LAS VIRGENES - TRIUNFO
JOINT POWERS AUTHORITY
AGENDA
4232 Las Virgenes Road, Calabasas CA 91302

CLOSING TIME FOR AGENDA IS 8:30 A.M. ON THE TUESDAY PRECEDING THE MEETING. GOVERNMENT CODE SECTION 54954.2 PROHIBITS TAKING ACTION ON ITEMS NOT ON POSTED AGENDA UNLESS AN EMERGENCY, AS DEFINED IN GOVERNMENT CODE SECTION 54956.5 EXISTS OR UNLESS OTHER REQUIREMENTS OF GOVERNMENT CODE SECTION 54954.2(B) ARE MET.

5:00 PM October 6, 2014

PLEDGE OF ALLEGIANCE

1. CALL TO ORDER AND ROLL CALL

A The meeting was called to order at _____ p.m. by _____ in the Las Virgenes Municipal Water District Headquarters and the Clerk of the Board called the roll.

Las Virgenes Municipal Water District	Present	Left	Absent
Charles Caspary, Chair	_____	_____	_____
Glen Peterson	_____	_____	_____
Leonard Polan	_____	_____	_____
Lee Renger	_____	_____	_____
Barry Steinhardt	_____	_____	_____
Triunfo Sanitation District			
Steven Iceland, Vice Chair	_____	_____	_____
Michael McReynolds	_____	_____	_____
Janna Orkney	_____	_____	_____
Michael Paule	_____	_____	_____
James Wall	_____	_____	_____

2. APPROVAL OF AGENDA

3. PUBLIC COMMENTS

Members of the public may now address the Board of Directors **ON MATTERS NOT APPEARING ON THE AGENDA**, but within the jurisdiction of the Board. No action shall be taken on any matter not appearing on the agenda unless authorized by Subdivision (b) of Government Code Section 54954.2

4. CONSENT CALENDAR

A Minutes: Regular JPA Meeting of September 2, 2014 (Pg. 4) Approve

5. ILLUSTRATIVE AND/OR VERBAL PRESENTATION AGENDA ITEMS

A Woodland Hills Country Club Recycled Water System Extension: Pricing Policy Discussion (Pg. 10)

Provide direction to staff on pricing policy options for the sale of wholesale recycled water to the Los Angeles Department of Water and Power via the proposed Woodland Hills Country Club Recycled Water System Extension.

6. ACTION ITEMS

A Lost Hills Interchange 10-inch Recycled Water Main Relocation Project (Pg. 18)

Authorize the Administering Agent/General Manager to execute the Utility Agreement with the City of Calabasas, subject to non-substantive changes and in a form approved by Legal Counsel, and to accept the lowest responsible construction bid identified by the City of Calabasas for the Lost Hills Interchange Improvement Project, including the recycled water main relocation work, provided that the bid items for the water main relocation do not exceed $500,000; accept the proposal from AECOM in the amount of $45,062 to incorporate design review comments from Caltrans and to provide bidding and construction support services for the work and authorize the Administering Agent/General Manager to execute a professional services agreement with AECOM for the same; and appropriate $401,357 to CIP Job No. 10540, the Lost Hills Interchange 10-inch Recycled Water Main Relocation Project.

B Resolution In Support of the Water Quality, Supply and Infrastructure Improvement Act of 2014 (Pg. 30)

Pass, approve and adopt Resolution No. 3, expressing support for the Water Quality, Supply and Infrastructure Improvement Act of 2014.

RESOLUTION NO. 3: A RESOLUTION OF THE BOARD OF DIRECTORS OF THE LAS VIRGENES-TRIUNFO JOINT POWERS AUTHORITY IN SUPPORT OF THE WATER QUALITY, SUPPLY AND INFRASTRUCTURE IMPROVEMENT ACT OF 2014.

(Reference is hereby made to Resolution No. 3 on file in the JPA's Resolution Book and by this reference the same is incorporated herein and made a part hereof.)

7. BOARD COMMENTS

8. ADMINISTERING AGENT/GENERAL MANAGER REPORT

9. FUTURE AGENDA ITEMS

10. INFORMATION ITEMS

A State Water Resources Control Board Draft Toxicity Policy Update (Pg. 45)

B Waters of the United States: Proposed Definition (Pg. 47)

C Odor Control Scrubber Carbon Replacement: Authorization of Purchase Order (Pg. 93)

D Tapia Primary Clarifier No. 1 Rehabilitation Project: Change Order No. 1 (Pg. 94)

E SCADA Communications Upgrade Phase 1: Call for Bids (Pg. 97)

F Agoura Road Recycled Water Pipeline Project: Ladyface Court to Cornell Road

(Pg. 104)

G 8-Inch Sludge Force Main Failure: Declaration of Emergency and Authorization to Procure Goods and Services (Pg. 106)

H Board Meeting Follow-up Items (Pg. 107)

11. PUBLIC COMMENTS

Members of the public may now address the Board of Directors **ON MATTERS NOT APPEARING ON THE AGENDA**, but within the jurisdiction of the Board. No action shall be taken on any matter not appearing on the agenda unless authorized by Subdivision (b) of Government Code Section 54954.2

12. CLOSED SESSION

A Conference with District Counsel – Existing Litigation (Government Code Section 54956.9(a)):

1. Las Virgenes - Triunfo Joint Powers Authority v. United States Environmental Protection Agency and Heal the Bay, Inc. v. Lisa P. Jackson

13. ADJOURNMENT

LAS VIRGENES – TRIUNFO
JOINT POWERS AUTHORITY
MINUTES

5:00 PM September 2, 2014

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance to the Flag was led by Chairman Caspary.

1. CALL TO ORDER AND ROLL CALL

A Call to order and roll call

The meeting was called to order at **5:01 p.m.** by Chairman Caspary in the Board Room at the Oak Park Library, in Oak Park. Daryl Betancur, Clerk of the Board conducted the roll call.

Present:	Director(s):	Polan, Renger, Peterson, Steinhardt (arrived **5:20 p.m**.), Board Chairman Caspary, McReynolds, Orkney, Paule, Vice Chairman Iceland (arrived **5:10 p.m**.)
Absent:	Director(s):	Wall

2. APPROVAL OFAGENDA

A Approval of agenda

Administering Agent/General Manager Pedersen indicated that there were no proposed changes to the agenda.

On a motion by Director Renger, seconded by Director Paule, the Board voted 7-0 to approve the agenda as presented. Motion carried as follows:

AYES:	Director(s):	Polan, Renger, Peterson, Caspary, McReynolds, Orkney, and Paule
NOES:	Director(s):	None
ABSENT:	Director(s):	Steinhardt, Iceland (Both arrived after a vote on this item was taken) and Wall

3. PUBLIC COMMENTS

There were no public comments.

4. CONSENT CALENDAR

A Minutes: Regular Meeting of September 2 , 2014. Approve

Director Polan moved to approve the minutes of August 4, 2014 as presented. Director Orkney seconded. Motion carried as follows:

ITEM 4A

AYES:	Director(s):	Polan, Renger, Peterson, Caspary, McReynolds, Orkney, and Paule
NOES:	Director(s):	None
ABSENT:	Director(s):	Steinhardt, Iceland (Both arrived after a vote on this item was taken) and Wall

5. ACTION ITEMS

A Rancho Las Virgenes Third Digester Construction: Approval of Scope Change for Professional Services During Construction and Change Order No. 5.

Authorize the Administering Agent/General Manager to execute a Change in Scope Agreement in the amount of $71,580.00 with Kennedy/Jenks Consultants for additional professional services during construction and staff training start-up and operation of the new facility; approve Change Order No. 5 in the amount of $29,952.46 to Pacific Hydrotech Corporation for additional work associated with eight work directives, and approve a budget and appropriation increase in the amount of $121,445 to CIP Job No. 10487 for the Rancho Las Virgenes Third Digester Project.

Administering Agent/General Manager Pedersen stated that the project will be completed by the end of September, with start-up activities commencing shortly thereafter; stated that Kennedy/Jenks had requested an augmentation to the Professional Services Agreement based on two reasons: 1) there was a higher level of effort that was required for the construction engineering and management services provided to date; that they had reviewed 214 submittals and resubmittals versus 130 submittals and resubmittals as outlined in the scope of work; 2) they had prepared responses to 115 Requests for Information (RFI's) to date versus the 110 RFI's included as part of the scope; and 3) that they had reviewed the indirect fired boiler documentation with the supplier and prepared the SCAQMD permit.

Administering Agent/General Manager commented that those three components make up part 1 of their request; stated that part 2 of the request is related to the duration increase in that the original contract, which was due for completion on June 21, and that the project is now about three months behind schedule according to the original target date; explained the reason for the higher amount as part of the request and what these funds will be used for in relation to the project.

Director Orkney expressed concerns with the change order and stated that the requested amounts seem significant and asked whether or not they are justified and/or if this was something that could have been foreseen.

Administering Agent/General Manager Pedersen stated that the request is justified due to the amount of work and that Kennedy/Jenks has been diligent in managing the allocated budget.

There were additional comments from Board members including a request that future projects include a budget line-item for training and start-up costs; the number of change orders associated with every project; whether or not CIP projects include a contingency amount and liquidated damages; as well as a process to memorialize some of the training aspects of this project.

Director Peterson moved to accept staff's recommendation. Motion seconded by Director McReynolds. Motion carried by the following vote:

AYES:	Director(s):	Polan, Renger, Peterson, Steinhardt, Caspary, McReynolds, Orkney, and Paule
NOES:	Director(s):	None
ABSTAIN:	Director(s):	Iceland

ITEM 4A

B Hatch Water Information Management System Software Implementation: Authorization to Issue Purchase Order.

Approve a budget appropriation of $32,350 to CIP Job No. 10552, Miscellaneous IT Capital Purchases, and authorize the Administering Agent/General Manager to issue a purchase order to Hatch Company in the amount of $32,350 for installation, configuration and training of software to take advantage of additional functionality of the Water Information Management System.

Administering Agent/General Manager Pedersen explained that this item pertains to a computerized data management system that it is used to assist the JPA in completing the NPDES reporting requirements; spoke about water monitoring requirements to demonstrate compliance with federal and state guidelines and regulations, including the California Integrated Water Quality System (CIWQS).

Mr. Pedersen further stated that the new software will assist staff in manipulating the data to provide further compliance with mandated reporting requirements; will provide for greater functionalities and efficiencies in processing and collecting the data thus allowing staff to focus on other critical tasks.

There were several questions from the Board relative to time and hours dedicated to the manual processes associated with the data collection and related tasks; whether or not there will be budget savings due to efficiencies achieved with the software; whether or not the JPA will receive further software versions or new releases, etc.

Brett Dingman, Water Reclamation Manager and Dave Pedersen, Administering Agent/General Manager explained that the software will allow for further efficiencies, accuracy and that the staff hours that could potentially be saved will allow staff to focus on other tasks.

Director Steinhardt moved to table this item until 1) staff can provide information as to how the hours that will be freed up are to be used; and 2) have staff provide information on the government regulations that require this type of monitoring and reporting. Motion seconded by Director Polan. Motion failed for lack of quorum by the following roll call vote:

AYES:	Director(s):	Polan and Steinhardt
NOES:	Director(s):	Renger, Peterson, Caspary, McReynolds, Orkney, Paule, and Iceland
ABSTAIN:	Director(s):	None

Following the vote, there were additional questions from the Board relative to greater efficiencies and the effective use of the time savings for other tasks.

Director Peterson moved to accept staff's recommendation. Motion seconded by Director Orkney. Motion carried by the following vote:

Director Iceland reported that he was not going to recuse himself, but that for purposes of full disclosure that the software at his company is from Perkin Elmer and he had been an employee of that company for two-and-a-half years; he no longer works for them and owns a minor amount of stock in that company.

AYES:	Director(s):	Polan, Renger, Peterson, Caspary, McReynolds, Orkney, Paule, and Iceland
NOES:	Director(s):	Steinhardt
ABSTAIN:	Director(s):	None

C Financial Review: Fourth Quarter of Fiscal Year 2013-2014

ITEM 4A

Receive and file the Financial Review of the Fourth Quarter of Fiscal Year 2013-14.

Administering Agent/General Manager Pedersen presented a high level overview of the fourth quarter financial review and turned the staff presentation over to Don Patterson, Director of Finance and Administration for further explanation.

There were several questions from the Board on specific items including Capital Improvement Projects;

Administering Agent/General Manager Pedersen further clarified the percentages listed. Don Patterson, Director of Finance and Administration explained the meaning of the various columns included in the Capital Improvement Projects report.

Director Renger moved to receive and file. Motion seconded by Director Iceland. Motion carried unanimously.

6. BOARD COMMENTS

Director Paule reported on having attended the CASA Conference in Monterey and found it to be very interesting and referenced the presentation by Mr. Jordan Dorfman of the EPA and the panel discussion of how to become more effective and collaborative when working with regulators.

Director Polan commented on possibly meeting on a quarterly basis with other colleagues such as those with the NGOs.

Director Orkney also commented on the CASA conference; she attended and stated she had found it valuable; found the presentation of Black & Veach valuable.

Director Steinhardt commented on the vote taken earlier regarding an item that would make staff's work more efficient and that when these projects are presented to the Board valid questions need to be asked in terms of why staff is proposing to make certain aspects of their work more efficient and what is to be done with the hours that could potentially be freed-up.

7. ADMINSTERING AGENT/GENERAL MANAGER REPORT

Administering Agent/General Manager reported on two items: 1) the release of an RFP for recycled water seasonal storage (roadmap and schedule), which staff has done; and 2) exceedences of the effluent limitations for Tapia and that staff is still in discussions with the Regional Board staff and District Counsel Lemieux.

8. FUTURE AGENDA ITEMS

Director Orkney requested that the endorsement of the Water Bond be on the next agenda.

9. INFORMATION ITEMS

A Recycled Water Reservoir No. 2 Improvements: Call for Bids

B Malibu Creek Discharge Avoidance: Tapia Effluent Alternatives Study

C Water Bond: Water Quality, Supply and Infrastructure Improvement Act of 2014

D Board Meeting Follow-up items.

Chairman Caspary asked that the Administering Agent/General Manager brief the Board on Item 9B.

Administering Agent/General Manager Pedersen explained that this item was a request from Director

McReynolds at the last JPA meeting; spoke about the key studies that were done on Creek avoidance.

10. PUBLIC COMMENTS

None.

The Board took a brief recess at **6:20 p.m**. and reconvened at **6:23 p.m.**

11. CLOSED SESSION

The Board recessed to closed session at **6:23 p.m.**, and reconvened to open session at **6:37 p.m.**

General Counsel Lemieux reported that the Board had met in closed session to receive a brief update on the item listed on the agenda, but there are no reportable actions.

A. Conference with District Counsel- Existing Litigation pursuant to Government Code Section 54956.9 (a).

1. Las Virgenes – Triunfo Joint Powers Authority v. United States Environmental Protection Agency and Heal the Bay, Inc. v. Lisa P. Jackson

12. ADJOURNMENT

Seeing no further business to come before the Board, the meeting was duly adjourned at **6:40 p.m.**

Charles Caspary, Chair

ATTEST:

Steven Iceland, Vice Chair

October 6, 2014 JPA Board Meeting

TO: JPA Board of Directors

FROM: Facilities & Operations

Subject: Woodland Hills Country Club Recycled Water System Extension: Pricing Policy Discussion (Pg. 10)

SUMMARY:

On August 4, 2014, JPA Director Janna Orkney requested a future agenda item to discuss pricing policy options for the sale of wholesale recycled water to Los Angeles Department of Water and Power (LADWP) via the proposed Woodland Hills Country Club Recycled Water System Extension. The pricing policy is important to ensure that the JPA recovers it cost to supply the wholesale recycled water over the proposed 30-year term of the agreement with LADWP.

On September 3, 2103, the JPA Board approved term sheets with LADWP for the extension of the JPA's recycled water system to serve the Woodland Hills Country Club. Additionally, on August 4, 2014, the JPA Board authorized the Administering Agent/General Manager to execute a cooperative agreement with LADWP for the preliminary design and environmental review of the project following approval of the agreement by LADWP. LADWP's approval is anticipated in November.

This report is intended to provide information on wholesale recycled water pricing policy options to facilitate a discussion by the JPA Board.

RECOMMENDATION(S):

Provide direction to staff on pricing policy options for the sale of wholesale recycled water to the Los Angeles Department of Water and Power via the proposed Woodland Hills Country Club Recycled Water System Extension.

FISCAL IMPACT:

Yes

ITEM BUDGETED:

Yes

FINANCIAL IMPACT:

The pricing policy option selected by the JPA Board will establish the basis for reimbursement of the JPA's costs to supply wholesale recycled water to LADWP over the term of the agreement, currently proposed to be 30 years.

DISCUSSION:

Introduction:

The concept of supplying wholesale recycled water to LADWP has been considered in the JPA's 2005 Tapia Effluent Alternative Study, 2007 Recycled Water System Master Plan and 2014 Recycled Water System Master Plan Update. Beginning in February 2011, the JPA Board provided staff with direction during negotiation of terms for the Woodland Hills Country Club (WHCC) Recycled Water System Extension, and on September 3, 2013, the attached term sheets were approved by the Board.

A 4.6-mile pipeline extension, with one mile within the JPA's service area, is proposed to serve the WHCC. LADWP has agreed to fund the entire cost of the extension, including pipelines in both agencies' servic

areas. The WHCC will have a maximum annual demand of 250 acre-feet, and additional LADWP customers along the proposed alignment could add 50 to 75 acre-feet of demand. The term sheets include a high-level pricing policy that calls for the wholesale recycled water rate to be equal to the JPA's wholesale rate plus a potable supplement component. The rate is to be escalated each year by the Consumer Price Index.

Recycled Water Demand Pattern:

Understanding the expected demand pattern for the recycled water is very important in establishing a pricing policy. The demand pattern determines the potential increase in potable supplement during the summer and decrease in disposal volumes during the remainder of the year (disposal during shoulder months and 001 discharge during non-shoulder months). Staff analyzed historical recycled water production, demand and potable supplement volumes from 2005 to the present. This period includes a combination of wet-, dry- and normal-water years that influence demand.

The result of the analysis is an average monthly demand percentage that can be applied to the expected WHCC usage to distribute it on a month-to-month basis. Comparing this new demand to the available supply results in approximately 125 additional acre-feet of potable water supplement, 112.5 acre-feet of decreased disposal during the shoulder months and 62.5 acre-feet of decreased discharge to 001 outside the shoulder months. Attached is chart that shows the results graphically.

Costs and Benefits:

An average of 840 acre-feet of recycled water is available per month; however, the total annual supply for beneficial use is limited due to lack of storage. Currently, addition of new recycled water demands results in an increase in potable water supplement volumes during the summer (cost) and decreases in disposal volumes during the shoulder months and 001 discharge volumes outside of the shoulder months (benefit).

If the recycled water demand replaces existing potable water demand, the agency that reduces its potable water demand benefits by making progress to meet its 20% reduction in demand by 2020. There is a cost associated with the increased potable water supplement volumes and a savings associated with the reduced disposal and discharge volumes. Also, there are intangible benefits for increasing recycled water demands, such as striving to achieve maximum beneficial reuse, creating regional partnerships, and reducing imported water needs and discharges to Malibu Creek.

The cost of additional potable water supplement is the fully-burdened cost to supply potable water to the recycled water system. Based the adopted Fiscal Year 2014-15 LVMWD Budget, this cost is $1,159 per acre-foot. The value of the benefit of reduced disposal volumes is the reduced expense for disposal plus the additional wholesale recycled water revenue. The value of this benefit is $1,150 per acre-foot. The value of reducing discharge to 001 consists of less chemical addition, which is a minor cost compared to the total volume discharged. Appling these values to the demand pattern for the WHCC results in an annual additional cost of approximately $15,500, or $51.67 per acre-foot when spread over the potential demand of 300 acre-feet.

Wholesale Recycled Water Pricing Policy Options:

Staff has identified the following pricing policy options for discussion by Board.

- Option No. 1 – Term Sheet Pricing Policy

One of the terms agreed to by the JPA and LADWP was setting the wholesale recycled water price at the JPA wholesale rate at a pre-determined point in time plus a potable supplement component. The price was to be escalated annually by the CPI. One advantage of this option is that it provides certainty to LADWP on future costs and to the JPA on future revenues. However, the cost of potable water has historically escalated at a higher rate than the CPI, which could potentially result in revenues that do not cover the cost of potable supplement. Conversely, if additional cost saving measures were implemented by the JPA such as expansion of its solar generation facility, reducing the wholesale rate of recycled water, the JPA could realizes additional net revenue under this option. Using the adopted Fiscal Year 2014-15 JPA and LVMWD Budgets, this option would result in a price of $857 per acre-foot[1].

- Option No. 2 – Pricing Based on Prior Fiscal Year Actuals

This option consists of charging LADWP based on the prior fiscal year's actual costs. For example, water purchased in Fiscal Year 2015-16 would be priced based on actual costs incurred during Fiscal Year 2014-15. The amount of potable supplement would still have to be estimated but could also be based on the prior year's overall usage pattern. This option would require more staff time to manage but would provide the most certainty with respect to recovering the actual cost of providing wholesale recycled water to LADWP.

- Option No. 3 – Hybrid Term Sheet Pricing Policy

This option would be similar to Option No. 1, but the potable water supplement component would be escalated based on actual MWD rate increases, whereas the wholesale rate would be escalated based on the CPI. The escalation amounts for both components would be "reset" every three to five years rather than being apply uniformly to the full term. This option would provides certainty to both LADWP and JPA and would be less likely to result in revenues being less than expenses. The option would also share the benefits of any cost-saving measures that reduce the wholesale rate of recycled between the JPA and LADWP, creating a collaborative partnership.

- Option No. 4 – In Lieu Potable Water Return

In this option, LADWP would "return" an equal amount of potable water used for recycled water supplement at an existing LVWMD/LADWP intertie connection. The wholesale recycled water price to LADWP would then be equal to the JPA's wholesale rate plus the difference between the fully-burdened cost of potable supplement and the MWD treated water rate. LVMWD would sell potable water supplement to the JPA at its fully-burdened rate, currently $1,159 per acre-foot.

The return of the potable water supplement to LVMWD would reduce its overall MWD purchases; therefore, a mechanism would need to be developed to confer the appropriate share of the benefit back to the JPA and TSD. One possibility would be for LVMWD to credit back to the JPA the value of the returned potable supplement at the MWD treated water rate, resulting in allocation of 29.4% of the benefit to TSD.

Staff will review each of the options in detail at the Board meeting.

---

[1] The term sheets estimated a cost of $670 per acre-foot was based on a smaller estimated volume of potable supplement and pricing the cost of potable supplement at $1,000 acre-foot, the amount reflected in the prior fiscal year budget.

