



Possible Impacts of EPA's Waters of the US Rulemaking in (South) Florida

**Palm Beach County WRTF
October 16, 2014**

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What is WOTUS?

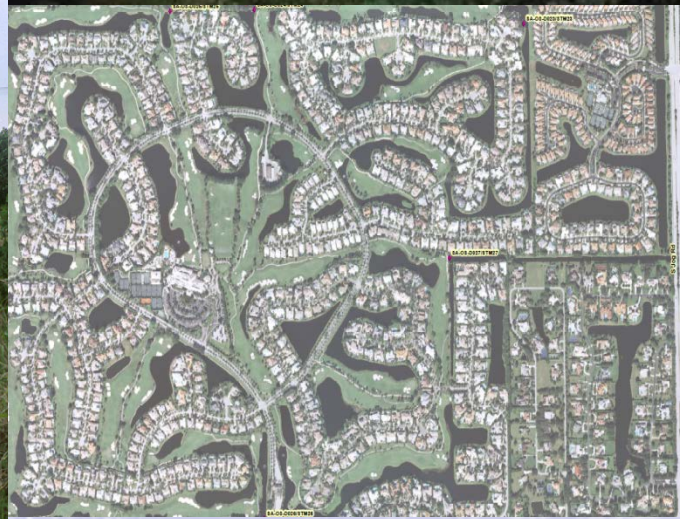


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- A rule to identify the boundaries of federal jurisdiction under the Clean Water Act





How did we get here?

- Existing Regulatory Definitions and Court Cases are not a Model of Clarity
- Supreme Court Cases
 - *SWANCC* (2001)
 - *Rapanos* (2008)
- Numerous District and Appellate Court Cases
- Multiple Guidance Documents
- 2003, 2008, 2011
- Additional Regulatory Guidance Letters and Inconsistency in Application

- \$Million ?'s – What test to use and what is a “significant nexus?”



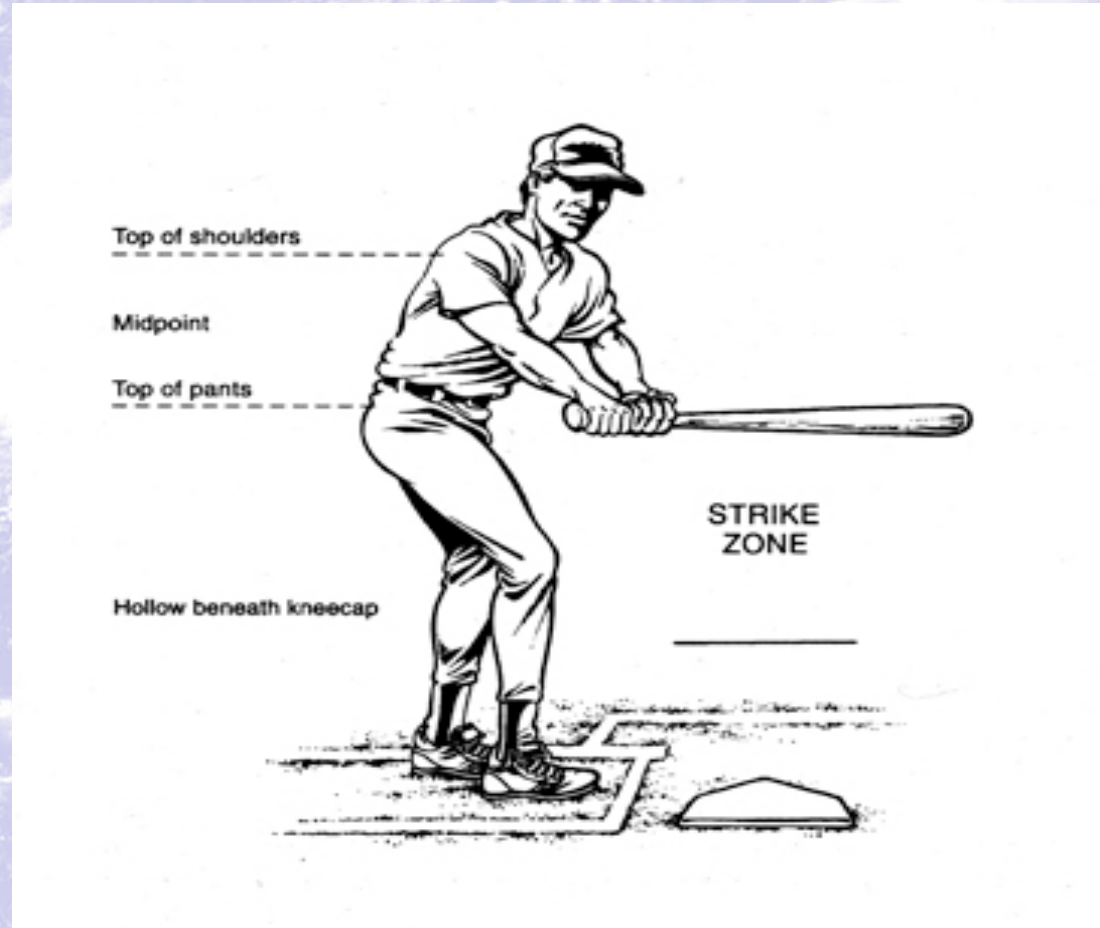


What is the purpose of the WOTUS rulemaking?

**Clarity (Per EPA Statements)

Possible Impediments:

- 1) National Rulemaking when permitting occurs on a state/local level based on local conditions
- 2) Possible conflict between proposed rule and existing state programs
- 3) Third Party Umpires interpreting EPA "intent"





What do we seek to avoid?



SOLUTION:
Maintain/clarify
existing exemptions
and reaffirm
previously
delegated and
authorized state
programs





Major Changes/Issues

- Definition of Tributary
- Definition of Adjacency
- Other Waters and the “Significant Nexus”
- Exemptions





Narrowly Defined Exemptions

- Ditches excavated wholly in uplands and that drain only uplands that have less than perennial flow (addressed previously)
 - What percentage of Palm Beach County could be considered wetlands?
- Groundwater, including groundwater drained through subsurface drainage systems
 - Does not reconcile the exclusion with the inclusion of waters based on subsurface connection
- Gullies, rills and non-wetland swales
 - Swales in South Florida that are utilized for stormwater treatment and conveyance?





Narrowly Defined Exemptions

- Waste Treatment Exemption: Wastewater treatment systems, including treatment ponds or lagoons, designed to meet the requirements of the CWA
 - Limited written guidance on what is included under the exemption
 - Stormwater systems permitted under authorized state programs?
 - Water reuse facilities constructed for water supply or other purposes?
- Prior Converted Cropland
 - Possible issues regarding claims of jurisdiction over features previously covered under agricultural exemption upon change in land use

Potential Amendment Suggestions



- Exclude from definition of WOTUS
 - Water Supply Storage Facilities
 - Aquifer Storage and Recovery Facilities
 - Stormwater management systems that are currently permitted under federal or authorized state programs
 - Reclaimed water storage and conveyance systems
 - Man-made wetlands that are permitted as part of waste treatment systems
- Clearly define “floodplain” and provide limits to “riparian area” to define adjacency





How to Comment on the Proposed Rule

- Submitting comments on the proposed rule, identified by Docket ID No. EPA-HQ-OW-2011-0880, can be done by one of the following methods:
 - Federal e-Rulemaking Portal:
<http://www.regulations.gov>. Follow the instructions for submitting comments.
 - Email: ow-docket@epa.gov. Include EPA-HQ-OW-2011-0880 in the subject line of the message.
- Comment period closes November 14, 2014





Questions?



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