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Executive Director & General Counsel  
**Julia Anastasio**

1725 I Street, NW, Ste. # 225,  
Washington, DC 20006

TEL: 202-756-0600

WWW.ACWA-US.ORG

May 13, 2025

Robyn S. Colosimo

Senior Official Performing the Duties of the Assistant Secretary of the Army (Civil  
Works)

U.S. Department of the Army

Peggy Browne

Acting Assistant Administrator for Water

U.S. Environmental Protection Agency

Re: E.O. 13132 (Federalism) Consultation and Coordination on Upcoming Efforts  
to Revise the Definition of "Waters of the United States"

The Association of Clean Water Administrators (ACWA) is the independent, nonpartisan, national organization of state, interstate, and territorial water program managers who serve as co-regulators of the federal Clean Water Act (CWA). ACWA appreciates that the U.S. Army Corps of Engineers (USACE) and U.S. Environmental Protection Agency (EPA) (collectively referred to herein as "the Agencies") have begun early engagement with CWA co-regulators in this rulemaking effort through federalism consultation and coordination under Executive Order 13132, *Federalism*.

As the primary entities responsible for carrying out most of the CWA programs, states are very interested in any national regulatory updates or policy positions that define terms under the CWA, including the definition of "waters of the United States" (WOTUS). That key phrase – which has been the subject of extensive litigation and recent federal rulemakings - establishes the scope of federal jurisdiction under the CWA and impacts various water quality management programs, including those administered by states.

To assist with the development of a foundational rule, ACWA offers the following comments and recommendations for any potential rulemaking or agency action intended to revise the Agencies' definition of WOTUS:

**1. Recognize states' delegated CWA authority and role as co-regulators in CWA program implementation.** When passing the CWA, Congress deliberately established a balance of powers and responsibilities between states and the federal government according to the principles of cooperative federalism. The Agencies must adhere to this Congressionally designated balance of state-federal powers and responsibilities in any CWA rulemaking.

**2. Provide states with early, continuous, and meaningful opportunities for dialogue and input as any new rule is developed.** Meaningful collaboration includes early engagement, reviewing draft products, identifying intended and unintended consequences, assessing opportunities for state program

improvement and enhancement, considering implementation obstacles and challenges, discussing administrative resource implications, and supporting states with appropriate training, tools and support materials. ACWA recognizes and appreciates the Agencies' engagement with states in their recent federalism consultation session with state organizations early in this process, as well as upcoming state listening sessions, in addition to opportunities for public comment.

**3. Recognize the geographic, geologic, climatic, hydrologic, and leadership diversity among states and craft a definition that provides clarity but also flexibility for state implementers.**

Each state faces its own diverse circumstances in implementing CWA programs and in protecting our Nation's waters. The Agencies should work extensively with individual states in the development and refinement of any new WOTUS rule to better understand how such a rule may impact their ability to protect our Nation's waters.

**4. Respect and follow binding legal precedent, Congressional intent, and peer-reviewed science in establishing any new rules, regulations, policies, or guidance that may define or affect the scope of WOTUS and CWA authorities.**

**5. Prepare to provide the states, well in advance, with technical assistance, tools, and trainings to assist with implementation of any revised definition.**

**6. Consider a delayed effective date, dependent on the significance and scope of the final rule, to give state partners adequate time to revise state regulations and/or to develop new state policy to cover any changes in coverage as a result of the revised jurisdictional definition.**

**7. Ensure that federal funding to states reflects necessary levels to continue states' ability to effectively and efficiently administer CWA programs and protect our Nation's water resources.**

While these comments and recommendations are intended to capture the diverse perspectives of the state, interstate, and territorial clean water administrators, the Agencies should also seriously consider the recommendations that come directly from individual states, interstates, and territories. We would like to reiterate our appreciation to the Agencies for the opportunity to provide pre-proposal recommendations – and look forward to continuing meaningful engagement – in this federal rulemaking effort.

Sincerely,

A handwritten signature in black ink that reads "Adrian Stocks". The signature is written in a cursive, flowing style.

Adrian Stocks  
ACWA President