



August 10, 2021

VIA REGULATIONS.GOV

Damaris Christensen
Oceans, Wetlands and Communities Division
Office of Water (4504-T)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

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

Attention: Docket ID No. EPA-HQ-OW-2021-0328

**Re: Request for Extension of Time to Provide Written Recommendations on the
Definition of “Waters of the United States”
86 Fed. Reg. 41911 (Aug. 4, 2021)**

Dear Ms. Christensen and Ms. Jensen:

On August 4, 2021, the U.S. Environmental Protection Agency (“EPA”) and the Department of the Army (“Army”) (or, collectively, “agencies”) published a notice in the Federal Register providing information about their plans to revise the definition of the term “waters of the United States” under the Clean Water Act and seeking feedback from the public on several topics, including implementation of the definition; regional, state and tribal interests; environmental justice interests; and jurisdictional tributaries and ditches. 86 Fed. Reg. 41911. The Federal Register notice stated public feedback must be received by the agencies no later than September 3, 2021.

The Waters Advocacy Coalition (WAC) represents a large cross-section of the nation’s construction, real estate, mining, agriculture, manufacturing, energy, and wildlife conservation sectors, all of which are vital to a thriving national economy. The undersigned organizations respectfully request a 60-day extension of the 30-day comment period to provide written recommendations on their perspectives on defining WOTUS and how to implement the definition as the agencies pursue future rulemaking proceedings.

EPA Administrator Regan and other senior EPA and Army officials have committed publicly and before Congress to robust stakeholder engagement as they undertake this rulemaking process. The scope of jurisdiction under the CWA is of fundamental importance not only to the undersigned organizations, but also to the Nation. Projects and operations in the sectors represented by WAC members are regulated in one manner or another by the CWA. Given the significance of this issue, and the prior commitments by Administrator Regan and others, the public should be permitted more than 30 days to analyze and develop recommendations on the broad range of topics that the Agencies are seeking feedback on.

Additional time for comment on these subjects is warranted to ensure that the agencies allow the public a meaningful opportunity to gather the relevant information and provide relevant feedback. The 30-day comment period also falls far short of the public comment period provided by previous administrations. By comparison, when the prior administration solicited pre-proposal recommendations on potential approaches to defining “waters of the United States,” it gave the public three months to do so. *See* “Definition of ‘Waters of the United States’—Schedule of Public Meetings,” 82 Fed. Reg. 40,742 (Aug. 28, 2017) (accepting written recommendations through November 28, 2017).

Administrator Regan and other EPA and Army leadership have repeatedly represented 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. To ensure that such engagement is indeed meaningful and that there will be a robust exchange of information, the agencies should provide more than 30 days for the public to submit informed and meaningful pre-proposal recommendations. Limiting stakeholders’ ability to comment will only compromise the agencies’ stated goal of developing a definition that is durable and that can withstand judicial review and political pressure.

For these reasons, the undersigned organizations therefore request that the comment period for providing pre-proposal recommendations be extended to a total of 90 days. We appreciate your attention to this important issue. If you wish to discuss any of these concerns, please contact David Y. Chung, counsel for WAC, at (202) 624-2587.

Sincerely,

Courtney Briggs, WAC Chair (CBriggs@nahb.org)
David Chung, Counsel to WAC (dchung@crowell.com)



APPENDIX A

American Exploration & Mining Association	Leading Builders of America
American Exploration & Production Council	National Association of Home Builders
American Farm Bureau Federation	National Association of Realtors
American Forest & Paper Association	National Association of State Departments of Agriculture
American Fuel & Petrochemical Manufacturers	National Club Association
American Gas Association	National Corn Growers Association
American Iron and Steel Institute	National Cotton Council of America
American Petroleum Institute	National Council of Farmer Cooperatives
American Public Power Association	National Mining Association
American Road & Transportation Builders Association	National Multifamily Housing Council
American Society of Golf Course Architects	National Oilseed Processors Association
Associated Builders & Contractors	National Pork Producers Council
Associated General Contractors of America	National Rural Electric Cooperative Association
Association of American Railroads	National Stone Sand & Gravel Association
Association of Oil Pipe Lines	Responsible Industry for Sound Environment
Club Management Association of America	Southeastern Lumber Manufacturers Association
Corn Refiners Association	Texas Wildlife Association
Florida and Texas Sugar Cane Growers	The Fertilizer Institute
Golf Course Builders Association of America	Treated Wood Council
Golf Course Superintendents Association of America	United Egg Producers
Independent Petroleum Association of America	USA Rice Federation
Industrial Minerals Association North America	US Chamber of Commerce
International Council of Shopping Centers	