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VIA REGULATIONS.GOV

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U.S. Environmental Protection Agency
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Stacey Jensen
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Re: Pre-Proposal Recommendations on the Definition of "Waters of the United States," 86 Fed. Reg. 41,911 (Aug. 4, 2021)
Docket ID No. EPA-HQ-OW-2021-0328

Dear Ms. Christensen and Ms. Jensen:

The Waters Advocacy Coalition ("WAC" or "Coalition") provides these recommendations in response to the U.S. Environmental Protection Agency's ("EPA's") and the U.S. Army Corps of Engineers' ("Corps'") notice soliciting pre-proposal feedback on defining "waters of the United States" ("WOTUS") under the Clean Water Act ("CWA").[1]

The Coalition's members are committed to both building modern, resilient infrastructure and protecting and restoring America's wetlands and waters and we believe that a clear regulation that draws bright lines between federal and state waters will help further those goals. The Coalition represents a diverse cross-section of the nation's agriculture, construction, transportation, real estate, mining, manufacturing, forestry, energy, recreational, wildlife conservation, and public health and safety sectors—all of which are vital to a thriving national economy and provide much needed jobs.[2] If the Administration and our nation are to meet our ambitious climate and infrastructure objectives, more must be done to ensure that federal permitting is sustainable and effective, consistent with current statutory authority and legal precedent. We have commented extensively on prior rules, including the Navigable Waters Protection Rule ("NWPR");[3] the proposal to repeal the 2015 Clean Water Rule ("2015 Rule");[4]

[1] *See* 86 Fed. Reg. 41,911 (Aug. 4, 2021).

[2] A complete list of WAC members is attached to these recommendations as Appendix A.

[3] Waters Advocacy Coalition, Comments on the Environmental Protection Agency and U.S. Army Corps of Engineers' Proposed Rule, Revised Definition of "Waters of the United States" (Apr. 15, 2019), Doc. No. EPA-HQ-OW-2018-0149-6849.

[4] Waters Advocacy Coalition, Comments on the Supplemental Notice of Proposed Rulemaking to Repeal the 2015 Clean Water Rule and Recodify the Pre-existing Rules (Aug. 13, 2018), Doc.

the proposed 2015 Rule;[5] the 2011 Draft Guidance on Identifying Waters Protected by the Clean Water Act;[6] the 2008 Guidance on Clean Water Act Jurisdiction After *Rapanos*;[7] and the 2003 Advanced Notice of Proposed Rulemaking on the Clean Water Act Definition of "Waters of the United States."[8] Most of the Coalition's individual members have also submitted their own comments on these proposals. Through these individual and collective efforts, the Coalition's members possess a wealth of expertise directly relevant to the Agencies' efforts to define WOTUS. Our ask has remained steadfast: we need clear rules to protect clean water.

Throughout the various comment processes, the Coalition has consistently urged the Agencies to: (i) interpret WOTUS in a way that gives appropriate weight to the explicit statutory policy to recognize, preserve, and protect the States' traditional and primary authority over land and water use; (ii) adhere to the full Supreme Court precedent on the definition of WOTUS under the CWA; (iii) give effect to the term "navigable" in the statutory text; (iv) draw clear lines between federal and state or tribal jurisdiction so that regulators and regulated entities can easily identify what features are subject to federal CWA jurisdiction; (v) account for science, while recognizing that the statutory text ultimately dictates jurisdiction.

The NWPR fulfills each of these key principles, protecting clean water in a fair, predictable way as envisioned by the statute. Therefore, the Coalition does not believe it is necessary or wise for the Agencies to redefine WOTUS in yet another round of lengthy rulemaking proceedings.[9]

No. EPA-HQ-OW-2017-0203-15249; Waters Advocacy Coalition, Comments on Comments on the Proposed Repeal of 2015 Clean Water Rule and Recodification of Pre-Existing Rules (Sept. 27, 2017), Doc. No. EPA-HQ-OW-2017-0203-11027.

[5] Waters Advocacy Coalition, Comments on the Proposed Rule to Define "Waters of the United States" Under the Clean Water Act, (Nov. 13, 2014, corrected Nov. 14, 2014), Doc. No. EPA-HQ-OW-2011-0880-17921.

[6] Waters Advocacy Coalition, et al., Comments in Response to the Draft Guidance on Identifying Waters Protected by the Clean Water Act (July 29, 2011), Doc. No. EPA-HQ-OW-2011-0409-3514.

[7] American Farm Bureau Federation, et al., Comments in Response to the Guidance Pertaining to Clean Water Act Jurisdiction After the U.S. Supreme Court's Decision in *Rapanos v. United States* and *Carabell v. United States*, (Jan. 22, 2008), Doc. No. EPA-HQ-OW-2007-0282-0204.

[8] Foundation for Environmental and Economic Progress, et al., Comments in Response to the Advance Notice of Proposed Rulemaking on the Clean Water Act Regulatory Definition of "Waters of the United States," (Apr. 16, 2003), Doc. Nos. EPA-HQ-OW-2002-0050-1816 (comments), -1829 to -30 & -1832 to -35 (Exhibits and Appendices).

[9] The Coalition recognizes that the federal district court in Arizona recently ordered that the NWPR be "vacated and remanded for reconsideration." *See* Order, *Pasqua Yaqui Tribe v. EPA*, No. 20-cv-00266, ECF No. 99, at 11 (D. Ariz. Aug. 30, 2021). However, as the Agencies have acknowledged in another case challenging the NWPR, the vacatur order should be limited to the parties before the court. *See* Reply Brief in Support of Defendants' Opposed Motion for Voluntary Remand of the NWPR Without Vacatur, *Pueblo of Laguna v. Regan*, No. 21-cv-277,

WAC, however, acknowledges that the Agencies intend to propose to reconsider the NWPR in the near future. Thus, consistent with our previous comments, the Coalition again recommends that the aforementioned key principles—set forth in more detail below—must guide any regulatory interpretation of the term "waters of the United States." Additionally, the Coalition offers recommendations on certain categories of jurisdictional and non-jurisdictional features identified in the Agencies' pre-proposal notice. Finally, the Coalition recommends that the Agencies continue implementing the NWPR in areas that are not subject to a vacatur order.[10]

I. A Durable Definition of WOTUS Must Adhere to the Following Key Principles.

A. The Agencies Must Recognize the Explicit Policy in CWA § 101(b) to Preserve the States' Primary Authority Over Land and Non-Navigable Water Resources.

