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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

MARY FRANCES REPKO, DEMOCRATIC STAFF DIRECTOR
ADAM TOMLINSON, REPUBLICAN STAFF DIRECTOR

August 30, 2021

The Honorable Michael S. Regan
Administrator
US Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20004

Mr. Jaime A. Pinkham
Acting Assistant Secretary of the Army
for Civil Works
US Department of the Army
108 Army Pentagon
Washington, DC 20310-0108

Dear Administrator Regan and Acting Assistant Secretary Pinkham:

We write to request that the US Environmental Protection Agency (EPA) and the US Army Corps of Engineers (Corps) undertake a more comprehensive stakeholder engagement process prior to issuing any formal proposal to change the 2020 Navigable Waters Protection Rule (NWPR).¹ At a minimum, the agencies must extend by 60 days the public comment period established in the *Federal Register* on August 4, 2021 for receiving recommendations on the best path forward.²

Extending the comment period is necessary to fulfill your repeated commitments to transparency, extensive engagement, and communication with stakeholders and Congress on this complex issue. An extension will allow the public to provide detailed input on the wide-ranging issues on which the agencies have requested feedback in the August notice. In June, you announced plans to repeal the NWPR, replace it in the short-term with pre-2015 definitions, and then replace it yet again with another rule. The information provided by you to Congress in response to our oversight requests demonstrates that you did not undertake broad or comprehensive stakeholder engagement prior to making your June announcement.³ You can course-correct those past missteps now by engaging fully with stakeholders through an extended comment period and rethinking the misguided rulemaking plan you announced in June.

A hurried, opaque process, without sufficient public input, is likely to lead to decisions by EPA and the Corps with wide-reaching implications that are not reflective of input from the full range of stakeholders who are impacted the most. You have already recognized this complicated nature

¹ The Navigable Waters Protection Rule: Definition of "Waters of the United States," 85 Fed. Reg. 22250 (April 21, 2020).

² Notice of Public Meetings Regarding "Waters of the United States"; Establishment of a Public Docket; Request for Recommendations, 86 Fed. Reg. 41911 (August 4, 2021).

³ Letter from S. Comm. on Env't & Public Works Ranking Member Shelley Moore Capito and EPW 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 Ranking Member Shelley Moore Capito and EPW Members to Administrator Michael Regan, US EPA, & Acting Ass't Sec. Jamie Pinkham, US Army Corps (July 30, 2021).

and made some adjustments in deciding to extend the federalism consultation process with tribal partners and intergovernmental associations on the initial rulemaking to repeal the NWPR.⁴

It is vital that the American public have confidence in the decisions being made by EPA and the Corps, particularly on a rulemaking with such significant environmental, economic, and legal implications. This confidence can only be achieved through a transparent and robust process, with sufficient public input. Thank you for your consideration and I look forward to your reply.

Sincerely,

A handwritten signature in blue ink that reads "Shelley Moore Capito". The signature is written in a cursive style and is positioned above a horizontal line.

Shelley Moore Capito
United States Senator
Ranking Member
Committee on Environment and Public Works

⁴ Letter from John Goodin, US EPA, to Tribal Leaders (August 16, 2021); Letter from Deputy Assoc. Admin. Casey Katims, US EPA, to Intergovernmental Association Colleagues (August 13, 2021).