



San Gabriel Valley Council of Governments

AGENDA AND NOTICE

OF THE JOINT MEETING OF THE WATER POLICY COMMITTEE & WATER TECHNICAL ADVISORY COMMITTEE (TAC)

Wednesday, July 19, 2017, 10:00 AM

Upper San Gabriel Valley Municipal Water District – 602 E. Huntington Dr., Monrovia, CA

Water Policy Committee

Chair: Diana Mahmud
City of South Pasadena

Vice-Chair: Judy Nelson
City of Glendora

Members
Claremont
Diamond Bar
Glendora
Monrovia
Rosemead
Sierra Madre
South Pasadena

Water TAC

Chair: Vacant

Vice Chair:

David Dolphin

Members
Alhambra
Arcadia
Covina
Monrovia
Sierra Madre
LA County DPW Upper
San Gabriel Valley
MWD

Ex-Officio Members
Foothill MWD
LA County Sanitation
Districts
SG Basin Watermaster

Thank you for participating in today's meeting. The Water Committee encourages public participation and invites you to share your views on agenda items.

MEETINGS: *Regular Meetings of the Water Committee are held on the third Wednesday of each month at 10:00 AM at the Upper San Gabriel Valley Municipal Water District Offices 602 E. Huntington Drive, Suite B Monrovia, CA 91016.* The agenda packet is available at the San Gabriel Valley Council of Government's (SGVCOG) Office, 1000 South Fremont Avenue, Suite 10210, Alhambra, CA, and on the website, www.sgvco.org. Copies are available via email upon request (sgv@sgvco.org). Documents distributed to a majority of the Committee after the posting will be available for review in the SGVCOG office and on the SGVCOG website. Your attendance at this public meeting may result in the recording of your voice.

CITIZEN PARTICIPATION: Your participation is welcomed and invited at all Water Committee and Water TAC meetings. Time is reserved at each regular meeting for those who wish to address the Committee. SGVCOG requests that persons addressing the Committee refrain from making personal, slanderous, profane or disruptive remarks.

TO ADDRESS THE COMMITTEE: At a regular meeting, the public may comment on any matter within the jurisdiction of the Committee during the public comment period and may also comment on any agenda item at the time it is discussed. At a special meeting, the public may only comment on items that are on the agenda. Members of the public wishing to speak are asked to complete a comment card or simply rise to be recognized when the Chair asks for public comments to speak. We ask that members of the public state their name for the record and keep their remarks brief. If several persons wish to address the Committee on a single item, the Chair may impose a time limit on individual remarks at the beginning of discussion. **The Water Committee and Water TAC may not discuss or vote on items not on the agenda.**

AGENDA ITEMS: The Agenda contains the regular order of business of the Water Committee and the Water TAC. Items on the Agenda have generally been reviewed and investigated by the staff in advance of the meeting so that the WRWG Committee can be fully informed about a matter before making its decision.

CONSENT CALENDAR: Items listed on the Consent Calendar are considered to be routine and will be acted upon by one motion. There will be no separate discussion on these items unless a Committee member or citizen so requests. In this event, the item will be removed from the Consent Calendar and considered after the Consent Calendar. If you would like an item on the Consent Calendar discussed, simply tell Staff or a member of the Committee.



In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the SGVCOG office at (626) 457-1800. Notification 48 hours prior to the meeting will enable the SGVCOG to make reasonable arrangement to ensure accessibility to this meeting.



PRELIMINARY BUSINESS

1. Call to Order
2. Roll Call
3. Public Comment (*If necessary, the Chair may place reasonable time limits on all comments*)

CONSENT CALENDAR (*It is anticipated that the Water Committee/TAC may act on the following matters*)

4. Water Committee/TAC Meeting Minutes – 6/21/2017
Recommended Action: Approve.

PRESENTATION

ACTION ITEMS (*It is anticipated that the Water Committee/TAC may act on the following matters*)

DISCUSSION ITEMS (*It is anticipated that the Water Committee/TAC may act on the following matters*)

5. AB 1180 (Holden)
Recommended Action: discuss and provide direction to staff.

INFORMATION ITEMS

6. Legislative Updates
 - State Legislation
 - Federal Legislation*Recommended Action: for information.*
7. State Audit of Regional Boards MS4 Permits
Recommended Action: for information.
8. Regulatory Updates
 - 303(d) List
 - WOTUS*Recommended Action: for information.*
9. Water Boards Update
 - State Board
 - Regional Board: Industrial Permit meeting*Recommended Action: for information.*
10. LA County Water Resilience Update
Recommended Action: for information.
11. Water Supply Update
Recommended Action: for information.
12. Litigation Update
Recommended Action: for information.
13. Stormwater Outreach Updates
 - Supervisor Barger, June 22nd
 - South Bay Cities COG, July 27
 - Flood Control Tour w/ Congresswoman Napolitano, Aug 3*Recommended Action: for information.*
14. E/WMP Updates
Recommended Action: for information.

EXECUTIVE DIRECTOR'S COMMENTS

CHAIR'S REPORT

ANNOUNCEMENTS

- LA Water Board Climate Change Strategy Workshop: Aug 8th
- San Gabriel Valley Water Association Quarterly Breakfast: August 9th. Alf Brandt will be the featured speaker.
- Water Policy/TAC meeting: Aug 16th (dark?)
- LA Water Board meeting: Sept 7th

ADJOURN



SGVCOG Joint Water Policy Committee/TAC Unapproved Minutes

Date: June 21, 2017
 Time: 10:00 AM
 Location: Upper San Gabriel Valley Municipal Water District
 602 E. Huntington Drive, Monrovia, CA

PRELIMINARY BUSINESS

1. Call to Order: The meeting was called to order at 10:06 AM.
2. Roll Call

Water Policy Committee Members Present

J. Nelson, Glendora
 J. Capoccia, Sierra Madre
 D. Mahmud, South Pasadena

Water Policy Committee Members Absent

Claremont
 Diamond Bar
 Monrovia
 Rosemead

Water TAC Members Present

D. Dolphin, Alhambra
 A. Tachiki, Monrovia
 M. Lombos, P. Villaluna, E. Vizcarra, LACDPW
 M. Gouveia, USGVMWD

Water TAC Members Absent

Arcadia
 Covina
 Sierra Madre

Ex Officio Members Present

S. Green, LA County Sanitation District

Ex Officio Members Absent

Foothill Municipal Water District
 Watermaster

Guests

J. Carver, M. Cansino, Pomona
 R. Tahir, TECS Environmental

B. Lathrop, Bradbury
 M. Lyons, S. Helland, S. Heieh, Assembly
 Member Holden

B. Pence, Congresswoman Napolitano
 E. Hills, SGVMWD
 S. Costandi, Covina

M. Lutz
 D. Diaz, Day One
 A. Molina, WSP USA

SGVCOG Staff

E. Wolf

3. Public Comment. There were no public comments.

CONSENT CALENDAR

4. Water Committee/TAC Meeting Minutes – 5/17/2017
There was a motion to approve the minutes. (M/S: D. Mahmud/J. Capoccia).

[MOTION PASSED]

AYES:	Glendora, Sierra Madre, South Pasadena, Alhambra, Monrovia, LACDPW, USGVMWD, Sanitation District
NOES:	
ABSTAIN:	

ABSENT:	Claremont, Diamond Bar, Monrovia, Rosemead, Arcadia, Covina, Foothill Municipal Water District, Watermaster
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PRESENTATION

ACTION ITEMS

5. Election of Chair and Vice Chair for the Water Policy Committee for 2017-2018.
There was a motion to nominate D. Mahmud as Chair. (M/S: J. Capoccia/J. Nelson)
There was a motion to nominate J. Nelson as Vice Chair. (M/S: D. Mahmud/J. Capoccia).

[MOTIONS PASSED]

AYES:	Glendora, Sierra Madre, South Pasadena
NOES:	
ABSTAIN:	
ABSENT:	Claremont, Diamond Bar, Monrovia, Rosemead

6. Election of Chair and Vice Chair for the Water Technical Advisory Committee for 2017-2018
There was a motion to nominate S. Chapman as Chair and D. Dolphin at Vice Chair. (M/S: D. Dolphin/M. Lombos)

[MOTIONS PASSED]

AYES:	Alhambra, Monrovia, LACDPW, USGVMWD
NOES:	
ABSTAIN:	
ABSENT:	Arcadia, Covina, Sierra Madre

DISCUSSION ITEMS

7. Legislative Updates
- State Legislation. D. Mahmud updated the committee on the status of SB 633 and SB 589. Both are two-year bills currently being held in the Appropriations Committee. M. Lyons stated that Assembly Member Holden’s office has been contacted by LA County requesting the insertion of Water Resilience language into one of Holden’s bills. Likely this will be a gut and amend to AB 1180.
 - o AB 1654 (Rubio) D. Mahmud gave an overview of the bill.
There was a motion to recommend that the Governing Board support AB 1654. (M/S: J. Nelson/D. Mahmud)

[MOTION PASSED]

AYES:	Glendora, Sierra Madre, South Pasadena, Alhambra, Monrovia, LACDPW, USGVMWD, Sanitation District
NOES:	
ABSTAIN:	
ABSENT:	Claremont, Diamond Bar, Monrovia, Rosemead, Arcadia, Covina, Foothill Municipal Water District, Watermaster

- Federal Legislation
 - o HR 2355 WIFA D. Mahmud requested that HR 2355 be discussed in conjunction with HR 465, a Republican-only bill that is very similar to 2355.

Due to the similarities in the bills, there was a motion to concurrently discuss and consider taking a position on either HR 2355 or HR 465. (M/S: D. Mahmud/S. Green)

[MOTION PASSED]

AYES:	Glendora, Sierra Madre, South Pasadena, Alhambra, Monrovia, LACDPW, USGVMWD, Sanitation District
NOES:	
ABSTAIN:	
ABSENT:	Claremont, Diamond Bar, Monrovia, Rosemead, Arcadia, Covina, Foothill Municipal Water District, Watermaster

Both bills codify integrated planning in MS4 permitting. HR 2355 is a bipartisan bill that also includes green infrastructure and a municipal ombudsman. HR 465 is a Republican-only bill that does not include these issues. Information obtained by the Committee indicates that 2355 will not move forward, but 465 will. That being the case, the Committee voted to support HR 465 with the following amendments:

- o Creation of an Office of Municipal Ombudsman
- o Promotion of the use of green infrastructure in programs and permits
- o Increasing the term of permits from 5 years to 10 years

There was a motion to recommend that the Governing Board support HR 465 with the amendments. (M/S: D. Mahmud/J. Nelson)

[MOTION PASSED]

AYES:	Glendora, Sierra Madre, South Pasadena, Alhambra, Monrovia, LACDPW, USGVMWD, Sanitation District
NOES:	
ABSTAIN:	
ABSENT:	Claremont, Diamond Bar, Monrovia, Rosemead, Arcadia, Covina, Foothill Municipal Water District, Watermaster

- o HR 2510 WQP&JCA D. Mahmud gave an overview of the bill.

There was a motion to recommend that the Governing Board support HR 2510. (M/S: D. Mahmud/J. Capoccia)

[MOTION PASSED]

AYES:	Glendora, Sierra Madre, South Pasadena, Alhambra, Monrovia, LACDPW, USGVMWD, Sanitation District
NOES:	
ABSTAIN:	
ABSENT:	Claremont, Diamond Bar, Monrovia, Rosemead, Arcadia, Covina, Foothill Municipal Water District, Watermaster

INFORMATION ITEMS

8. Regulatory Updates

- Report on Waste Discharge/MS4 Permit update. There was no update on this item.
- [303\(d\) List](#). P. Villaluna, LACDPW, discussed revisions to the 303(d) list based on the input the LA Regional Board received during its public comment period. Most cement-lined channels have been removed from the list. The County will continue providing data in support of delisting benthic communities. The list is now with the State Board for adoption after a period of public comment and a hearing. Written comments are due by July 10th and the hearing is set for October 3rd.

- [Waters of the United States Informal Comment Submission](#) E. Wolf reviewed the June Governing Board action approving the submission of comments to EPA.
9. Water Boards Update. There were no updates on this item.
 - State Board
 - Regional Board
 10. LA County Water Resilience Update. D. Mahmud discussed the draft legislative language necessary to grant the Flood Control District tax authority and the ability to use Proposition 218 rules to establish a property tax in support of the County's Water Resiliency Plan. Draft language states that 40% of the tax revenue will be distributed back to the district from which it came. 50% would go to the County for regional projects, and another 10% for administrative overhead. The County is targeting November 2018 for a ballot measure.
 11. Water Supply Update. There was no update on this item.
 - Upper District Update
 - Watermaster Update
 12. Litigation Update. There was no update on this item.
 13. Stormwater Outreach Updates. There were no updates on these items.
 - Flood Control Tour w/ Congresswoman Napolitano, TBD
 - Supervisor Barger, June 22nd
 - South Bay Cities COG, July 27
 14. E/WMP Updates. There was no update on this item.

