

online. At least 98 stakeholders attended the meeting, with at least 64 participating in person and 34 via webinar. Some in-person attendees may not have identified themselves.

FINAL FEDERAL WOTUS RULE

Krista Osterberg presented an overview of the final Waters of the United States rule. The presentation is available online at https://static.azdeq.gov/wqd/woaz/feb2020_stakeholder_presentation.pdf.

The final WOTUS definition is expected to be published in the Federal Register soon. The rule will become effective 60 days after publication. One of the biggest impacts to Arizona will be the exclusion of ephemeral streams from the new definition. However, ephemeral breaks may not sever jurisdiction in certain circumstances.

A meeting to discuss impacts to permit holders will be held in March in Phoenix. An invitation with details will be sent soon and include meeting location information. (Note: The meeting is scheduled for March 24, 1-4 p.m. at the ADOT HRDC Training Facility at 1130 N 22nd Ave, Phoenix.)



On Feb. 20, 2020, at least 98 people attended the Phoenix WOAZ Stakeholders meeting, including 64 who attended in person and 34 participating via webinar.

Highlights of stakeholder comments and questions regarding the presentation included:

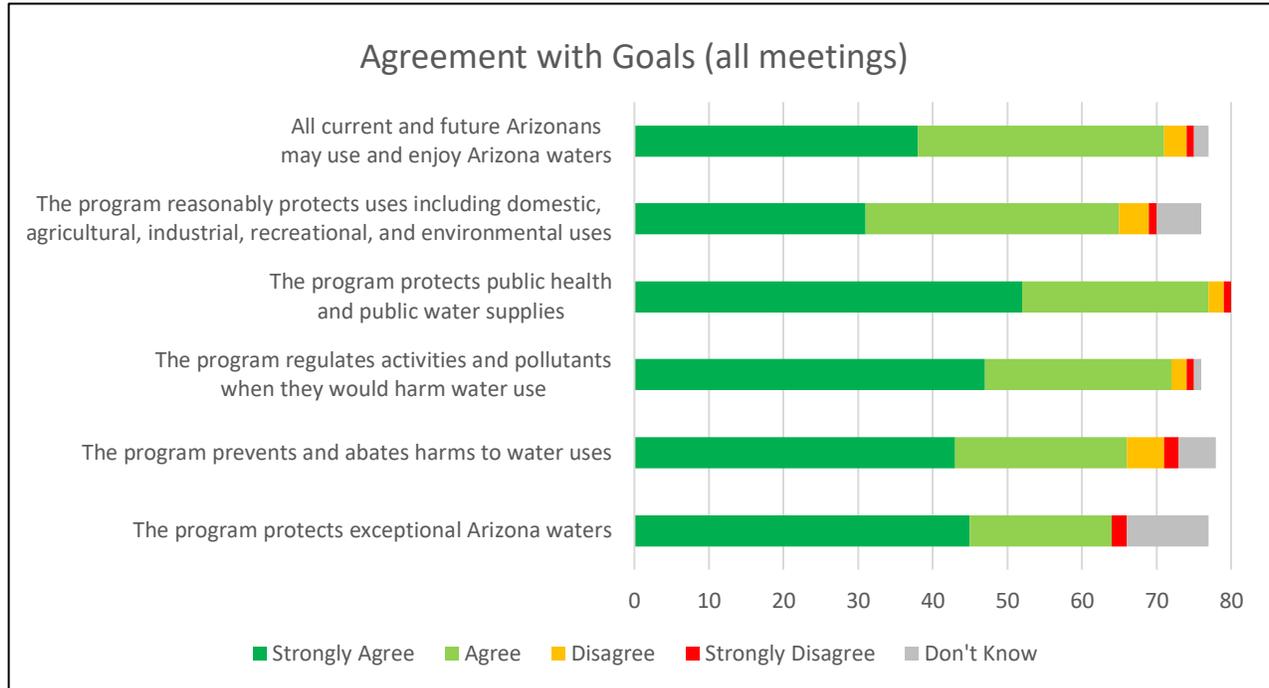
- It will be important to understand the scope of traditionally navigable waters.
- Have you determined the intent of the program?
- Can we assume EDWs are not jurisdictional?
- What is EPA's role in determining TNWs?
- How can an ephemeral feature deliver water in a "typical year" and not itself be jurisdictional as "intermittent"?
- Is there a gap measure to cover the significant loss of protection for important cultural resources and significant time between the WOTUS rule effective date and a future state program?
- When there are breaks in the ephemeral water, how will it be determined if there is an actual break?
- Is ADEQ going to quantify the gap between the new rule and what will be missed?
- Is there a timeline for making TNW determinations?
- What happens during the gap for those with an AZPDES permit?
- Will additional waters be identified as TNWs by EPA and the Army Corps of Engineers?
- What is the definition of "harms"? Does that include water quantity or flow rates?

