



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

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Eric J. Holcomb
Governor

Bruno L. Pigott
Commissioner

June 19, 2017

The Honorable E. Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Waters of the United States

Dear Administrator Pruitt:

The state of Indiana values the opportunity to provide the U.S. Environmental Protection Agency (U.S. EPA) and the U.S. Army Corps of Engineers (Corps) with comments on how to proceed with a national rulemaking to revise the Definition of “Waters of the United States” Under the Clean Water Act. The Indiana Department of Environmental Management (IDEM) relies on a clear and reliable interpretation of the definition of Waters of the United States (WOTUS) for the daily implementation of the Clean Water Act (CWA) water quality programs in Indiana.

We particularly commend the effort EPA and the Corps is making to perform a true federalism review and engage the States, as co-regulators, in development of any revised rule language. We agree that in the wake of *Rapanos v. United States* there is a need to clarify the applicability of the CWA to certain waters, and believe that this federalism review and consultation with state and local officials will reduce misunderstandings regarding the intent and meaning of a revised rule.

As you move forward in developing the revised rule, please continue to remember that the states know best how to protect the waters of their state. The U.S. Supreme Court has noted that:

“Congress passed the CWA for the stated purpose of ‘restoring and maintaining the chemical, physical, and biological integrity of the Nation’s waters.’...In so doing, Congress chose to ‘recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution....”

Admittedly, *Rapanos* leaves open the jurisdictional limitations under the CWA, but this open question should be resolved in favor of the states. State regulators are more familiar with and accountable to their regulated industries than distant federal regulators. We do not need additional layers of federal bureaucracy in order to realize the goal of the CWA.

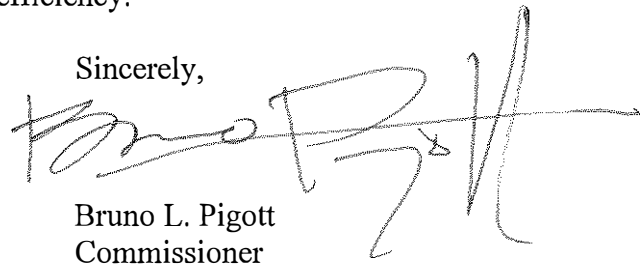
We have reviewed Justice Scalia’s opinion in *Rapanos v. United States* 547 U.S. 715 (2006) and support his interpretation that “the phrase ‘the waters of the United States’ includes only those relatively permanent, standing or continuously flowing bodies of water ‘forming geographic

features' that are described in ordinary parlance as 'streams[,] ...oceans, rivers, [and] lakes.'" We also support his further clarification: "By describing 'waters' as "relatively permanent,' we do not necessarily exclude streams, rivers, or lakes that might dry up in extraordinary circumstances, such as drought. We also do not necessarily exclude seasonal rivers, which contain continuous flow during some months of the year but no flow during dry month...." Indiana wants to ensure that critical, seasonal waters are regulated to maintain the quantity and quality of water necessary to support our public health, recreational, and business needs.

Indiana prefers rules over guidance for both clarity and enforceability. We believe the inclusion of specific, clarifying exceptions/exemptions/exclusions in addition to those permitting exemptions already existing in Section 404(f) of the Clean Water Act would be a useful addition to the rule. If, during implementation, these exceptions are treated as iron clad and not second guessed, the added specificity will expedite the determination of the need for, and the issuance of, some 401 water quality certifications.

Finally, we appreciate the U.S. EPA's swift attention to clarifying WOTUS. The sooner we can get clarity on jurisdictional waters, the sooner we can all reduce redundancies in regulation and issue any necessary, protective permits with increased efficiency.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruno L. Pigott", with a long horizontal stroke extending to the right.

Bruno L. Pigott
Commissioner

cc: Eric J. Holcomb, Governor, Indiana
Robert Kaplan, US EPA