SEPTEMBER 2020

Navigable Waters Protection Rule

Federal agencies redefine "waters of the United States," reducing protections for many waterbodies across the country and creating uncertainty about permitting for projects to dredge, fill, discharge or otherwise impact certain wetlands and small streams.

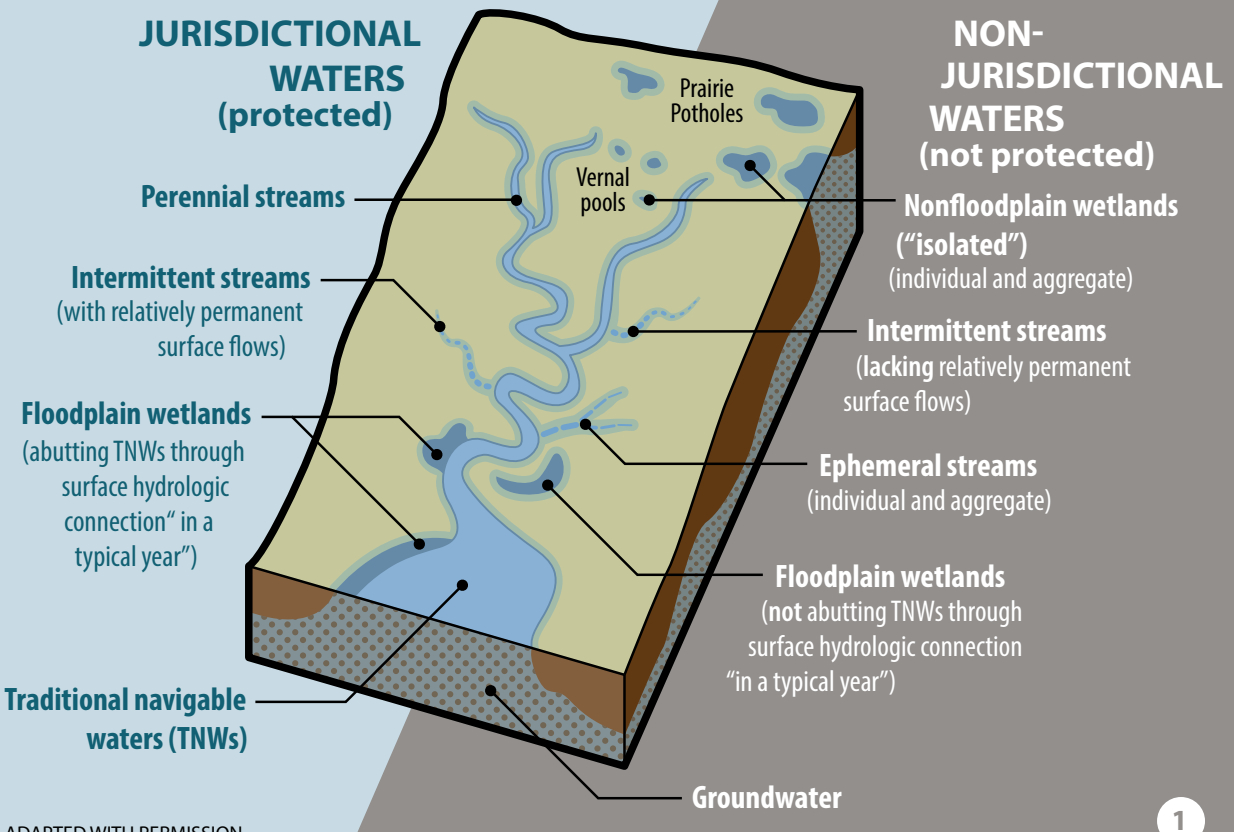
1. Why do 'waters of the United States' matter?

The Clean Water Act (CWA) controls activities causing pollution in "navigable waters," which is defined as "waters of the United States, including the territorial seas." The CWA itself does not further define waters of the United States (WOTUS). Instead the federal agencies charged with implementing the CWA—the U.S. Environmental Protection Agency (EPA) and the U.S. Department of the Army Corps of Engineers (Corps)—have defined WOTUS by regulation since the 1970s. Those regulations have become the source of frequent lawsuits by parties who seek to challenge the reach of the WOTUS definition under the CWA.

Definitions of which waters qualify as WOTUS are important as they ultimately determine which types of activities in which locations must comply with the CWA (e.g. obtaining discharge permits, dredge/fill permits, etc.).

