

STAKEHOLDER REACTIONS: THE NAVIGABLE WATERS PROTECTION RULE
UNDER THE CLEAN WATER ACT

Wednesday, September 16, 2020

United States Senate

Committee on Environment and Public Works

Washington, D.C.

The committee, met, pursuant to notice, at 10:08 a.m. in room 406, Dirksen Senate Office Building, the Honorable John Barrasso [chairman of the committee] presiding.

Present: Senators Barrasso, Carper, Braun, Rounds, Sullivan, Boozman, Ernst, Cardin, Whitehouse, Booker, Van Hollen.

STATEMENT OF THE HONORABLE JOHN BARRASSO, A UNITED STATES
SENATOR FROM THE STATE OF WYOMING

Senator Barrasso. Good morning. I call this hearing to order.

Today, the committee will examine the Trump Administration's Navigable Waters Protection Rule, defining waters of the United States under the Clean Water Act. The new rule went into effect in June of 2020. The 2020 rule replaces the Obama Administration's illegal rule issued in 2015. That rule gave Washington almost boundless control over what Americans can do on their own property.

The Senate opposed the 2015 rule. We passed a Congressional Review Act Resolution in 2015, sponsored by Senator Ernst, who is a valued member of the committee and who is here with us again today. President Obama vetoed that resolution after it passed the House in 2016.

President Trump signed an executive order during the first months of his presidency directing his Administration to do away with the 2015 rule. The Trump Administration repealed the Obama-era rule last year.

In April of this year, the Trump Administration published its replacement, the Navigable Waters Protection Rule. The new rule is clear, and it is limited. It is broadly supported by landowners, by businesses, and by States. Twenty-three States

are supporting the rule in court, including my home State of Wyoming.

President Trump's rule will not regulate puddles or prairie potholes or dry land. It follows Congressional intent, and it recognizes that landowners and States, not Washington, should lead the protection of most water and property in our Country. Washington should have a limited role grounded in interstate commerce.

Federal regulations, which are overly broad, can actually discourage innovative practices to protect our land and water. In addition, confusing and punishing regulation serves as a drag on our economy without environmental benefit. We can have clean water and a growing economy at the same time.

The Trump Administration also worked to ensure that its agencies collaborated on the new rule. This contrasts sharply with how the Obama Administration operated.

In 2017, our committee held a hearing on the old Waters of the U.S. Rule. We heard from retired Major General John Peabody, a former commanding general of the Civil and Emergency Operations at the Corps of Engineers. He testified that the Obama Administration's rule wasn't based on the Army Corps' expertise and experience. In fact, he said, the Army Corps was shut out of the process of writing the final rule and the support documents.

The Army Corps is the agency that performs the inspections that identify what water is federally regulated. If the rule wasn't based on the Army Corps' experience, that means it has no technical basis. It was a blatant government power grab by Washington's unelected bureaucrats.

By contrast, the Trump Administration has shown a collaborative approach in developing the Navigable Waters Protection Rule. Together, the Environmental Protection Agency and the Army Corps of Engineers developed a simplified, clear definition of waters of the U.S. that respects the law and the constitution.

The Trump Administration's replacement rule restores balance between the States and Washington. The new Waters of the U.S. Rule avoids needless duplication that provides no additional environmental benefit. I applaud the Administration for its recognition that clear rules also require consistent application.

Now that the new rule is out, EPA and the Army Corps are working on fostering consistent application of the rule. The Administration has already issued documents and tools to guide implementation in key areas. To ensure consistency, the Administration plans to conduct internal reviews at regular intervals to check that decisions are consistent, no matter what region of the Country they impact.

This is a good start. The Navigable Waters Protection Rule is a great example of Washington listening to the people to develop clear rules that result in clean water.

I will now turn to Ranking Member Carper for his opening statement.

[The prepared statement of Senator Barrasso follows:]

STATEMENT OF THE HONORABLE THOMAS R. CARPER, A UNITED STATES
SENATOR FROM THE STATE OF DELAWARE

Senator Carper. Mr. Chairman, thanks so much. I want to welcome with us here this morning, Douglas Davis, Jr., nice meeting you sir, and all the way from St. Augustine, Florida. We are happy that you are here. I understand Ray Gaesser is down in Corning, is it Iowa? Is it Iowa? Yes? Okay. We are happy to have one of your constituents here, Joni. I also want to welcome, all the way from Santa Fe, Rebecca Roose. You have come a long way, or almost, you are coming a long way from a long distance, Rebecca, so welcome aboard.

I really appreciate the opportunity, I think we appreciate the opportunity afforded by this hearing to discuss the role of the Federal Government in protecting our Nation's waters and in providing our States and our businesses with greater certainty and predictability. It is interesting; I think it is what everybody wants, greater certainty, predictability. So the question has always been, how do actually get to that goal?

Throughout what we call the Delmarva Peninsula, in our part of the world, throughout the peninsula can be found something called "whale wallows." These shallow, freshwater depressions dot and weave through the landscape of the Eastern Shore of Virginia, the Eastern Shore of Maryland, and my State of Delaware.

Believed by some to be shallow imprints made by ancient whales that were beached by great biblical floods, today these iconic wetlands are commonly known as the Delaware Bays. They are home to the greatest diversity of plant and animal species on the Peninsula, many of which are rare, even endangered. These wetlands are also attractive rest stops for pollinators and migratory birds alike.

These unique wetlands also act as a natural filter, helping to reduce high levels of nutrients and sediments in the soil that result from agricultural production in nearby communities. I have mentioned this before, I said to our witnesses and my colleagues, you have heard this, there are 400 chickens for every person who lives in Delaware, and probably almost as many in Maryland on the Eastern Shore, and in Virginia. Our State bird is a chicken.

For decades, as generations of Delmarva farmers have produced the poultry and crops that feed our Nation, this natural filtration system has helped to keep harmful pollutants out of our estuaries, including the Chesapeake Bay in our neighboring Maryland.

Sadly, on April 22nd of this year, all of these treasured waters throughout the Delmarva ecosystem lost federal protection under the Clean Water Act protection that for years ensured that no one could legally dredge them, fill them, or otherwise

degrade them without a permit. Having relied on federal protection, Delaware does not have a law on the books today that prevents anyone from altering or destroying these resources.

Now the Delmarva Bays, those legendary whale wallows that provide important habitats, filter harmful nutrients, and act as a flood barrier against worsening coastal storms can be dredged, developed, or otherwise degraded without consequence.

The high mountain wetlands of Colorado known as the fens, not from Finland, but the fens, F-E-N-S, now face a similar fate as does Crater Lake in Oregon, nearly 90 percent of the river miles in New Mexico, and hundreds of thousands of miles of streams and millions of acres of wetlands across our Country.

Protecting our Nation's waters and ensuring clean water for all has long been a shared responsibility between States and the Federal Government. However, Congress gave the EPA a clear directive in the Clean Water Act "to ensure the chemical, biological, and physical health of our waters."

The Trump Administration's rule represents an abdication of that responsibility, in my view. We know that from the view of a lot of people. We know that the extraordinary science, including more than 1,000 peer-reviewed studies that served as the foundation of the Obama-era rule that these water bodies are critically interconnected.

When snow melts or rain falls, eventually the water in the

farthest upper reaches of our river systems will flow downward, downhill, and feed into our rivers and also into our oceans. When these waters flow, no matter for how long or how frequently, they will carry every leaf, every twig, bit of dirt, and pollutant that they meet along the way.

Now that these headwaters can be developed or degraded without consequence, this rule, this new rule will ensure more pollution and higher costs for families and businesses everywhere, especially those in disadvantaged communities located downstream, which will see higher utility bills as a result. At the same time, the rivers and streams now left unprotected feed into drinking water sources for more than 100 million Americans, jeopardizing clean water for approximately one in three Americans.

