

| Issue                                                                                                                                                 | Current Status                                                                                                                                               | Clarity Provided by the Proposed Clean Water Rule                 |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| <b>Traditional Waters</b>                                                                                                                             |                                                                                                                                                              |                                                                   |
| Traditionally Navigable Waters (and adjacent wetlands)                                                                                                | Jurisdictional                                                                                                                                               | Jurisdictional (No change)                                        |
| Interstate Waters                                                                                                                                     | Jurisdictional                                                                                                                                               | Jurisdictional (No change)                                        |
| Territorial Seas                                                                                                                                      | Jurisdictional                                                                                                                                               | Jurisdictional (No change)                                        |
| <b>Tributaries and Streams (and associated wetlands)</b>                                                                                              |                                                                                                                                                              |                                                                   |
| Non-navigable tributaries (and adjacent wetlands) that are relatively permanent <sup>i</sup>                                                          | Jurisdictional                                                                                                                                               | Jurisdictional (No change)                                        |
| Non-navigable tributaries (and adjacent wetlands) that are <i>not</i> relatively permanent, including intermittent, ephemeral, and headwater streams. | Jurisdictional, if significant nexus to Traditionally Navigable Water                                                                                        | Generally Jurisdictional, unless otherwise exempt (Clarification) |
| <b>Agricultural-Related Waters and Activities</b>                                                                                                     |                                                                                                                                                              |                                                                   |
| Prior Converted Cropland                                                                                                                              | Exempt from jurisdiction                                                                                                                                     | Exempt from Jurisdiction (No change)                              |
| Artificially irrigated areas that would revert to dry land if use of irrigation water ceases                                                          | Generally not considered jurisdictional, unless Corps or EPA says they are.                                                                                  | Specifically exempt from jurisdiction (Clarification)             |
| Normal farming, ranching, and forestry (silviculture) activities.                                                                                     | CWA specifically exempts these activities from section 404 permitting requirements. <sup>ii</sup>                                                            | Exempt from Jurisdiction (No change)                              |
| Farm and stock ponds and irrigation ditches                                                                                                           | CWA specifically exempts construction and maintenance of farm and stock ponds and irrigation ditches from section 404 permitting requirements. <sup>ii</sup> | Exempt from Jurisdiction (No change)                              |
| Agricultural stormwater discharges and return flows from irrigated agriculture                                                                        | CWA specifically exempts these discharges from the section 402 permitting requirements.                                                                      | Exempt from Jurisdiction (No change)                              |
| Stock ponds <sup>iii</sup>                                                                                                                            | Generally not considered jurisdictional, unless Corps or EPA says they are.                                                                                  | Specifically exempt from jurisdiction (Clarification)             |
| Irrigation lakes or ponds <sup>iii</sup>                                                                                                              | Generally not considered jurisdictional, unless Corps or EPA says they are.                                                                                  | Specifically exempt from jurisdiction (Clarification)             |
| Groundwater                                                                                                                                           | Not considered jurisdictional, but no regulatory provision.                                                                                                  | Specifically exempt from jurisdiction (Clarification)             |

| Issue                                                                                                      | Current Status                                                                                                                     | Clarity Provided by the Proposed Clean Water Rule                                                                                                 |
|------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Ditches and Waste Treatment Systems</b>                                                                 |                                                                                                                                    |                                                                                                                                                   |
| Ditches (including roadside ditches) excavated wholly in and draining only uplands                         | Generally not considered jurisdictional, <i>unless</i> they carry a relatively permanent (seasonal or intermittent) flow of water. | Generally not considered jurisdictional, <i>unless</i> carry perennial (year-round) flow. (Clarification)                                         |
| Ditches that act as tributaries                                                                            | Generally jurisdictional                                                                                                           | Generally Jurisdictional, unless otherwise exempt (Clarification)                                                                                 |
| Waste Treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA | Exempt from jurisdiction                                                                                                           | Exempt from jurisdiction (No change)                                                                                                              |
| Municipal Separate Sanitary Sewer Systems (MS4)                                                            | No specific regulatory standard; however, generally exempt from jurisdiction.                                                      | Continues to be generally exempt, but additional clarity expected in final rule.                                                                  |
| Green Infrastructure                                                                                       | No specific regulatory standard; however, generally exempt from jurisdiction.                                                      | Continues to be generally exempt, but additional clarity expected in final rule.                                                                  |
| <b>Other Waters, Ponds, or Pools</b>                                                                       |                                                                                                                                    |                                                                                                                                                   |
| Geographically-isolated waters and wetlands                                                                | Uncertain; however, as a matter of practice, CWA jurisdiction not asserted over such waters since 2003 guidance.                   | Jurisdictional if significant nexus to other jurisdictional water (Clarification)                                                                 |
| Artificial lakes or ponds <sup>iii</sup>                                                                   | Generally not considered jurisdictional, unless Corps or EPA says they are.                                                        | Specifically exempt from jurisdiction (Clarification)                                                                                             |
| Artificial reflecting or swimming pools or other small ornamental waterbodies <sup>iii</sup>               | Generally not considered jurisdictional, unless Corps or EPA says they are.                                                        | Specifically exempt from jurisdiction (Clarification)                                                                                             |
| Water-filled depressions created incidental to construction activity                                       | Generally not considered jurisdictional, unless Corps or EPA says they are.                                                        | Specifically exempt from jurisdiction (Clarification)                                                                                             |
| Gullies, rills, and non-wetland swales                                                                     | Generally not considered jurisdictional, unless the Corps and EPA says they are covered.                                           | Specifically exempt from jurisdiction (Clarification)                                                                                             |
| Other erosional features                                                                                   | Generally not considered jurisdictional, unless the Corps and EPA says they are covered.                                           | Generally excluded; however additional clarification expected on difference between erosional features (exempt) and tributaries (jurisdictional). |

<sup>i</sup> Typically flow year-round or have continuous flow at least seasonally

<sup>ii</sup> Section 404(f)(1); however, if these activities are intended to convert the land to a different use, they could be subject to a 404 permit (404(f)(2)).

<sup>iii</sup> Constructed by excavating and/or diking dry land to retain or collect water.