

Surface Water Protection Program: Stakeholder Advisory Group

Meeting: #8 **Date:** December 1, 2020

Time: 11 am - 1 pm

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
- The Nature Conservancy
- Water for Arizona Coalition
- Water for Arizona Coalition
- Wellton-Mohawk Irrigation Drainage District

Member

Wade Noble
Bas Aja
Courtney Coolidge
Amanda McGennis
Gina Montes
Stephanie Smallhouse
Allison Gilbreath
Lee Decker
Eric Mears
Sarah Porter
Tricia Balluff
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
Susan Craig
Craig Sullivan
Robin Hillyard
Holly Pearen
Rob Anderson
Jay Tomkus
Bob Hollander
Sharon Morris
Scott Deeny
Joan Card
Patrick Cunningham
Elston Grubaugh

ADEQ Staff

- Trevor Baggio
- Ben Bryce
- David Lelsz
- Justin Bern
- Amanda Stone
- Krista Osterberg
- Theresa Gunn
- Erin Jordan
- Roxanne Linsley

Roll Call and Review Agenda

Trevor Baggio, Director ADEQ Water Quality Division, welcomed attendees and David Lelsz, ADEQ Program Manager of the Surface Water Protection Program, conducted roll call of the members.

Updates to the Proposed Framework and Draft Legislation

Ben Bryce, ADEQ Legal Specialist, reviewed the major elements of the framework and the corresponding language in the draft legislation document. The following is a summary of the common themes derived from the SAG members' comments, suggestions and questions.

Ephemerals as a "Shall Not" or "May" water: The group was divided on which tier ephemerals should be included. Supporters of the "May" list felt it provided an opportunity to add an individual ephemeral if the benefit of doing so outweighed the costs. Also, there is water in the ephemerals at times which would carry any pollutants to protected waters. Those who wanted ephemerals in the "Shall Not" tier stated the purpose of the state program is to protect wet water and stated you can't apply water quality standards and TMDLs if there is no water in the wash.

Listing of additional waters: Members asked questions about the nomination criteria and how ADEQ would determine if a benefit outweighed the cost when considering adding a water to the list. A concern was raised that the nomination process seems to be very open and may result in the agency being overwhelmed with requests for adding water to the list.

Waters on the initial list: A question was asked why major drainages upstream of the 8 major rivers were not included (ie Big Chino Wash.) A concern was raised about the difficulty in correlating the waters in Section 20 of the draft legislation with the current Appendix B table. A member asked if the waters on the list were verified by site visit. Members were encouraged to provide additional information if they wish to have a water body removed from the list prior to legislative approval.

Ephemeral water confusion: Members asked for clarification about discharges to an ephemeral which may reach a protected water. There was also confusion regarding the wording of the ephemeral stretches of the 8 major rivers. Some perceive it to mean all ephemerals which connect to the major rivers would be included. **The ADEQ proposal is that the entire length of the main stem of the 8 major rivers will be included on the protected waters list, including any ephemeral main stem reach of these rivers. Any ephemeral washes that are not part of the main stem of the river would not be included. Those 8 major rivers are;**

- Bill Williams River
- Colorado River
- Gila River
- Little Colorado River
- Salt River
- San Pedro River
- Santa Cruz River
- Verde River

NOTE: Not all of these rivers have ephemeral portions. This proposal is designed to protect them regardless of how these rivers might flow in the future. Even the Colorado runs dry before reaching the ocean. This proposal ensures that Arizona's major rivers are protected now and in the future.

Treatment of Effluent Dependent Waters (EDW) in legislation: EDW is not being treated as a flow regime. EDW status is not determinative. Rather, an EDW will need to be examined to see into which category of waters (shall list, may list, or shall not list) that it falls. Some indicated that there could be system design and permitting issues if a discharge creates a perennial stream which would change the level of protection required after a facility is built.

Draft map of protected waters: Members asked if the water bodies on the map could be matched to the names that appear in Appendix B and if this information could be added to the flow regime map online. A request was made to have the updated map by December 8 if possible.

CAP canals and canals which are a drinking water source: A member asked if the criteria of being a drinking water source was used to determine which canals should be listed, why are not the CAP canals listed. These canals provide a greater percentage of drinking water than the listed canals. Consider using language in Appendix B regarding the transport of the supply of water. **The Central Arizona Project canals have never been regulated under the Clean Water Act.**

Applicability of existing standards and TMDLs: A member opined that some of the existing standards incorporate elements of the CWA that he believed should not be included. Specifically, the anti degradation and Outstanding Arizona Waters elements of current standards. Another asked how TMDLs could be enforced for waters that are not WOTUS or protected under this proposal. Staff responded that TMDL authority under this proposal is limited to WOTUS and waters protected under this proposal.

Suggestions for changes to legislation document:

One member suggested two specific changes to the proposal. Specifically,

- Section 4 (2) should be before 49-222 to prevent implication of state waters being regulated by that section.
- TMDL - add language which protects normal farming and ranching activities

SAG Input on Protecting Surface Water from Dredge and Fill Activities

Trevor asked how the quality of surface water should be protected from dredging and filling activities. The following is a summary of the input received.

- There is a concern about the potential of fill material affecting water quality but should not require a permit. Best management practices could be adopted by rule using similar conditions as the agency currently uses for 401 certifications.
- Best approach would be BMPs or a general permit without mirroring the 404 program.
- BMPs may work in some cases but would not prevent or reduce the water quality impact if someone bulldozed a creek bottom without a permit. May need some prohibitions to limit excavation. (This was a new thought and several members stated they would think more about this implication.)
- BMPs similar to what is required under the stormwater program for construction sites

Next Steps

Trevor stated due to the compressed timeline of getting legislation ready for the next session, the deadlines for comment are very tight.

- SAG comments on draft legislation (in tracked changes) due Dec 8
- ADEQ will address any of the big issues from today and post the draft legislation by the end of the week for review by all stakeholders (this will not include addressing all of the SAG comments)
- Stakeholder meeting on draft legislation Dec 15
- All comments due Dec 22
- Revised draft legislation by end of year

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.