Prepared By: David R. Lippman, Director of Facilities and Operations

ATTACHMENTS:

Term Sheets

Chart with Average Annual Recycled Water Supply and Demand

Terms Sheet: Recycled Water Wholesale Purchase Agreement

1. Agreement
    a. The intent of this agreement is for the wholesale sale of Recycled Water to LADWP from the JPA.
2. Pricing
    a. Mutually agreed price per acre-foot or fraction thereof. Price per acre-foot will be equal to the cost of wholesale recycled water plus a potable supplement component (currently estimated at $670 per acre-foot.)
3. Capital Cost
    a. LADWP will reimburse the JPA for the capital expenditure within the JPA service area
4. Escalation
    a. Annual price escalation based on Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers (CPI-U); Los Angeles, Riverside, Orange Counties
5. Supplemental Supply
    a. JPA will provide supplemental supply during normal operating conditions
6. Planned or unplanned disruption
    a. During planned or unplanned disruption the JPA shall make every effort to resume recycled water delivery as soon as possible and shall keep LADWP informed as to the status of the event.
7. Water quality
    a. Water quality shall comply with JPA's RWQCB Water Reclamation Requirements and Title 22 at the point of regulatory compliance
    b. Water quality reports required by the RWQCB and/or SWRCB shall be made available to LADWP
    c. LADWP, the JPA and WHCC shall form an operating committee that meets periodically to review and operations and address any issues
8. Payments
    a. JPA shall invoice every 30 days and LADWP shall make payment within 45 days
9. Metering
    a. Wholesale sales shall be measured by a JPA meter at the service area boundary
10. LRP Funding
    a. LADWP shall apply for LRP funding
    b. LADWP shall receive all LRP funds
11. Ownership
    a. JPA shall own, operate and maintain facilities in their service area
    b. LADWP shall own, operate and maintain facilities in their service area
12. Termination
    a. Each party shall have the right to terminate the agreement with 180 day notice unless a shorter notice is mutually agreed
13. Term
    a. 30 years

b. Provide a mutually agreed renewal option for the same term as the original term

14. Point of Use Regulatory Compliance
    a. LADWP shall assure their retail customers comply with all necessary regulatory requirements for the use of recycled water
15. Minimum Pressure
    a. A minimum pressure of 100 psi shall be provided at the JPA/LADWP boundary
16. Each agency to indemnify each other, insure each other, pay their own attorney fees

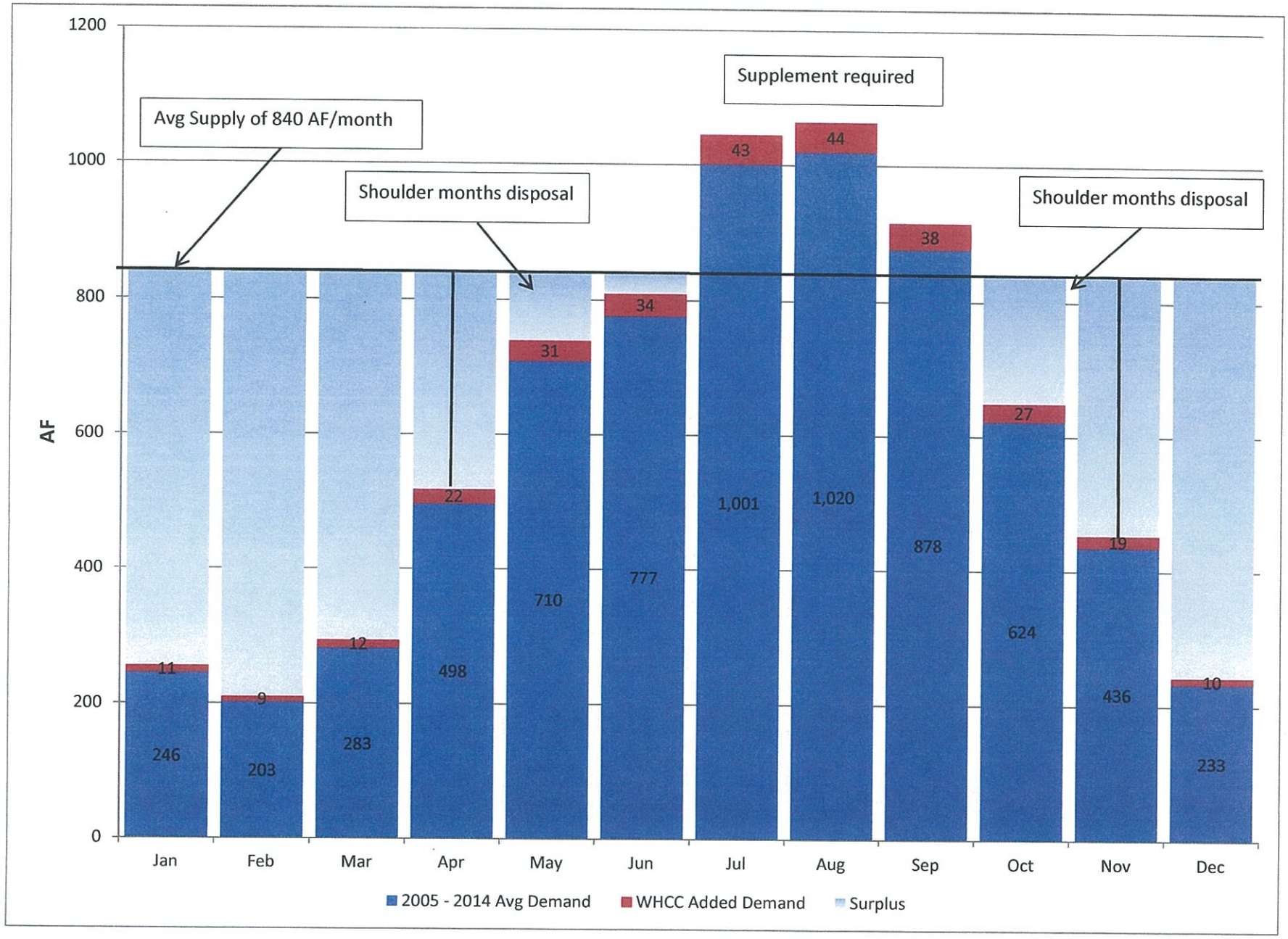
Terms Sheet: Design & Construction Agreement

1. Agreement
    a. The intent of this agreement is to define responsibilities for the preliminary design, CEQA, design and construction of the facilities necessary to convey wholesale recycled water to the WHCC in LADWP's service area from the JPA
2. Preliminary Design
    a. The JPA will be responsible to complete necessary preliminary design for the facilities to convey wholesale recycled water to WHCC from the JPA
    b. Facilities within the JPA service area shall be designed to JPA standards and facilities within the LADPW service area shall be designed to LADWP standards
3. CEQA
    a. The JPA shall be the lead agency for the project with LADWP being a responsible agency
4. Design
    a. The JPA will be responsible to complete design for the facilities to convey wholesale recycled water to WHCC from the JPA
    b. Facilities within the JPA service area shall be designed to JPA standards and facilities within the LADWP service area shall be designed to LADWP standards
5. Construction
    a. The JPA shall be responsible to bid and hire a contractor to construct the project.
    b. The JPA shall be responsible to construct any metering and backflow protection facilities for JPA retail customers
    c. LADPW shall be responsible to construct any metering and backflow protection facilities for LADWP retail customers
6. Permits and Rights of Way
    a. The JPA shall obtain all necessary encroachment permits and right of way within their service area
    b. LADPW shall obtain all necessary encroachment permits and right of way within their service area
    c. The construction contractor shall obtain traffic control permits and develop traffic control plans assisted as necessary by the JPA and LADWP
7. Cost Share
    a. Preliminary design and CEQA costs shall be shared between the JPA and LADWP on prorated basis based on the ratio of pipe length in each service area to the total pipe length. The JPA costs shall be reimbursed by LADWP.
    b. JPA shall pay for the cost of design for facilities within their service area reimbursed by LADWP
    c. LADWP shall pay for the cost of design for facilities within their service area
    d. JPA shall pay for the cost of construction including services during construction and any necessary mitigation measures within their service area reimbursed by LADWP
    e. LADWP shall pay for the cost of construction including services during construction and any necessary mitigation measures within their service area

f. JPA shall pay any fees associated with permits with in their service area reimbursed by LADWP
g. LADWP shall pay for any fees associated with permits with in their service area
h. Common permits, such as the RWQCB SSWP permit shall be paid for on the same basis as preliminary design and CEQA cost
i. LADWP shall pay an administrative cost to the JPA of 10% of their share of project

8. Payment
    a. The JPA shall bill LADWP every 30 days with payment due in 45 days
9. Use of consultants
    a. The JPA reserves the right to use consultants of their choice in preforming the preliminary design, CEQA, design and construction management.
    b. Both parties need to agree to award preliminary design, CEQA, design and construction management contracts if the parties do not agree then
        i. The project can be rebid if mutually agreed
        ii. The agreements become void and all outstanding costs are to be paid
10. Award of Construction Contract
    a. Both parties need to agree to award the construction contract if the parties do not agree then
        i. The project can be rebid if mutually agreed
        ii. The agreements become void and all outstanding costs are to be paid
11. Each agency shall indemnify each other, insure each other, pay their own attorney fees
12. LADWP may elect to perform the design of their facilities. In case LADWP and the JPA shall coordinate the design effort to assure a complete, integrated bid and construction package.

Average Annual Recycled Water Supply and Demand



Demand

ITEM 5A

October 6, 2014 JPA Board Meeting

TO: JPA Board of Directors

FROM: Facilities & Operations

Subject: Lost Hills Interchange 10-inch Recycled Water Main Relocation Project (Pg. 18)

SUMMARY:

On January 6, 2014, the Board awarded a contract to AECOM in the amount of $45,826 to design the Lost Hills Interchange 10-inch Recycled Water Main Relocation Project. AECOM has completed the design and is working with the City of Calabasas (City) and Caltrans to incorporate final comments before bidding. The City proposes to bid and administer construction of the recycled water main relocation work in conjunction with its interchange improvement project to minimize inconveniences to the public.

Caltrans requires the execution of an Utility Agreement (see Attachment 1) between the City and JPA for the pipeline relocation work. The City of Calabasas anticipates approving the Utility Agreement on October 8, 2014. Due to funding deadlines associated with the interchange improvements, City staff requests that the JPA authorize the City to award the construction contract, including the pipeline relocation work, within several days of the bid opening (see Attachment 2). The bid opening is scheduled for December 4, 2014 with award of the construction contract on December 10, 2014.

Given the circumstances, staff recommends that the Board authorize the Administering Agent/General Manager to execute the Utility Agreement with the City and to accept the lowest responsible construction bid identified by the City of Calabasas for the interchange improvements project, including the recycled water main relocation work, provided that the bid items for the water main relocation do not exceed $500,000, which is approximately 30% above the Engineer's Estimate.

RECOMMENDATION(S):

Authorize the Administering Agent/General Manager to execute the Utility Agreement with the City of Calabasas, subject to non-substantive changes and in a form approved by Legal Counsel, and to accept the lowest responsible construction bid identified by the City of Calabasas for the Lost Hills Interchange Improvement Project, including the recycled water main relocation work, provided that the bid items for the water main relocation do not exceed $500,000; accept the proposal from AECOM in the amount of $45,062 to incorporate design review comments from Caltrans and to provide bidding and construction support services for the work and authorize the Administering Agent/General Manager to execute a professional services agreement with AECOM for the same; and appropriate $401,357 to CIP Job No. 10540, the Lost Hills Interchange 10-inch Recycled Water Main Relocation Project.

FISCAL IMPACT:

Yes

ITEM BUDGETED:

Yes

FINANCIAL IMPACT:

The adopted JPA Fiscal Year 2014-15 Budget provides funding in the amount of $355,000 for this project under CIP Job No. 10540. An additional appropriation of $401,357 is necessary to cover the additional design revision costs, construction contract, services during bidding and construction, staff time and overhead, and a 10% contingency.

DISCUSSION:

The City's Lost Hills Interchange Improvements Project consists of a $25 million effort to replace and widen

the overpass to five lanes, provide improvements to the on- and off-ramps, and ensure motorist and pedestrian safety. An existing 10-inch recycled water main owned by the JPA crossed the freeway via the bridge and will need to be relocated into the new bridge. Combining the relocation of the recycled water main with the construction of the new interchange is an efficient use of public funds and minimizes inconvenience to the public.

Because the overpass crosses the 101 Freeway, the City requires an encroachment permit from Caltrans to complete the work. Prior to issuing the permit, Caltrans requires the execution of a standard Utility Agreement between the City and any utility owners with facilities in the bridge. The Utility Agreement provides assurance to Caltrans that the utility owner, namely the JPA, has approved the relocation of its facilities by the City and agreed to pay for its share of the work.

Staff obtained two engineering estimates of the recycled water main relocation work: $377,715 from AECOM and $393,049 from Willdan. The average of the two estimates is $385,382 and will be considered the Engineer's Estimate for the work.

Due to strict deadlines associated with the funding for the City's project, City staff proposes to recommend the award of a construction contract for the project within one week of the bid opening, currently scheduled for December 4, 2014. This expedited schedule does not provide sufficient time to present the lowest responsible bid to the JPA Board for approval prior to the December 10, 2014 City Council meeting when the construction contract is expected to be awarded. As a result, staff proposes that the Administering Agent/General Manager be authorized to accept the lowest responsible construction bid identified by the City, including the recycled water main relocation work, provided that the bid items for the water main relocation do not exceed $500,000, which is approximately 30% above the Engineer's Estimate.

If the water main relocation bid items are more than $500,000, staff recommends that the work be removed from the City's project and that the JPA bid it as a separate project. The total cost of the water main relocation project, if constructed in conjunction with the City's project, would be the sum of the contractor's itemized bid prices for the relocation work plus a proportional percentage of City's third-party construction management costs, similar to the arrangement between LVMWD and the City of Agoura Hills when a water main needed to be replaced due to widening of the Reyes Adobe bridge.

Additionally, staff requested a proposal from AECOM to analyze the bids received for the project and to provide construction support for the work (see Attachment 3). Also, AECOM's proposal included an additional task to incorporate the design comments provided by Caltrans.

Prepared By: John Zhao, P.E., Principal Engineer

ATTACHMENTS:

Attachment 1 - Utility Agreement

Attachment 2 - City of Calabasas Request Letter

AECOM

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

UTILITY AGREEMENT

RW 13-5 (REV 9/2014)

UTILITY AGREEMENT NO. 2

DISTRICT	COUNTY	ROUTE	KP(PM)	Project ID/E.A.
7	LA	101	51.1/51.6 (31.9/32.3)	07-24230K

Federal Aid No.: Not Applicable – No Federal Funding	**OWNERS FILE: City of Calabasas Lost Hills Bridge**

FEDERAL PARTICIPATION/FEDERALLY ELIGIBLE/NEPA DOCUMENT

On the Project YES X NO On the Utilities YES X NO

UTILITY AGREEMENT NO. 2 DATE _____

The City of Calabasas, acting by and through the State of California Department of Transportation, hereinafter called "CITY," proposes to replace the Lost Hills Bridge over the 101 Freeway in the City of Calabasas in Los Angeles County, California

and

NAME: Las Virgenes Municipal Water District

ADDRESS: 4232 Las Virgenes Road, Calabasas, CA 91302

hereinafter called "OWNER," owns and maintains a 10" water line in 16" casing located 4' east of the bridge centerline

within the limits of CITY's project which requires relocation into the new bridge structure.

to accommodate CITY's project. It is hereby mutually agreed that:

I. WORK TO BE DONE

In accordance with Notice to Owner No. 1, dated 9/29/14, CITY shall relocate OWNER's water line, as shown on OWNER's Plan No. 60314223, which plans are included in CITY's Contract Plans for the improvement of State Route 101, EA 07-24230K which, by this reference, are made a part hereof. Deviations from the OWNER's plan described above initiated by either the CITY or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the CITY and agreed to/acknowledged by the OWNER, will constitute an approved revision of the OWNER's plan described above and are hereby made a part hereof. No work under said deviation shall commence prior to written execution by the OWNER of the Revised Notice to Owner. Changes in the scope of the work will require an amendment to this Agreement in addition to the revised Notice to Owner. OWNER shall have the right to inspect the work by CITY's contractor during construction. Upon completion of the work by CITY, OWNER agrees to accept ownership and maintenance of the constructed facilities and relinquishes to CITY ownership of the replaced facilities, except in the case of liability determined pursuant to Water Code 7034 or 7035.

II. LIABILITY FOR WORK

The existing facilities are located within the STATE's right of way under permit and will be relocated at OWNER's expense under the provisions of Section 673 of the Streets and Highways Code.

UTILITY AGREEMENT

RW 13-5 (REV 9/2014)

III. PERFORMANCE OF WORK

OWNER shall have access to all phases of the relocation work to be performed by CITY, as described in Section I above, for the purpose of inspection to ensure that the work is in accordance with the specifications contained in the Highway Construction Contract; however, all questions regarding the work being performed will be directed to CITY's Resident Engineer for their evaluation and final disposition.

IV. PAYMENT FOR WORK

Not more frequently than once a month, but at least quarterly, CITY will prepare and submit itemized progress bills for costs incurred not to exceed CITY's recorded costs as of the billing date less estimated credits applicable to completed work. Payment of progress bills not to exceed the amount of this Agreement may be made under the terms of this Agreement. Payment of progress bills which exceed the amount of this Agreement may be made after receipt and approval by OWNER of documentation supporting the cost increase and after an Amendment to this Agreement has been executed by the parties to this Agreement.

The CITY shall submit a final bill to the OWNER within 90 days after the completion of the work described in Section I above. The final billing shall be in the form of an itemized statement of the total costs charged to the project, less the credits provided for in this Agreement, and less any amounts covered by progress billings. However, the OWNER shall not pay final bills which exceed the estimated cost of this Agreement without documentation of the reason for the increase of said cost from the CITY and approval of documentation by OWNER. Except, if the final bill exceeds the OWNER's estimated costs solely as the result of a revised Notice to OWNER as provided for in Section I, a copy of said revised Notice to Owner shall suffice as documentation. In either case, payment of the amount over the estimated cost of this Agreement may be subject to allocation and/or approval by the CITY.

In any event if the final bill exceeds 125% of the estimated cost of this Agreement, an Amended Agreement shall be executed by the parties to this Agreement prior to the payment of the CITY'S final bill. Any and all increases in costs that are the direct result of deviations from the work described in Section I of this Agreement shall have the prior concurrence of OWNER.

Detailed records from which the billing is compiled shall be retained by the CITY for a period of three years from the date of the final payment and will be available for audit by State and/or Federal auditors. CITY agrees to comply with Contract Cost Principles and Procedures as set forth in 48 CFR, Chapter 1, Part 31, et seq., 23 CFR, Chapter 1, Part 645 and/or 18 CFR, Chapter 1, Parts 101, 201, et al., to the extent they are applicable.

The OWNER shall pay its share of the actual cost of said work included in the CITY's highway construction contract within 45 days after receipt of CITY's billings, compiled on the basis of the actual bid price of said contract. The estimated cost to OWNER for the work being performed by the CITY's highway contractor is $xxx,xxxx.

V. GENERAL CONDITIONS

CITY represents and warrants that this Utility Agreement is not subject to 23 CFR 635.410, the Buy America provisions.

IN WITNESS WHEREOF, the above parties have executed this Agreement the day and year above written.

CITY:

By _____
Name _____ Date
Title _____

OWNER:

By _____
Name _____ Date
Title _____

CITY of CALABASAS

September 22, 2014

Las Virgenes Municipal Water District
John Zhao, P.E.
4232 Las Virgenes Road
Calabasas, CA 91302

Dear Mr. Zhao,

As you are aware, the City and LVMWD staff have been collaborating on the Lost Hills Interchange Improvements Project (Project). It has been proposed to include the relocation of a LVMWD Recycled Water Main (REW) as part of the Project. City staff concurs that inclusion of the REW would provide efficient use of public funds and would greatly reduce inconvenience to the public by avoiding the excavation of newly paved streets and prolonged construction duration if the two projects were constructed separately.

LVMWD staff informed City staff that LVMWD needs three weeks from the bid opening date to process LVMWD Board approval for the Recycled Water Main Relocation portion of the bid. This three week duration will delay the City's ability to award the construction soon after the bids are opened. It is the City's goal to award the construction bid as soon as possible in order to lock in project funding and meet deadlines expected of City staff by the City's residents and Council.

Therefore we would like to request LVMWD accommodate the City's Project schedule by shortening its approval duration for its REW approval after bid opening. The City anticipates a November 2014 bid opening date with an approval duration period of less than a week.

The City appreciates LVMWD's understanding and we look forward to working with your staff for the successful completion of the Project.

Sincerely,

Andrew Brozyna
Deputy Public Works Director

Cc: Robert Yalda, Director Public Works
Eric Spangler, Parsons

100 Civic Center Way
Calabasas, CA 91302
(818) 224-1600
Fax (818) 225-7324

AECOM
1220 Avenida Acaso
Camarillo, CA 93012

(805)388-3775 tel
(805)388-3577 fax

September 24, 2014

Mr. John Zhao, PE
Principal Engineer
Las Virgenes Municipal Water District
4232 Las Virgenes Road
Calabasas, CA 91302

RE: Lost Hills Overpass Recycled Water Main Relocation Project

Dear Mr. Zhao:

Thank you for considering this proposal to provide engineering support for bid and construction phase services related to the Lost Hills Overpass Recycled Water Main Relocation Project. We are eager to be of support to the District on this project and to continue our professional partnership.

A scope of work is attached as **Exhibit A**. We propose to provide these services on a time-and-materials basis with an upper limit of $45,062. The fee will not be increased above this amount without the District expressed authorization. Our 2014 Fee Schedule for Professional Services is attached as **Exhibit B** and a spreadsheet showing resource requirements and our fees is attached as **Exhibit C.**

We appreciate the opportunity to provide this proposal to the District and look forward to working together. Please do not hesitate to contact me should you require additional information.

Sincerely,

AECOM Technical Services, Inc.

Ryan Gallagher, PE
Associate Vice President

Enclosures: Exhibit A - Scope of Work
Exhibit B - 2014 Fee Schedule
Exhibit C - Engineering Fee Schedule

F:\LVMWD\60314223 - Lost Hills\100-Contract\CPS Amendment\OLD\Lost Hills Proposal_9-24-14.docx

Scope of Work

Las Virgenes Municipal Water District (LVMWD)
Lost Hills Recycled Waterline Relocation
Bid Services and Services during Construction

The Joint Powers Authority (JPA) of Las Virgenes Municipal Water District (District) and Triunfo Sanitation District owns and operate transmission pipelines that deliver recycled water to various users in Ventura and Los Angeles Counties. A 10-inch pipeline owned by JPA currently crosses the Ventura Freeway at the Lost Hills Road bridge crossing. Caltrans has plans to replace the bridge at the same location. Due to the proposed project and AECOM's past experience at the Reyes Adobe pipeline relocation project, AECOM was selected to provide engineering services for the relocation of the pipeline.

The final design is scheduled for completion in early October and will be included in the overall construction package for the Lost Hills Overpass Replacement Project. The engineer's estimate of probable construction cost is approximately $400,000.

The following scope of work includes engineering services in support of bidding and construction of the Lost Hills recycled water relocation. In addition, a scope of work is provided for additional design services related to coordination with Caltrans. Following review by Caltrans, significant design changes were requested (after the 95% design submittal) including comments to extend the steel casing to five feet beyond Caltrans right-of-way and changes to the vault which required significant modifications to plan and profile drawings. Upon receipt of the comments, the District requested that AECOM complete the changes in order to avoid delays to the overall project.

