

# St. Francis Levee District of Arkansas

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Established 1893

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U.S. Environmental Protection Agency

EPA Docket Center

Office of Water Docket

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Support for Clear Guidelines in Federal Water Permitting

Reference: EPA-HQ-OW-2018-0149-0003

As a local sponsor, state entity, business and landowner we understand how difficult it can be to obtain the necessary permits for a flood control and/or navigation project. That is why I am writing today in support of the newly proposed federal clean water rule. The proposed rule would continue to protect our Nation's clean water while correcting the federal overreach of the 2015 WOTUS rule, making it easier for projects to move forward with more certainty for when a federal permit is needed.

Projects in or near federal waters require extensive permitting that comes at a hefty price, in addition to any state or local permits a project will need. The proposed rule would remove much of the confusion about whether a small roadside ditch or low-lying dry patch of land could be considered a federal water of the United States. For too long, determining where federal jurisdiction lies has added regulatory uncertainty, delay and cost to projects. The more complicated it is to answer that question, the more land-owners and other project sponsors have to pay consultants and attorneys to figure it out - which means spending money just to know whether a rule applies, rather than on actually constructing anything. The proposed rule is a step in the right direction to achieving clean water through clear rules.

We support these common-sense approaches in the proposed rule that will more clearly define what waters ARE under federal jurisdiction and what waters ARE NOT under federal jurisdiction, simplifying and expediting the permitting process.

- Including within federal jurisdiction waters that are actual waterbodies in both the traditional and judicial sense of the term, such as: waters used in interstate or foreign commerce and tributaries of those waters as well as wetlands adjacent to those waters or to tributaries of those waters.

- Excluding from federal jurisdiction ephemeral features from federal regulation as waterbodies (these are features that only pool or flow due to wet weather)

- Excluding from federal jurisdiction most ditches from regulation as federal waterbodies

- Excluding from federal jurisdiction storm water control features constructed in uplands (non-wetland areas) from regulation as federal waterbodies
- Excluding from federal jurisdiction water-filled depressions in uplands created by construction equipment from regulation as federal waterbodies

Thank you for your leadership and service and we appreciate the opportunity to comment on the proposed rule.

Sincerely,



BACKGROUND:

<https://www.govinfo.gov/content/pkg/FR-2019-02-14/pdf/2019-00791.pdf>

ADDRESSES: You may submit comments, identified by Docket ID No. EPA-HQ-OW-2018-0149, by any of the following methods: • Federal eRulemaking Portal: [http:// www.regulations.gov/](http://www.regulations.gov/) (our preferred method).

Follow the online instructions for submitting comments. • Email: [OW-Docket@epa.gov](mailto:OW-Docket@epa.gov). Include Docket ID No. EPA-HQ-OW- 2018-0149 in the subject line of the message. •

Mail: U.S. Environmental Protection Agency, EPA Docket Center, Office of Water Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460. •

Hand Delivery/Courier: EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to [https:// www.regulations.gov/](https://www.regulations.gov/), including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "How should I submit comments?" heading of the GENERAL INFORMATION section of this document.

**Tell the EPA that you support a proposed rule that will clearly limit federal permitting jurisdiction, help projects move forward in a timelier manner, and continue to protect our nation's clean water.**

The Clean Water Act (CWA) grants the U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (Corps) the jurisdiction over "navigable waters," defined as "Waters of the United States" (WOTUS). Both federal agencies and courts have long struggled to define WOTUS resulting in confusion over which waters are regulated by the federal government -- leaving other waters to fall under the jurisdiction of state and local governments for protection.

In 2015, the EPA and Corps finalized a rule that expanded federal jurisdiction over water and wetlands, in turn increasing the number of construction sites required to obtain federal permits -- in addition to state and/or local water permits. Legal action has halted the rule's implementation in 28 states, while 22 states have implemented the rule, creating regulatory uncertainty for contractors. Every court that has

reviewed the 2015 rule on its merits has deemed it likely unlawful.

This proposed rule is a step in the right direction for ensuring clean water through clear guidelines. It includes waters that in many cases are readily identifiable as federal waters, such as interstate waters, tributaries and other waters with a surface connection or that regularly flow into those waters. And it excludes most ditches, storm water control features in uplands, and earthen depressions caused by construction equipment or activity in uplands that may fill with water, among other things.

**Action is easy! Simply mail this on your letterhead to the EPA.**