Congress of the United States

Washington, DC 20510

April 7, 2021

President Joseph R. Biden, Jr.
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20500

Dear Mr. President:

We write in regard to a matter critical to our Nation's economic recovery from the COVID-19 pandemic: the U.S. Army Corps of Engineers' (the Corps) authority to issue nationwide general permits for activities with limited environmental impact. This authority is integral to advancing our shared goal of improving America's infrastructure and creating jobs. Therefore, we request that you maintain these nationwide permits as currently issued, which ensure environmental protection while increasing the efficiency and effectiveness of permitting.

Pursuant to Section 404(e) of the Clean Water Act, the Corps may issue nationwide permits for a period of up to five years for categories of activities that result in the discharge of dredged or fill material in waters of the United States at a given site, provided that said activities are "similar in nature" and result in "minimal adverse environmental effects" or a "minimal cumulative adverse effect."[1] This authority has been exercised by the Corps under both Democratic and Republican administrations since the mid-1970s, with demonstrated success in moving projects forward in a timely manner while also protecting the environment.

According to data collected by the Corps, the average processing time for a nationwide permit once an application is complete is 40 days, whereas for an individual permit it is an average of 217 days.[2] This difference of almost six months is significant in terms of the life of a project as we work to quickly deliver on improved infrastructure for the American people. It is difficult to "build back better" if we are unable to build at all.

Contrary to assertions otherwise, the issuance of general permits, such as the nationwide permits, still provides robust environmental protections and ample opportunity for public input on projects. Even though the activities covered are by definition limited in their impacts on the environment, the Corps conducts the "required cumulative effects analyses"[3] for each nationwide permit issued. Endangered species are also protected because permit applicants are required to notify the Corps of any proposed activity that might affect listed species or critical habitat, and remain subject to oversight by the U.S. Fish and Wildlife Service under the Endangered Species Act. Furthermore, in recognition of our Nation's diverse water resources, the Corps' divisions

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[1] 33 U.S.C. § 1344.
[2] U.S. Congressional Research Service, *The Army Corps of Engineers' Nationwide Permits Program: Issues and Regulatory Developments*, No. 97-223 (Updated 2017).
[3] 86 Fed. Reg. 2744 (January 13, 2021).

and districts may impose additional conditions on nationwide permits to address regional and project-specific concerns. This is all in addition to other federal and state protections and regulatory requirements, none of which are obviated by the nationwide permits.

Bipartisan proposals to invest in our infrastructure will play an integral role in our Nation's recovery from the pandemic. Revocation of the Corps' duly issued nationwide permits in pursuit of nominal environmental benefits would hurt our chances at a strong recovery, however, and hinder needed improvements to our Nation's infrastructure.

It is critically important that we continue to pursue policies that responsibly protect our environment and support economic growth and job creation. Thank you for your consideration of our request.

Sincerely,

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

Sam Graves
Member of Congress
Ranking Member
Committee on Transportation
and Infrastructure

cc: Mr. Taylor N. Ferrell, Acting Assistant Secretary of the Army (Civil Works)

Lt. Gen. Scott A. Spellmon, Chief of Engineers and Commanding General of the U.S. Army Corps of Engineers