Congress of the United States
Washington, DC 20515

May 1, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

The Honorable John M. McHugh
Secretary
Department of the Army
The Pentagon, Room 3E700
Washington, D.C. 20310

Dear Administrator McCarthy and Secretary McHugh:

We write to express our serious concerns with the proposed rule re-defining the scope of federal power under the Clean Water Act (CWA) and ask you to return this rule to your Agencies in order to address the legal, economic, and scientific deficiencies of the proposal.

On March 25, 2014, the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE) released a proposed rule that would assert CWA jurisdiction over nearly all areas with any hydrologic connection to downstream navigable waters, including man-made conveyances such as ditches. Contrary to your agencies' claims, this would directly contradict prior U.S. Supreme Court decisions, which imposed limits on the extent of federal CWA authority. Although your agencies have maintained that the rule is narrow and clarifies CWA jurisdiction, it in fact aggressively expands federal authority under the CWA while bypassing Congress and creating unnecessary ambiguity. Moreover, the rule is based on incomplete scientific and economic analyses.

The rule is flawed in a number of ways. The most problematic of these flaws concerns the significant expansion of areas defined as "waters of the U.S." by effectively removing the word "navigable" from the definition of the CWA. Based on a legally and scientifically unsound view of the "significant nexus" concept espoused by Justice Kennedy, the rule would place features such as ditches, ephemeral drainages, ponds (natural or man-made), prairie potholes, seeps, flood plains, and other occasionally or seasonally wet areas under federal control.

Additionally, rather than providing clarity and making identifying covered waters "less complicated and more efficient," the rule instead creates more confusion and will inevitably cause unnecessary litigation. For example, the rule heavily relies on undefined or vague concepts such as "riparian areas," "landscape unit," "floodplain," "ordinary high water mark" as determined by the agencies' "best professional judgment" and "aggregation." Even more egregious, the rule throws into confusion extensive state regulation of point sources under various CWA programs.

In early December of 2013, your agencies released a joint analysis stating that this rule would subject an additional three percent of U.S. waters and wetlands to CWA jurisdiction and that the rule would create an economic benefit of at least $100 million annually. This calculation is seriously flawed. In this analysis, the EPA evaluated the FY 2009-2010 requests for jurisdictional determinations – a period of time that was the most economically depressed in

PRINTED ON RECYCLED PAPER

nearly a century. This period, for example, saw extremely low construction activity and should not have been used as a baseline to estimate the incremental acreage impacted by this rule. In addition, the derivation of the three percent increase calculation did not take into account the landowners who – often at no fault of their own – do not seek a jurisdictional determination, but rather later learn from your agencies that their property is subject to the CWA. These errors alone, which are just two of many in EPA's assumptions and methodology, call into question the veracity of any of the conclusions of the economic analysis.

Compounding both the ambiguity of the rule and the highly questionable economic analysis, the scientific report – which the agencies point to as the foundation of this rule – has been neither peer-reviewed nor finalized. The EPA's draft study, "Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence," was sent to the EPA's Science Advisory Board to begin review on the same day the rule was sent to OMB for interagency review. The science should always come before a rulemaking, especially in this instance where the scientific and legal concepts are inextricably linked.

For all these reasons, we ask that this rule be withdrawn and returned to your agencies. This rule has been built on an incomplete scientific study and a flawed economic analysis. We therefore ask you to formally return this rule to your agencies.

Sincerely,

CHRIS COLLINS
Member of Congress

KURT SCHRADER
Member of Congress

BILL SHUSTER
Chairman
House Committee on
Transportation and Infrastructure

LAMAR SMITH
Chairman
House Committee on
Science, Space, and Technology

FRED UPTON
Chairman
House Committee on
Energy and Commerce

DOC HASTINGS
Chairman
House Committee on
Natural Resources

FRANK LUCAS
Chairman
House Committee on Agriculture

COLLIN PETERSON
Ranking Member
House Committee on Agriculture

HAL ROGERS
Chairman
House Committee on Appropriations

SAM GRAVES
Chairman
House Committee on Small Business

BOB GOODLATTE
Chairman
House Committee on Judiciary

DAVE CAMP
Chairman
House Committee on Ways and Means

DARRELL ISSA
Chairman
House Committee on
Oversight and Government Reform

JOHN KLINE
Chairman
House Committee on
Education and Workforce

PETE SESSIONS
Chairman
House Committee on Rules

JEB HENSARLING
Chairman
House Committee on Financial Services

JEFF MILLER
Chairman
House Committee on Veterans' Affairs

CANDICE MILLER
Chairman
House Committee on House Administration

MIKE ROGERS
Chairman
House Permanent Select Committee
on Intelligence

BOB GIBBS
Chairman
Subcommittee on
Water Resources and Environment

MIKE McCAUL
Chairman
House Committee on Homeland Security

PAUL RYAN
Chairman
House Committee on Budget

CC: The Hon. Dr. Howard Shelanski, OMB Office of Information and Regulatory Affairs

