WATEREUSE
1199 North Fairfax St, Suite 900 • Alexandria, VA 22314

April 15, 2019

The Honorable Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Lieutenant General Todd T. Semonite
Chief of Engineers and Commanding General
U.S. Army Corps of Engineers
441 G Street , NW
Washington, DC 20314

Re: Docket ID No. EPA-HQ-OW-2018-0149

Dear Administrator Wheeler and Lieutenant General Semonite:

On behalf of the WateReuse Association (WateReuse), I am pleased to submit our comments to the U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (Corps) regarding the proposed rule on the Revised Definition of "Waters of the United States."

WateReuse is a not-for-profit trade association for water utilities, businesses, industrial and commercial enterprises, non-profit organizations, and research entities that engage in and on water reuse. WateReuse and its state and regional sections represent nearly 250 water utilities serving over 60 million customers, and over 300 businesses and organizations across the country. WateReuse's mission is to engage its members in a movement for safe and sustainable water supplies, to promote acceptance and support of recycled water, and to advocate for policies and funding that increase water reuse.

In 2014, we provided comments on the Waters of the United States rulemaking under the previous administration. At that time, we urged EPA and the Corps to exclude all constructed or managed water reuse and recycling treatment infrastructure. Our proposed changes were largely adopted in the final rule, and we appreciate that they have also been largely retained in this revised rule. **We strongly urge you to continue to exclude water recycling and reuse infrastructure, such as percolation, detention, retention, storage and recharge basins, from the definition of Water of the United States, and from regulation under the rule.**

That said, we have one significant concern related to a new limitation applied to these exemptions. In surveying our member utilities, we heard very clearly that limiting the wastewater recycling and stormwater control exemptions to upland would be extremely problematic for water recycling activities around the country. Many utilities could be forced to reconfigure their indirect reuse systems at an enormous cost.

Our wastewater utility members maintain recycled water storage ponds, as well as sites for future recycled water recharge basins, that are not in uplands, by design. In fact, non-

upland locations are often preferred for recharge because they are ideal for percolation. Moreover, in some cases, recycling structures and recharge facilities are located in areas where a river would historically meander or where wetlands would historically have been situated. In these cases, facilities were first sourcing mountain water that was released downstream and then diverted for recharge; imported water was then added (conveyed via streams), as was recycled water to recharge groundwater basins—so the initial location of spreading basins adjacent to rivers or in flood plains was mainly to facilitate those diversions.

In Florida, water districts use uplands to locate rapid infiltration basins (RIBs) to safely recharge over 218 MGD through 182 projects. This technology has been utilized for over 40 years and remains a significant environmental sustainability tool for the state. Without the groundwater recovery created by these projects, utilities would struggle to meet the drinking water needs of the state's growing population. Florida and other states have aquifer systems that naturally receive the majority of recharge from uplands, and RIB projects mimic the natural system to augment these resources. Furthermore, the loss of the ability to recharge the aquifers of Florida through the safe recharge of highly treated reclaimed water would mean the diversion of these waters to surface waters or use of other expensive technologies. Costs to divert 182 projects and their capacity of over 218 MGD would be significant and range from $3/MGD to $10/MGD.

The limitation to upland applications could have the unintended consequence of both restricting opportunities for ecological enhancement and severely hampering water recycling activities across the country. We heard from member utilities from the arid West to rain-soaked Florida that this restriction would make common practices such as aquifer recharge extremely difficult and expensive to practice and plan for and maintain. The additional regulatory hurdle would also cause delays in project construction and maintenance. **We therefore strongly urge you to remove the limitation to upland in both the preamble and rule itself**, as follows:

Preamble:

