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# Waters of the United States/Clean Water Act: Jamie Ewing Assistant Attorney General (Arkansas) Arkansas Environmental Federation Water Seminar Presentation

## Arkansas Environmental, Energy, and Water Law Blog

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Ms. Jamie Ewing, an Assistant Attorney General in the Arkansas Attorney General's Office, undertook a presentation at the Arkansas Environmental Federation Water Seminar titled *Waters of the United States* ("Presentation").

Ms. Ewing discussed the United States Environmental Protection Agency's ("EPA") promulgation of revisions to the federal Clean Water Act definition of "waters of the United States" and challenges to the rule by a number of states (including Arkansas).

Arkansas Attorney General Leslie Rutledge and her staff are representing the State of Arkansas in a coalition of states that are challenging the rule. Ms. Ewing has been involved in this challenge. She formerly served in the Arkansas Department of Environmental Quality Legal Division.

The *Presentation* addressed topics such as:

- The role of the definitions of "navigable waters" and "waters of the United States" in determining the Clean Water Act's jurisdictional scope
- Evolution of the regulatory definition of waters of the United States
- *Rapanos v. US* (United State Supreme Court) (including a discussion of the phrase "significant nexus")
- EPA's 2014 proposed rule revising the definition of "waters of the United States"
- EPA's final revisions to the definition of waters of the United States in 2015 noting that it defined
- Waters of the United States
- Tributaries
- Adjacent Waters
- Isolated Waters
- Significant Nexus
- Excluded Waters
- Discussion of "normal" farming activities
- Exclusions
- Waste treatment systems
- Prior converted cropland
- Certain ditches

- Certain other features such as artificial reflecting pools, erosional features, puddles, groundwater, stormwater control features, etc.

Ms. Ewing also discussed the objectives of the coalition of states that Arkansas has joined in challenging the rule. She referenced the Complaint filed by these states in North Dakota District Court in 2015 and a Petition for Review before the Eighth Circuit Court of Appeals. Also discussed was the fact that the federal District Court in North Dakota granted a Motion for Preliminary Injunction which resulted in a stay of the final rule for Arkansas.

Subsequent developments included a combining of the Eighth Circuit Court of Appeals petition with all other Circuit Court Petitions into one action before the Sixth Circuit. She updated the Sixth Circuit Court of Appeals litigation noting that that Court determined that it had jurisdiction to hear the case and subsequently issued a nationwide stay of the rule.

[Click here to download a copy of the Ms. Ewing's Presentation.](#)