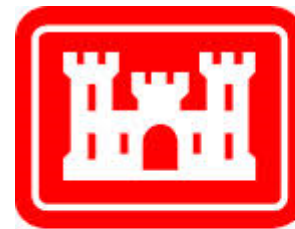


Waters of the U.S. Proposed Rule

Waters of the U.S. Proposed Rule

Clarifies protection
under the
Clean Water Act
for streams and wetlands



**US Army Corps
of Engineers®**

The objective of the Clean Water Act is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters”



The Clean Water Act

Protects “waters of the United States”



What is the current definition of Waters of the U.S.?

- Traditionally navigable waters
- Coastal waters
- Waterways that cross state borders
- Lakes made by damming a water of U.S.
- Waters that could affect interstate commerce
- Tributaries of these waters
- Wetlands next to these waters

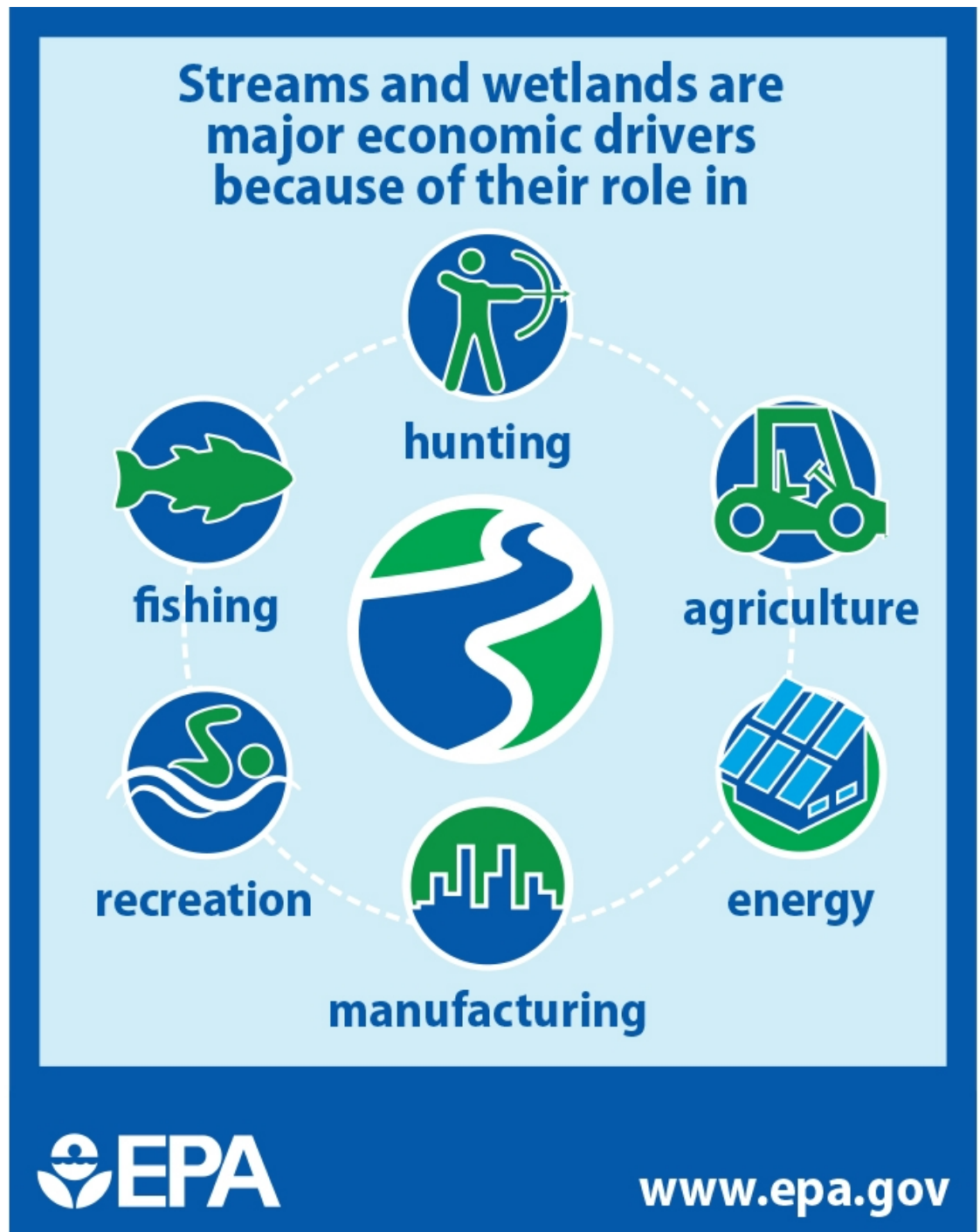
Streams and Wetlands Matter




Streams and
wetlands
benefit
communities



Streams and wetlands are economic drivers



Upstream
waters impact
downstream
waters



60% of stream
miles in the U.S.
only flow
seasonally
or after the rain,
but have a huge **impact**
on **downstream** waters



