

## **SUMMARY OF CONGRESSIONAL ACTIONS AFFECTING WATERS OF THE U.S. (WOTUS) AND THE FEDERAL FLOOD RISK MANAGEMENT STANDARD (FFRMS)**

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### **Overview:**

The release of the final WOTUS Rule earlier this week has been greeted with concern and also Clarian calls for action from a broad spectrum of water resource associations. With WOTUS now in place it is important to remember that FFRMS will also be finalized in the coming months. Water stakeholder groups have already launched follow-up actions with regard to WOTUS. This includes suggestions for studying the 300 page-accompanying document to try to better understand the new Rule and also discussing the potential for passing the hat to fund legal challenges to WOTUS and FFRMS despite the fact that such challenges would cost millions and could take many years to be resolved by the courts.

Both of these options are parts of the review and follow-up action process. But is also important that stakeholders be fully aware of the multiple legislative vehicles in the United States Congress. This includes authorizing legislation that mandates the withdrawal of WOTUS as well as FY16 legislative riders that forbid the expenditure of funds by the Army Corps of Engineers to implement WOTUS and also FFRMS. If implementation funding is removed from either of these Administration actions both would be stopped in their tracks. By the start of FY17 on October 1 of next year, the Obama Administration would have less than 4 months left in office which would be too late to try and restart new WOTUS/FFRMS efforts.

Hicks-Ray has prepared the following summary of Congressional actions to date that provide an update on the status of each bill and Congressional Appropriations rider regarding WOTUS and FFRMS. The Administration may threaten a veto of any these efforts. On the other hand, many Members of Congress may find it very difficult to cast very unpopular recorded votes during the coming months on issues that so adversely impact their constituents. If the water community and local governments are going to impact WOTUS/FFRMS, the best short-term option is to support the efforts of Congressional authorizers and appropriators to legislatively mandate withdrawal of the WOTUS Rule and defund implementation of both WOTUS and FFRMS during FYF16.

## Summary of Congressional Efforts to Date:

### Waters of the U.S. (WOTUS) Final Rule

Rule Issued by USEPA/Army Corps of Engineers, May 27, 2015

#### 1. Authorizing Legislation Mandating Withdrawal of the WOTUS Rule

##### **H.R. 1732** – *Regulatory Integrity Protection Act of 2015*

Requires the Administration to withdraw the WOTUS Rule and re-start the process, this time in full consultation with the Congress and affected stakeholders via a transparent process.

- Passed the House of Representatives May 12, 2015 by a vote of 261 to 155.
- 237 Republicans and 24 Democrats made up the majority.
- It would require 290 votes to make this legislation veto-proof in the House.

##### **S. 1140**—*Federal Water Quality Protection Act/Requires that the Administration withdraw the WOTUS Rule*

- Currently co-sponsored by 30 Senators including 27 Republicans and 3 Democrats.
- S. 1140 had a hearing on May 19, before the Senate Subcommittee on Fisheries, Water, and Wildlife of the Committee on Environment and Public Works.
- It takes 60 votes in the Senate to move a bill to the Senate floor for debate.
- It takes 67 votes in the Senate to overcome a Presidential veto.

#### 2. FY16 Appropriations Rider Removing Corps of Engineers' Funding to Implement WOTUS

**H.R. 2028**—*FY16 Energy and Water Appropriations Bill/*Appropriations language inserted into the text of the legislation and having the full force of law.

- "SEC.105. None of the funds made available in this or any other act making appropriations for Energy and Water Development for any fiscal year may be used by the Corps of Engineers to develop, adopt, implement, administer, or enforce any change to the regulations and guidance in effect on October 1, 2012, pertaining to the definition of waters under the jurisdiction of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) including the provisions of the rules dated November 13, 1986, and August 25, 1993, relating

to such jurisdiction, and the guidance documents dated January 15, 2003, and December 2, 2008 relating to such jurisdiction.”

- Passed the House of Representatives May 1, 2015 by a vote of 240 to 177.
- No similar provision in the Senate Energy and Water Appropriations bill although one could be added through amendment during floor debate on the bill.

### **Federal Flood Risk Management Standard (FFRMS)**

Issued by Executive Order 13690 on January 30, 2015

- Extends and expands Federal regulatory oversight over public and private activities located on floodplains.
- Replaces flood plain policies in place since 1977.
- Subject of Appropriations Riders in the FY16 Energy and Water Appropriations bill in both the House and the Senate.
- Funding for implementation of FFRMS is withheld from the Army Corps of Engineers and the Bureau of Reclamation.
- These Riders are part of the text of the legislation and would have the full force of law.

#### **H.R. 2028—House Version of the FY16 Energy and Water Appropriations Bill**

- Passed the full House of Representatives on May 1, 2015 by a vote of 240 to 177.
- Section 514 of the bill was adopted via voice vote on an amendment submitted during floor debate.
- Section 514. None of the funds made available by this Act may be used to implement, administer, carry out, modify, revise, or enforce, Executive Order No. 13690 (entitled “Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholders Input”).”

#### **H.R. 2028—Senate Version of the FY16 Energy and Water Appropriations Bill**

- “Sec. 503. None of the funds made available by this Act may be used to implement, administer, carry out, modify, revise, or enforce Executive Order 13690 (entitled “Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input”).”
- Senate version of the FY16 Energy and Water Appropriations bill adopted by full Senate Appropriations Committee on May 21, 2015 by a vote of 26 to 4.