SURFACE WATER PROTECTION PROGRAM FOR ARIZONA; TABLE DISCUSSIONS

Osterberg said that ADEQ does not intend to copy the federal Clean Water Act.

Gunn explained that based on comments from the November 2019 stakeholder meetings, draft goals for an Arizona program were developed. Attendees were asked to rate their level of agreement with each goal and to select a preferred goal by table. A graph depicting all attendees' responses – inclusive of the

Phoenix, Tucson and Flagstaff meetings – follows. Goal statements selected at each table at the Phoenix meeting are shown below. Comments from all meetings are available online in the comment matrix.



Preferred goals selected by each table included:

- Preserve and restore the biological, chemical, and physical integrity of WOTUS by limiting and reducing pollutant discharges and physical alterations that may impair designated uses.
- The narrowly defined pragmatic program prevents or mitigates harms to water uses that are not already protected by WOTUS.
- The program reasonably protects uses including domestic, agricultural, industrial, recreational, and environmental uses.
- Program protects public health, public water supplies, and uses (domestic, agricultural, recreations, and environmental uses) by regulating activities and pollutants that harm water use and preventing and abating harm to users. (Adjunct: exceptional waters.)
- The program regulates activities and pollutants when they could harm water use including the ecological integrity of riparian ecosystems.
- The program protects surface water quality, water facilities, and values for domestic, recreations and environmental use, while providing avenues for agricultural and industrial activities.
- The program does not target waters that are protected or should be protected under other state or local programs (e.g. canals and community/urban lakes).
- The program prevents and abates harms to exceptional Arizona waters, allowing for a mechanism for permit exemption by providing sufficient documentation and prevention and protection.
- To protect water quality, quantity and hydrological patterns using a regional approach.
- Provide complementary program to protect water quality in important, clearly defined state waters not covered by the CWA.
- Improves the quality of Arizona waters.

Suggested goal revisions included:

- All current and future Arizonans may use and enjoy Arizona waters, where it does not conflict with laws.
- The program prevents and abates harms to uses related to water quality
- The program protects wildlife, public health, and public water supplies

PARADIGM SHIFT; TABLE DISCUSSION

Osterberg asked attendees to consider shifting the paradigm to water use, and the type of protection required to protect that use.

Gunn directed each table to select a water use for discussion. Each table created a list of potential impacts, and how to determine whether the use would be impacted. Results from the Phoenix meeting follow.

Water Use	Potential Impacts	How to determine whether the use would be impacted
Aquatic and Wildlife	Pollutants, construction, agriculture (crop/animal), dewatering (pollutant concentration)	Set standards, assess against standards (the crux of the issue)
Drinking Water	Discharges of pollutants that increase treatment costs (point sources), discharges of pollutants that reduce quantity of water available for use (untreatable with current technology)	Decreased water quality: Narrative/numeric standards
Recreation	Non-point sources: agricultural return (Gila River, Nogales Wash); weather events: flood, rain, drought, fire; development: infrastructure (dams), residential, recreation, industrial, commercial, rock/agricultural; watershed diversion: change natural hydro patterns (roads, development, canals); human impacts: pollution, garbage, fecal matter	Quantitative sampling, monitoring for environmental metrics (species habitat), surveys (recreational usage), change over time, standards for designated uses
Cultural and Historic Resources	Contaminants/decrease in water quality (which could be caused by other uses), changes in quantity/flooding, will vary by tribe/source; use must recognize the spiritual and religious value of water and protect it for ceremonial uses, and to support culturally significant species, such as species gathered for basket weaving such needs, cat tails, clay used for dye, and related wildlife, culturally significant species such as eagles and turtles that rely on the integrity of a riparian ecosystem	The approach must be proactive' reactive is too late, complaints from tribal members, smell/taste/color/odor, changes in yield/population changes, should rely on Traditional Ecological Knowledge (TEK)
Drinking Water	Biological: bacteria, pathogens, solids, turbidity; quantity: issues with water rights, continue flow not necessarily direction; water chemistry: issues of impacts from regulated chemicals or emerging contaminants	Baseline assessment of source water, ambient monitoring, treatment plant efficiency, compliance with safe drinking water act, taste/odor complaints from the public, monitoring for emerging contaminants (UCMR, etc.)
Drinking Water	Discharges of/from: industrial, pharmaceuticals, medical waste, tailwater, mining, stormwater	Quality monitoring/testing, cannot treat drinkable (potable) in a "conventional" treatment plant, customer interaction, visual evidence, acute medical problem
Recreation	Illegal dumping/illicit discharges, non-point source pollutants (metals, hydrocarbons, bacteria, organics, inorganics, unintended consequences of recreational activities, sediment from activities such as construction,	Analytical monitoring, visual assessments, odor, decreased recreational use, complaints, public