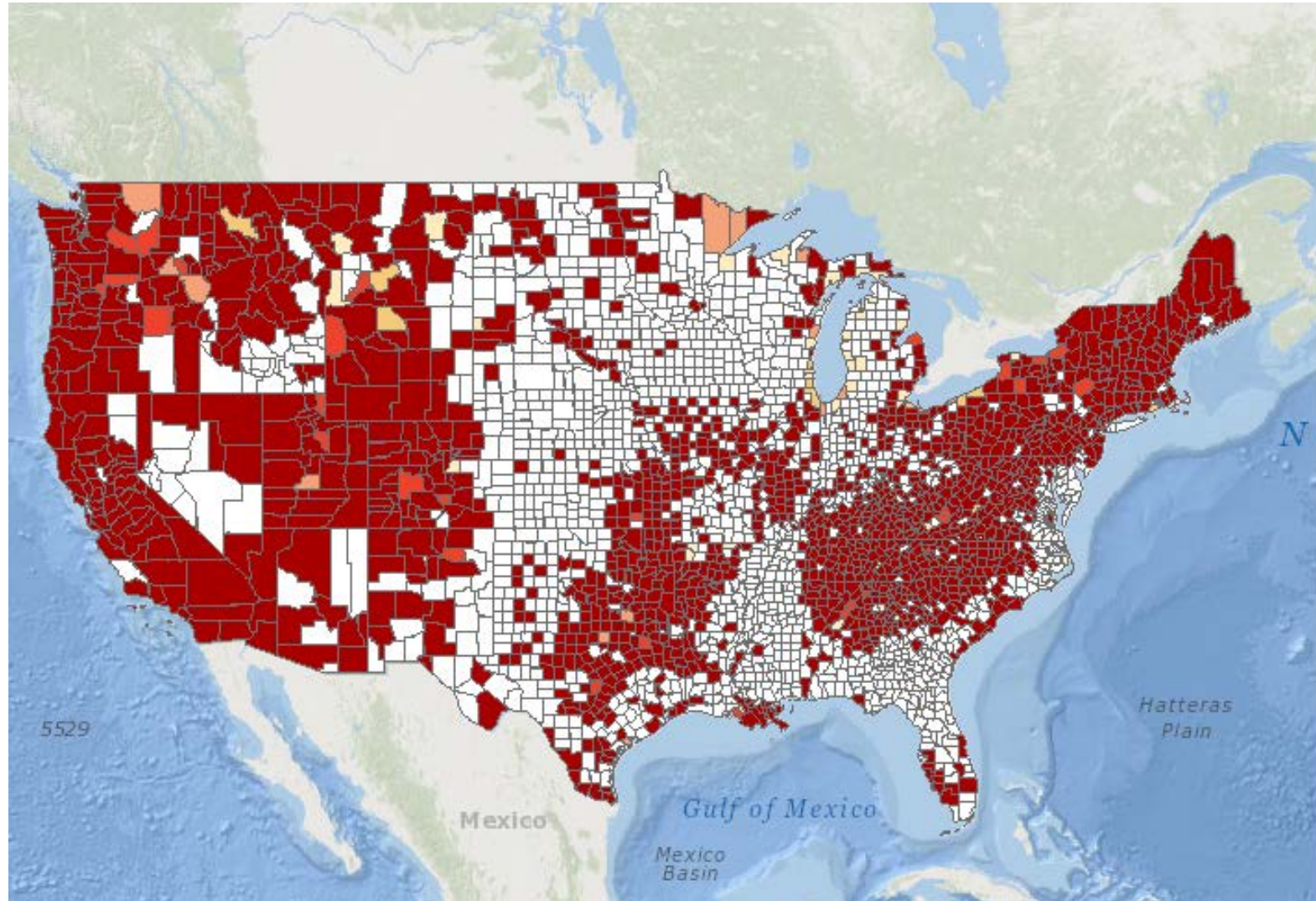
www.epa.gov

Streams provide drinking water

1 in 3
Americans
get their
drinking
water from
public systems
that rely on
seasonal
and rain-
dependent
streams



