

VIA EMAIL

The Honorable Radhika Fox
Assistant Administrator
Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

The Honorable Michael L. Connor
Assistant Secretary of the Army
for Civil Works
Department of the Army
108 Army Pentagon
Washington, DC 20310-0104

Attention: Docket Number EPA-HQ-OW-2021-0602

Re: Request for Extension of Comment Period Deadline

Dear Ms. Fox and Mr. Connor:

On December 7, 2021, the U.S. Environmental Protection Agency and the Department of the Army (agencies) published a proposal in the Federal Register to define the term “Waters of the United States” (“WOTUS”) under the Clean Water Act. 86 Fed. Reg. 69372. The agencies are providing the public with a 60-day comment period that will end on February 7, 2022. For the reasons discussed below, the undersigned agricultural organizations and entities respectfully request that the agencies extend the comment period by an additional 90 days.

Even if the proposal simply codified the pre-2015 rules and guidance as they had been used prior to the 2015 rule, our request for additional time would be highly consistent with the sound principle of allowing the public to meaningfully comment on proposed rules. The comment period overlaps with the agencies’ planned regional roundtables seeking comment on a second rulemaking are set to take place in January, 2022. We believe these overlapping processes will unfairly and improperly limit our ability to provide sound and well-informed input on the proposed regulation as well as supporting the contributions to the regional roundtables. An extension to the comment period would allow the public to focus on reviewing the proposed regulatory text and docket separate from preparing for and participating in the regional roundtables. The fact that a significant proportion of the proposed comment period also coincides with the holidays only exacerbates these challenges. Lastly, it is worth noting that the agencies halted in September 2021 the implementation of the Navigable Waters Protection Rule (NWPR). Claims of alleged environmental harms from NWPR implementation are obviously no longer relevant to the length of the comment period on this proposed rulemaking.

Unfortunately, and to our considerable alarm, the proposed rule appears to codify an entirely novel and expansive approach to the definition of WOTUS that was neither contemplated or applied under the pre-2015 guidance and rules. We simply need time to understand and process what has been proposed and assemble the relevant record for the docket as appropriate. The proposed rule makes numerous changes to the 1986/88 regulations without it being clear how these reflect developments in the caselaw or whether they are supported by the record prepared by the agencies. The agencies also make numerous statements throughout the preamble concerning their interpretation of vague, undefined terms in the regulatory text and various alternatives for how they might implement the rule. The agencies solicit comment on more than 100 specific questions in the preamble, and the proposal refers to and appears to rely on

developments in the science since the “Connectivity Report” was first issued. The agencies entered numerous, new documents into the docket which were not all available when the comment period was opened, and also created an entirely new economic analysis as well as a technical support document.

We believe it is clear that the proposed rule is far more than a simple restatement of the 1986/88 regulations and the guidance issued after the applicable Supreme Court decisions. A 60-day comment period that overlaps significantly with the holidays and the regional roundtables is simply not sufficient to allow the agricultural community to meaningfully comment on a proposal that is so important to their operations and welfare.

For these reasons we respectfully request that the agencies extend the comment period by an additional 90 days.

Sincerely,

American Dairy Coalition
American Farm Bureau Federation
Agricultural Retailers Association
American Soybean Association
Illinois Corn Growers Association
Illinois Farm Bureau
Indiana Pork Producers Association
Iowa Farm Bureau
Minnesota Agricultural Water Resource Center
Missouri Corn Growers Association
Maryland Grain Producers Association
Missouri Soybean Association
National Association of Wheat Growers
National Cattlemen’s Beef Association
National Cotton Council
National Council of Farmer Cooperatives

National Corn Growers Association
Northeast Dairy Farmers Cooperatives
National Milk Producers Federation
National Pork Producers’ Council
National Turkey Federation
Ohio AgriBusiness Association
Oregon Cattlemen's Association
Ohio Corn & Wheat Growers Association
Ohio Soybean Association
Professional Dairy Managers of Pennsylvania
Texas Association of Dairymen
The Fertilizer Institute
United Egg Producers
U.S. Cattlemen’s Association
US Poultry and Egg Association