TASK 3000 – CALTRANS DESIGN MODIFICATIONS

95% plans were submitted to Caltrans at the end of May 2014. Caltrans responded in July 2014 with comments to extend the steel casing to five feet beyond Caltrans right of way. Caltrans also requested to move the manhole closer to the sidewalk. Following a meeting with District staff on July 24, 2014 to discuss the changes that would affect the plan and profile and length of steel casing required, the District requested that AECOM update the plans to meet Caltrans requirements for the encroachment permit.

As of September 17, 2014, Caltrans additionally requested that the alignment be relocated into the sidewalk area to place the manhole out of the roadway entirely with a cast in place vault (originally pre-cast). In addition, the water pipeline was requested to be relocated into a different bridge bay and maintain the steel casing required. Upon review with the District, AECOM was directed to update the plan and profile to reflect the new location of the pipeline and revise the vault details.

The efforts associated with addressing these Caltrans changes, including coordination, meetings and design modifications, are covered by this task.

TASK 4000 – BID PHASE SERVICES (2 MONTH DURATION)

Task 4000 Pre-bid Meeting

AECOM will attend one pre bid meeting the District and will join the District and Bidders on a job walk of the site. Agenda and minutes are assumed to be by others.

Task 4001 Addenda

AECOM will prepare up to two (2) Addenda and will distribute the Addenda to the lead bridge designer (TYLIN) for distribution to prospective bidders. Each Addendum will address up to 8 items.

Deliverables:

- Two Addenda

Task 4002 Evaluation of Bids

The evaluation of the bids is assumed to be completed by the lead bridge designer (TYLIN). AECOM will evaluate the cost of the bid item related to the pipeline for consistency with the engineer's estimate of probable construction cost. Based on the results of this evaluation, AECOM will prepare a letter recommending whether the pipeline should be removed from the overall bridge replacement project and procured as a separate stand-alone construction project.

TASK 5000 – CONSTRUCTION PHASE DESIGN SERVICES

The following scope of work is provided for engineering services during construction. The estimate is based on the assumption that the project will be bid as a part of the larger bridge replacement project. These estimates may need to be adjusted should the project be procured as a stand-alone project.

Task 5001 – Pre-construction Conference and Construction Meetings

AECOM will attend a pre-construction conference with the District, involved agencies, utilities, first responders, and the Contractor's team as they prepare to mobilize for the project. AECOM will review plans and specifications with the Contractor in an effort to facilitate the Contractor's understanding of the project. Agenda and minutes are assumed to be by others.

AECOM will attend up to five (5) regularly scheduled construction progress meetings to provide input on the design related construction issues. It is assumed the lead bridge design engineer will coordinate, lead and provide agenda/minutes to construction meetings.

Task 5002 – Change Orders

Investigate proposed change orders (up to 2) submitted by the Contractor or requested by the District. Change order submittals will include supporting records. AECOM's investigation will include an opinion as to the impacts on the project schedule and budget, and will include a recommendation for action.

AECOM will perform the following tasks:

- Evaluate the Contractor's price proposals for reasonableness and accuracy of construction quantities, rates and unit prices, and time and schedule impacts.
- Maintain a change order log as a means to tracking change order proposals through the review and approval process.
- Establish files for potential change orders or claims such as to accumulate documentation should the issues result in a change order or claim.

Task 5003 – Request for Information (RFI)

Review, coordinate with LVMWD staff, and respond to Contractor's Requests for Information (RFI). When appropriate, suggestions and alternatives will be provided to the Contractors and/or LVMWD staff. Logs of RFI's will be maintained. Up to 10 RFI's are anticipated.

Task 5004 – Submittal Review

Receive from Contractor the required sets of specified submittals (up to 15). Submittals will be reviewed by AECOM for review and acceptance. Subsequent to AECOM review, AECOM will return the submittal to the Contractor. AECOM will maintain a log of shop drawings and RFI's that have been submitted, and their disposition.

Task 5005 – Record Drawings

AECOM will update final design drawings to reflect construction redlines as provided by the District's inspector, Contractor and/or construction manager. AECOM record drawings will be for pipeline drawings only (those produced by AECOM).

Other Conditions:

Any reuse of Design Professional prepared Work, except for the specific purposes intended hereunder, will be at LVMWD's sole risk and without liability or legal exposure to Design Professional or its sub consultants.

LVMWD agrees that in accordance with generally accepted construction practices, the construction Contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the Project, including safety of all persons and property, and that this requirement shall be made to apply continuously and not be limited to normal working hours. Design Professional shall not have control over or charge of, and shall not be responsible for, construction means, methods, techniques, sequences or procedures, as these are solely the responsibility of the construction Contractor. Design Professional shall not have the authority to stop the work of the construction Contractor. In no event shall Design Professional be liable for the acts or omissions of any construction Contractors, their subcontractors, any of their agents or employees, or any other persons or entities performing any work related to this project, or for the failure of any them to carry out construction work under contract with the LVMWD.

LVMWD agrees to obtain and maintain for the benefit of Design Professional the same indemnities and insurance benefits obtained for the protection of LVMWD from any Contractor or subcontractor working

on the project and shall obtain from that Contractor or subcontractor insurance certificates evidencing Design Professional as an additional named insured.

Consistent with the professional standard of care and unless otherwise specifically provided herein, Design Professional shall be entitled to rely upon the accuracy of data and information provided by LVMWD or others without independent review or evaluation.

Any Opinion of the Construction Cost prepared by Design Professional represents its judgment as a design professional and is supplied for the general guidance of LVMWD. Since Design Professional has no control over the cost of labor and material, or over competitive bidding or market conditions, Design Professional does not guarantee the accuracy of such opinions as compared to Contractor bids or actual cost to LVMWD.

Notwithstanding anything in this Agreement, Design Professional shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure to persons to hazardous materials in any form, at the Project Site.

Assumptions:

- District will provide all construction management and materials testing activities. AECOM has not included any onsite observation of construction.
- AECOM's scope applies only to the pipeline component of the project.
- Re-bidding or repackaging as a standalone project will require additional level of effort and is not reflected in the provided scope.

Exhibit B

AECOM
FEE SCHEDULE FOR PROFESSIONAL SERVICES
Effective January 1, 2014

Engineers, Planners, Architects, Scientists:

Student Assistant	$ 85.00 per hour
Assistant I	$ 104.00 per hour
Assistant II	$ 118.00 per hour
Associate	$ 139.00 per hour
Senior I	$ 166.00 per hour
Senior II	$ 191.00 per hour
Principal	$ 228.00 per hour
Company Officer	$ 243.00 per hour
Special Consultant	$ 189.00 per hour

Construction Administration Personnel:

Resident Project Representative	$ 115.00 per hour
Senior Resident Project Representative	$ 135.00 per hour
Resident Engineer	$ 165.00 per hour
Construction Services Manager	$ 217.00 per hour

Technical Support Staff:

Clerical/General Office	$ 74.00 per hour
Administrative Specialist	$ 88.00 per hour
Drafter/CADD Technician	$ 77.00 per hour
Assistant CADD Operator	$ 91.00 per hour
Designer/CADD Operator	$ 102.00 per hour
Senior Designer/Design CADD Operator	$ 118.00 per hour
Design/CADD Supervisor	$ 132.00 per hour

General Project Expenses [1/]

8.5% of Labor

Direct Project Expenses

Other Reproduction (8 1/2 x11 / 11x17 Color)	$1.15 / 1.50 per page
Plan Sheet Printing - In House Bond/Vellum/Mylar	$3.00/4.00/7.00 per sheet
Subcontracted Services/Reproduction	Cost + 15%
Subcontracted or Subconsultant Services	Cost + 15%
Auto Mileage for Construction Phase Services	$0.60 per mile
Travel & Subsistence (other than mileage)	Cost
Miscellaneous Materials	Cost + 15%

If authorized by the Client, an overtime premium multiplier of 1.5 may be applied to the billing rate of hourly personnel who work overtime in order to meet a deadline which cannot be met during normal hours.

Applicable sales tax, if any, will be added to these rates. Invoices will be rendered monthly. Payment is due upon presentation. A late payment finance charge of 1.5% per month (but not exceeding the maximum rate allowable by law) will be applied to any unpaid balance commencing 30 days after the date of the original invoice.

Fee schedule is subject to change annually.

1/ Includes mail, telephone, fax, office photo copies, personal computers and mileage (except as noted).

EXHIBIT B: Fee Estimate

23-Sep-14
Lost Hills Recycled Water Relocation
Construction Services

LVMWD

Task Description	Personnel Hours						Budget		
	Principal	Senior II	Assistant I	Senior Designer/Design CADD Operator	Administrative Specialist	Total Hours	Labor	Non-Labor Fee	Total
TASK 3000 – Caltrans Design Modifications									
Caltrans Design Changes (July 2014)	2	8	16	16	2	44	$ 5,696.00	$ 484.16	$ 6,180.16
Caltrans Design Changes (September 2014)	2	14	28	24	3	71	$ 9,110.00	$ 774.35	$ 9,884.35
Subtotal	4	22	44	40	5	115	$ 14,806.00	$ 1,258.51	$ 16,064.51
TASK 4000 – BID PHASE SERVICES									
Task 4000 - Pre Bid Meeting		4			1	5	$ 852.00	$ 72.42	$ 924.42
Task 4001 - Addenda (2)		8	8	4	2	22	$ 3,000.00	$ 255.00	$ 3,255.00
Task 4002 - Evaluation of Bids	2	6				8	$ 1,602.00	$ 136.17	$ 1,738.17
Subtotal	2	18	8	4	3	35	$ 5,454.00	$ 463.59	$ 5,917.59
TASK 5000 – CONSTRUCTION SERVICES									
Task 5001 – Pre-construction Conference and construction meetings (5)		12				12	$ 2,292.00	$ 194.82	$ 2,486.82
Task 5002 – Change Orders (2)	2	12			4	18	$ 3,100.00	$ 263.50	$ 3,363.50
Task 5003 – Request for Information (RFI, up to 30)		20			4	24	$ 4,172.00	$ 354.62	$ 4,526.62
Task 5004 – Submittal Coordination (up to 35)		30	30		4	64	$ 9,172.00	$ 779.62	$ 9,951.62
Task 5005 – Record Drawings				20	2	22	$ 1,536.00	$ 215.56	$ 2,751.56
Subtotal	2	74	30	20	14	140	$ 21,272.00	$ 1,808.12	$ 23,080.12
Total	8	114	82	64	22	290	41532	3530.22	45,062.22

October 6, 2014 JPA Board Meeting

TO: JPA Board of Directors

FROM: Resource Conservation & Public Outreach

Subject: Resolution In Support of the Water Quality, Supply and Infrastructure Improvement Act of 2014 (Pg. 30)

SUMMARY:

The Association of California Water Agencies (ACWA) has requested the Boards of Directors of water agencies across California to consider an expression of support for the November ballot measure known as Proposition One, the Water Quality, Supply and Infrastructure Improvement Act of 2014 (Water Bond). The Water Bond was approved by the Legislature and the Governor to replace a larger $11.14 billion bond measure developed as part of the state's comprehensive water "package" of 2009, previously slated for the November ballot.

Attached for reference are a two-page fact sheet on the Water Bond and a fiscal analysis of the Bond measure prepared by the Legislative Analyst's Office.

RECOMMENDATION(S):

Pass, approve and adopt Resolution No. 3, expressing support for the Water Quality, Supply and Infrastructure Improvement Act of 2014.

RESOLUTION NO. 3: A RESOLUTION OF THE BOARD OF DIRECTORS OF THE LAS VIRGENES-TRIUNFO JOINT POWERS AUTHORITY IN SUPPORT OF THE WATER QUALITY, SUPPLY AND INFRASTRUCTURE IMPROVEMENT ACT OF 2014.

(Reference is hereby made to Resolution No. 3 on file in the JPA's Resolution Book and by this reference the same is incorporated herein and made a part hereof.)

FISCAL IMPACT:

No

ITEM BUDGETED:

No

FINANCIAL IMPACT:

There is no direct financial impact associated with adopting the Resolution. However, passage of the bond measure by the electorate could provide the JPA with funding opportunities for recycled water projects.

DISCUSSION:

The JPA Board may choose to express its position for or against legislation and ballot measures based on the impacts such measures are expected to have on the JPA. Staff may also convey the position(s) taken by the JPA Board. However, JPA resources may not be used to actively promote or defeat a ballot measure. Staff is limited to educating the public on the issue itself, without conveying a "pro" or "con" position or recommendation.

Prepared By: Jeff Reinhardt, Public Affairs & Communications Manager

ATTACHMENTS:

Resolution No. 3

Two-Page Fact Sheet

Legislative Analyst - Measure One

RESOLUTION NO. 3

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE LAS VIRGENES – TRIUNFO JOINT POWERS AUTHORITY IN SUPPORT OF THE WATER QUALITY, SUPPLY AND INFRASTRUCTURE IMPROVEMENT ACT OF 2014

WHEREAS, California's water system faces a growing list of challenges associated with aging infrastructure, climate change, population growth and other factors; and

WHEREAS, water managers and top leaders including Governor Brown agree that California needs a comprehensive, statewide water plan to create a more resilient water system and meet the coequal goals of improved water supply reliability and ecosystem health; and

WHEREAS, the Legislature has approved and Governor Brown has signed the Water Quality, Supply and Infrastructure Improvement Act of 2014, which will appear as Proposition 1 on the November 4 ballot and provide much-needed funding to advance a statewide comprehensive water plan to secure California's water future; and

WHEREAS, the Las Virgenes – Triunfo Joint Powers Authority can help reduce the region's dependence upon imported resources through the expansion of its recycled water distribution system, which will maximize the use of a precious local resource; and

WHEREAS, if approved by voters, the measure would provide $7.545 billion in bond funding for new surface and groundwater storage projects, regional water reliability, sustainable groundwater management and cleanup, water recycling, water conservation, watershed protection and safe drinking water, particularly for disadvantaged communities, and other programs the Association of California Water Agencies and its members have long advocated as a part of a comprehensive statewide plan; and

WHEREAS, the Association of California Water Agencies Board of Directors voted unanimously to formally support Proposition 1 at a special meeting on August 19, 2014.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of the Las Virgenes – Triunfo Joint Powers Authority expresses its formal support for Proposition 1, the Water Quality, Supply and Infrastructure Improvement Act of 2014 on the November ballot.

.

PASSED, APPROVED, AND **ADOPTED** on October 6, 2014.

_____
Charles Caspary
Chair

ATTEST:

_____
Steven Iceland
Vice Chair

APPROVED AS TO FORM:

_____
Wayne K. Lemieux
Counsel

(SEAL)

PROPOSITION 1: THE WATER QUALITY, SUPPLY, AND INFRASTRUCTURE IMPROVEMENT ACT OF 2014

(State agency disbursing funds, if identified in the Act, is indicated in parentheses)

Clean, Safe and Reliable Drinking Water ($520 Million)

- $260 Million – Small community wastewater treatment (State Water Board Special Fund)
  - *priority for disadvantaged communities and public health hazards*
- $260 Million – Safe & affordable drinking water (State Water Board)
  - *priority for disadvantaged communities*
  - $25 million for technical assistance program
  - $2.5 million for disadvantaged community matching funds
- Other specific provisions to aid disadvantaged and severely disadvantaged communities
  - *cost sharing requirement (generally 50%) may be reduced or waived*
  - *minimum 10% for severely disadvantaged communities*
  - *15% of funding allowed for technical assistance*
  - *technical assistance proportion may exceed 15% of grant*

Protecting Rivers, Lakes, Coastal Waters and Watersheds ($1.495 Billion)

- $327.5 Million – Multibenefit watershed projects (State Conservancies)
- $200 Million – Projects to enhance stream flows (Wildlife Conservation Board)
- $100 Million – Urban creek restoration, including the Los Angeles River
- $20 Million – Multibenefit watershed projects (Natural Resources Agency)
- $475 Million – State obligations in water-related settlements (Natural Resources Agency)
- $285 Million – Statewide watershed restoration projects (Dept. of Fish & Wildlife)
- $87.5 Million – Delta water quality & ecosystem restoration (Dept. of Fish & Wildlife)

Regional Water Security, Climate, and Drought Preparedness ($810 Million)

- $510 Million – By California Water Plan hydrologic regions (Dept. of Water Resources)
- $100 Million – Urban and agricultural water conservation
- $200 Million – Stormwater management

Statewide Water Storage ($2.7 Billion) (California Water Commission)

- *Continuous Appropriation*
- *Funds public benefits of surface water reservoirs and groundwater aquifers*
- *Requires 50% non-State cost-share*
- *Requires ecosystem improvements for Delta or Delta tributaries*

Water Recycling ($725 Million)

- *Broad range of potential projects – including desalination and water quality*
- *Requires 50% non-State cost-share (less for disadvantaged communities)*

Groundwater Sustainability & Cleanup ($900 Million)

- $100 Million – Groundwater sustainability planning & projects
- $80 Million – Groundwater cleanup for drinking water sources
- Requires 50% non-State cost-share (less for disadvantaged communities)

Statewide Flood Management ($395 Million) (Dept. of Water Resources/Central Valley Flood Protection Board)

- $295 Million – Delta levee maintenance and improvements
- $100 Million – Multibenefit projects to achieve public safety and enhance fish/wildlife

BENEFITS OF THE 2014 WATER BOND
$7.545 Billion for Next-Generation Water Infrastructure

Invests in the Next Generation of Water Infrastructure

- Promotes New Technology – priority for "new or innovative technology"
- Funds Projects for the Future – water conservation, recycling, desalination
- Addresses Emerging Water Challenges – stormwater, groundwater cleanup
- Increases Regional Self-Reliance for Water Supply
- Encourages Cross-Agency Collaboration to Set Top Investment Priorities

Improves Drinking Water Quality Statewide

- Commits More than $1 BILLION to Improving Water Quality
- Restores Source Water Quality in Upstream Watersheds
- Allows Water Quality Projects in Several Categories
  - Safe Drinking Water
  - Recycled Water
  - Regional Water Security
  - Protecting Rivers
  - Groundwater Sustainability

Protects California's Water Environment

- Restores Watersheds That Provide California's Water Supply
- Allocates $1.495 Billion to Protect Rivers, Coast and Watersheds
- Funds Ecosystem Restoration Projects – The Delta, Watersheds, The Coast

Eliminates "Pork" Projects from Bond Funding – Reduces Bond $3.5+ Billion

- Deleted Project-Specific Allocations from Previous Water Bond
- Limits Allocations to Specific Agencies with Defined Water Purposes
- Prohibits Legislature from Appropriating Money to Pet Projects
- Reduced Water Bond By 1/3 – $11.14 billion to $7.545 billion

Protects Disadvantaged Communities Most at Risk

- Allows Smaller Local Contributions for Water Quality Projects
- Creates Technical Assistance Program for Disadvantaged Communities
- Prioritizes State Funding on Needs of Disadvantaged Communities

Ensures Accountability of State Expenditures

- Requires Audits and Public Reporting of Water Bond Expenditures
- Establishes Competitive Grant Programs – with public guidelines
- Requires Formal and Public Process for Water Transfers

Proposition 1
Water Quality, Supply, and Infrastructure Improvement Act of 2014. AB 1471 (Chapter 188, Statutes of 2014), Rendon. Bond Measure.

Yes/No Statement

A **YES** vote on this measure means: The state could sell $7.1 billion in additional general obligation bonds—as well as redirect $425 million in unsold general obligation bonds that were previously approved by voters for resource-related uses—to fund various water-related programs.

A **NO** vote on this measure means: The state could not sell $7.1 billion in additional general obligation bonds to fund various water-related programs. In addition, $425 million in unsold general obligation bonds would continue to be available for resource-related uses as previously approved by voters.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact

- Increased state bond repayment costs averaging $360 million annually over the next 40 years.
- Savings to local governments related to water projects, likely averaging a couple hundred million dollars annually over the next few decades.

State Bond Cost Estimates	
Authorized new borrowing	$7.1 billion
Average annual cost to pay off bonds	$360 million
Likely repayment period	40 years
Source of repayment	General tax revenues

Ballot Label

Fiscal Impact: Increased state bond costs averaging $360 million annually over 40 years. Local government savings for water-related projects, likely averaging a couple hundred million dollars annually over the next few decades.

BACKGROUND

Sources of Water in California. A majority of the state's water comes from rivers, much of it from Northern California and from snow in the Sierra Nevada Mountains. Water available underground (referred to as "groundwater") makes up roughly a third of the state's water use and is more heavily relied on in dry years. A small share of the state's water also comes from other sources, such as capturing rainwater, reusing wastewater (water recycling), and removing the salt from ocean water (desalination).

Meeting the State's Water Needs. Providing clean water throughout California while protecting the environment presents several key challenges. First, water is not always available where it is needed. For example, water from Northern California is delivered to other parts of the state, such as farmland in the Central Valley and population centers in the San Francisco Bay Area and Southern California. Second, the amount of water available can change widely from year to year. So, when less water is available in dry years, it can be difficult to provide all of the water that people want throughout the state. This can include providing enough water to maintain natural habitats—such as wetlands—for endangered species as is required under state and federal laws. However, in very wet years the state can sometimes experience floods, particularly in the Central Valley. Third, water is sometimes polluted, making it unsuitable for drinking, irrigating

crops, or fish habitat. Fourth, parts of the state's water system have affected natural habitats. For example, providing more water for drinking and irrigation has reduced the water available for fish.

In order to address these challenges, California has built various projects. Some projects use natural rivers—as well as pipelines, pumping stations, and canals—to deliver water used for drinking or farming throughout the state. These projects also include dams and other types of water storage to hold water for when it is needed. Other projects to meet the state's water challenges include water treatment plants to remove pollutants from drinking water and wastewater, systems to clean up runoff from storms, and levees to prevent floods.

Environment and Water System Are Linked. The state's water system and the environment are linked in several ways. As noted above, the use of water for irrigation and drinking water affects natural habitats used by fish and wildlife. These effects on natural habitats are made worse by pollution, which harms water quality for fish, wildlife, and people. The state has taken a variety of actions to improve natural habitats and water quality. These include restoring watersheds (an area of land that drains into a body of water) by reintroducing native plants and animals. The state has also provided water to rivers when needed by fish species.

Roles of Various Governments in Water System. The state, federal, and local governments play important roles in providing clean and reliable water supplies. Most spending on water programs in the state is done at the local level, such as by water districts, cities, and counties. In recent years, local governments have spent about $26 billion per year to supply water and to treat wastewater. About 80 percent of this spending is paid for by individuals as ratepayers of water and sewer bills. In addition, local governments pay for projects using other sources, including

state funds, federal funds, and local taxes. While most people get their water from these public water agencies, about one-sixth of Californians get their water from private water companies.

The state runs programs to (1) conserve, store, and transport water around the state; (2) protect water quality; (3) provide flood control; and (4) protect fish and wildlife habitat. The state provides support for these programs through direct spending, as well as grants and loans to local governments, nonprofit organizations, and privately owned water companies. (The federal government runs similar programs.) Funding for these state programs usually comes from bonds and fees. Since 2000, voters have approved about $20 billion in bonds for various environmental purposes, including water. Currently, about $900 million (5 percent) of these bonds remain available for new projects.