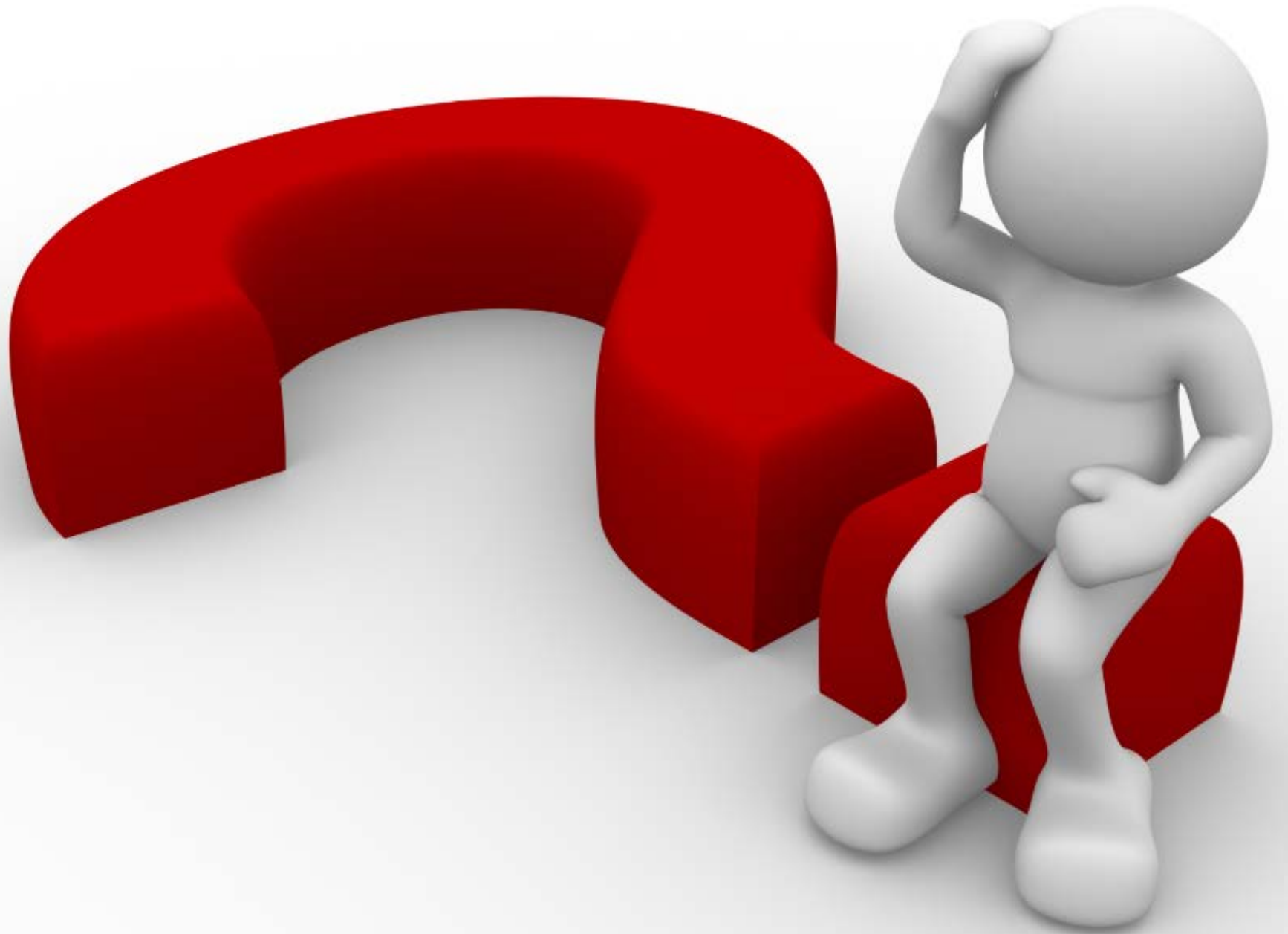
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Why Do a Rulemaking

Reduce
confusion
about
Clean
Water Act
protection



Supreme Court Decisions Affecting Water of the U.S.

Riverside Bayview Homes (1985): Unanimous decision upholding agencies' regulatory definition including "adjacent wetlands" as waters of U.S.

SWANCC (2001): Use of waters by migratory birds not sufficient basis for jurisdiction.

Rapanos (2006): Splintered decision provides relative permanence and significant nexus as standards for determining CWA protection.



