

Arizona will be the exclusion of ephemeral streams from the new definition. The biggest change since the draft rule was announced in January of 2019 is that ephemeral breaks will not necessarily sever jurisdiction. Of particular concern are intermittent streams, urban lakes, and canals.

Osterberg said that the state has the authority to set state water quality standards, but has not yet done so. Setting state water quality standards requires a rulemaking process. ADEQ does not have permitting authority, or a repair process obliging actions from violators for surface waters. ADEQ has permitting authority for ground water only.

Highlights of attendee comments and questions include:

- Would you set state standards during the gap?
- Ak Chin currently has some NPDES permits, but haven't received information from EPA.
- Would like Tribal notice regarding the ADEQ permit meeting scheduled for March.
- Does ADEQ plan to provide guidance to current permit holders?
- If an entity terminates a permit, would ADEQ provide notification to Tribes?
- What could you do under waters of the state?
- In what cases may ephemeral streams continue to be regulated?
- How will 404 permits be affected when there is a discharge into an ephemeral?
- In working with the Army Corps of Engineers, what will ADEQ be advocating for? Unless you are advocating for a state 404 program, there will be a gap.
- Is there funding for this program, and making these determinations regarding ephemeral breaks?
- What agencies are the GIS data group approaching, and how often are they meeting?
- Our Tribal environmental contact position is vacant, so this is a concern as well.
- The connection with the CWA for grant funding is also a concern since EPA will no longer fund CWA programs.
- What about nuisance authority regarding treated wastewater effluent? Dischargers are off the Navajo Nation.
- What is the timing of the Waters of Arizona program?

Baggiore requested input on types of permit terminations each Tribe would like to be noticed, and who should receive this notice.

Osterberg explained that if a water flow passes through an ephemeral break in a typical year, the intermittent upstream area would be regulated. ADEQ would like to coordinate with Tribes or the EPA if they are making determinations regarding ephemeral breaks on Tribal land. ADEQ intends to develop a methodology for doing so in the next few months.

Facilitator Theresa Gunn requested studies or historical data that could be made available to assist ADEQ. Osterberg noted that typical flow in a drainage area can be applied to multiple reaches. Baggiore said that ADEQ is advocating for clarity in the law.

Baggiore said that ADEQ has requested a delay in implementation. Once the new rule is in effect processes will not be in place. He explained that EPA said not to anticipate CWA funding changes for a few years; however, this is not certain.

Action item: Drago to ask EPA Region 9 to consider a joint Tribal meeting, either during the mid-March visit or at another time.

SURFACE WATER PROTECTION PROGRAM FOR ARIZONA; PROGRAM GOAL

Baggiore explained that the department does not yet know the approach anticipated for a surface water protection program for Arizona. It is not ADEQ's intent to copy the CWA, as it is a national program that does not consider the uniqueness of each state.

Using the goals identified at the November 2019 stakeholder meetings, attendees were asked to consider what goals were important from a Tribal perspective.

Goals suggested included:

- Consider the effects on water outside Arizona's jurisdiction (Tribal, other states, Mexico)
- Protect ecological integrity of aquatic resources and cultural resources.
- Protect narrative water quality standards and aesthetics, such as taste, smell, etc.

Additional comments regarding goals noted by participants in all meetings are available online in the comment matrix.

GUIDING PRINCIPLES

Gunn asked for input on the draft guiding principles based on recommendations from the November 2019 stakeholder meetings. Highlights of comments and questions included:

- Tribal consultation should be added as a stand-alone principle, in addition to cooperation activities listed.
- Struggled with #3, there will always be those who think they are not treated fairly. While the process should be fair (#2), people may not believe the outcome is fair. This may also clash with the use-based model.
- #1/sustainable principle: Concern with this principle since we don't want it to stagnate.
- #6/streamlined and flexible: Is flexibility going to allow less regulation for certain uses? This could be inconsistent with applying the program in a predictable way. Also, don't want to cut corners on the scientific data and analysis.
- Water quality is just as important as water quantity, especially in a state of scarcity.

Additional comments regarding guiding principles noted by participants in all meetings are available online in the comment matrix.

NEXT STEPS

Baggiore reviewed the timeline for next steps including:

- 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

Trevor asked how Tribes would fit into this advisory group process. The goal is to keep this group to 12-15 people in order to allow for small group conversation. There was a recommendation that Tribes nominate a representative and ADEQ make a selection. An attendee volunteer to ask ITAA to share information about

this advisory opportunity with Tribes. Baggioire noted that the representative will not be representing the official position of the Tribe, rather, ADEQ intends to seek input based on each individual's wealth of knowledge. There was also a recommendation to form a Tribal work group for this process, which was expected to provide a good opportunity for collaboration.

Highlights of additional comments and questions included:

- In the absence of WOTUS, if a Tribe does not enact rules, will Arizona rules extend to Tribal areas?
- A possible program element could be an ADEQ/Tribal cooperative agreement to enforce state law on Tribal lands.

