

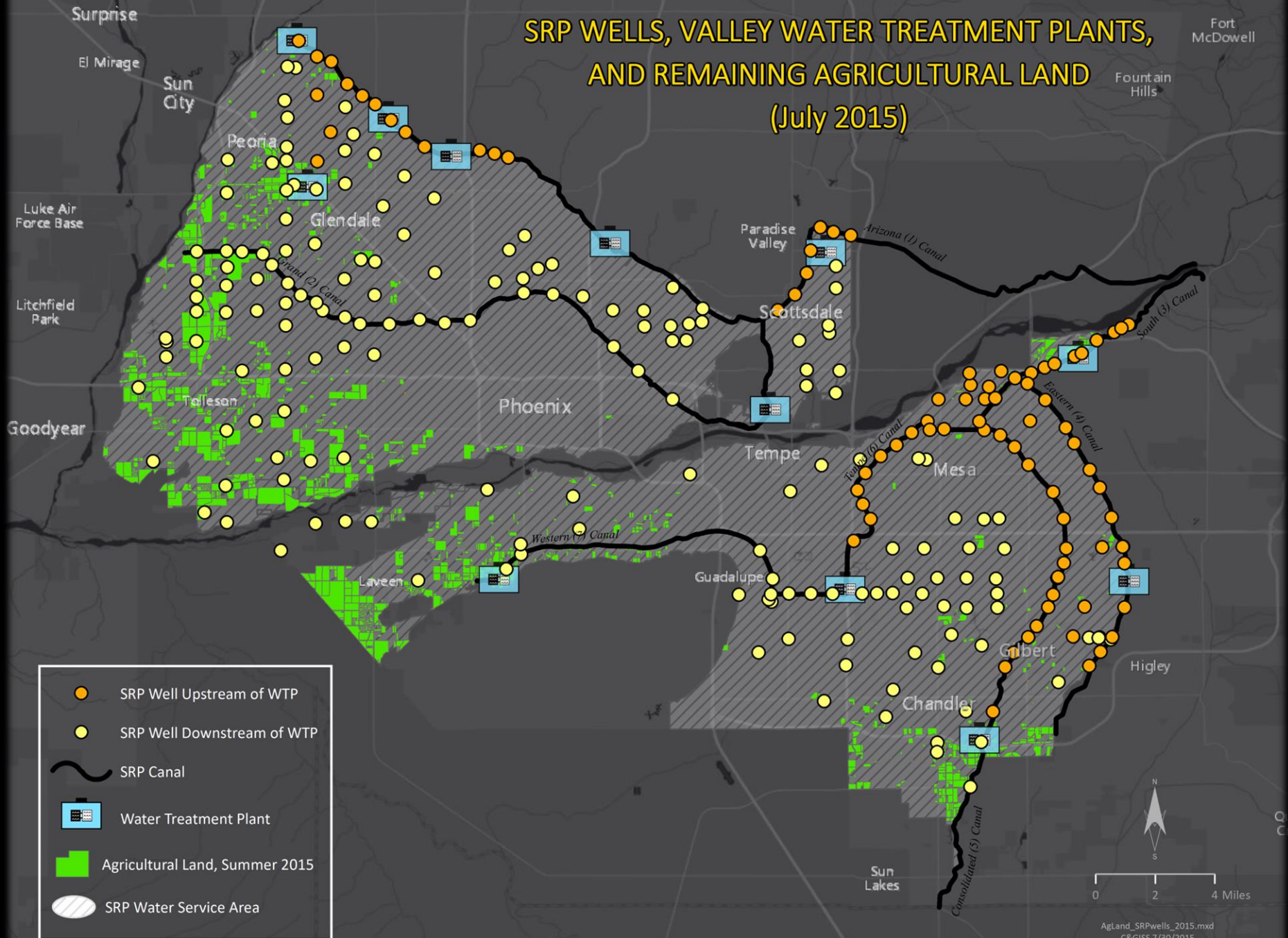
WATERS OF THE U.S. & DITCHES

WESTCAS Fall Meeting
October 28, 2015

Potential Challenges for the Arid West

- *“To be clear, under the rule a ditch may be a “water of the United States” only if it meets the definition of tributary and is not otherwise excluded under section (b) of the rule.”*
- *“In concrete-lined channels, the concrete serves as the bed and banks and can have other ordinary high water mark indicators such as staining and debris deposits.”*
- *“Ditches and canals, like other tributaries, export sediment, nutrients, and other materials downstream and are effective at transporting water and these materials, including nitrogen, downstream.”*
- *“Fish and other aquatic organisms utilize canals and ditches to move to different habitats, sometimes over long distances.”*

SRP WELLS, VALLEY WATER TREATMENT PLANTS, AND REMAINING AGRICULTURAL LAND (July 2015)



Groundwater Wells NPDES Permit

October 31, 1999 – individual permit issued to SRP authorizing the discharge of untreated groundwater to “Phoenix Area Canals”



Construction Stormwater General Permit

February 28, 2003 – AZPDES permit authorizing stormwater discharges to waters of the United States associated with construction



De Minimis General Permit

March 14, 2004 - AZPDES permit authorizing de minimis discharges to waters of the United States



Pesticide General Permit

October 31, 2011 – NPDES/AZPDES permits authorizing pesticide discharges to waters of the United States



CWA §404 Discharge of Dredge & Fill Material

Aug. 28, 2015 – Effective Date of CWR (Stayed Oct. 9, 2015)



CWA §404 Exemptions to Permitting

- USACE Regulatory Guidance Letter 07-02, Exemptions for Construction or Maintenance of Irrigation Ditches and Maintenance of Drainage Ditches under Section 404 of the Clean Water Act
 - ▣ *“A ditch determined to be either an irrigation ditch or a drainage ditch would then need to be evaluated on a **case-by-case** basis to determine if the recapture provision of Section 404(f)(2) applies.”*
- CWR Response to Comments Summary, Topic 6: Ditches
 - ▣ *“The term “ditch” is not specifically defined in the rule.”*
 - ▣ *“The agencies will continue to rely their existing practice of addressing the regulatory status and requirements with respect to ditches on more **case-specific basis.**”*

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