Determining Jurisdiction

Complex
Confusing
Inconsistent

Rulemaking was requested by many stakeholders

Congress Industry Public

State and local government Agriculture

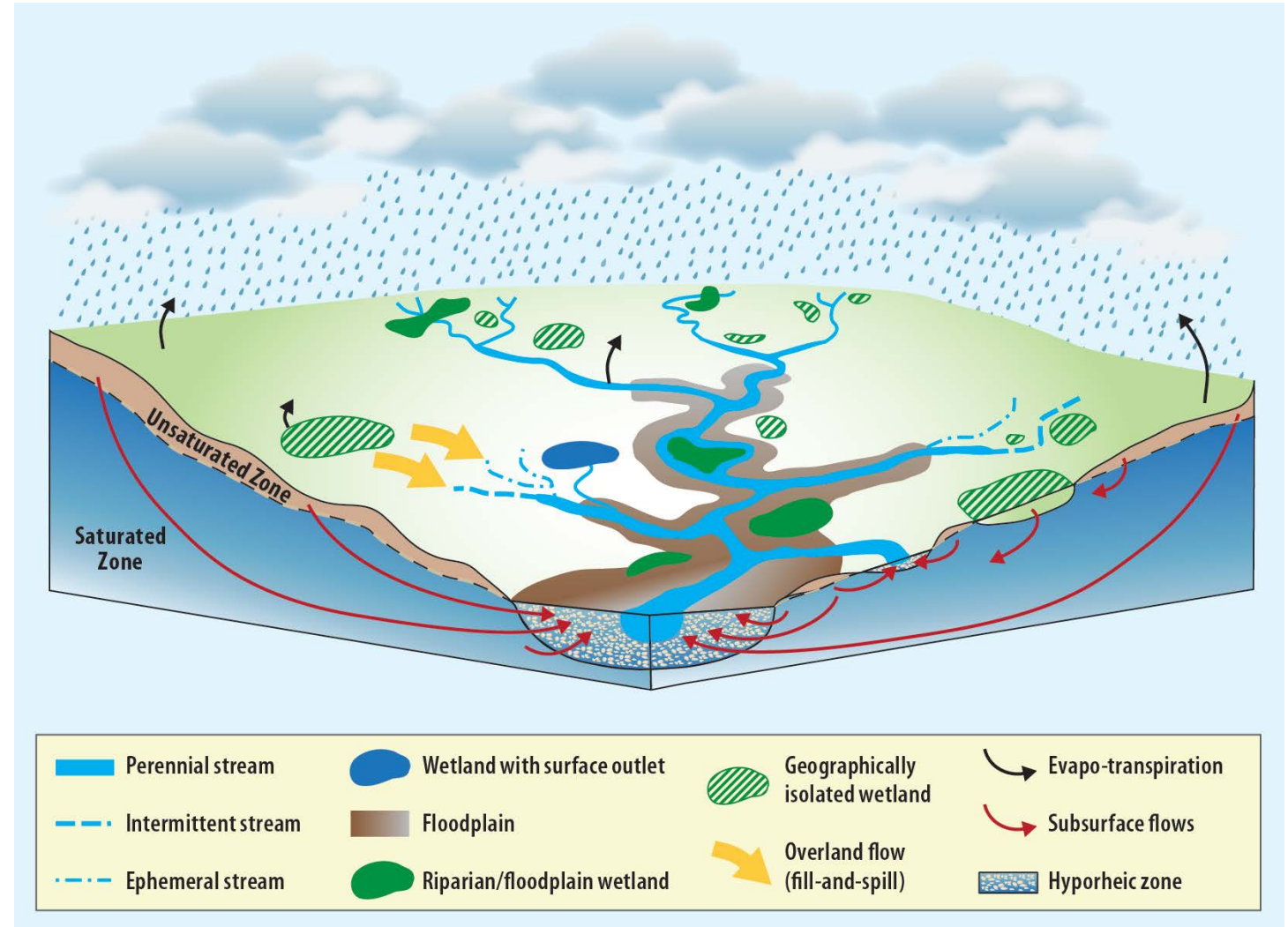
Hunters and fishermen Environmental groups

Supported by latest peer-reviewed science

Scientific
assessment of

1,000+

pieces of
literature



Provides More Benefits to Public Than Costs

BENEFITS

**\$388 to
\$514 million**

- Reducing flooding
- Filtering pollution
- Providing wildlife habitat
- Supporting hunting & fishing
- Recharging groundwater

COSTS

**\$162 to
\$278 million**

- Mitigating impacts to streams & wetlands from dredged or fill material
- Taking steps to reduce pollution to waterways.

Saves Businesses Time and Money



Helps States Protect Their Waters

2/3 of states rely on the federal definition

**What the
Rule Does**



What is the proposed definition of Waters of the U.S.?

- Traditionally navigable waters
- Coastal waters
- Waterways that cross state borders
- Lakes made by damming a water of U.S.
- Waters that have a significant nexus (connection)
- Tributaries of these waters (bed, bank, high water mark)
- Waters next to rivers, lakes, streams, coastal waters

Stream systems are protected



Proposed Rule Changes

Tributaries are jurisdictional but only when they meet the regulatory definition of tributary.

