

## CONTINUING ISSUE: Waters of the United States

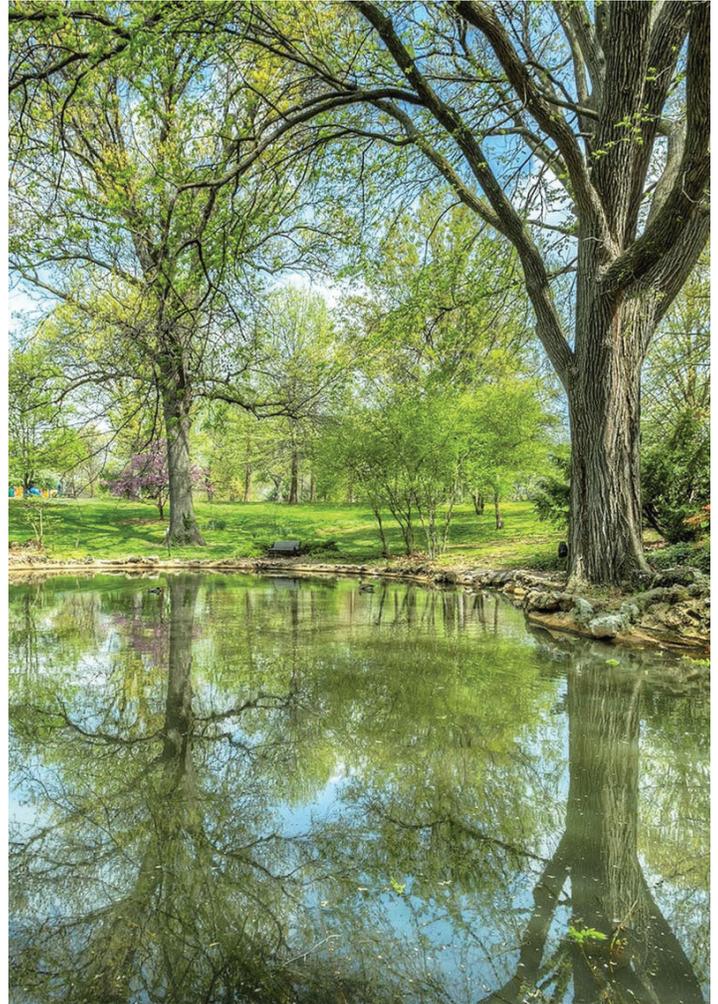
When Congress stated the objectives of the Clean Water Act (CWA) and the waters that warranted protection, it did not define “Waters of the United States” (WOTUS). Without a congressional definition, WOTUS has been gradually defined through case law and the rules developed by the U.S. Army Corps of Engineers (USACE) and the Environmental Protection Agency (EPA). Over the past 45 years, numerous administrative actions by USACE and EPA have significantly expanded WOTUS well beyond the original “navigable waters” designation in the CWA. The result has been an ongoing series of court actions, agency responses, and court decisions attempting to clearly define WOTUS.

**Past regulatory definitions have exceeded the intent of the CWA.** In recent years, USACE and EPA regulatory definitions of WOTUS have far exceeded the original intent of the CWA and have lacked the clarity and consistency required to understand federal jurisdiction. As a result, the federal permitting process for waters, not under federal authority, has been costly and time-consuming for Texas water managers.

**New rule offers much needed clarity.** This spring, USACE and EPA finalized the Navigable Waters Protection Rule, which attempts to clarify federal authority under the CWA, and streamline the definition of WOTUS.

TWCA believes the clarity offered in the new rule along with the express exclusion of water bodies traditionally unregulated by the CWA will provide much needed certainty for Texas water managers. We believe the new rule will allow water projects to come online more quickly, avoid the costly ambiguity of jurisdiction, and still ensure that U.S. waters are protected. Despite the Navigable Waters Protection Rule, concerns remain that various USACE districts will continue to apply “recodified” regulations resulting in federal overreach. TWCA will closely monitor USACE district actions while those rules remain in effect.

Unclear jurisdiction of the CWA has created **costly and time-consuming** processes for Texas water managers.



### REQUEST:

**Support the Navigable Waters Protection Rule.** TWCA supports this rule, including the definition of WOTUS, and will closely monitor the rule to ensure it is implemented as intended.