



September 3, 2021

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To Whom It May Concern,

I write to provide Wyoming's views on the Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (Corps) proposed rule revision to the scope of waters federally regulated under the Clean Water Act (CWA) (Docket ID No. EPA-HQ-OW-2021-0328). The agencies intend to develop a foundational rule to restore pre-2015 regulations (to be consistent with Supreme Court decisions) and ultimately develop a new definition of "waters of the United States" (WOTUS) in a future rulemaking. I am concerned that today's efforts will only add to additional uncertainty for the following reasons.

It is frustrating and deeply disturbing to see that the federal agencies are yet again pivoting, without meaningful consultation with Governors, on a very important matter overseeing the Clean Water Act's jurisdiction. The EPA and Corps do not provide justification to revisit the rulemaking, yet again, except in order to "restore longstanding protections" -- as if regulation of water bodies under the CWA were entirely revoked by the previous administration's Navigable Waters Protection Rule, which I do not believe is the case.

The question of WOTUS jurisdiction is in fact much more complex. Earlier this week, a district court judge in Arizona issued an order vacating the 2020 Navigable Waters Protection rule promulgated by the Trump Administration. At this time, it is not clear how the latest court order will affect WOTUS rulemaking. In the meantime, our state remains engaged in litigation over the Obama Administration's flawed and legally infirm rule that was promulgated in 2015.

In Wyoming's view, the 2015 rule extended the agencies' authorities far beyond what the CWA contemplated and far beyond what the Constitution permits. Our state stands by our support for the Trump Administration's 2020 Navigable Waters Protection Rule that was promulgated in 2020. The 2020 rule was mindful of the limits Congress set in the CWA, including respect for the "primary responsibility and rights of States" to regulate their own water resources. Wyoming appreciated the great care that was taken to gather meaningful feedback from states during consultation for the Navigable Waters Protection Rule rulemaking period. This consultation process not only included a written comment period but also included multiple in-person meetings that went beyond merely providing one-way information to the public. It entailed robust dialogue between the federal agencies and state co-regulators, which is the kind of consultation that should be conducted at a minimum to ensure that states' considerations are taken into account during a new rulemaking.

For today's needs, I offer a perspective on what works best for Wyoming as the EPA and Corps work to create yet another new definition of WOTUS. This feedback should aid the agencies to adhere to more specific, recognizable categories and provide certainty for everyone impacted by a new rulemaking.

For one, Wyoming contends that the best approach to a new WOTUS rule would be to carry over provisions from the 2020 Navigable Waters Protection Rule to the extent possible, considering the current legal issues in question. The specifics of Wyoming's asks were outlined in my comments to the EPA and Corps dated April 15, 2019 and have been attached to this letter for your reference.

In summary, important considerations should be made regarding the unique hydrologic regimes, as they exist in arid and snowmelt-driven regions like Wyoming and the Western United States. This has a bearing on what should be considered for "intermittent" water bodies as well as ephemeral waters that flow only in response to rain and other weather events. Other important topics that I highlighted in my 2019 comments include the need for exclusion of man-made features (i.e.- ditches) and additional concepts that would guide us toward a more appropriate, narrow scope for jurisdictional waters.

Additionally, the CWA was purposefully built on a framework of cooperative federalism. I cannot overemphasize this enough: on a crucial CWA rulemaking matter of great importance such as this, state consultation is absolutely necessary. Wyoming is a co-regulator of our waters and States, no doubt, are in the best position to manage the water within their boundaries. The EPA and Corps should tap into our expertise and approach us cooperatively to provide ample opportunities for meaningful dialogue.

For states to effectively fulfill our cooperative federalism responsibilities under the CWA, it is incumbent upon the federal government to set a WOTUS framework that affords clarity of interpretation and balances state autonomy. At the onset of the proposed revised rulemaking process

this summer, the EPA and Corps held public “listening sessions” on how to establish a regulatory foundation and build on that foundation to craft a "durable" definition of WOTUS. The agencies also promised to hold a series of talks with state and tribal co-regulators this fall to discuss both rulemakings.

While the EPA has reached out to the National Association of Clean Water Agencies (ACWA) to solicit pre-proposal comments for stage one of the rulemaking process through October 4th, I cannot emphasize enough how important it is that the EPA and Corps honestly and actively engage with Wyoming and other states throughout the rulemaking process to best take our views on WOTUS into account. This means going above and beyond merely informational presentations and written comment periods. Given this administration’s track record on meaningful state consultation, I am inclined to believe that the agencies are just checking the box and will do what they want anyway, regardless of the feedback they receive and who they do/do not meet with. The proof will be if and how additional consultation opportunities will be presented to engage states as the rulemaking process continues.

In closing, please refer to the Wyoming Department of Environmental Quality’s comment letter that has been submitted separately for more detailed discussion on Wyoming’s views for an appropriately scoped WOTUS definition. I again must emphasize that effective implementation of any revised rule will depend upon consultation and coordination with states to facilitate a shared understanding of what is and is not classified as WOTUS. The people and communities who rely on CWA protections deserve consistency and predictability in its application.

Sincerely,



Mark Gordon
Governor

MG:bc:kh

Encl:

cc: The Honorable John Barrasso, U.S. Senate
The Honorable Cynthia Lummis, U.S. Senate
The Honorable Liz Cheney, U.S. House of Representatives
Troy Thompson, President, Wyoming County Commissioners Association
Todd Heward, President, Wyoming Association of Conservation Districts
Bridget Hill, Wyoming Attorney General
Todd Parfitt, Director, Wyoming Department of Environmental Quality
Doug Miyamoto, Director, Wyoming Department of Agriculture



April 15, 2019

WER 10520.00d
Environmental Protection Agency
Revised Definitions of "Waters of the United States"
Docket EPA-HQ-OW-2018-0149

U.S. Environmental Protection Agency
EPA Docket Center
Office of Water Docket
Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460
To Whom It May Concern,

Thank you for the opportunity to review and comment on the Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (USACE) proposed rule defining the scope of waters federally regulated under the Clean Water Act (CWA). The following comments pertain to the State of Wyoming's review of the proposed revised definitions for Waters of the United States (WOTUS), consistent with the Presidential Executive Order signed on February 28, 2017 entitled "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule."

The CWA is one of the most significant environmental laws in effect today. It was enacted to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" yet imparts that states have the "primary responsibilities and rights...to prevent, reduce and eliminate pollution...of land and water resources" (33 U.S.C. §1251(b)). States, no doubt, are in the best position to manage the water within their boundaries on account of on-the-ground knowledge of hydrologic and regulatory conditions.

For states to effectively fulfill cooperative federalism responsibilities under the CWA, it is incumbent upon the federal government to set a WOTUS framework that affords clarity of interpretation and balances state autonomy. The following encapsulates the State of Wyoming's recommendations under the proposed rule using the guiding principles of cooperative federalism. Also included as attachments are individual state agency comment letters. These comments should be considered in context specifically to each state agency's area of expertise.

1. Improve clarity of WOTUS determinations

When finalized, the new WOTUS framework should come as close as possible to providing an explicit list of determinations accompanied by geospatial maps in order provide clarity in the application of WOTUS jurisdictional water bodies. States already have maps of attainable uses and designated waters within their boundaries as part of CWA compliance. Since part of the legwork is already complete, EPA and USACE should rely upon these state efforts as the initial framework in order to provide sufficient clarity of jurisdictional determination for all stakeholders. Wyoming is prepared to work closely with EPA and USACE to supply the necessary data and information to support this effort.

2. *Augment the definition of "intermittent" waters*

Wyoming supports the revocation of ephemeral waters that flow only in response to rain and other weather events. However, concern remains over the determination that would apply WOTUS jurisdiction to rivers and streams with yearly perennial or "intermittent" flow to downstream navigable waters. Wyoming's snowmelt-driven hydrologic systems include many dry draws that exhibit continuous but short-duration flows during spring runoff. Additionally, one could argue that all agricultural ditches are "intermittent" by nature especially because they seasonally convey water during the irrigation season.

To improve this matter, Wyoming requests a more straightforward explanation for what is meant by "intermittent" that should also include parameters pertaining to how an "intermittent" determination would be made (e.g. - flow volume in conjunction with duration). The attached state agency comments provide specific suggestions as to how to address this issue.

3. *Clarify the intent and application of jurisdictional "certain ditches"*

The current proposed revised definition of WOTUS properly narrows the scope for "certain ditches" to apply to "artificial channels used to convey water," ditches that are traditional navigable waters, and ditches constructed in a tributary or those that relocate or alter a tributary. Wyoming supports the complete revocation of the 2015 WOTUS jurisdictional rule that applied to "man-made features." However, the current proposed rule also applies jurisdiction to ditches when they "satisfy conditions of the tributary definition" or when they "relocate or alter" a tributary. These two aspects still have potential to create confusion concerning which ditches are, and are not, considered WOTUS.

For example, stream segments that are relocated or reconstructed as part of development or industrial activities could be deemed jurisdictional because they relocate or alter tributaries in order to convey water. As well, man agricultural ditches could also be argued to be jurisdictional by their inherent nature since they alter or relocate tributaries when conveying water. By these associations, there is too much ambiguity and more clarity is needed. Please refer to the attached State of Wyoming agency comment letters for recommendations as they apply to the application of WOTUS for "certain ditches."

4. *Support for the proposed definition for "adjacent" wetlands*

The 2015 WOTUS rule interpreted "adjacent" waters as jurisdictional WOTUS to which the State of Wyoming contested on account of its excessively broad application that included "bordering, contiguous or neighboring" waters. The new proposed rule amends the interpretation of "adjacent" as it applies to wetlands. It specifies that adjacent wetlands are jurisdictional when they physically touch other jurisdictional waters or have a surface water connection. Wyoming is supportive of this amended interpretation especially because it does not use location as a basis of jurisdictional determination.

5. *Partner with states, local governments and tribes for data compilation*

The State of Wyoming can provide a depth of resources to support the development of geospatial datasets for mapping jurisdictional waters. The state is in a position to facilitate collaboration with local governments, counties, conservation districts, and tribes to prepare datasets and maps. Wyoming will gladly assist EPA and USACE to identify and employ the best available tools and appropriate provisions for ongoing data and map maintenance.

6. *Ensure continued financial assistance for CWA state programs*

CWA funds are part and parcel to states' abilities to fulfill their obligations under delegated CWA programs. Changes to federal jurisdiction over the nation's waters under the proposed rule should not negatively impact existing or ongoing financial assistance granted to states to implement these programs. Wyoming requests commitment from the EPA to states that no reduction in existing financial assistance to states will occur directly or indirectly as a result of finalization, implementation or any future revisions to the proposed rule.

In closing, as currently proposed, the revised WOTUS rule makes strides toward setting a more appropriate, narrow scope for jurisdictional waters. Effective implementation of the revised rule will depend upon consultation and

coordination with states to facilitate a shared understanding of what is and is not classified as WOTUS. The people and communities who rely on CWA protections deserve consistency and predictability in its application. The State of Wyoming looks forward to collaborating with EPA and USACE as a final rule is promulgated.

Please feel free to reach out to Beth Callaway in this office for any questions: beth.callaway@wyo.gov or 307-777-8204. Thank you for your consideration.

Sincerely,



Mark Gordon

Governor

Encl.

CC: The Honorable Mike Enzi, U.S. Senate
The Honorable John Barrasso, U.S. Senate
The Honorable Liz Cheney, U.S. House of Representatives
Troy Thompson, President, Wyoming County Commissioners Association
Todd Heward, President, Wyoming Association of Conservation Districts
Bridget Hill, Wyoming Attorney General



Mark Gordon, Governor

Department of Environmental Quality

To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.



Todd Parfitt, Director

April 15, 2019

United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

United States Army Corps of Engineers
108 Army Pentagon
Washington, DC 20310

Submitted online via: <http://www.regulations.gov>

Re: Document ID No. EPA-HQ-OW-2018-0149; Revised Definition of "Waters of the United States"

To Whom It May Concern,

Please accept the following comments in response to the February 14, 2019 Federal Register notice that proposes a rule (2019 Draft Rule) to define the scope of waters federally regulated under the Clean Water Act (CWA). The Wyoming Department of Environmental Quality (WDEQ) is a co-regulator in implementing the CWA, in addition to administering state water quality requirements for "waters of the state" that extend beyond "waters of the United States" (WOTUS). The WDEQ has and will continue to advocate for a WOTUS definition that both recognizes the limits of federal authority over water quality and clearly establishes what is, and is not considered a WOTUS. As the United States Environmental Protection Agency and the United States Army Corps of Engineers, hereinafter referred to as the "agencies" recognize, these two elements are essential so that states can efficiently and with certainty implement state and federal water quality regulations.

