

Congress of the United States
Washington, DC 20515

July 12, 2021

The Honorable Michael Regan
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20004

Mr. Jaime A. Pinkham
Acting Assistant Secretary
of the Army for Civil Works
441 G Street NW
Washington, DC 20314-1000

Dear Administrator Regan and Acting Assistant Secretary Pinkham:

We write to you today greatly dismayed by the Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers' decision to remand the 2020 Navigable Waters Protection Rule (NWPR), which finally provided certainty and relief for rural America. We are also discouraged by your recent actions taken to reopen the definition of the "waters of the United States." These steps demonstrate a misguided and out of touch approach toward addressing the needs of local communities across the country. The NWPR was an immense step forward in rectifying the regulatory overreach that was attempted in 2015, and your agencies' vague announcement and opaque process fails to ensure our communities will not – once again – be subject to further uncertainty and government overreach.

The 2015 Waters of the United States rule (WOTUS) promulgated by then-President Obama and Vice President Biden was a drastic land and water grab that sought to give unprecedented power to unelected bureaucrats in Washington, D.C. at the expense of farmers, ranchers, small business owners, and the American people. Under this rule, the EPA could fine farmers and ranchers thousands of dollars if they simply rotated from one crop to another on their own land without first gaining permission from the federal government. In an unprecedented expansion of the definition of "waters of the United States," it asserted categorical jurisdiction over typically-dry channels and a variety of intrastate, non-navigable, isolated waters based on a faulty new interpretation of the term "significant nexus." This radical escalation of federal agencies' nearly unlimited authority to regulate any pond, puddle, ditch, stream, or creek threatened the very way of life of our constituents – and any attempt to revert to similarly restrictive policies that undermine existing stewardship efforts will only do the same.

Our farmers, ranchers, landowners, and small businesses have demonstrated a deep commitment to stewarding our waterways and lands, which is why this radical overreach was met with bipartisan opposition and concern that was even echoed by Administrator Regan during his confirmation process. During both a U.S. House of Representatives hearing and Senate confirmation hearing, Administrator Regan stated respectively, "We don't have any intention of going back to the original Obama WOTUS," and "We are not going to pull a rule off the shelf, especially after we've learned so much over the years." Unfortunately, your agencies' actions only point to seeking to do exactly that – dusting off the Obama-Biden WOTUS rule to drastically expand the jurisdiction of the federal government over non-navigable waters, leaving our nation's farmers, ranchers, and rural communities in significant legal uncertainty.

In addition to earning bipartisan opposition in Congress, the Obama-Biden WOTUS rule was challenged by 31 Democratic and Republican Attorney Generals who declared the rule exceeded the statutory authority of the Clean Water Act (CWA) and violated the Administrative Procedure Act. They were right and two federal courts granted preliminary injunctions on the implementation of the rule, with one court declaring it violated *both* laws.

In response to this unconstitutional and reckless failure of federal policy, the NWPR was promulgated in partnership with states and local communities to provide clear, commonsense guidance defining what waters are subject to federal jurisdiction under the CWA. Through this rule, the Trump Administration eliminated the precarious “significant nexus” standard set by the Obama-Biden WOTUS rule which was at the root of the confusion and uncertainty that plagued this poor policy. By clearly and directly identifying “waters of the United States” in six categories and making further clarifications of the definitions of tributaries and adjacent wetlands, the NWPR has set a comprehensible and successful standard for federal water policy while continuing to provide protection for our waterways and environment. Moreover, it is currently in effect in all 50 states, and all unwarranted attempts to force injunctions on the rule have been struck down by the courts – something that could never be said of the Obama-Biden WOTUS rule due to its illegality.

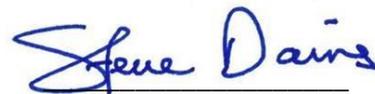
Confusion, regulatory uncertainty, and litigation have surrounded the scope of federal authority of our nation’s navigable waterways for decades. With your recent actions, the Biden Administration is trampling upon this progress and further jeopardizing rural Americans’ confidence that this Administration is working in their best interest. Therefore, we request answers to the attached questions by July 30, 2021.

Rural communities in the West and across the country are dedicated to clean water and do not deserve to be punished by far-reaching, burdensome federal regulations. We look forward to your thorough and prompt responses to these important questions.

