

## Arizona Surface Water Quality Program: Stakeholder Advisory Group

**Meeting:** #6

**Date:** Aug. 27, 2020

**Time:** 2:30-5 p.m.

### **Attendees:**

#### **Agency**

- Agribusiness and Water Council of Arizona
- Arizona Cattle Feeders' Association
- Arizona Chamber of Commerce and Industry
- Arizona Chapter of Associated General Contractors
- Arizona City/County Management Association
- Arizona Farm Bureau
- Arizona Manufacturers Council
- Arizona Mining Association
- Arizona Rock Products Association
- Center for Water Policy
- City of Phoenix
- County Supervisors Association of Arizona
- Environmental Defense Fund
- Grand Canyon Trust
- Home Builders Association of Central Arizona
- Inter-Tribal Council of Arizona
- Salt River Project
- The Nature Conservancy
- Water for Arizona Coalition
- Arizona Municipal Water Users Association
- League of Arizona Cities and Towns

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- Salt River Project

#### **Member**

- Wade Noble
- Bas Aja
- Courtney Coolidge
- Amanda McGennis
- Gina Montes
- Stephanie Smallhouse
- Allison Gilbreath
- Lee Decker
- Eric Mears
- Sarah Porter
- Kathryn Sorenson
- Michael Racy
- Chris Kuzdas
- Travis Bruner
- Spencer Kamps
- Susan Montgomery
- Maribeth Klein
- Patrick Graham
- Haley Paul
- Warren Tenney
- Tom Savage

#### **Alternate**

- Jason Moyes
- Chelsea McQuire
- Scott Thomas
- Steve Trussell
- Craig Sullivan
- Scott Deeny
- Joan Card
- Mia Hammersley
- Rob Anderson
- Mike Ford
- Holly Pearen
- Vince Lorefice
- Mike Denby
- Stacey James
- Cindy Blackmore
- Tricia Balluff
- Bob Hollander
- Sharon Morris

### **ADEQ Staff**

- Ben Bryce
- Patti Spindler
- Trevor Baggione
- Krista Osterberg
- David Lelsz
- Leigh Padgitt
- Deborah Birutis
- Chris Montague-Breakwell
- Erin Jordan

### **Consultant Support**

- Theresa Gunn, GCI
- Kelly Cairo, GCI

### **Introductions and Meeting Purpose**

Trevor Baggione, Director, ADEQ Water Quality Division, welcomed attendees. Facilitator Theresa Gunn, GCI, conducted roll call.

Highlights of Trevor's remarks included:

- ADEQ intends to pursue authority to implement a state program
- Navigable Water Protection Rule became effective June 22, 2020
- The NWPR requires a permit for those point sources that discharge to a Water of the US through relatively permanent waters
- Purpose of today's meeting is to discuss a screening toolkit to assist ADEQ and customers determination if a facility needs a permit
- Request SAG input by September 4 to gain a sense of whether ADEQ is going in the correct direction with this tool
- Next steps: Screening tool will be presented to the stakeholders for feedback
- Will provide slides of today's presentation to the group

### **Navigable Waters Protection Rule Screening Toolkit**

Trevor introduced the screening toolkit. Ephemeral waters, those bodies whose flows are entirely dependent on precipitation, cannot be WOTUS and are not regulated under NWPR. Intermittent and perennial waters can be regulated under NWPR.

David Lelsz, ADEQ, presented additional information. Highlights follow.

- Flow regime designations in Arizona include:
  - About 12% – relatively permanent waters/perennial
  - About 5% – relatively permanent waters/intermittent
  - About 1% – ephemeral
  - 80% of waters are undetermined
- Have begun a collaboration with SRP on flow regime and welcome additional information
- ADEQ currently has completed an assessment of all Individual AZPDES permitted facilities; this assessment was completed without input from permittees, however and is subject to change:
  - 45 facilities that appear to not require a permit
  - 71 facilities that appear to require a permit
  - 34 facilities; unclear if a permit is required at this point

David provided several examples of how ADEQ will use the toolkit to screen whether a facility needs an AZPDES permit or not.

