

RESOLUTION 2018 - 82

RESOLUTION OF THE PIMA COUNTY BOARD OF SUPERVISORS FOR PIMA COUNTY TO COMMENT ON PROPOSED CHANGES TO THE FEDERAL "WATERS OF THE U.S." RULE AND TO URGE THE ENVIRONMENTAL PROTECTION AGENCY TO MAINTAIN THE DEFINITION FOR "WATERS OF THE U.S." THAT WOULD RETAIN PROTECTIONS FOR HEADWATERS, WETLANDS AND INTERMITTENT AND EPHEMERAL STREAMS ACCORDING TO THE 2015 "CLEAN WATER RULE"

The Pima County Board of Supervisors finds:

1. On February 28, 2017, President Donald Trump signed Executive Order 13778, "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule," which directs the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps), to "rescind or revise" the "Clean Water Rule" and re-define the term "waters of the U.S.;"¹ and
2. The purpose of the 2015 "Clean Water Rule" is to define and clarify the term "waters of the U.S.," which determines the scope of waters protected under the Clean Water Act (Act);² and
3. The Act was signed into law in 1972 "to restore and maintain the chemical, physical and biological integrity of the Nation's waters;"³ and
4. One of the Act's primary tools to achieve this purpose is the regulation and limitation of the discharge of pollutants, including dredged or fill material, into "navigable waters";⁴ and
5. The Act defines the term "navigable waters" as "waters of the United States, including the territorial seas;"⁵ and
6. U.S. Supreme Court decisions, peer-reviewed science, and practical experience have all demonstrated that to achieve the purpose of the Act, the term "waters of the U.S." must not only include those waters considered "navigable in fact," but must also include upstream waters, including headwaters, tributaries, and wetlands that are

¹ "Presidential Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule," February 28, 2017. (<https://www.whitehouse.gov/the-press-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic>)

² 80 Fed. Reg. 37054 (June 29, 2015).

³ Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. §1251 *et seq.*

⁴ *See id.* at §1311(a).

⁵ *See id.* at §1362(7)

directly or indirectly connected to traditionally navigable waters and have the potential to affect the chemical physical, and biological integrity of those waters;⁶ and

7. The 2015 “Clean Water Rule” includes protections for streams and tributaries that may be intermittent or ephemeral but that have evidence of water flow such as banks and high water marks and that “contribute flow directly or indirectly to a traditional navigable water;”⁷ and
8. The final 2015 “Clean Water Rule” reflects input received during more than 400 meetings nationwide and in “over 1 million public comments ... the substantial majority of which supported the proposed rule;”⁸ and
9. The EPA estimated that “up to 60% of the nation’s streams and millions of acres of wetlands lacked clear protection from pollution prior to the Clean Water Rule;”⁹ and
10. According to the EPA, 117 million Americans – one in three people – got their drinking water from streams that lacked clear protection prior to the Clean Water Rule;¹⁰ and
11. For many decades, Pima County has played an active role in the discussion around the scope of protections under the Clean Water Act, as history has shown that pollutants entering dry riverbeds can contaminate drinking water supplies, and indeed the very origins of the Arizona Department of Environmental Quality can be traced to several prominent water pollution cases in Pima County; and
12. Pima County residents rely on both surface water and groundwater derived from infiltration of runoff, as well as the Colorado River, for their drinking water; and
13. Because the infiltration of water into dry streambeds is one of the primary mechanisms for replenishing the state’s aquifers, we recognize the state and federal interest in regulating discharge of pollutants to streambeds, headwaters and wetlands, even where water is not present year-round; and
14. If Clean Water Act protections are reduced for intermittent and ephemeral waterbodies, the vast majority of Arizona’s streams will have no water quality protections whatsoever because the state’s programs are dependent on the federal jurisdiction defined by “waters of the U.S.”; and because Arizona’s legislature has prohibited greater protections than are afforded by the Clean Water Act; and

⁶ See 80 Fed. Reg. at 37055.

⁷ *Id.* at 37058.

⁸ *Id.* at 37057.

⁹ William Yardley, “With new EPA water rule, Obama again takes executive action on environment,” Los Angeles Times, May 25, 2015.

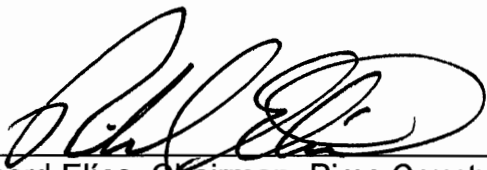
¹⁰ “Clean Water Rule Protects Streams and Wetlands Critical to Public Health, Communities, and Economy,” EPA News Release, May 27, 2015.

15. On July 27, 2017, the EPA and the Corps published a proposed rule that would re-establish the definition of "waters of the U.S." that was in place prior to the 2015 "Clean Water Rule", the first step in a two-step process that will result in a "substantial re-evaluation of the definition of "waters of the United States" per Executive Order 13778; and
16. On August 21, 2017, the Board adopted Resolution 2017-60 directing county staff to develop and submit comments to urge the EPA to maintain the definition for "waters of the U.S." that would retain protections for headwaters, wetlands and intermittent and ephemeral streams according to the 2015 "Clean Water Rule" and;
17. On December 11, 2018, the EPA and the Corps signed a proposed rule to replace both the 2015 "Clean Water Rule" and the pre-2015 regulations with a revised definition of "waters of the U.S." that would exclude ephemeral streams and their tributaries as well as isolated lakes, ponds, and wetlands, the final step in the two step process resulting in a "substantial re-evaluation of the definition of "waters of the United States" per Executive Order 13778.

NOW, THEREFORE BE IT RESOLVED the Pima County Board of Supervisors directs the County Administrator and staff to develop and submit comments on the proposed rule that would redefine "waters of the U.S." and

IT IS FURTHER RESOLVED that Pima County, in its comments on the proposed rule, will the urge the EPA and Corps to maintain the definition for "waters of the U.S." that would retain protections for headwaters, wetlands and intermittent and ephemeral streams according to the 2015 "Clean Water Rule."

Passed, adopted and approved, this 18 day of December, 2018.



Richard Elias, Chairman, Pima County Board of Supervisors

DEC 18 2018

ATTEST:



Julie Castañeda, Clerk of the Board

APPROVED AS TO FORM:



Andrew Flagg, Deputy County Attorney