Congress was well aware of regional differences in land and water features when it enacted the CWA, but Congress did not intend for the federal government to have jurisdiction over all water features within every state. Quite the opposite, Congress declared its policy "to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, [and] to plan the development and use . . . of land and water resources."[11] The Supreme Court emphasized this statutory policy in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* ("*SWANCC*"), when it rejected the government's argument that the Corps could assert CWA jurisdiction over non-navigable, isolated, intrastate waters based on "Congress's power to regulate intrastate activities that 'substantially affect' interstate commerce."[12] The Court noted that the government's interpretation would significantly impinge the States' traditional and primary power over land and water use. Such an interpretation, pushing the limits of Congressional authority, could only be upheld if there were "a clear statement from Congress that it intended such a result."[13] "Rather than expressing a desire to readjust the federal-state balance in this manner, Congress chose to 'recognize, preserve, and protect the primary responsibilities and rights of States . . . to plan the development and use . . . of land and water resources.'"[14]

In the Agencies' pre-proposal notice, they emphasize the Administration's goals outlined in Executive Order 13990, as well as the CWA Section 101(a) objective to "restore and maintain

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ECF No. 34, at 3 (D.N.M. filed Aug. 27, 2021) (quoting *California v. Texas*, 141 S. Ct. 2104, 2115 (2021)).

[10] For the reasons explained in WAC's August 10, 2021, letter, and in light of the District of Arizona's recent decision, the Coalition respectfully renews its request for an extension of the comment period for providing pre-proposal written recommendations. Should an extension be granted, the Coalition or its members may submit additional comments.

[11] 33 U.S.C. § 1251(b).

[12] 531 U.S. 159, 173 (2001).

[13] *Id.* at 174.

[14] *Id.* (quoting 33 U.S.C. § 1251(b)).

the chemical, physical, and biological integrity of the Nation's waters," while notably omitting any reference to the Congressional policy expressed in Section 101(b).[15] Regarding EO 13990, the priorities articulated in an executive order cannot expand statutory authorities or limitations enacted by Congress. Indeed, EPA and the Corps "literally ha[ve] no power to act . . . unless and until Congress confers power upon [them]."[16] Thus, important considerations of climate change, environmental justice, and other Administration priorities must be grounded in a lawful exercise of CWA authority. If the Agencies determined that jurisdiction over certain areas is important to a particular goal, "the Agencies would lack authority to extend CWA jurisdiction to such waters on that basis alone" for the same reason that the Agencies cannot expand CWA jurisdiction on the sole ground that "ESA consultation revealed waters of importance to listed species."[17] In sum, the Agencies lack authority to *expand* the CWA's reach on the ground that it would further the Administration's broader priorities.

Regarding CWA's Section 101(a) objective, the Agencies must further that objective while implementing and giving adequate consideration and weight to Section 101(b) as well. As the Agencies previously acknowledged, the Section 101(a) objective "does not mandate that the Agencies exercise their authority at the outermost possible bound."[18] Put differently, the Agencies cannot pursue the objective to the exclusion of the 101(b) policy or in disregard of the meaningful limits Congress placed on the Agencies' authority; the objective must be implemented "in a manner consistent with Congress' policy directives to the agencies."[19]

To be durable and defensible, any definition of WOTUS must not significantly impinge of the States' traditional and primary authority over land and water use. As the Agencies recently found, states have mechanisms in place that they can adapt to fill any gaps in federal authority and, indeed, over half of the states regulate waters beyond what the Agencies define as WOTUS.[20] There is simply no need, much less any lawful basis, to define every wet feature on

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[15] *See* 86 Fed. Reg. at 41,912.

[16] *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986); *see also Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 8 (D.C. Cir. 2002) (explaining that agencies are "creature[s] of status, having no constitutional or common law existence or authority, but *only* those authorities conferred upon [them] by Congress").

[17] Brief for Respondents, *In re: EPA and Dep't of Def., Final Rule: Clean Water Rule: Def'n of "Waters of the U.S.*, Case No. 15-3751, Doc. No. 149-1, at 239 (6th Cir. filed Jan. 13, 2017) (quoting *SWANCC*, 531 U.S. at 682-84).

[18] *Id.* at 132.

[19] 85 Fed. Reg. at 22,269.

[20] *See Resource and Programmatic Assessment for the Navigable Waters Protection Rule*, at 45-49 (Jan. 23, 2020). The Coalition acknowledges the importance of seeking input from states, local, and tribal entities. Among other things, the Agencies must obtain a thorough and accurate understanding of what states are doing, including whether, and to what extent, states are regulating activities under state water pollution control laws. This is especially true with respect to activities that the Corps has designated as "no permit required" and any activities that

the landscape as WOTUS to protect them. A definition that pushes the outer limits of the Agencies' CWA authority and fails to give adequate weight to the Section 101(b) policy would be legally vulnerable and would undermine the Agencies' stated goal of establishing a durable rule.

B. The Agencies Must Adhere to All Relevant Supreme Court Precedents.

The Supreme Court has addressed the constitutional bounds of the Agencies' authority over "waters of the United States," and in three seminal cases—*Riverside Bayview Homes*, *SWANCC*, and *Rapanos*—the Court has articulated important guideposts, most of which relate to the *limits* of CWA jurisdiction. Any definition of WOTUS should account for all of these holdings and limits.

In *United States v. Riverside Bayview Homes, Inc.*, the Court addressed whether the definition of WOTUS encompasses wetlands that abut waters traditionally regulated by the federal government.[21] The Court held that by defining "navigable waters" to mean "the waters of the United States," Congress intended to regulate "at least some waters that would not be deemed 'navigable' under the classical understanding of that term."[22] The Court went on to hold that the Corps' assertion of jurisdiction over wetlands that "actually abut[] . . . a navigable waterway" is a "permissible interpretation of the Act."[23] Integral to the Court's holding was Congress's acquiescence to the Corps' assertion of jurisdiction over such wetlands in adopting the 1977 amendments to the CWA.[24]

In the 2001 *SWANCC* decision, the Court held that "nonnavigable, isolated, intrastate" ponds (which, unlike the waters at issue in *Riverside Bayview,* did not abut a traditional navigable waterway) were not jurisdictional under the CWA.[25] In concluding that the "text of the statute will not allow" the Court to "hold that the jurisdiction of the Corps extends to ponds that are *not* adjacent to open water," it explicitly reversed the lower court's holding that the CWA reaches as many waters as the Commerce Clause allows.[26] Not only did *SWANCC* emphasize the importance of the term "navigable" in the CWA's text, it found that the Corps' assertion of jurisdiction would raise "significant constitutional questions" and "would result in a significant impingement of the States' traditional and primary power over land and water use."[27] Responding to the government's argument that its jurisdictional claims could be upheld based on "Congress' power to regulate intrastate activities that 'substantially affect' interstate

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stakeholders claim are causing significant environmental harm under the NWPR because of a lack of not just federal oversight, but also state and local oversight.

