

# LAS VEGAS VALLEY NPDES STORMWATER DISCHARGE PERMIT STORMWATER QUALITY MANAGEMENT COMMITTEE (SQMC)

August 11, 2020



# Item # 7

- Action to accept a presentation and receive an update on the implementation of the new definition of “Waters of the United States” rule (***For possible action***)



# Update on the Navigable Waters Protection Rule



## **Background**

- “Waters of the United States” (WOTUS) is a threshold term in the Clean Water Act and establishes the scope of federal jurisdiction under the Act
- The Clean Water Act does not define WOTUS; Congress left further clarification to the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE)
- The agencies have defined WOTUS by regulation and court decision multiple times since the 1970s

## **Background**

- The EPA and the USACE implemented a two-step rulemaking to develop the revised definition of "waters of the United States"
- Repeal and replace

## **Background**

- The 2019 Rule (Step 1): Repeals the 2015 Rule and recodifies prior regulations
- The 2020 Navigable Waters Protection Rule (Step 2) revises the definition of WOTUS and replaces the 2019 Rule



## **Key Changes**

- Four categories of jurisdictional waters and twelve categories of excluded waters/features
- Combines the categories of traditional navigable waters and territorial seas
- No case-specific significant nexus analysis

## Key Changes

- “Tributary” means a naturally occurring surface water channel that contributes surface water flow to a Territorial sea or other traditionally navigable waters in a typical year either directly or through one or more other waters
- A tributary must be perennial or intermittent in a typical year
- All ephemeral streams are non-jurisdictional



## Key Changes

- The final rule does not change the definition of “wetlands.”
- Revises definition of “adjacent”
- Wetlands physically separated from a WOTUS by an artificial berm, dike, or similar artificial feature must have a direct hydrologic surface connection to the jurisdictional water in a typical year to be considered adjacent
- No wetlands are evaluated by a significant nexus test

## **Impact**

- The new rule will have significant impacts for the construction of flood control facilities in southern Nevada
- Construction and maintenance of flood control facilities in ephemeral drainages will no longer require a permit from the USACE
  - No permit means no mitigation requirements

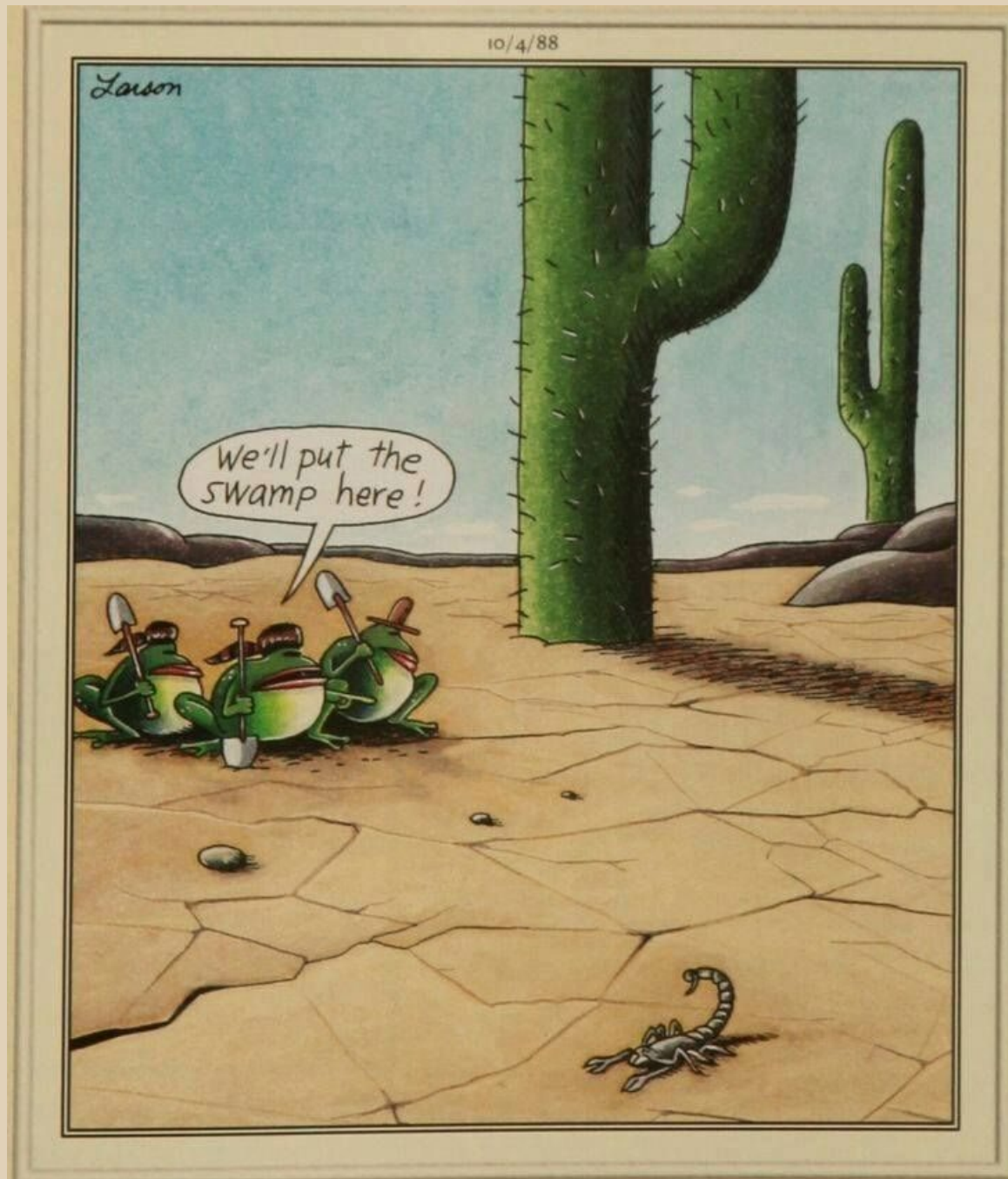
## **Impact**

- The new rule will not impact the Las Vegas Valley Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) permit
- The MS4 continues to discharge to the Las Vegas Wash and its tributaries which remain WOTUS

## **Litigation**

- Litigation in opposition to the new rule is already underway
  - However, no national or regional injunctions have been issued
- The rule is in full force and effect nationwide while the litigation proceeds

Questions?



Frog pioneers