Next steps:

- SAG input on the screening toolkit by Sept. 4
- Presentation provided by email to the SAG
- Request information on more accurate flow regime data
- Intend to provide screening toolkit for broader input in mid-September

Potential additions to toolkit after rigorous assessment:

- Depth the groundwater
- Surficial bedrock GIS analysis
- Snowpack contribution to surface water flows
- Antecedent precipitation tool feedback from EPA
- Streamflow duration assessment method

Highlights of attendee questions and responses include:

- ADEQ confirmed that a discharge from a facility could potentially create a permanent flow
- Threshold on riparian vegetation on potential intermittent streams is greater than 50%
- (Question): Would you lean toward a permit in the city of Holbrook Painted Mesa Water Reclamation Facility example?
  - (Response): ADEQ would use these tools (raindrop tracker, vegetative study) to discuss with the facility. If the facility feels they want a permit, could issue one. Cannot require permit based on this information
  - In the example, because there is an undetermined flow regime for Leroux Wash, would need to use the tool kit to determine potential risk
- (Comment): Believe there needs to be flow from the intermittent segments to the TNW
  - (Response): Agreed, this is outside the typical year flow information. The screening tool would be used to gather best information and make conservative assumptions
  - Tool designed to answer 402 permit question: *do I need an AZPDES permit?*
- (Comment): Should make clear to user that intermittent and perennial designations do not determine jurisdictional purposes, only flow regime
  - (Response): While this is true, the next step will be to determine jurisdictional status
- (Question): Can an individual provide the riparian screening?
  - (Response): Riparian NAAP information is available for those with GIS tools; Google Earth and Google Maps provide good visual information
- ADEQ believes that after making a determination for Leroux Wash, for example, this determination can be used to inform other washes that drain into the water body
- (Question): If the flow regime doesn't match Appendix B, which information is used?
  - (Response): Would need to understand basis of Appendix B information. It is not clear what information was used to place waters in Appendix B.
- (Question): The flow regime map seems to be missing from the ADEQ website
  - (Response): Didn't have enough information in records to provide context so the map was taken offline; once information is updated, the map will be reposted
- (Question): Is there an example of a discharge that would not require a permit, that does not drain to a terminal basin?

- (Response): ADEQ used a terminal basin example because this is a clear example. There are probably examples where there are a variety of ephemerals between the discharge and the TNW. A discharge to a WOTUS can be enforced against. Need to be extremely thoughtful on providing feedback that “no permit required”
- Trevor reviewed the Sierra Club v. Abston Construction Co lawsuit. ADEQ can’t require a permit in this instance. If a facility can’t distinguish its discharge from others, up to facility to choose whether to pursue a permit
  - ADEQ would have the burden of proof of a violation of the CWA in this instance
  - ADEQ believes physical evidence would be needed as proof (not the use of screening tools)
- ADEQ verified that the yellow portion (third section) of the NWPR Screening Toolkit flow chart show that ADEQ would not require a permit. Rather, ADEQ would help a facility determine whether they choose to pursue permit coverage
- (Question): Does the stream flow regime screening tool take into account discharge volume from a facility?
  - (Response): No, this would be a refinement of the tool
  - (Comment): Many facilities discharge intermittently into ephemeral waters
- (Question): How do you envision the tool working with state program development?
  - (Response): Intend to use a related tool adapted to water bodies
- (Question): How does the “cannot trace flow to a TNW/no permit required” scenario relate to the Verde River, which is not a TNW?
  - (Response): Don’t have a comprehensive assessment of Arizona TNWs. Don’t think ADEQ can require a permit under the CWA
  - Absent that determination, an upstream discharge would require a permit since the Verde connects to a TNW.
- (Comment): Concerned about public input on the “call/no call” regarding whether a permit is required, as these determinations may be made behind the scenes, or with facility-provided information
  - (Response): Trevor said that this type of feedback is important and will need to be considered. Though there is not a notification process today, it does not mean there couldn’t be
- (Question): Will there be another toolkit for jurisdiction under a new state program?
  - (Response): Purpose of these tools is to define what is or is not regulated under the federal CWA. Will look at similar questions such as flow regime and data about surrounding area as tools to determine if water bodies are intermittent or perennial and reach a TNW
- (Question): How will we address the regulation gap? What is ADEQ’s path forward?
  - (Response): The intent is to resume the conversation about ADEQ’s path forward, and continue engaging stakeholders leading up to the legislative session
- ADEQ has communicated with other southwestern states. Arizona appears to have invested more time in this process, including drafting a screening level process. ADEQ has not shown this tool to other states and plans to do so after the EPA conversation regarding the toolkit

**Next Steps and Adjourn**

Trevor requested additional input on the toolkit by Sept. 4, 2020. Input should be provided to Trevor, Theresa, or David (Lelsz.david@azdeq.gov).

He expressed his appreciation of the groups time and ability to attend the meeting. In addition to the presentation, meeting notes will also be provided.