



June 20, 2017

Karen Gude  
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United States Environmental Protection Agency  
Washington, DC 20460

Sent by electronic mail to [gude.karen@epa.gov](mailto:gude.karen@epa.gov), [CWAwotus@epa.gov](mailto:CWAwotus@epa.gov)

**RE: Proposal to rescind and then revise the definition of “waters of the United States” Executive Order 13778**

Greetings Ms. Gude,

The California Indian Environmental Alliance (CIEA) is writing you to offer comments regarding Executive Order 13778 and the creation of a new definition of ‘Waters of the United States’ for purposes of Clean Water Act regulations and enforcement. This comment letter is in response to a letter sent to Tribal Leaders from Secretary Pruitt on April 20, 2017.

CIEA provides information to low income families and California Tribal members on how to eat fish high in omega-3 fatty acids and low in environmental toxins. We work with federal and state agencies and California Indian Tribes to protect waters from toxins and clean up areas that contain unsafe fish. Because clean water results in healthy fish and healthy families we submit the following recommendations for EPA to consider as the ‘Waters of the US’ rule is revised.

First, we oppose any weakening of the definition or limiting of the number of streams that that are considered ‘waters of the US.’ Using Justice Scalia’s definition which “includes only those relatively permanent, standing, or continuously flowing bodies of water” and not water that “flows intermittently or ephemerally” would undermine efforts to protect or restore waters that provide healthy foods and other cultural benefits for California Indian Tribes and families. Wild-caught fish that are low in toxins are the main source of omega-3 fatty acids which provide the building blocks for developing babies through their mothers and small children, and protect against health problems throughout our lives. Fish and shellfish from healthy waters are also a source of income for thousands of families living near California rivers, lakes, streams and oceans.

We encourage the current administration, the EPA, the Army Corps of Engineers and relevant agencies to interpret and apply the “US Waters” definition as broadly as possible because we cannot protect major lakes, rivers and other waters unless we protect their sources upstream. It is our understanding that the EPA is specifically seeking feedback regarding the terms “relatively permanent” and “continuous surface connection.” It is important that even dry streams and riverbeds be considered as “waters of the United States” because, as our recent drought has reminded us, seasonality can be within a year or within multi-year cycles and we must have the ability to protect drinking water and water that supports aquatic life whenever water returns to those areas. Likewise, it is important to remember that

the geology and hydrology of a given location may require that springs, ponds, wetlands and ditches be considered part of the larger aquatic structure because they are interconnected as water flows through the system. Note that in the United States, 60% of stream miles only flow seasonally, and one in three Americans get drinking water from seasonal and rain dependent waters. Additionally, naturally ephemeral and intermittent streams and wetlands play an important role in the life cycle of fish, depending on the species and watershed. Excluding these streams from the protections afforded by the Clean Water Act undermines our ability to reverse the trend towards extinction for many aquatic species. There are site specific considerations that must be accounted for if we are truly interested in protecting aquatic and human health. Limiting the definition dangerously ignores the large body of supporting scientific evidence and is contrary to the intent of the Clean Water Act to protect human health.

We are also genuinely concerned that the current administration has targeted the Clean Water Rule for repeal without full disclosure of what will supplant this rule, without engaging in a full public process, and without properly consulting with Tribes. The letter dated June 20<sup>th</sup> initiates a truncated Consultation process and then asks for assistance in outreach and providing guidance to Tribes after the new Rule is created. It is not acceptable to merely “get the word out” afterwards and to provide trainings. This is backwards. The federal government has a Trust obligation to Tribes and can do much better to collaborate with Native American Tribes before new rules are created. In order to avoid future confusion or controversy, the public and Native American Tribes must be engaged in a robust review of the current Clean Water Rule, and any proposed changes must go through a lengthy public review process wherein a rigorous scientific review is conducted. Any other process is irresponsible and poses human health and environmental risks that would cost lives and billions of dollars in wasteful litigation, environmental cleanup and remediation. Time should be spent up front to allow for proper comments.

In conclusion, we ascertain that keeping the current Waters of the United States definition is an option before the current administration. We maintain that the Clean Water Rule is based on sound peer-reviewed science and long-standing agency experience in implementation of the Clean Water Act, and that it should be strengthened and interpreted broadly.

Thank you.

Sincerely,

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