



**“WOTUS”
In a Nutshell**



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Definition of Waters of the United States “WOTUS”

33 CFR 328.3 and 40 CFR 120.2

When congress created the term “navigable waters” in the 1972 version of the Clean Water Act (CWA), they simply defined it as “waters of the United States” (WOTUS). Many of the programs established under the CWA pertain to these waters; but they left the task of defining what exactly a WOTUS is to the US Environmental Protection Agency (EPA) and US Army.

Over the next four and a half decades, the definition of WOTUS was interpreted very differently by states and many of their municipalities. It was even contested in courts on numerous occasions. In 2019, a new final rule defining WOTUS was published, but it was quickly contested and rescinded.

The EPA and Army worked together to simplify and clarify the definition, resulting in the Navigable Waters Protection Rule which was published in the Federal Register on April 21, 2020. The rule, which contains the current definition of WOTUS, became effective on June 22, 2020.

The definition provides clarity and predictability by identifying categories of waters that are WOTUS as well as waters that are not under the jurisdiction of the CWA.

Waters of the United States (WOTUS)

ARE under the jurisdiction of the Clean Water Act:

- Oceans
- Rivers
- Streams
- Territorial Seas
- Perennial and intermittent tributaries
- Lakes, ponds and impoundments of jurisdictional waters
- Wetlands adjacent to jurisdictional waters

ARE NOT under the jurisdiction of the Clean Water Act:

- Groundwater
- Ephemeral streams, swales, gullies, rills and pools that flow only in response to precipitation
- Diffuse and upland stormwater runoff
- Ditches that are not tributaries or adjacent to wetlands
- Converted cropland and artificially irrigated areas
- Artificial lakes and ponds
- Excavated depressions and pits incidental to mining or construction
- Stormwater control features designed to treat, infiltrate or store stormwater runoff
- Water recycling and wastewater treatment systems