



May 19, 2020

VIA EMAIL

The Honorable John Barrasso
Chairman
Senate Committee on Environment
and Public Works
United States Senate
Washington, DC 20510

The Honorable Tom Carper
Ranking Member
Senate Committee on Environment
and Public Works
United States Senate
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper:

The Waters Advocacy Coalition (“WAC” or “Coalition”) respectfully asks that the Committee accept this letter for inclusion in the record for the upcoming May 20, 2020, hearing entitled, “Oversight of the Environmental Protection Agency.” WAC represents a large cross-section of the nation’s construction, transportation, real estate, mining, manufacturing, forestry, agriculture, energy, wildlife conservation, and public health and safety sectors—all of which are vital to a thriving national economy and provide much needed jobs. The Coalition’s members are committed to the protection and restoration of America’s wetlands and waters, and believe that a clear regulation that draws lines between federal and state waters will help further those goals.

The Coalition continues to strongly support the Agencies’ revised definition of “waters of the United States” (“WOTUS”) set forth in the Navigable Waters Protection Rule (“NWPR”), as well as the Agencies’ decision to repeal the 2015 WOTUS Rule. The NWPR strikes an appropriate balance between protecting waters and wetlands and providing clarity and predictability to stakeholders and regulators. Moreover, it is firmly grounded in the Clean Water Act’s (“CWA”) shared federal-state responsibility for water quality and relevant court precedents. WAC’s members look forward to working with the Agencies to address any challenges that arise during implementation of the new rule.

The issuance of the NWPR is a long overdue, welcome development for the Coalition’s members and private landowners nationwide. Over the decades, the definition of WOTUS has at times expanded well beyond the limits of the Agencies’ statutory authority under the CWA and the Constitution, at the expense of state and local authority. Because of this unlawful expansion, the Supreme Court has had to step in twice to curb the Agencies’ interpretations and direct them to respect the limits that Congress placed on the federal government’s authority. The Coalition believes the NWPR finally brings an end to persistent efforts to expand federal power by respecting the states’ traditional authority over land and water resources and avoiding the sorts of difficult constitutional questions raised by prior definitions of WOTUS. The NWPR also accounts for relevant scientific considerations, such as the fact that connections between water features occur along a gradient. The Agencies properly exercised their legal and policy judgment to assert federal regulatory authority over only those features along the gradient that exert the

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strongest influence on downstream navigable waters. In so doing, the NWPR wisely leaves other waters to state and local governments to prevent and control pollution.

The Coalition appreciates the opportunity to submit this letter showing its members' broad support for the NWPR.

Sincerely,

