# Overview of 2018 WOTUS Proposal

## Would replace 2015 Water Rule

## Joint between EPA and USACE

## Would modify multiple portions of the CWA

## Comment period is 60 days from date of publication in Federal Register

# Important Definitions

## Direct hydrological surface connection: occurs as a result of inundation from a jurisdictional water to a wetland or via perennial or intermittent flow between a wetland and jurisdictional water

## Intermittent: surface water flowing continuously during certain times of a typical year and more than in response to just precipitation

### The agencies are not proposing a specific duration

## Perennial: surface water flowing continuously year-round during a typical year

## Typical year: within the normal range of precipitation over a rolling 30-year period

### Generally, would not include times of drought or extreme flooding

## Upland: any land area that under normal circumstances does not satisfy the three wetland delineation criteria (hydrology, hydrophytic vegetation, hydric soils)

## Waste treatment system: includes all components, including lagoons and treatment ponds, designed to convey or retain, concentrate, settle, reduce, or remove pollutants, either actively or passively, from waste water prior to discharge

## Wetland: areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that do, under normal circumstances support, hydrophytic vegetation

# What’s Covered? Six Categories:

## Traditional Navigable Waters and Territorial Seas

### Traditional Navigable Water (TNW)

#### Defined as: Waters that are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce

### Have removed “interstate waters” as a separate category and placed under TNW

## Tributaries

### Defined as: river, stream, or similar naturally occurring water channel that contributes perennial or intermittent flow to a TNW or territorial sea

#### A perennial or intermittent stream that flows into a non-jurisdictional ephemeral feature would not meet this definition if the intermittent or perennial flow does not reach a TNW or territorial sea

### Alteration of a tributary would not modify its status so long as it continues to satisfy the above definition

## Ditches (new category)

### Defined as: artificial channel used to convey water (includes large canals used for transportation)

#### Must still qualify under either tributary or wetland (i.e. located in a natural waterway)

##### If evidence does not demonstrate that the ditch was located in a natural waterway, the agencies would consider that ditch non-jurisdictional

##### Ditches constructed in upland areas that flow perennially would still be non-jurisdictional

## Lakes and Ponds (new category)

### Defined as:

#### those that contribute perennial or intermittent flow to a water in a typical year which is considered to be jurisdictional

#### Lakes or ponds flooded by a jurisdictional water in a typical year

## Impoundments of waters in certain circumstances

## Adjacent Wetlands

### Defined as: Wetlands that abut or have hydrologic surface connection to another WOTUS

#### “Abut” meaning the wetland touches at least one point of another WOTUS

### Does not alleviate the need for site-specific verification of jurisdiction (such as wetland characteristics)

### A mere hydrologic surface connection may not be enough in cases where a wetland may only be connected during 100-year flood events, or similar circumstances

### The entire wetland is considered jurisdictional if any portion abuts or has direct hydrologic surface connection to a WOTUS

### Includes seasonal wetlands

### May include wetlands that are separated from a WOTUS by uplands, dikes, barriers or other similar structure if they have a hydrologic surface connection in a typical year

#### Would allow for seasonal overtopping

# What’s Excluded?

## Groundwater, including groundwater drained through subsurface drainage systems

## Ephemeral features

### Defined as: surface water pooling or flowing only in direct response to precipitation

## Ditches other than defined as above

## Prior converted cropland (has been excluded since 1993)

### Unless abandoned for 5 years and converted back to wetland

## Artificially irrigated areas

## Artificial lakes and ponds constructed in upland areas and filled by impounding non-jurisdictional waters

### Includes water storage reservoirs

## Water-filled depressions in upland areas due to mining or construction

## Stormwater control features

## Wastewater recycling structures in upland areas

### Includes detention, retention and infiltration basins and ponds, as well as groundwater recharge basins

## Waste treatment systems (have been excluded since 1979)

# Request for Comments

## TNWs

### Should the scope of TNW be updated to improve clarity or predictability?

## Impoundments

### Should certain categories of impoundments not be jurisdictional?

#### i.e. ones that release water downstream very infrequently or impede flow so that it is less than intermittent

## Tributaries

### This new rule proposes to no longer use the “Kennedy” method from the Rapanos Supreme Court case of a significant nexus for tributaries. EPA/USACE would like comment on if this is the correct course of action.

### Should tributary be limited to perennial only?

### Should tributary include ephemeral?

### Intermittent definition:

#### Change definition of intermittent to include “seasonal flow”?

#### Contain requirement for a specific duration of time?

### Should the concepts of bed, banks, and ordinary high water mark be used in the definition?

### How should effluent-dependent streams (streams that flow year-round based on wastewater treatment plan discharges) be treated under this definition?

#### As proposed, these would be included so long as they provide perennial or intermittent flow to a TNW or territorial sea

## Typical year

### Should the agencies provide additional details on what constitutes a typical year or provide guidance about appropriate tools for determining a typical year?

## Ditches

### Is more clarification needed?

## Ponds and Lakes

### Should a more defined definition be included?

#### Size?

## Wetlands

### This new rule proposes to no longer use the “Kennedy” method from the Rapanos Supreme Court case of a significant nexus for wetlands. EPA/USACE would like comment on if this is the correct course of action.

### Should agency look at redefining what constitutes a wetland?

### Should the agency consider different definitions for adjacent?

#### Ex. A certain distance from a WOTUS

#### Should the agencies exclude wetlands that are separated by structures like dikes or barriers even if they are connected to a WOTUS at some points of the year? This would exclude seasonal overtopping.

## Excluded components

### Do any components need more clarity? Particularly regarding groundwater?

#### Welcome comments on parameters of the groundwater exclusions and any implementation issues

### Should perennial or intermittent flows in upland areas be considered jurisdictional?

### Should stormwater control exclusions include permitted municipal separate storm sewer systems (either the whole MS4 or portions)?