

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

CHUCK CHAITOVITZ  
VICE PRESIDENT, ENVIRONMENTAL  
AFFAIRS AND SUSTAINABILITY

1615 H STREET, NW  
WASHINGTON, DC 20062  
(202) 463-5316

August 25, 2021

Damaris Christensen  
Oceans, Wetlands, and Communities Division  
Office of Water (4504-T)  
Environmental Protection Agency  
Washington, DC 20460

Stacey Jensen  
Office of the Assistant  
Secretary of the Army  
for Civil Works  
Department of the Army  
Washington, DC 20310-0104

RE: Notice of Public Meetings Regarding “Waters of the United States”; Establishment of a Public Docket; Request for Recommendations, 86 Fed. Reg. 41911, August 4, 2021, [Docket ID No. EPA-HQ-OW-2021-0328]

Dear Ms. Christensen and Ms. Jensen:

The U.S. Chamber of Commerce requests that the Environmental Protection Agency (EPA) and Army Corps of Engineers grant at least a 60-day extension of the period for receiving written recommendations about your plans to consider revising the rule “The Navigable Waters Protection Rule: Definition of “Waters of the United States” (the “NWPR”)<sup>1</sup>. That period is currently scheduled to end on September 3, 2021, the Friday before Labor Day. The Chamber and our members appreciate the opportunity to work with you to advance a legally sound definition of the term “waters of the United States” under the Clean Water Act as stated in the 2020 NWPR rule. The definition will promote both long-term environmental stewardship and economic recovery. It will serve as a catalyst for the Administration to achieve climate and infrastructure priorities.

Items for your consideration include:

**Thoughtful review process.** We agree that a thoughtful, deliberate process is needed to ensure full stakeholder input and inform the agencies’ decision-making. We commend the agencies for issuing its public notice soliciting specific written recommendations and for planning and announcing other opportunities for stakeholder meetings and outreach at this important stage of the agencies’ deliberations. The public notice solicits specific feedback on nine overarching topics. The agencies’ carefully crafted descriptions of these topics include many detailed questions. The important questions that you are raising around issues from environmental justice to climate change, as well as important technical and scientific questions concerning such matters as the scope of jurisdictional tributaries and the scope of adjacency, require analysis,

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<sup>1</sup> The Navigable Waters Protection Rule: Definition of “Waters of the United States,” 85 CFR 22250 (April 21, 2021).

feedback, and consultation that cannot be achieved effectively within the current timeframe. Moreover, the agencies' stated intention to initiate two major sequential rulemakings concerning this topic underscores the importance of careful consideration of all relevant issues to prevent unnecessary missteps and to promote sound decisions that will have staying power.

**Durable policy and broad, cross sector engagement.** The Chamber has been advocating for bipartisan consensus that will result in achievable, durable policy and regulatory certainty. Administrator Regan and other EPA and Army leaders have underscored that their new regulatory effort will be guided by, among other things, a consideration of the experience and input the agencies receive from landowners, the agricultural community, governmental entities, community organizations, environmental groups, and disadvantaged communities. The agencies should provide more than 30 days for the public to submit informed and meaningful pre-proposal recommendations to ensure that such engagement is meaningful and that there will be a robust exchange of information. More time will better enable the agencies to meet your stated goal of developing a definition that is durable and that can withstand judicial review and political pressure. In addition, providing an extension would be consistent with the agencies' plans to host a series of dialogues with state and tribal coregulators this fall to discuss both planned rulemakings, as well as a set of ten regional roundtables that have not yet been publicly announced.

**Effective permitting.** Effective, transparent, and timely federal government decision-making is necessary to support building smart, modern, resilient infrastructure. A similar modern approach to permitting, including Clean Water Act permitting, is needed to accelerate project delivery that will spur further economic recovery from the pandemic and will aggressively promote infrastructure authorizations that are needed to implement the Biden administration's policy agenda. Many of the Biden administration's infrastructure priorities are being actively debated in the more than \$1 trillion bipartisan infrastructure framework that would make progress on climate change and the environmental justice challenges referenced in EO 13990.<sup>2</sup> Among other things, the infrastructure framework would support the buildout of transmission infrastructure to connect cleaner energy, replace lead pipes to improve drinking water quality, connect people to job centers through better mass transit, deploy high speed internet to help bridge the digital divide, and make many other investments that are dependent on a reliable, efficient federal permitting process. Pre-construction delays due to a protracted permitting process can add tens of thousands to millions of dollars to the project's bottom line and even block some of these projects from proceeding. Any changes to the NWPR should be carefully considered in this context to make progress on the climate and environmental justice challenges.

**More time to gain information and experience relating to the NWPR.** It would be helpful if the agencies provided more information regarding the implementation of the NWPR, which is the first of the nine overarching topics on which the agencies have solicited comment. The Chamber encourages the agencies to be mindful that diligent compliance with the current regulations must continue, and that your ongoing experience administering the regulations over time may yield a better understanding of effectiveness as you consider how to proceed. We appreciate the agencies' statement that the agencies will continue to implement the NWPR during the time period when it is in effect, which promotes regulatory certainty and predictability for all stakeholders, including businesses and investors. Further, we respectfully submit that even

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<sup>2</sup> Executive Order 13990, Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis, 86 Fed. Reg. 7037 (January 25, 2021).

as agencies continue on the path of implementing their current plans, the agencies should maintain an open mind with regard to retaining the NWPR in substantial part or in its entirety, as the NWPR is well reasoned, is consistent with the Clean Water Act, and provides long-term certainty and predictability for stakeholders.

In conclusion, given the complex nature of the policy, economic, and technical issues associated with the definition of “waters of the United States” and the economic significance of jurisdictional determinations, we submit that an extension would assist our organizations and other commenters in providing thoughtful, considered comments on the notice that will be of maximum assistance. We respectfully request at least a 60-day extension to allow the business community and other stakeholders to offer thoughtful comments for the agency’s consideration to improve the agencies’ work on this important issue.

We look forward to continuing our dialogue with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Dana Chaboud". The signature is written in a cursive style with a large, looping initial "D".