

Waters of the U.S. Proposed Rule Myths and Facts¹

Overview:

- The Environmental Protection Agency's (EPA) proposed rule will not add to or expand the scope of waters historically protected under the Clean Water Act (CWA).
- The proposed rule will not regulate groundwater or tile drainage systems, and it will not increase regulation of ditches, whether they are irrigation or drainage.
- Any normal farming activity that does not result in a point source discharge of pollutants into waters of the U.S. still does not require a permit.
- If you were not legally required to have a permit before, the rule does not change that.

MYTH: The rule would regulate all ditches, even those that only flow after rainfall.

- The proposed rule does not expand regulation of ditches.
- The proposed rule would actually regulate fewer ditches than are currently covered under the 2008 Guidance.
- For the first time, the agencies are clarifying that any ditch that does not connect to the tributary system or any upland ditch built wholly in uplands that flow less than year round are never jurisdictional.
- Ditch maintenance activities do not require a CWA permit because they are exempt.

MYTH: This is the largest land grab in history.

- Fewer waters would be covered under this rule than were protected in the 1970s.
- The CWA is written and applied to protect clean waters, the lifeblood of communities, businesses, agriculture, energy development, and hunting and fishing across the nation.

MYTH: Those 56 conservation practices may be exempt from 404 but not other parts of the Clean Water Act.

- The 56 conservation practices were selected because they only involve section 404 discharges – dredged or fill material, and because they protect/enhance water quality.
- The agencies are eager to promote landowner practices that help to enhance environmental protection and protect the nation's clean water.
- The agencies are clarifying that operators are exempt from the need to obtain a 404 permit when they follow any of these 56 conservation practices – practices that are good for farmers and for clean water.

MYTH: EPA is increasing the number of jurisdictional waters by including ephemeral and intermittent streams as waters of the United States.

- Ephemeral and intermittent streams have been covered under the Clean Water Act since the 1970s.

¹ Source: <http://www.epa.gov/>

- The agencies are clarifying that ephemeral drainages under tillage and grassy swales on farm fields are not waters of the United States.
- Over 60% of tributaries nationwide have ephemeral or intermittent flow – the CWA recognizes that the health and water quality of larger streams, lakes and rivers depends on protecting the smaller streams and creeks that flow into them.

MYTH: EPA is taking control of the pond in the middle of the farm.

- The proposed rule does not change jurisdiction over farm or stock ponds.
- The rule does not change the existing exemption Congress created for farm or stock ponds which are covered by the CWA.
- Farmers and ranchers can continue to use and maintain their farm and stock ponds as they always have – this does not change.

MYTH: Groundwater and drain tiles will be regulated under the CWA.

- For the first time in regulation, the agencies are making clear that groundwater, including groundwater in drain tiles, is not covered by the CWA.
- The agencies are also making clear that swales, erosional features, rills, and gullies are never regulated.

MYTH: Farmers need a permit for cows walking across a stream or wetland.

- Farmers do not need a permit for cows walking across a stream or wetland.