

Statement of Rick Rogers
Executive Director
Resource Development Council for Alaska
121 W. Fireweed Lane, Suite 250
Anchorage, AK 99503

before the
Subcommittee on Fisheries, Water and Wildlife
Committee on Environment and Public Works
United States Senate

regarding
Impacts of the Proposed Waters of the United States Rule
on State and Local Governments and Stakeholders

April 6, 2015
10:00 AM
Loussac Library Assembly Chambers
3600 Denali Street
Anchorage, AK 99503

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**Testimony on the Impacts of the Proposed Waters of the United States Rule on State
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Good morning members of the committee. My name is Rick Rogers, Executive Director of the Resource Development Council for Alaska (RDC). RDC is a statewide membership-funded non-profit trade association representing the common interest of the Forestry, Fishing, Tourism, Mining and Oil and Gas industries in Alaska. Our membership is truly a broad cross section of Alaska businesses including the aforementioned industries as well as communities, all twelve Alaska Native Regional Corporations, organized labor, utilities and support business that recognize the important role resource development plays in our economy. I have submitted a copy of our most recent annual report for the record.

The Environmental Protection Agency's (EPA) proposed Waters of the U.S. rule (WOTUS) will have a disproportionate impact on Alaska's resource dependent industries and our economy as a whole. It is appropriate the committee chose to hold a field hearing here in Alaska. According to the U.S. Fish and Wildlife Service (USFWS), the State of Alaska includes approximately 63 percent of the nation's wetland ecosystems. Estimates place the total acreage at approximately 130 million acres or about one-third of the State.

The Rule has a Disproportionate Impact on Alaska

Before commenting on specific problems we see in the proposed rule, it is important to underscore how a classification of a wetland as a jurisdictional "Water of the U.S." impacts community and resource development projects in Alaska. The federal government already enjoys a disproportionate jurisdiction over land use and economic development in our state. Approximately 222 million acres, approximately 61 percent of Alaska is under direct federal jurisdiction, much of which is in conservation system units that are off limits to any type of development. Section 404 of the Clean Water Act expands that federal reach to private, Alaska Native Corporation, State, and municipal lands where wetlands are determined to be jurisdictional and therefore section 404 permits are required. The cumulative impact of vast federal lands, ubiquitous wetlands, and an ever-expanding definition of which Alaska's wetlands fall under federal regulatory jurisdiction means few projects in Alaska are outside the reach of federal oversight.

The Rule Fails to Achieve the EPA's Stated Objectives

We are in agreement with the EPA's stated intent for the rule to remove uncertainty and confusion in determining what lands and activities require Section 404 permits. However, rather than reducing confusion, the proposed rule as written takes the most aggressive and broad interpretation of federal jurisdiction, rendering adjacent waters, floodplains, ephemeral streams, tributaries, and ditches with limited exceptions as jurisdictional.

Perhaps the EPA's version of "clarity" simply means defaulting on the side of federal jurisdiction and broadening definitions of existing regulatory categories (tributaries) and regulating new areas that are not jurisdictional under current regulations (adjacent non wetlands, riparian areas, floodplains and other waters).

The EPA's Assurances Fall Flat Upon Plain Reading of the Rule

The EPA has launched a public relations campaign in an attempt to refute the concerns of RDC and other concerned members of the public who have concluded through a plain reading of the rule that it materially expands the scope and reach of the Clean Water Act. The EPA's assurances don't match the plain language of the rule.

Tributaries are a new and defined term and automatically jurisdictional under the rule. Adjacent Waters are considered jurisdictional, the legal test of significant nexus having been assumed. Many "other waters" will likely be deemed jurisdictional under the rule. As drafted, even ditches "inside the fence" or within the confines of developed projects could be deemed jurisdictional.

The EPA Grossly Underestimates the Costs of the Rule

The EPA estimates an increase of three percent in jurisdictional wetlands under the rule. This is a gross understatement. The Waters Advocacy Coalition¹ refutes the EPA's methodology as grossly understating this effect, both because of flawed methodology and because EPA failed to consider the impacts of new jurisdictional terminology such as neighboring, adjacent, tributary, riparian areas, and floodplain. Even assuming the EPA's conservative estimate is correct, the rule increases jurisdictional wetlands in Alaska by 3.6 million acres (three percent of 130 million acres of wetlands), about five times the size of Senator Whitehouse's home state of Rhode Island.

RDC applauds your congressional oversight on this issue. As currently drafted the rule will have significant negative impact on Alaskans. Thank you for the opportunity to comment on this far-reaching initiative. I have included additional references, and prior RDC comments to EPA on this rule and background for the record.

¹. *Review of 2013 EPA Economic Analysis of Proposed Revised Definition of Waters of the United States*, Sunding, David, Ph.D., February, 2014

Additional Background to Augment RDC verbal testimony.

Natural Resources are vital to the economic survival of Alaska and its residents. In part, Alaska was granted statehood due to our vast natural resources; the federal government expected Alaska to utilize its bounty of natural resources to build and sustain its economy. Alaska's constitution includes a unique provision, title 8, the preamble of which states "It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest." To fulfill the vision of Alaska's constitution, we must have access to our resources, and avoid uncertainty and unnecessary regulations that offer no added benefit to the environment.

Our members know that Alaska's economy is based on responsible resource development conducted in accordance with existing local, state, and federal environmental protections and laws. Alaskans must continue to have access to our valuable and traditional resources. The responsible development of these resources creates jobs in communities throughout Alaska, many of which have few other jobs available. Many of these communities will disappear if overly burdensome and unnecessary regulations are added to existing and new projects.

Attachments submitted for the record include:

RDC written comments regarding the WOTUS proposed rule and related connectivity report dated 7/29/11, 11/6/13, 7/7/14, and 11/14/14.

Growing Alaska through responsible resource development, 2014 Annual Report of the Resource Development Council for Alaska. Available online at <http://akrdc.org/membership/annualreport/annualreport2014.pdf>

Who Owns Alaska, A Special Issue of Resource Review, A periodic publication of the Resource Development Council for Alaska. Available online at <http://akrdc.org/newsletters/2009/whoownsalaska.pdf>

Review of 2013 EPA Economic Analysis of Proposed Revised Definition of Waters of the United States, Sunding, David, Ph.D., February, 2014
<http://www.nssga.org/wp-content/uploads/2014/05/WOTUS-Economic-Report-FINAL.pdf>