	firefighting/wildfires, grazing; prevention/mitigation: collaborative efforts amongst the state, local agencies, private industries, public.	health issues, death of aquatic/wildlife, deterioration of ecosystem
Irrigation	Quantity: project use limits supply; development: disturbance of existing features; Arizona Department of Water Resources; quality: type of discharge/operations, stormwater runoff	Testing at the point it is released to the irrigation system; monitoring/inspections
Aquatic and Wildlife	Quality, quantity, flow, development, land use, livestock and agriculture, industrial and mining activities, invasive species, alteration of flow path, types of discharge (wastewater, septic), legislation, funding, resources (manpower, etc.)	Water quality sampling, species surveys, visual assessment, odor, clarity, visitor attendance, health impacts
Drinking Water	Pollutant loading: stormwater contributions (urban), industrial discharges (upstream), non-point sources (agricultural, etc.), emerging contaminants, unpermitted discharges to ephemeral receiving waters; physical impacts: scarcity/supply, diversions, augmentation, seasonal changes to surface water supply	Everything has to do with the definition
Aquatic and Wildlife	Pollutants, construction, agriculture (crop/animal), dewatering (pollutant concentration)	Set standards, assess against standards (the crux of the issue)

Gunn noted that some participants were concerned with the premise of the exercise. Highlights of comments included:

- Is ADEQ moving away from a discharge-based program to an activity-based program?
- We don't want additional regulation on waters already protected.
- Like CWA -- We don't want to change anything, but want to cover the gap.
- Need to define what Arizona is going to protect.
- Feels like the department is expanding its scope.

Gunn asked for additional thoughts about a paradigm shift, and to consider the question, *What might be the challenges to have a program based on impacts to protected uses?*

Highlights of discussion regarding this approach included:

- What is considered an Arizona water?
- When looking at a single industry or site, the potential discharge and impacts are known. The question is how would a variety of small activities affect water cumulatively?
- Like the clarity of knowing discharge/impact implications.
- Comes down to the definition of the waters of Arizona that we are trying to protect.
- Have a substantial framework with CWA in place. There is opportunity for fine-tuning and revision. Water quality standards should drive the program.
- From a municipality's perspective, air quality standards came down to reasonable available best available practices. Many communities do not need to be regulated above that standard, e.g. if standards are met, an exemption would be available.
- A long-lasting program should consider that the new rule will be tied up in litigation, or future administration changes. Makes sense to keep it similar to the federal program.

