



# The Saginaw Chippewa Indian Tribe Of Michigan

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Karen Gude  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Mail Code: 4101M  
Washington, DC 20460

**RE: Proposal to Rescind and Revise Clean Water Rule: Definition of “Waters of the United States”; Final Rule, 80 Fed. Reg. 37,054 (June 29, 2015).**

Karen Gude:

The Saginaw Chippewa Indian Tribe of Michigan’s (Tribe) hereby provides comments regarding the Environmental Protection Agency’s (EPA) proposed action to rescind and revise the definition of “Waters of the United States” (Clean Water Rule: (CWR) Definition of “Waters of the United States”; Final Rule, 80 Fed. Reg. 37,054 (June 29, 2015)) under Presidential Executive Order (EO) 13778. The Tribe requests the EPA reevaluate EO 13778 after taking our comments into consideration. The Tribe has reviewed the documents associated with the EO 13778 and the CWR: Definition of “Waters of the United States”; Final Rule, 80 Fed. Reg. 37,054 (June 29, 2015) in its entirety and we recommend that the proposed decision be withdrawn. The Tribe believes there is insufficient evidence to repeal the CWR. In the event that EPA is moving forward, the Tribe has concerns and submits recommendations to be included under the new definition.

## **The Clean Water Rule Was Adequate**

The CWR was developed and backed with extensive research and external participation. It cites over 1200 peer-reviewed scientific studies, conducted extensive outreach, and obtained agency and public input (over a 200 day comment period, over 400 public meetings, and reviewed over one million comments), and a majority of comments received were in support of the CWR. Studies on the CWR demonstrated it would have a positive impact on public health and that it would be economically friendly. The science has not changed; therefore, before repealing the CWR, it must be demonstrated that it is inadequate. Any other approach is a waste of taxpayer dollars now and a risk to human and environmental health and safety down in the future.

## **The Proposed Interpretation Will Impact Tribal Waters**

The Federal government is trusted with the responsibility of protecting lands and waters within Tribal boundaries by ensuring that regulations adequately protect water quality in these areas. A

change in interpretation of “Waters of the U.S.” will alter how water bodies are regulated under the CWA, including waters within Tribal boundaries. If the interpretation is narrowly applied, as suggested by the EO, the Federal government will likely fail to uphold its responsibility of protecting lands and waters, including those within Tribal boundaries.

**Response To EPA Question: For The Purposes of the Clean Water Act, What Waters Should Be Jurisdictional? Why?**

The Saginaw Chippewa Indian Tribe is concerned that the proposed definition will not protect the following waters that are of special concern to the Tribe:

- Chippewa River Upstream of Coldwater
- Chippewa River Downstream of Coldwater
- North Branch Chippewa River
- Coldwater River
- North Branch Salt Creek
- South Branch Salt Creek
- Jordon Creek
- Spring Creek
- Hogg Creek
- Mission Creek
- Harden Creek
- Black Creek
- Drains Located in Waters of the U.S.
- Coldwater Lake
- Weidman Millpond
- Grewes Lakes #1
- Grewes Lakes #2
- Buck Run Golf Club Lake
- Herrick Recreational Area Lake
- Scott Lake
- Riley Lake
- Barnard Lake
- Wahl Lake
- Campau Lake
- McLaughan Lake
- Other Lakes
- Wetlands greater than 1 acre hydraulically connected - Hydraulically connected to other nearby waters, via groundwater
- Similar water bodies in Saganing, including Saganing River

These water bodies are, can, and/or should be able to be safely used for total and partial body contact for recreation and drinking water supplies; water quality should support traditional, cultural, ceremonial, wild rice, aquatic life, warm and cold water fisheries, navigation, industrial, commercial, and agricultural uses; and water quality should protect sacred, cultural, and/or historical waters. The pollution in these water bodies should not pose a threat to environmental or human health, culture, or sustenance fishing, hunting, or gathering.

**Response to EPA Question: What Sources of Costs And Benefits Should the Agencies Especially Consider When Considering a Change in The Definition of “Waters of The U.S.” as Suggested by the E.O.? Is There Any Information About the Costs And Benefits the Agencies Should Consider in Their Economic Analysis?**

The agencies should consider the costs and benefits analyzed in the U.S. EPA report “Economic Analysis of the EPA-Army Clean Water Rule,” (2015). This report provides a comprehensive analysis of the direct and indirect costs and benefits of the CWR interpretation. According to the Report, the CWA provides indirect benefits that substantially outweigh the costs of regulation. Annual indirect costs and benefits (using the original number of U.S. Office of Resource Management’s other water records quantified in this report) include those associated with

Concentrated Animal Feeding Operations (CAFO), stormwater administration and implementation, permit applications and wetland mitigation.

The socio-economic analysis of costs and benefits described in the U.S. Army Report “Finding of No Significant Impact, Adoption of the Clean Water Rule: Definition of Waters of the United States” concluded that “indirect incremental benefits are expected to exceed the indirect incremental costs” if the CWR was adopted (2015.) This CWR meant that the “other waters” category would increase positive jurisdictional determinations by changing the baseline for which the “No Action” conclusion is allowed.