2. What changed under the 2020 rule?

On April 21, 2020, the Corps and the EPA issued **a rule** changing the definition of WOTUS. This new rule – known as the ***Navigable Waters Protection Rule*** (2020 rule)– establishes two broad classes of waters: "jurisdictional waters" and "non-jurisdictional waters":



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- Jurisdictional waters are WOTUS, which is now defined to consist of only four specific categories of waters: (1) traditional navigable waters, (2) tributaries, (3) lakes, ponds, and impoundments of jurisdictional waters; and (4) adjacent wetlands.
- Twelve categories of waters are explicitly defined as "non-jurisdictional waters" that are not WOTUS (the WOTUS Exclusions), excluding many wetlands, ephemeral and intermittent streams (streams that flow in response to rainfall), and other isolated water bodies.

When determining if a water body or feature meets one of the jurisdictional definitions or exclusions, federal agencies will consider the circumstances during a "typical year." This definition will be important in determining the division between an ephemeral stream, which only flows due to precipitation, and a perennial or intermittent stream, which flows seasonally or annually. The 2020 rule defines a "typical year" to mean "***when precipitation and other climatic variables are within the normal periodic range for the geographic area … based on a rolling thirty-year period.***" Given that a typical year is based upon the most recent thirty years, a typical year for a given region, water body, or water feature could change significantly over time because of climate change impacts.

See the graphic in this section for an illustration of waters that are and are not protected. Also see **Appendix A** for a comparison of WOTUS jurisdiction across recent rulings.

The 2020 rule went into effect on June 22, 2020, except in Colorado where a court order stayed the rule. See **Appendix B** for a high-level timeline of recent court rulings on WOTUS.

3. Why does this rule change matter?

(a.) The 2020 rule removes or reduces protection for U.S. waters, including millions of miles of streams and acres of wetlands. If a water does not fall into one of the four new categories to constitute a "jurisdictional water," then the water is expressly classified as "non-jurisdictional" under the WOTUS Exclusions and is **not** subject to regulation under the CWA regardless of whether it meets any other specific exclusion. These waters will be vulnerable to outright destruction, fill, or unpermitted industrial pollution discharges that risk transporting pollutants throughout watersheds.

(b.) Without federal protection, vulnerable aquatic ecosystems that provide critical services to society, wildlife, and the economy may be at risk. The exclusions of the new rule are inconsistent with years of research that demonstrates how these waters are functionally connected to and support the integrity of downstream waters.

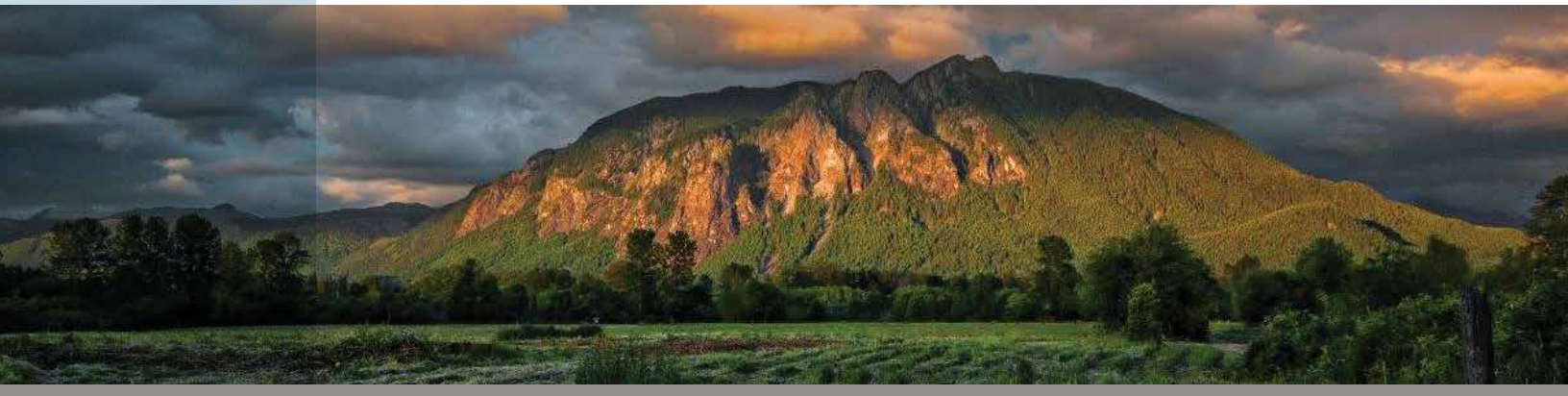

PHOTO: D. RAPHAEL

Removal of federal protection is likely to diminish numerous **ecosystem services**, such as safeguarding water quality and quantity, reducing or mitigating flood risk, conserving biodiversity, and maintaining recreationally and commercially valuable fisheries. This is likely to include increased risk to waters that help to:

- Provide and/or support habitat for salmon, which Tribes and Puget Sound's threatened southern resident orca need to survive.
- Filter and clean stormwater runoff.
- Recharge our underground sources of drinking water.
- Control flooding and erosion.
- Feed and shelter fish and other wildlife.
- Provide places for boating, fishing, and other recreational activities.