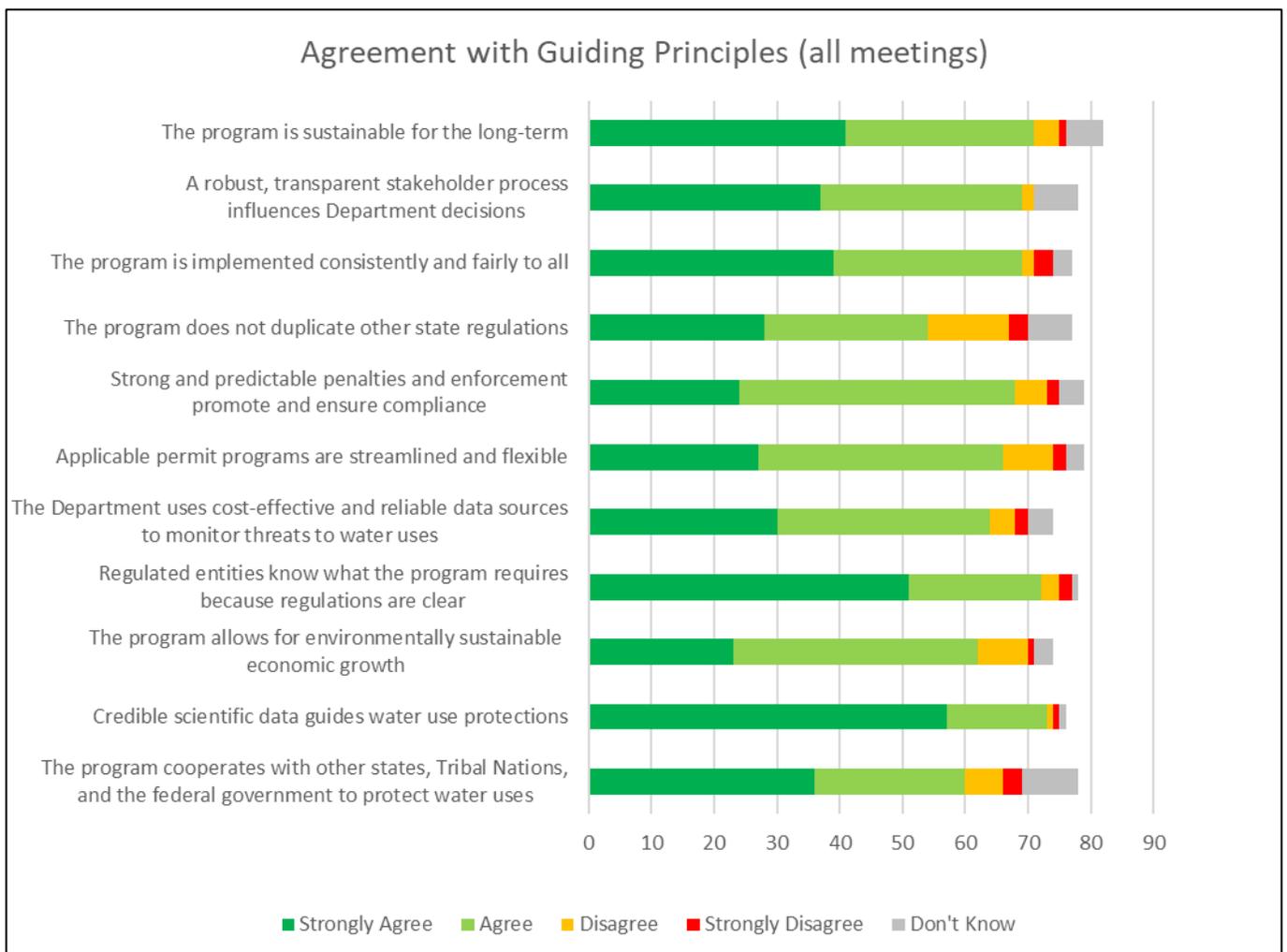
- Current WOTUS scheme includes section 106, section 7, and NEPA review and should account for those gaps as well.
- ADEQ has some other opportunities to protect water, through narrow focus, and complimentary program to avoid overlap.
- I don't agree with the "when it flows." If it flows only in response to rain, then the quality might be different. If it is ephemeral it wouldn't really flow and shouldn't be standing.

Additional comments included:

- The problem statement in November was clear: "We are losing protection on 93% of the stream-miles in AZ and 99% of our lakes." Now it is unclear whether we have problem or not. IF we do, we have no sense of the magnitude of the exposure.
- Federal funding for WOTUS programs will be eliminated for waters not protected under the new navigable waters rule. How much is this going to cost Arizona and how is it going to be funded?

GUIDING PRINCIPLES

Gunn asked stakeholders to provide input on the draft guiding principles developed at the November 2019 stakeholder meetings. A graph depicting all attendees' responses follows.



NEXT STEPS

Osterberg reviewed the timeline for next steps.

