

February 27, 2023

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

The Honorable Shelley Moore Capito  
Ranking Member  
Committee on Environment and Public Works  
United States Senate  
Washington, DC 20510

The Honorable Sam Graves  
Chairman  
Committee on Transportation and Infrastructure  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Rick Larsen  
Ranking Member  
Committee on Transportation and Infrastructure  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Carper, Ranking Member Capito, Chairman Graves, and Ranking Member Larsen:

As organizations representing a broad range of sectors from agriculture, energy, transportation infrastructure, construction and real estate, manufacturing, mining, recreation, chemical production, state departments of agriculture, and many other job creators, we urge support for the Congressional Review Act resolutions of disapproval of the Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) 2023 revised Waters of the United States (WOTUS) regulation.

Every sector of the U.S. economy – from small businesses and farmers, to manufacturers and homebuilders – depends on a clear, predictable, and transparent WOTUS rule so they can protect the environment, operate with certainty, and create jobs in their communities. Continual revisions, remands, and reintroductions of WOTUS definitions only sow confusion and ultimately dissuade future investment.

The Congressional Review Act provides an important oversight tool for Congress to ensure that agency rules are consistent with Congressional intent and authority. The new definition of WOTUS exceeds Congressional authority in multiple respects, ignores recent Supreme Court caselaw interpreting the Clean Water Act, and will be impossible to implement consistently in the field.

Unfortunately, the new WOTUS rule will hinder economic growth and development and make it more expensive to invest in U.S. infrastructure and businesses. This rule lacks definitions for key terms, uses vague and conflicting examples, and doubles down on an expanded and subjective “significant nexus” test. It complicates an already complex process without corresponding environmental benefits beyond what the current regulations already provide. Small businesses and landowners will be forced to spend tens of thousands of dollars to hire consultants and lawyers simply to determine whether there is federally jurisdictional water on their property and if they need a federal permit. Delays created by regulatory uncertainty, plus increased permitting and mitigation costs, will make it more difficult and expensive to meet our nation’s ambitious infrastructure goals, grow food, produce energy, and provide clean drinking water.

Finally, the United States Supreme Court is currently considering *Sackett v. EPA*, a case that could have significant ramifications for the scope of WOTUS regulations. Despite requests by Members of

Congress and the regulated community to delay any new regulation until that case is decided, EPA and the Corps disregarded this commonsense request and prematurely finalized yet another complex rule that lacks durability. The Court's decision in *Sackett* could render substantial portions of the final rule non-applicable and irrelevant – and require yet another WOTUS rule.

The undersigned organizations appreciate your attention to this issue and urge Congress to pass these resolutions of disapproval of the 2023 WOTUS rule in order to keep the current regulatory definitions in place.

Sincerely,

Agricultural Retailers Association  
American Exploration & Mining Association  
American Exploration & Production Council  
American Farm Bureau Federation  
American Fuel & Petrochemical Manufacturers  
American Iron and Steel Institute  
American Petroleum Institute  
American Road & Transportation Builders Association  
American Society of Golf Course Architects  
American Soybean Association  
Associated Builders & Contractors  
Associated General Contractors of America  
Club Management Association of America  
Corn Refiners Association  
Essential Minerals Association  
Florida and Texas Sugar Cane Growers  
Golf Course Builders Association of America  
Golf Course Superintendents Association of America  
Independent Petroleum Association of America  
Leading Builders of America  
Liquid Energy Pipeline Association  
National Association of Home Builders  
National Association of Manufacturers  
National Association of Realtors  
National Association of State Departments of Agriculture  
National Council of Farmer Cooperatives  
National Club Association  
National Corn Growers Association  
National Cotton Council of America  
National Mining Association  
National Multifamily Housing Council  
National Oilseed Processors Association  
National Pork Producers Council  
National Rural Electric Cooperative Association  
National Stone Sand & Gravel Association

RISE (Responsible Industry for a Sound Environment)  
Southeastern Lumber Manufacturers Association  
Texas Wildlife Association  
The Fertilizer Institute  
Treated Wood Council  
USA Rice Federation  
US Chamber of Commerce