

Gunn facilitated introductions in the room and David Lelsz, ADEQ, introduced stakeholders participating online. At least 46 stakeholders attended the meeting, with at least 20 participating in person and 26 via webinar.

Gunn encouraged attendees to sign up for the mailing list to ensure that they continue to receive meeting notifications and related information, and to reach out others to encourage them to join the mailing list.

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 Waters of the U.S. definition is expected to be published in the Federal Register soon. The rule will become effective 60 days after publication, likely in April/May, 2020. 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. If a water body conveys flow in a typical year, which is based on a 30-year analysis, jurisdiction will not be severed. Typical year assessments have not yet been conducted in Arizona.

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.)

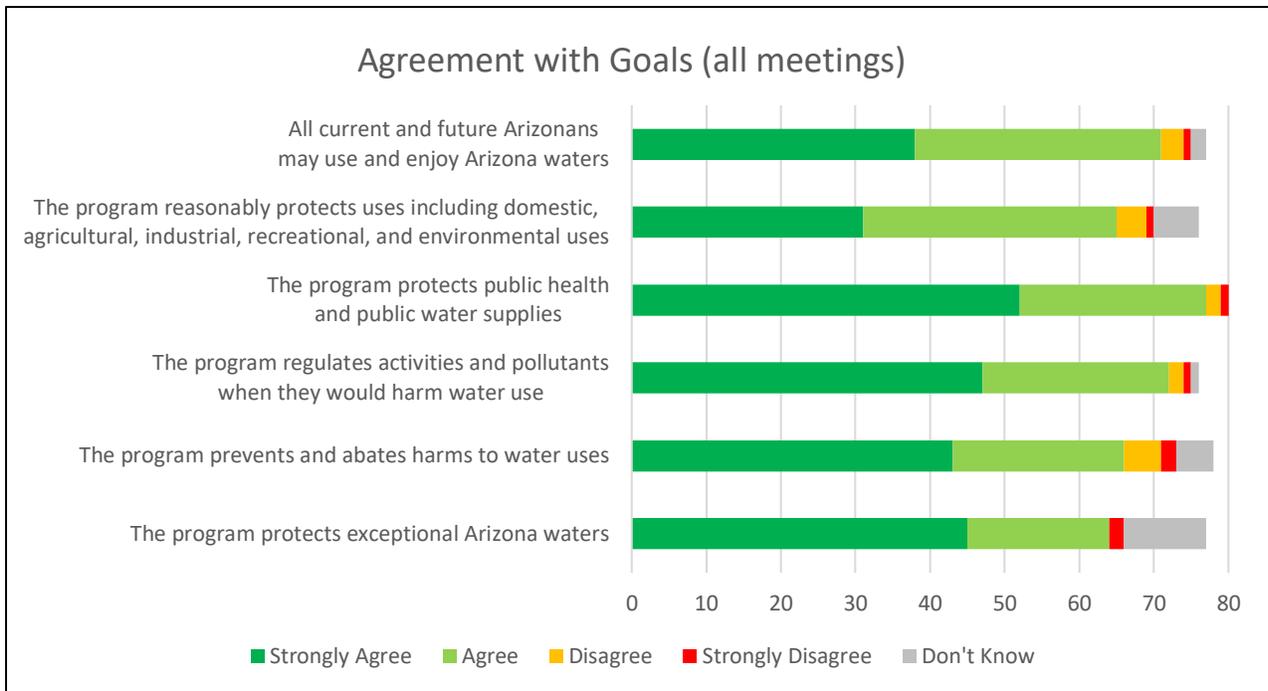
Highlights of stakeholder comments and questions regarding the presentation included:

- Are perennial and intermittent streams going to be protected?
- What is the definition of intermittent now?
- How will you address subsurface waters? Is that water part of the universe you are talking about? What will be considered jurisdictional in the state program?
- Believe we should recognize that Arizona collects water through means not typically recognized in other states.
- The 2015 rule was stayed in Arizona. Will ADEQ fight the new rule or join a lawsuit?
- How will the state protect some waters in the interim between the new rule and the anticipated 2023 state implementation?
- What are the traditionally navigable waters? Are the non-TNWs not covered in any way in Arizona?
- Will ADEQ use USGS data to determine ephemeral breaks?
- Will you look at other permit holders outside of AZPDES for potential permitting?
- Will ephemeral waters passing under roads or through culverts be severed?
- How will this impact the twenty-four designated Outstanding Arizona Waters?

SURFACE WATER PROTECTION PROGRAM FOR ARIZONA

Osterberg said that at the November 2019 stakeholder meetings, 91 percent of attendees indicated that protection of waters was important or very important. She noted that ADEQ does not intend to copy the federal Clean Water Act.

Gunn asked attendees to rate their level of agreement with each goal drafted from input at the November meetings, then to select a preferred goal for 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 Tucson meeting follow. Comments from all meetings are available online in the comment matrix.



