

New Water Rule Increases Confusion, Lacks Clarity

By Russell Riggs, NAR Director of Environmental and Sustainability Policy and RLI's Advocacy Liaison

The National Association of REALTORS® and the REALTORS® Land Institute are deeply concerned with the Environmental Protection Agency's and Army Corps of Engineers' final Waters of the United States (WOTUS) rule, announced on December 30, 2022. The rule will take effect 60 days after publication in the Federal Register.

The regulated community and many states have called for a rule that provides the clarity and certainty essential for predictable and efficient permitting. Unfortunately, the agencies failed to pay attention to the input they received during their public comment process, as well as their regional roundtables on the proposed rulemaking. Instead, the rule's reliance on vague terms and unclear definitions will make it very difficult for any business or individual who owns or develops property to comply with the requirements of the Clean Water Act (CWA).

Rather than providing clarity and certainty for property owners and other regulated stakeholders, this definition of WOTUS adds uncertainty and confusion to the regulatory process, raises housing costs and increases federal overreach in the permitting process. This is especially detrimental given the current housing shortage and existing regulatory barriers that are already delaying new construction, including of affordable housing.

In addition, the new rule comes at a time when the Supreme Court is weighing the scope of the CWA in the case of *Sackett v. EPA*. A ruling in the *Sackett* case could negate (or render irrelevant) significant elements of this WOTUS rule, which will create even more confusion for landowners and real estate businesses throughout the country.

NAR members work to protect and steward water resources, and a clear, efficient definition of WOTUS would enable us to continue to do so. Regrettably, EPA's new water rule not only makes these efforts more difficult, it also puts sorely needed infrastructure projects at risk and threatens to make housing even more expensive for America's families.

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