

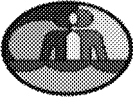
# EPA'S LOCAL GOVERNMENT ADVISORY COMMITTEE'S



6/27/2017

## Waters of the United States 2017 Report

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**From the LGAC's Charter, defining general goals:**

The LGAC is a policy-oriented committee. To assist the agency in ensuring that its regulations, policies, guidance and technical assistance improve the capacity of local governments to carry out these programs, the LGAC provides advice and recommendations to the EPA Administrator.

12



*"Water is the lifeblood of all our communities and our economic prosperity, and we want to be good stewards of our Nation's water resource for now and the years to come. This is why having a clear and enforceable 'Waters of the U.S.' rule is so important to us. It also is important that it is financially sustainable and does not overreach, but affirms our goals to make our communities a better place to live and work for all of our citizens."*

**Mayor Bob Dixson,  
LGAC Chairman**

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*"Clean, safe and affordable drinking water is a cornerstone of health, recreation and commerce. EPA has a critical role to create a facilitative, cooperative and collaborative regulatory environment in which local, tribal, state and the federal partners work together to protect one of our nation's most important resources."*

**Susan Hann,  
LGAC Water Workgroup Chairwoman**

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# EPA's Local Government Advisory Committee's

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## WATERS OF THE UNITED STATES 2017 REPORT

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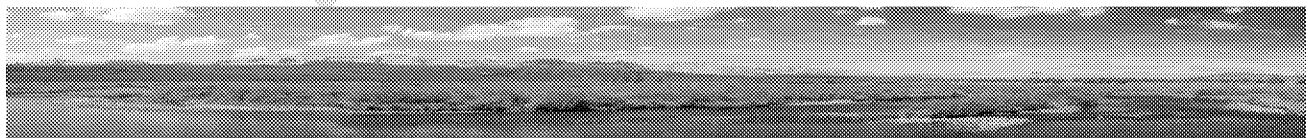
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Sawtooth Mountains, South of Stanley, ID-Photo Source: Eric Vance, EPA

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## 74 EXECUTIVE SUMMARY

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76 The EPA Administrator issued a compelling charge to the Local Government Advisory Committee that  
77 provided an opportunity for local, tribal and state governments to advise the EPA regarding Waters of  
78 the United States. The LGAC Waters of the United States Report 2017 provides both policy perspective  
79 and specific responses to the charge that can help guide the EPA in moving forward with rulemaking.

80 Clean, safe and affordable drinking water is vital to the health and prosperity of our communities. As  
81 local, state and tribal representatives, the LGAC is committed to this mission in philosophy and action. The  
82 report includes several thematic concepts:

- 83 • Local, tribal and state governments are partners in the mission to provide and preserve clean,  
84 safe and affordable drinking water. We connect with citizens and know our unique communities.  
85 Armed with this knowledge, we can act locally in the interest of clean water.
- 86 • Clarity and predictability are paramount to success. The lack of clarity and predictability are  
87 serious challenges to effectuating any rulemaking process. Clear definitions and criteria are  
88 needed for jurisdictional determinations rather than interpretations. Simplifying the jurisdictional  
89 determination process is one of the most important steps.
- 90 • Flexibility and consideration of regional differences are needed. Several examples of potential  
91 regional exemptions are included in the report.
- 92 • There are opportunities to enhance state and local roles. Local and state governments want to be  
93 engaged and can do so with the appropriate resources through State Assumption of the 404  
94 program or State Programmatic General Permits.
- 95 • Regulatory reform should include incentives for best practices including green infrastructure,  
96 stormwater management systems, agricultural innovation and other evolving innovations.  
97 Exemptions for activities that clearly have a net positive impact need to be considered.
- 98 • The permitting process must be more predictable. Jurisdictional determinations of “yes”, “no”, or  
99 “maybe” within a definitive time frame such as 60-90 days would be a tremendous improvement.  
100 Technology, including mapping, and other innovations, can improve efficiency and effectiveness.  
101 Utilizing the 2008 guidance (with definitional changes) can be a good foundation for jurisdictional  
102 determinations.
- 103 • Source water protection remains a primary concern as this is the foundation of the nation’s  
104 drinking water system and health of our communities. Ultimately, a community’s ratepayers  
105 absorb the cost of treating source water, which can become unmanageable as source water  
106 quality deteriorates.
- 107 • Affordability is a universal theme heard across the nation. Whether it is the cost of source water  
108 treatment, compliance costs and penalties, infrastructure development or a myriad of other costs –  
109 the ability of citizens to pay must be considered in the equation. If a community cannot develop  
110 an affordable rate structure, then citizens do not truly have access to clean, safe drinking water.

111  
112 In summary, the LGAC Waters of the United States 2017 report delivers a series of recommendations  
113 that can assist EPA in evolving the regulatory framework in a way that collaborates with local  
114 governments, improves efficiency and effectiveness and advances the goal of clean, safe and affordable  
115 drinking water for our communities.

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117 I. Introduction and Background

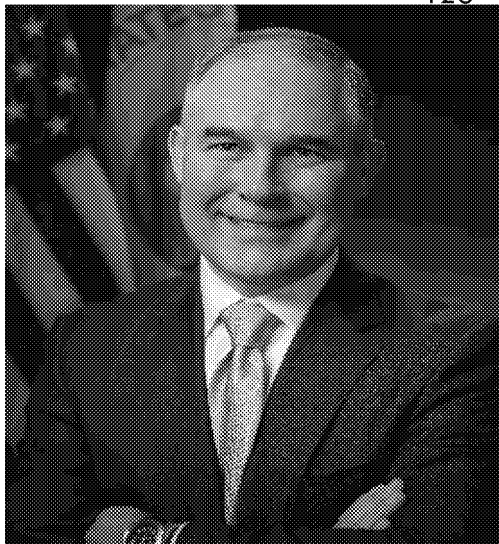
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119 A. EPA'S PROPOSED WATERS OF THE U.S. RULE

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121 On February 28, 2017, the President signed the Executive Order on *Restoring the Rule of Law,*  
122 *Federalism, and Economic Growth* by Reviewing the "Waters of the United States" Rule (issued June  
123 2015).<sup>1</sup> The Executive Order gives direction to the EPA Administrator and the Assistant Secretary of the  
124 Army for Civil Works to review the final Clean Water Rule (CWR) and "publish for notice and comment a  
125 proposed rule rescinding or revising the rule." The E.O. also directs that EPA and the Army "shall consider

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interpreting the term 'navigable waters' in a manner "consistent with Justice Scalia's opinion in *Rapanos* <sup>2</sup> which includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

As part of EPA's efforts to consult with state and local government officials, EPA's Local Government Advisory Committee (LGAC) is providing its recommendations to the Administrator on revising the definition of "Waters of the United States" (WOTUS) and identifying ways to reduce the regulatory burden on local communities as well as balance that with environmental protection.

On April 10, 2017, EPA Administrator Scott Pruitt sent out a solicitation for input on the forthcoming proposal to rescind and

139 The Honorable Scott Pruitt, EPA Administrator

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seek input from officials as an important step for the EPA in the process prior to proposing regulations that may have implications on federalism.

The LGAC's charge is also an opportunity to hear from state, local and tribal partners from across the country on approaches to consider for a WOTUS rule and other significant issues to be considered in developing and implementing a revised WOTUS rule.

*"We greatly look forward to the opportunity to sit at the table with our state and local partners from across the country to discuss the rule and develop an approach to address this significant issue while keeping States at the forefront of our mission."*

The Honorable Scott Pruitt, Administrator, EPA

<sup>1</sup> <https://www.whitehouse.gov/the-pres-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic>

<sup>2</sup> *Rapanos v. United States*, 547 U.S. 715 (2006) 126 Supreme Court 2208; 165 L.Ed. 2d 159

149 The agencies intend to follow an expeditious, two-step process that will provide certainty across the  
 150 country: 1) an initial rulemaking to rescind the 2015 rule and reinstate the regulatory approach that, except  
 151 for a brief two-month period prior to the 6th Circuit stay of that rule, has been the law in place since  
 152 1986, and thus maintains the status quo, and 2) promulgation of a revised definition of 'Waters of the  
 153 U.S.' consistent with direction in the February 28, 2017, E.O.



***"Our goal is to help the EPA be a better partner with State administrators and policy-makers to better achieve our shared objectives: protecting the waters of the U.S. and protecting the economic interests of Americans."***

State Representative Tom Sloan, Kansas

157 State Representative Tom Sloan, Kansas

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159 B. COMMITTEE CHARGE

160 As part of EPA's efforts to consult with state and local government officials, EPA's Local Government  
 161 Advisory Committee (LGAC) puts forth our findings and recommendations to the Administrator on revising  
 162 the definition of "Waters of the United States" (WOTUS) and identifying ways to reduce the regulatory  
 163 burden on local communities as well as balance that with environmental protection.  
 164

***"EPA Administrator Pruitt gave the LGAC a great opportunity to provide broad input not only on proposed rules, but also on their effective implementation. 'Waters of the US' rule is particularly challenging, but the LGAC embraced the charge, by providing our unique perspective to better help clarify, define and protect our important water resources across America."*** Jeff Witte,  
 Secretary, New Mexico Department of  
 Agriculture



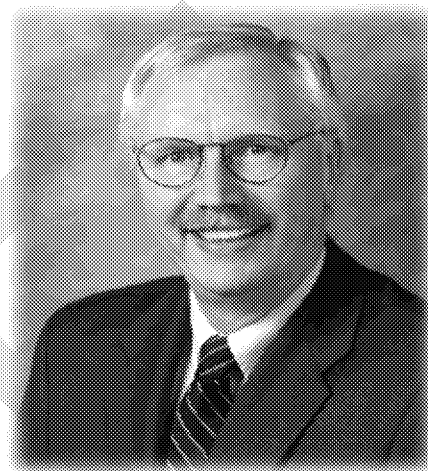
165 Jeff Witte, Secretary, New Mexico Department of  
 166 Agriculture

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168 The LGAC consists of 35 local, state and tribal government elected and appointed officials representing  
169 cities, parishes, counties, municipalities, and other local political jurisdictions. Local officials are  
170 knowledgeable and provide unique perspectives on issues relating to a revised rule. Further, the LGAC  
171 offers balanced views from diverse on-the-ground perspectives.

172 Through a collaborative process, the LGAC was charged to provide Administrator Pruitt with expeditious  
173 and meaningful advice relating to a revised "Waters of the U.S." rule. Overall, the goal is to provide  
174 recommendations on approaches the EPA should consider when considering a revised rule.

*"The City of Aurora Colorado appreciates the EPA's efforts to reach out to local communities to gather comments for potential approaches to the WOTUS rule." Council Member Brad Pierce*



175

Council Member Brad Pierce, Aurora, CO

176 This Report highlights our findings and recommendations from our unique local government perspective  
177 which will assist the agency in providing insights from this perspective to help shape a revised rule that  
178 will better promote cooperative federalism and also provide our perspectives on the best means to  
179 communicate a revised rule with state, local and tribal governments.  
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### 183 C. HISTORICAL PERSPECTIVE

184  
185 Congress enacted the Clean Water Act (CWA) in 1972 [33 U.S.C. §§1251 to 1387] to prevent the  
186 pollution of waters of the United States, including waters not deemed traditionally "navigable" such as  
187 streams, lakes, and wetlands. Since then, the CWA has been instrumental in protecting public health and  
188 the environment. However, Supreme Court decisions in 2001 and 2006 interpreted the Clean Water Act  
189 in ways that changed the approach for determining whether a water body was protected under the Act.

190 The Supreme Court's decisions shifted focus away from potential effects on interstate commerce, and  
191 towards connectivity among waters and potential effects of a water on the integrity of downstream  
192 navigable waters. The intent of the proposed rule was to clarify what waters were covered under the  
193 Clean Water Act. Following Supreme Court decisions in 2001 and 2006, determining protection for  
194 streams and wetlands became more complex. Requests for a rule to provide clarity came from  
195 Congressional members, state and local officials, industry, agriculture, environmental groups and the  
196 public.

197

198 In May 2014, the LGAC undertook an extensive analysis and collaboration to provide recommendations  
 199 to the EPA on the 2015 Waters of the U.S. Rule. The U.S. Environmental Protection Agency and the U.S.  
 200 Army Corp of Engineers proposed a joint rule (2014) to clarify the definition of "waters of the United  
 201 States" in the 1972 Clean Water Act. It was published in the Federal Register on April 21, 2014 [79  
 202 Fed. Reg. 22,188] with a public comment period that was extended twice. In response to the May 2014  
 203 Charge, the LGAC held four face-to- face public meetings from across the country to engage local  
 204 officials regarding the proposed rule. The goal of these public meetings was to hear input and develop

*We would like to recognize the efforts of those on LGAC. Your work on the "Waters of the U.S." is thoughtful and insightful. On behalf of the NACo, we thank you for your dedication, time and ongoing commitment to these efforts!*

**Julie Ufner, National Association of Counties (NACo)**

205 recommendations for the EPA to consider in  
 206 promulgating a final rule. To engage a wide  
 207 range of officials, the meetings were held in  
 208 diverse geographical regions: St. Paul,  
 209 Minnesota; Atlanta, Georgia; Tacoma,  
 210 Washington; and Worcester, Massachusetts.  
 211 The LGAC heard diverse viewpoints from  
 212 individuals of local, state and tribal  
 213 representatives. These perspectives were  
 214 deliberated and incorporated in a Report for  
 215 the EPA to consider entitled, "*Initial Findings and*  
 216 *Recommendations Pertaining to EPA's Clean*

217 *Water Act Waters of the U.S. Proposed Rule.*"<sup>3</sup>

218 The LGAC heard many concerns expressed across the country regarding clarity, sufficient time to give  
 219 input; regulatory delays and the costs (financial and resources) of implementation. Despite some changes  
 220 to the final rule as a result of the public comments and some LGAC recommendations incorporated, the



221 2015 final rule still lacked clarity and was  
 contested by states, industry and other  
 organizations. Some members felt that EPA's  
 detailed response to comments would  
 demonstrate to participants that their concerns  
 were heard and acknowledged. Other  
 members felt that the public, and especially  
 those involved in the LGAC public outreach,  
 should have the opportunity to comment on a  
 substantially revised rule. The LGAC concluded  
 that it was (and remains) important to EPA's  
 credibility to be responsive to the concerns of  
 local governments expressed through the public  
 outreach process.

**LGAC 2014 Meeting, Atlanta, GA, with Mayor Kasim Reed**

<sup>3</sup> [https://www.epa.gov/sites/production/files/2015-10/documents/11.5.14\\_w.o.f.u.s\\_report.pdf](https://www.epa.gov/sites/production/files/2015-10/documents/11.5.14_w.o.f.u.s_report.pdf)

237 II. Water and Our Communities  
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239 A. Water: Our Nation's Health and Wealth



Water resources are the lifeblood for our nation's cities, towns and small rural communities. It is essential for the health, prosperity and security for our citizens and is among the top priorities for us in local governments. As State, local and tribal government partners we desire to manage our water resources so that we have reliable and safe water supplies to create jobs, attract industry and investments, and provide for the health and welfare of citizens. A common understanding of the value of water and how it impacts the health and prosperity of us at

261 Evening barge trip on the Mississippi River near downtown Saint Paul, MN.  
262 Photo Source: Davin Brandt, Ramsey County, MN  
263

264 the local level is important for governmental decision-making. For example, water infrastructure costs are  
265 estimated to be \$100 per household per year. For smaller communities, these same costs are \$400 to  
266 \$800 more per year.<sup>4</sup> It is estimated that for every \$1 million investment in water infrastructure it  
267 supports between 15 and 18 jobs throughout the economy. Therefore, disruption in our nation's water  
268 supply could be devastating to communities.  
269 Therefore, protections under the Clean Water Act for the 117 million people (one third of  
270 Americans) that rely on these waters as part  
271 of our public drinking water assets are  
272 decisions of public trust and stewardship.  
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*Our communities depend on water for economic progress.*

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<sup>4</sup> <http://www.nerwa.org/gwnews/db212.pdf>, The Value of Water and the Water Operator, by Doug Buresh, Circuit Rider #3

275 Protecting our rivers, lakes, streams and wetlands  
 276 and keeping them healthy and safe is the  
 277 responsibility of all levels of government. At the  
 278 same time costs of treatment should not be  
 279 transferred directly to rate payer - **at the tap.**

280



281

282 **Mayor Norm Archibald, Abilene, TX**

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## 284 B. Local Governments and Cooperative Federalism

285 The Clean Water Act (CWA) as amended in 1972, established the basic structure for protecting our  
 286 nation's water resources by regulating pollutant discharges into the waters of the United States. Clean  
 287 Water Act programs are largely federal, state and tribal programs.

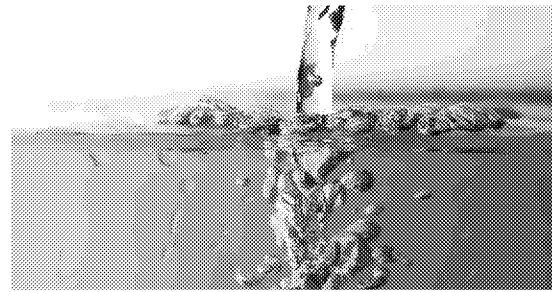
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289 The Clean Water Act applies to "navigable waters," defined in the statute as "Waters of the United  
 290 States." On February 28, 2017, the President of the United States issued an Executive Order directing  
 291 EPA and Department of the Army to review and rescind and/or revise the 2015 Rule.

292

293 The EPA and the U.S. Army Corps of Engineers are in the process of considering a revised definition of  
 294 "Waters of the United States" consistent with the Executive Order. Local governments support a straight-  
 295 forward rulemaking process, inclusive of the tenants of cooperative federalism. This approach  
 296 acknowledges the shared responsibility of state and local governments in the governance and in the  
 297 cooperation to work out details of responsibility.

298



*"One of the most important resources for any community is its water supply. The ability to provide for the future is the ability to provide water for the future. As our city plans ahead, the building of the Cedar Ridge Reservoir is at the heart of our plans. It is imperative we work hand in hand with our federal and state agencies to streamline the permitting processes. The next generation is counting on us."*

*Mayor Norm Archibald, Abilene, TX*

The U.S. Conference of Mayors sincerely appreciates the work of the Local Government Advisory Council (LGAC) for working on the issue of 'Waters of United States' and for providing multiple forums to listen to the concerns of the many parties that have concerns. This rule will have an enormous impact on the nation and it is important that the views of local government are well represented."

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Judy Sheahan, Assistant Executive Director  
The U.S. Conference of Mayors

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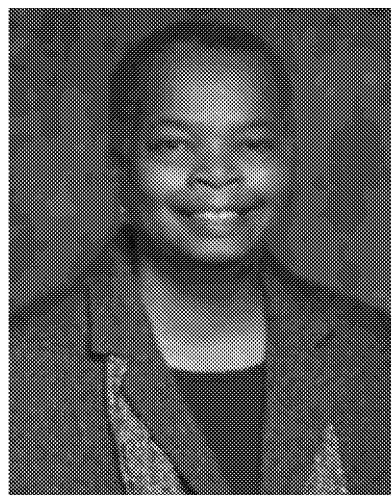
Homestake Reservoir – Pitkin and Eagle Counties, Colorado Photo Source: City of Aurora, CO

304 The CWA Section 404 is jointly administered by EPA and the Corps of Engineers and regulates  
305 discharges of dredged or fill materials into 'Waters of the United States', including wetlands. CWA  
306 Section 404 is largely federal with the exception of a small number of State Assumed 404 Programs  
307 (Michigan and New Jersey). If empowered, states and tribes could play an increased and more efficient  
308 role in managing the program. Local governments too, have a strong role to play and can be key  
309 strategic partners in protecting our nation's water resources. Local governments too manage broad water  
310 quality protection efforts such as managing stormwater, flood protection and enhanced watershed  
311 protection along with protecting the sources of drinking water.

312 Local governments have the tools to strengthen wetland and stream protection efforts that better support  
313 community goals with greater protection for the resource. Integrated Planning (IP) offers municipalities the  
314 opportunity to meet multiple Clean Water Act requirements by sequencing separate wastewater and  
315 stormwater programs while maximizing investments so that the highest priority projects come first. EPA,  
316 states, and municipalities have achieved progress in implementing IP approaches while addressing the  
317 most serious water quality issues in order of priority to protect public health and the environment.

*In Portland, Maine, we're lucky to have water resources at our door step. Water is vital to our regional economy and way of life. Therefore, our city and regional stakeholders collaborate with state and national partners to ensure we keep our rivers, streams, and bays clean. Everyone plays an important role!*  
*Councilor Jill Duson, Portland, ME*

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Councilor Jill Duson, Portland, ME and Vice -Chair of LGAC

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*"We should be gravely concerned about the minimization of the federal role in the Clean Water Act. Any changes at the federal level must be accompanied by the commitment and action to enhance protection by state and local officials. This requires frank discussion given the financial challenges faced by some local communities and states."*

Mayor Karen Freeman-Wilson, Gary, IN



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Mayor Karen Freeman-Wilson, Gary, IN

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### 324 C. Clarity and Predictability

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326 A central theme heard by the LGAC in public meetings of state, local and tribal government officials on  
327 the 2015 'Waters of the U.S.' rule is that definitions were too broad or confusing and were subject to  
328 interpretation through litigation.



*"It is very important that we have a clear definition when it comes to WOTUS. Without clear definitions, the costs of doing business rise, and we jeopardize our ability to provide jobs and remain competitive. The LGAC has collected great input from around the Country and I am hopeful to see some positive changes."*

Supervisor Ryan Sundberg, Humboldt County, CA

329

330 Supervisor Ryan Sundberg, Humboldt County, CA

331 Key terms used in the WOTUS rule are vague such as “uplands,” “tributary,” “floodplain,” “significant  
332 nexus,” “adjacent,” and “neighboring” but are also important in defining what waters are jurisdictional.  
333 These terms are either broadly defined, or not defined at all which has led to further confusion, not less,  
334 over what waters fall within federal jurisdiction. Local governments need a rule that that puts forward  
335 clear definitions and provides examples and graphics for further clarity. Without this clarity, it could lead  
336 to further unpredictability and result in unnecessary project delays, subjective judgements and  
337 inconsistency across the country.

338



#### D. Flexibility and Regionalization

In formulating a revised ‘Waters of the U.S.’ rule it should have flexibility and reflect natural and regional variability of our nation’s waters. As a basic approach, criteria could be established that recognize natural ecoregions (delineated on the basis of natural and anthropogenic factors) to recognize geographic variability

350 Ohio River, City of Huntington, West Virginia  
351 Photo Source: Huntington Quarterly

352

*“In the West, water quantity is a challenge, but quality is equally important. Protecting watershed health of the eastern Sierra is crucial to northern Nevada local communities.”*

**Council Member David Bobzien,  
Reno, NV**

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**Council Member David Bobzien, Reno, NV**

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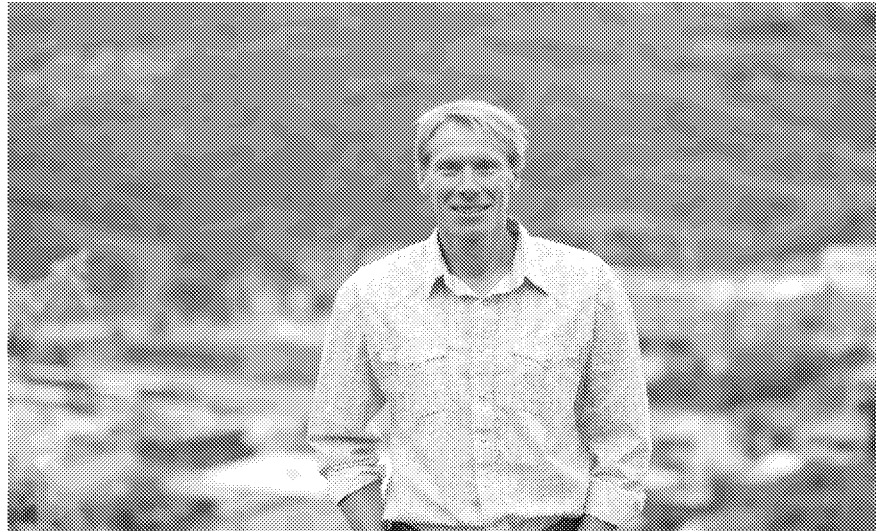
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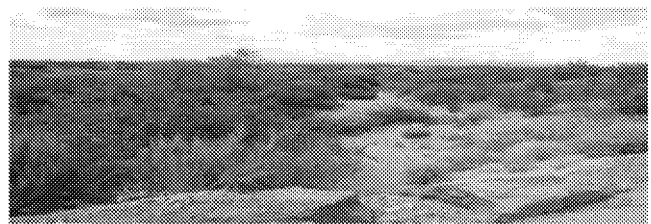
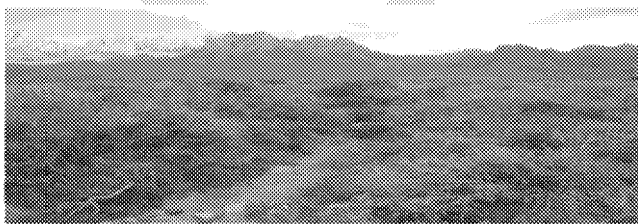
“Park City is a small western community of 8,000 with big water challenges. We work closely with our EPA Region 8 office to help solve our water issues. The EPA is not just a regulatory agency, but is an essential resource to help us address our legacy mining issues and its environmental impacts.” Council Member Andy Beerman, Park City, UT

among regions. States and tribes should have further input in this process to modify or improve on this basic approach. Workgroups made up of federal, state and local officials could help establish local delineation factors characteristic of these regional water bodies such as western ephemeral streams, and other regional unique wetlands such as pocosins, Carolina bays etc. should be factored.



Council Member Andy Beerman, Park City, UT

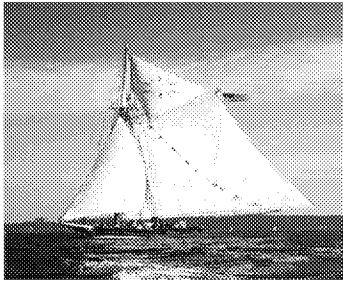
Western arid streams may need further regional determinations as to whether these areas are washes and otherwise dry channels characterized by irregular (not seasonal) ephemeral flows or may actually qualify as ‘Waters of the United States.’ These jurisdictional calls of WOTUS should be the exception rather than the rule. Also, wetlands and streams in the State of Florida also should be considered in separate regional guidance since most of the State could be classified as ‘Waters of the U.S.’ due to high groundwater tables and surface connections with ‘Waters of the U.S.’



Arroyos are common geographic water features in the arid west. The examples in these photographs are non-permanent, ephemeral waters that only carry water during extreme precipitation events. This is an example of land structures which cause confusion under a one size fits all approach.” Image Credit: Dripping Springs Road and Baylor Canyon Road Improvement Project Environmental Assessment, BLM & FHWA, April 2015.

385 E. Enhanced State and Local Government Role

386 States play a vital role in the protection of wetlands by addressing waters and activities that are not  
387 regulated under the Section 404 program, or by imposing additional limits on activities that are  
388 regulated under that program. Pursuant to Section 404(g) of the Clean Water Act, a state can assume the  
389 authority to issue permits for the discharge of dredged or fill material into waters regulated under the  
390 Clean Water Act other than traditional navigable waters or waters seaward of the high water mark. See 33  
391 U.S.C. § 1344(g).



Clearwater

Since the passage of the Clean Water Act in 1972, tremendous progress has been made cleaning up America's waterways. Water crises in Flint, MI, Newburgh and Hoosick Falls, New York, remind us: The Clean Water Act is as important today, as it was then. It needs to be clarified, strengthened and enforced. All waters are connected to the water we drink. It's important to the economy, and it's important to each of us". Legislator Manna Jo Greene, Ulster County, NY



Legislator Manna Jo Greene, Ulster County, NY

EPA's regulations also authorize tribes to assume Section 404 permitting authority within their jurisdiction (40 C.F.R. § 233.2). In order to assume the Section 404 permitting program, a state must enact laws and regulations to create a program that meets requirements designed to ensure that the state can administer the Section 404 permitting program as the Corps.

This process could be streamlined and could be incentivized for state assumption. States can play a greater role in the administration of the federal program and streamline permitting for developers in the state through the issuance of State Programmatic General Permits. CWA Section 404(e) authorizes the Corps of Engineers to issue general permits "on a state, regional or



nationwide basis for any category of activities involving discharges of dredged or fill material", if there are only minimal adverse environmental effects.

Local regulation of wetlands in addition to the state and federal programs have many benefits as well. Local decision makers have numerous land use tools available to them that can be more effective at less cost. They can also protect sensitive landscapes valuable to their community, such as with building permits, zoning authority, sanitary and health codes, and soil erosion control.

424 Back Cove runner, Portland ME. Photo Source: Corey Templeton Photography

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## 426 F. Scalia Approach: Challenges and Opportunities

427 Local governments, in general, support a narrow interpretation of the Clean Water jurisdiction. The Scalia  
 428 opinion applies a narrow interpretation to CWA jurisdiction. Such an interpretation would extend  
 429 jurisdiction to only "relatively permanent, standing or continuously flowing bodies of water" connected to  
 430 traditional navigable waters, and to "wetlands with a continuous surface connection to" such relatively  
 431 permanent waters. The LGAC puts forth an approach that would yield categorical answers of jurisdiction  
 432 of 'yes', 'no' or 'maybe' using criteria such as contained within the 2008 guidance and consistent with the  
 433 Scalia approach.



*"Certainly America's waters must be protected. We should not sacrifice the quality of our streams. However, pragmatism must also be reflected in our regulations. A pristine stream in a desert of economic activity creates an unnecessary tension between the intent to protect our environment and those who simply seek an honorable way to provide for their families. We must always be prepared to balance the scales between environmental protection and economic opportunity."* Mayor Stephen Williams, Huntington, WV

434

435 Mayor Stephen Williams, Huntington, WV

436 Local governments are also concerned about the assurances that water resources which provide (or  
437 potentially provide) our communities' drinking water (source water) are regulated and protected. These  
438 significant water bodies form the assets of our water infrastructure and these areas may or may not fall  
439 within the Scalia interpretation as "connected to a federal navigable waterway." Local governments  
440 would support States and Tribes assisting to identify these significant water bodies by delineating and  
441 mapping these significant 'Waters of the State'. These areas once identified should have primacy in  
442 decision-making.



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***"We need to protect our streams and wetlands that are the water source for many of our communities, especially for our EJ communities now and for our future generations. And we need to engage EJ communities to look at local solutions."***

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*Dr. Hector Gonzalez, M.D., Director  
City of Laredo Health Department, TX*

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453 G. Exemptions

454 Exemptions for stormwater and green infrastructure are important for local government. Local  
455 governments would be supportive of a revised rule that would retain codification of the waste treatment  
456 exemption. It should also extend to municipal separate storm sewer systems (MS4s), stormwater ponds,

"Ensuring clean water is vitally important for all Americans. Here in Michigan, we know this story far too well because of the Flint Water Crisis and continuing conversations about how we can ensure access to quality drinking water. The WOTUS rule must be carefully vetted to ensure that each level of government has the tools, resources, and clarity it needs to ensure clean water."

State Representative Stephanie Chang, Michigan



457

State Representative Stephanie Chang, Michigan

458

459

460 settling basins and recycled water facilities which depend upon artificially created wetlands and storage  
461 ponds to treat millions of gallons of water a



464 *"The EPA Local Government Advisory Committee is key  
465 to supporting and building the local-federal partnership.  
466 The local officials that serve on the LGAC are able to  
467 directly share feedback with EPA on rules and regulations  
468 and to help shape them to best meet the needs of  
469 communities across the country." Carolyn Berndt,  
470 National League Of Cities*

day. There has also been a major concern of  
county governments that roadside ditches are  
also exempt.

The revised rule should affirm that reservoirs  
and ponds along with influent and treated  
effluent storage ponds are within the scope  
of the waste treatment exemption, consistent  
with the regulatory definition of "complete  
waste treatment system" found in existing

471 federal regulations. This would include features such as storage ponds, basins, artificially created  
472 wetlands, recycled water reservoirs and other features associated with water recycling.<sup>5</sup>

473

474 H. Permitting Reform

475

476 CWA Section 404 permitting is complex and outdated. Agencies' budgets and staffing are overwhelmed  
477 and lack resources to respond to individual permits. At the same time, the private sector confronts time-  
478 consuming requirements that pose significant delays and economic burdens.

479



482 *"It's not just about getting a permit done quick  
483 It's about why you have the permit in the first  
484 place. As long as we keep in mind that it's about  
485 our environment, and it's about our water, we  
486 can implement that in any way we choose."*  
487

488  
489 *Commissioner Victoria Reinhardt, Ramsey County, MN.*  
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492  
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495 Commissioner Victoria Reinhardt,  
496 Ramsey County, MN

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<sup>5</sup> 1 See 40 C.F.R. §35.2005(b)(12), defining "complete waste treatment system" as "all the treatment works necessary to meet the requirements of title III of the [CWA], involving . . . the ultimate disposal, including recycling or reuse, or from the treatment process."

499 Permitting can be made more efficient and more effective. For example, permitting can be done more  
500 efficiently and in less time (less than 90 days). It can also be more flexible, decentralized and integrated  
501 with community goals. Local governments would be generally in favor of the State Assumption of the 404  
502 program. Also, further consideration of General Permits and mapping would aid in permitting reform.  
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504

## 505 I. Agriculture and Rural Communities

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507  
508 Agriculture and rural communities have expressed concerns about the 'Waters of the U.S'. Most of the  
509 concern of the 2015 rule has been whether it would modify existing statutory provisions that exempt  
510 "normal farming and ranching" practices from dredge and fill permitting or others that exclude certain  
511 agricultural discharges, such as irrigation return flow and stormwater runoff, from all CWA permitting.  
512 The other key area of concern was the confusion whether or not ditches were exempt.  
513  
514



*"The Small Community Advisory Subcommittee (SCAS) received many great comments from across the nation, particularly as the issue applies to agriculture and small communities. We have done our best to incorporate them into our recommendations, and hope we can help to formulate a clean water rule that can work across the nation."*

*Commissioner Dr. Robert Cope, DVM  
Salmon, ID, Chair of Small Community Advisory  
Subcommittee*

515  
516 **Commissioner Dr. Robert Cope, DVM, Salmon, ID,**  
517 **Chair of the Small Community Advisory Subcommittee (SCAS)**  
518  
519  
520

521 Normal agricultural and silvicultural practices are exempt but the interpretive rule issued in 2014 (later  
522 rescinded) to clarify the 56 practices that are exempt from CWA Section 404 permitting was very  
523 confusing to the agricultural community. Another issue for rural communities is the National Pollutant  
524 Discharge and Elimination System (NPDES) permitting for application of pesticides and herbicides in  
525 WOTUS. Also, there is a concern that 'prior converted croplands' which are exempt if they are certified  
526 by NRCS, it should also be exempt from wetland regulations administered by the Army Corps of  
527 Engineers and EPA (Section 404 of the Clean Water Act).  
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However, if the land changes to a non-agricultural use, or is abandoned, according to the criteria established by the Corps and EPA, it may be regulated under the CWA. These issues combined with the complexity of the WOTUS and the role of the NRCS poses significant issues for the agricultural sector and rural communities.

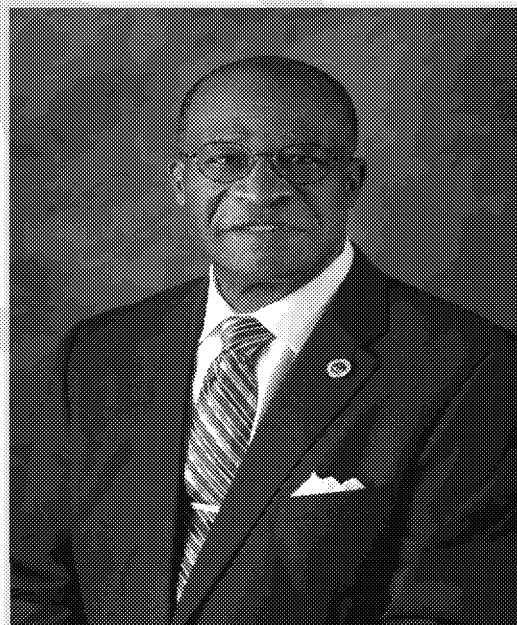
550 Fencing Livestock, Lexington, KY-Photo Source, Eric Vance, EPA

551

552

*"Waters of the United States' give us the unique opportunity to make sure all Americans have access to the best drinking water possible. We also have a duty to preserve the most vital part of life- Water."*

*Mayor Johnny DuPree, Ph. D.  
Hattiesburg, MS*



553

**Mayor Johnny DuPree, Ph.D., Hattiesburg, MS  
Vice-Chair, Small Community Advisory Sub-Committee**

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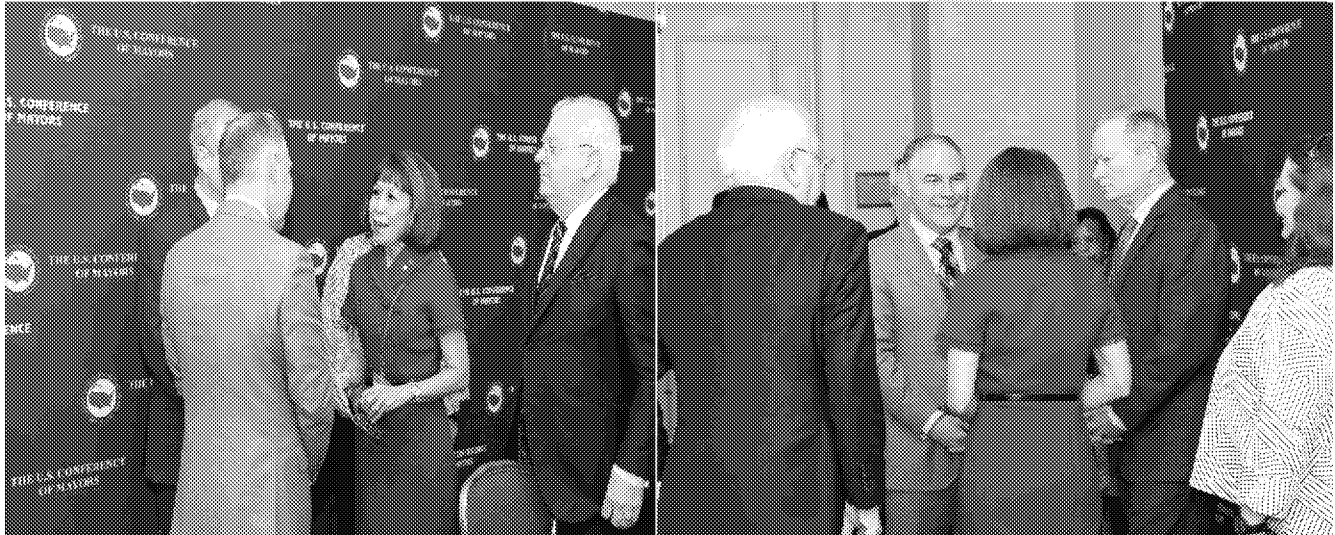
565 J. Outreach to Local Governments

566

567 There is a need for enhanced outreach to local governments. Its significance in WOTUS decision-making is  
568 all the more critical. A comprehensive communication strategy is needed for local governments that  
569 improves the channels of information distribution, and explicit communication at all levels of government.  
570 Getting information into the hands of local governments where it will have the most impact must be a  
571 priority. This is particularly relevant in small, disadvantaged and ethnically diverse communities. Local  
572 governments need to act effectively so that information will reach all relevant parties so it can also be  
573 readily communicated effectively to citizens.

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Administrator Pruitt meets with Mayor Elizabeth Kautz, Burnsville, MN and Vice-Chair, Protecting America's Waters Workgroup-at the U.S. Conference of Mayors, Photo Source: Eric Vance, EPA

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585

Therefore, there will be a pressing need to improve governmental communication and transfer of information among the EPA, state, tribal and local governments, and to get that information out to the public. Specific tailored information for local elected officials is also needed to convey the effective changes on any new WOTUS rule.



***“A change in culture is necessary in managing our water resources. Working together to solve our problems is what is needed rather than imposing fines on cities who already cannot pay.”***

*Mayor Elizabeth Kautz, Burnsville, Minnesota and Vice-Chair of the Protecting America's Waters Workgroup*



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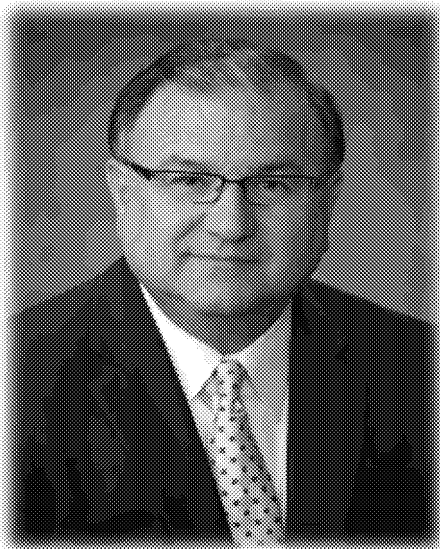
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Mayor Elizabeth Kautz, Burnsville, MN

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## K. Financial Sustainability

One of the common themes heard by LGAC members revolves around affordability. This issue has several components including compliance, pollution and clean-up costs, punitive costs that only serve to reduce local government resources and the disproportionate costs for small and economically disadvantaged communities. If the goal is safe, clean water throughout the country, innovation in approach and cost allocation must be considered at the federal, state and local levels.



