



Wyoming Association of Conservation Districts
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June 19, 2017

Via Electronic Mail: CWAwotus@epa.gov & Hanson.Andrew@epa.gov

Donna Downing
US Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Ms. Downing;

Comments Re: *February 28, 2017 “Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.”; Consistent with E.O. 13132, Federalism, the EPA, Department of Army, and the Army Corps of Engineers are consulting with state and local government officials, or their representative national organization, while developing a revised definition of “waters of the United States.”*

Dear Sir/Madam:

On behalf of the Wyoming Association of Conservation Districts, representing Wyoming’s 34 local Conservation Districts, we are providing comments on the above referenced notice of coordination with state and local governments pertaining to the rule defining “Waters of the United States” for the purposes of establishing federal regulatory jurisdiction and increased certainty and clarity.

The Association is extremely supportive and pleased that the Administration is re-evaluating the 2015 WOTUS rule and appreciative, as a representative of local governments, for the advanced consultation.

The Districts, pursuant to Wyo. Stat. §§ 11-16-101 *et. seq.*, have the authority to implement soil and water conservation projects and programs, including but not limited to, flood prevention, the conservation, development, utilization and disposal of water within the district. The districts implement water quality assessment, planning and best management practice in the state to address those waters on the state’s section 303(d) list of impaired and threatened waters. As such, they have intricate knowledge and expertise of local watershed conditions and work extensively with landowners and their local communities to implement best management practices to enhance and improve water quality while maintaining the economic stability of Wyoming’s communities, and specifically, the agriculture industry.

The Association and its member districts directly implement several programs, projects and processes as they relate specifically to federal Clean Water Act requirements and/or the Wyoming Environmental Quality Act. These include, but are not limited to Section 305(b) State Water Quality assessments, Section 303 Water Quality Standards, Section 303(d) Water Quality impairment determinations/Total Maximum Daily Load programs, Section 404 permitting, Section 402, and the National Pollutant Discharge Elimination System, among others.

The extensive level of implementation activity conservation districts take in their activities related to water quality enhancement and improvement, specifically related to section 303(d), are detailed in the “Watersheds Progress Report” published periodically by the Association.¹ These reports also detail the financial investment that the districts, local communities, landowners/homeowners, and the State of Wyoming have put forth into water quality improvement efforts. In fact, in 2011 the conservation districts’ and State of Wyoming’s combined investment into watersheds over a span encompassing two years, 2009-2011, exceeded \$21 million. A significant portion of this \$21 million is non-federal, private, local and state government investments. All of these investments apply to those waters identified as impaired and threatened on Wyoming’s section 303(d) list. These costs do not reflect the State DEQ’s cost of completing TMDL development, which on average, is \$150,000 for each TMDL. The 2015 Watershed Progress Report, covering 2011 to 2014, included implementation of over 1,100 Best Management Practices to address water quality concerns.

In October 2014 the Association submitted extensive comments on the Agencies’ proposed rulemaking. As well, the Association filed an Amicus Curiae brief in *State of North Dakota, et al. v. United States Environmental Protection Agency, et al.*²

The Association offers the following for consideration and incorporation into a revised rule:

Jurisdictional waters should consist of and be limited to the following:

1. Those interstate waters that are navigable-in-fact and currently used or susceptible to use in interstate or foreign commerce. These waters include the territorial seas.
2. Relatively permanent, standing or continuously flowing streams, rivers, and lakes having an indistinguishable surface connection with navigable-in-fact waters described in 1.
3. Wetlands that directly abut and are indistinguishable from waters in 1 and 2. Wetlands are those areas inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstance do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes and bogs. Wetlands are indistinguishable from waters described in 1 and 2.

Definitions:

Indistinguishable means relatively permanent waters that are directly connected at the surface by other relatively permanent waters.

Relatively permanent means waters that contain water throughout the year except for infrequent periods of severe drought³ and having an indistinguishable surface connection with waters in 1.

Based on a GIS analysis at the USGS Hydrologic Unit 1:24,000 scale, the above recommendations will clarify and enable the regulated communities and local and state governments to determine jurisdictional waters, limit federal oversight as appropriate and recognize that states and local governments clearly have the capability and expertise to address their water quality protection.

The proposed definition of “Relatively permanent” is consistent with USGS HUC FCode 46006.

¹ Watersheds Progress Report, 2005; 2007; 2009; 2011; 2015 <http://www.conservewy.com/WATER.html>

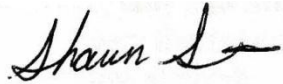
² Case No. 3:15-cv-00059-RRE-ARS

³ <https://nhd.usgs.gov/FeatureDirectory.pdf>

All other waters fall under state jurisdiction under which the several states have the sole and primary jurisdiction over their own waters.

Thank you for the opportunity to provide comment and input. The Association appreciates the Agency's true commitment to federalism principles, actions to reduce redundancy and regulatory uncertainty, and its respect for state and local jurisdiction to manage their own affairs.

Sincerely,

A handwritten signature in black ink, appearing to read "Shaun Sims", with a stylized flourish at the end.

Shaun Sims
President

Cc: Wyoming Congressional Delegation
Governor Matt Mead, Wyoming
National Association of Conservation Districts
Wyoming Department of Environmental Quality
Wyoming Department of Agriculture
Wyoming County Commissioners Association