KEY MILESTONES IN DEFINING "WATERS OF THE UNITED STATES"
PROTECTED BY CLEAN WATER ACT PROGRAMS

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1972	Clean Water Act programs address "navigable waters," defined as "the waters of the United States, including the territorial seas."
1973	EPA General Counsel memorandum suggests defining WOTUS as: all navigable waters of the US; tributaries of navigable waters; interstate waters; interstate lakes, rivers and streams used by interstate travelers for recreation or other purposes, from which fish or shellfish are taken and sold in interstate commerce, or are used for industrial purposes by industries in interstate commerce. The memorandum's proposed definition is not incorporated into regulations, although language similar for *intrastate* commerce links is adopted in the 1973 definition.
1973	EPA defines waters of the United States (WOTUS) as including: all navigable waters of the US; all tributaries to navigable waters; interstate waters; intrastate waters used by interstate travelers for recreation or other purposes, or from which fish or shellfish are taken and sold in interstate commerce, or are used by industries in interstate commerce.
1974	Army Corps defines WOTUS for CWA §404 purposes as including waters subject to the ebb and flow of the tide, or have been used in the past, present, or susceptible to future use in interstate or foreign commerce.
1975	D.C. District Court in *NRDC v. Callaway* invalidates Army Corps 1974 WOTUS definition, indicating WOTUS definition is not limited to the traditional tests of navigability. Court orders the Army Corps to publish new definition on an expedited timeframe.
1975	Army Corps issues "interim final" definition of WOTUS, including: navigable waters subject to the ebb and flow of the tide; all coastal wetlands and similar areas contiguous or adjacent to other navigable waters; rivers, lakes, streams, and artificial waterbodies that are navigable waters of the US; artificial channels used for recreational or other navigational purposes; tributaries to navigable waters; interstate waters; intrastate lakes, rivers, and streams used by interstate recreational travelers, for removal of fish sold in commerce, for interstate industrial commerce, or for production of agricultural commodities sold in commerce; freshwater wetlands contiguous or adjacent to other navigable waters; and other waters that the District Engineer determines necessitate regulation for protection of water quality.
1977	Army Corps finalizes 1975 "interim final" definition of WOTUS. Clarifies District Engineer power to assert jurisdiction over waters not explicitly listed as WOTUS requires showing a connection to interstate commerce. Defines "adjacent" as bordering, contiguous, or neighboring, and that wetlands separated from other WOTUS by man-made dikes or barriers are adjacent wetlands. Also indicates non-tidal drainage and irrigation ditches feeding into navigable waters would not be considered WOTUS under §404 but discharges into such waters could be addressed by other CWA programs such as §402.
1979	EPA revises WOTUS definition to include: waters used in the past, present, or susceptible to future use in interstate or foreign commerce, including waters subject to the ebb and flow of the tide; interstate waters including interstate wetlands; all other waters the use, degradation, or destruction of which could affect interstate or foreign commerce; impoundments of WOTUS; tributaries of WOTUS; territorial seas; and wetlands

	adjacent to WOTUS (other than those that are themselves wetlands). This definition, with some modifications reflecting new exclusions, continues to be the regulatory definition of WOTUS until replaced in 2015.
1979	Memorandum by Attorney General Benjamin Civiletti establishes that WOTUS has only one definition for all CWA programs, and EPA has final administrative authority to determine scope of WOTUS.
1979	EPA promulgates regulations that exclude waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Act, from the definition of WOTUS.
1980	EPA revises the waste treatment exclusion from WOTUS, indicating "this exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as a disposal area in wetlands) nor resulted from the impoundment of waters of the United States."
1980	EPA suspends regulatory language that had limited the scope of the waste treatment exclusion as applying only to manmade bodies of water or impoundments of WOTUS.
1982	The Army Corps adopts EPA's 1979 definition of WOTUS and the waste treatment exclusion.
1985	In response to a Congressional inquiry, EPA General Counsel Francis Blake clarifies that use of an isolated water by migratory birds or endangered species is a sufficient basis to consider the water as WOTUS.
1985	Unanimous U.S. Supreme Court decision in *Riverside Bayview Homes* affirms Army Corps and EPA regulations defining adjacent wetlands as WOTUS, observing the functional role of adjacent wetlands in the broader aquatic ecosystem while explicitly not addressing the jurisdictional question of isolated wetlands. The Court also indicates the word "navigable" was of limited effect.
1986	Army Corps provides in a Federal Register preamble examples of commerce links sufficient to establish jurisdiction, including: waters that are or would be used as habitat by migratory birds or by endangered species, or to irrigate crops sold in commerce. These examples become known as the "Migratory Bird Rule," even though not a rule or entirely about birds. The preamble also provides examples of waters "generally" not considered to be WOTUS, including: non-tidal drainage and irrigation ditches excavated on dry land; artificially irrigated areas that would revert to upland if irrigation ceased; artificial lakes or ponds created in dry land for stock watering and similar purposes; artificial reflecting, swimming, or ornamental pools; and water-filled depressions created in dry land incidental to construction activity, unless abandoned. The Army Corps reserves the right to find such waters to be WOTUS on a case-by-case basis.
1988	EPA provides in a Federal Register preamble the same examples as the Army Corps of commerce links sufficient to establish jurisdiction over a water as WOTUS, and the same examples of waters "generally" not WOTUS. EPA reserves the right to find such waters to be WOTUS on a case-by-case basis.
1993	EPA and the Army Corps promulgate an exclusion for prior converted cropland (PCC) from the regulatory definition of WOTUS. The preamble indicates PCC lands could be jurisdictional as WOTUS if the land is abandoned (not producing a commodity crop at least once every five years or not "recertified" as PCC by USDA) and the land reverts back to wetlands.
2001	U.S. Supreme Court indicates in *SWANCC* that an isolated intrastate non-navigable water cannot be considered WOTUS based solely on the presence of migratory birds. The Court does not invalidate the existing regulatory definition of WOTUS but qualifies how it is applied to isolated waters. The Court notes although *Riverside* said the word "navigable" was of limited effect, that does not mean giving it no effect. The Court states it was the