*The availability and cleanliness of our water supply is paramount to building a great nation.*

**Mayor Sal Panto, Easton, PA**

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**Mayor Sal Panto, Easton, PA**



*"Waters of the U.S. needs an education piece so that others are given a clear understanding that clean and safe water is a precious resource connected to everything-the water we drink and the food we eat. And we have a responsibility to protect it not only this generation but the generations to come." Samara Swanston  
Counsel to the New York City Legislature*

602  
603

**Samara Swanston, Counsel to the New York City Legislature**

604

## 605 III. Response to Charge: Findings and Recommendations

606

607 ➤ **Question: 1-** How would you like to see the concepts of 'relatively permanent' and 'continuous  
 608 surface connection' be defined? How would you like to see the agencies interpret 'consistent with  
 609 Scalia'? Are there particular features or implications of any such approaches that the agencies  
 610 should be mindful of in developing the step 2 proposed rule?

611

612 **1.a. How would you like to see the concepts of 'relatively permanent' and 'continuous surface**  
 613 **connection' be defined?**

614

615 *Background*

616 In the *Rapanos v. United States* 547 U.S. 715 (2006), the Supreme Court provided a plurality decision  
 617 of four justices, led by Justice Scalia. The decision basically challenged federal jurisdiction to regulate  
 618 isolated wetlands under the Clean Water Act. It also applied a very narrow interpretation to CWA  
 619 jurisdiction, extending the agencies' regulatory authority only to "relatively permanent, standing or  
 620 continuously flowing bodies of water" connected to traditional navigable waters, and to "wetlands with a  
 621 continuous surface connection to" such relatively permanent waters. Justice Kennedy focused on whether  
 622 the waters in question have a "significant nexus" to traditional navigable waters, *i.e.*, whether they,  
 623 "either alone or in combination with similarly situated lands in the region, significantly affect the chemical,  
 624 physical, and biological integrity of other covered waters more readily understood as 'navigable.'" The LGAC has previously commented that they would prefer a clear and simple approach for jurisdictional determinations such as an approach that yields categorical answers of jurisdiction in these categories: 'yes', 'no' or 'maybe' responses. Any of these answers are sufficient for local governments if these answers are provided in a timely fashion.

629

630 **Recommendations:**

631

632 ■ EPA and the Corps should apply simple approaches that yield jurisdictional calls with simple criteria  
 633 that give a 'yes', 'no' or 'maybe' answer. (2014 LGAC Report)

634

635 ■ The LGAC recommends using State criteria for these terms as a potential Approach to Wetlands with  
 636 a "Continuous Surface Connection" and "Relatively Permanent" Waters. Here are a few examples of such  
 637 criteria:

638

639 **Jurisdictional**

640

641 ✦ Streams with seasonal flows or streams with offflow from other water bodies should not cause  
 642 ephemeral and intermittent streams to be defined as 'relatively permanent'. Metrics and thresholds  
 643 should be established when a stream is considered "relatively permanent." Such metrics will vary  
 644 geographically, and the thresholds will be subjective, and made on a case-by-case basis.

645

646 ✦ Perennial streams only as "relatively permanent waters".

647

- 648      ✦ Wetlands that directly touch jurisdictional waters are jurisdictional. However, there may also be  
 649      circumstances where the current practice of considering wetlands with a continuous surface  
 650      connection, regardless of distance, to be jurisdictional is not appropriate. Such connections should  
 651      be perennial (and not include ephemeral and intermittent connections).  
 652
- 653      ✦ Wetlands with permanent, continuously flowing, surface connections should be included as  
 654      jurisdictional.  
 655  
 656

### 657      **Non Jurisdictional**

- 658
- 659      ✦ Erosional features in the arid West, such as arroyos and dry washes should be 'non-jurisdictional'.  
 660
- 661      ✦ Ditches and canals that only carry intermittent flows of water and that are not a relocated  
 662      tributary or excavated in a tributary, as well as stormwater control features that periodically  
 663      flow in response to significant precipitation events, should also be exempted.  
 664
- 665      ✦ Develop metrics to identify when "some degree of connectivity" should not be utilized. This will  
 666      require subjectively defining thresholds for what constitutes a significant degree of connectivity,  
 667      which should be avoided if at all possible.  
 668
- 669      ✦ Wetlands where connections do not exist should be exempted from jurisdiction.  
 670
- 671      ✦ Overland flows that flow through dryland breaks to a WOTUS (rendering a tributary up gradient  
 672      of the dryland break) should be non-jurisdictional.  
 673
- 674      ✦ Water features that may be present (for example, residual ponds resulting from placer or other  
 675      mining efforts) are not jurisdictional where a continuous physical channel is absent; a bed-and-  
 676      bank is not discernible; an ordinary high water mark is not observable; and/or there are no flow  
 677      characteristics are not jurisdictional.  
 678

### 679      **1.b. How would you like to see the agencies interpret 'consistent with Scalia'?**

680


#### 681      *Background*

682      EPA and the Corps issued the 2008 guidance document following the Rapanos case that was intended to  
 683      clarify WOTUS. It does so by asserting CWA jurisdiction over waters that would meet *either* the plurality  
 684      test (relatively permanent; continuous surface connection) or the Kennedy test (significant nexus). In the  
 685      Guidance and Memorandum of Agreement between the Corps and EPA, there is a list of key questions  
 686      and answers, that generally breaks the jurisdictional analysis into three major categories. *NOTE: The*  
 687      *2008 guidance did not go out sufficiently for public review and was not communicated well to local*  
 688      *governments and other stakeholders.* The first, and presumably more manageable category includes those  
 689      waters over which CWA jurisdiction will be asserted in every case. And then the second category of


690 waters that are not Waters of the U.S. The third category of 'maybe' will go to criteria developed by  
691 the states on waters that are significant and should be included as jurisdictional waters.

692  
693


694 **Recommendations:**


695  Criteria as outlined in the 2008 guidance should be used for a revised rule, along with revised  
696 definitions and the use of state specific criteria.

697  Definitions should be modified to provide clarity.

698  Criteria should be developed that state a series of questions to determine 'relatively permanent' or  
699 'continuous'. If answers are 'yes' or 'no' it leads to a 'yes', 'no' or 'maybe' jurisdictional determination. If  
700 there is a 'maybe', it diverts to state-specific criteria for jurisdictional determination.

701 **1.c. Are there particular features or implications of any such approaches that the agencies should be**  
702 **mindful of in developing the step 2 proposed rule?**

703  EPA and the Corps should establish an Interagency Taskforce to develop the matrix of questions to  
704 determine 'permanent' and 'continuous' indicators. Their results should be published and the public given  
705 the opportunity to give comment. (LGAC 2014 Report)

706  The LGAC recommends these following examples of state- specific criteria for the revised rule:

707 **Intermittent streams, playa lakes, wetlands, and other waters:**

- 708     ✦ In cooperation with the states, the EPA should designate intermittent streams and other waters as  
709 non-waters of the U.S. based on the following criteria:
- 710         ✦ Seasonal flow of running or standing water — each state to develop its own criteria subject  
711 to EPA review and approval;
  - 712
  - 713     ✦ Because of the variability of conditions within and among states, the EPA should provide guidelines  
714 for state standards that include factors to be considered, but which do not constitute federal  
715 standards (such as the Science Advisory Board's Connectivity Report).<sup>6</sup>
  - 716
  - 717     ✦ Such factors to include are:
    - 718         ✓ Average number of days of stream flow;
    - 719         ✓ Seasonality of stream flow;
    - 720         ✓ Rate of stream flow;
    - 721         ✓ TMDL levels during such periods, amount of water and TMDLs delivered to the 'discharge'  
722 body of water; and
    - 723         ✓ Any other relevant factors as the Agency deems appropriate.
    - 724

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<sup>6</sup> U.S. EPA. Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence (External Review Draft). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R-11/098B, 2013.

- 725      ✦ States should have standards/factors which reflect possible ground water recharge rates on  
 726      intermittent streams, playa lakes, wetlands, and other waters. Similarly, factors should include  
 727      potential contamination of ground water from such water bodies.  
 728
- 729      ✦ States should develop metrics for each standard they propose and submit to the EPA for review and  
 730      approval. EPA should respond within 90 days from receipt of a completed state plan to review,  
 731      propose revisions, or deny the submitted standards and metrics. Failure to complete the analysis  
 732      within 90 days, subject to the EPA and state agreeing on a time extension, shall result in the  
 733      submitted standards and metrics being deemed accepted.  
 734
- 735      ✦ Once the state-submitted standards (three years) are accepted, each state should submit a report  
 736      to the EPA detailing whether the waters in question continue to meet the EPA-accepted standards,  
 737      as determined by the state's metrics. The EPA should determine whether each state should submit  
 738      subsequent reports on an annual or other timeline basis.  
 739
- 740      ✦ States should use generally accepted scientific findings on issues that affect water quality related to  
 741      intermittent streams, playa lakes, wetlands, or other designated waters. The EPA may request  
 742      states review their standards and submit proposed revised plans for the Agency's consideration  
 743      and approval.

744      **Permanent Bodies of Water:**

- 745      ✦ Many wetlands are seasonal and have been addressed above. For those that are permanent, states  
 746      should be empowered to develop metrics that demonstrate whether the water draining a wetland  
 747      connected to jurisdictional water are "cleaner" than the water that otherwise would flow, if the  
 748      wetlands were not present.  
 749
- 750      ✦ States should submit proposed criteria and measurement techniques to the EPA for review and  
 751      approval. EPA should have 90 days from receipt of completed state plan to review, suggest revisions,  
 752      and approve or deny the submitted plan. If the review is not completed within 90 days, subject to  
 753      extension if the EPA and state agree, the submitted plan shall be deemed accepted.  
 754
- 755      ✦ States should be encouraged to develop water quality criteria and standards for wetlands and other  
 756      water bodies that impact on ground and source water quality.

757      ■ An application for Smart phone or hand-held computer should be developed to give a quick  
 758      jurisdictional determination and the output sent to all interested parties. (LGAC 2014 Report)

759      ■ Manmade conveyances, stormwater treatment systems, ditches, farm and irrigation ditches and green  
 760      infrastructure amenities should be exempt from jurisdiction. Where possible, EPA and the Corps should  
 761      work with State, local and tribal governments to map these features as well. *NOTE: Drinking water and*  
 762      *wastewater treatment utilities may have these features mapped as part of Asset Management features.*  
 763      (LGAC 2014 Report)

764

➤ **Question 2- What opportunities and challenges exist for your locality with relying on Justice Scalia's opinion?**

*Background*

Cities and communities care deeply about the quality of water. One concern is that a rule that is left entirely to interpretation and does not provide sufficient clarity, may add to costs and delays without causing important improvement to water quality. (Goodmann Letter) We understand that the goal is to make it easier to identify WOTUS and a rule interpreting the Scalia decision may not draw bright enough lines for local governments to easily identify those waters affected. Therefore, the use of the Scalia approach in and of itself is unlikely to significantly resolve all of the considerable uncertainty surrounding CWA jurisdiction (either then or now), or prevent continuing litigation to test the agencies' interpretations in the federal courts. However, the 2008 guidance does have criteria that will pose less uncertainty and yield faster results. If the 2008 guidance were revised to include clearer definitions with input from states, local and tribal governments and other stakeholders, with state-specific criteria, it could perhaps help to resolve these issues.

**Recommendations:**

■ Relying on a modified Scalia approach and incorporating the 2008 guidance into a revised rule can provide a clearer certainty of federal jurisdictional waters which will lead to more certainty and more ease in permitting.

➤ **Question 3: Are there other approaches to defining "waters of the U.S." that you would like the agencies to consider to providing clarity and regulatory certainty?**

*Background*

The 2008 guidance document (issued post- Rapanos) offers assistance and criteria to assess jurisdiction of WOTUS (post- Rapanos). It is consistent with the Scalia approach but also asserts criteria to be used for further consideration of CWA jurisdiction (over some waters). This approach would reflect the opportunity to cover waters significant to states, localities and tribes. The new WOTUS rule should also confirm certain exemptions from federal jurisdiction, offering federal clarification where there has previously been uncertainty. These exemptions include stormwater detention ponds, wastewater treatment facilities, irrigation ditches and "puddles."

**Recommendations:**

■ The LGAC recommends that a similar approach articulated in the guidance to the 2008 guidance be used to revise the WOTUS rule.

■ The 2015 rule regulates any area having a trace amount of water if it also has – or ever had – a bed, bank, and an ordinary high water mark (OHWM). This could include many channels and other features that are almost perpetually dry. For the 2017 revised rule, there should be more predictability and certainty in general if there is a dry bed with a OHWM (with historical aerial or infrared photography that it can be established as a WOTUS) or exempt.

➤ **Question 4-The agencies' economic analysis for step 2 intends to review programs under CWA 303, 311, 401, 402 and 404. Are there any other programs specific to your locality that could be affected but would not be captured in such an economic analysis?**

808

809

810 *Background*

811 A revised Clean Water Rule is expected to have increased clarity and certainty to the process of making  
812 jurisdictional determinations under the CWA. Individual jurisdictional determinations can be time-  
813 consuming and resource-intensive for the agencies, permittees, business community and local governments.  
814 A revised rule should be designed to reduce the uncertainty and clarify categories of waters that are  
815 jurisdictional or not jurisdictional by simplifying the process. Clarifying the CWR will reduce the costs and  
816 have positive economic benefits. However, the rule itself does not incur direct costs. The rule only applies  
817 when a permit is required for a pollutant discharge that would degrade, pollute or destroy a water  
818 body. On a positive jurisdictional call, it is uncertain how high the direct costs would be and who would  
819 pay those costs. More clearly defined exemptions will lessen the trigger for a CWA permit. However, it is  
820 uncertain the direct costs of either a positive or negative jurisdiction determination. Conceivably, a  
821 positive jurisdictional determination could trigger permitted activities potentially threatening or polluting  
822 waterways. This is especially a concern of local governments as it applies to water bodies that are used  
823 for drinking water sources. Because of the high costs of water treatment to meet drinking water standards  
824 these costs are often transferred directly to the rate payer and citizens. If a water body is polluted or  
825 destroyed, then cost at the local level could pose serious economic costs. Whereas, under a CWA permit,  
826 the permittee would seemingly be required to pay mitigation costs rather than the costs transferred to the  
827 local government or rate payer. Also, as state or local programs assume more authority, likely with more  
828 efficiency, the costs to manage permitting program could increase. States and local governments would  
829 not be able to assume these costs without additional resources. Therefore, the economic analysis should  
830 be broad and the direct and indirect costs be considered.

