

## Arizona Surface Water Quality Program: Stakeholder Advisory Group

**Meeting:** #3

**Date:** May 6, 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

#### **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 Grahom  
 Haley Paul

#### **Agency**

- Agribusiness and Water Council of Arizona
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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
- Environmental Defense Fund
- Home Builders Association of Central Arizona
- Inter-Tribal Council of Arizona
- League of Arizona Cities and Towns
- The Nature Conservancy
- Water for Arizona Coalition
- Water for Arizona Coalition

#### **Alternate**

Jason Moyes  
 Chris Udall  
 Courtney Coolidge  
 Chelsea McQuire  
 Jeff Kros  
 Scott Thomas  
 Steve Trussell  
 Craig Sullivan  
 Holly Pearen  
 Rob Anderson  
 Mia Hammersley  
 Tom Savage  
 Scott Deeny  
 Joan Card  
 Patrick Cunningham

### ADEQ Staff

- Misael Cabrera
- Trevor Baggio
- Krista Osterberg
- Rhona Mallea
- Ben Bryce
- David Lelsz
- Deborah Birutis

### Consultant Support

- Theresa Gunn, GCI
- Kelly Cairo, GCI

## **Online Instructions**

Theresa Gunn, facilitator, reviewed the webinar tools and encouraged participation.

## **Introductions**

Trevor Baggione, Director ADEQ Water Quality Division, welcomed attendees. He asked members to introduce themselves and cite a favorite water-related activity in Arizona.

## **Review Agenda**

Trevor reviewed the agenda. Highlights are listed below.

- Ben Bryce reported that there are five lawsuits regarding the new rule including cattle growers, environmental NGOs, 17 states and two cities
- Draft notes were emailed last week; requested any changes to Rhona Mallea
- Outstanding Action items
  - Send ADEQ and USACE permit timelines to members, due 5/8/2020
- Standards Kaizen
  - ADEQ is planning a multi-day Kaizen (process planning event) to think through the methodology for setting state standards
  - Would like to include stakeholders who are knowledgeable about setting standards and would be willing to participate
  - Likely a two to three full-day event to occur in the next few weeks and be conducted remotely
  - Requested names of people who you think would be helpful to this process and why (their experience) by May 11 to Trevor, Rhona or Krista Osterberg
  - Intent is to discuss the process of setting standards and will report out a recommended process for input from the SAG
- Trevor reminded the group that they are not speaking on behalf of their organizations

## **Member Questions/Discussion:**

- I'd like only the presentations to be recorded
  - Misael Cabrera explained that he would like to look at another way to fulfill that need with a stakeholder group
  - Action item: Krista to either record presentations or provide additional speaker notes independent of these meetings and make them available
- Is there legislation to authorize the development of a state program?
  - No, legislation is not required, since these are exploratory conversations to develop a program which may require additional authorities.

## **Flow Regime Definitions**

Krista Osterberg, Surface Water Quality Value Stream Manager, presented Flow Regime Definitions. Highlights are listed below.

- Definitions on perennial, ephemeral, and intermittent waters, are defined in A.A.C. R18-11-101
- A list of definitions was emailed prior to the meeting
- Ephemeral waters flow only in response to rain or snow
- Intermittent waters flow in response to snow melt, groundwater upwelling. A regular dam release could trigger a stream to become intermittent
- It can be difficult to determine whether a water is ephemeral or intermittent
- Arizona has waters that change over time

### Member Questions/Discussion:

- How extensive was the study on intermittent waters?
  - 38 waters were studied to make statistical assumptions about intermittent waters in Arizona; conducted 2014-2018
  - Action item: ADEQ to share report
- Is ADEQ developing a list of Waters of the U.S. (WOTUS)?
  - ADEQ is working with others to gather flow regime data and update GIS layers. However, it will not be used to develop a comprehensive list of waters that will or will not require an AZPDES permit.
- Could argue a dam release is in response to storm event (re: regular dam releases potentially classifying a water as intermittent versus ephemeral)
- How will ADEQ handle the evolving state of a waterway and what is ephemeral or intermittent?
  - Will be an important piece to consider as the program is developed
- As quantities change from intermittent to ephemeral, jurisdictional concerns could also change
  - Regulating water quantity may cause issues in this area

## **What We Have Heard from You**

Trevor presented information. Highlights are noted below.

### Goals

- 10 SAG members participated in this survey
- Member Questions/Discussion:
  - Getting questions from members about why jumping in when TNW is not yet resolved
  - In the past, water programs have moved toward a land use regulatory program and are concerned about similar scope creep. Prefer an approach that is directly related to activity at the water impact location. Believe “program regulates activities and pollutants when they would harm water use,” is broad, as is “harm”
  - Surprised only half of the SAG members responded. Should we offer another opportunity?
- Action item: Rhona to resend link and request responses by May 8

### Guiding principles

- 10 SAG members participated in this survey
- Department will consolidate these items after additional results are received and report back to this advisory group.



