



# Proposed Definition of Waters of the United States History and Summary

EQSC  
January 9, 2020

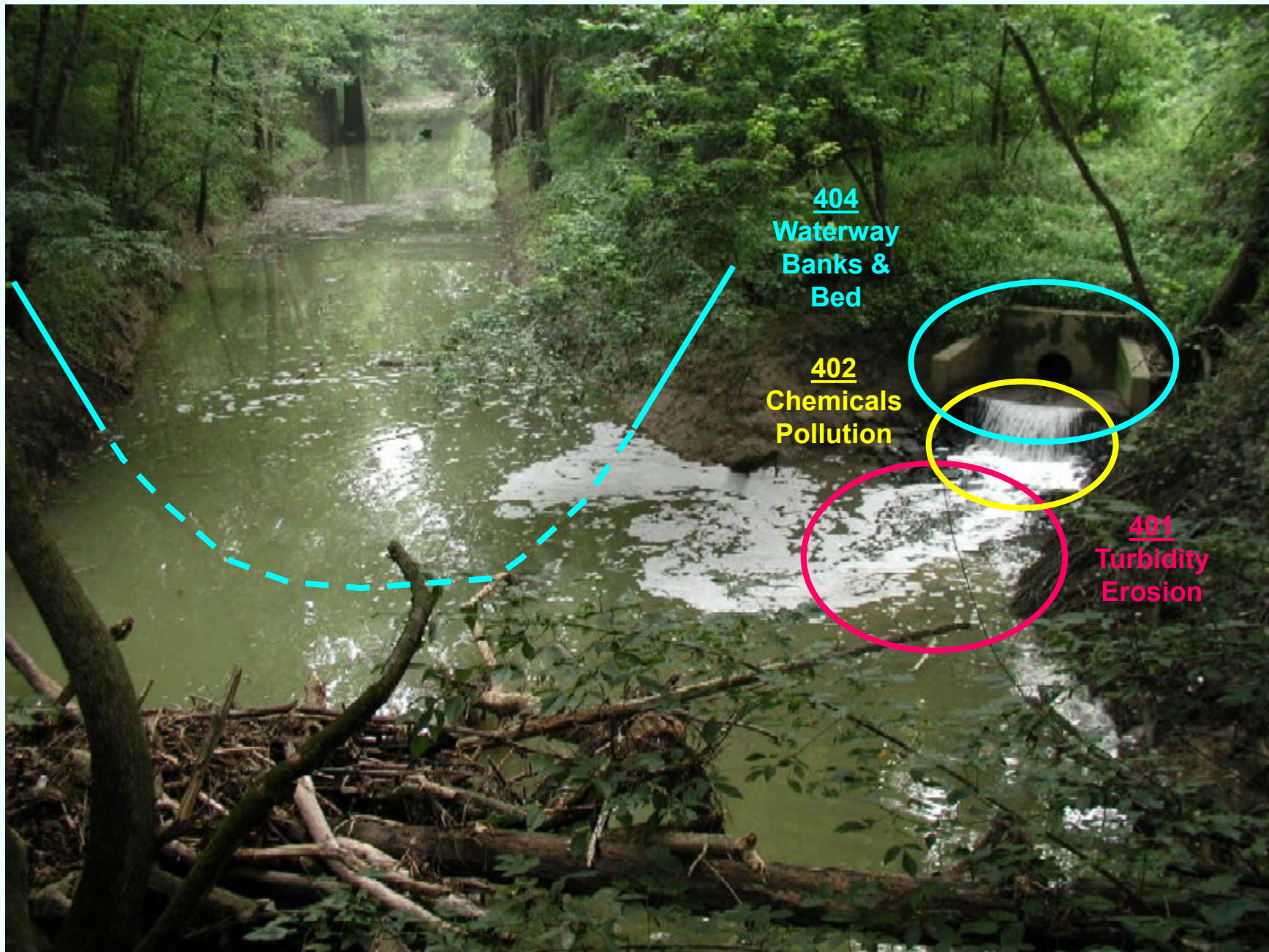
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biological r

Let's talk Cuyah







404  
Waterway  
Banks &  
Bed

402  
Chemicals  
& Pollution

401  
Turbidity  
& Erosion

# Key City Interactions with Waters of the U.S. (WOTUS)

- ❖ Construction/Maintenance/Repair Projects – in WOTUS
- ❖ Pesticide Application – in/over/near WOTUS
- ❖ Construction Projects - > 1 acre of ground disturbance
  - ❖ Maintenance Activities - > 5 acres of ground disturbance
- ❖ Effluent Discharge
- ❖ Waterline Flushing
- ❖ Municipal Separate Storm Sewer System
- ❖ City Industrial facilities

# Rapanos Supreme Court Case

## Key Moment in WOTUS History

Rapanos v. United States (2006)

❖ Resulted in a plurality opinion and a concurring opinion

- 1) Plurality opinion: “Relatively Permanent, standing or continuously flowing bodies of water” and “wetlands with a continuous surface connection”
- 2) Concurring opinion: wetlands with a “significant nexus” to navigable waters



