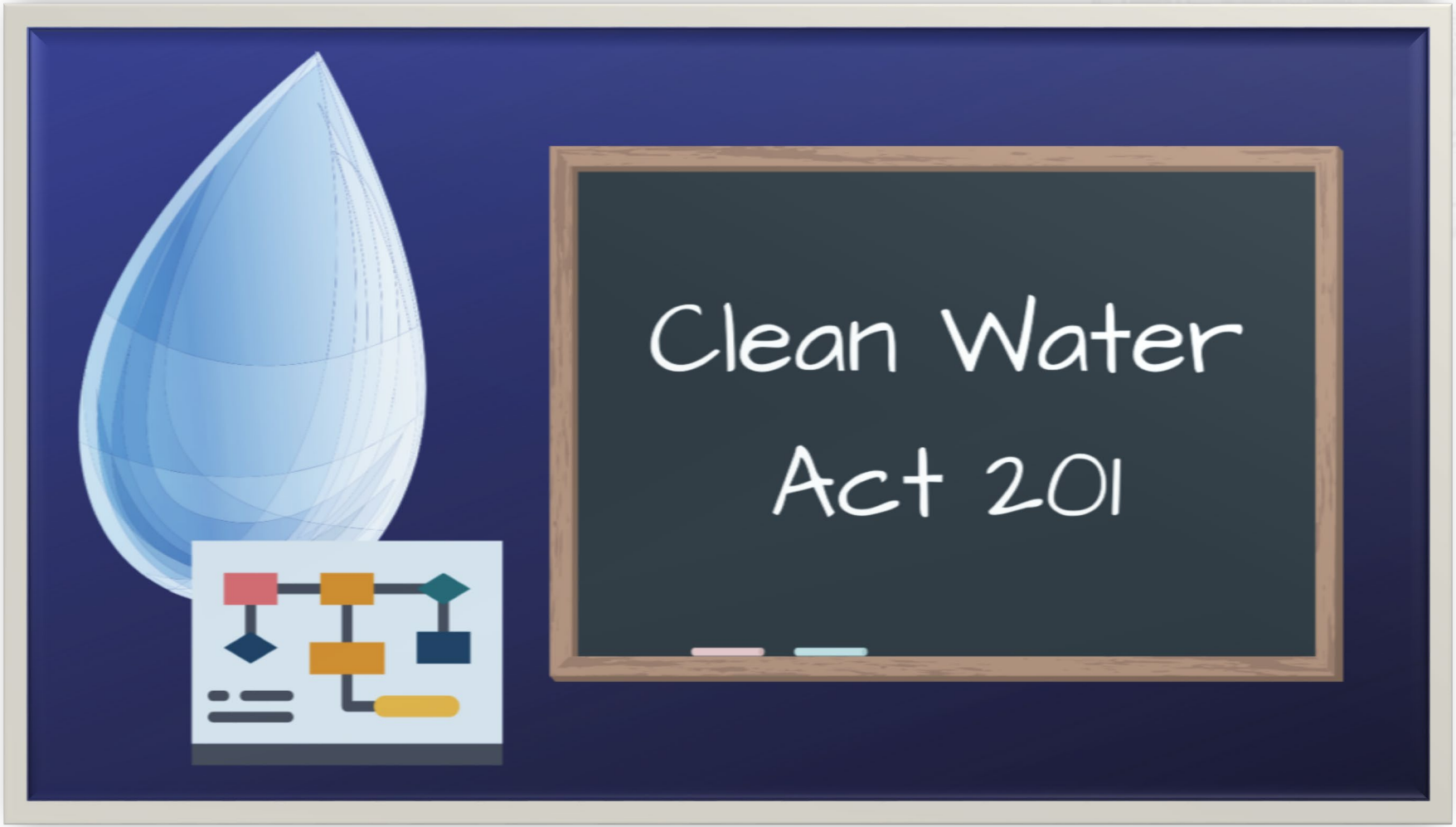
Arizona Department of Environmental Quality
Arizona Surface Water Protection Program

