

NEVADA ASSOCIATION OF COUNTIES (NACO)

Board of Directors' Meeting

March 29, 2019, 9:30 a.m.

NACO Office

304 S. Minnesota Street

Carson City, NV 89703

AGENDA

Some NACO Board members may attend via video link or phone from other locations. Items on the agenda may be taken out of order. The NACO Board may combine two or more agenda items for consideration. The NACO Board may remove an item from the agenda or delay discussion relating to an item on the agenda at any time.

Call to Order, Roll Call and Pledge of Allegiance

1. Public Comment. Please Limit Comments to 3 Minutes.
2. Approval of Agenda. **For Possible Action**
3. NACO President's Report.
4. NACO Executive Director's Report.
5. Approval of Minutes of the February 22, 2019 NACO Board of Directors Meeting. **For Possible Action**
6. Approval of NACO's December 2018 and January 2019 Financial Statements and January 2019 Investment Reports. **For Possible Action**
7. Approval of a NACO Resolution in Support of National County Government Month. **For Possible Action**
8. Possible Selection of one NACO Sponsored Applicant to Attend the National Association of Counties 2019 County Leadership Training Institute in Washington D.C. **For Possible Action**
9. Discussion of the 2019 Nevada Day Celebration Theme "Nevada Counties – 100 Years", Representatives of the Nevada Day Committee.
10. Update from the NACO Legislative Committee and Staff on Proposed Legislative Measures, Budget Requests, and NACO Priorities for the 2019 Nevada Legislative Session. **For Possible Action**
11. **Update and Possible Action** Regarding Natural Resources and Public Lands and Issues Affecting Counties Including:
 - a. NACO Public Lands and Natural Resources Committee Update.
 - b. Discussion and Approval of NACO's Draft Comments on the Revised Rulemaking/Definition Regarding Waters of the U.S. (WOTUS)
 - c. The BLM and USFS Greater Sage Grouse Resource Management Plan Amendments.
 - d. The U.S. Department of the Navy's DEIS for the Fallon Range Training Complex Modernization.
 - e. Update on the National Horse and Burro Rangeland Management Coalition's 2019 Summit in Nevada
12. National Association of Counties and Western Interstate Region Board Member Updates.
13. NACO Board Member Updates.

14. Public Comment. Please Limit Comments to 3 Minutes.

Adjournment.

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify NACO in writing at 304 S. Minnesota Street, Carson City, NV 89703, or by calling (775) 883-7863 at least three working days prior to the meeting.

Members of the public can request copies of the supporting material for the meeting by contacting Amanda Evans at (775) 883-7863. Supporting material will be available at the NACO office and on the NACO website at: www.nvnaco.org

This agenda was posted at the following locations:

NACO Office 304 S. Minnesota Street, Carson City, NV 89703

Washoe County Admin. Building 1001 E. Ninth Street, Reno, NV 89520

Elko County Manager's Office 540 Court Street #101, Elko NV 89801

POOL/PACT 201 S. Roop Street, Carson City, NV 89701

The following links and/or pages are support for agenda
Item 5

NEVADA ASSOCIATION OF COUNTIES (NACO)

Board of Directors' Meeting
February 22, 2019, 9:30 a.m.

NACO Office
304 S. Minnesota Street
Carson City, NV 89703

UNADOPTED MINUTES

ATTENDANCE: President Waits, President Elect French, Lincoln County Commissioner Higbee, Mineral County Commissioner Price, Lyon County Commissioner Hunewill, Esmeralda County Commissioner Keyes, Lander County Commissioner Allan, Elko County Commissioner Dahl, Storey County Commissioner Gilman, Washoe County Commissioner Lucey, Washoe County Commissioner Hartung, Carson City Mayor Crowell, and NACO Staff (Executive Director Dagny Stapleton, Deputy Director Vinson Guthreau, and Amanda Evans)

REMOTE ATTENDANCE: Pershing County Commissioner Shank, Eureka County Commissioner Goicoechea, and Past President Weekly.

OTHER ATTENDANCE: Travis Brewer LaChapelle, Office of Senator Rosen; Lyon County Commissioner Keller, Murph Glover, NDOT; Rudy Evensen and John Raby, BLM; Jared Buscar and Denise Tanata, Children's Advocacy Alliance; Dagen Downard and Savannah Reid, Policy Advocacy Clinic, University of California, Berkeley School of Law

The meeting was called to order at 9:31 am.

1. **Public Comment.** Travis Brewer LaChapelle introduced himself to the Board, Mr. LaChapelle is the newly appointed Northern Rural Director for Senator Jacky Rosen.
2. **Approval of Agenda.** The agenda was approved on a motion by Commissioner Dahl with second by Commissioner Higbee.
3. **NACO President's Report.** President Waits informed the Board that she and Dagny had made a presentation before the Assembly Government Affairs Committee on NACO and counties and noted that the Committee members were attentive and asked good questions. She concluded her remarks by acknowledging the Board members with February birthdays.
4. **NACO Executive Director's Report.** Dagny informed the Board that staff would be distributing information on events being held outside of the NACO Legislative Conference in Washington DC the following week. She reminded the Board of Local Government Day at the Legislature which will be held on March 28th. There would be an evening reception with legislators and all Commissioners are invited to attend. She also noted that staff would be working on obtaining meetings with legislators for NACO leadership during the day. Dagny informed the Board that prior to their meeting on March 29th, the Legislative Rural Caucus would be holding a breakfast and invited commissioners to join her and Vinson at that meeting. She reminded the Board that April is National Local Government Month and noted the link to the ICIVIS computer game that encourages engagement in the local government process. She concluded her remarks by noting the publication of the 2019 NACO Annual Directory.
5. **Approval of Minutes of the January 25, 2018 NACO Board of Directors Meeting.** The minutes were approved on a motion by Commissioner Allan with a second by Commissioner Price.
6. **Recommendation of Three Nominees to Fill the Director of a Social Services Agency Seat on the Board of Trustees of the Fund for Hospital Care to Indigent persons.** Dagny informed the Board that recommendations had been received from the Association of Health and Human Services' Directors and directed the Board to the letter included in the agenda packet. She outlined the appointment process that

requires the Association to submit three names for consideration by the Governor for appointment to the Board. The recommendations from the HHS Association were Mike Pawlak from Clark County who currently sits on the Board, Karen Beckerbaur from Douglas County and Mary Jane Ostrander from Carson City. The Board approved the three recommended individuals for the Governor's consideration on a motion by Commissioner Allan with second by Commissioner Price.

