



# **FEDERALISM 101: A RELATIONSHIP ON THE ROCKS**

## **NATIONAL ASSOCIATION OF CLEAN WATER AGENCIES DEVELOPMENTS IN CLEAN WATER LAW**

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## **SJRA AND THE CASE OF THE WEARY WATER FLEA**

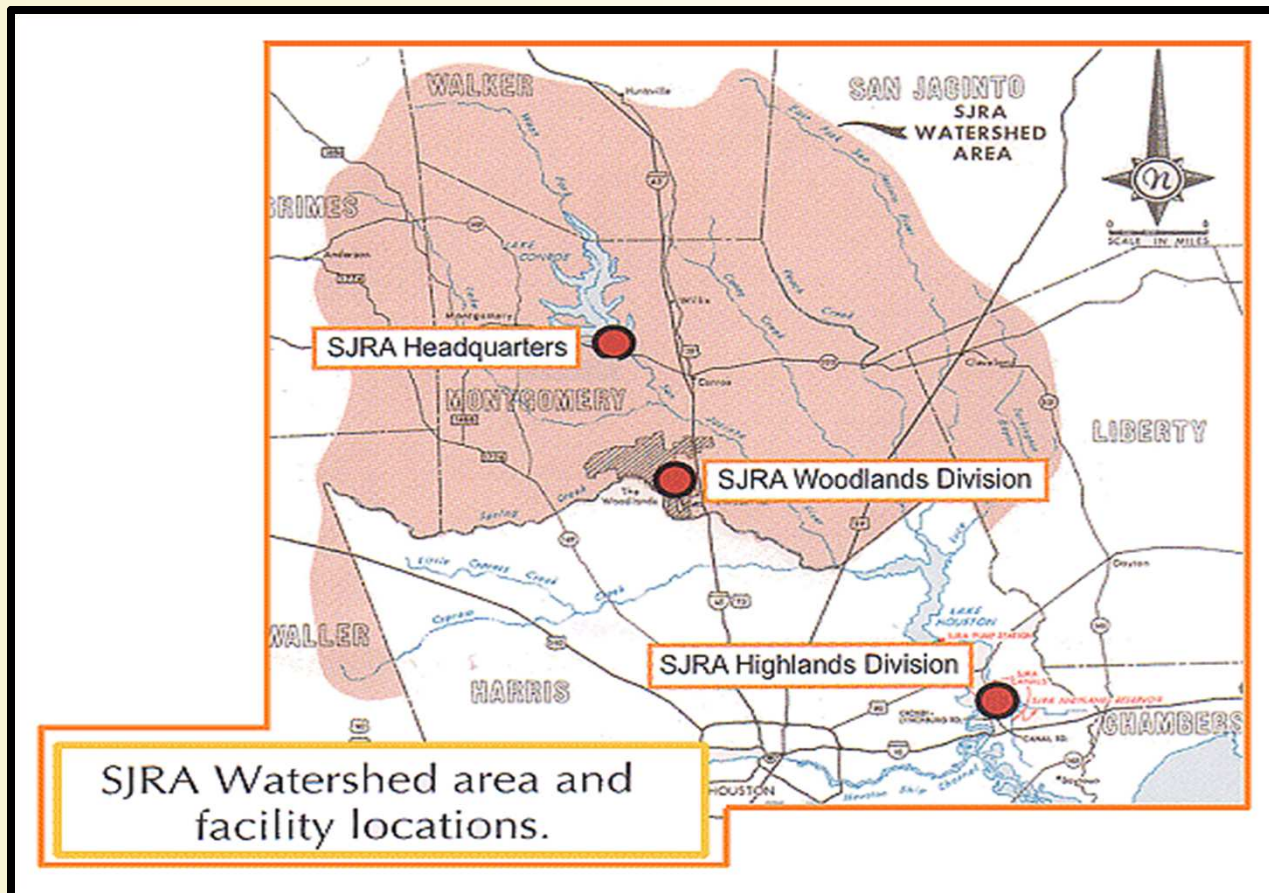
- San Jacinto River Authority (SJRA), The Woodlands Treatment Plant No. 1
- Whole Effluent Toxicity (WET) Testing: Chronic test for *ceriodaphnia dubia* (*c. dubia*)
- First federalized Texas Pollutant Discharge Elimination System (TPDES) permit
- Remanded by Environmental Appeals Board (EAB)
- Region 6 and Texas Commission on Environmental Quality (TCEQ) on WET

