

REVIEW AGENDA AND INTRODUCTIONS

Gunn provided webinar instructions to those participating online and welcomed attendees. She explained that the purpose of the meeting was for ADEQ share information regarding what is known about the WOTUS definition change and obtain input in development of a Waters of Arizona (WOAZ) state program.

Gunn facilitated introductions. At least 47 stakeholders attended the meeting, with at least 31 participating in person and 16 via webinar. Some stakeholders may not have provided their names.

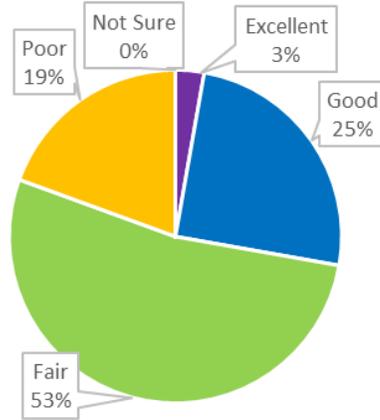
NEED FOR A WATERS OF ARIZONA PROGRAM

ADEQ Water Quality Division Director Trevor Baggiore thanked attendees for participating in the meeting. He stressed the importance of understanding how this change at the federal level is going to impact Arizonans at the state level.

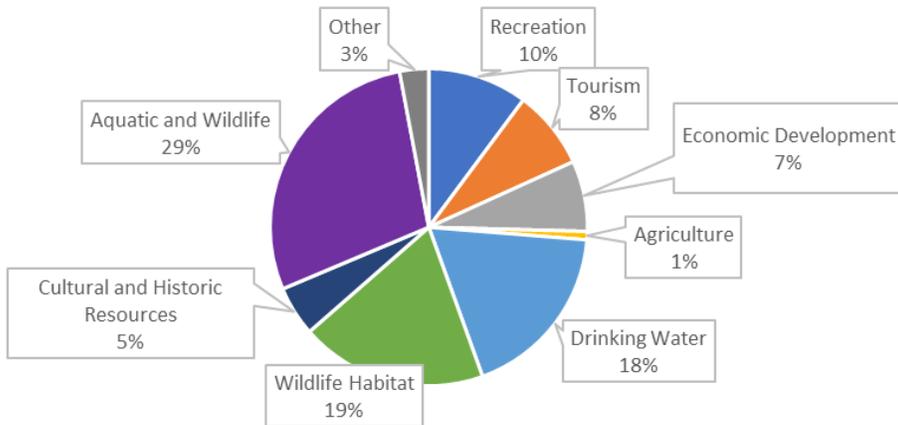
Baggiore presented Need for a Waters of Arizona Program. He explained that the presentation is based on EPA's draft proposed definition of Waters of the United States (WOTUS). He pointed out the definitions handout, and invited attendees to ask questions. Highlights of comments, questions, and responses included:

- (Question): What waters are considered traditionally navigable waters (TNW) in Arizona? (Response): Two segments of the Santa Cruz and two segments of the Gila River are TNWs. Other waters, such as the Colorado River, are considered TNW, but have not been officially identified as such.
- (Question): What waters will be covered by this division of ADEQ versus others? (Response): All ADEQ water programs are part of the Water Quality Division, of which Baggiore is the director.
- (Question): ADEQ lacks authority to issue point source permits. Have there been efforts to let the Legislature know this issue needs to be addressed? (Response): Yes, ADEQ has made leadership and some legislators are aware. We are at the early stages. Before the agency receives point source permitting authority, we want input on which waters should be regulated and how they should be regulated.
- This is our opportunity to react to the federal change.
- It is likely lawsuits will be filed on the new WOTUS rule, but it is unknown whether the result will be stayed.
- Association of Water Administrators members were polled regarding the survey question in the presentation.
- (Question): The current regime does not recognize unique Arizona waters, such as subsurface water flows. What will surface waters include? (Response): Arizona's Aquifer Protection Program (APP) is used to protect grounds water. APP is not part of the Clean Water Act (CWA), therefore it is not affected by the WOTUS definition change. We want to hear from you as to which water bodies should be regulated and how.
- (Question): ADWR recognizes subsurface waters as part of surface waters. Will ADEQ? (Response): We don't know yet.
- (Question): Significant nexus through Army Corps of Engineers is already changing how waters will be affected. Will you still pursue a Waters of Arizona program? (Response): New administrations often undo previous actions. We should protect Arizona's waters that need to be protected. Baggiore agreed that it was his interest in making sure waters that need to be protected are protected; however, he could only do so with statutory authority.

