



September 9, 2021

Vance F. Stewart III

Acting Principal Deputy, Office of the Assistant Secretary of the Army for Civil Works

Department of the Army  
108 Army Pentagon  
Washington, DC 20310-0104

John Goodin

Director, Office of Wetlands, Oceans and Watersheds  
Environmental Protection Agency  
Mail Code 4504-T  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

RE: EPA-HQ-OW-2021-0328; FRL-6027.4-02-OW *Notice of Public Meetings Regarding "Waters of the United States"; Establishment of a Public Docket; Request for Recommendations*

Dear Mr. Stewart and Mr. Goodin:

The Association of Clean Water Administrators (ACWA) is the independent, nonpartisan, national organization of state and interstate (hereinafter "states") water program directors, responsible for the daily implementation of the Clean Water Act's (CWA) water quality programs. We appreciate the opportunity to provide the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) with pre-proposal recommendations as the agencies begin their efforts to revise the definition of "waters of the United States."

The states offer the following high-level recommendations to guide the agencies' process of revising the definition of "waters of the United States" (hereinafter "WOTUS"): (1) respect the role of the states as co-regulators and provide **early, continuous, and meaningful** opportunities for dialogue and input as any new rule is developed; (2) respect and follow the science; (3) recognize the geographic, geologic, climatic, hydrologic, and leadership diversity among states and craft a definition that provides clarity but also flexibility for state implementers; (4) prepare to provide the states, well in advance, with technical assistance, tools, and trainings to assist with implementation of any revised definition; and (5) include a delayed effective date to give state partners ample time to revise state regulations and/or to develop new state policy to cover any changes in coverage as a result of the revised jurisdictional definition.

Because of states' unique and congressionally designated role under the CWA as co-regulators, ACWA recommends that EPA consider this journey to be a partnership; a genuine partnership that includes regular contact and dialogue through workgroups, focus groups, forums, calls, and other

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communication, throughout the life of this effort. Just as with past rules, state commissioners and elected officials will turn to ACWA members as the state implementing experts who will grapple with a new rule and its effects on state government, local landowners, and other stakeholders, on permitting efficiency, and on water quality. ACWA urges EPA to continue to take advantage of this expertise and experience by working directly with ACWA and its members as the proposed rule is drafted.

**At a minimum, we ask that EPA provide an early draft of regulatory text, or options with sufficient detail, for our members to give EPA useful and specific feedback on the proposal.** Providing this information to state surface water program directors would be tremendously beneficial for EPA, as our members are uniquely qualified to evaluate the regulatory text in terms of technical details, implementation challenges and barriers, and unintended consequences. Undertaking such a partnership need not be a drawn-out process, as ACWA's established WOTUS workgroup is organized and motivated to have thorough discussions in a short period of time to meet your schedule.

While ACWA's process to develop comments is comprehensive and intended to capture the diverse perspectives of the states that implement these programs, EPA should also seriously consider the recommendations that come directly from individual states, interstates, and territories. Thank you again for the opportunity to provide pre-proposal recommendations on this effort. Please contact ACWA's Executive Director Julia Anastasio at [janastasio@acwa-us.org](mailto:janastasio@acwa-us.org) or (202) 756-0600 with any questions regarding ACWA's comments.

Sincerely,

Andrew Gavin  
ACWA President