

**TOWN COUNCIL OF DEWEY-HUMBOLDT
REGULAR MEETING NOTICE**

Tuesday, August 5, 2014, 6:30 P.M.

**COUNCIL REGULAR MEETING
2735 S. HWY 69**

**COUNCIL CHAMBERS, TOWN HALL
DEWEY-HUMBOLDT, ARIZONA**

AGENDA

The issues that come before the Town Council are often challenging and potentially divisive. In order to make sure we benefit from the diverse views to be presented, the Council believes that the meeting be a safe place for people to speak. With this in mind, the Council asks that everyone refrain from clapping, heckling and any other expressions of approval or disapproval. Council may vote to go into Executive Session for legal advice regarding any matter on the open agenda pursuant to A.R.S. 38-431.03 (A) (3), which will be held immediately after the vote and will not be open to the public. Upon completion of Executive Session, the Council may resume the meeting, open to the public, to address the remaining items on the agenda. Agenda items may be taken out of order. Please turn off all cell phones. The Council meeting may be broadcast via live streaming video on the internet in both audio and visual formats. One or more members of the Council may attend either in person or by telephone, video or internet conferencing. **NOTICE TO PARENTS:** Parents and legal guardians have the right to consent before the Town of Dewey-Humboldt makes a video or voice recording of a minor child. A.R.S. § 1-602.A.9. Dewey-Humboldt Council Meetings are recorded and may be viewed on the Dewey-Humboldt website. If you permit your child to participate in the Council Meeting, a recording will be made. You may exercise your right not to consent by not permitting your child to participate or by submitting your request to the Town Clerk that your child not be recorded.

1. Call To Order.

2. Opening Ceremonies.

2.1. Pledge of Allegiance.

2.2. Invocation.

3. Roll Call. Town Council Members Jack Hamilton, Mark McBrady, Dennis Repan, Sonya Williams-Rowe, Nancy Wright; Vice Mayor Arlene Alen; and Mayor Terry Nolan.

4. Announcements Regarding Current Events, Guests, Appointments, and Proclamations.

Announcements of items brought to the attention of the Mayor not requiring legal action by the Council. Guest Presentations, Appointments, and Proclamations may require Council discussion and action.

5. Town Manager's Report. Update on Current Events.

6. Consent Agenda.

6.1. Minutes. Minutes from the June 24, 2014 "Special" Regular Meeting and July 1, 2014 Regular Meeting.

7. Comments from the Public (on non-agendized items only). The Council wishes to hear from

Citizens at each meeting. Those wishing to address the Council need not request permission or give notice in advance. For the official record, individuals are asked to state their name. Public comments may appear on any video or audio record of this meeting. Please direct your comments to the Council. Individuals may address the Council on any issue within its jurisdiction. At the conclusion of Comments from the Public, Council members may respond to criticism made by those who have addressed the public body, may ask Town staff to review a matter, or may ask that a matter be put on a future agenda; however, Council members are forbidden by law from discussing or taking legal action on matters raised during the Comments from the Public unless the matters are properly noticed for discussion and legal action. A **3** minute per speaker limit may be imposed. The audience is asked to please be courteous and silent while others are speaking.

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8. **Discussion Agenda – Unfinished Business.** Discussion and Possible Action on any issue which was not concluded, was postponed, or was tabled during a prior meeting.

8.1. **Reconsider the motion of approving the June 17th Regular Council meeting minutes with modifications, made at the July 15, 2014 Regular Council meeting. Approve the minutes of June 17, 2014 as presented.**

9. **Discussion Agenda – New Business.** Discussion and Possible Action on matters not previously presented to the Council.

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9.1. **To discuss and support or decline Resolution from Bullhead City, AZ: EPA (proposed) jurisdiction over local waterways.** [CAARF requested by Mayor Nolan]

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9.2. **Whether to invite County Officials to make a presentation about County Sales Tax for new jail.** [CAARF requested by Mayor Nolan]

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9.3. **Request legal advice regarding water issues.**[Council direction upon CM Hamilton July 1st CARRF request]

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9.4. **Seeking approval to contact Town Attorney with Town Manager, to discuss and obtain legal opinion on ethics violation investigations and hearings during election season.** [CAARF requested by VM Alen; council discussion at the July 15 meeting]

9.4.1. **Recess into and hold an executive session** pursuant to A.R.S. § 38-431.03(A)(3) for discussion or consultation for legal advice with the Town Attorney regarding the Town's Ethics Committee, processing complaints of violations of the Code of Ethics, and the Committee's legal obligations in light of upcoming elections.

9.4.2. **Reconvene into Regular Meeting.**

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9.5. **To determine if it is ethical and legal that person who files the complaint can sit on the Ethics Committee and participate on the committee that determines the outcome of the accused.** [CAARF requested by Mayor Nolan]

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9.6. **[Hold] An executive session** pursuant to A.R.S. § 38-431.03(A)(3) for discussion or consultation for legal advice with the Town Attorney regarding public private partnership arrangement, and pursuant to A.R.S. § 38-431.03(A)(4) for discussion or consultation with the Town Attorney in order to consider its position and instruct the Town Attorney and Town Manager regarding a possible public private partnership contractual arrangement for a Main Street Program. [CAARF requested by VM Alen]

9.6.1. **Recess into and hold an executive session** pursuant to A.R.S. § 38-431.03(A)(3) for discussions or consultations for legal advice with the Town Attorney regarding public private partnership arrangement, and pursuant to A.R.S. § 38-431.03(A)(4) for discussion or consultation with the Town Attorney in order to consider its position and instruct the Town Attorney and Town Manager regarding a possible public private partnership contractual arrangement for a Main Street Program.

9.6.2. **Reconvene into Regular Meeting.**

10. Public Hearing Agenda.

THIS CONCLUDES THE LEGAL ACTION PORTION OF THE AGENDA.

11. **Comments from the Public.** The Council wishes to hear from Citizens at each meeting. Those wishing to address the Council need not request permission or give notice in advance. For the official record, individuals are asked to state their name. Public comments may appear on any video or audio record of this meeting. Please direct your comments to the Council. Individuals may address the Council on any issue within its jurisdiction. At the conclusion of Comments from the Public, Council members may respond to criticism made by those who have addressed the public body, may ask Town

staff to review a matter, or may ask that a matter be put on a future agenda; however, Council members are forbidden by law from discussing or taking legal action on matters raised during the Comments from the Public unless the matters are properly noticed for discussion and legal action. The total time for Public Comment is **3** minutes per person. The audience is asked to please be courteous and silent while others are speaking.

12. Adjourn.

For Your Information:

Next Town Council Meeting: Tuesday, August 19, 2014, at 6:30 p.m.

Next Planning & Zoning Meeting: Thursday, August 7, 2014, at 6:00 p.m.

Next Town Council Work Session: Tuesday, August 12, 2014, at 2:00 p.m.

If you would like to receive Town Council agendas via email, please sign up at AgendaList@dhaz.gov and type Subscribe in the subject line, or call 928-632-7362 and speak with Judy Morgan, Town Clerk.

Certification of Posting

The undersigned hereby certifies that a copy of the attached notice was duly posted at the following locations: Dewey-Humboldt Town Hall, 2735 South Highway 69, Humboldt, Arizona, Chevron Station, 2735 South Highway 69, Humboldt, Arizona, Blue Ridge Market, Highway 69 and Kachina Drive, Dewey, Arizona, on the ____ day of _____, 2014, at ____ p.m. in accordance with the statement filed by the Town of Dewey-Humboldt with the Town Clerk, Town of Dewey-Humboldt.
By: _____, Town Clerk's Office.

Persons with a disability may request reasonable accommodations by contacting the Town Hall at 632-7362 at least 24 hours in advance of the meeting.

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**TOWN OF DEWEY-HUMBOLDT
TOWN COUNCIL
SPECIAL "REGULAR" MEETING MINUTES
TUESDAY, JUNE 24, 2014, 6:30 P.M.**

A SPECIAL "REGULAR" MEETING OF THE DEWEY-HUMBOLDT TOWN COUNCIL WAS HELD ON TUESDAY, JUNE 3, 2014, AT TOWN HALL AT 2735 S. HIGHWAY 69, DEWEY-HUMBOLDT, ARIZONA. MAYOR TERRY NOLAN PRESIDED.

1. **Call To Order.** The meeting was called to order at 6:31 p.m. Mayor Nolan presided.
2. **Opening Ceremonies.**
 - 2.1. **Pledge of Allegiance.** Made.
 - 2.2. **Invocation.** Given by Councilmember Nancy Wright.
3. **Roll Call.**
 - 3.1. **Town Council.** Town Council Members Jack Hamilton, Mark McBrady, Dennis Repan, Sonya Williams-Rowe, Nancy Wright; Vice Mayor Arlene Alen; and Mayor Terry Nolan were present.
4. **Announcements Regarding Current Events, Guests, Appointments, and Proclamations.** None.
5. **Town Manager's Report.** Update on Current Events.
None.
6. **Consent Agenda.**
 - 6.1. **Minutes.** Minutes from the May 13, 2014 Special Budget Workshop #3.
Mayor Nolan made a motion to approve the May 13, 2014 Special Budget Workshop #3 Minutes as presented, seconded by Councilmember Williams-Rowe seconded. It was approved unanimously.
7. **Comments from the Public (on non-agendized items only).** Jerry Brady spoke on Old Balck Canyon Highway and the history of secondary National Defense Highway roads. He recommended the town communicate with the US Secretary of Defense for information on the road.
8. **Discussion Agenda – Unfinished Business.** Discussion and Possible Action on any issue which was not concluded, was postponed, or was tabled during a prior meeting.
None.
9. **Discussion Agenda – New Business.** Discussion and Possible Action on matters not previously presented to the Council.
 - 9.1. **Fiscal Year 2014-2015 Budget Adoption Resolution 14-112.** Possible adoption, rejection and /or postponing adoption.
Councilmember Hamilton asked questions on the budget and asked for clarification on some items that still showed up in the document but were removed by the Council by vote (e-devices). Accountant, Deni Thompson explained that would be removed on Monday and she was at this meeting to make notes on anything that needs to be fixed. She explained she had responded to CM Hamilton's earlier submitted questions by email Monday.

CM Hamilton asked about updating the 6-year road plan; whether the \$10k for OSAT was for a project or a placeholder; excess revenue of \$6,495; where in the budget vehicle purchase was; including line items in the budget. Mayor Nolan explained the \$10 for OSAT was just a placeholder, not a specific project. Ms. Thompson responded to the questions on the 6-year road plan, and excess revenues by explaining they were answered in her email to him. She explained the vehicle purchase would be a capital outlay.

Mayor Nolan made a motion to postpone the approval of the budget until July 1st Regular Meeting when Town Manager Kimball is back, seconded by Councilmember Hamilton.

Public comment was taken on this item.

