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April 25, 2017

The Honorable John Barrasso
Chairman
U.S. Senate Committee on Environment and
Public Works
307 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Thomas Carper
Ranking Member
U.S. Senate Committee on Environment and
Public Works
513 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of the over 1.2 million members of the National Association of REALTORS® (NAR), I am pleased that the Senate Committee on Environment and Public Works is holding a hearing entitled, "A Review of the Technical, Scientific, and Legal Basis of the WOTUS Rule."

Robust review and oversight by Congress is needed for this rule. For NAR members, the Waters of the U.S. (WOTUS) rulemaking by the U.S. Environmental Protection Agency (EPA) and the United States Army Corps of Engineers (USACE) redefining which U.S. water bodies are regulated under the Clean Water Act (CWA) would have impeded development opportunities and hurt property rights with no improvement in water quality.

While President Trump has issued an Executive Order that places the WOTUS rule on a path to be being repealed and replaced, it is still important to review the technical, scientific and legal foundation of the rule to ensure that a WOTUS replacement will not make the same mistakes.

It is clear that the EPA did not use the best available science or legal scholarship to develop the WOTUS rule. Instead, the agency developed a rule prematurely, then created a flimsy review of old science and legal arguments that did not take into account the independent input of regulated stakeholders, experts or of the public.

Using the best available science for developing rules is a fundamental pillar of the federal regulatory process. If federal agencies do not use sound science, then the entire rulemaking process will lack credibility and increase market uncertainty. NAR is concerned that the scientific underpinnings for the WOTUS rule were flawed and not presented to the public for adequate review and comment.

NAR is also concerned about the legality of this rule. The Supreme Court has affirmed that both the U.S. Constitution and the CWA limits federal authority over intrastate waters, yet through this proposed rule, the EPA and the USACE - attempted to expand the scope of federal jurisdiction beyond anything that ever existed under the CWA. An expanded federal scope over more waters of the U.S. would mean more waters under EPA jurisdiction, more required permits and the loss of property rights.

NAR urges the Committee to work with the EPA and the Corps of Engineers to repeal the rule and thoughtfully draft a regulation that protects the nation's economy and the rights of property owners, while promoting responsible environmental stewardship.

Sincerely,

William E. Brown
2017 President, National Association of REALTORS®

cc: U.S. Senate Committee on Environment and Public Works



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