

December 5, 2014

Water Docket  
Environmental Protection Agency  
Mail Code 2822T  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

**Re: Definition of “Waters of the United States” Under the Clean Water Act; Proposed Rule. Docket ID No. EPA-HQ-OW-2011-0880.**

To Whom It May Concern:

The New England Water Environment Association (NEWEA) is a not-for-profit technical and educational organization that promotes the protection and enhancement of our water environment. Comprised of the six New England states, NEWEA serves over 2,000 members and is a member association of the Water Environment Federation (WEF), an internationally renowned organization. NEWEA’s mission is to promote education and collaboration while advancing knowledge, innovation and sound public policy for the protection of the water environment and our quality of life.

NEWEA is pleased that EPA is taking the necessary steps to enhance protection of the nation’s aquatic resources through the proposed Waters of the United States rule. In particular, our interest lies in more efficiently and effectively improving and preserving wetlands, their aquatic life, and water quality. In this letter, we wish to offer support for the proposed rule, as well as provide specific comments on the rule. The New England states have long boasted strong wetland protection programs to ensure these vital ecosystems are not damaged or lost. Implementation of the proposed rule would provide a similar high level of wetlands protection seen in New England for the entire country.

One benefit of strong wetlands laws and regulations is the protection of headwater streams. Amounting to 53 percent of the total stream miles in the continental United States, headwater streams are the lifeblood of our nation’s water bodies. Despite being the smallest part of river and stream networks, headwater streams play a critical role in trapping floodwaters, recharging groundwater supplies, removing pollution, providing fish and wildlife habitat, and aiding in the overall sustainability of downstream river, lake, and bay health. The health and the vitality of these headwater streams directly affect the water quality of subsequent downstream water bodies, further heightening the gravity of this rule to more effectively define and protect these areas.

Furthermore, in recent years, the environmental and economic value of wetlands has become even more apparent and cannot be underestimated. The functions of wetlands and the immense contributions to the communities in which they are located are critical. As communities nationwide are subjected to the increasing strength of storms, it is the ability of the wetlands to act as water storage areas and filtration systems that ameliorate the resulting financial and physical devastation of these disasters.

The transparency, predictability, and consistency the proposed rule aims to provide are essential for ensuring protection of our nation’s aquatic resources and making the process of identifying “waters of the United States” less complicated and more efficient. The clarity that we expect the final rule to provide in identifying waters as jurisdictional only further enhances the ability of regulators to expeditiously determine preservation and enforcement actions. Supported by science and consistent with the law, this rule will further endorse water quality and conservation, ultimately enhancing the quality of life for the citizens of this nation.

In addition to offering our support on the proposed rule, we wish to offer the following specific technical comments regarding additional ways to provide increased clarification and reduce complication. In regards to §328.3(b), to exclude those ditches that are excavated and drain wholly within uplands, it would be more clear to exclude these ditches if they exhibit more limited hydrology. This would be similar to classification for “areas subject to storm flowage,” such that (b)(3) could potentially be worded as follows: “Ditches that are excavated wholly in uplands, drain only uplands, and that carry flow only during storm events or snow melt.” This would reduce concerns over flow that is “less than perennial,” but is frequent enough to provide flow that regularly contributes and could carry pollutants to “waters of the United States.”

Furthermore, §328.3(b)(5) references seven types of “features” that are not waters of the United States. Many stormwater treatment BMP and green infrastructure features are *similar to* the seven listed features, but are not specifically listed. Structures like rain gardens, gravel wetlands, vegetated swales, etc. should be listed as an eighth feature under this section. Alternately, the “waste treatment system” section in (b)(1) could be revised to include them.

Additionally, there are concerns that the definition of “floodplains” could create unintended complications. The definition, “sediment deposited by water under present climatic conditions,” would create additional fieldwork and would not be verifiable via remote sensing techniques. The utilization of flood maps to establish the boundaries of floodplains would streamline the process and create less uncertainty. It is already potentially impossible to differentiate such sediment deposition from that deposited from either overland flow or stormwater discharge.

In regards to whether headwater wetlands should be classified as “tributaries,” or rather, as “adjacent wetlands,” it is advised that such wetlands should be defined as adjacent, and thus still having a significant nexus to waters of the United States by virtue of being connected with tributaries. The term tributary by many is considered to mean moving water and could create confusion for regulated communities. By keeping headwater wetlands and other similar waterbodies classified as “adjacent,” with established standards for showing a significant nexus to another water of the United States, it is likely more easily explained to and understood by the regulated public.

We would also like to suggest that it be clarified in the proposed rule that enforcement of long term operation and maintenance of stormwater BMP features should continue to be through the Clean Water Act program that created them, in this case the NPDES Phase II (MS4) program, rather than through a separate parallel WOTUS jurisdiction.

Due to the great need to improve and maintain water quality and resources nationwide, we strongly encourage EPA to move forward with the clarifications requested in this letter and to continue to finalize and implement the proposed rule in an expeditious manner. It is essential that these steps are taken to provide increased clarity surrounding this complicated issue. Please do not hesitate to contact me for additional information regarding this matter.

Sincerely,

Bradley Moore  
President

Mary Barry  
Executive Director