

**Golf Course Superintendents Association of America**  
**October 27, 2015**

**Waters of the  
U.S. (WOTUS):  
What  
Superintendents  
Need to Know**

GCSANC Institute  
October 27, 2015  
Fountaingrove Golf Club  
Santa Rosa, CA

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**Today's Talk**

- The Issue
- The Rules
- Tools for Following the Rules
- Questions

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**The Issue:**

- We Need Clean Water to:
  - Drink
  - Swim
  - Enjoy



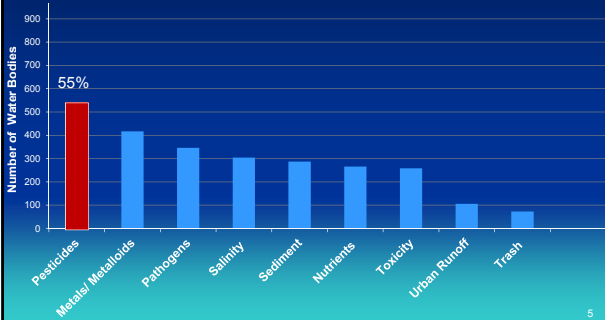
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**An Example: Pesticides**

- People don't like pesticides
- People really don't like pesticides in their water
- Risk = Toxicity, right?

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**2012 303(d) List: California's 1,021 Impaired Surface Water Bodies**



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**Time for Rules...**

- Clean Water Act (Federal)
- Porter Cologne Act (State)

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**What is NPDES?**

- **N**ational **P**ollutant **D**ischarge **E**limination **S**ystem
- Part of the Federal Clean Water Act
- Typical Uses: stormwater, construction, industrial discharges
- Benefits:
  - Protect water quality
  - Allows discharge
  - Provides legal protection



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**NPDES Program Framework**

- “Discharge of pollutants”
- From a “point source”
- Into “waters of the US” (WOTUS)



- **Must obtain an NPDES permit from EPA or an approved\* state**

\*Delegated State program  
 (CA is authorized to issue NPDES permits)

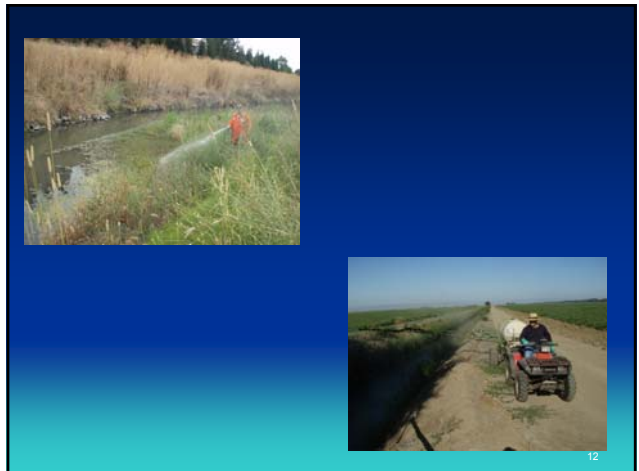
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**What Parts of the CWA Apply Most to Superintendents?**

- Section 402
  - Point Sources
  - Stormwater
  - Aquatic Pesticides
- Section 404
  - Dredge and Fill

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**The CWA Why Bother?**

- Up to \$37,500/day fine
- Legal Fees
- Bad Press
- Anxiety



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**Who Enforces this ?**



**Who Enforces this ?**

- **Unlikely:**
  - SWRCB
  - Ag Commissioner
  - CDFW
- **Possible:**
  - RWQCB
  - USEPA
- **Likely:**
  - Environmental Advocacy Groups



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**Who Enforces this ?**

- **Environmental Advocacy Groups**
  - California Sportfishing Protection Alliance
  - Deltakeeper
  - Baykeeper
  - Pesticide Action Network
  - California Environmental Health Initiative
  - Pesticide Research Institute
  - MOMs Advocating Sustainability

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## **Tools for Following the Rules:**

### **Tool #1 Know your "WOTUS"**

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## **Waters of the U.S. "WOTUS"**

