



# MEETING SUMMARY

## ADEQ WATER QUALITY DIVISION WATERS OF ARIZONA FLAGSTAFF STAKEHOLDER MEETING SUMMARY

**DATE:** Nov. 7, 2019

**TIME:** 10 a.m.-12 p.m.

**LOCATION:** Coconino Community College, Board Room, 2800 S. Lone Tree Road, Flagstaff

### STAKEHOLDER ATTENDEES (Attached)

#### ADEQ STAFF

Trevor Baggiore  
Justin Bern  
Ben Bryce  
David Lelsz  
Rhona Mallea  
Morgan O'Connor  
Krista Osterberg  
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 provided directions to those on the webinar. Questions sent through the webinar question function, or to the Waters of Arizona (WOAZ) email address ([watersofarizona@azdeq.gov](mailto:watersofarizona@azdeq.gov)) will be read aloud to the group.

Gunn facilitated introductions. At least 21 stakeholders attended the meeting, with at least 18 participating in person and three via webinar. Some stakeholders may not have provided their names. 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.

ADEQ Water Quality Division Director Trevor Baggione thanked attendees for participating in this meeting. He pointed out the definitions handout, and encouraged attendees to ask questions about any terms.

### **NEED FOR A WATERS OF ARIZONA PROGRAM**

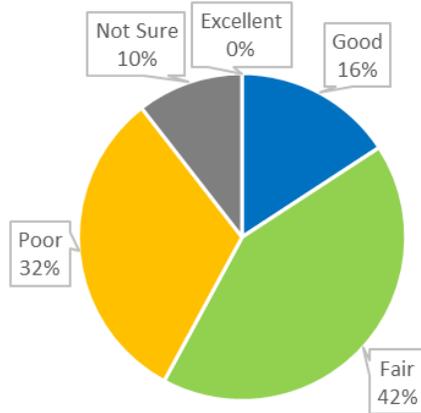
Baggione presented Need for a Waters of Arizona Program. He explained that the presentation is based on EPA's draft proposed definition of Waters of the United States (WOTUS). The final rule is expected to be announced in late-December or early January and become effective in late spring of 2020. Highlights 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.
- (Question): Would the Santa Cruz no longer be regulated under the new WOTUS rule? (Response): If the Santa Cruz is a traditionally navigable water (TNW), it would be regulated under WOTUS. However, we do not have a definition of TNW in Arizona, and ADEQ is seeking clarity. There are multiple definitions of navigable. At this point, the U.S. Corps of Army Engineers determines what is a TNW, though at some point the state may make this determination.
- It is likely lawsuits will be filed on the new WOTUS rule, which may result in a stay.
- The definition of intermittent is used in the WOTUS rule and ADEQ has used it.
- Arizona and many other states use the Clean Water Act (CWA) to protect surface water.
- (Question): What information was used to determine 98 percent of AZPDES permits would be affected? (Response): ADEQ has done some analysis on permits and types of waters and used GIS analysis to make this determination.
  - Action item: ADEQ to review analysis prior to providing public access to the document.
- ADEQ is looking for input on issues to be included or considered in a WOAZ rule.
- ADEQ would need to pursue statutory authority, as the department does not have surface water permitting and enforcement authority at the state level.
- (Question): Over 80 percent of stream flow originates in or flows through tribal lands. Where do tribes fit in as far as Waters of Arizona? (Response): EPA is essentially giving ephemeral waters back to states. Tribal waters will be up to tribes to regulate. ADEQ is seeking feedback about how tribes would like to work together. Questions we will need to discuss include: *Should we regulate these waters, and if so how?*
- (Question): How does the state view the tribes' jurisdictional position? There could be a higher risk of tribal/state legal conflict. Trust obligations of federal government do not go away. A triangular relationship will be created. (Response): Waters that are no longer considered WOTUS through the CWA could become complicated. These are precisely the types of issues ADEQ needs to consider in establishing a state program.