Program name

- Also available for input until May 8

### **Discussion of Homework Questions**

Trevor asked the group to shift the thinking from the “what” of the program to the “how.” He reviewed the list of discharges regulated under other programs. Highlights are noted below.

Regulated activities

*Should the discharge be regulated and what concerns do members have?*

Member Questions/Discussion:

- Would like to see regulation at a higher level in some places rather than others. Some room for protection from construction activities where there are flowing rivers without overreach
- Difficult to discuss types of activities without understanding the “where”
- Agree with the concerns about mission creep and concerns about where the water is located. Want to avoid turning this process into a land use regulation. Would not support a dredge and fill program that covers ephemerals
- The “how” questions in the homework are important; however, agree that a protection program will be easier to design after we know which waters are being protected. So much depends on location. May need to explore the “what” more before we discuss the “how”
- Don’t want a regulatory process dependent upon land use
- Can see in homework what many of the exemptions are. Are there specific instances with problems that not being addressed? Is there data that shows these land use issues are causing a water quality issue and causing these questions to come up?
  - This was included in homework so that we can consider opportunities for improvement in designing a program
- Are the current exemptions causing problems, or are we looking to broaden regulatory reach?
  - The purpose of question is to determine whether the exemptions are causing water quality concerns
- Ephemerals should be extremely limited; intermittent a notch above that; and perennial, a notch above intermittent. Should not be a one-size-fits-all approach
  - ADEQ is interested in a de minimis impact approach, regardless of the waterbody
  - Approach is not totally in line with this suggestion. A threat to an ephemeral would differ from a threat to a perennial. Don’t believe the state should treat the threat to all waters the same
    - Ephemeral and perennial waters have different uses, and this may help clarify the conversation moving forward
- If we know that certain uses are not impacting a water, seems this would be the basis for an exemption. Support the exemptions in place right now, at a minimum
- Important that one of the principles noted was the importance of science. On a scientific basis, we know that what is put into ephemeral systems will indeed impact intermittent and perennial streams
  - There was disagreement on whether impacts to ephemeral also impact intermittent waters
- Appreciate current exemptions provided in a list

## Special Water Quality Considerations

*Should a program give special consideration to:*

- *High quality waters*
- *Naturally low-quality waters*
- *Historically impacted waters*
- *Good Samaritan remediation efforts?*

Krista noted that special consideration does not necessarily mean additional protections.

## Member Questions/Discussion:

- Protecting a high-quality water seems like it should continue
- Consider degree of degradation to be allowed to a pristine stream, vs. a low-quality water
- Shouldn't we determine the status of the waters?
- Is there a list of Outstanding Arizona waters?
- If WOTUS changes, how will outstanding Arizona waters be affected?
  - A water has to be a WOTUS to be part of the state OAW program

## **What We Have Heard from You**

Trevor discussed the baseline program and water uses to be protected. Highlights are noted below.

- At the last meeting, we heard that there was support developing a baseline program that would expand and contract as the federal rule changes
- The SAG provided initial input on the water uses which need to be protected at the last meeting
- Would like to form a SAG subgroup interested in talking this through in greater detail and meet the week of May 11 to discuss
- Sub-Group Charge:
  - Review list of uses
  - Recommend a final list of which uses should be protected; identify uses which the group could not agree upon and why
  - Discuss: How do we decide whether a use is applied to a waterbody? Process for ADEQ to determine what water use is applied to each waterbody
  - Volunteers should contact Rhona by the end of the day; may include alternates
    - Volunteers identified during the meeting included Haley Paul, Maribeth Klein, Stephanie Smallhouse
  - ADEQ will provide assistance in setting up the meeting and taking notes
- Subgroup is asked to look at water uses, what should be protected, and how to determine which water use is applied to each waterbody
- After the sub-group recommendation on protected uses, we will then discuss at the SAG meeting which water bodies should be protected

## **Discussion of Homework Questions**

Ben reviewed the use of environmentally relevant activities and operational thresholds used by Australia. The country regulates air, water and soil as one, and considers environmentally relevant activities (ERAs) as a whole. The level of regulation is dependent on the level of risk of the ERA. ADEQ is

not advocating an Australia-based system but provides the approach as an example of environmentally relevant activities.