- March 2020: establish a stakeholder advisory group; conduct permit holders information meeting
- April 2020: form technical work groups
- May/June 2020: draft program outline for stakeholder input

Osterberg encouraged attendees to ask questions and provide comments via watersofarizona@azdeq.gov. Gunn encouraged attendees to download the comment forms online, email the forms to others, and encourage other interested stakeholders to subscribe to the email list.

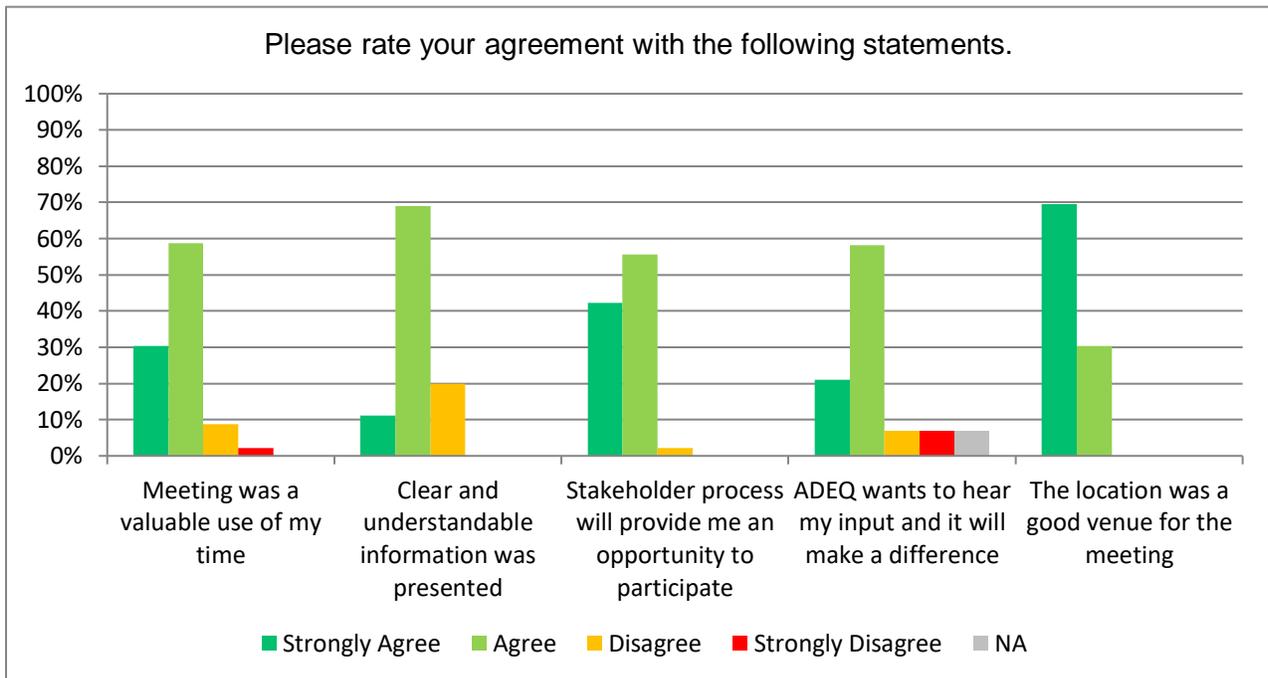
Baggiore thanked attendees for their participation. He said that ADEQ intends to continue to offer ideas for stakeholder consideration, and asked attendees to communicate questions or concerns about the options proposed and ADEQ's approach.

ADEQ STAKEHOLDER MEETING EVALUATION RESULTS

Forty-six stakeholders returned meeting evaluation surveys. Some stakeholders did not answer all questions.

Attendees were asked to rate their agreement (Strongly Agree, Agree, Disagree, Strongly Disagree, Not Apply) with the following statements:

- Meeting was a valuable use of my time
- Clear and understandable information was presented
- Stakeholder process will provide me an opportunity to participate
- ADEQ wants to hear my input and it will make a difference
- Meeting venue and location worked well for this meeting



What was the best thing about today?

- ADEQ explanation of their concept of their ideas and potential future path.
- Always good to get opportunity to learn the direction ADEQ wants to go; good to understand ADEQ's interpretation of new WOTUS.
- Background info explaining new WOTUS at this time. Good to know ADEQ sees need for AZ Water.
- Better understanding of timeline and thoughts about future meeting.
- Collaboration with other stakeholders.
- Comments made by attendees at the very end of the meeting. This allowed for a genuine, stakeholder focused exchange of ideas.
- Conversation with others and getting a feel for where this is headed.
- Discussion of concerns at the end.
- Discussions.