In the Snoqualmie Watershed alone, authors of a **2010 study** estimate the value of goods and services provided by natural systems to be **$265 million dollars annually** (Earth Economics, 2010).[1] These services are often undervalued or taken for granted.

(c.) The 2020 rule is likely to create permitting uncertainty, resulting in project delays for landowners and project proponents.

(d.) The 2020 rule is likely to adversely impact ecosystems and the services they provide in states that do not have robust environmental regulations. This is particularly important in arid and semi-arid regions. For example, in New Mexico's Río Peñasco watershed, the Obama Administration's 2015 Clean Water Rule protected 72% of wetland acres, whereas the ***2020 Navigable Waters Protection Rule*** will only protect 28%.

(e.) The 2020 rule categorically excludes subsurface hydrologic connectivity. To disregard groundwater connectivity is to disregard the scientific understanding of how natural waters function. However, in April 2020, the case of ***County of Maui v. Hawaii Wildlife Fund*** was brought before the U.S. Supreme Court, where the court rejected an argument that would have eliminated federal CWA protections. Due to this recent case, the court affirmed for the first time that pollutants that travel through groundwater and then emerge into surface waters are covered by the CWA. This may have implications for future rulings.

1 Note: the scope of this study was broader than just water-related benefits, including natural systems role in drainage, electricity, flood protection, recreation, and agriculture. See page 27 of the study for the full range of identified categories of ecological goods and services (23 in total).

(f.) Research-based evidence on the impacts of climate change were notably absent in the 2020 rule. Many stream flows are currently declining, such that intermittent and perennial streams are increasingly being replaced with ephemeral streams that will lose protection. For instance, reduced mountain snowpack and increased evaporation have been implicated in the 20% decline in the Colorado River's mean annual flow in comparison to the previous century. The Upper Colorado River basin supplies water to around 40 million people and supports nearly 16 million jobs.

4. What might this mean for Washington State?

(a.) The responsibility for protecting waters not covered by the new rule now falls to the states. In Washington, wetlands, streams, and other water bodies are protected under the state's 1945 **Water Pollution Control Act**, 1972 **Shoreline Management Act**, 1990 **Growth Management Act**, and other environmental regulations. The percentage of Washington's wetlands without federal protection will climb from 11% to 29% under the rule.

Transferring responsibility to the states creates a new permitting burden. The Washington Department of Ecology (Ecology) and Corps used a streamlined, joint process for reviewing projects for permitting under the CWA known as the Nationwide Permit program, which authorized projects with minor impacts to wetlands. **The new rule terminates this streamlined process for non-WOTUS waters.** Developers, local governments, and state agencies that seek to meet state water quality standards for their projects will now need to navigate an unclear, undefined and potentially inefficient authorization process. Applicants will still need to submit a **Joint Aquatic Resources Permit Application** (JARPA) to request authorization under the state Water Pollution Control Act.

(b.) Landowners should work closely with state agencies to ensure that wet areas on their property are appropriately permitted. This particularly applies for ephemeral features and wetlands that may no longer be federally protected and/or subject to new state permitting requirements. Even in cases where a water feature is no longer classified as a WOTUS, landowners may also need to consider whether they are subject to other CWA provisions. For instance, in some cases an ephemeral stream or ditch could be considered a "point source" that requires a discharge permit.

(c.) The rule is likely to increase the cost-burden to Washington taxpayers for oil spill response and clean-up across the state. When an oil spill or hazardous material release reaches waters of the United States, Ecology typically works with federal agency partners to respond to the environmental emergency. Federal partners historically have provided technical assistance and funding to help respond to and clean up the spill. This relationship may change as a result of the rule.

5. What's next?

(a.) Ecology is seeking feedback from stakeholders on how to address this increased need to respond to proposed projects that may impact state waters in an efficient and effective manner. Ecology believes issuing individual administrative orders for every project impacting waters that no longer qualify for federal protection is not a viable long-term solution. To give input, contact: Lauren Driscoll, Wetlands Section Manager, Department of Ecology; 360-584-5107, **lauren.driscoll@ecy.wa.gov**.

