

INPUT NEEDED: Fed Policy Council Takes Support Position on New Waters of the U.S. (WoTUS) Definition

On February 19th, the Federal Policy Council agreed to support filing public comments with the Environmental Protection Agency (EPA) in response to a newly-proposed definition for **Waters of the United States (WoTUS)**.

Additionally, there is a strong possibility that Colorado's new Attorney General Weiser will withdraw Colorado from the state's 2015 WoTUS lawsuit against the EPA. Withdrawal from that suit could require Colorado businesses to comply with the 2015 WoTUS rule with very little notice.

The Colorado Chamber believes actively participating in the federal rulemaking process is essential to building a better business case for balanced water protection rules, while at the same time creating one national compliance standard for predictability. (See below for more background)

What you need to know:

If you are interested in adding to or participating in drafting WoTUS comments to the EPA with the Colorado Chamber, please contact [Leah Curtsinger](#), Federal Policy Director at (303) 866-9641.

Why the proposed support comments?

The Colorado Chamber has long-sought a balance of protecting our environment with supporting our job creators & providers. The Colorado Chamber previously opposed the 2015 WoTUS rules issued by the Obama EPA, based on:

- Businesses were not meaningfully involved in rule development, while alternatives to the rules & impact on economy were not studied, as required by the Small Business Regulatory Flexibility Act & Executive Order 12866.
- The EPA could add individual properties on a case-by-case basis using new “other waters” & “significant nexus” definitions. Non-compliance fines could be up to \$37,500/day, which could/have potentially stopped economic development, while opening up businesses & individuals to environmental lawsuits in federal court.
- Science used in the 2015 rule's study was called into question for improper methodology (“connected” or not), bad parameters (scientists were not told what was allowed by law), as well as violating EPA & OMB requirements for peer reviews of studies & findings.
- The majority of lawsuits alleged the 2015 WoTUS rules violated at least one of the following established rules of law: the Clean Water Act (CWA), the Administrative Procedure Act, the National Environmental Policy Act (NEPA) and the commerce clause of the U.S. Constitution.

New WoTUS Definitions

“Our proposal would replace the Obama EPA’s 2015 definition with one that respects the limits of the Clean Water Act and provides states and landowners the certainty they need to manage their natural resources and grow local economies. For the first time, we are clearly defining the difference between federally protected waterways & state protected waterways. Our simpler & clearer definition would help landowners understand whether a project on their property will require a federal permit or not, without spending thousands of dollars on engineering and legal professionals.”

– EPA Administrator Andrew Wheeler

Timing: Comments on the EPA's proposed new definition of WoTUS must be received by **midnight, April 15, 2019**.

The Colorado Chamber plans to circulate draft comments within the next 2-3 weeks, giving 2 weeks for edits/additions/clarifications from our members, and another week to finalize public comments.

- **March 19th** – Target date to circulate proposed draft language
- **April 2nd** – Return comments/edits/input to Leah Curtsinger
- **April 12th** – Submit Colorado Chamber comments to the EPA

How to file comments individually: Filing *individual* comments helps represent individual industries & businesses affected by a patchwork of federal WoTUS regulations. The Colorado Chamber encourages you to share any individually-filed comments with our staff, so your business/industry is accurately reflected in our public comments as well.

- [Click here for complete background & pertinent Federal Register information.](#)
- You can submit comments using the www.Regulations.gov website under **Docket ID No. EPA-HQ-OW-2018-0149**.

Background on WoTUS

Proposed WoTUS changes are a direct result of the February 2017 President Trump Executive Order #13132 to realign federal and state authority over water regulations, as well as a directive to balance environmental protections with minimizing economic uncertainty.

"It is in the national interest to ensure that the nation's navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, & showing due regard for the roles of Congress and the states under the Constitution." -- EO #13132

Looking back: In 2015 more than half of all U.S. states filed lawsuits against the Obama EPA's WoTUS rules -- which resulted in 28 states (including Colorado) complying with *previous* WoTUS standards as a result of federal court injunctions to the 2015 rule; 22 states, D.C. & several U.S. territories are currently complying with the 2015 rule.

For reference, the 2015 EPA & Army Corps of Engineers rule redefined the term "waters of the United States" within the Clean Water Act (CWA). Previously, "waters of the U.S." were defined as *only* "navigable waters" -- where it's illegal to discharge pollutants, dredge or fill material into navigable waters.

Essentially, the 2015 rule's definitions deemed all tributaries, wetlands, stock ponds, drainage ditches, "prairie potholes," and temporary run-off water as "connected," either directly or by seasonal flooding and/or migratory wildlife. Being deemed "connected" under the 2015 definition requires EPA oversight of land use and permits (including tougher 404 permits for mining), and individuals can be added to EPA oversight on a case-by-case basis.

For any questions, comments or ideas on WoTUS, or other federal topics, please contact **Leah Curtsinger**, Federal Policy Director at LCurtsinger@COchamber.com or (303) 866-9641.