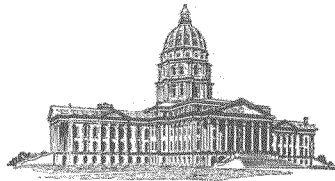


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 (SPECIAL COMMITTEE ON TAXATION)

September 11, 2014

Ms. Gina McCarthy
 Administrator
 Environmental Protection Agency
 MS 1101 A
 1200 Pennsylvania Ave. N.W.
 Washington, D.C. 20240

Via: Electronic Mail, Facsimile and US Post

Re: Coordination; Federal Rulemaking Information Requirements & WOTUS; Legislative Proposals

Dear Administrator McCarthy:

On July 16, 2014 I wrote invoking the doctrine of Coordination between the Environmental Protection Agency (EPA) and the Kansas House Energy and Environment Committee, as EPA contemplates the Waters of the United States (WOTUS) Rule. In that correspondence, I outlined procedural citations, technical necessities and statutorily-mandated studies required of EPA prior to publishing WOTUS in the Federal Register, stating our desire to review specific data, documents and information well before the October 20, 2014 closing date of the WOTUS comment period.

This correspondence supplements, details, highlights and requests studies EPA was to have completed prior to proposing WOTUS. I am also apprising EPA of my intent to introduce legislation that will create state data-availability, map-boundary and map-certification requirements to be fulfilled prior to publication of federal rules that affect our state.

As I know you understand, Federal Statutes, Regulations, Executive Orders, judicial case-law and longstanding Federal Policy all require EPA to Coordinate Major Actions when called upon to do so.¹ EPA was also required, prior to publication of WOTUS in the Federal Register, to have completed a cost-benefit analyses² compiled a list of alternatives,³ and to have provided clear justification as to how your agency selected WOTUS as the least-cost alternative.⁴

I have also requested - through the mechanism of Coordination - EPA to produce studies and information detailing how your agency assessed the economic impact of WOTUS on individual Kansas counties,⁵ agriculture, local business, families⁶ and disadvantaged populations.⁷

In its undated "*Questions and Answers about Waters of the US*" document, EPA cites the economic benefit of the WOTUS Rule to be "*about double the potential costs*" (\$160M - \$278M). In arriving at its conclusions, EPA appears to have based its analysis upon only one section of Clean Water Act - Section 404 - which pertains solely to Dredge and Fill operations.

¹ 42 U.S. Code §4331(b); Executive Orders 12372 Section 2 (e), 13575, 13352 Section 1; 40 CFR § 1500.1(b)

² 2 USC §1532(a)(2); Executive Order 12291 Section 2 (c),(d),(e); Executive Order 12291 Section 2 (b),(c)

³ 5 USC §603 (c); Executive Order 12866 Section 1(b)(3)

⁴ 2 USC §1535; Executive Order 12666 Section 1(b)(6)

⁵ 5 USC §603 (c);

⁶ Executive Order 12606 Section 2; Section 654 of The Treasury and General Governmental Appropriations Act (1999).

⁷ Executive Orders 12298 Section 3-302; 12250

By contrast, and were WOTUS to be promulgated, it would impact a number of permitting and compliance programs managed by Kansas, such as CWA Section 319 (*Nonpoint Sources*), Section 401 (*Wetland Water Quality Standards*), and Section 402 (*NPDES Permits*). To that end, please provide studies, data and information as to how EPA appropriately considered the economic impact to Kansans across all Clean Water Act Programs.

Because court rulings do not supersede legislative mandates, and longstanding protocols require administrative rules to be based upon peer-reviewed science, this committee needs to understand the scientific and procedural processes EPA used to develop, circulate and revise its *Connectivity Report*.⁸ I am particularly interested in comments EPA received from the peer-review community prior the March, 2014 publication of WOTUS in the Federal Register.

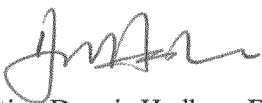
With respect to The National Environmental Policy Act (NEPA) of 1970⁹ and its implementing CEQ Regulations,¹⁰ the WOTUS Rule is considered a Major Federal Action. Therefore, preparation of an Environmental Impact Statement (EIS) was required prior to WOTUS publication, and my committee is interested in reviewing the EIS. Please provide those portions of the EIS relevant and specific to the Kansas counties proposed to be covered by the WOTUS Rule.

CEQ Regulations 40 CFR §1508.7 and 40 CFR §1508.27 require the *cumulative* and *intensity* impacts of collectively significant federal actions to be analyzed in the context of socioeconomic circumstances, cultural affects, and downstream future impacts. As you may be aware, there are number of significant, environmental-related Federal Actions taking place simultaneously in Kansas. These include Endangered Species Listings by the United States Fish and Wildlife Service, revision of the Resource Management Plan by Bureau of Land Management, the proposed groundwater Rule by the United States Forest Service, and the problematic Agriculture Conservation Practices Limitation Rule by EPA and US Army Corps of Engineers. Because Environment is the common theme behind all these initiatives, the collective and cumulative significance and intensity of impacts to the Human Environment of these initiatives are required to be collectively evaluated. Please provide this Committee with a demonstration of how the NEPA required impacts to culture, customs, and industry were evaluated, and how the proposed WOTUS Rule adequately accounts and balances Human and Natural Environments.

With respect to legislation, it is my intent is to introduce legislation requiring a field survey, legal description, and certification by a Professional Land Surveyor (PLS) of any map proposed for Federal rulemaking, Federal permitting, or which otherwise could impart a significant federal nexus in our state. As an example, the envisioned mapping legislation will require the boundaries of riparian maps from your agency, floodplain maps by the Federal Emergency Management Agency, Critical Habitat maps by US Fish and Wildlife Service, soil maps by Natural Resource Conservation Service and National Heritage Area maps by the Department of Interior to first be field located and described consistent with the USGS Geodetic and Kansas State Plane Coordinate Systems. Through this activity, the boundary coordinates of all maps for any proposed rule would first be required to be accurately described, clearly documented and certified by a PLS – prior to federal register publication.

Because the Kansas House Committee on Energy and Environment requires adequate time for review prior to the closing of the October 20, 2014 WOTUS comment period, please have all documents - both electronic and hard copy - delivered to my office no later than Tuesday, September 30, 2014.

Regards,



Representative Dennis Hedke - District 99
Kansas House Committee on Energy and Environment

⁸ Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence. EPA/611/R-R98B. September, 10, 2013.

⁹ 42 USC §§ 4321-4347; 42 USC § 4331 (a)-(c)

¹⁰40 CFR §1501 - 1502