



COUNTY SANITATION DISTRICTS OF LOS ANGELES COUNTY

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Via Electronic Mail

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Comments on Proposed Rule Changes **Definition of "Waters of the United States" Under the Clean Water Act**

The U.S. Environmental Protection Agency (EPA) is consulting with state and local officials as it develops a new definition of "Waters of the United States" (Waters of the U.S.) under the Clean Water Act (CWA). EPA has proposed interpreting the term "navigable waters" as defined in 33 U.S.C. 1362(7), in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006), to include "relatively permanent" waters and wetlands with a continuous surface connection to relatively permanent waters.

The Sanitation Districts of Los Angeles County (Sanitation Districts) are a confederation of 24 special districts, which operate and maintain 11 wastewater treatment and water recycling plants that serve more than 5 million people who reside in 78 cities and unincorporated areas in Los Angeles County. Many of the Sanitation Districts' wastewater treatment and water recycling facilities discharge into waters of the U.S., including inland and coastal surface waters. As such, the Sanitation Districts' operations may be affected by the changes to the definition of Waters of the U.S.

The Sanitation Districts appreciate the opportunity to provide input on the scope of the definition of Waters of the U.S., and recommend that both exceptions in the original definition and those added in 2015 be preserved, clarified, and explicitly incorporated into the new definition, specifically for waste treatment systems and recycled water facilities, as detailed below.

Waste Treatment Systems

The definition of Waters of the U.S. contained an exemption for waste treatment systems, both prior to 2015 (pre-2015 definition) and in the 2015 definition. The Sanitation Districts recommend that this exemption be explicitly included in the new definition, and include wastewater treatment facilities and related infrastructure that are designed to meet non-federal clean water or public health requirements. This infrastructure has not been previously considered or regulated as a waterbody and should remain exempt so that it can continue to be regulated according to longstanding practice.

Recycled Water Facilities

The 2015 definition of Waters of the U.S. added an exemption for "wastewater recycling structures constructed in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water tributary structures built for wastewater recycling." The Sanitation Districts support this exemption and recommend its inclusion in the new definition.

Recycled water use for applications such as groundwater recharge is an important tool for sustainable water management in California. As part of long-standing efforts to replenish local groundwater and maintain a reliable potable water source, the Sanitation Districts have supplied treated recycled water for more than 50 years to constructed earthen spreading basins that allow the water to percolate into the groundwater. These spreading basins have not been previously considered or regulated as "waterbodies" under either federal or state law, but are "relatively permanent" waters and are frequently located next to or near rivers that have been designated as Waters of the U.S., or they may be located in the riparian or floodplain areas of jurisdictional waters.

Placing these man-made spreading basins under the jurisdiction of the CWA would adversely affect the use of these facilities for their intended purpose of recharging groundwater by impeding the ability to operate and maintain the spreading basins. Obtaining approval from the U.S. Army Corps of Engineers can involve a lengthy and intensive process, and would be needed for all work in the spreading basins, such as dredging the bottom to maintain percolation rates. Treating the spreading basins as waterbodies would also trigger requirements for on-going maintenance of any habitat that may form in the basins and lead to water quantity and quality requirements for wildlife support, which is contrary to their intended primary use for groundwater replenishment. Additionally, the ability to supply recycled water to the spreading basins would be contingent upon obtaining NPDES permits to discharge water to the spreading basins, which is a lengthy, complex, and expensive process in California. The State of California would be obligated to delineate designated uses of the basins and apply associated water quality criteria to the water held in the basins, rather than to the underlying groundwater as currently applied. Depending on the uses designated, the resulting water quality criteria could be more stringent than necessary to protect the groundwater, which could necessitate additional treatment and increase exposure to penalties and third party litigation. These requirements and regulations, along with the associated economic impacts, could hinder or prevent water recycling, undermining sustainable management of the groundwater basin.

Artificial Lakes and Ponds

The 2015 definition of Waters of the U.S. added an exemption for "artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds." The Sanitation Districts support the exemption of artificial lakes and ponds, and recommend its inclusion in the new definition. Similar to spreading basins, placing these man-made features under the jurisdiction of the CWA could impede maintenance and repairs due to the need to obtain approval from U.S. Army Corps of Engineers, NPDES permits for discharge of recycled water, and unnecessarily restrictive water quality criteria.

The Sanitation Districts thank you again for this opportunity to provide input. If you have any questions concerning this letter, please feel free to contact the Naoko Munakata at (562) 908-4288 extension 2830 or by email at nmunakata@lacs.org.

Very truly yours,



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