(b.) A patchwork of permitting schemes across the U.S.?:

- **In May 2020, Washington joined 17 other states, the District of Columbia, and New York City to legally challenge the 2020 WOTUS Rule in the U.S. District Court for the Northern District of California.** The challenge asserted that the new rule is inconsistent with existing law governing what qualifies as WOTUS, disregards scientific evidence and prior agency findings, and fails to consider water quality impacts and the CWA's objective to protect the country's water resources. In June 2020, **the California District Court judge denied the challenge**, finding the plaintiffs failed to provide enough support for their claims.
- In June 2020, the District Court of Colorado ordered a stay of the rule's effective date within Colorado, reasoning that the new WOTUS definition conflicts with the CWA, contravenes Supreme Court precedent, contradicts the CWA's objective, and ignores sound science. It's possible that other courts may also stay the 2020 WOTUS Rule, while others do not. **Multiple legal challenges could result in a patchwork of distinct protections and permitting schemes across the country.**

Where can I go to learn more?

Washington Department of Ecology

Visit the following webpages from Ecology to learn more about the anticipated consequences of and the Department's stance on the WOTUS ruling: Federal environmental rollbacks; Focus on: Waters of the United States; Federal wetland regulations.

Contact: Lauren Driscoll, Wetlands Section Manager, Department of Ecology, 360-584-5107, lauren.driscoll@ecy.wa.gov

U.S. Environmental Protection Agency

Visit the following webpages from the EPA to learn more about the current implementation of WOTUS and other information: Navigable Waters Protection Rule; Imagery of WOTUS.

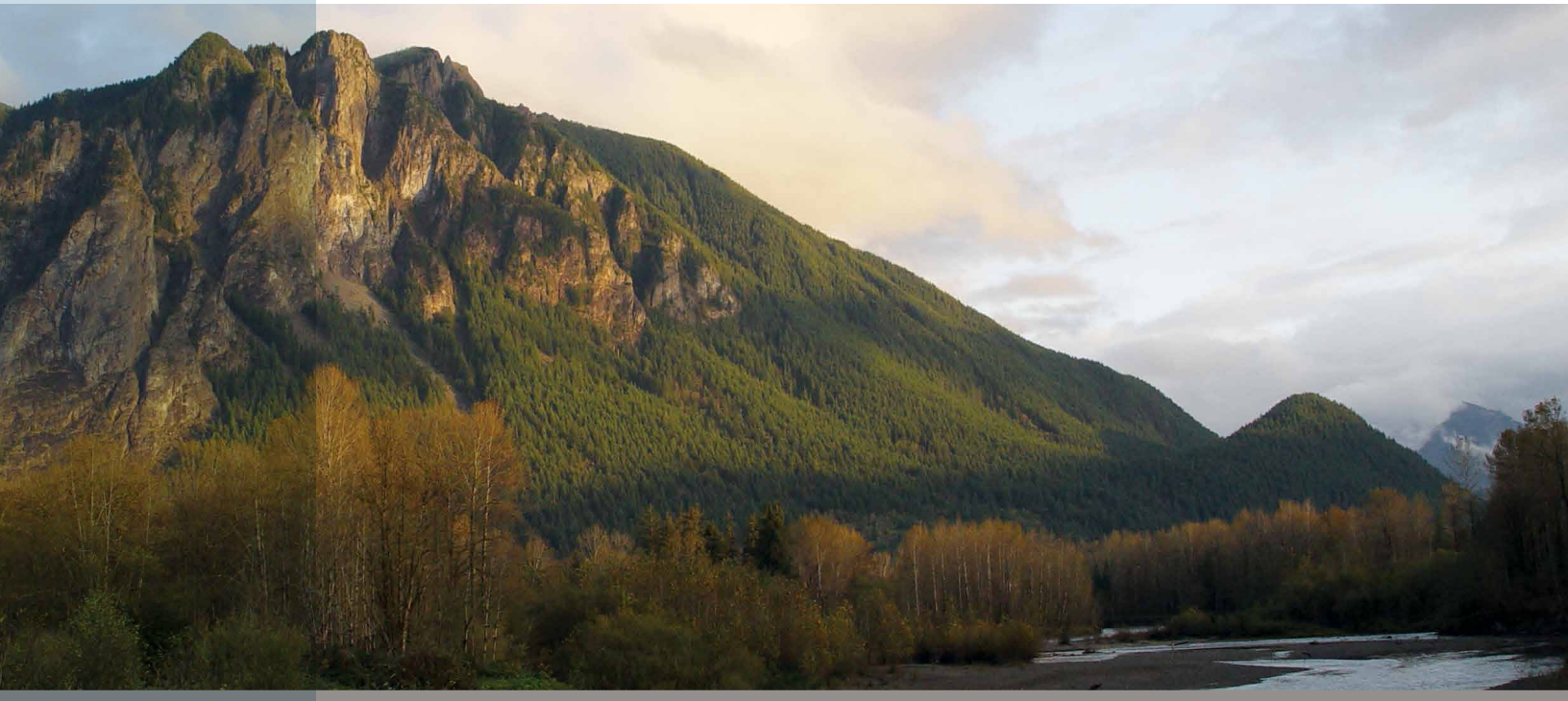

PHOTO: D. FRAME

Appendix A: What changed under the 2020 rule?

