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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

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

September 3, 2021

The Honorable Radhika Fox
Assistant Administrator for the Office of Water
Environmental Protection Agency
1200 Pennsylvania Avenue, Northwest
Washington, DC 20460

Mr. Jaime A. Pinkham
Assistant Secretary of the Army for Civil Works (Acting)
Department of the Army
108 Army Pentagon
Washington, D.C 20310

via email: OW-Docket@epa.gov

Re: Request for recommendations for defining “waters of the United States” under the Clean Water Act, Docket ID No. EPA-HQ-OW-2021-0328

Dear Assistant Administrator Fox and Acting Assistant Secretary Pinkham:

We are encouraged by your agencies’ June 9 announcement beginning the process to repeal the Trump administration’s Navigable Waters Protection Rule (NWPR) and to replace it with a robust definition of “waters of the United States.”

We note the decision by the U.S. District Court for the District of Arizona on August 30, 2021 vacating and remanding the NWPR. In light of your administration’s strong concerns about the adverse impacts of the Trump rule, we urge you, nonetheless, to proceed to remove the NWPR administratively through a formal notice and comment rulemaking on the basis of its fundamental policy failings.

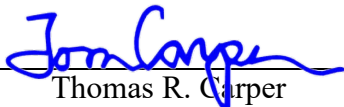
We also urge the agencies to narrowly tailor their removal of the NWPR in order to restore safeguards for those waters that have been protected since the 1980s.

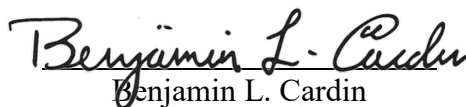
By proceeding quickly and simply with the elimination of the Trump rule, the agencies can focus their efforts on developing a new substantive definition of the term. In testimony before the Senate Environment and Public Works Committee, Assistant Administrator Fox noted that properly defining “waters of the United States” is “one of the most foundational components” of your agencies’ collective work to protect the nation’s waters.¹ We recognize that the continued success of the Clean Water Act requires a clear, scientifically sound definition of that term, one that protects the categories of waters that affect the physical, chemical, and biological integrity of the nation’s waters, consistent with the Act’s objective.


As some of us stated in an *amicus* brief opposing the NWPR, “the Clean Water Act envisions agency decisions grounded in water-quality science and oriented toward cleaning the nation’s waters.”² We thank you for working to restore strong, science-based federal clean water protections, and for working toward effectuating the purposes of the Clean Water Act.


We look forward to further opportunities to engage with you and support you as you move promptly to remove the NWPR, and then establish lawful and durable rules to protect the “waters of the United States.”

Sincerely,


Thomas R. Carper
Chairman

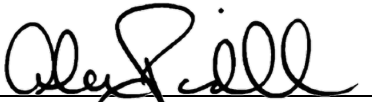

Benjamin L. Cardin
United States Senator


Ed Markey
United States Senator



Jeffrey A. Merkley
United States Senator

¹ U.S. Senate, Committee on Environment and Public Works, Testimony of Radhika Fox, Nominee at 39 (May 12, 2021), https://www.epw.senate.gov/public/_cache/files/5/1/512163b7-ef4e-4ff3-9a51-c6057bb1b5a2/A08DC241A8A4969F584785B17E1A7706.spw-05122021---nominations.pdf.

² Amicus Brief of Members of Congress in Support of Plaintiffs’ Motion for Summary Judgment, Doc. No. 50-1 at 4, *Conservation Law Fdn. v. U.S. EPA*, No. 20-cv-10820-DPW (D. Mass. Dec. 15, 2020).



Alex Padilla
United States Senator



Bernard Sanders
United States Senator