[21] 474 U.S. 121 (1985).

[22] *See id.* at 133.

[23] *Id.* at 135.

[24] *Id.* at 136-38.

[25] 531 U.S. at 169.

[26] *See id.* at 168 & 166 (quoting from 191 F.3d 845, 850-52 (7th Cir. 1999)).

[27] *SWANCC*, 531 U.S. at 174.

commerce,"[28] the Court noted that allowing the government to "claim federal jurisdiction over ponds and mudflats [covered by the Migratory Bird Rule at issue] would result in a significant impingement of the States' traditional and primary power over land and water use."[29] Such an interpretation, pushing the limits of Congressional authority, could only be upheld if there were "a clear statement from Congress that it intended" such a result.[30] The Court found no such statement, and Congress has declined to amend the CWA to add such a statement.

SWANCC's holding is not limited to the particular isolated, intrastate water features or the Migratory Bird Rule that were before the Court. It applies with equal force to any interpretation of CWA jurisdiction. Under this controlling precedent, in adopting a WOTUS definition, the agencies must give full effect to the term "navigable" and respect the limits of federal authority that flow from Congress's explicit choice to preserve and protect the States' traditional and primary authority over land and water use. Asserting jurisdiction over the very ponds at issue in *SWANCC* under some alternative theory, such as the 2015 Rule's theory of what constitutes a "significant nexus," is incompatible with that holding.

Most recently, the Court again interpreted the term "waters of the United States" in *Rapanos v. United States*, a case involving the Agencies' theory that CWA jurisdiction extends to any waters with "any connection" to navigable waters.[31] While all members of the Court agreed that the term encompasses some waters that are not navigable in the traditional sense, the plurality and Justice Kennedy, in a concurring opinion, articulated various limitations on the Agencies' CWA regulatory jurisdiction in likewise rejecting the "any hydrological connection" theory. The plurality concluded that the CWA confers jurisdiction over only "relatively permanent bodies of water connected to traditional interstate navigable waters," and "only those wetlands with a continuous surface connection" to those waters,[32] while Justice Kennedy concluded that the agencies' CWA jurisdiction extends only to waters and wetlands with a "significant nexus" to traditional navigable waters.[33]

Because the *Rapanos* plurality and concurrence took different approaches, under *Marks v. United States*[34] neither opinion standing alone is the binding holding of *Rapanos*. Nonetheless, there is some common ground between the two opinions, which constrain any definition of WOTUS:

- The term "navigable" must be given some independent effect.[35]

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[28] *Id.* at 173.

[29] *Id*. at 174.

[30] *Id.*

[31] 547 U.S. 715 (2006).

[32] *Id*. at 734, 742 (plurality) (emphasis in original).

[33] *Id*. at 767 (Kennedy, J., concurring).

[34] 430 U.S. 188 (1977).

[35] *Id.* at 731 (plurality) & 778 (Kennedy, J., concurring).

- The term "waters of the United States" includes some waters and wetlands not navigable-in-fact but which bear a substantial connection to navigable waters.[36]

- Environmental concerns cannot override the CWA's text.[37]

- WOTUS cannot include drains, ditches, or streams remote from navigable-in-fact waters that carry only a small volume of water toward navigable-in-fact waters, or waters or wetlands that are alongside such drains, ditches, or streams.[38]

- WOTUS does not encompass all wetlands, or even "all 'non-isolated wetlands.'"[39]

- The presence of a hydrologic connection to navigable-in-fact waters is not enough, by itself, to support jurisdiction.[40]

To withstand scrutiny, the definition of WOTUS must not ignore any of the foregoing holdings from these three Supreme Court cases, including the areas of common ground between the *Rapanos* plurality and concurring opinions. Only then can the Agencies ensure consistency with the statute, Congress's intent, and Supreme Court precedent.

C. Any Definition of WOTUS Must Give Effect to the Term "Navigable."

In *SWANCC*, the Supreme Court held that "the text of the statute will not allow [the Court] to hold that the jurisdiction of the Corps extends to ponds that are not adjacent to open water." [41]To hold otherwise would effectively read the term "navigable" out of the Act and strip it of any independent significance.[42] Although the Court acknowledged its statements in *Riverside Bayview* that the term "navigable" was of "limited import" and that Congress intended "to regulate at least some waters that would not be deemed 'navigable' under the classical understanding of that term,"[43] it cautioned that "it is one thing to give a word limited effect and quite another to give it no effect whatever."[44]

The *SWANCC* court also looked to the CWA's legislative history and prior regulatory interpretations, but found them unavailing. Among other things, the Court rejected the government's assertion that the 1977 legislative history indicates "that Congress recognized and

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[36] *Id.* at 731 (plurality) & 778 (Kennedy, J., concurring).

[37] *Id.* at 745-46 (plurality) & 778 (Kennedy, J., concurring).

[38] *Id.* at 733-34, 742 (plurality) & 778-91 (Kennedy, J., concurring).

[39] *Id.* at 779-70 (Kennedy, J., concurring) & 724 (plurality).

[40] *Id.* at 740-42 (plurality) & 784-85 (Kennedy, J., concurring).

[41] 531 U.S. at 168.

[42] *Id.* at 171-72.

[43] *Id.* at 167 (citing *Riverside Bayview*, 474 U.S. at 133).

