



September 25, 2017

The Honorable Scott Pruitt  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

**RE: Definition of “Waters of the United States” Recodification of Pre-Existing Rules  
Docket ID No. EPA-HQ-OW-2017-0203**

Dear Administrator Pruitt:

Western Energy Alliance supports EPA’s proposed withdrawal of the 2015 Clean Water Rule, or Waters of the United States (WOTUS) rule, and formal recodification of pre-existing regulations while it develops an updated definition of WOTUS. The final rule was overreaching in its scope and fraught with technical shortcomings, as evidenced by the nationwide stay issued by the 6<sup>th</sup> Circuit Court of Appeals.

Western Energy Alliance represents over 300 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in the West. Alliance members are independents, the majority of which are small businesses with an average of fifteen employees.

As originally written, the WOTUS rule would pose an enormous burden on states, communities, and businesses without providing commensurate environmental benefit. It is also an unreasonably broad interpretation by EPA and the U.S. Army Corps. of Engineers (ACE) of their regulatory authority under the Clean Water Act. The WOTUS rule contained interpretations of “significant nexus” to navigable waters, “adjacent waters” and tributaries that are clearly at odds with the Supreme Court’s rulings in *Rapanos v. United States* and *SWANCC v. U.S. EPA*. In addition to the substance of the rule itself, the rulemaking process followed by EPA and ACE was procedurally deficient. The agencies failed to provide an opportunity for public comment on key distance limitations for terminology like “adjacent waters” and “significant nexus.” By circumventing the public process, the agencies promulgated a final rule that significantly overstepped their authority and violated the Administrative Procedures Act requirements for proper notice and comment rulemaking.

The harm caused by the WOTUS rule would be especially acute in the West, where many ephemeral water features would have been subjected to Clean Water Act permitting requirements. In the West where arid conditions and seasonally fluctuating rainfall are commonplace, many features would have been potentially subject to the WOTUS rule despite being dry for much of the year or even for many years.

We support EPA recodifying the status quo as an interim step to revising and promulgated a new rule. As a practical matter, the 2008 guidance that preceded the 2015 WOTUS rule is in effect, meaning there will be no change to EPA's and ACE's ability to regulate and protect waterways. For operators and surface owners complying with the Clean Water Act, the continuity will provide much-needed certainty while EPA conducts a new rulemaking. From an environmental standpoint, preservation of the status quo poses no risk to the environment as the current guidance was developed to be protective of water quality.

The 2008 guidance, however, has presented implementation challenges to oil and natural gas development. Clean Water Act jurisdiction has been an inconsistent concept in agency interpretations for years. It is often addressed in a case-by-case manner with individual interpretations of guidance documents and the term WOTUS. Often, agencies' case-by-case determinations skewed towards an overly broad interpretation of authority. Ultimately, that overreach was codified in the 2015 rule.

Therefore we request that EPA move quickly to clarify the definition of WOTUS by developing and promulgating a revised rule. As EPA is well aware, Administrative Procedures Act (APA) rulemaking processes can be very time consuming. We urge EPA to move forward expeditiously with the rulemaking to replace the flawed 2008 guidance as soon as possible within the constraints of the APA. We appreciate that EPA is undergoing this full, deliberative process to ensure the reconsideration is legally defensible.

Thank you for the opportunity to comment. We support EPA swiftly recodifying the prior definition of WOTUS, and look forward to providing EPA substantive technical comments in the subsequent rulemaking.

Sincerely,



Ryan Streams  
Manager of Regulatory Affairs