

Talking Points Supporting EPA's Proposal to Rescind the WOTUS Rule

- The proposed rule to rescind the WOTUS Rule does not diminish the oversight the Clean Water Act (CWA) provides, it simply rescinds the 2015 finalized WOTUS Rule that was stayed by federal courts. Agencies will continue to implement regulatory oversight based on regulations in place prior to June 29, 2015 when the rule was finalized.
- It is important to note the WOTUS Rule was only enforce for about a month prior to being stayed by federal courts, and during that time, no regulatory action based on the WOTUS Rule was taken.
- Prior to the 2015 WOTUS Rule, three separate decisions by the U.S. Supreme Court were rendered to provide context and guidance in determining the appropriate scope of "waters of the United States". Those decisions were the Riverside, SWANCC and Rapanos decisions. The Riverside decision dealt with wetlands, the SWANCC decision was that use of isolated non-navigable waters by migratory birds was not sufficient basis to exercise federal regulatory authority and the Rapanos decision interpreted the term "waters of the United States" as covering relatively permanent, standing or continuously flowing bodies of water. However, none of the decisions provided complete clarity as to what constituted a water of the United States.
- The WOTUS Rule was supposed to clarify what waters fell under federal regulatory oversight; however, because of the overly broad and vague language in the rule, virtually any area that held water or could hold water for any period of time could have fallen under federal jurisdiction.
- The WOTUS Rule did note exemptions for normal farming practices, but normal farming practices were not clearly defined. This could have led to farmers having to obtain federal permits to build fences, plant and tend crops or do other general farming practices. This would have been costly and time consuming.
- The WOTUS Rule not only impacts agriculture, but every part of the economy.