



Board of County Commissioners

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April 15, 2019

Andrew Wheeler, Acting Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

R.D. James
Assistant Secretary of the Army (Civil Works)
Department of the Army
108 Army Pentagon
Washington, D.C. 20310-0108

Email delivery to: OW-Docket@epa.gov

RE: Comment on Docket ID No. EPA-HQ-OW-2018-0149

Dear Acting Administrator Wheeler and Assistant Secretary James:

The Board of County Commissioners for Eagle County, Colorado respectfully submits these comments to address the EPA's and Army Corps' ("the Agencies") rulemaking regarding the definition of "Waters of the United States" under the Clean Water Act ("CWA"). Eagle County, Colorado ("Eagle County") is the home of the headwaters to the Eagle River and the Fryingpan River, major tributaries to the Colorado River. Currently, the CWA provides considerable water quality protections that benefit these headwaters and Eagle County has significant concern regarding the proposed revisions to the CWA rules.

The Agencies' current rulemaking regarding the definition of "Waters of the United States" ("2019 Proposed Rule") dramatically reduces the protection afforded to waters in Eagle County under existing CWA jurisdiction, and will cause confusion as to which waters are considered jurisdictional under the CWA. The following comments focus on how the 2019 Proposed Rule would impact waters in Eagle County and other similar regions throughout the country. We urge you to withdraw this potentially damaging proposal that could eliminate CWA protection on up to half of the nation's wetlands and thousands of miles of streams, including sources of drinking water.

Additionally, Eagle County is a member of the Northwest Colorado Council of Governments Water Quality/Quantity Committee, which has submitted comments for this rulemaking; Eagle County adopts such comments as if stated fully herein.

I. Eagle County

Eagle County Colorado is located approximately 125 miles west of Denver across the Continental Divide. It comprises 1,685 square miles and is home to over 52,000 people. It has a robust tourism economy, providing its residents and visitors with a multitude of recreational activities that are impacted by water quality including fishing, hunting, kayaking, rafting, lake recreation, hiking,



camping, wildlife and bird watching, skiing, and other snow sports. Not only does Eagle County provide access to these recreational activities, it also provides drinking water to its residents and visitors. Water quality is critically important to Eagle County, because of the role water plays in the region's economy and environment.

Eagle County is home to the headwaters of the Eagle River and the Fryingpan River, which contribute significantly to the Upper Colorado River. Specifically, the Eagle River watershed covers a drainage area of approximately 970 square miles and has an average annual water discharge (water yield) of 415,000 acre-feet. Elevations in the watershed range from 6,100 feet at Dotsero to 14,003 feet at the summit of Mount of the Holy Cross. The Eagle River originates near the southeastern border of Eagle County at Tennessee Pass and flows northwest and then west for about 77 miles to its confluence with the Colorado River at Dotsero, 6 miles west of Gypsum. Homestake, Cross, Gore, Beaver, Lake, Brush and Gypsum Creeks are the largest of the many Eagle River tributary streams, and there are approximately 120 natural lakes and 8 reservoirs in the watershed. The river and its tributary streams supply water to the majority of Eagle County's population, and the majority of the population lives in developed areas immediately adjacent to stream and river channels.¹

Eagle County is full of tiny headwater streams, ephemeral channels that flow only after rainfall, intermittent channels that flow only where they intersect the water table, and wetlands that are not connected on the surface with rivers. These waterways are vital parts of Eagle County's river network and significantly influence water quality, the rate of flow and the biological communities in its larger rivers.

"Recreation and tourism drive Eagle County's economy; its water priorities correlate directly with this economic driver. The County is vigilant and proactive about knowing how additional diversions and exchanges will be managed to keep its three major watersheds healthy."² Eagle County's economy is heavily dependent on the recreational tourism economy as 51% of its jobs are related to that sector.³ Eagle County provides numerous opportunities for fishing, kayaking, rafting, and snow sports. For example, in 2016 the GoPro Mountain Games set a record with more than 67,000 overall spectators, more than 3,300 unique athletes, more than 120 sponsors and a more than \$7 million economic impact.

The 2019 Proposed Rule appears to reduce CWA jurisdiction in Eagle County and its adoption could moreover have a drastic and detrimental impact on water quality and economy for millions of citizens in the United States and Mexico.

II. Ephemeral Flows Comprise a Significant Portion of Water in Eagle County and Must be Protected Under the CWA.

The 2019 Proposed Rule defines "tributary" as a river, stream or similar naturally occurring surface water that contributes perennial or intermittent flow to a traditional navigable water or territorial sea

¹ Eagle County and Eagle River Watershed Council, Eagle River Watershed Management Plan, May 15, 2013,

² Coley/Forrest Inc., "Water and its Relationship to the Economies of the Headwaters Counties," Northwest Colorado Council of Governments (December 2011) at 66,

http://nwccog.org/wp-content/uploads/2015/03/QQStudy_Report_Jan-2012.pdf.