The 2015 Waters of the United States rule failed to provide the necessary clarity and did not recognize the limits of federal authority over water quality established by the Clean Water Act and the Supreme Court. Consequently, the WDEQ supports the agencies efforts to revise the definition of WOTUS in accordance with the Presidential Executive Order for "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule." Exec. Order No. 13,778, 82 Fed. Reg. 12,497 (Mar. 3, 2017). The WDEQ understands that this is the second of a two-step process intended to bring more clarity and consistency to the definition of WOTUS as directed by the Executive Order. WDEQ has provided extensive comments and recommendations throughout the repeal and revision process and looks forward to continued dialogue with the agencies as the rule revision process proceeds.

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WDEQ appreciates and commends the agencies' efforts in consulting with states in developing the 2019 Draft Rule which is clearer and better recognizes the intent and limits of the CWA as informed by legislative history and Supreme Court precedent. For instance, there are several aspects of the 2019 Draft Rule and future agency directives stated in the preamble that WDEQ supports and which are consistent with our previous recommendations, not the least of which is a rule that is in better alignment with the plurality opinion in *Rapanos v. United States*, 547 U.S. 715 (2006). These supported elements include the removal of interstate waters as a category, exclusion of ephemeral waters, exclusion of groundwater, and the desire of the agencies, in collaboration with states, to develop geospatial maps of WOTUS. Moreover, we support the separate category of ditches and the definition of adjacent wetlands with minor revisions.

However, there are some elements of the 2019 Draft Rule that would benefit from revision in order to provide necessary clarity between federal and state jurisdiction and minimize potential federal overreach. Specifically, the agencies should revise the definitions of "lakes and ponds" and "intermittent waters". In addition, the WDEQ has several minor revision requests including: that the rule incorporate clear quantitative criteria into the definition of typical year that is in alignment with the national standard for climate normals; clarify lateral extents of jurisdiction; incorporate clear criteria regarding breaks in federal jurisdiction; and explicitly exclude isolated waters. We also recommend revocation and replacement of the 2008 Rapanos Guidance with a document tailored to the new rule. Lastly, we request the agencies elaborate on states' roles as co-regulators of water quality while also affirming their support for maintained or increased federal CWA funding to the states.

Aspects of the 2019 Draft Rule WDEQ Supports

Removal of the Interstate Waters Category

WDEQ supports the removal of interstate waters as a separate jurisdictional category. This category has contributed to long-standing confusion in the definition of WOTUS. The term 'interstate waters' is a relic of the original Water Pollution Control Act (WPCA) of 1948 which was subsequently replaced with the term 'navigable waters' when Congress enacted the 1972 CWA amendments, effectively replacing prior iterations of the statute. Thus, the scope of federal jurisdiction is constrained to 'navigable waters' – regardless of state political boundaries.

This linkage was implicitly recognized in *Rapanos* considering that 'interstate water' was not used as a defining criterion in concluding whether a water was WOTUS and jurisdictional under the CWA. Under the *Rapanos* plurality opinion, all waters, regardless of whether they cross state political boundaries, must have a direct hydrological connection and relatively permanent flow to navigable waters to be a WOTUS. Waters that do not meet these criteria should be regulated by states. The removal of this category from the 1986 and 2015 WOTUS rules helps eliminate uncertainty and is more consistent with Congressional intent and authority to not "exert anything more than its commerce power over navigation." *Solid Waste Agency of Northern Cook County (SWANCC) v. U.S. Army Corps of Engineers*, 531 U.S. 159, 168 n.3 (2001). It is our opinion that most waters deemed jurisdictional under the interstate water category in past rules would likely remain jurisdictional under the 2019 Draft Rule by

satisfying the requirements of a direct hydrological connection and relatively permanent flow to a navigable water.

Exclusion of Ephemeral Features

WDEQ supports the agencies' categorical exclusion of ephemeral features in the 2019 Draft Rule which aligns with our past recommendations. This exclusion conforms to the plurality opinion in *Rapanos* that for a tributary to be considered a WOTUS, it must have relatively permanent flow and under normal circumstances, it must have water.

Without this exclusion, Wyoming would experience an unnecessary increase in the number of stream miles under federal jurisdiction by several orders of magnitude. Similarly, there would be a corresponding significant increase in 404 permits and associated state 401 certifications with expanded jurisdiction to ephemeral waters. This expanded jurisdiction would result in additional costs for permitting and compliance along with increased permitting delays. Expanding the reach of federal agencies into areas historically and more appropriately overseen by the states would result in resource redistribution that would adversely affect the ability of states to timely address critical water quality issues such as harmful cyanobacterial blooms (HABs) and nutrient pollution.

We therefore commend the agencies for excluding ephemeral waters as WOTUS to prevent these potential adverse public interest outcomes from becoming reality. This exclusion is important to further clarify what is and is not WOTUS and will minimize the need for jurisdictional determinations on ordinarily dry channels which only flow in response to single and infrequent precipitation events. Finally, this categorical exclusion adds necessary legal clarity that should eliminate future jurisdictional disputes and resource drains on the agencies and state regulators.

Exclusion of Groundwater

The WDEQ supports the agencies' explicit exclusion of groundwater in the 2019 Draft Rule. The plain language of the CWA affords federal protections for navigable waters and references groundwater only with respect to the issuance of grants to states for the purpose of groundwater protection activities as part of nonpoint source reductions. This separation of navigable waters and groundwater in the CWA indicates that Congress did not intend for the federal regulatory reach of the CWA to apply to the management and protection of groundwater. Recent lawsuits and inconsistencies in interpretation have occurred over the scope of the CWA with respect to groundwater and, therefore, an explicit exclusion gives certainty that the definition of WOTUS does not include groundwater.

Geospatial Mapping

The WDEQ supports the agencies' desire, in collaboration with states, to develop geospatial mapping tools that would facilitate the implementation of the 2019 Draft Rule and provide greater regulatory certainty. The exercise of mapping all WOTUS is a commendable and necessary task, though not without significant technical and procedural challenges (e.g., minimum data requirements, inconsistencies in the quality and quantity of geospatial data sets, process for updating maps). This effort will require robust

discussion and vetting of ideas among states and federal partners to adequately address the many challenges that lie ahead.

