

# KANSAS

DEPARTMENT OF WILDLIFE & PARKS

KATHLEEN SEBELIUS, GOVERNOR

15 April 2003

Water Docket  
Environmental Protection Agency  
Mailcode 4101T  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20460  
**Attention: Docket ID No. OW-2002-0050**

**APR 16 2003**

Ref: A1.0810  
Track: 20030098

Dear Madam or Sir:

The Kansas Department of Wildlife and Parks is commenting on the U.S. Environmental Protection Agency's and U.S. Army Corps of Engineers' (USACE) January 15, 2003, Advance Notice of Proposed Rulemaking on the Clean Water Act Regulatory Definition of "Waters of the United States," (68 FR 1991-1998). The Department's mission is to conserve and enhance Kansas' natural heritage, provide the public with opportunities to use and appreciate these resources consistent with conservation, and inform the public of natural resource status to promote understanding and gain assistance to help achieve the mission. The Department also has the responsibility to administer the State's Kansas Nongame and Endangered Species Conservation Act. Thirty percent of Kansas' threatened and endangered species inhabit wetlands or are associated with wetlands at some point in their natural history. Because of the recognized importance of wetlands in flood water attenuation, water recharges, filtration, as wildlife habitats, and for recreation, the Department has a vested interest in ensuring that wetlands are protected.

The Department is involved with other groups and agencies that have programs designed to conserve and protect wetlands including the Playa Lakes Joint Venture, Kansas Alliance for Wetlands and Streams, U.S. Fish and Wildlife Service, and programs administered by the U.S. Department of Agriculture. Besides these voluntary programs, Kansas has relied on the USACE's Section 404 authority to regulate and thus protect wetlands that have since been removed from USACE's regulatory purview since the U.S. Supreme Court's SWANCC decision. Wetlands now considered "isolated" are important habitats for many species of wildlife including migratory birds.

Hunting, wildlife watching, and fishing are activities that are carried out in wetlands and streams and thus would seem to provide a basis for determining CWA jurisdiction over isolated, intrastate, non-navigable waters as one of the factors listed in 33 CFR 328.3(a)(3)(i)-(iii), or more specifically "use of the water by interstate or foreign travelers for recreational or other purposes." We believe that regulation should define isolated waters. We concur with Ducks Unlimited's detailed explanation that adjacency to define isolated waters should be based on hydrological

Pratt Operations Office

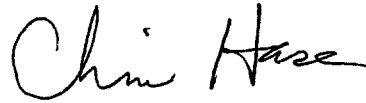
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connections not just apparent surface connections. This is because intricate hydrological connections, though not obviously apparent at the surface, have the potential to affect the water quality of navigable waters through tributaries to navigable waters. Defining isolated waters using the factors listed above and those factors considered collectively as the Migratory Bird Rule should increase the protection of wetlands and streams and help ensure that the Department can fulfill its mission.

Thank you for the opportunity to make these comments and recommendations. If you have any questions or need clarification, please E-mail me at [chrish@wp.state.ks.us](mailto:chrish@wp.state.ks.us) or telephone extension 198.

Sincerely,

A handwritten signature in black ink that reads "Chris Hase". The signature is written in a cursive, slightly slanted style.

Chris Hase  
Environmental Services Section

xc: KDWP Regional Supervisors  
KDWP Secretary, Hayden