Jerry Brady spoke on considering before approving the budget unfunded liabilities that need to be addressed and OBC Highway maintenance.

Councilmember Wright spoke on the truck purchase and other potential purchase of property and water survey being covered under cost overrun contingency. Accountant Thompson agreed that this sounded right.

Councilmember Hamilton withdrew his second on the motion, Mayor Nolan agreed to withdraw his motion.

Councilmember Repan state this budget was fundamentally flawed, since they should have had complete consensus when voting on things. No real effort to negotiation was made on those issues receiving a split vote.

There was discussion on this comment.

Councilmember Hamilton stated he would vote “no” on the budget as he was against the format of the budget, wanting separate line items for many specific items. There was discussion on why this wasn’t done (this detail is available on the monthly financial reports); why certain Council Members wanted it done (historical data and at end of year see what they spent on chip seal and fog seal etc., broken out). Accountant Thompson spoke on the difference between governmental accounting and a budget. Mayor Nolan explained the budget is a guesstimate while the financial statements are the actuals of what was spent.

Mayor Nolan made a motion to approve Resolution 14-112 adopting the FY2014-15 budget, seconded by Vice Mayor Alen.

Councilmember Repan spoke on there still being quite a few items on the budget he would like to go back and look at.

A vote was taken on the motion which failed by a 1-6 vote, Councilmembers Hamilton, McBrady, Repan, Williams-Rowe, Wright and Vice Mayor Alen voting against.

Mayor Nolan explained this item will come back before the Council at the July 1, 2014 Regular meeting.

9.2. Yavapai County Elections Service Agreement. Possible adoption, rejection, adoption with modification and/or postponing adoption.

Town Clerk, Judy Morgan gave an overview and explained some of the complications regarding the IGA (Attorney’s problem with the indemnification clauses).

Councilmember Hamilton made a motion to approve the IGA as presented, seconded by Councilmember Repan. It was approved unanimously.

9.3. Yavapai County Annual Unified Emergency Management Intergovernmental Agreement. Possible adoption, rejection, adoption with modification and/or postponing adoption.

Councilmember Repan made a motion to approve the Yavapai County Annual Unified Emergency Management IGA, seconded by Vice Mayor Alen.

Public comment was taken on this item.

Jerry Brady spoke on the importance of the IGA and on the firefighter safety initiative, recommending they contact Prescott regarding their IGA regarding NFPA 1500.

A vote was taken on the motion. It was approved unanimously.

10. Comments from the Public.

Jerry Brady spoke on historical frauds related to Old Black Canyon Highway. He moved to republish the information disclosed for publication to the U.S. Supreme Court in 1934 to see how the Council's current conduct on accountability and financial management conforms to what the U.S. Supreme Court did not decide until 1934 on the basis of the 1871 event (adjudication).

11. Adjourn. The meeting was adjourned at 7:23 p.m.

Terry Nolan, Mayor

ATTEST:

Judy Morgan, Town Clerk

**TOWN OF DEWEY-HUMBOLDT
TOWN COUNCIL
REGULAR MEETING MINUTES
TUESDAY, JULY 1, 2014, 6:30 P.M.**

A REGULAR MEETING OF THE DEWEY-HUMBOLDT TOWN COUNCIL WAS HELD ON TUESDAY, JULY 1, 2014, AT TOWN HALL AT 2735 S. HIGHWAY 69, DEWEY- HUMBOLDT, ARIZONA. MAYOR TERRY NOLAN PRESIDED.

1. **Call To Order.** The meeting was called to order at 6: 32 p.m.
2. **Opening Ceremonies.**
 - 2.1. **Pledge of Allegiance.** Made.
 - 2.2. **Invocation.** Given by Councilmember Nancy Wright.
3. **Roll Call.** Town Council Members Jack Hamilton, Mark McBrady, Dennis Repan, Sonya Williams-Rowe, Nancy Wright; Vice Mayor Arlene Alen; and Mayor Terry Nolan were present.
4. **Announcements Regarding Current Events, Guests, Appointments, and Proclamations.**
None.
5. **Town Manager's Report.** Update on Current Events.
Town Manager Kimball announced vandalism that occurred at the Town's park that morning (tree cut down, gazebo damaged, etc.) The incident was reported to the Sheriff's office and Town's liability insurance company. She explained they will attempt to repair the gazebo but may not be able to.
6. **Consent Agenda.** None.
7. **Comments from the Public (on non-agendized items only).**
Sandy Geiger requested the Council consider adopting an ordinance restricting or confining any pet including cats and rabbits to the owner's property.
8. **Discussion Agenda – Unfinished Business.** Discussion and Possible Action on any issue which was not concluded, was postponed, or was tabled during a prior meeting.
 - 8.1. **Fiscal Year 2014-2015 Budget Adoption Resolution 14-112.** Possible adoption, rejection and/or postponing adoption.
Town Manager Kimball gave an overview explaining all the council's questions have been answered, replacement pages provided and the fiscal year started today. She asked Council to adopt the FY2014-15 budget.
Councilmember Hamilton explained he changed his prior expectation to include specific line items and was satisfied with how the budget is presented. He apologized for any problem he created.
Councilmember Repan asked about the whether the road maintenance would be increased the same this year as last. Town Manager Kimball explained no additional monies were allocated to cover an increase in the maintenance but \$20k was added for the increase in maintenance costs (oil/fuel costs). They are continuing on a systematic cycle.
There was more discussion on council's expectations regarding increasing the level of maintenance on the roads. Ms. Kimball explained the plan is being monitored and they have seen some savings but work is being added as they can, such as drainage work done in advance of the chip seal.

Councilmember Hamilton made a motion to approve the adoption of resolution 14-112 adopting the Fiscal Year 2014-2015 Budget, seconded by Councilmember Williams-Rowe. It was approved unanimously.

9. Discussion Agenda – New Business. Discussion and Possible Action on matters not previously presented to the Council.

9.1. Mayor Nolan seeking approval from Council an invitation for the Mayors in the Prescott Quad-Cities to “help start the walk for the March of Dimes March for Babies on September 6, 2014”.

Mayor Nolan gave an overview on his request. Council discussed how this might benefit the town and what the Mayor was being asked to do. Mayor Nolan explained it was for a ceremonial start of the walk, not the walk itself.

Councilmember Repan made a motion to approve Mayor Nolan’s attendance for the ceremonial opening for the walk for the March of Dimes, March for Babies, seconded by Councilmember McBrady. It was approved by a 6-1 vote in favor, Councilmember Hamilton voting against.

9.2. Contact APS about helping us do a property inventory. [CAARF requested by Mayor Nolan]

Mayor Nolan gave an overview, explaining when they went through the economic development studies it was recommended to do a property inventory along the highway.

There was discussion on what properties would be inventoried, how it gets handled when a property owner doesn’t wish to participate in the process and the purpose for the property inventory.

Mayor Nolan explained it would be the properties along the highway corridor and the purpose is for economic development.

Council wanted to know why the town would be involved, how the process works, cost, etc.

Councilmember Wright made a motion to have staff contact APS to come and do a presentation on property inventorying, seconded by Vice Mayor Alen.

Public comment was taken on this item.

Bart Brush asked why APS would do the inventory rather than the County. Mayor Nolan explained since they provide electricity to all who develop they have that information available and offer this as a tool for Council when they do a General Plan update.

The motion passed by a unanimous vote in favor.

9.3. Request Legal Advice Regarding Water Issues. [CAARF requested by CM Hamilton]

Councilmember Hamilton gave an overview explaining the Council approved up to \$25k to do a water study. He wanted legal answers prior to doing a water study since the study will not answer legal questions.

There was discussion on the legal aspects of a water study, gift clause concerns if the town is not interested in purchasing the water company and what sort of data will come from the WAC for the study.

Councilmember Wright wanted the question asked, “Town has no water assets so it is a violation of the gift clause spending money on something that isn’t a town asset?”.

Councilmember Wright made a motion to put this on an agenda when the attorney can attend and ask as many of these water questions, including Councilmember Wright's, sending the questions in advance, seconded by Councilmember Hamilton.

Councilmember McBrady suggested this wait until after the election so those people elected can start through this process. Town Manager Kimball spoke on how full the next agenda was and Council reviewed the list of tentative agenda items. She explained she could answer many of the questions being asked based on her experience and offered to talk with CM Hamilton.

A vote was taken on the motion which passed by a 4 -3 vote in favor, Councilmembers McBrady, Williams-Rowe and Mayor Nolan voting against.

10. Public Hearing Agenda. None.

11. Comments from the Public. Bart Brush spoke on the vandalism at the park being similar to vandalism at the school last fall where an 11 or 12 year old was questioned regarding it.

12. Adjourn. The meeting was adjourned at 7:33 p.m.

Terry Nolan, Mayor

ATTEST:

Judy Morgan, Town Clerk

**TOWN OF DEWEY-HUMBOLDT
TOWN COUNCIL
REGULAR MEETING MINUTES
TUESDAY, JUNE 17, 2014, 6:30 P.M.**

A REGULAR MEETING OF THE DEWEY-HUMBOLDT TOWN COUNCIL WAS HELD ON TUESDAY, JUNE 17, 2014, AT TOWN HALL AT 2735 S. HIGHWAY 69, DEWEY- HUMBOLDT, ARIZONA. MAYOR TERRY NOLAN PRESIDED.

1. **Call To Order.** The meeting was called to order at 6:31 p.m.
2. **Opening Ceremonies.**
 - 2.1. **Pledge of Allegiance.** Made.
 - 2.2. **Invocation.** Given by Councilmember Nancy Wright.
3. **Roll Call.** Town Council Members Jack Hamilton, Mark McBrady, Dennis Repan, Sonya Williams-Rowe, Nancy Wright; Vice Mayor Arlene Alen; and Mayor Terry Nolan were present.
4. **Announcements Regarding Current Events, Guests, Appointments, and Proclamations.**

None.
5. **Town Manager's Report.** Update on Current Events.
 - 5.1. **Town Community Development Department staffing status as it relates to the existing functions of Planning and Zoning, Code Enforcement and new functions of Building Safety.**

Town Manager Kimball gave an update on the Community Development Department staffing. Connie Dedrick has been brought in (Part-time) for Planning and Zoning issues. Building Inspections and plan review have been brought in-house. Terry Ford has been hired as the Building Official/Inspector (Part-time) to perform these duties and head the transition and set-up for the department. Ms. Kimball thanked staff for their help.
6. **Consent Agenda.**
 - 6.1. **Minutes.** Minutes from the April 22, 2014 Special Budget Workshop #1, April 29, 2014 Special Budget Workshop #2, May 6, 2014 Regular Meeting, May 12, 2014 Special "ULI" Session and June 10, 2014 Work Session.

