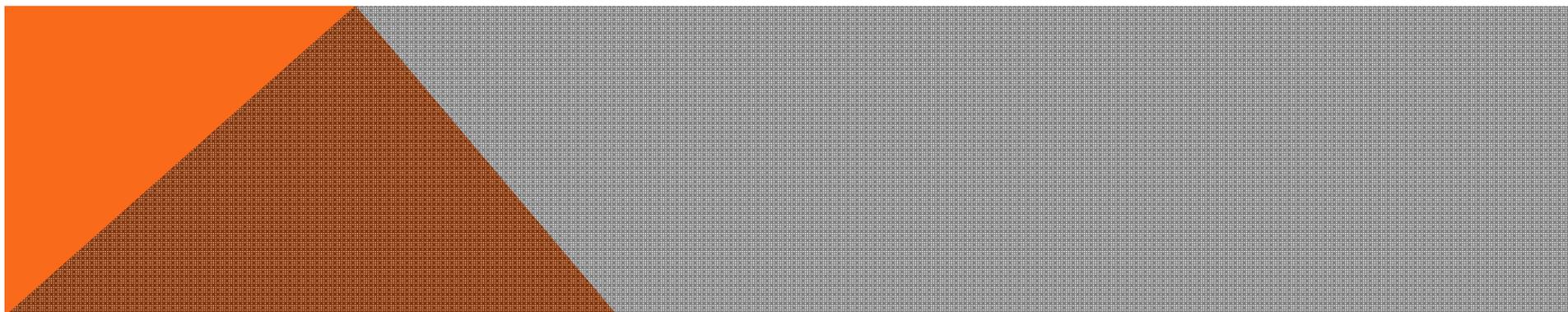


ARIZONA ROCK PRODUCTS ASSOCIATION CRITICAL ISSUES FORUM

NEXUS BETWEEN WATER QUALITY AND QUANTITY



PROTECTING THE NATION'S WATERS

The Clean Water Act: Congress established federal/state balance:

Primary authority is with the States:

- The States have primary responsibility and rights to address pollution, develop and use, land and water resources
- The States have authority to allocate water quantities within their jurisdictions. CWA Sec.
- Nothing shall supersede or abrogate rights to quantities of water which have been established by any State.

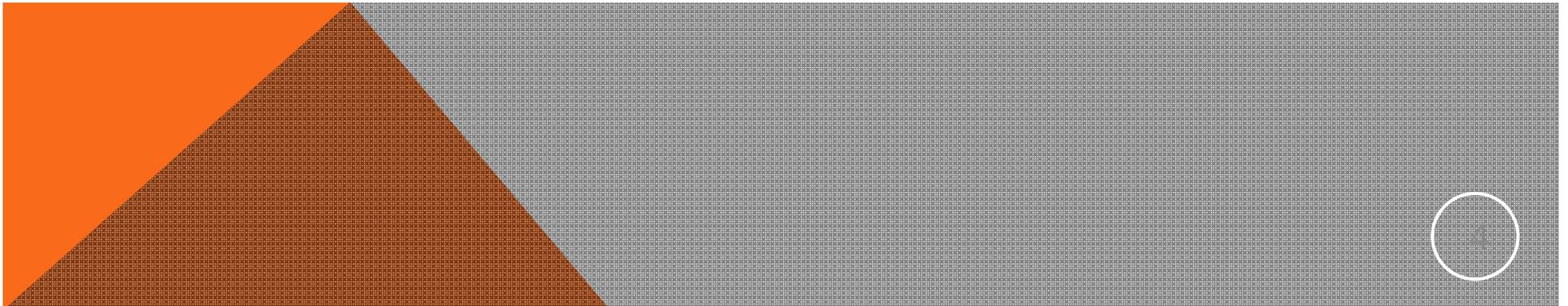
EPA'S FEDERAL ROLE

EPA's "backstop" authority- oversight & enforcement

- Develop programs for addressing water quality – surface and ground waters. CWA Sec. 102(a).
- Identify toxic pollutants, develop effluent limits, information, guidelines and criteria. CWA Sec. 301, 304, 307,
- Approve state programs and water quality decisions. CWA Sec. 303, 402, 404.
- Enforcement