# Current Arizona Status Quo

## 1986 Rule + 2008 Guidance

- ❖ TNWs, adjacent wetlands, relatively permanent tributaries, impoundments
  
- ❖ With Significant Nexus\*, also:
  - Ephemeral tributaries
  - Non-adjacent wetlands

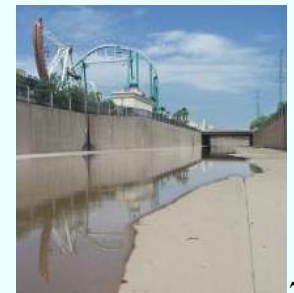
**EXEMPTIONS:** waste treatment systems, prior converted cropland, swales or erosional features, non-relatively permanent ditches excavated wholly in uplands and draining only uplands

# So what is a WOTUS right now?

Can be:

- Rivers/Streams
- Dry Washes/Arroyos
- Ponds/Lakes\*
- Wetlands\*
- Constructed Canals/Laterals\*

*\* fed by or conveys natural drainage flows*





# Example





# Example





# Example





# 2019 Proposed Draft WOTUS Rule

- 1) Waters used for interstate or foreign commerce
- 2) Perennial or intermittent tributaries of #1
- 3) Ditches that meet the definition of tributary or #1
- 4) Lakes and ponds that meet #1 or provide perennial or intermittent flow to a #1 water
- 5) Impoundments
- 6) Adjacent wetlands (abut or have a direct hydrologic surface connection)

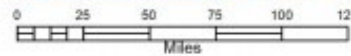
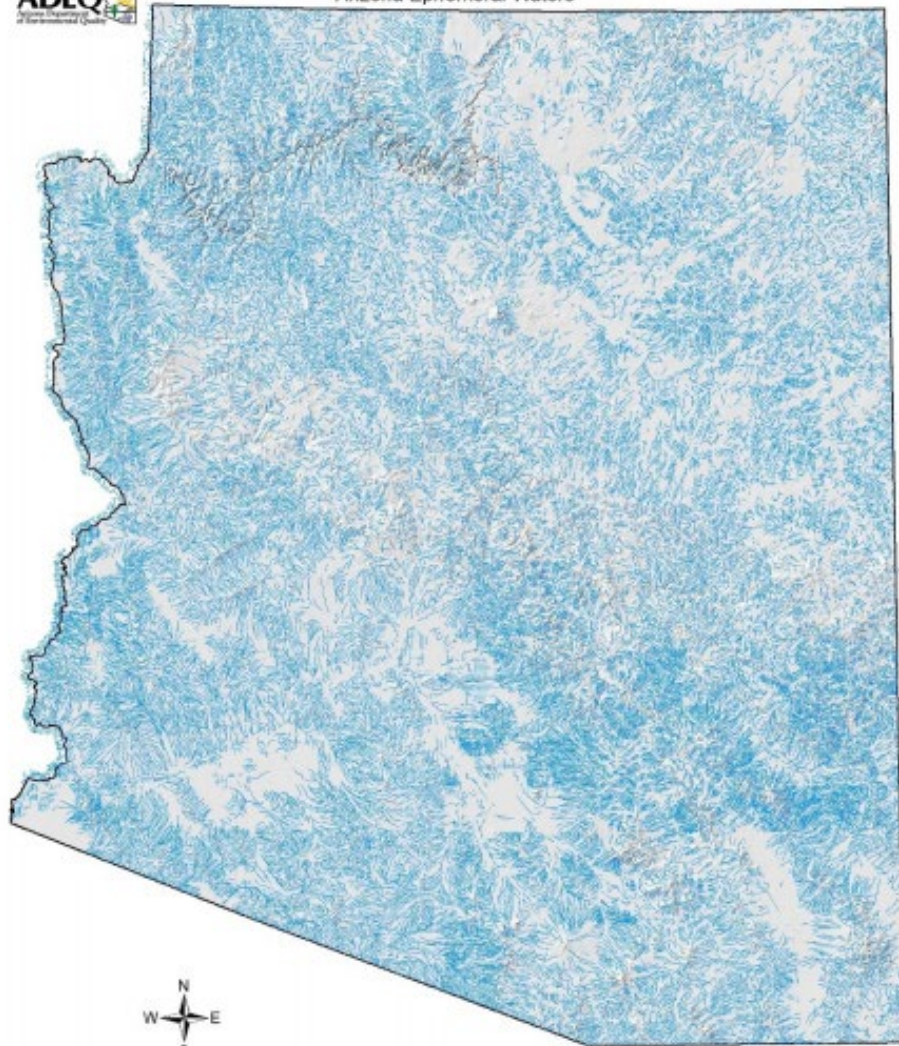
# 2019 Proposed WOTUS Definition – Key Points

- ❖ All ephemeral washes dropped from WOTUS
  - ❖ Would include large features such as Skunk Creek, Cave Creek, etc.
- ❖ An “ephemeral break” severs upstream jurisdiction for a perennial or intermittent tributary
- ❖ Ephemeral washes would be “Point Sources” under CWA
  - Brings in new compliance considerations and responsible party questions
- ❖ No significant nexus test
  - Any channel or water body not defined as WOTUS is assumed to have no physical, chemical, or biological impact on WOTUS, even if it’s connected.