Though the challenges are real, the creation of a state-approved 'national standard' in WOTUS mapping is certainly feasible. To this end, the WDEQ recommends a phased approach to geospatial mapping to provide ample time to address challenges while also making progress toward the end goal. The first phase of this approach involves developing maps of traditional navigable waters. Merely mapping traditional navigable waters would be a large step forward and would have the dual function as an initial 'testing' platform to identify and evaluate the most efficient methods for reviewing, creating, standardizing, and finalizing geospatial datasets. Once traditional navigable waters have been successfully mapped, the agencies and states can move forward with mapping perennial tributaries to traditional navigable waters, followed by intermittent waters. This process does not diminish nor in any way detract from the intent and purpose of Sections 101(b) and 101(g) of the CWA. In fact, it recognizes and embraces cooperative federalism and the state-federal co-regulation of water quality.

Aspects of the 2019 Draft Rule WDEQ Supports with Minor Revisions

Creation of a Separate Ditch Category and Definition of Ditch

The WDEQ supports the agencies' development of a separate category of ditches in the 2019 Draft Rule that clearly delineates which ditches are WOTUS along with an explicit exclusion of all other ditches that do not meet the definition. This is an improvement over previous WOTUS rules by recognizing the need to distinguish the different types of ditches. That said, the proposed definition of ditch as "...an artificial channel used to convey water" is vague, particularly with respect to what constitutes an artificial channel and whether that feature qualifies as a ditch.

To illustrate the need for further clarity, consider a natural WOTUS stream where a segment of that stream was re-located or re-constructed through upland for residential/commercial development or as part of industrial activities. Clearly, the altered stream segment is artificial, though could not reasonably be considered a 'ditch' in common parlance. However, this altered stream segment could be arguably considered a 'ditch' and non-jurisdictional under the proposed definition in the 2019 Draft Rule because of the ambiguity of 'artificial channel'. It is our opinion that under such circumstances, the re-located/re-constructed stream segment should retain its WOTUS status.

To address this issue, the WDEQ recommends that the proposed definition of ditch in 33 CFR § 328.3 (c)(2) is re-cast to read: "Ditch. The term ditch means a man-made surface water conveyance constructed for the sole purpose of directing and delivering water from one point to another for purposes of road or field drainage; supplying water for irrigation, stockwater or municipal uses; or transporting goods and services."

Definition of Adjacent Wetlands

The WDEQ supports the agencies' categorical treatment of adjacent wetlands as WOTUS. This is an integral step in providing clarity and regulatory certainty in the 2019 Draft Rule. We also support the clarification that adjacent wetlands are those that physically abut or have a direct hydrologic connection to another WOTUS. This commonsense definition of adjacency falls in line with *United States v. Riverside Bayview Homes*, 474 U.S. 121 (1985), where wetlands adjacent to or abutting navigable waters are WOTUS. The *Rapanos* plurality opinion further supports the inclusion of physically abutting in the definition as "wetlands are waters of the United States if they bear the 'significant nexus' of physical connection." 547 U.S. at 755.

However, additional clarity is needed in the proposed definition of adjacent wetlands under 33 § CFR 328.3 (c)(1). Specifically, the proposed definition of "adjacent wetland" should be revised to clarify that a direct hydrologic surface connection occurs as a result of inundation during a typical year from a paragraph (a)(1) through (5) water to a wetland. The addition of "during a typical year" is critical to clarify that non-abutting wetlands that are only inundated as a result low frequency, high magnitude flows (e.g., floods) do not meet the criterion of having a direct hydrologic connection to a navigable water and are therefore not WOTUS.

Aspects of the 2019 Draft Rule With Suggested Revisions

Lakes and Ponds Separated By Excluded Features Should Not be Jurisdictional

WDEQ supports the inclusion of a separate category for jurisdictional lakes and ponds, provided that the lakes and ponds have relatively permanent flow and a direct hydrologic surface connection to a navigable water. However, under the proposed definition, lakes and ponds would also be jurisdictional if they contribute perennial or intermittent flow through excluded non-jurisdictional features identified in 33 CFR § 328.3 (b) which includes groundwater, upland ditches, ephemeral features, prior converted cropland, and stormwater control features.

The WDEQ recommends that any references to the non-jurisdictional features in paragraph (b) be removed from the lakes and pond category since these excluded features should create a break in federal jurisdiction for the upstream lake or pond. The features in paragraph (b) and any lakes and ponds flowing into them are not WOTUS and are more appropriately managed by states. If the rule is not revised, excluded features such as groundwater, prior converted cropland or artificially irrigated areas that convey perennial or intermittent flow from a lake or pond to a jurisdictional water, could be arguably considered a WOTUS. A water cannot be an excluded feature and a WOTUS at the same time. This will lead to unnecessary confusion regarding their jurisdictional status and puts into question the very essence of the excluded features under paragraph (b).

Therefore, WDEQ recommends the following revision to 33 CFR § 328.3 (a)(4): delete "...or through water features identified in paragraph (b) of this section so long as those water features convey perennial or intermittent flow downstream...".

Definition of Intermittent Must Be Revised

A clear and unambiguous definition of “intermittent”, consistent with the intent of the CWA and Supreme Court decisions, is critical in the WOTUS rule. The 2019 Draft Rule, however, does not provide a clear definition for waters that are “intermittent” and the referenced definition of “snowpack” is equally unclear. The ambiguous nature of these two terms introduces considerable uncertainty in the proposed rule regarding jurisdiction, will increase the number of jurisdictional determinations and could conceivably lead to an expansion of federal authority that does not comport with *Rapanos*.

The 2019 Draft Rule defines intermittent as “surface water flowing continuously during certain times of a typical year and more than in direct response to precipitation (e.g., seasonally when the groundwater table is elevated or when snowpack melts)”. Snowpack is defined as “layers of snow that accumulate over extended periods of time in certain geographic regions and high altitudes (e.g., in the northern climes and mountainous regions)”. Terms such as ‘certain times’, ‘seasonally’, and ‘extended periods of time’ are too subjective to be implemented consistently. Furthermore, the need to show an elevated groundwater table or adequate ‘snowpack’ would be burdensome to implement effectively and efficiently as part of a final rule, leading to a substantial increase in the number of site-specific jurisdictional determinations. In addition, because the broad definitions of “intermittent” and “snowpack” lack duration components, practically any stream that has a shallow layer of accumulated snow in its watershed that contributes flow to a WOTUS for a few days to weeks every year during spring melt, could be arguably considered jurisdictional under the 2019 Draft Rule. Taken at its broadest possible interpretation, the current definitions of ‘intermittent’ and ‘snowpack’ could effectively result in a categorical inclusion of all intermittent waters tributary to navigable waters as WOTUS.

