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DEPARTMENT OF WILDLIFE CONSERVATION

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April 15, 2003

Water Docket
Environmental Protection Agency
Mailcode 4101T
1200 Pennsylvania Ave., NW
Washington, DC 20460
Attention: Docket ID No. OW-2002-0050

APR 15 2003

Re: Comments in response to Advance Notice of Proposed Rulemaking on the Clean Water Act Regulatory Definition of "Waters of the United States" Federal Register Vol. 68, No. 10, January 15, 2003

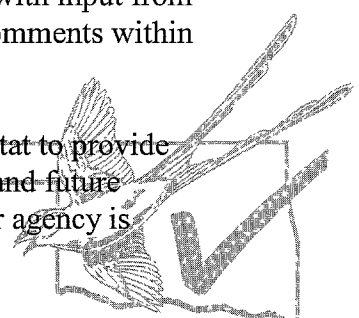
Dear Sir,

The Oklahoma Department of Wildlife Conservation (ODWC) submits the following comments in response to the Advance Notice of Proposed Rulemaking on the Clean Water Act Regulatory Definition of "Waters of the United States" (ANPRM) issued by the U.S. Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA). We have reviewed the comments from Ducks Unlimited, Inc. (DU) in the letter dated March 4, 2003, and concur with all of their comments. The comments of DU encompass a broad range of issues regarding the implications of the potential change of the definition of "Waters of the United States" which could result in limiting jurisdictional coverage and protection of wetlands under the Clean Water Act (CWA). We strongly believe that DU's recommendations to the Corps and EPA to clarify definitions of adjacency and significant nexus to reflect the actual functional relationships between geographically isolated wetlands and navigable waters should be carefully considered and will be critical to the continued protection of isolated wetlands under the Clean Water Act.

We have also reviewed and concurred with the Central Flyway Council's (CFC) letter dated March 25, 2003 which addressed the presence of wetlands classified as isolated in the Central Flyway, emphasized the critical habitat supplied by those wetlands for international resources and identified other vital functions of wetlands in the central region of the continent which greatly benefit society.

The State of Oklahoma has submitted a comment letter in response to this issue with input from our agency and other environmental agencies. This letter is to supplement the comments within that letter from the State of Oklahoma.

The mission of the ODWC is to manage Oklahoma's wildlife resources and habitat to provide scientific, educational, aesthetic, economic and recreational benefits for present and future generations of hunters, anglers and other who appreciate wildlife. Therefore, our agency is



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concerned that any change in the definition of “Waters of the United States” under the Clean Water Act which limits the protection of wetlands will have the potential to adversely affect fish and wildlife and their associated habitat. The purpose of this letter is to not only convey the importance of isolated wetlands but to describe the isolated wetlands unique to Oklahoma and how these wetlands benefit fish and wildlife resources and the citizens of Oklahoma.

Due to its varied ecological and environmental conditions, Oklahoma has a wide range of natural communities and a rich biodiversity of flora and fauna. There are a variety of types of isolated wetlands that are known to occur within Oklahoma including but not limited to marshes, lakes, ponds, playa lakes, run-off associated wetlands, ground-water associated wetlands and temporary pools.

In general, wetland functions include:

Water Quality Improvement	Recreation
Flood Control	Food and Fiber Production
Fish and Wildlife Habitat	Erosion Control
Ground-water recharge	

More specifically, isolated wetlands play a crucial role in providing benefits to fish and wildlife. Isolated wetlands provide nesting and spawning habitat for many species of fish and wildlife including many threatened and endangered species. They are universally recognized for their water quality improvement functions including nutrient uptake, chemical/metal removal, and sediment reduction. Isolated wetlands also function as recharge areas to aquifers critical to agriculture, industry and municipal and domestic water users. Isolated wetlands also have important aesthetic and social values by providing outdoor and wildlife related recreational opportunities including hunting, fishing, wildlife observation and photography resulting in billions of dollars generated annually into the national economy.

One unique type of isolated wetlands in Oklahoma is the playa lakes of the western high plains, which includes all of Oklahoma’s panhandle counties.

“These shallow, circular depressions [Playa lakes] fill with water draining off the surrounding plain. These areas form the most significant wetlands in the southern part of the Central Flyway, the migration route of waterfowl and shorebirds in midwestern North America. Playas are vital wintering and migration stopover areas for migrating waterfowl and other wetland birds. The wet-dry cycle that occurs every year results in high levels of productivity in these wetlands.”

(Oklahoma Biodiversity Plan: A Shared Vision for Conserving Our Natural Heritage, Pg. 32)

Playa lakes have been documented as principle recharge areas to important ground water aquifers such as the Ogallala aquifer. Depletion of ground water aquifers has been shown to have negative effects on adjacent navigable waters, such as rivers, by reducing flows due to the lowering of the ground water table. Extensive bibliographies of the value and functions of playa lakes is maintained by Texas Tech University on the Internet at www.lib.ttu.edu/playa

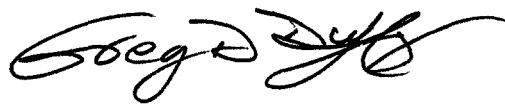
As a result of the SWANNC decision, many fish and wildlife species will be adversely affected especially migratory waterfowl, shore birds, wading birds and amphibians. Also, several federally listed threatened and endangered species such as bald eagles and whooping cranes will potentially be directly affected by excluding isolated wetlands from the definition of "Waters of the United States". In addition many other vertebrate and invertebrate species of animals will also likely be negatively affected as a result of the loss of protection of these critical habitats.

Scientific literature profusely documents the array of linkages between geographically isolated wetlands and other jurisdictional waters. The literature establishes that most geographically isolated wetlands are in fact functionally adjacent to navigable waters. Although these functional linkages are not as visually obvious as surface water connections through tributaries, they are just as directly related to the restoration, maintenance and integrity of our Nation's water quality and supply. Examples of this literature can be found in the Literature Cited section of the DU's letter dated March 4, 2003.

The Oklahoma Department of Wildlife Conservation believes it is critical that the Corps and EPA proceed in their proposed rule making to clarify definitions of adjacency and significant nexus to reflect the actual functional relationships, i.e., functional adjacency between geographically isolated wetlands and navigable waters that the scientific literature unquestionably documents. This clarification would be wholly consistent with the intent and language of the Clean Water Act and subsequent case law. With functional definitions of adjacency and significant nexus in hand, the agencies should then move expeditiously to take any and all actions necessary to consistently apply the protections of Section 404 and other sections of the CWA to geographically isolated wetlands across Oklahoma and the entire U.S.

Thank you for the opportunity to comment on this important federal rule making action.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg D. Duffy". The signature is fluid and cursive, with a large initial "G" and "D".

Greg D. Duffy, Director

cc: Governor Brad Henry
Congressional delegation
US Fish and Wildlife Service, Tulsa
Duck's Unlimited