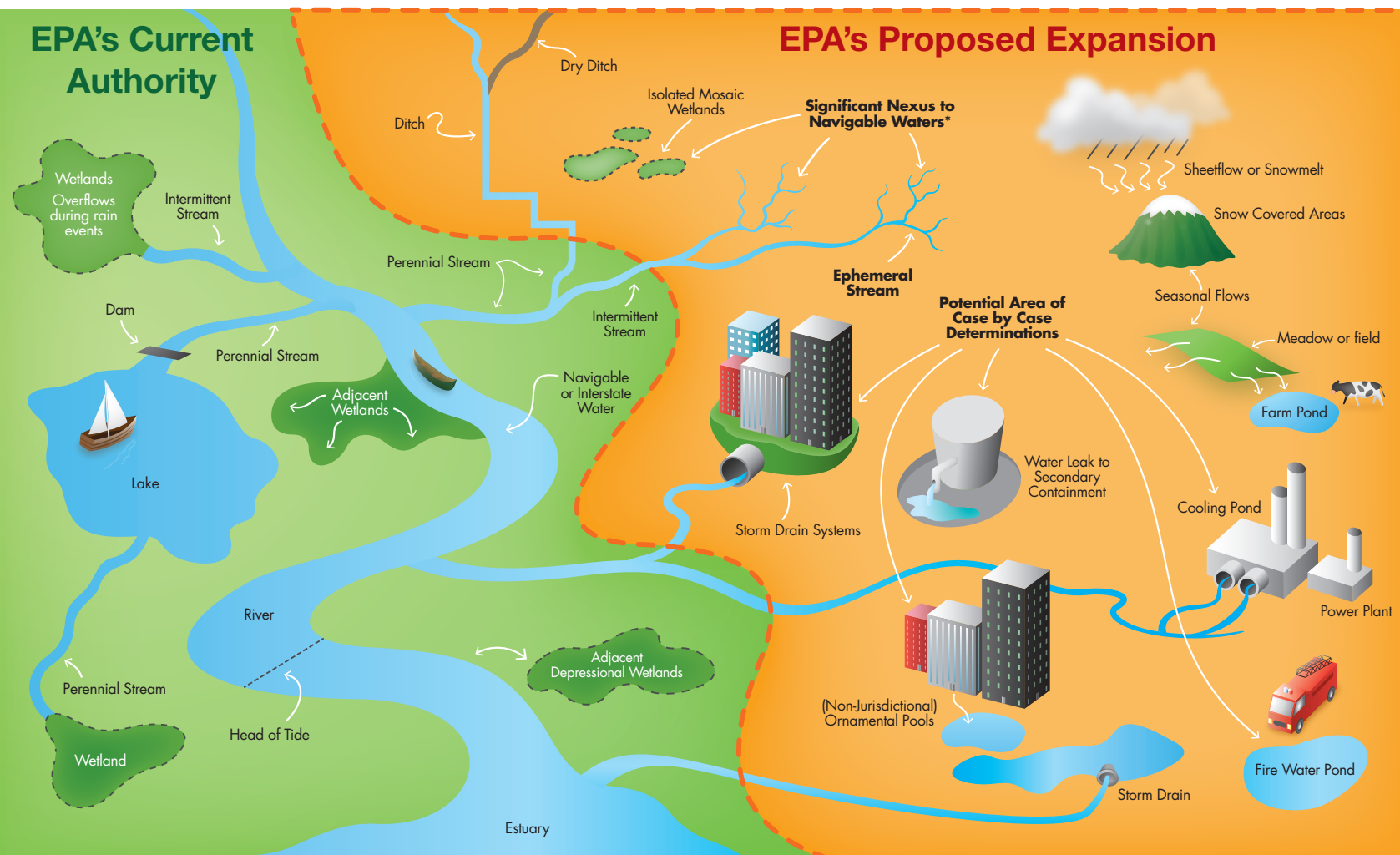


The EPA's Proposed Guidance Would Expand the Definition of Navigable Waters of the U.S.



The Environmental Protection Agency's (EPA) most recent proposed guidance expands the definition of the "waters of the United States," and by extension the EPA's and the Army Corps of Engineers' jurisdiction over these bodies of water. Under the new guidance, the EPA would be able to regulate things such as fire ponds, ornamental pools, dry ditches, ephemeral or seasonal streams, cooling ponds, isolated mosaic wetlands, snow melt and storm drainage ponds. In essence, the EPA would have the subjective authority to define, on a case by case basis, any and all waters as "navigable" to deviate from the spirit of current law which applies specifically to "navigable waters." The result would be increased uncertainty and greater incentive for groups to seek court intervention. Because the EPA is pursuing this approach as a guidance, it need not follow public notice and comment rulemaking safeguards before the Agency and 10 regions apply it.

*The EPA interprets the Clean Water Act to apply to non-navigable tributaries and their adjacent wetlands that have a "significant nexus" to navigable waters. The EPA defines significant nexus as waterways that "either alone or in combination with similarly situated waters in the region, significantly affect the chemical, physical, or biological integrity of traditional navigable or interstate waters."