



San Gabriel Valley Council of Governments

AGENDA AND NOTICE

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

Wednesday, October 18, 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
West Covina

Water TAC

Chair: David Dolphin
City of Alhambra

Vice Chair:
Fran Delach
Upper San Gabriel Valley
Municipal Water District

Members
Alhambra
Arcadia
Covina
Monrovia
Sierra Madre
LA County DPW
San Gabriel Valley
Municipal Water District

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.sgvkog.org. Copies are available via email upon request (sgv@sgvcog.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 – 9/20/2017
Recommended Action: Approve.

PRESENTATION

5. Water Resilience: Presentation by Russ Bryden, LA County Department of Public Works
Recommended Action: for information.
6. Whittier Narrows Dam Safety: Presentation by Ms. Kathy Anderson, Project Manager for the Dam Safety Study, USACE
Recommended Action: for information.

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*)

7. Waters of the United States
 - Small Government Listening Session: Sept 19th
 - Stormwater Listening Session: Nov 14th
 - Written Comments Due by November 28th*Recommended Action: for discussion*

INFORMATION ITEMS

8. Legislative Updates
 - State Legislation:
 - o SB 231 (Hertzberg), SB 541 (Allen), AB 1180 (Holden), SB 5 (DeLeon), AB 1668 (Friedman), SB 589 (Hernandez), SB 633 (Portantino)
 - o LA County Area Legislative Staff Water Group
 - Federal Legislation:
 - o H.R. 465/2355, H.R. 2510
 - o House Committee on Transportation and Infrastructure*Recommended Action: for information.*
9. Regulatory Updates:
Recommended Action: for information.
10. Water Boards Update
 - State Board: 303(d) List: Public Hearing Oct 3rd
 - Regional Board: October 5th meeting*Recommended Action: for information.*
11. LA County Water Update
Recommended Action: for information.
12. Water Supply Update
Recommended Action: for information.
13. Litigation Update
Recommended Action: for information.
14. Stormwater Outreach Updates
Recommended Action: for information.
15. E/WMP Updates
Recommended Action: for information.

EXECUTIVE DIRECTOR'S COMMENTS

CHAIR'S REPORT

ANNOUNCEMENTS

- LA Water Board meeting: Nov 2, 2017

ADJOURN



SGVCOG Joint Water Policy Committee/TAC Unapproved Minutes

Date: September 20, 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 10:10 AM.
2. Roll Call

Water Policy Committee Members Present

S. Pedroza, Claremont
N. Lyons, Diamond Bar
J. Nelson, Glendora
G. Crudgington, Monrovia
J. Capoccia, Sierra Madre
D. Mahmud, South Pasadena

Water Policy Committee Members Absent

Rosemead

Water TAC Members Present

D. Dolphin, Alhambra
K. Kearney, Baradbury
S. Costandi, Covina
A. Tachiki, Monrovia
J. Carlson, Sierra Madre
M. Lombos, LACDPW
F. Delach, USGVMWD

Water TAC Members Absent

Arcadia
South Pasadena

Ex Officio Members Present

S. Green, LA County Sanitation District
K. Gardner, R. Serna, Watermaster

Ex Officio Members Absent

Guests

M. Cansino, Pomona
R. Tahir, TECS Environmental
E. Reyes, SGV Municipal Water District
M. Spence, West Covina

B. Jensen, SGV Economic Partnership
W. La, San Gabriel Mountains & Rivers
M. Lutz

SGVCOG Staff

P. Hawkey
E. Wolf

3. Public Comment. There were no public comments.

CONSENT CALENDAR

4. Water Committee/TAC Meeting Minutes – 7/19/2017
There was a motion to approve the minutes. (M/S: J. Nelson/S. Pedroza).

[MOTION PASSED]

AYES:	Claremont, Diamond Bar, Glendora, Monrovia, Sierra Madre, South Pasadena, Alhambra, Bradbury, Covina, LACDPW, USGVMWD
NOES:	
ABSTAIN:	
ABSENT:	Rosemead, Arcadia

PRESENTATION

5. Industrial Permit Program: Presentation by Judy Nelson
J. Nelson reviewed the responsibilities a city has under its MS4 permit to inspect industrial sites. This category includes restaurants, nurseries, and auto shops. Suspecting that most cities are not conducting these inspections and that many businesses are not applying for permits as required, the Regional Water Board initiated a pilot program to assess compliance. The results confirm the Board's suspicion. Nelson provided an overview of how Glendora is fulfilling this responsibility. Follow on discussion sparked interest in hearing from other cities to see how they are handling this issue. D. Dolphin, Alhambra, offered to provide a copy of their city Ordinance and Citation empowering the city to enforce this requirement. Dolphin will also give a presentation on Alhambra's program.

ACTION ITEMS

6. Election of Chair for the Water Technical Advisory Committee for 2017-2018
There was a motion to elect David Dolphin as Chair of the Water TAC. (M/S: J. Carlson/A. Tachiki).