Two complementary summary tables are provided below: (1) a visual summary of how federal jurisdictional authority under the *Clean Water Act* has changed over time, and (2) a descriptive summary of significant changes.

Table 1a. Summary table of shifting federal jurisdictional authority for WOTUS under the Clean Water Act.

● Jurisdictional authority under CWA applies. ○ Jurisdictional authority under CWA kept with significant changes.

	CWA Jurisdiction			
Rule Category	**Pre-2015**	**2015 CWA**	**2020 NWPR**	**Comment**
Territorial Seas	●	●	●	Combined into new category: "Territorial seas and traditional navigable waters". Categories themselves are unchanged.
Traditional Navigable Waters (TNWs)	●	●		
Interstate Waters	●	●		Category removed. Still jurisdictional if waters fall under any other definition.
Tributaries	●	●	○	Category remains, but redefined. Excludes ephemeral streams.
Impoundments of Jurisdictional Waters	●	●	○	Combined into new category: "lakes, ponds, and impoundments of jurisdictional waters". New conditions required for Lakes and Ponds.
Lakes and Ponds	●	○		
Adjacent Wetlands / Waters	●	●	○	Category remains, but redefined.
Ditches	●	●		All ditches excluded. Only jurisdictional if constructed in a trib. or adj. wetland.
"Isolated" or "Other" Waters	●	●		Category removed.
Exclusions from the Waters of the U.S.	●	○	○	Many WOTUS Exclusions kept from 2015 rule. New exclusions added.

See Table 1b for further context. Pre-2015: Older regulations preceding the 2015 Clean Water Rule; 2015 CWR: Obama Administration Clean Water Rule; 2020 NWPR: Trump Administration Navigable Waters Protection Rule.

Table 1b. Descriptive summary table of jurisdictional authority for WOTUS under the Clean Water Act.

Rule Category	Older Regulations (Pre-2015)	2015 Clean Water Rule	2020 Navigable Waters Protection Rule
Territorial Seas	Jurisdictional	Jurisdictional	Jurisdictional. Unchanged. Combined as a category with TNWs.
Traditional Navigable Waters (TNWs)	Jurisdictional	Jurisdictional	Jurisdictional. Unchanged. Combined as a category with Territorial Seas.
Interstate Waters	Jurisdictional	Jurisdictional	**Removed as a separate category.** Will still be jurisdictional if waters fall under any other categorical definition.

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Rule Category	Older Regulations (Pre-2015)	2015 Clean Water Rule	2020 Navigable Waters Protection Rule
Tributaries	Jurisdictional. "Tributary" not defined.	Jurisdictional. CWR defines "tributary" for first time, as a water with bed/banks and ordinary high water mark that contributes flow to TNW, interstate water, or territorial sea. Tributary may be natural, man-altered, or man-made. No minimum flow established, but sufficient flow necessary to create required physical characteristics. The 2015 definition included all smaller tributary streams as long as they exhibit a bed and bank. This included everything from small year-round creeks to washes and arroyos where water flows only during rainfall—one aspect of the 2015 definition that federal courts ruled to be excessive.	Jurisdictional, but redefined. The 2020 regulation still includes small year-round creeks and small streams that typically flow at only certain times of the year. **But it removes ephemeral tributaries, which flow only during precipitation.** Frequently, these ephemeral drainages make up the outer edges of a tributary network, farthest from the downstream waters that flow year-round. Certain ditches can also be regulated as tributaries.
Impoundments of Jurisdictional Waters	Jurisdictional	Jurisdictional. The 2015 regulation had a broad exception from the impoundment category for artificial lakes and ponds built in uplands, like irrigation and stock ponds.	Jurisdictional. **This is the first-time lakes, ponds, and impoundments are being regulated as a single category.** The 2020 definition has a narrower exception: Artificial lakes and ponds are regulated if they drain, even only occasionally, to regulated tributaries. See 'Lakes and Ponds' for more relevant info.
Lakes and Ponds	Not an individual category.	Not an individual category, but jurisdictional as adjacent waters: if lake or pond was naturally occurring within 100 feet of a jurisdictional waterway or located both within 100 year floodplain of jurisdictional waterway and within 1,500 feet of jurisdictional waterway's ordinary high water mark. Ponds could also be jurisdictional if they contribute water downstream to TNW.	Jurisdictional. **This is the first-time lakes, ponds, and impoundments are being regulated as a single category.** **Redefined:** the new definition includes only lakes and ponds from which water typically drains to downstream tributaries or other features. It doesn't matter how far the lake or pond is from the downstream tributary to which it drains, nor does it matter how little or infrequent the drainage is. Waters are subject to 2020 rule if the water feature: (1) is a traditional navigable water (e.g. Great Lakes), (2) contribute surface water flow to a territorial sea or a traditional navigable water in a typical year either directly or through one or more jurisdictional waters; or (3) is inundated by flooding from a jurisdictional water at least once in a typical year.

