



September 17, 2014

Dear Senator:

On September 9, 2014, the House of Representatives passed H.R. 5078 with a strong, bipartisan vote. The Waters Advocacy Coalition (WAC) respectfully requests that the Senate move quickly to consider H.R. 5078, the *Waters of the United States Regulatory Overreach Protection Act of 2014*. Senate action on the bill will send a strong message to the Environmental Protection Agency (EPA) and the U.S. Corps of Engineers (Corps) that they need to go back to the drawing board, using a balanced approach to develop a consensus report to Congress that can yield a proposal that will maintain environmental safeguards and simultaneously protect business and landowners from unnecessary regulation.

Clarity on what is a “water of the United States” (WOTUS) has been elusive, but the current rule proposed by EPA and the Corps to define WOTUS is inconsistent with Supreme Court rulings and will expand federal jurisdiction and increase regulatory uncertainty. The proposed rule is, indeed, unacceptable to a broad range of stakeholders, including the bipartisan Western Governors Association, local elected officials represented by the National Association of Counties and, unanimously, by the National Association of State Departments of Agriculture.

To highlight one concern, while the agencies assert that they are not expanding federal jurisdiction, the evidence suggests otherwise. The proposed rule explicitly states that the agencies intend to treat all perennial, intermittent, and ephemeral streams as *per se* jurisdictional (no case-specific analysis), and the preamble indicates that the agencies will identify tributaries using U.S. Geological Survey (USGS) maps and other appropriate information.<sup>1</sup> Recent USGS maps prepared for EPA show a total of approximately **8.1 million miles** of perennial, intermittent, and ephemeral streams across the 50 states,<sup>2</sup> and that is before all ditches are included that could be *per se* jurisdictional under the proposed rule. However, EPA’s latest National Water Quality Inventory Report to Congress estimates only **3.5 million miles** of regulable streams nationwide.<sup>3</sup> The inventory report is based on the CWA section 305(b) reports, wherein the States report on the quality of all *navigable waters*, defined as WOTUS, within their borders. The comparison represents a 131% increase in potentially regulable stream miles under the proposed rule. The numbers simply do not add up.

It is imperative that the agencies withdraw the proposed rule and develop a consensus-based substitute that is consistent with congressional intent and Supreme Court precedent. H.R. 5078 will help accomplish this objective.

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<sup>1</sup> 79 Fed. Reg. at 22,202 (April 21, 2014).

<sup>2</sup> <http://science.house.gov/epa-maps-state-2013#overlay-context>

<sup>3</sup> U.S. Environmental Protection Agency, Office of Water, National Water Quality Inventory: Report to Congress (January 2009),

[http://water.epa.gov/lawsregs/guidance/cwa/305b/upload/2009\\_01\\_22\\_305b\\_2004report\\_2004\\_305Breport.pdf](http://water.epa.gov/lawsregs/guidance/cwa/305b/upload/2009_01_22_305b_2004report_2004_305Breport.pdf)

WAC is a coalition representing the nation's construction, real estate, mining, agriculture, transportation, forestry, manufacturing, and energy sectors, as well as wildlife conservation and recreation interests. Thank you for giving consideration to our views.

Sincerely,

Agricultural Retailers Association  
American Exploration & Mining Association  
American Farm Bureau Federation  
American Forest & Paper Association  
American Petroleum Institute  
American Public Power Association  
American Road & Transportation Builders Association  
American Society of Golf Course Architects  
Associated Builders and Contractors  
The Associated General Contractors of America  
Association of American Railroads  
Club Managers Association of America  
Corn Refiners Association  
CropLife America  
Edison Electric Institute  
Federal Forest Resources Coalition  
The Fertilizer Institute  
Foundation for Environmental and Economic Progress (FEEP)  
Golf Course Builders Association of America  
Golf Course Superintendents Association of America  
The Independent Petroleum Association of America (IPAA)  
Industrial Minerals Association – North America  
Interstate Natural Gas Association of America (INGAA)  
Irrigation Association  
Leading Builders of America  
NAIOP, the Commercial Real Estate Development Association  
National Association of Home Builders  
National Association of Manufacturers  
National Association of REALTORS®  
National Association of State Departments of Agriculture  
National Cattlemen's Beef Association  
National Club Association  
National Cotton Council  
National Council of Farmer Cooperatives  
National Golf Course Owners Association of America  
National Industrial Sand Association  
National Mining Association  
National Multifamily Housing Council  
National Oilseed Processors Association  
National Pork Producers Council (NPPC)

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National Rural Electric Cooperative Association  
National Stone, Sand and Gravel Association (NSSGA)  
Portland Cement Association  
Public Lands Council  
Responsible Industry for a Sound Environment (RISE)  
Southern Crop Production Association  
Southeastern Lumber Manufacturers Association  
Texas Wildlife Association  
Treated Wood Council  
United Egg Producers  
U.S. Chamber of Commerce