



Terry Rambler
Chairman

SAN CARLOS APACHE TRIBE

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October 4, 2021

Via Electronic Transmission to:

Docket ID: EPA-HQ-OW-2021-0328
U.S. Environmental Protection Agency
CWAwotus@epa.gov

U.S. Department of the Army
usarmy.pentagon.hqda-asa-cw.mbx.asa-cw-reporting@mail.mil

Re: Comments of the San Carlos Apache Tribe on EPA's Proposed Revising of the Definition of "Waters of the United States"

To Whom It May Concern:

I represent the San Carlos Apache Tribe ("Tribe") as its attorney. In accordance with the Notice in the *Federal Register* of August 4, 2021, by this letter I submit a comment on the proposed rule revising the definition of "Waters of the United States" under by the Clean Water Act, as proposed by the U.S. Environmental Protection Agency ("EPA") and the U.S. Army Corps of Engineers ("USACE"). In these comments, "EPA" will also include the U.S. Army Corps of Engineers. In addition, this comment complies with the extended deadline of October 4, 2021, as indicated in the letter to Chairman Rambler, dated August 21, 2021.

It is commendable that the EPA seeks to initiate a new rulemaking process that restores the regulations in place prior to the 2015 Clean Water Rule defining "waters of the United States," amended to be consistent with relevant U.S. Supreme Court decisions. Furthermore, the EPA's process stands consistent with President Biden's Executive Order 13990, Protecting Public Health and the Environment and Restoring Science to tackle the Climate Crisis, 86 Fed. Reg.

Comments to EPA and US Dept. of Army

*Re: Proposed Revising of the Definition of
"Waters of the United States" under Clean Water Act*

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7037 (published January 25, 2021, signed January 20, 2021), through which EPA undertook the review of the Navigable Waters Protection Rule ("NWPR"). The Tribe is pleased with the EPA's subsequent decision to revise the NWPR.

The Tribe has consistently opposed the NWPR since its publication in the Federal Register on April 21, 2020 (85 FR 22250). The NWPR sought to repeal and replace the 2015 Clean Water Rule. That action seriously jeopardized the protection of the nation's waters, including those on and within the San Carlos Apache Indian Reservation.

EPA also announced that it would initiate two new rulemakings. First is the proposal to restore the longstanding Clean Water Act regulations that were in place for decades prior to 2015. The EPA then proposes to initiate a second rule that builds on that regulatory foundation.

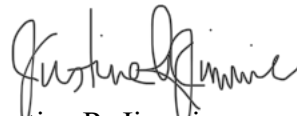
During the second rulemaking, the EPA promises to engage with tribes about their experiences with the NWPR, the 2015 Clean Water Rule and the pre-2015 regulatory process. To that end, the Tribe welcomes meaningful consultation with the EPA on the rulemaking.

To these ends, please send a letter inviting Chairman Rambler to engage in consultation. The Tribe has taken the position that consultation must include the San Carlos Council, the governing body of the Tribe. Furthermore, any consultation must be meaningful and responsive to the Tribe's concerns and interests.

As we say in our Apache language, Ahi'yi'é (thank you) for your consideration of this preliminary comment.

Sincerely,

SAN CARLOS APACHE TRIBE



Justine R. Jimmie
Deputy Attorney General

Cc: Terry Rambler, Chairman
Tao Etpison, Vice Chairman
San Carlos Council Members
Christabelle Mull, General Manager
Christy M. Sangster-Biye', Dir. EPD
Vernelda Grant, THPO
Alex Ritchie, AG, DOJ
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