	"significant nexus between the wetlands and 'navigable waters' that informed our reading of the CWA" in *Riverside*.
2001	EPA and the Army Corps jointly issue a legal memorandum describing CWA jurisdiction in light of *SWANCC*. The memorandum interprets the decision as focused narrowly on waters that are isolated, non-navigable, and interstate, and not affecting jurisdiction over tributaries and adjacent wetlands.
2003	EPA and the Army Corps jointly issue guidance clarifying the effect on the WOTUS definition of *SWANCC* and the federal court opinions since the Supreme Court's decision. The guidance indicates agencies should no longer assert CWA jurisdiction based solely on "Migratory Bird Rule" factors, but should continue to assert jurisdiction over traditional navigable waters and adjacent wetlands and, generally speaking, their tributary systems and adjacent wetlands.
2005	The Army Corps and NRCS withdraw from a 1994 Memorandum of Understanding with EPA addressing consistency between the CWA and Food Security Act, and issue joint guidance without EPA stating "a certified PC[C] determination made by NRCS remains valid as long as the area is devoted to an agricultural use. If the land changes to a non-agricultural use, the PC[C] determination is no longer applicable and a new wetland determination is required for CWA purposes."
2006	U.S. Supreme Court decision in *Rapanos* is split 4-1-4, with two standards for WOTUS emerging: the plurality's relatively permanent standard and Justice Kennedy's significant nexus standard. The decision does not invalidate the existing regulatory definition of WOTUS but qualifies how it applied.
2007	EPA and the Army Corps jointly issue guidance on the scope of WOTUS in light of *Rapanos*, indicating a water is a WOTUS if it meets either the "relatively permanent" standard or the "significant nexus" standard. Traditional navigable waters and their adjacent wetlands are jurisdictional *per se,* as are relatively permanent waters and wetlands that abut such waters. Waters not meeting the above characteristics are WOTUS if they have a significant nexus with a traditional navigable water either individually or cumulatively. The guidance also indicates WOTUS generally does not include swales or erosional features, or ditches that are excavated wholly in and drain only uplands and that do not carry a relatively permanent flow of water. The guidance is effective immediately but invites public comment.
2007	The Army Corps includes an interagency interpretation of "traditional navigable waters" (TNWs) as Appendix D to its Jurisdictional Determination Form Instructional Guidebook on implementing the *Rapanos* Guidance. Appendix D indicates relevant considerations for determining if a water is a TNW include: if the water is a navigable water of the United States under the Rivers and Harbors Act; or if the water qualifies as a navigable water of the United States under any of the tests set forth in 33 C.F.R. §329; or if a federal court has determined that the water body is navigable-in-fact under federal law for any purpose; or if the water is "navigable-in-fact" under the standards used by the federal courts.
2008	EPA and the Army Corps jointly issue revised *Rapanos* Guidance that is substantially similar to the initial 2007 guidance.
2015	EPA Office of Research and Development publishes "Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence." The report synthesizes over 1,000 peer-reviewed scientific articles on connectivity, and is itself peer-reviewed. Report serves as a key scientific basis for 2015 Clean Water Rule.
2015	EPA and the Army Corps promulgate the final Clean Water Rule. The Clean Water Rule defines WOTUS as including: all waters used in the past, present, or future in interstate or foreign commerce, or subject to the ebb and flow of the tide; all interstate waters including interstate wetlands; territorial seas; all impoundments of waters otherwise defined as WOTUS; all tributaries as defined; all adjacent waters as defined; and all waters determined on a case-by-case basis to have a significant nexus to a traditional navigable water or interstate