PROPOSAL

This measure provides a total of $7.5 billion in general obligation bonds for various water-related programs. First, the measure allows the state to sell $7.1 billion in additional bonds. Second, the measure redirects $425 million in unsold bonds that voters previously approved for water and other environmental uses. The state repays these bonds, with interest, using the state's General Fund. (The General Fund is the state's main operating account, which pays for education, prisons, health care, and other services.)

Uses of Funds

As shown in Figure 1 and described below, the bond measure provides funding to (1) increase water supplies, (2) protect and restore watersheds, (3) improve water quality, and (4) increase flood protection. The bond money would be available to state agencies for various projects and programs, as well as for loans and grants to local governments, private water

companies, mutual water companies (where water users own the company), Indian tribes, and nonprofit organizations.

Figure 1
Uses of Proposition 1 Bond Funds

(In Millions)	
Water Supply	**$4,235**
• Dams and groundwater storage—cost share associated with public benefits.	$2,700
• Regional projects to achieve multiple water-related improvements (includes conservation and capturing rainwater).	810
• Water recycling, including desalination.	725
Watershed Protection and Restoration	**$1,495**
• Watershed restoration and habitat protection in designated areas around the state.	$515
• Certain state commitments for environmental restorations.	475
• Restoration programs available to applicants statewide.	305
• Projects to increase water flowing in rivers and streams.	200
Improvements to Groundwater and Surface Water Quality	**$1,420**
• Prevention and cleanup of groundwater pollution.	$800
• Drinking water projects for disadvantaged communities.	260
• Wastewater treatment in small communities.	260
• Local plans and projects to manage groundwater.	100
Flood Protection	**$395**
• Repairs and improvements to levees in the Delta.	$295
• Flood protection around the state.	100
Total	**$7,545**

Funds for Water Supplies ($4.2 Billion). About $4.2 billion would fund projects intended to improve water supplies, in order to make more water available for use. Specifically, the bond includes:

- ***$2.7 Billion for New Water Storage.*** The bond includes $2.7 billion to pay up to half of the cost of new water storage projects, including dams and projects that replenish groundwater. This funding could only be used to cover costs related to the "public

benefits" associated with water storage projects, including restoring habitats, improving water quality, reducing damage from floods, responding to emergencies, and improving recreation. Local governments and other entities that rely on the water storage project would be responsible for paying the remaining project costs. These costs would generally be associated with private benefits (such as water provided to their customers).

- ***$810 Million for Regional Water Projects.*** The bond also provides $810 million for regional projects that are included in specific plans developed by local communities. These projects are intended to improve water supplies, as well as provide other benefits, such as habitat for fish and flood protection. The amount provided includes $510 million for allocations to specific regions throughout the state and $300 million for specific types of water supplies, including projects and plans to manage runoff from storms in urban areas and water conservation projects and programs.

- ***$725 Million for Water Recycling.*** The bond includes $725 million for projects that treat wastewater or saltwater so that it can be used later. For example, the funds could be used to test new treatment technology, build a desalination plant, and build pipes to deliver recycled water.

Funds to Protect and Restore Watersheds ($1.5 Billion). These monies would fund projects intended to protect and restore watersheds and other habitat throughout the state. This funding could be used to restore bodies of water that support native, threatened, or endangered species of fish and wildlife; purchase land for conservation purposes; reduce the risk of wildfires in watersheds; and purchase water to support wildlife. These funds include $515 million to restore

watersheds in designated regions around the state (including $140 million specifically for projects in the Sacramento-San Joaquin Delta [Delta]) and $475 million to pay for certain state commitments to fund environmental restorations. The remaining funding would be available to applicants statewide for programs that restore habitat and watersheds ($305 million) and increase the amount of water flowing in rivers and streams, for example by buying water ($200 million).

Funds to Improve Groundwater and Surface Water Quality ($1.4 Billion). The bond includes over $1.4 billion to improve groundwater and surface water quality. More than half of this funding ($800 million) would be used for projects to clean up and prevent polluted groundwater that is, or has been, a source of drinking water. The remaining funds would be available to (1) improve access to clean drinking water ($260 million), (2) help small communities pay for wastewater treatment ($260 million), and (3) provide grants to local governments to develop and implement plans to manage their groundwater supply and quality ($100 million).

Funds for Flood Protection ($395 Million). The bond provides $395 million for projects that both protect the state from floods and improve fish and wildlife habitat. While $100 million of this funding could be spent on flood control projects anywhere in the state, $295 million is set aside to improve levees or respond to flood emergencies in the Delta.

Requirements for Allocating and Spending Funds

How Projects Would Be Selected. The measure includes several provisions that would affect how specific projects are chosen to receive bond funds. The California Water Commission—an existing state planning and regulatory agency—would choose which water storage projects would be funded with the $2.7 billion provided in the bond for that use. The Commission would

not have to go through the state budget process to spend these funds. For all other funding provided in the measure, the Legislature generally would allocate money annually to state agencies in the state budget process. While the Legislature could provide state agencies with some direction on what types of projects or programs could be chosen, the measure states that the Legislature cannot allocate funding to specific projects. Instead, state agencies would choose the projects. In addition, none of the funding in the measure can be used to build a canal or tunnel to move water around the Delta.

Requirements for Matching Funds. Of the $7.5 billion in funds made available by the measure, $5.7 billion is available only if recipients—mostly local governments—provide funding to support the projects. This matching requirement only applies to the water supply and water quality projects funded by the measure. The required share of matching funds is generally at least 50 percent of the total cost of the project, although this can be waived or reduced in some cases.

FISCAL EFFECTS

Fiscal Effects on State Government. This measure would allow the state to borrow up to $7.1 billion by selling additional general obligation bonds to investors, who would be repaid with interest using the state's general tax revenues. We assume that (1) the interest rate for the bonds would average just over 5 percent, (2) they would be sold over the next ten years, and (3) they would be repaid over a 30-year period. Based on these assumptions, the cost to taxpayers to repay the bonds would **average about $360 million annually over the next 40 years**. This amount is about one-third of a percent of the state's current General Fund budget. We assume that redirecting $425 million in unsold bonds from previously approved measures would not increase the state's anticipated debt payments. This is because, without this measure, these bonds

likely would have been sold in the future to support other projects. (For more information on the state's use of bonds and the impact of this proposed bond measure on the state's budget, see "Overview of State Bond Debt" later in this guide.)

Fiscal Effects on Local Governments. The availability of state bond funds for local water projects would affect how much local governments, primarily water agencies, spend on water projects. In many cases, the availability of state bonds could reduce local spending. For example, this would occur in cases where state bond funds replaced monies that local governments would have spent on projects anyway. Local savings would also occur in cases where the availability of state bond funds allowed local governments to build projects that reduced operating costs, such as by increasing efficiency or using a new water source that allows them to purchase less water.

However, in some cases, state bond funds could increase spending on water projects by local governments. For example, the availability of bond funds might encourage some local governments to build additional or substantially larger projects than they would otherwise. These projects could also be more expensive to operate.

On balance, we estimate that this measure would result in savings to local governments on water-related projects. These savings would likely average a couple hundred million dollars annually over the next few decades.

An individual local government might use these savings in various ways. For example, it might use the savings to build other new facilities or for maintenance and repair of existing facilities. In other cases, a government might use the savings to keep water rates lower than they otherwise would be by delaying or reducing future rate increases. Since the amount of statewide

savings in any given year is likely to be small relative to the overall amount spent by local governments on water, any effect on rates would likely be small for most ratepayers.

INFORMATION ONLY

October 6, 2014 JPA Board Meeting

TO: JPA Board of Directors

FROM: Facilities & Operations

Subject: State Water Resources Control Board Draft Toxicity Policy Update (Pg. 45)

SUMMARY:

On November 4, 2013, staff provided the JPA Board with an update on the State Water Resources Control Board (SWRCB) Draft Toxicity Policy. At that time, the comment period for the policy had recently concluded, and the SWRCB had not responded to the comments received. To date, the SWRCB still has not responded to the comments, many of which were focused on the Test of Significant Toxicity or "TST," nor provided an update on the status of the policy development.

Nevertheless, the Los Angeles Regional Water Quality Control Board included the draft toxicity policy in NPDES permit renewals recently issued to the cities of Thousand Oaks and Simi Valley and the Camarillo Sanitary District. Due to significant impacts on the affected permittees, the Southern California Alliance of Publicly Owned Treatment Works (SCAP) recently initiated legal action challenging the implementation of the draft policy.

FISCAL IMPACT:

No

ITEM BUDGETED:

No

DISCUSSION:

Background:

On June 27, 2012, the SWRCB issued a Draft Policy for Toxicity Assessment and Control. The comment period for the policy concluded on August 20, 2012. The JPA participated in a joint comment letter from a group of six associations, including SCAP and the California Association of Sanitation Agencies.

Concerns with Draft Toxicity Policy:

Following is a summary of the primary concerns with the draft policy:

- Move to Numeric Limits - The toxicity policy is intended to serve as an investigative tool to identify and control toxicity. By creating numeric limits fro toxicity, the burden of compliance is placed entirely upon the discharger.
- Maximum Daily Effluent Limitations (MDELs) - MDELs are not appropriate because the toxicity analyses are multi-day tests. Also, MDELs are punitive because the causes of toxicity are very difficult to determine and even harder to control.
- False Positives under the Test of Significant Toxicity Approach - The TSD contains a regulatory management decision that establishes a 5% statistical false positive error rate for individual tests. As a result, dischargers can expect up to three violations from false positives over a 5-year permit cycle. These "violations" would be subject to penalties and would trigger increased toxicity monitoring.
- Cost of Compliance and Monitoring/Replicates - The draft policy requires all POTWs with a discharge rate of 1 MGD or more to perform toxicity sampling monthly. This low threshold requires very small POTWs to perform toxicity sampling, burdening them with the high cost of toxicity monitoring (approximately $800 per test). Additionally, an increase in false positive test results would require

more toxicity testing and trigger the need for a Toxicity Reduction Evaluation (TRE) to determine the source of the toxicity.

- In-stream Water Concentrations - The draft policy does not allow the use of a mixing zone or dilution credits to represent the actual in-stream concentration at the discharge point.
- Regulatory Backlog - The increase in positive toxicity samples will result in an increase in TREs, which would need to be reviewed by regulatory staff. Additionally, with the use of the TST approach, additional false positive "hits" for toxicity could result in water bodies being improperly listed for toxicity on the 303d list, which would need to be addressed by regulatory staff.

SCAP, et al. v. USEPA:

On June 25, 2014, SCAP, together with the Central Valley Clean Water Association (CVCWA), filed a complaint against the USEPA, challenging the implementation of the draft toxicity policy. At issue in the case is a March 17, 2014 letter from the USEPA to the SWRCB, approving the state's use of the TST methodology and explaining that such approval is "state-wide" and would apply to all new or revised NPDES permits issued in California. The plaintiffs believe that the USEPA letter circumvents a notice-and-comment rulemaking process required for the addition of TST to the list of officially recognized analytical methods pursuant to Part 136 of the Clean Water Act. Additionally, the affected permittees are pursuing an administrative appeal of the NPDES toxicity requirements to the SWRCB.

Prepared By: Brett Dingman, Water Reclamation Manager

INFORMATION ONLY

October 6, 2014 JPA Board Meeting

TO: JPA Board of Directors

FROM: Facilities & Operations

Subject: Waters of the United States: Proposed Definition (Pg. 47)

SUMMARY:

On April 21, 2014, the United States Environmental Protection Agency (USEPA) and the United States Army Corps of Engineers (Corps) published a proposed rule for public comments defining the scope of waters protected under the Clean Water Act (CWA)[1]. The proposed rule, as published in the Federal Register, is 88 pages and intended to resolve uncertainty concerning the CWA's jurisdiction.

USEPA and Corps representatives state that the proposed rule will enhance protection of the nation's public health and aquatic resources and increase CWA program predictability and consistency by clarifying the scope of those waters that are protected under the CWA. However, not all of the stakeholders share the perspective of the USEPA and Corps; many have significant concerns with the proposed rule. Farmers and agricultural interest groups are among those most outspoken in opposition of the proposed rule.

H.R. 5078, the Waters of the United States Regulatory Overreach Protection Act of 2014, seeks to prohibit the proposed rule from being developed, finalized, adopted, implemented, applied or enforced. On September 9, 2014, H.R. 5078 was passed by the House of Representatives on a 262-152 vote; the Bill is now with the Senate for approval.

On behalf of the water and wastewater agencies, CASA, ACWA and AWWA are engaged it in review of the proposed rule and will likely be submitting comment letters expressing concerns. Some of the suggested amendments are to exclude water conveyance and storage facilities, aquifer storage and recovery facilities and recycled water conveyance and storage facilities from the rule. Also, there are discussions related to excluding erosional features (gullies, swales, rills and ditches) from the definition of a tributary and avoiding the use of floodplain, riparian area or neighboring waters to define "adjacency"[2].

The term "navigable waters" is currently used in the CWA to define the scope of the Act and federal jurisdiction, commonly referred to as "Waters of the Unites States" or "WOTUS". No clearer definition was provided in the CWA, so the USEPA, Corps and various courts have interrupted and modified the definition. Under the proposed rule, all tributaries including any water that contributes either directly or through another water body to downstream WOTUS and waters adjacent to such tributaries will become considered jurisdictional. Many states including California regulate waters more broadly than required by the CWA.

California regulators have indicated that if the proposed rule is unsuccessful they will enact their own broad "Wetlands and Riparian Areas Policy" and "Waters of the State" policy[3]. The potential impact of the proposed USEPA rule on JPA operations is unclear at this time but will likely affect construction activities, facility expansions and/or construction of new facilities. The impacts may be in the form of higher permitting costs, increased mitigation costs and longer delays to obtain permits. Additionally, the siting, construction and future operation of a recycled water seasonal storage reservoir could be more challenging.

Attached for reference are copies of an AWWA report entitled "Understanding the Proposed Definition of Waters of the United States," H.R. 5078 and "Questions and Answers - Waters of the U.S. Proposal" by the USEPA and Corps that provide more information on the issue.

[1] Public comments are due October 20, 2014.

[2] Under the proposed rule, waters that are "tributary" or that meet criteria for "adjacency" would qualify as jurisdictional under the CWA.

[3] In January 2013, the SWRCB circulated a draft "Wetlands Area Protection Policy" that is on hold pending completion of the proposed USEPA rule.

FISCAL IMPACT:

No

ITEM BUDGETED:

No

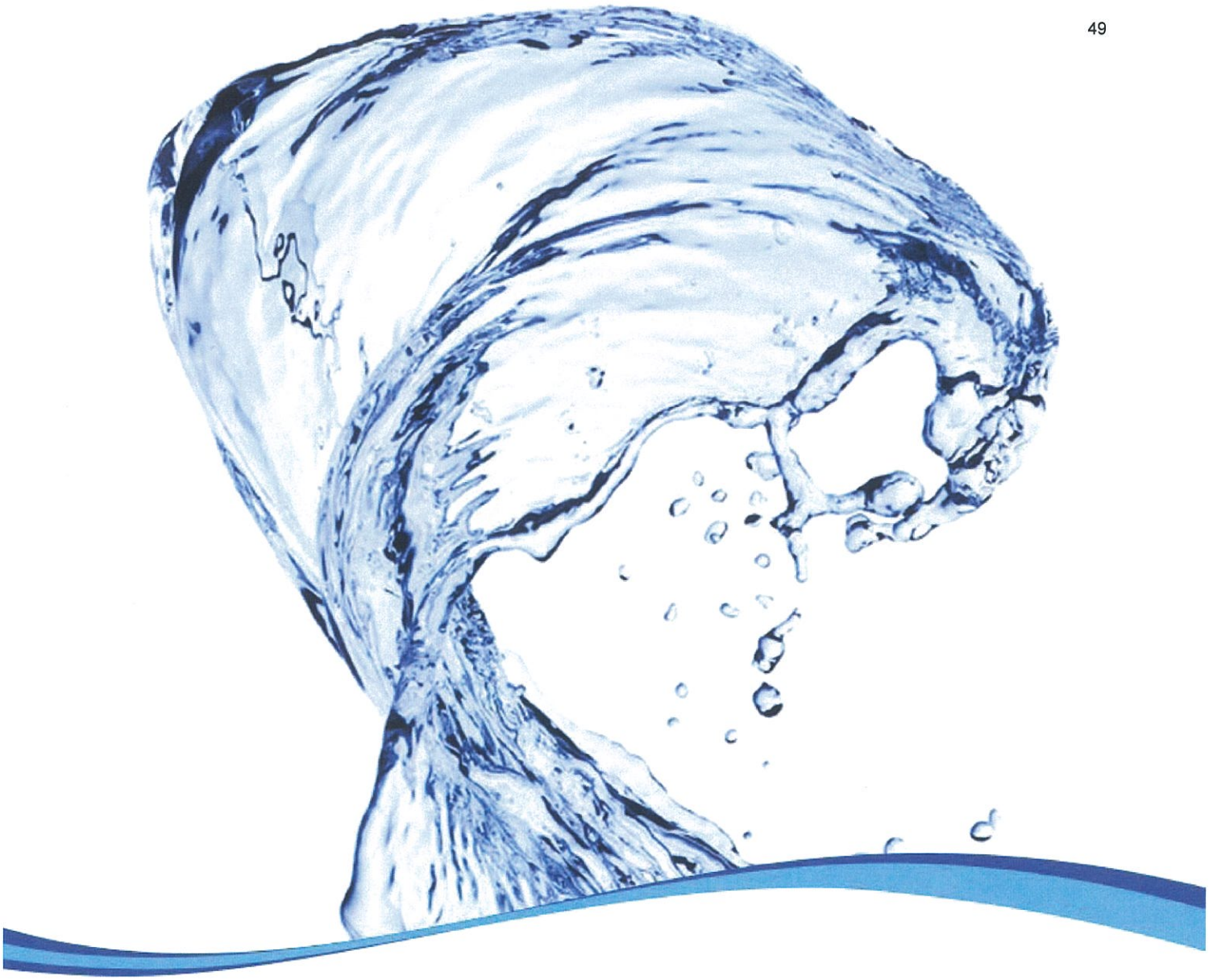
Prepared By: David R. Lippman, Director of Facilities and Operations

ATTACHMENTS:

AWWA WOTUS Report

H.R. 5078

EPA Q&A WOTUS



Understanding the Proposed Definition of Waters of the United States

American Water Works Association

Dedicated to the World's Most Important Resource™

ITEM 10B

Understanding the Proposed Definition of Waters of the United States

Review and summary of the United States Environmental Protection Agency and United States Army Corps of Engineers April 21, 2014, Proposed Rule: Definition of "Waters of the United States" Under the Clean Water Act

Project Funding

This report was developed by the American Water Works Association under the direction of its Water Utility Council, through ARCADIS U.S., Inc., in Newport News, Virginia. The project effort was led by Mark R. McElroy, Principal Scientist, Professional Wetland Scientist No. 1278.

Funding for this project was provided by the Water Industry Technical Action fund (WITAF). WITAF is funded through AWWA organizational member dues to support activities and analyses that advance sound and effective drinking water legislation, regulation, programs, and policies.

AWWA Headquarters
6666 W. Quincy Ave.
Denver, CO 80235-3098
303.794.7711

AWWA Washington DC Office
1300 Eye St. NW
Washington, DC 20005-3314
202.628.8303

www.awwa.org

American Water Works Association

Dedicated to the World's Most Important Resource™

ARCADIS

Contents

Introduction, 4
Evolution of Protection Beyond Navigable Waters, 4
The Proposed Changes, 6
Geographical Differences, 14
Impacts on Water Utilities,15
Potential Permitting Implications, 16
Summary, 16

Tables

1 Existing versus proposed rule, 7
2 Landscape scenarios, 11
3 Issues/Assessment, 14

Figures

1 History of waters of US jurisdiction, 5
2 Examples of ordinary high-water marks (OHWMs) in the context of continuum of tributaries, ranging from an ephemeral wash to a large perennial river, 8
3 Understanding adjacency, 9
4 Illustrated guide to proposed changes to the definition of waters of the US, 12
5 State-by-state breakdown, 13

Appendix

CRS Report for Congress. Side-by-Side Comparison of Existing vs. Proposed Language

Introduction

On April 21, 2014, the United States Environmental Protection Agency (USEPA) and the United States Army Corps of Engineers (Corps) published for public comment a proposed rule defining the scope of waters protected under the Clean Water Act (CWA). The proposal is intended to resolve uncertainty concerning the Act's jurisdiction, particularly in light of several decisions by the United States Supreme Court, including *U.S. v. Riverside Bayview,*[1] *Rapanos v. United States,*[2] and *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC).*[3] USEPA and the Corps state that this proposed rule will enhance protection of the nation's public health and aquatic resources and increase CWA program predictability and consistency by clarifying the scope of those waters that are protected under the Act.

Evolution of Protection Beyond Navigable Waters

The oldest federal environmental law in the United States is the Rivers and Harbors Act (RHA) of 1899. This act required the approval by the Secretary of War for all construction activities in, and deposition of refuse into, "navigable water." Since the enactment of the RHA, a number of other laws—most notably the Clean Water Act of 1972 and its amendments—have expanded federal jurisdiction to include not just the protection of navigation but also the chemical, physical, and biological integrity of the nation's waters.

The term *navigable waters* is used in the CWA to define the scope of the Act's—that is, federal—jurisdiction. In turn, navigable waters are defined as "waters of the United States, including the territorial seas." No clearer or precise definition was included in the statute, and USEPA and the Corps (which share jurisdiction for certain activities) were left to define the scope of the Act in rulemaking. Within the last several decades, various courts have modified the definition, and not always in a consistent manner. Appendix A provides a side-by-side comparison of the current and proposed rule language defining waters of the United States (WOTUS) under the CWA.

Waters that are jurisdictional—WOTUS—are subject to the multiple regulatory requirements of the CWA, including standards, discharge limitations, permits, and enforcement. Non-jurisdictional waters, in contrast, are not subject to federal requirements, although they may be subject to state or local requirements that are as or more strict than federal requirements. Figure 1 illustrates the history of regulation of navigable waters in the United States.

