December 1, 2021

Kate Balasa
Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Submitted via E-mail to: WOTUS-outreach@epa.gov

Stacey Jensen
Office of the Assistant Secretary of the Army for Civil Works
Department of the Army
108 Army Pentagon
Washington, DC 20310-0104

Re: Notification of Regional Roundtable Discussions Regarding "Waters of the United States" - Nomination Letter for Western Region Roundtable

Dear Ms. Balasa and Ms. Jensen:

We appreciate the opportunity to submit a proposal for consideration to the U.S. Environmental Protection Agency and the Department of the Army (Agencies) for the Western geographic regional Waters of the United States (WOTUS) Roundtable. This proposal was collaboratively assembled in conjunction with our fellow state farm bureau organizations in the western region. In the last six years, the Agencies have implemented three different definitions of Waters of the United States (WOTUS) including the pre-2015 regulatory regime, the 2015 Clean Water Rule, and the 2020 Navigable Waters Protection Rule (NWPR). As stakeholders continue to navigate this ongoing regulatory pendulum, it has never been more important to discuss the impact of these regulations, evaluate the regional variability of water resources, and explore key implementation issues stakeholders in the Western geographic region have faced under the varying definitions of WOTUS.

Description of the Western Region

For purposes of these roundtable discussions, the Agencies have divided the nation into five separate geographic regions. This proposal is intended to focus on the Western region which includes the following states: Wyoming, Montana, Idaho, Washington, Oregon, Nevada, California, Alaska, and Hawaii.

The western region of the United States is distinctive in many ways--from its soaring mountains and expansive prairies to its red-rock canyons and flat-topped buttes, to transitional areas

between valley floors and surrounding low foothills. Additionally, the West is home to a large percentage of the nation's federally managed public lands. Generally, one factor that sets the western region apart from other geographic regions of the United States is its lack of precipitation throughout much of the West. Regions with an arid, Mediterranean climate see rain three months out of the year. It does not rain continuously during this time, but rather, rain events occur sporadically throughout those three months. It is during major rain events, often only a few days per year, that swales will direct water downhill, onto neighboring properties, and into the regional watershed. These watersheds contain numerous tributaries that are considered non-navigable. The status of these waterways is a critical issue in the Western region.

WOTUS Implementation Key Topics in the Western Region

The October 25, 2021, Federal Register notice requests a brief description of key topics related to WOTUS implementation in the region. For Western key topics we offer the following:

- What constitutes WOTUS has been the subject of great political and legal debate for more than four decades. However, having a clear, well-defined standard as to what constitutes WOTUS, as well as a clear understanding as to the way WOTUS is implemented, continues to shift. The 2015 rule resulted in immediate litigation across the nation and led to inconsistent application across the nation's waterways. The 2020 National Waters Protection Rule (NWPR) narrowed the 2015 WOTUS rule to mixed reception. The result has been contentious and confusing regulatory schemes across the West.
- Over the years, confusion has resulted from lengthy legislative and legal battles, including several cases before the Supreme Court of the United States, since the Clean Water Act was enacted in the 1970s. For Western communities, where clean water is the lifeblood for both urban and rural areas, this regulatory pendulum has created uncertainty surrounding the federal regulatory regime. We share the Agencies' desire to clarify the long-standing confusion over the definition of WOTUS and achieve a durable definition of WOTUS.
- Utilization of peer-reviewed and relevant science of connectivity viewed in conjunction with relevant legal and practical constraints, especially those faced by the arid West.
- In the arid West, there is a significant presence of ephemeral rivers and streams that flow after rain or as snow melts. Whether or not these water bodies are jurisdictional has been significantly debated, with the 2015 Rule and the 2020 NWPR treating them very differently. These ephemeral streams and rivers are relied upon for both drinking water for communities and irrigation water used to grow food that feeds millions.
- Additional discussion is needed between the Agencies and stakeholders on the definition of tributaries. Occasional storm events in the arid West can be enough to establish a bed, bank, and ordinary high-water mark. Due to the nature of the West, utilization of this standard to define a tributary allows some features on otherwise dry land, without a

significant nexus to a traditional navigable water, to become jurisdictional, causing confusion.

- The scope of jurisdictional ditches continues to be a key issue in the West. Ditches, canals, channels, conduits, and man-made conveyance systems are commonly utilized in western states to transport, store, and divert water for agricultural, municipal, commercial, and industrial uses.
- Additional discussion is needed between the Agencies and stakeholders on the definition of adjacent waters and wetlands as this issue continues to cause considerable confusion, especially for lands in the arid West. Current definitions of "adjacent" allow for jurisdiction over isolated wet patches of land that may not be connected to other waters. Additional clarity is also needed regarding wetland delineation criteria.

