



Waters of the United States Proposed Rule



**US Army Corps
of Engineers®**

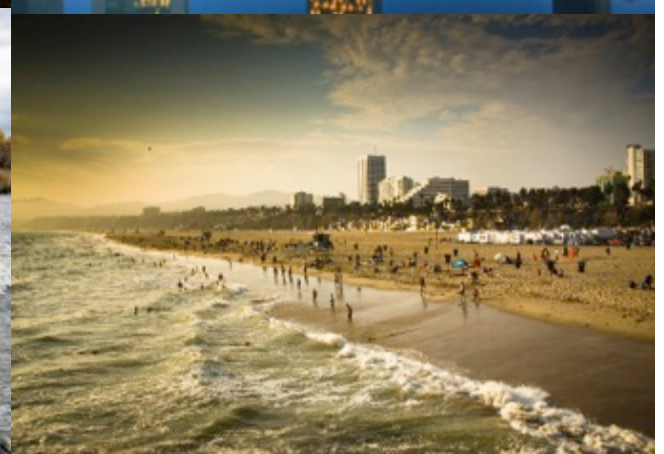
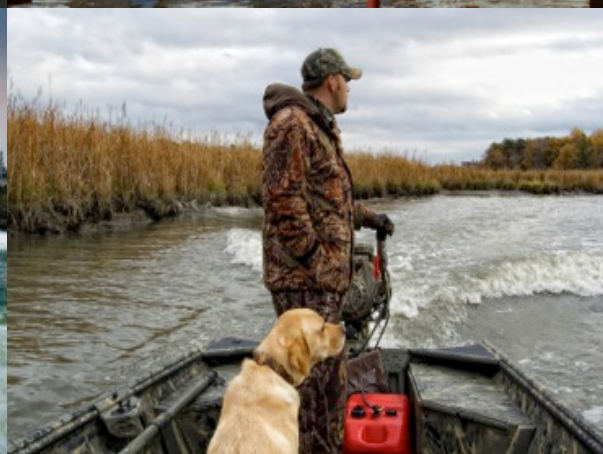
Clarifies Clean Water Act
protections for streams and wetlands

