

### US EPA FINALIZES THE NAVIGABLE WATERS PROTECTION RULE – FEBRUARY 2020

The U.S. Environmental Protection Agency (US EPA) has recently finalized the Navigable Waters Protection Rule, redefining “waters of the United States,” which are federally regulated under the Clean Water Act. The new definition seemingly reduces the types of waters/wetlands currently subject to federal jurisdiction. Soon, this rule will be published in the Federal Register and will become effective 60 days thereafter.

Under this rule, “waters of the United States” include: (1) territorial seas and tidal waters; (2) tributaries; (3) lakes, ponds, and impoundments of jurisdictional waters; and, (4) adjacent wetlands. Adjacent wetlands include those that abut a jurisdictional water; are flooded by a jurisdictional water in a typical year; are physically separated from a jurisdictional water only by a natural berm, bank, dune, or other natural feature; or, are separated from a jurisdictional water by an artificial barrier that maintains a direct hydrologic surface connection to that water.

The rule specifically references the following waters as non-jurisdictional features, among others:

- Ephemeral streams;
- Artificial ditches that are not tidal waters or tributaries or constructed in adjacent wetlands;
- Artificially irrigated areas;
- Artificial lakes and ponds constructed in uplands (that do not qualify as impoundments of jurisdictional waters);
- Stormwater control features constructed in uplands; and,
- Waste treatment systems.

A pre-publication version of the rule can be found at: [https://www.epa.gov/sites/production/files/2020-01/documents/navigable\\_waters\\_protection\\_rule\\_prepublication.pdf](https://www.epa.gov/sites/production/files/2020-01/documents/navigable_waters_protection_rule_prepublication.pdf).

To discuss this rule and how it could impact your project, please contact your Langan Project Manager or:

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