831

832 *Recommendations:*

833 ■ The Economic Analysis should be broad to include impacts to not only Clean Water Act programs but  
834 also state and local programs.

835

836 Below are programs from a local government perspective that should be considered in the Economic  
837 Analysis:

838 ✦ **Source Water Protection**-There is a general consensus that protecting the nation's water resources  
839 is important to local government. Local governments realize that poor water quality affects the  
840 health and economies of their communities, disproportionately impacting those that are low-income.  
841 Local governments also realize that protecting source water bodies like rivers, lakes, streams,  
842 wetlands and groundwater is paramount to protecting drinking water. (LGAC 2016 Drinking  
843 Water Report). **Under the Safe Drinking Water Act**, Source Water Assessments (SWAs) provide  
844 information about sources of drinking water used by public water systems. SWAs are studies or  
845 reports developed by states to help local governments, water utilities, and others protect sources  
846 of drinking water and are done differently by each state. Each program is adapted to a state's  
847 water resources and drinking water needs. To protect source water, the tools of the Safe Drinking  
848 Water Act (SDWA) and Clean Water Act (CWA) programs are utilized to protect source water.  
849 Additional protection tools can be found in other EPA programs and various agricultural  
850 programs. Changes made to CWA programs may greatly impact state and local source water  
851 protection programs and plans. This could have significant economic impacts to local communities.  
852 For example, in Flint, Michigan, shifting the source water to the Detroit River water resulted in  
853 significant deterioration of water quality that produced significant public health and economic  
854 problems. In Portland, Oregon, where source water is protected, treatment cost is less by having

855 Clean Water Protection programs in place. It is unclear how changes in a revised rule will impact  
856 streams and tributaries that impact local sources of drinking water. If adequate CWA protections  
857 are not in place it could have significant negative economic impacts to water utilities. These costs  
858 are likely be transferred to local governments and rate payers. It is also unclear how this may  
859 impact the prevalence of toxic algal blooms which have proved very costly on drinking water.

860  
861 ✦ **CWA Section 402** - The NPDES permits and discharges could hold significant economic issues for  
862 local governments in regard to WOTUS for wastewater treatment, stormwater management,  
863 CSOs, and application of pesticides (used for vector control). There has been a concern about  
864 expanded federal jurisdiction to previously unregulated streams, ditches, and wetlands. However,  
865 a revised rule will include exclusions beneficial for those that operate MS4s. The rule includes key  
866 exclusions that may be useful for localities. The rule retains a long-standing exclusion for "waste  
867 treatment systems," such as treatment ponds and lagoons. It also adds new exclusions for  
868 artificially created ponds, settling basins, construction and mining excavation pits, and wastewater  
869 recycling structures. Lastly, the revised rule could finally codify the well-understood principle that  
870 the CWA does not apply to groundwater. For MS4s, the primary concern about the 2015 rule  
871 was it could potentially be used as parts of an MS4 – including stormwater drainage ditches,  
872 BMPs, and green infrastructure projects – are "waters of the US." For example, that could mean  
873 that NPDES permit coverage would be required to discharge into an MS4 or that a CWA 404  
874 permit would be required to do maintenance on a BMP. The 2015 final rule includes, for the first  
875 time, a regulatory exclusion for "Stormwater control features constructed to convey, treat, or store  
876 stormwater that are created in dry land." However, the exclusion does not apply to ditches that  
877 were created in previously existing streams or wetlands. The rule's exclusions are important  
878 because they take precedence over the rule's jurisdictional tests. For example, a stormwater  
879 conveyance ditch that qualifies for the stormwater exclusion would be excluded from CWA  
880 jurisdiction even if the ditch would be considered a jurisdictional water under the tributary test.  
881 Furthermore, in a reversal of EPA and the Corps' previous position, the agencies stated that they  
882 do not retain any discretion to extend CWA jurisdiction to water features that qualify for one of  
883 the rule's exclusions. It is unclear how a revised rule will impact Section 402 permits. Potentially,  
884 Section 402 permits could prove more costly than Section 404 permitting at the local level in  
885 regard to stormwater and wastewater treatment.

886  
887 ✦ **Pesticide Applications in Waters of the U.S.**- Since 2011, pesticide applications into, over, or  
888 near WOTUS are permitted under the CWA National Pollutant Discharge Elimination System  
889 (NPDES) Program due to a 2009 U.S. Court of Appeals for the Sixth Circuit ruling. Agricultural  
890 producers, pesticide applicators and local governments have opposed or expressed concerns on  
891 the permitting largely on the grounds that it is duplicative and unnecessary to regulate pesticides  
892 applied in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Local  
893 governments, mainly county governments are largely responsible for vector control programs to  
894 manage mosquitos and spraying of insecticides to reduce vectors and public health concerns.  
895 Although the CWR would have arguably expanded the scope of the waters requiring pesticide  
896 permitting, the replacement or elimination of the CWR will not end NPDES requirements for  
897 pesticides. However, it may provide opportunity to clarify what discharge waters are subject to  
898 federal versus state permits.

899  
900 ✦ **Section 303 (d)**- Currently, The National Rivers and Streams Assessment (NRSA) 2008-2009  
901 report provides information on the biological and recreational condition of the nation's rivers and  
902 streams and the key stressors that affect them. The Report indicated that about half of our  
903 nation's streams (some of which provide sources of drinking water) have poor water quality.

904 Poorer water quality could result in significant treatment costs such as Impaired Water sites under  
 905 CWA Section 303(d) which could transfer the costs to local governments. In addition, in  
 906 communities that rely on these water bodies for drinking water and source water, the cost will  
 907 ultimately be transferred to rate payers, having a significant economic impact to local  
 908 governments. It is uncertain how changes in a revised WOTUS rule will impact on local  
 909 governments and their local efforts to improve access to clean water.

910

911 ✦ **Section 319 and Other Grants**-It is uncertain as to how the determination of WOTUS will impact  
 912 grants to states and communities. A grant may be given a priority if given to protect a Water of  
 913 the U.S. It is uncertain how that would impact states and communities.

914

915 ✦ **The Coastal Zone Management Act (CZMA) of 1972** provides for the management of the  
 916 nation's coastal resources, including the Great Lakes, administered by the National Oceanic and  
 917 Atmospheric Administration (NOAA). The goal is to "preserve, protect, develop, and where  
 918 possible, to restore or enhance the resources of the nation's coastal zone." The National Coastal  
 919 Zone Management (CZMA) Program aims to balance competing land and water issues through  
 920 state and territorial coastal management programs managed through state and local Coastal  
 921 Zone permits. These CZMA Programs work in tandem with the many tools of the CWA including  
 922 Section 404. The Economic Analysis should include an assessment of the economic impact to coastal  
 923 resources and wetlands, including an economic impact analysis to water dependent industries such  
 924 as fishery (salmon and seafood industry), tourism, and other water dependent industries. For  
 925 example, in the Puget Sound region, fish hatchery and harvest operations reeled in about \$18  
 926 million to tribal personal income. In areas where the average annual per capita income is around  
 927 \$10,000, a decline in the availability of healthy fish can significantly impact the economies of  
 928 these communities. (LGAC Drinking Water Report). An example, the LGAC worked with is  
 929 evaluating the impacts of the Deepwater Horizon Spill to local governments in the Gulf of Mexico.  
 930 The Gulf fishing and tourism industries produce \$3.5 - \$4.5 billion a year. Without adequate  
 931 federal CWA authorities in place other potential impacts could occur, having deleterious impacts  
 932 to local economies and natural resources.

933

934 ➤ **Question 5- What additional information can you provide from a local government  
 935 perspective that EPA should be aware of?**

936

937

## 938 DEFINITIONS

939

### 940 *Background*

941 Clear definitions are critical for the revised WOTUS rule. The LGAC fully supports and endorses EPA's  
 942 efforts for clarification of 'Waters of the United States'. These improvements are long overdue. The  
 943 LGAC highlights clarity in definitions, which is critical for the revised rule. While the LGAC does not have  
 944 specific language recommendations for all of the definitions of a revised rule, the LGAC offers the  
 945 following for the EPA to consider including, redefining or clarifying in the rule.

946

947

948

949

950 **Recommendations:**

951 The LGAC puts forward the following definitions brought forward to consider in the 2017 WOTUS Rule.

952 .



953 EPA should, where appropriate, use definitions that are used consistently across all of the federal  
954 agencies, e.g. EPA, Army Corps of Engineers, Federal Emergency Management Agency, Department of  
955 Agriculture, U.S. Geological Survey and U.S. Forest Services.

956



957 EPA should task an Interagency Workgroup to develop a glossary of definitions and publish this  
958 Interagency Glossary of Terms, following public review.

959



960 Definitions should be practical, written in plain English, and be enforceable.

961



962 The LGAC recommends that narrative descriptions with examples be provided to augment the  
963 definitions, as well as pictures, where this could achieve greater clarity.

964



965 The public should have the opportunity to comment on revised definitions.

966



967 The following terms, among others, should be defined concisely and with clarity: 'other waters',  
968 'adjacent' and 'upland'. Furthermore, the LGAC recommends 'upland' be defined based upon exclusion of  
969 what it is not.

970



971 The LGAC recommends that EPA consider the following when defining these terms:

972

973

974

**Wetlands**

- ✦ The current definition of wetlands should be used: "areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas."

979

980

**Floodplains**

- ✦ The definition of the Interagency Taskforce on Floodplains should be used: "Floodplains include low-lying areas adjacent to and the water bodies of streams, rivers, lakes, estuaries, and coastal zones that are inundated or may become inundated as a result of changing conditions." The definition of floodplains should take into account movement of flood lines due to extreme weather events.

986

987

**Riparian area**

- ✦ The LGAC recommends that riparian areas be defined as "an area bordering a water where surface or subsurface hydrology directly influences the ecological processes and plant and animal community structure in that area. Riparian areas are transitional areas between aquatic and terrestrial ecosystems that influence the exchange of energy and materials between those ecosystems."

993

994

**Floodway**

- 995 ✦ 'Floodway' should be defined as a flood course within the banks or within a canyon where water  
 996 would be expected to flow under normal circumstances.

### Ditches

- 1000 ✦ A clear definition of 'ditch' should be provided in the proposed rule.

- 1001  
 1002 ✦ The following Google Dictionary definition of 'ditch': a "narrow channel dug in the ground  
 1003 typically used for drainage". Examples listed are trench, croft, channel, dike, drain, watercourse  
 1004 conduits.

### [SCAS to include strike language]

### Significant Nexus

- 1009 ✦ The most important definition contained within the proposed rule and at the heart of  
 1010 jurisprudence in the issue of Waters of the U.S. It is uncertain how 'significant' nexus would be  
 1011 interpreted so the Committee recommends EPA describe significant nexus such that it is in plain  
 1012 English, with specific terms and examples.
- 1013  
 1014 ✦ The agency should consider all three parameters of water quality "the chemical, physical, and  
 1015 biological integrity of water" as criteria for 'significant nexus'. Likewise, the LGAC does not  
 1016 agree that only one of these features be used as the benchmark, but that all three parameters of  
 1017 chemical, physical and biological integrity of a water body are all equally important.
- 1018  
 1019 ✦ The LGAC does not agree with the use of the term "significant effect" and also recommends  
 1020 language of "insignificant or speculative" should not be used.
- 1021  
 1022 ✦ EPA charged the Science Advisory Board with interpreting significant nexus and connectivity  
 1023 based on the best science available. The LGAC is uncertain as to how the revised rule will make  
 1024 benefit of these important and critical definitions; however, the findings may be important to  
 1025 factor into a revised rule. (GAC 2014 Report)

### Streams and Tributaries

#### Tributaries

- 1030 ✦ A clear definition of 'tributaries' be included in the proposed rule using clarifying examples.

#### Streams

- 1033 ✦ The revised rule should define the term "rain dependent stream". An example of a stream that is  
 1034 not rain dependent be provided.

## ENVIRONMENTAL JUSTICE

### Background

1039 The LGAC would like to assure that all, but especially EJ, small, rural and tribal communities have access  
 1040 to safe drinking water and these water sources protected and made accessible. (For example,


1041 disproportionately low income communities do not have access to drinking water and source water is the  
1042 only source of water).


1043 EJ Communities:


- 1044 ✦ Must have regulation and enforcement that is coordinated among all levels (federal, state and  
1045 local) to assure we protect water now and for our future generations, since water is life.  
1046
- 1047 ✦ Must have protections against current contaminants but, as well, engage the scientific community  
1048 to preserve safe drinking water, and recreational waters from new and emerging contaminants.  
1049 EJ communities and Tribal communities depend on clean and safe water for their food supply, as  
1050 well.  
1051
- 1052 ✦ Need to have clearly defined WOTUS, what they are and engage EJ communities to better  
1053 understand protection of these valuable watersheds and bodies of water.  
1054
- 1055 ✦ Look to local communities to find local solutions. Water infrastructure resources, including clean  
1056 and safe source water, are needed for EJ communities to ensure safe and accessible drinking  
1057 water.  
1058
- 1059 ✦ Must have assurances that for all issues of WOTUS that EJ communities are included in any  
1060 economic analysis to assess cumulative risks for the lack of safe drinking water and/or for being  
1061 exposed to contaminated water (lead, mercury).  
1062
- 1063 ✦ Need to be integrated in urban and rural planning in coordination with state and federal  
1064 partners for Flood control impacts of a narrow CWA interpretation.


1065

1066 **Recommendations:**

1067  The revised WOTUS rule should serve as another important tool towards advancing clean safe  
1068 drinking water for all communities throughout the country, but especially for EJ, small, rural and tribal  
1069 communities.

1070  The revised WOTUS rule must include protections for the access of reliable, clean and safe drinking  
1071 water especially for disproportionately affected low income EJ communities (who already have  
1072 significant health disparities) and vulnerable populations across the country.

1073  The revised WOTUS rule should protect communities against downstream impacts of agricultural  
1074 runoff, sewage, industrial waste, mining, flooding and improper disposal of medical waste.

1075  The revised WOTUS rule must assure protection of water bodies from contamination that can  
1076 significantly harm the health of a community.

