

Arizona Surface Water Quality Program: Stakeholder Advisory Group

Meeting: #1

Date: April 1, 2020

Time: 10:00 am – Noon

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
- 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

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ADEQ Staff

- Misael Cabrera
- Trevor Baggioro
- Krista Osterberg
- Rhona Mallea

Consultant Support

- Theresa Gunn, GCI

Member

- Wade Noble
- Bas Aja
- Mike Ford
- Amanda McGennis
- Gina Montes
- Stephanie Smallhouse
- Allison Gilbreath
- Lee Decker
- Eric Mears
- Sarah Porter
- Michael Racy
- Chris Kuzdas
- Travis Bruner
- Spencer Kamps
- Susan Montgomery
- Maribeth Klein
- Patrick Graham
- Haley Paul

Alternate

- Jason Moyes
- Chris Udall
- Chelsea McQuire
- Scott Thomas
- Steve Trussell
- Craig Sullivan
- Mia Hammersley
- Scott Deeney
- Joan Card
- Patrick Cunningham

- Ben Bryce
- Justin Bern
- Patti Spindler
- David Lelsz

Webinar Instructions and Agenda

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

Welcome

Misael Cabrera, ADEQ Director, welcomed the members of the Stakeholder Advisory Group. Highlights of his remarks are listed below.

- Thank you for your time
- Arizona supports the federal rule change as it will allow Arizona to make our own decisions on what waters need to be protected in a manner best for our state
- We want to learn what works well from other programs such as the Clean Air Act and the state's Aquifer Protection Program
- Want to move away from a definition program and focus on potential impact of discharges
- Clean Water Act had done a lot of good but we want to learn from the many years of litigation; no national debate on air of the US like there is for waters of the US
- We want to think outside the box and start from the ground up
- We want your help in developing a program that fits our state
- Whatever program we come up with it needs to be approvable by legislature; we will need your help with getting that approval

Introductions

Trevor Baggione, Director ADEQ Water Quality Division, was introduced as the chair for the group. He asked members to introduce themselves and introduced ADEQ staff.

SAG Charter

Trevor reviewed the group charter. Highlights are listed below.

- Members comments will not be considered to be official positions of the organization they are representing
- These are not open meetings
- If your alternate is attending, please make sure they are fully briefed
- Looking for recommendations on how to build a program that makes sense for Arizona including developing a program outline, and drafting language for rules
- Treat each other with courtesy and respect
- We will all have different perspectives and we respect those differences
- You can speak to the media as an individual but not as a representative of the group and/or ADEQ
- If you have media questions you can contact Erin Jordan, ADEQ PIO

Discussion: Members had no questions on the charter.

Overview of the Current State

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.

- 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

Member Questions/Discussions:

- How long is the ephemeral segment at Granit Reef Dam? Lee Decker-clarification on Granite reef dam, how long of an ephemeral segment is that? It is from the 23rd Avenue Wastewater Treatment Plant in Phoenix to the dam, not sure the distance in miles.
- Many urban lakes are not currently defined as WOTUS. The lakes along Indian Bend Wash are considered jurisdictional.
- Currently ephemerals which have a significant nexus with a WOTUS are regulated

Group Discussion:

Based on your understanding of the revised federal rule, how would you define (describe) the risks to Arizona surface waters?

- Need more time to study the map; there is difference in how ADEQ will do business; risk is a different question and need to review map more
- Difficult; don't really know gap we are trying to fill; but so many unanswered questions (typical year, etc.) In the dark
- Members have pre-emptively given jurisdiction to Corps; a program that identifies the water that needs to be protected to give certainty
- What are the risks: 1) uncertainty; 2) Polluted water ways
- Seems new definition will create a gap; risks in terms of impacts on uses (10 uses in the stakeholder meetings) without any existing state program to protect surface water; the quality in these waters won't be protected in the time being; need to dig in to specific streams
- Not ready to get into great level of detail; agree we need certainty balanced against pollution concerns: human and livestock/wildlife
- Goal of CWA is to protect aquatic species and as long as a state program focuses on protecting those species; not focus on land and river beds; what pollutants are we talking about; what are we trying to prevent with the goal of protecting aquatic species (uses/activities); focus on pollutants
- Cultural/religious/historical resources on Tribal lands; water is an economic driver for Tribes (riparian areas); uncertainty re: water treatment facilities impact by polluted waters and Tribal projects; level of uncertainty during the gap is a problem
- Too soon to characterize the risk until the typical year analysis is complete; but if gaps where discharges would impact drinking water

- A lot of perennial flow we just don't know; staggering how much flow isn't known or shown on the map; uncertainty is massive on not knowing what is jurisdictional; tough to determine risk at this point
- CWA to protect water quality for important uses; since we don't have state program to fill gaps it is urgent we figure this out to help with uncertainty
- Clarity of purpose; limited scope; address the most, present highly elevated risk; don't build a program that covers 10,000 things; Add to as needed

Arizona Surface Water Quality Program

Krista shared information from the stakeholders on the importance of having a state program. She discussed the need for a unique program that works best for Arizona. Highlights are below.

- A lot of uncertainty because of the gap. What is the baseline how we should protect our waters?
- Some program elements (i.e. TMDL watershed grants) may require additional authority
- It is anticipated it will take 3 years to develop a program which includes time for obtaining legislative authority and drafting rules
- Need SAG help with the outline, the scope of the program
- Beyond just permitting and regulating, what else do we need

Group Discussion

What other things are we missing that you would like to see in the program outline?

- Will take this back and think about it for next time. Might look at specific locations that have not been considered but that we might want to.
- Consider overlap with other regulatory programs. RICRA exemptions, AZNPDES
- Comprehensive so far- how will public and tribes be involved?
- Good framework, devil is in the details
- Look at other regulatory programs that are already in place
- Outline looks good, no additions at this time
- What is the gap? Understand what gap we are talking about. Existing programs such as TMDLs may be able to address non-point source impacts
- Good beginning structure, other programs that already exist
- Look at Indirect discharges, regulatory approach may limit AZ ability to permit
- Need economic costs to private sector, timeline, build permit program
- Agree with comments already made, nothing to add

Future Meeting Schedule

Members prefer bi-weekly meetings on Wednesday mornings for two hours.

Homework for Next Meeting

Members were asked to review the following documents which will be sent after the meeting.

- Review the stakeholder summary documents regarding the program goal and guiding principles
- Review the goals and policy statements from peer states

- Review Arizona’s Waters of the State definition located at ARS 49-201(41.) located at: <https://www.azleg.gov/ars/49/00201.htm>

Discussion topics for the next meeting include the following.

- Goal (What is the desired outcome of the program):
 - A wide range of opinions
 - What do you think is the most appropriate goal?
- Guiding Principles
 - What do you think?
 - Is anything missing?
- Should any of the waters identified in the definition of waters of the state not be included in the scope of a state program to protect surface water quality?
- Program Name
 - Separate from WOTUS and CWA
 - Suggested project names
 - i. Protecting Arizona Lakes and Streams (PALS)
 - ii. Surface Water Protection Program (SWPP)
 - iii. What are your ideas?

Questions and Comments

- When will technical groups be organized? After advisory group determines which groups are needed.
- Is there a report on ADEQ and USACE permitting timelines? Yes, we can provide a report on ADEQ permitting timelines and will contact the USACE to see if they have any information.

Adjourn

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

ACTION ITEMS

| What | Who | By When |
|---|------------|----------------|
| Send members a roster | Rhona | When complete |
| Send invite for future meetings | Rhona | |
| Send ADEQ and USACE permit timelines to members | ADEQ | |