Clean Water Rule Timeline: 2001 – 2016

- **January 2001 Supreme Court decides *Solid Waste Agency of Northern Cook Cty. v. Army Corps of Engineers (SWANCC)*:** The Supreme Court held (in a 5-4 opinion) that the use of "isolated" non-navigable intrastate ponds by migratory birds was not by itself a sufficient basis to find Clean Water Act jurisdiction over such waters.

- **2002 Introduction of the Clean Water Authority Restoration Act**: A bill to amend the 1972 Clean Water Act to clarify the jurisdiction of the United States over the Waters of the United States. Essentially this same legislation was introduced in each congressional session from 2002 through 2010.

- **January 2003 Advanced Notice of Proposed Rulemaking (ANPRM) and SWANCC Guidance:** The Bush Administration's EPA issues SWANCC guidance (immediately effective without advance public notice and comment) with an advanced notice of proposed rulemaking.

- **Spring 2003 Comments Opposing ANPRM:** 39 state agencies and hundreds of thousands of individuals and organizations submitted comments urging the EPA and the Corps not to reduce the historic scope of waters protected under the Clean Water Act.

- **November 2003 Congress Opposes Narrowing CWA Jurisdiction:** Over 200 members of Congress from both parties (including Rep. Paul Ryan among others) wrote a letter to President Bush urging him "not to pursue any policy or regulatory changes that would reduce the scope of waters protected under the Clean Water Act."

- **December 2003 Withdrawal of ANPRM:** The Bush Administration abandons its rulemaking to reduce the scope of waters covered by the Clean Water Act, but retains the SWANCC Guidance, effectively removing CWA protections for an estimated 20 million so-called "isolated" wetland acres.

- **June 2006 Supreme Court decides *Rapanos vs. the United States* and Carabell v. United States:** The Supreme Court issues a fractured (4-1-4) decision involving wetlands adjacent to non-navigable tributaries of traditional navigable waters. A four justice plurality found that "waters of the U.S" covers "relatively permanent, standing or continuously flowing bodies of water" (including some seasonally flowing rivers) that are connected to traditional navigable waters, as well as wetlands with a "continuous surface connection" to such relatively permanent waters. Justice Kennedy's concurring opinion disagrees with the plurality opinion, and concludes that "waters of the U.S." includes wetlands that possess a "significant nexus" with navigable waters. He finds that wetlands possess the requisite significant nexus if they "either alone or in combination with similarly situated [wet] lands in the region, significantly affect the chemical, physical, and biological integrity" of other covered waters more readily understood as navigable. Three of the various opinions urged the agencies to initiate a rulemaking clarifying the "waters of the U.S". The decision was a 4-1-4 ruling.

- **2006-2014: Federal Court Litigation on "Waters of the U.S" Mounts Post-Rapanos, adding to costly litigation, uncertainty, delay, and hampered Clean Water Act enforcement.**

- **2007-2008 Bush Administration Rapanos Guidance:** The Bush EPA issues immediately effective Rapanos Guidance without advance public notice and comment. This guidance largely ignores the Kennedy direction to base significant nexus determinations based on the combination of similarly situated waters and imposes a confusing and burdensome case-by-case jurisdictional requirement on most wetlands and streams. Modest revisions were made to the Bush Administration Guidance in 2008.

- **2009 Clean Water Restoration Act (CWRA) is favorably reported to the Senate Floor by the Senate Environment and Public Works Committee, but is stalled in Congress through 2010.** CWRA would have restored the historical scope of the Clean Water Act to those waters protected by the Act prior to the 2001 SWANCC decision, but not expanded the scope of jurisdiction beyond those covered at that time.

- **April 2011 Proposed Guidance:** EPA and the Corps proposed guidance for determining CWA jurisdiction to replace guidance issued in 2003 and 2008. The proposal also announced the agencies' plans to proceed with rulemaking. The 2011 Proposed Guidance was the subject of extensive interagency review, economic analysis, and public notice and comment. Approximately 250,000 comments were submitted on the guidance, and these overwhelmingly supported the revised guidance. The proposed guidance would provide more certain and predictable protections for many streams and wetlands by comparison to the existing 2003 and 2008 guidance documents. The 2011 guidance still required a case-specific finding of significant nexus, but it found that based on the combined downstream effects of tributaries and adjacent waters within a watershed, significant nexus and CWA jurisdiction were highly likely to be established for these categories of waters.

- **2011-2012: EPA Office of Research and Development compiles a draft science report, *The Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence*.** This scientific report, based on peer-reviewed literature and an additional review by independent scientists, informs the Administration's proposed rule clarifying which waters are protected under the Clean Water Act.

- **July 2013: EPA Science Advisory Board (SAB) Launches an SAB Expert Scientific Peer Review of the Connectivity Report.** SAB peer review process and substance available throughout process at: https://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Watershed%20Connectivity%20Report!OpenDocument&TableRow=2.2#2.

- **September 2013: Administration Releases Draft Connectivity of Streams and Wetlands Science Report for public comment.**

- **September 2013: Administration Sends Proposed Clean Water Rule to OMB:** After holding up action on the Clean Water guidance in the Office of Management (OMB) for almost two years, the Administration sent its draft proposed Clean Water Rule to OMB for interagency review.

- **March 25, 2014: Administration Formally Proposes Clean Water Rule**: The EPA and the Army Corps of Engineers jointly propose the formal rule clarifying and partially restoring the historic scope of waters protected under the Clean Water Act. The 200+-day comment period ended November 14, 2014.

    - **EPA held over 100 meetings with state entities as well as many with agricultural and other stakeholders during the comment period:**
        - EPA Headquarters Proposed Rule Meetings/Events For Docket EPA-HQ-OW-2011-0880 (following the release of the proposed rule): http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OW-2011-0880-13183
        - 2014 EPA Regional Proposed Rule Meetings/Events for Docket EPA-HQ-OW-2011-0880: http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OW-2011-0880-13182

- **Summer 2014: Connectivity Report Peer-Review Wraps Up:** affirming the scientific synthesis and concluding that the scientific synthesis provides a sufficient scientific foundation for the Proposed Clean Water Rule.

- **October 17, 2014:** The Science Advisory Board's final peer review report supporting the draft Connectivity Report is formally issued.

- **November 14, 2014: Clean Water Rule public comment period ended, with over 1 million comments submitted.**

    - **EPA held dozens of meetings with stakeholders before finalizing the Clean Water Rule:** EPA Headquarters Stakeholder Meetings for Docket EPA-HQ-OW-2011-0880 Occurring After the Close of the Comment Period (November 14, 2014): http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OW-2011-0880-20870

- **May 27, 2015: EPA and the Army Corps of Engineers signed the final Clean Water Rule.** The final rule was published in the federal register on June 29, 2015, available at https://www.epa.gov/sites/production/files/2015-06/documents/epa-hq-ow-2011-0880-20862.pdf and became effective on August 28, 2015.

- **October 9, 2015:** The Sixth Circuit U.S. Court of Appeals, ruling on the consolidated petitions from multiple circuits, issued a nationwide stay of the Clean Water Rule pending further resolution of the multi-district litigation challenging the rule.

- **February 22, 2016:** The Sixth Circuit panel found jurisdiction to review the merits of the Clean Water Rule. A petition to review en banc is under consideration.

- **Pending lifting of stays of the Clean Water Rule, the 2003 and 2008 guidance documents requiring cumbersome and confusing case-by-case jurisdictional determinations remain in effect.**