

PROPOSED DEFINITION OF WATERS OF THE UNITED STATES

Waters of the United States shall include:

Scalia - only those relatively permanent, continuously flowing bodies of water "forming geographic features that are described in ordinary parlance as streams, oceans, rivers and lakes and does not include channels through which water flows intermittently or ephemerally, or channels that periodically provide drainage for rainfall.

navigable-in-fact oceans, rivers, streams, lakes, and only those wetlands possessing a continuous surface water connection to them and that are abutting to them and are indistinguishable from them, landward of which (both laterally and longitudinally) the state shall have purview. In the absence of abutting wetlands purview shall extend landward to the ordinary high water mark.

traditional navigable waters, which includes all the waters described in 33 C.F.R. section 328.3(a)(1), and 40 C.F.R. section 230.3(s)(1) ("All waters which are currently used, or 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") and only those wetlands possessing a continuous surface water connection that are abutting to them and indistinguishable from them, landward of which (both laterally and longitudinally) the state shall have purview. In the absence of abutting wetlands purview shall extend landward to the ordinary high water mark.

Waters of the United States shall not include:

wetlands, ponds, marshes, swamps, and bogs that are lacking a continuous surface water connection that are abutting and indistinguishable from navigable-in-fact waters.

isolated wetlands, ponds, marshes, swamps, and bogs

non-tidal, non-navigable-in-fact tributaries, canals, ditches, swales and drainages, plus the wetlands, ponds, marshes, swamps, and bogs that are abutting or adjacent to them

non-tidal tributaries, canals, ditches, swales and drainages, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce that must be frequently portaged, plus the wetlands, ponds, marshes, swamps, and bogs that are abutting or adjacent to them

prior converted farm fields, farmed wetlands, and all ditches, swales and drainages within, abutting, or adjacent to them