



**Before the
House Committee on Water and Environment
Testimony on Potential Changes to the Waters of the United States Rules
Earl Lewis, Assistant Director, Kansas Water Office
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Mr. Chairman, members of the Committee, thank you for the opportunity to provide some information on the potential changes to the waters of the United States, or WOTUS, rules. My name is Earl Lewis, and I am the Assistant Director of the Kansas Water Office.

Kansas has a long and well planned approach to dealing with water quality and regulatory issues arising as a result of the Clean Water Act. I know that other presenters will provide more information on this, so I won't go into significant detail.

The Committee should be aware that there is a parallel process which has just started on this topic. On May 8, 2017, EPA Administrator Scott Pruitt and Douglas Lamont, Senior Official Performing the Duties of the Assistant Secretary of the Army sent a letter to Governor Brownback. That letter requests input "on a forthcoming proposal to revise the definition of 'Waters of the United States.'" The deadline for that input is June 19, 2017. A copy of the May 8, 2017, letter is attached to my testimony for your information.

To be clear, there is no current proposed rule or change to the definition. The Trump Administration has chosen to engage states and local units of government before a federal rule is proposed. This approach follows Executive Order 13132, signed by President Clinton in 1999. The Kansas Water Office, Kansas Department of Health and Environment, and Kansas Department of Agriculture will be providing advice and draft comments to Governor Brownback for submittal to the EPA and Corps of Engineers.

In October 2014 the State of Kansas provided comments on this subject to the EPA and U.S. Army Corps of Engineers. That letter, which is also attached, was in response to a proposed rule which would have significantly increased the number of stream miles considered "waters of the US." As can be seen from the letter, the issue is not whether there is disagreement on the need to have clean water. But rather what are the appropriate roles of the state and federal governments, and perhaps equally important, how do we allocate and spend limited taxpayer funds to improve the state and nation's water quality.

Through the planning and water Vision process, the state has spoken to the issue of how best to improve water quality in Kansas. The 2009 version of the Kansas Water Plan includes a section related to improving the state's water quality and indicates that:

"The Kansas Water Plan has promoted a voluntary, incentives-based approach to surface water quality management that is focused on individual watersheds."

The language in the Water Plan is key to our overall approach in that it both recognizes the value of “voluntary, incentive-based approaches” and that to maintain and improve water quality, we must focus our efforts in the watersheds that feed our streams, rivers and reservoirs rather than solely seeking to regulate the stream itself.

The Vision process reinforced that approach as we heard from citizens all across Kansas on the overall approach to solving our water problems. In response to the feedback of citizens during that process, the Vision is based on four guiding principles, which each are applicable to the situation and current discussion. Those guiding principles are:

1. Locally driven solutions have the highest opportunity for long term success. Therefore, the intentional focus of the action items presented in the Vision are to provide the necessary tools and support to allow for greater flexibility and management of water resources at the local level.
2. Policies and programs should not unintentionally penalize those who have already demonstrated good stewardship with the state’s water resources.
3. Voluntary, incentive and market-based water conservation and land management activities are the preferred tools for ensuring a reliable statewide water supply.
4. Action is necessary now to ensure a reliable supply into the future.

Broadening the definition of Waters of the US and moving to a more prescriptive, regulatory approach would violate these principles. Kansas has a well-established approach to improving our state’s water quality that has been recognized nationally. Any comments we collectively make back to EPA and the Corps of Engineers, either directly or through organizations we belong to, should reinforce that the established Kansas approach is the correct one.

Thank you again for the opportunity to provide some information regarding Waters of the United States. I will be happy to stand for questions at the appropriate time.