Dear Administrator Regan and Acting Assistant Secretary Pinkham:

We write to you today greatly dismayed by the Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers’ decision to remand the 2020 Navigable Waters Protection Rule (NWPR), which finally provided certainty and relief for rural America. We are also discouraged by your recent actions taken to reopen the definition of the “waters of the United States.” These steps demonstrate a misguided and out of touch approach toward addressing the needs of local communities across the country. The NWPR was an immense step forward in rectifying the regulatory overreach that was attempted in 2015, and your agencies’ vague announcement and opaque process fails to ensure our communities will not – once again – be subject to further uncertainty and government overreach.

The 2015 Waters of the United States rule (WOTUS) promulgated by then-President Obama and Vice President Biden was a drastic land and water grab that sought to give unprecedented power to unelected bureaucrats in Washington, D.C. at the expense of farmers, ranchers, small business owners, and the American people. Under this rule, the EPA could fine farmers and ranchers thousands of dollars if they simply rotated from one crop to another on their own land without first gaining permission from the federal government. In an unprecedented expansion of the definition of “waters of the United States,” it asserted categorical jurisdiction over typically-dry channels and a variety of intrastate, non-navigable, isolated waters based on a faulty new interpretation of the term “significant nexus.”. This radical escalation of federal agencies’ nearly unlimited authority to regulate any pond, puddle, ditch, stream, or creek threatened the very way of life of our constituents – and any attempt to revert to similarly restrictive policies that undermine existing stewardship efforts will only do the same.

Our farmers, ranchers, landowners, and small businesses have demonstrated a deep commitment to stewarding our waterways and lands, which is why this radical overreach was met with bipartisan opposition and concern that was even echoed by Administrator Regan during his confirmation process. During both a U.S. House of Representatives hearing and Senate confirmation hearing, Administrator Regan stated respectively, “We don’t have any intention of going back to the original Obama WOTUS,” and “We are not going to pull a rule off the shelf, especially after we’ve learned so much over the years.” Unfortunately, your agencies’ actions only point to seeking to do exactly that – dusting off the Obama-Biden WOTUS rule to drastically expand the jurisdiction of the federal government over non-navigable waters, leaving our nation’s farmers, ranchers, and rural communities in significant legal uncertainty.
In addition to earning bipartisan opposition in Congress, the Obama-Biden WOTUS rule was challenged by 31 Democratic and Republican Attorney Generals who declared the rule exceeded the statutory authority of the Clean Water Act (CWA) and violated the Administrative Procedure Act. They were right and two federal courts granted preliminary injunctions on the implementation of the rule, with one court declaring it violated both laws.

In response to this unconstitutional and reckless failure of federal policy, the NWPR was promulgated in partnership with states and local communities to provide clear, commonsense guidance defining what waters are subject to federal jurisdiction under the CWA. Through this rule, the Trump Administration eliminated the precarious “significant nexus” standard set by the Obama-Biden WOTUS rule which was at the root of the confusion and uncertainty that plagued this poor policy. By clearly and directly identifying “waters of the United States” in six categories and making further clarifications of the definitions of tributaries and adjacent wetlands, the NWPR has set a comprehensible and successful standard for federal water policy while continuing to provide protection for our waterways and environment. Moreover, it is currently in effect in all 50 states, and all unwarranted attempts to force injunctions on the rule have been struck down by the courts – something that could never be said of the Obama-Biden WOTUS rule due to its illegality.

Confusion, regulatory uncertainty, and litigation have surrounded the scope of federal authority of our nation’s navigable waterways for decades. With your recent actions, the Biden Administration is trampling upon this progress and further jeopardizing rural Americans’ confidence that this Administration is working in their best interest. Therefore, we request answers to the attached questions by July 30, 2021.

Rural communities in the West and across the country are dedicated to clean water and do not deserve to be punished by far-reaching, burdensome federal regulations. We look forward to your thorough and prompt responses to these important questions.

Sincerely,

Dan Newhouse
Member of Congress

Steve Daines
United States Senator

Mariannette Miller-Meeks, M.D.
Member of Congress

Joni Ernst
United States Senator
Frank Lucas
Member of Congress

Earl L. “Buddy” Carter
Member of Congress

August Pfluger
Member of Congress

Doug Lamborn
Member of Congress

Yvette Herrell
Member of Congress

Debbie Lesko
Member of Congress

Lauren Boebert
Member of Congress

Jason Smith
Member of Congress

Tom Emmer
Member of Congress

Bob Gibbs
Member of Congress

Cliff Bentz
Member of Congress

Mark Amodei
Member of Congress

Darrell Issa
Member of Congress

Matthew Rosendale, Sr.
Member of Congress

Burgess Owens
Member of Congress

Michelle Fischbach
Member of Congress
1) What is the EPA and USACE’s timeline for promulgating revisions to the NWPR?
   a. Please include any plans for future coordination with stakeholders.
   b. Please also include any deadlines set for the Agency to publish proposed
      rulemaking redefining “waters of the United States.”

2) Which States and stakeholder groups did EPA, USACE, or other members of the Biden
   Administration consult with before determining to replace the Navigable Waters
   Protection Rule?

3) What is the intended scope for the planned replacement of the Navigable Waters
   Protection Rule?
   a. Please provide any details on the plans, if any, to include “significant nexus;
      redefine “tributaries,” or to amend “navigable” when replacing the rule.

4) Administrator Regan, you have conceded the 2015 Obama-Biden WOTUS rule was also
   problematic. What issues did you see with the former rule and what will you do to ensure
   mistakes are not repeated?

5) EPA and USACE staff pointed to “ongoing environmental harm” to justify revising the
   NWPR. Please provide our offices with further information and examples of the alleged
   environmental harm and damage as a result of the NWPR.
   a. Please include what baseline and units of measurement were used to define and
      determine “significant environmental damage” in the 333 cases your staff
      identified.
   b. Staff also justified this decision by citing implementation issues in the Southwest.
      As you know, implementation issues can easily be solved through the issuance of
      guidance documents, as opposed to a full replacement of the Navigable Waters
      Protection Rule. Will you commit to analyzing whether these implementation
      issues can be rectified through the issuance of implementation guidance?

6) States and rural communities have long championed efforts to protect our nation’s
   waterways. Please provide details on how you plan to coordinate revisions with local and
   state partners.

7) Will the EPA and Corps work with the Department of the Interior to do a cost/benefit
   impact analysis of how your rule would impact BOR projects, BOR supported
   groundwater replenishment projects and other critical water infrastructure?