

MINUTES OF THE
MARICOPA ASSOCIATION OF GOVERNMENTS
WATER QUALITY ADVISORY COMMITTEE MEETING

Wednesday, January 24, 2007
MAG Office Building
Phoenix, Arizona

MEMBERS ATTENDING

Roger Klingler, Scottsdale, Chair
*Avondale
Lucky Roberts, Buckeye
#Jacqueline Strong, Chandler
#Greg Stack, El Mirage
Lonnie Frost, Gilbert
Chris Ochs, Glendale
#David Iwanski, Goodyear
#Bill Haney, Mesa

*Stephen Bontrager, Peoria
Robert Hollander, Phoenix
Rich Williams Sr., Surprise
*David McNeil, Tempe
John Power, Maricopa County
John Boyer, Pinnacle West Capital
*Ray Hedrick, Salt River Project
*Patrick Clay, U of A Cooperative Extension
*Eugene Jensen, Citizen Representative

*Those members neither present nor represented by proxy.
#Attended by telephone conference call.

OTHERS PRESENT

Dale Bodiya, Maricopa County
Linda Taunt, Arizona Department of
Environmental Quality
Edwina Vogan, Arizona Department of
Environmental Quality
Julie Collins-Finke, Arizona Department of
Environmental Quality

Steve Olea, Arizona Corporation Commission
Lace Collins, Arizona Corporation Commission
Jerry Copeland, Entellus
Ray Jones, ARICOR Water Solutions
Julie Hoffman, Maricopa Association of
Governments

1. Call to Order

A meeting of the MAG Water Quality Advisory Committee was conducted on Wednesday, January 24, 2007. Roger Klingler, City of Scottsdale, Chair, called the meeting to order at approximately 4:00 p.m. Jacqueline Strong, City of Chandler; Greg Stack, City of El Mirage; David Iwanski, City of Goodyear; and Bill Haney, City of Mesa, attended the meeting via telephone conference call.

2. Agenda Announcements

Chair Klingler provided an opportunity for member agencies to report on activities of interest in their agencies.

3. Call to the Audience

Chair Klingler provided an opportunity for members of the public to address the Committee on items not scheduled on the agenda that fall under the jurisdiction of MAG or items on the agenda for discussion but not for action. No members of the public indicated that they wished to address the Committee.

4. Approval of the June 27, 2006 Meeting Minutes

The Committee reviewed the minutes from the June 27, 2006 meeting. Chris Ochs, City of Glendale, moved and Lucky Roberts, Town of Buckeye, seconded, and the motion to approve the June 27, 2006 meeting minutes carried unanimously.

5. Arizona Corporation Commission Overview

Steve Olea, Arizona Corporation Commission, provided an overview on the application and approval process for utilities. He stated that approval from the Arizona Corporation Commission (Commission) is required when a private utility wants to begin service or extend their existing service area. The private utility needs to apply for a Certificate of Convenience and Necessity (CC&N). He mentioned that a CC&N is needed before construction can begin. Mr. Olea stated that the CC&N gives the utility a monopoly right to serve a specific area. He indicated that there have been situations where a utility has been granted a CC&N and then became out of compliance, causing the Commission to issue an order that revokes the CC&N. The utility does not stop operating; however, they no longer have a monopoly in that area. Therefore, another utility could apply for a CC&N in that area and take the customers away. Without a CC&N, the utility can no longer add more customers, but must continue to serve their current customers.

Mr. Olea stated that to get a CC&N, a company must demonstrate to the Commission to be a fit and proper entity, including financial and technical resources. He indicated that the utilities requesting a CC&N or CC&N extension must also be in compliance with the requirements of other agencies. Some requirements cannot be met until the CC&N is issued. In these cases, the Commission will place a condition on the CC&N.