#### Regulatory Thresholds and Industry-Specific Considerations

*How can Arizona determine environmentally relevant activities?*

*How should Arizona set operational thresholds?*

#### Member Questions/Discussion:

- We work in Australia. Projects move forward faster. Benefit is regulatory certainty. Like this approach
- Should we look at what is/isn't working well in AZPDES?
  - Trevor said that the Clean Air Act is an impact-based approach that offers clarity
- If ADEQ has a shell of a program in mind, would like to react to this. How will we get to the point of creating program?
  - Trevor said that the goal was to provide the SAG with context and options, and the opportunity to get perspectives on other ways to establish an impact-based program
  - An impact-based approach considers impacts to the environment. ADEQ does not yet have a fully developed plan to unveil
- Recognize that it's complex to dive into the Australia example. Current AZDPES system has areas to consider and learn from
- Focus should be to establish credible scientific-based approach to waters no longer covered by CWA. Also, if an activity will affect surface water quality standards, this should be a starting place

#### **Topics for Next Meeting**

- The next SAG meeting will include a review of ADEQ's initial thoughts, and the SAG will be asked for input on the shell of what an impact-based program might look like
- Report out on uses from sub-group
- Covered waters
- Impact-based thresholds; input and feedback
- Remediation and restoration

#### Other:

- Received a request to change meeting time to 10 a.m. - 12 p.m. Members will receive a poll for input

#### **Adjourn**

#### Next steps:

- Subgroup – need to identify volunteers by COB May 7
- Standards kaizen – consider/suggest who should participate and why they would be a good fit
- Homework with discussion questions to consider in advance

Reminders:

- Encourage your members to subscribe to ADEQ’s WOAZ stakeholder list at <https://public.govdelivery.com/accounts/AZDEQ/subscriber/new>
- If desired, request ADEQ presentation to your organization/association. Contact Rhona Mallea, ADEQ Project Manager, 602-771-4492, [mallea.rhona@azdeq.gov](mailto:mallea.rhona@azdeq.gov)
- Meeting evaluation

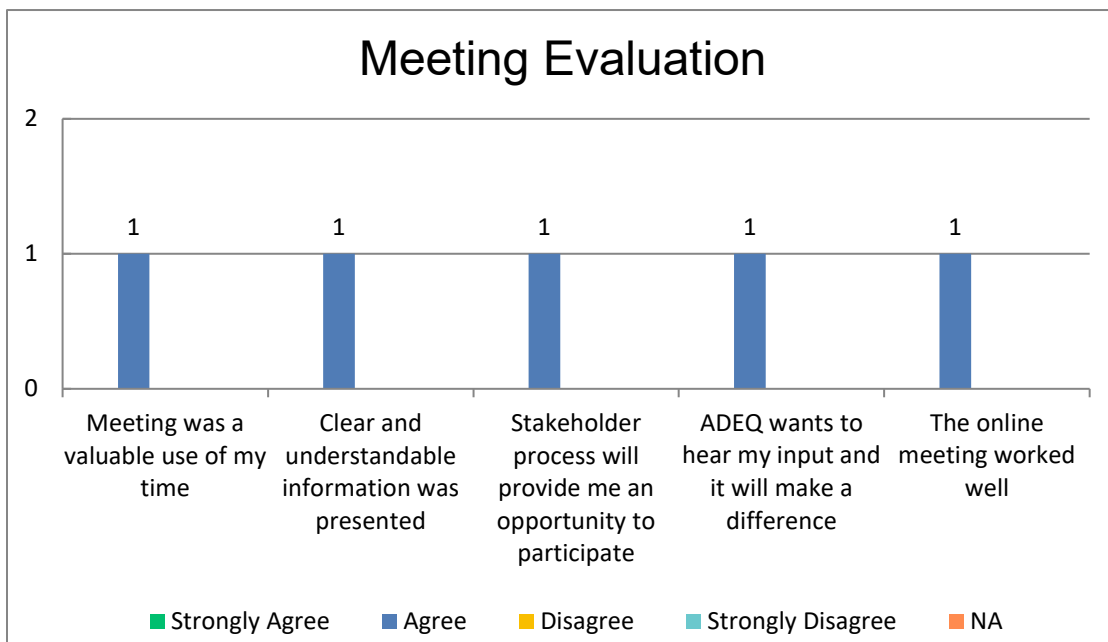
Trevor expressed his appreciation for attendees’ time, involvement and engagement during the meeting.

**ACTION ITEMS**

What	Who	By When
Provide presentation to SAG one day prior to meeting	ADEQ	Ongoing
Resend link re: goals/principles; responses due May 8	Rhona	May 6
Send ADEQ and USACE permit timelines to members	ADEQ	May 8
Volunteers for sub-group	SAG	May 8
Poll members regarding meeting time	ADEQ	May 11
Record presentations or provide additional speaker notes independent of meetings for SAG	Krista	
Share report on intermittent waters	ADEQ	

**Meeting Evaluation**

One member completed the online evaluation of the meeting.





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

- I thought there was some candid conversation which is helpful to move the ball forward on this process.

**What should be changed for future meetings?**

- The homework was a little difficult, given we still haven't nailed down "the what." Also, I think it was a bit of a shock to some to consider an entirely new regulatory regime as opposed to mirroring similar things that have worked for protecting waters. As was mentioned, if there is a vision for what ADEQ is thinking, it would be helpful to see it. Looking forward to what was outlined to be discussed in next meeting.