



MEETING SUMMARY

ADEQ WATER QUALITY DIVISION WATERS OF ARIZONA FLAGSTAFF STAKEHOLDER MEETING SUMMARY

DATE: Feb. 27, 2020 **TIME:** 9 a.m.-12 p.m.
LOCATION: Northern Arizona University, Health and Learning Center Room 2405,
824 S. San Francisco St., Flagstaff

ADEQ STAFF

Trevor Baggiore
Ben Bryce
David Lelsz
Rhona Mallea
Krista Osterberg
Patti Spindler

STAKEHOLDER ATTENDEES (Attached)

ADDITIONAL ATTENDEES

Kelly Cairo, GCI
Theresa Gunn, GCI

AGENDA

The complete agenda is available online and includes:

- Welcome
- Review Agenda and Introductions
- Final Federal WOTUS Rule
- Surface Water Protection Program for Arizona
- Program Goal
- Paradigm Shift
- Next Steps

WELCOME

ADEQ Water Quality Division Director Trevor Baggiore welcomed attendees and expressed his appreciation for participants choosing to spend their time with ADEQ on this process.

REVIEW AGENDA AND INTRODUCTIONS

Facilitator Theresa Gunn reviewed the agenda. Explained that this is a collaborative program, that is essentially a blank sheet of paper to design a program. Gunn facilitated introductions in the room and David Lelsz, ADEQ, introduced stakeholders participating online. Sixteen stakeholders attended the meeting, with 11 participating in person and five via webinar.

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, which differs from the draft version of the rule as discussed at November 2019 stakeholder meetings. 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.

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:

- Is groundwater excluded from the definition?
- How will the Haliburton loophole, in which oil and gas are exempt from the clean air and clean water acts, affect Arizona?
- When the rule is published, will the federal government publish some kind of map of affected waters?
- How will excluded waters be protected? Who will be liable for cleanup costs and impacts?
 - An attendee noted that Flagstaff has city codes which hold violators liable outside of the Clean Water Act.
- How do I find out if my creek will be affected?
- What is the definition of an ephemeral break? How will this be applied in the final rule?
- Would it be useful to create a table with water bodies, old rule, and new rule impacts and list the affects?
- Does ADEQ agree with the Flagstaff ordinance?
- Larger cities should have years of MS4 data to provide to ADEQ.
- Believe most city codes were written regarding a discharge to a WOTUS. Will city codes need to be rewritten?
- There is a 2018 USGS comprehensive article on stream flow and impacts to Tribal lands.

Ben Bryce, ADEQ, explained that the Haliburton Rule applies to the Safe Drinking Water Act and therefore does not apply to APP and navigable water definitions. Issues of local concern may be able to be addressed directly by municipalities.

ADEQ does not separate issues due to hydrological issues, rather, the department operates under legal authorities.

Typical year assessments have not yet been conducted in Arizona. Gunn said that ADEQ is coordinating with a variety of sources to obtain typical flow data and asked those with flow data to contact ADEQ.

SURFACE WATER PROTECTION PROGRAM FOR ARIZONA

Osterberg said that at the November 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. Language in all of the table exercises was provided by

stakeholders in the November 2019 meetings and meant to bring about a deeper consideration of these suggested issues. The intent of the exercise is not to conform to this list, but was provided as a starting point. A graph depicting all attendees’ responses – inclusive of the Phoenix, Tucson and Flagstaff meetings – follows. Goal statements selected at each table at the Flagstaff meeting are shown below. Comments from all meetings are available online in the comment matrix.



Preferred goals selected by each table included:

- The goal should be to fill the protection gap created with the new WOTUS definition.
- Compilation of the first three goals (All current and future Arizonans may use and enjoy Arizona waters; The program reasonably protects uses including domestic, agricultural, industrial, recreational, and environmental uses; The program protects public health and public water supplies) and provides a comprehensive set of goals to offer protection to waters.
- Split goals for agricultural and industrial uses from recreational and environmental uses.

Highlights of additional comments and questions included:

- Should develop a program equally or more protective than the 2015 WOTUS rule.
- On April 2, a meeting regarding GIS hydrogeologic data will occur.
- The language “may use and enjoy waters” could be confusing.
- To what degree can ADEQ enforce these rules? Is ADEQ a big player in Arizona? I think not, in the way that oil and gas are big players.
- If someone harms the water what can ADEQ do about it?
- If you hear urgency in our voices, it is because essentially there is an asteroid on course to hit us in a week.
- It is important to include groundwater in our protection, because groundwater affects all of our waters.