Mr. Olea discussed a conditional CC&N that can be issued by the Commission. A conditional CC&N means that the utility gets the CC&N and can start serving; however, conditions such as approvals from other agencies must be met within a certain period of time. He stated that if the conditions are not met, the Commission can issue an Order of Show Cause and revoke the CC&N. Mr. Olea indicated that the sewer utility must demonstrate 208 Plan amendment approval as a condition of the CC&N approximately one to two years from being issued the conditional CC&N.

Mr. Olea stated that recently, the Commission has begun issuing orders preliminary outside active management areas (AMAs). He discussed the difference between the order preliminary and conditional CC&N. With a conditional CC&N, the utility has the CC&N and the monopoly right to serve an area. With an order preliminary, the utility does not have the CC&N. They have an order that includes conditions that must be met. Once the conditions have been met, the Commission will place the item on an open meeting agenda to grant the CC&N. Mr. Olea indicated that orders preliminary are being granted outside of AMAs. The Arizona Department of Water Resources

requires a Certificate of Assured Water Supply within an AMA. However, outside an AMA, a subdivision can get a Letter of Inadequacy and still proceed with selling lots. The Commission has begun issuing orders preliminary outside of AMAs with a condition that a Letter of Adequate Water Supply be provided. Therefore, the CC&N will not be granted until the condition is met. Mr. Olea added that 208 approval may also be a condition in CC&N applications.

Chair Klingler inquired about an order preliminary for a sewer CC&N. Mr. Olea replied that a utility seeking just a sewer CC&N would typically receive a conditional CC&N. However, orders preliminary can be granted for a sewer CC&N within or outside an AMA.

Chair Klingler asked about the timing issue for two utilities competing to serve the same area. Mr. Olea responded that once a utility has a conditional CC&N, another utility could not be issued a CC&N for the same area. He added that only one water CC&N and one sewer CC&N can be issued for a certain area. Chair Klingler inquired about a situation where multiple utilities are applying for a CC&N for the same area at the same time. Mr. Olea replied that if multiple utilities are applying, it is not always the one who comes in first. He stated that competing applications are typically consolidated and heard by an administrative law judge together. The applications go to an open meeting and the Commission determines the outcome.

Chair Klingler asked if Mr. Olea is familiar with the Balterra Sewer Corporation CC&N. Mr. Olea replied that there were no competing CC&N applications for the service area included in the Balterra conditional CC&N. Chair Klingler requested clarification between the 208 Process and CC&N Process. Mr. Olea responded that 208 approval is a condition of the CC&N. He stated that the condition typically allows the utility one to two years, for a conditional CC&N, to receive 208 approval. Chair Klingler inquired about a utility requesting service in an area where another utility has been issued a conditional CC&N but has not yet met all the conditions. Mr. Olea responded that the utility with the conditional CC&N has the monopoly right to serve the area. He added that the utility would continue to have the monopoly right to serve the area past the time frame in the condition until the Commission issues an order to revoke the CC&N. A CC&N stays in effect until it is revoked by the Commission.

Ms. Roberts asked if a planned development that is not contiguous to the Town of Buckeye planning area would go to the Commission or be required to go to the Town for sewer service. Mr. Olea replied that to get a CC&N, regardless of location, a private utility would be required to go to the Commission. He added that the utility would need to comply with state, county, and local governments to get the CC&N.

Bill Haney, City of Mesa, referred to a situation where there are two sewer utilities wanting to serve the same area. He asked if it is prudent for the Committee to wait until after the Commission has issued a conditional CC&N to approve the 208 amendments. Mr. Olea responded that it is up to the Committee. Mr. Haney indicated that it would make more sense for a utility to get the CC&N and then come to MAG for 208 approval. Mr. Olea stated that it is rare to receive a CC&N application that already has 208 approval. Therefore, the 208 approval is included as a condition for a CC&N.

Mr. Haney referred to the Balterra 208 Plan Amendment. Chair Klingler stated that the Balterra Sewer Corporation did have a conditional CC&N. Julie Hoffman, Maricopa Association of Government, indicated that the Balterra Sewer Corporation had a conditional CC&N for a portion

of the service area included in the 208 amendment. Chair Klingler mentioned that the utility would need to apply for a CC&N expansion to increase the service area beyond the current CC&N.