Proposed rule definition: “waters with bed and banks and an ordinary high water mark that contribute flow to traditionally navigable waters, interstate water or territorial seas.”

Waters near
rivers and
streams
are protected



Proposed Rule Changes

Adjacent waters are jurisdictional.
Adjacency applies to all surface waters, not just wetlands.

Existing regulations define “adjacent” as “bordering, contiguous or neighboring.”
This rule adds a definition of neighboring.



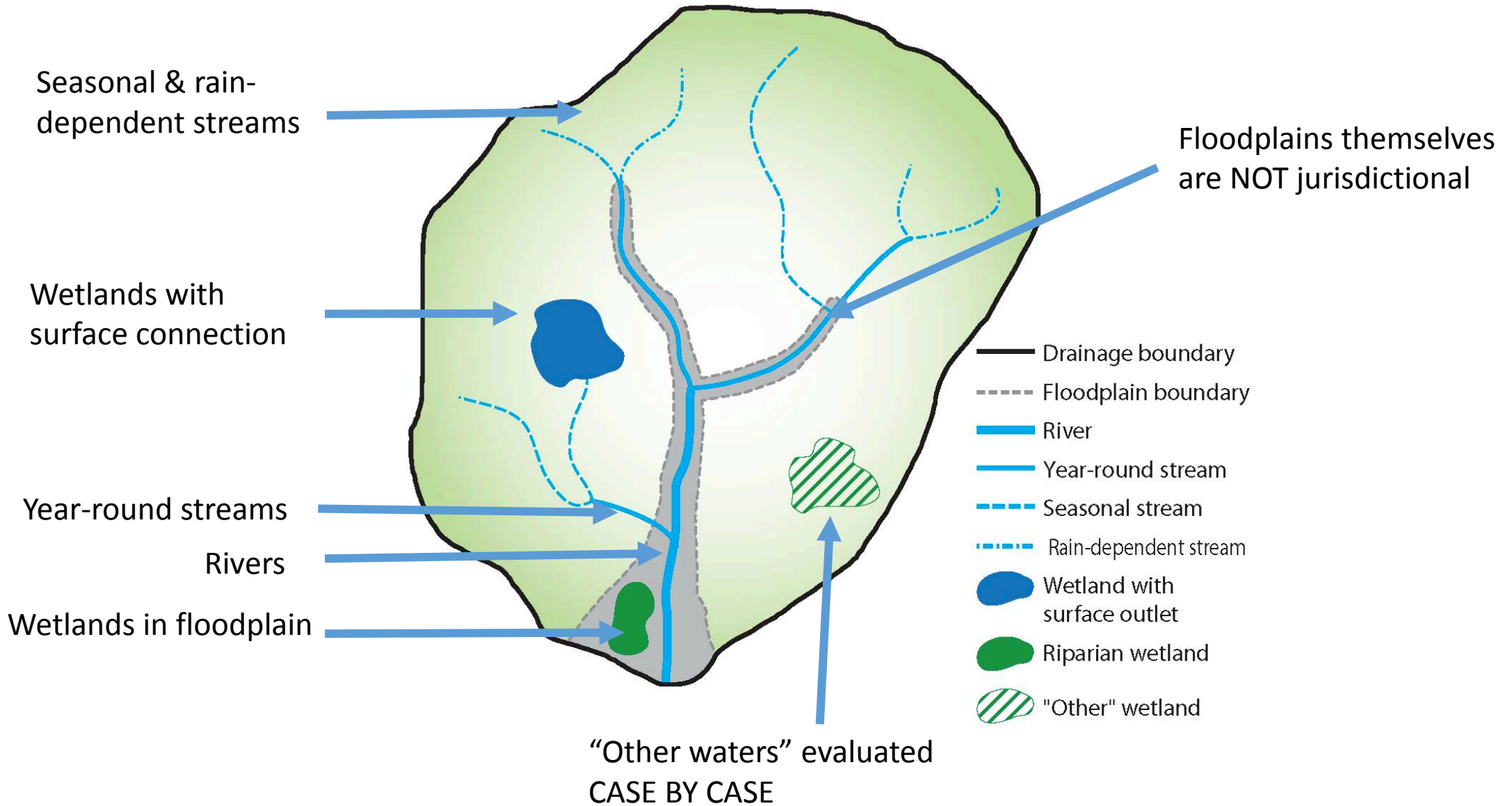
Other types
of waters
will be
evaluated
on a case
specific
basis.



Proposed Rule Changes

“Other waters” are jurisdictional only where a case-specific analysis shows they have a significant nexus to a traditionally navigable water, interstate water or territorial sea.