Jason Brush

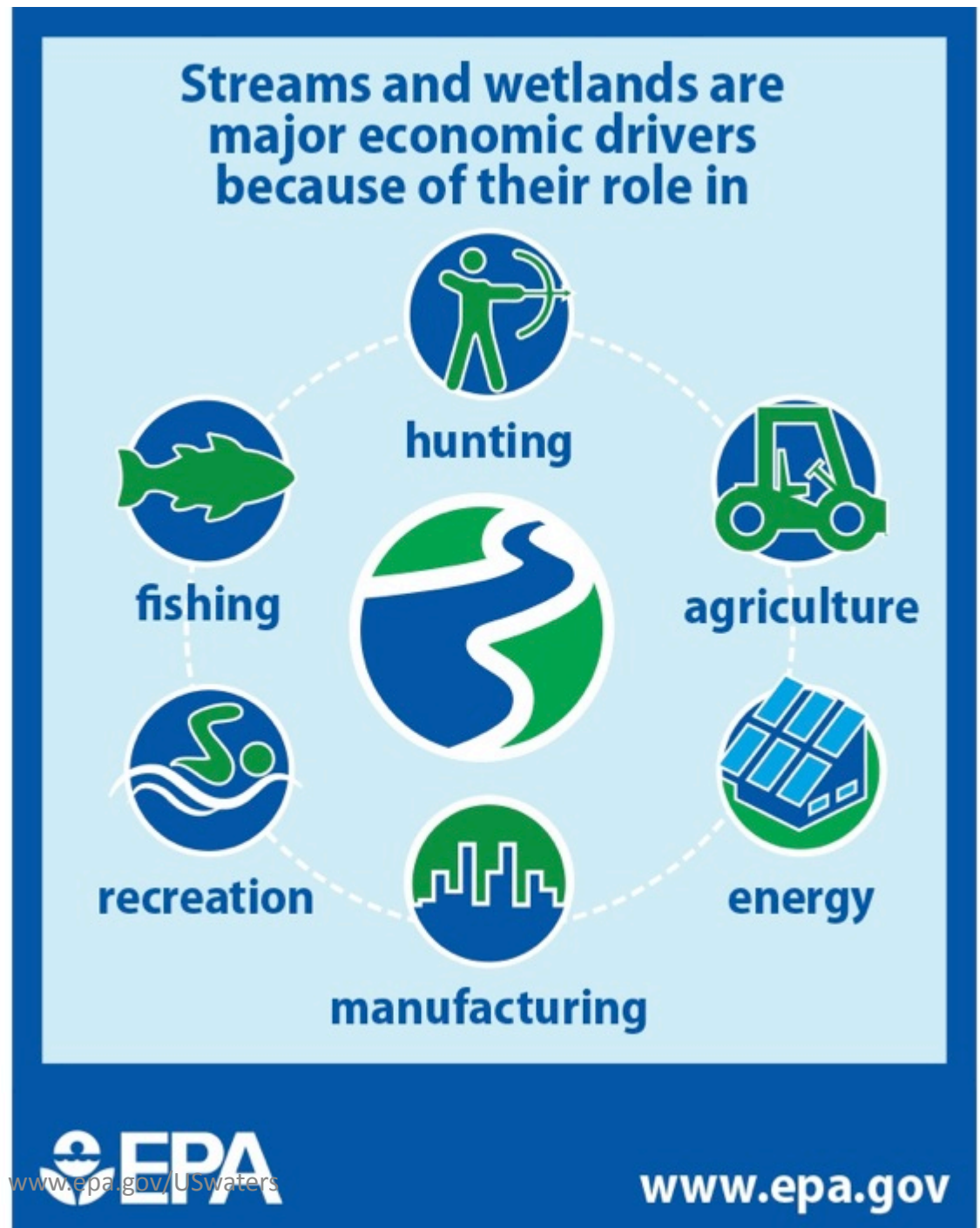
EPA Region 9

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Protecting Clean and Reliable Water



Streams and wetlands are economic drivers



Streams and
wetlands
benefit
communities





The objective of the Clean Water Act is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters”



The Clean Water Act Protects “waters of the United States”



Supreme Court Decisions Affecting Waters of the U.S.

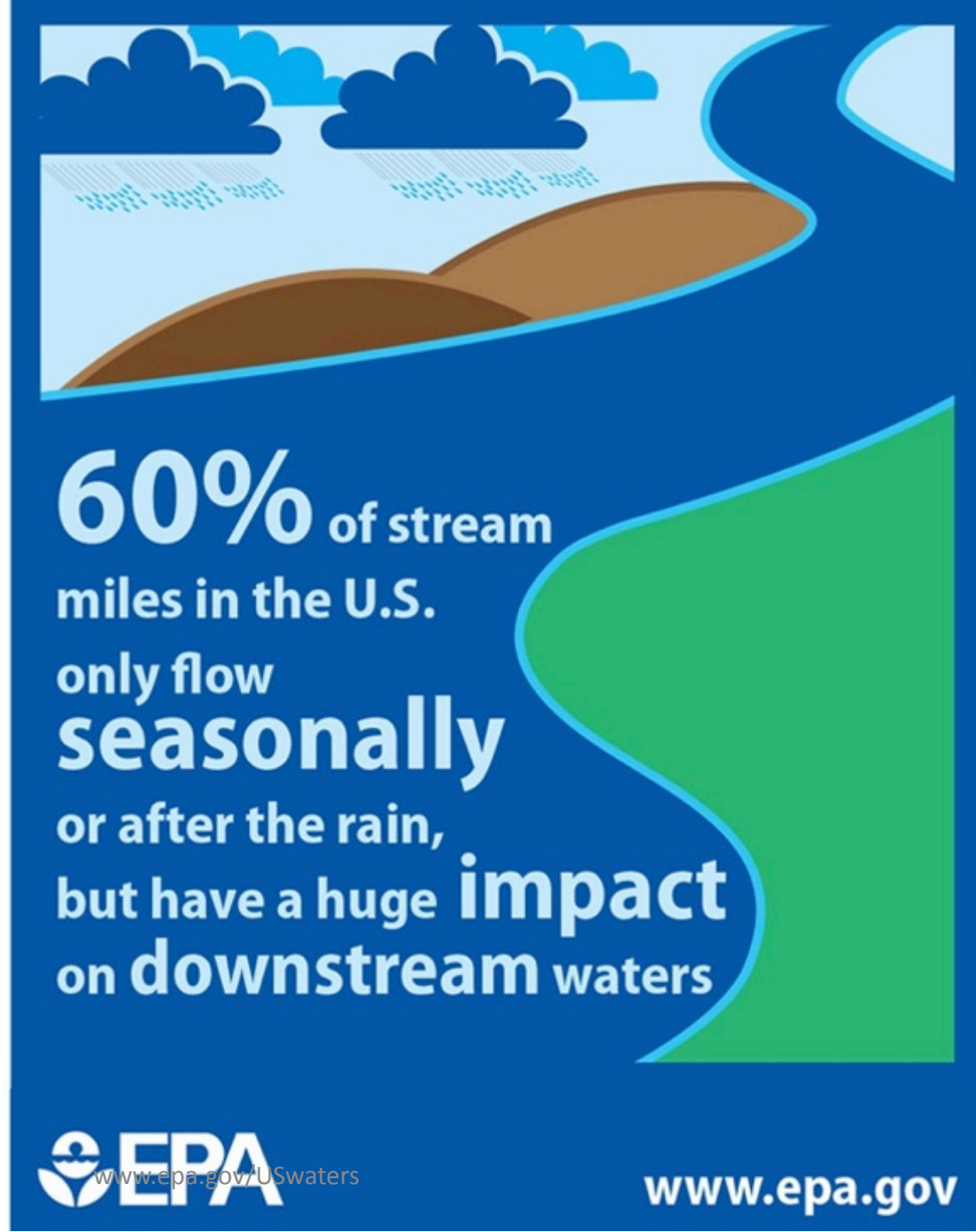
SWANCC (2001): Use of waters by migratory birds not sufficient basis for jurisdiction.