EXECUTIVE DIRECTOR'S COMMENTS

CHAIR'S REPORT

ANNOUNCEMENTS

The next LA Water Board meeting will be on July 6th.

The next Water Policy/TAC meeting will be on July 19th. (dark?)

ADJOURN

The meeting adjourned at 12:05 P.M.

DATE: July 19, 2017

TO: Water Policy Committee, Water Technical Advisory Committee

FROM: Eric Wolf

RE: AB 1180 (HOLDEN), TO AMEND SECTION 2 OF THE LAS ANGELES COUNTY FLOOD CONTROL ACT

RECOMMENDED ACTION

Discuss and provide direction to staff.

BACKGROUND

At the April 2017, Governing Board meeting, members adopted Resolution 17-07 supporting AB 1180 (Holden). As originally written, AB 1180 would increase the tire recycling fee by \$1.50 per tire with the money placed in the newly created Stormwater Permit Compliance Fund, to be used for stormwater cleanup. On May 16, 2017 Assembly Member Holden's staff contacted the SGVCOG to inform us that Assembly Leadership would not move the bill out of Appropriations over concerns about raising fees. In an effort to maintain the purpose of the bill—producer/source responsibility for cleanup of pollutants—Holden's staff suggested a gut and amendment of AB 1180. The amended version of the bill directs the Department of Toxic Substance Control to revise its 2017 Priority Product Work Plan include motor vehicle tires and adopt regulations for tires containing zinc oxide. On June 15, 2017, the Governing Board adopted a resolution to support the amended bill.

AB 1180 has again been amended to contain language sponsored by Los Angeles County Department of Public Works and supported by the Los Angeles Division of the League of California Cities. This legislation would make it clear that the Los Angeles County Flood Control District has the authority to levy a parcel tax. A 2008 bill (AB 2554, Brownley) authorized the district to impose a fee or charge to pay the costs and expenses of carrying out projects and providing services to improve water quality and reduce stormwater and urban runoff pollution in the district. AB 2554 was not explicit regarding the districts authority to levy a parcel tax however.

AB 1180

The objects and purposes of the act are to provide for the control and conservation of flood, storm, and waste waters, and to conserve these waters for beneficial and useful purposes by spreading, storing, retaining or causing them to percolate into the soil. To achieve these objectives, this bill would authorize the district to levy a tax or impose a fee or charge to pay the costs and expenses of carrying out projects and programs to increase stormwater capture and reduce stormwater and urban runoff pollution. AB 1180 specifies that projects funded by the revenues from the tax, fee, or charge may include those that provide multiple benefits such as increasing water supply, improving water quality, and where appropriate, providing community enhancements such as the greening of schools, parks, and wetlands, or increasing public access to rivers, lakes, and streams.

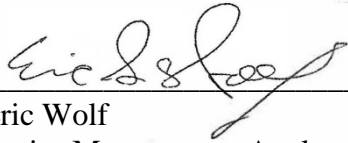
AB 1180 allocates funds as such:


- 10% shall go to the district for implementation and administration of projects and programs and for payment of the costs incurred in connection with the levy and collection of the tax, fee, or charge, as well as the distribution of the funds generated.
- 40% shall be allocated to cities, in the same proportion as the amount of revenues collected within each jurisdiction, to be expended by those cities for the implementation, operation and maintenance, and administration of projects and programs.
- 50% shall be allocated to pay for the implementation, operation and maintenance, and administration of watershed-based regional projects and programs, including those identified in watershed management programs developed pursuant to waste discharge requirements for MS4 permits.

DISCUSSION

Notably, the bill includes a statement that the governing board of the district shall adopt an ordinance to establish criteria and procedures to implement the authority granted under the bill. Should AB 1180 pass, it will be important for the COG to participate in discussions leading to the implementation of the bill. For example, the COG may want to advocate that the 50% allocation to regional projects be tied to specific projects, much the same way Measure M tax revenue was allocated to specific transportation projects.

AB 1180 is consistent with the COG Stormwater Policy, which includes development of funding sources as a stated goal.

Prepared by: 
Eric Wolf
Senior Management Analyst

Approved by: 
Marisa Creter
Assistant Executive Director

ATTACHMENT

Attachment A – AB 1180 (Holden)

AMENDED IN SENATE JULY 3, 2017
AMENDED IN SENATE JUNE 26, 2017
AMENDED IN ASSEMBLY MAY 30, 2017
AMENDED IN ASSEMBLY APRIL 19, 2017
CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 1180

Introduced by Assembly Member Holden

February 17, 2017

An act to amend Section 2 of the Los Angeles County Flood Control Act (Chapter 755 of the Statutes of 1915), relating to the Los Angeles County Flood Control District.

LEGISLATIVE COUNSEL'S DIGEST

AB 1180, as amended, Holden. Los Angeles County Flood Control District: taxes, fees, and charges.

Existing law, the Los Angeles County Flood Control Act, establishes the Los Angeles County Flood Control District and authorizes the district to control and conserve the flood, storm, and other wastewater of the district. Existing law authorizes the district to impose a fee or charge, in compliance with Article XIID of the California Constitution, to pay the costs and expenses of carrying out projects and providing services to improve water quality and reduce stormwater and urban runoff pollution in the district in accordance with specified criteria. The act requires that any fees imposed be levied and collected together with taxes for county purposes, and the revenues paid into the county treasury to the credit of the district, and requires the county board of supervisors

to expend the funds to pay for those costs and expenses, to be allocated as prescribed.

This bill would authorize the district to levy a tax, in compliance with the applicable provision of Article XIII C of the California Constitution, or impose a fee or charge, in compliance with the applicable provisions of Article XIII D of the California Constitution, to pay the costs and expenses of carrying out projects and programs to increase stormwater capture and reduce stormwater and urban runoff pollution in the district, and would specify that projects funded by the revenues from the tax, fee, or charge may include projects providing multiple benefits that increase water supply, improve water quality, and, where appropriate, provide community enhancements, as prescribed. The bill would revise certain provisions prescribing the allocation of those revenues derived from any tax, fee, or charge imposed pursuant to the above-described provisions for those water projects and programs.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2 of the Los Angeles County Flood
2 Control Act (Chapter 755 of the Statutes of 1915), as amended by
3 Section 2 of Chapter 212 of the Statutes of 2012, is amended to
4 read:

5 Sec. 2. The objects and purposes of this act are to provide for
6 the control and conservation of the flood, storm and other waste
7 waters of said district, and to conserve these waters for beneficial
8 and useful purposes by spreading, storing, retaining or causing to
9 percolate into the soil within the district, or to save or conserve in
10 any manner, all or any of these waters, and to protect from damage
11 from flood or storm waters, the harbors, waterways, public
12 highways and property in the district, and to provide for public
13 use of navigable waterways under the district’s control that are
14 suitable for recreational and educational purposes, when these
15 purposes are not inconsistent with the use thereof by the district
16 for flood control and water conservation.

17 The Los Angeles County Flood Control District is hereby
18 declared to be a body corporate and politic, and has all the
19 following powers:

20 1. To have perpetual succession.

1 2. To sue and be sued in the name of the district in all actions
2 and proceedings in all courts and tribunals of competent
3 jurisdiction.

4 3. To adopt a seal and alter it at pleasure.

5 4. To take by grant, purchase, gift, devise or lease, hold, use,
6 enjoy, and to lease or dispose of real or personal property of every
7 kind within or without the district necessary to the full exercise of
8 its power.

9 5. To acquire or contract to acquire lands, rights-of-way,
10 easements, privileges and property of every kind, and construct,
11 maintain and operate any and all works or improvements within
12 or without the district necessary or proper to carry out any of the
13 objects or purposes of this act, and to complete, extend, add to,
14 repair or otherwise improve any works or improvements acquired
15 by it as herein authorized. Construction or improvement of existing
16 facilities may involve landscaping and other aesthetic treatment
17 in order that the facility will be compatible with existing or planned
18 development in the area of improvement.

19 6. To exercise the right of eminent domain, either within or
20 without the district, to take any property necessary to carry out
21 any of the objects or purposes of this act.

22 7. To incur indebtedness, and to issue bonds in the manner
23 herein provided.

24 7a. To borrow money from the United States of America, any
25 agency or department thereof, or from any nonprofit corporation,
26 organized under the laws of this state, to which the Reconstruction
27 Finance Corporation, a corporation organized and existing under
28 and by virtue of an act of Congress, entitled "Reconstruction
29 Finance Corporation Act," or other agency, or department, of the
30 United States government, has authorized, or shall hereafter
31 authorize, a loan to enable nonprofit corporation to lend money to
32 the Los Angeles County Flood Control District, for any flood
33 control work authorized under this act, and to repay the same, in
34 annual installments, over a period of not to exceed twenty (20)
35 years, with interest at a rate of not to exceed four and one-fourth
36 per centum (4¼%) per annum, payable semiannually, and, without
37 the necessity of an election when authorized by resolution of the
38 board of supervisors, as evidences of that indebtedness, the district
39 is hereby authorized to execute and deliver a note, or a series of
40 notes, or bonds, or other evidences of indebtedness, signed by the

1 chairperson of the board of supervisors of the district, which notes,
2 bonds, or other evidences of indebtedness, shall be negotiable
3 instruments if so declared in the resolution of the board of
4 supervisors providing for their issuance, and notes, bonds, or other
5 evidences of indebtedness, may have interest coupons attached to
6 evidence interest payments, signed by the facsimile signature of
7 the chairperson of the board. All applications for these loans shall
8 specify the particular flood control work or projects for which the
9 funds will be expended, and when received, the money shall be
10 deposited in a special fund, and shall be expended for those
11 purposes only which are described and referred to in the
12 applications. If a surplus remains after the completion of the work,
13 the surplus shall be applied to the payment of the note, notes,
14 bonds, or other evidences of indebtedness, executed as aforesaid,
15 for the loan including interest coupons. The board of supervisors
16 shall annually levy a tax upon the taxable real property of the
17 district, clearly sufficient to pay the interest and installments of
18 principal, as the same shall become due and payable, under any
19 loan made pursuant to the authority of this section, and to create
20 and maintain a reserve fund to assure the prompt payment thereof,
21 as may be provided by resolution of the board of supervisors.
22 However, the amount of taxes levied in any year, pursuant to this
23 subsection, shall, pro tanto, reduce the authority of the board of
24 supervisors, during any year, to levy taxes under Section 14 of this
25 act, but this proviso shall not be a limitation upon the power and
26 duty to levy and collect taxes under this subsection.
27 Notwithstanding any other provisions of law, interest earned on
28 funds representing the proceeds of bonds of the district shall be
29 deposited and retained in the reserve fund of the district to meet
30 the principal and interest falling due on these bonds.

31 Notwithstanding anything in this subsection to the contrary, the
32 total amount the district may borrow under the authority of any or
33 all of the provisions of this subsection is limited to and shall not
34 exceed in the aggregate the sum of four million five hundred
35 thousand dollars (\$4,500,000).

36 7b. The power granted in the next preceding subsection is hereby
37 extended to authorize the issuance and sale of bonds or other
38 evidences of indebtedness of the district to the County of Los
39 Angeles and the purchase thereof by the county in accordance with
40 “An act authorizing the investment and reinvestment and

1 disposition of any surplus moneys in the treasury of any county,
2 city and county, incorporated city or town or municipal utility
3 district or flood control district,” approved April 23, 1913, as
4 amended; all subject to the provisions and limitations of the next
5 preceding subsection relative to the disposition and use of funds,
6 interest rate, period of repayment, tax rate and mode of issuance.
7 The total amount of bonds or other evidence of indebtedness, in
8 the aggregate, which the district may issue and sell under the
9 authority of subsection 7a and of this subsection is limited to and
10 shall not exceed four million five hundred thousand dollars
11 (\$4,500,000).

12 8. To cause taxes to be levied and collected for the purpose of
13 paying any obligation of the district in the manner provided in this
14 section.

