posted on the website and will include any comment cards received. In addition, a Triennial Review Comment matrix will be prepared to reflect these comments as well as comments received by email. These items are public record.
- The meeting slides provide only a highlight of the recommendations and discussions of each work group. Additional information is provided on the website.
- While stakeholder input is important, ultimately, this is a science-based rule. We must defend our decisions to EPA with scientific justification.
- Under the formal public hearing process, written and oral comments will be responded to in writing.

(Comment): Sounds like OAWs are waters we care about, but if they degrade they could be delisted. This sounds like the opposite of what we should do. (Response): We have received comments with both points of view.

(Comment): This process is very technical. I think we all care that HudBay wants decreased protection.

(Comment): I think we want everything protecting the water to be retained. If a water is dirty, clean it up.

(Comment): I support idea that an impaired water should be fixed, not taken off the list. (Response): The current rule doesn't specify what should occur if a water becomes impaired.

(Question): Does ADEQ have the power to put ephemeral or climate change concerns into the rule. (Response): Yes, we encourage stakeholders to provide draft language for consideration.

(Question): Under the new rules could a waterway be delisted? (Response): Anyone who discharges must get a permit and must meet water quality standards, regardless of whether they are OAW. The intent is to prevent a water discharge above water quality standards.

(Comment): The matrix shown says you don't have the resources to do the science. (Response): The comment referred to is in reference to workgroup suggestion that the rule be changed resulting in ADEQ conducting OAW.

(Question): How do you address TENORM (Technologically Enhanced Naturally Occurring Radioactive Materials) in Arizona? (Response): There are two radioactivity standards listed. If you are interested in ADEQ developing standards, please let us know which specific standards you'd like to see developed.

(Question): How do you protect the water? (Response): ADEQ protects the water through the implementation of the CWA and associated permits and standards. Protections apply to the uses of the water bodies and the standards.

(Comment): I am concerned that business interests will be considered over those of the public.

(Comment): Ephemeral flows can represent the same water present underground. This process should recognize the connection with the water three inches underground. (Response): Sutter explained that under OAW, no new or expanded discharges are allowed under antidegradation. However, in discharges to other waters, a permit can be issued if the discharge is shown to be under the standards allowed based on the type of permit.

(Comment): Include in the OAW definition, “any water system that feeds into a city’s watershed.”

Antidegradation and Effluent Dependent Waters

Jason Sutter explained that this workgroup convened in November 2017 to address concerns raised by stakeholders and provide input to ADEQ. The group was composed of 10 members (eight were not a part of ADEQ) and considered five topic questions.

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 purpose would be to follow the process that ADEQ would use.
- Degradation can’t be determined if there is no baseline data.
- The workgroup consensus was 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 report is not yet available for these topics, 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?

- While there was no consensus recommendation regarding allowable temporary impacts outside of the 404/401 program, the group did agree that temporary impacts are “not regularly occurring.”

(Question): How long does it take to establish reliable baseline data? (Response): For CWA assessments, three or more samples are required. However, this language is not prescriptive. At this time, we probably won't define this.

(Comment): I think this is a critical element and should not be allowed to temporarily degrade the water for any period of time.

(Comment): I heard that Rosemont could pump all the water they want out of Cienega because it is outside the AMA.

(Question): There are 22 OAWs in state. Are the rest of the waters protected in any way?

(Response): Yes, if someone wanted to discharge in one of those waters, they would have to comply with water quality standards specific to that waterway.

(Question): Why has a rulemaking been initiated? (Response): Because we were behind on keeping up with EPA rulemaking requirements, we requested the ability to have rulemaking authority.

- These initial topics were discussed at the workgroup level because the concerns were raised at the initial stakeholder meeting last summer. The overall process was initiated by ADEQ.

(Comment): I heard that Rosemont has a deal with Green Valley Water Company, which is interesting regarding the drought.

(Question): What impact would ADEQ's ability to issue 404 permits have on this process?

