



SAN JOAQUIN COUNTY
**FLOOD CONTROL & WATER
CONSERVATION DISTRICT**

P. O. BOX 1810
STOCKTON, CALIFORNIA, 95201
TELEPHONE (209) 468-3000
FAX NO. (209) 468-2999

MICHAEL SELLING
DEPUTY DIRECTOR PUBLIC WORKS

BOARD OF SUPERVISORS WATER COMMITTEE

Monday, August 24, 2015 at 10:00 a.m.

BOARD OF SUPERVISORS CONFERENCE ROOM

AGENDA

1. Discussion on Water Right Development, Resources Planning, and Other Activities – Public Works
 - a. Update on Clean Water Act Rule Making Defining Waters of the United States (See Attached)
2. Discussion on Flood Management Activities – SJAFCA and Public Works
 - a. Update on Reclamation District 17 200-year Flood Protection Alternatives

Public Comments

Adjournment

Meeting Notice:

The next meeting is scheduled for **September 21, 2015, at 10:00 a.m.** at the Board of Supervisors Conference Room. Please send future agenda item requests to Brandon Nakagawa, bnakagawa@sjgov.org, or (209) 953-7460.

ATTACHMENT

1.a.

DRAFT

The Honorable James Inhofe, Chairman
Committee on Environment and Public Works
United States Senate
410 Dirksen Building
Washington, DC 20510

The Honorable Barbara Boxer, Ranking Member
Committee on Environment and Public Works
United States Senate
456 Dirksen Building
Washington, DC 20510

**SUBJECT: LETTER OF CONCERN – PROPOSED FINAL RULE DEFINING WATERS OF
THE UNITED STATES UNDER THE CLEAN WATER ACT**

Chair Inhofe and Senator Boxer:

The County of San Joaquin (County) is concerned that the proposed Final Rule to define "Waters of the United States" (WOTUS) under the Clean Water Act (Clean Water Rule) is an expansion of federal jurisdiction beyond what the Clean Water Act originally intended relative to regulating activities on private and public property. Furthermore, the County remains concerned that the definitions and exemptions provided for in the Clean Water Rule are still subject to interpretation by staff at the Environmental Protection Agency and the U.S. Army Corps of Engineers, and as currently written, the proposed Clean Water Rule at times contradicts itself. As with previous iterations of the Clean Water Rule, disputes over the regulatory interpretation of the definition of WOTUS have been costly for both public and private project proponents that have required the Courts and ultimately, the Supreme Court of the United States (Supreme Court) to rule on the intended reach of the Clean Water Act.

During the public comment period, the County submitted detailed comments on the proposed draft Clean Water Rule. In addition, the County has had a long record of concerns on the definition of WOTUS. The final Clean Water Rule fails to adequately address the County's concerns. EPA and the Army Corps have incorrectly stated in their press release announcing their Clean Water Rule that the definition of WOTUS will lead to certainty in determining federal jurisdiction for public and private lands. The County joins a multitude of other state and local governments and agencies, as well as numerous private property interests, in voicing opposition to the Clean Water Rule as currently written.

The County supports the enactment of S. 1140, the Federal Water Quality Protection Act, passed by your Committee and respectfully urges Congress to ensure that any Clean Water Rule resolve jurisdictional issues decided in relevant Supreme Court decisions without expanding the federal jurisdiction into new categories of water, and without imposing unneeded new mandates on water already subject to Clean Water Act permits. The Clean Water Rule does not adequately address concerns regarding the regulation of stormwater, water delivery systems, ditches, and vernal pools. Prominent terms in the rule such as "dry land," "perennial," "ordinary high water mark," "tributary" and "adjacent" are either not defined at all, vague, overly broad, or still under development, ensuring prolonged decision-making, costly study and review, subjective regulatory interpretations in the field, and inviting litigation from third parties.

We believe the Clean Water Rule as written is certainly a broadening of the definition of Waters of the United States and an expansion of federal jurisdiction under the Clean Water Act. As such, implementation by the Environmental Protection Agency and the U.S. Army Corps of Engineers will continue to cause uncertainty across the United States with the additional burdens borne by both public and private entities through increased costs and time delays for projects and routine maintenance of ditches and other drainage facilities or topographic features. The County of San Joaquin urges Congress to take the necessary actions to address these ongoing concerns by passing S. 1140.

Sincerely,

KATHERINE MILLER
Chair Board of Supervisors
San Joaquin County

cc. Sen. Diane Feinstein
San Joaquin County House Delegation