Clean Water Rule Comment Compendium
Topic 17 – Non-Technical Comments (Volume 2)

The Response to Comments Document, together with the preamble to the final Clean Water Rule, presents the responses of the Environmental Protection Agency (EPA) and the Department of the Army (collectively "the agencies") to the more than one million public comments received on the proposed rule (79 FR 22188 (Apr. 21, 2014)). The agencies have addressed all significant issues raised in the public comments.

As a result of changes made to the preamble and final rule prior to signature, and due to the volume of comments received, some responses in the Response to Comments Document may not reflect the language in the preamble and final rule in every respect. Where the response is in conflict with the preamble or the final rule, the language in the final preamble and rule controls and should be used for purposes of understanding the scope, requirements, and basis of the final rule. In addition, due to the large number of comments that addressed similar issues, as well as the volume of the comments received, the Response to Comments Document does not always cross-reference each response to the commenter(s) who raised the particular issue involved. The responses presented in this document are intended to augment the responses to comments that appear in the preamble to the final rule or to address comments not discussed in that preamble. Although portions of the preamble to the final rule are paraphrased in this document where useful to add clarity to responses, the preamble itself remains the definitive statement of the rationale for the revisions adopted in the final rule. In many instances, particular responses presented in the Response to Comments Document include cross references to responses on related issues that are located either in the preamble to the Clean Water Rule, the Technical Support Document, or elsewhere in the Response to Comments Document. All issues on which the agencies are taking final action in the Clean Water Rule are addressed in the Clean Water Rule rulemaking record.

Accordingly, the Response to Comments Document, together with the preamble to the Clean Water Rule and the information contained in the Technical Support Document, the Science Report, and the rest of the administrative record should be considered collectively as the agencies' response to all of the significant comments submitted on the proposed rule. The Response to Comments Document incorporates directly or by reference the significant public comments addressed in the preamble to the Clean Water Rule as well as other significant public comments that were submitted on the proposed rule.

This compendium, as part of the Response to Comments Document, provides a compendium of the non-technical comments (volume 2), submitted by commenters. Comments have been copied into this document "as is" with no editing or summarizing. Footnotes in regular font are taken directly from the comments.

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Topic 17. NON-TECHNICAL COMMENTS

17.1. PROPERTY OWNER

Agency Summary Response

Various commenters expressed concerns regarding the need for the rule, private property impacts, and the breadth of the proposed rule's definitions or coverage of tributaries, puddles, ditches or various manmade features on their properties. A number of commenters expressed support for the rulemaking, due to concerns over the degradation of nearby waterbodies.

Specific Comments

Koontz, S.M. (Doc. #0020)

17.2.1 I live on 30 acres and my domestic water source comes from several springs on my property. I also maintain a small fishing pond on my property. I have a 2.5 acre property with a mobile home on it in Everett, Bedford County, PA. The water supply on this property is also derived from one of several springs. Your plan to expand your definition of "Navigable Waterways" to seize control of my water sources and supplies is unacceptable. I will fight you with every means appropriate and necessary to defeat such a notion. I will actively, through all forms of social media, lobbying avenues, and general communication methods oppose you and any candidate or representative who supports such a notion. You have no right to use my tax dollars to fund and execute such a mission. You do not represent the best interests of property owners or the environment. It is tragic this socialist act is the example your president has set for you. Please keep in mind Mr. Obama's imperial reign ends in 2.5 years and you will be facing accountability to a new administration. I strongly suggest you re-think your perspective on the expansion of the definition of a "navigable waterway" and show your respect for property owners. A respect that should be earned through the tax dollars we pay that in turn fund your agency and pay your salary. (p. 1)

Agency Response: **Section I of the Technical Support Document discusses the historic scope of the existing regulatory definition of "waters of the United States." Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations.**

Latchford, A. (Doc. #0600)

17.2.2 I own property with a man-made pond (pre-existing at purchase). We do not use it for more than children's fishing and a scenic item of interest. An EPA overreach could for any number of reasons determine that our water feature is in violation by its existence yet I know it has existed, without problems, for well over a decade.

I strongly oppose changing the EPA's authority to include expanses of water not currently included in their purview. To expand that control is a bad idea not only for landowners but the government whose resources are already spread thin an unable to prevent other violations from occurring in its current assignments. (p. 1)

Agency Response: **The scope of regulatory jurisdiction in this rule is narrower than that under the existing regulation. Section I of the Technical Support Document discusses the historic scope of the existing regulatory definition of "waters of the United States." Fewer waters will be are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations. The agencies have no intent to retroactively assert jurisdiction over any waters.**

Anonymous (Doc. #0820)

17.2.3 I am highly offended that the federal government is attempting to exercise authority again over something it has no right to. Please get out of my life. I have temporary streams running through my property caused by a pond overflow. This is not wetlands. (p. 1)

Agency Response: **Section I of the Technical Support Document discusses the historic scope of the existing regulatory definition of "waters of the United States." Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations.**

The final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades. In this final rule, the agencies are responding to those requests from across the country to make the process of identifying waters protected under the CWA easier to understand, more predictable, and more consistent with the law and peer-reviewed science.

The agencies believe that by defining "tributary" for the first time and including the requirements for an ordinary high water mark and bed and bank, the agencies have identified tributaries as a class of waters which are similarly situated and where they contribute flow have a significant nexus to downstream (a)(1) through (a)(3) waters. The rule includes ephemeral streams that meet the definition of tributary as "waters of the United States" because the agencies determined that such streams provide important functions for downstream waters, and in combination with other covered tributaries in a watershed significantly affect the chemical, physical, and biological integrity of traditional navigable waters, interstate waters, and the

territorial seas. Where ephemeral features do not meet the definition of tributary, they are not "waters of the united States." There are also new exclusions for ephemeral ditches and erosional features which are not jurisdictional. Please see the preamble, the Tributary Compendium, the Ditches Compendium and the Exclusion Compendium for a complete discussion of the definition of tributaries, the relevance of flow regime, the treatment of ditches and all of the other the exclusions in the final rule. The rule has expanded the section on waters that are not considered waters of the United States, including many of the features listed in the comment, such as artificial lakes and ponds created in dry land, water-filled depressions incidental to mining or construction, constructed grassed waterways and non-wetland swales, and stormwater and wastewater detention basins constructed in dry land.

Dion, B. (Doc. #0835)

17.2.4 **Thank** you for moving forward with action to protect Pennsylvania's waterways. My husband and son fish in a stream near our home. We live in a suburban neighborhood and having a fresh water source near us for recreation is a delight. Pollution has long been an issue for this stream and others like it nearby. The fish are placed there from a hatchery. We look forward to a day when this stream will allow the fish to thrive. These same streams feed into our water supply and we want clean water for our community.

Agency Response: **This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades. In this final rule, the agencies are responding to those requests from across the country to make the process of identifying waters protected under the CWA easier to understand, more predictable, and more consistent with the law and peer-reviewed science.**

Ealy, S. (Doc. #0910.1)

17.2.5 I am a property owner and clean water is very important to me. Your proposed rule is a significant expansion of the Clean Water Act that will affect every American, and have significant impact on my business and community due to the proposed increased jurisdiction over all waters. Due to the proposed rule's complexity, additional time is needed for me to review and respond to the rule and all its implications for my business, community and state. (p. 1)

Agency Response: **Section I of the Technical Support Document discusses the historic scope of the existing regulatory definition of "waters of the United States." Fewer waters will be defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations.**

This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades. In this final rule, the agencies are responding to those requests from across the country to make the process of identifying waters protected under the CWA easier to understand, more predictable, and more consistent with the law and peer-reviewed science.

The proposed rule was available for review and comment by the public for over 200 days. The agencies believe that sufficient time was provided for review of the proposed rule.

Shaughness, J. (Doc. #0930)

17.2.6 We have a small stream running through our back yard that originates from a natural spring. It also handles some rainwater runoff. Since most running surface water eventually finds its way to a navigable body of water I am concerned the proposed expansion of the EPA's water regulation will cover this small stream. The stream runs past or through several lots in our neighborhood, and control of this stream by the EPA will likely place an undue burden on property owners, both financially and structurally. For this reason I oppose any proposed expansion of EPA's regulations that would include very small streams such as the one described above. (p. 1)

Agency Response: **Section I of the Technical Support Document discusses the historic scope of the existing regulatory definition of "waters of the United States." Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations.**

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Kaun, S. (Doc. #0944)

17.2.7 It is my understanding that this proposed rule will include small, year-round creeks and wetlands which are tributaries to a traditional navigable waterway. Until now this lack of protection has caused considerable angst for citizens in Bellingham, Washington, especially those who have worked hard to protect the Padden Creek and Estuary system, part of which flows through the Fairhaven Neighborhood where I live. Padden is a natal

pocket estuary for the Nooksack River salmon runs, and is impaired in large part by lack of using best available science to ensure proper management of urban runoff.

Although the City acknowledges in its Shoreline Master Program the riparian protection area for the fragile Padden Estuary is 200 feet, citizens were advised by City staff that because Padden Creek's flow is below an average of 20 cfs, the protection of the Creek's riparian is limited to a mere 50 feet.

The Creek empties into Bellingham Bay, which is part of the Salish Sea (Puget Sound). Recent studies indicate the other creeks in Bellingham that empty into the Bay are also impaired. Latest studies by the Washington State Department of Ecology indicate the Bay is becoming increasingly polluted. I believe that with the passage of the new rule these small creeks and connected wetlands will now be seen as integral to the health of adjacent navigable waterways, fish, and wildlife, and will hopefully prompt local governments to revisit their earlier determination that these creeks do not merit increased protection.

The effort by EPA and Army Corps staff to extend protection to these small but essential creeks and wetlands is greatly appreciated, and in my opinion could bode well for future restoration and protection efforts in navigable waters such as Bellingham Bay. (p. 1)

Agency Response: **This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades. In this final rule, the agencies are responding to those requests from across the country to make the process of identifying waters protected under the CWA easier to understand, more predictable, and more consistent with the law and peer-reviewed science.**

The Clean Water Act regulates discharges of pollutants and fill material into covered waters, and does not regulate dry land, land use or private property rights.

Smith, C. and L. (Doc. #0974)

17.2.8 I am a senior citizen of Pennsylvania and have a stream running through my property. It has been running through my property without any regulations for as long as I can Remember. It is the cleanest and freshest water around. I am against any EPA regulations being enforced on my property. Government has become too involved in the private sector. (p. 1)

Agency Response: **Section I of the Technical Support Document discusses the historic scope of the existing regulatory definition of "waters of the United States." Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations.**

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The Clean Water Act regulates discharges of pollutants and fill material into covered waters, and does not regulate dry land, land use or private property rights.

Hixson, R. and D. (Doc. #1201)

17.2.9 My son and I own a small plot of ground with a mobile home on it. When the rains are heavy water collects in a low spot but it doesn't stay long before it soaks into the ground. We have never been flooded even in the September 2011 record flood. Though the water came to the top of the dike along White Deer Creek, it didn't come over. There was never any problem requiring federal intervention. I believe the EPA is overstepping its bounds with the proposed legislation. (p. 1)

Agency Response: **Section I of the Technical Support Document discusses the historic scope of the existing regulatory definition of "waters of the United States." Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present**

Yoder, M. (Doc. #1601)

17.2.10 I am a homeowner of a home in a community that has stormwater collection drains, which combine and partially flows through my property and then enters a ditch eventually entering a navigable waterway several miles away. The stormwater flowing across my property is not a singular point source, but a compilation of smaller sources, and is impacted and influenced by a variety of other factors. While my property has a man-made 'berm break', and has been defined not to be in a Flood Plain, there are intermittent times stormwater does pool up temporarily. For this and other reasons I am very concerned regarding possible implications and requirements for complying with the new rule. Some of my concerns relate to the definitions and my understanding of the specifics regarding 'Tributaries' (Part Ill, subpart F, 1 and 3,), 'Adjacent Waters' (Part Ill, Subpart G,2(i)), 'Other Waters' (Part Ill, subpart H). (p. 1)

Agency Response: **The rule has expanded the section on waters that are not considered waters of the United States, such as artificial lakes and ponds created in dry land, water-filled depressions incidental to mining or construction, constructed grassed waterways and non-wetland swales, and stormwater and wastewater detention basins constructed in dry land.**

The final rule has also revised and clarified important definitions for "tributaries" and "neighboring" (as a component of adjacent waters). In addition, there is no longer a separate category of "other waters." The final rule also provides for case-specific determinations under more narrowly targeted circumstances. Section IV(F) of the preamble addresses tributaries and section IV(G) covers adjacent waters.

Ray, C. (Doc. #1745)

17.2.11 I live near a stream, where my children and I have played for years and the impact of increased dirty run-off and other ill treatment are obvious. (p. 1)

Agency Response: **The final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades. In this final rule, the agencies are responding to those requests from across the country to make the process of identifying waters protected under the CWA easier to understand, more predictable, and more consistent with the law and peer-reviewed science.**

Calcote, R. (Doc. #1850)

17.2.12 The current proposal is much too broad in its breadth. There is a very small creek behind my backyard. The EPA proposed rule would impose unrealistic conditions on the use of my land. (p. 1)

Agency Response: **Section I of the Technical Support Document discusses the historic scope of the existing regulatory definition of "waters of the United States." Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations.**

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The Clean Water Act regulates discharges of pollutants and fill material into covered waters, and does not regulate dry land, land use or private property rights.

Anonymous (Doc. #2127)

17.2.13As a land owner living in a rural area bordered by a bayou on one side that drains much of the nearby city and a pond on the site I am gravely concerned about the government's consistent desire to over reach into the lives and property of individual citizens. As we have seen from the EPA over the last few years this agency wants to control everything. So instead of rule making to clarify what bodies of water it regulates, I strongly suspect the agency is trying to circumvent the court system and the intent of the CWA in order to gain more power over individual rights. (p. 1)

Agency Response: **In this final rule, the agencies are responding to requests from members of Congress, developers, farmers, state and local governments, energy companies, and many others who requested new regulations to make the process of identifying waters protected under the CWA clearer, simpler, and faster. The final rule does not establish any regulatory requirements. Instead, it is a definitional rule that clarifies the scope of "waters of the United States" consistent with the CWA, Supreme Court precedent, and science.**

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Anonymous (Doc. #2129)

17.2.14 I don't want to hear about any laws regulating water on or crossing my property...You don't seem very concerned with the microwaves from the cell tower above my head. (….) yet you seem so concerned about a little pool of water standing for time on my property! (…) You want to regulate the little petty things of life and don't bother with the major things.... (p. 1)

Agency Response: **In this final rule, the agencies are responding to requests from members of Congress, developers, farmers, state and local governments, energy companies, and many others who requested new regulations to make the process of identifying waters protected under the CWA clearer, simpler, and faster. The final rule does not establish any regulatory requirements. Instead, it is a definitional rule**

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Anonymous (Doc. #2138)

17.2.15 As a land owner with a creek running through my recreational property I find this VERY DISTURBING. I also have a dry wash on the back of my Home property. I see this as a major land grab in my opinion. What NEED does the EPA have to regulate a dry ditch (or a puddle) running on my yard behind my house? The only time it sees water is after a rain. (…)

I am all for clean water. (…) But this proposal to me is a no more than a power grab and a land grab. You would better serve us and get our support if you would go after the big polluters and leave those of us who pay our taxes and follow the law alone. (p. 1)

Agency Response: **: In this final rule, the agencies are responding to requests from members of Congress, developers, farmers, state and local governments, energy companies, and many others who requested new regulations to make the process of identifying waters protected under the CWA clearer, simpler, and faster.**

Section I of the Technical Support Document discusses the historic scope of the existing regulatory definition of "waters of the United States." Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations.

The final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades. In this final rule, the agencies are responding to those requests from across the country to make the process of identifying waters protected under the CWA easier to understand, more predictable, and more consistent with the law and peer-reviewed science.

The Clean Water Act regulates discharges of pollutants and fill material into covered waters, and does not regulate dry land, land use or private property rights.

Anonymous (Doc. #2572)

17.2.16 I have streams running through my property, one listed as protected and one not. I have done work on both, with the necessary permits. I can understand "navigable waters". Now you want to add "~ plus any nearby land we happen to like." The EPA needs to map out the specific properties that fall within its regulatory grasp: and then buy them. Placing the burden on landowners to get a permit for anything they want to do with their property or risk million dollar fines is unacceptable. Roll it back. (p. 1)

Agency Response: **Section I of the Technical Support Document discusses the historic scope of the existing regulatory definition of "waters of the United States." Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations.**

The final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades. In this final rule, the agencies are responding to those requests from across the country to make the process of identifying waters protected under the CWA easier to understand, more predictable, and more consistent with the law and peer-reviewed science.

The Clean Water Act regulates discharges of pollutants and fill material into covered waters, and does not regulate dry land, land use or private property rights.

Smith, R. & J. (Doc. #2667)

17.2.17 I own water rights to water from a creek that runs through my land and I and the NRCS have installed a gated pipe system that carries my water to irrigate my pastures. I make decisions every day, sometimes several times a day, regarding how this water is used on my property. I do NOT want or need ANY government regulations or interference of any kind regarding my use of this water. Please DITCH THE RULE. It is not necessary or needed. (p. 1)

Agency Response: **Section I of the Technical Support Document discusses the historic scope of the existing regulatory definition of "waters of the United States." Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations. Section IV.I of the preamble discusses the exclusions in the final rule.**

The final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This

interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades. In this final rule, the agencies are responding to those requests from across the country to make the process of identifying waters protected under the CWA easier to understand, more predictable, and more consistent with the law and peer-reviewed science.

The Clean Water Act regulates discharges of pollutants and fill material into covered waters, and does not regulate dry land, land use or private property rights.

Anonymous (Doc. #3071)

17.2.18 As a landowner, I am concerned about the government's over-reach into private property. Back in the early 1960's, after several years of drought, the US Fish and Wildlife approached farmers in our area for "wetland easements" that were 99 year leases with perpetual renewal. Those farmers were paid a one-time pittance for that lease, and now the USF&W seems to think that they purchased those lands. To make matters worse, they want to control any mining, oil exploration, or anything that they say may affect those lands. Those original wetlands have also multiplied by their rules, and are no longer only the wetlands that they may have "leased" at that time, but any land that may hold water for more than 36 hours. It seems that their plan is to not only control that property, but to take ownership of that property, whether a wetland or not.

An example of this- when a gravel company wanted a gravel lease on some of our land which has a "USF&W easement," the lease was denied by the DOT because of the lease. I contacted my Congressman, who in turn gave the USF&W 10 days to resolve the issue. I met with the representative from the USF&W at the site, he told me they "OWN" the property, that it was purchased in the early 1960's. My reply was, "If you owned the property, you would have the abstract, not be listed in my abstract as having an easement on the wetlands." He also told me that routinely after a down pouring rain, property is aerial photographed and those wetlands maps are updated. Hardly what was leased in the 60's, is it. As I said, the ultimate goal is to "own" the whole of the property where those wetlands are situated. (p. 1)

Agency Response: **In this final rule, the agencies are responding to requests from members of Congress, developers, farmers, state and local governments, energy companies, and many others who requested new regulations to make the process of identifying waters protected under the CWA clearer, simpler, and faster.**

Section I of the Technical Support Document discusses the historic scope of the existing regulatory definition of "waters of the United States." Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations.

The final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This

interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades. In this final rule, the agencies are responding to those requests from across the country to make the process of identifying waters protected under the CWA easier to understand, more predictable, and more consistent with the law and peer-reviewed science.

The Clean Water Act regulates discharges of pollutants and fill material into covered waters, and does not regulate dry land, land use or private property rights.

Baruch, M. A. (Doc. #3221)

17.2.19 Personally, as a property owner I would have to constantly wonder if I were breaking some minor rule or regulation as to well use, rainfalls, some flood control needs, garden water needs, dictated by a far away agency instead of by the rules and laws of the state I live in. This is contrary to free societies and goes beyond your authorities. It is more disruptive that useful. (p. 1)

Agency Response: **Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations.**

States and tribes, consistent with the CWA, retain full authority to implement their own programs to more broadly and more fully protect the waters in their jurisdiction. Under section 510 of the CWA, unless expressly stated, nothing in the CWA precludes or denies the right of any state or tribe to establish more protective standards or limits than the Federal CWA. Many states and tribes, for example, regulate groundwater, and some others protect wetlands that are vital to their environment and economy but which are outside the regulatory jurisdiction of the CWA. Nothing in this rule limits or impedes any existing or future state or tribal efforts to further protect their waters. In fact, providing greater clarity regarding what waters are subject to CWA jurisdiction will reduce the need for permitting authorities, including the states and tribes with authorized section 402 and 404 CWA permitting programs, to make jurisdictional determinations on a case-specific basis.

Reed, K. A. (Doc. #3386)

17.2.20 As a homeowner this could negatively and unfairly dictate how I care for my residential property since it slightly drains toward a nearby slope of land that eventually reaches a creek several hundred yards from my home and any natural contour of the land between the two points. I am not convinced that the EPA or its agents could not also regulate the occasional puddles that form after a moderate to heavy rain. The proposed fines alone would devastate my wife and I financially, since we are of low income (I am permanently and totally disabled). (p. 1)

Agency Response: **Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule**

puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations. Section IV.I of the preamble discusses the exclusions in the final rule, including an exclusion for puddles.

