

**Summary of CSAC Comments on the EPA/Corps Proposed Rule Defining “Waters of the United States” Under the Clean Water Act
November 3, 2014**



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Background

- April 21, 2014 – EPA/Corps released Proposed Rule defining the scope of waters protected under the Clean Water Act (CWA) for comments – called Waters of the US (WOTUS).
- Public comment period extended to November 14, 2014
- EPA/Corps goals: clarify CWA jurisdiction; not to expand jurisdiction

Proposed Rule

- Categorically defines jurisdiction.
- Jurisdictional definitions apply globally to all sections of the CWA.
- Exemptions for waste treatment systems, prior converted croplands, ditches.
- New definitions: Adjacent, Neighboring, Riparian Area, Floodplain, Tributary, Wetlands, Significant Nexus.

Issues

- Vague
 - Fails to clarify jurisdiction.
 - Definitions still require extensive interpretation
 - “Adjacent” defined to “Neighboring” which is defined to include “Floodplain.” “Floodplain” loosely defined.
- Expansive
 - Broad definitions blur distinction between storm drain systems and the receiving water body; could result in jurisdiction over storm drains, and consequently apply CWA provisions to miles of municipal drainage network.
 - Misapplies Justice Kennedy’s “Significant Nexus” jurisdiction test; lowers threshold for jurisdiction from three criteria to just one criterion.
- Limited exemptions
 - Narrow exemptions are of limited use to Counties.
 - Broad language can recapture exempted activities and facilities.
- EPA/Corps Economic Analysis of proposed rule severely underestimates cost
 - Assumes mere 3% increase in asserted jurisdiction
- Rule based on EPA review of scientific literature on stream connectivity that chases connectivity far upstream.

Recommendations

- Explicitly clarify that storm drain systems are not WOTUS.
- Define WOTUS exemptions to include: water quality treatment features, roadside ditches, and routine channel maintenance activities.
- Revise rule to be consistent with Justice Kennedy’s Significant Nexus threshold.