



MEETING SUMMARY

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

DATE: Nov. 14, 2019 **TIME:** 1:30-3:30 p.m.
LOCATION: YWCA Main Campus, Board Room, 525 N. Bonita Ave., Tucson

STAKEHOLDER ATTENDEES (Attached)

ADEQ STAFF

Trevor Baggiore
Justin Bern
Ben Bryce
Len Drago
Rik Gay
Hans Huth
David Lelsz
Rhona Mallea
Krista Osterberg
Meghan Smart
Patti Spindler

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.

REVIEW AGENDA AND INTRODUCTIONS

Len Drago, tribal liaison, facilitated introductions. Seven stakeholders attended the meeting, with two participating in person and five via webinar.

OVERVIEW OF THE WOTUS RULE CHANGE

ADEQ Water Quality Division Director Trevor Baggiore presented, Need for a Waters of Arizona Program.

Highlights included:

- The presentation is designed to provide background information about the expected WOTUS rule change.
- The purpose of the meeting is to hear from tribes.
- A Flagstaff tribal member pointed out that 80 percent of water in Arizona either originates in or flows through tribal lands.
- The meeting is not consultation. ADEQ wants to consult with tribes in addition to conducting these listening sessions.
- Want to discuss what ADEQ and tribes are doing to respond to this change and how to move forward.

LISTENING SESSION

Drago asked attendees to consider how the changes will affect tribal waters. He explained that the department is also interested in input regarding how tribes intend to address this issue. He requested input on how attendees would like to be engaged regarding consultation, and whether they liked the regional approach to conducting listening sessions.

Highlights of questions, comments, and responses include:

- Pascua Yaqui is waiting to see what happens regarding the anticipated definition. Black Wash is an ephemeral on trust lands. The tribe is concerned about sheet flooding.
- Water is of critical importance to the nation.
- What does ADEQ consider necessary to protect water?
 - This varies by waterbody and includes standards for a healthy waterbody.
- Protecting the supply of water is important.
- Some discussions regarding an approach to the change in the WOTUS rule have occurred at ITCA meetings.
- In addition to contacting those on the SHPO list, which includes the chair or president of each tribe, ADEQ should contact general counsel, the tribe's Office of the Attorney General, THPO, and environmental representatives.
- The WOTUS rule change is substantive and seems like this is insurmountable in moving the 404 assumption process forward.
 - ADEQ has requested input by Nov. 18 and hopes to announce the direction the 404 program will take within a few weeks. To date, feedback from applicants and non-applicants is that ADEQ should not move forward; however, it is uncertain as to whether the existing feedback is representative.
- What if governor or Legislature say ADEQ should assume the 404?
 - They can, of course, do what they wish. It is not ADEQ's intent to force an ADEQ program on applicants.
- Who will ADEQ report to regarding 404 assumption?
 - While there is no obligation to report, information will be reported to the governor's office. Authority was stated as "may" pursue (not "shall" pursue). ADEQ also intends to widely broadcast follow up information.

- Are you considering the possibility of a state/WOAZ 404 process?
 - Should WOTUS be changed as anticipated, there may need to be some kind of state program to protect waters.

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 asked about ideas to fill the timeline gap. He said that while ADEQ has requested delayed implementation from EPA, it is not likely to will occur. He also asked each nation to consider how ADEQ might assist in conducting these conversations with their leadership, and if they had considered liability concerns of a state impacting a tribe or tribe impacting a state.

Highlights of suggestions, questions, and responses include:

- Seek emergency authorization, e.g. regulate as we do today and then move forward with setting state water quality standards.
- On leased tribal lands, tribes able to require protections.
- To fill the timeline gap, use the Oregon approach this legislative session with a sunset in 2023 and/or to not take affect if there is a stay.
- In coordinating with tribal leadership, it will be helpful to know ADEQ's the direction would be helpful.
- Recommend providing comprehensive information and assume no knowledge of the technical issues when talking with tribal leadership.
- Tohono O'odham requested tribal consultation.
- Pascua Yaqui waters of concern include Black Wash and sheet flooding.

Drago thanked attendees for their participation and said that he appreciated the input received.

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

NAME	ORGANIZATION
LAURA BERGLAN	Pascua Yaqui Tribe Office of Attorney General
CAROLYN CAMPBELL	Coalition for Sonoran Desert Protection
KARL HOERIG	Pascua Yaqui Tribe Historic Preservation Office
AMY MIGNELLA	White Mountain Apache Tribe
VANESSA NOSIE	San Carlos Historic Preservation and Archaeology Department
CHRISTINE SCHWAMBERGER	Tohono O'odham Nation
JARED VOLLMER	EPA

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