

Arizona Surface Water Quality Program: Stakeholder Advisory Group

Meeting: #2

Date: April 22, 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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- Arizona Chamber of Commerce and Industry
- Arizona Farm Bureau
- Arizona High Ground
- Arizona Mining Association
- Arizona Rock Products Association
- County Supervisors Association of Arizona
- Inter-Tribal Council of Arizona
- League of Arizona Cities and Towns
- The Nature Conservancy
- Water for Arizona Coalition
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ADEQ Staff

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

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
- Courtney Coolidge
- Chelsea McQuire
- Jeff Kros
- Scott Thomas
- Steve Trussell
- Craig Sullivan
- Mia Hammersley
- Tom Savage
- Scott Deeny
- Joan Card
- Patrick Cunningham

Consultant Support

- Theresa Gunn, GCI
- Kelly Cairo, GCI

Webinar Instructions

Theresa Gunn, facilitator, reviewed the webinar tools.

Introductions

Trevor Baggio, Director ADEQ Water Quality Division, welcomed attendees. He asked members to introduce themselves and cite their favorite water body in Arizona.

Review Agenda

Trevor reviewed the agenda. Highlights are listed below.

- Navigable Waters Protection Rule was published to the Federal Register Rule on April 21, 2020, and takes effect June 22, barring any legal action
- Key topics include CWA 201, protection gap, water uses and water bodies
- Members' comments are not considered to be on behalf of their organizations
- Draft notes were emailed last week; requested any changes

Clean Water Act 201

Krista Osterberg, Surface Water Quality Value Stream Manager, presented Clean Water Act 201.

Highlights are listed below.

- Once the Navigable Waters rule becomes effective on June 22, the CWA will not apply to some waters previously considered WOTUS
- For non-WOTUS waters of the state, Arizona has the authority to establish and revise standards, monitor water quality, and enforce against standards when violations are identified
- Arizona has the authority to establish water quality standards for non-WOTUS waters, but has not yet taken advantage of that authority

The "GAP"

Ben Bryce, ADEQ Legal Specialist, continued the presentation with a review of the gap in protection.

Highlights are listed below.

- The gap has two parts
 - Programmatic Gap – ADEQ only has authority to set, monitor, and enforce water quality standards for waters not covered under AZPDES and APP
 - Waters Gap – Waterbodies and their uses that are not protected under AZPDES or APP
- ADEQ does not yet have a list of waters that will lose CWA protection
- Instead of reacting to a potentially changing WOTUS definition, Arizona seeks to set a baseline of protections
 - A baseline would create clarity and regulatory certainty for stakeholders
- ADEQ's intent is that:
 - A non-WOTUS program changes if WOTUS changes
 - WOTUS changes do not create duplicative regulation
 - A waterbody is only subject to one set of regulations

Member Questions/Discussion:

- What is ADEQ's target for identifying which Arizona waters are WOTUS?
- What about waters already declared a jurisdictional water?
- Does ADEQ plan to inform the public or others to mitigate against poor practices?
- Other programs, such as APP, address run-off and run-on; there is also nuisance authority and other authorities
- Many of the authorities seems to be reactive vs. proactive; water deterioration is a danger during the gap

Additional ADEQ Staff Comments:

- Impediments in identifying Arizona's WOTUS include ephemeral breaks, traditional flow regime
- ADEQ is working with the EPA and the Corps to understand these elements
- WOTUS ambiguity is not unique to this new definition
- Flow regime and typical year analysis will be a public process
- Current jurisdictional determinations are for a five-year period
- Will discuss internally the concept of letting people know about the importance of protecting waters

Group Discussion:

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

Benefits

- Allows the state to not be reactive
- Federal changes will not create new gaps
- Greater certainty at the state level, versus at the whim of federal government (although a state may change its rules as well)
- Rule would be more functional, tuned to the idiosyncrasies of Arizona
- Enables state to develop a program based on uses, such as those identified at the November stakeholder meetings
- Positive optics – there is a baseline level of water protection of Arizona waters
- State program provides local access

Risks

- Baseline so broad that the state cannot effectively implement it
- If the CWA is expanded in the future to encompass Arizona's program, the rule would become dormant and effectually be overwritten by a federal program
- Definitions are very broad and uncertain; programs implemented are similarly uncertain – need to provide limited, well-thought out rules.
- Could become unwieldy

Other

- Still grappling with baseline concept.
- Recommend a definitional approach. Not sure everyone understands that Colorado River is Arizona's until it enters into the state

Additional ADEQ Staff Comments:

- ADEQ views the baseline as: *What baseline uses do we want to protect? Which waters do we want to protect?*

Group Discussion:

Do you see any value in moving forward to create a baseline program which would change as the WOTUS definition changes?