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Rule Category	Older Regulations (Pre-2015)	2015 Clean Water Rule	2020 Navigable Waters Protection Rule
Adjacent Wetlands / Waters	Jurisdictional. "Adjacent" defined as bordering, contiguous, or neighboring; wetlands behind berms, dikes, and so on are considered adjacent.	Jurisdictional. Definition of "adjacent" retained, including waters bordering or contiguous or behind berms being adjacent. Defines "neighboring" for first time as including waters within 100 feet of a traditional navigable water, interstate water, territorial seas, impoundment of jurisdictional waters, or tributary, or within 100-year floodplain to a maximum of 1,500 feet of the ordinary high water mark, or within 1,500 feet of the high tide line. Entire water is "adjacent" if all or part bordering, contiguous, or "neighboring." Waters part of an ongoing farming, ranching, or silvicultural operation are not "adjacent," but may be jurisdictional based on a case-specific analysis.	Jurisdictional, but **redefined**. The 2020 definition includes only wetlands that directly abut other regulated waters or are separated from other regulated waters only by natural berms, banks, dunes, or permeable artificial barriers such as dikes, levees, or roads. Wetlands separated by artificial barriers that do not allow a surface hydrological connection to other regulated waters are not regulated under the 2020 rule. Wetlands that are farther removed are not regulated under the new definition.
Ditches	Not an individual category – default was jurisdictional.	Not an individual category in 2015 Rule -- default was jurisdictional, but were exempted if the ditch had only intermittent/ephemeral flow as long as they did not relocate a natural tributary.	**All ditches excluded:** Ditches are only jurisdictional if constructed in a tributary or an adjacent wetland (the ditch must satisfy definition of a tributary, presumably aside from the ditch being by definition artificial and not natural). Ditch is defined as artificial channel used to convey water.
"Isolated" or "Other" Waters	Jurisdictional where the water's use or destruction could affect interstate commerce.	Waters are jurisdictional where found on a case-specific basis to have a significant nexus. Applicable only to: • Waters categorically "similarly situated" — prairie potholes, Carolina and Delmarva bays, pocosins, western vernal pools in California, and Texas coastal prairie wetlands. • Waters within the 100-year floodplain of a TNW, interstate water, or territorial sea. • Waters within 4,000 feet of a traditional navigable water, interstate water, territorial seas, impoundment of jurisdictional waters, or tributary.	**Removed as a separate category**. Isolated waters would only be jurisdictional if they fulfilled requirements for another category (i.e. definition of pond).

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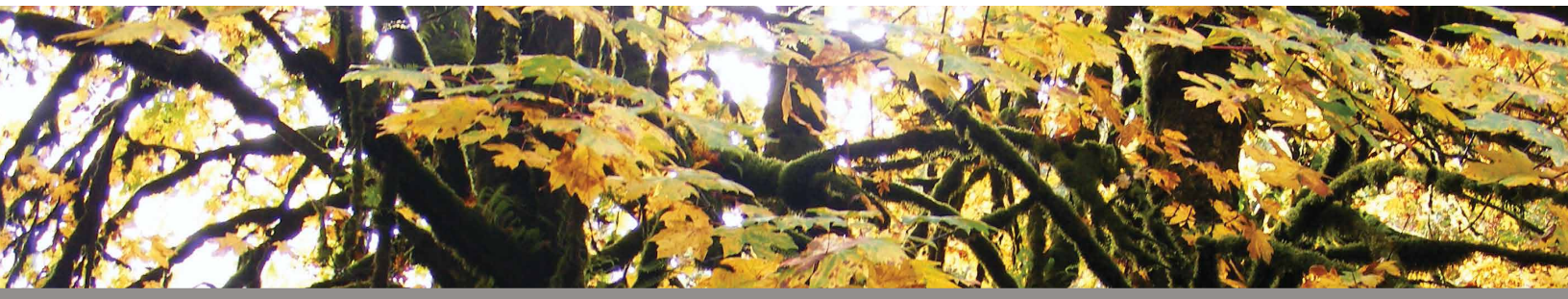

