



February 7, 2023

The Honorable David Rouzer
Chairman
U.S. House Committee on Transportation
and Infrastructure Subcommittee on Water
Resources and Environment

Dear Chairman Rouzer and Members of the U.S. House Committee on Transportation and Infrastructure Subcommittee on Water Resources and Environment:

On behalf of Associated Builders and Contractors, a national construction industry trade association with 68 chapters representing more than 21,000 members, I write to comment on the U.S. House Committee on Transportation and Infrastructure Subcommittee on Water Resources and Environment Hearing, “Stakeholder Perspectives on Impacts of the Biden Administration’s Water of the United States Rule.”

ABC applauds the subcommittee for calling this important hearing to gather stakeholder perspectives. ABC is also appreciative of Chairmen Graves and Rouzer’s [joint resolution](#) of disapproval on the Biden administration’s burdensome WOTUS rule under the Congressional Review Act and urges the U.S. House of Representatives to swiftly consider the legislation.

As a member of the [Waters Advocacy Coalition](#), ABC filed [comments](#) on the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers’ [proposed rule](#) to revise the definition of “waters of the United States” applicable to all Clean Water Act programs. On Jan. 18, 2023, the agencies released a [final rule](#), effective March 20, that unfortunately entirely disregarded the concerns expressed by ABC and the WAC coalition in the comment letter.

The rule would repeal [the Trump administration’s Navigable Waters Protection Rule](#) and codify a definition that reflects the pre-2015 regulatory regime that the agencies are currently implementing. Raising numerous important concerns, the coalition urged the agencies to withdraw the proposed rule, reconsider the rule while addressing the coalition’s concerns and reengaging stakeholders and repropose a rule that adheres to the CWA and relevant U.S. Supreme Court precedent. Instead, [ABC supports maintaining](#) the NWPR’s concise definition of WOTUS under the CWA so contractors have the information they need to comply with the law while also serving as good stewards of the environment.

ABC and the WAC have consistently urged the agencies to define WOTUS in a way that:

- Gives appropriate weight to the explicit statutory policy to recognize, preserve and protect the states’ traditional and primary authority over land and water use;
- Adheres to the full Supreme Court precedent on the definition of WOTUS under the CWA;
- Gives effect to the term “navigable” in the statutory text;
- Draws clear lines between federal and state or tribal jurisdiction so that regulators and regulated entities can easily identify which features are subject to federal CWA jurisdiction; and
- Accounts for science but recognizes that the statutory text ultimately dictates jurisdiction.

ABC and the WAC continue to believe that the NWPR is an appropriate foundation for a durable and defensible rule. Rather than wiping out that rule in its entirety and replacing it with the flawed framework

that prompted stakeholders to demand more clarity and certainty, the agencies should focus their efforts on revisions to the NWPR or related implementation guidance.

Under the 2015 WOTUS rule, the EPA and the Corps gave themselves unprecedented permitting and enforcement authority over land-use decisions that Congress did not authorize and had previously been under state or local jurisdiction. Under that rule, construction companies needed to rethink conventional building practices near any wet area, and property owners could face heavy fines for using their own ponds and creeks. Further, critical infrastructure projects could be slowed as a result of additional permitting requirements that involve the EPA and the Corps, when in the past they may have only included city, county or state governments.

Further, as Congress continues to debate permitting reform efforts, ABC urges that the codification of the 2020 NWPR remains a priority. Sen. Shelley Capito's, R-W.Va., [ABC-supported](#) legislation, The START Act, would codify the 2020 NWPR and the Trump administration's Section 401 Certification Rule under the CWA to prevent state actions that unreasonably block energy projects, which ABC would welcome.

Finally, because [the Supreme Court has decided to hear the case of Sackett v. Environmental Protection Agency](#), which challenges EPA's overreach of its CWA jurisdiction, there is no sense in rushing through a rulemaking proceeding that codifies a standard that the Supreme Court could change or foreclose altogether.

ABC and its members are committed to building our nation's infrastructure projects with the highest standards of safety and quality. ABC members stand ready for the opportunity to build and maintain America's energy infrastructure to the benefit of the communities that it will serve.

Sincerely,



Kristen Swearingen
Vice President, Legislative & Political Affairs

CC: Members of the U.S. House Committee on Transportation and Infrastructure Subcommittee on Water Resources and Environment: