

## **EPA Expands Federal Regulation of Wetlands**

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- **Analysis of: President Obama Seeks to Extend Clean Water Act Protections | [articles.latimes.com](http://articles.latimes.com)**
- **Source: [www.glggroup.com](http://www.glggroup.com) Summary:**

More federal control over wetlands, local streams and adjacent lands was announced in an EPA/Corps of Engineers guidance document issued April 27, 2011. Reinterpreting Supreme Court decisions from the mid-2000s, EPA's guidance document now asserts expanded permit and enforcement authority under the federal Clean Water Act to include intermittent streams and isolated ponds, particularly in the West.

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More federal control over wetlands, local streams and adjacent lands was announced in an EPA/Corps of Engineers guidance document issued April 27, 2011. Reinterpreting Supreme Court decisions from the mid-2000s, EPA's guidance document now asserts expanded permit and enforcement authority under the federal Clean Water Act to include intermittent streams and isolated ponds, particularly in the West. This new EPA guidance rejects policies issued by the Bush administration that interpreted the Supreme Court as limiting federal Clean Water Act jurisdiction.

Writing for the majority in a 2006 Michigan case, *Rapanos v. United States*, Justice Anthony Kennedy explained that the government could potentially assert jurisdiction over a particular wetland *if* it is able to establish a *significant connection* to interstate waters. However, the Court also drew some bright lines, holding that artificial lakes and ponds, roadside ditches and gullies, among others, are all exempted from federal oversight.

EPA's new stance worries agriculture, home builders and the oil industry, which fear that greater federal regulatory requirements will be costly and will interfere with their operational plans. The oil industry, in fact, met with the White House to urge that the guidelines not be issued—and has vowed a legal battle if they are.

Although the EPA guidance is not law, it does provide direction to EPA and Corps of Engineers officials in deciding whether particular areas come within federal jurisdiction. EPA may still decide to issue formal regulations that do have the force of law, but would also be subject to challenge in court.

A bipartisan group of 170 lawmakers urged the agencies in a letter last week not to release the guidelines. Others said they were needed because the Bush administration had misinterpreted court rulings and lifted protections for crucial waterways, including thousands of miles of streams and at least 20 million acres of wetlands.