



NATIONAL ASSOCIATION OF STATE FORESTERS

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August 30, 2021

John Goodin
Director, Office of Wetlands, Oceans and Watersheds
US Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Vance F. Stewart III
Acting Principal Deputy, Office of the Assistant Secretary of the Army for Civil Works
US Department of the Army
108 Army Pentagon
Washington, DC 20310-0104

**Docket ID No. EPA-HQ-OW-2021-0328; Document Citation: 86 FR 41911
Notice of Public Meetings Regarding “Waters of the United States”; Establishment of a Public
Docket; Request for Recommendations**

Dear Director Goodin and Acting Principal Deputy Stewart,

The National Association of State Foresters (NASF) appreciates the opportunity to provide comments on the proposed definition for jurisdictional waters of the U.S. (WOTUS). NASF represents the heads of the state forestry agencies in all fifty states, the U.S. territories, and the District of Columbia. Our members are either directly responsible for or the primary deliverers of sustainable forest management on nearly 300 million acres of family, state, and locally-owned forest land. State forestry agencies also provide wildfire protection on more than 1.5 billion acres nationwide and often assist in managing federal forests.

Over half of the nation’s drinking water supply comes from forested landscapes. Forests are the most effective land use type in protecting water quality and are key to protecting groundwater reserves. NASF supports a WOTUS rule that clearly defines what waters fall under federal jurisdiction. Such a rule would significantly reduce inconsistent interpretation and implementation on the ground. The “Navigable Waters Protection Rule” (NWPR) published in the Federal Register on April 21, 2020 more adequately satisfies this standard compared to the 2015 WOTUS Rule.

Each state has published a set of “Forestry Best Management Practices” (BMPs) for the protection of water quality and quantity. State foresters promote the use of BMPs through various means during forest management operations. The NASF website

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www.stateforesters.org/bmps/) houses a comprehensive data set and interactive map that includes each state's BMPs program. Nationally, the implementation rate and effectiveness of BMPs in protecting water resources are very high. Given this, NASF recommends that any WOTUS rule reaffirm the long standing, now codified, exemption of normal silvicultural activities under section 404(f)(1)(A) of the Clean Water Act.

The NWPR WOTUS exclusions and exemptions are well known and understood, and have little negative impact on traditional navigable waters. NASF does not support extending federal jurisdiction to non-navigable, isolated/intrastate waters and wetlands, or ordinarily dry features, such as ephemerals. Congress intended for states to protect and/or monitor the health of these water features, which makes sense since they may be unique to their geographies.

Federal definitions for terms such as "floodplain" and "riparian area" are impractical and lead to inconsistent rulings because of the significant variation in water features across the country. Rule-making needs to recognize that there are significant differences in watershed characteristics from one region to the next. The definition of WOTUS should acknowledge this variability, and its implementation should be tailored to what achieves the best result in specific locales. NASF supports a rule that provides States with greater decision-making authority when determining whether a water feature warrants protections under a federal WOTUS designation.

If specific federal stream definitions are included in a WOTUS rule, it is critical that they are clear and measurable with field indicators, such as bed, bank, and high-water marks, and evidence of perennial or intermittent flow. Such definitions are necessary for consistent and accurate implementation on the ground. NASF also supports maintaining definitions that are either inclusive of, or without conflict with, the diversity of state program definitions already in place, such as definitions used in states' BMPs manuals.

Determining intermittent or perennial status based on the number of days water is present in a water feature is not practical due to the diversity of hydrology nationwide. Likewise, the concepts of "significant nexus," "ecoregion," and "other situated waters" tend to produce generalized findings and potentially unnecessary conclusions about the need for federal jurisdiction. The WOTUS rule should provide some flexibility for regional or state-specific criteria rather than a one-size-fits-all national standard. Doing so will provide land managers with the flexibility they need, while also ensuring consistency in implementation.

