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Background Document on the EPA's Waters of the United States Rule (WOTUS)

SYNOPSIS AND SUPPORT OF WOTUS

PURPOSE OF WOTUS: The Clean Water Rule's (WOTUS) purpose is to simplify the permit review process and protect water quality by clarifying which waters are Waters of the US. Below are excerpts from USEPA fact sheets regarding the rule with links to the source for each. The rule and all supporting documents can be found at http://www2.epa.gov/cleanwaterrule.

WHAT IS THE CLEAN WATER RULE?: *Protection for about 60 percent of the nation's streams and millions of acres of* wetlands *has been confusing and complex since Supreme Court decisions in 2001 and 2006. The Clean Water Rule protects the streams and wetlands that are scientifically shown to have the greatest impact on downstream water quality and form the foundation of our nation's water resources. EPA and the U.S. Army are ensuring that waters protected under the Clean Water Act are more precisely defined, easier for businesses and industry to understand, and consistent with the law and the latest science. The rule does not protect any types of waters that have not historically been covered by the Clean Water Act. It also does not interfere with or change private property rights, or address land use. http://www2.epa.gov/sites/production/files/2015-05/documents/fact_sheet_communities_final_0.pdf*

OHIO PERMITS: Under current regulation streams and wetlands whose status as Waters of the US were called into question after the 2001 and 2006 Supreme Court cases must go through an evaluation process to determine if they are subject to a 404 permit from the Army Corps of Engineers before dredge or fill material can be discharged. Waters that are deemed to be non-jurisdictional and not subject to a 404 permit are still considered by the State of Ohio to be Waters of the State and subject to permitting by the State of Ohio.
http://www.epa.ohio.gov/dsw/401/permitting.aspx

WATERS THAT WOTUS PROTECTS*: The Clean Water Rule only protects the types of waters that historically have been covered under the Clean Water Act. The rule does not create any new permitting requirements for agriculture and maintains all previous exemptions and exclusions. It does not regulate most ditches and does not regulate groundwater, shallow subsurface flows, or tile drains. It does not make changes to current policies on irrigation or water transfers or apply to erosion in a field. The Clean Water Rule protects waters from pollution and destruction – it does not regulate land use or affect private property rights. These statements are supported by the text of the rule and its preamble. http://www2.epa.gov/sites/production/files/2015-05/documents/fact_sheet_fact_check_clean_water_rule.pd*

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PUBLIC INPUT SHAPED THE RULE*: USEPA listened closely and carefully to public input. For over a decade, EPA and the Army have received requests for a rulemaking to provide clarity on protections under the Clean Water Act from members of Congress, state and local officials, industry, agriculture, environmental groups, scientists, and the public. In developing the rule, the agencies held about 400 meetings with stakeholders across the country, reviewed over one million public comments, and listened carefully to perspectives from all sides. All of this input shaped and improved the Clean Water Rule.* http://www2.epa.gov/sites/production/files/2015-05/documents/fact_sheet_communities_final_0.pdf

FOUNDATION IN SCIENCE*: Science shows us the most important waters to protect. In developing the Clean Water Rule, the Agencies utilized the latest science, including a report summarizing more than 1,200 peer-reviewed, published scientific studies which showed that small streams and wetlands play an important role in the health of larger downstream waterways like rivers and lakes.* http://www2.epa.gov/sites/production/files/2015-05/documents/fact_sheet_communities_final_0.pdf

CRITIQUES OF WOTUS

CONFUSING TERMINOLOGY: *The proposed rule includes undefined and confusing new terms with the potential for sweeping impacts across all CWA programs. For example, the proposed rule extends the "waters of the U.S." definition by utilizing new terms—"tributary," "uplands," "significant nexus," "adjacency," "riparian areas," "floodplains" and "neighboring"—that could increase the types of public infrastructure considered jurisdictional under the CWA. Our groups have worked with the agencies to clarify these key terms but have received little assurance about how each EPA or Corps region will interpret and implement the new definition.* http://www.naco.org/legislation/policies/Documents/Energy,Environment,Land%20Use/WOTUS%20Senate%20Bill%20Joint%20Letter%2004%2029%2015.pdf

LACKING LOCAL GOVERNMENT INSIGHT: *Throughout the rulemaking process, the agencies failed to consult states and localities consistent with the Executive Order 13132: Federalism. As defined by this order, federal agencies are required to consult with state and local governments as early and often as possible before a proposed rule is developed or published in the Federal Register to ensure that federal rules are workable and obtainable for all levels of government.* http://www.naco.org/legislation/policies/Documents/Energy,Environment,Land%20Use/WOTUS%20Senate%20Bill%20Joint%20Letter%2004%2029%2015.pdf

PERMITS FOR FARMERS/INTRUDE ON PROPERTY OWNER RIGHTS: *The EPA is set to issue regulations that farmers argue would require them to get permits for work for which they have been long exempt.* http://www.nytimes.com/2014/03/13/us/politics/environmental-protection-agency-water-rules.html

IMPACT ON ECONOMY: Review of 2014 EPA Economic Analysis of Proposed Revised Definition of Waters of the Unites States. The report examines the U.S. Environmental Protection Agency's estimates of probable costs and benefits for the proposed rule on "Waters of the United States," and finds that EPA significantly underestimates the economic impacts the rule will have on local communities and businesses. Sunding is an economist on the faculty of the University of California-Berkeley and a principal of The Brattle Group.The rule proposes a significant expansion of the term "Waters of the United States" to include previously unregulated waters located in floodplains and riparian areas, ditches and the all-inclusive "other waters." Sunding chronicles how EPA systematically excluded costs, underrepresented jurisdictional areas and used flawed methodologies

to arrive at much lower economic impacts. He also examines how the significant lack of transparency in the report makes it difficult to understand or replicate the calculations, evaluate the underlying assumptions or understand discrepancies in the results. Sunding explains how EPA's analysis downplays non-404 impacts, resulting in an artificially small jurisdictional increase. http://www.nssga.org/economist-reviews-epas-economic-analysis-proposed-waters-united-states-rule/

LEGISLATION INTENDED TO REPEAL WOTUS RULE

- SB 1140 Senator John Barrasso (R-WY): Resides in Senate Environment and Public Works Committee.

- HR 1732: Representative Bill Shuster (R-PA): Passed the House 114-93. Received in the Senate. President Obama threatening veto.

INTERESTED PARTIES

PROPONENTS OF WOTUS

- American Fisheries Society
- American Fly Fishing Trade Association
- Backcountry Hunters and Anglers
- Berkley Conservation Institute
- Bull Moose Sportsmen's Alliance
- Dallas Safari Club
- Izaak Walton League
- The National Wildlife Federation
- Theodore Roosevelt Conservation Partnership
- Trout Unlimited
- State of Washington Department of Ecology
- Franklin Soil & Water

OPPORNENTS OF WOTUS

- The US Conference of Mayors
- National Association of Counties
- National League of Cities
- National Association of Regional Councils
- US Chamber of Commerce
- National Association of Manufacturers
- American Farm Bureau Federation
- Dairy Farmers of America
- Ohio Farm Bureau
- Union County Chamber of Commerce