The final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades. In this final rule, the agencies are responding to those requests from across the country to make the process of identifying waters protected under the CWA easier to understand, more predictable, and more consistent with the law and peer-reviewed science.

The Clean Water Act regulates discharges of pollutants and fill material into covered waters, and does not regulate dry land, land use or private property rights.

Thrower, G. (Doc. #3502)

17.2.21as a land owner I am very concerned with the current plans of the EPA to regulate even the most simple of water bodies. Like my small pond. how would I know if I am in violation of the new proposed EPA regs? would I really have to get a permit to prevent runoff damage, damage from cattle drinking out of the pond, a fence that needs put up. it seems terribly burdensome to both me, the casual farmer and the EPA. if I hand spray for thistle and other noxious weeds, would I need a permit? if I back fill dirt into the runoff erosion? how will I know if I need a permit? (p. 1)

Agency Response: **Section I of the Technical Support Document discusses the historic scope of the existing regulatory definition of "waters of the United States." Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations. Section IV.I of the preamble discusses the exclusions in the final rule.**

The final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades. In this final rule, the agencies are responding to those requests from across the country to make the process of identifying waters protected under the CWA easier to understand, more predictable, and more consistent with the law and peer-reviewed science.

The Clean Water Act regulates discharges of pollutants and fill material into covered waters, and does not regulate dry land, land use or private property rights.

Implementation of the CWA will be no different than under current regulations. The Army Corps of Engineer will still review permit applications for the discharge of dredged or fill material. The USDA NRCS will still be the first point of contact for our nation's farmers. And states and tribes with delegated authority to issue NPDES permits will continue to do so. None of that will change.

Dux, L. & N. (Doc. #4263)

17.2.22The EPA has no right to use the Clean Water Act to dictate how landowners use their land. We know how to use our land.

> This proposal will put a severe hardship on any small farm or company – the backbone of our Kansas economy – out of business. (p. 1)

Agency Response: **The Clean Water Act regulates discharges of pollutants and fill material into covered waters, and does not regulate dry land, land use or private property rights.**

Section I of the Technical Support Document discusses the historic scope of the existing regulatory definition of "waters of the United States." Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations. Section IV.I of the preamble discusses the exclusions in the final rule.

The final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades. In this final rule, the agencies are responding to those requests from across the country to make the process of identifying waters protected under the CWA easier to understand, more predictable, and more consistent with the law and peer-reviewed science.

Anonymous (Doc. #4440)

17.2.23There are four draws running through our property. They were created by a heavy rainfall event in a couple of hours. These draws are healing over due to our careful grazing management. Though we do not have a river, creek, spring, or wetland on our land, rainwater may run off the hills into the draws when it rains heavily. This would qualify our place as having "waters" and being subject to regulation. The new definition of wetlands and waters will damage our ability to successfully manage our vegetative resources by exponentially increasing government regulations and oversight and by requiring expensive NEPA to be prepared for even the smallest of our management tasks. (p. 1)

Agency Response: **Section I of the Technical Support Document discusses the historic scope of the existing regulatory definition of "waters of the United States."**

Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations. Section IV.I of the preamble discusses the exclusions in the final rule.

The final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades. In this final rule, the agencies are responding to those requests from across the country to make the process of identifying waters protected under the CWA easier to understand, more predictable, and more consistent with the law and peer-reviewed science.

Daly, M. (Doc. #6516)

17.2.24I own a mobile home park built in the 1970's. It lies partially in the flood plain in a rural area. With just 58 units any kind of regulatory oversight on minor grading operations will be prohibitively costly. I can assure you we are more than 100 miles from any navigable stream. You Storm Water Pollution Prevention Plan requirements show the way to over regulation. All spring the wind blows dust from Arizona into New Mexico and during the summer monsoons that dust is partially returned to Arizona. What little is not taken up by the soil. In our area only 20% of the land surface is covered by plant life; the rest is bare soil that moves every time the wind blows. Yet EPA SWPPP requirements insist that development not just keep the contaminants from leaving a site, but also insist that soil releases be controlled. While this might be a great idea around the Chesapeake River, it is a pointless exercise here. (p. 1)

Agency Response: **Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations. Section IV.I of the preamble discusses the exclusions in the final rule.**

The final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades. In this final rule, the agencies are responding to those requests from across the country to make the process of identifying waters protected under the CWA easier to understand, more predictable, and more consistent with the law and peer-reviewed science.

Kaufman, S. (Doc. #6833)

17.2.25We have a koi pond with a waterfall in our back yard at our home in Oklahoma. It is a landscape feature that is not a natural waterway. It is fed with city water and recirculates the water with a pump to the top of the waterfall. The total drop of the stepped waterfall is perhaps 15-20 feet down a hillside into two ponds in series. The ponds leak a small amount of water from time to time. The leaked water runs down hill gradually on our property and occasionally reaches the lot line before it evaporates or soaks into the ground. Beyond the lot line is city property which has not been developed because it is part of the flood plain.

From what I have read about the proposed regulations defining the "waters of the U.S.", our landscape feature might just be subject to regulation! That would be totally ridiculous.

…As proposed it violates the law, will not benefit the environment, and will have a negative impact on my property value and use of my home. (p. 1)

Agency Response: **Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations. Section IV.I of the preamble discusses the exclusions in the final rule, including exclusions for small ornamental waters constructed in dry land.**

Anonymous (Doc. #7176)

17.2.26My husband and I have a backyard that is the lowest spot in our neighborhood. During heavy rain events or consecutive days of rain when the ground is saturated, water can run in our backyard. Under the expansive language in the proposed rule, this could be interpreted as a navigable water. It would be burdensome and an intrusion on our property rights. I urge you to immediately ditch this rule. I am staunchly opposed! (p. 1)

Agency Response: **The Clean Water Act regulates discharges of pollutants and fill material into covered waters, and does not regulate dry land, land use or private property rights.**

Section I of the Technical Support Document discusses the historic scope of the existing regulatory definition of "waters of the United States." Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations. Section IV.I of the preamble discusses the exclusions in the final rule.

The final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-

reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades. In this final rule, the agencies are responding to those requests from across the country to make the process of identifying waters protected under the CWA easier to understand, more predictable, and more consistent with the law and peer-reviewed science.

Anonymous (Doc. #8794)

17.2.27More regulations at an individual landowner level will eventually drive up food cost in this country due to an increased cost of production. Landowners are already spending large amounts of money to improve the water quality leaving their land. Adding more rules to this will only hinder what is being done. (p. 1)

Agency Response: **In this final rule, the agencies are responding to requests from members of Congress, developers, farmers, state and local governments, energy companies, and many others who requested new regulations to make the process of identifying waters protected under the CWA clearer, simpler, and faster.**

Section I of the Technical Support Document discusses the historic scope of the existing regulatory definition of "waters of the United States." Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations.

The Clean Water Rule strengthens the protection of waters for the health of our families, our communities, and our businesses. Our nation's businesses depend on clean water to operate. Streams and wetlands are economic drivers because they support fishing, hunting, agriculture, recreation, energy, and manufacturing. The agencies' economic analysis indicates that indirect incremental benefits exceed indirect incremental costs.

Anonymous (Doc. #8805)

17.2.28This is an attack on Private property owners rights, who would need to obtain permits from the federal government more often than now when seeking to use and enjoy their land. There should be opposition to the rule from everyone, property owners to counties, concerned that costly new requirements will be imposed. Also, the CWA is without a men's rea clause; the principle of mens rea, or "guilty mind," holds that a person shouldn't be convicted if he hasn't shown an intent to do something wrong; and this expansion of jurisdiction only means more people could be subject to arrest and conviction for unknowing violations. (p. 1)

Agency Response: **In this final rule, the agencies are responding to requests from members of Congress, developers, farmers, state and local governments, energy companies, and many others who requested new regulations to make the process of identifying waters protected under the CWA clearer, simpler, and faster.**

Section I of the Technical Support Document discusses the historic scope of the existing regulatory definition of "waters of the United States." Fewer waters are

defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations.

Tolson, E. (Doc. #10768)

17.2.29 The attempt to define puddles, vernal pools, farm ponds, ditches and seasonal creeks as "Waters of the United States" would affect nearly every rural landowner (large and small) in the Country in a negative way. Imposing more government scrutiny and mandates to individuals and farm/ranch operations will deter their positive and productive agendas as time consuming practices to comply to nebulous regulations are implemented. Every individual's time is valuable; misusing it on needless compliance missions and paperwork assignments is wasteful. To declare all ponds or puddles where waterfowl may alight as "significant nexus" or a biological connection to navigable waters is totally unrealistic.

This is government overreach. There can be no practical way to monitor and control all watershed areas in rural America. The case-by-case agenda for exceptions to the onerous mandate will allow the governments to reward some and punish others at its pleasure. The government expense for monitoring would be prohibitive as would the expense imposed on landowners who would have to get permits and live with delays as they are being processed.

Congress should be the body to impose any regulation of this type and they have repeatedly voted against this plethora of "isolated waters" which have no surface connection to navigable rivers. The States and local governments are the agencies that should be the regulators. California has closely monitored its waters for years. (p. 1)

Agency Response: **Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations. Section IV.I of the preamble discusses the exclusions in the final rule, including exclusions for puddles and most ditches that are not relocated tributaries or excavated in a tributary. Vernal pools are not jurisdictional by rule and must instead first be subject to a significant nexus analysis before determining whether it is a water of the United States (see section IV.H. of the preamble).**

The final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades. In this final rule, the agencies are responding to those requests from across the country to make the process of identifying waters protected under the CWA easier to understand, more predictable, and more consistent with the law and peer-reviewed science.

Anonymous (Doc. #10849)

17.2.30The EPA, in their overview of this new ruling, says their purpose is to 'clarify the scope of the Clean Water act." It seems like all they have accomplished is to declare EVERYTHING as "Waters of the US"...even dry land, for the purposes of permitting process. This is an infringement on the private property rights of all taxpayer landowners. The EPA, an agency of the federal government, lacks the constitutional authority to change existing laws because that authority belongs solely to the Congress of the US. These proposed changes are therefore unconstitutional. (p. 1)

Agency Response: **Section I of the Technical Support Document discusses the historic scope of the existing regulatory definition of "waters of the United States." Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations.**

The Clean Water Act regulates discharges of pollutants and fill material into covered waters, and does not regulate dry land, land use or private property rights.

In this final rule, the agencies are responding to requests from members of Congress, developers, farmers, state and local governments, energy companies, and many others who requested new regulations to make the process of identifying waters protected under the CWA clearer, simpler, and faster. This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades.

Cooper, B. (Doc. #11375)

17.2.31I am equally concerned about locations that have seasonal runoff from higher elevations, rather it be melting snow or excess rainfall. We all know water finds the lowest point to flow too and many areas that have higher elevation, have rainfall runoff from excessive rain that has created, utilized or recreated existing and normally dry stream beds and ditches. Many of these usually dry runoff ditches or normally dry stream beds are used as crossing points for farming, forestry and many other operations that should absolutely not be impacted by any regulation now or in the future. At no time should a land owner suffer from regulation or be financially impacted due to regulations that have changed their historical use of their land. If a landowner has been utilizing a dry or wet stream bed to move equipment or livestock across, will this no longer be allowed? Will the same landowner have to construct a bridge or other means to traverse the location? If so, will the government pay for any apparatuses to put into place to continue access? The runoff from excessive rainfall from higher elevations is no different from excessive rainfall from higher elevations in metropolitan areas running down streets and road ways. Will the government consider these to be waterways and regulate them as well? I say hands off to

regulating land owners properties that have any form of waterway, seasonal, continual, rain runoff or impoundment unless it can be proven that a man made pollution issue is the result and that pollution cannot be natural earthen materials. (p. 1)

Agency Response: **In this final rule, the agencies are responding to requests from members of Congress, developers, farmers, state and local governments, energy companies, and many others who requested new regulations to make the process of identifying waters protected under the CWA clearer, simpler, and faster.**

Section I of the Technical Support Document discusses the historic scope of the existing regulatory definition of "waters of the United States." Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations. Section IV.I of the preamble discusses the exclusions in the final rule, including most ditches that are not relocated tributaries or excavated in a tributary and erosional features that do not meet the definition of tributary. In addition, all statutory exemptions, including those exempting "normal farming, silviculture and ranching activities" from CWA section 404 permitting requirements, remain in place and unaffected by the final rule.

Porter, P.J. (Doc. #11596)

17.2.32 Located on my property is an "ephemeral drain" which is, in my vocabulary, a dry creek bed until it rains substantially. It is my understanding that the rainwater that collects in this creek bed after a rain would then be considered to be WOTUS. This creek bed does not extend past my fence line so does not at any point join any other waterway nor does it feed any other waterway. Please do not restrict ranchers from using God's bounty (rain) to us to be used to grow beef for all by putting a bunch of paperwork regulations on us. As I understand it, your regulations would require an investigation on a case by case basis in order to determine whether or not this dry creek bed joins any other waterway. This seems to be overkill and over- regulation in West Texas where we are totally dependent on rainfall to operate our cattle operations. There is little underground water in this area, so surface ponds are my sole source of cattle water, including the creek when it does rain. This creek bed will catch a little water and hold it for several days and cattle will use it. But it does not supply any other tributary or lake. (p. 1)

Agency Response: **Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations. Section IV.I of the preamble discusses the exclusions in the final rule, including erosional features that do not meet the definition of tributary. In order to be considered a tributary under the final rule, the feature must have both a bend and banks and an ordinary high water mark. It must also contribute flow, either directly or through another water, to a traditional navigable water, interstate water or territorial sea.**

Williams, E. H. (Doc. #14961)

17.2.33All of my normal practices could also result in some concerned citizen deciding to file legal proceedings against what I do as part of my normal business practices. There have been too many instances of such frivolous lawsuits being filed in Illinois, with the added legal costs that the defendants have to pay! (p. 1)

Agency Response: **Although the EPA cannot preclude third parties from filing suit pursuant to the Clean Water Act's citizen suit provisions, the EPA and the Corps plan to clearly articulate the concepts embodied in any final rule in order to provide maximum clarity to permit applicants, agencies, and the public. We believe that doing so will reduce, not increase, the possibility that these provisions may be misunderstood by permittees, third parties, or other stakeholders, thereby leading to less litigation. Such clarity will also aid courts in responding consistently to citizen suits.**

Landowners may request a jurisdictional determination (JD) from the Corps. The agencies believe that the clarity provided by the rule will make conducting determinations easier. A JD is a Corps' determination that jurisdictional waters are either present or absent at a site, and can be used by the landowner if a CWA citizen suit is brought against the owner. While the JD would not be binding on the third party, we believe the Corps' expert opinion, and the landowner's reliance on the Corps' expert opinion, would be important factors to which any Court hearing such a suit would give substantial weight.

Mason, A. and NY State Ornithological Association, Inc. (Doc. #15743)

17.2.34The lack of a clear definition and understanding of the waters to be regulated under the Clean Water Act, particularly wetlands, has been a matter of serious concern in NY and across the nation. In NY, wetlands smaller than 12.4 acres are not regulated by the state, hence have no protections, despite their importance to water quality, flood and drought mitigation, and wildlife. These smaller wetlands have been drained and filled with impunity due to a loophole that has no recognition of their values. Nationwide, these losses have doubled since Supreme Court rulings stripping them of protection.

The importance of wetlands and riparian areas to birds cannot be overstated. About 138 avian species in the conterminous United States are wetland dependent (American Ornithologists' Union, 1983). About one-half of the 188 animals that are federally designated as endangered or threatened are wetland dependent. Of these, 17 are bird species or subspecies. Many other species, including at risk birds, utilize wetlands at some time in their life cycle.

It is important that the intent of protecting these smaller wetlands under the Clean Water Act be recognized and fully-implemented. Adopting these definitions will move the United States toward doing so.

Arguments that this rule would burden the regulated community are unfounded. No additional waters beyond those protected prior to the Supreme Court decisions would become regulated, and in fact expand exclusions to the CWA. We do not support increased exclusions, however, nor a case-by-case analysis approach wetlands.

We urge adoption of this rule.

Agency Response: **In this final rule, the agencies are responding to requests from members of Congress, developers, farmers, state and local governments, energy companies, and many others who requested new regulations to make the process of identifying waters protected under the CWA clearer, simpler, and faster.**

This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades. In this final rule, the agencies are responding to those requests from across the country to make the process of identifying waters protected under the CWA easier to understand, more predictable, and more consistent with the law and peer-reviewed science.

L.H. (Doc. #15750)

17.2.35 Please reconsider wording of this regulation. The proposed jurisdiction is too broad and not in the best interest of the private landowner or small property owner.

This rule would negatively impact my property, in relation to a county floodplain. According to the proposed broad terminology of the rule, any possible standing water in my garden from a recent rain or a thorough summer watering would also be affected. (p. 1)

Agency Response: **In this final rule, the agencies are responding to requests from members of Congress, developers, farmers, state and local governments, energy companies, and many others who requested new regulations to make the process of identifying waters protected under the CWA clearer, simpler, and faster.**

Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations. Section IV.I of the preamble discusses the exclusions in the final rule.

This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades. In this final rule, the agencies are responding to those requests from across the country to make the process of identifying waters protected under the CWA easier to understand, more predictable, and more consistent with the law and peer-reviewed science.

Anonymous (Doc. #16388)

17.2.36This rule is unlawful and unconstitutional and therefore should not be established. The rule usurps local and state land use authority. The rule is a "takings" without compensation to property owners for loss of use. There is no process for property owners to expeditiously contest an EPA decision regarding a designation of WOTUS for a pond, ditch, or wetland on their property. In addition, property owners must first be fined before they have legal recourse, forcing them to comply with a designation with which they disagree rather than wage costly litigation against the "deep-pocketed" EPA.

Besides being unlawful and unconstitutional, the proposed rule would inhibit the use of land for economic gain, crippling even more our struggling economy - especially for small businesses who have few resources to devote to time-consuming and expensive litigation of a WOTUS designation.

This rule must not be established for the sake of property owners, our economy, and our constitution. (p. 1)

Agency Response: **In this final rule, the agencies are responding to requests from members of Congress, developers, farmers, state and local governments, energy companies, and many others who requested new regulations to make the process of identifying waters protected under the CWA clearer, simpler, and faster.**

Section I of the Technical Support Document discusses the historic scope of the existing regulatory definition of "waters of the United States." Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations.

The Clean Water Act regulates discharges of pollutants and fill material into covered waters, and does not regulate dry land, land use or private property rights.

This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades.

Anonymous (Doc. #16422)

17.2.37My home is adjacent to an unregulated waterway, Salt Creek, and part of my yard is in the creek's floodplain, so my family is directly impacted by the rulemaking. In recent years there has been development next to the creek and the Army Corps said that it wasn't covered by the Clean Water Act. It is very likely that water quality was negatively impacted by that development. Specifically, a wooded, natural area was converted into a baseball diamond. The grass in the ball field is fertilized and there is likely runoff from it, whereas previously, there was no fertilizer application there. Salt Creek runs into the Des

Plaines River and eventually into the Gulf of Mexico which is plagued with excess nutrients. (p. 1)

Agency Response: **This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades.**

The Clean Water Act regulates discharges of pollutants and fill material into covered waters, and does not regulate dry land, land use or private property rights.

Potts, C. (Doc. #16807)

17.2.38As a property owner in Payson, AZ and included in the Salt River watershed of Arizona, I'm writing to express my concern over the proposed rule (EPA-HQ-OW-2011-0880). The primary effect of the proposed rule would be that the EPA would be granted jurisdiction of all water ways in the US. The EPA currently has jurisdiction over "navigable" water ways and wet lands. The EPA control over water is a problem because of the invasion of traditional and constitutionally guaranteed water rights. In addition, because the EPA only protects water quality, the Army Corp of Engineers is included in this proposal. That is where the problem starts. By way of example, an irrigation ditch which feeds into a primary water way would be subject to Corps jurisdiction.

Virtually every irrigation ditch that serves Arizona feeds into the Salt, Verde or Colorado River. The rule, if passed, could require any homeowner who wants to build a simple walkway over their ditch to obtain a permit from the Army Corps of Engineers.

This type of extreme invasion of a property owners rights should be avoided at all costs, despite any proposed additional authority that could be garnered by the administration in these matters. (p. 1)

Agency Response: **In this final rule, the agencies are responding to requests from members of Congress, developers, farmers, state and local governments, energy companies, and many others who requested new regulations to make the process of identifying waters protected under the CWA clearer, simpler, and faster.**

Section I of the Technical Support Document discusses the historic scope of the existing regulatory definition of "waters of the United States." Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations. Section IV.I of the preamble discusses the exclusions in the final rule, including most ditches that are not relocated tributaries or excavated in a tributary and erosional features that do not meet the definition of tributary. In addition, all statutory exemptions, including those exempting construction or maintenance of irrigation ditches from CWA section 404 permitting requirements, remain in place and unaffected by the final rule.

The Clean Water Act regulates discharges of pollutants and fill material into covered waters, and does not regulate dry land, land use or private property rights.

This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades.

Huffmaster, D. (Doc. #18633)

17.2.39I am very concerned about the broad definition of "tributary" under this proposed rule. I understand the federal agencies contend this rule would not expand federal regulatory authority, but my reading of the preamble does not support that contention.

