



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS  
441 G STREET, NW  
WASHINGTON, DC 20314-1000

REPLY TO  
ATTENTION OF

CECW-CEO

15 May, 2015

MEMORANDUM FOR Assistant Secretary of the Army for Civil Works

THRU Commanding General and Chief of Engineers, US Army Corps of Engineers

SUBJECT: Economic Analysis and Technical Support Document Concerning the Draft Final Rule on Definition of "Waters of the United States"

YAB  
15 MAY 15

1. I am forwarding the attached memorandum summarizing the Corps of Engineers' technical review of the Economic Analysis and Technical Support Document (EATSD) produced by the Environmental Protection Agency (EPA), to support the on-going draft final rule on the definition of the "waters of the United States" (WOUS) under the Clean Water Act (CWA). The Corps received these final draft versions for the first time in the last two weeks. These documents were reviewed at my request by some of the Corps' most experienced experts in applying Section 404 of the Clean Water Act, including legal, regulatory, and scientific experts in the Corps Headquarters, Engineer Research and Development Center, and the Institute for Water Resources.

2. The Corps of Engineers' technical review indicates that both documents are flawed in multiple respects. The collective view of the Corps experts is summarized by our Regulatory Chief in the attached memorandum, which highlights the key aspects requiring your awareness, and deserving of your attention. To briefly summarize, our technical review of both documents indicate that the Corps data provided to EPA has been selectively applied out of context, and mixes terminology and disparate data sets. In the Corps' judgment, the documents contain numerous inappropriate assumptions with no connection to the data provided, misapplied data, analytical deficiencies, and logical inconsistencies. As a result, the Corps' review could not find a justifiable basis in the analysis for many of the documents' conclusions. The Corps would be happy to undertake a comprehensive review with the EPA to help improve these supporting documents, which we recognize are critical to the rule-making.

3. With respect to these two documents, the Corps provided the EPA with raw data on the overall numbers of jurisdictional determinations (JDs) made by the Corps for aquatic resources within the span of control of the Corps' regulatory program (i.e., Section 404 of the Clean Water Act), and provided similar raw data for the Technical Support Document. However, the Corps had no role in selecting or analyzing the data that EPA used in drafting either document. As a result, the documents can only be characterized as having been developed by the EPA, and should not identify the Corps as an author, co-author or substantive contributor. To the extent that the term "agencies" includes the Corps of Engineers, any such reference should be removed. Finally, the Corps of Engineers logo should be removed from these two documents. To either

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imply or portray USACE as a co-author or contributor to these documents, other than as the provider of raw unanalyzed data, is simply untrue.

4. The Corps of Engineers fully recognizes the importance of this rule-making, and of these documents to underpin the content of the final proposed draft rule. We stand ready to assist the EPA in improving the technical analysis and to develop logically supportable conclusions for these documents, if and when requested.

Building Strong!

*John W. Peabody*

JOHN W. PEABODY  
Major General, US Army  
Deputy Commanding General  
for Civil and Emergency Operations

Encl.

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