



Pokégnek Bodéwadmik · Pokagon Band of Potawatomi  
Department of Natural Resources

Box 180 · 32142 Edwards Street · Dowagiac, MI 49047 · [www.PokagonBand-nsn.gov](http://www.PokagonBand-nsn.gov)  
(800) 517-0777 · (269) 782-9602 · (269) 782-1817 fax

March 4, 2019

Rose Kwok  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave. NW  
Washington, DC 20460  
[cwawotus@epa.gov](mailto:cwawotus@epa.gov)

Stacey Jensen  
Department of Defense  
U.S. Army Corps of Engineers  
441 G Street NW  
Washington, DC 20314

Re: Revised Definition of Waters of the United States

To the representatives of the Environmental Protection Agency and Army Corps of Engineers:

The Pokagon Band of Potawatomi ("the Band") hereby requests formal consultation with the U.S. Environmental Protection Agency and the U.S. Department of the Army regarding the proposed rule for the revised definition of "waters of the United States" signed on December 8, 2018. The Pokagon Band Department of Natural Resources (PBDNR) has been reviewing the proposed revised definition of waters of the United States ("WOTUS") put forth by your agencies and is interested in discussions regarding the proposed rule. To bring greater clarity to these changes we request consultation that includes, but is not limited to the following issues:

- 1) Under the adjacent wetland's definition, how will it be determined which wetlands have a hydrological surface connection in a typical year? Would this definition result in less floodplain protection under current practices and under the Clean Water Rule?
- 2) Does the currently proposed definition of WOTUS consider that intermittent/ephemeral streams contribute beneficial niche habitat during biologically sensitive times such as during early spring/summer thaws and flood pulses? Or the possibility that they may hold pollutants that could affect downstream waters. *Reference: Levick, L. et al. Nov. 2008 EPA/600/R-08/134*



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- 3) The Pokagon Band is located in southwest Michigan and northcentral Indiana. This area of the country is plentiful in groundwater that tends to be merely feet below the ground surface. This results in many of the ditches across the State to be perennial in nature or exhibit wetland characteristics. Are you expecting significantly fewer ditches to be considered jurisdictional in Michigan and Indiana with this definition change?
- 4) How is the definition of a typical year used in field assessments to decide WOTUS? In the proposed WOTUS definition a typical year is defined as "within the normal range of precipitation over a rolling thirty-year period for a particular geographic area." The definition of a typical year is further elaborated on later in the proposed rule, stating:

"The agencies consider a year to be "typical" when the observed rainfall from the previous three months falls within the 30th and 70th percentiles established by a 30-year rainfall average generated at NOAA weather stations. A typical year would generally not include times of drought or extreme floods. A rolling 30-year period would account for variability to provide a reliable indicator of the climate in a given geographic area without being confounded by a year or two of unusual climate data for the given area. The geographic area proposed to be used by the agencies would be on a watershed-scale basis to ensure specific climatic data are representative of the landscape in relation to the feature under consideration for meeting the tributary definition."

For PBDNR to fully understand the definition of a typical year we would need to understand how the definition is applied to real world scenarios and better understand what is meant by "watershed scale basis."

- 5) In the proposed WOTUS definition, the separate category of interstate waters is removed from the definition of WOTUS. Although the category of interstate waters has been removed, a water body that crosses a state line can still be considered WOTUS if it meets the requirements for other categories within the proposed definition. To our understanding, the category of interstate waters most recently included any water body that crosses over a state boundary. However, the category of interstate waters has historically been uncertain. PBDNR would like consultation on how the elimination of the category of





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interstate waters would affect waters that cross from state lands into tribal trust lands and if those water are currently considered interstate waters.

Thank you for reading our request for consultation. To schedule an appointment for consultation or if you have any questions or concerns please contact Jennifer Kanine, Pokagon Band Department of Natural Resources Director, at 269-782-9602 or [Jennifer.Kanine@PokagonBand-nsn.gov](mailto:Jennifer.Kanine@PokagonBand-nsn.gov).

Sincerely,

Matthew Wesaw, Tribal Chairman  
Pokagon Band of Potawatomi Indians