Tributaries are defined as any feature having "a bed, a bank, and a high water mark" without regard to whether water actually flows there. In my opinion, this definition expands federal regulatory authority to my property, and I do not believe this action is warranted.

I am a good steward of my property. Additionally, the Georgia EPD prohibits illegal pollution or abuse of the property. This proposed rule is an unwarranted expansion of federal power.

This proposed rule also infringes on my private property rights. If federal authority is authorized, I believe additional federal permits will be required if I decide to change the use of my property. This rule will add another layer of bureaucracy for me as a landowner, and I do not see how this will be of benefit to anyone. However, I can clearly see how it will infringe on my private property rights.

I respectfully request the federal agencies to withdraw this proposed rule from consideration. (p. 1)

Agency Response: **Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations. Section IV.I of the preamble discusses the exclusions in the final rule, including erosional features that do not meet the definition of tributary. In order to be considered a tributary under the final rule, the feature must have both a bend and banks and an ordinary high water mark. It must also contribute flow, either directly or through another water, to a traditional navigable water, interstate water or territorial sea.**

The Clean Water Act regulates discharges of pollutants and fill material into covered waters, and does not regulate dry land, land use or private property rights.

This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-

reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades.

Grether, S. (Doc. #18668)

17.2.40…permit requirements now applicable to navigable waters would, under this new definition, then be applied to the aforementioned land features. Since many of these land features exist on privately owned land, and virtually all of it gets rained at some point during a normal year, federal agencies could then regulate almost everything we do on our property via a permitting process.

> To redefine the term "Waters of the United States" in such a way redefines the very idea of private property. So in essence you regulators don't mind us owning the land, but you want to control everything we do on it. This way we are still responsible for paying the property taxes and incurring any and all liability which might befall said property. Is the scope of the rules ever enough? At what point do regulators kill the industry they are trying to control? Let these proposed rules stand and we will get to that point quickly. (p. 1)

Agency Response: **Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations.**

This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades.

The Clean Water Act regulates discharges of pollutants and fill material into covered waters, and does not regulate dry land, land use or private property rights.

17.2. BUSINESS OWNER

Agencies' Summary Response

Commenters expressed a number of concerns regarding potential impacts on businesses. Varied issues were discussed, including public input concerns and potential impacts on: ability to obtain permits, property rights, pesticide application, oil and gas development, and farming operations.

Specific Comments

Guthrie, T. (Doc. #0921.1)

17.2.41I am a vegetation management specialist and clean water is very important to me. Your proposed rule is a significant expansion of the Clean Water Act that will affect every American, and have significant impact on my business and community due to the

proposed increased jurisdiction over all waters. Due to the proposed rule's complexity, additional time is needed for me to review and respond to the rule and all its implications for my business, community and state. (p. 1)

Agency Response: **In this final rule, the agencies are responding to requests from members of Congress, developers, farmers, state and local governments, energy companies, and many others who requested new regulations to make the process of identifying waters protected under the CWA clearer, simpler, and faster.**

Section I of the Technical Support Document discusses the historic scope of the existing regulatory definition of "waters of the United States." Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations. Section IV.I of the preamble discusses the exclusions in the final rule.

The proposed rule was available for review and comment by the public for over 200 days. The agencies believe that sufficient time was provided for review of the proposed rule.

James, D. (Doc. #0991)

17.2.42 People will further lose their property rights with this. Also, consider when people start losing the privileges of property ownership, then why should they buy rather than rent! If they market dives for purchases of Real Estate, and the prices, then so will your Property Tax Collections. (p. 1)

Agency Response: **The Clean Water Act regulates discharges of pollutants and fill material into covered waters, and does not regulate dry land, land use or private property rights.**

Anonymous (Doc. #5366)

17.2.43 I have built few new terraces about every year or so for the last fifteen years. It is always a struggle to get them designed, contractors lined up, cooperative weather, short seasons to do the work, plan around crops, seed them, till and level them, and pay for them. If the EPA or CORP would add move permits and plans to the process most people would decide a good conservation measure such a as terrace would not be worth the hassle.

There are already regulations on most of the pesticides I use why add more" It has been said everything I do now will be exempted if so why bother with more rules and regulations, what's the point"

I think this goes way beyond Congressional intent of regulating navigable waters when it passed the CWA in 1972.

I strongly believe this rule would be an intrusion on my property rights and overly burdensome. I am urging you to abandon this rule. (p. 1)

Agency Response: **The Clean Water Act regulates discharges of pollutants and fill material into covered waters, and does not regulate dry land, land use or private property rights.**

Schlautmann, J. (Doc. #6072.1)

17.2.44…I say if the bill passes it will ruin small businesses everywhere and it will ruin the economy more than it is already ruined. The small businesses will be out of business because they won't be able to comply with all the rules and regulations which the EPA has in store for us. I say leave the bill like the House has passed as of right now, September 10, 2014.

First of all, this rule/act will harm the future of sustainable agriculture on small business, family-operated ranches like ours in many ways.

Our day-to-day operations would be severely affected. Many of our cattle use the banks of Wild Horse Creek, a tributary of the Belle Fourche River, to give birth to, and raise their young. The banks also provide shelter during spring blizzards, which without them, many calves would perish.

In the same way, some of our cattle use the banks of Mud Spring Creek, another tributary of the Belle Fourche River, as shelter in the harsh months. The creek is always dry then, but it and the surrounding floodplain would require a permit for use, which is unacceptable, for the ground that the family owns and has the mineral rights to. We use the meadows surrounding Mud Spring Creek as a hayfield in the summer, without which we would almost certainly have to buy hay to feed our cattle as it is one of our biggest hay producers. This use would also require a permit, which once again is unacceptable.

Our future as dedicated stewards of the land depends on the EPA staying out of our business and letting "we" the rancher/landowner take care the way we have always done for 100 years. (p. 1)

Agency Response: **In this final rule, the agencies are responding to requests from members of Congress, developers, farmers, state and local governments, energy companies, and many others who requested new regulations to make the process of identifying waters protected under the CWA clearer, simpler, and faster.**

Section I of the Technical Support Document discusses the historic scope of the existing regulatory definition of "waters of the United States." Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations. Section IV.I of the preamble discusses the exclusions in the final rule. In addition, all statutory exemptions, including those exempting "normal farming, silviculture and ranching activities" from CWA section 404 permitting requirements, remain in place and unaffected by the final rule.

The Clean Water Act regulates discharges of pollutants and fill material into covered waters, and does not regulate dry land, land use or private property rights.

Carlson, R. (Doc. #11834)

17.2.45 The additional rules surrounding the NPDES permitting process have already caused unnecessary additional work for us and our state agencies. Our state of Wisconsin has had strict permitting laws surrounding the application of aquatic herbicides and algaecides and the idea of adding yet another layer of regulation sounds redundant at best.

Like many states, our Department of Natural Resources is understaffed, underpaid and overworked. Who will administer and regulate any additional requirements? They were taxed with the added work-load of the NPDES permitting and now they may have to add and enforce yet another, unnecessary set of regulations? Small businesses like ours are likely to suffer as the permitting process will be further delayed and our cost of providing services will increase. Our states natural resources will also suffer as the DNR officials charged with implementing these new rules will have to ignore other, more important facets of their position. (p. 1)

Agency Response: **The final rule does not establish any regulatory requirements. Instead, it is a definitional rule that clarifies the scope of "waters of the United States" consistent with the Clean Water Act (CWA), Supreme Court precedent, and science.**

Klaassen, D. (Doc. #12193)

17.2.46 …If I have to report to EPA on routine activities like driving a tractor across a pasture, improving drainage on crop land or letting my cattle drink out of a creek, I will be less efficient in farming and I won't be able to make critical decisions myself. An example of less efficiency is not getting my drainage work done before a big rain. If I needed to fix a broken field terrace before a rain, I would need to fix it immediately. If the EPA was involved, I would have to get permission and by then the rain would have already hit.

My planned feedlot would be affected too. I have a Kansas state feedlot permit, but I would have to apply for a EPA permit too. I would have to delay my feedlot which keeps me from making income. I would have to change my plans so adhere to EPA regulations. The regulations would make a mess of my feedlot plans and cause unnecessary changes. I would ask you to consider everything that I have included in this letter and see how more regulations would hurt farmers' way of life. Some rules are important, but it is imperative that local and state governments make the rules. Local and state officials live among and understand the farmers unlike the federal officials who do not... (p. 1)

Agency Response: **Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations. Section IV.I of the preamble discusses the exclusions in the final rule. In addition, all statutory**

exemptions, including those exempting "normal farming, silviculture and ranching activities" from CWA section 404 permitting requirements, remain in place and unaffected by the final rule.

The Clean Water Act regulates discharges of pollutants and fill material into covered waters, and does not regulate dry land, land use or private property rights.

Martin Marietta (Doc. #13593)

17.2.47 There is no doubt that the expanded scope of this rule would directly impact our operations. As explained, among the impacts would be increased costs, delays in permitting, reduction in access to a necessary natural resource with a direct impact on our ability to provide needed materials for roads, bridges and construction projects. (p. 1)

Agency Response: **In this final rule, the agencies are responding to requests from members of Congress, developers, farmers, state and local governments, energy companies, and many others who requested new regulations to make the process of identifying waters protected under the CWA clearer, simpler, and faster.**

Section I of the Technical Support Document discusses the historic scope of the existing regulatory definition of "waters of the United States." Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations. Section IV.I of the preamble discusses the exclusions in the final rule.

Steinlage, J. (Doc. #13751)

17.2.48 This rule would make it more difficult to control harmful pests on private and public property if any water is near the area. Professional applicators and homeowners would have to obtain permits to protect properties from pests like ticks, which carry harmful diseases like Lyme Disease.

Well-maintained lawns are important for the environment and properly-cared for lawns reduce run-off into nearby waters. One of the unintended consequences of EPA's proposed rule could be increased erosion and run-off into many connected water bodies.

The proposed rule would have a profound and significant impact on small businesses providing pest, turf and lawn control solutions around the United States. The cost of pesticide application permits near waters that would be defined as a "water of the U.S." will create additional burdens for small businesses, and some business owners may not be able to afford these additional fees. The cost of permitting fees will also have to be reflected in customers' fees as businesses will have to increase prices to cover the new costs of their services. (p. 1)

The final rule does not establish any regulatory requirements. Instead, it is a definitional rule that clarifies the scope of "waters of the United States" consistent with the Clean Water Act (CWA), Supreme Court precedent, and science. The rule

would not change existing CWA permitting requirements regarding the application of pesticides or fertilizer on farm fields.

Poirier, D. (Doc. #18679)

17.2.49I am a royalty owner of both oil and natural gas interests. I'd like to let you know that I oppose the expansion of the Federal Clean Water Act. This act might take away my ability to develop my land and minerals, and raise my costs of production. The raising of surface regulatory compliance costs would make my land less attractive for development, and affect the livelihood of myself and my family. (p. 1)

Agency Response: **In this final rule, the agencies are responding to requests from members of Congress, developers, farmers, state and local governments, energy companies, and many others who requested new regulations to make the process of identifying waters protected under the CWA clearer, simpler, and faster.**

Section I of the Technical Support Document discusses the historic scope of the existing regulatory definition of "waters of the United States." Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations. Section IV.I of the preamble discusses the exclusions in the final rule.

The Clean Water Act regulates discharges of pollutants and fill material into covered waters, and does not regulate dry land, land use or private property rights.

The rule also does not affect or modify existing statutory and regulatory exemptions from NPDES permitting requirements, such as those for return flows from irrigated agriculture (CWA 402(l)(1); 502(14)), stormwater runoff from oil, gas and mining operations (CWA 402(l)(2)), or agricultural stormwater discharges (CWA 502(14)). However, consistent with longstanding practice, these exempt activities do not change the jurisdictional status of the water body as a whole, or the potential need for CWA permits for non-exempted activities in these waters or non-exempted discharges to these waters.

17.3. "GREEN CITIZEN"

Agency Summary Response

Commenters expressed concern over the pollution and degradation of waters, and expressed their support for clean water and the protection of aquatic ecosystems. A majority of commenters in this section support the rule. Several commenters expressed concern over exemptions or exclusions for agriculture and groundwater.

Specific Comments

Doerflein, C. (Doc. #0500)

17.2.50I spent summers on the New Jersey shore in a community that destroyed its wetlands to build houses on "lagoons." We didn't realize at the time what the consequences would be, but I can tell you that, decades later, our wonderful Barnegat Bay is nothing like it was, nor is the wildlife that depends on it, because of the ecological disaster brought by rampant destruction of its surrounding wetlands.

We have to be smarter about things.

I strongly support the proposed Waters of the United States rule to clarify the Clean Water Act's protection of our nation's critical wetlands and streams, and I urge you to promptly finalize the new rule so that birds, fish, other wildlife, and our own communities can thrive with the security of clean and abundant water. (p. 1)

Agency Response: **The agencies appreciate the commenter's support. This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades.**

Cuppy, E. A. (Doc. #1998)

17.2.51I am just a small person, living pay to pay. I do not have the means to fight the big companies that only care about the dollar not the water. We need the EPA to fight for us, not against us and have the companies that have polluted our waters for hundreds of years finally start cleaning up the damage that has already been done.

I would propose that we continue to work on the large companies that truly do pollute our waters.

The proposed rule does not provide clarity or certainty as EPA has stated. The only thing that is clear and certain is that under this rule, it will be more difficult to farm, ranch, build homes, erect fences or make changes to the land – even if those changes would benefit the environment. I work to protect water quality regardless of whether it is legally required by EPA. It is one of the values I hold as a human being.

Small people, like me, along with farmer, homeowners, all Americans will severely be impacted. Therefore, I ask, beg really, to withdraw the proposed rule. (p. 3-4)

Agency Response: **In this final rule, the agencies are responding to requests from members of Congress, developers, farmers, state and local governments, energy companies, and many others who requested new regulations to make the process of identifying waters protected under the CWA clearer, simpler, and faster.**

Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the

United States") than in present regulations. Section IV.I of the preamble discusses the exclusions in the final rule.

The Clean Water Act regulates discharges of pollutants and fill material into covered waters, and does not regulate dry land, land use or private property rights.

Anonymous (Doc. #2073)

17.2.52I am very concerned about water quality in the United States and the need for more water and soil retention. As a landowner with land in an active river watershed that empties into the gulf of Mexico, I am saddened by the massive movement of valuable top soil to the gulf. Expansion of the "waters of the US" will do nothing to help that as the government already neglects the land it controls. What is needed is incentives and funding to build more terraces, swales and small silt catchments as well as drop structures and riparian zones. I am strongly in favor of preventing infill and dense development in flood plains. The simple solution to that is to adopt the European standard of a 1000 year flood line for development nationwide. (p. 1)

Agency Response: **The Clean Water Act regulates discharges of pollutants and fill material into covered waters, and does not regulate dry land, land use or private property rights.**

Niccoli, R. (Doc. #2854)

17.2.53I would also like to take this time to urge the EPA to add Ephemeral/Vernal wetlands (i.e. Carolina Bays, Vernal Pools, Prairie Potholes and other similar features) and riparian buffer zones surrounding these to the ruling. These ecosystems are of vital importance to many insects and amphibians that cannot compete in open/connected water systems. The animals that rely directly on these systems also play a large role in the food web and have a large impact on the greater wildlife community. Please do not overlook these critical ecosystems in your rulings. (p. 1)

Agency Response: **The agencies recognize the importance of these wetlands and the ecosystems they support. Under paragraph (a)(7) of the final rule, prairie potholes, Carolina and Delmarva bays, pocosins, western vernal pools in California, and Texas coastal prairie wetlands are jurisdictional when they have a significant nexus to a traditional navigable water, interstate water, or the territorial seas. Waters in these subcategories are not jurisdictional as a class under the rule. However, because the agencies determined that these subcategories of waters are "similarly situated," the waters within the specified subcategories that are not otherwise jurisdictional under (a)(6) of the rule must be assessed in combination with all waters of a subcategory in the region identified by the watershed that drains to the nearest point of entry of a traditional navigable water, interstate water, or the territorial seas (point of entry watershed).**

Anonymous (Doc. #2951)

17.2.54Forty years ago, two-thirds of America's lakes, rivers and coastal waters were unsafe for fishing and swimming. Because of the Clean Water Act, that number has been cut in half. However, one-third of the nation's waters still do not meet standards.

Indiana is one of the worst states in the nation on water quality. It is terrible to see all the Indiana lakes and rivers on the list with mercury, PCB's, e-coli, algae, lead, copper and even cyanide. I firmly believe that the majority of causes polluting our waterways are from Concentrated Animal Feeding Operations (CAFOs) and pesticides and herbicides running into waterways from huge corporate farms.

The algae blooms, mercury, PCB, cyanide on the lakes and streams and the "Red Tide" on oceans and the "dead zone" on the Gulf are NOT natural occurrences! They are caused by POLLUTION! It is so sad that even though the Wabash River is a long way from the Gulf of Mexico and represents just 3% of the total Mississippi River Basin area, according to a recent study by a team of freshwater ecologists at the University of Notre Dame, it is responsible for 11% of the nitrogen that flows into the Gulf, causing the "dead zone". Indiana has been identified as one of the states contributing the most excess nutrients to the Gulf, and much of this is from CAFOs and corporate farms. Nearly every stream is Indiana is impaired and on IDEM's 303(d) list because of E. coli and other issues.

In 2004 our Salamonie Reservoir was in terrible shape. Due to illegal clumping of animal waste (much from a corporate dairy CAFO) into a ditch that led into Salamonie, there were often thick white-green smelly masses of algae in lots of places in the lake. Thanks to the help of the EPA and some state Senators and Representatives, 2005 was much improved. We are volunteers for Salamonie Lake in Indiana's Volunteer Lake program run by IDEM and Indiana University's School of Public and Environmental Affairs. We had dogs die from lapping water from Salamonie Reservoir 2 years ago. IDEM began blue-green algae sampling the summer of 2012. The designated swimming beaches of most of the state's reservoirs were sampled monthly unless cell counts exceed 100,000 cells per milliliter (cells/ml), at which point the swimming beaches in exceedance will be resampled on a biweekly basis until the counts fall below 100,000 cells/ml. For protection of human health from cyanobacteria, the World Health Organization uses a guideline level of greater than 100,000 cells/ml and microcystin toxin levels of 20 parts per billion (ppb) for a high risk health alert in recreational waters. In Indiana, IDEM uses 6 ppb of microcystin toxin as a warning level. The counts have often exceeded what they should. I now volunteer test for microcystins (blue-green algae) for the U. S. Army Corps of Engineers.

I firmly believe that more stringent majors need to be taken on not allowing animal wastes and pesticides and herbicides into our waterways. I do not believe that the proposed rule should preserve the Clean Water Act exemptions and exclusions for agriculture. (p. 1-2)

Agency Response: **The rule does not affect or modify in any way the many existing statutory exemptions under CWA Sections 404, 402, and 502, which were enacted into law by Congress. However, the states and tribes, consistent with the CWA, retain full authority to implement their own programs to more broadly and more fully protect the waters in their jurisdiction.**

Anonymous (Doc. #4486)

17.2.55The comment of "case-specific" when determining a "nexus" is potentially detrimental to many temporary pothole wildlife breeding locations if the court (a non-scientific entity), finds no connection to a protected water as defined. The result could open the prairies to commercialization without proper understanding of the part potholes play in aquifer recharge either directly via substrata infiltration or moisture retention and subsequent evaporation for future rainfall.

Loss of any naturally occurring water collection, distribution or presentation network or system will decrease fresh water availability and while human personal consumption needs can be met with desalination and fog collection systems, these will not preserve wildlife and once lost to commercial designs, decades, if not centuries, will typically be needed to return such deviations to the original form. Loss of such cannot be calculated by "nexus" test methodology and long term effects will never be understood.

Florida is a excellent case in point. Depletion of subterranean aquifers has caused loss of wetlands "downstream" and "laterally" without any surface waterway ever being in existence. Similar, and substantial networks exist from Missouri to and through Kentucky and Tennessee. These and other networks under attack by ventures which will deplete them as in Florida and California. The Clean Water Acts must protect all fresh water sources, no matter the insignificance they present. No court can rule on these effectively since the philosophy of words is more important to a justice or lawyer than what is right and proper to maintain a clean world. (p. 1)

Agency Response: **This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades. See sections III and IV.H. of the preamble to the final rule for a discussion of "significant nexus" and "case-specific waters of the United States," respectively.**

Vasaturo, G. (Doc. #4593)

17.2.56I'm writing as a South Florida resident in strong support of the proposed EPA and Corps "Waters of the United States" rule and would like my comments included in the docket. Water quality of Florida's coastal waters is declining, our freshwater supply dwindling, and habitat for wetland-dependent wildlife has been rapidly disappearing. This is a particular concern as development has started to ramp up in Florida, with over 1000 new people moving here every day. Wetlands, in particular shallow water wetlands, are diminishing...for example, the native apple snail is declining, and as this is the primary food for the snail kite and limpkin, these species are endangered. Development threatens floodplains and recharge areas essential not just to wetlands but to our vulnerable drinking water supply. It is so very important that waters of the US included headwater wetlands and waterways that are essential to cleansing out pollution, capturing and storing floodwaters, and providing sufficient freshwater flow to downstream rivers and

bays. I request EPA and the Corp to finalize this rule as soon as possible--time is of the essence for Florida waters. (p. 1)

Agency Response: **The agencies appreciate the commenter's support. This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades.**

Anonymous (Doc. #11810)

17.2.57I am absolutely in favor of this rule. Ditches and small streams are being used as dumping grounds for all manner of toxic chemicals, in quantities as small as a paint can to as large as a deliberate, illegal, industrial dump.