Such a categorical inclusion of all intermittent waters in the 2019 Draft Rule, could conceivably expand federal jurisdiction to thousands of miles of currently non-jurisdictional intermittent streams in Wyoming and the 27 other states where the 1986 Rule and 2008 Rapanos Guidance are in effect. The 2008 Rapanos Guidance identifies that the agencies assert jurisdiction over “non-navigable tributaries...that are relatively permanent where the tributaries flow year-round or have continuous flow at least seasonally (e.g., typically at least three months)” and that the agencies conduct site-specific jurisdictional determinations on “non-navigable tributaries that are not relatively permanent” (i.e., intermittent waters with continuous flows less than 3 months or ephemeral features) to determine whether they have a significant nexus with a navigable water. The 2019 Draft Rule represents a significant shift away from this practice and assumes that all intermittent waters, including those that have continuous flow for less three months, have a significant nexus to navigable waters and therefore are WOTUS.

To illustrate this possible expansion, the WDEQ roughly estimated that for Wyoming, the 2019 Draft Rule could result in upwards of a 175% increase in the miles of intermittent waters over what is considered jurisdictional under the 1986 rule and 2008 Rapanos Guidance.

By expanding jurisdiction beyond the 1986 Rule and the 2008 Rapanos Guidance, the 2019 Draft Rule is also inconsistent with both the plurality and concurring opinions in *Rapanos*. The position of the *Rapanos* plurality was that ‘the waters of the United States’ include only relatively permanent, standing

or flowing bodies of water...as opposed to ordinarily dry channels through which water occasionally or intermittently flows...or ephemeral flows of water.” 547 U.S. at 732-733. The plurality also acknowledged that it would “not necessarily exclude seasonal rivers, which contain continuous flow during some months of the year but no flow during dry months.” *Id.* at 732 n.5. Justice Kennedy’s concurring opinion stated that “intermittent flow can constitute a stream...while it is flowing...[i]t follows that the Corps can reasonably interpret the Act to cover the paths of such impermanent streams.” *Id.* at 770. Interestingly, nowhere in the *Rapanos* plurality nor the concurring opinion is the term ‘seasonal river’ tied directly to intermittent flow. *See id.* The plurality states that it’s possible that a ‘seasonal river’ could qualify as a ‘relatively permanent water’ and through inference, a ‘seasonal river’ could equate to a water with intermittent flow. *Id.* at 732 n.5. The WDEQ understands that translating these opinions into a definitive rule is difficult. However, when considered together in a balanced perspective, they cannot be interpreted to mean all intermittent waters are ‘seasonal rivers’ and therefore are jurisdictional. A more reasonable and accurate conclusion that balances the merits of these collective opinions is that some (but not all) intermittent waters with seasonal flow may be WOTUS.

The anticipated federal expansion in many regions of the nation as a result of the ambiguous ‘intermittent’ and ‘snowpack’ terms combined with the high likelihood for increased site-specific jurisdictional determinations and the misinterpretation/non-conformance with the opinions from *Rapanos* leaves the 2019 Draft Rule extremely vulnerable to future litigation and will therefore not provide the regulatory certainty necessary to successfully implement state and federal water quality protections.

The clearest and most defensible solution to these issues, that aligns to both the plurality and concurring opinions in *Rapanos*, is to include a duration component of continuous flow for at least three consecutive months during a calendar year within the definition of ‘intermittent’. The minimum three consecutive month continuous flow duration is recommended as it defines the length of a typical ‘season’ within a calendar year and aligns with long-standing agency practice per the 2008 *Rapanos* Guidance to which states have become accustomed. The flow duration component will provide the much needed quantification of “relatively permanent flow” that is necessary to establish a significant nexus with a navigable water and draw a clear line between jurisdictional intermittent waters and non-jurisdictional waters with impermanent flow (e.g., ephemeral features, intermittent waters with <3 consecutive months continuous flow).

Integration of a flow duration component would also allow the agencies to remove the ambiguous definition of ‘snowpack’ as well as the reference to an elevated groundwater table, resulting in further clarification to the rule. Furthermore, it is predicted that our recommended revision to the definition of ‘intermittent’ and removal of the term ‘snowpack’ would represent a low probability for an expansion of federal jurisdiction beyond the scope of the CWA from what currently exists in the 28 states where the 2015 Rule is enjoined.

Finally, the agencies, in collaboration with states, could develop a standardized process of identifying those intermittent waters that should be considered “tributaries” to navigable waters based on the consecutive three month continuous flow duration component using a ‘regional’ jurisdictional

determination approach. As part of this collaboration, state-federal partners should develop a standardized decision process to determine jurisdiction for intermittent waters that are 'on the cusp' based on the definition of 'intermittent'. Following public comment, these waters (along with the standardized processes) could be made available for the public and regulated community via geospatial maps and integrated as part of the national geospatial mapping exercise for all WOTUS that the agencies advocate in the preamble.

Additional Comments for Consideration

Incorporate Quantitative Criteria in the Definition for Typical Year that Aligns with National Standards

The term 'typical year' is commonly used throughout the 2019 Draft Rule and is defined as the "...normal range of precipitation over a rolling thirty-year period for a particular geographic area." The agencies, within the preamble, further interpret a year to be 'typical' when the observed rainfall from the previous three months falls within the 30th and 70th percentiles established by a 30-year rainfall average. It is further clarified in the preamble that this would generally not include times of drought and extreme floods.

Though the rationale behind using a 30-year rainfall average aligns with conventional analysis of climate data, the process by which this would be implemented by the agencies, as described in the preamble, represents an unnecessary and somewhat duplicative resource expense. Instead, we recommend the agencies use the 30-year precipitation normals developed by the National Oceanic and Atmospheric Administration (NOAA) that are for all intents and purposes the 'national standard' for climate normals. NOAA's 30-year climate normals are robust products that can be used at different geographic scales and are updated every ten years. We also recommend using the broader and more conventional interquartile range of 25th to 75th percentiles that better captures the 'typical' precipitation events while excluding periods of drought and extreme floods.