[MOTION PASSED]

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

The election of D. Dolphin to Chair created a vacancy at Vice Chair. Accordingly, members conducted an election for this position.

There was a motion to elect Fran Delach as Vice Chair of the Water TAC. (M/S: F. Delach/M. Lombos).

[MOTION PASSED]

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

DISCUSSION ITEMS

INFORMATION ITEMS

7. Legislative Updates
- State Legislation
D. Mahmud reviewed the status of the following legislation: AB 1668 (Friedman), SB 231 (Hertzberg), AB 1180 (Holden), SB 589 (Hernandez), SB 633 (Portantino). Regarding AB 1668, Mahmud reviewed the components of a "water budget" as envisioned in the bill. S. Pedroza encouraged the Water Policy and TAC Committees to continue working on a bill aimed at producer responsibility for stormwater cleanup.
 - Federal Legislation: H.R. 465/2355, H.R. 2510

S. Green discussed H.R. 465, explaining the integrated planning element of the bill. The US Conference of Mayors has come out in support of this legislation. Green stated that there will be a hearing on H.R. 465 at which the Conference of Mayors will testify in support, additionally, there will be representation from the LA area speaking in support.

8. San Gabriel Valley Legislative Caucus

- Sacramento Caucus: Aug 30th

D. Mahmud reviewed the Caucus meeting and the one-on-one meetings with legislators and/or their staffs that she and E. Wolf conducted while in Sacramento.

- SGV Legislative Staff Water Working Group: Presentation of 2018 Legislative Agenda
E. Wolf announced the SGVCOG's participation in this working group. He introduced the 2018 legislative ideas that will be presented.

9. Regulatory Updates

- Waters of the United States: Teleconference Sessions

E. Wolf reviewed the teleconference series and the SGVCOG's participation.

- 1, 2, 3-Trichloroethane

K. Gardner reviewed this regulation and the testing that has been done in the Main San Gabriel Basin. Of the 143 wells in the basin, only five have tested positive for 1,2,3-TCP. Of those, two will be able to treat by dilution, the other three will have to construct treatment facilities. Gardner added that the State Water Board has indicated that there will be no extension of the compliance timeline.

10. Water Boards Update

- State Board

o 303(d) List

M. Lombos stated that conversations with the Regional Water Board indicate that the State Board may reverse some of the delisting decisions made locally. This would expand the list, creating more burden on our cities. An updated list is due to be released soon.

M. Lyons from Assembly Member Holden's office reached out to both the SGVCOG and County Public Works for information on our requests to the State Board that the Public Hearing be held in the Los Angeles area. We provided that documentation but have yet to hear that the State Board is considering a change to the hearing location.

o Waters of the State

D. Mahmud provided an example of recent State Board actions to enact water regulations aimed at filling a gap where the federal government has deregulated.

- Regional Board

There was no discussion of this item.

11. LA County Water Resilience Update

M. Lombos reviewed the three components to Water Resilience: 1) the plan to capture and infiltrate more stormwater, 2) the public outreach plan, dubbed H2O4LA, 3) and the funding plan. The committee asked for a presentation from County.

12. Water Supply Update

- F. Delach reviewed two Upper District project concepts. The first is construction of dry weather urban runoff water capture and infrastructure at a site convenient to diverting that runoff to a Sanitation District reclamation plant for treatment and release. The other project would construct a pipeline to convey effluent from a Sanitation District plant to the Santa Fe spreading grounds. This is similar to the current City of Carson project. Committee members commented that the two projects should be

integrated if they go forward. S. Green shared that a similar project has been stopped pending review by US Fish and Wildlife, the concern being that diverting effluent to spreading grounds will decrease the amount of water needed to sustain downstream wildlife. She noted that the project will also need State Board approval. Delach added that there are studies underway to test the safety of infiltrating effluent into ground water. Finally, Green stated that, since the Sanitation District currently has excess capacity, they are working on ways to equalize the flow throughout the day. This will increase their overall capacity.

- California Water Fix Resolution 15-29

The Metropolitan Water District recently contacted the COG asking the council to endorse the California Water Fix. E. Wolf stated that COG is already on record supporting the water fix per Resolution 15-29. Wolf provided this resolution to MWD. The committee discussed the impact of Westlands Water District's recent opposition position. If the project goes forward as is, Westlands' departure from the coalition of water fix agencies will have the effect of increased costs for the remaining members.

13. Litigation Update

A November 13th trial date has been set for the Gardena and Duarte cases.

A remand of the State Supreme Court's decision on the State Mandates case has been set for January 31, 2018.

Regarding the LA Regional Board's 2012 MS4 permits, the NRDC's appeal has been assigned to the Second Court of Appeals.

As expected, San Diego has appealed their case against MWD to the State Supreme Court.

14. Stormwater Outreach Updates

- Judy Nelson's Stormwater Presentation to South Bay Cities COG
- Congresswoman Napolitano tour of County Flood Control Infrastructure
- Upcoming Tours of County Flood Control Infrastructure
- Los Angeles County Division, League of California Cities, Regional Stormwater Policy

Due to time constraints, there was no discussion of any of these items.

