

1 SENATE EPW SUBCOMMITTEE ON FISHERIES, WATER, and
2 WILDLIFE FIELD HEARINGS ENTITLED
3 "IMPACTS OF THE PROPOSED WATERS OF THE UNITED STATES RULE ON
4 STATE AND LOCAL GOVERNMENTS AND STAKEHOLDERS

5
6 TRANSCRIPT OF HEARING PROCEEDINGS
7 BEFORE CHAIRMAN DAN SULLIVAN
8 UNITED STATES SENATOR

9 Fairbanks North Star Borough
10 Mona Lisa Drexler Assembly Chambers
11 809 Pioneer Road
12 Fairbanks, Alaska 99701
13 April 8, 2015
14 9:00 a.m.

15 PANEL:

16 MS. SARA TAYLOR, Executive Director, Citizens' Advisory
17 Commission on Federal Areas

18 MR. BRYCE WRIGLEY, President, Alaska Farm Bureau

19 MR. JOHN MCKINNON, Executive Director, AGC of Alaska

20 MS. DEANTHA CROCKETT, Executive Director, Alaska Miners
21 Association

22 THE HONORABLE CLICK BISHOP (Telephonic), Senate District C,
23 Alaska State Senate

24 MS. CHARLOTTE E. BROWER (Telephonic), Mayor, North Slope
25 Borough

MS. SUE MAUGER, Science Director, Cook Inletkeeper

MR. AUSTIN WILLIAMS, Alaska Director of Law and Policy, Trout
Unlimited

MR. SHANNON CARROLL, Attorney and Commercial Fisherman

1 P R O C E E D I N G S

2 (Meeting comes to order)

3 CHAIRMAN SULLIVAN: The Subcommittee on Fisheries,
4 Water, and Wildlife will now come to order, and I would please
5 ask all the witnesses to take their seats up front at the
6 witness stand, please. And we have two witnesses on the line
7 from Barrow and Juneau.

8 I want to thank everybody for being here. I'm
9 Senator Dan Sullivan, senator from Alaska. We are here to
10 discuss the proposed Waters of the United States rule by the
11 Environmental Protection Agency. I know that some of you have
12 had to travel to be here. Most of you had to shuffle competing
13 schedules, so I want to thank everybody. I appreciate all of
14 you for participating today.

15 This is an official hearing of the United States
16 Senate Environment and Public Works Committee. I serve as the
17 chair of the Subcommittee on Waters, Wildlife, and Fisheries.
18 In Washington, D.C., we have held numerous hearings with the
19 EPA administrator, assistant secretary of the army, state
20 government representatives, and stakeholders about this issue.
21 This hearing is a continuation of these efforts, and it will
22 also give voice to a cross-section of Alaskans on this proposed
23 rule and its possible impacts.

24 Beyond those testifying today, the subcommittee heard
25 testimony from many Alaskans in Anchorage two days ago,

1 including the Resource Development Council, Alaska Municipal
2 League, Arctic Slope Regional Corporation, Alyeska Pipeline.
3 They joined three-fifths of states in the United States that
4 oppose the rule and more than 300 trade groups and associations
5 from across the country that oppose the rule.

6 I want to state at the outset, certainly, as Alaska's
7 senator, the obvious, but sometimes I think it needs to be
8 stated: We clearly, as Alaskans, believe in the importance of
9 clean water. We've seen the Clean Water Act over the years do
10 many important positive things. I think we certainly have some
11 of the cleanest water, the most pristine environment of any
12 place in the world, and Alaskans cherish that. I've also told
13 the EPA administrator we probably care about that living here
14 more than any EPA official in Washington, D.C. does. So I
15 think that's important.

16 I also think that it's important today to emphasize
17 that this hearing is also about respecting our citizens, as I
18 think almost every witness will testify. Certainly, they all
19 did in Anchorage. This is a unique rule that will impact
20 Alaska more than any other state by far. And we have certainly
21 unique aspects of our state that have not been taken into
22 consideration with regard to this rule, and it's important for
23 us in Washington, the senators in Washington, to bring
24 Washington, D.C. to Alaska, to the state, so we can hear
25 directly from you as opposed to having everybody have to fly

1 thousands of miles to Washington to testify on this rule.

2 Alaska is no stranger to overreaching federal
3 agencies; however, it should be stressed that the proposed
4 waters of the U.S. rule may be one of the most massive
5 expansions of federal jurisdiction we have seen to date.

6 Unlike much of the federal overreach that has impacted Alaska,
7 the tentacles of the Clean Water Act extend far beyond federal
8 lands and this rule would impact the ability for state and
9 private landowners to use their land.

10 Already a huge percentage of Alaska falls under the
11 Clean Water Act jurisdiction. Alaska has 43,000 miles of
12 coastline, millions of lakes, more than 43 percent of our
13 state's surface area is composed of wetlands, which accounts
14 for 65 percent of all the wetlands in the United States. A
15 whopping 63 percent of the nation's jurisdictional waters under
16 the Clean Water Act are in Alaska, meaning those who are
17 building or doing business on or near those waters have to
18 wrangle with the federal government to get permits or approval.

19 Let me be clear, there is no doubt that many of our
20 wonderful lakes and rivers, such as the Yukon and Chena and
21 their tributaries are jurisdictional under the Clean Water Act.
22 No one is suggesting otherwise. Instead, we are here to talk
23 about the proposed rule and regulations of waters that I
24 believe Congress never intended to be jurisdictional under the
25 act. As I mentioned earlier, Alaska has some of the cleanest

1 waterways in the world, leading to our vibrant world-class
2 fisheries and award-winning drinking water. Concerns over this
3 rule-making are not at all aimed at jeopardizing those
4 characteristics which we all hold dear and that are fundamental
5 to the identity of Alaska.

6 Instead, our efforts are about clarifying
7 jurisdiction and, if it's a major expansion of federal
8 jurisdiction, pushing back on federal agencies that are
9 asserting such authority, such authority over even the
10 possibility of roadside ditches, culverts, stormwater systems,
11 isolated ponds, and activities on adjacent lands, bypassing
12 Congress and ducking Supreme Court rulings. Regardless of this
13 rule, discharge of pollutants into these features would remain
14 subject to Clean Water Act regulations.

15 If the rule is finalized in its current form, it
16 would mean that many Alaskans could be subject to having to get
17 a permit from the EPA in order to do things such as dig ditches
18 in their backyards; it would mean that a farmer might have to
19 get a permit to plow new land. It would be a huge burden
20 possibly on our placer miners in the Interior. It would mean
21 that harbors, roads, pesticide control, and certainly natural
22 resource development could fall under a more rigorous federal
23 permitting process, effectively granting the EPA the power to
24 dictate energy and infrastructure policy in most of Alaska.
25 This is not hyperbole. Just ask the Idaho couple who wanted to

1 build a house on just over a half acre of their own private
2 land that happened to be near a lake. The EPA determined that
3 their property was a wetland and forced them to stop
4 development, rehabilitate the property to its natural state, or
5 face tens of thousands of dollars in fines a day. With this
6 rule-making, more landowners across the U.S. would be subject
7 to the same treatment.

8 Just a couple of weeks ago, the senate passed by a
9 strong bipartisan vote an amendment that I co-sponsored with
10 Senator John Barrasso of Wyoming that would rein in the scope
11 of this rule-making. This amendment was an important
12 bipartisan first step as we craft legislation to ensure that
13 the Clean Water Act is focused on maintaining pristine water
14 quality. We sent a strong bipartisan message that the Clean
15 Water Act should not be transformed into a tool to expand the
16 authority of the EPA without congressional authority and
17 control entirely unrelated activities.

18 So, again, I want to thank everybody for being here.
19 We have a very distinguished panel of witnesses. As the chair,
20 I want to emphasize that we have selected witnesses, both here
21 and in Anchorage, who are opposed to this rule and who are in
22 favor of this rule, and we want to be respectful of all
23 viewpoints. We will have two panels today to discuss this, and
24 we will begin here in a minute. I just want to mention one
25 final thing. Yesterday, in a presentation that I gave, there

1 were questions on whether other Alaskans, other Fairbanksans
2 could weigh in on this proposed rule in addition to the invited
3 witnesses that we have here today. And, as chair of the
4 subcommittee, I am requesting to keep the record of this
5 hearing open for the next 10 days for all additional written
6 testimony from any Alaskan, whether they support or oppose this
7 rule, so all of your voices can be heard.

8 I'm going to provide for the record an address to
9 send any additional written testimony from anybody here or
10 other Alaskans who want to participate. The address would be
11 to my office: Senator Dan Sullivan, Chair of the Subcommittee
12 on Fisheries, Wildlife, and Waters of the Environment and
13 Public Works Committee, and that is in the Dirksen Senate
14 Building, room number SDB-40A, Washington, D.C., 20515. And,
15 again, we want to encourage all Alaskans to participate with
16 regard to the importance of their voices being heard with
17 regard to this rule.

18 So we will begin with our first panel and that --
19 again, we're very, very pleased with the distinguished
20 witnesses that we have. The first panel is going to be
21 remotely testifying, first, from Senator Click Bishop who is
22 obviously the state senator from the Interior; and, Charlotte
23 Brower, the mayor of the North Slope Borough. I believe that
24 both Senator Bishop and Mayor Brower are on the line. We will
25 begin with the testimony of Senator Bishop and we'll move to

1 the testimony of Mayor Brower, and then I'm going to ask them a
2 few questions, and then we will turn to our second panel of
3 distinguished witnesses.

4 Senator Bishop, if you're on the line, the floor is
5 yours.

6 SENATOR BISHOP: Thank you, Chairman Sullivan, and
7 welcome home.

8 CHAIRMAN SULLIVAN: Thank you.

9 SENATOR BISHOP: As previously stated, my name is
10 Click Bishop, currently serving as Alaska state senator
11 representing west Fairbanks and a broad sweep of rural Alaska,
12 including 63 small villages situated in the Yukon-Koyukuk,
13 Tanana, and Copper River Valleys. As former labor
14 commissioner, I am intimately familiar with the impacts of
15 government decisions on our economy and on our working families
16 through delay or outright denial of resource development
17 projects.

18 My previous career was a heavy equipment operator
19 working on the TransAlaska Pipeline and many other associated
20 construction projects throughout Alaska. In my younger life, I
21 spent over 18 years racing Yukon 800 style outboard riverboats
22 on Alaska's Interior rivers, the Tanana and the Yukon. So it's
23 safe to say that everything I've been involved in was, since I
24 got out of high school and quite a bit of what I did before,
25 has taken place on or near waters of the United States,

1 especially under these new definitions.

2 In speaking with you today, it's not my intention to
3 regurgitate a long list of facts and counter-arguments showing
4 how and where federal agencies have overstepped their
5 boundaries in this action. Those have been entered into the
6 record hundreds of times after the proposed rule was published
7 in the Federal Record over a year ago. Instead, I want to
8 sound a warning that there will be a huge negative impact on
9 the nation and Alaska's economy if the EPA and the Corps adopt
10 these definitional changes, which it appears they are
11 proceeding to do. I fear the impacts of the EPA's new enhanced
12 and onerous powers generated by these proposed changes, impacts
13 on small family-owned and operated businesses as well as large
14 projects proposed in Alaska.

15 It's interesting to note that whenever a government
16 agency like the EPA or the Corps of Engineers seeks to clarify
17 the meaning or a definition of a term or a phrase, it very
18 seldom narrows its definition, but rather broadens it to areas
19 never envisioned by those who passed the Clean Water Act in
20 1972. Wouldn't it be more honest to look at the programs
21 enabling legislation and keep any clarifications as true to the
22 original intent of what Congress passed? As so often happens,
23 we also see that the words agencies are proposing to use to
24 clarify and better define their regulations only further muddy
25 the waters. How will they determine what is a significant

1 connection to downstream water quality? What is a significant
2 nexus?

3 I note, also, that agencies are headlong rushed to
4 impose this rule, ignoring the public process, in the case of
5 their Connectivity Report, getting the decision done before the
6 so-called science upon which this decision is supposed to be
7 made, is available. While stakeholders from state agencies to
8 local governments express their concerns about this cart-
9 before-the-horse process, the EPA and the Corps move forward
10 regardless. The agencies have moved forward their proposed
11 changes without consultation with state and local agencies that
12 will be required to implement and enforce the changes. In
13 addition, they have moved forward with no regard or meaningful
14 analysis of the fiscal impact to state and local agencies.

15 It's clear to me the EPA in lockstep with the Corps
16 view it as their mission to control every human activity within
17 the water column, from the moment the rain drop hits the earth
18 until it diffuses into the ocean. We, in Alaska, we take great
19 pride in our state's superlatives, which sets us apart from our
20 sister states. Little things like our millions of acres of
21 wetlands, millions of lakes, 30,000 miles of shoreline. We
22 know it's cold and dark here and there's midnight sun in the
23 summer. I see no evidence that the agencies will accommodate
24 our unique features such as permafrost, a pervasive feature
25 found in 63 percent of the state, yet unacknowledged in the new

1 proposed regulatory scheme. Permafrost is an inhibitor of
2 water flow; it's a sink for the storage of water. It should be
3 specifically excluded from these regulations.

4 Again, we are not sure how the agencies will
5 determine what is a significant nexus, but there is simply no
6 nexus between cryogenically isolated permafrost and waters of
7 the United States. Unique as we may be in Alaska in regard to
8 this new definition of waters of the United States, we are
9 truly in the same boat as all our sister states and
10 territories. With this definition change, we will see projects
11 shut down in Anchorage, Sheridan, Wyoming, Seattle, Washington,
12 and Topeka, Kansas.

