

New additions or changes in the rule are italicized. Bolded text is for emphasis.

Chart 1: Features that are Waters of the United States Under the New Rule:

(i) All waters which are currently used, were used in the past, or may be susceptible to **use in interstate or foreign commerce**, including all waters which are subject to the ebb and flow of the tide; [Note: these are “traditionally navigable waters.”]

(ii) All **interstate waters**, including interstate wetlands;

(iii) The **territorial seas**;

Note: The three categories above this point in the list have historically been considered waters of the US. Establishment of jurisdiction over tributaries and other features via a significant nexus must be with respect to these waters. The extension of jurisdiction over the categories below this point in the list has been the subject of evolving regulation and litigation over the years.

(iv) All **impoundments** of waters identified as waters of the US under this section;

(v) **All tributaries** of waters identified in paragraphs (i) through (iii) of this section;

(vi) All waters **adjacent** to a water identified in paragraphs (i) through (v) of this section, including **wetlands, ponds, lakes, oxbows, impoundments, and similar waters**.

Note: All features above this point in the list are “jurisdictional by rule.” Jurisdiction over features below this point in the list is determined on a “case-specific” basis.

(vii) **On a case-specific basis**, the following waters, provided that those waters **alone, or in combination** with other **similarly situated** waters located in the *same watershed* [Note: changed from “same region”], have a **significant nexus** to a water identified in paragraphs (i) through (iii) of this section: *Prairie Potholes, Carolina bays and Delmarva bays, Pocosins, Western Vernal Pools, and Texas coastal prairie wetlands*. [Note: this replaces the “other waters” category.]

(viii) *All waters located in whole or part within the 100-year floodplain of a water identified in paragraphs (i) through (iii), and all waters located in whole or part within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs (i) through (v), where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (i) through (iii).* [Note: this is a new category for near-by features.]

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Chart 2: Features that are NOT Waters of the US Under the New Rule:

(i) **Waste treatment systems.**

(ii) **Prior converted cropland.**

(iii) *The following **ditches**:*

(A) *Ditches with **ephemeral** flow that are **not** a relocated tributary or excavated in a tributary.*

(B) *Ditches with **intermittent** flow that are **not** a relocated tributary or excavated in a tributary, or .*

(C) *Ditches that **do not flow**, either directly or through another water, into a water identified in paragraphs (1) (i) through (iii).*

(iv) The following **features**:

(A) Artificially **irrigated** areas that would revert to dry land if application of water ceases.

(B) Artificial, constructed lakes and ponds created in dry land such as **farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds.**

(C) Artificial **reflecting** pools or **swimming** pools created in dry land.

(D) Small **ornamental** waters created in dry land.

(E) Water-filled depressions created in dry land incidental to **mining or construction activity**, including pits excavated for obtaining fill, sand, or gravel that fill with water

(F) ***Erosional features**, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways.*

(G) **Puddles.**

(v) **Groundwater**, including groundwater drained through subsurface drainage systems.

(vi) **Stormwater** control features constructed to convey, treat, or store stormwater that are created in dry land.

(vii) **Wastewater recycling** structures constructed in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary systems built for wastewater recycling.