



STATE OF ARKANSAS  
ASA HUTCHINSON  
GOVERNOR

June 16, 2017

Honorable Scott Pruitt  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington D.C. 20460

Dear Administrator Pruitt:

Thank you for your May 8, 2017 letter seeking comments from the State of Arkansas regarding the proposed revision to the definition of waters of the United States. I am pleased to have this opportunity to provide feedback to you and your team with the Environmental Protection Agency (EPA) regarding this rule. I am also pleased by President Trump's decision to support our economy and the well-being of the American people by rolling back the overreach of the 2015 Clean Water Rule.

As Governor, I have sought clear, efficient regulations that support economic growth in our state through the removal of burdensome requirements. In doing so, it has allowed regulated entities to operate with certainty and ensure that we carry out our stewardship of the environment in ways beneficial to all of our citizens. The EPA has initiated a strategy that reflects these objectives. First, withdrawing the 2015 rule and reinstating the previous regulatory definition during the development of a new rule provides clarity and avoids dependence on the potential outcome of pending litigation. Second, developing a new rule will enable the EPA to establish definitions and provide clarification to reflect appropriate federal jurisdiction.

I commend you and your agency for your efforts to engage the states early in this process and for placing such a high value on their participation. Your commitment to cooperative federalism provides a crucial starting point for promulgating such an important rule and signifies a welcome departure from the coercive treatment of past administrations. I have tasked our state agencies with embracing these opportunities, and know you will find a willing partner when you reach out.

The President's Executive Order correctly identified Justice Scalia's opinion in *Rapanos v. United States* as a sound guide for developing a definition for waters of the

United States. Justice Scalia recognized the need for a limitation to the scope of federal jurisdiction in order to avoid subjecting activities and significant portions of the economy to unnecessary federal permitting requirements. I believe it is important to not lose sight of this central theme as the EPA seeks to add further detail to key concepts Justice Scalia identified, such as “relatively permanent waters” and “continuous surface connection.” The EPA can build upon these key concepts to provide greater detail in a way that reflects Justice Scalia’s intent and carries out the charge of the Executive Order.

I also urge you to continue to build on the success of this initial federalism outreach by continuing this engagement through each step of this rulemaking process. I have directed our state agencies to review Justice Scalia’s plurality opinion and consider the implications for Arkansas. Once developed, we will provide information to help inform your decision. As your team considers particular definitions, we welcome the opportunity to provide further insights into the potential implications of suggested language.

Moreover, this idea of limited federal jurisdiction is strongly supported through federalism. The State of Arkansas currently has a broad statutory definition of “waters of the state” that provides ample jurisdiction to carry out its environmental regulatory programs. With such authority already in place on the state level, a change to federal jurisdiction will not result in waters losing environmental protections. Instead, a new rule would avoid the possibility of duplicative regulatory regimes. In addition, a new, clear federal rule will empower states to make decisions about the best way to carry out their own efforts as stewards of their environmental responsibilities with confidence that they will not be usurped or duplicated by federal overreach.

Finally, while the concept of federal jurisdiction is inherently a legal question, any definitions that result from this rulemaking need to be informed by science. Likewise, this effort will benefit from a robust administrative record. Given the importance of this rule, we believe it is important to see this process through. Arkansas supports the Administration in this effort and believes your agency is on the right path.

Sincerely,



Asa Hutchinson