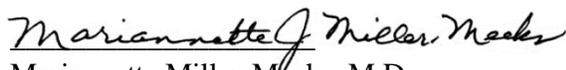
Sincerely,



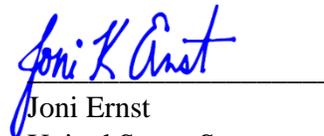
Dan Newhouse
Member of Congress



Steve Daines
United States Senator



Mariannette Miller-Meeks, M.D.
Member of Congress



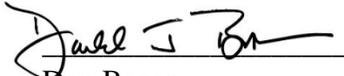
Joni Ernst
United States Senator



Chris Stewart
Member of Congress



Roger Marshall, M.D.
United States Senator



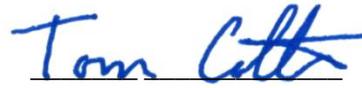
Don Bacon
Member of Congress



Roy Blunt
United States Senator



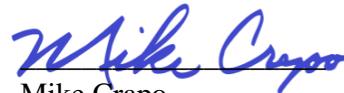
Russ Fulcher
Member of Congress



Tom Cotton
United States Senator



Ralph Norman
Member of Congress



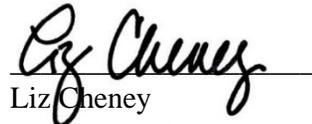
Mike Crapo
United States Senator



Fred Keller
Member of Congress



John Barrasso, M.D.
United States Senator



Liz Cheney
Member of Congress



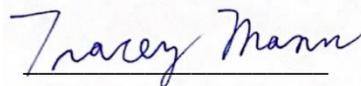
John Hoeven
United States Senator



Doug LaMalfa
Member of Congress



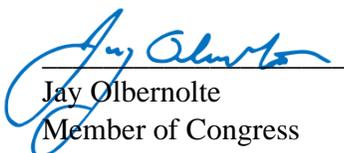
Ted Cruz
United States Senator



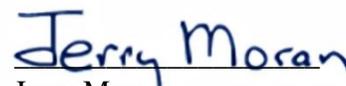
Tracey Mann
Member of Congress



Deb Fischer
United States Senator



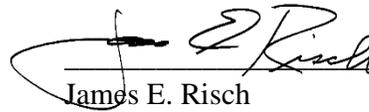
Jay Olberholte
Member of Congress



Jerry Moran
United States Senator



Jeff Duncan
Member of Congress



James E. Risch
United States Senator



Paul A. Gosar, D.D. S.
Member of Congress



Ken Buck
Member of Congress



Mike Bost
Member of Congress



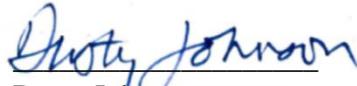
Adrian Smith
Member of Congress



Eric A. Crawford
Member of Congress



David G. Valadao
Member of Congress



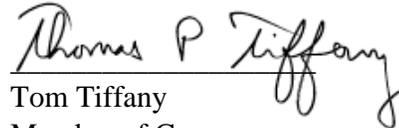
Dusty Johnson
Member of Congress



Bruce Westerman
Member of Congress



Ron Estes
Member of Congress



Tom Tiffany
Member of Congress



Pete Stauber
Member of Congress



Kelly Armstrong
Member of Congress



Andy Biggs
Member of Congress



James Comer
Member of Congress



Tom McClintock
Member of Congress



Markwayne Mullin
Member of Congress



Frank Lucas
Member of Congress



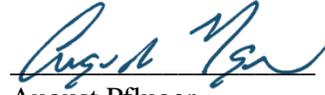
Tom Emmer
Member of Congress



Earl L. "Buddy" Carter
Member of Congress



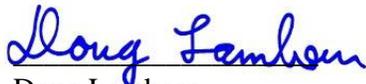
Bob Gibbs
Member of Congress



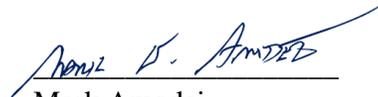
August Pfluger
Member of Congress



Cliff Bentz
Member of Congress



Doug Lamborn
Member of Congress



Mark Amodei
Member of Congress



Yvette Herrell
Member of Congress



Darrell Issa
Member of Congress



Debbie Lesko
Member of Congress



Matthew Rosendale, Sr.
Member of Congress



Lauren Boebert
Member of Congress



Burgess Owens
Member of Congress



Jason Smith
Member of Congress



Michelle Fischbach
Member of Congress

Attachment 1:

- 1) What is the EPA and USACE's timeline for promulgating revisions to the NWPR?
 - a. Please include any plans for future coordination with stakeholders.
 - b. Please also include any deadlines set for the Agency to publish proposed rulemaking redefining "waters of the United States."
- 2) Which States and stakeholder groups did EPA, USACE, or other members of the Biden Administration consult with before determining to replace the Navigable Waters Protection Rule?
- 3) What is the intended scope for the planned replacement of the Navigable Waters Protection Rule?
 - a. Please provide any details on the plans, if any, to include "significant nexus; redefine "tributaries," or to amend "navigable" when replacing the rule.
- 4) Administrator Regan, you have conceded the 2015 Obama-Biden WOTUS rule was also problematic. What issues did you see with the former rule and what will you do to ensure mistakes are not repeated?
- 5) EPA and USACE staff pointed to "ongoing environmental harm" to justify revising the NWPR. Please provide our offices with further information and examples of the alleged environmental harm and damage as a result of the NWPR.
 - a. Please include what baseline and units of measurement were used to define and determine "significant environmental damage" in the 333 cases your staff identified.
 - b. Staff also justified this decision by citing implementation issues in the Southwest. As you know, implementation issues can easily be solved through the issuance of guidance documents, as opposed to a full replacement of the Navigable Waters Protection Rule. Will you commit to analyzing whether these implementation issues can be rectified through the issuance of implementation guidance?
- 6) States and rural communities have long championed efforts to protect our nation's waterways. Please provide details on how you plan to coordinate revisions with local and state partners.
- 7) Will the EPA and Corps work with the Department of the Interior to do a cost/benefit impact analysis of how your rule would impact BOR projects, BOR supported groundwater replenishment projects and other critical water infrastructure?