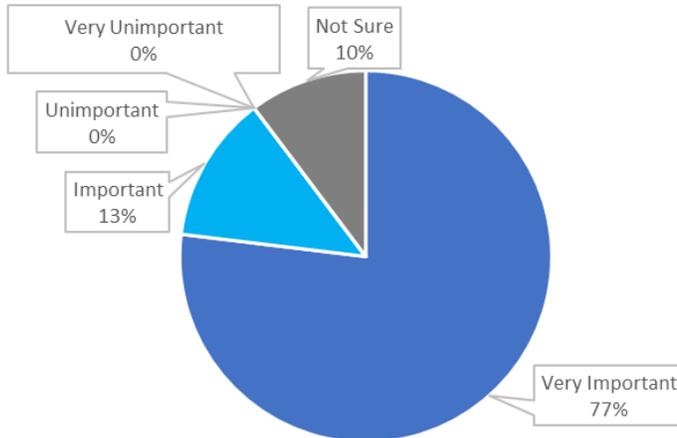
How well do the current regulations protect Arizona surface waters?



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?



Highlights of additional comments, questions and responses included:

- (Comment): The scope seems fuzzy. Arizona is missing standards for maintaining water quantity.
(Response): ADEQ only has authority over water quality. ADEQ has initiated meetings with others, such as ADWR, about how this change would affect Arizona.
- (Comment): Government needs to address water quantity needs to holistically.
- (Comment): Some people equate water quality with quantity, and this may be represented in the poll results.
- Gunn solicited causes for the fair rating regarding how well current regulations protect Arizona surface water, which included lack of oversight and lack of enforcement.
- (Comment): Construction and its effects can be a cause, e.g. the effect on the San Pedro.
- (Comment): Each water use affected by poor water quality comes back to water quantity.

Gunn directed attendees to use the comment form if they did not provide responses by text and encouraged people to continue to provide input by taking advantage of the email address and continuing to list considerations.

SMALL GROUP DISCUSSIONS

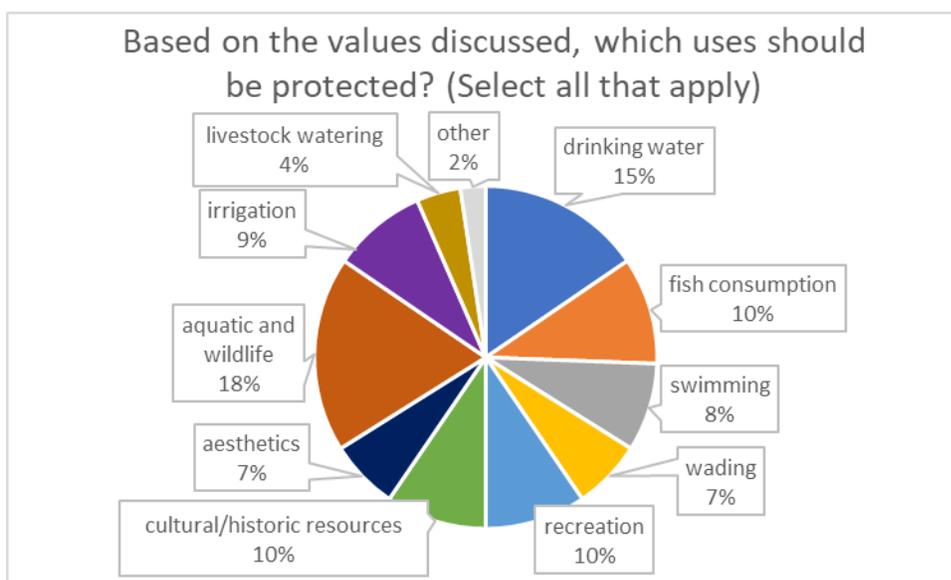
Gunn asked attendees to discuss and list issues as noted below. She explained that guiding principles have been used successfully in the past to develop solutions and new programs.

