

Thank you, Senator Sullivan, for the opportunity to testify on “Waters of the US.”

My name is Kathie Wasserman. I am Executive Director of the Alaska Municipal League; a membership League made up of all 164 cities and boroughs throughout the State of Alaska.

Cities and boroughs throughout the State of Alaska are quite diverse. They vary in the types of natural resources that they contain, their social and political environment, their culture, their economies and, to a degree, the powers they are allowed under Alaska state law. Many of the duties that Alaska’s municipalities have, are required or mandated by State law. They have varying degrees of authority with regards to roads, bridges, property taxes, schools, record keeping, elections, hospitals, economic development, land use planning and zoning and air and water quality.

Cities and boroughs own and maintain a wide variety of public safety infrastructure that would be impacted by the proposed rule, including roads and roadside ditches, bridges, storm water systems, maintenance projects, drinking water facilities and infrastructure that was never designed to meet new CWA requirements. Cities and boroughs are responsible for a large percentage of road maintenance, such as snow plowing, debris clean-up, and surface repairs. Many of these small roads are in rural areas. Any additional cost burdens are challenging to these small governments. As Alaska’s municipalities realize cuts in State Revenue Sharing, the potential loss of Timber Receipts (Secure Funding for Rural Schools) and the tenuous situation with PILT (Payment in Lieu of Taxes), historically provided by the U.S. government, it now seems to reflect a lack of “analysis” by that same government to mandate added, extra expenses, while at the same making economic development more difficult and while yet considering NOT paying property taxes through PILT.

According to a 2014 County Economic Tracker¹ report released by NACo (National Association of Counties) in January, found that only 65 of the nation’s 3,069 counties/boroughs/parishes have fully recovered to pre-recession levels. Many Alaskan projects (State and local) would be significantly affected by the changes to the definition of “waters of the U.S.” that have been proposed by the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps.). Therefore, the Alaska Municipal League urges the agencies to withdraw the proposed rule until further analysis of its potential impacts has been completed.

Most of Alaska’s municipalities are situated in low-lying areas with large bodies of water near the municipality. Simply, the choice of habitation by the First Alaskans was dictated in large part by the accessibility of salt and fresh water; for either travel and drinking and the foods contained therein. If the U.S. government had talked to local Alaskan governments, they would have realized that planning and zoning regulations in our respective communities, are put in place to minimize impacts to lakes, streams, rivers, and springs. Municipalities encourage the preservation of wildlife corridors,

¹ National Association of Counties, County Tracker 2014; On the Path to Recovery, NACo Trends Analysis Paper Series, (2014).

scenic vistas, archaeological sites, natural land characteristics and fish habitat. The original settlers of this great State survive through subsistence. Far be it for the federal government to tell these people, how to take care of the land and its resources for the long-haul. This also brings up the legal question as to how this ruling would work on privately owned Native Corporation lands, as much of these lands lie within municipal jurisdictions.²

As local Alaskan governments are major owners of much of the infrastructure in this State, we feel that we are important stakeholders in this decision. The properties that will potentially be impacted by this ruling include municipal airports, roadside ditches, flood control channels, storm water culverts and pipes, municipal storm sewer systems and other means with which to funnel water away from low-lying roads, properties and businesses.

Municipalities are also the first line of defense in any disaster. Following a major disaster, municipal police, firefighters and emergency personnel are the first on the scene. In the aftermath, municipalities focus on clean-up, recovery and rebuilding. For example, a major flood enveloped the City of Galena. While FEMA responded within what might be called a reasonable amount of time, it was the residents and government of Galena that shouldered most of the burden. While many of Alaska's communities are doing everything possible to protect themselves from Alaska's large, ever-changing rivers, with the record of huge erosion problems and catastrophic floods, the U.S. government is adamant about Alaska's communities protecting every water-filled ditch.