Rich Williams, City of Surprise, asked if a utility has the right to apply for a CC&N or CC&N expansion whether the area is located within incorporated city limits or unincorporated Maricopa County. Mr. Olea replied that is correct. Mr. Williams inquired about the position of the Commission on emerging and high growth areas like the West Valley where there is a strong municipal presence within the general planning areas. Mr. Olea stated that he cannot speak for the Commissioners; however, the process requires that the applicant notify the city of the CC&N application if the area is within city limits. He mentioned that the city has a right to intervene and be a party in the case and offer testimony. The Commission considers all evidence in issuing a CC&N. Mr. Olea added that there are five votes. Mr. Williams asked if there is a mechanism within the CC&N Process where there is an expectation that the municipality would be the regional water and sewer provider. Mr. Olea responded that there is no such mechanism.

David Iwanski, City of Goodyear, asked how the Commission handles issues where a private utility or a municipality provides interim or extended service to customers within an existing CC&N. Mr. Olea replied that the Commission requires the utility to get Commission approval for the agreement. He mentioned that along with the monopoly right with a CC&N comes the obligation to serve. Therefore, if a customer within the CC&N area requests service, the utility is obligated to serve. However, the customer is required to comply with the tariffs of the utility. If the customer does not comply with the tariffs, then the utility does not have to provide service. Mr. Olea referred to border agreements that have been approved by the Commission between two utilities where one utility serves within the CC&N area of another. He mentioned that similar agreements could be made between utilities and municipalities; however, the Commission has no jurisdiction over cities and towns.

Dale Bodiya, Maricopa County, inquired about a CC&N for an area where service has not been requested. Mr. Olea responded that the Commission is now requesting that the applicant provide requests for service from the landowners in the CC&N application. However, the Commission may include areas that have not requested service to avoid a “checker board” CC&N. Chair Klingler inquired about how the Commission handles different developers wanting different providers in the same area. Mr. Olea replied that the applications would be consolidated and all the evidence would be heard. The Commission would then decide the CC&N area for each provider. Mr. Bodiya discussed the 20-year planning horizon versus looking at individual properties that are ready to request service. He stated that regional plans for 20 years cover larger areas. Mr. Bodiya commented on the Commission granting a CC&N to a utility that would not be supported by the jurisdiction in which the CC&N would be located. He indicated that the jurisdictions (MAG member agencies) initiate the requests for 208 amendments.

Mr. Bodiya commented on statements made that the Commission is pushing for consolidated utilities that would provide water and sewer. Mr. Olea responded that water and sewer are not always provided by the same utility. He stated that the Commission reviews the facts of each case.

Mr. Williams inquired about the position of the Commission on franchise agreements. Mr. Olea replied that according to statute, the franchise is necessary to obtain a CC&N or CC&N expansion. He indicated that the franchise is typically listed as a condition in a conditional CC&N. The utility

is given 365 days to obtain the franchise from the county or city, depending on the location of the CC&N. Mr. Williams asked if a utility would be unable to provide service if a municipality chose not to authorize the franchise. Mr. Olea responded that for a conditional CC&N, the Commission could issue an Order of Show Cause to revoke the CC&N if the conditions are not met. For an order preliminary, the utility would not be granted the CC&N without the franchise.

Mr. Williams inquired about franchises in unincorporated Maricopa County. Mr. Olea replied that Maricopa County would need to authorize a franchise for the utility. He added that the utility would need to get the franchise from whichever jurisdiction has the legal authority to issue the franchise. Mr. Williams inquired about an existing CC&N without a current franchise. Mr. Olea stated that the jurisdictions may want to consult with their attorneys on the issue. He indicated that according to statute, a franchise is necessary to receive the CC&N, not keep it. Mr. Olea stated that a franchise is typically for 25 years before they need to be renewed. He mentioned that he was unaware of a situation where a utility loses their franchise and therefore their CC&N. Mr. Olea reiterated that to get a CC&N or CC&N expansion, the franchise is necessary. He added that the statute does allow for an agreement with the city or county in situations where a franchise cannot be authorized. Mr. Williams asked if the requirement would also apply to CC&N expansions. Mr. Olea responded that is correct.

