



June 14, 2017

Karen Gude
Office of Water Tribal Program Coordinator
American Indian Environmental Office

Sent by email to: gude.karen@epa.gov

RE: Revised Definition of WOTUS

Dear Ms. Gude:

The Kalispel Tribe of Indians has received EPA's offer to consult on the Agency's forthcoming proposal to rescind and then revise the definition of "waters of the United States." Although the Tribe does not wish to engage in government-to-government consultation at this time, we have serious concerns about EPA's proposal.

EPA appears to be interpreting President Trump's Executive Order as a mandate to interpret the term "navigable waters" in a manner that is consistent with Justice Scalia's opinion in *Rapanos*. That is not what the Executive Order requires.

The mandate is to "consider" such an interpretation. To do this, EPA must evaluate whether the body of science supporting the 2015 rule can rationally support the President's policy preference. As demonstrated by EPA's existing scientific analysis, the answer to this question is no. Justice Scalia's opinion is altogether unmoored from hydrologic fact.

As a practical matter, it also makes no sense to adopt a definition that will be legally challenged, that will work its way back to the Supreme Court, and that will be rejected by a majority of the Court. If the President wishes to adopt a less protective definition of "navigable waters," Justice Kennedy's opinion is a much sounder starting point.

All good environmental policy emerges from accurate scientific description. We urge EPA to push back on the Executive Order's cart-before-the-horse approach. It is essential that a regulatory decision that is critical to the protection of water resources be based on sound science.

Regards,

A handwritten signature in blue ink, appearing to read "Deane Osterman".

Deane Osterman
Executive Director, Kalispel Natural Resources