

## EPN Comments on Proposed Repeal of the Rule Defining the Waters of the United States

The U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers are seeking to repeal and reissue a Clean Water Rule promulgated in 2015. This rule, also referred to as the Waters of the United States (WOTUS) Rule, determined what waters possess a “significant nexus” to traditionally navigable waters such that the objective of the Clean Water Act (CWA) to “restore and maintain the chemical, physical and biological integrity of the Nation’s waters” could be achieved.

The [Environmental Protection Network](#) (EPN) is a volunteer organization of EPA alumni and others who work to preserve the nation’s bipartisan progress toward clean air, water, land and climate protections. EPN focused its comments on the basic policies pursued in the proposal and the implications of reversing long-standing understandings of the purpose, intent and administration of the CWA.

Agencies seeking to overturn their own previous rulemakings carry a heavy legal burden. They must provide a clear and convincing rationale for their proposal (as in any rulemaking) and equally explain reversals of the records they previously created. In this case, that includes the legal rationale for what constitutes a significant hydrological or ecological connection to traditional navigable waters, inland waterways and territorial seas, the science used to support the decision-making and other foundations of the 2015 rulemaking.

The government’s documents are unconvincing and in fact fall short of meeting the arbitrary and capricious standard of the Administrative Procedure Act. The proposal elevates states’ rights over the impacts of water quality on the health and safety of the American public. This overzealous focus on states’ rights misses the basic and critical point, recognized by Congress in the 1972 CWA, that water pollution is a national problem that requires a national solution. Our analysis of their proposal leads us to conclude that it incorrectly reinterprets the CWA, its legislative history and the applicable Supreme Court cases; that it has significant shortcomings; and that it should not proceed to promulgation.

The following is a summary of key points in the full comments:

- EPA and the Corps are attempting to reinterpret the CWA, its legislative history and the applicable Supreme Court cases differently than any prior administration, without proper legal support or foundation.
- The proposal’s focus on states’ rights misses the basic and critical point that the nation’s waterways are largely interconnected across state lines and, therefore, require a national solution. The 2015 rule buffers its effect on states’ right by limiting CWA jurisdiction to only those waters that affect downstream navigable waters.
- The agencies go to great lengths without any credible legal or scientific support to discredit several pertinent and well-researched reports presenting important analysis on how certain types of waterways can significantly affect downstream waters. These studies are critical. It is irresponsible to discredit them.
- The agencies state that the 2015 rule must be changed because it does not achieve its goal of regulatory certainty. Yet, the rule has essentially never gone into effect nor has it been tested in the real world. It was in effect in only parts of the country for only a few weeks before it was stayed by the courts.

EPN supports the legitimacy of a new administration reconsidering environmental policy directions, but it should not do so without developing a proper legal justification and record with full public input.

To read EPN’s full public comments please select the following link:

<https://www.environmentalprotectionnetwork.org/wotus-comments>

For more information: Contact EPN at [info@environmentalprotectionnetwork.org](mailto:info@environmentalprotectionnetwork.org) or call 202-656-6229.