May 8, 2017

The Honorable Doug Ducey
Governor of Arizona
State Capitol
1700 West Washington
Phoenix, Arizona 85007

Dear Governor Ducey:

We are writing to solicit your input and wisdom on a forthcoming proposal to revise the definition of waters of the United States (Clean Water Rule: Definition of "Waters of the United States"; Final Rule, 80 Fed. Reg. 37,054 (June 29, 2015)).

This action follows the February 28, 2017, Presidential Executive Order on "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule." The Order states that it is in the national interest to ensure that the Nation's navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of Congress and the States under the Constitution. The Order also directs the Environmental Protection Agency and the Department of the Army (hereinafter "the agencies") to review the existing Clean Water Rule for consistency with these priorities and publish for notice and comment a proposed rule rescinding or revising the rule, as appropriate and consistent with the law. Further, the Order directs the agencies to consider interpreting the term "navigable waters," as defined in 33 U.S.C. 1362(7), in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006).

Consulting with state and local government officials, or their representative national organizations, is a priority for us and President Trump. We believe this is an important step in the process prior to proposing regulations that may have implications on federalism as defined by the agencies' policy for implementing the Order. We hope to keep the states at the forefront of our mission and your input during the federalism process will enable us to do that effectively.

The agencies are implementing the 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 are taking action to

establish the legal *status quo* in the Code of Federal Regulations, by re-codifying the regulation that was in place prior to issuance of the Clean Water Rule and that is being implemented now under the U.S. Court of Appeals for the Sixth Circuit's stay of that rule. Second, the agencies plan to propose a new definition that would replace the approach in the 2015 Clean Water Rule with one that reflects the principles that Justice Scalia outlined in the *Rapanos* plurality opinion.

The federalism consultation for the new definition began with an initial meeting held April 19, 2017, with state and local government associations. In addition to discussions our respective staffs will have with associations and individual state environmental agencies, we are reaching out to you directly to ensure we receive the benefit of your particular state's experiences and expertise. The agencies are soliciting written comments from state and local governments until June 19, 2017. Enclosed is a PowerPoint presentation that provides brief background information on the process the agencies intend to follow, identifies some questions we are hoping states can help us answer, and includes instructions for providing us with your comments.

Cooperative federalism is a guiding principle for us. We want to clearly understand what definition will work best for your state as we develop a new federal definition of "waters of the United States" consistent with the Scalia opinion. In addition, we are interested in understanding how your state might respond to a reduced scope of federal jurisdiction under the Clean Water Act.

If you or your staff have further questions, please feel free to contact Donna Downing at (202) 566–2428 or CWAwotus@epa.gov, or Stacey Jensen at (202) 761-5856 or stacey.m.jensen@usace.army.mil.

Respectfully yours,

Scott Pruitt
Administrator
Environmental Protection Agency

Douglas W. Lamont, P.E.
Senior Official Performing
the Duties of the Assistant
Secretary of the Army
(Civil Works)