	water. The Clean Water Rule retains existing exclusions for waste treatment systems and PCC, adding several exclusions reflecting longstanding practice summarized in 1986 and 1988 preambles but without retaining authority to find some features to be WOTUS on a case-by-case basis.
2017	President Trump signs Executive Order 13778, "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule." The EO calls for EPA and the Army Corps to rescind or revise the 2015 Clean Water Rule, directing the agencies to consider interpreting the term "navigable waters" in a manner consistent with Justice Scalia's "relatively permanent" standard in *Rapanos*.
2018	U.S. Supreme Court holds that federal district courts have original jurisdiction to hear challenges to regulatory definitions of WOTUS. A Sixth Circuit Court of Appeals injunction on the 2015 Clean Water Rule subsequently is lifted, and district court challenges proceed.
2018	EPA and the Army Corps promulgate an "applicability date" for the 2015 Clean Water Rule defining WOTUS, providing that it would not take effect until February 6, 2020. The "applicability date" rule is subsequently overturned by a South Carolina federal district court in *South Carolina Coastal Conservation League v. Pruitt,* based on failure to follow Administrative Procedure Act requirements for public comment.
2019	EPA and the Army Corps finalize a regulation repealing the 2015 Clean Water Rule and recodifying the pre-existing definition of WOTUS, as an interim matter until the agencies redefine WOTUS in response to Executive Order 13778. Implementation of the pre-existing definition will be informed by the December 2008 *Rapanos* Guidance and longstanding practice.
2020	EPA and the Army Corps finalize a regulation redefining WOTUS in response to Executive Order 13778. Under the Navigable Waters Protection Rule, WOTUS includes: territorial seas and traditional navigable waters; perennial and intermittent tributaries as defined; lakes, ponds, and impoundments contributing surface flow to a TNW in a typical year; and adjacent wetlands as defined. Interstate waters are not categorically WOTUS. The NWPR incorporates exclusions similar to those in the 2015 Clean Water Rule. Generally, the NWPR does not view any type of ephemeral water as WOTUS.
2021	The U.S. District Court for Arizona vacates and remands the 2020 NWPR in *Pascua Yaqui Tribe v. EPA*, citing procedural errors and the likelihood of serious environmental harm. EPA and the Army Corps indicate as a result, they are interpreting WOTUS consistent with the pre-2015 regulatory regime until further notice.
2021	EPA and the Army Corps propose a new definition of WOTUS for public comment. The proposed rule mirrors many aspects of the pre-2015 definition while incorporating the relatively permanent and significant nexus standards from *Rapanos*. The agencies received approximately 113,500 public comments on the proposal.
2022	Army Corps issues announcement regarding effects of NWPR vacatur on Corps' approved jurisdictional determinations (AJDs) and associated permit actions. Generally, the Army Corps will not reconsider permit decisions completed prior to the August 2021 NWPR vacatur, while AJDs and associated permit actions not completed before the vacatur must reflect the currently applicable regulatory regime (i.e., the pre-2015 regulatory regime).
2022	The U.S. Supreme Court grants review in *Sackett v. United States*, a case that explores whether the Ninth Circuit Court of Appeals' use of the Kennedy significant nexus standard was appropriate for determining if a water was a "water of the United States."
2023	EPA and the Army Corps issue a final rule in January, defining WOTUS using both the "significant nexus" and "relatively permanent" standards. The rule is challenged in U.S. District Courts in Texas, North Dakota, and

	Kentucky, with the rule being stayed in states involved in the litigation. As a result, the pre-2015 WOTUS definition is in effect in 27 states, and the new rule in 23 states.
2023	The U.S. Supreme Court rules in *Sackett* in May, invalidating the "significant nexus" standard and holding that the "relatively permanent" standard from the plurality opinion in *Rapanos* was the appropriate analysis to determine if a wetland or other water was a WOTUS.
2023	After *Sackett*, EPA and the Army Corps issue conforming edits to the January 2023 WOTUS definition indicating that the appropriate standard for determining WOTUS is the relatively permanent standard. The conforming edits were immediately final upon publication in the Federal Register on September 8. The WOTUS definition as revised is in effect in 23 states, and the pre-2015 definition as modified by Sackett is in effect in 27 states. EPA has a map on its website indicating what definition is in effect in which states.