Vice Mayor Alen made a motion to approve consent agenda for minutes from the April 22, 2014 Special Budget Workshop #1, April 29, 2014 Special Budget Workshop #2, May 6, 2014 Regular Meeting, May 12, 2014 Special "ULI" Session and June 10, 2014 Work Session, as presented. Mayor Nolan seconded the motion. It was approved unanimously.
7. **Comments from the Public (on non-agendized items only).**

None.
8. **Public Hearing Agenda.**
 - 8.1. **Public Hearing on the FY2014-15 Budget.**

Mayor Nolan opened the public hearing on the FY2014-15 Budget at 6:37 p.m.

David Nystrom, Board of Directors and Secretary of the Dewey-Humboldt Historical Society, spoke on the Council's consideration of the DHHS museum rent grant request of \$7200 and his appreciation for the Council approving that request. He recommended Council ratify the budget with that item.

Carl Marsee, with the Dewey-Humboldt Historical Society thanked the Council for their consideration of the museum rent grant request on the 2015 budget.

No more comments were received so the public hearing was closed at 6:39 p.m.

Mayor Nolan explained the Council's budget deliberations were finalized earlier that day with adoption set for next Tuesday, June 24, 2014.

9. **Discussion Agenda – Unfinished Business.** Discussion and Possible Action on any issue which was not concluded, was postponed, or was tabled during a prior meeting.

None.

10. **Discussion Agenda – New Business.** Discussion and Possible Action on matters not previously presented to the Council.

10.1. FY14-15 Budget discussion and possible adoption through Resolution 11-112.

Possible adoption, rejection and /or postponing adoption.

The budget adoption (resolution 11-112) was moved to a special “regular” Council meeting on June 24th at 6:30 p.m.

10.2. Building Safety Services Intergovernmental Agreement (IGA) with Yavapai County Development Services. Possible adoption, rejection, adoption with modification and /or postponing adoption.

Town Manager Kimball spoke on the IGA being for Building Services “as needed” to cover anything unexpected. One minor modification she recommended was on the 1st page of the agreement (1.5) deleting Article 7-4 and changing it to per Town Code.

Councilmember Repan made a motion to approve the Building Safety Services Intergovernmental Agreement with Yavapai County Development Services, as presented. It was seconded by Vice Mayor Alen. It passed unanimously.

11. **Comments from the Public.** None.

12. **Adjourn.** The meeting was adjourned at 6:44 p.m.

Terry Nolan, Mayor

ATTEST:

Judy Morgan, Town Clerk



TOWN OF DEWEY-HUMBOLDT
P.O. BOX 69
HUMBOLDT, AZ 86329
Phone 928-632-8562 • Fax 928-632-7365

COUNCIL AGENDA ACTION REQUEST FORM

Meeting Type: Regular Special Work Session

Meeting Date: 8-5-14

Date of Request: 7-15-14

Requesting: Action Discussion or Report Only

Type of Action: Routine/Consent Agenda Regular

Agenda Item Text (a brief description for placement on the agenda; please be exact as this will be the wording used for the agenda):

To discuss & support or decline resolution from Bullhead City jurisdiction over local waterways

Purpose and Background Information (Detail of requested action).

The Army Corp of Engin new rules to govern Federal Clean Water Act jurisdiction

Staff Recommendation(s): _____

Budgeted Amount: 2

List All Attachments: see Attachment's Bullhead City Res 40 2014-R

Type of Presentation: oral and supporting doc.

Special Equipment needed: Laptop Remote Microphone
 Overhead Projector Other: _____

Contact Person: Mayor Nolan

Note: Per Town Code §30.105(D): Any new item will be placed under "New Business" for the council to determine its disposition. It can be acted upon at that meeting, sent to staff for more work, sent to the appropriate board or commission, set for a work session or tabled for a future date, etc.

RESOLUTION NO. 2014-R-40

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL
OF THE CITY OF BULLHEAD CITY, ARIZONA,
OBJECTING TO THE ENVIRONMENTAL PROTECTION
AGENCY'S PROPOSED RULE REGARDING CLEAN
WATER ACT JURISDICTION.**

WHEREAS, the Environmental Protection Agency ("EPA") has proposed a new rule which could expand the jurisdiction of the EPA over local waters far beyond what could credibly be considered Congress' intent; and

WHEREAS, the City Council of the City of Bullhead City, Arizona, strongly opposes any expansion of federal jurisdiction that stands to cause adverse impacts to landowners, businesses, and the economy of Bullhead City; and

WHEREAS, with questionable rationale, the proposal includes expanding the definitions of existing regulatory categories as well as adding vague terminology and new definitions regulating areas that have not been jurisdictional under current regulations, including for example, that *all* tributaries of traditional navigable or interstate waters have a significant nexus to such waters and are therefore subject to regulation under the Clean Water Act, regardless of distance, size, function, or amount and regularity of flow; and

WHEREAS, EPA also proposes to include "natural, man-altered, or man-made" in the new definition of tributary, appearing that the EPA is basing its categorical classification of tributaries as "waters of the U.S.", regardless of their size, amount of flow and distance from a traditional navigable water, on the significant nexus test articulated by Justice Kennedy in his concurring opinion in *Rapanos v. United States*, 547 U.S. 715 (2006), which was meant to be applied in a site-specific analysis; and

WHEREAS, in the City of Bullhead City, the vast majority of "waters" are desert washes that are part of ephemeral systems that flow into the Colorado River; and

WHEREAS, under this proposal, every small ephemeral system of limited function, remote from traditional navigable or interstate waters, and with no practical ability to influence the physical, chemical, or biological integrity of those downstream waters, could be regulated; and

WHEREAS, these desert systems are ubiquitous in the City of Bullhead City's landscape and can apparently remain jurisdictional even if upstream of a natural or man-made break, and unlike other states, Arizona is literally crisscrossed with man-made canals that are essential for critical water delivery; and

WHEREAS, under EPA's proposed assumptions, it is possible that every mile of these canals, including those that are currently not jurisdictional, will fall under Clean Water Act regulation; and

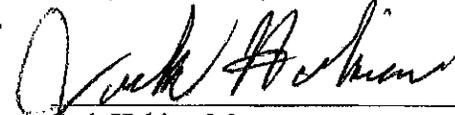
WHEREAS, taken together, it is easy to see the additional regulatory burden that the rule as proposed would create on industries that comprise the very backbone of the city's economy such as home building and construction would be adversely affected; and .

WHEREAS, like few places in the country, Arizonans know the need to protect and manage its precious water resources, and unfortunately, the current EPA proposal dramatically expands federal jurisdiction and will likely yield only the next step in an unnecessarily iterative process and create significant regulatory uncertainty; and

WHEREAS, troublingly, concerns unique to the arid Southwest in general, and Arizona in particular, have been given short shrift and merit additional analysis.

NOW THEREFORE BE IT RESOLVED, by the Mayor and City Council of the City of Bullhead City, Mohave County, Arizona, that it finds significant flaws in the proposed rule and supporting scientific analysis and as such, it strongly urges the EPA to abandon the current proposed rule and develop a meaningful proposal for evaluation, that at a minimum, limits federal jurisdiction and provides clarity and consistency for the regulated community.

PASSED AND ADOPTED by the Mayor and City Council of the City of Bullhead City, Arizona this 1st day of July 2014.



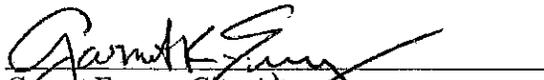
Jack Hakim, Mayor
Date: 7-3-14

ATTEST:



Susan Stein, CMC, City Clerk

APPROVED AS TO FORM:



Garnet Emery, City Attorney

EPA, Army Corps Propose New Rule to Govern Federal Clean Water Act Jurisdiction

Intended to clarify confusion from prior US Supreme Court decisions, the rules could have far-reaching implications for many stakeholders.

The US Environmental Protection Agency (EPA) and the US Army Corps of Engineers (Corps) jointly released a proposed rule on March 25, 2014 which would represent the most sweeping change in a generation to the rules governing federal Clean Water Act (CWA) jurisdiction. Federal jurisdiction under the CWA extends to a variety of activities including dredging, filling, discharging pollutants, reporting hazardous substances releases and oil spill control. Stakeholders of all types — industry, agriculture, real estate development, oil and gas, utilities and municipal government — will want to remain informed of the scope of the proposed changes and their impact on business practices, regulated activity and environmental protection. This *Client Alert* summarizes the provisions of the proposed rule and provides a comparison with the current regulatory regime. The agencies are soliciting comments, which may be submitted within 90 days when the formal comment period opens upon publication of the proposed rule in the Federal Register. Publication had not yet occurred as of Monday, April 7, 2014.

Key Takeaways

The release of the proposed rule presages yet another period of intense debate on the reach of the CWA. By rolling up three decades of jurisprudence and agency interpretation into an omnibus rule, the agencies may be inviting a future, broad-based rulemaking challenge, with the potential to settle a variety of persisting issues. Key takeaways from the agencies' announcement include:

- **Landscape Jurisdiction:** The proposed rule arguably sweeps into its ambit not only lands that are wet and, in many cases, without bed and banks, but also associated lowlands and transitional zones between open waters and upland areas. New definitions including the new concept of "a single landscape unit" leave ambiguity about what portion of each watershed is beyond the reach of federal regulators under the CWA. The agencies state that the proposed rule respects state and local land use authority; however, real-world implementation of the proposed rule possibly could erode local authority.
- **Upland Features:** The proposed rule exempts ditches cut into uplands from CWA jurisdiction, but does not clearly state whether other features cut into uplands, including municipal and private storm drain systems and construction sites located in upland areas, are similarly exempt. Likewise, the proposed rule does not contain a definition of the term "upland" whereas it provides new definitions for several other key terms.

- **“Significant Nexus” as Legal Term of Art or Scientific Term:** The proposed rule interprets “significant nexus” as a uniquely scientific term, finding jurisdiction wherever science supports such a nexus. This interpretation is founded on the draft version of an EPA report synthesizing published peer-reviewed scientific literature on the nature of connectivity and the effects of streams and wetlands on downstream waters. The final version of this report has not yet been published; EPA has said that it will not finalize the proposed rule until the final version of the report is published. The US Supreme Court arguably had something more practical in mind, as the nexus concept grew out of the 1985 decision finding wetlands “inseparably bound” to traditionally navigable waters to be jurisdictional. The Supreme Court expressed reluctance to extending CWA jurisdiction over “lands” not so situated — even those that are wet. The origins of this legal term of art suggest a common sense plain meaning of “significant,” so as to make the jurisdictional reach of the CWA simpler to discern for practitioners and landowners. Whether the Supreme Court will agree that science-driven nexus is a touchstone for jurisdiction remains to be seen.
- **Navigability and “Significant Nexus”:** Supreme Court precedent arguably did not extend “significant nexus” to the entire category of “other waters.” The agencies argue that an extrapolation to the category is warranted. In so doing, the agencies may be reading the concept of navigability too far out of the Act, especially as the Supreme Court has said the term must be given its place.
- **Agencies’ Public Rollout:** The EPA and the Corps have embarked on a public process for presenting the proposed rule, including the rationale for the proposed changes. The agencies have said that the proposed changes are meant to respond to uncertainty created by Supreme Court decisions interpreting the CWA term “navigable waters.” EPA Administrator Gina McCarthy’s statements have struck what arguably could be characterized as a dismissive tone towards those decisions. Of course, the Supreme Court may in the future have an opportunity to weigh in on the proposed rule now being circulated by EPA.

