

# United States Senate

WASHINGTON, DC 20510

February 3, 2022

The Honorable Michael S. Regan  
Administrator  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

The Honorable Michael L. Connor  
Assistant Secretary of the Army for Civil Works  
U.S. Department of the Army  
108 Army Pentagon  
Washington, D.C. 20310

Re: Docket ID No. EPA–HQ– OW–2021–0602

Dear Administrator Regan and Assistant Secretary Connor:

We write to request that the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE) suspend the pending rulemaking to redefine the scope of waters protected under the Clean Water Act, specifically “waters of the United States” (WOTUS), until the U.S. Supreme Court completes its consideration of *Sackett v. EPA*, Case No. 21-454. As you know, this case may have major implications for Clean Water Act scope and enforcement. It would be irresponsible for EPA and USACE to proceed down a regulatory path that could be invalidated or significantly altered as early as this summer.

More critically, suspending the rulemaking will permit stakeholders across the country to evaluate how a potential decision will affect their position in this regulatory space. The federal government should not promulgate rules for the sake of political expediency, but rather provide regulatory certainty for stakeholders within the bounds of an agency’s respective statutory authority. Proceeding with the rulemaking at this time, despite the pending litigation and potentially influential ruling, will only deepen uncertainty within the regulated community. We therefore urge EPA and USACE to suspend the WOTUS rulemaking, or at least extend the comment period for the proposed rule published at 86 Fed. Reg. 69372 (Dec. 1, 2021), until at least 60 days after the Supreme Court decides *Sackett*.

In addition to submitting this request, we also write to comment on the WOTUS rule as it is currently proposed. We are foremost troubled to see that the proposed rule exceeds the regulatory authority granted to EPA and USACE by the Clean Water Act. The proposed rule seeks to federalize waters in a land grab that arguably surpasses its 2015 predecessor, improperly encompassing water features traditionally within the sole purview of states, while reverting from the comparative straightforward application of the 2020 Navigable Waters Protection Rule, 85 Fed. Reg. 22250 (Apr. 21, 2020), and interjecting new uncertainties for nearly every private sector stakeholder.

In relying on the ambiguous “significant nexus” standard, the proposed WOTUS rule will subject water features not addressed by the mere two categorical exclusions of waste treatment systems and prior converted cropland (a term which is problematically left undefined in the rule) to costly and time-consuming processes to determine whether those features, such as ditches or other ephemeral waters, cause more than speculative or insubstantial effects on the chemical, physical,


or biological integrity of the nation's waters. The limited exclusions and lack of clarity, such as for ditches, prairie potholes, and stock ponds, as well as the failure to define prior converted cropland, are leading concerns for our constituent stakeholders.

Given the severe financial penalties stakeholders could face for conducting standard agricultural or other land development practices under the proposed rule, family farmers and ranchers are understandably alarmed by the administration's attempted land grab. These producers have an especially vested interest in responsible stewardship of their water and land, and they depend on precise, consistent, and durable regulations that can guide such activity. Unfortunately, the proposed WOTUS rule falls short by each measure.


As you consider our request to suspend the WOTUS rulemaking process, we urge you to listen to these stakeholders and hear firsthand how the proposed revision to the definition of WOTUS will cast a cloud of uncertainty over landowners across the country and snarl American economic sectors in red tape.


Thank you for your prompt consideration of our request.

