



#### Board of Directors & Officers

President, **Jennifer Wigal**  
Water Quality Program Manager,  
Oregon Department Environmental  
Quality

Vice President, **Allison Woodall**,  
Special Assistant, Texas Commission  
on Environmental Quality

Treasurer, **Andrew Gavin**, Deputy  
Executive Director, Susquehanna River  
Basin Commission

Secretary, **Peter Goodmann**, Director,  
Division of Water, Kentucky  
Department of Environmental  
Protection

Past President, **Peter LaFlamme**  
Director, Watershed Management  
Division, Vermont Department of  
Environmental Conservation

#### Regional Representatives

Region I - **Alicia Good** (RI)  
Region II - **Koon Tang** (NY)  
Region III - **Melanie Davenport** (VA)  
Region IV - **Peter Goodmann** (KY)  
Region V - **Rebecca Flood** (MN)  
Region VI - **Caleb Osborne** (AR)  
Region VII - **Jaime Gaggero** (KS)  
Region VIII - **Karl Rockeman** (ND)  
Region IX - **Krista Osterberg** (AZ)  
Region X - **Heather Bartlett** (WA)  
Interstates - **Susan Sullivan** (NEIWPC)

Executive Director & General Counsel  
**Julia Anastasio**

August 31, 2017

Ms. Stacy Jensen  
Regulatory Community of Practice (CECW-CO-R)  
U.S. Army Corps of Engineers  
441 G Street NW  
Washington, DC 20314

Ms. Donna Downing  
Office of Water, U.S. Environmental Protection Agency  
1200 Pennsylvania Ave, NW  
Washington, DC 20460

**Re:** Docket ID No. EPA-HQ-OW 2017-0203 *Definition of “Waters of the United States”-Recodification of Pre-Existing Rules*

Dear Ms. Downing and Ms. Jensen:

The Association of Clean Water Administrators (ACWA) is the independent, nonpartisan, national organization of state and interstate (hereinafter “states”) water program directors, responsible for the daily implementation of the Clean Water Act’s (CWA) water quality programs. We appreciate the opportunity to provide the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) with comments on this first step in the process of replacing and revising the rule interpreting the term “navigable waters” as defined in 33 U.S.C. 1362(7).

Members of ACWA have been briefed by EPA about the “2-step” process which EPA and the Corps are using to implement the “*Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the Waters of the United States Rule*” in an efficient, expedient manner. While ACWA supports EPA taking immediate action to bring more certainty to the regulated community and the public by reinstating the “Waters of the U.S.” interpretation which existed prior to the 2015 Clean Water Rule, we also request that EPA and the Corps take whatever time is needed to ensure that a final rule is the result of thorough examination of the science and implementation concerns, as well as extensive consultation with states throughout the rulemaking.

ACWA stands ready to assist you and your staffs as you begin to develop the outlines of a new rule. We have established a geographically diverse workgroup made up of representatives from several state water quality programs. This workgroup is available to assist as you consider potential options for the new rule. ACWA’s members have real-world experience and detailed understanding of how to implement the Clean Water Act in a manner

that meets their state priorities and goals while still meeting the requirements of the Act. When state environmental commissioners and elected officials need to discern how to implement this new rule and what effects it will have on locals, our members are the experts to whom they will turn. ACWA urges EPA to continue to take advantage of consulting with our members by asking for feedback as the text of the proposed rule is drafted and prior to publication of a proposed rule. Doing so would help ensure an improved final rule and exemplify the tenets of cooperative federalism.

ACWA looks forward to providing additional comments as the new rule is developed. ACWA members will continue to discuss the critical questions posed by EPA, such as: what are potential impacts, both intended and unintended, of a definition inspired by Justice Scalia's *Rapanos* decision on state CWA programs, how states would react to changes in federal jurisdiction (given that some states have "Waters of the State" definitions that cannot be more stringent than EPA's definition while others have more expansive "Waters of the State" definitions), and how states with less robust state permitting infrastructure would adapt to changes in the number of jurisdictional waters. We look forward to future opportunities to share our perspectives on these and other issues as the rule is drafted.

While ACWA's process to develop comments is fairly robust and intended to capture the diverse perspectives of the states that implement these programs, EPA should also seriously consider all of the recommendations that come directly from states and interstates. Please contact ACWA's Executive Director Julia Anastasio at [janastasio@acwa-us.org](mailto:janastasio@acwa-us.org) or (202) 756-0600 with any questions regarding ACWA's comments.

Sincerely,



Jennifer Wigal  
Water Quality Program Manager  
Oregon Department of Environmental Quality  
ACWA President

CC: Mr. Douglas W. Lamont, P.E.  
Senior Official Performing Duties of the Assistant Secretary of the Army (Civil Works)