The agencies currently are in the process of gathering input on the proposed rule from interested parties and are holding discussions across the country¹ On April 7, 2014, EPA hosted a webcast on the “Waters of the U.S. Proposed Rule” during which Nancy Stoner, Acting Assistant Administrator, Office of Water, EPA, and Donna Downing, Jurisdiction Team Leader, Wetlands Division, EPA, presented on the proposed rule and responded to questions. Questions focused generally on the scope of the proposed rule, clarification regarding various terms and the effect of the proposed rule on current jurisdictional exemptions. The questions also revealed ongoing concern that the proposed rule is an unwarranted administrative expansion of Clean Water Act jurisdiction. The speakers noted that the proposed rule should be published in the Federal Register during the week of April 7, and two public teleconferences on April 28 and May 2 will be held to take input on the EPA report regarding its proposed science-based interpretation of “significant nexus.”²

Supreme Court Precedent

The proposed rule purports to rely on three key Supreme Court decisions over the last three decades that have addressed the scope of “waters of the United States” regulated under the CWA.

- In *United States v. Riverside Bayview Homes*, 474 U.S. 121 (1985), a unanimous decision upheld CWA authority over wetlands adjacent to navigable-in-fact open waters.
- In *Solid Waste Agency of Northern Cook County (SWANCC) v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) the issue of the scope of “waters of the United States” rose before the Supreme Court again. In a 5-4 decision, the Court held Congress did not authorize the agencies to regulate

isolated, intrastate waters. Relying on *Riverside Bayview Homes*, the Court found that there must be a "significant nexus" to traditionally navigable waters, including a Commerce Clause connection far stronger than the Migratory Bird Rule invalidated by the decision.

- In *Rapanos v. United States*, 547 U.S. 715 (2006), the Court reached the term "waters of the United States" in a situation that involved wetlands that were neither wholly isolated, nor inseparably bound with navigable-in-fact open waters. A four-vote plurality of the Court held that "navigable waters" regulated under the CWA are limited to "only those relatively permanent, standing or continuously flowing bodies of water 'forming geographic features,'" such as streams, oceans, rivers and lakes. Wetlands with a "continuous surface connection" to such bodies of water, so that "there is no clear demarcation between them," are "adjacent to" such water bodies and also are covered. Justice Kennedy concurred in the judgment of the plurality, but did so on different grounds, relying on the "significant nexus" test that the Court articulated in *SWANCC* and the significant ecological functions that wetlands adjacent to tributaries can serve.³

What the Agencies Are Saying

EPA and the Corps state that the *SWANCC* and *Rapanos* decisions "resulted in the agencies evaluating the jurisdiction of waters on a case-specific basis far more frequently than is best for clear and efficient implementation of the CWA" and that, through this rulemaking, the "agencies are providing clarity to regulated entities as to whether individual water bodies" are or are not jurisdictional and discharges are or are not subject to permitting.⁴ EPA Administrator Gina McCarthy noted the need to clarify the CWA, which has been "bogged down by confusion" caused by the Supreme Court's decisions in *SWANCC* and *Rapanos*.⁵ She states these cases have "muddled everyone's understanding" of what waters are covered under the CWA, particularly with respect to smaller interconnected streams and wetlands.⁶ She states further that the proposed rule makes clear that most seasonal and rain-dependent streams, as well as wetlands near rivers and streams, are protected, while other types of waters with more uncertain connections with downstream water will be evaluated on a case-specific basis.⁷

The agencies also repeatedly have asserted that the proposed rule "will not add to or expand the scope of waters historically protected under the CWA."⁸ This issue came up several times during the EPA and Corps budget hearings on March 26 and March 27, 2014. In contrast, Congressman Ken Calvert (R-CA) remarked that the proposed rule is "the greatest expansion of federal control over land and water resources in the 42-year history of the Clean Water Act," and could subject "every small business and farmer...to EPA fines if they disturb a puddle on their land."⁹ Similarly, Congressman Hal Rogers (R-KY) argued that the proposed rule "will place strict new standards on thousands of miles of streams in this country."¹⁰

Addressing these concerns, the agencies have underscored what the proposed rule will *not* do as much as they have articulated what it will do. EPA's website states that the proposed rule does not protect new types of waters, broaden CWA's coverage, regulate groundwater, or expand jurisdiction over ditches.¹¹ Administrator McCarthy explained that the proposed rule does not regulate groundwater or tile drainage systems, or increase the regulation of irrigation or drainage ditches.¹² She added that the proposed rule not only keeps intact existing exemptions for agricultural activities, but expands them by exempting 53 additional conservation practices.¹³

The Proposed Rule

Specifically, the CWA's jurisdiction reaches all "navigable waters," which are defined in section 502(7) of the Act as "waters of the United States, including the territorial seas."¹⁴ The proposed rule would overhaul

the definition of "waters of the United States" in the administrative regulations which implement the various sections and programs of the Act.

Affected Programs/Regulations

The new definition of "waters of the United States" would apply to the following programs administered by EPA, the Corps and the states:

- The section 303 water quality standards and total maximum daily load programs
- The section 311 oil spill prevention and response program
- The section 401 state water quality certification process
- The section 402 National Pollutant Discharge Elimination System (NPDES) permit program
- The section 404 permit program for the discharge of dredged or fill material into navigable waters

The proposed rule proposes identical language for 11 sections of the Code of Federal Regulations; nine containing CWA regulations, and the other two containing regulations for administration of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Oil Pollution Act (OPA) and the CWA:

- Clean Water Act Regulations
 - 33 CFR § 328.3 (*Army Corps of Engineers regulations for implementation of Clean Water Act*)
 - 40 CFR § 110.1 (*EPA regulations for discharge of oil*)
 - 40 CFR § 112.2 (*EPA regulations for oil pollution prevention*)
 - 40 CFR § 116.3 (*EPA regulations for designation of hazardous substances*)
 - 40 CFR § 117.1 (*EPA regulations for determination of reportable quantities for hazardous substances*)
 - 40 CFR § 122.2 (*EPA regulations for the NPDES program*)
 - 40 CFR § 230.3(s) (*EPA regulations for section 404(b)(1) guidelines for specification of disposal sites for dredged or fill material*)
 - 40 CFR § 232.2 (*EPA regulations for exempt activities not requiring section 404 permits*)
 - 40 CFR § 401.11 (*EPA regulations for effluent guidelines and standards*)
- CERCLA/OPA/CWA Regulations
 - 40 CFR § 300.5 and app. E to part 300, sec. 1.5 (*EPA regulations for the National Oil and Hazardous Substances Pollution Contingency Plan (NCP)*)
 - 40 CFR § 302.3 (*EPA regulations for designation, reportable quantities and notification under CERCLA and the Clean Water Act*)

Proposed Definition

In all 11 sections, the proposed rule would change the definition of "waters of the United States" to read as follows:

(a) For purposes of all sections of the Clean Water Act, 33 U.S.C. 1251 et. seq. and its implementing regulations, subject to the exclusions in paragraph (b) of this section, the term "waters of the United States" means:

(1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(2) All interstate waters, including interstate wetlands;

(3) The territorial seas;

(4) All impoundments of waters identified in paragraphs (a)(1) through (3) and (5) of this section;

(5) All tributaries of waters identified in paragraphs (a)(1) through (4) of this section;

(6) All waters, including wetlands, adjacent to a water identified in paragraphs (a)(1) through (5) of this section; and

(7) On a case-specific basis, other waters, including wetlands, provided that those waters alone, or in combination with other similarly situated waters, including wetlands, located in the same region, have a significant nexus to a water identified in paragraphs (a)(1) through (3) of this section.

Exclusions

In all 11 sections, the new language also would specifically exclude the following from the "waters of the United States" definition:

(b) The following are not "waters of the United States" notwithstanding whether they meet the terms of paragraphs (a)(1) through (7) of this section --

(1) Waste treatment systems, including treatment ponds or lagoons, designed to meet the requirements of the Clean Water Act.

(2) Prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act the final authority regarding Clean Water Act jurisdiction remains with EPA.

(3) Ditches that are excavated wholly in uplands, drain only uplands, and have less than perennial flow.

(4) Ditches that do not contribute flow, either directly or through another water, to a water identified in paragraphs (a)(1) through (4) of this section.

(5) The following features:

(i) Artificially irrigated areas that would revert to upland should application of irrigation water to that area cease;

(ii) artificial lakes or ponds created by excavating and/or diking dry land and used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing;

(iii) artificial reflecting pools or swimming pools created by excavating and/or diking dry land;

(iv) small ornamental waters created by excavating and/or diking dry land for primarily aesthetic reasons;

(v) water-filled depressions created incidental to construction activity;

(vi) groundwater, including groundwater drained through subsurface drainage systems; and

(vii) gullies and rills and non-wetland swales.

Defined Terms

Finally, the proposed rule would also establish a new set of seven defined terms for use in interpreting the jurisdictional reach of "waters of the United States," in all 11 sections, as follows:

(c) Definitions --

(1) Adjacent: The term adjacent means bordering, contiguous or neighboring. Waters, including wetlands, separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are "adjacent waters."

(2) Neighboring: The term neighboring, for purposes of the term "adjacent" in this section, includes waters located within the riparian area or floodplain of a water identified in paragraphs (a)(1) through (5) of this section, or waters with a shallow subsurface hydrologic connection or confined surface hydrologic connection to such a jurisdictional water.

(3) Riparian area: The term riparian area means an area bordering a water where surface or subsurface hydrology directly influence the ecological processes and plant and animal community structure in that area. Riparian areas are transitional areas between aquatic and terrestrial ecosystems that influence the exchange of energy and materials between those ecosystems.

(4) Floodplain: The term floodplain means an area bordering inland or coastal waters that was formed by sediment deposition from such water under present climatic conditions and is inundated during periods of moderate to high water flows.

(5) Tributary: The term tributary means a water physically characterized by the presence of a bed and banks and ordinary high water mark, as defined at 33 CFR § 328.3(e), which contributes flow, either directly or through another water, to a water identified in paragraphs (a)(1) through (4) of this section. In addition, wetlands, lakes, and ponds are tributaries (even if they lack a bed and banks or ordinary high water mark) if they contribute flow, either directly or through another water to a water identified in paragraphs (a)(1) through (3) of this section. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if, for any length, there are one or more man-made breaks (such as bridges, culverts, pipes, or dams), or one or more natural breaks (such as wetlands at the head of or along the run of a stream, debris piles, boulder fields, or a stream that flows underground) so long as a bed and banks and an ordinary high water mark can be identified upstream of the break. A tributary, including wetlands, can be a natural, man-altered, or man-made water and includes waters such as rivers, streams, lakes, ponds, impoundments, canals, and ditches not excluded in paragraphs (b)(3) or (4) of this section.

