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

RE: Comments to Presidential Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" Rule (WOTUS)

The Upper Columbia United Tribes (UCUT) is comprised of the Coeur d'Alene Tribe, Colville Confederated Tribes, Kalispel Tribe, Kootenai Tribe of Idaho, and the Spokane Tribe. Our common mission is to work together as the UCUT on issues of common concern for the betterment of the tribes, resources upon which the tribes depend, and for the benefit of all.

The UCUT is opposed to eliminating, or in any way reducing or replacing the Clean Water Rule (also known as the "Waters of the U.S.") that allows the standards of water quality to be further degraded. We support increased review of clean water act standards in accordance with the best available science.

Consultation with Indian Tribes, as regulators of water quality standards in line with the Constitution of the United States, and the Clean Water Act "Treatment as a State" status for Tribes needs to be acknowledged. The fiduciary trust responsibility to Tribes must be upheld, and consultation with the Tribes of the UCUT must occur for this action to move forward.

Replacing the Clean Water Rule (WOTUS) with something less restrictive is wrong. All life requires clean, pure water. The Clean Water Rule (WOTUS) under the Obama Administration, calls for strengthened cleaner aquatic life biota standards upon which human water quality standards are based.

The 2015 Clean Water Rule is designed to make water safer, and increase federal oversight by expanding the definition of navigable waters. 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.

Long-term economic sustainability is the objective of more protective water quality standards, attempted through EO 13132 and the Clean Water Rule (WOTUS).

Safer water promotes more jobs. Part of the increase in jobs is advancement of technology. Part of the increase in technology includes the planted seeds of a faith in sustainability that is life itself, including new technology for clean water, yet unborn. We need to encourage these new ways by opening doors to cleaner water, rather than returning to the old ways of “dilution is the solution” and a preference for a possible short-term economic gain. The federal government should take a longer-term view of economic sustainability.

An attempt to secure a short-term economic gain by relaxing water quality standards is short-sighted, and will not promote economic sustainability. This review of the Clean Water Rule must include an analysis of the longer-term result of creating jobs and economic sustainability by maintaining the 2015 rule.

If you desire more information, or require clarification, please contact me at dr@ucut-nsn.org; or 509-954-7631.

Sincerely,



Donald R Michel
Executive Director