7. **Appointment of Two NACO Representatives to the National Association of Counties (NACo) Western Interstate Region Board (WIR).** Elko County Commissioner Dahl and Humboldt County Commissioner French were unanimously reappointed to the WIR Board on a motion by Commissioner Hartung with second by Commissioner Lucey.
8. **Discussion and Approval of Washoe County to Host the NACO 2019 Annual Conference.** Dagny informed the Board that the conference would be held on September 25th and 26th and would have an abbreviated schedule to encourage attendance at the NACo Annual Conference. She informed the Board that staff had been in contact with the Sparks Nugget and that the venue has offered a favorable contract. Commissioner Lucey informed the Board that he and Commissioner Hartung had discussed the issue at length and that Washoe County is pleased to host the event and encouraged consideration for the County to host a full conference in a later year. Commissioner Hartung echoed Commissioner Lucey's comments and noted that the County is honored to host the event. The Board approved the location of the conference on a motion by Commissioner Price with second by Commissioner Higbee.
9. **Discussion of a Request for Support from NACO for the National Horse and Burro Rangeland Management Coalition's 2019 Summit in Nevada.** President Elect French informed the Board that as a member on the BLM's National Wild Horse and Burro Advisory Board the event had been discussed at their meeting in Salt Lake City. Pursuant to that conversation Dr. Barry Perryman has spearheaded the creation an event through UNR to occur in May in Reno and be co-sponsored by the Society for Range Management. He noted that the event is expected to be similar to the one in Elko and would entail discussions on recommendations to present to the Department of the Interior for wild horse and burro management programs. President Elect French informed the Board that the group is looking for private sponsors but is requesting support from the Association and encouragement from the counties on participation and support. Commissioner Dahl inquired as to why the event is being planned in Reno instead of Elko and it was noted that proximity to the airport is the main consideration. Commissioner Lucey inquired as to if there would be the opportunity to take attendee's to areas where the rangeland has been compromised and the herds are endangered. President Elect French informed the Commissioner that, that is an ongoing conversation. Dagny informed the Board that the Association's budget includes a line item for sponsorships of \$1500.00 and suggested pledging up to \$1000.00, noting that the Association is also a member of the Society for Range Management. Commissioner Hartung moved to pledge the full \$1000.00 in support of the event, the motion was approved on a second by Commissioner Price.
10. **Presentation on Juvenile Fee Collection in Nevada, Denise Tanata, Children's Advocacy Alliance and Dagen Downard and Savannah Reid, Policy Advocacy Clinic, University of California, Berkeley School of Law.** The group gave a presentation to the Board that included information on the collection of fees and fines charged to juveniles within the State, noting that data collected shows that the collections are low revenue generators and lead to financial hardships and recidivism. They concluded their presentation by informing the Board that a bill will be introduced in the Legislature that will repeal discretionary fines for juvenile offenders. Commissioner Allan inquired as to average fees and Ms. Reid noted that the fees vary from county to county. Other discussion from the Board included the fees being intended to act as a deterrent and Mr. Downard informed the Board that the data collected shows that those juveniles who have been assessed the fees have a greater recidivism rate.
11. **Presentation on the Revised Rulemaking/Definition Regarding Waters of the U.S. (WOTUS), which Clarifies Federal Authority Under the Clean Water Act, Julie Ufner, Associate Legislative Director of Environment, Energy and Land Use, National Association of Counties.** Ms. Ufner joined the meeting by teleconference and thanked the Board for their previous engagement on the WOTUS issue. She gave an overview of the Act and the historical actions surrounding it. She referenced the order that required the Army Corps of Engineers to re-write the rule that they proposed for adoption in 2015. She informed the Board that the newly proposed rule was published the previous week and had opened a 60-day comment

period, which would expire on April 15. She gave an overview of some of the more concerning portions of the proposed rule, including the definitions of navigable water ways, determination of historical flow averages and recharge areas. Ms. Ufner informed the Board that NACo is working on an in-depth comparison of the 2015 Rule and the proposed rule and would be submitting comments. She also informed the Board that a meeting would be taking place at the NACo headquarters in Washington DC on March 1 and encouraged Commissioners who are attending the NACo Legislative Conference to attend the meeting. Commissioners Hartung and Dahl indicated that they would attend the meeting. President Waits, clarified that NACo would be requesting a 60-day extension to the comment period and Julie indicated that it is expected to be granted. Dagny inquired as to the Board's appetite for submitting comments and engaging in the process. She informed the Board that the Public Lands Committee has expressed interest in engagement, she also informed the Board that RCI would be able to provide support during the process. The Board approved engagement in the process and the submission of comments by the Association on a motion by Commissioner Dahl with second by Commissioner Lucey.

12. **Update from the NACO Legislative Committee and Staff on Proposed Legislative Measures, Budget Requests, and NACO Priorities for the 2019 Nevada Legislative Session.** Chair Lucey noted that the Legislature had been in session for three weeks and that Committee had been meeting weekly with staff to discuss proposed legislation. Vinson gave the Board an update on the NACO bills. He informed the Board that SB12, which would allow for a change in the usage of 911 fees, was heard in Senate Government Affairs and is moving forward. AB21 which will allow rural counties to appoint members to small boards and commissions was heard in Assembly Government Affairs - he thanked President Elect French for attending and giving Humboldt County's perspective and Nye County for providing exhibits and that the bill appears to be moving forward. Dagny informed the Board that SB13, which would allow counties to create 501(c)3's to accept donations in times of emergency, was heard. Comments and requests from the Committee included: the need to define what an emergency is; whether employees could serve on the Board; that 100% of all funds collected would be distributed; and direct reporting from a 501c3 board to the BOCC's. She informed the Board that an amendment including those provisions is being worked on. Dagny informed the Board that SB48 which would enable rural counties to enact diesel fuel taxes is expected to be heard in Senate Revenue and encouraged attendance at the meeting in addition to the resolutions of support that have been passed. Vinson informed the Board that SB150 that would require water resource plans be included in county master plans had been submitted by CNRWA, noting that an amendment is being submitted to allow 3rd party water resource plans to be used for those counties with external or regional water authorities. Dagny discussed collective bargaining bills and noted that direction given to staff the previous session was to support or be neutral on bills that make minor changes and that direction from the Committee had remained the same. AB103 allows paid leave for employees to participate in union activities and that many counties already allow this, and the bill would be an opportunity to show support. SB111 would change the end fund balance for use in bargaining from 25% to 16% which meets GASB standards and staff discussed potential support. Vinson presented SB153 which reverses major collective bargaining provisions passed in 2015 which the Legislative Committee recommended opposition to and the Board agreed on consensus. President Elect French suggested taking a position of neutral on SB111 but allowing for support if it would be beneficial to other efforts. Commissioner Hartung noted that funds in reserve maintain jobs during economic hardships and President Elect French concurred. Staff was given direction to remain neutral on SB111 and bring the bill back to the Board for a change of position if necessary. Dagny discussed AB 119 and AB 138, which make changes to workers compensation benefits for the public safety employees. The bills expand presumptive eligibility and would also expand heart and lung benefits. She noted that there was a working group that included POOL/Pact and that the consensus was that the liability expansion had the ability to cause great financial distress for counties. President Elect French inquired if there was a funding mechanism included in the bills and Dagny informed the Board that fiscal notes have been requested and there are no proposed revenue sources included in the bills. Staff was given direction to continue to negotiate on the proposed workers comp bills but to oppose if necessary. Dagny informed the Board that AB81 regarding indigent defense will be heard the following Monday. She noted that a proposed amendment by the Assembly Majority Leader is expected to give a large amount of funding but does not include a guaranteed sustained funding source or ensure that there will be no unfunded mandate to counties. She noted that the plan is to oppose the Leader's mock up and support an amendment that may be proposed by Clark County. Mayor Crowell noted that the bill was not what the Commission recommended but the potential amendment is

better. The final bill discussed was SB205 which will provide a funding stream for local governments to utilize for federal grants that require matching funds.

