



TEXAS GENERAL LAND OFFICE  
GEORGE P. BUSH, COMMISSIONER

June 19, 2017

Scott Pruitt  
Administrator  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Douglas W. Lamont, P.E.  
Senior Official Performing the Duties of the  
Assistant Secretary of the Army (Civil  
Works)  
Office of the Assistant Secretary of the  
Army (Civil Works)  
108 Army Pentagon  
Washington, DC 20310-0108

Dear Administrator Pruitt and Senior Official Lamont,

The Texas General Land Office (GLO) appreciates the opportunity to comment on the proposed revision to the definition of the waters of the United States (Clean Water Rule: Definition of “Waters of the United States”; Final Rule, 80 Fed. Reg. 37,054 (June 29, 2015)). The GLO manages the surface and mineral rights of state-owned lands in Texas. These lands are dedicated to the Permanent School Fund (PSF)—a constitutionally created fund that distributes hundreds of millions of dollars annually to Texas public schools. As the custodian of this property, the GLO has a fiduciary obligation to maximize the PSF through revenue generated from the development of oil and natural gas from these lands.

With respect to the proposed revisions to the definition of the waters of the United States (WOTUS), the GLO functions much the same as a private land owner and shares many of the same concerns regarding the final rule that have been raised by such groups as farmers and ranchers. In that regard, we can add little new to what has already been said for over two years by these constituency groups. What we can offer is perspective on how the rule could impact the state of Texas, specifically the Permanent School Fund.

One of the most important roles of the GLO is the management of the Permanent School Fund (PSF), a constitutionally created fund that consists of 13 million acres of land and mineral rights. The total value of the PSF, which includes investments outside of what is managed by the General Land Office, is **\$35.8 billion**, making it the largest public education endowment in the country, and second in value only to Harvard’s. Money from these investments is used to fund the Texas public school system. In short, the PSF benefits every child in Texas.

The WOTUS rule as currently written threatens the GLO's ability to maximize our return on investment on state lands. Last year, despite a downturn in the oil and gas market, the GLO deposited over \$1 billion into the PSF. The uncertainty, costs, intrusion into the development of our state lands and ultimately the threat to millions, if not billions of dollars, in revenue for the Texas public school system are the reasons why the GLO sued the Environmental Protection Agency and the Army Corps of Engineers. On June 29, 2015, the GLO joined the Texas Department of Agriculture, Texas Commission on Environmental Quality, Texas Department of Transportation, Railroad Commission of Texas, the Texas Water Development Board and the states of Louisiana and Mississippi in suing the Environmental Protection Agency and the Army Corps of Engineers, challenging the legality of the final rule.

The jurisdictional scope of the Clean Water Act has long been a contentious issue that continues to this day with no clear direction from the U.S. Supreme Court of how to interpret the tests set forward in the *Rapanos* decision (*Rapanos v. United States*, 547 U.S. 715 (2006)). We fully support the executive order from President Trump that instructs the EPA and the USACE to adopt the Scalia test from *Rapanos* in implementing the CWA. We believe this is the proper interpretation that limits the authority of the Clean Water Act to permanent bodies of water that would typically be referred to as oceans, rivers and lakes.

In your letter, you note that the request for input was being done in a spirit of "cooperative federalism." This is a welcomed change in perspective and one we believe will produce the best policy for both the state of Texas and the country.

Thank you for this opportunity to comment on this important issue.

Sincerely,



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