I think it is worth asking who truly benefits from federal rules that allow industrial facilities, mining operations, and animal feedlots to spill their waste into our Nation's headwaters and streams. Certainly, it is not our farmers located downstream, who will need to install water treatment facilities to have clean water to raise healthy crops and livestock. It is certainly not our fishermen and our hunters, who will see the quality of outdoor recreation decline.

Despite the Trump Administration's promises otherwise, States are not the real winners of this rule either, far from

it. For many reasons, including the hardship brought by the COVID pandemic, most States are unable to step up and cover the costs associated with losing federal protections of these waters.

As we will hear in greater detail shortly, New Mexico just recently lost its only protection for almost 90 percent, almost 90 percent, of its stream miles. Right now, New Mexico is one of several States with no law, no funding, and not enough staff to handle this huge influx of orphaned waterways.

As a former State treasurer and a recovering governor, I don't see how most States will be able to devote additional resources to shoulder this new burden, especially given the budgetary challenges posed by this pandemic. To complicate these financial challenges, 27 States have laws on the books that limit, if not prohibit, taking actions that are more stringent than federal regulations.

I will close by saying that for years, the Trump Administration promised its proposal would provide greater clarity for our constituents. Clearly, that has not proven to be true. Instead, this rule has created more uncertainty and higher costs for State, communities, and families, while putting the drinking water for over 100 million Americans at risk. At no time is this the right thing to do, and it is certainly not now.

Again, I will close with thanking our witnesses. We welcome you up here, close, and personal, and far away, as far away as New Mexico and Iowa. Thank you, Mr. Chairman.

[The prepared statement of Senator Carper follows:]

Senator Barrasso. Well, thank you so much, Senator Carper.

We do have, as you mentioned, three witnesses: Rebecca Roose, who is the Director of the Water Protection Division at the New Mexico Environmental Department. She is visiting with us remotely from Santa Fe.

We have with us in the room Douglas Davis, who is the President and CEO of Fletcher Davis in St. Augustine, Florida. He is testifying on behalf of the National Association of Homebuilders.

We also have, and I am going, in a second, ask Senator Ernst to introduce our witness, who will be coming to us directly from Iowa, and that is Mr. Ray Gaesser. He is joining us remotely from Corning, Iowa.

So with that, I would like to turn to Senator Ernst to make that introduction, and then to Mr. Gaesser for his testimony.

Senator Ernst. Yes. Thank you, Mr. Chair. I have the great privilege of introducing to the committee a fellow Iowan, Mr. Ray Gaesser. Today, Mr. Gaesser is here in his capacity as owner-operator of Gaesser Farms in Corning, Iowa, where he farms corn and soybeans on 5,400 acres. He has more than 50 years of farming experience and has advocated locally, nationally, and globally for agriculture in Iowa and the United States as President of both the Iowa Soybean Association and the American Soybean Association.

Mr. Gaesser received the American Soybean Association Distinguished Leader Award in 2018, the Iowa Master Farmer Award in 2012, the Adams County Conservation Award, and the Lenox Rotary Good Citizen Award.

On a personal note, I do want to say thank you so much to Ray and his wonderful wife, Elaine. They are well-known, not just through Southwest Iowa where I am from, but through the State of Iowa, as good citizens, and good members of their community. So thank you Ray, so very much, and I look forward to hearing your testimony today.

Thank you, Mr. Chair.

Senator Barrasso. Thank you, Senator Ernst. Mr. Gaesser, welcome to the committee. We look forward to your comments right now, as you are ready.

STATEMENT OF RAY GAESSER, OWNER-OPERATOR, GAESSER FARMS

Mr. Gaesser. Good morning. Can you all hear me?

Senator Barrasso. Very well, thank you.

Mr. Gaesser. So, good morning Chairman Barrasso and Ranking Member Carper and members of the committee. A sincere thank you to Senator Ernst for inviting me to speak about the Navigable Waters Protection Rule. It is an honor to share my perspective on behalf of Iowa's hard-working family farms.

My name is Mr. Gaesser. I join you today from my family farm in Southwest Iowa. Growing up, I always knew I wanted to farm, to grow food we eat, the fiber we wear, and the renewable fuels that we use. Forty-three years ago, my wife Elaine and I moved here, put down roots, and began growing corn and soybeans.

Ever since we planted our first seed, our mission and everything we have done to support it has been to protect our greatest asset: the soil. The conservation practices we have implemented have allowed us to grow more from less, sequester carbon, reduce nutrient runoff, and clean our water. We have invested time, energy, and hard-earned money into building the conservation infrastructure needed to accomplish our mission.

We cared tirelessly for our land in hopes that our next generation would share the same passion for agriculture. That hope became a reality in 2009 when our son, Chris, came home and said, "You know, all I really want to do is farm with you." It

was a great day.

Our farm's mission and partnership with Chris were thrown in jeopardy when the Obama Administration muddied the waters with its 2015 WOTUS Rule. The EPA wrote a rule that threatened my farm with jaw-dropping penalties and even criminal prosecution for tilling, spraying, or disturbing a water of the U.S.

The only certainty for farmers today is uncertainty. We do our best to manage our farms through unpredictable weather and market volatility, which can spoil the best-laid environmental plans. Our landscapes are diverse, so there is no perfect model. Instead, we need the ability to make the best decision possible to successfully manage and mitigate what is out of our control.

The 2015 WOTUS Rule made every small wetland, ditch, or stream on my farm a regulatory land mine. The rule's broad definition expanded federal jurisdiction far beyond what was authorized by Congress, resulting in burdensome requirements, widespread uncertainty, and legal risk for farmers. It would have given the Federal Government control over 97 percent of Iowa's land, forcing farmers to obtain costly permits or pay fines for doing normal activities like spraying weeds or even installing fences.

Farmers care about clean water and preserving the land.

That is why we support the Navigable Waters Protection Rule. This rule brings certainty and predictability into focus, giving farmers like me and my son Chris the freedom to farm, all while achieving important regulatory oversight.

This new rule does not change who oversees permanent waterways. Instead, it ensures that States can enforce their own environmental laws to position farmers and rural communities for long-term success. It is a very reasonable definition of waters of the U.S. within the limits set by Congress.

I like to say, the rain falls on all of us. By the same token, clean water matters to all of us. Just like we all want access to safe water for ourselves and our families, we all have a role to play in protecting our environment. Farmers have been calling for clean water and clear rules for years, and now, with the Navigable Waters Protection Rule, we know it is possible to have both.

Rather than force a square peg in a round hole with a one-size-fits-all approach, it is our government's best interest to provide research, technical assistance, and incentives encouraging innovation. This approach will help farmers grow more food using fewer resources, protect the soil, improve soil health, clean our water, and restore wildlife habitat. That is why I remain hopeful that the 2015 WOTUS Rule is forever relegated to the archives of history.

Common sense policy, paired with smart agriculture practices, will allow me and my son Chris to meet our mission and give us the opportunity to be a part of the solution to growing more resilient food, fiber, and fuel. That is why the Navigable Waters Protection Rule is the right approach to improving the livelihood of American farm families, rural communities, and businesses.

Thank you again for allowing me to share my story, thoughts, and values on behalf of Iowa farmers. I am happy to answer any questions you might have.

[The prepared statement of Mr. Gaesser follows:]

Senator Barrasso. Well, thank you so much, Mr. Gaesser. Thanks for joining us remotely from Corning, Iowa.

Thank you, Senator Ernst, for bringing such a wonderful witness to the committee and identifying Mr. Gaesser to help us in our deliberations today. Thank you both.

I would now like to welcome Douglas Davis, the President and CEO of Fletcher Davis, St. Augustine, Florida, who is testifying on behalf of the National Association of Homebuilders.

Mr. Davis, welcome.

STATEMENT OF DOUGLAS DAVIS, JR., PRESIDENT AND CHIEF EXECUTIVE
OFFICER, FLETCHER DAVIS COMPANY

Mr. Davis. Chairman Barrasso, Ranking Member Carper, members of the committee, I am humbled and honored to be here today. I am a little overwhelmed. This is such a treat to get to be here with you guys and to share a little bit about my family, about my business, and the impacts of this.