13. **Update and Discussion on NACO and NACO Members Participation in the National Association of Counties 2019 Legislative Conference in Washington D.C., including Meetings and Events Held During the Conference and Approval of Final NACO Federal Policy Priorities for 2019.** Dagny informed the Board that staff is continuing to work on meetings with the delegation and a schedule of events will be distributed to those attending. She referenced the Federal Priorities included in the packet and asked for approval of the document and its use in communications with the delegation. The Association's Federal Priorities were approved on a motion by Commissioner Gillman with second by Commissioner Keyes.
14. **Introduction and Remarks from John Raby, Director, Bureau of Land Management, Nevada.** Mr. Raby thanked the Board for their time. He informed the Board that he has been with the BLM for 23 years, in Oregon and Montana. He told the Board that he is glad to be in Nevada and is looking forward to working with the Board on a number of issues. Mr. Raby noted that David Bernhardt has been nominated for the position of the Director of the DOI and that they are still waiting on a BLM Director Nomination, and that a nomination for the Director of Operations is forthcoming. He informed the Board that the Bureau is working through the Governor's consistency review on the Greater Sage Grouse LUPA and that ROD's are expected in mid-March. He informed the Board that grazing regulations are up for review and that Nevada is well positioned to be active in those regulation updates because there are currently five pilot studies being conducted throughout the State. He concluded his comments by noting that they are currently working on the valuation of producer allotments that may be affected by the proposed withdrawals at NAS Fallon.
15. **Update and Possible Action Regarding Natural Resources and Public Lands and Issues Affecting Counties Including:**
 - a. **NACO Public Lands and Natural Resources Committee Update.** President Elect French informed the Board that the Committee meeting was brief, and the agenda sub-items will cover their discussions.
 - b. **Update on NACO's Natural Resources Management Position and Discussion and Possible Approval of an Interim Contract with Resource Concepts, Inc.** Dagny reminded the Board that the search for the position had been placed on hold due to the legislative session and that funding for any work completed under the contract is available in the budget through cost savings in salary and benefits due to the position remaining vacant. The contract was approved on a motion by Commissioner Dahl with second by Commissioner Lucey.
 - c. **The BLM and USFS Greater Sage Grouse Resource Management Plan Amendments.** Jeremy Drew of RCI informed the Board that the ROD is expected in March and that there are no expected changes based on the Governor's Consistency review submitted by Governor Sandoval. He informed the Board that there were 14 protests submitted, including the Association's and that additional information would be shared as it is received. Jeremy noted that comments have been submitted to the Forest Service and that the Proposed ROD is expected in April and will have a comment period. He also informed the Board that there was an Executive Order regarding compensatory mitigation and the SEC's conservation credit program; he will keep the Board informed as to any meetings on the issue. He also noted that the regulation would have a six-month trial period prior to becoming a permanent regulation.
 - d. **The U.S. Department of the Navy's DEIS for the Fallon Range Training Complex Modernization.** Vinson informed the Board that comments had been submitted on the 14th as required and that the final documents are included in the agenda packet.
16. **National Association of Counties and Western Interstate Region Board Member Updates.** Commissioner Dahl informed the Board that the next meetings are during the National Association's Legislative Conference and that conversation at WIR is expected to include resolutions on wildfire, SRS reauthorization, and the need to work toward a permanent funding source for PILT.

17. **NACo Board Member Updates.** Updates were given by members of the Board on activities within their counties.
18. **Public Comment.** Amanda requested all those attending the NACo Legislative conference to share their travel dates.

Adjournment.

DRAFT

The following links and/or pages are support for agenda
Item 6

Nevada Association of Counties
Balance Sheet
December 31, 2018

ASSETS

Current Assets		
Cash - Bank of America	\$	269,070.14
Money Market		110,717.25
PayPal Cash Account		19,664.48
Investments Cash Equivalents		7,194.99
Investments Cash Equivalents		12,376.51
Accounts Receivable		6,487.19
Prepaid Expenses		<u>2,130.02</u>
Total Current Assets		427,640.58
Property and Equipment		
Office Equipment		174,359.50
Building		447,906.18
Land		131,000.00
Building Improvements		90,311.78
Fixed Assets - Vehicle		32,878.25
Accumulated Depreciation		<u>(311,929.76)</u>
Total Property and Equipment		564,525.95
Other Assets		
Investments - RJ Equity		160,861.59
Investments - RJ Securities		426,954.89
DEFERRED OUTFLOWS		<u>191,230.00</u>
Total Other Assets		<u>779,046.48</u>
Total Assets		<u><u>\$ 1,771,213.01</u></u>

LIABILITIES AND CAPITAL

Current Liabilities		
Accounts Payable	\$	14,174.18
Accrued Salaries		6,342.66
Accrued Payroll Benefits		9,651.66
Deferred Income		30,000.00
PERS Pension Liability		653,604.00
DEFERRED INFLOWS		<u>47,130.00</u>
Total Current Liabilities		760,902.50
Long-Term Liabilities		
Total Long-Term Liabilities		<u>0.00</u>
Total Liabilities		760,902.50
Capital		
Retained Earnings		920,476.14
Net Income		<u>89,834.37</u>
Total Capital		<u>1,010,310.51</u>
Total Liabilities & Capital		<u><u>\$ 1,771,213.01</u></u>

Nevada Association of Counties
Income Statement/Budget
For the Twelve Months Ending December 31, 2018

	GL Acct.	Current Month	Year to Date	Budget	Y-T-D % Budget
Revenues					
Membership Dues	4500	0.00	352,846.00	352,846.00	100.0%
Public Lands Assessment Dues	4550	0.00	130,923.00	130,924.00	100.0%
Conference Revenues	4501,4502,4:	75.00	88,236.90	88,192.00	100.1%
IAF/Supplemental Funds	4602	0.00	70,000.00	70,000.00	100.0%
Interest Income	4650	1,810.11	17,281.52	15,000.00	115.2%
National Programs	4700	0.00	20,456.02	11,000.00	186.0%
Associate Memberships	4702	0.00	18,750.00	16,520.00	113.5%
Unrealized Gain/(Loss)-Investments	4740,4741,7:	(10,394.05)	(21,804.66)	0.00	
RCI/Greater Sage Grouse Cont.	4608	0.00	44,444.40	0.00	
Total Revenues		(8,508.94)	721,133.18	684,482.00	105.4%
Expenses					
Salaries	7100	33,921.88	291,219.23	305,857.00	95.2%
Retirement: PERS	7103	13,067.36	78,158.02	85,640.00	91.3%
Employee Health Insurance/Life	7104,7105	8,696.80	31,950.46	39,366.00	81.2%
FICA, ESD, and Medicare Expense	7106,7108	393.93	5,329.97	5,500.00	96.9%
Audit	7305	0.00	8,125.00	8,400.00	96.7%
Board Meetings	7303	2,019.87	9,713.10	10,000.00	97.1%
Conference Expenses	7300-01,730	30,528.12	39,121.91	45,000.00	86.9%
Depreciation Expense	7230	17,801.47	17,801.47	0.00	
Donations/Sponsorships	7234	0.00	37.50	1,500.00	2.5%
Equipment Lease & Maintenance	7202	629.92	7,053.88	7,522.00	93.8%
Equipment Purchases	7205	0.00	3,780.82	4,500.00	84.0%
County Leadership Institute	7306	0.00	1,800.00	2,200.00	81.8%
Internet Service	7208	399.00	3,250.40	0.00	
Legislative Expense	7304	1,217.92	1,267.92	3,000.00	42.3%
Liability & Auto Insurance	7212	611.25	5,161.82	5,040.00	102.4%
Member Services	7313	200.36	200.36	0.00	
Office Supplies	7204	415.61	2,789.50	3,500.00	79.7%
Postage	7210	118.54	438.73	500.00	87.7%
Printing	7218	0.00	219.78	1,000.00	22.0%
Professional Fees	7308, 7309	538.31	16,561.65	17,142.00	96.6%
PEHB Liability	7109	0.00	1,217.04	1,552.00	78.4%
Building Operating Expenses	8000-BLD,8	3,081.37	17,390.23	18,403.00	94.5%
Building Capital Projects	8500-BLD	0.00	0.00	6,000.00	0.0%
Publications, Dues, Registrations	7216	2,040.09	9,030.18	7,743.00	116.6%
Recruiting & Advertising	7319	25.00	25.00	0.00	
Representative Travel	7222	1,092.94	11,976.52	15,000.00	79.8%
RCI/Greater Sage Grouse Cont.	7408	1,560.00	25,121.60	50,000.00	50.2%
Special Studies/Litigation	7409	0.00	1,963.18	15,000.00	13.1%
Staff Travel	7219	1,550.81	16,904.93	20,000.00	84.5%
Telephone	7207	971.57	7,565.55	13,200.00	57.3%
Video-Conferencing Host & Warranty	7307	1,023.00	6,138.00	9,528.00	64.4%
Vehicle Registration Maintenance	7214	0.00	811.86	3,000.00	27.1%
WIR Dues	7224	0.00	9,173.20	9,991.00	91.8%
Total Expenses		121,905.12	631,298.81	715,084.00	88.3%
Net Income		(130,414.06)	89,834.37	(30,602.00)	

