



**Walter Wright, Jr.**  
wwright@mwlaw.com  
(501) 688.8839

# Politicization of the Waters of the United States Rulemaking: U.S. House of Representatives Committee on Oversight and Government Reform/Majority Staff Report

## Arkansas Environmental, Energy, and Water Law Blog

11/01/2016

The United States House of Representatives Committee on Oversight and Government Reform ("Committee") issued a Majority Staff Report titled *Politicization of the Waters of the United States Rulemaking* ("Report").

The *Report* states it provides:

... information on the flawed process and outline of other areas of concern with respect to the WOTUS rulemaking. The Administration's insistence on adhering to a specific timeline resulted in cut corners and bypassed regulatory protocols. This rulemaking demonstrates how an ideological policy agenda can override regulatory safeguards put in place by Congress.

WOTUS refers to the phrase "waters of the United States". The phrase constitutes the definition of the Clean Water Act term "navigable waters."

The United States Environment Protection Agency ("EPA") and the United States Corps of Engineers ("Corps") have undertaken a number of rulemakings over the years to define the phrase "waters of the United States."

The *Report* focuses on the final rule EPA and the Corps issued on May 27, 2015 addressing this phrase.

The various rulemakings and guidance the agencies have undertaken over the years to attempt to define the term waters of the U.S. are reviewed. The Report further provides the Committee Majority Staff's perspective on the agencies' 2015 rulemaking developed from prior oversight hearings and research.

The *Report* findings include:

- The Office of Information and Regulatory Affairs shortened the interagency review period for the final rule despite agencies' complaints they would be unable to complete a proper review
- EPA sidelined the Corps
- EPA and Corps pushed through the rule despite strong objections from senior Corps leadership
- EPA and the Corps did not consider appropriate alternatives to the rule, as they were required to do
- EPA did not fully consider public comments before finalizing the rule
- The handling of the science supporting the rule was problematic

- The White House allowed EPA to bypass additional analysis and small business review panels despite the requirement under the Regulatory Flexibility Act
- The Corps predetermined it's National Environmental Policy Act analysis to avoid interference with the rigorous timeline for rolling out the rule

[A link to the 182 page Report can be found here.](#)