

| SEPTEMBER 2021 |

USACE HALTS IMPLEMENTATION OF 2020 NAVIGABLE WATERS PROTECTION RULE

On August 30, 2021, the U.S. District Court of Arizona issued an order vacating and remanding the Navigable Waters Protection Rule. In consideration of the Court Order, the Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (USACE) have halted implementation of the Navigable Waters Protection Rule nationwide and, until further notice, are interpreting the regulatory limits of “waters of the U.S.” consistent with the pre-2015 regulatory framework.

Notable differences in those features that typically qualify as “waters of the U.S.” under the pre-2015 regulatory regime may include:

- Ephemeral streams and adjacent wetlands, which may require a significant nexus evaluation;
- Adjacent wetlands, which include “neighboring” features; and,
- Ditches, which may be considered “relatively permanent waters”.

Existing Jurisdictional Determinations (JD) issued under the Navigable Waters Protection Rule are expected to remain valid until their expiration; however, may be subject to challenge depending on the features and basis of the determination. JD applications currently pending will be reviewed/issued consistent with the pre-2015 regulatory regime.

For more information, please contact your Langan Project Manager or:



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