Nevada Association of Counties
Balance Sheet
January 31, 2019

ASSETS

Current Assets		
Cash - Bank of America	\$	371,078.11
Money Market		110,734.18
PayPal Cash Account		19,069.48
Investments Cash Equivalents		8,472.40
Investments Cash Equivalents		16,844.11
Accounts Receivable		370,736.74
Prepaid Expenses		<u>1,775.02</u>
Total Current Assets		898,710.04
Property and Equipment		
Office Equipment		174,359.50
Building		447,906.18
Land		131,000.00
Building Improvements		90,311.78
Fixed Assets - Vehicle		32,878.25
Accumulated Depreciation		<u>(311,929.76)</u>
Total Property and Equipment		564,525.95
Other Assets		
Investments - RJ Equity		167,629.43
Investments - RJ Securities		424,046.69
DEFERRED OUTFLOWS		<u>191,230.00</u>
Total Other Assets		<u>782,906.12</u>
Total Assets		<u><u>\$ 2,246,142.11</u></u>

LIABILITIES AND CAPITAL

Current Liabilities		
Accounts Payable	(\$	447.32)
Accrued Payroll Benefits		9,651.66
PERS Pension Liability		653,604.00
DEFERRED INFLOWS		<u>47,130.00</u>
Total Current Liabilities		709,938.34
Long-Term Liabilities		
Total Long-Term Liabilities		<u>0.00</u>
Total Liabilities		709,938.34
Capital		
Retained Earnings		1,010,310.51
Net Income		<u>525,893.26</u>
Total Capital		<u>1,536,203.77</u>
Total Liabilities & Capital		<u><u>\$ 2,246,142.11</u></u>

Nevada Association of Counties
Income Statement/Budget
For the One Month Ending January 31, 2018

	GL Acct.	Current Month	Year to Date	Budget	Y-T-D % Budget
Revenues					
Membership Dues	4500	361,491.00	361,491.00	361,491.00	100.0%
Public Lands Assessment Dues	4550	134,936.00	134,936.00	134,936.00	100.0%
Conference Revenues	4501,4502,4:	0.00	0.00	35,395.00	0.0%
IAF/Supplemental Funds	4602	30,000.00	30,000.00	70,000.00	42.9%
Interest Income	4650	1,022.44	1,022.44	15,000.00	6.8%
National Programs	4700	0.00	0.00	17,000.00	0.0%
Associate Memberships	4702	21,000.00	21,000.00	18,000.00	116.7%
Unrealized Gain/(Loss)-Investments	4740,4741,7:	8,601.88	8,601.88	0.00	
RCI/Greater Sage Grouse Cont.	4608	0.00	0.00	0.00	
Total Revenues		557,051.32	557,051.32	651,822.00	85.5%
Expenses					
Salaries	7100	23,909.32	23,909.32	309,419.00	7.7%
Retirement: PERS	7103	0.00	0.00	86,637.00	0.0%
Employee Health Insurance/Life	7104,7105	353.83	353.83	39,366.00	0.9%
FICA, ESD, and Medicare Expense	7106,7108	745.50	745.50	6,000.00	12.4%
Audit	7305	0.00	0.00	8,500.00	0.0%
Board Meetings	7303	0.00	0.00	7,500.00	0.0%
Building Operating Expenses	8000-BLD,8	283.40	283.40	18,403.00	1.5%
Building Capital Projects	8500-BLD	0.00	0.00	26,000.00	0.0%
Conference Expenses	7300-01,730:	0.00	0.00	35,000.00	0.0%
County Leadership Institute	7306	0.00	0.00	2,200.00	0.0%
Depreciation Expense	7230	0.00	0.00	0.00	
Donations/Sponsorships	7234	0.00	0.00	1,500.00	0.0%
Equipment Lease & Maintenance	7202	361.97	361.97	8,500.00	4.3%
Equipment Purchases	7205	0.00	0.00	4,500.00	0.0%
Internet Service	7208	399.00	399.00	4,788.00	8.3%
Legislative Expense	7304	0.00	0.00	5,000.00	0.0%
Liability & Auto Insurance	7212	355.00	355.00	5,500.00	6.5%
Member Services	7313	0.00	0.00	0.00	
Office Supplies	7204	36.54	36.54	3,500.00	1.0%
Postage	7210	0.00	0.00	500.00	0.0%
Printing	7218	0.00	0.00	750.00	0.0%
Professional Fees	7308, 7309	357.73	357.73	18,388.00	1.9%
PEHB Liability	7109	361.98	361.98	1,552.00	23.3%
Publications, Dues, Registrations	7216	17.00	17.00	7,743.00	0.2%
Recruiting & Advertising	7319	0.00	0.00	0.00	
Representative Travel	7222	0.00	0.00	17,000.00	0.0%
RCI/Greater Sage Grouse Cont.	7408	3,410.40	3,410.40	0.00	
Special Studies/Litigation	7409	0.00	0.00	15,000.00	0.0%
Staff Travel	7219	0.00	0.00	20,000.00	0.0%
Telephone	7207	54.89	54.89	7,000.00	0.8%
Video-Conferencing Host & Warranty	7307	511.50	511.50	6,649.00	7.7%
Vehicle Registration Maintenance	7214	0.00	0.00	3,000.00	0.0%
WIR Dues	7224	0.00	0.00	9,991.00	0.0%
Total Expenses		31,158.06	31,158.06	679,886.00	4.6%
Net Income		525,893.26	525,893.26	(28,064.00)	

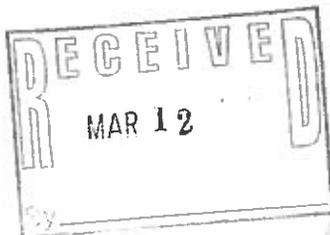


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Investment Objectives

Primary: Growth with a medium risk tolerance and a time horizon exceeding 10 years.

Activity

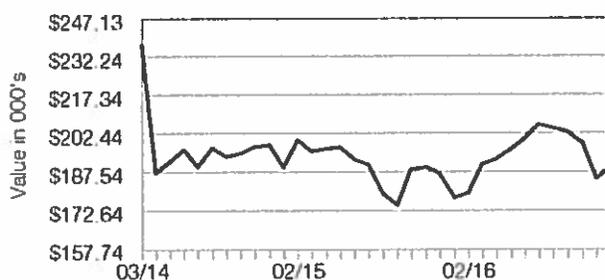
	This Statement		Year to Date	
Beginning Balance	\$	176,101.83	\$	168,056.58
Deposits	\$	0.00	\$	0.00
Income	\$	203.41	\$	649.60
Withdrawals	\$	0.00	\$	0.00
Expenses	\$	0.00	\$	(846.86)
Change in Value	\$	4,750.86	\$	13,196.78
Ending Balance	\$	181,056.10	\$	181,056.10

Time-Weighted Performance

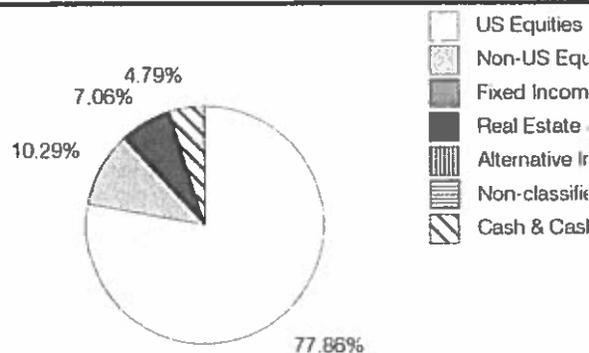
See Understanding Your Statement for important information about these calculations.

