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November 14, 2014

Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Jo-Ellen Darcy
Assistant Secretary of the Army
Civil Works
108 Army Pentagon
Washington, DC 20310

Submitted electronically

RE: Docket ID No. EPA-HQ-OW-2011-0880

Dear Administrator McCarthy and Assistant Secretary Darcy:

The Western States Land Commissioners Association (WSLCA) is submitting the enclosed resolution that addresses the proposed rule, *Definition of "Waters of the United States" under the Clean Water Act*. As set forth in our resolution, WSLCA urges the EPA to suspend and reconsider action on this rulemaking given that it contravenes Supreme Court precedent and federal statutory authority, lacks adequate scientific support and economic analysis, and prejudices the substantive and vested rights of landowners.

WSLCA is led by the land commissioners of 23 states, which together manage over 440 million acres of land, mineral properties, submerged lands, and water resources. Collectively, WSLCA's membership represents the nation's second largest landowner. Under state constitutional and statutory mandates, WSLCA members manage public lands and natural resources to generate income for the benefit of K-12 education and to support other public purposes provided by state law. WSLCA also consists of affiliate members representing businesses, industries, and organizations that support WSLCA's mission and help to conserve, develop, and maximize the value of the lands and natural resources within the western states.

WSLCA joins with the leaders of other western states in urging the EPA give due regard to the core principles of federalism embodied in the Clean Water Act, which states in relevant part: "[i]t is the policy of Congress to recognize, preserve, and protect the primary responsibilities and rights of States . . . to plan the development and use . . . of land and water resources." 33 U.S.C. § 1251(b). In conflict with this core principle, the EPA's rulemaking has proceeded without adequate state consultation and without appropriate consideration of local plans and priorities for land and water resources. As a result, the proposed rule is marked by regulatory uncertainty and overreach. If adopted, the rule will significantly interfere with the rights, duties, and economic interests of western states and landowners.

WSLCA respectfully requests that the EPA suspend action on this matter until such time as the rulemaking can be developed from a process based on peer-reviewed scientific studies and comprehensive economic analyses, thorough input from landowners and state and local officials, and full integration of state land and water management plans.

Thank you for your consideration of our comments on this matter.

Sincerely,

A handwritten signature in black ink that reads "John Thurston". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

John Thurston, President
Western States Land Commissioners Association
commissioner@cosl.org
501-324-9422
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Enclosure: WSLCA Resolution 2014-04



RESOLUTION 2014-04

CONCERNING THE PROPOSED CHANGES TO CLEAN WATER ACT JURISDICTION

Whereas, the Western States Land Commissioners Association (“WSLCA”) reaffirms its commitment to the conservation and preservation of America’s waters; and

Whereas, the Environmental Protection Agency (EPA) has proposed a rule to revise the regulatory definition of “waters of the United States” under the Clean Water Act; and

Whereas, the EPA’s proposed rule significantly broadens federal jurisdiction over state lands, waterways, and water resources in a manner that disregards sound science, contravenes Supreme Court precedent, and infringes on the constitutional and economic rights of western states and citizens; and

Whereas, members of WSLCA have state constitutional mandates to manage millions of acres of lands and waterways for economic development, public education, conservation, recreation, and other public purposes provided by state law, which will be significantly and adversely impacted if the proposed rule is adopted; and

Whereas, the proposed rule seeks to expand federal jurisdiction over wholly intrastate water bodies, wetlands, intermittently wet features, and all tributaries, regardless of their size, function, amount, and regularity of flow and relationship to traditional navigable waters, in contravention of Supreme Court precedent and the current scope of federal authority under the Clean Water Act; and

Whereas, the draft report the EPA claims as support for the proposed rule has not been finalized, has not undergone mandatory final peer review by the Science Advisory Board, and has not incorporated a rigorous analysis of the relationship of ephemeral systems to traditional navigable waters, instead lumping together ephemeral and intermittent systems as a basis to assert blanket jurisdiction over all tributaries; and

Whereas, the EPA fails to fully disclose and evaluate the negative economic impacts that will be caused by the rule, including the enormous impacts to land values, permitting and mitigation costs, and costs of project delays, all of which will severely harm the economies of the western states and impede the development, conservation, and productive use of public and private lands and scarce water resources; and

Whereas, many of the provisions of the proposed rule did not receive adequate state or local input, are vaguely written, and leave the regulated community without any clarity as to their regulatory status, thus exposing the regulated community to citizen suits and shifting the burden of proof to landowners to disprove federal jurisdiction; and

Whereas, states have primary jurisdiction for the management of bodies of water within their own borders, and several states have crafted, or are in the process of crafting, their own water management plans based on sound science and local information to conserve and preserve water and waterways while allowing for responsible economic growth within their state.

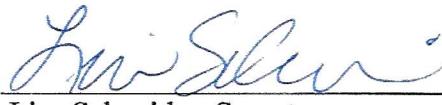
THEREFORE BE IT RESOLVED AS FOLLOWS:

1. WSLCA urges immediate suspension of the EPA's current rulemaking pending final peer review of the draft report entitled *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence*. Any proposed changes to the regulatory definition of "waters of the United States" should not proceed until the conclusion of the required process for developing and evaluating regulatory options based on sound, peer-reviewed science.
2. WSLCA calls upon the EPA to respect the limits of Supreme Court precedent and the scope of federal authority under the Clean Water Act, and to refrain from any efforts to extend regulatory jurisdiction to reach tributaries, waterways, wetlands, and other water bodies and systems that lack a significant nexus to navigable waters as traditionally understood.
3. WSLCA urges the EPA to explicitly state that the revised standards in the proposed rule do not apply to projects and lands already delineated under existing standards. Given the magnitude of the current proposal, it is critical to recognize the validity of existing delineations and protect the rights and interests of landowners relying on the federal government's existing jurisdictional determinations.
4. WSLCA recommends that all federal land use management and water management plans and policies strictly comply with and conform to the state water management plans and policies implemented in each state's jurisdiction.
5. WSLCA urges Congress to take federal legislative action to preserve the primary responsibilities and rights of states to prevent, reduce, and eliminate pollution of waters wholly within a state while allowing responsible economic development of state and private lands and water resources.

Adopted this 22nd day of July, 2014.



John Thurston, President
WSLCA



Lisa Schneider, Secretary
WSLCA