Again, my name is Doug Davis. I am the President and CEO of Fletcher Davis. We are a small, family-owned business based in St. Augustine, Florida. We focus on development of large, conservation-based master plan communities and resorts.

I commend the committee's desire to highlight the stakeholder experience with Clean Water Act compliance. Our company has been creating sustainable communities for over 50 years, that is 5-0 years, and I am proud of the fact that we have prioritized environmental protection. In fact, the environmental community, NGOs, and others alike, frequently applaud our efforts and our methods.

Over the years, the Federal Government has expanded the scope of the regulatory authority, and it frequently changed the requirements needed to obtain federal wetland permits. The Obama Administration's attempt to clarify Clean Water Act jurisdiction would have been especially harmful to my business. It would have increased federal regulatory power over private

property, led to additional permitting requirements, and lengthy delays for any business trying to comply. It was so convoluted that even professional wetland consultants with decades of experience struggled to determine what is jurisdictional.

My business has fallen victim to an uncertain permitting regime. One of our projects was delayed for a decade as we sought to obtain the necessary 404 permit. Every step of the process offered arduous obstacles, and as the rules changed and new requirements were added, it only got more difficult.

We were left at the mercy of the federal agencies because there was little recourse for landowners in this position. Federal agencies have the ability to hold up a project for any reason, and nothing can be done to expedite the process.

I also want to offer one more example. This is an instance where stringent federal regulations almost prevented my business from contributing to the preservation of our natural resources. In this case, it took us ten years, a different ten years, to navigate the red tape of setting up a wetlands mitigation bank. This would have allowed for the creation and preservation of over 1,000 acres in one case, and another case, 6,000 acres. So to be clear, the Federal Government has held up the creation and preservation of wetlands for ten years.

Thankfully, the Trump Administration finalized the Navigable Waters Protection Rule. This new rule provides

straightforward regulatory requirements, clear jurisdictional line, and makes compliance easier. It eliminates ambiguous tests to determine jurisdiction and provides landowners with greater certainty and focuses on conditions that are more easily observable, making it easier to implement in the field. The distinction of what is jurisdictional is clear enough to allow landowners to determine for themselves what would require a federal permit.

One of the biggest misconceptions surrounding the Navigable Waters Protection Rule is that waters no longer fall under federal jurisdiction will go unprotected. Now, I can tell you from my perspective, that is not true. State and local governments have the authority to regulate waters, and there are a number of environmental requirements that builders and developers must comply with.

In Florida, again, where I live, when creating a development, I must consult with the Florida Department of Environmental Protection. I have to comply with various State wetland laws and regulations, and obtain stormwater permits to manage all of my runoff. The State permitting process is far easier to navigate because they operate under reasonable deadlines and with a greater degree of accountability.

Homebuilders are especially sensitive to the cost of regulations because we have no choice but to pass these costs on

to the home buyer, which directly affects housing affordability, and I know that is big to all of us. NAHB estimates that nearly 25 percent, that is 25 percent the cost of a single-family home, is due to government regulations, and as a result, owning or renting suitable homes is increasingly out of financial reach for many households. Due to the COVID-19 pandemic, many parts of the U.S. economy are likely to experience long-lasting economic suffering.

However, housing has been the bright spot. Housing has experienced the strongest rebound among the individual sectors in the economy. Construction has remained an essential service in most States, and consumer confidence remains strong. Single-family permits are now up 8 percent year to date, and housing share of GDP rose to a 13-year high.

Despite all of these successes, many continue to suggest that the additional regulatory requirements are necessary. Housing has led our Nation out of virtually all economic downturns over the last several decades, but it will be unable to help lead this economic recovery unless we continue to repeal onerous regulations and promote sensible replacements.

The Navigable Waters Protection Rule is a perfect example of the regulatory actions needed to get our economy moving again. Our goal is to create more affordable housing. My company wants to do this. We want to do it for all Americans,

but we also want to protect our communities, and we want to protect the environment; that is important to us.

So again, I am humbled to be here today. I look forward to answering any questions that I can. Thank you so much.

[The prepared statement of Mr. Davis follows:]

Senator Barrasso. Well, thank you for your testimony, Mr. Davis. Welcome to you, and thank you for being here with us in the committee room today.

The committee is now going to be moving to New Mexico for a witness who is visiting us from Santa Fe, and that is Rebecca Roose, who is the Director of the Water Protection Division at the New Mexico Environment Department. Thank you so much for taking time to be with us today, and sharing your thoughts with the committee.

Please proceed, Ms. Roose.

STATEMENT OF REBECCA ROOSE, DIRECTOR, WATER PROTECTION DIVISION,
NEW MEXICO ENVIRONMENT DEPARTMENT

Ms. Roose. Thank you. Mr. Chairman, Ranking Member Carper, members of the committee, my name is Rebecca Roose, and I oversee implementation of the Clean Water Act programs for the New Mexico Environment Department. Thank you for the opportunity to provide testimony today on the impact of the Navigable Waters Protection Rule in New Mexico.

My testimony draws on my nearly 15 years of Clean Water Act experience at the State and federal levels. Despite being one of the driest States, New Mexico is rich with iconic rivers, such as the Rio Grande, stream networks that support multi-generational farms, and wetlands, lakes, and reservoirs that are critical for drinking water supplies and growing economy.

The impact of the rule on Clean Water Act jurisdiction in New Mexico is severe. As Ranking Member Carper noted in his opening statements, under the new rule, ephemeral streams, those that flow in response to precipitation, are not protected. Nearly 90 percent of New Mexico's rivers and streams could be left out of Clean Water Act protections as a result. Ephemeral waters are the capillaries of watersheds, recharging aquifers and delivering water downstream for beneficial uses.

In addition, the new definition of adjacent wetland results in the loss of protections for many wetlands in New Mexico, for

example, affecting up to 20 to 70 percent in one particular watershed.

The interplay between fewer enforceable water quality requirements and climate change does not bode well for our Nation's waters. More intense droughts and shifting precipitation patterns due to climate change result in lower water levels in rivers, lakes, and streams. More frequent and powerful storms increase polluted runoff from urban and disturbed areas to nearby waterways. These changes stress aquatic ecosystems and dramatically impact communities throughout the U.S.

In short, our precious surface waters are more in need of protection than ever before. A core argument by those in favor of the rule is that it returns control to States, while maintaining strong water protections nationwide. It may be true that some States will utilize existing authorities to close the regulatory gap and retain the critical water quality accomplishments of the last 50 years. But meanwhile, in New Mexico and many other States, as well as across Tribal lands, it could take years and millions of unavailable, unappropriated dollars to prevent water quality and watershed degradation.

Most States today are working through complex steps that involve evaluating how the new definition affects their waters, analyzing existing authorities to protect State waters, and then

identifying and prioritizing actions to close any regulatory gaps. Simply put, New Mexico has no ready substitute under State laws and budget to maintain the critical surface water protections achieved through the Clean Water Act. Establishing such a program requires significant time, funding, and staff, a high hurdle in the best economic times, let alone an economic recession.

This loss of jurisdictional waters could lead to hundreds of fewer federal permits in New Mexico alone. Without an established State program to pick up the slack, we could see thousands of pounds of additional pollutant discharged into our surface waters in New Mexico every year. The value of clean water in New Mexico is both cultural and economic.

Tribes, Pueblos, and traditional rural communities rely on fresh water for ceremonial purposes and to feed their families. Not only are polluted waters costly for drinking water, utilities, farmers, and the outdoor recreation industry, we also see implementation of the rule as creating new areas of regulatory uncertainty that will burden New Mexico businesses and communities.

The rule significantly changes the national regulatory landscape, cutting away at the Clean Water Act authors' goal of establishing a level playing field from State to State. In addition, determining whether water bodies are perennial or

intermittent in a typical year is a key provision of the new rule, and a task that demands site-specific analysis. In some areas, the rule will create a patchwork of WOTUS and non-WOTUS segments along the path of a single river, making it extremely difficult for landowners to know what is required.

