



September 27, 2021

Summary of EPA WOTUS Webinar
Sponsored by the National Association of Conservation Districts (NACD)

Brian Frazer, Director of Oceans, Wetlands, and Communities and Russ Kaiser with the US EPA were on hand to discuss the new Waters of the US (WOTUS) updates and to answer any questions that were pre-submitted and through the ZOOM chat box on September 27, 2021. Michael Crowder, NACD President led the discussion and moderated the webinar.

It was reiterated that the language involving “normal farming operations” under [404\(f\)](#) will remain that same and will not be changed. It as also reiterated that the stormwater discharge language in 402 will remain the same. Here is the direct excerpt from the [EPA website](#) as currently stands in 404 (f):

(1) Except as provided in paragraph (2) of this subsection, the discharge of dredge or fill material -

(A) from normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;

(B) for the purpose of maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures;

(C) for the purpose of construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches;

(D) for the purpose of construction of temporary sedimentation basins on a construction site which does not include placement of fill material into the navigable waters;

(E) for the purpose of construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained, in accordance with best management practices, to assure that flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired, that the reach of the navigable waters is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized;

The purpose of changing the language of what is considered “navigable waters” is so language does not change from administration to administration. This will be a two-step process and definitions will go BACK to that of 1986 for current permitting, not Obama administration era rules of 2015. There is emphasis that new rules will be made based on science and this particularly pertains to waters like ephemeral streams. Changing climate, regional focuses and exemptions, tribal lands, and identifying jurisdictional waters are all specifically listed topics of interest. This is in accordance with President Biden’s Executive Order 13990.

The EPA issued the following [statement](#) on June 9:

“On June 9, 2021, the U.S. Environmental Protection Agency (EPA) and the Department of the Army announced their intent to revise the definition of “waters of the United States.” This process includes two rulemakings: A foundational rule to restore longstanding protections, and a second rulemaking process that builds on that regulatory foundation. The forthcoming foundational rule will propose to restore the regulations defining “waters of the United States” that were in place for decades until 2015, with updates to be consistent with relevant Supreme Court decisions. The agencies will also pursue a separate, second rulemaking process that further refines and builds upon that regulatory foundation. The agencies intend to engage with state and tribal co-regulators and the public to inform these two rulemakings. The agencies are committed to learning from the past regulatory approaches—the pre-2015 regulations and guidance, the 2015 Clean Water Rule, and the 2020 Navigable Waters Protection Rule—while engaging with stakeholders and crafting a refined definition of “waters of the United States.”¹

Again, the focus of updating the definition for “waters of the US” is to potentially include non-jurisdictional waters and ephemeral streams, which were excluded in the Navigable Waters Protection Rule (NWPR) of the Trump Administration. This is due to concern that science was not involved in NWPR and left out many water types that should/could have required permitting (this mainly seems to affect the more arid states like Arizona and New Mexico).

An exact timeline could not be nailed down. The EPA and Army Corps of Engineers received over 900,000 comments and these will obviously take time to research. The hope is by the end of the year something will be drafted for consideration.

I encourage everyone to discuss with their local, state, and national legislators what their thoughts are and to express your concerns, thoughts, or likes about the proposal for a more clear definition for the WOTUS.

I would encourage you to look at the following websites and the links on the website pages for more information and for further background information on this subject as it has a long history.

<https://www.epa.gov/wotus/request-remand-and-supporting-documentation>

<https://www.epa.gov/wotus/intention-revise-definition-waters-united-states>

<https://www.epa.gov/cwa-404>

Sincerely,



Heather Duncan

WVACD Executive Director

¹ Notice of Public Meetings Regarding “Waters of the United States”; Establishment of a Public Docket; Request for Recommendations <https://www.federalregister.gov/documents/2021/08/04/2021-16643/notice-of-public-meetings-regarding-waters-of-the-united-states-establishment-of-a-public-docket>