



ECOS

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September 25, 2017

The Honorable E. Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Docket ID No. EPA-HQ-OW-2017-0203

Dear Administrator Pruitt,

The Environmental Council of the States (ECOS), the nonpartisan, national association of state and territorial environmental agency leaders, is pleased to provide comments on the proposed rule, “Definition of “Waters of the United States”-Recodification of Pre-Existing Rules” (82 FR 34899). ECOS appreciates this opportunity to comment on the proposed rule. These comments build upon the input ECOS provided to the U.S Environmental Protection Agency (EPA) on June 19, 2017 in response to the request for input on the redefining of waters of the U.S. (WOTUS) following the February 28, 2017, Presidential Executive Order on “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.”

The proposed rule “would rescind the 2015 Clean Water Rule and replace it with a recodification of the regulatory text that governed the legal regime prior to the 2015 Clean Water Rule and that the agencies are currently implementing under the court stay.” States commend U.S. EPA for clarifying the guidance that will be in effect in the proposed rule. We also acknowledge the time you are spending to obtain input on the WOTUS rule from stakeholders. We encourage you, as you make these visits, to draw upon the significant expertise of the states.

Many states are preparing their own comments, through which EPA and the Corps may receive more thorough and technical, and differing recommendations. We know some states are bringing forward proposals or ideas for how to manage this issue. These comments and proposals will more specifically address the questions posed by the agencies regarding the terms used to define waters of the U.S., though each state’s comments will be based on their available resources and the level of effort able to contribute in the given timeframe. While ECOS will not speak to all of the technical details of this proposed rule in this letter, states thank you for starting the outreach process before this formal comment period with consultation with governors, and emphasize the importance of ongoing and continuous state involvement – perhaps even through a negotiated rulemaking process in which states and the agencies engage in a dynamic conversation that incorporates diverse views and needs.

In addition to considering state and other stakeholder input, ECOS encourages EPA and the Corps to use the resources and expertise of other federal experts in the field, like the U.S. Geological Survey (USGS). The USGS is equipped with scientific research that can help inform this rulemaking, and many states may turn to available USGS data to inform recommendations to the two agencies.

We are extremely grateful for the early and thorough outreach to states, but we also recognize that attempting to define waters of the U.S. has been and will continue to be a challenge. We encourage EPA and the Corps to maintain focus on the end result and the question of regionalization of the rulemaking, as we know from experience that this will be crucial to effective implementation. The process of defining the terms in question for the rulemaking, such as “relatively permanent” or “continuous surface connection” will present different challenges in every region, and states hope for an approach that focuses on the outcome of such definitions.

While we know all states have different water protection priorities, the states wish to provide more unified, helpful input than 50 different comment letters on how to define waters of the U.S. ECOS therefore requests that EPA and the Corps engage states and other parties with significant interest in the ultimate WOTUS regulation via a negotiated rulemaking. This approach has been effective in previous drinking water rulemaking efforts and is currently being used by the Agency in the implementation of the new Lautenberg Act.

Again, we believe that your early consultation with states is a strong step towards a successful rulemaking process and productive continuing conversations on this issue. We thank you again for the opportunity to share our input, and look forward to continuing to collaborate in this process.

Regards,

A handwritten signature in blue ink, appearing to read 'Todd Parfitt', with a stylized flourish at the end.

Todd Parfitt
Director
Wyoming Department of Environmental Quality
ECOS President

CC: Mr. Douglas W. Lamont, P.E.
Senior Official Performing Duties of the Assistant Secretary of the Army (Civil Works)