RECENT FEDERAL AGENCY ACTIONS DISRUPT THIS DELICATE BALANCE

- EPA/Corps “Water’s of the U.S.” Rule
- EPA Conductivity Benchmark Criterion
- EPA Litigation Asserting Federal Authority Over Groundwater
- EPA NPDES Update Rule Revising Administratively Continued Permits
- Office of Surface Mining Stream Protection Rule
- National Park Service Revisions to Bulletin 38 Traditional Cultural Properties



EPA/CORPS “WATERS OF THE U.S.” RULE

- Federal jurisdiction drastically expanded based on concerns with downstream water quality
- EPA Relies on “connectivity” theory to sweep state water and land into federal jurisdiction

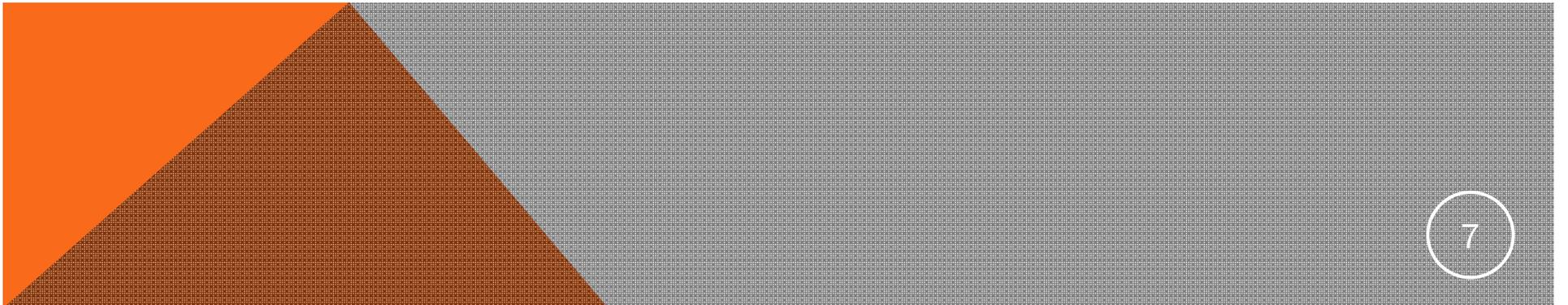
(add photo- federal jurisdiction before v after- nation, AZ-specific)

Mike, can you insert your points to this slide from your perspective? I am happy to brainstorm – perhaps a map showing Freeport’s mine footprint on top of the map showing newly jurisdictional waters and discuss what additional regulatory hoops and uncertainty would result?

EPA CONDUCTIVITY BENCHMARK CRITERION

- States may not agree conductivity is a preferred measure of WQ in streams
- Even where the State adopted an alternative approach, EPA used as a basis to:
 - Veto Section 404 permits
 - Not approve NPDES permits
 - Tell courts the CWA (402 (k))Permit Shield defense does not apply

ADD COUNTY OF MAUI



ADD EPA ADMINISTRATIVELY CONTINUED PERMITS

OFFICE OF SURFACE MINING –DOI

Stream Protection Rule

- Deemed necessary to protect downstream water quality
- Usurps state regulatory authority over water quality decisions
- Imposes costly new regulatory requirements on coal operations
 - AZ water conveyance systems rely heavily on coal-fired utilities
 - Costs of electricity will skyrocket and likewise cost of AZ water management
 - (Mike, can you speak to this from your perspective- in addition to the cost implication is there a water quantity issue here? Perhaps we can add some AZ statistics to make this more relevant to this group. For example, how much of AZ's water is under Salt River Project's operations and then how much of SRP's operations are fed with coal? National Mining Association issued an economic report that looked at impact of the rule on coal costs—we could use that to illustrate this point. Furthermore, industries, like Freeport, that are large energy users will bear the brunt of these increased energy costs.

EPA/U.S. ARMY CORPS OF ENGINEERS STREAM FLOW GUIDANCE

NATIONAL PARK SERVICE TRADITIONAL CULTURAL LANDSCAPES

- NPS revising Bulletin 38 – guidance on how to find TCL as “properties” eligible for listing under the National Historic Preservation Act
- Used to “federalize” projects
- Potential to sweep vast private and state lands and waters into “eligible or listed” status –requiring federal permits, consultation, and mitigation.

(I will add photos illustrating how broad this can get)

WHAT CAN THE STATES DO?

- States must preserve jurisdictional authorities by establishing robust regulatory programs
- Engage in federal rulemaking to preserve primary authority over land and water
 - I will add good government rule criteria here
- Legally challenge federal rules that overstep these jurisdictional lines

QUESTIONS?

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