

November 14, 2014

Ms. Donna Downing  
Office of Water  
Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

RE: Council for Quality Growth Proposed Environmental Protection Agency and  
Army Corps of Engineers Definition of "Waters of the United States" Under the  
Clean Water Act: Docket No. EPA-HQ-OW-2011-0880

Ms. Downing

The comments below on the proposed EPA/Army Corps of Engineers Definition of "Waters of the United States" Under the Clean Water Act are on behalf of the Council for Quality Growth, a 501-C6 Trade Association in the Metro Atlanta Region.

The Council for Quality Growth is a 29 year-old trade association representing over 250 members within the growth and development industry, with the mission of promoting balanced and responsible growth in the Metro Atlanta Region and Georgia. We bring the development community and policy makers together as we focus on long-range community planning, encouraging adequate government services, catalyzing consensus on growth issues and convening discussion on responsible development.

We are very concerned that the proposed rule would modify existing regulations, which have been in place for over 25 years. Because the proposed rule could expand the scope of CWA jurisdiction, counties could feel a major impact as more waters become federally protected and subject to new rules or standards.

First and foremost, due to the complexity of the proposed rule, we are concerned about the time allotted for review and comment. In order to fully understand what the rule does and does not do, we recommend that the agencies adopt a multi-step consideration process. The Administration should, at the very least, reopen the comment period for 90 days after EPA's connectivity report is released and updates are made to the proposed rule based on the final report.

Second, key terms used by the "waters of the U.S." definition—tributary, adjacent waters, riparian areas, flood plains, uplands and the exemptions listed—are inadequately explained and raise important questions. Because the

proposed definitions are vague, this will result in further legal challenges and delays.

Additionally, the EPA and the Corps state that the purpose of the rule is to provide clarity in the jurisdictional process. However, the definitions are unclear. The proposed rule states that man-made conveyances, including ditches, are considered jurisdictional tributaries if they have a bed, bank and ordinary high water mark (OHWM) and flow directly or indirectly into a “water of the U.S.,” regardless of perennial, intermittent or ephemeral flow. The proposed rule excludes certain types of upland ditches with less than perennial flow or those ditches that do not contribute flow to a “water of the U.S.” However, key terms like “uplands” and “contribute flow” are not defined. It is unclear how currently exempt ditches will be distinguished from jurisdictional ditches, especially if they are near a “water of the U.S.” A public infrastructure ditch system—roadside, flood or stormwater— is interconnected and can run for hundreds, if not thousands of miles. Ditches are not wholly in uplands nor do they strictly drain in uplands, since they are designed to convey overflow waters to an outlet.

Thirdly, Section 404 permits have been required for ditch maintenance activities, such as cleaning out vegetation and debris. While, in theory, a maintenance exemption for ditches exists, it is difficult for local governments to use the exemption. The federal jurisdictional process is not well understood and the determination process can be extremely cumbersome, time-consuming and expensive, leaving counties vulnerable to lawsuits.

In addition to the explicit concerns the Council for Quality Growth has, we have concerns about the number of other groups who have come together to express nation-wide concern to regarding this proposal. We would strongly encourage the EPA and Army Corps of Engineers to take this into consideration and listen to the collective voice of those who will be affected by this, from state and local governments to the private sector. We again ask that you would delay implementation of this proposal under further comments and review are evaluated and weighed, in order to produce a proposal that is acceptable to the EPA, Army Corps of Engineers and all Stakeholders affected.

Thank you for considering these important issues. If you have any questions, please do not hesitate to contact me at [JT@CouncilforQualityGrowth.org](mailto:JT@CouncilforQualityGrowth.org)

Respectfully,

A handwritten signature in dark ink, reading "James R. Touchton". The signature is fluid and cursive, with the first name "James" and last name "Touchton" clearly legible.

James Touchton, Director –Policy & Government Affairs