PARADIGM SHIFT

Baggioire explained that the CWA is based on water bodies receiving a discharge. The Clean Air Act, however, considers discharge thresholds. He asked attendees to consider a similar impact-based program for Arizona's waters. Highlights of discussion included:

- Concerned about cumulative impacts.
- Concerned about facilities that are consistently very near thresholds.
- Would need to build into a program a trigger for lowering thresholds.
- How would you incorporate downstream waters that have different uses?
- How would this approach address the fact that all water supports ecological functions?
- Protection from the CAA's permitting thresholds also depends on enforceability of those limitations, a system of performance standards, the RACT/BACT/LAER review process, and an environmental medium that (1) is more likely to have dispersion over time than accumulation and (2) is typically polluted by point sources rather than non-point sources (at least for most pollutants). Some of the other features and characteristics of the CAA make it work.
- Are there any other southwestern states that could be used as a model?

Attendees were asked to contact anyone on the project team with any additional comments.

Highlights of additional discussion included:

- ADEQ seems to be assuming that state-issued permits do not trigger federal programs such as NEPA. We disagree with the analysis that this doesn't apply.
- We appreciate these visits, but Tribal consultation policies need to be in place instead of in conjunction with these meetings.
- Couldn't you use the same system to notify us about the expiration/termination of a permit as is used to notify us about new permits?

Baggioire requested any available legal information about the federal trigger interpretation. He said that ADEQ is looking forward to providing a clear Tribal consultation policy, but due to urgency of this rule change, does not believe the policy can be in place prior to these needed discussions. He also requested the boundaries of the types of permit terminations/expiration for which Tribes would like to receive notification.

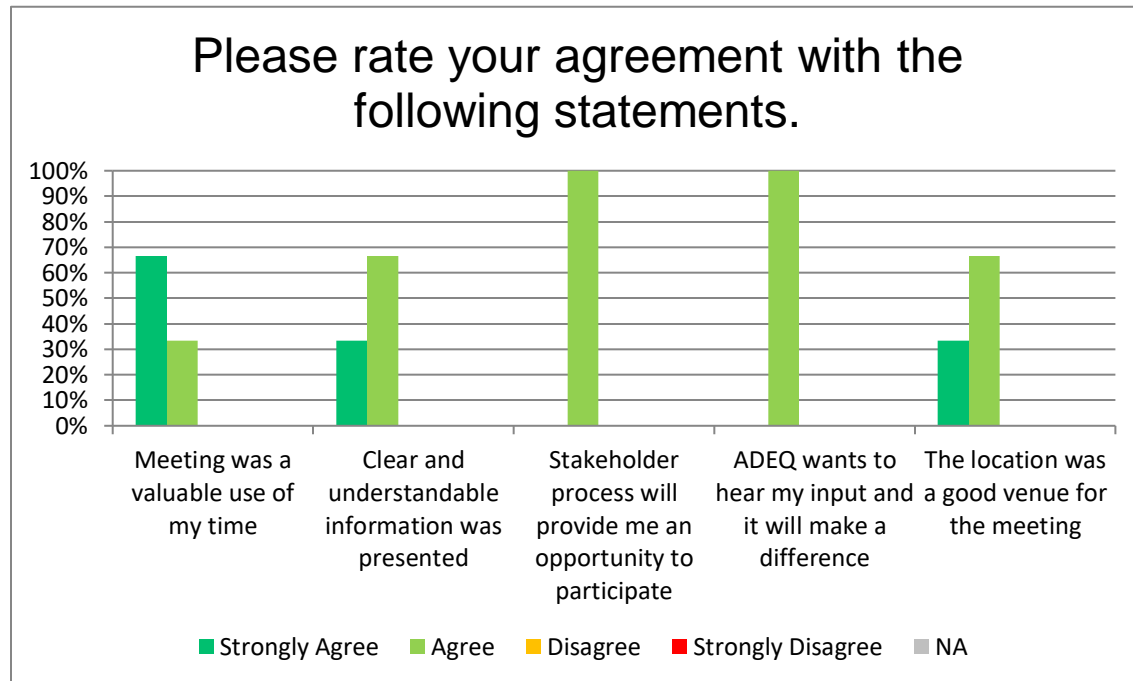
Attendees were encouraged to return meeting evaluation surveys. Baggioire thanked the attendees for their time and the open participation in this process.

ADEQ STAKEHOLDER MEETING EVALUATION RESULTS

Three attendees 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?

- Having the opportunity to discuss concerns & ideas in a roundtable format.
- I liked the format of the Tribal meeting vs. the previous open stakeholder process (morning session). It allowed for more open conversations. Very nice facility/location.
- Open dialogue.

What should be changed for future meetings?

- Greater attempts to get more Tribal representatives to the table.

STAKEHOLDER ATTENDEES* (IN PERSON AND BY PHONE) AND ORGANIZATION

NAME	ORGANIZATION
X	x

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