13 With that being said, I'd just like to wrap up in
14 summary. This whole wetlands adjacent regulation is the EPA's
15 attempt to circumvent the Supreme Court. I don't know if the
16 EPA knows this or not, but the Supreme Court is the highest law
17 in the land. They get the last word and they have spoken.
18 Implementing this adjacent regulation would overturn the Great
19 Northwest decision and that has terrible implications for
20 Alaskans all over the state.

21 Thank you, Mr. Chairman.

22 CHAIRMAN SULLIVAN: Thank you, Senator Bishop, for
23 that very powerful testimony. I look forward to digging a
24 little deeper with some of the questions.

25 Mayor Brower, if you're still on the line, the floor

1 is yours.

2 MAYOR BROWER: Chairman Sullivan, good morning
3 (speaks in Inupiat language)

4 CHAIRMAN SULLIVAN: Good morning.

5 MAYOR BROWER: My name is Charlotte Brower. I am
6 mayor of the North Slope Borough. I am also an Inupiat, the
7 wife of a whaling captain, and mother to 6 children and 26
8 grandchildren ranging from 21 years old to two weeks old.

9 Thank you for the invitation to address the
10 subcommittee today regarding the proposed rule put forward by
11 the EPA and the Corps of Engineers, which they define the
12 jurisdiction of those two agencies to regulate Waters of the
13 United States under the Clean Water Act.

14 I understand the proposed rule was submitted
15 yesterday to the White House Office of Information and
16 Regulatory Affairs, which is typically one of the last steps
17 taken before a proposed rule is finalized. It is our sincere
18 hope that the agencies have taken into consideration the
19 comments we submitted jointly with the Inupiat Community of the
20 Arctic Slope and the Arctic Slope Regional Corporation to the
21 agencies in the record, which expressed our serious concerns
22 with the proposed rule and the disproportionate impacts that
23 the proposed rule would have on our community.

24 As you know, the North Slope Borough is the largest
25 municipality in the United States in terms of land mass and

1 serves as the regional government for eight villages within
2 89,000 square miles of the Alaska Arctic. Over 70 percent of
3 our nearly 8,000 full residents are Inupiat Eskimo who continue
4 to rely heavily on the natural environment for subsistence and
5 for food security. While the borough believes it is very
6 important to protect our waters and wetlands, we also believe
7 that the proposed rule will cause much more harm to the borough
8 and its residents than the EPA and the Corps of Engineers
9 understand.

10 The scope of the proposed rule's impact on Alaska is
11 immense and its impact on Alaskans, Alaska Natives, and the
12 North Slope is disproportionate to the rest of the country.
13 43.3 percent of Alaska's surface area is wetlands. In the
14 Lower 48, wetlands only occupies 5.2 percent of the surface
15 area. The U.S. Fish and Wildlife Service calculates that 47
16 million acres in the Arctic foothills and the coastal plains
17 are wetlands. Together, these areas correspond roughly with
18 the borders of the North Slope Borough.

19 It appears that all 47 million acres, more than 80
20 percent of the entire North Slope region, could be considered
21 jurisdictional waters of the United States under the proposed
22 rule. I am a mayor of a borough that is larger than the state
23 of Utah. Most of the North Slope region is characterized by
24 tundra and permafrost, yet the proposed rule has left no
25 consideration for any of the unique aspects of Alaska's

1 wetlands. Neither the word "tundra" nor the word "permafrost"
2 appears anywhere in the proposed rule. Unlike the many
3 exceptions in the proposed rule that are created for farming
4 and other preferences, the proposed rule creates no exception
5 for any material portions of the wetlands in Alaska, yet
6 Alaska's waters and wetlands are unusual in many ways that may
7 make them unsuitable for this broad view assertion of
8 jurisdiction by the agencies. For one thing, many of Alaska's
9 wetlands are frozen for nine months out of the year and lie on
10 top of permafrost. Also, unlike wetlands in temperate zones,
11 Arctic wetlands which lies above thousands of feet of frozen
12 permafrost are not connected to apply for -- subject to water
13 flow.

14 As one more example, because water on top of
15 permafrost travels across frozen tundra surface in sheet flows,
16 these wetlands provide little function in controlling the
17 runoff.

18 To conclude, we believe that the proposed rule in its
19 truest form will impose enormous burdens on the North Slope
20 with very little benefit to the environment. For thousands of
21 years our people have relied on the natural environment for
22 subsistence purposes and the social fabric of our community
23 revolves around subsistence traditions. But the ability of the
24 Inupiat to maintain our traditions, our communities, and the
25 rudimentary services that make it possible for us to survive

1 and thrive on the North Slope all depends upon our access to
2 and our ability to use natural resources.

3 The borough is the sole provider for nearly every
4 essential service available to Alaska Natives and other
5 residents on Alaska's North Slope such as housing, utilities,
6 first responders, health care, and education. Over 97 percent
7 of the municipal budget used to provide these services is
8 derived from property taxes collected on oil and gas
9 infrastructure. Consequently, any (inaudible) defining natural
10 resource development attributable to (inaudible) permitting or
11 mitigation requirements will have a direct and immediate impact
12 on the borough's ability to pay for the services on which the
13 health and welfare of residents depends. And because most of
14 the land around the communities we serve would be classified as
15 wetlands under the new regulation, the borough will face steep
16 costs any time it attempts to provide new services or
17 infrastructure that impacts wetlands.

18 Under the proposed rule, 80 percent of the North
19 Slope could be considered waters of the United States as
20 compared to 5 percent in the rest of the country. Imagine how
21 the governor of New York state would react if 80 percent of the
22 state of New York was suddenly considered waters of the United
23 States (inaudible) regulation under the Clean Water Act. We're
24 almost twice the size of New York and yet the EPA and Corps of
25 Engineers did not bother to tailor their rule in a way that

1 would make sense for our state and our region. At the very
2 least, the proposed rule needs to be rewritten to clearly and
3 unambiguously address the unique nature of wetlands that lies
4 on top of permafrost.

5 Bottom line, the proposed rule would have a
6 disproportionate and entirely negative impact on the North
7 Slope Borough and the Inupiat people. This is why we stand
8 unified with all of our sister regional organizations in
9 opposition to this proposed rule-making and (inaudible)
10 constituents. We thank you for the opportunity to testify this
11 morning.

12 CHAIRMAN SULLIVAN: Thank you, Madam Mayor, and thank
13 you for that very powerful testimony. Congrats on the new
14 grandchild. I hope the child and mother are doing well. I do
15 want to just make a quick comment on your very insightful point
16 about the state of New York and the governor of New York and
17 how they would feel if it wasn't 5 percent, but close to 85
18 percent of their territory being impacted. I think that it
19 would be very different. And you're right, there's no element
20 of addressing any aspect of the uniqueness of Alaska in this
21 proposed rule. But you mentioned governors. It should be
22 noted that 35 states, including Alaska, a state official from
23 DEC testified two days ago in Anchorage, 35 states oppose this
24 rule and want it changed or either completely done away with,
25 which I think speaks to your broader point about how governors

1 and states view this current proposed rule.

2 Well, Senator Bishop and Mayor Brower, I was going to
3 ask a series of questions. I'll just make it easy, so they'll
4 be really addressed to both of you so either of you can respond
5 or build on the other's answers. Let me first by just asking,
6 given that you represent very large parts of the state of
7 Alaska, as you mentioned, Mayor Brower, and I'm sure it's the
8 same with Senator Bishop, the geographic scope of the
9 responsibilities that you cover is larger, both of you, than
10 many states in the Lower 48.

11 Can you just briefly describe to the extent your
12 constituents are aware of this rule and one of the -- you know,
13 one of the problems with a rule like this is that oftentimes
14 our constituents are not aware and then all of a sudden it
15 becomes a final rule and they're surprised. But to the extent
16 your constituents are aware, what has been their reaction?

17 SENATOR BISHOP: Chairman Sullivan?

18 CHAIRMAN SULLIVAN: Yes.

19 SENATOR BISHOP: I'll take the first stab at that.
20 It -- I would note, you know, even as late as last night at
21 9:30 after I got done here in the building, I'm still fielding
22 phone calls from concerned citizens, business owners, and as
23 early as 6:30 this morning I'm on my phone again. I've been
24 contacted, you know, by all forms, e-mails, phones, faxes, et
25 cetera, et cetera, postings on Facebook. They're all united in

1 their opposition to this rule, which, you know, if you look up
2 the definition of "federal overreach" in the dictionary, you'll
3 find a picture of the EPA extra -- and in the original
4 definition of "navigable waters" to eventually include every
5 drop of water. They are not happy.

6 CHAIRMAN SULLIVAN: Madam Mayor, how about your
7 constituents?

8 MAYOR BROWER: Senator Sullivan, thank you for that
9 question. My constituents, who are predominantly Inupiat
10 people, everyday common people, people who are involved also in
11 their Native village corporations, in their tribes, in their
12 cities, who thrive every day in hopes that the North Slope
13 Borough would help in every way. We do help, and they're not
14 fully aware of this proposed rule and the impacts that it would
15 have for the future of the North Slope, not because of what
16 we're going after for the North Slope Borough, but for the
17 people, for the existence of the people and the ruling that it
18 would make. And I'm afraid that once this is out as the way it
19 is, what is going to come down the road that's going to be like
20 a big cannonball being thrown all over the North Slope, and
21 that's the fear that I have.

22 CHAIRMAN SULLIVAN: Thank you, Madam Mayor, and I
23 will note in the testimony in Anchorage two days ago, there was
24 a senior executive from ARCTIC SLOPE REGIONAL CORPORATION who
25 testified and they were very opposed and had very detailed

1 concerns about the rule.

2 Let me turn to the issue -- Senator Bishop, I know
3 that you've been a leader on this throughout the state, the
4 issue of federalism. You know, there's been a lot of concerns
5 that this rule-making process was very rushed and, indeed, it
6 was very rushed. And there is an executive order; it's an
7 executive order numbered 13132. It's called the Federalism
8 Executive Order and it states, "When undertaking to formulate
9 and implement policies that have federalism implications,
10 agencies shall, in determining whether to establish uniform
11 national standards, they shall consult with appropriate state
12 and local officials as to the need for national standards and
13 any alternatives that would limit the scope of national
14 standards or otherwise preserve state prerogatives and
15 authority."

16 Madam Mayor, that Federalism Executive Order is in
17 addition to the trust responsibilities the federal government
18 has with regard to consulting with Alaska's Native people. Do
19 you believe that the Federalism Executive Order in this case
20 was abided by?

21 MAYOR BROWER: Senator Sullivan, no, we were never
22 properly consulted on this nor was it consulted to -- directly
23 to the tribes as well. So there is a failure of communication.

24 CHAIRMAN SULLIVAN: Thank you, Madam Mayor. Senator
25 Bishop?

1 SENATOR BISHOP: Senator Sullivan, I concur with
2 Mayor Brower. No, they obviously didn't read their own memo
3 down at the EPA.

4 CHAIRMAN SULLIVAN: Thank you. I want to dig into an
5 issue that you raised, which I think is very important for
6 Alaskans to know about. Senator Bishop, if you could talk a
7 little bit more about the Connectivity Report. And, just for
8 the record, the Connectivity Report was a report that the EPA
9 was using to base -- as a basis of the science to move forward
10 with the rule; however, the rule was promulgated well before
11 the Connectivity Report was ever made public, which, as you can
12 see, as you mentioned, is a bit of the cart before the horse.

13 Can you talk a little bit more about that issue? I
14 think most people are unaware of that and it does show the
15 rushed process.

16 SENATOR BISHOP: Yes. Briefly, I just -- you know,
17 in reviewing the three Supreme Court decisions as it relates to
18 your question at hand, I just find it -- I'm just -- I'm
19 flabbergasted at the EPA, you know, on these three Supreme
20 Court decisions on the connectivity piece. The Supreme Court
21 has spoken very clearly on this, but yet the EPA just doesn't
22 get it and they're trying to circumvent the Supreme Court. And
23 I just find it -- I'm overwhelmed. I just can't believe that
24 they can't -- you've got three Supreme Court decisions that's
25 written in plain English, even I understand it, but yet the EPA

1 doesn't understand it and they still want to try to connect
2 these waters.

3 CHAIRMAN SULLIVAN: Let me ask a related question
4 with regard to a simple but critical issue that I'm sure I'm
5 going to dig into with regards to the next panel as well.

6 Do you see this, Mayor Brower and Senator Bishop, do
7 you see this as an expansion of the EPA's jurisdiction over
8 waters in Alaska as the rule is currently written?

9 SENATOR BISHOP: Chairman Sullivan, this is
10 definitely, definitely a grab to include all waters, everything
11 they can get their hands on.

12 CHAIRMAN SULLIVAN: So you would see this as an
13 expansion of the EPA's jurisdiction?

14 SENATOR BISHOP: Absolutely. Absolutely. You know,
15 and furthermore I just -- you know, what really floors me about
16 this whole process is they have not done a cost-benefit
17 analysis on what the impact is to the United States economy or
18 the Alaskan economy.

