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Greensburg, Kansas
Secretary Jeff Witte, Vice – Chair
Las Cruces, New Mexico

May 15, 2019

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Carolina, Puerto Rico
Mr. Norm Archibald
Abilene, Texas
Hon. Kitty Barnes
Catawba County, North Carolina
Mr. Rodney Bartlett (SCAS)
Peterborough, New Hampshire

Honorable Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Hon. Andy Beerman
Park City, Utah
Hon. Jeff Branick
Beaumont, Texas
Hon. Dr. Robert Cope, DVM
Salmon, Idaho
Hon. Mark Fox
Mandan, Hidatsa, and Arikara
(MHA) Nation, North Dakota

Dear Administrator Wheeler:

EPA's Local Government Advisory Committee (LGAC) is pleased to present the LGAC's Report entitled, "*Report on the Proposed 2018 Waters of the United States (WOTUS) Rule*" which offers our findings and recommendations in response to our charge. As public elected and appointed officials we are keenly aware of the importance of protecting our nation's water resources and we appreciate the opportunity to provide you with the state, tribal and local government perspective.

Hon. Karen Freeman-Wilson
Gary, Indiana
Mr. Brian Fulton
Jackson County, Mississippi
Dr. Hector Gonzalez, M.D.
Laredo, Texas
Ms. Teri Goodmann
Dubuque, Iowa

Background

On December 11, 2018, the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE), jointly proposed a new WOTUS rule. On February 12, 2019 the LGAC was charged to give our advice and recommendations on the proposed rule.

Ms. Susan Hann
Brevard County, Florida
Mr. Brian Holter (SCAS)
Klawock Tribe, AK
Hon. Elizabeth Kautz
Burnsville, Minnesota

As LGAC Members we represent diverse perspectives of state, local and tribal elected and appointed colleagues across the country. Although there is strong consensus that the proposed rulemaking is generally going in the right direction, we also concur that the rule must consider regional differences. There is no "one size fits all" approach.

Hon. Ben Kimbro
Tulsa, Oklahoma
Ms. Susan Lessard
Bucksport, Maine
Hon. Carvel Lewis
Georgetown, Georgia
Hon. Ron Poltak
Auburn, New Hampshire
Hon. Carmen Ramirez
Oxnard, California
Hon. Victoria Reinhardt
Ramsey County, Minnesota
Hon. Dennis Scott (SCAS)
Calcasieu Parrish, Louisiana

In comparison to the 2015 rule, the proposed rule provides greater clarity regarding definitions and exclusions. Both have been sources of confusion and disagreement. However, with the greater clarity came the realization that the rule must allow for regional differences in order to properly protect water resources across the country without unnecessary regulatory burdens.

Sec. Michael T. Scuse
State of Delaware
Mr. Tom Sloan
Lawrence, Kansas
Hon. Libby Szabo
Jefferson County, Colorado
Mr. Jai Templeton
Nashville, Tennessee
Hon. Thomas E. Willsey, Jr. (SCAS)
Ross Township, Ohio
Hon. Shawn Yanity
Stillaguamish Tribe, Washington
Mr. William Youngblood
Pittsburgh, Pennsylvania

One way to address regional differences is to amend the rule to give greater flexibility for states, tribes and local governments to manage and protect Waters of the United States. A potential approach would have federal jurisdiction remain over all interstate and navigable waters, their tributaries and all adjacent wetlands, while the jurisdictional authority over intermittent and ephemeral streams, ditches and isolated wetlands would be developed through a shared governance model.

Shared Governance and Flexibility

The shared governance model recommended by the LGAC would give states and tribal governments the authority to provide input on what isolated wetlands, intermittent and ephemeral streams and ditches should be considered as WOTUS. The LGAC believes this is one of the most significant themes to emerge from our outreach and collaboration. There has always been strong agreement around protecting water resources, but regional differences make it very challenging to craft a rule that can be universally applied across the country. As we discussed these issues with our colleagues, it was clear that a regulation seen as too little in one part of the country could also be too much in another part of the country. The collaborative approach proposed by the LGAC is a way to respect regional differences while providing a reasonable and appropriate nationwide regulatory framework.

