Before the U.S. House of Representatives

Committee on Natural Resources

Subcommittee on Water and Power

Hearing on *"New Federal Schemes to Soak Up Water Authority: Impacts on States, Water Users, Recreation, and Jobs"*

Testimony of

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Submitted on behalf of the

National Water Resources Association

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Introduction

Chairman McClintock, Ranking Member Napolitano, and members of the subcommittee, thank you for giving me the opportunity to appear before you today, and for your attention to the many water challenges facing our nation. My name is Larry Martin and I am here on behalf of the National Water Resources Association; more commonly known as NWRA. NWRA represents state associations, irrigation districts, other water providers, and their collective interests in the management of irrigation and municipal water supplies in the western states. NWRA members provide clean water to millions of individuals, as well as families, agricultural producers and other businesses. For more than eighty years our members have worked to provide water in a manner that provides both economic and ecosystem benefits to communities in the West.

NWRA and its many members are stewards, dedicated to the efficient management of water supplies; one of our country's most important resources. I am the Co-Chair of the Regulatory Committee for NWRA, and serve as a member of the Federal Affairs, Water Quality, and Litigation Task Forces. NWRA has long been involved in matters regarding the administration of the Clean Water Act ("Act" or "CWA") and its interpretation by the Courts, and regularly provides briefings for Congressional staff. NWRA is committed to working with the agencies to provide a clearly defined, efficient process for all permitting requirements.

NWRA members have historically been, and will continue to be supporters of the goals of the Clean Water Act. NWRA members fully understand and support the need for keeping our waters safe and clean, not only for purposes of crop production, but also for drinking water, fish and wildlife habitat, and recreational uses. To further those goals, NWRA members continue to make necessary improvements to their systems to increase efficiencies, conservation, and environmental protections. In my testimony this morning I will focus on the recently proposed rule regarding the definition of the "waters of the United States" and its impacts on Bureau of Reclamation customers. I will also discuss a United States Forest Service groundwater proposal that, as currently drafted, has the potential to undermine state rights, increase the cost of water, and make meeting future water supply needs more difficult.

I have limited time today, so I will focus my comments on the Clean Water Act and groundwater proposals. But I would do the Committee and water users a disservice if I failed to mention that these are only two of the numerous pending rules, regulations, or policies proposed by the agencies that are currently out for comment. As I sit here today water users are struggling to review, comprehend, and comment on:

- Proposed Rule: Definition of "Waters of the United States" Under the Clean Water Act
- Proposed Directive: Proposed Directive on Groundwater Resources Management, Forest Service Manual 2560
- Proposed Directive: Proposed Directives for National Best Management Practices for Water Quality Protection on National Forest System Lands
- Proposed Rule: Ski Area Water Rights on Forest Service Lands

- Proposed Rule: Listing Endangered and Threatened Species and Designating Critical Habitat; Implementing Changes to the Regulations for Designating Critical Habitat
- Draft Policy: Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act
- Proposed Rule: Interagency Cooperation – Endangered Species Act of 1973, as Amended; Definition of Destruction or Adverse Modification of Critical Habitat

All of these proposals are currently open for comment and have the potential to seriously impact water users. These provisions are not easy reads; they are highly technical documents that cite numerous studies, which in some cases are not even finalized. As an example of the kind of document we are reviewing, let me read one sentence from the "Definition of Destruction or Adverse Modification of Critical Habitat." It states: "Therefore, an action that would preclude or significantly delay the development or restoration of the physical or biological features needed to achieve that capability, to an extent that it appreciably diminishes the conservation value of critical habitat relative to that which would occur without the action under going consultation, is likely to result in destruction or adverse modification." This is just one sentence from the hundreds of pages of regulations currently out for comment.

All of these regulations have come out within the last few months, the same time that many of NWRA's members are busiest, focusing on irrigating, planting and growing crops that feed and clothe our nation. I do not understand how the agencies expect our nation's farmers and ranchers to meaningfully review and comment on all of these regulations. We want to work collaboratively with our federal partners to provide meaningful comment, but the sheer mass and complexity of these regulations makes that charge exceedingly difficult. We have asked for extensions or will ask for extensions to all of these comment periods in coming weeks. I hope the agencies will heed this request; otherwise I fear this recent flood of regulation will drown agricultural and municipal water users in red tape.