Preferred goals selected by each table included:

- The program regulates activities and pollutants when they would harm water use; The program protects public health and public water supplies; All current and future Arizonans may use and enjoy Arizona waters.
- Protect the integrity of the stream, the bio-physical form and function, which will in turn protect quality and increase quantity; The program protects physical alteration of the water body; the program prevents degradation of impaired improvements.
- The program protects wildlife habitats; The program utilizes existing scientific data to determine which waters are protected.
- All current and future Arizonans including other species may use and enjoy high quality Arizona waters; Natural waterway processes.
- The protection and maintenance of the chemical, physical and biological integrity of the states' waters.

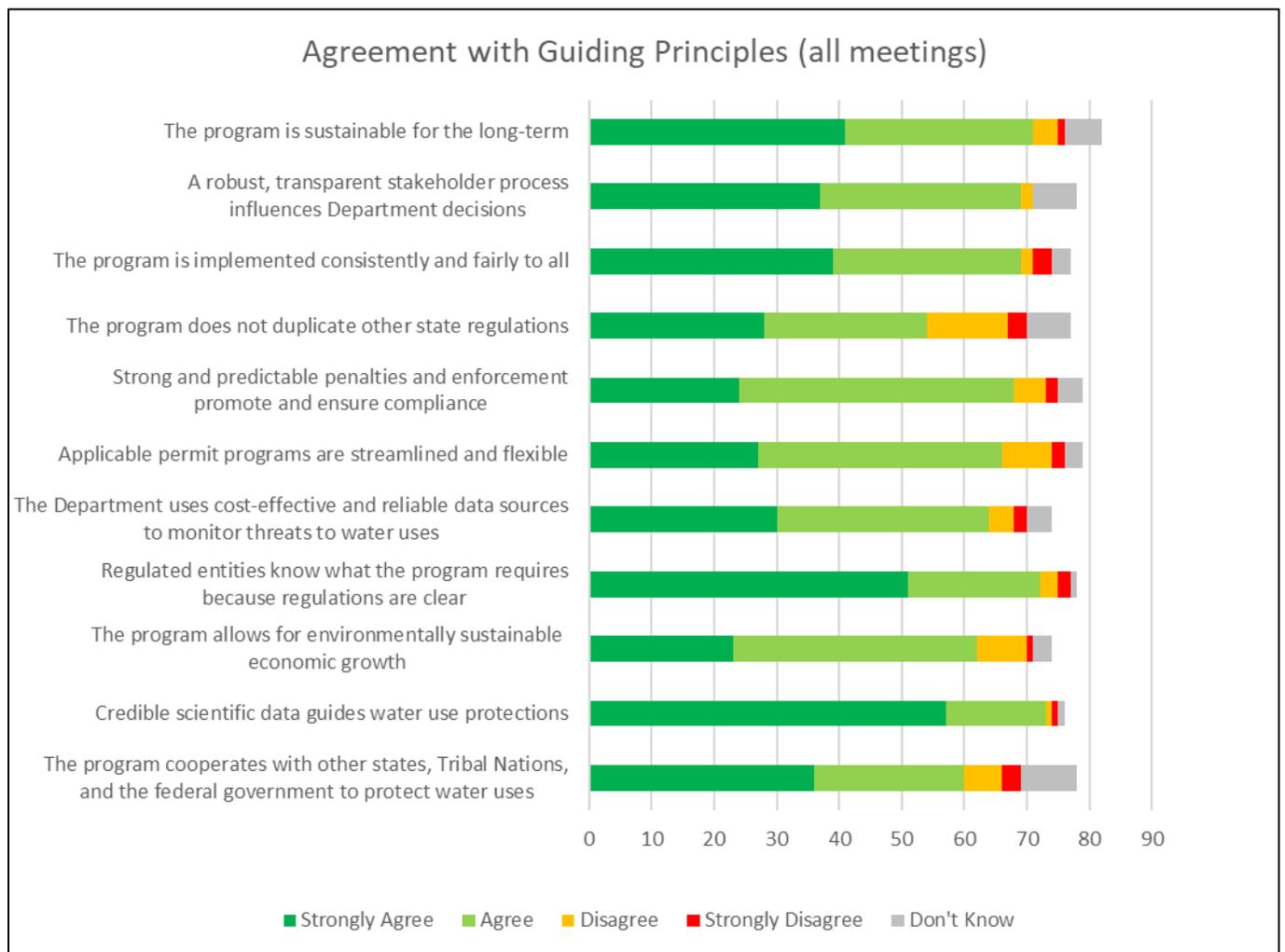
GUIDING PRINCIPLES

Gunn asked attendees to rate their level of agreement with each of the guiding principles as drafted from input at the November 2019 meetings, and to note suggestions for additional principles. Guiding principles are essentially the design criteria and basis behind the program’s design. A graph depicting all attendees’ responses follows.