"The agencies propose to exclude wastewater recycling structures ~~constructed in upland~~, such as detention, retention and infiltration basins and ponds, and groundwater recharge basins in paragraph (b)(10). This proposed exclusion clarifies the agencies' current practice that waters and water features used for water reuse and recycling would not be jurisdictional ~~when constructed in upland~~. The agencies recognize the importance of water reuse and recycling, particularly in areas like California and the Southwest where water supplies can be limited and droughts can exacerbate supply issues. This proposed exclusion responds to numerous commenters and is intended to avoid discouraging or creating barriers to water reuse and conservation. Many commenters noted the growing interest in and commitment to water recycling and reuse projects. Detention and retention basins can play an important role in capturing and storing water prior to beneficial reuse. Similarly, groundwater recharge basins and infiltration ponds are becoming more prevalent tools for water reuse and recycling. These features are used to collect and store water, which then infiltrates into groundwater via permeable soils. Though these features are often created in upland, they are also often located in close proximity to tributaries or other larger bodies of water. The proposed exclusion in paragraph (b)(10) would codify longstanding agency practice and encourage water management practices that the agencies recognize are important and beneficial".

Rule at Part 328.3 (b) on page 4204:

(b) The following are not "waters of the United States":
(1) Waters or water features that are not identified in paragraphs (a)(1) through (6) of this section;
(2) Groundwater, including groundwater drained through subsurface drainage systems;
(3) Ephemeral features and diffuse stormwater run-off, including directional sheet flow over upland;
(4) Ditches that are not identified in paragraph (a)(3) of this section;
(5) Prior converted cropland;
(6) Artificially irrigated areas, including fields flooded for rice or cranberry growing, that would revert to upland should application of irrigation water to that area cease;
(7) Artificial lakes and ponds constructed in upland (including water storage reservoirs, farm and stock watering ponds, and log cleaning ponds) which are not identified in paragraph (a)(4) or (5) of this section;
(8) Water-filled depressions created in upland incidental to mining or construction activity, and pits excavated in upland for the purpose of obtaining fill, sand, or gravel;
(9) Stormwater control features excavated or constructed ~~in upland~~ to convey, treat, infiltrate or store stormwater run-off;
(10) Wastewater recycling structures ~~constructed in upland~~, such as detention, retention and infiltration basins and ponds, and groundwater recharge basins; and
(11) Waste treatment systems.

Rule at Part 232.2 (2) on page 4213:

(2) The following are not "waters of the United States":
(i) Waters or water features that are not identified in paragraphs (a)(1) through (6) of this section;
(ii) Groundwater, including groundwater drained through subsurface drainage systems;
(iii) Ephemeral features and diffuse stormwater run-off, including directional sheet flow over upland; (iv) Ditches that are not identified in paragraph (a)(3) of this section;
(v) Prior converted cropland;
(vi) Artificially irrigated areas, including fields flooded for rice or cranberry growing, that would revert to upland should application of irrigation water to that area cease;
(vii) Artificial lakes and ponds constructed in upland (including water storage reservoirs, farm and stock watering ponds, and log cleaning ponds) which are not identified in paragraph (a)(4) or (5) of this section;
(viii) Water-filled depressions created in upland incidental to mining or construction activity, and pits excavated in upland for the purpose of obtaining fill, sand, or gravel;
(ix) Stormwater control features excavated or constructed ~~in upland~~ to convey, treat, infiltrate or store stormwater run-off;
(x) Wastewater recycling structures ~~constructed in upland~~, such as detention, retention and infiltration basins and ponds, and groundwater recharge basins; and
(xi) Waste treatment systems.

WateReuse agrees with the Agencies' position that waters and water features used for water reuse

activities. We therefore strongly urge you to modify the revised rule as outlined above. We agree that detention and retention basins play a significant role in capturing and storing water prior to reuse and recycling. We were pleased to see the jurisdictional exclusion for groundwater recharge basins and infiltration ponds and a recognition that these are becoming more prevalent tools for water reuse and recycling activities. We also appreciate that the proposed exclusions aim to codify the well-established practice of the Agencies and will allow water reuse and recycling activities to continue across the country.

Thank you for your consideration of our comments.

Sincerely,

Patricia Sinicropi

Executive Director

WateReuse Association