

Navigating California's New Regulations for Wetlands and State Waters

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PRESENTED BY

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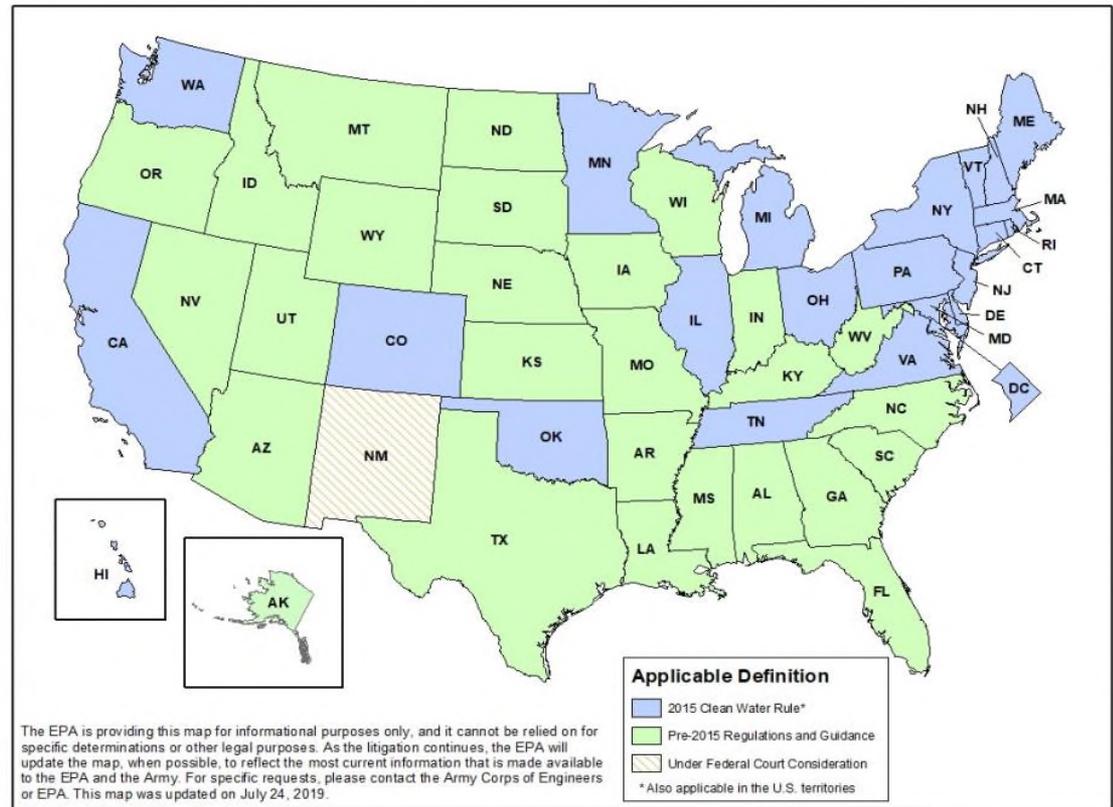


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Waters of the United States: Status

- Current: 2015 WOTUS Rule applies in California & 21 other states
- September 12: Final Rule to Repeal 2015 Rule. Effective 60 days after publication in Federal Register
- Replacement Rule: comments on proposal closed April 15. EPA target December 2019



Source: U.S. EPA



California Response: Waters of the State Definition and Wetlands Regulation



- Broader effort began as response to Supreme Court decisions in SWANCC (2001) and Rapanos (2006), and EPA guidance that followed
- Accelerated with December 2018 WOTUS Proposed Replacement Rule
- April 2019: Board Approves Waters of the State: Wetland Definition and Regulations for Discharge of Dredge and Fill Material
- Effective May 28, 2020
- Early 2020: Internal Water Board staff training
- Followed by planned external training



What's in the new Rule?

- Defines “wetlands” to include:
 - WOTUS wetlands (under “any historic definition”)
 - All natural wetlands regardless of proximity to waters
 - Salt flats
 - Desert Playas
 - Most artificially created wetlands (not from surface water)
 - Exception from WOTS: <1 acre
 - Exception from WOTS: primarily for wastewater, stormwater, water recycling/groundwater recharge
- Requires a new permit (a WDR) for any discharge of dredge or fill to any Water of the State (wetland or other)



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WDR Permit Application Exceptions for O&M or Agriculture

- Activities & Areas that Impact WOTS but Excluded from Permit Application Requirements:
 - Established agricultural activities, irrigation ditches, & farm roads exempt under CWA Section 404(f)
 - Certain mining activities
 - [Excluded from WDR but not 401 Cert]: Routine and emergency O&M activities by public agencies, water utilities, or special districts causing discharge to artificial WOTS if:
 - primarily for sediment settling, stormwater, surface water treatment, recycled water, groundwater recharge; OR
 - Preserving line, grade, or capacity in existing footprint of a flood control or stormwater conveyance facility.
 - Routine O&M activities (by anyone) causing discharge to artificial WOTS (that is not WOTUS, specified in Water Quality Control Plan, a modified WOTS, or compensatory mitigation), if:
 - primarily for wastewater treatment or disposal, sediment settling, stormwater, fire suppression, industrial processing or cooling, recycled water, or groundwater recharge
 - Prior converted cropland, certain wetlands for rice cultivation
 - Certain agricultural ditches, stock ponds, and irrigated areas



What's in the new Rule?