15 8a. To levy a tax, in compliance with the applicable provisions
16 of Article XIII C of the California Constitution, or impose a fee or
17 charge, in compliance with the applicable provisions of Article
18 XIII D of the California Constitution, to pay the costs and expenses
19 of carrying out projects and programs to increase stormwater
20 capture and reduce stormwater and urban runoff pollution in the
21 district in accordance with criteria established by the ordinance
22 adopted pursuant to subsection 8c. Projects and programs funded
23 by the revenues from the tax, fee, or charge may include projects
24 providing multiple benefits that increase water supply, improve
25 water quality, and, where appropriate, provide community
26 enhancements such as the greening of schools, parks, and wetlands,
27 and increased public access to rivers, lakes, and streams. Any tax,
28 fee, or charge that is levied or imposed pursuant to this subsection
29 shall be levied and collected together with, and not separately
30 from, taxes for county purposes, and the revenues derived from
31 the tax, fee, or charge shall be paid into the county treasury to the
32 credit of the district, and the board of supervisors shall expend
33 these funds to pay for costs and expenses in accordance with this
34 subsection.

35 8b. The district shall allocate the revenues derived from any
36 tax, fee, or charge imposed pursuant to subsection 8a as follows:

37 (A) Ten percent shall be allocated to the district for
38 implementation and administration of projects and programs
39 described in subsection 8a, and for payment of the costs incurred
40 in connection with the levy and collection of the tax, fee, or charge

1 and the distribution of the funds generated by imposition of the
2 tax, fee, or charge, in accordance with the procedures established
3 by the ordinance adopted pursuant to subsection 8c.

4 (B) Forty percent shall be allocated to cities within the
5 boundaries of the district and to the County of Los Angeles, in the
6 same proportion as the amount of revenues collected within each
7 jurisdiction and within the unincorporated territories, to be
8 expended by those cities within the cities' respective jurisdictions
9 and by the County of Los Angeles within the unincorporated
10 territories that are within the boundaries of the district, for the
11 implementation, operation and maintenance, and administration
12 of projects and programs described in subsection 8a, in accordance
13 with the procedures established by the ordinance adopted pursuant
14 to subsection 8c.

15 (C) Fifty percent shall be allocated to pay for the
16 implementation, operation and maintenance, and administration
17 of watershed-based regional projects and programs, including
18 projects and programs identified in stormwater resource plans
19 developed in accordance with Part 2.3 (commencing with Section
20 10560) of Division 6 of the Water Code, watershed management
21 programs developed pursuant to waste discharge requirements for
22 municipal separate storm sewer system (MS4) discharges within
23 the coastal watersheds of the County of Los Angeles, issued by
24 the Los Angeles Regional Water Quality Control Board, and other
25 water management plans, as appropriate, in accordance with the
26 procedures established by the ordinance adopted pursuant to
27 subsection 8c.

28 8c. The governing board of the district shall adopt an ordinance
29 to establish *criteria and* procedures to implement the authority
30 granted pursuant to subsections 8a and 8b.

31 9. To make contracts, and to employ for temporary services
32 only, expert appraisers, consultants and technical advisers, and to
33 do all acts necessary for the full exercise of all powers vested in
34 the district, or any of the officers thereof, by this act.

35 10. To grant or otherwise convey to counties, cities and counties,
36 cities or towns easements for street and highway purposes, over,
37 along, upon, in, through, across or under any real property owned
38 by the Los Angeles County Flood Control District.

39 11. To remove, carry away and dispose of any rubbish, trash,
40 debris or other inconvenient matter that may be dislodged,

1 transported, conveyed or carried by means of, through, in, or along
2 the works and structures operated or maintained hereunder and
3 deposited upon the property of the district or elsewhere.

4 12. To pay premiums on bonds of contractors required under
5 any contract if the amount payable to the contractor exceeds five
6 million dollars (\$5,000,000); provided, that the specifications in
7 these cases shall specifically so provide and state that the bidder
8 shall not include in his or her bids the cost of furnishing the
9 required bonds.

10 13. To lease, sell or dispose of any property (or any interest
11 therein) whenever in the judgment of the board of supervisors of
12 the property, or any interest therein or part thereof, is no longer
13 required for the purposes of the district, or may be leased for any
14 purpose without interfering with the use of the same for the
15 purposes of the district, and to pay any compensation received
16 therefor into the general fund of the district and use the same for
17 the purposes of this act. However, nothing herein shall authorize
18 the board of supervisors or other governing body of the district or
19 any officer thereof to sell, lease or otherwise dispose of any water,
20 water right, reservoir space or storage capacity or any interest or
21 space therein except to public agencies for recreational purposes
22 when the use is not inconsistent with the use thereof by the district
23 for flood control and water conservation purposes; or except as
24 provided by Section 17 of this act. However, the district may grant
25 and convey to the United States of America, or to any federal
26 agency authorized to accept and pay for the land or interests in
27 land, all lands and interests in land, now owned or hereafter
28 acquired, lying within any channel, dam or reservoir site, improved
29 or constructed, in whole or in part, with federal funds, upon
30 payment to the district of sums equivalent to actual expenditures
31 made by it in acquiring the lands and interests in land so conveyed
32 and deemed reasonable by the Secretary of War and the Chief of
33 Engineers.

34 14. To provide, by agreement with other public agencies or
35 private persons or entities or otherwise, for the recreational use of
36 the lands, facilities, and works of the district which shall not
37 interfere, or be inconsistent, with the primary use and purpose of
38 the lands, facilities, and works by the district.

39 15. In addition to its other powers, the district shall have the
40 power to preserve, enhance, and add recreational features to its

1 properties and upon a finding by the board of supervisors that the
 2 acquisition is necessary for those purposes, to acquire, preserve,
 3 enhance, and add recreational features to lands or interests in lands
 4 contiguous to its properties, for the protection, preservation, and
 5 use of the scenic beauty and natural environment for the properties
 6 or the lands and to collect admission or use fees for the recreational
 7 features where deemed appropriate.

8 The district by or through its board of supervisors, or other board
 9 or officers at any time succeeding to the duties or functions of its
 10 board of supervisors, is hereby authorized and empowered to
 11 warrant and defend the title to all land and interests therein so
 12 conveyed to the United States of America or to any agency and
 13 its respective assigns; to covenant and agree to indemnify and keep
 14 indemnified and to hold and save harmless and exonerated the
 15 United States of America or any agency, to which lands or any
 16 interest therein are so conveyed by the district, from and against
 17 all demands, claims, liabilities, liens, actions, suits, charges, costs,
 18 loss, damages, expenses and attorneys' fees of whatsoever kind
 19 or nature, resulting from, arising out of or occasioned by any defect
 20 or defects whatsoever in the title to any land or interest in land so
 21 conveyed by the district; to reimburse and save harmless and
 22 exonerated the United States of America or any agency for any
 23 and all amounts, paid, and expenses incurred, in the compromise
 24 or settlement of any demands, claims, liabilities, liens, actions,
 25 suits, charges, costs, loss, damages, expenses and attorneys' fees
 26 of whatsoever kind or nature, resulting from, arising out of or
 27 occasioned by any claim to or defect or defects whatsoever in the
 28 title to any land or interests in land so conveyed by the district; to
 29 pay all just compensation, costs and expenses, which may be
 30 incurred in any condemnation proceeding deemed necessary by
 31 the United States of America or that agency, in order to perfect
 32 title to any land or interests in land, including without limitation
 33 all attorneys' fees, court costs and fees, costs of abstracts and other
 34 evidences of title, and all other costs, expenses or damages incurred
 35 or suffered by the United States of America or that agency; and
 36 consent is hereby given to the bringing of suit or other legal
 37 proceedings against the district by the United States of America
 38 or that agency, as the case may be, in the proper district court of
 39 the United States, upon any cause of action arising out of any
 40 conveyance, contract or covenant made or entered into by the

1 district pursuant to the authority granted in this act, or to enforce
2 any claims, damages, loss or expenses arising out of or resulting
3 from any defect whatsoever in the title to the land or any interest
4 therein or any claims of others in or to the land or interest therein.

O

STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0086
(916) 319-2086
FAX (916) 319-2186

Assembly California Legislature



AL MURATSUCHI
ASSEMBLYMEMBER, SIXTY-SIXTH DISTRICT

COMMITTEES
CHAIR: JOINT LEGISLATIVE AUDIT
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NATURAL RESOURCES
UTILITIES & ENERGY
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BUDGET SUBCOMMITTEE NO. 2
ON EDUCATION FINANCE
CHAIR: SELECT COMMITTEE ON
AREOSPACE

June 8, 2017

Members
Joint Legislative Audit Committee
1020 N Street, Room 107
Sacramento, CA 95814

JUN 14 2017
2017-118

Dear Members of the Committee:

I request the approval of a state audit of the Los Angeles, San Francisco, and the Central Valley Regional Water Quality Control Boards (Regional Water Boards) to review, gather data, and compare storm water treatment and municipal separate storm sewer system (MS4) permitting processes pursuant to the federal Clean Water Act (33 U.S.C. § 1251 et seq. (1972)).

The primary objective of this audit is to determine and compare how the requirements, and the attending costs, for CWA and MS4 permit compliance are established by the different Regional Water Boards. This audit should specifically address the issue of whether the requirements and attending costs of CWA and MS4 permit compliance being imposed upon cities within Los Angeles County are reasonable and proportional to the amount of storm water pollution being generated by the cities.

Background

The Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. Under the CWA, EPA has implemented pollution control programs such as setting wastewater standards for industry and water quality standards for all contaminants in surface waters. The EPA sets minimum water quality standards, which states must meet and these minimum standards include the treatment and management of polluted storm water (Source: U.S. EPA).

California's early regulatory efforts at the municipal and statewide level focused on the control and mitigation of pollutants in storm water; however, in recent years, the state has looked to storm water as a resource that, once treated, can be recycled and reused in order to increase water conservation efforts while preserving the environment. With the focus on storm water as a resource, newer low impact development and green infrastructure techniques are being recommended by Regional Water Boards to capture storm water runoff and use it for local landscape and agricultural irrigation, and groundwater recharge as part of Enhanced Watershed Management Programs (EWMP). In order to recycle and utilize storm water, in line with regional and statewide conservation efforts, some regions have adopted stringent MS4 permits. Some permits set the maximum daily load of pollutants that may be contained in storm water at very low levels, which increases the cost of treatment.

The costs associated with low impact development, green infrastructure, and other projects designed to treat storm water, in compliance with MS4 permits and the CWA, can be high, frequently running into the tens or hundreds of millions of dollars. The cost estimate for the implementation of storm water treatment projects throughout Los Angeles County is over twenty billion dollars. These costs have placed a significant financial burden upon many municipalities in the state. Since the Los Angeles County Region 4's MS4 permit was adopted, the State Water Resources Control Board has received 37 petitions challenging various provisions of the permit, as of June, 2015.

For example, the City of Gardena has filed suit against the Regional Water Quality Control Board for the Los Angeles Region (Region 4) and litigation is still pending regarding the strict provisions of the MS4 permit and the high costs associated with compliance. In an LA Times article published in June, 2015, Gardena City Councilman Dan Medina was quoted saying that compliance with the LA County MS4 permit could, "bankrupt our city and probably force it into disincorporation." The article also noted that, "a consultant had told the city [Gardena] that belonging to an enhanced watershed management program could cost the city \$12 million to \$24 million a year." Gardena's annual operating budget is approximately \$50 million.

While it is essential that California remains in compliance with the federal regulations and requirements of the Clean Water Act, it is also important that the permits being issued to municipalities are not so stringent that the costs associated with compliance are insurmountable or place these communities in precarious financial circumstances. Specifically, if municipalities cannot afford to comply with MS4 permits, the water conservation and recycling goals laid out in these permits will never be achieved. Additionally, it is unclear whether pollution costs are fairly allocated to polluters. I would like the audit to determine to what extent the permitting methodology allocates pollution costs to those who create the storm water pollution.

Audit request

For the above reasons, an audit to review storm water treatment, management, and MS4 permitting processes for the Los Angeles, San Francisco, and the Central Valley Regional Water Boards will lend perspective to and facilitate an important discussion regarding the challenges that are being faced by the state related to storm water treatment and water conservation.

As storm water treatment, management, and MS4 permitting processes are being considered for the Los Angeles area, I would like the audit to place a particular focus on the costs associated with treatment, management and permit compliance for the following municipalities: Gardena, Hermosa Beach, Lomita, Manhattan Beach, Palos Verdes Estates, Rancho Palos Verdes, Redondo Beach, Rolling Hills, Rolling Hills Estates, and Torrance.

