



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 26 2017

OFFICE OF WATER

Mr. Brandon Butler
Executive Director
Conservation Federation of Missouri
728 West Main
Jefferson City, Missouri 65101

Dear Mr. Butler:

Thank you for your letter dated August 18, 2017, regarding efforts by the U.S. Environmental Protection Agency (EPA) and the Army Corps of Engineers to clarify the definition of "waters of the U.S." We appreciate your organization's interest in this important topic.

On February 28, 2017, the President signed the "Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States Rule.'" The Executive Order calls on the EPA Administrator and the Assistant Secretary of the Army for Civil Works to review the final Clean Water Rule and "publish for notice and comment a proposed rule rescinding or revising the rule...". The Executive Order directs the EPA and the U.S. Army Corps of Engineers to "consider interpreting the term 'navigable waters'" in a manner "consistent with Justice Scalia's opinion" in *Rapanos*. The Scalia standard describes the scope of Clean Water Act jurisdiction to include relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters. EPA and the Department of the Army are in the process of revising the definition of "waters of the US" in response to the Executive Order.

We are responding to the Executive Order in two steps to provide as much certainty as possible as quickly as possible to the regulated community and the public during the development of the ultimate replacement rule.

First, the agencies proposed on July 27, 2017, a rule to rescind the 2015 Rule and recodify the regulation that was in place prior to issuance of the 2015 regulatory definition and that is being implemented now under the U.S. Court of Appeals for the Sixth Circuit's stay of that rule. The comment period for this first proposed rule closed on September 27, 2017. We were pleased to see that your organization's Resolution committed to providing public comments on actions revising the definition of "waters of the United States," and look forward to reading your comments on the Step 1 proposal.

Second, EPA and the Department of the Army plan to propose a new definition that is consistent with the approach outlined in the Executive Order. The agencies view pre-proposal input from a diversity of stakeholders, including conservation groups, as very important as we develop a new rule. On October 3, the agencies held a webinar specifically for conservation stakeholders in order to receive pre-proposal feedback on this rule to revise the definition of "waters of the U.S." In addition, when we do propose a

revised definition of "waters of the US," we will consider any comments the Conservation Federation of Missouri and its members may choose to submit to the proposed rule docket.

Thank you for your interest in our efforts to provide additional clarity and certainty for the regulatory definition of "waters of the United States." Additional information about our efforts can be found at <https://www.epa.gov/wotus-rule>.

Sincerely,



Catherine A. Libertz
Acting Director
Oceans, Wetlands and Communities Division