



The Daily Dish

Muddy Waters

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Eakinomics: Muddy Waters

Without great fanfare, the Trump Administration recently took the first step toward repealing and replacing the Obama-era Waters of the United States (WOTUS) rule that defines what natural features are considered federal waters under the Clean Water Act. As [explained](#) by AAF's Dan Bosch, putting a revised rule in place is intended to be a two-step process. First, the Environmental Protection Agency and the U.S. Army Corps of Engineers (the two agencies) have finalized a [rule](#) that repeals the Obama-era rule and restores regulations from the 1980s.

This is a mixed blessing. The 2015 Obama rule was necessitated by a series of Supreme Court decisions that ruled the Environmental Protection Agency and the U.S. Army Corps of Engineers had overstepped their authority. So, something had to be done. Unfortunately, the [first cut](#) imposed \$166 million in annual costs, took 370 pages, and replaced standard definitions of bodies of water (e.g. “intrastate lakes, rivers, streams”) with a case-by-case judgment framework. An uproar ensued and the administration adopted a [final rule](#) that was shorter (297 pages) but much more costly (\$462.9 million). This rule contained a set of “automatic jurisdictions” that produced a rise in the number of regulated bodies of water to correspond with the price tag.

The Trump Administration has now undone the automated jurisdictions and associated regulatory costs. But it finds itself in the same unenviable position as the preceding administration: how to produce an effective implementation of the Clean Water Act, devoid of excessive regulatory costs that can survive the inevitable litigation.