19 CHAIRMAN SULLIVAN: Madam Mayor, do you see this as
20 an expansion of the EPA's jurisdiction over waters in Alaska?

21 MAYOR BROWER: Yes. Senator Sullivan, this would
22 have a tremendous impact on the lives of the whole North Slope,
23 not only the North Slope, but the whole state of Alaska. Their
24 continuous presence that they want to do, they're doing it in
25 the wrong way. We hardly ever see EPA up in our area. The

1 only time that EPA comes out is when they're having the Alaska
2 Eskimo Whaling Commission meetings and they're there talking
3 about rules that concerns (inaudible) or rules that they have
4 to do. And they're not -- they're just doing a textbook
5 theory; it's not going to work. They need to come to us and
6 face us and then turn every waters, every -- all our land has
7 been submerged in water, but yet they're not coming to us.
8 They're not seeing the fact that we can live on top of snow, we
9 can travel on top of snow, we can travel on frozen oceans and
10 go out whaling, everything.

11 But, you know what, it does become spring and it does
12 become water and it always appears like it's wetlands, but
13 we've lived with it for ten thousands of years. They are not
14 here; they're living in D.C.

15 CHAIRMAN SULLIVAN: Thank you for that very powerful
16 testimony. Let me go on to another issue that, Senator Bishop,
17 you raised and I would like again both of our distinguished
18 witnesses to address this.

19 The EPA has stated in their cost-benefit that there
20 would not be - there would not be - significant costs with
21 regard to implementing this rule. Do you -- Senator Bishop, do
22 you agree with that? Do you agree that there would be no
23 significant costs? And in particular with regard to the
24 Interior, what do you think the impact would be on the small
25 placer miners that are still trying to eke out a living in this

1 part of the state?

2 SENATOR BISHOP: Oh, you know, and that's a good
3 question, you know, because they haven't done a cost- benefit
4 analysis. It would -- I would say it would be in the millions
5 of dollars and put -- you know, it has the potential to put 360
6 to 460 small placer miners out of business, but bigger than
7 that, we're trying to monetize Alaska's North Slope gas with
8 the AK-LANGUAGE project and to date just the impacts of the
9 wetlands mitigation disturbance just on the route that's been
10 identified to date has already added a quarter of a billion
11 dollars to the project that's already -- you know, it needs to
12 be looking at every nook, cranny, and corner to save a nickel.
13 And proposing this rule, who knows what it will add to the cost
14 of that pipeline, and that's Alaska's economic future for the
15 next hundred years.

16 CHAIRMAN SULLIVAN: Madam Mayor, do you agree with
17 the EPA, there's no significant cost to this rule? (Pause)
18 Mayor Brower, are you still with us?

19 MAYOR BROWER: Yes. There will be a future where
20 we'll struggle to provide basic services because of the
21 increased cost of wetlands mitigation. We have already
22 captured a glimpse of this future with our recent efforts to
23 permit an expansion of a local landfill. The cost assessed on
24 the borough for wetland mitigation exceeded one million
25 dollars, not including what we have to spend throughout the

1 permitting process. That's one million dollars less dollars to
2 pay for teachers, health aides, for police officers, or to
3 provide any number of other services.

4 Even worse, we know that much of this money won't be
5 used to benefit the North Slope. Part of the reason is that we
6 have been such good environmental stewards. We don't have
7 toxic land to clean up like they do in the Lower 48. It seems
8 like in some ways we're being penalized for being responsible.
9 In addition, the borough's rural villages are mostly populated
10 by the Inupiat Eskimos and they all lie in the areas that would
11 be classified as wetlands. Nearly every kind of construction
12 activity would be required from impact to wetlands. So our
13 villages would be constrained by additional permitting
14 requirements and mitigation if they required any additional
15 infrastructure in their communities. There is no other place
16 in America where the impacts of the proposed rule would fall so
17 heavily on one minority.

18 CHAIRMAN SULLIVAN: Thank you, again. That was very
19 powerful testimony. And your point about wetlands mitigation
20 came up in the Anchorage hearing and perhaps in the next panel
21 we can discuss that because that is another area where Alaska
22 is clearly, uniquely impacted.

23 I also want to just mention for the record with
24 regard to the issue of cost, the Regulatory Flexibility Act,
25 which is a federal law, requires agencies to examine the

1 impacts of a proposed regulation on small government entities,
2 like we have in Alaska, and small businesses. The EPA and the
3 Corps, under this rule-making, instead certified that this
4 proposed rule will not have significant impacts on small
5 entities, businesses, or small communities. They certified
6 that.

7 Kathy Wasserman, the executive director of the Alaska
8 Municipal League, which represents over 130 small communities
9 in Alaska, testified that that was completely incorrect. More
10 importantly, in some ways, the Obama administration's own Small
11 Business Association [[sic], the SBA, the chief counsel for the
12 SBA Office of Advocacy, determined that this certification by
13 the EPA and the Corps was in error and improper. Under the
14 regulatory act, the Corps and the EPA are required to conduct
15 small business advocacy review panels to determine costs, as
16 Senator Bishop mentioned. They failed to do that on this rule,
17 which led to the comments filed by the SBA of the Obama
18 administration's Office of Advocacy, and they stated,
19 "Advocacy, the SBA, and small businesses are extremely
20 concerned about the rule as proposed. The rule will have a
21 direct and potentially costly impact on small businesses. The
22 limited economic analysis," which is what Senator Bishop
23 mentioned, "which the agency submitted with the rule provides
24 ample evidence of a potentially significant economic impact.
25 The SBA Advocacy Office advises the agencies to withdraw the

1 rule and conduct an SBAR panel prior to promulgating any
2 further rule on this issue." This is the Obama
3 administration's own Small Business Administration saying the
4 rule needs to be withdrawn because of its negative impacts on
5 small businesses.

6 So, Senator Bishop, Madam Mayor, I think that you
7 even have elements of the Obama administration that are in
8 agreement with you.

9 I'd like to conclude by asking a final question. Do
10 you think the EPA would have benefitted from the assistance of
11 those with actual knowledge of wetlands, of the waters of
12 Alaska in your communities and the unique hydrology and
13 geographic features that we have here before promulgating a
14 rule that is the classic Washington, D.C. one-size-fits-all
15 approach to clean water? We all want clean water. As I
16 mentioned at the outset, Alaskans do a much better job than the
17 EPA and Washington on keeping our waters clean.

18 Do you think that this rule would have benefitted
19 from the input of constituents from your senate district,
20 Senator Bishop, or you, Madam Mayor, constituents from the
21 North Slope Borough or you and your staff?

22 SENATOR BISHOP: Chairman Sullivan, it would behoove
23 the department greatly to take into serious consideration with
24 boots on the ground, I mean boots on the ground, not boots in
25 Washington, D.C., but boots on the ground walking from maybe

1 Kaktovik to Barrow looking at what permafrost looks like, or
2 walking from the Charlie River to Fort Yukon looking at what
3 the ground looks like. And, I mean, I'm serious, this is --
4 I'm just flabbergasted. You know, again, you said it very
5 eloquently: it's done in Washington, D.C., it's done in a
6 vacuum. The people -- if I would have proposed a regulation
7 like this at the Department of Labor without giving the people
8 of Alaska their full and just due or a proper hearing and
9 proper notification, I would have been strung up by my
10 bootstraps.

11 And the last thing I'd like to say in closing is --
12 you might want to have your staff reference this and send a
13 copy to the EPA. In President Obama's State of the State
14 speech four years ago, on page 2 or page 3, he says, "Where my
15 agencies are overreaching and stifling business in the United
16 States, I'm going to work to lessen that impact."

17 They need to go read the president's own memo from his
18 State of the State speech.

19 CHAIRMAN SULLIVAN: Thank you, Senator Bishop. Madam
20 Mayor, would the EPA have benefitted from the very, very
21 significant expertise and wisdom and traditional knowledge that
22 exists on the North Slope before promulgating this rule?

23 MAYOR BROWER: Yes, we'd like to say that Alaska is a
24 unique and a special place, and that is especially true in the
25 context of our geography and hydrology. No other state in our

1 union has tundra or permafrost, and many people in the Lower 48
2 fail to grasp the sheer size and expanse of our state and
3 regions. As I mentioned in my comments, the proposed rule does
4 not even reference these critical features. On the North
5 Slope, particularly, relatively little is known about the
6 nature and function of our Arctic wetlands and much of what we
7 do know has come from studies conducted by the oil industry.

8 Given these facts, I don't believe that EPA has the
9 information that's needed to make an informed ruling. It is
10 important for the federal government to recognize the role that
11 the state and local municipalities can play in the permitting
12 process. Our local knowledge and expertise is critical in
13 recognizing impacts and mitigating negative consequences
14 associated with a potential project. State and local
15 governments are also more in tuned with the desires of the
16 local communities and are well-equipped to understand the
17 proper balance between facilitating economic development and
18 the protection of the environment.

19 CHAIRMAN SULLIVAN: Well, I want to thank both of you
20 for your very powerful testimony. I will note for the record,
21 sometimes the written record doesn't convey the sense of
22 frustration and exasperation that these two important witnesses
23 have articulated, but it was clearly there. And they represent
24 very, very important elements of the state, large swaths of the
25 state. And, for the record, I want to note that.

1 Senator Bishop, Mayor Brower, do you have any
2 concluding comments that you'd like to leave before we move to
3 the next panel?

4 SENATOR BISHOP: Yes. Chairman Sullivan, thank you
5 so much for coming home, holding this hearing in Fairbanks and
6 throughout Alaska. It's greatly appreciated. And don't give
7 up the fight. Keep fighting the fight and we're behind you 110
8 percent.

9 CHAIRMAN SULLIVAN: Thank you, senator. Madam Mayor,
10 any concluding comments?

11 MAYOR BROWER: Thank you, Senator Sullivan. I
12 personally want to thank you for (inaudible) me as mayor of the
13 North Slope Borough and as an Inupiat woman, very strong in
14 issues that you have in my region. And I think that the EPA
15 needs to delay implementing this rule in Alaska until it
16 conducts public meetings of which you are giving throughout the
17 towns and villages that would be so heavily impacted by this
18 rule-making. I don't think our people understand the extent
19 this rule-making will impact their lives. I also think the
20 agencies should conduct an extensive analysis of the Arctic
21 hydrology environment and have a better understanding of our
22 region before they implement this rule.

23 And thank you very much for having this in Fairbanks,
24 and I apologize, I am between three meetings, and I thank you
25 very much for allowing me to testify; although I would have

1 loved to have testified in every one and be very vibrant in
2 what I say. Thank you very much.

3 CHAIRMAN SULLIVAN: Well, thank you both again for
4 your powerful testimony and we really appreciate the insights
5 that you provided to the EPW committee. These will be
6 important as we move forward with regard to the national debate
7 on this rule.

8 So we're going to move forward from the first panel
9 and we're now going to move on to our second panel of
10 distinguished witnesses. We have seven witnesses. We will
11 have five-minute statements from each, and then we will then
12 conduct a series of questions and answers.

13 So why don't we begin with Sara Taylor, the executive
14 director of the Citizens' Advisory Committee on Federal Areas.

15 SARA TAYLOR: Chairman, thank you for allowing me to
16 testify today and especially thank you for coming to Alaska to
17 have hearings on this very important issue.

18 For the record, my name is Sara Taylor. I am the
19 executive director of the Citizens' Advisory Commission on
20 Federal Areas, commonly known as CACFA. The CACFA was
21 established by the Alaska State Legislature in 1981 to monitor
22 and mitigate negative impacts to Alaskans from the complex
23 mandates, diverse management schemes, and highly discretionary
24 rules and regulations that apply to just about 222 million
25 acres of our state. We work with individuals and agencies to

1 safeguard and preserve the rights and interests of Alaskans and
2 we maintain decades of institutional memory of engagement with
3 over a dozen federal agencies.

4 I could explain in great detail how the proposed rule
5 is legally indefensible or just really bad public policy, but
6 I'd much rather spend the time talking about what it means to
7 Alaskans. One recurring theme of management of federal lands
8 in Alaska is a manifest paternalism, blind to our needs and
9 experiences which stifles our opportunity for social and
10 economic autonomy and prosperity. We are quite accustomed to
11 and frankly tired of being the subject of a table-top exercise
12 thousands of miles away. In many ways, the proposed rule is
13 very emblematic of this approach to Alaska.

14 When the agencies say that Alaskan waters require
15 federal protection, they mean protection from us, the people
16 whose very survival depends on clean water. To most Americans,
17 Alaska is an idea. It's a trophy hunt. It's a dream vacation.
18 It's a post card. It's a reality show. It's a means of
19 preservation and atonement for the industrialized state of our
20 nation. But Alaska is not an abstract concept to us. Alaska
21 is our home. This is our being and water is the intravenous
22 system which feeds us both spiritually and physically.

23 The Clean Water Act recognizes that there are no
24 better stewards of clean water than the people who fish in it
25 and swim in it and drink it, and the state of Alaska has the

1 authority and the responsibility and the very detailed
2 expertise to manage water regardless of jurisdiction in our
3 state. And the regulation of water and land use is a very
4 traditional state and local power that deserves both legal and
5 intuitive deference, but the EPA and the Corps of Engineers did
6 not even consult with the state in developing this rule-making,
7 and this rule-making unapologetically highjacks those powers
8 and obligations. But Alaskans do more than depend on our
9 water. We also understand it and if our water needs
10 protection, it's from administrators who do not understand it.

