



## ASSOCIATION OF INDIANA COUNTIES, INC.

101 W. Ohio St., Suite 1575  
Indianapolis, Indiana 46204-2051

(317) 684-3710  
Fax: (317) 684-3713  
E-mail: [aic@indianacounties.org](mailto:aic@indianacounties.org)  
[www.indianacounties.org](http://www.indianacounties.org)

To: [CWAwotus@epa.gov](mailto:CWAwotus@epa.gov)

CC: [Hanson.Andrew@epa.gov](mailto:Hanson.Andrew@epa.gov)

From: David A. Bottorff, Executive Director, Association of Indiana Counties

The Association of Indiana Counties (AIC) is an incorporated non-profit organization representing county governments and county government officials in Indiana. All 92 counties in Indiana voluntarily join the AIC to collectively advocate public policy. Our Board of Directors is comprised of elected county officials including, but not limited to, county commissioners, county surveyors, and county councils who all have an impact on the financing and policy decisions of drainage and water quality in Indiana.

The AIC supports clarification and predictability in the definition of Waters of the U.S. but we do not believe an immediate expansion of the definition from the 2003 and 2008 guidance is necessary.

Per the Executive Order signed on February 28, 2017, we believe the Justice Scalia opinion in the *Rapanos vs. United States* (2006), should be the standard for defining Waters of the U.S. Waters without a hydrological or ecological connection to other navigable waters do not fall within the jurisdiction of the Clean Water Act.

If a new definition, or clarification of the Scalia opinions is necessary and advances through the rule making process, it should only attempt to clarify any ambiguity in the current rule.

We believe the definition of navigable water should be defined in the Clean Water Act as relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

We believe the definition of relatively permanent continuous surface connection should be perennial streams that carry flow throughout nine months of the year except in extreme drought or during freezing temperatures. This definition should minimize any expansion of the current rule and limit ambiguity in waters covered in the Clean Water Act. Diffused surface water flowing vagrantly over the surface of the ground should not be considered public water or under the jurisdiction of the Clean Water Act.

County commissioners, in consultation with county surveyors and county drainage boards, can determine if isolated wetlands, or waters that do not meet the definition suggested above, should be included in the Clean Water Act. Local officials can determine the connectivity through locally monitored metrics for the frequency and flow of non-permanent waters.

We appreciate the opportunity to provide these comments from the Association of Indiana Counties.