Performance Inception	YTD	2018	2017
08/26/96	7.89%	(3.52)%	18.71%

Value Over Time



Asset Allocation Analysis



Morningstar asset allocation information is as of 02/27/2019 (mutu

Nevada Assoc Of Counties - Account Sum

Account carried by Raymond James & Associates Inc.
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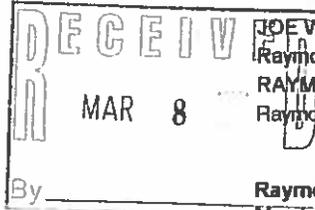
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0003947 04 MB 1.74 04 TR 00067 RJCP4T02 000000



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Raymond James Financial Services, Inc.
RAYMOND JAMES FINANCIAL SVCS. | 1011 C AVENUE | CC
RaymondJames.com/SanDiego | Joe.Woods@RaymondJames.c

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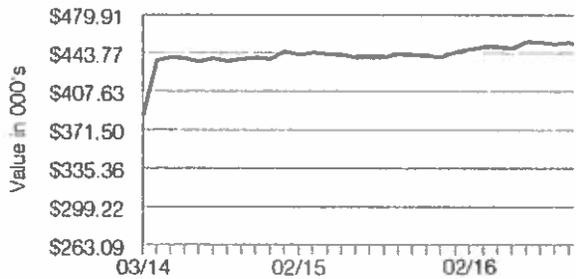
Investment Objectives

Primary: Income with a medium risk tolerance and a time horizon exceeding 10 years.

Activity

		This Statement		Year to Date	
Beginning Balance	\$	440,890.80	\$	439,331.40	
Deposits	\$	0.00	\$	0.00	
Income	\$	1,678.02	\$	2,234.60	
Withdrawals	\$	0.00	\$	0.00	
Expenses	\$	0.00	\$	(1,354.10)	
Change in Value	\$	(728.62)	\$	1,628.30	
Ending Balance	\$	441,840.20	\$	441,840.20	

Value Over Time

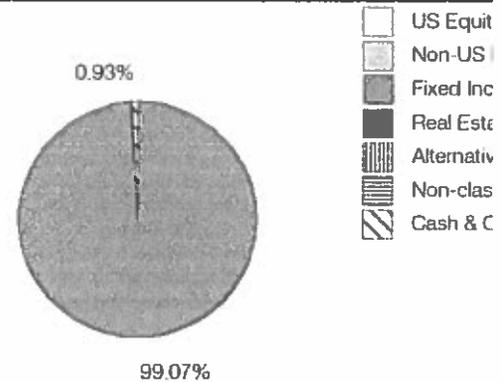


Time-Weighted Performance

See Understanding Your Statement for important information about these calculations.

Performance Inception	YTD	2018	2017
08/26/96	0.49%	(0.22)%	0.58%

Asset Allocation Analysis



Account earned by Raymond James & Associates Inc.
Member New York Stock Exchange/SIPC

0003947 RJCP4T02 018084

Morningstar asset allocation information is as of 02/27/2019 (m

Nevada Assoc Of Counties - Account S



The following links and/or pages are support for agenda
Item 7

Nevada Association of Counties (NACO)
Resolution 19-02

**Resolution in Support of National County Government
Month**

WHEREAS, the nation's 3,069 counties serving more than 300 million Americans provide essential services to create healthy, safe and vibrant communities; and

WHEREAS, counties move America forward by providing health care services, administering justice, keeping communities safe, creating economic opportunities and much more; and

WHEREAS, Nevada's seventeen counties take pride in their responsibility to protect and enhance the health, welfare and safety of their residents in sensible and cost-effective ways; and

WHEREAS, through the National Association of Counties (NACo) President Greg Cox's "*Connecting the Unconnected*" initiative, NACo is demonstrating how counties deliver "people-centered" services to residents nationwide; and

WHEREAS, each year since 1991 the National Association of Counties has encouraged counties across the country to elevate awareness of county responsibilities, programs and services; and

NOW, THEREFORE, we, the Nevada Association of Counties, do hereby proclaim April 2019, as "NATIONAL COUNTY GOVERNMENT MONTH" In all Nevada counties

PASSED, APPROVED AND ADOPTED this 29th day of March, 2019 by the Board of Directors of the Nevada Association of Counties.

Attests:

/ _____
Patsy A. Waits
President

/ _____
Dagny Stapleton
Executive Director

The following links and/or pages are support for agenda
Item 8

https://www.naco.org/sites/default/files/documents/BROCHURE_2019_CLI.pdf

The following links and/or pages are support for agenda
Item 11b

<https://www.epa.gov/sites/production/files/2017-07/documents/2017-13997.pdf>

**Draft – For Review and Possible Approval
By the NACO Board of Directors**

March TBD, 2019 [Due on or before April 12, 2019]

Michael McDavit
Oceans, Wetlands and Communities Division
Office of Water (4504-T)
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Submitted Via Email: OW-Dicket@epa.gov

And,

Online via Federal eRulemaking Portal:
<http://www.regulations.gov>

And,

Jennifer A. Moyer
Regulatory Community of Practice (CECW-CO-R)
U.S. Army Corps of Engineers
441 G Street NW
Washington, DC 20314

RE: Substantive Comments from the Nevada Association of Counties (NACO) Pursuant to Docket ID No. EPA-HQ-OW-2018-0149 Regarding a Proposed Rule for a Revised Definition of “Waters of the United States”

Dear Mr. McDavit and Ms. Moyer,

The Nevada Association of Counties ("NACO") greatly appreciates the opportunity to provide substantive comment to Docket ID No. EPA-HQ-OW-2018-0149 regarding a proposed rule for a revised definition of "waters of the United States" ("WOTUS") under the Clean Water Act ("CWA") Section 404 permit program. On June 19, 2017, NACO provided substantive input pursuant to Executive Order 13778 on 'Revising the Waters of the United States Rule under the Clean Water Act'. Those previous comments are hereby incorporated by reference and have been attached.

NACO works with counties to adopt and maintain local, regional, state and national cooperation which will result in a positive influence on public policy and optimize the management of county resources. Counties provide and maintain services and infrastructure pertinent to the CWA. These include, but are not limited to, roads, storm water and sewer systems, flood control facilities, land use planning, building and safety codes and permitting, emergency management, engineering and capital projects, parks and open space, and other infrastructure and utilities. It is from this perspective that NACO, on behalf of Nevada's 17 counties, is providing substantive comments.

Based on previous input, NACO continues to support a pure Justice Scalia approach. Executive Order 13778 directs the agencies to consider interpreting the term “navigable waters,” as defined in 33 U.S.C. 1362(7), in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006) (*Rapanos*). A Scalia approach would address the uncertainty that often causes inaction of regulators and the regulated public.

Jurisdictional arguments result in States' unwillingness to assume responsibilities due to apprehension of, and past experiences with, wasteful "means to an end" battles. A simpler, bright line rule as provided by

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By the NACO Board of Directors**

Justice Scalia will help States and local governments re-align their respective incentives and ultimately provide the protection the public seeks. While the attached previous comment letter provides NACO’s suggested definition of WOTUS, these comments cover some of the key inputs being sought in the Federal Register Proposed Rules dated Thursday, February 14, 2019 (EPA-HQ-OW-2018-0149; FRL-9988-15-OW). These comments are arranged to match the headings and subheadings found in the proposed rule and contain NACO’s general position on the various components of the proposed rule. For more detailed legal justification for these positions, please reference the attached comments previously provided.

Background:

NACO appreciates and supports the Agencies’ stated baseline concept that *The agencies propose as a baseline concept that “waters of the United States” are waters within the ordinary meaning of the term, such as oceans, rivers, streams, lakes, ponds, and wetlands, and that not all waters are “waters of the United States.”(emphasis added).*

Traditional navigable waters: NACO generally supports this approach to the definition of traditional navigable waters as it supports a definition that includes waters that are navigable-in-fact, and currently used or susceptible to use in interstate or foreign commerce.

Does NACO want to comment on way or another on the EPA’s proposal to remove “interstate waters” as a separate category of WOUS, and if so, should that include waters that cross between states, tribal lands, both?

Tributaries: NACO’s previous comments suggested a definition specific to tributaries that included, *relatively permanent, standing or continuously flowing streams, rivers, and lakes having an indistinguishable surface connection with navigable-in-fact waters.* As such, NACO has concerns with the proposed inclusion of “intermittent flow” in the definition. NACO previously suggested that the definition of “relatively permanent” *are those that flow for at least three contiguous months per year, except during periods of extreme drought or precipitation according to USGS standards.* As such, NACO supports inclusion of this definition rather than the current definition of “intermittent flow”.

