



ATTORNEY GENERAL OF COLORADO
John W. Suthers

October 21, 2014

Water Docket
Environmental Protection Agency
Mail Code 2822T
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Attention: Docket ID No. EPA-HQ-OW-2011-0880

Re: Proposed Revisions to Definition of Waters of the United States
Docket ID No. EPA-HQ-OW-2011-0880

Dear Environmental Protection Agency:

I provide the following comments in addition to those submitted by other agencies of the State of Colorado.

The efforts of the Environmental Protection Agency and the Army Corps of Engineers to “clarify” the jurisdictional reach of the federal government under the Clean Water Act (CWA) are having the opposite effect. The proposed rule redefining “waters of the United States” not only further clouds the jurisdictional issue; it has alarmed a vast spectrum of American society. Farmers, landowners and water providers to developers, small businesses and local governments all condemn this attempt to expand federal control over land and water by rule and recognize they will bear the burden of greater costs and increased regulations. The extension of CWA jurisdiction to include water with a significant nexus to navigable waters will certainly result in added regulation over actions that have not previously been subjected to regulation. The economic impacts of such a jurisdictional expansion will be very significant for those impacted.

The federal agencies’ attempt to clarify the meaning of “waters of the United States” must be governed by the rule of law; not imposed by their federal jurisdictional desires. Under the Clean Water Act, Congress preserves the states’ traditional authority to regulate and manage the development and use of land and water resources. The U.S. Supreme Court has thwarted recent attempts by federal agencies to encroach on states’ primary responsibilities to protect and manage their

October 21, 2014

Page 2

water resources. The scientific evidence offered to support the federal position should inform the dialogue; however, such evidence cannot expand federal jurisdiction beyond what Congress intended. The Clean Water Act and relevant case law support a more limited scope of federal jurisdiction than that enunciated in the proposed rule.

Several commenters have suggested the federal agencies put this rule on hold while they engage in a robust stakeholder process with all interested and affected parties. I believe this approach would lead to a more successful outcome than the protracted litigation that would result from adoption of the current proposed rule.

Sincerely,

A handwritten signature in black ink that reads "John Suthers". The signature is written in a cursive style with a long, sweeping underline.

JOHN W. SUTHERS
Colorado Attorney General