



May 30, 2014

Donna Downing  
Jurisdiction Team Leader, Wetlands Division  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Stacey Jensen  
Regulatory Community of Practice  
U.S. Army Corps of Engineers  
441 G Street, NW  
Washington, DC 20314

Attention: Docket ID No. EPA-HQ-OW-2011-0880

**Re: Request for Extension of Comment Period on EPA and Corps Proposed Rule Defining Waters of the United States” Under the Clean Water Act, Docket ID No. EPA-HQ-OW-2011-0880**

Dear Ms. Downing and Ms. Jensen:

The undersigned organizations respectfully request an extension of the public comment period, on the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers’ (Corps) Proposed Rule Defining “Waters of the United States” Under the Clean Water Act (CWA), 76 Fed. Reg. 22,188 (Apr. 21, 2014), to either 90 days beyond the current comment deadline, or 90 days beyond the EPA’s release of the final connectivity report, whichever is later.

We represent a large cross-section of California’s public and private agriculture, construction, real estate, mining, infrastructure, and manufacturing sectors, all of which are vital to our state’s economic health. Projects and operations in these sectors are regulated in one manner or another by the CWA. As such, the scope of jurisdiction under the CWA is of fundamental importance to the members of our organizations. Given the significance of the proposed rule, the public should

be permitted the opportunity to thoroughly review and comment upon EPA's proposed rule as well as its supporting documentation, including its lengthy Appendices (Appendix A – Scientific Evidence, Appendix B – Legal Analysis), Economic Analysis, and Draft Report on the “Connectivity of Streams and Wetlands to Downstream Waters.”

### Scientific Analysis

EPA's proposed rule purports to rely on the scientific conclusions of EPA's draft connectivity report, which is currently under review by the Science Advisory Board (SAB). Indeed, the SAB Panel's discussions on recent public teleconferences demonstrate that the SAB Panel is still grappling with the proper criteria for determining under which circumstances a connection amounts to a significant nexus for the purposes of establishing CWA jurisdiction.

Moreover, in recent statements, EPA has acknowledged that the SAB and the agency are still considering options for review of the adequacy of the science to support the proposed rule. Given the ongoing SAB Panel review, and that EPA has not yet determined how to review the adequacy of the science to support the proposed rule, commenters should have at least 90 days from the time when EPA completes its review of the science or issues a final connectivity report to comment on the proposed rule.

### Economic Analysis

After an initial review of EPA's Economic Analysis for the proposed waters of the United States rule, our organizations believe the analysis fails to provide a reasonable assessment of the proposed rule's costs and benefits. The Economic Analysis suggests that the proposed rule will increase overall jurisdiction under the CWA by only 2.7%. But EPA arrives at this percentage using a flawed methodology that only accounts for the Section 404 program, relies on figures extrapolated from statistics from FY 2009-2010 (a period of extremely low construction activity), and fails to account for the universe of waters and features for which landowners have not previously sought CWA permits. Relying on this percentage throughout the Economic Analysis, EPA systematically and hugely underestimates the impact of the proposed rule's new definition of “waters of the United States.”

As a result of the incompleteness and inaccuracies of EPA's Economic Report, it is necessary for our organizations to develop our own economic analyses to project the impacts of the proposed rule on our members. Additional time is required for commenters to gather the necessary data and develop sound economic methodology to properly assess the proposed rule's likely increase in jurisdiction as well as its projected costs and benefits. The comment period should be extended so that the public can adequately assess the economic implications of the proposed rule.

### Scope of Impact

The proposed rule will replace the definition of “navigable waters” and “waters of the United States” in the regulations for all CWA programs, including section 404 discharges of dredge or fill material, the section 402 National Pollutant Discharge Elimination System (NPDES) permit program, the section 401 state water quality certification process, and section 303 water quality standards and total maximum daily load (TMDL) programs. EPA and the Corps (together, the

agencies) have not truly considered the complicated implications that this proposed rule will have for the various CWA programs.

Although EPA's Economic Analysis purports to analyze the costs of importing this "waters of the United States" definition into other CWA programs, the analysis largely focuses on the section 404 program and essentially concludes that there will be no additional costs for other CWA programs. This cursory analysis is inadequate. The agencies have not considered, for example, that many stormwater ditches and features may now meet the definition of "waters of the United States," thereby requiring the features to achieve water quality standards, including numeric effluent limitations. The agencies have not looked at how this type of change may create confusion over whether an NDPES permit is required for certain features or may place an increased burden on states administering stormwater programs and setting water quality standards. EPA and the Corps have not truly considered how the proposed rule may affect the states implementing the various CWA programs or the stakeholders regulated by these programs. Nor have the agencies analyzed how the proposed definition of "waters of the United States" will affect their own administration of each of the CWA regulatory programs.

Because the agencies have not fulfilled their obligation to consider the implications to the various CWA programs, the burden falls on our organizations to address these implications in comments so that these issues are fully addressed by the agencies during the rulemaking process. Analyzing these implications is complicated, will require additional time, and, therefore, warrants an extension of the comment period.

Our organizations believe that given the scope and complexity of the proposed rule and its supporting documents, a 90-day comment period is simply insufficient. In light of the many important issues addressed by the proposed rule and the impact the rule will have on our members, it is imperative that EPA and the Corps allow all interested parties to have sufficient time to provide meaningful and fully developed comments. The undersigned organizations therefore request that the comment period be extended to either 90 days beyond the current comment deadline, or 90 days beyond EPA's release of the final connectivity report, whichever is later.

Thank you for considering our request.

Respectfully,



Brad Diede  
American Council of Engineering Companies of California



John Coleman  
Bay Planning Coalition



Shanda Beltran  
Building Industry Association of Southern California &  
Building Industry Legal Defense Foundation




Jelisaveta Gavric  
California Association of REALTORS®



Brenda Coleman  
California Association of Winegrape Growers



Richard Lyon  
California Building Industry Association



Rex S. Hime  
California Business Properties Association



Valerie Nera  
California Chamber of Commerce



Gary Hambly  
California Construction and Industrial Materials Association



Kari Fisher  
California Farm Bureau Federation



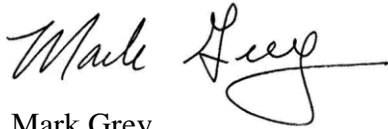
David Bischel  
California Forestry Association



Trudi Hughes  
California League of Food Processors



Karen Keene  
California State Association of Counties



Mark Grey  
Construction Industry Coalition on Water Quality



Paul Cook  
Irvine Ranch Water District



Staci Heaton  
Rural County Representatives of California



Kevin Buchan  
Western States Petroleum Association