

**WESTCAS 2011 Annual  
Conference**

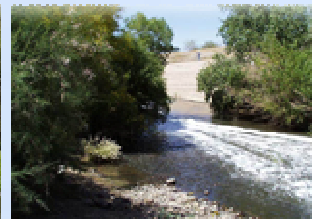
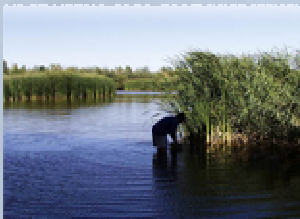
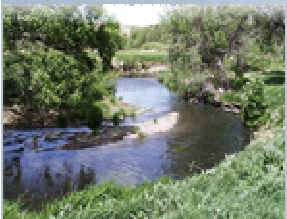
# **Waters of the United States**

**Fred Andes  
Barnes & Thornburg LLP**



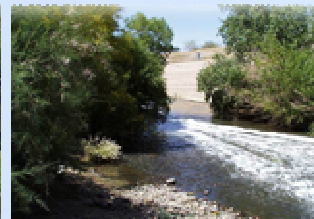
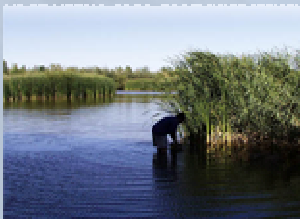
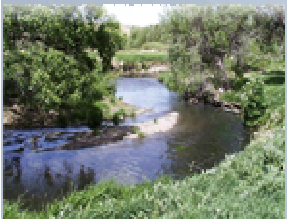
# Background

- ▶ EPA/Corps policy pre-2001
- ▶ SWANCC decision – 2001
- ▶ Rapanos decision – 2006
- ▶ Current guidance
- ▶ Litigation since SWANCC & Rapanos
- ▶ New draft guidance
- ▶ Plan to issue new regulation



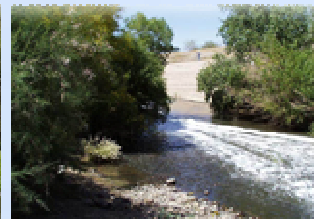
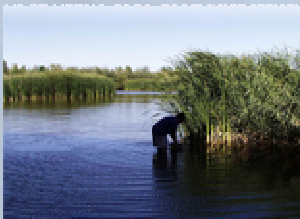
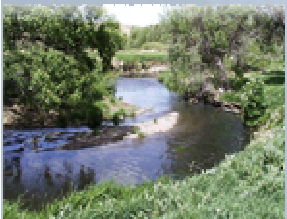
# Issues in New Guidance

- ▶ **Traditional Navigable Waters (TNWs)**
- ▶ **Interstate waters**
- ▶ **Tributaries**
- ▶ **Ditches**
- ▶ **Ephemeral waters**
- ▶ **Adjacent wetlands**
- ▶ **Other waters**
- ▶ **Waters that are generally non-jurisdictional**



# Where From Here?

- ▶ Expansion of jurisdiction in new guidance
- ▶ Application to 404 and NPDES programs
- ▶ Issuance of final guidance
- ▶ Development of new proposed rule
- ▶ Ongoing litigation
- ▶ Constitutional challenges
- ▶ Legislative action



# Questions?

**Fredric P. Andes, Esq.**

**Partner, Barnes & Thornburg LLP**

**One N. Wacker Drive, Suite 4400**

**Chicago, IL 60606**

**312/214-8310**

**[fandes@btlaw.com](mailto:fandes@btlaw.com)**

