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.
WATERS OF THE UNITED STATES

- 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

- Current
  - Water considered in bed, banks with high water mark
  - Wetlands, lakes and ponds if it contributes flows
  - Natural, man-altered or man-made

- New
  - Floodplains
  - Riparian areas
    - Bordering waters
    - Surface or subsurface
  - Confined Surface
    - Connection through a flow path
  - Subsurface Connection
    - Lateral connection through shallow subsurface layer.
  - Tributaries/direct and indirect connections
    - Man-made channels and wetlands draining into navigable waters
    - Includes channels that drain through other channels before hitting a navigable water
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

Upper Oso Reservoir
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