Mr. Bodiya commented on the Approval to Construct being tied to an approved 208 amendment. Mr. Olea replied that the Approval to Construct, approved 208 amendment, and Aquifer Protection Permit are conditions in a sewer utility conditional CC&N or order preliminary.

Chair Klingler asked if Maricopa County and the cities have the right to appear and provide comment at a hearing for a CC&N in their area. Mr. Olea responded that is correct. He referred to recent examples and stated that the comments from jurisdictions are part of the record. Mr. Olea stated that the Commission considers all of the record in making decisions.

Bob Hollander, City of Phoenix, asked if the franchise is similar to Maricopa County and the cities and towns having the right of first refusal. He commented on a utility not being granted a CC&N without the franchise. Mr. Olea replied that for a conditional CC&N, the utility would not meet all the conditions without the franchise and could have the CC&N revoked. For an order preliminary, the utility would not be granted the CC&N without meeting the conditions which would include obtaining a franchise. He added that the franchise or an agreement needs to be in place with Maricopa County or the municipality, depending upon the CC&N location, to meet the condition.

6. Designated Management Agencies

Ms. Hoffman gave an overview of recent discussions on Designated Management Agencies (DMAs). She stated that in the MAG region, several of the cities and towns serve as DMAs. Ms. Hoffman indicated that the Environmental Protection Agency (EPA) sent a letter to the Arizona Department of Environmental Quality (ADEQ) stating that they will hold all amendments until ADEQ provides an explanation of how DMA functions are addressed for 208 amendments with private utilities. She indicated that ADEQ has been working with EPA and the private utilities to prepare a response. Ms. Hoffman introduced Linda Taunt, Arizona Department of Environmental Quality.

Ms. Taunt provided the Committee with material regarding Section 208 of the Clean Water Act and the ADEQ proposal for addressing the concerns raised by EPA. She stated that the focus of the Clean Water Act was on the Federal Construction Grants Program and upgrading municipal systems in the early 1970s, when the Clean Water Act was written. Ms. Taunt indicated that Section 208 focuses on the concept of regionalization. She noted that the Clean Water Act was written in Washington D.C. and has the east coast mentality versus the large, rural, unincorporated areas found in the southwest.

Ms. Taunt discussed the purpose and requirements of Section 208. She indicated that MAG is the Designated Planning Agency (DPA) for Maricopa County and is responsible for preparing an areawide waste treatment management plan. Ms. Taunt stated that the plan must be certified by the Governor (or designee) and submitted to EPA for approval. She noted that ADEQ is the designee for the Governor for 208 purposes. Ms. Taunt mentioned the 208 Amendment Process. She indicated that EPA reviews and provides comments on 208 amendments; however, EPA does not actually approve them.

Ms. Taunt discussed the information to be included in a 208 plan, according to Section 208 of the Clean Water Act. She indicated that the focus in Arizona for the past 15 years has been on growth management. Ms. Taunt mentioned the information to include in a 208 plan when addressing municipal and industrial waste treatment needs for a 20-year planning horizon. She stated that 208 should also consider nonpoint source management and control, implementation measures, dredge or fill programs, basin plans, groundwater, TMDL load and wasteload allocations, and effluent limitations.

