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Official Correspondence
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July 25, 2017

Mr. Scott Pruitt
Administrator
U.S. Environmental Protection Agency
Washington, DC 20510

[sent via e-mail to Sarah Greenwalt]

Dear Mr. Pruitt:

The Western States Land Commissioners Association (WSLCA) support efforts to vacate the rule, Definition of "Waters of the United States" under the Clean Water Act (WOTUS), that was adopted in May 2015. Adoption of WOTUS by the EPA failed to give due regard to the core principles of federalism embodied in the Clean Water Act and to appropriately consider local plans and priorities for land and water resources. As a result, the rule is marked by regulatory uncertainty and overreach.

WSLCA concern stems from our constitutional and statutory mandates to manage public lands and natural resources to generate income for the benefit of K-12 public education and to support other public purposes. The association is comprised of the land commissioners of 20 states, which together manage over 515 million acres of land, mineral properties, submerged lands, and water resources. Collectively, WSLCA's membership represents the nation's second largest landowner. 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.

The WOTUS rule directly impacts 20 state education budgets due to impairing our ability to effectively manage the 515 million acres of land, minerals, and waterways which are held in trust for our school children and individual state residents. We therefore support swift action to vacate the final rule. If a future rulemaking process is deemed necessary, it should be developed from a process based on peer-reviewed scientific studies and comprehensive economic analyses, through input from landowners and state and local officials, and full integration of state land and water management authorities and plans.

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

Sincerely,

Harry Birdwell, President

Enclosure:
Resolution 2017-11

'Connecting the management of lands and assets to education funding'



RESOLUTION 2017-11
WATERS OF THE UNITED STATES AND CLEAN WATER ACT JURISDICTION

Whereas, the Western States Land Commissioners Association ("WSLCA") and its member states manage over 515 million acres of trust lands, minerals, and waterways that are interspersed with federal lands; and

Whereas, members of WSLCA have state constitutional mandates to manage millions of acres of lands for economic development, public education, conservation, recreation, and other public purposes provided by state law; and

Whereas, the ability of member states to fulfill their constitutional mandates is severely hindered when trust lands are surrounded by federal lands and federal wildlife management mandates; and

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) implemented Waters of the United States (WOTUS) Rule to revise the regulatory definition of "waters of the United States" under the Clean Water Act in August of 2015; and

Whereas, the EPA's WOTUS 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 public education, economic development, 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 WOTUS Rule expands 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, multiple litigation efforts across the nation were initiated by States and stakeholders to stay implementation of the WOTUS Rule and to remand the Rule to the EPA; and

Whereas, multiple Federal Courts stayed implementation of the Rule and the 6th Circuit Federal Court stayed implementation nation-wide; and

Whereas, President Trump signed Executive Order 13778 in February of 2017 requiring the EPA and the U.S. Army Corps of Engineers to review the WOTUS Rule to insure the Rule “...is in the national interest to ensure that the Nation's navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of the Congress and the States under the Constitution.”

Whereas, states have primary jurisdiction for the management of bodies of water within their own borders, and several states have drafted, or are in the process of creating, 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.

BE IT THEREFORE RESOLVED AS FOLLOWS:

1. The WSLCA urges the EPA to fully implement Executive Order 13778, 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; and

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2. The WSLCA urges the EPA to rescind the WOTUS Rule and issue a new Rule with concise definitions that respect the rights of states to regulate waters within their borders, recognize the validity of existing delineations and protect the rights and interests of landowners relying on the federal government's existing jurisdictional determinations; and
3. The 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; and
4. The 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 12th day of July, 2017.



Harry Birdwell, President
WSLCA



Linda Fisher, Secretary
WSLCA