Member Questions/Discussion:

- Absolutely important to define that baseline
- There is the potential to overreact, not knowing what the future is. Worry about how we are trying to fill the gap
- There is a value in certainty; a risk in uncertainty
- Yes, want to make sure we avoid irreversible harmful actions
- The rule has been a moving target in general – need to have certainty. Would be value if there is certainty and consistency to the regulated community and waters in Arizona.
- Seems the thrust of the rule is cooperative federalism. Biggest risk is NPDES permit and indirect discharge. Need to understand programmatic gaps and believe this can be quickly determined

Protecting Uses of Arizona's Waters

Krista noted that there are two considerations in setting the baseline: Identify water uses to be protected and Identify baseline waters to be protected. She asked for input on water uses. Highlights are listed below.

Group Discussion:

Water uses to be protected (updated from examples previously identified by stakeholders)

- Drinking Water and Public Health
- Aquatic and Wildlife – How to narrow/specific for AZ – technical WG or other look at ecosystems in Arizona and create subcategories specific to those systems
- Recreation
- Fish Consumption
- Swimming
- Cultural and Historic Resources (duplicative) – already addressed by state and federal laws if nexus – could be resources Tribes rely on species/plans (important to include this use) – Some Tribes have riparian plans that incorporate cultural aspects
- Irrigation – canals are integrated with drinking water systems for cities and could require more treatment
- Wading
- Aesthetics – Very subjective – not sure how to define – complicates on making decisions
- Livestock Watering
- Industrial Uses – mining, manufacturing – water quality and availability
- Recharge/environmental restoration – effluent on Santa Cruz and other washes

Member Questions/Discussion:

- Uses will differ based on the type of water
- The CWA sets aquatic and wildlife criteria – which are not specific to Arizona. Would not want to adopt the federal guidelines

- Does irrigation mean canals? It is important to cities, since canals are related to drinking water
- Some tribes have riparian standards that include cultural and religious considerations

Waters of the State Definition

Trevor provided the waters of the state definition:

"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).

Group Discussion:

Considering water uses to be protected, what Waters of the State should NOT be included in a state program?

- Ponds – personal property ponds and golf courses, unless they have some type of release. Uses would be fishing, recreation; golf course design
 - Locations of pond, and whether migratory birds use that pond may be a consideration.
- There are several hundred ephemeral/intermittent washes between Yuma and Parker that do not need to be included. Need to work on this aspect of the definition
 - Depends which ephemeral stream – based on location and list of uses, whether there is a connection to the uses list
 - Would not want to remove ephemerals in general
- Private flood irrigation (personal lawns) should not be regulated. Would want the supply regulated
 - There is water runoff from personal yards, which is a difficulty
- Irrigation ponds should still be protected by irrigation rules.
- Personal swimming pools – there is a commercial pool regulation, as well as green water regulation
- Wells, aquifers and streams, since there is a stand-alone APP program
- Golf course ponds
 - There are already regulations on reclaimed water, which is often used in golf courses
 - There are existing regulations about the water used, for example, in a golf course pond. But may still need other regulations if something is added to water
- May be important to define intermittent vs. ephemeral
- Many impoundments will be covered by APP.
- The catchall phrase of “any public or private...” is concerning. May be distinctions between locations of types of waters – public or private land. There are many stock ponds

Trevor noted that ADEQ’s goal is to provide a program outline this summer; however, the outline is not intended to answer all of these questions. Additional in-depth questions will need to be answered as this process moves forward.

Homework

- Complete the online survey to provide input on goals, guiding principles and program name by noon, Monday, April 27
 - Context for survey: first step in solidifying that outline
- Will send out additional information for members to prepare for the next meeting

- Factors to consider when setting thresholds for regulations and permits
- Authorities needed for a regulatory program

Open Discussion

Other thoughts, issues, concerns?

