NCDENR
North Carolina Department of Environment and Natural Resources

Pat McCrory
Governor

Donald R. van der Vaart
Secretary

August 27, 2015

The Honorable Roy A. Cooper
Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001

Dear Attorney General Cooper,

The N.C. Department of Environment and Natural Resources recently joined 29 other states in legal action against the U.S. Environmental Protection Agency's (EPA) published "waters of the United States" (WOTUS) rule. We write to request that the Attorney General's Office support DENR's complaint challenging the waters of the United States redefinition.

Similar to the EPA's recent rules regarding carbon emissions, which will greatly increase energy prices in North Carolina, the WOTUS rule is another example of federal overreach by the Obama administration. The future of North Carolina's waters must continue to stay in North Carolina's hands and not in Washington D.C. Our state has a much better record of protecting and cleaning our waters than the federal government. North Carolina proactively developed groundwater standards to protect the resources' best intended usage; in contrast, the federal government has no groundwater regulations. Due to the state's comprehensive environmental policies, the vast majority of surface waters in North Carolina are safe for fishing and swimming.

On July 20, DENR joined 10 other states in the U.S. District Court in Georgia in a complaint against the EPA and the Army Corps of Engineers for exceeding their constitutional authority.

Across the nation, we along with the 29 other states fighting the rule, believe it unconstitutionally expands federal authority and control over local water and land use management, and subjects productive property to costly, time-consuming permits. WOTUS ignores the role of the states in protecting water quality, imposes regulatory uncertainty, and will unnecessarily stifle economic growth and prosperity with little, if any, environmental benefit.

To protect the interests of North Carolina's farmers and property owners, we hereby request that the Attorney General's Office seek leave to file *amicus curiae* briefs in the Sixth Circuit Court of Appeals and in the U.S. District Court for the Southern District of Georgia (or in the U.S. District Court in which the District Court challenges may ultimately be consolidated) in support of DENR's position and the position of the other 29 states in the litigation.

This significant expansion of federal jurisdiction will affect real property in our state, and is expected to have the greatest impact on farmland in Eastern North Carolina. If the proposed rule

goes into effect in its current form, newly determined federal waters would become subject to state and federal regulatory programs. Large swaths of farmland could be swept into federal jurisdiction. Many more landscape features will become federally regulated under the proposed rule, resulting in reduced land values, reductions in productive land and increased costs for land use.

The Clean Water Act delegates the primary responsibility for managing land and water resources to the states. North Carolina, like many other states, has comprehensive programs in place that protect water quality without placing an undue burden on property owners. Our effective regulatory framework negates any justification for the federal agencies' proposed expansion of the meaning of WOTUS.

Please feel free to contact DENR's Office of General Counsel at 919-707-8600 with any specific questions regarding this challenge or the effect of the rule.

Sincerely,

Donald R. van der Vaart
Department of Environment & Natural Resources