It is time we protected ditches and small streams from these toxic dumps. (p. 1)

Agency Response: **The agencies appreciate the commenter's support. This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades.**

Assayag, M. (Doc. #12022)

17.2.58States, particularly those in the northern Mid-Atlantic, could benefit many other states if they were to enforce this rule revision. Big states such as Pennsylvania and New York have streams and waterways that flow all the way down into the Chesapeake Bay. They should want to protect this water, because it is being passed on to others. As someone receiving water closer to the exit at the Chesapeake Bay, I would greatly appreciate if the water I received was clean and less polluted.

In addition, by cleaning up the water and enforcing more sustainable practices now, we can save time and money by preventing larger, more expensive issues from arising. If we aid and suggest more practical methods and techniques for farmers to use, it would help prevent stricter regulation that the government would need to implement in the future to make up for the harm that farmers have imposed on the water and the environment.

Lastly, many small businesses in Maryland have joined forces with Environment Maryland to support the passing of this rule change. Small businesses and small farmers realize that they can ultimately benefit from this change. They can help protect themselves and other as well as improving the condition of their farms with the passing of this rule. Small businesses recognize that everyone could benefit from clean water and ultimately it will be worth the investment.

Ultimately, clean water is the best choice for everyone. Yes, we do have to think about the externalities that will come along with maintaining this grand idea of clean water and

clean water practices, but it will be worth it in the long run. Our water environments could thrive and better support us if we, as humans, were doing all we could to protect it. If we are able to better sustain clean water, then clean water can help sustain our nation better. (p. 1)

Agency Response: **The agencies appreciate the commenter's support. This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades.**

Zucker, A. (Doc. #12043)

17.2.59I stand as a strong advocate for Clean Waters of the US and believe that the rules imposed will have a large positive impact on not only our environment, but also our country as a whole. It is very important that we protect our most seasonal and rain-dependent streams, wetlands near streams and rivers, and other bodies of water that connect with downstream water to ensure public health, as well as national security. By protecting these waters, we are minimizing the amount of pollution that is dispersed through our environment from evaporation, and in translation we're minimizing acid rain that continues to pollute our waters. These proactive clean water actions will help with public health issues, as our damaged waters include 60% of our stream miles, accounting for 1/3 of Americans major source of drinking water! As every human needs water to survive, it is crucial that America provides clean drinking water without putting those drinking the water at risk for diseases.

As the Clean Waters of the US debate continues, it has come to my attention that many of the anti-activists for these imposed regulations are farmers. There are many beliefs that implementing rules and the Waters of the US would restrict how farmers and others can manage water on their property. Anti activists believe that permitting fees and compliance costs will hurt family farms, ranches, and small businesses. I do not believe this is the case, as small waters on farms that do not contribute to other waters in the US are exempt of the clean water regulations. Furthermore, I believe these regulations will positively impact farmers, allowing their farming to become more efficient due to clean water for their crops and land. Clean water can help farmers in the long run by keeping polluted water from eroding their land and dirt that is necessary for their every day farming needs.

As I explained, Water quality is crucial for public health and agriculture, but also very important for our ecosystem and other purposes. Increases in temperature, as well as changes in precipitation could diminish water quality in many regions. Additionally, increasing water temperatures can cause algal blooms and potentially increase bacteria in water bodies that are very harmful. These impacts require us as Americans to decrease our carbon footprint and take the necessary steps in implementing the regulations for Clean Waters of the US, in order to provide safe water resources for human uses.

As clean water is crucial for human life, it is always extremely valuable to our nature and wild life. Imposing regulations on waters of the US will help preserve our land from eroding, as well as giving animals a safe and clean environment to live. An extremely large amount of animals are affected and even killed by our polluted waters. I believe as citizens of the US, it is our responsibility to preserve our wildlife and nature. Our water quality is directly linked to the quality of our lives. By improving our waters through supporting clean water initiatives, we can each have a hand in ensuring clean, safe water for ourselves, our community, and our country as a whole. (p. 1)

Agency Response: **The agencies appreciate the commenter's support. This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades.**

Saine, A. (Doc. #12090)

17.2.60…If the intent is to strengthen protection of our water supply and give Citizens the right to clean water then I am in complete agreement. Water is a viable life giving source worthy of the time and effort. I live in Kennesaw, Georgia. My City's history is largely influenced by an abundant water supply. The Cherokee Indians referred to the water source here and the location was ideal to sustain an army with Calvary training during the Civil War. Big Shanty Spring is commemorated just behind City Hall. This head water flows from there to an unnamed tributary to Butler Creek to Lake Acworth to Lake Allatoona and into the Etowah River.

Our world today includes a surge in population and the desire to develop with buildings, roads and parking decks. While I understand and defend a property owner's right to develop their property, I believe the development must be done in a responsible manner. Water located on a property deserves a great deal of respect and water leaving a property should be clean. It simply is not polite to pass along dirty water to a neighbor.

2012 and 2013 included some very exciting activities in Kennesaw. The City of Kennesaw Decision Makers' conversations included the words: stream variance, mitigation credits, detention areas and creation of wetlands. In my opinion it is unfortunate the Georgia Department of Natural Resources Environmental Protection Division granted a stream variance to encroach within the 25 foot buffer adjacent to State Waters. The City of Kennesaw then reduced their 75 foot stream buffer to 25 feet. This variance literally paved the way for the Mainstreet Kennesaw Multi-Use Development and runoff from this massive five acre development adjacent to a future public park site with a stream. The Control Number for this Application is BV-033-13-01. While I am told a system to structurally clean the water is in place, I am left with the question, "Is it enough?"

The efforts currently underway with the intent of protecting a Citizen's right to clean water may be the help we need to ensure responsible development. I believe an Agency which is separate from the development interests of an area and committed to the

preservation and protection of our waterways would be one of the best assets the United States could have. (p. 1)

Agency Response: **The agencies appreciate the commenter's support. This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades.**

McDougal, S. (Doc. #12185)

17.2.61I support the EPA/Corps rules that speak of 'waters of the US' in the Clean Water Act. Neighboring is important because it includes oxbow lakes and other wetlands near or in floodplains as US waters. Also high water mark, or streams with a bank or bed should be included. Arid states such as MT and AZ need these protections.

Surface water protection is especially important, so floodplain definition should include the 100 year floodplain and any mapped 500 year floodplains and channel migration zones or similar mapped features. Streams that run underground should also be included. Wetlands and other waters located in and adjacent to floodplains deserve to be protected under the clean water act. The ecological floodplain or the 100 year floodplain should be protected, at a minimum. (p. 1)

Agency Response: **The agencies appreciate the commenter's support. This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades.**

Reeves, M. (Doc. #12466)

17.2.62I have reviewed the proposed rules to define the "waters of the United States" and support the proposed definition and the draft rules. Recently, the Yamhill County Oregon, three member Board of County Commissioners approved a Resolution opposing these draft rules based on misinformation, including broad statements not supported by facts. Their claims that these rules would adversely affect productive farm land and economic development in the County are not true.

I have lived in Yamhill County Oregon for 33 years and have actively participated in land and water use issues. Much of the productive farm land has tile drains which are exempt from the CWA and new development is permitted by State Land Use Laws. I am not aware of any adverse problems caused by the permitting or enforcement of the CWA in general, or the definition of "waters of the U.S." in particular.

Unfortunately citizens were not permitted to present any facts or correct misinformation to the Commissioner when the Resolution was enacted. What they drafted does not

reflect the will of the people in the County. Concerned citizens submitted letters to the editor (News Register, McMinnville OR, October 10, 2014).

I strongly supported the original enactment of the 1972 Federal Water Pollution Control Act Amendments (92-500) and the subsequent laws which created the Clean Water Act. The proposed rules reflect the purpose of the original legislation and over the years the success of the CWA has been remarkable. However, many problems remain. The fish in the Columbia River have toxic levels for humans and aquatic resources, farm and city run off creates algal blooms dangerous to both humans and fish. and we have yet to achieve the goals of swimmable and fishable waters here in Oregon.

Research has demonstrated the importance of temporary vernal pools or small potholes. For example, I lived for 10 years in the Dakotas and Minnesota and know that in some years, nesting ducks use temporary waters.. Although the Corps of Engineers and EPA permitting process is not always perfect, scare headlines and political posturing do not improve it.

Finally, I urge that the EPA includes these comments in the record and approves the draft rules. (p. 1-2)

Agency Response: **The agencies appreciate the commenter's support. This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades.**

Hopkins, S. (Doc. #12697)

17.2.63I am concerned about the exclusion of ground water from any regulatory consideration…

And yet the farmers are drilling deeper wells; up to 1,500' or more to find water. Shallow residential wells are drying up. The farmers are mining fossil water left over from the last ice age. When it's gone, it's gone; and the Central Valley will be FINISHED for farming. Not a pleasant prospect.

And yet, as the farmers pump, and the water table drops, the EPA turns its back on the potential disaster in the making.

Even if the modest rains return this winter, it won't recharge the deep aquifer. Once it's gone, it's gone forever and the Central Valley will slowly become a desert. (p. 1-2)

Agency Response: **As discussed in the preamble to the proposed rule, the agencies have never interpreted "waters of the United States" to include groundwater. Accordingly, the agencies include an exclusion for groundwater, including groundwater drained through subsurface drainage systems. However, the exclusion does not apply to surface expressions of groundwater, as some commenters requested, such as where groundwater emerges on the surface and becomes baseflow in streams or spring fed ponds. In addition, states and tribes, consistent with the CWA, retain full authority to implement their own programs to more broadly and more fully protect the waters in their jurisdiction. Many states and**

tribes regulate groundwater. Under section 510 of the CWA, unless expressly stated, nothing in the CWA precludes or denies the right of any state or tribe to establish more protective standards or limits than the Federal CWA.

Hallman, H. (Doc. #12912)

17.2.64I give my full support towards the EPA's proposal to clearly define what waters are protected under the Clean Water Act. Water pollution is caused by many different activities, which will be difficult to address, but we can clearly see the effect. We must do our best to clean up our water supplies. I hope that someday our water supplies will not be polluted by anthropogenic causes. It appears that some people will pollute without a second thought of the consequence their action will have on the environment. By placing a law into action that will no longer allow people to jump through loop holes, getting away with their pollution, I hope to see the Clean Water Act Thrive. (p. 3)

Agency Response: **The agencies appreciate the commenter's support. This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades.**

Grewe, A. (Doc. #13345)

17.2.65So, of course the definition of "waters of the United States" should include wetlands and headwaters in addition to lakes, streams, ponds and rivers. Wetlands are of huge importance to the health of our waters and to all the wildlife that depend upon them. When Congress passed the Clean Water Act 40 years ago, it intended that getting permits for destroying wetlands should be difficult. "The bottom line was to try to stem what the scientific evidence of the day showed was a problem: the dramatic reduction in wetlands habitat around the nation," said Jim Range, who helped write the law as chief counsel for then-Sen. Howard Baker, R-Tenn.

Wetlands perform a dazzling array of ecological functions that only recently have come to be appreciated. Scientists understanding of the complexities of wetland ecosystems still is developing, and it seems the more that is learned, the more valuable wetlands become.

…I sincerely hope that you will consider my writing when deciding upon definitions of the "waters of the United

States." (p. 1-2)

Agency Response: **The agencies appreciate the commenter's support. This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades.**

Martini, B. (Doc. #13589)

17.2.66I am writing to comment on the proposed rules that restore Clean Water Act "waters" definitions to return to the scope of protection we had before court decisions removed several headwaters portions of the water cycle. I have direct experience with the need for protection of the entire water cycle, not just the big bodies of water. I worked 32 years for the Wisconsin Dept. of Natural Resources protecting the waters of the state from environmental pollution. The small headwaters streams and groundwater are like capillaries in the human body that feed the major veins and arteries and keep the body alive. If a drug is injected into the skin or muscle, it is distributed to all parts of the body. In like fashion, pollutants injected into the groundwater or small streams will eventually contaminate downstream rivers or lakes. Much of the runoff phosphorus from agricultural lands enters the watershed via wetlands and small streams but eventually can degrade huge systems like Lake Erie and make a large city water supply (like that of Toledo, Ohio this summer) toxic and undrinkable. In the process, the fish and aquatic life in the whole contaminated watershed are adversely affected. Agriculture must be regulated just like the point sources to protect water quality and to correct the inequity of massive investments already made by most industrial sectors without similar progress toward water quality protection by the agriculture industry. Voluntary cost sharing does not work as we have demonstrated over the past 30 years in Wisconsin's costly (to the taxpayers) Priority Watershed program. Now it is necessary for agriculture to do what the point sources have already done and correct their share of the problem. It all starts with water quality standards. If the wetlands, small streams, and groundwater are exempt from Clean Water Act standards the whole process of controlling agricultural runoff pollution will fail at the expense of our drinking water and the economic sectors that depend on clean water (which is most of our economy and society). As a former county board member I saw what happens when local elected officials ignore the protection of small streams and wetlands in their shoreline protection ordinances. How can local units of government be expected to protect the entire interconnected water cycle if a science-based agency like EPA sets a bad example by omitting the part of the cycle that feeds the major rivers and Great Lakes? Wisconsin's great environmental philosophers, John Muir, Aldo Leopold, Gaylord Nelson, and others have given us this basic principle: "all waters and components of the ecosystem and the economy are connected and interdependent". We ignore parts of this sustaining system at our collective risk to our economy and our quality of life. Water quality reflects watershed quality and watershed quality reflects the quality of our society. Do not exempt a crucial part of the watershed because some vested interests do not want to do their part like the point sources already have. This is not about "ditches" as the ag industry would have you believe! This is about the responsibility of society to protect our most valuable natural resource. (p. 1-2)

Agency Response: **The agencies appreciate the commenter's support. This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades**

Anonymous (Doc. #15684)

17.2.67Even though I don't hunt and rarely fish, I still feel the need the speak up in support of our environment. We need to keep our wetlands not only clean but open to people who use them for recreational purposes. The US has a lot of bird watchers who visit wetlands to count birds every day across every state. If we allow the wetlands to be developed and polluted, we're making a big mistake that will ruin our ecosystem for years to come. (p. 1)

Agency Response: **The agencies appreciate the commenter's support. This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades.**

Species, S. (Doc. #15740)

17.2.68I support EPAs proposed definition of Waters for the U.S. The rule will help restore your authority to protect all of the water in the U.S. that Congress intended it to protect when it passed the Clean Water Act.

We need a strong Clean Water Act to address threats to the water that farmers, ranchers, and communities depend on -- from chemical spills from mining operations that have leaked arsenic into a Colorado river, to the heavy metals leached from coal ash at coal-fired power plants, to destructive saltwater spills, fracking fluids and other chemicals used in oil and gas drilling and production that have contaminated waters in states across the West. (p. 1)

Agency Response: **The agencies appreciate the commenter's support. This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades.**

Ellis, J. (Doc. #15747)

17.2.69While I would like to see all water resources protected from pollution, destruction, or exploitation--wetlands, lakes, rivers, streams--I understand that it's best that "Waters of the US" be clarified so that business, industrial, and farming practices are able to make clear decisions based on clear rules. This rule does clarify what waters and water bodies can and will be protected under the Clean Water Act. The rule also clarifies farming and ranching practices that can continue without need for permits or fear of breaking any laws. (p. 1)

Agency Response: **The agencies appreciate the commenter's support. This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional**

navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades.

Anonymous (Doc. #15803)

17.2.70 The one thing that keeps all life here on this planet is clean water. All water should be protected and not treated as if it were a commodity to be sold and polluted at will. The only thing water should be used for is to sustain life and should never be dumped into, used in a manor that would not allow it to be collected again for use as a life giving necessity (drinking). Our waters have been abused and misused for too long. Protection must be done at the National level to protect all the waters because they know no boundaries and flow from state to state and to the sea and other countries. Individual states do not have the resources to protect this precious resources for the benefit of all in this country. (p. 1)

Agency Response: **The agencies appreciate the commenter's support. This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades.**

Morris, B. (Doc. #15841)

17.2.71 It is critical in your regulations to include shallow wetlands in the EPA-Corps "waters of the United States" Clean Water Rule The Wood Storks need these shallow wetlands to feed and in Florida alone thousands of acres of Shallow Wetlands have been lost. Without the food sources from Shallow Wetlands the Wood Storks will not reproduce. In the early 1900s there were 100,000/Wood Storks in the area of the Corkscrew Sanctuary. Last year due to loss of shallow wetlands there were only 200 nests at Corkscrew. Without the Shallow Wetlands we will lose these and other critical animals. (p. 1)

Agency Response: **The agencies appreciate the commenter's support. This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades.**

Morris, S. (Doc. #15844)

17.2.72 This email is to strongly encourage the EPA and Army Corps of Engineers to complete and implement rules to provide protection to the various wetlands in Florida and other areas of the United States(docket EPA-HQ-OW-2011- 0880). Many critical wetland areas are in dire situations and only strong action by the EPA and the Army Corps of Engineers will prevent further damage. As a property owner in Florida, I have interest the

shore birds that have declined in population nearly 90% since the mid 19th century because of development, canal building, agriculture and other factors. These birds are important indicators of the state of the environment and unless strong actions are taken, wetland-related problems will continue to escalate. Your attention and prompt action would be appreciated. (p. 1)

Agency Response: **The agencies appreciate the commenter's support. This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades.**

Anonymous (Doc. #15867)

17.2.73I support EPA's proposed rule to restore Clean Water Act protections to all water, including small streams and wetlands.

Science shows that entire watersheds, including the wetlands, must be protected to protect the quality of water in rivers.

As a former water quality program specialist and scientist, I know that water is an interconnected system, and it is not possible on a scientific basis to separate the system into unconnected regulated/unregulated; public/private pieces. I do believe in the rights of people to own property, but I think that those rights are limited to what can be done without impacting the rights of other people. If someone pollutes the water or destroys the ecosystem upstream by paving over wetlands or other activity, it negatively impacts all the waters downstream, or downdraft for groundwater. Pollution and environmental degradation does not stop at property boundaries and thus regulation must be based on science, not property boundaries. Rivers and streams do not stop and start at the boundaries of states either, making comprehensive and cohesive federal regulations necessary to protect water quality all over the country.

Similarly, large rivers are not self-contained, but are the constant creation of precipitation, water from streams that feed into it, shallow groundwater flows and other factors. Whether or not a river can support fish or other life is influenced by what happens in riparian areas. Recent studies by Stroud WRC have shown how important riparian areas and tiny streams are to the total biological diversity of rivers they feed. Protecting these areas is critical to protecting the life-sustaining properties in the larger water bodies they feed.

The intent of the CWA was to protect the quality of all water in the United States, and EPA's rule restoring CWA protections to all water is vital to achieving this. It must be based on science, not individual property rights or short-term economic considerations.