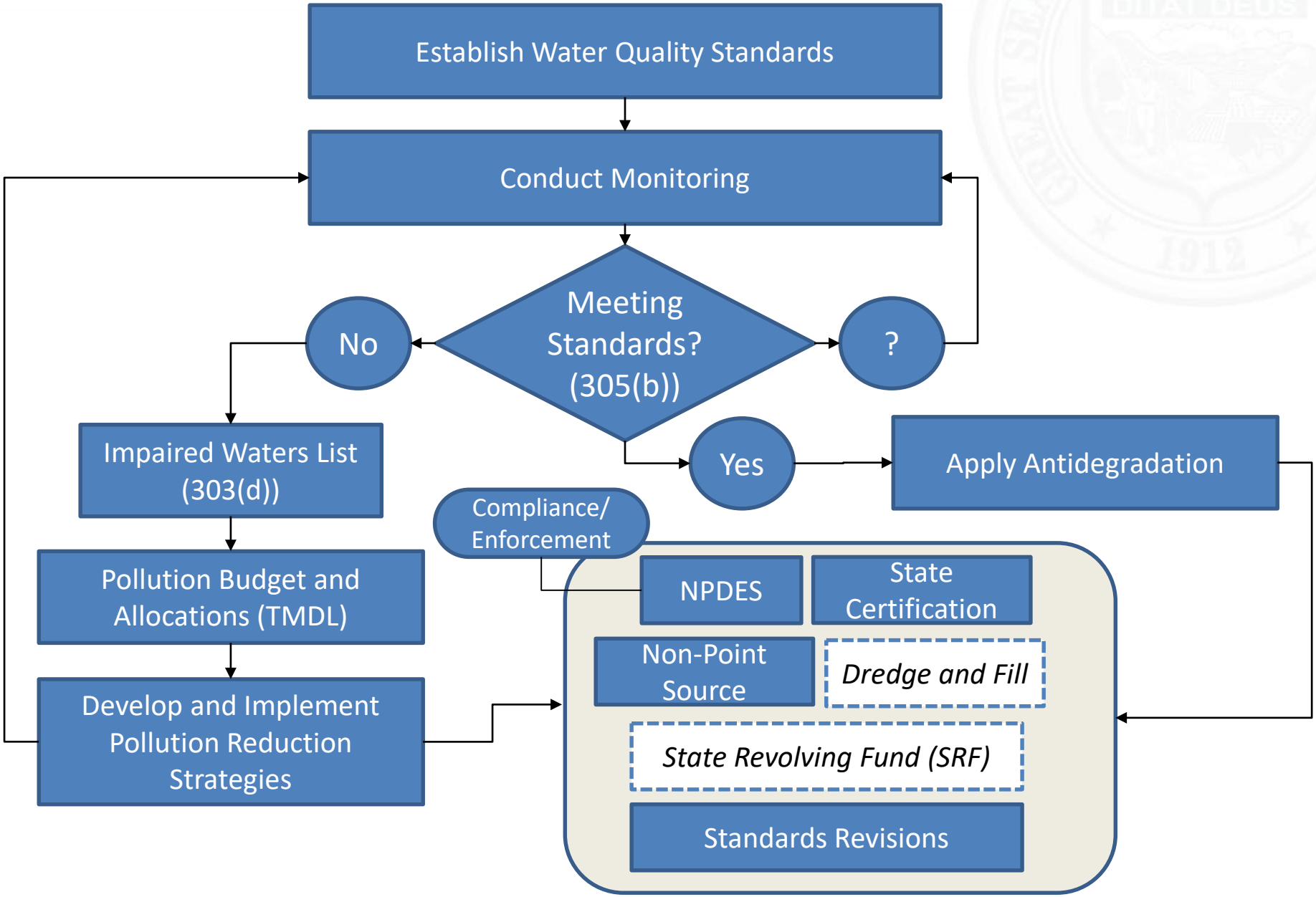
Stakeholder Advisory Group (SAG)

