



MEETING SUMMARY

ADEQ WATER QUALITY DIVISION WATERS OF ARIZONA PHOENIX STAKEHOLDER MEETING SUMMARY

DATE: Nov. 12, 2019 **TIME:** 1:30-3:30 p.m.
LOCATION: Gateway Community College, MA1100, 108 N 40th Street, Phoenix

STAKEHOLDER ATTENDEES (Attached)

ADEQ STAFF

Trevor Baggiore
Ben Bryce
Kristie Chavero
Sandra Frances
Rik Gay
Mark Joyner
Jessica Latzko
David Lelsz
Rhona Mallea
Krista Osterberg
Jonathan Paul
Meghan Smart
Patti Spindler

ADDITIONAL ATTENDEES

Kelly Cairo, GCI
Theresa Gunn, GCI

AGENDA

The complete agenda is available online and includes:

- Welcome Video
- Review Agenda and Introductions
- Need for a Waters of Arizona Program
- Understanding Current State of Arizona Waters
- Small Group Discussions
- Types and Uses of Waters
- Next Steps

WELCOME VIDEO

Facilitator Theresa Gunn welcomed attendees and played the introductory message (available at <https://www.youtube.com/watch?v=qPHMxe1Bqus&feature=youtu.be>) from ADEQ Director Misael Cabrera.

REVIEW AGENDA AND INTRODUCTIONS

Gunn reviewed the agenda and noted the meeting purpose is primarily exploratory – to identify issues for consideration in development of a Waters of Arizona (WOAZ) state program. Approximately 85 stakeholders attended the meeting, with at least 55 participating in person and 30 via webinar.

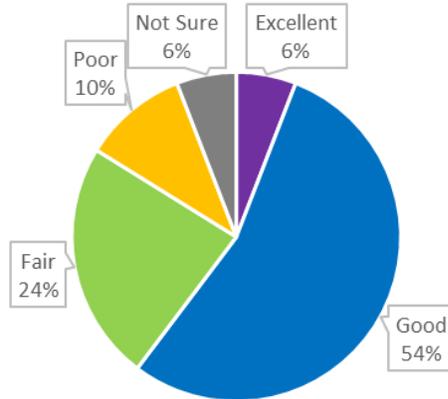
NEED FOR A WATERS OF ARIZONA PROGRAM

ADEQ Water Quality Division Director Trevor Baggiore thanked attendees for participating in the meeting. He pointed out the definitions handout, and invited attendees to ask questions.

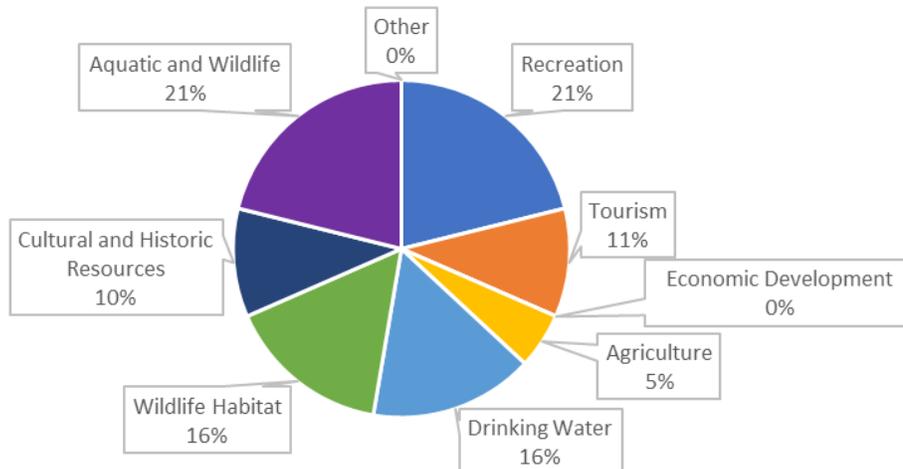
Baggiore presented Need for a Waters of Arizona Program. He explained that the presentation is based on EPA's draft proposed definition of Waters of the United States (WOTUS). The final rule is expected to be announced in early January and become effective in late spring of 2020. Highlights of comments, questions, and responses included:

- Ephemerals only contribute flow during a storm event. Intermittent waters may have other flows, such as from snow melt.
- It is not yet known whether the final rule will mimic the proposed rule, but it is likely to be very similar.
- (Question): Who assesses what is a traditionally navigable water? (Response): This is not yet determined.
- (Question): Waters with ephemeral break would now be out of WOTUS definition? (Response): Those segments that are part of the ephemeral break would not be regulated.
- Today, ADEQ has very limited authority to protect surface waters in Arizona.
- The rule change will provide an opportunity to address the gap. ADEQ cannot control the federal government.
- These are the first of a series of meetings anticipated to discuss Waters of Arizona (WOAZ). Many tribes in Arizona will also be impacted by EPA's new rule, not just the state of Arizona.
- The timeline anticipates ADEQ unable to provide a program for about two years from the effective date of the new rule. ADEQ requested delayed rule implementation. While we are hopeful this request will be honored, we are not optimistic.
- It is likely lawsuits will be filed on the new WOTUS rule, but it is unknown whether the result will be stayed. We don't anticipate the Arizona Attorney General's Office joining a lawsuit. If a national stay occurred, Arizona would be included. ADEQ does not want to wait to find out whether the rule will be stayed.
- (Question): What will be the impact on the state as recipient of Section 106 funding and Section 316 grants? (Response): Not much would change in the first few years. State allocations are calculated every five years, therefore the next time calculation for the number of WOTUS that are impaired would occur in 2023.
- (Question): Do you see a change in administration affecting the rule? (Response): Yes, new administrations often change rules. (Comment): It seems like it would be an especially good idea to put forth an Arizona program to protect Arizona consistently, regardless of federal changes.
- (Comment): What authority and jurisdiction is the state considering? It's not waters of tribes? (Response): Arizona does not have authority over tribal nations. We were informed at a previous meeting that about 80% of Arizona's water either originate or pass through tribal lands.

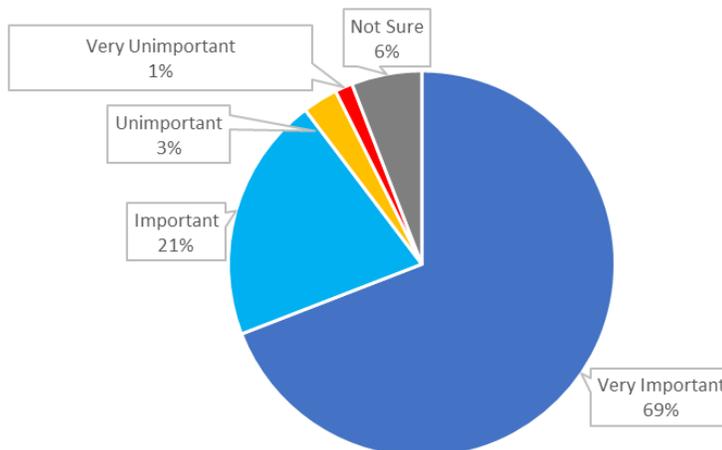
How well do the current regulations protect Arizona surface waters?



Which of the following are most affected by POOR water quality? (Select all that apply)



How important is it that Arizona develops a Waters of Arizona regulatory program?



SMALL GROUP DISCUSSIONS

Gunn asked attendees to discuss and list issues as noted below. Gunn explained that development of guiding principles has been used successfully in the past in developing solutions to and to guide development of a new program.

- What are potential issues to consider when developing a state program?
- What are potential causes?
- What are the values which should be used to guide the development of the program?

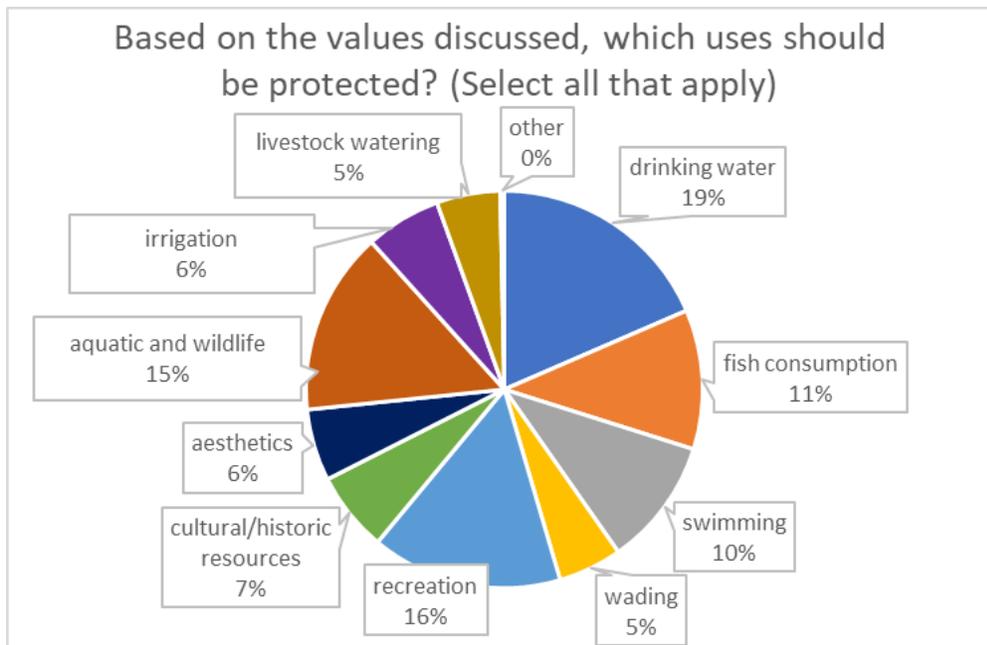
The combined results of all attendees are provided in an issues matrix on the ADEQ Waters of Arizona webpage at <https://azdeq.gov/node/6560>.