NACO strongly supports the exclusion of ephemeral flows, including dry washes, arroyos and similar features that lack the required perennial or intermittent flow regimes to satisfy the tributary definition.

Certain ditches: NACO believes that a separate definition for jurisdictional ditches is helpful; however, including “...ditches that are constructed in a tributary or that relocate or alter a tributary, or ditches constructed in an adjacent wetland...” is concerning. This definition would capture a large majority of irrigation ditches in Nevada as they relocate or alter a tributary to provide irrigation water. As previously commented, NACO supports an exclusion for ditches that would be used for agricultural purposes. The same concern would apply to ditches and structures utilized for flood abatement and/or stormwater control purposes including roadside ditches.

Certain lakes and ponds: NACO doesn’t believe that a separate definition for lakes and ponds is warranted or provides additional clarity. This definition could be incorporated into the definition of tributaries.

**Draft – For Review and Possible Approval
By the NACO Board of Directors**

Impoundments: NACO generally does not oppose the use and definition of impoundments contained in the proposed rule. However, some should be excluded. One example of an impoundment that should be considered for exclusion are stormwater impoundments designed to capture and slow storm/flood water in tributaries that are ephemeral or flow less than three consecutive months in a typical water year.

Adjacent wetlands: NACO previously commented that it supports wetlands that directly abut and are indistinguishable from traditional navigable waters and tributaries that qualify as WOTUS. As such, NACO supports that the term “waters” was not included in this definition and the fact that wetlands must meet the definition currently provided by the Army Corps of Engineers.

Waters NOT classified as “Waters of the US”: NACO supports the concept of clearly defining certain waters that are NOT classified as water of the US in this proposed rule. This portion of the rule can be very valuable in providing clarity and certainty to counties that are responsible for providing critical services and infrastructure, and the cost of providing said services and infrastructure.

Excluded waters: NACO supports the specific exclusion of *waters or water features that are not identified as being jurisdictional under the TNW, tributaries, ditches, lakes and ponds, impoundments and adjacent wetlands definitions are excluded.*

Groundwater: NACO previously commented and still supports that groundwater should never qualify as WOUS, and that the definition should include groundwater drained through subsurface drainage systems and shallow subsurface hydrologic connections used to establish jurisdiction between surface and groundwater.

Ephemeral features: NACO previously commented and still supports that channels through which waters flow intermittently (*waters flowing less than three contiguous months per year, except during periods of extreme drought or precipitation according to USGS standards*) or ephemerally should never qualify as WOUS. As such, NACO supports the exclusion of ephemeral features contained in the proposed rule and explicitly stating the inclusion of stormwater run-off, including directional sheet flow over upland areas, swales, erosional features and arroyos.

Certain ditches: NACO appreciates the inclusion of an exemption for certain ditches. In previous comments, NACO supported the concept of excluding ditches, conveyances and other structures, manmade or otherwise, used for: agricultural, flood abatement or stormwater control purposes. As such, NACO does not support the concept of ditches excavated in uplands but with perennial or intermittent flow qualifying as a tributary. NACO would re-iterate its support for excluding ditches based on a particular use, including agricultural use, irrigation, flood abatement and stormwater control purposes (including roadside ditches). In terms of determining if a ditch is artificial, versus being constructed in a tributary or adjacent wetland, all historic maps, photos and historical accounts should be available to make such a case.

Prior converted cropland: NACO generally supports this exemption for prior converted cropland.

NACO is not supportive of a 5-year window for determining if such cropland is ‘abandoned’. Often times, prolonged drought can result in a 5-year non-use based on a lack of water alone. Fluctuating commodity prices, change in ownership, etc. can also dictate such periods of non-use. The window for determining ‘abandonment’ should be a minimum of 10-years if not longer, particularly in times of prolonged drought or other hardship. In terms of evaluation of the cropland exclusion, documentation of

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state-managed or issued water rights should be considered in making such a determination as such rights have to be documented, filed and kept in good standing with the State.

Artificially irrigated areas: NACO generally supports this exemption for artificially irrigated areas, and believes the definition should not be isolated to certain crops.

Artificial lakes and ponds: NACO generally supports this exemption for artificial lakes and ponds, and believes the definition should apply to such waters located in uplands as defined in the proposed rule (see comments on proposed upland definition below).

Water-filled depressions: NACO generally supports this exemption for water-filled depressions and believes the definition should apply to such waters located in uplands as defined in the proposed rule (see comments on proposed upland definition below).

Stormwater control features: NACO strongly supports this exemption for stormwater control features and believes the definition should apply to all stormwater control features and municipal separate storm sewer systems (MS-4s). The MS4 exemption should apply to the entire MS4 system provided it is mapped and documented by the local municipality.

Wastewater recycling structures and waste treatment systems: NACO strongly supports these exemptions for wastewater recycling structures and waste treatment systems and believes the definition should apply to such systems located in uplands as defined in the proposed rule (see comments on proposed upland definition below).

Definitions:

Perennial: NACO generally supports the current definition of perennial as meaning, *surface water flowing continuously year-round during a typical year*. This support is contingent upon a more clear definition of “typical year” and the “geographic area” that is based upon.

Intermittent: NACO has concern with the current definition and use of “intermittent” as currently defined:

Surface water flowing continuously during certain times of a typical year, not merely in direct response to precipitation, but when the groundwater table is elevated or when snowpack melts. Continuous surface flow during certain times of the year may occur seasonally such as in the spring when evapotranspiration is low and the groundwater table is elevated. Under these conditions, the groundwater table intersects the channel bed and groundwater provides continuous baseflow for weeks or months at a time even when it is not raining or has not very recently rained.

In Nevada, expressions of groundwater at the surface can take multiple seasons or years to occur making the ‘typical year’ determination difficult if not impossible in many cases involving groundwater-influenced waters. NACO previously supported, and still supports, a definition of relatively permanent waters that codifies: *flow for at least three contiguous months per year, except during periods of extreme drought or precipitation according to USGS standards* as the minimum flow requirement for a WOUS.

**Draft – For Review and Possible Approval
By the NACO Board of Directors**

Ephemeral: NACO generally supports the current definition of ephemeral as meaning, *surface water flowing or pooling only in direct response to precipitation, such as rain or snow fall.*

Typical year: NACO has concern with the current definition of “typical year” included in the proposed rule. In the proposed rule, a ‘typical year’ is defined to mean within the **normal range of precipitation** over a rolling thirty-year period for a **particular geographic area**. To determine whether the year in question is a typical year, the agencies presently use observed rainfall amounts and compare it to tables developed by the Corps using data from NOAA. The agencies consider a year to be typical **when the observed rainfall from the previous three months** falls within the 30th and 70th percentiles established by a 30-year rainfall average generated at NOAA weather stations (**emphasis added**).

First, the geographic area would need to be better defined (see below comment). Second, the ecoregions found in Nevada experience tremendous fluctuations in terms of drought and extreme storm events. There are many areas of the state that experience no precipitation in a given 3-month period or where a single storm or storm series can easily exceed the noted percentiles. This definition is going to be difficult to apply consistently and practically in an area with such extreme and variable weather patterns. Finally, there are many areas in the arid west where NOAA weather stations are not available.

Geographic Area (within a typical year): NACO has concern with the current definition of “geographic area” currently included in the proposed rule. As presented, ‘geographic area’ would be defined on a watershed-scale basis to ensure specific climatic data are representative of the landscape in relation to the feature under consideration for meeting the tributary definition. However, there is no clarity or direction as to what specific ‘scale’ of watershed this would be based upon.

In Nevada, some watersheds are extremely large and span an extreme diversity of geography and elevation which results in a vastly different profile of “typical year” when considering precipitation. As such, if the definition remains, it would need to specify the scale of watersheds to be considered and account for the vast variations of a typical water year (particularly across elevation gradients) within the Great Basin and Mojave ecoregions.