ADEQ Arizona Department of Environmental Quality

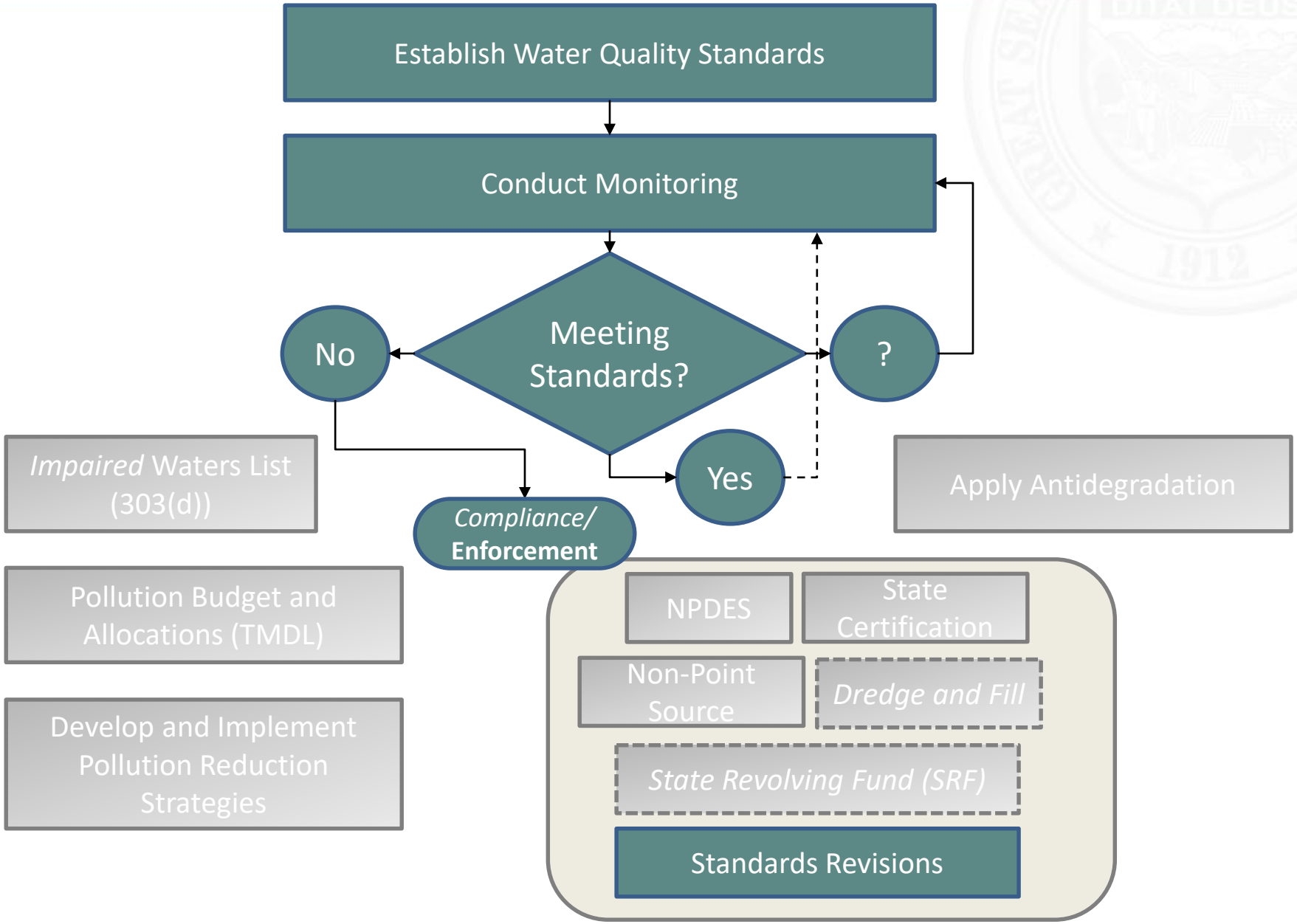
Clean Water Act 201



Clean Water Act Programs



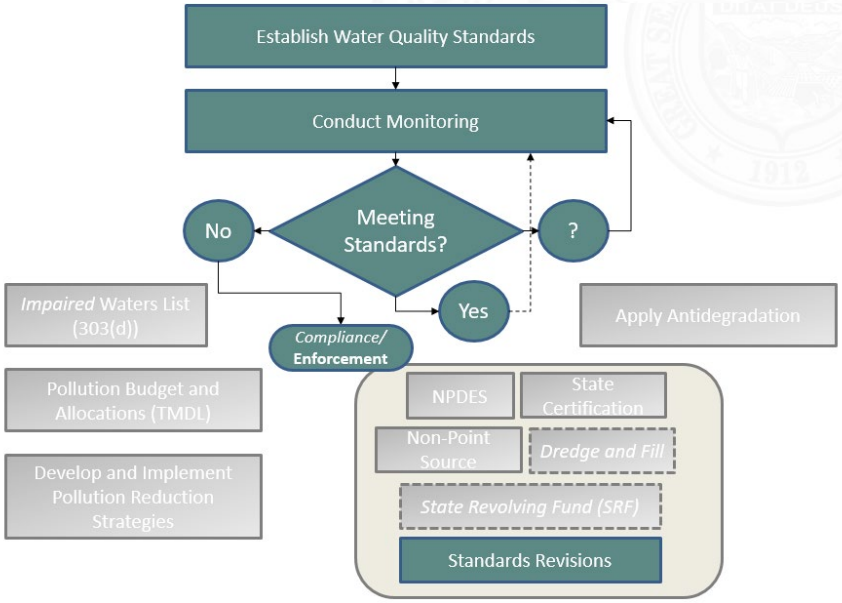
Current State Non-WOTUS Authorities



Two Parts of the Gap

The Programmatic Gap

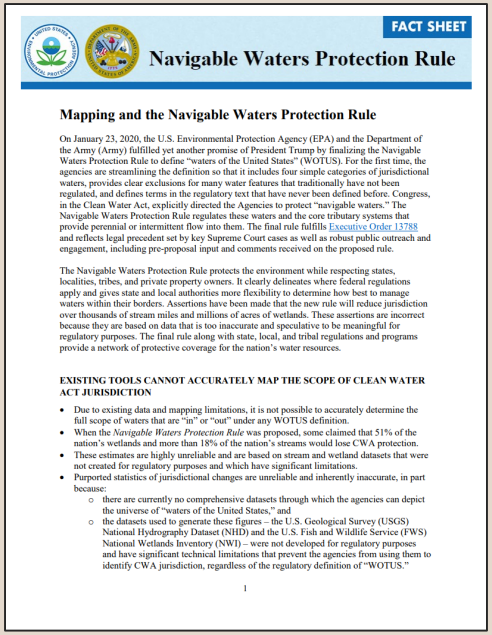
- ADEQ only has authority to set, monitor, and enforce water quality standards



The Waters Gap

- Waterbodies and their uses that are not protected

Uncertainty & The Waters Gap



FACT SHEET

Navigable Waters Protection Rule

Mapping and the Navigable Waters Protection Rule

On January 23, 2020, the U.S. Environmental Protection Agency (EPA) and the Department of the Army (Army) fulfilled yet another promise of President Trump by finalizing the Navigable Waters Protection Rule to define "waters of the United States" (WOTUS). For the first time, the agencies are streamlining the definition so that it includes four simple categories of jurisdictional waters, provides clear exclusions for many water features that traditionally have not been regulated, and defines terms in the regulatory text that have never been defined before. Congress, in the Clean Water Act, explicitly directed the Agencies to protect "navigable waters." The Navigable Waters Protection Rule regulates these waters and the core tributary systems that provide perennial or intermittent flow into them. The final rule fulfills Executive Order 13788 and reflects legal precedent set by key Supreme Court cases as well as robust public outreach and engagement, including pre-proposal input and comments received on the proposed rule.

