



Testimony for Bruce Thompson
President, American Exploration & Production Council
U.S. Environmental Protection Agency and U.S. Army Corps of Engineers' Public Hearing
on the Proposed Rule to Define "Waters of the United States" under the Clean Water Act
February 27, 2019

Good afternoon. My name is Bruce Thompson and I am President of the American Exploration & Production Council ("AXPC"). I am pleased to offer this testimony on behalf of AXPC in support of the rule proposed by the U.S. Environmental Protection Agency ("EPA") and U.S. Army Corps of Engineers ("Army Corps") to define "waters of the United States" ("WOTUS") under the Clean Water Act ("the Act"), hereinafter, the "Proposed Rule".

AXPC is a national trade association representing 30 of America's largest and most active independent natural gas and crude oil exploration and production companies. The protection of water resources is a top priority for AXPC members. In addition to complying with the Act's extensive regulations imposed on them at all levels of government, AXPC members develop and implement industry standards, share best practices, facilitate chemical and water use disclosures, and work with regulators to ensure their operations responsibly protect water resources regardless of jurisdiction.

In furtherance of these interests, AXPC members have a long history of engaging in good faith with EPA and the Army Corps (the "Agencies") throughout prior efforts to define WOTUS. The removal of regulatory protections or the unwarranted avoidance of federal oversight is not, and never has been our goal. On the contrary, AXPC's sole and consistent request of the Agencies has been and is that they craft a definition of WOTUS that: (1) conforms to the Agencies' authority under the Act; and (2) can be implemented in a clear, consistent, and predictable matter. While AXPC's written comments may identify minor issues or questions with respect to the Proposed Rule, AXPC believes that overall the Proposed Rule would fulfill these two important goals.

As a threshold matter, the Proposed Rule is a legal and valid reflection of the Act as it is a genuine and faithful interpretation of the Act as well as the three Supreme Court cases that have construed the five-word phrase "waters of the United States". Unlike prior interpretations of that critical phrase, the Proposed Rule reflects appropriate jurisdictional restraint and a guiding interest in promulgating a definition of WOTUS that is both lawful and sustainable.

Importantly, the jurisdictional restraint reflected in the Proposed Rule has also allowed the Agencies to craft a definition that is far more clear, consistent, and predictable than the 2015 WOTUS Rule. Unlike the 2015 WOTUS Rule, the Proposed Rule sets forth clear jurisdictional delineations that are identifiable through readily observable conditions, and without the need for costly studies or subjective case-by-case analyses that undermine regulatory certainty.

The Proposed Rule also addresses applicability issues presented by the 2015 WOTUS Rule's use of undefined or ambiguously defined, but crucial phrases such as "significant nexus," "tributary," "dry land," and interstate waters." These key words and phrases were necessary to establish the



universe of waters within the definition of WOTUS, and their ambiguity made the scope of the 2015 WOTUS Rule largely indecipherable. The Proposed Rule either eliminates or more fully defines these key words and phrases, and therefore provides agency staff clear and discernable criteria for making jurisdictional determinations. Moreover, by eliminating the more vague aspects of the 2015 WOTUS Rule, the Proposed Rule provides the regulated community reasonable notice of the scope and extent of federal jurisdiction over water resources in the areas where they live and work.

AXPC also supports the Agencies' proposed decision to maintain reliance on the findings of the Connectivity Report. While we continue to believe that a technical analysis such as the Connectivity Report cannot overcome statutory limitations on the Agencies' jurisdictional reach, we believe the Connectivity Report provides valuable information, and support the Agencies' use of the report to understand and evaluate the impacts of the Proposed Rule.

Finally, I wanted to note that the Proposed Rule's improved jurisdictional clarity not only benefits regulated entities as well as surface owners, it improves protection of water resources and the ability of regulators to ensure programs are effectively implemented. Indeed, the Act's water quality objectives are best met through clear jurisdictional boundaries that can be administered in a way that promotes accountability and preserves resources for actual environmental protection. These are important water quality objectives which the promotion of regulatory certainty enables.

AXPC welcomes the Agencies' recognition that jurisdictional clarity benefits environmental protection, and we support the Proposed Rule for its embodiment of this principle.

I appreciate the opportunity to provide these comments on behalf of AXPC. We intend to formally supplement these remarks with more detailed written comments.