

July 16, 2018

Andrew Wheeler, Acting Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

R.D. James
Assistant Secretary of the Army (Civil Works)
Department of the Army
108 Army Pentagon
Washington, D.C. 20310-0108

Email delivery to: CWAwotus@epa.gov; USACE_CWA_Rule@usace.army.mil

RE: Request for Extension to Comment on Docket ID No. EPA–HQ–OW–2017–0203: “Definition of ‘Waters of the United States’ – Recodification of Preexisting Rule”

Dear Acting Administrator Wheeler and Assistant Secretary James:

On behalf of our millions of members and supporters, the undersigned hunting, fishing, and conservation groups respectfully urge your agencies to extend the period during which you will accept citizen input on the comment period for the above-referenced docket to ensure at least a 90-day comment period to address the agencies’ supplemental proposal to repeal the 2015 Clean Water Rule.

The planned 30-day comment period minimizes the input of the more than one million people who participated in the development of the 2015 Rule and more than 685,000 people who submitted comments during the initial attempt to repeal the Rule. It is also an inadequate amount of time for stakeholders to engage meaningfully in this rulemaking process. Many of our members and supporters spend the summer months outdoors in pursuit of their passions. A shortened comment period leaves them with little time to voice their opinions about a rulemaking that will greatly affect their way of life.

EPA and the Army Corps adopted the Clean Water Rule to clarify longstanding confusion over which water bodies were protected under the Clean Water Act. The rulemaking responded to the request of stakeholders ranging from states to regulated dischargers to sportsmen and conservation groups. It was developed based on clear science and meaningful engagement of stakeholders. The agencies held more than 400 meetings with a variety of stakeholders, including small business owners, farmers, energy companies, states, counties, municipalities, other federal agencies, sportsmen and conservation groups, and environmental organizations. The Rule was also based upon well-established legal interpretations of the Clean Water Act, closely tracking Justice Kennedy’s pivotal “significant nexus” standard for determining the “waters of the U.S.”

It is only now, in the second, supplemental attempt to justify the repeal of the Clean Water Rule, that the agencies set forth novel legal and policy rationales for the proposed repeal of the Clean Water Rule,

rejecting and undermining their own previous rationales. The “supplemental” notice proposes an entirely new basis for repealing the Rule, namely that the Rule was unlawful.

The agencies now also request comment on the estimated impact of the 2015 Rule compared to pre-Rule practice, including some of the methodology, and have identified several case studies that the agencies indicate may be relevant to assessing whether the Rule was lawful. The agencies also acknowledge that 540 jurisdictional determinations have been made under the 2015 Rule. Effectively reviewing those determinations will be extremely time-consuming and should merit more time than a 30-day comment period.

The current 30-day timeframe to submit comments on the supplemental repeal proposal falls far short of even the bare minimum 60-day comment period set forth in Executive Order 12866. Given the agencies’ numerous requests for detailed feedback during this comment period, a minimum of a 90-day comment period should be required. A final rule repealing the Clean Water Rule, and approving the agencies’ new rationale for that repeal, would have significant ramifications our nation’s waters and for the effective and efficient implementation and enforcement of the Clean Water Act. For a rule of this nature, the agencies must provide a much longer time period for the public to make their voices heard.

This supplemental proposal to repeal the Clean Water Rule must be subject to the same rigorous review applied to the Clean Water Rule itself. The 2015 Clean Water Rule was developed over many years, with over 200 days of public comment and 400 stakeholder meetings. Yet the agencies propose to eliminate the Rule with virtually no public process. In view of the significant ramifications of this supplemental proposal to repeal the Clean Water Rule, as well as the significant new arguments and information set forth for public analysis and comment, the public comment period for this supplemental proposal should be at least 90 days from the publication of the proposal in the federal register *and* the public posting of all relevant supporting documents.

Respectfully submitted,

American Fisheries Society

American Fly Fishing Trade Association

Backcountry Hunters & Anglers

Bass Anglers Sportsman Society (B.A.S.S.)

Fly Fishers International

Izaak Walton League of America

National Wildlife Federation

Theodore Roosevelt Conservation Partnership

Trout Unlimited