Upland: NACO generally supports the definition of “upland” currently included in the proposed rule:

“Upland” in the proposed rule refers to any land area above the ordinary highwater mark or high tide line that does not satisfy all three wetland delineation factors (i.e., hydrology, hydrophytic vegetation, and hydric soils) under normal circumstances, as described in the Corps’ 1987 Wetland Delineation Manual. Features that were once wetlands but have been naturally transformed or lawfully converted to upland (e.g., in compliance with a section 404 permit) would be considered upland.

NACO strongly encourages the agencies to clarify, or at a minimum, maintain that areas within the 100-year floodplain that do not meet wetland criteria and/or wetlands that have been converted to upland do not qualify under the definition of upland. With Nevada being the driest state in the nation, most historic development occurred near and around perennial water. This resulted in a high density of County infrastructure (roads, ditches, wastewater treatment plants, etc.) being located within the 100-year flood plain (due to periodic flood events) that often did not contain areas that would meet wetland criteria. As the ‘upland’ definition pertains to many of the exceptions provided to critical infrastructure, NACO would like to ensure the definition is not revised to include the 100-year floodplain and/or historic wetland areas.

**Draft – For Review and Possible Approval
By the NACO Board of Directors**

Thank you for your attention and consideration of these comments. If you have any questions, please do not hesitate to contact me at dagny@nvnaco.org, or by phone at (775) 883-7863.

Respectfully,

Insert Signature

Dagny Stapleton
Executive Director

DS/jd

Attachment: June 19, 2017 Comment Letter from the Nevada Association of Counties RE: Substantive Input from the Nevada Association of Counties Pursuant to Executive Order 13778 on Revising the Waters of the United States Rule under the Clean Water Act

cc: National Association of Counties
Would we like to include additional Cc's?

DRAFT

PROPOSED Clean Water Rule: Definition of "Waters of the United States" 40 CFR 230.3¹
PART 230—SECTION 404(b)(1) GUIDELINES FOR SPECIFICATION OF DISPOSAL SITES FOR DREDGED OR FILL MATERIAL.

* * * * *

§230.3 Definitions.

* * * * *

(o) The term *waters of the United States* means:

- a. For purposes of the Clean Water Act, 33 U.S.C. 1251 *et. seq.* and its implementing regulations, subject to the exclusions in paragraph (o)(2) of this section, the term "waters of the United States" includes only:
 1. Those interstate waters that are navigable-in-fact and currently used or susceptible to use in interstate or foreign commerce. These waters include the territorial seas.
 2. Relatively permanent, standing or continuously flowing streams, rivers, and lakes having an indistinguishable surface connection with navigable-in-fact waters described in a.1.²
 3. Those wetlands that directly abut and are indistinguishable from the waters described in a.1. and a.2. Wetlands are those areas inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands are indistinguishable from the waters described in a.1. and a.2.³
 4. The following are never "waters of the United States":⁴
 - A. Groundwater or channels through which waters flow intermittently or ephemerally.⁵
 - B. Ditches, conveyances, and other structures, manmade or otherwise, used for agricultural, flood abatement or storm-water control purposes.
 5. The following definitions apply to terms used under this section:
 - A. Indistinguishable means that the waters have merged so there is no clear demarcation between the two.⁶
 - B. Relatively permanent waters are those waters that flow for at least three contiguous months per year, except during periods of extreme drought or precipitation according to USGS standards, and have an indistinguishable surface connection with navigable-in-fact waters described in a.1.

* * * * *

¹ The Environmental Protection Agency (EPA) and Army Corps of Engineers (Corps) have requested, pursuant to Exec. Order No. 13778, 82 Fed. Reg. 41 (Mar. 3, 2017), substantive comments from state and local governments to help develop a new "Waters of the United States" definition under the Clean Water Act (CWA) Section 404 permit program based on Supreme Court Justice Antonin Scalia's opinion in *Rapanos v. United States*, 547 U.S. 715 (2006) (*Rapanos*). This proposed definition is the result of a collaborative effort to capture Justice Scalia's plurality opinion in *Rapanos*.

² The EPA and Corps have asked about three potential approaches to the term "relatively permanent" waters: (1) Perennial plus streams with "seasonal" flow (Current practice: seasonal flow = about 3 months (varies regionally)); (2) Perennial plus streams with another measure of flow; and (3) Perennial streams only. The language in (a)(2) and (a)(5)(B) adopts the first approach, and codifies the three-month period of time as a minimal flow requirement and relies on USGS standards for determining extreme drought or precipitation. Relatively permanent waters are catered towards arid regions, especially those with snowmelt or hyporheic

connections. This approach would address concerns within the arid regions, and avoids the regional variations which often swallow the rule and provides the brightest line for the regulators and regulated public.

This definition directly addresses Justice Scalia's explanation of "relatively permanent":

"By describing 'waters' as 'relatively permanent,' we do not necessarily exclude streams, rivers, or lakes that might dry up in extraordinary circumstances, such as drought. We also do not necessarily exclude seasonal rivers, which contain continuous flow during some months of the year but no flow during dry months – such as the 290-day, continuously flowing stream postulated by Justice Stevens' dissent. Common sense and common usage distinguish between a wash and seasonal river. Though scientifically precise distinctions between "perennial" and "intermittent" flows are no doubt available, . . . , we have no occasion in this litigation to decide exactly when the drying-up of a stream-bed is continuous and frequent enough to disqualify the channel as a 'wate[r] of the United States.' It suffices for present purposes that channels containing permanent flow are plainly within the definition, and that the dissent's 'intermittent' and 'ephemeral' streams, that is, streams whose flow is '[c]oming and going at intervals. . . [b]roken, fitful,' Webster's Second 1296, or 'existing only, or no longer than, a day; diurnal. . . short lived,' are not.'" *Rapanos*, 547 U.S. at 733 FN 5.

³ The EPA and Corps have asked about three potential approaches to the term "Continuous Surface Connection": (1) Surface connection even though non-jurisdictional feature; (2) Some degree of connectivity; or (3) Wetland must directly touch jurisdictional waters. The only approach consistent with Justice Scalia's opinion is the third approach, that the "wetland must directly touch jurisdictional waters." According to Justice Scalia, the two must be "indistinguishable" like the wetlands that literally merged with the Black River in *Riverside Bayview*.

"Since the wetlands at issue in *Riverside Bayview* actually abutted waters of the United States, the case could not possibly have held that merely 'neighboring' wetlands came within the Corps' jurisdiction. *Obiter* approval of that proposition might be inferred, however, from the opinion's quotation without comment of a statement by the Corps describing covered 'adjacent' wetlands as those 'that form the border of *or are in reasonable proximity* to other waters of the United States.' The opinion immediately reiterated, however, that adjacent wetlands could be regarded as 'the waters of the United States' in view of 'the inherent difficulties of defining precise bounds to regulable waters,' a rationale that would have no application to physically separated 'neighboring' wetlands. Given that the wetlands at issue in *Riverside Bayview* themselves "actually abut[ted] on a navigable waterway;' given that our opinion recognized that unconnected wetlands could not naturally be characterized as 'waters' at all; and given the repeated reference to the difficulty of determining where waters end and wetlands begin; the most natural reading of the opinion is that a wetlands' mere 'reasonable proximity' to waters of the United states is not enough to confer Corps jurisdiction. In any event, as discussed in our immediately following text, any possible ambiguity has been eliminated by *SWANCC*." *Rapanos*, 547 U.S. at 741 FN 10 (citations excluded).

"Therefore, only those wetlands with a continuous surface connection to bodies that are 'waters of the United States' in their own right, so that there is no clear demarcation between 'waters' and wetlands, are 'adjacent to' such waters and covered by the Act." *Rapanos*, 547 U.S. at 741.