Clarify Lateral Extents of Jurisdiction

The 2019 Draft Rule describes the lateral limit for jurisdictional waters as either the water's ordinary high water mark (OHWM) or in the case of adjacent wetlands, where the land no longer satisfies all three wetland delineation criteria (hydrology, hydrophytic vegetation, hydric soils). While this is useful, this language is only found within the definitions of OHWM, upland and wetlands under paragraph (c) with no direct linkages to WOTUS waters identified in paragraph (a). WDEQ therefore recommends that the language in 33 CFR § 328.3 (a) explicitly reference the definitions in paragraph (c) to more clearly define the lateral extent of jurisdiction. Therefore the WDEQ recommends the following revision to 33 CFR § 328.3 (a) to read: "For purposes of the Clean Water Act, 33 U.S.C. 1251 et seq. and its implementing regulations, subject to the exclusions in paragraph (b) and definitions in paragraph (c) of this section, the term 'waters of the United States' means".

Revoke and Replace 2008 Rapanos Guidance

In response to the agencies' solicitation, WDEQ recommends revocation of the 2008 Rapanos Guidance following adoption of a revised WOTUS rule and that new guidance be developed that is specific to the new rule. While the WDEQ anticipates that the draft rule revised with our recommendations will result in notably fewer site-specific determinations, new guidance for conducting site-specific determinations will still be needed. New guidance will also assist agencies and stakeholders to create a "clean break" from the 1986 rule and avoid potential confusion that may occur by using guidance that was developed in association with previous rule language. We also recommend that this new guidance incorporate standard field methods for site-specific jurisdictional determinations to ensure consistency and repeatability in implementation of the rule. Finally, we recommend that the new guidance describe the standard process on how to determine whether a year is 'typical'.

Waters Upstream of Federal Jurisdiction Breaks Should Not Be Jurisdictional

The agencies requested comment on whether less than intermittent flow in a channel results in a break in jurisdiction of upstream perennial or intermittent waters. The WDEQ recommends that the rule explicitly state that federal jurisdiction is broken when segments of waters with less than intermittent flow or non-adjacent wetlands occur between a downstream WOTUS and an upstream perennial or intermittent water. It may be most appropriate to insert this explicit exclusion language under 33 CFR § 328.3 (b) of the proposed rule. This would be consistent with the plurality and concurring opinions in *Rapanos*, where a severing of federal jurisdiction occurs when an upstream perennial or intermittent water no longer has a continuous hydrologic surface connection of relatively permanent flow to a downstream WOTUS or the physical connection with a downstream WOTUS via adjacent wetlands is absent.

Isolated Waters Exclusion

As described in the preamble, isolated waters will be excluded from federal jurisdiction under the CWA. This is keeping with the intent of Congress when it enacted the CWA and adhering to *Rapanos* which reaffirmed the holding in *SWANCC* that physically isolated waters are not jurisdictional regardless of their proximity to a jurisdictional water. While WDEQ fully supports the agencies' exclusion of isolated waters as those not meeting the definitions of a WOTUS under paragraphs (a)(1) through (6) of the proposed rule, we request that isolated waters be identified as an explicit exclusion within paragraph (b) of the rule. Such clarity provides a more predictable regulatory framework.

State Protections and Funding

The preamble to the rule should include clear language that recognizes the states' role in determining how best to protect and manage its waters. The agencies should also affirm their support for adequate funding levels to states to ensure robust protection of the nation's water quality

Closing Statement

In closing, the WDEQ appreciates the agencies' efforts to develop a revised WOTUS definition that is more consistent with the *Rapanos* plurality and concurring opinions as well as the scope of federal jurisdiction Congress envisioned under the CWA. The 2019 Draft Rule represents a significant step forward toward more clearly defining what is and is not a WOTUS; however, there are some aspects of the 2019 Draft Rule, most notably the definition of intermittent waters that requires further consideration. With WDEQ's suggested revisions, the final WOTUS rule will support national water quality goals while also allowing states to fulfill their role as co-regulators of water quality. We look forward to continuing our partnership with you to develop a clear, definitive, and pragmatic rule that appropriately defines the role of the federal government and states in protecting the quality of all our nation's waters. If you have any questions or comments, please contact my staff David Waterstreet (david.waterstreet@wyo.gov, 307-777-6709) or Eric Hargett (eric.hargett@wyo.gov, 307-777-6701).

Sincerely,



Todd Parfitt, Director

TP/KF/DW/EGH/gt

cc: Kevin Frederick, Administrator, Water Quality Division, WDEQ
Beth Callaway, Governor's Office
Kelly Shaw and Erik Peterson, Attorney General's Office



State Engineer's Office

MARK GORDON
GOVERNOR

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April 15, 2019

David Ross
Assistant Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Federal Building
1200 Pennsylvania Avenue NW (1101A)
Washington, DC 20460

R.D. James
Assistant Secretary of the Army (Civil Works)
108 Army Pentagon
Washington, DC 20310-0108

Submitted online via: <http://www.regulations.gov>

Re: Revised Definition of "Waters of the United States," EPA-HQ-OW-2018-0149

Dear Administrator Ross and Assistant Secretary James,

The Wyoming State Engineer's Office (WSEO) appreciates the opportunity to comment on the proposed Revised Definition of "Waters of the United States" rulemaking. Wyoming holds title to water within its borders in a sovereign capacity as representative of all the people for the purpose of guaranteeing that the common rights of all are equally protected. Wyo. Const. art. 8 § 1; art. 1 § 31; *Merrill v. Bishop*, 287 P.2d 620, 625 (Wyo. 1955); See also *Farm Inv. Co. v. Carpenter*, 61 P. 258, 265 (1900). Wyoming constitutional and statutory provisions charge the State Engineer and the State Board of Control with the supervision, appropriation, distribution, and diversion of surface and groundwater use within the state. Wyo. Const. art. 8 §§ 2, 5; See, e.g., Wyo. Stat. Ann. §§ 41-4-502 through -511. The need for the state to control the use of its limited and precious water resources compelled Wyoming's Constitutional declaration of water ownership, and its history of water law and water administration that has since developed.