If there is new information to consider that invalidates the previous reports and the EPA decides to pursue a new analysis, the analysis should be completed by an outside contractor with no conflicts of interest. Costs tend to be more direct, measurable, and are relatively simple to assess. Because of the extensive amount of direct and indirect benefits the US receives from the CWA, it is important that these benefits are comprehensively and effectively estimated, such as was done in the “Economic Analysis of the EPA-Army Clean Water Rule” and socio-economic impacts described in the “Finding of No Significant Impact, Adoption of the Clean Water Rule: Definition of Waters of the United States”.

In the case of a new analysis, costs should consider but are not limited to the costs associated with increased burdens placed on our local communities to reactively improve water quality under a narrow definition and complications and inconsistencies that will arise when the law becomes increasingly difficult to interpret as we experience a changing climate. The indirect costs that should be analyzed include but are not limited to increased healthcare, drinking water treatment, tourism-based economies, businesses, and environmental costs. Environmental costs include but are not limited to stormwater management, water quality, and restoration. Furthermore, clean water is the most necessary component for life to exist; no other component holds more significance. Any analysis should also attempt to appropriately quantify this fact, in order to fully ascertain the cost associated with this change.

**Response to EPA question: If Particular Water Resources, Such as Ephemeral Streams, Intermittent Streams, Wetlands That Don't Connect to the Tributary System, or Wetlands That Don't Directly Touch the Tributary System Are Excluded from Federal Jurisdiction, How Might This Affect Your Constituencies?**

Based on the Tribe's history, culture, and practices, it is important that we protect more than just “navigable waters,” in its narrow meaning. In our culture, small water bodies are significant. These smaller bodies are invaluable resources for drinking water, sustenance fishing, and ceremony. These bodies of water include ephemeral streams, intermittent streams, wetlands that don't connect to the tributary system, and wetlands that don't directly touch the tributary system.

It is necessary that these types of uses are considered and protected. The regulation of all water bodies is important because they are all relevant to the interconnected watersheds and ecosystems in which we live, even if they are not hydraulically connected or without permanent flow. Just because a water body is not “navigable” does not mean it will not impact human, economic, and environmental health and community wellbeing.



**Response to EPA question: Do You Foresee Any Unintended Economic Effects on Your Constituents as a Result of Changes to The Definition?**

The Tribe foresees negative economic consequences as an effect of changing the definition. Water bodies within the Tribal Reservation are already impaired. These impairments have had negative impacts on tourism in the area. For example, elevated *E. coli* levels in the Chippewa River have led to a significant decrease in tubers, kayakers, canoers, and swimmers on the River. The Mt. Pleasant area depends on this revenue for various businesses and operations. The City of Mt. Pleasant also regularly exceeds its bacterial and bacterial treatment byproduct standards for drinking water that is pulled from the Chippewa River. Any further deregulation and increase in pollution would devastate the area economically. Additionally, this would lead to burdensome responsibilities for local governments as they attempt to offset the consequences with far less resources and expertise.

**Response to EPA Question: Are There Potential Variations Across States or Tribes Resulting From a New Federal Definition That May Have an Effect on Your Constituents and Their Communities?**

There are significant variations across states and tribes that impact water quality. For example, the Tribe's Tribal Reservation alone contains three different ecoregions: northern lakes and forests, southern Michigan/northern Indiana drift plains, and Huron/Erie lake plains. These different ecoregions encompass different ecosystems that all filter and tolerate pollution inputs very differently.

The Great Lakes Region holds significant importance to the national economy. Not only do the Lakes hold 20% of the world's freshwater, but they are ecologically significant, contain invaluable unique habitats, provide more than 1.5 million Great Lakes-related jobs, and generate over \$62 billion in wages. Therefore, water bodies within the Great Lakes basin need to be regulated differently to appropriately protect and restore water quality. The broader definition in the CWR is more in line with this idea. The suggested "navigable waters" definition would not protect waters to a high enough standard to support these geographic variations.

**Response to EPA Question: If the definition changes, what would be the best way to "get the word out" and provide training and information to Tribes?**

Issues such as this should be sent directly to Tribes, discussed at tribal meetings including National and Regional Tribal Operations Committees in advance of the tribal comment period, distributed to Regional Tribal Liaisons for further distribution to tribal staff, and on additional relevant calls/meetings as appropriate. On issues this impactful and complex, it would be helpful to have training and information sessions in advance of tribal comment periods. Furthermore, EPA should be able to provide information about how policy changes will impact tribal programs, sovereignty, and treaty rights.

Consequently, we still have the following questions:

1. How does the EPA anticipate a reduction in Clean Water Act jurisdiction might affect tribal water programs, such as 401 water quality certification or water quality standards?
2. How might a change in definition and reduction in Federal permitting affect other Tribal programs and interests?

Please consider our comments as you evaluate the proposed action to rescind and revise the definition of “Waters of the United States” (Clean Water Rule: Definition of “Waters of the United States”; Final Rule, 80 Fed. Reg. 37,054 (June 29, 2015)) under Presidential Executive Order 13778. We appreciate the opportunity to work collaboratively with the EPA, and we thank you for this opportunity to provide meaningful comment.

Sincerely,

A handwritten signature in blue ink, appearing to read "Frank J. Cloutier".

Frank J. Cloutier, Tribal Chief  
Saginaw Chippewa Indian Tribe