## SJRA AND THE WOODLANDS





## SAN JACINTO WATERSHED AND SJRA DIVISIONS



## WET TESTING



- Chronic 7-day test
- Exposure of *c. dubia* to dilution series
- Measure survival, growth & reproduction (lethality and sublethality) compared to control
- Importance of reference toxicant charts and dose response

## PERMITTING HISTORY

- 1989-1997 Region 6 issues original National Pollutant Discharge Elimination (NPDES) Permit, plant modifications and early WET failures, Toxicity Reduction Evaluation (TRE) closed, Region 6 proposes WET limit, SJRA requests hearing, no new NPDES permit is ever issued
- 1998-2001 WET test failures while state permit is up for renewal, second TRE initiated, delegation of NPDES program to Texas, Region demands WET limit in TPDES permit, TRE closed due to cessation of lethality, TPDES permit prepared with no WET limit

## PERMITTING HISTORY (CONT'D)

- November 2001, January 2002 SJRA testing labs report WET failures
  - December 2001 and January 2002 samples split
  - Both December 2001 and one January 2002 samples pass
  - Problems with dose response
  - Reference toxicant charts
- 2005 Evidentiary hearing results in finding that samples are not reliable and a WET limit is not necessary

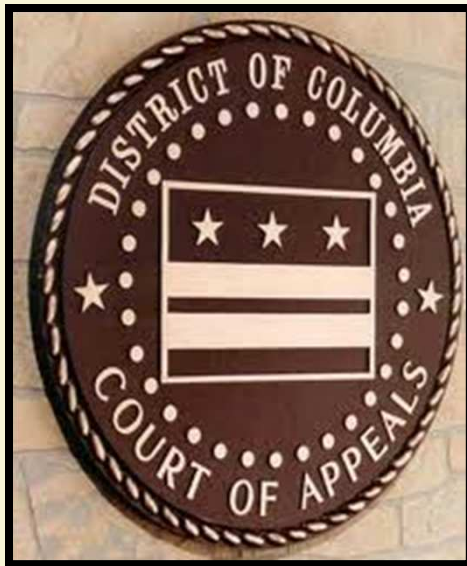
## THE FEDS & WET

- WET Testing Development
- Region 6 Position
- Permitting for Environmental Results  
(<http://cfpub.epa.gov/npdes/per.cfm>)
- EPA Draft Policy
- Implementation by Region 6





## Edison Electric Institute v. EPA



- Upholds test method
- Recognizes individual tests will be wrong “some of the time”
- Individual permitting decisions left to State permitting authorities

## **FEDERALIZATION OF SJRA PERMIT**

- TCEQ issues TPDES Permit in 2005
- Region 6 issues objection letter and federalizes SJRA permit in 2006
- Region 6 issues final NPDES permit in 2007, and SJRA appeals to EAB
- Region 6 files four motions for extension of time from 2007 to 2008 before finally withdrawing federal permit

## **FEDERALIZATION OF SJRA PERMIT (CONT'D)**

- 2009 Region 6 issues permit modification
- SJRA files 2<sup>nd</sup> appeal with EAB
- NACWA files amicus brief
- 39 days after oral argument, EAB issues decision remanding permit to Region 6

## EAB DECISION

- Further analysis of the statutory and regulatory basis for sublethal WET limit required
- Focus on language of Texas Surface Water Quality Standards

Recent Additions	EAB Decisions	Standing Orders	Electronic Filing	General Information
• Upcoming Oral Arguments	• EAB Dockets	• EAB Guidance Documents	• Federal Court Review	• FAQs • ADR
Vol 1	Vol 2	Vol 3	Vol 4	Vol 5



## STATE-FEDERAL PARTNERSHIP ON WET



- Current dispute between TCEQ and Region 6 on WET implementation
- TCEQ's revised Surface Water Quality Standards and Implementation Procedures are pending

## FUTURE FOR TEXAS WATER QUALITY



- How much effort should be spent on the weary water flea?
- Impacts to POTWs from sublethal TREs
- Policy implications for enforcement

## CONCLUSION AND QUESTIONS?