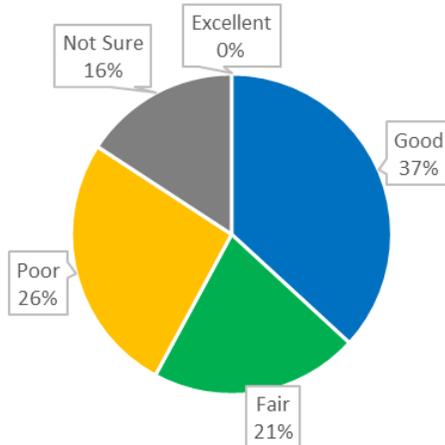
### **UNDERSTANDING CURRENT STATE OF ARIZONA WATERS**

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

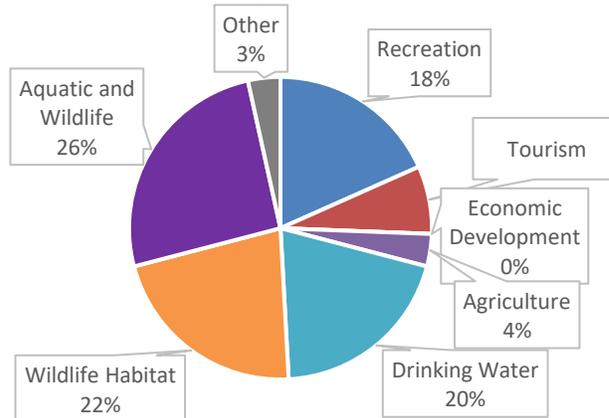
Overall, how would you rate the QUALITY of water in Arizona rivers and streams?

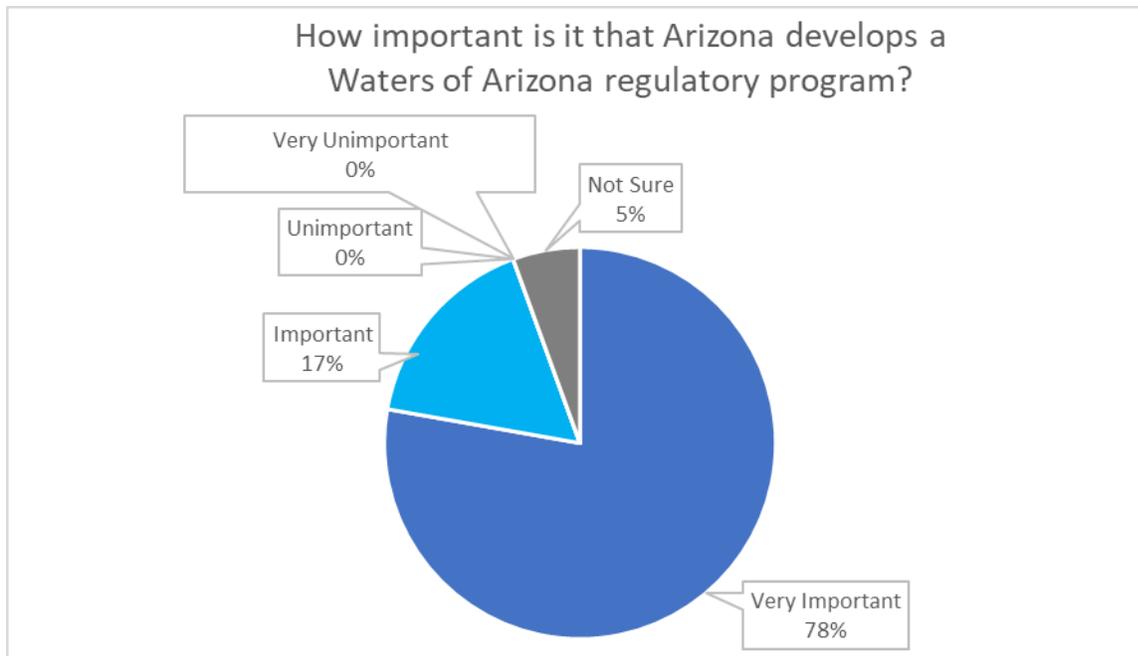


How well do the current regulations protect Arizona surface waters?