IL-19

Michele Bachmann

Tom Petri

Bennie G. Thompson

Shelley Moore Capito

Ralph M. Hall

Matt Salmon

Doug Lamborn

Tim Murphy

Mike Coffman

Sanford D. Bishop Jr.

Paul C. Broun

Mike McIntyre

Tim Walberg

Blaine Luetkemeyer

Frank Franks

Richard Davis

Lynn A. Ulmer Jr.

Rob Owen

Steve Pearce

John Fleming

Hugo Carollan

Larry Rau

Paul A. Gosar

Keith J. Rothfus

Doug La Malfa

Randy K. Weber

Ted S. Yoho

Ron Bishop

Austin Scott

Pete P. Gallego

Doug Collins GA-09

Tom Graves

Richard Hudson

Joseph R. Pitts

Scott Rigell

TN-04

Daniel B. Maffei

Dave Reichert

Phil Gingrey

Ann Wagner

Martha Roby

Jackie Walorski

Tom Cotton

J. Randy Forbes

Ed Whitfield

Ken Calvert

Louie Gohmert

Jim Matheson

Steve King

J T Smith

Don Young

Dan Rohrbacher

John Kostner

Felix Vela

Bill Boyd M.C.

Robert E Latta

Lee Terry

Spencer Bachus

Adrian Smith

John J Duncan Jr

John Barrow

Walter B. Jones

Mike Simpson

Robert B. Aderholt

Bill Owens

Tom Latham

Jim Sensenbrenner WI-05

Robert J Wittman VA-01

Pat Tiberi

Mike Pompeo

Cynthia M. Lummis

Lou Barletta

Jeff Flake

Blake Farenthold

Tim Huelskamp

Jim Bridenstine

Marsha Blackburn

Kevin Yoder

Todd Rokita

Chuck Fleischmann

Tim Scott

Mark V. Amodei

Van Taylor

Thomas Massie

Brett Guthrie

Gregg Harper

M.C.

Glenn GT Thompson

Chris Stewart

Mike Ryan (AL-03)

Adam Schiff

Lauy Buchanan

Jeyong

Vicky Hartzler

Kay Granger

Lynn Jenkins

Bill Flores

Kevin Cramer

H. Morgan Griffith

Steve Womack

Stephen Fincher

Roger Williams

D. Benkert

Jaime Herrera Beutler

Bill Cassidy

Terri Sewell

Tim [illegible] (AR-02)

[illegible] II

Brad R. Wenstrup

Bill Huizenga

[illegible]

Mike Mulvaney

SC-5

[illegible]

[illegible]

[illegible]

[illegible]

Rosa L. Neyba

Andy Byrne

Dilly Long

[illegible]

Susan W. Brooks

Ken A. Ribble

Mark Kelly

Raúl R. Labrador

J. [illegible]

[illegible] M.D

Bill Johnson

[illegible]

[illegible]

[illegible]

Rob Woodall

Mark Wayne Mullin

Diane Black

Mo Brooks

Sam Johnson

Mike Stopak

John Culberson

Gene Kingston

Luke Messer

Tom Marino

Tom Rice

[illegible] MS 4

[illegible] MI-03

Robert Pittenger

Pete Olson

[illegible]

[illegible]

[illegible]

Renee L Ellmers

Kevin McCarthy

Virginia Foxx

[illegible]

Kerrin [illegible]

Thomas Price

Erik Paulsen

Joe Heck

[illegible]

Tom Marino

Devin Nunes

Michael A. Grimm

K. Mitchell [illegible]

[illegible]