Highlights of suggested principles, discussion and questions included:

- The program should not duplicate or be in conflict with other regulations.
- Regulations are clear and guidance is provided.
- These rules should be harmonious with other existing rules.
- WHO provides scientific data?

- A good starting place is #3/protects health and water supplies.
- Don't know if there are surface water regulations. Needs to be predictable, consistent. This makes it easier to meet goals.
- Need to consider HOW to be fair.
- Make room for looking at things differently, such as consideration of watersheds.
- Protect wildlife habitats.
- Believe stakeholders are professionals or retired people – need to expand definition.
- Adequate, protect water for all life.
- Propose Principle 6 should read, "Applicable permit programs are streamlined and flexible and provide exemptions."



PARADIGM SHIFT

Osterberg asked attendees to consider shifting the paradigm to water use, and the type of protection required to protect that use. She said that there is a common misperception that if drinking water is protected, all waters are protected.

Osterberg 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. Gunn asked attendees to consider: *Might a use and impact program be a better fit for protecting Arizona’s waters than the definition of a water.* Results from the Tucson meeting follow.

Water Use	Potential Impacts	How to determine whether the use would be impacted
Recreation	No water, contaminants, temperature, climate crisis, lose water to another use, industrial discharge	Sample the water
Livestock watering	Non-point source issues (lead, argon), bacteria/E. Coli, stormwater	BMP: yes= assume protective no=assume impact; consider how to deal with NPS, general permits with expectations of source management
Wading	Land use (direct and indirect cumulative), pesticides/herbicides, water quality (livestock, wildlife, effluent, diversion of surface water), climate change, loss of surface water, strengthen AZ surface water quality standards, stormwater quality ties to WNS	Proximity of impact, quantity, frequency, level of contaminants, kinds of contaminants; if surface water quality is tied to WOTUS, how will state continue to implement the AZPDES program?
Drinking water	Soil discharges, water discharges, groundwater recharge, no protections from solid agricultural discharges which redirects flow or contains toxins, reservoir downwater sources with potential pollution discharges into them, public and private downwater wells (surface infiltration and water harvesting methods, aging infrastructure (wastewater)	Testing water supply, area of discharge and activities (industry, ranching, mining, "clean" activities, agriculture, stock ponds, reservoirs, SWQS, sediment testing, do a risk assessment
Industrial/Agricultural	TDS, sulfate, salinity, quantity/reliability, metals	Salinity: reduce yields, higher costs, soil

Highlights of discussion regarding this approach included:

- Don’t streams and lakes already consider the use? How would a different approach change anything?
- There’s been a lot of talk about how to integrate the quality of the stream, particularly regarding a recreational experience. The sound and look of the stream are not currently a consideration. Would like to see aesthetics included.
- Our group kept defaulting to “discharge” rather than “risk of a discharge.”
- Other considerations could be a regional approach of potential impacts in the region.
- Not sure Arizona has time to redefine the wheel. A three-year gap in regulation is concerning.
- How will the state regulate AZPDES and other permits with the removal of waters from definitions?
- How would this type of program, based on water use, deal with nonpoint sources? Perhaps a state program could include BMPs as a general permit?
- The state of New Mexico is responsible to EPA and has BMPs and an excellent program.
- Concerned about all species exposure to known toxic substances, either by ingestion or physical contact, e.g. historic and ongoing discharges of PFAs and PFOs, and: ongoing and cumulative impacts of medications. Science has already identified these as risks but, so far, there are no formal standards or regulatory approach.

Highlights of additional comments include:

- Because Arizona needs regulations, the biggest challenge is the Arizona Legislature.
- Basing a program on past uses of streams and not considering future would be limiting.

NEXT STEPS

Osterberg 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

She explained that ADEQ requires state authorities and rules before implementing a program. Funding for program development was requested in the current legislative session.

Highlights of additional comments include:

- Will ADEQ continue to pursue process even if there is a stay?
- When WOTUS goes away, what is my ability to destroy an ephemeral or dump chemicals in it?
- ADEQ should consider some interim guidance for activities once the new WOTUS rule becomes effective. Concern is for downstream users.
- Before speaking to permittees, consider point sources and NPDES-governed permits. Will there need to be a connection between the point source and the downstream uses? Looking for guidance on how to apply the WOTUS definition.
- How will permits be managed during this time without coverage?
- State had technical workgroups for 404 process. Why not use this information to develop a state program rather than start fresh?
- Utilizing Corps' jurisdiction seems the best way to develop general permits in contrast to state programs.

