



Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington DC 20515

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January 19, 2022

The Honorable Michael Regan
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue Northwest
Washington, DC 20460-1101A

The Honorable Michael Connor
Assistant Secretary of the
Army for Civil Works
108 Army Pentagon, Room 3E446
Washington, DC 20310-0108

Dear Administrator Regan and Assistant Secretary Connor:

We write concerning the comment period for proposed rule to define the term “waters of the United States” (“WOTUS”) under the *Clean Water Act*.¹ The United States Environmental Protection Agency (EPA) and the United States Army Corps of Engineers (Corps) (collectively, the “Agencies”) published the proposed rule in the Federal Register on December 7, 2021, and provided only sixty days for the public to comment on the proposal.² We are concerned this is an inadequate period of time given the complicated nature of the proposed rule and the broad impacts the final rule will have on a wide range of stakeholders across the country. Therefore, we request that the comment period be extended for a period of at least ninety days.

The Agencies have described their decision to revise the definition of WOTUS as a simple return to the regulatory definition used before the 2015 WOTUS rule and to update the definition to reflect Court decisions.³ However, they take a new and expansive approach to the definition of WOTUS not utilized before 2015.⁴ These changes will have far-reaching

¹ Revised Definition of “Waters of the United States,” 86 Fed. Reg. 69372 (Dec. 7, 2021), available at <https://www.federalregister.gov/documents/2021/12/07/2021-25601/revised-definition-of-waters-of-the-united-states>.

² *Id.*

³ *Id.*, See also: Press Release, EPA, EPA and Army Announce Next Steps for Crafting Enduring Definition of Waters of the United States, (Jul. 30, 2021), available at <https://www.epa.gov/newsreleases/epa-and-army-announce-next-steps-crafting-enduring-definition-waters-united-states>.

⁴ *Current Implementation of Waters of the United States*, EPA, (Jan. 1, 2022), available at <https://www.epa.gov/wotus/current-implementation-waters-united-states>; See also: Clean Water Rule: Definition of “Waters of the United States,” 80 Fed. Reg. 37054 (June 29, 2015) (2015 WOTUS rule), available at <https://www.federalregister.gov/documents/2015/06/29/2015-13435/clean-water-rule-definition-of-waters-of-the-united-states>.

implications for farmers, homeowners, private property owners, manufacturers, small businesses, water districts, and local governments. These stakeholders need more time to fully understand and analyze the proposed rule to provide the Agencies with meaningful feedback.

Furthermore, given the adverse impacts that stakeholders experienced under previous interpretations of WOTUS, it is critical the Agencies implement a comprehensive process to solicit public feedback when initiating a new rulemaking process.⁵ The current comment period overlaps with the Agencies' public hearings and planned regional roundtables, which is a new process created by the Agencies for this proposed rule requiring stakeholders to submit nominations themselves for the Agencies to potentially select as one of the roundtables.⁶ Stakeholders will require additional time to prepare for participation in these events, which will detract from their efforts to also prepare productive comments for the proposed rule.

In light of recent Congressional approval of billions of dollars in infrastructure funding, it is essential that a proposed revision to the definition of WOTUS is thoroughly examined before the Agencies move forward with a final rule, as any changes will have significant impacts on the ability to get infrastructure projects completed in a timely and efficient manner.⁷ Given this, we ask that the Agencies grant an extension of the comment period for ninety days to allow for robust public feedback and the collection of stakeholder input.

Thank you for your prompt attention to this important matter. If you have questions, please contact Ryan Hambleton, Republican Staff Director, Subcommittee on Water Resources and Environment, at (202) 225-9446.

Sincerely,



Sam Graves
Ranking Member



David Rouzer
Ranking Member
Subcommittee on Water Resources
and Environment

Cc: The Honorable Peter A. DeFazio, Chair
Committee on Transportation and Infrastructure

The Honorable Grace Napolitano, Chair
Subcommittee on Water, Resources, and Environment
Committee on Transportation and Infrastructure

⁵ *Clean Water Act, WOTUS*, American Farm Bureau (Jan. 11, 2022), available at <https://www.fb.org/issues/regulatory-reform/clean-water-act/>.

⁶ *Public Outreach and Stakeholder Engagement Activities*, EPA, (Jan. 11, 2022), available at <https://www.epa.gov/wotus/public-outreach-and-stakeholder-engagement-activities>.

⁷ *Infrastructure Investment and Jobs Act*, P.L. 117-58.