[44] *SWANCC*, 531 U.S. at 172.

accepted a broad definition of 'navigable waters' that includes non-navigable, isolated, intrastate waters."[45] The Corps' counsel at oral argument had conceded that a ruling upholding CWA jurisdiction over the *SWANCC* ponds would "assume that 'the use of the word navigable in the statute . . . does not have any independent significance."[46] But this went too far. The Court explained that the term "navigable waters" and the legislative history indicate that when Congress passed the CWA it was exercising its commerce power over navigation and had in mind its traditional jurisdiction over waters that were or had been navigable in fact or which could reasonably be so made."[47] Because the jurisdictional claim in *SWANCC* would "read[] the term 'navigable waters' out of the statute," it exceeded the Corps' CWA authority.[48]

Rapanos reinforced that any definition of WOTUS must give effect to the term "navigable." For instance, in reaffirming the holding in *SWANCC*, Justice Kennedy explained that the plain text of the CWA did not permit the Corps to assert jurisdiction over waters "that were isolated in the sense of being unconnected to other waters covered by the Act" and hence, lacked the sort of significant nexus to navigable waters that informed the Court's reading of the Act in *Riverside Bayview*.[49]

Accordingly, the definition of WOTUS must not read the term "navigable" out of the Act and must not be so broad as to try to sweep in as many waters as the Commerce Clause could allow. Any attempts to assert jurisdiction over isolated, intrastate waters such as the ponds in *SWANCC* or comparable features would violate the text of the Act, contravene Supreme Court precedent, impermissibly intrude on States' traditional and primary authority, and raise serious constitutional and federalism questions.

D. States and Regulated Entities Need a Clear and Easily Implementable Definition of WOTUS.

The definition of WOTUS must clearly differentiate between waters that are subject to federal jurisdiction and those that are subject to State and Tribal government regulation so that States and Tribes can effectively regulate land and water use within their borders. Such clarity also facilitates State efforts to assume authority to administer their own CWA Section 404 permitting programs under CWA Section 404(g). Finally, a clear definition of WOTUS, like that in the NWPR, is necessary to promote modern infrastructure development and achieve the President's agenda to "Build Back Better." Unclear definitions that depend on case-by-case "significant nexus" determinations, or otherwise overly expansive definitions, threaten to

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[45] 531 U.S. at 169.

[46] *Id.* at 172.

[47] *Id.* at 168 n.3, 172. In reaching this result, the *SWANCC* court explicitly reversed the lower court's holding that the CWA reaches as many waters as the Commerce Clause allows. *See* 531 U.S. at 166 (quoting from 191 F.3d 845, 850-52 (7th Cir. 1999)).

[48] *SWANCC*, 531 U.S. at 172.

[49] *See* 547 U.S. at 766-67; *see also id.* at 779, 781-82, 784-85 (emphasizing that the significant nexus must be to navigable waters "in the traditional sense" or "as traditionally understood").

frustrate that agenda by injecting uncertainty, inconsistency, and delays into project planning and permitting.

Clarity is paramount for all entities subject to potential CWA regulation. A growing number of Supreme Court justices have expressed concern in recent years about the Act's notoriously unclear reach. In *Sackett v. EPA*, Justice Alito lamented how "the combination of the uncertain reach of the Clean Water Act and the draconian penalties imposed for the sort of violations alleged in this case still leaves most property owners with little practical alternative but to dance to the EPA's tune."[50] And in *U.S. Army Corps of Engineers v. Hawkes*, Justices Kennedy, Thomas, and Alito warned that the CWA "continues to raise troubling questions regarding the Government's power to cast doubt on the full use and enjoyment of private property throughout the Nation."[51] These concerns are well founded, given that even "inadvertent violations" can result in "crushing" consequences for well-intentioned landowners.[52]

For these reasons, the definition of WOTUS must include bright lines that provide "clarity and predictability for regulators and the regulated community," such as those set forth in the NWPR.[53] A definition that lacks clarity and predictability is ineffective at protecting clean water and leaves people vulnerable to arbitrary and inconsistent application or enforcement.

E. The Agencies Should Account for Relevant Science, While Recognizing that the Statutory Text Ultimately Dictates Jurisdiction.

There is no serious legal dispute that priorities informed by current scientific understandings must still operate within the CWA's legal framework. The EPA's Science Advisory Board acknowledged this when it stated that the Connectivity Report, which served as the technical basis for the 2015 Rule, "is a science, *not policy*, document that was written to summarize the current understanding of connectivity or isolation of streams and wetlands relative to large water bodies such as rivers, lakes, estuaries, and oceans."[54] Similarly, when offering comments on the proposed NWPR, the SAB acknowledged that when it acts "in its advisory capacity" to summarize the science, it is "under no such constraint" imposed by "the CWA and subsequent case law" on the Agencies.[55]

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[50] 566 U.S. 120, 132 (2012) (Alito, J., concurring).

[51] 136 S. Ct. 1807, 1817 (2016) (Kennedy, J., concurring).

[52] *Id.* at 1816.

[53] 85 Fed. Reg. at 22,325.

[54] *See* SAB Review of the Draft EPA Report *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence*, EPA-SAB-15-001, at 2 (Oct. 17, 2014), *available at* https://nepis.epa.gov/Exe/ZyPDF.cgi/P100RO1Y.PDF?Dockey=P100RO1Y.PDF.

[55] *See* SAB Commentary on the Proposed Rule Defining the Scope of Waters Federally Regulated Under the Clean Water Act, EPA-SAB-20-002, at 2 (Feb. 27, 2020).

In finalizing both the 2015 Rule and the NWPR, the Agencies reinforced that the relevant science cannot dictate the legal definition of "waters of the United States." The 2015 Rule, for instance, explained that the Connectivity Report by itself cannot form the basis for the definition of WOTUS because "the science does not provide bright line boundaries" for distinguishing WOTUS from waters of the State and because "the agencies' interpretation of the CWA is informed by the [Connectivity] Report and the review and comments of the SAB, but not dictated by them."[56] Elsewhere, the 2015 Rule acknowledged that while "[t]he science demonstrates that waters fall along a gradient of chemical, physical, and biological connection to traditional navigable waters … it is the agencies' task to determine where along that gradient to draw lines of jurisdiction under the CWA."[57] In promulgating the NWPR, the Agencies again relied on the science to "inform[] [their] interpretation of [WOTUS]," while again recognizing that "science cannot dictate where to draw the line between Federal and State or Tribal waters, as those are legal distinctions that have been established within the overall framework and construct of the CWA."[58]

The Coalition agrees that the Agencies must account for the relevant science in defining the term "waters of the United States," but unlike the SAB, the Agencies *are* constrained by the limits Congress placed on their authority in the CWA and Supreme Court precedent interpreting and applying those limits.