As storm water treatment, management, and municipal separate storm sewer system permitting processes are being considered for the Central Valley, I would like the audit to place a particular focus on the MS4 permit for that region. The Central Valley's permit pools costs associated with storm water treatment on a regional basis, dividing them amongst multiple municipalities. I would like the audit to assess whether there are cost savings to individual municipalities that pool costs regionally under this permitting methodology.

For the State Water Resources Control Board (State Water Board) and Regional Water Quality Control Boards (Regional Water Boards), review, gather data, and compare the management of storm water runoff permitting processes, including for municipal and other permits since 2011. At a minimum and to the extent it does not interfere with any ongoing legal action, the audit should provide the following information and assessments:

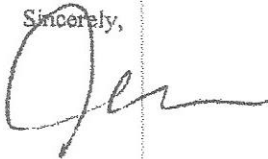
1. Identify the role the State Water Board, Regional Water Boards, and others play in developing policy and providing oversight and administrative review regarding storm water runoff permitting.
2. Determine whether California's storm water permitting and compliance requirements are consistent with federal requirements, including the Clean Water Act and other federal laws and regulations.
3. Determine whether the storm water permitting and compliance requirements for the Regional Water Boards for Los Angeles, San Francisco, and the Central Valley are consistent with State and federal requirements. Identify any significant disparities and determine why any significant disparities exist.
4. Identify data and information used by the State Water Board, Regional Water Boards, and others to allocate storm water cleanup costs, and establish storm water runoff permits, permit requirements, and programs for local jurisdictions and other parties. Explain the history and evolution of storm water runoff permits for the Regional Water Board in Los Angeles.
5. To the extent practical, determine the extent to which those responsible for storm water pollution within the three Regional Water Boards are held responsible for the costs and permits associated with their storm water pollution. If they are not, identify options for making polluters pay for their storm water pollution.

Explain the history of who has paid for storm water pollution within the jurisdiction for the Regional Water Board for Los Angeles.

6. Identify significant differences between permitting and compliance requirements between the three Regional Water Boards (e.g. interim compliance options) and identify their impact on local jurisdictions and other parties, including their cost of compliance.
7. Identify fiscal and other challenges local jurisdictions have and will face as they attempt to comply with their storm water permits. Provide local jurisdictions' perspectives and review any significant concerns they may have.
8. For a sample of municipalities from those referenced above in the background, identify current and other possible sources of funding for storm water programs, including Watershed Management Programs, and other programs that target storm water cleanup and management.
9. In reviewing storm water runoff permitting processes and policies, identify any best practices that could assist the State Water Board, Regional Water Boards, and permitted parties.

Thank you for your consideration of this request. Should you have any questions or require additional information, please contact Brady McCarthy at (916) 319-2066.

Sincerely,



AL MURATSUCHI, Chair
Joint Legislative Audit Committee
Assemblymember, 66th District



COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
<http://dpw.lacounty.gov>

MARK PESTRELLA, Director

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

July 10, 2017

IN REPLY PLEASE
REFER TO FILE: **WM-9**

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Dear Ms. Townsend:

303(D) LIST FOR WATERBODIES IN THE LOS ANGELES REGION COMMENT LETTER

The County of Los Angeles and the Los Angeles County Flood Control District appreciate the opportunity to provide comments on the proposed revisions to the Clean Water Act Section 303(d) List of Impaired Waters in the Los Angeles Region. Enclosed are our comments for your review and consideration.

If you have any questions, please contact me at (626) 458-4300 or dlaff@dpw.lacounty.gov or your staff may contact Mr. Paul Alva at (626) 458-4325 or palva@dpw.lacounty.gov.

Very truly yours,

MARK PESTRELLA
Director of Public Works

DANIEL J. LAFFERTY
Assistant Deputy Director
Watershed Management Division

GA:sw
P:\wmpubl\Sec\2017 Docs\Letter\20170629303(d)\ListRevCovrLtr\17175

Enc.

cc: County Counsel (Michael Simon, Lillian Salinger, Grace Chang)

THE COUNTY OF LOS ANGELES AND THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT COMMENTS ON THE PROPOSED 2016 303(d) LIST

I. Per the EPA Recommendations, the Lead and Copper Listings for Peck Road Park Lake, Legg Lake, and Santa Fe Dam Park Lake Should Be Delisted.

The following waterbodies are currently still listed on the 303(d) list for metals despite the lack of water quality impairment and the United States Environmental Protection Agency (USEPA) recommendations to delist these waterbody-pollutant combinations:

- Peck Road Park Lake: Lead
- Legg Lake: Copper, Lead
- Santa Fe Dam Park Lake: Copper, Lead

Section 4.3 of the Los Angeles Area Lakes Nitrogen, Phosphorus, Mercury, Trash, Organochlorine Pesticides and PCBs TMDLs¹ (LA Area Lakes TMDLs), promulgated by the USEPA in 2012, states that Peck Road Park Lake was sampled for lead between December 2008 and September 2010 and no exceedances were found for lead during this time. Therefore, the USEPA concluded that Peck Road Park Lake met the lead water quality standards, and that preparing a TMDL for lead would be unwarranted. The USEPA recommended that Peck Road Park Lake not be identified as impaired by lead in California's next 303(d) list.

Sections 9.3 and 9.4 of the LA Area Lakes TMDLs² state that Legg Lake was sampled for lead and copper between February 2009 and September 2010 and no exceedances were found for lead or copper during this time. Therefore, the USEPA concluded that Legg Lake met the lead and copper water quality standards, and that preparing a TMDL for lead and copper would be unwarranted. The USEPA recommended that Legg Lake not be identified as impaired by lead or copper in California's next 303(d) list.

Sections 11.3 and 11.4 of the LA Area Lakes TMDLs³ state that Santa Fe Dam Park Lake was sampled for lead and copper between March 2009 and August 2010 and no exceedances were found for lead or copper. Therefore, the USEPA concluded that Santa Fe Dam Park Lake met lead and copper water quality

¹ <https://www3.epa.gov/region9/water/tmdl/la-lakes/LALakesTMDLsSection4PeckRoadParkLake.pdf>

² <https://www3.epa.gov/region9/water/tmdl/la-lakes/LALakesTMDLsSection9LeggLakes.pdf>

³ <https://www3.epa.gov/region9/water/tmdl/la-lakes/LALakesTMDLsSection11SantaFeDamParkLake.pdf>

standards, and that preparing a TMDL for lead and copper would be unwarranted. The USEPA recommended that Santa Fe Park Dam Park Lake not be identified as impaired by lead or copper in California's next 303(d) list.

The USEPA collected sufficient data to reach the conclusions described above for these lakes, i.e., findings of non-impairment and the recommendation to delist them. Of 26 samples collected for Peck Road Park Lake, there were no exceedances of lead. Of 33 samples collected for Legg Lake, there were no exceedances of copper and lead. Of 28 samples collected for Santa Fe Dam Park Lake, there were no exceedances of copper and lead.

In response to comments, the Los Angeles Regional Board indicated that staff did not address these waterbody-pollutant combinations due to resource constraints coupled with challenges of identifying QA/QC documents associated with the data. However, Regional Board staff do not need to do any analysis because the USEPA already conducted the analysis needed and made the recommendation to delist these waterbody-pollutant combinations. Making a reference to the USEPA's 2012 LA Area Lakes TMDL should be sufficient evidence to delist these waterbodies as a similar approach has been utilized for delisting other waterbodies. For example, the Regional Board delisted Diazinon for Dominguez Channel based on the analysis and findings of non-impairment presented in a USEPA approved TMDL. To this end, the 303(d) list fact sheet for Diazinon in the Dominguez Channel⁴ states, "*there is sufficient justification to delist this waterbody/pollutant because when the Dominguez Channel and Los Angeles and Long Beach Harbors Toxics and Metals was completed, the TMDL analysis showed no diazinon concentrations above the guideline, post 2005.*"

Therefore, the County of Los Angeles (County) and the Los Angeles County Flood Control District (LACFCD) request that lead for Peck Road Park Lake, copper and lead for Legg Lake and Santa Fe Dam Park Lake be delisted based on analyses and the recommendation presented in the 2012 LA Area Lakes TMDL.

II. The Benthic Community Effects Listings Should Be Delisted for Alhambra Wash, Arroyo Seco Reach 1, and Los Angeles River Reach 4

The following concrete-lined channels are inappropriately proposed or remain listed for benthic community effects:

- Alhambra Wash (proposed)
- Arroyo Seco Reach 1 (existing)

⁴ http://www.swrcb.ca.gov/losangeles/water_issues/programs/303d/2016/Appendix_I/01077.shtml#33061

- Los Angeles River Reach 4 (proposed)

These listings of concrete channels for benthic community effects is not consistent with the Regional Board's approach stating that current biological indices (standards) are not calibrated for such channels in response to comments regarding other concrete-lined channels. Specifically, the Regional Board's response to comments states that *"benthic community listings for waterbodies that are lined entirely with concrete have been reassigned to Category 3 until such time as benthic community condition scores have been more specifically calibrated for concrete-lined channels."* This reasoning was used to delist benthic community listings for other concrete-lined channels, such as Ballona Creek⁵ and Dominguez Channel⁶.

The three waterbodies listed above are fully concrete-lined channels and, thus, should be reassigned to Category 3. The reconnaissance survey conducted by the Regional Board during the recreational use reassessment (RECUR) of the engineered channels of the Los Angeles River Watershed⁷ has confirmed that these are concrete-lined channels.

- Page 88 of the RECUR report describes Alhambra Wash as, *"...a concrete-lined box channel (with vertical walls) throughout its length..."*. LACFCD's database further confirms this fact.
- Page 66 of the RECUR report describes Arroyo Seco Reach 1 as *"concrete lined the entire length except in a short section just south of W. Holly Street to the Colorado Boulevard overpass where the stream channel is natural."* A further assessment by the LACFCD reveals that the natural section is approximately 0.25 miles of the more than seven miles total length of Arroyo Seco Reach 1 (see enclosed map). As shown in the map, the natural spot is located under a freeway, which is heavily constrained by bridge piers. This natural portion (which accounts only for 3% of the total reach length and located under a freeway) is negligible and, thus, Arroyo Seco Reach 1 should be considered fully concrete channel.
- Page 36 of the RECUR report describes the Los Angeles River Reach 4 as *"a channel with vertical concrete walls with a flat concrete bottom."*

⁵ http://www.swrcb.ca.gov/losangeles/water_issues/programs/303d/2016/Appendix_I/01082.shtml#32566

⁶ http://www.waterboards.ca.gov/losangeles/water_issues/programs/303d/2016/Appendix_I/01077.shtml#66165

⁷

http://www.waterboards.ca.gov/losangeles/water_issues/programs/bpa/docs/ben_uses/RECUR%20Final%20Report_Part%20I.pdf

LACFCD's database further confirms that this reach of the LA River is fully lined with concrete.

Therefore, to remain consistent, the benthic community listing for Alhambra Wash, Arroyo Seco Reach 1, and Los Angeles River Reach 4 should be removed from the 303(d) list and reassigned to Category 3.