Comprehensive, science-based regulations and programs to protect entire watersheds are also economically preferable to less regulation, since clean water is vital to all life, and time has shown that protecting water from pollution is less expensive than cleaning up polluted or degraded water, when that is even possible. Contrary to popular opinion, water quality regulations can also lead to reduced costs to regulated businesses by getting

them to develop ways to use fewer polluting materials. Many pollutants are costly, and reducing them through improved processes reduces costs as well as pollution. (p. 1-2)

Agency Response: **The agencies appreciate the commenter's support. This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades.**

Wright, K. (Doc. #16146)

17.2.74I am in favor of the adoption of the EPA/USACE rule to provide clarified description of waters eligible for protection by those agencies. I support it for reasons of reduced confusion of what waters are eligible, and because we need better protection of all surface waters that affect the quality of our drinking water. Source water protection is of paramount importance as we continue to grow and develop our economy. (p. 1)

Agency Response: **The agencies appreciate the commenter's support. This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades.**

Anonymous (Doc. #16148)

17.2.75As a naturalist and private citizen I believe it is vital to support the Clean Waters Act and applaud this effort. While some landowners may protect the integrity of waters on their property, and some states may have instituted proper legislation, the widespread pollution of minor steams and major bodies of water such as the Chesapeake Bay and Great Lakes demands action. (p. 1)

Agency Response: **The agencies appreciate the commenter's support. This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades.**

Burleigh, J. (Doc. #16232)

17.2.76When reading over the Clean Water Act in class, it becomes obvious there are some sections that would benefit from clarification. One of the main objectives of the act is the protection of navigable water. Navigable waters are defined as waters of the United States, which is not a clear definition. The EPA attempted to clarify this aspect of the act by creating the New Rule. Streams and wetlands protection is explained with the new

addition. According to the EPAs explanation of the rule, there are no new waters being protected. I believe that this addition to the Clean Water Act is beneficial to the protection of our waterways. Our waterways are largely interconnected, which means pollution in any waters affect all other waterways. This could be through tributaries, streams or lakes. When a body of water is not connected to a different water source, the water cycle is still affected. The pollutants in a wetland, freestanding lake or other unconnected waterways will seep into the groundwater. Once in the groundwater the pollutants will move throughout the water system and cause contamination to fresh water. With stricter regulations on pollution, clean waterways will become closer to a reality. Clean water is a basic human right that many people are not privileged to have. The United States should not have to worry about the pollution in their water source. This clarification of the act will stop polluters from dumping unwanted waste into waterways and hopefully limit the amount of polluted water in the United States. With stricter regulations and enforcements citizens are more likely to comply to the guidelines given. There are certain bodies of water that do not fit into the categories that are clearly defined in either the Clean Water Act or the New Rule. These waters fall under the term significant nexus and must be defined as waters of the United States on a case by case basis. After speaking to an employee of NRDC, the National Resource Defense Council, Jon Devine, it became clear that the significant nexus area should be clarified, which would clearly protect more bodies of water. This would sort a smaller number of water bodies in the significant nexus category, which would be beneficially, because deciding protection on a case by case basis can be inconsistent. Farmers argue that the act puts limitations on their ability to properly run their farm. Farmers would have to request a permit in order to use certain farm practices. There are 56 practices that the Clean Water Act defined as normal farming practices and these practices do not require permits. The American Farm Bureau Federation claimed these regulations to be unworkable. However, this act only clarified past regulations. Farmers were technically following these regulations before, with limited enforcements. Agriculture is a big factor in the amount of pollution in the water and regulations of these pollutants are beneficially for the safety of all water uses. (p. 1)

Agency Response: **The agencies appreciate the commenter's support. This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades.**

Anonymous (Doc. #16418)

17.2.77 These wetlands that are currently being threatened of not be protected from those that want to destroy these habitats in order to build upon them are extremely vital to many species of birds and fish and mammals that currently are living there. It is of the utmost importance that uphold the protection of these lands and subsequently many other areas that wildlife take refugee upon. Please support this bill in stating that the clean waters act applies to all waters that sustain wildlife within them. (p. 1)

Agency Response: **The agencies appreciate the commenter's support. This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades.**

Joy, J. N. (Doc. #17208)

17.2.78I strongly support EPA's proposed definition of Waters for the U.S. The rule will help restore the EPA's authority to protect all of the water in the U.S. that Congress intended it to protect when it passed the Clean Water Act.

We no longer have the luxury of having a cavalier approach to the protection of water in our world. Approximately one-third of the world's population does not have access to potable water, largely due to lackluster efforts on the part of world governments to protect water sources from the extensive and persistent pollution by industry, e.g., chemical spills from mining operations that have leaked arsenic into a Colorado river, heavy metal leaching from coal ash at coal-fired power plants, destructive saltwater spills, fracking fluids and other chemicals used in oil and gas drilling that have contaminated waters in states across the West.

As a pathologist, I have personally seen the medical tragedies related to pollution of our environment by uranium mining (lung cancer, pulmonary fibrosis with restrictive lung disease), fracking fluids (hemorrhagic diatheses, skin rashes, anemia, gastrointestinal disorders), and coal mining (pulmonary anthracosis/fibrosis). Despite denial by the industry defenders, I have no doubt in my mind that there is a direct association between the pollution of our environment, especially our water, and these medical conditions.

Worldwide the science community has endorsed the dangers of continuing down the path of continued mistreatment of our environment. We can no longer turn a blind eye to the very real and imminent dangers to our planet promulgated by industrial greed. As an agency that has actual power to act on issues that affect our entire nation, as well as indirectly on the world, I urge you to approve the Waters of the U.S. rule. (p. 1)

Agency Response: **The agencies appreciate the commenter's support. This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades.**

Newman, V. (Doc. #17698)

17.2.79On behalf of our local watershed group, Friends of the Weskeag, thank you for proposing a rule to clarify the scope of the Clean Water Act that will restore protections to the approximately 2 million miles of streams and tens of millions of acres of wetlands as surely was intended in the original law!

The Weskeag River watershed in Midcoast Maine exemplifies the need for this clarification. Our watershed is 11 square miles in size with portions located in Thomaston, South Thomaston, Rockland, and Owls Head. The headwaters begin in the city of Rockland and the river enters the ocean at a tidal falls in South Thomaston. The Weskeag Marsh is the largest tidal marsh in Midcoast Maine and the most productive shorebird roosting and feeding site in the Muscongus Bay area. A significant area of the marsh comprises the Ralph Waldo Tyler Wildlife Management Area. Additional sites along the lower river are currently being acquired by local land trusts. The estuary includes 1,100 acres of brackish tidal marsh and saltmarsh, extensive tidal flats, and eelgrass beds. Yet the Weskeag is one of several tidal rivers long considered by the Maine Department of Environmental Protection to be coastal wetlands most at risk from new development.

That development has taken place mainly within the upstream towns and has resulted in considerable direct and cumulative impact to intermittent streams and wetlands, including outright obliteration of these. Yet because of the variety of jurisdictions (state and local) it has been virtually impossible to prevent the resultant damage to the river's water quality. Hence, this proposed rule could perhaps have saved us much grief had not the Supreme Court et al cut short its application.

We earnestly hope that this time the full Clean Water Act will prevail, further damage to our aquatic ecosystem will be prevented, and even our water- and coastal-dependant uses may be enhanced. (p. 1)

Agency Response: **The agencies appreciate the commenter's support. This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades.**

17.4. OTHER

Agency Summary Response

Commenters expressed various concerns regarding implications of virtually every aspect of the proposed rule, from irrigation canals, to tributary and other definitions, to ditches, farming and ranching, pesticides application, Western water rights, ephemeral streams and features, stormwater, and property rights. Several commenters expressed support for the rule.

Specific Comments

Central Arizona Project (Doc. #3267)

17.2.80It is under this revised definition of a tributary that we interpret the entire CAP aqueduct system as being considered a tributary of a traditional WOTUS because, among other connections, the CAP interconnects with and uses Lake Pleasant to store water in winter

months for release in summer months. If CAP were to fall under the revised definition, it would inevitably lead to more costly, complex and time-consuming permitting as well as the potential for significant water shortages for Arizona cities during aqueduct repair and maintenance activities. (p. 3)

Agency Response: **Many commenters asked for an exclusion for drinking water supply systems, similar to exclusions for wastewater treatment and stormwater control. Because water supply networks can be both complex in structure and extensive in size, involving the use of tributaries as well as a variety of other features, the agencies determined that a complete exclusion of such systems is not appropriate. However, not all portions of these systems would be regulated under the final rule. Some portions of these systems are tributaries, or even traditional navigable waters, and so would be regulated under this rule for the same reasons that all such waters are subject to regulation as "waters of the United States." At the same time, there are some portions of these systems that would be excluded from regulation under the paragraph (b) exclusions, including (b)(3) (ditches that do not flow into a navigable water, interstate water or territorial sea) or (4)(B) (artificial, constructed lakes and ponds created in dry land). In addition, the agencies have not considered these water distributary systems jurisdictional where they do not have surface connections back into, and contribute flow to, "waters of the United States." However, the agencies have historically regulated aqueducts and canals where they serve as tributaries, removing water from one part of the tributary network and moving it to another.**

See response to comments for Topic 7: Features and Waters Not Jurisdictional for discussion of these and other exclusions that may apply to waters within the CAP.

There are also statutory exemptions for maintenance in the CWA Section 404(f)(1), including exemptions for maintenance of irrigation and drainage ditches, and construction of irrigation ditches. The CWA Section 404(f)(1)(B) exempts additional dredge and fill activities "for the purpose of maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures." Other types of maintenance activities in waters of the U.S. may also be authorized by a non-reporting Nationwide Permit 3. See summary response for 6.6 for a discussion of maintenance exemptions.

17.2.81 [U]nder the new definition, CAP would be subject to regulation under the Clean Water Act's section 404 program. CAP is generally not required to obtain 404 permits to perform earth-moving work in the canal, unless that work was to impact a jurisdictional water of the United States. (p. 5)

Agency Response: **See agencies' response for previous Central Arizona Project comment, above. However, certain dredge and fill activities in jurisdictional water of the U.S., including activities not covered by statutory exemptions for maintenance, may require 404 permits.**

17.2.82Interruption of Critical Water Flows: The rulemaking, as proposed, would impact the maintenance of the aqueduct system and pumping plants including the typical dredging of

the system and repairs that are required. On September 30,2012, CAP experienced a breach in the canal that forced its closure. CAP tapped the resources of the Lake Pleasant storage reservoir to provide uninterrupted water deliveries to its customers in the Phoenix, Pinal and Tucson area. The repair time from start to finish took approximately one month, but would undoubtedly have been longer had permits been required and, under those circumstances, might have created significant water shortages for Arizona cities. (p. 5)

Agency Response: **See agencies' response for first Central Arizona Project comment, above.**

Neill Grading and Construction (Doc. #4580.2)

17.2.83If you have a voice in the EPA Regulatory Debate, or if you care about wildlife preservation, water quality, soil conservation, an individual's right to the pursuit of happiness and personal property rights, then check out Callaway Gardens and see that "this shows what God could do if He had money." Thank God Carson Callaway did what is now Callaway Gardens before the EPA perverted Congress's Pollution Control Act into their Clean Water Act which should now be called the Construction Obstruction Act. The obstructionism practiced by the EPA as enforced through the Army Corp of Engineers has reached the point of causing harm to the environment by wrong-mindedly preventing the type conversions of waste land to natural paradise that Callaway Gardens represents. Elected officials fearful of being labeled anti-environmental have stood by and allowed the EPA through their rule making process to pervert the intent of Congress. They have "outlawed" common sense practices once required by the Soil Conservation Service (now called the Natural Resources Conservation Service). The EPA's ignorance of standard engineering principles and obliviousness to established common sense practice actually causes additional and continuous erosion, stream degradation and poorer water quality. They have done an amazing job of growing the size and grasp of their self perpetuating bureaucracy, adding unnecessary cost to almost everything except the thousands of worthwhile projects they totally prevent. They take great pleasure in obstructing and preventing projects that would enhance the environment and benefit wildlife and mankind while caring not about the jobs that are lost. I sincerely hope that you will read the enclosed excerpt from the Bo Callaway Story and avail yourself of the terrain and landscape before and after his family's efforts. The Callaway Garden story is the best evidence I have ever seen, that when it comes to the regulation of streams, the EPA does not need to be allowed any additional oversight. In fact, the Congress needs to man-up and pare back the effects of a decade of meritless overreach. It could be as simple as allowing the individual states to regulate the vastly different numbers and types of streams within their boundaries and require the EPA to stick to real pollution. The EPA can, to some degree, justify the loss of jobs and GDP for the sake of cleaner air but their endeavors to control and obstruct most stream related activities has a diminishing affect to jobs and GDP and personal property rights with no offsetting environmental benefit. In fact, the EPA's obstructionist policy actually adversely affects man, animal, nature, and the aquatic environment they pretend to protect. The USDA will have a difficult time spending $1.2 Billion on soil and water pollution "to encourage investments that would improve habitat, expand outdoor tourism and add jobs" (exactly what Callaway Gardens did and does) unless Congress gets the EPA and Army Corp out of the benefit-less

practice of obstruction in the misused name of environmental protection. In fact, why can we not change the EPA name and purpose to PCA and instruct the revamped Pollution Control Agency to stick to a new/old original mission.

As Millard Grimes wrote in The Bo Callaway Story (5-6), "When Fuller Callaway Sr. died in 1928, his son Cason became head of the company at the age of 33. He was already a veteran industrialist, and had virtually invented the valuable cotton waste business while in his early 20s. He was also the prime mover in establishing the rug mills that turned out Callaway Mill's only consumer product at the time. Cason was first of all an experimenter, which later led him to his greatest experiment: Callaway Gardens.""It was in 1923, on a weekend excursion, that Cason and Virginia discovered a huge and deep spring in the woods of Harris County, which they called Blue Springs, and where the Callaway family - now including three children - picnicked and spent many happy days in the late 1920s."

"Cason bought all the land around the Springs in 1930 and launched the agricultural and lake-building experiments that were his favorite interests."

"In 1938, Cason turned over management of the textile business to his younger brother, Fuller Jr., and for the rest of his life he was a farmer and gardener - on a grand scale." "He moved his family to a house he'd built near Blue Springs when his youngest son, Bo, was about 10. Bo attended the elementary school in Hamilton, where he met Beth Walton, when they were in the sixth grade."

"In the 1930s, the countryside between LaGrange and Hamilton was losing a centuries old battle against erosion and a 20th-century invasion by saw-millers, who were denuding its forested hills. Pine Mountain cast its shadow over a spreading wasteland of gullied hills, tree stumps and abandoned farmhouses. Only occasionally were there places of natural beauty such as Blue Springs, where tall trees still grew, surrounded by the wildflowers of the Appalachians."

"Cason, an environmentalist at heart, before environmentalism became fashionable, was concerned by the decline of the land. So for several years he concentrated on agricultural experiments, producing crops other Georgia Farmers never imagined could be raised in southern soil, such as strawberries and blueberries. Probably most important for the future of southern farming, he built lakes and demonstrated that fish could be a lucrative crop. "

"With the financial resources other farmers didn't have, Cason found ways to have a successful farm without growing a single stalk of cotton, which was then the main cash crop in Georgia. Later, with his" 100 Better Farms" promotion, he encouraged other Georgia farmers to diversify their crops."

"By 1948 Cason's attention was turning toward his third career: conservation and gardening on a grand scale. He looked at the wasteland along U.S. 27 in Harris County and decided to develop a huge wildflower garden there were other people could come and enjoy the rustic delights he and his family had found at Blue Springs."

"Writing to a friend in 1950, he made a prediction of what the area would become: "In eight miles between Hamilton and Chipley (now Pine Mountain)

we've built a I75-acre lake and around the lake is a seven-mile drive with six small lakes. We are now planning to put flowers and shrubs around the drive and lakeshores."

"Cason transformed the wasteland and wilderness into gardens of native flora through which people could walk, drive or bike for miles. In fact, there aren't any other woods exactly like the ones off U.S. 27, just south of Pine Mountain. As one observer said of another Callaway project: "This shows what God could do if He had money." (p. 1-4)

Agency Response: **Members of Congress, developers, farmers, state and local governments, energy companies, and many others requested new regulations to make the process of identifying waters protected under the CWA clearer, simpler, and faster. In this final rule, the agencies are responding to those requests from across the country to make the process of identifying waters protected under the CWA easier to understand, more predictable, and more consistent with the law and peer-reviewed science.**

The final rule does not establish any regulatory requirements. Instead, it is a definitional rule that clarifies the scope of "waters of the United States" consistent with the Clean Water Act (CWA), Supreme Court precedent, and science.

Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations. Section IV.I of the preamble discusses the exclusions in the final rule.

The Clean Water Act regulates discharges of pollutants and fill material into covered waters, and does not regulate dry land, land use or private property rights.

Travis County Commissioners' Court, TX (Doc. #4876)

17.2.84 The more defined scope and definition of several terms in rule will aid the development community in understanding potential impacts upfront in the planning and scoping of a project, instead of relying on a less clear decision making process once a project is submitted in a permit application to a federal agency. As one example, the proposed rule lists specific situations and systems that are not "waters in the United States" such as ditches and waste treatment systems. (p. 1)

Agency Response: **The agencies agree. Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations. Section IV.I of the preamble discusses the exclusions in the final rule.**

This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This

interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades. In this final rule, the agencies are responding to those requests from across the country to make the process of identifying waters protected under the CWA easier to understand, more predictable, and more consistent with the law and peer-reviewed science.

Reese, J. (Doc. #4955.1)

17.2.85These rules appear to be written by EPA lawyers to appear politically palatable, but still leave everything within the power of the EPA to determine what are and what are not Waters of the U.S. It intends to circumvent every Supreme Court decision that has previously stopped the EPA from enforcing CWA on all waters. Specifically Part 328.3 a. 7. The term Waters of the U.S. means: on a case-specific basis, (determined by the EPA) other waters, provided……, have a significant nexus (determined by the EPA) to a water identified in paragraphs a) 1-3.

The case-specific basis will be determined by the EPA and the significant nexus will be determined by the EPA. Those are problems that will create "government creep" into private property rights of citizens. (p. 1)

Agency Response: **Section I of the Technical Support Document provides the legal background for the final rule, including discussions addressing its consistency with the statute and caselaw. The rule establishes a definition of significant nexus, based on Supreme Court opinions and the science, to use when making these case-specific determinations (see section III of the preamble and section II of the Technical Support Document). Significant nexus is not a purely a scientific determination and neither is the agencies' interpretation of the scope of "waters of the United States." Further, the opinions of the Supreme Court have noted that as the agencies charged with interpreting the statute, EPA and the Corps must develop the outer bounds of the scope of the CWA, while science does not provide bright lines with respect to where "water ends" for purposes of the CWA. Therefore, the agencies' interpretation of the CWA is informed by the Science Report and the review and comments of the SAB, but not dictated by them.**

The final rule recognizes that not all waters have a significant nexus to a traditional navigable waters, an interstate water, or a territorial sea. In order to improve clarity, the final rule expands the discussion of excluded waters and other features not regulated. When a water is excluded by rule, it is not a "water of the United States" even where it meets the definition of a paragraph in (a)(1) through (a)(6).

Montana Wool Growers Association (Doc. #5843.1)

17.2.86The Proposed Rule should provide clear, concise, and repeatable methodology for determining the expected level of natural pollutants within a region.

The Proposed Rule should clarify that no natural levels of pollutants will be considered in determining when waters from a region "significantly affect" a Section (a)(1) through (a)(3) water.

The Proposed Rule should not allow a single event to cause an entire watershed to become a "water of the United States." (p. 6)

Agency Response: **Ambient water quality monitoring of rivers, lakes and estuaries is conducted primarily by the individual states. Similarly, water quality standards, including both water quality criteria and designated uses, are also set by the states and approved by EPA.**

Section III of the preamble and section II of the Technical Support Document describe the agencies' significant nexus analysis, which is based on Supreme Court opinions and the science. Sections VII and VIII of the Technical Support Document describe the agencies' conclusions regarding the significant nexus of tributaries and adjacent waters, respectively.

The agencies do not believe that the final rule establishes any criterion that could render an entire watershed to become a "water of the United States."

Physicians for Social Responsibility (Doc. #8374)

17.2.87 Healthy wetlands and streams provide many public health benefits to communities, including improving drinking water quality and preventing flooding. Wetlands serve as natural buffers, filtering out pollutants before they impact water sources and absorbing floodwaters before they hit land. As the climate changes and we begin to see more extreme weather events, wetlands can serve as an invaluable protection against flooding. Yet without CWA protections, there is often nothing stopping floods, sediment, sewage or toxic chemicals from threatening our health. (p. 2)

Agency Response: **The agencies appreciate the commenter's support. This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades.**

Energy Producing States Coalition (Doc. #11552)

17.2.88 Of our many concerns with this lengthy and complex proposal is an extension of vast federal permitting authority on an agency-determined, case-by-case basis for traditionally defined navigable waters into waters with a nebulous "significant nexus" to isolated waters, ephemeral streams, prairie potholes, and a definition of "tributaries" that likely encompasses drainage ditches and irrigation from farming operations. The proposal also expands the federal regulatory reach into waters with a "confined surface or shallow subsurface hydrologic connection to such a jurisdictional water." As numerous state and local regulatory officials and public and private-sector stakeholders have pointed out in their comments and letters, Congress never intended for the CWA process to apply to the management of groundwater in states. Such an expansive regulatory reach described above would encompass most of the arid Western U.S. and the proposed rule also expands the definition of "Waters of the U.S." to include "permafrost" – a move that

would potentially put 85 percent of the entire landmass of Alaska under a CWA permitting regime. (p. 1-2)

Agency Response: **Section III of the preamble and section II of the Technical Support Document describe the agencies' significant nexus analysis, which is based on Supreme Court opinions and the science. Sections VII and VIII of the Technical Support Document describe the agencies' conclusions regarding the significant nexus of tributaries and adjacent waters, respectively, while section IX addresses case-specific significant nexus determinations.**

Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations, including groundwater, most ditches that are not relocated tributaries or excavated in a tributary and artificially irrigated areas that would revert to dry land should application of water to that area cease. Section IV.I of the preamble discusses the exclusions in the final rule. Permafrost is not identified as a "water of the United States" in the final rule.

Urban Drainage and Flood Control District (Doc. #12263)

17.2.89 The proposed rule's definition of tributaries would increase the number of features that are considered tributaries to traditional navigable waters, and thus by rule, are Waters of the U.S., causing agencies like UDFCD to spend more time and resources negotiating permits and less on improving the nation's streams. (p. 2)

Agency Response: **In this final rule, the agencies are responding to requests from members of Congress, developers, farmers, state and local governments, energy companies, and many others who requested new regulations to make the process of identifying waters protected under the CWA clearer, simpler, and faster.**

Section I of the Technical Support Document discusses the historic scope of the existing regulatory definition of "waters of the United States." Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations. Section IV.I of the preamble discusses the exclusions in the final rule.

The agencies revised and clarified the definition of "tributary" in the final rule to no longer include wetlands, lakes and ponds as tributaries. These features may still be waters of the United States under other provisions of the rule, but they are not tributaries.

