Rapanos Repercussions Continue

The U.S. Environmental Protection Agency and the U.S. Department of the Army issued revised guidance related to the Clean Water Act (CWA) in December, replacing policy issued in June 2007. The new guidance is intended to elucidate the geographic scope of jurisdiction and clarify the June 2006 Supreme Court decision in *Rapanos v. United States* that addressed CWA jurisdiction in wetlands, tributaries, and other waters of the United States.

The guidance specifically addresses three terms: traditional navigable waters (TNWs), wetlands adjacent to TNWs, and relatively permanent nonnavigable tributaries of TNWs, all of which will receive protection. TNWs are tied to commercial navigation; wetlands are adjacent if they have an unbroken hydrologic connection, are separated by a berm, or are in close proximity; and instead of using the downstream limit of a stream to determine its relative permanency, "the flow regime that best characterizes the reach should be used."

Rep. James L. Oberstar, Chairman of the House Committee on Transportation and Infrastructure, and environmental groups such as the Environmental Defense Fund and American Rivers said the new guidance reduces protection for many waters under the CWA. Oberstar introduced the Clean Water Restoration Act in the last Congress and plans to make it a high priority in the 111th Congress.

In December, Oberstar's committee and the House Committee on Oversight and Government Reform summarized the results of an investigation into the alleged deterioration of the CWA enforcement program as a result of the *Rapanos* decision and the 2007 guidance. After reviewing EPA and U.S. Army Corps of Engineers documents, the committees found not only a "dramatic decline" in the number of enforcement actions, but also concern about this trend in EPA field offices. They also found that a political appointee—the Assistant Secretary of the Army for Civil Works—and corporate lobbyists attempted to overturn the May 2008 scientific determination of navigability on two sections of the Santa Cruz River in Arizona. (EPA intervened in August and affirmed the original determination in December.)

The committees noted that EPA provided documents that redacted the identity of those accused of polluting waterways and the specific waters affected and also withheld hundreds of other documents. The committee chairmen informed President-elect Obama of investigation results and requested to work with him to "restore the effectiveness and integrity of a program that is vital to the health and environment of the American people."

Visit www.epa.gov/owow/wetlands/guidance/CWAwaters.html, www.edf.org, www.americanrivers.org, and transportation.house.gov.

HydroFacts

Daily leakage rate from U.S. potable water systems: ..... ~6 billion gallons
Leakage as percent of the total daily water production: 14

Deaths caused by natural hazards in the United States from 1970 through 2004: 20,000
Most deadly natural hazards: heat/drought: 19.6%
severe summer weather: 18.8%
Among the least deadly natural hazards: earthquakes, wildfires, hurricanes: ..... <5% combined

Percent of surveyed climatologists at U.S. academic institutions who agree that global warming is human caused 97
Percent of surveyed meteorologists at U.S. academic instututions who agree 64

Sources: American Society of Civil Engineers, Report by Susan Cutter and Kevin Borden, University of South Carolina, Columbia. Forthcoming in International Journal of Health Geographics*; CNN.*

Klamath Dams May Come Down

In November the federal government, California, Oregon, and PacifiCorp signed an agreement in principle (AIP) that is the first step toward presumed removal of four hydroelectric dams owned by PacifiCorp on the Klamath River and an end to long-standing conflict on the Klamath related to endangered species requirements and water allocation (see *Southwest Hydrology*, July/Aug 2008).

The AIP requires the federal government to scientifically assess the costs and benefits of dam removal to confirm or refute the current view of the government that dam removal is in the public interest. The Secretary of the Interior will make a final determination by March 31, 2012, and will then either designate a nonfederal entity to remove the dams or decide dam removal is not justified, in which case PacifiCorp will have to return to the Federal Energy Regulatory Commission for relicensing.

A complex framework for dam removal described in the AIP balances the timing of removal of each of the four dams with operating conditions and the costs of replacement power for PacifiCorp customers. The AIP provides a target date of 2020 for removal of all four dams.

Assuming a final agreement is reached next year and pending congressional approval, PacifiCorp will also set aside millions of dollars for immediate environmental improvements. The funds would be used to enhance habitat, improve water quality, increase fish populations, and benefit fisheries management in the basin.

The agreement ensures that replacement power sources will be studied and secured by nonfederal parties, and while dam operation continues under Endangered Species Act requirements, water users will be protected from hydrologic problems such as occurred in 2001 when farmers were left without water. The AIP also establishes

continued on next page