II. Waterbody-Specific Recommendations

Although the Agencies have indicated that they intend to restore the pre-2015 definitions with "updates" that are consistent with relevant Supreme Court decisions, the Agencies have not yet detailed what those "updates" may look like, nor have they provided any indication of how they might "further refine" the updated definitions in a second rulemaking. Thus, at this time, the Coalition offers only high-level recommendations on the categories of jurisdictional and non-jurisdictional waters referenced in the pre-proposal notice.

A. Interstate Waters

As WAC has previously explained,[59] the definition of WOTUS cannot encompass water features solely by virtue of the fact that they cross State lines. The assertion of jurisdiction over all interstate waters and interstate wetlands, regardless of navigability, impermissibly reads the term "navigable" out of the statute; cannot be reconciled with *SWANCC*; and violates even the "significant nexus" test from Justice Kennedy's concurring opinion in *Rapanos*.[60] A standalone interstate waters and wetlands category also contravenes Congress's intent. Indeed, Congress

[56] 80 Fed. Reg. at 37,060.

[57] *Id.* at 37,057.

[58] 85 Fed. Reg. at 22,271.

[59] *E.g.*, 2019 WAC Comments at 13-14; 2014 WAC Comments at A-2 to A-3.

[60] *Georgia v. Wheeler*, 418 F. Supp. 3d 1336, 1358-59 (S.D. Ga. 2019).

deliberately replaced the term "interstate" with "navigable" in the 1972 Federal Water Pollution Control Act amendments.[61]

Prior definitions of WOTUS improperly allow for the assertion of jurisdiction over small non-navigable features that happen to cross State lines, regardless of whether they have any connection to a traditional navigable water or interstate commerce. In doing so, the agencies effectively equated such features with traditional navigable waters without providing any legal or scientific basis for doing so. Such interstate waters and wetlands that have no connection to traditional navigable waters can only be regulated by the States and Tribes under their sovereign authorities.

B. Tributaries

The NWPR's approach to tributaries, which was based on flow classification and accounts for the interconnected nature of the tributary system, strikes an appropriate balance between the CWA's objective to restore and maintain the integrity of the Nation's waters and the Act's policy to respect State and tribal authority over land and water resources.[62] The Agencies should carry forward that approach, which appropriately leaves the regulation of certain features, such as ephemeral streams, to States and Tribes. The Coalition strongly supports excluding ephemeral features from the definition of tributary for the reasons previously stated.[63] WAC also strongly supports a tributary definition that does not involve complicated case-specific significant nexus review of tributaries and instead categorically treats as jurisdictional all tributaries with either perennial or intermittent flow that contribute surface water flow to downstream navigable-in-fact waters in a typical year.

The Coalition recommends the Agencies avoid reverting to a definition of tributary that relies on indicators of channelization or of the ordinary high-water mark. As we have previously explained in detail,[64] physical features such as bed, banks, and ordinary high water mark are visible even in features without ordinary flow; asserting jurisdiction based on these characteristics would sweep in features with discontinuous surface connections to other waters and a speculative nexus to downstream navigable waters. Equally problematic, the ordinary high water mark is one of the most inconsistent and ambiguous terms in the CWA regulatory program, which explains why Justice Kennedy's concurring opinion in *Rapanos* was critical of the Corps' reliance on it to assert jurisdiction over tributaries and wetlands adjacent to such tributaries.[65]

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[61] *Compare* Water Pollution Control Act, ch. 758, 62 Stat. 1155, 1156 (1948) ("interstate"), and Pub. L. No. 87-88, 75 Stat. 204, 208 (1961) ("interstate or navigable"), *with* 33 U.S.C. 1362(7) ("navigable").

[62] *See* 85 Fed. Reg. at 22,287.

[63] *E.g.*, 2019 WAC Comments at 15-16; 2014 WAC Comments at 33-36, 62-63; 2011 WAC Comments at 62-65; 2008 WAC Comments at 53-59, 69-72.

[64] *E.g.*, 2014 WAC Comments at 33-38; 2011 WAC Comments at 61, 65-67.

[65] *See Rapanos*, 547 U.S. at 781-82 (Kennedy, J., concurring).

C. Ditches

Defining which ditches are jurisdictional, and which are appropriately excluded from the definition of WOTUS, is a top priority for WAC members. Ditches are ubiquitous across the country, and WAC members rely on a wide variety of man-made ditches each day as part of the construction, operation, and maintenance of homes, electric transmission and distribution lines, transportation-related infrastructure such as roads and railways, agricultural irrigation infrastructure, flood control infrastructure, rural drains and roads, mines, and other important activities. Ditches play a critical role in all of these activities, ensuring that stormwater is properly channeled away from facilities and land where it would otherwise collect and interfere with the intended use of the land and facilities. Ditches are also critical to ensuring proper drainage and flood prevention on agricultural fields, roads, and urban spaces.

The Agencies correctly note that the Agencies have previously recognized that ditches that reroute otherwise jurisdictional tributaries should be jurisdictional. WAC agrees that such ditches should be jurisdictional.[66] Further, it is important for the burden to remain on the government to establish that a ditch rerouted a jurisdictional tributary. Many ditches were constructed well before the CWA's enactment and well before tools were readily available to try to demonstrate historic conditions. Accordingly, the NWPR appropriately clarified that the "burden of proof lies with the agencies to demonstrate that a ditch relocated a tributary or an adjacent wetland" and that, "if the evidence does not demonstrate that a ditch was located in a natural [jurisdictional] waterway, the ditch will be non-jurisdictional under this rule."[67] Moving forward, the burden should remain on the Agencies to establish the historical status of ditches.

Except for ditches constructed in a jurisdictional tributary, man-made ditches generally should be non-jurisdictional regardless of flow regime, construction or excavation in *non-jurisdictional* aquatic features, physical features, use, or biological indicators. Ditches often contribute flow directly or indirectly to downstream navigable waters, carry flow or contain standing water, and exhibit wetlands characteristics.[68] Regulation of such features as WOTUS would not only read the term "navigable" out of the statute, it would impermissibly intrude upon state and tribal authority.[69] Equally important, it is unnecessary to define WOTUS to include ditches in order to protect ditches or the integrity of downstream waters; the Agencies can rely on existing Section 402 permitting requirements to protect downstream waters.[70]

D. Adjacency

The term "adjacent" in the definition of WOTUS has caused problems for decades.[71] Among other things, prior interpretations of "adjacent" failed to heed the holding in *SWANCC*

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[66] *E.g.*, 2019 WAC Comments at 19; 2014 WAC Comments

[67] 85 Fed. Reg. at 22,299.

