Rejecting the Dirty Water Rule: Tribal nations

The public responded to the Trump administration's proposal to radically redefine the Clean Water Act to strip protections from streams and wetlands with a resounding "No". The Environmental Protection Agency (EPA) only provided 60 days for public comment, but more than 525,000 Americans demanded that the Administration dump this Dirty Water Rule. Comments came from across the country from a diverse range of constituents — state agencies, water-dependent businesses, community leaders and representatives from underserved communities, people of faith, scientists, wetland experts and mitigation professionals, environmental and conservation groups, hunters and anglers. They talked about personal and spiritual connections to water and the need to do more — not less — to protect these vital resources. They discussed the established science that EPA ignored in its proposal, and the shaky legal ground it was on. **The comments implored EPA to drop this proposal and begin to defend and enforce the laws that keep our water clean and safe.**

Tribal nations also weighed in. The National Congress of American Indians writes that the proposal would contravene the Act's "recognition of the interconnectivity of water resources by narrowing the scope of protected waters," and "would unduly affect tribal nations and raise jurisdictional issues related to fulfillment of the federal trust responsibility, treaty compliance, and violations of reserved rights." Dozens of individual tribal nations, located in widely different areas (such as the Houlton Band of Maliseet Indians in Maine, the Cherokee Nation in Oklahoma, and the 20 member tribes of the Northwest Indian Fisheries Commission), also raised important concerns.

Here is a snapshot of what Tribal nations have said:

Bay Mills Indian Community: "The proposed definition of the Waters of the United States is a direct threat to the Bay Mills Indian Community. This definition and the directives behind it would strip protections for many of the Nation's waters and would threaten treaty resources while diminishing the federal government's trust responsibility to Tribes...It is apparent that the proposed definition of the waters of the United States fails to incorporate science. It is Bay Mills Indian Community's belief that protecting our waters should be the main goal. Ignoring science that protects our waters and treaty resources to justify the diminishing of federal regulations and boosting of economic growth is unacceptable."

1854 Treaty Authority (inter-tribal natural resource management agency): "States do not have the same relationship with tribes nor the same trust responsibility to tribes as the federal government. This may lead to a lack of proper consultation or tribal input being considered in a meaningful way ahead of potential impacts to waters and wetlands important to tribes... Overall, the revised definition of WOTUS seems to increase the states burden for regulation and increase the uncertainty of how states will regulate, potentially making important water and wetland resources more vulnerable to impacts."

Coeur d'Alene Tribe (ID): "More than any other Plateau tribal culture, the Coeur d'Alene defined themselves by reference to water. Water was the heart of their rich canoe culture and their primary source of transportation...Water was and continues to be spiritually important... The Tribe also continues to focus resources, financial and human, on the restoration of its canoe culture, recognizing the importance to overall community well-being is directly related to Tribal member relationship with their land and water."

Ak-Chin Indian Community: "A revised WOTUS definition that strips the EPA and ACE of jurisdiction over Ak-Chin's CAP [Central Arizona Project] water puts at risk the quality of the water that the Community is entitled to receive by statute and contract, thereby threatening Ak-Chin's tribal lands, assets, resources, and communities...If these ephemeral streams are left unmanaged under the newly proposed rule because they no longer qualify as WOTUS, they could consequently become improperly dredged, filled, or diverted or engineered incorrectly, resulting in devastating flooding to the Community located downstream... This proposal undermines the goals of the Endangered Species Act before the Act can even be put into play...The proposed rule, rather than improving on the 2015 definition, would result in greatly reduced protection of waters vital to tribal culture, health, well-being, and sustenance."

CLEAN WATER FOR ALL

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