



## Environment, Land Use & Natural Resources ADVISORY ■

**APRIL 23, 2019**

### California Issues Expansive “Wetland” Regulations as Federal Agencies Work to Narrow Clean Water Act Jurisdiction

by [Paul Beard](#) and [Gina Angiolillo](#)

On April 2, 2019, California’s State Water Resources Control Board (SWRCB) announced the adoption of [new regulations](#) defining California wetlands subject to state regulation and new procedures for reviewing and approving dredge or fill activities in those wetlands. The regulations are likely to have far-reaching and costly impacts on development, farmers, and ranchers with aquatic features on their properties.

The rules are the result of a decade-long effort to effectuate the state’s policy of ensuring “no net loss” of wetlands in California. And they come on the heels of efforts by the Trump Administration to [significantly roll back federal jurisdiction over “waters of the United States”](#) (WOTUS) under the federal Clean Water Act. In addition to supporting litigation that seeks to invalidate the Obama Administration’s 2015 WOTUS Rule—which dramatically expands federal wetland jurisdiction—the Administration recently has proposed a new revised rule, [which would dramatically scale back that jurisdiction](#). In the meantime, the 2015 WOTUS Rule applies in 22 states, including California.

California’s [Porter–Cologne Water Quality Control Act](#) (Water Code, Section 13000, et seq.) broadly defines “waters of the state” to cover “any surface or groundwater ... within the boundaries of the state” and includes all “waters of the United States” under the federal Clean Water Act. The SWRCB notes in the new [definition and procedures](#) that “wetlands that meet the current definition, or any historic definition, of waters of the U.S. are waters of the state.” As a result, waters subject to state regulation will not change even if federal jurisdiction under the Clean Water Act jurisdiction is narrowed.

Further, the new rules go far beyond what the Clean Water Act historically or even presently requires under the 2015 WOTUS Rule. They capture a wide range of state wetlands, including “natural wetlands,” “wetlands created by modification of a surface water of the state,” and even certain *artificially created* wetlands. Significantly, the new rules support jurisdiction even over wetlands found in arid regions of the state that do not normally support vegetation, like desert playas.

The SWRCB has underscored that the new rules will provide much-needed clarity and predictability to the regulated public. Even so, the rules likely will result in greater instances of state “wetland” regulation, translating into greater permitting burdens and costs.

The new rules will become effective nine months after approval by the state’s Office of Administrative Law.

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