[1] United States v. Riverside Bayview Homes, Inc., 474 U.S. 121, 106 S. Ct. 455, 88 L. Ed. 2d 419 (1985)

[2] Rapanos v. United States, 126 S. Ct. 2208, 165 L. Ed. 2d 159 (2006)

[3] Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers, 531 U.S. 159, 121 S. Ct. 675, 148 L. Ed. 2d 576 (2001)

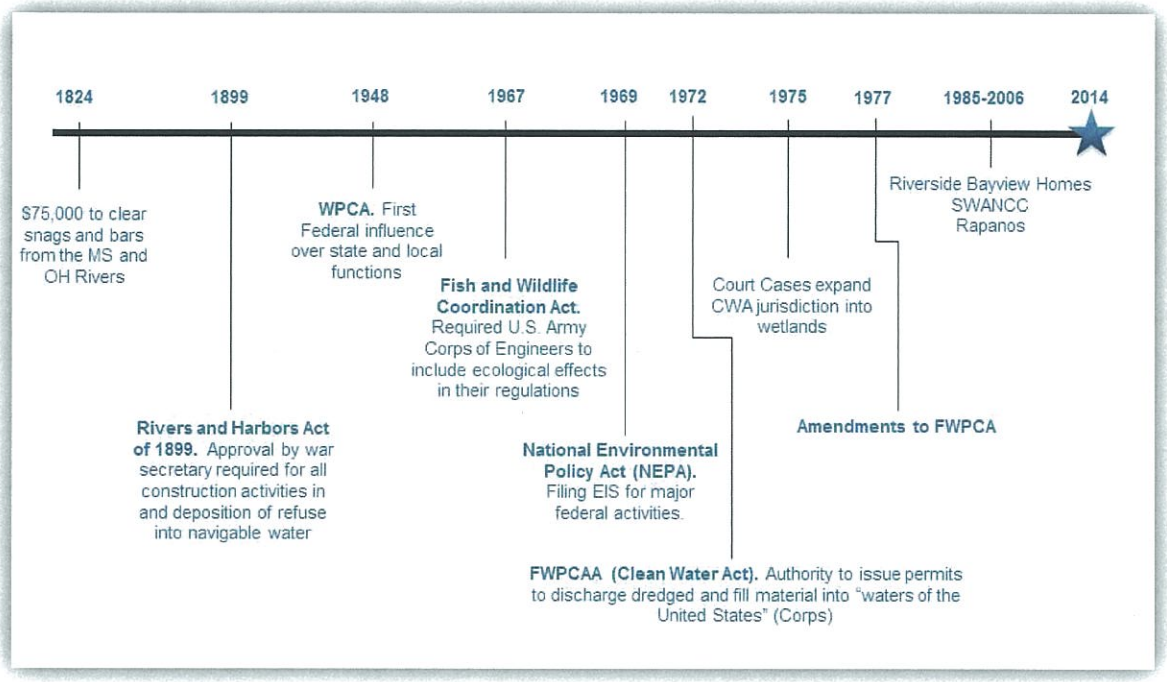


Figure 1 History of waters of US Jurisdiction

Federal jurisdiction implies:

- Federal prohibition on discharges of pollutants except in compliance with the Act's requirements (§301)
- Requirements for point sources to obtain a permit before discharge (§402 and §404)
- Water quality standards and measures to attain them (§303)
- Oil spill liability and oil spill prevention and control measures (§311)
- Certification that federally permitted activities comply with state water quality standards (§401)
- Federal enforcement (§309)

A point which should be stressed is that waterways need not be "navigable" to be subject to federal jurisdiction. Some smaller streams and wetlands that are in fact *not* navigable are nonetheless subject to federal jurisdiction, and have been since 1972. Both the legislative history and the case law surrounding the CWA confirm that jurisdiction is not limited to traditional navigable waters.[4]

[4] U.S. Environmental Protection Agency, Clean Water Act Outline of Cases Interpreting Definition of Navigable Waters and Waters of the United States under Section 311 of the Clean Water Act, http://www.epa.gov/region6/6en/w/wtrs_us1.htm

By clarifying where the CWA provisions will be applied, the definition of WOTUS provides a national benchmark for waters—including many sources of drinking water—that will be protected by the Clean Water Act.

Clarifying the definition of WOTUS does not in its own right change existing CWA programs. For example, the exemption of many farming activities from CWA requirements does not change under this proposal, and industries with point-source discharges into waters that are currently jurisdictional to the CWA will see no change in the requirements they face. However, in changing the definition of waters of the United States there *may* be instances in which the CWA applies for the first time or there is less ambiguity about whether the program applies. Where regulated activities are occurring in waters used for drinking water supply, there is the potential for this greater clarity to provide additional protections to source water quality.

The Proposed Changes

Table 1 provides a summary of how the proposed rule change alters the definition of WOTUS. This table was originally obtained from USEPA[5] but has been modified here.

Under the proposed rule the following will *always* be jurisdictional:

- All *tributaries*, including any water (wetlands, lakes, and ponds) that contribute flow, either directly or through another water, to downstream traditional navigable waters, interstate waters, or territorial seas.
- All waters *adjacent* to such tributaries. This clause previously specified *wetlands*, not *waters*.

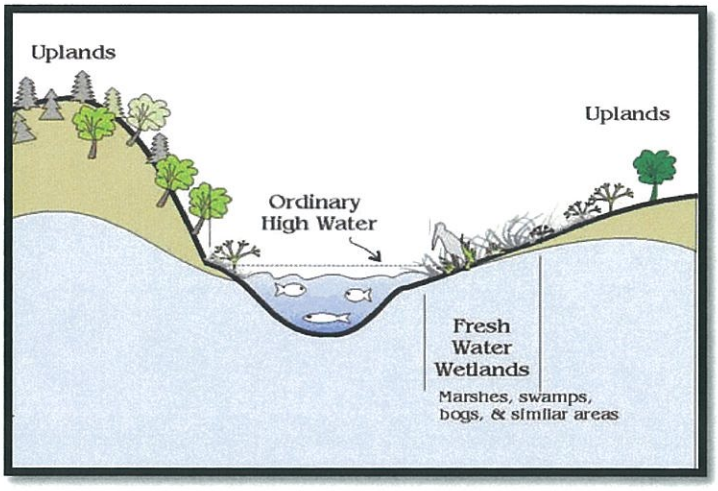
> "...there are some neighboring waters that might be located *outside* of the riparian zone or floodplain, such as wetlands immediately next to a highly incised and manipulated stream that no longer has a riparian area or a floodplain (that would be considered jurisdictional by rule)"
>
> "For purposes of this rule, *confined surface connections* consist of permanent, intermittent or ephemeral surface connections through directional flowpaths, such as (but not limited to) swales, gullies, rills, and ditches."
>
> "A *shallow subsurface hydrologic connection* is lateral water flow through a shallow subsurface layer, such as can be found, for example, in steeply sloping forested areas with shallow soils, or in soils with a restrictive layer that impedes the vertical flow of water... *Shallow subsurface connections* may be found both within the ordinary root zone and below the ordinary root zone (below 12 inches)... Shallow subsurface connections are distinct from deeper groundwater connections, which do not satisfy the requirement for adjacency"
>
> *Federal Register.* 79:76 (22207–22208)

[5] US Environmental Protection Agency. Waters of the United States Proposed Rule. Webcast sponsored by USEPA's Watershed Academy. April 7, 2014.

Table 1 Existing versus proposed rule

Existing Regulatory WOTUS	Proposed Rule
Includes all traditional navigable waters (TNWs)	No change
Includes all interstate waters	No change, but clarifies that interstate waters are treated as TNWs
Excludes jurisdiction over waste treatment systems and prior converted croplands	No change
Regulation does not identify features that are never jurisdictional	Includes list of features that are not jurisdictional, including erosional features, upland ditches, rills, non-wetland swales
Includes all wetlands adjacent to a jurisdictional tributary	All waters that meet the regulatory definition of "adjacent" are jurisdictional. Covers all adjacent waters, not just wetlands, within the floodplain
Includes other waters, such as geographically isolated wetlands, that have an effect on interstate commerce (e.g., wetlands used for recreation, fishing, industrial purposes)	Other waters are included if they have a significant nexus to TNWs. Other waters may be aggregated where they perform similar functions and are located close together in the same watershed.
Waters adjacent to a TNW are covered through "bordering, contiguous, or neighboring" connection. Term "neighboring" is ambiguous	"Neighboring" is now defined and includes wetlands, lakes, and ponds located within the riparian zone or floodplain of a WOTUS. Neighboring waters are jurisdictional.
Includes all tributaries; but tributaries are not defined, and regulatory reach is limited by US Supreme Court decisions	Includes tributaries and defines them based on presence of a bed, bank, and "ordinary high-water mark." Intermittent and ephemeral streams with those features that at some time contribute water to a recognized water of the United States will be WOTUS without consideration of additional factors.
Includes 56 "normal farming" agricultural exempted activities	No change

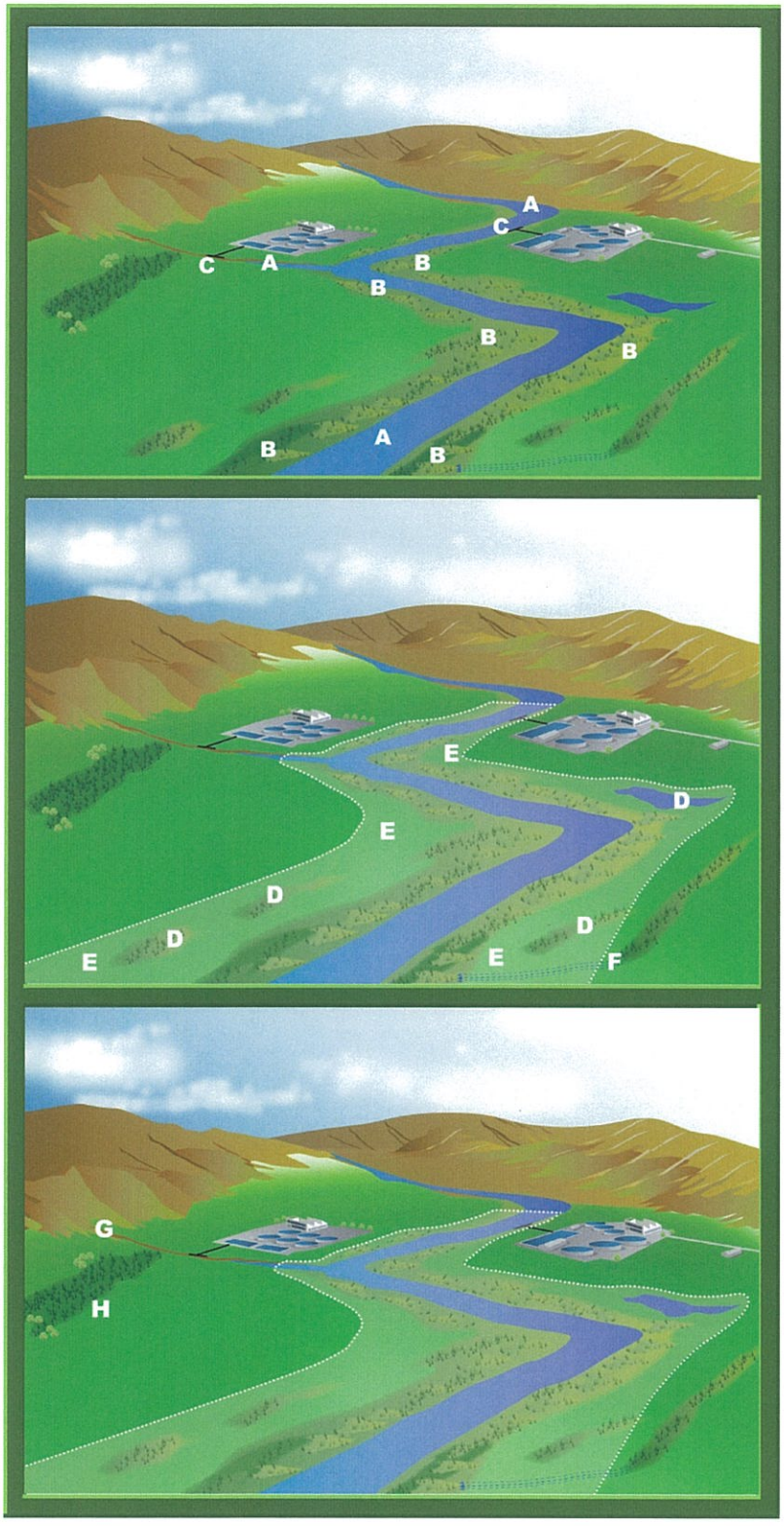
Figure 3 contains an example of jurisdiction based on the proposed definition of *adjacent*. The proposed rule broadly defines adjacent as including all waters located within the "riparian area" or "floodplain" of otherwise jurisdictional waters, and waters and wetlands located *outside* of floodplains and riparian areas that have shallow subsurface hydrologic connections or confined surface hydrologic connections to jurisdictional water. A case-by-case analysis could also determine that waters outside of the riparian area or floodplain have a sufficient hydrologic connection to be considered WOTUS.



The term "ordinary high-water mark" means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

— Definition of Waters of the United States, 328.3(e) 51 FR 41250, Nov. 13, 1986

Figure 2 Examples of ordinary high water marks (OHWMs) in the context of continuum of tributaries, ranging from an ephemeral wash to a large perennial river



The current rule and adopted court cases hold that federal jurisdiction includes Traditionally Navigable Waters (TNW) of the United States (A) Tributaries and adjacent wetlands (B). NPDES compliance points are based on end of pipe or WOTUS location (C). Tributary is not defined.

The proposed rule would consider waters of the United States to include other waters (D) in the "riparian zone" or "floodplain" (E) and potentially waters and wetlands outside the "riparian zone" or "floodplain" that are connected by channel flow or subsurface flow and are proximate (F).

The proposed rule would also define all "tributaries" as WOTUS. Any channel with a bed, bank, and an ordinary high-water mark (G). Tributaries will include channels with less than perennial flow. Waters and wetlands adjacent to these waters would be WOTUS, as well (H).

Figure 3 Understanding adjacency

The proposed rule codifies nine existing practices and categorically exempts a number of surface features from federal CWA jurisdiction. Five of these exemptions are likely to be relevant to water utilities. They include:

- Ditches excavated wholly in or only draining uplands and transporting less than perennial flow
- Ditches that do not contribute flow, either directly or through another water, to TNWs, interstate waters, or the territorial seas
- Water-filled depressions created incidental to construction activities
- Groundwater, including groundwater drained through subsurface drainage systems
- Artificial lakes or ponds created by excavating and/or diking dry land and used exclusively for stock watering, irrigation, settling basins, or rice growing

Four other categorically exempted structures are less likely to have an immediate impact on water utilities. They include:

- Artificially irrigated areas that revert to upland should water application cease
- Artificial reflecting or swimming pools created by excavating and/or diking dry land
- Small ornamental waters created for primarily aesthetic purposes
- Gullies and rills and non-wetland swales

The proposed rule's net effect is that some bodies of water and associated "wet" lands will be defined as WOTUS that previously might not have been under a case-by-case review. As noted elsewhere, this may bring about both greater source water protection and greater permit and mitigation requirements.

Figure 4 and Table 2 provide a summary of potential scenarios to aid in understanding the effect of the proposed rule in such cases.

Table 2 Landscape Scenarios (See Figure 4)

Scenario	Waters of the US under the proposed rule?
1. Farm pond in uplands	No, unless it is considered an impoundment of an otherwise defined water.
2. Ditch in uplands not draining another water	No
3. Aqueduct	USEPA has indicated classification will not change, but this is not made clear in rule language.
4. Wetland adjacent to waters, not in the riparian area or floodplain, but having a shallow subsurface hydrologic connection to waters	Not without site-specific analysis. If outside the floodplain or riparian area the wetland/water must be connected via a confined surface connection to be a WOTUS. But it could be determined to be an "Other Water" based on a case-specific review.
5. Impounded ephemeral stream	Yes, because the ephemeral stream will be a WOTUS.
6. Wetlands adjacent to impounded waters	Yes, because impounded water is a WOTUS
7. Rill/erosional feature	No. By rule, these features are explicitly excluded from jurisdiction.
8. Road ditch in upland not draining another water.	No.
9. Water adjacent to a tributary	Yes. Although outside the floodplain or riparian area, the water is connected via a confined surface connection to a WOTUS.
10. Road ditch in upland draining another water	Yes. This portion of the ditch is part of a stream (WOTUS) that is also integral to the road ditch.
11. Waste treatment lagoon	No. Waste treatment systems are excluded by rule.
12. National Pollutant Discharge Elimination System (NPDES) wastewater outfall	Yes, if the outfall (and pipe) is below the OHWM or in any other WOTUS. Geographic location of NPDES compliance points may be affected by shifting the limits of WOTUS upstream. Discharge limits will not be affected.
13. Sanitary sewer main	Construction of the line through features that are WOTUS would be affected, (but not the sewer main itself).
14. Wetland that is neither in the "Riparian" area nor in the floodplain and does not have a shallow subsurface hydrologic or confined surface connection to waters	No, unless it is determined to be an "Other Water" on a case-by-case review.
15. Waters in a floodplain	Yes. By rule, wetlands and open waters meeting the new definition of "neighboring" are themselves WOTUS. Neighboring is defined as wetlands, lakes, and ponds located within the riparian zone or floodplain.
16. Natural levee	N/A
17. Wetland adjacent to Waters separated by a natural levee	Yes. Even where the two waters may be separated by features that are not jurisdictional, such as uplands, berms, roads, levees, and similar features, the presence of these features does not extinguish jurisdiction.

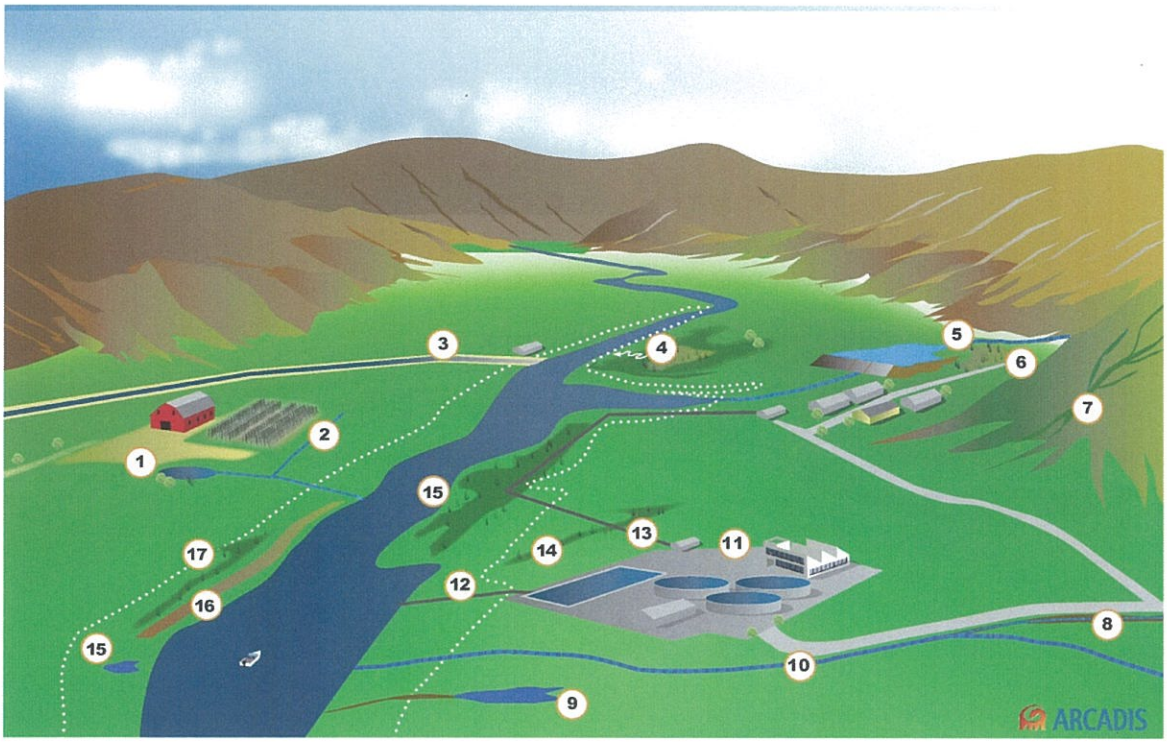


Figure 4 Illustrated guide to proposed changes to the definition of waters of the United States

Legend

1. Farm pond in uplands
2. Ditch in uplands not draining another water
3. Aqueduct
4. Wetland adjacent to waters. It is neither in the riparian area nor in the floodplain, however it has a shallow subsurface hydrologic connection to waters
5. Impounded ephemeral stream
6. Wetlands adjacent to impounded waters
7. Rill/erosional feature connected by confined surface hydrologic connection
8. Road ditch in upland not draining another water
9. Water adjacent to a tributary
10. Road ditch in upland draining another water
11. Waste treatment lagoon
12. NPDES wastewater outfall
13. Sanitary sewer main
14. Wetland that is neither in the riparian area nor in the floodplain nor does it have a shallow subsurface hydrologic or confined surface connection to waters
15. Waters in floodplain of waters
16. Natural levee
17. Wetland adjacent to waters separated by a natural levee

Geographical Differences

The confusion over what is classified as WOTUS has been fueled by vagueness or lack of definition of critical terms within the Clean Water Act and by recent Supreme Court rulings. Adding to the confusion, each state has decided under state laws whether to protect waters that are not explicitly protected under federal law. Figure 5 illustrates how the states currently make this decision. Some states have adopted "relevant stringency prohibitions," private property-based limitations, or a combination of the two, on state agencies (and in some instances, localities). These regulatory limitations are known as "relevant limitations provisions."[6]

The states that do versus the states that do not have relevant limitations provisions are shown in Figure 5. As shown, some states regulate aquatic resources just as stringently—but no more so—than explicitly required by the CWA. Other states have expanded their jurisdiction beyond that required by federal law.

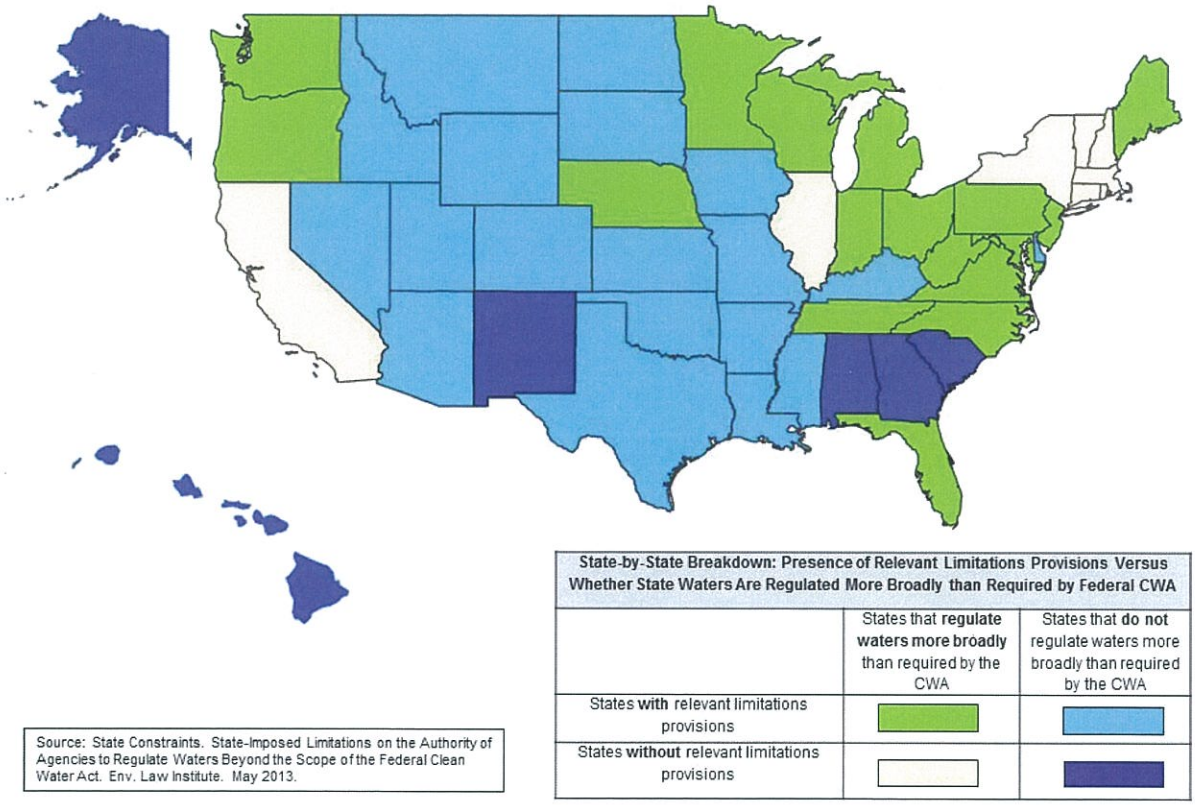


Figure 5 State-by-state breakdown

[6] These provisions can act to constrain, and in certain instances eliminate, the authority of regulators to protect aquatic resources that are no longer covered by the federal law or whose coverage has been made uncertain, as a result of the SWANCC and Rapanos decisions.