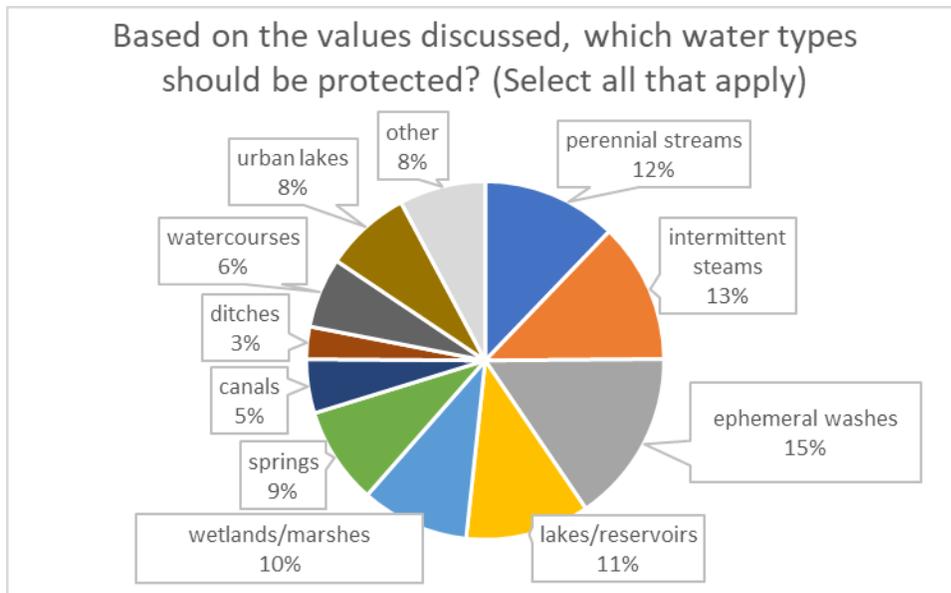
- What are potential issues to consider when developing a state program?
- What are potential causes?
- What are the values which should be used to guide the development of the program?

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

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 and responses included:

- While there is not currently a clear definition of a watercourse, it is part of the definition of waters of the state.
- (Comment): Ephemerals may be receiving high responses since we are aware they will no longer be included as WOTUS.
- Gunn solicited feedback regarding the selection of other water types that should be protected. Responses included:
 - Effluent-dominated waters
 - Connected to subsurface water
 - Catchment areas
 - Mine pit lakes

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:

- APP might be able to assist in filling the gap.
- Tribal nations will have some of the same problems of the state of Arizona and indicated in a previous meeting that some tribes may be able to use their authority over those who lease land from them to require water protection.

- Oregon asked their legislature to provide the state with the same authority as that they received under the CWA.
- In Arizona's letter to EPA, the state requested transition time in order to establish a state program. While Baggiore is hopeful for a positive response, it seems unlikely this request will be granted.
- There has been a suggestion to regulate waters such as ephemerals under solid waste rules.

Highlights of additional question, comments, and responses included:

