



June 19, 2017

Submitted via mail and electronic mail to CWAwotus@epa.gov

Donna Downing
1200 Pennsylvania Ave NW
Mailcode 4502T
Washington, DC 20460

Subject: Comments of the California Association of Sanitation Agencies on New Approach to Defining "Waters of the United States"

Dear Ms. Downing,

The California Association of Sanitation Agencies (CASA) is pleased to provide initial comments on an approach to defining "waters of the United States" under the federal Clean Water Act (CWA) currently under consideration. For 60 years, CASA has been the leading voice for public wastewater agencies on regulatory, legislative and legal issues. We also provide opportunities for the wastewater community to share ideas, creating a clean and sustainable environment for Californians. CASA's member agencies operate wastewater treatment and water recycling facilities that discharge into waters of the United States (WOTUS) as well as to waters of the state, and as such they will be directly impacted by any revisions to the definition of what constitutes a WOTUS.

Any revised definition should make clear that no changes are proposed to longstanding regulations that exclude (1) waste treatment systems designed to meet the requirements of the CWA and (2) prior converted cropland from the definition of a WOTUS. This is consistent with the definition of waters of the United States in federal regulations predating the withdrawn rule (See 40 CFR Part 122.2(2)(b)) as well as the version of the rule that has been withdrawn (80 Fed. Reg. 37054, June 29, 2015). We also suggest that any proposed rule clarify that the federal government does not intend to include groundwater within the reach of federal jurisdiction. This, too, is consistent with both the prior version of the rule and the rule that has since been withdrawn. (See 40 CFR Part 122.2(2)(b).)

These exemptions are an essential component of the existing regulatory framework that ensures effective local agency operations. The retention of the waste treatment exemption is one of the highest priorities for clean water agencies. Waste treatment systems designed to meet the requirements of the CWA are not waters of the U.S., and treatment systems should be defined to include any facilities, including storage ponds and basins, related not only to traditional treatment facilities and processes, but also to the production of recycled water.

Any proposed rule should also expressly state that the waste treatment exemption extends to recycled water facilities. It is essential that any proposed rule not interfere with recycled water production and treatment by making those features jurisdictional.

In the arid west, water and wastewater agencies must rely on a full suite of flexible options to provide potable and recycled water supplies for a variety of ongoing uses. Thus, CASA opposes any direct or indirect federal regulatory impacts on water recycling, water storage, and other mechanisms that play a part in recycled water infrastructure and processes.

California water recycling projects often depend upon artificially created wetlands and storage ponds to treat millions of gallons of water a day. If these features are considered waters of the U.S. and are excluded from the waste treatment exemption, they could theoretically no longer be used as an integral component of the waste treatment systems, forcing the closure of important recycled water projects critical to California's water supply.

Similarly, any proposed rule should also affirm that reservoirs or storage basins/ponds designed to store recycled water along with influent and treated effluent storage ponds are within the scope of the waste treatment exemption, consistent with the regulatory definition of "complete waste treatment system" found in existing federal regulations.¹ Because recycled water demand is variable with time of day and season, recycled water agencies maintain reservoirs or storage basins/ponds to store recycled water during periods of low usage in anticipation of peak demands. These features are an essential component of the recycled water process and integral to an agency's ability to continue reliably producing and supplying recycled water in many instances.

CASA appreciates your consideration of our comments. If you have questions or wish to discuss our perspective further, please contact Adam D. Link, CASA's Director of Government Affairs at (916) 446-0388 or Eric Sapirstein, CASA's federal representative, at (202) 466-3755.

Sincerely,



Adam D. Link
Director of Government Affairs

cc: Andrew Hanson (Hanson.Andrew@epa.gov)

¹ See 40 C.F.R. §35.2005(b)(12), defining "complete waste treatment system" as "all the treatment works necessary to meet the requirements of title III of the [CWA], involving . . . the ultimate disposal, *including recycling or reuse*, of the treated wastewater and residues which result from the treatment process." (Emphasis added); *see also* 40 C.F.R. §35.2005(b)(49) [definition of "treatment works" includes "storage of treated wastewater in land treatment systems before land application" among other things]