Ms. Taunt provided background information on DMAs. She indicated that ADEQ, in consultation with the DPAs, shall designate DMAs. Ms. Taunt mentioned that EPA envisioned DMAs to be municipalities or political subdivisions. She referred to language from the Clean Water Act. Ms. Taunt stated that EPA Region 9 is looking at the large open areas where there are no municipalities and 208 amendments are coming forward with private utilities. She indicated that EPA has asked ADEQ to explain how DMA functions are addressed for 208 amendments with private utilities. Ms. Taunt stated that ADEQ is not amending the definition of DMA to include private utilities. She indicated that ADEQ is requesting that the private utilities demonstrate through what authorities they can carry out the requirements from Section 208 (c)(2)(A through I) of the Clean Water Act. Ms. Taunt added that a number of the authorities come from the CC&N granted by the Commission. Therefore, these authorities would be limited to the CC&N area for the private utility. Ms. Taunt stated that the demonstration will be forwarded to EPA with the 208 amendment.

Ms. Taunt indicated that ADEQ is ready to send one, large, regional private utility 208 amendment and two smaller 208 amendments forward to EPA. She stated that ADEQ is hoping to get feedback from EPA on the demonstrations. Ms. Taunt mentioned that ADEQ is working on several 208 amendments with private utilities that have been sent to ADEQ from the Councils of Government since July 2006.

Ms. Taunt stated that in response to the EPA letter regarding private utilities and DMAs, ADEQ is proposing a three-tiered system for private utilities. She noted that changes may still occur. For the first tier, large regional utilities will demonstrate the authorities to meet the functions of a DMA.

She noted that a 208 amendment provides certain planning abilities outside of the CC&N, but grants the utility no authority.

Ms. Taunt stated that for the second tier, small utilities (e.g., serving a single master planned development) will demonstrate its authorities to meet the functions of a DMA within its defined CC&N boundaries. Depending on the development location, it may be required to accept permit conditions related to source control for commercial and industrial wastes. Ms. Taunt indicated that EPA expressed concerns about source control and pretreatment with private utilities.

Ms. Taunt indicated that the third tier is a private utility providing service under contract with an existing DMA. In this case, the 208 amendment should be either jointly developed or preferably developed by the DMA with mention of the contract, memorandum of understanding, etc. She indicated that ADEQ will propose the three-tier system to EPA as the approach to address their concerns. This information will be included with the three 208 amendments ready to be forwarded to EPA.

Chair Klingler inquired about permit conditions related to source control for large regional utilities. Ms. Taunt responded that a large regional utility will have to demonstrate they can carry out all of the requirements in Section 208 (c)(2)(A through I) of the Clean Water Act. She stated that large utilities will have to have source control or pretreatment programs. Chair Klingler inquired about Maricopa County being a DMA. Ms. Taunt replied that statutorily Pima County can own and operate a wastewater treatment system. John Power, Maricopa County, stated that Maricopa County has the authority; however, they have chosen not to own and operate wastewater treatment systems. Ms. Taunt discussed municipal planning areas (MPAs). She indicated that the cities and towns are able to determine wastewater providers within their planning areas.

Ms. Hoffman mentioned that several of the cities and towns serve as DMAs. Ms. Taunt suggested that all the cities and towns become DMAs; however, those that are not DMAs have the statutory authority to carry out Section 208 (c)(2)(A through I) of the Clean Water Act. She suggested that cities and towns that are not DMAs have their attorneys provide a self-certification stating that the city or town has the authorities and include it in the 208 amendment.

Mr. Hollander commented that private utilities are not political subdivisions. Ms. Taunt responded that the private utilities are only trying to demonstrate that they have the authorities to carry out Section 208 (c)(2)(A through I) of the Clean Water Act. She stressed that private utilities are not DMAs. Mr. Hollander referred to the Balterra Sewer Corporation demonstration, which was provided to the Committee as an example. He commented that the demonstration refers to a section of the Clean Water Act related to a regional operating agency. Ms. Taunt replied that she will look at the issue. Mr. Hollander commented on industrial pretreatment programs for the small private utilities. Ms. Taunt responded that ADEQ is unsure how EPA will handle the smaller 208 amendments. She stated that ADEQ is trying to develop conditions to appease EPA to say there will be no industrial waste generated; however, there are still commercial problems.