Perspectives Represented by the Roundtable

On June 9, 2021, the Agencies announced their intent to revise the definition of WOTUS under the Clean Water Act through two rulemakings; first, a foundational rule that will propose to restore protections, and a second rulemaking process that builds on the regulatory foundation created by the foundational rule. On July 30, 2021, the agencies then announced stakeholder engagement opportunities, including the Agencies' intent to host ten regionally focused roundtables. The scope of jurisdiction under the CWA is of fundamental importance to many categories of stakeholders. It is our understanding that the intent for each regional roundtable is to engage individuals representing diverse perspectives so that meaningful dialogue on the definition of WOTUS can be achieved. We believe the roundtable for the Western region proposed below is representative of the region, offers the diverse perspectives the Agencies are seeking, and highlights a high level of experience with the definition of WOTUS. Additionally, all fifteen of these organizations are committed to seeking a definition of WOTUS that is durable.

Proposed Western Roundtable Participants

Organizer & Roundtable Participant (Agriculture)

Jamie Johansson, President, California Farm Bureau

James D. "Jamie" Johansson has served as the president of the California Farm Bureau in December 2017. Jamie also grows olives and citrus fruit in Oroville, CA and operates an olive oil company, Lodestar Farms. He is a co-founder of the Sierra Oro Farm Trail Association and a former board member of the California Olive Oil Council. Jamie also served for four years on the Oroville City Council, which selected him to serve as vice mayor and serves on the American Farm Bureau Federation Board of Directors. A leading voice for California agriculture, Jamie has extensive knowledge about how federal and state jurisdiction has impacted farming and ranching. In addition to representing California Farm Bureau, Jamie would also serve as a voice for all the state farm bureau organizations in the Western region including Wyoming, Montana, Idaho, Washington, Oregon, Nevada, Alaska and Hawaii.

Agriculture

Phyllis Shimabukuro-Geiser, Chairperson, Hawaii Department of Agriculture
Phyllis serves as the Chairperson for the Hawaii Department of Agriculture. Phyllis' previous work experiences includes her role at Mikilua Poultry Farm, Inc. in Wai'anae where she served as Vice President and Administrative Fiscal Assistant as well as Vice President of Associated Producers Corp. in Honolulu. Phyllis earned her bachelor's degree in animal science from the University of Hawaii at Manoa and her master's degree in avian sciences from University of California, Davis.

Katie Vandenberg-Van Vliet, Attorney at Law & Associate, Sawtooth Law Offices, PLLC
Katie, a practicing attorney, focuses on agricultural law, business law, civil litigation, land use law, governmental affairs, natural resource law, real property law, and water law. A third-generation dairy farmer, Katie has first-hand knowledge of the livestock industry and can draw from these personal experiences in her legal work. Katie graduated cum laude from the University of Idaho College of Law. She also holds undergraduate degrees in agricultural economics and accounting.

Conservation

Todd Heward, President, Wyoming Association of Conservation Districts
As President of the Wyoming Association of Conservation Districts, Todd provides a unified, state voice for the state's 34 local conservation, guides conservation policy priorities and works to secure adequate funding for natural resources conservation programs. The Association has also worked to provide story maps to help clearly depict changes that have occurred to WOTUS in recent years. Todd has extensive cooperative experiences having served on the statewide Greater Sage-grouse Inter-Agency Team for U.S. Fish and Wildlife Service, the Historic Trails RC&D, and on the USFWS CCAA/CCA Development Team for Greater Sage-grouse/ranch management representing Wyoming Conservation Districts. Todd holds an Associate degree in Animal Science from Rick's College and a bachelor's degree in Animal Science/Rangeland Ecology & Watershed Management from the University of Wyoming.

Brenda Richards, Coordinator, Idaho Rangeland Conservation Partnership
Brenda Richards has over 25 years of experience in rangeland issues coupled with expertise in the social and economic elements vital to rangeland decisions. Her ranching background, work on rangeland and land policy, service as an elected leader, community involvement, and various leadership roles on local, state, and national levels are well suited to collaborative work and bringing a broad, Western regional perspective.

Developers

Jeffrey M. Pemstein, Division President, Towne Development of Sacramento HBT Construction & Remodeling

As Division President for Homes by Towne's Sacramento Division, Jeff oversees several business lines focusing on new-home building, remodeling and affordable housing construction, land acquisition and development, and real estate advisory and consulting. With over 30 years of professional experience, Jeff also has extensive expertise in land use policy and urban planning, NEPA compliance and environmental permitting, infrastructure planning as well as public facility finance. Jeff also has extensive knowledge of how WOTUS can interact with development and affordable housing.

Drinking Water/Wastewater Management

Greg Morrison, Government Relations Officer, Elsinore Valley Municipal Water District

As Government Relations Officer, Greg works to ensure Elsinore Valley Municipal Water District, a municipal water supply agency located in southern Riverside County, California, continues to provide the region with a reliable, affordable, and safe water supply. Relying on both imported and local water supplies, the District also seeks to develop new local water supplies and promote water conservation. Greg has extensive experience with past WOTUS rules and can provide perspective on how jurisdiction can impact critical water infrastructure for drinking water and other municipal and industrial needs.

