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April 15, 2019

U.S. Environmental Protection Agency  
EPA Docket Center, Office of Water Docket  
Mail Code 28221T  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Attention: Docket ID No. EPA-HQ-OW-2018-0149

**RE: Definition of "Waters of the United States" Under the Clean Water Act Federal Rule Making Proposal**

Administrator Wheeler:

On behalf of the State of Iowa, the Iowa Department of Natural Resources (IDNR), the Iowa Department of Agriculture and Land Stewardship (IDALS), and the Iowa Department of Transportation (IDOT) offers the following comments on the U.S. Environmental Protection Agency's (EPA) proposed rule - Definition of "Waters of the United States" Under the Clean Water Act (CWA) - published in the Federal Register on February 14, 2019 (84 FR 4154).

The Governor, IDNR, IDALS, and IDOT appreciate the opportunity to comment on these proposed rules and support the EPA's efforts to revise the definition of the Waters of the United States. We have based our comments on our experience implementing and complying with the CWA since its inception. It is essential that any rule revision facilitate the implementation of existing state programs rather than raising new questions about the scope and meaning of the law.

The proposed new definition provides more clarity to an unclear understanding of what is a water of the US; however we seek revision and clarification to the proposed definition of Waters of the U.S. as follows:

1. Iowa believes it is necessary to define "typical year" and would recommend that additional details about what constitutes a "typical year" be provided in rule text rather than a final preamble. The proposed rule states that "The term typical year means within the normal range of precipitation over a rolling thirty-year period for a particular geographic area." This definition could be interpreted in a number of ways. Do the

wettest and driest individual years of the 30-year period define the “normal range of precipitation”? If so, then a stream that is intermittent once every 30 years would be jurisdictional. If that is not the intent, then the definition needs to be clarified to specify how to determine the “normal range” within that 30 year data set. Additionally, clarification on the definition of “a particular geographic area” is needed for consistent interpretation.

2. The proposed rule excludes artificial lakes and ponds in upland. Uplands are all areas that do not meet wetland criteria. The tributary definition is clear that a dam or artificial break does not cause the loss of jurisdiction. Based upon the tributary definition, it would appear that a water body consisting of an impounded tributary would be jurisdictional, even if that waterbody is artificial and floods upland. However, the exclusion could be read broadly enough to exclude this lake or pond. The scenario which Iowa wishes to avoid is one in which there is a non-jurisdictional segment within a jurisdictional Water of the U.S. Further clarification may be needed to ensure that scenario is avoided.
3. The proposed rule excludes stormwater control features excavated or constructed in an upland to convey, treat, infiltrate, or store stormwater runoff. Iowa recommends the exclusion language be revised to include an example of a nutrient removal wetland (in Iowa referred to as Conservation Reserve Enhancement Programs (CREP) or CREP-like wetland). The inclusion of these features adds more clarity and predictability to the rule.
4. Intermittent streams, which are proposed to be jurisdictional, include those streams that flow “seasonally when the groundwater table is elevated”. Iowa has an extensive network of artificial drainage tiling designed to drain excess precipitation in order to maintain healthy soils and avoid extended periods when the groundwater table would otherwise be elevated. For those streams that flow intermittently due to tile drainage, the determination of jurisdictional status is unclear under the proposed rule.
5. The proposed rule excludes ditches that are not identified in paragraph (a)(3). Iowa supports the exclusion of most ditches and recommends that this exclusion apply to all ditches not covered under paragraph (a)(3), regardless of flow regime. Iowa also recommends that paragraph (b)(4) be revised to include examples of what ditch types would be excluded, such as roadside ditches, agricultural ditches, and irrigation ditches. The inclusion of these ditch types adds more clarity and predictability for regulators and the regulated community.
6. Prior converted (PC) cropland is proposed as an exemption with the caveat that the exemption would cease to apply when cropland is abandoned (not used in support of agriculture in the last 5 years) and reverted to wetlands. The definition of agriculture should include land enrolled in a state/federal/local conservation program (such as the Conservation Reserve Program – CRP), which still maintains cropping history for Farm Service Agency (FSA) program purposes. This language would not discourage enrollment in such programs which would have implications for PC designations if enrolled in these programs.

7. The proposed rule excludes water-filled depressions created in an upland incidental to mining and pits excavated in an upland for the purpose of obtaining sand or gravel. This is favorable language, but an addition to include abandoned, historical mining operations would provide clarity to the permitting process.
8. The proposed idea to establish geospatial datasets of “waters of the United States” would provide needed predictability for the permitting process. While Iowa has found United States Geological Survey (USGS) topographical maps useful, a comprehensive evaluation with current technology and local expertise, along with stakeholder input, would provide better clarity. Iowa would also recommend the development of regionalized field indicators or a rapid and repeatable assessment method for identifying flow regime in the field. It is important to engage state and local stakeholders in the process of determining geospatial datasets for their areas of interest.

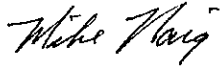
In conclusion, we believe that the proposed rule is a significant improvement to the 2015 WOTUS definition that expanded the scope of waters of the US while simultaneously adding uncertainty to how jurisdictional determinations will be made. The proposed rule conforms to EPA’s pre-2015 position that the CWA applies to perennial streams and such additional waterbodies that directly impact commerce with foreign nations and among the several states.

Thank you for letting us express our questions and concerns. We look forward to your response.

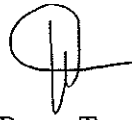
Sincerely,



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