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COMMONWEALTH OF KENTUCKY  
**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET**  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

FRANKFORT OFFICE PARK  
14 REILLY RD  
FRANKFORT KY 40601

March 13, 2003

**MAR 14 2003**

Water Docket,  
Environmental Protection Agency,  
Mailcode 4101T  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

RE: Docket ID # OW-2002-0050, ANPRM, "Waters of  
the US"

Dear Sir or Madame:

The Division of Water of the Kentucky Department for Environmental Protection is the state agency in Kentucky responsible for administering the Clean Water Act. As such we are very concerned about any potential changes to the definition of waters of the United States as it relates to the United States Clean Water Act.

We understand the need to provide guidance to Corps of Engineer District Offices who must now deal with the results of the SWANCC decision as it relates to sites that may be isolated from a water of the United States. We believe that the SWANCC decision should be viewed as a narrow court decision that applies only to the CWA jurisdiction over the sand and gravel pit in question. We do not agree that "SWANCC also calls into question whether CWA jurisdiction over isolated, intrastate, non-navigable waters could now be predicated on the other factors listed in the "Migratory Bird Rule" or the other rationales of 33 CFR 328.3(a)(3)(i)-(iii)."

Clearly, the purpose of the Clean Water Act to protect and restore the nation's waters cannot be achieved if "waters of the United States" is narrowly defined to include only traditionally navigable waterways. Of Kentucky's 89,000 total stream miles, we estimate that 49,000 miles are intermittent headwater streams. If the definition of waters of the United States is changed to only those streams that have perennial flow or are traditionally navigable, Kentucky would lose jurisdiction over the majority of stream miles in the state. This would eliminate, for example, our ability to effectively administer the NPDES program, the 401 Water Quality Certification Program, and limit the scope of waters protected by our Water Quality Standards. Also, since TMDLs are based on loadings for all streams that could contribute to an impaired reach, removing these waters from jurisdiction would obviously lead to increased pollution and make any Kentucky's TMDL efforts useless. Kentucky has no comparable state law that could replace the loss of CWA jurisdiction.

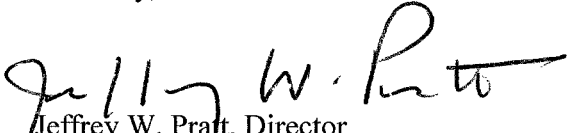


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We recommend that EPA and the Corps do not change the definition of water of the United States at this time and limit any response to the SWANCC decision to that needed to clarify the issue of what constitutes a direct hydrologic connection to a water of the United States, so that Corps personnel will have consistent guidance for making a jurisdictional determination in the field. Any extensive change to the scope of streams and wetlands subject to the jurisdiction of the Clean Water Act would reverse 30 years of progress that has been achieved.

Sincerely,



Jeffrey W. Pratt, Director  
Division of Water

JWP:JLD:jd

c: Ron Mikulak, EPA: Atlanta