The Navigable Waters Protection Rule protects the environment while respecting states, localities, tribes, and private property owners. It clearly delineates where federal regulations apply and gives state and local authorities more flexibility to determine how best to manage waters within their borders. Assertions have been made that the new rule will reduce jurisdiction over thousands of stream miles and millions of acres of wetlands. These assertions are incorrect because they are based on data that is too inaccurate and speculative to be meaningful for regulatory purposes. The final rule along with state, local, and tribal regulations and programs provide a network of protective coverage for the nation's water resources.

EXISTING TOOLS CANNOT ACCURATELY MAP THE SCOPE OF CLEAN WATER ACT JURISDICTION

- Due to existing data and mapping limitations, it is not possible to accurately determine the full scope of waters that are "in" or "out" under any WOTUS definition.
- When the *Navigable Waters Protection Rule* was proposed, some claimed that 51% of the nation's wetlands and more than 18% of the nation's streams would lose CWA protection.
- These estimates are highly unreliable and are based on stream and wetland datasets that were not created for regulatory purposes and which have significant limitations.
- Purported statistics of jurisdictional changes are unreliable and inherently inaccurate, in part because:
  - there are currently no comprehensive datasets through which the agencies can depict the universe of "waters of the United States," and
  - the datasets used to generate these figures – the U.S. Geological Survey (USGS) National Hydrography Dataset (NHD) and the U.S. Fish and Wildlife Service (FWS) National Wetlands Inventory (NWI) – were not developed for regulatory purposes and have significant technical limitations that prevent the agencies from using them to identify CWA jurisdiction, regardless of the regulatory definition of "WOTUS."

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"It is not possible to accurately determine the full scope of [WOTUS]."

E.P.A. and U.S. Army Corps of Engineers

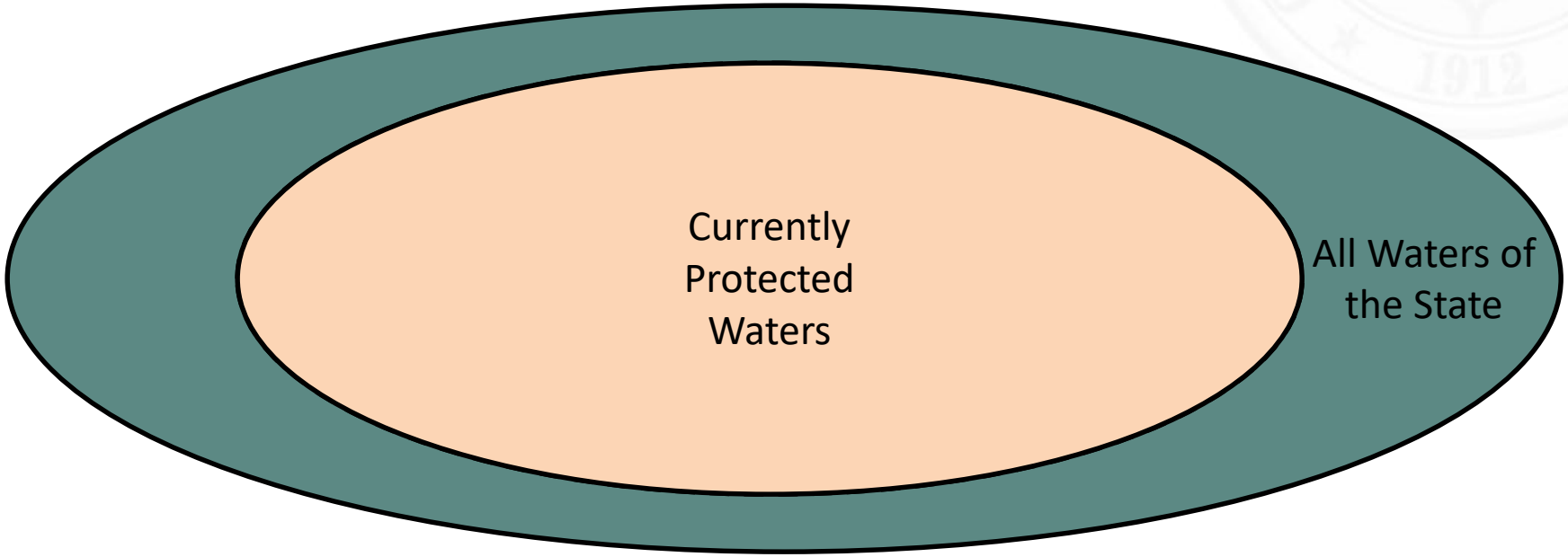
Mapping and the Navigable Waters Protection Rule Factsheet

- ADEQ working with EPA, Army Corps to understand how to implement the new WOTUS rule.
- There is no list of waters that will lose Clean Water Act protections.