(Response): An OAW requires no new or expanded direct discharges to an OAW." However, I can't speak to the requirements of a 404.

(Question): We are close to extreme drought in Arizona. Are your decisions independent of this? (Response): Yes.

(Comment): I am concerned about possibility of losing the opportunity to have a public process. (Response): That is why there is a lot of agreement that the rulemaking and associated processes should remain intact.

(Note): There were concerns about protecting the water way and OAW stream that are downstream of the Rosemont area from a potential discharge.

(Question): How does an aquifer protection permit and the contaminants affect surface waters? (Response): If the water daylight, they would be required to get a surface water permit.

(Question): OAW standards are vulnerable to this interaction. Is this addressed in any way? (Response): APP is generally at the same standard as drinking water level standards.

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?

- There was a suggestion to limit applicability, but there was no consensus on a specific language change. The majority of members suggested that the definition be revised to describe how infrequent discharges may not create an effluent dependent water.

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 work group agreed that defining wastewater by what it IS, not by what it is NOT. However, there was no consensus on language.

(Question): There was a proposal at the Legislature to redefine effluent. How might this get connected to these proposals? (Response): This proposal was outside of the water quality section, and more of a recharge issue.

(Comment): I want to note there is a federal register notice on the applicability of CWA on daylighting. They are taking comments at this time, and information can be found via the internet.

Osterberg asked for recommendations on meeting spaces in Tucson that could accommodate large groups. Suggestions included the Board of Supervisors Public Meeting Room, county library, and the Tucson convention center. She asked what time of day worked for future meetings. Attendees indicated that either daytime or evening meetings would be acceptable, with more preferring daytime meetings.

Comment cards received:

- Rule in Section R18-11-120 – Will need this for waters of the state? Why get rid of this tool, given that you could use this for a waters of the state program?
- Antideg: ADEQ should use EPA flow modification guidelines to evaluate permit activities that reduce flows. These were done in 2015, 2016.
- OAW – Removing ephemeral reaches of OAWs does not make sense.
- OAW – Confusion was caused adding “impaired water” standard to OAW.
- I think you should add “ephemeral” streamflow realities into the new rules. I think you should add climate change models and probabilities into the new rules. (Laurie Jurs)
- Small ephemeral reaches of a much larger stream channel should be included in OAW. Consider overall “character” of a stream (perennial, intermittent, ephemeral) for a particular reach, not small sections within.

- OAW retainment should be based on ecological significance and suitability of use for T&E, species of concern, and other special designation species. Important to keep protection of species and water afforded by OAW status.
- (Note): A letter from Mary Jo Sheldon-DiVito and a resolution of the Pima County Board of Supervisors were submitted at the meeting and attached separately.

NEXT STEPS

Gunn encouraged attendees to provide their information on the sign in form to indicate their attendance at this meeting and to receive future email about this project. She also let attendees know that they could sign up to receive notifications about upcoming 404 meetings.

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.

EVALUATION

Gunn encouraged stakeholders to complete meeting evaluations. The meeting evaluation was also available online through May 12. Results are attached.