[68] *See* 2014 WAC Comments at 42-46.

[69] *See id.* at 46-47.

[70] *See id.* at 47-48.

[71] *E.g.*, 2011 WAC Comments at 84; 2003 FEEP Comments at 39.

that "the text of the statute will not allow" the Agencies' jurisdiction to "extend[] to ponds that are *not* adjacent to open water."[72] The NWPR appropriately regulates only adjacent *wetlands* by creating a reasonably defined, standalone category of jurisdictional lakes, ponds, and impoundments. The Coalition urges the Agencies to retain the NWPR's approach to adjacency, which asserts jurisdiction over those wetlands that directly abut other WOTUS or that have a direct hydrologic surface connection to other WOTUS in a typical year and eliminates the need for case-specific significant nexus determinations. This approach satisfies common principles from the *Rapanos* plurality and concurring opinions, draws clear and implementable bright lines, and strikes the appropriate balance between the CWA Section 101(a) objective and 101(b) policy.[73] It also appropriately avoids relying on subsurface connections to deem an adjacent wetland to be jurisdictional. Such reliance is problematic for all of the reasons WAC has previously provided.[74]

Limiting adjacency to those *wetlands* that directly abut or have a direct hydrologic surface connection to other WOTUS ensures consistency with *SWANCC*, whereas the assertion of jurisdiction over non-adjacent, intrastate, non-navigable waters does not. A core holding in *SWANCC* is that, absent a clear statement of Congressional intent, the CWA must be construed to avoid federal intrusion into State authorities over land and water use.[75] Asserting jurisdiction over non-adjacent, intrastate, non-navigable waters would be incompatible with *SWANCC*. Nor does Justice Kennedy's concurrence in *Rapanos* support such a broad interpretation of WOTUS. Justice Kennedy explained that the plain text of the CWA did not permit the Corps to assert jurisdiction over waters "that were isolated in the sense of being unconnected to other waters covered by the Act" and hence, lacked the sort of significant nexus to navigable waters that informed the Court's reading of the Act in *Riverside Bayview*.[76]

Finally, WAC recommends that the Agencies continue to ensure, as they reiterated in the NWPR, that "the *presence and boundaries* of wetlands are determined based upon an area satisfying *all three of the definition's factors* (*i.e.*, hydrology, hydrophytic vegetation, and hydric soils) under normal circumstances.[77] It is not enough to assert that a particular feature is a jurisdictional wetland if one or more key factors are not met.

E. Exclusions

As the Agencies have previously explained, "[c]larity requires line drawing, which necessarily entails the exclusion of some waters from the definition of 'waters of the United

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[72] *SWANCC*, 531 U.S. at 167-68.

[73] *See* 85 Fed. Reg. at 22,261-62; *id.* at 22,308-14.

[74] *See* 2014 WAC Comments at 52-55.

[75] *See SWANCC*, 531 U.S. at 172-74.

[76] *See Rapanos*, 547 U.S. at 766-67 (Kennedy, J., concurring).

[77] 85 Fed. Reg. at 22,315.

States.'"[78] WAC appreciates the Agencies' attempts, both in the 2015 Rule and in the NWPR, to codify in the regulatory text a list of waters that are categorically *not* jurisdictional. WAC supports the codification of exclusions, so long as they provide clarity, are not overly restrictive in their applicability, and do not serve as the basis for establishing jurisdiction. For instance, many of the exclusions in the 2015 Rule were too unclear and narrow for the reasons we previously explained.[79] The NWPR corrected some of those deficiencies by, for instance, applying several of the exclusions to features constructed or excavated in "uplands" as well as features constructed or excavated in non-jurisdictional aquatic features. WAC supports the NWPR's formulation of those exclusions.

The Agencies' pre-proposal notice draws particular attention to two longstanding exclusions: waste treatment systems and prior converted croplands. Both of those exclusions, which have been in the regulatory text for many decades, are critically important to many WAC members' operations. WAC continues to support those exclusions.[80] WAC appreciates the new definitions in the NWPR for each of these exclusions, which are consistent with the Agencies' longstanding interpretation and implementation of these exclusions and "enhance implementation clarity."[81]

These exclusions are firmly grounded in a permissible interpretation of the CWA. Notably, the exclusion for waste treatment systems was upheld by the court of appeals that considered the merits of the Agencies' authority to promulgate that exclusion.[82] That court held, among other things, that the application of that exclusion to a water that would otherwise be a jurisdictional tributary was permissible.[83] The court also noted that stream segments connecting valley fills to sediment ponds are within the scope of the waste treatment system exclusion (and thus, are WOTUS) and that the Corps reasonably concluded that this approach reasonably harmonized the goals of the CWA and the Surface Mining Control and Reclamation Act.[84]

Also noteworthy, Congress discussed the Agencies' prior converted cropland exclusion when it amended the Food Security Act in 1996. Congress referenced the exclusion, which the Agencies codified in 1993, and noted that the amendments to the Food Security Act "should not supersede the wetland protection authorities and responsibilities of the [Agencies] under Section

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[78] Brief for Respondents, *In re: EPA and Dep't of Def., Final Rule: Clean Water Rule: Def'n of "Waters of the U.S.*, Case No. 15-3751, Doc. No. 149-1, at 133 (6th Cir. filed Jan. 13, 2017).

[79] *See* 2014 WAC Comments at 60-64.

[80] *E.g.*, 2019 WAC Comments at 24-25, 28.

[81] 85 Fed. Reg. at 22,317.

[82] *See Ohio Valley Envtl. Coal. v. Aracoma Coal Co*., 556 F.3d 177 (4th Cir. 2009).

[83] *See id.* at 212-15.

[84] *Id*. at 216 (citing 30 U.S.C. § 1202(f) (2000)).

