

Challenging Biden's WOTUS Rule Through the Congressional Review Act

The Biden WOTUS Rule: Overreaching, Misguided, Unnecessary

- At the end of 2022, President Biden's Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) issued a "revised" Waters of the United States (WOTUS) rule, which sets the bounds for what activities are regulated by the federal government under the Clean Water Act.
- This year, the Supreme Court is set to issue a decision on the scope of federal jurisdictional waters. Instead of waiting to see how the Court rules, the Biden administration has created further regulatory confusion by changing the definition now. This is the third major change to the definition in less than eight years.

Where the Biden WOTUS Rule Goes Wrong

- The revised WOTUS rule substantially expands federal jurisdiction over streams and wetlands, and encroaches on states' authorities to regulate land and water within their borders.
- By changing this definition, President Biden is unnecessarily creating regulatory uncertainty and added confusion and cost to infrastructure, transportation, and energy projects of all kinds.
- The added unpredictability for states and regulated entities is in direct contrast to the EPA's stated goal in releasing this rule.
- The new rule adopts a subjective "significant nexus" test for determining when land or a water feature is subject to federal regulation under the Clean Water Act. This complex test gives federal bureaucrats control over determining when temporary, tributary, and other upland waters are regulated.
- The rule makes farmers, developers, builders, and other landowners more reliant on the shifting interpretations of the EPA and Army Corps.

Why a Congressional Review Act (CRA) Resolution of Disapproval is Needed

- This ill-conceived Biden WOTUS rule isn't actually about clean water: it's about federal agencies trying to assert more power to regulate the lives of millions of Americans.
- The CRA provides a mechanism for Congress to vote to disapprove agency rules that go beyond the authority Congress granted in statute to federal agencies, and send the resolution to the president's desk.
- The Senate and House can pass a joint resolution of disapproval to invalidate the rule and prohibit an agency from issuing a rule that is in substantially the same form without further authorization by Congress.
- Congressional action against this rule is absolutely necessary to rein in the Biden administration's overreach and ensure that a durable WOTUS rule is crafted that will work for Americans and not against them.

"This Congressional Review Act resolution of disapproval will give every member of Congress the chance to stand with farmers, ranchers, landowners, and builders, and protect future transportation, infrastructure, and energy projects of all kinds in their states."

– Senate EPW Committee Ranking Member Shelley Moore Capito (R-W.Va.)