

June 3, 2016

TO: NRECA Board of Directors
Distribution CEOs
Statewide Managers
G&T Managers

Supreme Court Rules Wetland, Stream Determinations Open to Court Challenge

The U.S. Supreme Court unanimously [ruled](#) that an Army Corps of Engineers jurisdictional determination on whether a project requires a Clean Water Act (CWA) permit can be challenged in court. Upholding a lower court decision, the justices rejected the Corps of Engineers' long-time claim that jurisdictional determinations are not final agency decisions and there are "adequate alternatives" before a court challenge is necessary. Those "adequate alternatives" essentially forced a landowner or cooperative to ignore a CWA determination and risk potential civil and criminal penalties, or pay the expense to get a permit and then file legal challenges. The high court said jurisdictional determinations are binding agency decisions with the same weight as a final agency action under the Administrative Procedure Act and they have major impacts on projects.

The ruling allows landowners and developers to file immediate challenges on questionable CWA determinations and opens opportunities for courts to reject overreaching CWA interpretations. The long-term impact may be more consistent agency decisions. The ruling also opens CWA jurisdictional determinations to potential citizen lawsuits by groups that oppose projects. NRECA was part of a coalition (the Utility Water Act Group) which participated in the case by filing a friend of the court brief supporting the legal challenge.

G&T CEO Highlights Electric Co-ops' Commitment to Reliability, Security, Resilience

Greg Ford, CEO of Georgia Systems Operations Corp., [highlighted how electric co-ops](#) take an active role in electricity sector efforts to ensure grid security and resiliency to cyber and physical threats during a Federal Energy Regulatory Commission (FERC) [conference](#). Ford stressed that co-ops actively work with others in the electricity sector, North American Electric Reliability Corp. and FERC and other government agencies to protect the grid and respond to attacks. Those efforts include voluntary information sharing about grid risks and threats. He emphasized that electric co-ops' top priorities are ensuring an affordable, reliable and secure power supply.

Nationwide Permits Program Renewal includes Power Lines

The Corps of Engineers issued a [proposed rule](#) to renew the Clean Water Act (CWA) Nationwide Permits program with few changes. [Nationwide Permits](#) provide streamlined CWA permitting for specific categories of activities – including some linear projects like construction of power lines – that the agency determines will have only a minimal impact on streams, wetlands, or other Waters of the U.S. (WOTUS). Nationwide Permits must be reviewed and reissued by the Corps every five years. NRECA is reviewing the proposal.

Resolutions Committee to Review 2016 Proposed Resolutions Next Week

The Resolutions Committee holds its annual summer “Issues Meeting” next Friday, June 10, at 8 a.m. (EDT) to consider proposed resolutions submitted by NRECA voting members. The meeting will be [streamed live](#) on Cooperative.com. [Proposals are posted](#) on the Resolutions Committee page on Cooperative.com and NRECA voting members may submit comments to the committee at resolutions@nreca.coop.