15. E/WMP Updates

- MOA for SGVCOG Financial Management of the Upper LA River EWMP's Coordinated Integrated Monitoring Program

E. Wolf explained the idea behind these MOAs. Questions were asked and members of the ULAR EWMP provided answers based on their experience with the current MOA.

EXECUTIVE DIRECTOR'S COMMENTS

P. Hawkey thanked the Water Policy and TAC committees for their good work in helping SGV cities meet their MS4 requirements. Hawkey stated that the work of the committees has been recognized across the county and state, and is now making national headlines.

CHAIR'S REPORT

ANNOUNCEMENTS

- LA Water Board meeting: Oct 5th
- G. Crudginton announced that she has been made a member of the Policy Committee for the OurWaterLA group. She stated that she is preparing a position paper for the committee and solicited input from the committees. This issue will be added to the October agenda.

ADJOURN

The meeting adjourned at 12:06 p.m.

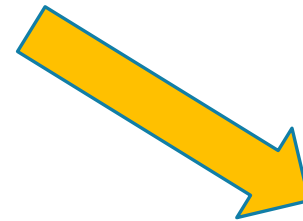
The Definition of “Waters of the U.S.” Stakeholder Recommendations Listening Session

Small Entities Webinar
September 19, 2017



Webinar Logistics

- Call in: (833) 424-6863, Conference ID: 76780971
- We will open up the phone lines for verbal recommendations following a brief presentation. The operator will call on pre-registered speakers in the order that was provided prior to the start of the listening session.
- For technical issues with the phone line, dial *0 for operator assistance. For technical issues with the webinar, please use the Chat box.

A screenshot of a chat box interface. The title bar says 'Chat' with a dropdown arrow and a close button. The main area is a large white text input field. Below it is a smaller white text input field with the placeholder text 'Send technical issues here'. At the bottom, there is a 'To:' dropdown menu currently set to 'Send question to Staff', a small downward arrow, and a 'Send' button.

Michael H. Shapiro

Acting Assistant Administrator for Water

Deputy Assistant Administrator Office of Water U.S. EPA

Michael Shapiro joined the Office of Water as the Deputy Assistant Administrator in November 2002. Prior to that, he was the Principal Deputy Assistant Administrator for the Office of Solid Waste and Emergency Response (OSWER). Mr. Shapiro has also served as Director of the Office of Solid Waste, and Deputy Assistant Administrator for the Office of Air and Radiation, where he directed implementation of the 1990 Clean Air Act Amendments. From 1980 to 1989, Mr. Shapiro held a variety of positions in the Office of Pesticides and Toxic Substances, where one of his responsibilities was developing EPA's Toxic Release Inventory.

Mr. Shapiro has a B.S. in Mechanical Engineering from Lehigh and a Ph.D. in Environmental Engineering from Harvard. He has also taught in the public policy program at the John F. Kennedy School of Government.



Douglas W. Lamont

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



Deputy Assistant Secretary of the Army (Project Planning and Review)

Mr. Douglas W. Lamont, P.E. was selected to the Senior Executive Service in November 2004 with the Department of Army. He is serving as the Senior Official Performing Duties as the Assistant Secretary of the Army (Civil Works) (ASA(CW)). In this capacity, he serves as the senior Policy oversight over the US Army Corps of Engineers (Corps) Civil Works Program. Previously he served as the Deputy ASA(CW) for project planning and review, providing objective and independent evaluation of Corps projects (including navigation, flood risk reduction, environmental restoration, water supply, hydropower, and recreation projects) and providing Army policy and procedural direction governing the planning and evaluation of Corps projects. Mr. Lamont has over 30 years of experience with the Corps in the Planning, Engineering, Construction-Operations and Regulatory programs.

The Definition of “Waters of the U.S.”

Stakeholder Recommendations

Listening Session



Small Entities Webinar
September 19, 2017



Purpose & Agenda

Purpose:

- Allow agencies to listen to pre-proposal recommendations from interested stakeholders on potential revisions to the definition of the “Waters of the U.S.” under the Clean Water Act (CWA).”

Agenda:

- “Waters of the U.S.” over time
- The Executive Order
- Progress to date
- Discussion of potential approaches
- Next steps



“Waters of the U.S.” and the Clean Water Act



“Waters of the United States” (WOTUS) is a threshold term under the Clean Water Act (CWA) for the scope of the Act.

CWA programs address “navigable waters,” defined in the statute as “waters of the United States including the territorial seas.”

- CWA did not define WOTUS; Congress left further clarification to agencies.

EPA and the Department of the Army (Army) have defined WOTUS by regulation since the 1970s.

“Waters of the U.S.” and the Supreme Court



Supreme Court decisions in 2001 and 2006 held that the scope of navigable waters must be linked more directly to protecting the integrity of traditional navigable waters.

- Neither of the decisions invalidated the underlying WOTUS definition in regulation but did shape its implementation across all CWA programs.
- The justices in the 2006 *Rapanos* decision were split on how this was to be accomplished.