1077

➤ **Question 6- Are there other issues the agencies should consider which would help ease the regulatory burden for implementation of WOTUS for state, local and tribal government?**

*Background*

The LGAC believes that clear boundaries of WOTUS jurisdiction and clear exemptions are crucial for the support of local governments. Clear boundaries provide for more equitable and predictable permitting and also for better protection of our water resources. (LGAC 2014 Report)

The LGAC concludes, based upon the testimony that we heard and the analysis of the Committee, that a revised rule can significantly clarify the historic confusion and uncertainty resulting from conflicting case law and Supreme Court decisions. (LGAC 2014 Report)

In 2014, the LGAC heard a broad level of concerns raised by municipal associations and county governments concerning MS4s. The LGAC is uncertain of what the regulatory impact will be on MS4s as a revised rule is currently not written. MS4s and green infrastructure are foundational to the continuum of care that is being implemented at the local level to improve water quality. (LGAC 2014 Report)

Much of the uncertainty of MS4s (in 2014), was that stormwater and green infrastructure is centered on whether these collection systems or portions of the systems would be required to meet State Water Quality Standards (WQS) under Section 303(d) or potentially a total maximum daily load (TMDL) because they will now be considered a "Water of the United States." WQS and TMDL were not designed for this application so application within a collection system seems not warranted. WQS define goals for a water body by designating its uses and setting criteria to protect those uses, but there is no established designated use for MS4s. Without a designated use, the default is "fishable/swimmable," unless the state demonstrates that it is not attainable for one of six particular reasons, none of which is because the waters serve as stormwater conveyances. A pending EPA proposed rule on water quality standards could make use designation analyses more stringent (i.e., by requiring a "highest attainable use" presumption). Also, if it is not deemed jurisdictional under Section 404 it will likely need a Section 402 permit and subject to WQS. (Goodmann Letter)


There could be potential impacts to wastewater systems and NPDES permitting related to these systems. Because of the exclusion language, the Agency did not seem to analyze the impact to wastewater systems but some cities have raised questions whether some part of combined sewer systems or other aspects of a wastewater treatment systems would be considered within the jurisdiction of the EPA, based upon the WOTUS rule. (Goodmann Letter)

Many communities already heavily focus on water quality programs and projects; these communities should be encouraged and incentivized to do more. A revised WOTUS rule should recognize that much of the action towards cleaner water happens at the local level. High performing local agencies should be noted as following best practices and afforded a relaxed regulatory environment in those circumstances where water quality objectives are met and exceeded. (LGAC 2014 Report)


The LGAC believes that making jurisdiction calls of what is 'exempt' and what is not in a timely fashion is critical to protecting water resources and providing predictability to state and local governments. The LGAC believes that easily accessible predictive tools need to be developed and utilized to speed this process. (LGAC 2014 Report)

1127

1128 **Recommendations:**

1129  The LGAC recommends that the use of State General permits be expanded to reduce the regulatory  
1130 burden and also be used for smaller projects with minimal impacts. It could also be used to address  
1131 regional and state specific activities and special water bodies. Under Section 404(e) of the Clean Water  
1132 Act, the U.S. Army Corps of Engineers can issue general permits to authorize activities that have minimal  
1133 individual and cumulative adverse environmental effects. Nationwide permits can authorize a wide  
1134 variety of activities such as mooring buoys, residential developments, utility lines, road crossings, mining  
1135 activities, wetland and stream restoration activities, and commercial shellfish aquaculture activities. All  
1136 permits, whether individual or general, must be reissued every five years.


1137

1138  The LGAC recommends that EPA clearly articulate jurisdictional waters in an outreach plan which, in  
1139 plain English, describes these areas with a clear statement of why they are in need of protection. This will  
1140 provide local governments with more certainty and assurance in communicating the rule to their  
1141 communities. (LGAC 2014 Report)


1142

1143  The LGAC highly recommends explicitly specifying when ditches would be considered jurisdictional.  
1144 (LGAC 2014 Report)


1145

1146  The LGAC recommends that manmade conveyance components of MS4s be exempt from Waters of  
1147 the United States. This includes manmade green infrastructure, roads, pipes, manmade gutters, manmade  
1148 ditches, manmade drains, and manmade ponds. (LGAC 2014 Report)


1149

1150  The LGAC recommends that natural conveyance components of MS4s are included in Waters of the  
1151 United States. This includes natural wetlands and associated modifications to natural wetlands. (LGAC  
1152 2014 Report)


1153

1154  The LGAC recommends that green infrastructure projects be exempt from WOTUS and that they  
1155 should be incentivized to protect water resources. (LGAC 2014 Report)


1156

1157  The LGAC recommends that there be some criteria which exempt certain activities in 'Waters of the  
1158 U.S'. for public safety and hazards. This is particularly critical in flood prone areas and for  
1159 disadvantaged communities in floodways that may need to have emergency relief quickly and rapidly.  
1160 (LGAC 2014 Report)


1161


1162  The LGAC recommends that EPA work to identify regional areas where jurisdictional determinations  
1163 could be problematic in terms of sea level rise and where groundwater and surface flow intermix. For  
1164 example, it is unclear how the state of Florida, with so much land area nearly at sea level, will be  
1165 categorized. In this specific region, conceivably all waters could potentially be jurisdictional. The LGAC  
1166 recommends that specific guidance be developed to address and classify these areas with region-specific  
1167 criteria to assess jurisdictional determinations. (LGAC 2014 Report)


1168

1169  The LGAC recommends that EPA, working with the Corps of Engineers, develop a tool for use by local  
1170 governments which a permittee can use to assess their own jurisdictional status. For example, this could


1171 involve a simple categorical, printable questionnaire in a decision tree framework with questions aimed  
1172 with an outcome of 'yes', 'no' or 'maybe'. The LGAC recommends this method be computerized and  
1173 developed as a smartphone application which yields a simple predictive outcome. (LGAC 2014 Report)  
1174

1175  The LGAC recommends that EPA work directly with stormwater associations to provide guidance to  
1176 best address MS4s, stormwater controls, and their jurisdictional determinations. (LGAC 2014 Report)  
1177

1178  The LGAC recommends that EPA look to stormwater experts and the practical advice that stormwater  
1179 professionals can lend to a proposed WOTUS rule that the EPA is considering for 'Waters of the U.S.'  
1180 (LGAC 2014 Report)  
1181

1182  The LGAC recommends addressing how mining impoundments, borrow pits and tailings ponds will be  
1183 addressed within jurisdiction of WOTUS. (LGAC 2014 Report)  
1184

1185  The LGAC recommends that regional and local technical manuals as well as other communication tools  
1186 (e.g. checklists, smartphone apps, etc.) designed to account for geographic differences in each EPA region  
1187 be developed to assist with jurisdictional calls. (LGAC 2014 Report)  
1188


1189  The LGAC recommends that EPA provide planning maps at the state level which could be used as a  
1190 planning tool to ascertain jurisdictional probability with high certainty. Such mapping would include the  
1191 Hydrologic Unit Codes (HUC) for waterways. (It is presumed that all waterways with a designation of  
1192 HUC-12 or less will be included in WOTUS.) (LGAC 2014 Report)  
1193

## 1194 **IMPLEMENTATION**










### 1195 *Background*

1196 The LGAC heard strong concerns (in 2014) regarding implementation, especially from local governments.  
1197 Several local agencies reported uncertainty in interpretation as well as uncertainty in time and cost to  
1198 undertake the permitting process. The rule language must be consistently interpreted by all parties  
1199 including the EPA, the US Army Corps of Engineers and local agencies. The rule should stipulate  
1200 responsiveness of permitting agencies. Otherwise, the LGAC is concerned that a revised rule could further  
1201 delay permits at the local level. (LGAC 2014 Report)  
1202  
1203  
1204

### 1205 **Recommendations:**

1206  The LGAC recommends that a revised rule stipulate time frames for permit review and jurisdictional  
1207 determinations. Time frames such as 60 to 90 days to obtain a permit would be well-received at the  
1208 local level. (LGAC 2014 Report)  
1209

1210  The LGAC recommends that EPA more clearly identify how Preliminary Jurisdictional Determinations  
1211 would be processed to avoid unnecessary permit delays. (Goodmann Letter)  
1212

- 1213  The LGAC recommends that EPA Administrator work with the Chief of the US Army Corps of Engineers  
1214 to determine a process to reduce the issue of permitting delays of Section 404 permits. These delays are  
1215 a significant and a costly issue for local governments. (LGAC 2014 Report)  
1216
- 1217  The LGAC recommends that state agency staff be utilized to make jurisdictional calls and work in  
1218 cooperation with local districts with subject matter expertise such as county-based Conservation Districts  
1219 or water management districts (e.g. Florida Water Management District). These local agencies can work  
1220 together with the Corps to streamline permitting. (LGAC 2014 Report)  
1221
- 1222  The LGAC recommends that EPA regionalize wetlands delineation manuals to take into account  
1223 regional and local variability of vegetation, hydromorphology and hydroperiods. (LGAC 2014 Report)
- 1224  The LGAC recommends that State agencies be delegated the authority to make jurisdictional  
1225 determinations. These determinations could be certified by the EPA and Corps District staff. Potentially,  
1226 private sector firms and/or individuals could be certified to make these determinations. This could relieve  
1227 overburdened federal agencies and accelerate the determination/permit process.
- 1228  EPA and the Corps should encourage and provide incentives for States and Tribes to identify and  
1229 protect significant state or unique waters such as sources for drinking water to protect.
- 1230  EPA and the Corps should provide mapping of jurisdictional waters (8-Digit HUC). It should also be  
1231 accessible by zip code and available online.
- 1232  The LGAC recommends that EPA work further with the Committee to develop a cohesive strategy to  
1233 address local tools for stream and tributary protection so that it does not interfere with local governments  
1234 protecting and maintaining water resources for its citizens and communities. For example, many local  
1235 governments have zoning ordinances and coastal management plans that are protective of streams,  
1236 riparian areas, and sensitive wetland areas. It is unclear how a revised WOTUS rule will affect our  
1237 ability at the local level to protect our significant ecological areas. (LGAC 2014 Report)  
1238
- 1239  The EPA should work with local communities to utilize the regulatory tools that the Clean Water Act  
1240 (CWA) and the Safe Drinking Water Act (SDWA) provide in order to protect source water, especially for  
1241 low-income, minority, rural and tribal communities where this threat remains. (LGAC Drinking Water  
1242 Report 2016)  
1243
- 1244  The LGAC strongly recommends that the EPA continue to explore how the SDWA and the CWA could  
1245 be coordinated to better protect source water and our nation's water resources. In addition, the LGAC  
1246 recommends that the EPA coordinate a Memorandum of Agreement with the U.S. Department of  
1247 Agriculture's Natural Resources Conservation Service (NRCS) to explore ways to reduce agricultural  
1248 runoff and improve soil health. (LGAC Drinking Water Report 2016)  
1249  
1250  
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**STATE ASSUMPTION OF SECTION 404****Background**

Under current regulations, states and some tribes may seek delegation to implement CWA § 404 which governs dredge and fill activities in wetlands and other waters. This CWA assumption allows a state or tribe to regulate those waters and to take jurisdictional responsibility to condition, approve or deny dredge and fill permits in lieu of the federal Section 404 program administered by the Corps and EPA. The state or tribal program must be approved by the EPA and the Corps of Engineers. States and tribes play a significant role in implementing CWA Section 404 Program through assumption and to fully integrated and comprehensive water program addressing the full range of state, tribal, and CWA requirements. Assumption allows for flexibility, less time constraints and the ability to integrate state and local water quality objectives.

The State of Michigan has received delegation authority and the LGAC was briefed on their program. Under the Michigan program, the permitting process is more streamlined and has incorporated other state statutory programs like CWA § 401 certifications, dam safety and other state regulatory programs. The average time of the permitting process is 21 days.<sup>7</sup>

Based on the Michigan example, the LGAC believes that states may more effectively administer the Section 404 program, especially in addressing regional issues. States can more effectively interact with local governments, businesses, agriculture and private landowners. (LGAC 2014 Report)

**Recommendations:**

■ The LGAC believes that State Assumed CWA and tribal-led programs may provide substantial cost-savings in time and money and should be investigated further. (LGAC 2014 Report)

■ The LGAC recommends that guidance be developed to facilitate State Assumption of the Section 404 program.

■ In order for state assumed programs to be successful, adequate resources must be made available and comparable water quality protections must be adopted by the state or tribal government. Despite these perceived barriers, the LGAC believes this is a highly worthwhile approach. Incentivizing the delegation program could achieve a strong return on investment. (LGAC 2014 Report)

■ Local agencies may also be more receptive to a revised WOTUS rule if it is a state-run program which can be more responsive to local and regional issues. (LGAC 2014 Report)

■ The LGAC strongly suggests federal incentives for States and Tribes to assume the CWA Section 404 program. These federal incentives should also provide technical, financial and staffing resources to assume the CWA 404 program. (LGAC 2014 Report)

<sup>7</sup> "Wetlands Protection." Michigan Department of Environmental Quality. [www.mi.gov/wetlands](http://www.mi.gov/wetlands).