11 Alaska has more wetlands than all the other states
12 combined. Alaska has more coastline than all the other states
13 combined, but the proposed rule and the 2013 draft Connectivity
14 Report completely failed to acknowledge our very unique
15 geomorphological and hydrologic conditions. These would be the
16 conditions that apply to the vast majority of areas impacted by
17 this rule-making, things that have been mentioned like
18 permafrost, like tundra, spruce bogs, muskegs, just those types
19 of situations, ice fields, glaciers. It's confusing. It's very
20 confusing to see how this proposed rule will actually impact
21 Alaska, which begs the question as to why application of this
22 rule is left to agencies who do not care or do not know enough
23 to even include the consideration of these very unique
24 conditions.

25 The proposed rule will not only deprive Alaska of its

1 traditional and sovereign powers. It will also
2 disproportionately impact our ability to grow and prosper. Out
3 of 283 total communities in Alaska, 215 of them live within two
4 miles of a navigable, in fact, water or coastline and the
5 proposed rule expands the area that will be subject to federal
6 permitting authority to the point where the development and
7 sustainability of these communities is going to be either
8 subject to a very expensive jurisdictional question or a very
9 expensive concession of jurisdiction, and both scenarios raise
10 major due process concerns where private property owners,
11 communities, and sovereign states need to pay to ask the
12 federal government if permission is needed or pay the federal
13 government for permission regardless of whether permission is
14 actually needed just to safely avoid fines, penalties, even
15 endless litigation. And what happens to your property rights
16 when you can't afford to ask that question?

17 Alaskans are no strangers to federal regulations
18 governing essential aspects of our lives and I'm not sure how
19 much more can be demanded of us, but I do know that this demand
20 mischaracterizes the state of the law and unconstitutionally
21 interferes with our authorities, but what's worse is it's not
22 going to enhance the protection of our waters. Thank you very
23 much.

24 CHAIRMAN SULLIVAN: Thank you, Ms. Taylor. Very
25 eloquent testimony there. Our next witness is Sue Mauger. She

1 is a science director for Cook Inletkeeper.

2 SUE MAUGER: Chairman Sullivan, thank you for the
3 opportunity to testify today. I've submitted written testimony
4 and ask that it be included in the record.

5 My name is Sue Mauger and I am the science director
6 for Cook Inletkeeper, which is a community-based non-profit
7 organization started in 1995 and dedicated to protecting clean
8 water and healthy salmon for Alaskans. Please accept this
9 testimony on behalf of Cook Inletkeeper's staff, board of
10 directors, and more than 2,000 members and supporters across
11 Southcentral Alaska.

12 My comments and support for clarifying protections of
13 waters of the United States under the Clean Water Act are based
14 on my experiences working in Alaska's fresh water systems for
15 the last 15 years. Recently my work has involved using thermal
16 infrared technology to identify and map shallow groundwater
17 connections that provide key sources of cold water in the
18 summer as well as warm water for juvenile salmon in the winter.
19 Exploring these complex surface and subsurface connections
20 reinforces to me that in Alaska, as in the rest of the United
21 States, protecting tributaries and adjacent wetlands is vital
22 for protection of the integrity of downstream waters.

23 In my opinion, the impact of the proposed rule will
24 be decidedly positive for Alaskans and I'd like to share with
25 you three reasons why. First, Alaskans rely on wild salmon and

1 other cold water fish for commercial, economic, cultural, and
2 nutritional health. Presently, Alaska's fresh water habitats
3 are largely intact and support some of the most robust wild
4 salmon populations in the world. This is, in part, due to the
5 extensively connected systems of small headwater streams and
6 supporting wetlands. State biologists down on the Kenai
7 Peninsula are doing exciting research which shows how broader
8 landscapes are linked to stream productivity and juvenile
9 salmon densities. Through the delivery of alder-derived
10 nitrogen and peatland-derived carbon into headwater streams,
11 whole ecosystem responses are generated, which underscores the
12 importance of landscape connectivity.

13 This makes me think of wetlands functioning like a
14 coffee filter. Just as my morning cup of caffeine helps bring
15 me back to life and increases my productivity, rich nutrient-
16 laden waters percolating out of saturated wetlands helps drive
17 stream productivities. The investment of nutrients from the
18 landscape into the smallest of our streams pays off huge
19 dividends in the form of vibrant fisheries. The proposed rule
20 will clarify these protections for key habitats that help
21 salmon and, in turn, helps Alaskans thrive.

22 Second, Alaskans rely on wetlands to reduce flood
23 peaks, which put our heavily subsidized transportation
24 infrastructure at risk. Fall storms are hard on our roads and
25 bridges. I remember well the devastating floods of 2002 when

1 sections of the Sterling Highway blew out, leaving the lower
2 Kenai Peninsula cut off for days. We had two 100-year flood
3 events within a month of each other. Poorly placed
4 inadequately sized culverts in the upper watersheds failed
5 which resulted in pulses of debris torrents causing extensive
6 damage downstream. Fall storms will continue; however, a
7 decrease in wetland cover can greatly increase peak flows and
8 increase downstream flood damage.

9 In FY-2015, the federal budget covers approximately
10 90 percent - 90 percent - over one billion dollars of Alaska's
11 road costs. It hardly seems like federal overreach for the EPA
12 to implement a rule which will reduce flooding potential by
13 keeping wetlands intact when the federal budget is footing the
14 bills to fix our flood damage.

15 Third, Alaskans rely on groundwater sources of
16 drinking water. Across our rural landscape, the majority of
17 Alaskans have private wells or use surface springs for drinking
18 water. Our wetland-dominated landscape makes this possible by
19 consistently recharging our aquifers. Most wells used to
20 supply water to individual homes yield water from shallow
21 aquifers, which were recharged within the last 25 years.
22 Shallow aquifers contain groundwater that is primarily from
23 infiltration of local rain and snow and discharge from streams,
24 lakes, and wetlands and thus are susceptible to contamination.
25 Keeping potential contaminants away from these water sources is

1 by far less expensive than trying to remove contaminants once
2 they move into the groundwater. The proposed rule, by
3 clarifying protections for these water bodies, will reinstate
4 Alaska's confidence that their drinking water is safe for their
5 families.

6 One argument that some have made to delay or
7 significantly alter the proposed rule is that Alaska's
8 hydrologic circumstances are unique. And I couldn't agree more
9 with that observation. Alaska's fresh water situation is
10 unique, uniquely intact and connected. Rare circumstances for
11 the Lower 48. But with the current uncertainty of what
12 constitutes the waters of the United States, Alaskans' clean
13 water and healthy salmon are at risk of a death by a thousand
14 cuts.

15 Now the EPA and the Army Corps of Engineers, agencies
16 not known for playing nicely together, have, in fact, come up
17 with language that they can work with to fulfill the goal of
18 the Clean Water Act. Congress ought to move forward now by
19 approving the protections provided by the proposed rule.
20 Alaskans will be better off for it. Thank you.

21 CHAIRMAN SULLIVAN: Thank you, Ms. Mauger. Our next
22 witness is Bryce Wrigley and Mr. Wrigley is president of the
23 Alaska Farm Bureau. I've worked with him on many issues. So,
24 President Wrigley, the floor is yours.

25 BRYCE WRIGLEY: Thank you, Senator Sullivan. I

1 appreciate the opportunity to testify at this hearing.

2 The Clean Water Act regulates navigable waters and is
3 defined as waters of the United States. It does not regulate
4 all waters. The United States Supreme Court has recognized
5 that the term "navigable" delineates what Congress had in mind
6 when it enacted the CLEAN WATER ACT. That was its traditional
7 jurisdiction over waters that were or had been navigable, in
8 fact, or which could be reasonably made. In fact, it was very
9 clear that Congress did not intend for the Clean Water Act to
10 cover all waters. When it enacted the Clean Water Act,
11 Congress explicitly recognized, preserved, and protected the
12 state's primary authority and responsibility over local land
13 and water resources. The proposed waters of the U.S. rule
14 attempts to usurp the state's traditional and primary authority
15 over land and water use.

16 The EPA and the Army Corps have made several attempts
17 to assert jurisdiction over waters and water bodies that the
18 Supreme Court has found to be outside their jurisdiction. The
19 agencies have demonstrated a continual pattern of pushing and
20 bullying the state and local governments and intimidating
21 private citizens as they have repeatedly sought to assert
22 control over additional waters and land. For example, after
23 the Supreme Court found that isolated waters fall outside the
24 Clean Water Act jurisdiction, it clarified that in classifying
25 a new area as a wetland, a significant nexus to an existing

1 navigable water must exist. The agencies next asserted that
2 the decision was limited to isolated waters and that if a water
3 body had any connection to a navigable water, it was no longer
4 an isolated water body and could therefore be regulated as a
5 navigable water under the Clean Water Act. The agencies'
6 rationale was that, in the end, all waters are connected, which
7 essentially include all wet areas, including ditches, drains,
8 desert washes, and ephemeral streams that flow infrequently and
9 may be miles from traditional navigable waters.

10 The Supreme Court again rejected the Corps' broad
11 interpretation and the court found that the plain language of
12 the Clean Water Act does not authorize this expansion of
13 federal jurisdiction and that in applying the definition so
14 broadly to seasonally wet features, the Corps had stretched the
15 term "waters of the United States" beyond parody. Further, the
16 court clarified that the act confers jurisdiction only over
17 relatively permanent bodies of water.

18 The implementation of the rule as it now stands will
19 expose farmers and ranchers to legal action if they engage in
20 normal farming activities. If a low spot in a field is,
21 indeed, determined to be a wetland under the expanded
22 definition because it sometimes holds or sheds water, it may
23 require dredge or fill permits to plant or harvest our fields.
24 It may also require a discharge permit for applying fertilizer
25 or pesticides to crops. And just because an operation is

1 organic doesn't mean that it would get a pass. Organic
2 operations would also need dredge and fill permits for planting
3 and harvesting and would also need discharge permits to apply
4 manure or compost to their fields.

5 I decided on the way in today that most of those
6 listening have no idea of what I'm even talking about. Your
7 experience with agriculture is through the food you eat, so you
8 cannot understand the impact of this rule on America's farmers.
9 So, in an effort to help you understand, I've decided that I'm
10 going to start a project to redefine food.

11 According to the Supreme Court, a significant nexus
12 must occur or be present. It is required to be able to -- and
13 that is required to be able to reclassify a substance as food.
14 Applying EPA's logic to this model, I've determined, and I'm
15 sure you'll agree, that what animals eat and then poop out
16 meets the significant nexus requirement for human food. They
17 eat the same things we do. Then, to make sure that these
18 resources are not wasted, I'm going to impose a \$37,000 fine
19 per day on anyone who does not eat this new food. So your menu
20 options at the restaurant will change. You can now choose
21 chicken poop tenders, poop chops, or cow pie steak. Now, you
22 laugh because you realize that I have no authority to implement
23 these food changes. Imagine if I was a powerful federal agency
24 with the full power and backing of the United States government
25 behind it and decided to implement these changes. What would

1 your reaction be?

2 Congress has allowed the creation of this vast
3 bureaucracy which, in all practicality, is a fourth branch of
4 the government. This fourth branch is not beholding to nor can
5 it be removed by we, the people. Our only recourse is to rely
6 on Congress to impose strict limits on their authority and
7 their rule-making. Both Congress and the Supreme Court have
8 told EPA that this rule oversteps the intent of Congress.

9 I urge you in the strongest possible terms to confine
10 EPA's authority to those navigable waters, as was clearly
11 intended by Congress when the Clean Water Act was passed.
12 Thank you.

13 CHAIRMAN SULLIVAN: Thank you, President Wrigley, and
14 thank you for all the work you do on behalf of Alaska's
15 farmers. It's a group of our citizens that do incredible work
16 for all of us, and I appreciate your testimony.

17 Our next witness is John McKinnon, executive director
18 of the Associated General Contractors of Alaska. Mr. McKinnon,
19 the floor is yours.

20 JOHN MCKINNON: Thank you, Chairman Sullivan. For
21 the record, my name is John McKinnon. I'm the executive
22 director of the Associated General Contractors. The AGC is a
23 construction trade association representing approximately 650
24 contractors, suppliers, manufacturers, and businesses in
25 Alaska. Within our membership is the majority of Alaska's

1 construction industry. AGC contractors are involved in the
2 construction of Alaska's public and private buildings,
3 highways, bridges, docks, and harbors, and the preparation of
4 access roads and development pads necessary for the extraction
5 of our natural resources.

6 The industry obtains general and individual permits
7 to perform construction activities in or near waters of the
8 United States and permits for stormwater discharges, both
9 covered under the Clean Water Act. As such, this proposed
10 guidance will pervade all stages of construction and will have
11 a substantial impact on the construction industry.

12 Prior to joining AGC eight years ago, I was -- and
13 becoming an advocate for the construction industry, I was a
14 deputy commissioner of the Alaska Department of Transportation
15 and an advocate for transportation projects in Alaska. During
16 that time, you know, DOT oversees 249 airports throughout the
17 state, 11 ferries serving thirty-five communities, 5,600 miles
18 of highways, and 720 buildings throughout Alaska. And one of
19 my responsibilities at DOT was overseeing the maintenance and
20 construction programs for all of those facilities. Major
21 projects in this state often require -- trigger NEPA and
22 require an environmental impact statement, and the challenge we
23 had was that the average EIS for a federally funded
24 transportation project takes about five years from beginning to
25 reaching a record of decision. From that point of the record

1 of decision, the project sponsor then begins to get the dozens
2 and dozens of permits required in order to go to construction.
3 The average time for a major highway project that requires an
4 EIS from beginning the EIS to completion of the project - this
5 is the average time - is 13 years. It's no wonder
6 transportation projects take so long to deliver when you
7 consider all of the permits and permissions required.

