

## Arizona Surface Water Quality Program: Stakeholder Advisory Group

**Meeting:** #7

**Date:** Oct. 16, 2020

**Time:** 12-2 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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**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
- Mike Ford
- Cindy Blackmore
- Vince Lorefice
- Lacey James
- Chelsea McGuire
- Mike Denby
- Scott Thomas
- Steve Trussell
- Craig Sullivan
- Robin Hillyard
- Holly Pearen
- Rob Anderson
- Mia Hammersley
- Bob Hollander
- Sharon Morris
- Scott Deeny
- Joan Card
- Tricia Balluff
- Patrick Cunningham

### **ADEQ Staff**

- |   |  |   |   |
|---|--|---|---|
| <input type="checkbox"/> Misael Cabrera             | <input checked="" type="checkbox"/> Ben Bryce        | <input type="checkbox"/> Patti Spindler           | <input checked="" type="checkbox"/> Justin Bern |
| <input checked="" type="checkbox"/> Trevor Baggione | <input checked="" type="checkbox"/> Krista Osterberg | <input checked="" type="checkbox"/> David Lelsz   |   |
| <input type="checkbox"/> Leigh Padgitt              | <input checked="" type="checkbox"/> Deborah Birutis  | <input type="checkbox"/> Chris Montague-Breakwell |   |
| <input checked="" type="checkbox"/> Erin Jordan     | <input checked="" type="checkbox"/> Roxanne Linsley  | <input checked="" type="checkbox"/> Amanda Stone  |   |

### **Consultant Support**

- Theresa Gunn, GCI       Kelly Cairo, GCI

### **Roll Call and Review Agenda**

Trevor Baggione, Director ADEQ Water Quality Division, welcomed attendees and conducted roll call. He explained that the purpose of the meeting was to introduce a framework for moving forward with a State Surface Water Protection program. He asked the group to provide an initial reaction on:

- Can you support this proposed framework?
- What other information is needed?
- What changes would you need to see to support it?
- Will you be willing to support potential legislation?

Highlights of Trevor's remarks included:

- The EPA and USACE did not intend the Navigable Waters Protection Rule (NWPR) to protect all important waters.
- The rule protects Traditional Navigable Waters (TNWs) and waters that contribute surface flow in a typical year. However, this leaves many important waters to the states to protect.
- NWPR is under challenge.
- Reviewed examples of "wet waters" without Clean Water Act (CWA) protection, such as the Santa Fe Reservoir in Williams and Roper Lake in Safford.
- Reviewed examples of newly non-WOTUS waters, such as Watson Lake in Prescott and Woods Canyon Lake, near Payson.
- Public expectation is that ADEQ is responsible for protecting waters used by the public.

### **Overview of a Proposed Framework**

Highlights of Trevor's presentation include:

- ADEQ has heard that the NWPR is confusing. A unique and complex new state program would be the wrong choice.
- ADEQ's conclusions based on stakeholder feedback and the Stakeholder Advisory Group:
  - Should include a map of protected state waters.
  - Should mirror the current CWA program, building on them so that permittees don't have to learn an entirely vocabulary and permit program.
  - Should protect surface water quality (and isn't a land management program).
- Proposed framework would add a level of protection similar to WOTUS for a list of non-WOTUS waters (with the exception of a dredge and fill program). The intent is for the permit to look similar to a CWA permit, but without federal/EPA oversight.
- Seeking to create a science-based program to address potential impacts.
- Framework features:
  - Same permit program and fees as the CWA 402 Program

- One set of standards
- Same permit for both WOTUS and listed state waters
- Framework would *NOT*:
  - Require multiple AZPDES permits for a single discharge
  - Set standards for any ephemerals other than minor portions of the eight major rivers
    - Arizona’s eight major rivers: Bill Williams River, Colorado River, Gila River, Little Colorado River, Salt River, San Pedro River, Santa Cruz River, Verde River
  - Change how ADEQ administers AZPDES
  - Regulate agricultural return flows and stormwater discharges
  - Create a state dredge and fill program

**SAG Member Discussion**

Highlights of comments, questions, and ADEQ responses include:

