

REGULATORY ROUND-UP

Issue 1 – June 30, 2021

A New WOTUS Rule is in the works; Arizona under scrutiny!

Excerpted and commented on by Jeff Eisenberg (NRULPC Consultant) from:

<https://www.epa.gov/newsreleases/epa-army-announce-intent-revise-definition-wotus>

On June 9, 2021, the Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) announced their intent to revise the definition of the “waters of the United States” (WOTUS) “to better protect our nation’s vital water resources that support public health, environmental protection.”

Acting Assistant Secretary for the Corps, Jaime Pinkham, pointed out that the Trump rule resulted in a 25 percentage point reduction in determinations of waters that would otherwise be afforded protection. Moreover, “the lack of protections is particularly significant in arid states, like New Mexico and Arizona, where nearly every one of over 1,500 streams assessed has been found to be non-jurisdictional. The agencies are aware of 333 projects that would have required section 404 permitting prior to the Trump Rule, but no longer do. In the announcement, they stated their commitment to “meaningful stakeholder engagement to ensure that a revised definition of WOTUS considers essential clean water protections, as well as how the use of water supports key economic sectors.”

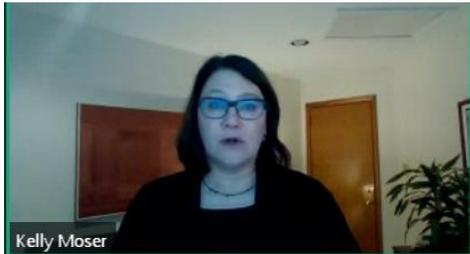
A decision in this general direction was expected. Still, the announcement is disappointing in that no reference is made to whether the Trump Rule in fact has led to degradation of water resources. Rather, the stated basis for the reexamination is political in that it highlights the curtailment of federal authority under the Trump Rule. This political approach suggests that the Biden Administration may not be the last Administration to opine on the matter! For now, there will be further announcements by the Administration about a process for engaging stakeholders in the development of a new rule.

Water Friendly Living in Arizona’s Verde Valley

Excerpted from Field Notes (for members of The Nature Conservancy in Arizona); Spring 2021 Issue.

The Nature Conservancy has been assisting three farming/ranching families in the Verde Valley to improve irrigation systems and water-use efficiency in the hope that “this area will become a showcase for ag and water conservation.” For one ranch, this meant replacing a dirt-lined ditch (connected to the Verde River) with PVC piping to prevent water loss. With the Conservancy’s help, another ranch using Verde River water switched from flood irrigation to sprinkler irrigation that led to a 20% savings. Oak Creek water, through the Mason Lane Ditch, is used by numerous ranches and landowners in that area. To improve efficiency, funding was secured to upgrade the ditch with new piping and a control gate, as well as updating one ranch’s sprinkler system.

Pending Litigation on the Navigable Waters Protection Rule (2020)



Environmental Law Institute (eli.org) Summer School Series on The Clean Water Act, Kelly Moser, Clean Water Defense Initiative, and Senior Attorney, Southern Environmental Law Center, presented this list of lawsuits challenging the rule. Some cases were stayed to allow the new administration time to review the rule.

Lawsuits brought by States

- California v. Regan* (N.D. Cal.) - coalition of 18 states, plus D.C.
- Colorado v EPA* (D. Colo.) *

Lawsuits brought by Tribes

- Navajo Nation v Regan* (D.N.M) *
- Pueblo of Laguna v Regan* (D.N.M)
- Pascua Yaqui Tribe v. Regan* (D. Ariz.) - coalition of tribes and environmental groups *

Lawsuits brought by environmental groups

- Chesapeake Bay Foundation v. Regan* (D.Md.)
- Conservation Law Foundation v. EPA* (D. Mass.) *
- Environmental Integrity Project v. Regan* (D.D.C.)
- S.C. Coastal Conservation League v. Regan* (D.S.C.) *
- Puget Soundkeeper Alliance v EPA* (W.D. Wash.)
- Waterkeeper Alliance v Regan* (N.D. Cal.) *

Other lawsuits

- Murray v. Regan* (N.D.N.Y)
- N.M. Cattle Growers' Association v. EPA* (D.N.M.)
- Wash. Cattlemen's Association v EPA* (W.D. Wash.)
- OR. Cattlemen's Association v DPA* (D. Or.)

* **Case not stayed**