



The Western Coalition of Arid States

WESTCAS

November 6, 2013

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The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Via E-Mail to: McCarthy.gina@epa.gov and Dickerson.aaron@epa.gov

RE: WESTCAS Comment on EPA draft report, Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence: Docket ID No. EPA-HQ-OA-2013-0582

Dear Administrator McCarthy:

The Western Coalition of Arid States (WESTCAS) has reviewed the Environmental Protection Agency (EPA) draft report, *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence (September, 2013 External Review Draft, EPA/600/R-11/098B)*. WESTCAS appreciates the opportunity to provide comments to you and the Science Advisory Board on this important Draft document on behalf of its members.

The Western Coalition of Arid States (WESTCAS) is a coalition of approximately 125 water and wastewater districts, cities, towns, and professional organizations focused on water quality and water quantity issues in the States of Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, and Texas. Our mission is to work with Federal, State, and Regional water quality and quantity agencies to promote scientifically-sound laws, regulations, appropriations, and policies that protect public health and the environment in the arid West.

WESTCAS is pleased to submit the following comments on the *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence* draft report ("Report"):

1. WESTCAS is concerned with the timing of the release of this Report. EPA's decision to issue the Report for public review and comment *after* the Agency's development of a proposed rule to clarify the jurisdiction of the Clean Water Act is backwards. If the Report, when finalized, is intended to provide the scientific basis needed to clarify Clean Water Act jurisdiction, public/scientific review and finalization of the report should occur *before* proposing a rule. For this reason WESTCAS urges EPA to complete all supporting documentation prior to development of any rule and to promulgate a rule that is fully supported by the record.

The Voice of Water Quality in the Arid West

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2. In the Technical Charge to External Peer Reviews, EPA states; “As a scientific review, the Report does not consider or make judgments regarding legal standards for Clean Water Act jurisdiction”. This statement is prefaced with the assertion that the report will be used to meet water quality goals and clarify what waters are covered by the Clean Water Act. WESTCAS urges EPA to better clarify how this report will support rulemaking and how water body connectivity relates in a Clean Water Act regulatory context. Furthermore, the authors and reviewer of the Report should be provided the context for which the Report will be used.
3. The Report finds that virtually all waters are connected which is consistent with a simple description of the hydrologic cycle. The report fails to address connectivity in the context of Clean Water Act jurisdiction which was clearly the goal of the Report. In order to meet this goal, the Report would need to be revised to clearly differentiate between connected water that is relatively permanent surface water with a significant nexus to traditional navigable water and water that does not meet this test. Not only does the test require a surface water nexus but that nexus must also be significant. Only a connection meeting this test could result in the transport of pollutants capable of impairing navigable water and therefore be subject to the Clean Water Act.
4. The Report asserts that all streams are physically, chemically, and biologically connected to downstream rivers, however the report fails to discuss the significance of connectivity or a method for determining how significant or insignificant a connection may be. Such determinations are necessary to establish water quality impacts, particularly relating to intermittent and ephemeral streams.
5. The Report focuses heavily on subsurface water connectivity in the arid west, but fails to describe the significance of these connections from a water quality impact perspective. The Report needs to be revised to clearly indicate groundwater is regulated by the states and, as such, is not a water of the United States.
6. If EPA intends to use this Report to support future regulation, EPA has failed to explain how subsurface waters are relevant to Clean Water Act jurisdiction and how any attempt to broaden jurisdiction will impact existing aquifer protection regulations, groundwater quality, recharge and reuse strategies, and complex water rights.
7. Section 4.8 of the Report relies heavily on studies of the San Pedro watershed and suggests that the hydrologic behavior and connectivity of the watershed is common to the southwestern United States. On the contrary, significant portions of the San Pedro River are perennial and not a good representation of the numerous ephemeral streams that are abundant in the arid southwest. WESTCAS recommends the study of ephemeral and intermittent streams that have little or no connectivity to perennial waters.

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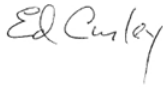
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8. The Report is flawed because it fails to consider all existing documented evidence. WESTCAS highly recommends the review and incorporation of findings from the *Arid West Water Quality Research Project*, most notably the *Aquatic Communities of Ephemeral Stream Ecosystem Final Report*. This project was funded by the EPA and specifically developed to conduct scientific research and disseminate scientific information on western ephemeral and effluent-dependent waters.

Overall, the Report fails to provide the clarification needed to determine which connections trigger Clean Water Act jurisdiction for individual water sources and therefore fails to meet EPA's primary goal for the Report.

Your consideration of these comments is appreciated.

Sincerely,



Ed Curley
President, WESTCAS

cc: Science Advisory Board c/o Docket_OEI@epa.gov RE: Docket ID No. EPA-HQ-QA-2013-0582

Attachments *Arid West Water Quality Research Project, Aquatic Communities of Ephemeral Stream Ecosystem Final Report*

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