- Exercises.
- Good location.
- Group activities and comments.
- Group discussions were thought provoking and allowed for a diversity of viewpoints.
- Hearing different and fresh perspectives.
- I liked the group discussions -- they got my mind thinking about some new points.
- It is important for ADEQ to provide in-person stakeholder feedback opportunities. I hope this continues.
- Lots of viewpoints.
- Meeting information for permit holders.
- Open discussion.
- Opens eyes to other perspectives/issues. Focus on big picture.
- Professional presentation.
- Round table at the end.
- The flexibility to voice opinions not contained within the exercises.
- The meeting was well run and put together. Comment section/discussion at the end.
- Timeline of program implementation.
- Timeline/schedule updates. Glimpse into what ADEQ is considering.
- To learn on the program specific designed to protect water in Arizona.
- Well organized. Inclusive.

What should be changed for future meetings?

- Allow introductions to understand the organizations represented.
- Better questions.
- Clearer questions that are more finite.
- Comment: ADEQ wants to hear my input and it will make a difference: Time will tell.
- Comment: ADEQ wants to hear my input and it will make a difference--You're asking these questions three years too late -- ADEQ needs a more aggressive attitude and timeline or our waters will lose protection.
- Comments on exercises be limited on time and topic. Limit repetitive comments and focus on group discussions with alternating groups.
- Continue to include diverse stakeholders to provide input.
- Detailed/focused stakeholder meetings will be a must in the future.
- Don't spend time on things that are well established -- such as what impacts water uses. Work on implementing a workable gap covering program.
- Fewer "groups."
- I like the overall process and setup. Other: I think ADEQ does want input and if legislation is passed it will make a difference.
- Ideas on exemption mechanism for communities that already have significant measures in place for protection of ephemeral waters.

- It is difficult at this time to understand how ADEQ is going to use the information being gathered. Correct uses and waters should mostly still be protected, but ADEQ should be clear on protection requirements.
- It seems that the approach to the process is to start a program from scratch. This is a lot to ask of everyone involved, given 1) the existing programs worked well in many ways, 2) many of us strongly disagreed with your director's support of the clean water rule repeal and don't remember that he solicited our feedback on it. It also does not seem like an efficient use of anyone's time. Why not start with the existing framework and make modifications? Wouldn't this reduce the 3-year gap?
- Less about what random people want, more where ADEQ is at determining what WOAZ will be.
- Less contrived table exercises.
- Less direction in discussions -- open discussions in smaller groups may help some speak up with new ideas, concerns, and approaches.
- Less passing around of the microphone. Some individuals feel the need to "educate" or "entertain" instead of just answering the question being asked.
- Make the connection between water quantity to water quality. Where is ADWR in the conversation.
- If we have no surface water we have no quality.
- More details on specifics; less on conceptual. Focus on filling immediate gap while you work toward a long-term program. We have a problem NOW that can't wait to 2023.
- More specifics on WOTUS in Arizona. Let the stakeholders have more input into the direction of the program. The exercises today seemed to limit and direct the focus of the WOAZ program.
- Narrow the scope and identify framework criteria.
- Need more direction on what is the expected outcome.
- Not crazy about the report outs.
- Phronesis. Discuss the definition of waters of Arizona. What is the purpose of the program?
- Second table exercise was a bit abstract.
- The second exercise was not helpful. It is basic information that everyone already knows. Felt like an elementary exercise in impacts to water and how you determine water quality impacts. We all know that.
- We NEED TO KNOW what will be covered by CWA and what will be protected by WOAZ. It feels like we are doing the same thing without this information. Comment: Regarding the opportunity to participate -- There is more opportunity to at least try to be involved but don't feel like we have a final say.
- Will eventually need to get into the details -- state surface water quality permit program; revised surface water quality standards.
- Would be nice to have an idea as to where ADEQ wants the program to go. So far, the stakeholders seem to favor cut and paste CWA, with some tweaks.

**(Please note: Some stakeholders may not have provided their names and/or organizations.)*