Rapanos (2006): Splintered decision provides relative permanence and significant nexus as standards for determining CWA protection.

This Rulemaking is consistent with these landmark Supreme Court decisions.



Upstream
waters impact
downstream
waters

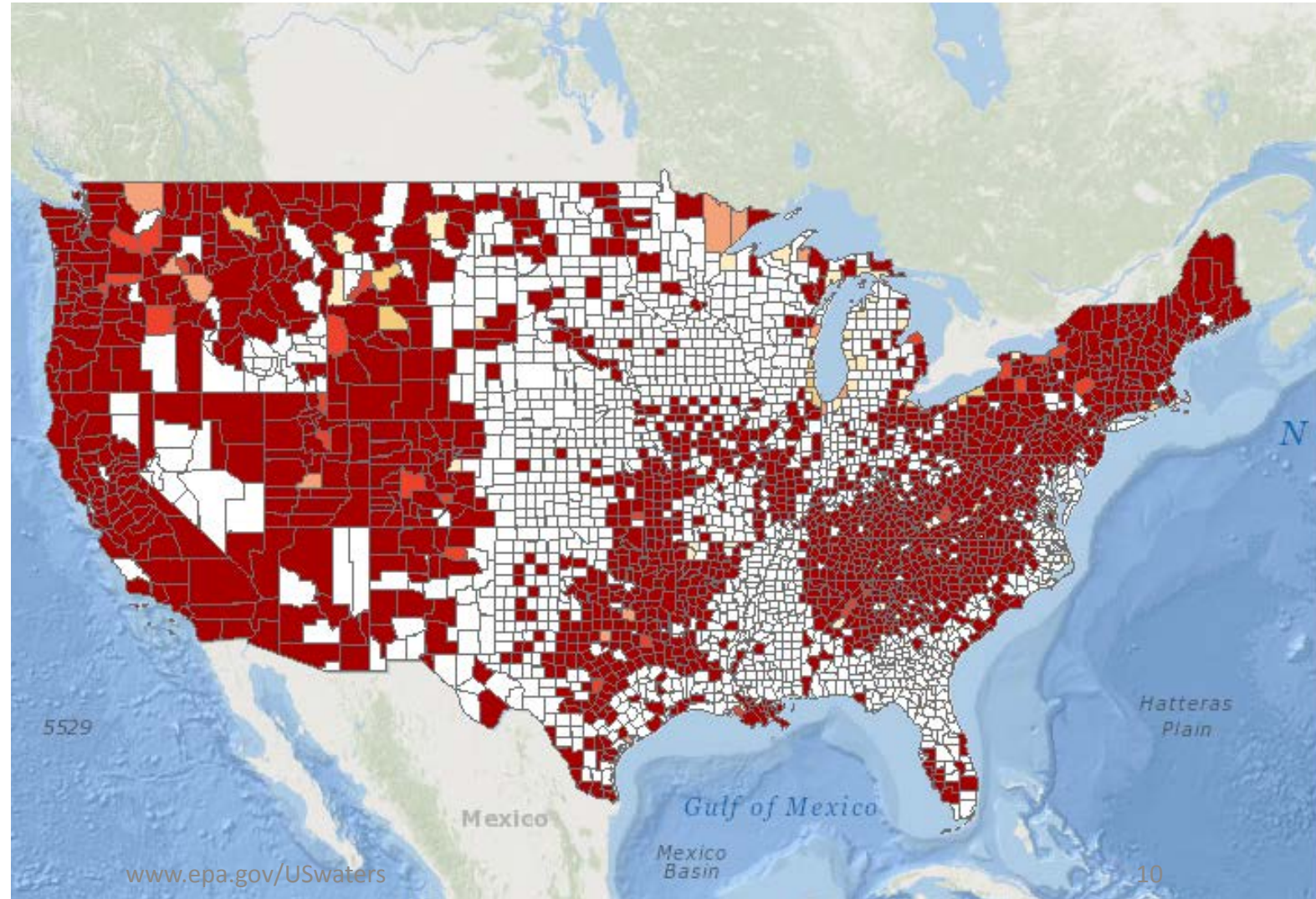


Streams provide drinking water

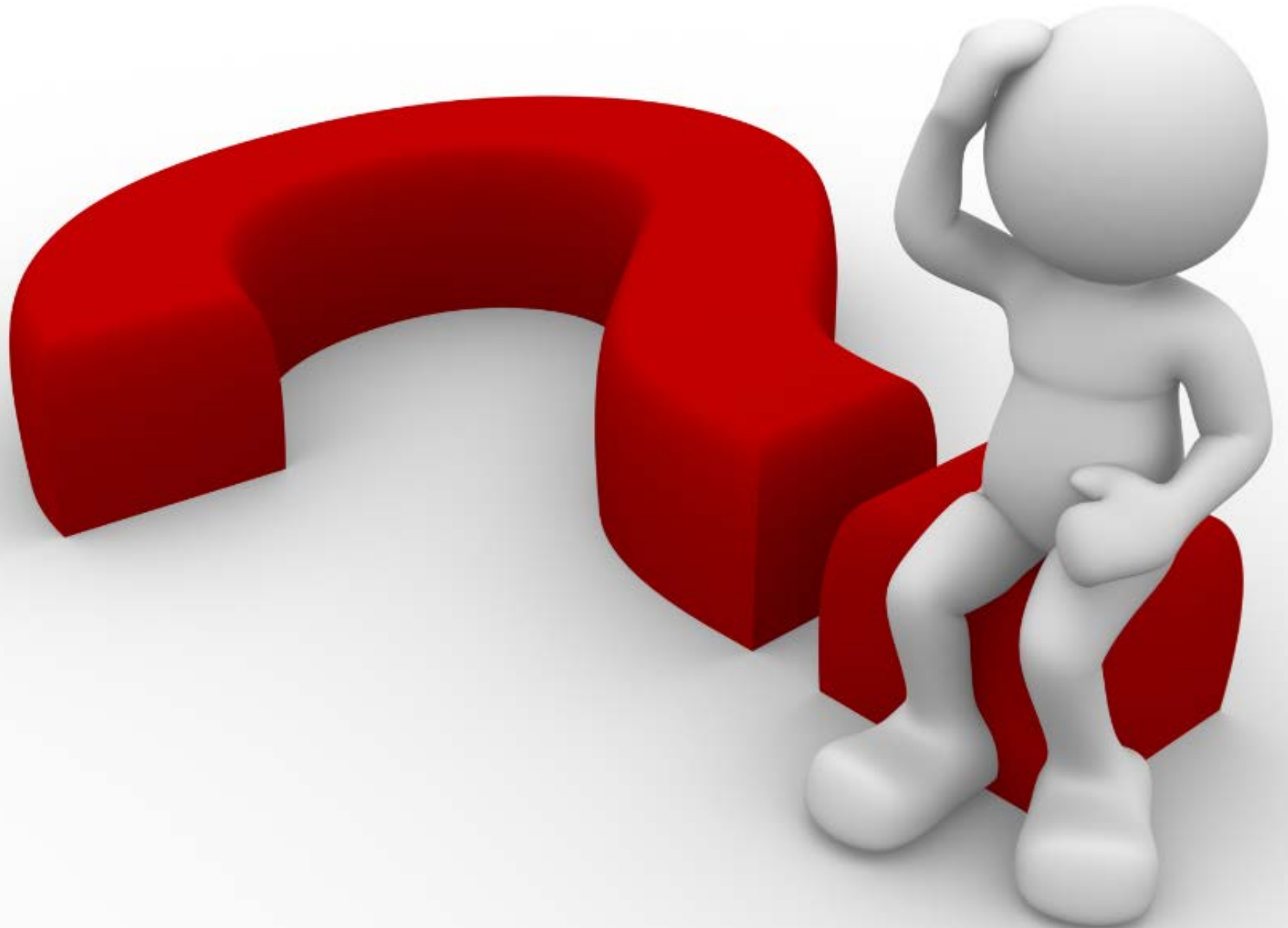
1 in 3
Americans
get their
drinking
water from
public systems
that rely on
seasonal
and rain-
dependent
streams