404 of the Clean Water Act."[85] This specific acknowledgment suggests that Congress considered that exclusion to be a lawful exercise of the Agencies' CWA authority.[86]

III. The Agencies Should Continue Implementing the Navigable Waters Protection Rule.

Notwithstanding the uncertainty caused by the federal court decision in Arizona that recently "vacated and remanded [the NWPR] for reconsideration," the Coalition continues to strongly support the NWPR, and we urge the Agencies to continue implementing that rule anywhere that is not subject to the District of Arizona's decision in *Pasqua Yaqui Tribe*.

The NWPR satisfies all of the key principles discussed above to which any definition of WOTUS must adhere in order to be defensible. The NWPR strikes an appropriate balance between protecting waters and wetlands and providing clarity and predictability to stakeholders and regulators, while respecting the CWA's stated policy of preserving the states' primary authority over land and water use, as well as relevant Supreme Court precedent. The NWPR provided long overdue certainty for WAC members, private landowners, and communities 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. The Coalition believes the NWPR rightly ended persistent, unlawful efforts to expand federal power by preserving the careful federal-state balance that Congress struck in the CWA and avoiding the sorts of difficult constitutional questions raised by prior definitions of WOTUS. The NWPR also accounts for important 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 those features along the gradient that exert the strongest influence on downstream navigable waters. In so doing, the NWPR wisely leaves other waters to state and tribal governments to protect.

Because of the NWPR's clear definitions, the rule is far easier to implement consistently on the ground compared to prior WOTUS rules. For example, because the NWPR largely bases jurisdictional determinations on observable surface connections, landowners can more easily ascertain whether they require CWA permits for their activities. The NWPR also excludes mostly dry ephemeral features, eliminates the nebulous "significant nexus" test, and precludes the extension of jurisdiction to non-navigable, intrastate water features that are distant from any navigable-in-fact waters. The exclusion of ephemeral features, in particular, is critical to WAC members' ability to identify what features on their land may be jurisdictional and thus avoid significant permitting confusion or losses in productivity that result from vague or more expansive definitions of WOTUS.

WAC members support the NWPR over the pre-2015 definitions that the Agencies have stated they intend to restore with updates to be consistent with relevant Supreme Court decisions.

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[85] H.R. Rep. No. 104-494, at 380, *as reprinted in* 1996 U.S.C.C.A.N. 683, 745.

[86] *Cf. Riverside Bayview*, 474 U.S. at 137 ("[A] refusal by Congress to overrule an agency's construction of legislation is at least some evidence of the reasonableness of that construction, particularly where the administrative construction has been brought to Congress' attention[.]").

The Agencies appear to acknowledge that reverting to the pre-2015 framework is not as simple as restoring the text of the Agencies' definitions from the 1980s, because the Agencies must account for the fact that the Supreme Court twice rejected their efforts to broadly assert jurisdiction under those definitions. Restoring the pre-2015 definition is not a satisfactory endgame, because the Agencies were still able to "stretch[] the term 'waters of the United States' beyond parody" for decades under that framework through case-by-case assertions of jurisdiction and guidance documents.[87] This approach created moving and inconsistent targets, both before and after *Rapanos*. At its worst, interpretations of what features are jurisdictional under the pre-2015 definition varied between agency offices within a single state and sometimes even between regulatory staff sitting in the same office.[88]

For all of these reasons, WAC urges the Agencies to continue implementing the NWPR in all areas of the country that are not bound by the recent decision in *Pasqua Yaqui Tribe*. As the Agencies recognized in a brief they filed in a different case involving challenges to the NWPR, nationwide vacatur would be inconsistent with the Supreme Court's statement in *California v. Texas* that a nationwide injunction is contrary to the principle that "[r]emedies . . . ordinarily 'operate with respect to specific parties.'"[89] Treating the order as nationwide in scope would also improperly allow the Agencies to undo a duly promulgated rule without either undertaking notice-and-comment rulemaking or a merits adjudication resulting in a holding that the rule was somehow unlawful. The Agencies should not undercut the robust opportunities for stakeholder consultation and notice-and-comment rulemaking that they have repeatedly promised to affected stakeholders.

Equally important is the Agencies' recognition that they have not gone "so far as to confess legal error" in the NWPR, even though they have expressed concerns about the defensibility of the rule and about how the "rule is leading to significant environmental degradation" and "is significantly reducing clean water protections."[90] These *preliminary* expressions of concern are not well founded.

First, the Agencies' concerns about defensibility are somewhat puzzling considering the early successes of the NWPR in the courts—a track record that contrasts sharply with prior interpretations of WOTUS. For example, unlike the 2015 Rule, which impermissibly pushed the limits of federal authority under the CWA and was stopped in its tracks by numerous

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[87] *Rapanos v. United States*, 547 U.S. 715, 734 (2006).

[88] *See, e.g.,* U.S. General Accounting Office, Corps of Engineers Needs to Evaluate Its District Office Practices in Determining Jurisdiction, GAO No. 04-297 at 26 (Feb. 2004) ("GAO No. 04-297").

[89] *See* Reply Brief in Support of Defendants' Opposed Motion for Voluntary Remand of the NWPR Without Vacatur, *Pueblo of Laguna v. Regan*, No. 21-cv-277, ECF No. 34, at 3 (D.N.M. filed Aug. 27, 2021) (quoting *California v. Texas*, 141 S. Ct. 2104, 2115 (2021)).

[90] *Compare id.* at 4 n.2 *with* "EPA, Army Announce Intent to Revise Definition of WOTUS" (June 9, 2021), *available at* https://www.epa.gov/newsreleases/epa-army-announce-intent-revise-definition-wotus.

courts—both preliminarily[91] and after full merits adjudication[92]—courts rejected numerous states' attempts to preliminarily enjoin the NWPR.[93] As one of those courts explained in detail, the state plaintiffs' various claims that the NWPR is contrary to the CWA or arbitrary and capricious were unlikely to succeed on the merits.[94] Although it is true the court in *Pasqua Yaqui Tribe* recently vacated and remanded the NWPR, it did so *without* adjudicating the merits.[95]

Second, the Agencies' concerns about environmental harm rest on a misunderstanding of the limits of CWA authority as well as largely unsubstantiated and speculative statements about "potential environmental harms."[96] In short, the Agencies appear to assume that a definition of WOTUS that does not push or exceed the limits of CWA authority means a lack of water quality oversight and immediate harm. That assumption is not supported by the record the Agencies have created to date, nor is it probable.