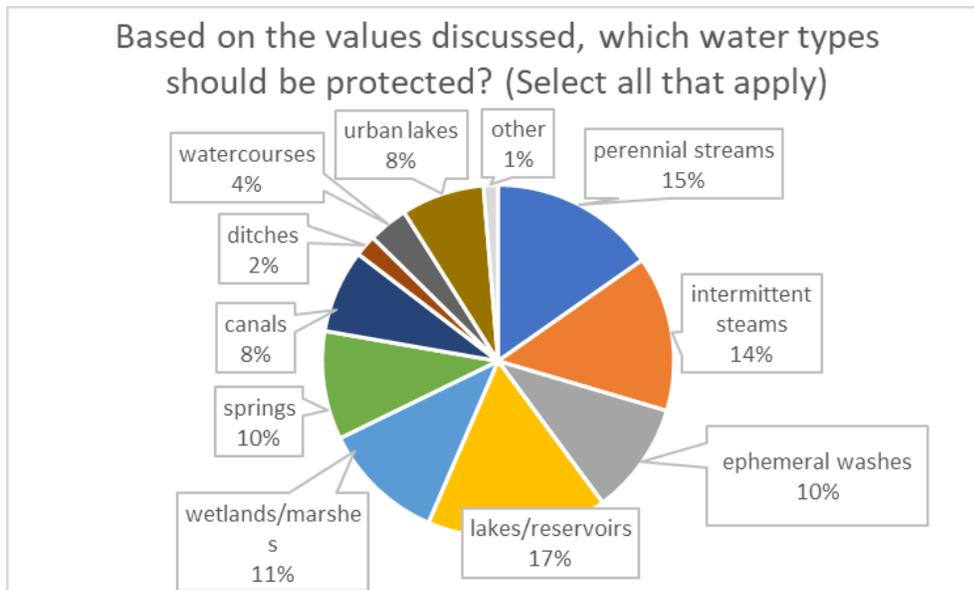
Highlights of additional comments included:

- Baggio explained that the “no more stringent” issue applies to CWA as it pertains to Section 402, and no more stringent where there is a federal program. Once ADEQ has clear authority to create a state program, then the “no more stringent than the federal program” concern would no longer apply.

TYPES AND USES OF WATERS

Gunn asked all attendees to participate in a live survey or via comment form handout. The results of the survey are shown below.





Highlights of additional comments, questions and responses included:

- (Question): How do we define water courses compared to some of the other listed water types? (Response): Baggiore noted that it is unlikely there is a much of a difference because the waters of the state definition has not been tested.
- (Question): Where should snow fall runoff be included? (Response): Intermittent water sources are generally seasonal. ADEQ will consider where seasonal water types should be captured.

NEXT STEPS

Baggiore reviewed the timeline for next steps. The WOTUS changes are expected to become effective in late spring, 2020.

- February 2020: meeting summaries
- June 2020: ADEQ program outline available
- July 2021: Statutory authority process if needed
- 2021: Collaborative program development
- 2023: Program effective

Baggiore asked attendees to consider the impact of this rule, and solutions about how to close this gap. He noted that a suggestion from a tribal listening session included a tribe's ability to protect waters in a lease situation. Highlights of additional comments, questions and responses included:

- (Comment): Wish there wasn't a gap. ADEQ should pursue change in current legislative session.
- (Question): Could you require notice from those discharging?
- (Comment): Could cities use current police force to protect the public health, perhaps as nuisance? (Response): Enforcement authority likely would be limited.
- (Question): Would permittees retain our own records? (Response): ADEQ can't enforce regulations. An additional question would be whether ADEQ will be informed.
- (Question): When will you bring on staff? (Response): Currently, ADEQ has the expertise on staff to run this program. CWA responsibilities would be shifted to WOAZ responsibilities. We have requested additional funding to address this issue in order to develop the program.