³ *Id.* at 18.



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in a typical year either directly or indirectly through other jurisdictional waters (incl. tributaries, impoundments, and adjacent wetlands). Noticeably, as proposed, “tributary” do not include surface features that flow only in direct response to precipitation—ephemeral flows, dry washes, arroyos, and similar features.

In fact, for the first time in the history of the CWA, the 2019 Proposed Rule would strip the CWA’s protection from ephemeral streams (those that flow only a short time after heavy rain and snowmelt) that are particularly important to Eagle County’s water quality not only for its citizens but also its visitors. Categorically excluding all ephemeral streams from protection is a dramatic departure from decades of regulatory practice that followed science and common sense to protect our nation’s water resources. In addition, the proposed rule would call into question the protection of intermittent streams (those that have wet and dry intervals throughout the year) through the creation of vague and ill-defined criteria for the circumstances under which protections would attach.

For all practical purposes, the source of water for streams and rivers in Eagle County is snow that accumulates during the winter and then melts, quickly at first in the spring and then with diminishing return during summer and fall. Summer rains also contribute to surface flows for short periods of time. The variability of precipitation, temperature and water runoff from season to season and year to year can be significant, as can river and stream flow amounts. The health of aquatic and riparian ecosystems is dependent on the amount, timing and variability of stream flows. Seasonal flows fluctuate in cycles that have been established over thousands of years, supporting unique ecosystems and environments that in turn provide habitat for populations of fish, insects, mammals and birds. These aquatic and riparian ecosystems can be fragile in nature, and are subject to impacts from a number of external factors, both natural and man-made. Under the 2019 Proposed Rule, it is likely that the majority of these important water sources would be considered ephemeral and thus not covered under the CWA’s jurisdiction. The exclusion of ephemeral water sources from CWA’s protection could have far reaching and permanent adverse effects.

The 2019 Proposed Rule not only has significant impact on our headwaters here in Eagle County, it also will adversely impact more than half the river miles in the continental United States. Because of the importance of headwaters, any rule that excludes their protection will have far reaching repercussions for fish, wildlife and their habitats, as well as economies dependent on those systems. Nearly 2 million miles of the stream miles outside of Alaska -- about 60 percent -- do not flow year-round. Approximately 117 million people in the lower 48 states “get some or all of their drinking water from public drinking water systems that rely at least in part on intermittent, ephemeral or headwater streams,” according to an EPA analysis of drinking water supplies that rely on small and non-perennial streams.⁴ Specifically, in Eagle County, the EPA indicates that 86-100% of Eagle County’s surface drinking water is derived from intermittent, ephemeral, or headwater streams.⁵ Moreover, “EPA estimates that more than 40 percent of the 37,000 permits with locational data

⁴ Geographic Information Systems Analysis of the Surface Drinking Water Provided by Intermittent, Ephemeral, and Headwater Streams in the U.S.,

<https://www.epa.gov/cwa-404/geographic-information-systems-analysis-surface-drinking-water-provided-intermittent>

⁵ *Id.*



discharge into either start reaches or intermittent/ephemeral streams, excluding Alaska. Approximately 28 percent of these discharges are from municipal sewage treatment systems, systems that treat domestic sewage as well as wastewater from commercial and industrial users.”⁶ Ultimately, under the Proposed Rule, communities across the U.S. including Eagle County, Colorado would lose the economic, social, and cultural benefits derived from ephemeral water sources.

Accordingly, Eagle County recommends that the 2019 Proposed Rule continue to include ephemeral streams and wetlands with important hydrological connections but no surface connections under the jurisdiction of the CWA.

III. Conclusion

Since Congress passed the CWA in 1972, the United States has made significant progress in cleaning up many of our nation’s most treasured rivers. Rivers depend on the small streams that flow into them and the wetlands that filter their waters and act as nurseries for fish and wildlife. Moreover, protecting water quality means protecting the region’s economic backbone of tourism, recreation, and agriculture. In contrast, the 2019 Proposed Rule would allow pollution and destruction of many of these streams and wetlands, reversing that progress. As a headwaters county, Eagle County stands to be particularly impacted by this proposed narrowing of jurisdiction. The Agencies should be doing more – not less - to safeguard these streams and wetlands on which all communities depend.

Eagle County respectfully requests your consideration of our comments. Please do not hesitate to contact any one of us directly or Holly Strablizky at holly.strablizky@eaglecounty.us for more information or questions.

Sincerely,

Jeanne McQueeney

Chair

Kathy Chandler-Henry

Commissioner

Matt Scherr

Commissioner

cc:

Senator Michael Bennet
Senator Cory Gardner
Representative Scott Tipton
Representative Joe Neguse

⁶ Letter the EPA to Jeanne Christie, Association of State Wetland Managers, Regarding *Rapanos v. United States and Carabell v. U.S. Army Corps of Engineers*, January 9, 2005 at 2.