



April 8, 2019

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

Re: Docket No. EPA–HQ–OW–2018–0149

Dear Administrator Wheeler:

On behalf of the 15,000 members of the American Society of Landscape Architects (ASLA), I appreciate the opportunity to provide comments opposing Docket No. EPA–HQ–OW–2018–0149, the Revised Definition of “Waters of the United States” (WOTUS).

ASLA, founded in 1899, is the professional association for landscape architects in the United States, with 49 chapters representing all 50 states and U.S. territories. Landscape architects are design professionals licensed in all 50 states and the District of Columbia who plan and design community master plans, multimodal transportation corridors that are safe for all users, parks and outdoor recreation spaces, water and stormwater management projects, and projects that help communities prepare for, and recover from, natural disasters. Landscape architects have the training, expertise, and skills as leaders in managing water and stormwater through creating resilient and green infrastructure designs to protect wetlands, coastlines, and rivers while shielding waterways from pollution so all living organisms can safely rely on our nation’s precious water sources.

On December 11, 2018, President Trump issued an Executive Order directing the agencies to redefine the term WOTUS in a manner that would erase federal protections for many waterways. ASLA opposes the Environmental Protection Agency (EPA) and the Army Corps of Engineers’ proposed revised definition of “Waters of the United States,” because it ignores basic science, undermines the tenets of the Clean Water Act (CWA), and ineffectively addresses the need for a clear, consistent, and universal definition of federally regulated waterways.

ASLA is concerned with the lack of clear, scientifically supported rationales to support the type of water bodies excluded from CWA regulation in this proposed definition. For example, the purposeful exclusion of wetlands that are not “adjacent” to already covered navigable waterways is glaring. Defining adjacent wetlands as only those with direct

hydrological surface connection disregards the fact/science that many waters are joined through subterranean networks. Compounding the matter, wetlands separated from other bodies of water by man-made barriers, such as dikes and levees, are also exempt, despite the fact that many of these barriers have seepage issues or can spill over due to flooding or by purposeful design.

Additionally, the proposed definition excludes groundwater, drainage ditches, irrigation canals, artificial lakes and ponds, mining or construction depressions, stormwater runoff diversions and control features, and wastewater facilities. These are all part of the greater hydrology system and are very often near or flow directly into drinking water sources. Such exemptions could easily lead to the pollution and contamination of an untold number of drinking water sources.

Further, we are disappointed that this rule ignores the science about and excludes ephemeral streams from the definition, especially in the arid west. It is estimated that more than 18 percent of streams are ephemeral, and within the arid west, the percentage of ephemeral streams nearly doubles to 35 percent. The torrents that run through these streams due to storms or snowmelt are able to carry a significant amount of pollution and contaminants downstream, and at times, even further and faster than streams that flow year-round. This leads to polluting bodies of water that have drinking water intakes, as well as negatively affecting recreational activities, tourism, and other economic drivers. Overall, it brings many questions into play, such as how to define and implement “seasonal flow” in a nationwide regulation while recognizing regional variation, an issue noticeably left unanswered by this proposed definition.

ASLA is also concerned that this proposed rule is an end-run by this administration around the protections offered by CWA, leading to a direct assault on the health, safety, and welfare of American communities nationwide. The CWA, passed in 1972, was implemented to protect American waterways, wetlands, and drinking water sources from harmful pollutants and contaminants. Therefore, a WOTUS definition should ensure healthy and safe drinking water, reduce adverse health consequences, bolster community reliance on tourism and recreation, and facilitate placemaking for coastal communities. This irresponsible rule change will undermine these goals. It is particularly regrettable that this rule would go into effect at a time when climate change is already wreaking havoc with fragile environments, particularly those in flood-prone areas. Increasingly frequent and intense storms will, by definition, affect the dry riverbeds and isolated wetlands that this new rule would exempt from protection.

It is also regrettable that this proposed rule will not lead to a clear and universally enforceable definition of WOTUS and will only continue to create confusion for communities and markets. In 2006, the Supreme Court of the United States in [\*Rapanos v.\*](#)

United States, 547 U.S. 715 (2006) issued a split ruling with no majority in determining a clear WOTUS definition. In 2015, the EPA concluded a rulemaking process and issued a final rule that would clarify the *Rapanos* decision. However, recent court challenges to and decisions regarding the 2015 WOTUS rule have created a patchwork of laws and regulations that vary from state to state, leaving many communities as well as design and water professionals in a quagmire. Unfortunately, the proposed revised definition is significantly flawed because it relies on such a narrow interpretation of navigable waters. This definition, as proposed, appears to be intentionally vague to allow for lax interpretation and enforcement, thus failing to create an actual nationwide enforceable definition of WOTUS. It is very clear that this rule would make a bad situation worse.

A WOTUS rule that does not rely upon accepted scientific facts, undermines the basic tenets of the CWA, and creates more confusion about the oversight of our waterways is certainly not the answer to creating an enforceable framework that will create and maintain safe, healthy bodies of water. ASLA believes that the EPA and Army Corps of Engineers should propose a more scientifically supported definition of WOTUS that can be applied nationwide while better protecting our nation's waters.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy Somerville", with a long horizontal flourish extending to the right.

Nancy C. Somerville, Hon. ASLA  
Executive Vice President/CEO

cc: Patrick M. Shanahan, Acting Secretary of Defense  
Dr. Mark T. Esper, Secretary of the Army  
Lt. Gen Todd T. Semonite, Chief of Engineers and Commanding General of the U.S.  
Army Corps of Engineers