Protection



What the Rule Does Not Do



Remember: Clean Water Act permitting requirements apply ONLY when there is a discharge of a pollutant from a point source into a Water of the U.S.



e.g., industry

e.g., oil spill



e.g., dredge and fill



What the Rule Does **NOT** Do

Does **NOT** protect any new types of waters

Does **NOT** broaden historical coverage of the Clean Water Act

Does **NOT** remove any exemption or exclusion for agriculture

Does **NOT** regulate groundwater, including tile drains

Does **NOT** expand regulation of ditches

What the Rule Does **NOT** Do

Does **NOT** change permitting requirements for any farming activities

Does **NOT** change the exemption for farm stock ponds

Does **NOT** regulate water-filled areas & erosional features on crop fields

Does **NOT** regulate land or land use

Does **NOT** regulate floodplains

The Facts About Ditches

Ditches that are IN are those that are essentially human-altered streams, which feed the health and quality of larger downstream waters. The agencies have always regulated these types of ditches.

Ditches that are OUT are those that are dug in dry lands and don't flow all the time, and ditches that don't flow into a jurisdictional water.



Input from USDA and agriculture community shaped the proposal



All Exemptions and Exclusions Preserved

- Normal farming, silviculture, and ranching practices.
- Upland soil & water conservation practices.
- Agricultural stormwater discharges.
- Return flows from irrigated agriculture.
- Construction/maintenance of farm or stock ponds or irrigation ditches on dry land.
- Maintenance of drainage ditches.
- Construction or maintenance of farm, forest, and temporary mining roads.
- Artificially irrigated areas that would revert to upland if irrigation stops.



All Exemptions and Exclusions Preserved

- Artificial lakes or ponds created by excavating and/or diking dry land and used for purposes such as rice growing, stock watering or irrigation.
- Artificial ornamental waters created for primarily aesthetic reasons.
- Water-filled depressions created as a result of construction activity.
- Pits excavated in upland for fill, sand, or gravel.
- Prior converted cropland.
- Waste treatment systems (including treatment ponds and lagoons).



Permit not needed for the specific NRCS practices



56 conservation practices exempt from dredged or fill permitting

Conservation cover Wildlife habitat restoration

Wetland enhancement Riparian forest buffer

Tree/shrub establishment Stream crossing

Local Government Issues

Local Governments Serve Many Functions

- Build and maintain roads and roadside ditches
- Manage stormwater to prevent flooding and protect water quality
- Provide safe drinking water
- Protect and restore rivers, lakes, and other surface waters

