



# A County Perspective on Sackett & Changes to the Clean Water Rule



**October 3, 2023**

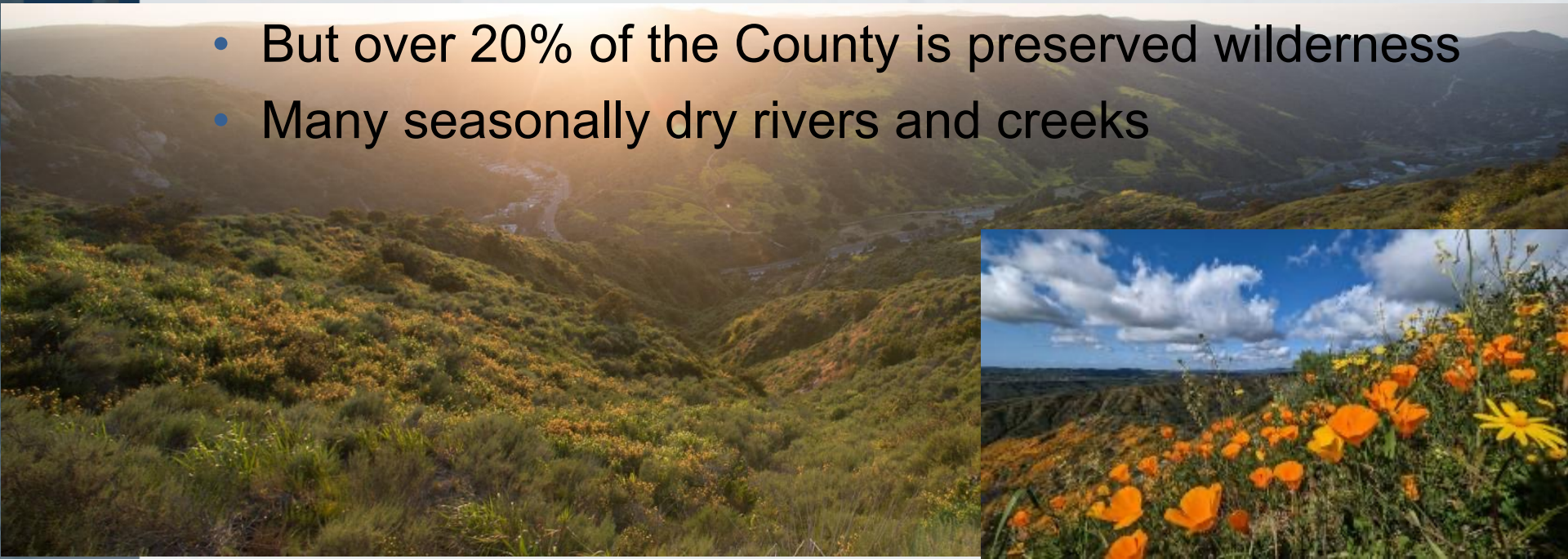
**Giles Matthews**

# Overview of the County



## → Orange County Key Statistics:

- Smallest County in So. Cal. – Size: 791 sq miles of land
- Population: 3.2 million (3<sup>rd</sup> most populous County in CA)
- 2<sup>nd</sup> most densely populated after SF County
- But over 20% of the County is preserved wilderness
- Many seasonally dry rivers and creeks



# Orange County Public Works

- Manage over 360 miles of flood channel & many miles of natural ephemeral channels in Unincorporated OC (Santa Ana Mountains & Foothills)
- Diverse watercourses from highly urban streams to mountain creeks and coastal wetlands
- Maintain hundreds of acres of mitigation sites
- Have a close working relationship with regulators
  - More trust, less punitive when we get it wrong and less mitigation



# Potential Impacts of Sackett on Orange County

Loss of WOTUS coverage means:

- Longer time to secure permits outside of WOTUS
- Loss of most of our future mitigation sites
- Increased likelihood of infilling/damage to non-WOTUS could increase flooding, loss of habitat, water quality/quantity function, etc.
  
- Uncertainty over what is now WOTUS
  - Continuously flowing body of water?
  - Relatively permanent?
  - Continuous surface connection?



