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**From:** Pete Thorson [constructionmgm@centurytel.net]  
**Sent:** 3/22/2017 6:51:29 PM  
**To:** mmiller@pacificlegal.org; jpt@pacificlegal.org  
**CC:** Bangerter, Layne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eb60fa9f470b4cb3802a892f1da68b25-Bangerter,]; Kreutzer, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=52652127f1174690a5223b2a6df21968-Kreutzer, D]; 'Ray Kagel' [ray@kagelenvironmental.com]; kjbopr@yaho.com  
**Subject:** FW: Response to Questions from our Meeting Mon. with Col. Calkins

Mark, Joshua and all...

Just got a Reply from Col. Calkins.. What a mouth full....1) Where in the Rapanos guidance did they see or come up with "Shallow Subsurface Connection" to establish the adjacency argument?

2) Previously they referenced in the AJD, the Lemonweir River was established in a case called "USACE vs. Bollig" as a TNW, Now Today its been recently declared from our AJD.... The "Story" is always changing!

3) Hawkes is now 1year old .... That's no reason not to be addressed it as an option, in a AJD letter.

As Ray Kagel says "No sense appealing the current record" when its full of unsubstantiated data, 14 yr. old references, St. Paul Regional supplements that only require 2 of the 3 required criteria of the "87 delineation manual" (CRA) Congressional Review Act question and using a connection through a farm drainage ditch. Not even considered as a "water of the state" by the state of Wisconsin. Some 67 miles away from the Wisconsin River (TNW)

Had a good meeting with Layne Bangerter and David Kreutzer @ the EPA this morning. Layne was at the forefront of helping the Sacketts when he was in congress. In his own words "This is Sacketts, all over again" their looking at options to assist.

Any Thoughts based on the latest reply? Mark & Joshua, are you sure we couldn't convince PLF to file suit, and Hope for a offer to settle. Like you accomplished in Andy Johnson case?

The appeal option is a waist, based on the record. And I don't have \$720,000.00 laying around to buy mitigations credits as Col. Calkins suggest. When 5 consultants say their over the line again!

Thanks everybody!

Pete

-----Original Message-----

From: Calkins, Samuel L COL USARMY CEMVP (US)  
[mailto:Samuel.L.Calkins@usace.army.mil]  
Sent: Wednesday, March 22, 2017 11:41 AM  
To: Pete Thorson <constructionmgm@centurytel.net>  
Subject: Response to Questions from our Meeting

Mr. Thorson - it was great to meet with you Monday, and I have some information on the questions you asked during the meeting:

1) You asked about a subsurface connection that we mentioned in the AJD and wondered where that fits into the requirements of the "significant nexus" and/or the "continuous surface connection."

Response: A shallow subsurface connection is one of the parameters used to establish adjacency and, as such, factors into both continuous surface connection and significant nexus. The reference for this adjacency argument is titled: "Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States," dated December 2, 2008 (page 5). I understand this document is commonly referred to as the Rapanos Guidance.

2) You asked why we called the Lemonweir a TNW in the AJD when it's not on the list of Navigable Waterways in WI from our website.

Response: Within this specific AJD, the Lemonweir River was determined to be a Traditional Navigable Water (TNW) based on guidance issued after the Supreme Court's decision in Rapanos v. United States. Not all TNWs are on the list of Navigable Waterways (navigable waters of the United States subject to Section 10 of the Rivers and Harbors Act), these are two different terms with different meanings. The list of Navigable Waterways (navigable waters of the United States subject to Section 10 of the Rivers and Harbors Act) are the waters determined to be jurisdictional pursuant to 33 CFR 329. TNWs are waters determined to be jurisdictional pursuant to 33 CFR 328 and the Rapanos Guidance (Section 404 of the Clean Water Act).

3) You asked whether moving forward with a permit as opposed to appealing to MVD or the courts might limit your ability to appeal administratively or legally.

Response: unfortunately we don't have an answer to this question since it's related to the Hawkes decision which is relatively new. We don't have clear guidance and we don't know how it would play out. What we do know, however, is the regulations are clear that you have 60 days from the date of the AJD in which to file an administrative appeal to MVD.

4) Finally you asked who to talk to if you want to move forward with applying for a permit.

Response: Kyle Zibung will be the Project Manager responsible for processing any permit application submitted.

Thanks,

COL Calkins

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Colonel Sam Calkins  
Commander, St. Paul District  
US Army Corps of Engineers

samuel.l.calkins@usace.army.mil

O: 651 290-5300

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