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





Highlights of additional comments, questions and responses included:

- (Comment): I provided a “fair” response to current water quality in Arizona rivers and streams due to trash in washes
- (Comment): I don’t think it’s meaningful to only select three areas affected by poor water quality.
- (Question): Can an Arizona program be more stringent? (Response): Regarding the discussion of newly non-jurisdictional waters, Arizona cannot be more stringent than a *federal* program. Because the WOTUS definition would be narrowed, these waters would no longer be part of a federal program.
- (Question): Will any state-level CWA have to include the promotion of Economic Development as a main pillar in order to ensure it aligns with the new federal rules? (Response): If the rule passes, a state program would be uncoupled from the CWA and there would be no responsibility toward federal regulations and newly non-jurisdictional waters.
- (Comment): I would like to see a question about what people see as contributions toward poor water quality. This should influence how ADEQ develops its program. (Response): This is an excellent insight and will be incorporated into future questions.

### **SMALL GROUP DISCUSSIONS**

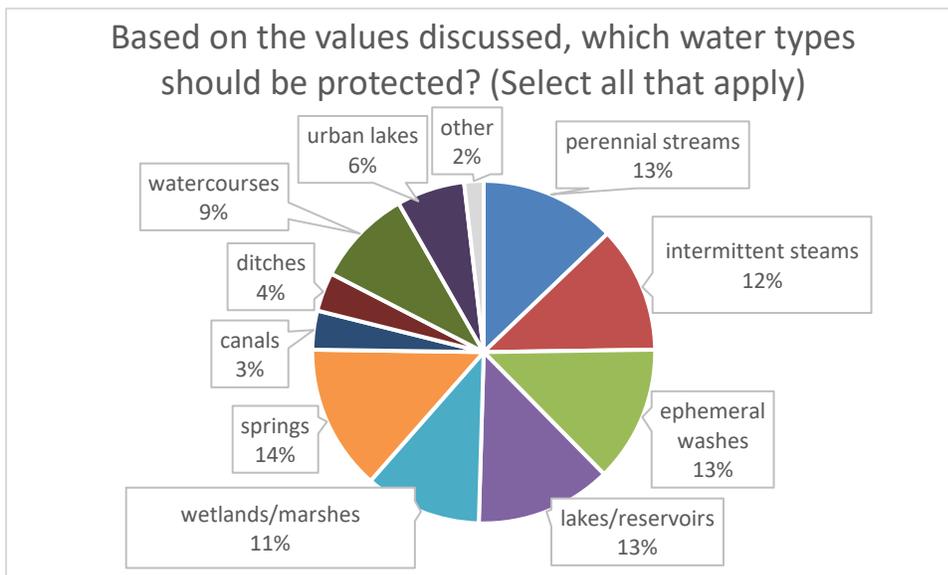
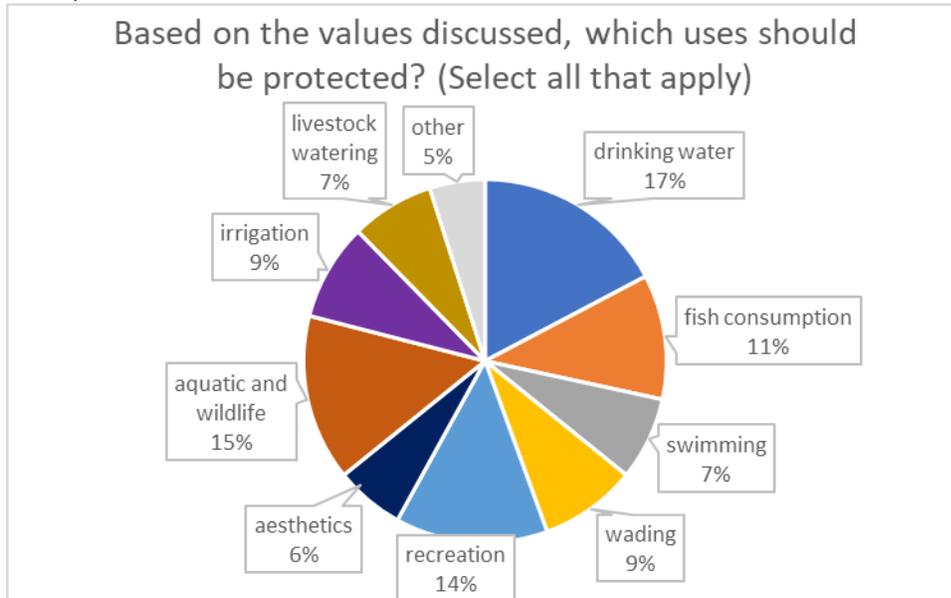
Gunn asked attendees to discuss and list issues as noted below.

