



October 1, 2021

John Goodin
United States Environmental Protection Agency
Office of Wetlands Ocean and Watersheds
Washington D.C. 20460

Re: Notification of Tribal Consultation comment Period for Revising the Definition of “Waters of the United States” (WOTUS)

Dear Mr. Goodin,

Buena Vista Rancheria of Me-Wuk Indians (BVR) is writing the Environmental Protection Agency (EPA) and the Army Corp of Engineers (ACE) to provide comments regarding the revision of the definitions of Waters of the United States (WOTUS).

Buena Vista Rancheria of Me-Wuk Indians is a federally recognized Indian Tribe. Our lands are located in the northern foothills of the Sierra Nevada Mountain approximately 50 miles southeast of Sacramento, CA. The Buena Vista Me-Wuk ancestral lands range approximately the eastern bounds of the Sacramento and San Joaquin River Delta and to the east to include the western slope of the northern Sierra Nevada mountains. BVR’s ancestral lands include many important tributaries and rivers that feed the San Joaquin and Sacramento River Delta including, but not limited to, the Mokelumne River and Cosumnes Rivers. BVR’s 67.5-acre reservation land spans two watersheds including the Mokelumne River to the south and Jackson creek to the north which is a tributary to the Mokelumne River downstream at the Sacramento/San Joaquin delta. BVR’s land is located in the mid to lower reaches of the watershed.

BVR recognizes the inherent interconnected quality of water and sees water as a fundamental part of life that has cultural, and spiritual significance in addition to supporting ecosystems and livelihoods. Water does not see political boundaries and connects and impacts all of Earth’s inhabitants especially those “downstream.” BVR’s reservation has several types of waters, including springs, perennial, intermittent, and ephemeral streams, impounded ponds, wetlands, and groundwater. These waters are vulnerable to changing definitions to Waters of the United States and the scope of the Clean Water Act. At this time BVR does not have permitting authority over discharges to Tribal lands and waters, but instead, relies on EPA’s water quality standards and authority to permit discharges; however, with many of the streams on BVR lands being ephemeral, they are not subject to the same protections afforded to intermittent and perennial waters. BVR supports the EPA and ACE in developing a strong encompassing definition that includes ephemeral waters, wetlands, adjacent wetlands, and groundwater and recommends the agencies takes into consideration a Tribal Waters definition so Tribal waters are no longer subject to changing protections depending on the WOTUS definitions in use.

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EPA's "Notice of Public meetings Regarding "WOTUS" Establishment of a Public Docket; Request for Recommendations," outlines several questions regarding environmental justice including, "Can the jurisdictional status of water be linked to environmental justice concerns...?" The continued lack of protections to ephemeral waters and other waters considered culturally significant by the Tribe are at risk from development, mining, and legacy impacts from historic mining activities. Historic lignite and gold mining impacts surround and encompass BVR lands, and although more research is needed to connect these activities to water quality impairments, our waters appear to be impacted.

Generally speaking, though not flowing most of the time, ephemeral waters convey water during rain events and these waters typically connect to a jurisdictional water thus conveying pollutants that may have been discharged to a previously dry stream bed. Additionally, if ephemeral waters or wetlands are destroyed for industrial purposes, development, or some other land use conversion those activities alter the hydrology of the watershed bringing more potential impacts downstream. Moreover, Tribes who have ephemeral waters or groundwater dependent systems such as springs moving across their lands cannot effectively regulate discharges taking place higher up in the watershed that impact these waters.

BVR strongly recommends EPA and ACE to consider creating a new definition that includes "Tribal Waters" which would include any water type on Tribal land a Tribe deems significant and states a beneficial or designated use for. EPA and ACE can utilize government to government consultation with Tribes to make a jurisdictional determination for a project where tribal waters are involved, and work to support Tribes in developing their own Water Quality Standards for Tribal water so those water quality standards effectively utilized in NPDES permits where discharges must meet the standards of the jurisdiction downstream. All consultations and information provided by Tribes should be considered confidential and only held in internal documents not for public disclosure unless specified by the consulting Tribe. Consultation is a critical step in developing the Tribal Waters definition and in all stages of its application. Though tedious, this will result in a more comprehensive system of understanding between agencies and Tribes.

The creation of the Tribal Water definition should be used within a set regional system that handles classification on a case-by-case basis. Regionalization would allow for specifics of watersheds and other connected water bodies to be handled by all stakeholders. The case-by-case basis will aid in the specifics and differences between Tribal understandings. Each Tribe has its own understandings and priorities about water bodies that impact their community. Additionally, the Tribal Water definition should be flexible enough to encompass all water bodies that Tribes use. This flexibility can address the issue stated above concerning the waterbodies that are not protected by WOTUS and can ensure Tribal waters are protected in perpetuity.



Buena Vista Rancheria of Me-Wuk Indians looks forward to continuing to engage in the WOTUS revision process and supports the EPA in its repeal of the NWPR to reinstate pre 2015 rules and subsequently revising the pre 2015 rule with the best available science and information.

Sincerely,

/s/ Michael DeSpain

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/s/ Emily Moloney

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