



Washington dc update

March 1, 2017

Executive Order Calls for WOTUS Review

“Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the Water of the United States Rule”

President Trump signed an Executive Order (EO) on Monday, February 28th, that calls for the review of the Waters of the United States Rule (WOTUS). WESTCAS members anticipated some action was possible, as discussed at the *Regulatory & Legislative Workshop* the week before. However, the means and process of the Executive Branch action was not unclear until yesterday. The text of the EO can be found on the [White House website](#).

There will be a role for WESTCAS members and the technical expertise, the arid-West perspective, and the project permitting experiences that the group brings. As the EO states, the WOTUS Rule is to be “reviewed” in terms of protecting the Nation’s navigable waters. WESTCAS members have and can under this WOTUS review, provide comments from these important perspectives.

The EO calls for protecting the Nation’s navigable waters (Section 1) under four considerations:

1. Keeping those waters free from pollution;
2. Promoting (“at the same time”) economic growth;
3. Minimizing regulatory uncertainty; and,
4. Providing regard for the roles of Congress and the States.

Section 2 directs three actions. First, the EPA and Corps of Engineers “shall review” the existing WOTUS Rule for consistency with the policies outlined in Section 1 and then publish for “...notice and comment a proposed rule rescinding or revising the existing rule, “...as appropriate and consistent with law.” Second, in the same manner, the “...orders, regulations, guidelines or policies implementing or enforcing the final rule...” shall be reviewed and rescinded, as consistent with the law. Finally, the Attorney General is to be notified. He will decide on the appropriate action to take with respect to the Courts.

The third section is a unique definition of “navigable waters.” Whereas the existing rule was justified to a large extent based on being consistent with the Justice Kennedy decision in *Rapanos*, this EO requires consistency with Justice Scalia’s decision.

Working with Jim Kudlinski and other WESTCAS members that have and are carefully following the WOTUS dynamics at EPA and through the Courts, Hicks-Ray will monitor to identify avenues for WESTCAS input in the overall process as it plays out.

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WESTCAS Summer Conference
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