Society of Wetland Scientists (Doc. #12846)

17.2.90 Because water quality is degraded during and after flooding, SWS supports the need to protect wetlands to reduce flood risk, which will be increasingly important during future

climates with more frequent, more extreme streamflow events. Here are relevant sections of recent scientific publications.

- Floods, like water quality, relate to the built environment. A study from Texas, which consistently has the nation's greatest impacts of flooding, concerned 423 flood events from 1997 to 2001 and identified impacts of several measures, including wetland alteration, impervious surfaces, and dams. Their results support the important role of naturally occurring wetlands in mitigating flood damage (Brody and Zahran 2008).
- It is conventional wisdom that losing wetlands increases flood risk. However, it is novel to quantify cumulative impacts at a watershed scale: Ahmed (2014) estimated a 4% increase in the 100-year flood as a result losing non-provincially significant wetlands (6% of basin area; PSW are provincially significant wetlands recognized by Ontario)… Adding non-PSWs (combined total = 15% of basin area) and assuming similar hydrological functions regardless policy-related class, peak flood attenuation was estimated to improve 9-10%. Removal of non-PSWs will increase the value of the 1-day flow by up to 50%.
- "…federal permits issued to alter a naturally occurring wetland exacerbate flooding events in coastal watersheds along the Gulf of Mexico… importance of our findings for planners and policy makers interested in reducing the adverse impacts of coastal flooding is that flood events are regulated not solely by the effect of permit counts, but by the type of permit granted. First, as expected, IP [individual permits] significantly increase flooding because they signify development projects requiring large amounts of wetland (>0.5 acres) to be disrupted. These projects usually involve the addition of impervious surfaces… Decision makers should carefully monitor the number and location of IP granted within a watershed to ensure the hydrological system remains relatively intact… Second, while we expect large development projects and associated impervious surfaces to increase the rate of flooding, the even stronger positive effect of GP [general permits] is somewhat surprising. This result indicates that relatively small-scale wetland alteration such as with the case of residential development have more serious ''cumulative impacts'' on flooding over time. GP may be indicative of sprawling development patterns where each individual project may not cause a severe impact, but the total sum of all small disruptions to a watershed unit results in loss of hydrological function and resulting increased flood events. This 'death by a thousand cuts' phenomenon should be a primary concern for environmental and hazard mitigation planners. Officials need to steer their focus away from site-based review and incremental decision making toward the watershed level where cumulative impacts are more easily detected. (Brody et al. 2007a)
- Wetland loss is the primary driver of increased flood risk. "Although the total amount of impervious surface in an area is often cited as the culprit for increased flooding and associated property damage, these may result more from exactly where these surfaces are, and how they affect the natural environment… by separating the variable measuring wetland development from the variable

measuring impervious surface, we eliminate from the latter from what may be its most important adverse hydrological impact: loss of wetlands. We noticed the same trends in related studies of floods at both the local jurisdiction scale and the watershed scale (Brody, Highfield, et al., 2007; Brody et al. 2008). (p. 5-6)

Agency Response: **The agencies appreciate the commenter's support. This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades. The scientific literature and the Science Report consistently document that the health of larger downstream waters is directly related to the aggregate health of waters located upstream, including waters such as wetlands that may not be hydrologically connected but function together to ameliorate the potential impacts of flooding and pollutant contamination from affecting downstream waters.**

TriBasin Natural Resources District (Doc. #13564)

17.2.91 The expansion of federal jurisdiction will also have a negative impact on the ability of TBNRD to provide the level of services necessary to manage water resources and water-dependent impacts to local land-use productivity and public safety. Because the Agencies have tailed to engage small governmental jurisdictions, such as TBNRD, in an analysis of the impacts of the Proposed Rule. Simple life-saving programs such as mosquito control measures to control West Nile Virus will fall within the scope of activities requiring a CWA permit (p. 2)

Agency Response: **During the consultation process, some participants expressed concern that the proposed changes may impose a resource burden on state and local governments. Some participants urged EPA to ensure that states are not unduly burdened by the regulatory revisions. The agencies have prepared a report summarizing their voluntary consultation and extensive outreach to State, local, and county governments, the results of this outreach, and how these results have informed the development of today's rule. This report, Final Summary of the Discretionary Consultation and Outreach to State, Local, and County Governments for the Revised Definition of Waters of the United States is available in the docket for this rule.**

Moore, S. (Doc. #13818)

17.2.92 I support the proposed rule change as I understand it will reduce a lot of the unnecessary case by case analysis currently done to determine if wetlands and other intermittent water areas qualify. This will allow the EPA and other governing bodies to focus on the broader issues and more important topics such as shrinking aquifers, saltwater intrusion, and significant water pollution sources. I also think this will set right some of the inadequacies created by the Rapanos decision, which was quite selective in what terms were narrowly defined and which were ignored or defined incorrectly. Wetlands have both water quantity and water quality benefits in that they filter toxins and excess

nutrients out of the water, they provide both flood surge buffering and reservoirs in time of drought, and they also offer vital habitat for many animals and plant species. Point Source definitions do not include any reference to whether a discharge is constant or intermittent, and it is meant to refer to the discharge of pollutants not the source of a flow of water. If you are going to accept that "pollutants naturally wash downstream" even through a "conveyance" as an acceptable discharge of pollutants, then I do not see why intermittent water flow that has a significant hydrological connection and vital connection to downstream waters is not considered equally important and relevant. You cannot have your cake and eat it too. Dredge materials often do move, which is why stormwater regulation has entire sections devoted to Erosion and Sediment Control, so it is beyond credulous to say dredge material doesn't need to be considered because it is designed to stay in place. Sedimentation impairment is a major source of concern in many lakes, rivers, streams, etc. A 100- year floodplain means that an area has a 1 in 100 (1%) chance EACH YEAR of a 100-year level flood. With the increasing strength and frequency of severe storms over the last 3-5 years, I am not sure these arbitrary floodplains are sufficient to protect property, and certainly should not be used as a reason to lessen areas we protect. Finally, the underlying reasoning in the Rapanos decision is a fundamental misunderstanding in how water moves throughout our environment. To consider surface water connections only, and ignore that surface waters almost always connect to groundwater and vice versa is like thinking rubbing poison on an open sore won't harm the blood inside your body. While this rule does not regulate groundwater, it does more to protect the waters that flow perennially (that would be constantly) or intermittently (that would be seasonally or for several months of the year) and thus impact our water aquifers and drinking water. Nowhere does this rule cover ephemeral waters (those that rarely and inconsistently run after severe precipitation only). This rule is necessary to clear up misunderstandings, focus our resources appropriately, and protect the resource that is a fundamental building block for life. (p. 1)

Agency Response: **The agencies appreciate the commenter's support. This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades.**

Anonymous (Doc. #13841)

17.2.93 One giant hole in the clean waters act is that it relies on cities and counties to spearhead enforcement. Small cities and counties such as mine (Gallatin County KY) do not have building departments to enforce state building codes let alone federal regulations. In fact stricter enforcement in larger cities and counties is driving development to smaller unregulated jurisdictions where the clean waters acts is ignored. (p. 1)

Agency Response: **State, tribal and local governments have well-defined and longstanding working relationships with the Corps and EPA in implementing Clean Water Act programs. The final rule reflects the current state of the best available science and is guided by the need for clearer, more consistent and easily**

implementable standards to govern administration of the Act. However, specific roles such as enforcement of CWA provisions is beyond the scope of this definitional rule.

Menard County Underground Water District (Doc. #13885)

17.2.94 The proposed rule would inevitably seriously disrupt important state water planning strategies and agricultural production, resulting not only in economic impairment to many areas of the state, but also in permanently entrenching the "have" and 'have-not" water status of many regions of the state. (p. 2)

Agency Response: **The final rule does not establish any regulatory requirements. Instead, it is a definitional rule that clarifies the scope of "waters of the United States" consistent with the Clean Water Act (CWA), Supreme Court precedent, and science. The agencies do not believe that the final rule will adversely affect water planning or agricultural production. In regard to the latter, the final rule excludes many water features common on agricultural lands and asserts for the first time in regulations that such features are not waters of the United States. See section IV.I of the preamble and Topic 7 of this RTC for a discussion of the exclusions in the final rule. Neither the CWA nor the rule impairs the authorities of States to allocate quantities of water. Instead, the CWA and the rule serve to enhance the quality of the water that the States allocate. For a further discussion of the CWA and state water rights, see the summary response for 1.1.2: Water Supply and Allocation.**

Interlocking Concrete Pavement Institute (Doc. #13952.1)

17.2.95 We urge EPA and USACE to acknowledge that permeable pavements can meet technical requirements while taking an economically feasible path, and to the extent possible, discuss and regard PICP and all permeable pavements as a favored, recommended, and recognized safe harbor method for complying with the future construction impacts of the proposed rule.

ICPI is providing an attachment used to inform municipalities about the benefits and some technical aspects of PICP. We urge EPA, USACE and the regulated community to review these materials in advance of any discussion regarding technological and economic feasibility arguments and rebuttals, and further, to consider integrating permeable pavements and the responsiveness to WOTUS impacts into future designs, specifications, RFPs and other construction procurement instruments.

ICPI notes that WOTUS clearly suggest that expanded environmental requirements would be a logical consequence of the proposed rule. ICPI also recognizes the need for a vigorous construction economy. We offer technologies that can address these two seemingly mutually exclusive concerns, thereby helping to resolve divergent viewpoints and agendas. In addition, the adoption of PICP today may help forward-looking development entities to prepare for future regulatory developments beyond the instant debate over WOTUS. (p. 2)

Agency Response: **The agencies recognize that cities have turned to green infrastructure, using existing natural features or creating new features that mimic natural hydrological processes that work to infiltrate or evapotranspirate**

precipitation, to manage stormwater at its source and keep it out of the conveyance system. These engineered components of stormwater management systems can address both water quantity and quality concerns, as well as provide other benefits to communities. This rule is designed to avoid disincentives to this environmentally beneficial trend in stormwater management practices.

U. S. Chamber of Commerce et al. (Doc. #14115)

17.2.96 The proposed rule adds several new definitions that, although critical to understanding the true scope of the rule, are so vague as to allow virtually any interpretation of their limits. These definitions include "neighboring," "riparian area," "floodplain," "tributary," and "significant nexus." These definitions work in conjunction with one another so that if an area channels water and contributes flow (directly or indirectly, in any amount) to downstream waters, it is a tributary. If the area does not contribute flow, but holds water enough (which may not be much) to be deemed a "wetland" or pond or other water feature, it may be considered jurisdictional due to shallow subsurface water connection to a water body, or because it lies in a floodplain or riparian area, or because it may have a significant nexus when combined with all similar features in the region. Thus, it will often be impossible for landowners and businesses to determine whether small features on their property—which may not even look like waters—are WOTUS under the revised definition. All that is certain is that most any occasionally wet feature could be deemed WOTUS. (p. 7)

Agency Response: **The scope of regulatory jurisdiction in this rule is narrower than that under the existing regulation. Fewer waters will be defined as "waters of the United States" under the rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In addition, the rule has expanded the section on waters that are not considered waters of the United States, including many features constructed in dry land. The final rule adds an exclusion for puddles. The proposed rule did not explicitly exclude puddles because the agencies have never considered puddles to meet the minimum standard for being a "water of the United States," and it is an inexact term. A puddle is commonly considered a very small, shallow, and highly transitory pool of water that forms on pavement or uplands during or immediately after a rainstorm or similar precipitation event. However, numerous commenters asked that the agencies expressly exclude them in a rule. The final rule does so.**

In response to comments, the agencies have revised and clarified several provisions and definitions in the final rule. The final rule includes specific definitions for "tributary" and "adjacent" waters. The definition of "neighboring" in the final rule has been changed to provide clearer lines on what is considered adjacent. The final rule no longer defines adjacency based only on the floodplain or riparian area but instead provides distance limits. See the preamble at Section IV.F and G for more discussion, as well as the Topics 3: Adjacent Waters and 8: Tributary Compendiums. The final rule also defines "significant nexus" and identifies specific functions to be assessed in a significant nexus evaluation. Shallow subsurface connection may be considered when making a significant nexus analysis for case-specific waters. See sections III and IV.H of the preamble, sections II and IX of the

Technical Support Document, summary responses in Topic 5: Significant Nexus Compendium and individual responses in Topic 4: Other Waters Compendium, for further discussion.

17.2.97 The stormwater conveyance pipe may classified as a "tributary" under the new WOTUS definition. (p. 10)

Agency Response: **The final rule includes an exclusion for stormwater control features constructed in dry land. Stormwater control features are designed to address runoff that occurs during and shortly after precipitation events; as a result, stormwater features that convey runoff are expected to only carry ephemeral flow. When these features convey, treat or store water from other sources, such as groundwater or discharges from industrial or domestic sewage sources or other non-authorized discharges, they would not qualify for the stormwater control feature exclusion. This exclusion does not change the agencies' longstanding interpretation that "waters of the US" includes waters, such as channelized streams or piped streams, even where used as part of stormwater management systems. Thus, stormwater control features that have been built in or excavated from jurisdictional waters continue to be jurisdictional waters of the United States.**

North Dakota Soybean Growers Association (Doc. #14121)

17.2.98 Maps developed by the EPA and the U.S. Geological Survey indicate that more than 8.1 million miles of rivers and streams, contrasting the previous EPA's Report to Congress of 3.5 million miles,[1] across the United States will be impacted by the revised WOTUS definitions.[2] (p. 5)

Agency Response: **: As a part of the process to evaluate the indirect costs and benefits associated with the proposed rule, the agencies assessed the estimated increase in new Clean Water Act permits that could reasonably be expected as a result of the proposed regulation. This analysis did not, and could not, quantify the potential change in the geographic scope of the CWA. Because the agencies generally only conduct jurisdictional determinations at the request of individual landowners, we do not have maps depicting the geographic scope of the CWA. Such maps do not exist and the costs associated with a national effort to develop them are cost prohibitive and would require access to private property across the country.**

The U.S. Geological Survey and the U.S. Fish and Wildlife Service collect information on the extent and location of water resources across the country and use this information for many non-regulatory purposes, including characterizing the national status and trends of wetlands losses. This data is publicly available and EPA has relied on USGS and USFWS information to characterize qualitatively the location and types of national water resources. This information is depicted on

[1] EPA Office of Water, National Water Quality the Inventory: Report to Congress, EPA 841–R–08–001 (January 2009).
[2] Press Release, House Committee on Science, Space & Technology, "Smith: Maps Show EPA Land Grab," August 27, 2014.

maps but not for purposes of quantifying the extent of waters covered under CWA regulatory programs.

Georgia Chamber of Commerce (Doc. #14430)

17.2.99 Chamber members are convinced that with so many contentious, poorly defined elements included in this draft rule that will extend the reach of the CWA far into areas where it has never applied, that his will open the door to ongoing and costly litigation that will disrupt business operations, community development and safety.

There is concern that there will be opportunity for vexatious litigation to impede legitimate business activities, halt development and road building projects that will add both time and additional cost burdens to businesses, utilities, counties and cities.

Such concerns raise the imperative for EPA to ensure clarity of all areas of the CWA's reach and its interpretation of all elements of the proposed rule.

Chamber members predict that this is an area where EPA rule ambiguity will end up being fodder for the courts for years to come, a very time consuming and expensive outcome for Chamber members to endure. Vague federal rules have been used by various groups to litigate against industry for years, it is not an outcome the Chamber wishes to see perpetuated by this rulemaking proposal. (p. 15)

Agency Response: **In response to comments, the agencies have made revisions to a number of provisions, definitions, and exclusions in the final rule to increase clarity about which waters are protected under the CWA. The scope of regulatory jurisdiction in this rule is narrower than that under the existing regulation. Fewer waters will be defined as "waters of the United States" under the rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries, and includes a number of specific exclusions, some of which are excluded for the first time by rule.**

Although the EPA cannot preclude third parties from filing suit pursuant to the Clean Water Act's citizen suit provisions, the EPA and the Corps plan to clearly articulate the concepts embodied in any final rule in order to provide maximum clarity to permit applicants, agencies, and the public. We believe that doing so will reduce, not increase, the possibility that these provisions may be misunderstood by permittees, third parties, or other stakeholders, thereby leading to less litigation. Such clarity will also aid courts in responding consistently to citizen suits.

Landowners may request a jurisdictional determination (JD) from the Corps. The agencies believe that the clarity provided by the rule will make conducting determinations easier. A JD is a Corps' determination that jurisdictional waters are either present or absent at a site, and can be used by the landowner if a CWA citizen suit is brought against the owner. While the JD would not be binding on the third party, we believe the Corps' expert opinion, and the landowner's reliance on the Corps' expert opinion, would be important factors to which any Court hearing such a suit would give substantial weight.

Tennessee Mining Association (Doc. #14582)

17.2.100 The definition of tributary causes substantial concern for the mining industry. For example, jurisdictional waters may require lateral buffering, permitting and costly compensatory mitigation. When all tributaries are considered jurisdictional, even all ephemeral streams, including Tennessee's wet weather conveyances, they become federalized and not only create additional jurisdictional waters, but also cause significant land use determinations that now are within the sole province of the states. Mining operations require regulatory certainty particularly for large surface coal mining operations and quarries. Identifying nearly all conveyances as jurisdictional may increase certainty, but hinders actual operations. For example, in Tennessee with the general permit for wet weather conveyances, excess material, such as rock and dirt, can be disposed of in wet weather conveyances. If, however, these wet weather conveyances are waters of the United States, as described in the Proposed Rule, the ability to use such features could be severely restricted if not entirely eliminated. This creates extra cost to mining interests with no appreciable environmental benefit. Likewise, some wet weather conveyances may require construction buffers. Tennessee prohibits surface coal mining through streams and prohibits removal of coal from the earth within 100 feet of a stream. A wet weather conveyance is by definition not a stream in Tennessee. (p. 4)

Agency Response: **By clarifying the definition of "tributary," the agencies intend to make the determination of jurisdictional waters independent of local nomenclature. Waters that flow in response to seasonal or individual precipitation events are jurisdictional tributaries if they contribute flow, either directly or indirectly, to a traditional navigable water, an interstate water, or the territorial sea, and they possess the physical characteristics of a bed, banks, and ordinary high water mark, which may be spatially discontinuous. A bed and banks and other indicators of ordinary high water mark are physical indicators of water flow and are only created by sufficient and regular intervals of flow. These physical indicators can be created by perennial, intermittent, and ephemeral flows. Where such features do not contribute flow downstream and/or do not have a bed, banks, and ordinary high water mark, they are not jurisdictional tributaries.**

However, the final rule includes a number of new and revised exclusions in section (b), including exclusions for many ephemeral and intermittent ditches, stormwater control features constructed in dry land, and water-filled depressions created in dry land incidental to mining or construction activity. See section IV.I of the preamble and summary responses in Topic 6: Ditches Compendium and Topic 7: Features and Waters Not Jurisdictional Compendium for a discussion of these exclusions. With respect to the jurisdictional status of stormwater control features as waters of the U.S, please see response to comments Topic 7, summary response at 7.4.4.

Finally, the rule is a definitional rule and does not have regulatory requirements or change the regulatory requirements of CWA programs, including the NPDES program under Section 402 of the CWA. The final rule does not change the validity of existing NPDES permits.

17.2.101 The definition of tributary causes substantial concern for the construction industry. For example, jurisdictional waters may require lateral buffering, permitting and costly compensatory mitigation. When all tributaries are considered jurisdictional, even all ephemeral streams, including Tennessee's wet weather conveyances, they become federalized, and not only create additional jurisdictional waters, but also cause significant land use determinations that now are within the sole province of the states. Construction projects require regulatory certainty particularly when undertaking large earth moving projects. Identifying nearly all conveyances as jurisdictional may increase certainty, but hinders actual operations. For example, in Tennessee with the general permit for wet weather conveyances, excess material, such as rock and dirt, can be disposed of in wet weather conveyances. If, however, these wet weather conveyances are waters of the United States as described in the Proposed Rule, the ability to use such features could be severely restricted if not entirely eliminated. This creates extra cost to the contractor with no appreciable environmental benefit as described in Paragraph III of these comments. Likewise, some wet weather conveyances may require construction buffers. Impacts to wet weather conveyances from moving equipment across a wet weather conveyance during construction will also become a substantial issue and create enforcement concerns. This results in notices of violations, agency orders, or even civil or criminal enforcement for what has been a lawful activity. (p. 17)

Agency Response: **See agencies' response to Tennessee Mining Association comment, above. Stormwater control features are designed to address runoff that occurs during and shortly after precipitation events; as a result, stormwater features that convey runoff are expected to only carry ephemeral flow. When these features convey, treat or store water from other sources, such as groundwater or discharges from industrial or domestic sewage sources or other non-authorized discharges, they would not qualify for the stormwater control feature exclusion.**

Anonymous (Doc. #14600)

17.2.102 I think that the proposed definition of waters of the United States, while expansive, creates a necessary bracket for federal regulatory power. In the wake of Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers in 2001 and Rapanos v. United States in 2006, it was unclear or difficult to determine which bodies of water constituted waters of the United States. Therefore, in order to avoid going to court every time someone pollutes or plans to build on possibly federal land, and having the decision made by the non-scientific body that is the Supreme Court, the EPA must clarify the language in the Clean Water Act. (p. 1)

Agency Response: **The agencies agree that is necessary to define and clarify the scope of "waters of the United States" consistent with the Clean Water Act, Supreme Court precedent, and science. The final rule includes several changes from the proposed rule to provide additional clarity. These changes include identifying the specific functions to be assessed in a significant nexus evaluation, providing more exclusions as part of the rule text for the first time and clarifying the exclusions for ditches, and revising certain definitions such as "neighboring" and "tributary." Along with a narrowing of jurisdiction, the final rule also significantly reduces the uncertainty and number of case-specific determinations that will**

required, reducing state and federal workload associated with jurisdictional determinations.