- Requires **alternatives analysis**. Exceptions:
 - Ecological Restoration (under binding agreement)
 - Actions under “Approved Watershed Plan”
 - No permanent impacts (less than 1 year)
 - Activity covered by 1 of 14 Water Board-certified Army Corps Nationwide Permits
 - Less than 0.2 acres or 300 linear feet, only impacts WOTUS, & covered by 1 of 40 uncertified Nationwide Permits
 - Uncertified NWP include: maintenance, outfall structures and associated intakes, bank stabilization, maintenance of flood control structures, stormwater management facilities



Approved Watershed Plan Exception

- Watershed Plans:
 - Special Area Management Plan
 - Advanced Identification Programs
 - Wetland Management Plans
 - Habitat Conservation Plans (if “substantially meets” standards)
 - Natural Community Conservation Plans (if “substantially meets” standards)
 - Municipal Stormwater Permit Watershed Management Plan (if “substantially meets” standards)
- Habitat Conservation Plans & Natural Community Conservation Plans approved in 2020 presumed to qualify



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What's in the new rule?

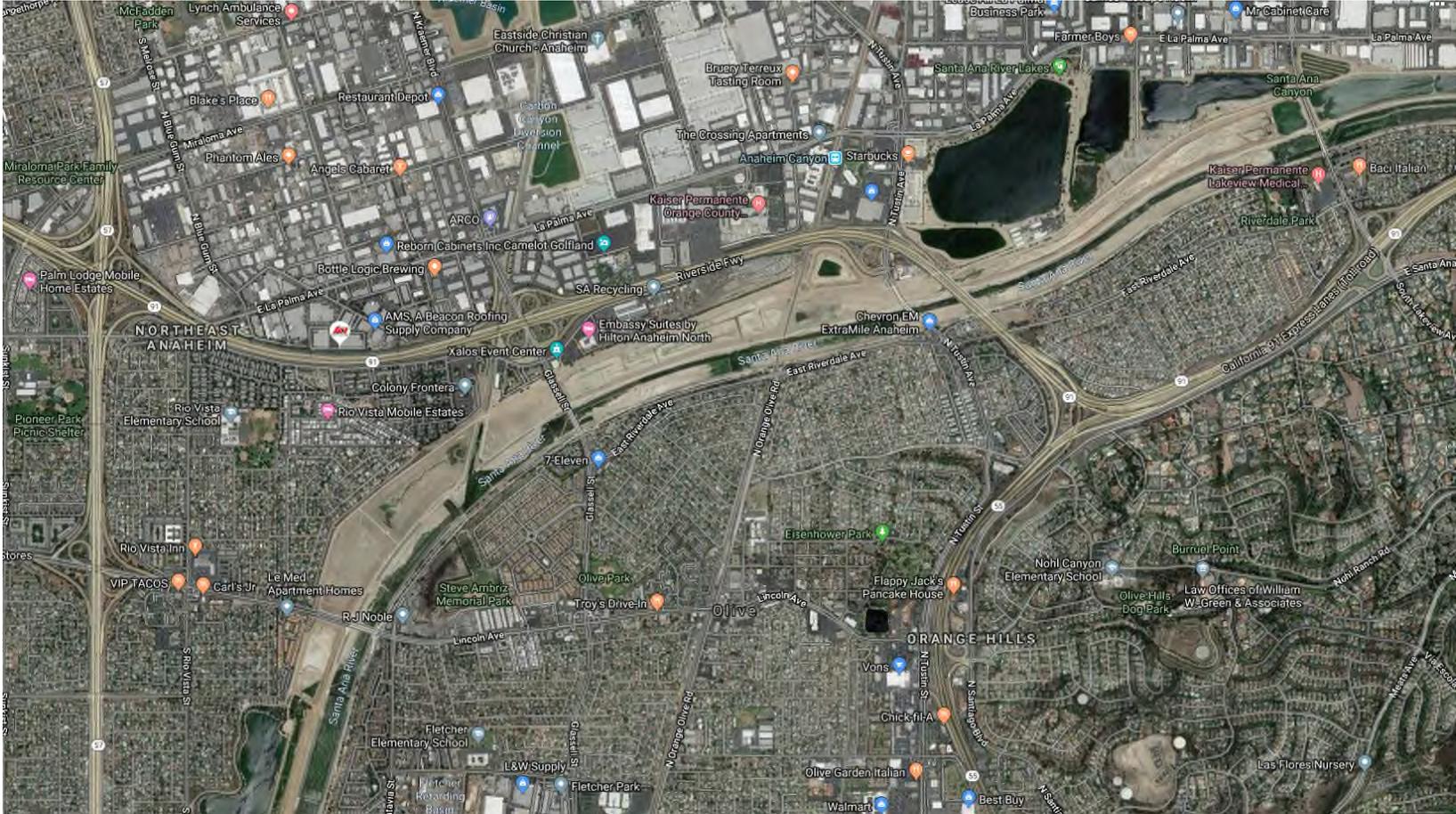
- Alternatives analysis must show project is “Least Environmentally Damaging Alternative”
- Require minimum 1:1 ratio of compensatory mitigation



Photo credit: U.S. Department of Interior



Impacts on water infrastructure & projects: Groundwater recharge, settling basins, & constructed wetlands



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Impacts on infrastructure & projects: groundwater from road cuts; ditches



State Wetlands and Waters of the State Takeaways

- New categories of wetlands will require permits
- Water Boards will have more work, even longer permitting and certification delays
- Areas of remaining uncertainty need to be resolved in implementation guidance and training sessions
- Where possible, submit applications before Rule goes into effect on May 28, 2020
- Examine existing plans to see if they can qualify as a “Watershed Plan” that covers activities
- Get USFWS approval for Habitat Conservation Plans & Department of Fish & Wildlife approval for Natural Community Conservation Plans by end of 2020 to gain presumption



Thank you

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