www.epa.gov



Reduce
confusion
about
Clean
Water Act
protection



What is the **current definition** of Waters of the U.S.?

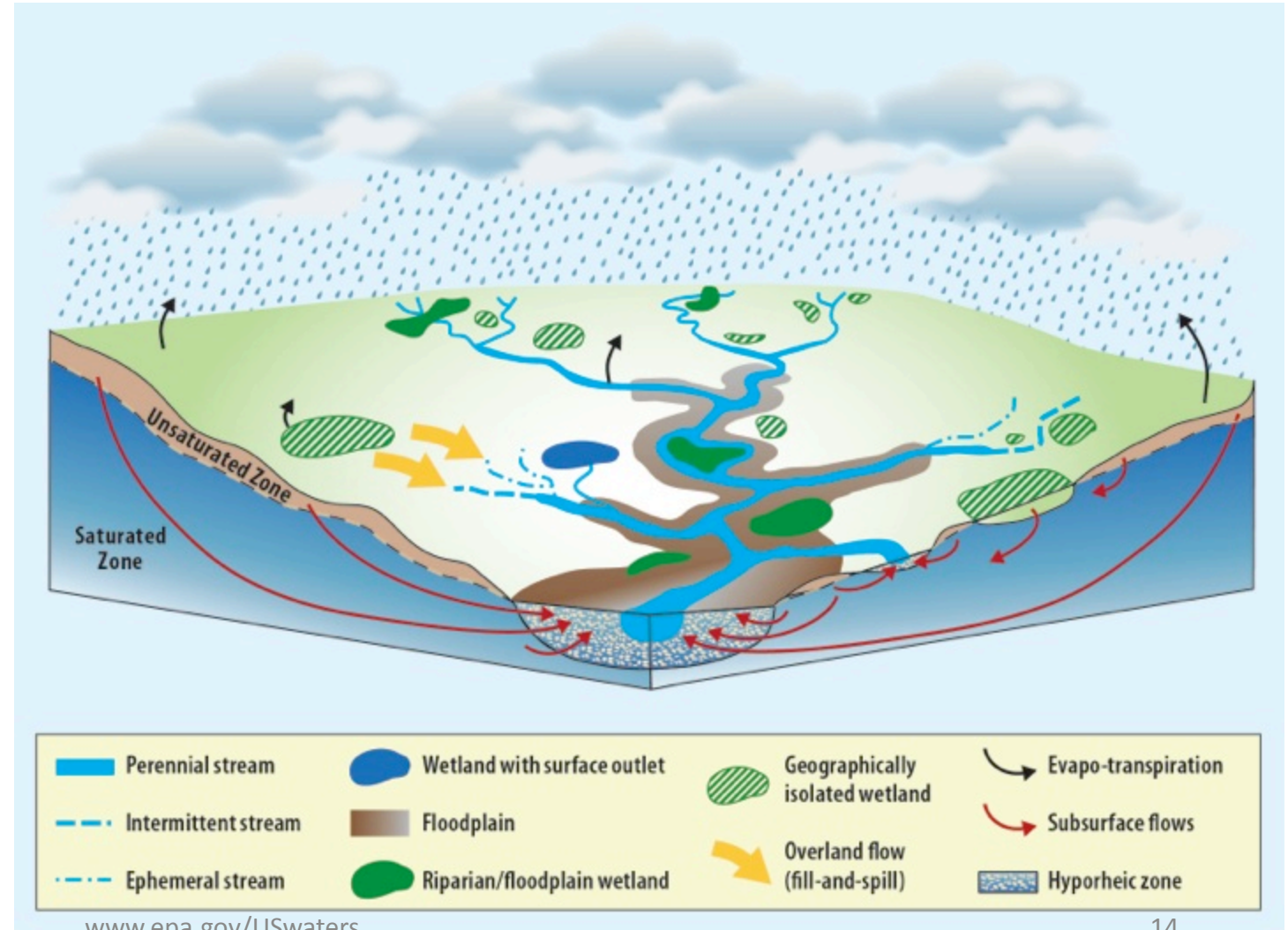
1. Traditionally navigable waters
2. Coastal (tidal) waters, including territorial seas
3. Waters crossing state borders
4. Lakes made by damming a water of U.S.
5. Waters that could affect interstate commerce
6. Tributaries of these waters
7. Wetlands next to these waters

