

Federal Clean Water Act Jurisdiction – Waters of the U.S. (WOTUS) Definition

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, including some wetlands, which the CWA defines as “waters of the United States” (WOTUS). Any waters not regulated by the EPA and the Corps (the federal government) as WOTUS; states retain jurisdiction over all other water and wetlands that are not WOTUS.
- In 2015, the EPA and the Corps issued a new definition of WOTUS significantly expanding the federal reach of the CWA to include many waters and wetlands not previously subject to federal jurisdiction.
- EPA and the Corps rescinded the 2015 rule in 2019 and in 2020 replaced it with a new WOTUS definition, the *Navigable Waters Protection Rule*. This new rule retains federal jurisdiction over permanent waterways while drawing clear lines indicating that usually dry areas should fall under state jurisdiction.

NRECA Position

NRECA supports the Navigable Waters Protection Rule (NWPR) as consistent with (1) the Clean Water Act’s structure creating a shared state-federal regulatory responsibility for protecting the nation’s waters and (2) Supreme Court decisions on the limits of federal authority under the CWA.

Impact on Co-ops

The NWPR clarifies the shared federal-state responsibility for water quality. It confirms federal jurisdiction over traditional navigable waters (e.g., rivers, lakes, and streams supporting commerce) while reserving to states jurisdiction over other waters, including isolated wetlands, groundwater, and ephemeral features that only contain water following a rain. The new rule confirmed and classified several long-established exemptions from federal jurisdiction including most ditches and wastewater treatment systems.

Expanded CWA jurisdiction under the 2015 rule would have made more marginal areas, such as ephemeral streams, subject to the CWA thus increasing costs associated with coop activities in such marginal areas including construction and maintenance of transmission and distribution corridors, stormwater control, oil spill control, as well as plant construction, operation, maintenance, and decommissioning.

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