- Can we get a copy of the letter from Governor Ducey? (Note: the letter is available on the ADEQ website as part of WOTUS information.
- Why was the language crafted with the word “use”? “Water quality” is missing.
- Sounds like the waters protected are being narrowed. Concerned that the state will be protecting less waters.
- This is the ultimate in being disingenuous, particularly in comparing Governor Ducey’s interest in protecting Arizona’s waters versus his position on fracking.

ADEQ staff members noted the following:

- In the case where there is an existing federal rule, a state rule cannot be more stringent than that federal rule. However, this is not the case, as there would not be a federally applicable rule.
- Baggiore explained that ADEQ is part of the executive branch and would seek additional authority from the Arizona Legislature as needed. The goal is to develop a state program to protect surface waters.
- The WOTUS definition change is not under ADEQ’s control.

Attendees were encouraged to provide additional comments via the waters of Arizona email: watersofarizona@azdeq.gov.

GUIDING PRINCIPLES

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

Highlights of suggested principles, discussion and questions included:

- Flexibility and consistency may be in conflict.
- Terms “cost effective” and “reliable data sources” may be in conflict.
- Streamlined and flexible sounds oil and gas have it easier to do fracking and have circumvented NEPA – need to back off.
- Regarding scientific data guides, I have looked at numerous studies and was surprised by huge areas of “insufficient data.” This is concerning.

PARADIGM SHIFT

Osterberg asked attendees to consider shifting the paradigm to water use, and the type of protection required to protect that use. She asked attendees for suggestions about other regulatory approaches that would achieve the same goals.

Gunn asked attendees whether a use and impact approach would be a better fit for protecting Arizona’s waters than the definition of a water. She 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 Flagstaff meeting follow.

Water Use	Potential Impacts	How to determine whether the use would be impacted
Drinking Water	Chemical contamination, loss of ground water, physical contamination, loss of surface water, short term economic gains can be dangerous, long term economic damage	Chemical profile, short- and long-term economic growth, physical health of citizens
Aquatic and Wildlife	Elimination of part of the system, industrial/commercial/residential development, erosion/sedimentation, water quantity, contamination of water	Understand climatic history/modeling long term, codating existing map and data, restriction of water for development, preventative plan for constituents (no release), reporting requirements
Recreation	Aesthetic (looks, odor), bacteria (limit use), upstream uses, suitable for wildlife, turbidity	Test/monitoring, threshold quality/use, modeling, changes to water course (degradation), indicator (specied, metrics), public monitors/reporting/stewards especially remote locations, education for public

Highlights of discussion regarding this approach included:

- It is important to consider an aquatic area, for example, as a whole system.

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
- June 2020: draft program outline for stakeholder input

Highlights of additional comments include:

- A stakeholder recommended that those interested in this process pay attention to trends, such as those trying to prohibit legislative change and regulations in general. Also, to consider who receives your vote.
- What happens between the new definition and the creation of an Arizona program?
- What is the state's take on the liability on the differing types of lands throughout the state?
- How many people work at ADEQ that could monitor water and would be hands-on aware?

ADEQ staff members noted the following:

- There is always the potential for litigation or a stay of the rule. In the interim, existing rules will continue to be used.
- ADEQ only has the authorities granted by the Arizona Legislature.
- There will be an in-depth conversation with permittees on the process moving forward. There would be a risk to permittees if the rule is stayed and they do not/have not complied with their permits.
- The intent of the permittee meeting is to discuss issues with permittees. Others may choose to attend by webinar, but we would ask that non-permittees hold question to the end in order to address the purpose of the meeting.
- Bryce has forwarded the liability question to the Office of the Attorney General and has not received a response at this time.

- Monitoring occurs through a variety of programs such as Aquifer Protection Permits, surface water, and drinking water programs.
- Under surface water monitoring, there are 10 staff members that conduct monitoring activities. There is also an expansive volunteer monitoring network through Arizona Water Watch, and other reporting areas for the public. Coordination with USGS, SRP, and volunteer groups also occurs.

