



**American
Public Power
Association**

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August 1, 2016

Mr. David Olson
U.S. Army Corps of Engineers,
Attn: CECW-CO-R
441 G Street NW,
Washington, DC 20314-1000
NWP2017@usace.army.mil

RE: Comments of the American Public Power Association on the U.S. Army Corps of Engineers' Proposal to Reissue and Modify Nationwide Permits, Docket Id. No.-COE-2015-0017

Mr. Olson:

The American Public Power Association (APPA) appreciates the opportunity to submit the following comments in response to the U.S. Army Corps of Engineers' (Corps) Proposal to Reissue and Modify Nationwide Permits (the Proposal).¹ APPA is the national service organization for the more than 2,000 not-for-profit, community-owned electric utilities in the U.S. Collectively, these utilities serve more than 48 million Americans in 49 states (all but Hawaii). The electric utility industry is undergoing a transformative time in our history. We are seeing increased demand and penetration of renewable energy (RE) generation, like wind and solar. EPA's regulations to control carbon dioxide (CO₂) emissions from the electric utility sector under section 111(d) of the Clean Air Act (CAA) is driving investment in RE resources, which require extensive transmission planning and integration. APPA is generally supportive of the Proposal, however we offer the following recommendations to improve and streamline Nationwide Permit (NWP) submittals under Section 404 of the Clean Water Act (CWA).

- The Corps should clarify that certain definitions in the Waters of the U.S. (WOTUS) do not apply to reissued NWPs. The WOTUS rule is currently stayed and a final decision from the Sixth Circuit Court of Appeals will not be reached before the Corps issues the final NWP rule.² The NWP proposal refers to key provisions in the stayed WOTUS rule, while the Corps has not clarified which jurisdictional definitions apply in the Proposal. The WOTUS rule seeks to expand jurisdiction which would result not only in an increased administrative burden to the Corps and permit applicants when

¹ 81 Fed. Reg. 35,186

² Oral arguments in the WOTUS litigation are expected to be completed in February 2017. The Corps has stated it expects to publish the final NWPs "90 days before the effective dates of March 19, 2017 or by December, 2016." 81 Fed. Reg. 35,189.

developing mitigation plans, but would also significantly increase the number of annual applications for NWP. Any expansion in the definition of jurisdictional waters adds to the complexity of transmission line routing projects and the impacts associated with jurisdictional waters.

- The current NWP acreage caps should, at a minimum, be maintained as they are sufficiently protective. APPA's members rely on NWP 12 to provide timely and reliable installation of transmission and distribution lines. The current acreage caps were developed and refined with public input to meet the NWP objectives, while also providing a streamlined permitting process. In our view, the current thresholds for NWP 12, 14, 51, and 52 are appropriately protective. If the WOTUS rule is affirmed by the court, the Corps should consider increasing these thresholds caps to avoid an overwhelming influx of individual permits and additional burden for applicants.

APPA is a member of the Utility Water Act Group and the Water Advocacy Coalition. We are supportive of these organizations' comments on the Proposal. APPA appreciates the opportunity to comment on the Corps' Proposal and urges the Corps to adopt APPA's recommendations in the final rule. If you have questions regarding the aforementioned comments please contact Ms. Carolyn Slaughter, at cslaughter@publicpower.org.

Sincerely,

A handwritten signature in black ink that reads "Carolyn Slaughter". The signature is written in a cursive, flowing style.

Carolyn Slaughter
Director, Environmental Policy