

Summary of the Draft Revisions to Waters of the United States: A Roll Back to the 1970's February 28, 2019

On December 11, 2018, the U.S. Environmental Protection Agency (EPA) and the Department of the Army [proposed](#) a new definition of “waters of the United States” (WOTUS). The new definition would halt decades-long progress toward understanding how rivers, streams, wetlands and other water bodies interconnect to provide clean drinking water and clean water for industrial needs. The proposal’s implications are deep and significant, denying Clean Water Act (CWA) protection to many headwater streams and undercutting protection to some bodies of water still under statutory protection. Once polluted, rivers and lakes fall into a cycle of degradation. Once filled and built over, wetlands are gone forever. The decades of research and billions of dollars spent maintaining and protecting water quality are put in jeopardy with the new proposed WOTUS definition.

What is expressly excluded from the Administration’s WOTUS definition (and therefore from protection) is significant and includes: (1) groundwater (including water flowing through tile drains), (2) ephemeral streams, (3) drainage channels not identified above, (4) prior converted croplands, (5) artificially irrigated areas that would revert to uplands without irrigation, (6) artificial lakes and ponds constructed in uplands, (7) water-filled depressions at mines, (8) stormwater control features, (9) wastewater recycling structures built in uplands and (10) waste treatment systems.

Why does this matter?

- Waters that flow from one state into the neighboring one (Interstate waters) have disappeared from the definition.
- Streams and ditches that have flowing water for brief periods during and following rainfall but are normally dry (“ephemeral waters”) are no longer protected, even though their impact in terms of polluting downstream water bodies when they do fill up and drain is considerable.
- The Administration significantly narrows the protections for wetlands, limiting its focus to those adjacent wetlands that have permanent, surface water connection to other waters.
- The “significant nexus” standard, authorized by the Supreme Court in 2006, has been dropped.

The lengthy Preamble discussion and the supporting documents are disingenuous and very troubling. Unlike the 2015 definition of jurisdictional waters, the proposed new definition provides no distinguishing physical characteristics for jurisdictional waters or specific distances to jurisdictional wetlands, which could result in the need for case-specific determinations.

Finally, the Economic Analysis is also deeply flawed:

- It does not assign value to the most consequential benefits lost under the proposal.
- It focuses solely on the cost savings and forgone benefits associated with the Section 404 dredge and fill program, managing to find greater than an order of magnitude drop in benefits of wetlands mitigation compared to the 2015 analyses.
- Its scenarios do not recognize constraints on state ability to continue regulating non-jurisdictional waters and thus underestimates the lost benefits of a more restricted jurisdiction definition.
- It overestimates the cost savings because it does not acknowledge the additional state dollars and state staff that will be needed replace federal resources to regulate non-jurisdictional waters.

For all of the reasons above, EPN strongly recommends withdrawing the proposed new WOTUS definition.

For more information, please email EPN at info@environmentalprotectionnetwork.org or call 202-656-6229.

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