

# FLOOD & STORMWATER MANAGEMENT UPDATE



## WOTUS Rule Published – Comments Due on April 15th

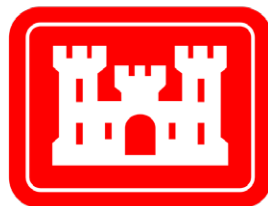


The proposed new rule to revise the definition of Waters of the United States (WOTUS) was published in the Federal Register on February 14, 2019 (attached). Formal publication of the rule had been held up by the recent 35-day federal government shutdown. With the 60-day comment period provided in the February 14<sup>th</sup> publication of the rule, comments are now due on April 15, 2019. EPA held an information sharing

webinar on the proposed rule on the day of its release. The slides from the webinar are to be available on the EPA website.

NAFSMA will be filing comments on the proposed rule and a number of NAFSMA members have volunteered to help with this effort which will be spearheaded by the association's Flood Management and Stormwater Management Committees. The NAFSMA leadership very much appreciates this assistance which always helps to strengthen our comments. If you are interested in helping with this critical effort, please send an email to the national office at [sgilson@nafsma.org](mailto:sgilson@nafsma.org)

## Public Hearings to be Held This Week in Kansas City



In the legislative alert provided to NAFSMA members on February 14<sup>th</sup>, it was noted that U.S. EPA and the Army Corps of Engineers will be holding public meetings on the proposed rulemaking in Kansas City, KS, on the afternoon of Wednesday, February 27<sup>th</sup> and the morning of Thursday, February 28<sup>th</sup>. For information on the upcoming public hearings go to [www.epa.gov/wotus-rule/proposed-revised-definition-wotus-public-hearing](http://www.epa.gov/wotus-rule/proposed-revised-definition-wotus-public-hearing).

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## NAFSMA to Request 60-day Extension of Comment Period

NAFSMA leaders on their monthly call on February 20<sup>th</sup> voted to request that an additional 60 days be added to the current comment period, which if provided by the federal agencies would make the new comment period sometime in mid-June. With the publication of the rulemaking and the public hearings on the proposed rule delayed this extension would provide needed time to review the proposed rule.

State organizations including the Association of Clean Water Administrators, the Association of State Wetland Managers, the Environmental Council of the States and the Association of Fish and Wildlife Agencies have already requested that the 60-day comment period on the proposed WOTUS rule set to end now on April 15<sup>th</sup> be extended by another 60 days.

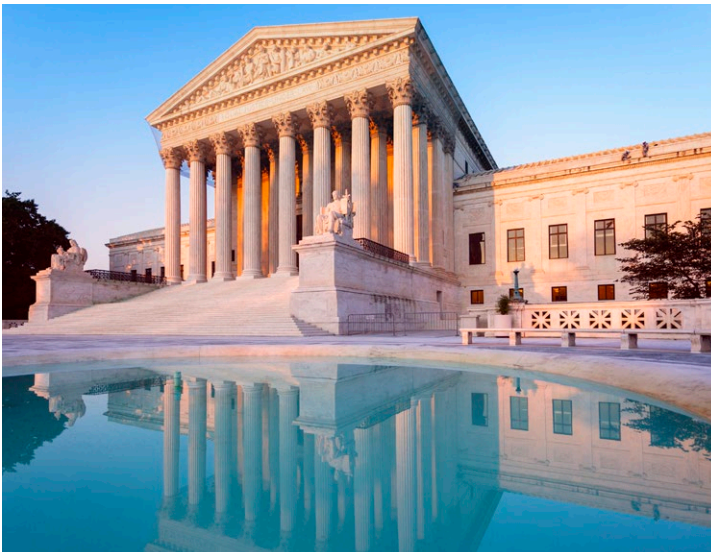
Members of Congress, including 160 representatives and 36 Senators, have also requested an extension to the 60-day comment period.

## EPA Administrator Nominee Awaiting Senate Floor Action



As reported in the last issue of NAFSMA's Flood and Stormwater Management Update, the Senate Environment and Public Works Committee on February 5<sup>th</sup> approved the nomination of Andrew Wheeler to serve as the new EPA Administrator by a vote of 11-10. Mr. Wheeler's nomination has not yet been taken up on the Senate floor.

## Supreme Court to Take Up Important Groundwater-Surface Water Connection Case



The Supreme Court on February 19<sup>th</sup> announced that it will be considering the high profile case of the *County of Maui, Hawaii v. Hawaii Wildlife Fund*. The question involved in the case which is being appealed by Maui County is whether the Clean Water Act applies if water is transported through groundwater to a federally regulated waterway.