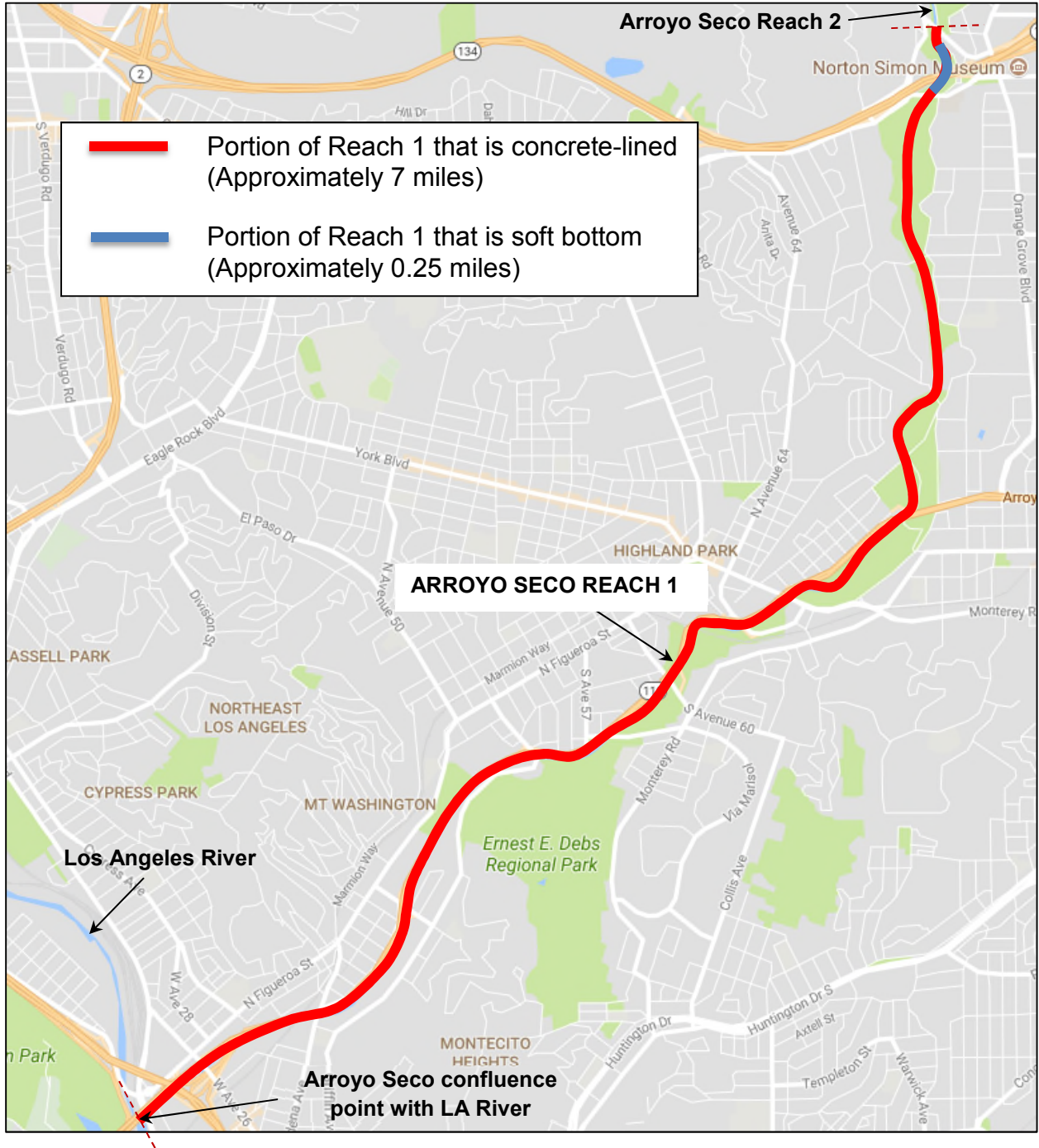
III. The Toxicity and Temperature Listings for The Los Angeles Region are Not Appropriate, and The State Water Board Should Reconsider the Regional Board Staff's Decision to List Them

The Regional Board's decision regarding toxicity and temperature listings should be reviewed by the State Water Board in conjunction with the County and LACFCD comments. The comment letter to the Regional Board is available at http://www.swrcb.ca.gov/losangeles/water_issues/programs/303d/2016/comments/17_LAC-LACFCD_p53.pdf. Comments III and IV (pages 6-9 of the pdf) discusses justifications for not listing toxicity and temperature, respectively.

IV. The October 3rd State Water Board Hearing on 303(d) List Should Be Held at Los Angeles Region

Unlike other regions, the Los Angeles Region 303(d) list has not been formally adopted by the Los Angeles Regional Board. Thus, the Los Angeles Region stakeholders request the opportunity to express their concern to the State Water Board during the October 3rd hearing. Travel to Sacramento can be cost prohibitive for many, therefore the October 3rd hearing should be held in the Los Angeles Region to encourage robust stakeholder participation.

ARROYO SECO REACH 1



The EPA Administrator, Scott Pruitt, along with Mr. Douglas Lamont, senior official performing the duties of the Assistant Secretary of the Army for Civil Works, signed the following proposed rule on 06/27/2017, and EPA is submitting it for publication in the *Federal Register* (FR). While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule for purposes of public comment. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's FDsys website (<http://fdsys.gpo.gov/fdsys/search/home.action>) and on Regulations.gov (<http://www.regulations.gov>) in Docket No. EPA-HQ-OW-2017-0203. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

6560-50-P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 328

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 110, 112, 116, 117, 122, 230, 232, 300, 302, and 401

[EPA-HQ-OW-2017-0203; FRL-9962-34-OW]

RIN 2040-AF74

Definition of “Waters of the United States” – Recodification of Pre-existing Rules

AGENCIES: Department of the Army, Corps of Engineers, Department of Defense; and Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency and the Department of the Army (“the agencies”) are publishing this proposed rule to initiate the first step in a comprehensive, two-step process intended to review and revise the definition of “waters of the United States” consistent with the Executive Order signed on February 28, 2017, “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.” This first step proposes to rescind the definition of “waters of the United States” in the Code of Federal

This document is a prepublication version, signed by EPA Administrator, Scott Pruitt, along with Mr. Douglas Lamont, senior official performing the duties of the Assistant Secretary of the Army for Civil Works, on 06/27/2017. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Regulations to re-codify the definition of “waters of the United States,” which currently governs administration of the Clean Water Act, pursuant to a decision issued by the U.S. Court of Appeals for the Sixth Circuit staying a definition of “waters of the United States” promulgated by the agencies in 2015. The agencies would apply the definition of “waters of the United States” as it is currently being implemented, that is informed by applicable agency guidance documents and consistent with Supreme Court decisions and longstanding practice. Proposing to re-codify the regulations that existed before the 2015 Clean Water Rule will provide continuity and certainty for regulated entities, the States, agency staff, and the public. In a second step, the agencies will pursue notice-and-comment rulemaking in which the agencies will conduct a substantive re-evaluation of the definition of “waters of the United States.”

DATES: Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OW-2017-0203, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The agencies may publish any comment received to the public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The agencies will generally not consider comments or comment contents located outside of the primary submission (i.e. on the

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web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION, CONTACT: Ms. Donna Downing, Office of Water (4504-T), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone number: (202) 566-2428; e-mail address: CWAwotus@epa.gov; or Ms. Stacey Jensen, Regulatory Community of Practice (CECW-CO-R), U.S. Army Corps of Engineers, 441 G Street, NW, Washington, DC 20314; telephone number: (202) 761-5903; e-mail address: USACE_CWA_Rule@usace.army.mil.

SUPPLEMENTARY INFORMATION:

The regulatory definition of “waters of the United States” in this proposed rule is the same as the definition that existed prior to promulgation of the Clean Water Rule in 2015 and that has been in effect nationwide since the Clean Water Rule was stayed on October 9, 2016. The agencies will administer the regulations as they are currently being implemented consistent with Supreme Court decisions and longstanding practice as informed by applicable agency guidance documents.

State, tribal, and local governments have well-defined and longstanding relationships with the federal government in implementing CWA programs and these relationships are not altered by the proposed rule. This proposed rule will not establish any new regulatory requirements. Rather, the rule simply codifies the current legal *status quo* while the agencies

engage in a second, substantive rulemaking to reconsider the definition of “waters of the United States.”

I. Executive Summary

A. What this proposed rule does

In this proposed rule, the agencies define the scope of “waters of the United States” that are protected under the Clean Water Act (CWA). In 2015, the agencies published the “Clean Water Rule: Definition of ‘Waters of the United States’” (80 FR 37054, June 29, 2015), and on October 9, 2015, the U.S. Court of Appeals for the Sixth Circuit stayed the 2015 Rule nationwide pending further action of the court. The agencies propose to replace the stayed 2015 definition of “waters of the United States”, and re-codify the exact same regulatory text that existed prior to the 2015 rule, which reflects the current legal regime under which the agencies are operating pursuant to the Sixth Circuit’s October 9, 2015 order. The proposed regulatory text would thus replace the stayed rulemaking text, and re-codify the regulatory definitions (at 33 CFR 328 and 40 CFR Parts 110; 112; 116; 117; 122; 230; 232; 300; 302; and 401) in the Code of Federal Regulations (CFR) as they existed prior to the promulgation of the stayed 2015 definition. If this proposed rule is finalized, the agencies would continue to implement those prior regulatory definitions), informed by applicable agency guidance documents and consistent with Supreme Court decisions and longstanding agency practice.

B. History and the purpose of this rulemaking

Congress enacted the Federal Water Pollution Control Act Amendments of 1972, Pub. L. No. 92-500, 86 Stat. 816, as amended, Pub. L. No. 95-217, 91 Stat. 1566, 33 U.S.C. 1251 *et seq.* (“Clean Water Act” or “CWA” or “Act”) “to restore and maintain the chemical, physical and

biological integrity of the Nation’s waters.” Section 101(a). A primary tool in achieving that purpose is a prohibition on the discharge of any pollutants, including dredged or fill material, to “navigable waters” except in accordance with the Act. Section 301(a). The CWA provides that “[t]he term ‘navigable waters’ means the waters of the United States, including the territorial seas.” Section 502(7).

The CWA also provides that States retain their traditional role in preventing, reducing and eliminating pollution. The Act states that “[i]t is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources...” Section 101(b). States and Tribes voluntarily may assume responsibility for permit programs governing discharges of pollution under section 402 for any jurisdictional water bodies (section 402(b)), or of dredged or fill material discharges under section 404 (section 404(g)), with agency approval. (Section 404(g) provides that states may not assume permitting authority over certain specified waters and their adjacent wetlands.) States are also free to establish their own programs under state law to manage and protect waters and wetlands independent of the federal CWA. The statute’s introductory purpose section thus commands the Environmental Protection Agency (EPA) to pursue two policy goals simultaneously: (a) to restore and maintain the nation’s waters; and (b) to preserve the States’ primary responsibility and right to prevent, reduce, and eliminate pollution.

The regulations defining the scope of federal CWA jurisdiction currently in effect, which today’s proposed rule would recodify, were established in large part in 1977 (42 FR 37122, July 19, 1977). While EPA administers most provisions in the CWA, the U.S. Army Corps of Engineers (Corps) administers the permitting program under section 404. During the 1980s, both

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of these agencies adopted substantially similar definitions (51 FR 41206, Nov. 13, 1986, amending 33 CFR 328.3; 53 FR 20764, June 6, 1988, amending 40 CFR 232.2).

Federal courts have reviewed the definition of “waters of the United States” and its application to a variety of factual circumstances. Three Supreme Court decisions, in particular, provide critical context and guidance in determining the appropriate scope of “waters of the United States.”

In *United States v. Riverside Bayview Homes*, 474 U.S. 121 (1985) (*Riverside*), the Court, in a unanimous opinion, deferred to the Corps’ ecological judgment that adjacent wetlands are “inseparably bound up” with the waters to which they are adjacent, and upheld the inclusion of adjacent wetlands in the regulatory definition of “waters of the United States.” *Id.* at 134.

In *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) (*SWANCC*), the Supreme Court held that the use of “isolated” non-navigable intrastate ponds by migratory birds was not by itself a sufficient basis for the exercise of federal regulatory authority under the CWA. The *SWANCC* decision created uncertainty with regard to the jurisdiction of other isolated non-navigable waters and wetlands. In January 2003, EPA and the Corps issued joint guidance interpreting the Supreme Court decision in *SWANCC* (“the 2003 Guidance”). The guidance indicated that *SWANCC* focused on isolated, intrastate, non-navigable waters, and called for field staff to coordinate with their respective Corps or EPA Headquarters on jurisdictional determinations which asserted jurisdiction for waters under 33 CFR 328.3(a)(3)(i-iii). Waters that were jurisdictional pursuant to 33 CFR 328.3(a)(3) could no longer be determined jurisdictional based solely on their use by migratory birds.

Five years after the *SWANCC* decision, in *Rapanos v. United States*, 547 U.S. 715 (2006) (*Rapanos*), a four-Justice plurality opinion in *Rapanos*, authored by Justice Scalia, interpreted the term “waters of the United States” as covering “relatively permanent, standing or continuously flowing bodies of water . . .,” *id.* at 739, that are connected to traditional navigable waters, *id.* at 742, as well as wetlands with a “continuous surface connection . . .” to such water bodies, *id.* (Scalia, J., plurality opinion). The *Rapanos* plurality noted that its reference to “relatively permanent” waters did “not necessarily exclude streams, rivers, or lakes that might dry up in extraordinary circumstances, such as drought,” or “*seasonal* rivers, which contain continuous flow during some months of the year but no flow during dry months....” *Id.* at 732 n.5 (emphasis in original). Justice Kennedy concurred with the plurality judgment, but concluded that the appropriate test for the scope of jurisdictional waters is whether a water or wetland possesses a “‘significant nexus’ to waters that are or were navigable in fact or that could reasonably be so made.” *Id.* at 759. The four dissenting Justices in *Rapanos*, who would have affirmed the court of appeals’ application of the agencies’ regulations, also concluded that the term “waters of the United States” encompasses, *inter alia*, all tributaries and wetlands that satisfy “either the plurality’s [standard] or Justice Kennedy’s.” *Id.* at 810 & n.14 (Stevens, J., dissenting).

While the *SWANCC* and *Rapanos* decisions limited the way the agencies’ longstanding regulatory definition of “waters of the United States” was implemented, in neither case did the Court invalidate that definition.

After the *Rapanos* decision, the agencies issued joint guidance in 2007 to address the waters at issue in that decision but did not change the codified definition. The guidance indicated that “waters of the United States” included traditional navigable waters and their

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adjacent wetlands, relatively permanent waters and wetlands that abut them, and waters with a significant nexus to a traditional navigable water. The guidance did not address waters not at issue in *Rapanos*, such as interstate waters and the territorial seas. The guidance was reissued in 2008 with minor changes (hereinafter, the “2008 guidance”).¹

After issuance of the 2008 guidance, Members of Congress, developers, farmers, state and local governments, environmental organizations, energy companies and others asked the agencies to replace the guidance with a regulation that would provide clarity and certainty on the scope of the waters protected by the CWA.

Following public notice and comment on a proposed rule, the agencies published a final rule defining the scope of “waters of the United States” on June 29, 2015 (80 FR 37054). Thirty-one States and a number of other parties sought judicial review in multiple actions in Federal district courts and Circuit Courts of Appeal, raising concerns about the scope and legal authority of the 2015 rule. One district court issued an order granting a motion for preliminary injunction on the rule’s effective date, finding that the thirteen State challengers were likely to succeed on their claims, including that the rule violated the congressional grant of authority to the agencies under the CWA and that it appeared likely the EPA failed to comply with Administrative Procedure Act (APA) requirements in promulgating the rule. *State of North Dakota et al. v. US EPA*, No. 15-00059, slip op. at 1-2 (D.N.D. Aug. 27, 2015, as clarified by order issued on September 4, 2015). Several weeks later, the Sixth Circuit stayed the 2015 rule nationwide to restore the “pre-Rule regime, pending judicial review.” *In re U.S. Dep’t. of Def. and U.S. Env’tl.*

¹ The guidance expressly stated that it was not intended to create any legally binding requirements, and that “interested persons are free to raise questions about the appropriateness of the application of this guidance to a particular situation, and EPA and/or the Corps will consider whether or not the recommendations or interpretations of this guidance are appropriate in that situation based on the statutes, regulations, and case law.” 2008 guidance at 4 n. 17.

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Protection Agency Final Rule: Clean Water Rule, No. 15-3751 (lead), slip op. at 6. The Sixth Circuit found that the petitioners had demonstrated a substantial possibility of success on the merits, including with regard to claims that certain provisions of the rule were at odds with the *Rapanos* decision and that the distance limitations in the rule were not substantiated by scientific support. Pursuant to the court's order, the agencies have implemented the statute pursuant to the regulatory regime that preceded the 2015 rule. On January 13, 2017, the U.S. Supreme Court granted *certiorari* on the question of whether the court of appeals has original jurisdiction to review challenges to the 2015 rule. The Sixth Circuit granted petitioners' motion to hold in abeyance the briefing schedule in the litigation challenging the 2015 rule pending a Supreme Court decision on the question of the court of appeals' jurisdiction.

On February 28, 2017, the President of the United States issued an Executive Order entitled "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule." Section 1 of the Order states, "[i]t is in the national interest to ensure that the Nation's navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of the Congress and the States under the Constitution." It directs the EPA and the Army to review the 2015 rule for consistency with the policy outlined in section 1, and to issue a proposed rule rescinding or revising the 2015 rule as appropriate and consistent with law. Section 2. The Executive Order also directs the agencies to consider interpreting the term "navigable waters" in a manner consistent with Justice Scalia's plurality opinion in *Rapanos*. Section 3.

The agencies have the authority to rescind and revise the regulatory definition of "waters of the United States," consistent with the guidance in the Executive Order, so long as the revised

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definition is authorized under the law and based on a reasoned explanation. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (“*Fox*”). Importantly, such a revised decision need not be based upon a change of facts or circumstances. A revised rulemaking based “on a re-evaluation of which policy would be better in light of the facts” is “well within an agency’s discretion,” and “[a] change in administration brought about by the people casting their votes is a perfectly reasonable basis for an executive agency’s reappraisal” of its regulations and programs. *Nat’l Ass’n of Home Builders v. EPA*, 682 F.3d 1032, 1038 & 1043 (D.C. Cir. 2012) (citing *Fox*, 556 U.S. at 514-15 (Rehnquist, J., concurring in part and dissenting in part)).

The Executive Order states that it is in the national interest to protect the nation’s waters from pollution as well as to allow for economic growth, ensuring regulatory clarity, and providing due deference to States, as well as Congress. Executive Order section 1. These various priorities reflect, in part the CWA itself, which includes both the objective to “restore and maintain” the integrity of the nation’s waters, as well as the policy to “recognize, preserve, and protect the primary responsibilities and right of States to prevent, reduce, and eliminate pollution...” CWA sections 101(a), 101(b). Re-evaluating the best means of balancing these statutory priorities, as called for in the Executive Order, is well within the scope of authority that Congress has delegated to the agencies under the CWA.

This rulemaking is the first step in a two-step response to the Executive Order, intended to ensure certainty as to the scope of CWA jurisdiction on an interim basis as the agencies proceed to engage in the second step: a substantive review of the appropriate scope of “waters of the United States.”

C. Today's proposed rule

In this proposed rule, the agencies would rescind the 2015 Clean Water Rule and replace it with a recodification of the regulatory text that governed the legal regime prior to the 2015 Clean Water Rule and that the agencies are currently implementing under the court stay, informed by applicable guidance documents (e.g., the 2003 and 2008 guidance documents, as well as relevant memoranda and regulatory guidance letters), and consistent with the *SWANCC* and *Rapanos* Supreme Court decisions, applicable case law, and longstanding agency practice. The proposal retains exclusions from the definition of “waters of the United States” for prior converted cropland and waste treatment systems, both of which existed before the 2015 regulations were issued. Nothing in this proposed rule restricts the ability of States to protect waters within their boundaries by defining the scope of waters regulated under State law more broadly than the federal law definition.

D. Rationale for this rulemaking

This rulemaking action is consistent with the February 28, 2017, Executive Order and the Clean Water Act. This action will consist of two steps. In this first step, the agencies are proposing as an interim action to repeal the 2015 definition of “waters of the United States” and codify the legal *status quo* that is being implemented now under the Sixth Circuit stay of the 2015 definition of “waters of the United States” and that was in place for decades prior to the 2015 rule. This regulatory text would, pending completion of the second step in the two-step process, continue to be informed by the 2003 and 2008 guidance documents. In the second step, the agencies will conduct a separate notice and comment rulemaking that will consider

developing a new definition of “waters of the United States” taking into consideration the principles that Justice Scalia outlined in the *Rapanos* plurality opinion.

In the 2015 rulemaking, the agencies described their task as “interpret[ing] the scope of the ‘waters of the United States’ for the CWA in light of the goals, objectives, and policies of the statute, the Supreme Court case law, the relevant and available science, and the agencies’ technical expertise and experience.” 80 Fed. Reg. 37,054, 37,060 (June 29, 2015). In so doing, the agencies properly acknowledged that a regulation defining “waters of the United States” in this area is not driven by any one type or piece of information, but rather must be the product of the evaluation and balancing of a variety of different types of information. That information includes scientific data as well as the policies articulated by Congress when it passed the Act. For example, the agencies recognized this construct in the preamble to the 2015 Rule by explaining that what constitutes a “significant nexus” to navigable waters “is not a purely scientific determination” and that “science does not provide bright line boundaries with respect to where ‘water ends’ for purposes of the CWA.” 80 Fed. Reg. at 37,060.²

The objectives, goals, and policies of the statute are detailed in sections 101(a)-(g) of the statute, and guide the agencies’ interpretation and application of the Clean Water Act. Section 101(a) of the Act states that the “objective of this chapter is to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters,” and identifies several goals and national policies Congress believed would help the Act achieve that objective. 33 U.S.C.

² This notion was at least implicitly recognized by the Chief Justice in his concurring opinion in *Rapanos*: “[T]he Corps and the EPA would have enjoyed plenty of room to operate in developing *some* notion of an outer bound to the reach of their authority.” *Rapanos v. United States*, 547 U.S. 715, 758 (2006) (Roberts, C.J., concurring). Ultimately, developing “some notion of an outer bound” from the full range of relevant information is the task facing the agencies.

§ 1251(a). When referring to the Act’s objective, the 2015 rule referred specifically to Section 101(a). 80 Fed. Reg. at 37,056.

In addition to the objective of the Act and the goals and policies identified to help achieve that objective in section 101(a), in section 101(b) Congress articulated that it is “the policy of the Congress” to:

[R]ecognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this chapter. It is the policy of Congress that the States manage the construction grant program under this chapter and implement the permit programs under sections 1342 and 1344 of this title.

33 U.S.C. § 1251(b). Therefore, as part of the two-step rulemaking, the agencies will be considering the relationship of the CWA objective and policies, and in particular, the meaning and importance of section 101(b).

The 2015 rule did acknowledge the language contained in section 101(b) and the vital role states and tribes play in the implementation of the Act and the effort to meet the Act’s stated objective. *See, e.g.*, 80 Fed. Reg. at 37,059. In discussing the provision, the agencies noted that it was “[o]f particular importance[,] [that] states and tribes may be authorized by the EPA to administer the permitting programs of CWA sections 402 and 404.” *Id.* The agencies also noted that “States and federally-recognized tribes, consistent with the CWA, retain full authority to implement their own programs to more broadly and more fully protect the waters in *their jurisdiction.*” *Id.* at 37,060. However, the agencies did not include a discussion in the 2015 rule preamble of the meaning and importance of section 101(b) in guiding the choices the agencies make in setting the outer bounds of jurisdiction of the Act, despite the recognition that the rule must be drafted “in light of the goals, objectives, and policies of the statute.” In the two-step rulemaking process commencing with today’s notice, the agencies will more fully consider the

policy in section 101(b) when exercising their discretion to delineate the scope of waters of the U.S., including the extent to which states or tribes have protected or may protect waters that are not subject to CWA jurisdiction.

The scope of CWA jurisdiction is an issue of great national importance and therefore the agencies will allow for robust deliberations on the ultimate regulation. While engaging in such deliberations, however, the agencies recognize the need to provide as an interim step for regulatory continuity and clarity for the many stakeholders affected by the definition of “waters of the United States.” The pre-CWR regulatory regime is in effect as a result of the Sixth Circuit’s stay of the 2015 rule but that regime depends upon the pendency of the Sixth Circuit’s order and could be altered at any time by factors beyond the control of the agencies. The Supreme Court’s resolution of the question as to which courts have original jurisdiction over challenges to the 2015 rule could impact the Sixth Circuit’s exercise of jurisdiction and its stay. If, for example, the Supreme Court were to decide that the Sixth Circuit lacks original jurisdiction over challenges to the 2015 rule, the Sixth Circuit case would be dismissed and its nationwide stay would expire, leading to inconsistencies, uncertainty, and confusion as to the regulatory regime that would be in effect pending substantive rulemaking under the Executive Order.

As noted previously, prior to the Sixth Circuit’s stay order, the District Court for North Dakota had preliminarily enjoined the rule in 13 States (North Dakota, Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, South Dakota, Wyoming and New Mexico). Therefore, if the Sixth Circuit’s nationwide stay were to expire, the 2015 rule would be enjoined under the North Dakota order in States covering a large geographic area of the

country, but the rule would be in effect in the rest of the country pending further judicial decision-making or substantive rulemaking under the Executive Order.

Adding to the confusion that could be caused if the Sixth Circuit's nationwide stay of the 2015 rule were to expire, there are multiple other district court cases pending on the 2015 rule, including several where challengers have filed motions for preliminary injunctions. These cases – and the pending preliminary injunction motions – would likely be reactivated if the Supreme Court were to determine that the Sixth Circuit lacks original jurisdiction over challenges to the 2015 rule. The proposed interim rule would establish a clear regulatory framework that would avoid the inconsistencies, uncertainty and confusion that would result from a Supreme Court ruling affecting the Sixth Circuit's jurisdiction while the agencies reconsider the 2015 rule. It would ensure that, during this interim period, the scope of CWA jurisdiction will be administered exactly the way it is now, and as it was for many years prior to the promulgation of the 2015 rule. The agencies considered other approaches to providing stability while they work to finalize the revised definition, such as simply withdrawing or staying the Clean Water Rule, but did not identify any options that would do so more effectively and efficiently than this proposed rule would do. A stable regulatory foundation for the *status quo* would facilitate the agencies' considered re-evaluation, as appropriate, of the definition of "waters of the United States" that best effectuates the language, structure, and purposes of the Clean Water Act.

II. General Information

A. How can I get copies of this document and related information?

1. *Docket.* An official public docket for this action has been established under Docket Id. No. EPA-HQ-OW-2017-0203. The official public docket consists of the documents specifically referenced in this action, and other information related to this action. The official

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public docket is the collection of materials that is available for public viewing at the OW Docket, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The OW Docket telephone number is 202-566-2426. A reasonable fee will be charged for copies.

2. *Electronic Access.* You may access this Federal Register document electronically under the “Federal Register” listings at <http://www.regulations.gov>. An electronic version of the public docket is available through EPA’s electronic public docket and comment system, EPA Dockets. You may access EPA Dockets at <http://www.regulations.gov> to view public comments as they are submitted and posted, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. For additional information about EPA’s public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the Docket Facility.

B. What is the agencies’ authority for taking this action?

The authority for this action is the Federal Water Pollution Control Act, 33 U.S.C. 1251, *et seq.*, including sections 301, 304, 311, 401, 402, 404 and 501.

C. What are the economic impacts of this action?

This proposed rule is the first step in a comprehensive, two-step process to review and revise the 2015 definition of “waters of the United States.” The agencies prepared an illustrative economic analysis to provide the public with information on the potential changes to the costs and benefits of various CWA programs that could result if there were a change in the number of positive jurisdictional determinations. The economic analysis is provided pursuant to the

requirements of Executive Orders 13563 and 12866 to provide information to the public. The 2015 CWR is used as a baseline in the analysis in order to provide information to the public on the estimated differential effects of restoring pre-2015 status quo in comparison to the 2015 CWR. However, as explained previously, the 2015 CWR has already been stayed by the Sixth Circuit, and this proposal would merely codify the legal status quo, not change current practice.

The proposed rule is a definitional rule that affects the scope of “waters of the United States.” This rule does not establish any regulatory requirements or directly mandate actions on its own. However, by changing the definition of “waters of the United States,” the proposed rule would change the waters where other regulatory requirements that affect regulated entities come into play, for example, the locations where regulated entities would be required to obtain certain types of permits. The consequence of a water being deemed non-jurisdictional is simply that CWA provisions no longer apply to that water. There are no avoided costs or forgone benefits if similar state regulations exist and continue to apply to that water. The agencies estimated that the 2015 rule would result in a small overall increase in positive jurisdictional determinations compared to those made under the prior regulation as currently implemented, and that there would be fewer waters within the scope of the CWA under the 2015 rule compared to the prior regulations. The agencies estimated the avoided costs and forgone benefits of repealing the 2015 rule. This analysis is contained in the *Economic Analysis for the Proposed Definition of “Waters of the United States” – Recodification of Pre-existing Rules* and is available in the docket for this action.

III. Public Comments

The agencies solicit comment as to whether it is desirable and appropriate to re-codify in regulation the *status quo* as an interim first step pending a substantive rulemaking to reconsider the definition of “waters of the United States” and the best way to accomplish it. Because the agencies propose to simply codify the legal *status quo* and because it is a temporary, interim measure pending substantive rulemaking, the agencies wish to make clear that this interim rulemaking does not undertake any substantive reconsideration of the pre-2015 “waters of the United States” definition nor are the agencies soliciting comment on the specific content of those longstanding regulations. *See P&V Enterprises v. Corps of Engineers*, 516 F.3d 1021,1023-24 (D.C. Cir. 2008). For the same reason, the agencies are not at this time soliciting comment on the scope of the definition of “waters of the United States” that the agencies should ultimately adopt in the second step of this two-step process, as the agencies will address all of those issues, including those related to the 2015 rule, in the second notice and comment rulemaking to adopt a revised definition of “waters of the United States” in light of the February 28, 2017, Executive Order. The agencies do not intend to engage in substantive reevaluation of the definition of “waters of the United States” until the second step of the rulemaking. *See P&V*, 516 F.3d at 1025-26.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563:

Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket.

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In addition, the agencies prepared an analysis of the potential avoided costs and forgone benefits associated with this action. This analysis is contained in the *Economic Analysis for the Proposed Definition of “Waters of the United States” – Recodification of Pre-existing Rules*. A copy of the analysis is available in the docket for this action.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control numbers 2050-0021 and 2050-0135 for the CWA section 311 program and 2040-0004 for the 402 program.

For the CWA section 404 regulatory program, the current OMB approval number for information requirements is maintained by the Corps (OMB approval number 0710–0003). However, there are no new approval or application processes required as a result of this rulemaking that necessitate a new Information Collection Request (ICR).

C. Regulatory Flexibility Act

We certify that this action will not have a significant economic impact on a substantial number of small entities. Because this action would simply codify the legal *status quo*, we have concluded that this action will not have a significant impact on small entities. This analysis is contained in the *Economic Analysis for the Proposed Definition of “Waters of the United States” – Recodification of Pre-existing Rules*. A copy of the analysis is available in the docket for this action.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The definition of

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“waters of the United States” applies broadly to CWA programs. The action imposes no enforceable duty on any state, local, or tribal governments, or the private sector, and does not contain regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Consistent with the agencies’ policy to promote communications with state and local governments, the agencies have informed states and local governments about this proposed rulemaking.

The agencies will appropriately consult with States and local governments as a subsequent rulemaking makes changes to the longstanding definition of “waters of the United States.”

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This proposed rule does not have tribal implications as specified in Executive Order 13175. This proposed rule maintains the legal *status quo*. Thus, Executive Order 13175 does not apply to this action.

Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011), the agencies will appropriately consult with tribal officials during the development of a subsequent rulemaking that makes changes to the longstanding definition of “waters of the United States.” In fact, the agencies have already initiated the formal consultation process with respect to the subsequent rulemaking.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because the environmental health risks or safety risks addressed by this action do not present a disproportionate risk to children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

This proposed rule does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

This proposed rule maintains the legal *status quo*. The agencies therefore believe that this action does not have disproportionately high and adverse human health or environmental effects on minority, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, Feb. 16, 1994).

K. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

Pursuant to Executive Order 13771 (82 FR 9339, February 3, 2017) this proposed rule is expected to be an E.O. 13771 deregulatory action.

List of Subjects

33 CFR Part 328

Environmental protection, Administrative practice and procedure, Intergovernmental relations, Navigation, Water pollution control, Waterways.

40 CFR Parts 110, 112, 116, 117, 122, 230, 232, 300, 302, and 401

Environmental protection, Water pollution control.

Dated: _____.

E. Scott Pruitt,

Administrator,

Environmental Protection Agency.

Dated: _____.

Douglas W. Lamont,

Senior Official Performing the Duties of the Assistant Secretary of the Army for Civil Works,

Department of the Army.

Title 33—Navigation and Navigable Waters

For the reasons set out in the preamble, title 33, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 328—DEFINITION OF WATERS OF THE UNITED STATES

1. The authority citation for part 328 is revised to read as follows:

Authority: 33 U.S.C. 1344.

2. Section 328.3 is amended by revising paragraphs (a) through (d) and adding paragraphs (e) and (f) to read as follows:

§328.3 Definitions.

* * * * *

(a) 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;

(2) All interstate waters including interstate wetlands;

(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:

(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;

(4) All impoundments of waters otherwise defined as waters of the United States under the definition;

(5) Tributaries of waters identified in paragraphs (a) (1) through (4) of this section;

(6) The territorial seas;

(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) (1) through (6) of this section.

(8) Waters of the United States do not include 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.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States.

(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.

(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."

(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.

(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 the surrounding areas.

(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.

Title 40—Protection of Environment

For reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 110—DISCHARGE OF OIL

3. The authority citation for part 110 is revised to read as follows:

Authority: 33 U.S.C. 1321(b)(3) and (b)(4) and 1361(a); E.O. 11735, 38 FR 21243, 3 CFR Parts 1971–1975 Comp., p. 793.

4. Section 110.1 is amended by revising the definition of “Navigable waters” and adding the definition of “Wetlands” in alphabetical order to read as follows:

§110.1 Definitions.

* * * * *

Navigable waters means the waters of the United States, including the territorial seas.

The term includes:

(a) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

(b) Interstate waters, including interstate wetlands;

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) That are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

(3) That are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as navigable waters under this section;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this section, including adjacent wetlands; and

(f) Wetlands adjacent to waters identified in paragraphs (a) through (e) of this section: Provided, That waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States;

Navigable waters do not include 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.

* * * * *

Wetlands means those areas that are inundated or saturated by surface or ground water at a frequency or 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 playa lakes, swamps, marshes, bogs and similar areas such as sloughs, prairie potholes, wet meadows, prairie river overflows, mudflats, and natural ponds.

PART 112 –OIL POLLUTION PREVENTION

5. The authority citation for part 112 is revised to read as follows:

Authority: 33 U.S.C. 1251 et seq.; 33 U.S.C. 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

6. Section 112.2 is amended by revising the definition of “Navigable waters” and adding the definition of “Wetlands” in alphabetical order to read as follows:

§112.2 Definitions.

* * * * *

Navigable waters of the United States means “navigable waters” as defined in section 502(7) of the FWPCA, and includes:

(1) All navigable waters of the United States, as defined in judicial decisions prior to passage of the 1972 Amendments to the FWPCA (Pub. L. 92–500), and tributaries of such waters;

(2) Interstate waters;

(3) Intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; and

(4) Intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce.

* * * * *

Wetlands means those areas that are inundated or saturated by surface or groundwater at a frequency or 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 playa lakes, swamps, marshes, bogs, and similar areas such as sloughs, prairie potholes, wet meadows, prairie river overflows, mudflats, and natural ponds.

* * * * *

PART 116—DESIGNATION OF HAZARDOUS SUBSTANCES

7. The authority citation for part 116 is revised to read as follows:

Authority: Secs. 311(b)(2)(A) and 501(a), Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

8. Section 116.3 is amended by revising the definition of “Navigable waters” to read as follows:

§116.3 Definitions.

* * * * *

Navigable waters is defined in section 502(7) of the Act to mean “waters of the United States, including the territorial seas,” and includes, but is not limited to:

(1) All waters which are presently used, or were used in the past, or may be susceptible to use as a means to transport interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide, and including adjacent wetlands; the term *wetlands* as used in this regulation shall include 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; the term adjacent means bordering, contiguous or neighboring;

(2) Tributaries of navigable waters of the United States, including *adjacent* wetlands;

(3) Interstate waters, including wetlands; and

(4) All other waters of the United States such as intrastate lakes, rivers, streams, mudflats, sandflats and wetlands, the use, degradation or destruction of which affect interstate commerce including, but not limited to:

(i) Intrastate lakes, rivers, streams, and wetlands which are utilized by interstate travelers for recreational or other purposes; and

(ii) Intrastate lakes, rivers, streams, and wetlands from which fish or shellfish are or could be taken and sold in interstate commerce; and

(iii) Intrastate lakes, rivers, streams, and wetlands which are utilized for industrial purposes by industries in interstate commerce.

This document is a prepublication version, signed by EPA Administrator, Scott Pruitt, along with Mr. Douglas Lamont, senior official performing the duties of the Assistant Secretary of the Army for Civil Works, on 06/27/2017. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Navigable waters do not include 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.

* * * * *

PART 117—DETERMINATION OF REPORTABLE QUANTITIES FOR HAZARDOUS SUBSTANCES

9. The authority citation for part 117 is revised to read as follows:

Authority: Secs. 311 and 501(a), Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), (“the Act”) and Executive Order 11735, superseded by Executive Order 12777, 56 FR 54757.

10. Section 117.1 is amended by revising paragraph (i) to read as follows:

§117.1 Definitions.

* * * * *

(i) *Navigable waters* means “waters of the United States, including the territorial seas.”

