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Waters of the United States/U.S. Environmental Protection Agency/Army Corps of Engineers Proposed Rule: Solar Energy Industries Association of America Comments

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The Solar Energy Industries Association (“SEIA”) submitted February 7th comments to the United States Environmental Protection Agency (“EPA”) and United States Army Corps of Engineers (“Corps”) addressing the December 7, 2021, proposed rule to once again revise the definition of waters of the United States (“WOTUS”). See Revised Definition of “Waters of the United States,” 86 Fed. Reg. 69372, Docket No. EPA-HQ-OW-2021-0602.

EPA and the Corps had previously withdrawn revisions to the Clean Water Act definition of WOTUS promulgated during the Trump Administration.

SEIA describes itself as the national trade association of the U.S. solar energy industry. The organization’s focus is stated to be the promotion of environmentally responsible development of solar energy. SEIA references over 1,000 organizations that are stated to manufacture, install and support solar energy.

SEIA’s interest in the proposed rule is noted. The organization states in part:

- To achieve the Biden Administration’s goals of a fully decarbonized economy by 2050, more than 1 million megawatts of new solar energy will need to be deployed (a tenfold increase from current levels)
- A significant portion of future utility-scale deployment will require authorizations from the Corps to be constructed

As a result, SEIA states that it has an interest in having a reasonable, administrable, and durable definition of “waters of the U.S.”

EPA’s rationale and proposed text is stated to be generally supported. However, SEIA argues that a final rule:

... should not unduly burden efforts to reduce the greenhouse gas emissions that cause climate change, including construction of solar energy facilities.

Two specific comments are offered by the organization:

1. Requests that the “Energy Generation” category for sector-specific section 404 permit analysis be further divided and analyzed according to project description (i.e., coal, cogen, geothermal, hydropower, natural gas, nuclear, oil, solar, and wind).
2. While the “significant nexus” standards for field application is supported – except that ditches that do not otherwise meet the definition of a point source should not be considered jurisdictional.

A copy of the comments can be found [here](#).