



September 8, 2014

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

Re: Comments on the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers proposed rule Definition of Waters of the United States Under the Clean Water Act

The New Mexico Association of Commerce and Industry (ACI) submits these comments on behalf of our members concerning the proposed rule "Definition of Waters of the United States Under the Clean Water Act".

ACI serves as New Mexico's statewide business advocate. 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 concerned 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 a deliberative, fair, and transparent regulatory process. 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 many industries will be negatively impacted by the rule. As it pertains to agriculture, ACI believes that the practical effect of the 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. The said interpretive rule binds farmers and ranchers with new, costly legal obligations under the CWA. Other industries may experience increased costs and restrictions under the rule, such as those for permitting, water delivery, facility siting, mitigation, financing, and any sector dependent on developable land. The interpretive rule will complicate state water quality standards, such as those related to stormwater discharges, and lead to economically damaging project delays and unnecessary costs.

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. The proposed rule is in fact a regulation and therefore by federal statute must be promulgated under the Administrative Procedure Act.

On behalf of our members, ACI opposes the proposed rule and hereby requests that the agencies withdraw the rule immediately. ACI further recommends that the agencies avoid the problem the 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,



Jason Espinoza
Vice President for Government Affairs