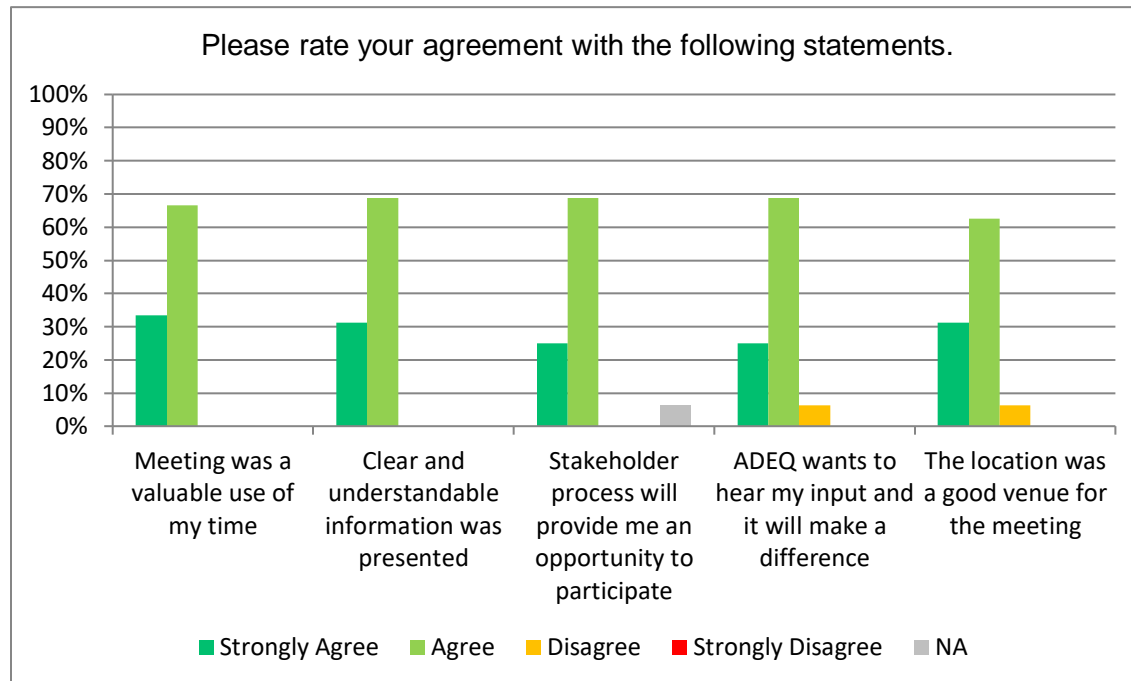
Gunn encouraged attendees to provide comments and utilize online comment forms. She encouraged attendees to ask questions and provide comments via: watersofarizona@azdeq.gov. She requested that attendees complete meeting evaluation forms and thanked for attendees for their participation.

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?

- Diverse groups of stakeholders attended.
- Good stakeholder involvement.
- Good to hear other stakeholder concerns. Some additional clarity on issues and schedule going forward.
- Having a dialogue w/ADEQ. Being able to ask questions and hear from them directly.
- Hearing other stakeholders concerns.
- Learning that protecting Arizona's water might be too big of a task for ADEQ to handle.
- Participation by all open ears by ADEQ.
- Thanks for the presentations today!
- The beginning education on the topic of discussion helped due to being new to this field.
- The presentation on the new rule.

- Those who were unaware of fracking and its water use and possible contamination of groundwater and surface water now are more aware.
- Very good and calm facilitators that give the impression that ADEQ is really willing to listen and incorporate these ideas.

What should be changed for future meetings?

- Encourage a separation of surface water vs. ground water discussions.
- Full day. Need work group and input from Northern AZ (Kingman to Sanders and above.)
- I would like to see: Crosswalk-current to new federal and brand new Arizona. List of waters. List of programs such as pretreatment, UIC, stormwater, etc. to be impacted (or not) and nexus to other programs like drinking water, groundwater, etc. Do we rank the quality of data, such as water quality, as they do in CAA (AP-42 in particular), Krista mentioned "credible data."
- Possibility of more meetings?
- Separating the stakeholders for different focus groups.
- Start developing a direction in which ADEQ thinks that things will move forward. I understand that this is not possible at this particular part in time.
- Subject professionals presenting technical info on specific related topics. E.g.- Hydrologist helping to define intermittent/ephemeral streams.
- Trying to keep people on task. I know it's hard but it makes the meeting more productive.
- Very well done.
- Would consider separating out public activists/non-profits from government, Tribal, and consultants. Perhaps a separate meeting for concerned citizens to allow meetings to be more effective. For both general audiences.

