

WOTUS in the Words of the Army Corps of Engineers: “Not a Joint Endeavor”

“The preamble to the proposed rule and the draft preamble to the draft rule state that the rulemaking has been a joint effort of the EPA and the Corps, and that both agencies have jointly made significant findings, reached important conclusions, and stand behind the final rule. These statements are not accurate.”

(Letter from General Peabody to Assistant Secretary of the Army, 4/27/15)

“Shall not identify Corps as Author, co-author, or substantive contributor.”

(Letter from General Peabody to the Assistant Secretary of the Army, 5/15/15)

“To the extent that the term ‘agencies’ includes the Corps any such references should be removed.”

(Letter from General Peabody to the Assistant Secretary of the Army, 5/15/15)

“The Corps of Engineers logo should be removed from those documents.”

(Letter from General Peabody to the Assistant Secretary of the Army, 5/15/15)

THE SCIENCE OF THE RULE:

“Corps data to EPA has been selectively applied out of context, and mixes terminology and disparate data sets. In the Corps judgement, these documents contain numerous inappropriate assumptions with no connection to the data provided, misapplied data, analytical deficiencies and logical inconsistencies.”

(Letter from General Peabody to the Assistant Secretary of the Army, 5/15/15)

“The 1500 ft limitation is not supported by science or law and thus is legally vulnerable.”

(Lance Wood memo to General Peabody, 4/24/15, Pg. 5)

“The 4000 ft bright line rule is not based on any principle of science, hydrology or law, and thus is legally vulnerable.”

(Lance Wood memo to General Peabody, 4/24/15, Pg. 9)

“Gross misrepresentation of Corps raw data”

(Jennifer Moyer memo to General Peabody, 5/15/15, Pg. 3)

THE LEGAL JUSTIFICATION FOR THE RULE

“It will be legally vulnerable, difficult to defend in court, difficult for the Corps to explain or justify and challenging for the Corps to implement.”

(Lance Wood memo to General Peabody, 4/24/15, Pg. 5)

“Rule not likely to survive judicial review in federal courts”

(Lance Wood memo to General Peabody, 4/24/15, Pg. 9)

“Inconsistent with SWANCC and Rapanos. This assertion of CWA jurisdiction over millions of acres of isolated waters...undermines the legal and scientific credibility of the rule”

(Lance Wood memo to General Peabody, 4/24/15, Pg. 10)

“The draft final rule continues to depart significantly from the version provided for public comments, and that the corps recommendations relation to our serious concerns have gone unaddressed. Specifically, the current draft final rule contradicts long-standing and well-established legal principles undergirding CWA 404 regulations and regulatory practices, especially the decisive Rapanos Supreme Court decision. The rule’s contradictions with legal principles generate multiple legal and technical consequences that in the view of the Corps would be fatal to the rule in its current form.”

(Letter from General Peabody to Assistant Secretary of the Army, 4/27/15)