The issue has drawn both congressional and judicial attention, with the Senate Environment and Public Works Committee holding hearings on the issue last year. Generally this type of discharge into groundwater is governed by the States and a number of local, regional and State groups have argued that the decision in the Maui case greatly expanded the jurisdiction of the Clean Water Act into groundwater issues.

NAFSMA will be closely following the case and will keep members apprised of Supreme Court action on the case.

## EPA Releases New Memo to Modernize Water Quality Trading Policy

EPA on February 6, 2019, released a new policy memo to address [Water Quality Trading](#). The announcement of the new policy was made by EPA Acting Administrator Andrew Wheeler and Assistant Administrator for Water David Ross at an event in Georgia. In announcing the new policy, Mr. Ross stated that, "Building on efforts already underway at the State, local and tribal level, EPA is taking a number of steps to help facilitate the use of a broad range of tools and technologies that will deliver critical water quality improvements at a lower cost."

EPA's new trading memo identifies six Market Based Principles listed below to encourage creativity and innovation in the development and implementation of programs that reduce pollutants in the Nation's waters:

- States, tribes and stakeholders should consider implementing water quality trading and other market-based programs on a watershed scale.

- EPA encourages the use of adaptive strategies for implementing market-based programs.
- Water quality credits and offsets may be banked for future use.
- EPA encourages simplicity and flexibility in implementing baseline concepts.
- A single project may generate credits for multiple markets.
- Financing opportunities exist to assist with deployment of nonpoint land use practices.

EPA plans to host a webinar on March 5 to discuss the trading memo and its ongoing work to reduce excess nutrients in waterways. For more information visit [www.epa.gov/nutrient-policy-data/collaborative-approaches-reducing-excess-nutrients](http://www.epa.gov/nutrient-policy-data/collaborative-approaches-reducing-excess-nutrients).

## FEMA Administrator Brock Long Resigns



In a surprise statement from Department of Homeland Security Secretary Kirstjen M. Nielsen on February 13<sup>th</sup>, the resignation of current Administrator of FEMA Brock Long was announced. He is expected to be in the Administrator until early March.

Secretary Nielsen's statement recognized Mr. Long's contributions to the agency. "Over the last two years, Administrator Long has admirably led the men and women of FEMA during very difficult, historic and complex times. Under Brock's leadership, FEMA has successfully supported State and Territory-led efforts to respond and recover from 6 major hurricanes, 5 historic wildfires and dozens of other serious emergencies. I appreciate his tireless dedication to FEMA and his commitment to fostering a culture of preparedness across the nation."

Serving as Acting Administrator upon Mr. Long's departure as FEMA Administrator will be Deputy Administrator Pete Gaynor. Although Mr. Gaynor will be moving into the role of Acting Administrator, the White House on February 15<sup>th</sup> announced the nomination of Jeff Byard to assume the role of Administrator.

He comes from a background in emergency management in Alabama and is currently serving as Associate Administrator.

**"Under Brock's leadership, FEMA has successfully supported State and Territory-led efforts to respond and recover from 6 major hurricanes, 5 historic wildfires and dozens of other serious emergencies."**

*– DHS Secretary Nielsen*

Addressing the nomination of Jeff Byard to move into the top FEMA post, Brock Long issued the following statement. "The Administrator applauds the President's intent to nominate Mr. Jeffrey Byard as FEMA Administrator. Mr. Byard, Associate Administrator for the Office of Response and Recovery at FEMA, is an exceptional team member and will carry out the Agency's mission of helping people before, during and after disasters, as he has skillfully done for the past two hurricane seasons. During the confirmation process, Mr. Byard will continue to serve in this capacity as Associate Administrator as we prepare for the 2019 hurricane season."



## NAFSMA Submits Comments on WRDA Guidance Implementation

A number of NAFSMA members and the association's Executive Director participated in a stakeholder engagement session held at the U.S. Army Corps of Engineers headquarters in Washington, DC, on February 11<sup>th</sup> to share comments on WRDA implementation guidance. NAFSMA submitted its formal comments, which can be found under latest news at [www.nafsma.org](http://www.nafsma.org), on February 12<sup>th</sup>.