- 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, questions and responses included:

- (Comment): Additional options for uses that should be protected should be considered, such as
  - Cultural
  - Non-use (e.g. people that have never visited the Grand Canyon want it protected nonetheless)
  - Human use
  - Water storage
- (Comment): Additional water types might include
  - Stock ponds
  - Wildlife impoundments

- All of those may be habitat. Might they require protections under the Migratory Birds Act, or other similar regulations?
- Since ADEQ is writing this rule from the ground up, the department can use, or not use, as much from the CWA that they choose.
- (Comment): Consider components of a new program that don't require new legislation and develop that option in parallel (but separately) with components that require legislation.

## **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

Highlights of additional comments, questions and responses included:

- (Question): What are the logistics of permits once the WOTUS rule is finalized? (Response): There will have to be communication between ADEQ and regulated parties.
- (Question): Need a gap action, shouldn't there be a bridge to protect water? Is the agency proposing a temporary continuation? (Response): This would need to occur through the Legislature. ADEQ does not have the authority to continue CWA. ADEQ requested delayed implementation. ADEQ may advocate and request, but does not have authority to implement policy without authorization.
- (Comment): States' interests still need protecting. To leave a gap of "nothing" is very imprudent. Why would permittees even listen to ADEQ if the department has no authority?
- For the most part, discharges to ephemerals will no longer be regulated. ADEQ's primacy is dependent on the CWA. If the definition, as part of CWA changes, ADEQ cannot regulate. ADEQ can determine water quality standards.
- (Comment:) Tribes have their own water quality standards. The state should not just look at state waters. Trust obligations of the federal government do not go away with changes to the WOTUS definition.
- Baggiore said that states are not signing an MOA with EPA regarding the new WOTUS rule. He agreed that the three-year timeline for ADEQ to create a rule for protecting waters previously considered WOTUS is problematic.
- (Question): What if the WOTUS rule is not approved, or changed? (Response): Future administrations can always negate rules implemented during a previous administration.

Gunn urged attendees to provide additional input via the project email and to sign up for the mailing list. Baggiore thanked attendees for their time, and for providing the hard questions and perspectives that will help ADEQ understand issues related to the future WOAZ program.