Uncertainty & The Waters Gap

Do we need to quantify the waters gap?

Setting a Baseline



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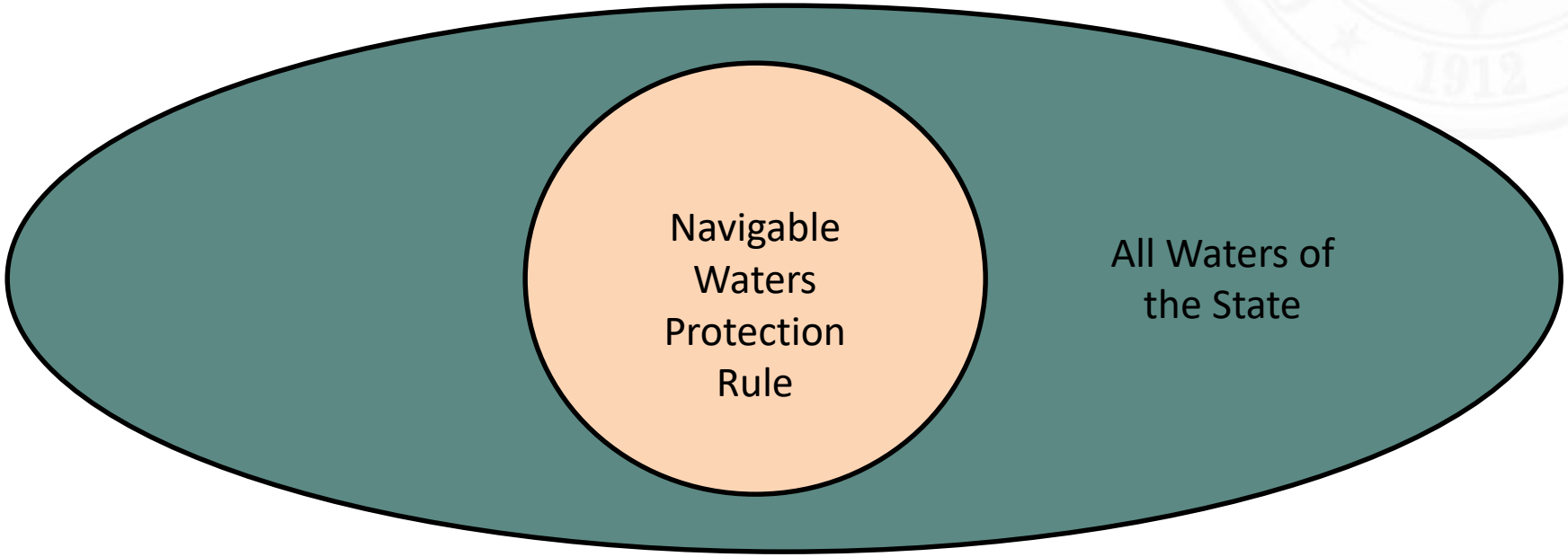