PHOTO: J. HERRMANN

Rule Category	Older Regulations (Pre-2015)	2015 Clean Water Rule	2020 Navigable Waters Protection Rule
Exclusions from the Waters of the U.S.	Excluded prior converted cropland and waste treatment systems from jurisdiction.	*Excludes non-jurisdictional waters under old reg:* • Prior converted cropland • Waste treatment systems *For the first time in rule, excludes certain ditches:* • Ephemeral ditches not excavated in or relocating a tributary. • Ditches that do not contribute flow, either directly or through another water, to a TNW, interstate water, or the territorial seas. • Intermittent ditches not excavated in or relocating a tributary, or draining a wetland. *For the first time in rule, excludes waters non-jurisdictional under past practice:* • Artificially irrigated areas that would revert to dry land should irrigation cease. • Artificial lakes and ponds created in dry land. • Artificial pools created in dry land. • Small ornamental waters created in dry land. • Water-filled depressions created in dry land incidental to mining or construction activity. • Erosional features that do not meet the definition of "tributary," non-wetland swales, lawfully constructed grassed waterways. • Puddles. • Groundwater. • Stormwater control features created in dry land. • Wastewater recycling structures created in dry land.	*Exclusions kept from 2015 rule:* • Prior converted cropland. • Artificial lakes and ponds constructed in upland (i.e. water storage reservoirs, farm and stock watering ponds, settling basins). • Stormwater control features in upland. • Groundwater. • Waste treatment systems. • Water filled depressions created in upland incidental to mining or construction activity and pits excavated in upland for the purpose of obtaining fill, sand or gravel. • Waste water recycling structures in upland. • Prior converted cropland. • Artificial lakes and ponds constructed in upland (i.e. water storage reservoirs, farm and stock watering ponds, settling basins). • Stormwater control features in upland. • Groundwater. • Waste treatment systems. • Water filled depressions created in upland incidental to mining or construction activity and pits excavated in upland for the purpose of obtaining fill, sand or gravel. • Waste water recycling structures in upland. ***New Exclusions:*** • **Any water not falling into explicitly listed categories.** • **All ditches except those identified as jurisdictional under new ditches section.** • **Ephemeral surface water features.** • **Diffuse stormwater runoff.**

Appendix B: High-Level Timeline of Recent Rulings on WOTUS (2014-2020)

Context: in 2014, the Obama Administration issued a proposed rule, ***Definition of Waters of the United States Under the Clean Water Act***, for public comment as a result of two recent Supreme Court Decisions, ***Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC)***, and Rapanos v. United States (Rapanos) in 2001 and 2006, respectively.

- In SWANCC, the Court decided that the use of waters by migratory birds is not a sufficient basis for federal jurisdiction under the Clean Water Act.
- In Rapanos, provided that the CWA strictly applies to 1) "navigable waters", and only applies to non-navigable waters if the waters are "relatively permanent, standing or flowing bodies of water", such as streams, rivers, lakes, and bodies of water forming geographical features, and 2) if waters have a 'significant nexus' to navigable waters and sea.

These two decisions have resulted in considerable confusion over what waters are jurisdictional, and therefore increased allocation of federal and state resources to determining this on a case-by-case basis. A high-level timeline of proposed rules, challenges, and court issued stays is provided below.

Year	Month	Description
2014	March	**Definition of Waters of the U.S. proposed** The Environmental Protection Agency (EPA) and the Corps published a **proposed rule** aiming to define which waters were to be considered WOTUS and therefore subject to federal oversight.
2015	Jun.	**Final rule issued and challenged in court** EPA and U.S. Army Corps of Engineers (USACE) published the final rule: **Clean Water Rule: Definition of Waters of the United States** (also known as the 2015 Clean Water Rule or WOTUS). After the rule was issued, it was challenged in multiple courts.
	Aug.	**Stay on rule issued for 13 states** The U.S. District Court for the District of North Dakota granted a preliminary stay of the rule for 13 states that were suing EPA and USACE, finding the rule exceeded the agencies' congressional mandate to regulation of the "waters of the U.S.", while also likely violating the Administrative Procedures Act.
	Oct.	**Stay on rule issued for all of U.S.** The U.S. Court of Appeals for the Sixth Circuit issued a nationwide stay against the enforcement of WOTUS. Stakeholders referred to pre-2015 guidance for interim.
2016	May	**Challenges to rule are elevated to the Supreme Court (SCOTUS)** Several district courts dismissed challenges to WOTUS citing lack of jurisdiction. U.S. District Court of the District of North Dakota stayed WOTUS proceedings pending further decision by the Supreme Court of the United States (SCOTUS).
2017	January	**SCOTUS granted *certiorari*** Being granted certiorari means SCOTUS is authorized to review the merits of the existing case/legal challenges. SCOTUS proceeded to hear all litigation challenging WOTUS to answer the question: do U.S. courts of appeals or federal district courts hold jurisdiction over challenges to the rule? Meaning: who gets to decide on legal challenges to WOTUS?

