



SAVE YOUR LAND: WHAT SMALL BUSINESS LANDOWNERS NEED TO KNOW ABOUT WOTUS

**Special Guest - Congressman Dan
Newhouse (R-WA), Chairman of the
Congressional Western Caucus**



What is WOTUS?

The Clean Water Act regulates discharges of any “pollutant” into “navigable waters.” 33 U.S.C. §§ 1311(a), 1362(12)(A).

A pollutant is “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, **rock, sand, cellar dirt** and industrial, municipal, and **agricultural waste.**” 33 USC § 1362(6)



What is WOTUS?

The statute defines “navigable waters” as “the waters of the United States, including territorial seas.” 33 U.S.C. § 1362(7)

Why does WOTUS matter?



WOTUS – Recent Timeline

- 2001 - Supreme Court rules in *Solid Waste Agency of Northern Cook County (SWANCC) v. United States* - 5-4 decision that agencies could not exercise jurisdiction over an “isolated, seasonal ponds.”
- 2006 - Supreme Court 4-1-4 split decision in *Rapanos v. United States*, providing ambiguity.
- 2015 - Obama Administration promulgates the Clean Water Rule, proposing expansive WOTUS definition.
NFIB and others sue to block implementation. 6th Circuit Nationwide injunction issued.
- 2016 - President Trump issued Executive Order directing revision or rescission the Clean Water Rule.
- 2017 – Supreme Court vacates the 6th Circuit injunction on procedural grounds
- 2018 – Trump Administration delays Clean Water Rule, pushing back the applicability date of the rule to 2020.
- 2019 – Trump Administration completes repeal of the Clean Water Rule.
- 2020 – Trump Administration finalizes its replacement rule, the Navigable Waters Protection Rule.
- 2021 – Biden Administration indicates its intent to repeal the Navigable Waters Protection Rule and replace it.
Federal District Judge in Arizona vacates the Navigable Waters Protection Rule