- (Question): Would water quality standards be enforced for dredge and fill impacts, or create prohibitions for these waters?
  - (Response): Will consider this circumstance.
  - (Comment): Might already have standards that prohibit this.
- (Question): Would all CWA standards apply, such as technology-based limits, OAWs, TMWs, Section 208, etc.?
  - (Response): If there are certain standards that should not be included, we’ll need additional feedback for consideration.
  - (Comment): Numeric limits for OAWs tend to be far more stringent and anti-degradation tends to be very complicated.
- (Question): By listed non-WOTUS waters do you mean Appendix B waters minus those that are ephemeral?
  - (Response): No. The program would create a protected surface waters list. This would likely include some waters on Appendix B, but we don't anticipate adopting the current Appendix B wholesale. We'd be looking for stakeholder input on how that list gets developed. Appendix B could be a place to start, but we are open to discussion and suggestions. The list would include more than Arizona's eight major rivers.
- (Question): Will the philosophy carryover of a discharge which might find its way to wet waters? I assume the expected approach to listing impaired or non-attaining waters in a state program would also track CWA?
  - (Response): Yes, the intent would be to protect downstream water.
- Staff commented that the toolkit previously introduced to permittees is in early stages, and this program would assist with clarity. It would also eliminate some of the confusion created through typical year analysis.
- (Question): Where do wetlands fit into the scope?
  - (Response): If it’s a wet water, assume it would be on our list. Wetlands fall under the wet water concept. However, the concept of “adjacent to wetland” comes from TNW definition. A state program would not rely on this concept.
- (Question): What about manmade wetlands?
  - (Response): Goal would be to understand when a water should be included and to have a process to make that determination.

- (Question): What about the tributaries to the eight major rivers?
  - (Response): If it is a perennial or intermittent tributary, it would be our intent to have include that water on the list under a state program.

Facilitator Theresa Gunn polled the SAG members. Results of the anonymous poll follow:

**1. Based on the information provided in this meeting what is your initial reaction to the proposed framework?**



Highlights of additional comments, questions, and ADEQ responses include:

- (Comment): Like the approach, use of existing programs as building blocks.
- (Question): What is the process to show a discharge does not impact downstream waters?
  - (Response): Should be able to show your analysis. Would require a demonstration if you were terminating your permit.
  - (Comment): Would like more information on these issues.
- (Comment): Would like additional specific examples. This would help us better understand how the program would work and what it might look like, such as that in the Roper Lake slides.
  - (Response): This type of certainty would be a benefit of this program.
- (Question): During the permittee screening tool presentation, ADEQ mention a potential 50% permit termination. Is there a similar analysis for this program?
  - (Response): No, there's not been that type of analysis. To this point we haven't had any termination of permits. ADEQ will consider how we might be able to do this.
- (Question): Would general permits apply?

- (Response): The intent is that general permits would still apply. It is not our initial intent to create additional general permits.
- (Question): What about EDW?
  - (Response): It is not our intent to include in a state program more than what the CWA regulated. However, Appendix B has not yet been revised.
- (Question): I assume the expected approach to listing impaired or non-attaining waters in a state program would also track CWA?
  - (Response): The intent is to use the same approach and set of standards.
- (Question): How will the state protect waters regarding pre- and post-development pumping issues?
  - (Response): Will need to get more input on criteria for these waters.
- (Comment): Would think that point source discharges of effluent to ephemerals would need to be considered because of the aquatic and wildlife that inevitably use it.
  - (Response): There is a broad spectrum of effluent dependent waters. Would appreciate perspective on this range of waters.
- (Question): Have you studied aquatic life use in those de-regulated surface waters, such as fish and water bugs.
  - (Response): No, we didn't have authority to require this at the time.
  - (Comment): In the past, the Pima County WW plant met all AZPDES requirements, but not CWA requirements. Following improvements, fish now can be found. APP simply doesn't ask certain questions.
- (Question): Will 402 permits and 404/402 permits apply?
  - (Response): The solid waste exemption is based on federal law. Framework does not include a state 404 program.
- (Question): Does ADEQ have a plan to pursue science-questions raised during this process, or rely on others to obtain this information? Sometimes the science isn't available yet.
  - (Response): Over the next year, ADEQ's work will be to address flow regime in Arizona to determine federal/CWA vs. state waters. Would appreciate any additional assistance available.
- (Comment): I have always had trouble understanding a use-based program, and like the straightforward nature of this program.
  - (Response): Other states successfully use a similar approach.

### **Next Steps and Adjourn**

Next steps include:

- ADEQ will provide slides and homework (below) to the group
- SAG feedback requested on the following by Oct. 30:
  - Thoughts on inclusion of the eight major rivers
  - What should our initial set of protected waters be?
  - Which waters should be excluded?
  - Suggestions for criteria and process to add or remove waters
  - Comments on draft legislation
- Intent of the Oct. 30 deadline is to keep the process moving forward
- Stakeholder meeting to discuss the framework, to be announced

- SAG Meeting #8 to review draft legislation for the 2021 session

Trevor thanked attendees for making time for this meeting. He noted the importance of avoiding silent disagreement and encouraged attendees to reach out to discuss any issues.