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**ENFORCEMENT**

*Background*

The LGAC believes that enforcement will be important in implementing the CWA programs to follow a revised rule. It is not possible to ascertain the impacts of enforcement on local governments without a revised rule currently in place. The LGAC also believes that clarified definitions contained within a revised WOTUS rule will be critical to effective and equitable enforcement of the rule. (LGAC 2014 Report)

**Recommendations:**

■ The LGAC recommends that flexibility is important within the regulatory context so that conservation practices can be considered nationwide and be consistent, particularly on agricultural lands. (LGAC 2014 Report)

■ The EPA should work collaboratively with state regulators to reduce punitive approaches and increase facilitative solutions. Generally, communities facing fines and citations are already struggling with compliance. Fines rarely improve water quality; fines only reduce the local resources available to achieve compliance. A collaborative approach can be most effective in reaching water quality goals. (LGAC Drinking Water Report 2016)

■ The LGAC recommends that EPA work with state and local governments once a revised WOTUS final rule is developed and issued regarding enforcement options. (LGAC 2014 Report)


**LOCAL SOLUTIONS -INTEGRATED PLANNING**

*Background*

The LGAC believes that the CWA has had tremendously positive impacts on the rivers and streams of the United States which in turn has led to economic prosperity and well-being for our nation's communities. Communities and local governments are spending millions of dollars to improve our waterways and drinking water supplies. Some states even have more protective water quality standards than those required by federal law. The LGAC noticed a general feeling of distrust that the 2015 rule generated. Further clarity on definitions, jurisdiction and exemptions should further aid Integrated Planning. However, it is uncertain how a revised WOTUS rule will factor in Integrated Planning efforts in general. Furthermore, there is a great deal of uncertainty how CWA 404 and the rule will impact local ordinances and how it can be integrated into state, tribal and local water quality plans. (LGAC 2014 Report)

**Recommendations:**

■ The LGAC recommends that EPA work with cities and communities on Integrated Water Quality Planning that will incorporate all of the Clean Water Act provisions into local plans, including Section 404. This planning process is already ongoing and the LGAC looks forward to these proactive approaches to address water quality concerns while providing green infrastructure and multi-use amenities to serve our public and create jobs. (LGAC 2014 Report)

1343  The LGAC recommends that EPA incentivize local, tribal and state agencies to engage in Integrated  
1344 Water Quality Planning and develop policies, programs and projects that further the goals of the Clean  
1345 Water Act. The rule should not in any way discourage local efforts to improve water quality through  
1346 projects and programs. (LGAC 2014 Report)

- 1347
- 1348 ➤ **Question 7- What should the agencies consider in communicating the final rule to state, local**  
1349 **and tribal governments to help them fully understand these regulatory changes and**  
1350 **implementing them efficiently and most cost-effectively?**

1351

### 1352 *Background*

1353 The LGAC believes that clear communication and outreach is essential at every level of government once  
1354 a revised rule is developed. There are many misconceptions and uncertainties regarding EPA, the Army  
1355 Corps of Engineers, and a revised WOTUS rule's impact on CWA programs.

1356


1357 In learning from the WOTUS 2015 rule, we heard concerns throughout the outreach process, and noted  
1358 these concerns about the mixed messages relating to the economic impacts.

1359


1360 The LGAC recommends that the EPA share the LGAC findings and recommendations with the state  
1361 environmental commissioners, state agricultural directors, state water directors, and other state officials.  
1362 (LGAC Water Report 2014)

1363


### 1364 **Recommendations:**

1365  The LGAC recommends that a Fact Sheet (one-page) be developed laying out the clear messaging of  
1366 the revised WOTUS rule. It should also have graphics and a side-by- side comparison of what the rule  
1367 currently is and what the revised rule proposes. This sheet should be developed to enhance public  
1368 understanding of the rule. (LGAC Water Report 2014).


1369

1370  The LGAC believes it is important that EPA is aware of the potential for mixed messages in their  
1371 communication with local agencies regarding the economic impact of a revised rule. Based on the  
1372 Workgroup's 2014 field meetings, local agencies were skeptical of EPA's strong statement that the  
1373 proposed rule did not change the definition of the 'Waters of the U.S.' Although this statement may have  
1374 been factually correct, what likely occurred in the field is that local agencies may have experienced a  
1375 permitting environment in direct contrast to this statement, as jurisdictional assertion was expected to  
1376 increase. It is important that the EPA and the US Army Corps of Engineers do not understate the impact  
1377 the rule may have on local jurisdictions. Also, the economic analysis should include all Clean Water Act  
1378 programs. (LGAC Water Report 2014)

1379


1380  The LGAC recommends that the EPA continue to evolve and improve its communication with local  
1381 governments, as well as EJ, agricultural and small communities with respect to the 'Waters of the United  
1382 States.'

1383

1384  The LGAC recommends that EPA develop Fact Sheets to communicate the proposed changes in the  
1385 WOTUS rule designed *specifically for locally elected officials*.

1386

1387  The EPA should work with State Municipal Leagues and other intergovernmental organizations to  
1388 distribute communication materials for local governments. (LGAC Drinking Water Report 2016)  
1389


1390  In EPA's annual or biannual meetings with State Environmental Commissioners, State Public Health  
1391 Directors and State Agricultural Directors, the EPA should convene a special forum on 'Waters of the U.S.'  
1392 on ways to assist local governments, EJ communities and rural communities. (LGAC Drinking Water Report  
1393 2016)  
1394  
1395

1396 ➤ **Question 8- The Workgroup will also develop recommendations on how the EPA can better work**  
1397 **with local governments and engage local governments on issues such as: What additional**  
1398 **regulatory issues could be revised or clarified to more effectively to help local governments**  
1399 **understand how this rule would apply? Are there additional policy discussions that could help**  
1400 **address local questions about implementation, in agricultural and rural small communities? Are**  
1401 **there other considerations such as ditch maintenance, stormwater management or green**  
1402 **infrastructure?**

1403 8.a. **What additional regulatory issues could be revised or clarified to more effectively to help**  
1404 **local governments understand how this rule would apply?**  
1405  
1406

1407 **Recommendations:**

1408  The LGAC recommends that EPA should consider the impacts of a revised rule on NPDES and  
1409 Wastewater systems. (Goodmann Letter).  
1410

1411  The LGAC recommends that EPA consider a bright-line on 'other waters' to provide more clarity on  
1412 what is jurisdictional under the CWA. For example, it would be well-advised that EPA determine with  
1413 accuracy what areas are considered to be state or local ecologically significant areas such as source  
1414 water and drinking water sources, and that states should provide a listing of these areas. (LGAC 2014  
1415 Report)  
1416  
1417  
1418

1419 8.b. **Are there additional policy discussions that could help address local questions about**  
1420 **implementation, in agricultural and rural small communities?**  
1421  
1422

1423 **Background**

1424 The Small Community Advisory Subcommittee (SCAS) of the LGAC investigated in greater  
1425 depth the agricultural related issues to a revised WOTUS rule. The SCAS had some observations from the  
1426 testimony received. Also, several of the SCAS Members are also agricultural producers or work closely  
1427 with the Conservation Districts. Generally, at issue for the agricultural community in the 2015 rule was the  
1428 lack of clear definitions and the lack of clarity on exemptions.  
1429

1430 Agricultural issues remain an area where there is a great deal of uncertainty and confusion regarding  
1431 WOTUS. The SCAS believes that the agricultural community presents the greatest challenge but also

1432 offers the greatest receptivity to recognizing the importance of conservation and protection of our  
1433 natural resources. Agriculture is a water-dependent business and cannot flourish without adequate  
1434 supplies of clean and safe water.

1435  
1436  
1437 **Recommendations:**

1438 ■ The LGAC recommends that EPA develop a “rural strategy” which would address the issue of ‘Waters  
1439 of the U.S.’ on agricultural lands and rural communities. This rural strategy could provide more  
1440 comprehensive planning and resources to address the full range of water quality and community issues  
1441 associated with rural America and disadvantaged small communities.

1442  
1443 ■ The LGAC recommends that there be consistency between Natural Resources Conservation Services  
1444 (NRCS) and EPA on interpretation of normal farming practices and that a clear definition of normal  
1445 farming practices be included. Furthermore, the LGAC recommends a manual of agricultural exemptions  
1446 be developed and published.

1447  
1448 ■ The LGAC recommends that the jurisdiction of farm ponds, irrigation ditches and ponds, artificial lakes  
1449 and ponds created by excavation and/or diking dry land for purposes of stock watering, settling basins  
1450 be exempt from WOTUS.

1451  
1452 ■ The LGAC recommends that floodplains be established at a level of 50- year, 100- year and 500 -  
1453 year for agricultural purposes.

1454  
1455 ■ The LGAC was made aware of the State of Tennessee’s Water Quality program, and the LGAC  
1456 recommends that the EPA investigate this approach in regard to jurisdictional waters on agricultural  
1457 lands.

1458  
1459 ■ The LGAC recommends that EPA facilitate better working relationships with the Corps, especially in  
1460 regard to agricultural lands.

1461  
1462 ■ The LGAC recommends that dams and drainages designed for fire prevention be exempt from  
1463 WOTUS.

1464  
1465 ■ The LGAC recommends that settling ponds and basins be determined on a regional case- by -case  
1466 specific basis.

1467  
1468 ■ The LGAC recommends expanding the Conservation Reserve program to enhance protection of  
1469 riparian areas and wetlands.

1470  
1471 ■ The LGAC recommends that EPA continue to work with NRCS to incentivize farming practices that  
1472 improve water quality.

1473

**Prior Converted Croplands**

*Background:*

The Clean Water Rule excludes Prior Converted Croplands (PCC) from the definition of "waters of the United States." (existing since 1992). The Rule also provides that even if another federal agency has deemed land to be PCC, the final authority regarding CWA jurisdiction remains with the EPA. Other provisions such as Swampbuster also incorporates a PCC exception but are administered by the USDA under the Food Security Act of 1985. The Act regulates federal benefits for farmers and includes provisions designed to discourage farming on converted wetlands. Under the Act, farmers who have altered a wetland after November 28, 1990, to make crop production possible are generally prohibited from receiving USDA-FSA-administered commodity, disaster, and conservation program benefits. Likewise, farmers who plant crops on wetlands converted between December 23, 1985, and November 28, 1990, are ineligible for program payments. Generally, drainage systems and other conversions in place before December 23, 1985, may continue in their existing form. The 2014 Farm Bill also reinstated a requirement that farmers must comply with Swampbuster provisions to receive crop insurance premium assistance beginning in 2015. The NRCS is responsible for making wetland determinations for purposes of USDA farm program eligibility only. Once a certified wetlands determination is made (and given to the farmer via form NRCS-CPA-026), it is binding on the property. All determinations made after July 3, 1996, are automatically deemed "certified." Determinations made prior to that date may be considered certified if they meet certain conditions. If a certified wetlands determination exists, the NRCS may not issue a new determination, absent a request by the landowner and (1) a determination that natural changes have occurred to the topography or (2) an acknowledgment by NRCS that an error exists in the current report. It is uncertain how changes in the WOTUS rule will change the dates for PCC or Swampbuster provisions.

**Recommendations:**

■ A process for determining Prior Converted Croplands should be established with the new changes to the WOTUS rule. For example, what date should the PCC be referred to.

■ On agricultural lands, the Department of Agriculture should be given authority to make WOTUS jurisdictional determinations. (LGAC 2014 Report)

■ The LGAC recommends that normal agricultural practices be defined more effectively to achieve the desired results and to be accepted by the agricultural community. Normal farming practices are not limited to those listed and will change with advances in science and technology.

■ The LGAC recommends consistency of definitions among NRCS, EPA and other agencies involved in these issues. The SCAS believes that a glossary defining what agricultural exemptions are will be helpful. Specifically, the LGAC has heard a great deal of concern from Northern Minnesota where there are non-tiled drainage ditches and also from agricultural communities in Georgia. (LGAC 2014 Report)

■ The LGAC recommends more effective outreach to agricultural communities and small rural communities on a revised WOTUS rule.

**Recommendations:**

■ The EPA should plainly state how WOTUS rulemaking will impact storm-water collection systems and clearly exempt those parts of the systems that EPA does not wish to include. (Goodmann Letter)

1517 **8.c. Are there other considerations such as ditch maintenance, stormwater management or green**  
1518 **infrastructure?**

1519 *Background*


1520 Rule language should not have broad inclusions and cities are concerned that jurisdictional calls will be  
1521 dependent upon agency judgments and discretion for exclusions. The criteria need to be clear enough  
1522 that cities do not have to either guess at application of a rule or wait for the agency to interpret a rule  
1523 which creates uncertainty. It is unworkable for cities to rely on agency judgments and discretion for  
1524 exemptions. There is a concern about the magnitude of the requests the agencies will be forced to  
1525 address and the timeliness of the agencies' responses given any uncertainty of a new rule. Cities cannot  
1526 be faced with significant delays to address critical storm-water infrastructure while waiting for agency  
1527 action. Cities should be provided clarity by the agencies so that they can effectively plan and budget for  
1528 the operation and maintenance of the storm-water collection systems without the uncertainty of the  
1529 discretion of the agencies and when it will receive that agency judgment. In addition, without a specific  
1530 exemption for MS4 systems including drains, roads, pipes, curbs, gutters, ditches and other components  
1531 that channel runoff, as well as non-MS4 storm-water systems and features/components, EPA and Army  
1532 Corps open the door for litigation and citizen suits that could determine that they are considered a  
1533 "Waters of the U.S." and thereby subject to Section 404 permitting and state Water Quality Standards.  
1534 (Goodmann Letter)  
1535


■ The EPA should exempt green infrastructure from jurisdiction and outline the Agency's definition of  
1536 what is included within green infrastructure similarly as for agricultural practices for 'normal farming  
1537 practices'. (Goodmann Letter)  
1538  
1539  
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1542 **IV. Cost to Local Government**1543 *Background*

1544 The LGAC heard extensive concerns that the US Army Corps of Engineers simply does not have enough  
1545 resources to effectuate an efficient permit process now, or under a new rule, without additional resources.  
1546 An ineffective permit process consumes scarce local, state and federal personnel and financial resources  
1547 without achieving a value-added return on investment. A revised rule and the permitting process and  
1548 implementation must recognize the scarcity of these resources such that results are optimized for the level  
1549 of investment. (LGAC 2014 Report) Delays and additional permitting do not get calculated into a  
1550 simplistic understanding of affordability of 2 percent of median household income (MHI), which the  
1551 Agency utilizes to make determinations on significant cost impacts to local communities (Goodmann letter).  
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1557 **Recommendations:**

1558  The LGAC recommends that the EPA continue to coordinate with the US Army Corps of Engineers to  
1559 ensure that the permit process is predictable and value-added. The proposed rule must be viewed in the  
1560 context of how it will be implemented to validate that the resource protection outcome is balanced  
1561 against the economic cost of the permitting process. Local, tribal and state agencies are at the front lines  
1562 of achieving the goals of the Clean Water Act. Engaging local agencies as collaborative partners in the  
1563 conversation with EPA and the US Army Corps of Engineers regarding implementation can only improve  
1564 the process and the desired water resources protection results. (LGAC 2014 Report)  
1565

1566  The LGAC recommends that EPA better understand the cost and resource implications, especially to  
1567 local, state and tribal agencies, before drafting a revised rule. Local agencies are very concerned about  
1568 cost, which is exacerbated by the uncertainty in the permitting process. (LGAC 2014 Report)  
1569

1570 **V. CONCLUSION**

1571

1572 The Local Government Advisory Committee (LGAC) provides a strong connection between the EPA and  
1573 the communities striving to provide clean drinking water and maintain healthy source water. The LGAC's  
1574 'Waters of the United States' 2017 Report provides a series of recommendations that offer the EPA  
1575 practical solutions to complex challenges based on the experience of local and tribal governments. The  
1576 LGAC is confident that our concepts and approaches can assist the EPA in developing a regulatory  
1577 framework that inspires communities to act in the interest of clean, safe and affordable drinking water.