The degree to which the states would be additionally burdened if this rule is adopted is based, in large part, on how broadly they are currently asserting jurisdiction within their boundaries. For example, most of the Western and Midwestern states have relevant limitations provisions and *do not* regulate waters more broadly than required by the CWA. These states would see the most significant changes if the proposed rule were adopted. Conversely, most of the New England states and California do not have relevant limitations provisions and *do* regulate waters more broadly than required by the CWA. These states would see the least significant changes if the proposed rule were adopted.

Impacts of the proposed new definition of WOTUS are likely to vary significantly from one state to another. For example, in Arizona, 94 percent of tributary streams to major rivers are intermittent or ephemeral (according to the National Hydrography Dataset). Arizona is a state that has not historically regulated waters where water is not present. Consequently a more broadly framed federal definition could mean that nearly all the tributaries in Arizona that carry little water at infrequent intervals become jurisdictional under federal law because they would likely meet the new definition of a tributary (having a "bed, bank, and OHWM").

Impacts on Water Utilities

Table 3 summarizes probable impacts on water utilities. As noted, states that currently regulate only what has been historically required under the CWA may experience the most significant modifications to their existing regulatory programs.

Table 3 Issues/Assessment

Potential Issues	Assessment
NPDES permit issues	Outfall limits are not likely to be affected by a change in the definition of WOTUS, though the location of compliance points could be moved upstream if the limits of jurisdiction move upstream. Previously, discharges (for example, from well flushing) to ephemeral streams located in uplands only required a permit if case-by-case analysis defined the receiving channel as WOTUS. Now a permit will be required categorically if the receiving channel has a bed, a bank, and an ordinary high-water mark.
Construction issues	A significant aspect of the proposed definition is increased burden during facility expansion and line installation. It appears that there will be more instances in which facility construction will require a permit and that more projects will require site-specific permits. The increased burden will likely take the form of increased permitting costs, increased mitigation costs, and longer wait times for required permits.

Table continued on next page

Table 3 Issues/Assessment (continued)

Potential Issues	Assessment
Stormwater (MS4, Green Infrastructure, etc.)	The proposed rule neither explicitly exempts stormwater and green infrastructure nor makes them jurisdictional by rule. USEPA has stated that nothing will change regarding this subject. Under both the current and proposed regulatory language, stormwater ponds can be deemed WOTUS if they are an "impoundment" of other defined waters. Some man-made water bodies are specifically exempted, such as • Artificially irrigated areas that would revert to upland should application of irrigation water to such areas cease. • Artificial lakes or ponds created by excavating and/or diking dry land and used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing. • Artificial reflecting pools or swimming pools created by excavating and/or diking dry land. • Small ornamental waters created by excavating and/or diking dry land for primarily aesthetic reasons. • Water-filled depressions created incidental to construction activity.
Drinking water	Groundwater supplies are not affected by the proposed rule. The definition of WOTUS is limited to surface waters and wetlands that have significant nexus to WOTUS. USEPA has stated that the proposed rule is not intended to change the regulation of water supply infrastructure such as aqueducts and reservoirs. With all agricultural exemptions remaining intact, potential negative impacts to source waters from farming activities (nutrient loadings, etc.) will continue to be an issue.
Reservoirs	Siting and construction of in-stream reservoirs could be more challenging if there is an expansion to jurisdictional wetlands and streams and the increased burden associated with increased permitting costs, increased mitigation costs, and longer wait times for project starts while permits are processed. The proposed approach to defining adjacent waters and tributaries could expand the jurisdictional waters impacted by reservoir expansion or management activities, potentially leading to additional permitting requirements.
Regulatory oversight and citizen suits	To the degree that the definition of WOTUS establishes specific criteria, adherence to those criteria will provide regulators with a basis for jurisdictional decisions. There are areas within the proposed rule (such as stormwater retention ponds) that may require more specificity to determine their jurisdictional status. Decisions on such waters will be litigable absent a site-specific science-based premise. Over time, clearer "bright lines" may develop, but until such lines evolve, the rule appears to place more burden on project sponsors to justify site-specific flexibility than on regulators.

Potential Permitting Implications

Although the proposed rule is not a permitting rule, it does have implications for permitting. Any regulatory or geographic expansion of WOTUS will increase the potential that permitting will be required in order to manage impacts on surface waters or wetlands. If additional federal permitting is required, it follows that additional agency scrutiny will be required. All federal actions and permits, for example, require some level of review by the US Fish and Wildlife Service through the Endangered Species Act or by historic preservation agencies through the National Historic Preservation Act. Activities that commonly require some level of federal review associated with impacts to WOTUS include:

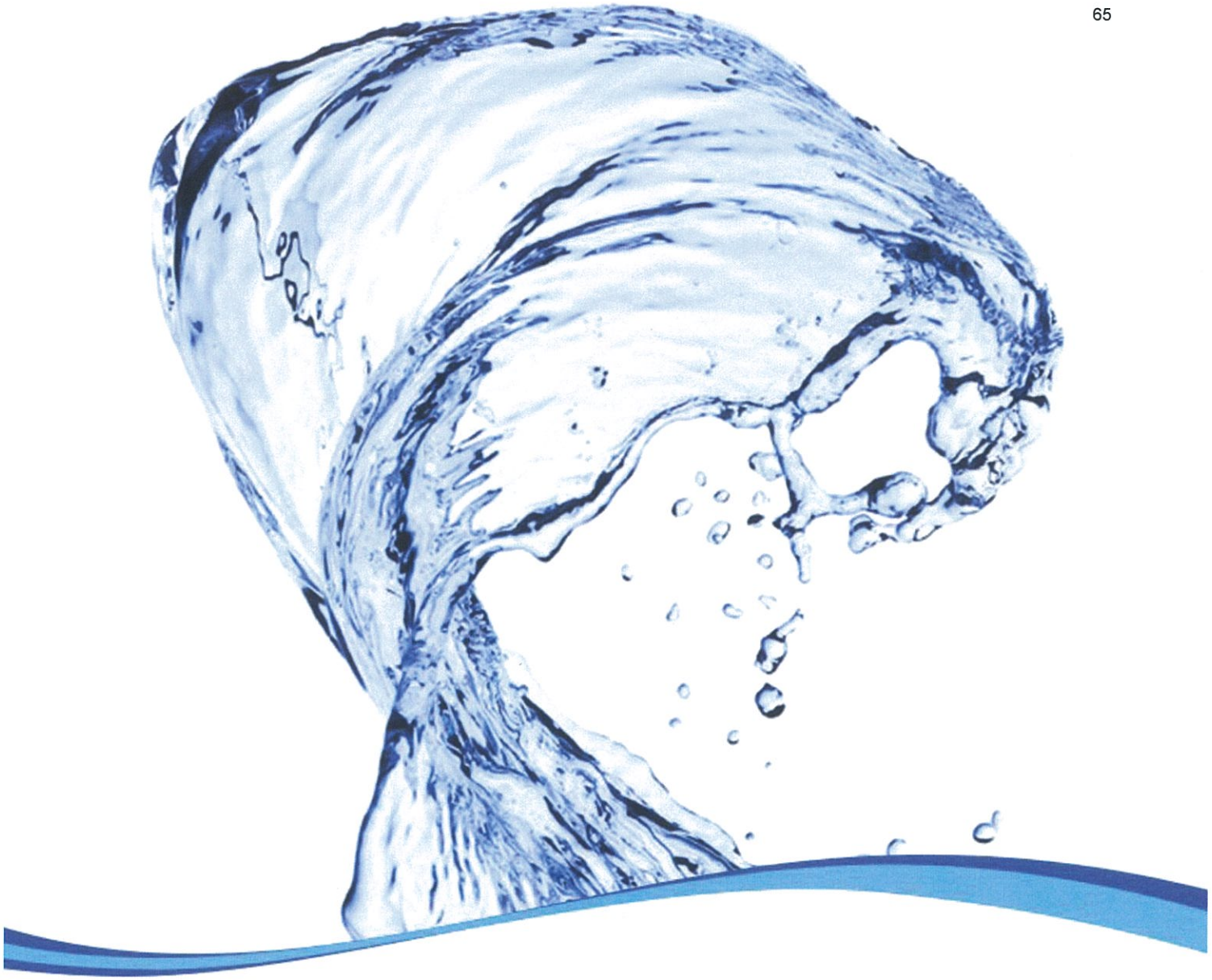
- Construction of road crossings over streams and wetlands
- Installation and maintenance of water or sewer lines in streams and wetlands
- Installation of outfalls
- Installation of intakes
- Discharge of fill material into streams or wetlands for building pads
- Inundation of streams or wetlands with standing water by construction that obstructs surface or channel flow

Aside from the permitting itself, other implications include effects on project schedules and costs associated with permits, studies, and compensatory mitigation.

Summary

The definition of "waters of the United States" is central to implementation of the Clean Water Act. Put simply, the proposed rule describes where the law applies. The CWA plays a powerful role in reducing the amount of pollution entering our nation's water and is central to protecting the quality of our drinking water supplies. Its implementation also has significant implications for the day-to-day operations and capital infrastructure planning necessary to drinking water, wastewater, stormwater, recycled water, and irrigation water utilities. We hope this description of the proposed rule helps illustrate its likely impacts.

For more information, please contact the American Water Works Association, Washington DC Office, 1300 Eye St. NW, Washington, DC 20005-3314, 202.628.8303.



Appendix A

Table 1. Comparison of "Definition of Waters of the United States" Regulatory Language

Current Regulatory Language and Proposed Rule Announced by EPA and the Army Corps of Engineers March 25, 2014

Current Regulatory Language[a]	Proposed Regulatory Language (3/25/2014)	Comments[b]
(a) The term *waters of the United States* means	(a) For purposes of all sections of the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its implementing regulations, subject to the exclusions in subsection (b) of this section, the term "waters of the United States" means:	
(1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;	(1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;	These waters are often referred to as "traditional navigable waters" (TNWs), which include but are not limited to the "navigable waters of the United States" within the meaning of Section 10 of the Rivers and Harbors Act of 1899. No change from the existing rule.
(2) All interstate waters including interstate wetlands;	(2) All interstate waters, including interstate wetlands;	These waters include tributaries to interstate waters, waters adjacent to interstate waters, waters adjacent to tributaries of interstate waters, and "other waters" that have a significant nexus to interstate waters. No change from the existing rule. Interstate waters would continue to be "waters of the United States" even if they are not navigable in fact and do not connect to such waters.
(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:	(7) On a case-specific basis, other waters, including wetlands, provided that those waters alone, or in combination with other similarly situated waters, including wetlands, located in the same region, have a significant nexus to a water identified in paragraphs (a)(1) through (3) of this section.	In the existing rule, there is a non-exclusive list of the types of "other waters" which may be found to be "waters of the U.S." The existing description is omitted under the proposal as unnecessary and confusing because it includes some waters that would be jurisdictional under one of the categories of waters that are jurisdictional by rule under the proposal (for example, an intermittent stream that meets the definition of tributary). Under the proposed rule, "other waters" are not jurisdictional as a single category but require a case-specific analysis of a significant nexus to a traditional navigable water, an interstate water, or the territorial seas. They may be evaluated either individually, or as a group of waters where they are determined to be similarly situated in a region. "In the region" means the watershed that drains to the nearest traditional navigable water, interstate

Current Regulatory Language[a]	Proposed Regulatory Language (3/25/2014)	Comments[b]
		water, or the territorial seas through a single point of entry. How other waters are aggregated for a case-specific significant nexus analysis depends on the functions they perform and their spatial arrangement within the region or watershed. It is the landscape position within the watershed that is the determinative factor for the analysis, which will focus on the degree to which the functions provided by the other waters affect the chemical, physical, or biological integrity of (a)(1) through (a)(3) waters. Current rule asserts jurisdiction more broadly than what is proposed; the proposal deletes language requiring that an "other water" be one "the use, degradation or destruction of which could affect interstate commerce" and replaces it with requirement that the "other water" meet the significant nexus standard. The agencies consider this a substantial change from the current rule.
(i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or (ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or (iii) Which are used or could be used for industrial purpose by industries in interstate commerce;		Specific examples are omitted in the proposed rule as unnecessary. The agencies say that the listing has led to confusion where it has been incorrectly read as an exclusive list.
(4) All impoundments of waters otherwise defined as waters of the United States under the definition;	(4) All impoundments of waters identified in paragraphs (a)(1) through (3) and (5) of this section;	Impoundments of a traditional navigable water, interstate water, the territorial seas, or a tributary are jurisdictional by rule. As a matter of policy and law, impoundments do not de-federalize a water, even where there is no longer flow below the impoundment. That is, damming or impounding a water of the United States does not make the water non-jurisdictional.
(5) Tributaries of waters identified in paragraphs (a)(1)	(5) All tributaries of waters identified in paragraphs	Tributaries, as defined in the proposed rule, of a

Current Regulatory Language[a]	Proposed Regulatory Language (3/25/2014)	Comments[b]
through (4) of this section;	(a)(1) through (4) of this section;	traditional navigable water, interstate water, the territorial seas, or an impoundment would be jurisdictional by rule. Unless excluded under subsection (b) of the proposed rule, any water that meets the proposed definition of tributary is a water of the United States, whether it is perennial, intermittent, or ephemeral. The water may contribute flow directly or may contribute flow to another water or waters that eventually flow into a jurisdictional water. The tributary must drain, or be part of a network of tributaries that drain, into an (a)(1) through (a)(4) water. "Tributary" is defined below.
(6) The territorial seas;	(3) The territorial seas;	Jurisdictional by rule; no change from the existing rule.
(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)(1) through (6) of this section.	(6) All waters, including wetlands, adjacent to a water identified in paragraphs (a)(1) through (5) of this section; and	All waters, including wetlands, adjacent to a traditional navigable water, interstate water, the territorial seas, impoundment, or tributary would be jurisdictional by rule. Under the proposed rule, wetlands, ponds, lakes, and similar waterbodies that are adjacent to traditional navigable waters, interstate waters, and the territorial seas, as well as waters and wetlands adjacent to other jurisdictional waters such as tributaries and impoundments, would be jurisdictional by rule.
	(b) The following are not "waters of the United States"	
(8) Waters of the United States do not include prior converted cropland.[c] Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.	(2) Prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.	No change proposed.
Waste treatment systems, including treatment ponds or	(1) Waste treatment systems, including treatment	The agencies do not believe that omitting the

Current Regulatory Language[a]	Proposed Regulatory Language (3/25/2014)	Comments[b]
lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 C.F.R. 423.11(m) which also meet the criteria of this definition) are not waters of the United States.[d]	ponds or lagoons, designed to meet the requirements of the Clean Water Act.	parenthetical reference to 40 C.F.R. 423.11(m) is a change in substance to the waste treatment exclusion or how it is applied.
	(3) Ditches that are excavated wholly in uplands, drain only uplands or non-jurisdictional waters, and have less than perennial flow.	Proposed rule would codify long-standing practice and guidance (including 1986 and 1988 preamble language), which has been to exclude these waters from jurisdiction. Excluded ditches must be dug only in uplands, drain only uplands, and have ephemeral or intermittent flow. Water that only stands or pools in a ditch is not considered perennial flow and, therefore, any such upland ditch would not be subject to regulation. Other ditches, if they meet the new proposed definition of "tributary," would continue to be waters of the United States. Ditches may function as point sources that discharge pollutants, thus subject to CWA Section 402.
	(4) Ditches that do not contribute flow, either directly or through another water, to a water identified in paragraphs (a)(1) through (4) of this section.	Proposed rule would codify long-standing practice and guidance (including 1986 and 1988 preamble language), which has been to exclude these waters from jurisdiction. These waters would not be jurisdictional by rule. Ditches that do not contribute flow to the tributary system of a traditional navigable water, interstate water, impoundment, or the territorial seas are not "waters of the United States," even if the ditch has a perennial flow. Other ditches, if they meet the new proposed definition of "tributary," would continue to be waters of the United States. Ditches may function as point sources that discharge pollutants, thus subject to CWA Section 402.

Current Regulatory Language[a]	Proposed Regulatory Language (3/25/2014)	Comments[b]
	(5) The following features: (i) Artificially irrigated areas that would revert to upland should application of irrigation water to that area cease; (ii) artificial lakes or ponds created by excavating and/or diking dry land and used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing; (iii) artificial reflecting pools or swimming pools created by excavating and/or diking dry land; (iv) small ornamental waters created by excavating and/or diking dry land for primarily aesthetic reasons; (v) water-filled depressions created incidental to construction activity; (vi) groundwater, including groundwater drained through subsurface drainage systems; and (vii) gullies and rills and non-wetland swales.	Proposed rule would codify long-standing practice and guidance (including 1986 and 1988 preamble language), which has been to exclude these waters from jurisdiction. These waters would not be jurisdictional by rule.
	(c) Definitions—	
(b) The term *wetlands* means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.	(6) **Wetlands**: The term *wetlands* means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.	No change proposed. Wetlands are ecosystems that often occur at the edge of aquatic (water, fresh or salty) or terrestrial (upland) systems. Wetlands typically represent transitional zones between aquatic and upland systems.
(c) The term *adjacent* means bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are "adjacent wetlands."	(1) **Adjacent**: The term *adjacent* means bordering, contiguous or neighboring. Waters, including wetlands, separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are "adjacent waters."	Current rule limits consideration of adjacency to wetlands. Proposed rule would change "adjacent wetlands" to "adjacent waters" so that waterbodies such as ponds and oxbow lakes [a U-shaped body of water formed when a wide meander from a river is cut off to form a lake] as well as wetlands that are adjacent to jurisdictional waters are "waters of the U.S." by regulation. The rule would include wetlands and other waterbodies that meet the proposed definition of adjacent, including "neighboring," which is defined separately. Adjacent waters are those that provide similar functions which, *together with functions provided*

Current Regulatory Language[a]	Proposed Regulatory Language (3/25/2014)	Comments[b]
		by tributaries to which they are adjacent, have a significant nexus to traditional navigable waters (TNWs), interstate waters, and the territorial seas. "In the aggregate, all adjacent waters have a significant nexus with their downstream TNWs or interstate waters." The lateral limits of an adjacent water, other than wetlands or tributaries, are determined by the presence of an ordinary high water mark (OHWM) without the need for a bed and banks. Deletion of parenthetical phrase in the existing rule is intended to ensure that all waters that meet the proposed definitions of "adjacent" are "waters of the U.S." regardless of whether or not another adjacent water is located between those waters and the tributary.
(d) The term *high tide line* means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.	No change proposed	
(e) The term *ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of	No change proposed	

Current Regulatory Language[a]	Proposed Regulatory Language (3/25/2014)	Comments[b]
the surrounding area.		
(f) The term *tidal waters* means those waters that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by hydrologic, wind, or other effects.	No change proposed	
	(2) **Neighboring**: The term *neighboring*, for purposes of the term "adjacent" in this section, includes waters located within the riparian area or floodplain of a water identified in paragraphs (a)(1) through (a)(5) of this section, or waters with a surface or shallow subsurface hydrologic connection to such a jurisdictional water.	Waters, including wetlands, that are located within the riparian area or floodplain of an (a)(1) through (a)(5) water would be jurisdictional without a case-specific significant nexus analysis. Even if separated from such a water by natural or man-made features (e.g., a berm), the water would be adjacent and thus jurisdictional.
	(3) **Riparian area**: The term *riparian area* means an area bordering a water where surface or subsurface hydrology influence the ecological processes and plant and animal community structure in that area. Riparian areas are transitional areas between aquatic and terrestrial ecosystems that influence the exchange of energy and materials between those ecosystems.	The term "riparian area" is used to help identify waters, including wetlands, that may be "adjacent" and would, therefore, be "waters of the United States" under the proposed rule. No uplands located in "riparian areas" can ever be "waters of the United States."
	(4) **Floodplain:** The term *floodplain* means an area bordering inland or coastal waters that was formed by sediment deposition from such water under present climatic conditions and is inundated during periods of moderate to high water flows.	The term "floodplain" is used to help identify waters, including wetlands, that may be "adjacent" and would, therefore, be "waters of the United States" under the proposed rule. No uplands located in "floodplains" can ever be "waters of the United States."
	(5) **Tributary**: The term *tributary* means a waterbody physically characterized by the presence of a bed and banks and ordinary high water mark, as defined at 33 C.F.R. §328.3(e), which contributes flow, either directly or through another water, to a water identified in paragraphs (a)(1) through (4) of this section. In addition, wetlands, lakes, and ponds are tributaries (even if they lack a bed and banks or ordinary high water mark) if they contribute flow, either directly or through another water to a water identified in paragraphs (a)(1) through	This term has not previously been defined in any regulation or preamble. Bed and banks and ordinary high water mark (OHWM) are features that generally are physical indicators of flow. OHWM generally defines the lateral limits of a water. In many tributaries, the bed is that part of the channel below the OHWM, and the banks often extend above the OHWM. Wetland tributaries are wetlands that are located

Current Regulatory Language[a]	Proposed Regulatory Language (3/25/2014)	Comments[b]
	(3) of this section. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if, for any length, there are one or more man-made breaks (such as bridges, culverts, pipes, or dams) or one or more natural breaks (such as wetlands at the head of or along the run of a stream, debris piles, boulder fields, or a stream that flows underground) so long as a bed and banks and an ordinary high water mark can be identified upstream of the break. A tributary, including wetlands, can be a natural, man-altered, or man-made waterbody and includes waters such as rivers, streams, lakes, ponds, impoundments, canals, and ditches not excluded in paragraph (b)(3) or (4) of this section.	within the stream channel itself or that form the start of the stream channel. Man-altered and man-made tributaries perform many of the same functions as natural tributaries and provide connectivity between streams and downstream rivers.
	(7) **Significant nexus**: The term *significant nexus* means that a water, including wetlands, either alone or in combination with other similarly situated waters in the region (i.e., the watershed that drains to a water identified in paragraphs (a)(1) through (3) of this section), significantly affects the chemical, physical or biological integrity of a water identified in paragraphs (a)(1) through (3) of this section. For an effect to be significant, it must be more than speculative or insubstantial. Other waters, including wetlands, are similarly situated when they perform similar functions and are located sufficiently close together or close to a "water of the U.S." so that they can be evaluated as a single landscape unit with regard to their effect on the chemical, physical, or biological integrity of a water identified in paragraphs (a)(1) through (3) of this section.	A significant nexus analysis may be based on a particular water alone or on the effect that the water has in combination with other similarly situated waters in the region. "Region" means the watershed that drains to a water identified in (a)(1) through (a)(3) through a single point of entry. Proposed rule adopts the concept of aggregating certain waters to determine whether they meet the "alone or in combination with similarly situated waters" test of Justice Kennedy. Waters must perform similar functions and be located sufficiently close together or close to a traditional navigable water, interstate water, or the territorial seas so that they can be evaluated as a single landscape unit with regard to their effects. Examining both functionality and proximity limits the "other waters" that can be aggregated for purposes of determining jurisdiction. Functions that might demonstrate significant nexus include sediment trapping and retention of flood waters. A hydrologic connection is not necessary, because the function may be demonstrated even in the absence of a connection (e.g., pollutant trapping).

Source: Prepared by CRS. Congressional Research Service. June 10, 2014. EPA and the Army Corps' Proposed Rule to Define "Waters of the United States". 7-5700

Notes: The proposed rule that was announced on March 25, 2014, was published in the *Federal Register* on April 21, 2014 (79 *Federal Register* 22188-22274), which initiated a public comment period that will end on October 20, 2014.

a. 33 C.F.R. 328.3, 40 C.F.R. 122.2, 40 C.F.R. 230.3, and 40 C.F.R. 232.2 (definition of "waters of the United States"). The term "navigable waters" is defined at 40 C.F.R. 110.1 (Discharge of Oil); 40 C.F.R. 112.2 (Oil Pollution Prevention); 40 C.F.R. 116.3 (Designation of Hazardous Substance); 40 C.F.R. 117.1(i) (Determination of Reportable Quantities for Hazardous Substances); 40 C.F.R. 300.5 and Appendix E 1.5 to Part 300 (National Oil and Hazardous Substances Pollution Contingency Plan); and 40 C.F.R. 302.3 (Designation, Reportable Quantities, and Notification).

b. Comments in this table are drawn in large part from the preamble to the proposed rule.

c. The term "prior converted cropland" is included in the U.S. Department of Agriculture's administrative definition of the term "wetland" (see 7 C.F.R. 12.2).

d. A definition of "waste treatment system" is found in EPA regulations (35 C.F.R. 35.905): "Complete waste treatment system. A complete waste treatment system consists of all of the treatment works necessary to meet the requirements of title III of the Act, involved in (a) The transport of waste waters from individual homes or buildings to a plant or facility where treatment of the waste water is accomplished; (b) the treatment of the waste waters to remove pollutants; and (c) the ultimate disposal, including recycling or reuse, of the treated waste waters and residues which result from the treatment process. One complete waste treatment system would, normally, include one treatment plant or facility, but also includes two or more connected or integrated treatment plants or facilities."

Page Intentionally Blank

Established in 1881, the American Water Works Association is the largest nonprofit, scientific and educational association dedicated to managing and treating water, the world's most important resource. With approximately 50,000 members, AWWA provides solutions to improve public health, protect the environment, strengthen the economy and enhance our quality of life.

Washington Office
1300 Eye Street NW
Washington, DC 20005-3314
T: 202.628.6303
www.awwa.org

American Water Works Association

Dedicated to the World's Most Important Resource™

II

Calendar No. 559

113TH CONGRESS
2D SESSION

H. R. 5078

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 10, 2014
Received; read the first time

SEPTEMBER 11, 2014
Read the second time and placed on the calendar

AN ACT

To preserve existing rights and responsibilities with respect to waters of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Waters of the United States Regulatory Overreach Protection Act of 2014".

SEC. 2. RULES AND GUIDANCE.

(a) IDENTIFICATION OF WATERS PROTECTED BY THE CLEAN WATER ACT.—

(1) IN GENERAL.—The Secretary and the Administrator are prohibited from—

(A) developing, finalizing, adopting, implementing, applying, administering, or enforcing—

(i) the proposed rule described in the notice of proposed rule published in the Federal Register entitled "Definition of 'Waters of the United States' Under the Clean Water Act" (79 Fed. Reg. 22188 (April 21, 2014)); or

(ii) the proposed guidance submitted to the Office of Information and Regulatory Affairs of the Office of Management and Budget for regulatory review under Executive Order 12866, entitled "Guidance on Identifying Waters Protected By the Clean Water Act" and dated February 17, 2012 (referred to as "Clean Water Protection Guidance", Regulatory Identifier Number (RIN) 2040–ZA11, received February 21, 2012); or

(B) using the proposed rule or proposed guidance described in subparagraph (A), any successor document, or any substantially similar proposed rule or guidance, as the basis for any rulemaking or decision regarding the scope

or enforcement of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

(2) USE OF RULES AND GUIDANCE.—The use of the proposed rule or proposed guidance described in paragraph (1)(A), any successor document, or any substantially similar proposed rule or guidance, as the basis for any rulemaking or decision regarding the scope or enforcement of the Federal Water Pollution Control Act shall be grounds for vacating the final rule, decision, or enforcement action.

(b) EXEMPTION FOR CERTAIN AGRICULTURAL CONSERVATION PRACTICES.—

(1) IN GENERAL.—The Secretary and the Administrator are prohibited from developing, finalizing, adopting, implementing, applying, administering, or enforcing the interpretive rule described in the notice of availability published in the Federal Register entitled "Notice of Availability Regarding the Exemption from Permitting Under Section 404(f)(1)(A) of the Clean Water Act to Certain Agricultural Conservation Practices" (79 Fed. Reg. 22276 (April 21, 2014)).

(2) WITHDRAWAL.—The Secretary and the Administrator shall withdraw the interpretive rule de-

scribed in paragraph (1), and such interpretive rule shall have no force or effect.

(3) APPLICATION.—Section 404(f)(1)(A) of the Federal Water Pollution Control Act (33 U.S.C. 1344(f)(1)(A)) shall be applied without regard to the interpretive rule described in paragraph (1).

SEC. 3. FEDERALISM CONSULTATION.

(a) IN GENERAL.—The Secretary and the Administrator shall jointly consult with relevant State and local officials to develop recommendations for a regulatory proposal that would, consistent with applicable rulings of the United States Supreme Court, identify—

(1) the scope of waters covered under the Federal Water Pollution Control Act; and

(2) the scope of waters not covered under such Act.

(b) CONSULTATION REQUIREMENTS.—In developing the recommendations under subsection (a), the Secretary and the Administrator shall—

(1) provide relevant State and local officials with notice and an opportunity to participate in the consultation process under subsection (a);

(2) seek to consult State and local officials that represent a broad cross-section of regional, eco-

nomic, and geographic perspectives in the United States;

(3) emphasize the importance of collaboration with and among the relevant State and local officials;

(4) allow for meaningful and timely input by State and local officials;

(5) be respectful of maintaining the Federal-State partnership in implementing the Federal Water Pollution Control Act;

(6) take into consideration the input of State and local officials regarding matters involving differences in State and local geography, hydrology, climate, legal frameworks, economies, priorities, and needs;

(7) promote transparency in the consultation process under subsection (a); and

(8) explore with State and local officials whether Federal objectives under the Federal Water Pollution Control Act can be attained by means other than through a new regulatory proposal.

(c) REPORTS.—

(1) IN GENERAL.—Not later than 12 months after the date of the enactment of this Act, the Secretary and the Administrator shall publish in the

Federal Register a draft report describing the recommendations developed under subsection (a).

(2) CONSENSUS REQUIREMENT.—The Secretary and the Administrator may include a recommendation in the draft report only if consensus has been reached with regard to the recommendation among the Secretary, the Administrator, and the State and local officials consulted under subsection (a).

(3) FAILURE TO REACH CONSENSUS.—If the Secretary, the Administrator, and the State and local officials consulted under subsection (a) fail to reach consensus on a regulatory proposal, the draft report shall identify that consensus was not reached and describe—

(A) the areas and issues where consensus was reached;

(B) the areas and issues of continuing disagreement that resulted in the failure to reach consensus; and

(C) the reasons for the continuing disagreements.

(4) DURATION OF REVIEW.—The Secretary and the Administrator shall provide not fewer than 180 days for the public review and comment of the draft report.

(5) FINAL REPORT.—The Secretary and the Administrator shall, in consultation with the relevant State and local officials, address any comments received under paragraph (4) and prepare a final report describing the final results of the consultation process under subsection (a).

(d) SUBMISSION OF REPORT TO CONGRESS.—Not later than 24 months after the date of enactment of this Act, the Secretary and the Administrator shall jointly submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate and make publicly available the final report prepared under subsection (c)(5).

SEC. 4. DEFINITIONS.

In this Act, the following definitions apply:

(1) SECRETARY.—The term "Secretary" means the Secretary of the Army.

(2) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(3) STATE AND LOCAL OFFICIALS.—The term "State and local officials" means elected or profes-

sional State and local government officials or their representative regional or national organizations.

Passed the House of Representatives September 9, 2014.

Attest: KAREN L. HAAS,
Clerk.

ITEM 10B

Calendar No. 559

113TH CONGRESS
2D SESSION

H. R. 5078

AN ACT

To preserve existing rights and responsibilities with respect to waters of the United States, and for other purposes.

SEPTEMBER 11, 2014

Read the second time and placed on the calendar

QUESTIONS AND ANSWERS – WATERS OF THE U.S. PROPOSAL

Key Background

Congress enacted the modern Clean Water Act in 1972 to address pollution entering the nation's waters to complement statutes such as the Rivers and Harbors Act written to protect navigation. As a pollution prevention statute, Congress wrote the CWA to extend beyond waters that are actually navigable to include the headwater streams, lakes, and wetlands. Since 1972, the CWA and agency regulations have successfully contributed to the protection of public health and water quality. Federal courts, including the Supreme Court, have consistently agreed that the geographic scope of the CWA should cover such waterbodies: "We have twice stated that the meaning of "navigable waters" in the Act is broader than the traditional meaning of that term." (Justice Scalia in *Rapanos, 2006)*

Supreme Court decisions in 2001 and 2006 changed the test for determining which waters upstream of navigable waters should be protected under the Act. The basis for determining jurisdiction under the CWA changed from whether degraded water quality would have an effect on interstate commerce, to a more technical and scientific understanding of water features and their connection and importance to downstream traditional navigable waters. In this rule, EPA and the U. S. Army Corps of Engineers (the agencies) are proposing to apply this principle, and in particular the "significant nexus" test, to clarify the waters – *based on sound peer-reviewed science* – that are vital to protect under the CWA if the CWA is to be successful. The proposal also identifies waters that are not subject to the CWA. The agencies are not expanding the CWA. The proposed rule does not add protection to any new types of waters that have not historically been covered by the CWA, nor does the rule in any way limit current regulatory and statutory exemptions and exclusions. Simply put, if an activity was exempted or excluded before this proposal, it will remain exempted or excluded. If you didn't need a permit for a type of activity before, you won't need one now.

Applying the Decisions of the Supreme Court

In 2008, the agencies issued guidance to interpret and apply the 2001 and 2006 Supreme Court decisions. This guidance was effective in providing agency field staff and the public with the kinds of information needed for permit decisions. However, with improved science and practical knowledge based upon years of experience, the agencies believe that regulatory improvements can and will be made with the proposed rule. Members of Congress, developers, farmers, states and local governments, energy companies, and many others demanded new regulations to make the process of identifying waters protected under the Act clearer, simpler, and faster. In response to the many comments received, the agency's proposed science-based rule is consistent with the Supreme Court's decisions and will improve the process for identifying which waters are and are not subject to the CWA.

The agencies then focused their efforts on proposing this rule to implement the decisions of the Supreme Court. The rule:

- Reduces the scope of waters protected under the CWA compared to waters covered during the 70's, 80's and 90's to conform to the Supreme Court's significant nexus test.
- Limits CWA jurisdiction only to those types of waters that have a ***"significant nexus"*** on downstream traditional navigable waters - not just any hydrologic connection.

- Improves efficiency, clarity and predictability for all land owners including the nation's farmers, as well as permit applicants, while maintaining all current exemptions and protecting public health, water quality, and the environment.
- Uses the law and sound, peer-reviewed science as its cornerstones.

"Significant Nexus"

The focus of the agencies' new proposed rule is to interpret and apply the "significant nexus" test established in Supreme Court decisions, based consistently on the law and science. To meet this goal, the new proposed rule must ensure that waters are protected under the CWA in circumstances where science supports an important and identifiable chemical, physical, or biological effect on downstream traditional navigable waters. This protection would prevent downstream waters from pollution upstream. For example, science demonstrates that the upstream headwaters, wetlands, lakes, man-made channels, or other waters act together to significantly influence downstream waters by:

- Protecting downstream water quality
- Contributing clean water for drinking, irrigation, recreation, commercial fishing, and industrial uses downstream, or
- Filtering pollution and reducing downstream treatment costs
- Providing habitat for fish and other aquatic life that live in traditional navigable waters
- Reducing downstream flooding and protecting property and infrastructure

The Proposed Rule

In implementing the Supreme Court's decisions, the proposed rule uses the law and science to clarify that:

- Science demonstrates that waters like tributaries and adjacent waters must be protected under the CWA because they significantly affect the quality of downstream waters.
- Tributaries include only those waters whose volume, duration and frequency of flow is sufficient to create certain well-known and easy to observe and document, hydrologic characteristics that typically take years to form, such as the formation of a clear channel with bed and banks and an ordinary high water mark.
- Ground water, gullies and erosion channels, and features on farm land including swales, farm and stock ponds that are built on dry land, as well as all ditches that do not have the features of tributaries or are explicitly excluded under the proposed rule, all prior converted croplands, and tile drainage systems – are not protected under the CWA.
- The definition of wetlands continues to exclude features that do not have the soil, vegetation, and saturation characteristics that take years to form.
- A group of water features like prairie potholes, vernal pools and playa lakes are identified as warranting a case-specific review to determine if they act as a collective group of similar waters, and may meet the significant nexus test and therefore warrant protection.

Conclusion

America thrives on clean water. It is vital for the success of the nation's businesses, agriculture, energy development, and the health of our communities. The agencies are eager to define the scope of the Clean Water Act that achieves the goals of protecting clean water and public health, and promoting jobs and the economy. Americans should not have to choose among these goals.

The agencies have proposed a new rule for public review and comment. The notice and comment process recognizes that an agencies' thinking can be improved by hearing from by landowners, business people, farmers, scientists, energy companies, conservationists, states and local governments, and others who have valuable experience, clear perspectives, and important information . We will not complete the rule until we have carefully read through all and address the public comments, until our scientific analysis and peer review are complete, and until we have worked to make the rule understandable, technically accurate, and legally correct.

During this public comment period, the agencies are hearing numerous specific and technical questions and have been asked for a clear articulation of the intent and reading of the proposal.

1. What is the purpose of this Q&A document?
ANSWER: This document explains the agencies intent and understanding of the rule text and is based on questions raised so far during the public comment period. We are hopeful that it will help inform the comments we receive and the conversations we are having with stakeholders, to allow the agencies to have a better understanding of how the rule and preamble can be written as clearly as possible when the final version is completed.

2. Is the proposal an expansion of jurisdiction?
ANSWER: No. From the Clean Water Act's enactment, its scope of jurisdiction, included any waterbody that had a connection with interstate commerce. However, the Supreme Court has now focused on a more technical and scientific understanding of water features and their connections to downstream traditional navigable waters. This new focus placed certain waters in a gray area, where case-specific determinations were required in the absence of agency rulemaking. This gray area creates uncertainty, litigation risk for some land owners, and inconsistent application of the CWA. The proposed rule clearly applies the "significant nexus" test as contemplated by Justice Kennedy. It also reduces litigation risk by reducing the amount of waters in this gray area.

3. Doesn't the Economic Analysis indicate jurisdiction would expand by at least 3 percent compared to the existing regulation?
ANSWER: The economic analysis examines the costs and benefits of the proposal. In doing so, the agencies compared the proposed rule to current practices. This analysis indicates that there would be a three percent increase, or roughly 1500 acres nationwide, in cases where the agencies would find waters jurisdictional. This increase is largely a result of clarifying the current confusion and difficulty of assessing "other waters." When the proposed rule is compared to the agencies' existing regulations, however, the proposed rule reflects a substantial reduction in waters protected by the CWA as a consequence of recent decisions of the Supreme Court.

4. If a water on my property is jurisdictional, does that mean the federal government controls my use of the water?
ANSWER: No. It is important to emphasize that CWA permitting only applies where someone proposes to dump waste or other pollutants into the nation's streams, rivers, lakes, and wetlands. These are waters where communities get their drinking water, where families swim and boat, and where fish are caught for recreation and for sale to markets and restaurants. If you're not polluting these water bodies, you don't need any sort of permit. Also, normal farming practices that involve dredged or fill material, regardless of jurisdiction, do not need a permit, since the law permanently excludes those practices.

5. Didn't the Supreme Court direct the agencies to only cover waters that are navigable?
ANSWER: No. The Supreme Court has clearly held all three times it has considered the issue that the CWA extends its protection beyond the navigable-in-fact waters. In fact, Justice Scalia makes it clear in Rapanos when he wrote, "the Act's term 'navigable waters' includes something more than traditional navigable waters. We [the Supreme Court] have twice stated that the meaning of 'navigable waters' in the Act is broader than the traditional meaning of that term." The courts, including the Supreme Court, have consistently found that the jurisdiction of the CWA extends beyond waters that are navigable-in-fact to include waterbodies such as wetlands and small tributaries. This is important because protecting downstream, navigable waters requires also protecting the waters that feed into them.

6. This proposed rule includes seasonal and rain dependent streams when they meet the definition of a tributary. Would the water that flows on my land only after a rainstorm now become jurisdictional?
ANSWER: Rainwater that flows on top of the land, sometimes referred to as sheetflow, or through an erosion feature is not jurisdictional under the CWA. The proposed rule would only cover features that have a bed and bank and ordinary high water mark. These features take years to develop. An erosion feature is not jurisdictional because it does not have these characteristics. Thus, the proposed rule specifically excludes erosional features, such as gullies.

7. Doesn't this rule make all "other waters," such as prairie potholes jurisdictional?
ANSWER: No. The rule maintains the status quo by treating unique waters like prairie potholes on a case-specific basis. However, pursuant to Justice Kennedy's opinion in the *Rapanos* case, the proposed rule considers the aggregate importance of these waters in a geographic area and their connection (if any) to traditionally navigable waters, when determining whether to extend CWA protections. Aggregation of waters is only appropriate for certain waters, like prairie potholes, that are very similar in specific location, size and proximity to jurisdictional waters.

8. The rule would continue to require a case-specific significant nexus analysis for "other waters", like Prairie Potholes. Does the rule allow the agencies to evaluate an adjacent Prairie Pothole wetland that has a significant nexus together with near-by non-adjacent Prairie Pothole wetlands when doing this significant nexus analysis?
ANSWER No. A case specific significant nexus analysis for an "other water" may only consider additional "other waters" of the same type located in the same region, but the analysis would not combine "other waters" with "adjacent waters" even if they are of the same type and located in the same region.

9. Are there maps that USGS put out showing that nearly all the waters in the United States now come under the jurisdiction of the CWA?
ANSWER: No. There are no maps of CWA jurisdiction from USGS or any other Federal agency. Due to the resolution of USGS maps, they do not distinguish between land and water and thus make waters appear more prevalent than is actual. USGS maps do not depict the scope of waters protected under the Clean Water Act or the scope of waters that would be protected under the proposed rule.

10. Doesn't this rule expand the opportunity for legal challenges under the CWA?
ANSWER: No. The regulated community has long been concerned that ambiguity in jurisdiction of the CWA would allow for third party lawsuits regarding where the CWA applies. The proposed rule reduces the grey area and reduces the opportunity for third party challenges.

11. Do I need a CWA permit when I am applying pesticides or herbicides to any farm fields?
ANSWER: No. A permit is only needed when pesticides are applied to waters that are jurisdictional. For example, if wetlands protected under the CWA are being farmed, activities such as plowing, seeding, and harvesting do not require a CWA permit. Applying pesticides or herbicides ***in*** jurisdictional wetlands, however, would generally require a permit, and may be satisfied by a general permit. In addition, neither agricultural stormwater nor return flows from irrigation need permits.

12. Do I need a CWA permit to fill puddles on my property?
ANSWER: No.

13. Will stormwater management systems permitted under the CWA, commonly called MS4s, become "waters of the US" under the proposed rule?
ANSWER: No. The proposed rule does not change the status of an MS4 under the CWA. The proposed rule does not regulate any types of waters that are not regulated under the current rule. We are eager to work with stakeholders and the public to ensure the final rule reflects this intent.

14. Will I need a Clean Water Act permit to fill in the wet area in my back yard?
ANSWER: No. Wet areas in your back yard, like puddles on your lawn that hold water temporarily following rainfall or snowmelt, are not subject to the CWA.

15. Would the proposed rule protect, as tributaries, all "channels" regardless of how often they flow or how much water they carry?
ANSWER: No. The agencies proposed, consistent with the Supreme Court decisions, to protect those flowing waters that significantly affect downstream navigable waters. Simply establishing a connection does not mean that the connection creates the required significant effect. The agencies have defined tributaries based on physical indicators of flow – bed and banks and ordinary high water mark – and many "channels" will not meet this definition. The agencies are eager to review public comments on the proposed rule to ensure that the definition of tributary is clear and reflects this.

16. While the proposed rule says groundwater is not jurisdictional, the proposal considers subsurface flows when deciding if a water is adjacent. Isn't this another way of making groundwater jurisdictional?
ANSWER: No. Although shallow subsurface flow can be used to establish a connection to Waters of the U.S. under the definition of "neighboring," it is not itself jurisdictional, and the proposal specifically excludes groundwater.

17. Why doesn't the definition of "floodplain" in the rule include a single frequency interval?
ANSWER: The proposed rule does not define floodplain because there is no scientific consensus on how to do so. However, the agencies want to hear specific comments on how this is possible to do.

18. Is all land and water in a floodplain subject to CWA jurisdiction?
ANSWER: No. The CWA does not apply to uplands. Only water features such as streams, wetlands, and ponds in floodplains are potentially covered by the CWA. It is important to keep in mind that normal farming practices can, do, and will continue to occur in waters in floodplains without the need for a 404 permit.

19. Will the proposed rule expand CWA jurisdiction over ditches, canals, and similar man-made channels?
ANSWER: No. The proposed rule would reduce jurisdiction over ditches currently covered by the CWA. For example, the rule would exclude ditches constructed on dry land and that flow less than year round. This would exclude from CWA protection, for example, many roadside ditches and irrigation ditches. Simply put, if a ditch is not constructed through a wetland or a stream, and if it doesn't flow year round, it would not be included in the jurisdiction of the CWA. Where a ditch is constructed though a wetland or a stream and connects to a navigable water, it will be treated the exact same way it was treated before this proposal.