Wyoming's Environmental Quality Act, under which Wyoming regulates water quality, further respects the diversion and use of water, as well as the State Engineer and State Board of Control's authority over those activities. "Nothing in this act shall be construed to supersede or abrogate any valid water right. It is recognized that diversion of water caused by the exercise of a valid water right is an allowable practice." Wyo. Stat. Ann. § 35-11-302(c). "Nothing in this act: . . . Limits or interferes with the jurisdiction, duties or authority of the state engineer, the state board of control " Wyo. Stat. Ann. § 35-11-1104(a)(iii).

The Clean Water Act ("CWA") provides that it is the "policy of Congress to recognize, preserve, and protect the primary responsibilities of States to . . . plan the development and use of land and water resources." 33 U.S.C. § 1251(b). Additionally, the CWA states: "It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this chapter. It is the further policy of Congress that nothing in this

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chapter shall be construed to supersede or abrogate rights to quantities of water which have been established by any State." 33 U.S.C. § 1251(g). As recognized by the CWA, Wyoming has an important, sovereign interest in protecting its ability to plan for the use of its limited water resources, and to allocate its waters for those uses according to state law.

The Wyoming Department of Environmental Quality (WDEQ) has coordinated and worked with the WSEO in preparing their detailed comments regarding the revised definition of "Water of the United States" and the WSEO supports them in whole. Of special importance to the water users of Wyoming when exercising their rights are clear definitions of jurisdictional waters, especially intermittent waterways and ditches. To that end, the idea of geospatial mapping tools would be extremely useful to our users and is supported enthusiastically by the WSEO.

The WSEO appreciates the agencies' efforts to reach out to the states as co-regulators in meaningful consultation, to listen to their concerns, acknowledge states' authorities over "waters of the state," and to work toward a rule that seeks to strike a balance between the importance of protecting the quality of the nation's waters and preserving the sovereignty of states over their land and water resources. The WSEO encourages the agencies to continue this outreach and consultation throughout the comment period and in the implementation of the rule.

Sincerely,

A handwritten signature in blue ink that reads "Rick Deuell".

Rick Deuell P.E.
Deputy State Engineer

Cc: Beth Callaway, Governor's Office
Chris Brown, Attorney General's Office

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The Wyoming Department of Agriculture is dedicated to the promotion and enhancement of Wyoming's agriculture, natural resources and quality of life.

April 15, 2019

U.S. Environmental Protection Agency
EPA Docket Center, Office of Water Docket
Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: Docket ID No. EPA-HQ-OW-2018-0149; Definition of "Waters of the United States"

Mr. McDavid:

The Wyoming Department of Agriculture (WDA) wishes to submit the following comments which are specific to our mission of promoting and enhancing agriculture, natural resources and quality of life in Wyoming. We appreciate the opportunity to comment on the above-referenced docket for the revised definition of Waters of the United States. We also appreciate the agencies' engagement with the States through the implementation of the 2017 Executive Order "Restoring the Rule of Law, Federalism and Economic Growth by Reviewing the 'Waters of the United States' Rule". The Executive Order, in our experience, illustrated a sincere commitment to cooperative federalism and also recognized the need to clarify, appropriately through formal rule-making, jurisdictional *Waters of the United States*.

We support the Proposed Rule as it affirms the wishes of Congress to "recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce and eliminate pollution" within their boundaries. Local control of decisions impacting water quality is essential. Wyoming's Environmental Quality Act (§ 35-11-101) grants the State the authority to regulate water quality for all surface and groundwater within the boundaries of the State. This means there are water quality standards for every drop of water in Wyoming. Lack of federal jurisdiction does not equal lack of protection. This proposed rule, therefore, finally contemplates whether federal agencies or local entities are better positioned to make decisions regarding how best to administer programs for smaller waterbodies.

WDA strongly supports any efforts of the agencies to collaborate with States, Tribes and other Federal agencies to develop geospatial datasets that would simply and conclusively identify "waters of the United States". We believe there is sufficient clarity of jurisdictional determination criteria, through this Proposed Rule, to allow the formulation of a geospatially-based tool to identify the appropriate waterbodies within Wyoming that should be considered *waters of the United States*. Wyoming has significant experience in these types of efforts to categorize water resources. The Wyoming Department of Environmental Quality, in collaboration with our States' Conservation Districts, recently undertook a very successful effort to develop and use a model fed by geospatial datasets to differentiate between waterbodies to be protected for primary contact recreation versus those waters to be protected for secondary contact recreation uses. The distinguishing characteristics separating primary and secondary contact recreation use designations are likely more obscure than those which would determine *waters of the United States*. WDA recommends the agencies institute a program for voluntary

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development of jurisdiction-determining models by States and Tribes for cooperative review and final approval by the agencies.

Federal-state interaction is common in categorizing waterbodies for any number of reasons. EPA reviews waterbody submissions of States for inclusion on the CWA 303(d) List of Impaired Waterbodies and routinely reviews Use Attainability Analyses conducted by States. These existing water quality administration tools are designed to assign attributes to waterbodies based on credible data for efficient and effective decision making. Every waterbody in Wyoming is categorized based on existing or potential uses for that water. These past experiences indicate CWA jurisdiction determinations are possible should be conducted collaboratively on a State-by-State basis. The creation of maps clearly indicating *waters of the United States* should be the ultimate goal of this effort.

In order to clearly identify *waters of the United States*, however, WDA requests better criteria for the definition of *intermittent*. In order to adhere to the philosophy of jurisdictional waters exhibiting relatively permanent flow, we recommend the phrase *three consecutive months of continuous flow during a calendar year* be utilized as qualifying criteria in place of *during certain times of a typical year*. Many dry draws in Wyoming exhibit continuous, but short-duration flows during spring run-off that would more appropriately be regulated locally.

WDA supports the premise offered by comments of the Wyoming County Commissioners Association and the Wyoming Association of Conservation Districts relating to jurisdictional ditches defined in the Proposed Rule. WDA also supports the agencies' proposal to exclude most ditches as *waters of the United States* but we are concerned that including *ditches constructed in a tributary or relocates or alters a tributary* will create ambiguity in determining jurisdiction. It could be inferred that all ditches inherently alter a tributary and would automatically be jurisdictional even if constructed in an upland setting common to agricultural operations. To remedy conflicting language in the proposed rule, we recommend striking the phrase *or relocates or alters a tributary* from the definition ditches constituting *waters of the United States*. WDA strongly recommends that upland ditches, agricultural ditches and storm water control ditches be exempt from federal jurisdiction.