(6) Wetlands: The term wetlands means those areas that are 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 generally include swamps, marshes, bogs and similar areas.

(7) Significant nexus: The term significant nexus means that a water, including wetlands, either alone or in combination with other similarly situated waters in the region (i.e., the watershed that drains to the nearest water identified in paragraphs (a)(1) through (3) of this section),

significantly affects the chemical, physical, or biological integrity of a water identified in paragraphs (a)(1) through (3) of this section. For an effect to be significant, it must be more than speculative or insubstantial. Other waters, including wetlands, are similarly situated when they perform similar functions and are located sufficiently close together or sufficiently close to a "water of the United States" so that they can be evaluated as a single landscape unit with regard to their effect on the chemical, physical, or biological integrity of a water identified in paragraphs (a)(1) through (3) of this section.

The existing regulatory definitions of "high tide line," "ordinary high water mark" and "tidal waters" are not proposed to change.¹⁵ Similarly, the term "wetlands" would not be redefined from existing regulations.

Structure of the Proposed Regulations

The proposed rule creates a clear duality in the jurisdictional reach of the CWA between "waters of the United States" by rule and "waters of the United States" as determined by a case-by-case analysis. All categories are subject to exclusions, meaning that certain specified waters are excluded from regulation even if they would otherwise be included within one of the seven categories.

"Waters of the United States" by Rule

Six categories of waterbodies would be "waters of the United States" by rule (e.g., *per se* jurisdictional waters), and would fall under the jurisdiction of the CWA with no additional analysis required. These waterbodies are traditional navigable waters or that unquestionably share a significant nexus to navigable waters:

- Traditional navigable waters - All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide
- Interstate waters - All interstate waters, including interstate wetlands
- The territorial seas
- Impoundments - All impoundments of a traditional navigable water, interstate water, the territorial seas or a tributary
- Tributaries - All tributaries of a traditional navigable water, interstate water, the territorial seas or impoundment
- Adjacent waters - All waters, including wetlands, adjacent to a traditional navigable water, interstate water, the territorial seas, impoundment or tributary

"Other Waters" Require Case-specific Analysis

An additional category, "other waters," consists of waterbodies not covered by the first six categories, which are not themselves navigable waters and may or may not share a significant nexus to navigable waters in and of themselves. Based on EPA's study of scientific evidence regarding the connectivity of streams and wetlands to downstream waters,¹⁶ the proposed rule requires waterbodies in this seventh category to undergo a case-by-case analysis to determine whether the requisite significant nexus exists. These "other waters" may be regulated if they, alone — or in combination — with other similarly situated waters located in the same region, share a "significant nexus" to a traditional navigable water, interstate water or territorial sea.

"Significant nexus" as the proposed rule would define, would mean that the water at issue significantly affects the chemical, physical or biological integrity of a traditional navigable, interstate water or territorial sea. "Significant effects" must be more than speculative or insubstantial. "Similarly situated waters" are

those that perform similar functions and are located sufficiently close together or sufficiently close to a "water of the United States" so that they can be evaluated as a single landscape unit with respect to their effect on the chemical, physical or biological integrity of a traditional navigable water, interstate water or territorial sea. The "region" is the watershed that drains to the nearest traditional navigable water, interstate water or territorial seas.

Comparison with Existing Regulations

The most significant textual change between the existing rule and the proposed rule is the proposed deletion of subpart (a)(3) of the existing definition, which includes:

all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters: (i) which are or could be used by interstate or foreign travellers for recreational or other purposes; or (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or (iii) which are used or could be used for industrial purpose by industries in interstate commerce.¹⁷

According to the regulatory preamble, these "other waters" under the proposed rule would be jurisdictional only upon a case-specific determination that they share a "significant nexus" to waters of the United States rather than the express heavy reliance on the Commerce Clause in the existing rule. This "significant nexus" concept, and several other significant changes between the old rule and the proposed rule, are discussed below.

Significant Nexus

Current regulation does not define "significant nexus," but the agencies' 2008 guidance document generally explains the current application of this standard.¹⁸

The proposed rule determines that certain types of waters share a "significant nexus" to the "waters of the United States" by definition and are thus jurisdictional by rule. These include, for example, tributaries (including small, intermittent, and ephemeral tributaries, tributary lakes, ponds, and wetlands, man-made and man-altered tributaries) and "adjacent waters" (including riparian and floodplain waters and wetlands with a confined surface or shallow subsurface connection, e.g., swales, gullies and rills, to a jurisdictional water).¹⁹ This is a change from the current rule and the 2008 Guidance, which refers to "adjacent wetlands" (instead of the proposed rule's broader "adjacent waters") and currently leaves much of the jurisdictional analysis to a case-by-case determination.

The proposed rule aims to reduce the need for case-by-case determinations per the 2008 Guidance regarding tributaries, by bolstering the existing rule's categorical inclusion of all tributaries as "waters of the United States."²⁰ For the first time, the agencies would define "tributary."²¹ Wetlands, ponds and lakes would also be defined as tributaries — even if they lack a bed and banks or ordinary high water mark — provided that they contribute flow, either directly or through another water — to traditional navigable water, interstate waters, or territorial seas.²² The fact that there may be man-made breaks (such as bridges, culverts, pipes or even dams) or natural ones (including if a stream flows underground) is inconsequential.²³ EPA and the Army Corps of Engineers assert that scientific evidence supports this conclusion that a significant nexus exists between tributaries and "waters of the United States."

The proposed rule leaves "other waters" to a case-specific analysis based on the functional relationship and the connectivity (chemical connectivity, physical and biological) of the "other water" with a jurisdictional *per se* water of the United States. While the proposed rule clarifies that a "hydrologic connection is not necessary to establish a significant nexus," the analysis of functional relationships and connectivity appears generally similar to that published by EPA and the Corps in the 2008 Guidance. In addition, the proposed rule explains for the significant-nexus inquiry, "other waters" will be "evaluated either individually, or as a group of waters where they are determined to be similarly situated in the region..., depend[ing] on the functions they perform and their spatial management within the 'region' or watershed."²⁴

The proposed rule appears to rely heavily on a "draft peer-reviewed synthesis of published peer-reviewed scientific literature discussing the nature of connectivity and effects of streams and wetlands on downstream waters" prepared by EPA's Office of Research and Development. This scientific report is currently under review by EPA's Science Advisory Board and EPA states that the rule will not be finalized until the Science Advisory Board's review is finalized and the scientific report is complete.²⁵ Appendix A to the proposed rule, itself over 100 pages, is an overview of scientific literature regarding connectivity and effects.²⁶

Tributaries

As discussed above, the agencies now propose for the first time a regulatory definition of "tributary." Tributary status is not lost by man-made or natural breaks so long as the bed, bank and ordinary high water mark can be identified upstream of the break.²⁷ Nor does the permanence of a water affect its status. The proposed rule removes the 2008 Guidance's distinction between permanent and intermittent tributaries; instead of an assessment of how long a flow is present, the only issue is whether there is evidence of a flow into "waters of the United States."²⁸ The origin of the water, whether natural, man-altered or manmade, expressly does not matter.²⁹

Adjacent Waters

The agencies now propose that adjacent waters, rather than simply adjacent wetlands, are "waters of the United States." The proposed definition for "adjacent" — meaning bordering, contiguous or neighboring — remains the same as under the existing regulations, but "neighboring" now includes waters located within the riparian area or floodplain of, and waters with a shallow subsurface hydrologic connection or confined surface hydrologic connection to, a traditional navigable water, interstate water, territorial sea, impoundment or tributary.

Ditches

The proposed rule would add two types of ditches to the list of excluded waters: (1) ditches that are excavated wholly in uplands, drain only uplands, and have ephemeral or intermittent flow; and (2) ditches that do not contribute flow, either directly or through another water, to a traditional navigable water, interstate water, territorial sea or an impoundment of a jurisdiction water.³⁰ Ditches not meeting these criteria could be considered "waters of the United States" if they meet the definition of a manmade tributary.³¹

EPA does not consider this addition to be a change of agency policy; the 2008 Guidance stated that EPA would not assert jurisdiction over intermittent upland ditches.³²

Waste Treatment Systems

The proposed rule does not change the regulatory exclusion of waste treatment systems, other than deleting a cross-reference to a since-removed section about cooling ponds.³³ EPA expressly states it does “not consider this deletion to be a substantive change to the waste treatment systems exclusion or how it is applied.”³⁴

Prior Converted Cropland

The proposed rule leaves unchanged the current rule’s exemption for prior converted cropland from jurisdiction under the CWA.³⁵ Like the current rule, the determination of an area’s jurisdictional status under this exemption for the purposes of the CWA remains with EPA, notwithstanding the determination of any other federal agency.

Groundwater

The proposed rule clarifies that groundwater — including groundwater drained through subsurface drainage systems — is not subject to regulation by the CWA as a “water of the United States.” The current rule and interpretive guidance do not address groundwater, so the proposed rule clarifies that “agencies have never interpreted ‘waters of the United States’ to include groundwater and the proposed rule explicitly excludes groundwater[.]”³⁶

Conclusion

If implemented, the proposed rule would have far-reaching effects on regulation of the nation’s waterways. It would define federal jurisdiction under the CWA to extend to most seasonal and rain-dependent streams as well as wetlands near rivers and streams, in addition to navigable waters. Further, the proposed rule provides that geographically isolated waters will be evaluated on a case-by-case basis. Exemptions would continue to apply for farming, silviculture, ranching, and other specified activities. This assertion of federal jurisdiction over tributaries, streams and wetlands could result in project delays due to the need for permits for dredging, filling, discharge or hazardous substances releases that may not previously have been required. In addition, the proposed rule creates several sources of considerable uncertainty, such as the jurisdictional reach to upland features and the precise practical definitions of terms including floodplain, riparian area, tributary, and ephemeral pond/pool or puddle. Latham & Watkins will continue to track and analyze the proposed rule, and will continue to provide updates.