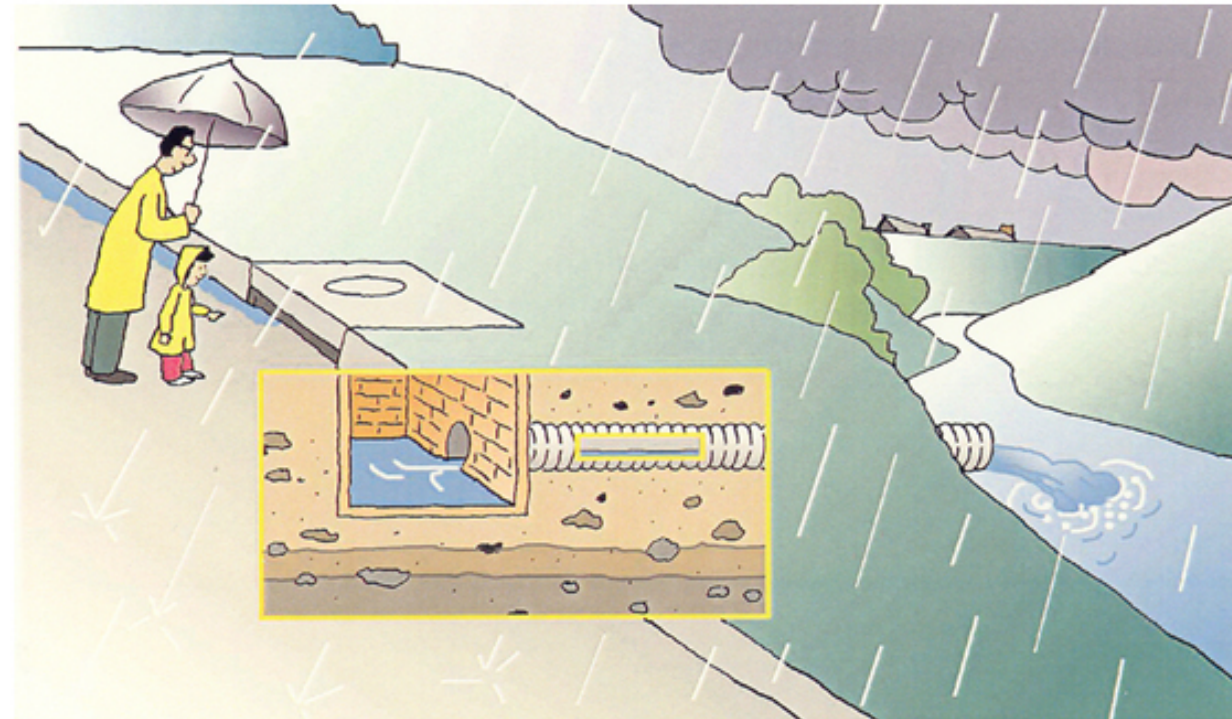
Ditches

- Some ditches are currently regulated, some are not
- Proposed rule intends to clarify the current practice and to clearly identify ditches that are not regulated in the rule.
- The proposed rule does not expand jurisdiction over any ditches that are not already regulated (as channelized streams).
- If an exemption applies, the exemption applies regardless of whether a ditch meets the tributary or adjacent water definitions



Stormwater and MS4s

- Stormwater can cause flooding, basement backups, water quality degradation and other problems for local governments.
- MS4s are complex systems, and some may currently include waters of the US
- Proposed rule does not change the regulation of MS4s



Green Infrastructure

- If no permit needed now, no permit will be needed after this rule is finalized
- Most stormwater features are not waters of the US
 - Stormwater ponds
 - Rain gardens
 - Grassy swales
 - Permeable pavement
 - Rain barrels
 - Cisterns



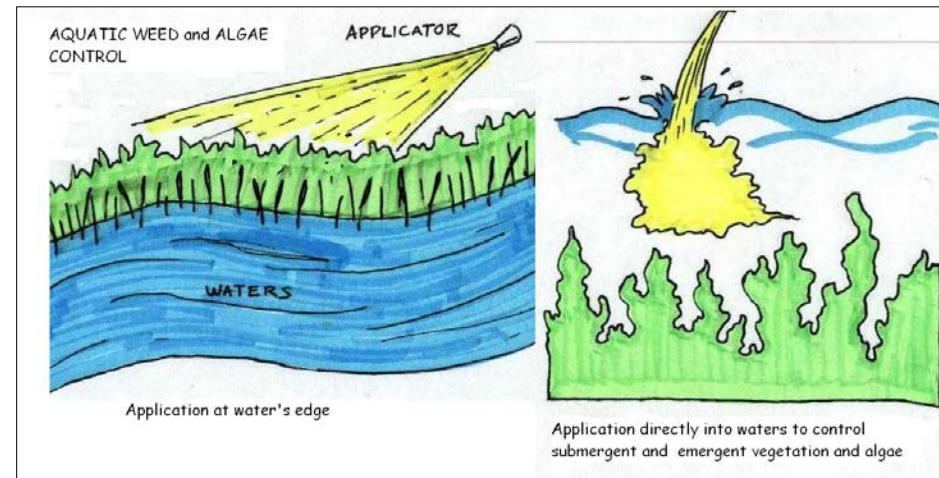
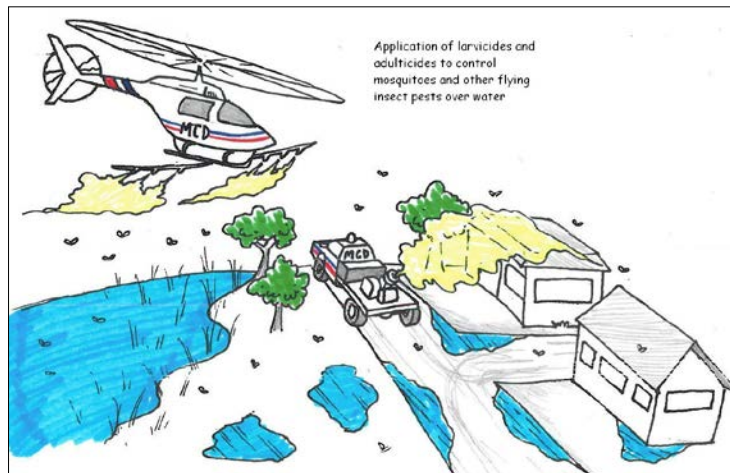
Water Supply Structures

- Waters of the US provide the source water for millions of Americans.
- Some water supply structures today are waters of the US, and some are not.
- The proposed rule does not change the CWA jurisdiction of a water supply structure.
- Also, the proposed rule does not require any change in operation of these water structures.



