

Changing the Definition of “Waters of the US (WoUS)”

Subcommittee Members:

On behalf of CONSOL Energy, Inc., a leading diversified energy company headquartered in the Appalachian Basin, and CNX Gas Company LLC, a subsidiary of CONSOL Energy, we would like to thank you for the opportunity to address the subcommittee on the proposed rule changing to the definition of waters of the United States as it applies to the Clean Water Act.

The proposed rulemaking expands upon the definition of “jurisdictional waters” and would include waters not traditionally covered under the Clean Water Act. The Environmental Protection Agency (EPA) has indicated that the intent of the proposed rule is to streamline the decision making process in regards to which waters are “jurisdictional waters” by increasing clarity as to the definition of waters of the US.

CONSOL Energy feels the proposed change is unwarranted due to current federal regulation and robust state programs that are already in place to protect waters of the US. CONSOL Energy also believes that the proposed changes will absolutely lead to increased permitting review and processing time by regulators due to the uncertainty of jurisdictionality, which will be an undue burden on industry. The expansion of jurisdictional waters would have substantial impact across the energy industry and indeed all industries by requiring permits for impacts to otherwise isolated waters, thereby triggering additional federal requirements for little to no environmental benefit.

In September 2013, EPA published their *Draft Connectivity of Streams and Wetlands to Downstream Waters* report. The report was used as a building block for expanding the Clean Water Act’s regulatory jurisdiction; however this was done prior to the Science Advisory Board’s review of the report. Such expansion of jurisdiction should not be based on a report that does not address the fundamental question of significance of any hydrologic connection. The Science Advisory Board has come out with much the same conclusion in their *Draft Review of the Draft Connectivity of Streams and Wetlands to Downstream Waters*.

In addition to the traditionally recognized rivers, streams and wetlands, the proposed rule includes a third category known as “riparian areas”. The proposed rule’s definition of riparian areas could include land surrounding the recognized traditional areas (transition areas between terrestrial and aquatic ecosystems), geographically isolated wetlands, flood plains, and even other areas connected through the subsurface. *The Connectivity of Streams and Wetlands to Downstream Waters* report also does not fully take into account the Corps’ 1987 wetland delineation manual requirements of requiring three field tests for determining the existence of a wetland. Selective choices in literature by the author led to error in the analysis with respect to the required determination of wetlands and illustrates that this report was not ready to be finalized when EPA drafted the proposed rule.

CONSOL Energy prides itself on being good environmental citizens and has set “compliance” as one of our top core values. This includes all regulations intended to improve the environment for the people living in the areas we operate. CONSOL Energy actually makes it a point to go above and beyond compliance as shown by our partnership with the Center for Sustainable Shale Development. In working toward these values we rely on avoidance of jurisdictional waters (as currently defined) as a way to be both compliant with Clean Water Act requirements and be good environmentally conscience corporate citizens. The proposed rule changes would significantly limit our ability to avoid newly regulated jurisdictional waters. By limiting our ability to avoid newly regulated jurisdictional waters, EPA would be directly affecting our project lead times and costs by requiring additional planning, training to meet additional permitting requirements, and now requiring mitigation for isolated resources and “riparian areas” that do not pose a significant or direct impact to the waters of the US.

Currently, CONSOL Energy has a project site located in central WV where the proposed rule would have a significant impact on our schedule, planning, and cost if it were to be implemented under the new proposed ruling. With the increased jurisdiction of the resources on the property, CONSOL Energy would be forced to abandon this site due to the associated increased costs with permitting delays and increased mitigation costs that we typically are able to avoid or minimize. (Refer to both figures showing resources w/current jurisdiction shown vs. jurisdiction after the Rule)

In closing, CONSOL Energy would like to reiterate that we are not in support of the proposed rule changing the definition of waters of the US and expanding jurisdictional waters that are covered by the Clean Water Act. These changes would lead to considerable permitting delays, additional mitigation cost, and a loss in our ability to consistently avoid and minimize currently regulated jurisdictional waters, while extending waters of the US coverage into areas that have no significant hydrologic connection to jurisdictional waters.

Thank you for your time and consideration.