ADEQ staff members noted the following:

- APP and solid waste rules exist; however, they do not equate the CWA.
- Varying administrations may change laws. There will be discussion with EPA about the need for clarity to permittees as well as compliance with the new law.
- Staff intends to have a transition plan developed prior to the March permittee meeting.
- The state is not trying to assume or comply with an existing federal program at the state level. Many protections in the current in the CWA would be missed by only looking at the Section 404 investigation.

Gunn encouraged attendees to provide comments and utilize online comment forms. She encouraged attendees to ask questions and provide comments via: watersofarizona@azdeq.gov.

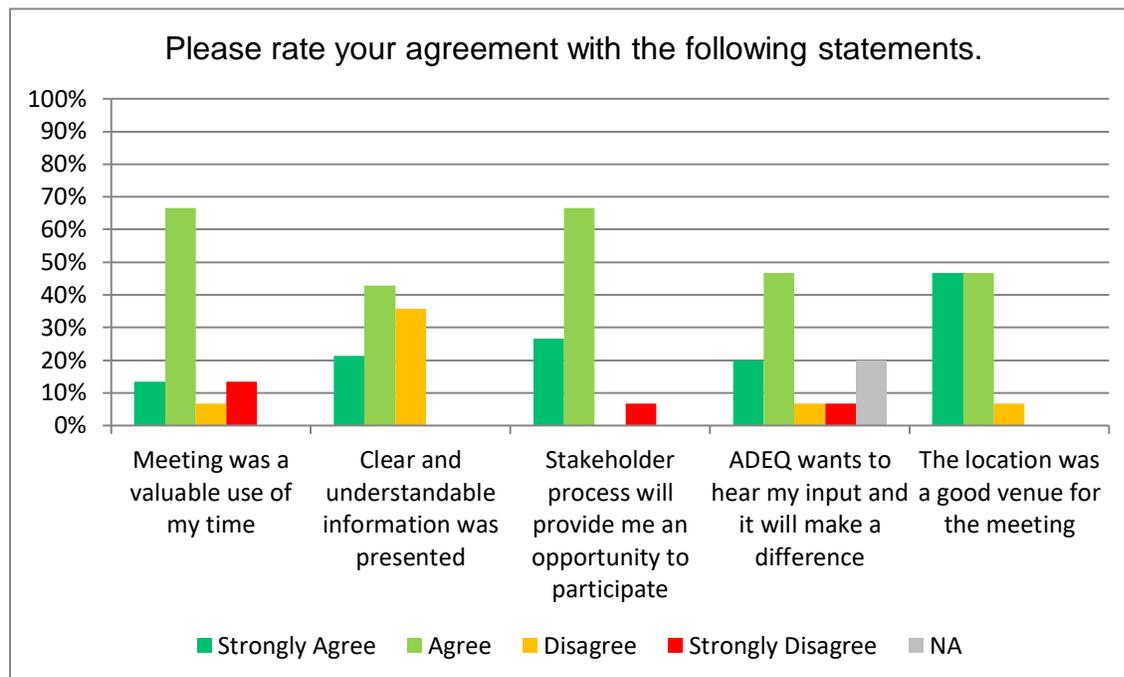
Gunn thanked for attendees for their participation and noted that additional meetings would be forthcoming. She requested that attendees complete meeting evaluation forms.

ADEQ STAKEHOLDER MEETING EVALUATION RESULTS

Sixteen 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?

- Attempt to look at other approaches to regulations.
- Chance to speak and listen to other opinions in the room.
- Dialogue.
- Group brainstorms and share-back discussions prompted good questions. Good clarity of new WOTUS ruling.
- Hands on exercise (table activities.)
- Open discussion and dialogue.
- Open discussion but needs to be more focused on future ADEQ. Must have some idea the level and direction of regulation. 2-3 years goes quickly when developing regs.
- Seeing friends.
- Talking to other stakeholders and where their concerns are coming from.
- Variety of stakeholders and activities.

What should be changed for future meetings?

- ADEQ should present their ideas in a clear concise manner to foster a productive conversation. The process "as is" is ineffective.
- Include less traditional stakeholders. Youth?
- More clarity in questions presented to participants.
- More time for question/answer periods.
- Recommend use of the PC water campus conference rooms.
- State should develop a "draft" program prior to these public meetings and allow stakeholders to comment on that. Commenting on general and vague statements from previous stakeholder meetings is not a productive use of time or developing an alternate program. ADEQ should utilize the expertise and information developed in the previous technical working groups to develop a program. And existing state programs. Commenting on general comments does not create a functional program. commenting on a "proposed" program already outlining regulations is more beneficial.
- The exercise (2nd one) was unclear- not sure what the point was - suggestion is clearer goals from the exercises. 2nd exercise was not well thought out.
- There needs to be a federal agency break out with ADEQ so all can set on similar page.
- You may want to demonstrate what a watershed approach with BMPs, like NM or like an air program, could look like, in order to help the brainstorm of alternatives.

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