



## Statement of the U.S. Chamber of Commerce

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**FOR:** Statement for the Record on the U.S. Environmental Protection Agency's and U.S. Army Corps of Engineers' Proposal, "Revised Definition of 'Waters of the United States,'" 84 Fed. Reg. 4,154 (Feb. 14, 2019)

**TO:** U.S. Environmental Protection Agency  
U.S. Army Corps of Engineers

**BY:** Jake Tyner,  
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The Chamber's mission is to advance human progress through an economic, political, and social system based on individual freedom, incentive, initiative, opportunity, and responsibility.

Statement Prepared for the U.S. Environmental Protection Agency and U.S. Army Corps of Engineers Public Hearing on, “Revised Definition of ‘Waters of the United States,’” 84 Fed. Reg. 4,154 (Feb. 14, 2018)

Kansas City, Kansas  
February 28, 2019

Jake Tyner  
U.S. Chamber of Commerce

Good Morning. My name is Jake Tyner and I am here on behalf of the U.S. Chamber of Commerce. The Chamber is the world’s largest business federation, representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber appreciates the opportunity to testify today in support of the U.S. Environmental Protection Agency’s and U.S. Army Corps of Engineers’ (the Agencies) proposal to revise the definition of “Waters of the United States,” known as “WOTUS,” under the Clean Water Act.<sup>1</sup>

Uncertainty has long surrounded the scope of federal jurisdiction over WOTUS under the Clean Water Act. Over the course of the last 20 years, the definition of what constitutes a “water of the United States” has been the topic of much debate in all three branches of government. Four years ago, the Agencies attempted to address this uncertainty and finalized a definition of “waters of the United States” that exceeded the Agencies’ statutory authority under the Clean Water Act.<sup>2</sup> The 2015 WOTUS rule failed to adhere to the limits set forth by Congress in the Clean Water Act that have been recognized by the Supreme Court and, instead, the Agencies relied on an unreasonably complex web of economic and scientific data as justification for the burdensome and legally-flawed rule. The

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<sup>1</sup> Revised Definition of “Waters of the United States;” 84 Fed. Reg. 4,154 (Feb. 14, 2019) (to be codified at 33 C.F.R. pt. 328; 40 C.F.R. pts. 110, 112, 116, 117, 122, 230, 232, 300, 302, and 401).

<sup>2</sup> Definition of “Waters of the United States” Under the Clean Water Act, 80 Fed. Reg. 37,054 (June 29, 2015).

Chamber and its membership recognized these flaws in comments filed in 2014 on the proposed rule, and opposed the overly-expansive 2015 WOTUS rule.<sup>3</sup>

The Chamber has been encouraged by the actions that the current Administration has taken to properly define “waters of the United States” or “WOTUS” and provide the business community and state regulators with the clarity they need to implement and operate within the Clean Water Act. The Chamber will be working to encourage extensive comment on this proposal to ensure that the administrative record is well-informed.

Unfortunately, regulatory uncertainty surrounding the definition of WOTUS still exists. After the 2015 WOTUS rule was finalized by the Agencies, the regulated community subsequently challenged its provisions in venues across the country. As a result of this litigation, the 2015 WOTUS rule is being implemented in 22 states, the District of Columbia, and U.S. territories, while the regulations defining WOTUS that pre-dated the 2015 WOTUS rule are in effect in the 28 other states.<sup>4</sup> This split illustrates the need for a definition of WOTUS that truly reflects the scope of federal authority under the Clean Water Act.

The Agencies’ proposed revisions to the definition of WOTUS will provide the regulated and agricultural communities with the regulatory certainty and clarity they need to continue operations and invest in new operations that are subject to the Clean Water Act’s requirements. Stakeholders in all sectors across the country rely on this regulatory certainty

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<sup>3</sup> See U.S. Chamber of Commerce et al., Comments on Proposed Rule: Definition of “Waters of the United States” Under the Clean Water Act (Nov. 12, 2014), available at [https://www.uschamber.com/sites/default/files/11.12.14-\\_multiorganization\\_comments\\_to\\_epa\\_and\\_usace\\_on\\_proposed\\_rule\\_definition\\_of\\_waters\\_of\\_the\\_united\\_states.pdf](https://www.uschamber.com/sites/default/files/11.12.14-_multiorganization_comments_to_epa_and_usace_on_proposed_rule_definition_of_waters_of_the_united_states.pdf).

<sup>4</sup> See U.S. Env'tl. Prot. Agency, *Definition of "Waters of the United States": Rule Status and Litigation Update* (last accessed Feb. 15, 2019), available at <https://www.epa.gov/wotus-rule/definition-waters-united-states-rule-status-and-litigation-update>.

and clarity to ensure that projects critical to our nation are completed in a timely fashion and that their day-to-day business operations are not unduly hindered by regulatory uncertainties.

The Chamber finds that the proposed revisions properly adhere to the limits set forth by Congress and the Supreme Court, reflect the principles of federalism that serve as the fundamental basis of the Clean Water Act, and provide the “bright lines” needed to identify jurisdictional waters. The proposed revisions address important topics such as the difference between ephemeral and intermittent streams, and the extent that ditches and tributaries should be federally regulated. The Chamber is encouraged by the Agencies’ decision to address features that *do not* constitute WOTUS. The proposed revisions, once finalized, will empower citizens and businesses that represent our nation’s communities to continue to protect their own water resources without the need to hire water and other subject matter experts to tell them how the Clean Water Act works.

Thank you for your time and consideration today and we look forward to continue working with the Agencies on this important manner.