

Arizona Surface Water Quality Program: State Agencies Meeting

Meeting: #2 **Date:** April 6, 2020 **Time:** 1:00 – 2:30

Attendees:

Agency	Member
Arizona State Land	Mark Edelman
Arizona Department of Environmental Quality	Deborah Birutis
Arizona Game and Fish Department	Clay Crowder
Water Infrastructure Finance Authority	David Dialessi
Arizona Department of Water Resources	Joy Hernbrode
State Historic and Preservation Office	Kathryn Leonard

ADEQ Staff

Misael Cabrera	Ben Bryce
Trevor Baggio	Justin Bern
Krista Osterberg	Patti Spindler
Rhona Mallea	David Lelsz

Consultant Support

Theresa Gunn, GCI

Webinar Instructions and Agenda

Theresa Gunn, Facilitator, reviewed the webinar tools available for the members

Welcome

Krista Osterberg, Surface Water Quality Value Stream Manager, provided an overview of the Clean Water Act history and what is currently considered jurisdiction Waters of the US. Highlights are listed below.

Overview of the Navigable Waters Protection Rule

- Ephemeral streams are not considered jurisdictional in the new rule
- If a stream which connects to a Traditionally Navigable Water (TNW) has a section which is ephemeral, this break may make the upstream water non jurisdictional depending on whether or not water flows through the ephemeral section in a typical year
- There is no statewide determination of which waters are TNWs
 - The USACE has only made determinations on a case by case basis

- ADEQ staff is currently working on what methodology and data need to do a typical year analysis
- There is a lot of uncertainty and unknowns of what will be jurisdictional in Arizona

Questions/Discussions:

Question: Has your agency determined how/whether the Navigable Waters Protection Rule will impact you once published?

- Arizona State Lands Department- Permit areas will no longer be jurisdictional (4); not a lot of thought about the risk/impacts of not being jurisdictional (404 permits)
- State Historic Preservation Office- The Section 106 reviews for 404 permits; severely limit the number of projects requiring a section 106 or NHP review; many on private lands which would have no other reviews for resources and increase to damage to arch/sacred resources to tribes (Federal Nexus-not a state authority); SHPO is a respondent to USACE; identify adverse effects and resolution the affects; large developments are being developed on private lands with significant resources.
- Arizona Game and Fish Department-No thorough analysis; looked at in lieu fee program for r404 mitigation impacts-discharge permits for hatchery's; wildlife/recreation/habitat and how it impacts management of species and recreation.
- ADOT is a customer of the AGFD in lieu program and jurisdictions and industrial (homebuilders and mining). Uncertainty for the customers who are being regulated and long-term costing
- State Historic Preservation Office - similar to how we worked together on the 404 program;
 - SHPO is concerned about the gap; additional 3 years to get the program in effect; during the gap we stand to lose resources; get the band back together; would like to help bridge the gap
- Arizona Game and Fish Department- Stakeholders have been reaching out and a lot of interest and how it affects Arizona; committed to working with ADEQ; concern about the gap; could affect wildlife, resources during this time; a resource during technical working groups
 - Question: What kind of interest from stakeholders?
 - Trout Unlimited-local interest not affiliated with an NGO; ASU was working on an article' broad spectrum of interests

Arizona Department of Water Resources- continuing to participate

Arizona State Lands – would still like to be at the table

Water Infrastructure Finance Authority-here to help; does not change much for them so far do not think there will be financial impact

Ongoing Activities:

- Stakeholder Advisory Group
- NHD Mapping Project

Question: How do state agencies want to be engaged in program development?

- Poll Question Answer: Every 2 weeks, preferred mornings on Wednesdays

Issue Identification:

Question: What do you see as potential issues/barriers to developing a state surface water protection program? Opportunities?

- Compensatory mitigation was the biggest barrier (USACE rules)
- State more responsive to the customer (service level); could move from no regulation to new regulation; how can SHPO assist from a period of time with no regulation to a time with regulation; need a common sense process; reasonable
- DWR regulates (co-regulates) with ADEQ on water rights, dams, discharges; how can these programs mesh together in the future; inadvertently each agency asks for different things; mining clean up tailings (voluntary) will need to discharge; don't have surface water right (can't impound)
- Make sure surface rights for impoundment
- Impacts are a benefit; consistency of voice; AZ is best to define on a local level
- Do we need a 404 type program in the state program?
 - Not necessarily, have just assumed there would be a mitigation program
 - Have thought how a 402 program might work but not a lot of thought in to how a 404 program; ADEQ doesn't have an opinion
- Need consistency on how to plan for short-and long-range programs; need to think about mitigation for impacts to habitat

Adjourn

Krista thanked the members for their time and adjourned the meeting.