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# Waters of the United States/Clean Water Act: Environmental Organizations File Judicial Challenge to U.S. Environmental Protection Agency/Corps of Engineers Final Rule

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The Conservation Law Foundation and other environmental organizations (collectively “CLF”) filed a Complaint in the United States District for the District of Massachusetts challenging the United States Environmental Protection Agency and United States Army Corps of Engineers (collectively “EPA”) final rule published on April 21st addressing the Clean Water Act definition of waters of the United States (“WOTUS”). See 85 Reg. 22250.

A link to a previous post describing the final rule can be found [here](#).

The other environmental organizations joining the Complaint include:

- Connecticut River Conservancy
- Clean Wisconsin
- Massachusetts Audubon Society, Inc.
- Merrimack River Watershed Council
- Natural Resources Defense Council, Inc.
- New Mexico Wilderness Alliance
- Prairie Rivers Network

The rule addressing WOTUS is denominated the Navigable Waters Protection Rule (“Rule”).

The definition of WOTUS is arguably one of the three key jurisdictional terms of the Clean Water Act. Its importance is magnified by the fact that 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 Substances Release Requirements
- Clean Water Act Spill Prevention Control and Countermeasure Regulations

As a result, the definition of WOTUS has been the subject of frequent litigation, legislative oversight, rulemakings and public policy debates since the enactment of the modern version of the Clean Water Act in 1972.

CLF’s arguments in the Complaint challenging the Rule include:

- EPA promulgated the Rule without meaningfully considering its impacts on the integrity of the nation's waters
- EPA had insufficient information to assess the potential water quality impacts of the Rule
- EPA disregarded without explanation the science-based findings from the prior WOTUS Rule
- EPA misrepresents and ignores relevant parts of the scientific record on which they claim to have relied
- EPA's line-drawing between protected and unprotected waters is arbitrary and not reasonably explained
- EPA untenably tries to defend the rulemaking in part on the grounds that it will provide "clarity," "certainty," and "predictability" for developers, farmers, and landowners, which is belied by the record
- The Rule is inconsistent with the Clean Water Act's text, structure and purpose.
- The Rule does not advance the Clean Water Act's purpose to protect the integrity of the nation's waters
- The Rule violates the Administrative Procedures Act and the Clean Water Act

The Complaint asks that the Court vacate and set aside the Rule.

A copy of the Complaint can be downloaded [here](#).