A final example of new regulatory uncertainty flows from the agency's failure to address implications for entities that could find themselves newly subject to waste management requirements under the Resource Conservation and Recovery Act due to revised Clean Water Act jurisdiction.

I appreciate the opportunity today to provide the Environment Department's reaction to the Navigable Waters Protection Rule. We now face a perfect storm of water quality devastation and economic harm from the rule itself and its rushed implementation by EPA and the Army Corps of Engineers, which precludes any opportunity for New Mexico to cover the regulatory gap before our precious waterways degrade.

Thank you, and I welcome your questions.

[The prepared statement of Ms. Roose follows:]

Senator Barrasso. Well, thank you so very much for your thoughtful testimony, and thanks for joining us from New Mexico.

I will start with questions. I know we have a number of votes starting at 11:30, but I think we will have plenty of time for all the members to ask questions.

My first is to Mr. Davis. Federal jurisdiction under the 2015 WOTUS Rule would have extended to isolated wetlands, to areas that flow only when it rains, to many man-made ditches. Can you discuss how overly-broad regulations can really drive up permitting costs and how that impacts housing affordability?

Mr. Davis. Yes, thank you. Overly broad rules provide uncertainty, and each of the witnesses today, I have heard all of us say kind of the same thing. Uncertainty is challenging, and for us in the developing and home-building sector, uncertainty means delays, and delay means additional expenses related to reports, to consultants.

Additional financing costs, a lot of people don't realize that whenever you have attractive land or you are building a home, you are only paid when you are complete, so your debt service costs just go up and up and up, and these things are in return, they make their way into the price of a home. In fact, if I may just, for every \$1,000 increase in a home price, for each time that home goes up \$1,000, 158,000 people are displaced from the home market.

So thank you for that question.

Senator Barrasso. Mr. Gaesser, I have been talking about this 2015 WOTUS Rule that I believe has been unclear and been overly broad. Certainly in Wyoming, I also saw this trampled on the property rights of farmers, ranchers, but not just in Wyoming, all across the Country.

You are there in Iowa. I have heard it was an illegal rule, extended Washington's authority well beyond the powers under the Clean Water Act. Could you explain a little bit how this new definition of waters of the U.S., how that works to respect your right to manage your land?

Mr. Gaesser. Yes, and thanks for the question. The old rule, was is really about uncertainty for us, and created uncertainty of what we could do and how we could do things, even to the practices of improving our water and our soil health, and all the other good things that we want to do.

The new rule allows us as farmers and at the State level to make recommendations and to help us to innovate, and it is about innovating. The old rule was uncertainty, and really, federal oversight to that delayed everything we did. We were waiting on, we would have waited on the Federal Government to make any decisions, whether it was planting or applications or fertilizer or whatever it was. We could not make a living under those kind of conditions.

The new rule clarifies that and allows the States to help with that and make their own decisions on their area of responsibility for water. That is what I like about it. It allows farmers to have more certainty.

Senator Barrasso. Thank you.

Mr. Davis then, with this new rule, the Trump Administration is focused on what we talked about as consistent implementation. In your testimony, you talked about how home-building is one of the bright spots in our economic recovery at this point, and the housing sector's share of the economy has risen to a 13-year high. Do you anticipate the housing demand to remain high and help drive recovery out of this pandemic? Will this new rule and consistent implementation help with the recovery?

Mr. Davis. Yes, sir, great question. The answer is absolutely, on behalf of the homebuilders and developers, we stand absolutely ready to lead in this effort. We are already there.

You have seen housing routinely over the decades take the lead, leading us into economic recovery. The old guy and my mentor who started our company used to always remind me, he said, don't ever underestimate and forget the impact that we are having on our economy.

NAHB, kind of transitioning now to, he always said it as

more of a saying, but now, as we look at the stats, NAHB says that for every 1,000 homes that we build, so every 1,000 single-family homes that we build, we create 3,000 full-time jobs. That same 1,000 homes also adds over \$100 million to the tax rolls that support our first-line, defenders of police, firefighters, schoolteachers, along with our government.

So, yes, sir, the answer is absolutely, we stand ready.

Senator Barrasso. Mr. Gaesser, going through your biography, I was really struck by your strong personal commitment to conservation in farming. I know Senator Ernst will have some questions in a second.

But along these lines, it does seem, the 2015 Rule seemed to doubt a farmer's commitment to environmental stewardship of the water resources located on your own property. It just seems that heavy-handed federal regulations can prevent a farmer from using innovative conservation practices to protect their land and water. Am I right about that?

Mr. Gaesser. Yes, Senator, you are absolutely right about that. We do take it personally. And it is not, I am not the only farmer in Iowa, you know, that really does care for the land and the water. Most of us do, and we are all trying to do the best job we can under the uncertainty of the environmental conditions that we have with droughts and floods and winds, now, and hurricanes in the south part of the U.S.

But we live with uncertainty, and having a one-size-fits-all rule from the Federal Government will not fit agriculture. Because what we have learned with two decades of testing on farm network testing on environmental programs, and watersheds with the Iowa Soybean Association is that one size does not fit all, within a watershed or even within a farm.

We have areas on our farm that need to be managed separately or differently than other areas of our farm. Having to wait on someone from the Federal Government to give you an approval or not, means are you going to get your crops planted this year or not, are you going to get it fertilized or not, and are you going to make a living for your family or not.

Senator Barrasso. Thank you so much for that answer.

Senator Carper.

Senator Carper. Thanks, Mr. Chairman.

Ms. Roose, your two Senators asked me to tell you hello, Tom Udall and Martin Heinrich. They are not members on this committee, but they are very much involved with us in a lot of issues, including the ones we are talking about here today, and they send their best.

Mr. Gaesser, you mentioned you have a son named Chris. We have three sons; one is named Chris. I call him Christopher, and he is a farmer.

[Laughter.]

Senator Carper. No, he is not a farmer. He would like to be a farmer, but he is a mechanical engineer who lives and works out on the West Coast for a technology company.

He is also a biathlete, triathlete, and he has actually done Ironman before. He is a better athlete than I will ever be. But he went out to ride, he rides his bike a lot on weekends up in Marin County north, in the northern part of the State, north of San Francisco and couldn't really breathe, had to stop, and basically say, this is not a good thing, it is not helping my lungs.

As it turns out, it is not just the Bay Area, it is not just the northern part of California. It is California, it is Washington State, it is Oregon State, and the place is on fire. We have seen the footage, the destruction, loss of life, huge damage of housing and other property.

As we gather here today, I think there is landfall today as Hurricane Sally came ashore in Southern Alabama, Florida. Not huge winds, but listen to this: 15 inches of rain in some places. Something is happening here, and this comes on the heels of a huge hurricane, Category 4/Category 5 hurricane into Louisiana just about a week or two ago.

With that, that is the predicate. I just wanted to lay it out and say, Ms. Roose, I think we are all concerned about the impacts of hurricanes or wildfires, whether it is Sally or some

other name, which I understand could dump up to, this latest hurricane, up to 35 inches of rain in some parts of Alabama and the Florida panhandle.

What impact would the Trump WOTUS Rule have on wetlands and their capacity to help mitigate the flooding associated with these massive storms?

Ms. Roose. Thank you, Senator Carper, for that question. And thank you for passing along the greetings from Senator Heinrich and Senator Udall. I appreciate that.

To your questions about wetlands impacts, there are well-known, well-established benefits of wetlands for a range of ecosystem services. Among them, helping to buffer our communities, our coastlines against the impacts of more intense storms brought on by changing climate.

This is a time when we, as a Country, should be coming together to, as one of the other witnesses said, innovate. And I would say innovate in the area of identifying all the ways in which we can better protect the natural resources that both, in protecting them, help to prevent the ongoing intensity of climate change and also increase our resiliency against the impacts of climate change.

This rule, in that it reduces protections for wetlands that nevertheless are critical to economic viability and climate change resiliency, that is going to make it harder for our State

and local communities and Tribes to continue to put up the strongest fight that they can against the impacts of the changing climate.

