



July 20, 2015

The Honorable Jo-Ellen Darcy
Assistant Secretary of the Army (Civil Works)
Department of the Army
108 Pentagon
Washington, DC 20310

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington, DC 20460

Re: Support for Retaining Regulatory Guidance Letter 07-02

Dear Assistant Secretary Darcy and Administrator McCarthy:

The Oregon Water Resources Congress (OWRC) respectfully requests, given the pending implementation of the final “waters of the U.S.” Clean Water Rule (Final Rule), that the current Regulatory Guidance Letter (RGL) 07-02 on Exemptions for Construction or Maintenance of Irrigation Ditches and Maintenance of Drainage Ditches under Section 404 of the Clean Water Act continues to remain in effect as the official policy of the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) for such irrigation water management features under the new Final Rule.

As a nonprofit association representing irrigation districts, water control districts, improvement districts, drainage districts, and other local government entities delivering agricultural water supplies, OWRC has a strong interest in the CWA and specifically, in the definition of WOTUS as it applies to ditches and canals. The water stewards we represent operate complex water management systems, including water supply reservoirs, canals, and pipelines, delivering water to roughly one-third of all irrigated land in Oregon. These entities and the thousands of water users they supply embody the association’s founding principles to promote the development, control, conservation, preservation, and utilization of land and water resources of the State of Oregon.

The RGL 07-02 was developed over several years through a collaborative, yet lengthy process between the Department of the Interior (Bureau of Reclamation), the EPA and the Corps. The purpose of the RGL was to clarify and set forth a consistent process in determining whether activities came under the exemptions for construction and maintenance of irrigation ditches, and the maintenance of irrigation drains, most of which are located in the Western U.S. Importantly, this RGL was signed by both EPA and the Corps, as both agencies were involved in its drafting and ultimate approval. The RGL clearly states the activities that are exempt under the Clean Water Act (CWA), what constitutes and triggers the recapture provisions, and allows for all activities associated with the maintenance and construction of irrigation ditches in the uplands and maintenance of irrigation drains to be fully in compliance with the CWA and the new Final Rule.

Over the past eight years, the RGL has provided irrigation districts, farms and ranches in the West with the certainty they need in determining what activities are exempt under the CWA when constructing and maintaining irrigation ditches by eliminating confusion over exempt activities. We know of several examples across the West where the RGL has enabled irrigation and drainage districts to react expeditiously and efficiently to construct new irrigation features,

make necessary repairs, and perform routine maintenance on hundreds of miles of irrigation and drainage ditches. One other benefit of the RGL is that it allows irrigation and drainage districts the confident choice of preserving what can be valuable wildlife habitat created by these ditches and drains. In this way, as long as the ditches and drains continue to function efficiently, the districts are not compelled to clean out or disturb this habitat for fear of jurisdictional regulation under the CWA.

We believe it was the express intent of Congress to not require time-consuming and costly permits for routine construction and maintenance of irrigation ditches and maintenance of drains that have little or no adverse effect on the environment. Clearly, costs to farmers and ranchers would increase significantly if irrigation and drainage districts were required to obtain a Section 404 permit every time they needed to maintain or build a ditch or maintain an irrigation drain. Further, the time consuming process of obtaining these permits would preclude much needed construction and maintenance. Improvements in water conservation and management so important during a drought or preparing for future drought conditions sometimes require the installation and construction of new infrastructure in water delivery ditches. Water districts have only a short window of time to complete planned construction and maintenance tasks on these ditches and drains. If these tasks are delayed in any way, the resulting lack of maintenance or construction could threaten the full use and purpose of these facilities, impacting water deliveries to farmers and necessary water conservation efforts, ultimately driving up the cost of food production.

The exemptions for construction and maintenance of irrigation ditches and drains have been part of the CWA since its inception. We are concerned that the new Final Rule does not specifically exclude from CWA jurisdiction all irrigation ditches and drains and, if the RGL were to be somehow materially changed or withdrawn, these exemptions could be rendered meaningless. We request that the RGL 07-02 remain in force under the Final Rule in order to provide EPA and the Corps with the correct and predictable interpretation of the existing ditch exemptions Congress explicitly provided in the CWA.

Sincerely,

April Snell
Executive Director
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