Mr. Bodiya commented on wastewater treatment plants applying for Arizona Pollutant Discharge Elimination System (AZPDES) emergency discharges. He asked if it is a provision that there be a pretreatment program when an AZPDES is issued. Ms. Taunt replied that 5 million gallons per day

capacity is a trigger for the pretreatment program. She noted that there are also other triggers. Ms. Taunt mentioned the triggers in the Aquifer Protection Permit.

Ms. Hoffman inquired about a city or town annexing an area where a private utility has demonstrated in a 208 amendment that they have the authorities to carry out Section 208 (c)(2)(A through I) of the Clean Water Act. Ms. Taunt responded that cities and towns would need to recognize the private utility. She stated that for 208 purposes, the private utility is there unless changes are made with the municipality annexing the area. Ms. Taunt reiterated that a private utility does not have authority outside the CC&N. Ms. Hoffman referred to the material provided by ADEQ that indicates the authority for a utility to function as a DMA must be in law, rule or regulation. Ms. Taunt responded that refers to the CC&N.

Chair Klingler commented that there is no requirement saying 208 amendments with private utilities must be approved or must be denied. Ms. Taunt replied that is correct. She indicated that the first item in the 208 Checklist discusses authority. Ms. Taunt stated that ADEQ is getting a better handle on how to address the concerns raised by EPA. In a few months, there will be more examples of the demonstration and hopefully feedback from EPA. She indicated that ADEQ will be updating the Councils of Government once feedback is received from EPA. Ms. Taunt mentioned that another concern of EPA was that citizens have recourse when there is a private utility. She stated that EPA has been informed of the Arizona Corporation Commission Process.

Mr. Williams requested that the timing issue be considered strongly. He discussed making decisions today in areas that could take decades to develop. Mr. Williams commented on preparing plans that include monumental decisions that cannot be changed later. He mentioned making an agreement with a private utility for a finite period of time to be reevaluated at a milestone. Mr. Williams indicated that would be very intelligent for the longevity of the system. Mr. Hollander commented that the municipalities would have it in their plans that they can contract with private utilities to serve an area. Ms. Taunt responded that is correct. Mr. Williams referred to the Growing Smarter Initiative that includes requirements for growth planning. He mentioned that some areas in unincorporated Maricopa County will be annexed. Therefore, decisions made in the unincorporated areas may be in incorporated areas in the future.

Chair Klingler inquired about the effect on the 208 Process. Mr. Williams stated that he would mandate that the local jurisdiction that is required by state law to have the planning area have the authority to be the provider without question. Chair Klingler inquired about the requirement and the process. Mr. Hollander stated that was in the intent of the Clean Water Act; to minimize the proliferation of wastewater treatment facilities in an uncoordinated manner. Ms. Taunt stated that ADEQ would like 208 to be tied closer to zoning and the Growing Smarter Initiative. She indicated that the 208 Process should be valuable. Mr. Williams commented that the plans should be linked.

Chair Klingler mentioned the MPAs and working with Maricopa County. Mr. Bodiya indicated that according to the MAG 208 Plan, the jurisdiction (MAG member agency) in which the facility would be located brings forward the 208 amendment. If the project is located outside a MPA, Maricopa County brings forward the 208 amendment. He added that if the project is located in an unincorporated area within a MPA, the city or town whose MPA the project is in would bring forward the 208 amendment. Chair Klingler inquired about the notification process. Mr. Bodiya responded that adjacent communities are notified if the proposed development is within three miles.

Mr. Bodiya referred to discussion by Ms. Taunt regarding rivers. He commented that there is a vested interest in protecting the groundwater supply. Mr. Bodiya mentioned the 208 Process and protecting the water supply for yourself and your neighbors. He stated that groundwater is a valuable resource in the arid areas.

7. Call for Future Agenda Items

Chair Klingler asked if there were any suggestions for future agenda items. With no further comments, Chair Klingler thanked the Committee for participating and called for adjournment of the meeting.