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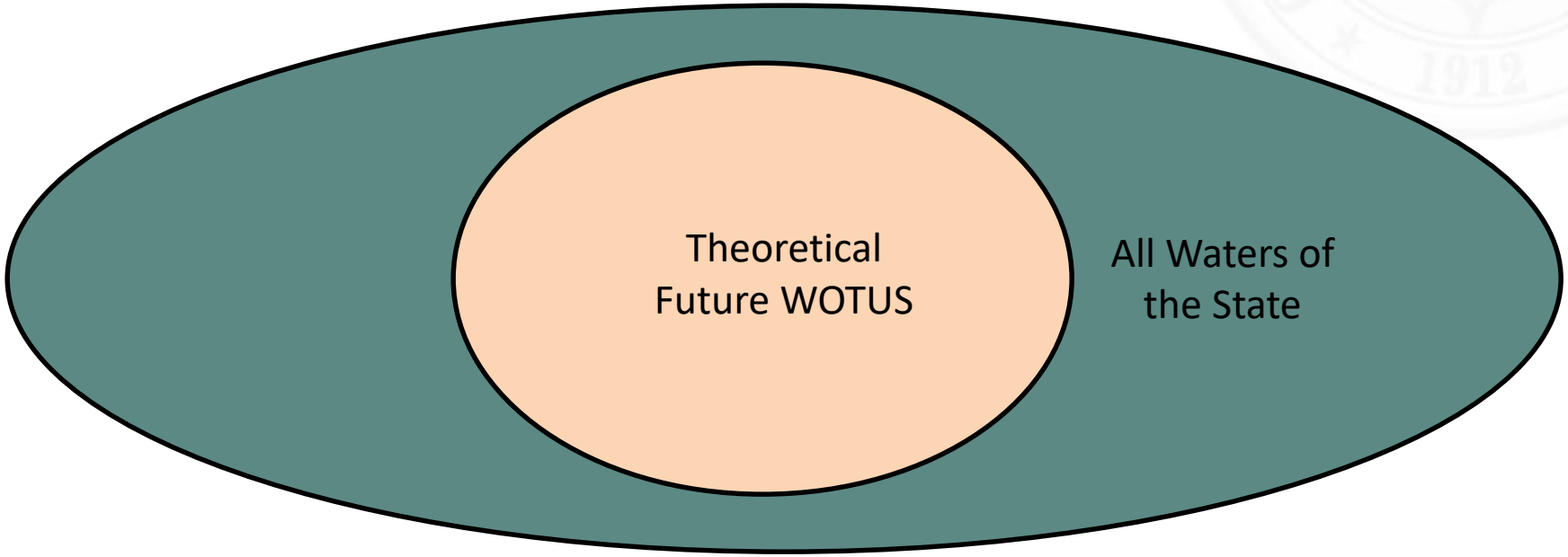
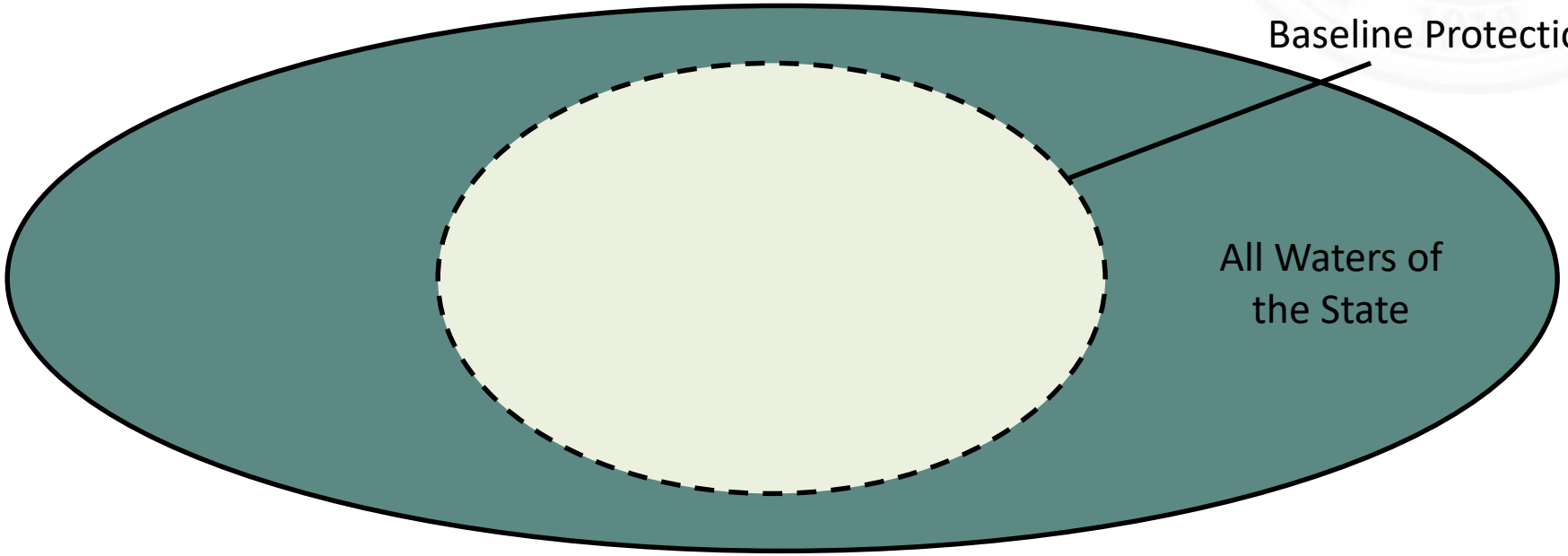