“Waters of the U.S.” and Federal Efforts to Clarify



EPA and the Army have been working since these Supreme Court decisions to provide clarification and predictability in the procedures used to identify waters that are – and are not – covered by the CWA.

The 2015 Clean Water Rule was an effort to provide clarification and predictability.

- Many stakeholders expressed concerns with the 2015 Rule, and litigation ensued.
- A North Dakota district court ruling meant the 2015 rule never went into effect in 13 states, and a Sixth Circuit Court of Appeals decision later resulted in a nationwide stay.

At the direction of the President, the agencies have embarked on an effort to provide clarity and predictability to members of the public through a new rulemaking.

The Executive Order (E.O.)



On February 28, 2017, the President signed the “Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.”

The E.O. calls on the EPA Administrator and the Assistant Secretary of the Army for Civil Works to review the final 2015 CWR and “publish for notice and comment a proposed rule rescinding or revising the rule....”

The E.O. directs that EPA and the Army “shall consider interpreting the term ‘navigable waters’” in a manner “consistent with Justice Scalia’s opinion” in *Rapanos*.

Justice Scalia’s opinion indicates CWA jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

<https://www.whitehouse.gov/the-press-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic>

Progress to Date



In order to provide as much certainty to the regulated community as quickly as possible during the development of a new definition of “waters of the U.S.,” the agencies are pursuing a two-step process:

1. Publication of a proposed rule to recodify prior regulation. On July 27, the agencies proposed to recodify the regulation in place prior to issuance of the 2015 CWR and currently being implemented under the U.S. Court of Appeals for the 6th Circuit’s stay of the 2015 CWR. Public comment period is open through September 27, 2017.
2. Development of a New Definition. The agencies plan to propose a new definition to replace the approach in the 2015 Rule with one that considers the principles that Justice Scalia outlined in the *Rapanos* plurality opinion.
 - The agencies held a formal consultation process with states, local government and tribes this past spring.
 - Listening sessions are ongoing as an opportunity for stakeholders to provide pre-proposal recommendations through a series of listening sessions from September through November 2017.

Until a new rule is finalized, the agencies will continue to implement the regulatory definition in place prior to the 2015 Rule, consistent with the 2003 and 2008 guidance, in light of the *SWANCC* and *Rapanos* decisions, pursuant to the 6th Circuit stay of the 2015 Rule.

Step 2: Develop New Rule Consistent with the Executive Order



The E.O. directs that EPA and the Army “shall consider interpreting the term ‘navigable waters’” in a manner “consistent with Justice Scalia’s opinion” in *Rapanos*.

Justice Scalia’s opinion indicates Clean Water Act jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

The Plurality opinion written by Justice Scalia provides considerations about “relatively permanent waters” and “continuous surface connection” – for example:

- “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. . . .”
- “channels containing permanent flow are plainly within the definition, and the dissent’s ‘intermittent’ and ‘ephemeral’ streams... are not.”
- “only those wetlands with a continuous surface connection to bodies that are ‘waters of the United States’ in their own right, so that there is no clear demarcation between ‘waters’ and wetlands, are ‘adjacent to’ such waters and covered by the Act.”

Potential Approaches to Defining “Relatively Permanent” Waters

Perennial plus streams with “seasonal” flow

This is the current practice. “Seasonal” is currently implemented as meaning about 3 months of flow (varies regionally)

Perennial plus streams with another measure of flow

This could include intermittent streams defined by some metrics such as flow duration/ volume; or physical or biological indicators

Perennial streams only

Streams that carry flow throughout the year except in extreme drought

Other

Comments from consultations range from “traditional navigable waters” to “all tributaries with OHWM” to regionalize

Potential Approaches to Defining a “Continuous Surface Connection”

Surface connection even through non-jurisdictional feature

Current practice considers directly abutting wetlands and those with a continuous surface connection, regardless of distance, to be jurisdictional

Some degree of connectivity

Use appropriate, implementable metrics, e.g., distance

Wetland must directly touch jurisdictional waters

Only wetlands that directly touch a jurisdictional water (abutting under 2008 guidance)

Other

Examples of comments from consultations include a requirement for a connection within a specific distance limit; connection must flow at least 6 months; regionalize

Some Themes from Federalism and Tribal Consultation



Federalism Consultation:

- Continued engagement with states
- Importance of clarity and predictability
- Specific rule text on streams and wetlands
- Inclusion of exclusions
- Opportunities for regionalization

Tribal Consultation:

- Continued engagement with tribes
- Concerns about repeal of the 2015 Rule
- Concerns about a Scalia-only approach
- Concerns about treaty rights
- Importance of wetlands and intermittent and ephemeral streams
- Concerns about the loss of CWA protections over tribal waters

Written Recommendations & Next Steps for Step 2 Proposed Rule



Public may submit written recommendations identified by Docket ID No. EPA-HQ-OW-2017-0480, at <https://www.regulations.gov>.

- Docket is separate from the docket for Step 1 proposed rule and separate from a future docket for the Step 2 rule (once proposed).
- The agencies will consider verbal or written recommendations but will only respond to public comments subsequent to publication of a proposed rule.