# Major Concern

- Will important ephemeral and/or intermittent creeks continue to be jurisdictional? e.g.
- Does a half mile long culvert that is dry 350 days a year constitute a “Continuously flowing body of water” or is it a “Continuous surface connection” or “Relatively permanent”?
- If not many miles of OC’s upper watercourses cease to be WOTUS
- **Why is this not good for us?**



# Increased Regulatory Burden

- ESA Species Consultation – Section 10 (no time limit) instead of Section 7 thru CWA
- 401 (reasonable period of time) vs. Porter Cologne Act (no time limit) – Water Board
- Result:
  - Could be waiting years longer for permits and authorizations

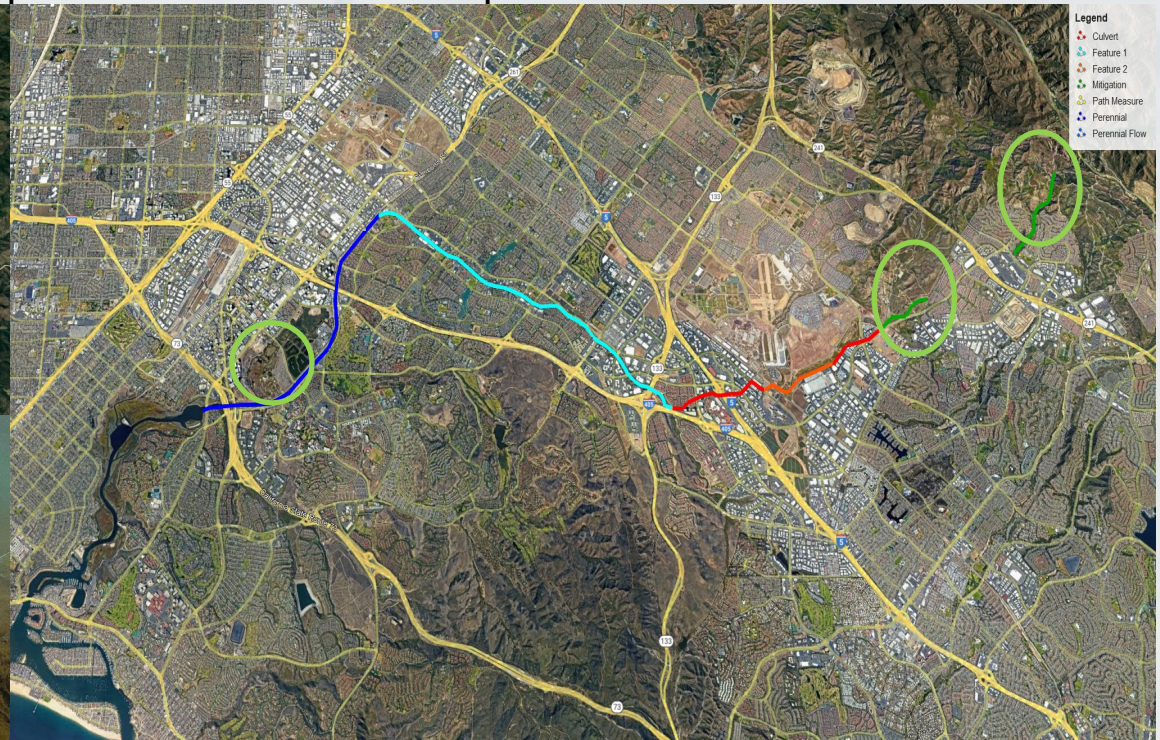


Waters/habitats  
and species no  
longer under  
Corps control



# Running Out of Mitigation Sites

- OC continues to develop, and has lots of wild land for potential mitigation, but..
  - What if much of this land ceases to be Corps Jurisdiction?
    - Can we still mitigate on rivers and creeks that are no longer considered WOTUS?...Probably not!
    - What about migratory species such as steelhead?
- Wetlands behind levees, perennial waters above ephemeral streams



# This mitigation site is ephemeral



- Loss of opportunity to restore sites as there is no longer an incentive to do so
- Mitigation requirements are a major financial mechanism to restore many of our habitats

**Supports rare & endangered wetland species but possibly no longer WOTUS so couldn't be a Corps mitigation site!**



# Looking forward

- Anticipate that there will be litigation over what is
  - Relatively permanent
  - Continuously flowing waterbodies
- Courts could further reduce WOTUS
  - May be good for individual projects or developers but,
  - Will be catastrophic for the environment,
  - Increase our regulatory burden, and
  - Make an already challenging mitigation situation even more difficult.