NWRA Position on Proposed Rule on "Waters of the United States" under the Clean Water Act

The proposed rule by EPA and the U.S. Army Corps of Engineers (the Corps) continues to expand the historical scope of federal jurisdiction under the Clean Water Act, and the various Court decisions interpreting the Act. This jurisdictional creep has been to the detriment of local communities and water users who rely on the efficient delivery of water for crops, jobs, and our economy. The reach and scope of the Clean Water Act's jurisdiction has kept EPA and the courtrooms busy. Despite the jurisdiction limitations contained in the original 1972 Act, and the judicial recognition by the U.S. Supreme Court in *SWANCC* and *Rapanos* that jurisdiction is not unlimited; the proposed rule goes beyond what was intended with the passage of the Clean Water Act.

The agencies may claim the proposed rule will provide clarity to regulated entities. That assertion is contradicted by the imprecise terms and broad definitions contained in the

proposed rule, along with the agencies' statements that they will use their "best professional judgment and experience" to interpret the terms. Instead, despite its length, the proposal creates more questions than answers on whether a minor body of water is a "water of the U.S." The primary question is why is it necessary to expand jurisdiction to local waters that have marginal connections to traditional navigable waters?

Another question is whether there is any appropriate cost/benefit balance to increasing jurisdiction over remote and intermittent waters? The proposed rule has the potential to expand categorical federal CWA jurisdiction over thousands, if not millions, of acres of property, and will likely encourage litigation over the scope of the rule. If adopted as presently proposed, the rule will increase costs and regulatory burdens on farmers, business, private and public landowners, and state and local governments by expanding the types of water bodies that require CWA permits. The proposed rule will also increase the risk of citizen suits due to the expanding scope of jurisdiction and regulatory questions raised by the rule.

The proposed rule would change the Clean Water Act and dictate that the following waters will always be jurisdictional:

- All **tributaries**, including any waters such as wetlands, lakes, and ponds, that contribute flow, either directly or thorough another water, to downstream traditional navigable waters or interstate waters.
- All waters **adjacent** to such tributaries. The proposed rule broadly defines "adjacent" to include all waters located within the "riparian area" or "floodplain" of otherwise jurisdictional waters, including waters with shallow subsurface hydrologic connection or confined surface hydrologic connection to jurisdictional water.
- All **man-made conveyances, including ditches**, would be considered jurisdictional tributaries if they have a bed, bank and ordinary high water mark and flow directly or indirectly into a "water of the U.S." regardless of perennial, intermittent, or ephemeral flow.

The extension of jurisdiction to these water features has implications for farming, permitting, land use options, and required mitigation. Water suppliers and private and public landowners will experience costs and delays associated with additional permits, restrictions on options, and the continued uncertainty on the scope of jurisdiction. Until the rule provides the specificity needed, persons will still be subject to the sometimes inconsistent interpretations offered by Corps of Engineer personnel. As often cited from the *Rapanos* decision, a 2002 study reported the average applicant for an individual permit spent 788 days and $271,596 in completing the process, and the average applicant for a nationwide permit spends 313 days and $28,915—not counting costs of mitigation or design changes. Close to $2 billion is spent each year by the private and public sectors obtaining wetlands permits. These costs cannot be avoided, because the Clean Water Act imposes criminal liability, as well as steep civil fines, on a broad range of ordinary activities. Expanding the scope of the Act to additional and uncertain jurisdictional water bodies will only increase those costs and delays.

We do commend the agencies with proposing categorical exemptions from federal jurisdiction; however the uncertainties and lack of specificity in some of the definitions provide only vague answers as to whether certain waters will be considered excluded from the scope of "waters of the U.S."

- For example, artificially irrigated areas that would revert to upland should water application cease are exempt, but there is no definite clarification as to what qualifies as an "upland."
- The proposed rule also properly excludes "groundwater" from its definition of "waters of the United States," but it does not reconcile that exclusion with its inclusion of certain waters based on a "subsurface" (groundwater) connection.
- Other exclusions that are not clearly defined include: gullies, rills, non-wetland swales; and certain types of upland ditches, or those ditches that do not contribute flow to a "water of the U.S." Again, key terms like "uplands" and "contribute flow" are undefined. For the people I represent, it is imperative that the rule define how currently exempt ditches will be distinguished from jurisdictional ditches. The proposed rule needs greater clarity, ensuring that the historic exemptions for irrigation ditches and associated infrastructure are retained.

