



# FEDERAL UPDATE



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## WATERS OF THE U.S. RULE

THE FINAL RULE WENT INTO  
EFFECT AUGUST 28, **BUT** IN  
OCTOBER THE U.S. COURT OF  
APPEALS BLOCKED THE RULE  
NATIONALLY - SO FOR NOW,  
THE RULE IS STAYED





## WATERS OF THE U.S. RULE

- 404B “DREDGE & FILL” PERMITS
- REGULATES FEATURES THAT WERE NOT PREVIOUSLY JURISDICTIONAL SUCH AS DRY STREAM BEDS & ISOLATED WETLANDS
- FOR EXPANSION OR NEW SITE, COSTS WILL INCREASE BECAUSE MORE AREAS WILL NEED MITIGATION: \$1,000,000+



## WATERS OF THE U.S. RULE

### NSSGA SUCCESS

- OUT: PITS, MORE DITCHES AND WATER TREATMENT SYSTEMS
- FOR EXISTING OPERATIONS, PERMIT CONDITIONS ARE UNLIKELY TO SIGNIFICANTLY CHANGE





## WATERS OF THE U.S. RULE

NEW IN FINAL RULE - NOT PART OF SCIENCE  
REVIEW OR NOTICE & COMMENT:

- ADJACENT: UP TO 1500'
- OUTER LIMIT OF 4000' WITH BROAD  
SIGNIFICANT NEXUS TEST
- BED BANK AND OHWM = REGULAR FLOW
- NO TECHNICAL BASIS: CORPS  
WANTED NAME OFF



## CORPS' CRITICISM OF WOTUS

- UNPRECEDENTED QUESTIONING  
OF RULE'S LEGALITY, CLARITY &  
TECHNICAL BASIS
- "1500 FT LIMITATION IS NOT  
**SUPPORTED BY SCIENCE OR LAW**  
& THUS IS LEGALLY VULNERABLE."

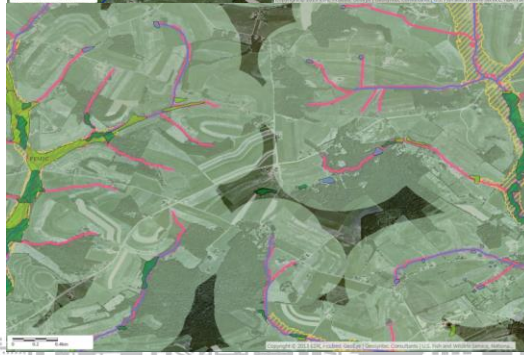


**NO  
WOTUS**



Source:  
Farm Bureau

**WITH  
WOTUS**



Pennsylvania  
81% with 1500'  
99% with 4000'

**NSSGA** NATIONAL STONE, SAND & GRAVEL ASSOCIATION

**NO WOTUS**



**WITH WOTUS**





## NSSGA ADVOCACY

- EXTENSIVE CONGRESSIONAL OUTREACH
  - 100s OF MEETINGS WITH MEMBERS
  - HEARING TESTIMONY
  - 1,500 LETTERS IN 2015 (THANK YOU!)
- WHITE HOUSE & EPA MEETINGS
- DETAILED COMMENTS
- **JOINED LITIGATION**



## CONGRESSIONAL ACTION

### STAND-ALONE ACTS TO WITHDRAW RULE:

- HOUSE PASSED MAY 12
- SENATE FAILED NOV 3

### CONGRESSIONAL REVIEW ACT:

- “SUBSTANTIALLY DIFFERENT” RULE
- HOUSE & SENATE PASSED; PRESIDENT VETOED JAN 20; OVERRIDE FAILED





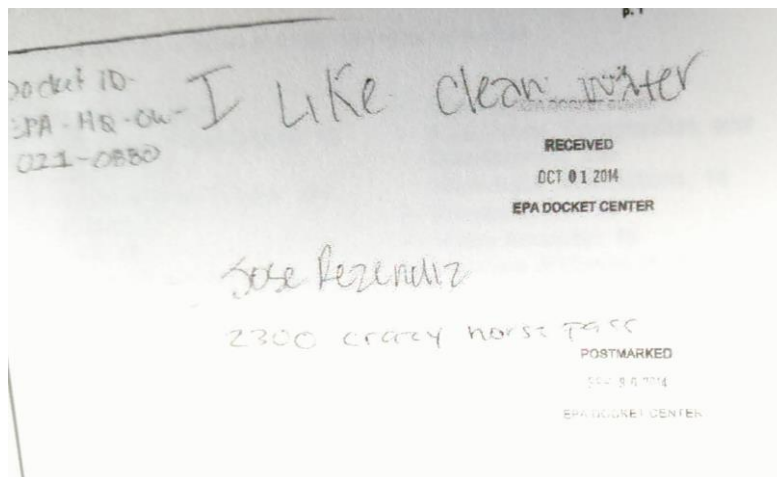
# EPA BROKE LOBBYING LAWS

## GOVERNMENT ACCOUNTABILITY OFFICE

- EPA “VIOLATED PROHIBITIONS AGAINST PUBLICITY OR PROPAGANDA AND GRASSROOTS LOBBYING”:
  - URGED MEMBERS OF CONGRESS TO SUPPORT THE RULE
  - BEGGED FOR POSITIVE COMMENTS



