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Governor Bill Walker
STATE OF ALASKA

September 25, 2017

Water Docket
U.S. Environmental Protection Agency
Docket ID No. EPA-HQ-OW-2017-0203
Submitted electronically at: <http://www.regulations.gov>

Re: State of Alaska's Comments on the Proposed Recodification of the Pre-Existing Definition of the "Waters of the United States"

Dear Administrator Pruitt and Deputy Assistant Secretary Lamont:

The State of Alaska (State) submits the following comments in support of the Environmental Protection Agency's (EPA) and the Army Corps of Engineers' (Corps) (collectively, "the federal agencies") proposed interim rule to rescind the "Waters of the United States" (WOTUS) definition in order to re-codify the pre-existing WOTUS definition. The original proposal to rescind the WOTUS definition was published in the Federal Register (FR) on July 27, 2017 at 82 FR 34899, and the original proposal was later revised on August 22, 2017 at 82 FR 39712 to extend the public comment period to September 27, 2017.

The State appreciates the opportunity to review and provide comments on the federal agencies' proposal to rescind the 2015 WOTUS definition and recodify the pre-existing definition. The Public Comments Section of the FR announcement indicates the federal agencies are soliciting "comment as to whether it is desirable and appropriate to re-codify in regulation the *status quo* as an interim first step pending a substantive rulemaking to reconsider the definition of 'waters of the United States' and the best way to accomplish it." The FR further elaborates that the federal agencies are not using the current comment period to solicit comment on the scope of the definition of WOTUS that the agencies will ultimately adopt in the second step of the proposed two-step process, as the agencies will address all of those issues, including those related to the 2015 Rule, in the forthcoming notice and comment period to adopt a revised definition of WOTUS.

The State supports the federal agencies' approach for rescinding the 2015 WOTUS definition and re-codifying in regulation the *status quo* of the previously promulgated WOTUS definition. State and federal regulators, and the regulated public, are all completely familiar with the pre-2015 WOTUS definition and regulatory requirements. There are certainly differing opinions on the strengths and shortcomings of the pre-2015 WOTUS definition. But, all interested parties will agree that we have been operating under those rules for decades. Re-codifying the pre-existing WOTUS definition will provide certainty and regularity nationwide during the interim period when the federal agencies conduct a substantive re-evaluation of the definition. On the other hand, should the stay on the 2015 rule expire, there would be major disruptions as the federal agencies attempted to make the major program changes necessary to implement the 2015 Rule during that same interim period.

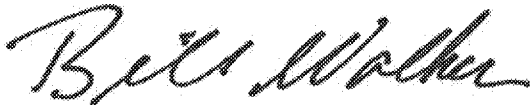
Thus, it is desirable and appropriate to recodify the pre-2015 regulations for the interim period until a substantive re-evaluation of the WOTUS definition has been completed.

As the agencies proceed with the next step to substantively revise the WOTUS definition, the State encourages the federal agencies to use a cooperative federalism approach, a concept championed by the Environmental Council of States. The State of Alaska has previously provided extensive comments regarding the WOTUS definition – outlining unique circumstances in Alaska and the challenges presented by regulatory efforts that fail to take those circumstances into consideration. Others, including numerous Alaska State legislators, have also attempted to highlight Alaska-specific circumstances. For example, Senator Bishop brought to our attention a February 20, 2017 letter to the agencies regarding permafrost and wetland delineations. To ensure the revised WOTUS definition provides clarity with respect to Alaska’s unique waterbody features, it is critical that the agencies take the time to meaningfully engage with the State.

To this end, we propose either regional listening sessions (similar to the ten listening sessions already established for specific stakeholder groups) or meeting with states individually. The information compiled from such an approach will help the agencies develop a revised WOTUS definition that is practicable, implementable, and defensible. In addition, publishing a proposed final rule for additional public review and comment prior to finalization will also help ensure stakeholder interests are accurately captured and addressed.

The State supports the recodification of the pre-existing WOTUS definition to provide stability pending a subsequent rulemaking and strongly encourages the federal agencies to continue using a cooperative federalism approach throughout the course of this important rulemaking effort.

Sincerely,



Bill Walker
Governor

cc: The Honorable Lisa Murkowski, United States Senate
The Honorable Dan Sullivan, United States Senate
The Honorable Don Young, United States House of Representatives
The Honorable Click Bishop, Alaska State Senate
The Honorable Sam Cotten, Commissioner, Alaska Department of Fish and Game
The Honorable Larry Hartig, Commissioner, Alaska Department of Environmental Conservation
The Honorable Marc Luiken, Commissioner, Alaska Department of Transportation and Public Facilities
The Honorable Andrew Mack, Commissioner, Alaska Department of Natural Resources
Donna Downing, Office of Water, Environmental Protection Agency Headquarters
Stacey Jensen, Regulatory Community of Practice, United States Army Corps of Engineers
Andrew Hanson, Federalism Contact, Environmental Protection Agency