Steve Chabot

Rubén Hinojosa

Greg Walden

Howard Coble

Joe Barton

Frank R Wolf

P. Paskam

Kurt Bentivolio

Cathy McMorris Rodgers

Paul Cook

Shaun Box-Lettinen

Jim Rahall

Joe Wilson

Scott Garrett

Michael R. Turner

Gary G. Miller

Patrick T. McHenry

Howard P. Buck McKeon

Member	Party	District
Don Young	R	AK-AL
Bradley Byrne	R	AL-1
Martha Roby	R	AL-2
Mike Rogers	R	AL-3
Robert Aderholt	R	AL-4
Mo Brooks	R	AL-5
Spencer Bachus	R	AL-6
Terri Sewell	D	AL-7
Rick Crawford	R	AR-1
Tim Griffin	R	AR-2
Steve Womack	R	AR-3
Tom Cotton	R	AR-4
Paul Gosar	R	AZ-4
Matt Salmon	R	AZ-5
David Schweikert	R	AZ-6
Trent Franks	R	AZ-8
Doug LaMalfa	R	CA-1
Jeff Denham	R	CA-10
Jim Costa	D	CA-16
David Valadao	R	CA-21
Devin Nunes	R	CA-22
Kevin McCarthy	R	CA-22
Howard "Buck" McKeon	R	CA-25
Gary Miller	R	CA-31
Tom McClintock	R	CA-4
Ken Calvert	R	CA-42
Dana Rohrabacher	R	CA-48
Darrell Issa	R	CA-49
Paul Cook	R	CA-8
Scott Tipton	R	CO-3
Cory Gardner	R	CO-4
Doug Lamborn	R	CO-5
Mike Coffman	R	CO-6
Jeff Miller	R	FL-1
Rich Nugent	R	FL-11
Gus Bilirakis	R	FL-12
Tom Rooney	R	FL-17
Steve Southerland	R	FL-2
Mario Diaz-Balart	R	FL-25
Ileana Ros-Lehtinen	R	FL-27
Ted Yoho	R	FL-3
Ron DeSantis	R	FL-6
John Mica	R	FL-7
Jack Kingston	R	GA-1
Paul Broun	R	GA-10
Phil Gingrey	R	GA-11
John Barrow	D	GA-12
David Scott	D	GA-13
Tom Graves	R	GA-14
Sanford Bishop	D	GA-2
Lynn Westmoreland	R	GA-3
Tom Price	R	GA-6
Rob Woodall	R	GA-7
Austin Scott	R	GA-8
Doug Collins	R	GA-9
Tom Latham	R	IA-3
Steve King	R	IA-5
Raul Labrador	R	ID-1
Michael Simpson	R	ID-2
William Enyart	D	IL-12
Rodney Davis	R	IL-13
Randy Hultgren	R	IL-14
John Shimkus	R	IL-15
Adam Kinzinger	R	IL-16
Aaron Schock	R	IL-18
Peter Roskam	R	IL-6
Jackie Walorski	R	IN-2
Marlin Stutzman	R	IN-3
Todd Rokita	R	IN-4
Susan Brooks	R	IN-5
Luke Messer	R	IN-6
Larry Bucshon	R	IN-8
Todd Young	R	IN-9
Tim Huelskamp	R	KS-1
Lynn Jenkins	R	KS-2
Kevin Yoder	R	KS-3
Mike Pompeo	R	KS-4
Ed Whitfield	R	KY-1
Brett Guthrie	R	KY-2
Thomas Massie	R	KY-4
Hal Rogers	R	KY-5
Andy Barr	R	KY-6
Cedric Richmond	D	LA-2
Charles Boustany	R	LA-3
John Fleming	R	LA-4
Vance McAllister	R	LA-5
Bill Cassidy	R	LA-6
Andy Harris	R	MD-1
Dan Benishek	R	MI-1
Candice Miller	R	MI-10
Kerry Bentivolio	R	MI-11
Bill Huizenga	R	MI-2
Justin Amash	R	MI-3