I represent numerous irrigation districts, water companies, and farmers in Washington State. The most critical element to my clients' livelihoods is the reliable, safe, and efficient delivery of water for the production of food and crops. In 2011, the total production value for the 17 states comprising the Western U.S. region was about $171 billion; with about $117 billion tied to irrigated agriculture. There is approximately 42 million irrigated acres for the Western U.S. [1]

Irrigation water providers, and farmers that rely on those waters, use a distribution system of canals, ditches, and drains to move water efficiently and reliably for crop production. It is mandatory that such ditches be maintained in a proper manner. As the Committee is well aware based on recent droughts, any lack of water during critical periods can be disastrous to crops, farmers, and our economy.

Irrigation ditches were never intended to be considered a "water of the United States" and yet the proposed rule perpetuates the misconception. According to the majority opinion written by Justice Scalia in ***Rapanos***; "waters of the United States" was intended to be limited to "relatively permanent, standing or flowing bodies of water. The definition refers to water as found in 'streams,' 'rivers,' 'lakes,' and 'bodies' of water 'forming geographical features.'" Justice Scalia goes on to say that phrase does not include, "ordinarily dry channels through which water occasionally or intermittently flows." Nor are man-made irrigation and drain ditches to be included as "waters of the United States."

Irrigation facilities such as canals and drains are distinct from natural waters both in their "nature" and their "purpose." Irrigation ditches are constructed conveyances regularly

[1] "The Economic Importance of Western Irrigated Agriculture" Water Resources – White Paper, prepared by Pacific Northwest Project, August 2013

maintained for the purpose of delivering irrigation water or draining agricultural lands. The purpose of drain ditches is to remove the surface and subsurface flows that are present only because of the application of irrigation water. Irrigation and drainage facilities cannot fairly be characterized as either streams, rivers, lakes or other bodies of water forming natural geographical features. These are artificial facilities created for the purpose of irrigation and drainage. Normally, these channels would otherwise be dry, but for the application of irrigation water to produce crops.

Where irrigation drains carry water on a more permanent basis it is due primarily to groundwater that is not jurisdictional to the Clean Water Act. Most irrigation return flows return subsurface to irrigation drains. The Corps regulatory approach would appear to control drains, but if the continued flow in a drain is from groundwater, it is not surface water, and therefore not jurisdictional. Irrigation drains would not have the necessary surface connection with navigable waters, but for the groundwater contribution caused by irrigation return flows. Since the Clean Water Act is concerned with surface water and not ground water, the flow in irrigation ditches and drains does not meet the "significant nexus" requirement with navigable waters, and should be specifically and clearly excluded from permitting requirements.

The primary goal of any rulemaking should be to clarify the scope of the federal agencies' jurisdiction under the Act. In particular, the agencies should make clear that irrigation canals, ditches and drains are not navigable waters, are not "waters of the U.S," and are not "tributary" to waters of the United States, consistent with the 1975 and 1977 regulations. The Act specifically excludes "return flows from irrigated agriculture" from the definition of "point source". 33 U.S.C. Sec. 1362(14); CWA Sec. 502(14). The Act also exempts "return flows from irrigated agriculture" from the NPDES permit requirements. 33 U.S.C. 1342(l)(1); CWA Sec. 402(l)(1). Similarly, permits for dredged or fill material are not required "for the purpose of construction or maintenance of. . . irrigation ditches, or the maintenance of drainage ditches". 33 U.S.C. Sec. 1344(f)(1)(C); CWA Sec. 404(f)(1)(C).

The words chosen by Congress and the intent of the Act are clear: irrigation canals, ditches, and drains were not meant to be regulated under the Clean Water Act. This was reflected in the 1975 and 1977 regulations, which provided that "manmade nontidal drainage and irrigation ditches excavated on dry land are not considered waters of the United States." 40 Fed. Reg. 31, 321 (1975); 33 CFR 323.2(a)(5)(1982). This is the only practical approach for irrigation canals, ditches, and drains under the statutory scheme of the Clean Water Act. Congress has not expanded the federal agencies' jurisdiction under the Clean Water Act since the initial regulations were promulgated in the 1970s. As a result, the federal agencies should implement Congress' determinations in their rulemaking, through the inclusion of an express exemption for irrigation canals, ditches, and drains from the definition of navigable waters, "waters of the U.S.," and tributary waters.

The federal government has a vested interest in seeing that its federal reclamation facilities are maintained in a condition that allows irrigation districts to properly operate

and maintain their facilities for the continued conveyance of agricultural waters, and the drainage of these waters, to protect the water users and the public from deterioration and failure of these facilities. Irrigation Districts and water providers maintain thousands of miles of canals and ditches and perform routine maintenance work in their conveyance facilities every year. If the Districts and water providers are required to obtain a CWA permit for each such activity, these routine activities would become exponentially more expensive, time consuming, and difficult. Irrigation Districts and water providers are also required to make more extensive improvements in the form of rehabilitation or replacement of some of the works from time to time. As demand for water in the West grows, water conservation activities such as lining or piping canals and drains are also commonplace activities. Without the ability to conduct these necessary activities, free from time consuming and costly federal processes, agricultural water delivery, and many of the efforts aimed at improving efficiencies and conserving water, would be severely challenged, if allowed at all. Additionally, many of these facilities provide a flood control function. In such cases, regular maintenance activities to maintain channel capacity are necessary to protect life and property, and prevent serious flood damage to property. The proposed rule should focus on limiting the regulatory uncertainty of "waters of the U.S." and jurisdiction, and not create unnecessary burdens on entities such as irrigation districts and water suppliers, whose purpose and facilities have no relationship to the originally envisioned scope of the Clean Water Act.

An increase in jurisdiction asserted by federal agencies also increases the costs to the consumers – both agricultural and municipal users. This includes increased food costs to all, many of whom are least able to absorb the costs. These costs come without any real improvements in water quality and will likely divert resources away from improvements to other water quality issues.

Sunnyside Valley Irrigation District

One of my clients is the Sunnyside Valley Irrigation District ("SVID"). SVID serves nearly 100,000 acres of land in the lower Yakima Valley. It provides water to some of the most productive farmground in the nation with its farmers growing apples, cherries, pears, grapes, mint, hops, and other important food crops.

Many years ago the Sunnyside Valley Irrigation District, along with the neighboring Roza Irrigation District joined together to voluntarily address water quantity and water quality projects. In a short five year period, 95% of the suspended sediment was removed from the return flows discharging back to the Yakima River. Twice the Irrigation Districts have received the State of Washington's Environmental Excellence Award. Additionally, SVID has participated in a multi-year conservation project through the federal Yakima River Basin Water Enhancement Project Act. This conservation project has increased efficiencies to its farmers within the project, plus will return over 43,000 acre feet per year for instream flows to the Yakima River for purposes of fish and other environmental benefits. The conservation program by SVID has received broad support from all parties in the Yakima River basin and has been recognized with awards both locally and nationally.

Despite its leadership role in water conservation and improvements to water quality, SVID was the unfortunate subject of the uncertainty regarding "waters of the United States" and jurisdiction by the federal government. In 2004, SVID was performing routine maintenance in a ditch within its system. Because the ditch had meandered over the years, it was creating erosion and drainage issues which needed to be fixed. The ditch was straightened and armored with rock to correct the problem. The activity performed by SVID was a routine action which is likely performed on an almost daily basis by other irrigation providers in the West. In SVID's 100 years of existence, at no time had it been advised that a Section 404 permit would be needed for such routine work. Later, a complaint was filed with the Army Corps of Engineers. The Corps investigated and advised SVID that project ditches were "waters of the U.S." and therefore subject to the Corps' Sec. 404 permitting process.

SVID was advised by the Corps that SVID's only option was to return the ditch back to its previous improperly working condition, and any permit request by SVID to do the repair work was likely to be denied. Despite its lack of expertise in the management of irrigation waters, the Corps added that in its opinion, the work performed on the irrigation ditch by SVID was not necessary or justified. The Corps also advised SVID that virtually all of the operation and maintenance activities that take place on a daily basis are subject to Corps jurisdiction; meaning that even if such activities were to fall under an exemption, contact must be made with the Corps for them to make that determination. In other cases where permits could be required, it was made clear the Corps would not approve much of the regular and necessary work needed by the Irrigation District to maintain its canals and ditches, and that requesting a permit to do such work could be futile.

After four years of negotiation, numerous meetings and trips to Washington D.C. to meet with EPA and the Corps, and the issuance of the Corps Regulatory Guidance Letter 07-02, *Exemptions for Construction or Maintenance of Irrigation Ditches and Maintenance of Drainage Ditches Under Section 404 of the Clean Water Act;* the Corps eventually advised SVID that its work on the ditch did not require a permit. SVID and other water suppliers can neither afford to wait four years nor afford the costs for determinations as to whether a permit is required.

