



Pokégnek Bodéwadmik · Pokagon Band of Potawatomi
Tribal Council

P.O. Box 180 · 58620 Sink Road · Dowagiac, MI 49047 · www.PokagonBand-nsn.gov
(269) 782-6323 · (888) 376-9988 toll free · (269) 782-9625 fax

June 19, 2017

E. Scott Pruitt, Administrator
United States Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Mail Code: 3201M
Washington, DW 20460

Re: Comments on Notice of Intention to Review and Rescind or Revise the Clean Water Rule

Dear Mr. Pruitt:

I am writing on behalf of the Pokagon Band of Potawatomi Indians (“Pokagon Band”), a federally recognized Indian tribe, to comment on the response by the United States Environmental Protection Agency (“EPA”) to the Presidential Executive Order on “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule” (“Order”). In pertinent part, the Order:

- States that “[i]t is in the national interest to ensure that the Nation's navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of the Congress and the States under the Constitution[;]”
- Directs the EPA and Department of the Army (“Army”) to review the existing Clean Water Rule for consistency with the above priorities and publish for notice and comment a proposed rule rescinding or revising the rule, as appropriate and consistent with the law; and
- Directs the EPA and Army to consider interpreting the term “navigable waters” (defined in the Clean Water Act (“CWA”) as “the waters of the United States” (“WOTUS”)), in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006), under which WOTUS would be limited to relatively permanent waters as well as wetlands with a continuous surface connection to such waters (“Scalia Approach”).

The Pokagon Band urges the EPA to ensure (consistent with the CWA’s main objective “to restore and maintain the chemical, physical, and biological integrity of the

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Nation's waters") that the current definition of WOTUS is not rescinded or revised in a manner that would threaten water resources for future generations. *See* 33 U.S.C. 1251(a).

The Pokagon Band's current territory is located within Michigan and Indiana. Traditional teachings passed down for generations hold great respect for water, which is sacred, as an essential element for life. Water ceremonies are conducted by women to pray for the health of our waters. Women, like water, have life giving capabilities and it is the responsibility of all women to protect the rivers, streams, lakes, and oceans for all life on Mother Earth. Sacred songs are used to teach our children to respect water in its many forms. Every living thing needs water to survive. Water is a limiting component to population size and ecological balance on Mother Earth. Limiting the definition of the WOTUS as set forth in the Scalia Approach would threaten ecological balance and water resources for future generations.

Importantly, scientific findings support not limiting the definition of WOTUS in such manner. If the Scalia Approach were implemented, fewer waterbodies and wetlands would be protected under the CWA because the Scalia Approach fails to account for the scientific understanding of how pollutants enter waterbodies. For example, wetlands, especially riparian wetlands, serve as a sink for nutrients, sediments, and flood waters (Mitsch and Gosselink, 2000). In fact, some studies have estimated that in watersheds where riparian wetlands are intact, 90% of pollutants are captured before they enter waterbodies (Gilliam, 1994). If the Scalia Approach were followed, a majority of riparian wetlands would not be considered WOTUS (American Water Works Association, 2014).

If a majority of riparian wetlands are not considered WOTUS, then the CWA's main objective would be undermined, because although some states have wetland protections in place, many states lack adequate laws to ensure that wetlands are protected at the level set forth in the CWA. Therefore, history teaches that the Scalia Approach would lead to the loss of riparian wetlands. Correspondingly, the loss of riparian wetlands would cause more pollutants to be imported into WOTUS, thereby undermining the main objective of the CWA.

Moreover, the Scalia Approach would result in more development in floodplains and riparian zones leading to direct degradation of surface waters. Human impacts have led to more than 50% of wetland lost across the United States (Dahl, 2000). The functions that wetlands provide in terms of niche habitats, flood control, nutrient and sediment reductions, cultural medicines, and many more, should not be discounted.

The definition of WOTUS should reflect the main objective of the CWA to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. 1251(a). The Scalia Approach would undermine this important objective and

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Pokagon Band's desire to ensure ecological balance and water resources for future generations.

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.

Sincerely,

A handwritten signature in black ink that reads "John P. Warren". The signature is written in a cursive style with a large, prominent "J" and "W".

John P. Warren
Tribal Council Chairman
Pokagon Band of Potawatomi Indians

Cc: Rose Kwok - CWAwotus@epa.gov
Karen Gude – Gude.Karen@epa.gov