



**Electric Cooperatives
of Arkansas**

Waters of the U.S. Definition

Issue: The Clean Water Act (CWA) gives federal and delegated state authorities regulatory jurisdiction over navigable waters, which the CWA defines as “waters of the United States” (WOTUS). EPA and the U.S. Army Corps of Engineers signed the final WOTUS rule May 27, 2015, revising the current regulatory definition and significantly expanding the reach of the CWA, though the agencies maintained that the rule merely clarifies and codifies current policy and practice.

The new rule has been challenged, and the 6th Circuit stayed the rule for the duration of the litigation. Litigation in the circuit court is on hold while the Supreme Court decides whether the appellate court has jurisdiction in the case. We expect a Supreme Court decision summer 2017.

The president’s Executive Order on Waters of the U.S., issued on February 28, 2017, provides an excellent opportunity for us to work with EPA to repeal the currently stayed rule and replace it with a new rule that provides jurisdictional clarity and respects the authority of the states.

Impact on Cooperatives: Such expanded CWA jurisdiction would affect cooperatives by increasing costs associated with construction and maintenance of transmission and distribution corridors, stormwater control, oil spill control, and plant construction, operation, maintenance, and decommissioning.

Electric Cooperatives of Arkansas Position. EPA should withdraw the 2016 rule and initiate a new rulemaking to reflect previous Supreme Court limitations on federal authority under the CWA and recognize the shared state-federal regulatory responsibility for protecting the nation’s waters. As part of a new rulemaking effort, EPA and the Corps of Engineer should consult with stakeholders, especially small business.

For more information:

Kirkley Thomas

501-570-2263

Kirkley.Thomas@aeci.com

www.ecark.org