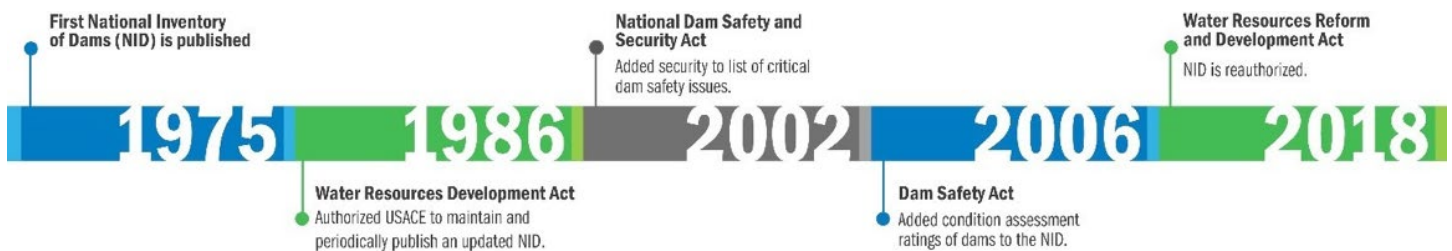
Many thanks to all those NAFSMA members who contributed to developing the association's comments on WRDA implementation.

The list of provisions from the 2018 WRDA included as part of American's Water Infrastructure Act and earlier WRDA bills that USACE has identified for the development of guidance can be found at [www.usace.army.mil/Missions/Civil-Works/Project-Planning/Legislative-Links/wrda\\_2018/wrda2018\\_IGs/](http://www.usace.army.mil/Missions/Civil-Works/Project-Planning/Legislative-Links/wrda_2018/wrda2018_IGs/).



## National Inventory of Dams Now Accessible

What once was a highly restricted database that required requesting special access, the National Inventory of Dams (NID), is now open and available for public download. The NID is a congressionally authorized database documenting dams in the United States and its territories. It is maintained and published by the U.S. Army Corps of Engineers (USACE) and in collaboration with the Federal Emergency Management Agency (FEMA) aims to obtain more accurate and complete information.



The NID is available at <http://nid.usace.army.mil> and was populated using the 116th Congressional District information and all charts, queries and maps reflect the most current NID database. State and federal dam regulators provided their data from May to November 2018 for inclusion in the 2018 database.

Major changes to the 2018 NID allow users to download or export certain NID data and to view the hazard potential classification. State or federal agencies may restrict access to information on dams within their jurisdiction, so for information not published in the NID, USACE recommends consulting the agency exercising responsibility over the dam. The hazard potential classification, as published in the NID, does not reflect the condition of a dam. That information can be found in the condition assessment, which is available to approved government users. Historically, the NID has been published every two years. Starting in 2019, the NID will be updated annually.

### Summary for US



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The goal of the NID is to include all dams in the United States that meet specific criteria, yet, is limited to information that can be gathered and properly interpreted with the given funding. The NID initially consisted of approximately 45,000 dams, which were gathered from extensive record searches and some feature extraction from aerial imagery. Since continued and methodical updates have been conducted, data collection has been focused on the most reliable data sources, which are the many federal and state government dam construction and regulation offices and now is up to 90,000 dams. In most cases, dams within the NID criteria are regulated (construction permit, inspection, and/or enforcement) by federal or state agencies, who have basic information on the dams within their jurisdiction.

The NID consists of dams meeting at least one of the following criteria:

- (1) High hazard potential classification – loss of human life is likely if the dam fails;
- (2) Significant hazard potential classification – no probable loss of human life but can cause economic loss, environmental damage, disruption of lifeline facilities, or impact other concerns;
- (3) Equal or exceed 25 feet in height and exceed 15 acre-feet in storage;
- (4) Equal or exceed 50 acre-feet storage and exceed 6 feet in height.

For further information on the National Inventory of Dams visit: [www.fema.gov/2018-national-inventory-dams](http://www.fema.gov/2018-national-inventory-dams)

To access and download the database visit: <http://nid.usace.army.mil>

*(Reprinted from FEMA announcement)*

## Make Your Plans Now – Important Upcoming Events and Dates

### August 19–22, 2019

NAFSMA 2019 Annual Flood and Stormwater Management Conference  
Los Angeles (Rancho Palos Verde), CA  
Look for registration and hotel information at [www.nafsma.org](http://www.nafsma.org) soon.

### February 26, 2019

NAFSMA 2019 Awards Programs Open

### Wednesday, May 15, 2019 Midnight Eastern Deadline for Submissions

2019 NAFSMA Excellence in Communications and Stormwater Management Green Infrastructure  
Online Awards Submissions Due Date – Wednesday, May 15th – Midnight (Eastern).  
Online applications to be available on Tuesday, February 26, 2019 at [www.nafsma.org](http://www.nafsma.org).