## **ADEQ ACTION ITEMS**

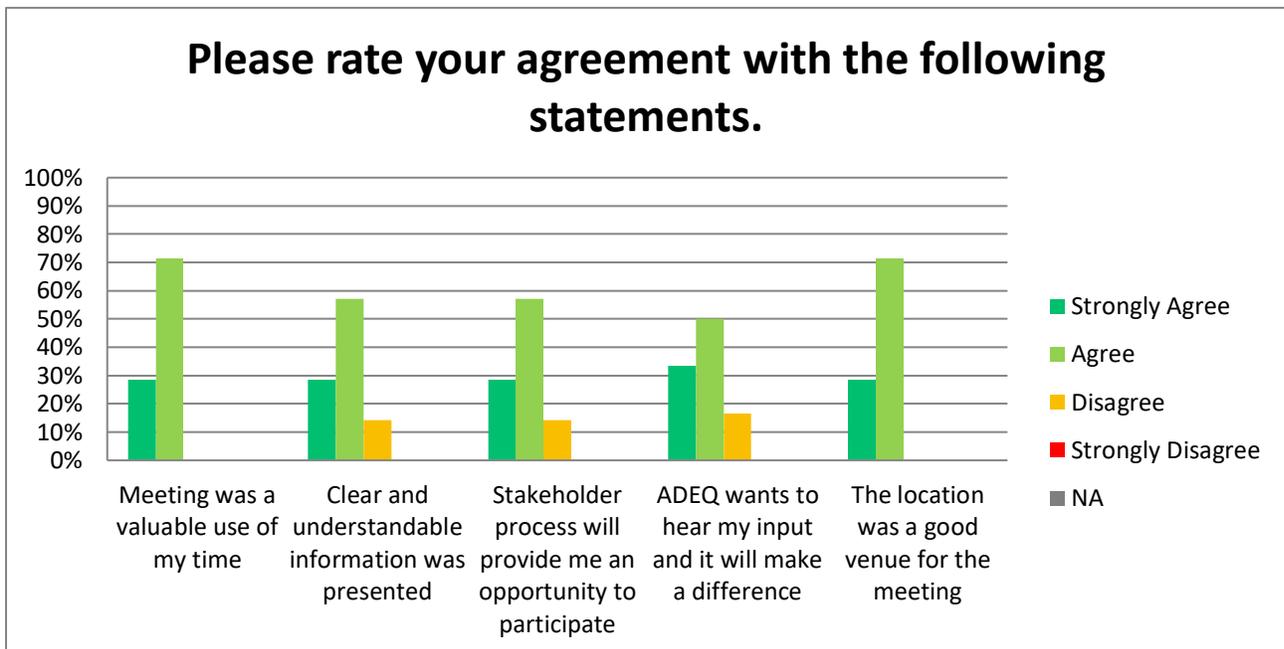
- ADEQ to review AZDPES permit analysis prior to providing public access to the document.

### ADEQ STAKEHOLDER MEETING EVALUATION RESULTS

Seven 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?

- Knowing that ADEQ is looking forward to taking control of the waters.
- Learning opportunity regarding proposed regulations.

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

- Incorporate tribal sensitive issues.
- Re-framing survey questions-- perhaps more public participation in terms of how to frame these.
- The facilitators need better information/more knowledge on tribal perspective, views, issues, consultation.

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

<b>NAME</b>	<b>ORGANIZATION</b>
<b>ETHIC ANDERSON</b>	Navajo Nation EPA Water Quality Program
<b>TONY ANGUIERA</b>	Yavapai
<b>PETER BUNGART</b>	Hualapai Tribe
<b>STEVE CAMP</b>	City of Flagstaff
<b>JOAN CARD</b>	CK Blueshift
<b>JAY CHRISTELMAN</b>	Coconino County Community Department
<b>IDA COSAY</b>	White Mountain Apache Tribe / Water Resources
<b>JAVIS DAVIS</b>	White Mountain Apache Tribe / Water Resources
<b>CHIP DAVIS</b>	Northern District
<b>CLAIRE HARPER</b>	Coconino County Public Affairs
<b>JIM JANECEK</b>	City of Flagstaff
<b>MEGAN KELLY</b>	Grand Canyon Trust
<b>MATT KILLEEN</b>	City of Prescott
<b>CLAYTON LUPE</b>	White Mountain Apache Tribe / Water Resources
<b>AMY MIGUELLE</b>	WMAT
<b>JAMIE QUISENBERRY</b>	W.L. Gore
<b>ERIC RICH</b>	Navajo Nation EPA Water Quality Program
<b>JOE SHANNON</b>	Sierra Club
<b>OREN THOMAS</b>	City of Prescott / Public Works
<b>JARED VOLLMER</b>	EPA

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