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Endnotes

- ¹ EPA, *Waters of the United States*, available at <http://www2.epa.gov/uswaters>.
- ² *Id.*
- ³ See Latham & Watkins LLP, *US Supreme Court Divided over Reach of Clean Water Act* (June 21, 2006), available at <http://www.lw.com/search?searchText=rapanos>.
- ⁴ *Waters of the United States Proposed Rule* (Proposed Rule), available at <http://www2.epa.gov/uswaters>.
- ⁵ Gina McCarthy, *Clearer Protections for Clean Water*, The Huffington Post, March 25, 2014, available at <http://www.huffingtonpost.com/gina-mccarthy/clearer-protections-for-c b 5029328.html>.
- ⁶ *Id.*
- ⁷ See generally Proposed Rule.
- ⁸ See note 5, *supra*.
- ⁹ Opening statement of Chairman Ken Calvert, Interior and Environment Subcommittee, House Committee on Appropriations, FY 2015 Budget Hearing, US Environmental Protection Agency, March 27, 2014, available at <http://docs.house.gov/meetings/AP/AP06/20140327/101941/HHRG-113-AP06-20140327-SD001.pdf>.
- ¹⁰ Opening statement of Chairman Hal Rogers, House Committee on Appropriations, Subcommittee on Energy and Water Development and Related Agencies, Fiscal Year 2015 Budget Hearing: U.S. Army Corps of Engineers, March 26, 2014, available at <http://docs.house.gov/meetings/AP/AP10/20140326/101933/HHRG-113-AP10-20140326-SD002.pdf>.
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- ¹³ *Id.*
- ¹⁴ 33 U.S.C. § 1362(7).
- ¹⁵ See 33 CFR, part 328.3(d), (e) and (f).
- ¹⁶ *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence*, EPA/600/R-11/098B, September 2013, External Review Draft, available at [http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/7724357376745F48852579E60043E88C/\\$File/WOUS_ERD2_Sept2013.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/7724357376745F48852579E60043E88C/$File/WOUS_ERD2_Sept2013.pdf).
- ¹⁷ 33 CFR, part 328.
- ¹⁸ See generally EPA, *Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States* (Dec. 2008) (2008 Guidance).
- ¹⁹ *E.g.*, Proposed Rule at 65–90.
- ²⁰ The current rule provides that tributaries of "waters of the United States" are "waters of the United States." (33 C.F.R. § 328.3(a)(5).) Following the Supreme Court's decision in *Rapanos*, *supra*, EPA issued new guidance that provided a more restrained application of "waters of the United States" to tributaries. (See generally 2008 Guidance.) The 2008 Guidance asserts EPA jurisdiction over non-navigable tributaries of traditional navigable waters if the tributary had at least seasonally continuous flow, including adjacent wetlands with a continuous surface flow with the tributary. For more intermittently flowing tributaries, the agency decides jurisdiction based on a significant nexus determination.
- ²¹ 33 C.F.R. § 328.3(c)(5) (proposed).
- ²² *Id.*

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- ²³ Id.
- ²⁴ *E.g.*, Proposed Rule at 90-103.
- ²⁵ *Id.* at 13. The report is titled "Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence" (US EPA, 2013).
- ²⁶ *Id.* at 133-272.
- ²⁷ Id.
- ²⁸ Proposed Rule at 56.
- ²⁹ 33 C.F.R. § 328.3(c)(5) (proposed).
- ³⁰ *Id.* § 328.3(b)(4) and (5).
- ³¹ Proposed Rule at 73.
- ³² 2008 Guidance at 12.
- ³³ 33 C.F.R. § 328.3(b)(1) (proposed).
- ³⁴ Proposed Rule at 115.
- ³⁵ *E.g.*, Proposed Rule at 24, 114-15.
- ³⁶ Proposed Rule at 118.



TOWN OF DEWEY-HUMBOLDT
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COUNCIL AGENDA ACTION REQUEST FORM

Meeting Type: Regular Special Work Session

Meeting Date: Aug, 5, 2014

Date of Request: July 14, 2014

Requesting: Action Discussion or Report Only

Type of Action: Routine/Consent Agenda Regular

Agenda Item Text (a brief description for placement on the agenda; please be exact as this will be the wording used for the agenda);

whether to invite County Officials to make a presentation about County Sales Tax for New Jail

Purpose and Background Information (Detail of requested action).

To receive info on what County wants to do about New jail in Prescott

Staff Recommendation(s): _____

Budgeted Amount: _____

List All Attachments: _____

Type of Presentation: _____

Special Equipment needed: Laptop Remote Microphone
 Overhead Projector Other: _____

Contact Person: Mayor Nolan

Note: Per Town Code §30.105(D): Any new item will be placed under "New Business" for the council to determine its disposition. It can be acted upon at that meeting, sent to staff for more work, sent to the appropriate board or commission, set for a work session or tabled for a future date, etc.

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COUNCIL AGENDA ACTION REQUEST FORM

Meeting Type: Regular Special Work Session

Meeting Date: 7/1/14

Date of Request: 6/20/14

Requesting: Action Discussion or Report Only

Type of Action: Routine/Consent Agenda Regular

Agenda Item Text (a brief description for placement on the agenda; please be exact as this will be the wording used for the agenda):

REQUEST LEGAL ADVICE REGARDING WATER ISSUES

Purpose and Background Information (Detail of requested action):

I BELIEVE BEFORE THE TOWN SPENDS MONEY FOR A WATER SURVEY WE NEED LEGAL ADVICE ON WATER ISSUES. THE SURVEY WILL NOT PROVIDE LEGAL ADVICE

Staff Recommendation(s): SEE ATTACHED SHEET FOR SOME OF THE QUESTIONS THAT NEED ANSWERED.

Budgeted Amount: _____

List All Attachments: _____

Type of Presentation: _____

Special Equipment needed: Laptop Remote Microphone
 Overhead Projector Other: _____

Contact Person: Jack Hamilton

Note: Per Town Code §30.105(D): Any new item will be placed under "New Business" for the council to determine its disposition. It can be acted upon at that meeting, sent to staff for more work, sent to the appropriate board or commission, set for a work session or tabled for a future date, etc.

Water Survey

At the 6/17/2014 budget meeting the need for a water survey for Dewey-Humboldt as explained by the Council was to know what the needs for water in the community were. The only reason for the survey is to see if the town wants to get into the water business. If the town is not in the water business it has very little control over any of the water issues.

The town needs answers to some basic legal questions regarding water first. Depending on the answers given it should determine whether the town needs the water survey.

1. If Dewey-Humboldt becomes a municipal water company can it force people to join the company?
2. Must the municipal water company provide water to a property owner that requests water that lives within Dewey-Humboldt?
 - a. If so, what kind of time frame would need to be met?
 - b. Can the municipal water company set the area that it will only provide service too within the town?
 - c. Is the municipal water company responsible for providing water to its customers even if its source of water is running dry?
 - d. What reports would the town have to make to government entities?
3. What if any liabilities are there for not meeting ADEQ standards of water delivery or quality?
4. If the town has to buy a water ranch in order to supply water, what are the requirements?
 - a. Like how much land is needed for a certain amount of water?
 - b. Can you pump so much water that it drops the water table to neighboring wells?
5. If a private owned water company within the town limits defaults or goes out of business does the town have to take the water company over? What other ramifications could happen if the private water company went out of business?
6. Can a municipal water company sell water in the same area that a private water company now provides water?
7. If a town buys a private water company and changes it to a municipal water company can it do the following.
 - a. Increase its area of water coverage? How is this done?
 - b. Increase the amount of water that is pumped from the well dramatically to cover new water usage?
 - c. Increase the cost of water going to customers because of the increased cost of providing the service without going to the Cooperation Commission?
8. A lot of property borders private roads. Is it a problem running municipal water lines down private roads? If the lines were run down the side of a private road so the line was totally on one person's property could that person keep the neighbor across the road from hooking up to the line?

July 1, 2014 Draft Minutes

9.3. Request Legal Advice Regarding Water Issues. [CAARF requested by CM Hamilton]

Councilmember Hamilton gave an overview explaining the Council approved up to \$25k to do a water study. He wanted legal answers prior to doing a water study since the study will not answer legal questions.

There was discussion on the legal aspects of a water study, gift clause concerns if the town is not interested in purchasing the water company and what sort of data will come from the WAC for the study.

Councilmember Wright wanted the question asked, "Town has no water assets so it is a violation of the gift clause spending money on something that isn't a town asset".

Councilmember Wright made a motion to put this on an agenda when the attorney can attend and ask as many of these water questions, including Councilmember Wright's, sending the questions in advance, seconded by Councilmember Hamilton.

Councilmember McBrady suggested this wait until after the election so those people elected can start through this process. Town Manager Kimball spoke on how full the next agenda was and Council reviewed the list of tentative agenda items. She explained she could answer many of the questions being asked based on her experience and offered to talk with CM Hamilton.

A vote was taken on the motion which passed by a 4 -3 vote in favor, Councilmembers McBrady, Williams-Rowe and Mayor Nolan voting against.

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COUNCIL AGENDA ACTION REQUEST FORM

Meeting Type: Regular Special Work Session

Meeting Date: 7.16.14

Date of Request: 7.8.14

Requesting: Action Discussion or Report Only

Type of Action: Routine/Consent Agenda Regular

Agenda Item Text (a brief description for placement on the agenda; please be exact as this will be the wording used for the agenda):

SEEKING APPROVAL TO CONTACT TOWN ATTORNEY W/ TOWN MANAGERS
TO OBTAIN LEGAL OPINION ON ETHICS VIOLATION INVESTIGATIONS

Purpose and Background Information (Detail of requested action). & HEARINGS DURING ELECTION SEASON

TO CLARIFY VIOLATIONS W/ CODE OF ETHICS RELATIVE TO THIS ISSUE

Staff Recommendation(s): _____

Budgeted Amount: _____

List All Attachments: CODE OF ETHICS

Type of Presentation: Verbal

Special Equipment needed: Laptop Remote Microphone

Overhead Projector Other: _____

Contact Person: ARLENE ALLEN

Note: Per Town Code §30.105(D): Any new item will be placed under "New Business" for the council to determine its disposition. It can be acted upon at that meeting, sent to staff for more work, sent to the appropriate board or commission, set for a work session or tabled for a future date, etc.

ORDINANCE 13-103 - CODE OF ETHICS AND CONDUCT FOR THE TOWN COUNCIL AND TOWN BOARDS, COMMISSIONS AND COMMITTEES

(A) PREAMBLE

(1) THE RESIDENTS AND BUSINESSES OF DEWEY-HUMBOLDT ARE ENTITLED TO HAVE A FAIR, ETHICAL AND ACCOUNTABLE LOCAL GOVERNMENT AND TO DEMAND THE HIGHEST STANDARD OF ETHICS FROM ALL ITS OFFICIALS. ALL MEMBERS OF TOWN BOARDS, COMMISSIONS, COMMITTEES AND THE TOWN COUNCIL SHALL MAINTAIN THE UTMOST STANDARDS OF PERSONAL INTEGRITY, TRUTHFULNESS, HONESTY AND FAIRNESS IN CARRYING OUT THEIR PUBLIC DUTIES, AVOID ANY IMPROPRIETIES IN THEIR ROLES AS PUBLIC SERVANTS, COMPLY WITH ALL APPLICABLE LAWS, WHETHER LOCAL, STATE OR FEDERAL, AND NEVER USE THEIR POSITION OR POWERS IMPROPERLY OR FOR PERSONAL GAIN.

