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The Honorable Stacey Jensen
Oceans, Wetlands and Communities Division
Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, D.C. 20460

The Honorable Milton Boyd
Office of the Assistant Secretary of the
Army for Civil Works
Department of the Army
108 Army Pentagon
Washington, D.C. 20310-0104

RE: Docket ID No. EPA-HQ-OW-2025-0093

Dear Ms. Jensen and Mr. Boyd:

The National Association of Tribal Historic Preservation Officers (NATHPO) urges the Environmental Protection Agency (EPA) and United States Army Corps of Engineers (USACE) to adopt a definition of Waters of the United States (WOTUS) that protects watersheds important to Tribal Nations.

NATHPO is the only national organization devoted to supporting Tribal historic preservation programs. Founded in 1998, NATHPO is a 501(c)(3) non-profit membership association of Tribal government officials who implement federal and Tribal preservation laws. NATHPO empowers Tribal preservation leaders protecting culturally important places that perpetuate Native identity, resilience, and cultural endurance. Connections to cultural heritage sustain the health and vitality of Native peoples.

NATHPO strongly believes no additional rule is necessary as the 2023 conforming rule addressed the Supreme Court of the United States 2023 decision in *Sackett v. Environmental Protection Agency*. Should the agencies decide to move forward with administrative action, NATHPO encourages the agencies to only make changes to the amended 2023 rule that are necessary to implement the decision in *Sackett v. Environmental Protection Agency*. Furthermore, any changes should make sure the definition of WOTUS is as broad as possible.

It is imperative any definition of WOTUS be consistent with the federal government's Federal Indian trust responsibility, one of the most important principles in federal Indian law, and treaties with Tribal Nations. It also implicates nation-to-nation consultation under the National Historic Preservation Act (NHPA) on projects that would have an impact on waters culturally important or sacred to Tribal Nations. Narrowing the definition and scope of WOTUS would reduce the number of projects subject to NHPA Section 106 review, therefore precluding a critical process for considering places and resources important to Tribal Nations.

As Pueblo of Jemez Governor George Shendo noted in the EPA's April 30th listening session, "The Jemez River watershed is used for cultural and ceremonial practices." He also added that the use of that water for growing crops has been and continues to be central to the Tribe's understanding of their place in the world. With that in mind, he added that a "narrowing of the definition of WOTUS will significantly harm the Pueblo of Jemez."

During that listening session, representatives of several other Tribal Nations advocated for as broad a definition of WOTUS as possible to protect waters important to their communities. The representatives specifically requested a definition that is broad enough to address these issues:

PROTECTING NATIVE PLACES

- Brianda Hernandez Rosales, the Water Quality Program Coordinator for the Bishop Paiute Tribe, and others urged the EPA to adopt a rule that would permit ephemeral streams to be included in the WOTUS definition. She also urged the adoption of a definition that does not “actively reward historical interference” and instead “accounts for historical connectivity that was interrupted by human interference.”
- Audrey McGaughey, the Tribal Historic Preservation Officer for Modoc Nation, urged the EPA to have a broad definition of WOTUS that included ditches.
- Gerald “G.I.” James, Vice President Lummi Tribal Council, encouraged the EPA to draft a definition of WOTUS that recognizes the “cumulative impacts” on waters important to the Lummi and other Tribal Nations.

While NATHPO urges the EPA to seriously consider the comments from the listening session and those brought up in one-on-one consultation, we strongly urge the EPA to engage in nation-to-nation consultation consistent with the federal government’s trust responsibility to Tribal Nations.

The NHPA Tribal consultation processes are fundamental tools Tribal Historic Preservation Officers (THPOs) use to protect places, including watersheds, that are important to their nations. While NATHPO shares project proponents' frustration with the current review process, NATHPO strongly opposes narrowing of the definition of WOTUS. As already noted, such an action would contradict the Federal Indian trust responsibility, one of the most important principles in federal Indian law.

The best way to address a consultation process that is frequently inefficient and fails to provide adequate protection of Tribal Nations’ cultural resources and sacred places, would be to increase federal support for THPOs. In Fiscal Year 2025, THPOs will receive on average \$100,900 from the Historic Preservation Fund (HPF). NATHPO strongly supports a reauthorization of the HPF that would require:

- THPOs receive a minimum of 20 percent of the HPF each year, and;
- direct the National Park Service to review if THPO funding is keeping pace and adjust the funding to reflect the annual increase in the number of THPOs accordingly.

We also urge the Administration to propose budgets and Congress to pass appropriations bills that reflect the important role THPOs play in protecting the places, including watersheds, that tell the stories of Tribal Nations.

Thank you for considering our comments. Please do not hesitate to contact me if you would like to discuss this matter or if I can be helpful in any other way.

Sincerely,



Valerie J. Grussing, PhD
Executive Director