# EPA LOBBYING





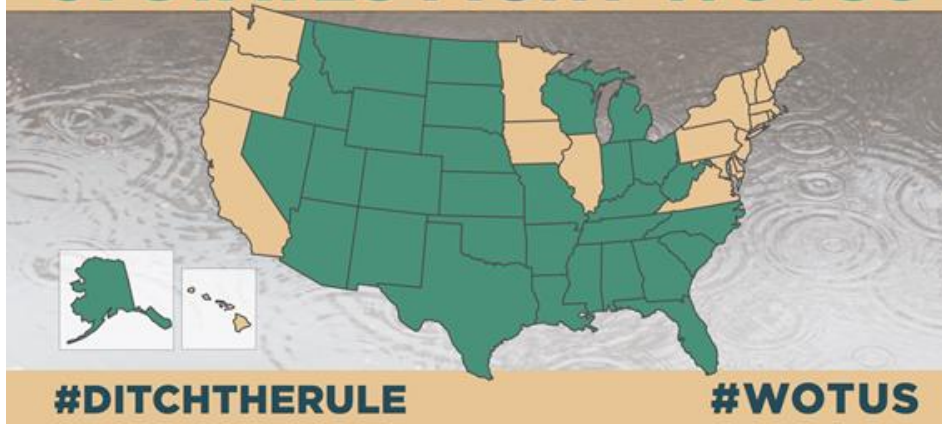


# WOTUS LITIGATION

- NSSGA SUIT
  - VIOLATES CONSTITUTION & APA
  - NO COMMENT ON MAJOR REVISIONS
  - UNPRECEDENTED ADVOCACY
- 32 STATES & LOCAL GOVERNMENTS; UTILITIES, SMALL BUSINESS & CHAMBER
- ENVIRONMENTAL GROUPS: 4000'



## 31 STATES FIGHT WOTUS





## WATERS OF THE U.S. RULE

- OCT 9: U.S. COURT OF APPEALS BLOCKS FINAL RULE NATIONALLY
  - “SUBSTANTIAL POSSIBILITY OF SUCCESS”
  - RULE PROCESS & DISTANCE “SUSPECT”
  - NO INDICATION OF HARM WITHOUT RULE
  - BREADTH OF RIPPLE EFFECT CAUSED BY RULE



## WHAT'S NEXT

- CONGRESS CONTINUES TO FIGHT RULE
- WILL LIKELY TAKE YEARS TO MOVE TO THE SUPREME COURT



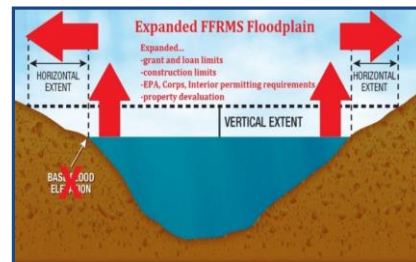




## FLOODPLAIN E.O. 13690

- 500 YR, 2-3 FT FREEBOARD OR CLIMATE
- NSSGA COMMENTS 5/6
  - MAKE CLEAR NOT FEDERAL PERMITS
  - EXEMPT AGGREGATES
- 8/17 MEMO:
 

DOES NOT AFFECT  
404 PERMITS



## NEXT PM REVIEW STARTED

- 2015 EPA SCIENCE WORKSHOPS:
  - NO NEW HEALTH EFFECTS PM10 DATA
  - INCREASED CONCERN OVER MICRO & COMBUSTION/ROAD; IARC
- WILL KNOW MORE WITH SCIENCE ASSESSMENT (LATE 2016)
  - RISK, POLICY, RULEMAKING





## EXCEPTIONAL EVENTS RULE

- 11/15 EPA PROPOSAL INTENDED TO EASE STATES REPORTING DUST STORMS, FIRES, ETC
- DATABASE USED FOR NON-ATTAINMENT DESIGNATIONS & FEW EVENTS EXCLUDED
- NSSGA COMMENTS 2/1:
  - GOOD START BUT WORK MORE WITH THE STATES
  - CLARIFY THAT TIMEFRAMES & DEMONSTRATIONS EASE STATE BURDEN



## ESA: CRITICAL HABITAT

NSSGA COMMENTED ON PROPOSED RULE 5/14

- DEFINING CRITICAL HABITAT W/OUT PRESENCE OF SPECIES IS UNLAWFUL EXPANSION

FINAL RULE 2/16

- ALLOWED UNDER ESA, HABITAT JUSTIFICATION WILL BE INCLUDED W/ EACH DESIGNATION
- NOT EXPANSION, WHAT THEY DO ALREADY

