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June 19, 2017

The Honorable Scott Pruitt  
U.S. Environmental Protection Agency

RE: EPA Request for Federalism Comments on Waters of the United States

Dear Administrator Pruitt,

The Iowa Department of Agriculture and Land Stewardship and the Iowa Department of Natural Resources offer the following feedback on the U.S. Environmental Protection Agency's (EPA) request for comments regarding "Waters of the United States." We appreciate the opportunity to comment on this matter, and support the Environmental Protection Agency's intentions to follow an expeditious process to rescind and revise the definition of the Waters of the United States.

The state of Iowa prides itself on being a national leader in improving water quality. In 2013, the Iowa Nutrient Reduction Strategy was put into place to assess and reduce nutrients delivered to Iowa waterways and the Gulf of Mexico using a science and technology-based approach. The strategy outlines voluntary efforts to reduce nutrients in surface water from both point sources, such as wastewater treatment plants and industrial facilities, and nonpoint sources, including farm fields and urban areas, in a scientific, reasonable and cost effective manner. This statewide strategy, which follows the recommended framework provided by the Environmental Protection Agency, has served as a model for several states and has led to measurable progress in Iowa water quality. Early results include farmers and 200 local organizations working together in 56 demonstration projects in targeted watersheds to help implement and demonstrate water quality practices. This includes 16 targeted ag demonstration projects, 7 projects focused on expanding the use and innovated delivery of water quality practices, and 34 urban water quality demonstration projects. These partners will provide more than \$26.5 million to go with more than \$17.2 million in state funding going to these projects. The total nitrogen load reduction from 3 select conservation practices was more than 3.8 million pounds. These early results are great examples of Iowa's historic collaborative efforts to maintain the health and vitality of our rivers, lakes, and streams. Unfortunately we have experienced delays in implementation of environmentally beneficial projects and other burdens resulting from the current definition and implementation of the Waters of the United States Rule. We provide the following input on how this rule could be more effective and less restrictive for Iowa, and allow us to reach the ambitious goals laid out in the Iowa Nutrient Reduction Strategy and clean water overall.

**Question 1 - How would you like to see the concepts of "relatively permanent" and "continuous surface connection" defined and implemented? How would you like to see the agencies interpret "consistent with" Scalia? Are there particular features or implications of any such approaches that the agencies should be mindful of in developing the step 2 proposed rule?**

Given the inconsistency and various interpretations of the scope of the Clean Water Act's authority over bodies of water such as wetlands and seasonal streams, we believe there needs to

be specific, concise language used regarding the concepts of “navigable water,” “relatively permanent” and “continuous surface connection.” The often repeated goal of EPA and USACE efforts to revise the definition of Waters of the U.S. (WOTUS) is to provide clarity. The rules must take into consideration the language of the Clean Water Act and all applicable U.S. Supreme Court Rulings. The 2015 rulemaking sacrificed clarity in its attempt to implement the significant nexus test. This welcome switch to Justice Scalia’s approach must focus solely on the goal of a clear and concise definition that is implementable by the States and understandable to the regulated public. Jurisdiction must be limited to those physical land features that contain water at all times except during extraordinary circumstances such as drought. To that end, “relatively permanent” should be limited to perennial rivers and streams and permanent lakes and wetlands that are adjacent, and connected directly to, perennial rivers and streams. The perennial nature of the rivers and streams would satisfy both criteria of being relatively permanent and having a continuous surface water connection. The connection between a lake or wetland and the adjacent river should also be continuous except during extraordinary circumstances such as drought.

There is precedent in Iowa for the determination by EPA that only perennial rivers and streams are jurisdictional. Pursuant to the EPA’s regulations, states must assume that all jurisdictional waters are capable of attaining all aquatic life, recreational, and other uses unless a scientific analysis has been completed and determined that certain uses could not be attained. For purposes of implementing this rebuttable presumption in Iowa, the EPA in 2006 approved Iowa administrative rule 567 IAC 62.3(1)(b) in which Iowa has applied the presumption to “All perennial rivers and streams as identified by the U.S. Geological Survey 1:100,000 DLG Hydrography Data Map (published July 1993) or intermittent streams with perennial pools in Iowa are designated as Class A1 waters.” A similar approach undertaken nationally would provide much needed clarity, and would be consistent with Justice Scalia’s plurality opinion in *Rapanos v. United States*.

In developing the new rules consistent with President Trump’s Executive Order, “*Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the “Waters of the United States” Rule*,” it is important to note that all exemptions from the 2015 Clean Water Rule should be reinstated. For example, the previously-exempt Conservation Reserve Enhancement Program (CREP) wetlands serve to improve water quality through the removal of nutrients and other contaminants. We request that the Environmental Protection Agency consult with States to determine what additional exemptions should be included in any revised rule.

**Question 2 - What opportunities and challenges exist for your state or locality with taking a Scalia approach?**

The state of Iowa would benefit from taking a “Scalia approach” to the Waters of the United States proposed rule and from considering the statutory language of the Clean Water Act and other U.S. Supreme Court precedent. We are confident this would result in a positive opportunity to reduce administrative overhead, cost and amount of administrative work, and would provide significant benefit to taxpayers. Previously, we have experienced delays related to jurisdictional determinations and establishment of the conditions of permits associated with the development of environmentally beneficial projects. There are potential opportunities for greater efficiencies in the implementation of future road construction and other critical infrastructure projects. We feel that the “Scalia approach” offers a more efficient, and expeditious approach to associated implementation of the new WOTUS rule.

**Question 3 - Do you anticipate any changes to the scope of your state or local programs regarding CWA jurisdiction? If so, what sort of actions do you anticipate would be needed?**

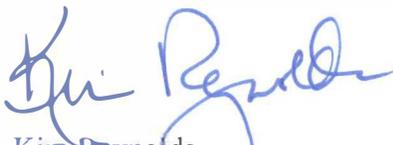
The overriding concern of a diverse group of impacted stakeholders, including state leaders, is that any new rule may impose significant barriers to the advancement of innovative, state- and local-driven conservation and environmental practices that would actually advance our common goal of water quality. The Trump Administration's intentions that "waters are kept free from pollution while at the same time promoting economic growth and minimizing regulatory uncertainty" are achieved with the goals that we have previously discussed. We further stress the importance of engaging stakeholders that will be impacted by the new WOTUS rule at all levels and especially at the local level. There must be engagement in developing this rule from the ground up, and not just at the federal agency level. This ensures that end users, such as our landowners and others that enjoy the use of Iowa's rivers, lakes, and streams, can better understand the impact that this new rule can and will have on their livelihoods.

**Question 4 - Are there any other programs specific to our region, state, or locality that could be affected but would not be captured in such an economic analysis?**

There are likely programs specific to the state of Iowa that could be affected but would not be captured in the federal Clean Water Act economic analysis. Until we see proposed language for any new definition or rule, we cannot adequately determine what programs will be impacted and to what extent. A more narrow definition of WOTUS that aligns with the statute could be beneficial to Iowa programs to provide more certainty or predictability regarding what is jurisdictional within a project, therefore streamlining the administrative portion of a project which will result in cost savings.

We strongly urge the EPA and US Army Corps of Engineers to listen to the consensus concerns of the States, including Iowa, to revise and put into place a better, less restrictive and more effective, Waters of the United States rule. Together, we look forward to continuing our commitment to improve water quality and our water resources.

Sincerely,



Kim Reynolds  
Governor of Iowa



Adam Gregg  
Lt. Governor of Iowa

Cc: Bill Northey, Secretary, Iowa Department of Agriculture and Land Stewardship  
Chuck Gipp, Director, Iowa Department of Natural Resources