The Agencies place a lot of emphasis on the increase in approved jurisdictional determinations ("AJDs") identifying non-jurisdictional aquatic resources during the first roughly ten months after the NWPR took effect (June 22, 2020 to April 15, 2021) compared to the same time period during the prior two years.[97] But there could be many reasons for this increase. Perhaps after enduring years of confusion and uncertainty, private landowners submitted particularly straightforward requests to the Corps for confirmation of "non-jurisdictional aquatic resources." Or perhaps the Corps front-loaded completing the easiest "non-jurisdictional" AJDs. Without knowing the universe of pending AJDs or how the Corps will resolve them, it is difficult to draw reliable conclusions from the increase in non-jurisdictional AJDs during the first year the NWPR was in effect.

The Agencies also rely on a list of 333 projects that are "associated with an approved jurisdictional determination in ORM2 (June 22, 2020-April 15, 2021) with the No Permit Required Closure Method of 'Activity occurs in waters that are NO longer WOTUS under the

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[91] *E.g.*, *In re EPA & Dep't. of Def. Final Rule*, 803 F.3d 804, 807 (6th Cir. 2015); *North Dakota v. EPA*, 127 F. Supp. 3d 1047, 1051 n.1, 1055 (D.N.D. 2015); *Georgia v. Pruitt*, 326 F. Supp. 3d 1356, 1364-65 (S.D. Ga. 2018); *Am. Farm Bureau Fed'n v. EPA*, 3:15-cv-165 (S.D. Tex. Sept. 12, 2018), Dkt. 87.

[92] *Texas v. EPA*, 389 F. Supp. 3d 497, 506 (S.D. Tex. 2019); *Georgia v. Wheeler*, 418 F. Supp. 3d 1336 (S.D. Ga. 2019).

[93] *Colorado v. EPA*, 989 F.3d 874 (10th Cir. 2021) (reversing and vacating district court's preliminary injunction); *California v. Wheeler*, 467 F. Supp. 3d 864 (N.D. Cal. 2020).

[94] *California*, 467 F. Supp. 3d at 872-76.

[95] *See* Order, *Pasqua Yaqui Tribe v. EPA*, No. 20-cv-00266, ECF No. 99, at 7 (D. Ariz. Aug. 30, 2021)

[96] *See* EPA/Corps Memorandum for the Record, "Review of U.S. Army Corps of Engineers ORM2 Permit and Jurisdictional Determination Data to Assess Effects of the Navigable Waters Protection Rule" (June 8, 2021), *available at* https://www.epa.gov/sites/default/files/2021-06/documents/3_final_memorandum_for_record_on_review_of_data_web_508c.pdf.

[97] *See id.* at 2.

NWPR.'"[98] According to the Agencies, these are activities that would have required a 404 permit before the NWPR, but no longer do because of the narrower scope of jurisdiction under the NWPR. As a preliminary matter, the Agencies have not disclosed all of the data necessary to review this list of projects. Since the Agencies' June 9 announcement, the Corps' website[99] has stated "The ORM2 PUBLIC DATABASE IS UNAVAILABLE" and thus many of the underlying documents are not readily available. More importantly, for those JDs that can be found online, it appears that most of them indicate that there are no prior JDs by stating "N/A" in the portions of the AJD that ask about "Associated JDs" or "Previous Jurisdictional Determinations (AJDs or PJDs)." If that is the case, there appears to be no basis for concluding that those projects used to require a permit but no longer do so under the NWPR. If the Agencies are basing their conclusion on their view that the water features in question would likely have been covered by the 2015 rule, that conclusion is misplaced because it fails to take into account that the 2015 rule was legally suspect, that many of the provisions exceeded the Agencies' legal authorities, and that the rule was never really in effect in over half the country.

The Agencies also note that a broad array of stakeholders have claimed that the reduction in the jurisdictional scope of the CWA is resulting in significant, actual environmental harms. But the agencies have done very little to substantiate this sweeping claim apart from attaching a select few litigation filings and letters from certain stakeholders. Many of the statements contained in those documents are, however, speculative and unsupported.

For all of these reasons, the Coalition does not believe that the Agencies' concerns with the defensibility of the NWPR or its potential for harm are well founded. But in light of the recent vacatur order, WAC recommends that the Agencies continue implementing the NWPR in areas of the country that are not impacted by that order, which in the Agencies' own view, should not have nationwide precedential effect given recent Supreme Court precedent.

IV. Conclusion

Any durable definition of WOTUS must adhere to the key principles outlined above in these recommendations. WAC further recommends that the Agencies continue implementing the NWPR, which strikes the appropriate balance between federal and state or tribal waters, in all areas of the country that are not subject to the a contrary court order. The Coalition looks forward to commenting on the Agencies' forthcoming rulemaking proposals.

Sincerely,

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[98] *Available at* https://www.epa.gov/sites/default/files/2021-06/documents/combined_4_thru_12_508.pdf.

[99] *See* https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/server_down/

WATERS ADVOCACY COALITION

APPENDIX A

American Exploration & Mining Association
American Exploration & Production Council
American Farm Bureau Federation
American Forest & Paper Association
American Fuel & Petrochemical Manufacturers
American Gas Association
American Iron & Steel Institute
American Petroleum Institute
American Public Power Association
American Road & Transportation Builders Association
American Society of Golf Course Architects
American Soybean Association
Associated Builders and Contractors
Associated General Contractors of America
Association of American Railroads
Association of Oil Pipelines
Club Management Association of America
Florida and Texas Sugar Cane Growers
Golf Course Builders Association of America
Golf Course Superintendents Association of America
Independent Petroleum Association of America
Industrial Minerals Association – North America
ICSC
Leading Builders of America
National Association of Home Builders
National Association of Manufacturers
National Association of Realtors
National Association of State Departments of Agriculture
National Club Association
National Corn Growers Association
National Cotton Council of America
National Council of Farmer Cooperatives
National Mining Association
National Multifamily Housing Council
National Pork Producers Council
National Rural Electric Cooperative Association
National Stone Sand & Gravel Association
Responsible Industry for Sound Environment
Southeastern Lumber Manufacturers Association
Texas Wildlife Association
The Fertilizer Institute
Treated Wood Council
United Egg Producers
USA Rice Federation
US Chamber of Commerce