



RESOLUTION 2018-02
WATERS OF THE UNITED STATES AND CLEAN WATER ACT JURISDICTION

Whereas, the Western States Land Commissioners Association ("WSLCA") and its member states manage over 515 million acres of trust lands, minerals, and waterways that are interspersed with federal lands; and

Whereas, members of WSLCA have state constitutional mandates to manage millions of acres of lands and waterways for public education, economic development, conservation, recreation, and other public purposes provided by state law, which will be significantly and adversely impacted if the proposed rule is adopted; and

Whereas, the WSLCA reaffirms its commitment to the conservation and preservation of America's waters; and

Whereas, the Environmental Protection Agency's (EPA) and the Army Corps of Engineers (Corps) WOTUS Rule implemented in 2015 significantly broadens federal jurisdiction over state lands, waterways, and water resources in a manner that disregards sound science, contravenes Supreme Court precedent, and infringes on the constitutional and economic rights of western states and citizens; and

Whereas, the 2015 WOTUS Rule expands federal jurisdiction over wholly intrastate water bodies, wetlands, intermittently wet features, and all tributaries, regardless of their size, function, amount, and regularity of flow and relationship to traditional navigable waters, in contravention of Supreme Court precedent and the current scope of federal authority under the Clean Water Act; and

Whereas, multiple Federal Courts have stayed implementation of the 2015 Rule in many States across the nation; and

Whereas, President Trump signed Executive Order 13778 in February of 2017 requiring the EPA and the Corps to review the WOTUS Rule to insure the Rule "...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 the Congress and the States under the Constitution"; and

Whereas, the EPA and the Corps published a proposed rule on July 27, 2017, to initiate the first step in a comprehensive, two-step process intended to review and revise the definition of "waters of the United States" consistent with the Executive Order signed on February 28, 2017, "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States' Rule"; and

Whereas, the Proposed Rule would re-codify the same regulatory definition of "waters of the United States" that existed prior to implementation of the 2015 Rule; and

Whereas, in a second step of the process, the EPA and the Corps will pursue a notice and comment rulemaking to conduct a substantive re-evaluation of the definition of "waters of the United States"; and

Whereas, states have primary jurisdiction for the management of bodies of water within their own borders, and several states have drafted, or are in the process of creating, their own water management plans based on sound science and local information to conserve and preserve water and waterways while allowing for responsible economic growth within their state.

BE IT THEREFORE RESOLVED AS FOLLOWS:

1. The WSLCA urges the EPA to fully implement Executive Order 13778, respect the limits of Supreme Court precedent and the scope of federal authority under the Clean Water Act, and to refrain from any efforts to extend regulatory jurisdiction to reach tributaries, waterways, wetlands, and other water bodies and systems that lack a significant nexus to navigable waters as traditionally understood; and
2. The WSLCA urges the EPA to rescind the WOTUS Rule and issue a new Rule with concise definitions of "waters of the United States" that respect the rights of states to regulate waters within their borders, recognize the validity of existing delineations and protect the rights and interests of landowners relying on the federal government's existing jurisdictional determinations; and

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3. The WSLCA recommends that all federal land use management and water management plans and policies strictly comply with and conform to the state water management plans and policies implemented in each state's jurisdiction; and
4. The WSLCA urges Congress to take federal legislative action to preserve the primary responsibilities and rights of states to prevent, reduce, and eliminate pollution of waters wholly within a state while allowing responsible economic development of state and private lands and water resources.

Adopted this 11th day of July, 2018.



Harry Birdwell, President
WSLCA



Bridget Hill, Secretary
WSLCA