Senator Carper. All right, thanks so much.

One more question, if I could, Ms. Roose. Your testimony points out that federal agencies overlook the rule's implications for hazardous waste compliance under the Federal Resources Conservation Recovery Act, we call it RCRA, our Nation's solid waste law.

My question would be, how does the rule's revised definition of federal clean water jurisdiction potentially impact municipalities and industrial facilities under RCRA, under the Resources Conservation Recovery Act?

Ms. Roose. Thank you for that question, Senator.

It is a complicated interplay between two federal statutes that are designed, by way of exemptions, one direction or the other, to avoid duplication of regulation for the regulated community, which makes a lot of sense.

In this instance, where we have the revision of Clean Water Act jurisdiction that is, in some parts of the Country, well, all across the Country and in some areas more than others, going to result in facilities that have been covered under Section Clean Water Act 402 permits, NPDES permits, that no longer are required to meet those programmatic requirements under the Clean

Water Act.

That then, may remove an exemption from some of these industrial facilities that discharge directly to water bodies and those that discharge to municipal wastewater treatment plants through a pretreatment program that they now could be subject to RCRA requirements, Subtitle C, for hazardous waste.

This is an area that we were disappointed, here in New Mexico, that the EPA and the Army Corps of Engineers didn't pay more attention to this in the final rule to provide more regulatory certainty for both the regulated entities that could be impacted by this, what this means for their compliance requirements, and also for the State and federal agencies that are charged with implementing the Resource Conservation and Recovery Act.

So it is unfolding, and we are concerned about the added uncertainty that it creates in terms of the interplay between these two federal programs.

Senator Carper. Ms. Roose, thanks very much for that response, and again, thank you very much for joining us from New Mexico. Thanks.

Senator Barrasso. Senator Braun?

Senator Braun. Thank you, Mr. Chairman. This is a hearing important to me. I have been here a little over a year and a half, and I have probably had more input from constituents back

in Indiana when it comes to developers, when it comes to farmers.

I would agree with Ms. Roose 100 percent, if we were talking about 48 years ago. I know back then, you couldn't fish in our local rivers because they were full of pollutants and hazardous waste material.

I think you have to acknowledge that, and what I disagree with 100 percent, is that the stewardship of landowners, the States themselves, have now had 48 years since the Clean Water Act to know what is best for their own properties and so forth. And I think the amount of regulations that have accumulated over time have swamped the system, so to speak.

So I think this is a perfect pivot to where we will not forget about where we have come from and that idea that only the Federal Government can be the steward that takes, literally, micromanagement, whether it is on the part of Mr. Gaesser on his farm, or Mr. Davis and his developments. I think this is a perfect time to kind of go the other way and not let up or forget any of the things that we have accomplished along the way.

First question is for Mr. Davis. A couple developers that had to mitigate were shocked in terms of the dollar amount of the development when their alternative was a \$2 million mitigation versus what ended up being a \$200,000 mitigation.

I would like to hear some of the graphic things that you have run into along the lines of that, first of all, to know that from experts, there was a 90 percent difference in what a consultant said needed to be done to mitigate. If you could give us a few graphic instances like that, I think it would be good for the public to appreciate what you are up against.

Mr. Davis. Why, certainly, and thank you for the question, Senator.

My mind goes to kind of two things. Number one, not only am I a developer, but I also do mitigation banks, and so you know, the concept behind a mitigation bank is that you go and you find land that is in distress; it is of regional consequence; it is land that hasn't been taken care of, and that through enhancement, creation, and preservation, you lift the environment up, and you create it back to the way it would have been kind of pre-industrial revolution, as it were.

When we do that, we create these mitigation banks, and then developers like your constituents will often buy credits from us. Part of the reason that is so expensive is, this goes to the second part of your question, I think, part of the reason it is so expensive, is one of the banks that I did, about 1,000 acres, it took me ten years and over \$1 million just to create, enhance, and preserve wetlands.

And so those dollars then have to bubble up to the cost of

the mitigation credit. And that is the reason why these costs can be so egregious, as your constituents have noticed.

Then, secondly, the other thing I would say is it happens to us often when we are doing developments. The overreach that we experience from regulators interpreting the rule prior to the most recent clarifications is overwhelming. It is absolutely overwhelming. We spend hundreds of thousands of dollars with expert consultants in order to help us identify where the wetland line is, and even once we do, the regulators still pull it up the hill further.

When those impacts occur, we have to purchase these mitigation credits and do on-site conservation and preservation, and the cost just absolutely skyrockets. Finally, that is the bottom line. That is the reason why we are struggling with housing affordability.

Senator Braun. Thank you.

Next question is for Mr. Gaesser. Another reason to be hopeful that with this rule, we won't forget where we have come from. Less than a year ago, we started a climate caucus within the Senate, and I was proud to be the first Republican, as a life-long conservationist, to do that. And we have actually got a bill that came out of the gate, bipartisan, the Growing Climate Solutions Act, which basically is wanting to help farmers, ag and trade, to certify their ground to take advantage

of voluntary and compliance markets that are out there.

So, Mr. Gaesser, my question would be for you, with this new rule, do you think you will still do the stewardship practices on your home farm, riparian buffers, grass waterways, or even further modify your practices to sequester carbon and do some of the things that would be rewarded by this bill, will this new adjustment from the Trump Administration help you do that?

Mr. Gaesser. Thank you, Senator, and yes. Farmers have always been innovative, and we have always been innovative on our farm, and that is not going to change. We really do love the land, and we want to do the best job that we can to protect the soil, clean our water, you know, be more resilient, and address the severe weather issues that we continue to have, and having more and more all the time.

So our practices aren't going to change. Our practice of innovation is not going to change. Our practices are changing. Just as an example in the last 30 years for us, or 40 years, you know, we have built terraces and waterways early on, and then we transitioned to a no-till 100 percent. Then ten years ago, we began growing cover crops, and we are over half our land in cover crops now, owned or rented, is doesn't matter. We do it because it is the right thing to do, and it makes sense.

Farmers are going to continue to do that, and we have more

and better technology all the time. We need to encourage that innovation and that adaptation. We need to encourage our companies, you know, to help us with that.

Our latest thing on our sprayer was exact apply. Each nozzle on our new sprayer shuts on and off at exactly the right time. There is basically zero overlap. It is just one of the things that we do, and we will continue to do that if we are allowed to.

Senator Braun. Thank you so much.

Senator Barrasso. Thank you, Senator Braun. Senator Cardin?

Senator Cardin. Thank you, Mr. Chairman, and let me thank all of our witnesses. The Clean Water Act for 48 years has been so critically important, not just to our environment, but to our economy. It is based upon the premise that we need to have a clean environment for our health, for our quality of life, but also for our economy.

The Clean Water Act, to me, is a critically important part of our legacy, and we need to make sure that it is preserved so that we can preserve, protect, and restore our Nation's waters.

I appreciate the testimony of all three of our witnesses, and I don't disagree with your passion and your assessment on how farmers or landowners respect the land and environment, because I agree with you on that. But I strongly disagree with

two of you and your assessment of what the Trump Administration's regulation will do. Because I think it will move us in the wrong direction, and let me tell you why.

I believe that farmers, I could tell you that Maryland farmers do great things to protect the Chesapeake Bay, because they recognize that the land is so critically important to their way of life. And they want it for future generations. So they do the right thing, and they want to do the right thing.

But when you see Maryland farmers stepping up to the plate and doing everything that they need to do, but to have upstream problems that counter a lot of the progress that we have made in cleaning up the Chesapeake Bay, that Maryland has no control over whatsoever. So the proper regulation of the Waters of the U.S. becomes a very important part of our commitment to achieve the environmental successes that science tells us that we can achieve.

My objection to the Trump regulation is that it is not based upon best science. It is a political statement that will make it more difficult for us to accomplish our objective for our environment.

