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Governor Bill Walker  
STATE OF ALASKA

June 19, 2017

The Honorable E. Scott Pruitt  
Administrator  
Environmental Protection Agency  
USEPA Headquarters  
Ariel Rios Building  
1200 Pennsylvania Ave. NW  
Washington, D.C 20460

Mr. Douglas W. Lamont  
Senior Official Performing  
the Duties of the Assistant  
Secretary of the Army (Civil Works)  
Department of the Army  
104 Army Pentagon  
Washington, D.C. 20310-0104

RE: Proposed Revision of the "Waters of the United States" Definition

Dear Mr. Pruitt and Mr. Lamont:

Thank you for reaching out to the State of Alaska (State) to solicit input on a revised "waters of the United States" (WOTUS) definition as the federal agencies undertake the work directed by the February 28, 2017 Presidential Executive Order. As evidenced by the State's past comments and our participation in litigation challenging the agencies' 2015 regulations expanding the WOTUS definition, the assertion of federal control represented by this rule has long been a matter of concern for Alaska.

We appreciate the steps taken to reevaluate the 2015 rule and, in particular, the focus given to Justice Scalia's opinion in *Rapanos v. United States*, 547 U.S. 715 (2006), in that effort. Justice Scalia appropriately recognized Congress's clear intent in the Clean Water Act (CWA) to "recognize, preserve, and protect the primary responsibilities and rights of states" in land and water management. 33 U.S.C. § 1251(b). A more restrained interpretation of federal jurisdiction under the CWA – as advanced by Justice Scalia – is consistent with that Congressional intent.

The absence of federal permitting requirements will not leave waters unprotected. The Alaska Constitution and a strong public trust doctrine govern the management of water resources in our state. The Alaska Legislature has already provided State agencies with statutory authority to protect water resources and to ensure all uses are in the public interest.

We also appreciate your emphasis on "cooperative federalism" in this rulemaking process. Alaska has unique characteristics such as permafrost that make our active participation critical to developing a sensible and workable definition of waters of the United States. The State of Alaska has often found itself in an adversarial position with the federal government in the past, fighting to preserve our ability to manage and develop our own lands and resources. We are hopeful that this marks the

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beginning of a more productive and collaborative relationship that takes into account Alaska's complex and unique environment.

We appreciate your effort in reaching out to states at this early stage and look forward to working with you as this rulemaking process advances. I have enclosed more detailed comments prepared by my State of Alaska agencies for your consideration.

Sincerely,



Bill Walker,  
Governor

**Enclosure**

cc: The Honorable Lisa Murkowski, United States Senate  
The Honorable Dan Sullivan, United States Senate  
The Honorable Don Young, United States House of Representatives  
The Honorable Sam Cotten, Commissioner, Alaska Department of Fish and Game  
The Honorable Larry Hartig, Commissioner, Alaska Department of Environmental Conservation  
The Honorable Marc Luiken, Commissioner, Alaska Department of Transportation and Public Facilities  
The Honorable Andrew T. Mack, Commissioner, Alaska Department of Natural Resources  
Gib Owen, Office of the Assistant Secretary of the Army (Civil Works), Department of the Army  
Donna Downing, Office of Water, Environmental Protection Agency  
Andrew Hanson, Federalism Contact, Environmental Protection Agency