(2) ETHICS IS DEFINED HERE AS THE RULES OR STANDARDS GOVERNING THOSE PERSONS FUNCTIONING AS REPRESENTATIVES OF THE TOWN DEWEY-HUMBOLDT. THESE RULES AND STANDARDS ARE BASED UPON A SET OF VALUES JUDGED TO BE MORAL TO THE EXTENT THAT THEY ENHANCE SOCIETY AND AN INDIVIDUAL'S RELATIONSHIP TO OTHERS. HONESTY AND INTEGRITY SHALL BE THE PRIMARY VALUES IN ALL ISSUES WHETHER IT BE IN THEIR DUTIES FOR THE TOWN OF DEWEY-HUMBOLDT OR IN ANY REGARD TO THEIR CONSTITUENTS.

(3) THE PURPOSE OF THIS CODE IS TO ESTABLISH ETHICAL STANDARDS OF CONDUCT FOR PUBLIC OFFICIALS ACTING IN THEIR OFFICIAL PUBLIC CAPACITY.

(B) DEFINITIONS

"CENSURE" MEANS:

1. AN EXPRESSION OF STRONG DISAPPROVAL OR HARSH CRITICISM.
2. AN OFFICIAL REBUKE, AS BY A LEGISLATURE OF ONE OF ITS MEMBERS.
3. TO CRITICIZE SEVERELY; BLAME.
4. TO EXPRESS OFFICIAL DISAPPROVAL OF
5. A FORMAL, PUBLIC REPRIMAND FOR AN INFRACTION OR VIOLATION.

"PUBLIC OFFICIAL" MEANS THE MAYOR, TOWN COUNCIL MEMBERS, AND ANY TOWN BOARD, COMMISSION OR COMMITTEE MEMBER.

"SANCTION" MEANS:

1. THE PENALTY FOR NONCOMPLIANCE SPECIFIED IN A LAW OR DECREE.
2. A PENALTY, SPECIFIED OR IN THE FORM OF MORAL PRESSURE, THAT ACTS TO ENSURE COMPLIANCE OR CONFORMITY.
3. TO PENALIZE, ESPECIALLY FOR VIOLATING A MORAL PRINCIPLE OR INTERNATIONAL LAW.
4. TO IMPOSE A SANCTION ON; PENALIZE, ESP. BY WAY OF DISCIPLINE
5. TO PUNISH SO AS TO DETER

(C) RESPONSIBILITIES OF PUBLIC OFFICE

(1) BY OATH OF OFFICE EACH PUBLIC OFFICIAL IS RESPONSIBLE TO UPHOLD THE CONSTITUTION OF THE UNITED STATES, THE CONSTITUTION OF THE STATE OF ARIZONA, AND THE ORDINANCES AND REGULATIONS OF THE TOWN OF DEWEY-HUMBOLDT. PUBLIC OFFICIALS ARE OFTEN ASKED TO MAKE DECISIONS THAT AFFECT VARIOUS GROUPS AND INDIVIDUALS ADVERSELY. BALANCING DIVERSE CONSTITUENT INTERESTS IS A DIFFICULT TASK AND THEREFORE THE PUBLIC OFFICIAL SHALL PERFORM HIS OR HER OBLIGATIONS IN A MANNER THAT IS IMPARTIAL AND RESPONSIBLE TO ALL PEOPLE AND SHALL ADHERE TO ETHICAL STANDARDS THAT ELIMINATE DISAPPOINTMENT BORNE OF DISHONESTY, CONFLICTS OF INTEREST, UNFAIRNESS OR ILLEGALITY.

(2) THE PUBLIC OFFICIAL SHALL NOT USE HIS POSITION FOR PERSONAL OR MONETARY GAIN, WHETHER DIRECTLY OR INDIRECTLY OR ANY OTHER MANNER IN WHICH THE POSSIBILITY OF GAIN MIGHT BE PERCEIVED BY THE PUBLIC OR ANOTHER MEMBER OF THE PUBLIC BODY AND AS DESCRIBED HERE WITHIN IN SECTION II.

(3) THE PUBLIC OFFICIAL SHALL NOT DISCLOSE CONFIDENTIAL INFORMATION CONCERNING THE PROPERTY, GOVERNMENT, OR AFFAIRS OF THE TOWN OF DEWEY-HUMBOLDT WITHOUT PROPER LEGAL AUTHORIZATION. ARIZONA LAW PROVIDES THAT DURING A PERSON'S EMPLOYMENT OR SERVICE TO THE TOWN AND FOR TWO YEARS THEREAFTER, NO PUBLIC OFFICIAL MAY DISCLOSE OR USE CONFIDENTIAL INFORMATION WITHOUT APPROPRIATE AUTHORIZATION AS SET FORTH IN A.R.S. SECTION 38-504(B).

(4) PUBLIC OFFICIALS HAVE AN OBLIGATION TO BE ACCESSIBLE, OPEN AND DIRECT, NOT ONLY WITH THE OTHER MEMBERS OF THE COUNCIL AND/OR BOARDS, COMMISSIONS OR COMMITTEES BUT ALSO TO THE

CITIZENS AND BUSINESS REPRESENTATIVES THAT APPEAR BEFORE THEM, BOTH IN THE PUBLIC FORUM AND IN PRIVATE. THE PUBLIC IS ENTITLED TO COMMUNICATE WITH THEIR PUBLIC SERVANTS AND UNDERSTAND THE POSITION OF THE COUNCIL AND BOARDS, COMMISSIONS AND COMMITTEES ON PUBLIC ISSUES.

(5) PUBLIC OFFICIALS HAVE AN OBLIGATION TO ATTEND MEETINGS AND BE PREPARED. IT IS EXPECTED THAT PUBLIC OFFICIALS WILL REVIEW THE MATERIALS, PARTICIPATE IN DISCUSSIONS AND MAKE INFORMED DECISION OF THE MERITS OF THE ISSUE AS OPPOSED TO ACTING OUT OF EMOTIONAL BIAS.

(D) CONFLICT OF INTEREST

(1) PUBLIC OFFICIALS MUST BE CONSTANTLY ON GUARD AGAINST CONFLICTS OF INTEREST AND SHALL NOT BE INVOLVED IN ANY ACTIVITY WHICH CONFLICTS WITH THEIR RESPONSIBILITIES TO THE TOWN OF DEWEYHUMBOLDT AND ITS RESIDENTS. THE PEOPLE OF THIS TOWN HAVE A RIGHT TO EXPECT INDEPENDENCE AND FAIRNESS TOWARDS ALL GROUPS WITHOUT FAVORING INDIVIDUALS OR PERSONAL INTEREST.

(2) ARIZONA CONFLICT-OF-INTEREST LAWS APPLY TO PUBLIC OFFICIALS. AND AS SUCH, THIS CODE SHALL REINFORCE ANY EXISTING AFFIRMATION REGARDING CONFLICT OF INTEREST CONTAINED IN THE PUBLIC OFFICIAL'S OATH OF OFFICE. WHEN ACTING IN A PUBLIC CAPACITY, THE PUBLIC OFFICIAL SHALL ABSTAIN FROM PARTICIPATING IN DISCUSSION AND VOTE ON ANY PENDING MATTER THAT WOULD RESULT IN HIS FINANCIAL OR PRIVATE GAIN.

(3) PUBLIC OFFICIALS SHALL NOT DIRECTLY OR INDIRECTLY SOLICIT, ACCEPT OR RECEIVE ANY GIFT--WHETHER IT BE MONEY, SERVICES, LOAN, TRAVEL, ENTERTAINMENT, HOSPITALITY, PROMISE, OR ANY OTHER FORM THAT COULD BE REASONABLY INFERRED TO INFLUENCE THE PERFORMANCE OF HIS OFFICIAL DUTIES AND ACTIONS OR SERVE AS A REWARD FOR ANY OFFICIAL ACTION. IN ADDITION AND EXTENDED UNDER THIS ISSUE, UNDER NO CIRCUMSTANCES SHALL A PUBLIC OFFICIAL ACCEPT A GIFT OR FAVOR THAT IS A BRIBE, OR REFLECTS, TO A REASONABLE PERSON, AN EFFORT TO IMPROPERLY INFLUENCE THE PUBLIC OFFICIAL CONTRARY TO THAT PUBLIC OFFICIAL'S RESPONSIBILITY TO THE PUBLIC IN TOTAL OR TO ACT IMPARTIALLY AND ON THE MERITS OF THE MATTER. PUBLIC OFFICIALS MUST NOT BE INVOLVED IN DISCUSSING ISSUES THAT APPEAR TO BE SELF-DEALING. THAT IS, PUBLIC OFFICIALS MUST NOT BE INVOLVED IN DISCUSSING OR DECIDING ON ANY ISSUE OVER WHICH THEY HAVE JURISDICTION AS A COUNCIL OR BOARD, COMMITTEE OR COMMISSION MEMBER, WHICH MAY IMPACT THE PUBLIC OFFICIAL OR MEMBERS OF HIS FAMILY OR THE PUBLIC OFFICIAL'S BUSINESS, FINANCIALLY OR IN ANY WAY THAT MAY BE PERCEIVED BY ANY REASONABLE MEMBER OF THE COMMUNITY AS ADVANTAGEOUS TO THAT PUBLIC OFFICIAL.

IT SHOULD ALSO BE NOTED THAT COUNCILMEMBER'S MUST COMPLY ANNUALLY WITH THE FINANCIAL DISCLOSURE ACT, AS REQUIRED IN A.R.S. 38-541-545. ARIZONA LAW ALSO PROHIBITS PUBLIC OFFICIALS FROM RECEIVING ANYTHING OF VALUE OR ANY COMPENSATION OTHER THAN THEIR NORMAL SALARY OR STIPEND FOR ANY SERVICE RENDERED IN CONNECTION WITH THAT PUBLIC OFFICIAL'S DUTIES WITH THE TOWN OF DEWEY-HUMBOLDT.

(E) CONDUCT IN PUBLIC OFFICE

(1) THE PUBLIC OFFICIAL SHALL NOT DISCUSS OR DIVULGE CONFIDENTIAL INFORMATION ACQUIRED BY HIM IN THE COURSE OF HIS OFFICIAL DUTIES NOR SHALL HE USE THIS INFORMATION FOR HIS OWN PERSONAL INTEREST OR AGGRANDIZEMENT AND AS A MINIMUM, UTILIZE A.R.S. 38-504 AS, BUT NOT LIMITED TO, A GUIDELINE.

(2) THE PUBLIC OFFICIAL SHALL RESPECT THE RIGHTS, PRIVILEGES AND OPINIONS OF HIS FELLOW OFFICIALS.

(3) PROPRIETY DICTATES THAT THE PUBLIC OFFICIAL BE SENSITIVE TO THE POSSIBLE CONFIDENTIAL OR PERSONAL NATURE OF DIRECTIVES ADDRESSED TO OTHER INDIVIDUALS.