This term includes:

(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;

(2) Interstate waters, including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams, (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(i) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

(iii) Which are used or could be used for industrial purposes by industries in interstate commerce;

(4) All impoundments of waters otherwise defined as navigable waters under this paragraph;

(5) Tributaries of waters identified in paragraphs (i) (1) through (4) of this section, including adjacent wetlands; and

(6) Wetlands adjacent to waters identified in paragraphs (i) (1) through (5) of this section (“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 included playa lakes, swamps, marshes, bogs, and similar areas such as sloughs, prairie potholes, wet meadows, prairie river overflows, mudflats, and natural ponds): *Provided*, That waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States.

Navigable waters do not include 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.

* * * * *

**PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL
POLLUTANT DISCHARGE ELIMINATION SYSTEM**

11. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et.seq.*

12. Section 122.2 is amended by:

- a. Revising the definition of “Waters of the United States”.
- b. Adding a Note 1 to the definition of “Waters of the United States” and the definition of “Wetlands”.

The revision and additions read as follows:

§122.2 Definitions.

* * * * *

Waters of the United States or *waters of the U.S.* means:

(a) 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;

(b) All interstate waters, including interstate “wetlands;”

(c) 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 would affect or could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;

(f) The territorial sea; and

(g) “Wetlands” adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. [See Note 1 of this section.] Waters of the United States do not include 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.

NOTE: At 45 FR 48620, July 21, 1980, the Environmental Protection Agency suspended until further notice in §122.2, the last sentence, beginning “This exclusion applies . . .” in the definition of “Waters of the United States.” This revision continues that suspension.ⁿ¹

ⁿ¹ EDITORIAL NOTE: The words “This revision” refer to the document published at 48 FR 14153, Apr. 1, 1983.

Wetlands means those areas that are inundated or saturated by surface or groundwater 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.

* * * * *

PART 230—SECTION 404(b)(1) GUIDELINES FOR SPECIFICATION OF DISPOSAL SITES FOR DREDGED OR FILL MATERIAL

13. The authority citation for part 230 is revised to read as follows:

Authority: The Clean Water Act, Secs. 404(b) and 501(a) of the Clean Water Act of 1977 (33 U.S.C. 1344(b) and 1361(a)).

14. Section 230.3 is amended by:

- a. Redesignating paragraphs (b) through (d) as (c) through (e).
- b. Redesignating paragraphs (e) through (f) as (h) through (i).
- c. Redesignating paragraph (g) as paragraph (k).
- d. Redesignating paragraphs (h) through (l) as paragraphs (m) through (q).
- e. Reserving paragraphs (j) and (l).
- f. Redesignating paragraph (m) as paragraph (q-1).
- g. Redesignating paragraph (o) as paragraph (s).
- h. Redesignating paragraph (n) as paragraph (r).
- i. Revising newly redesignated paragraph (s).
- j. Adding the definition of “adjacent” at paragraph (b) and the definition of “wetlands” at paragraph (t).

The revision reads as follows:

§ 230.3 Definitions.

* * * * *

(b) 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.”

* * * * *

(s) 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;

(2) All interstate waters including interstate wetlands;

(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:

(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 purposes by industries in interstate commerce;

(4) All impoundments of waters otherwise defined as waters of the United States under this definition;

(5) Tributaries of waters identified in paragraphs (s)(1) through (4) of this section;

(6) The territorial sea;

(7) Wetlands adjacent to waters (other than waters that are themselves wetlands)

identified in paragraphs (s)(1) through (6) of this section; waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States.

Waters of the United States do not include 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.

(t) 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.

PART 232—404 PROGRAMS DEFINITIONS; EXEMPT ACTIVITIES NOT REQUIRING 404 PERMITS

- 15. The authority citation for part 232 is revised to read as follows:

Authority: 33 U.S.C. 1344.

- 16. Section 232.2 is amended by revising the definition of “Waters of the United States” and adding the definition of “Wetlands” to read as follows:

§232.2 Definitions.

* * * * *

Waters of the United States means:

All waters which are currently used, were used in the past, or may be susceptible to us in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

All interstate waters including interstate wetlands.

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 would or could affect interstate or foreign commerce including any such waters:

Which are or could be used by interstate or foreign travelers for recreational or other purposes; or

From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

Which are used or could be used for industrial purposes by industries in interstate commerce.

All impoundments of waters otherwise defined as waters of the United States under this definition;

Tributaries of waters identified in paragraphs (g)(1)–(4) of this section;

The territorial sea; and

Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (q)(1)– (6) of this section.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Act (other than cooling ponds as defined in 40 CFR 123.11(m) which also meet the criteria of this definition) are not waters of the United States.

Waters of the United States do not include 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.

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.

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

17. The authority citation for part 300 is revised to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601-9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p.306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

18. Section 300.5 is amended by revising the definition of “Navigable waters” to read as follows:

§ 300.5 Definitions.

* * * * *

Navigable waters as defined by 40 CFR 110.1, means the waters of the United States, including the territorial seas. The term includes:

(1) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

(2) Interstate waters, including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters;

(i) That are or could be used by interstate or foreign travelers for recreational or other purposes;

(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

(iii) That are used or could be used for industrial purposes by industries in interstate commerce;

(4) All impoundments of waters otherwise defined as navigable waters under this section;

(5) Tributaries of waters identified in paragraphs (a) through (d) of this definition, including adjacent wetlands; and

(6) Wetlands adjacent to waters identified in paragraphs (a) through (e) of this definition: Provided, that waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States.

(7) Waters of the United States do not include 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.

* * * * *

19. In appendix E to part 300, section 1.5 Definitions is amended by revising the definition of “Navigable waters” to read as follows:

Appendix E to Part 300—Oil Spill Response

* * * * *

1.5 Definitions. * * *

Navigable waters as defined by 40 CFR 110.1 means the waters of the United States, including the territorial seas. The term includes:

(a) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

(b) Interstate waters, including interstate wetlands;

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) That are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; and

(3) That are used or could be used for industrial purposes by industries in interstate commerce.

(d) All impoundments of waters otherwise defined as navigable waters under this section;

This document is a prepublication version, signed by EPA Administrator, Scott Pruitt, along with Mr. Douglas Lamont, senior official performing the duties of the Assistant Secretary of the Army for Civil Works, on 06/27/2017. We have taken steps to ensure the accuracy of this version, but it is not the official version.

(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition, including adjacent wetlands; and

(f) Wetlands adjacent to waters identified in paragraphs (a) through (e) of this definition: Provided, that waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States.

(g) Waters of the United States do not include 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.

* * * * *

PART 302— DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

20. The authority citation for part 302 is revised to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

21. Section 302.3 is amended by revising the definition of “Navigable waters” to read as follows:

§ 302.3 Definitions.

* * * * *

Navigable waters or navigable waters of the United States means waters of the United States, including the territorial seas;

* * * * *

PART 401— GENERAL PROVISIONS

22. The authority citation for part 401 is revised to read as follows:

This document is a prepublication version, signed by EPA Administrator, Scott Pruitt, along with Mr. Douglas Lamont, senior official performing the duties of the Assistant Secretary of the Army for Civil Works, on 06/27/2017. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c), 307 (b) and (c) and 316(b) of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), 1317 (b) and (c) and 1326(c); 86 Stat. 816 et seq.; Pub. L. 92-500.

23. Section 401.11 is amended by revising paragraph (l) to read as follows:

§ 401.11 General definitions.

* * * * *

(l) The term navigable waters includes: All navigable waters of the United States; tributaries of navigable waters of the United States; interstate waters; intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce; and intrastate lakes, rivers, and streams which are utilized for industrial purposes by industries in interstate commerce. Navigable waters do not include 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.

* * * * *

Los Angeles Regional Water Quality Control Board

TO: Interested Persons

FROM: Céline Gallon
Senior Environmental Scientist, Basin Planning Program
Los Angeles Regional Water Quality Control Board CG

DATE: July 11, 2017

SUBJECT: CLIMATE CHANGE STRATEGY – NOTICE OF PUBLIC WORKSHOP

This notice is to inform interested persons that the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) will conduct a stakeholder workshop to discuss the development of the Los Angeles Water Board's Climate Change Strategy. The stakeholder workshop will be held at the following date and location:

***Tuesday, August 8, 2017
9:30 am to 12:30 pm***

***Junipero Serra Building
320 West 4th Street, Los Angeles, CA 90013
1st Floor Carmel Conference Room***

(Please allow extra time to pass through the security measures at the Junipero Serra Building)

Board staff will present the process that has been initiated to define potential actions to address climate change within its programs. The focus of the workshop is to seek input on how climate change will affect dischargers and other stakeholders and consider the relationship between these impacts and how the Board regulates discharges. If you have any questions, please contact me by email at celine.gallon@waterboards.ca.gov or at (213) 576-6784.

If you are planning to participate, please RSVP at celine.gallon@waterboards.ca.gov. Also, please share this invitation with any persons known to you who may be interested in this matter.

Background

Human activities over the past century have resulted in releases of large quantities of carbon dioxide and other greenhouse gases into the atmosphere, leading to the onset of significant changes in the earth's climate that will have substantial impacts on water resources, including water quality. More specifically, the predicted increase in temperatures, increased occurrence of extreme weather conditions (including extreme precipitation events and drought), and sea level rise could drastically alter hydrological and ecosystem processes in our region. Such impacts could manifest in multiple ways, such as decreases in stream flow, reductions in, and changes to, aquatic habitats, increases in surface water temperature, increases in pollutant levels, sedimentation, and algal growth, and changes in salinity levels and acidification in coastal areas. These impacts could affect many beneficial uses of our waters, including ecological habitats and associated species and recreational uses.

Because preserving water quality is essential to protect both human populations and natural ecosystems into the future, it is imperative to assess these impacts, and to develop strategies to adapt to the upcoming changes and mitigate their effects on water quality and on the beneficial uses of our waters.

Recognizing the challenges posed by climate change, on March 7, 2017, the State Water Resources Control Board adopted a resolution requiring a proactive approach to climate change in all Board actions, including drinking water regulation, water quality protection, and financial assistance ([Resolution No 2017-0012](#)).

Locally, the Los Angeles Regional Water Board has been working on the development of a Regional Climate Change Strategy. Efforts towards this end included the development of an initial "[Framework for Climate Change Adaptation and Mitigation](#)" for the Los Angeles region. This document took a first look at impacts of climate change on water supply and water quality for various waterbody types of the region, as well as through the lenses of the Los Angeles Water Board's programs, and began a discussion on issues that will need to be considered and tackled over time. Further work will include the development and consideration of specific actions to address climate change within the various Los Angeles Water Board's programs.

This workshop is an opportunity for stakeholders and interested persons 1) to learn more about the Los Angeles Water Board's work to develop a regional climate change strategy, and 2) to come together and discuss how the various impacts of climate change may affect facilities, the regulatory environment, and our water resources and associated beneficial uses, and how the Los Angeles Water Board could take these issues into consideration. All interested persons are encouraged to attend.

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**SAN GABRIEL VALLEY
WATER ASSOCIATION**

Join us for our

**Quarterly Meeting
(Breakfast)**

San Gabriel Valley Quarterly Meeting
Wednesday, August 9, 2017
8:00 a.m.

Pomona Valley Mining Co.
1777 Gillette Road Pomona, CA 91768

**“California
Stormwater & Green Infrastructure”**

Featuring the perspective of

Alf Brandt

Senior Counsel from

Office of Assembly Speaker, Anthony Rendon

Please join us on **Wednesday, August 9th at 8:00 a.m.** for the San Gabriel Valley Water Association’s Quarterly **Breakfast**.

Mr. Brandt has extensive experience in Sacramento advising Assembly Speaker Rendon and state lawmakers on water and other issues impacting our region. Mr. Brandt has particular interest and background in the Clean Water Act and municipal separate storm sewer systems (MS4). He has written and presented nationally on the subject as it relates to the Los Angeles region.

Please [register here](#), no later than Tuesday, August 1, 2017. If you have any questions, please call the office at 626-815-1305.

[REGISTER HERE!](#)

See you on August 9, 2017

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La Puente Valley County Water District
Rowland WD
San Gabriel CWD
San Gabriel Valley MWD
Three Valleys MWD
Upper San Gabriel Valley MWD
Valley CWD
Walnut Valley WD

Public Utilities:

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California American Water Co.
Golden State Water Co.
San Gabriel Valley Water Co.
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Mutual Water Companies:

Amarillo Mutual Water Co.
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Private & Industrial Producers:

Hanson Aggregates West, Inc.
L.A. Co. Dept. of Public Works
MillerCoors
Sonoco Products Co.
United Rock Products Corp.
Vulcan Materials Co.
Workman Mill Investment Co.

Consultants/Others:

Adan Ortega Associates
Aqua Capital Management LP
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