Small Entities In-Person Meeting

- Monday, October 23, 2017, from 9:00 to 11:00 am Eastern at EPA Headquarters
- RSVP to Joan B. Rogers, EPA Small Business Ombudsman (202-564-6568 or rogers.joanb@epa.gov).
- RSVPs accepted until Friday, October 13, 2017, or until room capacity has been reached (100 max), whichever occurs first.

Stakeholder Sessions: Every Tuesday from 1:00 – 3:00pm (Eastern)

- Sessions geared towards: environment and public advocacy; conservation (e.g., hunters and anglers); construction and transportation; agriculture; industry; mining; scientific organizations and academia; stormwater, wastewater management, and drinking water agencies; and the general public.

For more information, visit <https://www.epa.gov/wotus-rule/outreach-meetings>

Especially For Consideration by Small Entities:

The agencies look forward to receiving all recommendations, but given today's audience of small entities, especially those that help us answer the following:

1. How does CWA jurisdiction affect you as a small entity?
2. For purposes of the Clean Water Act, what tributaries and wetlands should be jurisdictional?
3. Are there particular features or implications of any such approaches that you as small entities recommend the agencies be mindful of in developing the Step 2 proposed rule?
4. Are there certain waters or features that you recommend the agencies consider excluding from the proposed definition?
5. Following Supreme Court cases restricting jurisdiction - *SWANCC* in 2001 or *Rapanos* in 2006 - did you experience any changes in your costs as a result of reduced assertion of jurisdiction? Can you provide any helpful information or data regarding any such changes?
6. Many small entities have requested better clarity regarding where the Clean Water Act applies. What would clarity look like to you?
7. Do you have feedback about how the agencies should interpret key terms in Justice Scalia's opinion, such as "relatively permanent," and "continuous surface connection"?
8. Would you derive greater or fewer costs/benefits from a change in the definition of "waters of the U.S." as suggested by the E.O.? Is there any information or data about costs and benefits to small entities the agencies should consider in their economic analysis?

Facilitated Listening Session



Commenting on Step 1 Proposed Rule



The Step 1 proposed rule published in the *Federal Register* on July 27, with a public comment period open until September 27.

The proposed rule and the economics analysis are available on our website at: <https://www.epa.gov/wotus-rule/rulemaking-process#S1>

The public is encouraged to submit written comments, identified by Docket ID No. EPA-HQ-OW-2017-0203, at <https://www.regulations.gov>.

General guidance on making effective public comments is available on our website at <https://www.epa.gov/dockets/commenting-epa-dockets>.

Contacts



Project Leads

Donna Downing (EPA)

- (202) 566-2428
- CWAwotus@epa.gov

Stacey Jensen (Army Corps of Engineers)

- (202) 761-5903
- USACE_CWA_Rule@usace.army.mil

Comments on Definition and Jurisdictional Reach of “Waters of the United States”

Docket ID: [EPA-HQ-OW-2017-0480-0001](#)

San Gabriel Valley Council of Governments (SGVCOG)

How does CWA jurisdiction affect your agency?

The San Gabriel Valley Council of Governments (SGVCOG) is a joint powers authority made up of 31 cities, 3 Los Angeles County Supervisorial Districts, and 3 Municipal Water Districts located in the San Gabriel Valley of Southern California. The COG seeks to address important issues impacting our member cities, in this case, access to safe and clean drinking water, as well as the proper treatment of stormwater and urban runoff. We understand that protection of the environment is of paramount importance. At the same time, we firmly believe a fair and balanced approach should be taken regarding Clean Water Act compliance.

Our Water Policy Committee has followed very closely the various court cases and interpretations of Waters of the United States (WOTUS), including the Environmental Protection Agency’s (EPA) and U.S. Army Corps of Engineers’ (USACE) 2008 joint memorandum following issuance of the U.S. Supreme Court case decision in *Rapanos v. United States*, as well as the 2015 Clean Water Rule. These developments potentially affect how the San Gabriel Valley is able to convey and treat stormwater and urban runoff for Clean Water Act compliance before they reach the outfall at the Pacific Ocean. It is at those outfalls that Clean Water Act compliance is critical.

Are there certain waters or features that you recommend the agencies consider excluding from the proposed definition?

The Los Angeles County flood control system is an amalgamation of under-street storm drains, open channels, and river beds, both concrete lined and natural. In San Gabriel Valley, almost all waterways within its urbanized area are either man-made or man-altered, constructed or modified for flood control purposes. Under the tributary rule most segments of this system are considered WOTUS, so any changes to the interpretation and reach of federal jurisdiction have major impacts on our member cities and their ability to use the flood control system for its intended use, to convey stormwater.