Paul Arrington, Executive Director & General Counsel, Idaho Water Users Association

Paul Arrington is the Executive Director and General Counsel for the Idaho Water Users Association, a non-profit corporation representing approximately 300 canal companies, irrigation districts, ground water districts, municipal and public water suppliers, hydroelectric companies, aquaculture interests, agri-businesses, professional firms, and individuals throughout Idaho. Their purpose is to promote, aid and assist in the development, control, conservation, preservation, and utilization of the state's water resources.

Environmental

Chrysten Rivard, Oregon Director, Trout Unlimited

Chrysten Rivard serves as the Oregon Director for Trout Unlimited. TU works throughout the nation working to protect, reconnect, restore, and sustain coldwater resources. Taking an inclusive, collaborative approach to coldwater conservation, TU works to integrate the needs and expertise of all stakeholders while actively seeking to build durable partnerships to leverage resources and ensure projects and initiatives are multi-benefit. In the context of WOTUS, TU is committed to healthy headwaters and wetlands, important components to the Western network of streams and rivers. Although Chrysten is based in Oregon, TU works throughout the Western region.

Environmental Justice

Tiffany Monroe, President, Lane Families for Farms and Forests
Tiffany is a fifth-generation farmer, who grew up on a hazelnut, vegetable, seed, and timber farm in Junction City, Oregon. Ms. Monroe farms with her husband, engages in agricultural advocacy work across the country and serves as President for Lane Families for Farms and Forests. Ms. Monroe was recently appointed to Governor Kate Brown's Racial Justice Council and serves as co-chair of the Environmental Equity Committee. While earning her master's degree in Community and Leadership Development with an emphasis in Agricultural Education from the University of Kentucky, her graduate research on implicit bias focused on lowering racial anxiety, implicitness, prejudice, and racial color-blindness among entering college freshman. Additional research and programing included evaluation of gardening and plant science curriculum for elementary school students, rural African American male perspective on education, and food systems, food justice, and race curriculum development. Tiffany is also the co-founder and female leadership team member of the Oregon Black Food Fund and a member of the Oregon Food Bank Policy Leadership Council.

Industry

Tammy Johnson, Executive Director, Montana Mining Association
On behalf of the Montana Mining Association, a trade association representing mining companies, Tammy has been engaged on WOTUS since the 2015 rules were proposed, submitting lengthy and detailed comments to the Agencies. Tammy also has extensive involvement with Clean Water Task Forces, the Montana Nutrient Work Group, and has been engaged in water quality and quantity issues throughout her 30-year career.

Other – Tribal

Jason Robison, Lands and Resources Officer, Cow Creek Band of Umpqua Tribe of Indians
Jason serves as Lands and Resources Officer for the Cow Creek Band of Umpqua Tribe of Indians, one of nine federal recognized Indian Tribal Governments in the State of Oregon. With government offices in Roseburg, Oregon, Jason has been involved in Tribal environmental programs for more than ten years and has worked in fisheries and wildlife management, environmental management, cultural resource management and forest management. Jason would bring a wide range of natural resources expertise to a roundtable as well as offer a Tribal perspective on WOTUS definition and jurisdiction. Either Jason or his designee would participate on behalf of the Cow Creek Band of Umpqua Tribe of Indians.

Other – State Government

Jennifer Carr, Deputy Director, Nevada Division of Environmental Protection
Serving within the Nevada Department of Conservation and Natural Resources, Jennifer offers a strong background and experience in not only extensive coordination with operational and

policy considerations with federal agency rules and regulations, she also is responsible for carrying out the required protections of waters in Nevada because of the state's comprehensive definition of "Waters of the State." Her insights from this experience and knowledge of Nevada's unique arid waterbody characteristics will provide an extremely important perspective in the conversations of the region's Roundtable.

Amanda Kaster, Director, Montana Department of Natural Resources and Conservation
As Director of Montana Department of Natural Resources and Conservation, Amanda oversees the Department's mission to help ensure that Montana's land and water resources provide benefits for present and future generations. Organized into seven divisions, the Department's Water Resources Division coordinates the development and utilization of the state's waters, allows the Division to protect existing uses, and promotes adequate future supplies for domestic, industrial, agricultural, recreation, the conservation of water for wildlife, aquatic life and other beneficial uses.

Other – Water Supply

Dan Keppen, Executive Director, Family Farm Alliance
As Executive Director of the Alliance, Dan focuses on ensuring the availability of reliable, affordable irrigation water supplies to Western farmers and ranchers. The Alliance has long worked on finding ways to streamline and improve federal regulatory processes including working with the Agencies on the definition and implementation of WOTUS. Family Farm Alliance represents members in all the states included in the Western region.

Conclusion
We appreciate the Agencies' commitment to learning from past regulatory approaches and engaging with stakeholders. We believe that the proposed roundtable for the Western region outlined above would provide the Agencies with a broad array of unique perspectives and ample insights about their experiences with the definition of WOTUS, including challenges and opportunities within the western geographic region. Should this proposal be selected, please contact Erin Huston (ehuston@cfbf.com) in the California Farm Bureau Federal Policy Department at 916-849-3746.

Sincerely,

JAMIE JOHANSSON
President