

September 12, 2014

The Honorable Gina McCarthy  
Administrator  
US Environmental Protection Agency

The Honorable Jo-Ellen Darcy  
Assistant Secretary of the Army  
Department of the Army, Civil Works

Water Docket  
Environmental Protection Agency  
Mail Code 2822T  
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Email to: [ow-docket@epa.gov](mailto:ow-docket@epa.gov)

**Re: Clean Water Rule Docket ID # EPA-HQ-OW-2011-0880**

Dear Administrator McCarthy and Assistant Secretary Darcy:

The undersigned forty-five (45) organizations and businesses working in Florida appreciate the opportunity to comment on the US Environmental Protection Agency (EPA) and US Army Corps of Engineers (Corps) proposed *Definition of "Waters of the United States Under the Clean Water Act"* to clarify which streams, wetlands and other waters are protected under the Clean Water Act. This rule is long overdue. Many of our organizations and businesses have spent more than a decade advocating to restore Clean Water Act protections to all wetlands and tributary streams, as Congress originally intended when it passed the landmark Act in 1972.

**Our organizations and businesses support the proposed rule for the clear protections it restores to headwaters, intermittent and ephemeral streams, and to wetlands and other waters located near or within the floodplain of these tributaries. We urge the Agencies to strengthen the final rule by further clarifying that important wetlands and other waters located beyond floodplains are also categorically protected under the Clean Water Act.**

For its first thirty years, the Clean Water Act safeguarded nearly all of our rivers, streams, lakes and wetlands, in order to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Despite the law's dramatic progress at combating water pollution nationally, federal policy changes in the last decade have left many small streams and "isolated" wetlands vulnerable to pollution or destruction. These federal policy changes have called into question Clean Water Act protections for nearly 60% of our nation's stream miles and at least 20 million acres of wetlands in the continental United States.

Millions of small streams, springs, and wetlands provide the flow to our most treasured American rivers, including the Suwanee River and St. Johns River, both of which are important sources of recreation and wildlife habitat. Similarly, streams and wetlands form the Kissimmee Basin and the Kissimmee River, which flow into Lake Okeechobee and are the key source of water for the Everglades ecosystem. Florida's over 900 springs also offer significant recreational opportunities for visitors and residents and several million dollars to the local economy each year. The proposed rule will help clarify that the small streams, springs, and wetlands flowing into these water bodies are covered as long as they meet the definitions under

the rule. This will eliminate the need for a case-specific analysis and room for debate that comes at the cost of our water quality, public health, and economy.

The Florida Department of Environmental Protection has also estimated that over 800,000 acres in the Panhandle region alone are so-called “isolated” waters, which do not have clear Clean Water Act protections. These shallow, depressional wetlands, including cypress domes, need to be protected to support critical wildlife habitat and recreational opportunities for future generations.

If we do not protect these Florida water bodies, we cannot preserve and restore the lakes, rivers and bays on which communities and local economies depend. Leaving critical water resources vulnerable jeopardizes jobs and revenue for businesses that depend on clean water, including outdoor activities like angling and water-based recreation.

**We support the Agencies’ proposal to define all tributaries as “waters of the United States,” including headwaters and small streams that may only flow seasonally.**

Headwater streams provide most of the flow to downstream streams and rivers, and make up 29 percent of Florida’s stream miles. Intermittent and ephemeral streams may only flow during parts of the year, but they support water quality in downstream waters by filtering pollutants and capturing nutrients and make up 12 percent of Florida’s stream miles.

These streams are also critical habitat for fish and other aquatic species. Headwater and seasonal streams also feed the drinking water sources of 117 million Americans. Clarifying that all tributary streams, regardless of size or frequency of flow are covered under the Clean Water Act will restore protections to 580 miles of headwater, intermittent and ephemeral streams in Florida that supply drinking water sources.

In addition, we support the Agencies’ definition of tributary and strongly agree that ditches should be defined as “waters of the U.S.” where they function as tributaries. There is sufficient scientific evidence that some ditches function as tributaries moving water and pollutants downstream. In those cases protection is important.

**We support the Agencies’ determination that all adjacent wetlands are “Waters of the U.S.”** Wetlands perform critical functions that support aquatic life, clean drinking water and safeguard communities from floods. Wetlands protect the water quality of entire watersheds by filtering pollutants. They also store floodwaters, reducing flood flows that can threaten property and infrastructure. Wetlands also provide essential fish and wildlife habitat that support robust outdoor recreation and tourism. When wetlands are polluted, dredged or filled, these benefits are lost.

In order to protect wetlands and other resources, we also urge the Agencies to:

- 1. Categorically define certain non-adjacent “other waters” as “Waters of the United States” and identify additional subcategories of waters that are jurisdictional, rather than requiring case-by-case determinations.** Wetlands and other waters, even so-called isolated ones that are not adjacent to tributaries, provide many of the same natural benefits as adjacent waters located within floodplains. In fact, it is because of their placement outside of floodplains that they function as “sinks” to capture and filter pollutants and store floodwaters, protecting the physical, biological and chemical integrity of downstream waters.

- 2. Provide for new science by not categorically excluding any of the “other waters,” and establishing a process by which evolving science can inform jurisdictional decisions in the future.** “Other waters” that cannot be defined as jurisdictional in the final rule should still be assessed on a case-by-case basis and provisions made for categorically including them as “Waters of the United States” if and when evolving science indicates that this is appropriate.

It is particularly critical for Floridians that the Agencies implement a strong rule to protect our economy and environment. With a strong tourism-based economy, Florida depends on healthy streams and wetlands in order to sustain fish and wildlife for its vibrant recreational industry. According to VISIT FLORIDA’s 2012-2013 Annual Report, 91.5 million out-of-state and international visitors and 20.3 million in-state travelers participated in tourism in Florida in 2012. Visitors spent a total of \$71.8 billion into Florida’s economy and over 1 million Floridians were directly employed by tourism in 2012. According to reports by the U.S. Fish and Wildlife Service, Florida residents and nonresidents spent \$9 billion on wildlife recreation, including \$4.6 billion on fishing, in 2011. More than 6.4 million Floridians participated in wildlife recreation activities in 2011. Floridians depend on streams and wetlands to be clean and desirable for visitors in order to support the thriving recreational tourism industry and economy.

The Agencies’ commonsense proposal is based on the best scientific understanding of how streams and wetlands affect downstream water quality. The public benefits of the rule – in the form of flood protection, filtering pollution, providing wildlife habitat, supporting outdoor recreation and recharging groundwater – far outweigh the costs. When finalized, this rule will provide the regulatory assurance that has been absent for over a decade, eliminate permit confusion and delay, and better protect the critical water resources on which our communities depend.

**We urge the Agencies to swiftly finalize a rule to clarify that all waters with a “significant nexus” to downstream waters are clearly protected under the Clean Water Act.**

We thank the Agencies for their efforts to protect these waters and look forward to working with them to finalize and implement a strong *“Definition of Waters of the United States under the Clean Water Act.”*

Sincerely,

Undersigned Organizations and Businesses

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