



The Daily Dish

Protecting the Waters of the United States

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Eakinomics: Protecting the Waters of the United States

Among the greatest hits of the Obama Administration's regulatory tsunami is the so-called "Waters of the United States" ([WOTUS](#)) rule which implements the Clean Water Act of 1972 (CWA). The WOTUS rule derived from Supreme Court decisions that the Environmental Protection Agency (EPA) and Army Corps of Engineers had overstepped their authority under the CWA. The Obama Administration first tried to replace a standard definition of bodies of water, "such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds," with a case-by-case approach that depended on whether a body of water had a "significant nexus" with other navigable bodies traditionally covered by the Act. This vagueness created a political firestorm and the final Obama rule resorted to simply having a set of "automatic jurisdictions" much like having a broad, standard definition.

Clearly crafting a WOTUS rule is very difficult. So it is notable that the Trump Administration released its final replacement of the Obama WOTUS rule. AAF's Dan Bosch has a nice [rundown](#) of the implications; here I focus on two.

First, he notes that "it is the third-largest deregulatory action of the Trump Administration in terms of present-value savings. The agencies estimate the rule will bring total savings of \$3.2 billion, which will count toward the administration's fiscal year 2020 regulatory budget savings target of \$51.6 billion. The actual savings may be even larger."

Second, Bosch points out that "environmentalists are harshly criticizing the final rule. The most common criticism of the rule is that it substantially scales back federal 'protection of' waters. When the changes are described this way, the term 'protection of' implicitly means 'authority over.'" That misses the larger point that waters also reside in and flow through an enormous array of state, county, and local jurisdictions, all of which have no incentive to allow those waters to be degraded. The ideal regulation would balance federal oversight among federal and other jurisdictions. The notion that a more limited federal role amounts to abandoning conservation of U.S. waters is simply an overstatement.

The Trump Administration's regulation agenda remains its most significant – and underappreciated – accomplishment. Unlike the legislative avenue, it is far less likely to disappear during an election year, so get ready for more developments.