



CLEAN WATER RULE: PROTECTING NEBRASKA'S WATER RESOURCES

In Nebraska, water is life for people, crops, livestock and wildlife, as well as farms, ranches, business and industry. The 2015 Clean Water Rule was instated to protect this vital resource for all Nebraskans while also providing clarity and certainty for farmers and ranchers without expanding historical jurisdiction or permitting requirements.

Much misinformation has surrounded the Clean Water Rule, also known as the Waters of the United States (WOTUS) rule, both at its inception and today. Many have positioned the rule as a power grab increasing the EPA's regulation and oversight authority over agricultural land. Instead the rule protects agriculture's existing exemption and the protection of normal farming and ranching practices.

WHAT THE CLEAN WATER RULE DOES

- Clearly defines which water bodies are protected by the Clean Water Act, eliminating the need for a costly and time-consuming case-by-case evaluation.
- Protects one in four Nebraskans who rely on surface water for their drinking water supply.
- Reduces the number of ditches subject to Clean Water Act jurisdiction. If a ditch does not run year-round or run through a wetland or stream it is exempt from permitting requirements.

IN NEBRASKA IN 2016,
THERE WERE ONLY
8 EPA
CLEAN WATER ACT
ENFORCEMENT ACTIONS

Enforcement actions were limited to industry, development or community wastewater treatment facilities. No actions were imposed against farmers or ranchers.

WHAT THE CLEAN WATER RULE DOES NOT DO

- Infringe upon property rights or regulate land use. Practices such as the discharge of agricultural stormwater or return flow from irrigated agriculture do not require additional permitting or oversight of property use. A permit is only required if a protected water is to be polluted or destroyed.
- Regulate groundwater or subsurface drainage systems.
- Interfere with existing exemptions for normal farming and ranching practices such as planting, harvesting or moving livestock.

CLEAN WATER RULE STATUS

In late 2015, the Clean Water Rule was stayed by the U.S. Court of Appeals for the Sixth Circuit. Under the stay, the 2003 and 2008 guidance documents requiring a case-by-case jurisdictional determination remain in effect.

On Feb. 28, 2017, President Donald Trump issued an executive order to “review and rescind or revise the 2015 rule.” The Environmental Protection Agency and Army Corps of Engineers responded to the order by issuing notice of a rulemaking process to reconsider the scope of the Clean Water Act’s guaranteed protections.

Despite the executive order, in April 2017 the Supreme Court announced its decision to continue to hear the case challenging the 2015 rule. The Court will decide whether legal challenges to the rule belong in federal district or appeals courts. Following the Supreme Court’s decision, litigation on the validity of the rule itself will re-start.