8 I have attached to my written testimony a graph like
9 this which shows the federal environmental requirements
10 affecting transportation. That's about 1965 where it starts on
11 that trajectory upward.

12 CHAIRMAN SULLIVAN: We want to make sure that will be
13 submitted for the record.

14 JOHN MCKINNON: Yes, thank you. You know, I might
15 add that in -- about 40 years ago, 1970 or so, approximately 90
16 cents out of every dollar for a construction project went out
17 as a payment to contractors. That was dirt in the ground,
18 pavement and that. Today it's under 70 cents on every dollar
19 of a construction project goes out as a payment to contractor.
20 The balance in there, that twenty-some cents, is going into
21 process and permits and much of it adds very little value to
22 the project.

23 In Alaska, a lack of adequate transportation is one
24 of the biggest impediments to our economy. Forty years ago,
25 the biggest obstacle we had to doing something was scraping the

1 money together. Today, the biggest obstacle is getting
2 permission, and this will only exacerbate that.

3 Development of wetlands falls under the guideline
4 hierarchy of avoid, minimize, and mitigate. And when designing
5 a project, the first objective is to avoid any impact to
6 wetlands. People don't set out to impact wetlands. It just
7 happens because roads and airport construction, projects in
8 general, prefer flat ground and in Alaska that's where you find
9 wetlands. When avoidance isn't possible, you work to minimize
10 the impact on wetlands and any wetlands impacted are subject to
11 a fee-in-lieu mitigation payment. Depending on the class of
12 the wetlands disturbed, mitigation can be up to \$55,000 per
13 acre. This is up from \$10,000 an acre relatively few years
14 ago. That makes Alaska's 170 million acres of wetlands worth
15 over 9 trillion dollars.

16 The simple conclusion to draw is that this proposed
17 guidance is increased jurisdiction, it is increased permitting,
18 it is increased mitigation, and it is increased cost.

19 The Clean Water Act has worked as intended in the
20 forty-some years since it became law. We've corrected most of
21 our environmental problems and degradation. We probably have
22 the cleanest country on Earth. We've overcompensated in so
23 many areas as the chart shows, and now the bureaucracy is again
24 taking the law, and through regulations, stretching it beyond
25 its original intent.

1 In conclusion, in Alaska's case, we're held to the
2 same standard as the rest of the country and we're not the same
3 condition. The present jurisdiction exceeds what's necessary
4 to protect the environment and maintain interstate commerce.
5 The proposed changes will have a significant negative effect on
6 the construction industry and the economy and the guidance
7 under WOTUS will have a further material impact on permitting
8 and enforcement nationwide. Thank you.

9 CHAIRMAN SULLIVAN: Thank you, Mr. McKinnon, for that
10 very powerful testimony. Our next witness is Austin Williams.
11 He is the Alaska director of law and policy for Trout
12 Unlimited. Mr. Williams, the floor is yours.

13 AUSTIN WILLIAMS: Thank you. Chairman Sullivan, my
14 name is Austin Williams. I'm the Alaska director of law and
15 policy for Trout Unlimited, which I will abbreviate as TU.

16 Thank you for the opportunity to testify and please
17 also include the written testimony that I have provided as part
18 of the record.

19 TU is the nation's largest sportsmen organization
20 dedicated to cold water conservation, with more than 1,000
21 members in Alaska. They are passionate anglers, lodge owners,
22 fishing and hunting guides, commercial fishermen, among various
23 other occupations. In addition to our members in more remote
24 parts of the state, we have active chapters in Fairbanks,
25 Anchorage, and the Mat-Su, on the Kenai Peninsula, and in

1 Southeast. TU supports the Clean Water Act rule because it
2 will ensure protection of critical water resources, the
3 nation's millions of miles of headwater streams, and Alaska's
4 most important and productive waterways. We cannot ensure
5 clean water in our most valuable rivers and streams without
6 also protecting the smaller waters that feed in to them, yet
7 recent administrative guidance following two Supreme Court
8 cases, SWANCC in 2001 and Rapanos in 2006, has thrown decades
9 of precedence, logic, and stability on its head.

10 After repeated requests from TU, along with many
11 other sportsmen organizations, businesses, and industry groups,
12 the Corps and the EPA have finally taken the strong step to
13 propose a fix that will help provide clarity and consistency
14 within the act while ensuring clean water protections for our
15 fish and wildlife, including Alaska's iconic salmon runs.

16 At the heart of the agencies' proposal is what every
17 sportsman knows: that small streams influence the health of
18 large rivers and that clean water for small streams help grow
19 big fish. Like many Alaskans, I first came to our great state
20 to experience its legendary fish and wildlife and, like many
21 more Alaskans, these qualities are why I continue to call
22 Alaska home, and why my wife and I choose to raise our family
23 here. My son is only three and my daughter is not yet two
24 months old, but my hope is that they can grow up and enjoy the
25 same great fishing and hunting opportunities available to you

1 and me, which all depend on clean water.

2 Fishing isn't just part of the Alaska way of life,
3 it's also big business. Nearly 650 million dollars a year is
4 spent on sport fishing in Alaska. When you factor in
5 multiplier effects, sport fishing accounts for more than a
6 billion dollars in economic impact to Alaska communities. Add
7 in hunting and other wildlife-related recreation, then the
8 total climbs to 3.4 billion dollars each year. Alaskans also
9 commercially harvested 157 million salmon last year worth more
10 than half a billion dollars at the dock and the number is
11 projected to increase this year to more than 220 million
12 dollars -- or 220 million salmon. I'm sorry. And all of this
13 is possible because of clean water.

14 Those that claim the sky is falling with regard to
15 the cost of complying with the proposed rule or that claim that
16 development will come to a screeching halt fail to recognize
17 that even greater value, clean water and the fish and wildlife
18 it supports, provides to Alaskans. And, besides, before
19 SWANCC, when the jurisdictional reach of the Clean Water Act
20 was even greater than what is proposed under the current rule,
21 Alaska's population nearly doubled from 324,000 to 633,000
22 people, and its gross domestic product nearly doubled from 15
23 billion dollars to 29 billion dollars per year. Oil, gas, and
24 coal production all increased several times over during the
25 same period. Economic development and clean water protections

1 can co-exist under this proposed rule.

2 In a recent statewide poll, 96 percent of Alaskans
3 said salmon are essential to the Alaskan way of life. Eighty-
4 nine percent said that even in tough economic times, funding
5 for salmon conservation should be maintained. Eighty percent
6 said that protecting the forests, tundra, and wetlands around
7 streams is as important as protecting the streams themselves.
8 Seventy-nine percent of Alaskans were concerned about pollution
9 in rivers, lakes, and streams, which is on par with issues like
10 reducing the federal budget deficit and unemployment.

11 TU is a science-driven organization and in this case
12 the science is clear: headwater streams provide essential
13 habitat for important fish and wildlife, contribute to the
14 water quality of larger downriver streams. Better habitat
15 means better fishing and better fishing is good for Alaska.
16 Thank you.

17 CHAIRMAN SULLIVAN: Thank you, Mr. Williams. I
18 appreciate the testimony. Our next witness is Deantha
19 Crockett. She is the executive director of the Alaska Miners
20 Association. And, Ms. Crockett, appreciate your testimony.
21 Thank you.

22 DEANTHA CROCKETT: Thank you very much. For the
23 record, my name is Deantha Crockett and I'm the executive
24 director of the Alaska Miners Association. AMA is a trade
25 association. It represents all aspects of Alaska's mining

1 industry.

2 As you mentioned, this rule is massive and, I'll add,
3 inappropriate of an expansion. The reality here has been
4 discussed, so I'll move on.

5 Aside from the legality issues, AMA has spent
6 considerable amount of time in collaboration with our partners
7 in other states to examine the impacts of this proposed rule.
8 We found that no matter what geographic location with the
9 constituency reviewing the proposal, all had significant issue
10 with the proposed rule. Yes, what effects water permitting and
11 mining operations in Nevada is significantly different than
12 operations here in Alaska, but therein lies the complexity of
13 this proposal. The Clean Water Act is explicit in governing
14 how water is managed across the nation and, since its passage,
15 operations have understood the requirements of the act. This
16 proposal dramatically shifts that understanding by redefining
17 what a water actually is. Nevada, clearly a dry, arid region,
18 is seeing the possibility of regulation of manmade water bodies
19 at mining operations. Alaska, with water being one of our most
20 plentiful resources, is seeing the possibility of having to
21 regulate stormwater and diversion ditches.

22 You've asked me here today to discuss impacts of this
23 proposed rule on Alaska's miners. First, I'd like to be clear
24 and address our previous 2008 comments that were taken out of
25 context at your hearing on Monday. The Trustees for Alaska

1 indicated that we asked for clarity at that time, and they are
2 correct, but this is not it. The lack of clarity throughout
3 this document is actually our major concern. Definitions of
4 key terms and concepts like waters, flood plain, wetlands,
5 subsurface connection, et cetera, are completely ambiguous.
6 There is no room for confusion when it comes to permitting and
7 regulating mining projects in Alaska. We depend on, and we
8 believe the public does, too, a rigorous science-based
9 permitting system. Without explicit definition of all
10 technical and enforceable terms we are left with an
11 unpredictable and confusing proposed rule. We can only assume
12 that we will also be left with undefined terms that will be
13 subject to interpretation by the agencies.

14 To be perfectly frank, we fear this provides an
15 avenue for our federal agencies to take a large leap into
16 overreach and place unreasonable regulations on mining projects
17 simply because they can. Both agencies have hosted public
18 forums in which stakeholders have posed questions about the
19 rules and in the forums that I've participated in, the agencies
20 could not provide definitions or responded that the intent of
21 the proposed rule isn't actually what they meant in the
22 language, et cetera, and that we should put in our comments
23 what our concerns are and allow them to address it at that
24 time.

25 One of the instances I'm thinking of here is in July,

1 the National Mining Association hosted a meeting with Greg
2 Peck, he's the office -- head of the Office of Water in -- with
3 EPA, excuse me, that proposes this rule and we spent a lot of
4 time talking to him and asking him for clarification on these
5 things, in which he responded, no, that's not what we meant and
6 be sure to put that in your comments so we can address it. And
7 we specifically asked, those of us participating from Alaska,
8 for a lot more information because he didn't understand. At
9 that time, AMA in conjunction with RDC who represents all of
10 Alaska's resource industries, as well as all of Alaska's Native
11 corporations, sent him a letter inviting him to Alaska and
12 offered to hold some sort of public meeting with a lot of
13 stakeholders to bring him up to speed on how this would affect
14 Alaska. We didn't hear back. And in August, we asked Senator
15 Murkowski and then Senator Begich and Congressman Young and
16 they did remind Gregory Peck of that invitation, still never
17 heard back and did not get any engagement from him.

18 So I bring that up because you asked the previous
19 testifiers if it would have helped, and I think it would have
20 helped EPA to consult with Alaskans and come see for themselves
21 what they're proposing to do.

22 You, in talking with Senator Bishop and Mayor Brower,
23 touched on this, but EPA didn't consult with the state on this
24 proposed rule, nor did they consider a consult with the Alaska
25 Native landowners. The Native landowners were granted 44

1 million acres of land that Congress intended to be a partial
2 settlement of outstanding Native claims. The new definitions
3 will undoubtedly have the direct result of significantly
4 undermining the intent of Congress for these acres to be
5 available for responsible resource development, including
6 minerals, now owned in fee title by the corporations
7 established by the Alaska Native Claims Settlement Act.

8 Furthermore, the rule encroaches on traditional power of
9 the states to regulate land and water within our borders. It's
10 just as vital to ensure that states' rights are not being
11 violated. It's statutorily mandated and affirmed by our legal
12 system that regulation of Interior waters is a quintessential
13 state function.

14 Categorizing many new features as waters of the U.S.
15 and determining that all adjacent features also qualify will
16 consequently subject nearly every parcel of land to
17 jurisdiction under the act. In Alaska, 175 million acres are
18 classified as wetlands, thus 45 percent of our land base.
19 We're the only state in the union with extensive permafrost and
20 our coastline and tidally influenced waters exceed that of the
21 rest of the nation combined. Any regulation or rule addressing
22 wetland and coastal environments will have a potentially
23 greater effect in Alaska than anywhere else in the nation,
24 particularly if ill-conceived. The combination of these
25 Alaska-specific issues and those that all stakeholders must

1 manage means Alaska's miners have an enormous burden at stake.

2 AMA has recommended that the agencies table this
3 proposed rule and engage in meaningful dialogue with the
4 regulated community and with the states about more appropriate
5 and clear changes to existing regulations. Only then should
6 agencies replace the proposed rule with one that reflects those
7 consultations and is supported by science and case law. Doing
8 so will ensure responsible, legally defensible rule-making that
9 captures the intent of Congress and the Supreme Court and does
10 not place unnecessary burdens on Americans.

11 Thank you, Senator Sullivan.

12 CHAIRMAN SULLIVAN: Thank you, Ms. Crockett. Our
13 final witness today before we have some Q and A is Shannon
14 Carroll. He is an attorney and a commercial fisherman. Mr.
15 Carroll.