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Year	Month	Description
2017 continued	February	**Executive Order signed to review WOTUS** President Donald Trump signed **executive order (EO) 13778** "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule", which directed EPA and USACE to review and potentially rescind the 2015 rule.
	Jun.	**EPA and USACE propose rule to repeal WOTUS** EPA and USACE published a **proposed rule** to repeal WOTUS, and re-codify regulations that existed prior to the 2015 rule. The action was a first step of a two-step, repeal-and-replace process.
	Nov.	**EPA and USACE propose delaying implementation of rule until 2020** EPA and USACE propose a rule to delay the applicability date of WOTUS by two years (until 2020). The stated rationale is to "provide continuity and certainty for regulated entities, the States and Tribes, agency staff, and the public".
2018	January	**SCOTUS rules that all challenges to WOTUS must be heard in federal court** SCOTUS decides that all challenges to the rule must be heard in federal district courts. SCOTUS orders the Sixth Circuit of Court of Appeals to dismiss the case.
	February	**EPA and USACE finalize 2-year delay of WOTUS until Jan 2020** EPA and USACE finalized the **two-year delay of WOTUS**, pushing back the applicability date of the rule to January 31, 2020. The two-year delay was **immediately challenged** in a lawsuit filed in U.S. district court by the attorneys general of California, Connecticut, Maryland, Massachusetts, New Jersey, New York, Oregon, Rhode Island, Vermont, Washington and the District of Columbia. **Sixth Circuit Court of Appeals dismisses case** The Sixth Circuit Court of Appeals **vacated** its nationwide stay and dismissed consolidated petitions for review due to a lack of jurisdiction.
	June	**WOTUS stayed in 11 states** The U.S. District Court for the Southern District of Georgia **granted** a regional injunction of WOTUS to 11 states—Georgia, West Virginia, Alabama, Florida, Indiana, Kansas, Kentucky, North Carolina, South Carolina, Utah and Wisconsin.
	August	**WOTUS reinstated in 26 states** The U.S. District Court for the District of South Carolina **ruled** that EPA and USACE failed to comply with the Administrative Procedures Act when issuing the 2-year extension of the WOTUS applicability date. The action reinstated WOTUS in 26 states, the District of Columbia and Territories, while the rule remained stayed in 24 states due to separate injunctions. Subsequent injunctions in September further shift the situation: WOTUS remains stayed in 28 states and in effect in 22 states.
	December	**EPA and USACE rewrite WOTUS (2015 rule)** EPA and USACE propose a WOTUS rewrite to replace the 2015 final rule and clarify federal authority under the Clean Water Act.
2019	March	**Efforts to delay 2015 WOTUS rule implementation dropped** The Trump administration withdraws its appeal efforts regarding its February 2018 attempt to delay the implementation date of EPA's 2015 WOTUS rule. The August 2018 ruling determined that EPA and USACE failed to comply with the Administrative Procedures Act when issuing the two-year extension.
	December	**2015 WOTUS rule repealed** EPA and USACE repeal the 2015 WOTUS rule following the publication of a new **final rule**. The rewrite restores the 1986 regulatory definition of the "waters of the United States".

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Year	Month	Description
2020	January	**2015 WOTUS rule replaced** EPA and USACE released the "**Navigable Waters Protection Rule**", which updates the federal definition for a WOTUS.
	April	**Revised WOTUS rule published in the Federal Register: in effect on June 22, 2020** EPA and USACE publish the new rule in the Federal Register on April 21, 2020. The rule will go into effect on June 22, 2020. The 14 states and New York City moved to voluntarily dismiss this case, filed in U.S. District Court for the Southern District of New York, after EPA finalized the 2020 WOTUS Rule.
	May	Washington joined 17 other states, the District of Columbia, and New York City to challenge the 2020 WOTUS Rule in the U.S. District Court for the Northern District of California. The challenge asserted that the new rule is inconsistent with existing law governing what qualifies as WOTUS, disregards scientific evidence and prior agency findings, and fails to consider water quality impacts and the CWA's objective to protect the country's water resources.
	June	The California District Court judge denied the challenge, finding the plaintiffs failed to provide enough support for their claims. At the same time, the District Court of Colorado ordered a stay of the rule's effective date within Colorado, reasoning that the new WOTUS definition conflicts with the CWA, contravenes Supreme Court precedent, contradicts the CWA's objective, and ignores sound science. It's possible that other courts may also stay the 2020 WOTUS Rule, while others do not. Multiple legal challenges could result in a patchwork of distinct protections and permitting schemes across the country.

Source: adapted from the National Conference of State Legislatures, June 2020. Access online:
Legal & Regulatory Timeline of "Waters of the United States".

Alternate formats available. Please call 206-263-8353 or TTY: 711.
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