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EPA and Army Propose New "Waters of the United States" Definition

WASHINGTON (December 11, 2018) – Today, the U.S. Environmental Protection Agency (EPA) and the Department of the Army (Army) are proposing a clear, understandable, and implementable definition of “waters of the United States” that clarifies federal authority under the Clean Water Act. Unlike the Obama administration’s 2015 definition of “waters of the United States,” today’s proposal contains a straightforward definition that would result in significant cost savings, protect the nation’s navigable waters, help sustain economic growth, and reduce barriers to business development.

“Our proposal would replace the Obama EPA’s 2015 definition with one that respects the limits of the Clean Water Act and provides states and landowners the certainty they need to manage their natural resources and grow local economies,” said EPA Acting Administrator Andrew Wheeler. **“For the first time, we are clearly defining the difference between federally protected waterways and state protected waterways. Our simpler and clearer definition would help landowners understand whether a project on their property will require a federal permit or not, without spending thousands of dollars on engineering and legal professionals.”**

The agencies’ proposal is the second step in a two-step process to review and revise the definition of “waters of the United States” consistent with President Trump’s February 2017 Executive Order entitled “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.” The Executive Order states that it is in the national interest to ensure that the nation’s navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of Congress and the states under the Constitution.

“EPA and the Army together propose this new definition that provides a clear and predictable approach to regulating ‘waters of the United States.’ We focused on developing an implementable definition that balances local and national interests under the Clean Water Act,” said R.D. James, Assistant Secretary of the Army for Civil Works. **“I have heard from a wide range of stakeholders on Clean Water Act implementation challenges. This proposed definition provides a common-sense approach to managing our nation’s waters.”**

The agencies' proposed rule would provide clarity, predictability and consistency so that the regulated community can easily understand where the Clean Water Act applies—and where it does not. Under the agencies' proposal, traditional navigable waters, tributaries to those waters, certain ditches, certain lakes and ponds, impoundments of jurisdictional waters, and wetlands adjacent to jurisdictional waters would be federally regulated. It also details what are not “waters of the United States,” such as features that only contain water during or in response to rainfall (e.g., ephemeral features); groundwater; many ditches, including most roadside or farm ditches; prior converted cropland; stormwater control features; and waste treatment systems.

The agencies believe this proposed definition appropriately identifies waters that should be subject to regulation under the Clean Water Act while respecting the role of states and tribes in managing their own land and water resources. States and many tribes have existing regulations that apply to waters within their borders, whether or not they are considered “waters of the United States.” The agencies' proposal gives states and tribes more flexibility in determining how best to manage their land and water resources while protecting the nation's navigable waters as intended by Congress when it enacted the Clean Water Act.

Robust, publicly accessible data is also a key component of common-sense, cost-effective environmental protection. In response to requests from some states, EPA and the Army are exploring ways the agencies can work with our federal, state, and tribal partners to develop a data or mapping system that could provide a clearer understanding of the presence or absence of jurisdictional waters.

The agencies invited written pre-proposal recommendations and received more than 6,000 recommendations that the agencies have considered in developing this proposal. The agencies listened to those directly affected by the regulations, and this proposal balances the input the agencies received from a wide range of stakeholders.

The agencies will take comment on the proposal for 60 days after publication in the Federal Register. EPA and the Army will also hold an informational webcast on January 10, 2019, and will host a listening session on the proposed rule in Kansas City, KS, on January 23, 2019.

More information including a pre-publication version of the Federal Register notice, the supporting analyses and fact sheets are available at: <https://www.epa.gov/wotus-rule>.

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