STAKEHOLDER ATTENDEES (IN PERSON AND BY PHONE) AND ORGANIZATION

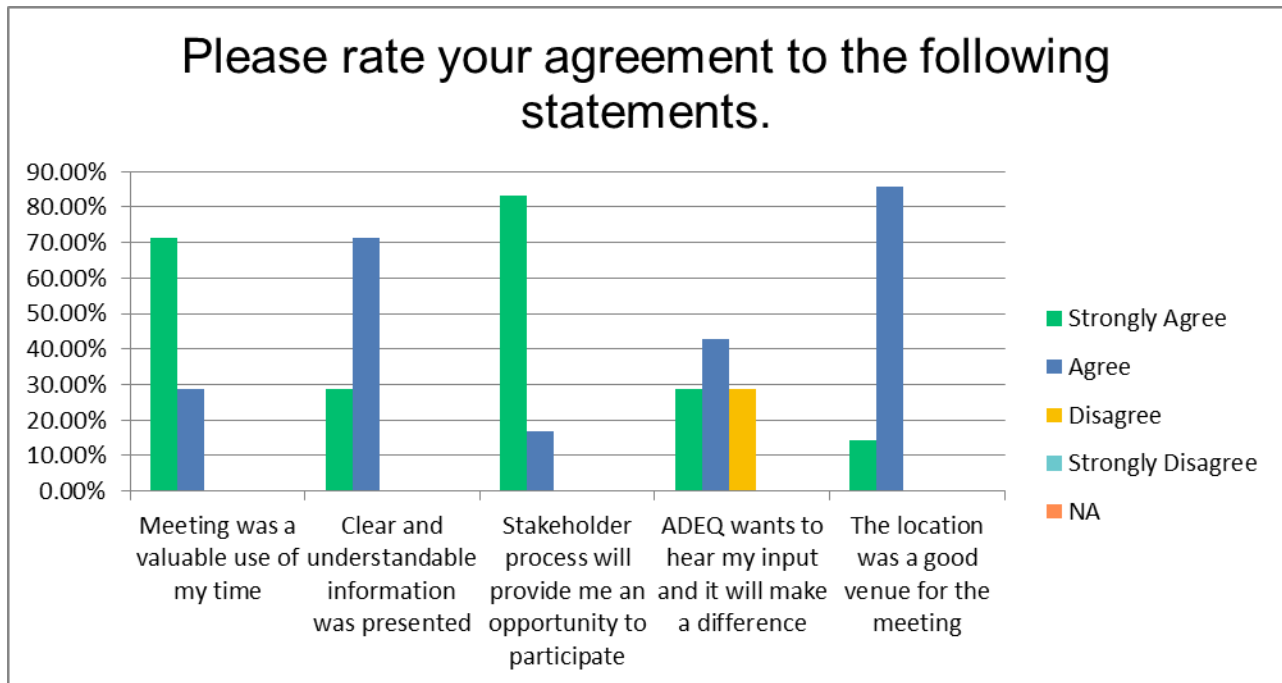
| | |
|------------------------|---|
| Melanie Alvarez | Pima Association of Governments |
| Kathy Arnold | Rosemont Copper Company |
| Steve Brown | Save the Scenic Santa Ritas |
| Jennifer Clarke | (tax payer) |
| Tony Davis | Arizona Daily Star |
| Cathy Della Penta | (did not provide) |
| Lauren Dempsey | U. S. Air Force |
| Colleen Filippone | National Park Service |
| Julia Fonseca | Pima County Office of Sustainability and Conservation |
| Tricia Gerrodette | (did not provide) |
| Ned Hall | Freeport-McMoran |
| Sami Hammer | (did not provide) |
| Neal Hanna | (tax payer) |
| Robert Harris | (private citizen) |
| Raymond Harris | (did not provide) |
| Gayle Hartmann | Save the Scenic Santa Ritas |
| Susan Husband | Sky Island Alliance |
| Jason James | NACOG |
| Laurie Jurs | (tax payer) |
| Maggie Leonard | (did not provide) |
| Marie Light | PDEA |
| Jim Littlejohn | (did not provide) |
| Roger McManus | Friends of the Sonoran Desert |
| Kristie Mendoza | Tucson Water Department |
| Dan Meyer | (tax payer) |
| Louise Misztl | Sky Island Alliance |
| Melanie Mizell | Community Water Coalition |
| Mark Murphy | (did not provide) |
| Lynn Pedros | (did not provide) |
| Cynthia Pruett | Tucson Audubon Society |
| Randy Serraglio | Center for Biological Diversity |
| Mary Jo Sheldon-DeVito | (did not provide) |
| Greg Shinski | (did not provide) |
| Carol Shinsky | Save the Scenic Santa Ritas |
| Catlow Shipek | (did not provide) |
| Natalia Smith | SRP |
| Vashti Supplee | (did not provide) |
| Tom Swenson-Healey | (did not provide) |
| Jennifer Varin | U. S. Forest Service |
| Mary Walker | Tucson Audubon Society |
| Meg Weesner | Sierra Club - Rincon Group |
| Roy Zeagler | (private citizen) |

ADEQ STAKEHOLDER MEETING EVALUATION RESULTS

Seven 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?

