

**Testimony of Russ Biggica
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Before the House Committee on Agriculture
Subcommittee on Conservation and Forestry**

*To review the definition of “waters of the United States”
proposed rule and its impact on rural America.*

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Introduction

Chairman Thompson, Ranking Member Lujan Grisham, members of the Subcommittee, thank you for inviting me to testify today on the definition of the “waters of the United States” (WOTUS) proposed rule and its impact on rural America. Since 1942, the Pennsylvania Rural Electric Association (PREA) has served as the unified voice for electric cooperatives in Pennsylvania and New Jersey. PREA is a non-profit, service organization headquartered in Harrisburg, Pa., and is governed by a 14-member board of directors. Today, 14 electric cooperatives in Pennsylvania and New Jersey supply electricity to more than 230,000 rural households, businesses and industries, representing more than 600,000 consumers.

As locally owned and locally controlled businesses, electric cooperatives play vital roles in maintaining the economic health of their rural communities – providing jobs and contributing to the overall quality of life. Established to provide reliable electric service to their member-owners at the lowest reasonable cost, electric cooperatives are private, independent electric utilities owned by the members they serve, each governed by a board of directors elected by and from the membership. Access to affordable energy resources is especially important to residents of rural communities who already spend more per capita on energy than citizens in more populous areas.

Electric co-ops’ operating costs are borne by our member-owners – not investors – and many of our member-owners already experience challenging economic circumstances. Nine out of ten electric cooperative member-owners have average household incomes below the national average, and more than 7 million Americans

served by electric cooperatives live below the poverty line. In fact, cooperatives serve 90 percent of the nation's persistent poverty counties (i.e., those with deeply entrenched poverty rates consistently 20 percent above the national average for the last three decades).

PREA's Concerns with the "Waters of the United States" Proposed Rule

PREA has significant concerns with the rule proposed by the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) to revise the definition of WOTUS under the federal Clean Water Act (CWA), especially the expanded universe of features that would become WOTUS. Electric cooperatives in Pennsylvania own and maintain about 12.5 percent of the electric distribution lines in the state, covering nearly one-third of the Commonwealth's land area in 42 counties. These lines, an essential component of rural business and industry, represent one of the Commonwealth's largest non-governmental investments in rural infrastructure.

Several activities associated with providing electric service require federal CWA permits. The proposed rule would necessitate even more permits. Power lines require regular maintenance, including necessary repair and replacement of poles and towers. In addition, these facilities require upgrades to make the system more resilient in the event of severe weather events. As our members increase generating capacity to meet the growing demands of our members and to invest in generation from other fuels including renewables, electric cooperatives in Pennsylvania and elsewhere will need to build new transmission and distribution infrastructure.

Serving some of the least densely populated areas of the country requires an expansive network of power lines for both electric transmission and distribution. The Corps has a nationwide permit (NWP 12) for utility line activities that allows co-ops to construct and maintain power lines so long as each "single and complete" project –each separate and distinct crossing of a WOTUS – does not result in the loss of more than one half acre of WOTUS. Cooperatives configure lines and structures to avoid many wetland and streams to stay within the half acre limit. However, the broad proposed definition of "tributary" and assertion that all water in floodplains and riparian areas are "adjacent" waters would capture many features commonly found on rural land spanned by cooperative power lines. Such a broad expansion of jurisdictional waters would significantly limit, if not eliminate, cooperatives' ability to stay within the nationwide permit limits, potentially rendering the nationwide permit useless.

More permitting – especially more individual permitting – increases uncertainty, delay, and ultimately the cost of constructing and maintaining power lines. An individual permit can be expected to cost ten times as much as a general permit, and take twice as long to obtain. In many cases, increased delay and increased costs can make the difference between proceeding with, delaying, or cancelling a project. The economic challenges faced by our members underscore the importance of a cost-effective regulatory program. A ten-fold increase in cost of permitting to construct and maintain critical infrastructure with no appreciable environmental benefit is not cost-effective.

PREA believes the broad categories and ambiguous definitions in the proposed rule will vastly expand the reach of the CWA. Under the proposed rule, our rights of way may be considered WOTUS, even though they are often simple ditches alongside roads that receive road run-off and infrequently hold water. EPA and the Corps have said that they are exempting ditches that drain only upland and are constructed in uplands, but the term “upland” is not defined. This gives the federal government the final say on whether or not ditches are eligible for the exemption.

To maintain the reliable delivery of electricity, cooperatives must maintain rights of way, keeping them clear by controlling vegetation which may include the use of herbicides. Electric cooperatives must control vegetation around generating facilities and substations as well. Permits are required if herbicides are applied in WOTUS, so an expansion of WOTUS as described in the proposed rule will also increase the requirement for vegetation control permits. EPA and states have issued general permits for vegetation, but if you spray more than 20 linear miles, there are added burdens. And, if the area is considered a WOTUS or potential habitat for endangered species, there will be even more requirements, all triggered by the assertion of federal jurisdiction.

Concerns of Small Business

The proposed rule will impose significant costs on small businesses, including electric cooperatives. All distribution cooperatives, and all but three generation and transmission cooperatives, meet the Small Business Administration definition of a small business. The typical distribution co-op serves 13,000 consumers and, on average, seven customers per mile of electric distribution line –far fewer than the national average of 34 customers per mile of distribution line for investor owned utilities and 48 customers per mile for publicly owned utilities (municipals).

PREA agrees with the findings of the Small Business Administration Office of Advocacy (SBA Advocacy) that the EPA and the Army Corps of Engineers improperly certified the rule as not posing a significant economic impact on a substantial number of small entities. We also agree with SBA Advocacy that the agencies should have prepared and made available in the rulemaking record an initial regulatory flexibility analysis describing the impact of the proposed rule on small entities. Furthermore, the EPA erred in not conducting a small business advocacy review (SBAR) panel in accordance with the requirements of the Small Business Regulatory Enforcement Fairness Act (SBREFA).

Conclusion

Electric cooperative members value, and deserve, a healthy environment. Affordable and reliable electricity is also an interest of critical importance to our members and the nation. As electric cooperatives work to harmonize these interests on behalf of our members, maintaining the electric infrastructure on which our member owners rely, we cannot afford the delays and additional red tape this proposed rule would create. The increased costs and lengthy permitting for constructing and maintaining power lines imposed by the proposed rule would result in little – if any – enhanced protection for the nation’s waters.

The economic challenges faced by so many cooperatives and their member-owners underscore the importance of a cost-effective regulation. The proposed rule is not cost-effective and will impose significant economic impacts on a substantial number of small entities, including electric cooperatives. We call on EPA and the Corps to withdraw the proposal and engage in a meaningful dialogue with all stakeholders, including electric cooperatives and others that provide essential services to the rural community.

I appreciate the invitation to testify and would be happy to address questions from the Committee on this important issue.

Pennsylvania/New Jersey Territorial Map