The application of WOTUS jurisdiction to flood control and stormwater infrastructure threatens its use for the very purpose it was constructed. We understand that stormwater and urban runoff from local roads and streets carry with them bacteria, oils, and other pollutants. These pollutants eventually empty into “receiving waters” depending on which parts of this system are classified as such. Here lies the problem and question: where should the line between Municipal Separate Storm Sewer Systems (MS4) and WOTUS be drawn so that local municipalities can feasibly comply with CWA standards at a cost their

residents can afford while at the same time keeping their residents safe during storm events?

Fortunately, the Clean Water Act (CWA) distinguishes between WOTUS jurisdictional waterways and MS4. Under street storm drains are generally acknowledged to be MS4. In the Los Angeles area, those features typically empty into open, cement-lined boxed culverts. Due to the nature of the way the flood control system has evolved over time, some of those open channel segments could be considered MS4, regulated by CWA Section 402, and are thus not WOTUS. Moreover, the 2015 Clean Water Rule did not clearly identify a boundary between these two, other than to exclude stormwater conveyance “constructed in dry land.” We find this term to be vague, especially when applied to the amalgamated system we have in the Los Angeles area, where some portions—concrete-lined and/or natural—were constructed in historic though intermittent waterways and other connecting sections built “in dry land.” In either case, without clarity, these MS4 sections could potentially be classified as “tributaries” and subject to WOTUS jurisdictional reach. We request that all MS4 infrastructure be expressly exempted from WOTUS jurisdiction. [DM1]

Considering Justice Scalia’s opinion in the *Rapanos* case, how would you like to see the concepts of “relatively permanent” and “continuous surface connection” defined and implemented?

“Relatively permanent” and “continuous surface connection” should be defined according to Justice Scalia’s statement in *Rapanos*, without further applying the “significant nexus” test. Scalia stated that relatively permanent waters do not include tributaries “whose flow is ‘coming and going at intervals... broken, fitful.’”¹

The engineered stormwater system within the San Gabriel Valley was designed to capture, contain, divert, and/or rapidly convey urban runoff and stormwater either downstream or into spreading grounds. The entire system is under continuous control of the Los Angeles County Flood Control District and subject to release of upstream water and urban runoff at times set by them and to destinations of their choosing [DM2]. These engineered channels do have a continuous surface connection to both upstream and downstream navigable waters but the highly engineered nature of the system subjects water flows to the discretion of the Flood Control District. [DM3] For this reason, the flow is ‘coming and going at intervals... broken, fitful.’”

What opportunities and challenges exist for your locality with taking a Scalia approach?

Strictly defining jurisdictional waters according to Scalia’s opinion, as relatively permanent waters which do not include tributaries “whose flow is ‘coming and going at intervals... broken, fitful,’” provides the opportunity to rollback regulatory control over

¹ 547 U.S. 715 (2006)

the flood control system. Declassifying this system as WOTUS removes the requirement to establish and meet CWA standards.

Do you anticipate any changes to the scope of your state or local programs (e.g., regulations, statutes or emergency response scope) regarding CWA jurisdiction?

The application of WOTUS jurisdiction to flood control infrastructure has already brought about the requirement to control upstream non-point source pollution (stormwater and urban runoff) at the source. In order to do this, the existing flood control infrastructure must, to some extent, be replicated at the city level. It is hoped that by rescinding CWA jurisdiction over flood control infrastructure, those facilities may continue to be used for the efficient conveyance of stormwater and urban runoff before they reach ocean outfall, to prevent degradation of ocean waters.



San Gabriel Valley Council of Governments: 2018 MS4 Compliance

Eric Wolf

Senior Management Analyst

September 27, 2017



LA County's 2012 MS4 Permit

- Created a watershed-focused process for compliance
- Granted interim compliance upon approval of E/WMPs
- Created a focus on stormwater as water supply
- Obligated water quality compliance through local and regional capture and infiltration
- Increased monitoring requirements
- Significantly increased the number pollutants covered

EWMP & WMP Costs Per City (Report Courtesy of LA County)

City/Agency	Total ¹
Agoura Hills	\$ 113,336,905
Alhambra	\$ 167,650,000
Arcadia	\$ 407,986,602
Artesia	\$ 840,000
Azusa	\$ 332,232,746
Baldwin Park	\$ 194,616,000
Bell	\$ 49,000,000
Bell Gardens	\$ 41,900,000
Bellflower	\$ 70,149,037
Beverly Hills	\$ 169,350,000
Bradbury	\$ 67,056,839
Burbank	\$ 253,900,000
Calabasas	\$ 166,866,306
Carson	N/A ²
Cerritos	\$ 5,897,449
Claremont	\$ 101,268,635
Commerce	\$ 52,000,000
Compton	N/A ²
Covina	\$ 156,413,000
Cudahy	\$ 31,000,000
Culver City	\$ 220,434,605
Diamond Bar	\$ 6,400,000
Downey	\$ 41,851,237
Duarte	\$ 172,160,698
El Monte	N/A ²
El Segundo	\$ 41,912,644
Gardena	N/A ²
Glendale	\$ 304,140,000
Glendora	\$ 233,338,000
Hawaiian Gardens	\$ 1,540,000
Hawthorne	\$ 192,370,775