We commend any attempt by the agencies to avoid similar circumstances from occurring again, but remain concerned the proposed rule contains uncertainties as to what is covered. Similar situations to SVID's experience will continue to occur until there are clear definitions distinguishing between jurisdictional waters. The final rule should expressly provide that waters in irrigation canals, ditches, drains and other conveyance facilities are not navigable waters, waters of the United States, or tributary waters, and, therefore, are not subject to the federal agencies' jurisdiction under the CWA. This clarification is long overdue and we appreciate the federal agencies' willingness to tackle this important issue.

Exempt Water Reclamation, Reuse and Title XVI Facilities

Reclaimed and reused water is a beneficial use that develops local water resources and reduces the demand for imported water. The processes for reclaiming and reusing water are costly, but are becoming increasingly feasible in areas of the country where groundwater and surface water sources are strained and the cost or availability of imported water are prohibitive. Water authorities across the country, especially those in the arid west, are investing millions of dollars in infrastructure to utilize this drought proof water resource. Treatment and distribution costs of recycled water are already high, making this valuable resource marginally cost effective in some places. Any significant increase in regulation will escalate the cost of utilizing this water and discourage its development.

Under the proposed rule, water reclamation and reuse facilities are not exempt from being designated waters of the U.S. Ditches that transport effluent or discharged water can easily meet the definition of "tributary" under the proposed rule and be categorically regulated as waters of the U.S. The proposed rule defines as a "tributary" any natural or man-made feature that has a bed, bank, ordinary high water mark, and conducts flow to another water. Reclamation and reuse facilities are frequently located in a floodplain or otherwise adjacent to jurisdictional water where all waters are categorically defined as waters of the U.S. While the proposed rule includes an exemption for artificial lakes and ponds used exclusively for settling basins, such reuse facilities can function or take on the characteristics of a wetland and can receive and discharge water into surface ditches that are not exempt. The proposed rule's waste water treatment exemption would not extend to an associated water reuse facility because such facilities are not expressly "designed to meet the requirements of the Clean Water Act," a condition stipulated in the rule that would not cover a beneficial use not addressed in the Act.

Western states like California acknowledge the value of recycled water and established a statewide goal (California Water Plan) of recycling 2.5 million acre feet of water by 2030. In 2009, .67 MAF was recycled; and increasing to 2.5 MAF is ambitious, but necessary to help drought-proof the state. Currently, 3.5 MAF of treated wastewater is being discharged to the ocean, and not beneficially reused.

Eastern Municipal Water District (EMWD), a water and wastewater agency in Southern California utilizes nearly 100 percent of the recycled water it generates, and recycled water comprises 30 percent of its entire water supply portfolio – over 35,000 acre feet annually. With the assistance of the U.S. Bureau of Reclamation's Title XVI program, EMWD has developed 5,714 acre-feet of seasonal storage, five million gallons of elevated storage (to pressurize the system), 200 miles of recycled distribution water pipeline, and 19 pumping facilities. EMWD currently has greater demand than supply for recycled water and in response has prepared unique allocations for customers. Under the proposed rule, 10 EMWD recycled water storage sites would become jurisdictional because they are located in floodplains, are adjacent to jurisdictional water, and likely possess a subsurface hydrologic connection. After becoming jurisdictional, regular maintenance and vegetation removal of these 500 acres of ponds would require Sec. 404

permits. This added regulatory burden would not only increase the cost of recycled water, and potentially delay further development of recycled water storage ponds, but could hamper the development of this drought-proof water supply. Numerous agencies in the arid southwest share this scenario, concern, and dilemma.

Water reclamation and reuse facilities should be expressly exempt from this rule. Particularly in times of drought such as the one that currently affects most western states, developing new sources of water for consumption should be encouraged. This rule could discourage water reuse and interfere with the successful deployment of Title XVI programs. Of equal concern is that the economic analysis that accompanies the propose rule completely ignores the potential impact on water reuse. NWRA recognizes that water recycling and groundwater recovery projects will greatly improve Western States' water supply reliability and provide environmental benefits through effective water recycling and recovery of degraded groundwater. We appreciate the efforts of members on this Committee who have worked to highlight the proposed rule's potential impacts on water recycling.

