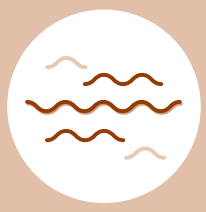
Muddying **Clean Water Regulation**

THE DEFINITION OF WATERS OF THE U.S.

The Clean Water Act requires the federal government and states to work together to protect water resources. Despite a clear ruling from the U.S. Supreme Court in *Sackett* v. *EPA* in 2023, the Biden administration issued yet another WOTUS rule that suffers from many of the legal and practical flaws of its predecessor rule, expanding federal jurisdiction over land and water features too far, making it more difficult for important mining projects to move forward.



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. Unfortunately, the definition of "Waters of the United States" (WOTUS) has been marred by uncertainty, controversy and litigation for decades.

- **The repercussions of regulatory ping-pong.** For decades, different administrations have crafted their own WOTUS rules defining the scope of federal jurisdiction over land and water features. The Obama administration created a rule that was overly broad and blurred the lines between state and federal jurisdiction. The Trump administration reversed course and drew clear lines between water features regulated by the federal government and those regulated by the states. The Biden administration then crafted its own WOTUS rule. When parts of this administration's WOTUS rule were struck down by the U.S. Supreme Court in *Sackett* v. *EPA*, the agencies responded with yet another overly expansive WOTUS rule that even the agencies are having difficulty implementing. The result: increased confusion on the ground that will lead to additional costs, delays and financial risks for nearly every sector of the economy, including the mining industry.

- **Businesses need clear, predictable and transparent rules to protect the environment, operate with certainty, and create jobs in communities.** Continual repeals, remands and reintroductions of WOTUS definitions only sow confusion and thwart regulatory certainty. The recent WOTUS rule will make economic development more difficult and make it more expensive to invest in U.S. operations and businesses. New projects will become cost-prohibitive, and existing lawful operations will be subjected to increased permitting requirements, delays, undue litigation threats and even potential closures.