16 SHANNON CARROLL: Thank you. My name is Shannon
17 Carroll. I'm a commercial fisherman and a solo practitioner
18 attorney. I thank the committee for the opportunity to testify
19 today.

20 My comments and support for the proposed regulations
21 are based on my experience working in the commercial fishing
22 industries in Alaska, Washington, and Maine. And as someone
23 who has fished elsewhere in the country, I am proud to live and
24 work in a state that takes the health of its fisheries so
25 seriously. I also want to thank you, Senator Sullivan, for

1 supporting our industry during your time in office thus far.

2 In 1977, Congress re-examined the necessity of
3 wetland protections within Section 404 of the Clean Water Act.
4 Then, as now, commercial fisherman vocalized their support for
5 the provision, coining the phrase "no wetlands, no seafood." I
6 mention this phrase now because in the case of Alaska, it
7 cannot be more apropos. With over 43 percent of our state
8 covered in wetlands, it is not surprising that 76 percent of
9 our state's seafood harvest comes from wetland-dependent
10 fisheries each year. In addition to the state's iconic salmon
11 fisheries, wetlands are also critical to other keystone
12 fisheries such as halibut, pollack, herring, and crab.

13 I support the proposed rule because it clarifies
14 protections to waters upon which these fisheries rely, all
15 while reserving existing exemptions for farmers, ranchers, and
16 foresters.

17 In addition to promoting the health of our fisheries,
18 the proposed rule further protects the brand of Alaskan
19 seafood. As the Alaska Seafood Marketing Institute noted, the
20 perception of Alaskan stewardship is an immeasurable but
21 important component of both the seafood and visitor industries.
22 Millions of people eat Alaskan seafood for the same reason that
23 over one million visitors travel to the state each year,
24 because they value Alaska's pristine environment. By
25 categorically including wetlands, the proposed rule ensures

1 that Alaska's seafood sterling reputation will continue into
2 the future.

3 My support of healthy fisheries is not entirely out
4 of self-interest. Fishing means business and it means jobs in
5 Alaska. As Alaska's third largest industry, recent figures
6 place the combined value of Alaska seafood exports and domestic
7 sales at 6.4 billion dollars and when secondary economic output
8 is included, the Alaska fishing industry accounts for 15.7
9 billion dollars in economic production. That's over 94,000
10 jobs that are directly tied to the commercial fishing industry
11 and an estimated 6.4 billion dollars in labor wages. And,
12 importantly, most of these jobs stay in Alaska, with nearly one
13 in eight Alaskan workers earning at least a portion of their
14 income directly from the fishing industry.

15 Fishing is also the backbone of Alaska's coastal
16 communities employing 50 percent of private sector workers in
17 coastal towns. And perhaps equally important in places like
18 Kodiak, Petersburg, Dillingham, Cordova, commercial fishing is
19 not just the engine that drives the local economy, it's a means
20 of opportunity and a means of mobility. These are good jobs
21 that can provide high school-age kids with the opportunity to
22 pay for college, a down payment on a boat or a permit. These
23 are jobs that bestow self-worth amongst those in the industry
24 and further a tradition that one is proud to pass down to the
25 next generation. Most importantly, however, these are jobs

1 that are built on the back of a sustainable resource, meaning
2 that these jobs can, with proper management and self-restraint,
3 support local communities for generations to come.

4 And there will, no doubt, be costs associated with
5 the proposed rule, but it seems equitable that these costs at
6 least be initially borne by those seeking to benefit from the
7 proposed development. And just as before SWANCC and Rapanos,
8 development and resource extraction will continue to occur and
9 the economy will continue to grow. I will also add that having
10 commercial fished in Washington and Maine, two states that
11 previously held some of the world's largest salmon runs, that
12 there are much greater costs associated with the restoration of
13 a crippled fishery than there are with development fees and
14 mitigation banks. To give you an example, Washington state has
15 invested more than one billion dollars in public funds to its
16 hatchery program and continues to spend 60 million dollars a
17 year with little effect on its dwindling salmon fishery.

18 So, in closing, I urge Senator Sullivan and the
19 members of this committee to consider the wide-reaching and
20 economic and cultural benefits that this proposed rule will
21 have for the state. Thank you.

22 CHAIRMAN SULLIVAN: Thank you, Mr. Carroll, and thank
23 you for reminding us of the importance of the fishery --
24 fishing communities and industry to our state. You're spot-on
25 with regard to those comments.

1 We have about 20, 25 minutes until the hearing is
2 supposed to adjourn and what I thought we would do is conduct
3 some questions, follow-up questions. And the way I like to do
4 this is start with a question maybe of a certain witness, but I
5 want to encourage everybody who wants to weigh in on any
6 question to just be recognized. And certainly all of you can
7 feel free to weigh in on any of the questions that are posed,
8 even if they're initially posed for certain members of the
9 panel.

10 I guess I'll start. And, Ms. Taylor, you, as I
11 mentioned were very eloquent in terms of some of the things
12 that you laid out with regard to the views that some of our
13 Lower 48 citizens have with regard to Alaska. But,
14 importantly, and there's a lot of lawyers on the panel, so feel
15 free to weigh in, it's important to remind people what the
16 Clean Water Act tried to do with regard to states' abilities to
17 keep their waters clean.

18 So Section 101(b) of the Clean Water Act clearly
19 states, "It is the policy of Congress to recognize, preserve,
20 and protect the primary responsibilities and rights of the
21 states to prevent, reduce, and eliminate pollution, to plan the
22 development and use in restoration, preservation, and
23 enhancement of land and water resources, and to consult with
24 the EPA administrator in the exercise of his authority under
25 this chapter." His or her authority.

1 Do you think that the EPA is abiding by this
2 directive of Congress under the Clean Water Act as making sure
3 that the policy of the Congress is to protect, preserve, and
4 recognize the primary responsibility of states and other
5 entities to protect their waters? I'll start with you, Ms.
6 Taylor, and then anyone else who wants to jump in on that
7 issue. This is the law. This is the law.

8 SARA TAYLOR: No, absolutely not. Not legally or
9 even kind of holistically. If you look at this rule, it
10 presumes that where federal jurisdiction ends, complete and
11 utter lawlessness exists thereafter, which is incredibly
12 disrespectful to the states' management obligations and
13 traditional and primary powers, and authorities to manage and
14 protect its waters. But even on a legal basis, if you look at
15 other parts of the Clean Water Act, like the -- it gives the
16 states regulatory responsibilities, significant regulatory
17 responsibilities, and it gives opportunities to assume primacy
18 over certain permitting aspects for discharge, for dredge and
19 fill. But the primacy aspect exists, you know, where it's not
20 waters of the U.S. I'm generalizing, but where the federal
21 government has jurisdiction, it kind of keeps it, and then the
22 states kind of get a little primacy, you know, left -- it's
23 very complicated. Sorry. But the whole aspect of primacy
24 would mean nothing if there's nothing left.

25 So the Clean Water Act has created the system where

1 states can assume primacy, but we would be paying millions of
2 dollars to manage like a million acres. You know, so it
3 wouldn't -- it would read all of those provisions completely
4 out of the law to assume that this regulation can go forward as
5 written.

6 CHAIRMAN SULLIVAN: Any other comments on that
7 initial primacy directive from Congress to the EPA with regard
8 to the states' primacy -- primary responsibilities on these
9 issues? Sir?

10 BRUCE WRIGLEY: Yes. All the states have incentives
11 to encourage and improve their water resources and water --
12 and there are a lot of water success stories that are, in fact,
13 featured on EPA's web site. Those success stories came about
14 without the heavy hand of EPA regulating and permitting. The
15 success stories were due to voluntary conservation efforts
16 under the existing definitions of the Clean Water Act. The
17 presumption here is that without -- and I agree with Sara. The
18 presumption is that without this rule going forward, we are --
19 in fact, do not have any Clean Water Act in place. And in
20 reality, what we have is a Clean Water Act that is functioning
21 and still allows the states to assert primacy, to control and
22 to manage those waters within their jurisdiction.

23 CHAIRMAN SULLIVAN: Let me ask another question with
24 regard to the hearing today, the first panel, this panel, and
25 the hearing we held two days ago in Anchorage. Two themes come

1 out, I believe, and I believe that even though there's
2 differing opinions, obviously from the witnesses here on their
3 support or lack thereof of this rule, that there was agreement
4 in Anchorage on two key issues. One is that Alaska, under this
5 rule, given our size, given the huge amount of wetlands, given
6 the huge amount of clean water that we have is uniquely
7 impacted by this rule.

8 Is there general agreement among the witnesses on
9 that issue? Say, we had a witness that mentioned some
10 category, I think even a state park in our state, the Wood-
11 Tikchik, which is larger than certainly Rhode Island and some
12 other states. It's important for my fellow senators in the
13 Lower 48 to recognize this. But is there a general agreement
14 among the witnesses here that we are uniquely impacted one way
15 or the other with regard to this rule for all the reasons that
16 have been discussed by the witnesses today? I see everybody's
17 head nodding. Sue, is your head nodding?

18 SUE MAUGER: I guess it's just a choice of words.
19 We're impacted, but we're also protected.

20 CHAIRMAN SULLIVAN: Okay. And then I do want to get
21 into the issue of consultation. This process, I believe, has
22 been flawed, has been very rushed. I have raised this with the
23 EPA administrator. The issue of getting the Connectivity
24 Report that the rule is based upon out after the rule is
25 promulgated is beyond bizarre in terms of a process that's

1 supposed to work well.

2 Were any of your organizations or your members -- do
3 you think you had the proper consultation with the EPA? And,
4 you know, Ms. Crockett, you mentioned how hard you worked to
5 try to get an EPA administrator up here to try and understand
6 Alaska. Do you think that the consultation that is required by
7 the EPA and the whole host of federal statutes and regulations
8 was undertaken in a way that was sufficient, particularly to
9 allow Alaskans to give their voice to what is going to be
10 possibly a rule that can have enormous impact on our state?

11 DEANTHA CROCKETT: Absolutely not.

12 CHAIRMAN SULLIVAN: Yes, Mr. Williams?

13 AUSTIN WILLIAMS: Senator, if I may, TU has
14 participated throughout the public processes through
15 development of this proposed rule, and we had no special
16 treatment beyond what any other member of the public had. But
17 we found the EPA's procedures to be typical with what would be
18 expected of a rule-making process and felt that the opportunity
19 to participate was adequate for our purposes and believe that
20 the rule should go forward as currently proposed.

21 CHAIRMAN SULLIVAN: Okay. Let me turn to the impact
22 on small entities. I read the rule. I read the SBA's -- Obama
23 administration's SBA's concerns. President Wrigley, Ms.
24 Crockett, Mr. McKinnon, a lot of your members represent not
25 huge organizations, but placer miners, small farmers, small

1 contractors. Could you describe what you think is the impact
2 on particularly small businesses, small farmers that I think is
3 so often overlooked as really the backbone of our economy here
4 in Alaska and throughout the country.

5 DEANTHA CROCKETT: I'll go first. Thank you, Senator
6 Sullivan. As you mentioned, I'm the representative on the
7 panel here that represents placer miners and I can tell you
8 that my very small placer mining operations that I represent,
9 they're very scared. I do want to point out, at the end of
10 2014, AMA published a research survey we did with the McDowell
11 Group here in Alaska to figure out what the economic impact of
12 placer mining in the state of Alaska is. And we found out, and
13 what we term it is, is that it's our seventh large mine in
14 Alaska, meaning with all of the placer mines in Alaska, the job
15 numbers, the economic procurement numbers, the revenues to
16 local, state, and federal governments, is as much as one large
17 operating mine, yet these are really small projects and very
18 small parcels of acreage with real small amounts of employees.

19 I bring this up because a proposal like the waters of
20 the U.S. proposal, these guys have been operating on their
21 land, many of them, for three or four decades and they
22 understand it better than nobody else, and they understand
23 their permits and they understand specifically what every piece
24 of land on their property -- what permits go about it and how
25 to work it and how to manage it in responsibility to the

1 environment. So when a change like this comes along and they
2 have a water body that for -- whether it's the intent of the
3 EPA or not the intent of the EPA, because this rule is so
4 confusing, may become jurisdictional. Now they're entering
5 into the realm of what Mr. McKinnon described to you as
6 wetlands mitigation. So now they have a body of water that
7 they could be required to pay, like Mr. McKinnon said, it used
8 to be \$11,000 an acre, now it could be up to \$55,000 an acre
9 for a very small placer mining operation in which very often is
10 one or two, almost always no more than ten employees. Fifty-
11 five thousand dollars an acre for a small business like that
12 will absolutely put them out of business.

13 I don't think it's fair to say that we are claiming
14 the sky is falling. The sky will fall for an operation like
15 that if they have to start paying amounts on that, on a body of
16 water on their property that they've been managing and treating
17 and doing the right way for several decades.

18 CHAIRMAN SULLIVAN: Thank you. Mr. McKinnon?

19 JOHN MCKINNON: Senator Sullivan, I'll touch a little
20 bit more on the mitigation aspect of it. You know, it goes by
21 a number of different terms. Formally, it is mitigation and
22 the fees can be quite onerous, relative to the size of the
23 project. Mitigation dollars are intended to be spent to
24 restore or enhanced damaged or impacted wetlands within the
25 same region, preferably watershed of where the proposed

1 wetlands would be impacted. And it's very difficult to do in
2 Alaska because we have such vast undeveloped acreage. When you
3 want to develop in one particular area, there may be nothing
4 nearby to mitigate. We've got situations right now that I've
5 been told about where projects that are desired to go forward,
6 going through the permitting process cannot find mitigation
7 projects in order to offset. So we've got stalled projects,
8 according to the rule.