NWRA Position on Forest Service Groundwater Management Directives

The EPA and Corps have consistently stated that they are not proposing to regulate groundwater. Unfortunately, it appears that the United States Forest Service ("NFS" or "Forest Service") is attempting to do just that. Its "Proposed Directive on Groundwater Resources Management" ("Directive") is extremely troubling to water users. As currently drafted, the Forest Service Directive unnecessarily expands the reach of the federal government into an area generally regulated by the states. In this Directive, the Forest Service notes that they will apply federal reserved water rights under the *Winters* doctrine to both surface water and groundwater. We question this claim and believe that the Directive goes far beyond the Forest Services' legitimate authorities.

The Forest Service Directive is contrary to long standing federal policy respecting the role of states in regulating groundwater. The proposal threatens states rights and could adversely impact private property rights. In addition, we are very concerned that this Directive was developed in a vacuum without any meaningful outreach to water users. While we appreciate the opportunity to comment on the Directive, the lack of transparency surrounding its development is concerning. During a meeting with congressional staff and stakeholders the Forest Service told NWRA representatives that this policy had been in development for eight years. NWRA staff asked if the agency had reached out to water users to discus this proposal during that time. Agency personnel answered that no, they did not reach out to water users during that eight year period.

The Directive would place additional permitting requirements on both existing and future water infrastructure. These permitting requirements would make meeting current and future water needs, and responding to climate variability, more difficult, more time consuming, and more expensive. The Directive would take water supply decisions out of the hands of water managers and put it in the hands of Forest Service employees who may have little or no experience in water management.

The Directive states that the Forest Service will: "Deny proposals to construct wells on or pipelines across NFS lands which can reasonably be accommodated on non-NFS lands." The rule does not define "reasonably." This requirement is excessively ambiguous and ignores the fact that water infrastructure can be constructed in a manner that benefits both people and the environment. Evaluating all alternatives could be a very time consuming process, and could delay already planned and vital water projects. There are few other "reasonable" alternatives to developing facilities off of NFS lands in the mountains of the western U.S.
The Forest Service is openly embracing a policy that they know will directly increase water costs for people throughout the West.

The Forest Service also states that they will work to apply new permit requirements to new and existing groundwater wells and water pipelines. We are concerned that the Forest Service will attempt to tie permit approval to the modification of a state issued water right. The Forest Service has already attempted this in regard to ski area permitting and we are concerned that the agency will attempt to apply similar policies to water users.

Although the Directives provide for collaboration with other federal agencies, such as experts from the USGS, state, tribal, and local agencies, and other organizations; noticeably absent is the Bureau of Reclamation, Irrigation Districts, and other water providers who are the largest distributors and users of water resources, many of which have existing water systems on Forest Service lands.

The Forest Service is also assuming the role of States by an evaluation of all applications not only on Forest Service lands, but also on applications on **adjacent** lands. There is no clear definition of "adjacent." If the Forest Service believes all waters are in hydraulic continuity, will they assert all state water right applications must be evaluated by the Forest Service regardless of the distance from their boundaries?

In the Yakima Basin, after decades of fighting resulting in inaction, water users representing agriculture; municipal; tribal; and environmental interests throughout the region put aside their differences to craft a water plan that meets everyone's needs; the Yakima River Basin Integrated Water Resource Management Plan. The Yakima Integrated Plan provides both instream and out-of-stream benefits by:

- Providing more water for stream flows that fish need to survive.
- Building fish passage to allow salmon, steelhead, and bull trout to travel throughout the basin, and reestablishing what could be the largest sockeye run in the lower 48 after extirpation from the Yakima Basin over a century ago.
- Providing greater water supply reliability for farmers and communities.
- Securing the water that communities need to meet current and future demand.
- Protecting over 200,000 acres of currently unprotected forest, shrub steppe, and river habitat.
- Stretching the amount of water available by using it more efficiently.
- Enhancing habitat along the Yakima River and its tributaries.

Essential elements to the Yakima Basin Integrated Plan are improvements to reservoirs located on Forest Service lands that provide vital water to the Yakima River basin for fish, cities, and agriculture. These reservoirs have been in place and in use for many years and are the lifeblood to the communities and people served by the reservoirs. The Forest Service Directive could delay or derail the implementation of this vital, innovative, and broadly supported plan, including already approved projects which will provide water for fish and habitat.