### Arizona Ephemeral Waters



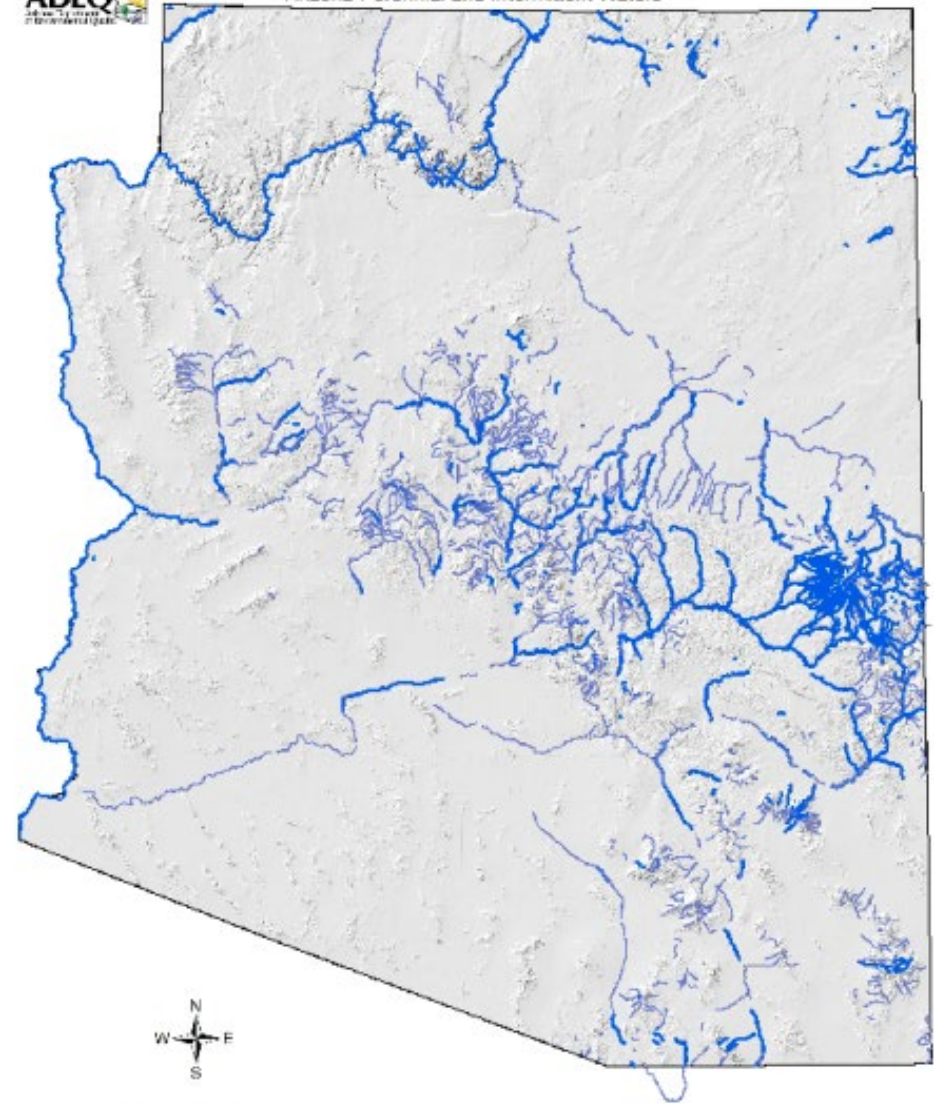
This map is for general reference only and may not be all-inclusive. ADEQ program's data collection efforts are ongoing. More detailed information and specific locations can be obtained by contacting the Arizona Department of Environmental Quality.

1 in = 42 miles

Map Date: 1/2007



### Arizona Perennial and Intermittent Waters



1 in = 42 miles

This map is for general reference only and may not be all-inclusive. ADEQ program's data collection efforts are ongoing. More detailed information and specific locations can be obtained by contacting the Arizona Department of Environmental Quality.

Map Date: 1/2007

## What Came after the Proposed Rule?

- City provided a comment letter expressing concerns on proposed rule in April 2019
- EPA received over 600,000 comments on the proposed rule
- EPA rescinded the 2015 WOTUS rule effective December 2019 (never effective in Arizona)
- Final WOTUS rule expected February 2020



# EQSC Action

- No EQSC action on WOTUS needed at this time
  - Waiting on Final Rule for impact analysis
  - After assessing final impacts, may re-approach EQSC with a support request
  
- Green Infrastructure Handbook - EQSC Support Letter Request



# Questions?



City of Phoenix

**FIND OUT FIRST!**