**REWIRE OF THE “WATERS OF THE U.S.” RULE**

**QUICK FACTS**

- EPA and the Corps are working to withdraw and rewrite the 2015 WOTUS rule following a three-step process:
  
  1. Extend implementation date of the rule—Due to lawsuits, implementation of the 2015 rule has been delayed. Once those cases are decided, the stay will be lifted and the rule will move forward, unless the administration can successfully extend the implementation date of the final rule
  
  2. Withdraw the 2015 Clean Water Rule and recodify the regulation that was in place prior to the issuance of the 2015 rule
  
  3. Propose a new definition of “Waters of the U.S.” that focuses on a narrower definition of WOTUS

- Counties play an important role as both regulators and regulated entities under the Clean Water Act

- Counties own public safety infrastructure that may be impacted by a WOTUS designation

**ACTION NEEDED:**

Continue to advocate for the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers (Corps) to rewrite the 2015 “Waters of the U.S. (WOTUS)” rule in a way that recognizes counties’ role as owners of key public safety and water infrastructure and as intergovernmental partners in implementing federal regulations under the Clean Water Act.

**BACKGROUND:**

In February 2017, President Trump released Executive Order (EO) 13778: Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the “Waters of the U.S.” Rule that instructed the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) to review and rewrite the 2015 WOTUS rule. Subsequently, the agencies immediately laid out a game plan to withdraw and rewrite the WOTUS rule in the next several years. Last fall, the agencies accepted comments on both extending the implementation date and the withdrawal of the 2015 rule, and expect to start writing a new rule in 2018.

WOTUS is a term used in the Clean Water Act (CWA) to determine what waters and their conveyances fall under federal verses state permitting authority. In 2014, the EPA and the Corps undertook an effort to rewrite and expand the current WOTUS definition. In 2015, the Obama Administration finalized a new definition of WOTUS, which was immediately challenged in the courts. Since there was a question about which court—appeals or district—had the authority to initially hear and decide the 2015 rule, implementation of the rule was temporarily delayed until the Supreme Court could rule on court jurisdiction. In January 2018, the Supreme Court ruled unanimously that federal district courts have jurisdiction, rather than the appeals courts, which potentially invalidates the nationwide stay issued by the 6th U.S. Circuit Court of Appeals in October 2015.

As a result, the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) have proposed to extend the implementation date of the 2015 WOTUS rule for two years from the date of publication in the Federal Register this February, which would give the agencies more time to work through the rulemaking process to repeal and replace the 2015 rule. This extension is expected to be challenged in the courts once finalized.

Since the rule was originally proposed in 2014, NACo has expressed concerns with the impact a broader interpretation of WOTUS may have on county-owned and maintained roads and roadside ditches, bridges, flood control channels, drainage conveyances and wastewater and storm water systems. NACo had called for the 2015 final WOTUS rule to be withdrawn until further analysis and more in-depth consultation with state and local officials can be completed.
KEY TALKING POINTS:

• As co-regulators under provisions of the Clean Water Act, counties are not just another stakeholder in this discussion. Counties own and maintain roadside ditches and other water infrastructure, and act as both regulators and regulated entities under the Clean Water Act.

• We thank the EPA and the Corps for holding a EO 13132 Federalism consultation meeting on April 19 with state and local governments on the WOTUS rule-making. We encourage the agencies to continue the dialogue with state and local governments throughout the WOTUS rulemaking process, as authorized under EO 13132.

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