Let me just give you one example. You have the nutrient goals that we need to achieve in the Chesapeake Bay Partnership by 2025. There are six States and D.C. that are all part of this coalition. The Chesapeake Bay Program is a program that

was developed at the local level with buy-in from all stakeholders. It is not partisan at all. It is embraced by all stakeholders in Maryland. But it requires the Federal Government to be an objective umpire to make sure that we all achieve what we say we are going to achieve. Without establishing the right regulations of the waters that are impacted, it makes it more difficult.

My question to Ms. Roose is that, we have certain requirements that we need to accomplish under Section 303(d) of the Clean Water Act to restore impaired waters. How will this new regulation work? Will it make it more difficult for us to achieve those objectives, even though a State does everything it needs to do, it can't control what other States are doing?

Ms. Roose. Good morning, Senator Cardin. Thank you for that question. There is clear interplay between where the Clean Water Act jurisdiction stops and starts, and how our water bodies are going to respond. You are right, in terms of that the interstate connections here under this rule, interstate waters are not jurisdictional, just based on that fact alone, which is a change from the past. That can complicate cross-boundary regulation and protections and collaborative efforts along the lines of what you described in the Chesapeake Bay.

There is also this connection between, in the States that do not have the programs to fill the gaps, as I described for

New Mexico, there's this connection between what happens in the meantime. If facilities that had been meeting certain pollutant limit requirements for their end-of-pipe discharge no longer have to do that under federal law, and there is not a State law to pick it up, we could see more pollutant loads. That is going to impact streamwater quality, which is going to cause additional impairment.

So, one thing that that does, it strains already strained resources to tackle the existing impaired waters if we have to be redirecting and adding additional resources to address potentially increasing and new impairments over time as a result of fewer protections.

Senator Cardin. Let me ask you one other question, which has not been brought up yet. Fresh streams are a critical source for our drinking water. Under this new rule, there will be less regulation on some of those streamwaters that go into our drinking water, causing additional burdens on making sure that we have safe drinking water for the people of this Country.

I can tell you, in Maryland, we already have an affordability issue in regard to clean water and safe drinking water. What impact will this regulation have on the affordability of drinking water? Will it put more pressure on the rates in order to make sure that water is safe, again, putting pressure on those who perhaps, are least likely to be

able to afford that increase?

Ms. Roose. That is a likely scenario, Senator, for a number of communities, that if in fact, streamwater quality degrades, dirtier water coming into a surface water intake at a drinking water utility is more costly to treat. They may need to upgrade their systems. We have seen examples of this in our State under existing requirements from major disasters and spills.

If the utility has to increase their treatment, they are going to have to incur costs. How do those costs get borne out? Many times, we do see it getting passed along to ratepayers, and that is absolutely one of the key economic concerns at the local level that we identified in our testimony.

Senator Cardin. Thank you.

I know my time is expired. I just really want to make one last point, and that is, I really do think this new rule will provide less certainty rather than more certainty. It is not going to end this issue, and that is unfortunate.

We should have clarified from the Supreme Court decisions in regard to certainty. The Obama Rule did that; this rule will not. So I am afraid that the certainty that all of us want to see is not going to be there.

Thank you, Mr. Chairman. I appreciate it.

Senator Barrasso. Thank you very much, Senator Cardin.

Senator Ernst?

Senator Ernst. Thank you, Mr. Chair, and as we heard in Mr. Gaesser's testimony, the Obama Administration's flawed WOTUS Rule posed some serious challenges for Iowa's farmers in not knowing whether a ditch or a puddle could be subject to federal regulation created confusion, fear, and additional costs.

In 2015, I was proud to introduce legislation that would have nullified the Obama Rule, which gave the Federal Government the authority to regulate 97 percent of Iowa's land. My bill passed both the House and the Senate with bipartisan support, but was ultimately vetoed by President Obama.

Getting this ill-conceived rule off the books has been one of my top priorities since entering office. I was delighted to see the Trump Administration finalize the Navigable Waters Protection Rule, which provides much-needed predictability and certainty for farmers by establishing clear and reasonable definitions of what actually qualifies as a Water of the U.S.

Mr. Gaesser, we will start with you. What challenges, and you have mentioned a couple of those, but what challenges did the Obama Administration's WOTUS Rule cause for farmers like you, and can you provide a few more of those examples? You mentioned just simply putting in a new fence row would create difficulties with permitting. Can you provide some other examples?

Mr. Gaesser. Yes, thank you, Senator.

Yes, there are lots of examples, but doing, repairing drainage tile is one of them. Adding to a livestock facility is a big issue. But to me, it was, you know, and then for many of us, it was that uncertainty of a federal overreaching rule that had a bureaucrat come and tell you exactly what you needed to do, which really did discourage the innovation that I talked about. And it has discouraged practices that really did work, rather, in lieu of a rule that wasn't practical for our conditions on our local farm, or in Iowa, in a lot of cases.

And we are doing so many things in Iowa and on our farm to encourage that innovation, but to clean the water. Our Department of Agriculture and Land Stewardship, we are working with the Iowa nutrient reduction strategy that has been in place for seven, eight years now, we are making lots of progress there.

And part of that [indiscernible] that I cochaired with Secretary Naig is the conservation infrastructure. It is those incentives and encouraging for agriculture in our communities to clean the water, to protect the soil, to reduce nutrient load, all those things. We are making progress, and it allows States and local communities to make their decision on how to best make that happen.

Senator Ernst. Yes, thank you, Mr. Gaesser, and I do know

that when this rule was put into place, I heard from farmers and contractors as well because they were in the process of actually doing conservation projects on various farms. And they didn't even know if they would be allowed to do those conservation projects because of the WOTUS Rule. So I appreciate your answer.

In your testimony, Mr. Gaesser, you express support of the Navigable Waters Protection Rule, and you did say that it provides more clarity, more certainty. How does the new rule eliminate that confusion and uncertainty caused by the Obama Rule?

Mr. Gaesser. Well, and overall, regulation from the Federal Government really never applies to local issues, you know, and that is what I keep coming back with. All these issues are local, you know, and if you have a one-size rule or a regulation, it doesn't allow us to adapt and to adopt our practices, or what we are doing to really address the issue. We need to encourage that, those local initiatives, those farm initiatives.

As I said before, one thing that we have learned with two decades now of studying with the environmental and the ARMFarm Network and Iowa soybeans is that no one size fits all, and every farm is different and every watershed. There are 1,600 HUC 12 watersheds in Iowa, and every watershed can have a

different practice that works equally well for their water. Certainty is what we need, and innovation.

Senator Ernst. Yes. Thank you, Mr. Gaesser.

Just finally, very briefly, you know that this current rule put in place by the Trump Administration could be undone by future administrations, and then, once again, replaced by the Obama WOTUS Rule from 2015, or a more extreme version of it. Our Country is trying to rebound from COVID-19, and in Iowa, we are trying to recover from a devastating derecho. We need to be cognizant of the impact of regulations on our farms and businesses.

What would the reinstatement of the Obama WOTUS Rule mean for our ag economy?

Mr. Gaesser. Well, it would be the same uncertainty that we have, and you know, we do continue to live in uncertainty. Sometimes, you know, we need some help, you know, and we need incentives to offset that uncertainty, and create practices and learn new practices. So we need that research and we need that investment to help us, you know, advance, and address the issues that the uncertain weather and the climate issues that we are seeing all the time now. We need that help.

Senator Ernst. Thank you, Ray, very much for joining us today. Thank you, Mr. Chair.

Senator Barrasso. Thank you very much, Senator Ernst.

Senator Whitehouse?

Senator Whitehouse. Thank you, Chairman.

I have noticed we seem to be talking a lot more about regulatory burden here than we are about clean water. At the end of the day, what we really count on is actually having clean water.

Sometimes people like to pollute. Old as time, old as mankind. It is cheap, it is easy, it washes down, somebody else's problem. So I think that there remains a very important role in trying to keep waters clean.

