

United States Senate

November 3, 2021

Ms. Radhika Fox
Assistant Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Assistant Administrator Fox:

I write to you today to follow up on our exchange during the Committee on Environment and Public Works (EPW) hearing on October 20, 2021, during which I requested quantitative data from the Environmental Protection Agency (EPA) as evidence of actual environmental damage or harm that was caused by the Navigable Waters Protection Rule.

The Clean Water Act (CWA) is a profoundly important law that protects the environment and public health. It is the primary federal law governing pollution of surface waters, and was enacted “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”¹ Unfortunately, under the Obama Administration, we have seen the EPA commit serious overreach of its authority, far beyond the intent of the CWA. In the process, the EPA has made the term “water” ambiguous creating further uncertainty for farmers, developers, manufacturers, and other landowners nationwide.

In contrast to this uncertainty, the previous administration’s Navigable Waters Protection Rule provided clarity, predictability, and consistency in the application of the CWA. This is why it was so disappointing to learn of the decision on June 9, 2021, by the EPA and the US Army Corps of Engineers (Corps) to repeal and replace this rule.²

In your answer to my question relating to the environmental impact, you cited the “Army Corps’ data, which is publicly available.” However, this “data” refers only to the list of projects that would have required permits under the 2015 regulatory regime that did not require one under the Navigable Waters Protection Rule, therefore my question remains unanswered. This is one of a number of questions my colleagues and I on the EPW Committee have been pressing this Administration on for months with no real answers.³

While I appreciate your efforts to communicate with myself and my fellow members of this Committee through your testimony and written letters, I would appreciate a precise response to the question below.

¹ 33 U.S.C. § 1251(a).

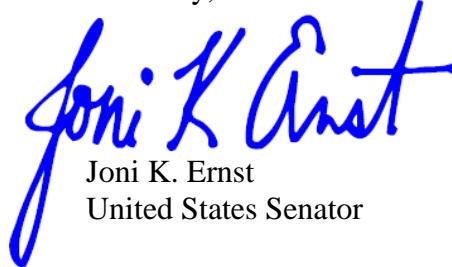
² The Navigable Waters Protection Rule: Definition of “Waters of the United States,” 85 Fed. Reg. 22250.

³ Letter from S. Comm. on Env’t & Public Works Members to Administrator Michael Regan, US EPA, & Acting Ass’t Sec. Jamie Pinkham, US Army Corps (June 21, 2021); Letter from S. Comm. on Env’t & Public Works Members to Administrator Michael Regan, US EPA, & Acting Ass’t Sec. Jamie Pinkham, US Army Corps (July 30, 2021).

Does the EPA have quantitative data of observed environmental damage or harm as a direct result of the Navigable Water Protection Rule, beyond the previously cited list of projects that are included in 2015 jurisdiction, testimonies from various stakeholders, or any “potential”⁴ effects? If so, please provide such data.

I look forward to your response.

Sincerely,

A handwritten signature in blue ink that reads "Joni K. Ernst". The signature is written in a cursive, flowing style. The first name "Joni" is written in a larger, more prominent script, followed by "K." and "Ernst".

Joni K. Ernst
United States Senator

⁴ Executive Order 13990, Protecting Public Health and the Environment and Restoring Science to Tackle Climate Change.