9 This guidance -- you know, we've got a difference of
10 opinion. Some say it isn't an expansion and some say it is. I
11 think, unfortunately, time will only tell as the expansion of
12 the Clean Water Act has happened. You know, we're adding more
13 acreage in there to potentially be mitigated and we're
14 potentially shutting down a tremendous amount of development,
15 of resource extraction, of jobs, of future. And I know Austin,
16 to the left of me, wants his son to grow up here and enjoy the
17 fish and game and I think everyone does want their children to
18 grow up and have a good employment, fish and game, and the
19 great outdoors, and no one wants to ruin that, but unless we
20 have an economy to build upon, that's not going to happen.

21 CHAIRMAN SULLIVAN: And who makes the -- you talked
22 about the increase in the mitigation per acreage from -- what
23 did you say, \$10,000 to about.....

24 JOHN McKINNON: Ten thousand -- again, it depends on
25 the value of the wetlands.

1 CHAIRMAN SULLIVAN: Right.

2 JOHN MCKINNON: There are high-value wetlands, lower-
3 value wetlands, but there is a sum attached to each one of
4 those. That comes from the Corps of Engineers through
5 consultation.

6 CHAIRMAN SULLIVAN: And they just do that -- I mean,
7 I've seen the numbers grow. They're just making -- they just
8 have the discretion to say, heh, here it's 10,000, over here
9 it's going to be 100,000. Good luck. I mean, is that what
10 happens?

11 JOHN MCKINNON: You know, they're the permitting
12 agency. You don't have much opportunity or leg to stand on and
13 argue against them. If they say the mitigation fee is \$55,000
14 an acre, it's either pay up if you want to construct or go
15 away.

16 CHAIRMAN SULLIVAN: Just from my perspective, I think
17 that's something that needs a lot more congressional oversight
18 because in my experience in Alaska, it seems completely random
19 and prohibitive in terms of some of the value that they've put
20 on some of these projects that essentially make them
21 uneconomic.

22 Mr. Wrigley, do you want to comment at all with
23 regard to the cost to the small farmer? I know that the
24 National Farm Bureau, in addition to the Alaska Farm Bureau, is
25 very concerned about this rule.

1 BRUCE WRIGLEY: Yes, thank you. Yeah, I think of my
2 operation. I've got a -- and for the other members of your
3 committee that probably have never been outside a city, I have
4 a field that's two miles long, about a quarter mile wide, so
5 basically the size of the Washington Mall. So if you can
6 picture that. Now, this field is not flat. It's got low
7 undulating terrain that bisects that field on a diagonal. So
8 every -- you've got high spots and then you've got low spots,
9 and then high spots and low spots.

10 During the wintertime, it obviously gets cold here,
11 the ground freezes, and then when summertime comes or
12 springtime comes, then the snow melts and it runs to the low
13 spots. So the top, the high ground is free of snow and thaws
14 out while the bottom ground is covered with snow and then ice
15 and water and until that frost goes out of the ground, that
16 area is wet. Now, because the ground is not flat, then this
17 water that has melted and accumulated in these low spots,
18 drifts toward the downstream side.

19 Two weeks later it's completely dry. I can farm it
20 up and down, up and down, up and down. According to this rule,
21 those low spots, and there's half a dozen of them in this
22 field, I could not farm those low spots even though they're
23 dry, I could not farm through those low spots unless I had a
24 dredge and fill permit because, while we talk about the
25 exemptions to agriculture that are within the Clean Water Act,

1 in order to apply those exemptions, you have to have been
2 farming that area continuously since 1977. Now, that area was
3 cleared for agriculture in 1979 and '80 and '81, and so none of
4 that area is even eligible for it. And the new ground that
5 gets broken would also require a dredge and fill permit.

6 So what is the cost of those permits? If you make a
7 mistake and don't get the right permit, then it's \$37,500 a
8 day. A day. And so how can a small farmer or small business
9 afford those kind of things? There's no way. And so what
10 you're going to have is large, large corporations who can
11 afford to hire somebody and chase these permits and make sure
12 that the reporting is done, because getting the permit is only
13 part of the process; you still have to report on it. And so
14 the permitting and chasing these permits and reporting on that
15 can be done by somebody who can do this for a large corporation
16 because he can afford to do that. And that's going to result
17 in -- 98 percent of our farmers in America are still family
18 farms. That's going to completely change the dynamics of those
19 numbers.

20 So I think that it's very clear that -- again, I --
21 and I state again, this rule has nothing to do with the Clean
22 Water Act. The Clean Water Act is in place. We're not
23 debating whether to drop it or throw it out or anything like
24 that. We're just talking about federal overreach because we're
25 not just talking about the waters that EPA controls, we're

1 talking about the land underneath those waters.

2 And so my field becomes land underneath those waters.
3 Even though there's no water on it, that comes under the
4 jurisdiction of the EPA now, or Army Corps.

5 CHAIRMAN SULLIVAN: And we know that if that were the
6 case, it would take some time just to be able to apply for and
7 get the permits.

8 BRUCE WRIGLEY: Yeah, and there is no schedule as far
9 as how long they can take to get those permits. You apply for
10 a permit. What if you had -- suddenly had a grasshopper
11 infestation and now you need to apply a pesticide to kill the
12 grasshoppers before they destroy your crop. How long does that
13 take to get that permit? Because over a wetland you would not
14 only need dredge and fill permits to do normal farming
15 activities, put a fence in, pull weeds, all of this stuff is
16 required for dredge and fill permits, but now you need a
17 discharge permit to be able to kill the grasshoppers. And how
18 long is that going to take? Your crop is gone before you can
19 get that permit process through.

20 CHAIRMAN SULLIVAN: Let me follow up on a -- oh, go
21 ahead, Mr. Carroll.

22 SHANNON CARROLL: I just want to add since we're
23 talking about small businesses that I think it's important for
24 the record to note that every fishing vessel is quite literally
25 a small business.

1 CHAIRMAN SULLIVAN: I couldn't agree more.

2 SHANNON CARROLL: They're all LLCs. And, you know,
3 mitigation serves a purpose and while I can't speak to the
4 difficulty of obtaining mitigation land in this state, I will
5 say that fishermen will suffer if wetlands are not covered
6 under this protection, and they will go out of business. I've
7 seen it other states where I've lived. Those coastal
8 communities shut down and people from out of state move in and
9 those coastal communities change a lot in character.

10 So these are small businesses that are adversely
11 affected by, you know, an effort to repeal this proposed rule.

12 CHAIRMAN SULLIVAN: Well, trust me, there is an EPA
13 reg right now that I'm trying to get excepted permanently.
14 You're probably quite aware of it - we're making some good
15 progress - that is directly impacting small businesses in the
16 form of our fishermen, which is the discharge permit required
17 for decks. Literally, hosing off the fish guts off your vessel
18 after you're fishing.

19 SHANNON CARROLL: Right.

20 CHAIRMAN SULLIVAN: Lunacy, in my view, that's
21 killing our small fishermen.

22 SHANNON CARROLL: Yeah, and I.....

23 CHAIRMAN SULLIVAN: And, by the way, we're making
24 very good progress on getting rid of that one hopefully
25 forever. So I certainly -- you make a very good point. Our

1 fishermen and women are classic -- the definition of small
2 businesses. They take risks, they create a great product,
3 which is Alaska seafood, and they often pass on their
4 businesses to their kids and grandkids. In my experience,
5 they're impacted by EPA regulations in a negative way almost
6 more than anybody, even our miners. So I certainly recognize
7 that. It's a good point.

8 Let me just ask an issue that's related that I --
9 it's actually one of the critical issues. We have a lot of
10 lawyers on the panel. There's a big debate here. Is this an
11 expansion of the EPA's jurisdiction under the Clean Water Act
12 or not? If it is, if it's a major expansion, it is clear, it
13 is clear, it's abundantly clear that the power to dramatically
14 expand the jurisdiction of the Clean Water Act does not reside
15 with the EPA. It resides with the Congress of the United
16 States.

17 I was, as Alaska's attorney general, part of a
18 lawsuit that went to the Supreme Court last year. It was a
19 similar case in many ways. It was the EPA's rule-making under
20 the Clean Air Act, and they had promulgated a rule that would
21 have negatively impacted the state of Alaska dramatically under
22 the Clean Air Act and the Supreme Court reprimanded the EPA and
23 essentially said, if you don't have -- if you're expanding the
24 jurisdiction of the Clean Air Act, you have to go to Congress
25 to get permission to do that. You can't do that through a

1 rule-making. And they had some very strong language with
2 regard to the EPA's overreach, saying it's a violation of the
3 separation of powers.

4 So let me get to that issue. It's the critical
5 issue. Right now the EPA is saying, no, no, no, this is not an
6 expansion; this is a limitation, this is a clarification. And
7 yet I think some of the testimony here believes that this is a
8 massive expansion of the jurisdiction of the Clean Water Act.

9 Mr. Wrigley, your testimony just now in terms of what
10 it would do to a family farm in Alaska certainly is powerful
11 evidence that this is an expansion. Would anyone like to
12 comment one way or the other? If it is an expansion, they have
13 to go to Congress to get that permission, period. Which is why
14 I think the administrator of the EPA is kind of playing a
15 little bit footloose and fancy free with her depiction of what
16 this rule would do by saying, no, it's a clarification, it's a
17 limitation on us. I personally don't believe that, but I'd
18 like any of the witnesses to opine either with regard to
19 whether they see this as an expansion or -- that's the critical
20 issue that we're looking at. Mr. Williams? Oh, I'm sorry, Ms.
21 Taylor, go ahead.

22 SARA TAYLOR: I'm going to say that it's such an
23 expansion if you look at what would be jurisdictional under the
24 rule that I don't even think Congress could authorize the
25 extent of that jurisdiction if they asked.

1 CHAIRMAN SULLIVAN: Meaning it would violate the
2 Constitution?

3 SARA TAYLOR: That's correct. Yes.

4 CHAIRMAN SULLIVAN: So you think it's not only
5 within the realm of the EPA's because they're a -- remember,
6 they're a federal agency that has to get its authority from
7 Congress. You think it would be beyond the power of Congress
8 even to expand it this far? What would -- that would
9 violate.....

10 SARA TAYLOR: That would violate the commerce clause
11 of the U.S. Constitution. It would be too attenuated from a
12 connection to interstate commerce because you'd be regulating
13 very solely intrastate things that are under the sovereign
14 power of the states.

15 CHAIRMAN SULLIVAN: Thank you. Anyone else? Mr.
16 Wrigley? Mr. Williams?

17 AUSTIN WILLIAMS: Yes, Mr. Chairman. I do not
18 believe that the proposed rule is an expansion of
19 jurisdictional reach of the Clean Water Act. In fact, as the
20 Congressional Research Service report on the proposed rule
21 shows, the proposed rule would bring into its scope 3 percent
22 more area than the 2008 guidance. But as compared to the reach
23 of the Clean Water Act prior to the Supreme Court cases in 2001
24 and '06, the proposed rule would affect 5 percent less wetlands
25 than were originally under jurisdiction of the Clean Water Act.

1 And I think it's important to also look at some of
2 the congressional record that we have relating to when the
3 Clean Water Act was initially passed and when the amendments of
4 1977 were considered. In particular -- and I highlighted and
5 referenced these in my written testimony, but if I may I'd like
6 to read a short quote from Republican Senator Baker from the
7 1977 deliberations. "A fundamental element of the water act
8 is broad jurisdiction over water for pollution control
9 purposes. It is important to understand that toxic substances
10 threaten the aquatic environment when discharged into small
11 streams or into major waterways. Similarly, pollutants are
12 available to degrade water and attendant biota when discharged
13 into marshes and swamps, both below and above the mean and
14 ordinary high water marks. The once seemingly separable types
15 of aquatic systems are, we now know, interrelated and
16 interdependent. We cannot expect to preserve the remaining
17 qualities of our water resources without providing appropriate
18 protection for the entire resource."

19 And I think it's also, when we're looking at this,
20 important to remember that in the Rapanos decision, Justice
21 Kennedy was very careful to describe the significant nexus
22 requirement that bounds the EPA's and the Corps' jurisdictional
23 reach on Clean Water Act issues, and to recognize that under
24 the 2008 guidance, on a case by case basis, the Corps and the
25 EPA applied the significant nexus test. What's new about the

1 proposed rule is that there is clarity to the significant nexus
2 test.

3 We no longer will have to go through the case by case
4 determination for waters that have always been under Clean
5 Water Act jurisdiction and now we only will have to mess with
6 the complication of a case by case jurisdictional determination
7 for those waters -- the other waters category.

8 And so this is not an expansion of jurisdiction and,
9 in fact, it's compared to application of the Clean Water Act
10 prior to SWANCC and Rapanos; it's restricted by 5 percent.

11 CHAIRMAN SULLIVAN: Okay. I appreciate that. I just
12 think for the record, the Rapanos/Kennedy opinion was a
13 concurring opinion, so there's not a five justice majority on
14 that test. And also for the record, the Congressional Research
15 Service report that you cite states, "Changes proposed in the
16 proposed rule would increase the assertive geographic scope of
17 Clean Water Act jurisdiction, in part, as a result of the
18 agencies expressly declaring some types of waters categorically
19 jurisdictional and also by application of new definitions which
20 give larger regulatory context to some types of waters such as
21 tributaries."

