

# *2017 & The Water Policy Reset*

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Hopping Green & Sams

# Eight Years of Significant Regulatory Activity

Numeric Nutrient Criteria

Effluent Limitation Guidelines



316(b)

Chesapeake Bay TMDL

~~Waters of the U.S.~~  
"Clean Water Rule"



# Water Policy 2017



# A difference in viewpoint



**vs.**



# Federalism, not a party line thing...

## E.O. 13132, Federalism, Aug. 4, 1999

- “...National action limiting the policymaking discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance. ...agencies shall consult with appropriate State and local officials to determine whether Federal objectives can be attained by other means.”
- “...With respect to Federal statutes and regulations administered by the States, the national government shall grant the States the maximum administrative discretion possible. **Intrusive Federal oversight of State administration is neither necessary nor desirable.**”



# Or stated differently...



# So, how is this playing out?

- **EPA Rolling Back Federal Water Programs**
- **Targeting Recent Rules**
  - Waters of the U.S.
  - Effluent Limitation Guidelines
- **Targeting the Budget**
- **Some policies beyond reach**



# Waters of the U.S.

- On May 26, 2015, EPA and the Army Corps of Engineers **finalized** a rule that establishes the boundaries of federal jurisdiction over water features.
- Specifically, the rule defines what is a “**water of the U.S.**”



VS.





# Why does anyone care?

- Clean Water Act regulatory programs **only** apply to waters of the U.S.
  - Water Quality Standards
  - Total Maximum Daily Loads
  - NPDES Permitting
  - Dredge & Fill Permitting
  - Citizen Suit Provisions
- May affect **total project costs (both time and money)**

# Waters of the U.S.

- Lawsuits filed against the rule
  - Florida and 29 other states
  - Agricultural, business, governmental, and environmental groups
  - Some in district courts, others in appellate courts
- 6<sup>th</sup> Circuit consolidated suits; stayed the rule
- Supreme Court currently considering jurisdiction of court to hear the suit



Became a 2016 campaign issue

# Waters of the U.S.

## E.O. 13778, Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the “Waters of the United States” Rule, Feb. 28, 2017

- “...It is in the national interest to ensure that the Nation’s navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and **showing due regard for the roles of the Congress and the States under the Constitution.**”
- **Directs EPA review the waters of the U.S. rule**



# Waters of the U.S.

- March 6, 2017
  - Corps & EPA published “advanced notice of a forthcoming proposed rulemaking”
- Primary guideposts for redefining scope of “waters of the United States” – applying the term to:
  - (1) “Relatively permanent” bodies of water and
  - (2) Adjacent wetlands with a “continuous surface connection” to those waters
- Pre-rulemaking outreach to States



# Effluent Limitation Guidelines

- Sept. 30, 2015
  - EPA finalizes effluent limitation guidelines for steam electric power generating industry
- Waste streams
  - FGD
  - Fly ash transport
  - Bottom ash transport
  - Combustion residual leachate
  - Flue gas mercury controls
- 5<sup>th</sup> Circuit Litigation

## Compliance Date

“...as soon as possible beginning Nov. 1, 2018, but that is also no later than Dec. 31, 2023.”

# Effluent Limitation Guidelines

- March / April 2017
  - Petitions for reconsideration
    - Utility Water Act Group
    - Small Business Administration
- April 2017
  - Citing new information & questions of feasibility, EPA stays compliance dates for new, more stringent ELG provisions
  - Multiple procedural & legal steps taken
  - Clarity by August 12, 2017
- Bottom line: EPA is unwinding the ELG rule

# Budget

- March 21<sup>st</sup>

\$\$ = Policy

- Proposed EPA Budget
- 31% decrease
- \$2.3 billion for the State Revolving funds and \$20 million for new Water Infrastructure Finance and Innovation Act program
- Eliminates Environmental Justice, National Estuary, Chesapeake Bay, and Gulf of Mexico programs
- Focus: “federal-only and national efforts...support to states...”

# What's Next?

- Dredge & Fill Delegation
- Human Health Based Criteria
- Underground Injection Control
- (More) Water Infrastructure



Mike's Crystal Ball



# Thank You!

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