

ARKANSAS CHAPTER
of
The Wildlife Society

April 15, 2019

The Honorable Andrew Wheeler, Administrator
U.S. Environmental Protection Agency
Office of the Administrator: 1101A
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

Via regulations.gov: Docket ID No. EPA-HQ-OW-2018-0149

Dear Administrator Wheeler and Assistant Secretary James:

On behalf of the members of the Arkansas Chapter of The Wildlife Society, I respectfully submit the following comments in response to the proposed rule, “Revised Definition of ‘Waters of the United States,” published in the Federal Register on February 14, 2019.

The Arkansas Chapter of The Wildlife Society (AR-TWS), a state-based chapter of the parent organization (The Wildlife Society) represents the professional wildlife biologists, managers, and educators of Arkansas who are dedicated to excellence in wildlife stewardship. The chapter’s mission is to inspire, empower, and enable wildlife professionals to sustain wildlife populations and habitat through science-based management and conservation.

Representatives of AR-TWS have read the proposed rule in its entirety and our chapter would like to refer you to the combined comments of our national parent organization (The Wildlife Society) and the American Fisheries Society (AFS) and formally endorse their comments as accurately reflective of the concerns and position of the AR-TWS. Thus, the **position of the Arkansas Chapter of The Wildlife Society is to strongly oppose the proposed rule for the reasons laid out in the referenced combined comments of TWS and AFS.**

As stated in the referenced comments, “we greatly value the country’s clean waters and healthy aquatic ecosystems as they are critical to maintaining fisheries, ecosystem services, and biodiversity. The limited protections proposed for our nation’s waters under the proposed rule threaten fish, fisheries, and the terrestrial wildlife and human populations that rely on them, and places the highly valued ecosystem services that are derived from these systems in great peril. [We] fully support the definition of Waters of the U.S. (WOTUS) in the 2015 Clean Water Rule (2015 CWR), which was overwhelmingly supported by peer-reviewed science. The EPA’s Office of Research and Development prepared a comprehensive scientific report to accompany the 2015 CWR, the “Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence” (herein the “Connectivity

Report” but which was described in the 2015 CWR as the “Science Report”). The Connectivity Report synthesized more than 1,200 peer-reviewed publications and provided the technical basis for the 2015 CWR. The 2015 CWR also underwent an extensive stakeholder review process. Since the completion of the Connectivity Report, substantial additional literature has emerged that reaffirms the report and the 2015 CWR [...] The 2015 CWR reflects the best available science in regard to connectivity, but unfortunately, the proposed rule is unsupported by peer-reviewed science. It was developed without the critical scientific analysis that supported the 2015 CWR rulemaking process and it has not been subjected to a rigorous independent review process. Further, the proposed Rule fails to align with the original intent of the Clean Water Act to ‘to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.’ This can only be achieved if the definition of WOTUS is grounded in sound science and recognizes all five parameters of connectivity (hydrologic, chemical, physical, biological, ecological), as documented in the Connectivity Report (EPA 2015).”

The proposed rule would significantly and detrimentally impact the fish and wildlife resources of the State of Arkansas as a result of withdrawing longstanding Clean Water Act (CWA) protections from a significant percentage of our remaining wetlands and many thousands of miles of streams. Wetland status and trends reports of the U.S. Fish and Wildlife Service have documented that Arkansas has already lost more of its original wetland acres than any other inland state in the nation. The withdrawal of CWA protections from many of the remaining wetlands would without question result in the loss of many more wetland acres. This loss of habitat not only directly results in negative impacts to our fish and wildlife populations, but also affects jobs and the economy of the state. Outdoors- and wildlife-related recreation is a large and significant industry in Arkansas, and much of this recreation depends on the wildlife habitat provided by wetlands and the other waters that sustain our wildlife populations.

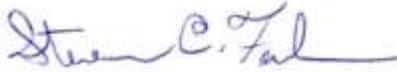
In addition, the Ozarks are rich in small ephemeral and intermittent streams and related waterbodies that are critical for providing the water and associated habitats needed by our wildlife. Many thousands of miles of these streams would also no longer be protected by the CWA if the proposed rule were to go into effect. The withdrawal of federal CWA protections and the inevitable detrimental impacts to these aquatic habitats would result in a reduced ability of these waters and associated habitats to maintain wildlife populations.

AR-TWS has some common membership with the Friends of the North Fork and White Rivers, Inc., and we also endorse and support the more detailed comments submitted by that organization (see attached). Their conclusion expresses well the position of the AR-TWS, and we quote them below to summarize our basic position that the 2015 rule should continue to be used and the proposed rule be withdrawn.

“Although an exhaustive response to the proposed rule and its solicitations for comments on details is not possible given the short comment period provided, [...] ***we conclude that the proposed rule should be withdrawn and we recommend the alternative of continuing to defend and use the existing 2015 rule to guide interpretation of “waters of the U.S.” for the purpose of Clean Water Act administration.*** Details of our reasoning are outlined in our comments above, but the two overriding reasons are that:

- the 2015 rule much more closely adheres to the hydrologic and other sciences upon which that rule was based and that must be at the heart of achieving the intent of Congress and the purposes of the CWA; and,
- the 2015 rule much more closely aligns with the most recent findings of a majority of the Supreme Court justices (Kennedy and the four in dissent) in *Rapanos* with respect to delineating the waters of the United States that should be jurisdictional under the Clean Water Act based on the science and the law.”

Respectfully submitted,

A handwritten signature in blue ink that reads "Steven C. Fowler". The signature is written in a cursive style with a long horizontal flourish at the end.

Steven Fowler
President, Arkansas Chapter of The Wildlife Society
Phone: 501-201-0486