

March 29, 2022

The Honorable Roy Blunt
United States Senate
260 Russell Senate Office Building
Washington D.C. 20510

Dear Senator Blunt:

We are writing in regard to the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) (together the Agencies) Proposed Rule entitled “Revised Definition of the Waters of the United States” (Proposed Rule) and our numerous concerns if the Proposed Rule and subsequent “Step 2” rule are to proceed.

As you know, the Proposed Rule replaces the Navigable Waters Protection Rule (NWPR), which was only in place for 14 months, yet, the NWPR is blamed for “significant environmental degradation” by the Agencies. In contrast, we believe the NWPR provided a solid regulatory and legal framework to protect water quality through the Clean Water Act (CWA) and would like it to be upheld and the Proposed Rule halted, especially as the U.S. Supreme Court will hear the CWA case *Sackett v. Environmental Protection Agency*.

The definition of WOTUS is critically important to our collective organizations and members, which is why we have participated in numerous rulemaking proceedings on this issue for decades. Simply put, many features on lands are only wet when it rains, such as ephemeral streams, ditches and low spots and may be miles from the nearest “navigable” water.

Expanding the definition to cover these features means that any activity on this type of land that moves dirt or applies any product to that land could be subject to regulation under the Proposed Rule. That said, it’s hard to square that reality with the Agencies’ assertion that the Proposed Rule “by itself imposes no costs or benefits.” The tens of thousands of additional costs for federal permitting for ordinary activities is beyond the means of many of our members.

We have significant concerns with the Agencies’ proposal to implement “a known and familiar framework.” The Proposed Rule codifies both the “relatively permanent” and “significant nexus” approaches in a radical expansion of the Agencies’ jurisdiction as compared to the NWPR, as well as the pre-2015 regulatory regime that the Agencies are currently implementing. The process to arrive at a jurisdictional determination is arduous and costly, and one that could take between six months and a year to receive. If an affirmative jurisdictional determination occurs, the cost of consultants, engineers, permit applications, mitigation and compliance costs will make the process unbearable for most. The Agencies’ proposed approach of case-by-case analysis will surely threaten to create an unequal playing field, where identical features might be viewed as jurisdictional or not.

This is not a durable, clear rule. Instead, the Agencies are creating a system of arbitrary decision-making and one that will surely lead to regulatory fatigue, frustration and further litigation. The constant shifting of goal posts from the Agencies has been a nightmare, causing our members difficulty in planning for the future because of regulatory uncertainty, negatively

The Honorable Roy Blunt
March 29, 2022
Page Two

impacting everything from the building of homes and businesses, farms and ranches, municipal projects, sourcing of aggregates, to construction and maintenance of bridges and thousands of miles of roads across our state.

We stand firm that any revision to WOTUS must not add additional regulatory burden, risk or cost onto the backs of our members, both now and in the future. Further, Congress should act to provide clarity to the CWA to eliminate this decades-old regulatory back-and-forth. Our members must be able to answer quickly, efficiently and accurately what should be a relatively straightforward question as to what features are and are not a jurisdictional water, without the need to hire engineers, lawyers and federal agency staff.

We sincerely appreciate your past championing of our concerns, and we ask that you lead a dear colleague on WOTUS to the Agencies to complement a recent letter led by Congressman Graves in order to highlight the disastrous effects the new WOTUS rule will have on the members and industries our organizations represent.

Thank you for your assistance. Should you or your staff have any questions or comments, please contact Dan Engemann, Missouri Farm Bureau Director of Regulatory Affairs at (573) 893-1409 or dan.engemann@mofb.org.

Respectfully,

AGC of Missouri
Associated Industries of Missouri
Association of Missouri Electric
Cooperatives
Coalition to Protect the Missouri River
Home Builders Association of Central
Missouri
Home Builders Association of Greater
Kansas City
Home Builders Association of Greater
Springfield
Home Builders Association of St. Louis and
Eastern Missouri
MFA Incorporated
Mississippi Valley Flood Control
Association
Missouri Agribusiness Association
Missouri Asphalt Pavement Association
Missouri Association of Counties
Missouri Cattlemen's Association

Missouri Chamber of Commerce
Missouri Concrete Association
Missouri Corn Growers Association
Missouri Dairy
Missouri Dump Truckers Association
Missouri Farm Bureau
Missouri Forest Products Association
Missouri Land Improvement Contractors
Association
Missouri Levee & Drainage District
Association
Missouri Limestone Producers Association
Missouri Municipal League
Missouri National Federation of
Independent Business
Missouri Pork Association
Missouri Soybean Association
Missouri Trucking Association
MOARC
Neighbors of the Mississippi

The Honorable Roy Blunt
March 29, 2022
Page Three

REGFORM
Upper Mississippi, Illinois and Missouri
Rivers Association