- Aug 28, 2015: Definition revised
  - Applicable in California
  - Significant expansion
  - Very Controversial
- Oct 9, 2015: 6th U.S. Circuit Court of Appeals suspends implementation

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## **WOTUS**

### **The US Army Corps of Engineers is NOT on board**

- "Corps data to EPA has been selectively applied out of context, and mixes terminology and disparate data sets. In the Corps judgement, these documents contain numerous inappropriate assumptions with no connection to the data provided, misapplied data, analytical deficiencies and logical inconsistencies."
  - Major General John Peabody, Deputy Commanding General, Civil and Emergency Operations, USACE
- "It will be legally vulnerable, difficult to defend in court, difficult for the Corps to explain or justify and challenging for the Corps to implement."
  - Lance Wood, assistant chief counsel for environmental law and regulatory programs, USACE

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## **What is a "WOTUS" ?**

- Go back to the "Rapanos" definition
- Rapanos: a Supreme Court Decision that since 2006 defined WOTUS
- Three Types:
  - **Definitely**
  - **Maybe**
  - **Not**

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**Definitely** Rapanos WOTUS

- Traditional navigable waters
- Wetlands adjacent to traditional navigable waters
- Relatively permanent non-navigable tributaries of traditional navigable waters that typically flow year-round or have continuous flow at least seasonally (~3 mo.s)
- Wetlands that directly abut such tributaries

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**Maybe** Rapanos WOTUS

- Non-navigable tributaries that are not relatively permanent
- Wetlands adjacent to non-navigable tributaries that are not relatively permanent
- Wetlands adjacent to, but that do not directly abut a relatively permanent non-navigable tributary



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**Maybe** Rapanos WOTUS

- Depends on significant “Nexus” with traditional navigable water
- Nexus /ˈnɛksəs/, noun:
  - a connection or link
  - a connected group or series



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**Maybe** Rapanos WOTUS

- Significant Nexus evaluates:
  - Hydrologic and ecologic factors
  - Tributary flow characteristics and functions
  - Wetland functions adjacent to the tributary to determine affect on the chemical, physical and biological integrity of downstream traditional navigable waters

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**Not** Rapanos WOTUS

- Swales or erosional features (e.g., gullies, small washes characterized by low volume, infrequent, or short duration flow)
- Ditches (including roadside ditches) excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water