Thank you for your commitment to partnering with State and local entities to bring regulatory certainty and efficiency to water quality improvement efforts across the country. Farmers and ranchers constitute a valuable source of information regarding the function of the watersheds in which they live and work and are impacted by decisions relating to management of natural resources. WDA believes that the Proposed Rule appropriately positions States to take the lead in improving water resources.

Sincerely,

Doug Miyamoto
Director, Wyoming Department of Agriculture

Cc: Governor Mark Gordon
Wyoming Congressional Delegates

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National Association of State Departments of Agriculture
Wyoming Department of Environmental Quality
Wyoming State Engineer's Office
Wyoming Water Development Office
Wyoming Game and Fish Department
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April 15, 2019

WER 10520.00d
Environmental Protection Agency
Revised Definitions of "Waters of the United States"
Docket EPA-HQ-OW-2018-0149

U.S. Environmental Protection Agency
EPA Docket Center
Office of Water Docket
Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

To Whom it May Concern,

The staff of the Wyoming Game and Fish Department (Department) has reviewed the proposed Revised Definitions of "Waters of the United States". We offer the following comments for your consideration.

As a headwater state, Wyoming contains the origins of many of the great rivers of the United States. These rivers rise from the mountains, foothills, sagebrush steppes, and eastern plains to flow across the borders and become the Colorado River, Snake River, Missouri River and Platte River. While these larger rivers are undoubtedly considered Waters of the United States, it appears that some quantity of smaller tributaries and headwaters (especially ephemeral headwaters) that feed these rivers appear to not be covered under the proposed new rule.

From a scientific perspective, there is no doubt that tiny headwater seeps and springs are important for the proper ecological function of downstream rivers (Colvin et al. 2018). Wyoming contains a vast network of small headwater streams. Based on 1:24,000 High Resolution National Hydrography Dataset (NHD), Wyoming has approximately 34,000 miles of perennial streams, 197,000 miles of intermittent streams, and an uncertain number of ephemeral streams. Highest densities of intermittent streams occur in headwaters at high elevations although they can also be found at other elevations throughout the state (Paul Caffrey, WyGIS Personal Communication). Without further detailed Geographic Information Systems (GIS) analysis and modeling, it is unclear how many of those headwater streams would not be considered jurisdictional under the proposed new rule.

It appears the amount of unprotected stream miles and associated wetlands under the proposed rule is underestimated because of imprecise maps and associated NHD data layers. Many

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headwaters show up on the maps as perennial but are actually ephemeral or intermittent. This mapping error has been estimated to range from 24% in the western mountains to 33% in the Great Plains (Stoddard et al. 2005). Therefore, there are many miles of streams and associated wetlands in Wyoming that may not qualify for Clean Water Act protection under the proposed rule.

Headwaters in Wyoming play a critical role in providing nutrients and cold water habitats for many downstream waters. The headwaters play an important role in maintaining Wyoming's fishery resources. Cutthroat trout and various native nongame fish species are dependent on these headwaters.

Native cutthroat trout in Wyoming include the Yellowstone cutthroat trout, the Colorado River cutthroat trout, and the Bonneville cutthroat trout. These native trout depend on cold, clean water habitats and can be found in the mountainous regions of north central, northwest, and western Wyoming. They are also found in southwest Wyoming in the Missouri River, Snake River, Green River, Bear River, and Little Snake River drainages.

Native cutthroat trout are a priority for the Department, and our conservation and management activities revolve around securing and expanding their populations. Cutthroat trout today exist at mid to high elevations in perennial foothill streams up to tiny, high mountain streams that may be intermittent or even ephemeral. It is vital to protect the water quality and quantity of the headwater springs and seeps and all the tributaries whether perennial or not.

The northern leatherside chub is recognized as a Species of Greatest Conservation Need under Wyoming's State Wildlife Action Plan (SWAP 2017). This fish species frequents intermittent streams in the Snake and Salt River drainages (SWAP 2017, Schultz and Cavali 2012). For example, Dry Fork is a seasonally dry tributary to the Smiths Fork River and harbors northern leatherside chub. This tributary and others like it would not meet the proposed definition of Waters of the United States.

The native fish community of the Green River basin in Wyoming is the most imperiled in the state (SWAP 2017). The basin is home to four of Wyoming's most sensitive fish species, the bluehead sucker, flannelmouth sucker, roundtail chub, and the federally endangered Kendall Warm Springs dace. Collectively referred to as the "Three Species", the bluehead sucker, flannelmouth sucker, and roundtail chub exist in Wyoming in a subset of drainages with intermittent and ephemeral tributaries. These waters provide periodic habitat during wetter periods. These waters would not meet the proposed definition of Waters of the United States.

Native fish communities on Wyoming's eastern plains are adapted to cycles of wet periods and droughts and expand and contract their distributions according to runoff characteristics. Many of these streams in the Platte River Basin and Northeastern Missouri River Basin in Wyoming are intermittent or ephemeral (SWAP 2017). While portions of the streams' mainstem channels (for

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example, the Belle Fourche, Little Missouri River, Cheyenne River and the Niobrara River) would be considered Waters of the United States under the proposed rule, it appears that other portions and headwater tributaries would likely not. Species of Greatest Conservation Need in these watersheds include: brassy minnow, finescale dace, flathead chub, goldeye, Iowa darter, pearl dace, plains minnow, western silvery minnow, shovelnose sturgeon, sauger, bigmouth shiner, common shiner, hornyhead chub, orangethroat darter, northern plains killifish, plains topminnow, sturgeon chub, and suckermouth minnow.

In summary, the Department places high value on Cutthroat trout and various native nongame fish species and the smaller tributaries and headwaters they depend on. Wyoming values these essential waters and will provide sufficient protections. We ask the Environmental Protection Agency to work with us to fully understand the proposed definitions. In addition, GIS modeling and imagery analysis will also be necessary to clearly understand the extent of Wyoming waters excluded under the proposed definition of Waters of the United States.

Thank you for the opportunity to comment. If you have any questions or concerns please contact Angi Bruce, Deputy Director, at 307-777-4501.

Sincerely,



Scott G. Smith
Deputy Director

SS/pd/ml

cc: U.S. Fish and Wildlife Service
Chris Wichmann, Wyoming Department of Agriculture, Cheyenne
Paul Dey, Wyoming Game and Fish Department
Alan Osterland, Wyoming Game and Fish Department
Beth Callaway, Office of Governor Mark Gordon

To Whom it May Concern
April 15, 2019
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