Thus, the proposed verbiage does not use the term "continuous surface connection" and instead adopts the term "indistinguishable" to reduce confusion as it might be applied both to sections (a)(2) and (a)(3). In *Rapanos*, Justice Scalia only used the term "continuous surface connection" to identify the connection between a wetland and a covered water and as described in the previous paragraph it means "indistinguishable." The term "indistinguishable" was selected over "continuous surface connection" because that term is more exact and it was used by Justice Scalia to describe what he meant by "continuous surface connection." This also reduces any potential confusion with the term "continuously flowing."

This approach adopts the Corps 1987 Manual which responds to the debate over "adjacent" and precludes the EPA from regulating land or other features between the wetlands and the covered waters. US Army Corps of Engineers. *Corps of Engineers Wetlands Delineation Manual: Technical Report Y-87-1*. U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS. 1987. This again avoids the regional variations which often swallow the rule and provides the brightest line for the regulators and regulated public.

⁴ (a)(4) is meant to capture all of the examples listed by Justice Scalia in *Rapanos* which are not "Waters of the United States." We request that the EPA and Corps include in the preamble to their rule Justice Scalia's list of exclusions, as well as those examples provided in individual comment letters to help illustrate various scenarios. This will provide necessary clarity and intent during implementation to show clearly what is not "Waters of the United States". The list as provided by Justice Scalia's plurality in *Rapanos* includes:

Ditches, including roadside ditches, manmade ditches, and irrigation ditches; Drains; Channels that provide only drainage, such as from rainfall; Conduits; Highly artificial, manufactured, enclosed conveyance systems; Discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, main, pipe, hydrant, machinery, building, and other appurtenances and incidents of systems of water works; Ephemeral streams; Wet meadows; Storm sewers; Culverts; Directional sheet flow during storm events; Drain tiles; Storm drains systems; Man-made drainage ditches; Typically dry land features such as arroyos, coulees, washes, and channels; Transitory puddles; Floods and inundations; and Intrastate waters, whether navigable or not.

⁵ Groundwater should include groundwater drained through subsurface drainage systems and shallow subsurface hydrologic connections used to establish jurisdiction between surface waters.

⁶ This definition directly addresses Justice Scalia's explanation for when wetlands are covered by the rule:

"Therefore, only those wetlands with a continuous surface connection to bodies that are 'waters of the United States' in their own right, so that there is no clear demarcation between 'waters' and wetlands, are 'adjacent to' such waters and covered by the Act. Wetlands with only an intermittent, physically remote hydrologic connection to 'waters of the United States' do not implicate the boundary-drawing problem of *Riverside Bayview*, and thus lack the necessary connection to covered waters that we described as a 'significant nexus' in SWANCC." *Rapanos*, 547 U.S. at 741.

2019 POLICY BRIEF

COUNTIES ARE ENCOURAGED TO WEIGH IN ON PROPOSED “WATERS OF THE U.S.” RULE

QUICK FACTS

- Even non-federal waters are protected by state and local regulations – sometimes even more strictly than federal rules. As co-regulator under provisions of the Clean Water Act, counties are not just another stakeholder in this discussion.
- While the proposed rule exempts ditches that are not only wet during rainfalls, other ditches that flow seasonally or year-round may be jurisdictional.
- The proposed rule newly defines the term tributary as a “naturally occurring surface water channel that contributes perennial or intermittent flow to a WOTUS” and ditches as “artificial, manmade conveyances.”

ACTION NEEDED:

NACo urges counties to provide input and feedback on the administration’s revised definition for “Waters of the U.S.” under the Clean Water Act. Counties are encouraged to provide examples on how the proposed rule will impact county-owned infrastructure such as roads and roadside ditches, drainage and irrigation conveyances, flood control channels, bridge construction and rehabilitation projects and stormwater and wastewater facilities and provide suggestions on how the rule can be modified.

BACKGROUND:

On February 14, the U.S. Environmental and Protection Agency (EPA) and the U.S. Army Corps of Engineers (Army Corps) [officially released](#) the Trump Administration’s proposed new “Waters of United States” (WOTUS) rule defining which bodies of water across the United States are subject to federal regulations under the Clean Water Act (CWA). This action represents the second step in the process taken by the EPA and Army Corps to review and replace the Obama Administration’s 2015 WOTUS rule. The proposed rule is open for public comment until April 15, 2019.

The new proposed definition would create six categories of regulated waters and 11 exemptions. The six categories of WOTUS include: traditional navigable waters; tributaries; certain ditches; certain lakes and ponds; impoundments; and adjacent wetlands. The proposed rule specifies that if water does not meet one of the six listed categories, it will not be considered a WOTUS and clarifies that certain other waters will also no longer be considered a WOTUS, such as ditches that are only wet during rainfall events, groundwater, stormwater control features, wastewater recycling infrastructure built in uplands, converted cropland and waste treatment systems.

While the proposed rule tries to draw a bright line between tributaries and ditches, there remains uncertainty about when a ditch may be jurisdictional. For example, even though tributaries are defined as “naturally occurring surface channels” and ditches are defined as an “artificial channel used to convey water,” there are some cases when ditches may be considered jurisdictional under the tributary definition. Case in point, many roadside and drainage ditches were built decades ago in natural stream systems would be jurisdictional if the ditch has year-round or seasonal flow. But, ditches that are only wet during rainfall events, are not jurisdictional under the proposed rule.



Under the proposed rule, the following types of county-owned infrastructure may be jurisdictional:

- Roadside ditches that have flow year-round (perennial flow)
- Roadside and other ditches with intermittent flow (i.e. seasonal) that are a relocated tributary, or are excavated in a tributary, or touch jurisdictional wetlands
- Roadside and other ditches that have a seasonal flow due to snowmelts and monsoons
- Stormwater systems and wastewater recycling infrastructure in low-lying areas

Furthermore, the proposed rule ponders how jurisdictional “intermittent” waters should be defined. But, the proposed rule stops short at proposing a specific duration (e.g. the number of days, weeks or even months) the feature would need to flow to be considered “intermittent.” Currently, intermittent means surface water flowing continuously during certain times of a typical year and more than in direct response to precipitation (e.g., seasonally when the groundwater table is elevated or melted snowpack). This lack of a definition could be problematic in some parts of the country due to different climates, topography, and other features.

Finally, the proposed rule contains several exemptions for stormwater features and wastewater recycling structures constructed in uplands and for waste treatment systems. While the waste treatment exemption is a continuation of a previous exemption, the proposed rule defines for the first time the parameters of a waste treatment system. The stormwater exemption is similar to provisions in the 2015 WOTUS rule and raise similar questions about when stormwater systems and/or green infrastructure are considered jurisdictional. These systems are regulated under the CWA Section 402 stormwater permit program which allows water to be treated before it is released to a WOTUS. However,

under law, we cannot treat water in a WOTUS, which will automatically cause conflict with the CWA Section 402 program. This, in turn, opens local governments up to citizen suits. Instead, the stormwater system as a whole should be exempt from WOTUS if it is permitted under Section 402. NACo looks forward to working with the agencies to address these challenges.

“Waters of the U.S.” (WOTUS) is a term used in the Clean Water Act to determine what waters and their conveyances fall under federal and state permitting authority. In 2014, EPA and the Army Corps undertook an effort to rewrite and expand the current WOTUS definition. In 2015, the Obama Administration finalized a new definition of WOTUS, which was immediately challenged in the courts. NACo has expressed multiple concerns on the 2015 WOTUS rule's impact on county-owned and maintained roadside ditches, bridges, flood control channels, drainage conveyances and wastewater and stormwater systems and has [called for the final rule to be withdrawn](#) until further analysis and more in-depth consultation with state and local officials be completed.

Currently, the 2015 WOTUS rule is currently in effect in 22 states (California, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia and Washington), while regulations from the 1980s are in effect in the other 28 states. As a result, in February 2017, President Trump released Executive Order (EO) 13778: [Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the “Waters of the U.S.” Rule](#), which instructed the EPA and the Corps to review and rewrite the 2015 WOTUS rule.

For further information, contact: Julie Ufner at 202.942.4269 or jufner@naco.org



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