I note that there is a doctrine, this will be, I guess, a question for Ms. Roose. There is a doctrine that once the Federal Government chooses to regulate in a certain area, that displaces the traditional common law nuisance doctrine that has been the law of the Anglo-American tradition back into the mists of time.

Ms. Roose, would it be your view that once that regulatory protection is withdrawn, the waters and wetlands that no longer enjoy federal protection would revert to being protected by common law nuisance liability and that as a result, downstream injured riparian folks can sue for pollution and upstream mistreatment?

Ms. Roose. Thank you, Senator, for that question. It is something that I can't speak to definitively, as a legal matter,

but I think, yes, there are going to be at least, as a general matter, people looking at all of the other legal availability, legal opportunities that they have to protect themselves, their families, their business, from any number of things that are out there coming against them, including upstream pollution that comes down and onto their property.

I know that certainly doesn't make up for preventing the pollution in the first place, and States that don't have readily-available programs to roll out and implement to prevent the pollution, we are going to see more and more, probably, reliance on laws like nuisance laws and other provisions that allow people to seek damages when in fact, that is the situation they encounter.

Senator Whitehouse. So let's talk about when that upstream problem crosses State lines. The theory of this is that the Federal Government will step back and that State regulators will step in, and that the water will be protected and we will all continue to have safe, clean drinking water. That is the theory of the case, but if the effect of a polluting source is primarily being felt in one State, but the source is in another, how does the polluted State regulate the upstream polluter in another State? If EPA won't step in, where do you go?

Ms. Roose. Again, Senator, I would point to, it is a complicated interplay between where Clean Water Act Jurisdiction

comes into that pattern. I am not exactly sure what the downstream State, what the remedies would be. That is something that I would have to look into and get back to you on.

Senator Whitehouse. But clearly, an individual whose water has been polluted in some way, or a municipality that has to redo its water treatment system to deal with upstream pollution coming from out of State, if they are in Rhode Island and they go to the Rhode Island Department of Environmental Management, they are not able to get from the Rhode Island Department of Environmental Management relief against a Massachusetts polluter, are they?

Ms. Roose. I believe that is true, yes.

Senator Whitehouse. So that opens up a pretty serious problem for interstate pollution, particularly if a polluter has a lot of clout in the State that has to regulate them and can stop that, but the local clean water agency can protect him. You could be in a real stuck situation where you can't defeat the politics of the polluting State, and you can't get relief from your own regulatory agencies, and so you are stuck.

Can I ask one more question? It is a little bit unrelated.

Senator Barrasso. Yes, please proceed, Senator Whitehouse.

Senator Whitehouse. Thank you, Chairman.

I see that Mr. Davis is here, and his testimony says that he represents the National Association of Homebuilders. We are

right now, with Senator Barrasso's active assistance, and Senator Carper's, trying to put together an energy bill that we hope can get some agreement and move forward. The area of contention right now appears to be building efficiency measures. I keep hearing that the National Association of Homebuilders is actively in against those building efficiency measures.

I know builders in Rhode Island and around the world who actually are efficiency builders. That is their work. You have a whole group of contractors for whom this is their business. So it is strange that the organization would be against it.

Second, as you update building codes to meet new efficiency standards, it seems to me that that actually creates work for the industry as new windows, new forms of insulation, new, more efficient boilers and so forth, have to be installed.

So, I am a bit at a loss as to figuring out why the National Association of Homebuilders has been the enemy of this, when everything that I see about it makes me think that it is in your interest to have building efficiency standards.

Don't you want, as an association, to have America have the most efficient buildings? Don't you want the people who you serve who build these homes to have the lower utility bills and the more efficient outcomes? I am struggling to understand why I keep hearing that the National Association of Homebuilders is the impediment to that bill.

Mr. Davis. Yes, thank you for the question. Let me apologize ahead of time. I came today to testify about the Clean Water Act.

Senator Whitehouse. I know, and I appreciate that. I said that this was off topic.

Mr. Davis. I appreciate that.

Senator Whitehouse. I understand.

Mr. Davis. I just wanted to apologize to say that I am not really prepared to answer that. I think it is a great question; I think you deserve an answer. I am sure that the National Homebuilders can follow up with you on that.

But I would love to just also speak to your other comment around clean water, because really, I mean, that is my passion, that is what I was here today to talk about. You brought up a couple of points about how the areas that would no longer be captured by the jurisdiction of the Corps and the EPA, how are they regulated.

So I just did want to speak to that, just real quickly, you know, I from Florida. I do work in Florida and Georgia and the Southeast. I can tell in emphatically that the State and local government is every bit on top of every square inch of wetlands, whether they are jurisdictional or not. So we go through the same rigorous processes at the State level with the water management districts, with the DEP, with local governments, we

have to account for all of our runoff, 100 percent of our runoff. Not only do we have to account for it, but we have to attenuate it, and we have to treat it. So we are held accountable for what it looks like both pre-development and post-development.

So I came here to just share, all I can do is share from my perspective. I can't talk about the other witnesses, but from my perspective, clean water will be the in perpetuity in Florida. We have the appropriate measures in place outside of what the government needs to regulate. I believe that this new Trump Rule will actually, it will create some certainty for us. It will allow predictability and accountability now at the National level, as well.

Senator Whitehouse. Thank you, Chairman.

Senator Barrasso. Well, thank you, Senator Whitehouse, and thank you Senator Van Hollen. You have been patiently awaiting, and we look forward to your questions at this point. Thank you, Senator.

Senator Van Hollen. Thank you, Mr. Chairman, and to the Ranking Member, and to all our witnesses.

I would like to follow up a little bit on the points made by Senator Cardin with respect to the Bay, and also really referenced by Senator Whitehouse and Senator Carper earlier regarding the impact of activity outside of one State on

another.

The photograph behind me is of the Blackwater National Wildlife Refuge in Maryland, one of two national wildlife refuges near the Bay and its tributaries. We have an interstate compact between Maryland and Virginia, the District of Columbia, and Pennsylvania, to protect the Bay. It can only work if all the parties to that agreement are really enforcing its provisions and complying with the nutrient reduction goals. The EPA is designated to enforce that.

We have been having trouble with the current EPA fully enforcing those provisions with respect to some of the States, especially, right now, the State of Pennsylvania. The Susquehanna River runs through Pennsylvania, comes into the Chesapeake Bay.

What this change in the WOTUS Rule would do is take away important tools that are needed to help the Federal Government and local officials enforce that compact. I appreciate the testimony about Florida's active efforts at the State level to protect their waters. But when you have a really important and essential national estuary like the Chesapeake Bay with more than one State involved in its protection, these provisions are very important.

I would just ask Ms. Roose to elaborate on that, because in your statement, in your written testimony, you say ephemeral

streams are the capillaries of watersheds, recharging aquifers and delivering water downstream for aquatic life, wildlife, and human use. Well, the Chesapeake Bay is downstream from a lot of those sources.

Can you elaborate more on how these proposed changes to the rule would make it harder to enforce Clean Water standards in order to protect the Chesapeake Bay downstream?

Ms. Roose. Thank you, Senator. Yes, speaking to the interstate issues is really important, and I will answer more generally. This would apply to the Chesapeake Bay Region and other areas.

One of the advantages of having federal Clean Water Act permits in play, State to State to State, for common waterbodies and waterbodies that flow across States, watersheds that don't know State lines, is that a downstream State has an opportunity to review a permit before it is issued to see if that permit is going to put limits in place that will protect the downstream State use.

If the permit in the upstream State is no longer required under federal law, it is maybe being issued under State law, then we aren't necessarily, as a downstream State, going to be able to be involved in that process, ensure that that permit, when issued, is strict and stringent enough to protect not just the State waters that it is in, but the waters as they flow down

into the next State.

So, the more jurisdictions you have at play, like in the Chesapeake Bay Watershed, the more complicated that gets, the more interplays that may be lost of having those checks and balances to make sure that the protections are effective for the entire watershed.