22 So in my view and, more importantly, in the view of
23 the Congressional Research Service, the rule does expand
24 jurisdiction. And with regard to the EPA, I think you give
25 them an inch, they're going to take a mile. And that's my

1 concern. Mr. Wrigley, do you have a.....

2 BRUCE WRIGLEY: Yes, just a couple of comments with
3 respect to clarity. Certainly, the rule provides clarity. If
4 you make everything that rain touches or water touches a
5 wetland, then there is clarity there. So from that standpoint,
6 the rule does provide clarity. Is it an expansion? I don't
7 think that there can be any dissent really, I mean, in all
8 honesty, that it does expand that. I look at my farm, my
9 field, if I have to leave those low spots or get a permit for
10 them because they're under Clean Water Act jurisdiction now,
11 where up until now they had not been, that's an expansion of
12 that authority. I'm not required to do it right now.

13 And as far as the significant nexus requirement, the
14 courts held that a significant nexus was required and EPA's
15 interpretation of that was that essentially all waters are
16 connected, therefore there is a significant nexus that exists.
17 In my field when that water goes downstream until it's stopped
18 by a road, which is in existence, and then the frost goes out
19 and the water melts away, that's a significant nexus; it
20 actually picks up underground at that point. But that would
21 require me to have that permit.

22 So I don't think that there's any way that you can
23 really state that it's not an expansion because that area is
24 not under Clean Water Act jurisdiction right now -- not under
25 EPA jurisdiction right now. And we have talked a number of

1 times about that the current amount of land under jurisdiction
2 at this time is less than before SWANCC. The fact of the
3 matter is that those Supreme Court decisions were in -- were
4 found to be there because they were already overstepping their
5 bounds. That's why they were restricted. That's why they
6 pulled back.

7 So we can't go back to pre-1977 and say, well, this
8 is what the traditional interpretation was, because that was
9 clarified by the court and now we are looking at not just the 3
10 percent increase -- that's what EPA is saying, that we're going
11 to increase that amount by 3 percent. In reality, we're
12 talking about millions and millions and millions of acres
13 across the country.

14 CHAIRMAN SULLIVAN: Well, even 3 percent in Alaska is
15 huge.

16 Let me turn to another final couple of questions. I
17 do want to -- you know, Mr. Carroll, Mr. Williams, Ms. Mauger,
18 you guys importantly, and I think it is important testimony,
19 you raise the -- you emphasize the importance of our fisheries
20 and I think everybody in the room can agree on the importance
21 of Alaska's fisheries. You know, you mentioned they're
22 actually -- the numbers I have seen, they're actually the
23 number one employer in state of Alaska, more than oil and gas.
24 So incredibly important for all of us, for our heritage, for
25 recreation, for livelihood.

1 But I want to ask you, can we make sure that we
2 protect our fisheries without the federal government being
3 involved in such a heavy-handed way? You know, the state
4 actually has a -- we're not perfect, certainly, but we have a
5 pretty good record certainly relative to some of the states
6 that you mentioned, Maine, Massachusetts, the sustainable
7 fisheries at the federal and the state level. Is this the kind
8 of federal intervention that we need to make sure our fisheries
9 stay healthy or can we do this with regard to our own
10 interests? In my view, we're better at this than anyone in
11 Washington, D.C. and you guys are very involved in this
12 important part of our livelihood and life in Alaska.

13 SUE MAUGER: Thank you for the question. With our
14 current state government budget, I think the answer has to be
15 no; that Alaska cannot protect its waterways sufficiently and
16 that just as the federal government pays for the vast majority
17 of our infrastructure and things that make living here
18 possible, I think we need the benefit of being part of the
19 larger country and taking advantage of those resources. And I
20 think personally that that is what the EPA is bringing to us,
21 is bringing.....

22 CHAIRMAN SULLIVAN: But remember the federal
23 government is not paying for this. We're going to pay for
24 this, this regulation. I don't see the EPA doing anything in
25 terms of additional expenditures. They're just going to

1 promulgate a reg that we pay for. So, I don't see the
2 connection to federal spending in the rule.

3 SUE MAUGER: Presently, the vast majority of efforts
4 to monitor and research our water bodies in the state is from
5 Clean Water Act money that is passed through to the states.
6 The Alaska Clean Water Action program is one of the few pots of
7 money available for monitoring of water quality issues. And in
8 many cases, there are infractions or lack of permits and
9 discharges that can only be identified through the efforts of
10 monitoring and the federal government is paying for that kind
11 of oversight on what is actually getting into our water bodies
12 through the Nonpoint Source Program.

13 And so I do think that the federal government is an
14 important player in ensuring that those permits are being
15 properly instituted and that there are plenty of examples where
16 discharges are happening and they're only being identified by
17 people monitoring. So I do think the federal government is
18 playing an important piece in keeping the waters clean.

19 CHAIRMAN SULLIVAN: Okay. Mr. Williams?

20 AUSTIN WILLIAMS: I think some of the points that Ms.
21 Mauger raised, especially regarding the difficulty -- the
22 difficult financial status of our state budget at the moment,
23 really need to be given our consideration here. One of the
24 initiatives that Trout Unlimited has throughout many parts of
25 the country, but that is particularly relevant in Alaska, is

1 many of our members will go out and document the presence and
2 absence of anadromous fishes and nominate waters to the state's
3 anadromous waters catalog for -- you know, that would then
4 potentially benefit from our anadromous fish protection laws.

5 Most recently we submitted a handful of nominations
6 as we do most years and these are nominations that include
7 scientific documentation of the presence and absence of
8 anadromous fishes, typically coho salmon, high in the watershed
9 for spawning, rearing, or migration that have, in the past,
10 been readily accepted as viable nominations. This past year,
11 the Alaska Fish and Game denied our nominations on the grounds
12 that they did not have the funds to process our nomination
13 requests. These are waters that are not currently in the
14 Anadromous Waters Catalog, but that nonetheless have coho
15 salmon spawning, rearing, or migrating through. These are
16 small headwater areas, areas that don't necessarily even flow
17 continuously year-round, but nonetheless have coho juvenile
18 salmon in them.

19 CHAIRMAN SULLIVAN: That are not currently covered by
20 the Clean Water Act?

21 AUSTIN WILLIAMS: These are areas that are not
22 currently protected by our state's anadromous waters laws. If
23 we did not have protections like those afforded by the Clean
24 Water Act and we were relying exclusively on state protections,
25 these are areas that would not be protected under state law,

1 but that nonetheless contribute significantly to the production
2 of salmon that support, as you, yourself, indicated, the
3 largest employer in our state.

4 So if we want to repeal Clean Water Act
5 protection.....

6 CHAIRMAN SULLIVAN: Nobody is talking about doing
7 that, so that's not.....

8 AUSTIN WILLIAMS: If.....

9 CHAIRMAN SULLIVAN: Let's not go there.

10 AUSTIN WILLIAMS: If we.....

11 CHAIRMAN SULLIVAN: That's an area that's a red
12 herring. Nobody is talking about that.

13 AUSTIN WILLIAMS: If we are talking about the value
14 or the potential for the state to provide the same clean water
15 protective services that the EPA, under the Clean Water Act, or
16 the Corps under the Clean Water Act do, I think there's a real
17 problem from a financial standpoint with our state being able
18 to fund those programs in a way that meaningfully protects our
19 fisheries.

20 CHAIRMAN SULLIVAN: I just worry that the way this is
21 being discussed, it's going to make farmers like, you know, Mr.
22 Wrigley, be the one holding the financial costs, because it
23 isn't -- Mr. McKinnon?

24 JOHN MCKINNON: Along the same lines, you know, I
25 remember statehood, I remember before statehood. I'm probably

1 one of the oldest ones up on this panel. You know, fisheries
2 under federal protection and federal management was on a
3 downhill trajectory and it didn't improve until the state took
4 management over and that was in the late sixties. A number of
5 programs the state put in place are the result -- resulted in
6 the vibrant fisheries we have today, and at the same time
7 development occurred in Alaska, absent the Clean Water Act.
8 And fisheries and development can co-exist, they do co-exist,
9 and the development, you know, is one of those things that
10 allows the fisheries to be here because without that
11 development we wouldn't have shoreside facilities, roads to get
12 to the boat launch facilities and everything else. They have
13 to co-exist and they do co-exist.

14 CHAIRMAN SULLIVAN: Listen, I want to end with one
15 final -- you've been very patient. I appreciate it. We've run
16 over our time.

17 Ms. Taylor, your opening statement I thought was very
18 powerful in terms of this idea that -- and I'll let you
19 articulate it because you'll do so way better than I would.
20 But in some people minds, whether it's senators from the East
21 Coast or Outside environmental groups, that Alaska is some kind
22 of snow globe, you know, some kind of dream destination that
23 they can feel great about particularly given that some of these
24 states with some of their policies over the years certainly
25 have not done a good job of keeping their water as clean as

1 ours or their air as clean as ours, or their environment as
2 pristine as ours. So once they've kind of ruined -- well, I
3 shouldn't go that far, but they look at us as saying we have to
4 preserve Alaska and nothing can happen. The 10-02 area of
5 ANWR, several of my colleagues on the other side of the aisle
6 have written the Secretary of Interior saying, keep it up, lock
7 it up. That makes them feel good. My view is it hurts us. It
8 hurts our future. It hurts my kids' future. It hurts your
9 kids' future.

10 And can you comment about that, because it is
11 something that I see, but you stated it so well and I think
12 it's very important for our fellow Alaskans to hear about that.
13 And I'd just like to conclude the hearing on kind of what you
14 started with in regard to those issues. We all certainly want
15 the cleanest water, the cleanest environment. We live here.
16 We care more about it than the EPA administrator does, I
17 guarantee you. But there is this notion to keep us down so
18 they can feel good.

19 SARA TAYLOR: Yeah, you put it very well. There is a
20 sense that, you know, it always comes from people who don't
21 really understand how we are able to both thrive, survive; that
22 there's a balancing act that we have to do as Alaskans because
23 Alaska, it's not a place where we can just massively grow our
24 own food, it's not a place where -- we can hunt and we can
25 fish, but so long as somebody lets us. You know, there is -- I

1 was talking to -- actually, Mayor Brower put it really well,
2 too. I was talking to a group of people last weekend and I
3 said, you know, if everybody Outside wants us to go back to
4 living in sod houses and heat it with whale oil and trying to
5 kill our own food and feed our families, we couldn't do it
6 because there's not a single way that any of that could happen
7 anymore because of federal permitting. We couldn't mine the
8 sod, we couldn't actually kill the whales, we couldn't go and,
9 you know, kill enough to feed a family to do it. So we're
10 really kind of stuck in a situation where, and this is how I
11 usually refer to it, we're kind of being idealized into
12 powerlessness.

13 People have this ideation and they want to preserve
14 Alaska, that they fail to recognize the fact that people live
15 here and that we live in these communities. And the Alaska
16 National Interest Lands Conservation Act was a really great
17 opportunity where everybody got to kind of take a minute and
18 realize this is what -- this how we'll divide up Alaskans, but
19 we will protect their lifestyle. And you don't see that
20 anymore. You don't see that anymore at all.

21 CHAIRMAN SULLIVAN: Well, listen, I want to thank all
22 of you. This is a very informative panel. I want to thank
23 those of you who attended the hearing today. Please, if you'd
24 like to submit comments to the committee, we will keep the
25 record open for the next ten days to receive any other comments

1 in addition to the comments from our two panels. And I really
2 appreciate your interest in this important issue, and we look
3 forward to hearing more as we move forward on this matter.

4 Thank you very much. The hearing is hereby
5 adjourned.

6 MEETING ADJOURNED

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C E R T I F I C A T E

UNITED STATES OF AMERICA)
) ss
STATE OF ALASKA)

I, Elizabeth D'Amour, Notary Public in and for the State of Alaska, residing at Fairbanks, Alaska, and court reporter for Liz D'Amour & Associates, Inc., do hereby certify:

THAT the annexed and foregoing transcript of proceedings in the SENATE EPW SUBCOMMITTEE ON FISHERIES, WATER, and WILDLIFE FIELD HEARINGS ENTITLED "IMPACTS OF THE PROPOSED WATERS OF THE UNITED STATES RULE ON STATE AND LOCAL GOVERNMENTS AND STAKEHOLDERS was taken before me on the 8th day of April, 2015 beginning at the hour of 9:00 o'clock a.m., at the Fairbanks North Star Borough Mona Lisa Drexler Assembly Chambers, 809 Pioneer Road, Fairbanks, Alaska;

THAT this transcript of proceedings, as heretofore annexed, is a true and correct transcription of the testimony of participants, taken by me and thereafter transcribed by me.

THAT the original transcript of this transcript of proceedings has been lodged in a sealed envelope with the agency requesting transcription of same, that being U.S. Senator Dan Sullivan, Chair of the Subcommittee on Fisheries, Wildlife, and Waters of the Environment and Public Works Committee, Dirksen Senate Building, SDB-40A, Washington, D.C., 20515.

I am not a relative, employee, attorney, nor counsel of any of the parties, nor am I financially interested in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 17th day of April, 2015.

S E A L _____
Notary Public in and for Alaska
My Commission Expires: 12/28/2018