- (Question): How would a stay affect Arizona? (Response): We don't anticipate the Arizona Attorney General's Office participating in a lawsuit. Arizona would be required to demonstrate harm. Any national stay would be effective in Arizona.
- (Question): How will current AZDPES permits be affected? (Response): ADEQ will not unilaterally discontinue permits. However, permits would no longer be required and Arizona could not enforce them.
- (Question): Would the permit shield still be in effect, which protects permittees from lawsuits? (Response): if there is no longer an underlying regulation, ADEQ can no longer enforce permits. There may be other nuisance laws under which people could initiate lawsuits. ADEQ would rather be proactive than reactive.
- (Question): How will you pay for this program? (Response): Today, ADEQ collects permit fees for AZPDES and receives federal grants. There would not be an initial change in grant funding.
- (Question): How will you pay for the Section 404 Program if essentially no waters are included? (Response): WOTUS changes the math of this program as well. Cost and revenue would both be reduced, regardless of whether the 404 program is through ADEQ or the Corps.
- (Question): Do costs make it more important for ADEQ to develop a WOAZ program? (Response): The department's mission is to protect human health and the environment. The purpose of program development is not to bring in more money, it is to address what waters need to be regulated and how.
- (Question): Are ephemerals waters of the state? (Response): It's not yet clear. We want to have clarity about how ephemerals are regulated.
- (Question): Would you create definitions in statute? (Response): We would need to include specifics on which waters are regulated and how.
- (Comment): The scope and complexity of regulations would become monumental if you were working on a fee-based program. (Response): We would prefer some other source of revenue for program management.
- (Comment): Defining ephemerals will help prevent future litigation.

Baggiore requested input on how to manage gap between the WOTUS definition change and a future ADEQ WOAZ program. Highlights of additional question, comments, and responses included:

- (Comment): Get emergency authority from legislature. (Response): While ADEQ has some influence, is not the role of ADEQ or Baggiore to propose bills. It would be helpful for people to talk to their elected officials and let them know waters need to be protected.
- (Question): Is there support from state leadership to pursue a similar approach as that of Oregon in determining all waters are CWA-regulated?

- (Question): Can you set standards as stringent as federal standards? (Response): Waters under CWA jurisdiction may be only as stringent as federal standards and not more stringent in Arizona.
- (Comment): It is possible the effects will be more serious than expected. Any work that occurs may or may not be effective between now and November of 2020. I think it is very important to obtain power in the interim. I support ADEQ having stop-gap authority in the interim.
- (Question): Do local jurisdictions have the authority to regulate surface waters? (Response): We are not aware of any other regulations that would allow them to do so in absence of a state program.
- (Question): Could you explain impact thresholds? (Response): Under the Clean Air Act, minor dischargers are not regulators. This approach would require a change in the CWA.

Gunn urged attendees to provide additional input via the project email and to sign up for the mailing list. She encouraged attendees to pass along mailing list requests and other information to others.

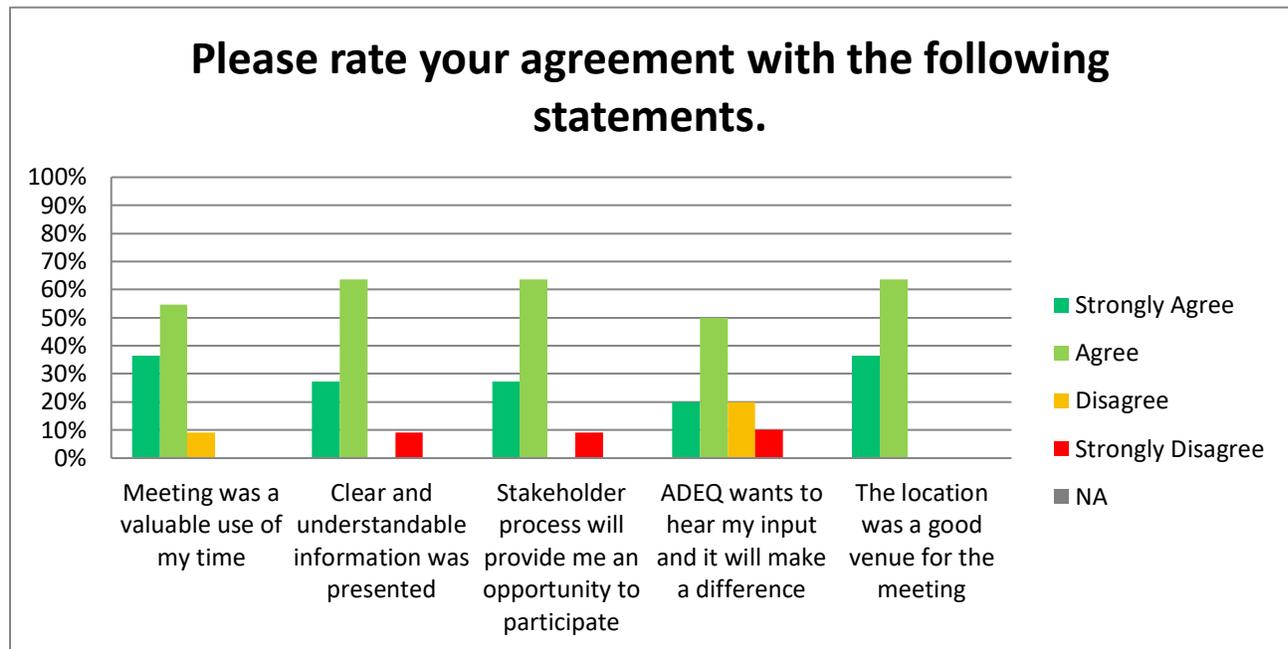
Baggiore thanked attendees for their time, and said that he was looking forward to additional interaction in the future.

