

# Waters of the US Proposed Rule: Electric Utility Sector


Southern States Energy Board

July 26, 2014

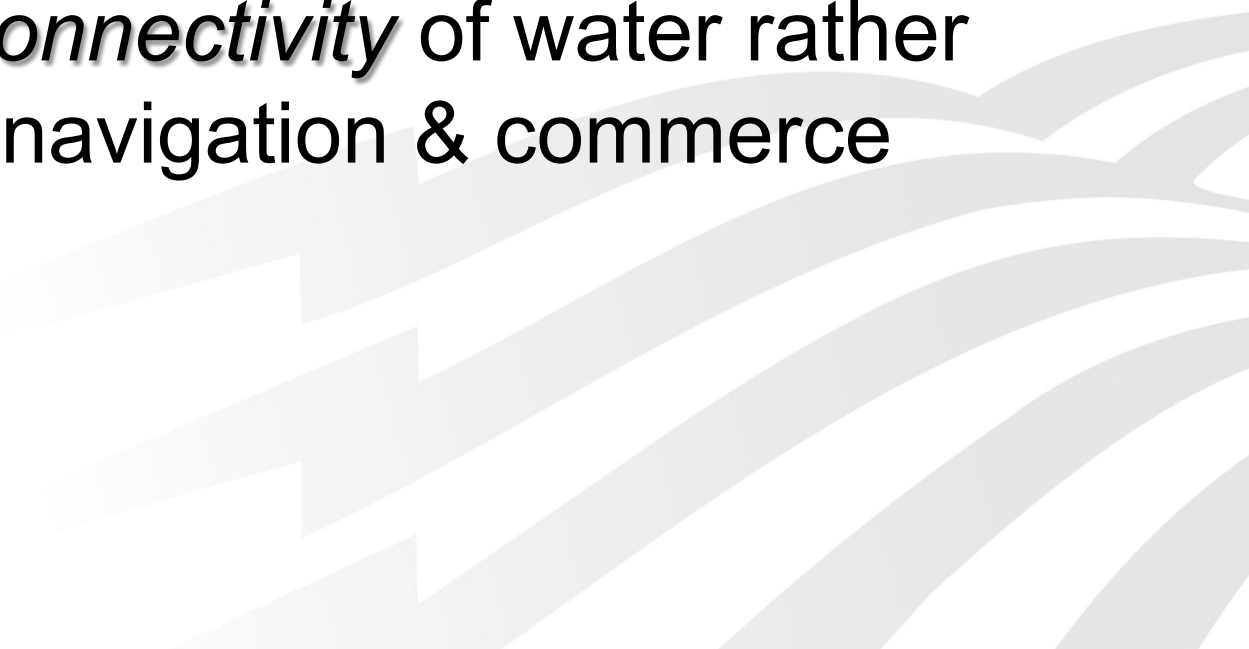
Dorothy Allen Kellogg



**National Rural Electric  
Cooperative Association**

A Touchstone Energy® Cooperative 

# 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 ...**

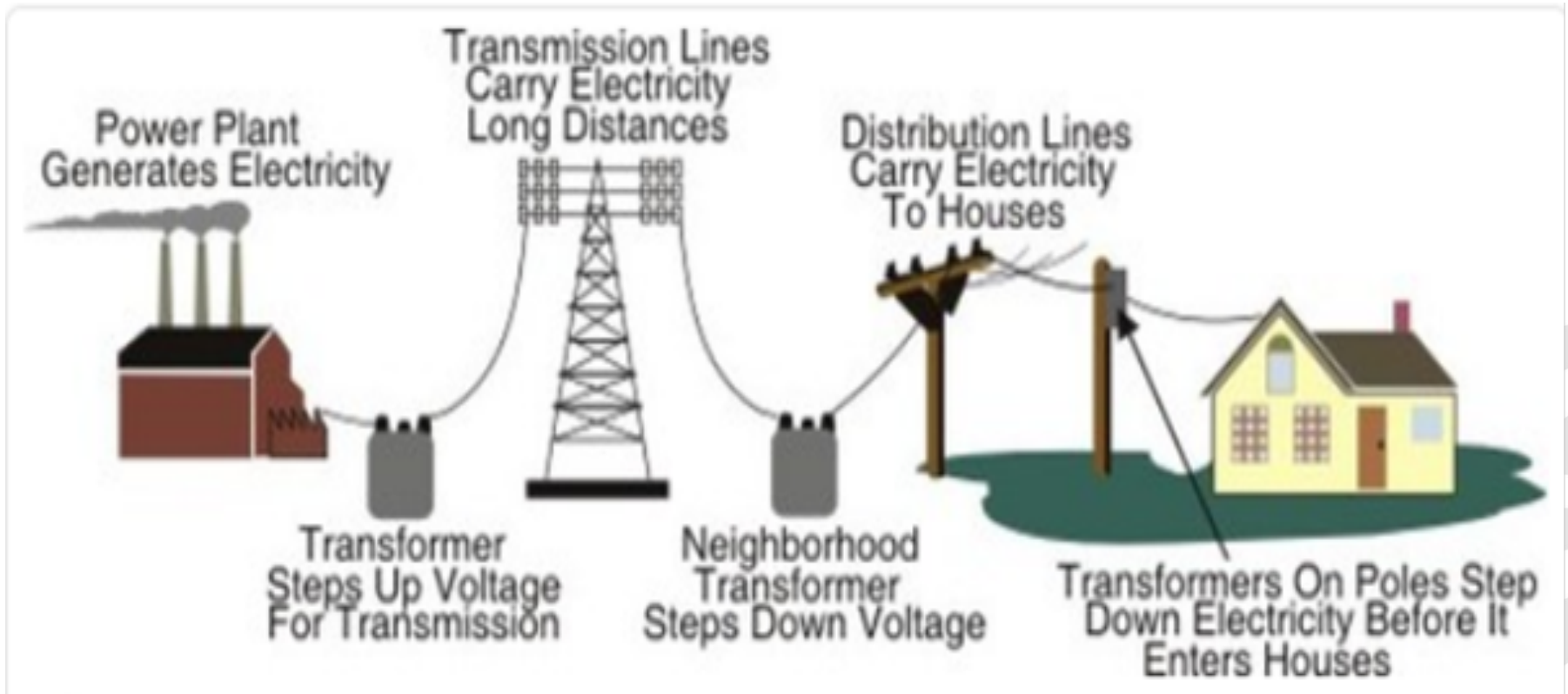
- Minimal consultation with State, local, tribal governments
- Minimal consultation with small entities
- Minimal consideration for impact non-404 CWA Programs

# 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




# 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
- 
- A decorative graphic in the bottom right corner of the slide. It features several thick, light gray, wavy lines that curve upwards and to the right. Overlaid on these lines is a stylized lightning bolt shape, also in light gray, pointing downwards and to the right.

# 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

Dorothy Kellogg

[Dorothy.kellogg@nreca.coop](mailto:Dorothy.kellogg@nreca.coop)

703-907-5715