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Office of Water (4504-T)
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Stacey Jensen
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Washington, D.C. 20310-0104

RE: Revised Definition of “Waters of the United States,” 86 Fed. Reg. 69,372 (Dec. 7, 2021), Docket No. EPA-HQ-OW-2021-0602

Dear Ms. Christensen and Ms. Jensen:

The Solar Energy Industries Association (“SEIA”) is the national trade association of the U.S. solar energy industry. Our members promote the environmentally responsible development of solar energy. We are committed to working with federal agencies, environmental and conservation organizations, Tribal governments, state agencies, and other stakeholders to achieve this goal. On behalf of our member companies, SEIA appreciates the opportunity to comment on the U.S. Environmental Protection Agency’s (“EPA”) and the U.S. Army Corps of Engineers’ (“Corps”) proposed rule, “Revised Definition of ‘Waters of the United States,’” 86 Fed. Reg. 69,372 (Dec. 7, 2021).

A. Introduction

SEIA is committed to building a strong solar industry to speed the country’s energy transition and address the climate crisis. As the national trade association for the U.S. solar energy industry, which employs more than 250,000 Americans, we represent over 1,000 organizations that manufacture, install and support solar energy. We firmly believe that the clean energy transition must be based on principles of equity and opportunity. These values are infused throughout our organization and ones we are actively working to advance within our industry.

Environmental protection, including protections for navigable waters, is a paramount concern for the solar energy industry, and solar energy provides a variety of important

environmental benefits. Solar energy is clean, abundant, and the United States has some of the richest solar resources in the world. Solar technologies offer a number of environmental benefits, including the reduction of harmful pollutants and carbon emissions in comparison to fossil fuel-based energy sources. It is an energy solution that provides clean, reliable electricity, increases consumer choice, and helps homeowners and business owners save money on their utility bills. Deploying more solar energy will sharply reduce the carbon, sulfur, and mercury emissions that come from burning fossil fuels, saving approximately 60,000 American lives each year, and helping our nation address the threats of climate change, which are existential to many waters of the U.S.¹

In order to achieve the Biden Administration's goals of a fully decarbonized economy by 2050, more than 1 million megawatts of new solar energy will need to be deployed, a roughly tenfold increase from current levels.² It is likely that some if not a significant portion of future utility-scale deployment will require authorizations from the Corps to be constructed, including general and individual authorizations under section 404 of the Clean Water Act. SEIA's members therefore have a strong interest in a reasonable, administrable, and durable definition of "waters of the U.S."

B. Responses to Specific Requests for Comments

While we generally support the rationale and proposed text of the definition, it bears repeating that climate change represents one of the greatest threats to many of the different defined categories of "waters of the U.S.," and by extension their use for commercial and recreational activity and as habitats. We believe that a final rule should not unduly burden efforts to reduce the greenhouse gas emissions that cause climate change, including construction of solar energy facilities.

To that end, SEIA offers two specific comments on the proposed rule. First, in the accompanying economic analysis of the proposed rule, SEIA requests that the "Energy Generation" category for sector-specific section 404 permit analysis be further divided and analyzed according to project description (*i.e.*, coal, cogen, geothermal, hydropower, natural gas, nuclear, oil, solar, and wind).³ Second, SEIA generally supports the "significant nexus" standard for field application, except that ditches that do not otherwise meet the definition of a point source should not be considered jurisdictional.

¹ See, e.g., 86 Fed. Reg. at 69,383 ("Climate change ... affects streamflow characteristics like the magnitude and timing of flows ... [and] can cause streams and wetlands to become drier, negatively affecting both water supplies and water quality.").

² See U.S. Department of Energy, "Solar Futures Study," available at <https://www.energy.gov/sites/default/files/2021-09/Solar%20Futures%20Study.pdf>, at vi (Oct. 2021).

³ See https://www.epa.gov/system/files/documents/2021-11/revised-definition-of-wotus_nprm_economic-analysis.pdf, App'x G.

C. Conclusion

SEIA supports EPA and the Corps in their efforts to modernize the definition of “waters of the U.S.” to improve protections for jurisdictional waters without impeding the responsible and expeditious development of solar power infrastructure projects across the country. We look forward to reviewing a final rule.

Thank you for the opportunity to provide these comments. If you have any questions, please contact me at (202) 556-2909 or bnorris@seia.org.

Sincerely,

/s/ Ben Norris

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