Alaska Oil and Gas Association

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Submitted electronically to:
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Subject: Impacts of the Proposed Waters of the United States Rule on State and Local Governments and Stakeholders

Good morning, my name is Kara Moriarty and I serve as the President and CEO of the Alaska Oil and Gas Association (AOGA). AOGA is a professional trade association whose mission is to foster the long-term viability of the oil and gas industry for the benefit of all Alaskans. AOGA's membership includes 14 companies representing the industry in Alaska, which have state and federal interests, both onshore and offshore. I greatly appreciate the opportunity to discuss the proposed Waters of the United States Rule and the negative consequences that will inevitably follow if the EPA continues down this path.

As context for my testimony, Alaska has 63% of the nation's jurisdictional waters and represents 20% of the U.S. land mass. I cannot emphasize enough that federal rules of the nature proposed by EPA in this instance have a huge and disproportionate impact on Alaskan public, private and native interests. Yet EPA has given no attention and attributed no significance of which I am aware to the unique and profound significance of changes in Clean Water Act jurisdiction in Alaska.

The proposed rule would serve to dramatically, and we believe illegally, expand Clean Water Act jurisdiction in Alaska. Enacted in 1972, the Clean Water Act endeavored to create a workable partnership between the states and federal agencies to effectively manage identified pollution sources. The proposed rule represents an unfortunate revision to an

agreement Alaskans have long honored. The EPA has repeatedly suggested that the Rule is intended to simply provide "clarity" and reduce "uncertainty." However, as outlined in my testimony, the rule has had the opposite effect, causing members of the regulated community, ranging from municipalities and boroughs to the agricultural, mining, and oil and gas industries, to have great and grave concerns that this rule will result in significant regulatory burdens by causing water features, such as canals and ditches with only remote and speculative hydrological connections to traditionally navigable and interstate waters, to become "jurisdictional" under the Clean Water Act for the first time. Despite the EPA's statements to the contrary, I hope that each and every member of the regulated community appreciates that the rule represents a statement by the EPA that it intends to exercise authority under the Clean Water Act on virtually any water feature with any tentative or hypothetical connection, directly or indirectly, to a traditionally navigable or interstate water.

The Supreme Court of the United States has, time and again, clearly held that there are limits to federal jurisdiction under the Clean Water Act, ardently rejecting the notion than any remote hydrological connection effectively trumps state jurisdiction. The Court has repeatedly emphasized the need for the EPA to establish that a body of water constitutes a "navigable waterway," as defined under the Clean Water Act, to effectively trigger federal jurisdiction. Despite that guidance, the proposed rule will extend coverage to many features that are remote and/or carry only minor volumes, including dry streambeds that only occasionally fill with water and small ponds and water holes. The proposed rule provisions read together serve to provide no meaningful limit to federal jurisdiction. Understandably, all Alaskans should be concerned that the EPA's proposed rule would allow it to regulate far more bodies of water than it attempted to regulate prior to being rebuked by successive Supreme Court decisions. I also am concerned how the EPA could, in good faith, construe Supreme Court decisions reigning in federal overreach as inviting a dramatic and unprecedented expansion of EPA authority.

Moving past issues of legality, my primary concern remains that the proposed rule will expand regulatory gridlock and uncertainty by subjecting even more activities to CWA permitting requirements, NEPA analyses, mitigation requirements, and citizen lawsuits challenging the applications of new terms and provisions. Naturally, these impacts will be felt by the entire regulated community, and will result in an exponential increase in the costs of projects large and small. Nevertheless, the EPA has largely ignored the potential adverse effect on economic activity and job creation, by relying on its highly flawed economic analysis for the proposed rule. Based on the EPA's calculations, the total estimated cost of the proposed action ranges from $133.7 million to $231 million. However, according to Dr. David Sunding, a professor of agricultural and resource economics at the University of California, Berkeley, the EPA's "entire analysis is fraught with uncertainty" and is not an accurate evaluation of the actual cost of implementing the rule. Furthermore, Dr. Sunding stated that "the errors, omissions, and lack of transparency

in [the] EPA's study are so severe [that it renders it] virtually meaningless." In reality, private and public sectors spend approximately $1.7 billion a year to obtain Section 404 permits. It takes over two years to obtain a 404 permit, with an average cost of almost $300,000. It is impossible to understate how significantly the proposed rule will effect operations in Alaska, through both increased delays and increased costs.

Finally, returning to my original point, despite the obvious disproportionate and adverse effects in Alaska of a dramatic expansion of Clean Water Act regulation, the EPA has failed to include adequate analysis of how the proposed rule will affect Alaska. The EPA should be mandated to consider Alaska's unique circumstances, such as the fact that less than one percent of Alaska is held in conventional private ownership and that federal agencies currently claim ownership and jurisdiction of 222 million acres of Alaska, or 61 percent of the state. I encourage this Committee to consider the profound and adverse impacts this rule will have on Alaska and its citizens. It is an ill-conceived rule that serves only to frustrate state sovereignty and local regulations.

Sincerely,

Kara Moriarty

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