- (Question): Could you get an emergency rulemaking and convert current standards? (Response): An emergency rulemaking results in skipping a good deal of public input. Additionally, state statute requires review of social, economic and other standards.
- (Comment): Maybe ADEQ can work with trade organizations that would require essentially continuing permit standards.
- (Question): What happens to city ordinances based on MS4 authority, or where the city is regulating others based on this passed-along authority? (Response): This is uncertain and will depend upon whether a city has organic authority.
- (Comment): What about issues related to sewage dumping, as we already have illegal dumping. Can you regulate industry discharge to WTP under MS4 (no pretreatment regulations if not WOTUS)? (Response): There may be a biosolids requirement, and some commitment through APP.
- (Question): Can you expand APP? (Response): This may be an option.
- (Question): Can't you just say Arizona will use the previous WOTUS definition? An interim rule to follow either the 2015 or 1986 definition until there is a new program? (Response): It is not up to ADEQ to make this determination, rather this is a legislative decision. People can impact the process through their legislators.
- (Question): What if wetlands cannot be used for mitigation? What will the U.S. Army Corps of Engineers do? (Response): We don't know how the Army Corps of Engineers will respond.
- (Comment): ADWR water rights regulations do not allow for downstream degradation. Is there some state authority that could be used in conjunction with this regulation?
- (Comment): There is always a civil lawsuit option.
- (Question): Does any other state do something similar to Oregon? (Response): Many water-rich states are not impacted. More arid states have robust existing state authority. New Mexico is in a similar situation to that as Arizona. We expect to have addition conversations.
- (Question): Are permittees elsewhere getting both state and federal permits? (Response): Utah regulations, for the most part, are under waters of the state authority. This process is not duplicative, but provide for similar permits under a different authority.
- (Question): Will Arizona get in trouble with other states? (Response): We are engaging the Attorney General's Office to understand how lack of regulations would affect Arizona's relationship with other states and tribal nations.
- (Question): What does this look like moving forward? Does mydeq website shut down? What's the worst-case scenario? (Response): We would expect some permittees to continue to be compliant; however, they would have the right not to do so.
- (Comment) We will still have new MSGP, but it will not be enforceable.

Baggiore encouraged attendees to contact him directly or through watersofarizona@azdeq.gov with any additional comments, particularly ideas to fill the gap. He thanked attendees for their time and input, and said that he looked forward to continued engagement.

ADEQ ACTION ITEMS

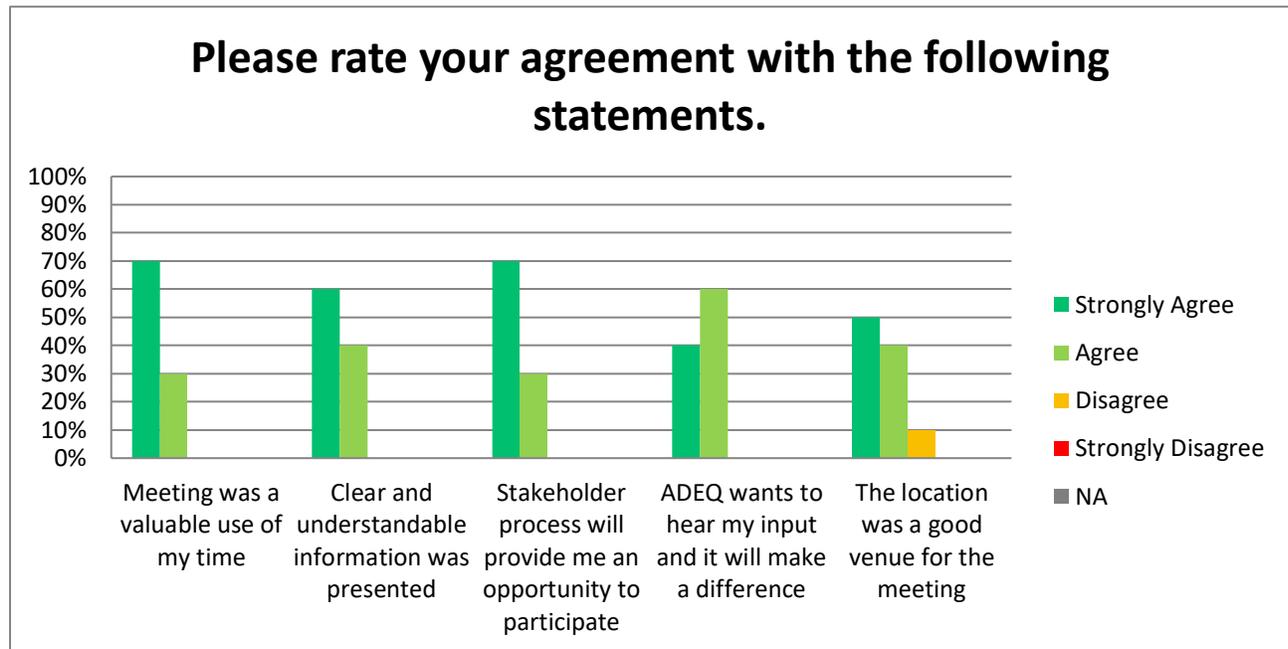
- ADEQ to consider where seasonal water types should be captured in uses and types of waters.

