Waters of the US Proposed Rule: Electric Utility Sector

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Waters of the US – Proposal

• “Clarify” to reflect SCOTUS decisions
• Establish “bright lines”
• Based on connectivity of water rather than link to navigation & commerce
Waters of the US – Science

• Draft scientific report on water connectivity
  – Waters in floodplains assumed connected
  – Waters in riparian areas assumed connected
  – Other waters may be connected

• Sent to SAB concurrent with proposal
  – Connectivity binary – in or out, no gray
  – Reliance on biological connectivity

• Will be completed before rule finalized
Waters of the US – Jurisdictional

“Traditional” Navigable Waters – lakes, rivers, interstate waters, territorial seas

Tributaries – including ditches and seasonal/ephemeral streams

Adjacent Waters & Wetlands – in floodplains & riparian areas; shallow subsurface connections

Other Waters – Alone or in combination with other similar situated in the region
Waters of the Us – Exclusions

- Groundwater – except shallow subsurface connections
- Uplands – unless connected
- Prior converted cropland
- Ditches
  - Excavated in uplands & drain only uplands
  - Do not contribute flow
Waters of the US – Exclusions

• Artificial lakes/ponds
  – Created in dry land
  – Used exclusively for stock watering, irrigation, settling basins, rice growing

• Artificial reflecting or swimming pools – in dry land

• Small ornamental waters – in dry land

• Water-filled depressions from construction

• Gullies, rills, non-wetland swales, puddles*
Waters of the US – Outreach

NOT …

• Minimal consultation with State, local, tribal governments
• Minimal consultation with small entities
• Minimal consideration for impact non-404 CWA Programs
Being Jurisdictional Means

• More permitting/reporting requirements – general and individual
• Enforcement/likelihood of potential illegal discharges
• Other federal actions – NEPA, ESA, NHPA
• Mitigation
• Third-party challenges

*More Uncertainty – More Time – More Costs*
The Utility Grid

- Power Plant Generates Electricity
- Transmission Lines Carry Electricity Long Distances
- Distribution Lines Carry Electricity To Houses
- Transformer Steps Up Voltage For Transmission
- Neighborhood Transformer Steps Down Voltage
- Transformers On Poles Step Down Electricity Before It Enters Houses
Transmission Concerns

- More geographic features jurisdictional
  - more permits required
- “Common landscape unit”
  - individual rather than general permit
- For:
  - Existing transmission
  - New transmission
  - Vegetation control
  - Substation SPCC plans
Generation Concerns

• Water management systems
  – Conveyances
  – Stormwater management systems

• New generation
  – Natural gas
  – Renewables

• Wastewater treatment unit exemption?
Other Industries Concerned

• Agriculture
• Homebuilding/Development
• Mining
• Manufacturing
• Energy
Implication for States

• State land use/water rights law
• State flexibility to manage “waters of the state”
• State administration costs:
  – More permitting
  – More water quality standards
• State/municipal implementation costs:
  – Roadside drainage ditches
  – Stormwater/MS4 systems
What Can You Do? – Engage

• How will this affect your constituents?
  – Consult with state agencies
  – Consult with cities & towns
  – Consult with constituents

• Communicate concerns with your Congressional delegation

• Communicate concerns to EPA & the Corps
Questions?
Thank You

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