

Revised Definition of “Waters of the United States” Public Meeting

August 18, 2021

Introductions

- **Zachary Schafer**, Senior Advisor to the Assistant Administrator for Water, U.S. Environmental Protection Agency
- **Brian Frazer**, Director of the Oceans, Wetlands, and Communities Division, U.S. Environmental Protection Agency
- **Stacey Jensen**, Assistant for Regulatory and Tribal Affairs in the Office of the Assistant Secretary of the Army (Civil Works)

“Waters of the United States” and the Clean Water Act

- “Waters of the United States” (WOTUS) is a threshold term in the Clean Water Act that establishes the geographic scope of federal jurisdiction under the Act.
- Clean Water Act regulatory programs address “navigable waters,” defined in the statute as “the waters of the United States, including the territorial seas.”
- The Clean Water Act does not define WOTUS; Congress left further clarification to the agencies.

Previous “WOTUS” Definitions

- The EPA and the Department of the Army have defined WOTUS by regulation since the 1970s.
 - Pre-2015 Practice
 - 2015 Clean Water Rule
 - 2020 Navigable Waters Protection Rule

Executive Order 13990: NWPR Review

- Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (January 20, 2021)
- Directs federal agencies to review recent regulations, including the NWPR
- Identifies science, the environment, climate change, and environmental justice, among others, as issues to consider
- On June 9, 2021, EPA and the Army announced their intention to revise the definition of “waters of the United States”

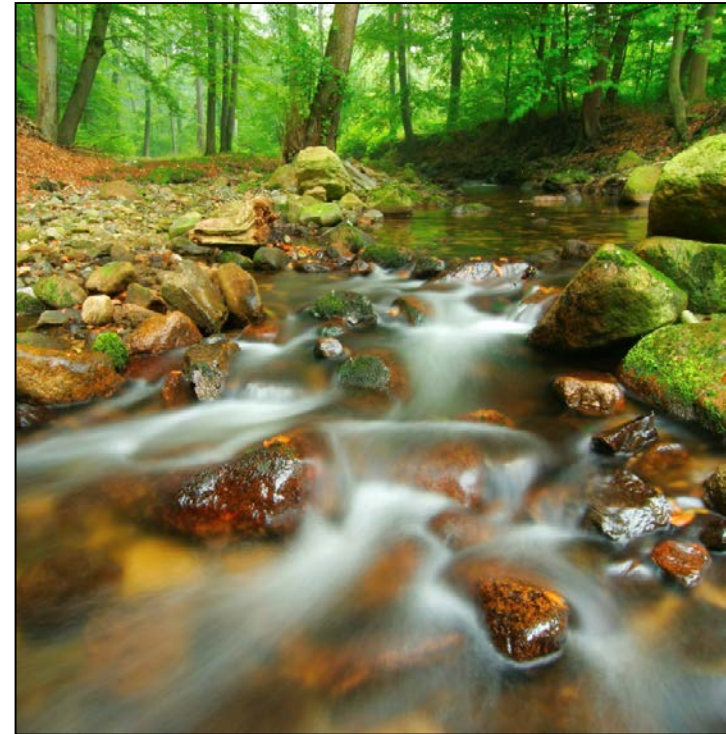
New Rulemaking Process

- **Two new rulemakings**
 - Rule 1: Restore pre-2015 regulations, amended to be consistent with Supreme Court decisions
 - Rule 2: Build upon that regulatory foundation with the benefit of additional stakeholder engagement
- **Process considerations**
 - Protecting water resources and our communities consistent with the Clean Water Act
 - Considering the direction in the Executive Order
 - Recognizing the importance of practical implementation
 - Reflecting the experience of, and input received from, landowners, the agricultural community, states, tribes, local governments, community organizations, environmental groups, and communities with environmental justice concerns

Key Issues from the *Federal Register* Notice

Definition of “WOTUS” as it relates to

- Climate change
- Environmental justice interests
- Relevant science
- Regional, state, and tribal interests
- Implementation



Key Issues from the *Federal Register* Notice

Scope of jurisdictional waters:

- Tributaries
- Ditches
- Wetlands
- Exclusions from the definition



Additional Information

- EPA is accepting written feedback for 30 days. Written feedback must be received on or before September 3, 2021.
- Written feedback on the notice should be identified by **Docket ID No. EPA-HQ-OW-2021-0328** and may be submitted online.
 - Go to <https://www.regulations.gov> and follow the online instructions for submitting feedback to the docket.

Additional Information

- Additional public meetings are planned for August 23, 25, 26, and 31, as well as September 2.
 - **Small businesses, small governments, and small non-profits** are invited to participate in the meeting for small entities on Aug. 25th.
- For more information on WOTUS, the rulemaking process, and upcoming opportunities **to share your voice**, please visit www.epa.gov/WOTUS.
- If you have any questions, please send an email to WOTUS-outreach@epa.gov.