Pesticides and Herbicides

- Local governments may use herbicide and pesticides in or near waters of the US
 - Weed control in ditches
 - Treatment of mosquitoes and other pests
- General NPDES permits are required and available for pesticide applications made directly to waters of the US



**Input is
Important**

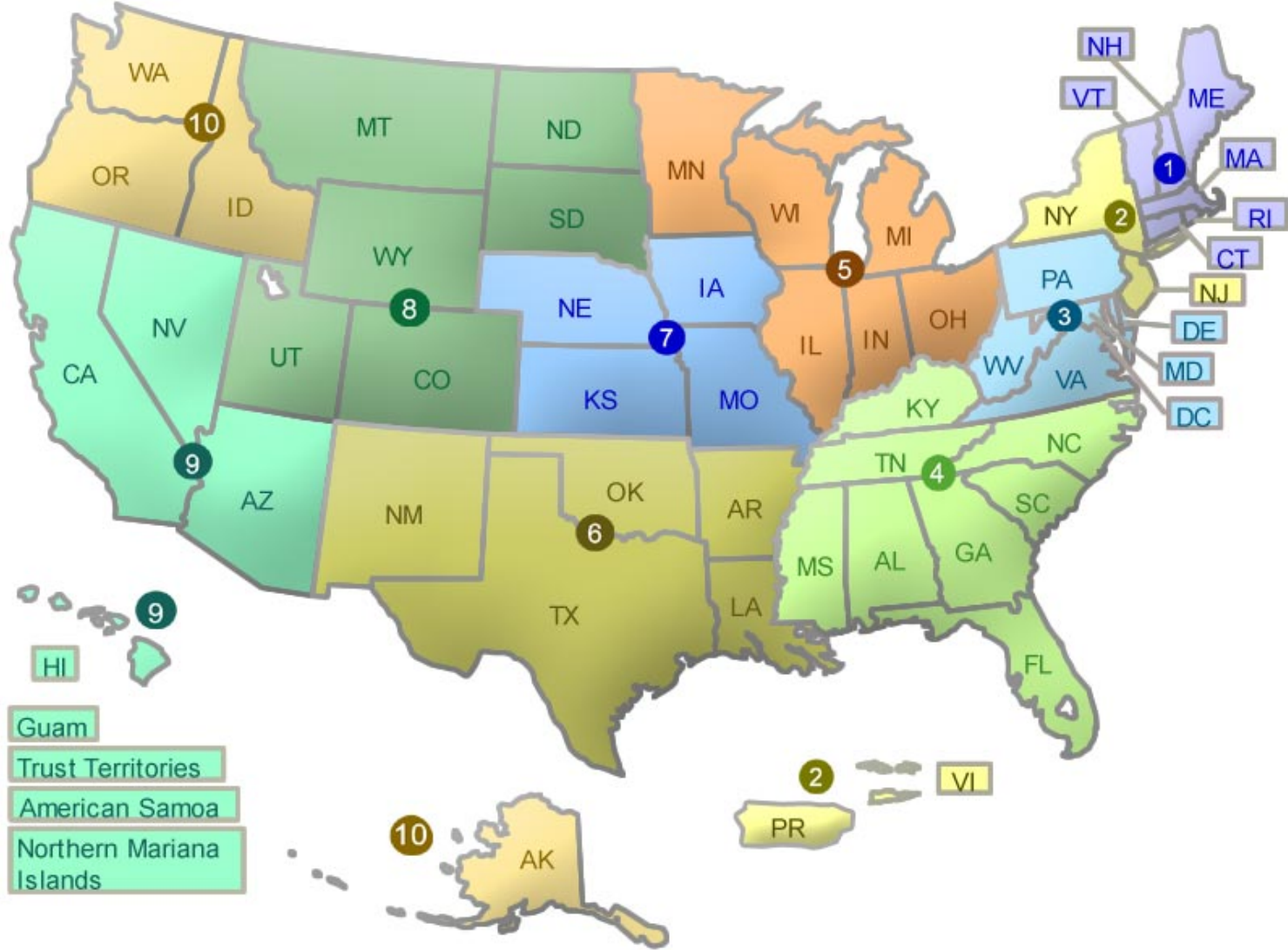


Public input was considered

4+ years of dialogue

415,000 comments

Outreach is underway across the country



Want Comments and Input on Proposed Rule

180 day public comment period

October 20 comment period closes

How to Comment on the Proposed Rule

- Submitting comments on the proposed rule, identified by Docket ID No. EPA-HQ-OW-2011-0880, can be done by one of the following methods:
 - Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
 - Email: ow-docket@epa.gov. Include EPA-HQ-OW-2011-0880 in the subject line of the message.
- 180-day comment period closes October 20, 2014

www.epa.gov/uswaters

Questions?

