September 27, 2017

Submitted Electronically to Docket No: **EPA-HQ-OW-2017-0203**

Comments of Co-op Name

RE: U.S. Environmental Protection Agency's and U.S. Army Corps of Engineers' Proposed Definition of "Waters of the United States" – Recodification of Pre-existing Rules
82 Fed. Reg. 34899 (July 27, 2017)

Co-op Name submits these comments on the U.S. Environmental Protection Agency's (EPA) and the U.S. Army Corps of Engineers' (Corps) proposed rule: Definition of "Waters of the United States"—Recodification of Pre-existing Rules (82 Fed. Reg. 34899, July 27, 2017). Co-op Name is a member of the National Rural Electric Cooperative Association (NRECA), and these comments hereby incorporate by reference the comments submitted by the NRECA, the Utility Water Act Group (UWAG), and the Water Advocacy Coalition (WAC).

The definition of "waters of the United States" (WOTUS) is important to the utility industry. In particular, [description of your coop – including information such as:

* Confirmation that you are a small business
* Number of member-owners
* Miles of power lines you maintain and connections/mile
* Size of your service territory]

All Americans value and deserve a healthy environment. However, the economic challenges we and our member-owners face underscore the importance of cost-effective regulation. We believe that the 2015 WOTUS rule was not cost-effective, and we support the current proposal by EPA and the Corps (collectively, “the Agencies”) to rescind the 2015 rule (80 Fed. Reg. 37,054, June 29, 2015) and to codify the *status quo* that is now effective under a stay of the 2015 rule issued by the U.S. Court of Appeals for the Sixth Circuit.

The Agencies are justified in rescinding the 2015 rule because its provisions are, in various respects, beyond the Agencies' statutory authority, inconsistent with Supreme Court precedent, and contrary to the goals of the Clean Water Act (CWA), including the goal to "recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution" (33 U.S.C. § 1251(b)). The Agencies’ failure to seek input from state and local entities during the development of the 2015 rule contributed to the rule's legal flaws and lack of clarity. That the Sixth Circuit was persuaded to stay the 2015 rule is testament to its overreach.

We also agree with the conclusions of the US Small Business Administration’s Office of Advocacy that the 2015 rule would have imposed significant economic impact on a substantial number of small entities, including Co-op Name, with little if any enhanced protection for the nation’s waters.

Of particular importance to Co-op Name is the regulatory uncertainty that flows from the 2015 rule's lack of clarity on key terms and definitions, such as "adjacent," "floodplain," "ordinary high water mark," and "significant nexus." Moreover, by allowing for jurisdiction over remote, isolated features and ephemeral washes, the 2015 rule virtually eliminates the term "navigable" from the statute and implicates significant constitutional concerns about the appropriate scope of federal authority. Furthermore, nothing in the record created during the 2015 rulemaking process dictated the adoption of such a sweeping definition of WOTUS.

To address these concerns, the Agencies should rescind the 2015 rule and recodify the regulations in place immediately prior so that the Code of Federal Regulations accurately reflects the applicable regulations. Since the Sixth Circuit's October 2015 issuance of a nationwide stay, the Agencies have been applying the regulations defining WOTUS that were in effect immediately before the 2015 rule. The proposed action would simply continue that practice and recodify the status quo that has been in place for decades.

Finally, Co-op Name supports the Agencies' efforts to undertake substantive rulemaking to reconsider the definition of "Waters of the United States." Although codifying the status quo is important to ensure clarity and regulatory certainty in the near term, there are many issues with the current regulations and guidance documents that should be addressed through a new rulemaking. Co-op Name will continue to support a rulemaking to clearly articulate the extent of federal CWA authority.

If you have any questions regarding these comments, contact [name] at [email] or [phone].

Sincerely,

[Signature of appropriate coop representative]