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**Easy to Follow, right?**



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**WOTUS or Not ?**

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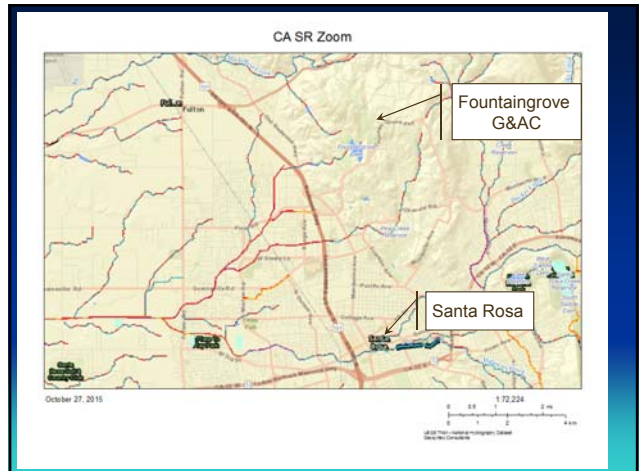
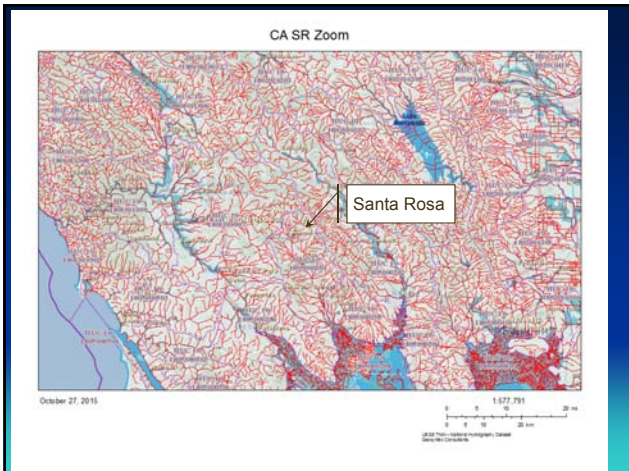
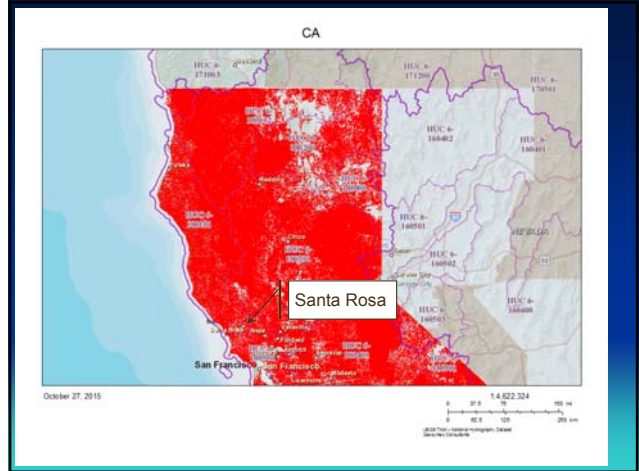
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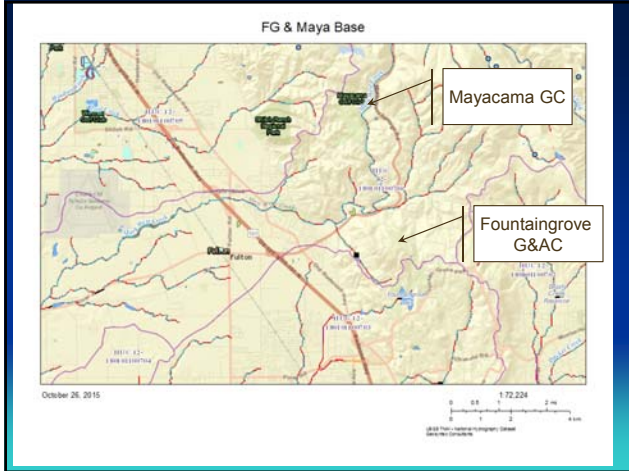
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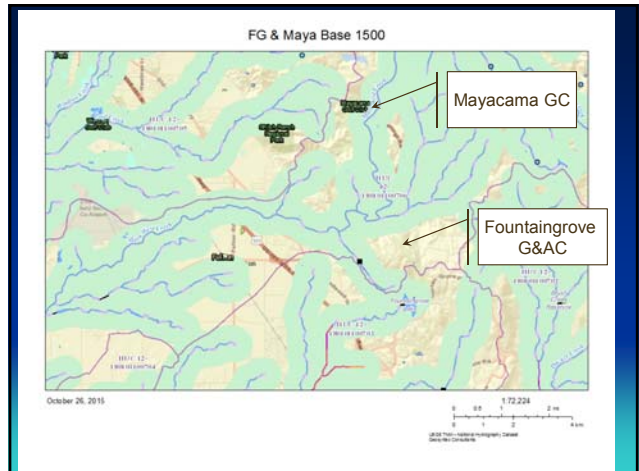
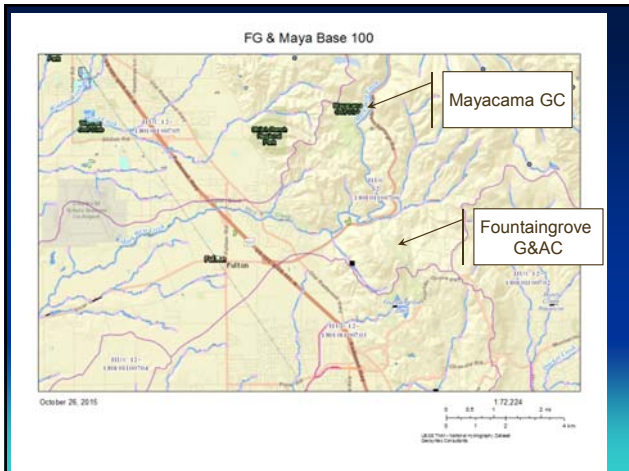


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**NOT WOTUS...yet?**

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***More Information***

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