What is the **proposed definition** of Waters of the U.S.?

1. Traditionally navigable waters
2. Coastal (tidal) waters, including territorial seas
3. Waterways that cross state borders
4. Lakes made by damming a water of U.S.
5. Waters that have a *significant nexus* (defined)
6. Tributaries of these waters (now defined)
7. *Waters* next to rivers, lakes, streams, coastal waters

Supported by latest peer-reviewed science

Scientific
assessment of
1,000+
pieces of
literature



What the Rule Does



Helps Businesses



Greater clarity saves
time and money

Helps States

2/3

use the federal definition
to protect state waters.

Stream systems are protected



Proposed Rule Changes

Tributaries are jurisdictional when they meet the definition:

Tributary: “waters with bed and banks and an ordinary high water mark that contribute flow to traditionally navigable waters, interstate water or territorial seas.”

- **Certain man-made tributaries (ditches), however, are excluded.**

Proposed Rule Changes

Adjacent waters are jurisdictional.
Adjacency applies to all surface waters, not just wetlands.

Existing regulations define “adjacent” as “bordering, contiguous or neighboring.”
This rule adds a definition of neighboring.



Proposed Rule Changes

“Other waters” are jurisdictional only where a case-specific analysis shows they have a significant nexus to a traditionally navigable water, interstate water or territorial sea.

What the Rule Does Not Do



All Jurisdictional Exclusions Preserved

- Artificial lakes or ponds created by excavating and/or diking dry land and used for purposes such as rice growing, stock watering or irrigation.
- Artificial ornamental waters created for primarily aesthetic reasons.
- Artificially irrigated areas that would revert to upland if irrigation stops.
- Water-filled depressions created as a result of construction activity.
- Prior converted cropland.
- Waste treatment systems (including treatment ponds and lagoons).



All Permitting Exemptions Preserved

- Normal farming, silviculture, and ranching practices.
- Upland soil & water conservation practices.
- Agricultural stormwater discharges.
- Return flows from irrigated agriculture.
- Construction/maintenance of farm or stock ponds or irrigation ditches on dry land.
- Maintenance of drainage ditches.
- Construction or maintenance of farm, forest, and temporary mining roads.



What the Rule Does **NOT** Do

- Does **NOT** broaden coverage of the Clean Water Act
- Does **NOT** change permitting requirements
- Does **NOT** regulate land or land uses
- Does **NOT** regulate floodplains or groundwater
- Does **NOT** remove any exemption or exclusion
- Does **NOT** expand regulation of ditches

Remember: Clean Water Act permitting requirements apply **ONLY** when there is a discharge of a pollutant from a point source into a Water of the U.S.



e.g., industry

e.g., oil spill



e.g., dredge and fill



4+ years of dialogue

415,000 comments

Want Comments and Input on Proposed Rule

180 day public comment period

October 20 comment period closes

Two Ways to Comment

By October 20, 2014:

- Follow instructions at Regulations.gov
- Email: ow-docket@epa.gov

*Docket Number: EPA-HQ-OW-2011-0880
(include in the subject line if emailing)*

www.epa.gov/uswaters

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