(4) IN ANY DEALINGS WITH TOWN OF DEWEY-HUMBOLDT EMPLOYEES, THE PUBLIC OFFICIAL SHALL MAINTAIN PROFESSIONAL CONDUCT WITH RESPECT TO THE EMPLOYEE'S WORK ASSIGNMENTS AND OBLIGATIONS. THE OFFICE OF THE PUBLIC OFFICIAL SHALL IN NO SITUATION BE USED TO WRONGFULLY OBTAIN INFORMATION EITHER BY INTIMIDATION OR BY DELIBERATELY VIOLATING THE PRIVACY OF AN EMPLOYEE'S WORK STATION.

(5) PUBLIC DECISION-MAKING MUST BE FAIR AND IMPARTIAL AND SHALL BE NON-DISCRIMINATORY ON THE BASIS OF PROTECTED CLASSES, SUCH AS RACIAL AND RELIGIOUS GROUPS, OUTLINED IN FEDERAL, STATE AND TOWN LAWS AND ORDINANCES. PUBLIC OFFICIALS SHALL CONDUCT BUSINESS AND OPERATE IN A MANNER THAT IS FREE FROM ILLEGAL DISCRIMINATION ON THE BASIS OF AGE, SEX, COLOR, RACE, DISABILITY,

NATIONAL ORIGIN, OR RELIGIOUS PERSUASION.

(5) PUBLIC OFFICIALS SHALL NOT USE THEIR POLITICAL OR APPOINTED OFFICE TO ADVANCE PRIVATE INTERESTS AND ENGAGE IN POLITICAL CAMPAIGNING AT TOWN MEETINGS OR WITHIN TOWN BUILDINGS.

(6) NO RELATIVE OF A SITTING COUNCIL MEMBER, MEMBER OF A TOWN BOARD, COMMITTEE OR COMMISSION MAY BE EMPLOYED BY THE TOWN.

(7) DISCUSSION OF ISSUES WHICH MAY APPEAR IN THE FUTURE BEFORE THE COUNCIL OR A BOARD, COMMITTEE OR COMMISSION SHALL BE PROHIBITED WHEN A SITUATION ARISES WHERE A QUORUM OF THE COUNCIL OR A BOARD, COMMITTEE OR COMMISSION EXISTS. NUMEROUS ARIZONA LAWS REQUIRE THAT MEETINGS OF PUBLIC BODIES BE OPEN TO THE PUBLIC AND THAT PUBLIC RECORDS BE AVAILABLE FOR INSPECTION.

(F) COMPLIANCE AND ENFORCEMENT WITH THE DEWEY-HUMBOLDT CODE OF ETHICS

(1) PUBLIC OFFICIALS TAKE AN OATH WHEN THEY ASSUME THEIR DUTIES TO UPHOLD THE LAWS OF THE UNITED STATES OF AMERICA, THE STATE OF ARIZONA, AND THE TOWN OF DEWEY-HUMBOLDT. THEREFORE, IT IS THE INTENT OF THE TOWN COUNCIL TO EDUCATE AND WHERE NECESSARY, TO DISCIPLINE PUBLIC OFFICIALS WHO VIOLATE THIS CODE.

(2) THE PROCESS FOR ENFORCEMENT FOLLOWS:

(A) IF A RESIDENT (COMPLAINANT) THINKS THAT A VIOLATION OF THIS CODE HAS OCCURRED THEY SHALL COMPLETE A COMPLAINT FORM. THE FORM WILL BE AVAILABLE ON-LINE OR AT TOWN HALL. THE FORM WILL INCLUDE THE DATE OF FILING THE COMPLAINT, THE DATE OF THE VIOLATION, THE FACTS SUPPORTING THE COMPLAINT, WHAT PART OF THE CODE THAT WAS VIOLATED, AND THE NAME OF THE PERSON THAT VIOLATED THE CODE. THE COMPLAINANT WILL SUPPLY CONTACT INFORMATION SO HE CAN BE TOLD OF THE OUTCOME OF THEIR COMPLAINT.

(B) THE COMPLAINT THEN GOES TO THE ETHICS COMMITTEE. THIS COMMITTEE WILL BE MADE UP OF THE MAYOR, VICE-MAYOR AND A ROTATING COUNCIL MEMBER. THE ROTATING MEMBER WILL BE SELECTED IN THE SAME MANNER AS THE VICE-MAYOR IS SELECTED ON A YEARLY BASIS. THE COMMITTEE WILL DETERMINE WHETHER A VIOLATION HAS OCCURRED. THE ETHICS COMMITTEE MAY REQUEST ADDITIONAL INFORMATION FROM STAFF, THE RESPONDENT (OBJECT OF THE COMPLAINT), THE COMPLAINANT AND TOWN ATTORNEY.

(C) THE ETHICS COMMITTEE WILL THEN DECIDE WHETHER OR NOT THERE WAS A VIOLATION AND WHETHER THE VIOLATION WAS A MINOR OR MAJOR VIOLATION OF THE ETHICS CODE. THE RULING OF THE MAJORITY OF THE COMMITTEE IS THEN PRESENTED TO THE FULL COUNCIL. IF THERE IS NOT A UNANIMOUS DECISION BY THE COMMITTEE, A MINORITY REPORT CAN BE PRESENTED ALONG WITH THE MAJORITY OPINION. THE WHOLE COUNCIL CAN ALSO LOOK AT ALL THE INFORMATION RECEIVED BY THE ETHICS COMMITTEE TO MAKE THEIR DETERMINATION. THE ETHICS COMMITTEE DISCUSSION MAY BE HELD IN EXECUTIVE SESSION.

(D) IF A MAJORITY OF THE COUNCIL DETERMINES THAT NO VIOLATION OCCURRED, NO ACTION WILL BE TAKEN AND THE COMPLAINANT WILL BE NOTIFIED OF THE OUTCOME.

(E) IF A MAJORITY OF THE COUNCIL AGREES THAT A MINOR VIOLATION HAS OCCURRED, THE COMMITTEE HAS THE FOLLOWING OPTIONS:

(1) FOR THE 1ST MINOR OFFENSE THE COMMITTEE CAN TALK TO THE VIOLATOR IN EXECUTIVE SESSION AND EXPLAIN HOW TO AVOID A VIOLATION IN THE FUTURE.

(2) FOR THE 2ND MINOR OFFENSE THE COMMITTEE CAN CHOOSE TO AGAIN SPEAK TO THE VIOLATOR ON HOW TO AVOID A VIOLATION IN THE FUTURE OR RECOMMEND A PUBLIC CENSURE.

(3) FOR THE 3RD MINOR OFFENSE THE COMMITTEE CAN RECOMMEND A PUBLIC CENSURE.

(F) IF A MAJORITY OF THE COUNCIL AGREES THAT A MAJOR VIOLATION HAS OCCURRED THE COMMITTEE HAS THE FOLLOWING OPTIONS:

(1) FOR THE 1ST MAJOR OFFENSE THE COMMITTEE CAN RECOMMEND A PUBLIC CENSURE.

(2) FOR THE 2ND MAJOR OFFENSE THE COMMITTEE CAN RECOMMEND A PUBLIC SANCTION. THIS CAN BE REMOVAL FROM A TOWN BOARD, COMMITTEE OR COMMISSION OR REMOVAL FROM REPRESENTING THE TOWN AT OTHER GOVERNMENT ENTITIES SUCH AS CYMPO, NACOG, WAC OR THE LIKE.

(3) FOR THE 3RD MAJOR OFFENSE THE COMMITTEE CAN RECOMMEND A FINE OF UP TO \$500 PER TOWN CODE 10.99.

(G) FOR ANY OUTCOME THE COMPLAINANT WILL BE NOTIFIED OF THE DECISION.

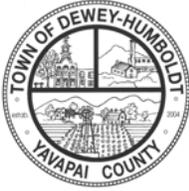
(H) IF THE COMPLAINT IS AGAINST ONE OF THE MEMBERS OF THE ETHICS COMMITTEE, THAT PERSON WILL BE EXCUSED FROM THE PROCEEDINGS AND ANOTHER COUNCIL MEMBER WILL BE APPOINTED IN HIS OR HER

PLACE.

(I) THE RESPONDENT HAS THE RIGHT TO APPEAL ANY COUNCIL DECISION TO BINDING ARBITRATION BY AN INDEPENDENT HEARING OFFICER MUTUALLY AGREED TO BETWEEN THE TOWN COUNCIL AND THE PUBLIC OFFICIAL. THE COST OF THE HEARING OFFICER SHALL BE BORNE EQUALLY BETWEEN THE TOWN AND THE PUBLIC OFFICIAL.

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TOWN OF DEWEY-HUMBOLDT
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COUNCIL AGENDA ACTION REQUEST FORM

Meeting Type: Regular Special Work Session

Meeting Date: next available

Date of Request: 7.16.14

Requesting: Action Discussion or Report Only

Type of Action: Routine/Consent Agenda Regular

Agenda Item Text (a brief description for placement on the agenda; please be exact as this will be the wording used for the agenda):

An executive session pursuant to A.R.S. § 38-431.03(A)(3) for discussion discussion or consultation for legal advice with the Town Attorney Attorney regarding public private partnership arrangements, and pursuant to A.R.S. § 38-431.03(A)(4) for discussion or consultation with the Town Attorney

Purpose and Background Information (Detail of requested action). cont. from Agenda Text above

in order to consider its position and instruct the Town Attorney and Town Manager regarding a possible public private partnership contractual arrangement for a Main Street Program.

Purpose and Background Information (Detail of requested action). This is follow-up to approved attorney call with Town Manager re: Potential Main Street P3 Project

Staff Recommendation(s): _____

Budgeted Amount: _____

List All Attachments: ARS 38-431.03 (A) (3) and ARS 38-431.03 (A) (4)

Type of Presentation: verbal

Special Equipment needed: Laptop Remote Microphone
 Overhead Projector Other: _____

Contact Person: Arlene Alen

Note: Per Town Code §30.105(D): Any new item will be placed under "New Business" for the council to determine its disposition. It can be acted upon at that meeting, sent to staff for more work, sent to the appropriate board or commission, set for a work session or tabled for a future date, etc.

38-431.03. Executive sessions

A. Upon a public majority vote of the members constituting a quorum, a public body may hold an executive session but only for the following purposes:

1. Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, except that, with the exception of salary discussions, an officer, appointee or employee may demand that the discussion or consideration occur at a public meeting. The public body shall provide the officer, appointee or employee with written notice of the executive session as is appropriate but not less than twenty-four hours for the officer, appointee or employee to determine whether the discussion or consideration should occur at a public meeting.
2. Discussion or consideration of records exempt by law from public inspection, including the receipt and discussion of information or testimony that is specifically required to be maintained as confidential by state or federal law.
3. Discussion or consultation for legal advice with the attorney or attorneys of the public body.
4. Discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation.