

Another Battle on “Waters of the United States” (WOTUS)

In 2006, the U.S. Supreme Court tasked EPA with defining “waters of the United States” (WOTUS), to establish clear guidelines for stakeholders regulated under the Clean Water Act. In 2015, EPA and the Army Corps of Engineers finalized the WOTUS Rule, which was a significant expansion of federal jurisdiction, including isolated waterbodies and features that only carry water following precipitation. In 2020, EPA finalized a revised definition — the Navigable Waters Protection Rule (NWPR) — that more appropriately limited federal jurisdiction to waterways that significantly contribute to downstream water quality.

The NWPR, unlike the 2015 WOTUS rule, did not subject ephemeral streams or isolated water features to federal regulation. Additionally, the NWPR scaled back the wetlands subject to federal jurisdiction, which greatly simplified implementation of the rule. The rule also provided much-needed agricultural exemptions for stock ponds, prior converted cropland, and other agricultural features. NCBA engaged in litigation to defend the NWPR in federal courts across the country, but unfortunately it was struck down by the U.S. District Court in Arizona on August 30, 2021. That court issued a ruling that vacated and remanded the NWPR, essentially repealing it overnight. On a less accelerated timeline, the Biden Administration has announced its intent to carry out a two-step rulemaking process, first repealing the NWPR and then writing a new WOTUS definition.

What is the current definition of WOTUS?

EPA announced its intent to interpret WOTUS consistent with the pre-2015 regulations until further notice. This means that regulatory requirements and jurisdictional determinations will follow limits put in place by the agencies’ 1986 regulations and subsequent guidance.

How does WOTUS impact cattle producers?

Cattle producers rely on clean water for the health of their animals, families, and communities. Producers recognize the Clean Water Act as an important tool to protect our nation’s water quality, but they also need clear rules to be able to operate their businesses successfully and in compliance with the law. Since the Clean Water Act’s passage in 1972, cattle producers and other small business owners have faced years of inconsistent interpretation regarding the reach of federal jurisdiction on WOTUS. Policy changes and litigation led to ever-changing requirements, making it difficult for regulated stakeholders to rely on consistent standards. Further, recent attempts to define WOTUS have gone far beyond previous interpretations, impacting ranchers who have never before been subject to federal regulations.

What is NCBA doing?

NCBA continues to fight against overreaching federal jurisdiction under the Clean Water Act. We are working with the EPA and Congress to ensure that any definition of WOTUS provides necessary clarity for cattle producers and does not exceed the statutory limits of the Clean Water Act. Any definition of WOTUS should satisfy these criteria:

- Ensure that the regulatory definition of WOTUS is consistent with the Clean Water Act and existing Supreme Court precedent.
- Limit federal jurisdiction to traditionally navigable waters, their consistently flowing tributaries, and abutting wetlands.
- Maintain important agricultural exemptions, including exemptions for stock ponds, agricultural ditches, and prior converted cropland.

TAKE ACTION NOW! SCAN THE QR CODE

Tell the federal government that you oppose overly restrictive regulations that will tie the hands of farmers and ranchers on conservation work. Cattle producers are some of America’s original environmental stewards and they provide crucial conservation benefits to our air, land, and water every day. They need regulatory clarity so they can keep running their operations, safeguarding our clean waterways, and feeding our nation.



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