



April 15, 2019

U.S. Environmental Protection Agency
EPA Docket Center
Office of Water Docket, Mail Code 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: Docket ID No. EPA-HQ-OW-2018-0149

To whom it may concern:

Conservatives for Property Rights (CPR), a coalition of policy organizations representing tens of thousands of Americans, supports the reforms to the Waters of the United States (WOTUS) rule, under the final rule, Docket ID No. EPA-HQ-OW-2018-0149.

CPR emphasizes the central importance of private property in all its forms — physical, personal, and intellectual. The right to private property ranks among the unalienable rights the Founders referenced in the Declaration of Independence. Thus, property rights should not be considered a conservative or liberal issue, although this coalition approaches property rights from a conservative philosophical perspective.

Conservatives for Property Rights applauds the Trump administration for pulling back an overreaching WOTUS rule, perhaps best illustrated by its expansive definition of “navigable waters” into the realm of the absurd. The Obama rule compounds regulatory vagueness and expands bureaucratic discretion to the arbitrary, capricious, and malevolent. Property owners have faced regulatory takings and their property rendered unusable and unproductive, until the Trump administration initiated this rulemaking and issued Executive Order 13778, and the judiciary intervened with an injunction. This proposed rule marks a good next step toward restoring reasonable, clear lines under the Clean Water Act.

There has undoubtedly been harm, extra costs, and jeopardy to private land owners caused by the current WOTUS rule. The Small Business Administration Office of Advocacy, which leads the president’s deregulatory initiative, reports: “Because of the lack of clarity in the definition [of ‘waters of the United States’], small businesses have endured major development project delays, have incurred fines for waters that were not understood to come under federal jurisdiction, and, in general, have incurred costs to hire outside experts and consultants to help ensure they do not incur federal penalties.”¹

¹ <https://advocacy.sba.gov/2019/02/28/advocacy-holds-small-business-forum-in-kansas-city-on-wotus/>

We acknowledge the proposed WOTUS rule as moving to restore the pre-2015 interpretation of the Clean Water Act. This clarifies the rules governing wetlands, navigable waters, and so forth so that average Americans can more easily comply, and more closely respects constitutional limits upon the government under the Commerce Clause and the Due Process Clause. Under WOTUS currently, more than 60 percent of the nation's streams, along with millions of acres of wetlands, has been inappropriately swept under federal jurisdiction, with property owners subjected to regulatory abuse by environmental extremists, judicial activists, and overzealous government agents. Thus, the proposed regulation would strengthen property rights.

As proposed, the rule would (1) appropriately refine and narrow the definition of "waters of the United States" in a more straightforward, conventional, reasonable way; (2) exclude waters not described under the new definition; (3) specify certain waters and water features that the new definition excludes; (4) clarify certain terms; and (5) provide roles for states, tribes, and federal agencies to engage in federal jurisdictional determination processes.

It is well-founded that property rights are inherent rights, not a privilege. The proposed rule moves in the direction of restoring a portion of what are one's sacrosanct private property rights, which existing WOTUS rules encroach.

The father of our Constitution, James Madison, said, "Government is instituted to protect [private] property of every sort; as well that which lies in the various rights of individuals as that which the term particularly expresses. This being the end of government, that alone is a just government, which impartially secures to every man, whatever is his own."

The existing WOTUS rule is detrimental to individual land owners, their families, our manufacturing base, entrepreneurs, our economy, our national security, and our sovereignty. American family businesses, farms, and ranches are the bedrock of America's economy, providing 72 percent of America's jobs. They are anchors of their communities. The more common-sense definition of "navigable waters" proposed here is a welcome salve to the damage to property rights from the Obama-era WOTUS rule.

We urge adoption of the new and improved WOTUS rule.

Respectfully,

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