

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 Federation of Independent Business
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