

# Waters of the United States/U.S. EPA Proposed Rule: St. Francis Levee District of Arkansas Comments



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

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The United States Environmental Protection Agency (“EPA”) has received thousands of comments in the Administrative Docket for the proposed revisions to the Clean Water Act definition of Waters of the United States (“WOTUS”). See Docket No. : EPA-HQ-OW-2018-0149.

A few of the submitted comments have originated from organizations or entities located in the State of Arkansas.

EPA and the United States Corps of Engineers (“Corps”) proposed revisions to WOTUS on December 11, 2018. Further, they had previously rescinded the Obama era revision clarification of WOTUS.

The definition of WOTUS is arguably one of the three critical jurisdictional terms of the Clean Water Act. Its important is magnified by the fact it is also relevant to non-National Pollution Discharge Elimination System programs such as:

- Section 404 of the Clean Water Act Wetland Permits
- Section 311 Oil/Hazardous Substance Release Requirements
- Clean Water Act Spill Prevention Control and Countermeasure Regulations

The December 11th proposed changes to the rules were briefly delineated here. (See previous post [here.](#))

One of the Arkansas organizations that submitted comments on the proposed rule is the St. Francis Levee District of Arkansas (“St. Francis”). St. Francis submitted comments which initially note that it is:

. . . a local sponsor, state entity, business and landowner. . .

The organization states that it can be difficult to obtain the necessary permits for flood control and/or navigation projects. Further, it states its support of the proposed rule, arguing that it will protect the Nation’s “clean water” while “correcting the federal overreach of the 2015 WOTUS rule.”

Points put forth in the comments include:

- Projects in or near federal waters require extensive permitting that comes at a hefty price
- Confusion would be removed as to whether a small roadside ditch or low-lying dry patch of land could be considered WOTUS
- The prior rules have been complex, posed regulatory uncertainty, and added cost and delay to projects
- The proposed rule will more clearly define what constitutes WOTUS. Included within WOTUS would be actual waterbodies in both the traditional and judicial sense

- Federal jurisdiction would not apply to ephemeral features that only pool or flow due to wet weather
- Stormwater control features constructed in uplands would be excluded
- Water-filled depressions in uplands would be excluded

A copy of the St. Francis comments can be found [here](#).