



## WATERS OF THE UNITED STATES

### Current rule:

- Waters susceptible to interstate commerce (traditionally navigable waters)
- All interstate waters
- Impoundments of the above waters
- The territorial seas

San Juan Creek and its tributaries are "blue-line" streams and defined as Waters of the US



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- **Clean Water Act is based on cooperative Federalism**
- Majority of Western States are seeing proposed rule as an infringement on States rights, California is supportive of rule
- **Rule attempts to develop “significant nexus” definition based on the Rapanos ruling from the US Supreme Court**
- **Rule developed without consulting with the states and is based on an unfinished technical report**
- **Rule allows for citizen claims and lawsuits for enforcement**
- EPA has stated the Rule does not change current permitting, however, the text does not support the claim
- Can require the Army Corps of Engineers to provide case-by-case analysis to provide determination on each project.

## TRIBUTARIES AND ADJACENT WATERS - DEFINITIONS

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| <ul style="list-style-type: none"> <li>• <b>Current</b></li> <li>▪ Water considered in bed, banks with high water mark</li> <li>▪ Wetlands, lakes and ponds if it contributes flows</li> <li>▪ Natural, man-altered or man-made</li> </ul> | <ul style="list-style-type: none"> <li>• <b>New</b></li> <li>▪ Floodplains</li> <li>▪ Riparian areas           <ul style="list-style-type: none"> <li>▪ Bordering waters</li> <li>▪ Surface or subsurface</li> </ul> </li> <li>▪ Confined Surface           <ul style="list-style-type: none"> <li>▪ Connection through a flow path</li> </ul> </li> <li>▪ Subsurface Connection           <ul style="list-style-type: none"> <li>▪ Lateral connection through shallow subsurface layer.</li> </ul> </li> <li>▪ Tributaries/direct and indirect connections           <ul style="list-style-type: none"> <li>▪ Man-made channels and wetlands draining into navigable waters</li> <li>▪ Includes channels that drain through other channels before hitting a navigable water</li> </ul> </li> </ul> |
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## WHAT IT MEANS TO BE JURISDICTIONAL

- **Facilities are subject to Clean Water Act regulatory requirements**
  - More studies on recreation and habitat concerns
- **May trigger other federal laws such as NEPA and the endangered species act.**
  - Involves additional studies
  - Additional comment periods
- **Additional requirements = additional time and money**
  - May increase basic O&M costs
  - May require 404 permits for maintenance activities
- **Jeopardizes Recycled Water Projects**
  - Proposed rules exempt wastewater treatment systems “designed to meet the requirements of the Clean Water Act”
  - Water reuse facilities such as seasonal storage or basin recharge do not fall under the exemption.

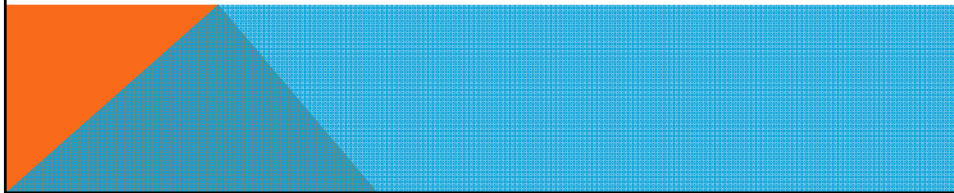
## RECYCLED/REUSE WATER FACILITIES

Gobernadora Multipurpose Basin



## PROPOSED RECYCLED WATER PROJECTS MAY BE IMPACTED

- **Facilities are proposed to be adjacent to jurisdictional waters**
  - Infiltration basins
    - Potential recycled water
    - Constructed wetlands
  - Seasonal storage of recycled water at proposed Trampas Reservoir for recharge
  - Recharge with urban return flows
- **Stormwater Retention Basins**
  - Potential for recharge will have connection to jurisdictional waters – could be considered jurisdictional wetlands or surface waters based on connection
- **Assorted pipeline and treatment projects may be complicated**
  - Increased permitting complexity and difficulty for projects related to recharge



## POTENTIAL COMMENTS/AMENDMENTS

- **Waters to exclude from the definition**
  - Water conveyance systems
  - Off-stream water supply storage facilities
  - Aquifer storage and recharge facilities
  - Stormwater management and capture facilities
  - Recycled water storage and recharge facilities
- **Avoid using the following terms to define adjacent waters:**
  - Floodplain
  - Riparian Areas
  - Tributary

