



October 4, 2021

Robin Vos
Assembly Speaker
Wisconsin
President, NCSL

Martha R. Wigton
Director
House Budget & Research
Office
Georgia
Staff Chair, NCSL

Tim Storey
Executive Director

The Honorable Radhika Fox
Assistant Administrator
U.S. Environmental Protection Agency
Office of Water
1200 Pennsylvania Avenue N.W.
Washington, D.C. 20460

The Honorable Jamie Pinkham
Acting Assistant Secretary of the Army
- Civil Works
U.S. Department of the Army
108 Army Pentagon
Washington, D.C. 20310

RE: Response to EPA’s Intent to Revise the Definition of “waters of the United States.”

Dear Assistant Administrator Fox and Acting Assistant Secretary Pinkham:

The National Conference of State Legislatures (NCSL), the bipartisan organization representing the legislatures of our nation’s states, commonwealths and territories, welcomes the opportunity to provide input on the Environmental Protection Agency and the U.S. Department of the Army (the agencies) initial rulemaking to revise the definition of “waters of the United States” and restore the regulations in place prior to the 2015 Clean Water Rule. By the agencies’ own admission, consultation with state and local governments, and their respective national organizations, is an important step in the process prior to proposing regulations, and we look forward to working together to ensure that partnership remains strong.

Over 40 years ago, Congress enshrined the principle of cooperative federalism into the Clean Water Act, acknowledging that a singular, universal approach to water protection and management does not always consider the unique water challenges states face, and instead affords states the flexibility to address their water needs as they see fit, relying upon the expertise within their states to protect the unique chemical, physical and biological integrity of the nation’s waters. As defined partners in protecting America’s water resources, it is essential that state governments have a clear understanding of the changes both regarding restoration of regulations and guidance defining “waters of the United States” in place prior to the 2015 rule, and as the agencies work towards a second rulemaking that further defines “waters of the United States.” While we are encouraged by the initial outreach efforts thus far, we urge the administration to engage in continued meaningful and timely consultation with state and local government officials throughout the entirety of the process, ensuring that the administration is assessing, from numerous viewpoints, various potential impacts of redefining “waters of the United States.”

NCSL is appreciative of the initial federalism consultation on Aug. 5, 2021, and we look forward to continuing to work together with the administration as the regulatory process moves forward and further decisions are made regarding the scope of “waters of the United States.” If you have any questions, please do not hesitate to contact NCSL staff Kristen Hildreth (202-624-3597 or Kristen.hildreth@ncsl.org).

Sincerely,

A handwritten signature in blue ink that reads "Tim Storey". The signature is written in a cursive style with a long, sweeping underline.

Tim Storey
Executive Director
National Conference of State Legislatures

Enclosed:

[NCSL June 2017 Letter to EPA Administrator Pruitt](#)

[NCSL March 2012 Letter to the Acting Director of the Office of Management and Budget](#)