



MEETING SUMMARY

ADEQ WATER QUALITY DIVISION WATERS OF ARIZONA TRIBAL LISTENING SESSION/PHOENIX

DATE: Nov. 12, 2019 **TIME:** 10 a.m.-12 p.m.
LOCATION: Gateway Community College, South Building Room 1330, 108 N 40th Street, Phoenix

STAKEHOLDER ATTENDEES (Attached)

ADEQ STAFF

Mike Keyack
Trevor Baggione
Justin Bern
Ben Bryce
Len Drago
Rik Gay
Mark Joyner (Flag?)
David Lelsz
Rhona Mallea
Krista Osterberg
Meghan Smart
Patti Spindler
Trey Dempsey
Cody Maynard

ADDITIONAL ATTENDEES

Kelly Cairo, GCI
Theresa Gunn, GCI

AGENDA

The complete agenda is available online and includes:

- Welcome
- Review Agenda and Introductions
- Overview of the WOTUS Rule change
- Listening Session
- Next Steps

WELCOME

Facilitator Theresa Gunn welcomed attendees to the meeting and provided webinar directions for those participating online.

ADEQ Water Quality Division Director Trevor Baggione thanked attendees for participating in the meeting. He introduced the welcome message (available at <https://www.youtube.com/watch?v=qPHMxe1Bqus&feature=youtu.be>) from ADEQ Director Misael Cabrera.

REVIEW AGENDA AND INTRODUCTIONS

Len Drago, tribal liaison, explained that this meeting is a listening session to hear from tribal participants on their concerns related to Waters of Arizona (WOAZ).

Drago facilitate introductions. Approximately 15 stakeholders attended the meeting, with at least 11 participating in person and three via webinar.

OVERVIEW OF THE WOTUS RULE CHANGE

Baggiore presented, Need for a Waters of Arizona Program. He explained that the presentation is designed to provide background information about the expected WOTUS rule change, and that the purpose of the meeting was to hear from tribes. He pointed out the definitions handout, and encouraged attendees to ask questions during the presentation. Highlights of comments, questions, and responses included:

- EPA expects the final rule to be issued in January, and it would go into effect 60 days after it appears in the Federal Register.
- ADEQ has the authority to set and enforce standards some for surface water quality. ADEQ does not have authority to set standards, enforce and issue permits for waters currently under the CWA as WOTUS.
- Other states use the same authority to regulate waters at the state level.
- It is likely lawsuits will be filed – whether a stay will occur is unknown. This is our opportunity to plan for and protect waters in Arizona.
- Tribes and the state of Arizona will need to plan what waters will need to be protected, and how should these waters be protected.
- This is the very beginning of the process. We believe we need a program to comprehensively protect waters.
- (Question): What's the interplay between the timing of the 404 assumption and the definitions of waters. (Response): We recognize that definitions will affect the 404 program. We have asked for input on whether ADEQ should pursue the program by Nov. 18.
- (Question): Are you only looking for feedback from 404 permittees? (Response): If applicants that would be regulated do not want an ADEQ program, we will not pursue assumption. If the applicants support ADEQ assumption, then we would look to additional discussion from all parties.
- (Question): Is there a revision to tribal policy? (Response): Drago explained that the current policy is from 2003 and needs to be updated. A meeting with ADEQ leadership is planned for the week of Nov. 18 to discuss how to move forward. The department has learned that it needs to understand what consultation means to each tribe. The success of a tribal policy will be dependent on input from the tribes. The current policy only describes how ADEQ interacts with tribes.

LISTENING SESSION

Drago explained that ADEQ recognizes that listening sessions are not consultation. Letters requesting consultation have gone out to the tribes. These meetings represent the first listening sessions for Waters of Arizona. Drago encouraged attendees to share the invitation to participate in consultation with other tribal nations. In addition to comments about WOAZ, Drago asked for input on how tribes would like to be contacted.

Drago also noted that other tribes indicated that land leases could be used to help protect water.

Highlights of attendees' questions and comments include:

- Like that ADEQ is being proactive in this approach to WOAZ.
- Salt River Pima is seeking authority for 303 and 401 programs.
- Will ADEQ proceed with a state program if the federal definition is stayed?
- The Ak Chin council receives a lot of letters requesting consultation. It is better to also contact the environmental directors and follow up with phone calls. We have a good relationship with ADEQ – it is better to first reach out to environmental staff.
- ADEQ should develop a clear list of who should be contact in each tribe and include these people with each communication.
- Ak Chin has water quality standards and draft standards under tribal authority. We are seeking treatment as a state. All water is ephemeral. We have concerns about drinking water wells. We receive CAP water and are concerned about the quality in canals and reservoirs.
- Some tribes mirror ADEQ standards. If ADEQ makes changes, this will cause a disconnect.
- Can't allow a situation to occur where there is no regulation.
- Water is culturally important. An original village along a wash can be impacted by discharges.
- Need to do something this legislative session.
- Recommend maintaining status quo until the rules are finalized.
- If there is no extension of the current definition, what authority will the state have? If there is no stay, all of Arizona will have to rely on the goodwill of sources.
- Salt River Pima regulations fall under leases. All Section 402 permits are on TNWs. Concerned about cross jurisdiction.
- The Arizona Administrative Code restricts discharges into specific (named) washes. See R18 11.23
- There is a cultural perspective not based on quality of water – it is putting water on the original village.
- If discharge to wash is allowed and storms occur, it could cause flooding.
- Tribes lose consultation under state historic preservation law. Should seek other means to allow for Section 106 consultation. Don't see an equivalent to Section 106 consultation in current state law. Arizona could step up by including consultation in forthcoming rulemakings.
- We all should consider a "wish list" of what could go into an upcoming law.
- Tribal concerns do not end at tribal boundaries.

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: State program effective

Baggiore noted that those in the room share his concern regarding lack of protection during the gap from the WOTUS effective date to a new rulemaking. While Governor Ducey stated that he looked forward to an Arizona program, ADEQ also requested EPA to provide additional time for Arizona to create a program.

Highlights of questions, comments, and responses include:

- (Question): Can we maintain status quo until legislation can go through? (Response): It is unlikely the department can get this into legislator's ears quickly enough.
- (Question): If we cannot get an extension from EPA, what authority would ADEQ have? (Response): Would have no authority to issue point source permits. Many companies may seek them, but they would not be required to do so.
- (Question): Would 404 permits no longer be required? (Response): Correct, 404 permits are for WOTUS waters.
- ADEQ could enforce *state* surface water quality standards; however, these standards do not exist at this time.
- (Comment): Legislative authority needs to occur as quickly as possible.
- Unless there is a stay on the new rule, ADEQ will not have authority. The stay would likely have to be a nationwide stay, or if a group demonstrates environmental harm.
- (Comment): Assuming the definition change occurs, Arizona would be relying on the goodwill of (current) applicants. (Response): The rumor from EPA is that a delay should not be anticipated.
- (Comment): I am very concerned about the protection gap for this length of time. (Response): ADEQ is also concerned about this gap. We are also interested in how tribes intend move forward to protect these waters.
- (Comment): Concerned that a previously denied permit by Ak Chin could now be allowed to a global water; however, protections in the Administrative Code do not allow this discharge. A discharge could be considered an effluent discharge, which the community could oppose since it flows through tribal land and is a drinking water source. (Response): There is some ambiguity in the 2019 new rule regarding a discharge in an ephemeral that would reach a TNW. However, in a constrained water, this argument not hold true.
- (Comment): If there are tribal standards, it may provide a way to disallow the discharge.
- (Comment): There are science vs. cultural concerns. The best analogy is taking pure water and spreading it on the pews of a church. (Response): In setting state standards, ADEQ will need to take into account environmental, economic and social perspectives in addition to the purely scientific water quality standards.
- (Comment): For the community, the treatment of the effluent water is an issue. Would not want to allow treated effluent or stormwater to flow on cultural resource locations.
- (Comment): It is important that a future program is not less protective than the current program.

Baggiore reminded attendees that ADEQ is not pursuing authority. ADEQ is reacting to a change in federal law.

He thanked attendees for providing thoughtful comments, and expressed his appreciation for helping the department understand the concerns. He noted that since ADEQ does not yet have a proposed program, the department is not seeking "feedback," but rather input in developing that future program. He asked

attendees to continue to provide input via email and to sign up to receive future notices. Baggioire noted that the department would welcome the opportunity to consult with tribal leadership and environmental representatives.

Gunn invited stakeholders to attend the afternoon session if they wished. The session will include a similar presentation, with additional interactive activities.

Drago thanked the group for providing productive comments.

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

NAME	ORGANIZATION
BRENDA BALL	AK Chin Indian Community
JACK CONOVALOFF	San Juan Southern Paiute Tribe
SARAHNAN COOPER	Salt River Pima Maricopa Indian Community
RORY HAYS	City of Phoenix
MIA HAMMERSLEY	Inter-tribal Association of Arizona
JASON JAMES	NACOG
JUSTINE JIMMIE	Dept. of Justice San Carlos Apache Tribe
JENNIFER MARTIN	Sierra Club
REGINA MASON	Salt River Pima Maricopa Indian Community
BIANCA MEZA	Arizona State University
ISMENE MEZA	(did not provide)
KATOSHA NAKAI	Strikland and Strikland
WILLIAM NIEBLING	LIPPES
BRIDGET SANDATE	AK Chin Indian Community

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