

U.S. Senate Committee on
ENVIRONMENT & PUBLIC WORKS
From the office of Chairman Jim Inhofe

Final “Waters of the U.S.” Rule

Rush to Judgment despite Serious Concerns and a Flawed Process

On Wednesday, May 27, 2015, the Environmental Protection Agency (EPA) released its final rule defining “waters of the United States” (WOTUS).

EPA claims it conducted significant outreach, touting over 400 meetings held after it issued the rule, but –

- Consultation after EPA had made up its mind is not meaningful.
- The 400 meetings were presentations by EPA telling people what was in the proposal, rather than a substantive back and forth discussion.
- EPA rushed to issue a final rule and evaded the small business review that the Small Business Administration said in both comments and testimony was required by law, the Regulatory Flexibility Act analysis (also required by law), and federalism consultation (required by Executive Order) claiming that the WOTUS rule imposed no costs and had no small business or federalism impacts.

EPA sent the final rule to the Office of Management and Budget for interagency review on April 6, less than five months after the comment period closed, even though –

- The agency received over 1 million comments, of which over 20,000 were unique (the rest were mass campaign emails or form letters) and approximately 2,000 were substantive. According to the Corps of Engineers, 60% of the unique comments were opposed to the rule.
- 32 states opposed the rule and wanted it withdrawn or significantly modified.
- EPA used taxpayer dollars to fund a grass roots lobbying campaign to make it appear that the public supported the decisions EPA had already made, making a mockery of the notice and comment process.

The White House cleared the final rule on May 26, only seven weeks after receipt, even though –

- The expanded jurisdiction in the final rule will create significant problems for other federal agencies.
- For example, it will require agencies such as the Bureau of Land Management to redo pending environmental impact statements for projects, such as one for a solar array in San Bernardino, California, that identified about 500 acres ephemeral features (over 475,000 linear feet) as “state waters” not federally controlled.