



Confederated Tribes of Warm Springs, Oregon
PO Box C
Warm Springs, OR 97761
Phone: 541-553-1161
Fax: 541-553-1924

June 20, 2017

Karen Gude
Tribal Program Director
U.S. Environmental Protection Agency/Office of Water

Gude.karen@epa.gov
CWAwotus@epa.gov

Re: Comments on "Waters of the U.S." rulemaking

Dear Ms. Gude:

I am submitting these comments as the General Manager for the Confederated Tribes of the Warm Springs Reservation of Oregon ("CTWS" or "Tribe"), Branch of Natural Resources. CTWS has received treatment in the same manner as a state for Clean Water Act Section 303 and 401 purposes. The Tribe's water quality standards and certifications address a diversity of aquatic habitats as the Warm Springs Reservation is a 650,000 acre Reservation located in northern central Oregon that ranges from arid, dry high desert conditions to wet, humid Cascade range conditions and maritime conditions. The Tribe also administers active resource management and restoration programs both on and off reservation for fish and wildlife in the Columbia, Deschutes, John Day, Hood River, and Willamette river basins.

Presidential Executive Order 13778 directs the Environmental Protection Agency and the Department of the Army to consider interpreting "navigable waters" in a manner consistent with the opinion of Justice Scalia in *Rapanos v. United States*, 547 US 715 (2006). In short, this opinion indicates that the Clean Water Act's jurisdiction is limited to include relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters. Implementing this interpretation will directly harm fish and wildlife habitat that the Tribe and others seek to manage, restore, and/or protect. These programs are essential to the cultural and economic well-being of tribal members and are a core commitment of the federal government in the Tribe's 1855 Treaty with the United States. In this 1855 Treaty, CTWS reserved the right to fish, hunt, gather foods, and pasture livestock in the Tribe's ceded lands and at usual and accustomed stations. This, time and again, has been held to secure for CTWS members the right to fish throughout its reserved fishing areas for subsistence, ceremonial, and commercial purposes and includes important habitat protections. The federal government has a trust responsibility for protection and enhancement of these trust resources.

The *Rapanos* definition appears to be fundamentally flawed. It appears to lack a scientific foundation that is responsive to the diversity of waters in the United States. As noted above, even the Tribe's own reservation contains vastly different aquatic habitats which are vulnerable to different tributary threats and rely on different watershed protections. The role that

watersheds, including tributaries, play in healthy, sustainable fisheries is well established. And, this is particularly true in drier systems. For example, this connection is so well established that the Tribe is nearing completion of a ten year effort in partnership with other Columbia River tribes and the Bonneville Power Administration to focus fishery restoration efforts on tributaries, including *watershed* improvements to intermittent and perennial streams, springs, sinks, and wetlands, among other resources. These efforts have resulted in meaningful successes.

Reducing the jurisdictional reach of the Clean Water Act will open up important tributaries and watershed resources to pollution threats, and the downstream impacts of pollutants from agricultural, urban, and industrial uses will directly adversely impact fishery habitat. In addition, the Tribe's Warm Springs community obtains its main drinking water from the Deschutes River. Adding pollutants to the Deschutes River from upstream sources is patently inconsistent with the health and welfare of the Tribe's members.

In the Tribe's culture, the following resources are important: Water, fish, wildlife, roots, and berries. These are listed in the order that was given to the tribes by the Creator, support the Tribe's culture, economy and health, and guide natural resource management. Restricting the Clean Water Act definition would be inconsistent with this focus. Thank you for your consideration of this important issue.

Sincerely,



Robert A. Brunoe

General Manager

Branch of Natural Resources

The Confederated Tribes of the Warm Springs Reservation of Oregon