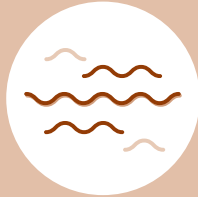


Muddying Existing Clean Water Regulation

WATERS OF THE UNITED STATES (WOTUS)

Both the U.S. Constitution and the Clean Water Act place limits on federal authority over waters, and Congress has declined to alter the careful balance struck between federal and state water regulation.



The Clean Water Act was intended to provide both vital environmental protections for our nation's waterways, and the regulatory certainty necessary for investment and a thriving economy. By muddying the application of federal regulations, the 2015 WOTUS rulemaking put both key interests at risk.

The 2015 Waters of the United States (WOTUS) rule attempted to unlawfully expand the scope of federal Clean Water Act jurisdiction.

- **The rule created confusion.** Contrary to the stated purpose of the rulemaking, the rule failed to provide much needed clarity as to which waters are federally regulated. Rather than provide clear delineations between state and federal waterways, the rule provided federal regulators with expanded authority to regulate marginal waters while calling into question the status of areas never before subject to federal jurisdiction. The result: increased confusion that would have led to additional costs, delays and financial risks for nearly every sector of the economy, including the mining industry.
- **The rule inhibited economic growth.** By federalizing the nation's waters on both public and private lands, the rule would also have had a dramatic impact on job creation and economic investment and growth. Many new projects would have become cost-prohibitive, and existing lawful operations would have been subjected to increased permitting requirements, delays, undue litigation threats and even potential closures.

In 2017, the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) wisely proposed repealing the rule, taking steps to address a deeply problematic regulation that completely ignored the balance between federal and state water regulation, as well as constitutional limits on federal authority. In 2019, the EPA and Army Corps of Engineers proposed a revised WOTUS definition that will provide long-overdue clarity regarding the scope of federal Clean Water Act jurisdiction and restore the appropriate balance between state and federal authority over waterways.