



Press Release

The Biden WOTUS: Breadth and Uncertainty

PAULINA ENCK | NOVEMBER 19, 2021

The latest salvo in the ongoing struggle to durably define “waters of the United States” (WOTUS) arrived with the release of a notice of proposed rulemaking from the Environmental Protection Agency and the U.S. Army Corps of Engineers. In a new insight, Director of Regulatory Policy Dan Bosch explains the rule, compares it to recent predecessors, and assesses its implications. Bosch notes that the definition, punted to the agencies nearly 50 years ago by Congress, is critical as it underpins several federal regulatory programs.

Key Points

- The Biden Administration proposed a new definition of “waters of the United States” that can best be described as having the coverage of the Obama Administration’s 2015 rule with less certainty over what waters are covered.
- The proposal aims to thread the needle of having the coverage of the 2015 rule while simultaneously sidestepping some of the features that caused that rule to be partially stayed by federal courts.
- Compared to the definition finalized by the Trump Administration, which this proposed rule would repeal, the agencies estimate it could cost as much as \$276 million more on an annual basis for permitting and mitigation for just one of the Clean Water Act’s most widely used permitting programs.

[Read the analysis](#)