The LGAC suggests that acknowledging regional differences in the rule can be accomplished by inserting a referral clause in the rule (where applicable) to “see State and tribal criteria”; and by EPA and the Corp developing implementing guidance that will detail state and tribal criteria for waters of regional concern that can be defined as jurisdictional. The LGAC believes that state and tribal criteria can be developed with relative ease through administrative actions at the state and tribal levels.

Under this shared governance model, the greater authority to the states, tribes, and subdivisions of these governmental authorities, would be given on wetlands, ephemeral and intermittent streams and ditches by providing criteria regarding the characteristics of waters that should be considered in WOTUS, but not by usurping federal regulatory authority.

Isolated Wetlands, Intermittent and Ephemeral Streams and Headwaters

The LGAC found differing views as to the protection of isolated wetlands. Some agree with the narrow interpretation of WOTUS in the proposed rule, but others countered that all wetlands in their area are important as economic drivers and valuable natural resources. The LGAC heard several concerns that the loss of wetlands due to lack of federal regulation could be catastrophic to a local fishing industry or coastal economy.

Likewise, in some regions ephemeral and intermittent streams and especially headwater streams provide a key role in maintaining the source and quality of drinking water and livestock. Many LGAC Members expressed concern that protection of our headwaters streams is important to prevent flooding hazards and to prevent degradation of the watershed and rivers. These issues all require an approach that considers regional differences and engages state, local and tribal governments in the process.

Ditches

The LGAC supports the exclusion of all ditches, except those ditches identified in paragraph (a)(3), from WOTUS. As local governments we regularly design, construct and maintain ditches for a variety of purposes including public safety. Therefore, it is imperative that ditches do not fall under an extensive regulatory burden.

In order to develop additional guidance on ditches the LGAC recommends a collaborative approach through an Interagency Task Force. The Interagency Task Force would include the EPA, the Corps and state, local and tribal stakeholders. The goal would be to jointly develop greater clarity on ditches that can be understood and applied at the local level. This would also provide a forum for data sharing across jurisdictions.

Mapping and Tools

Data sharing and mapping tools were also consistently noted through our outreach efforts. Ideally, 'Waters of the United States' could be delineated utilizing Geographic Information System tools. Several local government representatives indicated the availability of reliable data to share in a collaborative approach. This could be another important assignment for the Interagency Task Force.

Implementation and Permitting


If the WOTUS rule is to be successfully implemented, the permitting process must be evaluated and redesigned for shared governance. The LGAC heard significant concerns from stakeholders about permitting delays and inconsistencies. The recent collaborative work between the EPA and the Corps is a significant step forward. The recommended Interagency Task Force could also play a leadership role in resolving these concerns.

Summary

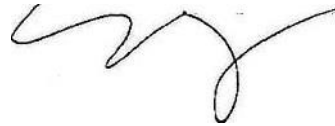
The LGAC appreciates the evolution of the proposed rule to achieve greater clarity. As a result, regional differences have emerged as the next challenge. The LGAC is recommending a collaborative, shared governance model that can achieve regional flexibility within a reasonable and clear regulatory framework.

The LGAC recognizes that it is a delicate balance of federal, state, tribal and local authority which is needed to ensure our nation's water resources are clean, safe and reliable. Thank you for the opportunity to provide our recommendations regarding this important issue.

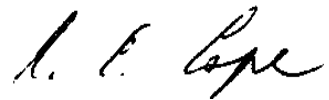
Sincerely,

Handwritten signature of Robert A. Dixon in cursive.

Bob Dixon
Chair

Handwritten signature of Ms. Susan Hann in cursive.

Ms. Susan Hann
Chair, Water Workgroup

Handwritten signature of Dr. Robert Cope in cursive.

Dr. Robert Cope, DVM
Chair, Small Community Advisory
Subcommittee(SCAS)