ADEQ STAKEHOLDER MEETING EVALUATION RESULTS

Twelve 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?

- Connecting with other stakeholders.
- Dialogues at the table
- Good outline of issues.
- Interaction.
- Learning.
- Presentation on effects of new role, Q&A.

What should be changed for future meetings?

- Better microphone setup
- Try to mix pre-registrants between tables so that table discussions are between strangers and/or people from different agencies/backgrounds/perspectives.
- Fewer table exercises.
- How to engage other people who aren't paid to attend or who aren't retired.
- Increase advertisement and sufficient advertising time before next meeting.
- Would like to know affiliation of people on the phone.

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

NAME	ORGANIZATION
ELBERTO ACOSTA	City of Douglas
ANN AUST	San Pedro Water Sentinels
KIMBERLY BAEZA	PDEQ
ROBIN BARNES	Asarco
ANDY BENNETT	(did not provide)
LAURA BERGLAN	Pascua Yaqui Tribe Office of Attorney General
AMANDA BEST	Westland Resources
RION BOWERS	Bowers Environmental Consulting
MICHAEL CABRERA	Pima County Regional Flood Control District
CAROLYN CAMPBELL	Coalition for Sonoran Desert Protection
MICHAEL CARLSON	ADOT
JONEEN COCKMAN	Bureau of Land Management
LUKE COLE	Sonoran Institute
RYAN FITZPATRICK	US Army
JULIA FONSECA	Pima County
TRICIA GERRODETTE	(did not provide)
NICOLE GILLET	Tucson Audubon Society
STAN HART	Save the Scenic Santa Ritas
DAN HAWS	US Army
JOYANN HERNANDEZ	Raytheon
CHRIS HIGGINS	US Army
KARL HOERIG	Pascua Yaqui Tribe Historic Preservation Office
KATHY HUCKFELDT	SMCFD No. 1
DARCY KOBER	Maricopa County
JOHN KOLANZ	(did not provide)
ALEISA KRUG	Raytheon
MARIE LIGHT	Pima County
DAVID MACK	ADOT
ROGER MCMANUS	Friends of the Sonoran Desert
THOMAS MEIXNER	University of Arizona
MEAD MIER	PAG
AMY MIGNELLA	White Mountain Apache Tribe
MELANIE MIZELL	(did not provide)
MATT OLLER	Maricopa County
JOHN PERRY	(did not provide)
KATE RAO	EPA
MILLIE RAPP	TEP
KARLA REEVE-WISE	PDEQ
SHARON REID	San Pedro NRCD
JACKIE RONSTADT	PDEQ
IVY SCHWARTZ	Community Water Coalition of Southern Arizona
JANA SEGUL	Sustainable Tucson
WILLIAM TURNER	Maricopa County
JENNIFER VARIN	Coronado NF
JARED VOLLMER	EPA

CALEB WEAVER
KEN WYSOCKI

Borderlands Restoration Network
EPA

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