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Office of the Governor

September 22, 2021

Michael S. Regan, EPA Administrator
The U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Submitted electronically to Rose Kwok: CWAwotus@epa.gov

Re: EPA's Proposed Intent to revise the definition of "Waters of the United States" (WOTUS)

Dear Administrator Regan:

The Pueblo of San Felipe (the Pueblo) hereby submits comments on the first phase of the proposed intention to revise the definition of the "Waters of the United States" (WOTUS) under the Clean Water Act (CWA). The Pueblo understands that on June 9, 2021, the Environmental Protection Agency (EPA) and the Army Corps of Engineers (USACE) "the agencies" announced their intent to revise the definition of WOTUS to better protect our nation's vital water resources that support public health, environmental protection, agricultural activity, and economic growth.

Upon the agencies review of the 2020 Navigable Waters Protection Rule (NWPR), the determination was made that the rule is significantly reducing clean water protections and environmental degradation. The changes the EPA and USACE implemented under the previous administration removed protections for 86% of New Mexico's water, and over 90% of San Felipe's waters. We understand the agencies are in receipt of the U.S. District Court for the District of Arizona's August 30, 2021, order vacating and remanding the Navigable Waters Protection Rule in the case of Pascua Yaqui Tribe v. U.S. Environmental Protection Agency. In light of this order, the agencies have halted implementation of the NWPR and are interpreting WOTUS consistent with the pre-2015 regulatory regime until further notice. We are gratified to see changes to restore protections. Administrator Regan, we ask that under your leadership every effort is made to ensure the protections for water will be long lasting.

The Pueblo understands the agencies are seeking comments on the first phase to revise the definition of WOTUS, which includes restoring the protections in place prior to 2015 WOTUS implementation, for a more durable, defensible rule. We are optimistic and support the proposed

remand of the 2020 NWPR, because it resulted in the potential of unregulated destruction of water protection from our tribal and Nations waters. We ask the agencies' new regulatory effort be guided by the following considerations:

- Protecting water resources and the health of our communities.
- Effects of urbanization, industry including oil and gas extraction on our water quality and quantity.
- Emphasizing a rule with a practical implementation approaches for Tribal partners, including provisions for cultural and traditional values and uses of water.

Under the proposed development of reversion to the 2008 Post-Rapanos Guidance, and changes relative to the NWPR, this includes ephemeral waters to be a WOTUS if they have a defined connection to downstream waters. This is important to the Pueblo because of the ecological and hydrological significance of ephemeral and intermittent streams in the arid Southwest. These waters serve a critical role in the protection and maintenance of water resources, human health, and the environment, especially with the changes to seasonal flow patterns we are seeing. It is possible that some of our irrigation canals and drains will be WOTUS if they have a potential for seasonal flow and a connection to downstream waters. It is crucial that the agencies seek a broader definition of what constitutes WOTUS, so that will there are no differences in jurisdictional status.

The Pueblo submitted numerous comments regarding our objections and concerns over the last 4 years with Executive Order (E.O.) 13778, Promoting Energy Infrastructure and Economic Growth, and the NWPR and the Pueblo reiterates our comments and restates our objections to reducing water quality protection, state and tribal authority under the current CWA WOTUS definition, where subsequently § 401, § 402 and 404 permitting programs become applicable.

The Pueblo of San Felipe is in the process of submitting our application to EPA for Treatment as a State (TAS) for Water Quality Standards (WQS). We understand that once the Pueblo obtains TAS for WQS, the Pueblo will generally be responsible for issuing water quality certifications through CWA Section 401.

We look forward to participating in the Agency's intended plan for state and tribal meetings, regional roundtables, and further engagement. We ask the agencies to keep in mind the COVID-19 mitigation measures and Tribal Executive Health Orders currently in place. We ask the agencies to develop a definition for WOTUS which honors the federal trust responsibility, and is protective of our lives and precious waters. Additionally, the EPA should increase funding and training for tribal governments for direct implementation of the CWA.

The Pueblo of San Felipe looks forward to working with our federal partners to ensure there are adequate and robust protection for the waters, air, and lands within our Pueblo and the Nation.

PUEBLO OF SAN FELIPE

It is our hope that EPA upholds its interpretation to the pre-2015 regulatory regime and develops revisions to the definition of WOTUS that supports 401 permitting for protection of waters. This interpretation needs to continue to support the role of tribes as co-regulators while protecting the environment, cultural and traditional values and sites, ecosystems, and public health to ensure that tribes are empowered in circumstances that may affect their waters, cultural values and traditions.

The Pueblo of San Felipe would like to thank you for your meaningful consideration of our comments, consistent with our Government-to-Government relationship and we request Government-to Government consultation. Please contact Arienne Tenorio, Executive Assistant at 505-867-3381 or atenorio@sfpueblo.com to begin this process.

Sincerely,
Pueblo of San Felipe

Governor Anthony Ortiz

Lt. Governor James Tenorio

Cc via email:

Rose Kwok, Oceans, Wetlands, and Communities Division
Radhika Fox, EPA Office of Water, Assistant Administrator
Jaime Pinkham, Acting, Assistant Secretary of the Army for Civil Works
Stacy Jensen, Office of the Assistant Secretary of the Army
John Goodin, Director, Office of Wetlands, Ocean's, and Watersheds

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