NWRA members remain dedicated to providing a safe, reliable and affordable water supply in an environmentally responsible manner. We are concerned that the Forest Service Directive will make meeting future water supply needs exponentially more difficult and will not provide any additional environmental benefit.

Summary

NWRA members, both agricultural and municipal water providers, and the farmers and water users they represent, support the goals of the Clean Water Act and are committed to working with the agencies in a collaborative manner that respects states rights. Our members have, and will continue to meet their obligations to provide an efficient and safe water supply and remain dedicated to the protection of our natural resources.

Unfortunately, the CWA proposed rules could impose additional regulatory burdens on water suppliers, farmers, local communities, and economies, with only marginal environmental benefits. Many geologic and man-made water related features common to the arid West, including ditches, dry arroyos, washes, and ephemeral streams that flow only in response to agricultural return flows or infrequent storm events will now become subject to federal jurisdiction and permitting; negatively impacting the ability of suppliers to timely and efficiently maintain their systems and supply critical water to the water users.

NWRA also has many of the same concerns with the Forest Service Groundwater Management Directives. The Forest Service is attempting to assert authority over groundwater and surface water decisions which are beyond its authority and within the scope of the States' jurisdiction on water rights. The Forest Service needs to pull back on its regulatory overreach.

We thank you for this opportunity to testify. Despite our concerns, NWRA and its members are committed to assisting Congress and the agencies to address these issues in providing certainty to jurisdictional requirements under the Clean Water Act. . On behalf of NWRA's members I thank you for your attention to the critical water supply issues facing our nation, and for supporting our members as they continue to be stewards of our nation's water supply and a critical part of the economy.

Eastern Municipal Water District

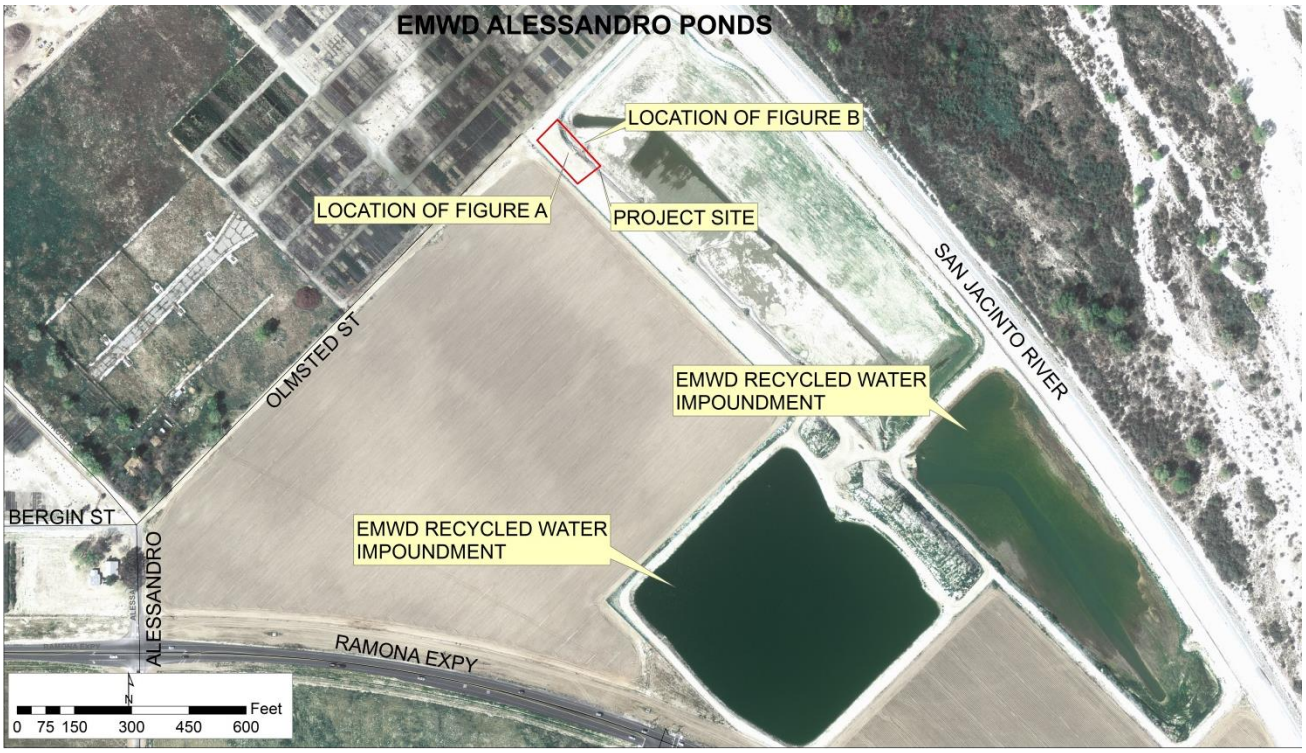
The facilities pictured below offer just a few of the many examples of EMWD water and recycled water facilities that are in jeopardy of becoming waters of the United States under U.S EPA's proposed rule defining waters of the U.S.

