



GOVERNOR OF MISSOURI

JEFFERSON CITY
65102

ERIC R. GREITENS
GOVERNOR

P.O. Box 720
(573) 751-3222

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The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Pruitt:

The State of Missouri appreciates the opportunity to offer insights as the Environmental Protection Agency (EPA) moves to revise the definition of Waters of the United States (WOTUS). We applaud your effort to minimize the regulatory uncertainty that has been associated with this unnecessarily complex definition. EPA's recognition that it is crucial to keep our waterways free of pollution while promoting economic opportunities is commendable.

We believe that an appropriate WOTUS definition will be limited in scope. EPA has historically interpreted WOTUS too broadly. As a result, it has been difficult, if not impossible; to answer what should be a relatively straightforward question: What is *not* a Water of the United States? EPA should take this opportunity to directly answer that question.

Missouri already implements a robust yet appropriate water protection framework. Missouri's Department of Natural Resources (MoDNR) has worked well with the EPA over the years to implement the Clean Water Act and will continue to do so in the future. We appreciate EPA's continued support while MoDNR continues to lead the conversation in Missouri on clean water issues. With that in mind, please consider these comments as you move forward.

EPA Discussion Questions and State of Missouri Responses

EPA asked four questions on April 19, 2017:

- 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?**

For purposes of implementing the delegated portions of the Clean Water Act, all waters in Missouri receive protections appropriate to their uses. In Missouri, streams that have perennial flow, and streams that maintain permanent pools during normal dry periods and that contain

aquatic life, are presumed to have the uses listed in Section 101(a) of the Clean Water Act. This approach has served Missouri well from a regulatory and resource management standpoint and offers protections to Missouri waters that appropriately capture Justice Scalia's concept of "relatively permanent" waters. We offer the perennial flow/permanent pool model as a straightforward, workable model for defining what constitutes a relatively permanent water.

"Continuous surface connection" for purposes of wetland connectivity is not defined in Missouri law and Missouri does not have a comparable standard to offer. We would observe that in the context of Scalia, the term denotes a *hydrologic* connection, not a biological or other functional connection. We would also observe that, by definition, a "continuous" connection is one that is uninterrupted and constant. This would indicate that a hydrologic influence exists under normal conditions, as opposed to a connection that is infrequent or which only occurs under extreme conditions.

The existing exemptions, e.g., for farmed wetlands, stock and farm ponds, farm and forest roads, etc., should be retained. Common sense exemptions for highway and road ditches and irrigation features should also be codified.

Clarity and certainty of outcome are important to all: landowners, the public, and regulators alike. In addition to the correct definitions, tools that make jurisdictional determinations more predictable will expedite the decision process for everyone involved in the application and approval process. Missouri's classification system for lakes and streams is a GIS-based hydrographic map data set, which is incorporated into regulation. Through this system, anyone can determine a water body's classification through an interactive online mapper. The data is integrated to provide faster permitting decisions. Waters can be added or removed from the system through a use attainability analysis of site-specific conditions. We encourage EPA to consider use of technology to make the jurisdictional determination process clearer and more accessible to all.

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

Missouri understands its water resources and has demonstrated the ability to protect those resources from pollution. Having flexibility to craft our own jurisdictional approach has resulted in greater coordination and cooperation among stakeholders and permittees, and greater regulatory and technical innovation in water protection. We believe our current approach to stream protection is consistent with a Scalia approach, as we understand it. Furthermore, the Scalia approach could provide a practical framework for identifying and applying uses to an appropriate set of jurisdictional wetlands for the application of water quality criteria.

- 3. Do you anticipate any changes to the scope of your state or local programs (e.g., regulations, statutes or emergency response scope) regarding CWA jurisdiction? In addition, how would a Scalia approach potentially affect the implementation of state programs under the CWA (e.g., 303, 311, 401, 402 and 404)? If so, what types of actions do you anticipate would be needed?**

Missouri anticipates very little programmatic impacts from this approach. Of the programs that Missouri administers, no significant additional burden is expected with respect to identifying and remedying impaired waters (Section 303) or implementing the National Pollution Discharge Elimination System permit program (Section 402). Water quality certification work (Section 401) likely would be streamlined.

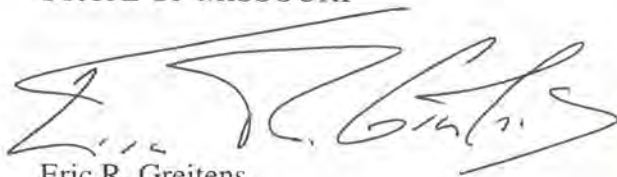
- 4. The agencies economic analysis for step 2 intends to review programs under CWA 303, 311, 401, 402 and 404. Are there any other programs specific to your region, state or locality that could be affected but would not be captured in such an economic analysis?**

We anticipate that a WOTUS approach tailored to the Scalia opinion will streamline activities related to management of state and local facilities, including construction and maintenance of utilities, roadway infrastructure, and other government facilities.

We appreciate the opportunity to provide input on this important issue. For questions or further assistance, please feel free to contact Carol S. Comer, Director of the Missouri Department of Natural Resources, at 573-522-6221.

Sincerely,

STATE OF MISSOURI



Eric R. Greitens
Governor

DEPARTMENT OF NATURAL RESOURCES



Carol S. Comer
Director