



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

August 24, 2020

THE ADMINISTRATOR

Michael Honeycutt, Ph.D.
Chair
Science Advisory Board
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Dr. Honeycutt:

Thank you for transmitting the U.S. Environmental Protection Agency Science Advisory Board's February 27, 2020, commentary on the proposed revised definition of "waters of the United States." The EPA appreciates the work and advice of the SAB. Staff from the EPA Office of Water fully participated in informational and formal meetings and teleconferences with SAB representatives at their request in advance of the issuance of the proposed rule (e.g. February 16, 2018, and May 31, 2018), after publication of the proposed rule (e.g. April 25, 2019) and during the SAB's public meeting in Washington, D.C., on June 6, 2019.

As announced on January 23, 2020, the EPA and the U.S. Department of the Army finalized the Navigable Waters Protection Rule, which revises the definition of "waters of the United States." This rule protects the environment while respecting states, localities, tribes and private property owners. As the EPA and the Army made clear in the proposed rule preamble and explain in greater detail in the preamble to the final rule and supporting materials, the fundamental bases for the Navigable Waters Protection Rule are the text and structure of the *Clean Water Act*, U.S. Supreme Court precedent and the constitutional boundaries within which Congress enacted the CWA. As the SAB itself notes, the SAB is not constrained by the CWA and associated legal precedent; the EPA and the Army, however, are obligated to act within the authorities granted by Congress and the limitations that have been established by the Supreme Court.

In developing the final rule, the EPA and the Army considered approximately 620,000 comments received by the agencies through the public comment process. The substance of the SAB's comments was raised by others as part of the public comment period on the proposal and, as a result, have been addressed by the agencies in the final rule and its preamble and supporting documents. As discussed in the preamble to the final rule, the agencies' definition of "waters of the United States" is informed by science, but science cannot dictate where to draw the line between federal and state or tribal waters, as those are legal distinctions established within the overall framework and construct of the CWA.

The EPA appreciates the work of the SAB and the workgroup to review and provide a commentary on the proposed revised definition of “waters of the United States.” If you have further comments or questions, you may contact Thomas Armitage at (202) 564-2155 or armitage.thomas@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Wheeler", with a long horizontal flourish extending to the right.

Andrew R. Wheeler