



## WATER QUALITY / QUANTITY COMMITTEE (QQ)

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Michael Shapiro  
Acting Assistant Administrator for Water  
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U.S. Environmental Protection Agency

SUBMITTED VIA EMAIL: [CWAwotus@epa.gov](mailto:CWAwotus@epa.gov)

**RE: Potential rewrite of the definition of “waters of the United States”**

Dear Mr. Shapiro and Ms. Downing:

These comments are submitted by Northwest Colorado Council of Governments Water Quality/Quantity Committee (QQ) in response to the EPA and Army Corps of Engineers request for local government comments regarding the potential rewrite of the “waters of the United States” regulatory definition, as directed in President Trump’s February 28 Executive Order (EO) on “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.”

QQ’s mission is to enable its member jurisdictions to protect and enhance the headwaters of Colorado while facilitating the responsible use of water resources in Colorado. Its members are municipalities, counties, and water and sanitation districts in the headwaters of the Colorado, Gunnison, Yampa and South Platte river basins. We collectively refer to this region as the headwaters, or headwaters region. Northwest Colorado Council of Governments is the designated Regional Water Quality Management Agency under Section 208 of the Clean Water Act (CWA), appointed by Executive Order of the governor of Colorado to prepare and implement the region’s 208 Plan.

QQ supports efforts to add clarity to the definition of “waters of the United States” while ensuring adequate water quality protection for the headwaters region. EPA has reported that the lack of clarity as to what waters would be jurisdictional after the *Rapanos* decision has resulted in waters not receiving water quality protection under the CWA, additional burdens on federal

agencies, and delayed timelines for permit-seekers.<sup>1</sup> QQ participated in the 2014 Clean Water Rule rulemaking, and, after providing detailed comments, generally supported the proposed rule as providing additional clarity and adequate water quality protection. While QQ supports increased clarity for the definition of “waters of the United States,” this clarity should not mean reduced water quality protection under the Clean Water Act. Instead, CWA jurisdiction should be based on scientific evidence of hydrological connections between rivers, streams, and wetlands.

Water quality in the headwaters of Colorado is critically important for our regional tourism economy as much as for environmental protection. Tourism is the largest employment sector in the headwaters region, comprising 48% of all jobs.<sup>2</sup> Tourism in the region includes fishing, hunting, kayaking, rafting, wading, lake and reservoir recreation, wildlife watching, hiking, and snowmaking for ski resorts, all of which depend on clean water. While many tourists recreate in the headwaters, the economic impact of tourism in the headwaters is felt statewide. Travelers to the headwaters region purchase most of their equipment and transportation services in the population centers on the Front Range of Colorado.<sup>3</sup> In addition, water from the headwaters region flows downstream to six other states and Mexico, providing water for use by more than 30 million people. Finally, local governments like those comprising QQ are charged with protecting water quality through their stormwater, wastewater and water treatment systems. Clean Water Act protections help to ensure safe drinking water and robust economies. Simplifying and clarifying the jurisdictional scope of federal authority over water bodies is essential to this goal, as is continued protection of headwaters streams and wetlands which impact downstream rivers that flow through headwaters communities.

We offer two specific comments on a potential rewrite of the “waters of the United States” definition based on Justice Scalia’s *Rapanos* plurality opinion (as directed in the February 28 Executive Order):

1. **“Relatively permanent” streams should include those with seasonal intermittent flows.** In the Colorado headwaters, almost all precipitation comes in the form of snow, which melts and creates headwaters streams that may not have year-round flows. Protecting these headwaters streams is just as important as protecting streams with equivalent year-round flows, as the impact to the downstream communities, environment, and economy is the same. Excluding headwaters streams could have negative consequences for the headwaters environment and economy.

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<sup>1</sup> Congressionally Requested Report on Comments Related to Effects of Jurisdictional Uncertainty on Clean Water Act Implementation, Report No. 09-N-0149 at 1- 2 (2009) <<http://www.epa.gov/oig/reports/2009/20090430-09-N-0149.pdf>>. This issue is discussed in more detail in Section 3.

<sup>2</sup> Coley/Forrest Inc., "Water and its Relationship to the Economies of the Headwaters Counties," Northwest Colorado Council of Governments, December 2011 <[http://nwccog.org/docs/qq/QQStudy\\_Outreach%20Summary%20Jan%202012.pdf](http://nwccog.org/docs/qq/QQStudy_Outreach%20Summary%20Jan%202012.pdf)>.

<sup>3</sup> For example, 57% of the economic impact from fishing is experienced in the Front Range, while only 14% is experienced in the headwaters counties. Coley/Forrest Inc., "Water and its Relationship to the Economies of the Headwaters Counties."

2. **All wetlands and other waters with a hydrologic connection to a jurisdictional water should considered “waters of the US.”** Streams and wetlands may be hydrologically connected in different ways, not necessarily through a surface water connection. The exact means of the connection should not affect whether the water receives protection under the Clean Water Act.

The nexus between headwaters streams and wetlands and Clean Water Act goals is aptly described in a paper published in the *Journal of the American Water Resources Association*: “[H]ydrological connectivity allows for the exchange of mass, momentum, energy, and organisms longitudinally, laterally, vertically, and temporally throughout stream networks and the underlying aquifers. Therefore, hillslopes, headwater streams, and downstream waters are best described as individual elements of integrated hydrological systems.”<sup>4</sup> Thus, CWA protection for waters at the top of the watershed is essential because these waters affect the biologic, chemical, and physical integrity of downstream navigable waters. There is no rational basis to exclude these waters from CWA protection because they always are functionally interconnected to the waters that they join.

Water quality protection in the headwaters region will become increasingly important as the region sees increased development and future water needs. Protecting water quality also means protecting the region’s economic backbone of tourism, recreation, and agriculture. A rule which delivers clarity on what waters are considered jurisdictional as “waters of the US” should also provide water quality protection for the headwaters streams and wetlands that deliver water to downstream communities.

Please do not hesitate to reach out with additional questions. Thank you for your consideration.

Sincerely,



Torie Jarvis

Co-Director and Staff Attorney

Northwest Colorado Council of Governments Water Quality/ Quantity Committee

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<sup>4</sup> Tracie-Lynn Nadeau and Mark Cable Rains, “Hydrological Connectivity Between Headwater Streams and Downstream Waters: How Science Can Inform Policy” *Journal of the American Water Resources Association* 43:1 (February 2007):128.