The agencies believe the rule will expedite the permit review process in the long-term by clarifying jurisdictional matters that have been time-consuming and cumbersome for field staff and the regulated community for certain waters in light of the 2001 and 2006 Supreme Court cases. The Corps' Nationwide Permit program, which authorizes Clean Water Act Section 404 discharges that would have no more than minimal adverse impacts to aquatic resources, is available for activities that qualify. The agencies have adopted many streamlined regulatory requirements to simplify and expedite compliance through the use of measures such as general permits and standardized mitigation measures. The agencies will continue to develop general permits and simplified procedures, to ensure that projects that offer significant social benefits can proceed with the necessary environmental safeguards while minimizing permitting delays.

Environmental Enforcement Council (Doc. #14608)

17.2.103 As described in more detail in the attached comments, we are concerned that the proposed rule advances new concepts that are undefined and new definitions that need to be more clearly defined, thereby potentially undermining the agencies' stated goals of greater consistency, clarity and certainty. We are also concerned that the many ambiguities in the proposal could undermine EPA's Strategic Plan and "NextGen" compliance paradigm, both of which hinge on designing regulations that are clear and objective. Finally, we are concerned that the proposed rule could make the regulated community more susceptible to unwarranted and/or inconsistent enforcement, a risk that is exacerbated by the conflicting interpretations that can be drawn from the new concepts and new definitions in the proposal. (p.1)

Agency Response: **The final rule includes several changes to provide the additional clarity requested. These changes include identifying the specific functions to be assessed in a significant nexus evaluation, providing more exclusions as part of the rule text for the first time and clarifying the exclusions for ditches, and revising certain definitions such as "neighboring" and "tributary."**

Along with a narrowing of jurisdiction, the final rule also significantly reduces the number of case-specific determinations that will be required, thereby reducing uncertainty for landowners and reducing state and federal workload associated with jurisdictional determinations.

17.2.104 These risks stem from the sweeping nature of the Proposal, new concepts and definitions that are undefined or not well defined, ambiguities and conflicting interpretations, all of which run counter to the stated goals of greater consistency, clarity and certainty. (…)

As a general matter, CEEC strongly supports the premise that improved environmental performance and results can be achieved through greater compliance with environmental regulatory requirements. At the same time, CEEC believes that compliance and enforcement should serve the broader mission of both Agencies – protecting human health and the environment. To achieve this mission, the Agencies'

regulatory programs and how they are administered must be consistent, clear and certain, so that the public and regulated community understand their rights and obligations. This is especially important in a definitional rule that serves as the bedrock of a major federal environmental statute, like the definition of "waters of the U.S." under the Clean Water Act ("CWA"). Unless this definition is clear on its face, then compliance with the myriad regulatory programs that rely on it will become uncertain, increasing the risk of enforcement without any corresponding improvement in environmental performance. (p. 3

Agency Response: **See agencies' response to above Environmental Enforcement Council comment.**

17.2.105 This particular rulemaking is intended to bring clarity to these outer limits of jurisdiction. However, CEEC respectfully submits that the Proposal fails to achieve the stated objective. (p.

Agency Response: **See agencies' response to above first Environmental Enforcement Council comment, above. The final rule will clarify and simplify implementation of the CWA consistent with its purposes through clearer definitions and increased use of bright-line rules. The final rule is clearer on the outer limits of neighboring and case-specific waters. See the preamble sections IV.G and H and the Technical Support Document sections VIII and IX for a discussion. In addition, the agencies limited the tributaries that are "waters of the United States" to those that have both a bed and banks and another indicator of ordinary high water mark, and contribute flow to downstream (a)(1) through (3) waters, that are not otherwise excluded under section (b).**

17.2.106 Given the many unresolved ambiguities in the Proposal, CEEC's members will suffer greater risk of unwarranted and/or inconsistent agency enforcement and citizen lawsuits. These kinds of enforcement actions come with the threat of potentially enormous penalties. And even if the enforcement action is ultimately not well-supported, the action will demand significant resources to defend and could adversely affect corporate reputation. (…)

These risks are exacerbated by the fact that even if the Agencies adhere to a narrow interpretation of what is required for compliance, citizen groups may advance much broader interpretations, in effect using citizen lawsuits to drive their own agenda or desired policy outcomes. Indeed, recent practice shows that citizen groups are routinely using citizen lawsuits to advance policy and shape how agencies interpret and enforce their own rules (see, e.g., the citizen campaign in California over industrial stormwater permit compliance, which now totals well over 100 distinct citizen lawsuits, as well as the citizen campaign targeting seeps from coal ash impoundments under the CWA, even in the face of a major impending federal rule governing coal ash storage and disposal).

Citizen suits are by no means CEEC's only concern. In the recent Sackett case,[3] EPA issued an administrative order threatening to fine a landowner up to $75,000 per day

[3] Sackett v. U.S. EPA, 132 S.Ct. 1367 (2012).

until the landowner restored wetlands on property that had been impacted by the construction of an ornamental pond. EPA pursued this enforcement action despite the parties' dispute over whether the wetlands were subject to federal jurisdiction. After the landowner was denied pre-enforcement review – allowing a judge to determine whether the wetlands were jurisdictional – the case came before the Supreme Court, which reversed the government's case in a decisive 9-0 decision. CEEC flags this case to highlight the technical and legal complexity often involved in making CWA jurisdictional determinations for geographic features that resemble dry land more than water. The Proposal would make even more dry land jurisdictional and would further confuse the line between wet and dry. Cases such as Sackett underscore why it is so exceedingly important for the Agencies to pursue a rulemaking that actually achieves their stated goal – greater consistency, clarity and certainty in determining which waters are jurisdictional. (p. 10)

Agency Response: **See agencies' response for first Environmental Enforcement Council comment, above. The Clean Water Act regulates discharges of pollutants and fill material into covered waters, and does not regulate dry land, land use or private property rights. While certain ephemeral waters may lack flowing water at a given point in time, the agencies believe that relying on observable physical characteristics, including bed and banks and ordinary high water mark, will allow jurisdictional tributaries to be consistently identified. Wetlands regulated as adjacent (a)(6) waters, or (a)(7) or (a)(8) waters must meet the three parameters of a wetland, as well as the requirements of the above referenced subparagraphs, to be considered jurisdictional. The final rule also includes a number of exclusions for waters constructed in dry land, and ephemeral features such as erosional features and most ephemeral ditches.**

Although the EPA cannot preclude third parties from filing suit pursuant to the Clean Water Act's citizen suit provisions, the EPA and the Corps plan to clearly articulate the concepts embodied in any final rule in order to provide maximum clarity to permit applicants, agencies, and the public. We believe that doing so will reduce, not increase, the possibility that these provisions may be misunderstood by permittees, third parties, or other stakeholders, thereby leading to less litigation. Such clarity will also aid courts in responding consistently to citizen suits.

Landowners may request a jurisdictional determination (JD) from the Corps. The agencies believe that the clarity provided by the rule will make conducting determinations easier. A JD is a Corps' determination that jurisdictional waters are either present or absent at a site, and can be used by the landowner if a CWA citizen suit is brought against the owner. While the JD would not be binding on the third party, we believe the Corps' expert opinion, and the landowner's reliance on the Corps' expert opinion, would be important factors to which any Court hearing such a suit would give substantial weight.

17.2.107 In the face of such widespread and wide-ranging interest, CEEC respectfully submits that its perspective and comments are unique in their focus on the enforcement-related risks associated with the Proposal. Above all else, we are concerned that the Proposal could undermine EPA's Strategic Plan and "NextGen" compliance paradigm, both of which hinge on designing regulations that are clear and objective. We urge the Agencies

not to proceed with any final action until they have meaningfully addressed the concerns raised in these comments. (p.11)

Agency Response: **See agencies' responses for previous Environmental Enforcement Council comments, above.**

Senator John Kefalas, Colorado et al. (Doc. #15031)

17.2.108 As a headwater state, it's critical that we ensure our rivers are protected. Colorado is home to four of our country's major river basin systems, which are party to nine interstate river compacts, one interstate agreement, and two equitable apportionment decrees for rivers. The Colorado River Basin is a primary source of water for drinking, recreational activity, agriculture, and industrial uses for seven states - providing the drinking water for over 30 million Americans. Most of Colorado' s nearly 100,000 miles of streams are tributary to one of these rivers. Even minor impacts to these tributary systems can significantly affect water across the West. In order for the Act to truly protect our river s and waterways, it must protect our headwaters. Protect water at its most vital point - the source. (p. 2)

Agency Response: **The agencies agree. This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades. The Clean Water Rule will clarify that the Clean Water Act protects certain streams and wetlands. Protection for about 60 percent of the nation's streams and millions of acres of wetlands has been confusing and complex as the result of Supreme Court decisions in 2001 and 2006. For nearly a decade, EPA and the Corps have received numerous requests for a rulemaking to provide clarity on protections under the Clean Water Act from members of Congress, state and local officials, industry, agriculture, environmental groups, scientists, and the public. The EPA and U.S. Army Corps of Engineers are issuing this as a joint rule and are responding to those requests from across the country to make the process of identifying waters protected under the CWA easier to understand, more predictable, and more consistent with the law and peer-reviewed science.**

The health of rivers, lakes, bays, and coastal waters depends on the streams and wetlands where they begin. Streams and wetlands provide many benefits to communities – they trap floodwaters, recharge groundwater supplies, remove pollution, and provide habitat for fish and wildlife. They are also economic drivers because of their role in fishing, hunting, agriculture, recreation, energy, and manufacturing. About 60 percent of stream miles in the U.S. only flow seasonally or after rain, but have a considerable impact on the downstream waters. And approximately 117 million people – one in three Americans – get drinking water from public systems that rely in part on these streams. These are important waterways for which EPA and the Army Corps is clarifying protection.

American Foundry Society (Doc. #15148)

17.2.109 Despite the claim of EPA and the Corps that the proposed rule clarifies an existing regulatory program, nothing could be further from the truth. The proposed rule expands the definition of "tributary" to cover anything that is capable of contributing any amount of flow to "downstream" locations that eventually connect to larger water bodies. The expansion of the types of waters, drainage features, and other areas that will fall under the definition of "tributary" will lead to confusion as to whether or not low spots and drainage swales in areas at or near a facility are jurisdictional under the proposed rule. Accordingly, to be safe and avoid potential liability under the CWA, metalcasters may need a federal water permit to conduct most routine maintenance or process activities that are a vital part of its operations.

In defining a tributary as a drainage feature having a bed, bank and an ordinary high water mark (OHWM), the agencies want the public to believe that the assertion of CWA authority over "tributaries" is appropriate. This assertion fails to recognize the unnecessary inclusion of numerous other land features that fall within the definition of "tributary," such as those areas with drainage features that do not even resemble any stream, brook or creek. Instead, the agencies advance new jurisdictional authority by introducing ambiguity and vague concepts of connectivity.

The agencies justify this effort to broaden the boundaries of what the agencies consider a tributary because in "some regions of the country where there is a very low gradient, the banks of a tributary may be very low or may even disappear at times." 79 Fed. Reg. at 22202. This appears to be a thinly veiled justification to protect human health and the environment, without first demonstrating any harm that must be eliminated or prevented.

This uncertainty and potential liability is further aggravated by the EPA and the Corps determination that "[a] water that otherwise qualifies as a tributary under the proposed definition does not lose its status as a tributary if, for any length, there are one or more man-made breaks (such as bridges, culverts, pipes, or dams), or one or more natural breaks (such as debris piles, boulder fields, or a stream segment that flows underground) so long as a bed and banks and an ordinary high water mark can be identified upstream of the break." How far would a landowner have to look "upstream" to insure he or she is not liable for routine activities in an area that may lack a bed, bank, or OHWM, yet is still considered a jurisdictional water?

In many intermittent and ephemeral tributaries, including dry-land systems in the arid and semi-arid west, OHWM indicators can be discontinuous within an individual tributary due to the variability in hydrologic and climatic influences. 79 Fed. Reg. at 22202. Furthermore, specific areas of arid land drainage (e.g., alluvial fans) experience random channel breaks or avulsions in heavy precipitation events, the presence of an upstream channel (i.e., at the head of the fan) could then render the entire region an ephemeral streambed subject to regulation. Accordingly, how does a landowner gauge liability for CWA violations of $37,500 per day per occurrence and the risk of a citizen law suit when the discernible features of a tributary may not exist in a specific location? It is difficult to understand how the agencies consider it logical that the proposed rule provides clarity and certainty for industrial operations. (p. 4-6)

Agency Response: **The scope of regulatory jurisdiction in this rule is narrower than that under the existing regulation. Fewer waters will be defined as "waters of the United States" under the rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries.**

By clarifying the definition of "tributary," the agencies intend to make the determination of jurisdictional waters independent of local nomenclature, such as "dry wash" and "arroyo." Waters that flow in response to seasonal or individual precipitation events are jurisdictional tributaries if they contribute flow, either directly or indirectly, to a traditional navigable water, an interstate water, or the territorial sea, and they possess the physical characteristics of a bed, banks, and ordinary high water mark, which may be spatially discontinuous. A bed and banks and other indicators of ordinary high water mark are physical indicators of water flow and are only created by sufficient and regular intervals of flow. These physical indicators can be created by perennial, intermittent, and ephemeral flows. Where such features do not contribute flow downstream and/or do not have a bed, banks, and ordinary high water mark, they are not jurisdictional tributaries. With respect to natural and constructed breaks in the ordinary high water mark of a tributary, see summary response 8.3 in the Tributaries Compendium. With respect to the significant nexus determination for tributaries as defined, see the Technical Support Document at section VII.B.

A number of waters are excluded in section (b) of the rule that may apply to constructed waters on or near facilities, including exclusions for many ephemeral and intermittent ditches, and waters constructed in dry land such as stormwater control features, waste treatment systems designed to meet the requirements of the Clean Water Act, and water-filled depressions created in dry land incidental to mining or construction activity, among others. See Topic 6: Ditches Compendium and Topic 7: Features and Waters Not Jurisdictional Compendium for more information about exclusions.

Pennsylvania Municipal Authorities Association (Doc. #15374)

17.2.110 PMAA is concerned with the ambiguity of definitions used in the document and the extent to which they apply, or not, or how they may be interpreted by federal and state regulators or the courts. As an example, the definitions of tributary, neighboring, in the region, and adjacent need to be better defined for practical application. (p. 1)

Agency Response: **The scope of regulatory jurisdiction in this rule is narrower than that under the existing regulation. Fewer waters will be defined as "waters of the United States" under the rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries.**

The definition of "neighboring" in the final rule has been changed to provide clearer lines on what is considered adjacent. The final rule no longer defines adjacency based only on the floodplain or riparian area but instead provide distance limits.

See section IV.G of the preamble and summary responses in Topic 3: Adjacent Waters Compendium for further discussion of adjacency.

By clarifying the definition of "tributary," the agencies intend to make the determination of jurisdictional waters independent of local nomenclature, such as "dry wash" and "arroyo." Waters that flow in response to seasonal or individual precipitation events are jurisdictional tributaries if they contribute flow, either directly or indirectly, to a traditional navigable water, an interstate water, or the territorial sea, and they possess the physical characteristics of a bed, banks, and ordinary high water mark, which may be spatially discontinuous. A bed and banks and other indicators of ordinary high water mark are physical indicators of water flow and are only created by sufficient and regular intervals of flow. These physical indicators can be created by perennial, intermittent, and ephemeral flows. Where such features do not contribute flow downstream and/or do not have a bed, banks, and ordinary high water mark, they are not jurisdictional tributaries. See section IV.F of the preamble and summary responses in Topic 8: Tributaries Compendium for further discussion of the definition and physical features of tributaries.

The final rule includes a definition of "significant nexus" which explains that "in the region" for the purposes of this rule means the watershed that drains to the nearest water identified in paragraphs (a)(1) through (3) of the rule.

17.2.111 A growing number of stormwater management authorities will need more precise direction in their efforts to comply with conditions that a "narrative" NPDES permit might contain. Those permits could conceivably be impacted by the use or application of definitions in the proposed rulemaking. (p. 1)

Agency Response: **The final rule does not establish any regulatory requirements, and questions about implementation of the NPDES program are beyond the scope of the rulemaking. Instead, the final rule is a definitional rule that clarifies the scope of "waters of the United States" consistent with the Clean Water Act (CWA), Supreme Court precedent, and science. However, the agencies recognize that programs established by the CWA, such as the section 402 National Pollution Discharge Elimination System (NPDES) permit program, do rely on the definition of "waters of the United States." See summary response 12.3 in the Implementation Compendium for a discussion of NPDES implementation.**

The final rule also expressly excludes stormwater control features created in dry land and certain wastewater recycling structures created in dry land. Stormwater control features are designed to address runoff that occurs during and shortly after precipitation events; as a result, stormwater features that convey runoff are expected to only carry ephemeral flow. When these features convey, treat or store water from other sources, such as groundwater or discharges from industrial or domestic sewage sources or other non-authorized discharges, they would not qualify for the stormwater control feature exclusion. With respect to the jurisdictional status of stormwater control features as waters of the U.S, please see response to comments Topic 7, summary response at 7.4.4.

Permian Basin Petroleum Association (Doc. #15378)

17.2.112 PBPA believes that the proposed revisions to the definition of waters of the United States do not recognize or consider the realities of hydrological conditions in the arid western part of the country; and disproportionately burdens the oil and gas industry with significant environmental compliance costs that do not provide a commensurate return in the form of environmental protection.

PBPA disagrees with EPA assertions that ephemeral streams necessarily have a chemical, physical, or biological nexus with downstream waters. PBPA is concerned that many features in the arid west that may be potentially defined as ephemeral stream under the proposed rule-making are more correctly classified as erosional gullies, and thus would be excluded from jurisdiction. PBPA suggests the distinction between these two classes of features is particularly critical and difficult in the arid west, and has the potential to create significant negative and expensive litigious contention over determinations of jurisdiction or non-jurisdiction that would not provide a commensurate return in the form of actual environmental protection.

PBPA is further concerned that the proposal to make determinations on a case-by-case basis introduces the probable need for a new and expensive review process, that associated determinations would be difficult, time-consuming, and expensive to perform, and that resulting determinations would not provide a commensurate return in the form of actual environmental protection. (p. 2)

Agency Response: **Section I of the Technical Support Document discusses the historic scope of the existing regulatory definition of "waters of the United States." Fewer waters are defined as "waters of the United States" under the final rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In fact, the agencies are specifically excluding more water features as non-jurisdictional (i.e. they are not "waters of the United States") than in present regulations. The final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies' technical expertise and extensive experience in implementing the CWA over the past four decades. In this final rule, the agencies are responding to those requests from across the country to make the process of identifying waters protected under the CWA easier to understand, more predictable, and more consistent with the law and peer-reviewed science.**

The agencies believe that by defining "tributary" for the first time and including the requirements for an ordinary high water mark and bed and bank, the agencies have identified tributaries as a class of waters which are similarly situated and where they contribute flow have a significant nexus to downstream (a)(1) through (a)(3) waters. The rule includes ephemeral streams that meet the definition of tributary as "waters of the United States" because the agencies determined that such streams provide important functions for downstream waters, and in combination with other covered tributaries in a watershed significantly affect the chemical, physical, and

biological integrity of traditional navigable waters, interstate waters, and the territorial seas. Where ephemeral features do not meet the definition of tributary, there are new exclusions for ephemeral ditches in (b)(3) A) of the rule and erosional features in (b)(4)(F), which are not jurisdictional. Please see sections III and IV.F of the preamble to the final rule, as well as the Tributary Compendium, for discussions on the definition of tributaries, their significant nexus to downstream (a)(1) through (3) waters, and the relevance of flow regime. See section IV.I and the Features and Waters Not Jurisdictional Compendium for discussion of the exclusions.

See summary response for section 9.1 in the response to comments for Topic 9: Scientific Evidence Supporting the Rule. The final Science Report has an entire section devoted to Biological Connections in the Case Study on Southwestern Intermittent and Ephemeral Streams, in section B.5.5.3. In addition, see the final Science Report page 3-37 for references to downstream transport of pathogens in ephemeral tributaries, page 3-38 for export of terrestrial invertebrates from ephemeral streams following channel rewetting, and page 3-39 for references that dry stream channels can facilitate the dispersal of aquatic insects by being dispersal corridors for terrestrial adult forms. There are many western streams that have intermittent or perennial headwater reaches that are separated from downstream perennial waters by stretches of ephemeral channels.

Overall, the final rule provides greater clarity regarding what waters are subject to CWA jurisdiction, and reduces the need for permitting authorities to make jurisdictional determinations on a case-specific basis. The rule provides for case-specific determinations under more narrowly targeted circumstances based on the agencies' assessment of the importance of certain specified waters to the chemical, physical, and biological integrity of traditional navigable waters, interstate waters, and the territorial seas. See preamble section IV.H and Technical Support Document section IX for more information about case-specific significant nexus determinations.