Hermosa Beach	\$ 45,200,000
Hidden Hills	\$ 12,418,049
Huntington Park	\$ 49,600,000
Industry	\$ 476,261,000
Inglewood	\$ 197,193,651
Irwindale	N/A ²
La Canada	
Flintridge	\$ 76,500,000
La Habra Heights	N/A ²
La Mirada	\$ 5,500,000
La Puente	\$ 136,827,000
La Verne	\$ 150,833,214
Lakewood	\$ 97,535,992
Lawndale	N/A ²
Lomita	\$ 58,456,951
Long Beach	\$ 235,120,990
Los Angeles City	\$ 8,758,005,653
Los Angeles County	\$ 2,671,286,769
Lynwood	\$ 34,770,000
Malibu	\$ 20,100,000
Manhattan Beach	\$ 45,600,000
Maywood	\$ 30,900,000
Monrovia	\$ 261,638,275
Montebello	\$ 141,470,000
Monterey Park	\$ 131,630,000
Norwalk	\$ 3,600,000
Palos Verdes Estates	\$ 5,000,000
Paramount	\$ 58,755,896
Pasadena	\$ 247,850,000
Pico Rivera	\$ 22,600,000
Pomona	\$ 243,543,937

Rancho Palos Verdes	\$ 55,800,000
Redondo Beach	\$ 56,000,000
Rolling Hills	N/A ²
Rolling Hills Estates	\$ 50,500,000
Rosemead	\$ 113,870,000
San Dimas	\$ 150,833,214
San Fernando	\$ 30,450,000
San Gabriel	\$ 83,720,000
San Marino	\$ 50,890,000
Santa Clarita	\$ 499,000,000
Santa Fe Springs	\$ 4,900,000
Santa Monica	\$ 276,860,000
Sierra Madre	\$ 30,478,919
Signal Hill	\$ 24,091,899
South El Monte	\$ 82,210,000
South Gate	\$ 61,200,000
South Pasadena	\$ 35,190,000
Temple City	\$ 51,030,000
Torrance	\$ 15,134,000
Vernon	\$ 35,700,000
Walnut	N/A ²
West Covina	\$ 380,459,000
West Hollywood	\$ 98,660,000
Westlake Village	\$ 52,918,491
Whittier	\$ 14,700,000