Example 1 – Sun City Ponds (Near Salt Creek, Perris), Water Reuse Facilities

Unlined ponds are adjacent to a creek, and have a subsurface connection to Salt Creek.

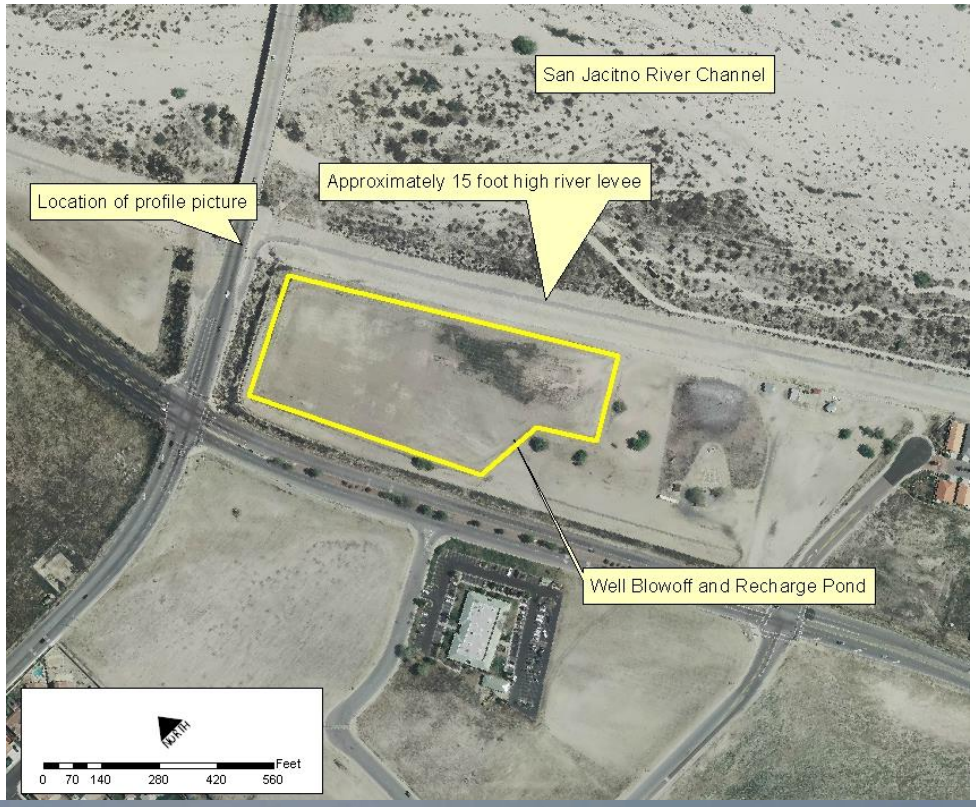
Example 2 – Alessandro Ponds (Near San Jacinto River), part of Water Reuse Facilities

Recycled water storage ponds that could become jurisdictional based on adjacency, subsurface hydrologic connection, and the location in the flood plain of the San Jacinto River.



Example 3 – Well Blowoff and Recharge (Mountain Avenue 2 Recharge Pond, part of future for groundwater banking, recharge site) Wells 33, 80 and 36, potable water system.

Unlined pond is adjacent to the San Jacinto River, and has a subsurface connection to the river. This is a closed groundwater basin, there is no subsurface outflow. Groundwater recharge sites are often located adjacent to , but not within riverbeds.



Example 4 – Well Blowoff Pond (Lakeview on Nuevo Road), potable water system.

This unlined pond is about 2000 feet from the San Jacinto River and is in the 100 year flood plain. Overflow from this facility is tributary to the San Jacinto River.

For additional information contact Jolene Walsh, Senior Director of Public and Governmental Affairs, walshj@emwd.org, 951-928-3777 ext. 4347.