National Sustainable Agriculture Coalition (Doc. #15403)

17.2.113 Stakeholder Engagement**.** The agencies have come under fire throughout the rulemaking process for their communication with stakeholders. Some have argued that the EPA has been defensive or noncommittal when responding to stakeholder concerns, or that the Corps has been largely absent from efforts to reach out to the regulated community. While we agree that more can be done to engage stakeholders, we commend the agencies for some of their efforts to address concerns among those in the agricultural community. Administrator McCarthy's visit to Missouri is a good example. It showed that the EPA is committed to getting out of Washington and understanding how the rule will impact farmers on the ground. A primary complaint throughout the agricultural community is that the EPA does not recognize the impact regulations have on farming families in rural America. More visits by high-level EPA administrators like McCarthy's trip to Missouri would be a step toward building a stronger, more productive rapport between the agency and farmers. Furthermore, the agencies could jumpstart their coordination with NRCS by hosting regional events bringing together regional EPA, Corps, and NRCS representatives to interact with stakeholders.

Additionally, the EPA's WOTUS Question & Answer document, issued in September 2014 in response to key concerns made apparent during the public comment period, is helpful in that it provides clear answers to stakeholder concerns. We urge the agency to continue releasing documents and additional information on the proposed rule and its implementation. Critics of the WOTUS rule have argued that the agency has been unable to verify which waters would be jurisdictional when asked. We recognize that speaking in hypotheticals around a regulation is challenging, but complaints that the agency is unclear on the scope of its own rule could be addressed by releasing in-depth case studies or examples of what would constitute a water of the United States under the proposed rule.

Finally, the agencies should work with farmer and community-based organizations at the regional, state, and local levels as part of their outreach efforts. Community-based organizations, especially farmer-based organizations or associations with personal relationships to farmers, can provide a valuable, rational voice to this issue. NSAC is a leader in the sustainable agriculture movement, together with our member groups located throughout the country. We would gladly help facilitate connections between the agencies and regional and local sustainable agricultural interests in any way possible.

Recommendation: Continue to promote stakeholder engagement through visits to rural farms, publication of case studies, and work with regional, state, and local-level community-based organizations. (p. 10)

Agency Response: **This rule reflects significant consultation with many stakeholders. The EPA held over 400 meetings with interested stakeholders, including representatives from states, tribes, counties, industry, agriculture, environmental and conservation groups, and others during the public comment period.**

EPA and the Corps have used the feedback we received from public outreach efforts as the source of early guidance and recommendations for refining the proposed rule. Specifically, stakeholder input received during public outreach events in combination with the written comments received during the public comment period have reshaped each of the definitions included in the final rule, ultimately with the goal of providing increased clarity for regulators, stakeholders, and the regulated public to assist them in identifying waters as "waters of the United States."

17.2.114 Helping Beginning Farmers Navigate the Rule. The agencies have an opportunity to improve stakeholder engagement and potentially build support for the rule by increasing outreach to beginning farmers. A targeted outreach effort by the EPA and the Corps to beginning farmers and ranchers, including a guide to the rule targeted toward beginning farmers that lays out background information and the impacts of the rule, would provide a valuable resource. NSAC is happy to offer assistance on this issue.

Recommendation: Target outreach efforts to address concerns and deliver accurate information to beginning farmers. (p. 10)

Agency Response: **This rule reflects significant consultation with many stakeholders. The EPA held over 400 meetings with interested stakeholders,**

including representatives from states, tribes, counties, industry, agriculture, environmental and conservation groups, and others during the public comment period.

EPA and the Corps have used the feedback we received from public outreach efforts as the source of early guidance and recommendations for refining the proposed rule. Specifically, stakeholder input received during public outreach events in combination with the written comments received during the public comment period have reshaped each of the definitions included in the final rule, ultimately with the goal of providing increased clarity for regulators, stakeholders, and the regulated public to assist them in identifying waters as "waters of the United States."

Association of Texas Soil and Water Conservation Districts (Doc. #15475)

17.2.115 Our members have attended multiple meeting with EPA to answer questions on the proposed rule and the largest concern is the uncertainty surrounding its implementation. EPA continues to clarify the proposed rules and each meeting holds a different answer than the meeting before. How can we proceed when you do not have a clear path forward? Our farmers and ranchers cannot operate under that level of uncertainty and should not be expected to. (…)

As conservation leaders in Texas we recognize the need to care for our natural resources but not through a heavy-handed top down approach. This is nothing more than an effort to expand the jurisdiction of EPA and control farming and ranching activities on private property. If EPA is truly interested in water quality they would look for ways to work with landowners, not opportunities to regulate and fine. (p. 1)

Agency Response: **The final rule does not establish any regulatory requirements. Instead, it is a definitional rule that clarifies the scope of "waters of the United States" consistent with the Clean Water Act (CWA), Supreme Court precedent, and science. The agencies recognize of the vital role of farmers in providing the nation with food and fiber and are sensitive to their concerns. The final rule reflects the intent of the agencies to minimize potential regulatory burdens on the nation's agriculture community, and recognizes the work of farmers and landowners to protect and conserve natural resources and water quality on agricultural lands. The rule reflects this by clarifying the waters subject to the activities Congress exempted under CWA Section 404(f)(1) are not jurisdictional by rule as "adjacent". Statutory exemptions under 404(f)(1) apply to certain activities conducted in waters of the U.S., including activities related to normal farming, ranching, and silviculture, and these exemptions are unchanged by the rule. These activities are exempt from needing a 404 permit if they are part of an ongoing agricultural practice. For a general discussion of activities related to normal, ongoing farming, silviculture and ranching, see summary response 14.2.2.**

Finally, in response to comments, the agencies have made revisions to a number of provisions, definitions, and exclusions in the final rule to increase clarity about which waters are protected under the CWA. For example, the final rule in section (b) has expanded the waters and features that are not considered "waters of the

United States" including exclusions for many ditches, ponds, and other features commonly located on farmland.

Wisconsin Farm Bureau Federation (Doc. #16166)

17.2.116 Likewise, the expanded definition of "tributary" leaves farmers with questions on commonly accepted farming practices on any area of a field that contains a tributary. Will they be able to plant treated seeds? Plow the soil? Apply manure or other fertilizers? Apply pesticides, herbicides or fungicides? Will they be granted a CWA permit to do any of these activities if their farm field does in fact contain a small "tributary"? How long will approval of this permit take? These questions are all left unaddressed and unknown under the proposed rule as well as the additional interpretive rule. (p. 2)

Agency Response: **The agencies recognize of the vital role of farmers in providing the nation with food and fiber and are sensitive to their concerns. The final rule reflects the intent of the agencies to minimize potential regulatory burdens on the nation's agriculture community, and recognizes the work of farmers and landowners to protect and conserve natural resources and water quality on agricultural lands. The rule reflects this by clarifying the waters subject to the activities Congress exempted under CWA Section 404(f)(1) are not jurisdictional by rule as "adjacent". Ephemeral tributaries are jurisdictional under the final rule; however, a number of regular farming and ranching activities are exempt from needing a permit under CWA Section 404(f)(1), if they are part of an ongoing agricultural practice. These statutory exemptions under 404(f)(1) are not modified or impacted in any way by the rule. Landowners, including farmers, may apply for a 404 permit with their local U.S. Army Corps of Engineers district office for authorization of any discharges or activities in waters of the U.S. that are not covered by a statutory exemption. The agencies have also withdrawn the Interpretive Rule. See summary response 14.2. For a general discussion of activities related to normal, ongoing farming, silviculture and ranching, see summary response 14.2.2.**

The rule would not change existing CWA permitting requirements regarding the application of pesticides or fertilizer on farm fields. A NPDES pesticides general permit is required only when there are discharges of pesticides into waters of the United States. The CWA provides NPDES permitting exemptions for runoff from agricultural fields and ditches. Discharges from the application of pesticides, which includes applications of herbicides, into irrigation ditches, canals, and other waterbodies that are themselves Waters of the United States, are not exempt as irrigation return flows or agricultural stormwater, and do require NPDES permit coverage. Some irrigation systems may not be Waters of the United States and thus discharges to those waters would not require NPDES permit coverage. Please see the responses to comments on the application of the pesticides general permit (PGP) in the Implementation Compendium, Topic 12.

Anonymous (Doc. #16217)

17.2.117 We have enough land use laws on the books. By giving EPA an open door policy regarding all waters will negatively impact all of rural America. The US government along with state and local laws and regulations have property rights striped away from land owners the way laws are interpreted. There has been extensive case law in regards to navigable waters. Kaiser Aetna v. United States, 444 U.S. 164, 100 S. Ct. 383, 62 L. Ed. 2d 332, gives specific rules to test the case and this one doesn't hold water. EPA definition will be struck down in a court of law anyways. Save everyone some time and money and leave us land owners alone. If you want your cheep reliable food that has been here for the last 75 years leave us alone. (p. 1)

Agency Response: **The Clean Water Act regulates discharges of pollutants and fill material into covered waters, and does not regulate dry land, land use or private property rights.**

Kentucky Soybean Association (Doc. #16345)

17.2.118 EPAs use of the term ephemeral to define tributaries is problematic. Jurisdiction should not be a categorical determination using ambiguous classifications like perennial, intermittent and ephemeral. A site-specific significant nexus test would be somewhat preferable to categorical determinations, but the Proposed Rules classification of waters meeting the significant nexus standard is also unclear. (p. 2)

Agency Response: **The science has advanced considerably in recent years and the comprehensive report entitled "Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence" synthesizes the peer-reviewed science which support the connection of tributary streams to the chemical, physical, and biological integrity of downstream waters. The agencies believe that by defining "tributary" for the first time and including the requirements for an ordinary high water mark and bed and bank, the agencies have identified tributaries as a class of waters which are similarly situated and where they contribute flow have a significant nexus to downstream (a)(1) through (a)(3) waters. The rule includes ephemeral streams that meet the definition of tributary as "waters of the United States" because the agencies determined that such streams provide important functions for downstream waters, and in combination with other covered tributaries in a watershed significantly affect the chemical, physical, and biological integrity of traditional navigable waters, interstate waters, and the territorial seas. However, there are new exclusions for ephemeral ditches in (b)(3)(A) of the final rule and erosional features in (b)(4)(F), which are not jurisdictional. Please see sections III and IV.F of the preamble to the final rule, as well as the Tributary Compendium, for discussions on the definition of tributaries, their significant nexus to downstream (a)(1) through (3) waters, and the relevance of flow regime. See section IV.I and the Features and Waters Not Jurisdictional Compendium for discussion of the exclusions.**

17.2.119 There is concern about how the agency will actually distinguish between erosional features that are excluded and tributaries that will be jurisdictional. Using a bed, bank and ordinary high water mark standard for determining jurisdiction potentially opens up

every farm field to permitting. If this standard is not significantly revised, we fear that most fields will suddenly contain jurisdictional waters, and common practices like fertilizer application and pest management will require a Clean Water Act permit. (p. 2)

Agency Response: **Ephemeral erosional features that are neither tributaries or excluded ditches, such as gullies, rills, and non-wetland swales, do not have the physical features of tributaries, including bed and banks and ordinary high water mark, and are specifically excluded from waters of the U.S. under paragraph (b)(4)(F). The preamble makes it clear that gullies, rills, and non-wetland swales can be important conduits for moving water between jurisdictional waters. However, they are not jurisdictional waters themselves. Further discussion of the exclusion for erosional features is found in the summary response 7.3.7 within the Features and Waters Not Jurisdictional Compendium. In addition, the summary response for Section 8.4 in the Tributaries Compendium, discusses distinguishing tributaries from non-jurisdictional erosional features.**

It should be noted that some ephemeral streams are colloquially called "gullies" or the like even when they exhibit a bed and banks and an ordinary high water mark; regardless of the name they are given locally, waters that meet the definition of tributary are not excluded erosional features. While the proposed rule specifically identified gullies and rills, the agencies intended that all erosional features would be excluded. The final rule makes this clear.

Burlsworth, J. (Doc. #16431)

17.2.120 Many of the terms used in the proposed rule are ambiguous. The proposed rule mentions adjacent waters, riparian areas, tributary, flood plains, and uplands, but these terms aren't adequately defined. Our public infrastructure system for ditches - stormwater, roadside, or flood - can run for thousands of miles. How can a resident, or even a local elected official, say or prove that their runoff ditch does not contribute to flow? What if a ditch is near waters of the U.S.? Can it be exempted? It seems that this will create a crisis situation in operational procedures. The uncertainty of how this will specifically impact residents, businesses, and government has us very concerned about federal overreach and control. (p. 1)

Agency Response: **As discussed in the preamble to the final rule and summary responses in Topic 6: Ditches Compendium, the agencies do not intend to regulate all ditches. The agencies modified the proposed ditch exclusion and the rule includes new ditch exclusions in section (b)(3) that provide greater clarity and consistency. Reference the summary responses within the Ditches Compendium for a full discussion on the treatment of ditches in the final rule, including summary response 6.2 discussing excluded ditches.**

The final rule does includes definitions for "tributary" and "adjacent" waters. The definition of "neighboring" in the final rule has been changed to provide clearer lines on what is considered adjacent. The final rule no longer defines adjacency based only on the floodplain or riparian area but instead provides distance limits. See the preamble at Section IV.G and Topic 3: Adjacent Waters Compendium for more discussion. In addition, the agencies recognized that the term "upland" in the

rule created concern, because "upland" itself was not explicitly defined. In order to increase clarity, the term "upland" has been removed from rule language.

City of Riverside Public Utilities (Doc. #17052)

17.2.121 Under the proposed rule, the City of Riverside would be subject to all the permitting requirements in the CWA including needing to obtain a section 404 dredge and fill permit when, for example maintenance work is conducted on our canal. The City of Riverside recommends water conveyance systems be excluded from the definition of tributary. (p. 2)

Agency Response: **The agencies have included an exclusion that applies to water distributary systems. The agencies have not considered these water distributary systems jurisdictional where they do not have surface connections back into, and contribute flow to, "waters of the United States." In contrast, the agencies have consistently regulated aqueducts and canals as "waters of the United States" where they serve as tributaries, removing water from one part of the tributary network and moving it to another. The agencies have not in practice asserted jurisdiction over these types of features when created in dry land. These features often connect or carry flow to other water recycling structures, for example a channel or canal that carries water to a percolation pond. The exclusion in paragraph (b)(7) codifies long-standing agency practice and encourages water management practices that the Agencies agree are important and beneficial. In addition, maintenance of irrigation and drainage ditches is exempt from 404 permitting requirements under section 404(f)(1)(C) of the CWA. This and other statutory exemptions of the CWA are not changed in any way by the rule.**

Mark R. Warner, United States Senator, Constituent Comment - Charles Cooper (Doc. #19311)

17.2.122 The citizens of Virginia and the USA are "fed up" with Obama's communistic takeover of our rights and freedom. Now we hear the latest that he wants to have EPA take over our rivers and streams. Come on-- enough is enough!!! If this ever makes the floor of the Senate, we are trusting you to say NO!' Obama knows nothing about the economy or health care. So what makes him think he knows anything about the environment?? So far most everything Obama has done has caused greater restrictions on our economy, our health care and now he wants to take over our water!! No way please!' (p. 2)

Agency Response: **The final rule does not establish any regulatory requirements. Instead, it is a definitional rule that clarifies the scope of "waters of the United States" consistent with the Clean Water Act (CWA), Supreme Court precedent, and science. See the preamble to the final rule, section I.B for an explanation of the legal authority under which the final rule is issued. The scope of regulatory jurisdiction in this rule is narrower than that under the existing regulation. Fewer waters will be defined as "waters of the United States" under the rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries.**

Bayou Concrete (Doc. #19321)

17.2.123 In order to have an effective rule, everyone must understand how to comply with it. The proposed rule's vague and confusing definitions make it nearly impossible for ready mixed concrete producers to determine what they will need to do to meet federal requirements for doing every day, routine tasks around their facility and on a construction site. Furthermore, Bayou Concrete LLC already has to, and does, comply with numerous requirements to ensure that all waters on and around ready mixed concrete facilities are not subject to harmful pollutants and discharges; begging the question of why such a confusing "clarification" would then be needed at all? (p. 2)

Agency Response: **Members of Congress, developers, farmers, state and local governments, energy companies, and many others requested new regulations to make the process of identifying waters protected under the CWA clearer, simpler, and faster. In this final rule, the agencies are responding to those requests from across the country to make the process of identifying waters protected under the CWA easier to understand, more predictable, and more consistent with the law and peer-reviewed science.**

The final rule does not establish any regulatory requirements. Instead, it is a definitional rule that clarifies the scope of "waters of the United States" consistent with the Clean Water Act (CWA), Supreme Court precedent, and science. This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. The rule will clarify and simplify implementation of the CWA consistent with its purposes through clearer definitions and increased use of bright-line rules.

In response to comments, the agencies have made revisions to a number of provisions, definitions, and exclusions in the final rule. For example, the final rule in section (b) has expanded the waters and features that are not considered "waters of the United States", including many of the features listed in the comment, such as artificial lakes and ponds created in dry land, water-filled depressions incidental to mining or construction, constructed grassed waterways and non-wetland swales, and stormwater detention basins constructed in dry land. The longstanding exclusion for waste treatment systems designed consistent with the requirements of the CWA has been moved to (b)(1) and remains substantively and operationally unchanged.

Robert Rustermier (Doc. #19398)

17.2.124 I'm writing in support of Clean Water Action's initiative to keep the Clean Water Act a vitally important piece of legislation and asked me to send you this sentiment:

"Please keep the Clean Water Act strong and effective and finalize a rule that will improve the health of our nation's rivers, lakes and bays by protecting the small streams and wetlands they depend on."

Which I strongly support. There's so much of the natural world in jeopardy, under constant threat. We should do all we can to reverse current trends. And I'm counting on the EPA to function on my behalf. (p. 1)

Agency Response: **The agencies agree. The EPA and U.S. Army Corps of Engineers are issuing this as a joint rule and are responding to those requests from across the country to make the process of identifying waters protected under the CWA easier to understand, more predictable, and more consistent with the law and peer-reviewed science. This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. The Clean Water Rule will clarify that the Clean Water Act protects certain streams and wetlands. Protection for about 60 percent of the nation's streams and millions of acres of wetlands has been confusing and complex as the result of Supreme Court decisions in 2001 and 2006.**

The final rule reflects that the scientific evidence unequivocally demonstrates that the stream channels and riparian/floodplain wetlands or open waters that together form river networks are clearly connected to downstream waters in ways that profoundly influence downstream water integrity. The health of rivers, lakes, bays, and coastal waters depends on the streams and wetlands where they begin. Streams and wetlands provide many benefits to communities – they trap floodwaters, recharge groundwater supplies, remove pollution, and provide habitat for fish and wildlife. They are also economic drivers because of their role in fishing, hunting, agriculture, recreation, energy, and manufacturing.

In addition, about 60 percent of stream miles in the U.S. only flow seasonally or after rain, but have a considerable impact on the downstream waters. And approximately 117 million people – one in three Americans – get drinking water from public systems that rely in part on these streams. These are important waterways for which EPA and the Army Corps is clarifying protection.

Tunget, B. (Doc. #19951)

17.2.125 The rule stands in direct conflict to Colorado Water law under which water belongs to the people of the state and is managed by doctrine of prior appropriation. (p. 1-2)

Agency Response: **This rule recognizes the unique role of states related to water quantity and as confirmed by section 101(g) of the CWA. The rule is consistent with Congressional policy not to supersede, abrogate, or otherwise impair the authority of each state to allocate quantities of water within its jurisdiction, and neither does it affect the policy of Congress that nothing in the CWA shall be construed to supersede or abrogate rights to quantities of water which have been established by any state. For a further discussion of the CWA and state water rights, see the summary response for 1.1.2: Water Supply and Allocation.**

Grace, R. (Doc. #20398)

17.2.126 I oppose expanding the definition of "navigable waters". The existing silly definition has already cost me needless time and money via the SPCC for ASTs, and expanding the definition is another step in the wrong direction.

This is pretty simple: "navigable waters" are those upon which you can place a boat and move from place to place. Small rivers, ponds, ditches clearly do not qualify, so this is

clearly an attempt to expand Federal influence where it is neither needed or wanted. (p. 1)

Agency Response: **The rule does not expand the definition of "navigable waters" but clarifies the scope of "waters of the U.S." that are protected by the Clean Water Act. This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. The Supreme Court has consistently agreed that the geographic scope of the CWA reaches beyond waters that are navigable in fact. This action would not require facilities that have prepared SPCC plans to update these plans. The owner/operator of a facility that has an SPCC plan in place has already determined that there is a "reasonable expectation" of an oil discharge as per 40 CFR part 112.1(b).**

REFERENCES AND ATTACHMENTS

Comments included above in this document discuss the Proposed Rule, and some include citations to various attachments and references, which are listed below. The agencies do not respond to the attachments or references themselves, rather the agencies have responded to the substantive comments themselves above, as well as in other locations in the administrative record for this rule (e.g., the preamble to the final rule, the TSD, the Legal Compendium). In doing so, the agencies have responded to the commenters' reference or citation to the report or document listed below as it was used to support the commenters' comment. Relevant comment attachments include the following:

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