ADEQ STAKEHOLDER MEETING EVALUATION RESULTS

Ten 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?

- I think this is a very important effort for the state on the order of the Aquifer Protection Permit Program.
- Multiple different perspectives. Talking about specific issues municipalities face.
- Participation.
- Very informative and presents well.

What should be changed for future meetings?

- Break into groups: surface water quality standards, permit program, fees (but could be similar to AZPDES program).
- Lower volume of microphone, add more tables.
- Microphone too loud.
- Not sure. I think it was very well presented.

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

NAME	ORGANIZATION
SANDY BAHR	Sierra Club
BRENDA BALL	AK Chin Indian
TRICIA BALLUFF	City of Phoenix
JOSH BLAKEY	City of Phoenix
JEREMY BROWNING	GOUGROUP
SILVANA BURGOS	City of Glendale
SUSAN BUTLER	City of Scottsdale
CHRIS CONNOR	Chandler
KEVIN COSTELLO	Pinal County
LEE DECKER	Gallagher and Kennedy
EILEEN DUNN	ADOT
NICHOLE ENGELMANN	FWS
FREDERICK ENNIN	Drake
DENNIS ERICKSON	DEMA
MELANIE FORD	City of Phoenix
LONNIE FROST	Pinal County
ISRAEL GARCIA	ADOT
TRICIA GERRODETTE	(did not provide)
ANDREA HAMILTON	Town of Queen Creek
HILARY HAZTLINE	City of Phoenix
KRYSTAL HEYER	City of Scottsdale
JILL HIMES	(did not provide)
BOB HOLLANDER	City of Peoria
CHRISTINA HOPPE	Tempe
BRETT JASPERS	KJ22
MICHELLE KAMIKAWA	SWGAS
BERAI KIMBALL	City of Phoenix
SCOTT KOZAKIEWICZ	DEMA
JIM KUDLINSKI	Salt River Project
BRIAN LAMB	WestLand Resources Inc
ANDREA LOVE	City of Phoenix
JULIA MAMFREDI	ADOT
MARISA MANHEIM	ASU
MEGAN MARTIN	SRP
AUTUMN MARTINEK	Maricopa County Env. Serv.
AMANDA MCGENNIS	AZAGC
CHELSEA MCGUIRE	AZ Farm Bureau
JOHN MEYER	City of Mesa
JEREMY MILEUS	City of Tempe
KATOSHA NAKAI	Strikland and Strikland
LAURA NORDAN	ADOT
LINDA PALUMBO	City of Phoenix
MARINELA PAPAKONOMI	Maricopa County
MIKE PLOUGLE	SRP
DANIEL PORTH	AZ DEMA

NATHAN REES	Trout Unlimited
AMANDA REEVE	Snell and Wilmer
CECILIA RIVIERE	ASU
DAVE ROSALES	AZ DEMA
MEGAN SHELDON	City of Glendale
RAMONA SIMPSON	Town of Queen Creek
REBECCA SYNDOR	Wood Ple
SCOTT THOMAS	Fennemore Craig Law
MEGAN TRACY	City of Tempe
WILLIAM TURNEV	Maricopa County Env. Serv.
JERRY WORSHAM	Cavanagh Law
VINNIE WRIGHT	(did not provide)
DUANE YANTORNO	Asarco

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