- Would like the presentation one day prior to meeting
- Are there any additional EPA materials that can be shared, such as EPA guidance documents?

Additional ADEQ Staff Comments:

- ADEQ will provide the presentation to members one day prior to the meeting
- ADEQ will post EPA/Corps guidance documents to the WOTUS website page; however, information has not yet been received
- Encouraged members to subscribe to the WOAZ stakeholder list
- ADEQ is available to present on these topics to members’ organizations
- Meeting evaluation is included at the end of the homework/survey information

Adjourn

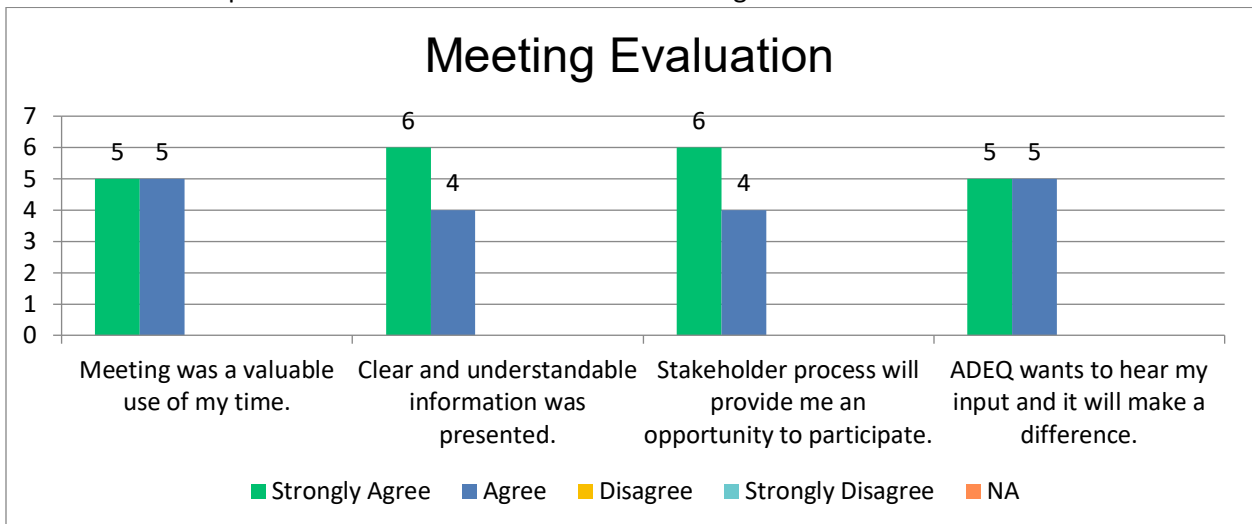
Trevor thanked the members for their time and participation, and adjourned the meeting.

ACTION ITEMS

What	Who	By When
Send members a roster	Rhona	Completed 4/2/2020
Send invite for future meetings	Rhona	Completed 4/24/2020
Send ADEQ and USACE permit timelines to members	ADEQ	Due date 5/8/2020
Next meeting agenda: Flow Regime 101	ADEQ	May 6, 2020
Provide presentation to SAG one day prior to meeting	ADEQ	Ongoing

Meeting Evaluation

Ten members completed the online evaluation of the meeting.



What was the best thing(s) about this meeting?

- Opportunity to participate
- Information was very clearly communicated under the circumstances, and ADEQ strongly encouraged stakeholder participation and input
- Learning how the new application of the Navigable Water Protection Rule is likely to apply in Arizona, and the challenges it creates, was very helpful.
- It's useful to hear the concerns and opinions of various interest groups. I appreciated the neighboring states statements.
- The cooperative spirit among the many interests.
- Clean Water 101 presentation was excellent
- Appreciated the ice-breaker as a means of engaging participants given the online format.
- The background provided on the CWA. ADEQ staff being prepared and requiring participants to make decisions and provide input to keep the process moving.
- Thanks for turning meeting number 2 into a Zoom meeting where we could see each other's faces!
- I think you're doing the best you can with the remote meeting issue. This survey was actually nice and very useful - and I am presuming we will see the results of the surveys.
- Stay the course.

What should be changed for future meetings?

- I wish we could meet in a room.