

IADC Briefing Book

Waters of the US (WOTUS)



The Waters of the United States (WOTUS) was published in the Federal Register on 29 June 2015 and became effective on 28 August 2015. [1] It was developed by the U.S. Environmental Protection Agency (EPA) and the Department of the Army Corps of Engineers to attempt to simplify the process for identifying those waters that are and are not protected under the Clean Water Act, based on the latest science and the law. Its intent is to define which rivers, streams, lakes and marshes fall under the jurisdiction of the EPA and the Army Corps of Engineers. Since it was issued, more than 32 states filed suit to have the law struck down, and on 9 October 2015, the U.S. Court of Appeals for the Sixth Circuit stayed the rule pending further action. [2]

Key Messages

- The rule is based on defining which navigable waters come under federal jurisdiction. It looks at the nature of the connectivity of waterways to determine the effects of streams and wetlands on downstream waters, or those that have been historically defined as “traditionally navigable waters” [3]. IADC contends that the any rule should include a more defined way to designate waters new to consideration under federal jurisdiction, and those that are defined as “traditionally navigable waters”.
- The U.S. has an abundance of natural gas reserves, and the nation’s energy renaissance has led to new areas to access those reserves through the use of new drilling technologies. The WOTUS rule would likely have the unintended consequence of limiting the ability to obtain natural gas resources form these new access areas and would create permitting difficulties for not just fossil fuel energy projects but also for other energy projects with larger geographical footprints like wind and solar.
- WOTUS represents a broad and unnecessary expansion of the Clean Water Act, which prohibits discharge of pollutants that may flow into navigable waters. IADC and its members question whether the rule provides sufficient benefits to justify the increase in regulatory burden that the rule would impose.
- WOTUS is ambiguous, and complex to implement, and uses many technical terms without regulatory definition. The rule is also vague in its exemptions and as written, any body of standing water, on any land, could potentially be subjected to the rule.
- A 2014 API economic analysis found that the rule would have GDP cost impacts of \$8 billion, and would delay and impede energy development across the country, leading to higher costs to produce energy and job losses. [4]

Resources

1. U.S. Environmental Protection Agency: https://www.epa.gov/sites/production/files/2015-06/documents/preamble_rule_web_version.pdf
2. Washington Post: https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/10/09/sixth-circuit-puts-controversial-waters-of-the-united-states-wotus-rule-on-hold/?utm_term=.ef53048e5098

3. EPA Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence:
<https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=296414&CFID=66737096&CFTOKEN=74628766>
4. American Petroleum Institute (API): <http://www.api.org/~media/Files/News/Letters-Comments/2014/WOTUS-Comment-Packet-Filed.pdf>
5. EPA Greenhouse Gas Reporting Program: <https://www.epa.gov/ghgreporting/ghgrp-reported-data>