



BIG PINE PAIUTE TRIBE OF THE OWENS VALLEY

Big Pine Paiute Indian Reservation

P.O. Box 700 · 825 South Main Street · Big Pine, CA 93513

(760) 938-2003 · fax (760) 938-2942

www.bigpinepaiute.org

June 20, 2017

Submitted VIA email to:

CWAwotus@epa.gov

Gude.karen@epa.gov

RE: Presidential Executive Order (E.O.) 13778 on "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule"

The Big Pine Paiute Tribe of the Owens Valley (Tribe), a federally recognized Tribe with strong relations to water, opposes the United States Environmental Protection Agency (EPA) and United States Army Corps of Engineers (ACOE) efforts to rescind the 2015 Clean Water Rule and proposal to revise the definition of "Waters of the United States". The Clean Water Act (CWA) was passed in order "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." The Tribe objects to the two-step rulemaking approach which EPA and ACOE intend to follow to repeal and replace the 2015 Clean Water Rule. This approach will weaken the CWA nationally, suppress protection of tribal waters, and present an imminent threat to the health and welfare of both Tribal and non-tribal communities.

The Tribe views the determination of what waters are and are not subject to the CWA as very important due to the ability to protect water quality, including source water protection and regulation of both point and nonpoint pollutants. Gaps in such regulations resulting in inadequate protection for drinking water, inadequate control of stormwater pollution and inadequate control of point and nonpoint sources are major concerns of the Tribe. Tribes in California face degradation to their seasonal waters, where applications for medical and recreational cannabis cultivation has grown exponentially. The risks of fertilizer, pesticide and herbicide runoff into intermittent and ephemeral streams threaten drinking water sources for many tribes. Lessening CWA protection by creating gaps through the reduction of federal jurisdiction over waterways poses a significant risk to the health and welfare of tribes and their culture.

The Tribe understands that Step 1 of implementing E.O. 13778 is to withdraw the 2015 Clean Water Rule. Although the Tribe understands the 2015 Rule has yet to be implemented due to lawsuits, EPA and ACOE have not provided scientifically defensible reasons for repealing the 2015 Clean Water Rule. The 2015 Clean Water Rule was put in place after an extensive

scientific record had been established to clarify which streams and wetlands were in need of federal clean water protections through a thorough public process. The Tribe fails to see how EPA's proposal to reinstate the regulatory definition of the waters of the United States that was in place before the 2015 Clean Water Rule will provide clarity and predictability to the regulated community and public as claimed by EPA and ACOE.

The Tribe does not support EPA and ACOE's consideration to interpret the term "navigable waters" in a manner consistent with Supreme Court Justice Scalia's opinion in *Rapanos*. EPA and ACOE's reliance on Justice Scalia's opinion in *Rapanos* provides protection to wetlands only if they have a "continuous surface connection" to navigable waterways and extended protection to streams only if they were "relatively permanent". The shift to Scalia's narrow interpretation would cover far fewer waterways, leaving 60 percent of the nation's streams that do not flow year-round unprotected. Polluters could take advantage of the limited protection for headwater streams and waterways, but vulnerability to the effects of toxic runoff for communities downstream of intermittent watercourses will increase. E.O. 13778 calls for more certainty for industry, but what is needed is enhanced protection for people and the environment as well as clarity so that regulators may appropriately enforce the CWA.

The United States, in reaction to the 1969 fire on the Cuyahoga River, saw a growing public awareness and concern over water pollution, and as a result the Federal Water Pollution Control Act of 1948 was amended in 1972 to expand water protections. The Tribe desires EPA and ACOE to consider the historical context of water protection in the United States and recognize that reducing the amount of protected waterways opens the door to increased water pollution for the Nation. The United States has steadily improved in its ability to restore and maintain waters, and it is vitally important to continue moving in a positive direction. Water is considered the universal solvent capable of harboring and transporting a huge range of pollutants. Because water (clean or polluted) is the main component of all living organisms, including humans, and because access to the earth's limited supply of clean water is critical to the future of us all, the United States needs to continue the work of protecting water for today and future generations.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannon Romero". The signature is stylized with large, sweeping loops.

Shannon Romero
Tribal Chairwoman

cc: U.S. Congressman Col. Paul Cook (Ret.)
U.S. Senator Kamala Harris
U.S. Senator Dianne Feinstein