

## January 2019 Update on Federal Definition for Waters of the U.S.

In December 2018, the EPA/Corps of Engineers announced a revised definition for “Waters of the United States” (WOTUS) and therefore what waters and wetlands are regulated under federal authority under the Clean Water Act. When SMC wetland staff reviewed the proposed rule (often coined the ‘WOTUS Rule’), two main themes became clear:

- **Theme 1:** There is a *significant scaling back* on the waters and wetlands that would be regulated federally. Under the current *expansive* 2015 Clean Water Rule, around **90%** of Lake County’s wetlands/waters are regulated federally. With the proposed rule, that would drop to around **52%** based on our recent WRAPP GIS data. Isolated wetlands/waters regulated under the County’s Watershed Development Ordinance would go from about 10% to around 48%.
- **Theme 2:** There is an emphasis on **shifting the regulation** of waters and wetlands back to the States and Tribes, based on the precepts of the Constitution, the original 1972 Clean Water Act provisions, and the various Supreme Court rulings on this matter over the decades.

The attached fact sheet provides further details and compares the proposed rule with the 2015 rule currently being used throughout Illinois. Here are some highlights:

- Traditionally navigable waters (e.g., North Branch Chicago River, Des Plaines River, Fox River) remain federally regulated.
- Tributary rivers and streams that flow into a traditionally navigable waters during a typical year (e.g., Indian Creek, Bull Creek, Mill Creek, etc.) remain federally regulated.
- Fewer ditches will be under federal regulation (e.g., ditches that have replaced creeks or have a surface water connection to a navigable water will be federally regulated, but ditches built in upland and ditches that lack such a surface water connection won’t be regulated federally).
- Fewer lakes and ponds may be federally regulated (particularly if they are isolated).
- A more limited set of adjacent wetlands would be regulated federally (they must abut a jurisdictional water or have a direct surface hydrologic connection to a jurisdictional water in a typical year).

As of January 7, 2019, publication of the proposed rule in the Federal Register has been postponed due to the current lapse of appropriations for the EPA. Once the rule is published, there will be a 60-day period for comments. SMC staff will continue to track this important issue as it proceeds through the public comment period and will keep you updated with pertinent developments.