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April 25, 2014

The Honorable Bill Shuster
2209 Rayburn HOB
Washington, D.C. 20515

Dear Representative Shuster,

On March 25, 2014, the Environmental Protection Agency and Army Corps of Engineers proposed to “clarify” which waters of the United States are subject to regulation under the Clean Water Act. The National Association of REALTORS® strongly opposes the proposal as a thinly veiled attempt to expand the federal government’s reach to almost any property with a wet area in the country.

While asserting their proposal is “narrower” than the existing regulations, these agencies unapologetically add new categories and catch-all definitions to those regulations, including:

- “ALL Tributaries” that contribute to a jurisdictional “by rule” water. Current regulations are limited to some tributaries, but this proposal includes an entirely new definition of the term “tributary” that is so broad and sweeping that few waters can be excluded.
- “ALL adjacent waters” – current regulations extend only to adjacent wetlands but this proposal inserts all other adjacent water into the regulations.
- “Other Waters” – if “all tributaries” and “all adjacent waters” isn’t broad enough, under the proposal regulators can assert jurisdiction over any other water that it deems has a “significant nexus” based on their case-by-case review using their own evidence.

The Supreme Court has made clear that there is a limit to federal jurisdiction under the CWA. But this proposed rule will extend coverage to many waters that are remote and/or carry only minor volumes, and its provisions provide no meaningful limit to federal jurisdiction. While it’s true the proposal will exclude some waters, like swimming pools and farm waste ponds, these were never at issue. And the exclusion of some waters doesn’t justify the inclusion of others.

The regulators will claim that all the new definitions and catch-alls will provide brighter lines for what’s “in/out” and on net benefit property owners. What they are really saying is the draft rule would save bureaucrats time in denying more permit applications to property owners who are seeking to improve *their very own property*. In reality, the proposed rule will subject more activities to CWA permitting requirements, NEPA analyses, mitigation requirements, and citizen suits challenging



the applications of new terms and provisions. The potential adverse impacts on economic activity have been largely dismissed by the agencies and are not reflected in EPA's flawed economic analysis for the proposed rule.

Thank you for holding this critical oversight hearing into a potential regulatory over-reach into properties with a wet area. We look forward to working with you to restore the original limits of the Clean Water Act and narrow the scope to the navigable waters of the U.S. as Congress really intended.

Sincerely,

A handwritten signature in blue ink that reads "Steve Brown". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Steve Brown
2014 President, National Association of REALTORS®