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September 26, 2017

Office of Water
Environmental Protection Agency
1200 Pennsylvania Avenue
Washington, DC 20460

RE: Docket ID No. EPA-HQ-OW-2017-0203

TO WHOM IT MAY CONCERN:

We at the National Environmental Banking Association (NEBA) respectfully submit the following key positions related to the rules and regulations on Waters of the United States (WOTUS):

- NEBA is an association of wetland and species mitigation bankers, private landowners and numerous support companies who are committed to providing high quality mitigation banks and projects to assist the private sector address their regulatory needs and requirements related to the Clean Water Act and Endangered Species Act, along with other regulatory mandates requiring mitigation. NEBA supports private sector solutions to addressing wetland and species and water quality needs that provides cost effective and efficient methods for private sector development to proceed in a timely manner with a minimal amount of regulatory burdens, while harnessing the efficiency of the private sector to supply their needed mitigation.
- NEBA supports regulatory consistency and certainty in application of rules and regulations related to Waters of the U.S. (WOTUS). The current WOTUS requirements sets out a framework to define what constitutes jurisdictional waters of the U.S. including wetlands and, if applied fairly, can be used to determine their compliance needs.
- NEBA supports all efforts to streamline and reduce the burdens on private and public permittees under WOTUS and believes the best method to address this issue is to provide consistent and transparent guidelines for determining jurisdictional wetlands and waters of the US.
- It has been the experience of NEBA members, along with our development clients that the recent challenges to WOTUS result in uncertainties related to definitions of what constitutes jurisdictional streams and wetlands. This only results in project delays and creation of duplicative and, often times, more onerous state and local regulations. As was the case with both the SWANCC and Rapanos SCOTUS decisions, both caused delays in wetland delineations and verifications and resulted in the passing of a myriad of state and local wetlands and waters regulations and policies. These additional state and local regulations resulted in even greater project delays and costs, which were often times duplicative of federal efforts. Already states; such as, California and others, are in the process of re-writing their wetlands and waters policy in anticipation of potential changes to WOTUS. The repeal of WOTUS is creating a hodge-podge of wetland rules depending on the state and region.

- NEBA supports methods to reduce and streamline the WOTUS process by allowing project applicants to identify existing wetland mitigation banks in their permitting process as the preferred mitigation option without having to justify additional wetland mitigation measures.
- NEBA believes that the WOTUS rules and regulations need to be fair and equitable and reflect the regional ecological conditions. Development projects should be given an expedited permit timeline review if they identify and use mitigation bank credits and projects that apply the 12 conditions included in the federal 2008 Mitigation Rule.
- NEBA continues to work with our government offices in promoting WOTUS rules and regulations that are consistent with the intent of the Clean Water Act. These rules allow private and public development to obtain their necessary permits and satisfy their mitigation requirements in a timely and cost-effective manner. We believe that private mitigation banks provide the most efficient, ecologically responsible and cost-effective tool to achieve this.

Respectfully,

A handwritten signature in cursive script that reads "Donna Collier".

Donna Collier
Chairwoman