Senator Van Hollen. Right. I just want to emphasize in the case of the Chesapeake Bay, even the existing authorities don't seem adequate if you have the federal regulatory agency, in this case, the EPA, not fully using their authorities, which is why the State of Maryland, the Chesapeake Bay Foundation, and others have filed a lawsuit against the EPA for lack of enforcement, and that is with its existing toolbox. This would further diminish those tools available.

I want to point out, because we are talking about the intersection of the WOTUS Rules and economic interest, that the Maryland Watermen's Association is a party to that lawsuit, together with the State of Maryland and the Chesapeake Bay Foundation. Because obviously the degradation of the waters of the Chesapeake Bay very much harm the interests of the watermen and fisheries and oystermen.

So as we think about the environmental and economic impacts, it is important to remember that taking away some of these protections not only can result in more environmental

degradation to the Bay, but have a very negative, harmful impact on important industries in the State of Maryland.

That is just one example. Obviously, you can extend that nationally, and the same holds true with respect to States trying to protect wetlands as buffers in general, and, as you said earlier, Ms. Roose, with respect to the impact of climate change.

This interstate component is something that is very troubling. A lot of the testimony from the proponents of these changes have focused just on activities within a particular State. But there's a fundamental question about what recourse States like Maryland have without the tools available.

So, I want to thank all of you for your testimony. I look forward to continuing the conversation. I think we all would like to see more clarity. That is in everybody's interest. But we don't want changes that will take away very important tools to protect national and natural treasures like the Chesapeake Bay.

Senator Barrasso. Thank you very much, Senator Van Hollen.

Senator Carper, do you have any additional questions?

Senator Carper. Maybe two, if I could, Mr. Chairman.

Senator Barrasso. Please.

Senator Carper. Thanks so much.

The first question, this would be for Ms. Roose again. Ms.

Roose, if you would, would you just give us an example of the kind of facilities that would be subject to fewer pollution controls as a result of the Trump Administration's Navigable Waters Protection Rule?

Ms. Roose. Yes, Senator. It is a variety. We will see, and speaking of New Mexico, down where we have a significant amount of waters that lose jurisdiction, we may have a wider range of facilities.

But we are talking about hard rock mines that are disturbing significant amounts of land using chemicals to extract materials, we are talking about municipal wastewater treatment plants, private wastewater treatment plants that may take on not just domestic sewage but industrial wastewater as well, manufacturing facilities, there is a wide range of types of facilities.

Senator Carper. Let me just follow up if I could. How would the increased pollution you have just described, impact the environment and human health?

Ms. Roose. Well, to name a few impacts, filling wetlands and ephemeral streams can degrade water quality throughout a watershed. Also, in the arid West, where there is a real connection between water quality and water quantity, we could see flows diminished that are critical for some of our interstate compact agreements out here in New Mexico. We could

see impacts from ephemeral waters that are no longer protected and pollutant discharges no longer restricted under federal law, and without a State backup, would not be restricted, then causing impairments downstream in the waters that the Trump Rule does deem jurisdictional.

So we could actually see water quality impacts, and we expect to, in the State of New Mexico, as a result of this rule, where you have got impairments, waters and streams not meeting their designated uses, whether that be for recreation, drinking water, irrigation for crops, as a result of upstream waters no longer having protection.

Senator Carper. Let me make sure I understood this. How will the public know about the impacts that you have just described, over time?

Ms. Roose. That is a good question. One of the cornerstones of the Clean Water Act is a monitoring program, where States devote resources to get boots on the ground, go out, collect data about what the actual water quality in streams, rivers, and lakes is, and then assess that data to see whether or not those water bodies are meeting their intended uses.

So we will see over time through the data that is generated, these monitoring assessments. We will see whether or not impairments do, in fact, go up in certain parts of the

Country and certain regions and certain localities. Wo we will be able to watch that data to understand what the actual water quality impacts are as the regulatory landscape comes full circle.

Senator Carper. Thanks. One more last question, if I could, for Mr. Davis, again, on clarity under the new rule.

Administrator Wheeler has promised that this rule would enable property owners to make their own determination of what is in and what is out when it comes to jurisdictional determination. To me, the rule does more than that. It seems to put the responsibility on you and your staff to make the determination about whether a particular parcel of land you may want to develop requires a federal permit.

Would you just think about that? My question I guess, would be, under this new rule, do you, and maybe even more importantly, your attorneys, feel confident that if you walked your property and determined whether a federal permit is or is not required to develop some part of that land, that you may have gotten it right?

Mr. Davis. Yes, sir, great question, and thank you. My reaction to that would be, as a developer, I rely on consultants often. Some of my best friends are scientific consultants and so forth, and so under the new rule, we are still going to have scientists out there looking at the projects, because remember,

not only are we concerned about jurisdictional wetlands, but we are also concerned about State wetlands as well.

So the DEP, the DNRs, the water management districts, they are still requiring that we go out there and we flag these wetlands, and we understand what resources that we have on our projects.

So for me personally, it is not that we are now going to not be concerned about certain wetlands that fall outside of the jurisdiction, but rather it is more about having certainty on where this jurisdictional line ends and where the State picks up. So for us, this rule is about clarity. So for me, I would have no intention on necessarily doing this without consultants, but it will absolutely provide the clarity that we need and avoid some of the delays that we are experiencing.

Senator Carper. Thank you.

Thanks very much, and thanks to all of our witnesses. Let me just conclude, Mr. Chairman, I would ask unanimous consent that several items be included in the record, please.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Barrasso. As well, I ask unanimous consent to enter into the record letters of support for today's hearing from the National Stone, Sand, and Gravel Association, and the Waters Advocacy Council, which includes members from the retail, energy, transportation, construction, and many other sectors.

[The referenced information follows:]

Senator Carper. Can I just mention one last thing? One of the things that the Chairman and I and members of this committee, Democrat and Republican, have worked on, is legislation dealing with hydrofluorocarbons and trying to phase them down over the next 15 years or so. I am very proud of the bipartisan products that we developed. Hopefully, it is going to be included in the energy legislation that was referenced earlier by Senator Whitehouse.

A good friend of the Chairman, and a pretty good friend of mine now, is a fellow from Wyoming, who is Assistant Secretary of the Department of the Interior, and he has a saying that he shared with us here in this room, and it is that bipartisan solutions are lasting solutions, that is what he said. Bipartisan solutions are lasting solutions.

On this issue, we have the issue of clean water, Waters of the U.S., navigable waters, navigable rivers, and so forth. We have a situation where we have one administration coming forth with one rule, and then a new administration coming forth with another rule. We are going to have an election on November 3rd, and that might even be changed, and who is going to be living and working out of the White House. And we face the prospect of doing it again. It is almost like ping-pong.

I don't know if it is unrealistic, but wouldn't it be nice if we could somehow find the middle. I like to quote Ted

Kennedy when I was new in the Senate. I asked him, I said to him, why, Senator Kennedy, a very liberal Democrat, you know, all these Republicans in the Senate, they always want you to be their lead Democrat on bipartisan legislation that they are introducing. And I said, why do they always want you to be their lead Democrat?

And I will never forget what he said. He said, "I am always willing to compromise on policy; I am never willing to compromise on principle." Always willing to compromise on policy, never willing to compromise on principle. At the end of the day, I think, we probably aren't that far apart in agreeing on the principles. We are struggling, at least through these regulatory processes, coming together on the policies.

This issue is not going to go away; we are going to have an opportunity here to probably to revisit in a new Congress, maybe with a new administration. These are important issues, and I hope that we can just bring our best efforts to bear as we have with hydrofluorocarbons and climate change, and get us to a better place. Thank you.

Senator Barrasso. Well, thanks for your continued partnership, friendship, and leadership. Thank you.

Thanks to all three of our witnesses today. It was a very productive hearing. I am very grateful for all of you. We had 11 different members participating in the hearing today. Some

may have additional questions that they will submit to you in writing, so we will keep the hearing record open for two weeks, and we would appreciate your response to those questions.

Thank you all again for a very informative hearing today. With that, this hearing is adjourned.

[Whereupon, at 11:37 a.m., the hearing was adjourned.]