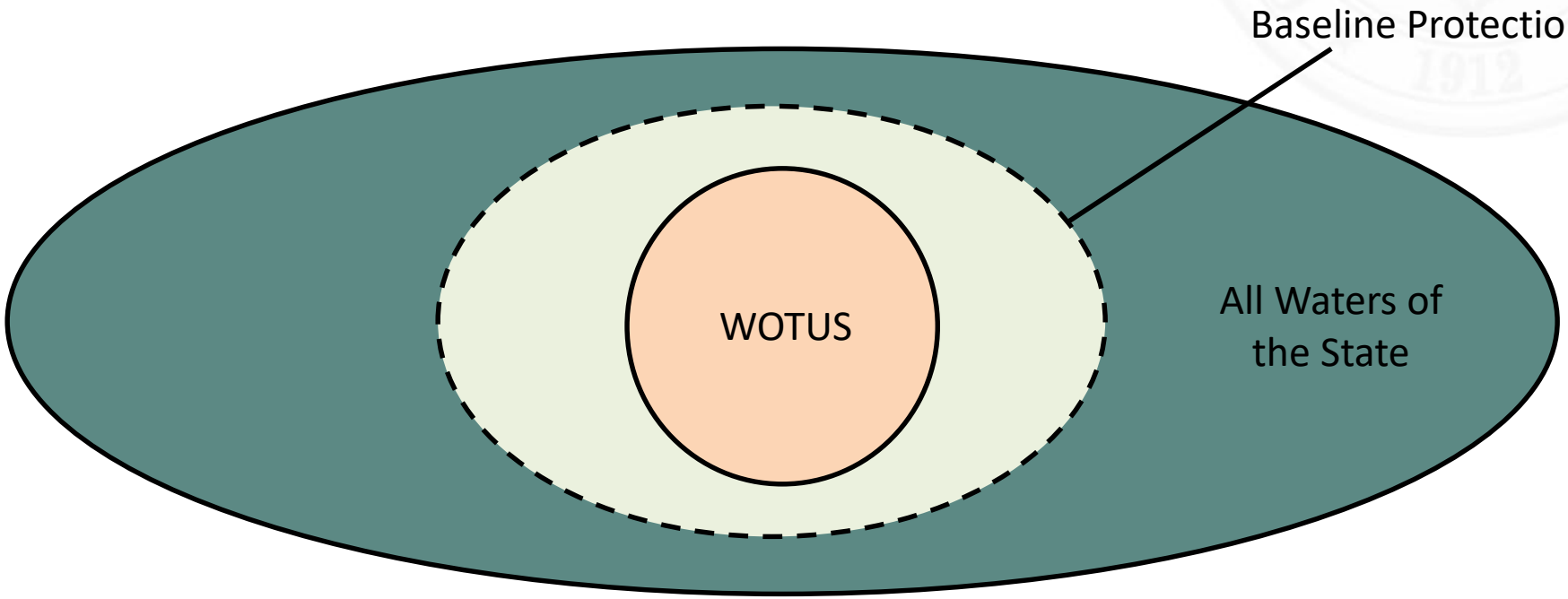
SETTING A BASELINE

- Baseline protects important waters/uses
- Baseline provides clarity and certainty



SETTING A BASELINE

- WOTUS changes do not effect the baseline.



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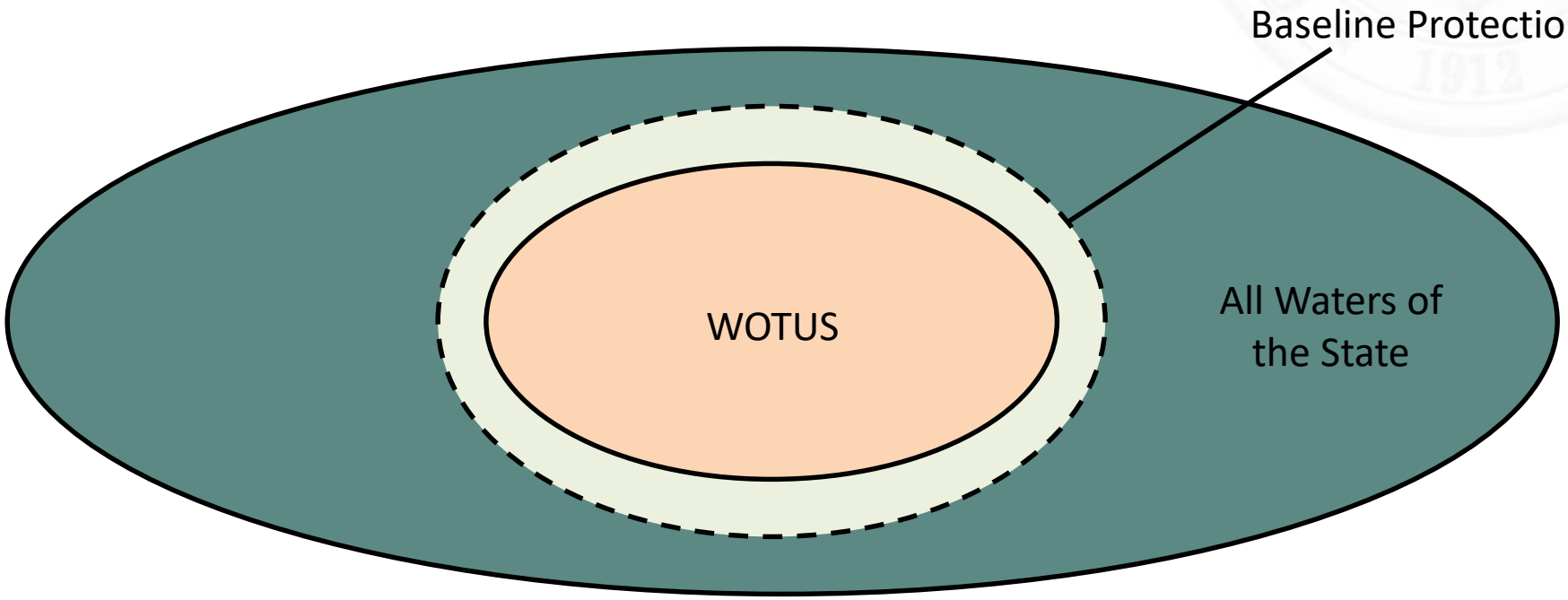

