Fact Sheet

February 2019

Waters of the U.S. (WOTUS) Definition – Federal CWA Jurisdiction

Key Findings

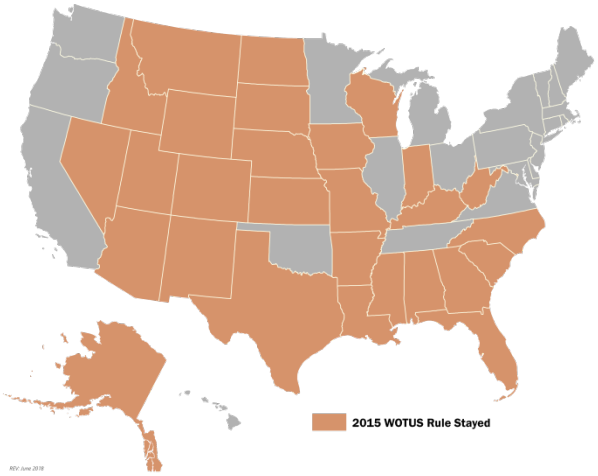
- The Clean Water Act (CWA) gives the Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) regulatory jurisdiction over navigable waters, which the CWA defines as "waters of the United States" (WOTUS).
- In 2015, the EPA and the Corps of Engineers issued a new definition of WOTUS significantly expanding the federal reach of the CWA. A 2017 Executive Order directed EPA and the Corps to review the 2015 rule and the legality of the expanded federal reach. Courts have stayed the 2015 rule in 28 states, but it remains in effect in the other 22 states (see map below).
- EPA and the Corps are implementing a two-step process to respond to the Executive Order: Step 1 (proposed in 2017) would rescind the 2015 rule; Step 2 (proposed in 2019) would establish a new, replacement WOTUS rule.

NRECA Position

NRECA urges the administration to withdraw the 2015 rule and initiate a new rulemaking process that reflects previous Supreme Court decisions on the limits of federal authority under the CWA. It is important that the new rulemaking also recognize the shared state-federal regulatory responsibility for protecting the nation's waters.

Impact on Coops

Expanded CWA jurisdiction increases permitting costs associated with the construction and maintenance of transmission and distribution corridors, the management of storm water runoff, and plant construction, operation, and maintenance.



Co-ops are also concerned that the expansion of CWA jurisdictional waters and features would mean that some water management systems could be considered WOTUS requiring new permits for water management within a plant's footprint and a return to pre-plant conditions when a wastewater management unit (e.g., ash pond) or plant is decommissioned.

That the 2015 rule is effective in some states but not others creates confusion and increased cost to any plant or project that spans multiple states.

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