As Alaskan municipalities are responsible for implementing CWA programs, it is important that the Federal government work with us to form practical and workable rules and regulations that achieve the shared goals of protecting clean water, ensuring the safety of our communities and minimizing unnecessary delays and costs. As part of the Regulatory Flexibility Act, the agencies must certify that the proposed rule does not have a significant economic impact on a substantial number of small entities. Small entities are defined as small businesses and organizations, cities, counties/boroughs, school districts and special districts with a population below 50,000. To certify a proposed rule, federal agencies must provide a "factual basis" to determine that a rule does not impact small entities. If the agencies are unable to certify that a proposed rule does not impact small entities, the agencies are required to convene a small business advocacy review panel. The agencies determined, in this situation, that there was no "significant economic impact on a substantial number of small entities," and therefore did not provide the necessary review. Out of 164 municipalities in the State of Alaska, 160 meet the criteria of a "small entity." Further, because a thorough consultation process was not followed, the agencies released an incomplete and inaccurate economic analysis that did not fully capture the potential impact on other Clean Water Act programs.³

² Definition of Waters of the U.S. Under the Clean Water Act, 79 Fed. Reg. 22188 (April 21, 2014) at 22200.

³ Econ. Analysis of Proposed Revised Definition of Waters of the U.S., U.S. EPA Agency & U.S. Army Corps of Engineers, 11 (March 2014).

Late on the afternoon of August 8th, I received a message from the National Association of Counties, stating that they had been asked to make sure that the Executive Directors of the Leagues from the western states were aware of a meeting taking place in Tacoma, Washington on Waters of the U.S. This meeting was hosted by the EPA's Local Government Advisory Committee. The brochure that NACo sent me, also stated that input as a State, local, or tribal official will assist in providing valuable advice to Ms. Gina McCarthy. The brochure and accompanying letter had been sent out by the EPA on July 18th. I could not find an Alaskan municipality who had been contacted. If not for NACo, my office would also not have known. A trip to Washington for any of my members, is at least a day's travel by air and also includes at least two hotel nights. The meeting was scheduled for August 13th which was three business days away, meaning travel arrangements would give someone two days (at the most) to make reservations, work on comments and get down to Seattle/Tacoma. I called EPA in Washington D.C. and they seemed quite surprised that no one had bothered to contact Alaska's public officials.

To summarize:

- **Defining what waters and their conveyances fall under federal jurisdiction has a direct impact on Alaska's cities and boroughs who are legally responsible for maintaining storm water systems, infrastructure, etc.**
- **Changes to the scope of the "waters of the U.S." definition, without a true understanding of the direct and indirect impact and costs to state and local governments, puts Alaskan local governments in a precarious position, choosing between environmental protection and public safety and also, the dire need for improved economic development.**
- **Alaska's geography will see Alaska's municipalities most likely impacted more than any other state. Given time, it would not be surprising to find EPA simply deem Alaska as a "water of the U.S."**
- **Throughout the entire rule-making process, state and local governments were not adequately consulted through the Regulatory Flexibility Act (RFA).**
- **The agencies determined there was no "Significant Economic Impact on a Substantial Number of Small Entities (SISNOSE)". This was obviously important enough for someone in the Federal government to even make an acronym for it.**
- **Under Executive Order 13132 – Federalism, federal agencies are required to work with state and local governments on proposed regulations that will have a substantial direct impact on state and local governments.⁴ Under this rule, agencies must consult with state and local officials early in the process**

⁴ Exec. Order No. 13132, 79 Fed. Reg. 43,255 (August 20, 1999).

and must include in the final draft regulation, a federalism summary impact statement, which must include a detailed overview of state and local government concerns and describe the extent the agencies were able to address the concerns. A federalism impact statement was not included with the proposed rule.

Again, the Alaska Municipal League, on behalf of all 164 of Alaska's cities and boroughs, thanks you for the opportunity to comment on Waters of the U.S. This is a clear example of mandated expanded regulations imposed on local governments while at the same time, the U.S. government finds reasons to not provide funds available for current programs, much less for new expanded programs. We, in Alaska, know better than anyone that "one size fits all" more often than not, does NOT fit Alaska.

Respectfully submitted,

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