NASF supports the exclusion of upland ditches, such as road ditches and stormwater ditches, from the WOTUS rule. While we support jurisdictional WOTUS status on canals that are intended for commerce and ditches that are channelized stream tributaries, minor wetland silvicultural ditches should be considered wetland extensions, not new artificial "tributaries." This interpretation would be consistent with the silvicultural exemptions codified in Section 404(f) of the Clean Water Act and state-adopted BMPs. We also recommend that the administration eliminate the use of "blueline streams" or the National Hydrography Dataset as sole indicators of WOTUS. These maps are known to be inaccurate and underestimate the number of streams.

Finally, the federal register notice for this comment period requested commenters to provide any relevant science that has been published since EPA's 2015 Report *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence*. Please see Appendix A for a list of relevant research articles on forests and water.

Our regular evaluation of state BMP programs underscores the fact that one national water resources policy does not – and will not – work for all states and locales. State regulatory approaches are tailored to the varied ecological conditions that exist across the country, as well as to the socio-political environment that defines each state's most likely pathway to success. Any decision regarding the definition of WOTUS should take this consideration into account. Thank you for your time and attention; we look forward to future opportunities for input as rule-making moves forward.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joe A. Fox". The signature is stylized and cursive.

Joe Fox
Arkansas State Forester
NASF President

APPENDIX A – Relevant Science Published since 2015

- Amatya, D.M. and C.C. Trettin. 2019. Long-Term Ecohydrologic Monitoring: A Case Study from the Santee Experimental Forest, South Carolina. *Journal of South Carolina Water Resources*. 6: 46-55. <https://www.fs.usda.gov/treesearch/pubs/59583>
- Cohen, M. and others. 2017. Managing Forests for Increased Regional Water Availability. FDACS Contract No. 20834, Report on Task 7: Year 3 Annual Report: Final. [for copy, contact Matthew Cohen, Associate Professor: Univ. of Florida, IFAS, School of Forest Resources and Conservation]
- Cristan et al. 2017. National status of state developed and implemented forestry best management practices for protecting water quality. *Forest Ecology and Management*. 418: 73-84. <http://dx.doi.org/10.1016/j.foreco.2017.07.002>
- Hwang, T., K.L. Martin, J.M. Vose, D. Wear, B. Miles, Y. Kim, and L.E. Band. 2018. Nonstationary Hydrologic Behavior in Forested Watersheds Is Mediated by Climate-Induced Changes in Growing Season Length and Subsequent Vegetation Growth. *Water Resources Research*. 54: 5359-5375. <https://doi.org/10.1029/2017WR022279>
- Leibowitz, S.G., P.J. Wigington Jr, K.A. Schofield, L.C. Alexander, M.K. Vanderhoof, and H.E. Golden. 2018. Connectivity of streams and wetlands to downstream waters: an integrated systems framework. *Journal of the American Water Resources Association*. 54(2): 298-322.
- Liu, N., G.R. Dobbs, P.V. Caldwell, C.F. Miniati, P. Bolstad, S. Nelson, and G. Sun. 2020. Quantifying the Role of State and Private Forest Lands in Providing Surface Drinking Water Supply for the Southern United States. United States Department of Agriculture, Forest Service, Southern Research Station. <https://www.fs.usda.gov/treesearch/pubs/59637>
- Prisley, S.P., J.A. Turner, M.J. Brown, E. Schilling, and S.G. Lambert. 2020. Uncertainty of forested wetland maps derived from aerial photography. *Photogrammetric Engineering and Remote Sensing*. 86(10): 609-617. <https://doi.org/10.14358/PERS.86.10.609>
- Skaggs, R.W., D.M. Amatya, and G.M. Chescheir. 2020. Effects of drainage for silviculture on wetland hydrology. *Wetlands*. 40(1), 47-64.
- Vepraskas, M.J., R.W. Skaggs, and P.V. Caldwell. 2020. Method to assess climate change impacts on hydrologic boundaries of individual wetlands. *Wetlands*, 40(2): 365-376. <https://doi.org/10.1007/s13157-019-01183-6>
- Weaver, J.C. 2016. Low-flow characteristics and flow-duration statistics for selected USGS continuous-record streamgaging stations in North Carolina through 2012. Ver.1.1 U.S. Geological Survey. <http://dx.doi.org/10.3133/sir20155001/>