20. How is the term "upland" used in the proposed rule?
ANSWER: Under the rule, an "upland" is any area that is not a wetland, stream, lake or other waterbody. So, any ditch built in uplands that does not flow year-round is excluded from CWA jurisdiction.

21. If a ditch listed as excluded from jurisdiction is also located in a floodplain, does it become jurisdictional?
ANSWER: No. A ditch excluded from the CWA under the proposed rule would remain excluded even if located in a floodplain. For example, upland areas exist in floodplains. If a ditch drains upland areas, even in a floodplain, and it flows less than 365 days a year, the ditch is not jurisdictional. None of the water features excluded in the proposed rule can be brought back under CWA jurisdiction. Once a water feature qualifies for the exclusion, it is out.

22. Is my rain garden regulated as a "water of the US" under the proposal?
ANSWER: No. Rain gardens and similar green infrastructure would not be regulated under the proposed rule because they are not wetlands or built in waters protected by the CWA.

23. If I have a water listed as "excluded" under the proposed rule, can it become jurisdictional if it also falls into the category of "adjacent waters" or some other category of jurisdictional water?
ANSWER: No. In the proposal, where a water meets a criterion for being excluded from the definition of waters of the U.S., it remains excluded regardless of any other considerations.

24. Will the proposed rule change the current exclusion regarding waste treatment systems constructed in waters of the US?
ANSWER: No. The proposed rule would not change, in any way, existing application of the waste treatment system exclusion.

25. Will the proposed rule change the current exclusion for prior converted cropland?
ANSWER: No. The exclusion from jurisdiction for prior converted cropland is carried forward unchanged from the current rule.

INFORMATION ONLY

October 6, 2014 JPA Board Meeting

TO: JPA Board of Directors

FROM: Facilities & Operations

Subject: Odor Control Scrubber Carbon Replacement: Authorization of Purchase Order (Pg. 93)

The Las Virgenes-Triunfo Joint Powers Authority (JPA) approved funding for this matter in the Fiscal Year 2014-15 JPA Budget. The Las Virgenes Municipal Water District Board, as the Administering Agent of the JPA, authorized the General Manager to issue a purchase order in the amount of $35,615.62 to Prominent Systems, Inc., for carbon media replacement at the Tapia Water Reclamation Facility at its September 23, 2014 meeting.

SUMMARY:

One of the maintenance projects included in the annual budget is for replacement of the granular activated carbon media in the odor control scrubbers at the Tapia Water Reclamation Facility. There are four 18,000-pound scrubbers for the headworks facility and three 6,000-pound scrubbers for the primary sedimentation basins. Life expectancy of the carbon media varies depending on operation of the scrubbers. However, the media for the primary scrubbers generally lasts one year; whereas, the media for the headworks scrubbers usually lasts two years.

For Fiscal Year 2014-15, carbon media replacement is scheduled for two primary scrubbers and one headworks scrubber. The following three bids were received for the work:

Company	Bid
Prominent Systems, Inc.	$35,615.62
BakerCorp	$42,212.00
Enviro Supply Service, Inc.	$42,780.00

Prominent Systems, Inc. successfully completed the carbon media replacement last year.

FISCAL IMPACT:

Yes

ITEM BUDGETED:

Yes

FINANCIAL IMPACT:

Sufficient funds are available for this work in the adopted JPA Fiscal Year 2014-15 Budget.

Prepared By: Brett Dingman, Water Reclamation Manager

INFORMATION ONLY

October 6, 2014 JPA Board Meeting

TO: JPA Board of Directors

FROM: Facilities & Operations

Subject: Tapia Primary Clarifier No. 1 Rehabilitation Project: Change Order No. 1 (Pg. 94)

The Las Virgenes-Triunfo Joint Powers Authority (JPA) approved funding for this matter in the Fiscal Year 2014-15 JPA Budget. The Las Virgenes Municipal Water District (LVMWD), as Administering Agent of the JPA, administratively approved Change Order No. 1 pursuant to the General Manager's authority to approve contract change orders as defined in the LVMWD Code.

SUMMARY:

On April 22, 2014, a contract was awarded to Offshore Construction, Inc. in the amount of $169,500 for the rehabilitation of Tapia Primary Clarifier No. 1. The project includes concrete repair, installation of protective coating and replacement of corroded aluminum launders. On July 15, 2014, the General Manager approved Change Order No. 1 in the amount of $22,565 (copy attached) to increase the stainless steel launder size from 15"x 15" as shown in the construction documents to 24"x 24" as measured in the field.

FISCAL IMPACT:

No

ITEM BUDGETED:

Yes

FINANCIAL IMPACT:

Sufficient funds are available in the adopted Fiscal Year 2014-15 JPA Budget for this work.

DISCUSSION:

The 15"x 15" launder size shown in the construction documents was based on record drawings. The contractor field verified the actual launder dimensions to be 24"x 24". Staff requested that the contractor to provide additional quotes to ensure competitive pricing of the larger replacement launders. A total of three quotes were received:

Offshore Construction:	$31,517.00
JBI Water and Wastewater Equipment:	$59,720.00
Penn Stainless Steel (stainless steel sheets only, no fabrication):	$30,401.22

Construction of the project is near completion. Due to delays associated with delivery of the launders and diffusers, the overall construction schedule has been delayed. However, the delays have not impacted the normal operation of the Tapia Water Reclamation Facility. Staff anticipated that the project will be completed and presented to the LVMWD Board for acceptance in November 2014.

Prepared By: John Zhao, P.E., Principal Engineer

ATTACHMENTS:

Change Order No. 1

ITEM 10D

CONTRACT CHANGE ORDER
No. 01

4232 Las Virgenes Road
Calabasas, California 91302-1994

Project Tapia Water Reclamation Facility: Primary Clarifier No.1 Rehabilitation Project

Project No. Acct. No. 10512.1880.505

Contractor Offshore Construction, Inc. Date July 15, 2014

CONTRACTOR CHANGE ORDER NO. 01 The Contractor is hereby authorized and directed to make the herein described changes from the Plans and Specifications or do the following work not included in the Plans and Specifications for the construction of this project.

This change requested by: Offshore Construction, Inc.

DESCRIPTION OF CHANGE:

	Description	Amount	Days
	Increase stainless steel launder size from 15"x15" to 24"x24"[1]	$ 22,565.00	0
	TOTAL	**$ 22,565.00**	0

[1] Field verification showed that the actual size of the stainless steel launders was 24"x24". Contractor's bid was based off of 15"x15" dimensions from District record drawings.

TOTAL INCREASES AT AGREED PRICES OR FORCE ACCOUNT **$ 22,565.00**
~~DECREASES~~

Contract Change Order No. 01 Project No. Acct. No. 10512.1880.505

Date July 15, 2014

(2) Estimate of increases and/or decreases in contract items at contract unit prices:

INCREASES

Item	Description	Quantity	Unit Price	Total
			TOTAL INCREASES	$N/A

DECREASES

Item	Description	Quantity	Unit Price	Total
			TOTAL DECREASES	$N/A

TOTAL NET _____ IN CONTRACT ITEMS AT CONTRACT UNIT PRICES $_____

TOTAL COST OF THIS CHANGE ORDER $ 22,565.00 **INCREASE** ~~**DECREASE**~~

It is agreed 0 consecutive calendar days extension of time will be allowed by reason of this change.

Recommended by

John Zhao, P.E.
Principal Engineer

Departmental Approval

David R. Lippman
Director of Facilities and Operations

ACCEPTED:

Offshore Construction, Inc.

By:

Date: 7/14/2014

APPROVED:

Las Virgenes Municipal Water District

By:

David Pedersen, P.E.
General Manager
Date: 09/05/14

Note: Attention is called to the sections of the Special Provisions and Standard Provisions on EXTRA, ADDITIONAL OR OMITTED WORK.

- THIS CHANGE ORDER IS NOT EFFECTIVE UNTIL APPROVED BY OWNER
- IF ACCEPTABLE TO THE CONTRACTOR, THIS CHANGE ORDER IS EFFECTIVE IMMEDIATELY

October 6, 2014 JPA Board Meeting

TO: Board of Directors

FROM: Facilities & Operations

Subject: SCADA Communications Upgrade Phase 1: Call for Bids (Pg. 97)

The Las Virgenes-Triunfo Joint Powers Authority (JPA) approved funding for this project in Fiscal Year 2014-15 JPA Budget. The Las Virgenes Municipal Water District (LVMWD) Board of Directors, acting as Administering Agent of the JPA, authorized a Call for Bids in accordance with the project specifications and proposed bid schedule for the SCADA Communications Phase 1 Upgrade Project and authorized the General Manager to approve a change in scope to MSO Technologies, Inc. in the amount of $40,760.00 for additional design services.

SUMMARY:

On April 23, 2013, the LVMWD Board authorized the General Manager to execute a professional services agreement with MSO Technologies, Inc., for engineering design services in the amount of $93,900 for the first phase of the SCADA Communications Upgrade Project. The scope of work consisted of improvements and upgrades at various sites to both the District's and JPA's wired and wireless Supervisory Control and Data Acquisition (SCADA) network.

During the design process, the scope of work was expanded to include additional project sites based on the 60% design review meeting. The addition of sites provided an overall cost savings for the project as described in the discussion below. These project sites were not initially included in MSO's scope and were added from the planned second phase of work. MSO submitted a budget augmentation request in the amount of $40,760 for the additional effort expended due to the change in scope.

FISCAL IMPACT:

Yes

ITEM BUDGETED:

Yes

FINANCIAL IMPACT:

Sufficient funds are available in the adopted Fiscal Year 2014-15 JPA Budget for the work. The JPA's share of the chance in scope to MSO Technologies, Inc., is $9,840.

DISCUSSION:

The proposed schedule for the project is as follows:

Call for Bids	August 26, 2014
1st Advertisement	September 2, 2014
2nd Advertisement	September 8, 2014
Mandatory Pre-Bid Job Walk	September 24, 2014
Bid Opening	October 13, 2014
Project Award	November 11, 2014

Project Completion 270 Calendar Days from NTP (est. August 2015)

Additional project sites were added or expanded upon following the 60% design review meeting in order to fully complete each specific site without requiring future work at the same locations as part of the Phase 2 improvements. The reduction in contractor mobilization for the two phases of work will reduce the overall construction cost.

Also, the addition of sites for the Westlake Filtration Plant, Rancho Las Virgenes Composting Facility, Tapia Water Reclamation Facility, and Lift Station Nos. 1 and 2 result in a cost-savings of approximately $40,000 annually by eliminating the need for costly T1 telecommunication services.

The Calleguas East Portal repeater site was added to allow the Twin Lakes Pump Station to communicate with the Twin Lakes Tank site. The existing buried communications line has failed numerous times causing the tank to overflow. Repair of the line not feasible.

Other sites were added to complete the backhaul ring of high speed radios. The ring is the backbone of the overall project and is needed for redundant communications through the addition of Westlake, Rancho, and Tapia. All future sites will connect through this ring.

Services during construction for the additional sites are included within the cost for the scope change.

Prepared By: Eric Schlageter, P.E., Associate Engineer

ATTACHMENTS:

Notice Inviting Sealed Bids

Scope Change MSO

NOTICE INVITING SEALED PROPOSALS (BIDS)

SCADA Phase 1 Communications Upgrade

*NOTICE IS HEREBY GIVEN that the Board of Directors of Las Virgenes Municipal Water District invites and will receive sealed proposals (bids) up to the hour of **3:00 PM** on **Monday, October 13th ,2014**, for furnishing the work described in the contract documents. Bids received after the time stated in the Call for Bids will not be accepted and will be returned, unopened, to the bidder. The time shall be determined by the time on the receptionist telephone console in our Headquarters lobby. Proposals will be publicly opened and read aloud at the office of the District, 4232 Las Virgenes Road, Calabasas, California. Said bids shall conform to and be responsive to the Specifications and Contract Documents for said work as heretofore approved by the District.*

*A **mandatory** pre-bid tour will be conducted at **10:30 AM** on **Wednesday, September 24th, 2014**. The meeting will begin at the District headquarters at 4232 Las Virgenes Road, Calabasas, CA 91302. Attendance at the pre-bid conference is a condition precedent to submittal of the bid and the District will not consider a bid from any bidder not represented at the pre-bid conference. Questions regarding the project may be directed to Eric Schlageter, P.E., at 818-251-2142.*

*Sets of contract documents may be purchased at the District office upon payment by check of **thirty-five dollars** ($35) for each set requested or ten dollars ($10) for each Compact Disc requested. Checks shall be made payable to the Las Virgenes Municipal Water District. Purchase price will not be refunded*

Each bid must be on the District bid form and shall be sealed and filed with the secretary of the District at or before the time stated in the Notice.

All terms and conditions contained in the Specifications and Contract Documents shall become part of the contract. The Board of Directors of Las Virgenes Municipal Water District reserves the right to reject any and all bids and to waive any and all irregularities in any bid. No bidder may withdraw his bid after the said time for bid openings until 60-days thereafter or until the District has made a final award to the successful bidder or has rejected all bids, whichever event first occurs.

The Board of Directors of the District reserves the right to select the schedule(s) under which the bids are to be compared and contract(s) awarded.

BY ORDER OF THE GOVERNING BODY OF
LAS VIRGENES MUNICIPAL WATER DISTRICT

_____ _____

Dated

Barry S. Steinhardt
Secretary of the Board

CHANGE IN SCOPE TO PROFESSIONAL SERVICES AGREEMENT # 14986-OJ

Project Title: Phase 1 SCADA Communications Upgrade

Consultant:DD MSO Technologies, Inc.

Nature Of Changes:

The design scope of the first phase of the SCADA network upgrade project was expanded to include additional project sites based on the 60% design review meeting and subsequent testing of alternative paths. These additional project sites were not initially budgeted for within the first phase of the project and were added to the scope of work.

Fee Adjustment	
Previous Fee:	$93,900.00
Increase/~~Decrease~~:	$40,760.00
Estimate ☐ Lump Sum ☐ Not to Exceed ☑	
Revised Fee:	$134,660.00

Time Adjustment	
Previous Deadline:	
Additional Time:	
New Deadline:	

Las Virgenes Municipal Water District

Eric Schlageter, P.E.

David W. Pedersen, General Manager

Date:

MSO Technologies, Inc.

2985 East Hillcrest Drive, Suite 101
Thousand Oaks, CA 91362

Voice (805) 379-8668
Fax (805) 379-8677

June 6, 2014

Las Virgenes Municipal Water District
Michael McIntyre
4232 Las Virgenes Road
Calabasas, CA 91302-1994

REF: SCADA Network Upgrade Phase One Scope Increase

Dear Michael:

As you're aware, the District chose to expand the scope of the first phase of the SCADA Network Upgrade Project by including additional sites. The first increase came as a result of the 60% design review meeting and subsequent testing of alternate paths. The second increase came as a result of the District needing to establish a more formal agreement for access to Castro Peak. With the exception of the Calleguas East Portal site these sites would have been included in subsequent phases of this project. Sites added to the first phase are listed below.

1. 005 Outfall
2. Calabasas Tank
3. Calleguas East Portal (repeater site)
4. Castro Peak (major network site)
5. LV1 Flow Meter
6. Rancho Las Virgenes Composting Facility
7. Reservoir One
8. Tapia Water Reclamation Facility
9. Twin Lakes Pump Station
10. Westlake Filtration Plant (major network site)

A breakdown of the additional effort is shown on the follow pages.

Michael McIntyre
Las Virgenes Municipal Water District
SCADA Network Upgrade Phase One Scope Change

Detailed Design			
Site	**Hours**	**Rate**	**Cost**
005 Outfall	4	$140	$ 560
Calabasas Tank	24	$140	$3,360
Calleguas East Portal	24	$140	$3,360
Castro Peak	24	$140	$3,360
Rancho Composting	16	$140	$2,240
Reservoir 1	24	$140	$3,360
Tapia	12	$140	$1,680
Twin Lakes Pump Station	8	$140	$1,120
Westlake Filtration Plant	12	$140	$1,680
Design revisions due to revised architecture	24	$140	$3,360
		Subtotal	$24,080

Path Investigation and Site Visits			
Site	**Hours**	**Rate**	**Cost**
Reservoir 1 / Tapia	8	$140	$1,120
Castro Peak	8	$140	$1,120
		Subtotal	$ 2,240

Commissioning Services			
Site	**Hours**	**Rate**	**Cost**
Construction supervision services (bid/RFI response, submittal review, installation supervision)	16	$140	$2,240
Commissioning and configuration services	80	$140	$11,200
Reimbursable expenses (MSO van and mileage)	1	$1,000	$1,000
		Subtotal	$14,440

Requested Change Order			
Detailed Design	1	$24,080	$24,080
Path Testing and Site Visits	1	$2,240	$2,240
Commissioning Services	1	$14,440	$14,440
		Total Change Request	**$40,760**

Michael McIntyre
Las Virgenes Municipal Water District
SCADA Network Upgrade Phase One Scope Change

Please contact me at any time with any questions at (805) 379-8668 extension 1001.

Sincerely,
MSO *Technologies*

David Patrick, P.E.

INFORMATION ONLY

October 6, 2014 JPA Board Meeting

TO: JPA Board of Directors

FROM: Facilities & Operations

Subject: Agoura Road Recycled Water Pipeline Project: Ladyface Court to Cornell Road (Pg. 104)

SUMMARY:

The Agoura Road "Gap" project was identified in the 2007 Recycled Water Master Plan Update. The purpose of the project is to close a gap in the recycled water transmission system to provide redundancy, improve reliability, and serve future customers along the alignment. The scope of work in the 2007 Master Plan included installation of 9,250 linear feet of 8-inch pipeline from Ladyface Court to Lewis Road.

The City of Agoura Hills (City) is currently planning to widen Agoura Road from Ladyface Court to Cornell Road, which presents an opportunity to install the pipeline within the same reach at a reduced cost by combining the two construction projects to realize savings from mobilization, traffic control and pavement restoration, and to reduce impacts to the public. The proposed project includes installation of 5,100 linear feet of 8-inch recycled water pipeline from Ladyface Court to Cornell Road, which is about 55% of the original scope identified in the 2007 Master Plan Update.

On June 3, 2013, the JPA Board awarded engineering services for the project to Kimley-Horn & Associates, Inc. (Kimley-Horn). Kimley-Horn is currently under contract with the City to provide civil engineering design services for the street widening improvements along Agoura Road. Kimley-Horn was recommended for the engineering services for the recycled water pipeline due to their competitive proposal and ability to coordinate the work with the City's project.

Kimley-Horn has completed the design of the 8-inch recycled water main extension, which has been added as an alternative bid item under the City's road widening project. The City is preparing to advertise the combined project for bid. This memo is intended to provide an update to the JPA Board as to the status of the project. Staff will return to the JPA Board on December 1, 2014 with a recommendation for award of the project based on an analysis of the bids received.

The tentative schedule provided by the City is as follows:

Advertise for bids: October 13, 2014

Bid Opening: November 13, 2014

JPA Award: December 1, 2014

Project Award: December 10, 2014

Start Construction: January 2015

FISCAL IMPACT:

No

ITEM BUDGETED:

Yes

FINANCIAL IMPACT:

There is no financial impact associated with this project status update.

The JPA Board has approved appropriations totaling $423,103 for this project through Fiscal Year 2014-15 under CIP Job No. 10521; this amount was not expected to fully fund the project. The Engineer's Estimate of probable construction costs for the pipeline is $926,100. Significant savings can be realized by taking advantage of the opportunity to include the pipeline work in the City's project. Following opening of construction bids for the combined project, the JPA can decide whether or not to accept or reject the bid for the pipeline portion of the project, depending on the actual cost-savings realized. Pending the result of the bid opening, an additional appropriation will be required to complete construction of the project.

Prepared By: Eric Schlageter, P.E., Associate Engineer

INFORMATION ONLY

October 6, 2014 JPA Board Meeting

TO: JPA Board of Directors

FROM: Facilities & Operations

Subject: 8-Inch Sludge Force Main Failure: Declaration of Emergency and Authorization to Procure Goods and Services (Pg. 106)

On September 23, 2014, the Board of Directors of Las Virgenes Municipal Water District, as Administering Agent of the Las Virgenes-Triunfo Joint Powers Authority (JPA), declared the 8-inch sludge force main failure of September 11, 2014 an emergency requiring immediate action without delay and authorized the General Manager to procure goods and services necessary to respond to the emergency, in an amount not to exceed $75,000, without formal bids, informal bids or requests for proposals.

SUMMARY:

On September 11, 2014, the nipple attaching an air and vacuum release valve (air-vac) to the 8-inch sludge force from the Tapia Water Reclamation Facility to the Rancho Las Virgenes Composting Facility failed due to corrosion. The air-vac was within a manhole in the northbound lane of Las Virgenes Road between Camp David Gonzales and Mulholland Highway.

The failure of the air-vac resulted in the discharge of sludge onto Las Virgenes Road and the adjacent drainage channels. Staff responded immediately to the failure, diked the roadside drainage channels to contain the overflow, and began clean-up and repair work. Fortunately, the majority of the sludge was contained and recovered, preventing it from reaching the creek. Three contractors were called in to assist with traffic control, clean-up and repair on an emergency basis.

Additional details on the incident and response will be provided at the JPA Board meeting.

FISCAL IMPACT:

Yes

ITEM BUDGETED:

Yes

FINANCIAL IMPACT:

Sufficient funds are available for this work in the adopted JPA Fiscal Year 2014-15 Budget.

DISCUSSION:

Las Virgenes Municipal Water District Code Section 2-5-502 - Emergencies:

(b) "When a meeting of the Board can be commenced in a timely manner to authorize emergency action, by a 4/5's vote, the Board may authorize procurement of good and services without formal bids, informal bids, or requests for proposal. Such authorization shall be based on substantial evidence set forth in the minutes of the meeting that the emergency will not permit delay and action is necessary to respond to the emergency. Until the emergency subsides or the work is complete, at each subsequent regular meeting the Board shall determine by 4/5's vote whether to continue or terminate the authorization for emergency."

Prepared By: David R. Lippman, Director of Facilities and Operations

INFORMATION ONLY

October 6, 2014 JPA Board Meeting

TO: JPA Board of Directors

FROM: General Manager

Subject: Board Meeting Follow-up Items (Pg. 107)

SUMMARY:

Attached is a list of follow-up items from previous JPA Board meetings. The list provides a brief description of the various items, origination dates, and responsible managers.

FISCAL IMPACT:

No

ITEM BUDGETED:

No

Prepared By: David W. Pedersen, Administering Agent/General Manager

ATTACHMENTS:

Board Meeting Follow-Up Items

BOARD MEETING FOLLOW-UP ITEMS

Item No.	Origination Date	JPA or LVMWD	Description	Responsible Manager
1	07/07/2014	JPA	Report back on the outcome/resolution of the Tapia NPDES Permit Exceedences issue with the RWQCB.	Lippman
2	08/04/2014	JPA	Report back on the JPA's maintenance program for its trunk sewers and recycled water pipelines, considering the recent LADWP pipeline break near UCLA.	Lippman