



July 7, 2014

U.S. Environmental Protection Agency
Water Docket, Environmental Protection Agency
Mail Code 2822T
Docket ID No. EPA-HQ-OW-2013-0820
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: Comments on the U.S. Army Corps of Engineers and U.S. Environmental Protection Agency Interpretive Rule Regarding the Applicability of Clean Water Act Section 404(f)(1)(A)

The New Mexico Association of Commerce and Industry (ACI) submits these comments on behalf of our members, concerning the Interpretive Rule regarding the applicability of Clean Water Act (CWA) Section 404(f)(1)(A).

ACI is the statewide advocate of business interests and serves as the state chamber of commerce. In this capacity, ACI represents employers across every industry sector at the state and federal level. Our mission is to enrich the lives and prosperity of New Mexicans through a vibrant business climate built by effective advocacy and education.

After review of the Interpretive Rule by ACI's Agriculture & Food Policy Committee and Water & Land Use Policy Committee, we are extremely troubled that the interpretive rule, which has already been put into effect, is an attempt to obtain de facto expansion of the EPA's and the Corps' regulatory land use authority over the property of farmers, ranchers, developers, and other industry sectors throughout New Mexico. The attempt at a de facto expansion of the agencies' regulatory authority through the proposed rule is in direct conflict to the meaningful limits Congress has placed on the agencies' authority under the CWA, which have been repeatedly recognized by the U.S. Supreme Court.

Additionally, ACI believes that the EPA and the Corps are pursuing rulemaking requests in a blatant attempt to circumvent engaging in regulatory process that is deliberative fair, and transparent. Instead the agencies are seeking a hurried and predetermined outcome through rulemaking requests. The EPA and the Corps have continued to pursue this course of actions despite failing to 1) conduct a statutorily-required small



business analysis and outreach pursuant to the Regulatory Flexibility Act (RFA), 2) appropriately consult with affected states, and 3) allow for the completion of the Science Advisory Board review of the so-called "Connectivity Report".

ACI believes that the practical effect of the interpretive rule is to require compliance with National Resource Conservation Service standards when undertaking any normal farming, silviculture, or ranching activity that federal officials might deem to be located in a water of the U.S. Because said interpretive rule binds farmers and ranchers with new, specific legal obligations under the CWA, the interpretive rule is regulation and therefore must be promulgated under the Administrative Procedure Act.

The scope of the CWA jurisdiction is one of the most important regulatory issues facing landowners and businesses today. Moving forward with the proposed rule will significantly impair economic activity across New Mexico.

ACI strongly recommends and hereby requests that the agencies withdraw the interpretive rule immediately and avoid the problem that the interpretive rule is attempting to fix by forgoing any changes that would extend the scope of the CWA beyond the existing definition of navigable waters of the U.S.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jason Espinoza', is written over a light blue horizontal line.

Jason Espinoza
Vice President for Government Affairs