- Audience response.
- Audience responses.
- Leaned about the process.
- Questions and answers.
- Seeing the report for water quality protection from attendees.
- The meeting was well run and the facilitator did a good job keeping us on track + focus on the topic. Thank you for making this opportunity available.
- You attempted to listen to as many people as possible.

What should be changed for future meetings?

- ALL comments provided in advance, clearly accessible.
- Larger venue, maybe more time.

- Less time on concerns of ADEQ.
- More time for attendees to inform ADEQ of their concerns.
- More time for emotional, non-wonky issues.
- Post schedule of process on line, rather than on slides/text.
- Your process, actions and dates, have been unclear. Today is the first I heard you are employing a new process, which is a good process, to write new regulations.

Attachments

Mary Jo Sheldon-DiVito, Esq., CPA

7372 N. Camino Sin Vacas
Tucson, Arizona 85718
520 544-9756
520 405-9600
mjsheldondivito@comcast.net

May 10, 2018

Arizona Department of Environmental Quality
State of Arizona

Re: Rosemont Mine and Southern Arizona Water Issues

The Rosemont Mine will pollute Southern Arizona's water. The mine is at the headwaters of the Davidson drainage area. Hubbay wants to weaken water quality protections for the Davidson Canyon and Cienega watershed. The Cienega watershed provides 20% of our groundwater.

They will be pumping groundwater as well, reducing flows to streams that replenish our aquifer.

Capetown, South Africa is on the verge of completely running out of water. We too are in a drought. Cutbacks in CAP deliveries could come as soon as 2020.

Pima County and Tucson are at the end of the CAP delivery system and will have cutbacks before Phoenix and Maricopa County. Where will the million plus people in Pima County get their water? We will have to replace it with higher priced water, if it is even available.

Our groundwater will be more important than ever and Rosemont will continue to pump it and pollute it.

Water is necessary to life. I do not want people to be an endangered species in Southern Arizona. Icebergs are not a water source option for us.

I am a lifelong Republican and extremely concerned that we are choosing short term profit to the detriment of our children, country, and the world.

RESOLUTION 2017- 50

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA
AFFIRMING PIMA COUNTY GOALS FOR PROTECTION OF WATER QUALITY**

THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA FINDS:

1. Water is essential to life and sacred to many religions;
2. The water cycle connects rainfall, runoff, surface water and ground water;
3. Pollutants entering the water cycle can be passed to other parts of the water cycle;
4. Clean water is essential to human health and the health of the plants and animals on which we depend;
5. Pima County residents rely on water derived from rain, surface runoff, underground aquifers, and the Colorado River;
6. Pima County has a role in managing watersheds and protecting water quality;
7. Local communities can participate in setting state and federal standards for the protection of water quality.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. Pima County shall participate in the Triennial Review of surface water quality standards in order to protect human health and the ecosystem functions on which wildlife depend;
2. Staff shall oppose efforts to diminish or remove water quality protections for Cienega Creek, Davidson Canyon, Buehman Canyon, or other Arizona Outstanding Waters;
3. Staff shall manage point source and non-point source pollution to maintain water quality at a level needed to ensure human and wildlife health now and for future generations;

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4. Staff shall consider the connections between activities affecting land and air and surface water and groundwater, in the exercise of their duties.


Passed and adopted this 11th day of July, 2017.


Chair, Pima County Board of Supervisors

ATTEST:


Clerk, Board of Supervisors

APPROVED AS TO FORM:


Deputy County Attorney
TOM WEAVER