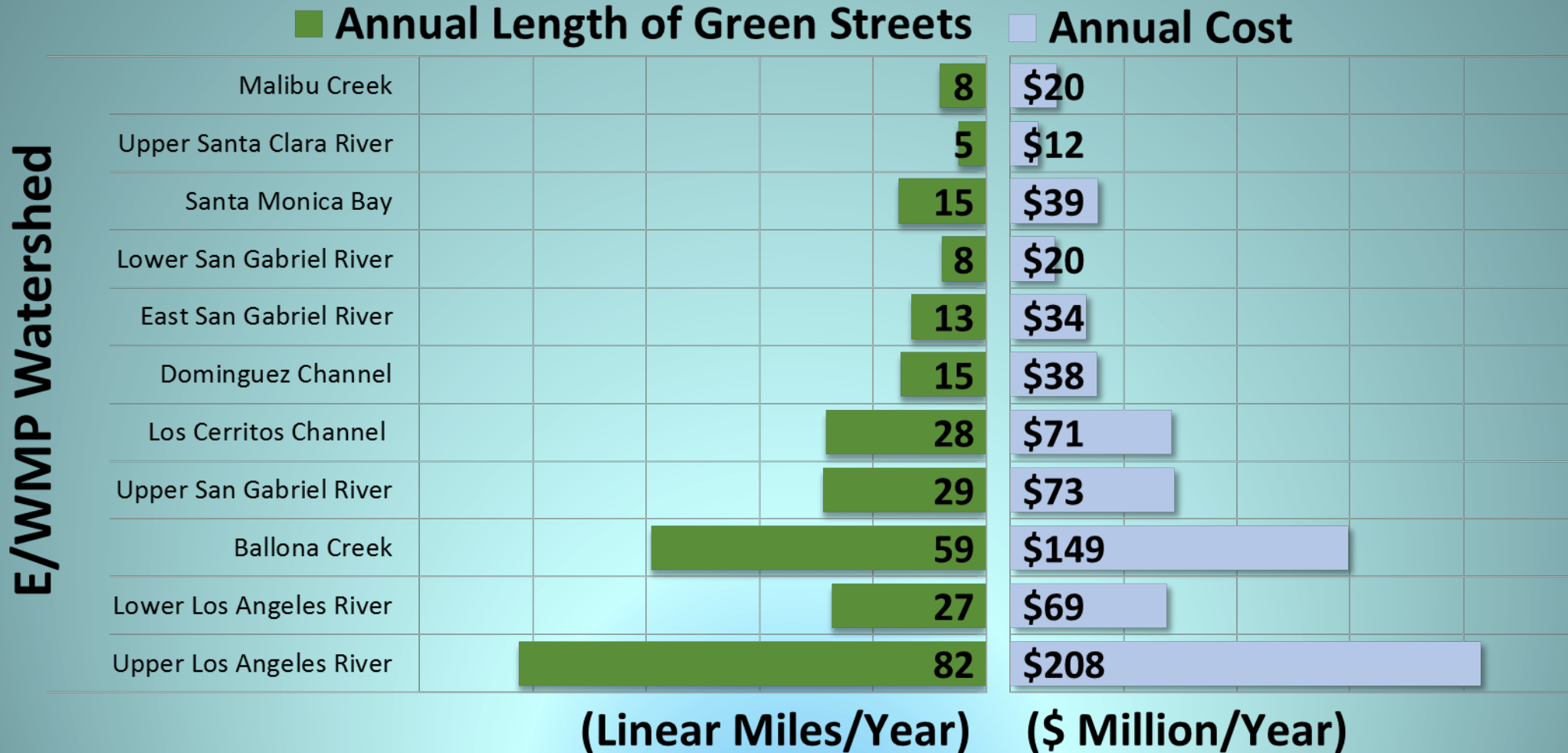
\$ 20,068,404,378

COSTS BY EWMP/WMP



Total ¹		\$ 20,068,404,378
Upper Santa Clara River EWMP	Full Implementation by 2032	\$ 809,000,000
Upper LA River EWMP ³	Majority implementation by 2028, Full Implementation by 2037	\$ 6,308,700,000
Rio Hondo/San Gabriel EWMP	Full Implementation by 2028	\$ 1,463,321,591
Upper San Gabriel River EWMP	Full Implementation by 2040	\$ 2,520,487,000
Malibu Creek EWMP	Majority Implementation by 2021, Full Implementation by 2035	\$ 279,009,751
Marina del Rey EWMP	Full Implementation by 2021	\$ 391,914,196
North Santa Monica Bay EWMP	Full Implementation by 2021	\$ 54,200,000
Santa Monica Bay J2 & J3 EWMP	Full Implementation by 2021	\$ 743,350,000
Beach Cities EWMP	Full Implementation by 2032	\$ 161,934,000
Peninsula EWMP	Full Implementation by 2032	\$ 129,300,000
Ballona Creek EWMP	Full Implementation by 2021	\$ 4,278,450,000
Dominguez Channel EWMP	Full Implementation by 2032	\$ 1,298,806,340
LA River Upper Reach 2 WMP	Full Implementation 2037	\$ 290,100,000
Lower LA River WMP	Full Implementation 2037	\$ 292,822,500
East San Gabriel River WMP	Full Implementation by 2040	\$ 646,479,000
Lower San Gabriel River WMP	Full Implementation 2026	\$ 64,630,000
Los Cerritos Channel WMP	Full Implementation 2026	\$ 332,000,000
Alamitos Bay WMP	Full Implementation 2032	\$ 3,400,000
Santa Monica Bay J7 WMP	Full Implementation 2021	\$ 500,000

ANNUAL Length & Cost of Green Streets





What Should Our Approach Be?

- SGVCOG adopted a three pronged approach:
 1. Work towards compliance
 - Initiate monitoring, identify regional projects, begin local BMPs
 2. Outreach and Teach
 - Elicit help from elected and state representatives
 - Build coalitions with LACDPW, non-profits, the League, COGs
 3. Advocate for policy change
 - Legislation, WOTUS, the Basin Plan, 303(d) list
- League of California Cities has endorsed this approach

Advocate for Policy Change



- LA Basin Plan
 - Establishes Beneficial Uses, Water Quality Objectives, and Total Maximum Daily Loads (TMDLs) for the LA Flood Control System
 - Beneficial Uses: recreation, municipal supply, habitat, etc.
 - The Beneficial Use designation dictates the associated water quality objective and TMDL
- Waters of the United States (WOTUS)
 - All of our stormwater system is designated as WOTUS, receiving Clean Water Act (CWA) protections
 - By extension of Beneficial Use protections, we cannot use existing infrastructure to convey stormwater to appropriate downstream locations for capture and infiltration

Advocate for Policy Change



- SB 541 (Allen) – best design practices for water capture at public schools - ENROLLED
- SB 589 (Hernandez) – adopts Financial Capability Assessment (FCA) analysis – TWO YEAR BILL
- SB 633 (Portantino) – considers opportunities to convey stormwater to a regional site for capture and infiltration – TWO YEAR BILL
- AB 1180 (Holden) – as originally drafted, created a \$1.50 tire fee to address stormwater pollution due to zinc oxide, a tire component – AMENDED TO PROVIDE FOR LACFCD TAXING AUTHORITY

Proposed 2018 Legislation



- Source Control: e.g. zinc oxide in tires (AB 1180)
- Municipal Ombudsman: at SWRCB and each Regional Board (exists for small business)
- Regional Board Prerequisites: require appointees to have expertise in water issues (similar to SWRCB)
- Municipal Liability: address potential liability for groundwater contamination due to stormwater infiltration, or failure of infiltration to achieve water quality standards
- Tax Credit: for stormwater capture/infiltration projects that exceed legal requirements