

Waters of the United States/U.S. EPA Proposed Rule: Arkansas Valley Audubon Society Comments



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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 Further, they had previously rescinded the Obama era revision clarification of WOTUS.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 importance 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 Arkansas Valley Audubon Society (“Audubon Society”). Audubon Society submitted comments which initially state in part:

The Clean Water Act’s goal is the restoration and protection of the country’s water. To limit the definition of ‘waters of the U.S.’ is short-sighted at best and dangerous at worst .

Points put forth in the comments include:

- Navigable waters should continue to be defined as rivers, streams that contribute perennial or intermittent flow to downstream traditional navigable waters and ephemeral streams having water in them only immediately after it rains, ditches, lakes, ponds (including wetlands that do not abut or do not have a direct hydrological connection to jurisdictional waters)
- Narrowing the definition of what constitutes waters will endanger drinking water sources
- Narrowing the definition of what constitutes waters will jeopardize wildlife habitat, outdoor recreation and safety for those dependent upon healthy wetlands and natural ecosystems
- More than 1/3 of the United States’ threatened and endangered species live only in wetlands
- Many of the United States’ breeding bird populations feed, nest, and raise their young in wetlands

- Some species of migratory birds are completely dependent upon certain wetlands and face extinction if such areas were developed

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