Dave Camp	R	MI-4
Fred Upton	R	MI-6
Tim Walberg	R	MI-7
Mike Rogers	R	MI-8
John Kline	R	MN-2
Erik Paulsen	R	MN-3
Michele Bachmann	R	MN-6
Collin Peterson	D	MN-7
Ann Wagner	R	MO-2
Blaine Luetkemeyer	R	MO-3
Vicky Hartzler	R	MO-4
Sam Graves	R	MO-6
Billy Long	R	MO-7
Jason Smith	R	MO-8
Alan Nunnelee	R	MS-1
Bennie G. Thompson	D	MS-2
Gregg Harper	R	MS-3
Steven Palazzo	R	MS-4
Patrick McHenry	R	NC-10
Mark Meadows	R	NC-11
George Holding	R	NC-13
Renee Ellmers	R	NC-2
Walter Jones	R	NC-3
Virginia Foxx	R	NC-5
Howard Coble	R	NC-6
Mike McIntyre	D	NC-7
Richard Hudson	R	NC-8
Robert Pittenger	R	NC-9
Kevin Cramer	R	ND-AL
Lee Terry	R	NE-2
Adrian Smith	R	NE-3
Scott Garrett	R	NJ-5
Steve Pearce	R	NM-2
Mark Amodei	R	NV-2
Joe Heck	R	NV-3
Michael Grimm	R	NY-11
Chris Gibson	R	NY-19
Peter King	R	NY-2
Bill Owens	D	NY-21
Richard Hanna	R	NY-22
Tom Reed	R	NY-23
Chris Collins	R	NY-27
Steve Chabot	R	OH-1
Michael Turner	R	OH-10
Patrick Tiberi	R	OH-12
David Joyce	R	OH-14
Steve Stivers	R	OH-15

Jim Renacci	R	OH-16
Brad Wenstrup	R	OH-2
Jim Jordan	R	OH-4
Robert Latta	R	OH-5
Bill Johnson	R	OH-6
Bob Gibbs	R	OH-7
Jim Bridenstine	R	OK-1
Markwayne Mullin	R	OK-2
Frank Lucas	R	OK-3
James Lankford	R	OK-5
Greg Walden	R	OR-2
Kurt Schrader	D	OR-5
Tom Marino	R	PA-10
Lou Barletta	R	PA-11
Keith Rothfus	R	PA-12
Charlie Dent	R	PA-15
Joe Pitts	R	PA-16
Tim Murphy	R	PA-18
Mike Kelly	R	PA-3
Scott Perry	R	PA-4
Glenn 'GT' Thompson	R	PA-5
Jim Gerlach	R	PA-6
Patrick Meehan	R	PA-7
Mike Fitzpatrick	R	PA-8
Bill Shuster	R	PA-9
Mark Sanford	R	SC-1
Joe Wilson	R	SC-2
Jeff Duncan	R	SC-3
Mick Mulvaney	R	SC-5
Tom Rice	R	SC-7
Kristi Noem	R	SD-AL
Phil Roe	R	TN-1
John J. Duncan, Jr.	R	TN-2
Chuck Fleishmann	R	TN-3
Scott DesJarlais	R	TN-4
Diane Black	R	TN-6
Marsha Blackburn	R	TN-7
Stephen Fincher	R	TN-8
Louie Gohmert	R	TX-1
Michael McCaul	R	TX-10
K. Michael Conaway	R	TX-11
Kay Granger	R	TX-12
Mac Thornberry	R	TX-13
Randy Weber	R	TX-14
Ruben Hinojosa	D	TX-15
Bill Flores	R	TX-17
Randy Neugebauer	R	TX-19

Ted Poe	R	TX-2
Lamar Smith	R	TX-21
Pete Olson	R	TX-22
Pete Gallego	D	TX-23
Kenny Marchant	R	TX-24
Roger Williams	R	TX-25
Michael Burgess	R	TX-26
Blake Farenthold	R	TX-27
Henry Cuellar	D	TX-28
Sam Johnson	R	TX-3
John Carter	R	TX-31
Pete Sessions	R	TX-32
Marc Veasey	D	TX-33
Filemon Vela	D	TX-34
Steve Stockman	R	TX-36
Ralph Hall	R	TX-4
Jeb Hensarling	R	TX-5
Joe Barton	R	TX-6
John Culberson	R	TX-7
Kevin Brady	R	TX-8
Rob Bishop	R	UT-1
Chris Stewart	R	UT-2
Jason Chaffetz	R	UT-3
Jim Matheson	D	UT-4
Robert Wittman	R	VA-1
Frank Wolf	R	VA-10
Scott Rigell	R	VA-2
J. Randy Forbes	R	VA-4
Robert Hurt	R	VA-5
Bob Goodlatte	R	VA-6
Morgan Griffith	R	VA-9
Jaime Herrera Beutler	R	WA-3
Doc Hastings	R	WA-4
Cathy McMorris Rodgers	R	WA-5
Dave Reichert	R	WA-8
Paul Ryan	R	WI-3
Jim Sensenbrenner	R	WI-5
Tom Petri	R	WI-6
Sean Duffy	R	WI-7
Reid Ribble	R	WI-8
David McKinley	R	WV-1
Shelly Moore Capito	R	WV-2
Nick Rahall	D	WV-3
Cynthia Lummis	R	WY-AL