



The Association of State Wetland Managers, Inc.

“Dedicated to the Protection and Restoration of the Nation’s Wetlands”

September 11, 2017

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The Honorable Douglas W. Lamont
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104 Army Pentagon
Washington, DC 20310-0104

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

Dear Mr. Pruitt and Mr. Lamont:

The attached comments were prepared by the Association of State Wetland Managers (ASWM) in response to the *Federal Register* notice of a Proposed Rule: “Definition of Waters of the United States” – Recodification of Pre-existing Rules. ASWM is a nonprofit professional organization that supports the use of sound science, law, and policy in development and implementation of state and tribal wetland programs. We are pleased to take this opportunity to convey our positions to the Environmental Protection Agency and the Department of the Army.

Our organization and our member states and tribes have long standing positive and effective working relationships with both agencies in the implementation of dredge and fill regulations to protect our nation’s water resources, and trust that our comments will assist in moving forward to clarify the jurisdictional rule, and to increase regulatory stability as quickly as possible. The important and unique role of states and tribes in the management of water resources is clearly recognized in the Clean Water Act (CWA). Therefore, any action taken by the federal government to either expand or contract the scope of federal protection will have direct and significant impacts on the states and tribes.

We wish to emphasize what may seem obvious – that once jurisdiction is removed from a category of waters, then all protection provided by the Clean Water Act from any and all types of pollutant discharges is also removed. While ASWM is most conversant in the effects of a change in jurisdiction to dredge and fill permitting programs, we recognize that the impacts of changes in Clean Water Act jurisdiction extend to point source permits and other CWA programs as well as the Oil Pollution Control Act and waters eligible for Oil Spill Trust Funds. Thus, we believe there are many areas of broad agreement concerning waters that merit protection included in both the 1986/88 and 2015 rules that should remain part of Clean Water Act jurisdiction now and in the future.

We believe that the economic analysis developed in support of the proposed rule was deficient in that it failed to quantify any value for wetlands and other water resources in the cost benefit analysis. We have documented a robust selection of recent economic studies that quantify the economic and ecosystem service values of wetlands.

To offer just a single example, wetlands contribute to the storm resiliency of coastal economies via reducing the height of storm surges. A study on the benefits of coastal wetland flood damage reduction funded by Lloyd's of London, an insurance market, found that coastal wetlands prevented nearly \$626 million in damage from Hurricane Sandy alone. Given the significant market and non-market benefits associated with wetlands and other water resources, consideration of these values is an essential component of decisions regarding Clean Water Act jurisdiction.

Because we anticipate that the status quo use of post-*Rapanos* guidance to define jurisdiction may continue for some time while legal issues are resolved, we have also included recommendations in our comments for interim measures that may help to address both agency and public concerns through the careful application of existing regulatory measures, and potentially through development of additional technical and regional guidance. We have also taken a look forward to potential development of a new rule that focuses on the Scalia opinion, and have identified issues that should be taken into account as that development proceeds.

ASWM greatly appreciates the opportunity to comment at this initial stage of the federal agencies proposal for redefining jurisdiction over Waters of the United States. While these comments have been prepared with input from the ASWM Board of Directors and a technical workgroup, they do not necessarily represent the views of all individual states and tribes. We also encourage you to seriously consider the comments of individual states and tribes and other state associations. ASWM is prepared to continue to collaborate with the federal agencies, and to assist in informing the states of proposed actions throughout revision or redrafting of a CWA jurisdictional rule. Please do not hesitate to contact me should you wish to discuss these comments.

Sincerely,

A handwritten signature in black ink that reads "Jeanne Christie". The signature is written in a cursive, flowing style.

Jeanne Christie
Executive Director

ATTACHMENT

CC: Donna Downing, USEPA, OWOW
Stacey Jensen, USACE
ASWM Board