Sincerely,


  
John Thune (R-SD)  
United States Senator

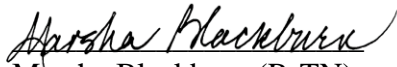
  
Shelley Moore Capito (R-WV)  
United States Senator

  
John Boozman (R-AR)  
United States Senator

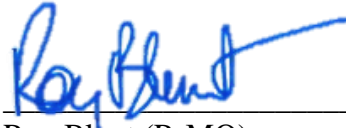
  
John Barrasso (R-WY)  
United States Senator

  
Mitch McConnell (R-KY)  
United States Senator

  
Deb Fischer (R-NE)  
United States Senator



Marsha Blackburn (R-TN)  
United States Senator



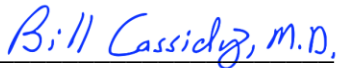
Roy Blunt (R-MO)  
United States Senator



Mike Braun (R-IN)  
United States Senator



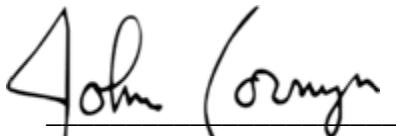
Richard Burr (R-NC)  
United States Senator



Bill Cassidy, M.D. (R-LA)  
United States Senator



Susan Collins (R-ME)  
United States Senator



John Cornyn (R-TX)  
United States Senator



Tom Cotton (R-AR)  
United States Senator




Kevin Cramer (R-ND)  
United States Senator




Mike Crapo (R-ID)  
United States Senator

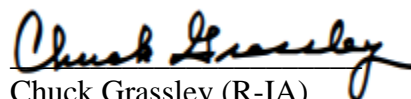



Ted Cruz (R-TX)  
United States Senator

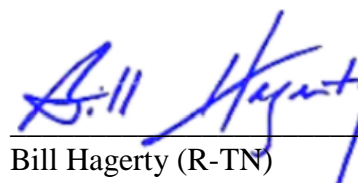


Steve Daines (R-MT)  
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Joni Ernst (R-IA)  
United States Senator

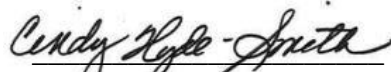
  
Chuck Grassley (R-IA)  
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Lindsey O. Graham (R-SC)  
United States Senator

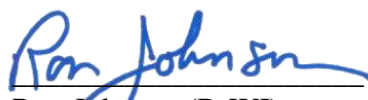
  
Bill Hagerty (R-TN)  
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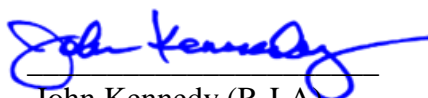
  
Josh Hawley (R-MO)  
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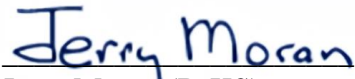
  
Mike Lee (R-UT)  
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Roger Marshall, M.D. (R-KS)  
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Jerry Moran (R-KS)  
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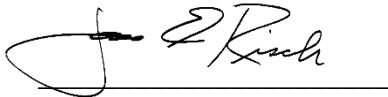
Lisa Murkowski (R-AK)  
United States Senator



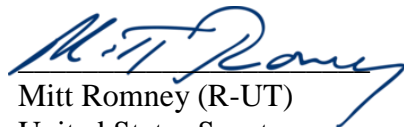
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United States Senator



Rob Portman (R-OH)  
United States Senator



James Risch (R-ID)  
United States Senator



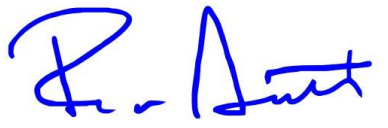
Mitt Romney (R-UT)  
United States Senator



M. Michael Rounds (R-SD)  
United States Senator



Marco Rubio (R-FL)  
United States Senator



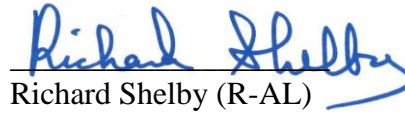
Rick Scott (R-FL)  
United States Senator



Tim Scott (R-SC)  
United States Senator



Ben Sasse (R-NE)  
United States Senator



Richard Shelby (R-AL)  
United States Senator



Dan Sullivan (R-AK)  
United States Senator



Thom Tillis (R-NC)  
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Pat Toomey (R-PA)  
United States Senator



Tommy Tuberville (R-AL)  
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Roger F. Wicker (R-MS)  
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Todd Young (R-IN)  
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