1578 Many communities have already invested their resources in green infrastructure, integrated planning and  
1579 innovation that advances the state of practice. Local, tribal and state governments are already leading  
1580 clean water initiatives in their jurisdictions. EPA can utilize this experience, captured in the LGAC report,  
1581 to develop clear, predictable, flexible and locally adaptable approaches to regulation.

1582 Thank you to the EPA Administrator and the EPA Team for their partnership with the LGAC in advancing  
1583 the goal of clean, safe and affordable drinking water across the United States.

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## APPENDIX

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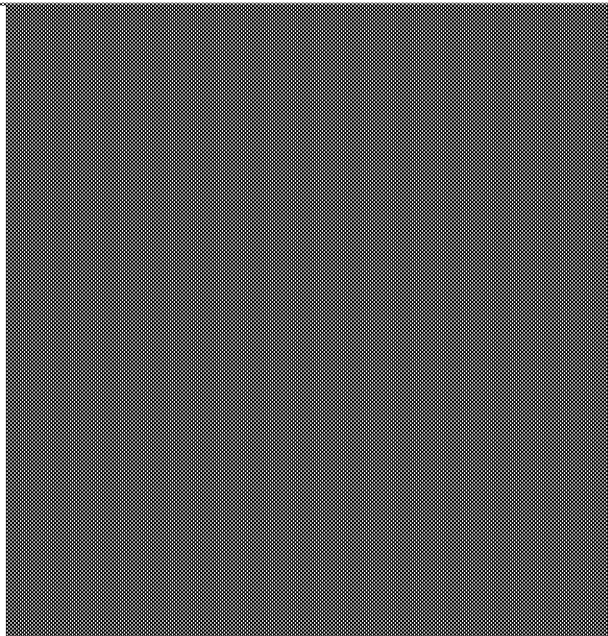
*Disclaimer: This Report reflects what was conveyed during the course of the LGAC meetings. The Committee is not responsible for any potential inaccuracies that may appear in the Report as a result of information conveyed. Moreover, the Committee advises that additional information sources be consulted in cases where any concern may exist about statistics or any other information.*

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# Roster of LGAC Members

Waters of the United States  
2017 Report

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1619 2017 ROSTER LGAC AND SCAS MEMBERS

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1621 **Chair of LGAC**

1622 **The Honorable Bob Dixon**

1623 **Mayor, Greensburg, KS**

1624 **Greensburg, KS**

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1626 **Chair of SCAS**

1627 **The Honorable Robert Cope**

1628 **Commissioner, Planning and Zoning, Salmon, ID**

1629 **Salmon, ID**

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1632 **LGAC AND SCAS MEMBERS**

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1634 **Region 1**

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1636 **Mr. Rodney Bartlett**

1637 **Town Administrator**

1638 **Peterborough, New Hampshire**

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1640 **The Honorable Kim Driscoll**

1641 **Mayor, City of Salem**

1642 **Salem, MA**

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1644 **The Honorable Miro Weinberger**

1645 **Mayor, City of Burlington**

1646 **Burlington, VT**

1647 **The Honorable Jill Duson (Vice-Chair)**

1648 **Councilor, Portland, Maine**

1649 **Portland, Maine**

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1653 **Region 2**

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1655 **Samara Swanston, Esq.**

1656 **Counsel to NYC Council Environmental Protection Committee, New York, NY**

1657 **New York, NY**

1658  
1659 **The Honorable Dawn Zimmer**  
1660 **Mayor, Hoboken, NJ**  
1661 **Hoboken, NJ**

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1663 **The Honorable Manna Jo Greene**  
1664 **County Legislator, Ulster County, NY**  
1665 **District 19 Rosendale, NY**

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1667 **Region 3**

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1669 **The Honorable Sal Panto, Jr.**  
1670 **Mayor, City of Easton**  
1671 **Easton, PA**

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1673 **The Honorable Stephen T. Williams**  
1674 **Mayor, Huntington, WV**  
1675 **Huntington, WV**

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1677 **Region 4**

1678  
1679 **The Honorable Merceria Ludgood**  
1680 **Commissioner, Mobile County**  
1681 **Mobile County, AL**

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1683 **The Honorable Johnny DuPree, Ph.D.**  
1684 **Mayor**  
1685 **Hattiesburg, MS**

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1687 **The Honorable Kitty Barnes**  
1688 **Commissioner, Catawba County, NC**  
1689 **Terrell, NC**

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1691 **The Honorable Hardie Davis**  
1692 **Mayor, City of Augusta, GA**  
1693 **Augusta, GA**

1694  
1695 **Ms. Susan Hann**  
1696 **Director, Planning Palm Bay County Schools, FL**  
1697 **Palm Bay County, FL**

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1700 **Region 5**

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1702 **The Honorable Stephanie Chang**  
1703 **State Representative- House District 6**  
1704 **State of Michigan**

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1706 **The Honorable Victoria Reinhardt**  
**Commissioner, Ramsey County, MN**

1707 **St. Paul, MN**

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1710 **The Honorable Elizabeth Kautz**

1711 **Mayor, Burnsville, MN**

1712 **Burnsville, MN**

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1714 **The Honorable Karen Freeman-Wilson**

1715 **Mayor, Gary, IN**

1716 **Gary, IN**

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1719 **Mr. Kevin Shafer, PE**

1720 **Executive Director, Milwaukee Metropolitan Sewerage District**

1721 **Milwaukee, WI**

1722 **Region 6**

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1724 **The Honorable Mark Stodola**

1725 **Mayor, City of Little Rock**

1726 **Little Rock, Arkansas**

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1728 **The Honorable Norm Archibald**

1729 **Mayor, City of Abilene, TX**

1730 **Abilene, TX**

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1732 **Jeff Witte**

1733 **Secretary of Agriculture, New Mexico**

1734 **New Mexico**

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1737 **Dr. Hector Gonzalez, MD**

1738 **Director of Health Department, Laredo, TX**

1739 **Laredo, TX**

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1741 **Region 7**

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1743 **Teri Goodman**

1744 **Assistant City Manager, City of Dubuque**

1745 **Dubuque, IA**

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1747 **The Honorable Tom Sloan**

1748 **State House Representative, State of Kansas**

1749 **Kansas**

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**Region 8**

**The Honorable Andy Beerman**  
**City Councilor**  
**Park City, UT**

**The Honorable Brad Pierce**  
**Council Member, City of Aurora, CO**  
**Aurora, CO**

**Region 9**

**The Honorable Cynthia Koehler**  
**Board of Directors, Marin County**  
**Marin County, CA**

**The Honorable David Bobzien**  
**City Councilmember At-Large - City of Reno**  
**Reno, NV**

**The Honorable Mary Casillas Salas**  
**Mayor, City of Chula Vista**  
**Chula Vista, CA**

**Scott Bouchie**  
**Environmental Management and Sustainability Director - City of Mesa**  
**Mesa, AZ**

**The Honorable Ryan Sundberg**  
**Supervisor, Humboldt County, CA**  
**Humboldt County, CA**

**Region 10**

**Susan Anderson**  
**Director, Portland Bureau of Planning and Sustainability**  
**Portland, OR**

**The Honorable Shawn Yarity**  
**Chairman, Stillaguamish Tribe**  
**Arlington, WA**

1797 **APPENDIX 2**1798 **EPA'S LOCAL GOVERNMENT ADVISORY COMMITTEE (LGAC) DRAFT CHARGE**  
1799 **ON 'WATERS OF THE U.S.' (WOTUS)**1800 **OVERVIEW**1801 **Background and Description**

1802 February 28, 2017, the President signed the Executive Order on *Restoring the Rule of Law, Federalism, and Economic Growth* by  
1803 reviewing the "Waters of the United States" Rule (issued June 2015).<sup>8</sup> The Executive Order gives direction to the Administrator and  
1804 Assistant Secretary of the Army for Civil Works to review the final Clean Water Rule (CWR) and "publish for notice and comment  
1805 proposed rule rescinding or revising the rule." The E.O. also directs that EPA and the Army "shall consider interpreting the term  
1806 navigable waters' in a manner "consistent with Justice Scalia's opinion in *Rapanos*"<sup>9</sup> which includes relatively permanent waters and  
1807 wetlands with a continuous surface connection to relatively permanent waters.

1808 part of EPA's efforts to consult with state and local government officials, EPA's Local Government Advisory Committee (LGAC) will  
1809 provide its recommendations to the Administrator on revising the definition of "Waters of the United States" (WOTUS) and identifying  
1810 ways to reduce the regulatory burden on local communities as well as balance that with environmental protection.

1811 **Project Scope**

1812 The agencies intend to follow an expeditious two-step process to provide certainty with the rule:

- 1813 1) Establish the legal status quo by re-codifying the regulation that was in place prior to issuance of the CWR now  
1814 under the U.S. Court of Appeals for the Sixth Circuit's stay of that rule.
- 1815 2) Propose a new definition of Waters of the U.S. that would replace the 2015 CWR that reflects the principles outlined  
1816 by Justice Scalia (*Rapanos* plurality opinion).  
1817  
1818

1819 The LGAC consists of 36 local, state and tribal government elected and appointed officials representing cities, parishes,  
1820 counties, municipalities, and other local political jurisdictions. Local officials are knowledgeable and provide unique  
1821 perspectives on issues relating to a revised rule. Further, the LGAC has potential to engage other knowledgeable local  
1822 officials with unique valuable on-the-ground perspectives and knowledge. Through this collaborative process, the chartered  
1823 LGAC will provide Administrator Pruitt with expeditious and meaningful advice relating to a revised "Waters of the U.S." rule.  
1824 Overall, the goal would be to develop recommendations to the EPA for consideration on a revised rule. This advice and  
1825 recommendations come from an 'on the ground' local government perspective which will assist the agency in providing the best  
1826 means to communicate a revised rule with local officials.

1827 **Charge Issues**

1828

1829 **LGAC Charge:**

1830

1831 The LGAC will develop recommendations for the EPA to consider in developing approaches to a revised rule  
1832 defining "waters of the U.S." that ensures that the nation's waters are kept free from pollution while at the

<sup>8</sup> <https://www.whitehouse.gov/the-pres-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic>

<sup>9</sup> *Rapanos v. United States*, 547 U.S. 715 (2006) 126 Supreme Court 2208; 165 L.Ed. 2d 159

1833 same time promoting economic growth and minimizing regulatory uncertainty. The following are specific charge  
1834 questions and issues for the LGAC to consider:

1835  
1836 **Charge Questions**

- 1837
- 1838 1) How would you like to see the concepts of 'relatively permanent' and 'continuous surface connection'  
1839 be defined? How would you like to see the agencies interpret 'consistent with Scalia'? Are there  
1840 particular features or implications of any such approaches that the agencies should be mindful of in  
1841 developing the step 2 proposed rule?  
1842
  - 1843 2) What opportunities and challenges exist for your locality with relying on Justice Scalia's opinion?  
1844
  - 1845 3) Are there other approaches to defining "waters of the U.S." that you would like the agencies to consider  
1846 to providing clarity and regulatory certainty?  
1847
  - 1848 4) The agencies' economic analysis for step 2 intends to review programs under CWA 303, 311, 401, 402  
1849 and 404. Are there any other programs specific to your locality that could be affected but would not be  
1850 captured in such an economic analysis?  
1851
  - 1852 5) What additional information can you provide from a local government perspective that EPA should be  
1853 aware of?  
1854
  - 1855 6) Are there other issues the agencies should consider which would help ease the regulatory burden for  
1856 implementation of WOTUS for state, local and tribal government?  
1857
  - 1858 7) What should the agencies consider in communicating the final rule to state, local and tribal governments  
1859 to help them fully understand these regulatory changes and implementing them efficiently and most  
1860 cost-effectively?  
1861
  - 1862 8) The Workgroup will also develop recommendations on how the EPA can better work with local  
1863 governments and engage local governments on issues such as: What additional regulatory issues could  
1864 be revised or clarified to more effectively to help local governments understand how this rule would  
1865 apply? Are there additional policy discussions that could help address local questions about  
1866 implementation, in agricultural and rural small communities? Are there other considerations such as  
1867 ditch maintenance, stormwater management or green infrastructure?  
1868

1869 **Deliverables**

1870 The LGAC will provide a letter of recommendation to the Administrator to identify approaches to consider in a revised "Waters of  
1871 the U.S." rule. The chartered LGAC will prioritize and summarize these issues in a report to the EPA that focuses on the charge issues.  
1872 The final LGAC report will be conveyed to the EPA Administrator with a transmittal letter summarizing findings and recommendations.  
1873 This Report will be published on the EPA's website for LGAC.

1874 **Preliminary Timeline/Schedule**

1875

1876 **April 26, 2017** – Executive Committee meets to discuss and approve the LGAC's Charge (Protecting America's Waters Workgroup)  
1877 and develops a work plan with timeline.

1878 **May 3**– LGAC's Protecting America's Waters Workgroup meets to discuss charge (via teleconference).

1879 **May 18**- LGAC's Protecting America's Waters Workgroup meets with National Intergovernmental organizations to discuss charge  
1880 (via teleconference).

1881 **June 7** – LGAC's Protecting America's Waters Workgroup meets to discuss charge (via teleconference).

1882 **June 29, 2017**-The LGAC meets in a public meeting (via teleconference) to review recommendations on rescission of the 2015 CWR  
1883 and revising the CWR. (Deliverable: Letter of Recommendation)

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