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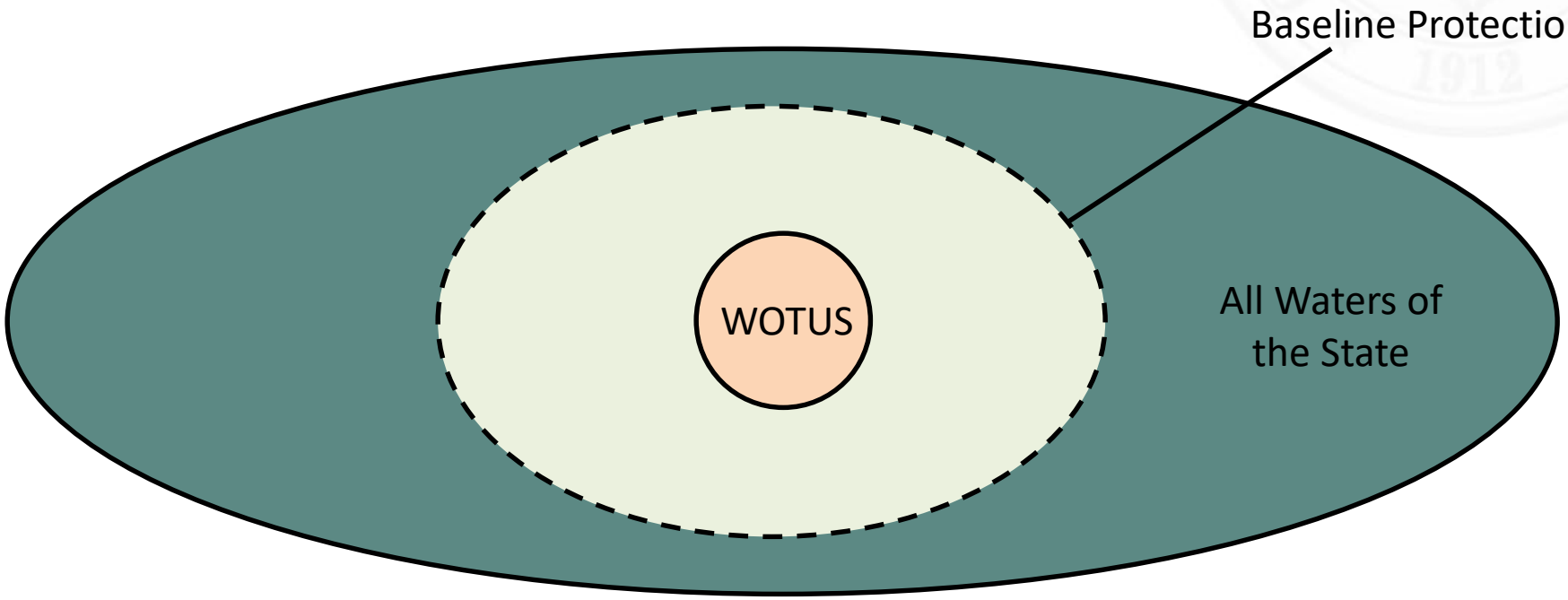

ADEQ's Intent Is That:

- A non-WOTUS program changes if WOTUS changes
- WOTUS changes do not create duplicative regulation
- A waterbody is only be subject one set of regulations

What are the potential benefits and risks of setting a baseline so that future WOTUS changes will not create new gaps?

GROUP DISCUSSION

The Two Parts of a Baseline

Step 1

Identify water uses to be protected

Step 2

Identify baseline waters to be protected

Baseline Water Uses

Step 1 – Identifying water uses to be protected

Baseline Water Uses

Examples of Water Uses Identified by Stakeholders:

- Drinking Water
- Aquatic and Wildlife
- Recreation
- Fish Consumption
- Swimming
- Cultural and Historic Resources
- Irrigation
- Wading
- Aesthetics
- Livestock Watering

Are there other uses that should be on this list?
What water uses should be protected?

GROUP DISCUSSION

Baseline Waters

Step 2 – Identifying baseline waters to be protected

Waters of the State Defined

"Waters of the state" means all waters within the jurisdiction of this state including all perennial or intermittent streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, aquifers, springs, irrigation systems, drainage systems and other bodies or accumulations of surface, underground, natural, artificial, public or private water situated wholly or partly in or bordering on the state.

A.R.S. §49-201(41).

Considering water uses to be protected, should any waters not be included in a state program?

- Specific waterbodies?
- Types of waterbodies?
- Why?

GROUP DISCUSSION

HOMEWORK

Complete the online survey emailed out last week regarding:

- Goals
- Guiding Principles
- Program Name
- DUE by noon on Monday, April 27th

HOMEWORK

- Examples of regulatory approaches
- Questions to answer regarding
  - Regulatory thresholds
  - Regulatory scope

NEXT MEETING DISCUSSION

- Homework
- Authorities needed for a regulatory program

Other thoughts, issues, concerns?

GROUP DISCUSSION